

Policy and Planning Committee

**Zermatt Resort
Basel Room
784 Resort Drive
Midway, UT 84049**

**October 3, 2017
10:00 – 12:00 p.m.**

Members Present

Hon. Derek Pullan - Chair
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Mary Noonan
Hon. Reed S. Parkin
Rob Rice

Members Excused

Staff

Keisa Williams

Guests

Shane Bahr

(1) Approval of minutes.

Judge Pullan welcomed the members to the meeting. Judge Pullan addressed the September 11, 2017 minutes. There being no changes to the minutes, Rob Rice moved to approve the September 11, 2017 minutes. Judge Bagley seconded the motion and it passed unanimously.

(2) CJA 1-201. Membership –Election.

Keisa Williams noted that the rule was back from public comments, with no comments received. The committee recommended that the rule go before the Judicial Council for final approval as written.

(3) CJA 3-201. Court Commissioners.

CJA 3-111. Performance evaluations of senior judges and court commissioners.

Ms. Williams referred the committee to Nancy Sylvester's detailed memo on the status of this rule. Ms. Williams noted that Ray Wahl's suggestion was that the rule be presented to the presiding judges, senior judges, and TCEs for comment and feedback. Ms. Williams and Ms. Sylvester will present the rule drafts to the presiding judge and senior judge meetings this week and move the item to the next agenda.

(4) CJA 4-202.02. Records Classification.

Ms. Williams briefly addressed the proposed changes from Brent Johnson. Ms. Williams explained the new automated PC system being implemented state-wide. This

proposal would classify probable cause statements as private, rather than public. Court services expressed concerns about exposing individuals to public scrutiny when there was no basis for their arrest (no charges filed). Mr. Johnson noted that individuals could have those records expunged after 30 days.

The committee discussed the draft and how the process currently works. Judge Parkin noted citations are currently listed as private because the document itself has private information on it. Judge Pullan noted the probable cause statements have private information as well. Ms. Williams noted probable cause statements are public by default. Judge Pullan questioned whether the probable cause statements or citations would remain private forever if classified as such by the courts, or would the public still be able to obtain them. Rob Rice said the courts cannot amend what is private under the GRAMA statute. The committee discussed the difference between making the probable cause statement private in Xchange versus amending the rule to classify the document as private. Judge Boyden noted that when a person is arrested, the information is public. Judge Parkin said software can be created to redact information automatically. Ms. Williams said the PC system will roll out fairly quickly. The committee discussed the significant public interest in knowing the grounds on which the Executive Branch exercises its arrest power, and for that reason, probable cause statements ought to remain public.

Judge Pullan moved to not accept the proposed draft at this time. Judge Bagley seconded the motion and it passed unanimously.

(5) CJA 4-703. Outstanding Citations and Warrants.

Ms. Williams said this rule was addressed at the justice court clerk's conference with Brent Johnson. Justice court clerks indicated that they are not following this rule. Mr. Johnson suggested that the rule be kept, but amended to remove the requirement for prosecutors to appear in court to show cause (OSC) why a citation should not be dismissed. Mr. Johnson suggested that it was sufficient for the court to send an OSC to prosecutors who could simply respond in writing. In addition, Mr. Johnson suggested that the requirement for clerks to prepare OSCs no less than quarterly should be removed or amended to once a year.

Judge Boyden and Judge Parkin said on a regular basis they work with the prosecutors to clear out old cases. Judge Boyden said her clerks pull cases prior to the warrants expiring date. Judge Pullan suggested the rule state a certain timeframe, such as quarterly or annually for a warrant review. Judge Boyden noted felony warrants do not expire. Judge Pullan recommended sending the rule back to Mr. Johnson to work with the clerks to propose a rule that coincides with current practice. Judge Parkin noted when a warrant is issued, the case pending time is stayed. Judge Parkin said there is no value to reviewing the warrants prior to them expiring. Judge Noonan asked Ms. Williams to review the juvenile rules to make sure the court procedures are consistent.

Judge Pullan questioned if there would be a need for an affidavit and probable cause to reissue an expired warrant.

Judge Boyden said when the prosecutor is presented with the expiring warrants, they respond with a probable cause/order to show cause and it is then documented in the case history. Judge Bagley said periodically the clerk adds the expiring warrant to the court calendar and the prosecutor is asked in open court what their intentions are.

The committee decided to remove the rule from the committee queue until Mr. Johnson is able to review and resubmit the rule based on the committee's feedback. Questions and direction for Mr. Johnson include:

- What is the current practice?
- Review with clerks of court to conform to current practice.
- When do citations expire?
- What does "outstanding citation" mean?
- Is the practice consistent with juvenile court rules?
- The format for prosecutors' written responses to an OSC should be formal.
- What criteria is required to find that probable causes exists to revive an expired warrant/citation? What should be included in the probable cause affidavit/Information?
- Is this consistent with Rule 7 of the Rules of Criminal Procedure? If a citation/warrant is expired, are prosecutors required to issue a summons?
- Why is this necessary? If a warrant expires, shouldn't a prosecutor have to reapply for a new warrant?
- Is there a difference if it is a misdemeanor vs. a felony?

(6) CJA 4-202.09. Miscellaneous.

Ms. Williams next addressed this rule draft received from the Standing Committee on Court Forms. The Forms Committee would like to remove the requirement for filers to certify that the documents do not contain non-public information. As a practical matter, the certification has no value. If the filer does not include a certification, there are no consequences. If the filer includes an incorrect certification, there are no consequences. If this amendment is not made, the Standing Committee on Court Forms will be required to review every form to ensure relevant forms include this certification.

Rob Rice moved to approve the rule as amended and send the rule to the Judicial Council for approval for public comment. Judge Noonan seconded the motion and it passed unanimously.

(7) CJA 3-407. Accounting.

Ms. Williams said this proposal came from John Bell, the Director of Finance. The amendment changes the membership of the Accounting Manual Review Committee to reflect current practice. The Accounting Manual Review Committee proposed this

change because the co-chairs are listed as the finance and budget managers, but those positions no longer exist in the AOC. The Director of Finance chairs the committee and has done so for some time. This is just an administrative amendment.

Judge Parkin moved to approve the draft as proposed and send to the Judicial Council for approval for public comment. Mr. Rice seconded the motion and it passed unanimously.

(8) Other Business

Ms. Williams presented a working draft of CJA 4-202.02 for the purpose of making the rule easier to understand and read. Ms. Williams noted this committee has made many requests regarding the reorganization of this rule. Judge Parkin said he believes this is a much-needed change. Ms. Williams included the summary of the classifications currently posted on the Court's website, but noted that it didn't reflect all of the requirements included in the rule itself. Judge Pullan recommended using a similar table to that found in Rule 26 of the Utah Rules of Civil Procedure. The committee recommended that the rule itself remain in narrative format, albeit reorganized, but the table should be linked to the rule.

The next meeting is scheduled for November 3, 2017 in the council room at 12:00. There being no other business the meeting was adjourned at 11:20 a.m.