

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

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
December 7, 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 Kevin Allen	•	
Judge John Walton	•	
Mr. Rob Rice	•	

GUESTS:

None

STAFF:

Michael Drechsel
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Circumstances required Judge Pullan, Judge Evershed, and Judge Walton to participate in the meeting via telephone. Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the November 2, 2018 meeting. With no changes, Mr. Rice moved to approve the draft minutes. Judge Chin seconded the motion. The committee voted and the motion passed unanimously.

(2) HR 590 – INTERNS AND WORK CONFLICTS:

Justice Himonas had a scheduling conflict that prohibited him from attending the meeting today. Arrangements have been made to have him participate in the January meeting.

The committee briefly discussed the draft policy. Judge Pullan noted that HR 590 would allow court interns to accept employment positions outside court, while simultaneously being employed as a court intern. The “Scope” section of the current draft notes that the policy is “an exception” to the general rule prohibiting such activity. Judge Pullan was concerned about creating that sort of exception to the general rule, and wasn’t comfortable with the language in the “Scope” section for that reason.

Judge Pullan also recommended that, at a minimum, the draft policy should include language making it clear that recusal should be both case-based AND issue-based. In other words, if an intern hasn’t worked on a particular case, but has worked on a particular ISSUE, that issue-based conflict should result in the intern’s recusal and screening from participating in the matter. Judge Pullan recommended changes to the draft on specific line numbers. Mr. Drechsel will make those changes and send the revised draft to Justice Himonas and Nancy Sylvester in advance of the next meeting.

The committee welcomes further discussion with Justice Himonas to continue exploring how to get to a workable policy. This matter was tabled until the January meeting.

(3) RULES BACK FROM PUBLIC COMMENT:

Mr. Drechsel reported to the committee regarding the four rules that had been published for public comment from September 28, 2018 to November 12, 2018.

- CJA 1-205 – Standing and Ad Hoc Committees: one comment was received for this rule in connection with the change related to the membership of the Committee on Pretrial Release and Supervision. Joanna Landau of the Utah Indigent Defense Commission (UIDC) commented that the intent and purpose of the amendment to the rule would be better served if the language stated “a person to represent the Utah Indigent Defense Commission, who is designated by the Commission’s Chair.” This would allow the chair to assign a staff member or designee at their discretion. Mr. Drechsel recommended changing the language to read “ the Director of the Indigent Defense Commission or designee.”

With no further discussion, Mr. Rice moved to recommend to the Judicial Council that the amended language, as described by Mr. Drechsel, be approved as a final change to the rule. Judge Allen seconded the motion. The motion was unanimously approved and the amended language (as well as the language regarding the Committee on Court Forms, which remained changed) is recommended to the Judicial Council for final approval.

- 4-202.02 – Records Classification: no comments were received.
- 4-508 – Guidelines for Ruling on a Motion to Waive Fees: no comments were received.
- Appendix I – Summary of Classification of Court Records: no comments were received.

With no further discussion, Judge Chin motioned to recommend to the Judicial Council that these rule changes be adopted for final approval. Judge Walton seconded the motion. The motion was unanimously approved.

(4) COURT COMMISSIONER CONDUCT COMMITTEE:

CJA 3-201.02 was last amended in 2004. This proposed amendment had first been considered by the committee at the November 2, 2018 meeting. Since that time, Mr. Drechsel has reviewed the current rule, the feedback from the committee from the November 2, 2018 meeting, and the court’s and Judicial Conduct Commission’s complaint resolution processes. Mr. Drechsel then took that information and prepared a draft of Rule 3-201.02, which draft was included in the committee’s meeting materials. Mr. Drechsel reviewed the draft with the committee. The committee discussed the draft, including significant conversation regarding confidentiality and when certain people should be notified a complaint was received and investigated. Several of the committee members stated that they believed it was not necessary for the commissioner or the presiding judge to be notified of the complaint unless the initial review was to result in additional investigation. Rob Rice suggested that the rule should be drafted so that “dismissal” isn’t so prominent. In other words, a complaint should move forward under certain circumstances. If the complaint is not advanced in the complaint resolution process, then it would be dismissed. But dismissal should not appear in the rule to be a desired resolution to the complaint process. The committee agreed that the Presiding Judge would need to be involved in the complaint resolution process, since by statute, the presiding judge is the court commissioner’s supervisor.

Mr. Rice inquired why the typical Human Resource policies for employees complaint resolution and discipline (since commissioners are employees) were not sufficient for this process. Mr. Drechsel informed the committee that commissioners and judges are excluded from the normal HR policies for typical employees and that the processes outlined in Rule 3-201.02 and 3-201 are the avenue for complaint resolution and sanctions against a commissioner. For this reason, Mr. Drechsel explained, it is important that the process be sufficiently detailed. The committee reviewed some of the procedures related to the Judicial Conduct Commission’s complaint resolution process, including the statutes and the associated administrative rules. The committee agreed that the court commissioner conduct committee process should be similar to the JCC processes (though perhaps not identical).

The committee discussed several language modifications of the rule for clarity. Without finishing a complete review of the draft rule, Judge Pullan suggested that the Court Commissioner Conduct Committee should be asked to provide direction on the complaint process outlined in the rule. The committee agreed with this approach to revising the rule. Mr. Drechsel was tasked with meeting with Judge Christiansen Forster, chair of the court commissioner conduct committee, to discuss recommendations made by this committee. Mr. Drechsel will bring this item for review at the January meeting.

(5) HR 480 – EMPLOYEE EXERCISE POLICY (NEW POLICY):

Mr. Drechsel reported that the TCEs have been discussing a new policy, numbered HR 480. Human Resources believes an employee exercise policy is a good way to improve employee satisfaction and attract more individuals to work for the court. The policy encourages wellness and fitness in the workplace. The committee membership all agreed that such a policy appears to address desirable purposes.

The committee discussed concerns regard two items in the policy. The first item addresses the time at which employees are allowed to use the exercise time described in the policy. The current policy allows for 30 minutes and must be used during the employees work time, contiguous with their lunch break. Judge Pullan believed this was unnecessarily restrictive and that the time should be available to the employee at whatever time works best for the employee and supervisor in meeting court staffing needs (including using the time at the beginning or end of the workday or at other times throughout the day). The committee agreed with this position, noting that supervisors would be in the best position to assess when an employee using such time would be least disruptive.

The second item is in regards to how this policy would relate to Workers' Compensation if the employee were to be injured during exercise time. Mr. Drechsel reported running this by David Lund (not mentioned by name in the meeting because Mr. Drechsel couldn't recall his name off the top of his head) at the State Department of Risk Management. Mr. Lund noted that similar policies were in effect for other state agencies, and appear to be working well. Mr. Lund wasn't sure that compensated time would ever not be considered subject to Workers' Comp claims. As a result of that feedback, and based on research conducted by Mr. Drechsel, the committee decided that it would be wise for the current policy to not address whether injuries would be subject to Workers' Compensation claims. There is a separate process available to determine applicability and speaking to that in the policy would not be outcome determinative.

An additional source of liability is if employees are able to bring in and store their own exercise equipment at courthouses. A few questions related to such equipment would be who would be responsible for maintaining and supervising the use of those items. Mr. Drechsel expressed concerns that it is a liability consideration for the court if an employee were to get injured during their workout when using their own, or another employee's, donated equipment on court property, especially if such equipment wasn't adequately supervised. Mr. Drechsel stated that the course of action that most clearly eliminates this potential liability is to prohibit the use or storage of donated exercise equipment on court premises. Mr. Drechsel also noted that this may be unpopular in certain areas where there may be a desire to have such equipment available on the courthouse.

Judge Allen stated that one way to resolve some of these concerns would be take a closer look at how similar policies are implemented in other agencies, including where there is equipment on-site. Judge Allen recommended that the State Capitol be contacted to see how they operate their exercise room. Mr. Drechsel will review employee exercise policies from other state agencies and conduct further research. Mr. Drechsel will provide recommended revisions to the current policy following his review and will bring this to the committee for review at the January meeting.

(6) ELECTION OF CHAIR FOR 2019:

Rule 1-204 states that "[t]he members of the Policy and Planning Committee . . . shall elect their respective chairs annually and select a new chair at least once every two years." Mr. Drechsel explained that Judge Pullan had become chair of the committee after a vote at the January 2017 meeting. Mr. Drechsel noted that, as a result, it was time for the committee to elect a new chair. The committee discussed the rule. Judge Pullan stated he is happy to continue to chair the committee unless someone else on the committee would like an opportunity to serve in that position.

Judge Allen nominated Judge Pullan to be elected as the new, continuing chair of the committee. Both Judge Walton and Judge Chin seconded the motion. The committee voted and the motion passed unanimously. Judge Pullan will serve as chair of the committee for 2019.

(7) ADJOURN

With no further items for discussion, Judge Chin motioned to adjourn the meeting. Judge Walton seconded the motion. The motion was approved unanimously. The meeting adjourned at 1:30 PM. The next meeting is scheduled for January 4, 2019, in the Judicial Council room at 12:00 p.m.

At the conclusion of the meeting, Mr. Drechsel noted that he has been asked to participate in the courts' Legislative Liaison activities during the upcoming legislative session. Mr. Drechsel will have conflicting schedules during the February 1 and March 1 meetings. The Committee requested that Ms. Sylvester staff those meetings in behalf of Mr. Drechsel. Mr. Drechsel will make the necessary arrangements.