

**JUDICIAL COUNCIL MEETING
Minutes**

October 24, 2022

**Meeting held through Webex
and In-person**

**Matheson Courthouse
Council Room
450 S. State St.
Salt Lake City, Utah 84111**

9:00 a.m. – 3:50 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Keith Barnes
Hon. Suchada Bazzelle
Hon. Brian Brower
Hon. Samuel Chiara
Hon. Augustus Chin
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. James Gardner
Hon. Elizabeth Lindsley
Hon. Thomas Low
Hon. David Mortensen
Justice Paige Petersen
Hon. Kara Pettit

Excused:

Margaret Plane, esq.

Guests:

Kate Bradford, Kem C. Gardner Institute
Andrea Brandley, Kem C. Gardner Institute
Hon. Craig Bunnell, Seventh District Court
Jacqueline Carlton, OLRGC
Erik Christiansen, Utah State Bar
Sue Crismon, Office of Innovation
Hon. Lee Edwards, Logan Justice Court
Phil Dean, Kem C. Gardner Institute

AOC Staff:

Ron Gordon
Neira Siaperas
Michael Drechsel
Brody Arishita
Shane Bahr
Katy Burke
Todd Eaton
Alisha Johnson
Wayne Kidd
Jessica Leavitt
Tania Mashburn
Heather Marshall
Jordan Murray
Bart Olsen
Jim Peters
Nathanael Player
DeeDee Sonntag
Nick Stiles
Karl Sweeney
Sonia Sweeney
Melissa Taitano
Chris Talbot
Keisa Williams
Jeni Wood
Kim Zimmerman

Guests Cont.:

Grace Spulak, National Center for State Courts

Hon. Brendan McCullagh, West Valley Justice Court
Miguel Medina, Court Interpreter

Mark Urry, TCE Fourth District Court
Hon. Danalee Welch-O'Donnal, Grand County
Justice Court

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 September 13, 2022 Judicial Council meeting minutes, as amended to change “do” to “does” in section 14, page 11. Judge Paul Farr seconded the motion, and it passed unanimously.

2. OATH OF OFFICE FOR JUDGE SUCHADA BAZZELLE, JUDGE JAMES GARDNER, AND JUDGE THOMAS LOW: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant administered the Oath of Office to new Council members, Judge Suchada Bazzelle, Judge James Gardner, and Judge Thomas Low and welcomed them to the Council.

3. SELECTION OF JUDICIAL COUNCIL EXECUTIVE COMMITTEES: (Ron Gordon)

Ron Gordon reviewed current and proposed Judicial Council executive committee members, noting that the Management Committee approved the proposed changes. He recommended the following changes.

- Judge Kara Pettit be moved from the Liaison Committee to the Management Committee. Judge Pettit will remain on the Budget and Fiscal Management Committee;
- Judge Elizabeth Lindsley be assigned to the Management Committee;
- Judge Low be assigned to the Liaison Committee;
- Judge Gardner be assigned to the Policy, Planning, and Technology Committee;
- Judge Bazzelle be assigned to the Policy, Planning, and Technology Committee.

Motion: Judge Paul Farr moved to approve the assignments of Judge Pettit and Judge Lindsley to the Management Committee; the assignment of Judge Low to the Liaison Committee; and the assignments of Judge Gardner and Judge Bazzelle to the Policy, Planning, and Technology Committee, as presented. Judge Connors seconded the motion, and it passed unanimously.

4. SELECTION OF JUDICIAL COUNCIL VICE CHAIR: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant recommended Judge David Mortensen be appointed as the Vice Chair to the Judicial Council pursuant to UCJA Rule 1-201 Membership – Election, which states “the Council may elect a vice-chairperson to conduct meetings of the Council when the Chief Justice is absent.”

Motion: Judge Pettit moved to approve Judge Mortensen be appointed as the Vice Chair to the Judicial Council, as presented. Judge Lindsley seconded the motion, and it passed unanimously.

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

Chief Justice Durrant thought the new Judicial Council member orientation went well and was delighted to have the three new judges on the Council.

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

Mr. Gordon announced Katy Burke as the new Treatment Court Coordinator. Mr. Gordon updated the Council that, per the Council’s previous conversation regarding drug testing facilities not providing timely results, Shane Bahr is holding discussions with the executive branch who holds the contract and with the contracted facilities to ensure they understand what is expected. Mr. Gordon reminded the Council that the annual Council photo will be taken at the November meeting and asked that they attend in person, if possible.

7. 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:

Judge Pettit mentioned that things are moving through interim committees as the time draws closer to the 2023 General Legislative Session. Michael Drechsel is participating in meetings regarding a new business court proposal. There will be a presentation at the Fall Forum on this proposal. The preliminary hearing issues from last year will continue to be a topic of discussion. Mr. Drechsel is working with the Board of Pardons and the Department of Corrections regarding legislative discussions about removing indeterminate sentencing. The juvenile expungement bill that did not pass last session will be brought again for consideration at the upcoming session. Senator Todd Weiler agreed to run the Courts’ bill to request a new juvenile court judge in the Fourth District Juvenile Court as well as the financial transaction fees.

As she exits the Liaison Committee, Judge Pettit noted that she has enjoyed her time on the Committee and the opportunity to work with Mr. Drechsel, who was fabulous.

Policy, Planning, and Technology Committee Report:

Their last meeting was cancelled.

Bar Commission Report:

Margaret Plane was unable to attend. Erik Christiansen updated the Council that the committee created by the Bar Commission continues their study on the possibility of housing the Office of Legal Services Innovation (Office), including assessing employment-related issues, legal issues in relation to the current lawsuit against the Bar, and creating a budget for the Office. They anticipate having a response to the Supreme Court by the end of 2022.

Two legislators created a workgroup to create a business chancery court, which would create two new judges with statewide jurisdiction to hear certain types of cases that are legislatively defined. This is expected to mimic the Arizona model. Justice Paige Petersen

wondered if the Commission explored having the business chancery judges housed within the district court. Mr. Christiansen said they evaluated this possibility but felt it would be better to keep it separate from the current existing courts.

The Bar will hold their 2022 Fall Forum on November 4 and their Spring Convention will be held in St. George from March 16-18, 2023.

8. OFFICE OF LEGAL SERVICES INNOVATION UPDATE: (Sue Crismon)

Chief Justice Durrant welcomed Sue Crismon. The majority of services rendered have been for business purposes, followed by veteran/military cases. The Office has also serviced court patrons with accident/injury, end-of-life planning, marriage/family, immigration, financial, housing, employment, and domestic violence cases. There has been less than 1 complaint per 4,800 services provided.

Key points from the Stanford Law Report on Legal Innovation After Reform Study
<https://law.stanford.edu/2022/09/29/stanford-law-report-on-legal-innovation-after-reform/>

- Lawyers are playing a central role in the entities and the innovation within them.
- A majority of entities are using both technology and other innovations to deliver services in new ways, mostly to consumers and small businesses.
- UPL reform appears to be critical to serving lower-income populations.
- Reform efforts to this point do not appear to pose a substantial risk of consumer harm.

Funding update

- First quarter burn rate is lower than budgeted due to delay in hiring a Senior Research Analyst.
- Updating contracts to bring rates on par with market norms required putting contracts up for bid.
- The projected number of audits has not yet materialized.
- The Stand Together Grant application is still being considered.

Next steps

- The Office is working on a Bar budget proposal.
- The next fiscal quarter will give a better estimate of the burn rate as data contractors move daily operations to the Senior Research Analyst and development slows.
- The Office is working with the AOC procurement on the 2023 contract for the entity management system with an estimated number of licenses needed.

Chief Justice Durrant thanked Ms. Crismon.

9. BUDGET AND GRANTS: (Karl Sweeney, Alisha Johnson, Todd Eaton, Brody Arishita, Chris Talbot, Jessica Leavitt, and Jordan Murray)

Chief Justice Durrant welcomed Karl Sweeney, Alisha Johnson, Todd Eaton, Brody Arishita, Chris Talbot, Jessica Leavitt, and Jordan Murray. As of September 29, the courts have \$259,244 in ongoing turnover savings for FY 2023. As of September 16, the courts have a potential amount of \$3,925,724 in one-time turnover savings. The remaining forecasted funds

available for FY 2023 year-end spending is \$876,929, which includes \$851,000 in Council-approved funds and \$45,872 in new requests.

ARPA Funds

	Funded by	GOPB	Requested	Approved	Actual FY	Actual FY	Balance
					2022	2023	
	Legislature	Approved	Amount	Amount	Expended	Expended	Available
IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	11,000,000	3,042,468	1,585,662	6,371,870
Courts Case Backlog - Part I*	May-21	Yes	1,000,000	1,000,000	707,963	172,289	119,748
Subtotal			12,000,000	12,000,000	3,750,431	1,757,951	6,491,618
Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature			Requested	Approved	Actual 2022	Actual 2023	Available
IT Access to Justice - Response to COVID - Part II	2022 GS	Submitted 10/21	1,373,400	1,373,400	-	-	1,373,400
Courts Case Backlog - Part II	2022 GS	Submitted 10/21	1,000,000	1,000,000	-	-	1,000,000
COVID-19 Supplies	2022 GS	Submitted 10/21	640,000	302,100	-	-	302,100
Legal Sandbox Response to COVID	2022 GS	Submitted 10/21	649,000	324,500	-	-	324,500
Self-Help Center	2022 GS	Submitted 10/21	64,000	-	-	-	-
Interpreter Equipment	2022 GS	Submitted 10/21	97,000	-	-	-	-
Eviction Court	2022 GS	Submitted 10/21	166,000	-	-	-	-
Public Outreach & Engagement	2022 GS	Submitted 10/21	30,000	-	-	-	-
IT Access to Justice - Response to COVID - Part III	2022 GS	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	\$ 1,757,951	\$ 9,491,618

The final date for ARPA spending is December 31, 2024. The cut off date for lost revenue is December 31, 2023. Ms. Johnson explained that they anticipate all ARPA funds will be expended. Brody Arishita didn't believe there would be any issues with meeting spending deadlines because they are in constant communication with the vendors.

IT Equipment Funding for Newly Hired Judicial Assistants (JAs) \$5,872 one-time funds

As a result of legislative funding approved to hire additional JAs for debt collection and to handle additional caseload for DUIs, the courts will hire 7 new JAs in Q1/Q2 FY 2023. These new hires need IT equipment to perform their jobs.

Motion: Judge Connors moved to approve the IT Equipment Funding for Newly Hired Judicial Assistants request for \$5,872 in one-time funds, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

Build-out of Replacement for Courts' Access Revenue System \$40,000 one-time funds

The IT Department and Finance worked together to build a replacement revenue system using a more robust open source web browser based software system as the code base and customizing it to meet the needs of the courts. This new system is designed to be flexible in meeting new demands and uses code that is more robust than Access. IT has funded this project entirely from its internal funds for approximately eight months but has reached the limits of the funds it can use.

Motion: Judge Connors moved to approve the Build-out of Replacement for Courts' Access Revenue System request for \$40,000 in one-time funds, as presented. Judge Chin seconded the motion, and it passed unanimously.

Reallocation of Retiring Farmington Courthouse Construction Bond
\$399,045.93 FY 2024 ongoing funds

The objective of this request is to reallocate the retiring construction bond annual rent payment (\$399,045.93) so the court may retain the amount as a credit towards the construction of a new Farmington Courthouse. The Courts will be proposing the replacement of three aging courthouses (Farmington, Layton and Bountiful) with a new combined facility that will also provide for future expansion in a growing county. It is anticipated that the new courthouse will be built on the existing Farmington Courthouse site with a portion of the existing building to be sold to Davis County. The courts will also be exploring the sale of the existing State-owned Layton Courthouse to Layton City. The existing Bountiful Courthouse is a shared building that is leased from Bountiful City. It is unknown at this time if these other facility changes will provide additional funding reallocation opportunities for the new project. Judge Chiara asked for confirmation that the money accumulated will be used for the project. Chris Talbot confirmed that the saved funds will accumulate and be used for the new courthouse.

Motion: Judge Connors moved to approve the Reallocation of Retiring Farmington Courthouse Construction Bond for \$399,045.93 in FY 2024 ongoing funds, as presented. Judge Brian Brower seconded the motion, and it passed unanimously.

Rate Increase for Certified Contract Court Interpreters

Ms. Leavitt proposed to increase the rate for interpreters. This change will allow contract court interpreters to remain competitive in the intermountain west market where average pay ranges between \$25-\$50. This increase will enhance the courts' competitive advantage in recruiting interpreters and expand its interpreter roster. New rates would be Certified \$52; Approved \$41; Registered \$41; and Conditionally-Approved \$23. The funding for the rate increase is coming from the JWI fund. JWI can cover the cost of an estimated \$41,000-\$42,000. Because this is JWI funding, this is not a Judicial Council budget request, rather, Ms. Leavitt sought only for the Council's approval to change the rate. Judge Connors asked if this was enough of a raise. Ms. Leavitt thought it was for now but the conversations may continue with the ever-evolving industry. Mr. Sweeney explained that the Council recently approved a raise for interpreters and that this was a supplement to that. Judge Gardner recognized the hard work of the interpreters. Mr. Gordon explained that this possible raise was discussed with interpreters throughout the state.

Motion: Judge Connors moved to approve the interpreter pay increase rate to \$52 for Certified Interpreters; \$41 for Approved Interpreters; \$41 for Registered Interpreters; and \$23 for Conditionally-Approved Interpreters paid through the JWI fund, as presented. Judge Gardner seconded the motion, and it passed unanimously.

DWS Grant

Mr. Murray requested permission from the Council to execute the agreement with the Utah Department of Workforce Services (DWS) to fund the FY 2023 costs associated with statute in HB 359 Eviction Records Amendments, which became effective on July 1, 2022. The bill addressed the expungement of eviction records and anticipated one-time costs to the courts totaling \$116,600 through FY 2023. To fund this mandate, the Legislature is utilizing previously authorized federal Emergency Rental Assistance funds disbursed as a noncompetitive subaward grant issued through Utah DWS serving as the passthrough agency. There is no cash or in-kind match from the courts. The one-time reduction was only for FY 2023; the courts will receive the full amount for FY 2024.

Motion: Judge Connors moved to approve the agreement with DWS for a grant in the amount of \$116,600, as presented. Judge Chin seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Mr. Sweeney, Ms. Johnson, Mr. Eaton, Mr. Arishita, Mr. Talbot, Ms. Leavitt, and Mr. Murray.

10. COURT COMMISSIONER CONDUCT COMMITTEE REPORT: (Judge Ryan Harris and Keisa Williams)

This item was postponed.

11. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Craig Bunnell and Sonia Sweeney)

Chief Justice Durrant welcomed Judge Craig Bunnell and Sonia Sweeney. Since the last report to the Council in May 2022, the Board of Juvenile Court Judges has initiated or continued working on the below-listed items.

- a) **Judicial Weighted Caseload Study.** The Board established a standing Juvenile Judicial Workload Committee which held its first meeting on May 2, 2022. The committee reviewed judicial workload case weights that were impacted the most by the pandemic or by legislative and other changes in judicial work. The selected case weights are being updated to accurately reflect the current workload. The committee and the juvenile court data team are finalizing a judicial workload survey that will reflect updated judicial processes and include time needed for virtual and hybrid hearings.
- b) **Racial, Equity, and Fairness Workgroup.** The Workgroup (formerly known as the Racial and Ethnic Disparities initiative) has been working to secure research partners for phase II of the Board's Fairness and Accountability project. To secure access to resources and appropriate research partners who can do complex juvenile court analysis, they will consider integrating their efforts under the Office of Fairness and Accountability umbrella.
- c) **Assessment of Juvenile Defense.** Juvenile court judges and staff will participate in the upcoming assessment by the Gault 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. Judges will be able to opt in or out of the interviews, particularly if there are concerns about discussing specific issues regarding juvenile defense counsel.

Chief Justice Durrant thanked Judge Bunnell and Ms. Sweeney.

12. SENIOR JUDGE CERTIFICATION: (Neira Siaperas)

Chief Justice Durrant welcomed Neira Siaperas. Judge Renee Jimenez will retire on December 15, 2022 and has applied to be an Active Senior Judge. As required by UCJA Rule 11-201(1)(C)(ix), the Council was provided with Judge Jimenez’s Active Senior Judge application and the most recent JPEC Performance Evaluation. Judge Jimenez does not have any outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court. Judge Jimenez has met all other Active Senior Judge qualifications and requirements found in Rule 11-201.

Chief Justice Durrant thanked Ms. Siaperas.

Motion: Judge Lindsley moved to approve recommending Judge Renee Jimenez to the Supreme Court for active senior judge appointment, as presented. Judge Bazzelle seconded the motion, and it passed unanimously.

13. GREEN PHASE WORKGROUP REPORT: (Ron Gordon)

Chief Justice Durrant welcomed Ron Gordon. The Workgroup submitted their report and recommendations for the ongoing use of virtual meeting technology to conduct court proceedings to the Council for consideration. Mr. Gordon thanked the Workgroup and staff for their dedication to the work in creating this report. The Workgroup focused on identifying how much judicial discretion should be given.

Executive summary

- The use of virtual hearings to conduct court proceedings is accompanied by benefits and drawbacks, which must be identified, monitored, and balanced to best ensure that the courts continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice.
- A 2022 survey of Utah court users shows an overwhelming preference for the continued use of virtual hearings across court user types and age groups in district, juvenile, and justice courts.
- After careful study, the Workgroup favored an approach that prioritizes judicial discretion in determining whether a hearing will be in-person or virtual and allows court patrons to request to participate in a different manner.

- Recommended best practices for continued use of virtual hearings revolve around adequate notification of which hearings are intended to be conducted virtually, education and technical assistance to overcome technological and user-centric barriers, clear communication regarding decorum expectations, and continuing coordination with patrons, practitioners, the public, and other stakeholders.

Introduction

Judicial officers and court staff have developed proficiency in the logistics of scheduling and conducting virtual hearings, which has revealed benefits and drawbacks related to using virtual meeting technology for court proceedings. While virtual hearings will undoubtedly continue to be an important tool for the Judiciary, the tool's effectiveness varies based on the situation and the parties involved. The goal has been to ascertain how virtual meeting technology can be employed into the future to advance the Judiciary's mission without sacrificing the effectiveness inherent in proceedings held in-person.

Benefits and drawbacks of virtual hearings

Virtual hearings have been critical to the operation of the Judiciary during the pandemic. The use of technology allowed the courts to overcome the all-or-nothing choice between fully restricting access to the courts or exposing patrons, court staff, and judicial officers to a little-understood, highly contagious and deadly disease.

Access to justice

Access to justice has been, is, and will continue to be a primary consideration when assessing court operations, including the use of virtual meeting technology. One of the benefits of virtual hearings has been an increase in access to justice for many people. There are also aspects of virtual hearings that can impede access to justice. These obstacles must be understood and considered to ensure that the Judiciary provides the best opportunities for the public to access court services.

Technology considerations

Instituting virtual hearings in the Utah courts at the onset of the pandemic required the Judiciary to purchase and roll out new technology, train judicial officers and employees, collaborate with system partners, and increase IT team support. A forward-looking and effective virtual hearings strategy will require additional and upgraded hardware and software, continual network monitoring and improvements, and significant time to fully implement. Early in the pandemic, the Utah Courts determined that Webex was the virtual meeting technology platform best suited to the needs of the Judiciary. The Judiciary currently has approximately 1,900 Webex licenses for state and local courts.

The increased use of virtual court hearings and meetings has at times placed a nearly overwhelming load on the Courts' network capabilities and bandwidth. This voluminous data transmission burden has resulted in slow network response times for critical systems to function well. It is anticipated that these challenges will not be fully resolved until an ARPA-funded network upgrade is completed in December 2024. This upgrade is intended to optimize system performance through the creation of discrete network connections to route network traffic for the Courts' internal applications (CORIS, CARE, etc.) separately from external applications

(Webex, Google services, etc.). The Workgroup recommended the Council continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees, judges, and commissioners.

Court user survey

Earlier this year, the Utah State Bar's Access to Justice Commission, in partnership with the Judicial Council, conducted a limited survey of court users (primarily in the Third District Court) about their experiences with virtual hearings from the fall of 2021 through the spring of 2022. A total of 212 individuals had provided survey responses including 116 parties, 68 lawyers, 22 government agency workers, and 5 friends/guardians of a party. These individuals participated in a variety of criminal and civil hearings in district court, delinquency and child welfare hearings in the juvenile court, and criminal, traffic, and small claims hearings in the justice court. Seventy-five percent of respondents expressed a preference for virtual hearings.

Judicial discretion vs. patron preference

The Workgroup weighed three main considerations: patron preference, consistency, and judicial discretion. The Workgroup recommended the Council approve allowing judges to have discretion to determine whether a hearing will be in-person or virtual. If a court patron requests to participate in a way other than the way identified by the judge and demonstrates good cause, the judge should be required to grant the request. Court rules should be adopted to implement this approach.

Judge Gardner was concerned about the consistency issue with judicial discretion. Judge Pettit explained that if the Council adopts the built-in judicial discretion then judges can have courthouse or bench guidelines that can be more specific.

Mr. Gordon confirmed that questions have been raised about the reasons that the courts hold some hearings virtually while similar hearings are held in-person. Judge Brower worried that if there is no control over how hearings are held then it may end up garnering the attention of legislators.

Considerations for judges – juvenile courts

While the decisions on in-person and virtual hearings should be made based on unique circumstances of each case and each hearing, some juvenile court proceedings are more suitable to conduct virtually while other proceedings are more suitable for an in-person setting. Virtual hearings in the juvenile courts could include detention hearings, expungements, custody of refugee, immigrant status, and child welfare reviews. Whereas, in-person juvenile court hearings could include trials, evidentiary hearings, competency hearings, and shelter hearings. The Workgroup recommended juvenile court judges consider factors when deciding whether to hold a hearing virtually or in-person.

Considerations for judges – district and justice courts

Judicial discretion is paramount when deciding whether to hold an in-person or virtual hearing. Given the unique characteristics of each court, court location, and case, district court judges must have individual discretion to determine which hearing type will best promote the open, fair, and efficient administration of justice in each proceeding. It is also important to

understand the technical limitations that impact virtual hearings. For example, some county jails have limited capacity for virtual hearings and cannot accommodate the number or length of virtual hearings a court may desire to hold. The Workgroup recommended district and justice court judges consider principles of procedural fairness, factors outlined in court rule, and the other factors where relevant.

Judge Farr thought it may be difficult for 80 justice courts located throughout the state to follow district court guidelines, especially since justice courts handle the most amount of cases throughout the state. Many decisions for operating justice courts are made by the local city or county. This direction may harm access to justice. Judge Pettit wondered if the report should add more input from the justice courts.

Considerations for judges – appellate courts

The appellate courts have only one hearing type to consider in evaluating moving into a post-pandemic judicial environment. Oral arguments never have witnesses and very rarely utilize any form of evidentiary exhibits. The Workgroup recommended appellate court judges consider factors when deciding whether to hold a hearing virtually or in-person. The Council recognized that the report would allow for interlocutory appeals. Judge Gardner said people can file an interlocutory appeal regardless of the report. Judge Connors would prefer removing the language in the report on appeals.

Amending court rules

The Workgroup recommended all initial filings by self-represented litigants should be made in-person or via U.S. Mail. If approved, the Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings in a case through email. Notwithstanding this, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in this proceeding.

The Workgroup recommended the Supreme Court establish a good cause standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judge. The Supreme Court should define “good cause” and establish an appeal process when a hearing participant believes a judge is not appropriately applying the good cause standard.

Constitutional considerations

Rulemaking bodies should explore the constitutional concerns surrounding the use of in-person and virtual hearings, most importantly whether in-person and virtual hearings are constitutionally equivalent. For example, URCP Rule 26(a)(1) provides that minors have a right “to appear in-person and to defend in-person or by counsel.” URCP Rule 17.5 identifies certain types of hearings that can be held via contemporaneous transmission, while prohibiting others, and allowing for waiver of the prohibition with mutual agreement of the parties. The Workgroup recommended that the Judiciary’s rulemaking bodies balance the increasing need for opportunities to improve access to justice, while simultaneously ensuring court rules and practices do not violate principles of due process.

Stakeholder input

The Utah Department of Corrections (UDC) expressed hope that the courts would not change policies that would result in them needing to conduct more transports. UDC noted that increasing the number of transports would impact their capacity to handle other work. The Division of Juvenile Justice and Youth Services similarly expressed a hope that detention hearings could be held virtually. They noted that for youth in a community placement in their county, their case managers would plan to request in-person hearings when they felt it was necessary.

The most common feedback from community stakeholders was that options for virtual participation in court proceedings should continue and that court patrons should be able to request the opportunity to participate virtually even if the judicial officer has determined that the proceeding will be in person. Stakeholders explained that even though virtual hearings have some limitations and are not the best option in all circumstances, they have significantly expanded access to justice.

Judge Lindsley operates her court holding virtual hearings on certain days or in-person hearings on other days based on jail personnel's availability, while understanding that the courts cannot control the jails' availability.

Multiple stakeholders expressed appreciation for virtual hearings while also noting a need for additional technical support for virtual hearing participants. Many participants will not have experience with Webex and may experience difficulties accessing a virtual hearing and navigating through Webex. Resources with detailed explanations about how to participate in a virtual hearing and employees or volunteers dedicated to assisting virtual hearing participants would help people overcome difficulties prior to and during their virtual hearing.

Self-represented parties

Judge Farr was concerned for the self-represented parties who may not know to contact the court or understand what is considered a good cause reason. Judge Brower wouldn't oppose a presumption for certain types of hearings in justice courts.

Abuse of discretion standard

Chief Justice Durrant noted that judges' discretion is subject to the abuse of discretion standard, as evidenced by many cases where judges have to make good cause determinations. As he read this report, judges have absolute discretion on how a person should appear. If a person disagreed with a judge's decision on how to appear, the judge would be subjected to the abuse of discretion standard. Chief Justice Durrant thought the Workgroup's direction was the right one.

Definition of good cause

Judge Lindsley said rules' committees could take years to determine what is considered good cause. Chief Justice Durrant agreed that it would be difficult to define what good cause is for all case types. Judge Lindsley recommended striking these sentences "The Supreme Court should establish a "good cause" standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should charge its various advisory committees with defining the "good cause" standard through rule."

MyCase

Judge Pettit wondered if the initial filings recommendation should be amended to require filings via MyCase rather than allowing filings by email. Mr. Gordon said MyCase should be the default, however, the courts are still out about 18 months to allow for MyCase e-filing. Judge Pettit recommended modifying that section of the report and recommended including time-sensitive documents such as protective orders and evictions.

Policy, Planning, and Technology Committee

The Council decided to have the Workgroup modify the report as discussed then readdress it with the Council. Judge Mortensen asked if this should be adopted and then sent to the Policy, Planning, and Technology Committee for further work. Mr. Gordon confirmed that this is the typical course of action but the rule that needed amending is a Supreme Court rule, not a Council rule. Judge Pettit agreed that this would go to the Supreme Court for their rule amendment consideration.

Future questions

The Workgroup recommended the Judiciary continue to gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings.

Mr. Gordon confirmed that the Council would want the report to eliminate defining good cause, have clarification of filings by email, reword “valid reason”, and clarify appeals. Additionally, page 38 should be changed to “the Supreme Court should consider establishing a rule that allows hearings participants to appear opposite of the judges decision” and striking the rest of that section.

Chief Justice Durrant thanked Mr. Gordon and the members of the Workgroup.

Motion: Judge Pettit moved to:

- Adopt the recommendations of the Green Phase Working Group as revised in this motion.
- Recommend that the Supreme Court consider establishing a rule of procedure that allows hearing participants to request to appear opposite the decision of the judicial officer to hold a hearing in person or virtually.
- Obtain the input of the Board of Justice Court Judges on whether justice courts should be included in the Supreme Court’s procedural rule.
- Request that the Policy, Planning, and Technology Committee draft an amendment to the Code of Judicial Administration Rule 4-503 regarding filings by email by self-represented litigants until the e-filing capability of MyCase is fully functional.
- Not adopt a recommendation to establish a rule that defines “good cause” and the appeal process.

Judge Farr seconded the motion. The motion passed unanimously.

14. DISSOLUTION OF THE ENTERPRISE JUSTICE COURT: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Pursuant to Utah Code § 78A-7-123. Dissolution of Justice Courts, Mr. Peters presented the City of Enterprise’s intent to dissolve the Enterprise City Justice Court per Resolution 2202-009 adopted by the Enterprise City Council. Enterprise City requested a shortened amount of time to dissolve the court, as required by statute from one year to December 31, 2022. The Enterprise Justice Court is a Class IV Court, which is one of the smallest courts with only 29 cases in the past year. Of the 29 cases, 20 were traffic and 9 were criminal cases. This has been challenging for the court to maintain skills and abilities needed to properly run a justice court. The Washington County Justice Court will absorb the cases. The judge that currently runs the Enterprise Justice Court also works at the Washington County Justice Court.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Farr moved to approve the dissolution of the Enterprise Justice Court, effective December 31, 2022, as presented. Judge Chin seconded the motion, and it passed unanimously.

15. JUSTICE COURT REFORM: (Judge Paul Farr, Jim Peters, Ron Gordon, Michael Drechsel, Wayne Kidd, Kate Bradford, Andrea Brandley, Phil Dean, and Grace Spulak)

Chief Justice Durrant welcomed Judge Paul Farr, Jim Peters, Ron Gordon, Michael Drechsel, Wayne Kidd, Kate Bradford, Andrea Brandley, Phil Dean, and Grace Spulak. Chief Justice Durrant was grateful for Judge Farr and the Workgroups exceptional work on reform.

Background

- 1989 Justice courts were created by statute, prior to that there was the position of the justice of the peace.
- 1996 Circuit courts dissolved and justice court jurisdiction expanded. Some of the work went to the justice courts and some went to the district courts.
- 2007 The Nehring Commission was created to identify comprehensive justice court reforms. The Commission was comprised of more internal and less external participants.
 - Recommendations that were enacted included judicial selection process, salary protections, and as a compromise, a salary range of 50-90%.
 - Recommendations that were not enacted included judges to be state employees, judges’ salaries set at 90% of a district court judge (prorated for part-time judges), the elimination of part-time judicial positions, and all judges to have at least a Bachelor’s Degree.
- 2016 *Simler v. Chilel*, 379 P.3d 1995 (Utah 2016), which recognized the right to a jury trial in small claims cases. Rules were established to allow a party to remove a case to the district court in order to avail themselves of the right to a jury trial.
- 2018 Supreme Court Advisory Committee on Procedural Reforms for Justice Courts, Chaired by Judge Kate Appleby. Judge Farr and staff were on this committee.
 - “The Utah Supreme Court is interested in exploring procedural reforms for cases initiated in the justice courts. This project is rooted in our ongoing commitment to promoting access to justice. We believe that small claims procedure, in particular, could benefit from streamlining and refinement. And we have convened this

committee for the purpose of advising us on possible ways to implement the reforms that are outlined below.”

- “We are interested in exploring the possibility of amendments to our rules, to controlling legislation, and (if necessary) to the Utah Constitution to pave the way for elimination of the appeal by de novo trial. Instead, we propose a more traditional appeal, but on an expedited path (restricted word limits, perhaps a decision without oral argument, and short opinions possibly lacking precedential authority).”
- “We are unanimous in our support of the points set forth above. We are less certain, however, of the best means for implementing them. And we remain open to pushback on even these central points.”
- 2019 Justice Court Reform Taskforce was created.
 - Met from May 2020 – August 2021.
- 2021 Justice Court Reform Taskforce presented to the Judicial Council and Supreme Court.
 - Core recommendations included eliminating de novo appeals without requiring a constitutional amendment, creating a new division of the district court (magistrate division) where all misdemeanor and small claims cases would be heard on-the-record by fulltime judges who are members of the Utah State Bar, and increasing judicial independence by eliminating conflicts of interest, setting fixed judicial salaries, and standardizing practices.
 - Structural reform and necessary supporting changes included
 - the creation of a division of the district court (magistrate duties assigned to division judges, class A misdemeanors transferred to division judges, and preliminary hearings transferred to division judges);
 - division judges required to be members of the Bar;
 - populate division court with eligible justice court judges. Future vacancies appointed by the State Governor;
 - current justice court judges continue in office;
 - the number of division judges to be established by statute;
 - creation of new criminal court rules;
 - indigent defense services;
 - plea withdrawal expansion;
 - additional appellate court judges and staff;
 - statutes enacted clarifying all courts as part of the state Judiciary;
 - judicial salaries set at a fixed amount;
 - Accounting Model 2 eliminated;
 - geographic restrictions for judicial applicants being removed; and
 - AOC assuming greater role in administration of justice courts.

Small claims recommendations

- Small claims cases heard on the record.
- Small claims separation between private and commercial.
- Definition of private vs. commercial claims.
- Removal of third-party debt collection restrictions in small claims.
- Filing fee for commercial claims increased and system for representation created.

- ODR expanded to all small claims cases.
- New judicial rules created for civil/small claims cases.
- Pro tem judges discontinued and ODR facilitator system created.
- Webex hearings made available for parties, volunteers, and attorneys.

Simplified infraction process

- Creation of a simplified process for infractions, including ODR process, possibly using the Hawaii model.

Post-taskforce report recommendation

- Transfer of eviction cases to division.

Judge Farr mentioned that groups from other states as well as the NCSC and the PEW Foundation that have expressed interest in these recommendations.

In August 2021 the Council approved the recommendations of the Justice Court Reform Taskforce, recognizing that the proposals made could evolve over time with further information from stakeholders and authorized the formation of the Justice Court Reform Workgroup to take the next steps toward exploring the implementation of the recommendations.

Mr. Drechsel, Judge Farr, and Mr. Peters met with the Judiciary Interim Committee, which is comprised of the Chairs and members of each house. Mr. Drechsel felt they saw merit in the principles and considerations, while grappling with current issues, including the amount of self-represented parties and funding. Mr. Drechsel wasn't aware at this time of any proposed justice court reform bills. He didn't think justice court reform would be affected by the proposed chancery business bill. Judge Farr mentioned that this wasn't the first time legislators heard about reform efforts because there were representatives from many groups on the taskforce.

NCSC focus groups

Grace Spulak stated that the NCSC conducted 6 focus groups between August – September, 2022, including the Board of Justice Court Judges, justice court clerks, Board of District Court Judges, prosecutors, defense attorneys, and local government officials. During the focus groups participants were asked to share reasons they supported the proposal, concerns about the proposal, and any other suggestions to improve justice courts.

Four judges indicated that they believed the proposed reforms would lead to better access to justice. The groups supported the elimination of de novo appeals and building a body of caselaw around misdemeanors and small claims cases. Participants expressed concerns about judge and staff retention, salaries, and transferring benefits. Community input included concerns about losing the sense of community connection with local justice courts moving to division courts, remote appearances to avoid traveling great distances, and that local courts can reflect the sensibilities of the community.

The groups believed moving class B and C misdemeanors to the division courts would create better indigent defense and allow for access to specialty courts, such as mental health courts.

NCSC survey

The NCSC sent a survey to those involved in the focus groups, plus the AOC Directors, TCEs, and other stakeholders. Of the 282 responses, 270 responses indicated that they were familiar with the Taskforce's work.

Participants	Count
Judges	82
Prosecutors	45
Court staff	114
Defense attorneys	15
County and municipality stakeholders	15
Other	11
Total	282

Chief Justice Durrant thanked Ms. Spulak and those at the NCSC who participated on this effort.

Kem C. Gardner Policy Institute

Mr. Dean explained that the Institute gathered data from FY 2018 – FY 2020 from 13 justice courts including 5 Class I Courts, 3 Class II Courts, 4 Class III Courts, and 1 Class IV Court. Entities do not always follow the uniform chart of accounts so some of the data had to be interpreted. Ms. Bradford noted that they recognized that 2020 was a pandemic year but for purposes of this presentation, they included the data from that year.

Categorization of data

- 1) Total building expenses
 - Maintenance
 - Rent/building fee
 - Utilities
 - Other
- 2) Total employee expenses
 - Attorneys
 - Bailiff/security
 - Judge
 - Other
- 3) Equipment and supplies
- 4) IT (computer/phone)
- 5) Juror/witness/interpreter
- 6) Travel/transportation/training
- 7) Total other
 - General
 - State fees paid
 - Unknown

Employee expenses comprise approximately 90% of total expenses listed in the categories above. Depending on the court location, of the employee expenses, the majority of

expenses were staff, followed by attorneys, then followed by bailiff/staff. Building expenses were difficult to determine because some justice courts are using shared rooms; some justice courts only provided rough estimates of their building expenses; and building leases or rental fees.

	% of Revenue Retained	% of Cases Retained
Davis	46%	68%
Orem	42%	71%
Salt Lake City	45%	52%
Sandy	66%	82%
West Valley	34%	54%
Carbon County	41%	68%
Millard	56%	89%
North Salt Lake	43%	70%
Herriman	65%	78%
Parowan	46%	75%
Saratoga Springs	34%	66%
Wellsville	55%	85%
Garland	41%	61%

Chief Justice Durrant thanked Ms. Bradford, Ms. Brandley, and Mr. Dean.

Mr. Drechsel reminded the Council that it is common to see both state courts and justice courts operate in the red because courts are an essential government service. Judge Chin said many cities and counties approach judges on the revenue their courts bring in through ordering and collecting fines. Judge Brower thought that many larger jurisdictions understand the losses taken with justice courts but accept the losses because they recognize they are providing an essential service. However, more rural courts sometimes only hope to break-even. Judge Chin didn't believe the majority of justice courts break-even fiscally. Mr. Drechsel said if the reform efforts were adopted, the state courts budget may appear further in the red, resulting in the Council's need to identify if there are any sources of revenue that could soften the loss.

The Workgroup provided the following assessment of the state fiscal impact, while accepting that these amounts could increase.

Fiscal impacts – expenses

- Personnel
 - Magistrate judges – \$19 million
 - Judicial assistants – \$26.4 million
 - Court of Appeals – \$2.3 million
 - AOC – \$2.2 million
- Facilities
 - Set up/FF&E (one-time) – \$5.1 million
 - Rents, not including 3% escalation – \$3.8 million
 - Court security (bailiffs only) – \$3.6 million
- Other
 - IT infrastructure (one-time) – \$3.6 million

- IT infrastructure – \$400,000
- Education – \$768,000

Fiscal impacts – offsets

- New state revenue that would follow cases moving from justice courts to division courts – \$22 million.
- Reallocation through attrition of 17 retiring district court judges – \$3.6 million and 34 judicial assistants – \$3.4 million. Mr. Peters explained that they are anticipating future events, such as retirements, because the reform will not be implemented all at once.
- Other possible facilities savings – up to \$1.6 million and possible revenue distribution adjustments (state/local splits) – up to \$18 million.

Mr. Gordon pointed out that if all of these changes were implemented, the justice courts’ revenue would decrease. Cities and counties are using revenue from those cases for other services. Judge Lindsley said realistically post-pandemic, the revenue may be lower because judges may be diverting away from fines to community service.

Options for moving forward

- Do nothing
 - *Pros* –
 - No fiscal impact
 - Easy to implement
 - *Cons* –
 - There are current concerns that need to be addressed
 - Spent significant amount of time and money working to identify and develop solutions to those concerns
 - Other stakeholders, including Legislature, also have an interest in certain reforms
- Seek to fully implement the taskforce’s recommendations
 - *Pros* –
 - Recommendations could be used as a gold standard
 - Best way to achieve the principles highlighted in the report
 - *Cons* –
 - Would result in significant personnel and facilities challenges
 - May carry a fiscal note somewhere between \$20 and \$70 million per year
- Eliminate justice courts
 - *Pros* –
 - Goal around the country is to consolidate courts
 - Would accomplish most of the goals in the recommendations
 - *Cons* –
 - Would arguably require a constitutional amendment
 - Would result in even more significant personnel and facilities challenges, and an even larger fiscal burden as the entire justice court caseload would be transferred to the district court
 - May exacerbate access to justice issues
- Make justice courts “courts of record”

- *Pros* –
 - Would resolve the de novo appeal issues
 - Would have smaller fiscal impacts
- *Cons* –
 - Would leave some of the recommendations related to judicial independence and other issues unaddressed
 - As a court of record, judges would be required to be members of the State Bar, serve fulltime, and be appointed by the Governor, as required by the constitution; this would effectively eliminate small, rural justice courts.
 - Would require constitutional amendments to multiple sections, including those dealing with the judicial appointment process.
- A gradual, phase approach
 - *Vision* –
 - Encourage legislation, rules, and other changes that get the courts closer to the core concepts of 1) cases heard on the record, 2) the elimination of conflicts of interest that increase judicial independence, and 3) accomplishing other recommendations
 - *Pros* –
 - Stay true to the recommendations
 - Accomplishes some of the goals immediately
 - Establishes a framework for future implementation
 - Is more fiscally responsible
 - *Cons* –
 - Leaves many of the recommendations undone – at least for now – including the primary goal of eliminating de novo appeals
 - Creates uncertainty for the future

Judge Farr was concerned about how a mandate that all justice court judges be members of the Bar would affect the small part-time courts. Judge Pettit asked why not change the statute to allow direct appeals from the justice courts. There are currently 78 justice court judges with 20 of them being non-lawyers. More than half of the justice courts operate less than fulltime. Judge Pettit asked if the majority of the justice courts could have direct appeals. Judge Farr was concerned that not all justice courts are recorded through FTR and smaller courts do not have the funding for a better recording system. Less than 2% of cases are appealed.

Phase approach 1 of 4 support legislation enacting those recommendations that have no state fiscal impacts/avoid significant structural changes.

- Enact statute clarifying that all courts are part of the Judiciary.
- Set fixed judicial salaries, which would have local financial impacts.
- Eliminate Accounting Model 2.
- Eliminate geographic restrictions for justice court judge applicants.
- Require all new justice court judges to have law degrees, allowing current justice court judges without law degrees to be grandfathered in.

Judge Farr noted some justice courts are not set up to accept electronic fine payments. If a clerk is unavailable, there are city or county personnel who accept fine payments from court patrons or assist judges.

Phase approach 2 of 4 support legislation enacting the legal framework through which future structural changes could more easily be implemented.

- Create a magistrate judicial position, appointed, fulltime, Bar membership, with duties set forth in statute, including presiding over class B and C misdemeanors and small claims, magistrate functions, other duties as assigned by the district court, appointed by the Governor, and salary set at 90% of a district court judge.
- Concurrent jurisdiction of class B and C misdemeanors and small claims between justice and district courts, with primary jurisdiction in justice courts and jurisdiction transferring upon certain events such as dissolution of a justice court, legislative transfer of certain case types or order of a district court judge where a magistrate judge has been implemented.
- Funding of a magistrate judge in districts with greatest current judicial need.

This phase sets up the possibility for future changes.

Phase approach 3 of 4 support legislation relating to the transfer of certain small claims cases.

- Transferred case would be heard by a magistrate on the record.
- Could apply to certain case types such as personal injury, insurance or expert witnesses and at either a party's request or automatically if certain conditions exist.
- Coordinate with URSCP Rule 4A Defendant's Removal to District Court, which provides for removal for the right to a jury trial.

Phase approach 4 of 4 recommendations to work towards in the future.

- Magistrate duties assigned to magistrate judges.
- Class A misdemeanors heard by magistrate judges.
- Preliminary hearings heard by magistrate judges.
- Differentiate between private and commercial small claims cases.
- Bring third party debt collection cases under the small claims umbrella, both to be heard by magistrate judges.
- Filing fee for commercial small claims and debt collection cases to be used to provide LPP representation.
- Expand ODR to all small claims and debt collection cases.
- Discontinue the use of pro tem judges for small claims and create ODR facilitator system.
- By rule, make remote hearings available to parties, volunteers, attorneys, etc.
- Creation of a simplified process for infractions.
- Eviction cases to be heard by magistrate judges.

Justice courts have continued to decline from 120 to 80 over the past 10 years. Judge Gardner noted that the district courts that are in need of a judge would have plenty of work for magistrates to do. Judge Farr wondered where in a district court a magistrate could be housed

and thought the Legislature may be more willing to fund a less expensive request rather than fund a new judge. He also questioned if the Legislature would be interested in utilizing court space more effectively. Mr. Drechsel said the Legislature has been interested in space utilization in the post-COVID environment.

Mr. Drechsel said if provisions to the Code could be amended with enough clarity, the Council could easily transition justice court reform efforts over time. Mr. Peters thought the Council could create future dates for changes. Mr. Gordon said the Council and AOC staff need to keep the commitment to continue pursuing these efforts for a number of years.

Mr. Gordon and Mr. Drechsel felt the courts could begin legislative discussions for the implementation of phase 1 and both believed the Council should communicate their research and work with the Legislature. Mr. Drechsel recommended the Council communicate to the Legislature that they've investigated, assessed the five options, selected option 5, and have recognized the reality of the lack of time with the session closely approaching to draft something. Mr. Gordon suggested the written report incorporate the information from the NCSC and Kem C. Gardner Institute.

Chief Justice Durrant thanked Judge Farr, Mr. Peters, Mr. Gordon, and Mr. Drechsel.

Motion: Judge Lindsley moved to have Mr. Drechsel, with the assistance of Judge Farr and Mr. Peters create a list of talking points that link to the reports that the Council has received to show their intent to work through phases to implement the recommendations regarding reforming the justice courts in the state of Utah.

Mr. Drechsel confirmed the incremental approach would fall in line with option 5. Judge Lindsley confirmed and stated that it would include how the Council would be moving through phase 5, which could be further revised as needed by the Council in the future. Judge Lindsley confirmed Mr. Drechsel's interpretation of her motion. Judge Pettit was uncomfortable with this because she has not had sufficient time to digest this. Judge Lindsley clarified that she was referring to option 5 with pieces that may change in the future based on the court system and how other things are working but working towards those changes from the initial report of justice court reform. And, maybe less concrete as to where Judge Pettit is concerned. Judge Chin suggested the report could indicate the Council's support for some type of reform with future ideas still in development.

Judge Pettit felt this was a new concept that hadn't been talked about before. Judge Lindsley accepted Judge Chin's amendment. Judge Bazzelle asked if it would be helpful to add that the Council was planning on legislation in 2024. Mr. Drechsel thought this was a good idea. Judge Lindsley added this to her motion and preferred to have a more concrete path forward.

Judge Evershed seconded the motion, and it passed unanimously.

16. EXECUTIVE SESSION

An executive session was not held.

17. CONSENT CALENDAR ITEMS
None

18. ADJOURN
The meeting adjourned.