

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

WebEx Video Conferencing
June 5, 2020 – 12. p.m. – 2 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:

Brent Johnson
Nancy Sylvester
Paul Barron
Geoff Fattah
Nathanael Player
Judge Dennis Fuchs
Bart Olsen
Michelle Wilkes

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 May 11, 2020 meeting. Judge Cannell noted that, on page 3, he opposed the language change in the proposed amendments to rule 4-202.02 (Records classification) but voted to take the rule to the Judicial Council for discussion.

With no other change to the minutes, Judge Chin moved to approve the draft minutes subject to amendment. Judge Cannell seconded the motion. The committee voted and the motion unanimously passed.

(2) 4-202.02. Records classification:

Nathaneal Player reviewed his proposal to make a slight amendment to Code of Judicial Administration Rule 4-202.02. In most cases a minor's name is private in court records, however, the Court's practice is (and has been) to include a minor's name on public stalking injunctions. Subsection (4)(O) of 4-202.02 provides a list of district and justice court proceedings in which a minor's name is public, but it omits stalking injunctions. I believe that is an oversight and it should be changed to comport with Court practice. The omission was brought to our attention when a court patron contacted the Self-Help Center and was very upset that her child's name was listed on a stalking injunction.

Judge Pullan: Are minor's names public on protective orders?

Mr. Player: Yes. Minor's names are public on protective orders and those proceedings are listed in (4)(O) as an exception.

Judge Evershed moved to approve the change as proposed and send it to the Judicial Council for approval for public comment. Mr. Rice seconded. The motion passed unanimously.

(3) 6-507. Court Visitor:

Nancy Sylvester provided an overview of the rule amendments based on the Committee's feedback at its May 1st meeting:

1. Used the term, "Request to submit for decision" for consistency in tracking;
2. Separately outlined the process for making court findings upon requests for waivers of a respondent's presence versus all other reports in paragraph (8);
3. Ensured that the rule does not conflict with Rule 3-101 in paragraph (8);
4. Added "interested person" to paragraph (2); and
5. Clarified service of a court visitor report language in paragraph (6).

A request to waive the respondent's presence falls outside of Rule 3-101, but all other reports are subject to the timeline in Rule 3-101 (60 days). Section (2) now refers to Utah Code §75-1-201 defining appointment and the role of court visitors. Section (6) clarifies that court visitor reports must be filed and served on all parties and interested persons who requested appointment of the court visitor, with the exception of appointments made under paragraph (2)(e). Those appointments are exempt from service because it's often difficult to find those parties. In paragraph (3)(b)(ii), "...if the guardianship or conservatorship appointment is made" was added to clarify that it pertains to the appointment of a guardian/conservator.

Judge Pullan: Paragraph (8)(a) requires the court to make findings two (2) days in advance of the hearing. Is there a requirement that the court visitor program file a report a week before the hearing? Ms. Sylvester: The court visitor program's practice is to provide reports to the court about a week before the hearing. Usually the due date is in the court's order.

Judge Cannell: Will they file a proposed order as well? Ms. Sylvester: Yes.

Judge Pullan: I would prefer to include a requirement in the rule that the report be filed 5-7 days in advance of the hearing. Seven (7) days would make it consistent with the rules of civil procedure. That would provide judges with enough time to make findings at least 2 days in advance of the hearing. Is there a reason it has been done in advance of the hearing? The findings could be read at the hearing and if the request to waive appearance is denied a new hearing can be scheduled to ensure the respondent is present.

Ms. Sylvester: It's often difficult to get respondents to the courthouse, especially those who are disabled. If the court hasn't made a decision prior to the hearing respondents may appear unnecessarily, or visitors/parties may be held in contempt for not bringing the respondent to court. This has been an issue for court visitors. It's helpful to have clear instructions from the court. In the 3rd district, these hearings are scheduled a month out to provide the court visitor and the court with sufficient time to file the report and issue findings before the hearing.

Mr. Rice: Is the deadline programmed into CORIS so that judges receive an automatic reminder? Paul Barron: No, something would have to be built. We could allow the court visitor program to e-file reports and prioritize them so that they would be brought to the attention of the JAs.

Michelle Wilkes: Once the court visitor program receives a request, it takes 3-5 days to find a volunteer. The volunteer takes about 2-3 weeks to conduct interviews and gather information. The reports are filed 5 days before the hearing. I don't have an issue with including the 5-day requirement in the rule. In my experience some attorneys become upset or are inconvenienced when a hearing is continued.

Judge Cannell: A request to submit and proposed order should also be filed within 5 days. That would trigger a notice to the JA and judge that the report is in the record and ready to be reviewed.

Mr. Rice moved to approve the proposed rule as amended and send it to the Judicial Council for approval for public comment. Judge Cannell seconded. The motion passed unanimously.

(4) Juvenile Drug Court Certification Checklist:

Judge Fuchs: I propose that the Juvenile Drug Court Certification Checklist be amended, moving standard #25, "the Juvenile Drug Court has more than 15 but less than 125 active participants," from the Presumed Category to the Best Practices Category. Drug court participation numbers have dropped significantly with new juvenile justice reform. There's no longer any real incentive for juveniles to participate. I propose changing the participation numbers to a minimum of 8-10.

Judge Pullan: Are the drug courts able to function in a meaningful way if they don't have a minimal level of participation with 15 participants? We need to consider, as a matter of policy, whether we want to continue juvenile drug courts. Do the low numbers impact the success of juveniles who are participating? Do all of our juvenile drug courts have 15 right now? Do you know how many have less than 8?

Judge Fuchs: Best practices show that juvenile drug courts are most effective with 15 or more participants. That doesn't mean that they aren't effective with less, just that they are *most* effective with fifteen (15). Without at least 8-10, we may be wasting the judges' and treatment providers' time. Those juveniles could be treated in a different way without a separate court calendar. My inclination is to let drug courts operate when there are at least 8-10 participants. It's questionable when we drop below eight (8). There are only 5-6 juvenile drug courts in the state. Only one has less than 8 participants. Most others have somewhere between 8 and 10.

Judge Pullan: I believe this is a policy question for the Judicial Council. What do we know about the effect on treatment of having 15 participants? Is 15 a magic number? If we cut that in half, are we compromising outcomes, causing harm, or making no difference?

Judge Fuchs: I will make contact with the National Association of Drug Court Professionals (NADPC) about research regarding the effect on drug courts with fewer than 15 participants.

Judge Evershed: I will reach out to the juvenile court bench and juvenile court board of judges for input. They are meeting a week from today.

Mr. Rice moved to send the issue to the Judicial Council for a discussion regarding the policy question of whether juvenile drug courts should wind down. Judge Evershed seconded. The motion passed unanimously.

(5) Rule amendments re HB206:

3-407. Accounting

4-609. Procedure for obtaining fingerprints...

10-1-404. Attendance and assistance of prosecutors in criminal proceedings

Ms. Williams: The proposed amendments are related to HB206 and the new definition of bail. Additional minor amendments, unrelated to HB206, were made to 3-407 at the request of the Finance Department.

Mr. Rice moved to approve the proposed rules as amended and send it to the Judicial Council for approval for public comment. Judge Evershed seconded. The motion passed unanimously.

(6) 4-401.01. Electronic media coverage of court proceedings

4-401.02. Possession and use of portable electronic devices

Mr. Johnson reviewed the proposed amendments. Rule 4-401.01 addresses electronic media coverage of court proceedings. The proposed change is intended to make it clear that the rule applies to viewing proceedings by remote transmission. In other words, the media still needs permission if they want to record or take photos of the remote proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage in remote proceedings when there are multiple media requests. Anyone who asks could attend.

Rule 4-401.02 addresses use of electronic devices by others viewing court proceedings. The proposal would prohibit individuals from recording or photographing proceedings, just as they are prohibited from doing so in a courtroom. When a person is granted access to a proceeding they would be required to accept the terms of the rule, including acknowledging they could be held in contempt for violating the rule. This would obviously be very difficult to enforce but it is hoped the warning would stop most people. The IT Department set up the remote system so that all individuals and the media are required to click on a box saying they will abide by the rule. An open question is whether recording should be prohibited in remote proceedings?

Geoff Fattah: We brought this issue up with the media subcommittee of the Standing Committee on Judicial Outreach. The subcommittee includes media representatives from all of the media outlets and TV stations, in addition to judicial representatives from all levels of the court. The subcommittee discussed the upcoming use of WebEx events and how to make access a little easier for the public. The proposal was for IT to set up an automatic request process. Two issues surfaced:

- 1) The rule does not address live streaming. If it is the will of this body and the Management Committee and Judicial Council to continue to prohibit live streaming then the person will need to acknowledge that they will not live stream the proceeding. Even if live streaming is prohibited, it's possible they will find a way to circumvent the registration process and live stream the proceeding without us knowing about it.
- 2) The media is concerned that if we don't enforce the prohibition against live streaming and we allow other members of the public to share access or live stream, the media will be held to a more stringent standard than other members of the public.

Judge Pullan: The acknowledgement should require individuals to obey a court order and not just the rule. The order should state that the proceedings are not to be recorded without express permission of the court. In order to gain access to the hearing the person would have to check a box stating that they have read the order and agree to abide by it. When it comes to contempt proceedings and imposing sanctions, the court would need to find by clear and convincing evidence that the person was aware of the order, they understood the order, and they willfully failed to comply.

Mr. Johnson: That is worth exploring. I will talk to Heidi Anderson.

Mr. Fattah: There may also be a training component for the JAs. It is my understanding that when JAs set up the WebEx event they are in charge of adding the registration page for each calendar. We would need boiler plate language for them to copy and paste over.

Judge Pullan: Is it possible for the language to automatically show up when an event is scheduled?

Mr. Johnson: It may be possible for IT to program the system to allow people to go to a calendar and click on a link that takes them to the registration page where they would be required to submit certain information. Once submitted, they would receive an email with a link to the Webex hearing. The acknowledgement page would automatically pop up when they click on that link. They couldn't move to the next step or get into the hearing until they click on a button acknowledging their understanding and willingness to comply with the order.

Mr. Barron: That should be possible. It would require programming.

Judge Pullan: What pops up needs to be an order. It could be signed by the presiding judge of each district.

Mr. Fattah: I tested the system to see if I could circumvent the registration process. I registered for a WebEx hearing and sent the link to my nephew to see if he could access it. The system recognized that it was a different person and it took him to the registration page.

Mr. Rice: Is there a risk that the public will hijack or disrupt a hearing? Do we need to include that in the presiding judge's order? Mr. Fattah: Yes, that's always a risk and it wouldn't hurt to include it in the order. My understanding is that WebEx is more secure than other platforms. Judge Chin: I can limit individuals from entering the hearing

and prevent them from vocalizing. If they are a panel member, they are allowed to speak. There are stop gaps in to prevent the public from interfering in that way. Judge Pullan: I believe it is a crime to disrupt a government proceeding. If so, that might be something to include in the order.

Mr. Johnson: I can work on language for the order. The proposed change in 4-404.01 would be helpful to have in place now. We may not need (3)(C) in 4-401.02 if we have the order.

Mr. Barron: It isn't difficult for individuals to use portable devices. I would suggest removing the word "portable" from lines 58 and 60. Judge Pullan recommended adding language to lines 64 and 66 stating that access to proceedings is contingent on the person agreeing to comply with administrative and standing orders.

Mr. Johnson will work on a draft standing order and bring it back to Policy and Planning for review. Judge Pullan suggested that the order be standardized and used statewide. Mr. Johnson will take another look at the rules to clean up the language if needed.

Mr. Rice moved to approve the proposed rules as amended by the Committee and send them to the Judicial Council for approval for public comment. Judge Chin seconded. The motion passed unanimously.

(7) HR Policy Revisions. Phase 1 - Employment:

- **HR01 – Definitions**
- **HR02 – Administration**
- **HR03 – Classification**
- **HR04 – Filing Positions**
- **HR05 – Career Service Status & Probation**

Mr. Olsen: I propose that Policy and Planning postpone reviewing and approving sections 1-5 until the entire manual revision has been completed by the Human Resources Committee. I believe waiting will result in an improved review process, a better quality end product, timelier product delivery, and will be less of a heavy lift for Policy and Planning. Currently our HR policies reside on the intranet. A number of policies haven't been touched for years. This is not to discount the policies that are in place. They are extremely valuable and have guided the judiciary for years. There are a lot of excellent answers in there. However, it is difficult for employees to find the answers.

A search feature doesn't yield all of the results because of different formats in the policy; some are HDML coded into the intranet site while others are embedded PDF documents. Another challenge is that many of the widely shared practices are inconsistent with policy and some policies are inconsistent with employment law. Example: Our policy states that employee performance plans and evaluations will be conducted, but we have moved away from that practice. Another issue is that some policies are dated and dictate inefficient business practices.

The HR Committee is considering several factors while conducting the review. The Executive Branch HR rules guide many of the same systems used in the Judiciary. They don't govern the systems, but provide guidance about how they are governed. The Judiciary uses the same health insurance, retirement vendors, and HR and payroll systems. The Executive Branch HR policies undergo an annual refinement process through Risk Management, the Attorney General's office, and other agencies that provide continuous feedback and a thorough vetting process each year. The Committee is also working to ensure that any current judicial policies that work well and help the court accomplish its mission aren't excluded. Other factors include ensuring different sections in the policy are harmonious, the policy is accessible and clear, the policy provides transparent guidance for employees and management alike, and the content is searchable. The HR Committee is dedicated to ensuring the review process is transparent across the board. The Committee is looking at three sources; current internal HR policies, current DRHM rules, and proposed draft policies.

Policy and Planning didn't review sections 1-5. Mr. Olsen will bring the entire manual, sections 1-17, back to Policy and Planning once approved by the HR Committee.

(8) 1-201. Rules for Conduct of Council Meetings

6-102. Election of District Court Judges to the Judicial Council

7-101. Juvenile Court Board, Executive Committee and Council Representatives

Mr. Drechsel: SB167 expanded membership of the Judicial Council from 14 to 16, with the addition of a district court member and a juvenile court member. Rule 6-102 is the district court rule. The Council determined that the district court seats would be filled by one member from 2nd district, two from 3rd, one from 4th, one from 1st or 5th, and one from 6th, 7th or 8th. Judges Shaughnessy and Pettit represent 3rd, Judge Pullan represents 4th, Judge Cannell represents 1st, and Judge Walton represents 5th. There is no representative from 2nd district or 6th/7th/8th districts.

Right now, two members are serving from 1st (Judge Cannell) and 5th districts (Judge Walton). Moving forward, these two districts will share a single seat. That could be resolved by electing a new member from either 2nd or 6th/7th/8th districts in September when Judge Walton rotates off. The remaining district would fill the newly created seat. Both changes could wait until the annual conference, but there is still a decision to be made about the rotation schedule in regard to terms.

The amendments to Rule 1-201 allow the Board of District Court Judges to fill vacancies until the next regular election. An important goal would be to create a rotation schedule with two judges rotating on and off the Council each year. At least until 2021, that will be a little tricky with the board electing someone for a period of time and the full bench holding elections at the annual conference and then re-electing that person.

Juvenile court is a little easier. Judge Evershed is from the 8th district and Judge May is from 3rd district. The way the juvenile court board is proposing to structure their rule is for the third member to be at-large. That member can be pulled in from any of the districts. Judge May rotates off in 2021 and Judge Evershed rotates off in 2022. The at-large member would be elected this year at the annual conference for 2020-2023. In 7-101, subsection (6)(B) is being removed to account for the increase from one to two members. Subsection (6)(D) is being removed because that language is covered in Rule 1-201.

An open question is whether you want the Board of District Court Judges to appoint the member from 2nd or 6th/7th/8th for 15 months until you get to the 2021 annual meeting, or do you want the full bench to conduct elections for both positions at this year's annual meeting to cover the 2020 and 2021 cycle.

Judge Pullan asked Mr. Drechsel to draft a memo and rule revisions addressing the issues discussed by the Committee for presentation to the Judicial Council in June.

Judge Cannell moved to have Mr. Drechsel revise the rules to address the issues discussed by the Committee and present the rules along with a memo describing the options to the Judicial Council with a recommendation for expedited approval. Mr. Rice seconded. The motion passed unanimously.

(9) OLD BUSINESS/NEW BUSINESS:

None

(10) ADJOURN:

With no further items for discussion, Judge Cannell moved to adjourn the meeting. Mr. Rice seconded the motion. The committee unanimously approved the motion. The meeting adjourned at 1:48 pm. The next meeting will be on August 7, 2020 at 12:00 pm via WebEx Video Conferencing.