

# JUDICIAL COUNCIL MEETING

**Minutes**  
**June 25, 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:**

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

**Staff:**

Richard Schwermer  
Ray Wahl  
Jacey Skinner  
Kim Allard  
Shane Bahr  
Cathy Dupont  
Geoff Fattah  
Jim Peters  
Dawn Marie Rubio  
Nancy Sylvester  
Jessica Van Buren  
Jeni Wood

**Excused:**

Hon. David Marx

**Guests:**

Hon. George Harmond  
Annie Knox  
Joanna Landau  
Jojo Liu  
Hon. Jim Michie  
Peyton Smith  
Keisa Williams

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed Annie Knox from Deseret News to the meeting.

**Motion:** Judge Kate Toomey moved to approve the minutes from the May 21, 2018 Judicial Council meeting. Judge Ryan Evershed seconded the motion, and it passed unanimously.

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

Chief Justice Durrant said the PJ/TCE/COC Conference went well and thanked those involved.

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

Richard Schwermer said author, Gary Marchant, presented at the PJ/TCE/COC Conference on how technological changes can affect the court process. Mr. Schwermer said there was discussion about having Mr. Marchant present at the annual conference. Judge Derek Pullan and Judge Toomey said that they also enjoyed the presentation by Kristen Cox on applying systems efficiencies.

Mr. Schwermer next addressed the media clips that are included in the monthly Judicial Council meeting packet and asked the Council if they were useful or redundant. Justice Thomas Lee said the employee time spent on organizing the media clips is perhaps not worth completing because Geoff Fattah emails news on a regular basis. Judge Toomey agreed the media clips were redundant. Mr. Schwermer will discuss this issue with Geoff Fattah and Jeni Wood.

Mr. Schwermer noted additional funds from FY18 one-time money were used to purchase the second server and related equipment for St. George.

The new PSA system is now active. Mr. Schwermer has received positive feedback from judges. Mr. Schwermer thanked Keisa Williams and the Pretrial Release Committee for their hard work and effort.

**4. COMMITTEE REPORTS:**

***Management Committee Report:***

The work of this committee is reflected in the minutes.

***Liaison Committee Report:***

Justice Thomas Lee noted the Liaison Committee met this morning. Justice Lee said our rules require the committee to meet weekly during the legislative session and periodically outside of the legislative session. The committee is working to enhance communications and provide a better understanding of the role of the Supreme Court, court procedures and court rules with the Office of Legislative Research and General Counsel, members of the Legislature and staff, outside of the legislative session.

Justice Lee testified at the Interim Judiciary Committee hearing last Wednesday explaining the role of the Judicial Council and Liaison Committee. Justice Lee thought the hearing went well. Representative McKell mentioned that he was thankful for Justice Lee attending and discussing the distinction between legislative policy and procedural rules.

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

The committee has been working on a rule drafted by the Board of District Court Judges that would allow the consolidation of probation cases from different districts. There was

discussion about which geographic location the cases would be assigned to after they are consolidated.

***Bar Commission Report:***

Rob Rice updated the Council on the Statement of Diversity and Inclusion, which was implemented in 2011. The Statement strives to increase members' awareness of implicit and explicit biases; make Bar services available to all members; support the efforts of all members; Bar activities, committees, and section's; promote a culture that values all members; and requires mandatory unconscious bias training for new lawyers. The statement was redistributed to all of the Bar committees. The committees will report their work to the Bar.

**5. LIVING TRADITIONS FESTIVAL: (Jessica Van Buren)**

Jessica Van Buren showed photos from the booth at the Living Traditions Festival, which celebrates diversity in Utah. The courts display at the booth provided information on the wide range of resources available within Utah courts. Children pronounced orders after getting their picture taken wearing a judicial robe. Ms. Van Buren said there were volunteers from the Law Library, judges, including a judge's team, AOC, and Self-Help Center. The booth was active for 18 hours of the festival and had approximately 700 visitors to the booth.

**6. JURY MANAGEMENT LOGISTICS: (Kim Allard)**

Kim Allard addressed lessons learned from the Matheson Courthouse parking issue on May 22, 2018 where there were 6 jury trials scheduled in the district court, 451 district court hearings scheduled, and 213 jurors were called to report. 136 of the 154 jurors that appeared parked on P2. This caused the public parking level (P2) to be full by 8:15 a.m.

Ms. Allard stated statewide jury trials have declined 7% since FY16. However, in the same time-period, jury trials at the Matheson Courthouse have increased 12%.

Jury trials in the Third District Court:

West Jordan	Salt Lake
Past 10 months = 4	Past 10 months = 105
FY16 = 13	FY16 = 94

Ms. Allard noted there is additional offsite parking. Ms. Allard said potential jurors are notified of alternate transportation methods and offsite parking availability in the jury notice. Judge Toomey said she is concerned that litigants don't have the same opportunity for notification. There is now open parking on the P1 employee level, which eliminates the overflow of court employees parking on P2. Mr. Schwermer noted the Judicial Council members now have access to park on P1. Shane Bahr said Denise DeCamp would begin notifying Matheson court personnel of jury schedules in advance so outside entities arriving at the courthouse can be notified during busy times.

Mr. Schwermer asked that Ms. Allard reserach the late jury cancellation rate to see if there has been a change in practice.

**7. PRETRIAL RELEASE COMMITTEE REPORT: (Judge George Harmond, Jim Peters, and Keisa Williams)**

Chief Justice Durrant welcomed Judge George Harmond and Keisa Williams. Judge Harmond briefly reviewed findings and research regarding the effectiveness of pretrial reform efforts. Judge Harmond recognized the efforts of Keisa Williams and said the committee would like to have Keisa Williams remain on the Pretrial Release Committee and the Pretrial Working Group, as an Indigent Defense Commission representative. The committee will address amending the rule to include a member of the Indigent Defense Commission. Keisa Williams said she would like to continue her work with both the committee and working group.

Judge Harmond said Utah, Wasatch, and Washington counties are working on their jail management systems so that the PC and PSA processes will be integrated. Harvard will conduct a study in Davis, Morgan, Utah, and Weber counties to measure the effects of providing the PSA to judges. Judge Harmond said Ms. Williams met with various entities, such as courts, jails, and met with attorneys, throughout the state. Ms. Williams said this training will be ongoing. Judge Todd Shaughnessy said that he has received positive reviews of the PSA website.

Judge Shaughnessy said the committees efforts are remarkable. Judge Harmond noted the Board of District Court Judges recommended future programming that would allow for reviewing magistrates to be able to post conditions of release, review law enforcement entries regarding the arrest, and include factors enumerated in Utah Constitution and Code.

Judge Harmond mentioned of the three pretrial release supervision programs in Utah: 1) Salt Lake County (which has the largest pretrial release program); 2) Duchesne County allows local sheriffs to operate the pretrial release program after a judge sets bail; and 3) Carbon County has a program including ankle monitoring and telephone visits.

Chief Justice Durrant said he is very grateful for the dedication of the Pretrial Release Committee, Judge Shaughnessy, and Keisa Williams, who have shown an amazing level of commitment to this program. Chief Justice Durrant said this program is one of the most important initiative the Utah courts has seen in the past couple of decades.

**8. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Jim Michie and Dawn Marie Rubio)**

Chief Justice Durrant welcomed Judge Jim Michie. Judge Michie presented a video created by the Juvenile Court about navigating the juvenile system. This video will be available to juveniles and their families. The Board of Juvenile Court Judges is focusing on judicial outreach and the implementation of the new juvenile justice reform law. Judge Michie reviewed recent statistics in the juvenile courts, related to a decrease in contempt dispositions, and an increase in non-judicial proceedings.

Judge Michie said there are 24 juvenile court speciality courts, and a new transitional youth court for juveniles who have aged-out of the system. There are 31 juvenile court judges who participate on 63 boards and committees. Recently, the Third District Juvenile court judges prepared lunch for the homeless youth in Salt Lake County. Chief Justice Durrant said the efforts of the juvenile court judges is impressive.

**9. INDIGENT DEFENSE COMMISSION (IDC) REPORT: (Joanna Landau and Jojo Liu)**

Judge Kate Toomey welcomed Joanna Landau and Jojo Liu. Ms. Landau stated that Utah has 187 local indigent defense systems covering 29 counties. The counties spend approximately \$35 million annually on indigent defense, and of that, \$21 million was spent in Salt Lake County and \$5,000 was the budget for indigent defense in Daggett County. Ms. Landau noted that the grants received by the IDC vary in scope and size.

The IDC has met with all of the Boards. Ms. Landau said some counties are reluctant to accept one-time state funding for an on-going responsibility.

Ms. Liu said the IDC includes juvenile courts defense issues, many of which were studied by the Council's Juvenile Indigent Representation Committee. The IDC's working group that was comprised to address work with the juvenile courts includes Senator Todd Weiler and Representative Lowry Snow.

**10. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)**

Ms. Sylvester reviewed Judge Mary Noonan and Judge Ivo Ray Peterson's applications. Judge Noonan has applied to be an active senior judge. Judge Peterson applied to be inactive.

**Motion:** Judge Shaughnessy moved to approve Judge Mary Noonan as an active senior judge, upon retirement, and approve Judge Ivo Ray Peterson as an inactive senior judge. Judge Toomey seconded the motion, and it passed. Judge Noonan abstained from voting.

**11. INTERIM COMMITTEE AGENDAS: (Jacey Skinner)**

Jacey Skinner thanked Justice Lee for speaking with the Legislature. Ms. Skinner said the Legislature is having their staff review Utah appellate opinions when those opinions suggest potential legislative changes. The courts will participate in a victim advocate exploring confidentially subcommittee.

Ms. Skinner addressed the Legislature's master study list, which includes:

- 1) pretrial risk assessment with a focus on cooperation of courts with the bail industry;
- 2) review of grand jury panel and process;
- 3) review administrative law judges, including the appeals process;
- 4) judicial diversity;
- 5) gender change statutes;
- 6) vexatious demands related to the ADA;
- 7) red flag laws for dangerous individuals; and
- 8) expungement issues.

Ms. Skinner asked that if there are recommendations to add to this list, please contact her. Ms. Skinner would like to have a member of the Grand Jury Panel attend the next legislative interim meeting.

**12. DETERMINATION TO FILL THIRD DISTRICT COURT COMMISSIONER VACANCY: (Peyton Smith)**

Chief Justice Durrant welcomed Peyton Smith. Mr. Smith introduced himself as the Third District TCE. Mr. Smith stated Commissioner T. Patrick Casey would be retiring from the courts in October. The commissioner rule requires that the Council approved the advertisement of the position.

**Motion:** Judge Toomey moved to approve filling the Third District Court Commissioner vacancy when Commissioner Casey leaves in October. Judge Shaughnessy seconded the motion, and it passed unanimously.

Mr. Smith will notify Human Resources to advertise the position.

**13. RECOGNITION OF COUNCIL MEMBER JUDGE MARY NOONAN: (Chief Justice Matthew Durrant)**

Chief Justice Durrant said Judge Noonan is a delightful person who is consistently engaged and thoughtful. Chief Justice Durrant said it is his privilege to wish Judge Noonan well in her retirement. Judge Noonan provided an Irish blessing and thanked the Council.

**14. EXECUTIVE SESSION**

An executive session was not held.

**15. CONSENT CALENDAR ITEMS**

**1) Committee appointments.**

- Language Access Committee appointment of Yadira Call;
- Education Committee appointment of Judge Kimberly Hornak and Shelly Waite. Approved without comment.

**2) Rules for public comment.** CJA Rules 3-401; 3-414; 4-403; 4-701; 4-202.03; and 4-202.09. Approved without comment.

**3) Forms Committee forms for final approval.** Motion to appear remotely / Order on motion; Notice of relocation / Motion for orders regarding relocation / Order on motion; Motion to change venue / Order on motion; Motion to continue / Order on motion; Motion to vacate dismissal and reinstate case / Order on motion. Approved without comment.

**4) Rules for final approval.** CJA 3-111, 3-407; 4-202.02; 4-202.07; 4-202.09; 4-510.03, 9-109, and “disclaimer language for auto-dialer.” Approved without comment.

**5) Probation policies.** Revisions to 2.10 and delete policy 2.15. Approved without comment.

**16. ADJOURN**

The meeting adjourned.