

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is a formatted and unedited transcript of the last meeting. The official record of each meeting, the meeting minutes, are usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at [www.courts.ca.gov](http://www.courts.ca.gov).

>> Please stand by for real-time captions.

>> [Captioner standing by]

>> Good afternoon. Everyone please take your seats so we can start our meeting.

>> Good afternoon, this is the public business meeting of the Judicial Council of California, Thursday, September 20, 2018. The meeting is now in session. We are joined on the phone I believe by council member Andrea Wallin-Rohmann, we expect her to join. This is the first day of our two-day business meeting. We plan to adjourn later this afternoon at approximately 2 PM and reconvene to the public session tomorrow morning at 9:25 AM. Later this afternoon we will have the 25th annual judicial service awards, hosted by [indiscernible], but before we begin the regular agenda, as you know September is a Judicial Council, it means new terms and continuing terms. The new members, you are joining as you know a long tradition of working cooperatively with our stakeholders in the justice system, both state and nationally, to ensure California courts are fair and accessible to all. When the voters created this council, you might be interested to know, they decided that the purpose of council was to advise the courts of the state on a business basis. And that we as council members are charged with the duty of seeing justice is being properly administered throughout California and for all Californians. The hope was this council would again a greatly in simplifying and improving the administration of justice that we endeavor to do not only in our [indiscernible] as you can see in the agenda the 41 consent items. Over 400 dedicated servants who have full-time jobs volunteer their time to serve on the Judicial Council's various advisory bodies. Several of these hard-working bodies' work is reflected in the agenda, as I indicated, today and tomorrow, but particularly in the 41 items that reflect months if not years of work in response to legislative changes and updating forms for all of the court users. As you know, these volunteers fluidly share their knowledge and skills and expertise. And the diversity of background and experience enriches our fact-finding and decision-making process at the council level. As I said earlier this week on Constitution Day, in 1787 we the People established that government exists to serve the People. It separates and balances federal and state powers, safeguards the interests of the majority and minority rights [indiscernible] we bring these to light every day.

>> I will ask the six appointed members to come near me near the flag to take your oath of office for the Judicial Council.

>> Let me name them for you as they begin to assemble. We have Judge Paul Bacigalupo, Superior Court of Los Angeles County, Judge Jonathan Conklin, Superior Court of Fresno County, Court Executive Officer Nancy CS Eberhardt, Superior Court of San Bernardino

County, and Justice Brad Hill, Court of Appeal, Fifth Appellate District. And we also have Presiding Judge Ann Moorman and the little introduction for the reappointed members, I asked them all to join, Judge Kyle Brodie, Judge Samuel Feng, Court Executive Officer Kimberly Flener, Judge Scott Gordon, attorney Patrick Kelly, and Presiding Judge Gary Nadler did the --.

>> That leaves very few of us remaining. Please crowd in and I think we will have pictures taken.

>> I will move over.

>> Please raise your right hand and repeat after me. I solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the state of California against all enemies foreign and domestic, [indiscernible] that I take this obligation freely without any mental reservations or purpose of evasion. I will well and faithfully discharge the duties on which I am about to enter. Thank you and I look forward to working with you, congratulations. [applause].

>> Yes. As we take our seats I will announce, as you know, that we have two discussion agenda items this afternoon here. For the first of these we have a very special guest for what has become a very important regular item on the annual agenda. Under family and juvenile law, the Judicial Council resolution for Court Adoption and Permanency Month, I invite our presenters and special guest, Judge Jerilyn Borack, cochair of the Judicial Council's Family and Juvenile Law Advisory Committee, with a very special family.

>> Welcome.

>> Thank you.

>> Good afternoon Chief Justice members of the council, it is my delight to be here once again to talk about permanency for children in the state of California. Currently we have approximately 60,000 children who are living apart from their parents, under the supervision of child welfare. Out of that 60,000, about 40 percent have been in and out of their home care for over two years. 8,300 remain in temporary, nonpermanent homes. Placements in excess of five years. Since 1999, the Judicial Council has supported permanency in the state of California every year, declaring November to be Court Adoption and Permanency Month. During that month courts are reminded to remain committed to permanency, raise awareness of the needs of our children to have a what we call forever family. We have one such family here today. And I want you to understand, I think it is important to understand, how difficult and challenging that job is. We are charged with the responsibility of keeping families together, strengthening families, making them safe for their own children, because we all know that no matter what, that's where children want to be. We call it reunification. That's what we have to do. At the same time that we are doing that, we are making certain that if that fails, there is a permanent place for these children from the beginning. So what is the challenge that a family like this has to meet? They have to look after this child's welfare. They have to commit themselves to this child. They have to support this child, they even have to love this child because we all need love, and they do that during this reunification not knowing whether or not this child will be their forever child.

>> Heather and Roy were lucky. As was Helen. They are here to tell their story to you today.

>> Make yourself comfortable.

>> My name is Roy and my wife is Heather. These are our five children, and this is my oldest, Helen, Jack, William, and Levi, our kids. We want to thank you very much for having us here and giving time for us to speak and share our story through the foster care and adoption process that happened for us. Our family has video of the youngest child, Levi, who had just turned three years old. On his first roller-coaster at Disneyland he keeps asking before he gets moving, Is it time to start yet, is it time to start? In between the questions he screams on cue. But once the roller-coaster gets really moving, he stops screaming completely, with the most terrified look on his face clings to Heather's arms, and the video is hilarious. It is laughable, but also a little pathetic at the same time because of the realization he was truly preparing himself. Our journey started years ago. We have been married over 18 years. And we knew we were called to adopt a child from early on in our marriage. Finally after years of asking for wisdom, as a family, we felt the pull of our hearts toward a home and applying for foster care. We knew there were children in need of a permanent home right in the community surrounding us. We talked extensively with our three children that we had, and they were all excited about the idea of having another sibling through adoption. We had an unrealistic, glamorized view of what we thought adoption would look like. The adopted child would have to fall within the birth order so as not to disrupt our other children. A girl with long brown hair. We asked the child's parental rights be terminated before she came to our home. And we made it clear to the foster care agency what we wanted and that our intention was to adopt. We were extremely eager to receive a child in our home and, as Levi in the roller-coaster video, as we waited for the foster party to start we would insert screams and worry where we thought we needed to. Our first call came about two months after our certification. The agency social worker told us the case was a little outside the box but it seemed to be a pretty open and shut case. The reality was, it wasn't an open and shut case. Over the next 3-1/2 years there would be a tremendous amount of ups and downs. Jason Johnson, an advocate for foster care and adoption, quotes, It is the mercy of God that he doesn't show us everything that will unfold, in the foster care and adoption journey. The moment we first say yes it would be too unbearable for the hard and the good would be unbelievable. On a hot afternoon in August 2013 we saw our daughter for the first time. Helen walked to our doorstep and her social worker carrying a small cardboard box with all her belongings. She was a petite, young Chinese girl with mismatched clothes, crocks that were small, chubby cheeks, and a malnourished belly. She smiled but it was in hiding. She walked from room to room questioning if she was in Heaven. Helen had already been in foster care 14 months and we were her for the home. The day after she came she started calling us mom and dad. She wanted to belong. There we were, awestruck and excited and scared with a little girl we knew nothing about. We had no medical records, no file, nothing that gave us any insight. And later on we asked her what she thought about adoption and her answer was simple, staying. It was probably a month after Helen came when her case went back to court. When we stopped the fake screaming and the fear of the unknown into the truth of the adoption journey. Shortly after we received Helen in our home we were given promise Helen would be our daughter. We felt we were given promises from the Bible as we journeyed. A verse in Exodus we kept hearing, The Lord will fight for you, you need

only to be still. Our family stepped into what we started referring to as the new normal. We felt exposed. County workers in a revolving door were constantly in our home. We encountered behavioral issues from Helen, trying to figure out what was the trigger. Our family began to show outward signs of trauma and stress. Countless people evaluating our home. Helen and our other children constantly giving us unsolicited advice. It seemed for every struggle we faced, God saw us through it and in turn rewarded our family. We were grateful for those connected with Helen's case who were brought into our home. The love and real concern of Helen's concerns, her attorneys, the FFA worker, brought normalcy to the process. We were continually encouraged by our family, friends and our church and they rallied around us in prayer and support despite how uncomfortable it was for them. At first, because of Helen's original case, we did not have rights. Because of an incident with her biological parents, we were given educational rights and could home school Helen along with the rest of our children. We still remember the day Joy called as we were camping, and as soon as our children found out we all huddled around Helen and embraced her with a big hug. We waited, cried, and prayed over her promised adoption day for about 3-1/2 years.

>> After Helen was in foster care for 1,745 days, our promise was fulfilled. On March 23, 2017, our family sat in front of a judge and signed paperwork promising to be Helen's parents. We received the new birth certificate for Helen and it listed Roy and my name as Helen's biological parents. Now we are on a journey and our lovely daughter has persevered. She has recently been able to do things she was previously filled full of did we know we are promised guidance as we start the new normal. Throughout the difficulties it's been a privilege being part of the process. We watched Helen become the girl that she is today. She is secure and confident, clever, witty, wise, and able to stand up for herself. We watched her find her genuine smile and she has found the love for good food. We watched her interests blossom and develop and she stepped into her own style. We went through seven years of life without her, yet it's as if she's always been part of our family. She is always quick to help, always quick to show support, she was a missing puzzle piece that fits into our complete family. [indiscernible] it feels as if our daughters have been true friends, best friends, the closest of friends forever, both into art and currently working on a comic book. The boys have another playmate and best friend and older protective sister. Our three-year-old son Levi, who's never known life without her, he has times playing with her with his tiny toddler arms around her neck.

>> We've seen Helen step into a role of being a leader and a friend to children who are the same age she was when she was first removed from her biological home. She is one of our youth leaders and helps in a preschool class in our church. Through all this process, our children have all become more compassionate and discerning. While they are still struggling, we watch them become more equipped to work through the struggles. Our family has learned the value of patience and servanthood in compassion for all people, especially people in need. Adoption isn't glamorous and it's not for every family but it is for every family that is called to it. We truly never have known life so right. We recognize there were tremendous ups and downs, but it was like any worthwhile journey, it has made us beautiful and has built into each of us immeasurable qualities. Our family has been met together, it was meant to be. Helen was meant to be our daughter and we were meant to be her parents. That is such an amazing gift. Roy quoted Jason

Johnson at the beginning. He also writes this: That space between this is what we hope for, and this isn't what we signed up for, is filled with the mercy of God and hope that in the end the work is worth it. Thank you for letting me share with you.

>> [applause]

>> So, Chief Justice, on behalf of the committee, on behalf of Roy and Helen, their family, and all of the families in like situations, the Family and Juvenile Law Advisory Committee asks you to adopt the Adoption and Permanency Month resolution. I am not going to read it all. It must be somewhere here.

>> I second.

>> [indiscernible-low volume]

>> I third. [laughter]

>> All in favor. It is unanimously and enthusiastically adopted. Thank you for representing and showing us this wonderful family and sharing the family with all of us. We would like to take a picture with everyone between the flags. If we can bring everyone up, Judge Borack.

>> Thank you again. [applause]

>> We need to sign this. Can we have the family? We were going to sign the resolution.

>> We are going to sign the resolution.

>> Look at the camera.

>> Our second and final agenda item for today's business meeting is remote access to electronic records, an action item, and I invite the presenters, Judge Shelia Hanson, chair of the Judicial Council Information Technology Advisory Committee, Justice Peter Siggins, rules and policy subcommittee. Mr. Patrick O'Donnell, judicial legal services, and Ms. Andrea Jaramillo, Judicial Council services.

>> Justice Siggins, are you presiding over this, in the absence of Judge Hanson?

>> I was under the understanding she would be present by telephone.

>> Thank you. Judge Hanson are you on the line? It sounds like you are presenting.

>> I was about to say that, thank you.

>> Our time is always an approximation on the agenda. Thank you.

>> Thank you. Thank you Chief Justice, members of the council, you have in front of you today for consideration a set of rules that were formulated by a task force that was put together under the auspices of the Information Technology Advisory Committee and Judge Hanson, to consider and come up with rules

>> Hello, this is Judge Hanson.

>> Great.

>> Welcome.

>> Our time is always an approximation.

>> Thank you very much.

>> The floor is yours. I will be very brief.

>> You have in front of you today for consideration a set of rules that were formulated.

>> I have been given informal legal advice to turn down whatever's in the background. Okay.

>> We can start again.

>> We cannot hear you.

>> I think I made a mistake by watching the live feed and speaking at the same time. I just wanted to thank, address the chief, to each of the members of the Judicial Council, I would like to introduce Justice Siggins to present the next item to each of you. Before I do so he will explain each of the proposals, I want to thank Justice Siggins and each of the workstream members. He brought together an enormous number of members of the ad hoc committees to design and develop these role proposals for you today. At this point in time I would like to turn the floor over to Justice Siggins, he has done an excellent job following the workstream peered.

>> Thank you Judge Hanson. Once again, good afternoon. So these are a set of rules that build upon the current rules of court that provide for public access to electronic records. What we set out to do was to provide a comprehensive set of rules to all users, court users to allow them to access records electronically. Before I give you a structural overview of the changes we have made to the rules, I just want to touch base on some fundamental presuppositions we had going into the project. First of all were trying to facilitate existing relationships, particularly with respect to government agencies. There are MOUs use in place and ways courts are going about to provide electronic access to their users, and we wanted to provide clear authority to the courts that it's okay to do so, the circumstances under which they may do so. One thing that became clear as we worked through the project was it was also important to provide standards under which use was authorized, and standards for misuse of information and access. And finally the most important thing is what we set out to design was the same level of access someone would get by walking into the courthouse and asking to see the record. As we work through the roles you will see there are various categories for different users, court users who would be accessing records, and it is meant to facilitate and put in place in a virtual sense what that person could get by walking into the courthouse and taking a look at a court file they would have an interest in. Privacy interests were considered and pervasive throughout the formulation. Where we had concerns about a privacy issue, the bias was to restrict access for that purpose. There are a few places where that was done by juvenile records, dependency records, and criminal records to a large extent. We also use the advisory committee note to process a bit more than we normally would, to provide users some context and direction as they work through these rules. If we can

go to the next slide, organizationally, the rules are provided for in for articles. Articles 1 and 2 are in the existing rules of court, the general provisions for access to public records. They cover the broad concepts, definitions, and we expanded on some of those definitions to take into account working in a virtual world. Article 2 covers the existing provisions for public access. They are largely unchanged. Where there were edits to article 2 they were largely technical and contextual in light of what we were doing with the other rules. The main thrust of the workgroup was articles 3 and 4, entirely new. Article 3 covers remote access for parties, parties' designees or attorneys, court-appointed persons, persons working in legal organizations, and qualified legal services projects. They are all slightly different because depending on that category you may have access to different types of records. Some concepts pervade the rules. One of them that is in our [indiscernible] picks up on a concept already existing in article 2. The rules must be implemented and courts are to provide remote access only to the extent feasible. The advisory committee notes specifically take into account the feasibility, considering financial means, security resources, and technical capabilities.

>> Finally also feasibility takes into account the notion if the court can provide access to some records or some forms of records under these rules, but it is not feasible to do so for other categories of records, they should provide what is feasible and provide what they can comply with. Partial compliance is something we envision.

>> The rules specify terms of access for the users. They specifically allow the local courts to provide for additional conditions of remote access. Identity verification is a central concept. It allows the courts individually to determine what they need to verify identity. Some courts may be able to do it electronically, some courts may require a user to come down one time and present a driver's license with the photo and demonstrate they are who they are and be assigned a unique identifier. And finally there is a provision in the rules that requires or has a recommendation for audit trails. So the court can look back and determine if there was misuse, who was accountable for the misuse, and otherwise provide statistical information they need. The audit trail provisions were initially mandatory. After considering the comments of the presiding judges and the Court Executives Advisory Committee, we made them a recommendation for the time being with specific notation that at some point it will be mandatory. And finally there's provisions for termination under remote access under misuse.

>> Article 4 is an article that pertains to remote access for government entities. We selected and tried to identify those entities that have the most business before our courts. We tried to specify those matters that they would particularly need authorize access to. And there is a catchall provision that allows other agencies to come forward if remote access is necessary to enable them to perform the government function or participate in litigation. There is a bit of redundancy in the rules in the sense that the provisions for identity verification, security, encryption and audit trails are in both article 3 and repeated again in article 4 to make clear. Our notion was in article 4 a lot of this is already being done by MOU between particular government agencies. With that I have nothing further to describe today other than to entertain and hopefully answer any questions you may have.

>> Thank you Justice Higgins. I think you have wowed us.

>> That would be a first.

>> To hear the good work of your committees, I am impressed by the depth. It also goes to show how much of the court work, for some of the new members of Judicial Council, are done by the volunteers that bring special expertise as chairs and for the public good and public access. As I sit here I could tell you 10 years ago when I was on council I never would've thought we would have this kind of presentation. [indiscernible]

>> So I would make a motion that these be adopted and also secondly I would be remiss if I didn't thank all of you and your committees for your good work. It is done because of people like you and your committee who roll up your sleeves and get it done. Presented with the technology committee, prior to coming to this committee. In our technology committee is grateful for your work.

>> I second.

>> Any further comment or observation? All in favor? Any abstentions? And any day.

>> It carries unanimously. thank you for making our lives easier and public access even better.

>> Thank you very much.

>> [indiscernible] a moment of personal privilege before the panels leave. I wanted to make an announcement. This is a little unusual, we don't always do this. But sadly for us, this is Patrick O'Donnell's last council meeting before his retirement. He's been a principal managing attorney for us for many years. Patrick, I know you are a humble man, but you will have to allow me a moment to tell your story. Patrick joined the council staff in 1998, 20 years ago. The council was luckily hiring this Harvard Law School graduate with a PhD from UC Berkeley. He brought to us his experience as a practitioner in both civil [indiscernible] law. With small claims and probate and advisory communities help for many years. In the 20 years of his career on the Judicial Council, he has contributed in many ways to the administration of justice in California. In addition to supporting the council itself, he has also provided legal support to several advisory committees who work in groups, providing excellent counsel with the internal committees, including the Executive and Planning Committee, the Technology Committee, and the Rules and Projects Committee he serves as the co-lead attorney. This is the reason for the exception. It's not often we have someone of this caliber that actually provides the staff work and support, on three particular committees. It says a lot about him. His wise counsel, quick wit, and elect, we want to thank you for your service and wish you the best in your retirement. Setting aside some prepared remarks, you should know this man represents, I believe, all that is actually good in public servants, the career servants who are loyal to the house of government. He is able to be true to and the best to the leaders of government who, believe it or not, cycle in and out. My way of saying there is actually a very deep and very good state in this country of this government. That gentleman represents everything that is good about it. Good luck to you, Patrick. [applause]

>> Justice Hall.



>> Thank you chief. Patrick, I wanted to add a few of my own remarks, maybe somewhat redundant to what Martin Hoshino has said. Working with Patrick ever since I came to the council a number of years ago now. It should be known Patrick has contributed in so many ways to improving the administration of justice in California and therefore contributing to [indiscernible]. Among other things Patrick was a lead staff supporting effort back in the early 2000s to rewrite all, that is all of the California rules of court, using plain language and to renumber the rules in a more logical sequence. Recently Patrick has been the lead staff supporting efforts to modernize the court to accommodate the electronic environment as we have heard. [indiscernible] this is only the tip of the iceberg of what he has done for the council. He has been lead staff or legal counsel for many Judicial Council advisory committees during his 20 years here, including the Civil and Small Claims Committee, Probate, Information Technology Advisory Committee, protective orders working groups, and the blue ribbon panel of experts on the fair and efficient administration of justice and civil cases. I understand all the way back in 2005, when we were all much younger [indiscernible] top 100. Patrick, thank you for your many years of standing service to the council and the state of California. I sincerely thank you for everything you have done to improve the administration of justice. Speaking personally, it's been a great pleasure working with you throughout the years and coming to respect you as deeply as we all do. We wish you a very long and happy retirement.

>> Chief, I move we reject his retirement. [laughter]

>> We already have airplane tickets.

>> That's good cause, nonrefundable tickets.

>> I would be remiss if I didn't say something. I found out today when I was talking to Patrick that he and I both started back in 1998. He is an employee here in me serving on Civil and Small Claims. We were both brand-new. I was much more inept than he was. I knew he was someone right away to rely on. In our careers through Judicial Council terms, I think I have been on every committee you have served on. You were there when I was chair of Civil and Small Claims. I wish I could go back and talk about some of the different initiatives we were involved in, some controversial and some not. We have watched our families grow together, we have become great friends, and I will miss you

>> Patrick, you and I have worked together for 20 years. It is hard for me to admit that. But those 20 years of working with you I concur in all of the compliments that have been heaped on you. I also know you are a humble man, but you will have to put up with this a bit longer. We will so miss your elegance and confidence. In the detail that you bring to every consideration that this council has to raise. You will be sorely missed. I thank you for the past 20 years. I have no idea what we will do without you. Thank you.

>> Patrick, I just want to say, as you know more than any of us, the kind of necessary technical, critical and important work you have done, that is the mark of excellence of the judicial branch and the Judicial Council. For all that's been said here, I would add that your work has always come at the highest threshold degree of confidence. When we look at a committee or a report that you have authored or worked on, it gives us all comfort and confidence in knowing that you were

on the committee and helped guide the results and recommendations. That means a lot when you are among so many other experts, that your work comes at such a high degree of confidence from us. We will miss you. And we hope you stay in touch and keep us posted on things you observe, where we could potentially do better and we still continue to benefit from your expertise.

>> I would like to thank everyone for all of the kind words. Actually one other thing, my wife Barbara is here. [applause] A little tip that someone might be saying something. Barbara and I, next week will be my last week here and after that we will head off to New York for a little while. Barbara's mother is 98. Then we will be back in the Bay Area, next month will be our 32nd wedding anniversary. We will be around. Yes, I would like to keep in touch and continue to provide public service. It has been my great pleasure to do this. My career as a lawyer for over 30 years has been mostly with the courts, the Ninth Circuit for a couple of years, private practice and then here. This opportunity was amazing, the kind of opportunity to perform public service. I have a long list I won't go into. All of the people I've worked with. [indiscernible] Civil and Small Claims, we have a three-track study, then the temporary judge working group. Then the ENT. There are others of you, almost all of you I have gotten to know through the different works of the committees and council. It is an amazing amount of work that has been done. When I look back as people did 20 years ago, we were in the paper world, doing things in a very different way. Justice Chen was maybe thinking something will never happen like the electronic citations. We are getting there. Today's presentation was a good sign. When I first came here, there were public access rules, the whole idea of remote access seemed obscure. Now that is 20 years in the past and we are now talking about how the courts communicate with the rest of the world in a remote fashion. The L.A. court tells us there's some astounding number of juvenile records exchanged every week, we will see a lot of that. We are getting there and Justice Chen, we can relax a little bit that progress has been made. Parts on the road financially and resource ride, when you turn the corner, the future looks positive and better. I am happy to be leaving at what I think is a bright and positive moment, so thank you very much everyone that I have had a chance to work with. [applause]

>> First, Barbara, thank you for sharing him with us. You have had to make a sacrifice for the greater good. And Patrick, if we can invite you to come up here, we have a small token signed by the Chief Justice to recognize your years of service.

>> Thank you, Barbara.

>> Don't sit down yet.

>> Sorry to have you walk back up, Patrick, but can we have you and Barbara come up so we can take a picture?

>> [applause]

>> So before we adjourn, I'd like to remind council that we have official photos to be taken after adjournment. We now stand in recess until tomorrow for the open meeting at 9:25 AM.

>> I also remind you the Distinguished Service Awards, if it confounded you like it did me, now I understand it, 4 PM is the reception and 5 PM begins the ceremony tonight hosted by [indiscernible]

>> [applause]

>>[Event concluded]