



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: June 1, 2017
Re: Rule 2-212. Communication with the Office of Legislative Research and General Counsel.

At our May meeting, the committee discussed a comment to Rule 2-212, attached, from the Legislature's Judicial Rules Review Committee. The comment requested several amendments to the rule, most of which appear to return previously removed language (with some edits) and tracks [Utah Code section 36-20-3](#). This committee expressed concerns with the language of the rule generally and noted that both the Utah Supreme Court and the Judicial Council had a stake in its outcome. It deferred action on the rule pending staff vetting with the Supreme Court.

Rick Schwermer and I met with the Supreme Court on May 16 to discuss Rule 2-212, its background, including Section 36-20-3, and the Legislature's comments. The Supreme Court expressed concerns with Section 36-20-3 and its reach into its draft rules. The Court discussed the potential repeal of Rule 2-212, but determined that at this point, that sort of action may come with an unintended political cost. Ultimately the Court concluded that it should have its own rule to address the submission of court rules to the Legislature; the statute addresses both Supreme Court and Judicial Council rules. It also determined that its advisory committees should have a more uniform practice with respect to transparency and posting meeting materials, including rule drafts. James Ishida will look into developing some uniform guidelines, based in part on what the federal judiciary has done.

I have redrafted Rule 2-212 with the Legislature's comments incorporated. Policy and Planning should address each of the edits. I will take the final draft and work with James Ishida to create an accompanying Supreme Court rule. The Supreme Court rule will then go to the Court for approval and then both rules will come back to Policy and Planning for discussion if the Court makes changes to its own, or to the Council if not. The goal is to have the rules align as much as possible, taking into account, of course, the needs of each body.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule 2-212. Communication with the Office of Legislative Research and General Counsel.**Intent:**

To provide the Legislature, through the Office of Legislative Research and General Counsel, with notice of Council rules and opportunity to comment upon them.

To provide the Legislature and the Office of Legislative Research and General Counsel with notice of Council action upon Council rules.

Applicability:

This rule shall apply to the Council, the Boards of Judges, the standing and ad hoc committees of the Council, and the Administrative Office.

Statement of the Rule:

(1) ~~The principal staff person assigned to the Council, the Boards of Judges, and the standing and ad hoc committees of the Council~~Administrative Office of the Courts shall send to the staff of the Judicial Rules Review Committee within ~~Director of the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee~~ the a draft rule of the Council, Board, or committee at the same time the draft rule is submitted to the Council and when the draft rule is published for public comment.

(2) A legislator or representative of the Office of Legislative Research and General Counsel may attend any meeting of the Council at which a rule of the Council is under consideration, and may comment upon the rule.

(3) ~~The State Court Administrator~~ Administrative Office of the Courts shall notify the ~~chair~~ staff of the Judicial Rules Review Committee ~~and the Director of~~ within the Office of Legislative Research and General Counsel and the chairs of the Judicial Review Committee of the Council's final action on any rule ~~published for comment or adopted~~ the Council adopts.

Rule 2-212. Communication with the Office of Legislative Research and General Counsel.

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**COMMENTS TO CODE OF JUDICIAL ADMINISTRATION
RULE 2-212 (1 COMMENT)**

CJA02-212. Communication with the Office of Legislative Research and General Counsel. Amend. Limits and changes the timing of the notice requirement to the Office of Legislative Research and General Counsel of the Court's draft rules.

Posted by Patricia Owen on behalf of Todd Weiler, Senate Chair Daniel McCay, House Chair

On behalf of the Judicial Rules Review Committee of the Utah State Legislature, we recommend the following changes to CJA02-212, Communication with the Office of Legislative Research and General Counsel:

On lines 19-20, we recommend that the rule state that the Administrative Office of the Courts send a draft rule of the Judicial Council to "staff of the Judicial Rules Review Committee within the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee." These individuals can be found on the Utah Legislature's website: le.utah.gov. By specifying the individuals who receive the information, it ensures that the information will be properly considered by the individuals assigned to review judicial rules under Utah Code, Title 36, Chapter 20, Judicial Rules Review Committee. Even during those times when the Judicial Rules Review Committee is less active, the Office of Legislative Research and General Counsel will designate staff for the committee.

For the same reasons stated above, on lines 28-30, we recommend that the rule state that the Administrative Office of the Courts notify the "staff of the Judicial Rules Review Committee within the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee" of final action on any rule the Judicial Council adopts.

On lines 21-22, we recommend that the rule state that a draft rule be submitted at the "same time the draft rule is submitted to the Council and when the draft rule is published for public comment." Utah Code § 36-20-3 provides that a proposal for a court rule be submitted to the Judicial Rules Review Committee "when:

- a) the court rule or proposal for court rule is submitted to:
 - (i) the Judicial Council for consideration or approval for public comment; or
 - (ii) the Supreme Court from the advisory committee after its consideration or approval;
- and
- b) the approved court rule or approved proposal for court rule is made available to members of the bar and the public for public comment."

We appreciate your consideration of these recommendations.