

JUDICIAL COUNCIL MEETING

Minutes

July 19, 2021

Meeting conducted through Webex and at
450 S. State St.

Salt Lake City, UT. 84111

9:00 a.m. – 12:30 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Todd Shaughnessy, 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. David Mortensen
Rob Rice, esq.
Hon. Brook Sessions

Excused:

Hon. Samuel Chiara
Hon. Kara Pettit
Hon. Derek Pullan

Guests:

Hon. Kate Appleby, Senior Judge
Michael Cowden, Code for America
Max Hell, Code for America
Kristina King, OLRGC
Joanna Landau, Indigent Defense Commission
Dr. Arul Mishra, University of Utah

AOC Staff:

Ron Gordon
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Paul Barron
Casey Huggard
Kara Mann
Meredith Mannebach
Jordan Murray
Bart Olsen
Jim Peters
Jon Puente
Clayson Quigley
Lucy Ricca
Neira Siaperas
Nick Stiles
Karl Sweeney
Keisa Williams
Jeni Wood

Guests Cont.:

Dr. Himanshu Mishra, University of Utah
Holle Petersen, Utah Legal Services
Meilani Santillan, Code for America
Noella Sudbury, Sudbury Consulting

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 David Connors moved to approve the June 28, 2021 Judicial Council meeting minutes, as amended on page 7 to change FY22 to FY21 expense. Judge Brook Sessions seconded the motion, and it passed unanimously.

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

Chief Justice Durrant did not provide a report.

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

Ron Gordon announced that Tonya Mashburn from KSL will join the courts as the new Public Information Officer. Senior judge coverage filling existing needs in the districts is going well. The Senate is expected to hold an Extraordinary Session in August to confirm new judges.

The Management Committee is meeting weekly to discuss rising COVID case counts while moving cases forward. There was an incident in which a juror was exposed to a court team member who had tested positive for COVID.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

The committee met earlier this month to address annual budget requests.

Liaison Committee Report:

The Liaison Committee has not met since the last Council meeting. The Executive and Judicial Compensation Commission informed the court that they are focusing on compensation for judges.

Policy and Planning Committee Report:

Judge Derek Pullan was unable to attend.

Bar Commission Report:

Rob Rice stated the Bar is looking forward to the upcoming Summer Convention in Sun Valley. Last checked, early registration was on par with the last Sun Valley Convention.

5. UTAH RETIREMENT SYSTEMS MEMBERSHIP COUNCIL (UTAH CODE § 49-11-205): (Ron Gordon)

Chief Justice Durrant welcomed Ron Gordon. Mr. Gordon sought the Council’s approval to reappoint Judge Pettit or appoint a new judge to the Retirement Systems Oversight Board to fill the Judiciary representative. Judge Pettit was willing to serve a second term. Utah Code § 49-11-205(2)(f) states “one council member shall be a representative of members of the Judges’ Noncontributory Retirement System selected by the Judicial Council.” Therefore, the member does not need to be a Judicial Council member.

Chief Justice Durrant thanked Mr. Gordon.

Motion: Justice Deno Himonas moved to approve the reappointment of Judge Pettit to the Utah Retirement Systems Membership Council, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

6. PAY INCREASE FOR CONTRACT INTERPRETERS: (Kara Mann)

Chief Justice Durrant welcomed Kara Mann. Ms. Mann stated nationwide courts are addressing the COVID-related backlog of cases. Recently, another state asked Utah’s contract certified and approved court interpreters to work for their courts at a higher rate of pay. Court interpreters provide an essential role in the judicial process. Without a contract rate increase to stay competitive with other states, the courts run a high likelihood of further prolonging the backlog for cases that require a court interpreter.

A survey of the contract rates for freelance court interpreters in nearby states showed Utah has one of the lowest hourly rates of all the states surveyed.

State	Credential	Hourly Rate
Arizona	Certified	\$95*†
Wyoming	Certified	\$55
Colorado	Certified	\$45-\$55† (pay depends on the language)
New Mexico	Certified	\$50
Idaho	Certified	\$39 - \$44† (pay depends on their exam scores)
Utah	Certified	\$39.80

*Arizona is a non-unified court system, with the rates decided by the local courts. This is the data available for the largest jurisdiction in the state.

† Denotes two-hour minimums

To retain interpreters, the Language Access Committee recommended the Judicial Council approve a permanent 20% rate increase for contract spoken language court interpreters to stay competitive with other states. The proposed 20% contract hourly rates would be as follows.

Credential	Current Contract Rate	Proposed Contract Rate
Certified	\$39.80	\$47.76
Approved	\$34.11	\$40.93
Registered	\$34.11	\$40.93
Conditionally-Approved	\$18.57	\$22.28

The 20% increase will cost an additional \$156,152 based on FY19 spending, which is the last full fiscal year not impacted by the pandemic. Contract court interpreters are paid from the JWI fund. Karl Sweeney agreed the 20% interpreter increase can be made permanent without any additional funding required. This increase would not affect the staff interpreters or the ASL interpreters.

Ms. Mann recommended a 20% contract rate increase be approved on an ongoing basis, then approve an additional one-time bonus increase (varying between 5.62% -.19%, depending on the credential) for FY22 only as the courts address the backlog. The Management Committee

requested that Ms. Mann research the possibility of increasing certified interpreters to \$50 and round up to the nearest dollar for the other interpreter levels. Mr. Sweeney believed it would be sustainable for FY22 because there is carryforward money for that account, but does not know if it could continue past FY22 on an ongoing basis. The total expenditures for FY22 would need to be reviewed since there is fluctuation in the carryforward amounts for this fund.

On July 15, 2021 the Budget & Fiscal Management Committee unanimously approved by email a 20% contract rate increase on an ongoing basis. Only one of the four members approved an additional one-time bonus increase (varying between 5.62% -.19%, depending on the credential). Judge May wasn't sure how this budget request compares to other budget requests and believed this should be reviewed annually.

Judge Shaughnessy thought Utah's interpreter pay should be comparable to neighboring states. Judge Brian Cannell asked if interpreters would be participating remotely for neighboring states' hearings. Ms. Mann assumed the majority will perform remote interpretations with neighboring states. Certified interpreters are only available in 18 languages so often other levels of interpreters are needed.

Heidi Anderson noted the IT Department is working with technology resources to better assist with remote interpreting. Ms. Mann said each justice court can select the amount they pay interpreters, some use the court's pay baseline and others set their own pay amounts. Salt Lake City Justice Court pays interpreters more than the Judiciary. Justice courts compete with other courts for interpreters.

Chief Justice Durrant thanked Ms. Mann.

Motion: Judge Shaughnessy moved to approve a permanent 20% increase in pay for contract spoken language interpreters, with a one-time FY22 bonus increase (varying between 5.62% -.19%, depending on the credential), bringing the certified interpreters pay to \$50, and rounding up to the nearest dollar amount for all other interpreter credentialing, as presented. Judge Connors seconded the motion, and it passed with Justice Himonas preferring not to vote without additional information.

7. JUSTICE COURT JUDGE CERTIFICATIONS: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Utah Code § 78A-7-202(5) requires that "every prospective justice court judge attend an orientation seminar conducted under the direction of the Judicial Council. Upon completion of the orientation program, the Judicial Council shall certify the justice court judge as qualified to hold office." Code of Judicial Administration Rule 9-106 establishes "the orientation and testing procedure to be followed in determining certification of proposed justice court judges."

Prospective justice court judges include city and county appointees who are attorneys who may or may not have criminal law experience, or who are individuals who do not have legal training. As currently structured, appointee attends a week-long "orientation seminar" which includes two days of classroom instruction and three days of observation in courtrooms in Salt Lake City, Sandy, and West Valley. Following the seminar, an exam is administered to test the

prospective judges' understanding of the concepts most relevant to serving as a justice court judge.

Mr. Peters sought approval from the Council to replace the current exam with a revised version that was developed with the assistance of faculty and the Utah Judicial Institute. Mr. Peters also sought approval for future exams to be updated by the Board of Justice Court Judges without the need to obtain Council approval for each revision. The Council was in favor of having the Board of Justice Court Judges oversee the curriculum for New Judge Orientation, which could vary depending on the background and experience of the participants. Delegating these functions to the Board of Justice Court Judges would not require a rule or statute change.

Judge Shaughnessy explained that the Management Committee felt having the Council approve the exam might result in the exam being posted publicly, whereas, the Board can be delegated to edit the exam without public access.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Paul Farr moved to approve having the Board of Justice Court Judges oversee the orientation seminar and exam for new justice court judges, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

8. SENIOR JUDGE CERTIFICATIONS: (Cathy Dupont)

Chief Justice Durrant welcomed Cathy Dupont. Ms. Dupont presented three applications for new active senior judges and several applications for recertifications for active and inactive senior judge status. None of the judges seeking initial certification or recertification have any outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court. (Code of Judicial Administration Rule 11-201(2)) All of the judges meet the criteria found in Code of Judicial Administration Rules 11-201. Senior Judges., 11-203. Senior Justice Court Judges., and 3-111. Performance Evaluation of Active Senior Judges and Court Commissioners.

CJA Rule 3-111(3)(A)(ii)(b) states a satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater. The National Center for State Courts (NCSC) prepares the performance evaluations on a Likert scale. Seventy percent of a 0-5 score is 3.5. All senior judges' scores exceed 3.5.

Initial Certifications Seeking Active Senior Judge Status

Judge Robert Dale will retire on August 16, 2021 from the Second District Court.
Performance Survey Score No information available

Judge Royal Hansen will retire on August 16, 2021 from the Third District Court.
Performance Survey Score 4.60

Judge Darold McDade will retire on July 16, 2021 from the Fourth District Court.
Performance Survey Score No information available

Recertifications of Active Senior Judges
District Court Active Senior Judges

Judge Judith Atherton

Performance Survey Score 4.53

Receiving Benefits, No

History of Hours Worked 2021 = 0, 2020 = 68, 2019 = 0, 2018 = 0

Judge L.A. Dever

Performance Survey Score No information available

Receiving Benefits, No

History of Hours Worked 2021 = 0, 2020 = 0, 2019 = 16, 2018 = 0

Judge Gordon Low

Performance Survey Score 3.99

Receiving Benefits, Yes

History of Hours Worked 2021 = 0, 2020 = 0, 2019 = 0, 2018 = 0

Judge Michael Lyon

Performance Survey Score 4.71

Receiving Benefits, Yes

History of Hours Worked 2021 = 0, 2020 = 44, 2019 = 0, 2018 = 8

Judge Sandra Peuler

Performance Survey Score 4.45

Receiving Benefits, No

History of Hours Worked 2021 = 0, 2020 = 0, 2019 = 0, 2018 = 0

Judge Gary Stott

Performance Survey Score 4.18

Receiving Benefits Yes

History of Hours Worked 2021 = 16, 2020 = 12, 2019 = 0, 2018 = 0

Juvenile Court Senior Judges

Judge Kent Bachman

Performance Survey Score 4.25

Receiving Benefits, No

History of Hours Worked 2021 = 0, 2020 = 0, 2019 = 0, 2018 = 0

Judge Frederick Oddone

Performance Survey Score 4.81

Receiving Benefits, Yes

History of Hours Worked 2021 = 4, 2020 = 28, 2019 = 0, 2018 = 0

Justice Court Active Senior Judges

Judge Ronald Wolthuis

NCSC does not conduct performance evaluations on justice court judges.

Justice court judges do not receive benefits from the Utah Judiciary.
Justice court judges' number of hours worked is unknown as they work in multiple courts.

Appellate Court Active Senior Judges

Judge Russell Bench

Performance Survey Score No information available

Receiving Benefits, Yes

History of Hours Worked 2021 = 0, 2020 = 0, 2019 = 0, 2018 = 0

Recertifications of Inactive Senior Judges

District

Judge William Bohling

Judge Scott Hadley

Judge Thomas Higbee

Juvenile

Judge Kay Lindsay

Justice

Judge David Marx

Judge Allen Vail

Judge Scott Waterfall

Chief Justice Durrant thanked Ms. Dupont.

Motion: Judge Connors moved to approve the certification of Judge Robert Dale, Judge Royal Hansen, and Judge Darold McDade as active senior judges; the recertification of Judge Atherton, Judge Dever, Judge Low, Judge Lyon, Judge Peuler, Judge Stott, Judge Bachman, Judge Oddone, and Judge Wolthuis as active senior judges; and the recertification of Judge Bohling, Judge Hadley, Judge Higbee, Judge Lindsay, Judge Marx, Judge Vail, and Judge Waterfall as inactive senior judges, as presented. Judge Farr seconded the motion, and it passed unanimously.

9. BUDGET AND GRANTS (JCTST ALLOCATIONS): (Judge Mark May, Karl Sweeney, Jim Peters, and Jordan Murray)

Chief Justice Durrant welcomed Judge Mark May, Karl Sweeney, Jim Peters, and Jordan Murray.

JCTST Allocations

Utah Code § 78A-7-301 and Code of Judicial Administration Rule 9-107 describe the Justice Court Technology, Security and Training Account (Fund) created by the Utah Legislature. The Fund increases with the collection of the security surcharge attached to a variety of other fines. The Fund decreases as money is allocated to local government and state entities involved in operating or supporting one or more justice courts.

Each year, applications are solicited for audit, technology, security, and training needs in justice courts throughout the state. The Board of Justice Court Judges (Board) reviews the requests and makes recommendations to the Council. Below is a chart that describes all requests received and the Board's recommended amount.

The balance of the Fund as of July 1, 2020 was \$636,663. The Council authorized expenditures for FY21 in the amount of \$689,126 and revenue collected during FY21 is projected to be approximately \$675,000, resulting in a forecasted balance of \$622,537 as of June 30, 2021.

Recommendations for spending from the Fund in FY22 amount to \$778,101. If approved and revenues in the coming year increase to \$725,000, the Fund balance is expected to be approximately \$50,000 lower next year than it was this year. In other words, if revenue continues to run lower than expenses by the amount forecasted for FY22, there will come a point approximately 10 years from now where the Fund is no longer capable of covering the needs of the justice courts.

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
1	AOC/Information Technology	Programming and Help Desk Support for Justice Courts	\$208,806		\$208,806	Personnel costs attributable to Justice Courts for IT support
2	AOC/Information Technology	Google Accounts for Justice Court Judges and Clerks	\$22,500		\$22,500	500 licenses @ \$45 each
3	AOC/Information Technology	CORIS Infrastructure for Justice Courts	\$165,215		\$165,215	CORIS Infrastructure for Justice Courts
4	AOC/Judicial Institute (Education)	Request for Justice Courts' Share of Education's Overhead Costs	\$45,080		\$45,080	Partial cost of providing employee classes, the Annual Judicial Conference, training technology, professional memberships and training of education personnel
5	AOC/Judicial Institute (Education)	Judicial Decision Making (fka Law and Literature)	\$8,000		\$8,000	Funding for a 1.5 day program for 15 judges
6	AOC/Judicial Institute (Education)	Constitutional Law or Other Workshop	\$4,000		\$0	Cost of an extra workshop to be provided in connection with the spring conference
7	AOC/Judicial Institute (Education)	Small Claims Training for Judges Pro Tem	\$1,000		\$1,000	Small claims training provided twice each year for judges pro tem
8	AOC/Judicial Institute (Education)	New Clerk Orientation	\$8,000		\$0	Cost of in-person orientation for new clerks in connection with the spring conference
9	Board of Justice Court Judges	Trust and Confidence Committee	\$2,000		\$2,000	Funding for outreach/CLE presentations to build trust and confidence in the Justice Courts
10	Board of Justice Court Judges	Computer Equipment for Judges	\$25,000		\$25,000	Funding for the cost of laptops for the judges
11	Board of Justice Court Judges	District Trainings	\$10,000		\$10,000	Funding to provide training to judges and clerks at the district level
12	Board of Justice Court Judges	Financial Assistance for Active Senior Judges to Attend the Spring Conference	\$2,500		\$2,400	Assistance for four active senior judges @ \$600 each (if application is approved)
13	Board of Justice Court Judges	Out-of-State Training Fund	\$50,000		\$20,000	Funding for out-of-state training and other educational opportunities
14	Centerville	One year subscription to DocuSign Business Pro	\$480		\$0	Software to obtain electronic signatures from defendants on various forms
15	Ephraim Justice Court	Replacement Laptop for Courtroom	\$1,000		\$0	Funding for a new laptop for clerical use
16	Holladay Justice Court	Public Computer Access	\$2,295		\$0	Funding to provide a computer station outside the clerks' office
17	Millard County Justice Court	Defibrillator	\$400		\$400	Funding to help purchase a new defibrillator for the courthouse lobby
18	North Salt Lake Justice Court	Digital Signature Service	\$1,920		\$0	Funding to purchase software that can obtain digital signatures from defendants
19	Ogden City Justice Court	Ballistic Glass for Front Counter	\$69,925		\$0	Funding to cover a Design Basis Threat Analysis and ballistic glass for the front counter
20	Provo City Justice Court	iPads, Wall Mounts and Electrical Work for Charging Stations	\$4,500		\$0	Funding to purchase hardware to obtain digital signatures from defendants
21	Rich County Justice Court	Laptop for the Justice Court Judge	\$1,800		\$0	Funding to purchase a new laptop for the judge
22	Riverdale Justice Court	Security Upgrades for the Riverdale Courthouse	\$10,507		\$1,300	Funding to fix the panic buttons, install a bullet-proof window, and install a wood door
23	Salt Lake County Justice Court	New Xray Machine	\$20,500		\$0	Funding to replace an Xray machine that is over 25 years old
24	Taylorsville Justice Court	LiveScan	\$7,500		\$3,200	Funding for the purchase and installation of a LiveScan fingerprint machine for the court
25	Utah County Justice Court	Improved Security for the Entrance Checkpoint for the Courthouse	\$4,027		\$2,000	Funding to purchase ballistic resistant film to the tempered glass used at the security checkpoint
26	Washington City Justice Court	Sound System for Courtroom	\$9,940		\$0	Funding to upgrade the sound system for the courtroom
27	West Jordan Justice Court	Upgrade Courtroom Technology	\$104,000		\$0	Funding to upgrade the sound system and other courtroom technology
Total One-Time Grant Requests for FY22			\$790,895		\$516,901	

Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
AOC/Audit	Internal Audit Position Dedicated to the Justice Courts	\$75,000	\$75,000		Covers the cost of one FTE equivalent in the Audit Department
AOC/Information Technology	Webex Licenses and Support	\$20,000	\$20,000		Covers cost of Webex licenses at \$215 each
AOC/Judicial Institute	Education Coordination Fee	\$50,000	\$50,000		Coordination of all justice court events with personnel from Education
AOC/Judicial Institute	Justice Court Education Coordinator	\$55,000	\$55,000		Funding for half of the Justice Court Education Coordinator
AOC/Judicial Institute	New Judge Orientation	\$3,500	\$3,500		Estimated cost of orientation for new justice court judges up to three times per year
AOC/Judicial Institute	Justice Court Clerks' Conference	\$50,000	\$15,000		Estimated cost of providing an in-person conference for 350 clerks
AOC/Judicial Institute	Justice Court Judges' Conference (Spring)	\$40,000	\$28,450		Estimated cost of providing an in-person conference to 77 judges in spring 2022
AOC/Judicial Institute	Annual Judicial Conference (Fall)	\$25,800	\$14,250		Estimated cost of having 77 judges attend the Annual Judicial Conference
AOC/Judicial Institute	Justice Court Benchbook Update	\$1,500	\$0		The contract with Brent Johnson required \$3,000 every two years
Totals					
	Total Requests	\$1,111,695			
	Total Ongoing Grant Funds		\$261,200		
	Total One-Time Grant Funds Recommended for FY22			\$516,901	
	Total of Recommended Awards			\$778,101	

The criteria the Board used for deciding on budget items include 1) the amount of the request (amounts ranging from hundreds of dollars to more than \$100K); 2) if a cost is shared by the local city or county; and 3) extraordinary needs, such as a defibrillator and a live scan machine. Judge Augustus Chin noted revenues are down for all justice courts, therefore, the Council cannot rely on the notion that justice courts make money.

Annually, the Board meets with Ms. Anderson (IT Department) and Lauren Andersen (Education Department) to address their budget requests. Ms. Anderson said two-thirds of IT help desk calls come from the justice courts.

Motion: Judge Connors moved to approve the one-time and ongoing Justice Court Technology, Security, and Training requests, as presented. Judge Chin seconded the motion, and it passed unanimously.

Mr. Murray provided the 2021 second quarter grants update. The total award percentage of grant funding includes 92% federal and 8% non-federal funds. Mr. Murray will implement grant processes through the Accounting Manual rather than a standalone manual.

Percentage of grant funds

- Appellate 33%
- District 0
- Juvenile 31%
- Justice courts 5%

- ADR 5%
- IT 9%
- GAL 17%

Source of Grant Funds	Grant Award Budget	Expenditures Life-to-Date	Expenditures Calendar Q2	Grant Balance Remaining
Federal Grants				
DHHS Children's Bureau	\$ 145,564	\$ 102,137	\$ 38,874	\$ 43,427
DHHS Children's Bureau	\$ 147,058	\$ -	\$ -	\$ 147,058
DHHS Children's Bureau	\$ 145,564	\$ 81,326	\$ 23,135	\$ 64,238
DHHS Children's Bureau	\$ 156,103	\$ 29,980	\$ 5,606	\$ 126,123
DHHS Children's Bureau	\$ 100,000	\$ 100,000	\$ 30,353	\$ -
DOJ Office of Violence Against Women	\$ 85,000	\$ 40,000	\$ 20,000	\$ 45,000
DOJ Office of Victims of Crime	\$ 289,902	\$ 220,000	\$ 69,000	\$ 69,902
DOJ National CASA Association	\$ 26,662	\$ 7,024	\$ 5,836	\$ 19,638
State Justice Institute	\$ 200,000	\$ 77,872	\$ 25,434	\$ 122,128
State Justice Institute	\$ 75,000	\$ -	\$ -	\$ 75,000
DOJ Justice Assistance Grant	\$ 180,000	\$ -	\$ -	\$ 180,000
<i>Subtotal for Federal</i>	\$ 1,550,853	\$ 658,339	\$ 218,238	\$ 892,514
Non-Federal Grants				
The Hewlett Foundation	\$ 250,000	\$ -	\$ -	\$ 250,000
Pew Charitable Trusts	\$ 110,000	\$ 20,250	\$ 20,250	\$ 89,750
Comm on Service & Volunteerism (UServe)	\$ 5,500	\$ 3,891	\$ 2,866	\$ 1,609
<i>Subtotal for Non-Federal</i>	\$ 365,500	\$ 24,141	\$ 23,116	\$ 341,359
TOTALS FOR ALL ACTIVE GRANTS	\$ 1,916,353	\$ 682,480	\$ 241,354	\$ 1,233,873

Chief Justice Durrant thanked Judge May, Mr. Sweeney, Mr. Peters, and Mr. Murray.

10. AMERICAN RESCUE PLAN ACT (ARPA) FUNDING: (Ron Gordon, Cathy Dupont, and Michael Drechsel)

Chief Justice Durrant welcomed Ron Gordon, Cathy Dupont, and Michael Drechsel. Mr. Gordon explained that the Treasury Department issued a frequently asked question that specifically said ARPA funds can be used to address trial backlogs and he is confident we can accept the 1 million set aside for the courts for that purpose. The additional ARPA funds are being held pending the publication of the final regulations. We hope to see the final regulations soon.

The courts anticipate \$261K in CARES Funds.

Chief Justice Durrant thanked Mr. Gordon, Ms. Dupont, and Mr. Drechsel.

11. REGULATORY REFORM INNOVATION OFFICE UPDATE: (Lucy Ricca)

Chief Justice Durrant welcomed Lucy Ricca. Justice Himonas thanked Ms. Ricca, who will be leaving the office soon, for her help with this program.

Sandbox Activity (October 2020 – May 2021)

- 28 entities approved to offer services
 - Low Risk = 4 (AGS Law, Blue Bee, Firmly, Hello Divorce)
 - Low/Moderate = 10 (FOCL Law, Jordanelle Blocks, LawPal, Legal Claims, Inc., Mountain West Legal Protective, R&R, Robert Debry & Associates, Rocket Lawyer, Tanner, Xira)

- Moderate = 13 (1Law, Davis & Sanchez, DSD Solutions, Estate Guru, Holy Cross Ministries, LawGeex, Law HQ, Law on Call, Nuttall, Brown & Coutts, Off the Record, Pearson Butler, Sudbury Consulting, Timpanogos Legal Center)
- High = 1 (AAA Fair Credit)
- 4% high risk; 46% moderate risk; 36% low/moderate risk; 14% low risk
- 12 entities reporting data to date; 8 reporting this period
 - 2 low risk entities; 6 low/moderate risk entities; 4 moderate entities
- 1,896 legal services sought from over 1,500 unduplicated clients
 - Low = 113 legal services sought (2 entities)
 - Low/Moderate = 491 legal services sought (6 entities)
 - Moderate = 1292 legal services sought (4 entities)
 - 68% of legal services produced via moderate risk entities
 - 1459 legal services have been delivered by a lawyer (or lawyer employee) or software for form or document completion only with lawyer involvement
 - 437 legal services have been delivered by software with lawyer involvement
 - The rank of legal category addressed has been 1) End of Life Planning; 2) Business; 3) Marriage/Family; 4) Financial; 5) Accident/Injury. Five legal categories accounted for 77% of legal services. The remaining 15 possible legal categories accounted for 23%. The top three categories accounted for 58% of legal service.

Chief Justice Durrant thanked Ms. Ricca.

12. INDIGENT DEFENSE COMMISSION (IDC) REPORT: (Joanna Landau)

Chief Justice Durrant welcomed Joanna Landau. Ms. Landau is leaving the IDC for the Federal Defender’s Office. Adam Trupp will be the interim director until Ms. Landau’s position is filled. The IDC continues to expand their grant program with 24 counties currently participating. Ms. Landau was on the pretrial reform workgroup, which took an interest in first appearances. Ms. Landau thanked the Council and has appreciated working with the Judiciary.

Chief Justice Durrant thanked Ms. Landau.

13. COMMISSIONER RETENTION CERTIFICATIONS: (Shane Bahr)

Chief Justice Durrant welcomed Shane Bahr. Court commissioner evaluation and retention processes are governed by CJA Rules 3-111 and 3-201. Mr. Bahr presented two commissioner applications for recertifications. Neither of the commissioners has a complaint pending before the Commissioner Conduct Commission.

Commissioners whose terms expire this year

Blomquist, Michelle	Third District Court	Term start 1/1/18	Term end 12/31/21
Minas, Russell	Third District Court	Term start 10/9/19	Term end 12/31/21

Chief Justice Durrant thanked Mr. Bahr.

Motion: Judge Shaughnessy moved to approve the recertification of Commissioner Michelle Blomquist and Commissioner Russell Minas. Judge Connors seconded the motion, and it passed unanimously.

14. EXPUNGEMENT UPDATE: (Justice Deno Himonas, Noella Sudbury, Meilani Santillan, Dr. Arul Mishra, Dr. Himanshu Mishra, Michael Drechsel, Heidi Anderson, Clayson Quigley, and Jon Puente)

Chief Justice Durrant welcomed Justice Deno Himonas, Noella Sudbury, Meilani Santillan, Dr. Arul Mishra, Dr. Himanshu Mishra, Michael Drechsel, Heidi Anderson, Clayson Quigley, and Jon Puente. Ms. Sudbury presented the Clean Slate program thanking the IT Department for this time-consuming partnership. Utah law allows individuals to expunge their records, but the petition-based court process is so complex, costly, and complicated that the vast majority of people eligible to clear their records never obtain relief. In 2019, Utah became the second state in the nation to pass a Clean Slate law (H.B.341) requiring courts to make “reasonable efforts” to identify and automatically expunge qualifying misdemeanor records. Utah Code § 77-40-116. This law eliminates the need for qualifying individuals to petition the courts to obtain an expungement.

Eligible Offenses

- Class A drug possession offenses
- Most Class B and C misdemeanors
- Infractions
- Dismissals with Prejudice
- Acquittals

Ineligible Cases

- All Felonies;
- Any case types ineligible for expungement under the petition-based process;
- All exempted misdemeanors under Utah Code § 77-40- 102(5)(c) (weapons offenses, sex offenses, offenses against the person including DV and simple assault, misdemeanor DUIs, etc.)

The plan was to use Code for America’s computer software to match criminal case records then create a computer code to identify eligible cases. Currently, there are 203,000 people in Utah who meet the eligibility criteria. Mr. Cowden evaluated open-source alternatives for computer software to identify eligible cases, but only found one that worked well. Ms. Anderson said the IT Department would need to request funding for this program. Ms. Anderson confirmed reviewing expungement possibilities would be ongoing.

Ms. Anderson’s team is working on code revisions, taking into consideration any future items that may be added. The IT Department continues to work on the notification process and applying judge’s signatures to the orders, which is challenging with so many judges. Ms. Anderson asked if the courts could potentially use an AOC stamp rather than a judge’s signature. Judge Shaughnessy thought managing justice court presiding judges for signatures might be easier than managing all justice court judges, perhaps through an interlocal agreement. Justice court judges cannot sign outside of their jurisdiction, which would invalidate using a presiding

judge. Judge Farr will discuss this with the Board of Justice Court Judges. For notifications to prosecutors, one option might be to inform prosecutors of a link to find the cases.

Ms. Anderson said from an implementation standpoint, the IT Department still has several steps before they are ready to begin. Ms. Anderson was not comfortable with providing a date they would be ready and will speak with her team and Code for America. The Council requested Keisa Williams draft an opinion about dismissals without prejudice cases.

Ms. Anderson appreciated Code for America personnel and Ms. Sudbury's assistance. Ms. Sudbury thanked the University of Utah members for their time and expertise. Judge Shaughnessy said this is very impressive work for the team who put all of this together. Chief Justice Durrant thanked Justice Himonas, Ms. Sudbury, Ms. Santillan, Dr. A. Mishra, Dr. H. Mishra, Mr. Drechsel, Ms. Anderson, Mr. Quigley, and Mr. Puente, noting he was thrilled with the amount of work and expertise of the presenters.

15. WATER LAW JUDGES: (Judge Kate Appleby)

Chief Justice Durrant welcomed Judge Kate Appleby. Judge Appleby would like to establish a rule creating water law judges comparable to the rule that creates tax law judges. Code of Judicial Administration Rule 6-103 District Court Tax Judges, was designed to establish a procedure whereby district court tax cases are heard by designated tax judges. Judge Appleby presented the Resolving Water Conflicts in California Courts Report and the Network Note Focus on Utah Report that focused on race, federal Indian policy, and access to water. Judge Appleby felt this is the right time as many other states have water law judges, noting that litigants would not be forced to use these judges but can if they choose.

The Bear River runs through three states, the Bear River Compact divides the river into three sections. There is current litigation on portions of the River and Utah is expecting litigation soon on the Utah portion of the River. The Bear River case currently has 20,000 pending claims. In 1979, the Montana legislature created the Montana Water Court to expedite and facilitate the statewide adjudication of over 219,000 state law-based water rights and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims. Montana has two dedicated water judges and 11 water masters.

There is an organization that is creating course curriculum for training water law judges. Judge Appleby spoke with local judges who have water law cases that have continued for years. Justice Himonas asked if the venue statute needed amending. Tax judges can hear cases statewide. Judge Shaughnessy questioned if there would be incentives for judges to sign up to handle these matters. Tax judges are supposed to get a break with their caseloads. Cathy Dupont mentioned the senior judge rules allow for coverage by senior judges for tax judges regular calendar when the tax judge is hearing a tax case.

Chief Justice Durrant thanked Judge Appleby.

Motion: Judge Connors moved to refer the creation of a rule for water law judges to the Policy and Planning Committee. Judge Cannell seconded the motion, and it passed unanimously.

16. OLD BUSINESS/NEW BUSINESS

No additional business was addressed.

17. EXECUTIVE SESSION

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

18. CONSENT CALENDAR ITEMS

a) Forms Committee Forms. Approved without comment.

b) Probation Policy 3.1. Approved without comment.

c) Committee Appointments. Appointment of Judge Adam Mow to the ADR Committee.

Appointment of Cade Stubbs and Ingrid Oseguera to the Language Access Committee.

Approved without comment.

19. ADJOURN

The meeting adjourned.