

JUDICIAL COUNCIL MEETING

Minutes

November 23, 2020

Meeting conducted through Webex

9:00 a.m. – 1:00 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. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Rob Rice, esq.

Excused:

Hon. Samuel Chiara

Guests:

Randy Dryer, Professor, University of Utah
Hon. Dennis Fuchs, Senior Judge

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Geoff Fattah
Larissa Lee
Jordan Murray
Jim Peters
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Keisa Williams
Jeni Wood

Guests Cont.:

Hon. George Harmond, Seventh District Court
Hon. Jeremiah Humes, Eighth District Court
Hon. Keith Kelly, Fifth District Court
Kristina King, OLRGG
Hon. Michael Leavitt, Fifth District Juvenile Court
Hon. David Mortensen, Court of Appeals

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex. Judge Jeremiah Humes attended on behalf of Judge Samuel Chiara. Judge David Mortensen has been selected to replace Judge Kate Appleby on the Council beginning January 2021.

Motion: Judge Kate Appleby moved to approve the October 26, 2020 Judicial Council meeting minutes, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

Motion: Judge David Connors later in the meeting moved to approve the October 26, 2020 Judicial Council meeting minutes, as amended to correct paragraph 15 commissioner evaluations. Judge Appleby seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and other court personnel will meet with the Governor today to discuss the court budget.

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

Judge Mary T. Noonan announced that Judge Jerald Lee Jensen, who served as a justice court judge for Davis County passed away last week.

The COVID jury trial pilot project was expected to start in December, however, the medical experts from the University of Utah Health Sciences, who have consulted with the Courts and the state Health Department felt with rising numbers it would be best to delay the Third District and Eighth District pilot program. Judge Derek Pullan requested further discussion on jury trials.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Mark May said the committee addressed carryforward requests that will be discussed later in the meeting.

Liaison Committee Report:

Judge Kara Pettit noted the committee met to review draft bills. They will meet again in December.

Policy and Planning Committee Report:

Judge Pullan requested CJA Rule 3-101 be removed from the consent calendar and placed on the December 21, 2020 Council agenda to allow additional time to address the proposed changes.

Motion: Judge Pullan moved to remove CJA Rule 3-101 from the consent calendar and at it to the December Council agenda. Judge Pettit seconded the motion, and it passed unanimously.

The committee formed a subcommittee lead by Judge David Connors to address the senior judge rules. Judge Connors briefly reviewed senior judge statistics.

The committee created subcommittees to review the HR policies.

Bar Commission Report:

Rob Rice announced the Bar Commission is conducting a nationwide search for John Baldwin’s replacement as Mr. Baldwin will retire on July 1, 2021.

5. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Michael Leavitt and Neira Siaperas)

Chief Justice Durrant welcomed Judge Michael Leavitt and Neira Siaperas. The Board of Juvenile Court Judges adopted a goal to address fairness and accountability and will work on further reporting to the Board on mentoring efforts. The Board continues to avoid backlog of cases due to the pandemic. Judge Leavitt complimented Judge Mark May for his representation of the juvenile courts on the Council and his assistance with ensuring the Administrative Order addresses the needs of the juvenile courts.

Video hearings have been going well and help with youth not missing as much school time in traveling to a courthouse. The courts would like to continue video chats even after the pandemic. Judge Leavitt noted Neira Siaperas and her team have done a wonderful job during such difficult times.

Judge Pullan said the district court reviewed the bail system. Judge Leavitt is on a group that has been studying the point when youth enter detention and early decisions.

Chief Justice Durrant thanked Judge Leavitt and Ms. Siaperas.

6. COVID JURY TRIAL WORKGROUP REPORT: (Judge Todd Shaughnessy, Judge Paul Farr, and Judge Mary T. Noonan)

Chief Justice Durrant welcomed Judge Todd Shaughnessy, Judge Paul Farr, and Judge Mary T. Noonan. Judge Pullan was grateful for the work of the committee on this project but noted the system has to provide jury trials in light of the Sixth Amendment. Judge Connors echoed Judge Pullan's comments regarding jury trials. Judge Todd Shaughnessy agreed stating the pilot program implemented all the steps recommended by the medical consultant in an effort to minimize the risk of COVID transmission, however, there is a strong reluctance on both prosecutors and defense counsel to move forward with the jury trial pilot program at this time. There is also an issue of whether jurors will feel safe and provide their undivided attention due to the fear of exposure to the virus. Unfortunately, with the very high community rates, the medical consultants determined that a jury trial would be risky.

Judge Pullan questioned the possibility of a virtual jury trial. Chief Justice Durrant noted there is an appellate process for constitutional issues that may arise. Judge Noonan noted that earlier in the pandemic, the Health Department said it would be safe to hold jury trials if the viral positivity rate was in an acceptable range of 5-10%. Currently, Utah is between 25-30% positivity. Judge Shaughnessy said even with testing every day, the odds are that someone will test positive. Jurors who test positive could be more easily replaced than one of the parties or counsel. He suggested that if we tried the pilot program at this time, the rate of mistrials will increase significantly.

Judge Connors thought given the extent of the circumstances, one option may be to have a virtual jury. Judge Shaughnessy is reviewing rule changes with the amendments to the Administrative Order when defendants waive their rights. Judge Shaughnessy said the Order should be extremely clear that all hearings, with the exception of jury trials, can be held virtually.

Heidi Anderson said Texas is holding virtual civil jury trials by purchasing 120 iPads and cell service on the iPads, which are then sent to jurors. Judge Jeremiah Humes noted that in the Eighth Judicial District, more than 50% of the juror questionnaire responses showed jurors were willing to serve. Justice Himonas noted Rule 17 provides for a defendant to be present during a trial. Judge Pullan questioned if the changes to jury trials would include death penalty cases. The workgroup will meet to discuss jury trials and the results of this conversation.

Chief Justice Durrant thanked Judge Shaughnessy, Judge Farr, and Judge Noonan.

7. LEGISLATIVE AUDITS (JRI; INFO SHARING; AND FINES/SURCHARGES) – PROPOSED ACTION PLAN: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel said workgroups will be created to address the three legislative audits. The workgroups hope to be able to provide the Council a final product in January, 2021.

Chief Justice Durrant thanked Mr. Drechsel.

8. FORMS COMMITTEE REPORT: (Professor Randy Dryer and Brent Johnson)

Chief Justice Durrant welcomed Professor Randy Dryer. In October of 2020, the Committee made the decision to move to meeting every other month during the pandemic, with the recognition that the committee will likely need to meet two months in a row following the 2021 General Session of the Legislature.. Professor Dryer was very appreciative of Jessica Van Buren and Judge James Taylor for their dedication to the committee.

- The Committee completed updating numerous forms that required revision due to recent court rule changes and the 2020 General Session of the Legislature.
- The vast majority of the forms needed by the newly licensed LPP practitioners to practice in the areas of landlord-tenant, debt collection and family law have been reviewed and approved.
- Approximately 90% of the OCAP provisions relating to family law have been reviewed and approved. There are numerous other general family law practice forms that the committee will be reviewing well into 2020.
- In total almost 200 forms have been reviewed and approved by the Committee and approximately 40 additional forms are in the queue to be reviewed by either a subcommittee or the full Committee.

Mr. Rice was very impressed and thanked the committee for their work. Chief Justice Durrant thanked Professor Dryer and noted the courts owe the committee a debt of gratitude.

9. PROPOSED RESERVE CHANGES AND CARRYFORWARD REQUESTS: (Judge David Mortensen, Larissa Lee, and Geoff Fattah)

Chief Justice Durrant welcomed Judge David Mortensen and Larissa Lee. In August, the Judicial Council approved legislative funding to automate the process for creating and paginating a record on appeal. This request estimated that \$210,000 would be needed to create an automated solution in-house. Tybera, the vendor behind CORIS is not compatible with CARE; therefore a solution to automate records on appeal is not the same as what could have been built in-house. If

funded, Tybera estimates a 2-3 month completion to fully activate the binder (automated records) function.

The courts would also see immediate savings of judicial assistants' time. The Third District Court has a judicial assistant who spends nearly all their time solely preparing records. The Second and Fourth Districts similarly spend a significant amount of time manually preparing records and would be able to redistribute this time to much needed projects. The Budget & Fiscal Management Committee approved this request.

Breakdown of costs:

Tybera: \$22,500

IT (personnel time, storage): \$10,000

Total: \$32,500

Alternative funding sources, if any: None

Motion: Judge May moved to approve the Tybera one-time carryforward funds request of \$32,500 from the Reserve Account, as presented. Judge Appleby seconded the motion, and it passed unanimously.

#23 COVID Outreach Ad Campaign

\$34,000 one-time funds (original request)

\$17,000 UBF Grant – Transfer to Reserve account

\$17,000 Courts expenditures

Subsequent to the approval of this request, the Utah Bar Foundation (“UBF”) funded 50% of the cost of the Public Service Ad Campaign (\$17,000). The Public Information Office is returning the surplus \$17,000 it received. The Budget & Fiscal Management Committee approved the request to accept these returned funds to be added to the Reserve Account.

The Council agreed to the return of \$17,000 in funds to be added to the Reserve Account, as presented.

Chief Justice Durrant thanked Judge Mortensen and Ms. Lee.

10. CJA APPENDIX J ABILITY-TO-PAY MATRIX: (Judge George Harmond and Keisa Williams)

Chief Justice Durrant welcomed Judge George Harmond and Keisa Williams. The Ability-to-Pay Matrix was adopted by the Judicial Council on August 21, 2020. The Standing Committee on Pretrial Release and Supervision has been soliciting feedback on, and considering necessary adjustments to policies implemented in response to the 2020 General Session HB 206.

Policy and Planning approved the proposed amendments to the matrix and recommended that it be approved by the Judicial Council on an expedited basis, with a November 23, 2020 effective date.

Chief Justice Durrant thanked Judge Harmond and Ms. Williams.

Motion: Judge Shaughnessy moved to approve the Ability-to-Pay Matrix effective November 23, 2020, as presented. Judge Appleby seconded the motion, and it passed unanimously.

11. PROBLEM-SOLVING COURTS RECERTIFICATIONS; NUMBERING SYSTEM; AND JUSTICE COURTS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Dennis Fuchs.

Numbering of PSCs

Judge Fuchs created a numbering system for PSCs to more easily identify each court. If approved, the numbers would be used on each PSC Checklist completed.

Motion: Judge Shaughnessy moved to approve the problem-solving courts numbering system, as amended to use the numbering system currently being used in the Third District. Judge Connors seconded the motion, and it passed unanimously.

Justice Courts

Judge Fuchs tracks the justice court PSCs, although the Council has not been certifying them. Judge Fuchs would like the Council to determine whether they would like a formal justice court PSC certification or continue with the current informal process. There are three to four justice court PSCs.

Motion: Judge Farr moved to approve the certifications of justice courts by the Council. Judge Augustus Chin seconded the motion, and it passed unanimously.

Conditionally Approved, Deferral or Rejected PSCs

In the past when a PSC is non-compliant, the Council conditionally approves, defers or rejects the recertification request. Judge Fuchs questioned if once a court that has been conditionally approved, deferred or rejected due to non-compliance meet the criteria, they can be added to the Council's consent calendar. Since the majority of a Checklist has already been approved, this would save the Council time from reviewing the entire Checklist again and readdressing it.

Chief Justice Durrant thanked Judge Fuchs.

Motion: Judge Pullan moved to continue requiring problem-solving courts that have been conditionally approved, deferred or rejected be placed on the Council agenda once the problems have been corrected. Judge Appleby seconded the motion, and it passed unanimously.

Adult Drug Courts

ADC1Cache	Judge Cannell
ADC1Carbon	Judge Harmond
ADC1Emery	Judge Humes
ADC1SanJuan	Judge Torgerson
ADC1Uintah	Judge McClellan

ADC1Utah	Judge Howell
ADC2Utah	Judge Eldridge
ADC3Utah	Judge Brown
ADC3Weber	Judge DiReda

Juvenile Family Dependency Drug Courts

JFDDC3Utah	Judge Bartholomew
JFDDC2Weber	Judge Heward

Motion: Judge Appleby moved to approve all problem-solving courts for recertification including Judge Torgerson and Judge Brown’s courts, as presented. Judge Connors seconded the motion, and it passed with Judge Cannell abstaining as to his court and Judge Michelle Heward abstaining as to her court.

12. MODEL UTAH CIVIL JURY INSTRUCTIONS COMMITTEE REPORT: (Judge Keith Kelly and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Keith Kelly and Nancy Sylvester. The Committee on the Model Utah Civil Jury Instructions (MUJI-Civil) is comprised of district judges, civil practitioners from both sides of the aisle, and a linguist. In the last year or so, the committee has completed two sets of instructions: 1) trespass and nuisance and 2) updates to the general instructions. The trespass and nuisance instructions are new and the general instructions have been streamlined and amended to more closely resemble the general criminal jury instructions.

Due to the pandemic, meetings were canceled from March through September. The committee is now meeting through Webex and is working on updates to the products liability instructions. Because of the deliberative nature of the committee’s work, it is not clear how quickly the work will get done in a virtual meeting space as opposed to in-person.

Chief Justice Durrant thanked Judge Kelly and Ms. Sylvester.

13. SENIOR JUDGE CERTIFICATIONS: (Cathy Dupont and Nancy Sylvester)

Chief Justice Durrant welcomed Cathy Dupont and Nancy Sylvester. In January, 2020 the Council approved a moratorium suspending all senior judge applications pending further information. In October, 2020 the Council renewed their moratorium on the suspension of senior judge applications pending additional data. The Policy & Planning Committee created a workgroup to address the rule amendment proposals and process. Judge Connors supported approving the current senior judge certifications and recertifications. Judge May asked if there was an age limit for judges, why would there not be one for senior judges. Judge Connors said they are working on the rule amendments that are urgent, then they will address other issues. Cathy Dupont noted those judges receiving health insurance benefits may be affected if they are not recertified by the end of December because their terms end and they would no longer be eligible for the benefits. .

Motion: Justice Himonas moved to lift the moratorium with respect to the new applicants as well as recertifications of those who are receiving benefits that would be affected, as amended. The motion was held until after an executive session.

Justice Himonas believed senior judges should be required to work if called upon.

Senior judge certifications

Judge James R. Taylor, Fourth District Court. Retiring January 1, 2021

Judge Edwin T. Peterson, Eighth District Court. Retiring January 15, 2021

Judge Mary Kate Appleby, Court of Appeals. Retiring January 1, 2021

Active senior judge recertifications

District

Judge Michael Allphin

Judge G. Rand Beacham

Judge Glen R. Dawson

Judge L.A. Dever

Judge Gordon J. Low

Judge Michael D. Lyon

Judge Gary D. Stott

Juvenile

Judge Frederic M. Oddone

Judge Sterling B. Sainsbury

Inactive senior judge recertifications

District

Judge Robert W. Adkins

Juvenile

Judge Arthur Christean

Judge Thomas M. Higbee

Justice

Judge Lee Bunnell

Judge Jack Stevens

Chief Justice Durrant thanked Ms. Dupont and Ms. Sylvester.

14. LEGAL RESEARCH VENDOR: (Cathy Dupont)

Chief Justice Durrant welcomed Cathy Dupont. Ms. Dupont noted the state has not completed their master contracts with the legal research vendors and requested this be addressed in an executive session.

Chief Justice Durrant thanked Ms. Dupont.

15. OLD BUSINESS/NEW BUSINESS

Geoff Fattah reviewed the results from the COVID campaign ads.

Bonneville (9/14/20 – 10/02/20)

KSL (3 weeks) 134,300

FM100 (3 weeks) 136,600

Arrow 103.5 (3 weeks) 130,700

Total: 401,600

Alphamedia (9/28/20 – 10/31/20)

LaGran D

Latino 106.3

Juan 1600

Total for Website/Streaming: 136,970 (est.)

Total for On-air: 100,000 (est.)

Telemundo (9/30/20 – 10/21/20)

Facebook Live – 3,300

Nelson Ratings believes Telemundo

controls 65% of the Spanish-speaking

Facebook

Reach – 62,416

Engagement – 1,360

Shares – 62

viewer market in Utah.
Morning (15 ads): 10,500
Afternoon (11 ads): 16,500
Evening (11 ads): 37,400
Total: 64,400

59.6% women, 40.4% men – Mostly 35-65
years old

Grand Total Reach: 785,386

**Weekly website hits from 9/14/20 –
10/31/20**

Home Page: 15,949 – 18,851 (up 16%)
Alerts Page: 1,745 – 2,223 (up 22 %)

Judge Appleby thought about whether the percentage of retention votes for judges in general elections has shifted over time. Clayson Quigley conducted a study that identified over the past six years there has been an increase in votes for the retention of judges.

Karl Sweeney requested the Council allow remaining funds from the ODR improvement grant be applied as recommended by PEW for an ADA/Usability Study.

16. EXECUTIVE SESSION

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

Motion: Justice Himonas moved to lift the moratorium passed on senior judge certifications; instruct the Policy & Planning Committee to evaluate need and cost of senior judges over the next year or two, including a review of age limits and the matrix used with senior judge evaluations, and how the senior judge work is tracked; approve all eligible senior judge certifications and recertification's with the exception of Judge Low and Judge Beacham, who have not worked in the past two years; defer the decision on Judge Low and Judge Beacham pending Cathy Dupont's follow up with the presiding judges and TCEs of the First and Fifth districts. Judge Pettit seconded the motion. Judge Pullan noted that the Council and court should be making its evaluation under the rules that are in place for senior judges, rather than proposed amendments to those rules. Justice Himonas amended his motion to note that the Council could meet as needed. Judge Appleby abstained, and it passed unanimously.

17. CONSENT CALENDAR ITEMS

a) Committee Appointment. Education Committee reappointment of Judge Diana Hagen and Joyce Pace. Approved without comment.

b) CJA Rule 3-101 for Public Comment. Item removed.

c) Forms Committee Forms. Petition to Modify Divorce Decree, Findings of Fact and Conclusions of Law on Petition to Modify Divorce Decree, and Order on Petition to Modify Divorce Decree. Approved without comment.

18. ADJOURN

The meeting adjourned.