

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

August 2, 2024 – 12:00 p.m. to 2:00 p.m.

**Webex**

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> <li>Approved on expedited basis (effective 5/1): <ul style="list-style-type: none"> <li><b>CJA 4-601.</b> Selection of indigent aggravated murder and defense fund counsel (REPEAL)</li> <li><b>CJA 2-212.</b> Communication with the Office of Legislative Research and General Counsel</li> <li><b>CJA 4-907.</b> Divorce education and divorce orientation course</li> </ul> </li> <li>For final approval: <ul style="list-style-type: none"> <li><b>CJA 1-204.</b> Executive committees</li> <li><b>CJA 4-202.01.</b> Definitions</li> </ul> </li> <li>2<sup>nd</sup> round of public comments: <ul style="list-style-type: none"> <li><b>CJA 4-206.</b> Exhibits</li> </ul> </li> </ul>	Action	Tab 2	Keisa Williams
	<b>CJA 6-104.</b> District court water judges	Action	Tab 3	Judge Jennifer Valencia
	<b>CJA 4-206.</b> Exhibits	Action	Tab 4	Jace Willard
	<b>CJA 4-202.02.</b> Records classification <b>CJA 4-202.03.</b> Records access	Action	Tab 5	Keri Sargent
	<b>CJA 4-905.</b> Restraint of minors in juvenile court	Action	Tab 6	Keisa Williams
	Technology report/proposals <ul style="list-style-type: none"> <li>Strategic Plan (<b>Protected Record</b>)</li> </ul>	Action	Tab 7	Brody Arishita
1:50	Old Business/New Business			
2:00	Adjourn			

**2024 Meetings:**

September 6, 2024  
October 4, 2024  
November 1, 2024  
December 6, 2024

**2025 Meetings:**

January 3, 2025      July 11, 2025  
February 7, 2025    August 1, 2025  
March 7, 2025        September 5, 2025  
April 4, 2025         October 3, 2025  
May 2, 2025           November 7, 2025  
June 6, 2025          December 5, 2025

# TAB 1

## Minutes

June 14, 2024

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

**Draft**

Webex video conferencing  
June 14, 2024 – 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:**

Nick Stiles  
Paul Barron  
Keri Sargent  
Sara Osmund  
Amy Hernandez  
Shannon Treseder  
Shane Bahr

**STAFF:**

Keisa Williams  
Brody Arishita

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

Judge Chiara welcomed committee members to the meeting. The committee considered the minutes from the May 17, 2024, meeting. With no changes, Judge Gardner moved to approve the minutes as presented. Judge Bazzelle seconded the motion. The motion passed unanimously.

**(2) CJA 1-205. Standing and ad hoc committees**

**CJA 3-422. Tribal Liaison Committee (NEW)**

The proposed amendments create a new standing committee, the Tribal Liaison Committee, which would serve as a core leadership team for the courts' Tribal Liaison and provide subject matter expertise to the Council regarding matters impacting both the judiciary and tribal courts.

***Judge Gardner moved to recommend to the Judicial Council that the amendments to CJA rule 1-205 and 3-422 be published for a 45-day public comment period. Judge Bazzelle seconded the motion. The motion passed unanimously.***

**(3) CJA 3-501. Insurance benefits upon retirement**

Bart Olsen and Sara Osmund reviewed proposed amendments to CJA rule 3-501 as described in detail in the memo included in the meeting materials. In summary, the current language in rule 3-501 lacks clear and concise information regarding insurance benefits upon retirement for judges, justices, and court commissioners. The proposed amendments were developed by the Human Resources Department to resolve existing issues and facilitate consistency and clarity on the administration of these benefits moving forward. Following a discussion, the Committee made minor, non-substantive changes.

***Judge Gardner moved to recommend to the Judicial Council that the amendments to CJA rule 3-501 be published for a 45-day public comment period. Judge Bazzelle seconded the motion. The motion passed unanimously.***

#### **(4) CJA 2-102. Council agenda**

The Management Committee tasked PP&T with drafting a rule:

- formalizing the existence of the Council's consent calendar;
- listing the kinds of things that can be placed on the consent calendar;
- outlining the process for removing items from the consent calendar; and
- requiring a vote on the consent calendar.

Ms. Williams proposed adding language to CJA rule 2-102. Following a discussion, the Committee determined that "grant approvals" should be placed on the Council's main agenda.

***Judge DiReda moved to recommend to the Judicial Council that the amendments to CJA rule 2-102 be published for a 45-day public comment period. Judge Carpenter seconded the motion. The motion passed unanimously.***

#### **(3) CJA 4-101. Manner of appearance (NEW)**

The Supreme Court published for comment proposed rules of civil, criminal, and juvenile procedure related to manner of appearance. The comment period ends July 5, 2024. Each of those rules is included in the packet. Ms. Williams noted that she amended the definitions in 4-101 to match those found in the procedural rules and included a notice provision to account for the various ways the court may respond to a request to appear by a different method.

There is an existing link on the court's webpage regarding remote appearance. The page includes a comprehensive guide for pro se litigants on how to participate in remote proceedings. The Committee recommended that the webpage be amended to include guidance on how to participate in remote juvenile proceedings.

The Committee discussed whether notice must be provided in writing or may be provided in open court. The Committee determined that judges should have the option of providing notice in open court and that the substance of any written notice ((2)(A)-(2)(D)) should not be mandatory. The Committee amended the last sentence in paragraph (2) to read as follows: "Notice that is not provided in open court should include: ..."

The Committee copied language from Rule 87(a)(3) of the Utah Rules of Civil Procedure regarding the effect of one participant's preference on other participants.

The Committee asked Ms. Williams to send a copy of the rule draft to Judge Mettler and the Supreme Court's committee drafting associated rules of procedure.

***Judge Carpenter moved to recommend to the Judicial Council that the amendments to CJA rule 4-101 be published for a 45-day public comment period. Judge Gardner seconded the motion. The motion passed unanimously.***

**Technology report/proposals:**

The Technology Advisory Subcommittee (TAC) meets on July 1st to discuss the strategic plan. Mr. Arishita will report back.

**Old Business/New Business:**

The Committee reviewed and made minor amendments to the Judicial Inclusion Mentorship Program application and handbook.

**Adjourn:** With no further items for discussion, the meeting adjourned at 1:50 p.m. The next meeting will be held on July 5, 2024, at noon via Webex video conferencing.

# TAB 2

## **Back from Public Comment:**

*Approved on an expedited basis with a May 1, 2024 effective date:*

- **CJA 2-212. Communication with the Office of Legislative Research and General Counsel**
- **CJA 4-601. Selection of indigent aggravated murder and defense fund counsel (REPEAL)**
- **CJA 4-907. Divorce education and divorce orientation course**

*Rules for final approval:*

- **CJA 1-204. Executive committees**
- **CJA 4-202.01. Definitions**

*2<sup>nd</sup> round of public comments:*

- **CJA 4-206. Exhibits**

### **Notes:**

No public comments were received for rules **2-212**, **4-601**, or **4-907**. Those rules were approved on an expedited basis and do not require action unless the Committee makes amendments.

No public comments were received for rules **1-204** or **4-202.01**. Those are ready for final approval.

Court staff are proposing additional amendments to rule **4-206** (see Tab 4). If adopted, I recommend sending the rule out for a 2<sup>nd</sup> round of public comments, as the proposed amendments are substantive.

**Rule 2-212. Communication with the ~~Office of Legislative Research and General Counsel~~Rules Review and General Oversight Committee.**

**Intent:**

To provide the Legislature, through the ~~Office of Legislative Research and General Counsel~~Rules Review and General Oversight Committee, with notice of proposed and new Council rules ~~and opportunity to comment upon them~~.

~~To provide the Legislature and the Office of Legislative Research and General Counsel with notice of Council action upon Council rules.~~

**Applicability:**

This rule shall apply to the Council, ~~the Boards of Judges, the standing and ad hoc committees of the Council,~~ and the Administrative Office.

**Statement of the Rule:**

(1) **Submission of new and proposed rules.** The principal staff person assigned to the Council, ~~the Boards of Judges, and the standing and ad hoc committees of the Council~~ shall send copies of new and proposed rules in Chapters 1-10 of the Code of Judicial Administration to the Director of the Office of Legislative Research and General Counsel and the chair of the Judicial Rules Review and General Oversight Committee ("Rules Review Committee") ~~and the governor, through their designated representatives, the draft rule of the Council, Board, or committee at the same time the draft~~ when the rule is submitted to the Council for consideration or approval for public comment, and when the rule is made available to members of the Bar and public for public comment.

(2) **Contact information.** The Administrative Office shall provide the name and contact information of an Administrative Office employee that the Rules Review Committee and governor may contact about each rule.

(3) **Council meetings.** A legislator, ~~representative of the Governor's Office,~~ or representative of the Office of Legislative Research and General Counsel may attend any public portion meeting of ~~the~~ Council meeting at which a rule of the Council is under consideration, and may comment upon the rule.

~~(3) The State Court Administrator shall notify the chair of the Judicial Rules Review Committee and the Director of the Office of Legislative Research and General Counsel of the Council's final action on any rule published for comment or adopted.~~

*Effective: May 15, ~~2024~~1994*

**~~Rule 4-601. Selection of indigent aggravated murder defense fund counsel.~~**

**~~Intent:~~**

~~To establish the process to be used to select pre-contracted attorneys from the roster maintained by the Indigent Defense Funds Board in aggravated murder cases.~~

**~~Applicability:~~**

~~This rule shall apply to the district court.~~

**~~Statement of the Rule:~~**

~~After determining that a defendant is eligible for indigent defense counsel in an aggravated murder case, as provided in U.C.A. Title 77, Chapter 32, if the defense counsel is to be paid from the Indigent Aggravated Murder Defense Fund, the following process shall be used:~~

~~(1) The judge responsible for assignment of defense counsel shall, as soon as practical upon determining eligibility, contact the member of the Indigent Defense Funds Board designated by the Administrative Office of the Courts.~~

~~(2) That board member shall randomly identify, for each eligible defendant, five attorneys currently on the roster of qualified pre-contracted attorneys.~~

~~(3) The board member shall then promptly contact each of those attorneys and determine if they would be willing to undertake the representation of the defendant. If fewer than three attorneys are willing to undertake the representation, additional pre-contracted attorneys should be contacted until there are at least three attorneys from which the judge can choose.~~

~~(4) The judge shall then select one of the willing attorneys for appointment.~~

**~~Effective: April 1, 2011~~**



**Rule 4-907. ~~Divorce education~~Parenting and divorce orientation courses.**

**Intent:**

To establish policies for the implementation of the ~~divorce education~~mandatory parenting courses required by Utah Code Section 30-3-11.3 and the mandatory divorce orientation course required by Utah Code Section 30-3-11.4.

**Applicability:**

This rule shall apply to all proceedings in which Utah Code Section 30-3-11.3, Utah Code Section 30-3-11.4, or a court order requires attendance ~~at one or both courses~~.

**Statement of the Rule:**

(1) **Judicial education department.** The judicial branch education department ~~within the Administrative Office of the Courts~~ shall:

(1)(A) establish uniform specifications and standards for the courses;

(1)(B) issue a request for proposals setting forth the uniform specifications and standards;

(1)(C) award contracts for live courses; and

(1)(D) produce the courses by ~~video and other~~ effective formats.

(2) ~~(A) Attendance.~~ Each party required to attend ~~one or both~~ courses ~~shall may~~ attend the live course at any location at which it is offered ~~or take an interactive online course.~~ The judicial branch education department may approve an equivalent alternative under exigent circumstances. ~~(2)(B) A party required to attend one or both courses may~~

~~(watch a video of the course if:~~

~~(2)(B)(i) the party lives out of state or more than 60 miles from the nearest live class;~~

~~(2)(B)(ii) the party is in prison, jail or other detention facility;~~

~~(2)(B)(iii) the party is an in-patient at a medical facility; or~~

~~(2)(B)(iv) the party's request to watch the video is approved by the divorce education administrator.~~

~~(2)(C) The party may purchase the video or watch it at any district court courthouse.~~

(3) **Unmarried parties.** Until the Council approves and implements a mandatory parenting course for unmarried parties in a parentage action, an unmarried party in a parentage action must attend the mandatory parenting course for married parties.

~~(4) Certificate.~~ The course provider ~~or the custodian of the video~~ shall provide the party with a certificate of completion.

~~(5) Notice.~~ When the petition is filed, the clerk shall notify the petitioner of the course requirement. The petitioner shall notify the respondent of the requirement and file a certificate of service of the notice.

(6) **Fees.**

(6)(A) Any person attending a course shall present a valid form of photo identification, and pay the course fee, or present a copy of an order waiving the fee or a motion to waive fees that has been filed with the court. If the court determines that the party is not ~~impecunious~~indigent, the court may enter judgment for the amount of the course fee.

(6)(B) The fee for attending ~~the education or taking an online parenting~~ course ~~or watching the video~~ is \$35.00, which includes \$8.00 for deposit in the Children's Legal Defense Fund. The fee for attending or taking an online divorce ~~the~~ orientation course is \$15.00 for petitioners who attend the course within 30 days of filing and for respondents who attend the course within 30 days of service. Otherwise, the fee for attending or taking an online divorce ~~the~~ orientation course, ~~taking the course online, or watching the video~~ is \$30.00, which includes \$5.00 for deposit in the Children's Legal Defense Fund.

(7) **Course provider.** The course provider shall ~~, within 72 hours of each course,~~ provide the court with an alphabetized list of each party who completed the course on a monthly basis.

Effective: ~~November~~ May 1, 2024~~14~~

**Rule 1-204. Executive committees.****Intent:**

- To establish executive committees of the Council.
- To identify the responsibility and authority of the executive committees.
- To identify the membership and composition of the executive committees.
- To establish procedures for executive committee meetings.

**Applicability:**

This rule shall apply to the judiciary.

**Statement of the Rule:**

(1) **Executive Committees.** The following executive committees of the Council are hereby established:

- (1)(a) the Management Committee;
- (1)(b) the Policy, Planning, and Technology Committee;
- (1)(c) the Liaison Committee; and
- (1)(d) the Budget and Fiscal Management Committee.

(2) **Management Committee.** The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.

(3) **Policy, Planning, and Technology Committee.** The Policy, Planning, and Technology Committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of justice, and shall research and make recommendations regarding any matter referred by the Council. The Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration, new and amended policies for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402, and new or amended technology policies and priorities.

(3)(A) **Technology Core Teams.** Each court level shall establish a Technology Core Team to review and prioritize requests impacting technology associated with court level applications. Core Teams should include representatives from each judicial district, where applicable, and may consist of a combination of the following positions:

(3)(A)(i) **Appellate Court Core Team:**

(3)(A)(i)(a) Appellate Court Administrator;

(3)(A)(i)(b) Clerk of Court;  
(3)(A)(i)(c) appellate court judge;  
(3)(A)(i)(d) Appellate Court Coordinator; ~~and~~  
(3)(A)(i)(e) IT staff; and  
(3)(A)(i)(f) Judicial Data and Research Staff.

(3)(A)(ii) **District/Justice Court Core Team:**

(3)(A)(ii)(a) District Court Administrator or designee(s);  
(3)(A)(ii)(b) Justice Court Administrator or designee(s);  
(3)(A)(ii)(c) Clerk of Court;  
(3)(A)(ii)(d) Trial Court Executive;  
(3)(A)(ii)(e) district court judge;  
(3)(A)(ii)(f) justice court judge;  
(3)(A)(ii)(g) Team Manager;  
(3)(A)(ii)(h) Case Manager;  
(3)(A)(ii)(i) Judicial Assistant;  
(3)(A)(ii)(j) Training Coordinator;  
(3)(A)(ii)(k) IT staff;  
(3)(A)(ii)(l) Judicial Data and Research staff; and  
(3)(A)(ii)(~~m~~) local justice court administrator.

(3)(A)(iii) **Juvenile Court Core Team:**

(3)(A)(iii)(a) Juvenile Court Administrator or designee(s);  
(3)(A)(iii)(b) Clerk of Court;  
(3)(A)(iii)(c) Trial Court Executive;  
(3)(A)(iii)(d) Chief Probation Officer;  
(3)(A)(iii)(e) Probation Supervisor;  
(3)(A)(iii)(f) Probation Officer;  
(3)(A)(iii)(g) Team Manager;  
(3)(A)(iii)(h) Case Manager;  
(3)(A)(iii)(i) Judicial Assistant;  
(3)(A)(iii)(j) Training Coordinator;  
(3)(A)(iii)(k) juvenile court judge; ~~and~~  
(3)(A)(iii)(l) IT staff; and

(3)(A)(iii)(m) Judicial Data and Research staff.

(3)(B) **Technology Prioritization Subcommittee.** A Technology Prioritization Subcommittee is hereby established. Members shall be designated by each Core Team and shall consist of no more than two members from each Team. ~~A current or former member of the Policy, Planning, and Technology Committee shall be a non-voting member.~~ Each Core Team may submit technology requests associated with court level applications to the Technology Prioritization Subcommittee. The prioritization subcommittee shall come to an agreement on the percentage of work allotted for each court level. The percentage relates to development staff compensated by general funds. Technology requests from Core Teams should fall within the work allotted to that court level for that year, unless the work requested is required by legislative or rule changes. The prioritization subcommittee may review and consider exceptions to this standard. The prioritization subcommittee will make recommendations to the Policy, Planning, and Technology Committee.

(3)(C) **Technology Advisory Subcommittee.** A Technology Advisory Subcommittee is hereby established. The advisory subcommittee shall be available to the Chief Information Officer, Core Teams, Technology Prioritization Subcommittee, and the Policy, Planning, and Technology Committee to provide feedback and recommendations on statewide technology services, including but not limited to, device standards, email, and bandwidth. The advisory subcommittee shall consist of:

(3)(C)(i) one district court judge;

(3)(C)(ii) one juvenile court judge;

(3)(C)(iii) one appellate court judge;

(3)(C)(iv) one justice court judge;

(3)(C)(v) one district court Trial Court Executive

(3)(C)(vi) one juvenile court Trial Court Executive;

(3)(C)(vii) one district court Clerk of Court;

(3)(C)(viii) one juvenile court Clerk of Court;

(3)(C)(ix) one local justice court administrator;

(3)(C)(x) each court level administrator or their designee(s);

(3)(C)(xi) one Chief Probation Officer;

(3)(C)(xii) the Chief Information Officer or designee;

(3)(C)(xiii) the Court Security Director; and

(3)(C)(xiv) the General Counsel or designee. ~~one current or former member of the Policy, Planning and Technology Committee.~~

(4) **Liaison Committee.** The Liaison Committee shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the authority, jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative

process preclude full discussion of the issues by the Council, the Committee may endorse or oppose the legislation, take no position or offer amendments on behalf of the Council.

(5) **Budget and Fiscal Management Committee.** The Budget and Fiscal Management Committee shall review court budget proposals, recommend fiscal priorities and the allocation of funds, and make recommendations to the Council regarding budget management and budget development in accordance with Rule 3-406.

(6) **Members.** Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The members of the Policy, Planning, and Technology Committee, the Budget and Fiscal Management Committee, and the Liaison Committee shall elect their respective chairs on a schedule deemed appropriate by each Committee. Chairs must be members of the Council.

(7) **Meetings and Judicial Council Reports.** Each committee shall meet as often as necessary to perform its responsibilities, but a minimum of four times per year. Each committee shall report to the Council as necessary.

(8) **Staff.** The Administrative Office shall provide staff support to the executive committees.

Effective: ~~May~~January 1, 202~~4~~3

1 **Rule 4-202.01. Definitions.**

2 **Intent:**

3 To provide a uniform definition for special terms.

4 **Applicability:**

5 This rule applies to the judicial branch.

6 **Statement of the Rule:**

7 As used in these rules:

8 (1) "**Access**" means to inspect and obtain a copy.

9 (2) "**Court record**" means a record prepared, owned, received, or retained by a court or the  
10 administrative office of the courts.

11 (3) "**Record**" means books, letters, documents, papers, maps, plans, photographs, films, cards,  
12 tapes, recordings, data or other materials, regardless of form or characteristics, that are  
13 reproducible.

14 (4) "**Record**" does not mean any of the following unless received into evidence:

15 (4)(A) drafts;

16 (4)(B) calendars;

17 (4)(C) notes or similar materials prepared for the originator's personal-own use or for the  
18 personal-sole use of an individual for whom the originator works;

19 (4)(DB) a document or communication prepared or received by an individual in the  
20 individual's private capacity or a document or communication prepared or received by an  
21 individual that is unrelated to the public's business;

22 (4)(EG) materials legally owned by an individual in the individual's private capacity;

23 (4)(FD) materials to which access is limited by the laws of copyright or patent unless the  
24 copyright or patent is owned by the courts;

25 (4)(GE) proprietary software or software developed or purchased by or for the courts for  
26 its own use;

27 (4)(HF) junk mail or commercial publications received by the courts or an official or  
28 employee of the courts; or

29 (4)(IG) materials contained in the collection of libraries open to the public.

30 *Effective: ~~April~~ May 1, 2024~~13~~*

# TAB 3

## **CJA 6-104. District court water judges**

**Notes:** Judge Jennifer Valencia will present proposed amendments to rule 6-104 addressing the reassignment of water law cases.



**Rule 6-104. District court water judges****Intent:**

To designate certain district court judges as water judges.

To establish a procedure whereby district court water cases are heard by designated water judges.

To designate a supervising water judge.

**Applicability:**

This rule shall apply to district court judges.

**Statement of the Rule:**

(1) **Council Designation.** The Judicial Council shall formally designate at least three district court judges who volunteer as water judges. In making the designation, the Judicial Council shall consider the knowledge and experience of the judge in relation to cases involving the adjudication of water rights, or the willingness of that judge to become familiar with this area of the law.

(2) **Request for Assignment.** If a party to an action filed under Utah Code Title 73, Chapter 3 or Chapter 4 makes a request, as part of the complaint or first responsive pleading, to have the case assigned to a water judge, the case will be assigned to a water judge. Thereafter, a request to have the case assigned to a water judge may be granted in the discretion of the judge assigned to the case. Additionally, a party may request that a non-Chapter 3 or Chapter 4 case be assigned to a water judge. Non-Chapter 3 or 4 cases will be reviewed and assigned by the supervising water judge if the case is of sufficient legal complexity as related to water law to warrant assignment to a water judge.

(3) **Assignments.** Assignment of cases involving water law to a water judge shall be made on a random basis. Assignment may include an adjustment in the judge's calendar to allow the judge to handle the case.

(4) **Reassignments.** All cases involving water law that are pending before a water judge at the time the water judge ceases to be a water judge or ceases to be a district judge will be reassigned to another water judge.

~~(4)~~(5) **Supervising Water Judge.** The water judges shall elect one of the water judges to be the supervising water judge. The term of office of the supervising water judge is two years beginning July 1. The supervising water judge shall be primarily responsible for:

~~(4)~~(5)(A) the assignment of water law cases to water judges;

~~(4)~~(5)(B) the coordination of schedules of water judges and the assignment of courtrooms and facilities in conjunction with the state court administrator and the presiding judge of each district court;

(4)(5)(C) addressing concerns of water judges, other district court judges, or the Judicial Council regarding the management of district court water law cases;

(4)(5)(D) overseeing the water law education of the water judges, in conjunction with the Standing Committee on Judicial Branch Education and the Utah Judicial Institute;

(4)(5)(E) presiding over meetings of the water judges;

(4)(5)(F) the use of law clerk resources to develop water expertise, to assist the water judges, and to facilitate consistency in the development of case precedents in the water law area and otherwise assist in the transition as new water judges are designated; and

(4)(5)(G) coordinating with the water judge's presiding judge regarding any appropriate adjustments to the water judge's caseload.

**(5)(6) Posting Decisions.** If a water judge decides a water law case of first impression, the water judge shall cause the decision to be posted. A decision need not be posted where the case deals with settled rules of law.

**(6)(7) Term.** Water judges shall serve only so long as they are district court judges. Water judges may, however, resign as water judges, at their own request or the request of the Judicial Council, while still serving as district court judges.

**(7)(8) Caseload.** If a water judge does not have a full workload of water law cases, the judge shall hear non-water law district court cases to maintain a full workload of cases.

**(8)(9) Venue.** Nothing in this rule affects venue.

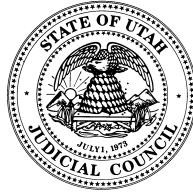
~~Effective: 11/01/2022~~Effective: November 1, 2024

# TAB 4

## CJA 4-206. Exhibits

**Notes:** Rule 4-206 is back from public comment. Court staff are proposing additional amendments. See attached public comments and memo for details.

The amendments posted for public comment are included in the rule draft along with the new changes. The version posted for public comment can be found [here](#).



# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

July 16, 2024

Ronald B. Gordon, Jr.  
State Court Administrator  
Neira Siaperas  
Deputy State Court Administrator

## MEMORANDUM

**TO: Committee on Policy, Planning & Technology**

**FROM: Jace Willard, Associate General Counsel**

**RE: Impact of 2023 and 2024 Statutory Amendments on CJA 4-206.**

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### SUMMARY OF NEEDED AMENDMENTS TO CJA RULE 4-206

The Office of General Counsel has been asked whether recently enacted SB76 (2024) affects Rule 4-206 of the Code of Judicial Administration (“the Rule”), which concerns receipt, retention, and disposal of court exhibits. As explained below, the need to amend the Rule actually goes back to legislation passed in 2023 (SB120), which prohibits courts from disposing of any evidence admitted in criminal cases, and which otherwise significantly restricts state agencies’ disposal of evidence in criminal cases. The 2024 amendments (SB76 and HB328) add to those restrictions.

Based on the legislation, as explained below, (1) there is no need to change the provisions of the Rule regarding the type of exhibits that remain in the custody of the parties; (2) the Rule should simply refer the parties to the statute for their retention obligations in criminal cases (not tell them they can dispose of any evidence at any given point in criminal cases); and (3) the Rule should require that all exhibits in the court’s custody in criminal cases be given to the prosecuting agency.

### ANALYSIS

The relevant legislative amendments are to the Code of Criminal Procedure. The principal section addressing the courts is section 77-11c-102, which provides:

(1) If evidence is admitted as an exhibit for a court proceeding, the clerk of the court shall:

(a) retain the evidence; or

(b) return the evidence to the custody of the agency.

(2) Rule 4-206 of the Utah Code of Judicial Administration applies to evidence that is admitted as an exhibit in a court proceeding.

UCA 77-11c-102 (enacted in 2023).

This section is a little confusing. On the one hand, per the first subsection, the court clerk is required to do one of two things with admitted evidence: either “retain” it or “return” it to the agency. This provision seems to have two implications: first, the clerk arguably must take custody of all admitted evidence (because it cannot either “retain” or “return” evidence without first taking custody of it), and second, the clerk seems to be prohibited from disposing of any evidence (because that would go beyond either retaining it or returning it to the agency).

But then the second subsection indicates that Rule 4-206 “applies” to the same evidence. This seems to conflict with both of the implications just noted in subsection (1) because Rule 4-206 includes a provision specifying certain exhibits that are to remain in the custody of the offering party, and includes separate provisions requiring return or disposal of all exhibits.

The relevant provisions of Rule 4-206, including certain proposed revisions that recently went out for public comment (ending June 29, 2024), as well as additional proposed revisions explained below, are as follows:<sup>1</sup>

**(2) Exhibit custody during trial.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biological evidence, biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party.

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<sup>1</sup> The substance of the proposed revisions that have already gone out for comment is intended to be preserved in the excerpt below. But because some of the additional proposed revisions involve adding new subparagraphs or reorganizing existing ones, it was impractical and more confusing than helpful to try to distinguish in the redline between the proposed revisions that have already gone out for public comment and the additional proposed revisions. Accordingly, all of the proposed revisions are reflected in the redlined text below.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. . . .

...

(3)(B) **Exhibit custody post disposition.**

(3)(B)(i) Courts of record. In courts of record, upon final disposition of the case, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

(3)(B)(ii) Courts not of record. In civil cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody shall be returned to the parties. In criminal cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody shall be given to the prosecuting agency, which must comply with Title 77, Chapter 11c, Retention of Evidence. The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

(3)(C) **Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5)(A)(i) or (5)(B)(i). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.

...

(5) **Disposal of exhibits.** Exhibits shall be disposed of as follows:

(5)(A) Criminal. In cases that are criminal in nature:

(5)(A)(i) Party custody. Parties with custody of ~~biological~~ evidence must comply with Title ~~7753~~, Chapter ~~11c20~~, ~~Forensic Biological Retention of Evidence Preservation~~.

(5)(A)(ii) Court custody. Exhibits in the court's custody shall be transferred to the prosecuting agency no earlier than 365 days after the time for appeal has expired, provided no appeal has been filed and there are no pending post-conviction relief actions or pending appeals of post-conviction relief actions.

(5)(B) Civil. In cases that are not criminal in nature:

(5)(B)(i) Disposal time. ~~Provided no appeal has been filed,~~ parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any ~~other~~ exhibits in their custody no earlier than 90 days after the time for appeal has expired, ~~or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later.~~

(5)(B)(ii) Court custody. Exhibits in the court's custody shall be disposed of as follows:

(5)(BA)(ii)(a) No monetary value. Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B)(ii)(b) Monetary value. Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

(5)(C) Time Period. Upon receipt of remittitur from an appellate court, the time period for all cases is reset.

UCJA 4-206 (emphasis added).

Of course, if evidence “remain[s] in the custody of the party offering the exhibit” per Rule 4-206(2)(A), the court clerk necessarily does not take custody of it. Thus, as previously

indicated, subsection 77-11c-102(1) seems to be at odds with subsection (2) and the rule stated to apply therein.

However, given the Legislature's express indication that Rule 4-206 "applies" to admitted evidence, the Legislature evidently does not intend the statute to entirely supersede the Rule. This makes sense since, in contrast to its authority to amend the rules of procedure and evidence (Utah Const. art. VIII, § 4), the Legislature is given no similar power to amend the Judicial Council's administrative rules. *See* Hon. Christine M. Durham, *Separate Branches, Balanced Powers: Governing the Judicial Branch*, Vol. 19 No. 6 Utah Bar J. 9 (2006) (75th Anniversary Special Issue) ("Article VIII, Section 12 creates the Judicial Council and vests in it the final authority to make rules administering the courts. Whereas the revised Judicial Article reserves to the Legislature the authority to amend rules of evidence and procedure adopted by the Supreme Court, there is no comparable authority to amend the Judicial Council's rules of administration." (emphasis added). Because the Legislature is not at liberty simply to rewrite the Judicial Council's administrative rules at will, some deference by the Legislature to the Rule would be expected.

On the other hand, the Judicial Council's rulemaking authority is limited to truly administrative provisions. The appellate courts have explained that the administrative rules can neither enlarge nor abridge a party's substantive rights. *Scott v. Majors*, 1999 UT App 139, ¶ 12, 980 P.2d 214 ("The purpose of the Code of Judicial Administration is to bring order to the manner in which the courts operate. They are not intended to, nor do they, create or modify substantive rights of litigants, nor do they decrease the inherent power of the court to control matters pending before it.") (citation omitted). *See also State v. Alexander*, 2012 UT 27, ¶¶ 40-41, 279 P.3d 371 (distinguishing between court rules, which "are only procedural and cannot create or modify substantive rights of litigants," and statutes enacted pursuant to "the Legislature's function to create a litigant's legal rights, liabilities, and remedies consistent with the state and federal constitutions," and which therefore set the standard within which the court's rules must be interpreted) (citing cases, including *Scott*).

This background sheds light on how the Rule interacts with the legislation. For example, deciding who has custody of "bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody" (Rule 4-206(2)(A)) at any given time is at least primarily a question concerned with the order and efficiency of court operations and administration rather than a party's substantive legal rights. The mere question of exhibit custody would not generally in and of itself affect or impair a party's substantive rights to access evidence or present its case. Thus, any inconsistency between subsection 77-11c-102(1) and Rule 4-206 as to the custody question would likely be resolved in favor of the Rule. Utah Const. art. VIII, § 12. Stated differently, because the Rule controls the administrative issue of custody, the restrictions on court action in subsection 77-11c-102(1) may reasonably be construed as limited to evidence



within the court's custody pursuant to Rule 4-206. So it is not necessary to change anything in Rule 4-206(2)(A).

Disposal of exhibits is a different matter. Disposal clearly concerns a party's substantive right to evidence preservation. *See Sandoval v. State*, 2019 UT 13, ¶¶ 3, 18, 441 P.3d 748 (noting that Rule 4-206 provision "direct[ing] court personnel to dispose of valueless property from exhibits in evidence '[a]fter three months have expired from final disposition of the case'" "functionally imposes a temporal bar on the rights afforded to the convicted by the PCRA because the preservation of their evidence is not guaranteed beyond three months;" further noting "that the Judicial Council may wish to explore whether the three-month time limit imposed by the rule so limits the rights granted by the PCRA as to implicate due process concerns;" and that "the Council may wish to examine the lack of formal notice directly to the convicted").

On that question, as to criminal cases, the Legislature has now taken decisive and sweeping action in the form of significant statutory amendments over the past two years (SB120 in 2023 and SB76 and HB328 in 2024). As indicated above, in such cases, pursuant to subsection 77-11c-102(1), regarding evidence within the court's custody under Rule 4-206, the courts are only permitted to retain the evidence or return it to the custody of the agency. To comply with this provision, and to avoid overburdening the courts' limited storage capacity for retained evidence, the proposed additional language in subdivision (3)(B)(ii) requires that, upon final disposition in criminal cases in courts not of record, exhibits in the court's custody be given to the prosecuting agency. Similarly, proposed subdivision (5)(A)(ii) (which applies to courts of record per subdivision (3)(B)(i)) provides that, in criminal cases after a certain time, all exhibits are to be given to the prosecuting agency.

The agency's retention obligations thereafter are governed by specific statutory provisions. *See* UCA 77-11c-201 (retention obligations as to evidence of misdemeanor offenses); 77-11c-202 (exceptions to 77-11c-201 obligations as to evidence of misdemeanor offenses); 77-11c-203 (request to prosecuting attorney by agency seeking to release or dispose of evidence, and providing for notice to defendant); 77-11c-301 (retention obligations as to evidence of felony offenses); 77-11c-302 (exceptions to 77-11c-301 obligations as to evidence of felony offenses); 77-11c-303 (procedure for authorizing return or disposal of evidence of a felony offense); 77-11c-401 (imposing obligations re preservation of biological evidence); 77-11c-402 (exceptions to 77-11c-401 preservation obligations); and 77-11c-403 (remedies for failure to preserve biological evidence).<sup>2</sup> The proposed revisions to Rule 4-206(3)(B)(ii) and (5)(A)(i)

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<sup>2</sup> A court is specifically included within the definition of an "evidence collecting or retaining entity" under 77-11c-101(17), and thus facially subject to 77-11c-401. But as a practical matter, a court generally does not come within the terms of the -101(17) definition because a court does not "collect[], store[], or retrieve biological evidence." 77-11c-101(17). Under Rule 4-206(2)(A), which provision (as indicated above) is controlling over inconsistent statutory

reflect the expanded legislation regarding evidence retention, directing parties with custody of any evidence in criminal cases to the Code for their retention obligations.

### **CONCLUSION**

For the reasons given above, Rule 4-206 should be amended to conform with the substantive requirements of the relevant 2023 and 2024 legislation. Please let me know if you have any questions or concerns.

Sincerely,

Jace Willard, Associate General Counsel

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provisions, “biological evidence” is among the types of evidence that “remain in the custody” of the offering party. So biological evidence is at least generally not held in the custody of the court.

# 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.

HOME

LINKS

Posted: May 15, 2024

Utah Courts

Code of Judicial Administration – Comment Period Closes June 29, 2024

CJA01-0204.Executive committees (AMEND)

Amends membership on the Technology Advisory Subcommittee (TAC). A representative from the Office of General Counsel would replace the Policy, Planning, and Technology Committee member and a member of the Judicial Data and Research department would be added to each of the technology core teams.

CJA01-0205. Standing and ad hoc committees (AMEND)

Eliminates the General Counsel member position on both the Pretrial and WINGS committees.

CJA04-0202.01. Definitions (AMEND)

Clarifies that calendars are not “records.”

CJA04-0202.08. Fees for records, information, and services (AMEND)

Grants clerks of court the authority to waive the one free copy limit for court records associated with a case.

CJA04-0206. Exhibits (AMEND)

Provides exhibit managers with much-needed clarity and guidance on how to manage exhibits in criminal, post-conviction, and appellate actions.

This entry was posted in -Code of Judicial Administration, CJA01-0204, CJA01-0205, CJA04-0202.01, CJA04-0202.08, CJA04-0206.

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-Rules of Appellate Procedure

-Rules of Civil Procedure

-Rules of Criminal Procedure

-Rules of Evidence

-Rules of Juvenile Procedure

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« Code of Judicial Administration – Comment Period Closes June 29, 2024

Rules of Juvenile Procedure – Comment Period Closed June 10, 2024 »

UTAH COURTS

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2 thoughts on “Code of Judicial Administration – Comment Period Closes June 29, 2024”

Daniel Meza Rincon  
May 21, 2024 at 7:29 am

The updates to Rule 4-206 – Exhibits are extremely helpful. I would recommend that the committee consider adding more flexibility to the rule for disposal of the exhibits. Right now the rule reads that exhibits shall be disposed 90 days after. For audit purposes, this means that one would be out of compliance on day 91. Possible language could be “no earlier than 90 days, and at a minimum on an annual basis.”

Thank you.

[Reply](#)

Keri Sargent  
May 29, 2024 at 12:35 pm

Re: Rule 4-206 Exhibits.

I agree with Daniel’s comment about allowing more flexibility by adding the language “no earlier than 90 days”. I would like this language added to line 119 – “no earlier than 365 days.”

There has been some discussion that the 365 day deadline may be too short in light of post-conviction relief cases and keeping exhibits in criminal cases. The deadline was initially added to aid exhibit managers when determining that the exhibits can be destroyed, but in light of post conviction relief cases, it may be too soon. The language being replaced asked exhibit managers to track when the statute of limitations ran out for post conviction relief cases, which was not feasible. So while choosing a set deadline may seem arbitrary, it’s also extremely beneficial. Perhaps the deadline can be changed from 365 days to a longer time period? Two or three years?

- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0102
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
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- CJA03-0106
- CJA03-0107
- CJA03-0108
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- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301

**Rule 4-206. Exhibits.****Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

**Applicability:**

This rule shall apply to all trial courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

**Statement of the Rule:****(1) Marking exhibits.**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled.

(1)(C) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

**(2) Exhibit custody during trial.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biological evidence, biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be

made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council.

**(2)(C) Secured Storage.**

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

**(3) Exhibit custody prior to disposition.**

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

(3)(A)(i) **Exhibit Manager.** The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or the clerk of court is prohibited without a court order.

(3)(A)(ii) **Secured Storage Location.** Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the

location, access procedures, or security controls require recertification by the Court Security Director.

**(3)(B) Exhibit custody post disposition.**

**(3)(B)(i) Courts of record.** In courts of record, upon final disposition of the case, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

**(3)(B)(ii) Courts not of record.** In civil cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody shall be returned to the parties. In criminal cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody shall be given to the prosecuting agency, which must comply with Title 77, Chapter 11c, Retention of Evidence. The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

**(3)(C) Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5)~~(A)(i) or (5)(B)(i)~~. Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.

**(3)(D) Access to exhibits by parties.** Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

**(4) Appeals.** Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure.

**(5) Disposal of exhibits.** Exhibits shall be disposed of as follows:

**(5)(A) Criminal.** In cases that are criminal in nature:

**(5)(A)(i) Party custody.** Parties with custody of ~~biological~~ evidence must comply with Title ~~7753~~, Chapter ~~11c20~~, ~~Forensic Biological Retention of~~ Evidence Preservation.

(5)(A)(ii) **Court custody.** Exhibits in the court's custody shall be transferred to the prosecuting agency no earlier than 365 days after the time for appeal has expired, provided no appeal has been filed and there are no pending post-conviction relief actions or pending appeals of post-conviction relief actions.

(5)(B) **Civil.** In cases that are not criminal in nature:

(5)(B)(i) **Disposal time.** Provided no appeal has been filed, parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any ~~other~~ exhibits in their custody no earlier than 90 days after the time for appeal has expired, ~~or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later.~~

(5)(B)(ii) **Court custody.** Exhibits in the court's custody shall be disposed of as follows:

(5)(B)(ii)(a) **No monetary value.** Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B)(ii)(b) **Monetary value.** Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

(5)(C) **Time Period.** Upon receipt of remittitur from an appellate court, the time period for all cases is reset.

*Effective: November 1, 2024*



# TAB 5

## **CJA 4-202.02. Records classification**

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

**Notes:** See attached rule amendment request form.

The definition of “nonpublic restitution record” can be found in [63M-7-502\(28\)](#) and the access provision can be found in [63M-7-527\(5\)](#).

Date of Request \*

MM DD YYYY

06 / 25 / 2024

Name of Requester \*

Keri Sargent

Requester Phone Number \*

435-633-5549

Name of Requester's Supervisor \*

Shane Bahr

Please attach all required documents as outlined above.



Redline CJA 4-20...



Add file

Type of Request \*



Policy &amp; Planning



Technology

Policy &amp; Planning Section

Location of the Rule \*

Code of Judicial Administration ▼

CJA Rule Number, HR/Accounting Section Name, Court Form Name \*

CJA Rule 4-202.02 Records Classification

Brief Description of Proposal \*

This rule needs to be changed to incorporate the new record created by statute that will be filed by the Utah Office for Victims of Crime (UOVC). These records only need to be filed when there is restitution in a case, UOVC has a restitution claim, and the defendant has requested a hearing regarding restitution. These nonpublic restitution records can only be accessed by the prosecuting agency and defense counsel, and should be provided to those parties by UOVC. This new record needs to be added to CJA 4-202.02 to be considered Sealed. This has been added to the rule as proposed paragraph (3)(L).

Reason Amendment is Needed \*

The new document type of "Nonpublic Restitution Record" is now available in eFiling. The UOVC team can now eFile these documents, and the document will automatically receive a "Sealed" classification. This means the title of the document will show in the public case history as "Confidential Nonpublic Restitution Record", but the document itself will not be accessible. UOVC will be responsible for distributing the record to the prosecuting attorney and the defense counsel, as per the statute.

Is the proposed amendment urgent? \*

☒ Yes

☐ No

If urgent, please provide an estimated deadline date and explain why it is urgent.

The statute authorizing this new record was effective May 1. The case management programming is also in place. The rule needs to reflect both the new statute and the new programming.

Select each entity that has approved this proposal. \*

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☐ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Budget and Fiscal Management Committee
- ☐ Children and Family Law Committee
- ☒ Clerks of Court
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☐ General Counsel
- ☐ Guardian Ad Litem Oversight Committee
- ☐ HR Policy and Planning Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee
- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☐ Model Utah Criminal Jury Instructions Committee
- ☐ Policy, Planning, and Technology Committee member
- ☐ Pretrial Release and Supervision Committee

- ☐ Resources for Self-Represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☐ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☐ TCE's
- ☐ Uniform Fine Committee
- ☐ WINGS Committee
- ☐ None of the Above
- ☐ Justice Court Reform Task Force
- ☐ Appellate Representation Committee
- ☐ Deputy State Court Administrator
- ☐ Judicial Fairness and Accountability Committee
- ☐ Other: .....

If the approving entity (or individual) is not listed above, please list it (them) here.

Utah Office for Victims of Crime .....

List all stakeholders who would be affected by this proposed amendment. \*

Utah Office for Victims of Crime .....

Technology

**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, minutes, or transcript of an open meeting;

(2)(BB) official audio record, minutes, or transcript of an open hearing;

(2)(CC) 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)(DD) record of a request for a record;

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

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

(2)(II) 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. Upon a finding of good cause on the record, the juvenile court may reclassify these records as non-public.

**(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) “nonpublic restitution records” as defined in Section 63M-7-502; and
- (3)(~~L~~K) 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, dispositional, and social summary reports;

(6)(E) probation agency and institutional reports or evaluations;

(6)(F) referral reports;

(6)(G) report of preliminary inquiries;

(6)(H) treatment or service plans;

(6)(I) nonjudicial adjustment records; and

(6)(J) documents filed with the court that were received pursuant to the Utah Interstate Compact for Juveniles.

**(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, probable cause statements;

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

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

(7)(F) referral and offense histories; and

(7)(G) 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:

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

456  
457 (8)(F)(ii) date of birth, driver's license number, social security number, account  
458 description and number, password, identification number, maiden name,  
459 mother's maiden name, and similar personal identifying information.

460  
461 *Effective: ~~January~~ August 26, 2024*

**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 below or by order of the court. A judge may review a sealed record when the circumstances warrant.

(2)(A) **Adoption records.** Upon request and presentation of positive identification, an adoption petition, and any other documents filed in connection with the adoption, may be open to inspection and copying:

(2)(A)(i) by a party to the adoption proceeding while the proceeding is pending or within six months after the day on which the adoption decree is entered;

(2)(A)(ii) when the adoption document becomes public on the one hundredth anniversary of the date of the final decree of adoption was entered;

(2)(A)(iii) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

(2)(A)(iv) by an attorney who is not the attorney of record with a release from an individual authorized access under this rule that is signed and notarized not more than 90 days before the date of the request for the records;

(2)(A)(v) by an individual who was 18 years of age or older at the time of adoption or their adoptive parent, without a court order, unless the final decree of adoption was entered by the juvenile court; and

(2)(A)(vi) by an individual who was a minor at the time of adoption, if the individual is 18 years of age or older and was born in the state of Utah, but only to the extent the birth parent consented to access under the Utah Adoption Act or if the birth parents listed on the original birth certificate are deceased.

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

(2)(B)(i) The following may obtain certified copies of the expungement order and the case history upon request and 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;

(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; and

(2)(B)(i)(d) an attorney who is not the attorney of record with a release from an individual authorized access under this rule that is signed and notarized not more than 90 days before the date of the request.

(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.

(2)(D) **Nonpublic restitution records.** The Utah Office for Victims of Crime (UOVC) may access nonpublic restitution records.

(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.

92  
93 **(4) Protected Court Records.** The following may access a protected court record:

94 (4)(A) the person or governmental entity whose interests are protected by closure;

95 (4)(B) the parent or guardian of the person whose interests are protected by closure if  
96 the person is an unemancipated minor or under a legal incapacity;

97 (4)(C) the person who submitted the record;

98 (4)(D) the attorney or licensed paralegal practitioner for the person who submitted the  
99 record or for the person or governmental entity whose interests are protected by closure  
100 or for the parent or guardian of the person if the person is an unemancipated minor or  
101 under a legal incapacity or an individual who has a power of attorney from such person  
102 or governmental entity;

103 (4)(E) an individual with a release from the person who submitted the record or from the  
104 person or governmental entity whose interests are protected by closure or from the  
105 parent or guardian of the person if the person is an unemancipated minor or under a  
106 legal incapacity signed and notarized no more than 90 days before the date the request  
107 is made;

108 (4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to  
109 litigation in which the record is filed;

110 (4)(G) anyone by court order;

111 (4)(H) court personnel, but only to achieve the purpose for which the record was  
112 submitted;

113 (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

114 (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.  
115

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

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

118 (5)(B) a parent or guardian of the subject of the record, or their attorney, if the subject is  
119 an unemancipated minor;

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

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

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

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

126 (5)(G) a governmental entity charged with custody, guardianship, protective supervision,  
127 probation or parole of the subject of the record including juvenile probation, Division of  
128 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) Dispositional reports on delinquency cases may be accessed by the minor's counsel, the prosecuting attorney, the guardian ad litem, and the counsel for the parent, guardian, or custodian of a child. When a minor or minor's parent, guardian, or custodian is not represented by counsel the court may limit inspection of reports by the minor or the minor's parent, guardian, or custodian if the court determines it is in the best interest of the minor.

(5)(O) 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)(O)(i) 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)(O)(ii) 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)(O)(iii) court personnel, but only to achieve the purpose for which the record was submitted; and

(5)(O)(iv) anyone by court order.

(5)(P) When releasing records under (5)(O)(iv), the court should consider whether releasing the records to the subject of the record would be detrimental to the subject's mental health or the safety of any individual, or would constitute a violation of normal professional practice and medical ethics.

(5)(Q) 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) **Juvenile court probation records.** Records prepared and maintained by juvenile court probation that are not filed in a juvenile court case are not open for inspection except by order of the court.

(9) 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.

(10) 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: ~~January 1~~August 26, 2024*

# TAB 6

## **CJA 4-905. Restraint of minors in juvenile court**

**Notes:** The proposed amendment fixes an incorrect reference in paragraph (4). I've also added headings per our ongoing project to reformat the rules as we go. If the Committee agrees, I believe these are non-substantive, clerical changes that could be made by staff without sending the rule out for comment.

CJA rule [2-203\(3\)](#): “Substantive amendments to existing rules shall be distributed by the Council for public comment in accordance with paragraph (1) of this rule.”

**Rule 4-905. Restraint of minors in juvenile court.****Intent:**

To provide for proper restraint of minors in juvenile court proceedings.

**Applicability:**

This rule applies to the juvenile court.

**Statement of the Rule:**

(1) **Restraints in the courtroom.** Absent exigent circumstances, a minor, while present in a juvenile courtroom, shall not be restrained unless the court finds by a preponderance of the evidence that:

(1)(A) restraints are necessary to prevent physical harm to the minor or a third party present in the courtroom;

(1)(B) the minor is a flight risk;

(1)(C) the minor is currently in jail, prison or a secure facility as defined by Utah Code section 78A-6-105;

(1)(D) the seriousness of the charged offense warrants restraints; or

(1)(E) other good cause exists for the minor to be restrained.

(2) **Right to be heard.** Any person with an interest in the case may move the court to restrain a minor during court proceedings. The court shall permit all persons with a direct interest in the case the right to be heard on the issue of whether to restrain the minor.

(3) **Reconsideration.** If the court orders that a minor should be restrained, the court shall reconsider that order at each future hearing regarding the minor.

(4) **Ex parte communications.** Ex parte communications that provide information on the criteria listed in paragraph (1a) are not prohibited. However, the judge or commissioner shall notify all other parties of the communication as soon as possible and shall give them an opportunity to respond.

*Effective: May 1, 2020*

# TAB 7

## Technology Strategic Plan

### **PROTECTED RECORD**

**Notes:** The Technology Advisory Subcommittee recommends adoption of the attached strategic plan. The plan will be sent to the Management Committee for final approval.