

Minutes of the Policy and Planning Committee

May 6, 2016

Members Present

Ann Boyden, Mark DeCaria, John Lund, Mary Noonan (by phone), Reed S. Parkin

Members Excused

Marvin Bagley

Staff

Nancy Sylvester

Keisa Williams

Guests

None

(1) Approval of Minutes and Announcements

Judge Noonan moved to approve the minutes of the April 1, 2016 meeting. Judge Boyden seconded the motion and it passed unanimously.

Ms. Sylvester introduced Keisa Williams to the committee. Ms. Williams is the newest attorney in the Office of General Counsel.

(2) Rules for Final Action

The committee discussed the following rules for final action:

- CJA 03-0403. Judicial branch education.
- CJA 04-0202.02. Records classification.
- CJA 04-0404. Jury selection and service.
- CJA 04-0903. Uniform custody evaluations (Comment)

Rule 3-403 Discussion:

Ms. Sylvester stated that the amendments to Rule 3-403 give the Management Committee authority to excuse an active senior judge applying for reappointment from completing the annual 30 hour education requirement based on good cause. To be eligible, the senior judge must have completed at least 60 total education hours in the two years preceding the effective date of reappointment. Ms. Sylvester noted that there were no comments on the rule. The committee discussed the basis for the rule, namely that there are instances when a senior judge is not able to fully comply with education requirements. The “for good cause” language gives the Management Committee discretion to excuse a senior judge from the annual requirement if he or she complies over a two-year period.

Judge DeCaria moved to recommend Rule 3-403 to the Judicial Council. Judge Boyden seconded the motion and it passed unanimously.

Rule 4-202.02 Discussion:

Ms. Sylvester stated that the amendments to Rule 4-202.02 classify jail booking sheets and nonresident violator notices of noncompliance as private. They also delete language addressing appellate brief addenda as they are governed by other rules. She noted that the rule received no comments. She

reminded the committee that the amendments related to the jail booking sheets and nonresident violator notices of noncompliance had been proposed by AOC Court services due to the sensitive personal information they contained, such as addresses and driver license numbers.

Judge Boyden moved to recommend Rule 4-202.02 to the Judicial Council. Judge DeCaria seconded the motion and it passed unanimously.

Rule 4-404 Discussion:

Ms. Sylvester stated that the amendments to Rule 4-404 incorporated 2015 amendments to Utah Code section 78B-1-110 regarding a juror's term of service. Ms. Sylvester noted that there were no comments to the rule. Judge Noonan asked whether the proposed rule language tracked the statutory language. Ms. Sylvester confirmed that it did.

Judge Parkin moved to recommend Rule 4-404 to the Judicial Council. Mr. Lund seconded the motion and it passed unanimously.

Rule 4-903 Discussion:

Ms. Sylvester stated that the amendments to Rule 4-903 clarified the list of professionals who may perform custody evaluations. They also eliminated the provision allowing two custody evaluators to be appointed if one party resides out of state and added additional factors for a custody evaluator to consider when conducting an evaluation. Ms. Sylvester noted that there was one comment to the rule from Alex Trumbo and discussed her opinion that Mr. Trumbo's comment should not change the rule. She noted that the rule primarily discussed what the parties and evaluators should do, not what the court should do. Mr. Trumbo had requested an amendment to require the court to look at ability to pay, among other factors, in considering whether to order a custody evaluation. Ms. Sylvester did not think Rule 4-903 was an appropriate vehicle for this change and the committee members agreed. Mr. Lund suggested sending the comment back to the Standing Committee on Children and Family Law.

Judge DeCaria moved to recommend Rule 4-903 to the Judicial Council. Mr. Lund seconded the motion and it passed unanimously.

(3) Senior Judge Assistance: Rule 3-108 vs. Rule 3-104

Discussion:

The committee discussed Tim Shea's suggestion to place the senior judge assistance issue in the presiding judge rule, 3-104. Ms. Sylvester noted that she had taken Mr. Shea's suggestion and placed it in a section farther up in the rule. Mr. Shea had placed the new section in its own paragraph, but Ms. Sylvester's draft placed it under the presiding judge authorities and responsibilities section, just below the coordination of judicial schedules paragraph. The committee discussed the merits of having the section in rule 3-108 versus 3-104. Committee members determined that the sticking point for the presiding judges was that there seemed to be some turf war between the AOC and the presiding judges. Affirming the presiding judges' authority by having the section dealing with senior judge assistance in 3-104 made sense.

Judge Parkin moved to place the senior judge assistance discussion in Rule 3-104. Judge DeCaria seconded the motion and it passed unanimously. The committee members also determined that where Ms. Sylvester had placed Mr. Shea's proposed language made sense.

The committee then discussed how the language should read based on Mr. Lund's motion at the Judicial Council meeting:

- 1) Presiding judges should have discretion for some defined period of time and amount of resources to make the decision on their own to appoint a senior judge without prior approval of anybody.
- 2) The presiding judge should provide notice to the appropriate management people in the Administrative Office that they made the assignment.
- 3) If there is going to be more than a 14 day commitment, there would be a plan put together and communicated to the Administrative Office about the staffing need the district has.
- 4) If there can't be amicable resolution as to how the staffing should be done, then the Management Committee of the Council should be responsible for making the final decision.

Members determined that not including "exigent circumstances" language in the rule made sense because it was already captured in the language Mr. Shea proposed: "if a judicial position is vacant or if a judge is absent due to illness, accident, or disability." The committee also determined that 14 judicial days would be the upper limit for using senior judge coverage without a plan in place. The committee took the priority language Mr. Shea had proposed in his last paragraph and moved it up to the beginning of the section so that it was clear that a presiding judge must follow the 3-108 priority list in covering vacancies and could not use a senior judge beyond the limits established in rule 11-201 (60 days).

The committee then weighed how to discuss the conflicts that can arise between presiding judges and the AOC and the final decisions that must be made on the presiding judge's plan. The committee determined the presiding judge should notify the Administrative Office when any senior judge assignment is made. The committee also determined that Mr. Shea's language regarding what the plan should contain made sense: "The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges."

The committee crafted language to capture the way the presiding judge will present the senior judge coverage plan to the Administrative Office. Members emphasized that the presiding judge would not be asking permission on the plan.

The committee then went over how and when the presiding judge's plan would be presented to the Management Committee. The committee determined based on concerns raised at the Council meeting and John's motion that if any part of the presiding judge's plan is contested by the Administrative Office, the plan would be reviewed by the Management Committee for final determination. The committee agreed that this would be the rare case.

The committee reserved a vote on the rule as edited during the meeting until the rule could be circulated by email.

Judge Parkin asked Ms. Sylvester and Ms. Williams to meet with Brent Johnson as a department to determine whether Rule 11-201(6) and proposed Rule 3-104(3)(C) were in conflict. Judge Parkin also asked Ms. Sylvester to find a place in the rules to provide for the expectation that judges will give 6 months' notice of retirement.

(6) Other Business

There was no other business and the meeting was adjourned at 2:05 p.m.