

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

Webex video conferencing  
December 3, 2021: 12 pm -2 pm

| <b>MEMBERS:</b>                  | <b>PRESENT</b> | <b>EXCUSED</b> | <b>GUESTS:</b>   |
|----------------------------------|----------------|----------------|------------------|
| Judge Derek Pullan, <i>Chair</i> | •              |                | Nathanael Player |
| Judge Augustus Chin              | •              |                | Lauren Andersen  |
| Judge Samuel Chiara              |                | •              | Judge Fuchs      |
| Judge David Connors              | •              |                | Judge Gilmore    |
| Judge Michelle Heward            | •              |                | Michael Drechsel |
|                                  |                |                | Bart Olsen       |
|                                  |                |                | Jim Peters       |
|                                  |                |                | Paul Barron      |
|                                  |                |                | Keri Sargent     |
|                                  |                |                | <b>STAFF:</b>    |
|                                  |                |                | Keisa Williams   |
|                                  |                |                | Minhvan Brimhall |

**(1) Welcome and approval of minutes:**

Judge Derek Pullan welcomed committee members and guests. The committee considered the minutes from the November 5, 2021 meeting. With no changes, Judge Heward moved to approve the minutes as presented. Judge Connors seconded the motion. The motion passed unanimously.

**(2) Rules back from public comment:**

- **CJA 2-101. Rules for conduct of Council meetings** (*effect 5/1/22*)
- **CJA 5-101. The Board of Appellate Court Judges** (*effect 5/1/22*)
- **CJA 6-101. The Board of District Court Judges** (*effect 5/1/22*)
- **CJA 7-101. Juvenile Court Board, Executive Committee and Council Representatives** (*effect 5/1/22*)
- **CJA 9-101. Board of Justice Court Judges** (*effect 5/1/22*)
- **CJA 3-303. Justice court clerks** (*expedited effect 1/1/22*)
- **CJA 3-117. Committee on Court Forms** (*coming back later*)
- **CJA 3-401. Office of General Counsel** (*effect 5/1/22*)
- **CJA 4-202.02. Records of classification** (*effect 5/1/22*)
- **CJA 4-208. Automatic expungement of cases** (*effect 5/1/22*)

Following a 45-day comment period, no comments were received on any rule.

CJA 2-101, 3-303, 3-401, 4-202.02, 4-208, 5-101, 6-101, 7-101, 9-101:

The amendments to CJA rules 2-101, 5-101, 6-101, 7-101, and 9-101 clarify the manner in which meetings are to be conducted and remove references to Robert's Rules of Order. The amendments to CJA 3-303 create an annual certification requirement for justice court clerks. The amendments to CJA 3-401 clarify the duties of the Office of General Counsel. The amendments to CJA 4-202.02 ensure that statements in support are classified as private records. New rule CJA 4-208 governs the AOC's development and implementation of an automated expungement process.

***Following further discussion and minor language changes, Judge Connors moved to send rules CJA 2-101, 5-101, 6-101, 7-101, 9-101, 4-202.02, and 4-208 to the Judicial Council with a recommendation that they be approved as final with an effective date of May 1, 2022. Judge Heward seconded the motion. The motion passed unanimously.***

***Judge Connors moved to send rule CJA 3-303 to the Judicial Council with a recommendation that it be approved as final with an expedited effective date of January 1, 2022. Judge Heward seconded the motion. The motion passed unanimously.***

**CJA 3-117:**

Previous amendments to CJA 3-117 removed the requirement that the General Counsel act as staff to the committee, giving the state court administrator the discretion to allocate AOC staff and resources as appropriate. Nathanael Player has now been appointed as staff to the committee. New proposed amendments would remove the requirement that the General Counsel conduct a legal review of every form prior to its adoption. The General Counsel, or designee from the office, may be consulted as needed. New proposed amendments would also clarify the current role and responsibilities of the committee on court forms. Paragraph (4)(d) would allow user testing of future forms where practicable.

Courts across the state would also be required to use standardized court forms. The committee expressed the need for clarification of the difference between standardized and mandatory forms, and noted that districts may need to modify forms to address differences in local practice and resources or to quickly address an issue. One option might be to allow modification, provided the proposal is submitted to the Forms Committee for approval prior to use if practicable, or within a specified period of time following the modification if not practicable.

After further discussion, the committee determined that the rule proposal needs more review and recommended that Mr. Player seek feedback from the boards of judges.

**(3) CJA 2-103. Open and closed meetings: *(approved to send to JC for public comment)***

The proposed amendments were requested by the Judicial Council at their November 22, 2021 meeting. The amendments: 1) remove the requirement that the AOC send a separate notification to a newspaper of general circulation when Council meeting agendas are posted on the Utah Public Notice Website, and 2) clarify that a Judicial Council meeting may be closed for discussions regarding legal advice of counsel.

***Judge Heward moved to send rule CJA 2-103 to the Judicial Council with a recommendation that it be posted for a 45-day public comment period. Judge Connors seconded the motion. The motion passed unanimously.***

**(4) CJA 3-403. Judicial branch education.**

The proposed amendments to CJA 3-403 were requested by the Standing Education Committee. The amendments would require all judicial officers to attend or participate in the annual judicial conference, unless otherwise excused by the Presiding Judge. Both in-person and virtual participation would be allowed. Judicial officers would be encouraged to attend in-person (when possible) or live through Webex, but recordings of the sessions would be made available for viewing when attendance is not possible.

The committee discussed concerns with the requirements as proposed. One concern was that a mandate for justice court judges may have a fiscal impact on cities and counties. The committee recommended that the Standing Education Committee meet with the respective boards of judges and the presiding judges from each district to gather their input on ways to encourage attendance at the annual conference.

**(5) Problem Solving Courts (best practice #3):**

Judge Fuchs recommended an amendment to best practice #3 on the problem solving court certification checklist. Currently, only participants that present as high risk and high need on the RANT (an approved validated assessment tool) may be admitted into the program. The proposed amendment would continue that practice, however, if a program is unable to target a high risk, high need offender, the program would develop an alternative track with services that can be modified to meet the risk and need levels of the participant. The proposed amendments would meet national best practice standards.

***Following discussion, Judge Connors moved to send the proposed amendment to the Judicial Council with a recommendation that it be approved as final. Judge Heward seconded the motion. The motion passed unanimously.***

**(6) CJA 6-303. Collection of fines and restitution (expedited effective date 1/1/22)**

The proposed amendments to CJA 6-303 are necessary to conform to statutory changes made during the 2021 Legislative session in HB 260. The Department of Corrections is no longer responsible for collecting any criminal accounts receivable for sentences imposed on or after July 1, 2021. They continue to be responsible for accounts receivable on cases sentenced before July 1, 2021.

***Judge Connors moved to send rule CJA 6-303 to the Judicial Council with a recommendation that it be approved as final with an expedited effective date of January 1, 2022. Judge Chin seconded the motion. The motion passed unanimously.***

**(7) Internal procedures re judicial misconduct complaints:**

- **HR 15-4. Workplace Harassment Investigative Procedures**
- **HR 16-3. Abusive Conduct Investigative Procedures**
- **CJA 3-301.01. State Court Administrator – Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees**

The proposed amendments to HR 15-4, HR 16-3, and CJA 3-301.01 are intended to streamline and memorialize procedures related to internal reports of alleged *judicial* misconduct involving court employees and/or other judicial officers, and (where appropriate and allowed under the law) to make the procedures more consistent with those related to similar reports of alleged *employee* misconduct. CJA 3-104(3)(K) outlines the actions Presiding Judges are authorized to take when “another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct.”

The committee reviewed comments from Judge Chiara. The committee expressed concerns regarding the minimal amount of information the alleged person would receive about the allegations at the beginning of an investigation, while highlighting the need to protect the identity of the victim and the importance of preserving evidence. The committee discussed adding a provision wherein the Chief Justice or Presiding Judge would issue a directive at the beginning of an investigation preventing the destruction of evidence prior to or during the investigative process.

The committee determined that a more comprehensive review of the proposed amendments are necessary. Mr. Olsen will meet individually with each committee member and will meet with the respective boards for input.

**Old Business/New Business:** None

**Adjourn:** With no further items for discussion the meeting adjourned. The next meeting will be held on January 7, 2022 at 12 PM via Webex video conferencing.