

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING AGENDA**

November 3, 2023 – 9:00 a.m. to 4:00 p.m.

Webex

9:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
9:05	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> • CJA 6-301. Authority of court commissioner as magistrate • CJA 4-202.08. Fees for records, information, and services • CJA 4-202.02. Records classification • CJA 4-202.03. records access 	Action	Tab 2	Keisa Williams
9:30	CJA 3-101. Judicial performance standards CJA 3-104. Presiding judges	Action	Tab 3	Keisa Williams
10:00	Technology report/proposals	Discussion		Brody Arishita
10:30	Old Business/New Business			
11:00	Adjourn			

2023 Meetings:

December 1, 2023

2024 Meetings:

January 5, 2024

February 2, 2024

March 1, 2024

April 5, 2024

May 3, 2024 (all day)

June 7, 2024

July 5, 2024

August 2, 2024

September 6, 2024

October 4, 2024

November 1, 2024 (all day)

December 6, 2024

TAB 1

Minutes

October 6, 2023

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

Webex video conferencing
October 6, 2023: 12:00 p.m.

DRAFT

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Keri Sargent
Paul Barron
Shonna Thomas
Nick Stiles
Stacy Haacke

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 September 1, 2023, meeting. With no changes, Judge Gardner moved to approve the minutes as presented. Judge Bazzelle seconded and the motion passed unanimously.

Judge Chin's term on the Council ended. A new PP&T member will be appointed at the Judicial Council's October meeting.

(2) Rules back from public comment:

- **CJA 6-501. Reporting requirements for guardians and conservators**

Following a second public comment period, one comment was received. The Probate Subcommittee does not recommend any further amendments. The commenter repeats some of the same concerns addressed by the committee following the first public comment period. Requiring the use of a court form has been discussed at length and, overall, judges prefer the uniformity forms provide. Once practitioners adjust to using the court form, it should not add any additional costs and it should be rather easy for a corporate fiduciary to make the change. The forms were updated and approved in February and are available on the court's website.

Following a discussion, the committee made a minor amendment to subsection (2)(A), changing "Paragraph (4)" to "Paragraph (3)."

With no further discussion, Judge Garner moved to recommend to the Council that CJA rule 6-501 be approved as final with a November 1, 2023 effective date. Judge Bazzelle seconded the motion. The motion passed unanimously.

(3) CJA 3-101. Judicial performance standards
CJA 3-104. Presiding judges

The Management Committee asked the Policy, Planning and Technology Committee to review and propose amendments to CJA 3-101 to provide clarity about both the case under advisement standards and the reporting requirements related to retention elections. The proposed rule draft deletes references to “averages” and seeks to clarify reporting terms. The first Monday in January was selected because it aligns with judicial terms in Utah Code § 78A-3-101, 78A-4-102, 78A-5-105 and 78A-6-201. The Board of District Court Judges and Board of Juvenile Court Judges approved the proposed amendments and recommended moving forward, noting that the changes provide much-needed clarity.

The committee recommended the following minor changes:

- Line 90 – replaced “first Monday in January following the general election in which they were last retained” with “the day after they submit the report in (7)(B)”
- Line 92 – changed August 14th to August 1st
- Line 94 – replaced “The next business day” with “Within 14 calendar days ...”
- Lines 102-103 – removed paragraph (7)(C). The monthly reporting requirement is captured in rule 3-104.

Since the Management Committee’s initial request, Judge Chiara and Judge Garner received a communication from Judge Mortensen that he no longer wishes to make amendments to CJA rule 3-101. Following a discussion, the committee asked that Ms. Williams seek guidance from the Management Committee about whether they would still like to move forward. PP&T believes the amendments would provide clarity.

Technology report/proposals:

The Judicial Council approved IT policies IT-01000 and IT-01150 during their September meeting and the policies are now in effect. The TAC is reviewing the IT emergency response plan and email retention policy. Mr. Arishita plans to have the policies ready for review by the December PP&T 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 November 3, 2023, at 9 AM via Webex video conferencing. This is scheduled to be an all-day meeting.

TAB 2

Back from Public Comment:

CJA 6-301. Authority of court commissioner as magistrate

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

CJA 4-202.02. Records classification

CJA 4-202.03. records access

Notes: Rules 6-301, 4-202.08, 4-202.02, and 4-202.03 are back from public comment. Public comments are attached.

Rule 4-202.08 (one internal comment): Court employees recommend the following amendments:

- (3)(C): With the exception of capital cases or cases where a party has requested and is paying for a stenographer, we very rarely have in-person stenographers. When there is one, the parties must agree to rely on the stenographer's text as the record. If there isn't an agreement, my understanding is that the FTR recording controls. If the parties want the stenographer's text to be the record, and they agree as such, I'm told we never collect a \$25 fee.
- (7)(B): Non-subscription access is now available

Rules 4-202.02 & 4-202.03 (one public comment): Commenter is challenging the decision to seal video records of court proceedings. Given the concerns we discussed previously about our inability to blur or redact Webex videos, and the potential for sensitive or non-public information to be included in those videos (i.e., video of a victim, etc.), I do not recommend additional amendments in response to the comment.

Rule 6-301 (one public comment): The line numbers he refers to do not match his comments. I believe he is referring to subsections (4), (5)(C), & (5)(D). The commenter's primary concern appears to be that those sections create inefficiencies, delays, and more work for public defenders. However, I do not believe commissioners have the authority to do what he suggests.

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: September 19, 2023

Utah Courts

Code of Judicial Administration – Comment Period Closes November 3, 2023

CJA06-0301. Authority of court commissioner as magistrate. (AMEND). Within the bounds of Utah Code section 78A-5-107 and constitutional limitations on the delegation of judicial authority, the proposed amendments broaden commissioners’ magistrate authority. The rule identifies the types of cases and matters court commissioners are authorized to hear and the types of relief and orders they may recommend. The rule also establishes timely judicial review of recommendations and orders made by a court commissioner.

CJA04-0202.08. Fees for records, information, and services. (AMEND). The proposed amendments 1) clarify that personnel time may be charged to copy records, 2) 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, and 3) add a provision regarding bulk data. Bulk data fees and individual hourly rates removed from the rule would be posted on the court webpage.

CJA04.0202.02. Records classification. (AMEND)

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

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- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

CJA04-0202.03. Records access. (AMEND).

The proposed amendments classify video records of court proceedings, other than security video, as sealed and limit access to 1) official court transcribers for the purposes outlined in Rule 5-202, 2) court employees if needed to fulfill official court duties, and 3) anyone by court order. Individuals denied access may file a motion with the court under Rule 4-202.04.

This entry was posted in [-Code of Judicial Administration, CJA04-0202.02, CJA04-0202.03, CJA04-0202.08, CJA06-0301.](#)

« [Rules of Juvenile Procedure – Comment Period Closes November 9, 2023](#)

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UTAH COURTS

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2 thoughts on “Code of Judicial Administration – Comment Period Closes November 3, 2023”

Eric K. Johnson
September 23, 2023 at 9:43 am

Re: proposed amendments to CJA04-0202.02 (Records classification) and CJA04-0202.03 (Records access), what is/are the motive(s) behind these proposals:

1) The record of public court proceedings is public record. Knowing this, the question is: who is harmed by public access to a “video record of a court proceeding” to the point that the harm justifies absolutely prohibiting public access to that record?

2) Based upon my years of (documented) personal experience and the policies behind public access to public records, it

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appears to me that those who currently administer Utah courts want to contrive and enjoy the public perception that the records of public court proceedings (i.e., the records of the public proceeding itself)–particularly the public proceedings in domestic relations proceedings*–are available to the public while the courts withhold these records from the public, and (ironically) in a transparently illogical, arbitrary, and capricious manner.

Unless and until someone makes a cogent argument to the contrary, it appears to me that the real and overarching purpose of these proposed amendments is to impede public scrutiny of public court proceedings and of the judges and commissioners presiding over them. Such secrecy breeds only suspicion and distrust.

*These proceedings are open to the public and the record of these proceedings is public record, but many judges and commissioners believe or claim to believe otherwise.

[Reply](#)

David Ferguson

October 27, 2023 at 4:09 pm

With regard to CJA06-0301, this is a concerning choice for several reasons.

Line 70: The proposal indicates that commissioners can dismiss cases at prelim but only without prejudice, and the dismissal is subject to de novo review. I'm not sure if this makes the evidentiary hearing de novo or just the argument phase of the prelim de novo (i.e. can prosecutors get another evidentiary hearing just by appealing, or is this a de novo review of "the record"). If it's the former, then I worry about the gamesmanship that may result from this position. One important way in which criminal cases get dismissed early in the process is because a witness withholds cooperation with the State's case. A prosecutor may request a continuance of the prelim if a key witness no-shows, and judges often allow one or two continuances when a witness fails to appear for apparently innocuous reasons. However, sometimes key witnesses simply do not want to participate with the prosecution for any number of principled reasons. Preliminary hearings serve as useful screening tools to weed out cases that that aren't going to go anywhere, and to do so without holding a case up for months-to-years at the pretrial stage. This proposal essentially adds additional hurdles to getting these sorts of cases screened out. If a magistrate dismisses a case with the awareness that the State has uncooperative witnesses, a prosecutor can appeal that decision, not because it is a decision worth appealing, but because it allows the case to drag on longer, keep a pretrial incarcerated detained longer, at the expense of driving inefficiency in courts that are already gummed up with cases.

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Line 79: Because commissioners can't accept pleas, it means that any resolution of a case before prelim will have to get rescheduled to a judge's calendar. Since it's very common to resolve cases pre-prelim (in fact, I suspect the majority of cases are resolved pre-prelim), the proposal is going to create an extra calendar date for A LOT of defendants. I imagine this being particularly frustrating for public defenders, where a resolution can be reached on a client's case, but there's a built-in 2-3 week delay to get a plea handled simply because the case is pre-prelim. In other words, this creates an inefficiency in the system that puts a lot of strain on defendants and defense attorneys, particularly public defenders.

Line 82: This indicates that magistrates can't enter "final pretrial status orders" (citing the bail statute). I'm not sure what a "final pretrial status order" is. The term "final" doesn't exist in the bail statute that way. And while an order of detention is appealable as a matter of right, it would not be correct to refer to any pretrial order as a final one. Hazardous a guess at the intent of this term, I'd be worried that this term means that a magistrate can never release someone if they come in at their initial appearance in custody, or at any stage in the preceding until after a preliminary hearing, assuming a magistrate holds onto the case through preliminary hearing. There are sometimes very good reasons for a defendant to be released at the initial appearance, or in any event, before/during a preliminary hearing. And it doesn't make sense to limit magistrates from entertaining such releases. If a magistrate can issue a no-bail warrant, surely she can vacate an order to hold without bail, or make any other order of release. I strongly urge a modification of this rule to the extent that it would either cause unnecessary procedural delays in having a defendant's release be addressed, or would require a rather confusing system of having a magistrate oversee a case through preliminary hearing, but darting on a judge's calendar for release decisions when they come up. Our system is already incredibly inflexible in entertaining a defendant's release. The Third District has never tried to follow the legislature's instruction to allow detention hearings within 10 days of a defendant's arrest (whenever I've asked for a detention hearing at an initial appearance, I have always been given scheduling conference date with the assigned judge more than 10 days after the arrest).

Our courts are overburdened. We all feel it. This proposal shifts some of that burden from judges to commissioners. However, it also shifts that burden onto defendants and defense attorneys (particularly public defenders), and we don't get better justice outcomes when additional burdens are added to the public defender's workload.

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

(2)(~~CCBB~~) 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)(~~DDGG~~) record of a request for a record;

(2)(~~EEDD~~) 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)(~~FFEE~~) rules of the Supreme Court and Judicial Council;

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

(2)(~~IIHH~~) 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;

(3)(J) video record of a court proceeding, other than security video; and

(3)(~~K~~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

(4)(A)(vi)(b) the case history and record of public hearings are public for adults.

(4)(B) records in the following actions, except that the case history, judgments, orders, decrees, letters of appointment, and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iii) Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;

(4)(B)(iv) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(v) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vi) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(vii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(viii) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) records related to determinations of indigency;

(4)(D) an affidavit supporting a motion to waive fees;

(4)(E) aggregate records other than public aggregate records under subsection (2);

(4)(F) alternative dispute resolution records;

(4)(G) applications for accommodation under the Americans with Disabilities Act;

(4)(H) jail booking sheets;

(4)(I) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(J) judgment information statement;

(4)(K) judicial review of final agency action under Utah Code Section 80-2-707;

(4)(L) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(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.

Effective: ~~November 1~~ April 25, 2023

Rule 4-202.03. Records Access.**Intent:**

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** No one may access a sealed court record except as authorized under (2)(A) and (2)(B) below or by order of the court. A judge may review a sealed record when the circumstances warrant.

(2)(A) **Adoption decree.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.

(2)(B) **Expunged records.**

(2)(B)(i) The following may obtain certified copies of the expungement order and the case history upon request and in-person presentation of positive identification:

(2)(B)(i)(a) the petitioner or an individual who receives an automatic expungement under Utah Code Chapter 40a or Section 77-27-5.1;

(2)(B)(i)(b) a law enforcement officer involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and

(2)(B)(i)(c) parties to a civil action arising out of the expunged incident, if the information is kept confidential and utilized only in the action.

(2)(B)(ii) Information contained in expunged records may be accessed by qualifying individuals and agencies under Utah Code Section 77-40a-403 upon written request and approval by the state court administrator in accordance with Rule 4-202.05. Requests must include documentation proving that the requester meets the conditions for access and a statement that the requester will comply with all confidentiality requirements in Rule 4-202.05 and Utah Code.

(2)(C) **Video records.** An official court transcriber may obtain a video record of a court proceeding for the purposes outlined in Rule 5-202. A court employee may obtain a video record of a court proceeding if needed to fulfill official court duties.

(3) **Private Court Records.** The following may access a private court record:

(3)(A) the subject of the record;

- (3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;
- (3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;
- (3)(D) an interested person to an action under the Uniform Probate Code;
- (3)(E) the person who submitted the record;
- (3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;
- (3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;
- (3)(H) anyone by court order;
- (3)(I) court personnel, but only to achieve the purpose for which the record was submitted;
- (3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
- (3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) Protected Court Records. The following may access a protected court record:

- (4)(A) the person or governmental entity whose interests are protected by closure;
- (4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;
- (4)(C) the person who submitted the record;
- (4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;
- (4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;
- (4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;
- (4)(G) anyone by court order;
- (4)(H) court personnel, but only to achieve the purpose for which the record was submitted;
- (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) **Juvenile Court Social Records.** The following may access a juvenile court social record:

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and

(5)(M) anyone by court order.

(5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

(5)(N)(i) the subject of the record, if age 18 or over;

(5)(N)(ii) an attorney or person with power of attorney for the subject of the record;

(5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(N)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(N)(vi) anyone by court order.

(5)(O) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

(6) Juvenile Court Legal Records. The following may access a juvenile court legal record:

(6)(A) all who may access the juvenile court social record;

(6)(B) a law enforcement agency;

(6)(C) a children's justice center;

(6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family;

(6)(E) the victim of a delinquent act may access the disposition order entered against the minor; and

(6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.

(7) Safeguarded Court Records. The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

(9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

| *Effective: ~~December~~November 1, 2023*

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)(~~C~~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)(~~D~~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, t~~here 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, t~~he 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;

(109)(A)(iii) any court appointed attorney acting on behalf of a client, if the client would qualify for a fee waiver under (109)(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 (109)(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*

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; and

(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 make an oral objection or file a written objection to the
100 recommendation within 14 days after the recommendation is made in open court or, if the
101 court commissioner takes the matter under advisement, within 14 days after the minute
102 entry of the recommendation is served. A judge's counter-signature on the commissioner's
103 recommendation does not affect the review of an objection.
104

105 (6)(C) The objection must be made 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*

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]

TAB 3

CJA 3-101. Judicial performance standards

CJA 3-104. Presiding judges

Notes: The Management Committee agreed to continue pursuing proposed rule amendments to 3-101 and 3-104. They've asked PP&T to conduct a thorough review and have them sent out for public comment per our usual process.

As a reminder, the proposed amendments to CJA 3-101 provide much needed clarity about both the case under advisement standards and the reporting requirements related to retention elections. The amendments to CJA 3-104 remove an identical definition of cases under advisement, now referring to rule 3-101.

Rule 3-101. Judicial performance standards.**Intent**

To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

Applicability

This rule applies to all justices and judges of the courts of record and not of record.

Statement of the Rule

(1) ~~Certification of p~~**Performance standards.** ~~(1)(A)~~ The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

~~(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.~~

(2) Definition of case under advisement.

~~(2)(A)~~ A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(2)(A)(i) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

~~(2)(AB)~~(ii) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

~~(2)(AC)~~(iii) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

~~(2)(B) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case. The final determination occurs when the trial court judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are required to subsequently submit a final order memorializing the decision for the judge's signature.~~

(3) Case under advisement performance standards.

(3)(A) **Supreme Court justice.** A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than ~~an average of~~ three principal opinions per

calendar year more than six months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year.~~

(3)(B) **Court of Appeals judge.** A judge of the Court of Appeals demonstrates satisfactory performance by:

(3)(B)(i) circulating not more than ~~an average of~~ three principal opinions per calendar year more than six months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year;~~ and

(3)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(3)(C) **Trial court judge.** A trial court judge demonstrates satisfactory performance by holding:

(3)(C)(i) not more than ~~an average of~~ three cases per calendar year under advisement more than two months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year;~~ and

(3)(C)(ii) no case under advisement more than six months after submission.

~~(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.~~

(4) **Case under advisement performance standards—compliance.** A judge or justice shall decide all matters submitted for decision within the applicable time periods ~~prescribed by this rule in paragraph (3),~~ unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

(5) **Judicial education performance standard.**

(5)(A) **Education hour standard.** Satisfactory performance is established if the judge or justice annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

(5)(B) **Education hour standard—compliance.** A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

(6) **Physical and mental competence performance standard.** Satisfactory performance is established if the response of the judge or justice demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(7) Reporting requirements.

(7)(A) Reporting term. For purposes of this rule, the reporting term for new justices and judges begins on the date the Utah Senate confirms their appointment. The reporting term for retained justices and judges begins the day after they submit the report in (7)(B). The reporting term for all justices and judges ends on August 1st of the year preceding the next general election in which the judge or justice is standing for retention.

(7)(B) Reporting requirement. Within 14 calendar days following the end of a reporting term, justices and judges shall report to the Judicial Council their compliance or non-compliance with the performance standards in this rule during that reporting term. Reports shall be submitted in accordance with policies established by the Judicial Council. If non-compliance is due to circumstances beyond the justice's or judge's personal control, the judge or justice must provide an explanation of the circumstances and may submit supporting documentation.

(8) Judicial Council certification.

(8)(A) As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

(8)(A)(i) Compliant;

(8)(A)(ii) Compliant with explanation, meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

(8)(A)(iii) Non-compliant, which may include a judge or justice who has certified his or her own compliance but the Judicial Council has received credible information inconsistent with that certification.

(8)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

(8)(C) All material relied upon by the Judicial Council in making a certification decision or explanation shall be forwarded to JPEC and shall be made public to the extent that the information is not confidential personal health information.

Effective: May/November 1, 202_1

Rule 3-104. Presiding judges**Intent:**

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

Statement of the Rule:**(1) Election and term of office.**

(1)(A) **Presiding judge.** The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

(1)(B) Associate presiding judge.

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(1)(C) **Removal.** A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

(2) Court organization.**(2)(A) Court en banc.**

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

(2)(A)(iv) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(A)(vi) Minutes of each meeting shall be taken and preserved.

(2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court invitation only.

(2)(A)(viii) The issues on which judges should vote shall be left to the sound discretion and judgment of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

(2)(B) **Absence of presiding judge.** When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) **Administrative responsibilities and authority of presiding judge.**

(3)(A) **General—Caseload—Appeals**

(3)(A)(i) **Generally.** The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(A)(ii) **Caseload.** Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.

(3)(A)(iii) **Appeals.** Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) **Coordination of judicial schedules.**

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) Authority to appoint senior judges.

(3)(C)(i) The presiding judge is authorized to assign a senior judge for judicial assistance consistent with Rule 3-108.

(3)(C)(ii) The presiding judge will notify the State Court Administrator or designee when a senior judge assignment has been made.

(3)(D) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) Outside agencies and the media.

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) Docket management and case and judge assignments.

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

151 (3)(G) **Court executives.**

152
153 (3)(G)(i) The presiding judge shall review the proposed appointment of the court
154 executive made by the State Court Administrator and must concur in the
155 appointment before it will be effective. The presiding judge shall obtain the
156 approval of a majority of the judges in that jurisdiction prior to concurring in the
157 appointment of a court executive.

158
159 (3)(G)(ii) The presiding judge for the respective court level and the state level
160 administrator shall jointly develop an annual performance plan for the court
161 executive.

162
163 (3)(G)(iii) Annually, the state level administrator shall consult with the presiding
164 judge in the preparation of an evaluation of the court executive's performance for
165 the previous year, also taking into account input from all judges in the district.

166
167 (3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the
168 court executive, including coordination of annual leave.

169
170 (3)(G)(v) Pursuant to Council policy and the direction of the state level
171 administrator, the court executive has the responsibility for the day-to-day
172 supervision of the non-judicial support staff and the non-judicial administration of
173 the court. The presiding judge, in consultation with the judges of the jurisdiction,
174 shall coordinate with the court executive on matters concerning the support staff
175 and the general administration of the court including budget, facility planning,
176 long-range planning, administrative projects, intergovernmental relations and
177 other administrative responsibilities as determined by the presiding judge and the
178 state level administrator.

179
180 (3)(H) **Courtrooms and facilities.** The presiding judge shall direct the assignment of
181 courtrooms and facilities.

182
183 (3)(I) **Recordkeeping.** Consistently with Council policies, the court executive, in
184 consultation with the presiding judge, shall:

185
186 (3)(I)(i) coordinate the compilation of management and statistical information
187 necessary for the administration of the court;

188
189 (3)(I)(ii) establish policies and procedures and ensure that court personnel are
190 advised and aware of these policies;

191
192 (3)(I)(iii) approve proposals for automation within the court in compliance with
193 administrative rules.

194
195 (3)(J) **Budgets.** The court executive, in consultation with the presiding judge, shall
196 oversee the development of the budget for the court. In contract sites, the court
197 executive shall supervise the preparation and management of the county budget for the
198 court on an annual basis and in accordance with the Utah Code.

199
200 (3)(K) **Judicial officers.** In the event that another judge or commissioner of the court
201 fails to comply with a reasonable administrative directive of the presiding judge,

interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

(3)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(L) Cases under advisement.

(3)(L)(i) A case is considered to be under advisement ~~when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" is defined as follows: if it meets the criteria outlined in rule 3-101.~~

~~(3)(L)(i)(a) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;~~

~~(3)(L)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or~~

~~(3)(L)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.~~

~~A case is no longer under advisement when the judge makes a decision on the issue that is under advisement or on the entire case.~~

~~The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision;~~

~~regardless of whether the parties are required to subsequently submit for the judge's signature a final order memorializing the decision.~~

(3)(L)(ii) Once a month, each judge shall submit a statement on a form to be provided by the State Court Administrator notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Management Committee.

(3)(L)(v) If a judge fails to submit a statement required under (3)(L)(ii), the presiding judge shall notify the appropriate state level administrator. If a judge fails to submit a statement for two consecutive months, the state level administrator shall notify the Management Committee.

(3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

(3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with the justice court administrator to develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate's caseload, location, and willingness to serve.

Effective May/~~November~~ 1, 202_3