

JUDICIAL COUNCIL MEETING

Minutes

August 21, 2020

Meeting conducted through Webex

12:00 p.m. – 3:15 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

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

Excused:

Hon. Brian Cannell
Hon. Augustus Chin

Guests:

Hon. Brendan McCullagh, West Valley Justice Court
Christopher Williams, OLRGC

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Brody Arishita
Shane Bahr
Geoff Fattah
Alisha Johnson
Larissa Lee
Meredith Mannebach
Bart Olsen
Jim Peters
Clayson Quigley
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Jessica Van Buren
Keisa Williams
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.

On July 22, 2020 the Judicial Council by email, voted and approved to extend the public comment period from 45 days to 90 days for CJA Rule 3-101.

Motion: Judge Kate Appleby moved to approve the July 16, 2020 meeting minutes, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

2. OATH OF OFFICE: JUDGE DAVID CONNORS AND JUDGE MICHELLE HEWARD: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant conducted the Oath of Office for Judge David Connors and Judge Michelle Heward during the New Judicial Council Member Orientation prior to this meeting.

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

Chief Justice Durrant thanked everyone for attending the Annual Budget Meeting. Chief Justice Durrant and other court members met with legislators to address access to justice issues through the Supreme Court’s Regulatory Reform program. Chief Justice Durrant thanked Judge Mary T. Noonan and Cathy Dupont for their remarkable work.

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

Judge Noonan welcomed Chris Williams who recently joined the Office of Legislative Research and General Counsel. At the end of this fiscal year the court returned funds from the Main Line General Fund (\$560,500) and Contracts and Leases General Fund (\$459,100). The EOCJ approved returning those funds to the Judiciary and approved an additional \$1.5M to fill 25 of the 50 vacant JA positions. Judge Appleby commended all involved with this effort.

5. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Mark May said the work of the committee was discussed at the Budget meeting.

Liaison Committee Report:

Judge Kara Pettit noted the committee has not met. Michael Drechsel has been working on a couple of bills. Ann Marie McIff was confirmed by the Senate to the Fifth District Court (new position) and Tasha Williams was confirmed by the Senate to the Second District Juvenile Court. Mr. Drechsel is preparing a memorandum addressing conflicts between federal and state laws.

Policy and Planning Committee Report:

Judge Derek Pullan highlighted that a policy decision was made by the committee to reject an amendment request to remove the notarized section on consent forms.

Bar Commission Report:

Rob Rice said the Bar Commission has not met recently. The Fall Forum will be held entirely online over a couple of days. The Spring Convention 2021 is scheduled to be held in person in St. George. The Summer Convention 2021 is scheduled to be held in Sun Valley.

6. ABILITY-TO-PAY MATRIX AND UNSECURED BONDS: (Keisa Williams and Michael Drechsel)

Chief Justice Durrant welcomed Keisa Williams and Michael Drechsel. HB 206 becomes effective on October 1, 2020, at which point the pretrial release decision-making process will include a requirement that judges impose the “least restrictive reasonably available conditions”

that will “reasonably ensure” court appearance, public safety, and the integrity of the judicial process. If a financial condition is deemed necessary under that standard, judges must consider an individual’s ability-to-pay the amount set.

The Pretrial Release and Supervision Committee developed an ability-to-pay matrix to assist judges in determining affordable monetary bail amounts, and unsecured bonds. The Committee is recommending that the Judicial Council implement the matrix statewide and encourage the use of unsecured bonds.

Keisa Williams has been working with the Department of Public Safety, BCI, the Sheriffs’ Association, the Chiefs of Police Association, and county jails on a mechanism to provide judges with some financial information at the PC phase. A solution has been identified with an October 1 completion for law enforcement officers to ask arrestees two questions: 1) gross household income, and 2) number of dependents. Any information obtained will be made available in Judicial Workspace. Internal AOC programming will be required. Ms. Williams is working on a JAG grant to pay for associated one-time costs and the work will need to be prioritized by the IT Department.

Much like the old bail schedule, the ability-to-pay matrix is meant to provide guidance and encourage uniformity. Unlike the old bail schedule, the matrix is not charge-based and would be used in conjunction with an individualized assessment of the defendant.

H.B. 206 provides an exception to the ability-to-pay analysis requirement for unsecured bonds. Unsecured bonds are essentially an IOU with the court – a “written undertaking without sureties.” Defendants would not be required to pay any money upon release, but if they failed to appear the bond could be forfeited and a judgment entered in the amount listed on the bond.

Numerous states and jurisdictions across the country have been using unsecured bonds for years. Two Pretrial Justice Institute studies found that unsecured bonds are as effective as secured bonds in achieving court appearance and public safety, while decreasing the pretrial jail population. Taylorsville Justice Court has been using unsecured bonds for over five years with great success. In that time, only two unsecured bonds have been forfeited. Taylorsville reports that the vast majority of defendants are grateful for the opportunity and show up to court.

Brody Arishita reviewed what changes would be made to the system. Judge Connors agreed with this for misdemeanor cases but questioned their effectiveness on felonies. Ms. Williams noted the current studies did not break down statistics by charge.

Chief Justice Durrant thanked Ms. Williams and Mr. Drechsel.

Motion: Judge Farr moved to approve the Ability-to-Pay Matrix and support in concept the procedure for unsecured bonds, as presented. Judge Pettit seconded the motion, and it passed unanimously.

7. CJA RULES FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved Code of Judicial Administration Rules 3-402, 4-403, 4-202..08, 4-106, 4-411, 6-506, 9-101, and 9-109 for public comment. During the 45-day comment period, one comment was received on Rule 3-402 and four comments were received on Rule 4-411. Policy and Planning reviewed the comments and made one amendment to the published draft of Rule 3-402. No amendments were made to the published draft of Rule 4-411. The Policy and Planning Committee recommended the following rules to the Judicial Council for final approval.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Farr moved to approve Code of Judicial Administration Rules 3-402, 4-403, 4-202..08, 4-106, 4-411, and 6-506, as presented, with an effective date of November 1, 2020. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve Code of Judicial Administration Rules 9-101 and 9-109, as presented, with an effective date of August 21, 2020. Judge Pettit seconded the motion, and it passed unanimously.

8. A SURVEY OF DRUG COURT SANCTIONS – PRICE, UTAH: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel was inspired with Ms. Williams work on HB206. The legislative auditor was contacted about a concern that females were subjected to jail time more regularly or for longer terms than males. The auditor found:

- Use of jail time appears to be limited in duration and frequency in recent years.
- A Sanction/Incentive Matrix is in place. This gives guidelines as to what level of sanction or incentive a judge can give based on the Drug Court task accomplished or offense committed. Sanctions can range from community service hours to incarceration. However, the Seventh District Drug Court’s practice is to consider other sanctions before considering jail time.
- The Judicial Council certifies each drug court, based upon assessment and information collected by Administrative Office of the Courts staff. The certification is based on implementation of national best practices from the National Association of Drug Court Professionals.
- Limited tracking of outcomes does exist.

The auditor did not find gender-bias in this audit. The auditor did not feel as though they needed additional work on this.

Chief Justice Durrant thanked Mr. Drechsel.

9. JUSTICE COURT REFORM TASK FORCE UPDATE: (Judge Paul Farr and Jim Peters)

Chief Justice Durrant welcomed Judge Paul Farr and Jim Peters. Senator Kirk Cullimore provided proposal on small claims cases. They’ve researched this topic in other states. Their next meeting in September will include a presentation on circuit courts from Justice Michael

Zimmerman, Dr. Jennifer Yim, and Joanna Landau. Justice Himonas will speak about ODR at a future meeting. Many legislators and have requested updates from the Task Force. A proposal arose to better utilize the magistrate functions of justice court judges. There is not a requirement to be an attorney to conduct magistrate functions. Moving debt collection cases to the justice courts would probably need a centralized structure. They will hold additional discussions on this in the future.

Chief Justice Durrant thanked Judge Farr and Mr. Peters.

10. AMENDMENTS TO RULE 3-413. JUDICIAL LIBRARY RESOURCES: (Judge Mary T. Noonan, Larissa Lee, and Jessica Van Buren)

Chief Justice Durrant welcomed Judge Mary T. Noonan, Larissa Lee, and Jessica Van Buren. The Law Library and Self-Help Center are currently housed under the appellate umbrella. However, these departments are often treated as being housed under the Administrative Office of the Courts and logistically make more sense under the AOC. We recommend that the Judicial Council approve moving the Law Library and Self-Help Center under the AOC's umbrella and amend the attached rule to have the Law Library Director report to the State Court Administrator rather than the Appellate Court Administrator. This move would remove some unnecessary bureaucracy because Jessica's departments function much more like an AOC department rather than a court level and are deeply involved in AOC operations. Jessica attends the AOC Director meetings and her staff attends the AOC staff meetings and parties. Jessica is the only person considered an "AOC Director" who does not report directly to the State Court Administrator.

Chief Justice Durrant thanked Judge Noonan, Ms. Lee, and Ms. Van Buren.

Motion: Judge Appleby moved to approve moving the Law Library and Self-Help Center to the supervision of the State Court Administrator and to approve amendments to CJA Rule 3-413, the purchase of the Code books, with an effective date of August 21, 2020, as presented. Judge Pullan seconded the motion, and it passed unanimously.

11. MYCASE UPDATE: (Heidi Anderson and Judge Kara Pettit)

Chief Justice Durrant welcomed Heidi Anderson and Judge Kara Pettit. Heidi Anderson reviewed the MyCase timeline. In the fall of 2018 the MyCase project began. In early 2019 a schedule was developed for this program. In April 2019 pilot locations were selected. Internal testing began in July 2019. By September 2019 the MyCase program was deployed in Workspace and went live in the West Valley Justice Court. In April 2020 discussions began for using this program for protective orders. MyCase allows individuals to track their court information, make payments to the courts, and use in tandem with the ODR program. Case types eligible include infractions, state felonies, parking citations, parking court cases, traffic citations, traffic court cases, divorce/annulments, temporary separations, misdemeanor cases, and other misdemeanors.

Limitations to MyCase are that this is a case based program, not an individual based program and that this is limited to public documents. They are working on 1) Data validation, 2) Case linking, and 3) Marketing. They are working on development resources for 1) Pro se e-filing, 2) Hearing documents, 3) Private documents, and 4) Notices. Judge Shaughnessy said this

will help with the clerks not having to mail many documents to pro se litigants and felt getting this operational sooner than work on upgrades and enhancements. Ms. Anderson agreed with that approach and noted the system is ready. However, the marketing has not been done to notify the public that they can have access. Plus, the courts need to train internally on this. Judge Shaughnessy said one possibility would be to mail out a notice to all active pro se cases. The committee agreed to move forward with the program and have this item addressed with the Management Committee at a future date.

Chief Justice Durrant thanked Ms. Anderson and Judge Pettit.

12. UTAH STATE BAR FOUNDATION JOINT GRANT: (Geoff Fattah, Nancy Sylvester, and Brent Johnson)

Chief Justice Durrant welcomed Geoff Fattah, Nancy Sylvester, and Brent Johnson. Geoff Fattah presented an estimate of advertising costs for the PSA Campaign. Mr. Fattah recommended the courts invest in a month-long public service ad campaign through radio and Facebook. Mr. Fattah recommended the slogan “Let the Courts Come to You.” The total cost for this campaign would be \$34,000. The Bar has approximately \$10,000 and could perhaps give the courts a portion of that. The Budget & Fiscal Management Committee approved this request in the amount of \$34,000. Mr. Rice noted the Bar Foundation is separate from the State Bar.

Chief Justice Durrant thanked Mr. Fattah, Ms. Sylvester, and Mr. Johnson.

Motion: Justice Himonas moved to approve submitting a grant request to the Bar Foundation, as presented. Judge Appleby seconded the motion, and it passed unanimously.

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

Chief Justice Durrant welcomed Judge Mark May and Karl Sweeney. The Judiciary receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY2020 are normally to be spent between July 1, 2019 and June 30, 2020; however the Legislature has approved the Judiciary carryforward funds of approximately \$3.2 million in unspent FY2020 funds into FY2021.

Item 20. Utah Code Books – Appellate Court

Jessica Van Buren

\$4,648 one-time funds

Fulfill request by Appellate Court to supply each Appellate judge a hard copy of the Utah Code and Rule books since they would otherwise share a single set among all judges.

Item 21. Upgrade Court Services’ Analytics Software

Clayson Quigley

\$40,000 one-time funds

Upgrade Court Services’ Cognos Analytics software from 11.0.7 to 11.1.6. Judge Pettit said the Budget Committee questioned whether a software upgrade was the correct path or could the court do something on this end and whether the software upgrade is supported. Heidi Anderson provided some insight on this program request. Mr. Sweeney said there is \$300,000 in

carryforward funds available so he hesitates to leave it out of the approval process in case other requests come up before the questions on this could be answered. Mr. Quigley said an upgrade would help with data collection and an upgrade would allow for analyst training. Judge Pullan questioned whether this is the right vendor to work with if the errors they are experiencing may be related to the vendor and not the older system. Ms. Anderson will work with the vendor to ensure those errors are resolved.

Item 22. Weighted Caseload Analysis

Clayson Quigley

\$17,000 one-time funds

Conduct a third party analysis of our Weighted Caseload methodology.

Item 23. One-month Public Service Ad Campaign for COVID-related Outreach

\$34,000 one-time funds

This will fund a one-month statewide public service ad campaign in English and in Spanish, encouraging the public to call or email the courts, rather than come in person during the pandemic.

Item 24. IT Inventory for Computer, Printer, Scanner and other Peripherals

Replacements

\$150,000 one-time funds

The IT Division has established an annual desktop and laptop replacement schedule that provides for each unit to be replaced once every five years. The Division has annually for the past two years requested \$250,000 for the program—this request for \$150,000 takes into account that an inventory of laptops currently exists (funded through CARES purchases) to draw from and laptops will not need to be funded from this request.

Item 25. IT Webex Virtual Hearing Improvement Project

\$150,000 one-time funds

The funding request is to enable some additional functionality within Webex to ease the use and attendance for the hearings.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge May moved to approve Utah Code Books – Appellate Court (\$4,648) using FY20 carryforward funds, as presented. Judge Sessions seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to reject the Upgrade Court Services’ Analytics Software (\$40,000), as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve Weighted Caseload Analysis (\$17,000) using FY20 carryforward funds, as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve One-month Public Service Ad Campaign for COVID-related Outreach (\$34,000) using FY20 carryforward funds, as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Appleby moved to approve IT Inventory for Computer, Printer, Scanner and other Peripherals Replacements (\$150,000) using FY20 carryforward funds, as presented. Judge Farr seconded the motion, and it passed unanimously.

Motion: Judge Farr moved to approve IT Webex Virtual Hearing Improvement Project (\$150,000) using FY20 carryforward funds, as presented. Judge Sessions seconded the motion, and it passed unanimously.

14. OLD BUSINESS/NEW BUSINESS

Judge John Walton asked about whether the courts will hold spring conferences. Judge Noonan said principally due to budget cuts a decision has not been made, however, if they are to be held, they will be held virtually. Cathy Dupont clarified that the funds are not available for in-person conferences but they are available for virtual conferences.

Judge May asked if the Council would approve changing the Director of the Office of Fairness and Accountability request from \$100,000 to \$120,000.

Motion: Judge Connors moved to approve expanding the Director of Fairness and Accountability request from \$100,000 to \$120,000 to include additional office expenses. Judge Appleby seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION

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

16. CONSENT CALENDAR ITEMS

a) Forms Committee Forms. Petition to register Office of Recovery Services (ORS) support order, Order on petition to register Office of Recovery Services (ORS) support order, Subpoena, Notice to persons served with a subpoena, Objection to subpoena, Declaration of compliance with subpoena, Application for subpoena under the Utah Uniform Interstate Depositions and Discovery Act, and Notice of deposition and request for subpoena in case pending out of state. Approved without comment.

b) Committee Appointment. Appointment of Brent Hall, Lisa Lokken, Anna Thomas, Dr. Alex Jensen, and Amanda Alkema to the Standing Committee on Children and Family Law. Approved without comment.

17. ADJOURN

The meeting adjourned.