

JUDICIAL COUNCIL MEETING

**AGENDA
October 3, 2017
Zermatt Resort
784 Resort Drive
Midway, UT 84049**

Chief Justice Matthew B. Durrant, Presiding

Please note: Lunch will be served at noon

1. 12:30 p.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 12:35 p.m. Chair’s Report. Chief Justice Matthew B. Durrant
3. 12:45 p.m. Administrator’s Report. Richard Schwermer
4. 12:55 p.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant
Liaison Committee. Justice Thomas Lee
Policy and Planning Judge Derek Pullan
Bar Commission Rob Rice, esq.
(Tab 2 – Information)
5. 1:05 p.m. Board of Justice Court Judges Update Reuben Renstrom
(Information) Jim Peters
6. 1:25 p.m. Education Committee Update Justice Christine Durham
(Information) Tom Langhorne
7. 1:45 p.m. Judicial Performance Evaluation Commission. Jennifer Yim
(Information) Diana Allison, JPEC Commissioner
- 2:05 Break
8. 2:15 p.m. Technology Update Justice John Pearce (telephonically)
(Information) Heidi Anderson
9. 2:25 p.m. Board of District Court Judges Judge Andrew Stone
(Information) Shane Bahr
10. 2:45 p.m. Standing Committee on Children and Family Law Update
. Judge Doug Thomas
(Information) Ray Wahl

- 11. 3:05 p.m. Commissioner Vacancy Fourth District Judge James Brady
(Action) Judge Suchada Bazzelle
- 12. 3:05 p.m. Approval of 2018 meeting dates Ray Wahl
(Tab 3 – Action)
- 13. 3:15 p.m. Executive Session
- 14. 3:25 p.m. Recognition of Council members’ terms expiring.
. Chief Justice Matthew B. Durrant
- 15. 3:35 p.m. Adjourn

Consent Calendar

The consent items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts (Jeni Wood 801-578-3806) or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Council during the scheduled Council meeting.

- 1. Committee Appointments
(Tab 4)

Tom Langhorne – Education Comm.
Nini Rich – ADR Comm.

Tab 1

JUDICIAL COUNCIL MEETING

**Minutes
September 11, 2017
Council Room
Matheson Courthouse
Salt Lake City, Utah 84111**

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Toomey, Vice Chair
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Mark DeCaria
Hon. Thomas Higbee
Hon. David Marx
Hon. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Rob Rice, esq.

EXCUSED:

Hon. Paul Farr

STAFF PRESENT:

Richard Schwermer
Ray Wahl
Jeni Wood
Heidi Anderson
Shane Bahr
John Bell
Katie Gregory
Jim Peters
Nancy Sylvester

GUESTS:

Hon. Suchada Bazzelle
Hon. James Brady
Hon. Michele Christiansen
Hon. Michelle Heward
Kasey Wright

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Kate Toomey moved to approve the minutes from the August 18, 2017 Judicial Council meeting and the August 18, 2017 Budget and Planning meeting. Judge Marvin Bagley seconded the motion, and it passed unanimously.

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

Chief Justice Durrant stated he met with the Appellate Nominating Commission to discuss the qualifications of applicants to replace the vacancy created by the retirement of Justice Durham.

3. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Mr. Schwermer mentioned James Ishida will be leaving the courts in October. Mr. Schwermer said there will be a national search for his replacement. Mr. Schwermer discussed that the next Council meeting will be held in the afternoon of October 3 in Zermatt. Mr.

Schwermer said the members are invited to join the Tribal State Reception, which will be from 5:30 – 7:00 on October 3.

Mr. Schwermer next discussed Operation Rio Grande. Mr. Schwermer said there are now funds for a new drug court. The drug court will begin September 13. Judge Fuchs will cover the first couple of weeks of the drug court. Judge Shaughnessy will oversee the court after that. Judge Todd Shaughnessy noted they currently have 40 potential participants. He also noted that there is room in the other drug courts. Mr. Schwermer said treatment slots are available but the final number will depend on Medicaid expansion.

Mr. Schwermer said Representative Hutchings met with him recently to provide feedback. Representative Hutchings has been involved in the probate case of a family member. Representative Hutchings wanted to thank Mr. Schwermer and the Self-Help Center for assisting with his case. Representative Hutchings said once he moved to the Self-Help Center the case went smooth and quickly.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant had nothing new to report.

Liaison Committee Report:

Justice Thomas Lee had nothing new to report.

Policy and Planning Meeting:

Judge Derek Pullan had nothing new to report.

Bar Commission Report:

Mr. Rob Rice said the Bar will be holding the 2019 Summer Convention in Park City in hopes to have greater participation. The Bar Commissioners toured the Canyons facility and were impressed with the pricing and space. Mr. Rice mentioned having the Council meeting in conjunction with the convention. Mr. Schwermer said that the 2019 schedule will be discussed in the fall of 2018.

5. REQUEST FOR NEW JUSTICE COURT - MONA: (Kasey Wright and Jim Peters)

Chief Justice Durrant welcomed Kasey Wright, attorney for Mona, and Jim Peters to the meeting. Mr. Peters presented a map of Mona and surrounding areas where there are existing justice courts. Mr. Peters noted there isn't a shortage of justice courts within 25 miles of Mona. Mr. Peters said seven miles from Mona is Juab County Justice Court. Mr. Peters noted most of the community's resources, such as schools and shopping are located in Nephi. Mr. Peters said the Board of Justice Court Judges was not in favor of adding a new justice court.

Kasey Wright briefly discussed the history of Mona city. Mr. Wright said since 2010 the population has risen approximately 70%. Mr. Wright said although the population is still small, they are expecting rapid growth. Mr. Wright said recently Mona has moved away from their dependence on Nephi and added an elementary. Mr. Wright said this summer a city building was completed with the justice court in mind. The new building has space for the justice court.

Mr. Wright noted there is no public transportation in Mona. Judge Noonan asked if Mona had discussed with neighboring justice courts the possibility of an interlocal agreement to Mona. Mr. Wright said they have not looked into this. Mr. Wright said the Mona cases are going to Juab County, which operates once a week. Mr. Wright said Mona is looking at the court being open once a week. Mr. Wright said the city is driven by independence more than revenue.

There was concern that the cost may outweigh the income. Mr. Wright said along with community identity, Mona is also working towards the expansion of the city. Mr. Wright said at this point they will not be adding a police department. Mr. Wright thanked Jim Peters for his assistance on this issue. Mr. Wright apologized for the Mayor’s absence. Judge Shaughnessy suggested starting with an inter-local agreement before creating a justice court. The Council discussed the costs associated with a court such as prosecutors, transportation of defendants, and legal defenders.

Motion: Judge Toomey moved to deny adding a justice court in Mona at this time because the city has not shown a need for the court as required by statute, and instead offering a potential solution of an inter-local agreement then readdressing this. Judge Mark DeCaria seconded the motion, and it passed unanimously.

6. AMENDMENTS TO FY 2018 SPENDING PLAN: (Richard Schwermer)

Mr. Schwermer presented FY 2018 spreadsheet showing what additional one-time funds are available after year-end close out. Mr. Schwermer explained what the funds are and how they can be used. Mr. Schwermer said the Legislature gives guidance on how the funds can be used. Mr. Schwermer said the items that were to be addressed in April 2018 can be dealt with today with the carry forward funds. Mr. Schwermer is proposing the following:

One-time Spending Plan		
Unallocated funds after closeout		\$366,066
WiFi Upgrade	\$60,000	\$306,066
UPS	\$79,000	\$227,066
VOIP	\$15,000	\$212,066
3rd District Senior Judges	\$97,000	\$115,066
ODR	\$8,000	\$107,066
Security Audit	\$17,000	\$90,066
Reserve	\$90,066	-

Mr. Schwermer discussed each proposal and explained the estimated costs are from the bids that have been received. There was discussion on each item. Mr. Schwermer mentioned the Fourth District is in need of a law clerk. Shane Bahr noted the vacant law clerk bailiff positions will not be replaced until permanent funding is available. Judge Pullan said this is important for service to the public, but, he believes the other issues listed are also important services to the public. Mr. Bahr said all of the law clerk bailiff positions are a one-year term.

The committee agreed to discuss the security audit in an executive session. Judge Toomey noted the amount for the security audit is small, however, if there are issues that need to be fixed that amount could rise.

Motion: Judge Parkin moved to accept the proposed funding as presented. Judge Toomey seconded the motion, and it passed unanimously.

7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Judge Michele Christiansen)

Chief Justice Durrant welcomed Judge Michele Christiansen to the meeting. She reported that there was only one new complaint since her last report to the Council, and that it was dismissed.

Judge Christiansen was thanked for her time.

8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Richard Schwermer)

Mr. Schwermer discussed the legislative interim highlights from the August 22, 2017 meeting. Mr. Schwermer said the legislature voted to pass a committee bill deleting the Administrative Office of the Courts from the sunset list.

Mr. Schwermer said that judicial rules will be discussed in a Legislature meeting later this week. Mr. Schwermer said all Judicial Council and Supreme Court rules that have gone out for comment in the past several months will be addressed by the legislature. This will allow the legislature to provide feedback to the judiciary.

Mr. Schwermer said Representative Ray has asked to discuss the pretrial release program in an interior meeting.

9. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Michelle Heward and Katie Gregory)

Chief Justice Durrant welcomed Judge Michelle Heward and Katie Gregory to the meeting. Judge Heward noted there was a change to the Board of Juvenile Court Judges since their last update. Judge Manley was replaced by Judge Fannesbeck. Judge Heward listed the other current members on the Board. Judge Heward reviewed the filing trends in the court over the past 10 years. Judge Heward said referrals, status offenses as well as delinquencies are down statewide. Judge Heward said the court is allowing probation to address non-compliance issues rather than a youth being referred back to the court. Judge Heward said the decrease in filings is due in part to enforcement and in part to efforts to keep kids out of the court system.

Judge Heward said the Board reached out to Geoff Fattah to outreach into the communities to help the relationship between the juvenile courts and the community and media. There have been positive outcomes from this effort. Judge Heward said another court improvement project was established. The Board brought in a Michigan Law School professor who is a national expert on keeping families engaged in the court system. The effort was to help attorneys understand the importance of keeping families involved. Judge Heward said the current staff to the juvenile courts is exceptional.

Judge Heward said the Board invited a tribal chief to come speak. There was concern about the tribal children. The chief discussed concerns which were then discussed with the juvenile court personnel. Judge Heward has since invited the chief to return for a follow up session. Judge Heward said there was a state-wide training on the Indian Child Welfare Act that

included DCFS personnel, Guardian ad Litem, judges, and court personnel, totaling over 1,000 individuals. Judge Heward noted Gabriella Archuleta has been instrumental in these efforts.

Judge Heward said probation has updated their case-planning curriculum.

Judge Heward discussed H.B. 239. Judge Heward said there were vast changes to the juvenile court system. Judge Heward noted the juvenile court houses probation, whereas the district courts do not. Judge Heward said the judges are aware of the changes. The changes will take place in two parts, one began August 1, 2017 and the other will begin July 1, 2018. Judge Heward indicated most of the spring conference will be devoted to from H.B. 239. Judge Heward said there are meetings being held regularly to discuss and understand the required changes. Judge Heward said most misdemeanors will no longer go before a judge, they will now go before probation officers for non-judicial closure. Judge Heward anticipates the workload for the probation officers will increase dramatically. Judge Heward said there are also substantial changes to CARE. Judge Heward said the Juvenile Justice Oversight Committee is tasked to discuss the new changes state-wide in meetings that have been organized.

Judge Mary Noonan briefly discussed the focus of these meetings has been discussing the changes to school districts and the police departments. Judge Noonan said the West Jordan chief of police said there may need to be issues readdressed in the law. Judge Noonan said Judge Heward has worked very hard in her efforts to educate stakeholders about the changes in H.B. 239.

Judge Heward requests any changes to resources wait for at least one year to give the juvenile courts time to adjust.

10. COMMISSIONER AND SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Ms. Sylvester discussed the senior judge certifications. Ms. Sylvester reviewed each of the judges who are applying for recertifications for both active and inactive status. Ms. Sylvester said senior judges did not have substantial relationships with the presiding judges and districts therefore, the surveys were not helpful. Ms. Sylvester said she will address this with Policy & Planning

Motion: Judge Shaughnessy moved to approve the recertifications of 1) active senior judges: Judge Kent Bachman; Judge William Barrett; Judge Rand Beacham; Judge Judith M. Billings; Judge L.A. Dever; Judge Roger Dutson; Judge Sheila McCleve; Judge Frederic Oddone; Judge Sterling Sainsbury; and Judge Gary Stott, 2) inactive senior judges: Judge Lee Bunnell and Judge Darwin Poulson, as presented. Judge Toomey seconded the motion, and it passed unanimously.

11. COMMISSIONER VACANCY FOURTH DISTRICT: (Judge James Brady and Judge Suchada Bazzelle)

Chief Justice Durrant welcomed Judge James Brady and Judge Suchada Bazzelle to the meeting. Judge Bazzelle said Commissioner Faulkner has been shared between two courts. Commissioner Faulkner will be leaving at the end of 2017. Judge Bazzelle discussed that the weighted caseload has been steadily increasing. Judge Bazzelle said the judicial workload reflects they are .8 judges understaffed. The judges are at approximately 115% of the workload standard. Judge Bazzelle reviewed further statistics related to the commissioner. Judge Bazzelle

is recommending a 60/40 split between the district courts and juvenile courts for Commissioner Faulkner's position.

Judge Brady said the current split is 50/50 between the courts. Judge Brady is concerned that the district courts are down 1.6 judicial positions, without a commissioner. Judge Brady said averaging the Second and Third District caseloads is about 1,600 per commissioner per year. Currently the Fourth District is 45% higher than the average of the Second and Third Districts. With the replacement of the commissioner position the yearly amount would be approximately 1,800. Judge Brady said the need is there for a full-time commissioner in the district court.

Judge James Brady and Judge Suchada Bazzelle were thanked for their time.

Mr. Schwermer suggested postponing any decision on this issue until more data can be collected only 40+ days is presently available since H.B. 239 took effect. Mr. Schwermer said the current data is too new to determine where the cases will end up. Mr. Schwermer said it takes about 3 months to bring in a new commissioner.

The Council decided to address this again in at the October meeting.

12. EXECUTIVE SESSION

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

An executive session was held.

13. ADJOURN

The meeting was adjourned.

Tab 2

Policy and Planning Committee

Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, UT 84111

September 11, 2017

Draft

Members Present

Hon. Derek Pullan – Chair
Hon. Ann Boyden
Hon. Mary Noonan
Hon. Reed S. Parkin
Hon. Marvin D. Bagley
Rob Rice

Members Excused

Staff

Keisa L. Williams
Nancy J. Sylvester

Guests

Nini Rich, Director, ADR/Mediation
Shane Bahr
Jim Peters

(1) Approval of minutes.

Judge Pullan welcomed the members to the meeting. Judge Pullan then addressed the August 4, 2017 minutes. There being no changes to the minutes, Mr. Rice moved to approve the minutes. Judge Noonan seconded the motion and it passed unanimously.

(2) CJA 4-501.03. Qualification of ADR Providers. (Amendment)

Judge Pullan welcomed the Director of ADR Programs for the AOC, Nini Rich, to the meeting and thanked her for proposing some rule changes and using the new form to do it. Ms. Rich explained that a few years ago when the ADR Committee undertook the process of determining how to educate mediators on their ethical requirements and provide them more training, it was determined that a best practice guide should be created. The ADR Committee developed that guide and then started looking at the ethics exam with the desire of making it broader in scope. In order to be included on the Court’s roster as a mediator, individuals must pass an ADR ethics exam. The previous exam covered only the Code of Ethics for ADR Providers found in the Utah Court-Annexed Dispute Resolution Rules (Rules 101-104). However, mediators are subject to compliance with not only those court rules, but also the Utah Alternative Dispute Resolution Act (Title 78B, Chapter 6), the Utah Uniform Mediation Act (Title

78B, Chapter 10), and Code of Judicial Administration Rule 4-510.03. The new ethics exam covers all of those standards and requirements.

Judge Parkin asked if the ADR Committee approved the language Ms. Rich is proposing. Ms. Rich said she did run it by the committee to see if it would be sufficient.

Mr. Rice asked what the other requirements were for the rule change. Ms. Rich stated that in addition to the rules and statutes (noted above), there is also case law that affects the ethical behavior of mediators, such as *Reese v. Tingey* and *Rawlings v. Rawlings*. The rule amendment doesn't change any of the requirements, it's just a better process to test as well as educate. The Committee has taken the best practice guide to the Utah State Bar, the Family Law Section and the Utah Council on Conflict Resolution and have received positive responses. This test was given out as a beta test to the current members, who stated that it was helpful to them.

Judge Parkin: Is your language sufficient or do we need to have Ms. Sylvester or Ms. Williams draft a proposed amendment?

Judge Pullan pointed to the proposed language from Ms. Rich on Line 36 that says "successfully pass an examination on the ethical requirements of the new members on the Utah Court Roster". The committee felt that the proposed change addressed the issues.

Judge Noonan made a motion approve the amendment as proposed for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it passed unanimously.

(3) CJA 3-201. Court Commissioners / CJA 3-111. Performance evaluations of senior judges and court commissioners (Back from Public Comment)

Ms. Sylvester noted that these rules have come back from public comment and only one comment was received from Commissioner Thomas Morgan. The comment had to do with a legislative issue with respect to the retirement benefits for commissioners. Ms. Sylvester feels this comment should be passed along to somebody who could deal with this on a legislative level.

Ms. Sylvester: Line 111 of CJA 3-111 talks about surveys of presiding judges (PJs) and court staff. These rule amendments were raised in the Judicial Council meeting today. There was feedback from TCEs and PJs saying that the PJ surveys aren't being done and seem like a bureaucratic redundancy or maybe something that is meaningless. Ms. Sylvester sent out a survey to PJs and TCEs for those who had senior judges appear in their district and has not received any meaningful responses, which is problematic. Since Ray Wahl approves the senior judge requests for courts of record and allocates the

funds, he said he could send an e-mail to the PJ in each district asking them to complete an evaluation. For senior judges, we do simultaneous attorney evaluations by the National Center for State Courts (NCSC). What we would be doing is duplicating that process at the PJ and TCE level. It would be an immediate evaluation, as opposed to right before they are certified. Ms. Sylvester asked if they should look at the rule language and change something, or perhaps work this through the NCSC and have them do the same thing that they're doing with the attorneys.

Judge Boyden: A comment was made that senior judges don't appear often enough all over the state and PJs might not have a relationship with them. Clearly that's not the case. Judge Skanchy's concern is that since PJs' aren't in court, they wouldn't know about the senior judge's performance. It would be easiest to see if they have received any complaints. By definition, no PJ is in the courtroom when a senior judge is on the bench because the very reason we need a senior judge is that no one is available to cover that calendar. When we ask attorneys who appear in court before a senior judge for an evaluation, then the attorneys at least have a foundation for valuable feedback. We could also ask the clerks for input. The PJ, and no other judge by definition, is going to know how the senior judges are managing their court calendars. That is the crux of the PJs' complaint. Not that they're unwilling to fill out an evaluation, it's just that they don't have firsthand information.

Ms. Sylvester: Currently, the NCSC is conducting attorney surveys. Within a week or so after a senior judge takes over a calendar, the NCSC e-mails a survey to the attorneys that have appeared before the judge. They accumulate results until the senior judge is up for certification and Ms. Sylvester receives them back. The response rate for senior judge evaluations is pretty low. Commissioners are also evaluated by attorneys and have a much higher response rate.

Judge Parkin: We need effective evaluations. The whole purpose for this policy and the rule was to create a system that allows us to objectively assess senior judges who are appointed to the bench to do the people's work but really have no accountability to the public. The State legislature made it very clear that the courts need to include senior judges in the evaluations or they'll do it for us. We need some process that is effective. We empower PJs to know the business of their district. I understand that this hasn't been in practice, but we might need to train TCEs and PJs more thoroughly on their expanded role. I don't want to rely on an outside organization to be the only evaluators. It may be one component of the evaluation process, but it shouldn't be all that we do.

Ms. Sylvester: Senior judges are supposed to be evaluated every 18 months, but the Judicial Council only gets the evaluations if there is a "needs improvement" rating. That happens very rarely. We need to make sure PJs and TCEs have a list of who is appearing in the courts and find out how well the judge did substantively. We aren't

delegating our responsibilities to the NCSC, we have a contract in place to conduct the surveys, so they could just duplicate that process for the PJs and TCEs.

Mr. Rice clarified that senior judges and court commissioners aren't covered under the JPEC process.

Shane Bahr: From a TCE perspective, it is difficult to complete evaluations because all I know when I report to the PJ is whether the senior judge showed up and whether there were any complaints from staff. On occasion I will hear good comments from staff saying they really liked a particular senior judge, but I don't know what that means in terms of their performance as a judge, only that they got along with staff and perhaps administratively managed their calendar well. What would be helpful is telling the TCEs and PJs what you really want to know. Perhaps creating a form that is filled out just after a senior judge's calendar that says, "here is how he/she performed in these particular areas." The form would then be submitted to the TCE after each appearance. The other issue is that some PJs rotate in and out, so they have to contact the TCEs to find out who was even in their district in the last year. There is some disconnect between what information we are really looking for and when we collect it. If we don't collect it immediately, it's gone.

Judge Pullan: The entire point of hiring a senior judge is to cover a calendar. As a PJ, if I have to sit in court and observe them, and they are only there for one day every 45 days, that would be very difficult to balance with other judicial responsibilities.

The committee discussed creating a simple form survey that court staff could fill out after an assignment is done, asking whether the senior judge appeared on time, etc. Substantive performance could be tracked in the attorney surveys. NCSC could send out a survey to the attorneys and, at the same time, send a survey to the court staff, PJ and TCE. Mechanically it might make sense to send out the surveys simultaneously, perhaps in an e-mail. All of the surveys could then be compiled in a repository for use when the time is up for certification/evaluation. That way, all of the surveys over the last few years would be available.

Shane Bahr: PJs sign the notice of assignment, which is then scanned into every case the senior judge is hearing that day. The clerk sitting next to the senior judge has that notice of assignment. If that notice also included a few questions asking how the judge did that day, it could be tied into the existing process.

The committee expressed concern that the attorney surveys are anonymous, but the clerks' evaluations may not be as anonymous if there are only one or two clerks working in the office.

Judge Noonan: What we are focusing on here in my estimation is procedure, and how we get the information. The substance of the rule seems to be appropriate. I am not

persuaded based on the conversation today that the rule needs to be changed. I think we've identified some infirmities in the procedure, but I'm not in favor of holding these rules for another month because we haven't really touched on anything substantive. If we have the ability to craft questions that will illicit meaningful information, then we can do that in the survey and we don't need to amend the rule. Judge Boyden agreed.

Ms. Sylvester expressed concern that if the processes or procedures are not captured in the rule itself, they won't be followed.

Judge Pullan pointed to the language in lines 111-118 of CJA 3-111, noting that it gives the committee the discretion to do just what Judge Noonan suggested. Ms. Sylvester noted that the problem is highlighted under lines 40-65, which outlines the criteria for evaluating senior judges. PJs can't speak to those specific criteria if they aren't in the courtroom. One of the questions on the survey should ask if the PJ has reviewed the information provided by the NCSC regarding the senior judge with a "yes" or "no" checkbox. That tells us if the judge has some foundation to render an opinion. However, several committee members expressed concern that a few simple questions for PJs in a survey wouldn't comply with the criteria listed in lines 40-65.

The committee discussed ways in which PJs could obtain firsthand information sufficient to evaluate a senior judge's substantive abilities. The presiding judge could pick five of the ten cases a senior judge handled and review them, but that may not save time. If a PJ knew that's what he/she had to do every time a senior judge was used, they would be inclined to just handle the calendar themselves. One way to give PJs meaningful information would be to require him/her to go back and listen to a random number of hearings the senior judge presided over. It would impose some meaningful duty on the PJ. Under CJA 3-111, lines 21-23, PJs are required to review at least five active cases presided over by a commissioner, including courtroom observation. This would be the same concept over senior judges. That would be a substantive change requiring a rule amendment.

Ms. Sylvester recommended that the committee hold rules 3-201 and 3-111 until the October meeting and she would speak to Ray Wahl about his recommendations. Judge Bagley made that motion. Mr. Rice seconded the motion and it passed unanimously.

(4) CJA 9-109. Presiding Judges in Justice Court. (New)

Ms. Sylvester: Last policy and planning meeting, the presiding judge rule came here. The justice courts are proposing this rule. This committee removed paragraph (g), but after conversations with the Supreme Court about URCP Rule 63 and URcRP Rule 29, there needs to be a mechanism for the assignment of substitute judges, causing amendments to Rules 63 and 29. During those discussions, the Supreme Court made a few more edits to paragraph (g) of CJA rule 9-109. Looking at URcRP Rule 29 (lines 39

and 47), the edits require that assignments of justice court cases be made in accordance with CJA 9-109, rather than the statute (78A-7-208). The problem with the statute is that the local government can make a list of judges authorized to preside in their court, but there was no mechanism identifying who can make the actual assignment. Currently, the county makes the assignment, but the Supreme Court expressed some concerns that there may be a constitutional issue because court assignments are a judicial procedure. The Supreme Court asked for clarifying language in CJA 9-109. T

Judge Parkin: Most justice courts have a list of five judges that they take to the city council, and the city council approves the list, so it complies with the statute. If there is a conflict for a particular judge, justice courts want language authorizing them to assign a conflict judge from the pre-approved list. This language puts the assignment in the hands of the presiding judge.

Ms. Sylvester: URCrP 29 and URCP 69 refer back to CJA 9-109 for Justice Court assignments. These amendments remove the statutory citation because the Supreme Court is very uncomfortable with it. The proposal would be to send the three rules out together once the judicial council weighs in just to make it clear what we are doing.

Judge Pullan: If that's the distinction we're making then in lines 87 - 89, instead of using the word "appoint", we should probably use the word "assign." It should read, "In the event that a judge is disqualified from a case, the presiding judge shall assign any judge duly appointed pursuant to Section 78A-7-208."

A motion was made by Judge Parkin to adopt the proposed language in 3(G), with Judge Pullan's amendment, for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it was unanimously passed.

(5) CJA 4-202.02. Records Classification. (Amendment)

Keisa Williams discussed Brent Johnson's email proposing an amendment to CJA 4-202.02. Currently, a minor's full name is used in child protective orders, but only the minor's initials are used in all other protective orders. Law enforcement has said they can't enforce protective orders when only initials are used because the initials are not sufficient to identify the exact child requiring protection. Brent thinks this came up because of an FBI audit criticizing the courts for only using the initials due to enforcement problems. Brent is proposing that the word "child" be deleted in line 139, allowing a minor's full name to be listed in any type of protective order.

After discussion, Judge Bagley made a motion to approve the proposed amendment for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it passed unanimously.

(6) Internal Operating Procedures

At the last meeting, this committee asked Ms. Williams to add language to the internal operating guide requiring the committee's staff attorney to get back with people who have submitted rule amendment requests. Ms. Williams pointed to the language she added in paragraph 5.

Judge Noonan suggested adding a date on the bottom of the form indicating when the committee adopted and/or approved a request.

After discussion, the committee approved both the internal operating guide and the request form, with the proposed amendments. Ms. Williams will distribute these documents to staff, notifying them of the procedural change for getting rule drafts before this committee.

(7) Other Business.

The committee discussed the date/time for the next meeting. Currently, it is scheduled for October 3, 2017 from 4:00-6:00, just after the Judicial Council meeting because the Liaison Committee took the 10:00-12:00 spot. But, if the council meeting ends early, the Policy and Planning meeting may be able to start early. Judge Pullan asked Ms. Williams not to invite presenters if at all possible so that the start time of the meeting could remain flexible.

(8) Adjourn

There being no further issues, there was a motion for the meeting to be adjourned by Judge Noonan. The motion was seconded by Judge Bagley and it passed unanimously.

Tab 3

**MANAGEMENT COMMITTEE
2018 MEETING DATES**

Meetings are generally scheduled on the Second Tuesday of the month and begin at 12:00 noon. All meetings will take place at the Matheson Courthouse in the Council Room.

Tuesday, January 9, 2018

Tuesday, February 13, 2018

Monday, February 26, 2018 (at the end of February Council meeting)

Tuesday, April 10, 2018

Tuesday, May 8, 2018

Tuesday, June 12, 2018

Tuesday, July 10, 2018

Tuesday, August 7, 2018

Tuesday, September 4, 2018

Tuesday, October 9, 2018

Tuesday, November 13, 2018

Tuesday, December 11, 2018

**JUDICIAL COUNCIL
2018 MEETING DATES**

Meetings are generally scheduled on the fourth Monday of the month beginning at 9:00 a.m. Meetings will be held in the Council Room of the Matheson Courthouse unless otherwise noted.

Monday, January 22, 2018

Monday, February 26, 2018

Friday, March 9, 2018 (in conjunction with the Bar's Spring Convention in St. George)

Monday, April 16, 2018

Monday, May 21, 2018 (Memorial Day is May 28)

Monday, June 25, 2018

Monday, July 16, 2018 (Bar conference will be held in Sun Valley July 25-28)

Friday, August 17, 2018 (Council Budget and Planning Meeting - Matheson Courthouse)

Tuesday, September 18, 2018 (in conjunction with the Annual Conference Sep 19-21 at Snowbird)

Tuesday, October 22, 2018 in Price

Monday, November 19, 2018

Monday, December 17, 2018

Bar Conferences:

Spring Convention in St George – March 8-10, 2018

Summer Convention in Sun Valley, ID – July 25-28, 2018

Fall Forum – date not yet determined

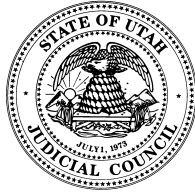
COSCA/CCJ Meetings:

2018 CCJ Midyear Meeting – January 27-31, 2018 in Las Vegas, NV

2018 CCJ/COSCA Annual Meeting – August 18-22, 2018 in Newport, Rhode Island

2018 COSCA Midyear Meeting – December 6-8 in Las Vegas, NV

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 5, 2017

Richard H. Schwermer
State Court Administrator
Ray Wahl
Deputy Court Administrator

MEMORANDUM

TO: Management Committee and Judicial Council

FROM: Tom Langhorne

RE: Filling a Standing Education Committee Vacancy

Standing Committee Vacancy in Question: Standing Education Committee

Reason for Vacancy: A committee member's term expired

Eligibility requirements: Rule 1-205 requires a district judge from either district two, district three or district four

Current committee member list:

Hon. Christine M. Durham (Chair), Hon. David Miller (Centerville Justice Court), Mary Barrientez (AOC IT representative), Rob Parkes (HR director), Ray Wahl (Deputy State Court Director), Mark Paradise (JA, Third District Court), Lynn Wiseman (Second District Juvenile Court Clerk of Court), Hon. George Harmond (Seventh District Court) Sherry Parkes (Third District Juvenile Court Chief Probation Officer), Professor Brian Stecklein (Weber State University), Hon. Janice Frost (Second District Juvenile Court), Tom Langhorne (Education Department Chair)

Description of recruitment process: Tom Langhorne emailed all second, third and fourth districts' district judges seeking their letters of interest for filling the vacancy. Only Judge Vernice Trease from the third district responded. Tom met with Judge Trease during which she personally reiterated her interest. Her name was presented to the District Judges' Board on August 25, 2017. That Board approved her nomination to be advanced to the Management Committee and Judicial Council.

List of names for consideration (at least two, preferably three): Judge Trease was the only judge who submitted a letter of interest.

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


Her letter of interest indicates the current committees on which she serves include: Rules of Evidence Committee, Sentencing Commission and other Law School and legal community organizations.

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
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Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Management Committee
From: Nini Rich, ADR Director 
Date: September 1, 2017
Re: ADR Committee Appointee Request

Name of Committee: Alternative Dispute Resolution Committee

Staff: Nini Rich

Reason for Vacancy: This vacancy is the result of the retirement of Judge Stephen Roth on Aug. 1, 2017.

Eligibility Requirements: This vacancy is for an appellate judge

Description of recruitment process: An email was sent to all appellate judges and James Ishida on August 10, 2017, describing the vacancy and soliciting interest. Judge Ryan M. Harris expressed interest.

List of names for consideration: Judge Harris was the only appellate judge to express interest.

Statement of Interest: Judge Harris expressed his interest via email.

List of current and past committee assignments: Currently on the Board of Appellate Court Judges and Model Utah Civil Jury Instructions Committee. Formerly, the Associate Presiding Judge, Third District.

Current ADR Committee Membership roster: Attached

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.

Utah Judicial Council's ad hoc Committee on Alternative Dispute Resolution

As of September 1, 2017

Judge Royal I. Hansen, Chair, Third District Court, rhansen@utcourts.gov

Vacant, Utah Court of Appeals

Judge Michelle Heward, Second District Juvenile Court, mheward@utcourts.gov

Commissioner Michelle Tack, Third District Court, ctack@utcourts.gov

Judge William Bohling, ret., Attorney/Mediator, williambohling@gmail.com

Michele Mattsson, Chief Appellate Mediator, Utah Court of Appeals, michelem@utcourts.gov

Professor James Holbrook, S.J. Quinney College of Law, james.holbrook@law.utah.edu

William Downes Jr., Utah Dispute Resolution, Chair of the Board, james.holbrook@law.utah.edu

Carolynn Clark, University of Utah, Conflict Resolution Cert. Program, info@clark-mediation.com

Brent Bateman, Director, Office of the Property Rights Ombudsman, info@clark-mediation.com

Marcella Keck, Attorney/Mediator, mkeck@accord-mediation.com

Michelle Oldroyd, Attorney/Mediator, michellemoldroyd@gmail.com

Kent B. Scott, Attorney/Mediator, kent@babcockscott.com

Nini Rich, Staff, ADR Director, Administrative Office of the Courts, ninir@utcourts.gov