

# JUDICIAL COUNCIL MEETING

## Minutes

February 24, 2020

Matheson Courthouse

Council Room

450 S. State St.

Salt Lake City, Utah 84111

9:00 a.m. – 2:30 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. Paul Farr  
Hon. Mark May  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Brook Sessions  
Hon. John Walton  
Rob Rice, esq.

### Excused:

Hon. Ryan Evershed  
Justice Deno Himonas  
Hon. Todd Shaughnessy

### AOC Staff:

Hon. Mary T. Noonan  
Cathy Dupont  
Michael Drechsel  
Shane Bahr  
Naomi Clegg  
Geoff Fattah  
Kim Free  
Brent Johnson  
Wayne Kidd  
Larissa Lee  
Kara Mann  
Meredith Mannebach  
Jim Peters  
Nini Rich  
Neira Siaperas  
Karl Sweeney  
Nancy Sylvester  
Kade Taylor  
Chris Talbot  
Jeni Wood

### Guests:

Michelle Draper  
Hon. Michael DiReda, Second District Court  
Hon. Dennis Fuchs, Senior Judge  
Hon. Royal Hansen, Third District Court  
Hon. Elizabeth Hruby-Mills, Third District Court  
Hon. Barry Lawrence, Third District Court  
Michele Mattsson  
Hon. David Mortensen, Court of Appeals  
Justice Paige Petersen, Supreme Court  
Hon. F. Richards Smith, Fourth District Juvenile Court  
Larry Webster, TCE, Second District Court

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

Judge Kate Appleby welcomed everyone to the meeting. Chief Justice Matthew B. Durrant arrived late to the meeting. Justice Paige Petersen attended on behalf of Justice Deno Himonas. Judge Todd Shaughnessy as well as other court personnel traveled to New Jersey to address pretrial release topics.

**Motion:** Judge Augustus Chin moved to approve the January 27, 2020 Council minutes, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Judge Mary T. Noonan introduced Wayne Kidd as the new AOC Audit Director. The Executive Appropriations Subcommittee met last Friday.

**4. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

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

Judge Mark May noted the committee began vetting budget proposals to allow an opportunity for feedback prior to their presentation to the Council.

**Liaison Committee Report:**

The Committee report will be discussed later in the meeting.

**Policy and Planning Committee Report:**

The committee continues to work on the courtroom attire rule. The remaining items will be discussed later in the meeting.

**Bar Commission Report:**

Heather Thuet has been confirmed as the President-Elect for the State Bar and will be sworn in at the Bar's Summer Convention. Rob Rice encouraged all Bar members to complete the membership survey. Herm Olsen is looking forward to visiting with the Council in March.

**5. ST. GEORGE EXPANSION: (Judge David Mortensen and Chris Talbot)**

Chief Justice Durrant welcomed Judge David Mortensen and Chris Talbot. Currently, the St. George Courthouse is shared with the federal courts. With the population growth, most likely the state courts will eventually need the space used by the federal courts. The federal court would like to remain in place and partner with the courts to expand the St. George facility. Originally, the federal courts indicated they would pay for the \$15K-\$20K feasibility study, but unfortunately, are now unable to cover the cost. The federal court has offered to conduct a marketability study. The Facilities Committee wants the court, through the Facilities Department, to fund the feasibility study. Mr. Talbot noted the Facilities Department has the

funding available in their budget. The Council gave their endorsement to move forward with the feasibility study.

Chief Justice Durrant thanked Judge Mortensen and Mr. Talbot.

**6. LEGISLATIVE UPDATES: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Judge Noonan reviewed the EOCJ funding item considerations and noted all four Council priorities are in the top 15 funding items. The funding for the replacement of the West Jordan Courthouse audio appears on a re-allocation/reduction list. This was a list Executive Appropriations asked each committee to create from pooled savings from the agencies under the committee's jurisdiction. These items should be funded separate from building block requests. Cathy Dupont noted the Executive Appropriations Committee has until March 6 to finalize their priority list.

Judge Noonan reported on special motions and intent language adopted by EOCJ. One item which was not adopted would have put the juvenile court program into a line item in the budget. This would have reduced the Court's ability to respond to needs within the district courts and the juvenile courts. Instead, EOCJ adopted intent language that instructs the court to use savings from the juvenile program to support the workload of the district courts. The courts are tracking savings created from H.B. 239. The legislators focused on the recent weighted caseload showing an overage of 7.1 juvenile court judges. The Court Services Department is updating the juvenile weighted caseloads, and we will need to report the results of that study to the legislature during the 2020 interim.

Mr. Drechsel will follow-up on the status of S.B. 172 Court Nominating Commission Amendments. The proposal would reconstitute the nominating commission, allowing for among other things, partisan membership, change to indefinite membership terms and remove the opportunity for Judicial Council guidance. Mr. Rice said the Bar is pleased with the Governor's nominations to the Bench. Mr. Drechsel will speak with Marshall Thompson and Dave Walsh and let the Council know the results.

S.B. 66 Court Resources Reallocation Amendments allows one juvenile court judge position upon retirement to transfer to a district court judge in the Fifth District Court. S.B. 66 has passed through the Senate, passed out of the House committee and is waiting on a final vote in the House. The courts asked for an immediate effective date. S.B. 167 Judiciary Amendments seeks to expand the Judicial Council membership adding one district and one juvenile court judge. S.B. 167 was read into Senate last week and will go to Senate Judiciary Committee.

Chris Talbot briefly noted the request for funding for a new Manti Courthouse was not funded. The property for the new Manti Courthouse was purchased and the site was cleared. Richfield is the closest courthouse with 2 courtrooms and is approximately 45 minutes. Provo is 42 miles from Manti. Judge Noonan recommended reviewing current Manti cases to determine distance and the complexities of the case with a possibility of moving trials to either Richfield or Provo.

S.J.R.5 Joint Resolution to Amend the Rules of Civil Procedure on Disqualification of a Judge was originally rejected by the Liaison Committee due to the impact on smaller counties. After discussions about Senator Cullimore's bill to make similar changes in Criminal Rules, other bills proposed by Senator Cullimore, and the risk of the bill passing as it is currently written, the committee discussed amendments to the resolution that would have a smaller impact on the districts. Mr. Drechsel was instructed to talk with Senator Cullimore about changing the resolution so that it would only apply to counties with seven or more judges and to clarify the time in which a respondent may request a different judge. The Liaison committee instructed Mr. Drechsel that if those changes were made, the Council would take no position. Mr. Drechsel presented the courts proposed changes to Senator Kirk Cullimore. The Bar recommended opposing the Resolution but would reconsider if courts changed their position. The Bar views the bill as judge shopping. Senator Cullimore will amend the proposed Resolution to meet the requests from the courts: 1) litigants can only file an elect to disqualify a judge if there are seven or more judges in that county; 2) the timeframe for responding will be tightened; and it will only apply to civil cases. The Council discussed the request of some of the District Court Judges to oppose the resolution, even if the changes are made. Judge Sessions recommended reconsidering our position and opposing the Resolution completely. The Council discussed the complexity of balancing the different views and potential outcomes of different proposed legislation, and the need to be consistent with representations made to a legislator. Chief Justice Durrant said he is pleased with how Mr. Drechsel represents the courts.

Senator Cullimore is exploring territory of justice courts expanding to include small claims actions.

Chief Justice Durrant noted there has been discussion on the constitutionality of some proposed legislation. The courts have taken no position on the constitutionality. Judge Pullan felt the judiciary's position should always be to defend the core function of the judiciary and that the court define the rules of civil procedure.

Chief Justice Durrant thanked Mr. Drechsel.

## **7. LANGUAGE ACCESS COMMITTEE REPORT: (Michelle Draper and Kara Mann)**

Chief Justice Durrant welcomed Michelle Draper and Kara Mann. In FY19 there were 22,653 court proceedings where interpreters were used. The vast majority of interpreter usage is in the Third District followed by the Fourth District. The interpreter roster grew 12% in district courts from FY18 – FY19, 2% in juvenile courts over the same period, and 44% in justice courts over the same period. The large increase in the justice courts could be attributed to better reporting as a result of training provided at justice court conferences. The top most requested languages (in order) were Spanish, Arabic, and American Sign Language.

The Language Access Committee is working to provide more efficient and more available training for potential interpreters. There continue to be struggles with the passing rate for the English Written and Oral Proficiency Exams. There has been a staff interpreter position open for nearly a year. The pay rate is approximately \$25 an hour for a staff interpreter, whereas, free-lance interpreters earn \$39 an hour.

The committee meets every other month.

### **Completed Projects**

- Revised and approved the Code of Professional Responsibility for Court Interpreters Exam
- Drafted and approved a recruitment pamphlet for court interpreters
  - Brochure was distributed at the Courts' booth at the Multicultural Festival, Partners in the Park, the Muslim Heritage Festival, and FanX
- Developed an action plan to address the certified Spanish interpreter shortage
- Reviewed the court employee second language stipend scoring requirement

### **On-Going Projects**

- Updating the Language Access Plan
- Drafting a handbook for Interpreter Coordinators
- Addressing the certified Spanish interpreter shortage
  - Outreach
  - Scheduling
  - Focus on Approved Interpreters

### **Future Projects**

- Drafting new court rules to address interpreting recorded evidence
- Reviewing the hourly pay for contract interpreters in order to make a recommendation
- Creating a mentoring program for approved interpreters

### **Looking Forward- Challenges**

- A lack of approved Spanish interpreters passing NCSC's Oral Proficiency Exam to become certified court interpreters
- The pay for interpreters of languages of lesser diffusion. The pay often isn't enough of an incentive for languages that are rarely requested
- A lack of qualified applicants applying for the open staff interpreter positions

Chief Justice Durrant thanked Ms. Draper and Ms. Mann.

## **8. ADR COMMITTEE REPORT: (Judge Royal Hansen and Nini Rich)**

Chief Justice Durrant welcomed Judge Royal Hansen and Nini Rich. More than 2,000 cases were referred directly to court-administered ADR Programs. In addition, more than 5,000 cases were mediated by private providers selected by parties. Over 900 pro bono mediations were provided through ADR Program collaborations with nonprofit community organizations and educational institutions. Six ADR staff mediators were assigned 1,402 Child Welfare mediations statewide. Of those cases mediated, 90% were fully resolved. (Since 1998, the Child Welfare Mediation Program has conducted over 17,300 mediations for the Utah State Juvenile Court) Three Juvenile Justice Mediators (2.5 FTE) were assigned 116 Truancy mediations and 90 Victim/Offender mediations statewide. More than 380 pro bono mediations were arranged directly by ADR staff.

The Utah Court Roster lists 203 ADR Providers who mediated 4,636 cases and arbitrated 48 cases in the 2018 calendar year. Over 30 new applications and 173 roster re-qualifications were processed by the ADR Office in 2018. Additionally, 1026 pro bono mediations and 10 pro bono arbitrations were provided by members of the Utah Court Roster. Over 300 court personnel completed the 40-hour Mediator Training.

**Major Projects Completed and Ongoing**

- Policy for Investigating Complaints against ADR Providers
- Re-write of UCJA 4-510 with tie-in to URCP 16
- Utah Mediation Best Practice Guide (updates ongoing)
- Interactive Online Mediation Ethics Exam
- 40-hour Mediation Training for Court Personnel - over 300 graduates
- Training of International Judicial Delegations on Utah Court –annexed ADR Structure and Programs (Botswana, South Africa)

**2020 Focus Areas**

- **Coordinating and Collaborating with Access to Justice Initiatives** the Committee will explore the range of ADR/Settlement Assistance options in the Utah State Courts (mediation, arbitration, judicial settlement conferences, domestic pro se calendars, domestic case managers, and online dispute resolution, ODR) to find areas for collaboration and coordination of efforts to support an overall ADR Program best suited to the needs of court patrons.
- **Data Collection on ADR/Settlement Assistance** the American Bar Association Section of Dispute Resolution’s Advisory Committee on Dispute Resolution Research has created preliminary recommendations on Data Elements for Courts to Collect Regarding ADR/Settlement Assistance. The ABA Advisory Committee is coordinating with the National Center for State Courts in an effort to develop cutting edge information to assist stakeholders in the justice system and assure the quality of dispute resolution services. The ADR Committee will explore ways to enhance ADR-related data collection in the Utah Courts.

The ADR Act provides for the creation of a restricted account, the Dispute Resolution Fund, to be funded by a portion of court filing fees and appropriated annually to the Administrative Office of the Courts (AOC) to implement the purposes of the ADR Act. Additional funds are provided through a Federal Child Access and Visitation Grant and the General Fund.

**ADR Programs**

Child Welfare Mediation	Statewide (Juvenile Court cases involving abuse or neglect)
Co-Parenting Mediation	Third District (U.C.A. §30-3-38)
Divorce Mediation	Statewide (U.C.A. §30-3-39)
General Civil Referrals	Statewide (Mediation or Arbitration) (UCJA 4-510.05)

Restorative Justice	Statewide (Juvenile Truancy & Victim/Offender Mediation)
Probate Mediation	Third District
Small Claims Mediation	Various Justice Courts
Small Claims Appeals	Second and Third Districts

Chief Justice Durrant thanked Judge Hansen and Ms. Rich.

**9. SELF-REPRESENTED PARTIES COMMITTEE REPORT: (Judge Barry Lawrence and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Barry Lawrence and Nancy Sylvester. Judge Lawrence believed the Self-Help Center is the most important resource statewide for assisting self-represented litigants. A lack of IT resources impeded the committee efforts to consider remote access attorney assistance to rural courthouses. They have been focusing on debt collection cases. Judge Lawrence would like the committee to begin working on eviction cases.

The courts and the Bar have multiple resources that the community may be unaware of. Judge Lawrence would like the Council and the committee to consider the possibility of adding more community resources to the committee. Mr. Rice recommended contacting the Pro Bono Commission at the Bar for guidance.

**Looking forward**

- The Self-Help Center
- Access issues
- Debt collection focus
- Future focus on evictions; landlord tenant issues
- Remote services
- Community outreach
- Continue to make presentations about the need for pro bono
- Court Visitor Program
- Continue to work with the domestic practice section
- Continue to interact with the Bar and the Access to Justice Committee

Chief Justice Durrant thanked Judge Lawrence and Ms. Sylvester.

**10. 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 the Board is working with the Education Department on training and mentoring new judges. A committee was created to address an ongoing judicial weighted caseload study. The bench has long-standing collaborative efforts between the courts and outside entities. The Board continues this tradition by inviting individuals from other entities to Board meetings. The Board continues with their communication, outreach, and transparency through a self-examining process. The new practice of sending draft minutes to the entire bench has prompted positive feedback. The TCEs are invited to the Juvenile Court Judges Spring Conference. They implemented a reporting schedule of the districts to the Board meetings.

They hold Board meetings throughout the State to participate in meeting the local staff and touring the courthouses.

Chief Justice Durrant thanked Judge Smith and Ms. Siaperas.

**11. AUTHORITY OF WELL-BEING COMMITTEE: (Judge Andrew Stone and Kim Free)**

Chief Justice Durrant welcomed Kim Free. Justice Paige Petersen noted Judge Stone was enthusiastic about Chairing this committee.

**Committee Objectives**

1. Look at the confidential judge study results and identify our biggest challenges; Who will be designated to start this project and measure efforts-based on above answers?
2. Create a judge-to-judge peer support team to serve all districts
  - a. Similar programs around the country similar to the Lawyers Helping Lawyers program.
  - b. Brent Johnson will be instrumental in establishing guidelines for this program.
  - c. A potential fiscal note to this program or committee will be the possibility of two or more clinical, licensed counselors, specializing in the legal community to be "retained" by the AOC for judges only. More details to follow in regards to this idea pending recommendations.
3. Assist in creation and oversight of high-quality training
  - a. Education department is currently offering well-being tracts/training for new-judge onboarding, bench-level conferences, all-judge judicial conference.

**Timelines**

- First Committee meeting: week of March 9, 2020
- Next Judicial Council update: August 2020 (scope and status)
- Target Date for All-Judicial Announcement: Annual Conference Sept. 2020.

**Recommended Membership** (every district and all benches must be represented).

Judge Andrew Stone	Third District Court	Chair
Larissa Lee	Appellate Court Administrator	Staff
Cathy Dupont	Deputy State Court Administrator	
Tom Langhorne	Education Director	
Kim Free	Justice Court Program Coordinator	
Brent Johnson	General Counsel	
Justice Paige Petersen	Supreme Court	
Judge Elizabeth Hruby-Mills	Third District (urban district representative)	
Judge Ed Peterson	Eighth District (rural district representative)	
TBD - Judge	(juvenile urban district representative)	
TBD - Judge	(juvenile rural district representative)	
TBD - Judge	(justice urban district representative)	
TBD - Judge	(justice rural district representative)	



TBD – Commissioner		
TBD – TCE	(urban representative)	
TBD – TCE	(rural representative)	

Judge Pullan asked if the composition could be reduced by having only one rural and one urban judge, rather than two of each. They will use ZOOM for appearance by video to meetings.

Chief Justice Durrant thanked Ms. Free.

**Motion:** Judge Mark May moved to approve Judge Andrew Stone as Chair, the committee composition as noted above, as amended to remove Brent Johnson until a further discussion can be held with the AOC to determine if the committee needs a General Counsel representative. Judge Pettit seconded the motion, and it passed unanimously.

**12. APPELLATE MEDIATION PROGRAM REPORT: (Michele Mattsson)**

Chief Justice Durrant welcomed Michelle Mattsson. The Appellate Mediation Office has been serving litigants for 22 years, with Ms. Mattsson as the Chief Appellate Mediator (19 years) and Shauna Hawley as the paralegal (7 years). Parties are not required to attend mediation. Successful mediations save the court and parties considerable amount of money through holding mediations prior to written briefs or transcripts, often solving both the appellate and district court cases, and quicker resolutions.

In 2019, there were 68 appellate mediation cases, of which, 37 settled by mediation. Divorce cases are the most common and most often settled followed by real estate, Labor Commission, and personal injury cases. The average time cases were in mediation was 81.38 days.

Chief Justice Durrant thanked Ms. Mattsson.

**13. OUTREACH COMMITTEE REPORT: (Judge Elizabeth Hruby-Mills and Geoff Fattah)**

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills and Geoff Fattah. There have been 59 school tours consisting of 1,858 students’ grades fourth through undergraduate. The Civil Organization partners include: Hinckley Institute, University of Utah Pre-Law, Utah Center for Legal Inclusion, and Utah Division of Multicultural Affairs. The Judge for a Day program hosted 24 high school students. Judge Pullan recommended shifting resources to allow for judges to present to government classes.

The Divorce Education for Children Subcommittee saw a 39% registration increase and a 35% attendance increase in FY19. The Fifth District will begin hosting Divorce Education for Children classes. They are working to design current programs to integrate younger aged children and teenagers.

There have been 348 media pool requests, 80 press releases, and 663 media inquiries. The courts hosted a two-day Law School for Journalists course. They created new jury service videos and a new defendant rights video.

## **2020 Initiatives**

Assessing Potential Outreach Collaboration with Outside Partners  
Providing Resources and Guidance to Statewide Staff on Outreach  
Creating Companion Divorce Education Website for Teens  
Request Council funding for Judicial Outreach and Education Coordinator Position

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

### **14. AN ACTION PLAN FOR COMPILING JUDICIAL COUNCIL HISTORY: (Geoff Fattah and Cathy Dupont)**

Chief Justice Durrant welcomed Geoff Fattah and Cathy Dupont. An estimated timeline of tasks, actions, and resources for the Judicial Council history project was presented. The project needs a coordinator, either through a contracted person or a committee created by the Council. Depending on the scope of the history project, the tasks and the budget may change. A budget proposal will be created. Ms. Dupont will inquire about the possibility of a grant from one of the State Bar sections or the West Center which is associated with the University of Utah.

#### **Tasks & timeline**

Establish project coordinator and advisor: begin March 2020  
Creating searchable database of primary source documents: has begun  
Conduct on-camera interviews of key individuals: begin February 2020  
Create a book of the history of the Council: to be determined

Mr. Fattah spoke with Tim Shea and is working to hold an interview with Justice Howe. Chief Justice Durrant noted this is a larger project than anticipated and appreciated Ms. Dupont's efforts on recognizing the time-sensitive interviews and the creation of the timeline. Mr. Fattah noted that multiple one-hour on-camera interview would cost more than \$10,000. Judge Chin recommended seeking out funding from the Bar. Mr. Rice recommended contacting John Baldwin.

Ms. Dupont stated if the Council would like to begin the database compilation and the video interviews then a committee should be formed. Judge Pullan said last June the Council recognized the importance of preserving their history, including the events of the June 2019 retreat and volunteered to serve on a committee. Judge Appleby felt a steering committee would be a good idea. Judge Chin recommended Judge Gregory Orme be considered as a committee member. Judge Noonan recommended two Council members. Judge Sessions would like to seek outside assistance and hopefully become a model for other Councils throughout the country. Judge Sessions volunteered to serve on the committee. Chief Justice Durrant said Judge Orme would be a valuable part of a committee and noted the time-sensitive interviews should be the priority. Judge Pullan will report to the Council.

Chief Justice Durrant thanked Mr. Fattah and Ms. Dupont.

**15. ETHICS ADVISORY COMMITTEE REPORT: (Judge Laura Scott and Brent Johnson)**

This item will be rescheduled.

**16. H.R. 550 FOR FINAL ACTION: (Judge Derek Pullan)**

This is the anti-discrimination policy previously presented to the Council. It has been amended to ensure that communications about and the possession of offensive material in the ordinary course of court work does not violate the policy, provided that the material is necessary to the performance of work-related functions and the material is not used or intended to harass, intimidate, or discriminate.

The rule creates many reporting points within the organization. Judge Pullan noted that the list of reporting points should be amended to include the Management Committee so that HR 550 is consistent with Rule 3-301.01 presented today.

Chief Justice Durrant thanked Judge Pullan.

**Motion:** Judge Pullan moved to amend H.R. 550 to include a new section – 6.1.6 By contacting the Management Committee. Judge Chin seconded the motion, and it passed unanimously.

**Motion:** Judge Paul Farr moved to approve H.R. 550 with an effective date of February 24, 2020, as amended to add 6.1.6 section as noted above. Judge Brian Cannell seconded the motion, and it passed unanimously.

**17. RULES 3-105 AND 3-301.01 FOR DISCUSSION AND PUBLIC COMMENT:  
(Judge Derek Pullan)**

**Proposed Rule 3-301.01. State Court Administrator – Complaints, and Performance Review; Complaints Regarding Judicial Officers and State Court Employees.**

To fulfill the first June Retreat assignment, Policy and Planning recommends the adoption of Rule 3-301.01. The intent of this rule is to set forth the authority of individual judges, courts, the Supreme Court, and the Judicial Council to fairly and effectively administer the functions of the judicial branch, and to provide a process by which the Supreme Court and the Judicial Council (1) determine when a matter is predominantly within the exclusive authority of the Supreme Court or the Judicial Council such that referral to and independent action of either body is required; and (2) determine when a matter significantly implicates the exclusive authority of both the Supreme Court and the Judicial Council such that a coordinated effort is required.

The rule creates the Performance Review Committee (PRC) consisting of one member of the Management Committee who is not a member of the Supreme Court, and one member of the Supreme Court. Both the Supreme Court and the Management Committee are authorized to receive complaints regarding the State Court Administrator. When this happens, each entity informs the other and then refers the complaint to the PRC for review, investigation, and recommendations to Judicial Council and Supreme Court. Recommendations may include: no further action, a performance or corrective action plan, discipline as a condition of continued

employment, or termination. The PRC also conducts an annual performance review of the State Court Administrator. It is in that review that the State Court Administrator will account for the poor performance or bad acts of high-level managers within the AOC. If the PRC recommends discipline as a condition of continued employment or termination of the State Court Administrator, the Judicial Council and the Court meet in joint executive session to consider the recommendation, conduct further investigation, and decide. The rule requires that the Judicial Council and the Supreme Court shall work together in good faith to exercise jointly and by consensus their statutory rights regarding termination of the State Court Administrator. The rule authorizes the Management Committee to (1) receive complaints regarding the conduct or performance of any judicial officer and to refer those complaints to the presiding judge or the Judicial Council; and (2) receive complaints regarding the conduct or performance of any state court employee. Complaints against employees--with the exception of complaints regarding the State Court Administrator and Human Resources Director--shall be referred to the Human Resources Department. Complaints against the Human Resources Director are referred to the State Court Administrator. Finally, the rule provides that the work performed pursuant to the rule by the PRC, Supreme Court, Judicial Council, and Management Committee is confidential. This allows the reputation and leadership capacity of the State Court Administrator and state court employees to be preserved while complaints are being investigated and resolved. Notably, the rule does not require that the PRC conduct performance reviews of high-level managers in the AOC. Instead, the State Court Administrator will be the sole supervisor of these managers, allowing them to be responsive to one supervisor, not many. This allows the Judicial Council to be faithful to its historical form, acting in the capacity of a board of directors to which the chief executive officer reports. Again, the State Court Administrator can account for the poor performance or bad acts of high-level managers in the Administrator's annual performance review.

Justice Peterson noted that the term complaint is not defined. She asked if the rule was meant to apply only to those complaints defined in HR 550 (which may not be broad enough to cover bullying behavior). Judge Pullan responded that the term complaint was meant to refer to complaints of any kind, including but not limited to those defined in HR 550, and that this broad use of the term was intentional. Defining the term complaint more precisely may result in the exclusion of some types of conduct from the definition, something that was not intended.

Policy and Planning recommends that the Judicial Council approve new rules CJA 3-105 and CJA 3-201.01 for public comment. Judge Pettit clarified that Chief Justice Durrant would have the responsibility to report any complaints received by the Supreme Court to the Management Committee. Mr. Rice commented that rule 3-105 does not address anti-bullying, is designed to address harassment, but not unlawful harassment. Mr. Rice recommended including an anti-bullying clause in another section of the HR Manual.

### **Proposed Rule 3-105. Administration of the Judiciary.**

To fulfill the second June Retreat assignment, Policy and Planning recommends the adoption of Rule 3-301. The intent of this rule is the State Court Administrator serves at the pleasure of both the Supreme Court and the Judicial Council. The intent of this rule is to establish (1) the process for reviewing the performance of the State Court Administrator; (2) an

avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated; and (3) the confidentiality necessary to perform this work.

The rule acknowledges those areas over which the Supreme Court has exclusive authority, and all remaining areas over which the Judicial Council has exclusive authority. A metaphorical fence divides the Supreme Court and the Judicial Council. When a matter arises or comes before the Supreme Court which clearly falls on the Judicial Council's side of the fence, the Court refers the matter to the Judicial Council by notice to the chairperson of the Management Committee. When a matter arises or comes before the Judicial Council which clearly falls on the Supreme Court's side of the fence, the Council refers the matter to the Court by notice to the Chief Justice. A good example of a matter implicating the exclusive authority of the Supreme Court is the approval of senior judges, a matter which in the past has been presented to the Judicial Council.

Sometimes work on one side of the fence implicates work properly done on the other side of the fence--or there is uncertainty about whether the Supreme Court or the Judicial Council has exclusive authority. When the Supreme Court begins considering such a matter, the Supreme Court or a designated member of the Court shall immediately meet with the Management Committee. When the Judicial Council begins considering a matter that implicates work on both sides of the fence, the Management Committee shall promptly meet with the Chief Justice. In these meetings, the attendees shall decide (1) whether the matter is predominantly within the exclusive authority of the Supreme Court or the Judicial Council and then refer the matter to the appropriate body; or (2) whether the matter substantially implicates both the exclusive authority of the Court and the exclusive authority of the Judicial Council, such that a coordinated effort should be taken. If no agreement can be reached, the Judicial Council and the Supreme Court meet at the fence line in joint executive session to resolve the question. An example of a matter that implicates the authority of both the Court and the Judicial Council is justice court reform. The matter began as the Court attempted to management the appellate process, but ultimately expanded to include far broader reform efforts within the exclusive authority of the Judicial Council. The process of the rule was applied. It was determined that justice court reform was predominantly within the exclusive authority of the Judicial Council. An example of a matter that is predominantly within the exclusive authority of the Court is the regulatory sandbox project which is the Court's effort to govern the practice of law. While administrative rules may need to be adopted to implement this reform, the project is predominantly within the Court's exclusive authority.

Chief Justice Durrant thanked Judge Pullan.

**Motion:** Judge Pettit moved to approve CJA Rules 3-105 and 3-201.01 for public comment, as amended to correct line 39 to require that the Supreme court refer matters implicating the Judicial Council's exclusive authority by notice to the Management Committee, not the chairperson of the Management Committee (who is the Chief Justice). This will ensure that the Management Committee receives notice of the referral. Judge Chin seconded the motion, and it passed unanimously.

**18. APPLICATION FOR WEBER COUNTY ADULT DRUG COURT: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs presented an application for the Weber County, Second District Drug Court, #2, presided over by Judge Joseph M. Bean. Weber County currently provides and maintains a drug court, however, there are numerous requests to participate that are rejected due to the limited number allowed (85) in that drug court. The second drug court would hold 50 or more participants within 3 months of opening. There will likely need to be a new assignment for a JA, probation officer, public defender, prosecutor, and at least one or two new counselors from Weber Human Services.

This would be the 70<sup>th</sup> problem-solving court in the state. The Council previously put a soft cap on problem solving courts at 70.

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge May moved to approve the creation of a second drug court in Weber County with Judge Joseph Bean presiding, as presented. Judge Chin seconded the motion, and it passed unanimously.

**19. PROBLEM-SOLVING COURT FORMS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs presented the following proposed forms:

- a letter that would be sent to judges whose problem-solving courts are not meeting the presumed best practices criteria
- adult DUI court certification checklist
- veteran court certification checklist
- mental health court certification checklist
- family dependency court certification checklist
- request for waiver of presumed certification criteria

Judge Fuchs provided five problem-solving court checklists. When courts are certified, Judge Fuchs provides the Council with the certification forms. The Council needs to determine whether those reports should be private or public. Judge Fuchs was concerned about the public's perception given that services available to the problem-solving courts vary throughout the state. Judge Fuchs provides the Department of Substance Abuse and Mental Health with a list of the courts that are certified but not the checklists. The Department has now asked for the checklists. Brent Johnson expressed to Judge Fuchs that the checklists are public documents.

The timeline would be:

First, Judge Fuchs sends out a recertification checklist to the courts

Second, they complete and send the checklists to Judge Fuchs

Third, if there are compliance issues Judge Fuchs sends a letter to the courts to correct the errors or prepare a waiver

Fourth, the courts must respond to Judge Fuchs with an explanation or a waiver

Fifth, the Council makes a recertification determination based on the information provided by Judge Fuchs

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Chin moved to approve the compliance letter and the waiver form, as presented. Judge May seconded the motion, and it passed unanimously.

**Motion:** Judge Pullan moved to approve the five problem-solving court certification checklists, as presented. Judge Chin seconded the motion, and it passed unanimously.

**20. XCHANGE FUNDS PROCESS CHANGE APPROVAL: (Judge Mark May and Karl Sweeney)**

Chief Justice Durrant welcomed Karl Sweeney. Code of Judicial Administration Rule 4-202.08. Fees for records, Information, and Services includes guidance for courts' collection and use of fees, including XChange subscriptions, paper copies, and personnel time. Although all XChange subscription fees do get credited to various groups within the AOC, XChange also receives fees for copy requests which are taken in from various payers and then allocated back to the Districts. Over time the subscription fee process has evolved to distribute a portion of XChange subscription fees to multiple AOC and district groups.

For FY 2020, the budget distribution for XChange subscription and other fees is as follows (in priority order):

\$102,600 to Education  
\$87,300 to Law Library  
\$750,800 to IT (\$600,800 to IT and \$150,000 to Information Services)  
\$258,300 to AOC  
\$127,900 to District Courts

**Proposed Options**

*Option 1*

- 1) Amend the rule to specifically include language that permits Education, Law Library, AOC, and Districts uses of the XChange subscription funds and follow the current allocation methodology. IT and Information Services are already included in the rule.
- 2) Amend the rule to specifically include language that takes non-XChange related other fees (copies, paper, personnel time, etc.) and specifies they are to be deposited to the District where the expense would have occurred separating it into a different section than XChange fees. In FY19 those fees were \$344,153.

*Option 2*

- 1) Keep the rule wording as-is. Move all XChange funding (subscription and other fees) to IT to be in clear compliance with the rule. Move sufficient general funds from IT and Information Services to the other groups to leave them whole. This does not impact the copy and other fees that districts currently receive. This method would involve the following budgetary reclassifications:

<b>Department</b>	<b>General Fund</b>	<b>XChange Funds</b>
Information Technology (BAK)	(\$576,100)	\$576,100
Education (BAJ)	\$102,600	(\$102,600)
District Courts (BAD)	\$127,900	(\$127,900)
Law Library (BAB)	\$87,300	(\$87,300)
AOC (BAH)	\$258,300	(\$258,300)
<i>TOTAL</i>	\$0	\$0

Current IT XChange budget: \$750,800

Additional IT XChange budget reclassified: \$576,100

Total proposed IT XChange budget: \$1,326,900

The Budget & Finance Committee, the Finance Department, and the IT Department recommended Option 2 and, if approved by the Judicial Council, will move budgets and funding sources to implement Option 2 as of July 1, 2019.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

**Motion:** Judge May moved to adopt option 2 as outlined above, as presented. Judge Farr seconded the motion, and it passed unanimously.

**21. PROPOSED DELEGATION OF AUTHORITY FOR PERSONNEL SALARY ADJUSTMENTS: (Judge Mark May and Karl Sweeney)**

Chief Justice Durrant welcomed Karl Sweeney. The Budget & Finance Committee and the Finance Department sought support for a Council request to approve the use of 20% of the estimated ongoing turnover savings, not to exceed \$110,000 in a fiscal year, to address departmental reorganizations, “hot spot” salary adjustments and other types of routine ongoing salary increase requests. This delegation of authority to the State Court Administrator and/or Deputy State Court Administrator (Administrators) offers a systematic way to fully address personnel actions (including salary increases) within the scope of CJA rule 3-301 yet retains for the Judicial Council sufficient funding to address court-wide market comparability and similar issues.

Judge Noonan felt this was a positive direction that would allow for adjustments to be made throughout the year. The formula would need to be created. Any adjustments would be reported to the Council.

The process for submitting personnel pay request would be:

1. Detailed write-up by the requesting manager,
2. Review and approval by the appropriate AOC Director or TCE and District/Juvenile Court State Level Administrator,
3. Reviews by the HR Director Review for compliance with HR policy and Finance Director for potential non-salary budget reduction opportunities, and
4. Review and approval by the Administrators.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.



**Motion:** Judge May moved to adopt the delegation of authority from the Judicial Council ongoing turnover savings to the State Court Administrator, as presented. Judge Farr seconded the motion, and it passed unanimously.

**22. OLD BUSINESS / NEW BUSINESS**

Judge Noonan noted CCJJ voted to strongly oppose S.B. 172.

A new Council room table is being ordered.

**23. EXECUTIVE SESSION**

**Motion:** Judge May moved to go into an executive session to discuss a litigation. Judge Farr seconded the motion, and it passed unanimously.

**24. CONSENT CALENDAR ITEMS**

**a) Committee Appointments.** Ethics Advisory Committee – appointment of Judge Ryan Harris, appointment of Judge Laura Scott as Chair. Language Access Committee – appointment of Rory Jones. Approved without comment.

**b) CJA Rule 3-403 for Public Comment.** Approved without comment.

**c) Forms Committee Forms.** Temporary Separation Overview and Petition Language and Temporary Separation. Approved without comment.

**25. ADJOURN**

The meeting adjourned.