

**JUDICIAL COUNCIL MEETING
Minutes**

August 19, 2022

Meeting conducted through Webex

12:45 p.m. – 5:12 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Todd Shaughnessy, Vice Chair
Hon. Keith Barnes
Hon. Brian Brower
Hon. Samuel Chiara
Hon. Augustus Chin
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Elizabeth Lindsley
Hon. David Mortensen
Justice Paige Petersen
Hon. Kara Pettit
Margaret Plane, esq.
Hon. Derek Pullan

AOC Staff:

Ron Gordon
Neira Siaperas
Brody Arishita
Shane Bahr
Kristene Laterza
Meredith Mannebach
Jordan Murray
Bart Olsen
Chris Palmer
Jim Peters
Jon Puente
Nini Rich
Nick Stiles
Karl Sweeney
Melissa Taitano
Jeni Wood

Excused:

Michael Drechsel

Guests:

Holly Langton, GOMB

Guests Cont.:

Mark Urry, TCE, Fourth District Court
Elizabeth Wright, Executive Director, Utah State Bar

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge David Connors moved to approve the July 18, 2022 Judicial Council meeting minutes, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

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

Chief Justice Durrant did not have an update for the Council.

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

The Senate unanimously confirmed Justice Jill Pohlman to the Supreme Court and Judge Rick Westmoreland to the Second District Juvenile Court. There are currently seven judicial vacancies throughout the state. Sonia Sweeney has been hired as the new Juvenile Court Administrator, beginning August 29.

The Green Phase Workgroup is hoping to provide the Council with a draft report compiled of information gathered from stakeholders in the next two months.

Ron Gordon thanked AOC staff, the Budget and Fiscal Management Committee, and the Boards of Judges on their preparation work for the Annual Budget meeting.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

The work of the committee will be addressed later in this meeting.

Liaison Committee Report:

Michael Drechsel updated the Liaison Committee of his work with various legislative committees. The committee agreed with the concept that any justice court reform changes be delayed until the courts have a better chance to study a phase-in implementation. Judge Kara Pettit did not receive any information on a constitutional change regarding preliminary hearings, however, Mr. Gordon thought there may be a sense of urgency among legislators to address preliminary hearing changes.

Policy, Planning, and Technology Committee Report:

Judge Derek Pullan reported that the committee continues to work on drafting the prioritization process of IT projects.

Bar Commission Report:

Margaret Plane said the Bar is launching a new and improved website on September 1st. They are testing 6 LPPs this month; currently there are 23 LPPs.

5. OFFICE OF INNOVATION UPDATE: (Nick Stiles and Margaret Plane)

Chief Justice Durrant welcomed Nick Stiles and Margaret Plane. The Office of Innovation (Office) is hoping to receive an answer on the Stand Together grant next week. Mr. Stiles noted there have been 71 total applications for the Utah Legal Sandbox, 43 authorized entities, with 3 more pending applications. There have been 23,353 legal services from the sandbox through the end of June; the majority of which fall into the military/veteran’s benefits category. The Office receives an average of 1 harm complaint for every 2,000 services provided. John Lund and Mr. Stiles have been involved with the Bar’s study to house the Office at the Bar. The study includes the practical effects of the Office, public relations issues, effects on the current litigation and potential liabilities that might arise, and financial considerations including

salaries, administrative services, IT services, and rent. The Office is studying the Arizona model when considering whether participants should be paying a fee.

Chief Justice Durrant thanked Mr. Stiles and Ms. Plane.

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

Chief Justice Durrant welcomed Jim Peters and Ron Gordon. The justice court workgroup, who meets every other week, has been calculating a fiscal note and facilitating outreach to various stakeholders about the task force recommendations. They have preliminary estimates for the fiscal note, which includes about 60 additional division court judges and about 260+ support staff.

They will next discuss how the reform would affect the Audit, Human Resources, Court of Appeals, Legal, and Education Departments. With regard to outreach, the National Center for State Courts (NCSC) facilitated a meeting with the Board of Justice Court Judges. The NCSC will meet next week with the justice court clerks and Board of District Court Judges. They are working to schedule focus groups with prosecutors, defense counsel, and city and county officials.

Mr. Peters said it will be difficult to determine the impact of the reform on current justice court staff and judges, because a lot of them are not full time. There are approximately 400 justice court staff, some of which only work 1-2 hours a week. There are 80 judges. Plus, at this point, they do not know how many city and counties will maintain their justice courts, which makes preliminary data difficult to determine.

Judge Paul Farr said there is a small group that is in favor of this proposal, a small group that opposes it – possibly for revenue purposes, but the largest group is somewhere in between. The in between group would like detailed financial data pertaining to their court after justice court reform takes effect. Mr. Gordon explained that the courts do not know how much revenue the Legislature will give to the new division courts, if the legislation passes. Assuming the proposal of moving traffic cases from justice to district courts is accepted as it is currently written, the revenue of just over \$30 million would not cover the cost of justice court reform. If the Legislature wants to be cost-neutral, they would need to instruct the cities and counties to split the revenue between them and the new division court on some cases.

Judge Pullan found that the justice court reform has familiar aspects to the old Utah circuit court system and recommended research as to why the courts moved away from circuit courts. Judge Farr had discussions with Justice Michael Zimmerman and Roger Tew about the old circuit court system. They identified that the circuit courts were the “gold standard” model for other states to follow and at that time, there was a push to eliminate justice courts over time so everything would be state-operated courts. But there was political opposition and financial incentives to municipalities that had justice courts. Judge Farr was told that the reason the circuit court system was removed was the internal tension among court levels. District court judges expressed concern that circuit court judges were not contributing to the workload enough, whereas, circuit court judges felt that district court judges higher salaries were unfair. Judge Farr believed the current proposals take the history of circuit court issues into consideration.

Chief Justice Durrant found it interesting that circuit courts were the gold standard. Judge Farr said those outside of the Judiciary liked the circuit courts but internally, the problems were clear and something needed to change. Judge Farr will contact additional people that were involved in the process moving away from circuit courts, such as, Justice Christine Durham, Dan Becker, Judge Lynn Davis, Judge Judith Atherton, Judge Sharon McCully, Judge Brent West, Judge Dennis Fuchs, as well as some of the senior judges.

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

7. BUDGET AND GRANTS: (Karl Sweeney, Jordan Murray, Brody Arishita, Todd Eaton, and Melissa Taitano)

Chief Justice Durrant welcomed Karl Sweeney, Jordan Murray, Brody Arishita, Todd Eaton, and Melissa Taitano. The total case processing amounts from 2022 Legislature General Session Fiscal Notes is \$247,900 in one-time funds and \$818,200 in ongoing funds. The expected carryforward amount from FY 2022 was \$3,200,000.

Upgrade Spanish Fork Courtroom Audio

\$17,000

One-time funds

The audio in this courtroom was last updated in 2009 and lacks the current audio technology to best support hybrid/remote hearings.

Motion: Judge Elizabeth Lindsley moved to approve the Upgrade Spanish Fork Courtroom Audio for \$17,000 in one-time funds, as presented. Judge Connors seconded the motion, and it passed unanimously.

Internal Control Self-Assessment

Mr. Murray presented the Five Year Internal Control Self-Assessment (ICSA) grants report, which represented the first compliance review conducted for grants awarded to the courts between 2016 – 2020. Future ICSA reviews will be completed annually per CJA Rule 3-411(9)(A)(i).

The ICSA was guided by principles and statutes set forth in:

1. Standards for Internal Control in the Federal Government;
2. Accounting Manual Section 11-07.00 Grants;
3. CJA Rule 3-411 Grant Management;
4. Utah Code § 63J-5-203 Judicial Council to Approve Certain New Federal Funds Requests, Utah Code § 63J-5-204 Legislative Review and Approval of Certain Federal Funds Requests, Utah Code § 63J-7-202 Judicial Council to Approve Certain Grant Requests, and Utah Code § 63J-7-203 Legislative Review and Approval of Certain Grant Requests; and
5. Generally Accepted Accounting Principles.

ARPA Spending

	Funded by	GOPB	Requested	Approved	Actual	Balance
	Legislature	Approved	Amount	Amount	Amount YTD	Available
IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	11,000,000	3,042,468	7,957,532
Courts Case Backlog - Part I*	May-21	Yes	1,000,000	1,000,000	707,963	292,037
Subtotal			12,000,000	12,000,000	3,750,431	8,249,569
Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature			Requested	Approved	Actual	Available
IT Access to Justice - Response to COVID - Part II	N/A	Submitted 10/21	1,373,400	1,373,400	-	1,373,400
Courts Case Backlog - Part II	N/A	Submitted 10/21	1,000,000	1,000,000	-	1,000,000
COVID-19 Supplies	N/A	Submitted 10/21	640,000	302,100	-	302,100
Legal Sandbox Response to COVID	N/A	Submitted 10/21	649,000	324,500	-	324,500
Self-Help Center	N/A	Submitted 10/21	64,000	-	-	-
Interpreter Equipment	N/A	Submitted 10/21	97,000	-	-	-
Eviction Court	N/A	Submitted 10/21	166,000	-	-	-
Public Outreach & Engagement	N/A	Submitted 10/21	30,000	-	-	-
IT Access to Justice - Response to COVID - Part III	N/A	Submitted 10/21	1,881,500	-	-	-
Subtotal			5,900,900	3,000,000	-	3,000,000
			\$ 17,900,900	\$ 15,000,000	\$ 3,750,431	\$ 11,249,569

The final date for spending ARPA funds is December 31, 2024. The final date for lost revenue is December 31, 2023. Judge Pullan expressed his appreciation for Mr. Sweeney’s careful work on the history of grants. Mr. Murray explained that each grant will be added to the Google drive so each grant manager can upload information in a shared, permanent capacity. This will effectuate timely communication. Judge Shaughnessy wondered if there were items in the pipeline that were going to use the \$11 million IT ARPA funds. Mr. Arishita has a roadmap created to use all of the remaining \$8 million in ARPA funds available to them.

Mr. Sweeney said senior judges’ assistance in the districts remains busy but has been declining. Shane Bahr informed the Council that the Board of District Court Judges recognized that the number of continuances has almost doubled compared to the pre-pandemic amount. He further noted, attorneys may not have enough funding or staff to keep up with current demand. The Council understood that much of trial preparation is hard for the courts to control. Judge Shaughnessy said there has been a culture developed for people asking for continuances. This may require judges to break this cultural expectation. Judge Pullan recommended this be further discussed at the Annual Judicial Conference.

Mr. Gordon informed the Council that the last FY 2022 fiscal quarter showed the courts had the highest amount of jury trials in recent history, which is likely attributable to the lifting of COVID restrictions.

Chief Justice Durrant thanked Mr. Sweeney, Mr. Murray, Mr. Arishita, Mr. Eaton, and Ms. Taitano.

8. **EVICTION AUTOMATIC EXPUNGEMENT ORDERS: (Keisa Williams)**

Chief Justice Durrant welcomed Keisa Williams. Utah Code § 78B-6-852 Automatic Expungement of Eviction, went into effect on July 1, 2022. In accordance with CJA Rule 4-208(3)(D) Automatic Expungement of Cases, the Council must approve the form and content of automated orders of expungement. Both the Management Committee and the Policy, Planning, and Technology Committee approved the automated process and the form and content of the proposed orders. Mr. Arishita explained that they have corrected the inadvertently expunged

cases. For expungement cases, the IT Department will create a process to frequently check on these cases.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Connors moved to approve the process and the three automated orders of expungement, as amended to develop and return to the Council with a proposed audit of the process. Judge Pullan seconded the motion, and it passed unanimously.

9. DEFERRED TRAFFIC PROSECUTION: (Keisa Williams and Michael Drechsel)

Chief Justice Durrant welcomed Keisa Williams. HB 139 Traffic Violation Amendments and revisions to Utah Code § 77-2-4.2 Compromise of Traffic Charges -- Deferred Prosecution of Traffic Infractions – Limitations, Deferred Traffic Prosecution, goes into effect on October 1, 2022. The amendments and orders authorize the AOC to implement automated processes and automatically affix signatures without judicial review, similar to the clean slate and eviction expungement processes.

The statute contemplates an administrative fee to be paid by participants to cover costs associated with the development and implementation of the system. Section (5)(h)(i) states that the “Judicial Council shall set and periodically adjust the fee ... in an amount that the Judicial Council determines to be necessary to cover the cost to implement, operate, and maintain the deferred prosecution program ...” The use of automated orders will help keep the administrative fee lower and more cost effective for court patrons.

Regardless of whether the Council approves the use of an automated or manual system, the Council will need to set an initial administrative fee to cover costs associated with administering the program and rely on AOC staff to provide periodic reports and recommendations on necessary adjustments. The AOC estimates that a \$5.00 fee is necessary to cover the initial implementation and operation costs.

In accordance with CJA 4-208(2)(C) and (3)(D), the Council must approve all automated processes developed by the AOC and the form and content of automated orders. Policy, Planning, and Technology recommended that the rules be adopted on an expedited basis with an October 1, 2022 effective date, followed by a 45-day public comment period.

Kristine Laterza explained that a quarterly auditing process has been created.

Chief Justice Durrant thanked Ms. Williams and Ms. Laterza.

Motion: Judge Pettit moved to approve the automated process, the orders, and amendments to CJA Rules 3-108, 4-208, and 4-403, with an effective date of October 1, 2022, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

10. RULES FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. Following a 45-day comment period, the Policy, Planning, and Technology Committee recommended that the following rules be

approved as final with an effective date of November 1, 2022, unless otherwise noted.

CJA Rule 4-202.03 Records Access.

Allows a petitioner in an expunged case to obtain a certified copy of the expungement order and case history upon request and in-person presentation of positive identification. This mirrors the process for adoptive parents in obtaining a certified copy of an adoption decree.

CJA Rule 6-501 Reporting Requirements for Guardians and Conservators.

Incorporates changes related to HB 320 Guardianship Bill of Rights, streamlines and clarifies exceptions to reporting requirements, outlines procedures and timelines for approval of and objection to reports, and requires the use of a Judicial Council-approved Order on Review and report forms that are substantially the same as Judicial Council-approved forms. In response to comments, the Policy, Planning, and Technology Committee renamed “coversheet” to “Order on Review of Guardian or Conservator Report” (“Order on Review”) to clearly define what it is and to ensure it is recognized as a critical document in the file.

CJA Rule 4-508 Guidelines for Ruling on Motion to Waive Fees

Amendments are in response to SB 87 Court Fee Waiver Amendments, effective May 4, 2022. Among other things, SB 87 amends provisions regarding affidavits of indigency and requires a court to find an individual indigent under certain circumstances. The Policy, Planning, and Technology Committee adopted the proposed amendments.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Connors moved to approve CJA Rule 4-202.03. Records Access and Rule 6-501. Reporting Requirements for Guardians and Conservators, as presented, with a November 1, 2022 effective date and approve CJA Rule 4-508 Guidelines for Ruling on Motion to Waive Fees, as presented, with an August 19, 2022 effective date. Judge Chin seconded the motion, and it passed unanimously.

11. APPOINTMENT OF WATER LAW JUDGES: (Shane Bahr)

Chief Justice Durrant welcomed Shane Bahr. CJA Rule 6-104 District Court Water Judges will go into effect on November 1, 2022. The rule requires the Council to formally designate at least three district court judges who volunteer as water judges. In preparation for this new rule to go into effect, the Board of District Court Judges contacted judges who currently have water cases assigned to them and asked if they were interested in volunteering to be water judges.

The following judges have expressed interest in serving as water judges. The Board of District Court Judges recommended that the Council designate these nine district court judges to serve as water judges.

- First District Court – Judge Angela Foncesbeck
- Second District Court – Judge Jennifer Valencia
- Third District Court – Judge Laura Scott, Judge Patrick Corum, and Judge Kent Holmberg (possibly short-term)

- Fourth District Court – Judge Kraig Powell
- Fifth District Court – Judge Ann Marie McIff Allen and Judge Michael Westfall (possibly short-term)
- Eighth District Court – Judge Greg Lamb

Judge Pettit wondered how much staff would be needed to work with this many Water Law Judges. Mr. Bahr explained that there will be one staff member to assist but they are planning on creating a bench book and provide mostly internal training. There is more costly training outside of the Utah Judiciary, which may be covered through the judges’ annual judicial fund.

Chief Justice Durrant thanked Mr. Bahr.

Motion: Judge Connors moved to approve all nine judges designated above, as presented. Judge Pullan seconded the motion, and it passed unanimously.

12. COMMISSIONER RECERTIFICATIONS: (Shane Bahr)

Chief Justice Durrant welcomed Shane Bahr. The court commissioner evaluation and retention process are governed by the following Code of Judicial Administration rules:

- Rule 3-111 Performance Evaluation of Active Senior Judges and Court Commissioners
- Rule 3-201 Court Commissioners

Commissioner Michelle Tack’s and Commissioner Marian Ito’s term ends on December 31, 2022. According to the information from the self-declaration form, surveys and annual performance evaluations, Commissioner Ito and Commissioner Tack meet the performance standards in the following areas: survey scores, judicial education records, self-declaration, no formal or informal sanctions, and performance evaluations. Neither of the commissioners has a complaint pending before the Commissioner Conduct Commission and there weren’t any public comments submitted for either commissioner.

Chief Justice Durrant thanked Mr. Bahr.

13. SENIOR JUDGE RECERTIFICATIONS: (Neira Siaperas)

Chief Justice Durrant welcomed Neira Siaperas. The following Code of Judicial Administration rules are relevant to appointment and reappointment of senior judges:

- CJA Rule 11-201 Senior Judges and CJA Rule 11-203 Senior Justice Court Judges establish the qualifications, term, authority, appointment, and assignment for senior judges.
- CJA Rule 3-111 Performance Evaluation of Active Senior Judges and Court Commissioners establishes the criteria and standards for performance evaluations.

Initial Appointment

Hon. David Hamilton, Second District Court, will retire on October 31, 2022 and has applied to become an active senior judge.

Reappointments

Active senior judges seeking reappointment

The following active senior judges of courts of record have applied for reappointment: Hon. Kate Appleby, Hon. Kent Bachman, Hon. Robert Dale, Hon. Lynn Davis, Hon. Donald Eyre, Hon. Dennis Fuchs, Hon. Ben Hadfield, Hon. Royal Hansen, Hon. Kimberly Hornak, Hon. Ernest Jones, Hon. Gordon Low, Hon. Michael Lyon, Hon. Darold McDade, Hon. Frederic Oddone, Hon. Sandra Peuler, Hon. Robin Reese, Hon. Gary Stott, and Hon. Brent West.

The following active senior justice court judge has applied for reappointment: Hon. Scott Cullimore.

Inactive senior judges seeking reappointment

The following inactive senior judges of courts of record have applied for reappointment: Hon. Lyle Anderson, Hon. Leslie Brown, Hon. Hans Chamberlain, Hon. Paul Iwasaki, Hon. Denise Lindberg, Hon. Tyrone Medley, Hon. Andrew Valdez, and Hon. Michael Wilkins.

The following inactive senior justice court judges have applied for reappointment: Hon. Dennis Barker, Hon. Holly Barringham, and Hon. Lesley Scott.

Judges not seeking reappointment

The following judges have not responded nor applied for reappointment, therefore, their terms will expire on December 31, 2022: Hon. Darold Butcher; Hon. Norman Ashton; Hon. Paul Lyman; and Hon. James Beesley. Hon. Lee Dever has indicated that he will not seek reappointment when his term expires on December 31, 2022.

Information

Initial Appointment

Judge Hamilton meets the qualifications for an active senior judge appointment as outlined in Rule 11-201.

Reappointments (Inactive and Justice Court Judges)

All inactive senior judges seeking reappointment meet the qualifications as outlined in Rules 11-201 and 11-203.

The Board of Justice Court Judges recommended reappointment of all senior justice court judges seeking reappointment this term.

Reappointments (Active Senior Judges)

Subject to the Council's determination that the survey scores are satisfactory, all active senior judges seeking reappointment meet the standards of performance as outlined in Rule 3-111. Fourteen judges meet the qualifications as outlined in Rules 11-201 and 11-203. Five judges are not in compliance with Rule 11-201(1)(C)(vii) "accepts assignments, subject to being called, at least two days per calendar year." None of the judges have outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court (Rule 11-201(2)).

Chief Justice Durrant thanked Ms. Siaperas.

14. OLD BUSINESS/NEW BUSINESS

No additional business was discussed.

15. EXECUTIVE SESSION

Motion: Judge Shaughnessy moved to go into an executive session for the purpose of discussing the character, competence, or physical or mental health of an individual and for the purpose of discussing litigation or legal advice. Judge Mortensen seconded the motion, and it passed unanimously.

After the executive session, the following motions were made.

Motion: Judge Pettit moved to approve forwarding to the Supreme Court for certification: Hon. David Hamilton as an active senior judge, effective upon retirement; approve forwarding to the Supreme Court for recertification: active senior judge recertifications of Hon. Kate Appleby, Hon. Donald Eyre, Hon. Dennis Fuchs, Hon. Royal Hansen, Hon. Kimberly Hornak, Hon. Ernest Jones, Hon. Michael Lyon, Hon. Darold McDade, Hon. Frederic Oddone, Hon. Sandra Peuler, Hon. Robin Reese, and Hon. Gary Stott; inactive senior justice court judge Hon. Scott Cullimore; inactive senior judges Hon. Lyle Anderson, Hon. Leslie Brown, Hon. Hans Chamberlain, Hon. Paul Iwasaki, Hon. Denise Lindberg, Hon. Tyrone Medley, Hon. Andrew Valdez, and Hon. Michael Wilkins, and inactive senior justice court judges Hon. Dennis Barker, Hon. Holly Barringham, and Hon. Lesley Scott as amended and to not forward at this point to the Supreme Court for recertification six judges that were addressed in the executive session. Judge Connors seconded the motion, and it passed unanimously.

Motion: Judge Pettit moved to approve the recertification of Commissioner Michelle Tack and Commissioner Marian Ito, as having met the performance standards and inform their respective presiding judges for retention purposes, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

16. CONSENT CALENDAR ITEMS

- a) Rules for Public Comment. CJA Rule 4-202.02. Records Classification and Appendix B. Justice Court Standards for Recertification. Approved without comment.
- b) Committee Appointments. The reappointment of Judge Jon Carpenter and the appointment of Judge Brendan McCullagh, Judge Ryan Richards, and Judge Barbara Finlinson to the Uniform Fine Committee. Approved without comment.

17. ADJOURN

The meeting adjourned.