

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

Via Webex

**December 18, 2020
12:00 p.m. – 2:00 p.m.**

MEMBERS PARTICIPATING

Judge Paul Farr, Chair
Ms. Anna Rossi 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. Ryan Robinson
Mr. George Sutton
Ms. Ann Marie Taliaferro
Commissioner Jerry Taylor
Mr. Roger Tew

MEMBERS EXCUSED

Ms. Kim Cordova

STAFF PARTICIPATING

Mr. Michael Drechsel
Ms. Cathy Dupont
Dr. Kim Free
Ms. Amy Hernandez
Ms. Nancy Merrill
Mr. Jim Peters
Ms. Kim Zimmerman

GUESTS PARTICIPATING

Mr. Wayne Kidd
Mr. Karl Sweeney
Ms. Diane Williams

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 November 20, 2020.

Motion: Mr. Burke made a motion to approve the minutes from the meeting held on November 20, 2020. Ms. Taliaferro seconded the motion. The motion passed unanimously.

2. Recommendations from AOC Audit and Finance:

Karl Sweeney, Director of Finance, Wayne Kidd, Director of Audit, and Diane Williams, Auditor, presented to the Task Force. Mr. Kidd began by reporting that the Audit Department has completed 32 Internal Control Self Assessments for the justice courts. The majority of the courts are at low risk and running well. Only a few courts are at high risk, and most of those want to implement the recommendations they receive to comply with established procedures. From a systemic standpoint, Mr. Kidd and Ms. Williams are primarily concerned with only one thing, and that is an option extended to justice courts many years ago to use an alternative accounting model.

Mr. Kidd explained that the standard accounting model to be used by justice courts is known as Model 1. With this model, the court receipts and deposits court funds and the court performs the case record keeping responsibilities. The alternative, known as Model 2, is where the local government receipts and deposits court funds (though the court performs case record keeping responsibilities). Right now 21 courts are using Model 2 to account for their funds. Model 2 was originally developed to assist small justice courts with separation of duties requirements by allowing financial personnel from local governments to perform certain tasks. There are many small justice courts with only one or two clerks that use Model 1, however. They are able to separate duties with the help of the judge or by having local staff perform external reviews.

Court leadership and the court's relationship with local government affect the controls of the court more than the size of the court. It is of significant concern to the Audit Department that some local governments do not agree that the Judicial Council has the authority to require that certain policies and procedures be followed. Mr. Kidd and Ms. Williams discussed specific examples of Model 2 courts where the audit team made multiple findings that resulted from local government following their own procedures rather than adhering to established court procedures.

Like Mr. Kidd and Ms. Williams, Mr. Sweeney sees no reason for having Model 2 courts. Model 1 can be made to work for all courts and it is more aligned with keeping the operation of the courts separate from the other branches. Mr. Kidd, Ms. Williams, and Mr. Sweeney addressed questions from the Task Force.

Ms. Anderson asked whether anyone from the Administrative Office had reached out to the Utah League of Cities and Towns (ULCT) to educate them on the three branches of government. Judge Farr noted that the Board of Justice Court Judges has provided training in the past. More recently, it has submitted an excerpt for the League's Handbook that explains the importance of the court's operating independent of other other branches. Mr. Tew indicated that state statute does not clearly indicate that there are three branches of government at the local level. Legal counsel for the Administrative Office of the Courts, on the other hand, has explained that there is no other way to view it. Mr. Sweeney then concluded by suggesting that making justice court clerks state employees would be the most effective way to address separation of powers and get the courts to follow the required policies and procedures.

3. Certification (and Recertification) of Justice Courts:

Before turning to a discussion of the recommendations the Task Force wants to advance to the Judicial Council, Mr. Peters wanted to explain an option for effecting minor reforms that don't require changes to the statutes or the state Constitution. As the Judicial Council is the governing body for courts throughout the state, including justice courts, it has promulgated certain standards that they must adhere to. A new court would need to demonstrate that it is willing and able to comply with these standards before it could be certified in the first place, and existing courts need to demonstrate ongoing compliance with them in order to be recertified--a process which occurs every four years. Proposing new standards, or modifications to existing standards, is something the Task Force could consider as it develops its recommendations for the Judicial Council.

By statute, justice courts are classified according to the number of filings they receive each month, as follows:

- Class I: 501 or more case filings per month
- Class II: 201-500 case filings per month
- Class III: 61-200 case filings per month
- Class IV: 60 or fewer case filings per month

The classification system does not distinguish between infractions (like speeding tickets) and time-intensive cases (like DUI or the cases that involve domestic violence), but it is the basis on which many of the operating standards are based. A Class I court is required to have a dedicated courtroom, for example, while other classes may use a city's council chambers for its hearings. Mr. Peters reviewed existing standards, as well as others that the Board of Justice Court Judges will be proposing to the Judicial Council this year, including a standard that addresses judicial independence and clerk certification.

A discussion ensued regarding certification standards in general, and the one addressing a court's requirement to provide "adequate" indigent defense, in particular. It was generally agreed that indigent defense needs to be addressed by the Task Force, one way or the other.

Judge Farr noted that, in order to make recertification more effective, a few things need to be considered:

- The Judicial Council needs to have more tools to allow them to enforce the standards. Presently they can only waive the requirement or decertify the court.
- Recertification should involve more than the judge who fills out the affidavit (although legal counsel is required to provide an opinion that the court is meeting all requirements).

- Standards like “adequate indigent defense” would be more effective if they were made to be more substantive.
- Recertification might be more effective if it were done more often than every four years

4. Justice Court Structural Models:

Judge Farr informed members of the Task Force that, at this point, the presentations he wanted them to hear are complete. It is time now for the Task Force to turn to formulating the recommendations it wants to make to the Judicial Council. To begin, Judge Farr reviewed the structural models he introduced previously:

- Status Quo: Leave the justice courts exactly as they are. This model would cost the least and be the easiest to implement, and would still allow for some reform.
- Modified: Keep justice courts in place and under local control but make structural changes to accommodate reforms. Make justice courts “courts of record,” abandon de novo appeals, transition to full-time courts, and require bar admission.
- Tiered system: Keep justice courts in place but limit jurisdiction to traffic and infractions. Misdemeanors, small claims and magistrate functions would be handled through a magistrate system, state justice courts, district court or county level justice courts.
- Magistrate: Create a system modeled after the federal courts. This model would accomplish all reforms but require significant statutory and constitutional changes. Judge Farr noted that the Task Force could look at Idaho’s system if they wanted to consider this approach. This model would be the most expensive model to implement.

5. Discussion of Recommendations:

The Task Force had further discussion about the proposed models. Judge Farr then invited comments as to what the recommendations should look like. It was suggested that recommendations heard to date be reviewed and summarized so that they are fresh for the Task Force. Judge Farr will compile those for the next meeting.

A discussion then ensued among members of the Task Force as to whether to make recommendations that reflect the ideal justice court or to be practical and recommend something less. Judge Farr thinks the Task Force should do both: recommend the ideal while considering the practical realities when it comes to implementation. It may be that the ideal can only be achieved after several interim steps are taken.

6. Adjourn:

There being no other business, the meeting adjourned at 2:00 p.m.

NEXT MEETING:

**January 15, 2021
Via Webex
12:00 p.m. – 2:00 p.m.**