

## **Policy and Planning Committee**

Park City Marriott  
1895 Sidewinder Drive  
Park City, Utah 84060

October 4, 2016

### **Members Present**

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

### **Members Excused**

### **Staff**

Nancy J. Sylvester  
Keisa L. Williams

### **Guests**

Clayson Quigley  
Rick Schwermer

### **(1) Approval of minutes.**

Judge Reed Parkin welcomed the members as well as guests, Rick Schwermer and Clayson Quigley, to the meeting. The committee then addressed the September 9, 2016 minutes. There being no changes to the minutes, Mr. Lund moved to approve the September 9, 2016 minutes. Judge Pullan seconded the motion and it passed unanimously.

### **(2) CJA 4-503. Mandatory electronic filing (District court civil cases).**

**CJA 4-603. Mandatory electronic filing (District court criminal cases).**

**CJA 9-302. Mandatory electronic filing (Justice court criminal cases).**

Mr. Quigley introduced the topic, stating that the Board of District Court Judges requested some time ago that the efilng program allow for the numbering and association of documents. This would allow clerks, judges, and attorneys to group and act on documents that relate to each other. Ms. Sylvester noted that the federal courts already do this in their ECF system. The committee discussed whether this should be in a rule or whether the system should just require it. Addressing the committee's concerns, Mr. Quigley stated that although the language in the rule might eventually have to be modified, this initial change to the rule is to get the system set up so that the attorneys will learn to recognize that this should be done at the time of filing. This will eventually save time for the courts and is to the benefit of the attorneys and parties. A member asked whether the system will require this step or if it would simply be an option. Mr. Quigley explained that within the system there are 277 document types. They are working on adding an alert to certain types of documents that will pop up and

force the attorney to link the document, such as a memorandum to a motion. Mr. Quigley said one large problem they have currently is many attorneys are efilng documents under the “other” category, therefore the alert wouldn’t pop up because it is such a broad category. This is in part the reason for the rule. A member noted that many clerks are trained in correcting this issue and redesignating the document type.

The committee wondered if a rule could be created or amended to require an attorney to be more specific when selecting the document type. The committee discussed the incredible burden to clerks and judges in correcting these and noted that the filer should have the obligation to associate the correct documents. There was concern as to whether amending the rule would make this a substantive requirement for attorneys. If the rule is not followed, would this then affect the validity of the document? Mr. Quigley stated that in order to be able to associate documents with other pleadings the court had to create a numbering system, which would automatically number each document filed in a case. These numbers will be assigned in chronological order. Attorneys will be able to see the documents and numbers to associate them. Mr. Quigley said although there are 277 document types, as the efilers go through the system, each step pairs down that number. When the efiler states what type of case it is, the 277 documents are narrowed down to what is needed for that type of case. The designation will be based on the number of the filing; for example, document number 79 will be associated with document number 74. The docket number will not show on the document. Ms. Sylvester said in the federal court system the docket number shows on the document, which is incredibly helpful when there are documents that are similarly titled. Mr. Quigley said the attorneys would be able to see the documents and numbers when they are associating them. Mr. Quigley stated he will discuss with the Board the option of adding the docket number to the document.

The committee discussed a forced prompt and not just an alert that would not allow the efiler to proceed without associating the document. This would eliminate the need for the rule change. Mr. Quigley restated the biggest concern regarding the use of the “other” option. The committee wondered how this would affect the public versus private filings. Mr. Quigley said the options would be very limited. However, they can create a special type of document if needed.

The committee asked Mr. Schwermer for his opinion on this matter. Mr. Schwermer suggested asking IT if there is a way to force the prompt. If not, then perhaps a rule should be issued. Mr. Quigley said this is currently in the process with IT and should be completed no later than the end of this year. Mr. Quigley said the Board is still in the decision-making process on whether the prompt should require association or just allow it. Mr. Quigley said part of the issue is that association shouldn’t be required on all documents because many filed are not going to be associated with something else.

Mr. Quigley noted the juvenile courts have not addressed this issue in their own system and the appellate courts are writing their efilings package now. The committee noted that if the rule change route was the way this should go, it should be consistent throughout the other courts: justice, juvenile, and appellate. At this time, the committee was leaning toward an IT route rather than a rule process. But if they choose to take the IT route instead, this could mean inconsistency throughout the courts. The committee asked Clayson to loop in the other court levels on this discussion.

After further discussion, the committee decided to have Mr. Quigley take the committee's questions back to the Board for further clarification. Mr. Quigley was thanked for his time.

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

Keisa Williams addressed this rule and said she spoke with Brent Johnson about his proposed change of removing the notice to the Judicial Rules Review Committee. The committee, although still active, hasn't done any work for approximately 10 years. Ms. Williams said she also discussed the proposed changes with Mr. Schwermer. Mr. Schwermer suggested that since notices are sent to the Office of Legislative Research, which staffs the committee, there is no harm in keeping everything status quo, especially where the Judicial Rules Review Committee is still technically active.

After brief discussion, the committee decided to accept the proposed changes with a few modifications to take out superfluous language.

Mr. Lund moved to approve the proposed changes to rule 2-212 and send the rule to the Judicial Council consent calendar for approval then public comment. Judge Noonan seconded the motion and it passed unanimously.

### **(4) CJA 3-201. Court commissioners.**

Ms. Williams discussed Brent Johnson's proposed rule amendments in detail. Ms. Williams stated Mr. Johnson was looking to clarify existing practices on commissioner nominating committees. The committee reviewed changes they made to this rule at the last meeting to update those members who weren't present then. The committee made an additional revision to paragraph (3)(C) ("level and judicial district") and voted to approve that revision. Judge Noonan made the motion and Judge Boyden seconded. It passed unanimously. The committee asked to reset this rule to the November agenda to address the remaining proposed amendments as laid out in the executive summary.

**(5) 4-202.02. Records classification and taxpayer confidentiality.**

Ms. Sylvester discussed the request, made by Utah attorneys who are seeking to preserve tax payer confidentiality. Their focus is on their clients: large companies and wealthy individuals. Ms. Sylvester stated the records classification rule would need to be amended as well as Rule 6-103 (District court tax judges). Mr. Schwermer stated these tax attorneys are concerned about the “secret sauce” of their clients being made public, but noted there is already a process in place where a litigant can request that a specific document be considered private. The attorneys requesting this felt that was burdensome on their part and costly for their clients. The committee discussed what is considered private and public. Mr. Schwermer stated the general consensus among judges is to let the litigants request that specific documents be marked as private and that the rest of the case can be public.

Mr. Schwermer noted the second half of the request is that opinions get published only after the tax payers have the opportunity to review them. Mr. Schwermer asked the committee if they wanted to afford the attorneys a procedural avenue to be heard at a future Policy & Planning meeting or if the committee wanted to make a decision on this without hearing from the requestors. Mr. Schwermer’s recommendation was that the committee extend an invitation to the attorneys to discuss this issue in person. Mr. Schwermer will attend the meeting as well. One of the concerns the committee had is that this could potentially open the door for every attorney who wants an audience with the committee.

Judge Parkin took a straw vote on whether the committee members would be in favor of, opposed to, or neutral about inviting attorneys to the meetings who want to discuss rule changes. The consensus was to allow it on a case-by-case basis.

The committee decided to allow these attorneys to come to a meeting to discuss their proposal. Mr. Schwermer will invite them to attend. The committee took no further action on the proposed rules.

Ms. Williams noted Judge McVey’s suggestion to have John McGarry from the Attorney General’s Office attend a meeting. Mr. Schwermer will contact Mr. McGarry to get a feel for his position on this issue.

**(6) Other Business.**

***Pro se E-filing.* CJA 4-503. Mandatory electronic filing (District court civil cases).**

Ms. Sylvester asked Mr. Quigley to speak briefly on the CORIS rewrite and what pro se e-filing may look like in the future. Mr. Quigley noted that the CORIS rewrite is expected to be about a two year process. Several groups have been established to

address various issues around it. The CORIS rewrite is initially looking at high-level, more urgent needs, but is developing a process for pro se litigants to use CORIS, receive notifications, and manage their cases. Based on past committee discussions and this update, Ms. Sylvester said she would contact Tyler Felt, who requested pro se efilings, to let him know that the committee felt a rule on this would be premature or unnecessary.

For quorum purposes, Judge Parkin asked the committee members to let staff know ahead of time if they are not able to attend a meeting. The meeting adjourned at 11:20 am.