

**JUDICIAL COUNCIL MEETING**  
**Minutes**  
**October 25, 2021**

**Meeting conducted through Webex**

**9:00 a.m. – 11:53 a.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Todd Shaughnessy, Vice 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. Kara Pettit  
Margaret Plane, esq.  
Hon. Derek Pullan  
Hon. Brook Sessions

**AOC Staff:**

Ron Gordon  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Meredith Mannebach  
Jordan Murray  
Bart Olsen  
Jim Peters  
Nini Rich  
Keri Sargent  
Neira Siaperas  
Nick Stiles  
Jeni Wood

**Excused:**

Hon. Ryan Evershed

**Guests:**

Kim Brock, TCE, Third District Court

**Guests Cont.:**

Commissioner Sherrie Hayashi, JPEC  
Hon. Elizabeth Knight, Third Juvenile Court  
Hon. Rick Romney, Provo Justice Court  
Hon. Danalee Welch-O'Donnal, Moab Justice Court  
Dr. Jennifer Yim, JPEC

**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 commented that he did not know that “gamified” was a word, and then moved to approve the September 28, 2021 Judicial Council meeting minutes, as amended to 1) add in item 11 that the FY21-22 projects were previously sent to the legislature; and 3) item 12 add “Mr. Bahr will follow up . . . are not consistent and do not always reflect the statutorily minimum fines. Judge Brook Sessions seconded the motion, and it passed unanimously.

**2. OATH OF OFFICE AND SELECTION OF EXECUTIVE COMMITTEE FOR MARGARET PLANE: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the Oath of Office to Margaret Plane. It is expected that Ms. Plane will be assigned to the Budget & Fiscal Management Committee. The Management Committee will vote on the executive committee assignments at their November meeting.

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

Chief Justice Durrant, Ron Gordon, and Michael Drechsel met with the Judicial Compensation Commission. The Commission supports the Judiciary.

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

Mr. Gordon will continue to work closely with the Judicial Compensation Commission and update the Council as information is available. The AOC has been working with TCEs and other employees to develop quarterly awards, looking beyond the normal annual judicial awards. This will provide additional opportunities to recognize the hard work of court employees.

Mr. Gordon is participating in the Justice Reinvestment Initiative Listening Tour coordinated through the Utah Commission on Criminal and Juvenile Justice. The tour provides forums for residents of Utah to provide feedback on the criminal justice system in Utah and suggestions for criminal and juvenile justice policy. At the end of the listening tour, a work group will be established to determine next steps.

All ARPA Funding requests have been submitted. Mr. Gordon thanked the Council for their efforts with this program. The AOC and staff throughout the courts are working on employee mental health and wellness issues with state partners in the executive branch and the Judicial Institute Director.

Judge Connors thanked the group that presented the Utah Access to Justice Initiative to the visiting ABA judges.

**5. 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 and will have further discussions later in the meeting.

**Liaison Committee Report:**

The pretrial legislative workgroup will meet tomorrow in anticipation of an upcoming bill. Michael Drechsel perceived that pretrial legislation may not be addressed at the November 18-19, 2021 Special Session and may, instead, be addressed during the regular session.

**Policy and Planning Committee Report:**

Judge Derek Pullan said the committee will meet on Friday.

**Bar Commission Report:**

Ms. Plane mentioned the Bar created the Reimagined Committee. The Fall Forum will be held virtually. The Bar received funding to conduct a licensee survey, with particular interest from rural areas and young lawyers. The survey will identify what kind of member benefits Bar members would prefer.

**6. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Rick Romney and Jim Peters)**

Chief Justice Durrant welcomed Judge Rick Romney and Jim Peters.

- There are 110 justice courts supported by 75 judges.
- Of the 75 judges, 60 are male and 15 are female.
- There are 10 judicial vacancies.

**Goals of the Board**

- Explore options for improving wellness among judges and clerks
- Continue to strengthen the Boards relationship with the AOC
- Propose revised standards for court certifications
- Launch the clerk certification
- Continue to provide subject-matter expertise for Justice Court Reform
- Recommend improvements to the judicial selection process for justice courts
- Study payment options for justice court patrons and make recommendations for improvement
- Develop a workload study for justice court clerks

Judge Romney was thankful for the work of their contacts in the Judicial Institute , Lauren Andersen and Kim Zimmerman. The Justice Court Reform Task Force proposals have not been reviewed by the Liaison Committee at this time.

Chief Justice Durrant thanked Judge Romney and Mr. Peters.

**7. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Elizabeth Knight and Neira Siaperas)**

Chief Justice Durrant welcomed Judge Elizabeth Knight and Neira Siaperas. Judge Knight was recently elected as the Chair to the Board of Juvenile Court Judges. Judge Knight thanked Ms. Siaperas for her dedication to the juvenile courts.

They completed phase I of the Fairness & Accountability project, highlighting the disparities of the juvenile court process, finding that minority youth received disproportionately more referrals to the juvenile court. Phase II of the project will allow for further review of the data more thoroughly to identify the courts role.

The juvenile courts are recognizing their staff through employee appreciation. The Board recognized that the juvenile court staff have the ability to understand the challenges and adjust the practices as needed. The previous Board Chair sent a letter to all staff showing his appreciation.

The Board appreciated the Council's support of the juvenile judicial workload study. They felt they had an accurate representation of their work. The Board is discussing creating expert panels to review case weights and other workload issues.

The Board continues to review the technological needs for holding hybrid hearings.

The Juvenile Recodification Act resulted in some mistakes that have been identified and are being corrected.

Chief Justice Durrant thanked Judge Knight and Ms. Siaperas.

**8. SENIOR JUDGE CERTIFICATION: (Cathy Dupont)**

Chief Justice Durrant welcomed Cathy Dupont. Judge Charlene Hartmann sought initial certification. Judge Hartmann does not have any outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court. (CJA Rule 11-201(2)) Judge Hartmann appeared to have met the criteria found in CJA Rule 11-203 with the exception of her education hours two years ago. The National Center for State Courts (NCSC) does not conduct performance evaluations on justice court judges. The courts are working with the NCSC to determine if that is a possibility. The Board of Justice Court Judges unanimously supported Judge Hartmann's application.

Chief Justice Durrant thanked Ms. Dupont.

**Motion:** Judge Chin moved to approve the initial certification of Judge Charlene Hartmann as an active senior justice court judge, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

**9. REPORT AND RECOMMENDATION ON WHETHER TO INCREASE SMALL CLAIMS JURISDICTIONAL FILING AMOUNT: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Utah Code § 78A-8-1091 states "The Judicial Council shall present to the Judiciary Interim Committee, if requested by the committee, a report and recommendation concerning the maximum amount of small claims actions." The Judiciary Interim Committee has requested a report and recommendation from the Council by November 1, 2021.

There was no recommendation from the Board of District Court Judges to make any change to the small claims jurisdictional amount. The Board of Justice Court Judges voted in favor of recommending that the legislature increase the jurisdictional limit, without identifying a specific amount of increase. Any increase should be reasonably designed to avoid directing more complicated cases (i.e. cases requiring extensive discovery, expert witness testimony, etc.) into the small claims venue. The Board is confident that justice courts around the state are well-positioned to effectively adjudicate higher-value cases if the legislature chooses to increase the jurisdictional authority.

The current small claims jurisdictional limit is \$11,000, including attorney fees, but exclusive of court costs and interest. Historically, the rate has continued to increase as follows:

2017 = \$11,000; 2009 = \$10,000; 2004 = \$7,500; 1993 = \$5,000; and in 1991 = \$2,000. Small claims actions over the past 10 years have steadily declined from 31,644 in FY12 to 10,872 in FY21. This reduction is not attributable to the launch of the Online Dispute Resolution (ODR) program; the represented data includes all ODR cases as well as all cases filed and processed using traditional small claims processes. Collateral effects of the COVID pandemic likely play a significant role in the decrease.

Small claim cases in the district courts have also seen a steady decline from 314 in FY12 to 158 in FY21.

Judge Shaughnessy asked if the data compiled separated landlord/tenant cases from general debt collection cases. Mr. Drechsel explained the data did not separate them out.

Judge Farr explained that the Justice Court Reform Task Force did not address small claims monetary limit. Justice Deno Himonas asked if this needed to be addressed at this time, given the significant proposed changes from the Task Force. Judge Todd Shaughnessy agreed that this should relate to the work of the Task Force. If the jurisdictional amount was increased, Mr. Drechsel didn't expect any changes from the largest group of filers.

Judge Shaughnessy wondered if the increase in the amount would result in high-volume filers filing in justice courts, which may result in a considerable increase in the justice courts' workload. Judge Farr said the justice courts might not see a large increase because justice courts only permit a party to collect their own debts. Cases that get assigned to a collection agency are considered third-party claims, which are not allowed in small claims court per Utah Code § 78A-8-103.

Judge Pullan thought the amount being requested in a case does not always correspond with the complexity of the case. As the amount increases, the Council may need to revisit small claims procedures. Judge Pullan didn't believe the courts gain much by increasing the amount. Judge Farr said increasing the amount may bring in personal injury cases, which would deprive the parties of discovery. Mr. Drechsel said if the amount was increased it could affect filings in district courts.

Judge Shaughnessy recommended the Council support an adjustment based on inflation, noting that the data does not indicate that the filing amount is an impediment to people filing. He suggested that the Council thinks there are perhaps other structural impediments that the Justice Court Reform Task Force is working through. Judge Sessions favored this form of open communication with constituents and the legislature. Mr. Drechsel will provide a report to the legislature similar to the one he presented to the Council.

Chief Justice Durrant thanked Ms. Drechsel.

**Motion:** Justice Himonas moved to defer the response until the Justice Court Reform Task Force can review the information. Judge Pettit seconded the motion, and it passed unanimously.

**10. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Sherrie Hayashi)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Sherrie Hayashi. Dr. Yim introduced Commissioner Hayashi, who began her service in 2020. Commissioner Hayashi used JPEC survey tools in her previous work of evaluating administrative law judges. Dr. Yim participates in the national Institute for the Advancement of the American Legal System (IAALS) that covers judicial performance evaluation topics. Some states have similar processes to Utah. The IAALS core group created the JPE 2.0 task force, which identifies concerning trends in performance evaluations, uncontested retention elections, and societal attitudes towards the Judiciary. Phase I includes collecting information and research on topics such as implicit bias and relationships. About six states have been participating in this process through a judicial survey. The multi-state survey by IAALS gives judges an opportunity to weigh in on the judicial evaluation process. Judge Shaughnessy said there are judges who would appreciate the opportunity to participate.

Dr. Yim will send the survey to Chief Justice Durrant to circulate to the judges. Judge Pullan suggested if Utah will undertake this effort, he would appreciate a letter from Chief Justice Durrant to encourage participation. Dr. Yim will prepare the letter for Chief Justice Durrant.

JPEC has proposed legislation to present in the upcoming session. The legislation is still in draft and has not been numbered. The Government Operations Committee considered the proposal. There are six states who have JPEC-style evaluations. Four of the six states have moved from making a recommendation to retain or not retain to instead providing information about whether the judge passes or does not meet the minimum standards. The substantive work of JPEC would not change with this proposal, the difference would help voters receive the most information about judges possible without feeling as though they were being directed as to their vote. Basically, JPEC would not make a recommendation; rather, they would simply provide whether a judge passed or not. Citizens should be making their own choices rather than a recommendation from JPEC.

Judge Pullan asked if there was any change in the outcome of elections in the other states where they have already changed from JPEC recommendations to noting whether a judge passed the evaluation scenario. The results showed more consistency between JPEC and voters. Judge Connors wondered if it would be better to not propose this legislation because once the proposal is sent to the legislature, the legislature may make other changes to JPEC on their own accord. Judge Pullan did not oppose the change. The Council was not being asked by Dr. Yim to take action on this proposal.

Chief Justice Durrant thanked Dr. Yim and Commissioner Hayashi.

**11. BUDGET AND GRANTS: (Judge Mark May, Karl Sweeney, and Jordan Murray)**  
Chief Justice Durrant welcomed Judge Mark May, Karl Sweeney, and Jordan Murray.

**\$7,600**

Special Request to Address 11% Salary Cap Issue

Ongoing turnover savings

In February 2020, the Council approved the use of 20% of the estimated annual Ongoing Turnover Savings, not to exceed \$110,000 in a fiscal year, by the State Court Administrator and Deputy State Court Administrator to address departmental reorganizations, “hot spot” salary adjustments and other types of routine ongoing salary increase requests. One other person has been identified as being impacted by the 11% salary cap. This is an additional request for \$7,600 in ongoing turnover savings in FY22 to address this issue.

**Motion:** Judge Shaughnessy moved to approve the 11% Cap Adjustment and Associate General Counsel position, as presented. Judge Connors seconded the motion, and it passed unanimously.

**Proposed Authorization to Increase Delegated OTS**

\$200,000 (up to)

Ongoing funds

The Council approved the use of 20% of the estimated annual ongoing turnover savings, not to exceed \$110,000 in a fiscal year to address departmental reorganizations. The new request is not to exceed \$200,000.

**Motion:** Judge Connors moved to approve the Proposed Authorization to Increase Delegated OTS, as presented. Judge May seconded the motion, and it passed unanimously.

**Software to Implement Court’s Portion of Clean Slate Legislation**

\$19,667

One-time funds

In order to complete continuing work on the expungement Clean Slate project, the courts need this in order to run auto expungements without human intervention. This will help continue the court's mission by assisting patrons with their expungements and relieving them of the burdening expungement process. Heidi Anderson will seek additional funds in 2022 as this is only valid for one year. Judge Pullan wondered if the courts should consider a long-term commitment.

**Motion:** Judge Pullan moved to approve the Software to Implement Court’s Portion of Clean Slate Legislation position, as presented. Judge Michelle Heward seconded the motion, and it passed unanimously.

Historically, the Judicial Operations budget has been funded through two sources:

- Ongoing base budget (\$500 per Judge/Senior Judge/Commissioner)
- Carryforward funding (\$400 per Judge/Senior Judge/Commissioner).

In FY21 and FY22, the carryforward funding was not granted by the Council leaving each Judge/Commissioner/Senior Judge with the \$500 Judicial Operations Budget base allocation. This allocation has not been fully utilized. In the past five years the greatest use year was FY18 and, in that year, the amount utilized was 59.31% of just the base portion of the

allocation (\$51,598/\$88,000). As a portion of total allocation, for the past five years, utilization rates range from a low of 19.79% in FY 2020 to a high of 32.95% in FY18.

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>
Base Allocation	\$86,500	\$87,000	\$88,000	\$88,000	\$88,000
Carryforward Allocation	\$69,200	\$69,600	\$70,400	\$70,400	\$-
Total Allocation	\$155,700	\$156,600	\$158,400	\$158,400	\$88,000
Funding Utilized	\$47,789	\$51,598	\$44,940	\$31,350	\$25,028
Percent of Base Utilized	55.25%	59.31%	51.07%	35.62%	28.44%
Percent of Total Utilized	30.69%	32.95%	28.37%	19.79%	28.44%

By design, the Judicial Operations Budget funding has very specific allowable uses as per the Accounting Manual section 13-02 00. The request is to eliminate the Judicial Operations Budget allocation. With the elimination:

- the base allocation would be moved to court executives’ budgets to control; and
- judges will be granted the flexibility, subject to accounting manual policy and court executive approval, not afforded to them within the current scope of the Judicial Operations budget.

Shane Bahr explained that currently the funds reside in the districts but are subjected to the Accounting Manual restrictions. Moving the approval to the districts would allow the TCEs discretion to use the funds in a manner that would improve their district, such as devices (coordinated through IT) and out-of-state travel. Council members expressed concern that the Board of District Court Judges have not weighed in on this request. Justice Himonas understood that this would allow more flexibility in the districts with the understanding that all electronic purchases must be coordinated with the IT Department.

Judge Shaughnessy thought this would be a good move but felt it should be conveyed to the Board. Mr. Bahr understood that the Accounting Manual restrictions currently in place would be removed but the amount allocated per judge would remain. Judge Pullan was concerned districts would seek additional funds and was very concerned ordering new electronic devices would be difficult for IT to control. Judge Pullan recommended IT produce a list of allowed devices.

The Council decided to postpone this decision until it can be discussed with the Board of District Court Judges, the TCEs, and the IT Department.

Jordan Murray reviewed the third quarter grants report. The revised draft of CJA Rule 3-411 is in the public comment period through November 12, 2021. The Council’s Grant Application Proposal forms are being updated to reflect revised Rule 3-411 and Accounting Manual Section 11-07.00. The Court Improvement Program renewal application, as approved as of September 24, 2021 by the Department of Health & Human Services Children’s Bureau. The Notice of Award letter is pending.

Mr. Murray sought expedited approval of Rule 3-411 from the Council and will seek the Council’s approval to end the grant moratorium. Judge Pullan was concerned that the public



comment period had not ended yet and felt this should be addressed after the public comment period had ended and to address the grant moratorium at that time.

**Motion:** Judge Pullan moved to delay the decision on CJA Rule 3-411 and the grant moratorium. Judge Chin seconded the motion, and it passed unanimously.

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

**12. OLD BUSINESS/NEW BUSINESS**

No additional business was addressed.

**13. EXECUTIVE SESSION**

An executive session was not held.

**14. CONSENT CALENDAR ITEMS**

- a) Committee Appointments. Appointment of Chris Morgan to the Court Facility Planning Committee. Approved without comment.

**15. ADJOURN**

The meeting adjourned.