

Agenda

Utah Judicial Council's Standing Committee on Resources for Self-represented Parties

March 13, 2020
12:00 p.m.-1:30 p.m.

Via Phone Conference

Welcome and approval of minutes	12:00-12:05	Tab 1	Judge Rich Mrazik, Chair
Discussion of budget request for AOC Communications Department	12:05-12:15	Tab 2	Judge Rich Mrazik, Judge Hruby-Mills, Geoff Fattah, Nancy Sylvester
Subcommittee updates <ul style="list-style-type: none">• Education• Outreach• Rural Services• Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee	12:15-1:25	Tab 3	All
Other Business	1:25-1:30		All

2020 Meeting Schedule: Matheson Courthouse, 12:00 to 2:00 p.m. unless otherwise stated: March 13, 2020 and other dates TBD.

Tab 1

**Utah Judicial Council's Standing Committee on
Resources for Self-Represented Parties Meeting Minutes**

Matheson Courthouse
Conference Room A
December 6, 2019
12:00 PM – 2 PM

Members	In attendance	Excused	Via phone conference
Judge Suchada Bazzelle	X		
Sue Crismon		X	
Monica Fjeldsted			X
Leslie Francis	X		
Nicole Gray	X		
Susan Griffith			X
Carl Hernandez		X	
Judge Catherine Hoskins		X	
Jacob Kent	X		
Judge Barry Lawrence - Chair	X		
Shawn Newell		X	
Nathanael Player	X		
Charles Stormont	X		
Peter Strand		X	
Virginia Sudbury	X		
Judge Doug Thomas	X		
Janet Thorpe	X		
Jessica Van Buren	X		
Guests	In attendance	Excused	Via phone conference
Naomi (law library)	X		
Amy Hernandez (Domestic Violence Program Coordinator)	X		
Rob Jepson (Access to Justice Commission)	X		
Kara Mann (Language Access Program Coordinator)	X		
Justice Christine Durham (Access to Justice Commission)		X	
Judge Richard Mrazik (in-coming Chair)	X		
Alice Jones (observer)	X		
Robert "Grigger" Jones (observer)	X		
Staff	In attendance	Excused	Via phone conference
Nancy Sylvester	X		

(1) Welcome and approval of minutes

Judge Lawrence welcomed the committee members and guests to the meeting and had everyone introduce themselves. Judge Lawrence then asked for a motion on the minutes. A motion was made by Charles Stormont and seconded by Virginia Sudbury and the minutes were approved.

(2) Chairman's report

Judge Lawrence discussed his transition out as chair and welcomed Judge Rich Mrazik. He went through the priorities below:

1. The Self Help Center:*

- a. The best use of resources in the State
- b. Continue to advocate for more funding
- c. Continue to get the word out to the bar, the community, Court staff (JA's)

2. Access Issues:

- a. Unrepresented parties should have unfettered access to the courthouse.
- b. Follow up with Judicial Council on Dress Code
- c. Expand the concept – cell phones and child care

3. Debt Collection Focus:

- a. Based on the number of defaults, serious concern
- b. Wednesday afternoon calendar to provide access to attorneys
- c. Senior Section of the Bar to help populate those calendars
- d. Forms:
 - i. Omnibus Collections Form
 - ii. Warning Language on Motions and Requests for Admissions
- e. Let's turn these into Rules.
 - i. Warning Language
 - ii. Ten Day Summons (?)

4. Future Focus on Evictions; Landlord Tenant Issues*

- a. Growing problem of affordable housing
- b. Growing problem of homelessness
- c. Multi-faceted approach is probably needed (are we situated to do this?)

5. Remote Services

- a. Remote access to rural courthouses to take advantage of Salt Lake lawyers
- b. Rural courts are interested, but practical concerns
- c. IT is a limiting factor. Proposal to Judicial Council in this regard?

6. Community Outreach*

- a. This is really important and we lawyer types aren't great at it.
- b. Sue and Shawn should continue to put in the effort on this.

7. Continue to make presentations about the need for pro bono

- a. Law Schools annual presentation
- b. Judge conferences
- c. Bar conferences.

8. Court Visitor Program

- a. Work with the University of Utah to start a program for students
- b. Alternative source of possible visitors.

9. Continue to Work with the Domestic Practice Section

10. Continue to interact with the Bar, the Access to Justice Committee

- a. Participate in Annual Summit
- b. Cross-Discussions between the groups are important.

Regarding outreach, Jessica Van Buren said the Self Help Center was involved recently in Homeless Connect, providing in-person the service the Center normally provides over the phone. Leslie Francis noted that medical clinics don't know that the SHC can provide help on guardianships and powers of attorney. She said medical clinics are a way to outreach to rural communities.

Judge Thomas discussed domestic case process improvements. He said there is an active case management system in 7th District. When someone files an answer, there is a case management conference scheduled. Judges have found that most cases are resolved at that first hearing. If it's not resolved then it's set for a quick trial and resolved there. It's been 2 ½ years since the recommendations were adopted but there is still no further adoption statewide. He noted that there is a significant difference between the time to disposition in the 7th district and the 3rd district. He said the Judicial Council needs to go to the Legislature for case managers. Kim Allard has said 4 were needed to implement statewide. Judge Lawrence noted that the Board of District Court Judges needs to take it up. A recommendation needs to be made by the Board for a building block at the Council's August meeting. Judge Thomas pleaded with the committee to not let this effort die. The committee discussed inviting Commissioner Sagers to the next meeting. Commissioner Petersen is doing the pilot in 4th District. Judge Bazzelle said she'd speak with him.

(3) Update from the Utah State Bar's Access to Justice Commission

Rob Jepson addressed this item. He said the A2J Commission is looking for a niche, evolving into a leadership counsel model. Judge Lawrence said the commission should be

independent and work on policy. There should be someone on the Hill representing all the people who aren't represented. Mr. Jepson noted that the Bar doesn't want to be sued for wading into policy. Judge Mrazik said there is a gap between what the courts are seeing and having a body to tell it to that can advocate. Judge Thomas noted that there is a large landlord group on the Hill that should be approached first about what is being seen on the ground.

(4) Discussion about Sealing Civil Eviction Records

Marty Blaustein, Utah Legal Services, presented on this issue. Mr. Blaustein said that when a tenant prevails, there is still an eviction that shows up on the tenant's background check. All the cases that have been handled by ULS are relatively easy to seal, i.e. no money still owed, no damage to the property. He requested that the court dismiss the case for failure to prosecute and when a court transfers a case, case 1 should be sealed since two evictions show up. Ms. Sylvester noted that any rule proposal would be a Code of Judicial Administration rule so it would go through the Judicial Council. Mr. Jepson said the Housing Coalition is also looking at running legislation. It was noted that there may be a need for funding so legislation and rulemaking may need to go hand in hand.

(5) VAWA funds

Amy Hernandez presented on new VAWA funds that are specifically for pro se litigants. There is money for court infrastructure, e-filing for protective orders, OCAP to e-file, Appellate Courts e-filing. Jessica said there is a gap—statute requires that JA assist. But JA's aren't helping because they don't feel like they can. There may be legibility issues. Jessica asked about getting a person to help with scribing.

(6) Discussion about Regulator Reform Initiative

Judge Lawrence addressed this item. There are limitations on who can dispense legal advice. The idea of the initiative is opening up who may provide legal advice to address access to justice. Leslie Francis and several others said they are concerned about the regulator. Judge Thomas asked if we are opening the door for victimization of pro se litigants. Judge Mrazik said what Justice Himonas would say is that you choose a small area of the law and data gather for a couple years with one provider within the context of the sandbox. Charles Stormont said he sees an opportunity for more access. Judge Mrazik said he doesn't want to lose sight of the need to have a human being involved in the process. Ms. Hernandez said she sees an opportunity for someone who is not a lawyer to help fill out divorce papers for a domestic violence victim. Ms. Francis said the question the committee should continue to push is what kind of access to justice this is permitting. Mr. Stormont said the first thing we should be targeting is enforcement of the unauthorized practice of law. Judge Mrazik said the committee should be very intentional about the message coming from the committee.

(7) Subcommittee updates

a. Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee

The Self-Help Center is funded full-time until June 30, 2020. The Judicial Council prioritized one additional staff attorney. Funding for permanent full-time attorneys has gone to a newly formed budget committee but there is no additional money. Nathanael is asking the Council to change its priority to asking for full-time staff at the legislature.

(8) Other

Rob Jepson said Parsons Behle Latimer has a lab and has offered to rebuild OCAP, which has so far been declined.

(9) Adjourn:

With no additional items to report, the meeting adjourned at 1:59 pm. The next meeting will be held on March 13, 2020.

Tab 2

OBJECTIVE:

Public Information Office: Public Outreach and Education Coordinator (Coordinator I)

Requested Amount			Required FTEs
One-time	Ongoing	Total Request	
\$0	\$94,059.04 (Midpoint Salary w/ Benefits)	\$94,059.04	1

Executive Summary

Based on past recommendation by the courts' Racial and Ethnic Fairness study to invest more time and resources toward actively reaching out to marginalized communities, and based on a recent report on cyber attacks against courts by Russian operatives that recommends courts provide more public education about the role and functions of judiciaries, the Standing Committee on Judicial Outreach recommends to the Judicial Council the creation of a Public Outreach and Education Coordinator position under the Public Information Office.

HISTORY AND BACKGROUND OF REQUEST:

The duties of community outreach and public education are handled by the Courts' Communication Director. Over time, the Standing Committee on Judicial Outreach has concluded that breaking down barriers of distrust that exist in some communities requires much more time and resources than what one person can provide.

The Utah Commission on Racial and Ethnic Fairness (1998-2004) [issued its first annual report and recommendations in January 2003](#). The goals of the commission were to: achieve equality and justice for all people, encourage implementation of equitable practices, and institutionalize accountability. Among the Commission's recommendations (Pg.13), was the call for "building partnerships with Community Resources and Outreach through State Office of Education, the Judicial Council's Public Outreach Committee, the Minority Bar Association, the Utah State Bar and communities of color..."

"The Judicial Council's Public Outreach Committee should take the lead in helping communities to understand the court process by considering implementation of the following: civics classes for minority communities, tours of the courts for schools and youth clubs, Meet the Judges nights, and having a Court - Community Outreach effort to link the courts and the public." (Pg. 36).

In an effort to accomplish this outreach directive, the Judicial Council adopted [Rule 3-114 of the Code of Judicial Conduct](#). The Standing Committee on Judicial Outreach has implemented school tours, public education resources for judges and teachers, and the Judge for a Day student/judge shadowing program. Statewide, many judges have volunteered to speak at their local schools. But, more needs to be done.

In an effort to reach out to marginalized communities, the Utah Courts hosted several judicial forums over the course of a three-year period (2013-2016) in Orem, Provo, West Valley, Salt Lake City and Ogden. Community attendance of these forums was sparse; prompting discussion

by Judicial Outreach and Community Relations Subcommittee members about ways to increase participation. Community representatives in both bodies advised that there exists deep distrust and lack of education among many minority communities. The lack of public participation is an indicator that the Courts need to invest more time and resources toward building relationships with Utah communities, and community-based organizations. Several organizations who work within Utah Hispanic communities have told the courts that more time needs to be spent forging relationships with groups who work within marginalized communities. This type of community work is time-intensive. While our Judicial Outreach members are dedicated to help in this regard, it will require more staff resources than is currently available.

Another aspect of this position is the need to invest more resources into public education about the Courts.

[A recent study points to Russian efforts to undermine the American public's trust in its governmental institutions.](#) While it may sound surreal, there is evidence that Russia's efforts are being directed toward courts across the country. We have seen at least two incidents in which news and social media reports on two Utah judges were amplified with the intent to sow distrust in Utah's courts. One involved the sentencing by a female judge for a Somali refugee who admitted to raping two white women at knife point. We saw evidence that the story was being circulated using "bot" accounts to push it in front of users who espouse hatred toward immigrants and minorities. We've also seen a similar pattern involving another female judge, where local criticism and disinformation regarding her sentences were amplified in a similar way. The National Center for State Courts is currently working with the authors of this study to create a resource manual to help courts combat misinformation campaigns.

One conclusion is that public education is a good inoculation to disinformation. NCSC and the report's authors recommend that courts invest more resources in educating the public about the role and purpose of the courts. This should include working more closely with schools at all levels to make sure they have materials and information about the courts, as well as working with community-based organizations to help train community-based caseworkers on the functions and services the courts provide.

Other recommendations from the report are to improve online social media monitoring of misinformation and to improve rapid response capabilities. Creating this new position would allow the Communication Director more time to work on proactive steps in this regard.

DETAILED REQUEST OF NEED:

- a) The Public Information Office budget (Unit 2440) does not have funds to support adding 1 FTE.
- b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.) While community outreach and education needs have been identified, the Communication Director has limited time to dedicate to effective outreach. Unlike some other government organizations (Health Department, Public Safety, Human Services) the Judicial Branch relies on one FTE for media relations. The Communication Director currently spends an estimated 80% of his time involved in managing media, including helping with information/data requests, explaining processes, training media, and aiding judges statewide with high-profile cases. On average, the Communication Director handles 62 media calls a month, and an average of 24 Camera Pool requests a month. In addition, the director is also in charge of publications, such as the [Annual Report](#), and

internal communication, such as [Court News](#). The director also monitors the Courts' social media accounts (Twitter, Facebook, YouTube) at all times. Creating a Public Outreach and Education Coordinator position would provide more resources needed to accomplish the outreach and education needs previously identified. The alternative would be to allow unfamiliarity and distrust build within communities.

- c) What has already been done to solve this problem with existing resources and what were the results? We have attempted to conduct outreach efforts with current resources, but with little success. Public events are not well attended and community representatives indicate the Courts need to invest more time establishing relationships with those within marginalized communities who could help us educate. A new FTE position would allow the Public Information Office to provide community-based training, be more of a resource to school teachers at all levels, and train court staff on outreach to have more of a presence at community events statewide.

COST DETAIL:

- a) How will new funding be utilized? There exist several comparable positions in other court systems. We've identified several program coordinator positions in Colorado, Los Angeles, San Mateo, and Florida. Similar positions require a Bachelor's degree and usually several years of experience in education or community relations. Positions range from \$55,000 - \$100,000 annually with benefits. The Courts' salary range for a Program Coordinator I position is \$43,055 - \$64,729.
- b) What are the anticipated results or outcomes of the new funding and how will the results be tracked? Creating this position will have an effect in two main areas:
- A full-time coordinator will open a new field of outreach that will inform and improve on court services, and help increase public trust and confidence in the courts. The Public Outreach and Education Coordinator will create outreach programs to provide training to community case workers, establish working relationships within marginalized communities, and create events tailored to feedback and needs of those communities. The coordinator will also act as an education resource for schools at all levels. The coordinator will work with educators to create a formalized educational experience about the Judiciary by providing mock trial materials, worksheets about the courts, coordinate judicial speakers and tours well-timed with a school's curriculum.
 - Having this additional staff resource will allow the Communication Director to expand much-needed additional resources within the Public Information Office. The Communication Director will work to establish a Speaker's Bureau of selected retired judges who can help educate the public on issues of interest to the Courts. The traditional model of having the Bar come to the defense of the judiciary will be added to a more rapid response cadre of retired judges who can speak from experience and respond to rapidly evolving controversies. Following the recommendation of the Cyber-Attack report, the Communication Director will

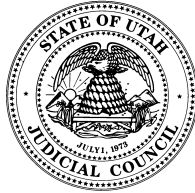
also coordinate a rapid-response cyber team to proactively respond to misinformation campaigns. Members of this team will include representatives from CCJJ, DHS (for juvenile matters), Utah Bar, JPEC, and legal experts from the two law schools. Efforts will include countering misinformation spread on social media as well as coordinated efforts to have problematic posts taken down by Social Media providers. NACM is also proposing that it will establish relationships with representatives of all major social media companies on behalf of courts across the country.

- c) What are potential negative effects if the funding is not received? Not having a public outreach and education position puts the Courts at a disadvantage when it comes to shaping the public's perception of the Utah court system. There has already been identified the need to penetrate marginalized communities and educate them on services the courts can provide and demystify assumptions people have about the courts; either based on cultural differences, fear, or both. Members of our own advisory committees will speak to the need to forge relationships with community groups on a personal level, and that this effort takes time and dedication.

ALTERNATIVES:

Are there Alternative Funding Opportunities for the building Business Case? The request is for an ongoing FTE position. One potential funding source is partial funding from the Utah Bar Foundation, however this may violate policy in funding staff positions using grants.

Tab 3



Administrative Office of the Courts

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

March 9, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Committee on Resources for Self-Represented Parties

FROM: Nathanael Player

RE: E-filing for self-represented litigants

The IT department is in the process of revising which technology projects it will prioritize. District, Juvenile and Justice Courts are evaluating their priorities and identifying delegates to work to advance those priorities. This committee should take this opportunity to advocate for self-represented litigants with regard to technology concerns. I recommend we start with a strong request that e-filing for self-represented litigants be a high IT priority.

In 2012 e-filing became mandatory for attorneys in Utah. At the time, the committee working on e-filing reported that they would start with attorneys, but then roll out the system to self-represented litigants within six months. The Self-Help Center has observed that e-filing for only attorneys disadvantages self-represented parties in our legal system.

E-filing advantages attorneys by providing easy filing, instant notice of what has been filed and access to the pleadings in the case

E-filing is discussed in CJA 4-503. The court rule says it is mandatory for attorneys and that self-represented parties may file pleadings "using any means of delivery permitted by the court." Some courts might allow the occasional unrepresented party to email a document for e-filing, but as a general rule, pro se litigants cannot e-file.

Being able to push a button and file a pleading saves time. There is no need to print and sort documents or to make arrangements for the papers to make it to court. E-filing also saves costs. Self-represented parties are unlikely to hire a courier, but needing to have pleadings delivered to court can mean making arrangements for child care, needing to take time off of work, and dealing with logistical issues, such as parking and/or transportation. Many of these hurdles would come up even if documents were mailed to the courthouse. Pleadings rarely require just one postage stamp and most people would need to have their postage weighed before mailing it - aside from the enthusiastic home baker, most people do not have a scale that can

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efficient, and independent system for the advancement of justice under the law.**

weigh postage at home. In addition to these logistical difficulties, if a clerk rejects a self-represented litigant's filings they will not necessarily provide a written reason for the rejection. It is of course possible for the clerk to reject an attorney's filing, but the clerk will be certain to include a notice of rejection and include a written explanation as to the reason for rejection. When the attorney corrects the problem, they will again need to just push a button to re-file. When the self-represented litigant is able to discern the reason for rejection and to correct the concern they will usually face another trip to the courthouse and all the logistical hurdles such a trip entails.

Using e-filing also means attorneys receive instant notification when something is filed in their cases. The Courts' Self-Help Center receives over 50 inquiries each month from people simply wanting their dockets - often because they are concerned about what has been filed in their cases. Concern about not knowing what has been filed is legitimate. Although service of subsequent pleadings or papers is required under URCP 5, some attorneys who are accustomed to e-filing forget to follow up with a paper copy for pro se litigants. Changes to URCP 5 last year allowed for self-represented litigants to be served via email, but this does not happen automatically and requires an extra step some busy legal staff might overlook.

E-filing provides attorneys quick access to the documents filed in their cases. This makes it easy for them to remain organized and quickly find an important pleading. Self-represented litigants do not have the ability to access pleadings online. Although they could use Xchange for this purpose, it requires set up, a monthly subscription and carries fees for each view of a document, making it impractical for most self-represented litigants. Options for self-represented litigants to access documents in their cases include going to a courthouse to request paper copies and paying a fee, contacting the Law Library to request copies and paying a fee or contacting the Self-Help Center for copies, which will be sent via email. With the change to URCP 5, self-represented litigants might need to keep track of some documents sent to them via email and other documents sent to them via US mail, compounding the difficulties they face in remaining organized.

E-filing advantages are more significant in eviction cases because of the nature of the proceedings

In eviction cases the structural advantages of e-filing are especially significant. Evictions are extremely consequential, move quickly and under our current processes do not always provide meaningful notice for defendants.

Court data shows that 96% of defendants in eviction cases are self-represented while over 80% of plaintiffs are represented. Additionally, unlike debt collection cases (the only case type with comparable disparities is representation), most defendants in eviction cases (over two-thirds) file answers and actively participate in their cases. Because most plaintiffs are represented and most defendants are not, and because most defendants are filing answers, the consequences of the advantages for attorneys weigh more heavily.

Decisions in eviction cases also have more gravity because of what is at stake. Unlike most decisions, where some inadvertence can be redressed with a 60(b) motion, once someone is evicted and displaced from their home, it cannot be undone. Even if someone receives an order of restitution and has a few days to respond, a motion to set aside would certainly not be considered before the order is executed. A defendant could seek to stay the order, but not without

coming up with a significant deposit to cover all of the plaintiff's likely damages (including treble damages and attorney fees).

Defendants in eviction cases have only three days to answer a complaint. Being able to e-file an answer and avoid the logistical hurdles of paper filing could help to make our courts more open and fair.

Not having e-filing can disadvantage defendants because of the lack of instant notice. Some callers to the Self-Help Center report that they did not receive notice of their occupancy hearing (where a decision about whether a defendant may remain in their housing is made - and a failure to attend usually results in an immediate eviction order). The ability to receive notice of what is happening through a verified email account that a defendant has been warned to monitor can mean that notice goes to the address where a defendant knows they will receive important information, instead of it going to the address the plaintiff includes in the pleadings, which is what address some clerks will enter into CORIS and where notices are sent.

After a defendant has been evicted the situation does not improve. Evictions are about possession and damages, so execution of an order of restitution does not end the case. After someone is evicted they are unlikely to have a tidy file with all the filings in their case and so remain confused about what has happened. The Self-Help Center regularly receives inquiries about this issue. If defendants could access their filings online they could more meaningfully remain apprised of their case and review what happened later.

At the end of an eviction case, instant notice matters even more, especially given our current court processes for the administration of justice. After the significant upheaval of eviction, defendants are unlikely to comply with the requirement to notify the court and all parties of their new address - if they have one. Still fewer will have the postal service forward mail. This means plaintiffs in eviction cases, who must wait until the defendant has been evicted before they can accurately calculate damages, will send their request for a damage judgment to the defendant's last known address - the address from which they were just evicted. The Self-Help Center regularly receives calls from defendants in eviction cases several months or years later who are shocked to learn they owe substantially more damages than simply unpaid rent. Plaintiffs in eviction cases can obtain a small windfall in these proceedings because treble damages are available for many fact-intensive questions such as damage to the unit and amounts due under the lease.

Recommendations to address the disparity in access to the courts

Our system should be changed. Rolling out e-filing for self-represented parties should be a high priority for the courts. Our IT department advises that this is not currently a priority. Given all this, I recommend that this committee:

- Vote to advocate for implementation of e-filing for self-represented litigants as a high IT priority.
- Advocate for e-filing to be available in eviction cases before any other case types.
- Insist on a seat at the table in the development and implementation of e-filing to ensure that best practices for self-represented litigants are implemented - including:
 - Allowing self-represented litigants to easily opt-out of the system if they choose;
 - Not charging self-represented litigants extra fees for e-filing;

- Not requiring actual signatures on documents - the same standard for attorneys using e-filing;
- Providing embedded support, guided interviews and live support if needed for the technological aspects of e-filing;
- Allowing for a public comment period and ongoing gathering of feedback on the e-filing system;
- Ensuring ADA and language access throughout the e-filing platform;
- Plain language instructions throughout the platform;
- Online access to court dockets and all filed documents in the case within the e-filing system.