

JUDICIAL COUNCIL MEETING

Minutes

April 27, 2020

Meeting conducted through Webex

9:00 a.m. – 2:30 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. Ryan Evershed
Hon. Paul Farr
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:

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Kim Free
Amanda Herman
Alisha Johnson
Brent Johnson
Tom Langhorne
Larissa Lee
Meredith Mannebach
Chris Palmer
Jim Peters
Neira Siaperas
Libby Wadley
Keisa Williams
Jeni Wood

Guests:

Jacqueline Carlton, Office of Legislative Research
Hon. David Hamilton, Second District Court
Michael Harmond, Supreme Court
Commissioner Curtis M. Jensen, JPEC
Ken Matthews, CCJJ
Hon. Brendan McCullagh, West Valley Justice Court
Hon. David Mortensen, Court of Appeals
Hon. Rick Romney, Provo Justice 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. Due to the recent coronavirus pandemic, the Council held their meeting entirely through Webex.

Motion: Judge Kate Appleby moved to approve the March 13, 2020 Council minutes, as amended to correct Justice Howe’s name and to correct Judge Pullan’s statement that he was concerned about jury trials compromising efforts to address a public health crisis. Justice Deno Himonas seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and Judge Noonan met through Webex with President Stuart Adams and Speaker Brad Wilson to ensure there is consistent and cooperative communication between the Judiciary and the Legislature.

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

Judge Mary T. Noonan thanked Cathy Dupont for her assistance in setting up the meeting with President Adams and Speaker Wilson.

Judge Noonan announced many court employees have family members who are helping with the coronavirus pandemic or who are suffering because of the pandemic. Mandy Acevedo, Judge Todd Shaughnessy’s clerk, is in New York assisting with the pandemic. An article was published commending Ms. Acevedo’s efforts - <https://www.nyl.com/nyc/staten-island/news/2020/04/24/utah-funeral-director-volunteers-at-staten-island-morgue-#>. Utah will move from code “red” to code “orange” in the coming weeks. Eighty percent of the Judiciary is telecommuting, with special thanks to Heidi Anderson and the IT Department for preparing and distributing more than 380 laptops in a week.

Judge Noonan anticipates proposed amendments to the current Administrative Order based on feedback from the Boards of Judges who are developing recommendations for expanding the types of hearings that could be held virtually and in-person. Ms. Anderson said their department is identifying methods to hold virtual evidentiary hearings and hold jury trials under the pandemic health requirements. One idea would separate jurors in another location in the building. Rob Rice said he participated in a virtual jury trial in Utah and the proceedings went smoothly, even with the presentation of evidence.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Ad Hoc Budget & Finance Committee Report:

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

Liaison Committee Report:

Judge Kara Pettit said Michael Drechsel has been in continued communication with legislators. Judge Pettit thanked Mr. Drechsel for his Legislative Summary and noted Mr. Drechsel is meeting with the Boards and other court entities for further legislative discussions. Mr. Drechsel said legislation from the recent special session did not directly impact the courts, other than House Joint Resolution 301 Urging Fiscal Responsibility, which directs state and local government entities to spend their budgets only for essential needs for the remainder of the 2020

budget year. The resolution also urged state entities to continue limited spending in the fiscal year beginning on July 1, 2020 and ending on June 30, 2021.

Policy and Planning Committee Report:

Judge Derek Pullan noted the committee did not meet in April.

Bar Commission Report:

Rob Rice said Heather Thuet was elected as Bar President-Elect. Mr. Rice reviewed other Bar elected officials.

5. FY20 REMAINING ONE-TIME BUDGET REQUESTS: (Judge Mark May and Karl Sweeney)

Chief Justice Durrant welcomed Karl Sweeney, Court Budget Director. Due to H.J.R. 301 Urging Fiscal Responsibility, several of the previously approved requests to spend this year’s one time savings have been withdrawn by the requesters because they did not meet the "essential spending" threshold. Some of the approved one time spending was spent on items that had already been ordered and could not be canceled. Other requests have been placed on hold pending further discussion by the Judicial Council. At the March 13, 2020 Council meeting several budget items were approved (\$1,869,310).

Forecasted Available One-time Funds			
#	Description	Funding Type	Amount
1	Turnover Savings as of pay period ending 4/3/2020	Turnover Savings	3,239,332
2	Turnover Savings Estimate for the rest of fiscal year	Turnover Savings	744,000
3	From TCE / AOC budgets	Internal Savings	546,100
4	Probate Notice Amendments (HB 343, 2020 GS)	Legislative Action	20,500
5	Reserve Balance (from August Judicial Council meeting)	Reserve	150,000
6	Reduction in FY 2020 funds due to FY 2020 legislative session	Legislative Action	(165,000)
7	Potential Year End Career Ladder Expense	Potential Expense	(50,000)
8	Set-aside for use in FY 2021 (carryforward)	Carryforward	(2,500,000)
Total Forecasted Available One-time Funds			\$ 1,984,932
Judicial Council Prioritized / Adopted			\$ (1,869,310)
Actual Return to State Finance Including other Savings			\$ 115,622

#	One-time Spending Plan	FY20	Judicial Council	Nonrefundable or
		Requests	Approvals	Essential (E)
One-time Budget Requests/Current Status in Bold		Amount	Amount	Non-essential (NE)
1	Courtroom A/V Upgrades (IT) - work in process partially expended	350,000	350,000	350,000 E
2	Upgrade For the Record (FTR) Digital Recording Software (IT) - Already expended	257,600	257,600	257,600 E
17	Remote Accessories - Already expended	83,000	83,000	83,000 E
3	Learning Management System (Education) PO ready to sign - awaiting final approval	164,100	164,100	164,100 E
4	Self-Assessment Materials (Education) - Withdrawn (W/D) by Requester	2,000	2,000	N/A NE
5	Training Equipment (Education) (laptops & equipment to create virtual training)	4,600	4,600	4,600 E
6	Alternative Dispute Resolution Training (ADR Committee) - CLASS CANCELLED	13,200	13,200	N/A NE
7	Online Dispute Resolution Facilitation Training Manual (ADR) (See Footnote)	5,000	5,000	5,000 E
8	Jury Chairs for Brigham City (1st District) (See Footnote)	15,000	15,000	15,000 E
9	Jury Tables / Chairs for West Jordan (3rd District) (Order can be Cancelled w/o penalty)	66,700	66,700	- NE
10	Carpet Replacement - Ogden Courthouse (2nd District) (Past cancellation date)	19,650	19,650	19,650 E
11	Public Viewing Agenda Monitor (Court of Appeals) (Order can be Cancelled w/o penalty)	4,000	4,000	- NE
12	Matheson Café Room and Conference Room A/B/C Furniture (Facilities) (Partial Cancel)	130,500	130,500	43,500 E/NE
13	Workforce Performance Bonuses (State Court Administrator) - W/D by Requester	500,000	500,000	N/A NE
14	Nat'l Assoc. Drug Court Prof. Annual Conference (Veteran's Court Team) - Converted to virtual conference @\$500 per attendee	3,960	3,960	- NE
16	Inventory of PCs (4/7/2020 deadline) (IT) - Already expended	250,000	250,000	250,000 E
18	NEW. See separate Request #18 document below. (IT)	279,000	-	279,000 E
Total One-time Spending Requests (before Contingent Requests)		2,148,310	1,869,310	1,471,450
Potential Return to State Finance				513,482
Contingent Requests				
13a	Employer Paid Benefits for Workforce Bonuses (6/26/2020 deadline) (SCA) Withdraw	160,200		N/A
15	Matheson Carpet Replacement (4/15/2020 deadline) (Facilities) - Move to \$2.5M Cfwd	400,000		N/A
Total with Contingent Requests		\$ 2,708,510	\$ 1,869,310	

Potential Savings from LMS (INFOR) – Tom Langhorne, Kim Free, Libby Wadley

The following potential savings have been identified as offsets sufficient to fully pay for the INFOR LMS purchase. Other LMS systems considered did NOT have the capability to provide both of these saving:

INFOR will provide fiscal year savings because it allows the Court to eliminate the current \$18,000 annual subscription to CERTAIN, a third-party event management system (“EMS”) software provider. INFOR is the only LMS solution among the vendors competing for the LMS contract that can completely replace the functionality that CERTAIN provides within the new LMS software. INFOR also allows the court to convert many in-person classes to webinar courses (simultaneously capturing all the enrollment and completion data and storing it within INFOR). INFOR allows us to create a virtual conference with all of the features we have today.

The average yearly in-person class expenditures for venue, travel, meals and lodging for the past three years was \$64,100. The Education Department expects to replace a large number of these in-person classes with INFOR’s on-line instructional capacities, an annual savings of \$50,000. Yearly INFOR subscription costs equal \$61,800 (2 years of subscription costs are paid with the initial purchase), thereby yielding an annual net savings of \$6,200.

Replace Budgeted IT Money Spent on COVID-19 Laptops and Other Related Purchases – Heidi Anderson

Amount requested \$279,000

There were originally several items anticipated to be purchased out of the approved FY2020 IT budget (4 PVUs for Websphere \$60,000; Tybera Upgrade \$30,000; Kendo UI Components \$24,000, Router Upgrades \$65,000; and Microsoft Software \$100,000). Due to the pandemic needs for additional laptops and other related purchases for remote working, these

purchases were delayed. These were originally intended to be purchased with funding out of the \$2.5M carry forward, but due to adjustments to the FY 2020 year-end spending approved requests, these are submitted as “essential” purchases to be made as originally intended in FY 2020.

Matheson Courthouse Carpet – Chris Talbot

The Matheson Courthouse carpet replacement (\$400,000 one-time funds) request was deferred until funding could be secured. Chris Talbot confirmed that the carpet order date for delivery prior to June 30 had moved up from April 15 to April 6 due to COVID-19 constraints. Due to reduced available funds, the Budget and Finance Committee recommended that the Matheson Courthouse carpet replacement request of \$400,000 be re-submitted as a request for use of the \$2.5M carry forward spend.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge Mark May moved to 1) Courtroom A/V Upgrades \$350,000; 2) Upgrade For the Record Digital Recording Software \$257,600; 3) Remote Accessories \$83,000; 4) LMS \$163,100; 5) Training Equipment \$4,600; 6) ODR Facilitation Training Manual \$5,000; 7) Jury chairs for Brigham City \$15,000; 8) Ogden Carpet Replacement \$19,650; 9) Matheson Café Room and Conference Rooms A, B, and C \$43,500; 10) Inventory of PCs \$250,000; and 11) Replace Budgeted IT Money Spent on COVID-19 Laptops and Other Related Purchases \$279,000 for a total of \$1,471,450. Judge Paul Farr seconded the motion, and it passed unanimously.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Curtis M. Jensen)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Curtis M. Jensen. Dr. Yim introduced Commissioner Jensen, who was appointed by the House of Representative to JPEC in 2017. Commissioner Jensen commended Dr. Yim and other members of JPEC for their continued professionalism and dedication to the Judiciary.

Dr. Yim felt the Judiciary has made amazing strides in moving into a virtual world within such a limited timeframe. JPEC exceeded the statutory requirements for the fall elections. They have been conducting mid-term evaluations for judges who stand for reelection in 2022.

JPEC is now identifying ways to hold evaluations alternatively from the normal in-person observations.

In 2018, JPEC unanimously recommended 100% retention of judges. Dr. Yim notified the Council that of the approximately 70 judges scheduled for retention elections in 2020:

- 94% received unanimous recommendations by JPEC for retention,
- 3% received mixed retained votes with a favorable recommendation from JPEC for retention (split votes with at least 1% voting against retention)
- 3% received either a no recommendation, a tie vote, or a recommendation against the retention of the judge.

Since its inception, JPEC reviewed more than 300 judges, of which:

- 92% received unanimous recommendations by JPEC for retention,
- 5% received mixed retained votes with a favorable recommendation from JPEC for retention (split votes with at least 1% voting against retention)
- 3% received either a no recommendation, a tie vote, or a recommendation against the retention of the judge.

Additional information will be available in July, after judges have decided whether to run for reelection. Judges have been informed of, and were invited to discuss, this information with JPEC. JPEC noted that there has been dramatic improvements in the performance of judges who received any notes of concern in mid-term evaluations.

Chief Justice Durrant thanked Dr. Yim and Commissioner Jensen.

7. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Rick Romney and Jim Peters)

Chief Justice Durrant welcomed Judge Rick Romney and Jim Peters. The justice court judges are now fully staffed. Judge Romney thanked Amy Hernandez for her assistance with the hiring process of justice court judges. There is great communication between judges and the AOC. The Board developed proposals for salary adjustments for judges and clerks. A survey was distributed where 55 out of 81 justice court judges responded. The survey addressed issues such as temporary practices due to the pandemic and continuing district-wide meetings. Judge Romney felt some judges were concerned that they were confined to only mission-critical hearings. Jim Peters noted there are attorneys who were concerned as well. Judge Romney said judges will continue some of their current practices during the pandemic after the pandemic ends.

Judge Romney thanked the Council for the creation of the Administrative Order. Chief Justice Durrant thanked Judge Romney and Mr. Peters.

8. PROPOSED AMENDMENTS TO CJA RULES 3-101, 3-403(3)(A) AND (4)(B)(I) AND 9-103: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. As a result of complications resulting from the pandemic, the Board of Justice Court Judges requested amendments to some rules as described below.

Educational Requirements:

Because the clerks' conference scheduled to be held last month and the justice court judges' conference scheduled to be held this month have both been cancelled, the Board of Justice Court Judges would request that these requirements be suspended for the year ended June 30, 2020. In addition, the Board would request that Rule 3-101(3) be suspended, if necessary, to keep judges in good standing for upcoming retention elections. And finally, the Board would request that Rule 9-103 be suspended so that the Justice Court Administrator need not report judges to the Judicial Conduct Commission for not complying with the educational requirements described below.

Rule 3-403 of the Code of Judicial Administration addresses judicial branch education. Section (3)(A) requires that “[a]ll judges, court commissioners, active senior judges, and active senior justice court judges ... complete 30 hours of pre-approved education annually.” Justice court judges and active senior justice court judges are specifically required by Section (3)(B) to attend the annual justice court conference unless excused by the Management Committee for good cause. Section (4)(B)(i) requires that all court staff employed by the justice courts complete 10 hours of approved coursework annually.

Elections

Rules 9-101(2) and 9-109(1)(A)(i) of the Code of Judicial Administration govern the elections for Judicial Council, Board and District positions held by justice court judges. Each of these rules requires that elections take place at the annual conference held each spring. Since that conference was cancelled, the Board would propose that these elections take place at the Annual Judicial Conference in September instead. The Board would also ask that those not able to attend the conference be allowed to vote in absentia. If that conference is at risk of being cancelled as well, the alternative would be to handle elections electronically for everyone – either this month or in September. Either way, these rules need to be amended. If the Management Committee agrees, language will be proposed at next month’s meeting for its consideration. If these provisions need to be suspended in the meantime, the Board would make that request as well.

Requesting Funds from the Justice Court Technology, Security and Training Account

Rule 9-107(5) of the Code of Judicial Administration requires that applications for funding from the Justice Court Technology, Security and Training Account be received by April 15. The Board would request that, for this year only, the deadline be extended to May 15.

The Management Committee approved the suspension of Rule 3-403(3)(B) to excuse justice court judges from attending the justice court conference; to suspend the operation of 9-101(2) and 9-109(1)(A)(i) and forward to Policy and Planning to amend the rule to allow elections to take place at the fall conference and allow elections through electronic means; approved extending the deadline found in Rule 9-107(5) from April 15 to May 15 for this fiscal year; and requested the Judicial Council make a determination on rules 3-101, 3-403(3)(A) and section (4)(B)(i), and 9-103. Tom Langhorne said the reporting period was changed last year to June 30 to comply with the fiscal year. Mr. Peters said many judges rely on conferences to obtain their education hours. There are some judges who have not fulfilled their required 30 education hours. The Education Department is providing free webinars to assist all members of the Judiciary. Mr. Langhorne approved training offered via Webex to be counted as education hours.

Mr. Rice said due to the Bar cancelling the Spring and Summer Conventions, it will be difficult for attorneys to comply with their education hours. Mr. Rice said if the education hour requirement is extended, it will be important to determine an end date of the extension. Mr. Peters said they are requesting an extension for this period only, if needed though, the rule can be extended further.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Paul Farr moved to suspend rules 3-101(3), 3-403(3)(A) and section (4)(B)(i) but not section (5) as hours are still required to be reported, and 9-103 for this reporting year. Judge Augustus Chin seconded the motion, and it passed unanimously.

9. INTERLOCAL AGREEMENT BETWEEN SPRINGVILLE AND MAPLETON: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Jim Peters informed the Council that Springville City Justice Court and Mapleton City Justice Court have determined that expanding Springville City Justice Courts territorial jurisdiction to include Mapleton City’s boundaries would serve in the best interest of both cities. The decision was based on the following:

- The Springville Justice Court has facilities dedicated solely to the justice court, whereas, Mapleton's justice court shares the same space as its city council chambers.
- Judge Fenstermaker sits as the judge for both Mapleton and Springville. Judge Fenstermaker has expressed a desire to have the two courts combined to allow more flexibility to set hearings and manage both courts.
- Added flexibility for court scheduling will benefit Mapleton and Springville residents. Judge Fenstermaker regularly holds court in Springville on Tuesdays and Wednesdays and in Mapleton on Thursdays. By combining both courts, the court will have more flexibility to work with defendants' schedules.
- Expanding Springville's territorial jurisdiction will allow both cities to combine resources and save money. As part of the proposed territorial expansion, Judge Fenstermaker would still be compensated the same.

Springville requested that the Judicial Council Grant its application to expand the Springville Justice Court's territorial jurisdiction to include the boundaries of both Springville City and Mapleton City effective July 1, 2020.

Chief Justice Durrant thanked Mr. Peters.

Motion: Justice Himonas moved to expand the Springville Justice Court's territorial jurisdiction to include the boundaries of both Springville City and Mapleton City effective July 1, 2020. Judge Chin seconded the motion, and it passed unanimously.

10. UNIFORM FINE & BAIL COMMITTEE REPORT: (Judge David Hamilton, Shane Bahr, and Meredith Mannebach)

Chief Justice Durrant welcomed Judge David Hamilton, Shane Bahr, and Meredith Mannebach. The Uniform Fine & Bail Committee approved recommended adjustments to the Fine Schedule based on legislative changes, Wildlife Resources requests, State Parks requests, other requests, and certain changes to SMOT.

The committee may seek an amendment to the committee title to remove the word “bail” because of case law in other states around the ability to pay, what has been used as a uniform

fine and bail schedule is moving towards a uniform fine schedule. Bail will likely be taken out or the uniform schedule equation. It is anticipated that the committee will meet twice a year rather than once a year as has been historically done.

Chief Justice Durrant thanked Judge Hamilton, Mr. Bahr, and Ms. Mannebach.

11. DISTRICT/JUSTICE COURT IT PRIORITY PROCESS: (Shane Bahr and Meredith Mannebach)

Chief Justice Durrant welcomed Shane Bahr and Meredith Mannebach. There are approximately 12 technology programs in the district and justice courts. Historically, a process has not been established for employees to recommend changes to court technology programs, such as CORIS, e-warrants, etc. If created, an application committee assigned to a specific program, such as CARE, would receive recommended changes and identify a priority list to forward to the Technology Standing Committee. Ms. Anderson noted the Technology Committee will meet quarterly. Mr. Bahr said he would prepare a more streamlined description of the proposal for a future Judicial Council meeting.

Judge Noonan noted conceptually the district and justice courts are moving in the right direction, but will need further explanations of their process. Judge Noonan recommended holding this discussion in approximately 90 days to allow the standing committee to clarify the process.

Chief Justice Durrant thanked Mr. Bahr and Ms. Mannebach.

12. UNIFORM FINE & BAIL COMMITTEE SCHEDULE: (Judge David Hamilton, Shane Bahr, and Meredith Mannebach)

Chief Justice Durrant welcomed Judge David Hamilton, Shane Bahr, and Meredith Mannebach. The committee considered reports from Michael Drechsel on legislative changes, specifically H.B. 206 and H.B. 485. The committee determined to table the issues related to H.B. 206 until their May 5th meeting; specifically, the issues of fine payments on previously designated mandatory appearance charges and application of pretrial release practices. H.B. 206 has an effective date of October 1, 2020 thus providing some time to consider the specific issues in greater detail. Consideration of H.B. 485 required the committee to act now due to its effective date of July 1, 2020. This bill mandates that a security surcharge of \$10 be added to sentences. Judges retain discretion on fines but the surcharge impacts the ultimate distribution of fine related money. It was clear that in order to stay "even", considering the surcharge and its destination, fines would need to be increased by a like sum.

The committee recommended that each fine be increased by \$10, with the exception of statutorily mandated fines. The committee will review the language in the Preamble at their May 5, 2020 meeting. Due to H.B. 206 there may be additional changes identified at a later date. Judge Derek Pullan was concerned about approving the change due to a potential constitutional problem. Judge Hamilton noted more details will be addressed in the Preamble. Judge Appleby recommended approving the Preamble as soon as possible or alternatively approving both the schedule and the Preamble together. Judge Hamilton is concerned about the timing for when the Preamble will be complete. Judge Shaughnessy thought perhaps an executive session should be held to discuss potential litigation.

Chief Justice Durrant recommended tabling this item for an executive session discussion with Brent Johnson. This item was addressed during the executive session.

Chief Justice Durrant thanked Judge Hamilton, Mr. Bahr, and Ms. Mannebach.

13. ODR GRANT: (Justice Deno Himonas)

Justice Himonas sought approval for a new SJI grant for \$185,000 for the ODR code to be shared with other states and for the PEW matching funds. The grant would enable the court to pay for a full code review, documentation enhancement, and compliance with intellectual property and governance requirements. The grants would also allow the court to develop an RFI to identify other states with interest in implementing Utah's code for ODR. Utah Courts will collaborate with the National Center for State Courts to complete the work, which is estimated to take 3-6 months. This project falls within the State Justice Institute's Priority Investment Areas – Self-Represented Litigation. PEW Research will match the SJI grant funding for \$25,000. The courts are not expected to match the awarded funds with court money. The committee previously questioned who would pay the matching funds needed if the PEW Research funds are not approved. Justice Himonas noted PEW asked the courts to request the matching funds.

This project cannot generate revenue. The courts would be providing the system at no cost to other states; therefore the courts will not be receiving a profit and not competing with the private industry. There were concerns about legal issues and the current workload on the IT Department. Justice Himonas previously noted any state seeking to use this program would cover all costs, including hiring outside IT personnel to provide service.

The grants would be used for legal fees for intellectual property regulations, a penetration test to detect external hacking vulnerabilities (pin test), and code review. Ms. Anderson would use the IT Department's security assessment employee to assist with the pin-test but the time required should be minimal. Judge Appleby questioned whether the proposal should be reworded to better clarify the terms. Justice Himonas didn't believe it needed to be reworded. Judge Kara Pettit was concerned that IT should be focused on mission-critical issues rather than facilitating other state's use of our ODR code Justice Himonas believes this project is mission-critical and will benefit the state because other states will be required to share their enhancements to the code with Utah. Ms. Anderson would be required to track the hours relevant to her team for SJI and PEW. Ms. Anderson identified the grant deliverables for the court as helping to facilitate the pin test and developing the licensing agreement completed though a law firm. Other work will be done by the National Center for State Courts. .

Chief Justice Durrant recognized this program was heavily vetted and appreciated the Council's investment in understanding the program. Chief Justice Durrant thanked Justice Himonas.

Motion: Judge Farr moved to approve the SJI and Pew grants as presented. Judge Brook Sessions seconded the motion, and it passed with Judge Pettit opposed.

14. REGULATORY REFORM GRANT: (Justice Deno Himonas, Larissa Lee, and Michael Harmond)

Chief Justice Durrant welcomed Larissa Lee and Michael Harmond. The Utah Courts submitted a new regulatory reform grant to the State Justice Institute. The grant would help support the work of The Legal Services Oversight Office and Regulatory Sandbox which will approve pilot programs that will ease certain restrictions on the practice of law in a safe and controlled environment to allow legal service providers to experiment with new, innovative, and cost-effective legal services. The grant would provide the Court with approximately \$100,000 in in-kind staff assistance from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The grant would pay for a project manager. The grant also requires some in-kind donation from the Court which may include time or equipment donated by the court, but does not include a cash contribution. Larissa Lee will devote approximately \$25,000 of her salary time to this project, but this contribution is not separately quantified in the grant application.

Cash match

FY21 \$107,214 (Grant) + \$100,000 (NCSC) = \$207,214 (in-kind match would include staff time)

FY22 \$92,786 (Grant)

The Board of Appellate Court Judges was concerned the in-kind contribution from Ms. Lee would interfere with her ability to carry out her Appellate Court Administrator duties. Ms. Lee noted the grant would provide funding to hire a project manager at the National Center for State Courts. Justice Himonas said the work of the courts and Ms. Lee have already met in kind requirements. Rob Jepsen, Access to Justice Commission Coordinator, will provide a significant amount of assistance. Ms. Lee noted the Board of Appellate Court Judges approved the grant. Justice Himonas I said a decision to charge fees during the pilot program depends on the decision of the Supreme Court, which reserved the right to charge fees. Justice Himonas noted the Bar would be notified if fees will be required. Mr. Rice questioned how much of the cost should be viewed as the cost of running the operation. Ms. Lee noted a vast majority of the grant will be spent on salary for a project manager and a small portion towards IT needs. Judge Shaughnessy asked if independent contracts are terminated, are the courts agreeing to fund this moving forward. Justice Himonas said they will not request funding from the Council at all. If funding runs low, they will seek additional grant funds. Justice Himonas said the independent contracts can be terminated at any time for any reason.

Mr. Rice spoke with Herm Olsen who expressed concern about the Bar's responsibility for supporting the regulatory reform program. Mr. Olsen was unsure about continued revenue due to the state of the economy. Chief Justice Durrant thanked Justice Himonas, Ms. Lee, and Mr. Harmond for a great job on this project.

Motion: Judge Pettit moved to approve the Regulatory Reform Grant, as presented. Judge Chin seconded the motion, and it passed unanimously.

15. BOARD OF APPELLATE COURT JUDGES REPORT: (Judge David Mortensen and Larissa Lee)

Chief Justice Durrant welcomed Judge David Mortensen and Larissa Lee. Judge Mortensen updated the Council on the following.

- Judge Mortensen praised Larissa Lee for her extraordinary work in the appellate courts.
- The estimated cost of e-filing would equal 8,600 hours at \$90 per hour for a total of \$774,000. The Utah appellate courts are the only appellate courts in the nation that do not allow e-filing.
- There may be requests in the future for the cost of e-filing.
- A large difference was noted from Court Services data showing the number of days a case is in the appellate courts, because Court Services began the timeline based on when a notice of appeal was filed. However, the appellate courts tracked cases from when an appeal was filed.
- Creating appellate records causes a considerable amount of work within the districts and juvenile courts. E-filing would allow for a single button to be used to create an entire appellate record.
- The appellate courts are holding 100% of their hearings virtually.
- The appellate roster includes 36 attorneys on the criminal roster, 11 attorneys on the child-welfare roster, and 3 attorneys on the termination of parental rights roster. The roster was created to ensure attorneys were acceptable to assist with indigent defense. The Indigent Defense Commission played a large role with this roster.

Chief Justice Durrant thanked Judge Mortensen and Ms. Lee.

16. RACIAL & ETHICS TASK FORCE RECOMMENDATIONS: (Judge Derek Pullan)

Judge Derek Pullan reviewed the Racial and Ethnic Fairness: Report on the State of the Criminal and Juvenile Justice Report and the Utah Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice System (March 2004) Report. The Task Force Commission met 20 years ago and identified several areas of interest: recruiting and hiring, training, interpretation, community resources, complaint processes within police agencies and the Judiciary, and data and research. The commission disbanded in 2005. Judge Pullan requested this be a Council priority. Judge Pullan recommended having someone in the AOC review the data to evaluate the Judiciary's progress towards racial and ethnic fairness. Judge Chin suggested speaking with those that were involved in the commission, such as Dr. Jennifer Yim or Justice Michael Zimmerman. Chief Justice Durrant would like to invite those involved in the previous commissions for a discussion at the next Council meeting in an effort to reduce duplicating the work that has been done. Mr. Rice recommended contacting the Utah Center for Legal Inclusion, whose objective is to ensure law schools, attorneys, and members of the bench are diverse. Judge Shaughnessy recommended receiving data to see if the efforts from 20 years ago have shown improvement. Judge Noonan agreed that this would be an important step and that Court Services may be able to assist with this. Judge Noonan volunteered to work with Court Services to obtain updated data.

Chief Justice Durrant thanked Judge Pullan.

17. COVID-19 UPDATE: (Judge Mary T. Noonan and Chris Palmer)

Chief Justice Durrant welcomed Chris Palmer. Judge Noonan said the COVID-19 Response Team (team) up until last week met daily in the morning and focused on technology and the health and safety of court employees. The team now meets three times a week. Additionally, the TCEs, Clerks of Court, AOC Directors changed their daily afternoon meeting to twice a week. The presiding judges have participated three times in these meetings.

The team created a COVID-19 website, created a leave guidance policy, trained managers and employees on new procedures, published a remote IT equipment user guide, created a guideline for careful hiring, created and are maintaining a telecommuting dash board, and created a judicial officer well-being website. The telecommute dashboard and tracker allow the courts to identify which of the more than 1,000 court employees are working in-court, working from home, or are on other leave. Nearly 80% of judicial employees are teleworking full-time. Twenty-two percent are teleworking part-time. Only 34 employees are on disaster leave. Bart Olsen is working on identifying the reason for the 34 employees being on disaster leave, 28 of which are judicial assistants. Mr. Olsen and Heidi Anderson have been instrumental in the creation and delivery of information and technology. The IT Department is refurbishing old laptops and has ordered a considerable amount of new laptops to assist those who are telecommuting.

Judge Noonan noted the courts are beginning to address the remainder of this fiscal year budget and the FY21 budget in accordance with the recent House Joint Resolution that passed in the special session which instructed state entities to reduce costs to only what is essential. Judge Noonan suggested the following guiding principles for the budget analysis:

Principles:

- Avoid reduction of services to patrons
- If budget reductions are needed, consider administrative reductions first
- Maintain the courts commitment to the items prioritized by the Council last August and funded by the legislature for FY 21
- Evaluate current programs and services to ensure they have beneficial outcomes
- Consider revenue sources such as increases in certain fees and fines to offset budget reductions
- Provide clear and timely communication about the budget to judicial employees, judges, boards, and the Judicial Council and Management Committee.

There was concern that increasing fees might create an access to justice issue and fines are typically difficult to collect. Judge Noonan said this would be a last resort and that the principles would be published to the public. Chief Justice Durrant thanked Judge Noonan and Mr. Palmer.

Motion: Judge Shaughnessy moved to adopt the principles presented by Judge Noonan. Judge Appleby seconded the motion, and it passed unanimously.

18. RULES 1-204, 1-205, 3-111, 3-406, 4-403, 4-503, 4-905, 10-1-202, AND APPENDIX F FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved the following rules for public comment on November 25, 2019. One comment was received during the 45-day comment period. Policy and Planning reviewed the comment and made no amendments to the published draft. Policy and Planning Committee recommends the following rules to the Judicial Council for final approval with an effective date of May 1, 2020.

CJA 1-204 – Executive Committees

CJA 3-406 – Budget and Fiscal Management. At its October 28, 2019 meeting, the Judicial Council formalized a new executive committee, the Budget and Fiscal Management Committee. The Council asked Policy and Planning to review associated rules and outline the new Committee's duties. Proposed amendments to Rule 1-204 add the Budget and Fiscal Management Committee to the executive committee list, and define the committee's duties. The amendments to the State Court Administrator's responsibilities in Rule 3-406 reflect the Council's policy change regarding its budget process. The State Court Administrator will now make recommendations to the Budget and Fiscal Management Committee, rather than orders and notice to the Council, when implementing the Council's fiscal priorities and allocation of funds, and when changes to those allocations are needed.

CJA 1-205 – Standing and Ad Hoc Committees. The Online Court Assistance Program Committee no longer exists. The membership lists for the Committee on Resources for Self-Represented Parties and the Committee on Court Forms include "one member of the Online Court Assistance Committee." Because the OCAP Committee no longer exists, each membership list has been revised to remove those members, however, each committee has at least one remaining member with OCAP expertise. Both committees approved the change. The Uniform Fine and Bail Schedule Committee requested that their membership be amended by removing the juvenile court judge and adding a justice court judge. That change would ensure the both district and justice court judges are equally represented.

CJA 3-111 – Performance Evaluation of Active Senior Judges and Court Commissioners. As part of its review of new forms for reporting cases under advisement, the Standing Committee on Court Forms noticed different standards in the rules for active judges versus senior judges and commissioners. One rule (3-101) said judges must report cases over two months, while the other rule (3-111) said senior judges and commissioners must report cases over 60 days. The statute (78A-2-223) sets a standard of two months for trial judges. To allow all judicial officers to be able to use the same form, the language in Rule 3-111 has been changed from "60 days" to "two months."

CJA 4-905 – Restraint of Minors in Juvenile Court. The proposed amendment is to eliminate the subsection of the referenced statute to avoid outdated citations in the future.

CJA 10-1-202 – Verifying Use of Jury. The Second District Court requested that local supplemental rule CJA 10-1-202 be repealed because it is no longer needed. The Second District is now following practices set forth in general rules observed by all other judicial districts.

CJA Appendix F – Utah State Court Records Retention Schedule. The first amendment eliminates the requirement that the enhancement forms previously required under Rule 9-301 be retained permanently. Because Rule 9-301 was repealed, those records should now be destroyed at the same time as the file to which the record pertains. Eliminating the specific reference in the schedule will default to that result. The second amendment changes the retention for domestic violence cases to ten years to reflect the change in statute that makes those offenses enhanceable for ten years.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Shaughnessy moved to approve amendments to rules 1-204, 3-406, 1-205, 3-111, 4-905, 10-1-202, and Appendix F with an effective date of May 1, 2020. Judge Pettit seconded the motion, and it passed unanimously.

19. BOARD OF JUVENILE COURT JUDGES RECOMMENDED CHANGES TO MARCH 21, 2020 ADMINISTRATIVE ORDER: (Neira Siaperas)

Chief Justice Durrant welcomed Neira Siaperas. This item was approved by the Management Committee meeting and unanimously approved by the Supreme Court.

Chief Justice Durrant thanked Ms. Siaperas.

20. OLD BUSINESS/NEW BUSINESS

The Management Committee approved using the technology platform in ODR and MyCase to facilitate the electronic filing of protective orders in the district court. This technology platform provides a more secure email system for the victims of domestic violence when they submit the requests for protective orders in the district court. Domestic Violence Advocacy Groups are concerned that an assailant if tech savvy would be able to intercept an emailed protective order from the victim to the court.

Prior to COVID-19, individuals filing protective orders had two options.

1. If a lawyer is obtained the protective order could be e-filed through our e-filing system.
2. If it is a pro-se litigant then they would walk into the courthouse and file in person.

Once the pandemic became prevalent, the courts opted to include a third option for filing protective orders.

3. Allow a pro-se litigant an option to file for a protective order through an email method.

Domestic violence advocacy groups were concerned about sending in protective order filings through email. The IT Department concluded that the concern was valid. An email sent into the courts from outside of the courts or the state of Utah's Google domain is not secure and can be retrieved, changed, eliminated or tracked by someone other than the sender or recipient.

The IT Department determined there were two potential options as shown below. Both options are viable and provide a long term value to the courts and could solve for the concern. The IT Department conducted a high level of cost/implementation effort with some input from

valued internal parties. Either of the options create approximately 100 hours of effort on the technology staff.

- Secure email option
 - This is a low-cost option and would provide value today and in the future for data that contains sensitive information. The State of Utah uses a similar process to transmit sensitive data.
 - Court staff would take minimal training.
 - Patron would send in a request to file securely.
 - Court staff would email back with encryption enabled.
 - Patron would get a link to a login page where documents could be uploaded.
 - Court staff would open case as they do today in CMS.
 - All communication between patron and court from that point is secure.
- Minimal changes to the ODR/MyCase Platform.
 - This is also a low cost option and would provide value today and in the future for securely filing protective orders.
 - Court staff would take minimal training.
 - Patron would send in request to file to court staff.
 - Court staff would set up shell case in MyCase and CMS.
 - MyCase would email patron link and code to set up account to file.
 - Patron can upload filing request and subsequent documents to system.
 - Court staff would attach to already created shell case and process as they do today in CMS.
 - Patron would be notified via MyCase when approved or denied.

Ms. Anderson said judges would not see a difference in filing with either option. Jessica Van Buren and Nathanael Player will assist with the pilot program. MyCase ties with CORIS and not CARE therefore child protective orders would not qualify. The IT Department is researching more information on this. Neira Siaperas believed most child protective orders are being filed in person. Judge Noonan said the courts are still accepting emailed protective order requests.

21. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss litigation and personnel. Judge Farr seconded the motion, and it passed unanimously.

22. CONSENT CALENDAR ITEMS

a) Committee Appointments. Appointment of Judge Kirk Morgan and John Larsen to the Education Committee and the reappointment of Judge Elizabeth Lindsey and Stuart Ralphs for an additional four years; Randy Dryer (Chair) and Guy Galli or an additional three years; and Judge James Taylor and Mary Westby for an additional two years to the Forms Committee Approved without comment.

b) Forms Committee Forms. 10-day summons; Small claims complaint; Small claims summons and notice of trial; Small claims counter complaint and notice to plaintiff; Small claims judgment; Small claims notice of appeal; Request to join the Office of Recovery Services;

Revised Petition to modify custody; Revised Order on petition to modify custody Petition and stipulation to modify parent-time; Findings of fact and conclusions of law on petition to modify parent-time; and Order on petition to modify parent-time. Approved without comment.

c) Probation Policies 4.15, 5.4, and 5.5. Approved without comment.

d) Rules 3-402, 4-411, and 4-202.08 for Public Comment. Approved without comment.

23. ADJOURN

The meeting adjourned.