

JUDICIAL COUNCIL
BUDGET AND PLANNING SESSION

Minutes
August 23, 2019
Matheson Courthouse
Large Conference Room (W19)
450 S. State St.
Salt Lake City, Utah 84111
8:30 a.m. – 1:45 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
Hon. Paul Farr
Justice Thomas Lee
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Excused:

Hon. Brook Sessions

Guests:

Jim Bauer, Third District Juvenile TCE
Commissioner Catherine S. Conklin, Second District
Phil Dean, State Budget Director and Chief Economist
Travis Erickson, Seventh District TCE
Hon. Hruby-Mills, Third District Court
Hon. Noel Hyde, Second District Court
Hon. Mark Kouris, Third District Court
Hon. Clemens Landau, Salt Lake Justice Court
Hon. David Mortensen, Court of Appeals
Joyce Pace, Fifth District TCE
Russ Pearson, Eighth District TCE
Peyton Smith, Third District TCE
Gary Syphus, Legislative Fiscal Analyst

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Holly Albrecht
Brody Arishita
Shane Bahr
John Bell
Stacey Demma
Todd Eaton
Geoff Fattah
Jeff Hastings
Alisha Johnson
Brent Johnson
Tiffany Lee
Heather Marshall
Jim Peters
Nathanael Player
Clayson Quigley
Nini Rich
Neira Siaperas
Amber Stubbings
Nancy Sylvester
Jessica Van Buren
Keisa Williams
Jeni Wood

Guests (cont.):

Joseph Wade, Office of Legislative Research
Dave Walsh, Deputy Director, CCJJ
Hon. Jeffrey Wilcox, Fifth District
Alex Wilson, Legislative Fiscal Analyst

1. WELCOME: (Chief Justice Matthew B. Durrant)

Judge Kate Toomey welcomed everyone to the meeting.

2. OVERVIEW OF BUDGET PLANNING SESSION: (Judge Mary T. Noonan)

Judge Mary Noonan provided an explanation of the process for budget requests and the duties of the Judicial Council.

3. GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET ECONOMIC PRESENTATION: (Phil Dean)

Chief Justice Durrant welcomed Phil Dean, State Budget Director and Chief Economist from the Governor's Office of Management and Budget. Mr. Dean provided demographic statistics for 1) income, 2) employment, 3) public programs, 4) population, and 5) outlooks. Mr. Dean stated Utah has a population of approximately 3.2 million. Unemployment claims remain low. With their recent expansion, Medicaid has seen a significant increase. Construction continues to thrive in Utah. The Census Bureau noted last December that the St. George area has one of the largest growth rate in the United States.

Chief Justice Durrant thanked Mr. Dean.

4. CASELOAD DATA PRESENTATION OVERVIEW: (Clayson Quigley and Heather Marshall)

Chief Justice Durrant welcomed Clayson Quigley and Heather Marshall. A weighted caseload is measured by counting case filings and events and weighing them by the time they take to complete. Ms. Marshall reviewed Supreme Court case filings; Court of Appeals case filings; District Court case filings, Justice Court filings, and Juvenile Court referrals.

District Courts saw a modest 3% increase in case filings. Criminal cases in district court cover 60% of judicial workloads. Juvenile Court referrals have seen a 7% decline in all case types and events. Delinquency cases in juvenile court cover 70% of judicial workload. Ms. Marshall also discussed the clerical weighted caseload. Judicial Administration Rule 4-402 governs the calculation of clerical weighted caseload. The district and juvenile clerical weighted caseload methodology was revised in 2017.

Chief Justice Durrant thanked Mr. Quigley and Ms. Marshall.

5. RECOMMENDATION FOR JUDICIAL SALARY INCREASE BY THE ELECTED OFFICIAL AND JUDICIAL COMPENSATION COMMISSION (EJCC): (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel, Assistant State Court Administrator. Mr. Drechsel explained the EJCC is a six-person commission (staffed by Alex Wilson, Legislative Fiscal Analyst Office), created by statute that, in alternating years, reviews judicial compensation. In 2018, the EJCC recommended to the Executive Appropriations Committee a 1.5% judicial increase, which did not pass. Chief Justice Matthew Durrant, State Court Administrator Judge Mary Noonan, Deputy State Court Administrator Cathy Dupont, and Assistant State Court Administrator Michael Drechsel meet with EJCC in July. The Chief let the committee know that the Court supports the schedule of salary increases for Judges and will

work with the committee to communicate that support to the Legislature. The EJCC committee indicated they would consider recommending a judicial compensation increase this year with data received by the courts to justify the increase. The courts seek judicial compensation based on the need to narrow the gap between large law firms' salaries and judicial salaries. Nationally, Utah is ranked 11th for judicial compensation without a cost of living and 19th in the nation with a cost of living.

The EJCC would like to create a methodology for judicial compensation to be addressed in smaller, more regular implements, rather than large increases several years apart.

Chief Justice Durrant thanked Mr. Drechsel.

**6. REPORTS AND BUDGET REQUESTS PRESENTATION:
BOARD OF DISTRICT COURT JUDGES**

Commissioners' Salaries Increase: (Commissioner Catherine S. Conklin and Judge Noel Hyde)

Chief Justice Durrant welcomed Judge Noel Hyde and Commissioner Catherine Conklin. Commissioners are evaluated on an annual basis pursuant to CJA Rules 3-111, 3-201, and 3-201.2. A commissioner's term is four years, renewable at the option of the Judicial Council. Commissioners' salaries have historically been set at 90% of a district court or juvenile court judge's salary. In recent years, commissioners' salaries declined to approximately 84.5% of a judge's salary. There has been a 50% turnover of commissioners. In the interest of retention of quality commissioners and attracting the best replacements, this request is made to increase commissioners' salaries.

The request for the commissioners' salaries increase is \$92,500 in ongoing money. The commissioners also asked the Council to adopt a commissioner salary standard of 90% of judges' salary.

Chief Justice Durrant thanked Judge Hyde and Commissioner Conklin.

Additional Fifth District Judge and Staff: (Judge Jeffrey Wilcox and Joyce Pace)

Chief Justice Durrant welcomed Judge Jeffrey Wilcox and Joyce Pace. The Fifth District currently has six District Court Judges: four judges in Washington County, one judge in Iron County, and one judge who splits time between Iron and Washington Counties. The 2019 Judicial Weighted Caseload reports that the Fifth District judges are carrying 117% of the recommended caseload and shows the district needs one additional judge. St. George ranks third in the Nation for percentage population growth.

Problem solving efforts currently in place:

- In order to resolve cases in accordance with timelines, three juvenile judges assist in covering district court cases.
- District Judges are regularly utilizing visiting judges to assist with many cases where there is a conflict.
- Judges have several weeklong jury trials coming up on cases that they are not able to calendar due to an influx of in-custody felony cases. Several cases are asking for one

week and some up to four weeks for jury trials. Without the assistance of a senior judge, these cases cannot be heard.

Alternatively, a new commissioner could alleviate domestic caseloads.

The request for a Fifth District judge and staff is \$453,788 in ongoing money (3 FTEs).

Chief Justice Durrant thanked Judge Wilcox and Ms. Pace.

Additional Third District Judge and Staff: (Judge Mark Kouris and Peyton Smith)

Chief Justice Durrant welcomed Judge Mark Kouris and Peyton Smith. The Judicial weighted caseload still shows that Third District is short almost four judges. At the last Legislative session, the Third District was allocated two new judges. In order to adequately address the large caseloads, the Third District is requesting an additional judge and two clerks.

Third District currently has 29 assigned judges and 5 commissioners. Currently, the Third Judicial District stands at 3.7 judicial officers below the Judicial Weighted Case Load's recommendation, including the two new judges allocated to the Third District during the 2019 Legislative session. During FY2018, the Third Judicial District handled 45% of case filings in the State and 53% of all jury trials conducted in the State.

The addition of a judicial officer would assist in addressing master calendaring issues, which contribute to below average days pending rates, and places the Third District in a more equitable position with other districts. The one time portion of the request is for furniture and audio/visual equipment for new courtrooms.

Potential solutions:

- Having Third District juvenile judge(s) assist with district cases.
- When the next juvenile judge retires or quits, the district court is allowed the replacement judge spot.

Judge Hyde noted the Board of District Court Judges believes the need for judicial officers in the Third District and Fifth District are equal.

The request for a Third District judge and staff is \$46,000 in one-time funding and \$907,576 in ongoing money (4 FTEs).

Two Problem-Solving Court (Drug Court) Clerks: (Judge Mark Kouris and Peyton Smith)

The Third District has five drug courts in Salt Lake County. On average, the time required to accomplish the needed drug court duties by a clerk takes eight hours each week. Each clerk is expected to complete these duties and to complete all of their other daily duties. The most recent clerical weighted caseload study showed that Third District is short 6.55 clerks.

Having dedicated drug court clerks will allow Third District to offer better customer service and will allow all agencies to have the same point person to help address issues. These

clerks can help ensure that each drug court is following the same guidelines and that each is consistent in their practices.

The request for the two problem-solving court (drug court) clerks is \$153,636 in ongoing money.

Chief Justice Durrant thanked Judge Hyde, Judge Kouris and Mr. Smith.

**7. REPORTS AND BUDGET REQUESTS PRESENTATION:
TECHNOLOGY STANDING COMMITTEE**

Five-Year Computer Replacement: (Judge Clemens Landau and Todd Eaton)

Chief Justice Durrant welcomed Judge Clemens Landau and Todd Eaton. The Court's IT Department needs ongoing funding to be able to better support and maintain the office desktop computer equipment courts use for daily operations. These monies will be used for the replacement of aging equipment.

This building block request seeks to reinstate the Courts' desktop replacement schedule.

The \$250,000 request would fund a mix of replacement equipment including:

- PCs & Scanners \$150,300
- Laptops \$84,700
- Printers \$15,000
- Total \$250,000

Alternatively, if ongoing funding is not appropriated, one-time or carry-forward funding could be utilized.

The request for the five-year computer replacement is \$250,000 in ongoing money.

Chief Justice Durrant thanked Judge Landau and Mr. Eaton.

Information Technology FTE Resources: (Judge Clemens Landau and Brody Arishita)

Chief Justice Durrant welcomed Brody Arishita. The Court's IT Department has continued to grow in the number of applications needed to support the Courts in the last 10 years. As the courts move further down the path of e-Courts, the staffing for the IT Department has stayed the same. The demand to increase the courts technology to support the public is continuing to increase. The IT Department need to increase the staff so we can keep up with demands.

The request for the Information Technology FTE resources is \$650,000 in ongoing money (6 FTEs).

Chief Justice Durrant thanked Judge Landau and Mr. Arishita.

Microsoft Office Suite Upgrades: (Judge Clemens Landau and Todd Eaton)

There are currently 1540 machines across the state that have MS Office 2010 installed. This version of Microsoft Office will end support in October of 2020, and will no longer be patched for security. This will put the courts at risk of cyber security attacks. Microsoft will no longer supply any patching for security or support.

Microsoft Office will eventually remove the desktop version and we will need to move to the subscription service. There is currently no ongoing funding for Microsoft Office products. The IT Department believes that moving towards the subscription service version for users is the best option as the courts finalize cost benefit analysis of Google-Suite vs. Office 365. The cost of Google suite will double in 2022 and with the amount we pay for Microsoft Office IT believes there can be a relatively cost neutral long-term option to switch to Office 365.

Alternatively, if each district provides funding for Microsoft Office for their users, this cost could come down.

The request for the Microsoft Office Suite upgrades is \$410,000 in one-time money and Move towards Office 365 – Subscription Service is \$72,000 in ongoing money.

Chief Justice Durrant thanked Judge Landau and Mr. Eaton.

OCAP Support Staff: (Judge Clemens Landau, Brody Arishita, and Clayson Quigley)

The IT Department and Court Services jointly submit this request to increase resources for OCAP in the form of one additional IT staff member and one additional Court Services staff member to provide standard development processes, security protocols, monitoring and tools. Currently a large portion of the application is developed and supported outside of IT. This has created challenges: many users have been unable to reliably access OCAP for the past year; the system has serious security concerns. OCAP is a foundational tool in providing access to justice relied upon heavily by self-represented litigants.

The request for the OCAP support staff is \$210,000 in ongoing money (2 FTEs).

Chief Justice Durrant thanked Judge Landau, Mr. Arishita, and Mr. Quigley.

West Jordan Audio/Visual Upgrade: (Judge Clemens Landau and Todd Eaton)

The Audio/Video equipment in the West Jordan building is failing frequently. Replacement parts must be purchased through eBay and repurposing old equipment, because the parts are no longer available through traditional websites and vendors. The team has had to go to West Jordan 35 times in FY2019 to perform repairs.

The request for the West Jordan audio/visual upgrade is \$450,000 in one-time money.

Chief Justice Durrant thanked Judge Landau and Mr. Eaton.

**8. REPORTS AND BUDGET REQUESTS PRESENTATION:
SYSTEM-WIDE REQUESTS**

Child Welfare Mediator: (Nini Rich)

Chief Justice Durrant welcomed Nini Rich. The purpose of this request is to provide ongoing funding for a half-time Child Welfare Mediator position that is currently funded with one-time money. The increase in mediation referrals from Juvenile Court Judges (over 12% since FY2014) has resulted in crowded mediation calendars and increasing difficulty for judges to get cases mediated within tight statutory timelines. The majority of cases must be scheduled within a timeframe of 2 weeks or less from the date of the judge's order.

The one-time funding of an additional half-time mediator in FY19 greatly reduces the mediation calendar congestion as well as scheduling complaints from the court and counsel. It has also addressed the problem of leaving some families without access to the benefits of participating in a collaborative decision making process that has been shown to lead to better outcomes for children and families.

The request for the child welfare mediator is \$54,947 in ongoing money.

Chief Justice Durrant thanked Ms. Rich.

Self-Help Center Funding Increase: (Nathanael Player)

Chief Justice Durrant welcomed Nathanael Player. The Self-Help Center seeks increased funding to better serve the public. This two-part request asks for ongoing funding to continue to fund five SHC attorneys full-time and for one additional staff attorney. Permanent full-time funding with the existing five staff attorneys (who are only permanently funded for 30 hours per week) would cost \$98,155. One additional staff attorney would cost \$96,909 and is one FTE. On May 20, 2019, the Judicial Council approved one-time funds to allow the self-Help Center to pilot full time status, but this money will run out on June 30, 2020.

Highlights from FY 2019

- 21,495 total contacts – the highest number ever for the Self-Help Center
- 10,113 calls answered and 34,221 calls missed (a 70% missed call rate)
- 6,273 emails
- 4,311 texts
- 109 average contacts per day

The request for the Self-Help Center funding increase is \$195,064 (\$98,155 for permanent funding for full-time staff and \$96,909 for one additional staff attorney) in ongoing money (1 FTE).

Chief Justice Durrant thanked Mr. Player.

Public Outreach/Education Coordinator: (Judge Elizabeth Hruby-Mills, Geoff Fattah, and Judge Shauna Graves-Robertson)

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills, Geoff Fattah, and Judge Shauna Graves-Robertson. Based on past recommendation by the courts' Commission on Racial

and Ethnic Fairness study to invest more time and resources toward actively reaching out to marginalized communities, the Standing Committee on Judicial Outreach recommends the creation of a Public Outreach and Education Coordinator position under the Public Information Office.

Alternatively, one potential funding source is partial funding from the Utah Bar Foundation; however, this may violate policy in funding staff positions using grants.

The request for the Public Outreach/Education coordinator is \$94,060 in ongoing money (1 FTE).

Chief Justice Durrant thanked Judge Hruby-Mills, Mr. Fattah, and Judge Graves-Robertson.

**9. REPORTS AND BUDGET REQUESTS PRESENTATION:
COURT FACILITIES PLANNING COMMITTEE**

West Jordan Courtroom Build-Out: (Judge David N. Mortensen)

Chief Justice Durrant welcomed Judge David N. Mortensen. During the 2019 Legislative session, the Third District was allocated two additional judges. These two new judges will be located in Salt Lake County. The two courthouses in Salt Lake County are the Matheson Courthouse and the West Jordan Courthouse. In the Matheson Courthouse, Third District occupies the third and fourth floors. There is currently one available courtroom on the fourth floor for one of the new judges. In the West Jordan Courthouse, Third District occupies the third floor where there are five finished courtrooms (all being used) and one shelled courtroom (for the second new judge). This will also allow all the district judges to be on the same floor.

Alternatively, there currently is an empty courtroom at the West Jordan courthouse on the second floor, which is the juvenile court floor; however, a juvenile courtroom does not have a jury box or deliberation room.

The request for the West Jordan Courtroom build-out is \$1,140,356 in one-time money.

Chief Justice Durrant thanked Judge Mortensen.

**10. DISCUSSION AND PRIORITIZATION OF FY 2021 BUILDING BLOCK
BUDGET REQUESTS: (Nini Rich)**

The budget categories that must be determined when prioritizing the budget requests are:

- 1) Obligations,
- 2) Deferral or alternative funding,
- 3) Elimination,
- 4) Building blocks,
- 5) Supplemental, and
- 6) Fiscal note building blocks.

Fiscal notes are attached to legislation. Building blocks do not require statute to advance. John Bell needs to have the Council's recommendations within 30 days.

Committee discussion

The Liaison Committee agreed that there continues to be a pronounced need for additional district court judges in several locations throughout the state, particularly in the Third District Court (3.7 district court judges) and the Fifth District Court (one district court judge). The courts are conducting additional study to determine whether the present judicial weighted caseload methodology properly assesses the juvenile court workload in a post-HB0239 world. The committee does not think it prudent to ask the legislature to appropriate new funding for additional judges during the 2020 session, particularly in light of the data indicating a possible excess of as many as 6.8 juvenile court judges. The Council believes it is essential to find ways to address the needs for additional district court positions. To balance these competing concerns, the committee proposed a response that incorporates two components.

The Liaison Committee recommended the following:

- The courts request that the legislature reallocate two juvenile court judge positions to the district court upon the retirement, resignation, or death of juvenile court judges. One of these judgeships would be allocated to the Third District Court. The second judgeship would be allocated to the Fifth District Court. This method of reallocation has historical precedent (SB0140 - 2002).
- The juvenile court bench and district court bench should continue to work together to meet remaining workload demands.
- The Judicial Council should not ask the legislature to make additional changes to the number of district court or juvenile court judges beyond what is recommended by this committee.

The District Board recommended the following:

- Request two new judges from the 2020 Legislature. One judge for the Third District and one judge for the Fifth District.
- Support the recommendations outlined in the memorandum submitted by the Board of Juvenile Court Judges Memorandum to fill one judicial vacancy in the third district through job-sharing.
- Should the Council deem it necessary to reallocate juvenile judicial positions (through attrition) to create new district court judge positions, the Board of District Court Judges recommended limiting reallocation to one position until the new Juvenile Court study is complete and the other considerations delineated in the Juvenile Board Memorandum are explored.

The Board of Juvenile Court Judges recognizes that the results of the workload analysis are in large part a consequence of a continuous decline in delinquency and child welfare referrals. The FY19 Juvenile Court Judicial Weighted Caseload analysis was conducted using a workload formula that was last updated in 2009. Since then, juvenile court work and practices have changed significantly. Juvenile court judges have assisted district court in several districts for many years.

The Juvenile Board recommended the following:

- Juvenile judges will continue to assist district court judges with workload needs. Some of this assistance, as previously noted, is now occurring. Juvenile judges have committed to offer the district court additional assistance equaling the work of one judicial officer. Details of that assistance will be arranged through the Presiding Judges. A meeting between Third District Juvenile and District Court Presiding Judges has been scheduled for August 26, 2019. It is anticipated that logistics, calendars, and any necessary training can be arranged as early as January 2020.
- If the Council determines that it is necessary to reallocate judicial positions between the district and juvenile courts, the Board would support that decision. However, the Board requests that such reallocation be accomplished through attrition (retirement and/or vacancy). It is anticipated that one or more retirements will occur in 2020.

The Seventh District, following an initial review of judicial duties and considering the Court's electronic system, recommended the study and initiation of a statewide initiative for Judicial Workload Support. The electronic review and signing of documents is an ideal first step toward implementing such a practice. These duties do not require substantial court resources for the originating district, and do not constitute a significant challenge for maintaining and cataloging recordings, etc., as would formal hearings.

Under the current judicial workload conditions, Seventh District has the capacity to assist in the development and implementation of this statewide practice. Additional study with a multi-disciplinary team may reveal additional opportunities to achieve efficiencies through inter-district judicial support.

Motion: Judge Paul Farr moved to defer the Third District Court Judge request to the Budget Committee for alternative funding. Judge Mark May seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to defer the Fifth District Court Judge request to the Budget Committee for alternative funding. Justice Lee seconded the motion, and it passed unanimously.

Motion: Judge Todd Shaughnessy moved to defer the Two Problem-Solving Court (Drug Court) Clerks, the Public Outreach/Education Coordinator, the Self-Help Center new FTE attorney, and the Child Welfare Mediator request to the Budget Committee. Judge Paul Farr seconded the motion, and it passed unanimously.

Motion: Judge Todd Shaughnessy moved to amend his motion to remove the Child Welfare Mediator from the motion above. Justice Thomas Lee seconded the motion, and it passed unanimously.

Motion: Judge Derek Pullan moved to refer the West Jordan Courtroom Build-Out request to DFCM for alternative funding. Judge Kate Appleby seconded the motion, and it passed with Judge Shaughnessy opposed.

Motion: Judge Shaughnessy moved to approve the OCAP court services staff member and the OCAP IT staff member for \$210,000 in ongoing funds. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve the Self-Help Center permanent funding for an additional staff attorney for \$96,909 in ongoing funds and to request the Budget Committee look for funding source for ongoing funding of \$98,155 for fulltime status. Judge May seconded the motion, and it passed unanimously.

Motion: Judge May moved to defer the Microsoft Office Suite Upgrades of \$410,000 and to approve moving towards Office 365 – subscription service that is \$72,000 in ongoing money. Judge Brian Cannell seconded the motion, and it passed unanimously.

Motion: Judge Pettit moved to approve the Court Commissioner Recruitment and Retention (submitted as commissioners’ salary increase) of \$92,500 in ongoing funds. Judge Cannell seconded the motion, and it passed unanimously.

Motion: Judge Ryan Evershed moved to approve the request for a child welfare mediator, \$54,947 in ongoing money. Judge Pettit seconded the motion, it passed with Justice Lee, Judge Farr, Judge Shaughnessy, and Judge Pullan opposed.

Motion: Justice Lee moved to approve IT 6 FTE Resources for \$650,000 in ongoing funds. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to defer the IT Five-Year Replacement Schedule. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve the West Jordan audio (not visual) request of \$450,000 in one-time funds. Justice Lee seconded the motion, and it passed unanimously.

The Committee completed the prioritized list. The results of the voting are as follows:

- 1A. Information Technology Resources
- 1B. Microsoft Office Suite Upgrades
- 1C. West Jordan Audio/Visual Upgrade
- 1D. OCAP Support Staff
2. Self-Help Center Funding Increase
3. Court Commissioner Recruitment and Retention (submitted as commissioners’ salary increase)
4. Child Welfare Mediator

Motion: Judge May moved to approve the list as prioritized as listed above. Judge Farr seconded the motion, and it passed unanimously.

11. ADJOURN

The meeting adjourned at 2:00.