

1. FY 2021 Spending Request to Judicial Council –Hire Retired JAs as Temps in FY 2021

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2021 are to be spent between July 1, 2020 and June 30, 2021; however current spending patterns will not fully expend our appropriations by June 30. This is a request to the Judicial Council to allocate the use of some of these anticipated unspent funds for projects that could be delivered prior to June 30, 2021

Date: 12/18/2020

Department or District: AOC Finance and HR Directors

Presented by: Karl Sweeney and Bart Olsen

(Note: Budget and Fiscal Management Committee approved this request on 12.18.2020)

Request title: Hiring of Experienced Temporary Clerks

Amount requested: \$100,000 per month x up to 6 months = \$600,000 of 1x funding

Funding Source: 1x Turnover Savings (TOS): Period 5 YTD 1x TOS:	\$2,007,000
Forecasted Period 6 1x TOS:	\$400,000
Forecasted Periods 7 – 12 1x TOS:	\$1,100,000 ¹
1x TOS required to meet Budget Cuts:	<u>(\$2,500,000)</u>
Forecasted EOY Surplus 1x TOS to use as directed by Judicial Council:	\$1,007,000

Purpose of funding request: The Clerks of Court (CC's) have written a detailed account of the morale issues Judicial Assistants (JA) are facing due to the impact of COVID on the JA workload. (See Exhibit B attached). The CC's "recommend that consideration be given to temporarily hiring skilled staff (retirees) as an interim solution."

Some of the recommendations from the Clerks of Court will require time to consider (ex, Probation Officer's assuming more court work), but the recommendation to bring back some retired clerks to supplement court staffing levels is one that we have budget room to consider due to YTD and expected future higher than budgeted 1x turnover savings.

Given that delaying this discussion/recommendation until our meeting in January 2021 pushes any decisions to bring on temporaries until the end of January, we are requesting the Judicial Council approve this request to use 1x turnover (TO) savings to fund 25 temporary positions for up to 6 months.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission).

As part of the FY 2021 budget reduction plan, the Courts agreed to keep 50 positions open throughout FY 2021 to produce a savings of \$4.0M. This was decreased to 25 open positions by the Legislature in its August 2020 special session to be effective October 1, 2020 to produce a total savings in FY 2021 of \$2.5M.

As noted in the Funding Source schedule above, the Courts have not been able to bring down our open positions because of turnover, especially JA turnover. We are still running over 60 vacant positions as of December 18th even though we're 2.5 months after the October 1 reduction date. This has resulted in

¹ Conservative forecast assumes unfilled positions decline from 60 – 65 today to 30 – 35 as of period 7. This lowers monthly 1x TOS to \$220,000 x 5 periods remaining in year = \$1,100,000. **Thirty three of the 65.5 FTE unfilled positions as of today are JA or Judicial Case Manager positions.**

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1x TO savings being well in excess of the run rate we will need to meet the \$2.5M in 1x TO savings for the fiscal year. Our average 1x TO savings so far this year is \$400,000 per month. We expect to generate \$400K in 1x TO savings in December which would put us on track to reach the budget reduction amount of \$2.5M by January 15, 2021. We conservatively project that our open positions will decline from 60 – 65 today to 30 – 35 by period 7. **Our request would use a portion of the Surplus 1x TO savings post Jan. 15, 2021 to fund temporary positions for skilled JA staff – similar in concept to how we use "senior judges":**

Forecasted EOY Surplus 1x TOS to use as directed by Judicial Council:	\$1,007,000 (per above)
Less: Request to fill 25 temporary positions for period 6 – 12:	<u>(\$600,000)</u> (see below)
1x TOS available for Judicial Council Use:	\$407,000
Add Judicial Council Current "Reserve" balance:	<u>\$381,163</u>
Forecasted Total Reserve Balance available for Judicial Council use:	\$788,163 ²

Calculation of Cost of Temporary JA Position: As a way to ballpark the cost, a temporary JA position that paid \$25 per hour (no benefits) and worked 40 hours per week would cost \$1,000 per week or \$4,000 per month. We could fund 25 positions for \$100,000 a month.

The 25 temp positions would almost fill the current 33 JA/Case Manager positions open today. Once the majority of those positions were filled, the temp positions would work on backlogs and reducing OT hours otherwise required of JA staff.

As noted above, funding the 25 temp positions for 6 months (through June 30) would still allow us to meet the \$2.5M in 1x TO savings that are part of the budget reduction plan and have at least \$788,000 in funds available at the end of the fiscal year to go towards other 1x spending needs including any areas where our budget savings did not materialize. With the collaboration of HR and the court executives we will determine the right \$ per hour number (it has to be enough to incentivize someone to come back out of retirement without causing unintended consequences among current staff).

There are some limitations to hiring retired JAs. Brent Johnson stated "FYI, retired employees can be employed part-time 60 days after retirement, with the max pay being capped. I think it will be close to \$18,000 next year. They can be re-employed after a year without a cap and they can either stop retirement payments and accrue more retirement benefits (under tier II), or keep retirement payments and get no retirement benefits."

Bart Olsen added "Supplementing what has been said on the retirement side, the rehired retiree scenarios with URS are a little complex -- but sufficient guidance is [provided here](#). We can make sure potential rehires are aware of how their own varying situations might be impacted so they can make an informed decision before accepting an offer to return in temporary positions."

Are there other priority uses for these funds? The YE spending for FY 2020 is attached as Exhibit A to illustrate what types of expenditures can be made from YE spending funds. As shown, most items were IT related. This use would reduce funds available for other YE spending requests which are typically made in April - May.

² This forecast is conservative. It only adds to the Reserve balance potential savings from 1x TOS. We believe there will be further savings from the Districts and AOC departments to add to this total. Finance will update its total FY 2021 forecast in late January 2021 based on inputs provided by the TCEs and AOC budget managers.

1. FY 2021 Spending Request to Judicial Council –Hire Retired JAs as Temps in FY 2021

Alternative funding sources, if any: None.

If this request is not funded at this time, what are the consequences or is there an alternative strategy? Higher JA turnover continues potentially impairing the Court's ability to maintain adequate staffing to process the case backlogs.



Exhibit A

FY 2020 Year End One-Time Spending Requests

One-time Spending Plan							13-Mar		Final Judicial Council	
Forecasted Available One-time Funds				# One-time Spending Plan			FY20	Judicial Council	Approvals for Essential	
#	Description	Funding Type	Amount	One-time Budget Requests/Current Status in Bold			Requests	Approvals	Items (E)	
							Amount	Amount	Non-essential (NE)	
1	Turnover Savings as of pay period ending 5/15/2020	Turnover Savings	3,593,376	1	Courtroom A/V Upgrades (IT) - work in process partially expended	350,000	350,000	350,000	E	
2	Turnover Savings Estimate for the rest of fiscal year (\$133K x 3 payrolls)	Turnover Savings	399,000	2	Upgrade For the Record (FTR) Digital Recording Software (IT) - Already expended	257,600	257,600	257,600	E	
3	From TCE / AOC budgets	Internal Savings	546,100	17	Remote Accessories - Already expended	83,000	83,000	83,000	E	
4	Probate Notice Amendments (HB 343, 2020 GS)	Legislative Action	20,500	3	Learning Management System (Education) PO signed.	164,100	164,100	164,100	E	
5	Reserve Balance (from August Judicial Council meeting)	Reserve	150,000	4	Self-Assessment Materials (Education) - Withdrawn (W/D) by Requester	2,000	2,000	N/A	NE	
6	Reduction in FY 2020 funds due to FY 2020 legislative session	Legislative Action	(165,000)	5	Training Equipment (Education) (laptops & equipment to create virtual training)	4,600	4,600	4,600	E	
7	Approved Carryforward use as of May 18, 2020	Carryforward	(512,000)	6	Alternative Dispute Resolution Training (ADR Committee) - CLASS CANCELLED	13,200	13,200	N/A	NE	
8*	Potential other Uses of Carryforward Funds	Carryforward	(1,350,000)	7	Online Dispute Resolution Facilitation Training Manual (ADR) (See Footnote)	5,000	5,000	5,000	E	
9	Balance of Carryforward Availability	Carryforward	(638,000)	8	Jury Chairs for Brigham City (1st District) (See Footnote)	15,000	15,000	15,000	E	
				9	Jury Tables / Chairs for West Jordan (3rd District) (Order can be Cancelled w/o penalty)	66,700	66,700	-	NE	
				10	Carpet Replacement - Ogden Courthouse (2nd District) (Past cancellation date)	19,650	19,650	19,650	E	
				11	Public Viewing Agenda Monitor (Court of Appeals) (Order can be Cancelled w/o penalty)	4,000	4,000	-	NE	
				12	Matheson Café Room and Conference Room A/B/C Furniture (Facilities) (Partial Cancel)	130,500	130,500	43,500	E/NE	
				13	Workforce Performance Bonuses (State Court Administrator) - W/D by Requester	500,000	500,000	N/A	NE	
				14	Nat'l Assoc. Drug Court Prof. Annual Conference (Veteran's Court Team) - Converted to virtual conference @\$500 per attendee	3,960	3,960	-	NE	
				16	Inventory of PCs (4/7/2020 deadline) (IT) - Already expended	250,000	250,000	250,000	E	
				18	Replenish IT Equipment Monies Used for COVID19 Purposes	279,000		279,000	E	
				19	IT Court Room Video Equipment for Jury Trials	250,000		250,000	E	
				20	IT Docking Stations for New Laptops and Other Misc IT Purchases	115,000	-	115,000	E	
Total Forecasted Available One-time Funds			\$ 2,043,976	Total One-time Spending Requests (before Contingent Requests)			2,513,310	1,869,310	1,836,450	
Judicial Council Prioritized / Adopted			\$ (1,836,450)	Potential Return to State Finance					207,526	
Actual Return to State Finance Including other Savings			\$ 207,526	Contingent Requests						
				13a	Employer Paid Benefits for Workforce Bonuses (6/26/2020 deadline) (SCA) Withdraw	160,200			N/A	
				15	Matheson Carpet Replacement (4/15/2020 deadline) (Facilities) - Move to \$2.5M Cfwd	400,000			N/A	
				Total with Contingent Requests			\$ 3,073,510			

* The Judicial Council has approved \$512K as of May 18, 2020 in carryforward uses. If the legislature reverses the funding allocation for the \$900K in IT priorities and the \$450K for one-time West Jordan AV work, the carryforward funds can be used to fund these items if deemed essential.

M E M O R A N D U M

TO: Judge Mary T. Noonan, State Court Administrator

FROM: Clerks of Court

RE: Clerical Staff Burnout

DATE: 12-16-2020

This memorandum is an attempt to memorialize some of the sentiments expressed by the collective Clerks of Court group during a meeting in which staff burnout was discussed. Our discussion started with a question posed to one of our Clerks of Court by a judge in her respective district -- "*What can judges do to support our clerical staff?*" While our discussion may not have led to concrete answers, we have identified some common themes as indicated below.

We know you have asked a few times during our statewide calls how staff are doing and we have been told the Chief Justice has inquired as well. We hope this memo will help you and others more fully understand the experiences our clerical support staff have had during the pandemic so that you can partner with us in finding ways to sustain that support. Clerks of Court have also committed to making sure their local admin teams and presiding judges are aware of the strain on their clerical teams. While we tend to shy away from presenting problems without a solution, we believe it is our duty and responsibility to advocate for our staff, despite the limitations we feel in our ability to solve these complex issues on our own.

The combined group of Clerks of Court discussed the burden placed on clerical staff during the pandemic. The following concerns and experiences were shared.

If it hasn't reached the breaking point, it's very close. The extra "little things" that clerks are continually required to take on is adding up to be more than we can bear. Many solutions found during the pandemic have fallen directly on the clerical staff to carry out and now, several months in, we are out of bandwidth to take on any more. Our teams, including leadership, have more work than they can complete during the workday or work week and the mental strain has caused a variety of health concerns. We are fearful of losing valued and skilled staff; some have already moved on.

We want to help our teams and appreciate the ideas shared by the committee regarding ways to improve staff morale. We're just not sure how to apply them or when we would even have time as we are very much focused on keeping our heads above water. Workgroups are great in starting important conversations but we are seeking to effectuate change.

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

Clerical staff have remained in the office doing whatever it takes to ensure judges, attorneys, patrons and their teammates' needs are being met so that court operations can continue. They sort of feel “left behind” to carry the burden. Court is crazy-- prep has doubled, clerking is stressful, and phone calls are through the roof. In some locations, front counters are experiencing heavier traffic than before the pandemic. Case numbers aren't a good measurement of how busy staff are because the time it takes to manage each case has increased so substantially. Attorneys still aren't helping to get clients to court and some are refusing to provide the Webex hearing links to those they represent. Emotions are high and the constant strain is taking both a mental and physical toll, causing some to contemplate retirement. Succession planning was already hard enough due to pay issues, the stress of managing court during a pandemic makes these positions even less appealing.

Supervisors have tried to fill the gap for staff working at capacity and unable to take on additional work but they too are overburdened as they are often covering for staff who are affected by the pandemic. Many don't feel like they can take time off and are constantly at the disposal of their staff who are seeking answers from them regarding their health and potential exposure that they are not qualified to make. Decision fatigue is real and rampant.

Judges are creeping back into the courthouse which puts pressure on clerical staff to be in the courtroom as well. Also, many judges are focused on the backlog of cases and may be overlooking the fact that large calendars are now requiring more clerical time due to Webex, and should be aware of the trade-off there. Limiting the number of hearings on a calendar day should not be dismissed out of hand, despite the backlog. Clerical staff know they are falling behind on case pending and other case management duties, but clerical resources are being dedicated to calendar management. The administrative order is asking clerical staff to focus on essential duties, which may not include case management at this time. We're not sure when we will be able to catch up or what is most concerning-- large virtual dockets or a backlog?

Committee participation, clean up projects and pilots are exciting and creative, but equally exhausting. Clerks of Court would like the opportunity to weigh in on whether or not their clerical staff can accommodate the extra burden being asked of them prior to being committed.

In terms of what judges can do, we identified the following.

Patience and understanding. Both judges and clerks feel a sense of responsibility for the patron's virtual court experience, however, clerks are doing the very best they can and are not qualified to fix complex technology issues. Patience and understanding of the difficulties we share is appreciated. Reaching out to the technology experts, when more appropriate, would also help a great deal.

More meaningful hearings. The number of continuances is high and is often due to attorneys not being prepared for the hearing or having failed to provide their client with

the Webex link. This results in an increased clerical workload and shifts the burden of the work from attorney's office to the clerk. Requiring attorneys to provide their clients with the Webex link or to file motions to continue in advance of the hearing when not prepared to proceed would save valuable clerical time.

Strike a balance. Virtual calendars are more time intensive for clerical staff due to Webex scheduling. While we initially saw a reduction in calendar sizes, most locations are now back to holding full calendars virtually. Full calendars help with the backlog or to prevent one but are not sustainable. Additionally, clerical resources are finite which means judicial expectations for large calendars plus timely case management may not be attainable right now.

For consideration by court administration, we offer the following.

Consult clerical leadership. Many teams and departments are interconnected and interdependent but none are more so than the clerical support team. Almost every project or initiative that a department is working towards will ultimately impact the clerical staff in some way. We ask that other departments be cognizant and sensitive to that and consult the Clerks of Court group to assess impact and feasibility.

Is temporary clerical staff a possibility? Over the past several years, clerical staff have been scaled back to bare minimum staffing levels. Due to the increased clerical workload caused by virtual hearings, staffing levels are insufficient. We recommend that consideration be given to temporarily hiring skilled staff (retirees) as an interim solution. In some circles, bringing on senior judges to handle backlogs has been contemplated to help reduce large calendars. Senior judges without additional clerical support will only compound the problem for clerical staff.

Support for overtime/comp time. To compensate for insufficient staffing levels, some staff are accruing extra hours. It is difficult and sometimes impossible to find time for staff to flex the additional time during the week and this becomes yet another stressor for clerical employees and their supervisors. We are asking for support for when overtime/comp time is accrued while we seek other resources to help carry the clerical workload. Our staff are worn out and while granting comp time/overtime deprives them of the break they need, they should still be compensated for their time.

Can probation staff help fill the gap? Many clerical duties are complex enough in nature that probation staff would likely struggle a great deal to assist without undergoing intensive training. However, there may be some tasks worth exploring. Some of those duties may include: processing jury qualification questionnaires and juror summons questionnaires, providing logistical support for jury trial pilots, assisting with sanitization efforts, and cleaning supply inventory and restocking. Additional opportunities may exist for some teams to incorporate a virtual bailiff and assistance in disseminating Webex links to parties.

Encourage more communication, locally. Working remotely has made communication more difficult and during a pandemic, consistent and frequent communication is even more essential. The statewide calls are helpful but should not be a substitute for local discussions.

Share the burden. Because clerical team members must staff our offices and be available to perform critical functions, we are addressing a variety of issues in addition to our already full plates, including security and building issues, office supply delivery, running to IT, cleaning needs, and COVID supplies. We ask that others be physically present more often to create an opportunity for them to assist.

Compensation. We are very appreciative of the efforts made by you and others in the past to address pay inequities for clerical staff. And, while we recognize paying clerical staff more would not resolve many of the issues we have identified in this memo, and that the current budget constraints make this timing of our request less than ideal, we also feel it is an important contributor to clerical burnout that cannot be overlooked.

Clerical job duties have always been more complex than given credit for and now it is even more so. For some districts, this has resulted in the loss of valued and experienced clerical staff and difficulties in keeping Training Coordinator positions filled. Bringing on new staff with a career track in limbo has only added to the stress and burden placed on our Case Managers who are responsible for keeping their offices staffed and judge teams running efficiently.¹

The work of Judicial Assistants has been deemed a critical function of the courts in the context of the Administrative Order and our response to the pandemic. This has necessitated continual sacrifice from our clerical staff members who are responsible for opening offices and serving the public, risking their health and that of their family, on top of responding to overwhelming changes and demands on their time. It is clear that we highly value the work of the clerical department, yet large pay disparities continue to exist between clerical and probation staff.² Pay inequality undermines our values and contributes to the decreased morale of our clerical department.

¹ Judicial Case Managers starting wage \$20.53/hr.; Probation Supervisors starting wage \$26.26/hr. (\$5.73/hr. difference)

² Judicial Assistant starting wage \$16.54/hr.; Probation Officer starting wage \$19.50/hr. (\$2.96/hr. difference)