

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

January 5, 2024 – 12:00 p.m. to 2:00 p.m.

Webex

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
12:05	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> CJA 3-101. Judicial performance standards 	Action	Tab 2	Keisa Williams
12:10	CJA 3-201. Court commissioners	Action	Tab 3	Keisa Williams
12:30	CJA 1-201. Judicial Council membership - election	Action	Tab 4	Keisa Williams
12:50	Technology report/proposals <ul style="list-style-type: none"> Appendix F. Utah Court Records Retention Schedule 	Action	Tab 5	Brody Arishita Bryson King
1:50	Old Business/New Business			
2:00	Adjourn			

2024 Meetings:

February 2, 2024	August 2, 2024
March 1, 2024	September 6, 2024
April 5, 2024	October 4, 2024
May 3, 2024 (12:00-4:00)	November 1, 2024 (12:00-4:00)
June 7, 2024	December 6, 2024
July 5, 2024	

TAB 1

Minutes

December 1, 2023

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

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

DRAFT

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.

TAB 2

Back from Public Comment:

CJA 3-101. Judicial performance standards

Notes: The proposed amendments provide clarity regarding case under advisement performance standards and reporting terms. No public comments were received.

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)(A)(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)(A)(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 1, 2024

TAB 3

CJA 3-201. Court Commissioners

Notes: Currently, the rule creates standing nominating committees in each judicial district, with three-year member terms. Because commissioners are appointed so rarely, and there will now be both domestic and criminal commissioners, the 3rd district court recommends eliminating standing committees. The proposed amendments remove member term limits, creating a new nominating committee each time the Judicial Council determines a commissioner vacancy should be filled. Because (3)(C) accounts for a joint committee when a commissioner serves more than one district, (3)(D) is unnecessary.

The rule does not require or prevent the creation of separate domestic and criminal nominating committees.

Rule 3-201. Court Commissioners.**Intent:**

To define the role of court commissioner.

To establish a term of office for court commissioners.

To establish uniform administrative policies governing the qualifications, appointment, supervision, discipline and removal of court commissioners.

To establish uniform administrative policies governing the salaries, benefits and privileges of the office of court commissioner.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

(2) **Qualifications.**

(2)(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents for three years preceding appointment and residents of Utah while serving as commissioners. A court commissioner shall reside in a judicial district the commissioner serves.

(2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good character. Court commissioners must possess ability and experience in the areas of law in which the court commissioner serves.

(2)(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.

(3) **Appointment- Oath of office.**

(3)(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.

(3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council shall determine whether to fill the vacancy. The Council may determine that the court commissioner will serve more than one judicial district.

(3)(C) A-After the determination required by paragraph (3)(B), the presiding judge or judges of the district(s) the commissioner will serve, will form a committee for the

purpose of nominating candidates. ~~The committee will for the position of court commissioner shall~~ consist of the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two members of the public. Committee members shall be appointed by the presiding judge of the district court of each judicial district. ~~The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year.~~ The presiding judge or judges shall designate a chair of the committee. All members of the committee shall reside in the judicial district(s). All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the procedures established in the commissioner nominating manual.

~~(3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the districts involved shall select representatives from each district's nominating committee to form a joint nominating committee with a size and composition equivalent to that of a district committee, except that a maximum of two judges from each district shall serve on the joint nominating committee.~~

(3)(~~DE~~) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(3)(~~EF~~) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(~~EG~~) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified candidates. All voting shall be by confidential ballot. The committee shall receive public comment on those candidates as provided in paragraph (4). Any candidate may be reconsidered upon motion by a committee member and upon agreement by a majority of nominating committee members.

(3)(~~GH~~) When the public comment period as provided in paragraph (4) has closed, the comments shall be given to the nominating committee. If any comments would

negatively affect the committee's decision on whether to recommend a candidate, the candidate shall be given all comments with the commenters' names redacted and an opportunity to respond to the comments. If the committee decides not to recommend a candidate based on the comments, the committee shall select another candidate from the interviewed applicants and again receive public comment on the candidates as provided in paragraph (4).

(3)(~~H~~) The chair of the nominating committee shall present the names, applications, and the results of background investigations of the nominees to the judges of the courts the court commissioner will serve. The committee may indicate its order of preference.

(3)(~~L~~) The judges of each court level the court commissioner will serve shall together select one of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district, the concurrence of a majority of judges in each district is necessary for selection.

(3)(~~J~~) The presiding judge of the district the court commissioner will primarily serve shall present the name of the selected candidate to the Council. The selection shall be final upon the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection within 45 days of the selection or the concurrence of the Council shall be deemed granted.

(3)(~~K~~) If the Council does not concur in the selection, the judges of the district may select another of the nominees or a new nominating process will be commenced.

(3)(~~L~~) The appointment shall be effective upon the court commissioner taking and subscribing to the oath of office required by the Utah Constitution and taking any other steps necessary to qualify for office. The court commissioner shall qualify for office within 45 days after the concurrence by the Council.

(4) Public comment for appointment and retention.

(4)(A) Final candidates for appointment and court commissioners who are up for retention shall be subject to public comment.

(4)(B) For final candidates, the nominating committee shall be responsible for giving notice of the public comment period.

(4)(C) For court commissioners, the district in which the commissioner serves shall be responsible for giving notice of the public comment period.

(4)(D) The nominating committee or district in which the commissioner serves shall:

(4)(D)(i) email notice to each active member of the Utah State Bar including the names of the nominees or court commissioner with instructions on how to submit comments;

122 (4)(D)(ii) issue a press release and other public notices listing the names
123 of the nominees or court commissioner with instructions on how to submit
124 comments; and

125 (4)(D)(iii) allow at least 10 days for public comment.

126 (4)(E) Individuals who comment on the nominees or commissioners should be
127 encouraged, but not required, to provide their names and contact information.

128 (4)(F) The comments are classified as protected court records and shall not be
129 made available to the public.

130 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the
131 third year following concurrence by the Council. At the conclusion of the first term of
132 office and each subsequent term, the court commissioner shall be retained for a term of
133 four years unless the judges of the courts the commissioner serves vote not to retain the
134 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does
135 not certify the commissioner for retention under rule 3-111. The term of office of court
136 commissioners holding office on April 1, 2011 shall end December 31 of the year in
137 which their term would have ended under the former rule.

138 (6) **Court commissioner performance review.**

139 (6)(A) **Performance evaluations and performance plans.** The presiding judge
140 of each district and court level the commissioner serves shall prepare an
141 evaluation of the commissioner's performance and a performance plan in
142 accordance with Rule 3-111. Court commissioners shall comply with the program
143 for judicial performance evaluation, including expectations set forth in a
144 performance plan.

145 (6)(B) **Public comment period results.** When the public comment period for a
146 commissioner provided in paragraph (4) closes, the comments shall be given to
147 and reviewed by the presiding judge of each district and court level the
148 commissioner serves. If there are any negative comments, the negative
149 comments shall be provided to the commissioner with the commenters' names
150 redacted and the commissioner shall be given an opportunity to respond to the
151 comments.

152 (7) **Corrective action or removal during a commissioner's term.**

153 (7)(A) **Corrective action.**

154 (7)(A)(i) The Council may take corrective actions as the result of a
155 complaint filed under rule 3-201.02.

156 (7)(A)(ii) If the commissioner's performance is not satisfactory, corrective
157 actions may be taken in accordance with paragraph (7)(A)(iii) by the
158 presiding judge, or presiding judges if the commissioner serves multiple
159 districts or court levels, with the concurrence of a majority of the judges in
160 either district or court level the commissioner serves.

(7)(A)(iii) Corrective actions may include but are not limited to private or public censure, restrictions in case assignments with corresponding reduction in salary, mandatory remedial education, suspension without pay for a period not to exceed 60 days, and removal under (7)(B)(i)(c).

(7)(B) Removal.

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

(7)(B)(i)(c) as the result of a complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

(7)(B)(ii) Removal by District or Court Level.

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's performance is not satisfactory, the commissioner may be removed by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, only with the concurrence of a majority of the judges in each district or court level the commissioner serves.

(7)(B)(ii)(b) If the commissioner serves multiple districts or court levels and one district or court level contests a commissioner removal decision made by the other district or court level, the Management Committee will review the decision, with final determination by the Judicial Council.

(7)(C) Review of District or Court Level Decisions. If the commissioner disagrees with a district or court level's decision to remove the commissioner or take corrective actions, the commissioner may request a review of the decision by the Management Committee of the Council.

(8) Retention.

(8)(A) The Council shall review materials on the commissioner's performance prior to the end of the commissioner's term of office and the Council shall vote on whether the commissioner is eligible to be retained for another term in accordance with rule 3-111.

(8)(B) At the end of a commissioner's term, the judges of each district and court level the commissioner serves may vote not to retain the commissioner for another term of office. The decision not to retain is without cause and shall be by the concurrence of a majority of the judges in each district and court level the commissioner serves. A decision not to retain a commissioner under this

198 paragraph shall be communicated to the commissioner within a reasonable time
199 after the decision is made, and not less than 60 days prior to the end of the
200 commissioner's term.

201 **(9) Salaries and benefits.**

202 (9)(A) The Council shall annually establish the salary of court commissioners. In
203 determining the salary of the court commissioners, the Council shall consider the
204 effect of any salary increase for judges authorized by the Legislature and other
205 relevant factors. Except as provided in paragraph (6), the salary of a
206 commissioner shall not be reduced during the commissioner's tenure.

207 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar
208 year and the same sick leave benefits as judges of the courts of record. Annual
209 leave not used at the end of the calendar year shall not accrue to the following
210 year. A commissioner hired part way through the year shall receive annual leave
211 on a prorated basis. Court commissioners shall receive the same retirement
212 benefits as non-judicial officers employed in the judicial branch.

213 **(10) Support services.**

214 (10)(A) Court commissioners shall be provided with support personnel,
215 equipment, and supplies necessary to carry out the duties of the office as
216 determined by the presiding judge.

217 (10)(B) Court commissioners are responsible for requesting necessary support
218 services from the presiding judge.

219

220 *Effective: May 1, 202~~4~~1*

TAB 4

CJA 1-201. Judicial Council Membership - Election

Notes: Effective July 1, 2024, the Business and Chancery Court (BCC) must have a representative on the Judicial Council ([78A-2-104](#)). The proposed amendments account for that addition, eliminating the election requirement when there is only one BCC judge.

Rule 1-201. Judicial Council Membership - Election.**Intent:**

To establish the manner of election of Council members as authorized by statute.

To establish the procedure for filling a vacancy on the Council as authorized by statute.

Applicability:

This rule shall apply to all elected members of the Council. This rule shall not apply to the Chief Justice of the Supreme Court.

This rule shall apply to the Boards of Judges and the Board of Commissioners of the Utah State Bar.

As used in this rule, unless the context indicates otherwise, "Board" includes the Boards of Judges and the Board of Commissioners of the Utah State Bar.

Statement of the Rule:

(1) The composition of the Council, the term of office of elected Council members, and the electorate of elected Council members shall be as prescribed by law.

(2) **Term.** The term of office of all elected Council members shall begin with the Council meeting immediately following the annual judicial conference. Except for the Business and Chancery Court member, no person shall serve on the Judicial Council for more than two consecutive three-year terms plus the remainder of any unexpired portion of a term.

(2) **Election.** Election of judicial members of the Council shall take place during the annual judicial conference at the business meeting of each respective court. Election of the representative of the Utah State Bar shall take place at a regularly scheduled meeting of the Board of Commissioners. If a court consists of one member, no election is required.

(3) Vacancies

(3)(A) **Judges.** If a vacancy exists for a judicial member of the Council who represents a trial court, the Board for the court represented by that seat shall appoint a judge to serve on the Council until the next judicial conference. At such conference, the judges shall elect a member to the Council to serve for the unexpired portion of the original term. If a judicial member of the Council who represents an appellate court is unable to complete a term of office, the members of that court shall appoint a judge to serve on the Council until the expiration of the vacated term.

(3)(B) **Bar representative.** If the representative of the Utah State Bar is unable to complete a term of office, the Board of Commissioners shall elect a member or ex officio

member of the Board of Commissioners to serve for the unexpired portion of the original term.

(4) **Board nomination procedures.** The Boards shall develop procedures for the nomination and election of Council members and shall certify to the Council the names of the members elected. The Boards shall give due regard to geographic representation, security of the election, timely publication of Council vacancies or expired terms, and ease of administration.

(5) **Meeting attendance.** When a judicial member of the Council is unable to attend a Council meeting, that member may designate a judge from the same level of court to attend the Council meeting and observe the proceedings. When the representative of the Utah State Bar is unable to attend a Council meeting, that member may designate a member or ex officio member of the Board of Commissioners to attend the Council meeting and observe the proceedings. The designee shall be provided with a copy of the Council agenda and other meeting materials, and may attend the open and closed sessions of the meeting. The designee may participate in the general discussion of agenda items but may not make motions or vote on Council issues.

(6) **Expenses.** Council members or their designated substitutes may be reimbursed for actual and necessary expenses incurred in the execution of their duties as Council members.

(7) **Board membership.** ~~C~~With the exception of the Business and Chancery Court member, Council members may not serve as voting members of a Board of Judges of a trial court or serve as members of the standing committees of the Council, except for the Standing Committee on Judicial Fairness and Accountability. The representative of the Utah State Bar may vote at meetings of the Board of Commissioners if permitted to vote under rules governing the conduct of the Board of Commissioners.

Effective: May 1, 2042~~3~~

TAB 5

CJA Appendix F. Utah State Court Records Retention Schedule

Notes: The Technology Advisory Subcommittee recommends the proposed amendments to the email retention schedule. For the positions included in the attached list, the default retention period would be seven (7) years. For all others, the default retention period would be one (1) year.

Appendix F. Utah State Court Records Retention Schedule

(A) Definitions.

(A)(1) **Appellate proceedings.** As applicable to the particular case:

(A)(1)(a) expiration of the time in which to file an appeal;

(A)(1)(b) completion of the initial appeal of right;

(A)(1)(c) completion of discretionary appeals; or

(A)(1)(d) completion of trial court proceedings after remittitur.

Appellate proceedings do not include collateral review, such as a petition for post conviction relief or a petition for writ of habeas corpus, although these petitions may themselves be the subject of appellate proceedings.

(A)(2) **Case file.** The compilation of documents pertaining to a case in the district court and justice court. The compilation of documents pertaining to an individual under the jurisdiction of the juvenile court.

(A)(3) **Case history.** Includes the docket, judgment docket, registry of judgments, register of actions and other terms used to refer to a summary of the parties and events of a case.

(A)(4) **Clerk of the court.** Includes all deputy clerks.

(A)(5) **Confidential records.** Records classified in accordance with the Title 63G, Chapter 2, Government Records Access and Management Act and Rule 4-202 et seq. of the Judicial Council as private, protected, juvenile, or sealed.

(A)(6) **Critical documents.** As applicable to the particular case:

(A)(6)(a) **Civil.** Final amended complaint or petition; final amended answer or response; final amended counterclaims, cross claims, and third party claims and defenses; home study or custody evaluation; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; interlocutory order only if reviewed by an appellate court; orders supplemental to the judgment and writs that have not expired; notice of appeal; transcripts; appellate briefs; final order, judgment or decree or any appellate court; case history.

(A)(6)(b) **Child abuse, neglect or dependency.** In addition to that which is required of civil cases, shelter hearing order; adjudication orders; disposition orders; reports of the Division of Child and Family Services; psychological evaluations; reports from treatment providers; motion for permanency hearing; response to motion for permanency hearing; petition for termination of parental rights; and response to petition for termination of parental rights.

(A)(6)(c) **Divorce and domestic relations.** In addition to that which is required of civil cases, petitions to modify or enforce a final order, judgment or decree and the final order entered as a result of that petition.

(A)(6)(d) **Felonies, including offenses by a minor in juvenile court.** All documents other than duplicates, subpoenas, warrants, orders to show cause, presentence investigation reports and notices of hearings.

(A)(6)(e) **Misdemeanors and infractions, including offenses by a minor in juvenile court.** Final amended citation or information; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; notice of appeal; appellate briefs; final order, judgment or decree or any appellate court; case history.

(A)(6)(f) **Probate.** In addition to that which is required of civil cases, will admitted to probate; trust instrument; final accounting; reports, findings and orders regarding the mental competence of a person.

(A)(7) **Document.** Any pleading or other paper filed with or created by the court for a particular case, regardless of medium.

(A)(8) **Off-site storage.** Storage at the State Records Center under the control of the Division of State Archives.

(A)(9) **On-site storage.** Storage at the courthouse or any secure storage facility under the control of the court.

(A)(10) **Retention period.** The time that a record must be kept. The retention period is either permanent or for a designated term of months or years.

(B) Case Records.

(B)(1) **Objectives.** The objective of the records retention schedule is to maintain convenient access to the documents of the case and to the case history as necessary to the activity in the case. Even in a case in which judgment has been entered there may be substantial activity. In criminal cases, the court can expect affidavits alleging violations of probation and petitions for post conviction relief. In civil cases, the court can expect to issue writs, orders supplemental to the judgment and to conduct other proceedings to collect the judgment. In divorce cases, the court can expect petitions to modify the decree or to enforce visitation and support. This may mean more immediate access in particular cases. The objective of the records retention schedule is to guide the transfer of permanent records to off-site storage and the destruction on non-permanent records.

(B)(2) **Storage medium.** The decisions of what storage medium to use and when to use it are left to local discretion, needs and resources of the clerk of the court.

With proper training or by the Division of State Archives the clerk of the court may microfilm records. Given the sensitive nature of identifying information contained in court records, such as name, address, telephone number, and social security number of parties, witnesses and jurors, microfilming of court records by Utah Correctional Industries is prohibited. All microfilming shall be in accordance with the standards adopted by the Division. All microfilm developing and quality assurance checks shall be done by the Division. The Division of State Archives shall keep the original film and return a copy to the court.

The clerk of the court may scan documents to a digital image based on local needs and resources. Once scanned to a digital image, the document may be destroyed. Electronic documents may be printed and maintained in the case file.

(B)(3) **Storage location.** The Administrative Office of the Courts shall maintain all computer records. The clerk of the court shall store on site pending cases, closed cases with significant post judgment activity, and cases with a retention period of less than permanent.

The clerk of the court shall not store case files with significant activity off-site. Records in which there is an order of alimony or child support, visitation or custody shall not be stored off-site until at least three years has expired from the date of the last activity in the case. Within these parameters, the decision to store permanent records on-site or off-site is left to local discretion, needs and resources. The state court records officer and the Division of State Archives may evaluate exceptions for courthouses with critically short storage problems. Records stored off-site shall be prepared in accordance with standards and instructions of the Division of State Archives. If a record stored off-site is needed at the courthouse, the record will be returned to the court for the duration of the need. The clerk of the court shall not return a record in which there is an order of alimony or child support, visitation or custody to off-site storage until at least three years after the last activity in the case.

(B)(4) **Critical documents.** At any time after the completion of appellate proceedings, the clerk of the court may remove from the case file and destroy all documents other than critical documents.

(B)(5) **Retention Period.** The retention period in a criminal case begins as of the completion of the sentence. The level of offense is determined by the offense of which the defendant is convicted or to which the offense is reduced under Utah Code Section 76-3-402. The retention period in a civil or small claims case begins as of the expiration or satisfaction of the judgment. The retention periods are for the following terms.

(B)(5)(a) **Permanent.** All case types not governed by a more specific designation; prosecution as a serious youth offender.

(B)(5)(b) **10 years.** Third degree felonies; violations of Utah Code Section 41-6a-502 or Section 41-6a-503, or of Section 41-6a-512 if the conviction is to a reduced charge as provided in that section; hospital liens; domestic violence misdemeanors within the scope of Utah Code Section 77-36-1.

(B)(5)(c) **5 years.** Administrative agency review; civil and small claims cases dismissed with prejudice; forcible entry and detainer; investigative subpoenas; post conviction relief or habeas corpus other than capital offenses and life without parole; tax liens; temporary separation; worker's compensation; probable cause statements and search and arrest warrants not associated with a case.

(B)(5)(d) **3 years.** Violations of Utah Code Section 53-3-231; violations of Utah Code Section 76-5-303.

(B)(5)(e) **1 year.** Civil cases with a judgment of money only; extraditions; misdemeanors and infractions classified as "mandatory appearance" by the

Uniform Fine Schedule; petitions to expunge an arrest record in which no charges have been filed.

(B)(5)(f) **6 months.** Civil and small claims cases dismissed without prejudice; misdemeanors and infractions classified as “non-mandatory appearance” by the Uniform Fine Schedule; small claims cases with a judgment of money only.

(B)(6) **Retention period in Juvenile Court.** The retention period in a delinquency petition or referral begins as of the completion of the sentence. The retention period in other cases begins as of the expiration of the judgment. The retention periods are for the following terms.

(B)(6)(a) **Permanent.** Adoptions; civil cohabitant abuse; orders terminating parental rights; prosecution as serious youth offender; substantiation.

(B)(6)(b) **Until the youngest subject of the petition reaches age 28.** Abuse, neglect and dependency; felonies.

(B)(6)(c) **Until the subject of the petition reaches age 18 and jurisdiction of the court is terminated.** Misdemeanors and infractions other than non-judicial adjustments; interstate compact.

(B)(6)(d) **10 years.** Violations of Utah Code Section 41-6a-502 or Section 41-6a-503, or of Section 41-6a-512 if the conviction is to a reduced charge as provided in that section.

(B)(6)(e) **3 years.** Violations of Utah Code Section 53-3-231.

(B)(6)(f) **1 year.** Petitions to expunge an arrest record in which no charges have been filed.

(B)(6)(g) **6 months.** Non-judicial adjustment of referrals; misdemeanors and infractions classified as “non-mandatory appearance” by the Uniform Fine Schedule, such as fish and game violations; cases dismissed without prejudice.

(B)(7) **Retention period in Supreme Court and Court of Appeals.** The retention period for records in the Supreme Court and Court of Appeals is permanent.

(B)(8) **Special cases.**

(B)(8)(a) The retention period for foreign judgments, abstracts of judgment and transcripts of judgment is the same as for a case of the same type filed originally in Utah.

(B)(8)(b) The retention period for contempt of court is the same as for the underlying case in which the contempt occurred.

(B)(8)(c) The retention period in the juvenile court for records of the prosecution of adults is the same as for the corresponding offense in district or justice court.

(B)(9) **Case related records.** If the record is filed with the case file, it is treated as a non-critical document unless it is specifically included within the definition of a critical document. If the record is not filed with the case file then its retention period is determined in accordance with the following schedule:

(B)(9)(a) **Audio and video tapes and tape logs; court reporter notes.** For misdemeanors, infractions and small claims, 3 years from the date the record is created. Otherwise, 9 years from the date the record is created. Tapes shall not be reused.

(B)(9)(b) **Court calendars.** As determined by the clerk of the court based on local needs.

(B)(9)(c) **Confidential records.** Confidential records are retained for the same period as the case to which they apply, but they are filed and stored in such a manner as to protect their confidentiality.

(B)(9)(d) **Depositions.** 6 months after the close of appellate proceedings.

(B)(9)(e) **Exhibits.** Three months after disposition of the exhibit in accordance with Code of Judicial Administration 4-206.

(B)(9)(f) **Expunged records.** For the same time as though the record had not been expunged.

(B)(9)(g) **Indexes.** Permanent.

(B)(9)(h) **Jury lists and juror qualification questionnaires.** 4 years from completion of term of availability.

(B)(9)(i) **Case history.** Permanent.

(B)(10) **Record destruction.** Court records 50 years of age or older shall be reviewed for historical significance by the Division of State Archives prior to destruction. If a record is of historical significance, the Division will take possession. If a record is not of historical significance, the court shall manage the record in accordance with this schedule.

Paper documents shall be destroyed after expiration of the retention period or after copying the document to microfilm, digital image, or electronic medium. If documents are copied to microfilm, digital image, or electronic medium, the court may maintain the paper documents until such later time that convenient access to the case file can be achieved by means of microfilm or digital image. Each court is responsible for destroying records or making arrangements for destroying records. The court must comply with all laws applicable to the method of destruction. Confidential records must be shredded prior to destruction. Recycling is the preferred method of destruction. In addition, the court may destroy records by incineration or deposit in a landfill. If the court is unable to destroy records by these means, the court may arrange through the state court records officer to have records destroyed by the State Records Center, which may charge a fee.

(C) Administrative Records.

(C)(1) **Record storage, microfilming, imaging and destruction.** Administrative records shall be stored on-site. Administrative records may be microfilmed or scanned to a digital image based on local needs and resources.

(C)(2) **Retention period.** The retention period for administrative records is in accordance with the following schedule.

(C)(2)(a) **Accounting, audit, budget, and finance records.** 4 years from the date the record is created.

(C)(2)(b) **Final reports approved by the Judicial Council.** Permanent.

(C)(2)(c) **General counsel legal files.** 10 years from date the record is created.

(C)(2)(d) **Juror fee and witness fee payment records.** 4 years from date of payment.

(C)(2)(e) **Meeting minutes.** Permanent.

(C)(3) **Other Record Retention.** All administrative records not specifically listed in this record retention schedule will be retained, transferred or destroyed according to the appropriate court policy and procedure manual or the "Utah State Agency General Retention Schedule."

(D) Email use and retention.

~~(D)(1) **Incidental Personal Correspondence.** Correspondence that does not relate to the business of the courts. The sender and recipient should delete the email as soon as s/he has no more need for it.~~

~~(D)(2) **Transitory Correspondence.** Court-related correspondence that is transitory in nature and does not offer unique information about court functions or programs. These records include acknowledgment files and most day-to-day office and housekeeping correspondence. The sender and recipient should delete the email as soon as s/he has no more need for it.~~

~~(D)(3) **Policy and Program Correspondence.** Court-related correspondence that provides unique information about court functions, policies, procedures, or programs. These records document material discussions and decisions made regarding all court interests. The recipient should delete the email as soon as s/he has no more need for it. The sender must retain policy and program email for the same duration as the Utah State Archives Record Retention Schedule for a record of that type.~~

~~(D)(4) **Reproducible Medium.** The sender must retain policy and program correspondence in a reproducible medium separate from transitory messages. The sender can do this by moving the email message to an electronic folder in the email system with an appropriate retention period or by copying the correspondence to~~

~~another medium for retention, such as a web page, a saved file, or a printed document. If the sender copies the email to another medium for retention, s/he should delete the email.~~

(D)(1) **Email use.** Email that contains unique information about court cases, functions, policies, procedures, or programs is considered related to the business of the courts and shall be sent or received through the Court's domain (utcourts.gov).

(D)(2) **Storage.** All email records sent or received through the Court's domain shall be stored by secure, electronic means. The IT Department shall maintain and oversee any software or programs necessary for email retention and shall provide credentials for the Office of General Counsel and Human Resources to access and search email records. Upon request, the Office of General Counsel or Human Resources may provide search results of requested email records.

(D)(3) **Employee transfers.** If an employee is scheduled for transfer, the employee's supervisor or designee will notify the Help Desk of the IT Department using the form provided by the Department. The IT Department will maintain the employee's email account at the new location and in compliance with subsection (D)(2).

~~(D)(54) **Email records of a terminated or transferred employee**~~**Employee terminations.** ~~(D)(53)(a) **Supervisor's or designee's responsibility.** If an employee is scheduled for termination, the employee's supervisor or designee will notify the Help Desk of the IT Department using the form provided by the Department. Upon termination or transfer, the supervisor or designee will review the employee's email. The supervisor or designee will retain policy and program correspondence of which the employee was the sender in accordance with paragraph (D)(3).~~

~~(D)(5)(b) **IT Division's responsibility.** If the employee is transferred, the IT Division will maintain the employee's email account at the new location. If the employee is terminated, t~~The IT Department will:

(D)(~~45~~)(~~a~~b)(i) De-provision the user id and email account of the employee;

(D)(~~45~~)(b)(ii) Remove authority to sign on to the court's computing network;

(D)(~~45~~)(~~c~~b)(iii) Remove authority to access the court's email account;

(D)(~~45~~)(~~d~~b)(iv) Remove the employee from group email lists; and

(D)(~~45~~)(~~e~~b)(v) Remove authority to access personal and network drives.

~~Upon receipt of notice of termination or transfer, the IT Division will retain the employee's email in its original form for 180 days from the date of termination or transfer. After 180 days, the IT Division may back up the employee's email, delete the email account and recover and reuse the disk space. The IT Division will retain the back up off site for one~~

~~year from the date of deletion.~~ If a terminated ~~or transferred~~ employee returns within ~~180~~
~~days after the date of termination~~ the time period stated in subsection (D)(5) for their
respective position, the IT Department will reactivate the employee's email account.

(D)(5) Retention period. A terminated employee's email records shall be stored in
accordance with subsection (D)(2), starting from the date of the former employee's
termination and for a period of time as required by law.

(D)(6) **Litigation.** Upon notice of pending or potential litigation, the IT Department will
retain the terminated employee's email records in the current format until it receives
notice from either the Office of the General Counsel or the Director of Human Resources
that the litigation is complete or is no longer contemplated. At such time, the retention
period for the employee's email records will be subject to ~~this~~ subsection (D)(5), starting
from the former employee's termination.

(D)(7) Archives. Following expiration of the retention periods in subsection (D)(5), the IT
Department will contact the Utah Division of Archives and Records Service and arrange
for the transfer of any email records that have not yet expired under the Utah State
Archives Record Retention Schedule for records of that type.

Effective: May 1, 2024

7-year retention list

Justices

Judges

Commissioners

State Court Administrator

- Deputy Court Administrator
- Assistant Court Administrator

Appellate Court Administrator

- Appellate Clerk of Court

District Court Administrator

- Assistant District Court Administrator
- District Court Program Administrator
- Statewide Treatment Court Program Coordinator

Justice Court Administrator

- Assistant Justice Court Administrator
- Domestic Violence Program Manager

Juvenile Court Administrator

- Assistant Juvenile Court Administrator(s)
- Juvenile Court Improvement Program Director

Commented [SW1]: There are two Assistant Juvenile Court Administrators- one for probation and one for clerical

Internal Audit Director

Human Resources Director

- Deputy HR Director

Tribal Outreach Program Coordinator

Director of Communications

Director, Judicial Data and Research

Court Security Director

Court Facilities Director

Director of the Office of Fairness, Equity, & Accountability

Director of Finance

- Deputy Director of Finance

General Counsel

- Associate General Counsel

Utah Judicial Institute Director

ADR Program Director

Director Guardian Ad Litem

Chief Information Officer

- Deputy Director, Technology

Director, Self-Help Center & Law Library

1st District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court

2nd District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court ~~Juvenile Court Program Coordinator~~
- ~~— Judicial Team Manager~~
- ~~— Probation Supervisor~~

3rd District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~— Juvenile Court Program Coordinator~~
- ~~— Judicial Team Manager~~
- ~~Probation Supervisor~~

4th District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~— Juvenile Court Program Coordinator~~
- ~~— Judicial Team Manager~~
- ~~— Probation Supervisor~~

5th District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~Juvenile Court Program Coordinator~~
- ~~Judicial Team Manager~~
- ~~Probation Supervisor~~

6th District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~Juvenile Court Program Coordinator~~
- ~~Judicial Team Manager~~
- ~~Probation Supervisor~~

7th District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~Juvenile Court Program Coordinator~~
- ~~Judicial Team Manager~~
- ~~Probation Supervisor~~

8th District

- Trial Court Executive
- Chief Probation Officer
- Clerk of Court
- ~~Juvenile Court Program Coordinator~~
- ~~Judicial Team Manager~~
- ~~Probation Supervisor~~

Justice Courts

- Clerk of Court
-