

# JUDICIAL COUNCIL MEETING

Minutes  
Monday, September 12, 2016  
Judicial Council Room  
Matheson Courthouse  
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

## ATTENDEES:

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Derek Pullan  
Hon. Randall Skanchy  
Hon. Kate Toomey  
John Lund, esq.

## EXCUSED:

Daniel J. Becker

## STAFF PRESENT:

Ray Wahl  
Jody Gonzales  
James Ishida  
Debra Moore  
Jim Peters  
Dawn Marie Rubio  
Rick Schwermer  
Derek Byrne  
Brent Johnson  
Nancy Sylvester  
Brody Arishita

## GUESTS:

Hon. Todd Shaughnessy  
Hon. Dennis Fuchs

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Higbee moved to approve the minutes from the August 19, 2016 Judicial Council meeting. Judge Toomey seconded the motion, and it passed unanimously.

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

He reported on the following items:

Judge Matthew Bates swearing-in ceremony was held on Friday, September 9.

Chief Justice Durrant and Mr. Schwermer recently met with the Elected Offices and Judicial Compensation Commission.

Chief Justice Durrant participated in the first meeting of the Pre-Trial Release Committee.

3. **ADMINISTRATOR'S REPORT: (Ray Wahl)**

Mr. Wahl reported on the following items:

Elected Offices and Judicial Compensation Commission Meeting. Mr. Schwermer reported on the meeting with the Elected Offices and Judicial Compensation Commission he and Chief Justice attended recently.

The commission has been interested in obtaining data pertaining to judicial recruitments and judicial retirements to support the increase in judicial salaries. The Commission on Criminal and Juvenile Justice (CCJJ) has been asked over the past couple of years to provide recruitment data to the Elected Offices and Judicial Compensation Commission. To date, the requested data has not yet been compiled.

Discussion took place.

MSU Graduation. The first graduating class of the Utah court system was honored at a graduation ceremony held on August 23 in the Supreme Court.

Annual Judicial Conference. Mary McQueen, the president of the National Center for State Courts (NCSC), will be presenting Judge Bill Thorne with the National Center for State Courts Distinguished Service Award at the opening of the Annual Judicial Conference.

Finance Director. Mr. Derek Byrne has accepted a position as one of the Appellate Court Administrators for Washington State, and he will be leaving the Utah court system in mid-October. The job announcement to fill this vacancy has been posted. Mr. Wahl acknowledged Mr. Byrne's contributions to the Utah court system.

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

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

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

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

No meeting was held in September.

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

Judge Parkin reported on the following items: 1) a rule for final action will be considered later on the agenda, and 2) changes to the committee were noted with Judge Pullan being appointed to serve on the committee, and Judge Mark DeCaria moving from Policy and Planning to the Liaison Committee. Judge Parkin thanked Judge DeCaria for his contributions to the committee.

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

Mr. Lund reported on the following items: 1) Mr. James Ishida presented information on the Limited Licensed Paralegal Program to the Bar Commission at their last meeting and requested support on specific elements of the program from the Utah State Bar, specifically the employee assistance program with Blomquist Hale and participation in the Bar's referral service; 2) the commission recognized the importance of their continued efforts to help members of the Bar understand that the Limited Licensed Paralegal Program is a positive development to the profession; 3) approval of sending a letter to the senators from the Utah delegation, regarding the full set of vacancies that exist in the federal judiciary, and urging that they support replacement of the federal judges in due course; 4) added complicit bias training to the new lawyer training program for new lawyers; and 5) Mr. Nate Alder has been appointed as an ABA delegate for the 2016-2018 term; and 6) the ABA delegation for the Bar includes Justice Christine Durham, Ms. Margaret Plane, Ms. Angelina Tsu, and Mr. Nate Alder.

**5. RULE FOR FINAL ACTION: (Nancy Sylvester)**

The Policy and Planning Committee recommended final action be taken on Rule 3-104 – Presiding Judges. The rule was sent out for public comment with no public comments received. The rule has been amended to affirm the authority of presiding judges to appoint senior judges to fill judicial vacancies.

**Motion:** Justice Lee moved to approve Rule 3-104 – Presiding judges for final action as recommended. Judge DeCaria seconded the motion, and it passed unanimously.

**6. PROBLEM SOLVING COURT CERTIFICATION – FOURTH DISTRICT COURT VETERAN’S COURT COURT: (Judge Dennis Fuchs and Rick Schwermer)**

Chief Justice Durrant welcomed Judge Fuchs and Mr. Schwermer to the meeting.

Judge Fuchs reminded members of the Council that they conditionally certified the Utah County Veteran’s Court in the Fourth District at the July meeting to allow for an acceptable drug and alcohol testing program to be established. He reported that the Utah County Veteran’s Court in the Fourth District is now in compliance with providing an acceptable drug and alcohol testing program for program participants.

**Motion:** Judge Pullan moved to certify the Utah County Veteran’s Court in the Fourth District for full certification. Judge Skanchy seconded the motion, and it passed unanimously.

**7. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer highlighted the following in his legislative update: 1) Judge Nielsen, the Governor’s appointment to fill the Fourth District Juvenile Court vacancy, will go before the Senate Confirmation Committee on September 16 and before the full Senate on September 21; 2) legislative interim session to be held on September 21; 3) judiciary committee agenda to include: surcharges and surcharge accounts, update on divorce education and divorce orientation, and a report on the expedited jury trials pilot; 4) discussion of a rule of evidence regarding what was, last year, called hate crimes by the Law Enforcement Committee; and 5) the Executive Office of Criminal Justice Appropriations Subcommittee has requested a report be provided by the courts at a meeting to be held on November 20.

Discussion took place.

Mr. Schwermer provided information on a draft statutory proposal to be discussed at the Judicial Performance Evaluation Commission’s meeting to be held on September 13.

Discussion took place.

Chief Justice Durrant welcomed Jim Peters, new Justice Court Administrator, to the meeting.

**8. SENIOR JUDGE AND COMMISSIONER CERTIFICATIONS: (Nancy Sylvester)**

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

She mentioned that information pertaining to the senior judge and commissioner certifications was included in the Council materials and at their places today. Ms. Sylvester reviewed the process for certifying senior judges and commissioners with members of the Council.

Ms. Sylvester reported that Commissioner Joshua Faulkner’s and Commissioner Kim Luhn’s terms of office will expire on December 31, 2016. Both commissioners meet all of the

performance standards under Rule 3-111.

Ms. Sylvester reviewed the senior judge new appointments and senior judges up for recertification: 1) Judge Mark Andrus, request for appointment as an active senior judge, effective upon retirement; 2) Judge Paul Maughan, request for appointment as an inactive senior judge, effective upon retirement; 3) Judge Kent Bachman, active senior judge; 4) Judge Darold Butcher, active senior justice court judge; 5) Judge Hans Chamberlain, active senior judge; 6) Judge Dennis Fuchs, active senior judge; 7) Judge Denise Lindberg, active senior judge; 8) Judge Sandra Peuler, active senior judge; 9) Judge Robin Reese, active senior judge; 10) Judge Gary Stott, active senior judge; 11) Judge Paul Iwasaki, inactive senior judge; 12) Judge Andrew Valdez, inactive senior judge; and 13) Judge Diane Wilkins, inactive senior judge.

**Motion:** Judge Parkin to move into executive session to discuss matters of personnel. Judge Bagley seconded the motion, and it passed unanimously.

**Motion:** Judge Higbee moved to forward the following recommendations for senior judge certification to the Supreme Court, on behalf of the Council: 1) Judge Mark Andrus, request for appointment as an active senior judge, effective upon retirement; 2) Judge Paul Maughan, request for appointment as an inactive senior judge, effective upon retirement; 3) Judge Kent Bachman, active senior judge; 4) Judge Darold Butcher, active senior justice court judge; 5) Judge Hans Chamberlan, active senior judge; 6) Judge Dennis Fuchs, active senior judge; 7) Judge Denise Lindberg, active senior judge; 8) Judge Sandra Peuler, active senior judge; 9) Judge Robin Reese, active senior judge; 10) Judge Gary Stott, active senior judge; 11) Judge Paul Iwasaki, inactive senior judge; 12) Judge Andrew Valdez, inactive senior judge; and 13) Judge Diane Wilkins, inactive senior judge. Judge Toomey seconded the motion, and it passed unanimously.

**Motion:** Judge Higbee moved to defer action on certification of the court commissioners to allow for the appropriate information to be prepared and available for consideration at the October Council meeting. Judge DeCaria seconded the motion, and it passed unanimously.

**Motion:** Judge Skanchy moved to enter back into an executive session to discuss the character, competence, or physical or mental health of an individual. Judge Higbee seconded the motion, and it passed unanimously.

#### **9. AMENDMENTS TO THE FY 2017 SPENDING PLAN: (Ray Wahl)**

Upon closing out FY 2016, an additional \$400,000 in carry-forward funding became available for allocation by the Judicial Council. The following amendments to the FY 2017 spending plan were recommended: 1) an additional \$100,000 for incentive awards, 2) an additional \$200,000 for the CORIS rewrite, and 3) an additional \$100,000 for desk and laptop equipment replacement.

**Motion:** Judge Toomey moved to accept the recommended amendments to the FY 2017 spending plan. Judge Farr seconded the motion, and it passed unanimously.

**10. REPORT ON THE IMPLEMENTATION OF MANDATORY E-FILING IN JUVENILE COURT: (Dawn Marie Rubio and Brody Arishita)**

Chief Justice Durrant welcomed Ms. Rubio and Mr. Arishita to the meeting:

Ms. Rubio highlighted the following regarding the implementation of mandatory e-filing in juvenile court: 1) the timeline of events regarding phase 1 – existing cases and phase 2 – case creation, 2) e-filing statistics, and 3) available training resources, 4) enhancements to e-filing to include – transition of CARE to a Linux environment, create a shopping cart for filing fees, CARE Access review, and ongoing enhancements.

The following juvenile court e-filing statistics were highlighted: 1) firm users increased by 931, 2) 526,255 e-filings, 3) 122,101 e-filings entered into the review queue, 4) 123,184 entered into the judge/order queue, and 5) 5,483 entered into the other queue.

Mr. Arishita demonstrated the following: 1) case creation, 2) MyCases/MyCalendar, 3) the “red folder”, 4) linking documents, and 5) order queue and judge review/signature.

Mr. Arishita provided answers to questions asked of the juvenile e-filing system.

Chief Justice Durrant thanked Ms. Rubio and Mr. Arishita for their update.

**11. EXECUTIVE SESSION**

An executive session was held at this time.

**12. ADJOURN**

The meeting was adjourned.

# Administrative Office of the Courts

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

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

## Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

I, Justice Matthew B. Durrant, state as follows:

1. On 9-12-16 (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:
  - the character, competence, or physical or mental health of an individual;
  - litigation;
  - the deployment of security personnel, devices, or systems;
  - allegations of criminal misconduct;
  - consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record;
  - the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or
  - the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.
2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.

I declare under penalty of perjury that the statements made in this document are true and correct.

9-12-16  
Date

  
Justice Matthew B. Durrant  
Chair, Utah Judicial Council

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.