

## JUDICIAL COUNCIL MEETING

### AGENDA

**Monday, June 27, 2016**

**Judicial Council Room**

**Matheson Courthouse**

**Salt Lake City, Utah**

*Chief Justice Matthew B. Durrant, Presiding*

1. 9:30 a.m. Welcome & Approval of Minutes . . . . Chief Justice Matthew B. Durrant  
(Tab 1 - Action)
2. 9:35 a.m. Chair's Report. . . . . Chief Justice Matthew B. Durrant
3. 9:40 a.m. Administrator's Report. . . . . Daniel J. Becker
4. 9:50 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant  
Liaison Committee. . . . .  
Policy and Planning . . . . . Judge Reed Parkin  
Bar Commission. . . . . John Lund, esq.  
(Tab 2 - Information)
5. 10:00 a.m. Language Access Committee Update. . . . . Judge Rick Romney  
(Tab 3 - Information) Keisa Williams
6. 10:20 a.m. Judicial Conduct Commission Update. . . . . Colin Winchester  
(Information)
7. 10:40 a.m. Court Commissioner Conduct  
Committee Update. . . . . Judge Michele Christiansen  
(Information)
- 11:00 a.m. Break
8. 11:10 a.m. Legislative Update and Interim Highlights. . . . . Rick Schwermer  
(Information)
9. 11:20 a.m. Fourth District Local Rule. . . . . Debra Moore  
(Tab 4 – Action)

10. 11:30 a.m. Senior Judge Certification. . . . .Nancy Sylvester  
(Tab 5 – Action)
11. 11:35 a.m. Justice Court Nominating Commission Manual  
And Application Changes. . . . .Melisse Stiglich  
(Tab 6 – Action)
12. 11:45 a.m. Executive Session
13. 11:55 a.m. Adjourn/Lunch

**Consent Calendar**

*The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.*

1. Committee Appointment  
(Tab 7)

Ron Bowmaster

**TAB 1**

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, May 23, 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. David Mortensen  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Randall Skanchy  
Hon. Kate Toomey  
Rob Rice for John Lund, esq.

### **EXCUSED:**

John Lund, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Debra Moore  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Nancy Sylvester  
Stacey Snyder  
Alyn Lunceford  
Keisa Williams

### **GUESTS:**

Hon. James Brady  
Hon. Marsha Thomas  
Hon. John Morris  
David Walsh  
Cuong Nuygen

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. He mentioned that Mr. Rob Rice is sitting in for Mr. John Lund.

**Motion:** Judge Toomey moved to approve the minutes from the April 25, 2016 Judicial Council meeting. Judge Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that he, Mr. Becker, Judge Todd Shaughnessy, Ms. Keisa Williams, Mr. Patrick Corum, and Mr. Robert Hilder attended a Pretrial Justice Reform Summit in Santa Fe, New Mexico May 11-13.

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

Mr. Becker reported on the following items:

**Associate General Counsel.** Mr. Becker introduced Ms. Keisa Williams, associate general counsel, filling the vacancy left by Ms. Alison Adams-Perlac. He provided background information of her work experience.



Recruitments. Recruitment for the following vacancies is in progress: 1) Appellate Court Administrator, 2) First District Court Executive, and 3) Justice Court Administrator.

Pretrial Justice Reform Summit. Mr. Becker summarized what other states have undertaken regarding pretrial justice reform to include: 1) most states are addressing pretrial justice reform with amendments to rules rather than amendments to statutes, and 2) most states have not included the bail industry in discussion regarding pretrial release reform.

Provo Courthouse Groundbreaking Ceremony. The groundbreaking ceremony for the new Provo Courthouse is scheduled for tomorrow, May 24 at 11 a.m. Chief Justice Durrant is scheduled to provide comments at the ceremony. All are invited to attend.

#### **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 May.

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

Judge Parkin reported that there are several rules on the agenda for final action, including the proposed senior judge rule.

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

Mr. Rob Rice reported on the following items: 1) Judge Dane Nolan has been selected as judge of the year; 2) Ms. Annette Jarvis and Mr. Bruce Mack have been selected as lawyers of the year; 3) the Bar's Summer Convention will be held on July 6-9 at the Loews Hotel in Coronado, CA; 4) the ABA will be conducting an internal review of the Utah State Bar's Office of Professional Conduct in June; and 5) a soft launch of the attorney directory at [licensedlawyers.org](http://licensedlawyers.org) took place last week, with testing at the operational level as well.

#### **5. RULES FOR FINAL ACTION: (Nancy Sylvester)**

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester mentioned that the public comment period for Rules CJA 3-0403, CJA 4-202.02, CJA 4-0404, and CJA 4-0903. Rule CJA 4-0903 was the only rule that received any comments, receiving only once comment.

Rule CJA 03-0403 – Judicial branch education. This rule was amended to give the Management Committee authority to excuse an active senior judge applying for reappointment from completing the annual 30 hour education requirement based on good cause. To be eligible, the senior judge must have completed at least 60 total education hours in the two years preceding the effective date of the reappointment.

Rule CJA 04-0402.02 – Records classification. This rule was amended to classify jail booking sheets and nonresident violator notices of non-compliance as private. The amendment deletes language addressing appellate brief addenda as they are governed by other rules.

Rule CJA 04-0404 – Jury selection and service. This rule was amended to incorporate recent amendments to the statute regarding a juror's term of service.

Rule CJA 04-0903 – Uniform custody evaluations. This rule was amended to include the following: 1) clarify the list of professionals who may perform custody evaluations, 2) eliminate

the provision allowing two custody evaluators to be appointed if one party resides out of state, and 3) adds additional factors for a custody evaluator to consider when conducting an evaluation.

Discussion took place.

**Motion:** Judge Higbee moved to approve the following rules for final action as recommended by the Policy and Planning Committee: 1) Rule CJA 03-0403, 2) Rule CJA 04-0402.02, 3) Rule CJA 04-0404, and 4) Rule CJA 04-0903. Judge Toomey seconded the motion, and it passed unanimously.

#### **6. PROPOSED SENIOR JUDGE RULE: (Nancy Sylvester)**

Ms. Sylvester reviewed discussion points made at the April 25 Council meeting regarding the proposed changes to Rule 3-108 – Judicial assistance. Policy and planning was given specific direction on what elements should be considered when preparing a revised rule change for consideration by the Council. At their May meeting, the Policy and Planning Committee drafted language to incorporate the elements discussed at the April 25 Council meeting. Mr. Shea suggested that Rule 3-104 – Presiding Judges would be a more appropriate rule to address the presiding judge's authority in approving senior judge coverage.

The Policy and Planning Committee amended Rule 3-104 – Presiding judges to include the following:

- The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability.
- Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).
- The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.
- If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges.
- If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

Discussion took place.

**Motion:** Judge Parkin moved to approve the changes, for public comment, to Rule 3-104 – Presiding judges as proposed. Additional rules affected by the proposed changes will be addressed separately. Judge Higbee seconded the motion. The motion passed with Judge Skanchy voting no.

**7. UNIFORM FINE AND BAIL COMMITTEE UPDATE: (Judge James Brady)**

Chief Justice Durrant welcomed Judge Brady to the meeting.

Judge Brady provided background information on the makeup of the committee and the committee's past and current charge.

It was suggested that it may be timely to revisit the charge and operation of the committee. Judge Brady requested approval from the Council to authorize the Uniform Fine and Bail Committee to complete the following:

- Study and recommend changes to the current Uniform Fine and Bail Schedule to:
  - Identify all crimes with maximum mandatory fines established by the legislature and confirm that they reflect the proper amount.
  - Treat similar types of crimes with similar fine recommendations (e.g., person crimes, property crimes, crimes against public order, crimes against moral order, regulatory crimes, traffic offenses, etc).
  - Significantly reduce the number of different recommended fine amounts within each category of crime.
  - Recommend fine levels that would demonstrably result in no, or minimal deviation of the total amount of fines ordered by the courts in 2015 and 2016.
- Study and recommend changes in the current rules and or statutes necessary to separate a Uniform Bail Schedule from a Uniform Fine Schedule. Prepare to issue a Uniform Fine Schedule without linkage to a Uniform Bail Schedule.
- Study and recommend alternatives for obtaining Offense Tracking Numbers (OTNs) for defendants that are not arrested, which do not create a conflict between BCI's purposes, the operations of the Committee, or create constitutional issues for the courts.

Judge Brady reported that the Committee surveyed district and justice court judges on how they perceived the Uniform Fine and Bail Committee. The results included: 1) a 50% response rate was shown, 2) 60% of the respondents were from the justice courts, 3) 40% of the respondents were from the district courts, 4) 75% of the respondents recommended changes to the schedule be made, 5) 50% of the respondents recommended reduction in the total number of violation number fines in each category to no more than three levels, 6) 20% of the respondents recommended single fine amounts be created, and 7) 70% of the respondents recommended the number of fine levels be restricted.

**Motion:** Judge Skanchy moved to authorize the Uniform Fine and Bail Committee to complete a study and prepare and present a report of their findings, at a later date, to the Council. Judge Toomey seconded the motion, and it passed unanimously.

**8. RESOURCES FOR SELF-REPRESENTED PARTIES COMMITTEE UPDATE: (Judge Marsha Thomas and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Thomas to the meeting.

Judge Thomas reminded members of the Council of the strategic plan update provided by her at the April 2015 Council meeting of the proposed priorities. She provided an update on the priorities listed in the September 2015 strategic plan to include: 1) continued support for the Self-Help Center; 2) develop and implement a court navigator program; 3) continue to develop forms; 4) analyze and improve the third year practice rule; 5) encourage improvement of lawyer directories, webpage triage efforts and referral sources; 6) support increasing availability of malpractice insurance for volunteer attorneys in all capacities; 7) support the development and

implementation of virtual services in rural areas; and 8) suggest opportunities for educating those who interact with self-represented parties.

Mr. Becker mentioned that concern was expressed at the Appellate Court Conference relative to the limited use of remote appearances. Discussion took place.

Judge Thomas noted that an Access to Justice listing is being compiled as a resource to self-represented parties.

Ms. Sylvester provided an update on behalf the Rule 16 Subcommittee. She highlighted the following regarding the subcommittee and the subcommittee's focus: 1) noted the members of the subcommittee; 2) how to implement early case conferences and domestic cases; 3) how to bring in the litigant early on while the attorneys are involved, with a plan, to get their cases through the system; 4) through a pilot soft-launch, commissioners are working on how to address these matters; and 5) the subcommittee will review their findings in August.

Judge Thomas was asked if there were any inquiries received from the juvenile court processes relative to delinquency and child welfare matters. She responded by letting the Council know that Judge Evershed is a member of the committee and has provided ideas in responding to inquiries related to juvenile court inquiries. She also noted that the Self-Help Center would be able to provide detailed statistics of the number and type of inquiries received relative to juvenile court that could be provided to Council members.

Once the Access to Justice document has been finalized, copies can be made available to judges.

The question was asked regarding the amount in the budget for the Self-Help Center. Mr. Becker noted that it is around \$350,000.

Judge Thomas and Ms. Sylvester were thanked for their update.

#### **9. JUVENILE INDIGENT DEFENSE STUDY: (Rick Schwermer)**

Mr. Schwermer provided background information relative to the study of indigent defense. The following study committees addressed indigent defense at the appellate and trial court level: 1) Study Committee on the Representation of Indigent Appellate Representation of Indigent Criminal Defendants, and 2) Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts. During the 2016 Legislative Session, creation of an Indigent Defense Commission was approved.

The Management Committee, at their May meeting, was asked for input relative to what steps should be taken to study the matter of indigent defense in juvenile court. The Management Committee requested the AOC to prepare a proposed charge, timetable and membership of a Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court for review by the Judicial Council at their May meeting.

Mr. Schwermer reviewed details of the proposed committee: 1) committee charge, 2) committee timetable, and 3) committee membership.

The proposed committee would be charged with conducting a thorough assessment of the provision of indigent representation services for juveniles in both delinquency and dependency referrals before the juvenile court, with more specific details provided.

The proposed timetable of the committee would allow for an initial report to be made to the Judicial Council in November of 2016. This would allow for the Judicial Council to determine whether legislation should be prepared for the 2017 legislative session or be deferred until the following year to allow additional committee work to be finalized.

Mr. Schwermer reviewed the proposed membership of the committee.

Discussion took place.

**Motion:** Judge Higbee moved to approve creation of the Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court, as proposed, and delegate to the Management Committee the task of naming specific members further, to allow the committee to bring in ex officio members as necessary. Judge Toomey seconded the motion, and it passed unanimously.

**10. GAL OVERSIGHT COMMITTEE UPDATE: (Stacey Snyder)**

Chief Justice Durrant welcomed Ms. Snyder to the meeting.

Ms. Snyder highlighted the following in her update to the Council: 1) she held her first meeting with the committee in December of 2016, 2) the Council approved the appointment of Mr. Jason Richards, in April, to fill a vacancy on the committee; 3) the next committee meeting is scheduled for September where committee responsibilities and policy updates will be reviewed; 3) legislative approval – salary parity; 4) approval, by the committee, to use the ongoing funding to address staff salary parity, as well as the attorney salaries; and 5) average caseload per GAL attorney.

Chief Justice Durrant thanked Ms. Snyder for her update.

**11. JUSTICE COURT JUDGES CERTIFICATIONS: (Rick Schwermer)**

Mr. Schwermer recommended the certification of the following two new justice court judges: 1) Judge Gary Owens, Garfield County Justice Court; and 2) Judge John Ynchausti, Davis County Justice Court. Both judges recently completed justice court judge orientation and passed the orientation exam.

**Motion:** Judge Bagley moved to certify Judge Gary Owens and Judge John Ynchausti as justice court judges. Judge DeCaria seconded the motion, and it passed unanimously.

**12. COURT FACILITIES PLANNING COMMITTEE UPDATE: (Alyn Lunceford)**

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Mr. Lunceford mentioned that Judge Samuel McVey was recently appointed as the committee chair and was unable to attend the meeting.

Mr. Lunceford highlighted the following in his update to the Council relative to the Court Facilities Planning Committee: 1) current and ongoing studies are being conducted in Sanpete, Wasatch, Iron and Davis Counties; 2) the Sanpete capital development project is tentatively slated to be presented to the legislature for full funding during the 2017 Legislative Session; 3) study of Wasatch County will be considered in the near future; 4) consideration for additional courtroom and program space in Cedar City; 5) conduct a feasibility study to evaluate the needs of all three court facilities in Davis County; 6) completion of the Ogden Juvenile Courthouse in 2015; 7) Duchesne County Courthouse – Phase I complete, Phase II to be completed late summer of 2016; 8) remodel of the Kane County juvenile probation office to be completed by August 2016; 9) Provo Courthouse groundbreaking to be held on May 24; 11) Carbon County – Price Courthouse construction – in the design phase; 12) review of the 2016 Facilities Master plan; 13) reviewed the list of court-owned and leased court facilities; and 14) funding in the amount of \$4 million to address capital improvement projects in FY 2017.

**Motion:** Judge Skanchy moved to approve the 2016 Facilities Master Plan as prepared. Judge Toomey seconded the motion, and it passed unanimously.

**13. COMMISSIONER NOMINEE APPROVAL: (Judge John Morris)**

Chief Justice welcomed Judge Morris to the meeting.

The Second District has a vacancy for a court commissioner with the upcoming retirement of Commissioner David Dillon, effective June 30, 2016.

Judge Morris requested approval for the appointment of Mr. Thomas R. Morgan to fill the vacancy for a court commissioner in the Second District. His background and work experience was provided.

**Motion:** Judge Toomey moved to approve the appointment of Mr. Thomas R. Morgan to fill the vacancy for a court commissioner in the Second District due to the retirement of Commissioner David Dillon, effective June 30, 2016. Judge Mortensen seconded the motion, and it passed unanimously.

Judge Morris reported that that Commissioner Dan Gardner has announced his upcoming retirement, effective October 31, 2016.

**14. EXECUTIVE SESSION**

An executive session was not held at this time.

**15. ADJOURN**

The meeting was adjourned.

**TAB 2**

# **Management Committee Minutes**



**JUDICIAL COUNCIL MANAGEMENT COMMITTEE  
MINUTES**

**Tuesday, June 14, 2016  
Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah 84111**

**MEMBERS PRESENT:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Randall Skanchy  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. Kate Toomey

**EXCUSED:**

**GUESTS:**

Hon. Paul Larsen

**STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Debra Moore  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Ron Bowmaster  
Melisse Stiglich  
Tom Langhorne  
Keisa Williams  
Brent Johnson

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

Chief Justice Durrant welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

**Motion:** Judge Toomey moved to approve the May 10, 2016 Management Committee meeting minutes. Judge Higbee seconded the motion, and it passed unanimously.

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

Mr. Becker provided the following update:

Appellate Court Administrator. Mr. James Ishida has been appointed to fill the vacancy for an Appellate Court Administrator due to the retirement of Mr. Tim Shea. Mr. Ishida's background and work experience was provided by Mr. Becker. A start date is forthcoming.

First District TCE. Mr. Brett Folkman has been appointed to fill the vacancy for a court executive in the First District. Mr. Becker provided his background and work experience.

Justice Court Administrator. The application deadline for the Justice Court Administrator position has been extended for an additional two weeks.

Executive Session. There are a few items to be discussed in an executive session at the end of the meeting.

Supreme Court Decision – Jury Trials in Small Claims Cases. Mr. Schwermer provided background information on the decision and the effect on small claims cases. It has been determined to create an ad hoc committee to address the matter further. The ad hoc committee will be a joint Supreme Court/Judicial Council committee with half of the membership appointed

by the Management Committee and the other half appointed by the Supreme Court. Ms. Keisa Williams, associate general counsel, will staff the ad hoc committee.

Potential membership names for the ad hoc committee were considered.

Discussion took place.

**Motion:** Judge Skanchy moved to approve the members of the ad hoc committee, on behalf of the Council, to include: 1) Judge Kate Toomey, 2) Judge Ryan Harris, and 3) Judge Brendan McCullagh. Judge Higbee seconded the motion, and it passed unanimously.

### 3. COMMITTEE APPOINTMENT: (Ron Bowmaster)

The Standing Committee on Technology recommended the appointment of Ms. Mikelle Ostler to fill a vacancy on the committee for a clerk of court with Ms. Dawn Hautamaki's term expiring.

**Motion:** Judge Skanchy moved to approve the appointment of Ms. Mikelle Ostler to fill the vacancy for a clerk of court on the Standing Committee on Technology and place it on the June Judicial Council consent calendar. Judge Marx seconded the motion, and it passed unanimously.

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

Chief Justice Durrant welcomed Ms. Stiglich to the meeting.

Ms. Stiglich reported that she has made changes 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 highlighted the following changes to the *Application for Judicial Office* for justice court judge applicants to include: 1) formatting changes, 2) instruction clarifications, and 3) reviewed the issue of diversity as shown in the current application, determining that no changes will be made at this time.

Mr. Schwermer introduced Ms. Stiglich, Justice Court Program Administrator to members of the Management Committee and outlined what her position entails.

**Motion:** Judge Skanchy moved to place the proposed changes to the *Manual of Procedures for Justice Court Nominating Commission* and the *Applicant for Judicial Office* for justice court judge applicants on the June Council agenda for discussion and approval. Judge Toomey seconded the motion, and it passed unanimously.

**5. JUVENILE INDIGENT DEFENSE STUDY GROUP: (Rick Schwermer)**

Mr. Schwermer reviewed the proposed membership for the Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court (to be staffed by the AOC General Counsel's Office) to include:

- Justice John Pearce, chair – Supreme Court Justice
- Judge Kim Hornak – juvenile court judge – urban
- Judge Ryan Evershed – juvenile court judge – rural
- Ms. Pam Vickery – delinquency defense counsel – urban
- Mr. Ben Gordon, Mr. Jonathan Pace – dependency defense counsel
- Mr. Jason Richards – prosecutor
- Ms. Carol Verdoia – attorney general representative
- Ms. Stacey Snyder – GAL director
- Mr. Lincoln Schurtz – local government representative
- Representative Lowry Snow – legislator
- Mr. Ron Gordon – member of Indigent Defense Commission
- Mr. Rick Schwermer and Mr. Brent Johnson – AOC representatives

Discussion took place.

**Motion:** Judge Higbee moved to approve the proposed membership for the Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court, including appointment of Mr. Ben Gordon as the defense counsel – rural and Mr. Jonathan Pace as the dependency defense counsel - urban. Judge Skanchy seconded the motion, and it passed unanimously.

**6. JPEC RELATED ISSUES: (Daniel J. Becker and Tom Langhorne)**

Mr. Becker reminded members of the Management Committee of the meeting held in April between himself, Chief Justice Durrant and Ms Jennifer Yim, Executive Director of JPEC. Discussion took place relative to providing educational assistance to judges who have performance gaps on their mid-term evaluations.

Mr. Becker asked Mr. Tom Langhorne, director of education, to reach out to colleagues in various states to determine what guidance, if any, is being provided for judges relative to their performance evaluations.

Subsequent meetings were held with Ms. Yim to discuss proposed ideas relative to a professional development program to provide educational assistance to judges who have performance gaps on their mid-term evaluations.

Mr. Langhorne reported that no formal programs are in place nationally. He did find that the former judicial education director and the current JPEC executive director in Colorado has developed a program program to assist judges with gaps in their performance.

Mr. Langhorne reviewed the proposed plan to include:

- Once information has been received by the courts from JPEC or the presiding judge regarding a judge who has performance gaps on his/her mid-term evaluation, Mr. Langhorne would schedule a confidential meeting with the judge and his/her presiding judge to offer assistance, support and the necessary resources to address the performance gaps.
- With agreement from the judge to accept assistance in addressing his/her performance gaps, a plan will be developed with specific learning needs outlined to address the performance gaps.
- The education staff would identify the performance gaps needing to be addressed and develop a specific performance plan with measurable objectives to enhance and address the performance gaps.
- Upon development of a performance plan, assistance would be provided by a coach or mentor to work with the judge in addressing the performance gaps, among other resources.
- One-on-one coaching sessions would be set up.
- Discreet courtroom observations would be set up.
- Development of mechanisms to provide evaluation and progress reporting to the judge.
- Provide the judge with a detailed written progress report at the end of the learning cycle.

Discussion took place.

The learning sessions would be completely confidential. Mr. Becker, Mr. Langhorne, the presiding judge, as well as the judge receiving assistance, will be the only ones that would know the training is taking place.

Mr. Schwermer reported he and Board of Justice Court Judges offer assistance and mentoring opportunities to justice court judges, with performance gaps in their mid-term evaluations, if they agree to it.

Members of the Management Committee were in agreement to development of an educational program to assist judges with performance gaps in their mid-term evaluations.

**7. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reviewed the proposed Judicial Council agenda for the June 27 Council meeting.

**Motion:** Judge Skanchy moved to approve the agenda for the June 27 Judicial Council meeting as amended. Judge Higbee seconded the motion, and it passed unanimously.

**Motion:** Judge Skanchy moved to enter into an executive session to address matters of professional competence. Judge Marx seconded the motion, and it passed unanimously.

**8. EXECUTIVE SESSION**

An executive session was held at this time.

9.

**ADJOURN**

The meeting was adjourned.

# **Policy and Planning Committee Minutes**

**Policy and Planning Committee**  
Matheson Courthouse  
Council room  
450 South State St.  
Salt Lake City, Utah 84111

June 3, 2016  
**DRAFT**

**Members Present**

Hon. Ann Boyden  
John Lund  
Hon. Reed S. Parkin

**Members Excused**

Hon. Marvin Bagley  
Hon. Mark DeCaria  
Hon. Mary Noonan  
Nancy J. Sylvester

**Staff**

Keisa L. Williams

**Guests**

**(1) Approval of minutes**

Judge Reed Parkin stated there are not enough members present to be a quorum; therefore the members briefly discussed a few issues. Without a quorum the minutes from May 6, 2016 will need to be approved at the next meeting.

**(2) CJA 11-203. Senior justice court judges.**

Judge Parkin discussed the justice court issues with senior judges. Judge Parkin stated if there are two judges with an individual caseload of less than 60% the county can begin reduction proceedings.

The committee briefly discussed CJA 11-203; however, due to the lack of a quorum no motions were made.

**(3) CJA 4-202.02. Records classification.**

Keisa Williams stated H.B. 68 made changes regarding compelling blood draws for individuals with suspected infectious diseases. Judge Mary Noonan confirmed this is most likely for emergency response personnel.

The committee briefly discussed CJA 4-202.02; however, due to the lack of a quorum no motions were made.

**(4) CJA 4-403. Electronic signature and signature stamp use.**

Ms. Williams stated that Brent Johnson was notified that some justice courts throughout the state have adopted a policy of only using clerks' first name and the first initial of their last name when they are signing court documents below a Judge's stamped or e-signature. Mr. Johnson recommended the committee discuss a consistent state-wide policy and encouraged requiring the use of the full first and last name.

The committee briefly discussed CJA 4-403; however, due to the lack of a quorum no motions were made.

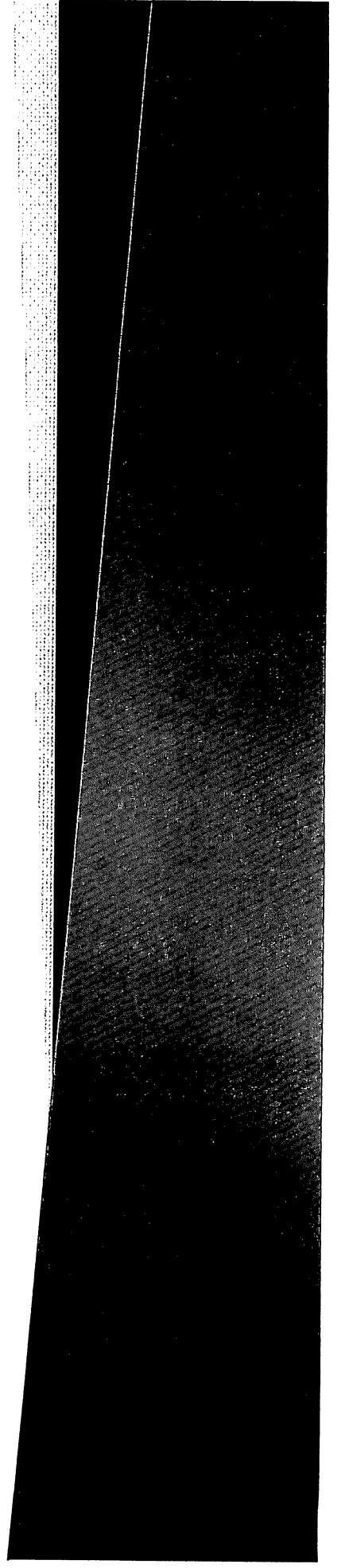
**(5) Other Business**

The member discussed rescheduling the July 1 meeting to June 24. Staff will send out notice of the change. There was no other business and the meeting was adjourned.

**TAB 3**

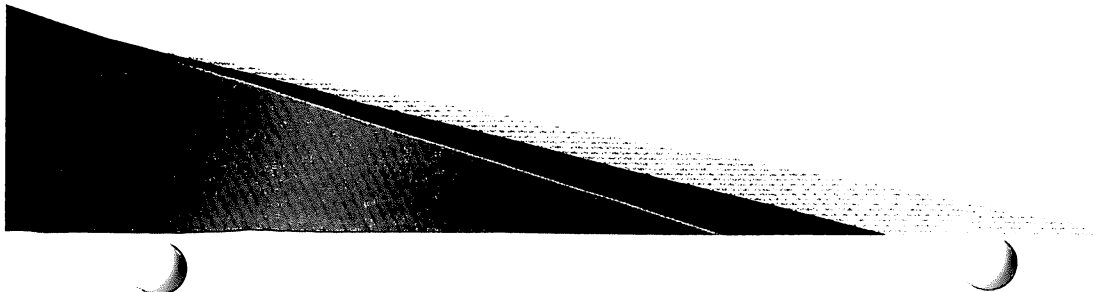


# Language Access Committee




# Committee Members

- ▶ Judge Rick Romney
- ▶ Judge Su Chon
- ▶ Judge Michael Leavitt
- ▶ Russell Pearson
- ▶ Maureen Magagna
- ▶ Megan Haney
- ▶ Mary Kaye Dixon
- ▶ Michelle Draper
- ▶ Randall McUne
- ▶ Jennifer Andrus
- ▶ Miguel Medina
- ▶ Gabriela Grostic
- ▶ Amine El Fajri
- ▶ Staff:
- ▶ Keisa Williams, Program Manager
- ▶ Rosa P. Oakes, Program Coordinator

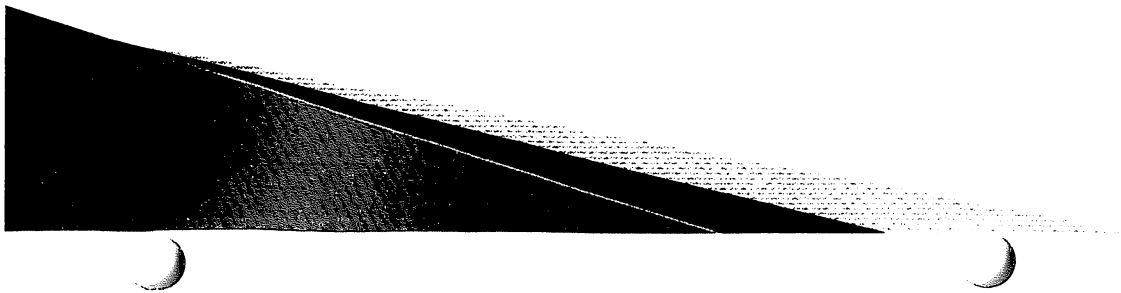


# Accomplishments

- ▶ Completed reformatting of Rule 3-306
    - New and improved version is Rule 3-306.01 - .05
  - ▶ Community Outreach
    - Vietnamese Newspaper Interview
    - Hispanic Community Event in Ogden
  - ▶ Interpreter Discipline Process
    - 7 formal complaints filed and reviewed by the committee
  - ▶ Approved Conversion of Interpreter Files into Digital
- 

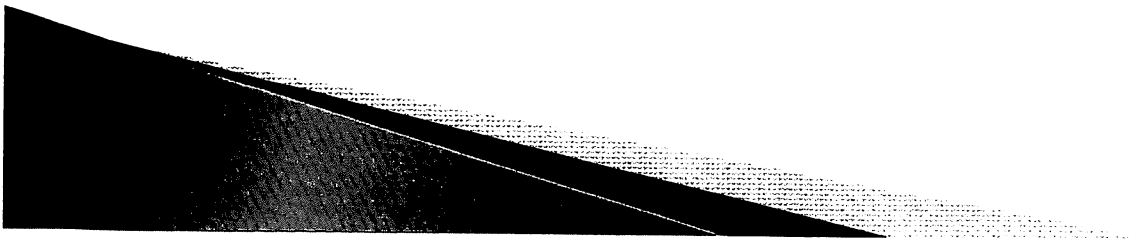
# Routine Matters

- ▶ Interpreter credentialing
  - Fees
- ▶ Out-of-State Interpreters 2016
  - Somali, Nepalese, and Armenian interpreters.
- ▶ Remote interpretation
  - National Center for State Courts database
- ▶ Staff Interpreters
- ▶ Translations



# Looking Ahead...

- ▶ Quality Interpretation
  - Exploring methods to ensure the quality of interpretation
  - Capturing the foreign language for the record – ASL and spoken language
- ▶ Improving interpreter scheduling and invoice processes.
- ▶ Providing training on Language & Culture



# For more Information

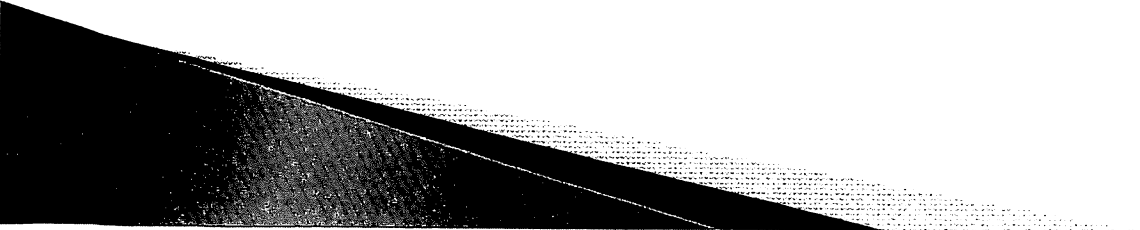
## Contact:

Rosa P. Oakes, AOC

801-578-3828

[rosao@utcourts.gov](mailto:rosao@utcourts.gov)

# Program Timeline

- ▶ 1995 – Utah joined the Consortium for State Court Interpreter Certification.
  - ▶ 1996 – Established Interpreter Advisory Panel
  - ▶ 2005 – Advisory Panel became the Standing Committee on Court Interpreters.
  - ▶ 2012 – National Center for State Courts took over for the Consortium.
  - ▶ 2013 – The Court Interpreter Committee became the Language Access Committee. Created a strategic plan.
- 

**TAB 4**



Proposed local rule for 4<sup>th</sup> District:

Proposed Rule 10-1-407

**10-1-407. *TIME TO CHARGE***

**Intent:** A Rule relating to the time and conditions between arrest and first appearance for non-petty offenses.

**Applicability:** All Felony and Class A Misdemeanor charges as identified in the statement of probable cause supplied upon booking at the jail when the Defendant has been arrested without a warrant and remains in custody, having not posted bail.

**Statement of the Rule:**

(a) 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 4<sup>th</sup> (fourth) business day after arrest. The first day commences at the first 8 a.m. time to occur on a working day after arrest. At the initial appearance the Court will comply with the Utah Rules of Criminal Procedure Rules 7(e) and (f) and, in particular:

1. Provide the arrestee a copy of the information;
2. Confirm the accuracy of the name, address and date of birth as included in the information;
3. Confirm that the arrestee understands the nature of the charges and any potential penalty;
4. Rule upon any request for appointed counsel or otherwise confirm if the Defendant will be retaining counsel;
5. Consider any request to modify bail; and,
6. Set the matter for the next available hearing before the Division of the District Court randomly assigned to the case.

(b) 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. In such an event the hearing

described in the preceding subsection (a) shall be continued to a certain date and time. In such an event the arrestee will continue to be held, subject to the established order of bail.

(c) 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 a promise to appear on the first appearance calendar one week or less at a future date. The promise to appear shall include a residential address which the arrestee affirms to be accurate.

(d) At the subsequent hearing date and time, set as provided in subsection (b) or (c), preceding:

(1) if an information has been filed and the arrestee is present the Court shall proceed as provided in subsection (a), preceding.

(2) If an information has been filed but the arrestee fails to appear as promised, the Court may consider and grant a warrant for the arrest of the arrestee with such bail as is appropriate in the discretion of the Judge.

(3) If an information has not been filed, whether the arrestee is present or not, the case shall be closed without prejudice.

**TAB 6**

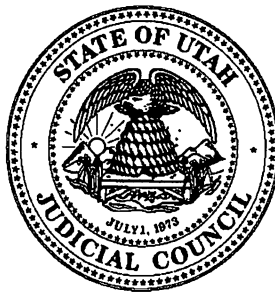
# **Manual**

# Utah State Courts

---

Manual of Procedures  
for  
Justice Court Nominating Commissions

---



---

2016

---

**The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.**

---

Manual of Procedures  
for  
Justice Court Nominating Commissions  
2016

Prepared by  
Administrative Office of the Courts  
POB 140241  
450 S State St  
Salt Lake City, UT 84114-0241  
[www.utcourts.gov](http://www.utcourts.gov)

---

## Table of Contents

---

(1) List of Utah Judicial Nominating Commissions .....	5
(2) Introduction.....	5
(3) Merit Selection of Judges .....	6
(4) Composition of Utah Judicial Nominating Commissions.....	7
(5) The Application Process .....	8
(a) Notice of Vacancy .....	8
(b) Applications.....	8
(i) Adverse References .....	9
(ii) Additional References.....	9
(iii) Reference Letters.....	9
(iv) Deadline.....	9
(c) Recruitment.....	9
(d) Pre-screening by Staff.....	10
(e) Distribution of Application Materials .....	10
(6) Organizational Meeting.....	10
(a) Introduction .....	10
(b) Conduct of Meetings .....	11
(c) Ethical and Legal Obligations.....	11
(d) Administrative Issues .....	12
(e) Timetable .....	13
(f) Public Testimony.....	14
(g) Initial Screening by Commission .....	14
(7) Investigation of Screened Applicants; Further Screening .....	15
(a) Summary Staff Investigation of Applicants.....	15
(b) Further Investigation by Staff and Commission.....	16
(c) Report of Investigation Results .....	16
(d) Further Screening and Selection of Interviewees.....	16
(8) Evaluation Criteria .....	17
(a) Constitutional and Statutory Minimum Requirements .....	17
(b) Qualities of Judges .....	17
(i) American Bar Association Guidelines.....	18

(ii) Other Considerations for Qualification .....	22
(9) The Interview .....	22
(a) Scheduling Interviews .....	22
(b) Preparation for Interviews .....	23
(c) Suggested Questions .....	23
(10) Selection of Nominees.....	24
(a) Order of Debate and Voting .....	24
(b) Public Comment Regarding Nominees; Removal of Nominee.....	25
(c) Submitting Nominees .....	25
(d) Nominee Selection and Certification.....	26



## **(1) List of Utah Judicial Nominating Commissions by Counties**

<b>Counties Served</b>	<b>District</b>
Box Elder, Cache, Rich	1
Davis, Morgan, Weber	2
Salt Lake, Summit, Tooele	3
Juab, Millard, Utah, Wasatch	4
Beaver, Iron, Washington	5
Garfield, Kane, Piute, Sanpete, Sevier, Wayne	6
Carbon, Emery, Grand, San Juan	7
Daggett, Duchesne, Uintah	8

Nominating committees are formed in a county as needed to fill a judicial vacancy. Individuals appointed to these committees serve a four year term and may be called upon any time a new vacancy occurs within that county during their term. The two commission members selected by the local government which has posted the vacancy (see Composition of Utah Judicial Nominating Commissions) are not subject to the four year term.

## **(2) Introduction**

Utah judicial nominating commissions serve a critical function. The work of a commission marks the beginning of a process that culminates in the appointment by the local government executive of a new member of the judiciary. Service on a judicial nominating commission is, therefore, a serious undertaking. It requires a willingness to devote the time and energy to nominate the candidates who will most effectively enhance the quality of the bench. It requires the discipline to work in a group and within the confines of a strict timetable. It requires the commitment to proceed through the various steps of the judicial nomination process with care and integrity. While the work of a judicial nominating commission is both concentrated and time consuming, participants will find satisfaction in the knowledge that their work directly improves the quality of Utah's judicial system.

Throughout their thoughtful and impartial deliberations, the commissioners must hold the public interest foremost in the decision making process. The quality of Utah's judiciary rests initially in the nomination of candidates by the commissioners. The commissioners have many applicants from which to choose. Consequently, only extreme diligence by the nominating commission assures that all of the nominees submitted to the local government executive will strengthen the state's judiciary.

This manual was developed to assist Utah's judicial nominating commissions by providing a common background of information and by establishing guidelines both for commission procedures and applicant evaluation. Its goal is to enhance the efficiency of the nominating process by resolving procedural issues and preserving the time of the commissioners for a more thorough investigation and evaluation of applicants. It also

seeks to articulate the qualifications and some of the more important qualities for judicial office, thus providing practical guidelines for applicant evaluation.

### **(3) Merit Selection of Judges**

The office of judge is unique in our society. A judge is a public servant holding an office of high public trust and so should answer to the public. However, the obligation of a judge is to resolve disputes impartially and base decisions solely upon the facts of the case and the law. A judge, therefore, should be insulated from public pressure.

The federal government and the states balance the competing interests of judicial accountability and judicial independence in a variety of ways. A federal judge, for example, is almost completely insulated from public pressure by serving a life term. There are two basic approaches to judicial selection and retention at the state level. Judges of many states face periodic partisan or nonpartisan elections which force them to act as politicians as well as jurists. Other states, including Utah, have decided to choose their judges by merit selection.

Merit selection was developed as an alternative to the federal system and to state systems requiring that judges run in contested elections, both of which have been criticized as unduly politicizing the judiciary and undermining the integrity of the law. Merit selection plans have been in the process of development in many states since 1913 under the auspices of the American Judicature Society, a non-profit, non-partisan organization formed to improve the judicial selection process. Utah initially developed its merit selection system by statute in 1967 to govern gubernatorial appointments and combined it with nonpartisan, contested elections for retention. The revised Judicial Article of the Utah Constitution, effective July 1, 1985, established merit selection as the exclusive method of choosing a state court judge. Legislation passed in 1994 changed the composition of the nominating commissions and the method of selecting commission members. However, despite the changes in the commission composition and selection, the over arching goal of the system -- the nomination and appointment of the best qualified candidates on a nonpartisan basis -- remains unchanged. As stated in the Utah Constitution: "Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration."

There are five steps in the Utah merit selection plan: nomination, appointment, confirmation, certification and retention. The nomination of judges includes several steps preceding the selection of nominees. A commission has 45 days from its first meeting to complete this process. The steps of the nomination process include:

- the application process;
- screening of applicants by staff to determine minimum constitutional qualifications for office;
- the organizational meeting including public testimony;
- screening of applicants by the commission based only on the application materials;
- the summary investigation of applicants by staff;
- investigation of the applicants as determined by the commissioners;
- the screening of applicants prior to interviews;

- preparation for the interviews;
- personal interviews of the candidates;
- selection of a preliminary list of nominees;
- public dissemination of the names of the proposed nominees and public comment upon their qualification for office;
- further investigation of the proposed nominees as determined by the commissioners;
- final selection of the nominees; and
- submitting the nominees to the local government executive.

The local government executive must appoint one of the nominees within thirty days of receiving the nominations.

After certification by the Judicial Council, the new judge assumes the duties of the bench for three years before facing the first unopposed retention election. In the unopposed retention election, the electorate is asked whether the judge should be retained in office. Thereafter, the term of office of a judge is six years. At the end of each term of office, the judge faces another unopposed retention election.

#### **(4) Composition of Utah Judicial Nominating Commissions**

The justice court nominating commissions are established by statute, and their composition is determined by statute. A county justice court nominating commission will be created when there is a vacant justice court judge position or when a new position is created. Membership of the county justice court nominating commission shall include:

1. One member appointed by the county commission if the county has a commission form of government

OR

The county executive if the county has an executive-council form of government

2. One member appointed by the municipalities in the counties as follows:
  - If the county has only one municipality, appointment shall be made by the governing body of that municipality; or
  - If the county has more than one municipality, appointment shall be made by a municipal selection committee composed of the mayors of each municipality in the county
3. One member appointed by the county bar association
  - If there is no county bar association, the member shall be appointed by the regional bar association. If no regional bar association exists, the state bar association shall make the appointment
4. Two members appointed by the governing authority of the jurisdiction where the judicial office is located

Reference Table:

Number of appointees	Appointing Authority	Term of Appointment
1	County commission/executive	4 years
1	Municipality/Municipal selection committee comprised of mayors of each municipality	4 years
1	County Bar Association	4 years
2	Governing authority of the jurisdiction where judicial vacancy is located	No term – varies by vacancy

Nominating commission members may not be elected officials of the county or municipality. Members of the commission are not eligible to apply for judicial vacancies within the appointing county during their term and may not be closely related to an applicant (see 6c). Commissioners are not paid for their work, but they may receive reimbursement for any necessary expenses incurred in the performance of their duties.

## **(5) The Application Process**

### **(a) Notice of Vacancy**

The notice of vacancy is in the form of a press release. The notice includes the jurisdiction of the court, the constitutional minimum requirements for judicial office (see Section 7, Evaluation Criteria), a brief description of the work of the court, the method for obtaining application forms, the application deadline, the names and cities of residence of commission members, when available (if appointments are pending, this will also be indicated), and the method for submitting oral or written testimony at the organizational meeting.

The notice is prepared by the Administrative Office of the Courts and is released to the Salt Lake Tribune, the Deseret News, the Utah State Bar and newspapers with circulation within the geographic venue of the court. Press releases are also provided to the network affiliated television stations in Salt Lake City.

### **(b) Applications**

Application forms and the required waivers are available from and should be submitted to the Administrative Office of the Courts, Attention: Judicial Nominations, P.O. Box 140241, Salt Lake City, Utah 84114-0241 or at Scott M. Matheson Courthouse, 450 South State Street, Suite N31. Application and waiver forms are available on preprinted forms and in an electronic format.

The application package consists of the following:

- a) An original and six copies of the application form.
- b) An original and six copies of the applicant's resume.
- c) A check or money order payable to the Administrative Office of the Courts for \$8.70 to cover the cost of a credit check.
- d) A waiver of the right to review the records of the commission.
- e) A waiver of confidentiality of records.

- f) A one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.

The waiver of confidentiality pertains to records which are the subject of investigation by the commission.

If the applicant has applied for another judicial position within the prior year, the applicant may submit copies of the application package from the previous vacancy with a letter of interest that includes a summary of any changes to the previous application package and a check or money order for the credit check.

#### **(i) Adverse References**

The application provides space for listing references. However, letters of recommendation are not submitted by the applicant. The judicial nominating commission selects from among the references listed, and the commission or its staff contacts the references.

#### **(ii) Reference Letters**

The judicial nominating commission or its staff contacts a minimum of three of the references listed on the application form and requests the references to complete and submit a standard reference letter approved by the Judicial Council. The commission may designate other references to be contacted either by the standard reference letter or by other means.

#### **(iii) Deadline**

The deadline for filing applications is established by the published notice. The minimum application period is 15 days, but the notice of vacancy may provide for an extended application period. If fewer than nine applications are received the vacancy must be announced for an additional 15 days. 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 persons who are not residents of the county or an adjacent county in which the court is located. Also in such circumstances applicants would only be required to have, at the minimum, a high school diploma or GED. See U.C.A. §78A-7-201.

The application is considered submitted upon receipt by the Administrative Office of the Courts with inclusion of all required application materials listed above. The Administrative Office of the Courts is not responsible for applications mailed but not delivered.

A notice of receipt is sent to the applicant. If the application is incomplete, the applicant is notified of the deficiency. The application may not be considered timely filed unless the deficiency is corrected before the application period closes.

#### **(c) Recruitment**

If commissioners wish to solicit individuals to apply for judicial vacancies they may do so directly or request that staff from the Administrative Office of the Courts solicit

applications of specific individuals by writing a letter indicating that the individual's name has been referred as a potential judicial applicant and inviting the individual to submit an application. If a third party presents the name of a potential applicant to a commissioner, the same procedure should be followed. Staff members should not personally solicit applications without a request by a commissioner.

#### **(d) Pre-screening by Staff**

After the expiration of the filing deadline, the staff person assigned to a nominating commission reviews the applications to screen out those applicants not meeting the minimum constitutional qualifications for office. A list of any applicants identified as not meeting the minimum qualifications and the deficiency is provided to all commissioners. Those applicants not successfully passing the pre-screening are advised by letter from the staff.

#### **(e) Distribution of Application Materials**

After the close of the application process, the staff to the commission delivers a copy of each application and resume and a list of all applicants in alphabetical order to the commissioners. All application materials are returned to the staff of the commission at the close of the nomination process in accordance with the section governing records.

### **(6) Organizational Meeting**

#### **(a) Introduction**

The date, time, and place of the organizational meeting are published as a part of the notice of the vacancy or in a separate public notice. Commissioners are notified individually of the commission's first meeting prior to the public notice if possible. The organizational meeting should be held as soon as practicable after the close of the application deadline.

The importance of this initial meeting cannot be overstated. If the commission is not well organized, it likely will face problems later. The least of these problems is the inefficient use of limited time. More serious problems such as breaches of ethics and confidentiality or disputes over voting procedures may develop. The organizational meeting is used to anticipate these problems before they occur.

The commission should accomplish five things during the organizational meeting. During the public portion of the meeting:

1. The commission should discuss issues of ethics and legal obligations (6c).
2. The commission should consider any administrative or procedural questions (6d).
3. The commission should develop a realistic time table in which to accomplish its many tasks (6e).
4. The commission should receive oral and written testimony from the public about community needs, the qualifications for the judicial office, and the nominating process, but not about individual applicants (6f).
5. After the public portion of the meeting, the commission should go into executive session to discuss the qualifications of applicants and make an

initial screening of the applicants. This initial screening of applicants by the commission is based upon the information contained in the application materials (6g).

### **(b) Conduct of Meetings**

The chair of each nominating commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process. For the purpose of organizing the first meeting, the chair of each nominating commission will be the appointed representative from the Bar. During the nominating commission's first meeting, the commission will select a chair. All commission members shall have the opportunity to question applicants and to discuss the qualifications of applicants. In questioning applicants and discussing the qualifications of applicants, the chair shall speak last.

### **(c) Ethical and Legal Obligations**

The organizational meeting is the appropriate time and place to address any issues regarding commission ethics that may be of concern. It is far better to try to anticipate problems and avoid them than to try to solve them once they occur. The goal of commissioners should be to avoid not only impropriety itself, but also the appearance of impropriety.

**Failure to Follow Law or Procedures.** If a commissioner fails or refuses to follow statutes, rules, or this manual regulating the nomination of candidates, the commissioner is disqualified from the commission, and the local government executive shall appoint a replacement as provided by statute.

**Confidentiality.** The names of the nominees are released to the public for the purpose of comment prior to submission to the local government executive, and the application materials and investigation reports for the nominees are forwarded to the local government executive. Otherwise, the policy in Utah is to maintain the confidentiality of all applicants and of all investigation sources. Subject only to the responsibility to report violations of the law and breaches of professional ethics, information provided by the applicant and information gathered as a result of the investigation are not disclosed. However, if an applicant is selected as a nominee, the application package of the nominee and the results of any investigation, including information from investigation sources, are forwarded to the local government executive. The application and investigation results are not otherwise disclosed by the commission.

**Relationship to the Applicant.** Perhaps one of the most common problems faced by nominating commissions is that some commissioners have a business, professional, or personal relationship to one or more of the applicants. Commissioners are required to disclose to the commission the existence and nature of such relationships, including any adverse relationship. These declarations should be made prior to screening the applicants. If an applicant is a commissioner's spouse or a person within the third degree of relationship to a commissioner, (grandparents; parents or parents-in-law; aunts or uncles; children, nieces and nephews and their spouses) that commissioner must disqualify him/herself from the nominating commission process. If a commissioner

declares some other type of relationship with an applicant, the other commission members must decide if that relationship constitutes a conflict of interest. If they so decide, the commissioner disclosing the relationship must disqualify him/herself from the nominating commission process. If the other commission members decide, by a majority vote, that the relationship does not constitute a conflict of interest, the commissioner disclosing the relationship may participate in the process. Only declarations which are determined by the commission to pose a conflict of interest are recorded in the minutes of the meeting. If a commissioner is recused for a conflict of interest or is otherwise unable to serve, the vacant position is filled by the appropriate appointing authority. The commissioner may continue to serve until a successor is appointed, but the commissioner may not vote for so long as the grounds for recusal continue. If the grounds for recusal are eliminated, the commissioner shall participate fully in the nomination process.

**Solicited Information.** Commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors and acquaintances. The commission should not solicit information from clients of lawyer applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this phase so inquiries should be discreet. However, it obviously will be necessary to reveal the name of an applicant when inquiring of others about the applicant. Information so gathered will be helpful to the commission in the process of its deliberations.

**Unsolicited Information.** The commission may receive unsolicited information or statements from third parties supporting or opposing an applicant. These should be received, considered, and, if appropriate, investigated. The response to the writer or caller should be uniform. The commission member or its staff should explain the impartial procedures that all applicants must complete and thank the individual for the information.

**Contact with an Applicant.** Commissioners should refrain from discussion with an applicant about his/her application. Feedback on interview performance should not be provided by commission or staff members to applicants.

**Commissioner Bias.** All people have particular philosophies and viewpoints. Commissioners can only realize that these biases exist and make every effort to ensure that they do not cloud the decision making process.

**Legal Requirements.** Sections of the Utah Constitution and Code applicable to the nomination and election of judges are provided to commission members.

#### **(d) Administrative Issues**

The organizational meeting should be used to answer any questions or concerns of the commissioners. A few issues are outlined here.

**Reimbursement of Expenses.** Commissioners are entitled to be reimbursed for all actual and necessary expenses incurred in the course of their duties as commissioners.



Mileage records and expense receipts should be submitted to the staff person assigned to the commission at or soon after the final meeting of the commission. Note, however, that if the work of the commission begins in one fiscal year and continues into the next fiscal year, expenses must be reimbursed with funds from the year in which the expenses were incurred. Requests for reimbursement of expenses incurred during one fiscal year must be submitted no later than July 20 of the next fiscal year. The fiscal year ends June 30.

**Records.** By statute, the Administrative Office of the Courts serves as staff to each of the nominating commissions. Forms are available from and all records of the commissions are maintained in that office. The notes of the commissioners are their own and are not filed with the Administrative Office of the Courts.

Summary minutes only, and not verbatim minutes, are maintained of all commission meetings including interview meetings and voting meetings. The minutes include:

- a) The date, time, and place of the meeting.
- b) A list of the commissioners present and a list of those absent or excused.
- c) A list of staff members present.
- d) A general description of the nature of the business to be conducted.
- e) A general description of the decisions made.
- f) Any declarations by commissioners of a relationship, interest, or bias concerning any applicant.
- g) A record of the total tally of all votes, but not the vote of individual commissioners.
- h) Written statements submitted to the commission regarding issues facing the judiciary.
- i) Any other matter desired by the commission to be recorded.

All records of the commission are maintained by the staff member assigned to the nominating commission by the Administrative Office of the Courts, but are not subject to public disclosure. The records are maintained until the appointee of the local government executive takes the oath of office. The records are then destroyed.

**Quorum.** Three commissioners must be present to conduct any business. Commissioners may be present through electronic means such as telephone or video conferencing. If a written ballot is required of a commissioner present through electronic means, the commission may submit the vote by fax, electronic mail, or other electronic means. The commission should take steps to secure the confidentiality of debate and votes made by electronic means.

#### **(e) Timetable**

The commission should develop a timetable of specific dates for the completion of the various steps in the nomination process. The commission should establish a deadline for each interim step in the process. Including the organizational meeting, commissioners will usually meet formally two to three times.

#### **(f) Public Testimony**

The public portion of the organizational meeting is used to develop oral and written testimony about issues of local concern, the general qualifications of judges, and constructive recommendations to the Judiciary. Statements concerning particular applicants or cases are prohibited. It is important at the initial meeting to develop a good sense of the interests of the communities served by a court. This is especially difficult in Utah where the jurisdiction of a court usually covers several counties.

The procedure for submitting written statements or a request for time to deliver an oral statement at the organizational meeting is as follows. Any interested person or organization may submit written statements to the Administrative Office of the Courts. A written statement may be accompanied by a request for time to present the statement orally to the commission. Requests for time to present an oral statement are not preferred unless accompanied by the written statement. The chair of the commission may permit a person to present an oral statement without submitting a written statement. A maximum time limit for oral statements is five minutes. A judge appointed by the Board of Justice Court Judges is invited to speak to the commission to address the importance of justice court judge selection without submitting a written statement.

The chair of the commission retains the discretion to deny a written request for oral testimony only to ensure the orderly conduct and timely completion of the public portion of the organizational meeting. If permission to provide oral testimony is granted, the person requesting permission is notified by staff in the Administrative Office of the Courts. All written statements become a part of the record of the commission. The substance of the statement and identification of the author are publicly disclosed at the organizational meeting. The statement may be read verbatim.

#### **(g) Initial Screening by Commission**

A screening process may be needed to reduce the number of applicants to a manageable number for purposes of further investigation and selecting candidates for interview. The initial screening should occur at the organizational meeting and is based upon the applicants' application and resume, and other application materials.

The objective of the commission in screening applicants is not to retain for further investigation and interviews all applicants who may conceivably be qualified but to retain enough applicants so as to be reasonably certain that the best qualified applicants are among them, given the information available to the commission at the time, the number of vacancies to be filled, and the overall quality of the applicant pool. The commission members review the application materials available, discuss the qualifications of the applicants, compare the information with the evaluation criteria, and vote to retain or eliminate an applicant. Depending upon the size and relative qualifications of the applicant pool, the commission may complete the screening at the organizational meeting, or the commission may complete the screening at a subsequent meeting at which the results of the investigation are available.

During the initial screening, unrestricted voting is acceptable. However, when voting for final nominees, voting is conducted by confidential ballot. Each commissioner is provided a ballot with the names of all applicants to be voted upon in alphabetical order.

Next to each applicant's name is a space designated "yes" and a space designated "no." The commissioner casts an affirmative or a negative vote for each applicant. The votes are tallied by the staff person and chair of the commission. All applicants receiving at least three affirmative votes shall be retained for further consideration. If after voting the commission determines there are too many applicants remaining given the number of vacancies and the overall quality of the applicant pool, the commission may further discuss the qualifications of applicants and conduct another round of voting. For each applicant retained after screening is concluded, the commission identifies the references listed by the applicant to be contacted by staff.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes of the commission. After the total vote tally is verified and recorded, the voting ballots are destroyed.

Those applicants not selected for investigation and a possible interview shall be notified by the commission staff.

## **(7) Investigation of Screened Applicants; Further Screening**

### **(a) Summary Staff Investigation of Applicants**

After screening out those applicants not meeting the minimum constitutional requirements, and after initial screening by the commission, the Administrative Office of the Courts conducts a summary investigation of all remaining applicants. The commission may conduct a further investigation, or may direct staff to do so, of any applicant remaining after screening.

As a part of the summary investigation, the staff person shall:

- a) \*Order a summary credit check of the applicant.
- b) Contact a minimum of three references listed by the applicant and designated by the commission for a recommendation.
- c) Contact the disciplinary committee of any state bar of which the applicant is or was a member to determine the existence of any disciplinary action.
- d) Contact the judicial disciplinary agency of any jurisdiction where the applicant was a judge to determine the existence of any disciplinary action.
- e) \*Contact the Bureau of Criminal Identification (BCI) to determine whether the applicant has any criminal record.

\*May be completed during pre-screening process depending upon the size of the applicant pool.

An applicant's personal physician may be contacted and asked to disclose the particulars of an applicant's medical history only if the sound mental health of an otherwise qualified applicant becomes an issue of concern to the commission. Any inquiry will be limited to information necessary to resolve the particular concern.

Because an applicant may be screened from further consideration based on the results of the investigation, the applicant may have no opportunity to rebut claims made during the investigation. Therefore, it is essential that the investigation be thorough and without errors.

### **(b) Further Investigation by Staff and Commission**

The commission may direct that a more in-depth background investigation be conducted by the staff of the Administrative Office of the Courts on any applicant remaining after screening. Staff conducting the investigation should accomplish the following:

- a) Coordinate a background check with law enforcement agencies to determine if the applicant has been or is the subject of a criminal investigation or has any record of past criminal activity.
- b) Contact current or former employers, partners, or associates.
- c) Contact any listed professional and civic organizations to determine the level of the applicant's activity.
- d) Contact any references listed by the applicant.
- e) Follow up on any areas of concern raised by any member of the nominating commission or otherwise revealed during the screening process.

In addition to any investigation conducted by staff, commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors and acquaintances. The commission should not solicit information from clients of applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this phase so inquiries should be discreet. However, it obviously will be necessary to reveal the name of an applicant when inquiring of others about the applicant.

### **(c) Report of Investigation Results**

Prior to the meeting for the further screening of applicants and the selection of candidates for interview, or, if no subsequent screening is needed to reduce the applicant pool further, prior to the meeting for interviews, each commissioner receives the following for each applicant:

- a) A copy of the application form and resume.
- b) A summary report of information contained in the application and information gathered as a result of the staff investigation. Credit check and BCI information is summarized orally with the nominating commission. This information may be shared with the commission during the initial meeting and screening of applicants if the size of the applicant pool warrants only one meeting prior to interviews. The summary report is intended only as a tool for the commissioners in organizing the often voluminous information. The report contains neither recommendations nor evaluations concerning the applicant.
- c) Copies of reference letters received.

### **(d) Further Screening and Selection of Interviewees**

If there is a second screening of applicants before interviews, the commission screens the applicants based upon the results of investigations. The commission should

conduct the voting for this subsequent screening of applicants in the same manner as the initial screening.

## **(8) Evaluation Criteria**

### **(a) Constitutional and Statutory Minimum Requirements**

**Age.** U.C.A. Section 78A-7-201 requires that a justice court judge must be 25 years old.

**Residency.** Justice court judges must be a resident of the county in which the court is located or an adjacent county for at least six months immediately preceding appointment and be a qualified voter of the county in which the judge resides.

**Education Requirements. ~~Practice of Law.~~** In counties of the first and second class, a justice court judge shall have a degree from a law school that makes one eligible to apply for admission to the bar in any state. In counties of the third, fourth, fifth and sixth class, a justice court judge shall have at the minimum a high school diploma or GED. A justice court judge does not need to hold a law degree. The applicant must have a high school diploma or GED.

**Restricted Activities.** Section 78A-7-206 of the Utah Code establishes further restrictions on the activity of judges.

(1) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.

(2) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

(3) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.

(4) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

### **(b) Qualities of Judges**

The following criteria for evaluating applicants are derived from the American Bar Association's Guidelines for Reviewing Qualifications of Applicants for State Judicial Office, which offer some guidance for determining "fitness for office." Following the ABA guidelines are some additional considerations. Although not all justice court judges are ~~not~~ required to be attorneys, these modified guidelines provide useful suggestions and standards for all applicants.

## **(i) American Bar Association Guidelines**

### **Introduction**

Below is a section of the American Bar Association Guidelines that are applicable to the justice court judge. These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics to be sought after in the judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated one from another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will then provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

#### **1. Integrity.** An applicant should be of undisputed integrity.

The integrity of the judge is, in the final analysis, the keystone of the judicial system; for it is integrity which enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. If applicable, the evaluator should make inquiry of judges before who the applicant has appeared and among other members of the bar as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should

waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

**2. Legal Knowledge and Ability.** An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions rapidly once he or she is apprised of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

**3. Professional Experience.** Professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure that the applicant has had substantial experience that would allow them to successfully analyze legal problems and the judicial process.

The extent and variety of an applicant's experience should be considered in light of the nature of the judicial vacancy that is being filled. A successful applicant will have a broad range of professional and life experiences that will add depth to the judicial office they hold.

**4. Judicial Temperament.** An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament is typified by recognition that there must be compassion as the judge deals with matters put before him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny. Judicial temperament is a quality which is not easily identifiable, but which does not wholly evade discovery. Its absence can usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

**5. Diligence.** An applicant should be diligent and punctual.

Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken. While diligence is not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, perseverance, and assiduousness. It does imply the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients and judges.

**6. Health.** A candidate should be in good health.

Good health embraces a condition of being sound in body and mind relative to the extraordinary decision making power vested in judges. Physical disabilities and diseases which do not prevent a person from fully performing judicial duties will not be a cause for rejection of a candidate. However, any serious condition which would affect the candidate's ability to perform the duties of a judge may be further investigated by the evaluator. The evaluator may require a candidate to provide a physician's written report of a recent thorough medical examination addressing the condition of concern.



Good health includes the absence of erratic or bizarre behavior which would significantly affect the candidate's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have developed the ability to refresh himself or herself occasionally with non-work-related activities and recreations. A candidate should have a positive perception of his or her own self-worth, in order to be able to withstand the psychological pressures inherent in the task of judging.

The evaluator should give consideration to the age of a candidate as it bears upon health and upon the number of years of service that the candidate may be able to perform.

**7. Financial Responsibility.** An applicant should be financially responsible.

The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.

**8. Public Service.** Consideration should be given to an applicant's previous public service activities.

The rich diversity of backgrounds of American judges is one of the strengths of the American judiciary, experience which provides an awareness of and a sensitivity to people and their problems may be just as helpful in a decision making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non-legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, the applicant should not be required to indicate how he or she would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

## **(ii) Other Considerations for Qualification**

In addition to the ABA guidelines, the commissioners may wish to consider the following in analyzing the qualifications of an applicant for judicial office.

**Impartiality.** A judge must be able to determine the law and sometimes the facts of a dispute objectively and impartially. Applicants should be challenged on their ability to make the transition from advocate to arbiter, on their ability to hear and consider all sides of an issue, and on their ability to put aside prejudice and bias.

**Industry.** Applicants must demonstrate a willingness to dedicate themselves to diligent, efficient, and thorough work. Work habits differ; work techniques vary; but rising court caseloads demand industry of judges. This means the ability to manage time efficiently, to persevere against obstacles, to prepare thoroughly and punctually, and to resolve issues concisely and decisively.

**Age.** A justice of the Supreme Court must be at least 30 years old. A judge of any other court must be at least 25 years old. Otherwise, there are no restrictions on the age of nominees to judicial office. Applicants should not be judged by their age alone. But they may be judged by the qualifications that may wax or wane with age: maturity, stability, legal skills, health, vitality.

**Justice Court Judges.** Justice court judges are in contact with the public more than any other judge. Justice courts are established by counties and municipalities and have the authority to hear class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction. Justice court judges serve the citizens of the city or county who appoint them and are often the first or only interaction many citizens will have with the court.

**Diversity on the Bench.** When deciding among applicants whose qualifications appear in all other respects to be equal, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made. The idea is to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

## **(9) The Interview**

### **(a) Scheduling Interviews**

After the candidates are selected for interview, the commission develops an interview schedule and should prepare questions for the interviews. This may be done at the same meeting in which the candidates for interview are selected or at an intervening meeting before the interviews begin.

Depending on the number of candidates, interviews should be completed in one day or on successive days. The number of intervening days between interviews should be kept to a minimum. It may be necessary for the commission to conduct some interviews in the evening. The interviews should be scheduled to include about ten minutes between interviews to review the qualifications of the candidate, if desired. Interviews should last about 20 to 30 minutes per candidate. This means that at least one-half hour per candidate should be scheduled.

Each interview is conducted in a similar fashion. The chair briefly introduces the candidate to the commissioners. The candidate is given several minutes to make an opening statement, if desired, which should include a statement of reasons for seeking the office. The commissioners then conduct the questioning. At the end of the questioning the candidate is given several minutes to make a closing statement.

Candidates are selected for time slots by the staff on a random basis. This avoids any accusation that a particular candidate was given a favored time slot.

Once set, the interview schedule is firmly fixed. Changes in the interview schedule lead only to scheduling difficulties and confusion. Rarely will any interview schedule satisfy all of the candidates, so the initial random schedule should not be changed except in extreme circumstances. The Administrative Office of the Courts is responsible for notifying the candidates of the date, time, location, and format of the interview.

### **(b) Preparation for Interviews**

Interviews are more productive if the commissioners are well-prepared. Prepare the questions beforehand. Some questions are asked of all candidates for all judgeships. Some questions might be asked only for a particular candidate or vacancy. The investigation of candidates likely will lead to questions designed for a particular candidate.

Determine the order of questions beforehand. Every commissioner should have the opportunity to ask questions. Generally, the questioning should rotate through commissioners. The chair should ask questions last.

Determining the questions and their order does not mean that the commissioners are prohibited from following up an answer with a more particularized question. The format of the interviews should be flexible enough to pursue an unanticipated line of questioning. Preparing the questions and their order beforehand helps in returning the interview to its original course.

### **(c) Suggested Questions**

Candidates must be treated fairly, but commissioners are encouraged to conduct aggressive questioning of the potential judges. Judges must frequently face the stress of decisions affecting the lives and property of other people. The commissioners have the responsibility to assess the ability of the candidate to resolve close questions under stress.

Phrasing of the questions is important. The commissioners may closely question the candidates concerning social issues, but the questions should be phrased to avoid opinion shopping or reducing the interview to a political interrogation. The questions should be phrased to elicit an applicant's knowledge and understanding of important issues.

Commissioners also should not hesitate to inquire about a candidate's qualifications for a position on the bench, including the applicant's health.

Each commission is responsible for developing its own set of questions suitable to the particular court and candidate. A few examples of possible questions follow. Not all questions may be applicable to every level of court.

### **Candidate's Skills, Experience, and Personal Traits**

- How would you deal with an attorney who is:
  - unprepared?
  - argumentative?
  - late?
- What would be your most important contribution to the court?
- What do you anticipate will be your frustrations on the bench?
- What aspects of the judicial profession do you anticipate will be boring?
- What are your most important interests outside of your present work?
- Will you have to forgo any of these interests to keep up with the court's caseload?

### **Candidate's General Judicial Philosophy**

- Why do you want to be a judge?
- What characteristics and qualities do you think are important for a judge to possess?
- Do you have a particular philosophy of law?
- What is your view of the role of the Judiciary in society?
- To what extent should a judge consider political, social, and economic consequences in decisions?

### **Candidate's View of the Court System**

- What do you see as the strengths and weaknesses of Utah's criminal justice system?

## **(10) Selection of Nominees**

### **(a) Order of Debate and Voting**

After the interviews are completed, the commissioners should devote sufficient time to discuss the qualifications of the candidates. This deliberation may help the commission to form a consensus and facilitate the selection of nominees. Every commissioner should have the opportunity to participate in the debate. Generally, the debate should rotate through commissioners. The chair should participate in the debate last. The commission may conduct its debate, or further debate, before every round of voting.

Voting for the selection of nominees must be conducted by confidential ballot, but otherwise is the same as voting during the screening process. Any candidate receiving a majority of votes of voting commissioners present is selected as a nominee. The commission should thoroughly debate the qualifications of candidates prior to voting. The commission can reconsider its action on any candidate upon a majority vote to do so.

The nominating commission must submit at least 3 and no more than 5 names to the appointing authority. See U.C.A. §78A-7-202(2)(d). If after full deliberation the commission is unable to agree upon the number of nominees permitted or required, the commission should further debate the qualifications of the candidates and conduct additional rounds of voting until commissioners agree upon the permitted or required number of nominees.

A nominating commission may not decline to nominate a candidate merely because: that commission or another declined to nominate the candidate to a previous vacancy; or because that commission or another nominated the candidate to a previous vacancy and the local hiring executive selected someone else.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes. After the vote tallies are verified and recorded, the ballots are destroyed.

#### **(b) Public Comment Regarding Nominees; Removal of Nominee**

Candidates are notified individually of their nomination. Candidates interviewed but not selected as nominees are notified of that fact by letter from the staff of the commission. The names of the nominees are made public by the commission. The public release of the names of the nominees includes a statement that persons having comments to make regarding the nominees should provide a written statement addressed to the commission chair through the Administrative Office of the Courts. Statements must be received by the Administrative Office of the Courts within 10 days of the public release of names. A copy of the public release is sent to the local government executive.

The commission may meet to review any public comments not sooner than ten days after the public release of the names of the nominees. The commission shall provide a nominee with a copy of any written negative comment received and shall provide a nominee the opportunity to respond in person or in writing. The commission may conduct further interviews of any nominee. The commission may request further investigation of any nominee.

After consideration of any comments and the response of the nominee, the commission may remove a candidate from the list of nominees upon the vote of four members of the commission. The commission shall select another nominee from among interviewed candidates in the manner described in paragraph 10(a) of this section for voting upon nominees. The nomination process is not final until the commission submits the nominees to the city/county executive.

#### **(c) Submitting Nominees**

Nominees are submitted to the local government executive by letter from the chair of the commission. A copy of the letter is sent to each commission member. The letter should encourage the local government executive to conduct further review of the nominees and to encourage public comments which could provide valuable insight to ensure that the best nominee is appointed. The application package, including investigation reports, reference letters, and public comments, of each nominee is forwarded to the local government executive.

Nominees are listed in alphabetical order without any indication of rank or preference and without any indication of the vote of the commission. Because the authority of the nominating commission ends with the nomination of candidates, it is important that there be no effort to influence or persuade the local government executive in the appointment. Minority reports and expressions of personal feelings regarding nominees are inappropriate. The appointment authority belongs to the local government, not to the commission. The local government executive has the means to conduct an independent investigation of the nominees and will select the nominee best qualified for the position. While commission members should not contact the local government executive, they should feel free to respond to inquiries initiated by the local government executive's office regarding the nominees.

If a nominee withdraws before the local government executive has made an appointment, the commission may, at the request of the local government executive, nominate a replacement. Unless time permits, the Commission does not need to publish the nominee's name for public comment.

#### **(d) Nominee Selection and Certification**

The appointment of a new judge is a three step process:

- Selection
- Confirmation
- Certification

After the local government executive has made a selection, the local legislative body is required to confirm the appointment. Once confirmed, a press release is issued naming the judicial appointee. This public notice provides the name of the appointee in addition to a brief summary of the appointee's education and work history.

The appointee is then required to successfully complete the Justice Court New Judge Orientation program provided by the Administrative Office of the Courts. This is a one week training program conducted in Salt Lake City. Upon completion of the orientation process, the Justice Court Administrator makes a recommendation to the Utah Judicial Council respecting certification. Certification is based on attendance of all parts of the orientation and on achieving a passing score on the exam administered at the end of the orientation. The Council issues final certification of the appointment.

# **Application**



## APPLICATION FOR JUDICIAL OFFICE

*Instructions to the applicant and  
summary of the nomination process*

### I. INSTRUCTIONS FOR OBTAINING APPLICATION FORM

The application form, waiver form, and summary of instructions are available on the state Courts web page at <http://www.utcourts.gov/admin/jobs>. The application form, waiver form, and summary of instructions are also available in the formats listed below. In all requests for an electronic file, be sure to designate the required format and include a return-internet e-mail address. You are urged to request the electronic file by internet e-mail which will automatically provide the return e-mail address.

\* Please note that the application instructions and form for Judicial Office have been updated as of June 2016.

The request for the electronic file may also be sent by letter or fax. If you wish the electronic file on disk, you must provide a formatted disk which can be hand delivered or mailed. If mailed, include a disk mailer with return address and postage prepaid.

Formatted: Indent: Left: 0.38"

Adobe PDF Form  
WordPerfect  
Microsoft Word

Please make requests to: Administrative Office of the Courts  
Attn: Melisse Stiglich  
450 S. State Street  
PO Box 140241  
Salt Lake City, Utah 84114-0241  
Phone: (801) 578-3844  
FAX: (801) 238-7828  
[melisses@utcourts.gov](mailto:melisses@utcourts.gov)

The application form, waiver forms and these instructions are also available in all of the above formats on the Courts Web-site: [www.utcourts.gov](http://www.utcourts.gov).

### II. INSTRUCTIONS FOR COMPLETING APPLICATION FORM

- A. Type all answers. Do not include these instructions with the completed application form.
- B. When preparing responses on a typewriter, if more space is needed, attach additional pages to the end of the application form and type the corresponding question number next to the information.
- C. When preparing responses on a word processor, include all information immediately after the question and allow the word processor to repaginate the document.



D. Answer all questions completely. If a question does not apply, write "Not applicable" in the space provided. If information is not available, write "Not available" and state your reasons for the unavailability.

E. Type your full name in the Header of the first page of the application. Please make sure that your name is on each page of the application.

F. E. Following is a checklist of materials to be submitted with the application. Please copy materials on both sides of the page on three hole punched paper (the original application may be single sided). Please do not staple any documents.

— Original application plus six copies of Section 2 of the application form, including any supplemental pages

— Original and six copies of the following 4 notarized documents (pages 17 – 20 of appl.) Please attach all four documents to each copy of the application form:

- Accuracy of the Application statement
- Waiver of Right to Review the Records in the Nomination & Appointment Processes
- Waiver of Confidentiality of Records
- Fair Credit Reporting Act Disclosure and Authorization

— A resume attached to each application form

— OneA brief one paragraph summary of education and work history that will be made available to the public if selected for nomination

— A check or money order for \$8.70 made payable to the Administrative Office of the Courts to cover the cost of a credit check (if you have applied for a justice court judgeship within the previous six months payment is not necessary).

— If you are simultaneously applying for more than one judgeship in a county, please contact Melisse Stiglich at [melisses@utcourts.gov](mailto:melisses@utcourts.gov) to determine whether multiple application packages are required.

Note: Applications for Justice Court judgeships are different than those for District, Juvenile and Appellate judgeships. Also the application and instructions have been updated as of June 2016.

G. F. Mail applications to:

Administrative Office of the Courts  
Attn: Melisse Stiglich  
450 S. State Street  
PO Box 140241  
Salt Lake City, UT 84114-0241

Since the Administrative Office of the Courts cannot be responsible for applications not received, please send applications by registered or certified mail, return receipt requested.

Upon receipt, the application will be reviewed for completeness. A notice of receipt listing any deficiencies in the application materials will be sent to you within 5 days. An application is not considered unless all deficiencies are corrected before the expiration of the filing deadline. If you do not receive an acknowledgment of receipt of your application within 5 days, contact Melisse Stiglich, at [melisses@utcourts.gov](mailto:melisses@utcourts.gov) to ensure that your application has been received.

Applications faxed or emailed to the Administrative Office of the Courts by the application deadline must be immediately followed by a mailed original application, post marked by the application deadline, along with the requisite number of copies and the required check or money order to cover the cost of a credit check.

H.G- The deadline for applications is stated in the published notice of vacancy. The notice of the vacancy allows for an application period of at least 15 days from initial release of publication. It may, however, be longer. At the discretion of the Nominating Commission, the application period may be reopened after the deadline has passed. If fewer than 9 applications are received for a judicial vacancy, the recruitment period will be extended for an additional 15 days.

After the initial application period 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 persons who are not residents of the county or an adjacent county in which the court is located. Also in such circumstances applicants would only be required to have, at the minimum, a high school diploma or GED. See U.C.A. §78A-7-201.

Formatted: Font: Arial, 10 pt

Formatted: Font: Arial, 10 pt

Formatted: Font: Arial, 10 pt

### III. SUMMARY OF THE NOMINATION PROCESS

- A. The date, time, and location of the organizational meeting of the Nominating Commission will normally be given in the notice of the vacancy. The public is invited to attend and may arrange through the Administrative Office of the Courts to submit oral or written statements. Testimony concerning individual applicants or cases is prohibited.
- B. An investigation of the applicants is conducted by the Administrative Office of the Courts and the results are submitted to the Commissioners. The Commissioners may conduct their own investigation. The scope of the investigation may include, but is not limited to, citizenship, residency, age, credit, taxes, education, employment, mental or physical health, civil litigation, criminal litigation, law enforcement investigation and criminal charges, admission to the practice of law, service in the United States' armed forces, or disciplinary action by any judicial conduct commission or state bar association of any jurisdiction. The names of applicants may be provided to other persons as necessary to accomplish the investigation but are not released to the public. The results of the investigation are not disclosed to the public. The Commission may disclose the investigation results to the appropriate investigative or prosecutorial authorities if the investigation reveals criminal activity or a breach of ethics by an applicant.
- C. Applicants should not personally contact Nominating Commission members regarding their application for the judicial vacancy.
- D. Applicants selected for interviews are notified of the date, time, location, and format of the interview. Applicants eliminated from consideration are notified as soon as possible after that decision is made.

- E. Applicants are evaluated on the basis of several criteria: integrity, impartiality, industry, legal knowledge and ability, judicial temperament, financial responsibility, health, and public service.
- F. The Commission publishes the names of the proposed nominees and invites comments regarding their qualifications. ~~The names of applicants may be provided to other persons as necessary to accomplish the investigation but are not released to the public. The results of the investigation are not disclosed to the public. The Commission may disclose the investigation results to the appropriate investigative or prosecutorial authorities if the investigation reveals criminal activity or a breach of ethics by an applicant.~~
- G. The names of three to five nominees are submitted to the local government executive, council or commission for each judicial vacancy. The nominees are listed in alphabetical order without any indication of preference by the Commissioners.
- H. Applications may be considered by Commissioners who have a business, professional, or personal relationship to the applicant. Commissioners must recuse themselves if they are within the third degree of consanguinity. For other relationships, Commissioners are required to disclose on the record of the Commission the nature of the relationship. The Commission by majority vote determines whether the relationship requires the recusal of the Commissioner.

#### IV. EVALUATION CRITERIA

##### A. Statutory Minimum Requirements

**Age.** U.C.A. Section 78A-7-201 requires that a justice court judge be 25 years old and retire upon attaining the age of 75 years.

**Residency.** All judges must be United States citizens. Justice court judges must be a resident of the county in which the court is located or an adjacent county for at least six months immediately preceding appointment and be a qualified voter of the county in which the judge resides.

**Practice of Law.** ~~—In counties of the first and second class, a justice court judge shall have a degree from a law school that makes one eligible to apply for admission to the bar in any state. In counties of the third, fourth, fifth and sixth class, a justice court judge shall have at the minimum a high school diploma or GED. A justice court judge is not required to hold a law degree. A high school diploma or GED is required.~~

Formatted: Font: Arial, 10 pt, Not Highlight

**Restricted Activities.** Section 78A-7-206 of the Utah Code establishes further restrictions on the activity of judges.

(1) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.

Field Code Changed

(2) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

(3) A justice court judge may not hold any office in any political party or organization engaged

in any political activity or serve as an elected official in state government or any political subdivision of the state.

(4) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

## **B. Qualities of Judges**

The following criteria for evaluating applicants are derived from sections of the American Bar Association's Guidelines for Reviewing Qualifications of Applicants for State Judicial Office, which offer some guidance for determining fitness for office. Following the modified ABA guidelines are some additional considerations. Although justice court judges are not required to be attorneys, these guidelines provide useful suggestions and standards for all applicants.

### **1. American Bar Association Guidelines**

#### **a. Introduction**

These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics to be sought after in the judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated one from another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will then provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

- b. Integrity.** An applicant should be of undisputed integrity. The integrity of the judge is, in the final analysis, the keystone of the judicial system; for it is integrity which enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's

integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. If applicable, the evaluator should make inquiry of judges before whom the applicant has appeared and among other members of the bar as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

- c. **Legal Knowledge and Ability.** An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions rapidly once he or she is apprised of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

- d. **Professional Experience.** Professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure that the applicant has had substantial experience that would allow them to successfully analyze legal problems and the judicial process.

The extent and variety of an applicant's experience should be considered in light

of the nature of the judicial vacancy that is being filled. A successful applicant will have a broad range of professional and life experiences that will add depth to the judicial office they hold.

- e. **Judicial Temperament.** An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament is typified by recognition that there must be compassion as the judge deals with matters put before him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny. Judicial temperament is a quality which is not easily identifiable, but which does not wholly evade discovery. Its absence can usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

- f. **Diligence.** An applicant should be diligent and punctual. Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken. While diligence is not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, perseverance, and assiduousness. It does imply the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients and judges.

- g. **Health.** An applicant should be in good health. Good health embraces a condition of being sound in body and mind relative to the extraordinary decision making power vested in judges. Physical disabilities and diseases which do not prevent a person from fully performing judicial duties will not be a cause for rejection of a candidate. However, any serious condition which would affect the candidate's ability to perform the duties of a judge may be further investigated by the evaluator. The evaluator may require a candidate to provide a physician's written report of a recent thorough medical examination addressing the condition of concern.

Good health includes the absence of erratic or bizarre behavior which would significantly affect the candidate's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have developed the ability to refresh him or herself occasionally with non-work-related activities and recreations. A candidate should have a positive perception of his or her own self-worth, in order to be able to withstand the psychological pressures inherent in the task of judging.

The evaluator should give consideration to the age of a candidate as it bears upon health and upon the number of years of service that the candidate may be able to perform.

- h. **Financial Responsibility.** An applicant should be financially responsible. The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.
- i. **Public Service.** Consideration should be given to an applicant's previous public service activities.

The rich diversity of backgrounds of American judges is one of the strengths of the American judiciary. Experience which provides an awareness of and a sensitivity to people and their problems may be just as helpful in a decision making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non-legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, the applicant should not be required to indicate how he or she would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

2. **Other Considerations for Qualification** - In addition to the modified\_ABA guidelines, the commissioners may wish to consider the following in analyzing the qualifications of an applicant for judicial office.
  - a. **Impartiality.** A judge must be able to determine the law and sometimes the facts of a dispute objectively and impartially. Applicants should be challenged on their ability to make the transition from advocate to arbiter, on their ability to hear and consider all sides of an issue, and on their ability to put aside prejudice and bias.
  - b. **Industry.** Applicants must demonstrate a willingness to dedicate themselves to diligent, efficient, and thorough work. Work habits differ; work techniques vary; but rising court caseloads demand industry of judges. This means the ability to manage time efficiently, to persevere against obstacles, to prepare thoroughly and punctually, and to resolve issues concisely and decisively.
  - c. **Age.** U.A.C. Section 78A-7-201 requires that a justice court judge be 25 years or older. Otherwise, there are no restrictions on the age of nominees to judicial office. Applicants should not be judged by their age alone. But they may be judged by the qualifications that may wax or wane with age: maturity, stability, legal skills, health, and vitality.
  - d. **Justice Court Judges.** Justice court judges are in contact with the public more than any other judge. Justice courts are established by counties and municipalities and have the authority to hear class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction. Justice court judges serve the citizens of the city or county who appoints them and are often the first or only interaction many citizens will have with the court.
  - e. **Diversity on the Bench.** When deciding among applicants whose qualifications appear in all other respects to be equal, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made. The idea is to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

## V. CANON 4 CODE OF JUDICIAL CONDUCT

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

- A. A judge or a candidate for a judicial office shall not:
  1. act as a leader or hold any office in a political organization;



2. make speeches for a political organization or publicly endorse or oppose a candidate for public office;
  3. solicit funds for or pay an assessment or make a contribution to a political organization or candidate for public office, or attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
  4. publicly identify himself or herself as a member of a political organization, except as necessary to vote in an election;
  5. seek, accept or use endorsements from a political organization;
  6. use court staff or make excessive use of court facilities or other court resources in seeking judicial office;
  7. knowingly, or with reckless disregard for the truth, make any false or misleading statement in seeking judicial office;
  8. make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
  9. make pledges, promises, or commitments other than the faithful, impartial and diligent performance of judicial duties.
- B. A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited by Canon 4 of the Utah Code of Judicial Conduct.
- C. A judge standing for retention shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and shall encourage members of the judge's family to adhere to the same standards of conduct.
- D. If a judge standing for retention has drawn public opposition, the judge may operate a campaign for office subject to the following:
1. the judge shall comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;
  2. the judge shall not directly solicit or accept campaign funds or solicit public statements of support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support. Committees may solicit campaign contributions and public statements of support from lawyers and non-lawyers. Surplus contributions held by the committee after the election shall be contributed without public attribution to the Utah Bar Foundation. Committees must not permit the use of campaign contributions for the private benefit of the judge or members of the judge's family;
  3. the judge shall review and approve the content of all campaign statements and materials produced by his or her campaign committee before their dissemination;
  4. the judge may speak to public gatherings on the judge's own behalf;
  5. the judge may respond to personal attacks or attacks on the judge's record, provided the response is consistent with other provisions of Canon 4, Rule 4.2 of the Utah Code of Judicial Conduct; and
  6. when a party or lawyer who made a contribution of \$50 or more to the judge's campaign committee appears in a case, the judge shall disclose the contribution to the parties. The requirement to disclose shall continue from the time the judge forms a campaign committee until 180 days after the judge's retention election.
- E. A judge shall resign from judicial office upon becoming a candidate for a non-judicial elective office, unless permitted by law to continue to hold judicial office.

- F. A judge is not required to resign from judicial office upon becoming a candidate for a non-judicial appointive office, provided that the judge complies with other provisions of the Utah Code of Judicial Conduct

Insert Full Name

**APPLICATION QUESTIONNAIRE FOR JUDICIAL OFFICE**  
**Section 1 Personal Identification**

Please read this entire questionnaire and the accompanying instructions before completing the questionnaire. Begin answers in the space provided. If the space provided is insufficient, allow the word processor to wrap the text and repaginate document.

Court for which this application is being submitted: \_\_\_\_\_

County of Residence: \_\_\_\_\_

Please provide a statement explaining why you are seeking this judicial position:

Formatted: Indent: Left: 0", First line: 0"

**PERSONAL IDENTIFICATION**

Formatted: Indent: Left: -0.94", Hanging: 0.5", Tab stops: -0.44", Left + -0.06", Left + 0.31", Left + 0.69", Left + 2.06", Left + 2.56", Left + 3.06", Left + 3.56", Left + 4.06", Left + 4.56", Left + 5.06", Left + 5.56", Left + 6.06", Left + Not at -0.31" + 0.06" + 0.44" + 0.81" + 2.19" + 2.69" + 3.19" + 3.69" + 4.19" + 4.69" + 5.19" + 5.69" + 6.19"

1. Full Name: (First Middle Last) \_\_\_\_\_

Have you ever been known by any other name or surname? \_\_\_\_\_ If so, state all names used and the dates and places of use. Include name changes as a result of marriage.

3. Social Security Number: \_\_\_\_\_

4. Residence Address: \_\_\_\_\_

5. Telephone: Home: \_\_\_\_\_ Cell: \_\_\_\_\_

6. Email Address: \_\_\_\_\_

7. Date of Birth: \_\_\_\_\_

8. Have you been a continuous resident of Utah for the immediately preceding three or more years? \_\_\_\_\_

Have you been a resident of the county, or the adjacent county of the court for which you are applying for at least six months immediately preceding appointment? \_\_\_\_\_

Are you a qualified voter of the county in which the judicial vacancy is open or in an adjacent county in which the judicial vacancy is open? \_\_\_\_\_

9. State all residences you have had in the last ten years.

Street Address

City, State, Zip

Dates

Insert Full Name

10. Business Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

11. Are you a citizen of the United States? \_\_\_\_\_

12. Are you currently admitted to practice law in Utah? \_\_\_\_\_

Insert Full Name

**APPLICATION QUESTIONNAIRE FOR JUDICIAL OFFICE**  
**Section 2 Qualifications**

Full Name: \_\_\_\_\_

Age: \_\_\_\_\_

Court for which this application is being submitted: \_\_\_\_\_

County of Residence: \_\_\_\_\_

Please provide a statement explaining why you are seeking this judicial position:

Formatted: Indent: Left: 0", First line: 0"

Formatted: Justified

Formatted: Justified

Formatted: Justified

**EDUCATION**

13. Show all post high school education

School Name and Location	Dates of Attendance	Major	Degree Awarded
--------------------------	---------------------	-------	----------------

14. Indicate any academic distinctions you have received.

**If you have been admitted to practice law, please fill out the following section:**

15. Show all jurisdictions, including Utah, in which you are or were admitted to practice law. Include the date of your admission and **your identification number**, if any.

Formatted: Font: Bold

Insert Full Name

16. Have you been entitled to practice law in each of the jurisdictions and before each of the courts listed in question 15 continuously from the date you first became entitled to practice until the date of this application? \_\_\_\_\_  
If not, state jurisdiction involved the dates during which you have not been so entitled, and the nature of and the facts surrounding the disqualification.
17. Have you ever been denied admission to practice law in any state? \_\_\_\_\_ If so, state the name of the jurisdiction and the reason for the denial.
18. a. Have you ever been disbarred, suspended from the practice of law, reprimanded, censured, or otherwise disciplined as an attorney in any jurisdiction? \_\_\_\_\_  
b. Are you aware of any formal disciplinary proceedings\* currently pending against you as an attorney in any jurisdiction? \_\_\_\_\_  
\* For purposes of this question, a "formal proceeding" is one in which the complaint has survived initial screening and has been referred for disposition on the merits.  
c. Have you ever been held in contempt by a court or sanctioned by a court? \_\_\_\_\_

If you answered "yes" to any part of this question, state the jurisdiction in which the matter occurred, the date of the action, the citation and number of the case, the facts of the case, and the disposition of the matter.

19. If a lawyer, indicate the general character of your practice of law over the course of your legal career. Your answer should include, but is not limited to, the following:
- the courts in which you have practiced
  - the nature of cases you have handled
  - the volume of cases handled in each case type
  - the percentage of your time that has been spent in litigation
  - the amount and type of actual in-court experience you have had - both in trials and in other appearances
  - your appellate experience

**JUDGESHIPS**

20. Show courts on which you have sat as a duly appointed or elected judge.

State	Court	Dates	Reason for Termination	Nature of Jurisdiction
-------	-------	-------	------------------------	------------------------

Insert Full Name

21. Have you ever served as a judge pro tempore, court commissioner, arbitrator or quasi-judicial fact finder? \_\_\_\_ If so, please indicate the court or organization, the length of your appointment and the nature of the work.

Court/Organization

Dates

Nature of Work

22. a. Have you ever been reprimanded, censured, suspended, removed from the bench, or otherwise disciplined as a judge in any jurisdiction? \_\_\_\_
- b. Are any formal complaints\* currently pending against you, or has any disciplinary action ever been taken against you by the judicial conduct commission of any state? \_\_\_\_

\* For purposes of this question, a "formal complaint" is one which has survived initial screening and has been referred for disposition on the merits.

If you answered "yes" to any part of this question, state the jurisdiction involved, the date of the action, the citation and number of the case, the facts of the case, and the disposition of the matter.

**ELECTED OFFICES**

23. Show any elected offices you have held.

**EMPLOYMENT HISTORY**

24. Show all businesses, professions, or employment you have had or been engaged in, since you were 21 years of age. List your current or most recent employment first. Employers listed may be contacted by the Judicial Nominating Commission or court staff.

Period of Employment	Employer Name and Address	Position Held	Immediate Supervisor	Reason for Termination
----------------------	---------------------------	---------------	----------------------	------------------------

Insert Full Name

---

25. Have you ever been discharged from employment or have you ever resigned from any employment after being told that your conduct or work was unsatisfactory? \_\_\_\_ If so, fully state the facts concerning the matter. For purposes of this question, "employment" does not include your retention by a client for the rendition of legal services.
26. Please explain how you believe your work experiences relate to the judgeship for which you are applying.

<b><i>SERVICE IN THE ARMED FORCES</i></b>
---

27. Have you ever been a member of any branch of the armed forces of the United States? \_\_\_\_ If so, state the following:
- Branch of Service: \_\_\_\_
- Service Number: \_\_\_\_
- Dates of Active Duty: \_\_\_\_
- Rank at Separation: \_\_\_\_
- Was your discharge other than honorable? \_\_\_\_ If so, explain:



Insert Full Name

**LITIGATION AS A PARTY**

28. Do you have any outstanding judgments against you? \_\_\_\_ If so, state the name and address of the creditor(s), the amount of the judgment outstanding, and the date, nature, and court of the judgment.
29. a. Have you ever been convicted of a criminal charge, whether or not later expunged, or are any criminal charges pending against you? (Do not include traffic offenses except for DUI, Reckless Driving, Failure to Stop at the Command of a Police Officer, Leaving the Scene of an Accident and Joy Riding.) \_\_\_\_
- b. Have you in your individual capacity ever been or are you currently a party to any civil litigation except for divorce? \_\_\_\_
- c. Have you ever been adjudicated as bankrupt or has a petition in bankruptcy ever been filed by you or against you either alone or in conjunction with others? \_\_\_\_
- d. Have you ever been or are you currently a defendant in a malpractice suit? \_\_\_\_
30. If you answered "yes" to any portion of question 29, state fully the name and location of the court, the case number, the names of the parties, the name and location of the law enforcement agency involved, the facts concerning the matter, the disposition of the matter including any sentence imposed, whether or not an appeal was taken or is pending, and the results of the appeal.
31. Are you currently the subject of an investigation which could result in civil or criminal action against you? \_\_\_\_ If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

**MENTAL AND PHYSICAL HEALTH**

32. Appendix A, Utah Code of Judicial Administration sets forth evaluation criteria for the selection of judges, including integrity, judicial temperament, diligence, and health. These criteria are reproduced as part of the introduction to this application form. Under these criteria, can you perform the duties of a judge with or without reasonable accommodation? \_\_\_\_ If No, please offer additional detail as necessary.

**PROFESSIONAL AFFILIATIONS**

Insert Full Name

33. List the names and dates of membership of any professional organization of which you currently are a member, including bar associations. List any elected or appointed offices or committee memberships held within these organizations.

**COMMUNITY AND CIVIC INVOLVEMENT**

34. List the names and dates of membership of any civic or community organization of which you are currently a member. List any elected or appointed offices or committee memberships held within these organizations and any other fact which you believe is significant.

**PUBLICATIONS**

35. List by title and publication any relevant articles you have published either as sole author or co-author.

Insert Full Name

<b>REFERENCES</b>
-------------------

36. Letters of recommendation are not submitted by the applicant. Please provide the contact information for five references we can contact if you are selected for an interview. Include reference names, phone numbers, email addresses and mailing addresses, and your relationship to the named reference. The judicial nominating commission or its staff will contact the references listed at their discretion.

<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>	<u>Mailing Address</u>	<u>Relationship</u>
-------------	---------------------	----------------------	------------------------	---------------------

Insert Full Name

**ACCURACY OF APPLICATION**

37. Is there any fact not set forth in your answers that in your opinion might be relevant to your qualifications to serve on the court for which you have applied or that could reflect either positively or negatively upon your candidacy for judicial office? \_\_\_\_ If so, state fully the facts concerning the matter.
38. I understand that submission of this application expresses my willingness to accept appointment to the position for which I have applied, subject to reaching an agreement as to salary and benefits. \_\_\_\_  
(Initials)
39. I understand that by submitting this application I am consenting to investigations concerning: verification of education, criminal charges and law enforcement investigations, credit information, court records, judicial and attorney disciplinary proceedings, any employers or references listed, and verification of any other information listed herein. \_\_\_\_  
(Initials)
40. I hereby state that the answers to all questions contained in this application are true to the best of my knowledge and that knowingly providing false information may subject me to removal from office. \_\_\_\_  
(Initials)

Date: \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Applications should be sent to: Administrative Office of the Courts  
Attn: Melisse Stiglich  
450 S State Street  
PO Box 140241  
Salt Lake City, Utah 84114-0241

The Administrative Office of the Courts cannot be responsible for applications not received. A notice of receipt showing any deficiencies in the application will be emailed to all applicants. Inquiries should be directed to Melisse Stiglich at the Administrative Office of the Courts, at the above address or by email at [melisses@utcourts.gov](mailto:melisses@utcourts.gov)

Insert Full Name

**WAIVER OF RIGHT TO REVIEW THE RECORDS IN THE NOMINATION AND  
APPOINTMENT PROCESSES**

I, \_\_\_\_\_, the undersigned applicant for the position of judge of the \_\_\_\_\_ Court,  
hereby waive any right which I may enjoy by virtue of state or federal statute, rule, regulation, or other  
law to review the records of the Utah Justice Court Nominating Commission, the Administrative Office  
of the Courts and the Judicial Council as they pertain to nominations for ~~and~~ appointment to this  
position.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

State of \_\_\_\_\_

} ss.

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Insert Full Name

### WAIVER OF CONFIDENTIALITY OF RECORDS

I, \_\_\_\_\_, the undersigned applicant for the position of judge of the \_\_\_\_\_ Court, hereby waive the benefit of any state or federal statute, rule, regulation or other law prescribing the confidentiality of any records or documents, whether formal or informal, pending or closed, maintained by any public or private agency or organization as those records or documents pertain to citizenship, residency, age, credit, taxes, education, employment, mental or physical health, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the United States' armed forces, or disciplinary action by any judicial conduct commission or state bar association of any jurisdiction.

I hereby authorize and request every public or private agency, organization, or person maintaining such records to furnish to the Utah Judicial Nominating Commission, the Office of the Court Administrator, or their agents or representatives any information contained therein and to permit them to inspect and make copies of such records and documents.

I hereby release the Utah Judicial Nominating Commission, the Office of the Court Administrator, their agents and representatives, and any agency, organization, or person furnishing them information from all liability arising out of any investigation concerning this application.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

State of \_\_\_\_\_

} ss.

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Insert Full Name

## FAIR CREDIT REPORTING ACT DISCLOSURE AND AUTHORIZATION

When considering your application for judgeship, the Nominating Commission, as an agent for the state, will obtain and use a consumer report from a consumer reporting agency. A consumer reporting agency is any person or business that assembles or evaluates consumer credit or other information on individuals. A consumer report is any information from a consumer reporting agency which may bear on a person's credit worthiness, character, reputation or other information that might be used in an employment decision.

When the Nominating Commission obtains a consumer report, the information in that report will be used to make decisions that may directly and adversely affect you. You may request a copy of the consumer report before the Nominating Commission meets to make its final decisions. For additional information about your rights, you should review the Fair Credit Reporting Act or contact the Federal Trade Commission.

By signing below, you acknowledge an understanding of your and the Nominating Commission's rights under the Fair Credit Reporting Act. You voluntarily authorize the Nomination Commission to obtain consumer reports from consumer reporting agencies and to consider those reports in making decisions about your application for judicial office.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

State of \_\_\_\_\_

} ss.

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**TAB 7**





Chambers of  
Justice John A. Pearce

## Supreme Court State of Utah

450 South State Street, S520  
PO Box 140210  
Salt Lake City, Utah 84114-0210  
Telephone: (801) 238-7935  
Fax: (801) 238-7980  
Email: [supremecourt@utcourts.gov](mailto:supremecourt@utcourts.gov)

June 22, 2016

Chief Justice Matthew B. Durrant  
Utah State Courts  
450 South State Street  
Salt Lake City, UT 84114

In re: Appointment to the Standing Committee on Technology

To Chief Justice Durrant:

The Technology Committee develops and makes recommendations to the Judicial Council relating to the plans, priorities, and strategies that guide and govern technology as applied to Utah's courts and management structure.

There exists a vacancy on the Committee consisting of one of the two clerks of the court. The Clerk's Committee has nominated Mikelle Ostler, 4th Juvenile court clerk, to fill the position left vacant by Dawn Hautamaki.

I would ask that you act favorably on the nomination of Mikelle Ostler to the Technology Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Pearce".

John A. Pearce  
Chair, Standing Committee on Technology

cc: Ron Bowmaster