

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

Webex video conferencing
December 4, 2020: 12 pm -2 pm

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Judge Mary Noonan
Judge Brian Cannell		•	Judge Ryan Harris
Judge Augustus Chin	•		Paul Barron
Judge David Connors	•		Brent Johnson
Judge Michelle Heward	•		James Peters
Mr. Rob Rice	•		Bart Olsen
			Jeremy Marsh
			STAFF:
			Keisa Williams
			Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the November 6, 2020 meeting. With no changes, Rob Rice moved to approve the minutes as drafted. Judge Connors seconded the motion. The motion passed unanimously.

(2) Reschedule January 2021 meeting:

The committee moved the January 2021 meeting to January 8th.

(3) Rules back from public comment:

- 3-105. Administration of the Judiciary.
- 3-301.01. State Court Administrator – Complaints and performance review; complaints regarding judicial officers.
- 3-201. Court commissioners.

Ms. Williams: These rules are back from public comment. No comment was received on 3-201. We received one positive comment on rule 3-105, and two comments on 3-301.01. One comment was positive, and one was negative. The negative comment involved concerns addressed by Policy and Planning in previous meetings. No changes are recommended.

Judge Pullan: The section of Rule 3-301.01 related to judicial officers addresses the ability of employees to file complaints directly with the Council and comports with HR policies and procedures. It's important to create and encourage that environment.

Mr. Rice moved to approve all three rules as drafted and to send them to the Judicial Council with a recommendation that they be approved as final. Judge Chin seconded the motion and it passed unanimously.

(4) 3-201.02. Court commissioner conduct:

Ms. Williams: Rule 3-201.02 is back from public comment. No comments were received. However, after further consideration, Judge Harris recommends minor amendments to the rule.

Judge Harris: The proposed amendments are to paragraphs (3)(A) and (3)(B). In paragraph (2), the chair shall dismiss any frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is review of the case by a trial court or on appeal. Complaints not dismissed by the chair must be referred to the full committee. In the draft that went out for comment, complaints referred to the full committee require a hearing, unless they qualify for a 12(b)(6) dismissal. The full committee recently reviewed a complaint and determined that a provision in the original version of the rule allowing the full committee to dismiss a complaint after a review or minimal examination, and on something other than (12)(b)(6) grounds, should be preserved. Not every complaint referred to the full committee warrants a hearing. The proposed amendments bring back the mechanism in paragraph (1)(H) of the rule in effect now.

Mr. Rice moved to approve rule 3-201.02, with the amendments proposed by Judge Harris, and to send it to the Judicial Council with a recommendation that it be approved as final. Judge Heward seconded the motion and it passed unanimously.

(5) 3-104. Presiding judges

3-108. Judicial assistance:

Mr. Johnson: In regard to the expungement issue, Policy and Planning determined that district court presiding judges should be the signing judge for all district courts within their district, and justice court presiding judges should be the signing judge for all justice courts within their district. After further research, I discovered statutory obstacles. Rule 3-108 applies only to the assignment of judges in courts of record. The rule is based in part on Utah Code § 78A-2-104(9)(a) which states that the Council “shall establish written procedures authorizing the presiding officer of the Council to appoint judges of courts of record by special general assignment to serve temporarily in another level of court in a specific court or generally within that level.” The statute does not expressly permit the Council to enact a rule allowing assignment of one justice court judge to serve in another justice court.

In addition, section 78A-2-225 permits a judge of a court of record to “serve temporarily as a judge in another geographic division or in another court of record, in accordance with the Utah Constitution and the rules of the Judicial Council.” This suggests that district court judges may serve only in other courts of record. Another problem with assigning presiding justice court judges to other justice courts is section 78A-7-208, which states, “when necessary, the governing body may appoint any senior justice court judge, or justice court judge currently holding office within the judicial district or within an adjacent county, to serve as a temporary justice court judge.” This suggests that local government governing bodies decide who will sign orders in their courts. All the Judicial Council can do at this point is appoint presiding district court judges to sign expungement orders in district court cases. In order for presiding justice court judges to sign for all justice courts in their district, a statutory amendment is necessary. The Council will need to decide if they want to pursue legislation. Internally, I will meet with Michael Drechsel and Paul Barron to determine whether it would work logistically. There may be resistance from cities and counties to a legislative change allowing judges to sign orders for other courts without approval by local governments. That should be part of the Council’s discussion.

Without a legislative change, the system will need to be programmed to affix each justice court judge’s signature to orders in their own cases. Tracking and updating the system when a justice court judge leaves the bench or retires will be critical. Orders with the signature of a judge no longer on the bench would be void.

The proposed amendment to rule 3-108(C) would read, “The presiding officer of the Council may appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge’s district. The length of the assignment may coincide with the judge’s term as presiding judge.”

Mr. Rice moved to approve rule 3-108 as proposed by Mr. Johnson, and to send it to the Judicial Council with a recommendation that it be published for comment. The Council should also discuss whether it wants to pursue legislation. Judge Connors seconded the motion and it passed unanimously.

(6) Senior judge program update:

Judge Connors reviewed the memo from Cathy Dupont summarizing the senior judge working group's progress. At a previous meeting, Policy and Planning asked whether an analysis should be conducted to identify the number of senior court judges needed in each district, and limiting the number of appointments accordingly. The working group determined that limiting the number of senior judges isn't a good idea, at least not at this time. Needs fluctuate and the costs for senior judges in their first 7 years is de minimis. About 6 or 7 years ago, we were struggling for coverage because we had so few senior judges. The TCE's indicated that even with 25-30 senior judges, there are times when they aren't able to get coverage in a timely manner. The Supreme Court may limit the number of appointments either based on need or for some other reason, so the working group added a provision that service is subject to appointment. Senior judge status is not a matter of right.

The TCE's agreed to develop a better tracking method. A rule prescribes the prioritization of requests so we shouldn't require that every request go out to every senior judge, but at least over time, we should ensure all senior judges have an opportunity to participate and we should track their responses. If there are judges who routinely turn down assignments, we need to be aware of that.

Another policy question was whether there should be an age limit for senior judges. The working group determined that no age limit should be imposed. The more important question is competence. Performance isn't necessarily dictated by age. We should ensure TCE's and presiding judges understand their role in evaluating and soliciting feedback on performance. One issue is how to determine the best source of feedback. In addition, the working group will propose changes to ensure senior judges receive adequate training.

In regard to senior judges beyond the first 7 years, the cost of the incentive benefit ranges from \$1,900 to \$4,100. Currently, 10 of the 26 senior judges fall into that category. The working group recommends a rule amendment making it clear that an extended period of refusing assignments could lead to a denial of reappointment. Policy and Planning recommended that the Council appoint or reappoint all senior judges with pending applications, with the exception of the two judges who have not taken any assignments in the last 2-3 years, and recommended asking the Supreme Court to sit down with those two judges to conduct an evaluation of the reasons for the lack of work.

Mr. Rice: One way of addressing that concern is simply eliminating eligibility after seven years of service.

Judge Connors: In rule 3-501, the description for automatic benefits sounds like it guarantees benefits for five years, making the earned benefits only two years. What is the history behind that? I don't entirely understand it. If it isn't accurate then we ought to change it. Mr. Olsen agreed to look into it.

Judge Pullan: The rule says a senior judge can only be appointed with their consent. That seems to build in the ability not to work. What was the thinking behind that?

Judge Connors: The discussion centered around conflicts in senior judge's schedules because they don't always have a lot of notice and they may have other plans. It might be a good idea to explore the idea of having senior judges designate weeks they are available. That could be built into the tracking system.

Judge Pullan: Was there a discussion about the fiscal impact of doubling the amount for training, from \$50 to \$100 a day?

Judge Connors: The working group recommends increasing the amount from \$25 to \$50 for a half day training, and \$50 to \$100 for a full day. The costs would primarily be for one conference a year with 25 judges. The working group will present the full packet of recommendations to Policy and Planning and the Council in January.

(7) HR policies:

- HR 1-5 – Judge Pullan
- HR 6-7 – Judge Cannell/Judge Heward
- HR 8-9 – Rob Rice
- HR 10-14 – Judge Connors
- HR 15-17 – Judge Chin

Mr. Olsen recommended discussing policies flagged by members with questions and proposed edits. Below are summaries of the changes based on the committee's discussion. Mr. Olsen will preserve redlined and clean copies of the Google drive documents for future review.

Chapter 1:

01:

- "Incumbent" was changed to "employee."
- Misconduct can include a violation of HR policies, i.e. the harassment policy. Language was added to the end of paragraph (86), "...and/or a violation of current judicial branch policies."
- All references to "the Judiciary" were replaced with "judicial branch."
- Language was added to expand the use of telecommunicating, and to distinguish between telecommuting and routine telecommuting.
- Substantial evidence: The definition was borrowed from the Executive Branch. After discussion, the committee determined that the definition is sufficient as written. Caselaw will be referenced in a footnote.

02:

- Unlawful discrimination: a reference was added in (a), "...consistent with HR15-3..."
- The Committee discussed electronic personnel files maintained by the HR Department and hard copy files maintained in a local district or court location. The central electronic files maintained by HR are the official personnel files. Employees should not have more than one personnel file. Item (7) was removed.

The committee will continue its review of the remainder of the HR policies at the next meeting.

(10) ADJOURN:

With no further items for discussion, Judge Heward moved to adjourn the meeting. Judge Connors seconded the motion. With no opposition, the meeting adjourned at 2:03 pm. The next meeting will be on January 8, 2021 at noon via Webex video conferencing.