

Minutes of the Policy and Planning Committee

April 1, 2016

Members Present

Marvin Bagley, Ann Boyden, John Lund, Mary Noonan

Members Excused

Mark DeCaria

Reed S. Parkin

Staff

Nancy J. Sylvester

Guests

Tom Langhorne

(1) Approval of Minutes

Judge Bagley moved to approve the minutes of the March 1, 2016 meeting. Judge Ann Boyden seconded the motion and it passed unanimously.

(2) Rules 3-302, 4-106, 9-105. Remote Hearings.

Ms. Sylvester discussed Leslie Slaugh's comment to rule 4-106 which suggested that the rule was in conflict with Utah Rule of Civil Procedure 43. Ms. Sylvester noted the "in open court" language was probably what Mr. Slaugh was pointing to as conflicting with rule 4-106. She said "in open court" under rule 43 means the evidence is not taken on an ex parte basis, but rather in front of the judge and all parties. The courts have already had rules allowing for remote hearings, so this would have conflicted for quite some time. Ms. Sylvester said she did not think it was in conflict. Judge Bagley and others agreed.

Judge Noonan asked about rule 3-302 and the language, "open and available." She recommended striking the language as superfluous. Judge Bagley noted that the Garfield County court had an issue where they were open but not available to transact business. Judge Boyden said it most likely addressed the very rural areas.

Mr. Lund then turned to rule 9-105 and said the same language Judge Noonan had brought up in rule 3-302 was in line 9 in rule 9-105. Judge Boyden noted that it was old language. She then gave an example of cases in which notices to appeal were filed in the West Valley City justice court. The filings were date stamped late due to a Christmas party. She said parties need to be able to file during the open hours, especially when they run up against deadlines. She said there was a purpose to the "and available" language.

Judge Noonan moved to recommend the rules as written. Judge Boyden seconded the motion and it passed unanimously.

(3) Rules 3-306.01, 3-306.02, 3-306.03, 3-306.04, 3-306.05. Language Access.

Ms. Sylvester noted that there were no comments on the language access rules. The committee was a bit surprised by that based on the controversy from which the rules had stemmed.

Judge Boyden moved to recommend the rules. Judge Bagley seconded the motion and it passed unanimously.

(4) Rule 4-408.01. Responsibility for Administration of Trial Courts.

Ms. Sylvester noted that Morgan was removed from the rule since it is no longer administered directly through the administrative office of the courts. Judge Bagley noted that Morgan is now state operated rather than county operated. He said they did the same thing with Kanab a few months ago.

Judge Noonan moved to recommend the rule. Judge Bagley seconded the motion and it passed unanimously.

(5) Rule 4-602. Victims' Rights Committees.

Ms. Sylvester noted that the victim rights committee rule was repealed. There were no comments to the rule. The members reviewed past discussions in which the committee determined it should be repealed because the statute did not provide for judiciary involvement.

Judge Bagley moved to recommend the rule. Judge Boyden seconded the motion and it passed unanimously.

(6) Rule 9-302. Mandatory Electronic Filing.

The committee reviewed Judge Parkin's amendments to the rule which corrected a reference on lines 8 and 11 from section 3 to 2b. Ms. Sylvester also corrected a date reference that left a 1 out of 2016.

Judge Boyden moved to recommend the rule with the corrections. Judge Noonan seconded the motion and it passed unanimously.

(7) Rule 3-108. Senior Judge Assistance.

Tom Langhorne was welcomed to the meeting. Mr. Langhorne said as part of the Education Standing Committee he composed a subcommittee of judges and TCE's throughout the state to address the issues of mentoring new judges. Mr. Langhorne introduced his suggested changes to Rule 3-108, which would provide for senior judges to mentor newly confirmed judges. Judge Boyden stated this practice hasn't been used in the past and there would need to be funding discussions as well. She said this committee cannot make any changes or decisions until after the Judicial Council addresses the issue.

Further discussion revolved around how senior judges could be used to assist new judges on the bench. There is not currently a mentoring rule regarding new judges. Judge Boyden noted that recently requests for mentoring to the current sitting judges have been made for long periods of time due to the high retirement rate on the bench. Judge Noonan and Judge Boyden both stated their concerns that senior judges may need to mentor voluntarily. The committee then discussed defining what mentoring is and starting there before carving out who serves. After further discussion it was decided to place this rule request on hold pending Judicial Council recommendations on the current senior judge assistance issue.

(8) Rule 4-401.03. Notice to Public of Recording.

S.B. 42 passed during the legislative session and provided for public notice of court recording. Ms. Sylvester said there was some money set aside to put signs outside of the statewide courthouses. A broad rule allowing the justice courts to easily comply was needed. She said chapter 4, article 4 of the Code of Judicial Administration seemed to be the best fit because it addressed court operations; 4-401.02 addresses recordings in court by the public so a new rule 4-401.03 seemed appropriate. The committee discussed the language Ms. Sylvester had proposed and determined that was too long and too wordy. The term "closed" was confusing. The committee also determined that it would be better to require a written notice, rather than allow the courts to comply with a verbal notice. The committee came up with the following simplified form to recommend to the Council, which closely tracks the new language in Utah Codes section 78A-2-208:

Intent:

To establish uniform standards and procedures for notifying the public when court proceedings are being recorded, consistent with Utah Code section 78A-2-208.

Applicability:

This rule applies to the courts of record and not of record.

This rule governs all judicial proceedings.

Statement of the Rule:

When an electronic or digital recording system is used, courts will provide written notice to the public that the proceedings are being recorded.

The committee discussed that it would recommend expedited action under Rule 2-205 since the effective date of S.B. 42 will be May 10.

Mr. Lund moved to recommend the rule on an expedited basis. Judge Boyden seconded the motion and it passed unanimously.

(9) Other Business

There was no other business and the meeting was adjourned.