

JUDICIAL COUNCIL MEETING

**Minutes
December 17, 2018
Matheson Courthouse
Council Room
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 Appleby, Vice Chair
Hon. Kevin Allen
Hon. Augustus Chin
Hon. Ryan Evershed
Hon. Paul Farr
Justice Thomas Lee
Hon. David Marx
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Staff:

Richard Schwermer
Ray Wahl
Hon. Mary T. Noonan
Heidi Anderson
Brody Arishita
Shane Bahr
Michael Drechsel
Cathy Dupont
Jim Peters
Nini Rich
Neira Siaperas
Nancy Sylvester
Jeni Wood

Excused:

Guests:

Hon. Royal Hansen
Hon. Jim Michie
Justice John Pearce
Hon. Andrew Stone

- 1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge Kate Appleby moved to approve the Judicial Council minutes from the November 19, 2018 meeting, as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

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

Chief Justice Durrant presented Richard Schwermer with a Judicial Council plate and thanked Mr. Schwermer for his role in helping create an extraordinary court system. Chief Justice Durrant said Mr. Schwermer has been a key player in the courts long-standing record of creating innovative programs and processes. Chief Justice Durrant thanked Senior Judge Mary T. Noonan for her willingness to return to the courts as an Interim State Court Administrator.

3. ADMINISTRATOR’S REPORT: (Richard Schwermer and Judge Mary T. Noonan)

Richard Schwermer thanked Chief Justice Durrant. Mr. Schwermer reviewed two forms from the Forms Committee that were removed from the consent calendar. Mr. Schwermer stated Neira Siaperas was appointed as the new Juvenile Court Administrator. The Provo Courthouse dedication is scheduled for February 4.

Mr. Schwermer said the Family Justice Initiative is an effort to determine best practices for domestic relations cases. The National Center for State Courts is staffing the project, and they are interested in piloting the best practices in Utah. Fifth District is their first choice. Judge Todd Shaughnessy recommended to defer a decision on whether the Fifth District Court would be willing to participate to the District Bench for discussion.

Mr. Schwermer presented the National Center for State Courts “2018 The State of State Courts Poll.” The Poll was a nationwide survey of more than 1,000 registered voters.

Key Findings from the survey:

- Confidence in state courts is the highest since the start of the State of the State Courts series (7 years) — though there is still plenty of room for improvement.
- Views on cash bail are fluid, but after hearing messages for reforming the system, the public strongly believes that judges should base pretrial release decisions on factors other than ability to pay.
- A majority say they are unprepared to represent themselves in court— yet alternatives to hiring a lawyer are only modestly popular.
- Certain case types lend themselves to Online Dispute Resolution (ODR) while others may not, and the public sees pros and cons to ODR generally.

Judge Mary T. Noonan reviewed dates approved by the Management Committee for the recruitment and selection of the State Court Administrator position, per Utah Code § 78A-2-105 and Code of Judicial Administration Rule 3-301.

Timetable:

Conduct a national search	12/14/2018 - 02/11/2019
Announce position through traditional recruitment channels by	12/14/2018
Issue Request for Proposal (RFP): recruitment services by	12/14/2018
RFP closes	12/28/2018
Score RFP and negotiate contract by	01/11/2019
Applications due	02/11/2019
Applications advanced to Management Committee	02/13/2019
Management Committee screens applicants and selects candidates for interviews	02/19/2019
Management Committee interviews and advances finalists	02/25/2019 - 02/26/2019
Finalists interviewed by the Supreme Court by	03/06/2019
Chief Justice consults with the Judicial Council	03/08/2019
Chief Justice appoints new State Court Administrator	03/15/2019
Start date	04/15/2019

Judge Noonan noted Mr. Schwermer will retire on January 16, but will remain in a consulting position with the courts to assist with the legislative session, and new court administrator transition. Mr. Schwermer’s retirement ceremony will be January 15 from 2:00 p.m. to 4:00 p.m. An invitation will be sent.

4. JUDICIAL COUNCIL SELECTION OF STUDY ITEM: (Richard Schwermer)

Mr. Schwermer presented possible items for study. The Board of District Court Judges will meet this Friday to discuss the possible study items.

- Justice For All – fines and fees that the court assesses (see Arizona study).
- Mental health issues – improving how the courts deal with individuals who have mental health issues. This will be a topic at the midyear Conference of Chief Justices and State Court Administrators in May 2019.
- Court security – variety of court security structures used in Utah and other states.
- Justice court reform – procedural issues; this hasn't been reviewed for 11 years.

The Council will address the study topic after the Board of District Court Judges has reviewed the possible study items.

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 is preparing for the legislative session.

Policy and Planning Committee Report:

Judge Derek Pullan said the work of this committee is reflected in the minutes.

Bar Commission Report:

Rob Rice noted the Bar is monitoring the Governor's interest in adding sales tax to professional services. There is also a case in the Eighth Circuit Court that questions a previous U.S. Supreme Court ruling that permits mandatory membership to state bar associations.

6. TECHNOLOGY COMMITTEE REPORT: (Justice John Pearce and Heidi Anderson)

Chief Justice Durrant welcomed Justice John Pearce. Ms. Anderson reviewed improvements made in the IT Department, including Agile, security upgrades, better transparency, team communication, and training within the department. Ms. Anderson noted several goals for the Technology committee include remote FTR computers, encryption at rest, and testing processes.

Chief Justice Durrant thanked Justice Pearce and Ms. Anderson for their report.

7. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Jim Michie and Neira Siaperas)

Chief Justice Durrant welcomed Judge Jim Michie. Judge Michie said the Board is pleased with Ms. Siaperas' appointment. Juvenile courts have seen a 22% increase in felony referrals and a 3% increase in misdemeanor referrals. Infraction referrals have declined 31% and status referrals have declined 53% due to the juvenile justice reform. Seventy-two percent of open cases in the juvenile courts are delinquency cases, ye, sixty-three percent of judicial time is spent on child-welfare cases. Judge Michie noted the courts are collaborating with the Department of Human Services in delivering and sharing of the courts service network.

Chief Justice Durrant thanked Judge Michie for his report.

8. JUSTICE COURT RECERTIFICATIONS: (Jim Peters)

Jim Peters noted pursuant to Code of Judicial Administration Rule 9-108(1)(B) the Board of Justice Court Judges reviewed applications from county justice courts for recertification. Mr. Peters noted there are 29 county justice courts in Utah. The Board recommended all county justice courts be recertified with the exception of the following. The remaining courts will be addressed with the Council in January.

- Juab County Justice Court – Judge Sharla Williams. Recertification on hold until the court remains open for one hour longer on Fridays or receives a waiver from the Judicial Council.
- Kane County Justice Court – Judge Gary Johnson. Recertification on hold pending issues with judge’s compensation.
- Morgan County Justice Court – Judge Brian Brower. Recertification on hold pending a back-up plan for clerical coverage because the Court currently has one half-time clerk.
- Uintah County Justice Court – Judge Jody Petry. Recertification on hold pending a revised opinion addressing the feasibility of maintaining a justice court.
- Wayne County Justice Court – Judge Roy Brown. Recertification on hold pending a completed affidavit and must rectify issues with their hours of operation.

Motion: Judge Marx moved to approve all county justice court recertifications with the exception of the Juab County Justice Court, Kane County Justice Court, Morgan County Justice Court, Uintah County Justice Court, and Wayne County Justice Court, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

9. LEGISLATIVE UPDATE: (Cathy Dupont)

Cathy Dupont said the courts’ first weekly legislative meetings begin Friday, January 11. Michael Drechsel will assist with the session on criminal issues. Judge Noonan, Rick Schwermer, Ray Wahl and John Bell will assist with budget issues. Legislative staff Patricia Owen will be replaced by Jacqueline Carlton.

Ms. Dupont provided the Council members with the following dates the districts will meet with their local legislators. Ms. Dupont encouraged the Council members to attend the meetings.

- First District – January 3, 2019
- Second District – January 4, 2019
- Third District – January 22, 2019
- Fourth District – January 18, 2019
- Fifth District – January 17, 2019
- Sixth District – January 14, 2019
- Seventh District – January 25, 2019
- Eighth District – January 23, 2019

On behalf of the Supreme Court, Ms. Dupont proposed a revision of Utah Code § 78A-3-101(6), deleting the limitation on the number of successive terms the associate chief justice may serve, and requested it be added to the housekeeping bill. Ms. Dupont noted if the Council approved the proposal, it would then be presented to Senator Lyle Hillyard for approval, as the sponsor.

Motion: Judge John Walton moved to approve adding the proposed revision to Utah Code § 78A-3-101 to the housekeeping bill, as presented. Justice Lee seconded the motion, and it passed, with Judge Pullan voting no.

10. RULES FOR FINAL APPROVAL: (Michael Drechsel)

Michael Drechsel presented amendments to Code of Judicial Administration rules 1-205 Standing and Ad Hoc Committees, 4-202.02 Records Classification, 4-508 – Guidelines for Ruling on a Motion to Waive Fees, and Appendix I – Summary of Classification of Court Records. Mr. Drechsel noted these rules were published for public comment from September 28 to November 12. Only one comment was received. Mr. Drechsel is seeking approval with an effective date of January 1, 2019.

Motion: Judge Shaughnessy moved to approve Code of Judicial Administration rule 1-205 Standing and Ad Hoc Committees, as presented with an effective date of January 1, 2019. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve Code of Judicial Administration rule 4-202.02 Records Classification, as presented with an effective date of January 1, 2019. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Appleby moved to approve Code of Judicial Administration rule 4-508 – Guidelines for Ruling on a Motion to Waive Fees, as presented with an effective date of January 1, 2019. Rob Rice seconded the motion, and it passed unanimously.

Motion: Judge Kara Pettit Appendix I – Summary of Classification of Court Records, as presented with an effective date of January 1, 2019. Judge Walton seconded the motion, and it passed unanimously.

11. ADR COMMITTEE REPORT: (Judge Royal Hansen and Nini Rich)

Chief Justice Durrant welcomed Judge Royal Hansen. Judge Hansen stated the Utah State Legislature enacted the Utah Alternative Dispute Resolution Act in 1994. The ADR program is partially funded by court filing fees, the Federal Child Access and Visitation Grant, and the General Fund. Annually, more than 1,800 cases were referred to the child-welfare mediation program, 5,000 cases were mediated by private providers, 900 pro bono mediations were provided, 350 pro bono mediations were arranged by ADR staff, and 808 pro bono mediations were provided by members of the Utah Court Roster. There are 6 ADR staff mediators and 232 mediators on the court roster.

ADR programs include:

- Child welfare mediation
- Co-parenting mediation
- Divorce mediation
- General civil referrals
- Restorative justice
- Law and motion calendar mediation
- Small claims mediation

Judge Hansen thanked Nini Rich and Rick Schwermer for their efforts with the ADR program over many years. Judge Ryan Evershed noted he took the mediation course offered in the courts and felt it was very worthwhile. Chief Justice Durrant thanked Judge Hansen for his report.

12. CIVIL JURY INSTRUCTIONS COMMITTEE REPORT: (Judge Andrew Stone and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Andrew Stone. Judge Stone reported that the Committee published instructions on injurious falsehood, economic interference, and part of the civil rights instructions.

Chief Justice Durrant thanked Judge Stone for his report.

13. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss the character, competence, and physical and mental health of an individual. Judge Walton seconded the motion, and it passed unanimously.

14. CONSENT CALENDAR ITEMS

a) Committee Appointments.

- Ethics Advisory Committee reappointment of Judge Wallace Lee. Approved without comment.
- Facility Planning Committee appointment of Mark Urry and reappointment of Judge Jon Carpenter. Approved without comment.
- Outreach Committee appointment of Nicholas Shellabarger. Approved without comment.
- Pretrial Release and Supervision Committee appointment of Judge Brook Sessions and the reappointments of Judge George Harmond, Judge Brendan McCullagh, Brent Johnson, and Pat Kimball, and the removal of Adam Trupp. Approved without comment.
- Self-Represented Parties Committee appointment of Peter Strand. Approved without comment.
- Standing Committee on Children and Family Law appointments of Commissioner Russ Minas and Judge Kent Holmberg and the appointment of Judge Elizabeth Hruby-Mills as co-chair. Approved without comment.
- Technology Committee appointment of Chris Palmer. Approved without comment.
- Uniform Fine and Bail Committee appointment of Judge Linda Jones and the reappointment of Judge David Hamilton. Approved without comment.

b) Forms Committee Forms. Forms Order on Motion for Genetic Testing, Motion for Genetic Testing, and Stipulation of Dismissal. Approved without comment.

c) Rules for Public Comment. Rule 1-303 Internal procedures and organization. Rule 501 The Board of Appellate Court Judges. Approved without comment.

d) Commissioner Evaluations. Certified for reappointment: Commissioner Catherine Conklin, Commissioner T.R. Morgan, and Commissioner Christina Wilson. For information only.

e) Probation Policies. Revisions to Policies 2.9 and 4.10. Approved without comment.

15. ADJOURN

The meeting adjourned.