

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

Webex video conferencing
April 2, 2021: 12 pm -2 pm

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Paul Barron
Judge Brian Cannell	•		Wayne Kidd
Judge Samuel Chiara	•		Tiffany Pew
Judge David Connors	•		Bart Olsen
Judge Michelle Heward	•		STAFF:
Mr. Rob Rice	•		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 March 5, 2021 meeting. With the correction of a few typos, Judge Connors moved to approve the minutes as drafted. Judge Heward seconded the motion and it passed unanimously.

(2) Rules back from public comment:

- **2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct**

Ms. Williams: There were no formal public comments, but Judge Orme made a few minor recommendations. His proposed amendments have been incorporated.

Judge Connors: Judge Orme's recommendation to add "other" in paragraph (1) doesn't make sense in context. If I report an allegation to my judicial assistants, does that begin this process? I don't think so. If a judge violates the Code of Judicial Conduct and his clerk tells another clerk about it, does that initiate some kind of response or action? An alternative is to say, "any other court employee designated to receive or review such allegations."

Judge Pullan: Our goal is to create an organization in which there are multiple places to report problems.

Mr. Rice: In a more typical grievance procedure in an employee handbook, that clause would read, "any other management or supervisory level employee," or something to that effect. In this context, that doesn't feel like the right fix. There are so many supervisory and management employees in the Judiciary. Hopefully, supervisors are trained to report those grievances to Human Resources, but judicial conduct issues are more complex than traditional HR issues. Judge Connors has a valid point. My suggestion is to create a way to draw a smaller circle around the kind of employees we're talking about.

The Committee discussed reporting levels and employee training regarding alleged judicial conduct violations.

Judge Pullan: I don't think the presiding officer of the Council should be the only person to whom these submissions can be made. I recommend separating the reporting structure into two sections.

Mr. Rice: I agree. The first section should make it clear to line employees that they can report to anyone, and the

second section should outline how the allegation gets to the Chief Justice once a report has been received at a lower level. The anti-discrimination and harassment policy is the model for the first section, stating that employees can report to anyone with whom they feel comfortable. The Human Resources department should be in the equation somewhere.

After further discussion, the Committee asked Ms. Williams to incorporate the two-step reporting structure from the HR policies into the rule and circulate it to members via email for approval.

Judge Heward moved to send rule 2-211, as amended and subject to future changes by Ms. Williams, to the Judicial Council with a recommendation that it be adopted as final. Judge Connors seconded and the motion passed unanimously.

(3) 3-415. Auditing:

Mr. Kidd: The purpose of the revisions is to clarify elements of the audit process, including the types of audits, and ensuring transparency. Substantial changes to the rule include the following:

- All boards of judges now have an opportunity to make recommendations for audit plans. Previously, only the board of justice court judges provided recommendations
- Clarifies that auditors have full, unrestricted access to all records and information
- Articulates clear definitions of fiscal and performance audits
- Clarifies that an audit may contain elements of both fiscal and performance audits
- Clarifies which individuals are involved at critical points and to whom audit reports are sent

Judge Pullan: In line 43, it says “objectivity shall be employed by the auditors at all times.” Is that something in addition to the earlier statement that auditors will follow “generally accepted audit principles”? Isn’t objectivity a requirement of those principles? I don’t want to create the perception that there is some standard independent of generally accepted audit principles.

Mr. Kidd: Yes, objectivity is included in generally accepted audit principles. We can take that out.

Judge Pullan: Line 113 is referring to the written responses and comments authorized in lines 100 and 107, but it isn’t clear. I recommend changing lines 113-114 to, “Written responses or comments to reports presented under paragraph (6)(A) shall be provided to the audit director within 30 days.”

The Committee discussed whether to include a consequence for not meeting the 30-day deadline, but determined that the language should be flexible enough to allow for case-by-case decisions by the audit director.

Judge Pullan: Final reports are sent to the Management Committee, but I’m wondering if performance audits shouldn’t also be sent to Policy and Planning because they deal with achieving policy goals and objectives, and financial audits to the Budget and Fiscal Management Committee for similar reasons. On the other hand, is the Management Committee acting as a screening mechanism? For example, if the Management Committee determines certain policy or financial issues need to change, then they make any necessary assignments?

Mr. Kidd: Yes, the Management Committee does make assignments as necessary, but the Audit Department should be making recommendations about copying certain boards or committees in the final reports.

Judge Connors moved to send rule 3-415 to the Judicial Council, as amended, with a recommendation that it be approved for public comment. Judge Chiara seconded and the motion carried unanimously.

(4) 7-302. Court reports prepared for delinquency cases:

Ms. Pew: The proposed amendments originated with the Juvenile Probation Policy Committee. The purpose is to align the rule with statutory changes, requirements outlined in the new juvenile disposition guide, and evidence-based practices related to objectively collecting and reporting information to the court.

The requirement that probation officers include an itemized list of losses suffered by the victim in (3)(A)(iv) has been eliminated in order to align with Utah Code section 78A-6-117, which states that a prosecutor or victim shall submit a request for restitution to the court at the time of disposition. The Board of Juvenile Court Judges feels that the role of probation officers and the role of prosecutors are very clear when it comes to restitution. The onus is on the prosecutors.

Paragraph (3)(B) has been removed to align with current evidence-based practices and research. Our officers should only include information in the court report that can be collected objectively through the administration of a validated risk assessment, collateral contacts, and formal interviewing techniques. The assessment under (3)(B) is subjective and could vary by probation officer. It's important to remove subjectivity and potential bias.

The amendments in (3)(E) update the rule to align with juvenile disposition guidelines that went into effect in December 2020. The new guidelines no longer include a sentencing matrix and now reference factors that inform disposition, which replaced "aggravating and mitigating factors."

Judge Heward: Who will gather the information for the victim impact statement? In the past, it's been done differently in districts across the state. Traditionally, in second district the county attorney's office gathers the information, but I know in other jurisdictions the probation officer has that primary responsibility. Has this met resistance from other areas of the state? Is the Board now taking the position that the county attorney's office must gather the information?

Ms. Pew: My understanding from the discussions with the Board is, yes, that should be the role of the county attorney. The probation department will continue to mail and e-file the victim impact statements in CARE, so they will still play a role in collecting that information, but when it comes to following up with the victim and getting receipts, et cetera, that would fall on the prosecutor.

Judge Heward: Will probation officers still be involved in non-judicial cases?

Ms. Pew: This rule only applies to delinquency cases in Juvenile Court, so the process for determining restitution for non-judicial agreements will remain the same.

After further discussion, Judge Heward moved to send rule 7-302, as amended, to the Judicial Council for approval for public comment. Mr. Rice seconded and the motion passed unanimously.

(5) 10-1-501. Orders to Show Cause
10-1-602. Orders to Show Cause:

Ms. Williams: Ms. Sylvester brought this to my attention about a week ago. The changes to rule 7 and the two new rules of civil procedure, rules 7A and 7B, go into effect on May 1, 2021. Ms. Sylvester recommends that local CJA rules 10-1-501 and 10-1-602 be repealed because they conflict with the new rules. We reached out to the 5th and 6th district benches to see if they had any thoughts or objections. Judge Bagley said the 6th district bench prefers its local rule, but understand that it conflicts with the civil rules so they are not objecting to a repeal. I emailed

Judge Westfall's concerns to the Committee separately. Per his comments, the 5th district bench is objecting to a repeal and would like to keep their local rule. My concern is that the Rules of Civil Procedure supersede these rules. I think Judge Westfall makes valid points about delay and workload, especially considering that they don't have a commissioner. I made a few edits to try and address some of his concerns, while remaining in compliance with the new rules, but I'm not sure I've succeeded. I don't think they can get around the 28-day service timeframe. Mr. Player also makes good points about forms. I don't think we want different forms for each court location. I also think the caution language and bilingual notice requirements are extremely important.

Judge Pullan: If these local rules are now in conflict with rule 7, they should be repealed. To Mr. Player's point, the purpose of the Rules of Civil Procedure is to create a uniform process of litigation statewide. A repeal might generate an initiative to adopt new local rules that are more consistent with the rules of procedure. I would prefer that process to trying to make amendments now. I propose that the committee recommend repeal, but encourage the 5th and 6th district benches to meet with the Rules of Civil Procedure committee to see if that body is willing to make adjustments, or to present new local CJA rules to this body that supplement the rules of procedure or are drafted in a way that implements rules of procedure efficiently, given local conditions.

Judge Connors: I agree. We can't maintain a rule that is not compliant or consistent with the rules of civil procedure.

Judge Chiara: I agree that the rules should be uniform. It would be inconceivable to file a summary judgment, for example, only to discover that the district had their own local rule that trumped rule 56. When I started practicing law, I had no idea how to file an order to show cause and there wasn't a rule anywhere that told me how to do it. The practice varied by district. After many years, we will finally have a uniform rule.

Mr. Rice: I agree. I don't think most practitioners are even aware of these local rules.

After further discussion, the committee asked Ms. Williams to notify Judge Bagley and Judge Westfall of the committee's decision.

Mr. Rice moved to recommend to the Judicial Council that rules 10-1-501 and 10-1-602 be repealed with an expedited May 1, 2021 effective date to coincide with the effective date of the new rules of civil procedure. Judge Connors seconded and the motion passed unanimously.

(6) ADJOURN:

With no further items for discussion, the meeting adjourned at 1:25 p.m. without a motion. The next meeting will be on May 7, 2021 at 9 AM via Webex video conferencing.