

# JUDICIAL COUNCIL MEETING

Minutes  
Monday, June 27, 2016  
Judicial Council Room  
Matheson Courthouse  
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

## ATTENDEES:

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Derek Pullan  
Hon. Randall Skanchy  
Hon. Kate Toomey  
John Lund, esq.

## EXCUSED:

## STAFF PRESENT:

Daniel J. Becker  
Jody Gonzales  
Debra Moore  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Geoff Fattah  
Melisse Stiglich  
Nancy Sylvester  
Keisa Williams  
James Ishida

## GUESTS:

Hon. Rick Romney  
Colin Winchester

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Toomey moved to approve the minutes from the May 23, 2016 Judicial Council meeting. Judge Skanchy seconded the motion, and it passed unanimously.

### **OATH OF OFFICE: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the Oath of Office to Judge Derek Pullan.

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

Chief Justice Durrant mentioned that this would be Mr. Shea's last Council meeting. He acknowledged Mr. Shea's many contributions to the Utah court system and wished him well in his upcoming retirement.

Recently the Supreme Court requested an audit of the Bar's disciplinary process. Members of the Supreme Court met with the ABA audit team last week to provide preliminary thoughts and improvements to be considered as they review the Utah State Bar's Office of Professional Conduct. A report should be prepared and disseminated in a couple of months.

### 3. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

Retirement. Mr. Becker expressed his appreciation and gratitude to Mr. Shea as a valued member of the Utah courts. Mr. Shea will be missed.

Appellate Court Administrator. Mr. Becker introduced and welcomed Mr. James Ishida to the Council. He provided his background and work experience.

Supreme Court Decision – Jury Trials in Small Claims Cases. Mr. Becker provided background information on the decision and the effect on small claims cases. It was determined to create an ad hoc committee to address the matter further. Membership of the ad hoc committee would be appointed jointly by the Supreme Court and the Judicial Council. Members of the committee include:

- Judge Kate Toomey, committee chair; Judge Ryan Harris; Judge George Harmond; Judge Brendan McCullagh; Judge Catherine Hoskins; Judge Reuben Renstrom; and Mr. Rod Andreason
- Staff – Ms. Keisa Williams and Mr. Rick Schwermer

Provo Courthouse. The groundbreaking ceremony for the new Provo Courthouse was held on May 24 with the Chief Justice providing an introduction and comments.

First District TCE. Mr. Brett Folkman was appointed as the First District trial court executive. Mr. Becker provided his background and work experience and mentioned that he begins working in this capacity today.

Justice Court Administrator. The job announcement for the justice court administrator position closed last Thursday. A review of the applicants is taking place. Interviews are forthcoming.

Nominating Commission. Mr. Becker reviewed the nominating commission process and schedule as outlined by Mr. Ron Gordon, Executive Director of the Utah Commission on Criminal and Juvenile Justice, regarding the timeliness of filling judicial vacancies.

A new administrative rule concerning the judicial nominating process will be issued by the Governor's office to go out July 1. The rule is intended to codify, in rule, information that is on the application currently. He highlighted the three additions to the administrative rule regarding the evaluation criteria: 1) when evaluating applicants interested in judgeships in juvenile court, commission members should consider the applicant's interest in understanding of and experience with issues and problems facing children and families; 2) when evaluating applicants interested in judgeships in the Appellate Courts, commission members shall consider the applicants ability to give and receive criticism of opinions and arguments without taking offense; and 3) when reviewing applicants whose qualifications, taken as a whole are comparable, it is relevant to consider the background and experience of the applicant in relation to the current composition of the bench of which the appointment is being made. Gender and race and other relevant factors can be taken into consideration at this time.

Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court. Mr. Becker mentioned that the Management Committee, at their June meeting, approved the study committee membership. Members of the study committee include:

- Staff – Brent Johnson and Mr. Rick Schwermer
- Justice John Pearce, committee chair; Judge Kim Hornak; Judge Ryan Evershed; Representative Lowry Snow; Mr. Ron Gordon; Mr. Ben Gordon; Mr. Jason Richards; Ms Pam Vickery; Ms. Carol Verdoia; Ms. Stacey Snyder; Mr. Lincoln Schurtz; and Mr. Jonathan Pace

Council Terms. Mr. Becker reminded members of the council terms expiring this year.

- Justice Thomas Lee's term filling the remainder of Justice Jill Parrishes' second term
- Judge Toomey's term filling the remainder of Judge James Davis' first term
- Judge Pullan serving the balance of Judge David Mortensen's second term
- Judge Randall Skanchy's first term
- Judge Thomas Higbee's first term

#### **4. COMMITTEE REPORTS:**

##### ***Management Committee Report:***

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

##### ***Liaison Committee Report:***

No meeting was held in June.

##### ***Policy and Planning Meeting:***

Judge Parkin reported that the Policy and Planning Committee met last week, and they will not meet in July. There are no items for consideration on today's agenda.

##### ***Bar Commission Report:***

Mr. Lund reported on the following items: 1) the Bar's upcoming Summer Convention to be held July 6-9 at the Loews Coronado Bay Resort in Coronado, CA; 2) provided an update on the launch of the online lawyer directory; and 3) creation of a card with information of the online lawyer directory to be handed to court patrons is progressing.

#### **5. LANGUAGE ACCESS COMMITTEE UPDATE: (Judge Rick Romney and Keisa Williams)**

Chief Justice Durrant welcomed Judge Romney and Ms. Williams to the meeting.

Judge Romney highlighted the following in his update: 1) membership of the committee, 2) accomplishments, 3) routine matters, and 4) items to address in the future.

Ms. Williams demonstrated use of a Language Map application developed by the Department of Justice to provide data in counties across the United States on non-English languages spoken in each county which would be valuable in evaluating future interpretation needs.

The status of providing remote interpretation statewide was questioned. Mr. Becker provided a response, noting that staff interpreters from Salt Lake City provide the remote interpretation services to the various remote access locations. The ability to provide remote interpretation statewide would require additional funding.

Judge Romney was asked a question regarding the matter of capturing the foreign language for the record. He provided a response. Ms. Williams responded by noting that the issue is relative to not capturing whispered conversations during the proceedings and conversations outside of the courtroom that would be pertinent to capture relative to the case. A subcommittee meeting will be held this week to address the matter further. The systems being used by the National Center for State Courts for delivering remote interpretation will be reviewed for possible application in Utah.

Chief Justice Durrant thanked Judge Romney and Ms. Williams for their update.

**6. JUDICIAL CONDUCT COMMISSION UPDATE: (Colin Winchester)**

Chief Justice Durrant welcomed Mr. Winchester to the meeting.

Mr. Winchester highlighted the following in his update: 1) the Commission currently meets bi-monthly or six times yearly; 2) the Commission has received 90 complaints this fiscal year; 3) requested permission from Ms. Cynthia Gray of the National Center for State Courts (NCSC) to be able to distribute a copy of a publication entitled *Ethical Issues for New Judges* to new judges--awaiting approval; 4) acknowledged current Commission appointments and reappointments.

Appointments/Reappointments. Mr. Winchester reported that Judge Todd Shaughnessy, Judge Stephen Roth and Mr. James Jardine were reappointed to the Commission. Two Commission appointments by the Governor's office are pending.

Questions were asked of Mr. Winchester, and he provided responses.

Chief Justice Durrant thanked Mr. Winchester for his update.

**7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Rick Schwermer)**

Mr. Schwermer provided an update on behalf of Judge Michele Christiansen. The committee received two complaints in the last year with the complaints stemming from the outcome of the court cases. He reminded the Council that all members of the committee are ex officio members.

**8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer highlighted the following in his legislative and interim committee update:

1) the interim committee met earlier this month, 2) the matter of tobacco settlement funds before the Executive Appropriations Committee, 3) update of justice reinvestment initiative matters, 4) the Judiciary Interim Committee's study on justice courts and the effect of JRI implementation on justice courts, 5) the change of moving Class C misdemeanors to infractions, 6) sunset review of the Crime Reparation Board, 7) discussion of death penalty costs before the Law Enforcement Committee, 8) Representative Lowry Snow offered to open a bill to address the needs for an additional judgeship in the Fifth District Court, and 9) members of the Indigent Defense Commission (IDC) were confirmed by the Senate.

Members of the Indigent Defense Commission include:

Sam Alba, Patrick Anderson, Wally Bugden, Mary Corporon, Nicole Cottle, Ron Gordon, Claudia Jarrett, Ryan Loose, Senator Todd Weiler, David Wilson, retired judge Michael Zimmerman, and Rick Schwermer (non-voting member).

A meeting of the Commission will take place next week to review the applicants for the executive director position.

**9. FOURTH DISTRICT LOCAL RULE: (Debra Moore)**

Ms. Moore reviewed the Rule 10-1-407 – Time to charge – the proposed local rule for the Fourth District as approved by the Board of District Court Judges, effective August 1, 2016. The Board of District Court Judges recommended approval of the rule for public comment.

Ms. Moore highlighted the rule to include:

- A person arrested for a non-petty offense, who is unable to post bail and remains in custody, shall be taken before a district judge before the close of business on the fourth business day after arrest.

- If a criminal information has not been filed by the time of the hearing, the arrestee shall be discharged and the matter closed without prejudice unless the State is allowed additional time to screen and charge.
- The court shall consider a request for additional time to screen and prepare charges if presented in writing, by counsel for the State. The request shall be granted for a reasonable period of time upon a showing of good cause.
- If a criminal information has not been prepared and no order for additional time to screen and file charges has been made, the arrestee will be released without requirement for bail or surety but upon promise to appear on the first appearance calendar one week or less at a future date.

Judge Pullan provided background information regarding preparation of Rule 10-1-407 – Time to charge as a proposed local rule for the Fourth District.

Discussion took place.

The process for approving a local rule and the Standing Committee on Pretrial Release planned consideration of a related issue was noted.

**Motion:** Mr. Lund moved to approve Rule 10-1-407 – Time to charge, on an expedited basis for public comment, as a local rule for the Fourth District, effective August 1, 2016. Judge Toomey seconded the motion, and it passed unanimously.

#### **10. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)**

Judge Lee Bunnell has applied for appointment as an active senior Judge. He meets the minimum performance standards, and the Board of Justice Court Judges recommended his appointment as an active senior judge.

**Motion:** Judge Marx moved to forward the recommendation to appoint Judge Lee Bunnell as an active senior judge, on behalf of the Council, to the Supreme Court. Justice Lee seconded the motion, and it passed unanimously.

#### **11. JUSTICE COURT NOMINATING COMMISSION MANUAL AND APPLICATION CHANGES: (Melisse Stiglich)**

Chief Justice Durrant welcomed Ms. Stiglich to the meeting.

Mr. Schwermer introduced Ms. Stiglich, Justice Court Program Administrator, to the Council members and outlined what her position encompasses. He mentioned that she will also manage the ODP program.

Ms. Stiglich reported on the changes made to the *Manual of Procedures for Justice Court Nominating Commissions* and the *Application for Judicial Office* for justice court judge applicants.

Due to legislation passed in the 2016 Legislative Session with regard to HB 160 – Justice Court Amendments, the proposed changes were made to the *Manual of Procedures for Justice Court Nominating Commissions* to include:

- It is a requirement in counties of the first and second class that a justice court judge shall have a degree from a law school that makes one eligible to apply for admission to a bar in any state.

- If, in counties of the first and second class, there are not at least three qualified applicants; the position shall be re-advertised and applications may be accepted from applicants, statewide, rather than from applicants who are residents of the county or adjacent county in which the court is located. With these circumstances, the applicants would only be required to have, at a minimum, a high school diploma or GED.

Ms. Stiglich reviewed the changes made to the *Application for Judicial Office* for justice court judge applicants to include: 1) changes resulting from HB 160, 2) formatting changes, 3) instruction clarifications, and 4) the issue of diversity as shown on the current application, determining that no changes would be made.

The matter of diversity, as outlined on the justice court judge application, was discussed further.

**Motion:** Judge Toomey moved to approve the proposed changes as recommended for the *Manual of Procedures for Justice Court Nominating Commissions* and the *Application for Judicial Office* for justice court judge applicants. Judge Pullan seconded the motion, and it passed unanimously.

**Motion:** Judge Skanchy moved to enter into an executive session to address a personnel matter. Judge Bagley seconded the motion, and it passed unanimously.

## **12. EXECUTIVE SESSION**

An executive session was held at this time.

## **13. ADJOURN**

The meeting was adjourned.