

**UTAH JUDICIAL COUNCIL
TASK FORCE ON JUSTICE COURT REFORM**

Via Webex

**July 10, 2020
12:00 p.m. – 2:05 p.m.**

MEMBERS PARTICIPATING

Judge Paul Farr, Chair
Ms. Anna Anderson
Judge Brian Brower
Mr. Paul Burke
Senator Kirk Cullimore
Judge Brent Dunlap
Mr. Ron Gordon
Judge Roger Griffin
Representative Craig Hall
Judge Ryan Harris
Ms. Joanna Landau
Mr. Ben Marsden
Mr. Ryan Robinson
Ms. Heather Robison
Mr. George Sutton
Ms. Ann Marie Taliaferro
Commissioner Jerry Taylor
Mr. Roger Tew

STAFF PARTICIPATING

Mr. Michael Drechsel
Ms. Cathy Dupont
Ms. Nancy Merrill
Mr. Jim Peters

GUESTS PARTICIPATING

Ms. Kim Cordova
Ms. Molly Davis
Judge Lee Edwards
Ms. Kim Free
Ms. Yolanda Jensen
Mr. Tom Langhorne
Ms. Debbie Lawley
Judge Brendan McCullagh
Judge Reed Parkin
Mr. Russell Pearson
Judge Rick Romney
Mr. Larry Webster
Judge Danalee Welch-O'Donnal

MINUTES

1. Welcome and Approval of Minutes:

Judge Farr welcomed everyone to the meeting. He asked for approval of the minutes from the meeting held on May 15, 2020.

- Roger Tew suggested replacing the second sentence of his background with the following: "He was involved in 1979-1980 with the implementation of the Circuit Court system. From 1981-1985, he was the Executive Director of the Constitutional Revision Commission and responsible for the development and passage of the Judicial Article of the Utah Constitution. And in 2008, he was involved with the reorganization of the justice courts."

- Representative Hall requested amending his background information to say that he works as in-house counsel at Intermountain Healthcare.

Motion: Joanna Landau made a motion to approve the minutes from the Justice Court Task Force meeting held on May 15, 2020, as amended. Judge Brower seconded the motion. The motion passed unanimously.

2. Introduce New Members:

Judge Farr next introduced two new members of the Task Force. George Sutton is an attorney at Jones Waldo and Ann Marie Taliaferro is an attorney at Brown, Bradshaw & Moffat. Mr. Sutton has been added for his expertise in civil matters and Ms. Taliaferro has been added for her experience as a criminal defense attorney.

3. Recommendations from the Board of Justice Court Judges:

Judge Romney joined the meeting at the request of Judge Farr. Judge Romney is the chair of the Board of Justice Court Judges. Judge Farr explained that the Board does not establish policy for the judiciary, but it advises the Judicial Council on policy matters that might affect the justice courts. As such, the Board's recommendations with regard to justice court reform do not necessarily represent the Judicial Council's view of the changes that need to be made. They are for the Task Force to consider as it develops its own recommendations for the Judicial Council.

With that introduction, Judge Romney presented the recommendations that had been provided to the Task Force earlier in the week. He explained that they were based primarily on a report from the Conference of State Court Administrators (COSCA) which identified four elements that limited jurisdiction courts should have in order to be effective. These include qualified judges, dispositions on the record that are reviewable, judicial independence and professional court governance. With regard to Utah's justice courts, the Board recommends the following:

- Recommendation #1: Replace de novo appeals to district courts with on-the-record appeals to the Utah Court of Appeals.
- Recommendation #2: Expand justice court jurisdiction to include Class A misdemeanors.
- Recommendation #3: Require newly appointed justice court judges to be members of the Utah Bar.
- Recommendation #4: Remove geographic restrictions for applying for a justice court judgeship to follow the district court practice in which judicial applicants throughout the state may apply and the new judge is required to relocate to the district.

- Recommendation #5: Transition to full-time judges as part-time judges voluntarily resign or retire.
- Recommendation #6: Set judicial salaries for full-time justice court judges at 90% of a district court judge's salary. Full-time justice court judges should receive the same benefits as all other judges in the state.
- Recommendation #7: Use justice court judges more extensively in their magistrate capacity.
- Recommendation #8: Bring justice courts under the umbrella of the Administrative Office of the Courts for administrative purposes.
- Recommendation #9: The Utah Code should state clearly that justice courts, even if under local sponsorship, are a part of the judicial branch of government and are governed by the Utah Judicial Council, not local officials.
- Recommendation #10: Standardize the budget of any justice courts that remain in local control by basing them on weighted caseload. Courts should be funded by general government funds. Funds used to supply advocates, like indigent defense services and prosecutorial services, should be excluded from court budgets. Court activities should be decoupled as much as possible from revenue generation.
- Recommendation #11: Consolidate part-time clerical positions to the extent possible through interlocal agreements or by utilizing district court clerks with excess capacity.
- Recommendation #12: The Council should determine the best judicial structure to implement the foregoing recommendations.

Judge Romney, Judge Farr and Mr. Peters addressed questions as they were raised. Discussion followed. Judge Farr noted the purpose for today's presentation was to get the Task Force thinking about the possibilities. No action will be taken today. Judge Romney thanked the Task Force for their time.

4. Discuss Elimination of De Novo Appeals:

Judge Farr explained that the Task Force was ultimately created because the Supreme Court was interested in exploring the elimination of de novo appeals. In addition, both COSCA and the Board of Justice Court Judges recommend replacing de novo appeals with appeals on the record. As many other decisions depend on how the Task Force wants to proceed with de novo appeals, Judge Farr invited discussion on the reasons for and against eliminating de novo appeals.

Judge Harris offered a perspective from the Court of Appeals. He has discussed the idea of eliminating de novo appeals with his colleagues, and they are in favor of making

the change. The question is one of resources. Right now the Court of Appeals hears approximately 950 appeals a year. On average, between criminal and small claims cases, there are between 750 and 1050 appeals de novo heard by the district courts each year. If that many cases were to be filed with the Court of Appeals, its caseload would immediately double. Even though these would likely be much simpler cases, the Court of Appeals would still need more judicial assistants, more staff attorneys and possibly an eighth judge.

Ms. Taliferro then offered her perspective as a defense attorney. She and many of her colleagues on the defense bar are opposed to eliminating the de novo appeal. She explained the various reasons. Most of all, she and her colleagues believe that eliminating appeals do novo would be harmful to pro se litigants. The overriding concern should be due process, ensuring a fair proceeding, and upholding the right of the parties.

5. Next Steps:

Judge Farr thanked everyone for their participation and invited them to consider everything that's been said to prepare for the next meeting. As they do so, Representative Hall reminded the Task Force that the legislature considers cost in connection with changes such as these. However good the ideas may be, it will be important for the Task Force to understand the costs involved with each of them so they can provide the legislature with all the information it needs.

6. Adjourn:

There being no further business, the meeting adjourned at 2:05 p.m.

NEXT MEETING:

**August 14, 2020
Via Webex
12:00 p.m. – 2:00 p.m.**