

**JUDICIAL COUNCIL MEETING  
Minutes**

**May 23, 2022**

**Meeting conducted through Webex and in person  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, Utah 84111**

**9:00 a.m. – 12:56 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Keith Barnes  
Hon. Samuel Chiara  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Ryan Evershed  
Hon. Paul Farr - virtual  
Hon. Michelle Heward  
Hon. Elizabeth Lindsley  
Hon. David Mortensen - virtual  
Justice Paige Petersen - virtual  
Hon. Kara Pettit - virtual  
Hon. Derek Pullan - virtual

**Excused:**

Hon. Todd Shaughnessy, Vice Chair  
Margaret Plane, esq.  
Hon. Brook Sessions

**Guests:**

Jonathan Adams, OLRGC  
Hon. Kate Appleby, Senior Judge  
Lester Bird, Manager, PEW Charitable Trusts  
Hon. James Brady, Fourth District Court  
Hon. Heather Brereton, Third District Court  
Justice Christine Durham, JPEC  
Hon. Lee Edwards, Logan City Justice Court  
Hon. Elizabeth Knight, Third District Court  
John Mabey, Attorney  
David McNeill, PEW Charitable Trusts

**AOC Staff:**

Ron Gordon  
Cathy Dupont - virtual  
Michael Drechsel - virtual  
Brody Arishita - virtual  
Shane Bahr - virtual  
Todd Eaton - virtual  
Alisha Johnson - virtual  
Jeremy Marsh - virtual  
Tania Mashburn - virtual  
Jordan Murray - virtual  
Bart Olsen - virtual  
Jim Peters  
Nathanael Player - virtual  
Jon Puente  
Nini Rich - virtual  
Keri Sargent - virtual  
Neira Siaperas – virtual  
Stacey Snyder - virtual  
Nick Stiles - virtual  
Karl Sweeney - virtual  
Melissa Taitano - virtual  
Chris Talbot  
Keisa Williams - virtual  
Jeni Wood

**Guests Cont.:**

Kim Paulding, Executive Director, Utah Bar Foundation  
Erika Rickard, Project Director, PEW Charitable Trusts  
Sarah Schecter, Utah Attorney General  
Hon. Bob Yeates, Guardian ad Litem  
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 a hybrid meeting through Webex and in-person.

**Motion:** Judge David Connors moved to approve the April 25, 2022 Judicial Council meeting minutes, as amended correct “effected” to “affected” in section 8, correct “driving” to “driven” in section 10, and to add “this matter” to the last sentence in section 15. Judge Keith Barnes seconded the motion, and it passed unanimously.

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

Chief Justice Durrant was thrilled with the Senate confirmation of Judge Diana Hagen to the Utah Supreme Court. Chief Justice Durrant was grateful for the opportunity to participate in a time capsule ceremony at the Utah Capital on May 19. The capsule was sealed with a letter from Governor Spencer Cox, letters from Utah’s elected leaders, license plates, coins, photos, and other memorabilia. The capsule will remain undisturbed until 2122.



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

Ron Gordon praised the Education Department for their highly successful and effective spring conferences. Mr. Gordon attended the JPE 2.0: Modernizing Judicial Performance Evaluation Conference in Colorado last week, along with Dr. Jennifer Yim. There are distinct differences between the states. Some states have a mandatory self-evaluation process, where other states have a voluntary self-evaluation. Utah does not interview every judge being evaluated, however, other states do interview each judge. A number of states assign a mentor judge for a judge going through the process for the first time. There may be opportunities where staff can be of more assistance to judges after evaluations have been completed. Utah may hold further discussions on processes in the coming months.

The AOC learned that the Board of Pardons and Parole only receives the judgment and commitment that actually sends the defendant to prison. They do not receive a judgment and commitment that resulted in the prison sentence being suspended. Therefore, they do not see any of the comments that judges make in the original judgment and commitment. The Board of Pardons and Parole also does not receive any documents from the court unless the court proactively sends them. Judge Derek Pullan understood that the Board only reviews the commitment but has access to Xchange to view other documents and felt the Board should be reviewing the sentencing report. The Board indicated that they do not conduct research into case files due to limited resources. The AOC is working with IT to identify a possible solution that would automatically send the needed information to the Board. Utah Code § 77-27-13(5)(a) requires prosecutors, in all cases, within 30 days from the date of sentence to provide the Board with “a full and complete description of the crime, a written record of any plea bargain entered into, a statement of the mitigating or aggravating circumstances or both, all investigative reports, a victim impact statement referring to physical, mental, or economic loss suffered, and any other information the prosecutor believes will be relevant to the Board of Pardons and Parole.” It is unclear how much of this information the Board currently receives.

Judge Samuel Chiara has been surprised when defendants return to his courtroom with new charges, within 60 days after he sent them to prison on multiple felony charges. Learning that the Board may not read all of the material may explain why the Board releases defendants so quickly.

#### **4. COMMITTEE REPORTS:**

##### **Management Committee Report:**

The work of this committee is reflected in the minutes.

##### **Budget & Fiscal Management Committee Report:**

Judge Kara Pettit has been named the new Chair of the committee.

##### **Liaison Committee Report:**

Michael Drechsel said the Judiciary Interim Committee (JIC) has an ambitious study schedule. At their last meeting, they spent more than 2 hours discussing the preliminary hearing item with various stakeholders. The JIC created an informal workgroup to further examine preliminary hearings. Mr. Drechsel explained that the preliminary hearing topic was not focused around Utah Constitution Article I, Section 12 Rights of Accused Persons, but rather the focus was on expanding the statutory basis for and the scope of the preliminary hearing.

The justice court reform update and the Utah Bar Foundations debt collection/eviction items were postponed until the JICs June meeting. The justice court reform issue was discussed with Senate President Stuart Adams.

##### **Policy, Planning, and Technology Committee Report:**

Judge Derek Pullan thanked Judge Kate Appleby for assisting the committee with water law judge rules. The committee has begun discussing the process for moving the Technology Standing Committee into the Policy and Planning Committee.

**Bar Commission Report:**

Margaret Plane was unable to attend.

**5. COURT FACILITY PLANNING COMMITTEE REPORT: (Judge James Brady and Chris Talbot)**

Chief Justice Durrant welcomed Judge James Brady and Chris Talbot. The committee reviews trends and projections in population, caseload, and other growth indicators to anticipate courthouse construction needs; reviews evaluations of courthouses and recommends the prioritized placement of construction projects; reviews recommendations from the facility coordinator (TCEs); makes recommendations to the Council regarding the committee’s master prioritization plan; compares requests with the Design and Space Guidelines of the master plan; develops a timetable for construction requests; and develops procedures for committee members and facility coordinators.

**Planning studies**

- Heber City/Wasatch County – Add a juvenile courtroom to the county facility. The feasibility study is pending. One possible funding solution would be to use retiring bonds in FY 2023.
- Davis County Courthouses – Consolidate the Layton, Farmington & Bountiful Courthouses with a new courthouse comprising 16 courtrooms. The feasibility study should be completed in FY 2023. One possible funding solution would be to use retired bonds in FY 2026.
- Cedar City/Iron County – A courthouse expansion of three courtrooms. There is no action planned in FY 2023.

**Active capital development projects**

- Manti Courthouse – This new district and juvenile courthouse will consist of two courtrooms (one to be shelled). The property has been purchased and the demolition of existing structures was completed in February 2020. The Legislature funded the design process in May 2021 and the full project in March 2022. Construction will begin in July 2023 with an estimated opening in the winter 2024.

**Capital improvement projects**

- There are currently 71 requested projects. The list is updated annually by DFCM, Court Facilities and TCEs.
- There are 23 prioritized projects approved by Legislature in FY 2022, with a total funding of \$5.2M with 70% of projects complete year-to-date.
- Notable projects from FY 2022 include the West Jordan HVAC system replacement, the Layton Basement waterproofing, the St. George emergency battery system (UPS) replacement, and the Ogden jury assembly room tenant improvement.
- There are 31 prioritized projects approved by the Legislature for FY 2023; a total funding of \$6.9M.

**Prioritization of projects for FY 2022**

1<sup>st</sup> Manti Courthouse

2<sup>nd</sup> Wasatch Courthouse

3<sup>rd</sup> Bountiful, Farmington, and Layton Courthouses tied  
4<sup>th</sup> Cedar City Courthouse

**Five-year development plan (ranked in priority)**

1<sup>st</sup> Wasatch County, Heber City Courthouse – proposed expansion of county-owned facility to add a new juvenile courtroom. Estimated cost \$3.8M over a new 15-year lease.

2<sup>nd</sup> Davis County Courthouse – proposed new courthouse with up to 14 courtrooms to consolidate the existing Farmington, Layton, and Bountiful courthouses into one facility. The feasibility study to be completed in FY 2023. Estimated cost to be determined.

3<sup>rd</sup> Iron County, Cedar City Courthouse – proposed expansion of the existing courthouse to add 3 courtrooms. Estimated cost to be determined.

4<sup>th</sup> Grand County, Moab Courthouse – proposed substantial remodel of existing leased 2 courtroom courthouse. Estimated cost to be determined.

5<sup>th</sup> Utah County, American Fork/Lehi Courthouse – proposed new courthouse with 4 courtrooms to replace the city-owned leased facility.

Mr. Talbot explained that a feasibility study will help determine whether to create 14 or 16 courtrooms for the proposed Davis County Courthouse. Judge Chiara appreciated being a part of the Manti Courthouse design. Chief Justice Durrant thanked Judge Brady and Mr. Talbot.

**Motion:** Judge Connors moved to approve the priority list as follows: 1<sup>st</sup> Wasatch County, Heber City Courthouse; 2<sup>nd</sup> Davis County Courthouse; 3<sup>rd</sup> Iron County, Cedar City Courthouse; 4<sup>th</sup> Grand County Moab Courthouse; and 5) Utah County, American Fork/Lehi Courthouse, as amended to increase the current estimate of 14 courtrooms to 16 courtrooms in the Davis County Courthouse. Judge Michelle Heward seconded the motion, and it passed unanimously.

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

Chief Justice Durrant welcomed Judge Elizabeth Knight and Neira Siaperas. Judge Knight briefly addressed each of the Boards undertakings.

**1. Racial and Ethnic Disparities (RED) initiative**

The phase I of the Board’s Fairness and Accountability data project was completed in April 2021. It entailed a high level analysis of the disparities at the referral and disposition points of the juvenile justice process. Some of the key findings included that minority youth receive disproportionately more referrals to juvenile court than non-minority youth. Minority youth are also diverted at a lower rate and receive dispositions that typically include a higher level of supervision. Phase II of the project had to be paused while the juvenile court searches for a research partner with capabilities to conduct complex data analysis. As part of RED initiatives, the Board also endorsed the creation of the Judicial Racial Justice Network workgroup led by Judge Monica Diaz. The workgroup has been meeting regularly and is tasked with exploring bias and implementing an action plan to address racial and ethnic disparities in delinquency.

**2. Judicial Weighted Caseload study**

The Board established a standing Juvenile Judicial Workload committee which held its first meeting on May 2, 2022. The committee will select and review the workload case weights

most impacted by the pandemic or by legislative and other changes in judicial work. The selected case weights will be updated to accurately reflect the current workload of juvenile court judges. This review and update of case weights will occur on an ongoing basis to ensure that judicial workload is represented accurately on a consistent basis. The Board greatly appreciates the support of the Judicial Council with the court level Boards taking ownership of applicable workload studies.

### **3. Assessment of Juvenile Defense**

Juvenile court judges and staff will participate in the upcoming assessment by The Gault Center (Center) to evaluate access to counsel and quality of legal representation for Utah youth in delinquency cases. The Center has conducted similar assessments in 28 states to date. There are six components to the assessment:

1. Access to Counsel and Quality of Representation
2. Indigent Defense Structural Overview
3. System Impacts to Justice and Fairness
4. Promising Practices
5. Recommendations for the State
6. Recommendations for Local Systems

The Utah assessment will involve select counties and include court observations and interviews with judges, administrators, district leadership and employees, and other stakeholders. It is anticipated that the assessment will start in August or September 2022. Judge Knight was grateful that the Legislature approved an additional Sixth District Court judge. The Board appreciated the Education Department's work on the spring conference. Judge Knight thanked Ms. Siaperas for her continued dedication to the juvenile courts and her aim to promote from within.

Chief Justice Durrant thanked Judge Knight and Ms. Siaperas.

### **7. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Heather Brereton and Shane Bahr)**

Chief Justice Durrant welcomed Judge Heather Brereton and Shane Bahr. Judge Brereton reported that the Board continues to discuss opening the courts in the Green phase. The Board looks forward to the efforts of the Green Phase Workgroup. The Board felt the role of IT is crucial with virtual and hybrid hearings but felt that the IT Department may be understaffed with the time it takes for a response. The Board hopes for additional IT staffing to ensure the courts continue operations in a timely manner. The IT Department is reporting monthly to the Board.

Some members of the Board attended the Problem-Solving Court Conference last week. Many believe that problem-solving courts should operate in person because participants have excelled when attending in person hearings.

Judge David Williams chairs the Post-Conviction Relief Act (PCRA) workgroup. Many judges have had difficulty in getting counsel to appear pro bono on PCRA cases. That resulted in SB0210, Post-Conviction Representation Amendments, which allows the court to appoint counsel from the indigent appellate defense division.

The transition to move the judicial operations budget funds to the districts seems to have resolved the issue of those funds not being used. The Board thanked the Council for allowing this transition.

Judge Brereton thanked the Council for allowing the District Court Judges Conference to be held in person. It was well-attended and many appreciated the in person setting.

The Board formed a judicial compensation workgroup that will prioritize a request of salary increases for judicial officers.

The Board is concerned about ensuring they have a voice in with the JIC's preliminary hearing workgroup. A proposed bill's language that would expand preliminary hearings for discovery purposes is very concerning and will have a significant impact on the courts. Judge Pullan felt he couldn't overstate the impact that would have on district courts because if this is opened up to any issue, it may become ineffective assistance of counsel not to engage in a preliminary hearing in every case. Judge Pullan informed the Council that if the bill passes, the courts may need to revisit the weighted caseload formula.

Chief Justice Durrant thanked Judge Brereton and Mr. Bahr.

**8. GAL OVERSIGHT COMMITTEE REPORT: (Judge Bob Yeates and Stacey Snyder)**

Chief Justice Durrant welcomed Judge Bob Yeates and Stacey Snyder. The job of a Guardian ad Litem attorney is to advocate for children. In FY 2014, the Executive Offices and Criminal Justice Subcommittee approved standards and performance measures for GAL attorneys.

**Private GALs**

In FY 2021, the Private GAL program had 79 private attorneys, who have accepted over 448 cases, including over 93 pro bono cases. The Best Practice Guidelines were expanded significantly in the form of a Private GAL Manual so the attorneys could be better equipped to handle difficult cases.

**Court-Appointed Special Advocate program (CASA)**

The CASA program is a valued resource for GAL attorneys. During FY 2021, 937 volunteer advocates served 1,549 children and donated 27,275 hours. Advocates are appointed pursuant to Utah Code § 78A-2-803. CASA volunteers are assigned to an individual case and gather information for the GAL attorneys by visiting consistently with child clients, attending child and family team meetings and court hearings, and tracking the child's progress in school.

**Utah Friends of CASA**

Utah's Friends of CASA is a nonprofit organization that supports the CASA program by providing supplemental funding for volunteer recruitment, training and retention.

Judge Michelle Heward mentioned the GAL attorneys are an important part of the juvenile courts and appreciated their work. Chief Justice Durrant thanked Judge Yeates and Ms. Snyder.

**9. BUDGET AND GRANTS: (Karl Sweeney, Alisha Johnson, Brody Arishita, Todd Eaton, and Jonathan Puente)**

Chief Justice Durrant welcomed Karl Sweeney, Alisha Johnson, Brody Arishita, Todd Eaton, and Jonathan Puente. The FY 2022 year end forecasted available one-time funds is expected to be \$2,377,654. The Council previously approved \$1,814,654 in one-time spending requests.

**New Edge Increased Bandwidth Firewalls (includes 5-year service contract on new servers)**

\$295,000 firewalls with a 3-year service or  
\$415,000 firewalls with a 5-year service  
One-time funds

The courts have two different sets of firewalls in place: The Cisco edge firewalls which protect the network and the VPN firewalls which provide VPN access when outside of the courts' network. The VPN firewalls are nearing end of life. Mr. Arishita proposed moving the current Cisco edge firewalls over to handle the VPN connections (and allow us to retire the current VPN firewalls) and replacing the Cisco edge firewalls with the new Palo Alto firewalls which have increased bandwidth capacity. Judge Pullan wondered if the courts are forgoing the ability to review alternate options if the courts accept the 5-year plan. Mr. Arishita explained the money saved long-term can be used elsewhere. Judge Connors said attorneys have complained about bandwidth when holding hybrid hearings. The overall bandwidth for public wifi is an issue and will be addressed at a later time.

**Google Enterprise Plus Renewal**

\$148,000  
One-time funds

The courts first contracted with Google in 2012. Since that time the courts have paid approximately \$109,000 annually for Google licenses. The current system is G Suite Basic, which provides email and google docs/sheets/forms etc. In FY 2022, Google notified the courts that G Suite Basic would no longer be available after July 2022, unless the courts upgrade to G Suite Enterprise. This request will enable the courts to sign a new contract in FY 2022 and pay for the increased cost for 1 year of services.

**Motion:** Judge Connors moved to approve a 5-year service for the New Edge Increased Bandwidth Firewalls one-time request for \$415,000 and approve the Google Enterprise Plus Renewal one-time request for \$148,000, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.



## **Public Outreach Coordinator**

\$120,000

Ongoing funds

This request is to fund the Public Outreach Coordinator position with court-funded ongoing turnover savings. This position has been filled since May 2021 and is currently funded with Legislature-funded one-time general funds set to expire on June 30, 2022. Mr. Gordon explained that this request is being made a month before the Council considers other ongoing funding requests to provide assurance to the current employee that the job will not end on June 30th. The Public Outreach Coordinator coordinates with schools for judicial visits, partners with community-based organizations to build trust and confidence with the courts, and works with marginalized communities.

Judge Chiara proposed funding the position with one-time funds for one year then seeking legislative approval for ongoing funds next year. Judge Connors wondered where the ongoing funds being requested would come from. Mr. Gordon identified ongoing turnover savings funds as a source for this internal position.

Judge Pullan was concerned that the departure from the standard process might relay a message to others that they could secure funds from the Council early, rather than go through the normal budget process. Mr. Gordon explained that the reason for the request now was that going through the normal process would result in the Council making a decision during their June 27 meeting, leaving only three days until the position's current funding expires. Judge Pettit noted the Budget and Fiscal Management Committee addressed whether submitting a request would send the wrong message to those who are submitting budget requests but the committee learned that the courts may have more funds than anticipated requests so felt this request was an acceptable deviation from the normal process. Mr. Gordon is not aware of any other premature requests.

Judge Chin thought that the Public Outreach Coordinator has been performing so well and preferred not to wait on a decision until June 27. Judge Pettit said one possibility would be to fund with one-time funds and add this to the normal process for ongoing funds. She believed that the courts may take a step backward if they fund with ongoing money internally then ask the Legislature for funding. Judge Pettit also believed positions should not be funded with one-time funds.

Judge Chiara proposed to extend the position to July 30<sup>th</sup> to avoid the three day notice concern; consider funding the position with one-time funds for an additional year through the normal funds request process; with the understanding that the Council will prioritize the position to the Legislature this year; and that the Council not make a decision today. Judge Ryan Evershed felt the Council already made the commitment when they approved using the one-time funding from the Legislature to create this position. Judge Connors agreed with Judge Evershed's comment and felt the Council should make a decision today. Judge Pullan didn't want to make any decisions today that should be made next month during the normal budget process for ongoing funding requests, and supported the 30-day extension or even a 60-day extension. Mr. Gordon highlighted that a one-time request doesn't have the same precedent as an

ongoing request. Judge Elizabeth Lindsley felt the Council loses creditability about our commitment to public outreach by creating this position then not sending a message of support.

**Motion:** Judge Connors moved to approve the request to fund the Public Outreach Coordinator with ongoing funds in the amount of \$120,000, as presented. Judge Chin seconded the motion, and it passed with Judge Chiara, Judge Mortensen, and Judge Pullan opposed.

Judge Pullan clarified that he isn't opposed to merits of funding the Public Outreach Coordinator position, but rather to the process of the request, and he hoped that the Council will communicate a firm commitment to the standard processes by which budget decisions are made. Judge Chiara agreed with Judge Pullan's comment. Chief Justice Durrant said that, on the merits, it appears as though the current Public Outreach Coordinator does a great job. Judge Mortensen thought the position should be funded for one-year and not with ongoing funds so that the courts can approach the Legislature again for funding.

Chief Justice Durrant thanked Mr. Sweeney, Ms. Johnson, Mr. Arishita, Mr. Eaton, and Mr. Puente.

**10. JUSTICE COURT REFORM: (Jim Peters and Ron Gordon)**

This item was postponed.

**11. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT: (Dr. Jennifer Yim and Justice Christine Durham)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Justice Christine Durham. Dr. Yim announced that Justice Durham has accepted serving another term of office as a commissioner with JPEC. Dr. Yim presented JPEC outcome indicators from 2012-2022, showing that in 2022 there were 62 judges on the ballot for retention. Of those, 95% received a unanimous favorable grade, which meets or exceeds the retention standards (this was later corrected to 94%), 3% received a mixed favorable grade, which includes a majority favorable, and 2% received an unfavorable, no determination, insufficient grade (this was later corrected to 3%). Two judges received presumptive unfavorable, which means that those judges did not pass at least one standard.

Justice Durham found that the determination work is a complicated process but she found working with the JPEC commissioners has been thoroughly pleasant, stating that Dr. Yim has been wonderful to work with. The commissioners pay a lot of attention to the rules and policies surrounding the procedures. JPEC has been working on ensuring confidentiality of judges' names to reduce potential bias when making decisions. The commission regularly trains on implicit bias. Every commissioner must disclose any associations or contacts with the judges that are under consideration. Justice Durham emphasized that JPEC commissioners have identified judges as very hard working individuals. The message is that JPEC looks at the objective data and that the standards set by statute are met.

Justice Durham has worked on gender bias for many years and appreciates the composition of JPEC commissioners, including minority individuals and minority women. JPEC continues to work on eliminating bias in the system.

Justice Petersen felt that some comments from lawyers are gender-biased against female judges. Justice Durham said JPEC didn't find a significant discrepancy on the scores when comparing females and males.

Chief Justice Durrant thanked Dr. Yim for her presentation and thanked Justice Durham for all of her work with the courts.

**12. CJA RULES 1-204, 1-205, 3-421, 4-508, 4-903, 6-104 AND HUMAN RESOURCE POLICIES FOR FINAL APPROVAL: (Keisa Williams and Bart Olsen)**

Chief Justice Durrant welcomed Keisa Williams and Bart Olsen. Following a 45-day comment period, the Policy, Planning, and Technology Committee recommended that the following rules be approved as final with a November 1, 2022 effective date.

**CJA 3-421. WINGS Committee.**

Outlines the roles and responsibilities of the new Standing Committee on Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

**CJA 4-903. Uniform custody evaluations.**

Limits the circumstances under which a custody evaluation can be ordered, outlines the training requirements of those who conduct custody evaluations, and shortens the time period in which a party must request a custody evaluation from 45 days to 28 days after the custody evaluation conference.

**Motion:** Judge Connors moved to approve CJA Rules 3-421 and 4-903, with a November 1, 2022 effective date, as presented. Judge Lindsley seconded the motion, and it passed unanimously.

**CJA 6-104. Water law judges.**

New rule creating designated water judges in district court to handle cases involving water law and the adjudication of water rights. Several recommendations would have significantly expanded the scope of the rule, resulting in an unfunded fiscal impact and potential legislative changes that would delay the appointment of water law-trained judges. The Policy, Planning, and Technology Committee recommended that the Council form an ad hoc committee with stakeholders included, one year after the adoption of Rule 6-104 to evaluate how the rule has been implemented and to recommend amendments.

Judge Kate Appleby felt this was a modest proposal to allow for education of judges. Judge Pullan thought it would be good to get the rule in place now and then conduct a study in a year. They anticipate this area of the law will become more critical due to the increasing drought in Utah.

Judge Appleby will work with the Education Department to possibly address this at the Annual Judicial Conference. From the appellate level, Justice Petersen would appreciate attending some of the courses offered to district court judges. Judge Appleby is working with Dividing the Waters to create online training for judges. This rule would require the Council to designate three district court judges who volunteer as water law judges.

**Motion:** Judge Connors moved to approve CJA Rule 6-104, with a November 1, 2022 effective date, as presented. Judge Barnes seconded the motion, and it passed unanimously.

The Policy, Planning, and Technology Committee recommended the following rules be approved on an expedited basis with a May 25, 2022 effective date, followed by a 45-day comment period.

**CJA 4-508. Guidelines for ruling on a motion to waive fees.**

The proposed amendments are in response to S.B. 0087 Court Fee Waiver Amendments, effective May 4, 2022. Among other things, S.B. 0087 amends provisions regarding affidavits of indigency and requires a court to find an individual indigent under certain circumstances.

**CJA 1-204. Executive committees.**

**CJA 1-205. Standing and Ad Hoc Committees**

Creates a Standing Committee on Working Interdisciplinary Network of Guardianship Stakeholders (WINGS). Per the Judicial Council's direction, the Policy and Planning will be renamed the "Policy, Planning, and Technology Committee." In addition to its current responsibilities, the committee will now review and recommend technology policies and priorities. The Standing Technology Committee will be dissolved.

**Motion:** Judge Connors moved to approve CJA Rules 4-508, 1-204, and 1-205, with an immediate effective date, as presented. Judge Lindsley seconded the motion, and it passed unanimously.

Ms. Williams requested the Council consider approving Rule 9-109 from the consent calendar.

**Motion:** Judge Connors moved to approve CJA Rule 9-109, with July 1, 2022 effective date, as presented. Judge Chin seconded the motion, and it passed unanimously.

Consistent with CJA Rule 3-402(5), the Human Resources Policy Review Committee meets regularly to review policy suggestions. Certain bills passed during this year's General Legislative Session require HR Policy amendments to be considered. The proposed policies were approved by the Policy, Planning, and Technology Committee.

- Proposed amendments for HR 01 and HR 07 support legislative requirements by removing the term "merit increase" and its definition and syncing leave policy with legislative language.
  - Proposed amendments to HR 07-2 include recognizing Juneteenth as a holiday.
  - HR 07-9 clarifies that management may authorize bereavement leave.
  - HR 07-21 replaces postpartum recovery leave with parental leave.
- HR 04 and HR 05 govern the filling of positions and career service status. The proposed amendments draw a line in the sand for the creation and filling of career service positions on July 1, 2022: vacant career service positions will convert to at-will positions.

- HR 04-1, 04-2, 04-3, and 04-4 are amended to address positions.
- HR 05-1, 05-2, and 05-3 propose changes that address career employees.
- The amended draft of HR 17-9 provides much needed guidance to the Grievance Review Panel on evidence and testimony to consider from grievant/appellant and from courts management, and the applicable HR policies against which the Panel should analyze the case.
- The proposed amendments to HR 09-9 governing Professional Appearance are based on the best examples gathered from other state court systems. The draft deliberately moves away from lengthy lists and photos of approved and prohibited attire. Instead, it gives overarching principles of professionalism in appearance, and a small table of examples, discretionary guidance to court executives in consultation with presiding bench leadership, and clear support of protected class rights.
- The draft of HR 09-12 restores the previous political activity policy and adds Committee recommendations on political and religious statements, displays and discussions in the workplace. The intent is to clarify that employees should always exercise caution, but prohibitions only apply when statements, displays or discussions are visible to or within earshot of the public.

Mr. Olsen explained that the current professional appearance policy may discriminate against some minorities, such as prohibitions on some visible body piercing. He also mentioned the need to respond to changes in business dress standards that relaxed during the pandemic. Mr. Olsen mentioned that the resolution of political and religious speech in the workplace was to make these conversations a clear prohibition in areas that are visible or can be heard by the public, but allowing them, with caution, in other areas not visible to the public.

**Motion:** Judge Chin moved to approve the proposed changes to HR Policies 01, 07-2, 07-9, 07-21, 04-1, 04-2, 04-3, 04-4, 05-1, 05-2, 05-3, 17-9, 09-9, and 09-12, with an effective date of July 1, as presented. Judge Heward seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Ms. Williams and Mr. Olsen.

**13. UTAH BAR FOUNDATION DEBT COLLECTION AND EVICTION REPORT: (Erika Rickard, Lester Bird, David McNeill, and Kim Paulding)**

Chief Justice Durrant welcomed David McNeill and Kim Paulding. The Utah Bar Foundation (Foundation), in conjunction with the Pew Charitable Trusts released the Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns Report in April 2020. The report identified that some of the highest unmet legal needs in Utah center around debt collection in both district and justice courts, as well as the district courts eviction process.

The current project sought to understand the processes and outcomes tied to small claims debt cases in the justice courts and third-party debt collection, eviction, and eviction-related debt cases heard in the district courts. The project researchers found the following:

- About 89% of plaintiff's are represented in district court cases, while less than 5% of defendants had attorney representation.
- Some policies, statutes, and court rules, serve to disincentivize defendant participation in debt lawsuits. In some cases, policies around attorney fees and court-awarded damages

lead to worse outcomes for defendants who engage with the courts than for defendants who do not participate in their cases and receive a default judgment.

- Civil courts are primarily being used by financial institutions and their subsidiaries to collect debts. As a result, individuals and/or small business owners represent a minority of plaintiffs.
- In Utah, 6 plaintiffs account for roughly 50% of all debt collection cases filed in the district courts and 9 plaintiffs account for roughly 50% of small claims filed in the justice courts.
- The size of debt being pursued in district court is very similar to that pursued in justice court, but outcomes for defendants are very different due to contrasting policies.
- While the small claims rules in justice courts are easier to navigate for debtors, the rules for district court were written assuming both parties involved in a case would have legal representation. Defendant confusion around their rights and obligations can discourage participation with a case.
- Utah’s eviction policies are among the least renter-friendly in the nation; only two other states have a three-day “pay or vacate” window coupled with treble damages, which may be assessed in addition to any back rent owed for residential evictions.

Additionally, the report identified several overarching themes related to the debt litigation process in the state:

1. Court is expensive for all parties.
2. Court processes are difficult to navigate without specialized training.
3. Court is a less efficient vehicle for resolving debt claims than upstream solutions.
4. People seldom understand their rights and obligations.
5. The length of time between case initiation to judgment is a significant factor in defendant outcomes.

**Debt collection and statewide standards**

Judges expressed a desire to have more judicial flexibility with treble damages in eviction cases. Kim Pauling recommended the courts set standards and guidance for handling debt collection cases throughout the state, especially with the vast amount of variations in the justice courts’ procedures.

**Judgments**

The Report found that the satisfaction of judgments do not include dollar amounts; which could result in people paying significantly more than the judgment amount because of post-judgment interest or people are paying less than the judgment amount because the plaintiff’s attorneys are writing off debt.

<b>Subject</b>	<b>Debt Collection</b>	<b>Eviction</b>	<b>Small Claims</b>
<b>Median Amount at Filing</b>	\$1,189	\$640	\$1,289
<b>Median Amount at Judgment</b>	\$1,575	\$4,070	\$1,301
<b>Average Days to Judgment</b>	39	26	76

<b>Average Post-Judgment Interest</b>	12.59%	24%	4.59%
<b>Outcome Percentages</b>	71% default judgment	40% default judgment	29% default judgment, 38% dismissed
<b>Satisfaction of Judgments</b>	\$1.94B total \$1.22B unsatisfied	\$164M total \$143M unsatisfied	\$169M total \$119M unsatisfied

The Management Committee wasn't sure the comparisons made between district and small claims courts would be useful because a plaintiff would request the same treble damages in small claims that they do in the district courts. This can be complicated because some complainants are forced to file in certain courts, whereas, defendants do not have a choice where a case is filed.

**Dedicated Calendars**

Dedicated calendars provide pro bono representation, which results in less people defaulting. Ms. Paulding questioned whether the courts could offer statewide jurisdiction when holding dedicated calendars.

**10-Day Summons and MyCase**

The next step would be to meet with the courts IT Department to identify MyCase capabilities. Stakeholder feedback showed multiple calls to the courts asking if a case has been filed when they receive a 10-day summons. Ms. Paulding wondered if a message could be added to MyCase to notify a person when a case is filed. The Management Committee identified that, at a minimum, the courts could change the misleading language about a lawsuit having been filed on the form.

**Next Steps**

Pew Trusts would like to meet with the IT Department to ascertain the value in the courts collecting demographic information.

**Judiciary Interim Committee (JIC)**

The Foundation will present the findings of this Report to the JIC at their June meeting. The Management Committee recommended that the Foundation focus on subjects that the Legislature has jurisdiction over, rather than court policies. Ms. Paulding said they are working closely with Cathy Dupont and Mr. Drechsel.

Chief Justice Durrant thanked Mr. McNeill and Ms. Paulding.

**14. OLD BUSINESS/NEW BUSINESS**

No additional business was discussed.

**15. EXECUTIVE SESSION**

An executive session was not held.

**16. CONSENT CALENDAR ITEMS**

- a) Committee Appointments. The appointment of Judge Marvin Bagley, Keri Sargent, David Head, AJ Torres, Judge Brent Bartholomew, and Bret Hayman to the Forms Committee; and the appointment of Mark Morris and William Eggington to the Model Utah Jury Instructions-Civil Committee. Recommend to the Governor, the appointment of Commissioner Marian Ito to the Child Support Guidelines Advisory Committee. Approved without comment.
- b) Forms Committee Forms. Consent to Petition for Minor Name or Sex Change. Approved without comment.
- c) Rules for Public Comment. CJA Rules 4-202.03, 6-501, and 9-109. Approved without comment.

**17. ADJOURN**

The meeting adjourned.