

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING AGENDA
September 1, 2023 – 12:00 p.m. to 2:00 p.m.
Webex**

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
12:05	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> • CJA 4-202.11. Vexatious record requester 	Action	Tab 2	Keisa Williams
12:15	CJA 6-301. Authority of court commissioner as magistrate	Action	Tab 3	Judge Scott
12:45	CJA 4-202.08. Fees for records, information, and services	Action	Tab 4	Keisa Williams
1:00	CJA 4-202.02. Records classification	Action	Tab 5	Keisa Williams
1:15	<u>Technology Policies:</u> <ul style="list-style-type: none"> • Information Security Policy • Information Security Risk Management Policy 	Action	Tab 6	Brody Arishita
1:50	Old Business/New Business			
2:00	Adjourn			

2023 Meetings:

October 6, 2023

November 3, 2023 (all day)

December 1, 2023

TAB 1

Minutes

July 7, 2023

**UTAH JUDICIALCOUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
July 7, 2023: 12:00 p.m.

DRAFT

MEMBERS:

PRESENT

EXCUSED

GUESTS:

Judge Samuel Chiara, <i>Chair</i>	•	
Judge Suchada Bazzelle	•	
Judge Augustus Chin	•	
Judge Michael DiReda	•	
Judge James Gardner	•	

Keri Sargent
Paul Barron
Tucker Samuelsen

STAFF:

Keisa Williams
Brody Arishita
Minhvan Thach

(1) Welcome and approval of minutes:

Judge Chiara welcomed committee members to the meeting. The committee considered the minutes from the June 2, 2023 meeting. With no changes, Judge Chin moved to approve the minutes as presented. Judge DiReda seconded the motion. The motion passed unanimously.

(2) Rules back from public comment:

- **CJA 4-202.02. Records classification (eff. 4/25/23)**
- **CJA 4-202.03. Records access**
- **CJA 4-202.05. Request to access an administrative record; request to classify an administrative record; request to create an index**
- **CJA 4-404. Jury selection and service**

Rule 4-202.02 – one public comment was received. The commenter was in favor of the amendments and did not recommend further changes. This rule was approved on an expedited basis and is currently in effect. No action is required unless PP&T makes additional edits.

No public comments were received for rules 4-202.03, 4-202.05, or 4-404.

With no recommended amendments, Judge Gardner moved to recommend to the Council that CJA rules 4-202.03, 4-202.05, and 4-404 be approved as final with an effective date of November 1, 2023. Judge Bazzelle seconded the motion. The motion passed unanimously.

(3) CJA 6-301. Authority of court commissioner as magistrate

The Judicial Council approved a budget request from the Third District court for assistance with criminal calendars. One option is to hire “criminal commissioners.” Council members asked for an amendment to CJA rule 6-301 to broaden commissioners’ magistrate authority. Judge Todd Shaughnessy and Judge Brendan McCullagh are in the

process of drafting a detailed proposal outlining the tasks criminal commissioners could constitutionally perform. In lieu of amendments to the rules of criminal procedure, Judge Shaughnessy recommends creating a local 3rd district court rule. Once the kinks are ironed out in the 3rd district, procedural rules could be amended if necessary. It's unclear at this time whether other districts are interested in hiring criminal commissioners, so the program may not be expanded beyond the 3rd district.

Following a discussion, the Committee decided to take no action on CJA 6-301 until after they have an opportunity to review Judge Shaughnessy's proposal.

Technology report/proposals:

The Technology Advisory group met on June 15 and will meet again on July 18. The Advisory group is continuing to review the email retention policy and hopes to have two other policies ready for PP&T's August meeting.

Old Business/New Business:

None

Adjourn: With no further items for discussion, the meeting adjourned at 12:12 pm. The next meeting will be held on August 4, 2023 at 12 PM via Webex video conferencing.

TAB 2

Back from Public Comment:

CJA 4-202.11. Vexatious record requester

Notes: The court received one public comment. The commenter is generally supportive of the rule, but suggests adding an exception for an attorney hired by a vexatious requester. While the comment is well taken, my office is concerned that a vexatious requester could attempt to circumvent the order by hiring counsel to make requests on his or her behalf. The Office of General Counsel would not deny a reasonable request from an attorney seeking records for representation purposes.

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: June 26, 2023

Utah Courts

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Code of Judicial Administration – Comment Period Closed August 10, 2023

CJA04-0202.11. Vexatious record requester (NEW). New proposed rule establishing a process whereby an administrative unit in the judicial branch can petition for relief from a person the administrative unit believes to be a vexatious records requester. The rule is in response to S.B. 231 and 63G-2-702(5) passed during the 2023 legislative session.

This entry was posted in [-Code of Judicial Administration, CJA04-0202.11.](#)

« [Rules of Appellate Procedure – Comment Period Closed August 12, 2023](#)

[Rules of Juvenile Procedure – Comment Period Closed July 29, 2023](#) »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
- [-Code of Judicial Conduct](#)
- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

UTAH COURTS

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2 thoughts on “Code of Judicial Administration – Comment Period Closed August 10, 2023”

David Ferguson

June 26, 2023 at 8:23 pm

This rule appears to offer an appropriately thoughtful balance. One area of concern I have is that sometimes I will get a client at a jail or prison who has been denied records requests because the request simply asks for information previously provided. Inmates in correctional facilities occasionally have legal documents destroyed or confiscated, which requires follow-up requests. Others sometimes don't appreciate how to make an appropriate request or appeal a denial due to intellectual disabilities or language barriers. I can appreciate that there has to be some sort of way to get relief from a vexatious requester, but I have concerns about situations in which a pro se individual finally gets an attorney to help them with their legal concern, and that attorney makes a request on behalf of that person where the attorney's request may be able to navigate the hurdles that the pro se requester couldn't. If the person was already deemed vexatious, then the attorney's sensible request may be blocked just as there is finally someone involved in the situation who can actually get to the bottom of the inmate's concern, provided that the request would be accepted such that the attorney can review the documents that the inmate wanted to get but couldn't wrap their heads around the appropriate way to make a request for the records that they actually need.

I don't know if there can be some sort of “change of circumstance” exception, or some kind of “newly retained counsel gets one free pass” rule for situations after the opportunity for an appeal has passed (or without needing to do an appeal), but I hope the committee can make some sort of small revision that allows for something along those lines. The risk here is that if I have a potential client whose sympathetic story prompts me to further investigate the concern, but I can't get access to records related to that concern because the person has burned their bridges with the record keeper, then I may have to turn down helping that person simply because I can't get enough information to decide whether their concern is legally viable. And I hope the committee will agree that such a situation is sufficiently foreseeable that some kind of equitable exception ought to apply.

Otherwise, I very much understand and appreciate the delicate balance that went into crafting this rule.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
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- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01

Rule 4-202.11. Vexatious record requester

Intent:

To establish the rights and procedures governing requests for relief from a vexatious record requester.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Definitions.

(1)(A) "Committee" means the Management Committee of the Council.

(1)(B) "Executive secretary" means an individual designated as executive secretary by the Committee for purposes of this rule.

(1)(C) "Respondent" means a person the petitioner claims is a vexatious record requester.

(2) Petition. The Office of General Counsel may submit a petition to the Committee requesting relief from a person alleged to be a vexatious record requester.

(2)(A) A copy of the petition shall be sent to the state court administrator and the respondent on the day the petition is submitted to the Committee in accordance with paragraph (3)(B). Service by mail or electronic means is complete upon sending.

(2)(B) The petition shall include:

(2)(B)(i) the respondent's name, email address, and mailing address submitted by the respondent in his or her most recent record request;

(2)(B)(ii) a description of the conduct that demonstrates the respondent is a vexatious record requester; and

(2)(B)(iii) a statement of the relief the petitioner seeks.

(3) Scheduling and notice.

(3)(A) Scheduling. Except as provided in (3)(C), no later than 7 business days after receiving the petition, the executive secretary shall send a copy of the petition to the Committee chair and schedule a hearing for the Committee to consider the petition:

(3)(A)(i) at the next regularly scheduled Committee meeting falling at least 15, but no later than 30, business days after the petition is submitted; or

(3)(A)(ii) at a regularly scheduled Committee meeting more than 30 business days after the petition is submitted, if the Committee chair determines the Committee will not have sufficient time to hold a hearing at an earlier meeting date.

(3)(B) **Notice.** The executive secretary shall send notice of the date, time, and location of the Committee meeting at which the petition will be heard to the Office of General Counsel, respondent, and state court administrator. Notice may be sent to the respondent via email at the email address last used by the respondent in communications with the court. If the respondent is incarcerated or is otherwise unable to communicate by email, notice shall be sent to the respondent via the last known method of communication used by the respondent. Public notice will be posted in accordance with paragraph (6).

(3)(C) **Denial without a hearing.** The Committee chair may direct the executive secretary not to schedule a hearing if the Committee chair and at least one other member of the Committee determine that the petition is without merit. In making that determination, the Committee chair may request that the respondent submit a written response to the petition.

(3)(C)(i) If the Committee chair declines to schedule a hearing, the executive secretary shall send notice to the Office of General Counsel, respondent, and state court administrator that the petition has been denied and the reasons for the denial. Notice shall be sent in accordance with paragraph (3)(B).

(3)(C)(ii) The petition, a response if received under paragraph (3)(C), and the Committee chair's denial decision shall be provided to the Committee in advance of the next regularly scheduled Committee meeting. If a majority of the Committee disagrees with the chair's decision to deny the petition, the Committee shall direct the executive secretary to schedule a hearing. Committee discussions about the chair's denial decision may be held in an executive session.

(4) **Response.** No later than 5 business days before the hearing, the respondent shall submit to the executive secretary and the Office of General Counsel a written statement in response to the petition. The written statement may be the same document as the respondent's written response under paragraph (3)(C).

(5) **Hearing.** The Committee will allow the Office of General Counsel and respondent a reasonable opportunity to present facts, authority, and argument at the hearing. The order of presentation and time permitted to each party shall be decided by the Committee. The Committee may permit any other person whose interests might be substantially affected by a decision to participate in the hearing. Discovery is prohibited, but the Committee may require either party to produce additional evidence in support of their claim or position. If the respondent fails to appear at the hearing, the Committee may cancel the hearing and deliberate the petition, or hold the hearing without the respondent.

(6) **Open and closed meeting.** Committee deliberations are closed and may be held in an executive session. Presentations by the Office of General Counsel, respondent, and any other person permitted to appear at the hearing are open to the public and notice of the hearing shall be given in accordance with Rule 2-103.

(7) **Order.** No later than 10 business days after the hearing, or the date on which the hearing was canceled under paragraph (5) was scheduled to be held, the Committee shall determine

whether the Office of General Counsel has demonstrated that the respondent is a vexatious record requester and issue a signed order that grants or denies the petition in whole or in part.

(7)(A) In determining whether the Office of General Counsel has demonstrated that the respondent is a vexatious record requester, the Committee may consider:

(7)(A)(i) the interests described in Rule 4-202;

(7)(A)(ii) the total number of record requests the respondent has submitted to the judicial branch, including:

(7)(A)(ii)(a) the number of pending record requests;

(7)(A)(ii)(b) the number of record requests approved;

(7)(A)(ii)(c) the number of record requests denied; and

(7)(A)(ii)(d) the number of appeals taken from record request denials, including information related to the results of such appeals.

(7)(A)(iii) the scope, content, and subject matter of record requests the respondent has submitted to the judicial branch;

(7)(A)(iv) the nature of any communications from the respondent to court employees or judicial officers related to a record request;

(7)(A)(v) any pattern of conduct that the Committee determines to constitute:

(7)(A)(v)(a) an abuse of the right of access to information; or

(7)(A)(v)(b) substantial interference with the operations of the judicial branch;

(7)(A)(vi) any prior petitions, findings, and orders regarding respondent as a vexatious record requester; and

(7)(A)(vii) any other factor or information the Committee considers relevant.

(7)(B) If the Committee grants the petition in whole or in part, it may order any relief requested by the Office of General Counsel, or any other relief the Committee deems appropriate.

(7)(C) The Committee's order granting the petition in whole or in part shall contain a statement of the reasons for the Committee's decision, and a statement that the respondent may petition for judicial review of the Committee's decision by filing a complaint in the Third Judicial District Court in accordance with the Utah Rules of Civil Procedure. If the Committee denies the petition, in whole or in part, the Office of General Counsel may also seek judicial review of the Committee's decision in accordance with this subsection. Any complaint filed under this subsection shall be filed no later than 30 calendar days from the date of the Committee's order.

151 (8) **Appeals.** A record request that the Office of General Counsel is not required to fulfill in
152 accordance with an order issued under this rule may not be the subject of an appeal under Rule
153 4-202.07.

154
155 (9) The time periods in this rule may be extended by mutual agreement.

156
157 *Effective: November 1, 2023*

TAB 3

CJA 6-301. Authority of court commissioner as magistrate

Notes: Rule draft and criminal commissioner duties proposed by the 3rd District Court.

CRIMINAL COMMISSIONER / MAGISTRATE FUNCTIONS

3rd Judicial District Court

FIRST APPEARANCE COURT (FAC)

5x/week; 1pm to 4pm --- In Person (Matheson)

Task	Status of Officer
Charge & Information - Inform D of charge & furnish Information (URCrP 7(a))	Article 8 status not required
Rights - Inform D of various rights (URCrP 7(a))	Article 8 status not required
Indigency - Determine indigency & appoint counsel	Article 8 status not required
Scheduling - Schedule next appearance with assigned judge; reassign cases per district policies	Article 8 status not required
Pretrial release - Consider pretrial release or changes to custody status	Article 8 status not required in almost all circumstances. Importantly, any decision by the magistrate to hold the defendant will be automatically reviewed, de novo, at a detention hearing before an article 8 judge, which is set at FAC.
	Current statute: “[T]emporary pretrial status order” is issued at time of warrant (UCA 77-20-205(1)(a)). Warrants signed or countersigned by article 8 judge would establish a “temporary pretrial status order.”
	URCrP 7(c) and 77-20-205(2)(a) state that the “pretrial status order,” which replaces the “temporary pretrial status order” is issued at time of first appearance. However, “[t]he magistrate ... shall delay the issuance of a pretrial status order ... until a pretrial detention hearing is held if the prosecuting attorney makes a motion for pretrial detention ... if a party requests a delay; or ... for good cause.” UCA 77-20-205(2)(c).
	If a defendant is held without bail, the State would be required to make a motion at FAC for continued detention pending a detention hearing. Granting that relief would not require article 8 status. The defendant’s custody status would remain as ordered by an article 8 judge.
	Denying such a motion, or ordering a defendant released to pretrial services, on recognizance, or reducing bail might arguably require article 8 status, but the defendant’s interests are not being adversely affected in virtually all circumstances. Only the State could object, and it is entitled to have that heard, de novo, at the first scheduling conference with the assigned judge. The magistrate’s order would remain interlocutory and not subject to appeal; likewise, it’s not clear the State (as opposed to the defendant) has a right to appeal even a final pretrial status order. See 77-18a-1 (“[A] defendant may, as a matter of right, appeal from ... an order denying bail under Chapter 20, Bail.”). An interlocutory appeal would necessarily and practically have to be from the article 8 judge’s decision at the scheduling conference / detention hearing.
	To the extent article 8 status is required, CORIS minutes could be countersigned.

FIRST APPEARANCE COURT (FAC)

5x/week; 1pm to 4pm --- In Person (Matheson)

Task	Status of Officer
Criminal POs & No Contact Orders - Issue criminal protective orders / no contact orders; modify or dismiss same	Article 8 status arguably not required, but countersigning by article 8 judge would be prudent. Civil protective order hearings can be conducted by commissioners (Buck v. Robinson, 2008 UT 28).
Existing Warrants - Take D's into custody on existing warrants	Article 8 status not required
Issue Warrants - Determine FTAs and issue warrants (based on PC or FTA if notice is provided)	Article 8 status or countersign
Extradition matters - order extradition <i>by consent</i> ; set review hearings; disputed extradition cases are set with assigned judge	Article 8 status not required. Extradition orders at FAC are done only by consent. Contested matters go to the assigned judge. Consider adding waiver/objection language to consent form.
Material Witness Warrants - Review and approve material witness warrants	Article 8 status or countersign. [We could require these to be submitted in efilng, which would eliminate the need to modify CORIS]
Dismissals - Dismiss cases by stipuation	Article 8 status or countersign. Magistrate's have the authority to conduct preliminary hearings. <i>Ford v. State</i> , 199 P.3d 892. Failure to establish PC means case must be dismissed without prejudice. Dismissal, without prejudice at least, would not appear to require article 8 status. Nevertheless, these could be set up to countersign if necessary.
Motions - Review variously filed motions in relation to the FAC calendar (dismiss, continue, appear remotely, etc.)	Article 8 status not required (unless dismissal or other "final" order, in which case countersign)

Task	Frequency	Location	Status of Officer
Arrest Warrants - review Information for PC and issue "temporary pretrial status order;" notify prosecutor of insufficient PC; dismiss case if deficiency not cured (URCrP 6)	Approx. 40-45 per day	Remote	Article 8 status or countersign. Countersign function currently exists for efilng so this can be done with current technology.
Jail Phone Calls (typically pretrial release issues)	5-10 calls / month	Remote	See pretrial release under FAC
Investigative Subpoenas - review petition and, if appropriate, issue subpoena(s)	1-3 per day	Remote	Article 8 status or countersign.
Preliminary Hearings - bind over or dismiss for failure to establish PC			Article 8 status not required (<i>Ford v. State</i> , 199 P. 3d 892); dismissal may need to be countersigned.
Temporary Protective Orders; Temporary Stalking Injunctions; etc. - review and, if appropriate, issue temporary Pos, Sis, etc.	8-10 per day	Remote	Article 8 status arguably not required, but countersigning by article 8 judge would be prudent. Protective order hearings can be conducted by commisioners (Buck v. Robinson, 2008 UT 28).
			Rule 108 objections to final protective orders, and requests for evidentiary hearings for stalking injunctions are and will continue to be heard by article 8 judges.
PC Review / Bailsets - PC review; make initial pretrial detention/release decision	35-40 per day	Remote	Article 8 status or countersigned (<i>State v. Thomas</i> , 961 P.2d 299) [Not feasible at the present time; PC system doesn't allow for countersignatures]
Daytime Search Warrants	20-30 per day Combination of day and night	Remote	Article 8 status required (<i>State v. Thomas</i> , 961 P.2d 299) [Not feasible at the present time; search warrant system doesn't have mechanism for countersigning]
Nighttime Search Warrants		Remote	Article 8 status required (<i>State v. Thomas</i> , 961 P.2d 299) [Not feasible at the present time; search warrant system doesn't have mechanism for countersigning]

Rule 6-301. Authority of Court Commissioner as Magistrate***Intent:**

To identify, as required by Utah Code Section 78A-5-107, the types of cases and matters commissioners are authorized to hear, to identify the types of relief and orders commissioners may recommend, and to establish procedures for timely judicial review of recommendations and orders made by court commissioners. To provide for the authority of a court commissioner to act as a magistrate as required by § 77-1-3.

Applicability:

This rule shall apply to court commissioners acting as magistrate judges in criminal cases in the district courts.

Statement of the Rule:

A court commissioner may exercise the following authority conferred upon magistrates by the Legislature:

(1) issue warrants and summonses in traffic cases; and

(2) set fines in traffic cases.

(1) **Types of cases and matters.** All felony and misdemeanor cases filed in the district court in counties where court commissioners are appointed and serving in accordance with Rule 3-201.

(2) **Duties of court commissioner.** Under the general supervision of the presiding judge, a commissioner has the following duties:

(2)(A) To handle procedural aspects of criminal cases up to and including bind over.

(2)(B) To conduct initial appearances, preliminary hearings, and other hearings consistent with applicable statutes and rules.

(3) **Authority of court commissioner.** Subject to the limitations outlined in this rule, court commissioners shall have the following authority:

(3)(A) All duties and responsibilities conferred upon magistrates by statute, the Rules of Criminal Procedure, and this rule;

(3)(B) Upon notice, to require the personal appearance of parties and their counsel at hearings before the commissioner or district court;

(3)(C) To conduct initial appearances in accordance with Rule 7 of the Utah Rules of Criminal Procedure;

(3)(D) To require defendants to disclose information necessary to ensure notice, compliance with pretrial release conditions, and appearance at court hearings;

(3)(E) To require defendants to make financial disclosures and complete forms necessary to determine indigency and appoint counsel;

(3)(F) To reassign cases in accordance with written policies of the district court;

(3)(G) To modify the terms of a temporary pretrial status order, subject to de novo review by the district court;

(3)(H) To enter pretrial protective orders, no contact orders, temporary civil protective orders, and stalking injunctions, subject to de novo review by the district court;

(3)(I) To recommend the issuance of arrest warrants based on probable cause or failure to appear;

(3)(J) To recommend the issuance of material witness warrants in accordance with Rule 7C of the Utah Rules of Criminal Procedure;

(3)(K) To conduct preliminary hearings in accordance with Rule 7B of the Utah Rules of Criminal Procedure;

(3)(L) To impose sanctions for contempt of court, subject to de novo review by the district court;

(3)(M) To issue temporary or ex parte orders, subject to de novo review by the district court;

(3)(N) To issue warrants and summonses in traffic cases;

(3)(O) To set fines in traffic cases; and

(3)(P) To make recommendations to the district court regarding any issue, including a recommendation for entry of final judgment.

(4) **Dismissals.** If a court commissioner dismisses a case at a preliminary hearing or other proceeding prior to bindover, the dismissal shall be without prejudice and subject to de novo review by the district court.

(5) **Prohibitions.**

(5)(A) Commissioners shall not make final adjudications or enter final, appealable orders.

(5)(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

(5)(C) Commissioners shall not conduct trials, accept guilty pleas, or impose sentences, even with consent of all parties.

(5)(D) Commissioners shall not enter final pretrial status orders in accordance with Utah Code Section 77-20-205.

(6) **Judicial review.**

(6)(A) All orders made by a commissioner are subject to review by the district court pursuant to this rule, applicable rules of criminal procedure, or local rules. Review by the district court is de novo, neither party is required to show a change in circumstances, and no deference

95 may be given to the commissioner's decision. Countersigning a recommendation by a
96 commissioner does not constitute de novo review.
97

98 (6)(B) A recommendation or order of a court commissioner is the order of the court until
99 modified by the court. A party may file a written objection to the recommendation within 14
100 days after the recommendation is made in open court or, if the court commissioner takes the
101 matter under advisement, within 14 days after the minute entry of the recommendation is
102 served. A judge's counter-signature on the commissioner's recommendation does not affect
103 the review of an objection.
104

105 (6)(C) The objection shall be filed in accordance with Rule 12 of the Utah Rules of Criminal
106 Procedure and must identify succinctly and with particularity the findings of fact, the
107 conclusions of law, or the part of the recommendation or order to which the objection is
108 made and state the relief sought.
109

110
111 *Effective: May/~~November~~ 12, 202_0*
112

113 *The format and content of this rule is based on Rule 6-401, the corresponding rule applicable
114 to Domestic Relations Commissioners, as well as Utah Code Section 78A-5-107 and URCP 108
115 regarding judicial review.

TAB 4

CJA 4-202.08. Fees for records, information, and services

Notes: The proposed amendments:

- (lines 48-50) clarify that personnel time may be charged to “copy” records (i.e., download and convert recordings, etc.)
- (lines 59-71) remove individual hourly rates so the rule doesn’t have to be updated every time rates fluctuate, authorizing the State Court Administrator to set the rates, which would be posted on the website or intranet page
- (lines 90-93) add a provision regarding fees for bulk data, authorizing the State Court Administrator to set the fees
- (lines 110-115) clarify that court appointed attorneys qualify for a fee waiver if they are requesting records on behalf of an indigent client and the client would qualify for a waiver under (10)(A)(ii)

Rule 4-202.08. Fees for records, information, and services.**Intent:**

To establish uniform fees for requests for records, information, and services.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts. This rule does not apply to the Self Help Center.

Statement of the Rule:

(1) **Fees payable.** Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public online services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public online services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.

(2) **Use of fees.** Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public online services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.

(3) **Copies.** Copies are made of court records only. The term "copies" includes the original production. Fees for copies are based on the number of record sources to be copied or the means by which copies are delivered and are as follows:

(3)(A) paper except as provided in (E): \$.25 per sheet;

(3)(B) electronic storage medium other than of court hearings: \$15.00 per unit;

(3)(C) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of testimony or part thereof;

(3)(D) electronic copy of audio record or video record of court proceeding: \$15.00 for each one-half day of testimony or part thereof; and

(3)(E) pre-printed forms and associated information: an amount for each packet established by the state court administrator.

(4) **Mailing.** The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.

(5) **Fax or e-mail.** The fee to fax or e-mail a document is \$5.00 for 10 pages or less. The fee for additional pages is \$.50 per page. Records available on Xchange will not be faxed or e-mailed.

(6) **Personnel time.**

(6)(A) ~~Personnel time to copy the record of a court proceeding is included in the copy fee. For other matters, there is no fee for the first 15 minutes of personnel time~~ required to provide the copy, record, information, or service, unless the person who submits the request:

(6)(A)(i) is not a Utah media representative; and

(6)(A)(ii) has submitted a separate records request within the 10-day period immediately prior to the date of the request to which the court or office is responding.

(6)(B) The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fees for personnel time may be set by the State Court Administrator and the rates charged should be ~~is charged at the following rates~~ for the least expensive group capable of providing the record, information, or service.:

~~(6)(B)(i) clerical assistant: \$15.00 per hour; (6)(B)(ii) technician: \$22.00 per hour;~~

~~(6)(B)(iii) senior clerical: \$21.00 per hour~~

~~(6)(B)(iv) programmer/analyst: \$32.00 per hour;~~

~~(6)(B)(v) manager: \$37.00 per hour; and~~

~~(6)(B)(vi) consultant: actual cost as billed by the consultant.~~

(7) **Public online services.**

(7)(A) The fee to subscribe to Xchange shall be as follows:

(7)(A)(i) a set-up fee of \$25.00;

(7)(A)(ii) a subscription fee of \$40.00 per month for any portion of a calendar month; and

(7)(A)(iii) \$.15 for each search over 500 during a billing cycle. A search is counted each time the search button is clicked.

(7)(B) When non-subscription access becomes available, the fee to access public online services without subscribing shall be a transaction fee of \$5.00, which will allow up to 10 searches during a session.

(7)(C) The fee to access a document shall be \$.50 per document.

(8) Bulk Data. If approved, individuals or entities may subscribe to receive indexed court data authorized under rule 4-202.02(2)(L) electronically in bulk. The fee to receive bulk data may be set by the State Court Administrator. Requests for bulk data should be made to the Office of Judicial Data and Research.

(98) **No interference.** Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public online services whose use interferes with computer performance or access by other users.

(109) **Waiver of fees.**

(109)(A) Subject to (109)(B), fees established by this rule, other than fees for public online services, shall be waived for:

(109)(A)(i) any government entity of Utah or its political subdivisions if the fee is minimal;

(109)(A)(ii) any person who is the subject of the record and who is indigent;

(10)(A)(iii) any court appointed attorney acting on behalf of a client, if the client would qualify for a fee waiver under (10)(A)(ii); and

(109)(A)(iv) a student engaged in research for an academic purpose.

(109)(B) Individuals who qualify for a fee waiver under (109)(A)(ii) and (10)(A)(iii) are entitled to one free copy of the record requested. The State Court Administrator may waive the one free copy limit under this rule for good cause.

(109)(C) Fees for public online services shall be waived for:

(109)(C)(i) up to 10,000 searches per year for a news organization that gathers information for the primary purpose of disseminating news to the public and that requests a record to obtain information for a story or report for publication or broadcast to the general public;

(109)(C)(ii) any government entity of Utah or its political subdivisions;

(109)(C)(iii) the Utah State Bar;

130 (109)(C)(iv) public defenders for searches performed in connection with their
131 duties as public defenders; and
132

133 (109)(C)(v) any person or organization who the XChange administrator
134 determines offers significant legal services to a substantial portion of the public at
135 no charge.
136

137 *Effective: ~~January-May/November~~ 1, 202_3*

TAB 5

CJA 4-202.02. Records classification

Notes: The number of records requests for copies of Webex recordings has increased over the last year. Currently, when a Webex recording is requested, the request is almost always denied and the FTR audio is released instead. That policy is based primarily on the Judicial Council's Interim Procedures for Recording Hearings issued in December 2021 (attached) and a determination that the converted FTR audio recording is the official court record released to the public.

However, whether a Webex recording is the “official court record” is a separate question, unrelated to whether it is a public record subject to release. The proposed amendments to rule **4-202.02** attempt to balance the interests in rule [4-202](#), the limits on media in rule [4-401.01\(6\)](#), and the reasons we prohibit recording in courtrooms in [4-401.02](#). If all of the information and records involved in a video recording of an open court proceeding are public, the recording is classified as public and subject to release. Because videos of court proceedings are “associated with a case,” requests would be processed in accordance with rule [4-202.04](#).

We do not currently have the technological capability to “blur” faces or “splice” webex recordings to obscure or remove sensitive or non-public information.

Relevant classifications under 4-202.02:

- (2)(J): exhibits are public, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure
- (2)(M) the name of an adult person is public “other than a party or a victim or witness of a crime”

- (2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case is public, but only 10 days after the jury is discharged
- (4)(B) "the record of public hearings" in a variety of domestic, disability, and PO/Stalking cases are public
- (4)(O) the name of a minor is private, except in certain district and justice court proceedings
- (4)(R) **photograph, film, or video of a crime victim is a private record**
- (4)(Y) the name of a prospective juror summoned to attend court is private, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family
- (5)(O) a record, the disclosure of which would jeopardize life, safety, or property, is protected
- (7)(E) records of juvenile court hearings are classified as "juvenile court legal records"
- A judge may classify any other "record" as nonpublic by court order

Rule 4-202.02. Records Classification.**Intent:**

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate filings, including briefs;

(2)(D) arrest warrants, but a court may restrict access before service;

(2)(E) audit reports;

(2)(F) case files;

(2)(G) committee reports after release by the Judicial Council or the court that requested the study;

(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(K) financial records;

(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(L)(i) amount in controversy;

(2)(L)(ii) attorney name;

(2)(L)(iii) licensed paralegal practitioner name;

(2)(L)(iv) case number;

(2)(L)(v) case status;

(2)(L)(vi) civil case type or criminal violation;

(2)(L)(vii) civil judgment or criminal disposition;

(2)(L)(viii) daily calendar;

(2)(L)(ix) file date;

(2)(L)(x) party name;

(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

(2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

(2)(O) name, business address, business telephone number, and business email address of a lawyer or licensed paralegal practitioner appearing in a case;

(2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

(2)(Q) name, business address, and business telephone number of judges;

(2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

(2)(U) order or decision classifying a record as not public;

(2)(V) private record if the subject of the record has given written permission to make the record public;

(2)(W) probation progress/violation reports;

(2)(X) publications of the administrative office of the courts;

(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

(2)(Z) record of the receipt or expenditure of public funds;

(2)(AA) record ~~of~~ minutes or transcript of an open meeting; ~~or~~

(2)(BB) audio record, minutes, or transcript of an open hearing ~~and the transcript of them;~~

(2)(CC) video record, if any, of an open court proceeding conducted by remote transmission, unless the recording involves nonpublic information or records, or the record is otherwise restricted by order of the court;

(2)(~~DD~~~~BB~~) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(~~EE~~~~GG~~) record of a request for a record;

(2)(~~FF~~~~DD~~) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

(2)(~~GG~~~~EE~~) rules of the Supreme Court and Judicial Council;

(2)(~~HH~~~~FF~~) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

(2)(~~II~~~~GG~~) statistical data derived from public and non-public records but that disclose only public data; and

(2)(~~JJ~~~~HH~~) notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) Sealed Court Records. The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(iii) Section 76-7-304.5 – Consent required for abortions performed on minors; and

(3)(A)(iv) Section 78B-8-402 – Actions for disease testing;

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings;

(3)(I) on appeal, any record previously designated as sealed by another court; and

(3)(J) other records as ordered by the court under Rule 4-202.04.

(4) Private Court Records. The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 26B-5-332, Involuntary commitment under court order;

(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;

(4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;

(4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed;

(4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment; and

(4)(A)(vi) Section 26B-8-111, Sex designation changes, and name changes combined with sex designation changes for both minors and adults, except that:

(4)(A)(vi)(a) the case history is public for minors; and

- 202
203 (4)(A)(vi)(b) the case history and record of public hearings are public for
204 adults.
205
- 206 (4)(B) records in the following actions, except that the case history, judgments, orders,
207 decrees, letters of appointment, and the record of public hearings are public records:
208
- 209 (4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations
210 orders, except that an action for consortium due to personal injury under Section
211 30-2-11 is public;
212
- 213 (4)(B)(ii) Title 75, Chapter 5, Protection of Persons Under Disability and their
214 Property;
215
- 216 (4)(B)(iii) Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
217
- 218 (4)(B)(iv) Title 78B, Chapter 12, Utah Child Support Act;
219
- 220 (4)(B)(v) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and
221 Enforcement Act;
222
- 223 (4)(B)(vi) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
224
- 225 (4)(B)(vii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
226
- 227 (4)(B)(viii) an action to modify or enforce a judgment in any of the actions in this
228 subparagraph (B);
229
- 230 (4)(C) records related to determinations of indigency;
231
- 232 (4)(D) an affidavit supporting a motion to waive fees;
233
- 234 (4)(E) aggregate records other than public aggregate records under subsection (2);
235
- 236 (4)(F) alternative dispute resolution records;
237
- 238 (4)(G) applications for accommodation under the Americans with Disabilities Act;
239
- 240 (4)(H) jail booking sheets;
241
- 242 (4)(I) citation, but an abstract of a citation that redacts all non-public information is public;
243
- 244 (4)(J) judgment information statement;
245
- 246 (4)(K) judicial review of final agency action under Utah Code Section 80-2-707;
247
- 248 (4)(L) the following personal identifying information about a party: driver's license
249 number, social security number, account description and number, password,
250 identification number, maiden name and mother's maiden name, and similar personal
251 identifying information;
252

(4)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(N) medical, psychiatric, or psychological records;

(4)(O) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i) name change of a minor, unless the name change is combined with a sex designation change;

(4)(O)(ii) guardianship or conservatorship for a minor;

(4)(O)(iii) felony, misdemeanor, or infraction when the minor is a party;

(4)(O)(iv) protective orders and stalking injunctions; and

(4)(O)(v) custody orders and decrees;

(4)(P) nonresident violator notice of noncompliance;

(4)(Q) personnel file of a current or former court personnel or applicant for employment;

(4)(R) photograph, film, or video of a crime victim;

(4)(S) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(S)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(T) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(U) record submitted for in camera review until its public availability is determined;

(4)(V) reports of investigations by Child Protective Services;

(4)(W) statement in support of petition to determine competency;

(4)(X) victim impact statements;

(4)(Y) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(Z) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(AA) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;

(4)(BB) records related to Court Commissioner Conduct Committee and Council actions under Rule 3-201.02, other than a public censure by the Council, and

(4)(CC) other records as ordered by the court under Rule 4-202.04.

(5) Protected Court Records. The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

- (5)(J)(iv) concern the security of a court facility;
- (5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;
- (5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;
- (5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;
- (5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation, or parole;
- (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- (5)(P) strategy about collective bargaining or pending litigation;
- (5)(Q) test questions and answers;
- (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- (5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;
- (5)(T) presentence investigation report;
- (5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and
- (5)(V) other records as ordered by the court under Rule 4-202.04.

(6) Juvenile Court Social Records. The following are juvenile court social records:

- (6)(A) correspondence relating to juvenile social records;
- (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
- (6)(C) medical, psychological, psychiatric evaluations;
- (6)(D) pre-disposition and social summary reports;
- (6)(E) probation agency and institutional reports or evaluations;
- (6)(F) referral reports;
- (6)(G) report of preliminary inquiries; and

(6)(H) treatment or service plans.

(7) Juvenile Court Legal Records. The following are juvenile court legal records:

(7)(A) accounting records;

(7)(B) discovery filed with the court;

(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;

(7)(D) name of a party or minor;

(7)(E) record of a court hearing;

(7)(F) referral and offense histories

(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) Safeguarded Court Records. The following court records are safeguarded:

(8)(A) upon request, location information, contact information, and identity information, other than the name of a petitioner and other persons to be protected, in an action filed under Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;

(8)(B) upon request, location information, contact information and identity information, other than the name of a party or the party's child, after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

(8)(C) upon request, if the information has been safeguarded under paragraph (8)(A) or (8)(B), location information, contact information and identity information, other than the name of a party or the party's child, in a proceeding under Title 30, Husband and Wife.

(8)(D) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;

(8)(E) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;

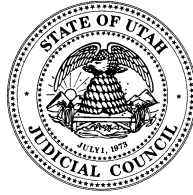
(8)(F) the following information about a victim or witness of a crime:

(8)(F)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;

(8)(F)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

455

|456 *Effective: November 1~~April 25~~, 2023*



MEMORANDUM

To: Clerks of Court, Trial Court Executives
From: Management Committee, Utah Judicial Council
Re: Interim Procedures for Recording Hearings
Date: 12/30/2021

On December 14, 2021, Appellate Court Administrator, Nick Stiles, and a group of internal stakeholders presented to the Management Committee about the on-going issues surrounding recording hearings, and the need for formal policies and procedures.¹ The Management Committee noted the urgency of the matter and requested the group prepare interim guidance for court staff while formal policies and procedures are developed. This issue was forwarded to the full Judicial Council.

The Judicial Council reviewed the issue on December 20, 2021. The Council directed the working group to begin work on formal policies and procedures. This work will culminate in written direction and a training offered through the Judicial Institute's Learning Management System.

Please find enclosed the approved **Interim Procedures for Recording Hearings**. Questions from staff should be directed to Clerks of Court, and then to the working group at the attention of Nick Stiles. (Nicks@utcourts.gov)

¹ The internal stakeholders included representatives from IT, District and Juvenile Court leadership, Clerks of Court, and the Transcription Office.

Interim Procedures for Recording Hearings

Utah Judicial Council Management Committee

Approved:

Effective until superseded by permanent procedures

RECORDING TYPES AND PROCEDURES

- **When to record WebEx ONLY:** All parties are appearing on WebEx. Special attention should be given to the clarity of the audio. If judges and staff can't understand every word, the recording will reflect that. Ask parties to mute themselves when not speaking and eliminate background noise.² If there is an interruption or momentary static, the recording will be inaudible.
- **When to record FTR ONLY:** All parties are in the courtroom. Make sure the audio is coming through clearly by using the headset. Make sure to check microphones regularly.
- **When to record BOTH Webex and FTR:** There are parties appearing in-person and parties appearing remotely. Record on FTR as it captures better in-court audio, and WebEx because it captures better remote audio. Hybrid hearings must have two audio files, one .trm file in FTR, and one MP4 WebEx file.
- At the beginning of each hearing state the full case name and case number.
- Document in the minute entry how the hearing is being recorded including start and stop times. (WebEx, FTR, Both)
- Do not record WebEx hearings from a computer speaker into FTR. This creates significant audio issues. If the hearing is at least in part on WebEx and the courtroom is not equipped with the hardware to record accurately directly into FTR, record the hearing on WebEx, and convert it to FTR. If the courtroom is equipped with the necessary hardware to record directly from WebEx into FTR, please also create a WebEx recording. Hybrid hearings should have two recordings.
- Save all converted audio in the highest possible quality. Refer to the WebEx to FTR conversion instructions ([located here](#)) for Audacity audio settings. Please contact IT if there are issues or questions about this process.
- If staff is notified by the Transcript Coordinator, Crystal Cragun, that a transcript has been requested, staff should provide the WebEx recording (MP3 or MP4) file within 24 hours.
- Be mindful of court related interference, typing and shuffling papers interfere with the recording.
- For hearings with both WebEx and FTR recordings, FTR remains the recording that is provided to the public.

² Similarly to an in-person courtroom reporter, if a judicial assistant notices responses are inaudible or difficult to hear they should let the judge know immediately and the judge should have parties repeat what was inaudible.

TAB 6

Technology Policies

Notes: The Technology Advisory Subcommittee recommends that PP&T adopt the following policies:

- Information Security Policy
- Information Security Risk Management Policy

Utah State Courts Information Technology

Information Security Policy

IT-01000 DRAFT

Responsible Official: Chief Information Officer

Responsible Office: Information Technology

Effective Date: August 8th, 2023

Last Revision Date: August 8th, 2023

Associated Policies, Forms, and Documents

- [Court Security Information](#)
- [Technology in the Courts](#)
- [Audit Services](#)
- [Human Resources](#)
- [IT-01000 Information Security Policy](#)
- [IT-01120 Software Development and Configuration Management Best Practices Policy](#)
- [IT-01150 Information Security Risk Management Policy](#)
- [IT-03000 Incident Response Plan](#)

Definitions

AOC - Administrative Office of the Courts

AUP - Acceptable Use Policy ([HR15-09](#))

CIO - Chief Information Officer

Cybercrime - Criminal activity or a crime that involves the Internet, a computer system, or computer technology.

Data breach - An incident in which sensitive, protected or confidential data has potentially been viewed, stolen or used by an individual unauthorized to do so. A data breach may involve personal health information (PHI), personally identifiable information (PII), trade secrets or intellectual property.

DDT - Deputy Director of Technology (to CIO)

EDSA - Enterprise Domain & Security Architect

HR - Human Resources Department

IT - Information Technology Department

IT Resource - Information Technology resources are the property of Utah Courts and include, but are not limited to all network related systems; business applications; network and application accounts; administrative, academic and library computing facilities; court-wide data, video and voice networks; electronic mail; video & web conferencing systems; access to the Internet; voicemail, fax machines and photocopiers; courtroom audio/video; computer equipment; software and operating systems; storage media; Intranet, VPN, and FTP. IT Resources include resources administered by IT.

PCI - Payment Card Industry –Data Security Standard. Promotes Payment Card Industry standards for the safety of cardholder data across the globe.

PHI - Personal Health Information

PII - Personally Identifiable Information – any data that could potentially identify a specific individual. Any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data can be considered PII.

User - Any person who makes any use of any Utah Courts IT resource from any location (whether authorized or not).

Policy Statement

All Utah State Courts (Utah Courts) Information Technology (IT) employees, contractors, vendors, interns and third-parties that create, use, maintain or handle Utah Courts IT resources

shall follow Utah Courts Information Security Policy and related sub-policies. Policy shall be subject to and superseded by applicable regulations and laws.

Policy Exception

Policy exemptions to Information Security Policy IT-01000 through IT-03000 will be permitted only when approved in advance and in writing by the Enterprise Domain and Security Architect (EDSA), Deputy Director of Technology (DDT) or Chief Information Officer (CIO).

Purpose

The Information Security Policy consists of related policies IT-01000 through IT-01120. It applies to all users of Utah Courts IT resources and supports the following goals:

1. Promote a “security is everyone’s responsibility” philosophy to assist Utah Courts in meeting its business and legal commitments.
2. Ensure CyberSecurity training is completed annually by all staff and proof of training is on file with the AOC Training Department.
3. Ensure that Utah Courts complies with all applicable laws and regulations.
4. Ensure the integrity, reliability, availability and superior performance of IT resources.
5. Ensure that users are protected from data breaches and cybercrime.
6. Ensure that use of IT resources is consistent with the principles and values that govern the use of facilities and services.
7. Prevent unauthorized disclosure of critical information.
8. Prevent disruption of court operations.
9. Ensure Utah Courts are protected from financial, legal, regulatory and reputational harm.
10. Ensure that IT systems are used for their intended purposes.
11. Establish processes for addressing policy violations and sanctions for violators.

General Use and Responsibilities

1. Maintain current knowledge of, and comply with, the contents of this Information Security Policy.
2. Distribute confidential and sensitive information on a limited basis to those with a business need to know the information.
3. Protect all PHI, PII, PCI, Protective Order and other regulated or proprietary data from unauthorized access.
4. Notify the EDSA and/or the IT Service Desk of any suspected breaches or violations

Policy Violation

1. Violation of the Acceptable Use Policy ([HR09-15](#)) may result in disciplinary action, up to and including termination of contract or employment.
2. Utah Courts reserves the right to report violations of federal, state and local laws and regulations governing computer and network use, as well as interactions that occur on the Internet, to authorities as deemed appropriate.
3. Users who violate the AUP may be held liable for damages to Utah Courts assets, including but not limited to the loss of information, computer software and hardware, down time, fines and judgments imposed as a direct result of the violation.
4. Utah Courts reserve the right to deactivate a user's access rights, if the user is suspected of any violation of this policy, when necessary to preserve the integrity and/or security of IT Resources.

Complaint Procedure

Information Security violations shall be reported to the EDSA, DDT or CIO. Non-security related violations (such as receipt of inappropriate content, other Human Resources (HR) policy violations, general policy violations or regulatory compliance violations) shall be reported to a supervisor or HR.

Related Governing Standards, Policies and Guidelines

1. [Federal Information Security Management Act \(FISMA\)](#)
2. [FTC Red Flag Rule](#)

3. [Health Insurance Portability and Accountability Act \(HIPAA\)](#)
4. [International Organization for Standardization \(ISO\)](#)
5. [National Institute Standards and Technology \(NIST\)](#)
6. [Payment Card Industry Data Security Standard \(PCI DSS\)](#)

Utah State Courts Information Technology Information Security Risk Management Policy

IT-01150

Responsible Official: Chief Information Officer

Responsible Office: Information Technology

Effective Date: August 8th, 2023

Last Revision Date: August 8th, 2023

Associated Policies

- [Court Security Information](#)
- [Technology in the Courts](#)
- [Audit Services](#)
- [Human Resources](#)
- [IT-01000 Information Security Policy](#)
- [IT-01120 Software Development and Configuration Management Best Practices Policy](#)
- [IT-01150 Information Security Risk Management Policy](#)
- [IT-03000 Incident Response Plan](#)

Definitions

- **AOC** - Administrative Office of the Courts
- **CIO** - Chief Information Officer
- **Enterprise Domain and Security Architect (EDASA)** – IT Manager, reporting to the CIO.
- **IT** - Information Technology Department

- **Risk profile** – An evaluation of an individual or organization’s willingness to take risks, as well as the threats to which an organization is exposed. A risk profile is important for determining a proper investment asset allocation for a portfolio.

Policy Statement

The Enterprise Domain and Security Architect (EDSA) shall document and implement a risk management program to prevent, detect, contain, and correct both deliberate and inadvertent Information Technology (IT) security incidents and emergencies.

Policy

Security Risk Identification

1. The Information Security Risk Management Program is part of the overall Utah State Courts (Utah Courts)/Administrative Office of the Courts (AOC) IT Risk Management Program. Its primary purpose is to prevent, detect, contain, and correct deliberate and inadvertent IT security incidents.
2. Using the risk-related information generated, the IT Department shall implement a combination of policies, procedures, and physical measures to sufficiently reduce (mitigate) the vulnerabilities and risks to a reasonable level.
3. The EDSA is responsible for risk management. Using various analytic efforts, the EDSA shall identify and rank risks in order to estimate total overall risk and IT Risk Profile.
4. All IT security protocols, including software and firmware patch management, shall be evaluated in terms of risk vs. cost to further mitigate risk prior to determining a final decision on expenditure of funding.

Security Risk Analysis / Ranking

1. After potential Information Security risks are identified, analyses of the risks shall be conducted to prepare an accurate and thorough assessment of their impacts on the confidentiality, availability, and integrity of the Utah Courts sensitive information.
2. This effort also provides the information to rank risks in order of their likelihood to happen, likelihood of success if attempted, and the consequences of their occurrence.
3. The risks are defined in a format compatible with that used and described within the IT Defense In Depth and Incident Response plans.

Vulnerability Assessment

1. Security reports shall be provided by the EDSA on at least a quarterly basis for IT leadership team review.
2. Where the need is identified, vulnerabilities shall be presented and discussed.

Security Risk Mitigation

1. Using the risk-related information generated in the efforts described above, the AOC IT Department shall implement a combination of policies, procedures, and physical measures to sufficiently reduce (mitigate) the vulnerabilities and risks to a reasonable level in compliance with EDSA standards, as well as governmental requirements.

Risk Reevaluation

1. Self-audits and activity reviews shall be conducted within IT at least annually.
2. The IT Department shall constantly monitor the identified Utah Courts IT Risk Profile to measure and refine its effectiveness.

Security Incident Response and Reporting

1. All event logs shall be collected in a centralized location on secure media that is difficult to alter and is protected from unauthorized access for protected services.
2. Viewing of the logs is on a need-only basis.