

Policy and Planning Committee
Matheson Courthouse
Council room
450 South State St.
Salt Lake City, Utah 84111

June 24, 2016

Members Present

Hon. Reed S. Parkin
John Lund
Hon. Ann Boyden – by phone
Hon. Mark DeCaria

Members Excused

Hon. Mary Noonan
Hon. Marvin Bagley

Staff

Nancy J. Sylvester
Keisa L. Williams

Guests

(1) Approval of minutes

Judge Reed Parkin opened the meeting by thanking the members for their continued dedication to the committee. Judge Parkin also thanked staff members, Nancy Sylvester and Keisa Williams, for their hard work. Judge Parkin next addressed the minutes. Judge Parkin noted that since there wasn't a quorum at the June 3 meeting those minutes did not need to be approved. The committee then addressed the May 6 minutes. John Lund moved to approve the minutes and Judge Mark Decaria seconded the motion.

(2) CJA 4-401.03. Notice to Public of Recording.

Ms. Williams stated that the comment period for Rule 4-401.03 is now closed and there were no comments. One member noted that the rule states, "when...a recording system is used," even though court proceedings are now always recorded. There was brief discussion about whether to amend this wording. The committee decided to leave the wording as it is currently written because it tracked the statute (Utah Code § 78A-2-208).

Judge Mark DeCaria moved to recommend CJA 4-401.03 to the Judicial Council. John Lund seconded the motion and it passed unanimously.

(3) CJA 11-203. Senior Justice Court Judges.

Ms. Williams stated that H.B. 160 amended Utah Code § 78A-7-203 to grant certain municipalities the ability to remove justice court judges as a reduction in force. Ms. Williams noted Rule 11-203's proposed amendments account for changes to the statute and also include a requirement regarding judicial performance evaluations, which would then bring the rule in line with rule 11-201. Active senior justice court judges would be required to provide the results of their final judicial performance evaluation survey, conducted prior to termination of service, and the results must have been sufficient to have certified them for a retention election. Judge Parkin noted that justice courts are unique in that there are four different levels of evaluations that are done, so there would not be uniformity in the ability to furnish this. The committee discussed this issue further, detailing various scenarios that might apply to both senior judges as well as justice court senior judges. The committee then agreed upon changes to the wording of this rule that would bring Rules 11-201 and 11-203 in alignment while allowing for some flexibility with respect to the performance evaluation uniformity issue.

Mr. Lund moved to amend CJA 11-201 and 11-203 per language recommendations made by Judge Parkin and Ms. Sylvester. Judge Mark Decaria seconded the motion and it passed unanimously.

(4) CJA 4-202.02. Records Classification.

Ms. Williams stated that the amendments to Rule 4-202.02 are based on changes made to Utah Code section 78B-8-402 pursuant to H.B. 68. The amendments added a process for individuals exposed to infectious diseases to obtain a warrant to compel blood draws for testing. All of these records would be sealed.

Judge Mark Decaria moved to recommend amended CJA 4-402.02 to the Judicial Council. Judge Ann Boyden seconded the motion and it passed unanimously.

(5) CJA 4-403. Electronic Signature and Signature Stamp Use.

Ms. Williams stated that the proposed amendment to Rule 4-403 is based on the need for consistency throughout the State regarding the clerk's signature under a judge's electronic or stamped signature on a court document. Some justice courts have adopted a policy requiring only a clerk's first name and the first initial of their last name. This proposal would require both the first and last name to be used. Ms. Williams said Brent Johnson believes the need for consistency requires this amendment.

Judge Boyden expressed concern over instituting a legal requirement to use full names simply for consistency. Judge Boyden noted that an incomplete signature is still a legal signature. For example, signing with an "x" is accepted in certain cases. The committee discussed the requested changes and decided that the purpose of the rule is to be able to identify who signed for the judge electronically and/or used the judge's stamp. Judge Boyden said clerks are allowed to click a box indicating the document is e-signed or stamped at the judge's request. The electronic record should be sufficient to identify the clerk.

It was noted that Utah County Jail last week refused a commitment order because it was e-signed/stamped by the judge and simply initialed by a clerk. The jail stated they had no way to verify that the judge authorized the order. The committee noted in this case it would not matter if there was a signature or just initials. It was discussed that electronic signatures can be traced back, but stamped signatures cannot. The committee discussed the fact that while most courts in the state are now using electronic filing, some justice courts do not. Therefore, CORIS, and the ability to identify clerks may be varied. There was further discussion about whether to present this issue to the CORIS rewrite working group.

Judge Reed Parkin moved to invite Mr. Johnson to the next meeting for further discussion, but take no action today. Judge Mark Decaria seconded the motion and it passed unanimously.

(6) Other business

Ms. Sylvester addressed Remote Hearings Rules to the committee. Ms. Sylvester emailed a memorandum she wrote to the committee today. The committee already revised rule 4-106, and there was a complementary effort to establish new rules 29B and 37B of the Rules of Juvenile Procedure and rule 17.5 of the Rules of Criminal Procedure. Rule 43 of the Rules of Civil Procedure will be amended. Rule 4-106 was made effective May 1st. The Supreme Court took up these rules in May; however, they sent the rules back to the committees and the staff members because they did not feel as though the language was matching up.

Ms. Sylvester addressed some suggested changes to rule 4-106 by the staff members. One suggestion is to repeal the rule because the issues will be addressed in the other proposed rules. As written, the current language may foreclose the normal phone scheduling conferences. The committee discussed changes to

the proposed rule 4-106. After a brief discussion, Ms. Sylvester stated she will take the suggestions back to the various committees to attempt to match up with their rules as closely as possible, and then return the rule for discussion to the committee.

Judge Parkin noted there are a tremendous amount of enhancement forms in the justice courts; some are ten pages long. Judge Parkin believes this has become quite cumbersome. Judge Parkin noted that district court judges give a verbal colloquy for enhancements on the record instead of a written document. Justice courts must provide proof of the discussion via an enhancement form. He was wondering whether, now that the hearing is recorded in a justice court, as it is in the district court, if there is a need for a written document showing the colloquy has taken place. There was committee discussion on simplifying these documents or simply not using them if the hearing is recorded. The committee asked Ms. Sylvester to discuss this with Brent Johnson. Judge Parkin said he would also speak to Mr. Johnson about this.

John Lund moved to adjourn and Judge Mark Decaria seconded the motion. There was no other business and the meeting was adjourned at 1:30 pm.