

**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 6, 2019 – 12:00 p.m. to 2:00 p.m.

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Judge Mary Noonan
Chris Palmer

STAFF:

Keisa Williams
Michael Drechsel
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the August 2, 2019 meeting. With no additional changes, Judge Chin moved to approve the draft minutes. Judge Walton seconded the motion. The committee voted and the motion was unanimously passed.

Judge Pullan welcomed Keisa Williams back to the committee. Ms. Williams will take over staffing duties of the committee from Michael Drechsel.

(2) STATE AUDIT RE: EVIDENCE, CJA 4-206 (EXHIBITS), AND SANDOVAL V. STATE:

On August 27, 2019, the State Auditor released Performance Audit 19-03 “An Audit of Evidence Storage and Management Among Selected Utah District and Juvenile Courts.” The audit identified multiple issues requiring immediate attention by the Court. Judge Noonan provided background on the audit’s findings, action planning that has already begun, and a summary of some implications for Policy and Planning.

The court failed the audit, but it has presented an opportunity to look at an area of practice in much need of attention. The focus of the audit centered around compliance with Code of Judicial Administration rule 4-206, addressing proper procedure and management in securing of exhibits and evidence. Specifically, the audit addressed property evidence, including drugs, weapons, paraphernalia, large-sized items, dangerous pieces of evidence typically the subject of chain of custody protocol.

Within 10 days of the audit, Mr. Chris Palmer was instructed to contact all trial court executive to ensure that all physical evidence was properly secured by the end the week. Judge Noonan has received confirmation that all items are now properly secured. Judge Noonan outlined three steps in the action plan for becoming compliant with the rule: 1) secure all items on site at each location, 2) come into compliance with the current rule (4-206) – this will have several administrative components, including inventory of items on site, inventory current practice (this varies widely across all court locations), train to the current rule, and a create a disposition or disposal plan for those items that are currently on site, and 3) identify implications for policy and planning.

The audit has raised questions, not just about how to comply with the current rule, but also about what the rule should say. Mr. Palmer has reviewed current practices across the State and similar practices at the federal level. In the federal court, no evidence is held at the courthouse. For example, a federal marshal who enters the courtroom with a gun for evidence will either remove the gun from the courtroom during a lunch break, or will stay in the room with the gun during the lunch break. Judge Noonan noted that Utah courts may want to look at federal practices or some other practice to better secure and protect exhibits presented at trial. Judge Noonan noted that this is an opportunity to look at the rule and change some of the presumption and the manner in which we are to conduct ourselves in this regard.

Judge Noonan and Mr. Palmer recently met with the TCE's. Four deliverables were identified. 1) Within the next 10 days, Brent Johnson will be releasing a memorandum to all presiding judges with guidance on this issue, including a proposed order that PJ's may want to sign to effectuate the management of evidence in the short term. 2) The Second District Court developed a local procedure based on the current rule with practical steps to aide them in managing property evidence. The AOC will distribute their practice to all TCE's and Clerks of Courts for consideration/implementation. 3) The AOC will pause any destruction of property that may already be in local evidence rooms or evidence safes. The destruction or disposal of items that may currently be on site is on hold until further notice. Everything will remain secured. 4) Within 10 days of this date, a proposed action plan will be developed, including recommended timeframes for Policy and Planning to consider the issue. Judge Noonan noted that the goal is to have the action plan approved, implemented, and come into compliance with the current rule within the next 2-3 months. Judge Noonan would like PJ's to be educated and the evidence custodian at each site trained as quickly and efficiently as possible. The action plan should allow Policy and Planning the opportunity to consider the larger issue of whether or not the court should take a completely different trajectory with respect to these issues and recommend a wholesale rule change.

Judge Pullan noted that in civil cases, he receives numerous exhibits into evidence which sit on his bench when they take a break, but the courtroom is locked. Judge Pullan expressed concern about moving toward a policy requiring documentary evidence to be booked into an evidence room. Many times the judge brings the exhibits into chambers.

Judge Noonan stated that in some court locations documents in civil cases are being placed in the evidence room, however, the majority do not. The focus of this work will be on vulnerable property. Ultimately, Policy and Planning will need to determine and define which items must be locked up and which do not.

After discussion, the Committee determined that this item should be included on the committee's agenda until action on its part is required. Judge Noonan and Mr. Palmer will provide a status report at future meetings and will keep the committee updated on the AOC's progress. Judge Pullan stated that his sense is that courts generally should not be in the business of acting as an evidence room. In light of the *Sandoval* case, the committee is interested in learning about the federal court model, and how it could be implemented in state court.

(3) HR550 – HARASSMENT POLICY:

Rob Rice provided an update on the harassment policy. The Human Resources Committee considered the policy as it is currently drafted. There are two outstanding issues: 1) drafting and 2) policy/administrative. The minor drafting items can be easily cleaned up at the next HR meeting. The HR Committee raised process questions regarding the complaint and investigation procedure section. There is a reference to the Human Resources Department following up with an investigation, and the Committee considered whether the policy should identify who would conduct that investigation. In Mr. Rice's view, the policy doesn't need to reflect that level of detail. That's a function of the Human Resources Department knowing how to respond to a complaint and knowing how it's going to be investigated. The policy is on the HR Committee's agenda for review at the October meeting. Mr. Rice believes the policy may be in final form after the October HR meeting and ready for review by the P&P

Committee by November. Mr. Rice also noted that the harassment policy will be briefly addressed during the anti-discrimination session at the annual judicial conference next week.

Judge Chin discussed sections 2.2.4, noting that any unwelcome sexual flirtations would be inappropriate so there shouldn't be a need for "or inappropriate." Judge Pullan questioned whether the language in 2.2.5 was too vague. "Statements about an individual's body" could include a judge commenting on an employee showing up to work in a boot on their ankle from an injury over the weekend. Mr. Rice proposed changing the language to "unwelcome or inappropriate statements about an individual's body or sexuality."

Mr. Rice also noted that the HR Committee raised a question about whether employees know who the managers, supervisors, or members of management are. Mr. Rice recommended that the court allow employees to report to any supervisor or manager with whom they feel comfortable. The question is, what in the AOC or what in the courts is the equivalent of a supervisor or manager with whom they feel comfortable reporting sexual harassment.

Mr. Drechsel noted that some locations have multiple levels of management for reporting and the policy is written in a manner that any manager may be identified as someone the employee may report to. The committee discussed that it may be helpful to list the chain of management (clerks of court, TCEs, judges, etc.) within the rule as guidance to help in identifying whom to report. Mr. Drechsel will be meeting with the HR Committee on October 1st and will address this area of concern.

Judge Pullan noted at the June P&P meeting, that Judge Pullan, Judge Walton and Judge Cannell were assigned to create a process by which the state court administrator's performance could be reviewed, as well as other high level managers within the AOC. The committee discussed where a person goes to report when the complaint is made against the HR Director. Mr. Rice recommended having multiple points of contact when addressing complaints against high-level managers. This would create room for safety and comfort for the employee to express their concern in an open and welcoming environment. The committee noted that any manager with state-wide authority would be one in which an employee may report concerns of a high-level manager.

Judge Pullan suggested listing those employees considered high-level managers in the policy. Mr. Rice expressed concern because identifying a discrete group of employees (i.e., high-level administrators), in some ways could have a chilling effect for employees who want to complain about those individuals because the policy itself sets them apart, possibly suggesting that it's a bigger deal to complain about those people than anyone else. We could look at strengthening the sections that already do a good job of making it clear that everyone is subject to this policy from low-level employees all the way up to Supreme Court justices. In looking at section 5.2, Judge Pullan questioned whether judges should be in the reporting chain. Mr. Rice stated that this policy is intended to convey that supervisors and managers have a special obligation under the law to investigate and stop the harassment conduct. Because judges are in a position of authority, they have an obligation to make sure HR gets involved in a situation and stops the harassment.

After discussion, the Committee asked that the policy be put back on the agenda after the HR Committee has completed their work and provided any additional recommendations for review. Mr. Rice will make additional changes to the policy and send it to Mr. Drechsel for review. Mr. Drechsel will discuss the changes with the HR Committee and provide an update to Policy and Planning on another date.

(4) RULES BACK FROM PUBLIC COMMENTS:

Mr. Drechsel reported that CJA 4-401.02 has recently returned from public comment. One comment was received. The comment focused on allowing hearings to be broadcasted publicly as a means to avoid the need for submitting records requests. The comment does not address the basis of the rule.

This committee duly considered the comment and determined no additional changes to the rule were needed. CJA 4-103 has also returned from public comment. No comment was received. With no further discussion, Judge

Walton moved to approve CJA 4-101.02 and CJA 4-103 as drafted and moved that they be submitted to the Judicial Council for final approval. Judge Cannell seconded the motion. The motion was unanimously approved.

Mr. Drechsel will prepare a memorandum to the Judicial Council for final approval of CJA 4-401.02 and 4-103.

(5) UPDATE TO PROBLEM-SOLVING COURT CERTIFICATION CHECKLIST:

At the August Judicial Council meeting, Judge Fuchs addressed a concern with the council regarding criteria #2 on the problem solving court checklist. The criteria indicate that the drug court would be responsible for tracking whether disadvantage groups are completing the program at the same rate as other groups. Judge Fuchs indicated that unless IT is able to create an automated process to track this information and store it in an accessible database, it would not be prudent for the courts to track it. The Council recommended changing the title of the criteria from "Presumed Certification Checklist" to "Non-Certification-Related Best Practice Standard." Mr. Drechsel noted that he has made the change as requested in the draft.

Mr. Drechsel questioned whether the court needed to wait for an IT solution, or whether there was a way to track it manually now. Utah County captures race in its drug court application. Washington County does not include a question about race on their application. Uintah County allows individuals to self-identify certain information but it does not identify whether they are a disadvantage participant. Race is not asked in Cache/Box Elder County. After discussion, the committee determined that courts should not be required to track that information until an IT system is available.

Mr. Rice moved to adopt Mr. Drechsel's provision to change "Presumed Certification Checklist" to "Non-Certification-Related Best Practice Standard." Judge Cannell seconded the motion. The committee voted and the motion was unanimously passed.

Mr. Drechsel and Ms. Williams will follow-up with the courts' IT department to identify an approximate completion date or where the project falls on IT's priority list.

(6) REPEAL OF CJA 10-1-202:

CJA 10-1-202 is a local supplemental rule in Second District Court. The rule is no longer being used in practice. The Second District is requesting that the rule be repealed and it has been vetted by Mr. Johnson.

With no further discussion or concerns by the committee, Judge Evershed moved to repeal CJA 10-1-202 and forward to the Judicial Council for public comment. Judge Cannell seconded the motion. The committee unanimously approved the motion.

(7) CJA 1-205 STANDING AND AD HOC COMMITTEES:

Code of Judicial Administration 1-205 defines memberships for all Judicial Council standing committees, including the Resources for Self-represented Parties Committee and the Committee on Court Forms. An OCAP Committee representative is listed as a member on both of those two committees, however, the OCAP committee no longer exists. It is recommended that the OCAP position be removed from the membership list on both of these committees.

Mr. Drechsel spoke with Nancy Sylvester who staffs the Committee on Self-represented Parties, as well as Mr. Johnson who staffs the Forms Committee. Mr. Johnson does not have any objection to removing this person from the Forms Committee. Ms. Sylvester stated the current representative from the OCAP committee provides valuable

contribution to the committee and she expressed concern that losing that individual would greatly diminish the work of the Self-represented Parties Committee.

Ms. Williams stated that the Self-represented Parties Committee has 17-18 members, so losing one shouldn't negatively impact their work. The committee can allow a person to attend the meeting and continue to provide meaningful insight. They wouldn't be a voting member, but could still fully participate. In the alternative, the committee has the ability to propose an amendment to their committee membership creating a different position or title in order to retain the expertise they're concerned about losing.

Judge Walton noted that it would be helpful for this committee to understand the role an OCAP person adds to these respective committees and determine whether their expertise should remain with the committee. The committee discussed various language changes that would allow for modification of the committee membership: "Court Services Director or designee" or "OCAP Advisory Group member." Judge Pullan noted that it would be beneficial to understand the Self-Rep Committee's concerns and preferences in losing the OCAP member.

After further discussion, Judge Cannell moved to table rule 1-205 until Ms. Williams is able to gather more information from the Self-Rep Committee's staff. This will be discussed at a future meeting.

(8) MISCELLANEOUS ITEM:

Mr. Drechsel stated that the April 2020 Policy and Planning Committee meeting is scheduled for Friday April 3rd, which is the same day as the Spring Conference. P&P will be meeting in March to discuss legislative updates. The committee opted to cancel the April 3, 2020 meeting.

(9) ADJOURN

With no further items for discussion, Judge Cannell moved to adjourn the meeting. Judge Walton seconded the motion. The meeting adjourned at 1:15 p.m. The next meeting will be held on October 4, 2019 at 12:00 pm (noon).