

Policy and Planning Committee

Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111

March 3, 2017

Members Present

Hon. Derek Pullan - Chair (by phone)
Hon. Ann Boyden
John Lund
Hon. Mary Noonan
Hon. Reed S. Parkin

Members Excused

Hon. Marvin Bagley

Staff

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

Guests

(1) Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting. Judge Parkin addressed the February 3, 2017 minutes. There being no changes to the minutes, Judge Ann Boyden moved to approve the February 2, 2017 minutes. John Lund seconded the motion and it passed unanimously.

(2) CJA 3-201. Court Commissioners.

CJA 3-111. Performance Evaluations of Senior Judges and Court Commissioners.

Ms. Sylvester addressed her memorandum regarding Rules 3-201 and 3-111. She focused first on new paragraph (7) in Rule 3-201, which deals with sanctions and removal. In the process of reviewing this rule at past meetings, the committee had requested that the process for both be clarified and separated from retention. Ms. Sylvester reviewed the changes she had made.

Ms. Sylvester then reviewed (7)(C) and, at the committee members' request, updated the paragraph to remove "presiding judge" and insert "district or court level," which was an update from earlier in the rule. Judge Pullan then asked if it has historically been the practice to reduce a commissioner's salary as is proposed on line 135 of the rule under "sanctions." Ms. Sylvester said yes it has always been the rule, however, she has not heard of this happening in the past. Judge Pullan said a district court judge cannot constitutionally have his or her salary reduced. Judge Pullan wondered about the effect of that sanction. Judge Parkin asked if this section was necessary. Judge Boyden said in

the past commissioners were not at the same pay rate as district court judges or appellate court judges but they have always had a set pay. Judge Parkin said he believed salary could be set on a step program. Judge Boyden said she is also concerned about the terms, salary reduction or suspension. Judge Parkin asked if there are only full-time or if there are part-time commissioners as well. Ms. Sylvester said it is her belief that all commissioners are full-time. Judge Pullan wondered if a reduction in salary was similar to a suspension without pay. After further discussion, the committee agreed to change lines 134 and 135 regarding the reduction in salary to reduction in case assignments with corresponding salary reduction and add a suspension without pay.

Judge Boyden moved to change the section as discussed. Judge Parkin seconded the motion. The committee asked if they needed to approve each change or the rule in full. The committee decided to approve at the end.

Judge Parkin next discussed the two-thirds rule in section 7(B)(i)(c) regarding commissioner removals by the Council. He wanted to make sure this rule reflected the current rules in practice for how voting is done. Judge Parkin asked who sets the rule for the Council's processes. Does this committee have the authority to direct the Judicial Council to set a higher standard? Judge Pullan noted this committee submits the rule proposals and the Council acts on them. Mr. Lund said he was concerned that the Council would see this as a recommendation to set the standard higher. Ms. Sylvester noted she was concerned about saying "simple majority" instead of two-thirds because of the message this would send to current commissioners, and also noted that the two-thirds language is already in the existing rule. Judge Parkin said with the justice court judges, decisions are based on a majority. Mr. Lund said the rule would be sent to the Council and that body would decide if that was still acceptable. Judge Boyden said the practice of majority has been done in the district courts as well but also noted that the Council cannot remove a judge, only the Judicial Conduct Commission can.

Judge Mary Noonan said, in reference to section (7)(C) there are protections for judges, but are there protections for commissioners? Is there an appeal right? The committee agreed to amend section (C) to clarify how and to whom a commissioner can request a review. Judge Pullan recommended dividing this into two sections. Judge Pullan explained that an attempted removal would initially start with the presiding judges. But a removal could go directly to the Management Committee. Judge Pullan stated he believes it's important to preserve the idea that decisions are to be made at either the local level or Council level. Mr. Lund recommended that section (C) have a title as well. Keisa Williams asked if the committee would keep the section on the Management Committee making the decision. Judge Boyden said she could see there being an issue if a commissioner is really effective in their job in one district or court level but not in another. Judge Boyden does not want to see two-thirds move forward, she would

prefer majority instead. The committee discussed the Council's authority to remove or sanction a commissioner.

Judge Parkin requested that Ms. Sylvester organize the rule better, such as with more titles. He said the committee was also getting confused because of all of the formatting. Ms. Sylvester said she would be happy to clean up the rule.

Mr. Lund said he is concerned judges can vote to remove a commissioner and then the Management Committee can overturn that decision. The committee agreed this is a concern. Judge Parkin noted the Management Committee moves most issues to the Council. Judge Pullan said he is okay with the Management Committee taking on issues but he believes the Council should be the final decision-maker. The committee agreed to change line 148 to add that the Council will make the final decision.

Ms. Sylvester discussed line 160, paragraph 8, which discusses retention. Ms. Sylvester noted the practice has been the Council reviews a commissioner's declaration and the supporting materials (attorney surveys, etc.) and then votes on whether to certify that person for another term. The Council then sends the recommendation to the district courts for their approval. Judge Pullan said he would like the rule to be specific as to retention. Judge Noonan recommended putting "is eligible to be retained." Mr. Lund agreed. The committee agreed to change this section to say the decision sent from the Counsel is as to eligibility. Ms. Sylvester said the rule isn't on the Council's agenda for this month therefore the committee can make a final decision at the next meeting.

Ms. Sylvester next discussed rule 3-111. Ms. Sylvester noted the rule was sent to the Council in November 2016 on a different issue but she held it back from comment when she realized the issues overlapped with the ones raised here.

The committee discussed changes to section (1). Judge Noonan was concerned about some of the language, such as at lines 16 and 22. Line 22 talked about courtroom observation, which could be done by a review of recordings. Judge Noonan said in juvenile court the audio would not be helpful, specifically to evaluation of demeanor. The committee removed the option to review audio. Ms. Sylvester noted Mr. Johnson had put this proposal in rule 3-201 but she moved it to rule 3-111 since it seemed like a better fit there.

Judge Parkin asked if the language was underlined because it was new language or just moved from another rule. Ms. Sylvester said it's both. She explained which words were new and which were preexisting. Mr. Lund asked if the results from the commissioners' performance plans would be kept in the human resources personnel file. Ms. Sylvester noted this was new language recommended through a discussion she had with Judge Pullan, Mr. Johnson, and Keisa Williams. Ms. Sylvester stated that currently the performance plan is only for someone needing correction. Mr. Lund said

this should be an HR issue, he is not sure if this needs to be in a rule. Ms. Sylvester noted she currently manages the process and performance plans are ineffective. Ms. Sylvester noted the evaluations are done annually but the performance plans have not been done and they contain basically the same language as the evaluations. Judge Noonan said she would like to clarify performance plans in section 4(G). The committee agreed on line 155 to delete "new" performance plan and instead use just performance plans. Then that would allow for corrective action plans. Judge Parkin didn't agree with using corrective action plans because it had a negative connotation. Ms. Sylvester noted a situation that had recently happened with a commissioner who needed corrective action and the presiding judge prepared a performance plan for them. The committee briefly discussed how performance or corrective action plans apply to senior judges then decided to remove the section since senior judges are not employees.

Judge Parkin then went back to discussing section (1)(D). Judge Parkin asked if the justice courts policy is only for that section. Ms. Sylvester stated lines 11 through 13 say the rule applies to justice court judges. Judge Parkin said he specifically wanted to know if after line 35, sections (1)(E) and on apply to justice courts. Ms. Sylvester said they do. Mr. Lund recommended identifying that in the rule. Mr. Lund recommends having section (2) have a title to clarify it is where evaluations section begins.

No voting took place. The committee instructed Ms. Sylvester to make the changes as proposed and return with cleaner versions of the rules.

(3) Other Business.

The next meeting is scheduled for April 7 in the Judicial Council room at 12:00. The legislative update is the same day so Ms. Sylvester will see if they can get a meeting room onsite. Mr. Lund noted he will not be able to attend the April 7 meeting. There being no other business, the meeting adjourned at 11:44 am.