

**JUDICIAL COUNCIL MEETING
Minutes**

November 20, 2023

**Meeting held through Webex
and in person
Matheson Courthouse**

**450 S State Street
Salt Lake City, UT 84111**

9:00 a.m. – 2:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. David Mortensen, Vice Chair
Hon. Suchada Bazzelle
Hon. Brian Brower
Hon. Michael DiReda
Hon. Ryan Evershed
Hon. Paul Farr
Hon. James Gardner
Hon. Elizabeth Lindsley
Hon. Keith Barnes
Hon. Samuel Chiara
Hon. Thomas Low
Justice Paige Petersen
Judge Amber Mettler
Judge Jon Carpenter

AOC Staff:

Ron Gordon
Neira Siaperas
Shane Bahr
Jim Peters
Nick Stiles
Keisa Williams
Hilary Wood

Excused:

Margaret Plane, esq.
Michael Drechsel
Sonia Sweeney

Presenters:

Mary-Margaret Pingree
Elizabeth Wright
Commissioner Bridget Romano
Judge William Kendall
Nathanael Player
Wayne Kidd
Karl Sweeney
Melissa Taitano
Katy Burke
Alyson McAllister
Jace Willard
Lauren Shurman

Tucker Samuelsen
Judge Danalee Welch-O'Donnal
Justice Michael Zimmerman
Nini Rich
Jordan Murray
Bart Olsen
Brody Arishita
Alisha Johnson
Kelly Moreira

1. WELCOME AND APPROVAL OF MINUTES: (Judge David Mortensen)

Judge David Mortensen welcomed everyone to the meeting.

Motion: Judge Paul Farr motioned to approve the October 23, 2023 Judicial Council meeting minutes. Judge Samuel Chiara seconded the motion, and the motion passed unanimously.

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

Chief Justice Matthew Durrant reported that he and the court administrators completed legislative visits to seven of the eight Utah districts this year. He felt that these visits were the most positive, productive and constructive visits in years.

3. STATE COURT ADMINISTRATOR: (Ron Gordon)

The State of the Judiciary will take place on January 16, 2024 at 2:15pm at the State Capitol. Ron Gordon will arrange to have some vehicles available to take Council members to the capitol, for those who are interested in attending.

The March 2024 Judicial Council meeting will be in St. George, so those Council members who attend the Bar Conference can stay for those meetings also taking place in St. George.

Supreme Court Painting

Mr. Gordon shared a statement issued by the Supreme Court to Fox News regarding the painting in the Supreme Court courtroom, stating that the painting in the Supreme Court will no longer be covered up by a curtain.

4. COMMITTEE REPORTS:

Management Committee Report:

Judge Mortensen shared his thoughts on some ambiguities in rule CJA 3-104 regarding the Presiding Judges. His question centered around judges reporting cases under advisement as well as the timeline. Judge DiReda mentioned the struggle to get some judges to submit their cases under advisement report, making them out of compliance.

Budget & Fiscal Management Committee Report:

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

Liaison Committee Report:

Justice Paige Petersen and Michael Drechsel attended the Bar Breakfast and had an opportunity to talk to some lawyers and legislators.

Policy, Planning, and Technology Committee Report:

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

Bar Commission Report: Elizabeth Wright, executive director of the Utah State Bar, reported on behalf of Margaret Plane, who was absent. The Bar hosted their annual Fall Forum recently in addition to the Bar Breakfast, which was a sold-out event. The Spring

Convention will be March 14-16, 2024 in St. George. The Bar just finished the annual financial audit, which resulted in a clean report. The Bar will be hosting Governor Cox at the January 5, 2024 meeting, where he will present on his “Disagree Better” initiative.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Mary-Margaret Pingree, Commissioner Blair Hodson)

Mary-Margaret Pingree reported that the Court Staff Survey was completed about a month ago with a 51% response rate. This was a little lower response rate than achieved with the last cycle. While the research firm was reviewing the results, they found that due to an error in the coding, one question was missed for both retention judges and mid-term judges. This missed question for retention judges was “Would you recommend this judge be retained?”, and by the time the error was found, about 80 court staff had completed the survey. Because it was a critical question, the research firm made contact via email with each of the respondents and they were able to capture all of those responses. The missing question for mid-term judges was optional, and asked respondents for any suggestions to help the judge improve. This question was asked in other places in the survey, so the research firm did not send anything additional out for that question.

The Attorney Survey opened in October 2023 and closed last night with a 40% response rate. There were no problems with the attorney survey. Now that these surveys have been completed, the Judicial Performance Evaluation Commission (JPEC) will spend the next few weeks evaluating the data.

Ms. Pingree summarized three pilot projects JPEC is currently working on.

- Juror Score Survey Normalization - All of the judges, both mid-term and retention, will receive a normalized score and a non-normalized score at the end of the cycle. The non-normalized score is the score judges have always received, and the normalized score is a test and will not be publicly available. More than half of the judges won’t see any difference between the two scores, and Ms. Pingree doesn’t expect to see normalization change whether or not a judge meets or exceeds performance standards.
- Appellate Survey - JPEC is working to expand the pool of respondents for appellate court judges and hope to have the results in the spring of 2024.
- Pro Se Litigants - With the increase of self-represented litigants in courts, JPEC is looking at finding a way to include them in the evaluation process. This project will pilot in the summer or fall of 2024.

6. BUDGETS AND GRANTS: (Karl Sweeney, Alisha Johnson, Melissa Taitano)

FY 2024 One-Time Turnover Savings

#		Funding Type	Actual Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 10/13/2023)	Internal Savings	482,083.73
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 10/13/2023)	Reimbursements	274,001.40
3	Est. One Time Savings for 1,480 remaining pay hours (\$1,350 / pay hour)	Internal Savings (Est.)	1,998,000.00
Total Potential One Time Savings			2,754,085.13

Prior Report Totals (as of PPE 9/15/2023) \$ 2,803,144.69

* Actual per hour turnover savings for the last 4 2024 pay periods (oldest to newest) are \$844.57, \$1,096.70, \$1,183.55, and \$1,031.37. The average per hour turnover savings YTD was \$1,260.14. These numbers do include ARPA reimbursements.

FY 2024 Ongoing Turnover Savings

#	Funding Type	Actual	Forecasted
		Amount YTD	Amount @ YE
	Internal Savings	(54,821)	(54,821)
	Internal Savings	337,660	337,660
1	Internal Savings	-	400,000
		282,839	682,839
2		(38,502)	(200,000)
		(38,502)	(200,000)
		244,337	482,839
3		-	262,550
		\$ 244,337	\$ 745,389

Prior Report Totals (as of 10/11/2023) \$ 122,742 \$ 673,795

FY 24 Forecasted Available One-time Funds

Forecasted Available One-time Funds		
Description	Funding Type	Amount
Sources of YE 2024 Funds		
* Turnover Savings as of PPE 10/13/2023 (including anticipated ARPA reimbursement)	Turnover Savings	756,085
** Turnover savings Estimate for the rest of the year (\$1,350 x 1,480 pay hours)	Turnover Savings	1,998,000
(a) Total Potential One Time Turnover Savings		2,754,085
Operational Savings From TCE / AOC Budgets - Forecasted	Internal Operating Savings	750,000
Reserve Balance (balance from FY 2023 Carryforward)	Judicial Council Reserve	52,997
Anticipated Reserve Uses - including previously approved and pending requests	Jud. Council Reserve Uses	-
(b) Total Operational Savings and Reserve		802,997
(c) Total of Turnover Savings & Operational Savings = (a) + (b)		3,557,082
Contingent Legislative Supplemental Funding:		
American Fork Lease Increases	Legislative Contingent	389,000
JWI Increase to 2 Hour Minimum	Legislative Contingent	275,000
JWI Higher Pay for Rural Assignments	Legislative Contingent	146,500
Senior Judge and Time Limited JA Funding Jan/Feb 2024	Legislative Contingent	160,000
(d) Subtotal - Contingent Legislative Supplemental Funding		970,500
Uses of YE 2024 Funds		
(e) Carryforward into FY 2024 (Anticipate request to Legislature for \$3,200,000)	Pre-Covid Carryforward	(2,500,000)
Total Potential One Time Savings = (c) + (d) less Carryforward (e)		2,027,582
Less: Judicial Council Requests Previously Approved		(1,263,950)
Less: Judicial Council Current Month Spending Requests		-
Remaining Forecasted Funds Available for FY 2024 YE Spending Requests		763,632
Less: Contingent Supplemental Funding		(970,500)
Remaining Forecasted Funds Available for FY 2024 YE Spending Requests if no Supplemental Funding is Received		(206,868)

ARPA funds remaining are \$4,215,513.

7. HB 531 REPORT: (Wayne Kidd, Karl Sweeney)

A workgroup of various finance, administrative, and clerical personnel under the direction of the state court administrator completed a review of court fees as required by House Bill 531 that passed in the 2023 General Session. This draft report will be final after review by the Judicial Council and a final decision on any recommendations to the Legislature. The report includes the information outlined below:

- The types of court fees charged and the amounts collected;

- The cost related to each fee, including the direct and indirect costs and expenses for providing the good or service for each fee;
- A determination of whether the fees generate excess revenue;
- The count and amount of waived fees; and
- The history of court fees.

This report showed that overall, court fees do not generate excess revenue. Court fees help support the goods or services being provided, but most costs exceed the fee amount. Only five fees exceeded the costs in the calendar year 2022.

Motion: Judge James Gardner motioned to submit the HB 531 report to the legislature as presented in the meeting. Judge Amber Mettler seconded, and the motion passed unanimously.

Mr. Gordon expressed appreciation for all of the hard work from those who contributed to the report.

8. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge William Kendall, Shane Bahr)

Judge William Kendall is the new Board of District Court Judges chair and gave an update on the Board. They have continued to revise bench cards, which have been very helpful for both the judges and attorneys. The Judicial Weighted Caseload has been completed and the Board approved the study. As a result of the study, the Board of District Court Judges brought a request to the Judicial Council for eight judicial officers, four judges and four commissioners. The Council asked the Board to rank the needs in the event the legislature does not approve the full request. The Board put together a new set of recommendations for the Council's review.

The Board continues to plan and host monthly virtual brown bag training sessions for the district court judges and juvenile court judges, and those have been well-attended. They also established work groups to look at ways to enhance the attorney law clerk position.

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

Nathanael Player asked the Judicial Council to review the work of the Forms Committee, as well as renew approval for the committee to continue writing forms under CJA Rule 3-117. In the past year, the Forms Committee has worked on 97 forms, and now has a forms attorney. The Forms Committee will start to meet monthly at the beginning of the year if they are granted reauthorization. Mr. Player reported that the committee is partnering with the Domestic Violence program coordinator Amy Hernandez, who will help standardize and improve protective orders. The Forms Committee is also partnering with the Self Help Center from Georgetown Law to help to improve the User Center design. The long-term goal is to make the family forms more concise.

Motion: Judge Elizabeth Lindsley motioned to reauthorize the Forms Committee as a Standing Committee. Judge Suchada Bazelle seconded the motion, and the motion passed unanimously.

10. FY25 LEGISLATIVE BUDGET REQUESTS: (Ron Gordon, Karl Sweeney)

Mr. Gordon explained that he has recently received additional information regarding some of the Judicial Council's FY25 budget priorities. The additional information requires action by the Judicial Council as outlined below.

Judicial Officer Compensation

- Judge compensation: \$3,791,000
The Judicial Council previously decided that it would include judicial compensation as the third budget priority for FY25 and that the requested amount for this budget priority would mirror the recommendation of the Elected Officials and Judicial Compensation Commission (EJCC). The EJCC recommended a 10% increase for state court judges. With that recommendation in place, the Judicial Council can finalize this budget request. The total cost for a 10% increase for state court judges is \$3,791,000.
- Commissioner Compensation - \$232,000
The Judicial Council has, in recent years, allocated internal funding to keep the salary of domestic relations commissioners at 90% of the salary of state trial court judges. Not knowing how much ongoing turnover savings we will have at the end of the current fiscal year, Mr. Gordon recommended adding the funding for domestic relations commissioners to the judicial compensation request discussed above. The total cost for a 10% increase for domestic relations commissioners is \$232,000. Adding this to the judicial compensation request would result in a total request for \$4,023,000. (Note that the EJCC recommendation includes a recommendation only for judges and that will not change because their statutory authority does not include commissioners. However, if the Judicial Council approves the inclusion of the funding for commissioners, staff will be able to advocate for that additional funding with the Office of Legislative Fiscal Analyst and legislators.) If the Judicial Council approves this, the budget request form will be amended to reflect the total amount.

Pay for Performance

- Original amount: \$2,000,000
- Revised amount: \$2,144,000
- Reason for change: Complete additional calculations have been made with more recent data.

At-will Conversion

- Original amount: \$2,000,000
- Revised amount: \$1,315,000
- Reason for change: The original amount was an estimate as we continued the labor-intensive process of determining the exact number of at-will employees. The exact number of career service employees has been calculated at 556.

Prioritization of Judicial Officers Request

The Judicial Council previously approved a budget request including two new Juvenile Court judges and eight new District Court judicial officers (a combination of judges and commissioners). The Council agreed on the prioritization order as follows:

1. 4th District Juvenile
2. 4th and 6th Districts Commissioner
3. 3rd District Judge A
4. 3rd District Judge B
5. 3rd District Juvenile Judge
6. 5th District Judge
7. 3rd District Commissioner C
8. 1st and 2nd Districts Commissioner
9. 4th District Judge
10. 3rd District Commissioner D

1st Motion: Judge Chiara motioned to approve the total judicial compensation request amount of \$4,023,000 as presented. Judge Thomas Low seconded the motion, and the motion passed unanimously.

2nd Motion: Judge Lindsley motioned to approve the performance pay request amount of \$2,144,000. Judge Farr seconded the motion, and the motion passed unanimously.

3rd motion: Judge Lindsley motioned to approve the At-Will Conversion budget request of \$1,315,000. Judge Farr seconded the motion, and the motion passed unanimously.

4th motion: Judge Lindsley motioned to approve the prioritized order of judicial officer request as noted above. Judge Bazelle seconded the motion, and the motion passed unanimously.

11. MODEL UTAH CIVIL JURY INSTRUCTIONS: (Alyson McAllister, Lauren Shurman, Jace Willard)

The Judicial Council's Standing Committee on the Model Utah Civil Jury Instructions (MUJI-Civil) comprises district judges, attorneys primarily representing plaintiffs, attorneys primarily representing defendants, and a linguist. This year, a few changes were made to the membership of the Committee. The Committee has a new plaintiff's attorney member and two new defense attorney members.

Utah Code of Judicial Administration Rule 1-205 provides for the establishment of the MUJI-Civil Committee, and Rule 3-418 sets out the Committee's charge. Over the last year, the Committee has discussed several sets of jury instructions including:

- Avoiding Bias
- Minimum Injury Requirements
- Remote Testimony
- Present Cash Value
- Easement by Necessity
- Easement by Implication
- Prescriptive Easement

Other instructions are pending in subcommittees. One working group has circulated draft Assault/False Arrest instructions. They are scheduled to present these instructions to the

Committee early next year. The Committee is also working with subcommittees engaged in drafting instructions on Insurance, Wills and Probate, Directors and Officers Liability, and Product Liability.

Lastly, at the suggestion of Professor William Eggington and some of his professional linguist colleagues, the Committee has recently formed a Linguistics and Law subcommittee to identify instructions in need of plain-language revisions and propose more juror-friendly language to potentially problematic instructions. The Committee expects that this subcommittee will be active in the year ahead and help to make Utah's model civil jury instructions more accessible than ever.

12. STATE TREATMENT COURTS UPDATE: (Katy Burke)

In the past year, Katy Burke facilitated 28 treatment courts site visits and technical assistance/training events, observed and reviewed the certification process with Senior Judge Fuchs, participated in four national trainings for statewide coordinators, was elected to the board of Council for Statewide Treatment Court Coordinators, and attended the Rise23 Conference in Houston, TX with 26 judges and court employees. The 2023 Treatment Court Conference was in October 2023, with over 350 people in attendance and nine national presenters.

2019 Problem Solving Court Report

Ms. Burke shared a report of the top three priorities identified by the 2019 Problem Solving Court Report.

1. Hiring a full-time statewide problem solving coordinator as soon as possible and support staff to assist with evaluation, training and certification;
2. Creating a statewide problem solving court coordinating committee;
3. Obtaining additional court FTEs to serve as local problem solving court coordinators.

Goals for 2024

- Develop the Statewide Problem Solving Court Committee
- Hire a part-time treatment court certification specialist
- Review and enhance the recertification process
- Create an interactive map of treatment courts for the courts website
- Add training resources for treatment courts to the courts website
- Research mentor courts and consider implementation in Utah
- Facilitate and coordinate training for treatment court teams, as requested

Judge Mortensen thanked Ms. Burke for the information she presented to the Judicial Council.

13. JUSTICE COURT REFORM UPDATE: (Jim Peters)

Jim Peters gave a brief follow-up report to the report he made last month to the Judicial Council. The Legislative Task Force met for a fourth time on November 7, 2023. The Task Force voted to support a Joint Resolution supporting justice court reform. Mr. Peters distributed and then reviewed the Joint Resolution with the Council.

14. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW: (Jim Peters)

The Judicial Council authorized the creation of the Committee on Children and Family Law in December 1999 when it adopted Rule 4-908 of the Code of Judicial Administration. That rule contemplates a committee comprising subject matter experts who are to:

- Discuss problems in the administration of justice in family law, such as programmatic and geographic voids in services, procedural reforms, and the unmet legal needs of children and families;
- Develop and recommend solutions, including rules and statutes, to those problems, excluding structural reorganization of the courts;
- Supervise and assist in implementing solutions;
- Provide a forum for debate on political and policy issues facing public and private institutions in their effort to deliver services to children and families;
- Develop and recommend a model and role for community-based councils on children and family law and a model for their relationship to the standing committee; and
- Supervise and assist in establishing community-based councils.

In June 2009, the Management Committee discussed whether this committee was necessary. Following further discussion by the Judicial Council, the committee was reauthorized for one year. In June 2011, the Council reauthorized the committee for six years and in November 2017, the Council reauthorized the committee for another six years.

Motion: Judge Gardner motioned to reauthorize the Standing Committee on Children and Family Law. Justice Petersen seconded the motion, and the motion passed unanimously.

15. JUDICIAL DATA PROJECT UPDATE: (Justice Pohlman, Jon Puente)

Justice Pohlman explained the data project the Office of Fairness and Accountability (OFA) has been engaged in over the recent months. In the September 2022 Judicial Council meeting, the Racial and Ethnic Disparity Workgroup (RED Workgroup), a subcommittee of the Committee on Fairness and Accountability (CFA), presented to the Judicial Council a blueprint of the data project it was developing to examine district court processes and outcomes that may contribute to or reflect the inequitable treatment of individuals based on race and ethnicity. The Judicial Council approved the project with the understanding that the data would be analyzed and reported anonymously. That is, the data would not be linked to individual judicial officers and the report would analyze the district courts as a whole.

As the project blueprint was presented to judicial officers, some officers asked important questions about the decision to analyze the data anonymously. In an effort to fully address the concerns implicated by those questions, the CFA has spent the past several months exploring the issue of anonymity relative to the data projects for both the juvenile and district courts. As part of that exploration, the CFA has gathered input from stakeholders, including the Boards of Judges and community members. After gathering this input and further discussing the issue, the CFA unanimously made the following recommendation to the Judicial Council:

"The OFA and CFA recommend to the Judicial Council to conduct anonymously the first data review projects for any court level, including the projects currently underway for the Juvenile and District courts, on the condition that the Council adopt a rule requiring that additional data projects will be conducted non-anonymously and on a regularly scheduled basis. If the Judicial Council is unwilling to commit to ongoing reviews and the adoption of a rule requiring them, the OFA and CFA recommend that all projects, including the projects underway for the Juvenile and District courts, be conducted non-anonymously."

Justice Pohlman stated that the Workgroup believes this is the right approach for the first project, so they are able to learn from the process, and make sure they have properly controlled and accounted for the data points in the project.

Some Council members expressed concerns about prematurely making design decisions regarding future data projects prior to completing and seeing the results of the initial project. Other concerns raised included the potential of misinterpreting data points, controlling for external factors, and the impact of disparities in other parts of the justice system on decisions by judicial officers. Council members also recommended implementing training following the completion of the initial project

Motion: Judge Chiara motioned to decline the proposal by the CFA. Judge Low seconded the motion, and the motion passed with a majority vote. Chief Justice Durrant voted against the motion.

Judge Mortensen encouraged the CFA committee to bring this topic back to the Judicial Council so the recommendation can be further discussed.

16. JUDICIAL COUNCIL STUDY ITEM: (Ron Gordon)

Mr. Gordon elected to discuss the Judicial Council study item in combination with the next item on the agenda.

17. SYSTEM REVIEW: (Ron Gordon, Neira Siaperas)

Nearly five years ago, the Utah Judiciary engaged the services of the National Center for State Courts (NCSC) to assist the Judiciary in assessing the perceptions and needs of the Judiciary, as viewed by our judges and employees. NCSC interviewed approximately 50 people in the Judiciary (judges and employees) in early 2019. During those interviews, NCSC asked questions about the governance of the Judiciary, communication, culture, onboarding and training, and harassment. NSCS also provided an opportunity for general feedback about the operations of the Judiciary. In March 2019, NCSC delivered an interim report outlining nearly 100 concerns and suggestions from the interviews. This was Phase I of the project.

Phase II of the project would have involved NCSC visiting with a much larger population of judges and employees about the feedback from the earlier interviews. Work on Phase II was postponed pending the appointment of a permanent state court administrator. (Judge Noonan was serving as the interim state court administrator at the time.) By the end of 2019, Judge Noonan had been appointed as the permanent state court administrator and the Judicial Council

had approved work on Phase II to continue in March 2020. Unfortunately, Phase II was not completed because of the COVID-19 pandemic. During the intervening time, the AOC has worked on many points of the feedback in the interim report outside of a formal Phase II.

Though much time has passed since the interim report, there is still value in the information and there is likely still value in completing some form of Phase II of the project. Mr. Gordon and Neira Siaperas recommend the Judicial Council adopt some form of Phase II of the system review as their 2024 study item.

Judge Lindsley commented that the Board of Juvenile Court Judges is supportive of Phase II, with the stipulation that the survey not address what has occurred in the past. She also felt that having the NCSC-complete Phase II would probably be better, as employees are likely to be more comfortable and candid with a neutral party. Mr. Gordon and Ms. Siaperas will explore options and cost to contract with the NCSC or other consultants for Phase II.

Motion: Judge Lindsley motioned to approve the implementation of Phase II as a study item. Judge Low seconded, subject to budgetary accommodations, and the motion passed with a majority vote. Chief Justice Matthew Durrant abstained from voting.

18. RULES FOR FINAL APPROVAL: (Keisa Williams)

Following a 45-day public comment period, the Policy, Planning and Technology Committee (PP&T) recommended that the following rules be approved as final with a January 1, 2024 effective date.

CJA 6-301. Authority of court commissioner as magistrate.
CJA 4-202.08. Fees for records, information, and services.
CJA 4-202.02. Records classification.
CJA 4-202.03. Records access.

Motion: Judge Farr motioned to approve the rules as presented. Judge Brower seconded the motion, and the motion passed unanimously.

19. OLD BUSINESS/NEW BUSINESS: (All)

Judge Chiara asked for a future discussion on the Judicial Performance Standards Rule. Keisa Williams stated that she will add this item to the next Policy and Planning agenda.

20. EXECUTIVE SESSION

There was an executive session.

21. ADJOURN

The meeting adjourned.

CONSENT CALENDAR ITEMS

- 1) CJA 3-101. Judicial performance standards
- CJA 3-104. Presiding judges
- 2) Model Utah Criminal Jury Instructions - New committee members