

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

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
October 5, 2018 – 12:00 p.m. to 2:00 p.m.

MEMBERS:

PRESENT EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Augustus Chin		•
Judge Ryan Evershed	•	
Judge Kara Pettit	•	
Judge John Walton	•	
Mr. Rob Rice	•	

GUESTS:

Chris Palmer

STAFF:

Michael Drechsel

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting.

The committee considered the minutes from the September 7, 2018 meeting. No amendments were proposed to the draft minutes.

Mr. Rice moved to approve the draft minutes, with the previously identified amendment.

Judge Evershed seconded the motion.

The committee voted and the motion passed.

(2) UPDATES:

Judge Pullan updated the committee membership regarding the status of CJA 6-305 (working rule number for proposed new rule regarding consolidation of probation in district court criminal matters). Judge Pullan noted that the Judicial Council believed a legislative amendment to Utah Code § 77-18-1(12) was advisable prior to moving forward on this rule. No discussion occurred and no action was taken on this update item.

Judge Pullan updated the committee membership regarding a new project that will be addressed by the committee at the next meeting. This project is to amend CJA 3-201 / 3-201.02 as it relates to the Court Commissioner Conduct Committee. Ms. Jacey Skinner will be providing the committee with a proposed revision of the rules for future consideration. No discussion occurred and no action was taken on this update item.

(3) UPDATE ON CJA 3-414 – BAILIFF STAFFING ISSUES

Mr. Chris Palmer updated the committee membership on the developments related to proposed revisions to CJA 3-414 regarding bailiff staffing issues. The committee had previously discussed amending language in CJA 3-414 to

more clearly specify which hearings the sheriff would be required to bailiff. After further consideration between the last time this was addressed by the committee and now, Mr. Palmer has decided to recommend that the proposed revisions to CJA 3-414 be pulled for the time being so that a legislative solution can be pursued. Judge Pullan asked about whether the proposed legislative solution would be a joint request. It is not clear that it will (or won't) be. Mr. Palmer stated he would like the legislature to clarify the situation through amendments to the law. One of the primary issues to address is what the statute means when it says the sheriff shall "attend" court. The committee discussed the underlying issues and how the process would move forward. Mr. Palmer noted that the sheriffs are aware of the situation. Judge Pullan stated that this would be removed from the Policy and Planning work queue for the time being. No action was taken by the committee on this update item.

(4) PRESENTATIONS REGARDING ANNUAL REVIEW OF CJA:

Michael Drechsel, Judge Pettit, Mr. Rice, and Judge Pullan presented their notes of their respective reviews of the sections of the Code of Judicial Administration that were previously assigned, recommending future work to amend the rules, as follows:

Michael Drechsel – CJA 1-101 through 1-305:

CJA 1-304("intent" (8)): "assure" should be changed to "ensure"

Judge Pettit – CJA 2-101 through 2-212:

CJA 2-208(2): amend rule to show that official version of Code of Judicial Administration is online?

CJA 2-212: Communication to Office of Legislative Research and General Counsel (*the committee agreed that no action should be taken on this particular rule at this time*)

Mr. Rice – CJA 3-101 through 3-503:

CJA 3-101(4): in regarding to physical and mental competence is established if "the response of the judge" is complete and accurate. The question is, the "response" to what? The rule doesn't specify what the judge is responding to.

CJA 3-101(5) (not an actual section of CJA yet – draft version from previous project): would allow Judicial Council to certify a judge even if not meeting performance standards . . . this had been previously proposed but was seen as potentially diminishing the role of JPEC.

CJA 3-106(3)(B): should the rule be narrowed from "any individual, group, or agency" to a smaller subset of people? Is that list too broad?

CJA 3-106(5)(A): should the rule include "the Court Administrator, *or a designee*" in order to bring the rule into conformity with current practice

CJA 3-106(1)(d) and 3-107(1)(B): "The Council may endorse, oppose, amend or take no position on proposed legislative initiatives" and "The Council may endorse, oppose, or take no position on proposed executive policy initiatives" (respectively): should these be amended for consistency to state "The Council may endorse, oppose, recommend amendment(s) to, or take no position on proposed legislative initiatives / executive policy initiatives."

CJA 3-202: what purpose is this rule serving? Should other rules be amended to remove references to "referee"?

CJA 3-302 and CJA 3-303: Should these two rules be combined or at least revised for consistency? Why do district court clerks have more duties than justice court clerks? There isn't anything wrong substantively with these rules, but shouldn't they at least be consistent?

CJA 3-413: should this rule be revised to reflect modern practice?

CJA 3-417: why was this rule enacted? Is it necessary in light of the requirements of federal and state law? Rob Rice noted that this rule is a good idea and there is nothing wrong with it, but why is this a rule when there are so many other obligations that employers have that have not been reduced to rule?

CJA 3-501: should this rule be amended to include parental leave? Many employers are adding this as a benefit to retain employees.

Judge Pullan – CJA 3-101 through 3-307:

CJA 3-103(2) and 3-104(3)(O) and 3-111(1)(D): because justice courts now have presiding judges, should these rules be amended to put the responsibility on those judges (consistent with their district court counterparts)?

CJA 3-106(1)(d) and 3-107(1)(B): *see notes above regarding these same rules*

CJA 3-201 and 3-201.02: these rules are the subject of another recently opened project and will be addressed by the committee when a proposed draft of the revisions is received from Jacey Skinner.

CJA 3-202: this rule may need to be amended if the recommendations of the domestic case management processing committee are adopted (for the person responsible for designating the “track” a case will follow).

OTHER MINOR REVISIONS:

CJA 3-102(1)(C): add commas

3-104(3)(E)(i): strike the word “total” from the rule (awkward usage)

CJA 3-109(7)(A): change 30 days to 28 days

After the committee members outlined the above rules for possible revision, the committee instructed Mr. Drechsel to contact any relevant court personnel to inquire regarding the need for change. Mr. Drechsel is to report back to the committee at the next meeting with any input from those individuals, and with draft rules prepared for further discussion, if warranted.

(5) CJA 4-409 – COUNCIL APPROVAL OF PROBLEM SOLVING COURTS:

Judge Pullan reintroduced the matter to the committee. At the conclusion of the last meeting, the committee had agreed that the certification criteria in CJA 4-409 should be moved to the certification checklist. After that meeting, Mr. Drechsel was presented with a list of items that it was believed should remain in the rule. Mr. Drechsel incorporated those into the proposed draft version of CJA 4-409 found in the meeting materials. Mr. Drechsel walked the committee through the proposed draft. The committee spent significant time discussing subsections (5) and (6) of the proposed draft.

The committee discussed what “structural inability” means, noting that it isn’t clear what would be a “structural” inability. Specific “presumed” criteria were reviewed and discussed as examples of what it might mean to have a “structural inability” to meet those criteria. The committee wasn’t certain that the use of “structural inability” is too broad or too narrow because the scope of the term isn’t easily comprehended. The committee discussed the other criteria that were included in this draft of the rule. After discussion of subsection (5), the committee determined that as many of the “requirements” that remained in the draft rule should be moved to the certification checklist and presented to the Judicial Council at the October 22 meeting. If there are contrary opinions about that approach, those can be expressed at that meeting.

The committee then spent significant time addressing subsection (6) “Certification.” The committee made significant revisions to the draft included in the materials, including reordering the options available to the Judicial Council, and providing a more specific process for determining de-certification (including notice, opportunity to be heard, specific identification of the deficiency, and time to correct.

After all of the consideration of this item, Judge Pettit moved to recommend to the Judicial Council that this rule be approved, subject to the changes discussed in this meeting being incorporated into the rule. Judge Evershed seconded that motion. The motion passed.

(6) RECORDING / PHOTOGRAPHY IN COURTHOUSES:

Mr. Drechsel reminded the committee that they began discussion on this topic at the last meeting. Mr. Drechsel explained the purpose behind the proposed rule 4-401. Judge Pettit asked why the proposed rule 4-401 is even necessary, since the existing rule 4-401.02 seems to already cover (or be capable of covering) the issue. The committee discussed First Amendment “auditors”, individuals who are recording in jury assembly areas, requests to use the facilities for commercial purposes, and A/V Friendly areas in courthouses. Judge Pullan noted that he was very concerned about a person recording in the jury assembly areas, but is recording in the common areas of the

courthouses a real problem. Judge Evershed noted that in some courthouses (i.e., Vernal) the common areas are indistinguishable from areas where people are directly entering and exiting courtrooms for hearings, waiting for hearings, etc. Mr. Drechsel also pointed out that with the resolution of cameras, a person could approach the counters with a camera recording and could capture sensitive information while someone is performing their work. Judge Pullan feels a rule like 4-401 would be impossible to enforce. Judge Walton pointed out that the rule would allow action to be taken when the recording does become an issue. Judge Pullan noted that a tourist who wanted to take a picture in the rotunda would be prohibited by the rule. Judge Evershed noted that the general orders could allow for that. Judge Pullan wanted to know why the rule itself couldn't be drafted to accommodate such behavior. Judge Evershed and Rob Rice noted that the general orders would be tailored to allow recording on a per site basis, rather than trying to make a rule that accommodates every location in the state. Judge Pullan worries that the rule would cause people to feel that the courts aren't transparent. Judge Pettit still believes that the existing rule 4-401.02(3) has capacity to already deal with these issues. Judge Pettit did not want there to be inconsistency between rules. Judge Evershed noted that he liked the intent of Rule 4-401.02 (allowing use of devices) as opposed to the intent of proposed Rule 4-401 (to restrict action). Rob Rice wondered whether the rule language could state that court security has discretion to prohibit recording if it is disruptive or threatens to undermine court operations, noting that appropriate use of photography and recording seems to be the norm and inappropriate behavior is the exception. Judge Pettit noted that such language, as suggested by Rob Rice, already exists in Rule 4-401.02(3)(B)(iii). The committee discussed whether the rule should have discretion because that might start down the path of content-related enforcement. Judge Pettit continued to point out that the current version of 4-401.02 is capable of dealing with this.

The committee asked Mr. Drechsel to invite Brent Johnson to come present to the committee on this particular proposal in November.

(7) ADJOURN

The meeting adjourned at approximately 2:00 p.m. The next meeting will be held on November 2nd, 2018, starting at 9:00 A.M.