

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

Webex video conferencing
August 7, 2020 – 12 pm – 2 pm

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Brent Johnson
Judge Brian Cannell	•		Shane Bahr
Judge Augustus Chin	•		Paul Barron
Judge Ryan Evershed		•	Bart Olsen
Judge John Walton	•		Geoff Fattah
Mr. Rob Rice	•		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 June 5, 2020 meeting. Judge Walton moved to approve the minutes as drafted. Judge Chin seconded the motion. The motion passed unanimously.

(2) 4-202.03. Records access:

Mr. Johnson: The proposed amendments to Rule 4-202.03 came from the clerks of court. When minors leave the system, clerks frequently receive requests from military recruiters for juvenile legal records. Recruiters typically bring in a signed release from the minor, but the vast majority of time they fail to get the release notarized. When clerks refuse to release the records on that basis, recruiters are behaving poorly with the front counter clerks. The clerks of court are proposing that juvenile legal records be released to military recruiters with a written release signed by the minor, removing the notary requirement.

Judge Pullan: Notarized signatures are required because the subject of the record has certain privacy interests. Minors' records are particularly sensitive. These protections are in place for good reason and obtaining a notarized signature isn't difficult. Minors can also go to the court to get the records themselves, showing initiative and demonstrating to the military that they are serious about the recruitment process. I see no reason to depart from this requirement simply because recruiters are unhappy at the front counter.

Judge Chin: I agree that it is quite important for the releases to be notarized given the sensitive nature of juvenile records. We require other people to have documents notarized.

Mr. Rice: The rule currently provides a workable mechanism for everybody, including recruiters. I propose that we decline to make changes to the rule.

Judge Chin moved to take no action. Mr. Rice seconded the motion and it passed unanimously.

(3) Rules back from public comment (already approved by JC on an expedited basis):

- CJA 1-205. Standing and ad hoc committees
- CJA 4-302. Uniform recommended fine/bail schedule
- CJA 4-701. Failure to appear
- CJA 4-704. Authority of court clerks
- CJA 6-301. Authority of court commissioners as magistrate
- CJA Appendix B. Justice Court standards
- CJA Appendix F. Utah State Courts records retention schedule

Ms. Williams: These rule amendments were related to HB 206 and were approved by the Council on an expedited basis. There were no public comments. If Policy and Planning doesn't make any changes, the rules don't need to go back to the Judicial Council for action.

The Committee made no changes to the rules. The rules will remain in effect as drafted.

(4) Public comment period extended:

- CJA 3-101. Judicial performance standards
- CJA 3-104. Presiding judges
- CJA 3-111. Performance evaluation of senior judges and court commissioners

Ms. Williams: These rules came to us from Nancy Sylvester. The public comment period closed but we've extended the comment period to address concerns outlined in a letter from JPEC regarding Rule 3-101. Ms. Sylvester reached out to Jennifer Yim to let her know that the rules will go back to the board of district court judges for consideration, along with JPEC's letter. Ms. Sylvester will keep JPEC informed throughout the review process and plans to bring the rules back to Policy and Planning in September.

Judge Pullan: I had a chance to visit with Dr. Yim about her concerns. A draft amendment is circulating with the board that I think will resolve some of the concerns. I am really encouraged by the court's positive engagement with JPEC.

(5) Rules back from public comment period for final approval:

- CJA 3-402. Human resources administration
- CJA 3-403. Judicial branch education
- CJA 4-202.08. Fees for records, information, and services
- CJA 4-106. Electronic conferencing
- CJA 4-411. Courthouse attire
- CJA 6-506. Procedure for contested matters filed in the probate court.
- CJA 9-101. Board of Justice Court Judges
- CJA 9-109. Presiding judges

Ms. Williams: These rules went out for public comment. We received comments on Rule 3-402 and Rule 4-411.

Rule 3-402

Mr. Olsen: The comment on Rule 3-402 opposes removing "employee promotions" from the list of issues that the grievance review panel may address (line 81). I am comfortable leaving it in or taking it out. The reason it was removed was because the rest of the issues listed in that section are things in which an employee has a property right. For example, if we're taking away salary, a career service employee has a property right to the salary; if we're imposing a suspension or taking any kind of disciplinary action, we are infringing on an employee's property right, whereas a promotion isn't necessarily a right. One of the things we will be including in the new HR policies is the ability for any issue not identified in rule 3-402 to be addressed through a grievance process, it just won't go all the way to the grievance review panel.

Judge Pullan: In light of our efforts to achieve racial and ethnic fairness within the court system, if a person feels that they have been repeatedly passed over due to racial or ethnic bias, what is the remedy within our HR structure?

Mr. Olsen: Currently, if someone feels passed over they can go to leadership or HR. Internally, we can review it formally or respond informally with data. The employee could also file a complaint with Utah Labor Relations Board (ULRB) and ask for a formal investigation by that agency. The new HR policies will outline the grievance process more clearly. If an employee takes an issue to their immediate supervisor or HR and they don't receive what they feel is a satisfactory remedy, they can advance it to the next level. It can be taken up to three levels, but not all the way to the grievance review panel. If the employee still doesn't feel that the remedy is satisfactory, they can look outside the court to other state agencies.

Mr. Rice: Part of the analysis regarding the property rights that Mr. Olsen discussed is whether employees have a procedural right to the grievance process. I believe that analysis weighs in favor of putting employee promotions back into the rule.

Mr. Olsen: Employees would have the right to grieve, just not all the way to the grievance review panel. The level making a final decision would depend upon where the grievance started. Most likely the final decision would be made by a court administrator or the State Court Administrator. If a direct supervisor is the subject of the grievance, employees have the right to start the grievance process with the next leadership level.

Mr. Rice: The important issue raised by Judge Pullan is do we have adequate measures in place for employee complaints and remedies surrounding discrimination. The HR Policy Review Committee has engaged in extensive efforts to revise and update the discrimination policy. The HR committee has done an excellent job and I appreciate their work.

After further discussion, Mr. Rice moved to retain the reference to employee promotions in line 81. Judge Cannell seconded the motion and it passed unanimously.

Rule 4-411

Ms. Williams: The first comment recommends adding "health" before the word "safety" in the sections discussing exceptions. Policy and Planning discussed including an exception for health safety concerns during the initial drafting process and ultimately decided to leave it out because it is too subjective. Court employees, judges, and bailiffs are not healthcare professionals. They do not possess the requisite expertise to identify legitimate health safety issues.

The second comment suggests that the rule creates a potential conflict with a statement on the bar website regarding attire for lawyers and recommends adding a comment or section in the rule addressing courtroom attire for attorneys.

Mr. Rice: The link included in the public comment takes you to the litigation section's homepage. The statement on courtroom attire for lawyers is coming from the litigation section, not the Utah Bar Association, and it appears to be an informal tip about how to dress in the courtroom. It isn't a bar rule. The statement is inconsistent with rule 4-411 and should probably be removed for the same reasons we're proposing this rule, but it should be accomplished through the Utah Bar Association.

Judge Pullan: In many ways, traditional professions have always been responsible for policing themselves. How a lawyer dresses in court communicates his or her respect for the tribunal and communicates to a potential client that they are serious about the work they do. I don't foresee lawyer attire changing significantly. I think that will take care of itself.

Judge Pullan: Judge Skanchy makes a point that judicial administration is mandating a policy that removes discretion from individual judges to make decisions regarding decorum in their own courtrooms. To some extent that is true, but I am not fully persuaded because the rule allows a judge to find a person's attire to be disruptive to the proceedings; they just have to make findings on the record supporting their decision. Discretion remains; it will just be guided now.

Judge Chin agreed and moved to send all of the rules in this section to the Council as drafted with a recommendation that the rules be approved as final. Judge Cannell seconded the motion and it passed unanimously.

(6) Office of Fairness and Accountability:

Judge Pullan: Policy and Planning has been tasked with identifying the purpose of the Office of Fairness and Accountability and creating a rule that defines the scope of the director's responsibilities. Other states may have offices tasked with similar responsibilities and that could be a good place to start. The National Center for State Courts might also be of some assistance.

Mr. Rice: I would prefer to consider the question of diversity in the spirit of the Utah Center for Legal Inclusion. They are developing a pipeline of diverse candidates for law school, attorney employment, and ultimately positions on the bench. The Judiciary isn't in a traditional position to be able to recruit diverse judges and yet that is an important part of the mission. The Judiciary should look like the community we serve. Women Lawyers in Utah is an organization dedicated to the advancement of women in the legal system and assists women lawyers in applying for positions on the bench. Judge Chin: I believe the same is true for the Utah Minority Bar Association and a couple of other organizations. Mr. Rice: The best approach for the Judiciary might be to support those types of organizations.

Judge Pullan and Judge Chin referenced an email from the Institute for the Advancement of the American Legal System out of Denver about a panel on racial and ethnic fairness in the judiciary.

Judge Pullan: In some ways, the new director for the office may be able to assist in developing the scope of responsibilities and mission. The director's job description may provide guidance. We should also address the issue of the independence of the office within our organizational structure and ensuring its legitimacy.

Ms. Williams: In reviewing the Code of Judicial Administration, Chapter 3, Article 4 seems like the most appropriate place for this rule. I could draft something similar to rule 3-401 and incorporate feedback from the NCSC and the Institute. That would give us a place to start.

Judge Pullan asked each member to give this issue some thought, and asked Ms. Williams to reach out to the NCSC and the Institute for the Advancement of the American Legal System to see if they can provide guidance and rules from other states. The Judicial Council's statement on the purpose of the office should be included in the committee's September meeting packet.

(7) Old business/new business:

Judge Pullan: When the cases under advisement rule was first discussed two years ago, there was a lot discussion about an electronic system that would act as a reminder for judges. In the 4th District, we create an electronic report for cases out 30 days but I'm not sure if that's handled the same way in other districts.

Mr. Barron: The IT Department is not actively working on an electronic reminder system for cases under advisement. CORIS has a tracking application and we separated notices to submit from those that are under advisement. We send a notification when a notice to submit is filed. It is up to the clerks to track it after that point, and to change it to under advisement status when appropriate. CORIS can run reports for cases under advisement. There are tracking mechanisms in the juvenile and appellate systems but I'm not sure exactly what they look like. It's possible to build something in CORIS that would send a warning to a judge's Judicial Workspace screen as opposed to the individual case file, or to create a tracking application. I would have to estimate the time and cost.

Judge Pullan: We would likely garner a lot of support from JPEC if we could demonstrate that our system doesn't allow things to slip through the cracks. I think every trial court judge is losing sleep over this issue. I recognize that IT has other pressing priorities right now with COVID-19, but it would be helpful to at least understand how this could work.

Judge Chin: Justice court judges get a monthly report of cases under advisement. Mr. Barron: That is pulled from the CORIS tracking system. Mr. Bahr: The issue with that system is that it lists items that have been submitted, but not necessarily received by the judge.

Judge Pullan: My clerk runs a cases under advisement report and I certify with my presiding that I don't have any cases under advisement more than 60 days.

Judge Walton: I agree that a more robust tracking system would be helpful.

Mr. Barron: I will visit with Clayson Quigley about the reports his department runs for justice courts and try to determine whether similar reports are run for other groups as well. I will also create an estimate for a tracking/warning system in CORIS and report back to Policy and Planning next month.

Mr. Bahr: We are working with the Technology Committee to develop an IT prioritization process but it hasn't been completed yet. Judge Pullan suggested that this project be a test case for the new prioritization process and asked that Heidi and Paul provide an update in September.

(8) ADJOURN:

With no further items for discussion, Judge Walton moved to adjourn the meeting. Judge Chin seconded the motion and it was unanimously approved. The meeting adjourned at 12:55 pm. The next meeting will be on September 4, 2020 at 12 (noon) via Webex video conferencing.