

# JUDICIAL COUNCIL MEETING

Minutes  
August 20, 2021

Meeting conducted through Webex

1:00 p.m. – 3:33 p.m.

*Chief Justice Matthew B. Durrant, Presiding*

## Members:

Chief Justice Matthew B. Durrant, Chair  
Hon. Samuel Chiara  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Paul Farr  
Hon. Michelle Heward  
Justice Deno Himonas  
Hon. Mark May  
Hon. David Mortensen  
Hon. Derek Pullan  
Rob Rice, esq.  
Hon. Brook Sessions

## Excused:

Hon. Todd Shaughnessy, Vice Chair  
Hon. Brian Cannell  
Hon. Ryan Evershed  
Hon. Kara Pettit

## Guests:

Hon. Jennifer Brown, Fourth District Court  
Suzanne Brown-McBride, Impossible6  
Hon. Jon Carpenter, Price Justice Court  
Hon. Barbara Finlinson, Nephi Justice Court  
Hon. Dennis Fuchs, Senior Judge  
Hon. Eric Jewell, Payson Justice Court

## AOC Staff:

Ron Gordon  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Paul Barron  
Alisha Johnson  
Tania Mashburn  
Jordan Murray  
Jim Peters  
Nathanael Player  
Jon Puente  
Nini Rich  
Neira Siaperas  
Nick Stiles  
Karl Sweeney  
Shonna Thomas  
Jeni Wood  
Kim Zimmerman

## Guests Cont.:

Ben Marsden, BYU  
Kim Paulding, Utah Bar Foundation  
Heather Robison, University of Utah  
Mark Urry, TCE, Fourth District Court

### **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.

**Motion:** Justice Himonas moved to approve the July 17, 2021 and July 30, 2021 Judicial Council meeting minutes, as amended to correct the July 30<sup>th</sup> minutes section Justice Himonas said that the fiscally prudent thing would be for the Council to retain control over the budget and award a lump sum and let the Supreme Court decide how it is allocated. Judge David Connors seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Ron Gordon introduced Tania Mashburn as the new Public Information Officer. Ms. Mashburn received numerous awards for investigative journalism.

**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:**

Judge Kara Pettit was unable to attend.

**Policy and Planning Committee Report:**

Judge Derek Pullan reported that the grant guardrail rule will be addressed by the committee in September.

**Bar Commission Report:**

Rob Rice briefly mentioned the Bar’s Summer Convention went well with 319 attorneys who attended in person and 78 who attended remotely.

**5. ODR UPDATE: (Justice Deno Himonas, Heidi Anderson, Brody Arishita, Meredith Mannebach, Nini Rich, and Kim Zimmerman)**

Chief Justice Durrant welcomed Justice Deno Himonas, Heidi Anderson, Nini Rich, and Kim Zimmerman. The ODR program will be piloted in Louisiana. The rollout throughout the state is going well. In September there will be 24 justice courts running the program. Ms. Anderson explained the program is linked to MyCase. There are 14 ODR volunteer facilitators, eventually the courts will need an estimated 34 facilitators.

**Motion:** Justice Himonas moved to have Judge McCullagh replace him on the committee. Judge Augustus Chin seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Justice Himonas, Ms. Anderson, Ms. Rich, and Ms. Zimmerman as well as the IT team.

**6. PROBLEM-SOLVING COURTS RECERTIFICATIONS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs reviewed the following problem-solving courts ready for recertification.

**Courts that meet all Required and Best Practices criteria**

ADC1Washington	Adult Drug Court	Washington County	Judge Walton
ADC1Iron	Adult Drug Court	Iron County	Judge McIff Allen
ADC1Davis	Adult Drug Court	Davis County	Judge Edwards
ADC2Davis	Adult DUI Court	Davis County	Judge Edwards
AMHC1Washington	Adult Mental Health	Washington County	Judge Westfall
AMHC1Iron	Adult Mental Health	Iron County	Judge Bell
AMHC1Davis	Adult Mental Health	Davis County	Judge Williams
AMHC1Cache	Adult Mental Health	Cache County	Judge Fannesbeck

Judge Fuchs noted there are two courts that do not meet all Required and Best Practices criteria.

- Judge Brady’s Adult Mental Health Court in Provo (AMHC1Utah) does not meet presumed #11. Drug tests available within 48 hours criteria. The court meets the criteria when possible.
- Judge Gilmore’s Adult Mental Health Court in West Valley Justice Court (AMHC3SaltLake) does meet the following criteria:
  - Required # 3: High Risk Participants (Class B misdemeanor)
  - Required # 10: Medically Assisted Treatment (Class B misdemeanor)
  - Required # 44: Excluded if no Residence
  - Presumed # 2: Monitor Incentives and Sanctions
  - Presumed # 11: Test Results Available Within 48 Hours
  - Presumed # 12: Deliver Test Specimen Within 8 Hours
  - Presumed # 29: Measures to Prevent an Overdose (most are not drug users)
  - Presumed # 35: More than 15 Participants
  - Presumed # 37: New Arrests and Convictions Followed

Judge Fuchs stated historically, the Council has been provided information on justice courts’ problem-solving courts but have not certified them because they mostly deal with misdemeanors, which would require a new set of certification criteria. Judge Fuchs said this court is the only justice court problem-solving court. There was concern that the court failed to meet basic criteria. Judge Pullan thought the Council should consider certifying problem-solving courts for justice courts. Judge Paul Farr said very few justice courts have the resources to provide these services. Judge Fuchs said most justice courts choose not to start problem-solving courts after discussions on the resources needed. Judge Connors thought the Council should have some control over these. Chief Justice Durrant recommended this be addressed with Policy & Planning.

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Connors moved to certify all problem-solving courts listed above, including Judge Brady’s mental health courts but to table Judge Gilmore’s court, as amended. Judge Mark May seconded the motion, and it passed unanimously.

**7. PROBATION POLICIES 2.11, 2.12, 2.13, AND 2.14: (Neira Siaperas)**

Chief Justice Durrant welcomed Neira Siaperas. The Board of Juvenile Court Judges has proposed revisions of the following policies. Ms. Siaperas sought revision approval for section 2.12 and deletion of sections 2.11, 2.13, and 2.14.

**Section 2.12 Bind Over Cases**

This policy, formerly titled Serious Youth Offender, was last revised in May 2018. The purpose of this policy is to outline probation officers' responsibilities for cases eligible for bind-over (transfer) to the District Court.

**Section 2.11 Juvenile Sentencing Guidelines**

This policy was last updated July 1, 2003 and is being recommended for deletion. The Juvenile Sentencing Guidelines referenced in the policy were retired by the Utah Sentencing Commission in December 2020 and replaced with new Juvenile Disposition Guidelines.

**Section 2.13 Certification Investigation Report**

This policy was last updated in December 2019 and is being recommended for deletion. This policy is no longer necessary as probation officers are no longer required to complete certification reports.

**Section 2.14 Direct File for Criminal Proceedings**

This policy was last updated July 1, 2003 and is being recommended for deletion. This policy is unnecessary since the information is out-of-date and does not address probation processes.

Chief Justice Durrant thanked Ms. Siaperas.

**Motion:** Judge Michelle Heward moved to approve the revisions of section 2.12 and the deletion of sections 2.11, 2.13, and 2.14, as presented. Judge Farr seconded the motion, and it passed unanimously.

**8. CARRYFORWARD BUDGET REQUESTS: (Judge Mark May, Karl Sweeney, Heidi Anderson, Chris Davies, Tracy Walker, and Nick Stiles)**

Chief Justice Durrant welcomed Judge Mark May, Karl Sweeney, Heidi Anderson, Chris Davies, Tracy Walker, and Nick Stiles. Chief Justice Durrant thanked Judge May for his incredible work on the committee and noted the Council was smart in creating the Budget & Fiscal Management Committee. Judge May thanked Mr. Sweeney for his work.

**FY21 IT Services Budgeted but Work Not Completed in FY21 – Request to Carryforward IT Funds into FY22**

\$150,000

Funding was allocated in FY21 for Cisco's assistance working with the development team at the courts to build the public facing portal with Webex integration. They originally anticipated the project to be complete by June 30, 2021, however, it was not completed and this is a pay upon completion project.

### **Judicial Council Room A/V Upgrade**

\$50,000 (\$10,519 as carryforward and \$39,481 as FY22 one-time turnover savings)

The system is out of warranty by eight years, the equipment is discontinued, and recent audio issues suggest the system is at its end-of-life. This audio/video refresh will bring the room up to the current industry and court technology standard and meet current and future in-person and virtual meeting access needs.

### **Cisco Router Replacement**

\$160,000

The courts have 25 Cisco 2900 routers in our network that have reached their end-of-life. This means that Cisco will stop releasing security/vulnerability updates for this hardware. This would put the network at risk. The IT Department recommended replacing these with Cisco 8300 routers. The 8300 routers will have a minimum 12-year life span and accommodate bandwidth of up to 2GB.

### **Wifi AP Upgrade and Expansion**

\$120,000

The courts have 125 access points throughout the state (Model 3502) that need to be replaced in order to be able to upgrade controllers to the newest secure code base. This hardware is at its end-of-life and no longer supported or supplied security update by Cisco. Upgrading these will also give the courts the future capability of higher bandwidth on the wireless network.

### **Additional Third District Court Media Carts**

\$50,000 one-time funds

Over the course of a few years, the Third District Court had three media carts constructed for the Matheson Courthouse. Since most of the evidence that is now presented comes in an electronic format, it was important to develop a way that evidence could be presented electronically in the courtroom. It was cost prohibitive to put new technology into every courtroom; the court instead came up with a mobile solution. The court now has the capability of moving media carts into any courtroom for a jury trial.

### **Converting Appellate Courts to Webex Capable Courts & Two Public Viewing Agenda Monitors**

\$148,000 Option 1 (basic)

\$210,000 Option 2 (higher level)

Throughout the pandemic the courts have quickly embraced a more technology focused system. This focus not only increases community members access to the courts, it also for the most part is viewed favorably by members of the Bar. Applicable here, the Appellate Courts are tasked with hearing cases from across the state. This funding request will enable both courts to conduct hybrid in-person/remote oral arguments allowing for example, one party to appear remotely from St. George and one party to appear in-person in Salt Lake City. This funding request expands the court's mission as it removes barriers to an appellate system that is located exclusively in Salt Lake City.

Chief Justice Durrant thanked Judge May, Mr. Sweeney, Ms. Anderson, Ms. Davies, Ms. Walker, and Mr. Stiles.

**Motion:** Justice Himonas moved to approve the FY21 IT Services Budgeted but Work Not Completed in FY21 – Request to Carryforward IT Funds into FY22 in the amount of \$150,000 in one-time funds; the Judicial Council Room A/V Upgrade in the amount of \$50,000; the Cisco Router Replacement in the amount of \$160,000 in one-time funds; the WiFi AP Upgrade and Expansion in the amount of \$120,000 in one-time funds; the Additional Third District Court Media Carts in the amount of \$50,000 in one-time funds; and the Converting Appellate Courts to Webex Capable Courts & Two Public Viewing Agenda Monitor in the amount of \$210,000 in one-time funds requests as presented. Judge May seconded the motion, and it passed unanimously.

**9. GRANT UPDATE: (Jordan Murray)**

Chief Justice Durrant welcomed Jordan Murray. They are moving forward with the grants process. Mr. Murray thanked the Council for their assistance with the SJI grant.

Chief Justice Durrant thanked Mr. Murray.

**10. JUSTICE COURT TASK FORCE UPDATE: (Judge Paul Farr and Jim Peters)**

Chief Justice Durrant welcomed Judge Paul Farr and Jim Peters. In December 2019, the Supreme Court and Judicial Council created the Justice Court Reform Task Force. The Council took responsibility for ongoing direction of the Task Force. The purpose of the Task Force was to complete a comprehensive evaluation of justice court structure and operations, and provide a report to the Council of recommendations to strengthen and improve the provision of court services at the misdemeanor and small claims level. The Council invited stakeholder representatives to serve as members of the Task Force. Membership included representatives from the courts, the legislature, the Governor’s office, prosecution and defense organizations, members of the bar, the Utah League of Cities and Towns and the Utah Association of Counties.

The Task Force began meeting monthly in May of 2020 and reviewed thousands of pages of reports, documents, and prior reforms in Utah.

The Task Force presented the Management Committee with their Report and Recommendations proposal. The Task Force believes that the reforms recommended would increase public access to justice, improve the quality of justice provided, and improve public perception of court services at the infraction, misdemeanor, and small claims level. These efforts are critical as this is the court level where most citizens come into contact with the judicial system.

Moving everything except infractions to the district courts under a new “division” court would require a statutory change. Justice court judges that are members of the State Bar could fill the positions needed in the division court. Hawaii had a model for resolving infractions that could be mimicked in Utah. Infraction appeals would be sent to the district court, similar to a de novo appeal.

Financial considerations show justice courts generate approximately \$42M annually in fines and fees. The cost of operating these courts as a whole is approximately \$42M annually, which identifies a fairly neutral financial scenario. Judge Farr mentioned that because justice courts are small with limited resources, a lot of substance abuse and treatment models cannot be

implemented. The guiding principles for the recommendation to create a division court included a qualified judge, on-the-record appeal, right to counsel, Article VIII courts, and substance abuse and mental health. The number of division judges needed would be approximately 30 judges, depending on whether Class A misdemeanors were included and whether a division court is district-wide or at a county level.

Practical considerations to the proposed changes included whether the recommended change would require a constitutional amendment, fiscal impacts of the changes, and different impacts of urban/rural reforms. Judge Connors observed that there are some district courts that currently handle misdemeanor courts. Judge Pullan asked if there was any legislative support for the changes. Judge Farr said Senator Cullimore served on the task force and has been a huge proponent of these recommendations.

The next step would be to create a workgroup to address implementation of the recommendations. The workgroup needs to consider the financial impact of reform, revisions to appropriate rules, and involving the Liaison Committee, and Policy & Planning Committee to create the appropriate rules. Simultaneously, the courts could work with legislators. The Task Force said their work, they believe, is done and now this should move to the implementation phase.

Judge Pullan thought the legislature may be in a better position to address the funds and revenue structures. Judge Farr wasn't sure if the legislature would have financial information since justice courts are locally controlled. Mr. Peters obtained financial information about local jurisdictions from websites because court personnel did not have information about the local government finances. Mr. Peters recommended formulating standards before addressing financials.

Michael Drechsel wondered if this should be addressed with the Judiciary Interim Committee as a follow up to the previous presentation. Judge Augustus Chin was impressed with the report and felt the report should be presented to the legislature again. Judge Connors personally could not accept the recommendations without reviewing additional impacts and recommended a joint study with the legislature. Mr. Drechsel explained at this point there should be outreach with stakeholders as groups. Mr. Drechsel offered to contact Representative Kerianne Lisonbee and Senator Todd Weiler. The legislature could perhaps conduct their own fiscal analysis with data received from the courts. The AOC can generate data on revenue but not expenses from justice courts.

Judge Pullan thought the Council could approve the Report as articulating a path toward the improvement of the Judiciary and would be interested in a plan being formulated as to where the Council goes from here.

**Motion:** Judge Pullan moved that the Council accepts these recommendations as articulating a path towards the improvement of the Judiciary and task someone with a strategic plan for moving forward. Judge Farr seconded the motion, and it passed unanimously.

Justice Himonas recommended creating a workgroup with the Supreme Court. Chief Justice Durrant agreed to the creation of a workgroup to identify the next steps in this process.

Mr. Gordon preferred to know the position of every group that would testify before the legislature. Mr. Gordon felt there is wisdom in receiving or adopting the report without committing to it so the courts can take the next step of receiving feedback from outside entities.

Chief Justice Durrant stated he was prepared to accept the recommendations because the Report was created by different entities who took many things into considerations but was willing to adopt the concept in principle with an explicit recognition in the motion that it would evolve over time as the courts solicit additional input and collect additional data.

Justice Himonas suggested the creation of a workgroup that provides quarterly updates with the Task Force members acting as a liaison to the workgroup. Judge Connors would feel more comfortable if the Council receives the report, establishes a workgroup to explore the next steps, but not formally adopt, accept or approve the recommendation. Justice Himonas said the implementation committee needs guidance. Chief Justice Durrant said this item could be tabled until the Council has had time to think about the proposal.

**Motion:** Judge Pullan moved that the Council approve the recommendations of the Task Force recognizing that the proposals made could evolve over time with further information from stakeholders. Justice Himonas seconded, and it passed with Judge Connors abstaining.

**Motion:** Justice Himonas moved to form a workgroup Chaired by Judge Farr, additional members to be determined, to take next steps toward exploring the implementation of the Task Force's recommendations. Judge Connors seconded, and it passed unanimously.

Judge Chiara asked that the Council's executive committees address this proposal.

Chief Justice Durrant thanked Judge Farr and Mr. Peters.

**11. WELLINGTON AND CARBON COUNTY INTERLOCAL AGREEMENT: (Judge Jon Carpenter and Jim Peters)**

Chief Justice Durrant welcomed Judge Jon Carpenter and Jim Peters. The town of Wellington is a suburb of Carbon. Wellington Justice Court's only court clerk resigned. The Wellington Justice Court is being staffed by Carbon County Justice Court staff. Wellington Justice Court and Carbon County Justice Court felt an interlocal agreement would be the best scenario for all involved. They want to make this effective September 1, 2021.

Chief Justice Durrant thanked Judge Carpenter and Mr. Peters.

**Motion:** Justice Himonas moved to approve the interlocal agreement between Wellington Justice Court and Carbon County Justice Court, effective September 1, as presented. Judge Connors seconded the motion, and it passed unanimously.

**12. JUSTICE COURT JUDGE CERTIFICATIONS: (Jim Peters)**

Chief Justice Durrant welcomed Jim Peters. Mr. Peters introduced Eric Jewel, selected to be the new judge for the Payson Justice Court and the Santaquin/Genola/Gosha Justice Courts and Barbara Finlinson, who was selected as the new judge for the Nephi Justice Court.

Chief Justice Durrant thanked Mr. Peters.

**Motion:** Judge Chin moved to approve Judge Eric Jewel to be the new judge for the Payson Justice Court and the Santaquin/Genola/Gosha Justice Courts and Judge Barbara Finlinson, who was selected as the new judge for the Nephi Justice Court, as presented. Judge Farr seconded the motion, and it passed unanimously.

**13. FOURTH DISTRICT COURT COMMISSIONER VACANCY: (Judge Jennifer Brown and Mark Urry)**

Chief Justice Durrant welcomed Judge Jennifer Brown and Mark Urry. CJA Rule 3-201(3)(B) requires the Council's approval to fill a commissioner vacancy. The Senate confirmed Commissioner Sean Petersen on August 18, 2021 to the Fourth District Court Bench. This transition resulted in a commissioner vacancy in the Fourth District Court. The Fourth District Court currently has two FTE commissioner positions and wants to advertise to fill the now empty commissioner position.

In 2020, Commissioner Petersen's domestic inventory alone consisted of 1,539 filings, which is 30-40% of the total domestic inventory in Utah County. He also hears monthly domestic cases (in-person pre-pandemic; virtually during the pandemic) in Fillmore, Heber and Nephi, in addition to all ORS cases for Provo and American Fork. Pre-pandemic, Commissioner Petersen's calendars consisted of 12-13 hearings every day, in addition to 25 ORS hearings every-other Friday. During the pandemic, Commissioner Petersen has maintained his caseload to avoid a large backlog. His current daily calendars consist of 8-9 hearings each day.

**Motion:** Judge Pullan moved to approve filling the Fourth District Court commissioner vacancy. Judge Connors seconded the motion, and it passed unanimously.

**14. OLD BUSINESS/NEW BUSINESS**

No additional business was addressed.

**15. EXECUTIVE SESSION**

An executive session was not held.

**16. CONSENT CALENDAR ITEMS**

a) Committee Appointments. Appointment of Stephen Kelson, Talatou Abdoulaye, and Anne Cameron to the ADR Committee. Appointment of Sharla Dunroe and Janet Lawrence to fill the defense counsel positions and Jeffrey Mann and Richard Pehson to fill the prosecutor positions to the MUJI – Criminal Committee. Approved without comment.

**17. ADJOURN**

The meeting adjourned.