

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

**Via Webex**

**August 14, 2020  
12:00 p.m. – 1:45 p.m.**

**MEMBERS PARTICIPATING**

Judge Paul Farr, Chair  
Ms. Anna Rossi Anderson  
Judge Brian Brower  
Mr. Paul Burke  
Ms. Kim Cordova  
Senator Kirk Cullimore  
Judge Brent Dunlap  
Judge Roger Griffin  
Representative Craig Hall  
Judge Ryan Harris  
Ms. Joanna Landau  
Mr. Ryan Robinson  
Ms. Ann Marie Taliaferro  
Mr. Roger Tew

**MEMBERS EXCUSED**

Mr. Ron Gordon  
Mr. George Sutton  
Commissioner Jerry Taylor

**STAFF PARTICIPATING**

Mr. Michael Drechsel  
Ms. Cathy Dupont  
Ms. Amy Hernandez  
Mr. Jim Peters

**GUESTS PARTICIPATING**

Judge Ken Armstrong  
Mr. Jim Bauer  
Ms. Mara Beutler  
Ms. Molly Davis  
Mr. Tom Langhorne  
Judge Brendan McCullagh  
Mr. Clayson Quigley  
Judge Rick Romney  
Judge Brook Sessions  
Ms. Dena Snider  
Mr. Larry Webster

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**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 July 10, 2020.

***Motion: Paul Burke made a motion to approve the minutes from the Justice Court Task Force meeting held on July 10, 2020. Anna Rossi Anderson seconded the motion. The motion passed unanimously.***

## **2. Presentation of Statistics and Introduction of Public Website:**

To address questions raised at the last meeting of the Task Force, Judge Farr asked that Jim Peters present statistics on the number of appeals de novo filed for the last three years. For the year ended June 30, 2020, together with the two years preceding that one, Mr. Peters provided data showing that appeals de novo for criminal cases have been declining. Mr. Peters had no theory as to why. Appeals de novo for small claims cases, on the other hand, have remained steady during the same period. These data generated questions as to whether they could be broken down by district, whether these data include appeals de novo on traffic cases, how the cases were resolved in district court and what percentage of case filings they represent for those three years. Mr. Peters didn't have that information available for today's meeting, but he will get it for the next one.

Mr. Peters next reviewed the number of cases filed in the district, juvenile and justice courts for each of the last six years. He also presented those filings as a percentage of all cases filed in the trial courts. For all years, juvenile court filings represented 3-5% of the total, district court filings represented 35-38% of the total, and justice court filings represented 58-61% of the total. The data he presented are attached.

Finally, Mr. Peters introduced a website for the Task Force that is publicly available. It can be accessed at <https://www.utcourts.gov/utc/jc-reform/> and includes a list of committee members, materials for each meeting and a schedule of future meetings. There's also a tab for any documents that the Task Force wants to share with the public, which right now includes only the Recommendations to the Task Force from the Board of Justice Court Judges. If anyone has suggestions for improving the site, they are welcome to contact Mr. Peters.

## **3. Small Claims Reform Proposals:**

As much of the discussion before now has been focused on the criminal matters that are heard by the justice courts, Senator Kirk Cullimore was invited to share his perspective on the reforms justice courts might implement with regard to the civil cases that get filed there. He likes the recommendations made by the Board of Justice Court Judges and believes they are generally applicable to small claims cases as well. In particular, converting justice courts into courts of record, with appeals going potentially to the Court of Appeals, would address the inefficiencies of having a civil case appealed only to litigate it all over again. In addition, he suggested that small claims jurisdiction be expanded for justice courts so that it wouldn't be necessary to litigate in multiple justice courts. As the circuit courts were once structured, Senator Cullimore would propose a model where certain justice courts were designated to hear civil cases while others were not. Finally, because justice courts are less intimidating to pro se litigants, he would also suggest that the justice courts hear the low dollar cases currently heard by the district court. Not only would that relieve the caseload of the district courts, but it would improve access to justice for the litigants who find district court to be complicated and time consuming.

Senator Cullimore also supports the recommendation that justice court judges be members of the Utah Bar. In fact, he thinks it's especially critical if they are going to have more civil responsibility. Implementing recommendations to remove the geographic restrictions for those wanting to serve as justice court judges and transitioning to full-time judges would improve the justice courts for civil cases as well. He is particularly supportive of modeling the justice courts after the circuit courts, as they were efficient and allowed for consistency and continuity in small claims cases. Finally, Senator Cullimore largely agrees with all the other recommendations proposed by the Board of Justice Court Judges, as they will all help with improving the justice courts for civil cases.

Following Senator Cullimore's remarks, a discussion ensued about how civil cases are and could be handled in the justice courts. Judge Dunlap asked about the status of using the Online Dispute Resolution for small claims cases. For the benefit of those who are not acquainted with it, Judge Farr explained that Online Dispute Resolution (ODR) is a program that the courts have been working on for approximately three years. Once a plaintiff files a case and the defendant receives notice, both parties log in on either a smartphone or a computer where a third party facilitates communication between the two. If the dispute does not get resolved through the online process, it gets scheduled for an in-person court hearing. The program has been piloted in West Valley City, Orem City and Carbon County, and the Judicial Council recently approved it for statewide use. A plan for expanding the program is being developed. Judge Farr plans to have someone present on ODR in a future meeting, as he thinks it could be a big part of some of the reforms being considered by the Task Force. Judge Dunlap expressed interest in the number of cases resolved using ODR versus those that did not. Mr. Peters will work on that for the next meeting.

#### **4. Implications of Eliminating De Novo Appeals:**

Ben Marsden, a law school intern from BYU, was asked by Judge Farr to present on the implications of eliminating de novo appeals. Mr. Marsden shared a number of slides that, among other things, explained that Utah's Constitution guarantees the right to appeal any criminal case conducted by a trial court. This can occur in one of two ways. Cases heard by a court of record are sent to an appellate court, where the record is reviewed for legal error. Cases heard by a court not of record, on the other hand, require an appeal de novo because there is no record to review. If appeals de novo are to be eliminated from the justice courts, it will be necessary that appeals be on the record instead. As a result, justice courts would need to become a court of record. As there are a number of inadequacies inherent to courts not of record, Mr. Marsden believes that making this change would result in several benefits.

Mr. Marsden then explained two possible approaches for converting the justice courts to a court of record. One would be to amend Article VIII, Section 1 of Utah Constitution to eliminate the requirement that courts not of record be established. The other would be to split the justice courts into two levels. One level would preserve the current system, thus fulfilling the constitutional mandate that requires having courts not of record in Utah. The other level of justice court would be created as a court of record.

The court not of record would handle infractions and the court of record would handle misdemeanors. Mr. Marsden concluded by suggesting that, if the Task Force wants to recommend eliminating de novo appeals, it must find a way to do away with courts not of record--at least to some extent. Either it can propose that Utah's Constitution be amended to no longer require courts not of record or it can restructure the current justice court system so that some justice courts continue as courts not of record while others are created that operate as courts of record.

Roger Tew, who was involved in drafting the judicial article of the Utah Constitution as it now reads, provided some context for why Article VIII, Section 1 refers to some court levels and not others. It could have referred to the Court of Appeals or the Circuit Courts, both of which existed at the time, but instead referred simply to "courts designated by statute." That would have included the justice of the peace courts, as they then existed, but the justices of the peace wanted more assurance that their courts would not be phased out. As a result, they insisted that the Constitution specifically require them. Paul Burke suggested that Article VIII, Section 1 of the Utah Constitution could be read differently. Rather than requiring that there be courts not of record, it could just as easily mean that if courts not of record are going to be created, they can only be created by the legislature and not by some other entity (like municipalities or another subdivision of the state). When read in the context of the rest of the section, he believes that the Constitution empowers the legislature to decide whether it wants to create courts not of record. As such, if it were decided that the justice courts should be a court of record, that's a change that can be made by the legislature without having to amend the Constitution.

The Task Force had further discussion about converting the justice courts to a court of record. Judge Farr then noted that, if the Task Force ends up making that recommendation, there are other changes that would necessarily follow. As written, the Utah Constitution requires that judges of a court of record be selected by the governor, have a law degree, and not practice law. The Task Force need not decide this today, but it is one of the first decisions it needs to make because it will affect so many of its other recommendations.

## **5. Limited Jurisdiction Courts in Other States:**

Heather Robison, a law school intern from the University of Utah, was asked by Judge Farr to share her research on limited jurisdiction courts in other states. In particular, she looked at (i) which states require the judges of their limited jurisdiction courts to be attorneys and (ii) how each state handles appeals from those courts. To summarize her findings, Ms. Robison updated a graphic she got from the Sixth Amendment Center, a copy of which is attached.

Ms. Robison explained that, currently, 25 states and the District of Columbia require all the judges in their states to be attorneys. These states represent all regions of the country and span the gamut in terms of their population, although it is more common for states in the east to require their judges to be attorneys than those in the west. Ms. Robison believes that's because, historically, the idea of a lay judge aligned more with

the concepts of frontier justice than the idea of a formally trained attorney, who was often viewed with suspicion by those who did not have law degrees. So Utah is not alone in allowing non-attorneys to serve as judges, but it is evident that the nationwide trend is moving away from that.

Of the 25 states that do not require their judges to have law degrees, four of them allow those judges to preside over civil matters only. Appeals de novo are permitted in 13 of the 21 states that do not require their judges to be attorneys (though Page 2 of the graphic shows that there are more than these 13 that allow appeals de novo). The other eight states, which neither require law degrees of their judges nor provide for appeals de novo for their defendants, may be running afoul of the due process protections of the Constitution.

Finally, Ms. Robison addressed the differences in statutes of the various states that require their judges to be attorneys. Ten require that judges be “licensed to practice law,” nine require them to be “members of the bar” and eight require them to be “licensed attorneys.” Generally, those that have required their judges to be attorneys have grandfathered in sitting judges who are not attorneys.

## **6. Justice Court Structure:**

The last item that Judge Farr wanted to address today relates to the structure of the justice courts. It will be necessary at some point to decide whether justice courts should continue as they are, change justice courts to look more like circuit courts, divide them into two levels or consolidate them into a single level. He asked the Task Force members for any initial thoughts they might have. Responses included the following:

- Whatever the Task Force decides to recommend, it should determine the cost of the changes and consider how they might be paid for.
- The Task Force should remember that cities and counties have made a significant investment in their justice courts since the circuit courts were eliminated.
- Also significant is the decrease in filings and revenue that justice courts have experienced over the last ten years.
- The public’s trust and confidence in the justice courts might be strengthened if they better understood how revenues are distributed. Judge Farr will add this to the agenda for next month’s meeting.
- Cities and municipalities might push back if more control and power is taken away from them and given to the state.
- One of the more significant tensions between local government and the judicial branch relates to who controls the judge. Judge Farr noted that the Board discussed the issue of control from the judge’s perspective as well.
- Whatever the structure, it should ensure access to justice and improve trust and confidence in the justice courts.

## **7. Other Business:**

Michael Drechsel reported that the Judiciary Interim Committee has invited Judge Farr to address the work of the Task Force this coming Wednesday, August 19, at 8:30 a.m. Representative Stoddard has interest in justice court reform and will introduce the discussion. Judge Farr will be addressing the committee after that. Task Force members can tune into that meeting on the legislature's website for the live presentation or they can access a recording of it afterward.

## **8. Adjourn:**

There being no further business, the meeting adjourned at 1:45 p.m.

## **NEXT MEETING:**

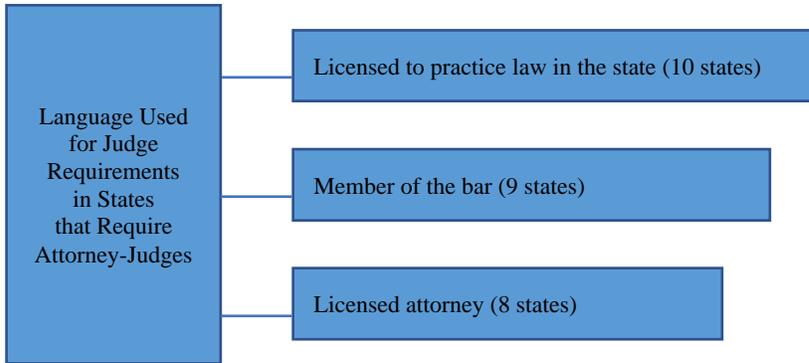
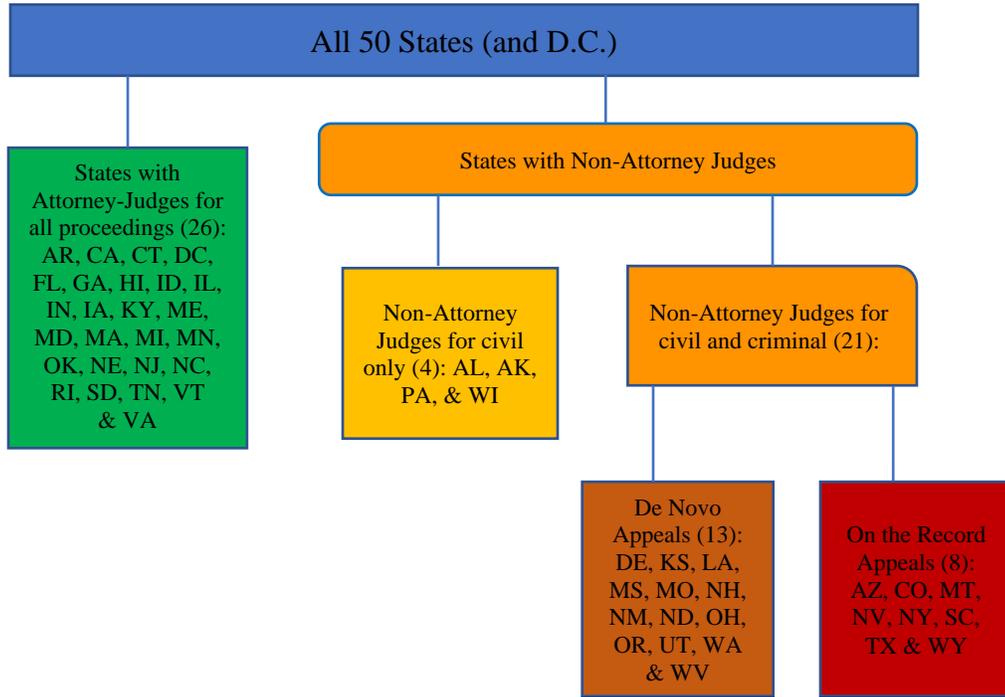
**September 11, 2020  
Via Webex  
12:00 p.m. – 2:00 p.m.**

<b>De novo appeals filed July 1, 2017 to June 30, 2020</b>			
<b>FY</b>	<b>Criminal</b>	<b>Small Claims</b>	<b>Total</b>
2018	824	192	1,016
2019	662	210	872
2020	561	187	748
<b>Total</b>	<b>2,047</b>	<b>589</b>	<b>2,636</b>

**Cases filed from July 1, 2014 to June 30, 2020**

<b>FY</b>	<b>District</b>	<b>Juvenile</b>	<b>Justice</b>	<b>Total</b>
2015	269,143	35,007	459,622	763,772
2016	256,604	30,641	428,809	716,054
2017	253,691	28,274	428,836	710,801
2018	252,080	24,864	439,358	716,302
2019	260,308	22,760	428,278	711,346
2020	253,039	25,086	388,203	666,328
<b>FY</b>	<b>District</b>	<b>Juvenile</b>	<b>Justice</b>	<b>Total</b>
2015	35%	5%	60%	100%
2016	36%	4%	60%	100%
2017	36%	4%	60%	100%
2018	35%	3%	61%	100%
2019	37%	3%	60%	100%
2020	38%	4%	58%	100%

# State Municipal Court Survey Summary



## States at a Glance

	De novo appeal	On the record appeal	Attorney-Judges	Type of Court
Alabama	X		No	district, municipal (civil)
Alaska	X	X	Yes	district
Arizona		X	No	justice of the peace, municipal
Arkansas	X		Yes	city (civil), district
California		X	Yes	superior
Colorado		X	No	county, municipal
Connecticut	X	X	Yes	probate
Delaware	X		No	justice of the peace
D.C.		X	Yes	superior
Florida	X (civil)	X (criminal)	Yes	county
Georgia	X		Yes	municipal
Hawaii	X	X	Yes	district
Idaho	X (crim & civil)	X (civil only)	Yes	magistrate
Illinois		X	Yes	circuit
Indiana		X	Yes	municipal
Iowa		X	Yes	district
Kansas	X		No	municipal
Kentucky		X	Yes	district
Louisiana	X		No	justice of the peace
Maine		X	Yes	district
Maryland	X	X	Yes	district
Massachusetts	X	X	Yes	district
Michigan		X	Yes	municipal
Minnesota	X		Yes	district
Mississippi	X		No	justice, municipal
Missouri	X		No	municipal
Montana	X (civil)	X (criminal)	No	city, justice, and municipal
Nebraska		X	Yes	district
Nevada		X	No	municipal
New Hampshire	X		Yes	circuit
New Jersey		X	Yes	municipal
New Mexico	X		no	municipal
New York		X	No	town & village, city
North Carolina	X		Yes	district
North Dakota	X		No	municipal
Ohio	X		Yes	municipal
Oklahoma	X (not-of-record courts)	X (of-record courts)	Yes	municipal
Oregon	X		No	municipal
Pennsylvania		X	No	magisterial, municipal
Rhode Island	X		yes	municipal
South Carolina		X	No	municipal
South Dakota		X	Yes	magistrate
Tennessee	X		Yes	municipal
Texas		X	No	municipal, justice of the peace
Vermont	X	X	Yes	superior
Virginia	X		Yes	district
Washington	X		Yes	municipal
West Virginia	X		No	municipal
Wisconsin	X		No	municipal
Wyoming		X	No	municipal