

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

Education Room (N31), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
December 2, 2019 – 2:00 p.m. to 4:00 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:

Shane Bahr
Paul Barron
Brent Johnson
Chris Palmer
Judge Christine Johnson

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed members and guests to the meeting. The committee considered the minutes from the November 1, 2019 meeting. With no changes, Rob Rice moved to approve the draft minutes. Judge Chin seconded the motion. The committee voted and the motion passed unanimously.

(2) EVIDENCE AUDIT UPDATE:

Chris Palmer met with a few clerks of court and judicial assistants to review proposed amendments to rule 4-206. That working group is halfway through the review and is scheduled to meet again soon. So far, the working group has made minor language changes and will be adding federal guidelines. Mr. Palmer hopes to have the revised draft ready for review by Policy and Planning in February 2020. Mr. Palmer noted that the working group did not have legislative feedback to share at this time. Mr. Palmer stated that the standards for evidence and facility storage should meet federal guidelines.

Mr. Palmer will present the working group's proposed amendments at a future meeting.

(3) 1-205. STANDING AND AD HOC COMMITTEES:

Judge Evershed met with the Board of Juvenile Court Judges. The Board discussed removing the juvenile court judge member from the Uniform Fine Schedule Committee because juvenile courts do not follow the fine and bail schedule. The committee asked whether the juvenile judge position should remain now that some juvenile judges have begun handling district court matters. Judge Evershed stated that the Board did not think it was necessary given juvenile judges' limited district court duties and the fact that district court judges on the committee have sufficient experience and expertise to address the issues.

Judge Evershed motioned to accept the Board's recommendations as proposed and to recommend that the Judicial Council adopt the rule for public comment. Judge Chin seconded the motion. The motion carried unanimously.

(4) 4-403. ELECTRONIC SIGNATURE AND SIGNATURE STAMP:

The proposed amendments to CJA 4-403 address an issue created by the implementation of a new Utah Rule of Civil Procedure (URCP), Rule 109, which becomes effective January 1, 2020. Rule 109 provides that a standard injunction shall be issued by the court immediately upon the filing of certain domestic relations cases. The Judicial Council has already approved a standard injunction form that must be used statewide.

Rule 4-403 was recently amended to include domestic relations injunctions as one of the types of documents on which a clerk can use a judge's signature stamp, with approval from the judge. The Board of District Court Judges and Clerks of Court expressed concern about workload implications for clerks if they are required to use a signature stamp on every injunction. The Board is recommending that presiding judges have the option of issuing standing orders authorizing the IT Department to act as a clerk and automatically affix a judge's signature to the injunctions. Brent Johnson noted that the standing order goes too far because the Judicial Council has already made a decision about the use of signature stamps in rule 4-403. Mr. Johnson recommends amending rule 4-403 and having the Judicial Council expressly allow the practice contemplated by the order.

If a petition is filed by an attorney, the system would automatically kick the signed injunction back to the attorney immediately upon filing. If the petitioner is a pro se litigant, the petition would be filed by a court clerk, auto-signed, and handed immediately to the litigant. The auto-signature would include a date/time stamp. Paul Barron noted that the programming is complete and it is scheduled to go live on January 1, 2020. Go-live can be delayed, but if the committee and/or the Judicial Council do not approve the process statewide, additional programming will be required.

Judge Cannell objected to URCP 109 because he feels it is judicial overreach. Requiring the issuance of automatic injunctions is a policy decision which should be accomplished via statute. Mr. Johnson noted that judges are statutorily authorized to issue these types of injunctions and do so routinely. This change is procedural and within the judicial branch's purview. The Supreme Court made the decision to implement URCP 109. The committee discussed their discomfort with the lack of judicial discretion about whether or not judges' signatures may be automatically affixed without their having seen the petition. Mr. Johnson noted that the injunction order is standard. It cannot be changed and it was approved by the Judicial Council, so every injunction will be the same. Judge Pullan noted that currently, judges may not address an injunction for several weeks after filing, at which point a party may have already improperly disposed of property. Once the petition gets before the court, these types of temporary injunctions are almost always issued. If URCP 109 is going into effect, there may not be a good reason to require clerks to affix signature stamps.

After further discussion, Mr. Rice moved to approve the amendments as proposed, including a recommendation for expedited approval by the Judicial Council with public comment to follow. Judge Chin seconded the motion. Judge Cannell opposed. The motion carried.

(5) 4-503. MANDATORY ELECTRONIC FILING:

Mr. Johnson discussed proposed amendments to rule 4-503 that would require Licensed Paralegal Practitioners to file documents electronically. The first group of LPPs has been licensed and may obtain access to the e-filing system. The committee had no concerns with the request.

With no further discussion, Mr. Rice moved to approve the amendments as proposed, including a recommendation for expedited approval by the Judicial Council with public comment to follow. Judge Chin seconded the motion. The motion carried unanimously.

(6) HR 550 – DISCRIMINATION AND HARASSMENT:

Ms. Williams noted that the proposed edits to HR 550 were made based on comments received at the last Judicial Council meeting. Ms. Williams added a new section starting at line 61 to address the Judicial Council's observation that judges' and court staffs' work-related duties may require them to possess or discuss offensive materials related to a case. Mr. Rice cautioned that employees may use offensive, work-related materials to harass another person and noted that HR has the discretion to investigate if those concerns arise. Mr. Rice felt subsection 4.2 was narrow enough to give HR the latitude to address those situations.

After further discussion, Mr. Rice moved to accept the amendments as proposed. Judge Chin seconded the motion. The motion passed unanimously.

(7) 4-411. COURTHOUSE ATTIRE (NEW):

At its October meeting, Policy and Planning voted to present the rule draft to each of the Boards of Judges and the Supreme Court because all courts would be affected by the rule. Judge Pullan received feedback from the Board of District Court Judges (BDCJ) and spoke with Board Chair, Judge Christine Johnson, regarding the Board's concerns with the rule. The BDCJ disagrees with striking subsection (4)(a)(i) because it eliminates judicial discretion. The Board felt section (2) should be removed entirely because the standard is way too low and subsection (1)(a) adequately addresses the problem with the addition of the word "solely." Judge Pullan noted that subsection (4)(b) should be deleted because decorum orders apply to more than just attire. Shane Bahr stated that the Board was looking for a distinction between the courthouse and courtroom. No one should be restricted from the courthouses other than for security reasons. Judges should determine what is appropriate in the courtroom.

Judge Chin asked why subsection (2)(b) was necessary because most women are covered when they breastfeed. Mr. Rice stated that breastfeeding is protected by statute. Ms. Williams noted that a nipple may be exposed during breastfeeding. The rule is meant to clarify for everyone that women who are breastfeeding may not be removed from the courthouse or courtroom even though they may be in violation of the standard outlined in (2)(a).

Judge Evershed presented the rule to the Board of Juvenile Court Judges (BJuvCJ). The general view from the BJuvCJ was that the issue is primarily limited to the Third District Court, and each district should have the discretion to set their own local standards.

Ms. Williams presented the rule to the Board of Justice Court Judges (BJCJ). The BJCJ initially expressed a desire for a section on public health issues, but Policy and Planning's reason for removing the public health section from the initial draft sufficiently addressed their concerns. Some members desired more judicial discretion related to attire in the courtroom.

Judge Pullan presented the rule to the Appellate Court Judges. The Appellate Court focused primarily on security-related issues and were satisfied that the discretion given to security personnel to assess threats and act accordingly was sufficient.

Mr. Rice and Ms. Williams presented the rule to the Supreme Court. Mr. Rice stated that the Court's primary concern was that section (4) provides judicial officers with too much discretion, effectively allowing judges to circumvent the standard in (2) entirely. The Court made several observations/recommendations: broaden the intent language, define "integrity," remove subsection (4)(a)(i), "disrupting" and "detracting" are too subjective, "adequately attired" is too broad, and "above or similar circumstances" is too broad.

Judge Pullan asked whether the committee would object to eliminating (2) entirely. Judge Chin agreed with that recommendation. Judge Cannell felt strongly that (2) should be removed and (4)(a)(i) should remain in the rule. The committee discussed removing “detracting” because “disrupting” was sufficient. Mr. Rice pointed to the Self-Represented Parties Committee’s expressed need for the low standard outlined in (2). Judge Cannell stated that the low standard isn’t necessary. Judges aren’t turning people away from the court for the inability to afford nice clothes. Access to justice is being upheld and respected. Section (2) would allow someone to come to court in a bikini and invites individuals or groups to use that standard for attention. Courtrooms are a place of respect. Ms. Williams noted that judges around the state have stated definitively that they do not allow individuals in the courtroom if they are wearing sleeveless shirts, shorts, flip flops, or similar attire. Unfortunately, people are being routinely denied equal access to the court when they are wearing reasonable attire.

Judge Pullan stated that while this may not be a widespread problem, rules are written for bad actors and to create normative standards and procedures. After further discussion, the committee decided to give the rule further thought and consideration. Judge Cannell will research standards in other states and will provide that research, and any proposed edits to the rule, to Ms. Williams for the committee’s review at the next meeting.

No motion was made. The rule was tabled for further review.

(8) JUNE RETREAT ASSIGNMENT RULES:

Policy and Planning received two assignments at the Judicial Council’s June retreat:

- 1) Create a rule establishing the Management Performance Review Committee, and outlining the process by which the Supreme Court and the Judicial Council will evaluate the performance of the State Court Administrator (SCA). The rule should also establish a process by which the SCA evaluates the performance of high level managers in the Administrative Office of the Courts.
- 2) Create a rule setting forth the authority of judges, courts, the Supreme Court, and the Judicial Council to administer the functions of the judicial branch. The rule should provide a process by which the Supreme Court and Judicial Council may assess and determine exclusive and predominate authority, and how those two bodies will communicate with each other when issues arise.

Judge Pullan expressed appreciation to Judges Walton and Cannell for their willingness to participate on the subcommittee to draft the attached rules. Judge Pullan reviewed each rule draft.

Management Performance Review

Mr. Rice recommended that the SCA’s duty under subsection (5)(a), to conduct ½ of the performance reviews each calendar year should be aspirational rather than required. In his experience, employees may use those types of requirements to object to discipline or termination for poor performance. The committee discussed whether the rule should be amended to allow the SCA to delegate that duty to the HR Director or Deputy Court Administrator. Ms. Williams suggested that it be the Deputy Court Administrator because it wouldn’t be appropriate for the HR Director (as a subordinate) to conduct an evaluation of the Deputy Court Administrator. Mr. Bahr noted that some high level managers currently report directly to the Deputy Court Administrator. The committee discussed adding “or designee” to subsection (5)(a) to allow the SCA to exercise discretion and manage workload.

Judge Pullan stated that the process contemplated by the rule would be more formal than the quarterly meetings conducted currently. Performance reviews would be written and included in the manager’s HR file. The committee discussed changing subsection (5)(a) to “should” versus “shall.”.

Administration of the Judiciary

The rule first identifies the issues over which individual judges, courts, court levels, the Supreme Court, and the Judicial Council have exclusive authority, and an issue over which the Court and Council have concurrent authority. Judge Pullan explained the process when a matter falls within the Supreme Court's or Judicial Council's exclusive authority, when an issue falls predominately within one body's exclusive authority, and when an issue implicates both bodies' authority.

After further discussion of both rules, no motion was made. The rules were tabled for a more comprehensive review at the next meeting.

(9) OLD BUSINESS/NEW BUSINESS:

Due to holiday scheduling conflicts in January, the January meeting was canceled. To account for the Legislative Liaison Committee meeting, the February 7th meeting was moved to 10:00 a.m..

With no further items for discussion, Judge Chin moved to adjourn the meeting. The meeting adjourned at 4:15 pm. The next meeting will be held on February 7, 2020 from 10:00 a.m. - 12:00 p.m.