

## JUDICIAL COUNCIL MEETING

### AGENDA

March 9, 2018

Hyatt Place

1819 South 120 East

St. George, Utah 84790

12:30 p.m. – 4:00 p.m.

*Chief Justice Matthew B. Durrant Presiding*

**Lunch will be served at 12:00 p.m.**

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. 12:40 p.m. Administrator’s Report ..... Richard Schwermer
4. 12:50 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. 1:00 p.m. Budget Update .....Richard Schwermer  
(Information)
6. 1:30 p.m. Legislative Update.....Jacey Skinner  
(Information)
- 2:30 p.m. Break
7. 2:40 p.m. TCE Report .....Jim Bauer  
(Tab 3 – Information) Brett Folkman
8. 2:55 p.m. Board of District Court Judges Report ..... Judge Sam Chiara  
(Information) Shane Bahr

- |     |           |  |                           |
|-----|-----------|--|---------------------------|
| 9.  | 3:05 p.m. | Utah State Bar Welcome and Report .....          | John Lund<br>John Baldwin |
| 10. | 3:25 p.m. | Uniform Fine and Bail Committee Appointment..... | Shane Bahr                |
|     |           | (Tab 4 – Action)                                 |                           |
| 11. | 3:30 p.m. | Code of Judicial Administration Rule 9-109.....  | Jim Peters                |
|     |           | (Tab 5 – Action)                                 |                           |
| 12. | 3:40 p.m. | Recognition of Judge Thomas Higbee               |                           |
| 13. | 3:45 p.m. | Executive session                                |                           |
| 14. | 4:00 p.m. | Adjourn  |                           |

#### **Consent Calendar**

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

# Tab 1



## JUDICIAL COUNCIL MEETING

### Minutes

February 26, 2018

Council Room

Matheson Courthouse

450 S. State St.

Salt Lake City, Utah 84111

9:00 a.m. to 12:00 p.m.

*Chief Justice Matthew B. Durrant, Presiding*

#### **Attendees:**

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

#### **Staff:**

Richard Schwermer  
Ray Wahl  
Shane Bahr  
Cathy Dupont  
Geoff Fattah  
Kara Mann  
Jim Peters  
Dawn Marie Rubio  
Jacey Skinner  
Nancy Sylvester  
Jeni Wood

#### **Excused:**

Hon. Mark DeCaria

#### **Guests:**

Judge Michele Christiansen  
Michelle Draper  
Sr. Judge Dennis Fuchs  
Judge Elizabeth Hruby-Mills  
Kevin Nudd  
Lee Anne Ross – private citizen

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

Chief Justice Matthew Durrant welcomed everyone to the meeting.

**Motion:** Judge Kate Toomey moved to approve the minutes from the January 22, 2018 Judicial Council meeting. Judge Thomas Higbee seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Richard Schwermer provided a history of council attendance at the State of the Judiciary address and asked whether this practice should continue. After brief discussion, the Council decided to continue providing an opportunity for Council members to attend the State of the Judiciary address. Mr. Schwermer noted a new request from Third District for senior judges to assist with the vacancy created with the appointment of Judge Petersen to the Supreme Court. He approved the request, until the end of this fiscal year.

Mr. Schwermer said there was a pretrial release meeting that included Judge Todd Shaughnessy, Keisa Williams, various lobbyists, and bail bond sureties. The resolution of the meeting was to move forward with the pretrial release program with a minor change to the MOU (memorandum of understanding) with the Arnold Foundation. That amendment has been signed.

Mr. Schwermer discussed the priority list that the appropriations subcommittee sent to the Executive Appropriations Committee.

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

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

The committee's work is reflected in the minutes.

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

Justice Thomas Lee said the committee is meeting weekly, and deferred to Ms. Skinner's report.

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

Judge Derek Pullan noted the work is reflective in the minutes.

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

Rob Rice said the Commission didn't meet this month.

### **5. LEGISLATIVE UPDATE: (Jacey Skinner)**

Chief Justice Durrant welcomed Jacey Skinner. Ms. Skinner has met with several bail bondsmen groups and legislators. Chief Justice Durrant noted the pretrial release team has done a remarkable job.

Ms. Skinner reviewed the following bills.

- S.B. 0079 Judiciary Amendments. This is the courts' housekeeping bill. (Passed)
- S.B. 0107 Third District Court Judge.
- H.B. 0132 Juvenile Justice Modifications.
- S.B. 0019 Competency restoration bill, which addresses the length of time individuals can be held in custody at a state mental health facility. The bill proposes that the timeliness and process be expedited. (Passed)

- S.B. 0051 Court Security Funding Amendments. This bill requests \$3 million for the court security account and is moving forward.
- H.B. 198 Attorney General amendments. This bill creates a presumption regarding what constitutes a conflict of interest amount attorneys. This may conflict with the Supreme Courts rule-making authority with the Rules of Professional Responsibility.
- Intervention as a matter of right. This allows the legislature to intervene in a wide range of lawsuits.

Ms. Skinner thanked Cathy Dupont for her assistance with the HB 198 and Chris Palmer for his assistance with the security fee issue. Ms. Skinner indicated that if anyone has any questions about pending legislation, please send her a text. Ms. Skinner said aside from a couple of issues, the session has gone very well.

#### **6. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)**

Chief Justice Durrant welcomed Nancy Sylvester. Ms. Sylvester reviewed the applications of Judge Lyle Anderson and Judge Robert Adkins to become senior judges.

**Motion:** Judge Toomey moved to approve Judge Lyle R. Anderson and Judge Robert W. Adkins to become active senior judges. Judge Augustus Chin seconded the motion, and it passed unanimously.

#### **7. MENTAL HEALTH COURT APPLICATION: (Kevin Nudd)**

Chief Justice Durrant welcomed Kevin Nudd. Mr. Nudd, the West Valley Justice Court administrator, reviewed the application for a West Valley Mental Health Court. Mr. Nudd explained the program and which entities have committed to this program. Judge Dennis Fuchs said this is a very well planned mental health court. Mr. Schwermer noted that the legal eligibility description is not consistent with best practices on the certification of checklist items. Mr. Nudd said there are many people who need this opportunity.

**Motion:** Judge Toomey moved to approve the application of the West Valley Mental Health Court with the contingency to review the legal eligibility process for compatibility with certification checklist items #1, #4, and #8. Judge Higbee seconded the motion, and it passed unanimously.

#### **8. PROBLEM-SOLVING COURT CERTIFICATIONS: (Sr. Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Senior Judge Dennis Fuchs. Judge Fuchs addressed certifications for approval for the below-listed courts. Judge Fuchs noted there are 61 problem-solving courts in Utah. Judge Fuchs is delaying certification review of two problem-solving courts because they are having a few issues that need to be addressed. Judge Fuchs noted the judges are receiving online training and training at conferences.

Judge Fuchs discussed the issue of drug testing being available 7 days a week and holidays. Some courts are having difficulty meeting that standard. The Council had in-depth discussion about the best practices of the drug-courts with regular drug testing and who should

be responsible for the testing. Mr. Schwermer noted with the new Medicaid expansion everyone meeting the income guidelines is eligible for Medicaid. The Council needs to be prepared to enforce required standards and decertify courts, but wants to give adequate notice to comply.

#### **Adult Drug Courts**

- Cache County (Logan) – Judge Thomas Willmore
- Davis County (Farmington) – Judge John Morris
- Iron County (Cedar City) – Judge Keith Barnes
- Salt Lake County – Judge L. Douglas Hogan
- Salt Lake County (Salt Lake City) – Judge Todd Shaughnessy
- Salt Lake County (Salt Lake City) – Judge Laura Scott
- Salt Lake County (Salt Lake City) – Judge Randall Skanchy
- Summit County (Park City) – Judge Kent Holmberg
- Weber County (Ogden) – Judge Joseph Bean
- Washington County (St. George) – Judge Jeffrey Wilcox

#### **Juvenile Drug Courts**

- Utah County (American Fork) – Judge Suchada Bazzelle

#### **Dependency Drug Courts**

- Davis County (Farmington) – Judge Janice Frost
- Washington County (St. George) – Judge Michael Leavitt

#### **Mental Health Courts**

- Iron County (Cedar City) – Judge Matthew Bell
- Salt Lake County (Salt Lake City) – Judge Heather Brereton
- Washington County (St. George) – Judge John Walton

**Motion:** Justice Lee moved to approve the certification of all problem-solving courts listed above with a sixth-month conditional certification of the three drug courts who are not meeting drug testing and other requirements, with Judge Fuchs notifying the drug courts of the expectations and rules, and with Policy & Planning Committee reviewing the problem-solving court rules. Those courts are the Weber County adult drug court, American Fork juvenile court, and the Washington County mental health court. Judge Higbee amended motion to revisit this issue when Policy & Planning has finished their work on the rules. Judge Toomey seconded the motion, and it passed unanimously. Judge Shaughnessy and Judge Walton abstained from voting as their courts are listed above.

Judge Fuchs will send a notice to the problem-solving courts explaining the conditional approval. Judge Fuchs will follow up with the drug courts within six months. Mr. Schwermer will discuss drug court testing options with the Division of Substance Abuse and Mental Health.



**9. ETHICS ADVISORY COMMITTEE REPORT: (Judge Michele Christiansen)**

Chief Justice Durrant welcomed Judge Michele Christiansen. Judge Christiansen said the committee has received a new opinion request and they will meet to discuss the issue. There were two opinions published in 2017. The committee is working on proposed changes to the Code of Judicial Conduct. Judge Christiansen said Brent Johnson does a wonderful job on this committee.

**10. LANGUAGE ACCESS COMMITTEE REPORT: (Michelle Draper and Kara Mann)**

Chief Justice Durrant welcomed Michelle Draper and Kara Mann. Ms. Draper reviewed interpreter statistics for FY2017, which included spoken language interpreter requests of 5,449 for the district courts; 4,380 for the juvenile courts; and 6,402 for the justice courts. The most requested language is Spanish, followed by Arabic. There were 188 sign-language interpreter requests in FY2017. The committee has completed bench cards for spoken languages. The committee is working on revising HR Policy 570 and rules 3-306.01-.05. Ms. Mann discussed the ongoing training for interpreters. Additionally, they will be including interpreter information in the TCE and COC manuals. Ms. Mann will present at the justice court judge conference in April.

**11. JUDICIAL OUTREACH COMMITTEE REPORT: (Judge Elizabeth Hruby-Mills and Geoff Fattah).**

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills and Geoff Fattah. Judge Hruby-Mills reviewed the Outreach Committees activities, including school tours, working with civic organizations, working with community leaders, and hosting committees, such as the Martin Luther King Human Rights Committee. Geoff Fattah noted he has been asked to assist in training reporters on court procedures. This will be an annual event and will be done in conjunction with the Bar. Judge Hruby-Mills said they are working on the Trust and Confidence Survey project.

**12. EXECUTIVE SESSION**

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

**13. CONSENT CALENDAR ITEMS.**

- 1) Judicial Outreach Committee: appointment of Michael Anderson, Joyce Pace, and Michelle Oldroyd. Approved without comment.
- 2) Ethics Advisory Committee appointment of Judge Trent Nelson. Approved without comment.
- 3) Forms Committee: Forms: Proof of Completed Service and Ex Parte Motion for Alternative Service. Approved without comment.
- 4) Probation Policies: Policy 2.6 deleted, Policy 4.7 amended. Approved without comment.

**14. ADJOURN**

The meeting was adjourned.

# Tab 2



**JUDICIAL COUNCIL MANAGEMENT COMMITTEE  
MINUTES**

**February 26, 2018  
Council room  
Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah 84111  
12:00 p.m. – 12:30 p.m.**

**Members Present:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Kate Toomey, Vice Chair  
Hon. David Marx  
Hon. Mary Noonan  
Hon. Todd Shaughnessy

**Staff Present:**

Richard Schwermer  
Ray Wahl  
Shane Bahr  
Cathy Dupont  
Dawn Marie Rubio  
Jeni Wood

**Excused:**

**Guests:**

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

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

**Motion:** Judge Kate Toomey moved to approve the February 13, 2018 Management Committee meeting minutes. Judge Mary Noonan seconded the motion, and it passed unanimously.

**2. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Durrant)**

Chief Justice Durrant addressed the proposed agenda for the March 9, 2018 Judicial Council meeting. Shane Bahr requested an addition to the Judicial Council agenda to discuss an appointment to the Uniform Fine and Bail Committee.

**Motion:** Judge Toomey moved to approve the Judicial Council agenda as amended. Judge Shaughnessy seconded the motion, and it passed unanimously.

**3. EXECUTIVE SESSION**

An executive session was not held.

**4. ADJOURN**

The meeting was adjourned.



**Policy and Planning Committee**

**Draft**

**Judicial Council Room  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, Utah 84111**

**March 2, 2018  
9:30 a.m. to 11:30 a.m.**

**Members Present**

Hon. Derek Pullan - Chair  
Hon. Augustus Chin  
Hon. Mary Noonan  
Hon. Kara Pettit  
Rob Rice  
Judge John Walton (by phone)

**Members Excused**

**Staff**

Amber Vinson – Recording Secretary  
Nancy Sylvester  
Keisa Williams  
Richard Schwermer- Court Administrator  
Rob Parkes  
Chris Palmer  
Judge Dennis Fuchs  
Jim Peters (by phone)

**Guests**

**(1) Welcome and Approval of minutes.**

Judge Derek Pullan welcomed the members to the meeting. Judge Pullan addressed the February 2, 2018 minutes. There being no changes, Judge Chin made a motion to approve the minutes as written. Mr. Rice seconded the motion and it passed unanimously.

**(2) Human Resources Professional Appearance Policy**

Judge Pullan welcomed Mr. Rob Parkes to the meeting and inquired about the genesis behind the new policy regarding professional appearance. Mr. Parke stated that the idea to change the policy came from the Trial Court Executives. The TCE's created a committee to address the professional appearance including court personnel from all levels of employment and court locations. The Professional Appearance Policy provides photographic depictions to help supervisors explain, and personnel understand the guidelines. The TCE's approved the draft policy and format. The policy is intended to be more gender neutral. The committee discussed issues regarding compliance and consistency in enforcement across the districts. Judge Noonan commented there has been feedback from staff in the Fourth District stating the visual aids are helpful. The committee discussed the reasoning behind having multiple standards for appearance, including

courtroom, non-courtroom business casual, and casual dress on Fridays. Jurisdictional flexibility allowed in the original policy has been eliminated in order to ensure the appearance standards are consistent across the state. Judge Pettit supported allowing more casual attire for employees not appearing in court. Judge Noonan stated that regardless of what policy is adopted, enforcement is critical. Judge Chin asked whether judges would be asked to enforce the policy in the absence of court administrators. If not, there may be discontent among staff when enforcement is inconsistently applied. Mr. Parkes stated that judges would not be asked to enforce the policy. The committee discussed how appearance may affect workplace morale, professional conduct, and public perception. Mr. Rice commented on the evolution of dress codes in private practice. Mr. Rice discussed the policy from an employment law perspective, and stated that the policy would be treated legally as a subjective guideline and does not create a contract between the employee and employer. The committee determined that the word “standard” should be changed to “guideline” throughout the policy, unless it would be grammatically impractical. Several members stated that they numerous suggestions regarding details of the policy, including: making the pictures more gender-neutral, adding men to the section on hair, and amending the section on tattoos to address language which should be prohibited, rather than location on the body. Judge Pullan suggested creating a subcommittee to conduct a detailed review/amendment of the policy. Judge Pettit, Mr. Rice and Mr. Parkes volunteered to make up the subcommittee and will report back to the committee at the next meeting.

### **(3) CJA 3-414 and HR 500. Code of Personal Conduct (Section 16. Court Security)**

Judge Pullan welcomed Mr. Chris Palmer to the meeting. Mr. Palmer discussed his edits to the security section of HR 500. Ms. Williams noted that the committee previously approved edits to that section. Mr. Palmer simply added “except those [employees] identified in CJA 3-414” which would allow the Court Security Director to carry firearms in the courthouse. Mr. Palmer outlined the standards created in CJA 3-414 that the Court Security Director would be required to meet in order to carry a firearm. Mr. Schwermer expressed concern with proposed section 16.5 prohibiting employees from possessing firearms while acting within the scope of their employment outside the courthouse. Mr. Schwermer stated that if the section would apply to employees driving their personal vehicles for business purposes, it is too restrictive. Mr. Palmer stated the goal is to prevent untrained users from carrying a firearm around judges, court staff, and court patrons. Mr. Schwermer proposed amending the language in sections 16.3-16.5 to state clearly the court’s intent behind this policy. What exactly are we worried about? The committee amended the language in 16.3 to cover all of the potential issues and deleted sections 16.4 and 16.5.

Judge Noonan inquired about the language allowing local security plans to limit the ability to carry firearms irrespective of this policy. Mr. Palmer stated it is important to allow local presiding judges to determine the security policies in their own jurisdictions, including imposing limitations on the possession of firearms. Judge Pullan asked about the badge access changes. Mr. Palmer discussed the need for a color-coded badge system to allow visual confirmation of clearance from a distance.



Judge Noonan made a motion to approve the policies as amended. CJA 3-414 will be recommended to the Judicial Council for public comment and HR 500 is approved for publication to court staff. Judge Chin seconded the motion and it passed unanimously.

#### **(4) CJA 2-207. Annual Rulemaking and Periodic Review of Assignments**

This item was held until the April meeting.

#### **(5) LawX Project (Master List)**

Ms. Williams detailed the master list she compiled pursuant to the committee's request at the last meeting. The list outlines and organizes the issues surrounding the request from regarding litigants' ability to email debt collection answers to the court for filing. Ms. Williams detailed the discussions she has had with the Self-Help center and Kimball Parker. The committee discussed the need for an initial policy decision about whether the court should consider this request at all given the pro se filing projects already in progress (i.e., MyCase). Mr. Schwermer stated that MyCase may be available as soon as the end of 2018, but he would need to talk to the IT Director, Heidi Anderson, about a more firm date. The committee discussed other programs available for pro se litigants in debt collection cases around the state. The committee discussed the issues, including substantive legal issues, surrounding accepting emails as filings. The committee discussed the ability to use what LawX has created to fast-track an OCAP version. The committee asked Ms. Williams to invite Heidi Anderson to the next meeting to discuss the MyCase completion date.

#### **(6) CJA 9-109. Presiding Judges in Justice Courts**

Judge Pullan welcomed Jim Peters. Mr. Peters reviewed the changes to CJA 9-109 suggested by the Board of Justice Court Judges. Mr. Peters stated that there were only three substantive changes. The first was to section (1)(D)(ii) on lines 55-55, which would allow a judge subject to a vote of removal to be eligible to participate in the vote. The second was to section (2)(A)(ii) giving judges more discretion about when to hold meetings. The third was to section (3)(G) which would give presiding judges the discretion to deny a motion to disqualify where appropriate.

Judge Chin made a motion to recommend to the Judicial Council that the rule, as amended, be published for public comment. Judge Pettit seconded the motion and it passed unanimously.

#### **(7) CJA 4-409. Council Approval of Problem Solving Courts**

Judge Pullan summarized the Judicial Council's discussion regarding problem solving courts. The Council asked this committee to review the certification process of problem solving courts and CJA 4-409. Judge Pullan noted that currently there are required, presumptive, and best practice standards in the court's checklists for certification. However, if the programs can show substantial compliance, they can be conditionally certified. Mr. Schwermer and Judge Fuchs provided an explanation of the way the certification process works now, how the checklists were created, and the work they are doing to help establish revised national best practice standards. Judge Fuchs discussed issues that continue to be a challenge around the state, such as drug testing, contracting for

services, and the amount of time judges spend with participants. Judge Pullan noted his concern that there are no real audits or data analysis, and compliance is evaluated primarily upon self-reporting. Judge Pullan also questioned whether the court should apply more resources to those issues. Mr. Schwermer stated that currently, only 0.5 FTE has been allocated for monitoring these programs. Indiana conducts actual audits and assessments with 3-day onsite visits for each court, but they allocate 4 FTEs. Judge Walton described his experience with drug court and recommended that the approach taken by the committee in identifying these procedures be supportive to judges, rather than punitive. The committee determined that the checklists should be reviewed to identify which standards are actually required. The committee asked Mr. Schwermer and Judge Fuchs to make those recommendations to the committee at the next meeting.

**(8) Adjourn.**

Judge Noonan made a motion to adjourn the meeting. Mr. Rice seconded the motion and it passed unanimously.

The next meeting is scheduled for April 6, 2018 in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 11:45 a.m.

# Tab 3





# **Annual Trial Court Executive Report to the Judicial Council**

**March 9, 2018 St. George**

## TCE update

- Krista Airam in 2nd Juvenile, Mark Urry in 4th District and Joyce Pace in 5th District were appointed as TCE's in 2017, Travis Erickson moved from 2nd Juvenile TCE to 7th District TCE
- Districts filled 100 clerical, 35 probation and 10 law clerk positions in 2017
- Coaching/Performance Management Protocol Replaced Annual Performance Evaluations
- As part of the Court's education and succession planning, staff continue to attend the court skills academy, mid-management academy and the Michigan State University Judicial Administration program

## District Court

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

## Juvenile Court

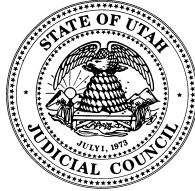
- HB 239 Implementation August 1, 2017 and July 1, 2018
  - Impact on Districts
  - NJ Funding Status
- 3rd Juvenile received OJJDP Funding through the Center for Children and Family Futures for National Evaluation and Technical Assistance for Family Drug Courts
- 3rd Juvenile was selected by the National Council of Juvenile and Family Court Judges and National Research Team to participate in evaluating the Juvenile Drug Court Treatment Guidelines
- Future of Juvenile Work Crews



# Tab 4







# Administrative Office of the Courts

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

February 27, 2018

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

## MEMORANDUM

**TO: Management Committee/Judicial Council**

**FROM: Shane Bahr, District Court Administrator**

**RE: Committee Membership -Uniform Fine and Bail Committee**

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Standing Committee Vacancy in Question: Uniform Fine and Bail Committee

Reason for Vacancy: Judge Augustus Chin has been appointed to the Judicial Council and Judge Scott Cullimore's term ended.

Eligibility requirements: Rule 1-205 states the Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges. Rule 1-205 requires a district judge from either district two, district three or district four.

Current committee member list: Hon. James Brady, Chair (Fourth District Court), Hon. James T. Blanch (Third District Court), Hon. Keith Eddington (Fifth District Juvenile Court), Hon. David Hamilton (Second District Court), Hon. Paul Parker (Third District Court), Shane Bahr (Staff, District Court Administrator), Hon. Brook Sessions (Wasatch Co. Justice Court), Vacant (Justice Court), Vacant (Justice Court).

Description of recruitment process: Jim Peters, Justice Court Administrator, emailed all justice court judges seeking their letters of interest to fill two positions vacated by Judge Augustus Chin and Judge Scott Cullimore. Judge Mike Junk (Second District Justice Court), Judge Reuben Renstrom (Second District Justice Court), and Judge Brendan McCullagh (Third District Justice Court) submitted their names for consideration. These names were presented to the Board of Justice Court Judges on February 23, 2018 which recommends Judge Mike Junk and Judge Reuben Renstrom be appointed to the Uniform Fine and Bail Committee.

Thank you for your consideration,

Shane Bahr  
District Court Administrator

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

### **JUDGE MICHAEL JUNK**

Judge Michael S. Junk was appointed to the Ogden City Justice Court in January of 2017. Judge Junk received a Bachelor of Science in Economics from Weber State University in 1984 and a Juris Doctor from the University of Utah in 1987. After law school he went on to work as the Ogden City prosecutor for over 27 years prior to being appointed to the Ogden City Justice Court. Judge Junk also teaches at Weber State University as an adjunct professor in the Business Administration department. 9/17

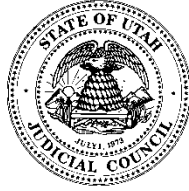
### **JUDGE BRENDAN P. MCCULLAGH**

Judge Brendan P. McCullagh was appointed to the West Valley City Justice Court in July 2002. He previously served six years as a Deputy District Attorney for Salt Lake County. In 1995, Judge McCullagh received a Juris Doctorate degree from the University of Utah College of Law. He has served on the Board of Justice Court Judges as well as on the Utah Supreme Court's Advisory Committee on the Rules of Evidence and the Judicial Council's Standing Committee on Interpreters. Judge McCullagh currently serves on the Utah Supreme Court's Advisory Committees on the Criminal Rules of Procedure and Criminal Jury Instructions. In 2007, Judge McCullough was elected by his peers to serve a three-year term on the Judicial Council and was re-elected in 2010. Also in 2007, Judge McCullagh received the Judicial Council's Quality of Justice award for performance of judicial responsibilities with outstanding dedication to the highest quality of justice. In 2008, Judge McCullagh was awarded the Scott M. Matheson Award by the Utah State Bar for outstanding service to law-related education. In 2010, Judge McCullagh was awarded the Utah Substance Abuse Advisory Council's Governor's award by Gov. Gary R. Herbert for his contributions in establishing the Utah E-Warrant system. 9/15

### **JUDGE REUBEN J. RENSTROM**

Judge Reuben J. Renstrom was first appointed to the Justice Court bench in February 2006. He currently serves as the justice court judge in the Harrisville, Riverdale, South Ogden, South Weber and Woods Cross Justice Courts. He received a B.A. in political science from Weber State University and a law degree from the University of Kansas School of Law in 2002. Judge Renstrom served as a prosecutor for Ogden City, and practiced law with Helgesen, Waterfall & Jones prior to his appointment to the justice court. He is a member of the Utah State Bar, the Utah Trial Lawyers Association, and the Rex E. Lee Inns of Court. 9/17

# Tab 5



# Administrative Office of the Courts

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

## MEMORANDUM

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

**To:** Judicial Council  
**From:** Jim Peters and Nancy Sylvester  
**Date:** March 2, 2018  
**Re:** CJA Rule 9-109: Comment Period Complete

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The following rule is now back from [comment](#) and we received one comment and one rule draft suggestion.

**UCJA09-0109 Presiding judges.** New. Establishes the procedure for election, term of office, role, responsibilities, and authority of presiding judges and associate presiding judges for justice courts.

The one comment is from Judge David Marx and reads as follows: "UCJA 9-109 Presiding Judges rule should include the provisions in the presiding judge rules for the other court levels that provides for oversight by the presiding judge as to such things as: cases under advisement monitoring; etc."

Judge Brendan McCullagh sent a proposed draft the goal of which was to capture the edits Judge Marx suggested. Jim Peters, Justice Court Administrator, and Judge Reuben Renstrom, chair of the Board of Justice Court Judges, then refined Judge McCullagh's proposed amendments. Policy and Planning took up those amendments and made additional edits at its February meeting. Policy and Planning then sent the draft back to the Board of Justice Court Judges for further discussion. Jim Peters circulated Policy and Planning's draft to the justice court bench and received several more comments from judges. Based in part on that feedback, the Board made further edits and sent those back to Policy and Planning for its March 2 meeting. Policy and Planning now recommends the rule – as amended by the Board – for expedited adoption as of April 1, 2018 under Rule 2-205. An additional comment period will follow.

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.



1       **Rule 9-109. Presiding judges.**

2       **Intent:**

3       To establish the procedure for election, term of office, role, responsibilities, and authority of presiding  
4 judges, associate presiding judges, and education directors for Justice Courts.

5       **Applicability:**

6       This rule shall apply to presiding judges, associate presiding judges, and education directors in the  
7 Justice Courts.

8       **Statement of the Rule:**

9       **(1) Election and term of office.**

10      (1)(A) Presiding judge.

11      (1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active  
12 judges present at the district meetings held at the 2018 Justice Court Conference. Thereafter, regular  
13 elections shall take place at the annual conference in odd years for odd-numbered districts and in even  
14 years for even-numbered districts. In the event that a majority vote cannot be obtained, the presiding  
15 judge shall be determined by the Board of Justice Court Judges. Interim elections, if necessary, shall take  
16 place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least  
17 one court within the district. Senior judges are ineligible to hold or vote for the office of presiding judge.

18      (1)(A)(ii) The presiding judge's term of office shall be from the time of his or her election or  
19 appointment until he or she resigns or until the next regular election, whichever occurs first. A presiding  
20 judge may serve successive terms.

21      (1)(B) Associate presiding judge.

22      (1)(B)(i) The active judges of a district may, at their discretion, elect one judge of the district to the  
23 office of associate presiding judge. An associate presiding judge shall be elected in the same manner and  
24 serve the same term as the presiding judge in paragraph (1)(A). An associate presiding judge shall be an  
25 active judge, currently appointed to at least one court within the district. Senior judges are ineligible to  
26 hold or vote for the office of associate presiding judge.

27      (1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the  
28 responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned  
29 by the presiding judge.

30      (1)(C) District education director.

31      (1)(C)(i) The active judges of a district may, at their discretion, elect one judge of the district to the  
32 office of education director. An education director shall be elected in the same manner and serve the  
33 same term as the presiding judge in paragraph (1)(A). Senior judges are ineligible to vote for the office of  
34 district education director but may hold the office. If a district does not elect an education director, the  
35 associate presiding judge, if there is one, shall serve as the education director. If the district elects neither

an education director nor an associate presiding judge, the presiding judge shall serve as the education director.

(1)(C)(ii) The education director shall serve on the justice court education committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level.

(1)(D) Removal and Other Vacancies of Office.

(1)(D)(i) If the office of presiding judge becomes vacant, then the associate presiding judge shall serve the rest of the presiding judge's term. If there is no associate presiding judge, the district education director shall, if the education director is an active judge, serve the unexpired term. Otherwise, the Chair of the Board of Justice Court Judges shall appoint a judge to serve until the next district meeting.

(1)(D)(ii) A presiding judge may appoint, on an interim basis, an eligible judge of the district to fill an unexpired term of associate presiding judge or education director until the next district meeting. At the district meeting, the active judges present shall ratify the appointment by majority vote. If they do not ratify the appointment, or if the presiding judge does not make an interim appointment, nominations and an election shall then be held at that meeting to fill the unexpired term.

(1)(D)(iii) A presiding judge, associate presiding judge or education director may be removed from that office by a two-thirds vote of the active justice court judges in the district. A successor presiding judge shall, or an associate presiding judge or education director may, then be elected to fill the unexpired term of the vacant office.

(1)(D)(iv) In extraordinary circumstances, to preserve confidence in the fair administration of justice, the Presiding Officer of the Judicial Council may remove a judge from any office described in this rule. Vacancies shall be filled as provided in this rule.

**(2) District meetings.**

(2)(A) Each district shall have regular meetings to discuss and decide district business, receive training, or address issues and concerns specific to the district.

(2)(A)(i) The presiding judge shall call and preside over a meeting of other justice court judges in the district at the annual Justice Court Conference.

(2)(A)(ii) Each district shall have at least one other meeting during the calendar year in which a majority of active justice court judges is present, including the presiding judge or associate presiding judge.

(2)(B) In addition to regular meetings, the presiding judge or a majority of the active judges may call additional meetings as necessary.

(2)(C) An agenda shall be circulated among the judges in advance of any meeting with a known method on how matters may be placed on the agenda.

(2)(E) Other than judges and the Justice Court Administrator, attendance at district meetings shall be by invitation of the presiding judge only.

72 (2)(F) The issues on which judges vote shall be left to the sound discretion and judgment of each  
73 district and the applicable sections of the Utah Constitution, statutes, and this Code.

74 **(3) Administrative responsibilities and authority of presiding judge.**

75 (3)(A) Generally. The presiding judge is charged with the responsibility for the effective operation of  
76 the justice courts within a district. He or she is responsible for the implementation and enforcement of  
77 statutes, rules, policies, and directives of the Judicial Council and the Board of Justice Court Judges as  
78 they pertain to the administration of the courts. When the presiding judge acts within the scope of these  
79 responsibilities, the presiding judge is acting within the judge's judicial office.

80 (3)(B) Coordination of required training.

81 (3)(B)(i) The presiding judge, associate presiding judge, or education director shall: (a) be  
82 responsible to see that judges in his or her district are appropriately trained, (b) assist in planning  
83 statewide trainings as part of the Education Committee, (c) plan district training to be held in  
84 connection with the meetings required by section (2), (d) recommend mentors for new judges, and (e)  
85 arrange for individual training, as needed.

86 (3)(B)(ii) Presiding judges are encouraged to observe the hearings of judges within the district to  
87 assess training needs.

88 (3)(C) Court committees. The presiding judge shall, where appropriate, make use of committees  
89 composed of other judges and court personnel to investigate problem areas and improve the  
90 administration of justice.

91 (3)(D) Outside agencies and the media.

92 (3)(D)(i) The presiding judge shall be available to meet with outside agencies, such as prosecuting  
93 attorneys, city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs,  
94 police chiefs, bar association leaders, probation providers, government officials of cities or counties  
95 located within the district, civic organizations, and other state agencies.

96 (3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in  
97 the district.

98 (3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative  
99 responsibilities of an appointed judge to the appointing authority of a court.

100 (3)(E) Judicial officers. The presiding judge shall discuss significant concerns, problems or complaints  
101 regarding the judges in his or her district with the Justice Court Administrator, who shall work together to  
102 resolve the concern. In the event that another judge in the district fails to comply with a reasonable  
103 administrative directive of the presiding judge, interferes with the effective operation of the court, abuses  
104 his or her judicial position, exhibits signs of impairment, or violates the Code of Judicial Conduct, the  
105 presiding judge may, depending on the severity of the issue and consistent with legal and ethical  
106 obligations:

107 (3)(E)(i) Consult with appropriate staff at the Administrative Office of the Courts and/or discuss  
108 the issue with other presiding judges;



109 (3)(E)(ii) Meet with the judge to explain the reasons for the directive given or the position taken,  
110 consult with the judge about alternative solutions and reevaluate the directive or position, as  
111 appropriate;

112 (3)(E)(iii) Present the problem to the Board of Justice Court Judges for input;

113 (3)(E)(iv) Require the judge to participate in appropriate counseling, therapy, education or  
114 treatment; or

115 (3)(E)(v) Refer the problem to the Judicial Council, the Chief Justice, or the Judicial Conduct  
116 Commission, as appropriate.

117 (3)(F) Liaison. The presiding judge or his or her designee shall serve as a liaison between the justice  
118 courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile  
119 Court and District Court.

120 (3)(G) Reassignment.

121 (3)(G)(i) In the event that a motion to disqualify a judge or judges is filed and no appointed judge of the  
122 court is available or empowered to hear the motion, the presiding judge shall consider the motion and, if  
123 necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a  
124 temporary justice court judge.

125 (3)(G)(ii) In the event that all of the appointed judges of a court recuse themselves from a matter, the  
126 presiding judge shall assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve  
127 as a temporary justice court judge.

128 (3)(H) Compliance with standards. The presiding judge shall monitor and ensure that judges are  
129 complying with performance standards established by the Council or as otherwise required by law.

130 (3)(I) Performance evaluations. Pursuant to Utah Code 78A-12-203, the presiding judge shall receive  
131 the midterm reports prepared by the Judicial Performance Evaluation Commission for the other justice  
132 court judges in his or her district. The presiding judge shall consult with the evaluated judge and the  
133 Justice Court Administrator to develop a plan for addressing the issues resulting in less than satisfactory  
134 scores.