

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

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
November 2, 2018 – 9:00 a.m. to 3:00 p.m.

MEMBERS:

PRESENT EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Kevin Allen		•
Judge Augustus Chin (arrived at 11:00)	•	
Judge Ryan Evershed (via phone 11:27 to 14:18)	•	
Judge John Walton	•	
Mr. Rob Rice	•	

GUESTS:

John Bell
Jim Peters
Tom Langhorn
Rick Schwermer
Jacey Skinner
Brent Johnson
Nancy Sylvester
Rob Parkes
Jessica Van Buren

STAFF:

Michael Drechsel
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee members to the meeting. At the commencement of the meeting, there was not a quorum to make and vote upon motions. As a result, review of the meeting minutes from October (and any other matters requiring a quorum) was postponed until later in the meeting. Judge Kevin Allen was just appointed to the committee in the last 10 days. His schedule was not able to accommodate the meeting on such short notice. As a result, he was excused from the meeting.

(2) RULE 4-405 – JUROR AND WITNESS FEES:

John Bell reported that this rule required revisions to address changing business practices. State Finance changed the per diem rate to \$5.00. Mr. Bell proposed that the current rule be updated to reflect this change. The proposed changes would also clarify that the rate was “not to exceed state per diem rate.” The committee discussed additional language changes to rule 4-405 to further reflect alignment with current business practice. The changes also provide clarification for the issuance of payment of juror and witness fees and expenses. Payment will be processed and completed within 10 days of the juror and/or witness date. The committee asked questions of Mr. Bell to better understand the implications of the proposed changes.

With no quorum present, the committee tabled the matter for further discussion and possible vote when a quorum was present.

(3) RULE 3-403 – JUDICIAL BRANCH EDUCATION:

The committee welcomed Jim Peters and Tom Langhorn to the meeting. Mr. Peters discussed proposed changes to rule 3-403 in regards to the number of training hours required of justice court clerks. The current rule states that

justice court clerks need 10 hours. Justice court clerks are employed by counties / municipalities, while district court clerks are employees of the court. Mr. Peters would like to develop a program that would allow justice court clerks to get the same amount of training as district court clerks. The current policy needs clarification on required training hours for justice court clerk staff.

The committee recommended distinguishing between state employees and local employees as a means to distinguish differences between required training hours. The committee discussed changing the language to read: "All court staff employed by local government shall complete 20 hours of approved coursework." The committee also discussed language changes to clarify the certification and reporting location of justice court training on an annual basis.

Mr. Peters will meet with the court administrators to discuss the recommended changes made by this committee. Mr. Peters will return at the next meeting to provide this committee with an update. The matter was tabled until that time.

(4) RULE 4-202.02 – RECORD CLASSIFICATION (TABLE FORMAT)

Mr. Drechsel sought clarification regarding a project that had started prior to Mr. Drechsel's employment with the Courts. The committee re-affirmed that it wanted to move forward with creating a convenience version of Rule 4-202.02 that is formatted in a table layout. Mr. Drechsel was assigned to finalize preparations of the table-based version of the rule so that it can be added to the code website. Because this version is solely for convenience and merely restates the actual rule, no further process is required on this matter.

(5) RULES 3-201.02 / 3-201 – COMMISSIONER CONDUCT RULES:

The committee welcomed Mr. Rick Schwermer and Ms. Jacey Skinner to the meeting. They discussed potential proposed changes to the commissioner complaint process. Currently there are two different processes for complaints, one for formal complaints and one for informal complaints. The need to make changes to rule 3-201.0 and 3-201 is to provide clarification on the types of complaints filed against a commissioner and who addresses those complaints. Ms. Skinner reported that commissioners are often times aware that a complaint has been filed against them, but do not have clear knowledge of the complaint and who is addressing the complaint. Mr. Schwermer stated that commissioners are court employees and are not under the jurisdiction of the Judicial Conduct Commission, and therefore the complaint process would not be processed by the JCC, nor should the process necessarily be the same. Ms. Skinner described the details of the current process and procedures.

The committee discussed distinctions between informal and formal complaints against a commissioner. The committee discussed who is best situated to address a complaint. The committee discussed the possibility of having two complaint processes, one to address ethical complaints, and the other to address administrative/performance complaints. Judge Pullan stated that a presiding judge should not be a screener for commissioner complaints, but rather that the chairperson of the conduct commission would better serve in this capacity. Judge Pullan noted that ethical complaints are recommended to be addressed by the commissioner's presiding judge. Upon further discussion and consideration, the committee determined that there was not a meaningful way to distinguish between those complaints that might be classified as "ethical" as opposed to "administrative" in nature. All complaints appear to implicate ethical considerations.

The committee discussed specific draft provisions for possible revision of the rule. The committee then instructed Mr. Drechsel to create a draft for further consideration at the next meeting.

(6) APPROVAL OF MINUTES

Judge Chin then arrived at the meeting. With a quorum was present, the committee considered the minutes from the October 5th, 2018 meeting. With no objections or amendments, Mr. Rice moved to approve the draft minutes. Judge Chin seconded the motion. A vote was taken and the motion passed unanimously.

(7) RULE 4-405 – CONTINUED DISCUSSION FROM #2 ABOVE

The committee turned its attention back to this matter. Prior to a vote, Judge Chin was updated by the committee members regarding the information presented by John Bell, as well as the committee's discussions. After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-405 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

(8) DISCUSSION OF PREVIOUSLY IDENTIFIED RULES WHERE NO CHANGE IS RECOMMENDED / CORRECTION OF MINOR PUNCTUATION:

Mr. Drechsel then briefly updated the committee members regarding several rules that the committee had identified at the October 5th meeting. Mr. Drechsel reported that, after doing further research on these matters, he was recommending to the committee that the rules did not need any revisions at this time. Particular details, as follows:

Rule 3-417: The court is required as a public entity by the ADA to have a procedure to address rules and grievances concerns. The reason this is a public-facing rule and not just an internal policy is so the public can be aware of the information and act accordingly when the situation warrants.

Rules 3-303 and 3-302: Describes the role of the clerks of court. Mr. Drechsel reported that he had made contact with Kim Allard, Jim Peters, and Shane Bahr about any perceived need to amend these rules. None of those individuals believed any changes were warranted at this time.

Rule 3-202: The rule regarding court referees is not implicated by the domestic case tracking pilot currently taking place. No amendment is necessary.

Rule 3-102: Assumption of judicial office. The October review revealed that several commas could be added to the rule. The committee discussed whether it was better to simply make the change, push the changes through the full rulemaking process (even though it was merely three commas), or leave the rule alone. After discussion, it was decided to leave the rule alone.

After a review of all of the above, the committee determined that these rules did not need any revision at this time. No further action was taken by the committee in connection with these matters at this time.

(9) RULE 3-101(4) – JUDICIAL PERFORMANCE STANDARDS

The committee began its discussion of this rule, which deals with the standards for assessing judges. Shortly after beginning this conversation, the committee paused the discussion to accommodate guests who had joined the meeting to discuss the next agenda topic.

(10) RECORDING / PHOTOGRAPHY IN COURTHOUSES

Mr. Brent Johnson was welcomed to the meeting. Mr. Johnson had been invited to discuss a proposed rule to allow for recording or photographing in courthouses. There are three different common scenarios of recording in courthouses: the media; commercial use of the building; and regular patrons of the court. The Management Committee had asked Mr. Johnson to review the current policy and bring a proposed policy to Policy and Planning Committee for review. Mr. Johnson states that one proposal being discussed is to have judges dictate when and where recording should be allowed in their specific courtroom.

Mr. Johnson will conduct additional research on courtroom recording policies, and make additional revision to the proposed rule. Mr. Johnson will return at another date and provide additional information to this committee.

(11) RULE 4-403 – ELECTRONIC SIGNATURE AND SIGNATURE STAMP USE

Judge Evershed joined the meeting via phone just a few minutes into addressing this agenda item. Rule 4-403 allows for court clerks to electronically sign and use signature stamps on behalf of a judge or commissioner on orders and motions, with prior permission of the judge or commissioner. The proposed revisions would permit clerks to sign the equivalent of federal transport orders (i.e., “writs of habeas corpus and prosequendum and testificandum”). This same draft also would permit the use of signature stamps on orders of “domestic relations injunctions” under future URCP 109. The committee discussed the merits of these proposed changes.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-403 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

(12) RULE 4-202.09 – MISCELLANEOUS

Mr. Drechsel discussed that Rule 4-202.09 currently requires parties to label documents that are filed with a classification (private, protected, safeguarded, etc.). Many documents are not being filed with the required designation. Mr. Drechsel stated that e-filing has automated the designations based upon the filing type. The recommendation is that the requirement to classify the record at the top of the page be removed from this rule.

The committee discussed the deletion of this requirement and determined it would be appropriate; however, the Advisory Committee on Civil Procedures should review the entirety of Rule 4-202.09(10) to determine if action should be taken to move those provisions to the Utah Rules of Civil Procedure.

After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-202.09 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

(13) HR 590 – INTERNS AND WORK CONFLICTS

Ms. Nancy Sylvester discussed HR 590 that addresses the availability of court interns to hold a second job. The current policy does not allow court interns to maintain their current position with the court, while maintaining employment or volunteering in a law firm / other legal work. The proposed HR policy would require interns to screen themselves from cases in which their other employment or volunteer position is associated with the case. If the court intern is employed with a law firm that has presence before the court, the intern will recuse themselves from that case.

Judge Pullan raised concern that there is an automatic conflict of interest for a court intern to continuing to maintain employment with a law firm that appears before court. The court intern will have access to information pertaining to the case. The court intern may be perceived as having unlimited access to the case information, that could be shared with opposing counsel. Members of the committee were concerned about the appearance of conflict.

Mr. Rob Parkes stated that all court interns are subjected to court’s HR policies.

The committee made recommendations for language changes to the proposed policy. Even after the revisions were drafted, the committee was still not convinced that such a policy was advisable. The committee asked Ms.

Sylvester to invite members of the Supreme Court to attend the next committee meeting to help the committee better understand the situation so that a solution might be crafted, if at all possible. Ms. Sylvester agreed to return for the next meeting and will provide updated information to this committee.

(14) RULE 1-205 – STANDING AND AD HOC COMMITTEES

Mr. Drechsel explained that rule 1-205 is currently out for public comment for some earlier-approved revisions. This proposed amendment to Rule 1-205 is to include the court security director to the court facilities planning committee. The current court security director, Mr. Chris Palmer, has been attending these meetings as a non-voting participant. That committee suggested that Mr. Palmer be added as a member of the committee so that he may be able to may provide input and vote.

The committee did not have other additional concerns or questions regarding the proposed amendments. After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 1-205 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

(15) RULE 4-508 – GUIDELINES FOR RULING ON A MOTION TO WAIVE FEES

Mr. Drechsel briefly discussed an amendment to rule 4-508. This rule is currently out for public comment on other revisions. This additional amendment would clarify a party filing a motion to waive fees would only need to provide documentation in support of the affidavit if requested by the court. The committee discussed the matter.

After reviewing the matter, Judge Chin made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-508 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

(16) RULE 3-101(4) – CONTINUED DISCUSSION FROM #9 ABOVE

The committee resumed discussion of this item. Rick Schwermer re-joined the committee for this portion of the meeting. Judge Pullan suggested that this committee hold off making any changes to this rule until the committee can better understand the implications of proposing changes. The committee discussed whether the “intent” section of the rule is accurate and drafted language that was more descriptive of the actual intent of the rule. This rule will be brought back in January for further discussion.

(17) RULES 3-103, 3-104, AND 3-111 – PRESIDING JUSTICE COURT JUDGES

Mr. Drechsel reminded the committee that several rules needed to be updated in light of the recent adoption of a rule creating presiding judges in justice courts. These rules had been identified by Judge Pullan as needing attention from the committee for this purpose. The committee discussed minor revisions to each rule that would bring consistency to certain responsibilities of being a presiding judge, regardless of whether the involved court is a district court or a justice court.

After reviewing the matter, Judge Chin made motion to recommend to the Judicial Council that the proposed revisions to Rules 3-103, 3-104, and 3-111 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

(18) RULES 3-106 AND 3-107 – JUDICIAL COUNCIL OPTIONS ON LEGISLATIVE / EXECUTIVE INITIATIVES

Rule 3-106: clarifies the Judicial Council's ability to endorse, oppose and recommend amendments to, or take no position on Legislative (3-106) and Executive (3-107) matters.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rules 3-106 and 3-107 be published for public comment. Judge Chin seconded the motion. A vote was taken and the motion passed unanimously.

(19) RULE 2-208 – PUBLICATION AND DISTRIBUTION OF CJA

Rule 2-208(2) was identified by Judge Pettit prior to her reassignment. The rule appeared to be out of date in requiring the AOC and each TCE to "maintain" a copy of the Code for public access and review. The committee reviewed draft language that would bring the rule into a more modern age where the internet is the primary source of information for the public.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 2-208 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

(20) RULE 3-501 – INSURANCE BENEFITS UPON RETIREMENT

Rule 3-501 discusses ongoing insurance benefits for retired judges, justices, and commissioners. Judges, justices, and commissioners can qualify for 8 months of coverage if they do not use more than 4 sick leave days in the year. Currently, maternity leave is counted as sick leave. The proposed rule also designates parental leave as sick leave. The proposed language makes the rule more gender neutral. The committee briefly discussed the proposal.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 3-501 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

(21) RULE 3-109 – ETHICS ADVISORY COMMITTEE

At the last meeting, Judge Pullan identified this rule for a potential revision. Rule 3-109 currently provides the Board of District Court Judges 30 days to request a reconsideration of an ethics opinion. The proposed revision would change this to 28 days, being an amount of time that is divisible by 7 (as many other time period have become over the last several years). During the discussions, the committee determined that there was a need for the time period to be at least 30 full days, so that the Board would have an opportunity to meet prior to the request for reconsideration being required. After discussion, the committee decided to not pursue any change to this rule at this time.

(22) RULE 3-413 – JUDICIAL LIBRARY RESOURCES

Mr. Schwermer and Ms. Jessica Van Buren were welcomed as guests to the meeting. The committee discussed proposed language changes that have been proposed to rule 3-413 to reflect current practices. At the time the rule was created, electronic research resources were not as robust as print publications. The proposed revisions, therefore, also reflect the increasing importance of electronic research resources in court activities. The proposed revisions makes no change to actual current practices.

Ms. Van Buren indicated that the court has electronic access to Westlaw and HeinOnline, as well as other free resources. The committee discussed the need for printed copies, as opposed to electronic copies. Many judges

prefer printed copies. The committee recognized that both types of research materials are important. The committee discussed the proposed revisions in detail.

Following further discussion and additional minor language changes for clarification, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 3-413 be published for public comment. Judge Chin seconded the motion. During this conversation, Judge Evershed was disconnected from the meeting (at approximately 2:20 p.m.). A vote was taken with a quorum still present and the motion passed unanimously.

(23) ADJOURN

The meeting adjourned at approximately 2:38 p.m. The next meeting will be held on December 7th, 2018, starting at 12:00 noon.