

# JUDICIAL COUNCIL MEETING

**Minutes**  
**May 21, 2018**  
**Council Room**  
**Matheson Courthouse**  
**450 S. State St.**  
**Salt Lake City, Utah 84111**  
**9:00 a.m. - 12:00 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Attendees:**

Hon. Kate Toomey, Vice Chair  
Hon. Augustus Chin  
Hon. Mark DeCaria  
Hon. Ryan Evershed  
Hon. Paul Farr  
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  
Alyn Lunceford  
Jim Peters  
Jeni Wood

**Excused:**

Chief Justice Matthew B. Durrant, Chair  
Dawn Marie Rubio  
Jacey Skinner

**Guests:**

Hon. David Mortensen  
Alex Peterson  
David Wilkins

**1. WELCOME AND APPROVAL OF MINUTES: (Judge Kate Toomey)**

Judge Kate Toomey welcomed everyone to the meeting. Judge Toomey noted Chief Justice Durrant was not able to attend the meeting.

**Motion:** Judge Todd Shaughnessy moved to approve the minutes from the April 16, 2018 Judicial Council meeting. Judge Augustus Chin seconded the motion, and it passed unanimously.

**2. OATH OF OFFICE AND APPOINTMENT OF JUDICIAL COUNCIL COMMITTEE – JUDGE RYAN EVERSLED: (Judge Kate Toomey)**

Judge Toomey administered the Oath of Office to Judge Ryan Evershed. Judge Toomey reviewed the proposed committee appointments for Judge Evershed and Judge Mark May, who will begin his term in June.

**Motion:** Judge Shaughnessy moved to assign Judge Ryan Evershed to the Policy & Planning Committee and assign Judge Mark May to the Liaison Committee. Judge Kara Pettit seconded the motion, and it passed unanimously.

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

Chief Justice Durrant was unable to attend the meeting.

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

Richard Schwermer stated Judge Glen Dawson and Judge Michael Allphin, both from the Second District, have announced their retirement. Keisa Williams has submitted her resignation. Ms. Williams will be working for the Indigent Defense Commission.

Mr. Schwermer discussed a change in the budget-spending plan regarding new servers in Salt Lake and St. George. The courts were able to save \$150,000 by purchasing both servers at the same time. The District Court Judges Conference last week went well.

Mr. Schwermer said former District Court Judge David Roth was elected the new chair of JPEC. Justice Thomas Lee said former Justice Christine Durham would also join JPEC as a member. At a recent meeting, JPEC talked about a number of initiatives they are considering and prioritized the initiatives. JPEC is considering conducting surveys annually rather than the current biannual process. If JPEC implements the annual survey, they will reduce the amount of surveys given to attorneys from nine to four surveys. Additionally, JPEC may implement a self-evaluation component. Mr. Schwermer said JPEC found some states are completing litigant surveys for judges. The most recent survey results showed no judges fell below the minimum statutory standard. Mr. Schwermer said the Judicial Council would receive a copy of judges' scores from the recent survey. JPEC is revisiting the process of evaluating appellate level judges. Judge Derek Pullan said it would be difficult to create a meaningful standard because appellate courts are small institutions. Justice Lee said the principle work product of appellate courts is their published opinions and it would be difficult to develop a consistent process with standards that would function well. Judge Toomey noted the Court of Appeals published over 900 opinions in 2017. JPEC is also in the process of reviewing how justice court judges are evaluated.

Mr. Schwermer said CCJJ is working with the legislature on a jail reimbursement ad hoc committee. Judge McKelvie will serve on the committee. Mr. Schwermer reviewed the district court weighted caseload from April 1, 2017 to March 31, 2018. Mr. Schwermer noted the Third District caseload includes the additional approved new judge for Third District. Mr. Schwermer said all of the AOC employees are now parking on P1, which has opened between 30-40 public spots on P2. Judge Shaughnessy believes the public parking issue could be due to an increase in jury trials.

Ray Wahl said Robin Arnold Williams, former director of Human Services, has passed away. Ms. Williams collaborated well with the courts. There will be a gathering at the State Capitol Auditorium on Wednesday to honor her.

**5. COMMITTEE REPORTS:**

***Management Committee Report:***

The work of this committee is reflected in the minutes.

***Liaison Committee Report:***

Justice Thomas Lee said the committee has not met since before the last Council meeting.

***Policy and Planning Committee Report:***

Judge Derek Pullan said that twice a year, the committee will meet for a full day. The committee is now working on the consolidation of probation cases rules. The District Board and prosecutors have reviewed the proposed rules. Keisa Williams is forwarding the proposal to defense attorneys. There was a subcommittee formed to address the new professional appearance policy. Judge Pullan also discussed how bail commissioners are dealing with felony bails. The records access for LPP's rule was approved. The committee is required to complete an annual review of the Code of Judicial Administration. Rule 4-409 regarding problem solving courts is being reviewed by a new workgroup consisting of three to four district court judges, two juvenile court judges, and Rick Schwermer and/or Dennis Fuchs. The review will also cover mental health courts. The remainder of the work is reflected in the minutes.

***Bar Commission Report:***

Rob Rice said Senior Judge Thomas Higbee was nominated to be the Judge of the Year by the State Bar. Judge Higbee will be presented this award at the Bar Summer Convention in July.

**6. FACILITIES PLANNING COMMITTEE REPORT: (Judge David Mortensen and Alyn Lunceford)**

Judge Toomey welcomed Judge David Mortensen and Alyn Lunceford. Judge Mortensen said Alyn Lunceford announced his retirement for July. Judge Mortensen complimented Mr. Luncefords work with the courts. Mr. Lunceford reviewed projects the committee is working on. Mr. Lunceford noted the Matheson Courthouse has 17 elevators, and the recent elevator improvement project is a two-year project and is the largest elevator project in the state. Mr. Lunceford reviewed projects in owned and leased courthouses throughout the state. Mr. Schwermer said the courts are able to plan better with the up-to-date information from contractors on the construction of the buildings. Mr. Schwermer thanked Mr. Lunceford for his service of the judiciary. Mr. Wahl noted Mr. Lunceford coordinated the construction of nine courthouses throughout Utah during his employment with the courts.

**7. H.B. 248 LANGUAGE FOR COMPENSATORY SERVICE: (Richard Schwermer)**

Mr. Schwermer discussed proposed compensatory service notice. Mr. Schwermer explained the reasoning behind adding this proposed notice. The compensatory service proposed language reads:

You may request that the Court allow you to perform community service in lieu of paying some, or all, of a fine for class B and C misdemeanors and infractions. Community service will be credited at a rate of \$10/hour. Please contact the court to make an appearance before the judge if you

would like to request community service in lieu of paying your fine.  
(UCA 76-3-301.7)

**Motion:** Judge Paul Farr moved to approve the proposed change. Judge Mary Noonan seconded the motion, and it passed unanimously.

**8. APPROVAL OF 2019 JUDICIAL COUNCIL SCHEDULE: (Ray Wahl)**

Mr. Wahl reviewed the proposed 2019 Judicial Council meeting schedule. Mr. Wahl noted the March 2019 meeting will be in conjunction with the State Bar convention but it is scheduled one week before the legislative session ends. Mr. Wahl said the Bar chose that week due to spring break in St. George. Mr. Schwermer discussed the possibility of holding a meeting at the new Provo courthouse next April, May or June. The February meeting will be moved to February 19. Mr. Wahl recommends waiting until after the legislative session to visit Provo. Mr. Wahl recommends the April 22nd meeting.

**Motion:** Judge Chin moved to approve the 2019 Judicial Council schedule, as amended. Judge Mark DeCaria seconded the motion, and it passed unanimously.

**9. CONSIDERATION OF COMMISSIONER REQUEST FOR EDUCATION WAIVER: (Richard Schwermer)**

Mr. Schwermer explained that new judges and commissioners are required to have the Council's approval if they are not going to attend all or portions of the required new judge orientation education course.

**Motion:** Judge Shaughnessy moved to approve the commissioner request for education waiver. Judge Mark DeCaria seconded the motion, and it passed unanimously.

**10. JUDICIAL CONDUCT COMMISSION REPORT: (Alex Peterson)**

Judge Toomey welcomed Alex Peterson. Mr. Peterson reviewed commission members, including new member Senator Jani Iwamoto; current members are Jim Jardine, Terry Welch, Judge David Mortensen, Judge Todd Shaughnessy, Representative Craig Hall, Senator Lyle Hillyard, Neal Cox, and Mark Raymond. Mr. Peterson provided a caseload update. The commission has received 47 cases thus far for FY2018, with two cases pending before the Supreme Court. There have not been any public dispositions. This is below the historical average. Mr. Peterson noted the commission sponsored visitors regarding judicial transparency from Serbia and Southeast Asia. Additionally, the commission provided training at the spring Justice Court Judges Conference, reported to the Supreme Court regarding additions to the Code of Judicial Conduct; established a performance plan for the executive director; and redesigned the commission's website.

Judge Shaughnessy said historically the commission received complaints by mail. The commission has not made a decision yet, but is exploring the option of online complaint forms. Mr. Peterson said the commission's role is to be reactive and not proactive. Mr. Peterson said he has been on the commission for 18 months now and has noticed that although for the most part the public has access to the commission, often, the commission loses track of complainants. Nationally, the challenge of social media is the highest priority. The commission has received

complaints about judges' postings on social media. Mr. Schwermer noted that some states, like Utah, have various rules and ethics opinions regarding judges on social media. Mr. Peterson said there are conflicting interpretations of rules in some states regarding social media.

## **11. EXECUTIVE SESSION**

**Motion:** Justice Lee moved to go into an executive session to discuss a security matter. Judge DeCaria seconded the motion, and it passed unanimously.

## **12. CONSENT CALENDAR ITEMS.**

**1) Committee appointments.** Pretrial Release and Supervision Committee appointment of Judge William Kendall; Child Support Guidelines Committee appointment of Commissioner T.R. Morgan. Approved without comment.

**2) Forms Committee forms.** Abstract of Judgment; Judgment, Information, Statement; Acknowledgement of Satisfaction of Judgment; Application for Writ of Execution; Request for Verification of Employment; Debtors Motion to Declare Judgment Satisfied: Response to Request for Verification of Employment; Writ of Execution; Application for Writ of Garnishment; Notice of Execution and Exemptions; Order on Motion to Declare Judgment Satisfied; Certificate; Reply and Request for Hearing; Writ of Garnishment and Instructions; Writ of Continuing Garnishment and Instructions; Garnishee Answers to Interrogatories for Property Other than Earnings; Garnishee Answers to Interrogatories for Earnings; Notice of Garnishment and Exemptions; Reply and Request for Hearing; Motion to Enforce Writ of Garnishment; Order to Garnishee to Show Cause; Motion to Renew Judgment; Memorandum Opposing Motion to Renew Judgment; Order on Motion to Renew Judgment; Counter Motion Affidavit in Support of Exhibit(s); Exhibit summary; Notice of Withdrawal of Counsel; Notice to Appear Personally or Appoint Counsel; Notice of Appearance or Appointment of Counsel Substitution of Counsel; Initial Disclosures; Certificate of Service of Initial Disclosures; and Parenting Plan. Approved without comment.

**3) Probation policies.** Revisions to 2.1, 2.12, 2.13, 4.2, 4.11, and delete policy 4.1. Approved without comment.

**4) Uniform Fine and Bail Committee – Sunset.** Reauthorized for six years. Approved without comment.

## **13. ADJOURN**

The meeting adjourned.