

Policy and Planning Committee

Judicial Council Room
Matheson Courthouse
450 South State Street
Salt Lake City, Utah 84111

December 2, 2016

Members Present

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

Members Excused

Staff

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

Guests

Judge Barry Lawrence
Rick Schwermer

(1) Approval of minutes.

Judge Reed Parkin welcomed the members to the meeting and guests, Judge Barry Lawrence and Rick Schwermer. Judge Parkin then addressed the November 4, 2016 minutes. There being no changes to the minutes,

Judge Ann Boyden moved to approve the November 4, 2016 minutes. Judge Marvin Bagley seconded the motion and the committee unanimously approved the minutes.

(2) CJA 1-205. Standing and ad hoc committees. CJA 3-117. Committee on Court Forms.

Judge Lawrence introduced the topic, noting that he was representing the Committee on Resources for Self-represented Parties. He explained some of the history of the current forms committee and then brought up some concerns he had with the new forms committee as proposed in the materials. He said both Jessica Van Buren and Mary Jane Ciccarello suggested that language be added stating the forms should be written in plain language. Judge Lawrence then discussed how the law library is the current “keeper” of forms. He thought that should continue and that it was also important to make sure someone from the law library was a part of the new forms committee. Judge Lawrence also noted his and others’ concerns that the committee will move at a pace slower than it should if they have to review and correct every single form as a committee of the whole. He believes there should be an exception for technical or simple amendments. But on more complex issues, like a gender change

forms, which don't have clear statutory or rule guidance, the whole committee should take them up.

The committee proposed changes to rule 1-205. Rick Schwermer stated he thought Kim Allard, who staffs OCAP, should be included in this discussion since many of the forms are changed based on statute and she is already tracking this. Judge Parkin noted the legal component is already established since the General Counsel Office will be staffing it. John Lund said all forms should cite to the appropriate references; he thought only some do currently. The Supreme Court is working on creating new licensure for Paralegal Professionals so they will eventually need an LLP on the committee. The committee also discussed a need to have Jessica Van Buren as the State Law Librarian on the forms committee.

The committee next discussed new proposed rule 3-117. Judge Lawrence requested that the rule give the forms committee authority to create an expedited process for handling urgent forms and simple updates. The committee discussed how currently the Board of District Court Judges reviews and approves forms, even though that process is not in the rule. Ms. Sylvester noted that staff members amend the forms when there are simple, non-substantive updates. With the creation of this standing committee, the Board will no longer have authority over approval of forms. Judge Derek Pullan wondered how or whether the forms would be presented to the Judicial Council. Ms. Sylvester stated it could be done by the consent calendar. Judge Pullan said the Board is concerned that forms would be created with no oversight and no approving authority. Judge Boyden wondered what the current practice is for amendments that do not need to go out for public comment. Mr. Schwermer said there is nothing in the rules that gives guidance. The committee amended the proposed rule to give the forms committee authority to know when and how a form change is needed. The committee was concerned about the forms committee being able to mandate the use of a form, so instead the forms committee would be able to recommend that a certain form be mandatory and the Council would ultimately make that decision. The committee then discussed the composition of the forms committee with respect to the addition of a community member who interacts with self-represented parties. The committee decided not to overstaff the forms committee with self-represented parties-focused members since the forms committee would have more than that function. The committee was satisfied that the addition of Law Library and Self-Help Center members would be sufficient, especially since non-members could weigh in on forms. Ms. Sylvester stated these rules were approved through the Management Committee on an expedited basis so that the forms committee will be in place before the Paralegal Practitioners taskforce completes its work. Judge Parkin said he did not want to move too fast with these rules, but thought they were pretty close to being done. Mr. Schwermer said he thought the rule could use further discussion, but Ms. Sylvester reminded the committee that the rule would go out for comment still and the committee would have another chance to look at it before it was finalized.

After further discussion and several amendments to the rules,

John Lund moved to send rules 1-205 and 3-117 to the Judicial Council to be adopted on an expedited basis with the rules also going out for a 45-day public comment. Judge Ann Boyden seconded the motion and it passed unanimously.

Judge Lawrence was thanked for his contributions and excused.

(3) CJA 3-201. Court commissioners.

Judge Parkin next addressed rule 3-201. The Committee determined that the rule should provide that commenters on commissioner candidates should have their names redacted if the comments are furnished to the candidates. Ms. Sylvester then discussed that she had proposed eliminating the comment period for commissioners, but Mr. Schwermer and Debra Moore had informed her that this was a new amendment within the last year. So she withdrew her proposal to eliminate it. Ms. Sylvester addressed further the changes proposed by Brent Johnson. The committee discussed his proposal to change the word “remove” when referring to the Council and district courts’ decision not to retain a commissioner at the end of their term. The committee then clarified disciplinary procedures in paragraph (7) to deal specifically with decisions to remove and sanction during a commissioner’s term. The committee separated that process from decisions to retain at the end of a commissioner’s term. The committee discussed potential situations in which one district or court level chooses to remove a commissioner but the other district or court level that uses the same commissioner does not. The committee asked Ms. Sylvester to bring in and modify for commissioners the language from Rule 3-104 dealing with when there is a conflict regarding senior judge appointments and the process of the Management Committee making the final decision.

The committee will continue this discussion at its next meeting.

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

Mr. Schwermer noted this rule needs to be expedited due to an accompanying legislative file being opened. Judge Parkin said the Council had two committee assignments, one for jail release and the other for expungements. It appeared that the jail release issue would go to the criminal rules committee.

Mr. Schwermer said legislators have raised concerns that even if charges are dismissed in a criminal case, the case is still available in multiple public locations, such as Xchange. Mr. Schwermer said his proposal is to let the courts change the records to private when a case is dismissed. The committee briefly discussed the various dismissals: with prejudice and without prejudice. Even if a case is dismissed without prejudice, meaning it can be refiled, there is no good public policy reason for keeping those records public. Mr. Schwermer said governmental entities would still have access

to the information, but the general public would not. He said prosecutors are in favor of the proposal. Judge Noonan asked about how this will apply to juvenile court cases. The committee discussed the current practice in the juvenile court. Judge Noonan said a dismissal on the record shows on the legal file, which is public, just as with district court cases. Judge Noonan would like to find current language then replicate it with this rule. Judge Parkin asked Ms. Sylvester to add the juvenile court language to this proposal.

John Lund moved to recommend to the Judicial Council expedited action on the proposed changes with the addition of equivalent juvenile court language. Judge Marvin Bagley seconded the motion and it passed unanimously.

Mr. Schwermer was thanked for his time and excused.

(5) Other Business.

The committee discussed future meetings and times that would be better for the committee. The committee decided during the liaison committee timeframes, they will meet from 10:00 – 12:00 instead of 12:00 – 2:00. This will affect January, February, and March. The next meeting is January 6 in the executive dining room. There being no other business, the meeting adjourned at 2:15 pm.