

JUDICIAL COUNCIL MEETING

Minutes

July 16, 2020

Meeting conducted through Webex

12:00 p.m. – 3:00 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. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. John Walton
Rob Rice, esq.

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Shane Bahr
Kim Free
Larissa Lee
Bart Olsen
Jim Peters
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Jessica Van Buren
Jeni Wood

Excused:

Hon. Paul Farr
Hon. Todd Shaughnessy

Guests:

Jacqueline Carlton, Office of General Counsel
Hon. Dennis Fuchs, Senior Judge
Hon. Tyrone Medley, Retired
Hon. Gregory Orme, Court of Appeals
Hon. Randall Skanchy, Third District Court
Hon. William Thorne, Retired
Dr. Jennifer Yim, JPEC
Justice Michael Zimmerman, Retired

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. Chief Justice Durrant welcomed Judge Michelle Heward. The Board of Juvenile Court Judges recommended Judge Heward to the Council. Judge Heward's Oath of Office will be conducted at the August Council meeting.

Motion Judge Kate Appleby moved to approve the June 22, 2020 and July 1, 2020 meeting minutes, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

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

Chief Justice Durrant spoke with Senator Todd Weiler about the Supreme Court’s regulatory reform and the new Office of Fairness and Accountability.

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

Judge Mary T. Noonan said the coronavirus count in Utah continues to increase, although not as much over the past couple of days. Judge Appleby noted the news is reporting 954 cases today; however, many are from data backlog. The Management Committee approved several courthouse reopening plans with the understanding that they will need to seek the Management Committee’s approval to move to the Yellow phase when the case counts decelerate or stabilize. Bart Olsen is preparing the announcement for the nationwide recruitment of the Office of Fairness and Accountability director position.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Mark May noted most of the committee’s work was conducted prior to the last Council meeting. The courts anticipate receiving about \$700,000 in CARES Act funds.

Liaison Committee Report:

Judge Kara Pettit noted a legislative special session is expected to be held in August.

Policy and Planning Committee Report:

Judge John Walton noted the committee did not meet this month.

Bar Commission Report:

Rob Rice said the Bar Commission met this morning with three new bar commissioners and one president-elect being sworn in. The meeting included a discussion on the regulatory reform.

5. AMENDMENTS TO RULE 3-413. JUDICIAL LIBRARY RESOURCES: (Larissa Lee and Jessica Van Buren)

Chief Justice Durrant welcomed Larissa Lee and Jessica Van Buren. The Law Library and Self-Help Center currently report to the Appellate Court Administrator, but are often treated as being housed under the Administrative Office of the Courts. The Law Library Director is the only person considered an “AOC Director” who does not report directly to the State Court Administrator. For finance and HR purposes, the move would require minimal work because both the Law Library and the Self-Help Center are already under their own budget and unit numbers. Ms. Lee and Ms. Van Buren recommended that the Judicial Council approve moving the Law Library and Self-Help Center to report to the State Court Administrator and amend rule 3-413 accordingly. This proposal was approved by the Supreme Court, Finance Department, and the State Court Administrator.

The amendments to the rule also included changes to the distribution of Code books due to the budget cuts. Two version were proposed. One that reduced the Code books temporarily and one that made the reduction permanent. Judge Pettit, Judge Brook Sessions, and Brent Johnson preferred a permanent change using option 2. Judge Pettit said it was agreed that a set of Code books would be approved for each courtroom not each judge. Option 2 of the rule allows for Code books in all court level courtrooms, including appellate, district, and juvenile. Judge Appleby said the issue with the appellate courts is that there are multiple appellate judges but only one courtroom per appellate court level. Judge Mark May said this would help when judges have multiple courtrooms in different court locations. Ms. Lee will edit the rule to allow each appellate justice and judge their own copy and each district and juvenile courtrooms be provided a copy and return to the Council meeting with a proposal at a later date.

Chief Justice Durrant thanked Ms. Lee and Ms. Van Buren.

6. PROBLEM-SOLVING COURT RECERTIFICATIONS: (Judge Dennis Fuchs and Judge Randall Skanchy)

Chief Justice Durrant welcomed Judge Dennis Fuchs and Judge Randall Skanchy. Judge Fuchs sought approval to recertify the Weber County Juvenile Drug Court (Judge Noland). The Council conditionally approved the recertification for 90 days on May 18, 2020. The recertification now includes a written policy dealing with medically assisted treatment.

The Council next addressed the following Salt Lake County problem-solving courts: Juvenile Drug Court (Judge Beck); Adult ASAP Drug Court (Judge Blanch); Adult Drug Court (Judge Skanchy); Adult Drug Court (Judge Shaughnessy); and Adult Drug Court (Judge Scott).

Judge Randall Skanchy noted the courts are working with the county to ensure compliance on issues that are within their control. Judge Skanchy said the issue about whether defendants should come to drug court has been discussed with prosecutors and defense attorneys. Judge Fuchs said all courts meet the 50-day requirement, however, to ensure all participants meet the deadline, defendants would need to be screened in the jails. Judge Skanchy said the district and juvenile courts met to address this issue and review the mandatory criteria and would like the Council to consider moving this requirement to the Best Practices section. Judge Fuchs was concerned that moving too many items to the Best Practices section might dilute the requirements and preferred not to move the 50-day requirement to the Best Practices section.

Chief Justice Durrant thanked Judge Fuchs and Judge Skanchy.

Motion: Judge Ryan Evershed moved to approve the recertification of the Weber County Juvenile Drug Court (Judge Noland); Juvenile Drug Court (Judge Beck); Adult ASAP Drug Court (Judge Blanch); Adult Drug Court (Judge Skanchy); Adult Drug Court (Judge Shaughnessy); and Adult Drug Court (Judge Scott), as presented. Judge Chin seconded the motion, and it passed with Judge Shaughnessy abstaining as to his court.

7. JUDICIARY TOTAL COMPENSATION STRATEGY: (Judge Mark May and Bart Olsen)

Chief Justice Durrant welcomed Bart Olsen. On November 25, 2019, the Judicial Council approved FY20 market comparability increases based on guiding principles adopted by the Budget & Fiscal Management Committee. Judge Mark May informed the Council that the Budget & Fiscal Management Committee's top priority for the coming year would be to examine the process for market comparability increases and identify recommendations to improve the overall compensation strategy. The current process for market comparability increases was developed to meet the requirements outlined in the Judicial Council Code. Particularly relevant pieces of the Code provide helpful context to contemplate future strategy by stating that Human Resource procedures shall be based upon:

“a salary schedule which provides for equitable and adequate compensation based upon studies conducted every three years of the salary levels of comparable positions in both the public and private sector and available funds;” and “employee retention on the basis of adequate performance ...” [Rule 3-402(3)(B)(ii), (iii)]

Although the requirements in Rule 3-402 may still be satisfied by retaining the current process, the effectiveness of the process is debatable. Additionally, the compensation strategy of the judiciary should be able to account for rapidly changing needs and must effectively attract and retain the people best suited to further its mission.

Judge May noted the funding is not available at this time, however, they are hoping that will change in the future. Mr. Olsen reviewed the challenges of current compensation practices and noted the goal is to intentionally generate turnover savings between \$500,000 - \$1,000,000 per year. They would like to replace the current MCA and career ladder process with salary ranges and to eliminate insignificant differentiation of jobs such as JA I, JA II, and JA III. Mr. Olsen said they would like to widen the scope of rewards, aligned with strategy such as through non-cash awards, paid services, incentivize a telecommuting opportunity, expanded leave accrual, flexible work scheduling, and strategic education assistance. If there will be FY21 carryforward funds available, the recommendation is to use data driven decisions to reward performance.

Judge Appleby said the decision to move to the JA tiers many years ago was divided. Mr. Olsen said one of the differences in the JA levels is training. The Department of Workforce Services created a similar system in an effort to move employees to the mid-level pay range. Judge Pullan was concerned about approving the new process when the funds are not available with the current economic uncertainties. Mr. Olsen confirmed the current request is for the concept only and not funding. Karl Sweeney said should the courts have additional funds towards the end of the fiscal year, then perhaps those funds could be used for compensation strategy. A request will be submitted to the Council if funding becomes available.

Chief Justice Durrant thanked Judge May and Mr. Olsen.

Motion: Judge May moved to approve the concept of transitioning the Judiciary from a market comparability process to the compensation strategy with the understanding that there are many

steps to be taken, as amended. Judge Appleby seconded the motion, and it passed with Judge Pullan and Mr. Rice voting no.

8. FY21 JUSTICE COURT TECHNOLOGY, SECURITY, AND TRAINING: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Mr. Peters reviewed funding requests as approved by the Board of Justice Court Judges and the Budget & Fiscal Management Committee. Mr. Peters explained that the restricted account created by statute was designed to assist justice courts. The Board of Justice Court Judges reviews the funding requests. There was a change with regard to item 15

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
1	AOC/Information Technology	Programming and Help Desk Support for Justice Courts	\$208,806		\$208,806	Personnel costs attributable to Justice Courts for IT support
2	AOC/Information Technology	Google Accounts for Justice Court Judges and Clerks	\$22,500		\$22,500	500 licenses @ \$45 each
3	AOC/Information Technology	CORIS Infrastructure for Justice Courts	\$165,215		\$165,215	CORIS Infrastructure for Justice Courts
4	AOC/Judicial Institute (Education)	Request for Justice Courts' Share of Education's Overhead Costs	\$45,080		\$45,080	Employee Classes, Annual Judicial Conference, Training Technology, Professional Memberships and Training of Education Personnel
5	AOC/Judicial Institute (Education)	Judicial Decision Making (Ika Law and Literature)	\$1,000		\$0	The Board is not interested in doing this training virtually
6	AOC/Judicial Institute (Education)	Constitutional Law or Other Workshop	\$1,500		\$1,500	To be provided in connection with the spring conference
7	AOC/Judicial Institute (Education)	Small Claims Training for Judges Pro Tem	\$3,000		\$1,000	Small claims training provided twice each year for judges pro tem
8	AOC/Judicial Institute (Education)	New Clerk Orientation	\$1,000		\$1,000	Covers orientation for new clerks in connection with the fall conference and the spring conference
9	Board of Justice Court Judges	Trust and Confidence Committee	\$2,000		\$2,000	Funding for outreach/CLE presentations to build trust and confidence in Justice Courts
10	Board of Justice Court Judges	Computer Equipment for Judges	\$30,000		\$30,000	Funding for the cost of computer equipment for the judges
11	Board of Justice Court Judges	District Trainings	\$5,000		\$5,000	New request; previously funded by the Education Department
12	Board of Justice Court Judges	WebEx Functionality for Calling Out	\$20,000		\$0	Trial period underway; future request possible in the fall
13	Board of Justice Court Judges	Funds to Replace In-Person Training Opportunities with Distance Learning	\$50,000		\$30,000	Temporarily replaces funds for out-of-state training
14	Aurora Justice Court	Printer	\$100		\$100	Funding to purchase a new printer for the judge to use in the courtroom
15	Davis County Justice Court	Video Cart	\$547		\$0	Request to reimburse the cost of a video cart allowing parties to use their devices in court
16	Garland Justice Court	Laptop Computer for In-court Processing	\$1,000		\$500	Funding to replace an outdated laptop computer for in-court processing
17	Harrisville Justice Court	Digital Pagers for Court Patrons	\$019		\$0	Funding to purchase digital pagers for court patrons to be able to wait at a safe distance
18	Holladay Justice Court	Smart TV	\$350		\$350	Funding to purchase a smart TV for remote video hearings and appearances
19	Iron County Justice Court	LiveScan	\$6,700		\$6,700	Funding to purchase a LiveScan
20	Juab County Justice Court	Metal Detector and Recharger Kit	\$191		\$191	Funding to purchase a new metal detector and recharger kit
21	Logan Justice Court	Walk-Through Metal Detector	\$4,000		\$4,000	Funding to purchase a walk-through metal detector for the courthouse
22	Orem Justice Court	Barrier Glass for the Front Counter	\$1,338		\$1,338	Funding to purchase and install barrier glass for the front counter of the court
23	Plain City Justice Court	Security Cameras for Courthouse	\$7,408		\$0	Funding to purchase and install security cameras in and around the city building
24	Pleasant Grove Justice Court	Adobe Editing Program	\$180		\$180	Funding for software to create interactive forms
25	Salt Lake City Justice Court	Headsets	\$2,500		\$2,500	Funding to purchase 10 Cisco 562 headsets for court staff
26	Salt Lake City Justice Court	iPads	\$4,000		\$2,000	Funding to purchase 10 ipads for jury trials

27	Salt Lake County Justice Court	<u>Redesign Courtrooms and Holding Cells</u>	\$50,000		\$0	Funding to redesign the courtrooms and holding cells
28	Summit County Justice Court	<u>Tablets</u>	\$1,000		\$500	Funding to buy tablets for electronic signatures in courthouse
29	Taylorsville Justice Court	<u>Sanitizer Stations</u>	\$1,000		\$1,000	Funding to purchase four hand sanitizers (two wall mount and two free standing)
30	Utah County Justice Court	<u>Monitors for Security Cameras</u>	\$1,270		\$1,000	Funding to purchase several monitors for security cameras
31	Washington City Justice Court	<u>New Court Sound System</u>	\$8,282		\$0	Funding to upgrade the court sound system
32	Washington County Justice Court	<u>Security Signage</u>	\$617		\$660	Signage prohibiting certain items within the courthouse
33	Willard City Justice Court	<u>Laptop for Courtroom</u>	\$1,295		\$500	Funding to purchase an updated laptop for the courtroom
Total One-Time Grant Requests for FY21			\$647,778		\$533,620	

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Chin moved to approve the Justice Court Technology, Security and Training one-time funding requests, as amended as to include item 15. Judge Sessions seconded the motion, and it passed unanimously.

9. COMMISSIONER RETENTIONS: (Nancy Sylvester)

Chief Justice Durrant welcomed Nancy Sylvester. Commissioner Kim Luhn and Commissioner Sean Petersen’s term ends on December 31, 2020. Both sought recertification. The Council went into an executive session.

Chief Justice Durrant thanked Ms. Sylvester.

Motion: Judge Appleby moved to approve the recertification of Commissioner Kim Luhn and Commissioner Sean Petersen, as presented. Judge Chin seconded the motion, and it passed unanimously.

10. TASK FORCE ON RACIAL & ETHNIC FAIRNESS: LESSONS LEARNED AND RECOMMENDATIONS FOR FUTURE ACTION: (Judge Mary T. Noonan, Brent Johnson, Justice Michael Zimmerman, Judge Tyrone Medley, Dr. Jennifer Yim, and Judge William Thorne)

Chief Justice Durrant welcomed Brent Johnson, Justice Michael Zimmerman, Judge Tyrone Medley, Dr. Jennifer Yim, and Judge William Thorne. Chief Justice Durrant enjoyed meeting with the presenters to discuss the prior work of the Racial and Ethnic Fairness Task Force. Judge William Thorne said 20 years ago when the task force was created it included 100 members of the community from all levels, including law enforcement, court personnel, attorneys, etc. The task force issued a report..

Dr. Jennifer Yim felt the Judiciary was moving into a positive direction with building a bridge that will establish credibility. Judge Sessions appreciated the honesty with the history lesson and looks forward to encourage participation in the future. Justice Zimmerman noted this won’t be an easy task and will require participation from those in the system and the community. Dr. Yim believed establishing an oversight committee might be beneficial. Judge Pettit confirmed the new director would report to the State Court Administrator.

Chief Justice Durrant thanked Mr. Johnson, Justice Zimmerman, Judge Medley, Dr. Yim, and Judge Thorne.

Motion: Justice Himonas moved to have Policy & Planning work on a rule to establish the office and create an oversight committee. Judge Appleby seconded the motion, and it passed unanimously.

11. OLD BUSINESS/NEW BUSINESS

Judge Richard Mrazik, Chair of the Outreach Committee participated in a discussion about the Outreach Coordinator position. Justice Deno Himonas noted the Outreach Committee understood that the hiring of an Outreach Coordinator position has been delayed.

Judge Pettit asked if judges could use their Judicial Operations Budget for out-of-state virtual conferences. Cathy Dupont will speak with the Finance Department about clarifying that in the Accounting Manual.

12. 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.

13. CONSENT CALENDAR ITEMS

There were no consent calendar items.

14. ADJOURN

The meeting adjourned.