

# JUDICIAL COUNCIL MEETING

**Minutes  
March 9, 2018**

**Hyatt Place  
1819 South 120 East  
St. George, Utah 84790  
12:30 p.m. – 4:00 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Attendees:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Kate Toomey, Vice Chair  
Hon. Augustus Chin  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. Mary Noonan  
Hon. Kara Pettit  
Hon. Derek Pullan  
Hon. Todd Shaughnessy  
Hon. John Walton  
Rob Rice, esq.

**Staff:**

Richard Schwermer  
Ray Wahl  
Shane Bahr  
Cathy Dupont  
Jim Peters  
Dawn Marie Rubio  
Jacey Skinner  
Jeni Wood

**Excused:**

Justice Thomas Lee

**Guests:**

John Baldwin  
Jim Bauer  
Dickson Burton  
Judge David Connors  
Brett Folkman  
John Lund  
Justice Paige Petersen  
Judge Andrew Stone

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

Chief Justice Matthew Durrant welcomed everyone to the meeting. Chief Justice Durrant noted Justice Paige Petersen is attending on behalf of Justice Thomas Lee.

**Motion:** Judge Kate Toomey moved to approve the minutes from the February 26, 2018 Judicial Council meeting. Judge Kara Pettit seconded the motion, and it passed unanimously.

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

Chief Justice Durrant thanked all of the individuals who were involved with the legislative session this year. Chief Justice Durrant thanked Judge David Connors for speaking at our appropriations committee meeting on the Court Visitor Program. Chief Justice Durrant thanked Jacey Skinner for her endless energy in supporting the courts during this session.

**3. ADMINISTRATOR'S REPORT: (Richard Schwermer)**

Richard Schwermer said that following a recent meeting with the Speaker and other Legislators, the new pretrial release program, with a minor change to the MOU, would move forward. Mr. Schwermer said the courts will begin using the new program in April or May. Mr. Schwermer reported district court filings overall are up 1%; justice court filings overall were up 5%, including an 11% increase of traffic citations; and juvenile court filings were down 11%, with that decrease attributed to a reduction of 70% in contempt filings. The decrease in contempt filings is due to the changes from H.B. 239.

State auditors recently conducted an AOC audit including controls in place for purchases, cash disbursement, payroll and surcharges. There will be an audit exit meeting within the next couple of weeks. Mr. Schwermer noted the new director of audit for the Courts, Julie Wrigley, started last week. Ms. Wrigley comes from the State Auditor's Office.

Mr. Schwermer next discussed the cases under advisement issue and noted a work-group has been created consisting of representatives from various court levels. The work-group will address rule and policy changes to assist judges in meeting the 60-day guideline, and will report back to the Council shortly.

**4. COMMITTEE REPORTS:**

***Management Committee Report:***

The committee's work is reflected in the minutes.

***Liaison Committee Report:***

Judge Paul Farr said the committee will meet in a couple of weeks to finalize their work with this legislative session. Judge Farr noted Jacey Skinner has been a great asset.

***Policy and Planning Meeting:***

Judge Derek Pullan highlighted a few tasks the committee is working on. They include forming a subcommittee to review the new Human Resources professional appearance policy; addressing court security rules; and monitoring the Law X project. Judge Pullan noted the committee will be working with Judge Fuchs to review and amend the problem-solving court rules.

***Bar Commission Report:***

Rob Rice thanked Judge Toomey for her attendance at the Bar Commission to discuss the LPP program. The State Bar approved \$37,000 request to pay consultants to draft validated certification tests for LPP program. Chief Justice Durrant asked Mr. Rice to thank the Bar Commissioners for their continued hard work.

**5. BUDGET UPDATE: (Richard Schwermer)**

Mr. Schwermer said the courts partnership with the Bar is invaluable. Mr. Schwermer distributed and reviewed the Judicial Council FY19 Budget Request. Mr. Schwermer noted that Judge Connors and Lisa Towner presented to our appropriations committee regarding the Court Visitor Program, which was approved with permanent on-going funds. Shane Bahr noted there is a Court Visitor Volunteer Recognition scheduled in the Supreme Court rotunda on Monday March 13 at 3:00 pm if anyone would like to attend.

Mr. Schwermer said Chris Palmer testified several times before various committees on behalf of the counties court security funds request. Jacey Skinner said the appropriations committee was aware the court security request came from the counties and not the courts. The \$500,000 one-time appropriation by the Legislature, along with the increased traffic citations will assist in additional funding for court security in the counties.

The jury/witness/interpreter program has an annual deficit of approximately \$1 million. The program was funded with \$2 million one-time funding and \$1 million on-going funds. Ray Wahl said Governor Herbert and the Board of Examiner always supported additional ongoing funds for this program rather than funding the deficit in with one-time monies.

The only request not funded was the one-time funding for a replacement server. The Council will address options for this replacement and other hardware replacement issues at the April meeting. Judge Pullan would like to review the plan that tracks the estimated life span of the courts' computers and systems.

**6. LEGISLATIVE UPDATE: (Jacey Skinner)**

Chief Justice Durrant welcomed Jacey Skinner. Ms. Skinner provided a summary of the legislation this year. There was a record of over 1,300 bill requests, with over 500 passing; and there were 58 resolutions passed.

Ms. Skinner invited several legislators to come to the court to attend hearings and meet with judges so they can learn how the courts operate. Ms. Skinner requested judges let her know if they are interested in having legislators come to their courtrooms. Ms. Skinner explained several bills that passed, including H.B. 198 Attorney General Amendments; S.B. 171 Intervention as a right. Ms. Skinner discussed HB 248 Compensatory Service in Lieu of Fine Amendments that passed requiring a community service option for misdemeanors. Judge David Connors said this might be difficult when someone is convicted of multiple levels of charges because one fine is imposed for all convictions in a case. H.B. 239 was amended to address truancy, custody status, and what charges would need to go to the prosecutor before being sent to the probation officer.

Ms. Skinner next addressed the new DUI law that reduces the legal limit to .05, effective in December 2018.

There were several bills addressing guardianship cases. Judge Connors explained that the district court must appoint both parents as co-guardians when their disabled child turns 18 years old, unless a parent is unwilling or unable in S.B. 182 Guardianship Amendments.

Mr. Schwermer thanked Ms. Skinner for a terrific job. Mr. Schwermer said having Jacey Skinner and Cathy Dupont's perspective from previously working at the Capitol with the Legislature was a great asset. Mr. Schwermer additionally thanked Judge David Connors, Judge Paul Farr, Judge Thomas Higbee, Judge Mary Noonan, Judge Kara Pettit, Ray Wahl, Brent Johnson, Shane Bahr, Dawn Marie Rubio, Jim Peters, John Bell, Kim Allard's department, Katie Gregory and Krista Airam for their legislative support.

## **7. TCE REPORT: (Jim Bauer and Brett Folkman)**

Chief Justice Durrant welcomed Jim Bauer and Brett Folkman. Mr. Bauer noted he recently moved from Michigan, where he worked in their court system. He noted the Utah court system is very advanced; including the merit selection of judges, well-developed governance structure, technology, and the self-help center.

### TCE Update

- 2017 TCE appointments: Krista Airam - Second Juvenile Court, Mark Urry - Fourth District Court, Joyce Pace - Fifth District Court, and Travis Erickson moved from the Second Juvenile TCE position to the Seventh District TCE position.
- Districts filled 100 clerical, 35 probation and 10 law clerk positions in 2017.
- Coaching/Performance Management Protocol Replaced Annual Performance Evaluations.
- As part of the court's education and succession planning, staff continue to attend the court skills academy, mid-management academy and the Michigan State University Judicial Administration program.

### District Court

- Electronic Submissions of Probable Cause Affidavits
- Status of CLE webcasts to courthouses
- Court Security contracts
- Cases under advisement reporting

### Juvenile Court

- H.B. 239 implementation dates: August 1, 2017 and July 1, 2018
  - Impact on Districts
  - NJ Funding Status
- Third Juvenile received OJJDP funding through the Center for Children and Family Futures for National Evaluation and Technical Assistance for Family Drug Courts
- Third Juvenile was selected by the National Council of Juvenile and Family Court Judges and National Research Team to participate in evaluating the Juvenile Drug Court Treatment Guidelines
- Future of Juvenile Work Crews

Mr. Folkman thanked Dawn Marie Rubio and Shane Bahr for their continued assistance with a fairly new group of TCE's. Mr. Folkman said clerical positions have a higher turnover rate than in the past due to higher pay jobs being available, staff leaving the court to start families and some staff leaving to get advanced degrees. The TCE's are studying the issue of clerical pay, which they believe is the top issue in retention of staff. Justice Paige Petersen said flexible schedules might help with the turnover rate.

The performance evaluation system has been replaced with a mentoring and frequent check in process, which they believe is working well. Mr. Bauer said the new process increases communication between the supervisor and employee. Mr. Folkman said the education department provides a skills academy for future managers, a middle-management academy, and a Michigan State University program for managers that result in a certificate in judicial administration. These programs were explained and have been very successful.

Mr. Folkman said he and Mr. Bauer have been assisting the Bar with CLE courses held at courthouses. The attendance rate has dwindled considerably. There is a bit of lost communication with the Bar as well. Ray Wahl said the Bar committed to providing a Bar representative to attend the CLE's to assist with sign-ups, however, this assistance has not always been available. Mr. Rice said he will follow up.

The TCE's are working on the cases under advisement reports. Mr. Bauer noted the changes in H.B. 239 caused the courts to restructure the juvenile courts. Mr. Bauer said the Third District family dependency drug court received a 2-year grant for technical assistance.

#### **8. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Andrew Stone and Shane Bahr)**

Chief Justice Durrant welcomed Judge Andrew Stone. Judge Stone became the Chair of the Board of District Court Judges in November 2017. There are 11 members on the Board; more than half of the members are new to the Board. Judge Stone mentioned a few projects the Board is working on. The consolidation of probation cases rule is complete and has been sent to the Policy & Planning Committee. One of the goals that should be complete this year is an online version of the bench books.

Judge Stone said the Board is looking for additional online resources for to assist with training new judges and the Board is looking at ways to assign law clerks areas of the bench books to maintain and update. Judge Pullan offered to have someone from Policy & Planning attend a Board meeting to discuss the problem-solving courts rules and process.

#### **9. UTAH STATE BAR WELCOME AND REPORT: (John Lund, Dickson Burton, and John Baldwin)**

Chief Justice Durrant welcomed John Lund, Dickson Burton, and John Baldwin. Mr. Lund introduced Dickson Burton as the Bar's president-elect. Mr. Lund thanked the Council for holding this meeting in St. George in conjunction with the Bar's Spring Conference. Mr. Lund said the Bar is working on how attorneys can be more accessible and useful to litigants. The Bar Commission authorized research on this subject. Mr. Burton said the Bar conducted a survey

and the results showed that individuals who interact with attorneys tended to have a more positive perception of lawyers than those who do not.

Mr. Lund said there has been discussion about including more attorneys who represent diverse perspectives in bar membership. The Bar is also working to better train attorneys. Justice Petersen said she noticed young lawyers who are in large law firms possess better skills in a courtroom because the law firms typically have a mentoring program, whereas lawyers who are not in a large law firm do not have the same opportunity for mentoring. Mr. Lund said he welcomes any recommendations from the courts. The Bar has a list-serve of practice areas, such as criminal cases. This allows attorneys to contact other attorneys on the list specific to their questions. Mr. Baldwin said the litigation section is going to conduct education courses that will include practical courtroom demeanor tips. Judge Todd Shaughnessy said keeping the law schools engaged in practical training for lawyers who will be in a solo practice would be beneficial.

**10. UNIFORM FINE AND BAIL COMMITTEE APPOINTMENT: (Shane Bahr)**

Mr. Bahr addressed the Uniform Fine and Bail Committees recommendation for the appointment of Judge Mike Junk and Judge Reuben Renstrom.

**Motion:** Judge Toomey moved to approve the appointment of Judge Mike Junk and Judge Reuben Renstrom to the Uniform Fine and Bail Committee. Judge Augustus Chin seconded the motion, and it passed unanimously.

**11. CODE OF JUDICIAL ADMINISTRATION RULE 9-109: (Jim Peters).**

Jim Peters discussed the proposed new rule 9-109, which allows for a presiding judge in justice courts. Mr. Peters is requesting this rule be effective April 1 with the understanding the rule will go out for public comment after the effective date. Mr. Peters said he has received very little negative reaction to this rule.

**Motion:** Judge David Marx moved to approve the new rule 9-109 as proposed with an effective date of April 1, 2018, with the understanding the rule will be sent for public comment. Judge Toomey seconded the motion, and it passed unanimously.

**12. RECOGNITION OF JUDGE THOMAS HIGBEE**

Chief Justice Durrant presented Judge Higbee with a Judicial Council plate. Chief Justice Durrant thanked Judge Higbee for his commitment to the Judicial Council and wished him well in his retirement. Judge Higbee said being a member of the Judicial Council has been a great opportunity, especially for rural courts.

**13. EXECUTIVE SESSION**

**Motion:** Judge Toomey moved to go into executive session to discuss a security matter. Judge Pullan seconded the motion, and it passed unanimously.

**14. CONSENT CALENDAR ITEMS.**

There were no consent calendar items.

15. **ADJOURN**  
The meeting adjourned.