

**UTAH JUDICIALCOUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES**

Webex video conferencing
March 4, 2022: 12 pm -2 pm

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>		•	Ron Gordon
Judge Augustus Chin	•		Bart Olsen
Judge Samuel Chiara	•		Paul Barron
Judge David Connors	•		Keri Sargent
Judge Michelle Heward	•		Jon Puento
			STAFF:
			Keisa Williams
			Minhvan Brimhall

(1) Welcome and approval of minutes:

Judge Connors welcomed committee members and guests. The committee considered the minutes from the February 4, 2021 meeting. With no changes, Judge Heward moved to approve the minutes as presented. Judge Chiara seconded the motion. The motion passed unanimously.

(2) Internal procedures re judicial misconduct complaints:

- **HR 15-3 and 15-4. Workplace Harassment Investigative Procedures.**
- **HR 16-2 and 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.**
- **CJA 3-104. Presiding Judges.**

The committee discussed amendments to HR 15-3, 15-4, 16-2, and 16-3 during its November 2021 meeting and recommended that Bart Olsen meet with each committee member individually. Mr. Olsen integrated members' feedback from those individual sessions into the current proposals. The amendments are intended to align procedures regarding allegations of judicial misconduct to that of allegations of employee misconduct. The amendment to 3-104 would allow Presiding Judges to place a judge on temporary, non-punitive paid administrative leave during an investigation.

HR 15-3 and 15-4:

The committee discussed substantive changes to HR 15-3 and 15-4 and made additional amendments. Section 15-3(4)(b), line 47, was amended to allow a complainant to submit a request to either the State Court Administrator or Deputy State Court Administrator for an independent review of a complaint if the complainant disagrees with Human Resource's determination that the accused did not violate policy. The committee discussed the language in HR 15-14(1)(c)(i)(1), lines 104-106. Section (1)(c) provides instruction for actions taken by the investigator. The committee determined that the language was better suited in 15-4(1)(a)(v), lines 78-79, for complaints against employees, and 15-14(1)(b)(v), lines 94-98, for complaints against judicial officers. The following amendments were also made:

- Line 102 - changed "often" to "may"
- Line 125 - added a reference to CJA 3-104

- Line 141 – added clarifying language to ensure the complainant and accused are notified of the completion of the investigative process
- Line 169 - “determine” was replaced by “believe”
- Lines 171-173 – rather than removing an accused’s representative from an interview if the representative becomes disruptive, the investigator may pause or terminate the interview to consult with administration or legal counsel on next steps

HR 16-2 and 16-3:

The committee noted that the changes in HR 15-3 and 15-4 should align with HR 16-2 and 16-3. Mr. Olsen will make those amendments.

After further discussion, the committee determined that both policies need additional review and language modification. Mr. Olsen and Ms. Williams will make adjustments to the policies as recommended. Mr. Olsen will circulate the changes to the committee members via email for review in hopes that the amendments can be approved electronically. If not, both policies (along with CJA 3-301.01 and 3-104) will be addressed at a future meeting. No motion was made at this time.

(3) HR 01. Definitions

HR 8-14. Dual State Employment

HR 9-11. Conflict of Interest

HR 9-12. Political Activity

HR 9-12:

In reviewing HR policies, Mr. Olsen and Ms. Williams discovered inaccuracies in section HR 9-12 regarding judicial employees’ ability to engage in political activities. The language in the current version of the policy was copied in error from executive branch policies. Employees of the judicial branch are subject to more restrictions on political activity than those employed in other branches of government. The proposed amendments revert back to language in the pre-July 1, 2021 HR policy, with a few amendments that reflect prohibitions found in Utah ethics advisory opinions.

Following discussion, the committee made the following minor changes:

- Lines 28-29 – Clarifies that the list of prohibited political activity is non-exhaustive
- Line 38 – replaced “invidious” with “unlawful”
- Lines 35-36 - replaced “etc.” with “other entities” and “entity”

In subsection (3), judicial employees are prohibited from serving on state and local boards, councils, committees, or other entities in the executive or legislative branches, unless those entities deal with the law, the legal system, or the administration of justice. Mr. Gordon expressed concern that the prohibition in (3) is too broad, noting that judicial employees should be allowed to participate in some local community activities. Ms. Williams pointed to Informal Ethics Advisory Opinion 97-6. The opinion states that employees are subject to the same restrictions as judges in this regard. Following discussion, the committee determined that the policy should remain as currently written because it would otherwise be out of step with the ethics advisory opinions, however, the committee agreed with Mr. Gordon that the prohibition seems overly broad. The committee asked Ms. Williams to submit a formal request on its behalf to the Ethics Advisory Committee for an opinion on this issue.

The committee discussed concerns with subsection (9), primarily the practicality of prohibiting any and all political displays (e.g., framed portrait of George Washington in a judge’s chambers) and religious discussions that may arise naturally in the work place, provided the discussions and displays aren’t offensive, harassing, or discriminatory in nature. The committee amended (9) to read “Employees should exercise caution with partisan political and religious displays, statements and discussions in the workplace, especially in areas visible to or within earshot of the public.” Ms. Williams expressed disagreement with the amendment, indicating that she believes political and religious displays and discussions in the workplace violate judicial ethics, tie management’s hands when those

issues become disruptive or an employee disagrees with management about the appropriateness of a particular discussion or display, and could lead to liability for the courts with respect to allegations of abusive conduct or workplace harassment or discrimination.

The committee discussed and made no changes to the proposed amendments to HR 01, HR 8-14, and HR 9-11.

With no further discussion, Judge Chiara moved to approve the proposed amendments to HR 01, HR 8-14, HR 9-11, and HR 9-12, with a recommendation to the Judicial Council that the policies be approved as final. Judge Chin seconded the motion. The motion passed unanimously.

(4) HR 8-22. Out-of-State Work Policy

HR 8-22 is a new policy associated with rules recently adopted by State Finance. The judicial branch utilizes the same payroll system as the executive branch, so judicial policies must align with those adopted by the executive branch. The state court administrator and deputy court administrator will provide additional direction to managers regarding employees' ability to work out of state.

With no recommendations for amendments or further discussion, Judge Chiara moved to send HR 8-22 to the Judicial Council with a recommendation that the policy be approved as final. Judge Chin seconded the motion. The motion passed unanimously.

(5) HR 9-9. Professional Appearance Policy.

Due to the lack of time, this item will be discussed at a future meeting.

Old Business/New Business: None

Adjourn: With no further items for discussion, the meeting was adjourned without a motion. The next meeting will be held on April 1, 2022 at 12 PM via Webex video conferencing.