

**JUDICIAL COUNCIL MEETING
Minutes**

November 21, 2022

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

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

9:05 a.m. – 10:25 a.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. David Mortensen, Vice 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
Justice Paige Petersen
Hon. Kara Pettit

Excused:

Margaret Plane, esq.

Guests:

Jonathan Adams, OLRGC

AOC Staff:

Ron Gordon
Neira Siaperas
Michael Drechsel
Brody Arishita
Shane Bahr
Jordan Murray
Bart Olsen
Jim Peters
Nathanael Player
Nick Stiles
Karl Sweeney
Sonia Sweeney
Melissa Taitano
Jace Willard
Keisa Williams
Jeni Wood

Guests:

Hon. James Brady, Fourth District Court
Hon. Lee Edwards, Logan Justice Court
Alyson McAllister, MUJI – Civil Committee
Lauren Shurman, MUJI – Civil Committee

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

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

Motion: Judge Kara Pettit moved to approve the October 24, 2022 Judicial Council meeting minutes, as amended to correct language in section 15, page 20. Judge David Connors seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that most of the appellate court members attended the Appellate Judges Education Institute (AJEI) Conference in Scottsdale. A notable speech regarding the safety of judges was presented by Judge Esther Salas, New Jersey United States District Court Judge, who lost her husband and son to a disgruntled lawyer. Judge Salas advocates for federal legislation to ensure better protections are in place for judges.

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

Ron Gordon said the Elected Officials and Judicial Compensation Commission (EOCC) recommended to the Legislature a 10% salary increase for state court judges and a 5% increase for all of the other elected officials. The increase is inclusive of a COLA increase. The courts originally requested a 20% increase in addition to a COLA increase.

In response to the Council’s action on the Green Phase Working Group’s report, Mr. Gordon conveyed to the Supreme Court the Council’s recommendation that the Supreme Court create a rule of procedure that would allow a participant to request permission to attend a hearing opposite of the way the judge decided. The Supreme Court is currently working the General Counsel to establish that rule.

Mr. Gordon updated the Council that the AOC’s data team will soon separate from the IT Department. The recruitment for the Director of Data and Research continues.

**4. COMMITTEE REPORTS:
Management Committee Report:**

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Kara Pettit noted the courts continue to accrue savings as staff positions are vacated. The judicial assistants turnover rate has declined since May and applicant pools have increased. Last month, the courts reached a near-all-time high for filled judicial assistant positions.

Liaison Committee Report:

Justice Paige Petersen is now the Chair of this committee. Michael Drechsel is tracking about 42 bills for the upcoming session. Some of the bills include a Utah business court; refining criminal restitution processes; proposed expanded criminal discovery; limits on the use of hearsay at preliminary hearings; potential changes to the “guilty with a mental illness” processes; modifications to the juvenile expungement processes; and creating a statewide definition of recidivism. Regarding justice court reform, Mr. Drechsel’s presentation to the Judiciary Interim Committee was well-received. The courts anticipate a justice court reform bill addressing nonstructural changes. Senator Todd Weiler agreed to run bills for a new Fourth District Juvenile

Court judge and authorization to charge an electronic payment fee to cover the credit card transaction fee.

Policy, Planning, and Technology Committee Report:

Judge Samuel Chiara was elected as the new Chair.

Bar Commission Report:

Margaret Plane was unable to attend.

5. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge James Brady and Shane Bahr)

Chief Justice Durrant welcomed Judge James Brady and Shane Bahr. Judge Brady has been elected as the new Chair. Judge Brady thanked Mr. Bahr and his staff for their continued assistance. The Board will focus on cases pending as they recognize that their cases pending numbers have increased significantly. Prior to COVID, around March 2020, the district courts had approximately 12,500 cases pending throughout the state. During the pandemic, that number increased to about 23,000 – 24,000. In May 2022, the cases pending had declined to about 20,000. However, the past couple of months has seen an increase in cases pending.

Each district provides monthly data of trials, including those that were set, settled or held. They have been focusing on criminal cases, therefore, tort cases have been backing up. They found that about 10% of cases actually go to trial. Some judges are stacking multiple trials on the same day.

Jury Trials June 2021 - October 2022				
District	Trials Scheduled	Trials Held	Trials Settled	Trials Continued
1	282	30	111	127
2	1077	85	438	513
3	2140	184	678	1165
4	968	99	380	407
5	413	27	255	413
6	17	1	19	4
7	128	19	114	9
8	192	20	115	50
State	5386	482	2132	2800

The Board meetings are now held in person, as are their conferences. The Board also discussed a new law that results in some protective order and stalking injunction cases being addressed in district courts. District court judges address issues in these cases that might be better addressed in juvenile court.

A survey has been sent to judges, which will assist with revising the judicial weighted caseload formula. Mr. Bahr explained that the formula will take into account travel, training, and meetings. Judge Elizabeth Lindsley asked if the formula will include hearings in person, remote, and hybrid. Mr. Bahr confirmed that the formula will include all three hearing options.

Chief Justice Durrant thanked Judge Brady and Mr. Bahr.

6. COMMITTEE ON COURT FORMS REPORT: (Nathanael Player)

Chief Justice Durrant welcomed Nathanael Player. The Committee on Court Forms is charged with reviewing the need for court forms and creating forms written in plain language. Court data shows that the overwhelming number of people facing litigation in district courts represent themselves. Without legally accurate and comprehensible forms, these self-represented litigants are largely unable to access the courts.

The Committee receives numerous requests for forms and prioritizes its work as follows

1. forms that must be amended or created because of changes in the law
2. forms that contain a mistake
3. forms that fall within one of the LPP practice areas
4. forms submitted or requested by one of the boards of judges
5. other forms, decided on a case-by-case basis. Requests are evaluated on criteria including:
 - access to justice principles,
 - the mission of the courts (to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law),
 - the number of people who are or would be impacted by a form, and
 - fixing a flaw in a court process.

The Committee has

- identified the need for a forms attorney to support the time-intensive work of the Committee;
- adjusted committee membership to add a practitioner, the LPP administrator, and a district court judge from beyond the Wasatch Front;
- continued to meet remotely every other month;
- maintained current forms consistent with the state of the law;
- in the past year, the Forms Committee worked on 105 forms, including:
 - revising and improving 17 existing forms;
 - updating 35 existing forms based on legislative updates;
 - drafting 21 new forms based on existing law;
 - drafting 32 new forms based on new legislation or court rules.
- on top of these revisions, the Forms Committee updated over 300 forms.

Judge Lindsley thanked Mr. Player for his work and dedication to the committee. Chief Justice Durrant thanked Mr. Player.

7. MODEL UTAH CIVIL JURY INSTRUCTIONS COMMITTEE REPORT: (Alyson McAllister, Lauren Shurman, and Jace Willard)

Chief Justice Durrant welcomed Alyson McAllister, Lauren Shurman, and Jace Willard. The Model Utah Civil Jury Instructions (MUJI-Civil) Committee is comprised of district judges, civil practitioners who primarily represent plaintiffs, civil practitioners who primarily represent defendants, and a linguist. Several changes were made to the leadership and membership of the Committee, including a new Chair (Ms. McAllister), Vice Chair (Ms. Shurman), a new linguist, and defense counsel member.

Over the last year, the Committee has discussed several sets of jury instructions including:

- *Boundary by Acquiescence*: These instructions include relevant definitions, elements required to prove a boundary by acquiescence, and exceptions.
- *Avoiding Bias*: The Council emphasized a request for civil instructions addressing juror implicit bias or a report on discussions for these instructions. A civil instruction on Avoiding Bias was approved. The Committee has also discussed whether the Court should consider addressing implicit bias through other means, such as videos or reading materials.

Judge Chiara learned that another state has a video on how to advise jurors of implicit bias. He wondered if the Utah Courts could obtain a copy of the video; however, he noted that the cost may not be worth creating a new video because the outcomes of showing the video indicated “no harm” rather than a positive outcome. Ms. McAllister will research the possibility of obtaining the video. Council members agreed that having this instruction was important.

With this being a new instruction, the Council felt the Boards should have an opportunity to weigh in before being presented to the Council. Mr. Bahr will assist with seeking the Boards opinion.

- *Defamation*: A case law update was presented to the Committee on the previously published defamation instructions. Amendments to these instructions were made to reflect updates to the law.
- *Easement by Necessity*: These instructions are being revised.
- The Committee amended the *Spoilation, Defamation (False Statement element), Nuisance, and a new proposed instruction on pretrial delay* instructions based on the public comments they received. Discussions regarding the public comments are ongoing.
- The Committee has worked throughout the year to revitalize the workgroups to address civil instructions on *Insurance, Wills and Probate, Assault and False Arrest, and Directors and Officers Liability*. This included reaching out to legal professionals in the community to form new connections that will work on drafting civil jury instructions on these topics. The Committee expects to see the *Products Liability* instructions completed soon.

Chief Justice Durrant thanked Ms. McAllister, Ms. Shurman, and Mr. Willard.

8. SENIOR JUDGE CERTIFICATION: (Neira Siaperas)

Chief Justice Durrant welcomed Neira Siaperas. Judge Roger Livingston applied to be an Active Senior Judge. Judge Livingston retired from the bench in 2003 and served as an Active Senior Judge from November 2010 to December 2016. He does not have any outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court.

Qualifications for Active Senior Judges are found in UCJA Rule 11-201(1). One of the requirements is “to obtain results on the most recent judicial performance evaluation prior to termination of service.” Judicial performance evaluations are not available for Judge Livingston because the Judicial Performance Evaluation Commission (JPEC) started conducting judicial evaluations in 2012, after he retired from the bench. Performance evaluations and attorney surveys from the National Center for State Courts (NCSC) are also unavailable because Judge Livingston has not served on the bench in the past six years.

A judge must also satisfy education requirements set forth in UCJA Rule 3-403(3)(A)(i). Judge Livingston does not meet the requirement of completing 30 hours of education annually. The Education Department and the Third District Court leadership team have agreed to assist Judge Livingston with completing the required hours through LMS courses and in-person training.

The Council recognized that Judge Livingston does not meet qualifications and wondered if the Council has the authority to defer the recommendation until he obtains the 30 required education hours. Judge Keith Barnes wondered if there was a shortage of senior judges. Ms. Siaperas noted that there is not a shortage of senior judges.

Chief Justice Durrant thanked Ms. Siaperas.

Motion: Judge Chiara moved to report to the Supreme Court that Judge Roger Livingston does not meet the qualification and that the Council does not recommend the active senior judge appointment. Judge Chin seconded the motion, and it passed unanimously.

9. JUSTICE COURT REFORM: (Judge Paul Farr, Jim Peters, and Ron Gordon)

Chief Justice Durrant welcomed Judge Paul Farr, Jim Peters, and Ron Gordon. Judge Farr provided the Justice Court Reform presentation to a legislator in anticipation of them running a bill. Mr. Gordon met with a Senator, who was hoping to move forward with a couple of nonstructural justice court reform changes.

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

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 with an effective date of January 1, 2023.

UCJA 1-204. Executive Committees. Creates court-level core teams and subcommittees of Policy, Planning, and Technology to assist the Committee in accomplishing its new technology responsibilities.

UCJA 4-202.08. Fees for Records, Information, and Services. Allows the court to charge requesters for the first 15 minutes of personnel time. “Impecunious” is changed to “indigent.”

Motion: Judge Connors moved to approve UCJA Rules 1-204 and 4-202.08 with an effective date of January 1, 2023, as presented. Judge Suchada Bazzelle seconded the motion, and it passed unanimously.

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 May 1, 2023.

Appendix B. Justice Court Standards for Recertification. The proposed amendments are intended to streamline the appendix, provide clarity, and incorporate recent statutory amendments.

UCJA 1-201. Judicial Council Membership – Election. Clarify that Council members can serve as non-voting members of a trial court board.

UCJA 1-302. Board of Judges – Membership – Officers – Secretariat. Clarifies that Council members may serve as non-voting members of a trial court board and continues to allow an exception for the appellate courts.

UCJA 4-202.04. Request to Access a Record Associated with a Case; Request to Classify a Record Associated with a Case. Clarifies that requesters denied access to non-public court records associated with a case that they are not authorized to access under Rule 4-202.03 must file a motion or petition to access the record.

UCJA 4-202.02. Records Classification. Currently, the rule is unclear as to what happens to a record previously designated as sealed if it is included in the overall record on appeal. The proposed amendment would allow sealed records to remain sealed even if included in the record on appeal. Court order may unseal records.

Judge Mortensen said Rule 4-202.02 was recently addressed and felt this amendment should be made effective immediately. Justice Paige Petersen said that on appeal, it needs to be clear what documents are sealed. Judge Mortensen explained that under the rules, if there is a sealed record, a separate brief must be filed stating that the brief itself is non-public. Justice Petersen was concerned about information from a sealed record being addressed in open court. Judge Connors didn’t believe Policy, Planning, and Technology Committee would oppose an immediate effective date.

Motion: Judge David Mortensen moved to approve UCJA Rule 4-202.02, with an effective date of November 21, 2022. Judge Pettit seconded the motion, and it passed unanimously.

Motion: Judge Connors moved to approve UCJA Appendix B, UCJA Rules 1-201, 1-302, and 4-202.04 with an effective date of May 1, 2023, as presented. Judge Chin seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Ms. Williams.

11. OLD BUSINESS/NEW BUSINESS: (All)

There was no additional business discussed.

12. EXECUTIVE SESSION

An executive session was not held.

13. CONSENT CALENDAR ITEMS

a) Committee Appointments of Brian Williams, Freyja Johnson, and Dustin Parmley, and the reappointment of Judge Brendan McCullagh to the MUJI-Criminal Committee.

Approved without comment.

b) Forms Committee Forms. Petition for Name and Sex Change, Order on Petition for Name and Sex Change, Motion to Consolidate, Order on Motion to Consolidate, Department of Corrections Certification Regarding Sex and Kidnap Offender and Child Abuse Offender Registries, Financial Declaration, Motion for Leave to Amend, and Order on Motion for Leave to Amend. Judge Connors questioned including both case numbers on the Motion to Consolidate form because the motion should be filed in both cases. Mr. Player stated if both numbers were included then judicial assistants may get confused as to which case to file the motion in. The substantive language explains the process. Approved with comment.

c) Rules for Public Comment. UCJA Rules 6-501, 3-406, and 3-104. Chief Justice Durrant wondered if Rule 3-406(2)(B) could be amended to simply state “managing the Judiciary’s budget”. Mr. Gordon explained that the Courts did not need to over-clarify to have a substantive impact. Approved with comment.

14. ADJOURN

The meeting adjourned.