

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

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
January 4, 2019 – 12:00 p.m. to 2:00 p.m.

**MEMBERS:**

**PRESENT    EXCUSED**

Judge Derek Pullan, <i>Chair</i>	•	
Judge Kevin Allen <i>* via phone starting at 12:45 p.m. until end of meeting</i>	•	
Judge Augustus Chin	•	
Judge Ryan Evershed <i>* via phone for entire meeting</i>	•	
Judge John Walton	•	
Mr. Rob Rice	•	

**GUESTS:**

Justice Himonas  
Rick Schwermer  
Nancy Sylvester  
Rob Parkes  
Brent Johnson

**STAFF:**

Michael Drechsel  
Minhvan Brimhall

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Pullan welcomed the members to the meeting. Judge Allen and Judge Evershed participated via telephone conferencing. The committee considered the minutes from the December 7, 2018 meeting. The committee identified one area of correction directing that the words “If such equipment is” be removed from the draft. With no additional changes, Mr. Rice motioned to approve the amended draft minutes. Judge Walton seconded the motion. The committee voted and the motion was passed unanimously.

**(2) HR 590 (500.11.2) – INTERNS AND WORK CONFLICTS:**

The committee continued its consideration of a proposed new HR policy dealing with work conflicts and interns. This matter had previously been discussed by the committee at its December 7, 2018 meeting.

Justice Himonas was present at the meeting and presented his view of the proposal for this new HR policy regarding court interns and work conflicts. He reported that the Supreme Court has had a number of interns over the last few years who have had simultaneous employment with law firms. The court is exploring ways to avoid putting the interns into the position of having to choose between getting a job and getting educational experience through the court internship. Justice Himonas and the committee reviewed the draft HR policy included in the committee materials packet, which included some revisions proposed by the committee as a result of the December 2018 committee meeting discussion. Judge Pullan asked if there had been a lack of interns applying because of this problem. Justice Himonas stated that it hasn’t been a problem because the policy hasn’t been observed. Justice Himonas noted that the Supreme Court isn’t concerned about this creating an appearance of conflict if the intern is recused from matters.

Judge Pullan directed the conversation toward line 16 of the proposed policy, regarding drafting the policy to address conflict at both the “case” level and the “issue” level (where an issue may be raised in a non-conflict case that is similar to an issue raised in a conflict case . . . should the intern be recused on both). Justice Himonas questioned such a prohibition for an intern, when law clerks don’t have that same limitation. He

explained that a law clerk might be hired after spending a year or two at a firm prior to coming to the court. During that time, the clerk might have been working on a particular issue, yet when they come to the court as a law clerk, they may end up working on that same type of issue, but not on any case that involves the firm. This is true even if they have an intent to go back to that same firm after clerking. Justice Himonas pointed out that the same is true for judges. Judge Pullan raised the hypothetical of two firms raising identical issues in the court, where an intern works at one of the two firms. The intern could work on that issue on a case unrelated to the intern's firm work, and then go to the intern's firm and report to the firm that a Justice feels a particular way about that issue relevant to the firm's case. Justice Himonas stated that an intern would not be able to do that. The intern would be recused on the separate case. And they couldn't do that regardless because any communication would be strictly off limits. The court makes it clear to interns that they take that information "to the grave" and if they violate that it would cost them their license. Justice Himonas reiterated that it would be odd to say a law clerk or a judge could do it, but an intern couldn't. Judge Pullan asked whether the "or issue" language should even remain in the proposed policy. Justice Himonas believed a heightened standard for an intern, that we don't have for anyone else, would be odd. Judge Walton noted that there isn't a policy for law clerks because they would be governed by the Rules of Professional Conduct. Judge Pullan noted that interns aren't. Justice Himonas pointed out that there would still be nothing to prevent the law clerk from working on a similar issue that they may have worked on as an attorney. Justice Himonas noted the language appears to be a solution in search of a problem and that this hasn't been something the court has ever had issue with. Justice Himonas thanked the committee and excused himself from the meeting.

The committee then continued its deliberations of the proposed rule. Judge Walton noted that he appreciates the committee's concerns, but also understands Justice Himonas' point about not have a rule that goes broader than it does with the law clerks. Mr. Rice wondered if "the issue" might be limited to one that would implicate a violation of the Rules of Professional Conduct. In other words, if an intern were working on an issue that wouldn't be a conflict for the lawyers at the firm, then it would be okay. The committee discussed the scope of the rule. Judge Pullan noted that he is worried about the perception of a policy like this because it creates an exception to the general prohibition against conflicts or the appearance of conflicts. The committee discussed the valid benefits to being an intern or law clerk, getting the internal experience of working at the courts, and that gaining that experience is one purpose for both working at the courts AND being hired to a firm afterward.

The committee further discussed whether it was a concern that the Rules of Professional Conduct do not apply to interns. What prohibits them from disclosing confidential information? Rob Parkes noted that the way this policy is presently drafted, it would apply to any interns who work at the courts (by implication noting that many of those will never be subject to the Rules of Professional Conduct or any restriction other than what is explicitly stated in the HR policies). Mr. Rice wondered if there were a way to make interns subject to the Rules of Professional Conduct via this HR policy. The committee discussed what the consequence would be for a violation (lose their internship?). Any remedy would only be able to be applied by the court.

The conversation turned to whether this is about actual conflicts or the appearance of conflict. The standard for the court is not only actual conflict, but even the appearance of conflict. Rob Parkes suggested that perhaps the policy could be narrowed to only address judicial interns. Judge Walton proposed the language "interns working under the supervision of a judge." Nancy Sylvester proposed the language "interns working in the same capacity as a law clerk." The committee agreed that the policy ought to be one that, after implementation, will actually be followed.

The committee invited General Counsel Brent Johnson to join the meeting. Judge Pullan presented the topic of discussion, explained the draft, summarized the various positions that had been presented, and sought Mr. Johnson's input on the "the issue" issue. Mr. Johnson noted that it is difficult even to know what "an issue" is. Mr. Johnson noted that it is the judge's obligation to ensure that the ethical standards are observed (including by interns working for the judge). The committee discussed what rules would guide the analysis of the policy

(Rules of Professional Conduct, Code of Judicial Conduct, etc.). Mr. Johnson noted that those rules weren't drafted with "the issue" issue in mind (they operate at "the case" level).

Judge Pullan circled back around to the idea of the perception of the conflict of interest, even where there is no actual conflict. Rick Schwermer noted that this policy only addresses the courts' obligations. What might be necessary is for the Rules of Professional Conduct to make clear that it is unethical for a lawyer or law firm to not screen an intern in the same way that a lawyer would be screen under similar circumstances. Judge Allen then joined the meeting via telephone. The committee continued to discuss the need to more clearly spell out the onus on the law firms involved with these interns. Mr. Rice noted that it may not solve the perception issue for the courts, but it does help address underlying issues. Some members of the committee continued to be concerned about potential ethical issues. Judge Walton suggested that the Judicial Council might be able to weigh in on the discussion, but it was determined by the group that taking an actual proposal to the Judicial Council would be the better course of action. The committee discussed whether a court policy should be formulated with hopes that the Rules of Professional Conduct might also be amended. The group agreed that any policy adopted by the courts should be sufficient on its own as a solid policy, without that sufficiency being dependent on action by some other body external to the courts.

The committee then turned to working on the actual language of the draft. The group agreed to include "the issue" issue, with an understanding that the concerns would be explained to the Judicial Council. Judge Walton proposed that "the issue" might be refined by including "a substantial issue" or "a materially related issue." Mr. Johnson suggested "an issue material to a case." Mr. Rice proposed "an issue material to the outcome of a case a firm is handling." These, and several other suggestions, were discussed by the committee. Mr. Johnson then left the meeting. Ultimately, after significant discussion, the committee settled on "material issue" as the language for the policy. The committee also added "immediately upon discovering the conflict" to clarify that notification is required when the intern knows there is a conflict.

The committee then discussed whether the draft should not include that the policy is an exception to when there is an actual conflict. The committee agreed that if there is an actual conflict, then there is no exception; the intern will be screened. So this policy really only speaks to an exception for circumstances where there is an "appearance" of conflict. The committee looked to the other policies cited in the draft rule ("500.8" and "500.11"). The committee reviewed the secondary employment policy (500.11) and the conflict of interest policy (500.7) located in HR500. In making that review, the committee determined that this policy fit more naturally within secondary employment (HR500.11) as opposed to being a stand-alone policy numbered HR590, as the working drafts have been, or being tied to the conflict of interest policy (500.7).

Mr. Rice then suggested that the matter was ready for motion, with recommendation that the appropriate body consider a similar amendment to the Rules of Professional Conduct (as discussed earlier in the meeting). With those proposals, Judge Walton made a motion that the proposed policy, as amended in the meeting, be advanced to the Judicial Council for further consideration. Mr. Rice seconded the motion. The motion passed unanimously.

### **(3) RULE 7-302 – SOCIAL STUDIES:**

Having spent so much time on the previous matter, the committee then took items from the agenda out of order so that priorities could be addressed.

Mr. Drechsel presented to the committee that Rule 7-302 was brought to this committee for review by Assistant Juvenile Court Administrator, Dennis Moxon. The proposed revisions modernize the rule, bringing the terminology and requirements up-to-date with current practice.

The most significant change to CJA Rule 7-302 is replacing the term “social study” with “court report.” In addition, the proposed revisions outline additional subjects that should be addressed in each court report, including victim impact information, substance use history, risk level (as determined by a validated assessment), risk-level-specific recommendations, and sentencing (disposition) guidelines. Finally, the revision clarifies that court reports are stored electronically in the minor’s file. These revisions have all been approved by the Board of Juvenile Court Judges.

Judge Evershed noted that these changes (as outlined in the revised rule) have been in practice for some time and agrees that the amended changes are appropriate and necessary. After the committee was provided an opportunity to discuss the matter, Judge Evershed motioned to approve and accept the changes as proposed. Judge Chin seconded the motion. The motion was unanimously approved.

#### **(4) RULES BACK FROM PUBLIC COMMENT:**

Mr. Drechsel noted that there were a number of rules back from public comment, as enumerated in the agenda. Of the rules that had been published for comment, one only had received any comments (the certification checklist that had been published with CJA 4-409).

- Certification checklist published with CJA 4-409 – Council Approval of Problem Solving Court:  
One comment was received related to the checklist. That comment addressed three concerns with three items in the checklist.

First, concern was expressed in how the rule is written regarding the chain of custody in “Required Rule #28.” The committee considered this comment and then elected to not recommend any change to the checklist.

Second, the comment encouraged the court to avoid pejorative language in “Required Rule #31” using the word “clean” to indicate that a drug test result shows that the tested sample was negative for any forbidden substance (in other words, that the test result showed that the person was compliant with the drug-testing requirements). The committee agreed with this feedback and instructed Mr. Drechsel to amend the language to use non-pejorative language.

Finally, the comment expressed a concern over the size / number of participants on a drug court calendar (related to “Presumed Rule #36”). The committee discussed this comment and the reasons why the comment was made. Ultimately, the committee determined that no modification would be recommended to the Judicial Council.

With those changes, Judge Walton motioned to recommend that CJA 4-409 and the certification checklist as published (with the single change to “Required Rule #31”) be recommended to the Judicial Council for final approval. Judge Chin seconded the motion. The motion passed unanimously.

The committee then reviewed the remaining rules that were back from public comment.

- CJA 1-205 – Standing and Ad Hoc Committees.  
No comments received.
- CJA 2-208 – Publication and Distribution  
No comments received.
- CJA 3-103 – Administrative Role of Judges  
CJA 3-104 – Presiding Judges

CJA 3-111 – Performance Evaluation of Senior Judges and Court Commissioners

No comments received.

- CJA 3-106 – Legislative Activities

CJA 3-107 – Executive Branch Policy Initiatives

No comments received.

- CJA 3-413 – Judicial Library Resources

No comments received.

- CJA 3-501 – Insurance Benefits Upon Retirement

No comments received.

- CJA 4-202.09 – Miscellaneous

No comments received.

- CJA 4-403 – Electronic Signature and Signature Stamp Use

No comments received. Mr. Drechsel informed the committee that the proposed amendment in this rule related to “domestic relations injunctions may not be ready for adoption at this time because it ties to URCP 109 which may not yet have been adopted. The committee instructed Mr. Drechsel to hold that specific amendment until URCP 109 is officially adopted.

- CJA 4-405 – Juror and Witness Fees and Expenses

No comments received.

- CJA 4-508 – Guidelines for Ruling on a Motion to Waive Fees

No comments received.

With no further discussions, Judge Walton motioned to move all rules, with the exception of that one portion of CJA 4-403, to the Judicial Council for final approval. Judge Chin seconded the motion. The motion was approved unanimously.

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

HR 480 is a proposed court employee exercise policy that has been presented by the TCEs. The policy would allow approved employees the opportunity to break from their work day schedule for a 30-minute workout, up to three days a week. The policy has been reviewed and discussed several times as to the merits and context of the policy. Rob Parkes reported that the TCEs and others who had reviewed the proposed policy wanted to keep the exercise time tied to the lunch hour, whenever that lunch hour happens for a particular employee.

Due to time constraint of this meeting, this item was tabled and will be discussed at the February meeting.

**(6) COURT COMMISSIONER CONDUCT COMMITTEE:**

Due to time constraint of this meeting, this item was tabled and will be discussed at the February meeting.

**(7) ADJOURN**

With no further items for discussion, Judge Chin motioned to adjourn the meeting. Mr. Rice seconded the motion. The motion was approved unanimously. The meeting adjourned at 1:57 PM. The next meeting is scheduled for February 1, 2019, in the 2nd Floor Board Room (N231) at 12:00 noon.