



# Administrative Office of the Courts

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

September 1, 2023

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

## MEMORANDUM

**TO: Management Committee / Judicial Council**  
**FROM: Keisa Williams**  
**RE: Rule for Final Approval**

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Following a 45-day public comment period, the Policy, Planning and Technology Committee recommends that the following rule be approved as final with a **November 1, 2023** effective date.

### **CJA 4-202.11. Vexatious record requester (NEW)**

Under [63G-2-702\(5\)](#), the section governing the applicability of GRAMA to the judicial branch, the Judicial Council may now:

- (a) establish a process for an administrative unit of the judicial branch to petition for relief from a person that the administrative unit claims is a vexatious requester; and
- (b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims is a vexatious requester.

The proposed rule establishes a new process to petition for relief from a vexatious requester, designating the Management Committee as the “appellate board” and the Office of General Counsel as the “administrative unit” authorized to petition for relief.

One public comment was received. The Committee does not recommend amendments in response to the public because the court will grant reasonable requests from attorneys seeking records on a client’s behalf, provided the attorney has not also been deemed a vexatious requester.

**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 4-202.11. Vexatious record requester**

**Intent:**

To establish the rights and procedures governing requests for relief from a vexatious record requester.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

**(1) Definitions.**

(1)(A) "Committee" means the Management Committee of the Council.

(1)(B) "Executive secretary" means an individual designated as executive secretary by the Committee for purposes of this rule.

(1)(C) "Respondent" means a person the petitioner claims is a vexatious record requester.

**(2) Petition.** The Office of General Counsel may submit a petition to the Committee requesting relief from a person alleged to be a vexatious record requester.

(2)(A) A copy of the petition shall be sent to the state court administrator and the respondent on the day the petition is submitted to the Committee in accordance with paragraph (3)(B). Service by mail or electronic means is complete upon sending.

(2)(B) The petition shall include:

(2)(B)(i) the respondent's name, email address, and mailing address submitted by the respondent in his or her most recent record request;

(2)(B)(ii) a description of the conduct that demonstrates the respondent is a vexatious record requester; and

(2)(B)(iii) a statement of the relief the petitioner seeks.

**(3) Scheduling and notice.**

**(3)(A) Scheduling.** Except as provided in (3)(C), no later than 7 business days after receiving the petition, the executive secretary shall send a copy of the petition to the Committee chair and schedule a hearing for the Committee to consider the petition:

(3)(A)(i) at the next regularly scheduled Committee meeting falling at least 15, but no later than 30, business days after the petition is submitted; or

(3)(A)(ii) at a regularly scheduled Committee meeting more than 30 business days after the petition is submitted, if the Committee chair determines the Committee will not have sufficient time to hold a hearing at an earlier meeting date.

(3)(B) **Notice.** The executive secretary shall send notice of the date, time, and location of the Committee meeting at which the petition will be heard to the Office of General Counsel, respondent, and state court administrator. Notice may be sent to the respondent via email at the email address last used by the respondent in communications with the court. If the respondent is incarcerated or is otherwise unable to communicate by email, notice shall be sent to the respondent via the last known method of communication used by the respondent. Public notice will be posted in accordance with paragraph (6).

(3)(C) **Denial without a hearing.** The Committee chair may direct the executive secretary not to schedule a hearing if the Committee chair and at least one other member of the Committee determine that the petition is without merit. In making that determination, the Committee chair may request that the respondent submit a written response to the petition.

(3)(C)(i) If the Committee chair declines to schedule a hearing, the executive secretary shall send notice to the Office of General Counsel, respondent, and state court administrator that the petition has been denied and the reasons for the denial. Notice shall be sent in accordance with paragraph (3)(B).

(3)(C)(ii) The petition, a response if received under paragraph (3)(C), and the Committee chair's denial decision shall be provided to the Committee in advance of the next regularly scheduled Committee meeting. If a majority of the Committee disagrees with the chair's decision to deny the petition, the Committee shall direct the executive secretary to schedule a hearing. Committee discussions about the chair's denial decision may be held in an executive session.

(4) **Response.** No later than 5 business days before the hearing, the respondent shall submit to the executive secretary and the Office of General Counsel a written statement in response to the petition. The written statement may be the same document as the respondent's written response under paragraph (3)(C).

(5) **Hearing.** The Committee will allow the Office of General Counsel and respondent a reasonable opportunity to present facts, authority, and argument at the hearing. The order of presentation and time permitted to each party shall be decided by the Committee. The Committee may permit any other person whose interests might be substantially affected by a decision to participate in the hearing. Discovery is prohibited, but the Committee may require either party to produce additional evidence in support of their claim or position. If the respondent fails to appear at the hearing, the Committee may cancel the hearing and deliberate the petition, or hold the hearing without the respondent.

(6) **Open and closed meeting.** Committee deliberations are closed and may be held in an executive session. Presentations by the Office of General Counsel, respondent, and any other person permitted to appear at the hearing are open to the public and notice of the hearing shall be given in accordance with Rule 2-103.

(7) **Order.** No later than 10 business days after the hearing, or the date on which the hearing was canceled under paragraph (5) was scheduled to be held, the Committee shall determine

whether the Office of General Counsel has demonstrated that the respondent is a vexatious record requester and issue a signed order that grants or denies the petition in whole or in part.

(7)(A) In determining whether the Office of General Counsel has demonstrated that the respondent is a vexatious record requester, the Committee may consider:

(7)(A)(i) the interests described in Rule 4-202;

(7)(A)(ii) the total number of record requests the respondent has submitted to the judicial branch, including:

(7)(A)(ii)(a) the number of pending record requests;

(7)(A)(ii)(b) the number of record requests approved;

(7)(A)(ii)(c) the number of record requests denied; and

(7)(A)(ii)(d) the number of appeals taken from record request denials, including information related to the results of such appeals.

(7)(A)(iii) the scope, content, and subject matter of record requests the respondent has submitted to the judicial branch;

(7)(A)(iv) the nature of any communications from the respondent to court employees or judicial officers related to a record request;

(7)(A)(v) any pattern of conduct that the Committee determines to constitute:

(7)(A)(v)(a) an abuse of the right of access to information; or

(7)(A)(v)(b) substantial interference with the operations of the judicial branch;

(7)(A)(vi) any prior petitions, findings, and orders regarding respondent as a vexatious record requester; and

(7)(A)(vii) any other factor or information the Committee considers relevant.

(7)(B) If the Committee grants the petition in whole or in part, it may order any relief requested by the Office of General Counsel, or any other relief the Committee deems appropriate.

(7)(C) The Committee's order granting the petition in whole or in part shall contain a statement of the reasons for the Committee's decision, and a statement that the respondent may petition for judicial review of the Committee's decision by filing a complaint in the Third Judicial District Court in accordance with the Utah Rules of Civil Procedure. If the Committee denies the petition, in whole or in part, the Office of General Counsel may also seek judicial review of the Committee's decision in accordance with this subsection. Any complaint filed under this subsection shall be filed no later than 30 calendar days from the date of the Committee's order.

151 (8) **Appeals.** A record request that the Office of General Counsel is not required to fulfill in  
152 accordance with an order issued under this rule may not be the subject of an appeal under Rule  
153 4-202.07.

154  
155 (9) The time periods in this rule may be extended by mutual agreement.

156  
157 *Effective: November 1, 2023*

## 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.”

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Posted: June 26, 2023

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#### Code of Judicial Administration – Comment Period Closed August 10, 2023

**CJA04-0202.11. Vexatious record requester (NEW).** New proposed rule establishing a process whereby an administrative unit in the judicial branch can petition for relief from a person the administrative unit believes to be a vexatious records requester. The rule is in response to S.B. 231 and 63G-2-702(5) passed during the 2023 legislative session.

This entry was posted in [-Code of Judicial Administration, CJA04-0202.11.](#)

« [Rules of Appellate Procedure – Comment Period Closed August 12, 2023](#)

[Rules of Juvenile Procedure – Comment Period Closed July 29, 2023](#) »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

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### UTAH COURTS

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## 2 thoughts on “Code of Judicial Administration – Comment Period Closed August 10, 2023”

David Ferguson

June 26, 2023 at 8:23 pm

This rule appears to offer an appropriately thoughtful balance. One area of concern I have is that sometimes I will get a client at a jail or prison who has been denied records requests because the request simply asks for information previously provided. Inmates in correctional facilities occasionally have legal documents destroyed or confiscated, which requires follow-up requests. Others sometimes don't appreciate how to make an appropriate request or appeal a denial due to intellectual disabilities or language barriers. I can appreciate that there has to be some sort of way to get relief from a vexatious requester, but I have concerns about situations in which a pro se individual finally gets an attorney to help them with their legal concern, and that attorney makes a request on behalf of that person where the attorney's request may be able to navigate the hurdles that the pro se requester couldn't. If the person was already deemed vexatious, then the attorney's sensible request may be blocked just as there is finally someone involved in the situation who can actually get to the bottom of the inmate's concern, provided that the request would be accepted such that the attorney can review the documents that the inmate wanted to get but couldn't wrap their heads around the appropriate way to make a request for the records that they actually need.

I don't know if there can be some sort of “change of circumstance” exception, or some kind of “newly retained counsel gets one free pass” rule for situations after the opportunity for an appeal has passed (or without needing to do an appeal), but I hope the committee can make some sort of small revision that allows for something along those lines. The risk here is that if I have a potential client whose sympathetic story prompts me to further investigate the concern, but I can't get access to records related to that concern because the person has burned their bridges with the record keeper, then I may have to turn down helping that person simply because I can't get enough information to decide whether their concern is legally viable. And I hope the committee will agree that such a situation is sufficiently foreseeable that some kind of equitable exception ought to apply.

Otherwise, I very much understand and appreciate the delicate balance that went into crafting this rule.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
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- ADR101
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