

**UTAH JUDICIALCOUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
August 5, 2022: 12 pm -2 pm

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Paul Barron
Michael Drechsel
Stacy Haacke
Judge Michelle Christiansen Forster
Kristene Laterza
Jim Peters
Keri Sargent
Nick Stiles
Nathanael Player

STAFF:

Keisa Williams
Brody Arishita
Minhvan Brimhall

(1) Welcome and approval of minutes:

Judge Connors welcomed committee members and guests. The committee considered the minutes from the July 8, 2022 meeting. With no changes, Judge Chiara moved to approve the minutes as presented. Judge Chin seconded the motion. The motion passed unanimously.

(2) Rules back from public comment:

- CJA 4-202.03. Records access
- CJA 6-501. Reporting requirements for guardians and conservators
- Effective 5/23/22 (expedited)
 - CJA 4-508. Guidelines for ruling on motion to waive fees
 - CJA 1-204. Executive Committees
 - CJA 1-205. Standing and ad hoc committee
- Effective 7/1/22 (expedited)
 - CJA 9-109. Presiding judges

The public comment period on the above rules closed on July 15, 2022. No comments were received on rules 4-202.03, 1-204, 1-205, and 9-109. Rules 1-204 and 1-205 were approved on an expedited basis with a May 23, 2022 effective date. Rule 9-109 was also approved on an expedited basis with a July 1, 2022 effective date. No further action is needed on those rules unless the committee makes additional changes. Two (2) substantive comments were received on rule 4-508 and two (2) were received on rule 6-501.

CJA 4-508:

The draft rule in the packet includes the amendments proposed by Michael Drechsel. Ms. Williams believes Judge Westfall's concern is addressed with "at the time of hearing the cause" in subsection (6), which she interprets to mean when the court actually "hears the cause" and considers the merits of the underlying cause of action. The court uses that opportunity to reassess the decision previously made under subsection (3). "At the time of hearing

the cause” is found in 78A-2-304(3)(a): “In cases where an affidavit of indigency under Section 78A-2-302 is filed, the court shall question the individual who filed the affidavit at the time of hearing the cause as to the individual’s ability to pay.” From what she understands, her interpretation of that language is consistent with the legislature’s intent. According to Michael Drechsel, the discussion of the bill with the sponsor before the session, the way the bill was presented during the session, and the debate the legislature engaged in on SB 87 never included any indication that a new hearing would be required. In fact, that would be contrary to the stated intention behind the bill, which was to ease the process of finding individuals indigent for filing fee purposes.

The committee noted that most fee waivers are addressed early on in the case, and in many domestic cases, a hearing is not held because the motions are filed in conjunction with the initial filing. Mr. Drechsel noted that the bill was not intended to disturb the practice of reviewing an affidavit and making a decision as to whether or not a person is indigent. The statutory provision allows a judge to question the party regarding the motion for a fee waiver at the time the hearing is held on the matter, not when the motion is filed.

With no further discussion, Judge Chiara moved to send CJA 4-508 to the Judicial Council for final approval of the new amendments with an August 19, 2022 effective date. Judge Chin seconded the motion. The motion passed unanimously.

CJA 6-501:

The cover sheet is intended to ensure that judges are receiving annual reports from guardians. The Probate Subcommittee to the Rules of Civil Procedure Committee recommends including the process in rule. Ms. Sargent met with the clerks of court to get their feedback on the proposed rule amendment and the cover sheet. The clerks proposed changing the name of the cover sheet from “report cover sheet” to “order on review of annual report.” The clerks also proposed that, rather than requiring a “request to submit,” the Judicial Assistant would accept the report, enter it into the case, and mark the report for the judge to review.

Following discussion, the committee made minor changes. The name of the cover sheet was changed to “Order on Review of Guardian or Conservator Report” (“Order on Review”) and all language referencing the cover sheet was changed to “Order on Review.”

With no further discussion, Judge Chin moved to send CJA 6-501 to the Judicial Council for final approval with a November 1, 2022 effective date. Judge Chiara seconded the motion. The motion passed unanimously.

(3) CJA 4-202.02. Records classification.

As currently written, the rules are unclear as to what happens to a record previously designated as sealed if it is included in the overall record on appeal. The concern is highlighted in a scenario where sealed records are included in the overall record on appeal, and by default are likely classified as “private records,” resulting in for example, all parties to the action having access. The proposed amendments to rule CJA 4-202.02 will allow records sealed by the trial court to remain sealed even if included in the record on appeal. The records may be unsealed by court order. The amendments would mirror other rules on sealed records. The Board of Appellate Court Judges supports the proposed amendments.

With no further discussion or concerns, Judge Chin moved to send CJA 4-202.02 to the Judicial Council for approval for a 45-day public comment period. Judge Chiara seconded the motion. The motion passed unanimously.

(4) Appendix B. Justice Court Standards for Recertification.

Rule 9-108 requires that justice court standards be reviewed and updated every two years. The Board of Justice Court Judges recommends the proposed amendments to Appendix B. The amendments clean up the rule and incorporate recent legislative changes.

The committee discussed the proposed amendments and made minor language changes. The word “creating” was replaced with “operating” throughout the rule. Line 136 was modified to read: “All court hearings shall be

conducted in a designated courtroom, including remote transmission, as permitted by the Judicial Council, or in another location authorized by the Presiding Judge.”

With no further discussion, Judge Chiara moved to send Appendix B to the Judicial Council for approval for a 45-day public comment period. Judge Chin seconded the motion. The motion passed unanimously.

(5) Deferred Traffic Prosecution – Automated Orders:

- Automated orders
- Standing order
- CJA 3-108. Judicial assistance
- CJA 4-208. Automated expungement of cases
- CJA 4-403. Electronic signature and signature stamp use

HB 139 (77-2-4.2), deferred traffic prosecution, goes into effect on October 1, 2022. The proposed rule amendments and orders authorize the AOC to implement automated processes and automatically affix signatures without judicial review, similar to the clean slate expungement process. A detailed outline of how the system would work is included in the packet. The code contemplates an administrative fee to be paid by participants to cover costs associated with the development and implementation of the system. Under 77-2-4.2(5)(h)(i), the “Judicial council shall set and periodically adjust the fee...in an amount that the judicial council determines to be necessary to cover the cost to implement, operate, and maintain the deferred prosecution program...” The use of automated orders will help keep the administrative fee lower and more cost effective for court patrons.

Regardless of whether the Judicial Council approves the use of an automated or manual system, the Council will need to set an initial administrative fee to cover costs associated with implementing and administering the program and rely on AOC staff to provide periodic reports and recommendations on any necessary adjustments. The proposed fee amount is \$5.00, but that amount may be modified depending on how many court patrons take advantage of the process. Patrons would have access through their MyCase account.

The committee did not express concerns with the proposed process or orders and made minor language changes to rules 3-108, 4-208, and 403.

With no further discussion, Judge Chiara moved to send the proposed orders and rule amendments to the Judicial Council with a recommendation that the automated process, \$5.00 administrative fee, automated orders, and proposed rule amendments be approved on an expedited basis with an October 1, 2022 effective date. Judge Chin seconded the motion. The motion passed unanimously.

(6) Technology report/proposals:

Mr Arishita did not have anything new to report. He will be meeting with Judge Pullan to create a rule for the Ad Hoc Technology Committee, as discussed at the last meeting. Mr. Arishita hopes to have a rule prepared for discussion at the next meeting.

Mr. Arishita asked if the committee had any concerns with the new rule and technology amendment request form. The committee did not express any concerns.

Old Business/New Business:

None

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