

JUDICIAL COUNCIL MEETING

AGENDA

Monday, November 19, 2012

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. Chief Justice Matthew B. Durrant
3. 9:15 a.m. Administrator's Report. Daniel J. Becker
4. 9:30 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant
Liaison Committee. Justice Jill Parrish
Policy and Planning Judge Greg Orme
Bar Commission. John Lund, esq.
(Tab 2 - Information)
5. 9:40 a.m. Judicial Performance Evaluation Commission Update. . . . Joanne Slotnik
(Information)
6. 10:00 a.m. Ethics Advisory – Informal Opinion 12-01. Brent Johnson
(Tab 3 - Action)
7. 10:25 a.m. Appeals Process for Purchasing Decisions. Brent Johnson
(Tab 4 – Action)
- 10:40 a.m. Break
8. 10:50 a.m. Rules for Final Action: CJA 04-0401.01 and
CJA 04-0401.02. Tim Shea
(Tab 5 - Action)
9. 11:10 a.m. Judicial Outreach Committee Update. Judge Carolyn McHugh
(Tab 6 - Information)
10. 11:30 a.m. Legislative Update and Interim Highlights Rick Schwermer
(Information)
11. 11:40 a.m. Language Access Report. Tim Shea
(Tab 7 - Action) Rosa Oakes

- 12:00 p.m. Council Photo
- 12:15 p.m. Lunch
- 12. 12:45 p.m. GAL Oversight Committee Update.Rick Smith
(Information)
- 13. 1:05 p.m. Certification of Senior Judges. Tim Shea
(Tab 8 - Action)
- 14. 1:10 p.m. Executive Session.
- 15. 1:15 p.m. Board of Juvenile Court Judges Update. Judge Mark May
(Information) Lisa-Michele Church
- 16. 1:35 p.m. Adjourn

Consent Calendar

The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.

- 1. Committee Appointments Tom Langhorne
(Tab 9) Ron Bowmaster
Ray Wahl
- 2. Grant Approvals Tom Langhorne
(Tab 10)
- 3. GAL Oversight Committee Chair Appointment Daniel J. Becker
(Tab 11)

**JUDICIAL COUNCIL WORKSHOP
CONTINUATION**

**AGENDA
Monday, November 19, 2012
Matheson Courthouse
Salt Lake City, Utah**

SESSION TO BEGIN IMMEDIATELY FOLLOWING THE COUNCIL MEETING

1. Welcome and Introduction.Daniel J. Becker
2. Continued Discussion of Future Planning Issues. All

NOTE: The workshop is expected to last an additional 1.5 hours after the Council meeting.

TAB 1

JUDICIAL COUNCIL MEETING

Minutes
Monday, October 22, 2012
LaQuinta Inn
Moab, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Tom Langhorne

GUESTS:

Hon. Mary Manley
Terri Yelonek, 7th Dist TCE
Claudia Page, 7th C of C

EXCUSED:

Justice Jill Parrish

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting. He extended a special welcome to the new Council members.

Motion: It was moved and seconded to approve the minutes from the September 11, 2012 Judicial Council meeting. The motion passed unanimously.

2. OATH OF OFFICE FOR NEW COUNCIL MEMBERS: (Mary Manley)

Judge Manley administered the Oath of Office to the new Council members and Chief Justice Durrant.

3. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reported on the following:
A meeting was held with Lt Governor Bell on October 16 to review the court's budget requests.

A Judicial Council orientation meeting was held on October 16 for the new members.

Mr. Myron March has been appointed to fill the vacancy on the Judicial Performance Evaluation Commission left by the resignation of Mr. Russ VanVleet.

A letter has been prepared and sent to the Judicial Performance Evaluation Commission regarding the Appellate Court judges' opinion evaluation proposal.

4. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

Court Visit. Ms. Moore hosted court staff from Maricopa County, Arizona, who were interested in learning from our experience with clerical reorganization in anticipation of our move to the electronic record.

National Summit on Language Access in the Courts. Mr. Becker provided an update on the National Summit on Language Access in the Courts which was held in Houston, TX on October 1-3. The following attended from Utah: 1) Judge Larry Steele, 2) Mr. Dan Becker, 3) Mr. Tim Shea, and 4) Ms. Rosa Oakes. The Summit was attended by over 300 people from 49 states and 5 territories.

Mr. Becker was pleased with the fact that Utah addressed the issue of interpreters and their use in civil cases early on. He noted that the Justice Department has now responded to complaints in eight states relative to interpreters in civil cases.

As a result of the Summit, Mr. Becker foresees the Utah courts addressing the following issues relative to language access in the courts: 1) developing a more complete complaint process, and 2) modifying CORIS and CARE to process payments as an automated function, with improved data collection as a byproduct. Discussion took place.

Court Executive Retirement. Ms. Beani Martinez, Second Juvenile court executive, has announced her retirement—effective January 1, 2013. He noted that Ms. Martinez is a long-term, very dedicated court employee, whose services will be missed.

Case Filing Update. Mr. Becker provided an update on the case filing statistics in district court and the referrals statistics in juvenile court for the first quarter of FY 2013.

He highlighted the following district court case filing statistics: 1) felonies, 8% increase; 2) misdemeanors, 7% increase; 3) criminal case filings, 8% increase; 4) domestic case filings, 0% change; 5) contracts, 18% decrease; 6) debt collection, 10% decrease; 7) general civil case filings, 8% decrease; 8) tax liens, 14% increase; 9) judgments case filings, 5% increase; 10) probate case filings, 4% increase; 11) property rights case filings, 6% decrease; 12) torts case filings, 9% decrease; 13) traffic case filings, 6% decrease; and 14) district case filings, 0% change overall.

He highlighted the following juvenile court referral statistics: 1) felony, 13% increase; 2) misdemeanor, 16% decrease; 3) infraction, 5% decrease; 4) contempt, 10% decrease; 5) status, 22% decrease; 6) adult violations, 17% increase; 7) child welfare proceedings, 4% increase; 8) termination of parental rights, 24% increase; 9) voluntary relinquishment, 5% decrease, 10) domestic/probate, 30% decrease, and 11) juvenile court referrals, 10% decrease overall).

Court Funding Strategy Summary. *The True Cost of Justice: Transforming the Debate on Restoring Court Funding*, part of the campaign for addressing court funding prepared by the National Center for State Courts and Justice at Stake was distributed.

Mr. Becker highlighted the following from the document: 1) challenges facing the court community, 2) confidence in governmental institutions is low, 3) voters are far more focused on the economy and fiscal austerity, 4) beliefs about delays and backlogs are not attributed to low funding, but to other (mis)perceptions, 5) short term objective: winning support from budget

setters, 6) long term objective: reshaping public attitudes to the courts, and 7) what doesn't work: themes and language to avoid in the debate.

Council Photo. Mr. Becker noted that the Council Photo will be taken at the November meeting.

Legislative Interim Highlights. Mr. Schwermer provided an update on the October Legislative Interim meetings. He highlighted the following in his update: 1) annual DUI Report, 2) Veteran's Reintegration Task Force, and 3) administrative law judge matter.

Summit County Drug Court Project. Clarification was requested on the proposed Summit County Drug Court project. Discussion took place. It was noted that the matter would be discussed further at the Specialty Court Committee meeting of the Third District Court on Thursday, October 25.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No meeting was held in October.

Policy and Planning Meeting:

No meeting was held in October.

Bar Commission Report:

Mr. Lund reported on the following:

This week is National Pro Bono week.

The Utah State Bar's Fall Forum will be held in Salt Lake City on November 8-9. Mr. Lund highlighted several presenters including Professor Jeffrey J. Rachlinski of the Cornell Law School.

Mr. Nate Alder has been appointed as the ABA delegate for the Bar.

Four free legal clinics are being offered by the Bar. Details can be found on the Bar's website.

6. COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed recommendations for Council committee appointments.

Vacancies exist on the Policy and Planning Committee with the terms ending for: 1) Ms. Lori Nelson, 2) Judge Keith Stoney, and 3) Judge Thomas Willmore.

Chief Justice Durrant proposed filling the vacancies on the Policy and Planning Committee with the new Council members: 1) Judge Glen Dawson, 2) Judge Reed Parkin, and 3) Mr. John Lund. The committee membership for the Management Committee and the Liaison Committee would remain the same.

Motion: Judge McCullagh moved to approve the recommendations for Council committee appointments as proposed by Chief Justice Durrant. Judge Harmond seconded the motion, and it passed unanimously.

7. 2013 CALENDAR APPROVAL: (Ray Wahl)

Mr. Wahl reviewed the proposed 2013 Council calendar. He highlighted the following dates: 1) the March meeting will be held in conjunction with the Bar's Spring Conference, noting the change in date; 2) an adjustment to the May meeting date as a result of the Memorial Day holiday; 3) the adjustment of the Budget and Planning Session to a one-day session, 4) the September meeting being held in conjunction with the Annual Conference, and 5) reviewed the dates and location for the Bar's Summer Conference.

Motion: Judge Hornak moved to approve the 2013 Council Calendar as proposed. Mr. Lund seconded the motion, and it passed unanimously.

8. JUSTICE COURT: IVINS INTERLOCAL AGREEMENT: (Rick Schwermer)

Mr. Schwermer provided details relative to the request made by Ivins City to dissolve their inter-local agreement with the Washington County Justice Court and enter into an inter-local agreement with the Santa Clara Justice Court, effective January 1, 2013. If the inter-local agreement is reached, the Santa Clara Justice Court would be considered a Category III Court.

All parties have been notified and are in agreement with the request.

Motion: Judge Sandberg moved to approve the proposed inter-local agreement request made by Ivins City. Mr. Lund seconded the motion, and it passed unanimously.

9. JUSTICE COURT PROPOSALS: (Rick Schwermer)

Mr. Schwermer reviewed two possible matters being considered for the next legislative session to include: 1) inclusion of prior warnings to be included with documents sent on behalf of the Judicial Conduct Commission to the Supreme Court when an order is sent, and 2) a proposed salary cap for justice court judges when they are employed by more than one entity. The anticipated sponsor has requested input from the courts. Discussion took place.

10. RULES FOR FINAL ACTION: (Tim Shea)

The Policy and Planning Committee recommended the following rules be approved for final action: 1) Rule CJA 02-0204 – Local Supplemental Rules, 2) CJA 03-0202 – Court Referees, 3) CJA 04-0202.01 Definitions, 4) CJA 04-0202.02 – Records Classification, 5) CJA 04-0202.03 – Records Access, 6) CJA 04-0202.05 – Request to Access an Administrative Record..., 7) CJA 04-0405 – Juror and Witness Fees and Expenses, 8) CJA 04-0409 – Council Approval of Problem Solving Courts, 9) CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues, 10) CJA 04-0704 – Authority of Court Clerks, 11) CJA 06-0401 – Domestic Relations Commissioners, and 12) CJA 07-0102 – Duties and Authority of Juvenile Court Commissioners. Mr. Shea reported the rules were all published for comment.

Rule CJA 04-0409 – Council Approval of Problem Solving Courts. The rule has been amended to regulate ex parte communication in problem solving courts as recognized by the Code of Judicial Conduct and consistent with the signed agreement.

Motion: Judge Orme moved to amend Subsection 7 of the Problem Solving Court rule. Judge McCullagh seconded the motion, and it passed unanimously.

Mr. Shea highlighted the following rules being recommended for approval:

Rule CJA 02-0204 – Local Supplemental Rules. This rule has been amended to modify the process by which local rules are approved.

Rule CJA 03-0202 – Court Referees. This rule has been amended, in conjunction with Rule 4-704 which prohibits courts from appointing court referees.

Rule CJA 04-0202.02 – Records Classification. This rule has been amended to remove investigative subpoenas from the list of protected records and change the classification of PSI reports from private to protected.

Rule CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues. This rule has been amended to describe a process for resolving discovery disputes quickly to minimize the impact on time to complete discovery.

Discussion took place relative to the effective date in conjunction with publication dates. Questions were asked, and Mr. Shea provided clarification. The Policy and Planning Committee will address the matter of rule approval in conjunction with publication dates.

Motion: Judge McCullagh moved to approve CJA 02-0204 – Local Supplemental Rules and CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues effective January 1, 2013 and approve the remainder of the rules for final action, effective April 1, 2013. Judge Orme seconded the motion, and it passed unanimously.

11. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Mr. Shea reported that Judge William Barrett and Judge Sterling Sainsbury have applied to be appointed as active senior judges.

He highlighted the following senior justice court judges up for reappointment: 1) Judge James E. Box, active; 2) Judge Betty Burns, inactive; 3) Judge Richard D. Carr, inactive; 4) Judge Jack Stevens, active; 5) Judge Allan D. Vail, inactive, and 6) Judge Sara Watson, active).

Clarification was provided relative to the education requirement for Judge Sara Watson for the 2012 year. Mr. Shea noted that the minimum performance standards have been met by all requesting certification or reappointment as senior judges.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the senior judges applying for certification and reappointment as active senior judges. Judge Maughan seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION:

An executive session was not held at this time.

13. JUSTICE COURT WEIGHTED CASELOAD: (Rick Schwermer)

Mr. Schwermer provided background information relative to the justice court weighted caseload. He reminded the Council that all justice courts are now on CORIS.

The Board of Justice Court judges recommended the following changes to their weighted caseload: 1) use each individual court location, 2) bench hour day changed to 8 hours from 7 hours, 3) 100% contest traffic—do not use state court numbers, and 6) small claims removed from courts using Pro Tem.

Mr. Schwermer reviewed the data provided for each justice court location and the adjustments being made. He asked the Council to approve the justice court weighted caseload in concept. Discussion took place.

Motion: Judge McCullagh moved to approve the justice court weighted caseload, in concept, but not change the judge day as proposed. Judge Steele seconded the motion, and it passed unanimously.

14. SEVENTH DISTRICT UPDATE: (Judge Mary Manley, Judge George Harmond, Ms. Terri Yelonek, and Ms. Claudia Page)

Chief Justice Durrant noted the continued judgeship support being provided by the Seventh District to the Eighth District. He expressed his gratitude, on behalf of the Council, to the Seventh District for their continued support and contributions to the Eighth District.

Chief Justice Durrant welcomed Judge Manley, Ms. Terri Yelonek and Ms. Claudia page to the meeting.

Ms. Yelonek highlighted the following in her update: 1) reviewed statistics for the Seventh District, 2) continued judicial support to the Eighth District, 3) judicial coverage to the Sixth District when requested and available, 4) clerks providing coverage for other offices as requested, 5) clerical staff restructuring plan taking place, 6) move to one clerk of court and one team manager is being looked at, 7) all staff cross trained throughout the district, 8) review of case management information, 9) district court fileless, and 10) juvenile court documents being uploaded into CARE.

Judge Manley provided an update relative to the Seventh District Juvenile Court to include: 1) reviewed statistics relative to juvenile court, 2) review of case management information, and 3) the status of the Seventh Districts' e-filing efforts.

Judge Harmond provided an update relative to the Seventh District Court to include: 1) Seventh District judicial support by taking on all cases in Duchesne, 2) all judges are cross designated, and 3) meet monthly with county sheriffs.

Mr. Becker expressed his gratitude and appreciation to the Seventh District for their continued judicial support to the Eighth District.

Ms. Page provided details on how the Seventh District uses the electronic record to provide clerk support to another district in the following areas remotely: 1) default judgments, 2) case pending, and 3) case collections.

Chief Justice Durrant thanked the Seventh District representatives for their update.



15. **ADJOURN**
The meeting was adjourned.



TAB 2

Management Committee Minutes

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

Tuesday, November 13th, 2012

**Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair
Hon. Kimberly Hornak
Hon. Judith Atherton
Hon. George Harmond
Hon. John Sandberg

EXCUSED:

GUESTS:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Brent Johnson
Ron Bowmaster
Tom Langhorne

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

Motion: Judge Harmond moved to approve the minutes. Judge Sandberg seconded the motion, and it passed unanimously.

2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker reported on the following items:

Facilities Priorities. The Building Board has set its facility priorities for the upcoming Legislative Session with the Ogden Juvenile court facility set as the #1 priority. The priorities for land banking requests have been set, as well, listing the Utah County land banking request as the #1 priority. A meeting was held last week with Mr. Ron Bigelow, GOMB, to discuss the requests further.

Legislative Audit Follow-up. The Legislative Auditor's office is completing a follow-up to the audit prepared on the operational efficiencies of the court system. A report has been filed with them reporting that all issues have been addressed, with the exception of the recommendation on time standards. The adoption of time standards will be on the Council agenda for December, following an 18-month pilot project.

Judgeship/GAL Director Position. Mr. Rick Smith, GAL Director, has been appointed by the Governor to fill the judgeship vacancy in Fourth District Juvenile with the upcoming retirement of Judge Sterling Sainsbury. If he is confirmed, there will be a vacancy for a GAL Director.

Mr. Becker noted that he will work with the GAL Oversight Committee to name a new director, should Mr. Smith be confirmed by the Senate.

Legislative Leadership. Mr. Becker mentioned the changes to Legislative leadership. Senate leadership include: 1) Mr. Wayne Niederhauser, Senate President; 2) Mr. Ralph Okerland, Majority Leader; 3) Mr. Stuart Adams, Majority Whip; and 4) Mr. Pete Knudson, Assistant Majority Whip. House leadership included one change with the newest member, Ms. Ronda Rudd Menlove.

Legislative Meeting. Mr. Becker and Mr. Rick Schwermer are scheduled to meet with Senator Lyle Hillyard, Senate Chair of the Executive Appropriations Committee, on November 26.

Council Meeting – Location Change. In follow-up to the suggestion made during the October Council meeting, Mr. Becker recommended the June 24 Council meeting be held in Panguitch. The Panguitch facility has been newly renovated and it has been some time since the Council has visited the Sixth District. The Management Committee agreed, and Mr. Becker will cover this location change in his report at the November 19 Council meeting.

JPEC Update. Mr. Schwermer provided an update to the Management Committee regarding the JPEC meeting held today. He highlighted the following in his update: 1) Chief Justice Durrant's remarks to the Commission concerning opinion evaluations, 2) discussion of retention results, 3) availability of public information prior to the election, 4) future survey methods, 5) review of the Appellate Pilot Program, 6) proposed legislation relative to juror surveys, and 7) Bar article.

3. COMMITTEE APPOINTMENTS: (Tom Langhorne, Ron Bowmaster, and Ray Wahl)

The Standing Committee on Judicial Education has a vacancy on the committee for a juvenile judge with Judge Elizabeth Lindsley's second term expiring. The Board of Juvenile Court judges recommended Judge Christine Decker to fill the vacancy.

The Standing Committee on Judicial Education has a vacancy on the committee for a district court clerk with Ms. Jana O'Hearon's second term expiring. The Committee requested Ms. O'Hearon be allowed to serve a third term on the Committee.

Motion: Judge Hornak moved to approve the recommendations as proposed for filling the vacancies on the Standing Committee on Judicial Outreach and place it on the November Judicial Council consent calendar. Judge Harmond seconded the motion, and it passed unanimously.

The Standing Committee on Court Technology has a vacancy on the committee for a trial court executive with the upcoming retirement of Ms. Beani Martinez. The trial court executives recommended Mr. Shane Bahr to fill the vacancy.

Motion: Judge Atherton moved to approve the appointment of Mr. Shane Bahr as the court executive on the Standing Committee on Court Technology and place it on the November Judicial Council consent calendar. Judge Hornak seconded the motion, and it passed unanimously.

The Standing Committee on Children and Family Law recommended the reappointment of Commissioner Michele Blomquist to serve a second term on the committee. She currently serves as the chair of the Divorce Procedures Subcommittee.

Motion: Judge Sandberg moved to approve the reappointment of Commissioner Blomquist for a second term on the Standing Committee on Children and Family Law and place it on the November Judicial Council consent calendar. Judge Harmond seconded the motion, and it passed unanimously.

4. GRANT APPROVAL: (Tom Langhorne)

Mr. Langhorne reported on the SJI CAT grant proposed application for development of online, new judge orientation modules that are immediate and accessible for new judges as they are appointed and confirmed. The funding for this grant is \$7,251.02, which will require a cash match of \$725.10 and an in-kind match of \$3,487.50.

Motion: Judge Hornak moved to approve the proposed grant application as presented and place it on the November Judicial Council consent calendar. Judge Sandberg seconded the motion, and it passed unanimously.

5. APPEALS PROCESS FOR PURCHASING DECISIONS: (Brent Johnson)

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson provided background information concerning the contract for the Divorce Education Program in the Third and Fourth Districts. A vendor not awarded the contract has protested the award of the contract to another vendor. He reported that as a separate branch of government, the judicial branch is responsible for managing the appeals process for purchasing decisions.

It has been suggested that the Management Committee serve as the appellate body for addressing appeals relative to purchasing decisions. This would require a rule change to add this as a responsibility of the Management Committee. Discussion took place.

Motion: Judge Sandberg moved to include the "Appeals Process for Purchasing Decisions" on the November Judicial Council agenda for adoption of an emergency rule change. Judge Harmond seconded the motion, and it passed unanimously.

6. E-FILING OUTREACH EFFORTS: (Debra Moore)

Ms Moore provided an update to the Management Committee on the e-filing outreach efforts to attorneys. She highlighted the following in her update: 1) training is being provided by the e-filing vendors at all Bar meetings, 2) districts are holding local meetings with attorneys, 3) an announcement on the courts' website relative to the e-filing rule and a link to the e-filing page is available, 4) distribution of an e-filing brochure at various Bar functions since July has taken place, 5) placement of a notice in the Bar's e-bulletin and the Bar journal, 6) notices posted at each state courthouse, 7) a presentation will be made at the Family Law Section on November 30, 8) a tentative date for domestic e-filing to take place in early January, 9) creating online training for attorneys, with the "Basics of E-Filing" currently available online, 10) an online training series is being prepared by Ms. Kristin Youngberg, 11) criminal e-filing is taking place

in three northern counties with a tentative implementation schedule prepared, and 12) the Criminal Defense Bar has rapidly moved to e-filing.

7. APPOINTMENT OF CHAIR OF THE GUARDIAN AD LITEM OVERSIGHT COMMITTEE: (Daniel J. Becker)

Mr. Becker reminded the Management Committee of the appointment of Mr. Merrill Nelson as the acting chair of the Guardian ad Litem Oversight Committee. Subsequent to that time, Mr. Nelson became a candidate for an open seat in the House, and it was suggested that if he was successful in his election bid that he remain as a member of the committee but the duties of the Committee chair be undertaken by someone else.

Mr. Nelson was successful in his election bid; therefore, a replacement committee chair is needed. Mr. Becker provided the names and a brief background of the current GAL Oversight Committee to include: 1) Mr. Merrill Nelson, 2) Judge Regnal Garff, 3) Ms. Louise Knauer, 4) Dr. Douglas Goldsmith, 5) Ms. Jini Roby, and 6) Mr. John Pearce. Discuss

Mr. Rick Smith recommended Ms. Jini Roby be appointed as the chair of the GAL Oversight Committee.

Motion: Judge Harmond moved to approve the appointment of Ms. Jini Roby to fill the vacancy for a chair of the GAL Oversight Committee, effective December 1, 2012, and place it on the November Judicial Council consent calendar. Judge Atherton seconded the motion, and it passed unanimously.

8. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed Council agenda for the November 19 Council meeting.

Motion: Judge Atherton moved to approve the agenda for the November 19 Council meeting. Judge Harmond seconded the motion, and it passed unanimously.

9. ADJOURN

The meeting was adjourned.

Policy and Planning Committee Minutes

Minutes of the Policy and Planning Committee					
Meeting Date November 2, 2012			Meeting Room Judicial Council Room		
Committee Member	Present	Excused	Committee Member	Present	Excused
Judge Glen Dawson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Gregory Orme, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. John Lund	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Reed Parkin	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judge Paul Maughan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Larry Steele	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Staff: Dan Becker, Mark Bedel, Tim Shea					
Guests: Judge David Connors					

Approve minutes of September 7, 2012	By Judge Orme
Motion: Approve as prepared.	By Acclamation
Vote: Yes All No Abstain	Pass <input checked="" type="checkbox"/> No Pass <input type="checkbox"/>

Selection of chair	By Judge Greg Orme
Discussion: Judge Orme said that the Council rule governing the Policy and Planning Committee requires the committee to select its chair every year. He said he has been serving as chair for 5 years, and he asked whether anyone wanted the opportunity.	
Motion: Judge Maughan nominated Judge Orme to continue as chair of the committee.	By Judge Maughan
Vote: Yes All No Abstain	Pass <input checked="" type="checkbox"/> No Pass <input type="checkbox"/>

Fee waiver guidelines and procedures	Judge David Connors By Mark Bedel
<p>Discussion: Judge Connors distributed the data used by a workgroup of the Board of District Court Judges and explained the workgroup's study. As a result of the study, the Board of District Court Judges recommends that the judiciary adopt guidelines for ruling on motions to waive fees. He said the recommended guidelines and procedures would apply to all civil cases, but that the number of fee waivers in cases other than family law cases is statistically insignificant. The number of waiver requests increased substantially in family law cases when the filing fee increased in 2009. Judge Connors highlighted the difference in waivers granted by court location. He said that the Board recommended the guidelines use 100% of the poverty guidelines as the standard.</p> <p>Judge Orme said that the committee appeared sold on the idea of consistent guidelines. Judge Parkin asked whether the guidelines would apply in justice court, and Judge Steele asked whether the guidelines would apply in juvenile court. Judge Connors said that the Board had not considered those issues. Judge Parkin said there appears to be no reason why they should not apply in the other courts.</p> <p>Judge Connors said that OCAP is capable of including fee waiver forms — or not — based on a person's income and its relation to the poverty guidelines. Judge Maughan said he wants the guidelines to be discretionary, not mandatory, because his practice is to require a petitioner to pay at least something in</p>	

most circumstances. Judge Connors said that the judge would continue to have that discretion. The purpose is to provide the judge with more information and guidelines for making a decision, but not to require a specific decision in any given set of circumstances.

Judge Connors said the Board is also recommending that there be a specific person, such as a commissioner or a law clerk, designated to review all motions to waive fees and make recommendations to the judge assigned to the case. Mr. Shea said that that kind of detail could be left to the Boards or to the local courts.

Judge Orme suggested that for the next meeting Mr. Shea draft a rule authorizing the program and standards and recognizing their use as a guide, not a mandate. However the rule could mandate the use of the court approved forms.

Action: Mr. Shea will draft a rule for the committee's consideration

Rule 1-201. Removal of a Judicial Council member

By Judge Greg Orme

Discussion: Judge Orme said that most policy making bodies have a process for removing a member under some circumstances. He observed that the Council does not. Neither is there a provision for a recall by the member's constituency. He suggested that there should be some method that is nuanced, graduated and requires a super majority. Judge Maughan expressed concern that mere allegations of misconduct could be used to disqualify someone.

Judge Orme suggested considering the option of a judge's constituency having the ability to cast a vote of no confidence. Mr. Becker said that is at odds with the Council member's duty to represent the interests of the entire court system, not necessarily the interests of the constituent judges.

Judge Dawson suggested that there be some method of comfortably bowing out. Mr. Becker suggested there be a requirement that a Council member advise the chief justice if the member is informed of a criminal charge, a Conduct Commission complaint, or other serious ethical breach. The chief justice could suggest that the member resign if it is in the Council's interest or the individual's interest to do so. Judge Orme said that, because of the amount of time needed by the member to address claims of misconduct, while still fulfilling regular Judicial Council responsibilities, it would often be in the member's best interest to resign from the Council.

There was consensus to add this to the Judicial Council's norms rather than adopting a removal or recall rule.

Action: Mr. Becker will add to the Judicial Council's norms a section requiring a Council member to advise the chief justice if the member is informed of a criminal charge, a Conduct Commission complaint, or other serious ethical breach.

Minimum time on bench for service on Judicial Council and Boards and as Presiding Judge

By Tim Shea

Discussion: At the Council's October 22 workshop, Mr. Becker and Judge Hornak suggested that the Council consider establishing some minimum experience on the bench before a judge could serve in a leadership position, such as presiding judge, board member or Council member. The Council assigned the topic to the Policy and Planning Committee.

Judge Steele said that the practice on the Juvenile Board has been to have relatively new judges as members. Mr. Becker said that the Juvenile Board has decided that as soon as the Fourth District vacancy is filled, that new judge will be the board member from the Fourth District. He said that this is not fair to the new judge, who should have the time to learn how to be a judge before being thrust into a leadership position.

Judge Steele said that there should also be continuity in the chair of the boards. In addition to promoting the vice chair to the chairmanship, the immediate past chair should remain for one more year. Judge Maughan said that may require a rule change to recognize the immediate past chair as a position other than representing the district from which she or he comes.

Judge Reed said that many organizations expect three to five years of experience before assuming leadership roles. Judge Steele said there should be exceptions for small districts and other extraordinary circumstances. Judge Maughan said that we should invite input from the boards and presiding judges. Judge Dawson asked whether the policy would encourage or require some minimum years of experience.

Judge Orme summarized the discussion and asked Mr. Shea to prepare a draft incorporating the ideas discussed. The committee will then invite input from the boards and presiding judges.

Action: Mr. Shea will draft a proposal for the committee to consider, and the committee will invite input from the boards and presiding judges.

The remaining items on the agenda were deferred to the next meeting.

TAB 3

Informal Opinion 12-01
August 31, 2012

Question:

The Ethics Advisory Committee has received opinion requests from two judges about the use of social media. The Committee has elected to combine the two requests into one opinion because of overlapping issues. The questions can be summarized as follows:

- 1) May a judge be “friends” or accept “friend” requests on Facebook from lawyers who appear before the judge?
- 2) If a judge is “friends” with a lawyer on Facebook, does that require a judge to recuse from the lawyer’s cases?
- 3) May a judge identify him or herself as a judge on Facebook?
- 4) May a judge appear in his or her robes in a photo on Facebook?
- 5) May a judge “like” events, companies, institutions, etc., that advertise or post on Facebook?
- 6) If a judge “likes” an entity or activity, does that require the judge’s recusal in any case involving that event or entity?
- 7) May a judge be “friends” with individuals who are candidates for political office?
- 8) May a judge be “friends” with elected officials?
- 9) May a judge “follow” or “like” law firms or others in the legal profession?
- 10) May a judge follow an attorney on Twitter if that attorney might appear before the judge?
- 11) May a judge follow a particular blog on legal or political issues when those blogs are also followed by lawyers or politicians?
- 12) Once associated with an individual or entity, does a judge have a responsibility to continually monitor the comments and webpage contents of those individuals or entities to ensure that the judge is not associated with material that might reflect poorly on the judiciary?
- 13) If a judge may not identify him or herself as a judge on a webpage, may a judge use a pseudonym to post content. For example, if it is inappropriate to be identified as a judge in posting a restaurant review, may a judge use a pseudonym to post such content?
- 14) Is a judge required to always identify him or herself as a judge in order to avoid inappropriate ex parte communications?
- 15) May a judge post content related to personal pursuits and interests?
- 16) May a judge post comments and content on legal topics, particularly when such comments may be along side a post that would be inappropriate if made by a judge?

- 17) May a judge maintain a profile on LinkedIn?
- 18) May the LinkedIn profile identify the occupation of the judge?
- 19) May the LinkedIn profile identify the court on which the judge serves?
- 20) May a judge join LinkedIn groups, law related or otherwise, such as groups created specifically for those in the legal profession?
- 21) May a judge "recommend" someone on LinkedIn either at the judge's initiation or at the individual's request?
- 22) May the judge ask another person to "recommend" the judge?
- 23) If the judge does "recommend" someone, would the judge be required to enter recusal in a proceeding involving that individual?

Discussion:

One of the judges has provided detailed background on the bases for the judge's request. This background provides helpful information in answering these questions and is repeated verbatim:

Prior to and since becoming a judge, I have participated in various forms of what is now known generically as "social media." These Internet-based services generally provide content to participants as well as permit participants to post their own content to the Internet site involved. Examples of services I use include Facebook, Google+, Twitter, Flickr, Panoramio, Food52, Garmin Connect, Earndit, Yelp, Food Spotting, Four Square, and others.

A common feature of these sites is the ability to associate with other users. In the course of using a particular service, a user may choose to have the content posted by other users of the same [service] displayed when the first user visits the Internet site. Facebook users "friend" or "like" other users, thus electing to have content from those users displayed in their respective "feeds." Twitter users "follow" other users, meaning they select other users whose "tweets" will appear in their Twitter feeds. Google+ users select others for various "circles," again resulting in content from those others appearing on the users' Google+ interface. Similar opportunities are available on Flickr and Panoramio to follow other users' photo postings, on Food52 to follow recipes and cooking posts from other users, and on Garmin Connect or Earndit to follow others' exercise and recreational activities.

In some cases (such as Facebook "friends" or Google+ circles) the relationship has to be by mutual agreement-one must accept a Facebook "friend" before one's content is then displayed for the other party. In other cases, a "follow" request does not require permission by the person publishing content on the web-the person desiring content simply opts to have a particular user's content displayed. In some cases, the publishing user may choose whether to require permission for their content to be displayed or not. On Twitter, for example, a user can hide

posts from the public, but allow followers permission to see them. Similarly, on Facebook, some users (generally businesses or celebrities) can set up an account that permits other users to “like” that publisher, again driving that publisher’s content to the user’s feed without permission from the business.

In some cases, other users of the service can view who another user has elected to associate with their feeds. In other words, other users with access to a given user’s content can generally view the other users that person has decided to view as part of their feeds. To be specific, Twitter users who I have granted permission to “follow” me can view my profile and see who else follows me and who I follow. My Facebook “friends” can see who else I have “friended.” In fact, Facebook encourages new associations by suggesting new friends based on a user’s existing friends, and who they have, in turn, “friended.”

The use of social media is becoming commonplace. Computers, laptops, tablets, and smartphones have made internet content and social media easily accessible and regularly viewed. Facebook has more than half a billion users worldwide. Twitter is used by media outlets, celebrities, politicians, and others to instantly update followers on current events. Individuals are able to access web sites on topics that interest them and individuals are able to post comments on those topics and read comments from others. Individuals can respond directly to the comments made by others. Although some of these activities may occur privately between individuals or small groups, much of this activity is widely accessible to, and capable of being viewed by, the public. The use of social media has become a topic of particular interest to judges because of the public nature of the activities and the multitude of topics on which comments may be posted and viewed. Social media are frequently used by the families and friends of judges, which raises questions about whether judges may use social media in the same manner as others.

A few states have issued ethics advisory opinions on judges’ use of social media. These opinions have not addressed all of the questions listed above, but they may provide some guidance in answering the questions. The opinions have primarily addressed judges’ use of Facebook and judges’ contacts with lawyers or others on Facebook pages. Not surprisingly, the states have issued differing opinions on these topics.

The Florida judiciary has issued two ethics advisory opinions and those opinions are perhaps reflective of the minority view to date. In opinion number 2009-20, the Judicial Ethics Advisory Committee of the Florida Supreme Court answered two questions relevant to this opinion. The first question was whether “a judge may post comments and other material on the judge’s page on a social networking site, if the publication of such material does not otherwise violate the Code of Judicial Conduct.” The Florida committee answered this question in the affirmative. The second question was whether “a judge may have lawyers who appear before the judge as ‘friends’ on a social networking site and permit such lawyers to add the judge as their ‘friend.’” The Florida committee answered that question in the negative.

The committee answered the first question in the positive because it addressed the mode of communication and not the substance, and this particular mode of communication in and of itself is not prohibited. In answering the second question in the negative, the committee stated:

The committee believes that listing lawyers who may appear before the judge as “friends” on a judge’s social networking page reasonably conveys to others the impression that these lawyer “friends” are in a special position to influence the judge. This is not to say, of course, that simply because a lawyer is listed as a “friend” on a social networking site or because a lawyer is a friend of the judge, as the term friend is used in its traditional sense, means that the lawyer is, in fact, in a special position to influence the judge. The issue, however, is not whether the lawyer actually is in a position to influence the judge, but whether instead the proposed conduct, the identification of a lawyer as a “friend” on the social networking site, conveys the impression that the lawyer is in a position to influence the judge. The Committee concludes that such identification in a public forum where a lawyer may appear before the judge does convey this impression and therefore is not permitted.

The Ethics Committee of the Kentucky Judiciary issued an opinion that is perhaps representative of the majority position. The questions in that case were whether a judge may “participate in an internet-based social networking site, such as Facebook, LinkedIn, MySpace, or Twitter, and be friends with various persons who appear before the judge in court, such as attorneys, social workers, and/or law enforcement officials?” The committee stated that the answer to the question is a “qualified yes.” The committee stated that the designation of someone as a “friend,” by itself, does not reasonably convey to others an impression that the person is in a special position to influence the judge. The committee stated:

Judges have many extrajudicial relationships, connections and interactions with any number of persons, lawyers or otherwise, who may have business before the judge and the court over which he or she presides. These relationships may range from mere familiarity, to acquaintance, to close, intimate friendships, to marriage. Not everyone of these relationships necessitates a judge’s recusal from a case.

The committee noted that “a designation of a ‘friend’ on a social networking site, does not in and of itself indicate the degree or intensity of a judge’s relationship with the person who is the ‘friend.’ The committee conceives such terms as friend, fan and follower to be terms of art used by the site, not the ordinary sense of those words.” The committee cautioned that social networking sites are “fraught with peril for judges” and that judges “may [not] participate in such sites in the same manner as the general public.”

Having considered the various sides of the issue, the committee determines that the majority position reflected by the Kentucky opinion is the most persuasive.

In issuing this opinion, it is important to answer the questions in a way that will also provide guidance in a landscape that is constantly changing. The Facebook of today may look completely different tomorrow or be replaced with a different social networking site that presents new questions. Throughout history, technology and social circumstances have continually evolved. The changes in and of themselves typically do not create problems for judges. The changes simply create new circumstances under which judges must take care to avoid violating the Code of Judicial Conduct. The proliferation of social media creates new questions based primarily on the very public nature of the participant's comments and activities.¹ However, social media is ultimately an extension of public fora that already exist. In other words, the same principles that apply to judges in other public settings will apply to judges in the "virtual" setting. Although social media have a potentially much broader public reach, it would be difficult to conclude that a judge's activity in one public setting is prohibited if performed in a different setting. It would be difficult to state, for example, that the same comments made in a public meeting would be prohibited if posted on a public internet bulletin board. Similarly, whether a person is a "friend" that might require a judge's recusal is based on the same criteria as when an individual personally observes a judge's interactions with others.

In answering these questions, the most relevant rules in the Code of Judicial Conduct are 1.2, 1.3, 2.4, 2.9, 2.10, 2.11, 3.1, 3.10, and 4.1. The sheer number of relevant Code provisions is indicative of how, as noted by the Ethics Committee of the Kentucky Judiciary, "social networking sites are fraught with peril for judges." However, this is also indicative of how the problems presented by social media are simply the same problems that have existed in other social and public settings.

The overarching principles guiding judges' use of social networking sites are found in Rule 3.1. The rule states that judges shall not "participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality" or "participate in activities that will lead to unreasonably frequent disqualification of the judge." Because of the public nature of social networking, judges must ensure that their activities do not undermine public confidence in the judge or the judiciary. This is also reflected in Rule 1.2, which states that a judge "should act at all times in a manner that promotes and shall not undermine public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety or the appearance of impropriety." Other relevant provisions of the Code require a judge to prevent others from abusing the prestige of the judicial office (Rule 1.3), avoid external influences on the judge's judicial conduct, such as permitting others "to convey the impression that any person or organization is in a position to influence the judge." (Rule 2.4), avoid ex parte communications about pending or impending matters (Rule 2.9), refrain from making public statements about pending or impending cases (Rule 2.10), enter disqualification

¹ The committee recognizes that a website such as Facebook allows users to restrict access to the users' websites, such as allowing access only to family members. The committee is nevertheless of the opinion that even if a Facebook page has restricted access, the page should be considered as potentially available to the public and therefore the same rules apply.

when the judge's impartiality might reasonably be questioned (Rule 2.11), refrain from giving legal advice (Rule 3.10), and maintain political neutrality (Rule 4.1).

The Committee also notes that, given the fact that the internet and social media are regularly used by the majority of individuals in the country, most individuals understand what it means to be a "friend," or to be associated with another person on LinkedIn, or to post comments or material on a website.² There are also most certainly members of the public who do not personally use social media, but are nonetheless aware of the specifics on how to use social media. This opinion reflects the vantage point of the reasonable person who understands social media, which is the majority of the population. With this background, the committee addresses each of the questions in order. This opinion is ultimately general in providing answers to many of these questions, because the questions themselves are broad. More specific answers must await more specific questions regarding a judge's intended activities.

1) May a judge be "friends" or accept "friend" requests from lawyers who appear before the judge?

Answer: Yes. Being friends with someone is not a violation of the Code of Judicial Conduct. Furthermore, the designation of someone as a "friend" on a website such as Facebook does not indicate that the person is a friend under the usual understanding of the term. Many Facebook users have hundreds and even thousands of "friends." Whether someone is truly a friend depends on the frequency and the substance of contact, and not on an appellation created by a website for users to identify those who are known to the user.

2) If a judge is "friends" with a lawyer on Facebook, does that require a judge to recuse from the lawyer's cases?

Answer: Maybe. Disqualification is not automatically required simply because a judge and a lawyer are "friends" on Facebook. Being a "friend" of a judge on Facebook does not automatically create the appearance that the lawyer is in a special position to influence the judge. Lawyers and judges frequently interact in public and private settings. Those interactions create opportunities for lawyers to attempt to influence judges. However, they don't necessarily create, or appear to create, special positions of influence. Because the committee considers a site such as Facebook to be another public setting, simple interaction as "friends" does not create a special position of influence, nor does it create an appearance of a special position to influence. Being "friends" is one factor to consider when deciding whether recusal is necessary. If the judge and lawyer frequently interact on Facebook then that may require the judge's recusal in cases involving that lawyer. By communicating frequently, a judge may create the appearance that the

² According to the website www.internetworldstats.com, the percentage of the population in the United States that uses the internet is approximately 80% and the number of Facebook users is approximately 50%.

lawyer has a special position in relation to the judge. The frequency and substance of the contacts will be determinative.

3) May a judge identify him or herself as a judge on Facebook?

Answer: Yes. A judge may identify him or herself as a judge on Facebook.

4) May a judge appear in his or her robes in a photo on Facebook?

Answer: Yes. A judge may post a photograph of the judge in his or her robes provided that the photograph was taken in an appropriate setting where wearing the robe would otherwise be appropriate, such as in the judge's chambers. When posting to a webpage, the photograph must be displayed in a context that does not undermine the integrity of the office.

5) May a judge "like" events, companies, institutions, etc., that advertise or post on Facebook?

Answer: Yes. A judge may "like" events, companies, institutions, etc. on Facebook.

6) If a judge "likes" an entity or activity, does that require the judge's recusal in any case involving that event or entity?

Answer: No. Liking an event, activity, or entity does not automatically require the judge's recusal. The term "like" is created by the website and the term itself does not import much about the judge's thoughts. A judge is not required, for example, to enter recusal in a case involving the financial institution where the judge does his or her banking, unless the judge has an ownership interest in the institution or another interest that could be substantially affected by the outcome of the case. (See the definition of "economic interest" in the terminology section of the Code of Judicial Conduct, and Madsen v. Prudential Federal Savings & Loan Ass'n, 767 P.2d 538 (Utah 1988)). The judge "likes" the financial institution enough to bank there, but that simple fact does not require recusal. A judge frequently displays his or her preferences, such as through the car the judge drives, the church the judge attends, the university events the judge attends, or the stores where the judge shops. These public displays of preferences do not automatically require disqualification from cases involving the manufacturer of the vehicle, the university, the religious organization, or the businesses. "Liking" something does not constitute a detailed statement about the judge's thoughts on a particular entity or subject.

7) May a judge be "friends" with individuals who are candidates for political office?

Answer: Yes. A judge may be "friends" with individuals who are candidates for political office. Again, this in and of itself is not sufficient to fall within prohibited political activity under Rule 4.1. Many judges have friendships with individuals who are running for office. Being "friends" with a candidate does not automatically constitute endorsement of that individual

for office, which is the standard in Rule 4.1. The judge must simply be careful about any statements that the judge makes on the webpage that might create an appearance of endorsement. Also, many individuals who are candidates for office have a Facebook page specifically designed to promote the individual's candidacy. A judge may not be a "friend" on that type of webpage, as that may constitute endorsement.

8) May a judge be "friends" with elected officials?

Answer: Yes. A judge may be friends with elected officials.

9) May a judge "follow" or "like" law firms or others in the legal profession?

Answer: Yes. A judge may follow or like law firms or others in the legal profession. In Formal Opinion 98-1, the Judicial Council recognized that judges may socialize with attorneys, such as by having lunch with attorneys or attending a law firm's open house. Social interaction between judges and attorneys occurs in other public settings. A judge may "like" a law firm enough to attend an open house or have lunch with one of the partners, and that degree of interaction does not automatically create perceptions of bias. As noted above, "liking" something or someone does not convey much about the judge's thoughts on a topic. A simple designation on a webpage, without more, does not create an appearance of bias. As noted, a judge may be required to avoid posting comments when liking or following a firm, but the designation of "liking" something does not otherwise convey much meaning.

10) May a judge follow an attorney on Twitter if that attorney might appear before the judge?

Answer: Yes. Similar to the answer above, following an attorney on Twitter does not automatically create issues. If the judge were to begin receiving ex parte communications, for example, that would create problems and the judge could no longer follow that particular attorney.

11) May a judge follow a particular blog on legal or political issues when those blogs are also followed by lawyers or politicians?

Answer: Yes. Simply following a blog that is also followed by politicians or those in the legal profession does not create issues for a judge. Judges and lawyers frequently read the same legal materials, distributed by the same sources. A blog is not that much different.

12) Once associated with an individual or entity, does a judge have a responsibility to continually monitor the comments and webpage contents of those individuals or entities to ensure that the judge is not associated with material that might reflect poorly on the judiciary?

Answer: No. A judge is not required to monitor other webpages. A judge has a responsibility to monitor his or her own activities to ensure that the judge is not associated with material that reflects poorly on the judiciary. However, a judge is not required to continually monitor the websites of others. If a judge happens to review a website with which the judge is associated, and the website contains questionable content, the judge may be required to disassociate from the site. The question of what might be considered "association" and what might be considered questionable content will have to await a more specific fact situation.

13) If a judge may not identify him or herself as a judge on a webpage, may a judge use a pseudonym to post content. For example, if it is inappropriate to be identified as a judge in posting a restaurant review, may a judge use a pseudonym to post such content?

Answer: Yes. As noted above, a judge may identify him or herself as a judge on websites, provided that the identification is in an appropriate context. However, a judge should not use his or her title when posting something such as a restaurant review because that may create the appearance that the judge is using the prestige of the judicial office to advance the interests of a for-profit entity. There is no legitimate reason for using the title in such a situation.

The Committee recognizes that on many websites users participate under "screen names" or pseudonyms. In fact, users are sometimes required to use a pseudonym. Judges may post comments under such a screen name. In posting comments, a judge should operate under the assumption that those who view the judge's comments will know that the commenter is a judge and therefore the judge must be careful in his or her comments to ensure that the comments do not undermine public confidence in the judiciary.

14) Is a judge required to always identify him or herself as a judge in order to avoid inappropriate ex parte communications?

Answer: No. A judge is not required to always identify him or herself as a judge. If a judge inadvertently receives ex parte communications, then the judge must take appropriate action, the same as in any other situation in which ex parte communications are inadvertently received. This may require recusal or notifying other parties of the communication.

15) May a judge post content related to personal pursuits and interests?

Answer: Yes. A judge may post content on personal interests and pursuits.

16) May a judge post comments and content on legal topics, particularly when such comments may be alongside a post that would be inappropriate if made by a judge?

Answer: Maybe. A judge may post comments and content on legal topics, unless the comments show a bias toward an issue that may come before the judge's court or the comment could be considered legal advice. A judge may post comments even if the comments might

appear in the same post as comments that would be inappropriate if made by a judge. However, if the public might associate the judge with a particular comment in a way that would undermine the judge's impartiality, such as a judge specifically taking a position adopting a poster's comments on a legally or politically controversial topic, then such a post would be inappropriate.

17) May a judge maintain a profile on LinkedIn?

Answer: Yes. A judge may maintain a profile on LinkedIn.

18) May the LinkedIn profile identify the occupation of the judge?

Answer: Yes. A judge may identify him or herself as a judge.

19) May the LinkedIn profile identify the court on which the judge serves?

Answer: Yes. The profile may also identify the judge's court.

20) May a judge join LinkedIn groups, law related or otherwise, such as groups created specifically for those in the legal profession?

Answer: Yes. A judge may join law related or other groups.

21) May a judge "recommend" someone on LinkedIn either at the judge's initiation or at the individual's request?

Answer: Maybe. A judge is not automatically prohibited from recommending someone on LinkedIn. Judges are permitted to write letters of recommendation, for example, and this would be somewhat similar. There are, however, restrictions placed on judges when writing letters of recommendation. A judge may be prohibited from writing a letter if the recommendation will be directly received by an individual or entity that regularly appears in the judge's court. There may be a perceived coercive effect on someone who regularly appears before the judge. However, recommendations on LinkedIn are usually not specifically directed toward individuals and therefore this aspect typically won't be an issue.

A judge may not, however, "recommend" someone who regularly appears before the judge. A recommendation on LinkedIn is different from being a "friend" on Facebook, or "liking" the attorney, because the recommendation may be perceived as an endorsement of the person's skills and credibility. LinkedIn is a professional networking site and the purpose of recommendations is to promote the professional careers of members. A judge may "recommend" attorneys who don't appear before the judge or individuals in other professions. A judge may also recommend someone who has worked for the judge, such as a law clerk.

22) May the judge ask another person to “recommend” the judge?

Answer: Maybe. A judge may ask another person to recommend the judge if the judge is seeking another judicial position. When judges are seeking judicial positions, they often ask others to provide recommendations. However, if the judge is seeking a position outside of the judiciary, such as at a law firm upon the judge’s retirement, then the judge should not seek a recommendation while still occupying the judicial office.

23) If the judge does “recommend” someone, would the judge be required to enter recusal in a proceeding involving that individual?

Answer: Maybe. If the judge recommends someone on LinkedIn, the judge is not automatically required to enter recusal. If the recommendation is, for example, for a law clerk who has worked for the judge, then the recommendation is based on the judge’s working relationship with the individual and is not based on court performance. Recusal is not automatically required. As noted above, however, recommending someone on LinkedIn is different from liking someone on Facebook because of the stronger statement it makes about the skills of the individual. Recusal would therefore be required when the judge is recommending the attorney based on the judge’s interactions with the attorney in court. Because judges must avoid activities that result in frequent disqualifications, judges should not recommend attorneys or others who regularly appear before the judge.

Conclusion:

In answering the above questions, it may have been simpler to answer most in the negative. This would have created a bright line for judges to follow. However, social media have become so prevalent and in many ways an important form of communication. Similar to other public settings, judges should be permitted to enter. Once they have entered, judges must be cautious. However, most of the activities and statements contained in the questions are very minimal. They are not the types of activities and statements that would create issues in other public settings. There must be more. There may be times when actions will be prohibited or will otherwise have consequences requiring the judge to act. As judges participate in social media, the committee encourages judges to submit opinion requests dealing with more specific factual situations.

TAB 4

Rule 1-204. Executive committees.

Intent:

To establish executive committees of the Council.

To identify the responsibility and authority of the executive committees.

To identify the membership and composition of the executive committees.

To establish procedures for executive committee meetings.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) The following executive committees of the Council are hereby established: (a) the Management Committee; (b) the Policy and Planning Committee; and (c) the Liaison Committee.

(2) The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is also responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.

(3) The Policy and Planning Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of justice. The committee shall research and make recommendations regarding any matter referred by the Council.

(4) The Liaison Committee shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the authority,

31 jurisdiction, organization or administration of the judiciary. When the exigencies of the
32 legislative process preclude full discussion of the issues by the Council, the Committee
33 may endorse or oppose the legislation, take no position or offer amendments on behalf
34 of the Council.

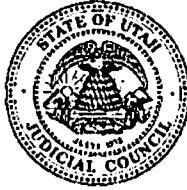
35 (5) Members of the executive committees must be members of the Council. Each
36 executive committee shall consist of at least three members appointed by the Council to
37 serve at its pleasure. The members of the Policy and Planning Committee and the
38 Liaison Committee shall elect their respective chairs annually and select a new chair at
39 least once every two years.

40 (6) Each committee shall meet as often as necessary to perform its responsibilities,
41 but a minimum of four times per year. Each committee shall report to the Council as
42 necessary.

43 (7) The Administrative Office shall serve as the secretariat to the executive
44 committees.

45

TAB 5



Administrative Office of the Courts

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

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Judicial Council
From: Tim Shea *T. Shea*
Date: September 19, 2012
Re: Rules for final action. Media rules

The comment period for the following rules has closed, and the Policy and Planning Committee recommends that they be approved.

Rule summary

CJA 04-0401.01. Electronic media coverage of court proceedings. New. Replaces Rule 4-401. Permits electronic media coverage of any public court hearing. Describes application and approval process. Establishes factors for denying electronic media coverage. Describes limits. The further amendments recommended by the Policy and planning Committee are shown by interlineations.

CJA 04-0401.02. Possession and use of portable electronic devices. New. Permits possession and use of portable electronic devices in courthouses. Allows judge to restrict use in courtrooms.

Comments

The comments and links to two opinion pieces are attached.

Encl. Draft rules
Comments

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

450 South State Street / POB 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: tims@email.utcourts.gov

Rule 4-401.01 Electronic media coverage of court proceedings.

Intent:

To establish uniform standards and procedures for electronic media coverage of court proceedings.

To permit electronic media coverage of proceedings while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice.

Applicability:

This rule applies to the courts of record and not of record.

This rule governs electronic media coverage of proceedings that are open to the public.

Statement of the Rule:

(1) Definitions.

(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) "Proceeding" as used in this rule means any trial, hearing, or other matter that is open to the public.

(1)(C) "Electronic media coverage" as used in this rule means recording or transmitting images or sound of a proceeding.

(1)(D) "News reporter" as used in this rule means any person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news and information to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

(2) Presumption of electronic media coverage; restrictions on coverage.

(2)(A) There is a presumption that electronic media coverage by a news reporter shall be permitted in public proceedings. The judge may prohibit or restrict electronic media coverage only if the judge finds that the reasons for doing so are sufficiently compelling to outweigh the presumption.

30 (2)(B) When determining whether the presumption of electronic media coverage has
31 been overcome and whether such coverage should be prohibited or restricted beyond
32 the limitations in this rule, a judge shall consider some or all of the following factors:

33 (2)(B)(i) whether there is a reasonable likelihood that electronic media coverage will
34 prejudice the right of the parties to a fair proceeding;

35 (2)(B)(ii) whether there is a reasonable likelihood that electronic media coverage will
36 jeopardize the safety or well-being of any individual;

37 (2)(B)(iii) whether there is a reasonable likelihood that electronic media coverage will
38 jeopardize the interests or well-being of a minor;

39 (2)(B)(iv) whether there is a reasonable likelihood that electronic media coverage will
40 constitute an unwarranted invasion of personal privacy of any party or witness;

41 (2)(B)(v) whether electronic media coverage will create adverse effects greater than
42 those caused by media coverage without recording or transmitting images or sound;

43 (2)(B)(vi) the adequacy of the court's physical facilities for electronic media
44 coverage;

45 (2)(B)(vii) the public interest in and newsworthiness of the proceeding;

46 (2)(B)(viii) potentially beneficial effects of allowing public observation of the
47 proceeding through electronic media coverage; and

48 (2)(B)(ix) any other factor affecting the fair administration of justice.

49 (2)(C) If the judge prohibits or restricts electronic media coverage, the judge shall
50 make particularized findings orally or in writing on the record. Any written order denying
51 a request for electronic media coverage shall be made part of the case record.

52 (2)(D) Any reasons found sufficient to prohibit or restrict electronic media coverage
53 shall relate to the specific circumstances of the case rather than merely reflect
54 generalized views or preferences.

55 (3) Duty of news reporters to obtain permission; termination or suspension of
56 coverage.

57 (3)(A) Unless otherwise ordered by the court, News reporters shall file a written
58 request for permission to provide electronic media coverage of a proceeding at least 24

59 ~~hours one business day~~ before the proceeding; ~~however, upon~~. Upon a showing of good
60 cause, the judge may grant a request on shorter notice.

61 (3)(B) A judge may terminate or suspend electronic media coverage at any time
62 without prior notice if the judge finds that continued electronic media coverage is no
63 longer appropriate based upon consideration of one or more of the factors in Paragraph
64 (2)(B). If permission to provide electronic media coverage is terminated or suspended,
65 the judge shall make the findings required in Paragraphs (2)(C) and (2)(D).

66 (4) Conduct in the courtroom; pool coverage.

67 (4)(A) Electronic media coverage is limited to one audio recorder and operator, one
68 video camera and operator, and one still camera and operator. If more than one news
69 reporter has requested permission to provide electronic media coverage, it is the
70 responsibility of news reporters to determine who will participate at any given time, how
71 they will pool their coverage, and how they will share audio, video or photographic files
72 produced by pool coverage. The pool equipment operators shall use equipment that is
73 capable of sharing audio, video or photographic files to pool recipients in a generally
74 accepted format. The pooling arrangement shall be reached before the proceedings
75 without imposing on the judge or court staff. Neither the judge nor court staff shall be
76 called upon to resolve disputes concerning pool arrangements.

77 (4)(B) News reporters shall designate a representative with whom the court may
78 consult regarding pool coverage, and shall provide the court with the name and contact
79 information for such representative.

80 (4)(C) Tripods may be used, but not flash or strobe lights. Normally available
81 courtroom equipment shall be used unless the judge or a designee approves
82 modifications, which shall be installed and maintained without public expense. Any
83 modifications, including microphones and related wiring, shall be as unobtrusive as
84 possible, shall be installed before the proceeding or during recess, and shall not
85 interfere with the movement of those in the courtroom.

86 (4)(D) The judge may position news reporters, equipment, and operators in the
87 courtroom. Proceedings shall not be disrupted. Equipment operators and news
88 reporters in the courtroom shall:

89 (4)(D)(i) not use equipment that produces loud or distracting sounds;

90 (4)(D)(ii) not place equipment in nor remove equipment from the courtroom nor
91 change location while court is in session;

92 (4)(D)(iii) conceal any identifying business names, marks, call letters, logos or
93 symbols;

94 (4)(D)(iv) not make comments in the courtroom during the court proceedings;

95 (4)(D)(v) not comment to or within the hearing of the jury or any member thereof at
96 any time before the jury is dismissed;

97 (4)(D)(vi) present a neat appearance and conduct themselves in a manner
98 consistent with the dignity of the proceedings;

99 (4)(D)(vii) not conduct interviews in the courtroom except as permitted by the judge;
100 and

101 (4)(D)(viii) comply with the orders and directives of the court.

102 (5) Violations. In addition to contempt and any other sanctions allowed by law, a
103 judge may remove from the proceeding anyone violating this rule or the court's orders
104 and directives and terminate or suspend electronic media coverage.

105 (6) Limitations on electronic media coverage. Notwithstanding an authorization to
106 conduct electronic media coverage of a proceeding, and unless expressly authorized by
107 the judge, there shall be no:

108 (6)(A) electronic media coverage of a juror or prospective juror until the person is
109 dismissed;

110 (6)(B) electronic media coverage of the face of a person known to be a minor;

111 (6)(C) electronic media coverage of an exhibit or a document that is not part of the
112 official public record;

113 (6)(D) audio recording or transmission of the content of bench conferences or in-
114 chambers hearings; or

115 (6)(E) audio recording or transmission of the content of confidential communications
116 between counsel and client, between clients, or between counsel.

117 (7) Except as provided by this rule, recording or transmitting images or sound of a
118 proceeding without the express permission of the judge is prohibited. This rule shall not

9 diminish the authority of the judge conferred by statute, rule, or common law to control
120 the proceedings or areas immediately adjacent to the courtroom.

121

Rule 4-401.02. Possession and use of portable electronic devices.

Intent:

To permit the use of portable electronic devices in courthouses and courtrooms, subject to local restrictions.

Applicability:

This rule applies to the courts of record and not of record.

Statement of the Rule:

(1) Definitions.

(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) "Portable electronic device" as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.

(2) Possession and use of portable electronic devices in a courthouse.

(2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.

(2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.

(2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.

(3) Restrictions.

(3)(A) Use of portable electronic devices in common areas. The presiding judges may restrict the time, place, and manner of using a portable electronic device to maintain safety, decorum, and order of common areas of the courthouse, such as lobbies and corridors.

(3)(B) Use of portable electronic devices in courtrooms.

(3)(B)(i) A person may silently use a portable electronic device inside a courtroom.

31 (3)(B)(ii) A person may not use a portable electronic device to record or transmit
32 images or sound of court proceedings except in accordance with Rule 4-401.01.

33 (3)(B)(iii) A judge may further restrict use of portable electronic devices in his or her
34 courtroom. Judges are encouraged not to impose further restrictions unless use of a
35 portable electronic device might interfere with the administration of justice, disrupt the
36 proceedings, pose any threat to safety or security, compromise the integrity of the
37 proceedings, or threaten the interests of a minor.

38 (3)(B)(iv) During trial and juror selection, prospective, seated, and alternate jurors
39 are prohibited from researching and discussing the case they are or will be trying. Once
40 selected, jurors shall not use a portable electronic device while in the courtroom and
41 shall not possess an electronic device while deliberating.

42 (4) Use of portable electronic devices in court chambers. A person may not use a
43 portable electronic device in chambers without prior approval from the judge.

44 (5) Instruction to witnesses. It should be anticipated that observers in the courtroom
45 will use portable electronic devices to transmit news accounts and commentary during
46 the proceedings. Judges should instruct counsel to instruct witnesses who have been
47 excluded from the courtroom not to view accounts of other witnesses' testimony before
48 giving their own testimony.

49

Utah State Courts Rules - Published for Comment

I write in support of the rule to allow cameras in the courtroom, as well as more open use of electronic communications technology within the court.

For years now, the Utah Supreme Court has shown by example that it can be done, and with minimal disruption to the proceedings. By allowing news media to pool resources to provide coverage, it further reduces the impact to the court system.

I have covered trials in other states where cameras are allowed in the court. In those cases, the judge has exercised wise discretion to protect both victim/witnesses and a jury, but also appropriately balancing the public's right to know by allowing coverage of a proceeding.

Surveys conducted by the courts in Utah and other states have found that a large majority of those who get their news about the judiciary get it from the news media. To quote from Justice Christine Durham's welcome letter in the Utah State Courts' official media guide:

"The Administrative Office of the Courts recently conducted a survey to determine the level of public trust and confidence in the Utah State Courts. Respondents ranked media as their number one source for information about Utah's judiciary.

Accurate reporting is essential to ensuring the public receives a clear picture of Utah's courts."

By allowing television cameras and other electronic devices in the courtroom, you are doing just that.

Posted by Ben Winslow August 23, 2012 05:40 PM

Re: CJA 04-0401.02. Possession and use of portable electronic devices. New. Permits possession and use of portable electronic devices in courthouses. Allows judge to restrict use in courtrooms:

Wouldn't now be a good time to allow people to make their own recordings of court proceedings using their own personal recording devices? The court's audio recording is still the official record, so how does my making my own recording (and thus saving the time and money I'd otherwise spend on ordering a copy of the official recording from the court) prejudice anyone? I see nothing but upside to allowing people to make their own recordings.

Posted by Eric K. Johnson August 23, 2012 12:02 PM

The Hon. Matthew B. Durrant, Chairperson
Utah Judicial Council
450 South State Street
P.O. Box 140210

Salt Lake City, Utah 84114-0210

Re: Code of Judicial Administration Proposed Rules 4-401.01 and 4-401.02, Electronic Media Coverage of Court Proceedings and Possession and Use of Portable Electronic Devices, Respectively

Dear Chief Justice Durrant:

The Reporters Committee for Freedom of the Press ("the Reporters Committee") submits the following comments in response to the June 9, 2012, drafts of Code of Judicial Administration proposed Rules 4-401.01 and 4-401.02. We thank you for this opportunity to comment.

By way of background, the Reporters Committee is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. As advocates for the rights of the news media and others who gather and disseminate information about issues that affect the public, we have a strong interest in the policies governing the rights of journalists to monitor and report on the proceedings of court systems nationwide. As such, the Reporters Committee commends the Judicial Council for its approval of rules that serve this interest, and strongly supports the proposals.

I. Comments on Proposed Rule 4-401.01: Electronic Media Coverage of Court Proceedings

The Reporters Committee supports the Judicial Council's proposed rule regarding the use of cameras and other recording devices in criminal and civil trial court proceedings in Utah. It strengthens the opportunity for meaningful public access to courtroom proceedings while appropriately protecting the interests of judges, parties, witnesses and jurors.

a. Access to the courts is a recognized right that offers benefits to the public, as well as the judicial system.

Courts have long recognized that public access to courtroom proceedings provides benefits to both the judicial system and the public. In *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982), the U.S. Supreme Court observed that the right of public access to criminal trials "plays a particularly significant role in the functioning of the judicial process and the government as a whole." The Court has noted that increased public access to judicial proceedings "enhances the quality and safeguards the integrity of the factfinding process," *id.*, by discouraging perjury, the misconduct of participants and decisions based on secret bias or partiality. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (plurality opinion). Moreover, the Court has found that public access "heighten[s] public respect for the judicial process" and allows the public to "participate in and serve as a check upon the judicial process — an

essential component in our structure of self-government.” *Globe Newspaper Co.*, 457 U.S. at 606.

The public greatly benefits from increased access to the judicial process. The Supreme Court has noted that there is a “therapeutic value” to the community by allowing it to reconcile conflicting emotions about high-profile cases. *Richmond Newspapers, Inc.*, 448 U.S. at 570. Additionally, public access reassures the public that its government systems are working properly and correctly, and enhances public knowledge and understanding of the court system. *Id.*

In more recent times, the public has relied greatly on the news media as its surrogate at courtroom proceedings. The Supreme Court recognized as much, noting that most people acquire information about the court system “chiefly through the print and electronic media.” *Id.* at 573. Allowing cameras to take the courtroom to the people, either in part or in whole, allows the media to best serve as public surrogates by providing unfiltered, unfettered, uncorrupted access to the judicial system. Viewing courtrooms through the lens of a camera allows the public to get as close to the courtroom as possible and directly observe the administration of justice.

Importantly, these benefits come with few strings attached. Technological advances have eliminated the concerns that cameras will create a physical disturbance in the courtroom.

Cameras now operate in near silence without potentially distracting bright lights and can easily fade into the background in a courtroom setting. In fact, as the New Hampshire Supreme Court noted, a number of studies have reached the same conclusion: Cameras in the courtroom cause very limited, if any, physical distractions. *In re Petition of WMUR Channel 9*, 813 A.2d 455, 459 (N.H. 2002) (“Advances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows court proceedings to be photographed and recorded in a dignified, unobtrusive manner, which allows the presiding justice to fairly and impartially conduct court proceedings.”).

b. The recommended presumption of electronic media coverage will promote public access while retaining safeguards.

The Judicial Council’s recommendation for creating a presumption of electronic media coverage will strengthen public access to courtroom proceedings while continuing to provide basic procedural safeguards to protect the legitimate interests in sometimes shielding a particular courtroom proceeding from the lens of a camera. A presumption of access does not prevent a court from limiting court access for good cause; it is simply a default choice that can be overcome by a showing that various interests of the parties are sufficiently compelling to outweigh the presumption. The same procedural safeguards found in the current rule would remain.

Indeed, the recommended new rule preserves the strong and important protections already in place under the current formulation of the rule, requiring the judge to consider a multitude of factors, including the fair trial rights of the parties, the privacy and safety of parties, witnesses and jurors, the risk of distraction, the adequacy of the courtroom's facilities and any other factor that may influence the fair administration of justice.

c. Specific court findings regarding electronic media coverage promote judicial administration and the rights to appeal.

The Reporters Committee also strongly supports the Judicial Council's recommendation to require specific on-the-record findings in support of a court's prohibition or restriction on the use of cameras or other recording devices. The current rule already requires the court to consider specific factors in deciding whether, in the exercise of his or her discretion, to permit photography; this proposal would simply require the court to disclose the grounds for its decision. Such a requirement is a net positive for both the administration of justice and the appellate process: It helps to ensure that the trial court makes well-informed decisions after hearing all interested parties and provides the parties with a means for understanding the court's rationale for its decision.

Moreover, requiring such findings also would help ensure that courts follow the important demands of the U.S. Supreme Court in restricting camera access. In *Chandler v. Florida*, 449 U.S. 560, 582 (1981), the Court dismissed the claim that cameras in a courtroom unduly prejudiced the specific criminal trial before it because there was "no evidence that any participant in this case was affected by the presence of cameras" and therefore "no showing that the trial was compromised by television coverage." By demanding basic evidentiary findings, the safeguards proposed by this Council set forth guidelines for a judge to consider the evidence the Supreme Court referred to in *Chandler*.

d. The definition of a "news reporter" subject to the proposed rule is consistent with the constitutionally protected function the media perform.

The unprecedented growth in size, scope and popularity of the Internet has transformed the news industry. As mainstream news organizations increasingly rely on their websites to deliver their content and attract readers, and nontraditional online outlets provide information about current events of public interest, the definition of who qualifies as a journalist can no longer fit squarely into a framework of what the news media traditionally have been.

Many courts nationwide have long recognized this broad definition, holding that nontraditional newsgatherers may invoke various privileges that belong to reporters if they can establish that, at the time of newsgathering, they had the intent to disseminate news to the public. See *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2d Cir. 1987); see also *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (noting that "[w]hat makes journalism journalism is not its format but its content"). By focusing on the reporter's

function and intent, rather than his or her title or credentials, the proposed rule adopts a standard that accurately reflects modern and future newsgathering practices.

II. Comments on Proposed Rule 4-401.02: Possession and Use of Portable Electronic Devices

The Reporters Committee supports the Judicial Council's proposed rule regarding the use of portable electronic devices in Utah trial courts. It reflects an understanding of changes in technology and journalism and enhances reporters' ability to do their jobs more effectively.

In recent years, the social media service Twitter and similar electronic media that allow live, online updates have become some of the most valuable reporting tools for journalists who regularly cover court proceedings, particularly in competitive news markets. Tweeting and live blogging have proven especially effective in covering courts, where the length and formality of proceedings often prevent journalists from providing timely reports to readers. But reporters now use courtroom tweets and live blogs to provide quick updates throughout a trial and share observations that may not make it in the main news article but that their followers may find interesting. In the involuntary manslaughter trial of Dr. Conrad Murray in the death of Michael Jackson last November, The Los Angeles Times' @latimesMJ sent out several courtroom tweets daily to its nearly 8,600 followers. The local ABC news station sent out nearly 1,900 tweets to about 3,000 followers during the six-week trial. Nicole Lozare, *More Reporters Tweeting from Courtroom*, The News Media & The L., Fall 2011, at 6, 6, available at <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-fall-2011/more-reporters-tweeting-court>. In short, the ability to use laptop computers, cellular phones and other electronic devices in courtrooms enables journalists to meet the demands of their increasingly digital readers.

And much like live camera coverage, the use of electronic media in this manner often provides near-contemporaneous accounts of court proceedings that provide greater public insight into how the judicial process operates — a benefit that serves the judicial system as much as it serves the public. "I thought the public's right to know what goes on in federal court and the transparency that would be given the proceedings by live-blogging outweighed any potential prejudice to the defendant," U.S. District Judge Mark Bennett of Sioux City, Iowa, said in an interview with the ABA Journal, explaining why he allowed a Cedar Rapids Gazette reporter to cover the tax fraud trial of a local landlord through live courtroom updates.

We thank you for the opportunity to comment on the Judicial Council's proposed rules. The Reporters Committee strongly supports the proposals and commends the Council for its recognition of the important interests underlying the public's and the news media's right of access to judicial proceedings.

Sincerely,

Gregg P. Leslie, Interim Executive Director

Kristen Rasmussen, McCormick Legal Fellow

The Reporters Committee for Freedom of the Press

Posted by Gregg P. Leslie August 22, 2012 11:48 AM

Judge John Walton, Judge Rand Beacham and I wish to comment on the proposed rule 4 – 401.01, Electronic Media Coverage of Court Proceedings. Open electronic media access to the courts appears to be a good idea in theory. Furthermore, we have no objection to a rule which establishes some factors that a judge might consider in determining whether electronic media coverage, such as live streaming, should be permitted. However, we are very concerned about the shift in presumption, in essence requiring a judge to justify his or her efforts to adopt procedures that would assure a fair hearing for all concerned. Other branches of government have, by rule or statute, gradually limited the discretion of trial court judges over the years. It is somewhat troubling to have those in charge of the judiciary also suggest that our discretion be limited in matters relating to activity in the courtroom.

We are aware of the argument that disruptions in the courtroom because the media is present are, if a problem at all, de minimis. That argument however, carries very little weight with those of us who are in the courtroom experiencing those de minimis disruptions. Despite what some may believe, we don't have security personnel or metal detectors to simply annoy the majority. Security measures exist in order to avoid the de minimis security breach. In the context of security, even one problem is too many. Regarding disruptions in the courtroom we believe that the same analysis should apply. We would hope that people with a political agenda or a desire to simply attack the reputation of others would not use the availability of electronic media in the courtroom to further their agenda. However, we fear that there are those who will do precisely that.

We of course appreciate the fact that, although the burden would shift to judges to justify excluding the electronic media, we would still have that option upon appropriate findings. However we anticipate that those findings would be made in the very type of case the media would like to cover live in the courtroom. The media will be much more anxious to cover cases involving the possibility of an outburst by a victim or a member of the victim's family or by a witness or a litigant. In those circumstances there might be sufficient justification to deny a request for electronic media in the courtroom. However, we expect that denial of such a request will prompt fairly contested hearings for which we have little time.

In jury trials we are concerned that live streaming may make available to members of the jury information that would not otherwise be accessible. This could include motions considered outside the presence of the jury but which may be interesting enough to be broadcast on the evening news.

In Cedar City, one of the court house locations in the Fifth District, the defendant in a criminal case is brought to the back door of the courthouse and then escorted through

the back door into the building. The defendant is exposed to at least two direct lines of sight from taller buildings for about 10 to 20 feet of that journey. An attempt to harm the defendant would be fairly easy as it is. Live streaming of proceedings so that an attack of that nature could be coordinated could increase the possibility of such an event.

As judges we like to see all of the courtroom and we prefer that our bailiffs see the entire courtroom as well. A tripod with a camera on top of it could restrict the opportunity to view activity in the courtroom, presenting a potential security risk.

Some judges conduct a portion of jury selection in camera. (That phrase may take on an entirely new meaning if this rule is passed.) Some of us don't have offices large enough to accommodate everybody that needs to be there plus a tripod with a video camera.

We realize that the Judiciary in Utah is frequently on the cutting edge of new developments. We're just not sure that restricting a judge's control over his or her courtroom by creating a presumption in favor of electronic media access is the direction the courts in Utah should be going. This proposed rule neither corrects a problem of which we are aware nor does it increase the quality of justice for those who appear in our courtrooms.

Posted by Judge Michael Westfall, Judge John Walton and Judge Rand Beacham
August 21, 2012 05:28 PM

I agree with letting the media record in the courtrooms. Court cases (excluding juveniles cases) are already a matter of public record so why not let the interested parties watch? There are many misconceptions about the judicial system because people in general do not see it in action. However, I agree there is a danger in letting it go too far and turning high publicity trials into TV soap operas. If this does pass, judges and the media need to be warned to tread ethically and not abuse this power to infringe on the rights of others.

Posted by Lis Stewart August 17, 2012 05:47 PM

I am legal counsel for the Utah Media Coalition, a coalition of Utah's daily and weekly newspapers and radio and television broadcasters. We support the new proposed rule for cameras in the courtroom. One of the attorneys associated with our group, Jeff Hunt, has served on the committee studying this rule and has often explained our positions and concerns about this issue. The proposed rule seems to represent a fair balancing of the competing interests on this issue. It would vault Utah into the position of having some of the most open and accessible courtrooms in the nation regarding cameras in court. We believe this will benefit the public and enhance the integrity and credibility of the judicial system. We urge adoption of the rule. Please feel free to contact me if you have any questions.

Mike O'Brien

Jones Waldo

801-521-3200

Posted by Mike O'Brien August 14, 2012 05:14 PM

I write in support of the proposed rule regarding portable electronic devices in courthouses, with one notable exception. The proposed rule recognizes the value and ubiquity of portable electronic devices in our modern world by setting forth the general rule that such devices may be used anywhere in the courthouse, including courtrooms, except where otherwise limited by the rule or judge order. Unfortunately, this general rule is seriously undermined by the provision that gives judges complete and unlimited discretion to ignore the general rule for whatever reason (or no reason) and ban the use of portable devices without having to make a finding that some countervailing judicial interest is adversely impacted by the presence or use of portable devices. This is a classic tail wagging the dog situation where the exception swallows the rule. Instead of requiring a judge to abide by the general rule (unless one or more of five articulated exceptions exist) the proposed rule merely "encourages" judges to follow the general rule and not impose restrictions on use unless the device "might" interfere with the administration of justice, disrupt the proceedings, pose a threat to safety or security, compromise the integrity of the proceedings, or threaten the interests of a minor. The words "encourage" and "might" are nowhere to be found in the language of the rule proposed by the committee which studied the portable device issue for over a year and drafted the original language of the proposed rule. The allowance of unlimited discretion to a judge to ban portable devices for any reason whatsoever and without requiring an explanation turns the general rule on its head and is inconsistent with and ignores

- (1) the language of the rule as originally proposed by the Social Media Subcommittee of the Judicial Council Outreach Committee (Subcommittee);
- (2) the subsequent approval of the Subcommittee's proposed rule by the Judicial Outreach committee (Outreach Committee);
- (3) the subsequent approval of the rule by the Judicial Council Study Committee on Technology in the Courtroom (Study Committee); and
- (4) other similar rules (e.g. the proposed rule governing cameras in the courtroom) where judges are required to state on the record why the general rule is being deviated from and identify one or more of the identified reasons for the deviation.

The Social Media Subcommittee, which I chaired, was comprised of eleven court executives, practicing lawyers and judges from all court levels and studied the issue for a year. The Subcommittee recognized the benefits to the public, lawyers and the media in allowing (under controlled conditions) use of mobile devices in courthouses. The Subcommittee recognized that improper use of mobile devices, however, may pose a potential threat to the fair administration of justice. Accordingly, the Subcommittee identified and set forth five appropriate circumstances when a judge may limit or ban portable devices, but contemplated judges making a finding that one or more of the five

circumstances were present. The five circumstances, which were extensively discussed and debated by the Subcommittee, were broadly drafted to give judges maximum, but not unlimited, discretion to forego the general rule. Turning the five articulated reasons for deviating from the general rule into simple suggestions is inconsistent with both the spirit and letter of the Subcommittee's recommended rule.

The Outreach Committee also approved the rule as proposed by the Subcommittee. The Outreach Committee has an even broader composition, including not only judges, attorneys and court executives, but also a public member. The grafting on of the new language also undercuts the action of the Outreach Committee and accords its approval little weight.

The Judicial Council Study Committee reviewed the Subcommittee recommendation with a fresh set of eyes and debated the policy over several months. On a 9-3 vote, the Study Committee approved (with minor revisions not relevant here) the rule as recommended by the Subcommittee and Outreach Committees. In adopting the rule (and rejecting a plea by the three dissenting voters to give judges unlimited discretion) the Study Committee made the following finding, which is worth noting here:

The proposed policy is built on the philosophy that the judiciary should focus on regulating conduct that is injurious to the judicial process and not on regulating the types of electronic devices that may or may not be allowed in the courthouse or individual courtrooms.

The new language flies in the face of the above finding and allows a judge to ban portable devices not because of any feared injurious conduct, but simply because the judge does not like the device.

Finally, it is fairly common for a judicial rule which reflects a policy position, but allows departure from that policy for identified reasons, to require the applicable reason for a departure to be articulated. This insures that a judge is operating within the contemplated policy and is not ignoring the policy for arbitrary or capricious reasons. In my view, the new language grafted onto the proposed rule essentially eviscerates the underlying policy determination that there is value in allowing portable devices in courtrooms and that use of the devices, in many or most instances, may be done without adversely impacting the fair and impartial administration of justice.

Respectfully submitted,

Randy L. Dryer

Posted by Randy L. Dryer August 13, 2012 04:16 PM

Before such a radical rule as this one is adopted, let us look at the horrible example of having TV cameras at the O.J. Simpson murder trial. I cite Vincent Bugliosi, one of the greatest prosecutors of modern time, from his work "Outrage: The Five Reasons Why

O.J. Simpson Got Away With Murder” as to why TV cameras were not good for that case or any other:

With respect to cameras in the courtroom, in my opinion they don't belong, not in [the O.J. Simpson] case, not in any case. Televising the trial turned it into a national soap opera. Without the cameras, the nation wouldn't have been exposed to the absurd spectacle of the talking heads (since they couldn't talk about something they weren't watching), with the resultant “in the air” harm to the prosecution effort. But there is an even more substantive objection to having cameras in the courtroom.

A trial is a serious and solemn proceeding that determines whether a person's liberty, and sometimes his life, should be taken away from him. Anything that interferes, or even has the slightest potential of interfering, with this determination should be automatically prohibited. Most people are self-conscious about speaking in public, even before a small audience. With cameras in the courtroom, sometimes millions of people are watching. Even if we make the doubtful assumption that most witnesses will not be affected, certainly, at least here and there, some are not going to be natural. They are going to be more shy and hesitant, or perhaps they will put on an act, not just in their demeanor, but much worse, in the words they use in their testimony. When this happens, the fact-finding process and the very purpose of a trial have been compromised.

Witnesses aren't the only ones affected. The Los Angeles Daily News reported in the late summer of 1994 that as a result of a murder trial then being televised on Court TV, “the defense attorney bought two new suits, the judge's wife makes sure his hair is properly gelled before he leaves for work in the morning, and the court clerk makes an effort to keep her pen out of her mouth.” Is it unreasonable to suggest that if people alter their physical appearance because of the camera, they may alter their words?

We know from the mouths of lawyers on the Simpson case that the TV cameras were having influence on them, encouraging theatrics and posturing. Gerald Uelman, the scholarly former dean of the Santa Clara University School of Law, who argued most of the defense team's legal motions, said in June 1995, while the trial was still in progress, that he originally favored TV cameras in the courtroom because they would “open the walls of a tiny courtroom and allow everyone who was interested to come in to observe and learn.” But he said he now shudders “at how naive and idealistic I was. The unprecedented public scrutiny of this case has intruded to alter the behavior of all of the participants in many ways, some subtle, some not so subtle.”

Also in June, Chris Darden told reporters: “I dislike having cameras in the courtroom. The lawyers cater to the cameras. That's been proven time and time again.” Shortly after the trial, Barry Scheck made similar comments. But why did we have to learn this from the trial? Common sense would have told us. . . .

What about the argument frequently used by the media that televising trials educates the public? It's transparent sophistry. The media's only motivation, though not an

improper one, is commercial. Although televising trials may indeed educate the public, that obviously is not the principal reason why people watch trials such as the Menendez and Simpson cases on television. It's a form of entertainment for them, pure and simple. Televising a breach of contract or automobile collision lawsuit and see how many people watch. The entertainment aspect of the Simpson trial became so ludicrous that time and time again, the talking heads, and those who called in on these shows, actually complained that certain lawyers and witnesses, as well as certain evidence, were too boring and dull for their tastes—which is to say they wanted, were almost demanding, better and more scintillating entertainment.

Even given the ancillary benefit of being educational, the sole purpose of a criminal trial is to determine whether or not the defendant is guilty of the crime. It is not to educate the public. (Pgs. 82-3).

The problems that TV cameras create are not limited to the attorneys and the parties. The judges are also affected in a negative way. Bugliosi goes on to say that Judge Lance Ito, who presided over the O.J. Simpson trial was obviously affected by the attention of TV cameras:

But although the cameras could only have a negative effect, if any, upon the trial proceedings, they stayed, right to the very end. Any they stayed, of course, because of one person and one person only, the only person who had the discretion and authority, under Rule 980 of the California Rules of Court, to pull the plug: Judge Lance Ito. Why didn't he? Even assuming he had what he believed to be valid reasons for keeping the cameras, one of his reasons was most assuredly improper—Ito loved to perform in front of these cameras. At least that seems to be the consensus of virtually all of the reporters who covered the trial. Reporters called him "Judge Ego." He seems to "relish the presence of the television cameras. He likes the limelight," Newsweek said.

I knew for sure that Ito was out of his depth in this trial when early on he started inviting celebrities visiting the proceedings back to his chambers, particularly talk show hosts whose programs covered the trial. I don't have anything against these talk show hosts, but it was unseemly and undignified behavior for a judge presiding over an important murder trial. What conceivable reason could Ito possibly have had for being so eager to play host to these celebrities other than that he was concerned with what they might say about him on the air? (The only other possibility that occurs to me is almost equally damning—that Ito lionizes celebrities, like so many of his fellow citizens. But if he does, this is at least one piece of circumstantial evidence that he did not possess the intellectual maturity to preside over a case of this magnitude.) *Id.* at 83-4).

In addition to the reasons given by Mr. Bugliosi for not having TV cameras in the courtroom, both the Board of District Court Judges and many of the Utah trial judges are against it. Also, there are no TV cameras in the federal trial courts or the U.S. Supreme Court.

Common sense and the protection of the parties' constitutional rights dictate that this rule should not be adopted.

Posted by Judge Thomas L. Kay August 13, 2012 02:53 PM

I believe electronic media should be banned. It only allows a platform for perpetrators to be recognized and I feel they will want their "15 minutes of fame" if media is automatically allowed.

The media are also whores for bad news and will create it if it doesn't exist naturally.

If someone in the public feels they have a right to know everything that is going on, let them put in the personal effort to investigate rather than handing it to anyone on a silver platter.

Posted by Bridgette Bowman August 11, 2012 10:36 AM

yes, i agree that they should put camera's in court room's. if they did the crime there face should be seen by the public. let's show these criminals to the people. especially those that do crime in every street in salt lake and get caught. perhaps this will put a curb on the no good two timing thieves out there so that this possibly will stop more crime of breaking into cars, stealing cars, taking away people's livelihood, they work so hard for. let's put a stop on crime once and for all.

Posted by joan August 11, 2012 09:50 AM

As a former full-time journalist and current associate professor of communications, I believe the move toward more electronic media access in Utah courtrooms is a positive development and will serve the public interest.

Proposed Rule 4-401.01(2)(A) establishes a presumption of access for electronic media during public judicial proceedings. This is a good place for the rule to start, but given that the presumption is one of access, the requirement in (3)(A) that news reporters request permission within 24 hours of a proceeding seems unnecessary. With a presumption of electronic media access, perhaps mere written notice to the court will be sufficient, rather than a requirement to gain permission for something that news reporters are told in the very same rule that they presumptively can do.

This issue notwithstanding, the rule is written well and should serve to advance the efforts of Utah's judiciary to administer the law while educating the public. The potential for education with electronic media access to judicial proceedings is great. Scholarly studies and pilot projects in several states have shown electronic media access generally does not negatively impact judicial proceedings, and the proposed Rule 4-401.01 acknowledges that a judge may act to protect the interests and rights of individual courtroom participants if the reasons are "sufficiently compelling" (section (2)(A)). This is appropriate.

This rule will bring Utah in line with other states, all 50 of which now permit some form of electronic media access to judicial proceedings.

Edward L. Carter, J.D. LL.M.

Utah State Bar #09871

Posted by Edward L. Carter July 31, 2012 03:02 PM

On behalf of the Radio Television Digital News Association ("RTDNA"), the world's largest professional organization devoted exclusively to electronic journalism, we are writing to express the unequivocal support of our more than 3,000 members for proposed rules 4-401.01 and 4-401.02. By adopting these proposed rules, Utah will join the forty-six states that allow electronic media coverage in some form in trial courts. There can be no doubt that the rules as amended will create greater transparency, will increase Utah citizens' knowledge and understanding of the court system, and will advance the public's right to know as it pertains to the judicial system.

RTDNA has long advocated allowing electronic journalists to use the tools of their trade to cover judicial proceedings, thereby allowing the citizenry see and hear justice be done first-hand. Our organization has been involved for many years in efforts on both the state and federal level to create unlimited seating in courtrooms through audiovisual coverage. Based on the overwhelmingly positive experience of those state courts that have opened their doors to "cameras," working closely with our members, it is clear that expanded media coverage of court proceedings has several important social and educational benefits, including more accurate coverage and a more engaged and informed audience.

Audiovisual coverage provides viewers with access to first-hand accounts of proceedings and allows viewers to directly observe participants' demeanor, tone, credibility, competence, and veracity. These direct observations are superior to reading, hearing, or watching second-hand accounts; however, when electronic cameras are not allowed in courtrooms, only second-hand accounts are available. The electronic media is uniquely situated to provide the maximum number of citizens with direct and unmediated access to the courts. As the final report of New York's Committee on Audio-Visual Coverage of Court Proceedings found, "reporting on court proceedings, both by newspaper and broadcast reporters, frequently is more accurate and comprehensive when cameras are present."

Further, unobtrusive cameras have no harmful effect on the fair administration of justice. In fact, in the hundreds of thousands of judicial proceedings across the country covered by the electronic media since 1981, to the best of RTDNA's knowledge there has not been a single case where the presence of a courtroom camera has resulted in a verdict being overturned, or where a camera was found to have any effect whatsoever on the ultimate result. Indeed, the majority of studies have concluded that the process is not only not harmed by cameras, it is enhanced by them. The Final Report from Utah's

Judicial Council Study Committee on Technology Brought into the Courtroom validates the reports from prosecutors, lawyers, jurors, judges, and witnesses from across the country: today's cameras have no adverse effect on trial or appellate courts.

Thus, RTDNA enthusiastically supports the proposed amendments to Rule 4-401. Under the current Rule 4-401, Utah allows electronic media coverage—including filming, video recording, and audio recording—at the appellate level only on a limited basis, and generally prohibits electronic media coverage at the trial court level. The proposed amendments, however, represent a tremendous stride forward. Together, they will make Utah courts more open and accessible to the public, placing Utah among the states that allow the most electronic media access to courtrooms. Proposed Rule 4-401.01 creates a presumption that electronic media coverage is allowed in all public proceedings, both at the trial court and appellate court levels. Further, the new rule holds that a judge may only prohibit electronic coverage if the judge finds that the reasons for prohibiting coverage are sufficient to outweigh the presumption. Proposed Rule 4-401.02 allows the use of portable electronic devices in Utah courtrooms so long as the use is silent and is in compliance with proposed Rule 4-401.01. Notably, RTDNA's members have found that enhancing traditional broadcasts of judicial proceedings through the use of newer media platforms has contributed significantly to audience attention and understanding. Overall, the proposed amendments maintain the judge's discretion to manage his or her courtroom and ensure a fair trial while at the same time giving weight to the significant public interest benefits inherent in openness.

RTDNA applauds the Utah Judicial Council for its thoughtful and thorough examination of this issue. Adopting the rules as proposed will place Utah's court system among those that will pave the way for the few remaining states that bar or severely limit trial court coverage. Most importantly, the new rules have the potential to illuminate Utah's courtrooms, demystify an often intimidating legal system, and subject the state's judicial process to an appropriate level of public scrutiny. RTDNA wholeheartedly endorses the rule change.

Mike Cavender RTDNA Executive Director

Kathleen A. Kirby RTDNA Legal Counsel Wiley Rein LLP

Posted by Kathleen A. Kirby July 31, 2012 11:58 AM

As a citizen who believes that our judicial system must be transparent and open; I am in favor of allowing electronic media coverage of court proceedings.

Posted by Mark Innocenti July 31, 2012 09:22 AM

July 31, 2012

Chief Justice Matthew Durrant

Chair, Utah Judicial Council

Re: CJA 04-0410.01

Chief Justice Matthew Durrant:

The Salt Lake chapter of the Society of Professional Journalists supports the adoption of the new rule that would allow Utah courts to permit electronic media coverage of criminal and civil trial proceedings, subject to the current process for application by media.

The Headliners Chapter equally feels that Utah citizens would greatly benefit from accurate information that can be provided by allowing audiovisual coverage of public proceedings. Allowing electronic media coverage would significantly educate the public on intricate details of the judicial and procedural process of our courts, its judges and instill confidence that justice can be served. Having cameras in courtrooms allows the public a level of previously unforeseen experience of the judicial branch in action, while gaining a deeper understanding of the -at times- complicated, lengthy and overburdened legal system.

A transparent, open government is in the best interest of the courts and public and equally serves as a powerful tool for those seeking knowledge about the judicial system and court cases which may set precedent in areas of concern for their daily lives. With the discretion of our judges and cooperation of the media, cameras during court proceedings can lend insight, transparency and confidence in our law enforcement without detracting from decorum in the courts or the right to a fair trial.

Sincerely,

Sheryl Worsley

President, Utah Headliners Chapter

Society of Professional Journalists

Posted by Sheryl Worsley July 30, 2012 05:55 PM

As regional director for the Society of Professional Journalists, the nation's most broad-based journalism organization, I fully support adopting Rule 04-0401.01, which would allow electronic media coverage of court proceedings.

The rule would allow the public to see and hear more accurately what actually takes place in Utah's courtrooms. For many Utahns, this might provide their first look into the judicial system. This rule change will place Utah's courts at the forefront of transparency, which benefits the courts, those who appear before its bar and the public it serves.

An open court has been one of the hallmarks of American society. Our nation's founders understood the abuses of England's Star Chamber and secret tribunals, and made sure that trials would be for the most part open to the public. Indeed, the U.S. Supreme has

recognized the First Amendment right of the public and press to attend court proceedings. Increasing accessibility is a logical extension of the right.

Today, the judicial branch is one of the more powerful branches of government. It not only defines and enforces the laws, but it also has the power to deny people of property, liberty and — in some cases — life. But it is one branch that is partly shrouded in mystery. Most people usually do not have occasion to go to a courtroom. And past rules on media coverage have helped further obscure the court's operation from the public eye. Permitting journalists' video cameras and audio recorders into courtrooms will allow people to see better how the courts operate, giving them a better perspective than they would otherwise have.

The court is currently engaged in a campaign to encourage more Utahns to perform their civic duty as jurors. Opening up the courts to digital media would help advance that effort as people would have a better understanding of what happens at a trial, rather than having to rely on what they see in entertainment media.

Openness would also further ensure a defendant's right to a fair trial. With more people being able to watch or hear a trial, it would allow the public to see whether a defendant truly had his day in court and that the justice that was being administered in their name was done without fear or favor.

This rule, and 04-0401.02, recognize the realities of our modern digital age. It makes sense to allow journalists to use the modern tools of their profession to provide the public with an accurate account of the court's proceedings. Utah's journalists have demonstrated their professionalism in following the rules governing still photography, and they will do so with electronic technology as well.

I respectfully urge the judicial council to adopt these rules and allow Utah to serve as an example of transparency.

Donald W. Meyers,

Region 9 Director

Society of Professional Journalists

Posted by Donald W. Meyers July 23, 2012 02:54 PM

As a justice reporter covering court matters on various occasions. I am pleased the court is considering this change to the outdated rule. There is already a court clerk and reporter taking notes, why should the media be restricted from using similar tools to take make a record?

The reality is prohibiting digital devices in reporting in this new age of media is a disservice to those involved on both sides in a case or trial. A digital record helps news media inform the public with even more accurate information about both sides and gives them access to something (the courtroom) that is already presumed public. Why limit or restrict the means or medium by which the public information is disseminated?

I agree the media should not disrupt with the court proceedings and there should be limits in how they broadcast proceedings. Laptops, smartphones and devices that allow recording of proceedings allow the media to preserve what happens in the courtroom and protect both sides and also display the true judicial process for the public to watch as if they were in the room themselves, instead of them only being familiar with inaccuracies they solely see in the movies.

Posted by Cimaron Neugebauer July 11, 2012 02:16 PM

I applaud efforts to make courts more transparent and hold officials responsible to the people they serve, but it is obvious that this was written by a former judge or at least an advocate thereof. Had it been written by the people, it would have been FOR the people, but as is, it provides so many loopholes that any judge who misbehaves can easily find a reason to keep people from recording, and doesn't need to do so on the record. For example, in the new 4-401.01 2B rules, there are a myriad of reasons a judge could use to deny recording in even the simplest of cases, where rule of law is most often abused. It is also only required (2C) that the findings be explained orally, and not made a matter of record. Why? To protect the judges, who obviously crafted this law. Rule 6C of this same section is also problematic. What if the defendant is recording his own trial? If his camera happens to catch his own personal notes, is this not an infraction - according to the letter of the law - worthy of contempt of the court? The letter of the law is all a bad judge looks for to cover his actions. Rule 7 of the same section basically lets the judge be on notice when he is being recorded, because his permission must still be asked. How much better for the people would it be for him to assume that at any time, his actions might be fully documented?

Section .02 is even worse. Rather than convey more openness, it encourages corrupt behavior on the part of the courts, and was obviously written by the courts, not an advocate of the people they are meant to protect. For example, section 2C says that at any time, portable electronic devices can be confiscated simply because the court believes a person MIGHT try to record - a purely subjected and unprovable claim. All that a judge needs to do to confiscate a person's property is look into the future. 3A also says he can set restrictions based any any number of subjective qualifications: decorum, safety (seriously? a cell phone camera is dangerous?), order. 4-4-1.02 3B(ii and iii) is also misleading because it seems to give permission to record, but then states a host of subjective reasons a judge may use to circumscribe the privilege.

Recording our public officials, as last July's Supreme Court ruling explained, is vital to the system of checks and balances in our government. There are far too many loopholes in these new rules. Any judge who wants to remove cameras from his court so there can be no record of his or her actions would not have to do much reasoning to be compliant. Is this the people's best interest? Or the courts? I've never been convicted of anything more than a traffic ticket, but even there I have seen behavior on

the bench that would shock the general public and would have probably resulted in that judge's removal had there been video evidence of the event.

Posted by Only A Semblance of Justice July 7, 2012 08:55 AM

Having reported on court hearings for many years, I applaud this new, proposed rule, which I believe will increase the public's appreciation of the intricate and nuanced aspects of the judicial system, as well as promote a greater understanding of the humanity of those involved.

Sincerely,

Sara Israelsen-Hartley

Reporter - Deseret News

Posted by Sara Israelsen-Hartley July 6, 2012 04:18 PM

The Salt Lake Tribune, Utah's largest newspaper and a longtime proponent of open government, wholeheartedly endorses rule change CJA 04-0401.01 to open Utah courtrooms to electronic recording. Most states already allow cameras and audio recordings in their courts, and with this change Utah would join the mainstream in terms of courtroom transparency.

This rule change still allows for judicial discretion when cameras and audio recording would create a miscarriage of justice, and it includes protections to keep jurors and minors from being improperly identified. But the change presumes that any court proceeding should be open to electronic recording, and those seeking to close proceedings would rightly have the burden of justifying such closures.

The Tribune commends the Utah Judicial Council and its study committee for investing more than a year in researching this change and then recommending this important step. Government transparency has shown to be a paramount concern for Utahns, and this change will make it easier for all Utahns to stay better informed about their court system.

Thank you,

Tim Fitzpatrick

Deputy Editor

The Salt Lake Tribune

Posted by Tim Fitzpatrick July 6, 2012 04:14 PM

As a journalism instructor and board member of the Utah Headliners Chapter of the Society of Professional Journalists, I recognize the importance of transparency within our court system and the vital role that journalists play in facilitating that transparency.

Journalists act as the eyes and ears of the public, and it is imperative that the public be made aware of the inner workings of our justice system. The electronic communication within the courtroom that CJA 04-0401.01 would allow for is a step in the right direction.

In today's world, many members of the public rely upon electronic means of communication to gather important information. Although the written word provides some summation of what occurs within the court system, it simply cannot provide the visual and aural truths that electronic communication can.

I urge you to support CJA 04-0401.01 and be on the side of openness and transparency.

Sincerely,

Shane Farver

Utah Headliners Chapter, Society of Professional Journalists

Posted by Shane Farver July 3, 2012 07:09 PM

Tribune opinion pieces

Campbell: Speak up now for cameras in Utah courtrooms

Time has come » Utah would join mainstream with this change.

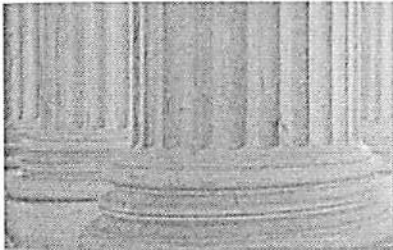
<http://www.sltrib.com/sltrib/news/54576216-78/rule-electronic-public-utah.html.csp>

A public trial

Open Utah courts to video

<http://www.sltrib.com/sltrib/opinion/54608009-82/rules-public-judicial-http.html.csp>

TAB 6



Utah State Courts

FY 2012-2013

Strategic Communication Plan

Compiled by
Nancy Volmer, Public Information Office
October 2012

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**Utah State Courts
Strategic Communication Plan
2012-2013**

I. NARRATIVE

Introduction

The Strategic Communication Plan addresses how to build public trust and confidence in the Utah State Courts through traditional public information programs, while exploring new methods of communicating through social media.

Under the direction of the Utah Judicial Council, the Strategic Communication Plan serves to engender public trust and confidence in the judiciary by strategically directing the communication, public information, and outreach programs for the Utah State Courts. This plan identifies proactive avenues for reaching out to the public through the media and other channels of communication.

The plan will be executed by the Public Information Officer, who is responsible for media relations, judicial outreach, and publications.

2012-2013 Plan

In preparing the 2012-2013 Strategic Communication Plan, the results and recommendations of the 2012 Public Trust and Confidence Survey have been considered and strategies incorporated. The detailed survey results and recommendations are listed on page 12 of this plan.

The survey shows that the Utah State Courts enjoy a high level of public confidence at 81 percent; however, the most positive views of the courts are held by those with historically the best access, which are white, better-educated males. Ethnic minorities, lower income households, and those with less educational attainment, tend to have a less positive view of the courts. The survey noted that these populations are best reached through non-traditional communication sources, such as social media and online.

Other survey results show that while TV news programs, the Internet, and newspapers/news magazines are still the most frequently-used information sources for how the public learns about the courts, print communications are becoming less influential compared to digital communication. Plus, traditional media reach primarily older and better-educated residents of Utah. Therefore, a new integrated marketing mix is needed in moving forward.

The survey results also found that the public felt it was important for the courts to report more regularly on its performance, but don't feel the courts are doing so. How to better inform the public on the court's performance measures will be explored in the coming year.

II. CHALLENGES AND STRENGTHS

A. Challenges

1. Public trust and confidence in the court system
2. Changing face of media, increase in use of social media, generalist versus specialist reporters
3. Consistent and professional look of the court's public materials
4. Limited resources available for schools and the courts to teach about the judiciary

B. Strengths

1. Strength of the Judicial Council
2. Quality and leadership of judges
3. Knowledge and dedication of committee and subcommittee members
4. Dialogue between the courts and the media

III. TARGET AUDIENCES

A. The Public

1. Court users
2. Voters

B. Attorneys

1. Utah State Bar members
2. Other law-related associations

C. Employees

1. Court wide
2. Boards of judges
3. Trial court executives
4. Clerks of court

D. Media

1. Print
2. Broadcast
3. Web-based

E. Education

1. Students
2. Community members

F. Government Officials

1. Legislative branch
2. District and county attorneys
3. Executive branch, police and sheriff public information officers

IV. GOALS

1. Enhance public trust and confidence in the Utah State Courts through media relations and outreach efforts.
2. Educate target audiences about the judiciary through outreach efforts.
3. Inform and recognize court employees through internal communications.
4. Communicate a consistent and professional court look through public materials.

V. KEY MESSAGES

An important aspect of creating and maintaining a positive image of the courts is delivering the right message. The public perception of the courts is influenced by a number of factors—from media coverage to first-hand experience with the courts. This plan addresses specifically the court’s public materials, judicial outreach, and media reports of court activities.

It is important to deliver a professional, clear, concise, and consistent message in any court communication. To effectively enhance the court’s image requires a commitment by all staff. In addition, it requires a commitment by designated court spokespersons to stay on message in media interviews.

The mission statement is the overriding message.

The mission of the Utah Courts is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

The core message is as follows:

Utah’s courts are committed to open, fair, and independent justice.

The court’s tagline is as follows:

Ensuring Justice for All.

VI. STRATEGIES

- A. Utilize media coverage proactively to create a better understanding of the Utah State Courts and the Judicial Branch.
- B. Foster an understanding of the role of the judiciary as an open, fair, and independent branch of government through judicial outreach efforts.
- C. Use communication tools effectively and maintain avenues of communication to relay the Utah State Court’s key messages to target audiences.
- D. Maintain avenues of internal communication to recognize employee contributions and accomplishments, advance PIO services, and support judges.

VII. TACTICS

- A. Utilize media coverage proactively to create a better understanding of the Utah State Courts and the Judicial Branch.
1. Media Outreach
 - Search out and pitch newsworthy and feature story ideas that humanize the bench, focus on unique court programs, and illustrate the alliances in the community.
 - Issue media advisories or news releases and/or pitch stories to the media when newsworthy events occur that generate positive press about the Utah State Courts.
 - Track coverage of the courts and distribute relevant clippings through email and post on the court's intranet site.
 - Compile media clippings and provide to the Judicial Council.
 2. Media Support
 - Support judges on media-related issues and media interviews.
 - Provide assistance to judges and coordinate media in high-profile cases, which includes drafting Decorum Orders.
 3. Media Interviews, Accessibility, and High-profile Case Tracking
 - Coordinate media interviews and photo opportunities with court personnel. Develop key messages and talking points when responding to the media.
 - Remain accessible to the media and respond to media requests in a timely manner.
 - Maintain tracking system for high-profile court cases.
 - Maintain a current, comprehensive media database of reporters statewide.
 4. Editorial Boards
 - Schedule meetings with editorial boards to address important court-related issues that arise.
 - Distribute news releases or contact editorial boards on issues that have a broad impact on the judiciary.
 - Submit editorials for publication when timely and appropriate.
 5. Bench-Media Subcommittee
 - Update the Media Guide to the Utah State Courts in FY 2013.
 - Explore holding a Law School for Journalists Program in conjunction with the Presiding Judges Workshop in June.
 - Determine how to best respond to public attacks on the judiciary.
 - Explore creating an online media training program.

B. Foster an understanding of the court's role as an open, fair, and independent branch of government through judicial outreach efforts.

1. Standing Committee on Judicial Outreach-Judge Carolyn McHugh, chair
 - Perform duties as staff liaison to the committee.
 - Recruit new members to committee and subcommittees when terms expire.
2. Created a Special Projects Subcommittee-Judge Robin Reece, chair
 - Review the court's communication channels and messaging and consider new integrated marketing and communication components.
 - Increase awareness of the court's performance measurements.
 - Research how other states treat jurors and implement resources for improving jurors' experience at the courthouse.
3. Diversity Subcommittee-Brent Johnson, chair
 - Maintain and distribute the Guide to the Courts in English and Spanish. Consider translating into Russian, Vietnamese, and possibly Tongan and Samoan.
 - **Plan town hall meetings with ethnic communities.**
 - **Improve communication with minority communities.**
4. Divorce Education for Children Subcommittee-Judge Elizabeth Hruby-Mills, chair
 - Continue holding classes twice a month with a goal of up to 10 participants in each class.
 - Coordinate with 1st District subcommittee.
 - **Approach the Legislature in 2013 for funding from the Children's Legal Defense Fund. Depending on outcome, look to expand into the 2nd and 4th districts and to hire a full-time program coordinator.**
5. Community Outreach Subcommittee-Judge Randall Skanchy, chair
 - Maintain existing tools for judges to use in presentations. Create additional resources as needed for judges to encourage participation in outreach.
 - Implement Law Day Programming to include Judge for a Day, newspaper insert, Hinckley Institute of Politics panel, Law Day Declaration, support the Law Day luncheon, and coordinate with the Salt Lake County Bar's Art and the Law contest organizers to recruit judges and display winning artwork at the Matheson Courthouse.

- Plan a Constitution Day celebration at the Matheson Courthouse. Encourage other districts to recognize Constitution Day with similar programs.
 - Continue oversight of court tours and speaker requests. Coordinate and host tours at the Matheson Courthouse.
 - Participate in teacher training programs, including the Hinckley Institute of Politics' Huntsman Seminar.
6. **Public Materials**
- Write, produce, and distribute the 2013 Annual Report to the Community.
 - Produce and distribute pamphlets that assist the public to better understand the court system.
 - Incorporate the court's look into all public materials.
 - Support districts with PIO-produced collateral materials.
7. **Conference of Court Public Information Officers**
- Host the 2013 meeting of the Conference of Court Public Information Officers (CCPIO).
 - Form and staff a subcommittee to assist in the planning process.
 - Oversee planning for all aspects of the conference, including meeting locations, evening event locations, catering, educational sessions, audio visual requirements, and materials.
- C. Use communication tools effectively and maintain avenues of communication to relay the Utah State Court's key messages to target audiences.
1. **Social Media**
- Explore additional proactive uses of social media to promote judicial programs and communicate with stake holders.
 - Maintain the court's Facebook, Twitter, and YouTube pages.
2. **Website Updates**
- Maintain the media section of the website to be useful and current.
 - Post media advisories and news releases to the website in a timely manner.
 - Post and update judge's biographies to the website.
3. **Court Image and Messaging**
- Incorporate the court's central message in all forms of communication.
 - Continue efforts to implement a consistent look in the public materials.
 - Keep the Graphic Standards Manual on producing court public materials current.

- D. Maintain avenues of internal communication to recognize employee contributions and accomplishments, advance PIO services, and support new judges.
1. Internal Communication
 - Produce employee newsletter—*Court News*—monthly.
 - Update email-based newsletter format in Gmail
 2. Public Information Office-General
 - Maintain the Utah State Court's Crisis Communication Plan.
 - Maintain Court Media Guidelines and communicate to employees.
 - Update board of judges, TCE's, and clerks of court on an annual basis.
 3. Support New Judges and Employees
 - Request biography and photo for website posting.
 - Produce invitations for oath of office ceremonies.
 - Present at the new judge orientations on working with the media.
 - Present media protocol at the New Employee Orientation.

IX. BUDGET

The Strategic Communication Plan will be administered within the approved Public Information Office budget of \$25,500. Additional funds will be solicited from non-state sources to produce the Law Day newspaper insert.

X. EVALUATION

The effectiveness of the Strategic Communication Plan will be determined based on the criteria listed below. Some of the criteria are easily measured by the end product produced, such as a brochure or video. Intangible or non-quantitative changes such as increase in knowledge, attitudes, and perceptions are more difficult to measure.

1. Media coverage generated, inclusion of message, and tone of coverage.
2. Effectiveness of collateral materials produced.
3. Support of and response from key constituents.
4. Employee feedback to be determined through an in-house e-mail survey on the effectiveness of communication programs and tools.
5. Outreach effectiveness as measured by outcomes established by the Standing Committee Judicial Outreach and its subcommittees.

XI. CONCLUSION

The Utah State Courts is charged with providing an open, fair, efficient, and independent system for advancing justice. The Strategic Communication Plan is an integral component to advance the Utah State Courts mission.

This Strategic Communication Plan is designed to effectively implement internal and external communication tools to position the Utah State Courts in a favorable light and to educate constituents through judicial outreach efforts.

APPENDICES

2012 Survey Results

In 2012, the Utah Judicial Council commissioned a Public Trust and Confidence Survey to measure the public's knowledge, experience, and expectations of the courts. The courts selected OpinionWorks to conduct the survey, which was conducted by telephone July through August 2012. The survey firm was asked to compare the 2012 results to the baseline survey conducted in 2006.

Highlights from the survey follow:

- Overall confidence in the Utah State Courts rose from 78 percent in 2006, to 81 percent in 2012.
- Familiarity with the courts decreased from 50 percent in 2006, to 42 percent in 2012.
- One third (31%) of the public indicated needing to get information about the courts in 2012, which is nearly identical to 2006 (33%).
- Forty-one percent of those looking for information about the courts sought it directly from personnel at the courthouse, compared to 36 percent in 2006. The Internet was the next highest source for information at 32 percent, compared to 26 percent in 2006.
- TV news, the Internet, and newspapers/news magazines rated as the most frequently-used sources of information about the courts. Reliance on the Internet increased dramatically over the past six years from 22 percent to 51 percent.
- Forty-six percent of the state's households reported having had direct experience with a court case, with 35 percent having had experience directly in a criminal matter.
- Forty-four percent of those having experience with the courts served as jurors or prospective jurors. Jurors reported being more confident in the courts as a result of their experience.
- Twenty-nine percent of those surveyed reported becoming more confident in the courts based on their court experience, while 22 percent became less confident and 48 percent said the experience had no effect on their confidence in the courts. While a negative case outcome significantly decreases confidence, a positive case outcome does not significantly increased confidence.
- One in five Utahns reported having considered taking a case to court and decided not to do so because of the cost of hiring an attorney (69%). Sixty-seven percent said the availability of another way to solve their problem kept or might keep them from going to court. Two process issues, the length of time it might take for a decision and a process that people find confusing, were next on the list.
- Fifty-eight percent disagree that one of the purposes of the court is to raise revenue.
- Protecting constitutional rights was listed as the most important function of the state courts (92%) followed by ensuring public safety (78%), reporting on court performance (62%), and assisting those acting as their own attorney (30%). In asking the public to rank how the court was performing on these measures, the court ranked low on reporting on its own performance.

- Groups that have traditionally had more influence in society—men, Whites, upper-income, and better-educated citizens—feel more positive towards the courts, while women, Hispanics, lower-income, and less-educated residents have a less positive view.

2012 Survey Recommendations

As a result of the 2012 Public Trust and Confidence Survey, the Survey Subcommittee reviewed the outcomes and has made the following recommendations to the Standing Committee on Judicial Outreach. These recommendations will be assigned to a newly-formed Special Projects Subcommittee, which will look at the best way to address the goals and implement changes.

Communication Messaging and Methods

Goal: Review the court's communication mechanisms and messaging.

Implementation: Explore ways to push information out via a variety of communication sources, including Facebook and YouTube.

Court Performance Reporting

Goal: Raise awareness of court performance measurements.

Implementation: Drive the public to the court's website CourTools section and other reporting sites, such as judges.utah.gov. Research the cost of implementing a marketing campaign.

Diversity Outreach

Goal: Improve communication with minority communities.

Implementation: Present information about the courts at community forums. Focus on Latino community initially. Partner with the Minority Bar Association.

Employees as Ambassadors

Goal: Review current employee customer service training to ensure it is current and relevant.

Implementation: Enlist the court's Education Department to conduct a review of available classes.

Juror Experience

Goal: Improve the juror experience.

Implementation: Research how other states treat jurors and implement resources for improving a juror's experience at the courthouse.

RULE 3-404. PUBLIC INFORMATION PROGRAM

Intent:

- To establish a public information program within the Administrative Office.
- To identify the Administrative Office as primarily responsible for the administration and management of the public information program.
- To establish criteria governing the type of public information services that shall be provided to the judiciary, the media, and the public.

Applicability: This rule shall apply to the judiciary.

Statement of the Rule:

(1) A public information program is established within and administered by the Administrative Office. The goal of the public information program is to establish strategies that promote the judiciary's missions, goals, and activities in a manner that reflects a positive image of the courts.

(2) The public information program shall include: (a) the development and maintenance of internal communication within the judiciary; (b) the development and maintenance of external communications and relations; (c) the development of technical resources and expertise and the identification of methods for providing technical advice in specific cases; (d) the development and maintenance of public education programs; and (e) the publication of a report on the operations of the courts, including financial and statistical data, recommendations for legislative or administrative action, and a general review of the activities of the judiciary.

RULE 3-114. JUDICIAL OUTREACH

Intent:

- To foster a greater role for judges in service to the community.
- To provide leadership and resources for outreach.
- To improve public trust and confidence in the judiciary.

Applicability: This rule shall apply to all justices and judges.

Statement of the Rule:

(1) The Committee on Judicial Outreach shall:

(1)(A) create and promote model outreach programs;

(1)(B) promote local outreach programs;

(1)(C) develop policies and rules that encourage judicial participation in outreach programs;

(1)(D) work with educators to incorporate civic education into school curriculums;

(1)(E) work with the Utah State Bar to develop joint outreach programs; and

(1)(F) communicate judicial outreach efforts.

(2) Consistent with the Code of Judicial Conduct and to increase public understanding of and involvement with the administration of justice, the judiciary is encouraged to:

(2)(A) educate civic, educational, business, charitable, media, and other groups about the court system and judicial process; and

(2)(B) take an active part in the community where the participation of the judiciary will serve to increase public understanding and promote public confidence in the integrity of the court system.

TAB 7

Utah State Courts

Language Access in the Trial Courts of Record 2010-2012



November 19, 2012

Language Access in the Trial Courts of Record 2010-2012

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(1) Interpreter Availability

Source: FINET

Language	Hours Interpreted 2012	Frequency of Language	Interpreters				Frequency of Interpreters
			Certified	Approved	Registered	Total	
Spanish	17,054	86.6%	47	4	19	70	46.1%
Arabic	402	2.0%		1	4	5	3.3%
Vietnamese	311	1.6%	1		3	4	2.6%
Somali	294	1.5%			2	2	1.3%
Burmese	214	1.1%		1	1	2	1.3%
French	134	0.7%			7	7	4.6%
Khmer	118	0.6%			1	1	0.7%
Bosnian	103	0.5%			2	2	1.3%
Farsi	90	0.5%		1	5	6	3.9%
Swahili	87	0.4%			1	1	0.7%
Samoan	76	0.4%			2	2	1.3%
Nuer	74	0.4%				0	0.0%
Mandarin	74	0.4%		1	4	5	3.3%
Tongan	68	0.3%			4	4	2.6%
Laotian	68	0.3%		2	1	3	2.0%
Tagalog	52	0.3%				0	0.0%
Navajo	52	0.3%	2		1	3	2.0%
Korean	48	0.2%			3	3	2.0%
Russian	47	0.2%	1		4	5	3.3%
Dutch	42	0.2%				0	0.0%
Dinka	38	0.2%				0	0.0%
Kirundi	38	0.2%			1	1	0.7%
Cantonese	24	0.1%			1	1	0.7%
Nepali	24	0.1%				0	0.0%
Tigrigna	21	0.1%			1	1	0.7%
Liberian	15	0.1%				0	0.0%
Chuukese	15	0.1%				0	0.0%
Mende	13	0.1%				0	0.0%
Urdu	13	0.1%			2	2	1.3%
Thai	11	0.1%			2	2	1.3%
German	11	0.1%			3	3	2.0%
Japanese	7	0.0%			4	4	2.6%
Hindi	7	0.0%			2	2	1.3%
Panjabi	7	0.0%			2	2	1.3%
Karen	7	0.0%				0	0.0%
Amharic	5	0.0%			1	1	0.7%

Language	Hours Interpreted 2012	Frequency of Language	Interpreters				Frequency of Interpreters
			Certified	Approved	Registered	Total	
Kurdish	5	0.0%				0	0.0%
Uduk	3	0.0%				0	0.0%
Albanian	3	0.0%			1	1	0.7%
Tibetan	3	0.0%				0	0.0%
Portuguese	3	0.0%			6	6	3.9%
Ewe	2	0.0%				0	0.0%
Mabaan	2	0.0%				0	0.0%
Igbo	2	0.0%				0	0.0%
Greek	1	0.0%				0	0.0%
Hmong	1	0.0%				0	0.0%
Indonesian	1	0.0%				0	0.0%
Marshallese	1	0.0%			1	1	0.7%
Total	19,689	100.0%	51	10	91	152	100.0%

(a) Certified

- Has completed an English diagnostic test, a test on the Interpreter Code of Professional Responsibility, a one-day orientation workshop, a background check and 10 hours of observation.
- Has completed a seven-day training course and passed a three-part examination offered through the National Center for State Courts.

(b) Approved

- Has completed an English diagnostic test, a test on the Interpreter Code of Professional Responsibility, a one-day orientation workshop, a background check and 10 hours of observation.
- Has passed an Oral Proficiency Interview offered by Language Testing International.

(c) Registered

- Has completed an English diagnostic test, a test on the Interpreter Code of Professional Responsibility, a one-day orientation workshop, a background check and 10 hours of observation.
- Designated as "Registered 1" if there is no examination available in the language for certified or approved credentials.
- Designated as "Registered 2" if s/he has not taken or has not passed the examination available for certified or approved credentials.

(d) Conditionally Approved

- Vetted by the appointing authority for suitability in the particular hearing.
- Any language listed for which there is no interpreter will necessarily have been interpreted by a conditionally approved interpreter.

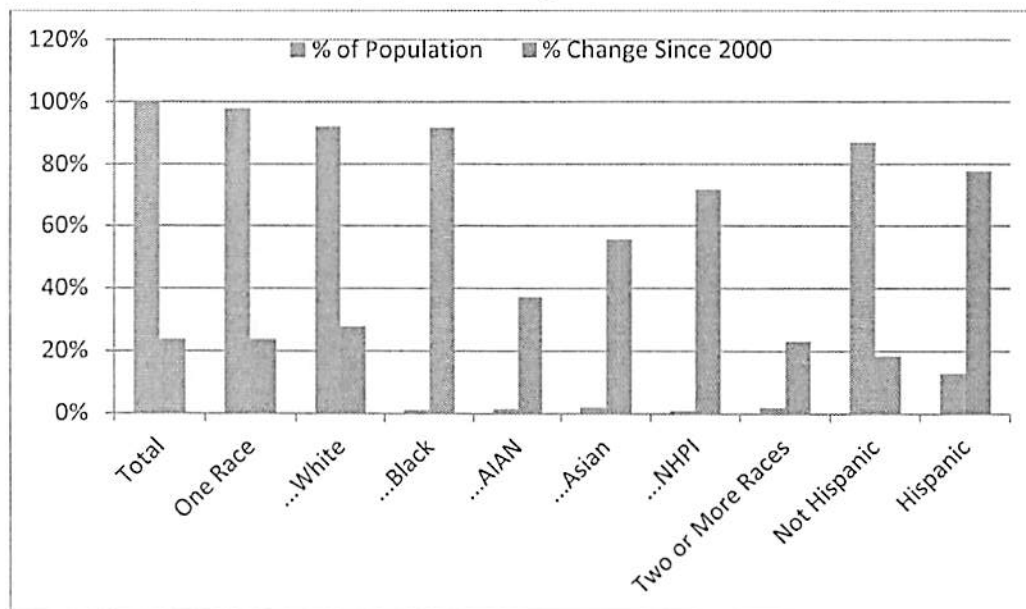
(2) Hispanic or Latino Population

Source: US Census

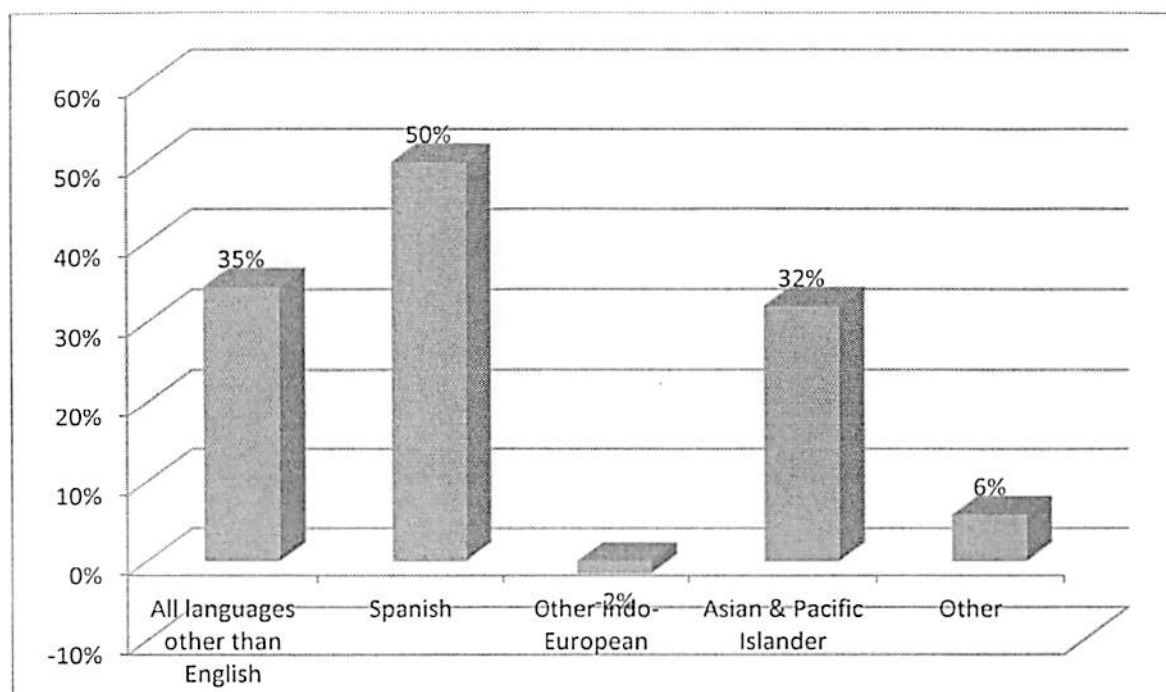
County	Percent Hispanic Population 2010
Salt Lake	17
Weber	17
Wasatch	14
Millard	13
Carbon	12
Summit	12
Tooele	11
Beaver	11
Utah	11
Cache	10
Washington	10
Grand	10
Sanpete	9
Davis	8
Box Elder	8

County	Percent Hispanic Population 2010
Iron	8
Uintah	7
Piute	7
Duchesne	6
Garfield	5
Emery	4
Sevier	4
San Juan	4
Rich	4
Wayne	4
Juab	4
Kane	4
Daggett	3
Morgan	2
State	13

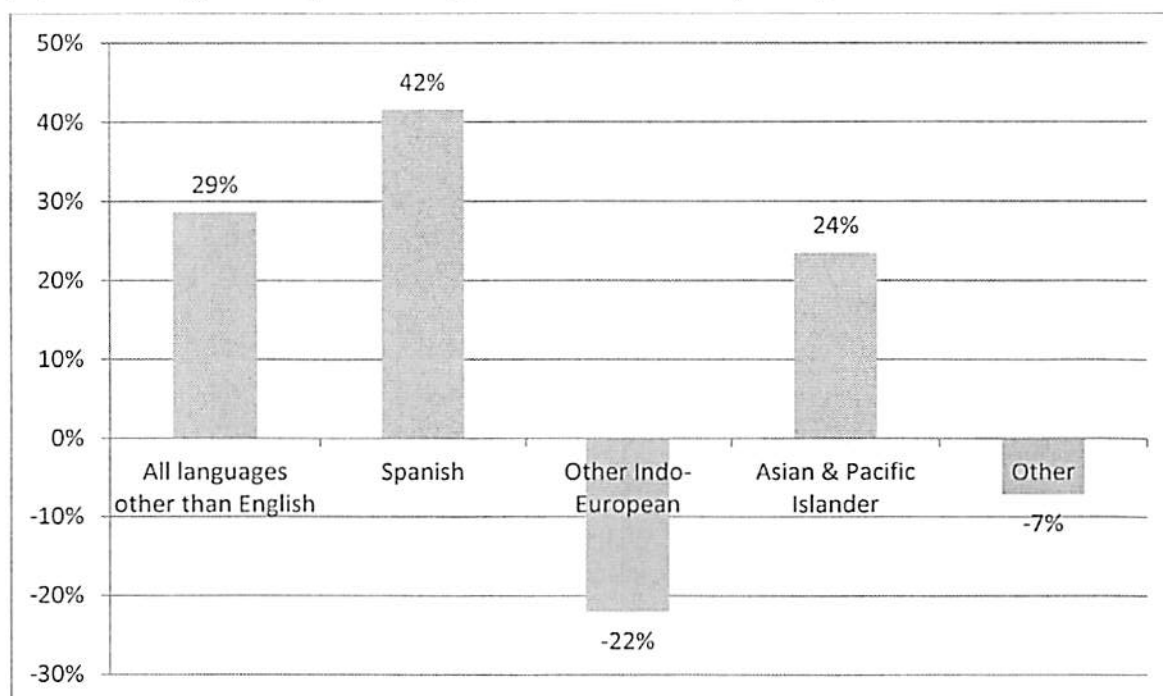
(3) Change in Utah population by race and ethnicity, 2000 - 2010



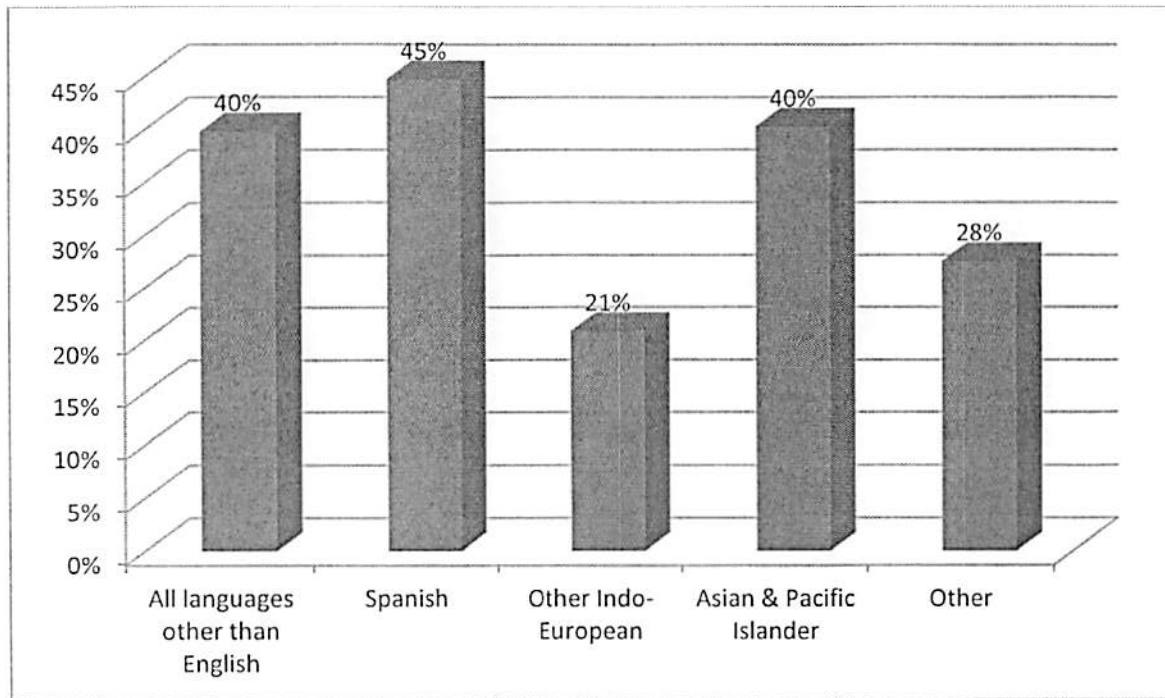
(4) Change in language spoken at home, 2000 - 2010



(5) Change in "Speaks English less than very well," 2000 - 2010



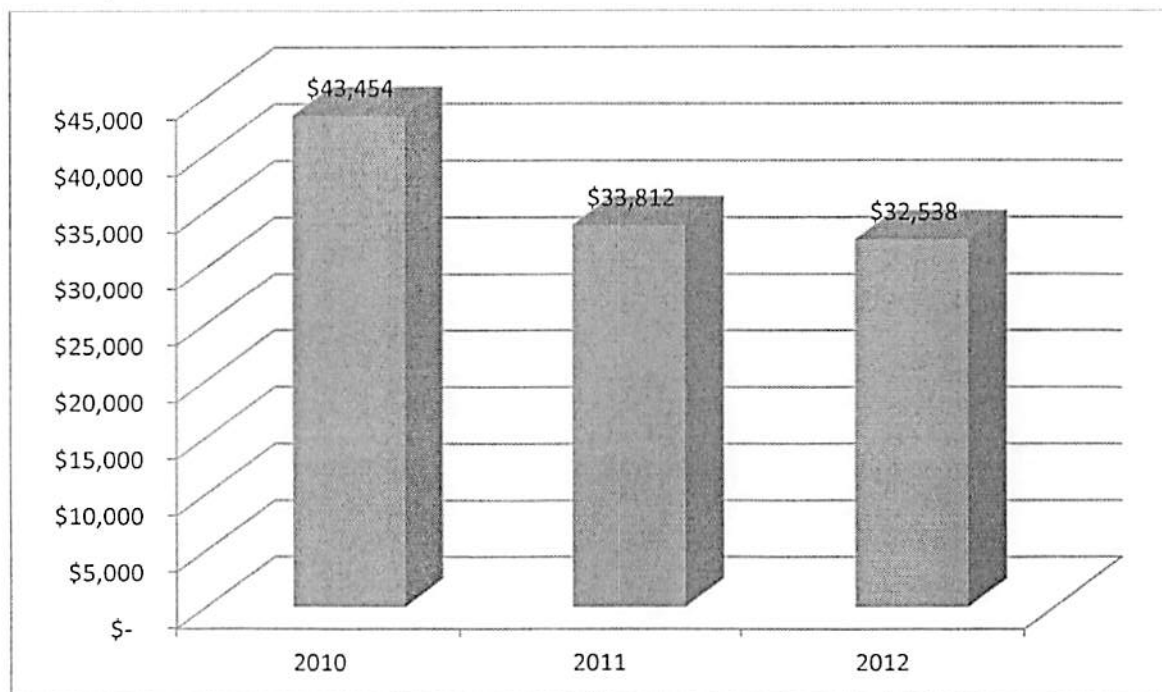
(6) "Speaks English less than very well" as a percent of language spoken at home, 2010



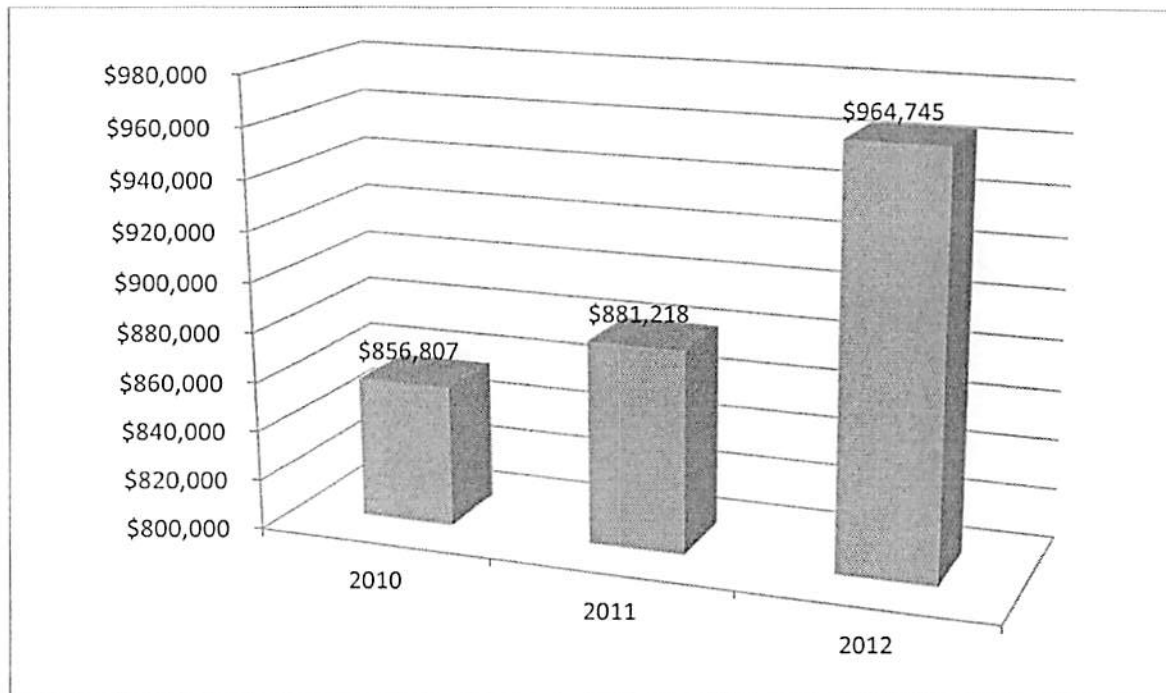
(7) Language Access Program Cost

Source: FINET

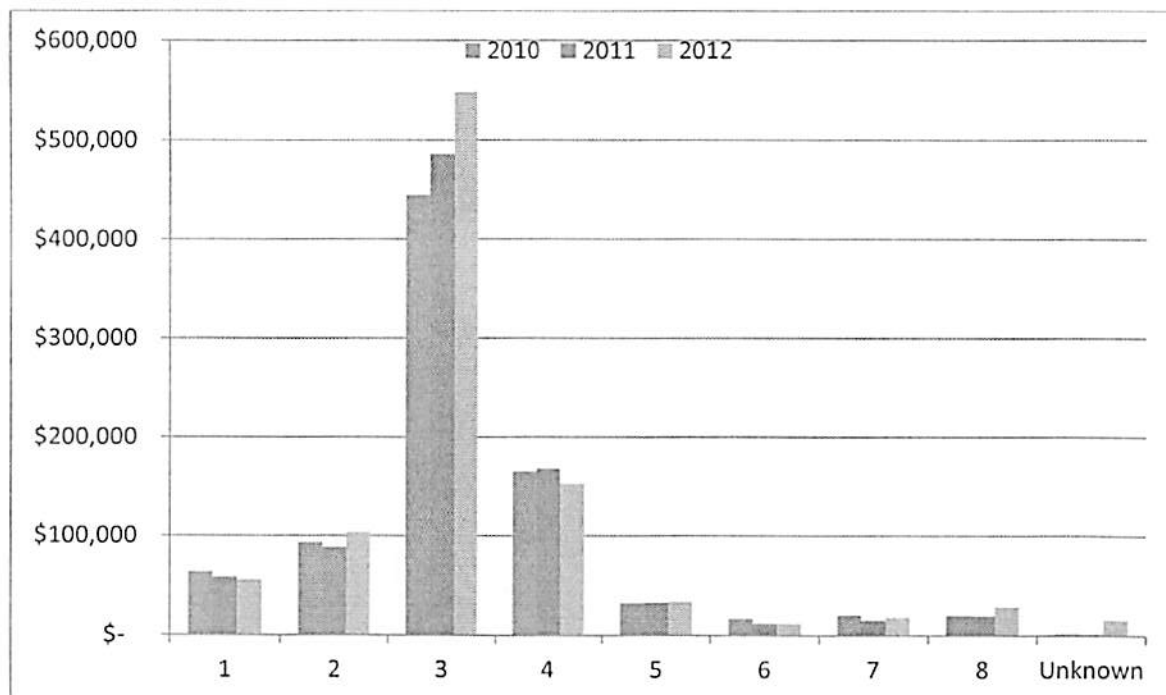
(a) American Sign Language interpreting



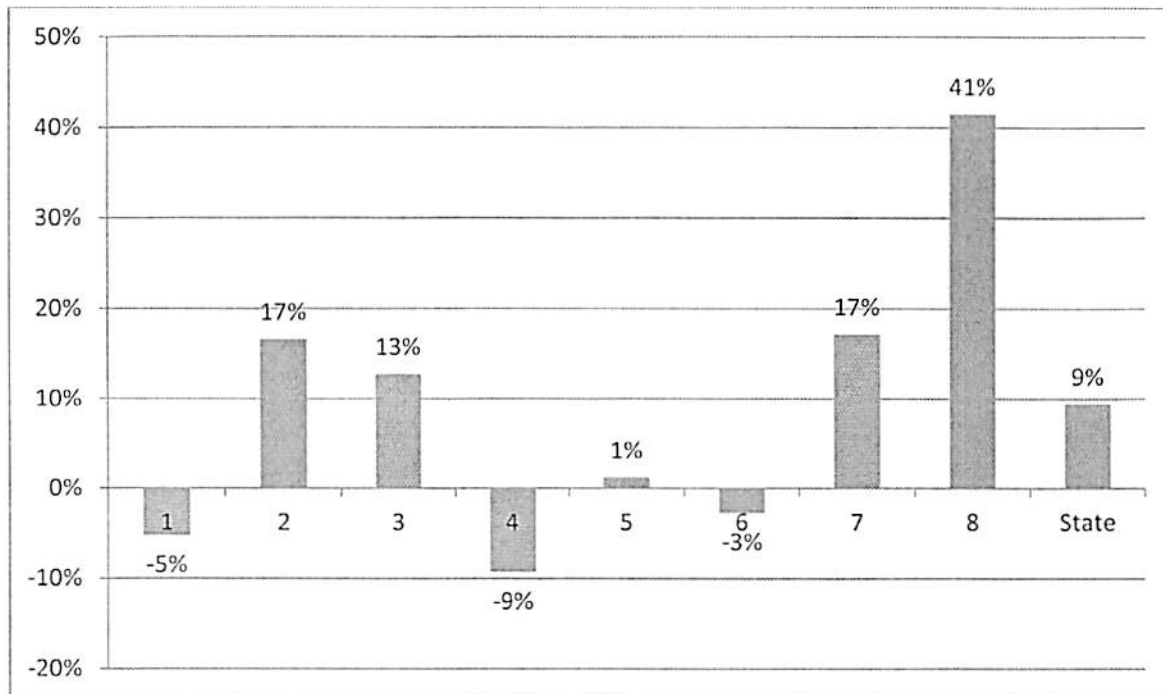
(b) Language interpreting



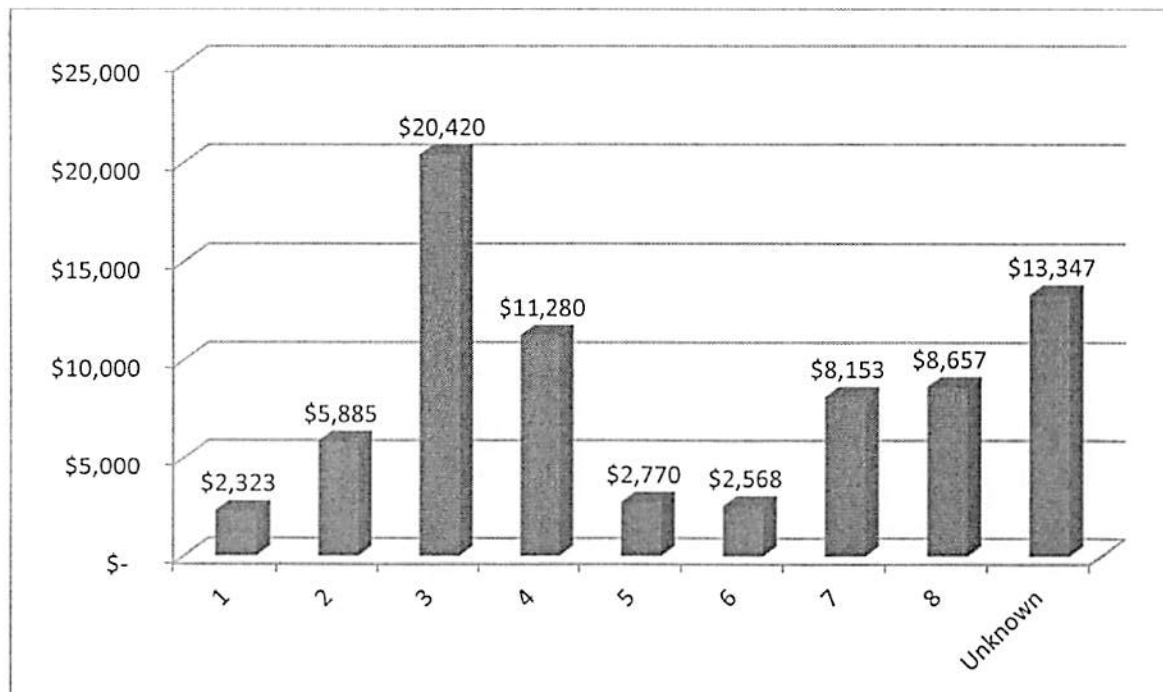
(c) Language interpreting cost by district



(d) Change in language interpreting cost, 2011 - 2012



(e) Travel cost, 2012



The total travel cost for FY 2012 was \$75,400, which is lower than was estimated last year. We began accounting for mileage reimbursement apart from professional services in mid-FY 2011. FY 2012 is the first year for which we have a complete year's worth of

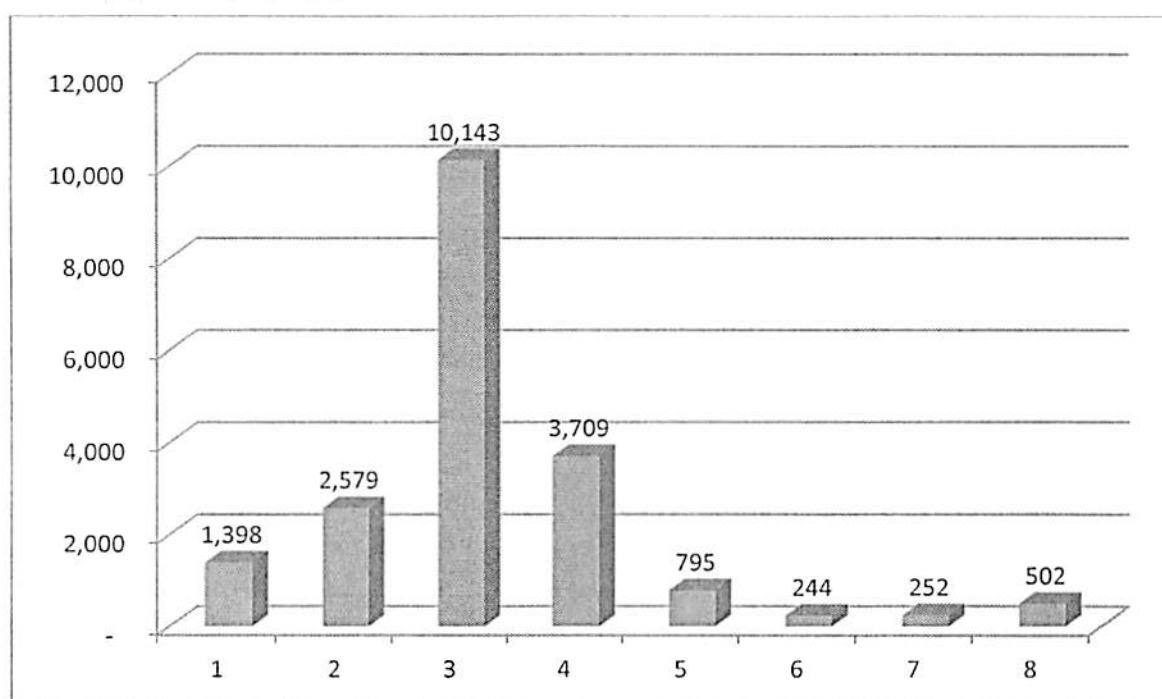
data. Unfortunately, coding errors mean we are unable to attribute a high percent of the travel cost to particular districts.

(8) Hours Interpreted, 2012

Source: FINET

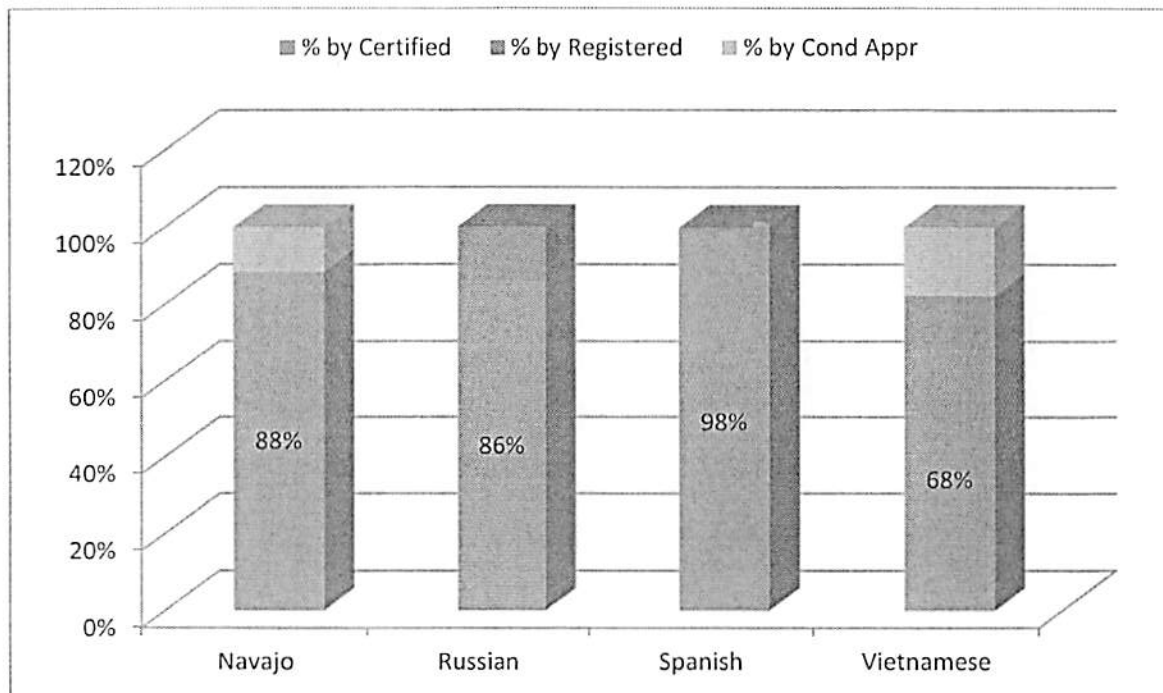
By isolating and subtracting mileage reimbursement, we are able for the first time to report the time spent interpreting. The reported time spent interpreting is the accumulation of the actual time or minimum time for which the interpreter was paid.¹ The result is a more accurate measure because the higher fee for higher credentials influences reporting by cost alone.

(a) By district

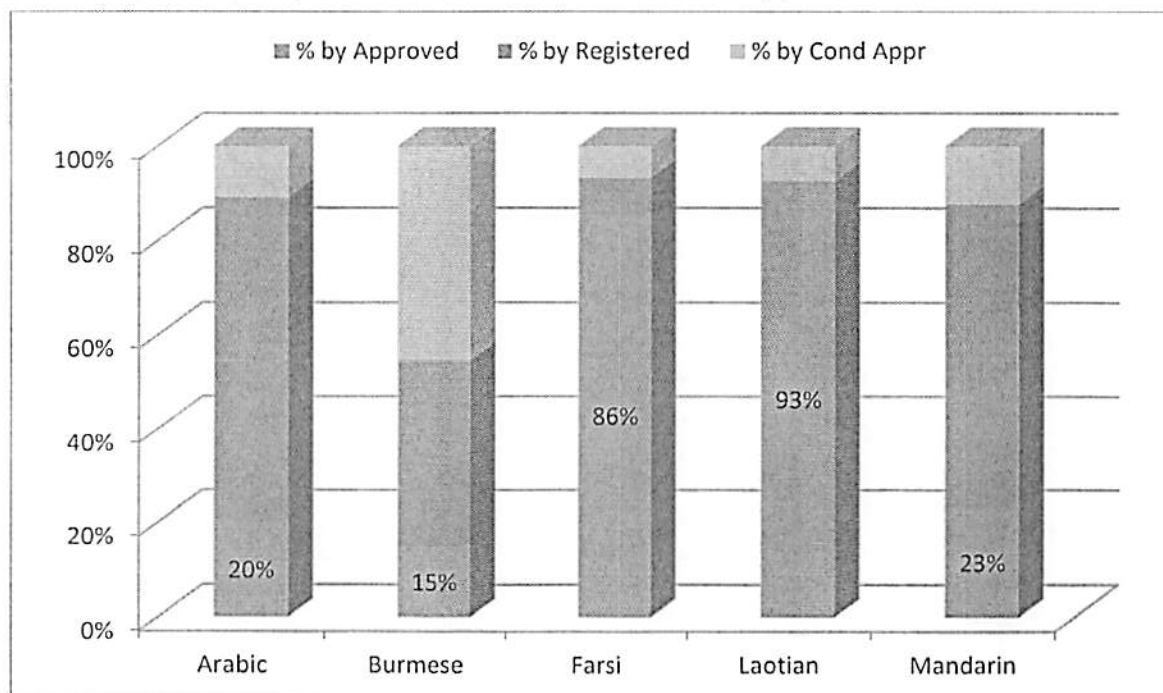


¹ Interpreters are paid in half-hour increments for the actual time interpreting or a minimum time based on the distance traveled to the hearing, whichever is greater.

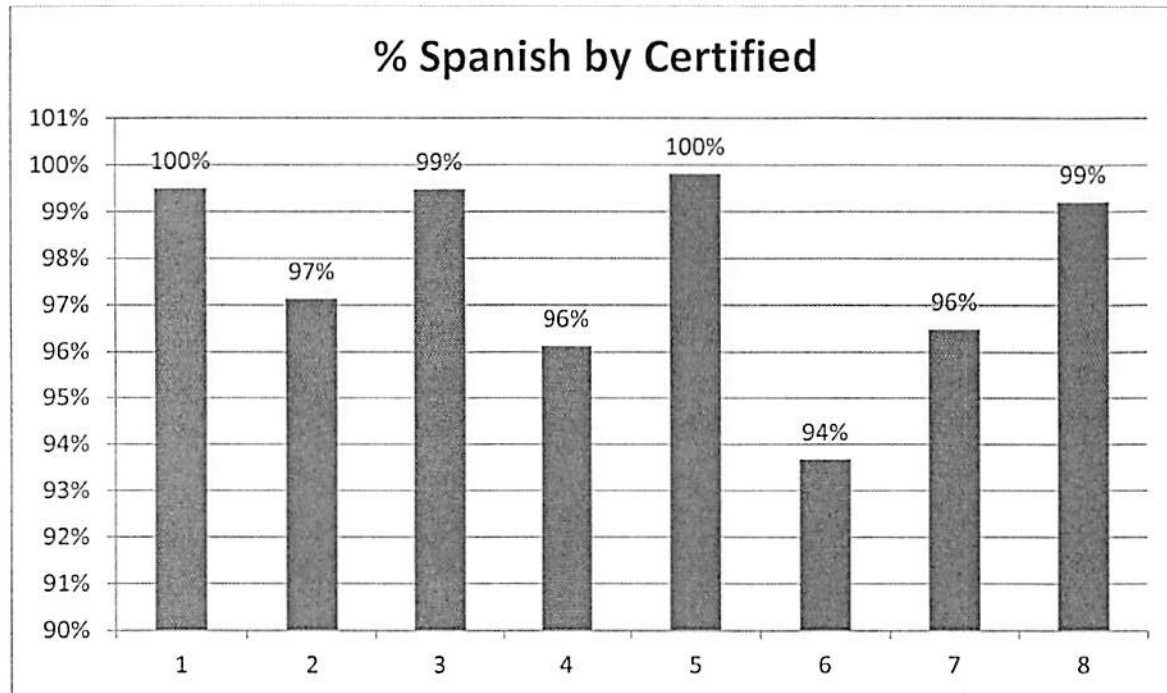
(b) By highest credentials available — Certified



(c) By highest credentials available — Approved



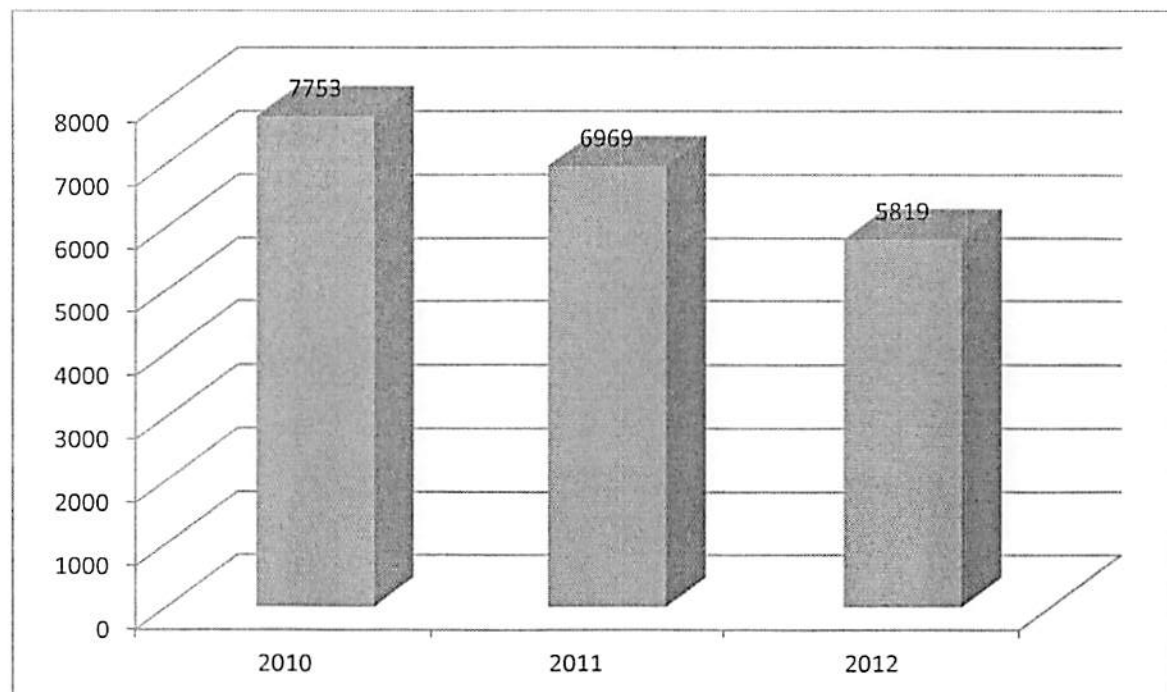
(d) Percent of Spanish language hours interpreted by a certified interpreter



(9) District Court

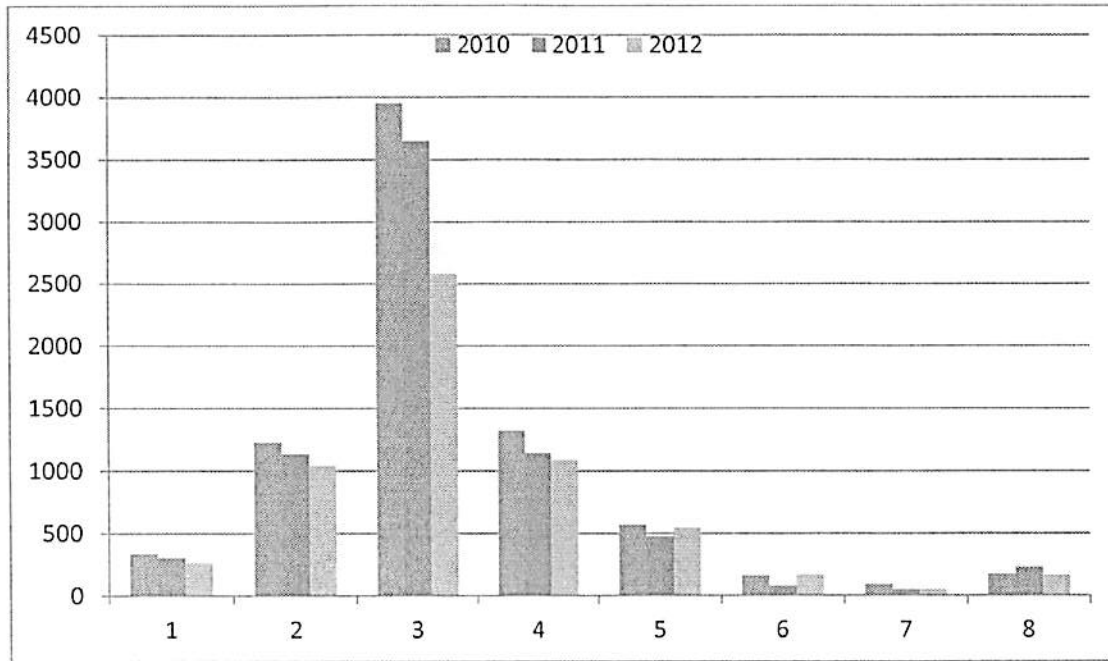
Source: CORIS

(a) Total interpreted hearings

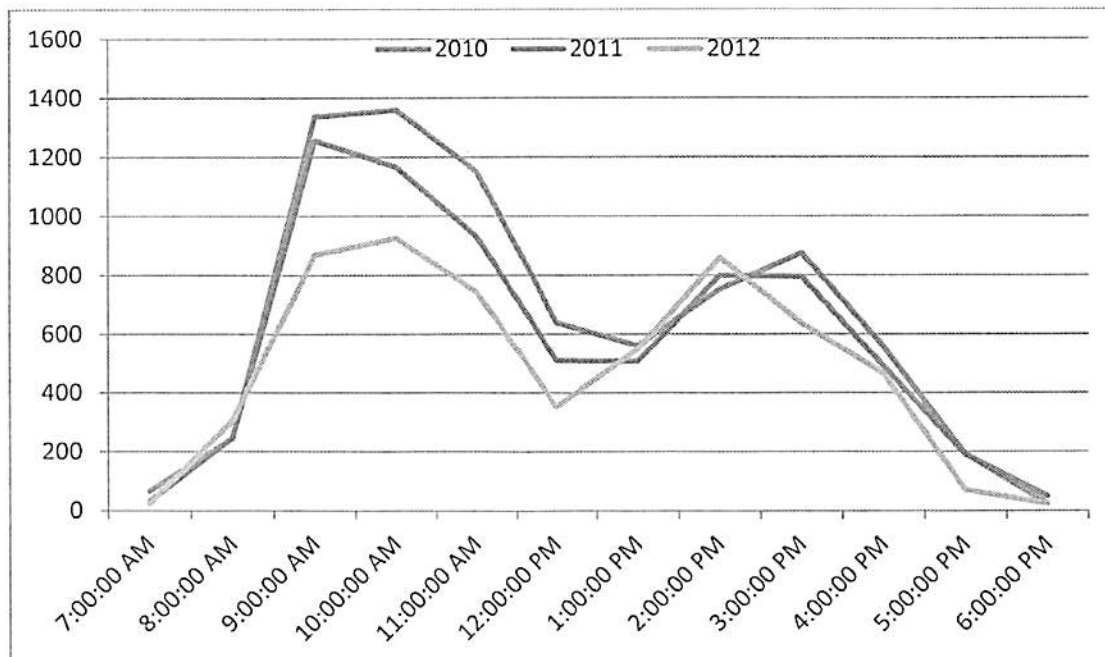


The amendment to Rule 3-306 providing interpreters for all district court hearings, not just criminal, went into effect April 1, 2011. Despite extending the language access program to all hearings, the total number of hearings interpreted has declined.

(b) Interpreted hearings by district



(c) Interpreted hearings by start time



Hearings reported as starting before 7:00 am are included with the 7:00 am hearings. Hearings reported as starting after 6:00 pm are included with the 6:00 pm hearings.

(d) Interpreted hearings by case type

Case Type	Number of Hearings Interpreted			Case Type	Number of Hearings Interpreted		
	2010	2011	2012		2010	2011	2012
Admin. Agency			1	Settlement			
Adoption			2	Miscellaneous	1		
Cohabitant Abuse	26	50	81	Misdemeanor	1086	962	810
Conservatorship			3	Name Change			7
Contracts			5	Not Applicable		4	10
Custody &				Paternity			9
Support	2	4	5	Personal Injury			4
Debt Collection		2	30	Post Conv Relief	1		1
Divorce	2	8	57	Probate			1
DUI	237	148	108	Sm Claims			
Estate			2	Appeal			6
Eviction		2	14	Small Claims	3	3	1
Felony	6055	5497	4386	Stalking			7
Guardianship			12	Traffic	339	289	241
Infraction	1		10	UIFSA			3
Minor's			3	Total	7753	6969	5819

(e) Interpreted hearings by hearing type

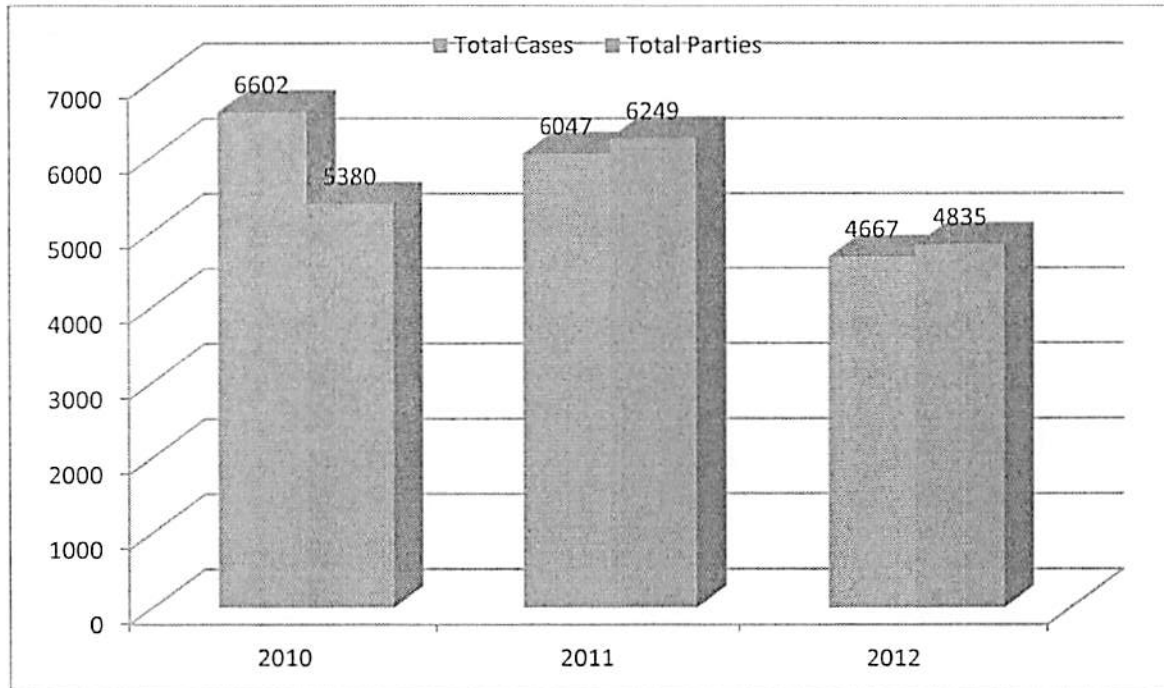
Hearing Type	Number of Hearings Interpreted			Hearing Type	Number of Hearings Interpreted		
	2010	2011	2012		2010	2011	2012
Appoint Counsel	889	710	514	Jury Trial	52	44	35
Arraignment	717	573	448	Law and Motion	773	870	911
Bail Forfeiture	27		8	Motion Hearing	25		8
Bail Hearing	41	36	52	OSC	72	81	70
Bench Trial	19	8	27	Plea Bargain	25		8
Bench Warrant	94	79	36	Preliminary Hng	314	354	301
Bond Hearing	3	2		Pretrial Conf	394	375	281
Change of Plea	655	586	386	Probable Cause	1		
Competency Hng	2	10	6	Probation Report	76	68	69
Disposition Hng			4	Probn Revocation	76	68	69
Drug Court	106	84	3	Protective Order	25	45	71
ECR Status Conf		2	31	Remand Hearing	6	1	3
Evidentiary Hng			6	Resolution			
Hearing	75		24	Hearing	5	12	1
Hearing Default	25		8	Restitution			
Imm Occupancy			5	Hearing	6	5	2
Initial Appearance	777	683	599	Review Hearing	179	135	155

Hearing Type	Number of Hearings Interpreted			Hearing Type	Number of Hearings Interpreted		
	2010	2011	2012		2010	2011	2012
Roll Call	518	556	158	Supp Order			6
Sanctions			1	TRO			1
Scheduling Conf	57	96	268	TBD		1	
Sentencing	1561	1284	978	Trial De Novo			2
Status Conf	2	17	2	Waive Prelim	153	182	261
Sufficiency Bond	3	2		Total	7753	6969	5819
Summary Jgmt			1				

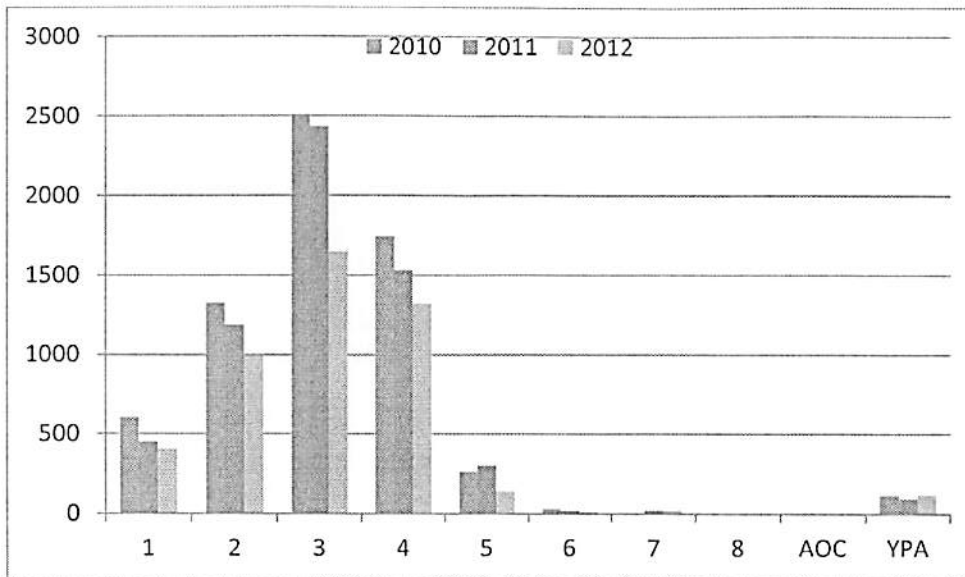
(10) Juvenile Court

Source: CARE

(a) Total



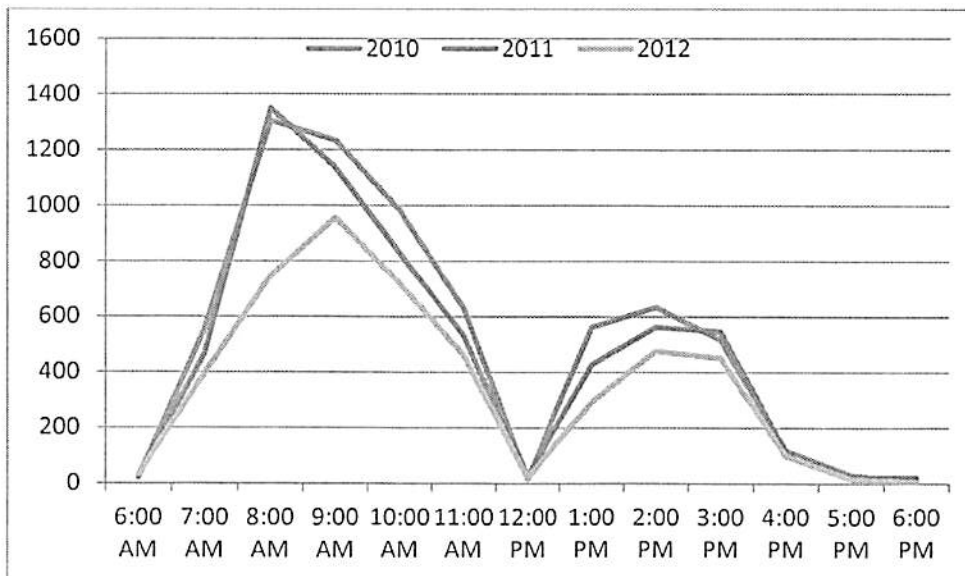
(b) Total cases by district



The juvenile court data are compiled on a calendar year basis, and the data for CY 2012 include hearings scheduled through the end of 2012.

There are only a few cases associated with the 8th Judicial District and the AOC, so the columns are too small to be seen on this scale. There should be no cases associated with the AOC. There are several cases associated with the Youth Parole Authority each year. It appears that these are interpreted hearings held at the YPA but recorded in CARE. It appears that the court is not paying the interpreter.

(c) Interpreted hearings by start time



Hearings reported as starting before 6:00 am are included with the 6:00 am hearings. Hearings reported as starting after 6:00 pm are included with the 6:00 pm hearings.

(11) Analysis

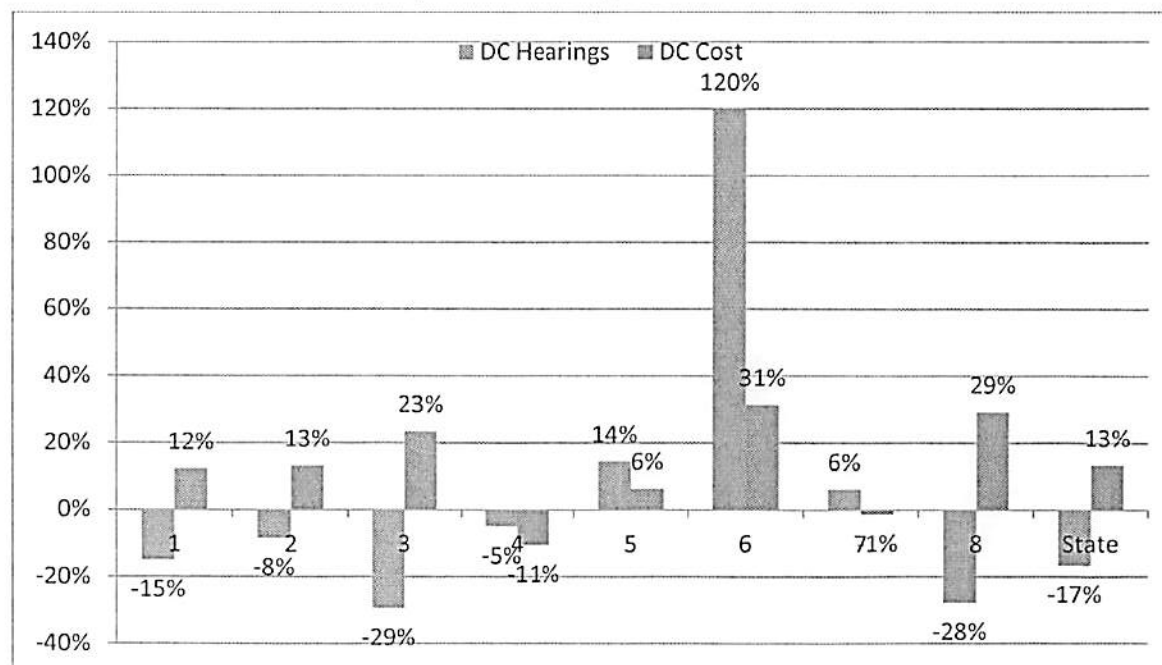
FINET provides the most reliable source of data because it is in the court's and the interpreters' self-interest to pay and to be paid the correct amount.

CORIS data are probably under-reported, although — again probably — not appreciably. Judicial assistants are good about recording the presence of the interpreter, but, from a case management perspective, there is no difference between doing so and failing to do so. Also, there are interpreting assignments for which an interpreter is paid that occur outside of a court hearing and are not captured in CORIS.

Now that we separate the cost of mileage reimbursement from the cost of professional services, we should have, for the future, a sound basis of measuring changes in the number of hours interpreted (based on the calculation of actual or minimum time paid).

By expanding the language access program to all hearings, civil and criminal, one would expect the number of interpreted hearings to have increased, but CORIS shows that they have decreased. New filings in district court have declined for the last three years; perhaps the overall decline in new cases more than off-sets the expansion to civil hearings. Without comparable hearing data from CARE, it is omitted from this analysis.

With the number of hearings declining, one would expect overall costs also to decline, but they have increased. One would expect a higher correlation between costs and hearings among the districts, but the variations are sometimes quite extreme. Only in Fourth District Court did hearings and costs both decline, and only in Fifth and Sixth District Courts did hearings and costs both increase. (Attributing half the salary of Third District staff interpreters to district court.) Removing the Third District from the data moderates the difference: Throughout the rest of the state from 2011 to 2012, the number of district court interpreted hearings declined 3% and the cost increased 3%.



In the Third District Court, the cost for contract interpreters declined substantially from 2011 to 2012, which one would expect with interpreters on staff. After including the salary of the staff interpreters, the total cost in the Third District increased while the number of district court hearings declined. However, the same is true in other districts, so the cause of the increase should not necessarily be attributed to staff interpreters.

We are unable to fully explain why costs have been increasing while the number of hearings has declined. There are several factors which contribute to the phenomenon, but they may not explain the divergence entirely.

One factor has already been mentioned: the number of interpreted hearings is probably under-reported. One can see some evidence of under-reporting in previous years in the 120% increase in hearings in the Sixth District Court. Whatever one is measuring, an increase of this magnitude, especially when out of proportion to the other districts, usually means improved reporting. The CORIS report of interpreters present at hearings is so thorough, however, that under-reporting hearings is probably minimal.

Some interpreting is not captured in CORIS, such as walk-in clients, mediation, divorce education and other court-annexed programs. From the experience of the interpreter coordinators, it appears that expanding the program to civil cases has increased this unscheduled need.

Part of the divergence in the Third Judicial District is due to the increased use of "miscellaneous" interpreters. This is a contract interpreter who is on-site but not scheduled for particular hearings. They are available in the probable event that there is an unscheduled need. The frequency of the actual need justifies the practice, but some of the interpreter's time will be idle. Formerly the Third Judicial District scheduled one miscellaneous interpreter for four hours per day. Currently there are two miscellaneous interpreters for six hours per day.

Three changes have had the effect of increasing costs even though work has not increased. The first is a newly established minimum fee for three hours based on the distance traveled. Formerly there were minimum fees for one, two and four hours; a minimum fee for three hours was added last year. Approximately 9% of all payments in FY 2012 were for three hours and would have been for two hours in previous years.

Although the hourly fee for interpreters with given credentials has remained stable from FY 2010 through FY 2012, some interpreters test into higher credentials and so are paid a higher fee. The interpreter ranks had the following increases during FY 2012:

	<u>Spanish</u>	<u>Languages other than Spanish</u>	<u>Fee Increase</u>
To Certified	6	1	16.7% over Approved
To Approved	3	7	14.9% over Registered

The number of hearings interpreted in Spanish is many times larger than in all other languages combined. So, even though approved Spanish interpreters are seldom used and additional certified Spanish interpreters means principally that the work is spread

among more people at the same cost, the multiplier on even modest increases is large. When an interpreter becomes certified (or approved) in a language in which there are no (or only a few) others with similar credentials, interpreters with the highest credentials corner a significant percent of the work in that language, also resulting in a higher cost.

Finally, beginning December 2010, mileage reimbursement was reinstated from \$0.36/mile to its former \$0.505/mile. This was a 71% increase, and, in a state as large as Utah, it is bound to have had an effect. The full effect would have been felt in FY 2012 and about one-half the effect in FY 2011.

The precise impact of these factors would be very difficult to measure. It is, however, a reasonable hypothesis that, when combined, they explain at least part of the divergence in hearings and costs.

(12) Interpreter information on the court's website

- American Sign Language Interpreters
- List of interpreters by language and credentials
- How to become a court interpreter
- Request a court interpreter
 - Forms and instructions in English, Spanish and Vietnamese.
- English-Spanish Legal Terminology

(13) Remote interpreting

At the end of the pilot program in FY 2011, we concluded that remote interpreting equipment integrated into an existing courtroom sound system, although less expensive than a stand-alone "cart" system, presented too many technical problems. As a result, integrated systems in Moab and Roosevelt have been replaced with cart systems. In addition the Sixth District has purchased a cart system for Manti. The cart system in Vernal, installed in October, 2010, continues to function, as does the integrated system in Richfield.

The Third Judicial District has established two small offices in the Matheson Courthouse dedicated to remote interpreting. From this location an interpreter has the equipment needed to communicate with the specialized equipment in the remote courtrooms. Although an interpreter can use any telephone for this purpose, we encourage interpreters to use the Matheson offices and equipment.

Remote interpreting equipment is not used frequently. As a result it remains somewhat foreign and mysterious; it does not take much of a problem with it to cause judges and judicial assistants to seek an in-person interpreter instead, or to use a speaker phone.

And there have been problems. Even in the offices in the Matheson Courthouse, which probably provide the most stable environment available, there are periodic noises on the line, delays in switching among the three interpretation modes, and difficulty hearing. We need to develop a regular testing pattern for all of the equipment to discover and fix problems before they occur during a hearing. And we need to improve our response to problems when they are reported. Regular tests should also help everyone to remain familiar with the equipment and more likely to use it.

The most serious problem, however, is not technical. Interpreters in the Matheson office must frequently wait — sometimes as long as two, three and four hours — for a hearing to begin. Sometimes the call to begin the hearing never comes. The courts pay for this idle time. A potential solution is to develop special calendars for interpreted hearings or to give priority on the calendar to interpreted hearings, but this will come at the expense of the judges' scheduling flexibility.

(14) Staff Interpreter Pilot Program

(a) Estimated savings

The Third Judicial District has hired four staff interpreters through written agreements that will expire June 30, 2013. The staff interpreters are paid \$30.00 per hour with no benefits compared to \$38.63 per hour with no benefits for a contract interpreter.² The staff interpreters work full-time. Two of the interpreters have been on staff since mid-April 2011, two since mid-April, 2012.

We have been keeping a record of each staff interpreter's time and tasks on her or his calendar, which we can download into a spreadsheet for analysis. We had hoped to have a full year's worth of data for two of the interpreters, but, in the transition from Groupwise to Google, much of the data of one interpreter was lost. Consequently we have based the following annualized estimate on the calendars of all four staff interpreters for four months, spanning the end of FY 2012 and the beginning of FY 2013.

Task	Annualized Time (Hours for one Interpreter)	Cost		
		Staff Interpreter @ \$30.00/hr	Contract Interpreter @ \$38.63/hr	Difference
Filling In	23	\$690	\$888	\$198
Front Counter/Law Library	21	\$630	\$811	\$181
Regular Interpretation	1745	\$52,350	\$67,409	\$15,059
Remote Interpretation	10	\$300	\$386	\$86

² When the Legislature approved a 1% cost of living adjustment for FY 2013, the staff interpreters' wages were increased, along with those of all other employees, to \$30.30/hour. The Judicial Council approved a 1% increase for contract interpreters to \$39.02/hour.

Task	Annualized Time (Hours for one Interpreter)	Cost		Difference
		Staff Interpreter @ \$30.00/hr	Contract Interpreter @ \$38.63/hr	
Translation	61	\$1,830	\$4,559 ³	\$2,729
Holiday	88	\$2,640		\$(2,640)
Vacation	120	\$3,600		\$(3,600)
Meetings	20	\$600		\$(600)
Total	2088	\$62,640	\$74,054	\$11,414

- Estimated annual savings are approximately \$11,000/interpreter.
- Actual savings are probably a little higher since this analysis does not include mileage reimbursement payable to contract interpreters. In FY 2012 certified Spanish contract interpreters were paid an average of \$762 each for mileage reimbursement. Staff interpreters are reimbursed for miles driven in a private vehicle, but they usually use a state vehicle.
- Estimated savings are due in part to the hypothetical payments to contract interpreters for webpage translations. This is a need that would go largely unmet but for the staff interpreters.

(b) Collaboration of the Third and Eighth Judicial Districts

Starting July 1, 2012, the Third and Eighth Districts entered into an agreement whereby the Third District interpreter coordinator schedules all interpreters for Eighth District hearings. Using the features of CORIS and CARE and supplemented by e-mail and telephone communication, the Eighth District judicial assistants identify and communicate the need for an interpreter and in which language. The Third District coordinator schedules the interpreters as needed.

Some general guidelines have been established about when the judges are willing to use remote interpreting, which is available in Vernal and Roosevelt, but not Duchesne or Manila.⁴ If an in-person interpreter is needed, the coordinator will schedule one of the staff interpreters in the Eighth District and then schedule a contract interpreter for any Third District hearings that would have been covered by the staff interpreter, that being the less expensive arrangement.

Based on early results, the agreement appears to be having the desired effect. For July and August, 2012, there has been only one Spanish contract interpreter with service in the Eighth District.⁵

³ Contract interpreters who translate webpages and forms are paid by the word rather than by the hour. This amount is the cost for a contract interpreter to translate the webpages and forms actually translated by the staff interpreters during 2012.

⁴ Most recently, the staff interpreters have also been doing most of the remote interpreting for Richfield, Manti and Moab.

⁵ This is based on the FINET record of payments. There is no deadline for interpreters to submit invoices, so there may be some payments pending.

(c) Survey about staff interpreters

We conducted a very brief survey of judges and judicial assistants in the Third and Eighth Judicial Districts in October, 2012, after two of the staff interpreters had been employed for about 18 months and two others for about six months. The staff interpreters and interpreter coordinators also were included as respondents. Of the 33 respondents, 75% were aware that we employ staff interpreters. All but 2 respondents recognized them as having interpreted at least one hearing or other encounter. Only one respondent thought them less qualified than contract interpreters. Fifty percent thought them better qualified, and the remainder thought that they have about the same qualifications as contract interpreters. Eighty percent of respondents thought we should continue to employ staff interpreters, 10% thought not, and 10% were unsure. The survey results, including comments, are in Appendix A.

(d) Recommendations

We began the pilot program in mid-April 2011 to see whether staff interpreters would save money. They have, but only a modest amount, and that will be eliminated if the salary recommendations made below are approved. If the courts are to employ staff interpreters on a permanent basis, the decision should be made because of the added benefits from staff interpreters, not because of savings. The benefits to the court include:

- No minimum fees.
- No travel reimbursement if the staff interpreter uses a state vehicle. Reduced reimbursement for private vehicle.
- Walk-in and other short notice needs are better met.
- Increased translation of the court website and forms.
- Using Third Judicial District staff interpreters for remote and in-person interpreting in the Eighth Judicial District and for remote interpreting for Richfield, Manti and Moab.
- Time waiting for hearings can be more productive.

There were enough benefits after a year with two staff interpreters to hire two more. Four interpreters on the Third Judicial District staff have not exceeded the demand for their time.

We recommend that the courts retain as full-time-fully-benefited-employees, if they agree, the four staff interpreters for the Third Judicial District. We recommend that we begin analyzing whether the circumstances in any of the other districts warrant hiring staff interpreters.

Wage options	Hourly Wage	Annual Wage	Benefits	Total
Current cost of the pilot program adjusted to include benefits ⁶	\$17.80	\$37,166	\$26,082	\$63,248
Median wage as shown by a national salary survey ⁷	\$21.68	\$45,268	\$28,915	\$74,183
Payments to contract interpreter performing comparable work adjusted to include benefits ⁸	\$21.90	\$45,727	\$29,075	\$74,803
Average wage as shown by a national salary survey	\$22.62	\$47,238	\$29,601	\$76,839

(15) Strategic planning

As required by Federal regulations passed under Title VI of the United States Code, the Court Interpreter Committee has developed and published a language access plan approved by the Judicial Council. In addition, the committee began at its September meeting the process for developing a strategic plan. The committee's initial efforts focused on improving education for interpreters and for the judges, court staff, lawyers and clients who work with them. Additional planning efforts will follow.

The National Center for State Courts and the State Justice Institute sponsored a National Summit on Language Access in the Court from October 1 - 3, and Utah sent a delegation of four people. The Summit provided an opportunity to compare our language access program with those of other states, and it provided several ideas that might be implemented in Utah.

⁶ Includes 1% COLA for FY 2013.

⁷ The results of the salary survey are in Appendix B.

⁸ Includes 1% COLA for FY 2013; includes average mileage reimbursement from FY 2012.

(16) Appendix A: Survey about staff interpreters

Were you aware that the court employs four Spanish-language interpreters as part of a pilot program?	Response Percent	Response Count
Yes	75.0%	24
No	25.0%	8
Skipped question	1	
The staff interpreters are: Frank Chavez - Israel Gonzalez-Nieri - Juana Gutierrez - Miguel Medina They interpret in the Third and Eighth Judicial Districts. Have you had any of them interpret?	Response Percent	Response Count
Yes	93.9%	31
No	6.1%	2
Skipped question	0	
How was their performance compared to traditional contract interpreters?	Response Percent	Response Count
Better	50.0%	14
Worse	3.6%	1
About the same	46.4%	13
Skipped question	5	
Do you think the court should continue to employ interpreters?	Response Percent	Response Count
Yes	80.6%	25
No	9.7%	3
Not sure	9.7%	3
Skipped question	2	

Comments

- It is easier to just order interpreters than just work on these four. Sometimes we are waiting because there are so many cases that need interpreters.
- Excellent program
- I haven't been with the bench long enough to really form an opinion on this.
- They are the best. It is so nice to have them in the courthouse when an unexpected need arises.
- The commissioners hear a significant amount of protective orders. Often, a party appears that nobody knew needed an interpreter. We have had a significant reduction in the need for continuances just to arrange for an interpreter. I strongly support keeping them on.
- Having the interpreters on hand really helps in Protective Order hearings where we have no advance knowledge that one is necessary until the calendar is called.

- I know some of these interpreters, but I had no idea that they were "pilot program" interpreters as opposed to actual contract interpreters. Because I didn't know there was any difference in status and because I do not know all of the names of the interpreters offhand, I am afraid I cannot provide any helpful comparison between them.
- Service is comparable - let the economics be the determining factor.
- They are much better, consistent and fully conversant with what we need to have happen. Some of our contract interpreters are not so skilled.
- I am extremely grateful that the court employs interpreters full time. We do not have any interpreters on staff and regularly call the on-call interpreter to come assist to help with Spanish speaking customers, which we see on a daily basis. We help provide Spanish speakers with better service when we have fluent court interpreters who can properly convey information.
- The contract interpreter in WJ was and is superior to others that have appeared.
- The service I have received from the employee interpreters and the contract interpreters has been essentially the same. I would think that the decision would be an economic one. I have no opinion on that point.
- The court should definitely continue to staff interpreters and consider hiring more interpreters as court staff. They are a much needed asset of the court system. Without them, the court system suffers and becomes inaccessible to a large part of the community and overall disservice to the general public. The court should consider hiring interpreters that speak Arabic and Russian as well.
- I'm in juvenile court. They are invaluable. Having them in the building all of the time is very helpful, often we don't know if a family needs an interpreter until they are in the hallway and we're getting ready to call the case. Being able to call and have an interpreter come down saves a lot of time because we avoid resetting the case. I've found the interpreters to be very professional and I never find myself doubting that I'm communicating well with the juveniles and parents.
- It is wonderful to have interpreters available so readily.
- No opinion
- Sometimes the need arises with very little notice. Having them available has been a real help at those times. Mr. Chavez and Ms. Gutierrez are the ones I'm familiar with, and I think they're fantastic.

(17) Appendix B. Salary Survey

(a) Other States

<u>State</u>	<u>Hourly Wage</u>	<u>Annual Wage</u>	<u>Wages and Benefits</u>
Florida	\$10.73	\$22,400.00	
Minnesota	\$14.87	\$31,048.56	
Kentucky	\$15.69	\$32,754.00	
University of Utah Health Interpreters	\$17.27	\$36,059.76	
Arkansas	\$17.88	\$37,332.00	
Idaho	\$19.55	\$40,816.50	
New Mexico	\$20.88	\$43,605.00	
Nevada	\$21.68	\$45,268.00	
Median	\$21.68	\$45,268.00	\$74,183
Connecticut	\$21.75	\$45,420.00	
Average	\$22.62	\$47,237.73	\$76,839
Colorado	\$25.66	\$53,568.00	
North Carolina	\$26.17	\$54,649.00	
Oregon	\$26.97	\$56,304.00	
Massachusetts	\$27.69	\$57,815.00	
California	\$32.57	\$68,006.16	
Washington	\$40.00	\$83,520.00	

Source: National Center for State Courts.

(b) Other court positions with comparable starting salary

<u>Position</u>	<u>Starting Hourly Wage</u>	<u>Position</u>	<u>Starting Hourly Wage</u>
Guardian ad Litem	\$17.17	Management Analyst III	\$22.46
Clerk Training Coordinator	\$17.58	Managing Purchasing Agent	\$22.46
Court Services Specialist	\$17.58	Probation/Intake Supervisor	\$22.46
GAL Program Assistant	\$17.58	Supervising Purchasing Agent	\$22.46
Budget & Accounting Officer II	\$18.07	Application Developer II	\$23.08
Management Analyst I	\$18.07	Business Application Tech II	\$23.08
Auditor III	\$21.27	Infrastructure Support Spec II	\$23.08
Clerk of Court II	\$21.27	Law Clerk II	\$23.08
Physical Resources Coord	\$21.27	Appellate Clerk of Court	\$23.71
Information Analyst II	\$21.86	Attorney/Law Clerk	\$23.71
Law Clerk I	\$21.86	Budget & Acc Officer IV	\$23.71
Court Program Administrator	\$21.86	Chief Probation Officer I	\$23.71
Court Program Coord II	\$22.46	Clerk Of Court III	\$23.71
Human Resources Rep IV	\$22.46	Guardian ad Litem Attorney I	\$23.71
Information Spec III	\$22.46	Program Coordinator III	\$23.71
Lead Child Welfare Mediator	\$22.46	Staff Attorney	\$23.71

TAB 9

MEMORANDUM

To: Management Committee

From: Tom Langhorne, Judicial Institute Director

Date: October 15, 2012

RE: Juvenile Judges' Board nominates Judge Christine Decker to fill Standing Education Committee's vacancy

Judge Beth Lindsley's second term on the Standing Education committee expired October, 2012. The Juvenile Judges' Board, during its October 12, 2012 meeting, recommended Judge Christine Decker fill that now vacant Juvenile Judge committee.

With your concurrence with the Board's recommendation, we will place her name before the Council's November Consent Agenda.

Respectfully,
Tom Langhorne
Judicial Institute Director

MEMORANDUM

To: Management Committee

From: Tom Langhorne, Judicial Institute Director

Date: October 15, 2012

RE: Request to have a Standing Education Committee member serve a third consecutive term

Rule 1-205 (3) (B) of the Judicial Council's Rules of Judicial Administration states, in part:

"...Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service more than two consecutive terms".

The current district court clerk position has been exceptionally well served by Jana O'Hearon, Deputy Court Clerk for the Seventh District Court. Ms. O'Hearon's second consecutive term expires in October, 2012. The Utah Judicial Institute Director believes it would be difficult to find a substitute for her two excellent terms of service to and experience on this committee. Accordingly, the Judicial Institute Director requests the Management Committee place her name before the Judicial Council's Consent Agenda and also recommend she be allowed to serve a third consecutive term on the Standing Education Committee.

Respectfully submitted,

Tom Langhorne
Judicial Institute Director

Utah Court of Appeals

Chambers of
Judge Carolyn B. McHugh

450 South State Street
Salt Lake City, Utah 84114 - 0230
(801) 578-3950
FAX (801) 238-7981

October 19, 2012

Judicial Council
Management Committee
Matheson Courthouse
450 South State Street
Salt Lake City, Utah 84114

Attention: Jody Gonzales

Re: Membership Recommendation From The Standing Committee on Court Technology

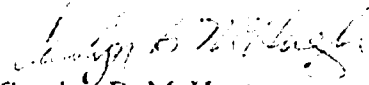
Dear Council Members:

The Technology Committee develops and makes recommendations to the Judicial Council relating to the plans, priorities, and strategies that guide and govern technology as applied to Utah's court and management structure.

There is a vacancy on the Committee consisting of one of the two Court Executive representatives. The Trial Court Executives have nominated Shane Bahr to fill the position left vacant by Beani Martinez.

I would ask that you act favorably on the nomination of Shane Bahr to the Technology Committee.

Sincerely,


Carolyn B. McHugh
Presiding Judge,
Utah Court of Appeals

c: Ron Bowmaster


Administrative Office of the Courts

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

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

TO: Management Committee

FROM: Ray Wahl, Staff, Standing Committee on Children and Family Law 

RE: Membership

DATE: October 22, 2012

Commissioner Michelle Blomquist's first term on this standing committee expires on November 22, 2012. The Standing Committee on Children and Family Law has unanimously endorsed the Commissioner being appointed by the Council for a second term. She presently serves as the chair of the Divorce Procedures Committee and the sub-committee will soon make recommendations to the full committee. I will be at the Management Committee meeting if there are any questions about this appointment.

cc: Judge Thomas Higbee, Co-Chair, SCCFL
Judge Douglas Thomas, Co-Chair, SCCFL

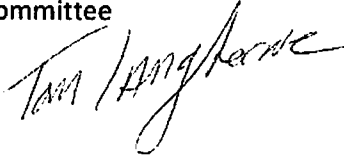
The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

TAB 10

MEMORANDUM

To: The Utah Judicial Council's Management Committee

From: Tom Langhorne, Judicial Institute Director



Date: October 29, 2012

RE: Judicial Institute's SJI Grant Application Request: Curriculum Adaptation Grant

Pursuant to the AOC's grant application procedures, the Judicial Institute presently requests permission to apply for a SJI curriculum adaptation grant.

Specifically, the Judicial Institute is prepared to submit its \$7,251.02 request in order to develop online, Utah specific, new judge orientation modules. These modules will assist new judges, upon Senate confirmation, to receive immediate, on demand online instruction and guides that advance their transition to the bench.

The Judicial Institute is partnering with the National Judicial Council (NJC) in this grant request. A subcommittee has been tentatively formed in anticipation of the SJI grant award. This subcommittee will be responsible for developing the modules' content. The NJC will be responsible for transporting that content into an electronic, online Webpage for new judges' ease of access. These Utah specific modules will be annexed to the NJC's existing new judge orientation Webpage.

The SJI curriculum adaptation grant guidelines require the grant recipients to make cash and in-kind matches. For this specific grant application, the AOC would be obligated to give a cash match equaling \$725.10. The AOC's in-kind match would equal \$3,487.50 which should easily be achieved through the time and work of Judicial Institute's eleven person subcommittee.

**Judicial Council Grant Application Proposal
Code of Judicial Administration 3-411**

FEDERAL GRANTS

Contact Person/Phone: Tom Langlois 578-3837 Date: 10/25/12

Judicial District or Location: ADC

Grant Title: SJI CAT GRANT Grantor: SJI

Grant type (check one): ☒ New ☐ Renewal ☐ Revision

Grant Level (check one): ☒ Low ☐ Med. ☐ High.
Under \$1,000,000 \$1,000,000 to \$10,000,000 Over \$10,000,000

Issues to be addressed by the Project: new judge orientation/training

Explanation of how the grant funds will contribute toward resolving the issues identified: Currently, newly confirmed Utah judges often wait up to one year before receiving new judge orientation. This grant assist the Judicial Institute develop online, new judge orientation modules that are immediately accessible

Fill in the chart(s) for estimated state fiscal year expenditures for up to three years:

Total Funding Sources

		(PROVIDE EXPLANATION OF ALL MATCHES IN THE COMMENTS SECTION)					
		MATCHING STATE DOLLARS					
		General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort	Total Funds
CASH MATCH	Other Matching Funds from Non-State Entities						
State Fiscal Year	Grant Amount						
FY 2013	725,100	725,100					\$0
FY							\$0
FY							\$0

		(PROVIDE EXPLANATION OF ALL MATCHES IN THE COMMENTS SECTION)					
		MATCHING STATE DOLLARS					
		General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort	Total Funds
IN-KIND MATCH	Other Matching Funds from Non-State Entities						
State Fiscal Year	Grant Amount						
FY 2013	725,100					725,100	\$0
FY							\$0
FY							\$0

Comments: New judge orientation curriculum will include substantial new judge orientation content. The NJC will put out the new Utah judges

Will additional state funding be required to maintain or continue this program or its infrastructure when this grant expires or is reduced? Yes ☐ No ☒ If yes, explain _____

Will the funds to continue this program come from within your existing budget? Yes ☒ No ☐ N/A ☐

How many additional permanent FTEs are required for the grant? 0 Temp FTEs? 0

This proposal has been reviewed and approved by the following:

- The court executives and judges in the affected district(s)
- The Grant Coordinator and the Budget Manager at the Administrative Office of the Courts
- The affected Board(s) of Judges

Approved by the Judicial Council _____ by _____
Date _____ Court Administrator _____

Copy forwarded to Legislative Fiscal Analyst _____
date _____

TAB 11

November 14, 2012

To: Members of the Judicial Council

From: Dan Becker

Subject: Appointment of Chair of Guardian ad Litem Oversight Committee

Mr. Merrill Nelson has been serving as the acting chair of the Guardian ad Litem Oversight Committee since the resignation of Ms. Tani Downing, earlier this year. Subsequent to be named acting chair, Mr. Nelson became a candidate for a vacant seat in the House of Representatives. This was discussed with the Management Committee at the time, and it was decided that should Mr. Nelson be successful in his election, it would be appropriate for him to remain on the committee, but that a permanent chair should be named at that time. Mr. Nelson has now been elected to the Legislature.

The Management Committee recommends that Ms. Jini Roby be named chair of the GAL Oversight Committee. Ms. Roby, who has been an active member of the committee, is a lawyer and a former GAL in the Provo GAL office. She is currently a professor in the social work department of BYU and specializes in issues relating to child welfare. She was recommended by Rick Smith, GAL Director.

**ADDITIONAL COUNCIL MEETING
HANDOUTS**



INTERIM HIGHLIGHTS

Office of Legislative Research and General Counsel
House Building, Suite W210 • Salt Lake City, Utah 84114 • (801) 538-1032

LEGISLATIVE INTERIM MEETINGS
Meetings were held November 14, 2012, or as noted.

Administrative Rules Review Committee

October 19, 2012

Rulemaking Related to Complaints and Fines Issued by the Division of Securities and the Division of Occupational and Professional Licensing

Discussed practices of the Division of Securities and the Division of Occupational and Professional Licensing regarding concerns with the divisions' handling of complaints and the assessment of fines against individuals the divisions found were in violation of state law. The committee also discussed whether the divisions should prepare administrative rules to address the concerns.

October 30, 2012

Requirements for Food Handlers

Received a report from the Department of Health regarding its efforts to prepare administrative rules, as required by state statute, to establish minimum requirements for food handler certification and training. The committee and representatives of the food industry discussed concerns with the department's proposed rulemaking process, while other food industry representatives and local health department representatives expressed support for the department's proposal.

Action: Directed committee staff to prepare a letter referring the issue to the Legislature's Business and Labor Interim Committee.

Definition of "Abuse or Neglect" in Statute and Administrative Rule

Discussed the definition of "abuse or neglect," as it relates to children, in Utah law and administrative rules, and in other western states.

Legislation Requiring Administrative Rulemaking

Received a statutorily required report from the Governor's Office of Economic Development explaining the reasons that the office was late in filing administrative rules to implement 2009 General Session H.B. 188, "Health System Reform — Insurance Market."

*Chairs: Rep. Curtis Oda / Sen. Howard A. Stephenson
Staff: Art L. Hunsaker (Policy Analyst) / Susan Creager Allred (Attorney) / Tracey Fredman (Secretary)*

Business and Labor

Alcoholic Beverage Control Act Amendments

Discussed draft legislation "Alcoholic Beverage Control Act and Master Licenses," which modifies the Alcoholic Beverage Control Act to create certain master licenses, modifies the definition of "retail license," and addresses the authority of the Alcoholic Beverage Control Commission.

Division of Occupational and Professional Licensing

Action: Approved as a committee bill, draft legislation "Professional Licensing Revisions," which modifies the duties and responsibilities of the Division of Occupational and Professional Licensing. The bill also modifies the division's oversight of factory-built housing and requirements for nursing education.

Exemption from Licensure for Hair Braiding

Action: Approved as a committee bill, draft legislation "Cosmetology and Hair Braiding," which adds an exemption for licensure for a person who braids hair and creates new licensing classifications related to hair braiders.

Insurance Amendments

Action: Approved as a committee bill, draft legislation "Insurance Amendments," which modifies the Insurance Code by making amendments to definitions, addressing rules related to the title and escrow commission, addressing monies deposited into the Insurance Fraud Investigation Restricted Account, and creating the Insurance Fraud Victim Restitution Account.

Recommendations of the Uniform Building Code Commission

Reviewed draft legislation "Construction Code Amendments" and "Energy Construction Amendments," which modify the editions of nationally recognized building codes incorporated by reference and adopted by the state.

(Continued next page)

IN THIS ISSUE:

Pages 1-10 Summaries of Legislative Meetings

Insert Legislation Recommended by Legislative Committees for the 2013 General Session

The majority of students served by the organization are located in traditional neighborhood classrooms, receiving outreach services, as opposed to being served in campus or magnet school classes.

Voted and Board Levy Program

Action: *Approved as a committee bill, draft legislation "Voted and Board Levy Program Amendments," which requires the full amount of the state contribution appropriated for the Voted and Board Levy Programs to be distributed each year, and requires the State Board of Education to increase the value of the state guarantee per weighted pupil unit sufficient to fully distribute the legislative appropriation.*

*Chairs: Rep. Francis D. Gibson / Sen. Howard A. Stephenson
Staff: Allison M. Nicholson (Policy Analyst) / Constance C. Steffen (Policy Analyst) / Angela Oakes Stallings (Attorney) / Debra Hale (Secretary)*

Government Operations

Absentee Ballot Amendments

Action: *Approved as a committee bill, draft legislation "Absentee Ballot Amendments," which:*

- *Prohibits a person from filling out an absentee ballot application for another person, except under certain circumstances; and*
- *Prohibits a person from filing an absentee ballot application with an election officer for another person, except under certain circumstances.*

Account for People With Disabilities Amendments

Action: *Approved as a committee bill, draft legislation "Account for People with Disabilities Amendments," which requires a two-thirds vote of the Legislature to repeal the section creating the Account for People with Disabilities Restricted Account and prohibits the Legislature from using money in the account to eliminate an operating deficit.*

Anonymous Campaign Contributions

Action: *Approved as a committee bill, draft legislation "Campaign Contribution Amendments," which:*

- *Prohibits an anonymous cash contribution over \$99;*
- *Requires a candidate to disburse an anonymous cash contribution or public service assistance over \$99 to either the state or political subdivision for deposit into its general fund or an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;*
- *Prohibits a filing entity, other than a candidate, from using an anonymous cash contribution for a political purpose or as a political issues expenditure;*
- *Allows a filing entity to aggregate on a report contributions that do not exceed \$99; and*
- *Increases the amount at which certain filing entities must report the recipient of an expenditure.*

Boards and Commissions

Action: *Approved as a committee bill, draft legislation "Boards and Commissions Amendments," which repeals several boards and commissions created in statute with the amendment that all references to the Board of Examiners be removed from the bill.*

Campaign Finance Reporting by Corporations

Action: *Approved as a committee bill, draft legislation "Campaign Finance Reporting by Corporations," which requires a corporation that makes expenditures to influence the outcome of an election to:*

- *Report on a financial statement money received from a donor in certain circumstances; and*
- *Notify a donor that the corporation may use the money to influence the outcome of an election and that the corporation may disclose the donor in certain circumstances.*

Election Law Amendments

Action: *Approved as a committee bill, draft legislation "Election Law Amendments," which makes conforming amendments for the date of the Western Presidential Primary, addresses the submittal of an absentee ballot, repeals references to the county in a municipal ballot, and makes conforming amendments regarding the voter information pamphlet.*

Election Polling

Action: *Approved as a committee bill, draft legislation "Election Polling," which requires the disclosure of the identity of a person who pays for a poll regarding a candidate or ballot proposition.*

Political Consultant Registration

Discussed draft legislation "Political Consultant Registration," which requires a political consultant to register with the lieutenant governor.

Veterans Reintegration Task Force

Received a report from the legislative Veterans Reintegration Task Force, which addressed the efforts and actions of the task force during the 2012 interim. The committee also reviewed draft legislation "Reauthorization of Veterans Reintegration Task Force."

Action: *Approved as a committee bill, draft legislation "Reauthorization of Veterans Reintegration Task Force," which:*

- *Reauthorizes the Veterans Reintegration Task Force and limits its composition to not more than 21 members;*
- *Requires the task force to further study the difficulties encountered by returning service members after deployments and create a statewide action plan for assisting with reintegration into communities, finding employment, pursuing education, and locating services; and*

Health System Reform Task Force

November 1, 2012

Responding to the Federal Patient Protection and Affordable Care Act

Received information from the Governor's Health Policy Adviser on the implications of the three models the state could use to implement the two health insurance exchanges required by the federal Patient Protection and Affordable Care Act (PPACA) in 2014. The U.S. Department of Health and Human Services has indicated it will release further implementation guidance after the November 6 election, including clarification that state "blueprints" for exchanges may be submitted after the November 16 deadline.

Received reports from task force staff and the Insurance Department on the potential use of "stop loss" insurance (reinsurance for employers) as a means of avoiding the impact of various provisions of the PPACA.

Received a briefing by Avenue H (the Utah Health Exchange), the Insurance Department, and other interested parties on whether stand-alone dental or vision plans should be offered in Avenue H and the two health insurance exchanges required by the PPACA.

Received information from Aarches Community Health Care, a "consumer operated and oriented plan," or "CO-OP," created as a result of the PPACA. Aarches is scheduled to provide health insurance beginning January 1, 2014.

Action: Voted to have the Insurance Market Issues Workgroup look further into whether stand-alone dental or vision plans should be offered in Avenue H and the two health insurance exchanges required by the PPACA.

*Chairs: Rep. James A. Dunnigan / Sen. Wayne L. Niederhauser
Staff: Mark D. Andrews (Policy Analyst) / RuthAnne Frost (Attorney) / Cathy J. Dupont (Attorney) / Lori R. Rammell (Secretarial Supervisor)*

Judiciary

Children's Participation in Custody Proceedings

Action: Approved as a committee bill, draft legislation "Child Custody Proceedings Amendments," which reduces the age from 16 to 14 for children to express their opinion in custody cases regarding which parent with whom they would prefer to reside.

Expungement Process

Action: Approved as a committee bill, draft legislation "Expungement Process Amendments," which creates a process to expunge drug-related offenses, requires the petitioner to be free of illegal substance abuse and to be successfully managing any substance addiction, and clarifies the difference between a pardon and an expungement.

Justice Courts' Jurisdiction

Discussed removing DUIs from the jurisdiction of justice courts and limiting justice courts' authority to impose consecutive sentences on individuals convicted of multiple misdemeanors.

Rights of Parents and Children

Action: Approved a memorandum from two committee members requesting that the Division of Child and Family Services provide during the 2013 General Session information and data to the Judiciary Standing Committee, the Health and Human Services Standing Committee, and the Social Services Appropriation Committee pursuant to 2012 General Session H.B. 161, "Rights of Parents and Children."

*Chairs: Rep. Kay L. McIlff / Sen. Mark B. Madsen
Staff: Chelsea B. Lloyd (Policy Analyst) / Esther Chelsea-McCarty (Attorney) / Jennifer K. Christopherson (Secretary)*

Law Enforcement and Criminal Justice

Campus Safety Amendments

Action: Approved as a committee bill, draft legislation "Campus Safety Amendments," which amends the Criminal Code provisions relating to persons interfering or trespassing on property owned by an institution of higher education.

Capital Punishment

Discussed aspects of the death penalty in Utah. Received an updated fiscal impact estimate from the Office of the Legislative Fiscal Analyst regarding the cost of imposing the death penalty compared to imposing life in prison without parole. The Fiscal Analyst estimates that imposing the death penalty in Utah costs the state approximately \$1.7 million per year more than the costs of seeking a sentence of life without the possibility of parole.

Received comments from the Office of the Utah Attorney General regarding the concepts of deterrence and retribution.

Received comments from individuals who have been personally affected by the death penalty as family members.

Received comments from Utahns for Alternatives to the Death Penalty.

Dating Protection Act

Action: Approved as a committee bill, draft legislation "Dating Violence Protection Act," which provides for the issuance, modification, and enforcement of protective orders between individuals in a dating relationship.

Enticing a Minor

Action: Approved as a committee bill, draft legislation "Enticing a Minor Amendments," which amends the Criminal Code by clarifying that enticing a minor does not include the intent to complete the commission of a sexual offense with a minor and provides that the penalty for enticing a minor is based on the level of sexual conduct that the offender solicits.

Material Harmful to Minors

Received a presentation regarding the effects that soft-core or gateway pornography has on the developing brains of children and the need to ensure that children are protected from viewing sexually oriented material in public.

Quality Growth Commission

Received a report from the Utah Quality Growth Commission on the state of quality growth in Utah, including the LeRay McAllister Conservation Program.

Veterans Reintegration Task Force Report

Action: Approved as a committee bill, draft legislation "Reauthorization of Veterans Reintegration Task Force," which reauthorizes the task force for the 2013 interim.

*Chairs: Rep. R. Curt Webb / Sen. Casey O. Anderson
Staff: Joseph T. Wade (Policy Analyst) / Victoria Ashby (Attorney) / Samantha Coombs (Secretary)*

Public Utilities and Technology

Electric Power Service Area Exchange

Received presentations from the Utah Associated Municipal Power Systems and a regulated utility provider. The presentations discussed potential draft legislation that authorizes municipalities and regulated utilities to exchange, by contractual agreement and filing with the Utah Public Service Commission, electric power service areas.

Network and Data Security

Received a presentation from the Department of Technology Services concerning the Deloitte Touche Security Assessment of state network and computer security. The presentation included discussion of the newly created State Security Council, geo-blocking, and 24-hour security monitoring.

Remote Utility Tax Incentives

Received presentations from Millard County and the governor's office about using tax incentives for the development of utility infrastructure. Utilities would build the infrastructure, but would have the incentive process in place to encourage taking the risk and constructing the facilities.

Storm Water Capture Amendments

Action: Approved as a committee bill, draft legislation "Storm Water Capture Amendments," which authorizes limited capture and use of storm water runoff without creating a water right.

Utility Infrastructure in Rural Utah

Received a presentation from a regulated natural gas utility provider about how it can provide infrastructure to rural Utah. The presentation included discussion about how to bring costs down by requests for proposals and by discussing pricing options with the Public Services Commission.

*Chairs: Rep. Michael E. Noel / Sen. J. Stuart Adams
Staff: Richard C. North (Policy Analyst) / Robert H. Rees (Attorney) / Tracey Fredman (Secretary)*

Retirement and Independent Entities

Line-of-duty Death and Disability

Action: Approved as a committee bill, draft legislation "Line-of-duty Death and Disability Amendments."

The bill:

- Provides that a line-of-duty death or line-of-duty disability for a public safety service employee or a firefighter service employee includes a death or disability that results from strenuous activity that occurs during training or another activity required by an act of duty; and
- Clarifies that a line-of-duty death and a line-of-duty disability for a public safety service or firefighter service employee does not include certain incidents.

Post-retirement Health Coverage for Governors and Legislators

Action: Approved as a committee bill, draft legislation "Health Insurance Coverage Restrictions on Retired Governors and Legislators," which amends post-retirement health coverage provisions for governors and legislators by:

- Clarifying that only service as a governor or legislator qualifies a recipient for governors' and legislators' group health coverage or Medicare supplemental coverage; and
- Providing that only service as a governor or legislator that began before July 1, 2013, qualifies a recipient for Medicare supplemental coverage.

Public Employee Exemptions From the Utah Retirement Systems

Received a presentation from committee staff on exempting public employees from the Utah Retirement Systems. Current state law provides a list of public employees who are either not eligible for limited membership in a Utah Retirement Systems-defined benefit system or who can elect to be exempt from a defined benefit system in favor of a defined contribution. If the Legislature finds it difficult to recruit and retain qualified applicants for certain positions, the Legislature could consider expanding the list.

Retirement Analysis Requirements for Newly Created Public Entities

Action: Approved as a committee bill, draft legislation "Retirement Analysis for New Public Entities," which requires a person or body submitting a notice to the lieutenant governor of an impending boundary action that creates or incorporates a local entity to include a letter from the Utah State Retirement Office identifying potential retirement provisions that the local entity is required to comply with if the impending proposed boundary action may result in a local entity that employs personnel.

Risk Management Coverage for Independent Entities

Action: Approved as a committee bill, draft legislation "Risk Management for Independent Entities," which amends requirements for a state independent entity to participate in coverage under the Risk Management Fund.

Commercial Driver License Issues

Action: Approved as a committee bill, draft legislation "Commercial Driver License Amendments," which modifies provisions relating to commercial driver licenses to comply with federal laws and regulations.

Driver License Motorcycle Endorsement Amendments

Action: Approved as a committee bill, draft legislation "Driver License Motorcycle Endorsement Amendments," which amends motorcycle endorsement requirements for certain persons who are ordered to active duty and stationed outside of Utah in any of the armed forces of the United States.

Motor Vehicle Dealer Bonding

Received a presentation from the Independent Auto Dealers Association regarding a proposal that would address cases where a motor vehicle dealer's corporate surety bond is not sufficient to cover the total aggregate liability on the bond for all persons making claims.

Special Group License Plate

Action: Approved as a committee bill, draft legislation "Special Group License Plate Amendments," which creates an "In God We Trust" special group license plate.

*Chairs: Rep. Bradley M. Daw / Sen. Kevin T. Van Tassel
Staff: Lief G. Elder (Policy Analyst) / Shannon C. Halverson (Attorney) / Tracey Fredman (Secretary)*

Utah International Relations and Trade Commission

October 23, 2012

Copyrights, Patents, Trademarks, and Trade Secrets

Received a presentation from commission staff about copyrights, patents, trademarks, trade secrets, federal and state law, and what role the state plays in enforcement. Copyrights, patents, and trademarks are all federally based, and trade secrets are protected by the Uniform Trade Secrets Act, which has been adopted by 45 states, including Utah.

Action: Voted to open a bill file that amends Utah's Trade Secret Act by enhancing penalties for violation of that act.

International Trade Representatives

Received introductions to Utah's six foreign-based international trade representatives by the Governor's International Trade and Diplomacy Office. Those countries represented are Chile, China, Germany, Japan, Mexico, and South Korea. Each trade representative gave a brief presentation about the foreign country that person represented and identified how efforts to promote Utah's international trade could be enhanced with additional resources.

One Stop Shop for Utah Export Businesses

Received presentations from the Utah World Trade Center about setting up a process for assisting Utah businesses that want to develop an international trade capacity. Discussion included adding a locally based regional representative to assist businesses in rural parts of Utah.

The commission requested recommendations from the Governor's International Trade and Diplomacy Office and the Utah World Trade Center regarding needed resources in the 2013-14 budget.

November 13, 2012

Utah's Latin American Trade Strategy

Received a report and presentation from the Americas Section of the Governor's International Trade and Diplomacy Office about Utah's Latin American trade strategy. The report identified Brazil, Columbia, Mexico, and Peru as the primary trade partners for the 2013-14 trade cycle and chemicals, computers, electronics, and machinery as the targeted sectors.

Copyrights, Patents, Trademarks, and Trade Secrets

Received an update from the law firm of Kirton McConkie about the protection of intellectual property and the recovery of damages. Two specific proposals were distributed for commission members to consider.

Doubling Utah's International Trade Exports

Received presentations from the Governor's Office of International Trade and Diplomacy and the Utah World Trade Center about how to double Utah's international trade exports. The focus of the presentations was to identify what governmental processes, including budgets, are inhibiting governmental and private sector entities from promoting international trade with Utah businesses. Topics included grants, protocol training, social media, trade representatives, and hosting trade shows.

International Small Arms Treaty

Received a presentation from committee staff about a United Nations proposal to recommence talks on drafting a treaty for regulating the illicit international small arms trade. These talks will begin in March 2013.

*Chairs: Rep. Eric K. Hutchings / Sen. Mark B. Madsen
Staff: Richard C. North (Policy Analyst) / Peter Asplund (Attorney) / Debra Hale (Secretary)*

Veterans Reintegration Task Force

October 19, 2012

Military Occupational Specialty — College Credit Transfer Process

Received presentations from the Board of Regents, Weber State University, and Utah Applied Technology Colleges about how veterans can get credit for military training and experience, and how institutions evaluate, transfer, and grant credits toward a college degree.

Legislation Recommended by Legislative Committees for the 2013 General Session**Business and Labor**

Alarm Company Employee Licensing
Cosmetology and Hair Braiding
Hearing Instrument Specialist Licensing Act
Industrial Accident Restricted Account
Insurance Law Amendments
Professional Licensing Revisions
Reauthorization of Provisions for Insurance Coordination with Other States
Repeal of Health Insurance Mandate Review
Repeal of Reporting Requirements
Unincorporated Business Entities
Worker Classification Coordinated Enforcement Council

Economic Development and Workforce Services Interim Committee

Agency Reporting Provisions
Utah Commission on Service and Volunteerism
Workforce Services Amendments

Education Interim Committee

Voted and Board Levy Program Amendments

Government Operations Interim Committee

Absentee Ballot Amendments
Account for People with Disabilities Amendments
Boards and Commissions Amendments
Campaign Contribution Amendments
Campaign Filing by Media Owner
Campaign Finance Reporting by Corporations
Campaign Finance Reporting Penalties
Candidate Amendments
Election Code Criminal Provisions
Election Law Amendments
Election Polling
Elections During Declared Emergency
Lieutenant Governor Candidate Amendments
Personal Use of Campaign Funds
Reauthorization of Veterans Reintegration Task Force
Requirements to Change Form of County Government
Scheduling of Special Elections

Health and Human Services Interim Committee

Health Care Provider Immunity Sunset Amendment
Medical Reserve Corps Amendments
Protection of Children Riding in Motor Vehicles
Research Using Pharmaceuticals
State Security Standards for Personal Information

Judiciary Interim Committee

Alimony Amendments
Child Custody Proceedings Amendments
Expungement Process Amendments

Law Enforcement and Criminal Justice Interim Committee

Campus Safety Amendments
Dating Violence Protection Act
Enticing a Minor Amendments
Inmate Medical Donation Act
Sex Offense Amendments
Threat of Terrorism Penalty Amendments

Legislative Management Committee

Joint Resolution Reappointing Legislative Fiscal Analyst

Natural Resources, Agriculture, and Environment Interim Committee

Adjudication of Water Rights
Water and Irrigation Amendments

Political Subdivisions Interim Committee

Reauthorization of Veterans Reintegration Task Force
Wrongful Documents

Public Utilities and Technology Interim Committee

Storm Water Capture Amendments

Retirement and Independent Entities Interim Committee

Health Insurance Coverage Restrictions on Retired Governors and Legislators
Line-of-duty Death and Disability Amendments
Retirement Analysis for New Public Entities
Retirement Eligibility Amendments
Risk Management for Independent Entities
Utah Retirement System Amendments

Revenue and Taxation Interim Committee

Cigarette and Tobacco Tax and Licensing Amendments
Joint Resolution on Remote Sales
Property Tax and Appraiser Amendments
Property Taxation of Business Personal Property
Sales and Use Tax Revisions
Special Election Date for Ballot Propositions
Special Needs Adoption Tax Credit
Time Period for Paying a Tax, Interest, or Penalties after a Judicial Decision

State Water Development Commission

Sales and Use Tax Allocations for Water Resources Funding

Transportation Interim Committee

Amendments to Ignition Interlock Program
Commercial Driver License Amendments
Disposal of Certain Surplus Property
Driver License Motorcycle Endorsement Amendments
High Occupancy Vehicle Lane Amendments
Local Transportation Corridor Preservation Fund Amendments
Public Transit District Customer Information
Special Group License Plate Amendments
State Highway System Modifications
State Park Access Amendments

Utah Office of Guardian ad Litem

HB 357/Amended UCA 78A-2-228

Summary and Action Plan

1. HB 357 Summary

- a. UCA 78A-2-228 has been amended to remove the Office of Guardian ad Litem from all district court cases. The only GAL alternative, as of July 1, 2013, will be private attorney GALs (aka PGALs).
- b. While the Office of Guardian ad Litem will be benefitted with the ability to focus its resources on Juvenile Court and have lower client numbers (from about 200 child clients per GAL attorney down to about 160 child clients: still well above the national standard of 80-100 clients), the impact on child-legal-representation in district court will be significant. Currently, the 60+ stalwart PGALs statewide take an average of 2-3 cases each. It would take well over 300 private attorneys to absorb the current district court GAL Office caseload. Based on recent survey results of the Utah State Bar Family Law Section, the pool of eligible PGALs will only grow to about 100-120 attorneys statewide.
- c. The statute requires the judiciary to:
 - i. "[P]rioritize case assignments" and consider the limited number of PGALs available and limited time and resources available to PGALs when making appointments; make findings regarding the need and basis for the appointments; determine how the PGAL will be paid by the parties (to be governed by new rule changes); specify and bifurcate the issues to be handled by PGALs; and issue final orders in regard to those issues and releasing PGALs within a year's time (unless compelling reasons are found to do otherwise).
 - ii. Use specific statutory language when appointing a PGAL and send appointment orders to the Office of GAL for case assignments to "eligible" PGALs "if available."

2. Action Plan

- a. Office of GAL will now begin withdrawing from or closing out district court cases as much as possible.
- b. Judiciary will need to determine how they will 'prioritize' ('triage' may be a better term) appointments, and is requested to sparingly, if at all, appoint GAL Office until December 31, 2012; and should then **stop appointing the GAL Office starting January 1, 2013.**
- c. Office of GAL will develop a more compact, user friendly, online training program for PGAL eligibility certification (to encourage more attorneys to participate); draft proposed changes to 4-906(8)(c) (as referenced in the statute); and process pro bono PGAL-appointment orders through the Utah State Bar Pro Bono Program.

Utah Office of Guardian ad Litem and CASA

Annual Report 2012



"Children are highly vulnerable. They have little or no power to protect or provide for themselves and little influence on so much that is vital to their well-being. Children need others to speak for them, and they need decision makers who put their well-being ahead of selfish adult interests."

*Elder Dallin H. Oaks (October 2012)
(Former Utah Supreme Court Justice)*





None should resist the plea that we unite to increase our concern for the welfare and future of our children – the rising generation."

*Elder Dallin H. Oaks (October, 2012)
Former Utah Supreme Court Justice*





Utah State Courts

Utah's Juvenile Court

In Utah, juvenile court judges hear and resolve cases involving delinquent youth, children who have been abused or neglected, and children whose parents are unable to care for them. Our system is unique because we use "one family-one judge" principles to provide continuity.

The juvenile court team includes probation officers, parental defense attorneys, guardians ad litem, caseworkers, assistant district attorneys, assistant attorneys general and others. Juvenile court employs a problem-solving approach to build stronger families, protect our community and give children a better chance to succeed.

WHO COMES TO COURT?

Eighty-nine percent of the referrals made to juvenile court are delinquency cases; eleven percent are child protection cases. Utah has 29 juvenile court judges, 130 court clerks, and 174 probation officers. Most Court appearances involving a child are attended by parents, relatives, friends and specialists giving input. An emphasis is placed on hearing from the child as well.

HOW ARE RESOURCES USED?

Last year, the juvenile court handled 4,768 child protection cases and 34,054 delinquency cases. While judges hear more delinquency cases than child protection cases, child protection cases are more complicated and require forty-three percent of the juvenile judges' time.

WHAT ARE THE RESULTS?

In Utah, many foster children (44%) are able to return home safely after their parents get help. When this isn't possible, another 15% are placed with relatives who become permanent guardians for the child. Another large group of children are adopted.

With delinquent youth, most of them (66%) do not re-offend (or recidivate). Last year, youth paid more than \$750,000 in restitution to their victims and performed more than 740,000 hours of community service. 48% of youth have only one referral to juvenile court and never return.

WHY DO KIDS COME TO COURT?

One third of child protection cases involve violent situations where children cannot remain home safely. Other risk factors include substance abuse and mental illness in the family. Some children are able to receive in-home services. The juvenile court also works with youth who have committed delinquency offenses. The majority of these (94%) are misdemeanors, contempt, infractions or status offenses. Felony offenses, which are the most serious type of offenses, make up only 6% percent of the cases in juvenile court.

HOW DO WE ENSURE EFFICIENCY?

The juvenile court uses follows statutory timelines to ensure cases are handled in a timely and efficient manner. 98% of felonies are adjudicated within 90 days; 93% of shelter hearings are held within 3 days of removing a child from home.

WHAT WORKS IN THESE CASES?

In Child Protection cases, the most effective techniques are Child and Family Team Meetings, Safety and Needs Assessments, Parenting Classes, Parent Time, Counseling and Drug Courts for Parents.

In Delinquency cases, the most effective techniques are Using Evidence-Based Practices, Providing Effective Case Planning, Matching Programs to Risk Factors, Requiring Community Service and Restitution Payments to victims.

DO WE TRY TO LIMIT THE TIME SPENT IN FOSTER CARE?

In Utah, children spend a median of 12 months in foster care before being reunified with their parents, relatives or having some other permanent arrangement made. This is a shorter time period than the national average of 13.5 median months in foster care.

DO WE RIGHT-SIZE THE PROGRAMS IN UTAH'S JUVENILE COURT?

Good news: of the 877,000 Utah children under 18, very few come to Juvenile Court. About 20,000 delinquency referrals were made last year – this represents only 2.2% of the youth population. Many of those (28%) are diverted into non-judicial agreements where they pay a fine.

About 36,000 children were the subject of a child abuse referral to DCFS last year; abuse was found in 11,543 cases. Still fewer cases ended up in Court – 2,600 Utah children are in foster care at any one time. At each step of the process, careful deliberation limits the involvement of the state and the court in a family's life.

HOW DO WE KNOW IF JUVENILE COURT HELPS KEEP CHILDREN SAFER?

94% of Utah children who leave foster care do not have another incident of abuse within 12 months of leaving foster care.

HOW DO WE CORRECTLY MATCH JUVENILE COURT PROGRAMS TO THE RISKS POSED BY DELINQUENT YOUTH?

Utah's Juvenile Court probation officers assess the risk level of delinquent youth and tailor the response to the risk. A correctional plan that focuses on the child's specific behavior needs is used. Only 7% of children are placed on formal probation. An even smaller group is placed in Juvenile Justice Services' custody.

When children are placed in state custody due to delinquency, the three most costly programs are reserved for youth with multiple offenses. 90.9% of kids in locked detention (\$163/day) had at least one previous disposition; kids in community placement (up to \$230/day) had an average of 7.9 prior dispositions; kids in secure care (\$208/day) had an average of 10.7 prior dispositions. We conscientiously use state resources to match the risks to the needs.

WHAT ARE ONGOING CHALLENGES FOR UTAH FAMILIES AND CHILDREN?

- .Mental health issues with youth/parents
- .Cases involving drugs
- .Multigenerational family caregivers
- .Cases across systems
- .Gangs and gang violence
- .Need to treat special populations
- .Limited resources
- .Services availability in rural areas

Utah State Juvenile Court Contacts :

Lisa-Michele Church,
Juvenile Court Administrator
lisamichelec@utcourts.gov

Katie Gregory,
Assistant Administrator - Child Protection
katieg@utcourts.gov

Neira Siaperas,
Assistant Administrator - Delinquency
neiras@utcourts.gov

11/14/12

Board of Juvenile Court Judges Goals

September 2012 – August 2013

Goal 1 – Design “Best Practices” guide regarding juvenile court practices on immigration

- a) Finalize draft toolkit identifying best practices for dealing with these issues and create bench kit.

Responsible person: Judge Michelle Heward/ Judge Larry Jones, Neira Siaperas

Time Frame: Draft to be discussed at December, 2012 Board meeting

- b) Distribute bench kit to bench, attorneys, caseworkers and other users.

Responsible person: Judge Michelle Heward, Neira Siaperas

Time Frame: Spring, 2013

Goal 2 – Implement first year of Juvenile Court Two Year Electronic Conversion Plan.

- a) The Electronic Conversion Workgroup (ECG), under judicial leadership, will continue to address equipment, partners, bench communication, training, IT resources, records quality and CARE programming issues within plan.

Responsible person: Judge Mark May, Judge Karla Staheli, Judge Mary Noonan, Lisa-Michele Church

Time Frame: ongoing throughout year

- b) Judges will give input on design and pilot Judicial Workspace Phase I

Responsible person: Judges May, Noonan, Staheli, Lyman, Noland

Time Frame: Spring 2013

- c) Receive ongoing reports from Ron Bowmaster and other IT experts on resource allocation to address juvenile court needs.

Responsible Person: Board, Lisa-Michele Church

Time Frame: ongoing throughout year

Goal 3 – Improve permanency for older youth.

- a) Seek input from judges and Court Improvement members on effective court practices with older youth

Responsible person: Judges Lindsley and Bazzelle, Lisa-Michele Church, Katie Gregory

Time Frame: Nov-Jan, 2013

- b) Challenge one judge in each district to pilot an effective court practice with older youth and present to entire bench at April conference.

Responsible person: Judges Lindsley and Bazzelle, Lisa-Michele Church, Katie Gregory

Time Frame: Pilot from Jan to April, report in April, 2013

- c) Identify training needs of Tribes, Foster parents, other groups when serving older youth

Responsible person: Judges Lindsley and Bazzelle, Misty Butler, Katie Gregory

Time Frame: Spring 2013

Goal 4: Give input to Juvenile Sentencing Guidelines Revision Committee

- a) Support Juvenile Court Probation staff in presenting to Committee on probation sentencing recommendations

Responsible person: Judge Janice Frost, Lisa-Michele Church, Neira Siaperas, PO Chiefs

Time Frame: November-December, 2013

- b) Judges presenting to Committee on judicial sentencing practices

Responsible person: Judge Frost, Judge May, Judge Andrus? Judge Oddone?

Time Frame: December, 2013

- c) Hear from Jacey Skinner at Board meeting on guidelines revisions

Responsible person;

Time Frame: Spring, 2013

- d) Give input to guidelines revisions committee prior to issuance of recommendations

Responsible Person: Judge Frost, Judge May

Time Frame: Spring 2013