

JUDICIAL COUNCIL MEETING

**Minutes
September 28, 2021**

Meeting conducted through Webex

12:00 p.m. – 4:15 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. Michelle Heward
Hon. Mark May
Hon. David Mortensen
Hon. Kara Pettit
Hon. Derek Pullan
Rob Rice, esq.
Hon. Brook Sessions

Excused:

Hon. Paul Farr
Justice Deno Himonas

Guests:

Emily Ashcraft, KSL News
Scott Burnett, Zions Capital Advisors
Sue Crismon, Office of Innovation
Hon. Diana Hagen, Court of Appeals
Hon. Michele Christiansen Forster, Court of Appeals
Peter Kelson, Zions Capital Advisors
Kristina King, OLRGC
Hon. Barry Lawrence, Third District Court

AOC Staff:

Ron Gordon
Cathy Dupont
Michael Drechsel
Lauren Andersen
Heidi Anderson
Shane Bahr
Paul Barron
Suzette Deans
Valeria Jimenez
Alisha Johnson
Wayne Kidd
Kara Mann
Jordan Murray
Chris Palmer
Jim Peters
Nini Rich
Keri Sargent
Neira Siaperas
Nick Stiles
Karl Sweeney
Kaden Taylor
Keisa Williams
Jeni Wood

Guests Cont.:

Lucy Ricca, Office of Innovation
James Teufel, Teufel Consulting
Chris Williams, OLRGC

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: Judge David Connors moved to approve the August 20, 2021 Judicial Council and the August 20, 2021 Annual Budget & Planning meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant felt the Mental Health Initiative Summit was highly successful and thanked all of those who participated, with special appreciation to Summit coordinators, Judge Kara Pettit and Lauren Andersen. Chief Justice Durrant and other court personnel will meet with the Executive Compensation Committee next week.

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

Ron Gordon mentioned several court personnel attended the National Center for State Courts Regulatory Reform Summit where Utah’s Supreme Court was recognized as a leader with regulatory reform. Mr. Gordon thanked everyone who attended the Summit. Mr. Gordon has received feedback and requests for additional information and guidance.

Mr. Gordon echoed Chief Justice Durrant’s appreciation to Judge Pettit and Ms. Andersen’s work on the Mental Health Summit.

Judge Richard Mrazik was interviewed by NPR regarding jury summons’. Judge Mrazik’s interview went very well.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Mark May stated the results of the committee meeting will be addressed later in the meeting.

Liaison Committee Report:

Judge Pettit noted that the committee will meet soon to discuss the November 18-19, 2021 Legislative Special Session.

The pretrial legislative workgroup has been meeting recently. Michael Drechsel said there are a number of topics that are being addressed, including the authority of a Sheriff to release people from jail on their own recognizance. There are discussions about using bail commissioners, as had been done in the past and if bail commissioners are hired the next step would be to determine what amounts they should be using to set bail in the absence of a bail schedule. Mr. Drechsel is encouraging those discussions to include the severity of the charge and risk of the person to the public.

Judge Shaughnessy believed reinvigorating a bail schedule without any reference to risk would be moving in the wrong direction and requested this be communicated with the decision-makers. Mr. Drechsel explained to Representative Mike Schultz that the courts have not taken an official position but this topic has been discussed with the Liaison Committee. Mr. Drechsel

stated that one of the primary concerns that gave rise to this endeavor was people being held in jail on monetary amounts that they could not afford and similarly, people with money were being released when perhaps they posed a threat to the public.

Judge Shaughnessy recognized there are a lot of policy-laden questions that the courts may not take a position on, however, with pretrial, it is only by act of a judge that a person can be held in jail. Judge Shaughnessy thought the courts should take a position on this matter. Judge Derek Pullan observed that a return to bail commissioners could invite constitutional challenges.

Pretrial release will be further discussed at the Annual Judicial Conference.

Policy and Planning Committee Report:

Judge Pullan briefly noted that the committee's work on grant guardrails is nearly complete.

Bar Commission Report:

Rob Rice said the Bar created a subcommittee to better engage rural lawyers, headed by Katie Woods, President Elect. With this being his last meeting, Mr. Rice thanked Chief Justice Durrant and Council members for the opportunity to sit on this Council.

5. EDUCATION COMMITTEE REPORT & REAUTHORIZATION: (Judge Diana Hagen and Lauren Andersen)

Chief Justice Durrant welcomed Judge Diana Hagen and Lauren Andersen. Ms. Andersen reviewed the Education Committee's work and requested the committee be reauthorized for another six-year term. The years 2020-2021 saw major changes for the department with the introduction of new tools, new people, and increased services during the pandemic.

Key performance metrics

- Over 4,825 enrollments in employee courses
- 79% of those enrollments received credit
- Launched a new Learning Management System (LMS) to 1,800 court employees. 1,785 of those users are active
- Hosted 5 virtual judicial conferences, 4 new judge orientations, 1 new employee conference and 1 justice court clerks conference

In August 2020, Kimberlee Zimmerman was hired as the Justice Court Education Coordinator. In May 2021, Libby Wadley moved from the position of Online Training Specialist to the Learning Management System Administrator. They also welcomed Ms. Andersen as the new Education Director in January, 2021.

The COVID pandemic required the department to rethink how educational content could be delivered by utilizing tools that allowed employees to learn outside of the classroom.

Tools used by the department

- The Learning Management System (LMS) allows all judicial employees to access asynchronous courses that are pre-recorded and gamified.

- Open Sesame's 25+ programs that place training into the LMS. Open Sesame courses are offered in addition to Career Track trainings and available to all court employees.
- Proof of training certifications in the LMS for Annual Court Security, PCI, Court Security Awareness (Justice Courts), and Electronic Mail Retention.
- Webex meetings, events and trainings to deliver all live courses and seminars and all virtual conferences and summits.

Chief Justice Durrant thanked Judge Hagen and Ms. Andersen.

Motion: Judge Shaughnessy moved to reauthorize the Education Committee for an additional six years. Judge Augustus Chin seconded the motion, and it passed unanimously.

6. BOARD OF APPELLATE COURT JUDGES REPORT: (Judge Michele Christiansen Forster and Nick Stiles)

Chief Justice Durrant welcomed Judge Michele Christiansen Forster and Nick Stiles. Judge Christiansen Forster reported that they recently held an appellate court conference, that included discussions on free speech, Fourth Amendment issues, and women on the bench. Judge Christiansen Forster thanked Ms. Andersen and Mr. Stiles for their work on the conference.

- The courts are working with IT and contractors to integrate audio and video in the appellate courtrooms to accommodate hybrid oral arguments.
- A financial audit of both appellate courts is nearly complete.
- Training is going well for the new law clerks in both appellate courts.
- They are updating the appellate mediation policy & procedures.

Chief Justice Durrant thanked Judge Christiansen Forster and Mr. Stiles.

7. JUDICIAL RETENTION CERTIFICATIONS: (Nick Stiles and Jim Peters)

Chief Justice Durrant welcomed Nick Stiles and Jim Peters. Judicial retention elections certified by the Council are set by JPEC Rule 597-3-4(2). CJA Rule 3-101 establishes the performance standards.

- A maximum number of cases under advisement;
- A minimum number of continuing education hours; and
- Physical and mental competence.

Supreme Court

Justice P. Petersen

Juvenile Courts

Hon. S. Bazzelle
 Hon. S. Davis
 Hon. M. May
 Hon. R. Smith
 Hon. T. Little
 Hon. B. Keisel
 Hon. R. Jimenez
 Hon. D. Jensen
 Hon. R. Evershed

District Courts

Hon. G. Harmond
 Hon. D. Gibson
 Hon. C. Koch
 Hon. M. Kouris
 Hon. B. Lawrence
 Hon. A. Mettler
 Hon. A. Mow
 Hon. R. Mrazik
 Hon. C. Neider
 Hon. P. Parker

Justice Courts

Hon. S. Bradshaw
 Hon. K. Christensen
 Hon. D. Cox
 Hon. B. Dunlap
 Hon. L. Edwards
 Hon. S. Fenstermaker
 Hon. C. Gilmore
 Hon. J. Graff
 Hon. S. Graves-Robertson
 Hon. L. Hazleton

Hon. R. Renstrom	Hon. R. Kunz
Hon. R. Skanchy	Hon. C. Landau
Hon. D. Torgerson	Hon. P. Larsen
Hon. V. Trease	Hon. M. Lorz
Hon. J. Wilcox	Hon. S. Magid
Hon. D. Williams	Hon. B. McCullagh
Hon. A. Foncesbeck	Hon. S. Mickelsen
Hon. M. Edwards	Hon. D. Miller
Hon. R. Faust	Hon. K. Myers
Hon. S. Chon	Hon. K. Nelson
Hon. P. Corum	Hon. K. Peters
Hon. S. Chiara	Hon. R. Richards
Hon. J. Blanch	Hon. S. Ridge
Hon. B. Cannell	Hon. J. Robinson
Hon. L. Jones	Hon. J. Robison
	Hon. V. Romney
	Hon. S. Stream
	Hon. P. Thompson
	Hon. D. Whitlock

Jim Peters explained that in addition to those who will be receiving a retention evaluation from JPEC, Judges' Paul Farr, Brook Sessions, Mark McIff, Randy Birch, and Bryan Memmott need to stand for retention in 2022. These are judges with multiple courts who are not due for a retention evaluation because JPEC is using the appointment date for one of their courts to define the controlling cycle for evaluations. But they need to stand for retention nevertheless.

There was one juvenile court judge who had a case under advisement for longer than the allowed period, however, this was addressed by the Council in the past. This was discussed in an executive session.

Chief Justice Durrant thanked Mr. Stiles and Mr. Peters.

Motion: Judge Pullan moved to certify to JPEC the above-listed judges for the 2022 election term, as amended to remove the noncompliant juvenile court judge and to certify to JPEC that the juvenile court judge is non-compliant with failure in one case to meet the six-month deadline, and send to JPEC the material relied upon by the Council in making that determination with an explanation included. Judge Shaughnessy seconded the motion, and it passed with Judge May, Judge Evershed, Judge Chiara and Judge Sessions abstaining as to their retentions.

Judge Cannell expressed concern that the rule contemplates challenging a judge when they say that they are compliant but there is credible evidence that they are not, but does not appear to contemplate what happens when a judge says they are not compliant but there is credible evidence that they are compliant. Moving forward, Judge Cannell felt there should be further discussions and training on the definition of compliance in relation to the rule.

8. FORMS COMMITTEE FORM: (Nathanael Player)

Nathanael Player was unable to attend.

9. MENTAL HEALTH INITIATIVE – NEXT STEPS: (Judge Kara Pettit and Ron Gordon)

Chief Justice Durrant welcomed Judge Kara Pettit and Ron Gordon. Mr. Gordon thanked Judge Pettit for her leadership with this program. The next steps are to have the ability to identify gaps in services and policies, organized by county and district. Groups are being created around the state to identify a team leader and staff person to address local needs. Chris Palmer will lead the project.

Judge Pettit thought the Summit was motivating and inspiring. The objective is to translate the goal into action by all districts engaging in the improvement and resources that are available. Law enforcement are typically the first people that can help identify mental health concerns.

Chief Justice Durrant thanked Judge Pettit and Mr. Gordon.

10. RULES 1-205, 3-415, 3-419, 4-206, 4-401.02, AND 7-302 FOR FINAL ACTION: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. Following a 45-day comment period, Policy and Planning recommended that the following rules be approved as final with a November 1, 2021 effective date.

CJA Rule 1-205. Standing and ad hoc committees

The proposed amendments change the Standing Committee on Pretrial Release and Supervision membership.

CJA Rule 3-415. Auditing

The proposed amendments more clearly define the types of audits conducted by the Audit Department, clarify audit procedures, and identify the individuals involved at critical points.

CJA Rule 3-419. Office of Fairness and Accountability

Identifies the objectives of the Office of Fairness and Accountability and the duties of the Director of the Office of Fairness and Accountability. Mr. Gordon noted that the AOC is working on the governance structure of the Office of Fairness and Accountability.

CJA Rule 4-206. Exhibits

The rule underwent a significant revision following a 2019 audit. The proposed amendments address custody, disposal, and storage of physical and electronic evidence. This rule has been thoroughly vetted by the boards and clerks of court.

CJA Rule 4-401.02 Possession and use of portable electronic devices

The proposed amendments (lines 30-34) allow JPEC to continue to use recordings to evaluate the performance of justice court judges subject to a basic evaluation.

CJA Rule 7-302. Court reports prepared for delinquency cases

The Sentencing Commission released a new Juvenile Disposition Guide that does not provide specific recommendations for disposition, only factors that should be considered.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Pettit moved to approve CJA Rules 1-205, 3-415, 3-419, 4-206, 4-401.02, and 7-302 with a November 1, 2021 effective date, as presented. Judge Brian Cannell seconded the motion, and it passed unanimously.

11. BUDGET AND GRANTS: (Judge Mark May, Karl Sweeney, and Jordan Murray)

Chief Justice Durrant welcomed Judge Mark May, Karl Sweeney, and Jordan Murray. Mr. Gordon and Cathy Dupont recommended the Council approve immediate expenditure of the FY21-22 American Rescue Plan Act of 2021 (ARPA) funding based on a review of the Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Final Interim Rule; a review of the Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions as of July 19, 2021; and conversations with staff members in the Governor’s Office of Planning and Budget (GOPB) who have oversight of the distribution of ARPA funds. The FY21-22 projects were previously sent to the legislature. The Judicial Council requested additional assurances that the projects are eligible.

The FY21-22 projects are eligible under the category of responding to the public health emergency with respect to COVID-19. The Final Interim Rule identifies 12 non-exclusive types of expenditures under this category of eligibility, including COVID response and prevention. 31 CFR § 35.6(b)(1). The Final Interim Rule further identifies 18 non-exclusive examples of COVID response and prevention expenditures. The examples share a common purpose of implementing measures to mitigate the spread of COVID. Though the projects contained within the FY21-22 ARPA requests are not specifically identified in the non-exhaustive list of examples, the FY21-22 ARPA requests do share the common purpose of implementing measures to mitigate the spread of COVID. Specifically, the FY21-22 ARPA requests reduce the number of people present in a courthouse by implementing alternative ways to transact court business and participate in court proceedings; and decrease public health risks involved with handling evidence by implementing technology solutions. These measures are consistent with and equally important as the listed examples.

Mr. Gordon explained that the need for the funds continues to increase. Mr. Gordon will continue to review any requests to determine if they are permissible.

Electronic Access to Justice Part I FY22

\$11M

- a. Infrastructure to support continued use of video hearings.
- b. To develop a fully functional e-filing system for all litigants, including self-represented litigants.
- c. Create additional self-help kiosks for courthouses.
- d. A well-designed website that is easy to navigate and search.

Electronic Access to Justice Part II FY23

\$3.2M

Part II accompanies and completes the Part I request. Due to pricing increases on technology since the original estimate in Part I, the courts have updated the pricing on all of the requests and made a few additions/scope adjustments.

Jury Trial Backlog – District/Juvenile Courts Case Backlog Part II FY23

\$1M

Due to the effects of COVID, the courts have had difficulty conducting jury trials and hearing cases. Although the case backlog is beginning to be addressed, the courts are finding that getting the parties together including scheduling dates acceptable to attorneys on both sides is taking twice as long as anticipated and those cases that do go to trial are lasting twice as long as estimated. Therefore, the actual case backlog is taking longer to work down than estimated a few months ago when the cost required to clear backlogged cases and jury trials was estimated. Because temporary Judicial Assistants are hired to free up the time of other JAs to devote to the case backlog and jury trials, the ongoing costs of these time-limited JAs now appear to be double what was estimated.

Judge Shaughnessy perceived that the need is great and with this level of review, these items should be authorized for the commencement of expenditures. Mr. Gordon said the FY21-22 requests have been approved.

Motion: Judge Shaughnessy moved to approve the Electronic Access to Justice Part I FY22 request in the amount of \$11M, the Electronic Access to Justice Part II FY23 request in the amount of \$3.2M, and the Jury Trial Backlog – District/Juvenile Courts Case Backlog Part II FY23 request in the amount of \$1M to be submitted to GOPB and the legislature for their consideration during the FY23 budgeting process, as presented. Judge Heward seconded the motion, and it passed unanimously.

COVID-Related Supplies FY23

\$100,000

This request seeks recovery under ARPAs provision to cover COVID supplies used by the court for patrons and employees in all areas of the courts including public areas and courtrooms. Based on the courts run rate for these type of expenses (approximately \$4,000 per month) in FY22, the forecast continued need at this same rate throughout FY22 and FY23.

Office of Legal Services Innovation

\$648,778

The COVID pandemic and the related economic crisis has accelerated and exacerbated significant challenges in the civil justice system. Even before the pandemic, the American legal system stagnated in the grips of an access to justice crisis. In roughly three-quarters of filed civil cases, one side lacks a lawyer and so must attempt to navigate the legal system alone. In 2019,

there were over 100,000 civil cases in the Utah state court system. In many of these cases, one or both parties are without legal representation.

Premium Pay for Essential Workers FY23

\$2.5M

This request seeks to provide a modest amount of premium pay for essential court workers who provided the services to the public during the pandemic. Courts had to remain open and functioning during the pandemic. Payments had to be processed. Court orders issued. Hearings held. Questions answered. New virtual IT services rolled out to the Courts. Essential business only, but it went forward with the help of the court's essential workers.

Reduction of Matheson Courthouse Parking Revenue FY23

\$843,000

This request seeks recovery under ARPA's provision to cover reduced revenues due to COVID. The courts were the recipients of parking garage fees for the public parking areas below the Matheson Courthouse. Due to the in-court sessions, court patrons, visitors, witnesses and the general public used the public parking facilities. In FY20 the court's received parking garage revenues (net of amounts paid to the parking garage manager) of \$301,000. With the lack of in-person court sessions since COVID, the contract with the public parking management company was suspended. The courts reinstated the contract a few months ago, but with the resurgence of COVID due to variants, the courts terminated the contract September 2021. The courts do not see a return to profitable parking garage operations for the foreseeable future.

Public Outreach & Engagement

\$30,000

Community outreach has always been a focal point for the courts, and the COVID pandemic has disrupted a lot of regular in-person participation and presence at community events and meetings. In response to the pandemic, the courts recognize the importance of shifting outreach remotely, increasing access to justice, and gaining the trust and confidence of the public, especially among historically marginalized communities.

Self-Help Center – Helping Family Law Self-Represented Parties

\$64,000

The Self-Help Center provides services to people throughout the state who are representing themselves in Utah State Court cases. Most of the patrons are unable to afford attorneys. The courts have experienced greater demand, especially in the area of family law where self-represented parties are a growing segment of court patrons, with 47% of family law cases having both parties self-represented.

Court Interpreters - Interpreting Equipment

\$95,760

Providing language access is essential, if not the very first step, for ensuring access to justice for limited English proficiency parties. The COVID pandemic has negatively disrupted how courts can provide language access while keeping court interpreters and limited English proficiency parties safe. As defined by the Department of Justice, limited English proficiency individuals are persons who do not speak English as their primary language and who may have a limited ability to read, write, speak, or understand English. Utah State Courts are federally required to provide language access for these individuals who come to court in order to place them on equal footing as someone who can read, write, speak or understand English.

Motion: Judge Cannell moved to approve FY 23 ARPA requests: 1) COVID-Related Supplies FY23 in the amount of \$100,000, 2) Office of Legal Services Innovation in the amount of \$648,778, 3) Premium Pay for Essential Workers FY23 in the amount of \$2.5M, 4) Reduction of Matheson Courthouse Parking Revenue FY23 in the amount of \$843,000, 5) Public Outreach & Engagement in the amount of \$30,000, 6) Self-Help Center – Helping Family Law Self-Represented Parties in the amount of \$64,000, and 7) Court Interpreters - Interpreting Equipment in the amount of \$95,760) to be submitted to GOPB and the legislature for their consideration during the FY23 budgeting process, as presented. Judge Chin seconded the motion, and it passed unanimously.

Funding for Performance Raises – Replacing Career Ladder

\$450,000

Ongoing funds

Historically, career ladder has consumed \$450,000 of ongoing turnover savings each year. With the career ladder sun-setting this \$450,000 of ongoing funds will be dedicated to performance raises, implementing the new performance compensation strategy.

Motion: Judge Heward moved to approve the Funding for Performance Raises – Replacing Career Ladder in the amount of \$450,000, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

FY22 Career Ladder Payments

\$243,000

One-time funds

The conversion of the Courts’ incentive plans from career ladder to a court wide incentive plan includes a Judicial Council approved wind-down of career ladder in FY22 using one-time turnover savings to make one-time payments. These are the final payments that will be made under the career ladder system.

Motion: Judge Connors moved to approve the FY22 Career Ladder Payments in the amount of \$243,000, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

FY22 Q1/Q2 Incentive Bonus Payments

\$275,000 cash payments

\$90,000 retirement and employer taxes

\$365,000 Total
One-time funds

Type 4 incentive bonus payments are meant to be given to employees who complete their individual performance goals as set with their manager. Not all goals will be accomplished in Q1 or Q2, but with the continued high turnover of court personnel, the courts are encouraging managers to begin paying incentive bonus payments as eligible employee's complete portions of their annual goals. The amount of the incentive bonus plan varies with some employees receiving performance raises and others incentive bonus payments. There will be a similar request for Q3 and Q4 at a future meeting. Judge Pullan wondered if this will become more of a practice in the future.

Motion: Judge Pullan moved to approve the FY22 Q1/Q2 Incentive Bonus Payments in the amount of \$365,000, as presented. Judge Connors seconded the motion, and it passed unanimously.

The Finance Department has responsibility for monitoring the difference between the interest the courts earn on trust accounts, earned surpluses retained inside the trust account, and the credit card and other fees the courts pay from the interest received. Historically, the courts either generated a cash surplus, or in years where general funds were going to lapse to the legislature, the courts moved general funds into the trust account to have on hand to cover future years expenses. Except for cash, each type of payment the court takes in has a cost associated with it. Payments by check and ACH have a nominal fee. Payments by credit card are the highest as there is both a per transaction (15 cents) and a fixed percentage charged on the payment amount (Transaction Fee). The total Transaction Fee is 2.95% and is fixed for approximately the next year. The courts had 246,000 credit card payment transactions in FY21 for a gross amount of \$32,064,968 of funds collected through credit card payments. As the society transitions more and more to "cashless" the courts expect credit card fees to increase due to both increases in the rate charged by credit card companies and volume as more court patrons shun cash in favor of credit cards.

Mr. Rice noted the courts aren't selling commodities, therefore, the burden cannot be spread to other consumers, further noting that there seemed to be no other choice than to adopt the fee. Mr. Sweeney thought the contract with Heartland was on average of what other credit card companies charge. Heidi Anderson said the courts went through a stringent process before deciding on Heartland.

Judge Connors felt adding a credit card fee is similar to increasing the filing fee. Mr. Sweeney said the courts have the option to collect the fees in criminal cases, however, they do not want to implement this until they have the authority to charge the fee on both criminal and civil cases. Ms. Anderson explained that the way the credit cards work is through trust & revenue accounts, which allow the courts to remove the fees on funds such as restitution. If the courts decide to collect both the credit card and charge fee it will take significantly longer to implement.

Judge Pullan said fines in criminal cases were used as punishment and adding fees to this obligation might create barriers.

Ms. Anderson noted PayPal may be an option but Venmo does not offer the security measures needed.

Mr. Sweeney will research additional options and how other states handle these issues then return to the Council. This may result in a statutory change. Mr. Gordon felt addressing this in October would allow time to include it with the next legislative session.

Mr. Murray presented CJA Rule 3-411, noting the revised guardrails are the product of many inputs from a variety of key stakeholders and grant professionals. In the early stages of assessment and throughout development, relationships and resource sharing opportunities were developed in partnership with additional state court jurisdictions; notable examples including Maryland and Kentucky; the National Center for State Courts (NCSC), and the National Grants Management Association (NGMA). These relationships were vital in the assessment and determination of best practices. During the rule drafting process, Accounting Manual Section 11-07.00 (special funds – grants) was concurrently revised to complement the revised rule and to provide enhanced guidance reinforcing its status as the official grant manual for the courts.

Motion: Judge Pullan moved to remove CJA Rule 3-411 from the consent calendar, revise as discussed, then send it for public comment. Judge Pettit seconded the motion, and it passed unanimously.

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

12. LEGISLATIVE AUDIT FINES & SURCHARGE IMPLEMENTATION: (Wayne Kidd, Michael Drechsel, and Paul Barron)

Chief Justice Durrant welcomed Wayne Kidd, Michael Drechsel, and Paul Barron. Recommendations from the Legislative Audit included:

- Tracking compliance with ordering statutorily required minimum fees
 - Tables were created in CORIS to identify statutes
 - There is a plan to implement warnings in CORIS & Judicial Workspace
 - There will be a district-level report on cases sentenced with fines below the mandatory minimum
- Monitor suspension of fines
 - Quarterly report of fines by district that will be sent to the presiding judges and justice court administrators. The report can be broken out by county or court.
- Track aggregate sentencing data
 - Statewide totals reported quarterly to court-level administrators
 - Totals posted on website, broken down by prison; probation; jail; and/or fine, fee or trust. Cases by prison or jail time can be broken down in ranges (0-5, 1-20, or 10-life)
 - Reporting total fines
- Track utilization of payment plans

- Quarterly report by district to presiding judges and justice court administrators including cases sentenced with fines and/or payment schedules. This would exclude traffic and parking case.

Mr. Drechsel explained that the audit was focused on tracking the minimum mandatory fine. Monitoring the suspensions is important for the courts because it identifies any fines or part of fines that judges suspend. Judge Connors said with every felony case, he is required to impose a prison sentence even though he sometimes suspends the sentence. Judge Shaughnessy clarified that judges can impose jail time over prison.

Judge Pullan wasn't sure what future purpose collecting the data would serve. Mr. Drechsel said the auditors reviewed aggregate data throughout the state, then felt the Council was better situated to address this. Judge Samuel Chiara didn't believe comparing people based on a similar charge would work well because they are in different situations. When the legislature made fines no longer a condition of probation, the collection of fines declined. Judge Pettit noted the payment plan data didn't seem accurate. Mr. Barron said the data was retrieved from the minutes. Mr. Barron will conduct a more thorough review of the data.

Judge Connors felt the mandatory fine issues should be identified in court programs, although he did not understand why the AP&P recommendations did not include mandatory fines. Mr. Bahr noted the Board of District Court Judges were also concerned about the AP&P issue, which has now been addressed with AP&P. Mr. Bahr will follow up with AP&P again and question why their recommended PSR's fines are not consistent and do not always reflect the statutorily minimum fines.

Mr. Drechsel explained that the JRI Audit was more than 140 pages and included sentences for drug possession charges. In some jurisdictions, drug treatment programs in jails are more successful.

Chief Justice Durrant thanked Mr. Kidd, Mr. Drechsel, and Mr. Barron.

13. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Barry Lawrence and Shane Bahr)

Chief Justice Durrant welcomed Judge Barry Lawrence and Shane Bahr. Judge Lawrence reported that Judge Heather Breerton will replace him as Chair on the Board. There are 11 new judges over the past year and more than two-thirds of the district bench have 8.5 or less years of experience.

The Green Phase Workgroup, lead by Judge Don Torgerson, has completed their work and will seek guidance from the Board tomorrow.

Judge Lawrence had the perception that judges are not as happy as they used to be. Judge Lawrence surveyed judges with more than 8 years on the bench. Most people love the core principles of being a judge but agreed that being a judge is less personal these days. Many judges would have preferred to hold the Annual Judicial Conference in person.

Chief Justice Durrant thanked Judge Lawrence and Mr. Bahr.

14. RECOGNITION OF OUTGOING JUDICIAL COUNCIL MEMBER – ROB RICE: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant thanked Mr. Rice for his dedication and expertise in the legal field. Judge Shaughnessy added that the Judiciary and the Council have been the beneficiaries of a lot of hours Mr. Rice has put in above and beyond the call of the Council on matters such as policies and procedures. Mr. Rice appreciated the remarks and felt this has been a real pleasure.

15. OLD BUSINESS/NEW BUSINESS

No additional business was addressed.

16. EXECUTIVE SESSION

Motion: Judge Heward moved to go into an executive session to discuss a professional competence of an individual and an issue of pending litigation. Judge Pullan seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to have Mr. Gordon and Ms. Dupont form a committee to prepare an RFP for legal representation in anticipation of pending litigation and that this committee communicate with the Council in drafting the RFP and determining who the RFP should be directed. Judge Sessions seconded, with Mr. Rice abstaining and Chief Justice Durrant abstained with the understanding that he does not have a vote.

17. CONSENT CALENDAR ITEMS

- a) Committee Appointments. Appointment of Judge Adam Mow as Chair to the ADR Committee. Appointment of Judge Teresa Welch to the MUJI – Criminal Committee. Reappointment of Judge Clemens Landau, the appointment of Judge Diana Hagen, and the appointment of Dawn Hautamaki to the Technology Committee. Approved without comment.
- b) Probation Policy 4.5. Approved without comment.
- c) CJA Rules 2-101, 3-117, 3-303, 3-401, 4-202.02, 4-208, 5-101, 6-101, 7-101, and 9-101 for Public Comment. Approved with comment removing Rule 3-411 until it can be revised. The approved motion allows the rule to be sent for public comment once changes are made.

18. ADJOURN

The meeting adjourned.