

JUDICIAL COUNCIL MEETING

Minutes

July 30, 2021

12:30 p.m. – 1:08 p.m.

Meeting conducted through Webex

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Augustus Chin
Hon. David Connors
Hon. Paul Farr
Hon. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. David Mortensen
Hon. Kara Pettit
Hon. Derek Pullan

Excused:

Hon. Todd Shaughnessy, Vice Chair
Hon. Brian Cannell
Hon. Samuel Chiara
Hon. Ryan Evershed
Rob Rice, esq.
Hon. Brook Sessions

AOC Staff:

Ron Gordon
Cathy Dupont
Heidi Anderson
Jordan Murray
Nick Stiles
Karl Sweeney
Amanda Herman

Excused:

Michael Drechsel
Shane Bahr
Jim Peters
Neira Siaperas

Guests:

Lucy Ricca, Office of Innovation
James, Teufel, Office of Innovation

1. WELCOME: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. The Council held their meeting through Webex. The Council confirmed they had met the requirements of a quorum, per CJA Rule 2-101. Rules of the conduct of Council meetings, section (1) states “a quorum of the Council is necessary for the Council to take any action.” Section (2) states the “affirmative vote of a majority of the Council members present is required to take final action on any rule or resolution.” Judge Pullan recommended allowing Council members to vote by email on emergent basis. CJA Rule 2-101(1) states “Council members may be present either physically or by means of electronic communication.”

2. GRANT APPLICATION PROPOSAL: (Karl Sweeney and Jordan Murray)

Chief Justice Durrant welcomed Karl Sweeney and Jordan Murray. Mr. Murray submitted a new Office of Innovation grant opportunity. The objective of this project is to contribute to the development, implementation, and nationwide scalability of a regulatory system designed to promote new legal business models and services while protecting consumers. This

project will promote institutional memory and ensure success of the regulatory function of the Office, in addition to increasing the likelihood of success of legal sandboxes across other states by creating tools meant to increase adoptability and efficiency of the Utah model.

The funds requested are:

Cash Match – none

FY22 \$35,020

FY23 \$30,000

In-Kind Match

FY22	\$35,020	\$20,200 (other matching funds)	\$55,220 (total)
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FY23	\$30,000	\$11,075 (other matching funds)	\$41,075 (total)
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A typical Project Grant awarded by SJI requires a 50% cash match. SJI Executive Director, Jonathan Mattiello, suggested the courts application include a request to waive the 50% cash match requirement. If approved, the courts would receive full project funding from SJI with no match requirements imposed. While not required by SJI, an in-kind match of \$31,275 over 18 months will be contributed with non-state funds by Stanford University, Arizona State University or the National Center for State Courts. If the cash match waiver is not approved by the Board, this application request will be retracted, updated with matching requirements as stipulated by the Board, and recirculated to the Judicial Council for review.

Questions/Answers on the Grant application:

- 1) Will additional state funding be required to maintain or continue this program or its infrastructure when this grant expires or is reduced?

Answer: No. The Utah Supreme Court voted unanimously to extend the term of the Legal Regulatory Sandbox to seven years, concluding at the end of August 2027. Operation of the sandbox will continue to be supported by grant funding and possibly through generation of a future operating budget comprised of fees paid by entities enrolled in the sandbox.

- 2) Will the funds to continue this program come from within the Judiciary’s existing budget?

Answer: No

- 3) How many additional permanent FTEs are required for the grant?

Answer: 0

Temp FTEs?

Answer: 0.15

- 4) Has this proposal has been reviewed and approved by the following?

Answer: Yes. The Grant Coordinator and the Budget Manager at the AOC.

Answer: Yes. The Utah Supreme Court.

Answer: N/A. The court executives and judges in the affected district(s).

Answer: N/A. The affected Board(s) of Judges.

The solicitation advance from the State Justice Institute (SJI) with a deadline of August 1, 2021. James Teufel provided answers, via email, to Judge Pettit’s questions below.

Question 1. How is this time sensitive?

A concept paper was submitted and the Executive Director of SJI requested that the courts submit a full application by the typical deadline of the concept paper. Since the courts were timely with the submission of a concept paper, this positioned the opportunity for a quick turnaround full application. The limited risk concept is addressed in response to question 3 (short-term license contracts that prevent funding shortfalls).

Question 2. How is the data being collected/managed now?

Data is currently being managed by Excel spreadsheets and csv files. QuickBase allows for increased efficiency and accuracy of entity reporting. It enables machine learning to reduce data correction time. It also creates opportunities for easier reporting on, splitting of, and aggregation of data. QuickBase includes a database with gold standard data security baked into the software too. QuickBase is a no to low code platform, which would allow for more limited staff maintenance cost after year one (after apps and the system is built out) and is also relatively easy to update. Given the visual nature of QuickBase, it allows for easy communication of the relationships among data elements.

Question 3. What is QuickBase?

The courts IT Department approved this program. Since QuickBase is a low to no code platform, after relatively brief training and the creation of handbooks, the ongoing maintenance cost is minimal, beyond the licensing fee. QuickBase includes a software platform as well as a secure database. Additionally, after speaking to platform developers, the cost of QuickBase, given its utility and low maintenance is a reasonable cost for current aims. As far as ongoing liability, QuickBase allows for one, two or three-year contracts. A one-year contract in this case minimizes any risk. If no funds are available for year two, then the license would not be renewed.

Question 4. Why can't the Hewlett grant monies be used to improve the existing data management system?

Hewlett money would likely be applied toward year two of the license. The Hewlett funding is restricted to activities of the Office. However, within the Office there is remarkable flexibility for the funding. It is functionally restricted to the Office but within reason. Hewlett will also be used to cover some of the additional ongoing costs of the Office.

Question 5. Why is there a time-sensitive need at this early stage of the program to develop tools for other states?

The Office is currently an example of visionary leadership. This state and national leadership role assists the state directly by including typical Utah stakeholders in the rule of law differently to improve access to justice for the people of Utah. The national recognition potentially leads to economies of scale and the inclusion of new stakeholders who could further bridge the access to justice gap in the state. With regard to currently available legal services relative to legal needs in Utah, to bridge the justice gap services for low-income households would need to increase fifteen times, services for middle-income double, and services for small businesses triple.

The Budget & Fiscal Management Committee approved, by email, on July 29, 2021 by a vote of 3-1 to send this item to the Judicial Council, with Judge Pettit opposing for the following

reasons 1) the Budget Committee and the Council agreed to a temporary moratorium prohibiting the consideration of new grant applications unless the grant is demonstrably time-sensitive. This grant application is not time-sensitive. It appears that the submission of the concept paper has created the deadline Mr. Murray asked the Budget Committee to consider to be time-sensitive. It could have been communicated to SJI when the concept paper was submitted that the courts currently have a temporary moratorium in place in applying for new grants, and thus, any application would be made after the moratorium is lifted; alternatively, the concept paper could have waited until the moratorium was lifted; 2) it appears new funding is not necessary to purchase the QuickBase software, as the Hewlett funds could be used for that purpose; 3) the personnel hired with the Hewlett grant monies could begin work on the other two deliverables, without seeking additional grant funds, or at least not seeking them until the moratorium is lifted; and 4) there are ongoing costs associated with the QuickBase software, and although it is easy to say now that the courts can cancel the license if there was not external funding for it, in reality if the system is already in use and being relied upon, it appears likely the courts will have to find funds somewhere to renew the license.

Justice Himonas wanted the Council see Judge Pettit's questions and the answers. Judge David Mortensen questioned if the courts had any requirements to track the time as had been previously done with SJI grants. Mr. Murray said the courts would be keeping track of the percentages of time, including the Director's position, Dr. Teufel's position, and the to-be-hired at .15 FTE regulatory management database assistant (developer). Judge Mortensen hoped the tracking would be more thorough than had been done in the past for other grants. Judge David Connors didn't understand why this was so time sensitive and couldn't have been addressed earlier. Justice Himonas said time sensitive is the standard, but does necessarily not mean it is an emergency. Justice Himonas further noted this discussion began last Wednesday and was sent to SJI on Thursday. On Friday, Justice Himonas spoke with the SJI Board.

Judge Pettit asked why the Council couldn't wait until the guardrails are in place to ensure that the Council is proceeding in an orderly fashion, as they voted to do. Justice Himonas said SJI does not know that the courts have a moratorium on grants and that is not something that they've asked anyone else either. Justice Himonas clarified that this vote would only be for the application and not the acceptance of funds, adding that the funds wouldn't come in until after the guidelines are in place. Judge Pettit said Council members were given one day to review this grant and meet and with so many Council members unable to attend, felt this was not an effective process for a subject that has a moratorium in place. Judge Pettit didn't believe this met the criteria for a rush, especially where Hewlett funds are available. Justice Himonas confirmed Hewlett funds could be used but the courts cannot then get a grant to replace those funds and the courts would have lost the ability to use the Hewlett funds to pay for other work by the contractor.

Justice Himonas said SJI will fund part of the contractor and the software but they are not willing to pay for operating costs. Judge Pettit confirmed there will be ongoing costs for this grant. Justice Himonas confirmed there is a cost trade-off, with an increase in human cost in reviewing the data, but said the courts would not be required to continue the grant. Justice Himonas noted at some point the Council will have to hold a discussion about funding the regulatory reform and the oversight of the practice of law which is the Supreme Court's constitutional role.

Judge Mark May supported the grant. Judge Derek Pullan echoed with Judge Pettit's comments recognizing that the speed with which this process has happened can lead to poor decision-making, but understood sometimes things are outside of the courts control. Judge Pullan recommended building in the guardrails a process that is nimbler. If the courts like the software and want to continue to use the software after the grant period, Justice Himonas estimated the cost to the courts would be between \$17,000 - \$25,000 annually for the license. Heidi Anderson spoke briefly on the ability to extract the data from the software if the courts chose not to renew the software licenses. Dr. Teufel mentioned the courts could engage in a one-year license and retrieve the data before they discontinue the service, should they choose.

Chief Justice Durrant thought Judge Pettit raised legitimate concerns, that this procedure was not optimum, however, he didn't see another way to resolve this issue. At this time, the benefits of accepting the grant outweigh the concerns.

Motion: Justice Himonas moved to approve the grant application. Judge Derek Pullan amended the motion adding that in approving the grant application, the Council is making no commitment with respect to ongoing annual payments in the future, explaining that he was not willing at this time to commit to renewing this annually in the future. Judge Paul Farr seconded the amended motion. The motion passed with Judge Pettit opposed.

Justice Himonas agreed to the amended motion but also said he thought the Council and the Supreme Court need to discuss the appropriate role of each governing body with respect to funding the regulatory reform of the practice of law. Justice Himonas asked Cathy Dupont to set up the meeting with the appropriate individuals from the Supreme Court and the Judicial Council to begin the discussion on this topic. He further stated that the Council should not be put in the position of deciding which portions of the Supreme Court regulation of the practice of law the Council will fund. Justice Himonas believed the fiscally prudent thing would be for the Council to retain control over the budget and award a lump sum and to let the Supreme Courts decide how that is allocated. Justice Himonas stated the work of a joint committee will become more important with the lawsuit. Justice Himonas believed that the lawsuit against the Bar has either been dismissed or a motion has been filed requesting the Bar be replaced as defendants with the Supreme Court.

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

3. OLD BUSINESS/NEW BUSINESS

No additional business was addressed.

4. EXECUTIVE SESSION

An executive session was not held.

5. ADJOURN

The meeting adjourned.