

# JUDICIAL COUNCIL MEETING

## Minutes

July 18, 2019

Grand Summit Hotel  
4000 Canyons Resort Drive  
Room – Cabin I and II  
Park City, Utah 84098  
9:00 a.m. – 12:00 p.m.

*Chief Justice Matthew B. Durrant, Presiding*

### Members:

Chief Justice Matthew B. Durrant, Chair  
Hon. Kate Appleby, Vice Chair  
Hon. Brian Cannell  
Hon. Augustus Chin  
Hon. Ryan Evershed  
Justice Thomas Lee  
Hon. Mark May  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Brook Sessions  
Hon. Todd Shaughnessy  
Hon. John Walton  
Rob Rice, esq.

### Excused:

Hon. Paul Farr  
Neira Siaperas

### AOC Staff:

Hon. Mary T. Noonan  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Jim Peters  
Jeni Wood

### Guests:

John Baldwin, Utah State Bar  
Dickson Burton, Utah State Bar  
Jacqueline Carlton, Office of Legislative Research  
Jeremy Christensen, DHS  
Glenn Ercanbrack, AP&P  
Heather Farnsworth, Utah State Bar  
Mike Hadden, AP&P  
James Hudspeth, AP&P  
Commissioner Gil Miller, JPEC  
Herm Olsen, Utah State Bar  
Laura Thompson, DOC  
Joseph Wade, Office of Legislative Research  
Dr. Jennifer Yim, JPEC

## **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed Joseph Wade and Jacqueline Carlton from the Office of Legislative Research and General Counsel.

Judge Derek Pullan recommended a change to the June 24, 2019 minutes in the Judicial Council Retreat section: change to: Judge Pullan moved to amend the motion to include the

creation of a committee to assist both bodies in the evaluation of the performance of the State Court Administrator and other high-level managers and other related duties.

**Motion:** Judge Kate Appleby moved to approve the Judicial Council minutes from the June 24, 2019 meeting, as amended. Judge Augustus Chin seconded the motion, and it passed unanimously.

**2. CHAIR’S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant said he and Justice Thomas Lee attended the Bars Past Presidents’ Reception. The Utah State Bar will have more than 500 attendees at the Summer Convention.

**3. ADMINISTRATOR’S REPORT: (Judge Mary T. Noonan)**

Judge Mary Noonan mentioned Judge Douglas Thomas, Seventh District, announced his retirement, effective January 1, 2020, after serving more than 17 years on the bench. Michael Drechsel has been appointed as the Assistant State Court Administrator and Clayson Quigley is the new Court Services Director, both positions were effective July 15.

Judge Diana Hagen has been appointed to the Sentencing Commission to represent the courts, replacing Judge Michele Christiansen Forster, whose term ended.

Judge Noonan reviewed current and recent State Audits:

- The “Performance Audit of Child Welfare During Divorce Proceeding” audit is complete.
- The Performance Audit on Evidence Storage and Management began in February. This audit relates to evidence retained in the courthouse. A response group will be formed to address the audit findings.
- The Legislative Audit on JRI recently began. The audit will be conducted on multiple entities; the courts will offer support and information as required.
- The auditors have begun conversations regarding the Seventh District Drug Court audit.

Judge Noonan recommended having the following individuals attend the Budget Committee meetings: Judge Mary T. Noonan, Cathy Dupont, Michael Drechsel, one rural and one urban TCE, a court level administrator, and the HR Director, with John Bell as staff. The following Council members were selected as members of the Budget Committee: Management Committee representative – Judge Mark May, Liaison Committee representative – Judge Kara Pettit and Policy & Planning Committee will provide a representative later.

**4. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Liaison Committee Report:**

Justice Thomas Lee said the committee held a conference call to address 1) approval of a Judicial Council Update document related to the PSA; and 2) responding to concerns raised by Representative Lowrey Snow related to the recommendations of the Evidence Advisory Committee which recommended some changes to the rule of evidence for the victim

communication privilege that Representative Snow passed during the 2019 Legislative Session. Justice Lee informed the Council that the Legislature enacted a joint resolution adopting a rule of evidence, but delayed the effective date of the rule of evidence until July 31, with the recognition that the courts might revise the rule before it took effect. The Evidence Advisory Committee presented a proposed rule amendment to the Supreme Court Justices. Justice Lee informed the Council that the Supreme Court Justices considered the recommendations of the Evidence Advisory Committee and decided to let the victim advocacy communication Rule of Evidence take effect, under the terms of the joint resolution, on July 31, 2019. The Evidence Advisory Committee may continue its analysis of the new rule. . Michael Drechsel noted Representative Snow has been grateful for the courts ongoing involvement. Cathy Dupont and Mr. Drechsel met with President Adams to speak about any questions or concerns regarding the courts and PSA issues and the meeting went well. Michael and Cathy will try to set up a similar meeting with House leadership.

**Policy and Planning Committee Report:**

Judge Derek Pullan said they have not formally met since the June Council meeting. The Committee may create a subcommittee to draft rule proposals as recommended at the retreat.

**Bar Commission Report:**

Rob Rice said Herm Olsen will replace Dickson Burton as the Bar President. Mr. Rice thanked the Judiciary for their support with the Summer Convention.

**5. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT:  
(Dr. Jennifer Yim and Commissioner Gil Miller)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Gil Miller. Dr. Yim introduced Commissioner Miller, who is serving his second term on JPEC. Dr. Yim reminded the Council they will begin the evaluation process in September and they will conduct surveys of attorneys in October. The Commission received ongoing funding to purchase a customer relations management system that has the capability to track a judge’s performance long-term and will help with the preparation of reports and blind-reviews. Commissioners no longer know the identity of judges they are reviewing. Dr. Yim thanked the judges who will participate in JPECs “Role of Attorneys Completing Surveys on Experiences with the Utah Judiciary” breakout session at the Summer Convention, including the moderator – (former) Chief Justice and JPEC Commissioner Christine Durham.

**6. PROPOSED AMENDMENT TO CODE OF JUDICIAL ADMINISTRATION  
RULE 4-401.02: (Dr. Jennifer Yim, Commissioner Gil Miller, and Michael  
Drechsel)**

Michael Drechsel stated Policy and Planning was approached by JPEC to explore possible changes to Code of Judicial Administration Rule 4-401.02 that would permit JPEC to use electronic audio and video recordings as part of a pilot project for basic evaluations for certain justice court judges. Currently, a basic evaluation is described on JPEC’s website, as follows:

A judge is scheduled to receive a basic level evaluation if they carry less than a .2 weighted caseload in each of the locations they serve.

Judges who are scheduled to receive the basic level evaluation are not in court frequently or regularly and do not have enough attorneys sitting before them to take a quantitative survey. Because these individuals also do not have enough court participants for JPEC to conduct intercept surveys, no survey is completed. No courtroom observation is done.

JPEC is hopeful that, with audio and video recordings, courtroom observation can be accomplished in rural areas in which in person observations are hard to complete, even for those judges who are subject only to basic evaluation. JPEC has presented the concepts behind this pilot project to the Board of Justice Court Judges, and reports receiving unanimous support from that group. The pilot will be conducted only for midterm judges so that the effect of the pilot can be evaluated independent of any concern with actual retention elections for those judges. The basic premise of the pilot project is to create a system for courtroom observation that mimics the in-person courtroom evaluation to which all other judges are subject.

One challenge to the pilot program is that the current language in CJA 4-401.02 prohibits audio and video recording in courtrooms (see CJA 4-401.02(3)(B)(ii)). In order to permit JPEC's pilot project, the rule must be revised. Policy and Planning has spent significant time reviewing and discussing the proposed revisions to 4-401.02. Ultimately, after significant discussion, Policy and Planning voted to recommend that these proposed revisions be published for public comment. The Policy and Planning Committee vote was not unanimous, especially concerning the third sentence of proposed CJA 4-401.02(2)(D) regarding retention of the recordings. Policy and Planning members intend to discuss this in detail with the full Judicial Council either before publication for public comment is authorized or before seeking final approval of the revisions.

Dr. Yim noted the goal is to have recordings created through the internet, only for JPEC use. GRAMA rules consider records public unless identified as private under court rule or court order. Mr. Drechsel will research this further and address it with the Council after the comment period closes.

Chief Justice Durrant thanked Dr. Yim, Commissioner Miller, and Mr. Drechsel for the careful and professional manner in which they conduct their work.

**Motion:** Judge Shaughnessy moved to approve the proposed amendments to rule 4-401.02, as amended, removing the third sentence and with a citation to the classification, and to distribute the proposed amendments for 45-day comment period. Judge Appleby seconded the motion, and it passed unanimously.

## **7. EXPUNGEMENT BILL FOLLOW-UP AND RECOMMENDATIONS: (Michael Drechsel and Heidi Anderson)**

Chief Justice Durrant welcomed Michael Drechsel and Heidi Anderson. Mr. Drechsel noted the purpose of H.B. 431 Clean Slate Expungement Implementation Bill (sponsors – Senator Thatcher and Representative Hutchings) is to create automatic expungements for certain convictions that meet the eligibility criteria. The legislature granted funding in the amount of \$200K one-time and \$200K ongoing, which was significantly less than what the Court asked for in the fiscal note attached to the bill. Currently, there is insufficient funding for the courts to be

prepared for the implemented May 1, 2020 date, with the exception of acquittals and dismissals. Mr. Drechsel is seeking additional grant money from CCJJ.

The Bill requires the courts to

- automatically expunge “clean slate eligible” cases (without petition or request),
- expunge cases full acquittal (after 60 days) or dismissal with prejudice (after 180 days),
- delete traffic cases,
- notify prosecution and DPS of expungements, and
- have the Judicial Council create rules to implement procedures.

A clean slate conviction is either a class A misdemeanor possession of a controlled substance ( $\geq 7$  years), a class B misdemeanor ( $\geq 6$  years), a class C misdemeanor ( $\geq 5$  years), or an infraction ( $\geq 5$  years), and the person must not have any pending criminal cases. It is anticipated that historically there are approximately 207,000 district court cases, 470,000 justice court cases, and millions of traffic cases that would be eligible for automatic expungement. It is expected that on an ongoing basis, there will be approximately 5,800 district court cases, 24,000 justice court cases, and 330,000 traffic ongoing cases.

Convictions that do not meet the clean slate criteria are:

- Where conviction or plea in abeyance for:
  - Any offense that is ineligible for typical expungement
  - Any offense against person under Title 76, Chapter 5
  - Any weapon offense under Title 76, Chapter 10, Part 5
  - Sexual battery
  - Lewdness
  - Any DUI / Driving offense under Title 41, Chapter 6a, Part 5
  - Damage to or interruption of a communication device
  - Domestic violence
  - Any felony or other class A misdemeanor
- Where prosecutor objects because: 1) eligibility criteria not met; 2) ongoing criminal activity; or 3) unpaid restitution to victim
- Where there is a “criminal judgment account receivable” that has been either converted to a civil judgment and sent to OSDC or has not been satisfied according to court records
- Where not guilty by reason of insanity

The Bill requires “reasonable efforts within available funding shall be made to expunge or delete a case as quickly as is practicable . . .” beginning May 1, 2020, and beginning one-year from identification to process the backlog of historical cases. Once implemented, the system, through the IT Department, will continually search for cases that meet criteria. Once eligible cases are identified, a notice is sent to the prosecutor’s office. The prosecutor will have 45-days to e-file an objection. Cases with objections filed will be flagged in CORIS and removed from the eligible list.

The goal of this process is to:

- develop foundational technology for all automatic expungements, including the data pipeline between the courts and the Department of Public Safety (DPS),
- create automatic expungement orders,
- develop a process for acquittals and dismissals,
- develop and test logic for identifying cases,
- develop a process for notifying prosecutors and objection workflow, and
- develop routines for automatic deletion of traffic cases.

Mr. Drechsel sought approval for the following:

- Authorization from Judicial Council to pursue implementation that leverages standing orders from judges to automate the expungement orders.
- Prioritization of the development path to be responsive to political consideration while balancing fiscal limitations.
- Implementation team (including a project sponsor).
- Rules to govern processes (via Policy & Planning).

Chief Justice Durrant thanked Mr. Drechsel and Ms. Anderson.

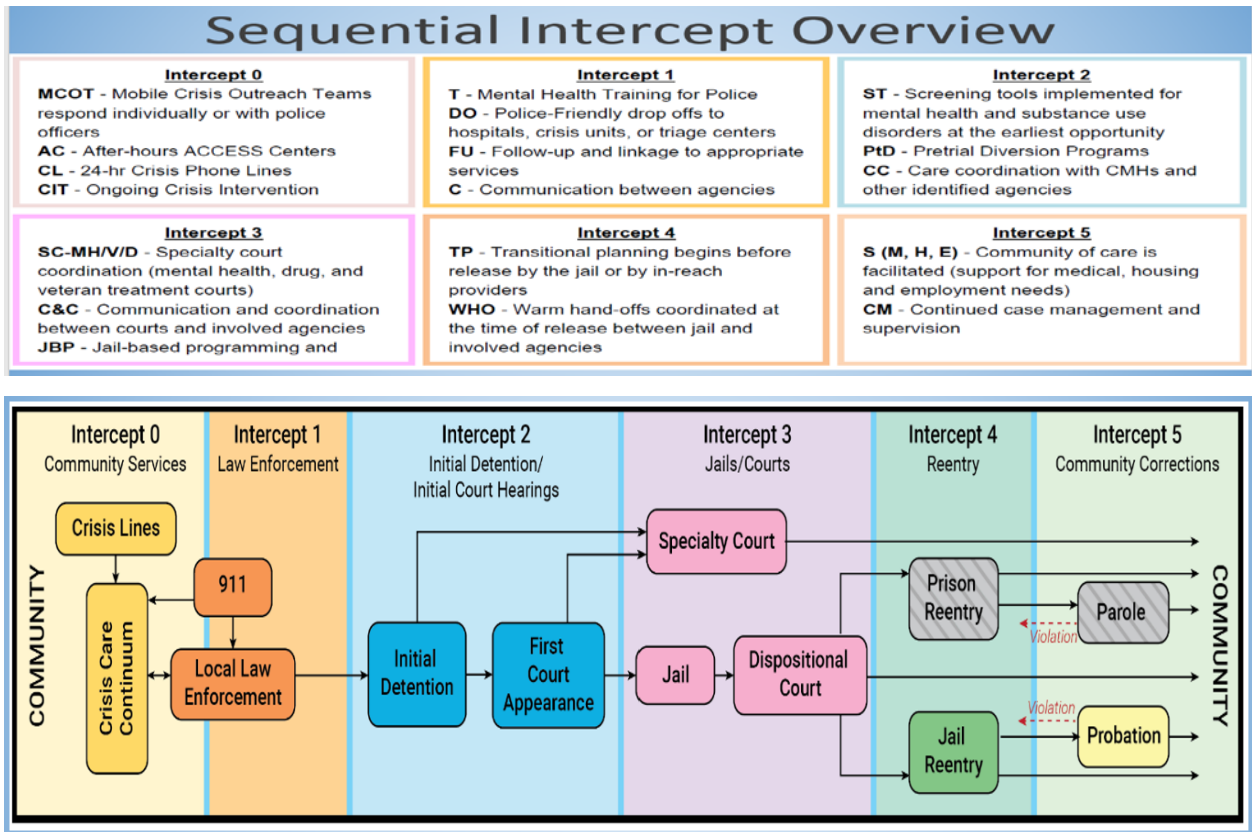
**Motion:** Judge Pullan moved to approve, as it relates to implementation of H.B. 431, that the Judicial Council 1) approve pursuing an implementation that leverages standing orders from judges to automate the creation and signing of expungement orders; and 2) prioritize the development path as outlined in the meeting materials (1st - foundational technology; 2nd - acquittals / dismissals with prejudice; 3rd - logic for identifying and processing clean slate eligible cases; 4th - prosecutor notification and objection; and 5th - deletion of traffic cases). Judge Pullan also included in his motion, direction for staff to contact the bill sponsor about the implementation strategy and to provide the Council with any sponsor feedback. Judge Pettit seconded the motion, and it passed unanimously.

**8. CCJ/COSCA SUMMIT: IMPROVING THE COURT AND COMMUNITY RESPONSE TO THOSE WITH MENTAL ILLNESS REPORT: (Judge Kara Pettit, Laura Thompson, and Jeremy Christensen)**

Chief Justice Durrant welcomed Laura Thompson and Jeremy Christensen. Ms. Thompson explained the strategy for improving court and community responses to those with mental illness, as focused on at the May CCJ/COSCA Summit.

**Proposed strategy dates**

- Establish a Judicial Council steering committee and present to the judicial Boards
  - Summer 2019
- Conduct a statewide summit to introduce Sequential Intercept Model (SIM) framework, concepts, and to energize stakeholders
  - Fall 2019
- Train individuals to conduct local summits in all judicial districts
  - 2020
- SIM mapping at the local level



Ms. Thompson requested the Council create a committee to educate the courts and other entities involved with mental health. Chief Justice Durrant recommended Judge Pettit lead the committee.

Chief Justice Durrant thanked Judge Pettit, Ms. Thompson, and Mr. Christensen.

**Motion:** Judge Appleby moved to approve a task force with Judge Kara Pettit as Chair. Judge Shaughnessy seconded the motion, and it passed unanimously.

**9. FY20 JUSTICE COURT TECHNOLOGY, SECURITY, AND TRAINING ACCOUNT EXPENDITURES: (Jim Peters)**

Judge Appleby welcomed Jim Peters. Mr. Peters reviewed funding recommendations of the Board of Justice Court Judges. Mr. Peters apologized for Judge Rick Romney’s absence. The Justice Courts’ budget is allocated money from the Court Security Surcharge (\$3.20 from each \$50 collected). Each year, the Board of Justice Court Judges approves grants from the allocated money to others. Jim Peters presented the Board’s recommendations for the allocation of the grants and sought Judicial Council approval of the grants. The Judicial Council discussed the impact of reducing IT infrastructure funding from last year’s grant money. Item number 3 – CORIS infrastructure for justice courts request was originally \$165,215, but was decreased in the Board’s original grant proposal. After discussion, the Board approved \$123,079. The projection

for Surcharge collections is higher than anticipated; therefore, the Board approved [CD1] increasing the infrastructure request by an additional \$28,000.

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
1	AOC/Information Technology	<a href="#">Programming and Help Desk Support for Justice Courts</a>	\$235,551		\$228,806	Personnel costs attributable to Justice Courts for IT support
2	AOC/Information Technology	<a href="#">Google Accounts for Justice Court Judges and Clerks</a>	\$22,500		\$22,500	500 licenses @ \$45 each
3	AOC/Information Technology	<a href="#">CORIS Infrastructure for Justice Courts</a>	\$165,215		\$123,079	CORIS Infrastructure for Justice Courts
4	AOC/Judicial Institute (Education)	<a href="#">Management and Leadership Academy for Supervisory Clerks</a>	\$10,426		\$0	Day-long training for current justice court clerks in management positions or clerks who want to move to management positions
5	AOC/Judicial Institute (Education)	<a href="#">Clerk Certification Program</a>	\$5,000		\$5,000	Funding to develop and pilot a program to certify justice court clerks to perform the duties needed to perform their jobs
6	AOC/Judicial Institute (Education)	<a href="#">Presiding Judge Training</a>	\$6,240		\$0	Funding for a one-day training for newly elected Presiding Judges
7	AOC/Judicial Institute (Education)	<a href="#">Judicial Decision Making (fka Law and Literature)</a>	\$7,400		\$7,400	Funding for a 1.5 day program for 17 judges
8	AOC/Judicial Institute (Education)	<a href="#">New Clerk Orientation</a>	\$10,750		\$10,750	Day-long skills workshop held twice a year on the day preceding the justice court clerks' conference
9	Board of Justice Court Judges	Trust and Confidence Committee	\$2,000		\$2,000	Travel for outreach/CLE presentations to build trust and confidence in Justice Courts
10	Board of Justice Court Judges	Computer Equipment for Judges	\$25,000		\$25,000	Funding for the cost of computer equipment for the judges
11	Board of Justice Court Judges	Online Learning System	\$18,000		\$0	Annual licenses for 100 judges and 400 clerks plus training
12	Board of Justice Court Judges	Out-of-State Training Fund	\$50,000		\$50,000	Funding for out-of-state training and educational opportunities
13	Board of Justice Court Judges	Financial Assistance for Active Senior Judges to Attend the Annual Conference	\$5,000		\$5,000	10 active senior judges @ \$500 each

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
14	Box Elder Justice Court	<a href="#">LiveScan Fingerprint Equipment</a>	\$5,449		\$5,449	Funding to purchase and install a Livescan a fingerprint device
15	Daggett County Justice Court	<a href="#">Window Tinting</a>	\$630		\$630	Funding to install window tinting on the glass for judge's office and jury room
16	East Carbon Justice Court	<a href="#">Computer, Printer and Scanner for the Courtroom</a>	\$1,179		\$0	Funding to purchase a printer, computer, and scanner for the courtroom
17	Emery County Justice Court	<a href="#">TV, Stand and DVD Player</a>	\$198		\$198	Funding to purchase a TV and DVD to show the Rights Videos to defendants
18	Holladay Justice Court	<a href="#">Fireproof Safe</a>	\$435		\$0	Funding to purchase a safe to secure funds and receipt books as recommended by the AOC
19	Mantua Justice Court	<a href="#">Handheld Metal Detector</a>	\$400		\$184	Funding to purchase a handheld metal detector and to train staff
20	North Salt Lake Justice Court	<a href="#">Laptop</a>	\$1,060		\$0	Funding to purchase a laptop and security cameras for the bailiff to be able to see outside the courtroom
21	Ogden Justice Court	<a href="#">Security Film for Windows Located at Court Security Station</a>	\$3,440		\$3,440	Funding to purchase and install security film for court building windows
22	Parowan Justice Court	<a href="#">Security Cameras</a>	\$3,220		\$1,500	Funding to purchase and install a security system for the court
23	Payson Justice Court	<a href="#">Security Upgrades</a>	\$9,640		\$0	Funding to purchase swipe card for one restricted door and replace a keypad on another restricted door
24	Plain City Justice Court	<a href="#">Security Cameras</a>	\$6,604		\$0	Purchase and install four security cameras for the courtroom
25	Riverdale Justice Court	<a href="#">Security Upgrades</a>	\$4,451		\$2,500	Funding to purchase and upgrade court building stairs, create a separate judge entrance, and apply
26	Roy/Weber Justice Court	<a href="#">Printer/Scanner for the Courtroom; Lockers</a>	\$1,460		\$0	Funding for purchase of a wireless printer and scanner to print defendants orders and to purchase
27	Salt Lake City Justice Court	<a href="#">X-Ray Machine</a>	\$20,000		\$0	Funding for the purchase and installation of a XIS 6040 X-ray machine
28	Salt Lake City Justice Court	<a href="#">Surface Tablets for Paperless Jury Process</a>	\$5,694		\$0	Funding for purchase of six Surface Pro Tablets and hard cases
29	Salt Lake City Justice Court	<a href="#">Affirming Artwork</a>	\$3,750		\$0	Funding for purchase and installation of new diverse artwork for the courthouse



#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
30	Saratoga Springs Justice Court	<a href="#">Printer/Copier and Safe</a>	\$10,248		\$0	Funding to purchase an updated printer/copier for the court
31	Saratoga Springs Justice Court	<a href="#">Bullet Resistant Materials for New Courthouse</a>	\$19,740		\$0	Funding to purchase and install bulletproof glass for the courtroom
32	Saratoga Springs Justice Court	<a href="#">Security System for New Courthouse</a>	\$29,884		\$0	Funding to purchase and install security upgrades for the courthouse
33	South Ogden Justice Court	<a href="#">Court Recording Software Upgrade</a>	\$4,189		\$1,000	Funding to replace sound system so it is compatible with the FTR system
34	South Weber Justice Court	<a href="#">Court Security Upgrades</a>	\$1,500		\$1,500	Funding for security upgrades, alarms, window tinting and barriers
35	Sunset Justice Court	<a href="#">Handheld Metal Detector</a>	\$184		\$184	Funding to purchase a handheld metal detector
36	Tremonton Justice Court	<a href="#">Bullet Resistant Materials for Courtroom</a>	\$2,527		\$0	Funding to purchase and install bulletproof panels for the courtroom
37	Utah County Justice Court	<a href="#">Safe, Locking Cabinets, Tripods</a>	\$1,124		\$0	Funding to purchase a safe, gun vault, and tripod
38	Washington County Justice Court	<a href="#">AED, Whiteboards and Projectors</a>	\$1,965		\$0	Funding to purchase several items to enhance safety in the courtroom, see request
39	Wellington Justice Court	<a href="#">Computer, Printer and Scanner for the Courtroom</a>	\$1,179		\$0	Funding to purchase printer, computer and scanner for the courtroom
40	West Jordan Justice Court	<a href="#">Dedicated Microsoft Tablet for the Courtroom</a>	\$3,218		\$0	Funding to purchase a dedicated Microsoft tablet for the courtroom (priority 1)
41	West Jordan Justice Court	<a href="#">Court Computer Upgrades</a>	\$4,000		\$0	Funding to upgrade computers for compatibility of the new court FTR system

Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
Board of Justice Court Judges (Unit 2711)	Online Legal Research for Justice Court Judges (ongoing from 2005 grant cycle)		\$20,000		Westlaw subscriptions
Information Technology (Unit 2712)	Vidyo Support and Inventory Management (ongoing from 2008 grant cycle)		\$20,200		
Judicial Institute (Unit 2713)	New Judge Orientation (ongoing from 2005 grant cycle)		\$3,500		
Judicial Institute (Unit 2713)	Justice Court Clerks' Conference (ongoing from 2005 grant cycle)		\$16,075		
Judicial Institute (Unit 2713)	Justice Court Judges' Conference (ongoing from 2005 grant cycle) and \$15,000 (ongoing from 2018 grant cycle) for Justice Court Educational programs		\$30,005		
Judicial Institute (Unit 2713)	Continuation of Utah Judicial Institute Staffing at Current Level (ongoing from FY2009 grant cycle)		\$104,200		Partial cost of Education Coordinators and Conference Coordinator
Judicial Institute (Unit 2713)	Clerks Conferences	\$55,000	\$0		New request
Judicial Institute (Unit 2713)	District Trainings	\$3,500	\$0		New request
AOC/Audit Department (Unit 2420)	Internal Audit Position Dedicated to the Justice Courts (ongoing from FY2012 grant cycle)		\$84,900		

**Totals**

<b>Total Ongoing Grant Funds</b>	<b>\$278,880</b>
<b>Total One-Time Grant Funds Recommended for FY20</b>	<b>\$496,120</b>
<b>Projected Revenue from FY19</b>	<b>\$775,000</b>
<b>Total Grant Awards</b>	<b>\$775,000</b>
<b>Difference Between Available Funding and Recommended Grant Awards</b>	<b>\$0</b>

Judge Appleby thanked Mr. Peters.

**Motion:** Judge Chin moved to approve funding, as amended to increase the IT infrastructure request by \$28,000. Judge Shaughnessy seconded the motion, and it passed unanimously.

**10. UTAH STATE BAR WELCOME AND REPORT: (Dickson Burton, John Baldwin, Heather Farnsworth, and Herm Olsen)**

Chief Justice Durrant welcomed Dickson Burton, John Baldwin, Heather Farnsworth, and Herm Olsen. Mr. Burton introduced Herm Olsen, who will be sworn in as the Bar President tomorrow and Heather Farnsworth, who will be sworn in as the Bar President, Elect. Mr. Burton thanked the Council for holding the meeting in Park City in conjunction with the Bar's Summer

Convention. The joint Lawyer and Judge Wellness Committee now has an Executive Director position. The Bar is funding a study, created by experts at the University of Utah, to provide a baseline of law students and attorneys' wellbeing.

The Bar created a task force, Chaired by Justice Deno Himonas and John Lund, to evaluate the regulation of legal services, in an effort to improve access to justice. The Bar will conduct a survey of attorney member's demographics and economics. This survey was last conducted in 2011. The Bar informed the Council that the Office of Professional Conduct made the decision to quit offering an ethics hotline. The Bar did not receive much advance notice of OPC's decision to end the ethics hotline, so it was not operational for a few weeks. Going forward, the Bar will run the ethics hot line services. . The legislative proposal that would impose sales taxes on legal services has been discussed at many town halls across the state. The Bar has been speaking at the town halls in opposition to imposing a sales tax on legal services.

Chief Justice Durrant thanked Mr. Burton, Mr. Baldwin, Ms. Farnsworth, and Mr. Olsen.

**11. COMMISSIONER RECERTIFICATIONS: (Cathy Dupont)**

Ms. Dupont reviewed commissioner evaluation (CJA Rule 3-111) and recertification retention requests (CJA Rule 3-201) for the following:

- Commissioner Catherine S. Conklin – Second District
- Commissioner Thomas R. Morgan – Second District
- Commissioner Joanna B. Sagers – Third District
- Commissioner Christina Wilson – Second District

Ms. Dupont noted terms of office for all commissioners listed above will expire on December 31, 2019. None of the commissioners has a complaint pending before the Commissioner Conduct Commission.

**Motion:** Judge Shaughnessy moved to approve recertifications of Commissioner Catherine S. Conklin, Commissioner Thomas R. Morgan, Commissioner Joanna B. Sagers, and Commissioner Christina Wilson. Judge Brook Sessions seconded the motion, and it passed, with Judge Evershed abstaining from Commissioner Joanna B. Sagers.

**12. AP&P PRESENTATION OF NEW PSI REPORT FORMS: (Shane Bahr, Glenn Ercanbrack, Mike Hadden, and James Hudspeth)**

Judge Appleby welcomed Shane Bahr, Glenn Ercanbrack, Mike Hadden, and James Hudspeth. Shane Bahr noted the Department of Corrections (Department) made changes involving the supervision of low risk offenders, agents covering calendars in individual courtrooms, and Pre-Sentence Investigation Reports (PSIs).

Pursuant to U.C.A. § 77-18-1(3) the department will not provide pre-sentence investigations or supervision to low risk individuals:

The department shall establish supervision and presentence investigation standards for all individuals referred to the department based on:

- (i) the type of offense;

(ii) the results of a risk and needs assessment;  
(iii) the demand for services;  
(iv) the availability of agency resources;  
(v) public safety; and  
(vi) other criteria establish by the department to determine what level of services shall be provided.

The LS/RNR is a validated actuarial risk and need assessment to assist in determining a level of service and factors to address in case plans. It is based on statistical probabilities and is not intended to establish a just penalty in criminal sentencing, nor to predict specific risk to the community. Individuals identified as low risk are generally not appropriate for supervised probation, either by AP&P or by another supervising agency (2017 Adult Sentencing & Release Guidelines, p. 12). The Department respectfully is requesting the courts not order supervision of low risk offenders, unless they have an active sex offense. Additionally, the Department is requesting the courts terminate probationers who have met their Earned Compliance Credit (ECC) date.

Starting July 1, 2019 AP&P staff members will no longer regularly spend time in individual courtrooms to cover general calendars. Staff will continue to attend specialty court calendars where they are providing supervision. If the Court desires an AP&P staff member to attend a bearing, the Department asks that they be subpoenaed. In doing so, the courts will be able to hear from the actual agent who is currently working with the offender. Several years ago, this change was implemented in the Fourth Judicial District and the process has been successful.

The Department is changing the way it conducts the pre-sentence investigation process, as well as the content of the PSIs. In making these changes, the Department seeks to provide specific, evidence-based information that will enable the Courts to make even more-informed sentencing decisions. This change is in response to Utah Code § 64-13-20(1), which directs the Department to establish standards for providing investigative services based on available resources, giving priority to felony cases. Further Utah Code § 77-18-1(3)(a) requires the Department to establish supervision and presentence investigation standards for all individuals referred to the Department. Per Utah Code § 77-18-1(3)(b), the Department is required to submit such investigation standards to the Judicial Council on an annual basis for review and comment.

These changes involve plans to provide distinct versions of the PSI. The type of PSI provided in each case will depend upon factors such as the level of the offense and the risk level of the offender. For certain low-risk offenders, a sentencing memorandum may be the only report submitted by the Department. These new PSIs and sentencing memoranda should be more useful to the Court, to prosecutors, and to defense counsel.

It was noted that many times parties request PSI reports unnecessarily. A recommendation was made to have AP&P provide this report to both the Statewide Association of Prosecutors and Utah Association of Criminal Defense Lawyers as an education tool.

Judge Appleby thanked Mr. Bahr, Mr. Ercanbrack, Mr. Hadden, and Mr. Hudspeth.

**13. OLD BUSINESS / NEW BUSINESS**

Judge Noonan will speak to Geoff Fattah at possibility enlisting the assistance of intern/externs to create a history of the Council.

**14. EXECUTIVE SESSION**

**Motion:** Judge Appleby moved to go into an executive session to discuss a personnel matter. Judge Shaughnessy seconded the motion, and it passed unanimously.

**15. CONSENT CALENDAR ITEMS**

**a) Committee Appointments.** 1) Commissioner Lorene Kamalu from the Utah Association of Counties and justice court Judge Jeanne Robison was appointed to the Pretrial Release and Supervision Committee. Megan Haney was appointed to the Education Committee. Approved without comment.

**b) Grants.** 1) National CASA Awareness Grant; 2) Child Access Visitation Grant. Approved without comment.

**c) Probation Policies 5.1 and 5.3.** Judge May moved to remove these items until he has time to speak with Neira Siaperas, and add them to the August consent calendar. Judge Evershed seconded the motion, and it passed unanimously.

**d) Rule for Public Comment.** Code of Judicial Administration Rule 4-103. Approved without comment.

**e) Forms Committee Forms.** 1) Income Verification and Compliance with Child Support Guidelines; Certification of Readiness for Trial; Trial Issues - Domestic Cases; Trial Issues – Non-Domestic Cases; Motion for Leave to Amend; Declaration of Jurisdiction and Grounds for Divorce; and Motion for Orders Regarding Relocation (revised). Approved without comment.

**16. ADJOURN**

The meeting adjourned.