

Policy and Planning Committee

November 4, 2016

Members Present

Hon. Reed S. Parkin - Chair
Hon. Marvin Bagley – by phone
Hon. Ann Boyden
John Lund

Members Excused

Hon. Mary Noonan
Hon. Derek Pullan

Staff

Nancy J. Sylvester
Keisa L. Williams
Jeni Wood – recording secretary

Guests

Sue Willis

(1) Approval of minutes.

Judge Reed Parkin welcomed the members to the meeting. Judge Parkin addressed the October 4, 2016 minutes. Judge Parkin proposed an amendment to the minutes in section number 3 to clarify that the committee was leaning toward the IT route with Clayson Quigley's proposed rule changes. With that being the only change,

John Lund moved to approve the October 4, 2016 minutes. Hon. Reed Parkin seconded the motion and it passed unanimously.

(2) CJA 4-202.02(3)(A)(iv). Records classification.

Judge Parkin asked Nancy Sylvester to explain this rule. Ms. Sylvester stated this rule has gone out for public comment and was based on some 2016 legislation dealing with disease testing and the warrant system. With brief discussion and no further changes to the rule,

Mr. Lund moved to send this rule to the Judicial Council for final approval. Judge Ann Boyden seconded the motion and it passed unanimously.

(3) CJA 3-201. Court commissioners.

Ms. Sylvester discussed Brent Johnson's proposed changes to rule 3-201, starting with (4)(d)(ii) (where the committee had left off from the previous meeting), but expressed concerns based upon her experience with the commissioner certification process about a comment period for retention of commissioners. She noted that the commissioners are already subject to attorney surveys, so this seemed redundant, unnecessary, and never done. Judge Parkin asked staff to clarify with Brent Johnson the proposed rule changes.

(4) CJA 9-301. Enhancements in justice courts.

Judge Parkin discussed justice courts enhancement notification. Judge Parkin stated the enhancements have grown exponentially. Judge Parkin brought in a two page drug

enhancement notification to show the committee. He said an attorney has expressed their desire to repeal the rule and said everyone agrees this is burdensome and seemingly unnecessary. Judge Parkin said the Board of Justice Courts has voted to repeal the rule. Judge Parkin said even with following through on the appropriate colloquies, there are still complaints on a regular basis from defendants. It has been suggested that colloquies should be given at the beginning of a case instead at the end as is current practice. The committee briefly discussed having the same policies for both the justice and district courts. John Lund suggested writing a new rule to clarify the procedures up front. Judge Parkin said he's found it is best at arraignment to deliver the enhancement information to defendants so they are fully aware early in the stages what can happen.

After further discussion, Judge Parkin's final recommendation is to abandon the majority of rule 9-301 and make the enhancements a best policy practice. Judge Parkin questioned whether the last section, paragraph (3) should be repealed. He asked staff to check with Brent Johnson on the necessity of keeping it.

Mr. Lund moved to approve repealing the enhancement portion of rule 9-301 (sections 1 and 2 only) and sending the rule to the Judicial Council. Judge Boyden seconded the motion and it passed unanimously. Ms. Sylvester will discuss with Brent Johnson as to what the best move will be for section 3.

(5) CJA 4-103(2). Dismissals "without prejudice."

Ms. Sylvester discussed the proposed changes to Rule 4-103(2) based on the Supreme Court case of *Cannon v. Holmes*, 2016 UT 42. The Supreme Court suggested that the tension between Civil Rule 41 and Rule 4-103 could be resolved but requiring that all dismissals entered pursuant to Rule 4-103 should explicitly state, "without prejudice." Judge Boyden said the changes have already been made in CORIS. After brief discussion, Judge Parkin recommended the rule changes pass the committee but also that staff discuss with Brent Johnson whether the rule should apply to justice courts.

Judge Boyden moved to approve the proposed changes to rule 4-103 and send the rule to the Judicial Council consent calendar for approval then to send the rule out for public comment, after staff receives approval from Brent Johnson regarding the rule applying to justice courts as well. John Lund seconded the motion and it passed unanimously.

(6) CJA 4-202.02(2)(C), (2)(F), (4)(A)(iv), (4)(B). Records classification.

Ms. Sylvester introduced Sue Willis from the appellate courts to the meeting. Ms. Sylvester explained the reasoning for the proposed changes to this rule, which was to deal with a more public appellate documents online interface. The committee discussed the rule changes. Sue Willis stated she believes the most important part of the changes is protecting the juvenile cases. Ms. Sylvester noted it was both the appellate court and the IT department who requested the change. Judge Parkin said this seems to be a fairly

simple change. John Lund, however, noted that the proposed amendments already appear in another section of the rule and that would need to be resolved.

After discussion, the committee agreed to have Ms. Sylvester confirm the proposed changes with James Ishida and work through some of the drafting issues. Ms. Sylvester will bring the rule back at the December meeting.

(7) Other Business.

The next meeting is December 2. There being no other business and the meeting was adjourned at 1:41 pm.