

Policy and Planning Committee

Matheson Courthouse
Council room
450 South State St.
Salt Lake City, Utah 84111

September 9, 2016

Members Present

Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Mary Noonan
Hon. Reed S. Parkin - Chair
John Lund

Members Excused

Hon. Mark DeCaria

Staff

Nancy J. Sylvester
Keisa L. Williams

Guests

(1) Approval of minutes

Judge Reed Parkin welcomed the members to the meeting. Judge Parkin announced Judge Mark DeCaria had been moved to the Liaison Committee. The committee then addressed the August 5, 2016 minutes.

Judge Noonan moved to approve the August 5, 2016 minutes. Judge Boyden seconded the motion and it passed unanimously.

(2) CJA 3-111. Performance evaluation of senior judges and court commissioners.

Keisa Williams discussed a proposal by Brent Johnson to amend Rule 3-111. The amendment is to clarify a question posed to Mr. Johnson regarding whether separate performance evaluations are required from each presiding judge when a commissioner serves multiple districts. Mr. Johnson offered two versions. Version 1 required separate evaluations; Version 2 required only one evaluation with each presiding judge consulting with one another and providing feedback. Mr. Johnson recommended Version 1, due to a concern that each presiding judge will not perform the duties required in the evaluation form, namely surveying judges and court personnel and reviewing at least five of the commissioner's cases. During discussions, the committee concurred with Mr. Johnson's concerns and noted that commissioner performance may differ greatly by district and it was important that the evaluation process be a complete and accurate review of performance.

Judge Noonan moved to approve Version 1 of the amendments to Rule 3-111 to be sent out for public comment. Judge Bagley seconded the motion and it passed unanimously.

(3) CJA 2-212. Communication with the Office of Legislative Research and General Counsel.

Keisa Williams discussed a proposal by Brent Johnson to amend Rule 2-212. The purpose of the amendment is to eliminate the requirement of the Board of Judges and Standing and Ad Hoc Committees to send copies of rule drafts to the Director of the Office of Legislative Research and General Counsel and the chair of the Judicial Rules Review Committee at the same time the draft rules are sent to the Judicial Council. The amendment would simply require the Administrative Office of the Courts (AOC) to send such rule drafts to the Office of Legislative Research and General Counsel when they are sent out for public comment. Mr. Johnson felt that this change would make things more efficient and comport with current practice.

After discussion, the committee asked Keisa Williams to follow up with Rick Schwermer to clarify whether the Judicial Rules Review Committee still exists and get Mr. Schwermer's opinion on whether this rule change would cause an issue with the legislature.

(4) CJA 3-201. Court commissioners.

Keisa Williams discussed a proposal by Brent Johnson to make several amendments to Rule 3-201. Mr. Johnson's proposals stem from recent issues that arose during the Second District Court Commissioner approval process and a review conducted by Mr. Johnson when presenting to the presiding judges and trial court executives on commissioner evaluations. The proposals are as follows:

(3)(C) - Clarify that the word "court" refers to the site and not the entity

- After discussion, the committee amended the language to clarify that the presiding judge or designee from each court "level" the commissioner will serve shall sit on the nominating committee. The committee expressly changed the word "site" to "level" because commissioners may serve at several court "sites" under one district, and requiring a judge from each "site" would make the committee unwieldy.

(3)(C) - Proposes the creation of a commissioner nominating manual because we no longer control the judicial nominating process

- After discussion, the committee agreed with Mr. Johnson's proposal of the creation of a commissioner nominating manual similar to that used by the Justice Courts, as it will clarify the specific duties and requirements in the nominating process.

(3)(D) – Limits the number of judges serving on the committee when a commissioner serves multiple districts.

- After discussion, the committee removed the language from Mr. Johnson’s proposal regarding service percentages as it seemed arbitrary, but approved the language limiting service on the nominating committee to a maximum of two judges from each district so as to not make the committee unwieldy.

(3)(G) – Requires voting by the nominating committee to be by confidential ballot and provides a process for reconsidering a candidate.

- After discussion, the committee agreed with Mr. Johnson’s proposal as written because it makes the voting process fair and less contentious.

(3)(H) – Requires the names of public commenters be redacted before they are provided to the candidates.

- After discussion, the committee agreed with Mr. Johnson’s proposal as written, in order to promote candid public comments without fear of retaliation.

(3)(J) – Clarifies that votes for nominees require a majority of judges in each district if the commissioner is serving more than one district.

- After discussion, the committee agreed with Mr. Johnson’s proposal and made an additional edit to make the language consistent with (3)(C) regarding court “levels.”

Judge Bagley moved to approve amendments to Rule 3-201, with committee changes on sections (3)(C), (3)(D), (3)(G) and (3)(J). The rule will not be sent out for public comment until the committee has a chance to review the remaining proposed amendments.

Judge Noonan seconded the motion and it passed unanimously.

The committee asked Keisa Williams to add the remaining proposed amendments to the committee’s next agenda.

(5) Other business

There was no other business and the meeting was adjourned at 1:50 pm.