

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
May 6, 2022: 12 pm -4 pm

MEMBERS:

PRESENT

EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Augustus Chin	•	
Judge Samuel Chiara	•	
Judge David Connors	•	
Judge Michelle Heward	•	

GUESTS:

Judge Kate Appleby
Commissioner Minas
Nathanael Player
Amy Hernandez
Jim Peters
Shonna Thomas
Allison Barger
Bart Olsen
Stacy Haacke
Paul Barron
Keri Sargent
Meredith Mannebach
Brody Arishita

STAFF:

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 March 4, 2022 meeting. With no changes, Judge Chin moved to approve the minutes as presented. Judge Chiara seconded the motion. The motion passed unanimously.

(2) Rules back from public comment:

- **CJA 1-205. Standing and ad hoc committees.**
- **CJA 3-407. Accounting.**
- **CJA 3-421. WINGS Committee.**
- **CJA 6-104. Water law judges.**

The public comment period for CJA 1-205, 3-407, 3-421, and 6-104 closed on April 28, 2022. No comments were received for rules 1-205, 3-407, or 3-421. CJA 3-407 has been approved on an expedited basis, effective March 11, 2022. Rules 1-205 and 3-421 are ready for final approval by the Judicial Council.

With no further discussion, Judge Chiara moved to send CJA 1-205 and 3-421 to the Judicial Council with a recommendation that the rules be adopted as final. Judge Chin seconded the motion. The motion unanimously passed. The committee made no edits to rule 3-407. It will remain in effect as drafted.

CJA 6-104: The court received four comments on rule 6-104. Judge Appleby noted that many of the comments expressed similar concerns, one of which was a recommendation that the courts create special water courts. Doing so would significantly expand the proposed rule, resulting in a need for legislation with an unfunded fiscal impact, delaying the appointment of water law-trained judges. Judge Appleby noted that the commenters may not be

aware that 6-104 was modeled after the tax judge rule. The committee engaged in a substantive discussion about the comments. The committee added a subsection clarifying that nothing in the rule affects venue and changed “publishing opinions” to “posting opinions” to remedy concerns about the precedential impact of the posted decisions. The committee will recommend that the Judicial Council create a drafting committee one year after adoption of the rule to evaluate how the rule has been implemented and to recommend amendments. The drafting committee would include water law stakeholders. Judge Pullan agreed to prepare a letter to the commenters, thanking them for the comments and explaining the committee’s decisions. Judge Pullan and Judge Appleby will discuss the comments and rule amendments with the Judicial Council.

With no further discussion, Judge Chiara moved to approve rule CJA 6-104 as amended and forward the rule to the Judicial Council with a recommendation that it be adopted as final with a November 1, 2022 effective date. Judge Heward seconded the motion. The motion passed unanimously.

(3) CJA 4-508. Guideline for ruling on a motion to waive fees.

Proposed amendments to CJA 4-508 are in response to S.B. 87 (fee waiver amendments), effective May 4, 2022. SB 87 removes the court’s discretion to evaluate indigency under certain circumstances. If an individual demonstrates that (1) their income is at or below 150% on the poverty guidelines, (2) they receive benefits from a government program, or (3) they have a court-appointed attorney, the court must find them indigent. The court still has discretion to evaluate indigency when the individual is seeking a fee waiver due to insufficient income. Mr. Player and Ms. Williams presented opposing views on when a hearing on a motion to waive fees is required. Following a discussion, the committee determined that a hearing is required only when the court considers the merits of the cause of action.

With no further discussion, Judge Chiara moved to approve rule CJA 4-508 as amended and forward the rule to the Judicial Council with a recommendation that it be adopted as final with an expedited effective date of May 25, 2022. Judge Chin seconded the motion. The motion passed unanimously.

(4) CJA 4-202.03. Records Access.

Currently, expungement orders are classified as sealed and cannot be accessed without a court order. The Clerks of Court and Self-Help Center recommend amending rule 4-202.03(2) to allow individuals to obtain a copy of their expungement order without getting a court order to unseal the record. The proposal mirrors the process that allows adoptive parents to obtain a copy of an adoption decree.

The committee discussed the meaning of “positive identification,” adding language requiring that the request be made in-person. If the individual cannot appear in person, they will need to file a petition for a court order. The committee recommended that Mr. Player and Ms. Mannebach meet with the clerks of court to develop training for court clerks and JAs on the meaning of “in-person positive identification” when processing requests. Webex could be considered “in-person” only if the clerks of court agree that it is a good idea and employees can be adequately trained.

With no further discussion, Judge Heward moved to approve rule CJA 4-202.03 as amended and forward the rule to the Judicial Council with a recommendation that it be published for a 45-day public comment period. Judge Chiara seconded the motion. The motion passed unanimously.

(5) Pretrial Protective Order Form

The Court Forms Committee recommends adding language to the Protective Order form notifying litigants that attending a hearing and serving documents will not violate the protective order, and that they must stay away from the protected person if they encounter them at a location not listed in the order. The Domestic Violence Program also recommends the proposed amendments to reduce the risk of lethality in criminal domestic violence cases, such as stalking behaviors. The proposed amendments have been presented to all of the board of judges.

With respect to the language about attendance at hearings and service, the Board of District Court Judges and the Board of Juvenile Court Judges wanted a general statement, while the Board of Justice Court Judges asked for additional language articulating which types of service were satisfactory. With respect to the notice about encountering protected persons at unspecified locations, the Board of Justice Court Judges wanted to include the proposed language, but the Board of District Court Judges disagreed and wanted it removed. The Board of Juvenile Court Judges were not asked about that provision. The committee discussed whether the service language may create an “open courts” issue. If you read the provisions of the protective order statute broadly, would it be considered 3rd party contact? Protective orders couldn’t be served in person under any circumstances, but otherwise must be served in accordance with the rules of procedure.

The committee recommended that the Forms Committee consider the committee’s feedback and request specific proposed amendments from the BJCI on the stay away provisions.

Following discussion, Judge Chin moved to send the Pretrial Protective Order Form back to the Forms Committee for further review. Judge Chiara seconded the motion. The motion passed unanimously.

(6) CJA 9-109. Presiding Judges.

The proposed amendments to CJA 9-109 come from the Board of Justice Court Judges and simplify the leadership structure of justice courts and address the compensation disparity for presiding and associate presiding judges by eliminating the position of Education Director. The Associate Presiding Judge will assume the education duties. The board is requesting a July 1, 2022 effective date due to the timing of their elections.

With no further discussion, Judge Chin moved to approve 9-109 as amended and forward it to the Judicial Council with a recommendation that it be approved on an expedited basis with a July 1, 2022 effective date, followed by a 45-day public comment period. Judge Chiara seconded the motion. The motion passed unanimously.

(7) CJA 4-903. Uniform custody evaluations.

In November 2021, proposed amendments to rule 4-903 were recommended by the Standing Committee on Children and Family Law. The amendments limit the circumstances under which a custody evaluation can be ordered and outlines the training requirements of those who conduct custody evaluations. Following a 45-day comment period, one comment was received. In February 2022, Policy and Planning expressed concerns about the uncertainty surrounding who would be responsible for payment of the evaluation and recommended that the rule be amended to provide clarity. The committee also recommended a 15-day written notice of request for a custody evaluation, rather than 45 days. Commissioner Minas agreed to take the committee’s feedback to the Children and Family Law Committee for consideration. The proposed amendments incorporate the committee’s recommendations.

Following a discussion, the committee reduced the written notice of the evaluation from 45 days to 28 days and retained the language allowing judges or commissioners to make the determination as to which party will pay for the cost of the evaluation. That language allows the allocation of cost on a case-by-case basis.

With no further discussion, Judge Heward moved to approve 4-903 as amended with a recommendation to the Judicial Council that it be adopted as final. Judge Chiara seconded the motion. The motion passed unanimously.

(8) CJA 6-501. Reporting requirements for guardians and conservators:

The WINGS Committee and Probate Subcommittee recommend proposed amendments to rule 6-501, incorporating changes related to H.B. 320 (Guardianship Bill of Rights) and feedback from Policy and Planning at its November 5, 2021 meeting. The rule has been formatted to make it easier to read and for consistency with other CJA rules. The WINGS Committee addressed concerns about reports not being reviewed and attended to the way

they should be and provided clarity on reporting requirements. The WINGS committee also created a cover sheet that will accompany the report and will allow for e-filing.

The committee asked whether the case management system includes a process that would generate an automatic timer/reminder for an annual review of the reports? That functionality does not exist currently. Mr. Barron will work with Ms. Barger and Ms. Haacke to research a possible solution prior to the effective date of the rule.

With no further discussion, Judge Chin moved to approve 6-501 as amended and send it to the Judicial Council with a recommendation that it be published for a 45-day comment period. Judge Heward seconded the motion. The motion passed unanimously.

(9) HR Resource Policies.

- HR 01. Definitions.
- HR 07-02, 07-9, 07-21. Leave.
- HR 04-1 thru 04-4. Filling positions.
- HR 05-1 thru 05-3. Career service.
- HR 15-3, 15-4, 15-6. Workplace Harassment.
- HR 16-2, 16-3, 16-4. Abusive Conduct.
- CJA 3-301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees.
- HR 09-9. Professional Appearance.
- HR 17-9. Grievance Review Panel.
- HR 09-12. Political Activity.

HR sections 01, 07-2, 07-9, 07-21 (definitions and leave):

The amendments support several pieces of legislation passed during the 2022 legislation, including HB 238 (state holidays), HB 449 and SB 63 (Bereavement leave), SB 100 (paid parental leave), and HB 104 (merit increases).

With no further discussion, Judge Chin moved to approve the policies as drafted with a recommendation to the Judicial Council that they be adopted as final. Judge Heward seconded the motion. The motion passed unanimously.

HR section 04-1 thru 04-4 and 05-1 thru 05-3:

The amendments would make all new court positions “at-will,” removing career service exempt status for all new hires. Current employees in career service exempt status will stay as they are, but if a career service exempt person moves into a new position after July 1st, they will no longer be a career service exempt employee. The court will continue to retain and implement due process procedures when corrective action is needed before termination proceedings take place. Employees should not feel their positions are in jeopardy when moving to at-will status.

With no further discussion, Judge Heward moved to approve the policies as drafted with a recommendation to the Judicial Council that they be adopted as final. Judge Chin seconded the motion. The motion passed unanimously.

HR 15-3, 15-4, 15-6, 16-2, 16-3, and 16-4:

The current policies governing harassment and abusive conduct investigations do not work well or are insufficient for judicial officers because: a) judicial officers are appointed by a process of nomination and confirmation by elected officials, not hired; b) judicial officers are accountable to the people and to the Supreme Court, not to a traditional organizational management structure; and c) similar protective remedies available to employees should be available to judicial officers if they become subject to harassing or abusive behavior. Amendments to HR15 and HR16 seek to remedy all of those concerns.

Unlike the JCC process wherein judges are not notified of complaints until they are determined to have merit, the

committee recommended notifying the accused judicial officer of an allegation, whether the allegations are merited or not. The process should be as transparent as possible. The accused should not learn about the allegation and potential investigation through other employees or judicial officers. The committee also recommended the following amendments to the notification letter sent to the accused judicial officer.

"The allegations of misconduct have been reported to the Management Committee and preliminary inquiry ~~an investigation~~ into the allegations, and any potential pattern of misconduct, has been approved to determine whether a formal complaint is warranted. . . ."

The committee recommended changing all usage of "investigation" to "inquiry" in sections 15 and 16.

The committee discussed what processes or actions would take place in the event that Human Resources determines there is merit for an investigation and further action by the Management Committee. The committee also discussed actions in the event the Presiding Judge requests to provide input on the allegations.

Following further discussion, the committee determined that more information is needed. In the interim, the committee recommends that the HR Department conduct preliminary inquiries into the allegations before making a recommendation to the Management Committee about whether a formal investigation is warranted. Mr. Olsen will bring the policies back to the Committee for further review next month.

HR 09-9:

The amendments to HR 09-9 provide clarification on appropriate work place attire and professional appearance.

With no further discussion, Judge Chiara moved to approve the policy as drafted with a recommendation to the Judicial Council that it be adopted as final. Judge Heward seconded the motion. The motion passed unanimously.

HR 17-9:

Amendments to HR 17-9 outline the duties and role of a grievance panel. The panel reviews grievances filed by career service employees subject to discipline and issues a decision or recommendation for action within 10 business days of the meeting. The panel is made up of independent reviewers, not court employees.

With no further discussion, Judge Heward moved to approve the policy as drafted with a recommendation to the Judicial Council that it be adopted as final. Judge Chiara seconded the motion. The motion passed unanimously.

09-12:

The Management Committee recommended that the prohibition against religious and political displays, statements, and discussions be bifurcated. There should be a "bright line" prohibition in areas visible to or within earshot of the public, and employees should exercise caution in all other areas of the workplace. The Management Committee also recommended adding language that reminds employees of their duty to be respectful and professional. Following a discussion, the committee made minor, non-substantive changes, but otherwise agreed with the Management Committee's recommendations.

With no further discussion, Judge Connors moved to approve the policy as amended with a recommendation to the Judicial Council that it be adopted as final. Judge Heward seconded the motion. The motion passed unanimously.

(10) CJA 1-204. Executive Committees.

CJA 1-205. Standing and ad hoc committees.

As recommended and approved by the Judicial Council, the Technology Committee is disbanded. Policy and Planning will now absorb those duties and will be renamed the Policy, Planning, and Technology Committee (PP&T). Ms. Mannebach discussed the new process for technology requests prior to their presentation to the

Committee. The process will be similar to that which is currently being implemented at the district, juvenile and justice court levels. The flowchart presented by Ms. Mannebach will be emailed to the Committee members following the meeting.

Mr. Arishita and Ms. Williams will work together to streamline the process for rule amendment requests and requests for technology changes and prioritization.

With no further discussion, Judge Connors moved to approve rules 1-204 and 1-205 with a recommendation to the Judicial Council that they be approved an expedited basis with a May 25, 2022 effective date, followed by a 45-day public comment period. Judge Heward seconded the motion. The motion passed unanimously.

Old Business/New Business: None

Adjourn: With no further items for discussion, the meeting adjourned without a motion. The next meeting will be held on June 3, 2022 at 12 PM via Webex video conferencing.