

**UTAH JUDICIAL COUNCIL  
POLICY, PLANNING and TECHNOLOGY COMMITTEE  
MEETING MINUTES**

Webex video conferencing  
December 1, 2023 – 12 p.m.

**MEMBERS:**

**PRESENT**

**EXCUSED**

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

**GUESTS:**

Michael Drechsel  
Daniel Meza Rincon  
Keri Sargent  
Paul Barron  
Stacy Haacke  
Nick Stiles

**STAFF:**

Keisa Williams  
Brody Arishita  
Minhvan Thach

**(1) Welcome and approval of minutes:**

Judge Gardner welcomed committee members to the meeting. The committee considered the minutes from the November 3, 2023, meeting. With no changes, Judge Gardner moved to approve the minutes as presented. Judge Carpenter seconded the motion. The motion passed unanimously.

**(2) CJA 4-208. Automated case processing procedures**

Under Utah Code § 77-40a-201(7), the Judicial Council and Supreme Court are authorized to make rules governing the process for automatic expungements. Rule 4-208 complements Rule 42 of the Rules of Criminal Procedure. The proposed amendments to CJA rule 4-208 clarify that an automatic expungement can only occur through the automated processes established and approved by the Judicial Council. Currently, the rule does not prohibit a judge from manually issuing an automatic expungement order and certain judges have done so upon request. When a judge manually issues an automatic expungement order, it causes a significant amount of friction for BCI to process the order outside of the established workflows for all other automated orders.

The committee noted that prohibiting judges from issuing automatic expungement orders appears to conflict with 77-40a-201(7)(b), which grants presiding judges the authority “to issue an expungement order for any case when the requirements for automatic expungement are met.” However, preceding subsection (a) states that the rules created by the Judicial Council and Supreme Court govern the process for automatic expungements and those rules “may authorize” presiding judges to issue such orders. Arguably, the Council can by rule determine how automated orders are issued. For individuals who need an expungement order more quickly than the automated process would permit, the petition-based process is available.

Following a discussion, the committee recommended that CJA 4-208 be included on the Management Committee and Judicial Council's December agendas and requested that Mr. Drechsel be present to lead the discussion during those meetings. If the proposed amendments are approved by the Council, Mr. Drechsel requested that the rule be approved on an expedited basis with a January 1, 2024 effective date, followed by a 45-day comment period.

Additional amendments would authorize juvenile court presiding judges to sign automatic expungement orders in qualifying juvenile court cases.

***With no further discussion, Judge DiReda moved to recommend to the Judicial Council that following an in-depth discussion, CJA rule 4-208 be approved as final with an expedited effective date of January 1, 2024, as well as be published for a 45-day public comment period. Judge Gardner seconded the motion. The motion passed unanimously.***

### **CJA 3-108. Judicial assistance.**

The proposed amendments in paragraph (4)(C) extend the rule to juvenile court cases, granting the presiding officer of the Council the authority to appoint a juvenile court presiding judge as the signing judge for automatic expungement orders in juvenile court cases related to non-judicial adjustments.

***With no further discussion, Judge Gardner moved to recommend to the Judicial Council that CJA rule 3-108 be approved as final with an expedited effective date of January 1, 2024, as well as be published for a 45-day public comment period. Judge DiReda seconded the motion. The motion passed unanimously.***

### **(3) CJA 4-202.02. Records classification**

#### **CJA 4-202.03. Records access**

Juvenile court staff are working on updates to CARE record classifications in preparation for the launch of a juvenile court version of "MyCase." The proposed amendments are intended to clarify the classification of and access to juvenile court records for court staff and court patrons. The purpose behind each amendment, and any modifications made by the committee, are as follows:

#### CJA 4-202.02:

(2)(II) – added language allowing the juvenile court to reclassify records as non-public upon a finding of good cause as provided in Utah Code § 78A-6-209(4)(b). The committee modified the last sentence to read, "Upon a finding of good cause on the record, the juvenile court may reclassify these records as non-public."

(6)(D) – added dispositional reports to the list of juvenile court social records consistent with language in URJP 45.

(6)(I) – added nonjudicial adjustment records to the list of juvenile court social records because there is no court adjudication when a youth enters a nonjudicial adjustment agreement with probation, and therefore, no legal records.

(6)(J) – added records filed with the court that are received under the Utah Interstate Compact

for Juveniles (ICJ) to the list of juvenile court social records because the records are received from another state and are more akin to a report or evaluation, rather than a pleading or legal document.

(7)(C) - Added probable cause statements to the list of legal records because they are like other legal documents listed in (7)(C) and it provides clarity for probation and clerks of court when those documents are filed in a case.

CJA 4-202.03:

(2)(A)- expanded access to adoption records to align with 78B-6-141(3) and allows an attorney not of record representing an individual authorized access under the rule to obtain copies of adoption records, provided the attorney presents a signed and notarized release from the individual.

(2)(A)(iv) - added "...for the records" at the end of the sentence.

(2)(B) - removed the in-person identification requirement to obtain expungement records.

(2)(B)(i)(d) - added language to allow attorneys not of record to access expungement records with a notarized signed release from an individual authorized access under the rule.

(5)(B) - added language authorizing the attorney of a parent or guardian of the subject of the record to obtain access to juvenile court social records.

(5)(N) - added language regarding dispositional reports to align with URJP 45(a)(4).

(5)(O) & (5)(P) - removed the ability of the subject of the record to access juvenile court medical and mental health records. The language in (5)(P) comes directly from 63G-2-304.

Under GRAMA, medical and mental health records are classified as both "private" (63G-2-302(1)(b) & (3)) and "controlled" (63G-2-304). Medical records are private, unless releasing the records to the subject of the record would be detrimental to the subject of the record's mental health or the safety of another, or release would violate professional practice or medical ethics, in which case the records are controlled.

Sensitive medical and mental health records are filed in nearly every juvenile court case. When a clerk of court receives a records request from the subject of the record or someone with a power of attorney, they have no way to determine whether releasing those records would be detrimental to the subject's mental health or the safety of another, or whether it would constitute a violation of normal professional practice and medical ethics. As such, the proposed amendments limit access to attorneys involved in the case, government entities with custody, guardianship, etc., court personnel, and anyone with a court order.

(8) Added language prohibiting the inspection of juvenile court probation records not filed in a case except by order of the court in accordance with Utah Code § 78A-6-209(5). These files may include sensitive information such as ICJ records from other states, shared education or DCFS records, mental health questionnaires, unredacted victim information, police reports, documents shared by other entities, etc.

The Judicial Council previously approved the amendments in (2)(C) that place limits on video records and access to video records. Those amendments will go into effect on January 1, 2024. It is recommended that these new amendments also be approved on an expedited basis with a January 1, 2024 effective date, followed by a 45-day comment period.

***With no further discussion, Judge Gardner moved to recommend to the Judicial Council that CJA rules 4-202.02 and 4-202.03 be approved as final with an expedited effective date of January 1, 2024, as well as be published for a 45-day public comment period. Judge Carpenter seconded the motion. The motion passed unanimously.***

#### **(4) CJA 3-104. Presiding judges**

The Judicial Council asked the committee to review previously proposed amendments to CJA 3-104. The revised amendments address the three questions posed by the Judicial Council at its November meeting:

1. Why should state level administrators wait an additional 30 days to report cases to the Management Committee under (3)(L)(iv)?
2. What happens if a judge doesn't comply with the reporting requirements in (3)(L)(ii)?
3. Should judges be required to explain how they intend to resolve the case(s) or issue(s) included in the monthly report?

The timing of state level administrator reports depends on how often the Management Committee wants to see them. The intent behind (3)(L)(iv) was to give judges time to resolve a case or issue before it was elevated. Paragraph (3)(L)(v) already addresses what happens when a judge fails to comply with their reporting requirements. Paragraph (3)(L)(iv) was deleted and a line was added to the new (3)(L)(iv) requiring reports to the Management Committee only when a state level administrator determines that a judge has willfully failed to submit a statement. The committee does not believe judges should be required to explain how they intend to resolve a case or issue held under advisement more than 60 days. It is sufficient for a judge to provide a reason for the delay.

***With no further discussion, Judge Bazzelle moved to recommend to the Judicial Council that CJA 3-104 be published for a 45-day public comment period. Judge DiReda seconded the motion. The motion passed unanimously.***

#### **Technology report/proposals:**

Appendix F. Utah Court Records Retention Schedule.

Due to a lack of time, this item will be discussed at a future meeting.

#### **Old Business/New Business:**

The committee determined that all-day meetings in May and November are no longer necessary and reduced the time to four hours. The meetings will now begin at noon and end at 4 p.m. or when all agenda items have been addressed. The May 3rd meeting will need to be rescheduled because it coincides with the District Court Judge's Spring Conference. The committee will discuss that issue at a future meeting.

**Adjourn:** With no further items for discussion, the meeting adjourned at 2:24 p.m. The next meeting will be held on January 5, 2024, at noon via Webex video conferencing.