

**UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
September 7, 2018 – 12:00 p.m. to 2:00 p.m.

MEMBERS PRESENT:

Judge Derek Pullan, Chair
Judge Augustus Chin
Judge Ryan Evershed
Judge John Walton

MEMBERS EXCUSED:

Rob Rice
Judge Kara Pettit

GUESTS:

Rob Parkes
Judge Dennis Fuchs
Shane Bahr

STAFF:

Michael Drechsel
Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES

Judge Pullan welcomed the members to the meeting. The committee addressed the August 3, 2018 minutes. Judge Pullan noted that Rob Rice mentioned via email that: 1) he believed the committee, at the last meeting, approved language stating that ties are optional for in court appearance; and 2) this didn't appear to be reflected in the minutes. The committee members discussed the conversation from the previous meeting. Ultimately, the committee decided that no changes were necessary. Judge Chin made a motion to approve the minutes as written. Judge Walton seconded the motion. The motion passed unanimously.

(2) REVIEW OF RULES BACK FROM PUBLIC COMMENT:

The committee reviewed six rules that have now been published for public comment from June 25, 2018 through August 10, 2018. For the six published rules, only one public comment was received.

CJA 3-401 – Office of General Counsel – No public comments were received for this rule.

CJA 3-414 – Court Security – One comment was received for this rule, which the committee considered and discussed prior to taking action on the proposed rule. The committee determined that the comment received would not result in any further revisions to the rule prior to the rule being submitted to the Judicial Council.

CJA 4-403 – Electronic Signature and Stamp Use – No comments were received for this rule.

CJA 4-701 – Failure to Appear – No comments were received for this rule.

CJA 4-202.03 – Records Access – No comments were received for this rule.

CJA 4-202.09 – Miscellaneous – No comments were received for this rule.

Judge Walton motioned to recommend to the Judicial Council that the proposed revisions be adopted and published as final rules. Judge Chin seconded the motion. The motion was approved unanimously.

As part of the discussion of these rules, Mr. Drechsel reported that (as an example) Rule 4-202.09 is frequently revised. Recently, the Publishers noted a difference between the current version of this rule to the new rule that has been submitted to them for final publication. This happened because different revisions of a single rule were running in parallel to each other, with each of the revisions taking place in separate documents that were not tracking consistently with each other. This results from the relatively long time frame for rule amendments (from first request to change, to Policy & Planning, to the Judicial Council for approval to publish for public comment, to the public comment period, to Policy & Planning for a second review, and then to the Judicial Council for final consideration prior to adoption. When a single rule is in multiple phases of that process for different revisions, the possibility arises that certain revisions will not be accurately reflected consistent in the final version(s) of the rule. Mr. Drechsel proposes that when rules are in revision process the rule be placed on “hold” until all proposals, amendments, and comments are completed before opening the rule back up for additional revisions. This would eliminate confusion and duplication of multiple amended versions.

Judge Pullan asked that Mr. Drechsel’s proposal (and any other possible solutions to the problem) be placed on the next meeting’s agenda for further discussion in this committee.

(3) RULE 4-202.02 RECORDS CLASSIFICATION:

Recent changes in the law affected the options available to victims in juvenile court matters to collect restitution. In district and justice court matters, the restitution order can be entered as a civil judgment and the victim has the ability to use the judgment collection methods available for civil judgments. While the law requires the juvenile court to enter restitution orders as civil judgments, the juvenile court was not able to provide a collection mechanism for victims. A solution was created to this issue, whereby an abstract of the juvenile court judgment could be filed in the district court, which would permit the victim to pursue restitution collection via civil process. Those abstracts would not, however, preserve the confidential nature of juvenile court proceedings. The proposed amendment would classify the abstracts issued in connection with juvenile court judgments as “private.”

The committee discussed the process as it currently exists, as well as where the satisfaction of judgment might be filed. The committee discussed the proposed amended language to CJA 4-202.02(4)(A). No revisions to the proposed language were suggested or discussed by the committee.

With no further discussion, Judge Evershed made motion to recommend that this revision be approved by the Judicial Council to be published for public comment. Judge Walton seconded the motion. The motion was approved unanimously.

(4) HUMAN RESOURCES PROFESSIONAL APPEARANCE:

Mr. Parkes provided an update on revisions made to professional appearance policy. Since the previous meeting, and based upon the input of the committee at the August 3 meeting, Mr. Parkes revised the policy into a single “Standard Professional Attire Guideline,” removing the distinction between courtroom attire and business attire. Under the current version of this policy, as presented to the committee today, collared polo-style shirts are only permitted as part of casual Friday dress standards, or when special occasion permits, i.e. department outing, training, or directed by a department manager.

This committee discussed additional minor languages to the proposed guidelines, including the addition of some language to the first sentence of the Casual Day Guideline page (additional language in bold and underlined): “The casual day guideline is applicable on Friday, for full day trainings, or, **as occasion requires**, on a day designated by district or administrative management.”

After concluding the discussion, Judge Chin made motion to recommend to the Management Committee that this version of the professional appearance policy be adopted, with the corrections discussed by the committee during the meeting. Judge Evershed seconded the motion. The motion passed unanimously. Mr. Parkes will make those minor revisions prior to presenting the final version of the policy to the Management Committee.

(5) RECORDING/PHOTOGRAPHY IN COURTHOUSES:

The committee started (but did not finish) a discussion about rules related to recording and photography in the courthouses. Mr. Drechsel presented proposal for a new Rule 4-401. A proposed amendment was on the agenda for Rule 4-401.02, as well, but the committee did not undertake a discussion of that proposed amendment during this meeting. Rule 4-401 would provide a statewide policy regarding recording and photography in courthouses. This has been a topic of consideration by the AOC management committee and will be the subject of conversation at upcoming meetings and conferences.

The new rule may be drafted to allow (or require) each courthouse to identify a location within their respective building where recording and photography will be permitted. This proposed rule would not implicate recording or photography of actual court hearings by news media outlets as Rule 4-401.01 already addresses such activity and that rule appears to be functioning well.

The committee discussed whether the rule should authorize recording and photography which would allow law schools and/or educational entities to record for educational purposes (i.e., moot court, mock trial, etc.). The new rule, as presently drafted, allows presiding judges to authorize recording and photography for special purposes, i.e. adoptions, drug court graduation, etc.

Due to time constraints, discussion of the proposed Rule 4-401 for recording and photography in the courthouse will be continued at the next meeting. No action was taken by the committee as it relates to Rule 4-401 or 4-401.02 during this meeting.

(6) PROPOSED NEW RULE – CONSOLIDATION OF PROBATION:

Judge Pullan stated that final changes have been made on the rule for probation consolidation. The rule changes have been reported to Board of District Court Judges at its most recent meeting on August 24. The Board provided some feedback to the committee. That feedback was communicated to the committee by Mr. Drechsel and Judge Pullan. Mr. Drechsel addressed a concern that was mentioned by the Board related to the statutory language in the language Utah Code § 77-18-1(12)(b)(i) (requiring “the court that authorized probation” to review the affidavit alleging violation of probation). The Board recommended that the rule not be implemented unless that language was addressed legislatively so that the rule does not have to work around that language. This was a sentiment that the committee shared. The committee also considered feedback that would result in the proposed rule being amended to require that restitution determination hearings would remain in the sending court, so victims and witnesses would not have to travel to a new court location to participate in such matters. Finally, the committee discussed adding specific language that states that a prosecutor could oppose consolidation if victim rights issues existed in the case. The committee recognized that the prosecutor is always able to object to consolidation for that, or any other, reason. In fact, any of the involved parties could, under the terms of the proposed rule, object to consolidation of probation for any reason or no reason at all. For these reasons, the committee did not believe that it was necessary to spell out in detail any particular reason for objecting to application of the rule in any particular case.

The committee recommends sending the proposed changes of this rule to the Judicial Council for further review (including possible publication for public comment). Mr. Drechsel is instructed to clearly inform the Judicial Council regarding the recommended legislative amendment to Utah Code § 77-18-1(12)(b)(i) prior to adopting a final version of this rule. Judge Chin motioned to approve the recommendations as proposed. Judge Walton seconds the motion. The motion was approved unanimously.

(7) PROBLEM SOLVING COURT WORKING GROUP UPDATE:

Judge Fuchs provided an update on the problem solving court working group's efforts regarding the certification checklist. It was reported that the working group had reviewed each item on the adult certification checklist to determine which of the checklist items should be "Required." The working group proposed that several of the previously "required" items be classified as "presumed to be required." Several other minor amendments were made to the existing version of the checklist. Judge Pullan noted that there remain 53 "Required" items, 41 "Presumed Required" items, and 15 "Best Practice" aspirational items. There was specific discussion by the committee of a number of the "Required" items to determine if those really need to be classified as required.

The committee then turned its attention to CJA 4-409. The working group reported that it had not undertaken a separate review of amendments to that rule as part of its efforts, though the rule was used as a guideline for drafting of the checklist. The committee discussed the reasons why the list of requirements in the rule is so much shorter than the list in the checklist. The committee reviewed several items on the checklist and rule 4-409 for language clarification and to determine if the rule was duplicative of the checklist. The committee recommends that the certification checklist be sent to the Judicial Council for modification, which would include amendment to the minimum requirements of rule 4-409. The proposed amendments to the rule included: 1) striking the majority of Rule 4-409(5) (as those items were perceived by the committee, based upon the discussion, to be duplicative of items on the checklist); and 2) providing greater detail in the rule regarding the Judicial Council's options when reviewing the certification of a problem solving court (i.e., certify, conditionally certify, or de-certify) and provide time for a problem solving court to remedy any deficiencies identified during the certification review process. Mr. Drechsel will draft language and proposal for the changes for presentation to the Judicial Council.

Judge Fuchs noted that because the certification checklist is needed quickly for review of some problem solving courts, the checklist is presently on the Judicial Council's September agenda for review and adoption. Once approved, other problem solving court certification checklists (mental health, juvenile dependency, etc.) will be updated to reflect the same underlying changes.

Judge Walton motioned to submit the checklist to the Judicial Council for review as amended by this committee. Judge Evershed seconded the motion. Judge Walton's motion was approved unanimously.

(8) REVIEW 2019 COMMITTEE MEETING DATES:

The committee voted unanimously to cancel the July 2019 due to holiday and summer schedules.

(9) ADJOURN

The next meeting is scheduled for October 5, 2018, in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 2:10 pm.