

Policy and Planning Committee

Council Room – N31
Matheson Courthouse
450 South State Street
Salt Lake City, UT
August 3, 2018
12:00 – 2:00 pm

Members Present:

Judge Augustus Chin
Judge Derek Pullan, Chair
Judge Ryan Evershed
Judge Kara Pettit
Rob Rice

Members Excused:

Judge John Walton

Staff:

Michael Drechsel
Minhvan Brimhall

Guests:

Shane Bahr
Kim Allard
Chris Palmer
Rob Parkes

(1) Welcome and Approval of Minutes:

Judge Pullan welcomed the members to the meeting. Judge Pullan addressed the June 1, 2018 minutes. There being no changes, Judge Chin made a motion to approve the minutes as written. Rob Rice seconded the motion and it passed unanimously.

Due to the Problem Solving Court working group meeting, Judge Walton was excused from this meeting.

Michael Drechsel was introduced as the new AOC staff member replacing Keisa Williams.

(2) CJA 4-508. Guidelines for Ruling on a Motion to Waive Fees:

The current CJA 4-508 form states that the form will be approved by the Board of District Court Judges (or the Board of Juvenile Court Judges, as relevant) on motion to waive fee matters. The proposed amendment modifies the rule to state that the form will now be sent to the Judicial Council's Standing Committee on Court Forms for approval. Upon approval within this committee, Mr. Drechsel will present the proposed changes to the Judicial Council and send the rule out for public comment.

Mr. Rice moved to adopt the amendment as recommended. Judge Kara Pettit seconded the motion and it passed unanimously.

(3) CJA 1-205. Standing and ad hoc committees:

Mr. Drechsel presented two proposed changes to Code of Judicial Administration rule 1-205:

Section (1)(B)(xiii) would be amended to include a representative from the Utah Indigent Defense Commission to the Committee on Pretrial Release and Supervision. The addition of a member from the Indigent Commission allows for input from that commission (which has important overlapping interests with the committee), as well as Ms. Williams' continuation of participation with the committee.

Section (1)(B)(xiv) would include a court commissioner on the Committee on Court Forms. Commissioner T. Patrick Casey had been serving as a member of the committee as a representative from the Online Court Assistant Program. Commissioner Casey has retired. The Committee on Court Forms would benefit from input from a Court Commissioner as they move forward towards completion of the LPP and OCAP forms.

There was very brief discussion regarding how large some committees seem to be getting, with some minor concern that too many seats on committees makes it difficult to schedule meetings and get work accomplished. But because the requests for these proposed additions to these committee memberships originated with the committees themselves, it is assumed by Policy and Planning that these committees have good reason to request the additional members.

With no additional discussion, Judge Pettit moved to approve the proposed changes. Judge Chin seconded the motion and it passed unanimously.

(4) BDCJ Proposed Rule Change re: Consolidation of Probation:

This agenda item was a continued discussion (previously on the agenda April 6, 2018 and June 1, 2018) of practicalities regarding the Board of District Court Judges' proposed rule which would allow probation supervision and management to be consolidated before a single district court judge. Under the current system, the district courts lack the technological capacity to have a court clerk in one district to enter minutes and orders in the records of another district. The committee discussed the need to allow for clerks to access and enter minutes and orders in consolidation of probation cases. The current version of the proposed rule only requires minute entry and orders when a person is being supervised by Adult Probation and Parole. The committee discussed that, once consolidated, the supervising judge would have access to all of the probation-related records. But a sending judge in another district would have an incomplete file as minutes and prior consolidation orders would not exist in the sending judge's records. Ms. Allard discussed that the court clerks have indicated they would be willing to enter minutes and orders within their jurisdiction, as well as provide information from the supervising judge to any sending judge upon termination of probation in the case. The committee discussed whether the specific details of the actual process for sharing probation-related records need to be in this proposed rule. It was agreed that the internal process for actually delivering those records from the supervising judge to the sending judge did not need to be included in the proposed rule.

Mr. Drechsel reviewed the sentencing statute for criminal cases (Utah Code § 77-18-1(12)(b)) which indicates that upon filing of the affidavit alleging a violation of probation, “the court that authorized probation” will determine if the affidavit establishes probable cause. Mr. Drechsel noted that this language is unique within the scheme of the statute, meaning there are no other references to “the court that authorized probation” in the statute. In order for this proposed rule to comply with this statute, it appears that the supervising court would need to be the authorizing court. The committee discussed the need for a legislative change to the statutory language, or whether the rule could be drafted in such a way that the supervising court will authorize probation through the probation consolidation order. The committee does not believe that the language in the statute necessarily needs to be amended to permit the creation of this proposed rule.

The committee reviewed and made minor language changes for consistency throughout the rule and tasked Mr. Drechsel with additional minor revisions.

The Board of District Court judges will be meeting on August 24, 2018. Mr. Drechsel will present the proposed draft of the rule to the Board and hopefully, upon agreement from the BDCJ, have a rule to present at the next Judicial Conference.

The committee did not entertain a motion to approve changes to this rule at this time, as future discussion of the proposed rule is anticipated at the September 7 committee meeting.

(5) Human Resources Professional Appearance Policy:

Since the time that this matter was previously before the Policy and Planning Committee, Mr. Parkes met with the Management Committee in reviewing changes made to the policy. The Management Committee posed some questions:

1. Should these policies be: a) standard throughout the Utah court system; b) determined by each district; or c) determined by each courthouse location?
2. Should the requirement of wearing a tie in the courtroom be removed?

Mr. Parkes reported that the management committee commented that the differences between the normal dress code and the courtroom dress code is very slight. Some members of the management committee voiced that the requirement of wearing a tie in the courtroom should be removed, while others believed that polo shirts should be permitted. According to Mr. Parkes, the Management Committee made several edits to the language of the policy, to align with consistency of the entire policy, as well as made edits of photos used in the policy.

Mr. Parkes reviewed that the reason these policies are being discussed is that Third District changed their dress standard that allowed for more flexibility in clothing. This was not changed in other districts, and such changes were not compliant with the now-existing policies in effect. Judge Pullan noted that the standards of dress should be raised not lowered, while in the courtroom. Judge Pullan also notes that a single standard should be implemented statewide whether in court or out of court. Judge Pettit asked Mr. Parkes if he has received comments

regarding the morale of court employees required to wear a tie to work every day. Mr. Parkes was unable to speak to this.

This committee agrees that the standard needs to be statewide, for both courtroom and non-courtroom dress. This committee could not agree that polo shirts should be allowed in the courtroom. There was discussion regarding a more formal dress code being required for court employees who are addressing the court during hearings (i.e., juvenile probation officers). There was discussion about the differences in role between various court employees and what it means to address the court. The committee discussed removing the distinction between a “business casual” dress guideline and a “courtroom” guideline (as the differences really come down to how a tie and collared polo shirts fit into the schemes). Some committee members believed the guidelines should read that “blazers, suits, or tie are optional, but preferred, while in court.”

After significant discussion on the matter, and without consensus among the committee members, the committee requested that Mr. Parkes develop one standard policy for court house appropriate attire and incorporate the items as discussed. Mr. Parkes will report at the next meeting.

Mr. Rice made a motion that whatever policy is adopted, formal or informal, be a statewide policy, without regional variations. Judges Pullan, Chin, and Evershed voted in favor of the motion. Judge Pettit opposed the motion. The motion passed by majority vote. Mr. Parkes will return to this committee on September 7 to brief the committee on the single dress guideline. The matter will then be subject to further discussion.

(6) CJA 3-414. Court Security:

Chris Palmer presented to the committee. He noted that this requested amendment revolves around the needs and limitations of Salt Lake County. He has spoken with the sheriff's association and there is a committee being formed to discuss security staffing levels. That committee has not yet met. Chris anticipates some resistance to getting to his desired staffing levels, since this will likely be perceived as an unfunded mandate. There was discussion about NCSC materials (provided by Mr. Palmer) regarding best practices for staffing and steps to implement those best practices. These NCSC best practices provide some basis for requesting security staffing at certain levels. Chair Pullan wondered why staffing levels is a conversation that needs to happen in the first place where it is about public safety, which is central to the sheriff's primary purposes.

Chair Pullan asked how viable it would be to have a State Marshal's Service (a state equivalent of the federal system). Mr. Palmer noted that there has been previous consideration of such a system and that it was predicted to run approximately \$20m annually. If implemented, this would likely result in the second largest personnel type in the courts. The courts have \$8.2m projected for annual bailiff / security expenses. The committee discussed whether private contractors could be hired with that money to provide better service than what is currently provided. Mr. Palmer was unequivocal that it would not be possible to get services as good or better with that amount of money. Mr. Palmer discussed other security options than are

employed around the state based upon the unique circumstances of each location, including, for instance, courts that don't have front door screening.

Chair Pullan wondered what the impact of amending Rule 3-414 would be on important relationships statewide. Mr. Palmer would like to work with the sheriffs' association committee to try to find an agreement first. Mr. Palmer would also like to present to the legislature a change in the statute that may clarify the obligations regarding staffing levels. Chair Pullan wondered if we could align our interests with the sheriffs and go to the legislature together. Mr. Palmer believes the interests are not that closely aligned.

Mr. Palmer will work with the sheriffs' association committee and then bring this back before this committee in September once he knows more about how that might work out. Chair Pullan would like to seek additional input from the judicial council after Mr. Palmer has been able to meet with that sheriffs' association committee. It is understood that, at this time, that committee will be comprised of rural sheriffs, urban sheriffs, and judges.

(7) Problem Solving Court Working Group Update

Due to his participation with the Problem Solving Court Working Group, Judge Walton was unable to provide an update. This item will be carried over for discussion at the next meeting.

(8) Adjourn

The next meeting is scheduled for September 7, 2018 in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 2:02 p.m.