

JUDICIAL COUNCIL MEETING

Minutes

June 22, 2020

Meeting conducted through Webex

9:00 a.m. – 1:00 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:

Guests:

Hon. Christine Johnson, Fourth District Court
Joanna Landau, Indigent Defense Commission
Hon. Brendan McCullagh, West Valley Justice Court
Commissioner Gil Miller
Alex Peterson, Judicial Conduct Commission
Heather Thuet, State Bar President-Elect
Dr. Jennifer Yim, JPEC
Kim Zimmerman, West Valley Judicial Assistant

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Brody Arishita
Shane Bahr
Geoff Fattah
Kim Free
Alisha Johnson
Brent Johnson
Larissa Lee
Meredith Mannebach
Jim Peters
Clayson Quigley
Nini Rich
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Jeni Wood

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 May 18, 2020 Council minutes, as amended to correct Judge Farr's name in paragraph 15. Judge Derek Pullan seconded the motion, and it passed unanimously.

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

Chief Justice Durrant was impressed by the work of the Budget & Fiscal Management Committee.

3. ADMINISTRATOR’S REPORT AND COVID-19 UPDATE: (Judge Mary T. Noonan)

Judge Mary T. Noonan noted the State of Utah Judiciary Risk Phase Response Plan, Pandemic Risk Response Checklist, Screening Questions, COVID-19 Trial Recommendations for District and Justice Court, Jury Seating Capacity, Jury Trials in Justice Courts – Survey Results, Juvenile Trials Booklet, and the Pro Se Access to Technology were approved by the Management Committee. The documents will be discussed with the presiding judges, TCEs, Clerks of Court, and Chief Probation Officers tomorrow and will be released upon the completion of the amended administrative order. Prior to fully reopening, each court must submit a Risk Response Checklist to the Management Committee for approval. The courts will need to coordinate with local health departments when completing their checklist. The courts must be responsive to fluctuating situations over the next several months. Rob Rice volunteered to assist in sharing the plans with the Bar.

Judge Noonan said the acceleration phase of COVID-19 continues in Utah, which may be an issue in the larger court locations, such as, the Second, Third, and Fourth Districts. The Department of Health consulted with members of the Judiciary to assist with the completion of the Risk Response Plans. The Health Department advised the courts that they should plan on maintaining at least the yellow phase for all courts until late fall.

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

The work of this committee is reflected in the minutes.

Budget & Finance Committee Report:

Judge Mark May said the committee has met twice over the past month, most recently, last Friday.

Liaison Committee Report:

Judge Kara Pettit said Michael Drechsel has been tracking recent legislative events of the Interim Judiciary Committee. Mr. Drechsel will provide regular updates on proposed legislation.

Policy and Planning Committee Report:

Judge Derek Pullan noted the committee received a request to amend the juvenile drug court certification checklist. Participation has declined due to H.B. 239. The committee will wait for additional information before a decision can be made on the checklist. The committee is also working on amending the rule that allows electronic portal devices.

Bar Commission Report:

Eric Christensen, Chair of the Regulatory Reform Subcommittee (tasked with gathering data on regulatory reform) reached out to sections of the Bar for comments on the regulatory

reform proposal. Mr. Christensen will distribute the information once compiled. Mr. Rice noted there has been an 18% increase in women lawyers. Mr. Rice reviewed racial statistics in the Bar.

5. JUDICIAL CONDUCT COMMISSION REPORT: (Alex Peterson)

Chief Justice Durrant welcomed Alex Peterson. Mr. Peterson reviewed the current Commission membership. The Commission prepared a reduced budget proposal; conducted a five-year review of their administrative rules; met with the Supreme Court to address rules; and responded to the COVID-19 pandemic, including conducting video conferencing meetings. The Commission has sent requests for information as follows: 4 – AOC, 13 – JPEC, 7 – CCJJ, and 17 – AJDC/CJE.

Commission Caseload Update

- 64 cases in FY19 compared to 58 cases in FY18. The commission currently has 48 cases in FY20, showing a downward trend.
- To date in FY20, there has been one public disposition and one DWW disposition for 1) Indecorous treatment of subordinates and 2) Abuse of prestige of judicial office.
- No Commission cases are pending before Utah Supreme Court.

Chief Justice Durrant thanked Mr. Peterson.

6. ODR EXPANSION: (Justice Deno Himonas, Larissa Lee, Judge Brendan McCullagh, Heidi Anderson, Brody Arishita, and Kim Zimmerman)

Chief Justice Durrant welcomed Judge Brendan McCullagh, Heidi Anderson, Brody Arishita, and Kim Zimmerman. The Board of Justice Court Judges voted to expand the ODR program from four justice court locations to justice courts statewide over the course of one to two years. Brody Arishita described how the ODR program works through a series of slides. Fifty percent of cases through the ODR program settle without hearings.

Judge McCullagh requested the Council recommend to the Supreme Court to make this program permanent, transition to statewide usage and to seek input from the Boards to create a roll-out schedule. Heidi Anderson said the majority of the work would be with training court personnel. Judge Pullan questioned in the beginning stages if there is an option for litigants to identify if they've retained an attorney. Justice Himonas said attorneys can appear in a case. Mr. Arishita said if there was an attorney on the case, they would file the documents.

Judge Todd Shaughnessy was concerned about financial and employee IT resources. Justice Himonas agreed that any financial changes or IT resources needed for the program would go through normal channels for assistance. Judge McCullagh confirmed that the MyCase program would not be affected by the ODR program. Judge Appleby was concerned that having Mr. Arishita present this program to other states might be a drain on IT resources. Mr. Arishita said he has a process and would spend limited time on the presentations.

Chief Justice Durrant thanked Judge McCullagh, Ms. Anderson, Mr. Arishita, and Ms. Zimmerman and noted the court system is fortunate to have the members of the IT Department.

Motion: Judge Paul Farr moved to approve the ODR expansion and recommend the rules become permanent, with the limitation that any financial changes or additional IT resources requests be brought to the Management Committee, as amended. Judge Pettit seconded the motion, and it passed unanimously.

7. INDIGENT DEFENSE COMMISSION REPORT: (Joanna Landau)

Chief Justice Durrant welcomed Joanna Landau. Ms. Landau presented the 2019 Annual Report. The Utah Indigent Defense Commission (IDC) protects constitutional liberties through ongoing support for effective indigent defense services. The Utah Territory had the country's first right-to-counsel laws, which are now found in the Utah Code and Constitution. Utah delegates that responsibility to its counties and cities. The Legislature created the IDC to provide guidance and accountability over those local services. Minors and adults who cannot afford to hire an attorney are considered indigent. Approximately 80% of Utah's adult criminal defendants are indigent. Local government participation with the IDC has increased from 1 county in 2017 to 12 counties and 4 cities in 2018 and 23 counties and 6 cities in 2019. Ms. Landau reported that the money appropriated to the IDC for establishing an appellate office in the 2020 General Session was lost in the budgets cuts of the Special Session.

In 2019, Utah's 29 counties spent \$35 million on indigent defense services, of which, \$21.5 million was spent in Salt Lake County. The Council was concerned that Ms. Landau was having a difficult time with justice courts inadequately funding indigent defense. Judge Shaughnessy questioned whether the courts could require justice courts to address the adequacy of indigent defense participation as part of their certification process. Ms. Landau said the current certification standards include a statement about providing indigent defense in compliance with the indigent defense standards.

Chief Justice Durrant thanked Ms. Landau for the important work of the commission.

8. JPEC RULE AMENDMENTS AND REPORT: (Dr. Jennifer Yim and Commissioner Gil Miller)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Gil Miller, recently elected as Chair to the subcommittee. Virtual observation hurdles for members of JPEC are being addressed; the benefits include observations without travel. Mid-term justice court judge's evaluations include intercept and exit interviews of staff. These will need to be supplemented when travel is safe and courts return to a more normal status. JPEC will also conduct a cost-benefit analysis before traveling to the justice courts to determine if they can speak to enough people.

Judge Shaughnessy asked how the evaluations are modified or impacted by differences between in person and virtual interactions in court. Dr. Yim said research has been conducted to identify the differences between in-person and virtual interactions. This research has been provided to the evaluators.

Dr. Yim addressed proposed changes to several JPEC rules. The rule amendments will allow for virtual observations, training associated with virtual observations, and evaluations. The rules have not been released for public comment. Justice Himonas recommended a change to

rule 597-3-6(2) to clarify the wording of when evaluations end for judges. Dr. Yim said this amendment was changed because evaluations are no longer needed when a judge announces their retirement, dependent on their retirement date. Dr. Yim said the language could be amended but it's meant to identify when a judge will retire.

Judge Pullan believed JPEC would agree that there would always be a preference for in-person evaluations. Dr. Yim wasn't sure what the majority of evaluators would prefer. Judge Pullan's concern was that the proposed amendment to the rule would allow JPEC to decide on how observations would be conducted. Dr. Yim noted Judge Pullan's concern. Judge Shaughnessy noted after the pandemic, some judges may hold only certain types of hearings virtually so JPEC may not be able to see a full picture of a judge if observation is limited to only online observation. Dr. Yim said they are putting together a basic evaluation process, with the addition of virtual hearings, Webex creates a level of transparency. Someday the courts may return to in-person hearings, but for now, virtual hearings allow for a better understanding of the processes in smaller, rural courts. Dr. Yim asked that the Council and Justice Court Reform review justice court certifications to perhaps include Webex broadcasting, even after the courts have returned to in-person hearings.

Chief Justice Durrant thanked Dr. Yim and Commissioner Miller.

9. XCHANGE FEES RULE AMENDMENTS: (Karl Sweeney and Clayson Quigley)

Chief Justice Durrant welcomed Karl Sweeney and Clayson Quigley. The courts submission to the EOCJ Legislative Subcommittee of 2%, 5%, and 10% budget cuts proposal included a \$316,000 increase in Xchange fees. The current proposal is to increase Xchange fees by approximately \$500,000.

Xchange fees have never been increased. However, new fees have been created and added to the various fees paid by users. The rule that governs these fees is Judicial Council Code of Judicial Administration 4-202.08.

For billing purposes there are three types of Xchange users: billable, non-billable, and media.

- Billable users (2069) are regular users subject to all of the fees described above. Most billable users are commercial entities that use the information for their business needs.
- Non-billable (1656) users are exempt from all fees. These are state and local government employees.
- Media users (51) are exempt from the monthly subscription fee but pay for over-cap searches and documents. Media accounts were exempted from the monthly subscription to help increase transparency and provide important information for general consumption for the benefit of the public.

The intent of the increase is to pass along to all of our users the increased costs of developing, operating and securing the Court's IT systems. It also seeks to increase fees on those who are the heaviest users of the system. All Xchange revenues are used to fund Courts IT and Court Services groups. Proposed increases are:

- Increase monthly subscription costs from \$30 to \$40.
- Increase the fee per search from \$0.10 to \$0.15
- Increase the number of free searches from 200 to 500.

The bulk of the Xchange revenue comes from monthly subscriptions and over-cap search fees (about 50% and 38% respectively, with document download fees comprising the other 12%.) Increasing the monthly subscription fee is equitable; however an increase to the over-cap search fee would address those who put the greatest burden on our systems. Post implementation, revenue split would be 49% subscription fees, 42% search fees, and 9% document fees.

Chief Justice Durrant thanked Mr. Sweeney and Mr. Quigley.

Motion: Judge May moved to approve an increase of Xchange fees for FY21 as follows: subscription costs \$40, fee per search \$.15, and free searches increased to 500, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

10. BUDGET CUTS: (Judge Mary T. Noonan and Karl Sweeney)

Chief Justice Durrant thanked Judge Noonan and Mr. Sweeney. The Legislature approved SB 5001 - Budget Balancing and Coronavirus Relief Appropriations Adjustments, which allowed them to remove the previously-approved ongoing and one-time funding for the three Judicial Council priorities from the 2020 session: Technology Investment (\$932,000 ongoing and \$450,000 one-time); Court Commissioners (\$92,500 ongoing); and Child Welfare Mediator (\$54,947 ongoing). The Legislature also removed nearly all funding connected to fiscal notes on new legislation that passed during the 2020 General Session. The Technology Investment (\$932,000 ongoing and \$450,000 one-time) and the Child Welfare Mediator (\$54,947 ongoing) are seeking approval to use funds from the carry forward FY21 money. The IT Unfunded Mandates (\$288,900) are also seeking approval to use carry forward FY 2021 money.

The Public Outreach Coordinator (\$100,000) request, sought approval for one-time funding of the position. A submission to seek permanent funding has been approved by the Budget & Fiscal Management Committee and will be submitted at the August Judicial Council meeting.

Justice Deno Himonas would like the Council to consider hiring a grant coordinator. Judge May said these requests are sent to the Finance Department first to be included in the budget requests considered by the committee and the Council. Judge Noonan confirmed new permanent positions must go through the building block process and thought this issue was already on track to be addressed.

Judge Noonan appreciated the work of the TCEs and Budget & Fiscal Management Committee for their work on the budget reduction scenarios submitted to the Legislature. Mr. Sweeney said only H.B. 485 Amendments Related to Surcharge Fees survived the legislative special session.

Judge Pullan requested further discussion on the Public Outreach Coordinator request. Judge Shaughnessy recommended approving it with the option of keeping the title and duties

open for additional discussion. The Council decided to hold on making a determination on the Public Outreach Coordinator position.

Motion: Judge Appleby moved to confirm the budget cuts, as approved by the Council and to approve the Technology Investment (\$932,000 ongoing and \$450,000 one-time), the Child Welfare Mediator (\$54,947 ongoing), and the IT Unfunded Mandates (\$288,900) request through FY21 carry forward funds, as presented. Justice Himonas seconded the motion, and it passed unanimously.

11. CODE OF JUDICIAL ADMINISTRATION RULES 1-102, 6-102, AND 7-101 FOR EXPEDITED APPROVAL: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. At the Judicial Council's request, the Legislature passed SB01671 during the legislative session, effective May 12, 2020. The bill expanded the membership of the Judicial Council, adding a new district court judge member (for a total of six district court judges) and a new juvenile court judge member (for a total of three juvenile court judges). SB0167 therefore expands the total membership of the Council from 14 to 16 members.

There are three rules in the Code of Judicial Administration that need attention to properly effectuate the legislative change and to harmonize the rules for internal consistency:

- 1-201 (Council membership and elections generally);
- 6-102 (district court); and
- 7-101(6) (juvenile court).

Policy and Planning has considered these rule changes and recommends to the Council that the rules be adopted under the expedited rulemaking procedures of Rule 2-205. Expedited rulemaking is advisable because: the changes to Council size are already in Utah Code; some of the rule changes are necessary to implement the statute; the matter has already been given considerable attention by the Council prior to the legislative session, including hearing from the various benches; the issues are squarely internal administrative decisions that should not need public comment; and the Boards of judges were involved in the drafting process.

Mr. Drechsel stated in an effort to balance the Council, the Sixth/Seventh and Eighth Districts could share a seat on the Council, as well as First and Fifth District. Judge Shaughnessy recommended Mr. Drechsel present this proposal to the Boards for their input. Shane Bahr noted the Board of District Court Judges has reviewed the proposal rules.

Chief Justice Durrant thanked Mr. Drechsel.

Motion: Judge Shaughnessy moved to approve the expedited approval of Code of Judicial Administration Rules 1-201, 6-102, and 7-101, as presented, with an effective date of June 22, 2020. Judge Appleby seconded the motion, and it passed unanimously.

12. RACIAL AND ETHNIC TASK FORCE RECOMMENDATIONS: (Judge Derek Pullan, Brent Johnson, and Clayson Quigley)

Chief Justice Durrant welcomed Brent Johnson and Clayson Quigley. Mr. Quigley reported that as a whole, race and ethnicity data is not recorded in our case management systems at a regular or reliable rate. Some courts and court levels record this information while others do not. Because of the unreliability of this data and the sensitivity around the data elements, Court Services does not prepare reports that include race and ethnicity data points.

District Courts

The district court does not collect race and ethnicity data in the case management system in a consistent or reliable manner. Over the last 6 years, nearly 64% of criminal cases and 99% of civil cases had no race or ethnicity data or the information was unknown. Unlike the justice court, district courts are more likely to leave the race and ethnicity blank than indicate that it is unknown. There are districts that record race and ethnicity data more consistently than others. The Eighth District collects this information at a more consistent rate than any other district. Since 2014, on average the Eighth District collected race and ethnicity data on 77% of cases, however close to 10% of cases recorded “unknown”. However, the Third District only has race and ethnicity data for less than 1% of cases filed between 2014 and 2019. The overall statewide number is greatly affected by this due to the volume of cases in the Third District.

Juvenile Courts

The juvenile court is by far the most reliable and consistent collector of race and ethnicity data. There are several federal grants and state programs which require regular reporting of these data elements. Since 2014, the juvenile court has on average collected race data for about 98% of petitions filed with the court. Likewise, they have collected ethnicity data on 96% of petitions.

Justice Courts

Justice courts as a whole collect race and ethnicity data on 76% of criminal cases. On the 24% of cases where the information is unknown or blank, the justice courts are more likely to report “unknown.” If self-reported, unknown may indicate that the individual did not want to report their race or ethnicity. In cases where the race or ethnicity is observed, unknown would indicate that the observer was unable to identify the individual’s race or ethnicity.

Summary

The Utah Courts would not be able to engage in a statewide study involving race and ethnicity data with the current data practices. We may be able to do limited research by only looking at information from select sites and/or court levels. However, these limitations would make it impossible to extrapolate meaningful analysis to a statewide level.

Mr. Quigley felt if the Council wishes to engage in such studies in the future, there should be further discussion about improvements to our data systems to record the information in a manner that is consistent with national practice and standards. Additionally, the Council should create policy concerning the collection methods, safeguarding, and use of race and ethnicity data. Judge Pullan commented that in the absence of the other branches of governments being involved in the study of racial and ethnic fairness, the Judiciary’s efforts may fall short. However, Judge Pullan would like to recreate a task force. Judge Appleby questioned the cost of

collection of information. Mr. Quigley said the system is currently set up, with a few minor adjustments, to obtain this information. Mr. Quigley said policies would need to be created and staff would need to be trained.

Mr. Rice noted during the Council retreat in 2019, Justice Zimmerman said the Legislature stopped the funding for a statewide response to the findings of the Racial and Ethnic Task Force. Mr. Rice recommended asking the Legislature to fund a statewide approach to the issue, as well as move forward internally on the issue of racial and ethnic fairness. Judge Shaughnessy said historically having a task force with all three branches didn't work and that the Judiciary could consider having a task force within the Judiciary.

Justice Himonas suggested mandatory implicit bias training annually for court personnel. Chief Justice Durrant preferred a new task force be created. Judge Noonan said in an effort to identify the issue of racial and ethnic fairness as a long-term commitment, the Council could consider creating an office, with a director and staff, to take action on racial and ethnic fairness in the Judiciary. She suggested this approach rather than a task force. Judge Pullan recommended the title be: Office of Fairness, Equality and Accountability. Judge Pettit stated the request for the Public Outreach Coordinator could be transitioned to report directly to the State Court Administrator and possibly increase the funding. Judge Shaughnessy said the requested position would be very different than a position needed for this office. Judge Noonan proposed having the Budget & Fiscal Management Committee meet within one week to review whether the proposed Public Outreach Coordinator position could be reworked to one needed for this office. Then readdress this issue to possibly advance a directorship in an emergency Council meeting.

Judge Appleby said it would be difficult to determine what the courts need without first seeing the data and a detailed plan. Judge Brook Session believed the last task force may have had too many members. Judge Pettit thought the first task should be to identify the issues. The newly created office would be tasked to research the history of the task force, coordinate implicit bias training, and identify current issues. Justice Himonas discussed the need to coordinate the different Supreme Court standing committees that deal with these issues and evaluate whether there is a need to revise or adopt judicial rules to implement racial and ethnic fairness in the courts.

Chief Justice Durrant thanked Judge Pullan, Mr. Johnson, and Mr. Quigley.

Motion: Judge Shaughnessy moved to approve the concept of the creation of the Office of Fairness, Equality and Accountability with the details and the job description to be developed by the Budget & Fiscal Management Committee and to be presented to the Council within two weeks, as amended. Justice Himonas seconded the motion, and it passed unanimously.

13. JUDICIAL COUNCIL HISTORY PROJECT: (Judge Derek Pullan and Cathy Dupont)

Judge Derek Pullan reviewed the status of the tasks associated with the Judicial Council History Project and noted letters have been sent to several people seeking additional information regarding the Council's history. Judge Sessions recommended asking if there were rejected reform proposals that may be necessary with current conditions.

Chief Justice Durrant thanked Judge Pullan and Ms. Dupont.

14. BOARD OF DISTRICT COURT JUDGES REPORT AND RULES: (Judge Christine Johnson and Shane Bahr)

Chief Justice Durrant welcomed Judge Christine Johnson. Mr. Bahr noted the Management Committee determined the rules would be sent to the Supreme Court therefore this item was not addressed. Judge Johnson said the Board met last week to address the potential statement on ethnic fairness. The Board felt a statement should not be given by the Judiciary. Judge David Connors continues to be the representative on the ABA. Judge Sam Chiara and Judge Barry Lawrence represented the district court on the Risk Response Workgroup. The Board has been reviewing the Judicial Operations Budget. The Board volunteered to assist the Council with any issues as needed.

Chief Justice Durrant thanked Judge Johnson and Mr. Bahr.

15. OLD BUSINESS/NEW BUSINESS

a. PEW Commission/Utah State Courts Grant Agreement: (Justice Deno Himonas)

Justice Himonas reviewed the PEW Commission ODR Grant in the amount of \$185,000.

b. NCSC System Review Phase 2: (Judge Mary T. Noonan and Cathy Dupont)

Judge Noonan informed the Council that the National Center for State Courts proposed delaying the survey and continued work on the review until a later date. Judge Appleby and Judge Shaughnessy agreed that once the review begins that the courts would need to basically start over as the landscape of the Judiciary has changed so much. Cathy Dupont said when we inform the Judiciary that the system review is on hold, we could encourage judges or staff with concerns or comments to contact Judge Noonan with those concerns. .

c. Mental Health Initiative: (Judge Kara Pettit)

Judge Pettit said the seminar has been postponed for about a year. The Summit will hopefully be next year.

d. Federal CARES Act Eviction Moratorium: (Nancy Sylvester)

Nancy Sylvester presented the Declaration Concerning CARES ACT and letters from Brenda Marstellar Kowalewski, Chair of the Ogden Civic Action Network, and Martin Blaustein of the Utah Legal Services. Both organizations requested the courts enter an order requiring parties to plead whether the CARES Act applies in their eviction cases. The Supreme Court reviewed the letters; however, with the eviction moratorium expiring on July 15, they decided to not make any decisions at this time. If the moratorium is extended, the Supreme Court will revisit the requests. Nathanael Player conducted research and found that only four states have acted through administrative orders on evictions.

e. Access to Justice: (Justice Deno Himonas)

Justice Himonas presented a project proposal (Legal Empowerment in Underrepresented Communities Experiencing Medical Debt) from the University of Arizona.

16. STATEMENT OF THE JUDICIARY: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the draft statement he authored. The Board of Juvenile Court Judges, with the support of five Board members and opposition by one Board member, voted to request that the Judicial Council issue a public statement reaffirming the Judiciary's commitment to the core mission and values. The Board of District Court Judges recommended that a public statement not be issued by the Judiciary.

A majority of the Board of Justice Court Judges advised against the Judicial Council's issuing a public statement. It believed that the Judiciary can best demonstrate its commitment to neutrality by staying "above the fray," because that has always been its approach in the past. If the Judicial Council does decide to issue a statement, however, the Board would recommend that the statement only include the first paragraph of the draft statement prepared by Chief Justice Durrant.

Justice Himonas said he would like to issue a stronger statement than has been presented. Judge Pullan felt it would be ill-advised to issue a statement as it may appear to be political and that the Council should be cautious about judicial neutrality. Judge Shaughnessy felt this is a time for meaningful actions not words. Chief Justice Durrant agreed that a statement with action would be preferred. Judge Appleby said the Board of Appellate Court Judges felt a statement without meaningful action may not be acceptable.

Motion: Judge Pullan moved to make a public announcement of the concrete actions taken today after the creation of the Office of Fairness, Equality and Accountability, with the Council reviewing the statement before it's published. Justice Himonas seconded the motion, and it passed unanimously.

17. EXECUTIVE SESSION

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

18. CONSENT CALENDAR ITEMS

a) Committee Appointments. Reappointment of Kara Mann to the Forms Committee and the appointments of Judge Michael Leavitt and Evangelina Burrows to the Language Access Committee. Approved without comment.

b) Probation Policies 1.2, 1.3, and 1.8. Approved without comment.

c) Rules 4-202.02, 6-507, 3-407, 4-609, 10-1-404, 4-401.01, and 4-401.02 for Public Comment. Approved without comment.

19. ADJOURN

The meeting adjourned.