

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

Webex video conferencing
January 8, 2021: 12 pm -2 pm

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Paul Barron
Judge Brian Cannell	•		Bart Olsen
Judge Samuel Chiara	•		Jeremy Marsh
Judge David Connors	•		Kim Zimmerman
Judge Michelle Heward	•		Jody Thenot
Mr. Rob Rice	•		Jim Peters
			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 December 4, 2020 meeting. Judge Connors moved to approve the minutes as drafted. Mr. Rice seconded the motion and it passed unanimously.

(2) Rules back from public comment:

- CJA 4-202.02. Records Classification
- CJA 4-403. Electronic signature and signature stamp

Ms. Williams: Rules 4-202.02 and 4-403 are back from public comment. There were no comments on rule 4-403. We received one comment on rule 4-202.02. Currently, affidavits of indigency are private records. The proposed language would cover both affidavits of indigency and the two financial data elements now received by the AOC through the electronic probable cause system for use by judges in determining an individual's ability-to-pay a monetary bail amount. Those fields, gross household income and number of dependents, determine where an individual falls on the poverty guidelines. The comment relates to concerns about making more government records private. I do not recommend any changes based on the comment.

Judge Pullan: Each time a decision is made regarding indigency and the appointment of counsel, public funds will be expended. There may be public interest in those decisions. For example, how would the public know if we were over- or under-appointing counsel? How would the public hold anyone to account without access to that information? I think that's a fair question. "Private" is the most restrictive classification. Would "protected" be sufficient? At the same time, we don't want to chill someone's 6th Amendment right. If they know their personal financial information will become public, they may not request counsel.

Judge Connors: I don't think the comment requires a change. A criminal defendant's financial data ought to be protected. The prosecutor's office represents the interests of the government agency paying for public defense. As a party, any concerns about the over-appointment of counsel could be raised in court.

Judge Chiara: Is there a mechanism that allows a person to petition the court for access to a private record?

Ms. Williams: Yes. Under 4-202.04(2)(B), “A person not authorized to access a non-public record may file a motion to access the record. If the court allows access, the court may impose any reasonable conditions to protect the interests favoring closure.” The public can also request data from the Court Services Department regarding the number of appointments, etc.

Judge Pullan: I am comfortable with that. If there is public interest in determining whether or not the courts are appropriately appointing public defenders, and whether those funds are being expended properly, a motion could be made to access the records and the court would have the discretion to redact the records in some way if necessary.

Judge Connors moved to approve the proposed amendments to rules 4-403 and 4-202.02 as written with a recommendation that the Judicial Council approve them as final. Judge Heward seconded and the motion carried unanimously.

Judge Connors: In rule 4-403, military service orders in default debt collections cases should be included in the list of things that can be taken care of with an electronic signature or signature stamp. Those are handled by clerks in our district.

Judge Connors will work with Ms. Williams on a proposed draft for a future meeting. Those changes will not be included in the version of 4-403 approved today.

(3) CJA 3-303. Justice Court Clerks:

Jim Peters introduced Jody Thenot and Kim Zimmerman.

Mr. Peters: The proposal creates a certification requirement for every justice court clerk. Justice court clerks are not state court employees, but this idea is not without precedent. We have a certification program for juvenile probation officers as well. I will also be presenting this to the Management Committee on Tuesday. The proposed rule amendment is to CJA Rule 3-303.

There are currently 113 justice courts throughout the state, with approximately 400 justice court clerks. In the past 6 years, justice courts handled about 60% of all trial court cases. That is more than the district and juvenile courts combined. It raises an interesting question about training. Justice courts don’t have TCEs or training coordinators, many only have one clerk running the entire court. When that person leaves, there is no one to train their replacement and no one at the city or county level, including city managers, have experience running the court or with CORIS. In those smaller courts, the judge may only hold court once a week or every other week and judges aren’t in a position to train clerks. In courts with multiple clerks, a clerk with seniority may be available to train new personnel but that may not be helpful if, for example, they haven’t kept up with CORIS, MyCase, or Workspace changes. As it stands, many justice court clerks call the court’s IT department help desk with questions and are trained in that manner. That is not a good utilization of our resources and is evidence of a lack of training.

The AOC has provided training over the past 4 or 5 years, holding justice court clerk conferences twice a year. The group planning those conferences has been discussing the idea of clerk certification because justice court clerks are the backbone of those organizations and are critical to running the court properly. If the clerks aren’t well trained, judges can’t proceed. In 2018, we began holding quarterly administrative meetings with the highest-ranking clerk from every justice court, similar to the clerks of court. In 2019, that group began developing and publishing training documents, and started holding webinars called “lunch and learn,” splitting conference items up into short sessions throughout the year. Now that the learning management system (LMS) has gone live, the time is right to launch a clerk certification program.

The certification program committee has identified 137 competencies. Twenty (20) have been developed, but only 14 have been approved. The other six (6) are still out for comment. As each competency is approved, they will be added to the LMS for easy access. Each session is about 10-15 minutes long with a quiz at the end. Clerks must pass

each section with a score of 100%. They can take the quiz as many times as they need to pass. The annual certification program in LMS would include a 100-question exam that they would take at different times of the year. The exam would cover items discussed at the annual conference, legislative updates, current topics, and anything that may affect the court system, including ODR and any software updates. In order to be certified they would have to pass that exam with a score of 100%, but it can be taken as many times as needed. The goal is not to set anyone up to fail, but to ensure clerks are educated on court processes and are able to do their job well.

Ms. Thenot: As we interacted with different clerks across the state, we identified a need for consistent training that would ensure confidence in the justice court system. We have been working on this for a while and feel that it is both necessary and important.

Ms. Zimmerman: Now that we've gone live with the LMS, we are in a unique position to offer this information easily to all of the justice court clerks throughout the state. It will make a certification program much more attainable.

Judge Chiara: Do you think there will be an impact on justice courts if the clerks have to take a test every year? Do you think it will discourage people from applying or will cause clerks to quit? There is a lot of turnover amongst out district court clerks right now and I wonder if requiring an annual exam in rural areas will negatively affect their turnover rates? I support education, but I'm concerned about the pressure of having to take an annual exam.

Mr. Peters: With only one exception, the justice court administrators have been very supportive. They like the idea of knowing whether their clerks have been properly trained and can perform their jobs well. I think people outside the court would appreciate knowing whether the justice court clerks are certified. This is modeled somewhat after the BCI's annual certification requirements for TACs. Some clerks may not enjoy taking a 100-question test, but we plan to make it as manageable as possible. It isn't meant to be a "gotcha." This would allow us to see where people are struggling and make changes if needed.

Ms. Thenot: We already do something similar. Because justice courts are unique and scattered across the state, the test is critical to identify the areas where people need help. We don't have a better way to identify who might need help and on which topics.

Ms. Zimmerman: The exam isn't 100 questions all at one time, they will be able to break it up over the year. The most time will be spent on questions associated with a conference. If we approach the yearly assessment as a way to show proficiencies and identify training gaps, we can make a really positive impact. We can also try to build a community so that no one is afraid to reach out for help, especially in those courts run by a single clerk.

Judge Heward: Are we requiring this of clerks at any other level of the court?

Mr. Peters: No. The distinction is that justice court clerks are employed by 113 different entities that are not in a position to train them, whereas juvenile and district court clerks have training coordinators, clerks of court, and multiple levels of management that can observe whether they are doing a good job or not. That isn't the case in justice courts.

Judge Heward: Some clerks have been here for a number of years and they are very competent. I am wondering if a test is the best way to assess competency for experienced clerks. I have concerns about treating them all the same every year. I want to make sure we are identifying those that need help and getting them the help they need, but I'm not sure requiring every single clerk, every single year, to pass an exam is the best approach.

Mr. Peters: The group discussed that. The challenge with clerks who have been with the court for a long time is that they were around when the old case management system or the old accounting system was in place. New systems are being developed, like MySpace and ODR, and changes are frequently made to Workspace and CORIS, so even clerks with tenure will have new information to learn. We are interested in identifying areas of improvement and resources needed. That will help us develop content for the annual conference.

Judge Heward: Do you anticipate changing the exam every year as new programs come on board?

Mr. Peters: Yes. It will be a different test every year. Exams will be designed to incorporate the content from that year's annual conference and legislative update.

Judge Connors: I share the concerns expressed by Judge Chiara and Judge Heward. If the goal is make sure we are doing a good job at training, then maybe this ought to be considered a training assessment tool and not a test. The word "test" itself is offensive in some ways. If I were told I had to test every year to keep my job, I would be offended by that. On the other hand, if I'm being asked to help the AOC determine areas of weakness in its training program by giving them a sense of what I feel well trained in and what I don't, that doesn't offend me in the least. If someone were to test me on my ability to use the electronic signing queue, I would probably fail. However, I would be happy to know the areas in which I need additional training so that I can do it properly. This may be an issue of semantics or in how we talk about it.

Judge Pullan: I assume the authority by which we require employees of counties and cities to meet proficiency standards is in our authority to certify justice courts?

Mr. Peters: Yes. Ultimately, we envision making this a part of the recertification standards justice courts have to meet every 4 years. The Board of Justice Court Judges is working on those revisions. My proposed changes to Rule 3-303 would allow us to start the recertification program now.

Judge Pullan: Do you anticipate push back from county and city HR departments who say that the proficiency of their employees is under their purview? What would we do if a clerk's score gets lower and lower every year? We don't have the authority to terminate them.

Mr. Peters: I'd say we are doing the counties and cities a favor. We will be able to help them determine whether they hired someone that isn't a good fit much sooner than they would have otherwise. I'm happy to go to the Utah League of Cities and Towns' Fall conference to have this discussion. I think they would appreciate having assurances that their clerks know what they're doing.

Judge Pullan: Does it make sense to keep testing every clerk every year? With the exception of maybe the legislative update and annual conference standards, if a clerk has passed the test with a score of 100% for 5 years, why does she need to keep taking it? Could the requirement change to every other year at that point? If we're just trying to establish a threshold level of proficiency, once they've attained that level, do they need to keep doing it every year?

Mr. Peters: In those cases, maybe we wouldn't require 100 questions. If the Committee is more comfortable with testing less often, that would be better than nothing. If we hope to test those 137 modules, but limit them to 25-50 questions every year, that's enough material to keep us going for a while. With recent and upcoming changes to ODR and CORIS, we don't anticipate a shortage of test material for several more years. Stress on, or burnout of, clerks is something worth considering.

Judge Pullan: I tend to agree with Judge Connors. How we talk about this matters, because in some ways we are creating a barrier to employment. We already have a hard time hiring and retaining clerks. This could be interpreted as us saying that we believe them to be somewhat incompetent and, therefore, they must prove to us that they're not. I worry about that message. I also worry about treating justice court clerks differently than juvenile and district court clerks.

Judge Connors: Have you conducted a focus group or received feedback from city clerks about this kind of proposal?

Mr. Peters: Yes. The justice court administrators are the highest ranking court official in their city/county. We meet with them every three months and we've discussed this multiple times. With one exception, the justice court

administrators are supportive of this idea and are excited about having a way to identify which clerks they need to focus on. This is more than just an evaluation. The program includes a curriculum. When a new clerk in a two-clerk office is hired, the more experienced clerk may not know how to train them on 137 topics. The program gives them a road map and feedback on whether their clerks understand it. In addition to the justice court administrators, the justice court clerk certification committee includes 7-8 different clerks from across the state.

Judge Connors: I have no concerns about the training aspect, it is the “testing” aspect that I worry about. It’s good to assess how well our training is received, but the notion of requiring clerks to pass a test every year in order to serve is where I get hung up.

Ms. Thenot: The proficiency of district court clerks is tied, in part, to career ladders and raises. Justice courts don’t have that system. The goal is to make sure everyone is trained and proficient. There is some flexibility to account for the range of experience and knowledge. Clerks can take a pre-assessment in LMS and if they pass, they don’t have to do the training.

Judge Pullan: This isn’t on for action today. An extraordinary amount of work has gone into this. I don’t want anyone leaving Policy and Planning with the idea that we are resistant to improving competence in the justice court. That is clearly not the case. You have articulated good reasons for why we need to be looking at this issue. I would be interested in knowing whether the Utah League of Cities and Towns and the Utah Association of Counties are supportive. We need to ensure they are okay with us creating a rigorous standard for their employees. I can’t imagine they would be opposed for the reasons Mr. Peters stated, but bringing them to the table on the front end may help us avoid misunderstandings. How long will it take you to meet with them?

Mr. Peters: The League’s main meeting is in the Fall. UAC may be more of a challenge, especially with the session starting soon. I will report back after I’ve met with those two groups.

(4) 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

Judge Connors: At the last meeting, I asked for clarification on the provision in rule 3-501 on automatic benefits. It sounds like it guarantees benefits for five years, making the earned benefits only two years, but it’s unclear.

Judge Pullan: We need to make sure our rules reflect our practice.

Mr. Olsen and Judge Connors will follow-up on that issue after the meeting.

Judge Pullan: To make the review process more efficient, Mr. Olsen is proposing that he schedule one-hour meetings with each member to discuss questions or notes on their assigned policies. Many of the suggestions in the Google doc are grammatical and don’t need to be discussed during a meeting. After the individual meetings, Mr. Olsen would bring all of the policies back to the full committee for a robust discussion on substantive policy issues.

Mr. Olsen: I think that would save a lot of time. Each member would know exactly what they want to discuss with the full committee and the reason behind the proposed amendments.

After further discussion, the Committee agreed to Mr. Olsen’s proposal. The Committee’s February 5th meeting will be extended to three hours (12:00-3:00 pm) and will be dedicated to finalizing as many of the proposed HR policy amendments as possible.

Judge Cannell asked about the employee overtime compensation policy.

Mr. Olsen: The overtime issue is addressed in Section 8. I am working with Brent Johnson on a memo regarding the court's obligation to pay for compensable hours under the Fair Labor Standards Act. We need to be made aware if employees have worked overtime hours that haven't been reported, so that those employees can be paid as required. Mr. Johnson spoke with the TCEs and we are developing a reporting and approval process through management. We need open communication between line staff and management when overtime is needed, and employees need to understand that they will be compensated for time worked. The memo will also address how we plan to manage overtime moving forward.

Judge Chiara: In rural areas, many clerks don't feel like they can take overtime. They either leave and complete the work the next day, even if it needed to be done the same day, or stay to complete the work but don't report the overtime hours. They don't know, or don't feel, that they can account for the overtime hours.

Judge Pullan: If employees are working overtime and not reporting it, it needs to stop today. We need to find out if we have a financial responsibility. We may need to look at getting additional FTEs, but the cultural issues definitely need to change.

Mr. Rice: I reviewed section 8 and it accurately addresses the court's policy on overtime. The cultural aspect is a separate training issue and it's an important one to address with managers.

Mr. Olsen: This is something that needs to be addressed at all management levels and on an ongoing basis.

(10) ADJOURN:

With no further items for discussion, Judge Connors moved to adjourn the meeting. With no opposition, the meeting adjourned at 1:30 pm. The next meeting will be on February 5, 2021 at noon via Webex video conferencing.