

# JUDICIAL COUNCIL MEETING

## Minutes

September 22, 2020

Meeting conducted through Webex

12:00 p.m. – 4:40 p.m.

*Chief Justice Matthew B. Durrant, Presiding*

### **Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Kate Appleby, Vice Chair  
Hon. Brian Cannell  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Ryan Evershed  
Hon. Michelle Heward  
Justice Deno Himonas  
Hon. Mark May  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Brook Sessions  
Hon. Todd Shaughnessy  
Hon. John Walton  
Rob Rice, esq.

### **Excused:**

Hon. Paul Farr

### **Guests:**

Hon. Dennis Fuchs, Senior Judge  
Hon. Diana Hagen, Court of Appeals  
Amy Hawkes, Judiciary Interim Committee

### **AOC Staff:**

Hon. Mary T. Noonan  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Kim Free  
Amy Hernandez  
Alisha Johnson  
Brent Johnson  
Tom Langhorne  
Larissa Lee  
Meredith Mannebach  
Jim Peters  
Neira Siaperas  
Karl Sweeney  
Nancy Sylvester  
Jeni Wood

### **Guests Cont.:**

Hon. Christine Johnson, Fourth District Court  
Kristina King, Office of Legislative Research  
Hon. F. Richards Smith, Fourth Juvenile Court  
Hon. Andrew Stone, Third District Court

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex.

**Motion:** Judge Kate Appleby moved to approve the August 21, 2020 Judicial Council meeting minutes and the August 21, 2020 Budget & Planning meeting minutes, amending the Council minutes to correct the Policy & Planning report section that the proposal was to remove the notarized section. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

On Tuesday, September 8, 2020 the Management Committee considered grant funding that is available through the Utah Bar Foundation (via Salt Lake County CARES Act money).

The courts are set to receive the following amounts under the grant:

- \$32,500 for three computer kiosks and two ADA computer stations to be used in Matheson and West Jordan for parties to electronically participate in WebEx hearings;
- \$47,246 for 42 multi-person listening devices for translation services in each of the district and juvenile courtrooms in Matheson and West Jordan;
- \$100,000 for technology improvements for virtual court hearings due to the pandemic; and
- \$26,950 additional staffing for the Self- Help Center to focus on Salt Lake County eviction-related questions.

In addition to, and separate from, that CARES Act grant funding, \$17,000 is available through the Utah Bar Foundation to assist with a public outreach campaign regarding court operations during the pandemic. Prior to grant funding being received, Utah Code § 63J-7-203 and the Code of Judicial Administration Rule 3-411 require Judicial Council approval. Because this funding is time-restricted (must be spent by mid-December) and there is a current/immediate need for the funds, the Management Committee voted to submit this grant request to the entire Judicial Council for an immediate vote by email. On September 10, 2020 the Judicial Council by email, voted and approved CARES Act Funding by unanimous vote.

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

Chief Justice Durrant looks forward to the Annual Judicial Conference.

**3. ADMINISTRATOR’S REPORT: (Judge Mary T. Noonan)**

Judge Mary T. Noonan said interviews for the new Office of Fairness and Accountability will be conducted next week. The 117 applicants were divided into three tiers of qualifications. The first interview panel consists of administrators and judges. Tom Langhorne (Education Department Director) announced his retirement effective January, 2021. Jessica Van Buren (Law Library Director) will be leaving the courts mid-October.

The Management Committee has been reviewing Risk Response Plans from courthouses throughout Utah. The recent COVID surge has caused concern for some counties that are operating in the Yellow phase. Local experts expect a surge of cases during the winter/flu season. Judge Noonan expressed that many courts approved to operate in the Yellow phase are slowly transitioning into the phase. Judge Noonan would like to hold a meeting with presiding judges, TCEs, COVID Response Team, and the Management Committee next week.

Judge Noonan said data from Court Services indicated a 55% increase in child welfare cases from 2019 to 2020. After further review, an error was identified in the data calculations. Once the error has been corrected, new information will be presented to the Council and the Board of Juvenile Court Judges.

The Annual Judicial Conference will be the first time the new LMS (Learning Management System) is used by the courts. The Education Department has worked hard to create an online conference using the LMS system and will be available for any questions.

**4. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Budget & Fiscal Management Committee Report:**

Judge Mark May said the work of the committee will be discussed later in this meeting.

**Liaison Committee Report:**

Michael Drechsel said interim meetings with the legislature have continued. The primary topic of discussion related to the Judiciary is the Juvenile Court Recodification Effort. The Board of Juvenile Court Judges will address this legislation as it develops. A new item being addressed is the Criminal Code Evaluation Task Force – Recodification of the Criminal Code.

**Policy and Planning Committee Report:**

Judge Derek Pullan noted the Policy & Planning Committee is working on the rule related to cases under advisement. The committee is working on drafting rules for the Office of Fairness and Accountability and would like to have the advice and guidance of the new Director.

**Bar Commission Report:**

Rob Rice reported on the State Bar’s survey results plateaued with respect to minorities since the last survey in 2011. The Bar will partner with UCLI to increase the pipeline of diverse candidates in the legal profession.

**5. EDUCATION COMMITTEE REPORT: (Judge Diana Hagen, Tom Langhorne, and Kim Free)**

Chief Justice Durrant welcomed Judge Diana Hagen, Tom Langhorne, and Kim Free. The Education Department has

- been working to replace in-person learning through virtual means;
- training and beginning to use the new LMS and event management system;
- welcomed a new team member, Kim Zimmerman;
- been working with Westminster College to continue the Judicial Administration Certificate Program;
- completely redesigned the department’s budget;
- created procedures manuals; and
- enhanced judicial mentoring efforts through CJA Rule 3-403.

Chief Justice Durrant thanked Judge Hagen, Mr. Langhorne, and Ms. Free. Council members expressed their appreciation for Mr. Langhorne. Mr. Langhorne said he has thoroughly enjoyed working for the courts and expressed his gratefulness for the Utah Judiciary.

**6. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Christine Johnson and Shane Bahr)**

Chief Justice Durrant welcomed Judge Christine Johnson and Shane Bahr. Judge Johnson reported that the Board of District Court Judges has been addressing evictions, cases under advisement, and the backlog of cases. The Board may seek an amendment to the Administrative Order to allow for more remote hearings. Judge Johnson’s term as Chair on the Board is complete. Judge Barry Lawrence will move into the Chair position beginning October 1. The Board will vote for a new Vice Chair. A few Board members will be transitioning off the Board.

Chief Justice Durrant thanked Judge Johnson and Mr. Bahr.

**7. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge F. Richards Smith and Neira Siaperas)**

Chief Justice Durrant welcomed Judge F. Richards Smith and Neira Siaperas. Judge Smith noted the Board is working on training and mentoring new judges as the juvenile courts are specialized and unique. Good mentoring is the key to success for new juvenile court judges. The Board participated in a systemwide effort to create child-welfare core principles. Judge Smith said the juvenile court has embraced the new Webex reality. The juvenile court does not have jury trials so they do not have a build up of backlog cases.

Judge Smith thanked Neira Siaperas for her work in the juvenile courts. Roughly, there have been 11,593 Webex juvenile court hearings since May, which is approximately 3,000 hearings a month. The hearings take a while longer, however, attorneys, GAL, and case workers work diligently to ensure smooth virtual hearings through education and consistent communication.

Chief Justice Durrant thanked Judge Smith and Ms. Siaperas.

**8. PROBLEM-SOLVING COURT RECERTIFICATIONS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs noted the PSC's that have not met all Required and Presumed Best Practices are working to correct those issues.

**Adult Drug Courts that have met all Required and Presumed Best Practices**

Sanpete County, Manti – Judge Keisel  
Kane County, Kanab – Judge Lee

**Adult Drug Court that has met all Required but not all Presumed Best Practices**

Sevier County, Richfield – Judge Bagley  
Presumed Best Practices #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court suspended new entries and is slowly returning to a full participant count, with 12 participants at this time.

**Family Dependency Drug Courts that have met all Required and Presumed Best Practices**

Carbon County, Price – Judge Bunnell  
Salt Lake County, Salt Lake City – Judge Jan  
Salt Lake County, Salt Lake City – Judge Eisenman  
Salt Lake County, Salt Lake City – Judge May  
Salt Lake County, West Jordan – Judge Renteria

**Family Dependency Drug Courts that have met all Required but not all Presumed Best Practices**

Utah County, American Fork – Judge Nielsen  
Presumed Best Practice #31 requires team members to be assigned for not less than two years. DCFS caseworker turnover occurs often and the courts have no control over that.  
Presumed Best Practice # 34 new staff hires receive formal orientation training and attend annual

continuing education workshops. Presumed Best Practice #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court limited the number of participants. This will change once the court reopens for hearings.

**Adult Mental Health Courts that have met all Required and Presumed Best Practices**

Cache County, Logan – Judge Fannesbeck

**Adult Mental Health Courts that have met all Required but not all Presumed Best Practices**

Sevier County, Richfield – Judge Bagley

Presumed Best Practices #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court suspended new entries and is slowly returning to a full participant count, with 5 participants at this time.

**Juvenile Mental Health Courts that have met all Required and Presumed Best Practices**

Salt Lake County, Salt Lake City – Judge Knight

The following courts have been sent letters of non-compliance with Required and/or Presumed Best Practices. These courts are not seeking recertification at this time.

Utah County, American Fork – Judge Nielsen (Family Dependency)

Utah County, Vernal – Judge McClellan (Adult Drug Court)

San Juan County, Monticello – Judge Torgerson (Adult Drug Court)

Utah County, Provo – Judge Eldridge (Adult Drug Court)

Utah County, Provo – Judge Taylor (Adult Drug Court)

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Appleby moved to approve all problem-solving courts listed above including those who have met all Required but not all Presumed Best Practices, as presented. Judge Heward seconded the motion, and it passed with Judge May abstaining as to his court.

**9. BOARD OF DISTRICT COURT JUDGES REQUEST FOR ORDER REQUIRING A DECLARATION CONCERNING CARES ACT: (Judge Andrew Stone and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Andrew Stone and Nancy Sylvester. The Board of District Court Judges voted to require a declaration be used in all unlawful detainer cases. The Board is seeking the Judicial Council's approval for this. The declaration will inform a district court judge whether the CARES Act applies in a particular case. If the Act applies, a district court judge would then ask whether the landlord gave proper notice to vacate, if the defendant was charged late fees or penalties for nonpayment of rent during the moratorium period, if this case was initiated prior to July 25, 2020 or if this case is still in forbearance.

Judge Pullan felt this subject fell within the authority of the Supreme Court and that any approval of a form should follow the adoption of a rule. The Council agreed and no action was taken.

Chief Justice Durrant thanked Judge Stone and Ms. Sylvester.

**10. TECHNICAL INNOVATION: (Justice Deno Himonas)**

Chief Justice Durrant welcomed Justice Deno Himonas. The objective of this proposed Phase I SBIR project is to demonstrate the feasibility of an AI/Machine Learning/Natural Language Processing based virtual or robotic lawyer to analyze and deliver legal services. The core team, made up of experienced lawyers and technologists, has a number of products and deployments within the legal space, specifically rule-based systems. The team is aware of the limitations.

Judge Shaughnessy said this was a worthwhile goal but was concerned about the commitment of staff. Judge Kara Pettit noted phase I didn't identify what needs would be required from staff and resources. Justice Himonas agreed to convey to the project that there would be time-limitations. Judge Pettit recommended waiting until the Director of the Office of Fairness and Accountability is hired and can address this. Justice Himonas said he can request a more detailed explanation.

Chief Justice Durrant thanked Justice Himonas.

**Motion:** Justice Himonas moved to convey that the Council is not inclined to approve this item at this time and that further information would be required. Judge Pettit seconded the motion, and it passed unanimously.

**11. CIVIL JUSTICE DATA COMMONS INITIATIVE: (Justice Deno Himonas)**

Chief Justice Durrant welcomed Justice Deno Himonas. The Civil Justice Data Commons Initiative is engaged in a project, funded by the National Science Foundation, to develop models and best practices for collecting and sharing data under appropriate privacy and security safeguards for purposes of expanding access to justice, formulating policy, and increasing the effectiveness of civil justice institutions. Council members wanted more information about the project. Mr. Rice agreed that the documentation did not provide sufficient information. Judge Connors did not want to approve giving anyone open access to all of the courts data.

Chief Justice Durrant thanked Justice Himonas.

**12. REGULATORY REFORM UPDATE: (Justice Deno Himonas, Larissa Lee, and Brent Johnson)**

Chief Justice Durrant welcomed Justice Deno Himonas, Larissa Lee, and Brent Johnson. Justice Himonas presented the Narrowing the Access-to-Justice Gap by Reimagining Regulation Report and Recommendations from the Utah Workgroup on Regulatory Reform. The reform is not fully staffed, there have been 10 applications to the courts. The courts hired Lucy Ricca, an independent contractor, to serve as the director. They've hired Helen Lindamood as the project manager. They are in the process of hiring a data analyst as an independent contractor.

The Management Committee and Supreme Court discussed the practical aspects of the reform office. The AOC has subject-matter experts on this matter that provide assistance. Judge Pullan recollected that everything with the reform would be funded through a grant. Judge Appleby agreed and noted the approved minutes reflected that. Justice Himonas said the minutes were incorrect and that court employees are required to support court functions. Judge Pullan

said the court can use AOC resources, but there is always a limit of resources. Judge Pullan felt that the Supreme Court should be empowered to do its work and suggested at the beginning of each fiscal year the Council review anticipated Supreme Court budget costs to avoid these issues. Justice Himonas said he took responsibility for poor communication but never meant to suggest that the new office would not use AOC staff. Chief Justice Durrant agreed with Judge Pullan's recommendation for an annual budget review and evaluation of AOC staff time devoted to the new office. Judge Connors mentioned the British experiment report and noticed the tremendous expense in regulatory reform and felt Judge Pullan's comments were legitimate. Judge Connors questioned when this will transition to an independently funded effort.

Chief Justice Durrant thanked Justice Himonas, Ms. Lee, and Mr. Johnson.

**13. BUDGET – CARRYFORWARD REQUESTS: (Judge Mark May and Karl Sweeney)**

Chief Justice Durrant welcomed Judge Mark May and Karl Sweeney.

**Reserve**

\$150,000 one-time funds (previously approved)

\$231,164 carryforward

\$381,163 Total

This is a request for additional one-time funds which will be available to pay for unexpected/unplanned one-time expenditures at the discretion of the Judicial Council. Funds not spent can be re-purposed at year-end 2021 for other one-time spending priorities including FY 2021 budget reductions.

**#26 Utilize Existing Incentive Gift Cards**

\$4,175 one-time funds

The AOC Directors and TCEs would like to utilize the existing inventory of gift cards purchased in FY 2020. The cards total \$13,915. The request is funding for the 30% tax impact to the recipients. The gift card values were increased to cover a large portion of the tax.

**#27 IT WebEx FTR Automation Project**

\$150,000 one-time funds

The funding request is to enable additional functionality within Webex to automate the conversion to FTR.

**#28 MyCase e filing for Pro Se Parties**

\$375,000 one-time funds

\$80,000 ongoing funds (will begin in FY22)

The ability for pro se parties to efile information for the top 6 case types would make the courts more efficient in handling 80% of pro se filings for the FY20.

**#29 Grants Coordinator Position**

\$91,400 one-time funds (mid-point salary with benefits)

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court levels and departments. This position will provide much needed support for employees with existing grant responsibilities, help increase grant funding in

a time of widespread budget cuts and, in conjunction with the Judicial Council, identify and implement best practices with respect to grant funding and grant-funding protocols.

**#31 Fix Court's Protective Order System**

\$50,000 one-time funds

The Court's protective order system ("CPOS") is not in compliance with federal statutes, federal regulations, state statutes, and judicial rules. The current CPOS requires programming changes that must be performed by Court Services and IT to bring it back into compliance. IT will require additional funding, however, that amount will be determined at a later date.

**#32 Small Claims ODR Facilitator Training**

\$15,000 one-time funds

Recruitment and Training of 18 new volunteer ODR Facilitators in order to accommodate an eventual statewide rollout of the ODR Program for small claims cases.

**Motion:** Judge May moved to approve the Reserve, Utilize Existing Incentive Gift Cards, IT WebEx FTR Automation Project, MyCase eFiling for Pro Se Parties, Fix Court's Protective Order System, Small Claims ODR Facilitator Training requests with one-time money, as presented. Justice Himonas seconded the motion; Judge Pullan requested to move the Grants Coordinator position to a separate motion.

Judge May said the one time funds request was for the Grant Coordinator position. Judge Noonan said the courts have in the past used one-time funds to continue certain positions until the legislature provides ongoing funds or the Court finds ongoing funds to support the position. Judge Shaughnessy felt there needs to be further discussion on the Grant Coordinator position and did not want to fund any position with one-time funds. Justice Himonas said the Council has been in violation of CJA Rule 3-411 requiring a grant coordinator. Karl Sweeney has been monitoring court grants; however no court personnel meet the intent of the rule. The Judiciary has approximately 13 grants.

Judge Pullan too preferred not to fund an FTE with one-time money and wondered if one-time funds would attract a qualified person knowing the position is limited. Judge Pullan suggested the courts could put a moratorium on grants until a later date. Justice Himonas also expressed concern with funding this with one-time money; however the amount of time spent by certain employees who are not experts on grant applications is too much. Chief Justice Durrant shared Justice Himonas' view about the need to have a dedicated employee for the court grants. Larissa Lee noted the anticipated salary is considered the mid-level range. Judge David Connors recommended further discussion and noted long-term there is no doubt that there is a need for a coordinator. He cautioned that funding personnel with one-time funds is only useful if the Council is confident the funds will be available at some point.

Judge May noted if the Council funded the position with one-time funds this year, the Council could renew the one-time funding for the position next year, find permanent funding, or request funding from the legislature. Judge Noonan noted the rule requiring a grant coordinator has been in place for many years and that additional information could be provided at a future meeting. Ms. Lee and Ms. Anderson expressed a need for this position now. Judge Connors preferred to delay a decision rather than to object to a motion. Judge Michelle Heward clarified the concerns are about ongoing funding and not the need for the position and questioned if a



motion could be made for ongoing funds. Judge May said the Council cannot vote for ongoing funds at this time. Judge Shaughnessy said he has not had an opportunity to review the rule, however, he continues to believe the position should not be funded with one-time money. Judge Shaughnessy said the Council has worked hard to stay away from funding staff with one-time money. Judge Shaughnessy agreed with Judge Pullan that if grants are causing so many problems with Directors, then the grants should stop for now. Judge Noonan believed the staff that has been involved with most grants raised no concerns about compliance with or management of current grants. Justice Himonas said he anticipates a grant coordinator would alleviate some of the AOC support requirements. Judge Pullan would like to have the amount of resources applied to grants tracked. Chief Justice Durrant and Justice Himonas felt that was an excellent suggestion.

**Motion:** Judge May moved to approve the Grants Coordinator Position request, as presented. Justice Himonas seconded the motion with also seeking permanent funding. Judge May noted the Budget & Fiscal Management Committee will address permanent funding with the Council at a later date.

**Motion:** Judge Connors made a substitute motion to table the Grant Coordinator position decision until a subcommittee can address this. Judge Appleby seconded the motion. Judges Walton, Pettit, Shaughnessy, and Rob Rice voted yeah. Justice Himonas, Judges Chin, Cannell, Sessions, Pullan, May, Evershed, and Heward voted nay. The motion failed.

**Motion:** Judge Pullan moved to address this after an executive session. Justice Himonas seconded the motion, and it passed.

#### **14. OLD BUSINESS/NEW BUSINESS**

Chief Justice Durrant thanked Judge John Walton for his service on the Council. Judge Walton thanked the Council members.

Judge Cannell noted the First and Fifth Districts now share a spot on the Judicial Council. To keep the rotation in sync, this position needs to follow the rotation that Judge Cannell now holds. Therefore, Judge Cannell will finish the final year of his term (ending Sept. 2021). The First and Fifth District will then nominate a judge from the Fifth district to serve on the Council.

Cathy Dupont stated the March Utah State Bar Spring Convention will be held in St. George. As the Council normally holds their March meeting in St. George, Ms. Dupont questioned whether with the uncertainties of the pandemic and with budget cuts, if the Council would like to continue that tradition or remain local for the March, 2021 meeting. Mr. Rice said the Bar has always enjoyed having the Council at the Convention, although with the surge in COVID cases the plan to hold the Convention in St. George may change. The Council decided not to hold their March, 2021 meeting in St. George.

#### **15. EXECUTIVE SESSION**

**Motion:** Judge Appleby moved to go into an executive session to discuss a personnel matter and/or pending litigation. Justice Himonas seconded the motion, and it passed unanimously.

After the executive session ended, Judge Pullan noted there is only one grant that funds a position and that if the courts would like the Grants Coordinator position to be funded with a

grant, it would have to be from new grants, not existing ones. Judge Noonan believed this was incorrect. Justice Himonas said some grants defray administrative costs. Judge May noted the minutes reflect an approval of a position with future funds. Judge Connors was concerned about the process and noted a comment made by a presenter should not be considered an action item of the Council. Mr. Sweeney implied that the current fiscal year turnover savings would not be able to cover the cost of the Grants Coordinator position. Ms. Lee identified about 12 states that have grant coordinators. Judge Pettit clarified that some states' grant coordinators also have other duties. Justice Himonas said the majority of the Office of Fairness and Accountability could potentially be funded through grants. Judge Pullan again stated he is opposed to funding positions with one-time funding; however, the Council has an obligation to follow the rule.

**Motion:** Judge Pullan moved to accept the Grants Coordinator position with one-time money and the courts not seek additional grants until the person is hired and guards are in place. Justice Himonas seconded the motion, and the motion passed with Judges Walton, Shaughnessy, and Appleby voting nay.

Judge Pettit echoed that the Council has worked to move away from one-time funding positions and that she preferred to know additional information on what the position would entail. Judge Noonan will communicate with HR the job descriptions of other coordinators.

#### **16. CONSENT CALENDAR ITEMS**

- a) **Village Grant Project.** Approved without comment.
- b) **Probation Policies.** Probation Policies 4.9 and 5.7 (4.14 was removed at the Management Committee meeting). Approved without comment.
- c) **Rules for Public Comment.** CJA Rules 3-201, 3-201.02, and 4-202.08. Approved without comment.

#### **17. ADJOURN**

The meeting adjourned.