

**JUDICIAL COUNCIL MEETING**

**Minutes**

**October 28, 2019**

**Matheson Courthouse**

**Council Room**

**450 S. State St.**

**Salt Lake City, Utah 84111**

**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  
Hon. Paul Farr  
Justice Deno Himonas – by phone  
Hon. Mark May  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Brook Sessions  
Hon. Todd Shaughnessy  
Hon. John Walton  
Rob Rice, esq.

**Excused:**

Jim Peters

**AOC Staff:**

Hon. Mary T. Noonan  
Cathy Dupont  
Michael Drechsel  
Shane Bahr  
Geoff Fattah  
Katie Gregory  
Larissa Lee  
Clayson Quigley  
Neira Siaperas  
Chris Talbot  
Keisa Williams  
Jeni Wood

**Guests:**

Jim Bauer, Third District Juvenile TCE  
Hon. Michele Christiansen Forster, Court of Appeals  
Travis Erickson, Seventh District TCE  
Joyce Pace, Fifth District TCE  
Commissioner Bridget Romano, JPEC  
Ron Shepherd, Third District Probation Officer  
Hon. F. Richards Smith, Fourth District Juvenile  
Gary Syphus, Legislative Fiscal Analyst  
Dr. Jennifer Yim, JPEC

- 1. COUNCIL PHOTO.** The annual Judicial Council photo was taken.
- 2. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**  
Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Kate Appleby moved to approve the Judicial Council minutes from the September 10, 2019 meeting, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Judge Mary T. Noonan noted Judge Lichman, a Florida judge who is a national expert on addressing mental health issues in the justice system, is expected to attend an event being organized by the Courts and the Department of Human Services as part of the initiative for the Courts & Community Response to Those with Mental Illness (also known as the Sequential Intercept Model). He is available on one of the following dates April 20-22, 2020.

The NCSC System Review Steering Committee met last week with Patti Tobias to begin the process for phase 2 of the system review. The committee will present a proposed contract and timeline to the Council in November.

The Governor has appointed Teresa Welch and Kristine Johnson to the Third District Court.

**5. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Ad Hoc Budget & Finance Committee Report:**

The committee held its first meeting and addressed two main issues:

- The market comparability analysis, which will be addressed again in November, and
- The reallocation issue, which will be discussed at this meeting.

**Liaison Committee Report:**

The committee met on September 30 and reviewed current legislation. Cathy Dupont noted Senator Weiler will sponsor the judicial housekeeping bill and the judicial reallocation bill. Michael Drechsel is consulting with national experts to help the committee better understand how the courts can effectively and accurately communicate court fiscal impact to the legislature.

**Policy and Planning Committee Report:**

The subcommittee created from the June Council retreat completed their work on two rules.

**Bar Commission Report:**

Rob Rice noted the Bar approved the first four Licensed Paralegal Practitioners (LPPs), three of which are established with law firms, and one is working on creating their own business.

**6. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Bridget Romano)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Bridget Romano. Dr. Yim introduced Commissioner Romano. JPEC and judges (not in the 2020 retention term) met with attorneys to prepare them for the judicial survey. They emphasized the purpose of responding to the survey, the importance of honesty, and ensuring attorneys understood that

judges want their feedback. Recently, there were approximately 230 CLE participants at the Bar-approved one-hour JPEC professionalism CLE.

The response rate for surveys conducted by court staff this year is comparable to surveys in the past; however, comments received indicate a fear of retribution. JPEC addressed this with the TCEs. The Council recommended JPEC attend the next annual conference to speak with judges.

Chief Justice Durrant thanked Dr. Yim and Commissioner Romano.

**7. CJA RULE 4-401.02 FOR FINAL APPROVAL: (Dr. Jennifer Yim, Commissioner Bridget Romano, Judge Derek Pullan, and Keisa Williams)**

Chief Justice Durrant welcomed Dr. Jennifer Yim, Commissioner Bridget Romano, and Keisa Williams. JPEC requested an amendment to Code of Judicial Administration Rule 4-401.02 Possession and Use of Portable Electronic Devices to allow JPEC to engage in a pilot project using audio and video recordings of justice court hearings to create a system for courtroom observation that mimics the in-person courtroom evaluation to which all other judges are subject. The pilot will be conducted only for mid-term judges so that the effect of the pilot can be evaluated independent of any concern with actual retention elections for those judges. The rule recently completed a 45-day comment period, where one comment was received.

Because in-person observation does not result in any permanent record beyond the documented observations of the JPEC observer, the audio and video recordings will not be retained beyond the period necessary to review the recordings. By designating the records “not public,” access to the recordings will be restricted. The Court has the ability to restrict access to records under Utah Code § 63G-2-201(3), which states: "The following records are not public: (b) a record to which access is restricted pursuant to court rule [or] another state statute..." Under Utah Code § 78A-12-206(1)(c) and (d), JPEC reports and information obtained in connection with evaluations are protected. Reports only become public on the day following the last day on which a judge may file a declaration of candidacy for a retention election. Because this pilot will only involve mid-term judges that are not subject to retention, the recordings remain protected under both 78A-12-206 and CJA 4-401.02.

Chief Justice Durrant thanked Dr. Yim, Commissioner Romano, Judge Pullan, and Ms. Williams.

**Motion:** Judge Shaughnessy moved to approve amendments to CJA Rule 4-401.02, as presented with an effective date of November 1. Judge Augustus Chin seconded the motion, and it passed unanimously.

**8. CJA RULE 4-103 FOR FINAL ACTION: (Keisa Williams)**

Chief Justice Durrant welcomed Keisa Williams. Code of Judicial Administration Rule 4-103 Civil Calendar Management completed a 45-day public comment period with no comments received. As part of the annual review of the Code of Judicial Administration as required by CJA Rule 2-207, Policy and Planning observed that, Subsection (3) in rule 4-103 creates confusion when it references “Pursuant to Rule 41 of the Utah Rules of Civil Procedure.

Rule 41 does not actually require “without prejudice” language. Making the revisions as proposed by Policy and Planning will eliminate the confusion without compromising the mandate in Holmes v. Cannon, 2016 UT 42.

Chief Justice Durrant thanked Ms. Williams.

**Motion:** Judge Todd Shaughnessy moved to approve amendments to CJA Rule 4-103, as presented with an effective date of November 1. Judge Mark May seconded the motion, and it passed unanimously.

**9. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge F. Richards Smith and Neira Siaperas)**

Chief Justice Durrant welcomed Judge F. Richards Smith and Neira Siaperas. Judge Smith noted Judge Kimberly Hornak, Third District Juvenile, is retiring. The average length of service for current juvenile court judges is 6.4 years of service. Only five judges have ten or more years of service. Sixteen of the thirty-one juvenile court judges have five or less judicial years of service.

The Board of Juvenile Court Judges is committed to maintaining fidelity to best practice standards for child-welfare cases. The Education Department will work with the juvenile bench in creating a better mentoring program for juvenile court judges. Juvenile court judges have been assisting district court judges, specifically in the Eighth District with some district court cases. The Sixth District Juvenile Court assists the district court with domestic matters. The Third District has an agreement, beginning January 1, 2020, where the juvenile court will assume the responsibility of the district courts’ first appearance calendars, five days a week.

The Council recommended training juvenile court judges that assists with district court cases.

Chief Justice Durrant thanked Judge Smith and Ms. Siaperas.

**10. COURT COMMISSIONER CONDUCT COMMISSION REPORT: (Judge Michele Christiansen Forster and Katie Gregory)**

Chief Justice Durrant welcomed Judge Michele Christiansen Forster and Katie Gregory. The commission received three complaints this past year. Two complaints were dismissed by letter, and the third complaint was against staff and not a commissioner. It was therefore forwarded to the appropriate supervisor.

Policy & Planning is working on amending the complaint process. Judge Christiansen Forster noted she has met her tenure on this Commission therefore; a new Chairperson will need to be appointed.

Chief Justice Durrant thanked Judge Christiansen Forster and Ms. Gregory.

**11. AN ACTION PLAN FOR COMPILING JUDICIAL COUNCIL HISTORY: (Geoff Fattah)**

Chief Justice Durrant welcomed Geoff Fattah. Mr. Fattah presented a preliminary action plan for creating a Judicial Council history. The goals of the project are to preserve and prepare oral histories and primary source documents, and commission an author to write a history that is both engaging, accessible, and structured in a way to be updated every 10 years.

The following is a preliminary outline of the first steps for creating the Judicial Council history.

- I. Capture Oral Histories
- II. Preserve and Index Judicial Council Primary Documents
- III. Commission an Author

Oral histories of key figures involved in the formative years of the Judicial Council need to be identified and preserved. It is recommended that these oral histories be captured on video for historical value (approximate cost \$10,000). The following individuals have been identified:

Chief Justice Richard Howe  
Chief Justice Michael Zimmerman  
Chief Justice Christine Durham  
Judge Gregory Orme, Utah Court of Appeals  
Tim Shea, former Appellate Courts Administrator  
Dan Becker, former State Court Administrator

In order to prepare for the Council History, all Judicial Council documents must be indexed by time and topic, as well as searchable by keyword. The Utah State Law Library contains 28 linear feet of Judicial Council materials (dated from 1973). There are also 22 additional volumes of materials in binders located at the AOC. Using a standard formula of 1,800 pages per linear foot, that comes to an estimated 61,200 pages. The Utah State Law Library has offered to begin indexing Council documents. Depending on the estimate on time and scope of indexing Council documents, there may be a need to hire a scanning service, temporary help for indexing/metadata entry or both.

The Judicial Council, with the assistance of the AOC, will likely need to post an RFP to commission a writer to create this historical work. An RFP committee, as well as a project-working group, will need to be formed. We will then need to seek the assistance of Council members, judges, law professors, and other attorneys to recruit and encourage prospective authors to apply. AOC legal should also be involved in reviewing the contract to ensure that the Utah State Courts retain the appropriate rights over the final work. Once the work is completed, a working group will be needed to fact check and advise on content. It is recommended that the final product be formally published, including registration with the Library of Congress.

Mr. Fattah will seek guidance from the National Center for State Courts regarding possible grants and report to the Council in November.

Chief Justice Durrant thanked Mr. Fattah.

**12. PROPOSED LEGISLATION RE: THIRD DISTRICT JUDICIAL REALLOCATION: (Judge Mark May and Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel mentioned that after the Budget Committee met, the Legislative Fiscal Analyst Office (LFA) recommended that three juvenile court judges be reallocated to district courts. At the courts request, the EOCJ Legislative Appropriations Subcommittee delayed action on the LFA recommendation in order to give the Judicial Council time to make a recommendation on judicial re-allocation.

The Ad Hoc Budget and Finance Committee considered the recommendations of the Boards of District Court Judges and Juvenile Court Judges in making the following recommendation to the Council:

1. Upon retirement of one juvenile court judge from Third District Juvenile Court, the position should be reallocated through legislation to a district court position in the Third District; and
2. the judicial districts should carefully review capacity and determine how the juvenile courts can (continue to) provide assistance to the district courts in meeting workload needs (particularly in Third District and Fifth District).

Judge May noted that the weighted caseload data for this year indicates that there are too many juvenile court judges in some districts. He cautioned against reducing the number of juvenile court judges by more than one position based on one year of data and suggested that the courts should evaluate multiple years of data to determine the trend in the data, which is what the courts do when we ask the legislature for additional judges. The courts do not make changes in the number of judicial officers without multi-year trends. The trend in the weighted caseload for juvenile courts may be impacted by the update of the weighted caseload formula being developed for the juvenile courts, which should more accurately reflect workload after juvenile justice reform. Judge May commented that over the course of this next year, the juvenile court judges can assist where possible with district court calendars. He commented that the weighted caseload data does not reflect the assistance the juvenile court judges currently provide to the district courts. The Council addressed reviewing caseloads over the course of 2-3 years.

Clayson Quigley explained juvenile weighted caseloads.

The Fifth District Judicial Weighted Caseload reached 116% of the statewide standard in FY 2019. The Bench currently holds six judicial seats and the FY 2019 Judicial Weighted Caseload indicates a shortage of 1.0 Judicial Officers. The Fifth District has determined that the primary coverage need is located in the St. George Courthouse.

The Fifth District has been and continues to take steps toward maximization of internal resources. The Seventh District coverage capacity will be affected for a period due to Judge Thomas' retirement and pending the confirmation of new district court judge. Fifth District and Seventh District Trial Court Executives, Presiding Judges, and Clerks of Court have studied both districts needs and abilities. The following factors were considered:

- Judicial time and travel
- Limited local legal community/courtroom availability
- Clerical resources
- Remote hearings

The Seventh District could share a portion of the Fifth District uncontested civil, domestic, and probate case load. The Fifth and Seventh Districts are currently seeking additional information about the percentage of caseload standard assigned per office or per judge. This information is needed to determine the appropriate case type and assignment weights to best distribute the workload.

The Fifth and Seventh Districts would need to coordinate to develop business rules and clerical best practices to manage the shared caseload, monitor, and report on standards for time to disposition, case pending, and matters under advisement. This approach addresses emerging clerical duties resulting from the electronically shared caseload. The districts would also work together on a process for facilitating the electronic review of pro se filings and determine the process of judge reassignment back to Fifth District when needed. Fifth and Seventh Districts would regularly review individual district needs and abilities in order to determine whether additional caseload support is needed and what opportunities exist.

The Council discussed whether to recommend a reduction in the number of juvenile court judges by one or two in this year's legislation.

Chief Justice Durrant thanked Judge May and Mr. Drechsel.

**Motion:** Judge Ryan Evershed moved to approve 1) upon retirement of one juvenile court judge from Third District Juvenile Court, the position be reallocated through legislation to a district court position in the Third District; and 2) the judicial districts carefully review capacity and determine how the juvenile courts can continue to provide assistance to the district courts in meeting workload needs (particularly in Third District and Fifth District), as presented. Judge Shaughnessy proposed a substitute motion to first vote on whether to reduce a juvenile judge in the third district upon retirement, and to decide on where to re-allocate the judge in a separate motion. Judge Pettit seconded the motion to vote on reducing the number of juvenile court judges in the third district by one upon a retirement. The motion passed with Judge Appleby, Judge Walton, Judge Pullan, Judge Farr, Judge Shaughnessy, and Justice Himonas opposed.

**Motion:** Judge Pullan moved to allocate a juvenile court judge from the Third District Juvenile Court to the Fifth Judicial District Court. Judge Cannell seconded the motion, and it passed with Judge Evershed and Judge May opposed.

### **13. JUDICIAL COUNCIL COMPOSITION COMMITTEE RECOMMENDATIONS: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. In June 2019, the Judicial Council tasked an ad hoc Composition Committee with assessing the ideal composition of the Judicial Council and its Executive Committees (Management Committee, Liaison Committee, and Policy and Planning Committee. The Council was also interested in recommendation regarding the

Council's *ad hoc* Budget and Finance Committee becoming a fourth Executive Committee. The Composition Committee met during the intervening months and now makes the following recommendations to the Council:

1) Size of the Council:

In order to facilitate the work of the Judicial Council and its Executive Committees, the committee recommends that the Council increase membership by adding two new members: one additional Second District Court dedicated judge and one additional juvenile court judge, as determined by the Juvenile Bench.

2) *Ad Hoc* Budget and Finance Committee:

The committee recommends that the *ad hoc* Budget and Finance Committee be formally established as a permanent Executive Committee. Consistent with the other Executive Committees, there would not be a requirement that each of the three members represent any particular level of court. The committee recommends that the Policy and Planning Committee assist in drafting the duties of the Budget and Finance Committee, primarily to be drawn from a restructured Rule 3-406.

3) Communication and Transparency:

The committee recommends that any group advancing a recommendation to the Judicial Council or any of its Executive Committees be invited to participate in any meeting where that matter is being deliberated.

4) Participation in Council Process:

The committee recommends that each Board of judges (Appellate, District, Juvenile, and Justice) determine how that Board can proactively be involved in Council processes and implement a plan to effectuate the desired level of involvement.

The Council discussed the recommendations. Concerning the proposed new positions on the Council, the Council discussed how Second District having a dedicated seat on the Council would affect First District (since those two district currently share a seat). The Council noted the two options identified in the Composition Committee memo. Judge Cannell noted the First District is part urban and part rural and in that way is similar to the Fifth District. As a result, the groupings for district court representation on the Council might be best balanced by the following:

First and Fifth Districts = one seat for 10 judges

Second District = one seat for 14 judges

Third District = two seats for 31 judges

Fourth District = one seat for 13 judges

Sixth, Seventh, and Eighth Districts = one seat for 8 judges

The Council reviewed urban vs. rural representation and when additional members would begin on the Council, if the necessary statutory changes were approved by the Legislature.

Chief Justice Durrant thanked Mr. Drechsel.



**Motion:** Justice Deno Himonas moved to approve the following:

- 1) the Council be increased by adding two new members: one additional district court position dedicated to the Second District and one additional juvenile court position to be allocated as determined by the Juvenile Bench (this motion was amended with input from Judge Pettit to clarify that the breakdown of district court Council positions would be as outlined above and to have the Liaison Committee work with the Legislature to make necessary revisions to Utah Code § 78A-2-104 and to have Policy & Planning revise any related rules in the Code of Judicial Administration);
- 2) the ad hoc Budget and Finance Committee be formally established as a permanent Executive Committee, after Code of Judicial Administration Rule 1-204 has been amended;
- 3) Policy and Planning Committee assist in drafting the duties of the Budget and Finance Committee;
- 4) that any group advancing a recommendation to the Judicial Council or any of its Executive Committees be invited to participate in any meeting; and
- 5) each Board of judges (Appellate, District, Juvenile, and Justice) determine how that Board can proactively be involved in Council processes and implement a plan to effectuate the desired level of involvement.

Judge Walton seconded the motion, and it passed unanimously.

**14. RETENTION ELECTIONS CERTIFICATION: (Judge Mary T. Noonan)**

JPEC rule 597-3-4(2) provides that “no later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.” Judge Julie Lund has met the standards as required by CJA Rule 3-101. Judge Lund did not submit her self-declaration because she plans to retire soon. Upon learning of this, JPEC advised Judge Lund that given the timing of her retirement, it was best that she go through the certification process. JPEC is willing to accept a late certification decision regarding Judge Lund from the Council.

**Motion:** Judge Appleby moved to approve Judge Julie Lund for the 2020 election term, as presented. Judge Paul Farr seconded the motion, and it passed with one opposed.

**15. SENIOR JUDGE CERTIFICATIONS: (Cathy Dupont)**

Chief Justice Durrant welcomed Cathy Dupont. Ms. Dupont informed the Council that Judge Tubbs submitted an application a few days before the Council meeting. He is retiring November 3 and would like to assist his court with coverage until they select a new judge. There has not been time to verify his status with the Judicial Conduct Commission. Judge David Tubbs has not met his CLE required hours for 2019, but because the year is not over, Brent Johnson suggested that we measure CLE requirements based on 2016 through 2017. Judge Tubbs exceeded his CLE requirements for all 3 years.

Justice court senior judges seeking certification:

**Active**

Judge Carolyn E. Howard

Judge David Tubbs

The senior justice court judges below have terms of office that will expire on December 31, 2019. None of the senior judges has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission.

Justice court senior judges seeking recertification:

**Active**

Judge Darold M. Butcher

**Inactive**

Judge Dennis Barker

District court senior judge seeking recertification:

Judge Steve Hansen

Chief Justice Durrant thanked Ms. Dupont.

**Motion:** Judge May moved to defer consideration of Judge Howard until the November Council meeting, to approve the certification of Judge David Tubbs (active) and to approve the recertification of Judge Darold Butcher (active), Judge Steve Hansen (active), and Judge Dennis Barker (inactive), with the understanding that Judge Tubbs' certification is subject to confirmation by the Judicial Conduct Commission that there are no complaints pending. Judge Cannell seconded the motion, and it passed unanimously.

**16. WEST VALLEY PROBATION OFFICES RELOCATION: (Chris Talbot and Jim Bauer)**

Chief Justice Durrant welcomed Chris Talbot and Jim Bauer. The West Valley Justice Court and West Valley probation office need to be moved from the building used by the West Valley Police Department. Mr. Talbot explained that relocating the West Valley probation offices 1.5 miles would allow for the same amount of space and would allow the configuration supportive of the probation office needs. Additionally, this would allow the office located near the airport to relocate to the new building. The new space is not expected to cost the courts any additional money. The justice court will move into the existing facility.

Chief Justice Durrant thanked Mr. Talbot and Mr. Bauer.

**17. OLD BUSINESS / NEW BUSINESS**

Mr. Talbot noted the courts will not be able to fund an additional juvenile courtroom for the Wasatch courthouse. Mr. Talbot will continue to research funding for this.

Judge Shaughnessy requested the Budget & Finance Committee review 1) the possibility of moving the cost of softbound Utah Code books to judges' judicial operations budget, 2) how else the funds can be used, and 3) allow for partial ordering of Code books, such as only ordering volume 3.

Judge May addressed age limits for senior judges. Cathy Dupont noted a working committee will review all senior judge rules.

Ms. Dupont stated the Justice Court Board rejected a request from the Salt Lake City Justice Courts for approximately \$4,000 to update the artwork in the Justice Court to reflect cultural diversity and to be more welcoming of culturally diverse communities. The Board did not approve the use of funds for the justice court project. The justice court found alternate private funding from the Utah Center for Legal Inclusion. Justice John Pearce requested the Council or the AOC provide some funding for the project as a way of supporting judicial efforts to reach diverse populations and to be more welcoming to diverse populations. . The Council did not take any action on the request.

## **18. EXECUTIVE SESSION**

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

## **19. CONSENT CALENDAR ITEMS**

**a) Forms Committee Forms.** Verified Parentage Petition, Stipulation, Findings of Fact and Conclusions of Law, and Parentage Decree and Judgment. Approved without comment.

**b) Probation Policy 5.2 Revision.** Approved without comment.

**c) Committee Appointments.** Resources for Self-Represented Parties – Appointment of Judge Richard Mrazik to the committee and as Chair. Facilities Planning – Reappointment of Archie Philips, termination of Lyle Knudsen. Approved without comment.

## **20. ADJOURN**

The meeting adjourned.