

**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 1, 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:

Shelley Waite
Brent Johnson

STAFF:

Keisa Williams
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 October 4, 2019 meeting. With no changes, Rob Rice moved to approve the draft minutes. Judge Chin seconded the motion. The committee voted and the motion was unanimously passed.

(2) CJA APPENDIX F. UTAH STATE COURT RECORDS:

Mr. Johnson reviewed two proposed amendments. The Legislature changed the statute last year making domestic violence misdemeanor offenses enhanceable for 10 years. The first amendment moves the language regarding DV misdemeanor offenses from the 5 year section to the 10 year section. The second amendment eliminates the reference to Rule 9-301 under (B)(5)(a) because that rule has been repealed and records can now be destroyed at the same time as the case file.

With no further discussion, Mr. Rice moved to approve the rule as amended. Judge Cannell seconded the motion. The committee voted and the motion unanimously passed. The approved amendments will go to the Judicial Council for approval for public comment.

(3) RULES BACK FROM PUBLIC COMMENT:

CJA 4-410. (New) Courthouse Closure.

This is a new rule. The purpose is to establish protocols for presiding judges, court staff, and other affected stakeholders in the event a courthouse needs to be closed or its opening delayed. It is back from public comment. No comments were received.

Shelly Waite, Trial Court Executive for the 4th District Juvenile Court, reported questions from the TCEs regarding the practical application of some of the requirements under the rule. Starting at line 25, the rule discusses an "order." There is some confusion among presiding judges and TCEs about what elements should be included in the order. Ms. Waite asked whether there was a template order that jurisdictions could use to ensure they are in compliance with the rule. Similar practical questions included: where does

the order go, how is the order used, what is the difference between an order and a notice, what is the timing for issuing notices and orders? Ms. Waite didn't have any recommendations regarding language changes in the rule itself, but thought an outline of the timeline and procedural requirements, and a template order would be most helpful.

Ms. Williams offered some suggestions based on her understanding of the rule, including the difference between a notice and an order, the timing and elements for each, and the communication requirements and timing. Depending on the situation and jurisdiction, it may be difficult to post a notice on the courthouse door during inclement weather. Ms. Williams stated that those procedures probably shouldn't be outlined in the rule because every jurisdiction and circumstance may require a different approach. Mr. Rice asked whether there are other circumstances in which presiding judges issue administrative orders. Judge Pullan stated that there have been administrative orders signed by the Chief Justice posted in the building.

Ms. Williams provided a bulleted outline of the procedures under the rule. The Committee discussed whether the order should be retained and by whom. Judge Pullan stated that keeping the order may be important if, for example, a party missed a filing deadline and the statute of limitations had run. He suggested that orders be kept centrally by the AOC because there are no case numbers associated with them. Judge Cannell stated that his jurisdiction keeps a binder of standing orders. Ms. Waite stated that they have shared files where those items are stored. The Committee determined that orders should be sent to the State Court Administrator's Office and be retained by the TCEs or presiding judges.

Judge Pullan suggested that a form order with check boxes be created for use as a starting point for judges, especially given that these situations don't arise often. Ms. Williams will create a draft template order, with a procedural checklist as the first page, and include it on the next agenda. Judge Pullan stated that presiding judges need to make these decisions in consultation with the TCEs and that requirement should be included in the procedural outline. The outline should also include the procedure for retention of the order. Judge Pullan suggested that a new provision, subsection 9, be added to the rule to include the retention requirement.

Mr. Rice asked whether the court could send electronic closure notices via the e-filing system. Ms. Williams noted that if it's possible, it's unlikely that the system could send notices only to specific jurisdictions. If notices can be sent, they would likely have to be sent to everyone. The Committee felt a message to everyone would be okay as long as the affected court was named because many attorneys travel to different courts. Ms. Williams stated that there may be multiple messages in one day at different times based on when a jurisdiction makes a decision to close. Judge Chin stated that the multiple notices would be anticipated as weather travels across the State. The messages should also be included in the MyCase system. An electronic notice requirement could be added as (5)(C). The Committee discussed whether notices could be sent by the State Bar. Mr. Rice stated that his concern with a Bar email is that it would introduce a middle person. The emails notifying attorneys that the e-filing system is down comes from the court.

The committee recommended that this item be tabled to allow Ms. Williams time to speak with the IT department to determine capability, costs, and time frame of electronic closure notices. Ms. Williams will seek feedback from the TCEs on the draft order template and invite Ms. Waite back to the next meeting when Rule 4-410 will be discussed. No motion was made for this item.

(4) 1-204. EXECUTIVE COMMITTEES:

In June of this year, the Judicial Council created an "Interim Ad Hoc Budget Committee." CJA 1-204 outlines the three current executive committees. CJA 1-205 outlines the Council's authority to create ad hoc committees. CJA 3-406 addresses the court's Budget and Fiscal Management policy and

responsibilities. Judge Pullan stated that the Judicial Council voted to make the Budget and Finance Committee a permanent executive committee, requiring amendments to CJA 1-204 and CJA 3-406.

The committee recommended changing the name of the Budget Committee to “Budget and Fiscal Management Committee” in both rules 1-204 and 3-406 to be consistent with the language in 3-406. Judge Pullan recommended that the role of the Budget and Fiscal Management Committee should be to make recommendations to the Council regarding budget management and budget development in accordance with 3-406. Mr. Rice stated that the need for the committee was born out of a desire to be more anticipatory about budget issues, especially those that might arise during the fiscal year so that the Council can be less reactive. The Committee agreed to reference 3-406 in 1-204.

Ms. Williams stated that Judge Noonan expressed a need for changes to the responsibility of the state court administrator outlined in 3-406 based on the Council’s discussions. Judge Pullan noted that any Council decision regarding the budget would be informed by the Budget and Fiscal Management Committee’s work, so it may not be necessary to change the Council’s responsibilities or add a section for the Budget Committee in 3-406.

Under (2)(B), the state court administrator can order reductions or reallocation of funds upon notice to the Council. The committee removed that authority because the SCA will now be making recommendations to the Budget Committee. The Budget Committee will make recommendations to the Council about priorities, initial allocations, and reductions or reallocations. The SCA will implement the Council’s decisions.

Judge Walton moved to approve the suggested amendments to both rules. Judge Cannell seconded the motion. The motion was unanimously approved. The amendments will go to the Judicial Council for approval to be sent out for public comment.

(5) 4-905. RESTRAINT OF MINORS IN JUVENILE COURT:

The proposed change is minor. It came out of Judge Evershed’s annual review. The amendment was on hold because Nancy Sylvester was proposing unrelated changes to 4-905 and the Committee intended to make both changes at once. However, Nancy’s project has since been placed on a permanent hold so Ms. Williams recommended moving forward with the change. The proposed amendment is to remove subsection 36 from the reference to 78A-6-105 because the statutory subsections continue to change.

With no additional changes or further discussion, Mr. Rice moved to accept amendments to rule 4-905 as presented. Judge Chin seconded the motion. The motion unanimously passed. The rule will go to the Judicial Council for approval for public comment.

(6) 3-201. COURT COMMISSIONERS and 3-201.02. COURT COMMISSIONERS CONDUCT COMMITTEE:

Policy and Planning reviewed revised drafts of rules 3-201 and 3-201.02 in March and May 2019. At its May 3rd meeting, the Committee asked Mike Drechsel to prepare edits in light of the committee’s discussion. The recommendations from that meeting were to change “sanction” to “corrective action,” make it clear that both the Council and the presiding judge can take corrective actions as the result of a complaint or poor performance, include removal as a possible corrective action, and to remove language regarding records access.

Judge Pullan made two suggestions: In 3-201.02(3)(A), remove the requirement that Commissioners pay a fee to obtain a copy of the record of a court commissioner conduct committee hearing. In 3-201.02(4), the 30 day time requirement for filing objections to committee findings should be moved under subsection (3) because that section discusses the conduct committee hearing process. Objections should

be filed with the conduct committee, not the Council, because the conduct committee will be in the best position to determine how objections should be resolved. The Council will receive the complete file, including the objections and how they were resolved, from the conduct committee. After discussion, the Committee agreed with both suggestions.

Mr. Rice stated that the rule seems to lack an appeal process. He asked what happens after a finding in a complaint against a judge before the judicial conduct commission. Judge Pullan stated that these rules should be modeled as closely as possible with the judicial conduct commission process. Mr. Rice suggested that Ms. Williams review the Code of Judicial Conduct to see whether these rules are mirroring the judicial conduct commission procedures and bring the rules back to the Committee with proposed changes.

No motion was made to this item at this time.

(7) 3-111. PERFORMANCE EVALUATION OF ACTIVE SENIOR JUDGES AND COURT COMMISSIONERS:

The request for this change came from the Forms Committee. As part of the Forms Committee's review of forms for reporting cases under advisement, they noticed different standards in the rules for active judges versus senior judges and commissioners. The proposed amendment is a technical change from "60 days" to "two months" to be consistent with the statute and other rules. The change would allow all judicial officers to use the same form.

With no further discussion, Mr. Rice moved to approve the rule as amended. Judge Chin seconded the motion. The motion unanimously passed. The rule will go to the Judicial Council for approval for public comment.

(8) ANNUAL REVIEW PROJECT:

Ms. Williams reviewed the list of rules up for review in 2020. Judge Walton and Judge Evershed are set to review the rules listed. They will present any proposed amendments to the Committee at the September 4, 2020 meeting to allow for final adoption by November 1, 2020.

(9) OLD BUSINESS/NEW BUSINESS:

The Board of District Court Judges would like to be informed and included in meetings where Policy and Planning will be discussing rules which may affect district court judges. When adding items to the agenda, Ms. Williams will consider who may be affected and then extend a broad invitation to all stakeholders that might be impacted. The goal is to increase transparency and communication.

Judge Cannell suggested that the Council or Committee member scheduled to report to the Board of District Court Judges should provide a synopsis about items which came directly from the Board. If the reporting member isn't on the Policy and Planning Committee, a P&P member should prepare the reporting Council member with a status update. It might also be beneficial to reach out to the Chair beforehand and ask what they want to hear about. The reporting member would then report back to the Policy and Planning Committee about the Board's feedback. The Committee agreed. Judge Walton reported to the BDCJ in Price. He suggested that the reporting member stay for the entire Board meeting to ensure the Board understands that the Committee and Council are invested and want to be a part of the dialogue and solution. Judge Pullan asked Ms. Williams to confirm that he is scheduled to report to the Board in November.

The Committee will be working on rule amendments consistent with the Council's decision to amend the composition of the Council. A statutory amendment is required so there isn't a rush, but the Committee should get a rule amendment drafted. Judge Cannell noted that the rule amendment will need to be tied with the annual meeting. Judge Pullan stated that amending the rule doesn't make sense until the statutory amendment is in place, but a rule amendment can be drafted with an effective date after the annual meeting.

The Courtroom Attire rule will be presented to all Boards of Judges and the Supreme Court for feedback.

(10) ADJOURN:

With no further items for discussion, Judge Chin moved to adjourn. The meeting adjourned at 10:20 am. The next meeting will be held on December 6, 2019 at 12 pm (noon).