

JUDICIAL COUNCIL MEETING

Minutes

June 28, 2021

Meeting conducted through Webex and at

450 S. State St.

Salt Lake City, UT. 84111

9:00 a.m. – 1:50 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
Rob Rice, esq.
Hon. Brook Sessions

Excused:

Guests:

Commissioner Catherine Conklin, Second District Court
Travis Erickson, TCE Seventh District Court
Commissioner David Jordan, JPEC
Kristina King, OLRGC
Hon. Barry Lawrence, Third District Court
Russ Pearson, TCE Eighth District Court
Peyton Smith, TCE Third District Court
Aimee Thoman, Judicial Conduct Commission
Dr. Jennifer Yim, JPEC

AOC Staff:

Ron Gordon
Cathy Dupont
Michael Drechsel
Holly Albrecht
Lauren Andersen
Heidi Anderson
Shane Bahr
Todd Eaton
Amy Hernandez
Alisha Johnson
Kara Mann
Meredith Mannebach
Jeremy Marsh
Jordan Murray
Bart Olsen
Jim Peters
Jon Puente
Nini Rich
Neira Siaperas
Ryan Steffensen
Nick Stiles
Karl Sweeney
Chris Talbot
Keisa Williams
Jeni Wood

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. The Council held their meeting through Webex and in-person.

Motion: Judge Derek Pullan moved to approve the May 24, 2021 Judicial Council meeting minutes, as amended to correct section 13 to include “Critical to Judge Pullan’s motion to support the sandbox grant, was Justice Himonas assuring the Council that the Supreme Court would never approach the legislature unilaterally to request funding for the office. Any legislative request for such an appropriation would be through the standard process of prioritization and approval by the Council.” Justice Himonas questioned would a request for ARPA funds be violative. Judge Pullan wasn’t sure of the answer. Justice Himonas requested guidance on this issue. Judge David Connors said if this was the type of request that would otherwise divert funding from the Judiciary then one might believe the spirit of Justice Himonas’ past observation might suggest that it be addressed by the Council. Justice Himonas didn’t believe APRA funds would be brought to the Council because they would be “in addition to” and not a diversion of funds, however Justice Himonas stated he is “happy to have this run through the Council if that’s what people think is appropriate.” Judge Connors wasn’t sure why this wouldn’t be run through the Council. Justice Himonas replied that running this through the Council lets the Council decide Supreme Court priorities. Justice Himonas felt unless the Council changes the structure, that’s the right way to do things. Judge Connors noted that this “ends up messing up with the priorities set by the Council for funding of the Judiciary in general.” The Council decided to further this discussion at a later date. Another change to the minutes includes amending section 18 to “Judge Pullan emphasized it would be important to assure employees that discretionary compensation decisions would be guided by objective criteria and principles.” Judge Brian Cannell seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had the privilege of speaking at Chief Justice Richard C. Howe’s funeral. Justice Howe served on the Utah Supreme Court from 1980 to 2002 and was the Chief Justice of the Utah Supreme Court from 1998 to April 2002. Chief Justice Durrant said Justice Howe led with quiet dignity.

3. STATE COURT ADMINISTRATOR’S REPORT: (Ron Gordon)

Keisa Williams hired an Associate General Counsel, beginning July 6th. The position for the second Associate General Counsel posting closed Friday. Ron Gordon appreciated all of Ms. Williams’ efforts in her new position. The Public Information Officer position interviews were held last week. Michael Drechsel and Mr. Gordon presented to the budget subcommittee earlier this month regarding the backlog of jury trials. The subcommittee appreciated the effort in creating the plan to address jury backlogs.

Each entity is responsible to ensure they are using APRA funds appropriately, therefore, AOC staff is working to evaluate the interim federal regulations to make determinations about American Rescue Plan Act (ARPA) funding options. The Governor’s Office of Planning and Budget has been designated as the grant coordinator for the ARPA funds. Mr. Gordon is working with other states to recognizing that they have similar issues to Utah.

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 this will be discussed later in the meeting.

Liaison Committee Report:

Judge Pettit stated the Pretrial Release group is meeting every other week.

Policy and Planning Committee Report:

Judge Derek Pullan will discuss the committee's work later in this meeting.

Bar Commission Report:

Rob Rice reported that Elizabeth Wright was hired as the Executive Director of the State Bar. Ms. Wright has an excellent reputation throughout the country and has a deep understanding of the Bar's work. Nancy Sylvester has been hired as the Bar's General Counsel. Judge Brendan McCullagh has been recognized as Judge of the Year. The Bar's Summer Convention begins July 28.

5. JUDICIAL CONDUCT COMMISSION REPORT: (Aimee Thoman)

Chief Justice Durrant welcomed Aimee Thoman.

Membership Update

- a. New Members: Sen. Mark McKell (R).
- b. Missing Members: None.
- c. Current Members (11): Rep. Craig Hall, Chair; Ms. Cheylynn Hayman, Ms. Michelle Ballantyne, Judge David Mortensen, Judge Todd Shaughnessy, Rep. Elizabeth Weight, Senator Mike McKell, Senator Jani Iwamoto, Mr. Stephen Studdert, Mr. Mark Raymond, Ms. Georgia Thompson.
- d. Supreme Court renewed Ms. Hayman appointment in April for four more years. Next scheduled Supreme Court appointment is in 2024.

Caseload Update and Analysis

- a. Currently, the JCC is at 72 cases in FY21 (51 in FY20, 64 in FY19, 58 in FY18) and expect to close year at mid-70's.
- b. In FY21, they have had 0 public dispositions, 0 DWW dispositions and 12 reconsideration requests. No JCC cases are pending before Utah Supreme Court.
- c. Staff will conduct and report analysis of previous 18-months for any "delay" anomaly associated with CV19.

Misc. Activities (over the last six months)

- a. Annualized requests for info (AOC = 16, JPEC = 6, CCJJ = 16, AJDC/CJE = 124) and 311 answered phone call inquiries.
- b. Staff working on publishing FY21 Annual Report and reporting annual performance measures to legislature.

- c. Resolved GRAMA litigation regarding a DWW record. (Records not released).
- d. JCC has returned to meeting in person and will also continue video conferencing for members and public.

Chief Justice Durrant thanked Ms. Thoman.

6. JPEC JUROR SURVEY AD HOC SUBCOMMITTEE REQUEST: (Dr. Jennifer Yim and Commissioner David Jordan)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner David Jordan. Dr. Yim presented the Utah Judicial Performance Evaluation Juror Impact Analysis (2012-2019). The report examined the impact of jurors in the performance evaluation scores of Utah judges based on the 2012, 2013, 2015, 2017 and 2019 Utah JPEC Judicial Performance Evaluation surveys. These surveys included questions from which four performance scores were calculated: Legal Ability, Integrity and Judicial Temperament, and Administrative Skills. Administrative skills include communications, and procedural fairness in the courtroom. This Juror Impact Analysis report focused on only the last three scores since jurors were not asked to rate judges' legal ability.

To assess the impact of jurors on judicial reviews, the data was analyzed using Analysis of Variance (ANOVA). This technique is useful to examine the effect of a single variable on an outcome, and to assess whether different groups have statistically different average values. Linear regression and correlation analysis were also used to measure the impact of the number of jurors who evaluate a judge and that judge's performance ratings.

The results of this impact analysis suggest that jurors may have had a significant impact on the scores a Utah state judge received during the 2012-2019 period.

- For all scores, jurors rate judges significantly higher than the ratings provided by attorneys and court staff.
- On average, jurors' ratings are above ~4.85 for all scores compared to ~4.52 for court staff and ~4.37 for attorneys.
- Since jurors tend to rate all judges significantly higher, those judges who oversee fewer or no jury cases (for instance Juvenile judges) may be at a disadvantage.
- Regression analysis showed that the percentage of jurors evaluating a judge has a statistically significant impact on that judge performance scores. For each percentage point increase in the number of jurors evaluating a judge, the overall Integrity and Judicial Temperament as well as Administrative Skills mean scores of that judge are increased by 0.004 and the judge's Procedural Fairness mean score is increased by 0.005.

The analysis of juror surveys indicated there may be unfairness to some judges who don't have the opportunity to hold many jury trials. Some judges are more active in soliciting jury survey responses by having their court staff contact jurors to encourage responses. This is allowed but can also result in significant skewing of the scores. The combination of those factors tends to favor judges who hold a lot of jury trials. This may not be fair on a comparative basis of judges who do not have as many jury trials. The larger the sample size of jurors, the larger the score as it tends to overwhelm the other responses.

JPEC ran test cases for judges who were on the border of meeting or not meeting the statutory standards presumption for retention. In a few cases, juror scores made the difference for judges between meeting the standard and not meeting the standard. JPEC did not recommend that juror surveys be dropped, however, judges who do not hold many jury trials have a significant comparative disadvantage to those judges who do have more jury trials.

Dr. Yim explained that the denominator in the average calculation is done by the total number of respondents, such as, if someone has 80 jurors and 10 court staff and 50 attorneys then there would be a comparably large impact for that judge.

Dr. Yim questioned if the Council would like a judge to be involved in the process through the workings of a subcommittee. Judge Pullan thanked Dr. Yim and Commissioner Jordan for raising this issue. Chief Justice Durrant pointed out that some district court judges benefit more than others due to the juror surveys and that JPECs goal is to create a more equitable scenario. Judge Shaughnessy believed one problem is the district court judge who does a lot of jury trials versus another who doesn't but there is also a problem with a district court judge who conducts jury trials versus a juvenile court judge who handles no jury trials. Judge Shaughnessy wondered if mathematical adjustments could be made to put all judges on equal footing. Dr. Yim agreed that this could be a solution, noting that JPEC preferred to have the Council's input prior to implementing any changes.

Chief Justice Durrant thanked Dr. Yim and Commissioner Jordan, noting that the Judiciary appreciates Dr. Yim and the members of the commission for their conscientious procedural fairness. Chief Justice Durrant and Mr. Gordon will work to assign court person(s) to the subcommittee.

7. OFFICE OF FAIRNESS AND ACCOUNTABILITY CREATION OF A COMMITTEE: (Jon Puente)

Chief Justice Durrant welcomed Jon Puente. Jonathan Puente requested a new committee be created to assist his office with developing a strategic plan by early 2022. The Strategic Plan Development Committee will include approximately 16 members, made up of AOC Directors, representatives from the Boards of Judges, TCE's, public members, and other stakeholders.

The committee will help to promote a systemic, collaborative, and strategic approach to achieve the goals and objectives they set and to enhance the AOC's interest in advancing fairness, accountability, and inclusion in the Judiciary through the Strategic Plan. Upon approval of the Strategic Plan by the Judicial Council, the committee would be charged with the implementation and ongoing monitoring of the plan, including measuring progress toward achieving goals and objectives.

Strategic Plan Process and Timeline

The process will focus on

- Impact
 - What and whom
- How will the AOC achieve this impact?
- What will be the specific priorities?

- What will be the needed resources?
- How will the courts know progress is being made?

Timeline

- Phase 1 (July 2021)
 - Background research with committee
- Phase 2 (August – December 2021)
 - Planning/drafting sessions with the committee
 - Drafting sessions with subcommittee's
 - Engage with stakeholders on first draft
 - Present draft to Judicial Council
- Phase 3 (January – February 2022)
 - Present stakeholder and Judicial Council feedback to the committee
 - Update draft with committee
 - Present stakeholders complete draft for final feedback
 - Finish draft
- Phase 4 (March – April 2022)
 - Submit complete draft to Judicial Council

The committee would be divided into workgroups assigned to specific tasks.

It was mentioned that the Racial and Ethnic Task Force ultimately dissolved but the courts were in a better position today to sustain this system. Mr. Rice recommended a member of the Utah Center for Legal Inclusion (UCLI) be added to the committee and possibly a member from the Young Women's Christian Association (YWCA). Judge Pettit questioned if this should be a standing committee and if the composition should be reviewed stating that there seem to be two separate objectives: one for administrative personnel and one for the community. Mr. Puente felt it would be better to start as an ad hoc committee then transition if need be. Mr. Puente believed stakeholders included employees and members of the public.

Justice Himonas endorsed the idea of a committee but will vote against this due to the committee composition recommendation. Justice Himonas hoped that making this office independent, the courts would hear more from outside agencies. Mr. Puente explained he only planned on having three judges plus AOC personnel on the committee.

Mr. Puente understood the Council's concern and thought the key to success was to find a balance of recommendations from outside entities with court personnel. Judge Shaughnessy noted this office should have an independent body outside of the courts to help provide direction. A committee comprised of individuals outside of the courts would not oversee the creation of a strategic plan. The Judiciary will need trusted voices to deliver difficult news with the data collected. Ms. Williams conducted a 50-state survey, which found the vast majority of states have an independent commission. Ms. Dupont explained that the public comment period for the OFA rule will be addressed in August with Policy & Planning. Ms. Dupont recommended having Policy & Planning work with Mr. Puente at that time and report back to the Council.

Chief Justice Durrant thanked Mr. Puente.

Motion: Judge Shaughnessy moved to have Policy & Planning address the creation of an independent body prior to the strategic plan's creation, as amended. Justice Himonas seconded the motion, and it passed unanimously.

8. BUDGET AND GRANTS FY21 CARRY FORWARD REQUESTS AND ONGOING SPENDING REQUESTS: (Judge Mark May, Karl Sweeney)

Chief Justice Durrant welcomed Judge Mark May and Karl Sweeney. Judge May mentioned that the courts received \$1M to fund senior judges and staff of ARPA funds, however, it is undetermined if regulations support these criteria. The Budget & Fiscal Management Committee determined not to spend these funds until more information can be obtained. One strategy might be to request \$1M from the legislature to fund this item. If denied by the legislature, the courts could use turnover savings or one-time funding. As to pay increases for JAs, Judge May noted this is not on the budget list for discussion today, however, that may be a legislative request.

ONE-TIME FUNDING REQUESTS

Mr. Sweeney requested an amendment on the Sunset Career Ladder request to \$475,000 as one-time FY22 instead of carry forward.

Contractor Support for Senior Project Manager/Developer Training and Critical IT Projects in FY 2022

\$682,000

Alternate funding: None

This request is the second of two related requests (the first was approved in March 2021 for \$225,000 to use FY21 one-time surplus funds) to hire/promote four Senior Project Managers/Developers (SPMs) earlier than the July 1, 2021 date when legislature-approved ongoing funding will start. This request is to retain four experienced contract developers currently in the roles the new SPMs will assume for purposes of training and transition of the new SPMs into their roles.

Matheson Carpeting

\$100,000

Alternate funding: None

The original 22-year-old carpet in Matheson is long past the industry standard replacement cycle. Excessive wear and carpet seams coming unglued whenever the carpet is cleaned are creating safety issues. The court received and spent \$350,000 from capital improvements in FY21 to replace the most worn and unsafe areas. The estimate to replace the remaining old carpeted areas in the building is \$300,000. Due to other budget priorities, it is unlikely that the State will fund further carpet replacement through capital improvement. Facilities requested the Judicial Council approval to fund \$100,000 for FY23 with the goal of repeating this request two more times (total \$300,000) over the next three to five years to complete the project.

Employee Incentive Awards

\$280,000

Alternate funding: This funding has always been carved out of carry forward funds from the prior fiscal year. If the courts do not fund this amount, there will be no funds available to fund employee incentive awards.

The courts have established a program to provide on-the-spot recognition for outstanding service as well as a formal nomination process to reward employees for their service in the following ways:

- An innovative idea or suggestion, implemented by the courts, which improves operations or results in cost savings
- The exercise of leadership beyond that normally expected in the employee’s assignment
- An action which brings favorable public or professional attention to the courts
- Successful completion of an approved special individual or team project
- Continually outstanding performance of normal responsibilities

The incentive can be issued in cash or a gift card. If deserved, a single employee can receive multiple incentive awards in a given year.

Interstate Compact for Juveniles (ICJ) Operations Funding

\$21,000 (\$17,000 Annual dues; \$3,000 extradition expenses; and \$1,000 training)

Alternate funding: None

In past years, Federal JABG funds supported the payment of national ICJ dues, but JABG funding is no longer available. Therefore, other funding is necessary to support ICJ dues which are currently assessed at \$17,000/year. This amount is calculated based on the criteria outlined in ICJ Rule 2-101 and the calculations for each state are revised every five years. Next calculation will occur at the end of FY21 and new dues, if any, will go into effect for FY23.

Educational Assistance for FY22

\$75,000

Alternate funding: None

Previously \$0 was approved for FY21 due to budget cuts; actual spend for FY20 was approximately \$60,000. The courts encourage employees to seek further education in order to perform their jobs more effectively and to enhance their professional development. The Human Resources Department may assist an employee in the pursuit of educational goals by granting a subsidy of educational expenses to court employees under specified circumstances. This request will subsidize education assistance for court employees for FY22. Courses completed during FY21 are not eligible for reimbursement. The amount requested is slightly higher than FY20 actual due to expected pent-up demand for this benefit.

Seventh District Court – Equipment and Improvements

\$17,350

Alternate funding: Funds from the FY22 budget year.

The request was to purchase new laptops for district court judges, Monticello courtroom podium, Price Courthouse storage cabinets, all-in-one Webex-enabled computer for court patrons, and Castle Dale Courthouse improvements.

District Court Two Time-Limited Law Clerks (Continuation of Funding)

\$191,200

Alternate funding: None

The Board of District Court Judges has been charged with the distribution of district court law clerk resources. As of February 1, 2021, there are thirty-one Law Clerk positions allocated in district courts across the state. Of the thirty-one law clerk positions, twenty-nine positions are funded through general funds and the equivalent of two full-time positions are funded with onetime funding.

Historically, the Board has sought one-time funding, year to year, in order to maintain the number of law clerk positions until there were adequate ongoing funds to transition law clerk positions to permanent funding. Now that the courts are coming up on seven years of one-time funding, the courts ask the Judicial Council to consider funding at least one of the two law clerk positions with ongoing funds some time in FY22. The courts realize that this would require one-time funding for both positions until sufficient ongoing funds were available. This request does not increase the total number of district court law clerk positions.

Secondary Language Stipend

\$68,900

Alternate funding: This funding is not included in our base budget and the courts have traditionally used carry forward funds to provide this stipend. If this request is not funded, interpretation services to court patrons could decline as fewer qualified interpreters are available.

There is a great diversity in languages spoken by court patrons. In order to facilitate court proceedings for non-English speaking patrons, the courts employ court interpreters or utilizes the foreign language talents of current court employees. There are 64 slots available for this stipend. However, not all slots are filled so we are requesting the historical average spend (\$68,900), not the maximum theoretical spend (\$83,200) if all slots are filled for the entire year. For FY21 and FY20 the request was for \$65,000.

Technology Improvements – Utah Supreme Court and Court of Appeals Benches

\$5,320

Alternate funding: None

The Supreme Court and Court of Appeals do not have any computers or monitors in their courtrooms. Prior to the COVID pandemic, there was not a realized need for computers/monitors on the benches. That need has now been realized, and the appellate courts respectfully submitted this request for funding to place monitors and docking stations on the appellate benches.

Public Transit Partial Reimbursement Program

\$25,000

Alternate funding: None

To provide court employees state-wide with an opportunity to receive a 50% reimbursement of the costs paid for utilizing public transit until the funds are depleted. One-time funds are requested to evaluate the response from employees and determine if this plan is well-utilized.

Third District Court – Media Carts

\$50,000

Alternate funding: Save district funds

This request is for two media carts for the Matheson Courthouse. The carts will be used for virtual jury selection and evidence presentations during jury trials. The cart includes separate monitors for the judge, witness, attorneys and the jury. The cart will allow the judge to turn off the jury monitor until the evidence has been admitted by the judge. The carts are portable which will allow movement throughout the courthouse. This will save the courts from installing this in each courtroom. The West Jordan Courthouse has one media cart.

The Second District Court requested a media cart. Judge Shaughnessy reminded the Council that the media carts can be moved to other courtrooms. Peyton Smith said the media carts are also being used for jury selection. Heidi Anderson will meet with AOC administrators about current stock and future needs to ensure needs of the courts are met.

New Taylorsville State Office Building (TSOB) Probation Offices Cabling/Network Spend

\$25,000

Alternate funding: None

The Third District Juvenile Court is relocating, combining the West Valley and City Probation offices into a new space in the TSOB around January 2022. The State (DFCM) and City of West Valley are covering the cost of the construction and a new furniture package. The court still needs to provide a new network circuit, data fiber runs and hardware (router, WAN access points, etc.) for functionality in the new space. This does not include computers, printers, phones and copiers that will be relocated for use in the new space from the offices they are vacating. Facilities has typically funded these IT costs in new office space.

Price, Utah GAL Office Lease Termination, Relocation and New Space Build Out

\$24,800

Alternate funding: None

Carbon County informed the courts in April that they needed to terminate the GAL lease in the old courthouse building in order to move forward with the county health department renovations that include the courts space in the facility. The best alternative for replacement

office space is to build out two GAL offices inside the secured Price Courthouse, which is a county owned facility.

Carry forward Bar Foundation Grant for Teen Website Development

\$18,000

Alternate funding: The grant provides the funds and this request is merely to carry forward the grant monies into FY22. If not used, the grant monies will be returned.

The Bar Foundation supplied the Divorce Education for Children Program \$20,000 to develop an educational website for teens experiencing parental separation. Attempts to develop this website have been delayed due to staff turnover and COVID, although \$2,000 has been spent to date. Development of a teen curriculum and a curriculum for children five to eight will begin development in late May of FY21 and is expected to be delivered in August FY22.

Sexual Violence Program Coordinator

\$57,000

Alternate funding: None. The grant funding for Jonathan Love's position will be depleted by June 30, 2021.

The issue of sexual violence frequently arises in the district courts and appellate courts. Statute, judicial rule, and case law surrounding sexual violence typically require a nuanced and detailed judicial approach. Due to the varied nature of sexual violence and the courts' role in addressing it, stakeholders across Utah requested the development of a sexual violence bench book and training for judges and court staff. This bench book addresses emerging case law in sexual violence cases, best practices in sentencing, working with marginalized populations, understanding the civil law impacts of sexual violence, and other critical educational needs.

IT – Computer/Printer Replacement Inventory (IT Inventory for Computer, Printer, Scanner and other Peripherals Replacements)

\$250,000

Alternate funding: None

The IT Division has established an annual laptop replacement schedule that provides for each unit to be replaced once every five years. The Division has annually requested \$250,000 for the program – although last year's request was reduced to \$150,000 which considered that an inventory of laptops was funded through CARES funds in FY21, and thus reduced the need for laptop replacements.

Facilities – Contingency Request for Unforeseen Projects & Repairs

\$200,000

Alternate funding: None

Facilities funds unforeseen/unbudgeted projects and repairs statewide every year. Due to funding reductions in the Court Complex fees and parking revenue in FY21, Facilities will not have any reserve funds left to draw from carryover funding for these projects in FY22. ARPA funding may yet be obtained as the courts made a \$350,000 request for ARPA funding in April

2021 along with the 2 approved requests, but to date the legislature has chosen to not address this request in its first pass for funding.

Applicant Tracking (ATS) and Onboarding System Request

\$20,000

Alternate funding: Ongoing funds are an alternate source, but not logical or desirable due to the existing agreement parameters of using DHRM systems. DHRM may move to a different vendor for recruitment and onboarding at any time. Because they charge a flat rate for using their HR software platforms, the courts could opt-in if at some point they adopt systems better suited to court needs.

This request is to fund a more secure and independent Onboarding and Recruitment Software application and process. This software would be leased and any updates would be included in the asking price. The courts could discontinue this program, however, if the software is efficient, the courts will ask for funding next year to continue the program. If the system works, the next request would be for ongoing funds. The IT Department is comfortable with this program as it will not require IT support.

Support for In-Person Conference and Employee Manager Training

\$127,500

Alternate funding: None

This request seeks to fund the shortfall in education's budget for FY22 to enable education to be responsive to the requests of the various Boards of Judges to return to in person trainings, including judge and employee conferences for FY22. Education is requesting that \$113,500 in one-time funding be allocated to support four in-person conferences (all judicial, district, juvenile and employee), and \$14,000 in one-time funding to be used to develop performance based, soft-skilled, mid-level manager courses for probation officers and judicial assistants – made necessary to transition away from career ladder toward a performance-based rewards system. The courts have approximately \$186,000 for conference. The Annual Judicial Conference cost \$100,000; therefore, funding is needed for additional conferences.

ODR Facilitator Training

\$20,000

Alternate funding: None

Recruitment, training and oversight of 18 additional volunteer Online Dispute Resolution (ODR) Facilitators in order to accommodate a statewide rollout of the ODR Program for small claims cases. The Judicial Council approved \$15,000 last year but as the program is moving statewide, the courts need additional facilitators. This will include the contract for Nancy McGee.

Reserve

\$150,000

Alternate funding: None

This is a request for one-time funds which will be available to pay for unexpected/unplanned one-time expenditures at the discretion of the Judicial Council. Funds not spent can be re-purposed at the end of 2022 for other one-time spending priorities including FY23 carry forward requests. Historically, the courts have used reserve funds but not gone beyond that amount.

Motion: Judge May moved to approve the Contractor Support for Senior Project Manager Developer Training and Critical IT Projects in FY22, the Matheson Carpeting, the Employee Incentive Awards, the Interstate Compact for Juveniles (ICJ) Operations Funding, the Educational Assistance for FY22, the Seventh District Court – Equipment and Improvements, the District Court Two Time-Limited Law Clerks (Continuation of Funding), the Secondary Language Stipend, the Technology Improvements – Utah Supreme Court and Court of Appeals Benches, the Public Transit Partial Reimbursement Program, the Third District Court – Media Carts, the New Taylorsville State Office Building (TSOB) Probation Offices Cabling/Network Spend, the Price, Utah GAL Office Lease Termination, Relocation and New Space Build Out, the Carry forward Bar Foundation Grant for Teen Website Development, the Sexual Violence Program Coordinator, the IT – Computer/Printer Replacement Inventory, the Facilities – Unforeseen Projects & Repairs, the Applicant Tracking (ATS) and Onboarding System Request, the Support for In-Person Conference and Employee Manager Training, the ODR Facilitator Training, and the Reserve one-time funds request, as presented. Judge Farr seconded the motion, and it passed unanimously.

ONGOING FUNDING REQUESTS

Court Commissioners – Recruit and Retain

\$92,500

Alternate funding: None, except another request to the legislature.

As part of the budget cutting for FY21, the courts committed to taking \$475,000 of ongoing turnover savings to meet our overall budget reduction. The courts forecasted this would take the entire fiscal year of 2021 to accumulate. The courts recently eliminated 2 positions in Third District Juvenile Court. These eliminated positions boosted ongoing turnover savings by \$147,000. This unexpected windfall allows the courts to reconsider the court commissioners' request that has been put forward in two different legislative sessions for ongoing funding.

Ongoing Turnover Savings to Address 11% Salary Cap

\$50,000

Alternate funding: The cost of the solution represents almost half of the court's yearly hotspot allocation. The courts would need to address this issue over several years without this one-time request for additional carry forward money.

In February 2020 the Judicial Council approved the use of 20% of the estimated annual ongoing turnover savings not to exceed \$110,000 in a fiscal year by the State Court Administrator and Deputy State Court Administrator to address departmental reorganizations, "hot spot" salary adjustments and other types of routine ongoing salary increase requests. This year, the courts request an additional \$50,000 to address the consequences of a now-repealed HR

policy that limited salary increases for individuals who were internally promoted to 11% of their current salary. Over the years, this policy resulted in external hires earning larger salaries than some of our internal hires who are in the same roles and have similar years of experience. The request also includes a couple of salary adjustments to address comparability issues related to addressing the 11% rule impact.

District Court Administration Reorganization

\$126,000

Alternate funding: One-time funding to cover the position in the short term with a commitment to fund will ongoing funds as soon as they are available. A legislative request may be another option, but it will not meet the urgency of this request.

Access to justice in the district courts has evolved over the last decade and will continue to evolve for years to come. The Board of District Court Judges is playing a greater role in creating the vision for the District Courts and how they operate. A growing number of programs, initiatives, and applications have been developed that require resources to maintain, improve, and operate. The Board of District Court Judges, District Court Bench, Trial Court Executives, District Clerks of Court and other district court staff need more support to continue moving forward with their current and future initiatives. The purpose of the request is to secure funding to support one additional FTE in the Office of District Court Administration (ODCA).

The AOC has been working to restructure innovations in a manner to offer better support for the demands on court personnel.

Grants Coordinator Position – Continued Funding

\$78,900

Alternate funding: Continued use of one-time carry forward funds.

The AOC requested to convert funding for the Grant Coordinator (GC) position to ongoing funds. The courts are now six months past the filling of this position. The AOC believes sufficient progress has been made in the following areas to justify ongoing funding for FY22:

- assessing past compliance with grants,
- building relationships with grant providers,
- establishing guardrails to the grant compliance process in terms of review of submissions since the coordinator start date
- developing a revised grant policy (CJA Rule 3-411),
- preparing a grant compliance calendar,
- building strong relationships of trust with Court grant managers and
- collaborating with grant applicants to submit select grants that meet the grant moratorium exceptions for Judicial Council review.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge Connors moved to approve the Court Commissioners – Recruit and Retain, the Ongoing Turnover Savings to Address 11% Salary Cap, the District Court Reorganization, the

Grants Coordinator Position, ongoing funds requests' as presented. Judge Michelle Heward seconded the motion, and it passed unanimously.

9. SENIOR JUDGE RULES FOR APPROVAL: (Cathy Dupont)

Chief Justice Durrant welcomed Cathy Dupont. In the fall of 2019 the Board of Senior Judges created a workgroup to amend senior judge rules. At the same time, the TCEs and the Management Committee identified language in the senior judge rules that was not clear. In October of 2020, the senior judges presented proposed amendments to the Policy and Planning Committee. The Policy and Planning Committee appointed a workgroup to review and make recommendations about the proposed amendments to the senior judge rules. The workgroup included Judge Connors, Chair, Judge Pullan, Cathy Dupont, staff, Judge Atherton, active senior judge, Peyton Smith, TCE, Third District Court, and Joyce Pace, TCE, Fifth District and Juvenile Courts.

The workgroup accepted the proposed amendments to the senior judge rules presented by the senior judges at the October 2020 Policy and Planning Committee meeting, except for Rules 3-108 and 11-201. The workgroup added language to Rule 3-108 that permits some flexibility for appointing a senior judge when there are exigent circumstances. Rule 11-201 was modified at the request of the Supreme Court to give the Management Committee the authority to recommend the appointment of a senior judge.

The Board of Senior Judges approved the workgroup's changes, with the understanding that Policy and Planning will work to establish guidelines for evaluating how to determine the need for senior judges in Rule 11-201, and that the language will be reviewed in 2 to 3 years. On June 4, 2021, the Policy and Planning Committee approved the amendments to the senior judge rules.

Judge Todd Shaughnessy questioned if it would be better to have a designated presiding judge over the senior judges as a contact person or a liaison between the courts and the senior judges. Ms. Dupont explained the Board of Senior Judges has been making efforts to be a more structured group. A recommendation was made that the Chair of the Board can serve in that role. Shane Bahr mentioned many of the districts have received responses from senior judges and have filled their needs. Justice Himonas was concerned about having to call senior judges rather than email them for assignments.

The two TCEs on the workgroup provided valuable experience with senior judge usage. Judge Pettit asked about mentoring senior judges. Ms. Dupont provided that Tom Langhorne wanted senior judges to serve as mentors in rural areas.

Judge Pullan corrected CJA Rule 1-304 on line 74 and line 79. Judge Pettit recommended having the Board of Senior Judges review the structure of assignments.

Chief Justice Durrant thanked Ms. Dupont. Judge Connors thanked Ms. Dupont for her work on the rules. Policy & Planning will hold on the structure of assignments until it is determined whether having a presiding judge through the Board helps.

Motion: Judge Shaughnessy moved to approve CJA Rules 1-305, 3-104, 3-108, 3-113, 3-501, and 11-201, as presented, with an effective date of June 28, 2021 and to be sent for public comment. Judge Connors seconded the motion, and it passed unanimously.

10. JUDICIAL COUNCIL 2022 SCHEDULE APPROVAL: (Ron Gordon)

Chief Justice Durrant welcomed Ron Gordon. Mr. Gordon presented the 2022 proposed Judicial Council schedule. Mr. Gordon explained that the Council will plan on holding their March meeting in St. George in conjunction with the Bar's Spring Convention in St. George, if the convention is held in St. George.

Chief Justice Durrant thanked Mr. Gordon.

Motion: Judge Shaughnessy moved to approve the Judicial Council 2022 schedule, as presented. Judge Connors seconded the motion, and it passed unanimously.

11. OLD BUSINESS/NEW BUSINESS

Mr. Sweeney sought funding to substitute ARPA funds to cover July, August, September for senior judges and JAs needed. The JAG award includes funding for the courts for the backlog of jury trials. Mr. Gordon explained the courts are hoping for reimbursement of funds from ARPA funding.

Motion: Judge Connors moved to approve using FY22 one-time turnover July savings of \$300,000 and \$150,000 budget to pay for senior judge and JAs to assist with the backlog of jury trials to be reviewed on a monthly basis to compare federal regulations to ensure the courts are following the appropriate rules. Judge Shaughnessy seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION

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

13. CONSENT CALENDAR ITEMS

None.

14. ADJOURN

The meeting adjourned.