

**JUDICIAL COUNCIL MEETING**

**Minutes**

**January 25, 2021**

**Meeting conducted through Webex**

**9:00 a.m. – 3:10 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Todd Shaughnessy, Vice Chair  
Hon. Brian Cannell  
Hon. Samuel Chiara  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Ryan Evershed  
Hon. Paul Farr  
Hon. Michelle Heward  
Justice Deno Himonas  
Hon. Mark May  
Hon. David Mortensen  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Brook Sessions  
Rob Rice, esq.

**AOC Staff:**

Hon. Mary T. Noonan  
Cathy Dupont  
Michael Drechsel  
Shane Bahr  
Kim Free  
Larissa Lee  
Jordan Murray  
Bart Olsen  
Jim Peters  
Jon Puente  
Clayson Quigley  
Lucy Ricca  
Neira Siaperas  
Karl Sweeney  
Nancy Sylvester  
Keisa Williams  
Jeni Wood

**Excused:**

**Guests:**

Hon. Dennis Fuchs, Senior Judge  
Hon. George Harmond, Seventh District Court  
Hon. Keith Kelly, Third District Court

**Guests Cont.:**

Justice Paige Petersen, Supreme Court  
Commissioner Shannon Sebahar, JPEC  
Dr. Matthew Thiese, University of Utah  
Dr. Jennifer Yim, JPEC

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex. The Oath of Office of Judge David Mortensen was completed at the January 12, 2021 Management Committee meeting.

**Motion:** Judge Derek Pullan moved to approve the December 21, 2020 Judicial Council meeting minutes, as amended to change 1) page 3 “the courts should pay” to “the State should pay”; 2) in the Policy & Planning section change “neither group” to “both groups agreed to the draft”; and

3) on page 5 change predominate to predominant. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and other court personnel met with President J. Stuart Adams and Speaker Brad Wilson to discuss the Judicial Branch budget priorities for the upcoming legislative session. Judge Mary T. Noonan felt the meeting went well.

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

Judge Noonan reported that Lauren Andersen was hired (January 25<sup>th</sup> start date) as the new Judicial Institute (Education) Director and Nick Stiles was hired (February 2nd start date) as the new Appellate Court Administrator.

**4. SELECTION OF A JUDICIAL COUNCIL VICE CHAIR: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant selected Judge Todd Shaughnessy to fill the Vice Chair position on the Judicial Council and Management Committee.

**Motion:** Judge David Connors moved to approve Chief Justice Durrant’s selection of Judge Todd Shaughnessy as the Vice Chair of the Judicial Council and Management Committee. Judge Brook Sessions seconded the motion, and it passed unanimously.

**5. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Budget & Fiscal Management Committee Report:**

Judge Mark May stated that the committee approved the grants coordinator policies, which will be discussed later.

**Liaison Committee Report:**

Judge Kara Pettit and the committee meets weekly to review proposed Bills.

**Policy and Planning Committee Report:**

Judge Pullan reported that the subcommittees have been working through the HR policies. They discussed an annual proficiency testing for justice court clerks; however, the Judiciary has no supervisory authority over justice court employees. Jim Peters is seeking support from the cities and towns on this effort.

**Bar Commission Report:**

Rob Rice will meet with the Pro Bono Commission to discuss the availability of lawyers for post-conviction relief (PCRA) cases. Justice Deno Himonas recommended judges contact law firms for PCRA cases noting that he found success with this process. Judge Pullan was uncomfortable with contacting law firms who have cases before him. Justice Himonas agreed it was uncomfortable and was only meant as a short term solution.

**6. PRETRIAL RELEASE AND SUPERVISION COMMITTEE REPORT: (Judge George Harmond and Keisa Williams)**

Chief Justice Durrant welcomed Judge George Harmond and Keisa Williams. There have been two new proposed pretrial Bills introduced this legislative session. The committee is working on educating judges on the Ability-to-Pay-Matrix; adding additional facts to the PC statements, and looking at ways to electronically streamline information to attorneys. Judge Harmond read that the Ohio court system is addressing similar issues. Ms. Williams explained they are tracking aggregate data including the number of times a person is released, the amount of time people are spending in jail, and data on race that would help identify trends.

Chief Justice Durrant thanked Judge Harmond and Ms. Williams.

**7. CJA RULES 4-202.02 AND 4-403 FOR FINAL ACTION: (Keisa Williams)**

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved the following rules for public comment. During the 45-day comment period, no comments were received on 4-403. One comment was received on 4-202.02. After careful consideration of the comment, Policy and Planning made no amendments. The committee recommended these rules for final approval, with a May 1, 2021 effective date for rule 4-403. Ms. Williams recommended a back-dated effective date of December 5, 2020 for rule 4-202.02 because the programming to collect financial data was launched on December 5, 2020.

**CJA 4-202.02. Records Classification (amend)**

HB 206 went into effect on October 1, 2020. That bill requires judges to consider an individual's ability to pay a monetary bail amount any time a financial condition of release is ordered.

**Rule 4-403. Electronic Signature and Signature Stamp Use (amend)**

The proposed amendments at lines 31-40 authorize judges' electronic signatures to be automatically affixed to automatic expungement orders.

Chief Justice Durrant thanked Ms. Williams.

**Motion:** Judge Connors moved to approve recommended changes to CJA Rule 4-202.02 with a backdated effective date of December 5, 2020 and CJA Rule 4-403 with an effective date of May 1, 2021, as presented. Judge Sessions seconded the motion, and it passed unanimously.

**8. WINGS COMMITTEE REPORT: (Judge Keith Kelly, Shonna Thomas, and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Kelly and Nancy Sylvester. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) is a problem solving body that relies on court-community partnerships to:

- Oversee guardianship practice in the Courts;
- Improve the handling of guardianship cases;
- Engage in outreach/education; and
- Enhance the quality of care and quality of life of vulnerable adults.

The committee's accomplishments include:

- CJA Rule 6-507
- Court order revision
- Court partnerships
- Community partnerships
- National WINGS recognition
- Court visitor appreciation

Current and future projects include:

- Guardianship education/manuals
- Reminder notice system
- Annual report review process
- CJA Rule 6-501
- Guardianship for school purposes

The committee meets every two months and is effective through the participation of key stakeholders who understand and are in a position to improve the Courts' guardianship processes. Judge Kelly thanked all those involved as they have made great strides with the program.

Chief Justice Durrant thanked Judge Kelly and Ms. Sylvester.

**9. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)**

Chief Justice Durrant welcomed Nancy Sylvester. District court Judge Lynn Davis who recently retired has applied for active senior judge status and juvenile court Judge Kent Bachman has reapplied for active senior judge status. Neither of the senior judge applicants has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. Ms. Sylvester stated she is seeking clarification from Judge Davis regarding his application and recommended the Council delay its decision for Judge Davis. Judge May was concerned about not having an age limit for senior judges and asked if the age limit is being discussed as part of the proposed amendments to the senior judge rules. The Policy & Planning Committee's workgroup and the Board of Senior Judges do not recommend imposing an age limit. Policy and Planning continues to work on the rule amendments and has discussed some issues with the Supreme Court.

Chief Justice Durrant thanked Ms. Sylvester.

**Motion:** Judge Connors moved to approve the recertification of Judge Kent Bachman, as amended and to delay a decision on Judge Lynn Davis's application. Judge Pettit seconded the motion, and it passed unanimously.

**10. PROBLEM-SOLVING COURTS CERTIFICATIONS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs presented to the Council the problem-solving courts seeking recertification.

Courts that meet all Required and Presumed Best Practices  
ADC1Weber                      Judge Bean

ADC1Tooele	Judge Gibson
JMHC1Cache	Judge Galloway
VDC1SaltLake	Judge Hansen
VDC1Utah	Judge Powell

Courts that meet all Required but do not meet all Presumed Best Practices

JFDDC1Utah	Judge Nielsen
AMHC1BoxElder	Judge Walsh
JFDDC5Utah	Judge Smith
ADC1Grand	Judge Manley
JFDDC1Grand	Judge Manley
JDC1Utah	Judge Smith
ADC2Weber	Judge Valencia

Judge Pullan asked Judge Fuchs if some of the courts were accepting low risk individuals into some of the drug courts which could cause harm to the low risk individuals. Judge Fuchs said he was aware that some courts worked with medium risk individuals and that there is often a fine line between high risk and medium risk individuals. Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Connors moved to approve all problem-solving courts listed above that meet both Required and Presumed Best Practices and to approve the problem-solving courts listed above that meet all Required but do not meet all Presumed Best Practices, as presented. Judge Michelle Heward seconded the motion, and it passed unanimously.

#### **11. REGULATORY REFORM INNOVATION OFFICE: (Lucy Ricca)**

Chief Justice Durrant welcomed Lucy Ricca. The Office has received 34 applications to the Regulatory Sandbox. The Office has recommended 20 of those applications to the Court for admission to the Sandbox. The Court has authorized 16 entities (in whole or in part) to offer services in the Sandbox. 6 applicants withdrew their applications; 1 has withdrawn but will resubmit its application; 1 applicant was denied by the Office. The Innovation Office has tabled 5 applications based on the Court’s statement on referral fees issued December 10, 2020. There are 2 entities currently under active review by the Innovation Office.

The following entities are operational and offered legal services to the public during the month of November: Blue Bee Bankruptcy, AGS Law, Rocket Lawyer, and 1LAW. In the Office’s Interim report dated November 24, 2020, it was reported that the following additional entities were operational and offering services: R&R Legal, FOCL Law, Law Pal, LawHQ, and Estate Guru. However, additional communications with those entities clarified that they were not, in fact, launched as authorized by the Court and therefore not prepared to report data for November 2020. The Office expects those entities to come online and begin reporting. Rocket Lawyer and 1LAW continue to report as required. There are no indications of material consumer harm. Blue Bee and AGS Law will submit their first quarterly reports in January 2021.

Chief Justice Durrant thanked Ms. Ricca for an exceptional job and noted that he presented this topic recently to the Conference for Chief Justices. Chief Justice Durrant

recognized that in the future consumers will be able to access documents and utilize non-lawyers who are overseen by lawyers. Chief Justice Durrant was encouraged by the various entities and services provided.

## **12. PROPOSED GRANT POLICIES AND PROCEDURES: (Karl Sweeney and Jordan Murray)**

Chief Justice Durrant welcomed Karl Sweeney and Jordan Murray. The Budget & Fiscal Management Committee approved the newly created grant policies. The Council discussed whether it was appropriate to lift the moratorium on applying for new grants, with all grants being reviewed for approval by the Council. The committee discussed that the proposed grant process differs in some ways from the grant process currently in rule. The committee agreed that the memo and the current rules should be referred to Policy and Planning. The committee then discussed whether the court should proceed with some time sensitive grant applications while the rules are with Policy and Planning. Judge Pullan preferred to have the rules approved before authorizing any grants. Justice Himonas discussed potential grants related to initiatives that are under the Supreme Court and the potential for Federal Cares Act funding in the next two months. Mr. Murray will assist the courts with grant opportunities. At this time, Mr. Murray is conducting a compliance review with current grants.

Chief Justice Durrant thanked Mr. Sweeney and Mr. Murray.

The Council members addressed the following:

- resources needed from the AOC for grant applications;
- the ability to withdraw an application if the Council did not approve it;
- whether the grant coordinator rules should be in place before lifting the moratorium;
- whether applications should be filed with first receiving Council approval;
- the time it would take for Policy & Planning to review the policies/rules;
- if allowing exceptions would result in multiple requests; and
- lifting the moratorium because the Council will make a determination on each grant.

**Motion:** Judge Pullan moved that the memorandum/policies/rules be referred to Policy & Planning with the highest priority. Justice Himonas seconded the motion, and it passed unanimously.

**Motion:** Judge May moved to approve lifting the moratorium to allow for communications and applications only for time-sensitive grants until the next Council meeting. Justice Himonas seconded the motion. The motion passed with seven Council members voting yea and Judges Mortensen, Pettit, Pullan, Connors, Cannell, and Mr. Rice voting nay.

## **13. LEGISLATIVE UPDATES: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel reviewed the proposed Bills noting the session began on January 19<sup>th</sup> and will end on March 5<sup>th</sup>. The Liaison Committee has considered 59 of the more than 140 Bills. Many Bill proposals do not have impacts on the courts. The committee has been working on the Bills that directly impact the courts, including HB0026, HB0129, HB0189, SB0016 and the committee opposes at this time HB0073 and HB0220.

Chief Justice Durrant thanked Mr. Drechsel.

**14. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Shannon Sebahar)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Shannon Sebahar. Dr. Yim introduced Commissioner Shannon Sebahar noting her longstanding membership on the commission. Dr. Yim presented the JPEC 2020 Election Survey, the Media Analysis Report Executive Summary, and the 2021 Report to the Community. The overall objective of the Survey was to ascertain how JPEC can better inform voters regarding the judges that appear on their ballot.

The Executive Summary found that the 2020 General Election garnered more voter participation than any general election on record, raising the question of how new voters treated the judicial retention ballot items. JPEC's goal was to double the amount of 2018 web traffic to its website, judges.utah.gov, as measured by the number of page sessions from September 1 to Election Day. Outreach efforts, combined with increased voter participation, resulted in increased voting on judges, JPEC website traffic, and public interest in the evaluation of judges.

The Report to the Community identified statistics on judicial retentions and elections outreach efforts.

Commissioner Sebahar said JPEC continues to improve their website with information to the public. Dr. Yim stated inclusion breeds trust by answering questions about judges when citizens are making decisions on retentions.

Chief Justice Durrant thanked Dr. Yim for her leadership with JPEC and the commitment Commissioner Sebahar has shown.

**15. INTRODUCTION OF JONATHAN PUENTE: (Judge Mary T. Noonan)**

Judge Noonan introduced Jonathan Puente as the new Director of the Office of Fairness and Accountability.

**16. JUDICIAL COUNCIL MARCH 2021 MEETING DATE: (Judge Mary T. Noonan)**

The Judicial Council typically holds their March meeting in conjunction with the Utah State Bar in March in St. George. Due to the pandemic, the Bar will hold their Convention virtually on March 25-27, 2021. The Council meeting is currently scheduled for March 12<sup>th</sup> beginning at 12:00 p.m. If held on a normal date/time, the meeting would be held on March 22<sup>nd</sup> at 9:00 a.m.

The Council decided to keep the March 12<sup>th</sup> meeting as currently scheduled.

**17. OLD BUSINESS/NEW BUSINESS**

Chief Justice Durrant stated on the record that a brief conversation was held prior to the beginning of the meeting. Judge Shaughnessy noted the Third District Court will begin in-person criminal jury trials today. Delivery of the Hepa filters has been delayed a few weeks. Judge

Pullan said the Fourth District Court has been making preparations to hold trials in the future. Judge Samuel Chiara invited 10 jurors into the courtroom at a time during his trial and mailed out questionnaires to potential jurors. The Eighth District Court will hold a mock jury trial to identify the correct processes and any issues in preparation for their upcoming criminal jury trials in February. Judge Shaughnessy said there are layers of protection installed, including masks, each juror will have an individual meeting room, symptom checklists, analysis of jurors who are symptomatic, questions about prior and current testing, rapid response test the first day of trial for participants and daily for jurors, continual checking of symptoms, physical distancing, witness booth with glass, cleaning of the courtroom, and dedicated spaces.

The Utah Department of Health toured the Matheson Courthouse and reviewed each of the safety measures. Sim Gill, Salt Lake County District Attorney, authored a letter to the Third District expressing concerns and requested a one-week delay in beginning the criminal jury trials. With the COVID rates decreasing and the approval of the Health Department, the Management Committee decided not to postpone the trials.

Judge May noted CJA Rule 1-204(6) Executive Committees states “Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The members of the Policy and Planning Committee and the Liaison Committee shall elect their respective chairs annually and select a new chair at least once every two years.” This section does not recognize the Budget & Fiscal Management Committee. The Budget & Fiscal Management Committee requested to be added to this rule with the selection of a new Chair every three years.

**Motion:** Judge May moved to send CJA Rule 1-204 to Policy & Planning for review. Justice Himonas seconded the motion, and it passed unanimously.

Judge Pullan reminded the Council that Policy & Planning has a form when sending a rule to them and to please contact Ms. Williams.

Judge Pullan suggested that the absence of counsel in PCRA cases is a gaping hole in the justice system and has spoken with Joanna Landau with the Indigent Defense Commission. Judge Pullan would like this to be considered for a study item and possibly prioritize this issue. Chief Justice Durrant thanked Judge Pullan and recommended a follow up discussion.

Judge Sessions mentioned that Grant Nagamatsu, a Utah County public defense attorney, sadly passed away on January 16, 2021 due to complications from COVID. Judge Sessions noted attorneys are in close contact with court personnel and litigants both in and out of custody. The courts need to continue to try prioritizing addressing the health concerns of all who come before the court.

The Council briefly discussed distribution priorities for the COVID vaccine. Judge Noonan noted the TCEs are reaching out to local health departments regarding prioritizations. Some counties have made vaccination appointments available to court personnel and attorneys, while other counties have not. The situation depends on each county and the courts have been instructed not to lobby for a place on the priority list as not to override those with a greater need.



**18. EXECUTIVE SESSION**

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

**Motion:** Judge Chiara moved that the information provided be used by the courts internally. Judge Sessions seconded the motion, and it passed unanimously.

**19. CONSENT CALENDAR ITEMS**

**a) Committee Appointment.** Education Committee – appointment of Judge Matthew Bates. Approved without comment.

**b) Forms Committee Forms.** Answers to Request for Admissions. Approved without comment.

**20. ADJOURN**

The meeting adjourned.