

JUDICIAL COUNCIL MEETING
Minutes

January 18, 2022
Meeting conducted through Webex

9:00 a.m. – 12:09 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Todd Shaughnessy, Vice Chair
Hon. Keith Barnes
Hon. Augustus Chin
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Michelle Heward
Hon. David Mortensen
Justice Paige Petersen
Hon. Kara Pettit
Margaret Plane, esq.
Hon. Derek Pullan
Hon. Brook Sessions

Excused:

Hon. Mark May

Guests:

Jeri Allphin, Daggett County Justice Court
Emily Ashcraft, Deseret News
Commissioner James C. Jenkins, JPEC
Hon. Richard Mrazik, Third District Court
Dr. Jennifer Yim, JPEC

AOC Staff:

Ron Gordon
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Casey Huggard
Alisha Johnson
Meredith Mannebach
Tania Mashburn
Jordan Murray
Bart Olsen
Marianne Perry
Jim Peters
Nathanael Player
Keri Sargent
Neira Siaperas
Nick Stiles
Karl Sweeney
Melissa Taitano
Chris Talbot
Keisa Williams
Jeni Wood

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 Paul Farr moved to approve the December 20, 2021 Judicial Council meeting minutes, as presented. Judge Brook Sessions seconded the motion, and it passed unanimously.

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

Chief Justice Durrant videotaped this year’s State of the Judiciary. Chief Justice Durrant thanked Michael Drechsel, Ron Gordon, and Cathy Dupont for their help with the speech.

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

Mr. Gordon noted the link for the State of the Judiciary was emailed to all judicial employees and is scheduled for 2:15 today. A link to the court’s YouTube channel will also be sent after the recording is available.

The United States Supreme Court stayed OSHA’s emergency temporary standard regarding mandatory vaccinations for companies with 100 or more employees. The issue is back with the Sixth Circuit Court of Appeals.

Governor Spencer Cox and the State Health Department recommended those who have COVID symptoms remain at home rather than get tested, with exceptions, because the COVID testing facilities are completely overwhelmed with the Omicron spike in cases. Ms. Dupont has been working to ensure testing capacity is in place for in-person jury trials. The courts are looking at a contract for proctored tests where individuals test themselves with online assistance.

Mr. Gordon mentioned that he, Ms. Dupont and other court personnel met with Representative Cheryl Acton, Chair of the Executive Offices and Criminal Justice appropriations committees, to explain the courts budget requests. The statewide turnover rate for judicial assistants in 2021 was 25%, which is unsustainable and impacts the ability of the courts to operate. A couple of years ago, the turnover rate was 19%. This underscores the need for this budget item.

The Utah Judicial Council’s Annual Report was emailed to all judicial employees as well as the Legislature and the Governor.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Karl Sweeney mentioned the committee will address budget items later in the meeting.

Liaison Committee Report:

Judge Kara Pettit reported that the committee began their weekly meetings. Judge Pettit distributed an email to court management reminding them of the one-voice philosophy.

Policy and Planning Committee Report:

The committee did not meet in January.

Bar Commission Report:

Margaret Plane mentioned the Bar Commission did not meet recently, however, they are discussing whether to hold their March St. George meeting in person or virtual.

5. LEGISLATIVE UPDATES: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel reminded the Council that the session started today. The six budget priorities the Council set last August have been addressed with the Executive Offices and Criminal Justice Appropriations Subcommittee (EOCJ):

- 1) Judicial Assistants Recruit and Retain;
- 2) IT Infrastructure and Development;
- 3) Public Outreach Coordinator;
- 4) Sixth District Court Juvenile Judge
- 5) Court Visitor Program Coordinator; and
- 6) Statewide Treatment Court Coordinator.

The Judiciary has two current bills. One will create the Sixth District Court juvenile judicial position (SB0086 District and Juvenile Judge Amendments). The other bill SB0098 (Judiciary Amendments), will clarify justice court operations, including recognizing presiding judges in justice courts in statute.

Mr. Drechsel has reviewed and responded to 110 bills at this point. Mr. Drechsel will keep the benches informed of relevant bills. Mr. Drechsel provided a brief summary of other proposed bills.

Mr. Gordon and Judge Pettit noted Mr. Drechsel was well-respected with the legislature. Chief Justice Durrant thanked Mr. Drechsel, noting he is truly extraordinary.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Dr. Jennifer Yim and Commissioner James C. Jenkins)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner James C. Jenkins. The proposed changes in HB0040, Judicial Performance Evaluation Commission Amendments, recognize the independence of voters to use the information that JPEC provides without being told how to vote. Supported by research and similar changes made in neighboring states, JPEC proposes to change its reporting language from “recommends retention” to “passes minimum performance standards.” When the decision of how to vote is left expressly to voters, there is increased consistency between the judge's performance evaluation result and voter choice, as demonstrated by other states. HB0040 was unanimously approved by the Government Operations Interim Committee.

Historically, all courtroom observers completed their observations in person. However, in the spring of 2020, all Utah courtrooms moved to a virtual setting using Webex due to the ongoing COVID pandemic. At that time, JPEC made a change to its administrative rule allowing observations to be completed over Webex. Since then, 95% of observations have been completed virtually.

Chief Justice Durrant and Mr. Gordon attended a JPEC meeting in December. Commissioner Jenkins found references about JPEC on the courts website and wondered if one way to strengthen the judiciary with voters would be to refer inquiry to JPEC, such as through

the Frequently Asked Questions section of the courts website. Justice Paige Petersen supported JPECs role and recommendation believing that the work of JPEC is key for judges. Ms. Plane consistently receives feedback that people appreciate JPECs website. Chief Justice Durrant and Judge Pullan thought JPECs link could be posted on the website home page and on the Frequently Asked Questions section. Heidi Anderson said there is American Rescue Plan Act (ARPA) funding to assist the courts with updating the website which could help with the links to JPEC.

Dr. Yim proposed sending a letter to judges with their midterm reports explaining any areas of concern. The comment would only be included in the letter and not the midterm report and would not be sent to the presiding judge. JPEC does not want to stigmatize any judges, but this is more a step towards transparency. Judge Pullan and Judge Pettit thought if JPEC found a consistent concern with a judge, it should be reported to the presiding judge. Dr. Yim didn't have any concern with providing the report to the presiding judge, she was just concerned it would tarnish a judge's reputation for a minor concern that didn't rise to the level of the judge not being retained.

Dr. Yim explained areas of concern are made from multiple sources and not one person's comment. Judge Shaughnessy doesn't believe a judge can be held to a standard without knowing any areas of concern and appreciated Dr. Yim's move to notify judges. Judge Michelle Heward thanked Dr. Yim for JPECs transparency, stating that judges pay a lot of attention to the notices they receive from JPEC. Judge Heward thought having the assistance of a presiding judge would be helpful. Judge Shaughnessy asked how would JPEC handle an issue if a judge didn't respond to the area of concern. Dr. Yim said if the area of concern worsened, this would result in further conversations, but JPEC would not view a non-response as an aggravating factor.

The Council agreed to alert the presiding judge but not the Council if there are any areas of concern that do not rise to the level of JPEC not recommending a judge for retention.

Dr. Yim reminded the Council that JPEC will reach out to judges for pictures and biographies.

Chief Justice Durrant thanked Dr. Yim and Commissioner Jenkins.

7. DRAFT LEGISLATION ON PRESIDING JUDGES' COMPENSATION: (Ron Gordon)

Chief Justice Durrant welcomed Ron Gordon. In October 2021, the committee discussed draft legislation that would establish uniform compensation for presiding and associate presiding judges. Those amounts are set in statute and are currently not consistent for district, juvenile, and appellate courts. The committee supported draft legislation that would clearly state that presiding judges receive an additional \$2,000 per year and associate presiding judges receive an additional \$1,000 per year. The Liaison Committee supported the proposal.

Mr. Gordon questioned whether the draft legislation should apply to justice court judges as well. Boards and committees that have considered the draft legislation are comfortable having it apply to justice court judges; with the understanding that there is currently no funding for

additional compensation for presiding and associate presiding judges in justice courts. Therefore, if the draft legislation applies to justice court judges, it would need to specify the funding source for the additional compensation.

There are at least three approaches.

1. The legislation could require local governments to provide the additional compensation. That approach would place an additional fiscal burden on local governments and would likely not be supported by local governments.
2. The legislation could identify an existing restricted account and expand the permitted uses of the restricted account to include additional compensation for presiding and associate presiding judges in justice courts. The Finance Department has an idea for an existing account that could be expanded for this use.
3. The legislation could request that the expenses be covered through the general fund. This approach would involve somewhat complicated legislation that appropriates funds to the state courts and directs the state courts to provide those funds to the local governments employing the presiding and associate presiding justice court judges. This could create some complicated accounting scenarios, especially if the justice court judge presides in more than one jurisdiction.

The Justice Court Training Account is a sustainable option for funding justice court presiding judges, with current estimates at \$12,000 a year for justice courts. Judge Pullan asked if now was the time to address increasing the amounts provided to presiding judges. Judge Shaughnessy didn't believe people took the positions for the financial rewards and preferred to not have presiding judges vie for that position for compensation purposes. Judge Pettit preferred not to advance any additional funding this year so the legislature can concentrate on staff pay increases.

Judge Sessions recommended when a discussion takes place on salary increases for presiding judges, perhaps a reduction in their workload could also be addressed consistent with the actual time they are spending in their roles. Mr. Gordon offered to assist with sending a message to the Elected Official and Judicial Compensation Commission for a salary recommendation and review of presiding judges' workloads.

Chief Justice Durrant thanked Mr. Gordon.

Motion: Judge Sessions moved to approve moving the legislation forward this year with the amendment to the Justice Court Training Account and defer until next year the increased compensation for presiding judges, as presented. Judge Pullan seconded the motion, and it passed unanimously.

**8. COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES
REPORT AND REQUEST FOR REAUTHORIZATION: (Judge Richard Mrazik
and Nathanael Player)**

Chief Justice Durrant welcomed Judge Richard Mrazik and Nathanael Player. The Committee on Resources for Self-Represented Parties is guided by CJA Rule 3-115. The committee is charged with studying the needs of self-represented parties within the Utah

Judiciary; propose policy recommendations; assess available services and forms; ensure court programs for self-represented parties are integrated into statewide and community planning for legal services to low- and middle-income individuals; and recommend measures to the Judicial Council, State Bar, and other appropriate entities for improving the legal system. The committee also develops action plans for the management of cases involving self-represented parties.

In the past year, the committee worked on the following:

- E-filing for self-represented parties through MyCase;
- Outreach to marginalized communities with the Office of Fairness and Accountability;
- Expansion of pro se calendars, however, logistical hurdles and lack of volume presented challenges;
- Maintaining the option of remote hearings, working with the Access to Justice Commission and the Utah State Bar;
- Developing a wage theft clinic, encouraging community partners work together on this issue; and
- CLE credit for court-referred pro bono service through a proposed rule for a two-year pilot program.

The work of the committee has been somewhat reactive to the challenges and opportunities presented by the pandemic. Looking prospectively to calendar year 2022, the committee hopes to work with new committee members to develop a strategic plan to move forward, focusing on initiatives that center the needs of self-represented litigants to make the courts more open, fair, efficient, and independent.

Judge Pullan generally noted that when the Council creates committees to perform functions, there isn't an identifiable point when the committee needs to end so the Council could focus on something else. Judge Pullan expressed support for reauthorizing this committee, but questioned whether, at some point, a committee that keeps getting re-authorized should be converted to a standing committee.

Chief Justice Durrant thanked Judge Mrazik and Mr. Player.

Motion: Judge Pettit moved to approve the reauthorization of the Committee on Resources for Self-Represented Parties for a six-year term, as presented. Judge Chin seconded the motion, and it passed unanimously.

9. CERTIFICATION OF JUSTICE COURT JUDGES: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Mr. Peters sought certification from the Council on new justice court judges: Jeri L. Allphin to the Daggett County Justice Court, Matthew D. Carling to the Parowan Justice Court, E. Jed Labrum to the Duchesne County Justice Court, and K. Shawn Patton to the Utah County Justice Court. The judges have completed new judge orientation earlier in January.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Chin moved to certify Jeri L. Allphin to the Daggett County Justice Court, Matthew D. Carling to the Parowan Justice Court, E. Jed Labrum to the Duchesne County Justice Court, and K. Shawn Patton to the Utah County Justice Court, as presented. Judge Farr seconded the motion, and it passed unanimously.

10. BUDGET AND GRANTS: (Judge Mark May, Karl Sweeney, Cathy Dupont, Chris Talbot, and Jordan Murray)

Chief Justice Durrant welcomed Karl Sweeney, Cathy Dupont, Chris Talbot, and Jordan Murray. Mr. Sweeney reported that there is \$400,183 of actual turnover ongoing savings for FY22, with a forecast of an additional \$163,633. Ongoing turnover savings is created when a vacant position is filled at a lower rate and/or with lower benefits. There are currently 38 positions that have turned over in the past 90 days. There will be a request to use funds in this category for 2022 performance-based raises and hot spot awards.

The one-time turnover savings for pay period ending November 26, 2021 is \$4,192,693.

New Third District Juvenile Court Taylorsville State Office Building Probation Office AV System

\$47,806

One-time funding

This request is to fund the first phase of AV equipment and installation at the new offices scheduled to open in March of 2022. The second phase will follow through a FY 2022 carryforward request later in FY 2022 to be expended in FY 2023. The second phase budget is \$61,508 for a phase 1 and 2 total expenditure of \$139,314. There are 38 employees merging from two locations into this office space. The office space includes non-dedicated workspace for anyone who works in the office that day. Phase 2 will be needed to fund the conference rooms.

Motion: Judge Shaughnessy moved to approve the New Third District Juvenile Court Taylorsville State Office Building Probation Office AV System request for \$47,806 one-time funds, as presented. Judge Chin seconded the motion, and it passed unanimously.

Supplemental Utah Criminal Justice Center (UCJC) Consulting

\$5,000

One-time funds

UCJC is proposing the AOC enter into a memorandum of understanding to provide consulting services to each of the branches/agencies that are part of its Board of Directors. The requested amount is \$5,000 for a one-year MOU. The MOU would provide stability to UCJC's finances and in return provide expertise from their staff on various court initiatives.

Motion: Judge Shaughnessy moved to approve the Supplemental Utah Criminal Justice Center (UCJC) Consulting request for \$5,000 one-time funds, as presented. Judge Chin seconded the motion, and it passed unanimously.

Mr. Murray continues to monitor grants.

Chief Justice Durrant thanked Mr. Sweeney, Ms. Dupont, Mr. Talbot, and Mr. Murray.

11. AUTOMATED EXPUNGEMENT UPDATE: (Heidi Anderson and Marianne Perry)

Chief Justice Durrant welcomed Heidi Anderson and Marianne Perry. The IT Department is ready to begin automatically expunging acquittals and dismissals with prejudice and clean slate cases in an interim phase. They identified approximately 218,000 acquittals and dismissals with prejudice cases and approximately 600,000 clean slate cases to be expunged. Acquittals and dismissals with prejudice will be started as a micro pilot within the next few weeks as part of continuous testing with BCI. The system will send an email to prosecutors with a list of expunged cases. Once testing is finished, the IT Department will increase the amount of cases that will be expunged and make their way through the backlog.

Production runs of auto-expungements, to include clean slate cases, will begin on February 7, 2022. For acquittals and dismissals, the system will continue to send out an email to prosecutors with a list of case numbers expunged. For clean slate cases, the system will email a preliminary list of cases and provide 35 days for objection. Once 35 days have passed, the cases without an objection will be automatically expunged. For all cases being expunged, an order will automatically be added to the case in CORIS. The judge's signature stamp will be added to each order. Part of the programming will allow monitoring by the district and justice court administration teams (Shane Bahr and James Peters).

Ms. Anderson sought approval from the Council to begin the interim process. The courts will continue to work with BCI to make sure everything is working on both ends and will also start work on the next phase to include the Xchange Prosecutor Portal and the traffic deletion process. Ms. Anderson valued and appreciated her team and outside entities who assisted with this project.

Judge Pullan asked if an error rate had been identified. Ms. Anderson explained that they the process is designed to err on the side of caution. They have not identified an error rate, noting that the program has never sent a person's case through the process that does not meet the required criteria. Judge Shaughnessy asked if individual judges will receive the cases in their assigning cue. The program will assign the signatures in the clean slate program rather than each judge receiving the notices.

Chief Justice Durrant thanked Ms. Anderson and Ms. Perry.

Motion: Judge Shaughnessy moved to approve beginning the clean slate expungement process, as presented. Judge Chin seconded the motion, and it passed unanimously.

12. OLD BUSINESS/NEW BUSINESS

No additional business was discussed at this time.

13. EXECUTIVE SESSION

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

Motion: Judge Pullan moved to adopt the findings and conclusions of the Court Commissioner Conduct Committee with respect to Commissioner T.R. Morgan; adopt the majority recommendation that Commissioner Morgan be removed from office, a sanction that cannot be imposed because Commissioner Morgan has resigned; and provide notice of this decision in writing to Commissioner Morgan. Judge Shaughnessy seconded, and it passed with Judge Connors' abstaining.

14. CONSENT CALENDAR ITEMS

a) Committee Appointments. Reappointment of Charles Stormont, Peter Strand, Leslie Francis, Shawn Newell, Nicole Gray, and Janet Thorpe, and the appointment of Judge Jan, Judge Welch-O'Donnal, Shannon Treseder, Marcus Degen, Alison Satterlee, and Brooke Robinson to the Committee on Resources for Self-Represented Parties. Approved without comment.

b) Forms Committee Forms. Declaration of Financial Status (Criminal) and Order on Declaration of Financial Status (Criminal). Approved without comment.

15. ADJOURN

The meeting adjourned.