

**Supreme Court's Advisory Committee on the
Rules of Criminal Procedure**

Webex Video Conferencing
July 21, 2019
12:00 p.m. - 2:00 p.m.

AGENDA

1. Welcome and approval of minutes - Doug Thompson
2. Rule 6 - proposed amendments - Judge Corum
3. Rule 16 - approved for public comment - Doug Thompson
4. Expungement rule - Brent Johnson
5. Update on restitution rule - Brent Johnson
6. Update on probation consolidation - Doug Thompson
7. Adjourn

**Supreme Court's Advisory Committee
on the Rules of Criminal Procedure**

MEETING MINUTES

WebEx Video Conferencing
May 19, 2020 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Douglas Thompson, <i>Chair</i>	•		Jacqueline Carlton
Judge Patrick Corum	•		
Jeffrey S. Gray	•		STAFF:
Judge Elizabeth Hruby-Mills	•		Brent Johnson - excused
Blake Hills	•		Minhvan Brimhall (recording secretary)
Craig Johnson	•		
Joanna Landau	•		
Keri Sargent		•	
Judge Kelly Schaeffer-Bullock	•		
Ryan Stack	•		
Cara Tangaro	•		
Matthew Tokson	•		

1. Welcome and approval of minutes:

Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the March 17, 2020 minutes. There being no changes to the minutes, Jeff Gray moved to approve the minutes. Judge Corum seconded the motion. The motion was unanimously approved.

2. Rule 6:

At a recent Board of District Court Judges bench meeting, a question came up as to whether rule 6 requires a review of the probable cause statement when it contains FTA information at the time a summons is issued. The requirement to review the probable cause statement was removed when a summons is issued, but the Board noted it is unclear if the statement should be reviewed when FTA information is available. Judge Corum asks if the committee needs to consider language modification to 6(c) and (d) to clarify this process.

Mr. Thompson recalled that the rule is intended to keep probable cause review in circumstances such as this but the court does not need to review the probable cause statement when issuing a summons.

The committee reviewed subsections 6(c) to (e) and considered inferences that would be applied when referencing subsections (e) to (c) and (d). Judge Corum will put together language recommendations for the committee to consider and send out via email for discussion.

3. Rule 22 – final approval:

Rule 22 was discussed at a previous meeting. Mr. Johnson had recommended updating the rule to put into practice that clerks will automatically email the jail with the court's order for detention. The committee approved the modified language to rule 22. The rule was published for public comment with no comments coming back for review. The rule is ready for final approval by the Supreme Court.

With no further discussion, Craig Johnson moved to approve the rule. Judge Shaeffer-Bullock seconded the motion. The motion unanimously passed. Rule 22 will go to the Supreme Court for final approval.

4. Rule 8 – final approval:

Rule 8 was approved by the Supreme Court for public comment. One comment was received for this rule. The rule stems from discussions with Neil Hamilton regarding the appointment of counsel in capital cases. The committee modified language to clarify that appointment as defense counsel required experience in defense cases and representation of a defendant, and the committee updated language regarding in-person CLE's. The comment received came from a former prosecutor who felt it was unfair to disqualify him as defense counsel because of the lack of experience in capital cases. The commenter is now in private practice. The Supreme Court asked this committee to review the received comment.

The committee discussed the concerns raised the commenter. Many members of the committee had spoken with other prosecutors in various areas of the State and they did not express the same concerns as of the commenter. The committee noted that this does not change the rule or the necessary requirements to be appointed as counsel in capital cases. CLE requirements can be obtained through other means by way of the State Bar, which may include video and online training. The committee discussed and recommended removal of "in person" from section (b)(3) because of the increase in remote learning.

With no further discussion, Judge Corum moved to approve rule 8 as modified. Mr. Gray seconded the motion. The motion unanimously passed. Rule 8 will now go the Supreme Court for final approval.

5. Rule 16 - update:

Mr. Thompson has drafted a memorandum to the Supreme Court for discussion of the committee's approved modifications of rule 16. Mr. Thompson and Mr. Johnson will be meeting with the Supreme Court within the next week.

6. Rule 19 - discussion:

Rule 19 stems from amendments to body cam legislation from the 2020 legislative session. The legislature decided to create possible remedies for violation of the body cam requirement if a police officer turns off his/her body cam. There is possibility for a jury to inference evidence that would have been on the video as an adverse to the State's position. The legislation also created a few more exceptions in dealing with domestic violence victims, and consultation with a superior officer – which can be muted or turned off. The court's subcommittee discussed with legislative the appropriateness of rules versus statutes. The subcommittee was unable to come to an agreement with the proponents of the bill, but decided to propose changes to the rule, and not to the bill. Language of the new statute includes a reference to rule 19. Section 77-7a-104.1 references adverse jury instructions that is in accordance with rule 19.

The committee discussed briefly the concerns of the court. Mr. Thompson noted that the committee can draft amendments to rule 19 to address how adverse jury instructions would be used. The court has indicated they are not comfortable with what was discussed with the legislatures but would not recommend language changes at this time. The committee determined that no action is needed on rule 19 at this time. The committee proposes taking proposed change to rule 19 out of circulation for the time being and wait to see how the statute might be applied to the rule.

With no further discussions, committee members agreed the proposal may be an appropriate action at time, however, no formal motion or vote was taken. This item is held over for further discussion at a future meeting.

7. Rules 9 and 9A – final approval:

Rules 9 and 9A came back from public comment with no comments received. The committee discussed and made no changes to rule 9. The committee discussed and made minor changes to rule 9A. The committee recommended moving "within 48 hours after arrest" to the end of the paragraph for better readability.

With no further discussions, Mr. Gray moved to adopt the changes as modified. Judge Corum seconded the motion. The motion unanimously passed. The rule will go to the Supreme Court for final approval.

8. Rule 17 - discussion:

Due to the restrictions related to COVID-19, concerns have arisen regarding waiving a jury trial. Court committees are addressing how to conduct jury trials in light of current

restrictions, as they are not happening right now. A judge proposed amending the rule of eliminate the requirement that a prosecutor agree to waive a jury trial. The Supreme Court decided not to suspend the provision, but also did not prohibit discussion by this committee. The judge asked for a proposal to be sent to this committee for discussion.

The committee discussed other sources of substantive right to a jury trial. Mr. Gray noted that a defendant has a right to a jury trial but not a right to a bench trial and the State has as much of an interest in a jury trial as the defendant would. Several members of the committee would oppose any changes to the rule to eliminate a prosecutor's consent and noted that many prosecutors would also oppose the same. Mr. Thompson asked if, other than this rule, is there something that gives the prosecutor the right to object to a bench trial, and suggested research would be helpful. The committee agreed that this would be a big change to the rule and additional research is needed before making any recommendations to modify the rule. Blake Hills volunteered to research this matter and will discuss his findings at a future meeting, or he will communicate with committee members via email prior to the next meeting.

Mr. Brent Johnson noted this is not an urgent request; however, the judge who asked for the review would like an answer as soon as possible. This item will be held over for review at another meeting.

9. Expungement rule:

The expungement rule has been in discussion over the past year since legislation passed during the 2019 session. The rule was discussed by the Policy and Planning Committee in April. The committee decided the Rules of Criminal Procedure Committee should review the rule, specifically portions of the rule directly related to the Rules of Criminal Procedure. Mr. Johnson notes other committees have reviewed the rule but the final review and decision-making falls on this committee. The rule will address an automatic process for reviewing cases eligible for automatic expungement and the Judicial Council will need to approve the process identify. The court's IT department will be developing a program to pull cases eligible for expungement. Those cases will then be forwarded to the presiding judge and prosecutor for review and decision whether to expunge. There are rule changes that will be required and the rule will need to be modified and refined before it can go to the Supreme Court for review.

The committee did not have further discussion on this item. No committee vote was taken. This item will be discussed at the July meeting.

10. Update on restitution rule:

Due to his participation with the court's Pandemic Response Team, Mr. Johnson has been unable to finalize a draft on the restitution rule. The majority of the work is completed, but needs fine-tuning. Mr. Jonson will have a proposed draft for discussion at the next meeting.

11. Update on probation consolidation:

Due to issues related to JRI and statutory requirements, Mr. Thompson proposes the committee start from scratch in drafting a rule regarding probation consolidation. Mr. Thompson noted the ideas are good but many portions of the statute are replicated or the changes would undermine the new process. The last rule had some ambiguous language and is no longer practical. Mr. Thompson stated that starting fresh would allow the committee to address how the rule could be more efficient. Mr. Thompson would like to consider something more useful and could help courts in multiple jurisdictions in cutting down on multiple hearings. Mr. Thompson will be meeting with Judge Taylor to discuss new ideas for the rule and will have a draft for the committee to discuss at a future meeting.

12. Other business:

Ms. Joanna Landau asked whether can be made to rule 7 that would help ensure defendant had counsel at first appearance. Pretrial rules allow discussion of release conditions at initial appearance. A public defense attorney could be present at those hearings even when one is not yet appointed to the case. Ms. Landau has heard of judges declining to address bail because the prosecutor referenced rule 7(c)(1) and is not prepared to address bail at that time. Is the current language appropriate or do prosecutors need to say they are not ready to address bail?

The committee discussed Ms. Landau's concerns. A judge should be able to address bail at the initial appearance if counsel is present and ready to proceed. The prosecution can object and ask for bail to be addressed at another hearing. Courts have the ability to address bail early due to programs like WebEx and Zoom and this could avoid bail hearings from being extended too far out on the calendar. The committee discussed other issues with the rule and determined that more research is needed to better address the concerns and make rule changes. Ms. Landau will research the rule, and concerns surrounding the rule, and will provide an update at a future meeting.

13. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:25 p.m. The committee discussed and voted to meet for the July meeting on July 21. The meeting will be at 12 pm (noon) via Webex Video Conferencing.

Rule 6. Warrant of arrest or summons.

(a) Upon the filing of an indictment, or upon the acceptance of an information by a judge, the court must set the case for an initial appearance or arraignment, as appropriate. The court must then issue a summons directing the defendant to appear for that hearing, except as described in subsection (c).

(b) The summons must inform the defendant of the date, time and courthouse location for the initial appearance or arraignment. The summons may be mailed to the defendant's last known address, or served by anyone authorized to serve a summons in a civil action.

(c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a summons if the court finds from the information and any supporting statements or affidavits that:

(c)(1) The defendant's address is unknown or the defendant will not otherwise appear on a summons; or

(c)(2) there is substantial danger of a breach of the peace, injury to persons or property, or danger to the community.

(d) A judge may issue a warrant of arrest in cases where the defendant has failed to appear in response to a summons.

(e) Prior to issuing a warrant under either subsection (c) or (d) the judge must review the information for sufficiency. If the judge determines from the information, or from any supporting statements or affidavits, that there is probable cause to believe the offenses have been committed and that the accused committed them, the judge may issue the warrant. If the judge determines there is not probable cause the judge must notify the prosecutor. If the prosecutor does not file a sufficient information within 28 days, the judge must dismiss the case.

(e)(1) When a warrant of arrest is issued, the judge must state on the warrant:

(e)(2) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-20-1, and the alleged facts supporting.

(e)(3) The conditions of pretrial release the court requires of the defendant, including monetary bail.

(e)(3)(A) In determining the amount of monetary bail, the judge must set the lowest amount reasonably calculated to ensure the defendant's appearance at court.

(e)(3)(B) The court must state whether the defendant's personal appearance is required or whether the defendant may remit the monetary bail to satisfy any obligation to the court pursuant to Utah Code § 77-7-21.

(e)(4) The geographic area from which the issuing court will guarantee transport pursuant to Utah Code § 77-7-5.

(f) The clerk of the court must enter the warrant into the court information management system.

(g) Service, Execution and return of the warrant.

(g)(1) The warrant must be served by a peace officer. The officer may execute the warrant at any place within the state.

(g)(2) The warrant must be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest. Upon request, the officer must show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in possession at the time of the arrest, the officer must inform the defendant of the offense charged and of the fact that the warrant has been issued.

(g)(3) The person executing a warrant or serving a summons must make return thereof to the magistrate as soon as practicable.

(h) The court may periodically review unexecuted warrants to determine whether they should be recalled.

Effective May 1, 2020

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.**

3 ~~(1) Mandatory disclosures. Except as otherwise provided,~~ The prosecutor ~~shall~~must
4 disclose to the defense ~~upon request~~ the following material or information related to the
5 case of which the prosecu~~tor~~ion team has knowledge and control:

6 ~~(1)(A) relevant~~ written or recorded statements of the defendant ~~or~~and any
7 codefendants, and the substance of any unrecorded oral statements made by the
8 defendant and any codefendants to law enforcement officials;

9 ~~(2)(B)~~ the criminal record of the defendant and any co-defendants;

10 ~~(C)~~ reports and results of any physical or mental examination, of any
11 identification procedure, and of any scientific test or experiment;

12 ~~(3)(D)~~ physical and electronic evidence, including any warrants, warrant
13 affidavits, books, papers, documents, photographs, and digital media recordings
14 seized from the defendant or codefendant;

15 ~~(E)~~ written or recorded statements of witnesses;

16 ~~(F)~~ reports and notes prepared by law enforcement officials;

17 ~~(4)(G)~~ evidence ~~known to the prosecutor~~ that must be disclosed under the United
18 States and Utah constitutions, including all evidence favorable to the defendant
19 that is material to ~~tends to negate the guilt of the accused, mitigate the guilt of the~~
20 ~~defendant, or mitigate the degree of the offense for reduced~~ punishment; and

21 ~~(5)(H)~~ any other item of evidence which the court determines on good cause
22 shown should be made available to the defendant in order for the defendant to
23 adequately prepare a defense.

24 ~~(b)(2)~~ Timing of ~~prosecutor's~~mandatory disclosures. The prosecutor's duty to disclose
25 under paragraph (a)(1) is a continuing duty as the material or information becomes
26 known to the prosecutor. The prosecutor's~~shall make all~~ disclosures must be made as
27 soon as practicable following the filing of an Information. charges and before~~In every~~
28 case, all material or information listed under paragraph (a)(1) that is presently and

29 reasonably available to the prosecutor must be disclosed before the preliminary hearing,
30 if applicable, or before the defendant is required to plead or go to trial. ~~The prosecutor~~
31 ~~has a continuing duty to make disclosure.~~

32 (3) Disclosures upon request. Upon request, the prosecutor must obtain and disclose to
33 the defense any of the material or information listed above which is possessed by another
34 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
35 Government Records Access and Management Act.

36 (4) Trial disclosures. The prosecutor must also disclose to the defense the following
37 information and material no later than 14 days, or as soon practicable, before trial:

38 (A) Unless otherwise prohibited by statute or rule, a written list of the names,
39 current contact information, and criminal records, if any, of all persons whom the
40 prosecution intends to call as witnesses at trial; and

41 (B) Any exhibits that the prosecution intends to introduce at trial.

42 (5) Information not subject to disclosure. Unless otherwise ordered by the court on a
43 showing of constitutional, statutory, or regulatory right, the prosecution's disclosure
44 obligations do not include information or material that is privileged or attorney work
45 product. Attorney work product protection is not subject to the exception in Rule 26(b)(5)
46 of the Utah Rules of Civil Procedure.

47 ~~(e)~~**(b) Disclosures by defense.**

48 (1) Mandatory disclosures. Except as otherwise provided or as privileged, The defense
49 ~~shall~~must disclose to the prosecutor ~~such information as required by statute relating to~~
50 ~~alibi or insanity and~~ any ~~other~~ item of evidence which the court determines on good cause
51 shown should be made available to the prosecutor in order for the prosecutor to
52 adequately prepare the prosecutor's case for trial.

53 (2) Other disclosures required by statute. The defense must disclose to the prosecutor
54 such information as required by statute relating to alibi or insanity.

55 (3) Trial disclosures. The defense must also disclose to the prosecutor the following
56 information and material no later than 14 days, or as soon as practicable, before trial:

57 (A) A written list of the names and current contact information of all persons,
58 except for the defendant, whom the defense intends to call as witnesses at trial;
59 and

60 (B) Any exhibits that the defense intends to introduce at trial.

61 (4) Information not subject to disclosure. The defendant's disclosure obligations do not
62 include information or material that is privileged or attorney work product. Attorney
63 work product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules
64 of Civil Procedure.

65 ~~(d) **Timing of defense disclosures.** Unless otherwise provided, the defense attorney shall make~~
66 ~~all disclosures at least 14 days before trial or as soon as practicable. The defense has a continuing~~
67 ~~duty to make disclosure.~~

68 ~~(e)(c)~~ **Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense
69 may make disclosure by notifying the opposing party that material and information may be
70 inspected, tested or copied at specified reasonable times and places.

71 (d) **Disclosure limitations and restrictions.**

72 (1) The prosecutor or defense may impose reasonable limitations on the further
73 dissemination of sensitive information otherwise subject to discovery to prevent improper
74 use of the information or to protect victims and witnesses from harassment, abuse, or
75 undue invasion of privacy, including limitations on the further dissemination of
76 ~~videotaped~~recorded interviews, photographs, or psychological or medical reports.

77 ~~(f)(2) **Restrictions on disclosure.**~~ Upon a sufficient showing the court may at any time
78 order that discovery or inspection be denied, restricted, or deferred, that limitations on the
79 further dissemination of discovery be modified or make such other order as is
80 appropriate. Upon motion by a party, the court may permit the party to make such
81 showing, in whole or in part, in the form of a written statement to be inspected by the
82 judge alone. If the court enters an order granting relief following such an ex parte
83 showing, the entire text of the party's statement shall be sealed and preserved in the
84 records of the court to be made available to the appellate court in the event of an appeal.

85 ~~(g)(e)~~ **Relief and sanctions for failing to disclose.**

86 ~~(1) If at any time during the course of the proceedings it is brought to the attention of the~~
87 ~~court that~~When a party fails has failed to comply with the disclosure requirements of this
88 rule, a court may, subject to constitutional limitations and the rules of evidence, take the
89 measures or impose the sanctions provided in this paragraph that ~~order such party to~~
90 ~~permit the discovery or inspection, grant a continuance, or prohibit the party from~~
91 ~~introducing evidence not disclosed, or it may enter such other order as it deems just~~
92 appropriate under the circumstances. If a party has failed to comply with this rule, the
93 court may take one or more of the following actions:

94 (A) order such party to permit the discovery or inspection of the undisclosed
95 material or information;

96 (B) grant a continuance of the proceedings;

97 (C) prohibit the party from introducing evidence not disclosed; or

98 (D) order such other relief as the court considers just under the circumstances.

99 (2) If after a hearing the court finds that a party has knowingly and willfully failed to
100 comply with an order of the court compelling disclosure under this rule, the
101 nondisclosing party or attorney may be held in contempt of court and subject to the
102 penalties thereof.

103 ~~(h) Additional requirements that may be imposed on the accused.~~ Subject to constitutional
104 limitations, the accused may be required to:

105 ~~(1) appear in a lineup;~~

106 ~~(2) speak for identification;~~

107 ~~(3) submit to fingerprinting or the making of other bodily impressions;~~

108 ~~(4) pose for photographs not involving reenactment of the crime;~~

109 ~~(5) try on articles of clothing or other items of disguise;~~

110 ~~(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily~~
111 ~~materials which can be obtained without unreasonable intrusion;~~

112 ~~(7) provide specimens of handwriting;~~

113 ~~(8) submit to reasonable physical or medical inspection of the accused's body; and~~
114 ~~(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged~~
115 ~~offense.~~

116 **(f) Identification evidence.**

117 (1) Subject to constitutional limitations and upon good cause shown, the trial court may
118 order the defendant to appear in a lineup; speak for identification; submit to
119 fingerprinting or the making of other bodily impressions; pose for photographs not
120 involving reenactment of the crime; try on articles of clothing or other items of disguise;
121 permit the taking of samples of blood, hair, fingernail scrapings, and other bodily
122 materials which can be obtained without unreasonable intrusion; provide specimens of
123 handwriting; submit to reasonable physical or medical inspection of the accused's body;
124 and cut hair or allow hair to grow to approximate appearance at the time of the alleged
125 offense.

126 (2) Whenever the personal appearance of the ~~accused~~defendant is required for the
127 foregoing purposes, reasonable notice of the time and place of such appearance ~~shall~~must
128 be given to the ~~accused~~defendant and the ~~accused's~~defendant's counsel.

129 (3) Unless relieved by court order, failure of the ~~accused~~defendant to ~~appear or to~~ comply
130 with the requirements of this ~~paragraph~~rule, ~~unless relieved by order of the court,~~
131 without reasonable excuse shall be grounds for revocation of pretrial release and will
132 subject the defendant to such further consequences or sanctions as the court may deem
133 appropriate, including allowing the prosecutor to offer as evidence at trial the defendant's
134 failure to comply with this paragraph~~may be offered as evidence in the prosecutor's case~~
135 ~~in chief for consideration along with other evidence concerning the guilt of the accused~~
136 and shall be subject to such further sanctions as the court should deem appropriate.



Administrative Office of the Courts

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

July 16, 2020

Hon. Mary T. Noonan
Interim State Court Administrator
Cathy Dupont
Deputy Court Administrator

MEMORANDUM

TO: Supreme Court Advisory Committee on the Rules of Criminal Procedure

FROM:  Brent M. Johnson

RE: Automatic expungement

Attached is a proposed rule to address automatic expungements under Utah Code § 77-40-114. I am including a copy of the statute. As we discussed at a previous meeting, an automatic expungement rule had been presented to the Policy and Planning Committee of the Judicial Council and they decided the procedures belong in the rules of criminal procedure. The committee agreed with this assertion at the last meeting (at least as to a portion of the rule) and asked me to refine the original rule proposal. I am including a copy of the original proposal.

As I reviewed the rule, I think there are still pieces that need to be handled by the Judicial Council. The statute contemplates this will all be done automatically. Cases will be identified automatically; notices sent to the prosecutor automatically; and expungement orders issued automatically if objections are not received. To that end, I think the Judicial Council still needs to enact rules that allow for assignment of presiding judges to those cases and for the use of a judge's signature stamp on the orders. I am enclosing copies of the rules that I will be proposing to the Judicial Council to accomplish those two pieces. I am also enclosing a copy of the order that might eventually be used. These will hopefully provide the committee with a larger picture of how this might all occur.

I am a bit uncomfortable having the Supreme Court direct the Administrative Office of the Courts to undertake the process. The rules of procedure typically do not involve the administrative office, but it might be the easiest way to accomplish the objectives. The committee can decide whether there is an issue. I hope this is otherwise self-explanatory. I look forward to our discussions.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule _____. Automatic Expungement

1 a) Definitions

2 (a)(1) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.

3 (a)(2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
4 Safety.

5 (a)(3) "Conviction" means a judgment by a criminal court on a verdict or finding of guilty
6 after trial, a plea of guilty, or a plea of nolo contendere.

7 (a)(4) "Expunge" means to seal or otherwise restrict access to the individual's record
8 when the record includes a criminal investigation, detention, arrest, or conviction.

9 b) Clean slate eligible convictions

10 (b)(1) Records in the following case types may be expunged automatically:

11 (b)(1)(A) a case that resulted in an acquittal on all charges;

12 (b)(1)(B) except as provided in paragraph (b)(2), a case that is dismissed with
13 prejudice; and

14 (b)(1)(C) a clean slate eligible case.

15 (b)(2) A case that is dismissed after completion of a plea in abeyance agreement is not
16 eligible for automatic expungement.

17 c) Notice to prosecuting agencies

18 (c)(1) Once a month the Administrative Office of the Courts (AOC) must identify for
19 each court every case that is eligible for automatic expungement. The AOC must
20 email the list of eligible cases to the prosecuting entity, notifying the prosecuting
21 entity the cases appear to be eligible for automatic expungement.

22 (c)(2) The information for each case must include, at a minimum, the individual's first
23 name, last name, date of birth, and case number.

24 (c)(3) Each prosecuting entity must provide to the AOC a single email address where
25 notices will be sent. The prosecuting entity must immediately notify the AOC if
26 they want the notices sent to a different email address.

27 **d) Objection by prosecuting agencies**

28 (d)(1) If the prosecuting entity objects to the expungement of a case, the prosecuting
29 agency must e-file an objection in that case within 35 days of the date notice was
30 sent under paragraph (c)(1). If an objection is received, the AOC must remove
31 the case from the list of cases eligible for automatic expungement.

32 (d)(2) Failure to properly e-file an objection will result in the objection being rejected.

33 (d)(3) After the period for objections has expired, the AOC will provide each court with a
34 list of the cases that remain eligible for automatic expungement.

35 **e) Expungement orders**

36 (e)(1) Upon receiving the list from the AOC each court must issue an expungement
37 order for each eligible case.

38 (e)(2) The AOC must provide copies of the expungement orders to the bureau and the
39 prosecuting entity.

40 *Effective* _____

Effective 5/1/2020

77-40-114 Automatic expungement procedure.

- (1)
 - (a) Except as provided in Subsection (1)(b) and subject to Section 77-40-116, this section governs the process for the automatic expungement of all records in:
 - (i) except as provided in Subsection (2)(d), a case that resulted in an acquittal on all charges;
 - (ii) except as provided in Subsection (3)(d), a case that is dismissed with prejudice; or
 - (iii) a case that is a clean slate eligible case.
 - (b) This section does not govern automatic expungement of a traffic offense.
- (2)
 - (a) Except as provided in Subsection (2)(d), the process for automatic expungement of records for a case that resulted in an acquittal on all charges is as described in Subsections (2)(b) through (c).
 - (b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
 - (i) issue, without a petition, an expungement order; and
 - (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
 - (c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
 - (d) For purposes of this section, a case that resulted in acquittal on all charges does not include a case that resulted in an acquittal because the individual is found not guilty by reason of insanity.
- (3)
 - (a) The process for an automatic expungement of a case that is dismissed with prejudice is as described in Subsections (3)(b) through (c).
 - (b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
 - (i) issue, without a petition, an expungement order; and
 - (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
 - (c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
 - (d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not include a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).
- (4)
 - (a) The process for the automatic expungement of a clean slate eligible case is as described in Subsections (4)(b) through (f) and in accordance with any rules made by the Judicial Council as described in Subsection (4)(g).
 - (b) A prosecuting agency shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.
 - (c) Within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the prosecuting agency shall provide written notice in accordance with any rules made by the Judicial Council if the prosecuting agency objects to an automatic expungement for any of the following reasons:
 - (i) after reviewing the agency record, the prosecuting agency believes that the case does not meet the definition of a clean slate eligible case;

- (ii) the individual has not paid court-ordered restitution to the victim; or
 - (iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.
- (d)
- (i) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (4)(c) within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the court may not proceed with automatic expungement.
 - (ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is sent without the prosecuting agency providing written notice of an objection for a reason described in Subsection (4)(c), the court may proceed with automatic expungement.
- (e) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
- (i) issue, without a petition, an expungement order; and
 - (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
- (f) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
- (g) The Judicial Council shall make rules to govern the process for automatic expungement of records for a clean slate eligible case in accordance with this Subsection (4).
- (5) Nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement under this section if an automatic expungement has not occurred pursuant to this section.
- (6) An automatic expungement performed under this section does not preclude a person from requesting access to expunged records in accordance with Section 77-40-109 or 77-40-110.

Amended by Chapter 218, 2020 General Session

1 **Rule 4-208. Automatic expungement of cases.**

2 **Intent:**

3 The intent of this rule is to govern the process for automatic expungement of records for clean
4 slate eligible cases.

5 **Applicability:**

6 This rule applies to automatic expungement of clean slate eligible cases in the district and
7 justice courts.

8 **Statement of the Rule:**

9 **(1) Definitions**

- 10 (1)(A) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.
11 (1)(B) "Bureau" means the Bureau of Criminal Identification of the Department of Public
12 Safety.
13 (1)(C) "Conviction" means a judgment by a criminal court on a verdict or finding of guilty
14 after trial, a plea of guilty, or a plea of nolo contendere.
15 (1)(D) "Expunge" means to seal or otherwise restrict access to the individual's record
16 when the record includes a criminal investigation, detention, arrest, or conviction.

17 **(2) Clean slate eligible convictions**

- 18 (2)(A) Records in the following cases may be expunged automatically:
19 (2)(A)(i) a case that resulted in an acquittal on all charges; or
20 ~~(2)(A)(ii)~~—except as provided in subsection (2)(B), a case that is dismissed with
21 prejudice; ~~or~~
22 ~~(2)(A)(iii)~~(2)(A)(ii) a clean slate eligible case.
23 (2)(B) A case that is dismissed with prejudice does not include a case that is dismissed
24 with prejudice as a result of successful completion of a plea in abeyance
25 agreement governed by Utah Code §77-2a-3(2)(b).

26 **(3) Automated expungement process**

- 27 (3)(A) The Administrative Office of the Courts shall develop automated processes for
28 the expungement of records outlined in subsection (2)(A).
29 (3)(B) Automated processes must comply with the requirements outlined in the Utah
30 Expungement Act and this rule.

31 (3)(C) All automated expungement processes developed by the Administrative Office of
32 the Courts shall be approved by the Utah Judicial Council.

33 (3)(D) The form and content of the order of expungement must be approved by the
34 Utah Judicial Council.

35 **(4) Standing orders and orders of expungement**

36 (4)(A) The presiding officer of the Judicial Council may authorize ~~the~~ presiding judges of
37 the district court to serve as a justice court judge for the limited purpose of
38 signing automatic expungement orders for the justice courts within that district.

39 (4)(B) If the presiding officer of the Council authorizes them to do so under (4)(A),
40 standing orders shall be issued by district court presiding judges for the entire
41 judicial district, including courts of record and not of record. Justice court judges
42 may not issue standing orders under this rule.

43 (4)(C) If the presiding judge determines that the requirements under subsection (3)
44 have been met, the presiding judge shall issue a standing order authorizing the
45 Administrative Office of the Courts to determine whether the criteria have been
46 met, and if so, to prepare and automatically affix the presiding judge's judicial
47 signature to orders of expungements issued in relation to cases from that judicial
48 district.

49 (4)(D) Automated orders of expungement must be approved by the Utah Judicial
50 Council.

51 **(5) Notice to prosecuting agencies**

52 (5)(A) The Administrative Office of the Courts shall send notice to each prosecuting
53 agency on a monthly basis, listing all cases prosecuted by that agency that
54 appear to be clean slate eligible.

55 (5)(B) The list of potentially eligible cases shall include, at a minimum, the individual's
56 first name, last name, date of birth, and case number.

57 (5)(C) Notice to prosecuting agencies under this rule shall be sent by email.

58 (5)(D) Each prosecuting agency shall:

59 (5)(D)(i) Provide to the Administrative Office of the Courts a single email
60 address for that prosecuting agency;

61 (5)(D)(ii) acknowledge that all notices under this rule will be sent to that single
62 email address;

63 (5)(D)(iii) maintain that single email address without change unless strictly
64 necessary; and

65 (5)(D)(iv) update that email address within three business days of any change
66 by contacting the Administrative Office of the Courts.

67 **(6) Objection by prosecuting agencies**

68 (6)(A) Within 35 days of the date on which notice under subsection (5)(A) is sent, the
69 prosecuting agency shall e-file any statutory objection.

70 (6)(B) When e-filing an objection, the prosecuting agency shall select the “objection –
71 automatic expungement” document type in the e-filing system. Failure to select
72 the appropriate document type will result in the objection being invalid.

73 (6)(C) If an objection has not been timely filed pursuant to subsection (6)(A), an order of
74 expungement for each clean slate eligible case shall automatically issue.

75 **(7) Notice of action taken**

76 (7)(A) The Administrative Office the Courts shall notify the bureau and the prosecuting
77 agency identified in the case that an order of expungement has been issued.

78 *Effective May 1, 2020*

1 **Rule 3-108. Judicial assistance.**

2 **Intent:**

3 To establish the authority, procedure and criteria for judicial assistance.

4 **Applicability:**

5 This rule shall apply to judicial assistance provided by active senior judges and judges
6 of courts of record.

7 **Statement of the Rule:**

8 (1) Criteria for requesting assistance. Judicial assistance shall be provided only for the
9 following reasons:

10 (A) to prevent the occurrence of a backlog in the court's calendar;

11 (B) to reduce a critical accumulated backlog;

12 (C) to handle a particular case involving complex issues and extensive time which
13 would have a substantial impact on the court's calendar;

14 (D) to replace a sitting judge who is absent because of assignment as a tax judge,
15 illness or to replace the judges in that location because of disqualification in a particular
16 case;

17 (E) to handle essential cases when there is a vacant judicial position;

18 (F) to handle high priority cases during vacation periods or during attendance at
19 education programs by the sitting judge, following every effort by that judge to adjust the
20 calendar to minimize the need for assistance and only to handle those matters which
21 cannot be accommodated by the other judges of the court during the absence;

22 (G) to provide education and training opportunities to judges of one court level in the
23 disposition of cases in another court level; ~~and~~

24 (H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of
25 the Utah Code of Judicial Administration; and

26 (I) to handle automatic expungement cases.

27 (2) Criteria for transferring or assigning judges. The transfer or assignment of judges
28 shall be based upon the following priorities:

29 (A) experience and familiarity with the subject matter, including, in district court cases
30 involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial
31 Administration, knowledge of the theory and practice of ad valorem, excise, income,
32 sales and use, and corporate taxation;

33 (B) active judges before active senior judges with consideration of the following:

34 (i) active judges from a court of equal jurisdiction in a different geographical division
35 than the court in need, who are physically situated nearest and are most convenient to
36 that court;

37 (ii) active senior judges from a court of equal jurisdiction to the court in need who are
38 physically situated nearest and are most convenient to that court;

39 (iii) active judges from a court of different jurisdiction than the court in need whose
40 subject matter jurisdiction is most closely related to that court and who are in close
41 proximity to it;

42 (iv) active judges from a court of equal jurisdiction in a different geographical division
43 than the court in need who are far removed from that court;

44 (v) active or active senior judges from a court of different jurisdiction than the court in
45 need whose subject matter jurisdiction is similar to that court who are not in close
46 proximity;

47 (C) availability;

48 (D) expenses and budget.

49 (3) Assignment of active judges.

50 (A) Any active judge of a court of record may serve temporarily as the judge of a court
51 with equal jurisdiction in a different judicial district upon assignment by the presiding
52 judge of the district in which the judge to be assigned normally sits or, in district court
53 cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial
54 Administration, assignment by the supervising tax judge with the approval of the
55 presiding officer of the Council.

56 (B) Any active judge of a court of record may serve temporarily as the judge of a court
57 with different jurisdiction in the same or a different judicial district upon assignment by
58 the presiding officer of the Council or assignment by the state court administrator with
59 the approval of the presiding officer of the Council.

60 (C) The presiding officer of the Council may appoint a district court presiding judge as
61 the signing judge for automatic expungements in all courts within their district, including
62 district courts and justice courts. The length of the assignment may coincide with the
63 judge's term as presiding judge.

64 (E D) The assignment shall be made only after consideration of the judge's calendar.
65 The assignment may be for a special or general assignment in a specific court or
66 generally within that level of court and shall be for a specific period of time, or for the
67 duration of a specific case. Full time assignments in excess of 30 days in a calendar
68 year shall require the concurrence of the assigned judge. The state court administrator
69 shall report all assignments to the Council on an annual basis.

70 (D E) Requests for the assignment of a judge shall be conveyed, through the presiding
71 judge, to the person with authority to make the assignment under paragraphs (A) and

72 (B). A judge who is assigned temporarily to another court shall have the same powers
73 as a judge of that court.

74 (4) Notice of assignments made under this rule shall be made in writing, a copy of which
75 shall be sent to the state court administrator.

76 (5) Schedule of trials or court sessions. The state court administrator, under the
77 supervision of the presiding officer of the Council, may schedule trials or court sessions
78 and designate a judge to preside, assign judges within courts and throughout the state,
79 reassign cases to judges, and change the county for trial of any case if no party to the
80 litigation files timely objections to the change.

1 **Rule 4-403. Electronic signature and signature stamp use.**

2 **Intent:**

3 To establish a uniform procedure for the use of judges' and commissioners' electronic
4 signatures and signature stamps.

5 **Applicability:**

6 This rule shall apply to all trial courts of record and not of record.

7 **Statement of the Rule:**

- 8 (1) A clerk may, with the prior approval of the judge or commissioner, use an electronic
9 signature or signature stamp in lieu of obtaining the judge's or commissioner's signature
10 on the following:
- 11 (1)(A) bail bonds from approved bondsmen;
 - 12 (1)(B) bench warrants;
 - 13 (1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested
14 cases or when stipulated by both parties in contested cases;
 - 15 (1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);
 - 16 (1)(E) orders to show cause;
 - 17 (1)(F) orders to take into custody;
 - 18 (1)(G) summons;
 - 19 (1)(H) supplemental procedure orders;
 - 20 (1)(I) orders setting dates for hearing and for notice;
 - 21 (1)(J) orders on motions requesting the Department of Workforce Services (DWS)
22 to release information concerning a debtor, where neither DWS nor the debtor
23 opposes the motion;
 - 24 (1)(K) orders for transportation of a person in custody to a court hearing,
25 including writs of habeas corpus ad prosequendum and testificandum; and
 - 26 (1)(L) orders appointing a court visitor.
- 27 (2) When a clerk is authorized to use a judge's or commissioner's electronic signature or
28 signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the
29 document directly beneath the electronic signature or stamped imprint of the judge's or
30 commissioner's signature.
- 31 (3) ~~In a case where a domestic relations injunction must be issued under URCP 109, the~~
32 ~~electronic signature of the judge assigned to the case may be automatically attached to~~
33 ~~the domestic relations injunction form approved by the Judicial Council, without the need~~
34 ~~for specific direction from the assigned judge and without the need for a clerk's signature~~
35 ~~accompanying the judge's signature.~~ The electronic signature of a judge may be

36 automatically affixed to the following documents without the need for specific direction
37 from the assigned judge if a Judicial Council approved form is used;

38 (3)(A) a domestic relations injunction issued under URCP 109;

39 and

40 (3)(B) an automatic expungement order issued under Utah Code § 77-40-114.

41 (4) All other documents requiring the judge's or commissioner's signature shall be personally
42 signed by the judge or commissioner, unless the judge or commissioner, on a document
43 by document basis, authorizes the clerk to use the judge's or commissioner's electronic
44 signature or signature stamp in lieu of the judge's or commissioner's signature. On such
45 documents, the clerk shall indicate in writing that the electronic signature or signature
46 stamp was used at the direction of the judge or commissioner and shall sign his or her
47 name directly beneath the electronic signature or stamped imprint of the judge's or
48 commissioner's signature.

49 *Effective ~~January 1, 2020~~*

In the District / Justice Court of Utah
[district_number] Judicial District, [county_name] County / [city_name] City

[prosecuting_entity – usually “State of Utah”],

Plaintiff,

vs.

[defendant_name]

[defendant_dob]

Defendant.

**Order on Automatic
Expungement of
Acquittal / Dismissal with Prejudice**

Case Number: [case_number]

This order is issued pursuant to the automatic expungement provisions in Utah Code § 77-40-114. The Judicial Council has approved an automated process for identifying cases to be expunged, and providing the prosecution entity with a list of those cases. The prosecutor has an opportunity to object to expungement. If the prosecutor objects the case is removed from the automatic expungement list. The process has identified this case as eligible for automatic expungement and the process has identified this case as one on which an objection has not been received.

The Court Orders:

The records of defendant’s arrest, investigation, detention, and prosecution related to court case number [case_number] are expunged.

Judge’s signature will appear at the top of the first page of this document.