

JUDICIAL COUNCIL MEETING
Minutes

January 17, 2023

Meeting held through Webex

9:00 a.m. – 11:25 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
Margaret Plane, esq.

Excused:

Guests:

Hon. Barbara Finlinson, Nephi Justice Court
Hon. Dennis Fuchs, Senior Judge
Lisa Garner, Draper City Justice Court

AOC Staff:

Ron Gordon
Neira Siaperas
Michael Drechsel
Lauren Andersen
Brody Arishita
Shane Bahr
Katy Burke
Alisha Johnson
Jordan Murray
Bart Olsen
Jim Peters
Nini Rich
Tucker Samuelsen
Nick Stiles
Karl Sweeney
Sonia Sweeney
Melissa Taitano
Keisa Williams
Jeni Wood

Guests Cont.:

Commissioner Blair Hodson, JPEC
Russ Pearson, TCE Eighth District Court
Dr. Jennifer Yim, JPEC

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

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

Motion: Judge David Connors moved to approve the December 19, 2022 Judicial Council meeting minutes, as amended to 1) change Justice Paige Petersen’s comment in item # 2 from “Justice Petersen thought that, if they do make the change, it might make the nominating

commission imbalanced as to partisanship. She wondered how will the constitution be protected.” to “Justice Petersen thought that if the nominating commission is made partisan, it could impact the constitutional requirement that judicial selection not consider political ideology”; 2) change item #3 from “If discretionary funding is allocated, salary increases for court positions that require Juris Doctorate degrees could be funded from the discretionary funds.” to “If discretionary funding is allocated, salary increases for court positions that require Juris Doctorate degrees other than judges could be funded from the discretionary funds.”; 3) change item #7 from “trust in confidence” to “trust and confidence; and 4) Judge Brian Brower will provide additional errors at a later time. Judge Brower seconded the motion, and it passed unanimously.

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

Chief Justice Durrant will be providing the Senate and House of Representatives with the State of the Judiciary this afternoon.

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

Ron Gordon introduced Tucker Samuelson as the Director of the new Data and Research Department and Mark Paradise as the new Third District Court TCE. Joyce Pace announced her retirement from the Fifth District Court TCE position. Mr. Gordon said Ms. Pace’s leadership will be greatly missed.

Judge Coral Sanchez has been confirmed to the Third District Court. There are a few judicial appointments pending confirmation, Judge Amy Oliver to the Court of Appeals, Jay Winward to the Fifth District Court, and Jason Nelson to the Second District Court.

Mr. Gordon organized a secondary trauma committee to identify ways to improve services to judges and employees. One of the committee members, Tiffany Power, JTCE, Third District Juvenile Court, recently completed her master’s thesis which focused on secondary trauma in the courts.

The Courts presented their budget requests to the co-Chairs of the Executive Offices and Criminal Justice Budget Appropriation Committee last week. Mr. Gordon will make the same presentation to the full appropriation subcommittee in February.

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 discussed later in the meeting.

Liaison Committee Report:

Justice Petersen noted the committee began their weekly meetings.

Policy, Planning, and Technology Committee Report:

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

Bar Commission Report:

Margaret Plane said the Bar's wellbeing providers will go live on February 1. TAVA is the new therapy provider replacing Blomquist Hale. The Bar is supportive of the judicial raises budget request.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT: (Dr. Jennifer Yim)

Chief Justice Durrant welcomed Dr. Jennifer Yim. Dr. Yim introduced Commissioner Blair Hodson. Commissioner Hodson was appointed in 2018 by the Supreme Court.

Judge Pettit asked if JPEC has been involved in discussions about potential legislation to address judicial nominating commissions. Dr. Yim was invited to an informal workgroup to discuss judicial retentions. Senator Kirk Cullimore presented to JPEC some of his ideas.

Dr. Yim started working for JPEC in 2016 wanting to accomplish a few things:

- 1) To ensure that judges knew JPEC was an entity that could be trusted to conduct evaluations fairly and accurately and in the best interest of Utah. She wanted to work collaboratively with the Courts on improving the process of evaluating judges.
- 2) To find ways to minimize implicit bias in the evaluation process.
- 3) To have an informed electorate in casting votes for judges. She wanted to make sure voters could rely on JPEC's evaluations when casting votes.

Dr. Yim felt that JPEC has made significant progress on these fronts and continues to improve.

Dr. Yim appreciated the training being offered by the Judicial Institute to help judges increase their scores when requested by a judge. She noted that it may be beneficial to offer more formalized training. Lauren Andersen said the Judicial Institute continues to offer services, including making recommendations, tailoring training specific to the need of a judge or hiring personal coaches. Dr. Yim stated that JPEC has changed some of the evaluation criteria to meet the changing environment. She would like to know more about how Utah judges have modernized their workload and what other newer methods are being used. Justice Petersen appreciated encouraging participants to review JPEC evaluations. Dr. Yim said JPEC discusses their process with other states who have similar processes to work together to provide more outreach.

Survey of Judges on Judicial Performance Evaluation - Overall Findings

- 86.6% of Utah judges reported overall satisfaction with the process.
 - Respondents reported feeling informed about the process and finding the results helpful.
 - Only 42.4% of Utah respondents had specific concerns about the evaluation process. This is considerably lower than the 58.7% of respondents from 8 other states who identified the same concerns.
- Concerns

- As in other states, Utah judges are very concerned about bias in the process itself and in survey respondents. Bias includes both gender/racial bias as well as outcome-related bias.
- Similar to other states, Utah judges are concerned about low response rates.
- Suggested improvements
 - Increase training for observers.
 - Add context to survey responses in order to decrease bias and assess relevance.
 - Follow-up and resources to improve after an evaluation.
- Praise
 - Utah’s effort.
 - Efforts made to improve the process.

Conclusions

- Help validate the results of JPEC’s internal judge surveys.
- Give cross-state comparisons to see how JPEC is doing.
- Justify continued efforts to ensure that the evaluations are accurate and bias minimized.
- Points to areas for continued process improvement.

The self-represented litigant surveys pilot project has launched. Litigants without legal representation are a rapidly growing population of court users and can change the courtroom dynamic. JPEC is working to incorporate input from self-represented litigants into the performance evaluation survey pool currently made up of attorneys, court staff, allied professionals, and jurors. Capturing these important voices is an important step to ensure that court users have input into judicial evaluation. The two-part pilot will include a standing survey kiosk inside of select courtrooms and an online survey available to any self-represented parties.

Chief Justice Durrant thanked Dr. Yim and Commissioner Hodson for the amount of dedicated time they invest into the work of JPEC.

6. BUDGET AND GRANTS: (Karl Sweeney, Alisha Johnson, and Jordan Murray)
Chief Justice Durrant welcomed Karl Sweeney, Alisha Johnson, and Jordan Murray.

FY 2023 Ongoing Turnover Savings

#	Funding Type	Actual	Forecasted	
		Amount YTD	Amount @ YE	
1	Carried over Ongoing Savings (from FY 2022, includes unallocated ongoing appropriation)	Internal Savings	250,392	250,392
2	Ongoing Turnover Savings FY 2023	Internal Savings	302,119	602,119
3	TOTAL SAVINGS		552,511	852,511
	2023 Hot Spot Raises		(133,656)	(200,000)
	2023 Authorized Ongoing for Performance Based Raises (will be used at the end of the FY)		-	(450,000)
4	TOTAL USES before YE Requests		(133,656)	(650,000)
Actual Turnover Savings for FY 2023 as of 12/23/2022			\$ 418,854	\$ 202,511

- Ongoing turnover savings only happens when a vacant position is filled at a lower rate and/or with lower benefits.
- There are currently 23 positions that have turned over within the past 90 days that are currently listed as having unknown benefits. If those employees select lower benefits, there will be additional savings.

- Currently 64.6 FTE positions are vacant with 21 in process of being filled. If those positions fill, with no other changes, that would leave 43.6 FTE vacant positions.

Ms. Johnson explained that a low turnover savings amount implies that there is less employee turnover. However, retirements and promotions are considered in this as well.

FY 2023 One-Time Turnover Savings

#		Funding Type	Actual Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 12/09/2022)	Internal Savings	2,117,737
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 11/11/2022)	Reimbursements	416,865
3	Est. One Time Savings for 1,160 remaining pay hours (\$2,000 / pay hour)	Internal Savings (Est.)	2,320,000
Total Potential One Time Savings			4,854,602

ARPA Expenses

#	Funded by	GOPB	Requested	A Judicial Council Approved	B Actual FY 2022 Expended	C Actual FY 2023 Expended	A - B - C Balance	
1	IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	11,000,000	3,042,468	2,117,603	5,839,930
2	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	2,409,640	5,839,930
Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature				Requested	Approved	Actual 2022	Actual 2023	Available
1	IT Access to Justice - Response to COVID - Part II	2022 GS	Yes	1,373,400	1,373,400	-	-	1,373,400
2	Courts Case Backlog - Part II	2022 GS	Yes	1,000,000	1,000,000	-	148,923	851,077
3	COVID-19 Supplies	2022 GS	Yes	640,000	302,100	-	-	302,100
4	Legal Sandbox Response to COVID	2022 GS	Yes	649,000	324,500	-	-	324,500
5	Self-Help Center	2022 GS	Yes	64,000	-	-	-	-
6	Interpreter Equipment	2022 GS	Yes	97,000	-	-	-	-
7	Eviction Court	2022 GS	Yes	166,000	-	-	-	-
8	Public Outreach & Engagement	2022 GS	Yes	30,000	-	-	-	-
9	IT Access to Justice - Response to COVID - Part III	2022 GS	Yes	1,881,500	-	-	-	-
Subtotal				5,900,900	3,000,000	-	148,923	2,851,077
				\$ 17,900,900	\$ 15,000,000	\$ 3,750,431	\$ 2,558,563	\$ 8,691,007

FY 2023 Year End Forecasted Available One-Time Funds

Description	Funding Type	Amount
Sources of YE 2023 Funds		
* Turnover Savings as of PPE 12/09/2022 (including anticipated ARPA reimbursement)	Turnover Savings	2,534,602
** Turnover savings Estimate for the rest of the year (\$2,000 x 1,160 pay hours)	Turnover Savings	2,320,000
(a) Total Potential One Time Turnover Savings		4,854,602
(b) Operational Savings From TCE / AOC Budgets	Internal Operating Savings	-
(c) Reserve Balance (balance from FY 2022 Carryforward)	Judicial Council Reserve	500,076
Anticipated Reserve Uses - including previously approved and pending requests	Judicial Council Reserve Uses	(152,000)
Uses of YE 2023 Funds		
Carryforward into FY 2024 (Request has been made for up to \$3,200,000)	Historical Carryforward	(3,200,000)
Total Potential One Time Savings = (a) + (b) + (c) less Carryforward		\$ 2,002,678
Less: Judicial Council Requests Previously Approved		\$ (937,772)
Less: Judicial Council Current Month Spending Requests		\$ (453,400)
Remaining Forecasted Funds Available for FY 2023 YE Spending Requests		\$ 611,506

grants; as of October 1, 2022, the 3 grants have been consolidated into one grant with no decrease in funding.

- 4 are administered by the Juvenile Court
- 1 by Information Technology
- 2 by the Domestic Violence Program
- 3 by the Office of Legal Services Innovation
- 1 by Alternative Dispute Resolution
- 1 by the Office of Guardian ad Litem

Chief Justice Durrant thanked Mr. Sweeney, Ms. Johnson, and Mr. Murray.

7. PROBLEM SOLVING COURTS RECERTIFICATIONS: (Judge Dennis Fuchs)

This item was moved to the February Council meeting.

8. LEGISLATIVE UPDATES: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. A bill is being drafted for the Council's budget request for a new Fourth District Juvenile Court judge. In 2021, the Council sought the authority to collect electronic payment fees when people elect to use their credit cards. That bill is in the drafting phase. There are currently about 250 House and over 100 Senate bills. Those numbers are expected to double by the end of the session.

HB0210 – Justice Court Changes is the bill that creates and identifies the duties of a Legislative Justice Court Reform Task Force consisting of 3 Senate members and 4 House of Representatives members, and addresses vacancies, judicial salaries and expenses, staffing, and the duties of the Task Force. The section about judicial independence makes it clear that justice courts are considered part of the state Judiciary even though they are independently funded. There is a section allowing a release of geographical restriction requiring six-month residence before application. The section about salaries changes the minimum to 90% of a district court judge, reducing accordingly for part-time judges. If judges work for multiple entities, their cumulative salary cannot exceed that of a district court judge. The section about staff explains that in the exercise of judicial functions and administration, the Supreme Court and Judicial Council has oversight.

A new house bill seeks to create a business or chancery court with statewide jurisdiction to handle equity-based business cases. Those cases would be removed from the current district court. The bill establishes two judges and judicial assistants but does not specifically address a reduction of currently sitting district court judges. If passed, the bill has an effective date of July 2024.

The Liaison Committee is reviewing HJR002 Joint Resolution Amending Rules of Civil Procedure on Injunctions, which proposes to amend the issuance of preliminary injunctions and temporary restraining orders. The sponsor indicated that he is working to align state and federal rules. Judge Pettit was concerned about the retroactive component of this bill which would require many cases to be re-litigated. Mr. Drechsel explained that the Courts do not have any data on past or current cases which this bill would apply to if it passes.

SB0087 Court Fee Waiver Amendments and SJR006 Joint Resolution Amending Rules of Procedure and Evidence Regarding Criminal Prosecutions are extensions from last year to create a right of a defendant to conduct depositions. Judges have provided feedback to Mr. Drechsel. Judge Elizabeth Lindsley asked if there would be additional funding provided for indigent defense. The bills do not create any funding therefore the counties would be assessed the cost. The bills specify that a witness who is under the age of 14 at the time of the deposition is ineligible to be deposed, those ages 14-18 would need court approval to be deposed, and victims of a crime would have additional rights.

The two large recodifications expected for this session that will affect the Courts are HB0046 Criminal Code Recodification and Cross References and HB0030 Wildlife Resources Code Recodification.

Mr. Drechsel thanked Sonia Sweeney and her team for their assistance with the juvenile expungement bill and a child welfare bill that seeks to expand the amount of time where a relative or someone can appear in court seeking custody.

Chief Justice Durrant thanked Mr. Drechsel.

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 hopes to be involved in the legislative taskforce.

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

10. JUSTICE COURTS RECERTIFICATIONS: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Pursuant to UCJA Rule 9-108(1)(B) Justice Court Standards, the Board of Justice Court Judges has discussed the applications received for recertification of the county justice courts. For each court, these applications include (i) the judge's affidavit attesting that the court is in compliance with the operating standards required both by statute and by the Judicial Council, (ii) a legal opinion from the county attorney's office (a) informing the governing body as to those operating standards and (b) advising it as to the feasibility of maintaining a justice court, and (iii) a resolution from the governing body committing to abide by those standards and requesting that the court be recertified. The Board recommended that these municipal justice courts be recertified for a 4-year term beginning February 1, 2023. Mr. Peters noted that some counties contract with cities to operate their justice courts, so Weber County and Uintah County aren't on the list below because Roy and Vernal run those courts instead. Cache County never had a county justice court.

Garfield County Justice Court – Judge Gary Owens

As a Class III Justice Court, the Judicial Council's standards require that Garfield County set a trial calendar at least every other week. Because most of the cases that took Garfield County from a Class IV court to a Class III court are handled without the need for a hearing, the court would like to set a second day of court each month only as needed. As such, Judge Owens requested that this requirement be waived. The Board is supportive of his request.

Rich County Justice Court – Judge Trevor Cook

As a Class III Justice Court, the Judicial Council’s standards require that Rich County set a trial calendar at least every other week. Because the number of cases filed in the Rich County Justice Court vary dramatically depending on the season, the court would like to set a second day of court each month only as needed. As such, Judge Cook requested that this requirement be waived. The Board is supportive of his request.

Mr. Peters explained that a Class III court averages between 61-200 cases per month.

Judge Pettit thought Garfield County had a fair number of cases set over the next 30 days compared to other jurisdictions. She thought this could be supported with holding court twice a month and wanted to ensure the court was not unnecessarily delaying cases for litigants by holding court only once a month. Mr. Peters explained that the need for hearings isn’t that great because 92% of cases over the past year were traffic citations with 8% being criminal cases. DUI cases totaled 15 of the 162 cases. Judge Brower noted that his court is generally scheduled once a week but there are weeks where caseloads are much lighter and other weeks where caseloads are much greater. He wasn’t concerned about the exception being requested. Judge Farr said judges review cases and must still comply with statute, even if they are only scheduling hearings once a month.

Courts seeking recertification

1. Beaver County Justice Court (Beaver Precinct)
2. Beaver County Justice Court (Milford Precinct)
3. Beaver County Justice Court (Minersville Precinct)
4. Box Elder County Justice Court
5. Carbon County Justice Court
6. Daggett County Justice Court
7. Davis County Justice Court
8. Duchesne County Justice Court
9. Emery County Justice Court
10. Garfield County Justice Court
11. Grand County Justice Court
12. Iron County Justice Court
13. Juab County Justice Court
14. Kane County Justice Court
15. Millard County Justice Court
16. Morgan County Justice Court
17. Piute County Justice Court
18. Rich County Justice Court
19. Salt Lake County Justice Court
20. San Juan County Justice Court
21. Sanpete County Justice Court
22. Sevier County Justice Court
23. Summit County Justice Court
24. Tooele County Justice Court
25. Utah County Justice Court

- 26. Wasatch County Justice Court
- 27. Washington County Justice Court
- 28. Wayne County Justice Court

Motion: Judge Connors moved to approve a 4-year recertification for all 28 justice courts listed above and approve the Rich County Justice Court waiver but to not approve the Garfield County Justice Court waiver until sufficient information can be provided to the Council, as amended. Judge Chin seconded the motion, and it passed with Judge Brower abstaining as to the Morgan County Justice Court.

Judge Pettit would appreciate clarification that statutory timelines would be adhered to regardless of the regular schedule. Mr. Peters will readdress the Garfield County Justice Court with the Board and then with the Council at a later date. Chief Justice Durrant thanked Mr. Peters.

11. JUSTICE COURT JUDGE CERTIFICATION: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Mr. Peters presented Lisa Garner for consideration as the new Draper City Justice Court Judge. UCJA Rule 9-106. New Judge Certification Procedure states “(8) Upon completion of the orientation process, the Justice Court Administrator shall make a recommendation to the Council respecting certification. The Council shall either certify that the proposed judge has attended the orientation and successfully passed the examination, or decline to certify the same. The Council shall notify the proposed judge and the appointing authority of its decision in writing.” Mr. Peters mentioned that Ms. Garner has completed New Judge Orientation, scored 95% on the exam, and has completed all other requirements needed for certification.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Chin moved to certify Lisa Garner as the new Draper City Justice Court Judge. Judge Farr seconded the motion, and it passed unanimously.

12. RULES FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Policy, Planning, and Technology Committee recommended that the following rules be approved with a May 1, 2023 effective date, followed by a 45-day public comment period.

UCJA Rule 3-406. Budget and Fiscal Management. Proposed amendments incorporate the role of the Budget and Fiscal Management Committee and make other improvements to clarify the budget process. Mr. Sweeney clarified that he was trying to be more specific when recommending the change to annual priorities instead of fiscal priorities. Judge Pettit asked if the BFMC could readdress this rule.

UCJA Rule 3-104. Presiding Judges. Proposed amendments require presiding judges to notify the appropriate state level administrator when a judge fails to submit a required case under advisement statement. If a judge fails to submit a required statement for two

consecutive months, the state level administrator must notify the Management Committee.

Motion: Judge Pettit moved to refer UCJA Rule 3-406 to the Budget and Fiscal Management Committee for discussion. Judge Connors seconded the motion, and it passed unanimously.

Motion: Judge Gardner moved to approve Rule 3-104 with an effective date of May 1, 2023 and a 45-day public comment period. Judge Connors seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Ms. Williams.

13. OLD BUSINESS/NEW BUSINESS: (All)

No additional business was discussed.

14. EXECUTIVE SESSION

An executive session was not held.

15. CONSENT CALENDAR ITEMS

a) Committee appointments of Judge Troy Little and Judge Ann Marie McIff Allen to the Court Facility Planning Committee and the appointment of Judge Chelsea Koch to the Forms Committee. Approved without comment.

b) Rules for Public Comment. UCJA Rule 3-403. Judicial Branch Education. Approved without comment.

16. ADJOURN

The meeting adjourned.