

# JUDICIAL COUNCIL MEETING

## AGENDA

February 22, 2021

Meeting held through Webex

*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  
(Information)
3. 9:10 a.m. Administrator's Report and COVID-19 Update..... Judge Mary T. Noonan  
(Information)
4. 9:20 a.m. Board of Juvenile Court Judges Report ..... Judge Michael Leavitt  
(Information) Neira Siaperas
5. 9:30 a.m. Reports: Management Committee ..... Chief Justice Matthew B. Durrant  
Budget & Fiscal Management Committee..... Judge Mark May  
Liaison Committee..... Judge Kara Pettit  
Policy & Planning Committee ..... Judge Derek Pullan  
Bar Commission..... Rob Rice, esq.  
(Tab 2 - Information)
6. 9:55 a.m. Grant Rule and Moratorium..... Judge Derek Pullan  
(Action) Karl Sweeney  
Jordan Murray
7. 10:15 a.m. Time-Sensitive Grant Opportunities ..... Jordan Murray  
(Tab 3 - Action) Karl Sweeney
- 10:35 a.m. Break
8. 10:45 a.m. Proposed One-time FY21 and FY22 Carryforward Requests .....  
(Tab 4 - Action) Judge Mark May  
Karl Sweeney
9. 11:00 a.m. Legislative Updates..... Michael Drechsel  
(Information) Jim Bauer

- |     |            |                                                                                                                   |                                                  |
|-----|------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| 10. | 11:45 a.m. | Ethics Advisory Committee Report .....                                                                            | Judge Laura Scott<br>Brent Johnson               |
|     | 11:55 a.m. | Lunch Break                                                                                                       |                                                  |
| 11. | 12:05 p.m. | Self-Represented Parties Committee Report .....                                                                   | Judge Richard Mrazik<br>Nancy Sylvester          |
| 12. | 12:15 p.m. | Senior Judge Certifications .....                                                                                 | Nancy Sylvester                                  |
|     |            | (Tab 6 - Action)                                                                                                  |                                                  |
| 13. | 12:20 p.m. | Outreach Committee Report .....                                                                                   | Judge Jill Pohlman<br>Geoff Fattah<br>Jon Puente |
|     |            | (Tab 7 - Information)                                                                                             |                                                  |
| 14. | 12:30 p.m. | CJA Rules 3-101, 3-108 for Final Approval.....                                                                    | Keisa Williams                                   |
|     |            | (Tab 8 - Action)                                                                                                  |                                                  |
| 15. | 12:40 p.m. | HR Policies Manual for Approval .....                                                                             | Bart Olsen<br>Keisa Williams                     |
|     |            | (Tab 9 - Action)                                                                                                  |                                                  |
| 16. | 1:10 p.m.  | Dissolution of Levan Justice Court.....                                                                           | Jim Peters                                       |
|     |            | (Tab 10 - Action)                                                                                                 |                                                  |
| 17. | 1:20 p.m.  | Executive Session - There will be an executive session                                                            |                                                  |
| 18. | 1:45 p.m.  | Weighted Caseloads NCSC Report .....                                                                              | Clayson Quigley                                  |
|     |            | (Tab 11 - Action)                                                                                                 |                                                  |
| 19. | 2:05 p.m.  | Introduction of Nick Stiles, Appellate Court Administrator and Lauren Andersen, Judicial Institute Director ..... | Judge Mary T. Noonan                             |
|     |            | (Information)                                                                                                     |                                                  |
| 20. | 2:10 p.m.  | Old Business/New Business .....                                                                                   | All                                              |
|     |            | (Discussion)                                                                                                      |                                                  |
| 21. | 2:30 p.m.  | Adjourn                                                                                                           |                                                  |

### **Consent Calendar**

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

None

# Tab 1

## Agenda

**JUDICIAL COUNCIL MEETING****Minutes****January 25, 2021****Meeting conducted through Webex****9:00 a.m. – 3:10 p.m.*****Chief Justice Matthew B. Durrant, Presiding*****Members:**

Chief Justice Matthew B. Durrant, Chair  
 Hon. Todd Shaughnessy, Vice Chair  
 Hon. Brian Cannell  
 Hon. Samuel Chiara  
 Hon. Augustus Chin  
 Hon. David Connors  
 Hon. Ryan Evershed  
 Hon. Paul Farr  
 Hon. Michelle Heward  
 Justice Deno Himonas  
 Hon. Mark May  
 Hon. David Mortensen  
 Hon. Kara Pettit  
 Hon. Derek Pullan  
 Hon. Brook Sessions  
 Rob Rice, esq.

**AOC Staff:**

Hon. Mary T. Noonan  
 Cathy Dupont  
 Michael Drechsel  
 Shane Bahr  
 Kim Free  
 Larissa Lee  
 Jordan Murray  
 Bart Olsen  
 Jim Peters  
 Jon Puente  
 Clayson Quigley  
 Lucy Ricca  
 Neira Siaperas  
 Karl Sweeney  
 Nancy Sylvester  
 Keisa Williams  
 Jeni Wood

**Excused:****Guests:**

Hon. Dennis Fuchs, Senior Judge  
 Hon. George Harmond, Seventh District Court  
 Hon. Keith Kelly, Third District Court

**Guests Cont.:**

Justice Paige Petersen, Supreme Court  
 Commissioner Shannon Sebahar, JPEC  
 Dr. Matthew Thiese, University of Utah  
 Dr. Jennifer Yim, JPEC

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex. The Oath of Office of Judge David Mortensen was completed at the January 12, 2021 Management Committee meeting.

**Motion:** Judge Derek Pullan moved to approve the December 21, 2020 Judicial Council meeting minutes, as amended to change 1) page 3 “the courts should pay” to “the State should pay”; 2) in the Policy & Planning section change “neither group” to “both groups agreed to the draft”; and



3) on page 5 change predominate to predominant. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and other court personnel met with President J. Stuart Adams and Speaker Brad Wilson to discuss the Judicial Branch budget priorities for the upcoming legislative session. Judge Mary T. Noonan felt the meeting went well.

**3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)**

Judge Noonan reported that Lauren Andersen was hired (January 25<sup>th</sup> start date) as the new Judicial Institute (Education) Director and Nick Stiles was hired (February 2nd start date) as the new Appellate Court Administrator.

**4. SELECTION OF A JUDICIAL COUNCIL VICE CHAIR: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant selected Judge Todd Shaughnessy to fill the Vice Chair position on the Judicial Council and Management Committee.

**Motion:** Judge David Connors moved to approve Chief Justice Durrant's selection of Judge Todd Shaughnessy as the Vice Chair of the Judicial Council and Management Committee. Judge Brook Sessions seconded the motion, and it passed unanimously.

**5. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Budget & Fiscal Management Committee Report:**

Judge Mark May stated that the committee approved the grants coordinator policies, which will be discussed later.

**Liaison Committee Report:**

Judge Kara Pettit and the committee meets weekly to review proposed Bills.

**Policy and Planning Committee Report:**

Judge Pullan reported that the subcommittees have been working through the HR policies. They discussed an annual proficiency testing for justice court clerks; however, the Judiciary has no supervisory authority over justice court employees. Jim Peters is seeking support from the cities and towns on this effort.

**Bar Commission Report:**

Rob Rice will meet with the Pro Bono Commission to discuss the availability of lawyers for post-conviction relief (PCRA) cases. Justice Deno Himonas recommended judges contact law firms for PCRA cases noting that he found success with this process. Judge Pullan was uncomfortable with contacting law firms who have cases before him. Justice Himonas agreed it was uncomfortable and was only meant as a short term solution.

**6. PRETRIAL RELEASE AND SUPERVISION COMMITTEE REPORT: (Judge George Harmond and Keisa Williams)**

Chief Justice Durrant welcomed Judge George Harmond and Keisa Williams. There have been two new proposed pretrial Bills introduced this legislative session. The committee is working on educating judges on the Ability-to-Pay-Matrix; adding additional facts to the PC statements, and looking at ways to electronically streamline information to attorneys. Judge Harmond read that the Ohio court system is addressing similar issues. Ms. Williams explained they are tracking aggregate data including the number of times a person is released, the amount of time people are spending in jail, and data on race that would help identify trends.

Chief Justice Durrant thanked Judge Harmond and Ms. Williams.

**7. CJA RULES 4-202.02 AND 4-403 FOR FINAL ACTION: (Keisa Williams)**

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved the following rules for public comment. During the 45-day comment period, no comments were received on 4-403. One comment was received on 4-202.02. After careful consideration of the comment, Policy and Planning made no amendments. The committee recommended these rules for final approval, with a May 1, 2021 effective date for rule 4-403. Ms. Williams recommended a back-dated effective date of December 5, 2020 for rule 4-202.02 because the programming to collect financial data was launched on December 5, 2020.

**CJA 4-202.02. Records Classification (amend)**

HB 206 went into effect on October 1, 2020. That bill requires judges to consider an individual's ability to pay a monetary bail amount any time a financial condition of release is ordered.

**Rule 4-403. Electronic Signature and Signature Stamp Use (amend)**

The proposed amendments at lines 31-40 authorize judges' electronic signatures to be automatically affixed to automatic expungement orders.

Chief Justice Durrant thanked Ms. Williams.

**Motion:** Judge Connors moved to approve recommended changes to CJA Rule 4-202.02 with a backdated effective date of December 5, 2020 and CJA Rule 4-403 with an effective date of May 1, 2021, as presented. Judge Sessions seconded the motion, and it passed unanimously.

**8. WINGS COMMITTEE REPORT: (Judge Keith Kelly, Shonna Thomas, and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Kelly and Nancy Sylvester. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) is a problem solving body that relies on court-community partnerships to:

- Oversee guardianship practice in the Courts;
- Improve the handling of guardianship cases;
- Engage in outreach/education; and
- Enhance the quality of care and quality of life of vulnerable adults.

The committee's accomplishments include:

- CJA Rule 6-507
- Court order revision
- Court partnerships
- Community partnerships
- National WINGS recognition
- Court visitor appreciation

Current and future projects include:

- Guardianship education/manuals
- Reminder notice system
- Annual report review process
- CJA Rule 6-501
- Guardianship for school purposes

The committee meets every two months and is effective through the participation of key stakeholders who understand and are in a position to improve the Courts' guardianship processes. Judge Kelly thanked all those involved as they have made great strides with the program.

Chief Justice Durrant thanked Judge Kelly and Ms. Sylvester.

#### **9. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)**

Chief Justice Durrant welcomed Nancy Sylvester. District court Judge Lynn Davis who recently retired has applied for active senior judge status and juvenile court Judge Kent Bachman has reapplied for active senior judge status. Neither of the senior judge applicants has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. Ms. Sylvester stated she is seeking clarification from Judge Davis regarding his application and recommended the Council delay its decision for Judge Davis. Judge May was concerned about not having an age limit for senior judges and asked if the age limit is being discussed as part of the proposed amendments to the senior judge rules. The Policy & Planning Committee's workgroup and the Board of Senior Judges do not recommend imposing an age limit. Policy and Planning continues to work on the rule amendments and has discussed some issues with the Supreme Court.

Chief Justice Durrant thanked Ms. Sylvester.

**Motion:** Judge Connors moved to approve the recertification of Judge Kent Bachman, as amended and to delay a decision on Judge Lynn Davis's application. Judge Pettit seconded the motion, and it passed unanimously.

#### **10. PROBLEM-SOLVING COURTS CERTIFICATIONS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs presented to the Council the problem-solving courts seeking recertification.

Courts that meet all Required and Presumed Best Practices  
 ADC1Weber                      Judge Bean

ADC1Tooele	Judge Gibson
JMHC1Cache	Judge Galloway
VDC1SaltLake	Judge Hansen
VDC1Utah	Judge Powell

Courts that meet all Required but do not meet all Presumed Best Practices

JFDDC1Utah	Judge Nielsen
AMHC1BoxElder	Judge Walsh
JFDDC5Utah	Judge Smith
ADC1Grand	Judge Manley
JFDDC1Grand	Judge Manley
JDC1Utah	Judge Smith
ADC2Weber	Judge Valencia

Judge Pullan asked Judge Fuchs if some of the courts were accepting low risk individuals into some of the drug courts which could cause harm to the low risk individuals. Judge Fuchs said he was aware that some courts worked with medium risk individuals and that there is often a fine line between high risk and medium risk individuals. Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Connors moved to approve all problem-solving courts listed above that meet both Required and Presumed Best Practices and to approve the problem-solving courts listed above that meet all Required but do not meet all Presumed Best Practices, as presented. Judge Michelle Heward seconded the motion, and it passed unanimously.

#### **11. REGULATORY REFORM INNOVATION OFFICE: (Lucy Ricca)**

Chief Justice Durrant welcomed Lucy Ricca. The Office has received 34 applications to the Regulatory Sandbox. The Office has recommended 20 of those applications to the Court for admission to the Sandbox. The Court has authorized 16 entities (in whole or in part) to offer services in the Sandbox. 6 applicants withdrew their applications; 1 has withdrawn but will resubmit its application; 1 applicant was denied by the Office. The Innovation Office has tabled 5 applications based on the Court's statement on referral fees issued December 10, 2020. There are 2 entities currently under active review by the Innovation Office.

The following entities are operational and offered legal services to the public during the month of November: Blue Bee Bankruptcy, AGS Law, Rocket Lawyer, and 1LAW. In the Office's Interim report dated November 24, 2020, it was reported that the following additional entities were operational and offering services: R&R Legal, FOCL Law, Law Pal, LawHQ, and Estate Guru. However, additional communications with those entities clarified that they were not, in fact, launched as authorized by the Court and therefore not prepared to report data for November 2020. The Office expects those entities to come online and begin reporting. Rocket Lawyer and 1LAW continue to report as required. There are no indications of material consumer harm. Blue Bee and AGS Law will submit their first quarterly reports in January 2021.

Chief Justice Durrant thanked Ms. Ricca for an exceptional job and noted that he presented this topic recently to the Conference for Chief Justices. Chief Justice Durrant

recognized that in the future consumers will be able to access documents and utilize non-lawyers who are overseen by lawyers. Chief Justice Durrant was encouraged by the various entities and services provided.

## **12. PROPOSED GRANT POLICIES AND PROCEDURES: (Karl Sweeney and Jordan Murray)**

Chief Justice Durrant welcomed Karl Sweeney and Jordan Murray. The Budget & Fiscal Management Committee approved the newly created grant policies. The Council discussed whether it was appropriate to lift the moratorium on applying for new grants, with all grants being reviewed for approval by the Council. The committee discussed that the proposed grant process differs in some ways from the grant process currently in rule. The committee agreed that the memo and the current rules should be referred to Policy and Planning. The committee then discussed whether the court should proceed with some time sensitive grant applications while the rules are with Policy and Planning. Judge Pullan preferred to have the rules approved before authorizing any grants. Justice Himonas discussed potential grants related to initiatives that are under the Supreme Court and the potential for Federal Cares Act funding in the next two months. Mr. Murray will assist the courts with grant opportunities. At this time, Mr. Murray is conducting a compliance review with current grants.

Chief Justice Durrant thanked Mr. Sweeney and Mr. Murray.

The Council members addressed the following:

- resources needed from the AOC for grant applications;
- the ability to withdraw an application if the Council did not approve it;
- whether the grant coordinator rules should be in place before lifting the moratorium;
- whether applications should be filed with first receiving Council approval;
- the time it would take for Policy & Planning to review the policies/rules;
- if allowing exceptions would result in multiple requests; and
- lifting the moratorium because the Council will make a determination on each grant.

**Motion:** Judge Pullan moved that the memorandum/policies/rules be referred to Policy & Planning with the highest priority. Justice Himonas seconded the motion, and it passed unanimously.

**Motion:** Judge May moved to approve lifting the moratorium to allow for communications and applications only for time-sensitive grants until the next Council meeting. Justice Himonas seconded the motion. The motion passed with seven Council members voting yeh and Judges Mortensen, Pettit, Pullan, Connors, Cannell, and Mr. Rice voting neh.

## **13. LEGISLATIVE UPDATES: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel reviewed the proposed Bills noting the session began on January 19<sup>th</sup> and will end on March 5<sup>th</sup>. The Liaison Committee has considered 59 of the more than 140 Bills. Many Bill proposals do not have impacts on the courts. The committee has been working on the Bills that directly impact the courts, including HB0026, HB0129, HB0189, SB0016 and oppose HB0073 and HB0220.

Chief Justice Durrant thanked Mr. Drechsel.

**14. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Shannon Sebahar)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Shannon Sebahar. Dr. Yim introduced Commissioner Shannon Sebahar noting her longstanding membership on the commission. Dr. Yim presented the JPEC 2020 Election Survey, the Meida Analysis Report Executive Summary, and the 2021 Report to the Community. The overall objective of the Survey was to ascertain how JPEC can better inform voters regarding the judges that appear on their ballot.

The Executive Summary found that the 2020 General Election garnered more voter participation than any general election on record, raising the question of how new voters treated the judicial retention ballot items. JPEC's goal was to double the amount of 2018 web traffic to its website, judges.utah.gov, as measured by the number of page sessions from September 1 to Election Day. Outreach efforts, combined with increased voter participation, resulted in increased voting on judges, JPEC website traffic, and public interest in the evaluation of judges.

The Report to the Community identified statistics on judicial retentions and elections outreach efforts.

Commissioner Sebahar said JPEC continues to improve their website with information to the public. Dr. Yim stated inclusion breeds trust by answering questions about judges when citizens are making decisions on retentions.

Chief Justice Durrant thanked Dr. Yim for her leadership with JPEC and the commitment Commissioner Sebahar has shown.

**15. INTRODUCTION OF JONATHAN PUENTE: (Judge Mary T. Noonan)**

Judge Noonan introduced Jonathan Puente as the new Director of the Office of Fairness and Accountability.

**16. JUDICIAL COUNCIL MARCH 2021 MEETING DATE: (Judge Mary T. Noonan)**

The Judicial Council typically holds their March meeting in conjunction with the Utah State Bar in March in St. George. Due to the pandemic, the Bar will hold their Convention virtually on March 25-27, 2021. The Council meeting is currently scheduled for March 12<sup>th</sup> beginning at 12:00 p.m. If held on a normal date/time, the meeting would be held on March 22<sup>nd</sup> at 9:00 a.m.

The Council decided to keep the March 12<sup>th</sup> meeting as currently scheduled.

**17. OLD BUSINESS/NEW BUSINESS**

Chief Justice Durrant stated on the record that a brief conversation was held prior to the beginning of the meeting. Judge Shaughnessy noted the Third District Court will begin in-person criminal jury trials today. Delivery of the Hepa filters has been delayed a few weeks. Judge Pullan said the Fourth District Court has been making preparations to hold trials in the future.

Judge Samuel Chiara invited 10 jurors into the courtroom at a time during his trial and mailed out questionnaires to potential jurors. The Eighth District Court will hold a mock jury trial to identify the correct processes and any issues in preparation for their upcoming criminal jury trials in February. Judge Shaughnessy said there are layers of protection installed, including masks, each juror will have an individual meeting room, symptom checklists, analysis of jurors who are symptomatic, questions about prior and current testing, rapid response test the first day of trial for participants and daily for jurors, continual checking of symptoms, physical distancing, witness booth with glass, cleaning of the courtroom, and dedicated spaces.

The Utah Department of Health toured the Matheson Courthouse and reviewed each of the safety measures. Sim Gill, Salt Lake County District Attorney, authored a letter to the Third District expressing concerns and requested a one-week delay in beginning the criminal jury trials. With the COVID rates decreasing and the approval of the Health Department, the Management Committee decided not to postpone the trials.

Judge May noted CJA Rule 1-204(6) Executive Committees states “Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The members of the Policy and Planning Committee and the Liaison Committee shall elect their respective chairs annually and select a new chair at least once every two years.” This section does not recognize the Budget & Fiscal Management Committee. The Budget & Fiscal Management Committee requested to be added to this rule with the selection of a new Chair every three years.

**Motion:** Judge May moved to send CJA Rule 1-204 to Policy & Planning for review. Justice Himonas seconded the motion, and it passed unanimously.

Judge Pullan reminded the Council that Policy & Planning has a form when sending a rule to them and to please contact Ms. Williams.

Judge Pullan suggested that the absence of counsel in PCRA cases is a gaping hole in the justice system and has spoken with Joanna Landau with the Indigent Defense Commission. Judge Pullan would like this to be considered for a study item and possibly prioritize this issue. Chief Justice Durrant thanked Judge Pullan and recommended a follow up discussion.

Judge Sessions mentioned that Grant Nagamatsu, a Utah County public defense attorney, sadly passed away on January 16, 2021 due to complications from COVID. Judge Sessions noted attorneys are in close contact with court personnel and litigants both in and out of custody. The courts need to continue to try prioritizing addressing the health concerns of all who come before the court.

The Council briefly discussed distribution priorities for the COVID vaccine. Judge Noonan noted the TCEs are reaching out to local health departments regarding prioritizations. Some counties have made vaccination appointments available to court personnel and attorneys, while other counties have not. The situation depends on each county and the courts have been instructed not to lobby for a place on the priority list as not to override those with a greater need.

**18. EXECUTIVE SESSION**

**Motion:** Mr. Rice moved to go into an executive session to discuss a personnel matter. Judge Pullan seconded the motion, and it passed unanimously.

**Motion:** Judge Chiara moved that the information provided be used by the courts internally. Judge Sessions seconded the motion, and it passed unanimously.

**19. CONSENT CALENDAR ITEMS**

**a) Committee Appointment.** Education Committee – appointment of Judge Matthew Bates. Approved without comment.

**b) Forms Committee Forms.** Answers to Request for Admissions. Approved without comment.

**20. ADJOURN**

The meeting adjourned.



# Tab 2

## Agenda

**JUDICIAL COUNCIL'S  
MANAGEMENT COMMITTEE**

**Minutes  
February 16, 2021  
Meeting held through Webex  
12:00 p.m. – 4:00 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Committee Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Todd Shaughnessy, Vice Chair  
Hon. Paul Farr  
Hon. Mark May  
Hon. David Mortensen

**Excused:**

Michael Drechsel

**Guests:**

Hon. Michele Christiansen Forster, Court of Appeals

**AOC Staff:**

Hon. Mary T. Noonan  
Cathy Dupont  
Lauren Andersen  
Heidi Anderson  
Shane Bahr  
Brent Johnson  
Wayne Kidd  
Jim Peters  
Clayson Quigley  
Neira Siaperas  
Nick Stiles  
Jeni Wood

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Paul Farr moved to approve the January 12, 2021, January 15, 2021, January 19, 2021, and January 22, 2021 Management Committee minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

The committee unanimously approved by email on February 1, 2021 the Risk Response Checklist for Saratoga Springs Justice Court.

**2. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)**

Judge Mary T. Noonan announced the EOCJ ranked the courts highest listed priority of \$1.4M for IT Infrastructure and Development which includes IT developers, OCAP, Cyber security, rural bandwidth, Webex licenses, and Microsoft licenses at number 9.

Recent COVID data has shown a consistent decline so more districts are preparing for jury trials. The First District Court expressed their intent to delay in-person jury trials until the district has moved to the Yellow phase.

**3. SENIOR JUDGE ASSIGNMENT REQUEST: (Judge Michele Christiansen Forster and Cathy Dupont)**

Judge Kate Appleby retired on January 1, 2021. The Senate did not confirm Governor Gary Herbert's appointment. The position has been reposted with applications due by February 15<sup>th</sup>. Filling the position could take four to six months because the Senate's time requirement does not begin until the Nominating Commission meets for the first time (that meeting has not been scheduled). Judge Appleby has been assigned to assist in her active senior judge capacity until the position has been filled. It is anticipated Judge Appleby will hear oral arguments at least three times per month, author two to three opinions per month, and decide, review, and conference on at least eight other opinions per month. Judge Michele Christiansen Forster proposed a biweekly budget of \$5,200.

Because CJA Rule 11-201(6)(A) contains a 60-day appointment limit on senior judge assignments, Judge Christiansen Forster certified that there is an extraordinary need for senior judge assistance in the Court of Appeals and requested that Judge Appleby be assigned as a senior judge to the Court of Appeals for a period of time that exceeds the 60-day limit. Judge Appleby is familiar with the Court's AIS system and how to conduct remote hearings during the pandemic. No other senior judge who may be available to serve on the appellate court would be able to get up to speed on these procedures quickly enough to help the court in this time of need.

The senior judge expenditure summary dated February 8, 2021 shows that there is \$126,108 still available for this fiscal year in senior judge funds. The committee requested to comply with the rule, a return visit of this subject if it's anticipated that the appointment will exceed sixty days.

**Motion:** Judge Farr moved to approve Judge Kate Appleby's active senior judge assignment for sixty days, as presented. Judge Mark May seconded the motion, and it passed unanimously.

**4. ST. GEORGE COURTHOUSE EXPANSION: (Chris Talbot)**

This item was moved to a later date.

**5. COMMITTEE APPOINTMENTS: (Chris Talbot and Kara Mann)**

This item was moved to a later date.

**6. LANGUAGE ACCESS COMMITTEE REQUEST FOR REAUTHORIZATION: (Kara Mann)**

This item was moved to a later date.

**7. AMEND CJA RULE 3-415 AUDITING: (Wayne Kidd)**

Wayne Kidd explained that the Audit Department was proposing amendments to CJA Rule 3-415 to (1) clarify elements of the audit process, (2) accurately define the types of audits, and (3) to promote transparency. In making these proposed changes, the Audit Department has sought direction from all Boards of Judges, AOC General Counsel, and reviewed auditing standards and best practices.

**Motion:** Judge Shaughnessy moved to approve sending the proposed amendment of CJA Rule 3-415 to Policy & Planning, as presented. Judge Farr seconded the motion, and it passed unanimously.

**8. PROBATION POLICY 4.8: (Neira Siaperas)**

This item was moved to a later date.

**9. RED PHASE JURY TRIAL PROJECT: (Judge Todd Shaughnessy)**

Judge Shaughnessy presented a proposed process for the jury trial project to operate while the courts are in the Red Phase as defined by the Risk Phase Response Plan. The project will operate in jurisdictions approved by the Management Committee including, but not limited to, the Matheson Courthouse, Third District Court, Salt Lake County and the Duchesne Courthouse, Eighth District Court, Duchesne County. Additional jurisdictions may seek approval by the Management Committee and must substantially comply with these requirements and other requirements imposed by the Management Committee.

Judge Noonan noted some districts may need additional assistance, however, some districts have expressed that they will be able to conduct jury trials without additional assistance. Shane Bahr visited with the districts and said the districts have used the Council approved one-time money for temporary JA assistance. The Second and Fourth District Courts are in the process of hiring temporary part-time employees. Mr. Bahr said the intent was to prepare one courtroom for Red phase jury management with the Third and Fourth Districts having two courtrooms set up. Some districts have requested additional courtrooms. Chief Justice Durrant welcomed additional courtrooms being converted as long as the safety and professionalism standards are not reduced.

**Motion:** Judge Shaughnessy moved to approve the Red Phase Jury Trial Project as a template, as amended to note the districts may edit as necessary. Judge May seconded the motion, and it passed unanimously.

**10. FREQUENCY OF BOARD REPORTS TO THE JUDICIAL COUNCIL: (Jim Peters and Judge Rick Romney)**

This item was moved to a later date.

**11. DISSOLUTION OF THE LEVAN JUSTICE COURT: (Jim Peters)**

The Levan Town intends to dissolve the Levan Justice Court on March 1, 2021 because they do not have a judge at this time or as soon as the Judicial Council allows. The cases would be transferred to the Juab County Justice Court, who is fully prepared to take them as soon as Levan is closed. Jim Peters noted the court is very small seeing only 60 cases (40 were traffic) last year. The IT Department requested the dissolution not occur before April 1 to allow their work to be complete.

**Motion:** Judge Farr moved to approve adding this item to the Council agenda with the Management Committee's recommendation to dissolve as of April 1, 2021, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

**12. APPROVAL OF THE JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant addressed the Judicial Council agenda.

**Motion:** Judge May moved to approve the Judicial Council agenda, as amended to add Time Sensitive Grant Opportunities, the grant moratorium from last month's discussion, and removing items from today's agenda that were deferred. Judge Shaughnessy seconded the motion, and it passed unanimously.

**13. OLD BUSINESS/NEW BUSINESS: (All)**

There was no additional business addressed.

**14. WEIGHTED CASELOADS NCSC REPORT: (Clayson Quigley and Cathy Dupont)**

Last year the AOC engaged the National Center for State Courts (NCSC) to conduct a review of the methodology of the court's annual weighted caseload analysis. The NCSC reviewed about 20 years' worth of weighted caseload reports and supporting documentation concerning changes and updates to the methodology over the years. The NCSC provided the courts with a report of their findings and suggestions for improvements. The report identified several opportunities for improvement, but found no major critiques that would result in the discontinuation of the court's current methodology.

**Timeline for Implementation of Weighted Caseload Proposals**

	FY21 Q3	FY21 Q4	FY22 Q1	FY22 Q2
Objective 1: Begin using a 3 year average to calculate judicial need.				
Objective 2: Study and make necessary changes to Judicial Year				
Objective 3: Re-evaluate analyst resources in Court Data Services				
Objective 4: Establish best practices for documenting changes to the methodology.				
Objective 5: Create expert panels				
Objective 6: Establish a long-term roadmap for updating case weights				
Objective 7: Establish a long-term plan for regular third party reviews				

Judge Noonan said Mr. Quigley would seek the Council's recommendation of the NCSC's proposed process. Mr. Quigley will seek Council approval in August for an additional FTE to monitor weighted caseloads as well as conduct other court business. Judge Mortensen questioned the need for an FTE because the courts have already been conducting weighted caseloads. Mr. Quigley said the data collection would need to be reprioritized with other staffing resources. Judge May would like the new process reviewed with the Boards before a decision can be made.

Mr. Quigley will request the Council adopt the 3-year average, adopt this as a study item, and review the recommendations from the NCSC including a new FTE. Judge Mortensen added that he would like to receive feedback from the Boards on this matter.

**15. CCJJ DATA SHARING AGREEMENT: (Clayson Quigley and Brent Johnson)**

Mr. Quigley noted the courts have a data sharing agreement with CCJJ. CCJJ has requested an expansion of more data because of legislation passed in 2020. Their request is very

explicit with statute, therefore, the courts are obligated to share the data. The committee did not object to sharing the data.

**16. EXECUTIVE SESSION**

An executive session was held.

**17. ADJOURN**

The meeting adjourned.

## Agenda

### UTAH JUDICIAL COUNCIL POLICY AND PLANNING COMMITTEE MEETING MINUTES

Webex video conferencing  
February 5, 2021: 12 pm -2 pm

**DRAFT**

#### MEMBERS:

#### PRESENT

#### EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Brian Cannell	•	
Judge Samuel Chiara	•	
Judge David Connors	•	
Judge Michelle Heward	•	
Mr. Rob Rice	•	

#### GUESTS:

Paul Barron  
Bart Olsen  
Jeremy Marsh  
Jordan Murray  
Judge Mary Noonan  
Loni Page  
Chris Palmer  
Heidi Anderson  
Karl Sweeney

#### STAFF:

Keisa Williams  
Minhvan Brimhall

#### (1) Welcome and approval of minutes:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the January 8, 2021 meeting. Judge Connors noted a few typos omitting “Judge” in front of Judge Pullan and Judge Chiara’s names. With no other changes, Judge Connors moved to approve the draft minutes subject to those amendments. Rob Rice seconded the motion and it passed unanimously.

#### (2) Proposed grant policies and procedures:

Judge Pullan: The lively discussion and close vote (7/6) on this issue demonstrates that the Judicial Council is a robust, policy-making body. The Council made this Policy and Planning’s number one priority. Jordan Murray is the new grants coordinator. He will provide an overview of the memorandum, flowchart, and calendar to give us a general idea of the proposed policies. The plan today is for Policy and Planning to provide Mr. Murray with some feedback and direction.

Mr. Murray: The materials under tab 2 outline the steps we have accomplished thus far. The goal is to put guardrails in place to help guide the court’s grant governance in the future, particularly as it relates to the new grant coordinator position. We’ve created a compliance calendar for the full calendar year that includes all of the active grants in the court’s portfolio. We are working on a five-year retrospective review (or audit) of all grants to ensure that we’ve complied at every step along the way, and to identify any areas in which we need to double back and make sure we’re appropriately following state and federal guidelines. The plan is to present those findings to the Judicial Council later this month.

We are working on a standardized process to solicit feedback within the court system to identify needs and determine how we can address those needs with grant funding. Beyond that, how do we present those needs to the Budget and Fiscal Management Committee and the Judicial Council, and how do we prioritize grants that should be pursued for the coming year? Mr. Sweeney and I met with the National Center for State Courts to

research practices in other states. We have materials from Maryland, Nevada, Kentucky, and a few others, and we are reaching out to them for more information. We don't want to reinvent the wheel, but we do want to identify best practices and tailor them to our unique needs in Utah.

Mr. Sweeney: There are no criteria for seeking grants. Up until now, if you wanted a grant and you had the time, you applied for it. We are seeking to enforce some of the same rigor that we impose on our budgets. How well does this grant accomplish the mission of the courts? You may not be able to accomplish your mission if you are pulled in too many directions, and with little results for the work. Ensuring the grant aligns with the courts' mission will become part of the vetting process. We also need to maintain flexibility. Prioritization decisions at the beginning of the year may change throughout the year. The policy should allow us to take an opportunistic approach if funding becomes available for a particular need that meets criteria, no matter where it was on the original prioritization list.

Judge Connors: I don't have any general issues with the memo as written, but I have some concerns about the three-day reporting deadline in Section 3. Is three days enough time to review and approve deliverables and get them filed in a timely manner?

Mr. Sweeney: That issue came up last week and we are considering increasing the deadline.

Judge Connors: In section (3)(e), I would use the words "will be used" rather than "sought". I wouldn't want to place an undue burden on our IT resources.

Mr. Sweeney: That section relates to a lesson learned. An employee obtained a grant that involved writing, research, and IT work. They went directly to the IT department to find an available contractor. However, the available contractor didn't have the entire skill set needed for that particular grant. Hiring the right contractor is critical. Rather than taking whoever is offered or available, it's much better to pay the appropriate amount and find the right person.

Mr. Rice: I'm having difficulty connecting the prioritization process in section (1)(a) with the criteria set forth in section (2). In section (1), it says the Supreme Court will prioritize grants that relate to Constitutional powers, but then it goes on to say in (2) that the Budget and Fiscal Management Committee will use different criteria to prioritize grants. Which of those sections control?

Mr. Murray: The language regarding prioritization in section (1)(a) may not be ideal. I don't think the intent was for (1)(a)(i-iv) to constitute the criteria by which the Supreme Court would make decisions, but rather it's meant to cover, generally, those things within the Supreme Court's jurisdiction. Section (2) outlines the criteria for how potential grant opportunities would be assessed.

Judge Pullan: I'm having a hard time reconciling the flowchart with the language in the memorandum. The box for grants within the Supreme Court's jurisdiction is sitting all by itself. There is no line suggesting Judicial Council involvement. The box for grants within the Judicial Council's jurisdiction is connected to a comprehensive process. Section (1)(a) of the memo suggests that Supreme Court requests will be subject to analysis by the grants coordinator. We should be clear that the Supreme Court intends to use the grants coordinator for at least some of this work.

CJA Rule 3-105 (effective May 1, 2021) outlines the procedures for issues raised in Judicial Council meetings that implicate the exclusive jurisdiction of either the Court or the Council. The body with exclusive jurisdiction takes ownership. Periodically, issues involve concurrent jurisdiction. In those instances, the rule outlines a process for negotiating whether one body will take primary ownership or whether those issues will be addressed via a joint effort. I have no problem with the Court using their own process for issues within their exclusive jurisdiction; however, I think that is going to be rare. At the very least, the grant money will run through accounting, so accounting and grant coordinator resources will be used. What if the grant requires hiring FTEs? The Council would



have to be involved. We need to ensure that the proposed rule is consistent with rule 3-105, and that the flowchart is amended to reflect the process contemplated in 3-105.

Judge Connors: What grants fall within the list in section (1)(a)? If you took an overly expansive view of what those words mean, you could say everything falls within the governance of the practice of law.

Mr. Sweeney: We received an email indicating that grants related to the regulatory sandbox would fall within that list. Grant funding for that project is imminent, it just hasn't made it on the list yet.

Mr. Rice: It would be helpful to have a list of the universe of grants out there so we understand what the topics are. For example, the regulatory sandbox, collecting data to assist our fairness and equity efforts, and pro bono activities. I'm looking for a list of representative examples that allow us to develop criteria in the real world.

Judge Cannell: I agree. One of the challenges I had at the Council meeting was a lack of information about what we may be losing if we didn't act quickly. This is a great start and the process is very helpful, but I think we need prior notice and direction about what is coming up and what's already in the bucket.

Mr. Sweeney: We have such a list ready. We will ensure it includes the Utah Bar Foundation and get it out to everyone.

Judge Connors: Is the grant for the Utah Office for Victims of Crime a court grant or one for the State of Utah?

Mr. Murray: It is a court grant. It renews each year through the Utah Office for Victims of Crime. It's not a traditional grant where we pursue and apply for the grant each year. The state gets an allotment of guaranteed funds from the federal government and is the administering body. The state makes an award to the court, but it is considered a grant for our purposes because it is subject to reporting and other requirements necessary to maintain compliance.

Judge Pullan: At what point should the Judicial Council be involved in this process? If the Council isn't presented with a grant proposal until after all of the application resources have been expended and there is a \$1M dollars on the table, it will be hard for the Council to turn down. There will already be organizational momentum behind it. Because the application process itself is expending organizational resources, the Council should be authorizing the application at some point.

Mr. Murray: I agree. I hope we wouldn't encounter that situation routinely. If we do, then we need to reassess. It should be a rare exception. The ideal process would allow the Judicial Council an opportunity to review and approve a grant before court resources have been overly invested.

Judge Pullan: Under this proposal, grants can begin at the TCE level. That many cooks in the kitchen may be very hard to manage organizationally. It says the grant coordinator will meet with the Council annually. What happens at that meeting? Is that when the Council is presented with potential grants for that year or the next year, and we prioritize which ones we want to apply for?

Mr. Sweeney: Yes, that is the plan for now. We could also meet quarterly.

Judge Pullan: Rules vetted by stakeholders tend to be more broadly accepted and implemented. I don't want to leave anyone out. The boards of judges should probably review the final product and Mr. Murray should take a look at the list of stakeholders to see if anyone else in our organization should weigh in. Any proposed amendments to the accounting manual should be reviewed by the Accounting Manual Review Committee.

Judge Connors: When does the Executive Appropriations Committee or the Legislative Fiscal Analyst get involved?

Judge Noonan: The law requires that the legislature be notified of grants at certain amounts, usually after the fact. We need to be very careful about grants that involve hiring FTEs, or that put the legislature in a difficult position to continue funding for projects that become critical to operations. We could establish a preference for grants with some form of deliverable product that do not require additional staff or resources to implement that product on an ongoing basis. We should be able to absorb the costs because we've changed our business practices, or we've found additional capacity or efficiencies that allow us to continue to support the product in a way that does not impact the bottom line.

Judge Pullan: Is there a standard of practice for agencies to approach the legislature early on about federal grants? How does that work? As a matter of policy, I would like to approach the legislature even on medium Tier grants. They may have the same interest and I want to be respectful of the other branches.

Judge Noonan: That is a good question. We will have to do a deeper dive and report back.

Mr. Sweeney: The requirements in the flowchart come directly from the legislature. We cannot accept Tier 3 funds until the legislature has approved the grant in a general or special session. I agree that the judiciary could have a stricter policy than what the legislature imposes.

Judge Pullan: This cements the wisdom of not lifting the moratorium until we have a better understanding of these things. It also raises the question of the grant coordinator's job description. How will his time be best spent? The point at which he touches the grant applications seems important.

Judge Noonan: The moratorium will lapse by the next Council meeting, so the Council will need to readdress it or let it lapse.

Mr. Murray: Justice Himonas mentioned that a regulatory sandbox grant is urgent, and we just completed a grant assessment for an e-filing project at the appellate level. I am working with Larissa Lee and Nick Stiles to identify next steps. No timelines have been ironed out, but an e-filing grant may be an opportunity.

Judge Noonan: CARES funding may become available. Those funds are routed through the Bar Foundation so we wouldn't be administering it, but it could still be considered grant money.

Mr. Sweeney: Future CARES money will probably be handled the same way it was originally. The state is aware of our request and we are waiting to see how much we get.

After further discussion, the Committee agreed that this issue is too important to rush. It will remain the committee's first priority, but the rule must be well crafted and stakeholders must have input. The issue will be added to the February Council agenda as a separate item and Judge Pullan will provide a report on the Committee's progress. Mr. Murray and Mr. Sweeney will work on proposed changes to the Accounting Manual, and will work with Ms. Williams on a proposed rule draft, including the grant coordinator's duties. Mr. Murray and Mr. Sweeney will report back to Policy and Planning at its March 5<sup>th</sup> meeting.

**(3) Rules back from public comment:**

- CJA 3-101. Judicial Performance Standards
- CJA 3-108. Judicial Assistance

Ms. Williams: No comments were received on either rule. I reached out to Dr. Yim on rule 3-101. JPEC has no objection to 3-101 as drafted and is not recommending any changes. Dr. Yim expressed her hope that the court will amend its self-declaration forms to ensure compliance with 3-101.

Judge Pullan asked Ms. Williams to review the forms to ensure they comply with rule 3-101 and report back to the Committee.

***Judge Heward moved to forward rules 3-101 and 3-108 as drafted to the Judicial Council for final approval. Mr. Rice seconded and the motion passed unanimously.***

**(4) CJA 4-206. Exhibits:**

Ms. Williams: Rule 4-206 is on the agenda for feedback and direction, with a substantive discussion at the March 5<sup>th</sup> meeting.

Ms. Page: The rule seeks to address issues identified in the 2019 audit on exhibits. We added a section on digital exhibits and we've had success with it in district courts. In the seventh district, parties submit exhibits electronically via email, either on a drive or as PDF files. We dump everything into a Google drive folder that the judge can view. If an exhibit is admitted, it's moved to a separate "received" folder. We are using the same custodian in charge of physical exhibits to handle digital exhibits so there is no additional administrative burden. So far, we've received a lot of positive feedback from clerks and judges.

Mr. Palmer: The appellate court was involved in drafting the rule and they are changing their procedures for digital exhibits as well.

Judge Chiara: I follow the same process. I view the exhibits before the hearing and move them to a "received" folder. Judicial assistants drag and drop the exhibit into the folder and a notice is sent to parties that the file has been reviewed. Once the exhibit has been admitted, the folder is secured to prevent changes.

Ms. Anderson: I am in full support of this process from an IT standpoint. We just need to pay attention over the next few months to see if this impacts Google drive data or requires more support.

After further discussion, the Committee asked Ms. Page and Mr. Palmer to seek feedback on the rule draft from the boards of district, justice, and juvenile court judges, and bring it back to the Committee for substantive review.

**(5) HR policies:**

- HR 1-5 – Judge Pullan
- HR 6-7 – Judge Cannell/Judge Heward
- HR 8-9 – Rob Rice
- HR 10-14 – Judge Connors
- HR 15-17 – Judge Chiara

Mr. Olsen: Every committee member devoted time to each section. I recommend that we prioritize items flagged for discussion in the materials. Ms. Anderson is here to discuss HR 5-3 and 6-9 on career service and career service exempt status for employees of the IT department. In section 5, IT employees hired after January 1, 2019 who had already achieved career service status will be grandfathered. They will retain that status unless they choose to move into a different career service exempt position. That is an existing practice but it was never added to the HR policies. I think it's important to be transparent and spell out current practices in the policy. HR 6-9 is related. The policy comes from an Executive Branch rule created for the Department of Technology Services. It doesn't move any positions to career service exempt status, it outlines the process we would follow to get there.

Mr. Olsen explained the difference between career service status and career service exempt status.

Ms. Anderson: This is very important. IT employees are given administrative access to our networks, applications, systems, and buildings. An employee with that kind of access has the ability to take down the entire court system. I believe that security risk necessitates a higher level of scrutiny for those employees. In addition, technology changes rapidly and drastically. What is considered standard knowledge today may change in two years. My expectation is that my staff stay up to date and keep their skills current. If an individual hired as a group administrator doesn't have the desire to learn, or doesn't have the skill set to adapt, when we move to a new tool, I

need to hire someone else to meet that need. IT personnel must be willing and able to evolve their skill set with changes in technology.

Judge Chiara: I certainly understand the heightened risk with some of those positions, but I'm wondering why we wouldn't provide the same level of due process for those employees?

Mr. Olsen: We would still follow something similar to the due process procedures for career service status employees. The problem is that meeting the definition of due process can be very time consuming and we often get bogged down in the details. For a department like IT that has to move quickly and make decisions around changing technology, it is sometimes better to fall a little short of full due process in order to meet business needs. In the Executive Branch, the way this has played out in practice is that the Department of Technology Services implemented a process that resembles due process, but when there are cases that need to move quickly, they are able to do so without requirements that tie their hands. The concern early on when they made this change was that it would simply be a tool the department could use to get rid of a bunch of employees they didn't like. What actually happened is that most employees stayed, and the department was better equipped to respond to business needs and the timelines associated with those needs.

Mr. Rice: I am encouraged that this policy is modeled after the Executive Branch's rules and regulations. It surprises me that you can take away a property right with an administrative rule. Is a career service exempt position a common thing in the public sector?

Mr. Olsen: In the Department of Technology Services (DTS), just about every position is career service exempt. One way DTS got around the property right issue was to offer a monetary incentive for folks to convert to career service exempt. Employees could choose not to take the incentive and preserve their career service status. There are still a small handful of employees at DTS who chose not to convert.

Ms. Anderson: All new positions in IT are career service exempt, so 30% of my staff are already there. I am not suggesting that we force people to convert. We could offer an incentive like DTS. It also doesn't have to happen right now, but I am recommending that we move all IT positions to career service exempt.

***After further discussion, Mr. Rice moved to approve HR05-3 as drafted. Judge Chiara seconded and the motion passed unanimously.***

Ms. Olsen: In HR04-4(6), Judge Pullan recommended adding the full list of protected classes. My response was that including the full list could be daunting in practice. Gender is the easiest class to diversify, followed by age and race/ethnicity. The other classes are much more difficult to diversify on a hiring panel.

Judge Chiara: I think it's okay as is. I don't know that changing it would cause people setting up a hiring panel to go looking for members of another protected class. Religion is a protected class, but I don't think we want employees to ask someone about their religious beliefs to diversify a panel. Gender and race is a good place to start.

Judge Pullan: I don't want to create procedural obstructions every time we hire someone. As long as we're training employees to try to diversify interview panels, I am comfortable with that.

***After further discussion, Judge Chiara moved to approve HR04-4(6) as drafted. Judge Heward seconded and the motion passed unanimously.***

Mr. Olsen: I spoke to Brent Johnson about Judge Pullan's question on HR04-15(4)(a) and (c). This policy addresses when the results of a criminal background check may result in management deciding not to hire a candidate. Mr. Johnson and I replaced "crimes of financial turpitude" with "fraud." Neither of us knew what that meant. There are crimes of "moral" turpitude, but not "financial" turpitude. Judge Pullan's question to Mr. Johnson was whether adding references to the criminal code would clarify intent without making it too broad or too limiting. Mr. Johnson said he's comfortable with the code citations because it's prefaced by, "including but not limited to."

Judge Chiara: I am wondering about the necessity of it being a felony conviction. Many crimes are reduced to misdemeanors in a plea bargain. A hiring manager may not want to hire a candidate with a conviction for forgery or unlawful use of a financial transaction card, for example, which may have been reduced to a class A misdemeanor.

Judge Pullan: We might want to avoid creating discretion for hiring managers to disqualify an otherwise qualified candidate (who is now 30 years old) on the basis of a retail theft or infraction when he was 18 years old. There may be a good reason for a felony / misdemeanor distinction.

Mr. Rice: There is a body of law that arises in Title 7 cases where the EEOC takes the position that there is a distinction between felonies and misdemeanors, and that employers have a little bit more latitude to make employment decisions based on felonies. There is a pretty clear line drawn between misdemeanors and felonies and employers have less discretion to fire individuals because of misdemeanors. I think it warrants keeping the felony/misdemeanor distinction in the rule. I like using the term “may” with respect to not hiring people with felony convictions, because there may be circumstances when the law would say the fact that it’s a felony isn’t good enough. If someone has a 10-12 year old felony conviction (even something worse than a shoplifting conviction), that may not be a sufficient basis for firing them. It appears that the language in (c) was meant to characterize severe misdemeanors, where I think employers do have some increased latitude, but some of that language seems to be pulled from the felony section, which is a little bit troubling.

Mr. Olsen: The process HR typically follows is to consider the age of the offense and whether it is pertinent to the job. HR would coach hiring managers through these issues and would likely ask for Mr. Johnson’s input before making a decision.

After further discussion, (a) remain unchanged, (b) was deleted, and (c) was amended to read, “A misdemeanor conviction involving crimes of violence against people or destruction of property, identity theft, fraud, or other similar offenses.”

***Judge Connors made a motion to approve the language as amended. Judge Chiara seconded the motion and it passed unanimously.***

Mr. Olsen: Judge Chiara recommends including “political views” in HR 15-1(3)(a) addressing workplace harassment.

Mr. Rice: The legislature enacted a new statute with very specific language about protecting employees and their ability to engage in political discussions in the workplace, provided they were not disrupting the workplace. We should ensure the proposed language is consistent with that statute.

Mr. Marsh: I worry about adding political views here because it could contradict other protections listed in that section. Adding it would make it very difficult for us to enforce the policy. For example, someone’s political view is that they support white supremacy and are against equality for other ethnicities or people with a different skin color, or someone says, “My political view is that every believer in Islam is a terrorist, so I believe you are a terrorist.” That would be hard for HR to investigate from a practical perspective because those statements would be protected.

Judge Cannell: Doesn’t the catchall at the end of the paragraph, “or any other category protected by federal, state or applicable local law,” cover it?

Judge Pullan: I agree with Mr. Marsh. Adding political views may make it difficult to enforce other parts of the policy because political views may encompass discrimination against protected classes.

Judge Chiara: Being in one of these categories does not license you to harass another category. A religious person could attempt to hide behind the shield of religion in a similar way that they might try to hide behind the shield of a political view. My concern is someone coming into work and getting harassed for having a political bumper sticker. Regardless of persuasion, there is a lot of impetus right now to try to silence speech. I don’t want to see

anyone harassed for their political views. Many people hold their political beliefs as closely as they do their religious beliefs. The original purpose of the first amendment was to protect political and religious speech.

Mr. Marsh: We don't have the resources to investigate all of the potential opposing views, or when someone is offended by a bumper sticker. Incorporating an exhaustive list in a code of ethics seems more appropriate than to tie it into this policy.

Mr. Rice: The categories enumerated in the policy are all statutorily recognized protected classes. That list is 100% risk free because Congress says you can't harass anyone on those bases. I agree with Judge Chiara, especially in this day and age, but political beliefs are not statutorily protected. In light of the legislature's recent announcement, it makes me a little nervous to expand statutorily recognized protected categories to another classification. Congress and the Utah legislature require us to have an anti-harassment policy in place to respond to what is, statutorily, a violation of the law. The law is driving this practice. I am concerned that by adding political beliefs, we would be bumping into state statute.

***After further discussion, Judge Connors made a motion that "political beliefs" not be included in the policy. Mr. Rice seconded. Judge Chiara and Judge Cannell opposed. The motion passed by majority vote.***

Judge Heward: No discussion is needed on HR07-1(10), I just wanted to make the Committee aware of it. Judge Cannell and I support the changes. It closes the loop for extensive use of leave.

Mr. Olsen: We have had a number of employees "gaming the system" by using their FMLA leave and then taking off again after enough leave has been accrued. Management was required to retain the employee, making it almost impossible to keep the business of the court moving forward. This policy is copied verbatim from an Executive Branch rule. After four months of cumulative leave in a 24-month period, the employee may be separated from employment regardless of paid leave status, unless prohibited by law. The law protects the three-month period of FMLA, so that would not count against the four-month cumulative leave count.

***Judge Connors moved to send the HR Policies and Procedures Manual to the Judicial Council for approval. Judge Cannell seconded the motion and it passed unanimously.***

Mr. Olsen will prepare a memorandum for the Judicial Council to help focus the discussion on significant items and rules that are a departure from the past, and will work with Judge Noonan to get on the Council's next meeting agenda.

#### **(6) ADJOURN:**

With no further items for discussion, the meeting adjourned at 2:55 pm. The next meeting will be March 5, 2021 at noon via Webex video conferencing.

# Tab 3

**This item will be sent  
after the Budget &  
Fiscal Management  
Committee meeting**



# Tab 4

## 2. FY 2021 Spending Request to Judicial Council – Workforce Performance Bonuses

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

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**Date:** 2/8/2021

**Department or District:** Hon. Mary T. Noonan

**Presented by:** Karl Sweeney and Bart Olsen

**Request title:** Workforce Performance Bonuses

**Amount requested:** \$750,000 in payouts + \$240,300 in tax gross ups = \$990,300 total - 1x funding

**Funding Source:** FY 2021 Year End Forecast Available One-time Funds – See Exhibit A

**Executive Summary - Purpose of funding request:**

The Clerk of Courts memo of December 2020 said this about 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** (emphasis added).

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.”

The overall turnover rate at the Courts continues to run between 10% and 15%; however, the rate of churn for some job groups is much higher particularly in urban districts where jobs with less stress are available. When churn is so high, it becomes extremely difficult to deliver an open, fair, efficient and independent system to advance justice – because so many personnel simply don’t yet have enough knowledge and skill.

If the Courts have an opportunity to recognize and reward employees that consistently demonstrate both potential and a current high level of performance that clearly moves the Courts forward in its ability to effectively accomplish its mission, the Courts could potentially slow some of the turnover and churn in mission critical positions, and could potentially retain highly valuable employees that might otherwise decide to pursue more lucrative/less demanding opportunities.

FY 2021 is a year where personnel needs can be addressed without diminishing the amount needed for IT. The combination of CARES funds, Utah Bar Foundation grants and expected legislative approval for \$1.5M in IT requests have reduced the expected 1x IT requests.

We are seeking to fund a Workforce Performance Bonus of \$750,000 (grossed up for taxes on the bonus payment) in direct response to the Clerks of Court memo received in December 2020 supported by feedback from an even broader group of Court employees and managers that such a payment is both timely and well-deserved. Gross amounts will be allocated to the District, Juvenile and Appellate Courts

## 2. FY 2021 Spending Request to Judicial Council – Workforce Performance Bonuses

as well as AOC departments based on total approved positions. Judicial Officers will not be included in the bonus pool.

The State Court Administrator, Deputy State Court Administrator, Court-level Administrators and HR Director will work collaboratively with the TCEs and AOC Directors on the specific criteria to be applied in determining individual amounts awarded to recipients so that the process is consistent and equitable. The criteria is expected to include individual and team performance. If approved, payments are expected to be processed on or before the 4<sup>th</sup> week of March 2021.

The total employer benefits associated with this payment add an additional 32.04% for each dollar of bonus paid to a bonus recipient who receives Tier 1 retirement benefits (the Tier 1 contribution alone is 23.69% - see Exhibit B for a detail of the employer benefits percentage). If we fund these benefits out of the \$750,000 total, the net cash available to recipients would be reduced by \$183,000 to \$567,000, a 24% reduction.

Since the purpose of the Performance Bonus Awards is to provide meaningful payments to employees with superior performance, the preferred way to accomplish this objective is to retain the \$750,000 Performance Bonus and approve a supplemental funding for the one-time employer-paid benefits costs so that employees can use the supplemental payment for taxes due on the bonus. Using the same 32.04% percentage multiplied by the Workforce Performance Bonus payment of \$750,000 yields an additional component of the bonus of \$240,300. Since the proportion of Tier 1 versus Tier 2 bonus recipients is not known, this request is for the maximum impact based on a Tier 1 recipient multiplier. To the extent Tier 2 employees receive Performance Bonus Awards, actual payments will be less.

Based on total approved and eligible Court positions of 900 and assuming the tax gross up, the average payout will be \$1,100. Actual payouts will vary according to performance criteria.

### Sources of Funds for Bonus Payment – Exhibit A

Before approving the workforce bonus payment request, it would be reasonable to know what risks are inherent in approving it. As detailed in the Funding Sources portion of Exhibit A, the Courts have just completed a FYE 2021 forecast which includes detailed operating forecasts for each District, Juvenile, and Appellate court and all AOC departments. The total operational savings coming from these updated forecasts combined with AOC Finance's forecast of FYE 2021 one-time turnover savings<sup>1</sup> totals \$3,991,106 in total sources of FYE 2021 available funds. We feel confident in the operational savings forecast of \$1,033,978.

The largest component of sources of funds is 1x turnover savings. The forecast of FYE 2021 1x turnover savings ("1xTOS") is less than the +/- \$5.0M we historically achieve because we pledged \$2.5M in 1xTOS to fund the FY 2021 budget cuts. Through the first week of February 2021 we have averaged 60 open FTEs – but we have conservatively forecasted that our open positions will decline approximately 20% to 48 open positions over the balance of the fiscal year and we forecast a total 1xTOS for FYE 2021 of \$2,576,128 (\$1,556,128 + \$1,020,000) which will be available for use. We feel confident in the 1xTOS forecast of \$2,576,128.

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<sup>1</sup> One-time turnover savings are calculated as the salary and benefits saved from having an unfilled position.

## 2. FY 2021 Spending Request to Judicial Council – Workforce Performance Bonuses

### Uses of Funds – Exhibit A

As shown in Exhibit A, our forecasted sources of cash flows (as described above) will enable the Courts to meet our budget savings goals and still have sufficient FYE 2021 1x savings for the following uses:

- (1) Up to \$2.278M for FYE 2021 requests (we funded \$1.8M for FYE 2020 1x requests), and
- (2) \$1.5M in carryforward (we funded \$3.7M for FYE 2020 carryforward and a special appropriation)

We have asked budget managers to submit their time-sensitive FYE 2021 1x requests. Exhibit A shows those we have received that are time-sensitive and has a separate request write up which is part of the submissions this month. Even if we fully funded these requests, based on our forecast in Exhibit A, we will have \$511,806 in remaining available 1x funds for other potential requests. If not used, any remaining FYE 2021 1x funds can be used to increase our carryforward above \$1.5M.

We know of approximately \$280,000 of potential other FYE 2021 1x requests that are not time-sensitive and could be funded later as the forecast becomes even more solid.

### FY 2022 Carryforward Decrease – Exhibit C

Historically, in periods of recession, the Courts have not carried forward the maximum available amounts. For example in 2011 – 2014 the Courts did not carryforward the maximum amount. We feel this pattern will hold true for FY 2022 carryforward. The major reason for a decrease in carryforward funds available is the \$2.5M of 1xTOS which was used to meet our budget obligations for FY 2021. But fortunately we also forecast a lower need for carryforward funds in FY 2022. As shown in Exhibit C, approximately \$3.760M was available to spend for FY 2021 carryforward and additional appropriations. Here are items funded by FY 2021 carryforward that are not expected to be funded from FY 2022 carryforward:

- Approximately \$1.7M of uses of FY 2021 carryforward for items (highlighted in yellow) the legislature cancelled ongoing funding for in June 2020 and were 1x funded through the use of FY 2021 carryforward. Exhibit C assumes these items are funded by the legislature in FY 2022.
- Approximately \$1.1M of FY 2021 carryforward was for 1x items (highlighted in gray) not expected to be needed for FY 2022. The majority of these expenditures were for 1x uses or are not expected to be at typical levels due to CARES funds in FY2021 supplying some of the needs.
- Approximately \$55K of FY 2021 carryforward for 1x items (highlighted in light red) that will be converted to ongoing turnover savings for FY 2022.
- Approximately \$375K of FY 2021 carryforward for 1x items (highlighted in green) that will be replaced with grant or partner match funding.

Partially offsetting these decreases, we forecast some items cut in FY 2022 (such as career ladder) should be considered for conversion to a 1x incentive payment plan for FY 2022 due to a lack of ongoing turnover savings. These items are shown in “New Items for FY 2022” in Exhibit C.

**Conclusion: The \$511K of 1x FY 2021 savings forecasted to be available to cover any forecast shortfalls combined with the lower need for carryforward funds for FY 2022 (primarily due to funding by the legislature) provides a high level of confidence that we can pay the Workforce Bonus amount by the end of March 2021 with large enough reserves to cover any residual risk. If needed, the**

## **2. FY 2021 Spending Request to Judicial Council – Workforce Performance Bonuses**

approval can be contingent upon the legislature providing the expected ongoing funding of our \$1.452M IT request.

**Are there other priority uses for these funds?** No.

**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?**

The consequences of delaying this opportunity to emphasize personnel needs this year would leave the Courts vulnerable to the belief by some of their most dedicated employees that past promises to recognize superior performance “when we are able to” were not genuine – bringing the consequences detailed in the Clerk of Court memo.

## 2. FY 2021 Spending Request to Judicial Council – Workforce Performance Bonuses

### Exhibit B

#### Detail of Employer Benefits % - Tier 1 Retirement Employee

<b>Expense Type</b>	<b>Percentage</b>
Retirement (Tier 1, non-contributory assumed)*	23.69%
Unemployment Compensation	0.12%
Workers Compensation	0.58%
OASDI	6.20%
Medicare	1.45%
<b>TOTAL</b>	<b>32.04%</b>
*Tier 2, non-contributory rate is 20.02%	

## Exhibit A

[illegible]

Updated 2/9/21


\* Actual turnover savings per the last 4 pay periods (oldest to newest) are \$110,152, \$105,491, \$122,587, and \$97,213. We are using an estimate of \$85,000 with the expectation that positions will be filled throughout the remainder of the fiscal year with gradual lowering of the open positions. Current vacant FTEs are 59.5. If positions are filled faster in the last 4 periods of FY 2021, one-time turnover savings will decrease but ongoing turnover savings will increase. We believe the forecast is conservative but the \$511,806 in "Potential Addition to Carryforward" can be used if needed.

\*\*\* Based on updated forecasts from budget managers (TCEs, AOC Directors, etc) received at the end of January 2021.

+ This number can be used to meet our budget goals if necessary. The maximum amount that could be carried into FY 2022 is \$2,500,000. The decision to only carryforward \$1,500,000 is based upon necessary carryforward requests at this time and assumes the Legislature will fund our #1 priority IT request for \$1.452M.

# The previously approved budget for request # 1 (approved in Dec. 2020) will cover the costs of requests # 1, # 5 and # 6 since requests to use temps to assist clerks of court have come in below the appropriated \$600,000 amount.

Separate requests to re-allocate a portion of the unused funds towards these new uses is included in the packet.

FY 2021 Requests for Carryforward Funds - FY 2022 Forecast of Uses of Carryforward Funds					Exhibit C			
<b>Total Available Funds</b>								
<b>Carryforward spending requests - Total Available \$3,200,000 + \$560,500 appropriation from Sixth Special Session</b>			<b>\$ 3,760,500</b>	<b>Type of Use</b>			<b>Recap of FY 2021 Requests</b>	
2	PSA Calculation Cost for Including NCIC "Hits" (Legal)	\$ 198,014	B					
3	ICJ Operations Funding (Dues/Training and travel/Extradition) (Neira Siaperas) (\$24,000 approved last year - 1x)	\$ 20,000	E		A	\$ 1,093,238	1x Items Funded only in FY2021	
4	Divorce Ed for Children Video - Teen Website (carry forward of remaining grant balance) (Public Information)	\$ 18,000	A		B	\$ 1,680,014	Items Expected to be funded by Legislature	
5	Utah Code & Rules for judges (Law Library) (\$54,069 approved last year - 1x)	\$ -			C	\$ 55,000	Items to be funded by Ongoing Turnover Savings	
6	Secondary language stipend (HR) (\$65,000 approved last year - 1x)	\$ 65,000	E		D	\$ 375,000	Seeking grant funding	
7	Matheson Courthouse carpet repairs (select replacement with carpet tiles) (Facilities)	\$ 20,000	E			\$ 3,203,252	<b>Total of Items in FY 2021 not needed in FY 2022</b>	
8	Time-limited Law Clerks ( 2 FTEs) (Shane Bahr) (\$190,650 approved last year - 1x)	\$ 191,200	E					
9	IT Unfunded Mandates (Researching funding through CCJJ)	\$ 288,900	A					
16	Public Outreach Coordinator 1st Year Funding (salary, wages, IT equipment purchases, and other office expenses)	\$ 100,000	B					
17	Child Welfare Mediator PT	\$ 55,000						
18	IT Information Technology Infrastructure and Development	\$ 1,382,000	B				<b>Forecast of FY 2022 Requests</b>	
19	Reserve - For one-time items at discretion of Judicial Council	\$ 150,000	E		E	\$ 557,248	Expected to require repeat funding in FY2022	
20	Additional Code and Rule Books for Appellate Courts	\$ 4,648	E			\$ 500,000	<b>New Items for FY 2022</b>	
22	Court Services NCSC Weighted Caseload Study	\$ 17,000	A				Other -1x Fund Judicial Priorities not funded by legislature	
23	COVID Outreach Ad Campaign	\$ 34,000	A			\$ 400,000	Incentive Bonus Awards (replace career ladder)	
24	Computer, Printer, Replacement Inventory (IT)	\$ 150,000	A			\$ 40,000	Printer replacement inventory	
25	Webex Enhancements (IT)	\$ 150,000	A			\$ 1,497,248	<b>Potential Requests for FY 2022 Carryforward</b>	
26	Utilize Existing Incentive Gift Cards	\$ 4,175	A					
27	Webex - FTR Integration (IT)	\$ 150,000	A					
28	MyCase efilng for Pro Se Parties (IT)	\$ 375,000						
29	Court's Grants Coordinator	\$ 91,400	E					
31	Fix Court's Protective Order System	\$ 50,000	A					
32	Small Claims ODR Facilitator Training	\$ 15,000	E					
19	Increase Reserve for balance remaining (Total Reserve of \$381,163 if approved)	\$ 231,163	A					
<b>Grand Total Approved Essential Uses of Carryforward/Additional Appropriations</b>		<b>\$ 3,760,500</b>						
<b>Reserve - For one-time items at discretion of Judicial Council Balance - 9.30.2020</b>		<b>\$ 381,163</b>						
<b>Total Approved Uses of Carryforward/Additional Appropriations</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		
<b>LEGEND</b>								
Carryforward Funding into FY 2021 has been increased by the legislature from \$2.5M to \$3.2M. Legislature approved additional appropriation of \$560K of General Funds which has been added to \$3.2M = \$3.760M total amount to be requested for use.								



### 3. FY 2021 Spending Request to Judicial Council – IT - COVID Jury Trial Public Access

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 forecasts indicate the Courts will not fully expend our appropriations by June 30. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2021.**

**Date:** 2/1/2021

**Department or District:** Information Technology

**Requested by:** Heidi Anderson

**Request title:** Courtroom Kits for Public Access to Jury Trials

**Amount requested:** \$ 136,000

**One-time funds**

**Purpose of funding request:** For COVID jury trials we need to provide public access. This request is to buy additional equipment for panoramic cameras and provide network cabling and power to the cameras to ensure the cameras capture the trials. **This purchase is eligible for CARES reimbursement should CARES funds at the state level be approved for it. This is a time-sensitive purchase request.**

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

As part of the Court's return to jury trials, public access is vital to providing confidence in the judiciary. This request is to purchase 10 Cisco courtroom "kits"<sup>1</sup> that provide panoramic camera views of the entire courtroom to monitors outside the courtroom where the public can view the trial proceedings. These are different locations than the first 10 Cisco "kits."

Depending on camera placement and existing power and cable supplies, this expenditure contemplates \$10,000 for the camera and \$3,600 for connecting the camera to both cable and power. The cameras are capable of streaming WebEx sessions to areas where the public can safely view the court proceedings.

The location for the courtroom kits will be determined by working with TCEs and court-level administrators to provide access where it is most needed.

IT will continue to search for lower cost ways to provide the cameras and other technology for public access.

**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?** Each district will be required to purchase what they need for public access or we will limit to the 1 courtroom per district for jury trials.

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<sup>1</sup> These Cisco courtroom kits are in addition to 10 other kits which are already installed or soon will be. This will bring the total cameras that facilitate public access to courtrooms to 20 locations.

#### 4. FY 2021 Request to the Judicial Council – IT – Subscribe to Juror Qualification Survey Tool

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 forecasts indicate the Courts will not fully expend our appropriations by June 30. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2021.**

**Date:** 2/1/2021

**Department or District:** Information Technology

**Requested by:** Heidi Anderson

**Request title:** Purchase Survey Tool for Juror Qualification during COVID

**Amount requested:** \$ 40,000

**One-time funds**

**Purpose of funding request:** For COVID jury selection, it has been proven beneficial to utilize an on-line Jury survey tool to qualify prospective jurors. The IT team has researched a widely-used, affordable survey tool called Survey Monkey.<sup>1</sup> We are requesting funds to purchase sufficient annual licenses to meet the needs of Districts and or Counties. Annual Full licenses are \$900 and enable the user to create surveys/templates and send out unlimited surveys. Annual Restricted licenses are \$500 and enable the user to analyze and view surveys. It is expected that each District would have at least one of each license. The State of Utah has a contract with Survey Monkey. If we can negotiate an enterprise agreement we expect to obtain savings to the \$40,000 ask. **This purchase is eligible for CARES reimbursement should CARES funds at the state level be approved for it. This is a time-sensitive purchase request.**

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

Traditional in –person “cattle call” jury qualification processes are not safe. The Courts have been testing Survey Monkey as an on-line tool to pre-qualify potential jurors. The surveys can be created by local court personnel – changed as often as needed, and used to make the juror qualification process speedy and safe.

We request \$40,000 to test this tool for a year and evaluate Survey Monkey as a potential juror qualification tool to use after COVID restrictions are lifted. During this one-year test, we will actively look for ways to reduce costs to use the tool by consolidating licensing wherever possible.

**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?** Each district will be required to purchase what they need for licenses or develop alternative processes that work.

<sup>1</sup> Partners and customers of Survey Monkey include Tableau, Microsoft Teams and 90%+ of the Fortune 500.

## 5. FY 2021 Request to the Judicial Council – Clerks of Court Admin Support

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 forecasts indicate the Courts will not fully expend our appropriations by June 30. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2021.**

**Date:** February 8, 2021

**Department or District:** District Court Administration

**Requested by:** Shane Bahr

**Request title:** Clerk of Court Support - District Court Program Administrator

**Amount requested:** \$ 24,500<sup>1</sup>

**One-time funds**

**Purpose of funding request:** The purpose of this request is to utilize \$24,500 in one time money to fund a new District Court Program Administrator who will provide dedicated support to the Clerks of Court. The requested one time funding will fund this position from April 1, 2021 thru June 30, 2021, at which time we will request 2022 Carryforward funds until ongoing turnover savings are available (\$98,000) to support this position as part of the FY22 annual budget.

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

The Clerks of Court sent a memorandum to Judge Noonan on December 16, 2020 outlining the workload and burnout experienced by our front line workers across the judicial districts. The Judicial Council responded to the Clerk's memo by asking the clerks to identify resources that they think will help relieve the workload and burnout experienced by the JA's and clerks. One solution that is supported by both the Clerks of Court and the Trial Court Executives is the creation of a program administrator for the district court clerks of court. Clerks of court have expressed the need to have one person to serve as the liaison between districts clerks of court and the departments in the administrative office to maintain consistency and to keep important items from falling through the cracks. Dividing support duties between multiple people in many departments is neither efficient nor sustainable.

Furthermore, in August, 2020 the clerk of court group became a self-governing body. The group elected Loni Page, 7<sup>th</sup> District Clerk of Court as chair and Dawn Hautamaki, 8<sup>th</sup> District Clerk of Court as vice-chair. Self-governance has given the clerks of court a voice and a presence that they have not had in the past, but more work has been added to their very demanding jobs and clerks of court believe their priority should be placed on working with court staff in their respective districts. A dedicated program administrator will ease some of the burden placed on the clerks of court by providing administrative, policy, procedure, and operational support from the administrative office.

Clerks of court believe a dedicated person at the administrative office to support district clerks of court will fill existing gaps such as:

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<sup>1</sup> See Funding Sources section of this request.

## 5. FY 2021 Request to the Judicial Council – Clerks of Court Admin Support

**Focus** - There is a need for a dedicated person who can focus on all things clerical. There needs to be someone at the administrative office who can identify if and how changes in policy or procedure will impact clerical work at the court level.

**Communication**- There is a need for a liaison who can speak with one voice to and from the district clerks of court. One person at the administrative office will help "anchor" the clerks of court.

**Consistency** – Establishing one person as the go-to person will help with consistency in messaging and memorialize policy and processes throughout the state. With many new employees in the judicial workforce, training documents need to be updated and made consistent throughout the state. The District Court Judicial Support Training (DCJUST) document is a vital resource used in training judicial assistants. At present, this document is out of date and needs administrative support to help clerks of court and trainers make necessary updates.

**Coordination** - A single point of contact will be beneficial to coordinate and organize items that need to be addressed by the Clerks of Court. A dedicated person could keep a pulse on statewide issues that impact clerical functions and allow clerks of court to spend valuable time on demands of the local districts. This person could definitely lighten the load for many of the clerks by wading through the minutia and identifying the real issues at hand. Oftentimes, clerks don't know where to direct their questions and a lot of time is spent bouncing from person to person. A single point of contact will definitely be more efficient and productive for the clerks of court and for the court system in general.

This request falls in line with the request that was made for one-time funding to provide assistance to clerical staff in response to the memorandum submitted to Judge Noonan by the clerks of court.. The Judicial Council approved the use of \$600,000 in one-time funding to provide needed assistance to clerical staff. Districts have used these funds to increase part-time employee hours and are in the process of filling temporary clerical positions. It appears that not all of the \$600,000 one-time funds will be utilized and we believe funding this request with a portion of the remaining funds will augment the critical needs for clerical support.

**Funding Sources.** Funding for this project will come from repurposing a portion of the \$600,000 in 1x turnover savings that the Judicial Council appropriated in December 2020 for the estimated 25 FTEs needed for the Clerks of Court project. Actual costs to provide resources to the Clerks of Court have come in lower than expected. As of today we have hired 12.125 FTEs for the Clerks of Court project and early feedback is that these new resources (some from PT employees temporarily going to increased hours, some for contract temps, and some from retired court employees who have returned for this temporary assignment) are performing as expected and the clerks of court teams are being amply supported. The number of new requests for resources to join the Clerks of Court task force has slowed to a trickle and as of today we forecast to spend only \$230,000 of the \$600,000 to pay for existing resources through June 30, 2021. If we add a reserve of \$70,000 to that amount (sufficient to pay for 2.5 more FTEs, only \$300,000 of the appropriation will be used for the Clerks of Court project through June 30, 2021. We seek Judicial Council approval to repurpose the remaining funds as follows:

Initial Funding approved for 25 FTEs to assist Clerks of Court	\$600,000
Less: Forecasted use of these funds through 30 June 2021	(\$230,000)

## 5. FY 2021 Request to the Judicial Council – Clerks of Court Admin Support

Less: Reserve for potential additional FTEs for CofC project	<u>(\$70,000)</u>
Available to be repurposed	\$300,000
Less: Repurpose request in #5 – Clerk of Court Admin Support	<u>(\$24,000)</u>
Less: Repurpose request in #6 – WebEx Support Team	<u>(\$240,000)</u>
Amount still available for contingency or repurposing	\$36,000

### Alternative funding sources, if any:

Various funding sources have been explored. Some of these alternatives include reassigning vacant FTE or existing FTE from other departments to the district court administrative team or requesting ongoing funds from the Judicial Council this fiscal year. Unfortunately, we have not identified existing resources that can be reassigned and given budget cuts there aren't ongoing funds available this fiscal year. Therefore, we have identified an opportunity to utilize one-time funding through repurposing some previously-approved asks for the last quarter of FY21 and then request ongoing funds to support this position beginning in FY22.

### If this request is not funded at this time, what are the consequences or is there an alternative strategy?

If this request is not funded at this time, the critical needs for support for our clerks of court and our judicial assistants in the district courts will continue to be divided among many employees in various departments resulting in an added burden to the clerks of court.

## 6. FY 2021 Request to the Judicial Council – IT – Jury Selection WebEx Support Team

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 forecasts indicate the Courts will not fully expend our appropriations by June 30. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2021.**

**Date:** 2/4/2021

**Department or District:** Information Technology

**Requested by:** Heidi Anderson

**Request title:** Jury Selection WebEx Support Team

**Amount requested:** \$ 240,000<sup>1</sup>

**One-time funds**

**Purpose of funding request:** The process of Jury selection and orientation using WebEx and other remote tools is taxing an already over-taxed team of clerks. Just as we marshalled additional resources to assist the Clerks of Court statewide to adapt to the extra stresses of operating in a COVID environment, we propose to organize, train, support and (if needed) supervise a team of 10 contract workers – trained and supported by an experienced WebEx user who is also familiar with all Court systems and courtroom processes. The goal is to provide flawless jury selections around the state – all the way through to the jurors who are to serve on juries being ready to assume those responsibilities. **This expenditure is eligible for CARES reimbursement should CARES funds at the state level be approved for it. This is a time-sensitive purchase request. It is possible these funds can be sourced with JWI funds. We have asked our Legislative Fiscal Analyst to include intent language for JWI funds for this year to allow this.**

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

As the latest implementation of WebEx-assisted processes has begun to stretch to cover jury selection, we have noticed a need to hire and train some additional contract resources who can specialize in jury selection and grow proficient in running this process for Courts statewide. At this moment, we are sure the added contract resources are needed – but we are still working to determine if a centralized remote team versus a decentralized remote team would work better. Regardless of that determination, we seek BFMC and Judicial Council approval for these funds so that when the location is decided upon, we can immediately move forward with hiring.

Our best assessment is that 10 contract workers supervised by 1 FT Court employee who knows WebEx and Court systems and courtroom processes will add greatly-needed proficiency. Our desired start date for these hires is as close to March 1 as possible.

The cost of the 10 contract workers at \$25 per hour x 40 hours per week is \$10,000 per week x the 18 weeks in the March – June time frame = \$180,000 + \$60,000 in costs for the payroll and benefits of the

<sup>1</sup> See Funding Sources section of this request.

## 6. FY 2021 Request to the Judicial Council – IT – Jury Selection WebEx Support Team

contract worker who will be hired to replace the FT Court IT employee who will be tasked to run this program = a total project cost of \$240,000.

**Funding Sources.** Funding for this project will come from repurposing a portion of the \$600,000 in 1x turnover savings that the Judicial Council appropriated in December 2020 for the estimated 25 FTEs needed for the Clerks of Court project. Actual costs to provide resources to the Clerks of Court have come in lower than expected. As of today we have hired 12.125 FTEs for the Clerks of Court project and early feedback is that these new resources (some from PT employees temporarily going to increased hours, some for contract temps, and some from retired court employees who have returned for this temporary assignment) are performing as expected and the clerks of court teams are being amply supported. The number of new requests for resources to join the Clerks of Court task force has slowed to a trickle and as of today we forecast to spend only \$230,000 of the \$600,000 to pay for existing resources through June 30, 2021. If we add a reserve of \$70,000 to that amount (sufficient to pay for 2.5 more FTEs, only \$300,000 of the appropriation will be used for the Clerks of Court project through June 30, 2021. We seek Judicial Council approval to repurpose the remaining funds as follows:

Initial Funding approved for 25 FTEs to assist Clerks of Court	\$600,000
Less: Forecasted use of these funds through 30 June 2021	(\$230,000)
Less: Reserve for potential additional FTEs for CofC project	<u>(\$70,000)</u>
Available to be repurposed	\$300,000
Less: Repurpose request in #5 – Clerk of Court Admin Support	(\$24,000)
Less: Repurpose request in #6 – WebEx Support Team	<u>(\$240,000)</u>
Amount still available for contingency or repurposing	\$36,000

If the need for the Jury Selection WebEx Support Team goes past June 30, 2021, we will submit a request to use an appropriate amount from the \$2.5M carryforward funding for up to 2 months (total of 6) into FY 2022.

**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?** The individual courts will not get the needed support and will necessarily be slowed in their productivity.

# Tab 5



## **Report of the Judicial Council's Standing Committee on Resources for Self-represented Parties**

**February 2021**

The Judicial Council's Standing Committee on Resources for Self-represented Parties supports the court's mission of providing the people an open, fair, efficient, and independent system for the advancement of justice under the law by studying the needs of self-represented parties within the Utah State Courts and proposing policy recommendations concerning those needs to the Judicial Council. More detail on this is found in the committee's authority:

### **Rule 3-115 of the Code of Judicial Administration**

Intent: To establish a committee to study and make policy recommendations to the Judicial Council concerning the needs of self-represented parties.

(1) The committee shall study the needs of self-represented parties within the Utah State Courts, and propose policy recommendations concerning those needs to the Judicial Council.

(2) *Duties of the committee.* The committee shall:

(2)(A) provide leadership to **identify** the needs of self-represented parties and to **secure and coordinate resources** to meet those needs;

(2)(B) assess available **services and forms** for self-represented parties and gaps in those services and forms;

(2)(C) ensure that **court programs for self-represented litigants are integrated** into statewide and community planning for legal services to low-income and middle-income individuals;

(2)(D) **recommend** measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties; and

(2)(E) **develop an action plan** for the management of cases involving self-represented parties.

## **Membership**

### **Rule 1-205 of the Code of Judicial Administration:**

(1)(B)(viii) **The Committee on Resources for Self-represented Parties** shall consist of

- two district court judges,
- one juvenile court judge,
- two justice court judges,
- three clerks of court--one from an appellate court, one from an urban district and one from a rural district,
- one representative from the Self-Help Center,

- one representative from the Utah State Bar,
- two representatives from legal service organizations that serve low-income clients,
- one private attorney experienced in providing services to self-represented parties,
- two law school representatives,
- the state law librarian, and
- two community representatives.

## **Committee Priorities**

The committee's efforts are currently focused on the following projects.

### **Priority #1: E-filing for self-represented parties**

Currently, a self-represented party does not have the ability to access the docket and documents in their own case, or to file documents in their own case, without the assistance of court personnel, which often means visiting a courthouse in person. To increase self-represented parties' ability to litigate in their own behalf—and to act quickly when faced with short deadlines--the committee is working with the Utah Courts IT team to expand the MyCase platform to provide what the committee is calling the “Big Three Needs in the Big Three Case Types (plus one).”

#### Big Three Needs for Self-Represented Parties:

- (1) E-filing (i.e., uploading electronic documents to the court's system)
- (2) Viewing the electronic docket in the party's case;
- (3) Downloading documents filed in the party's case, including private documents (this is crucial in domestic cases).

#### Big-Three Case Types (plus one) for Self-Represented Parties:

- (1) Domestic (divorce, parentage, custody)
- (2) Debt collection
- (3) Landlord/Tenant
- (4) Protective orders and civil stalking injunctions

### **Priority #2: Outreach to marginalized communities**

Outreach to marginalized communities remains one of the committee's top priorities. The committee is pleased to see that, now that Jonathan Puente has been hired to lead the Office of Fairness and Accountability, an outreach coordinator is in the process of being hired. The committee looks forward to working with Jon and the new coordinator to address this important issue.

### **Priority #3: Expansion of pro se calendars**

Currently, Utah's district courts offer the following pro se calendars:

- First District:
  - Domestic pro se calendar in Logan (not currently running due to COVID-19)
- Second District:
  - Domestic pro se calendars in Ogden and Farmington (not currently running due to COVID-19)
  - Debt collection and eviction pro se calendars in Farmington
  - Debt collection pro se calendar in Bountiful (unclear whether these are currently running)
- Third District:
  - Domestic pro se calendars in Matheson, West Jordan, Tooele, and Summit County
  - Eviction pro se calendar in Matheson
  - Debt collection pro se calendar in Matheson
- Fourth District:
  - Domestic pro se calendar in Provo (once per quarter; motions only; unclear whether this is currently running)

The committee is working to expand these calendars within these districts, and to other districts that do not currently offer dedicated pro se calendars.

### **Priority #4: Maintaining the option of remote hearings**

As we transition to post-pandemic life, the committee urges the Utah Courts to maintain an appropriate mix of remote and in-person hearings. Unrepresented—and represented—parties should, in the case of simple court matters or short hearings, have the option to access the courthouse remotely.

Over the years, the committee has grappled with how to help alleviate the many challenges litigants face in accessing the courthouse, which include issues related to time off work, child care, cost of transportation and parking, cell phone use, and dress code issues. Maintaining the option of—and, when appropriate, encouraging the use of—remote hearings addresses many of these challenges. The committee, with input from other groups also studying this, will continue to push for a hybrid approach to courthouse access while balancing the challenges created by the use of new technology.

**Priority #5: Wage theft clinic**

The Utah Foundation's Justice Gap report, which is accessible [here](#), identified multiple civil justice gaps in Utah. Employment Law, and specifically wage theft, was a major gap identified by the report. Self-represented parties need help filling out the claim [forms](#) which, if not done properly, can result in delays or denials. The committee is working to address this gap by supporting the formation of a wage theft clinic.

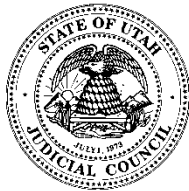
**Priority #6: CLE credit for court-referred pro bono service**

The committee is working on a proposed rule and rule changes that would allow an attorney to be awarded up to three credits per compliance period for providing pro bono services or mentoring another lawyer or law student providing such services. The proposed rule provides that the pro bono services must be referred from a court or qualified entity, as defined in the rule.

The Board of District Court Judges supports this proposal.

# Tab 6

## Agenda



## Administrative Office of the Courts

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

### MEMORANDUM

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

**To:** Judicial Council  
**From:** Nancy Sylvester *Nancy J. Sylvester*  
**Date:** February 11, 2021  
**Re:** Certification of New Senior Judge Applicant

District court **Judge Lynn Davis**, who recently retired, has applied for active senior judge status.

The senior judge evaluation and appointment processes are governed by the following Utah Code of Judicial Administration rules:

- [Rule 3-111](#): governs senior judge evaluations;
- [Rule 11-201](#): governs the appointment of senior judges of courts of record.

Judge Davis does not have any complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. His application is attached and certification appears to be appropriate.<sup>1</sup>

<sup>1</sup> After Judge Davis applied for senior judge status, I saw that his application had the wrong language on paragraph 13 regarding JPEC certification. I corrected the application language as follows: "I understand that the Judicial Council may review my recent judicial performance evaluations in connection with my application." I reached out to Judge Davis to see if this amendment would change his response. We spoke on the phone and he indicated that it would not change his response.



**Senior Judge Application for District or Juvenile Court Judge  
Active Status**

**Qualifications for Office**

I, Judge Lynn W. Davis, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.

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- 12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

- 13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 15) I was not removed from office or involuntarily retired on grounds other than disability.
- 16) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 18) I will submit relevant information as requested by the Judicial Council.
- 19) My date of birth is [REDACTED] and my retirement date is January 1<sup>st</sup>, 2021
- 20) I have not been subject to any order of discipline for conduct as a senior judge.
- 21) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 23) The address at which I can be contacted after retirement is:

[REDACTED]

### Judicial Performance Evaluation Information

I further declare as follows:

- 24) I have held no more than three cases per calendar year under advisement more than 60 days after submission. ✱
- 25) I have held no cases under advisement more than 180 days after submission.
- 26) I am in substantial compliance with the Code of Judicial Conduct.
- 27) I am physically and mentally fit for office.



28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30+	30+	30+

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

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29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

17 DECEMBER 2020  
Date

Judge Lynn Williams  
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241  
Email: [nancyjs@utcourts.gov](mailto:nancyjs@utcourts.gov); Fax: 801-578-3843

\*Footnote to paragraph 24  
(Judicial Performance Evaluation Information)

I have had more than 3 cases for more than 60 days during the last 6 months of 2020 because of the following reasons:

My wife and I suffered from the coronavirus in late July of 2020. While I was mostly asymptomatic, I was still quarantined in lock down for 14+ days. My wife had serious health challenges with the virus.

Next, on October 31<sup>st</sup>, 2020 I had an accident that shattered my right knee cap. I had knee surgery on Monday, November 16, 2020 and was in the hospital for 2 days and then home recovery for over ten days.

In addition, my Administrative Assistant recently had neck surgery and was out for a period of time and her husband had very extensive surgery earlier this fall.

These challenges, together with coronavirus closure of the courts and handling everything by WebEx, have delayed a few decisions.

Of course all cases will be ruled on before retirement.

Next, one of the reasons for desiring Senior status is so that I can continue my appointment on the Grand Jury Panel. Michael Drechsel has informed us that our next panel hearing is scheduled for Jan. 14, 2021.

# Tab 7

# UTAH STATE COURTS

## Standing Committee on Judicial Outreach Projects and Initiatives

- ❖ Creation of the Office of Fairness & Accountability (with Public Outreach and Education Coordinator)
- ❖ Public COVID Alerts Page - Community Resources During the Pandemic
- ❖ COVID Public Awareness Ad Campaign
- ❖ Virtual Town Hall Series - Evictions, Domestic Violence, and Divorce/Custody
- ❖ Divorce Education for Children Went Virtual, and in Spanish
- ❖ COVID Jury Video
- ❖ Law School For Journalists
- ❖ Matheson Diversity Artwork Initiative

The Standing Committee on Judicial Outreach expresses its gratitude to the Council for its recent creation of the Office of Fairness & Accountability, along with the Public Outreach and Education Coordinator. Several members of the committee participated in helping to draft the office's charter and advise on the job descriptions for the OFA Director and Outreach Coordinator.

During the pandemic, several outreach initiatives were undertaken to educate the public on how to contact the courts for help. The Public COVID Alerts Page keeps the public updated on the status of each county, the latest Administrative Order, and guidance on how to attend a Webex hearing. Community resource fliers were also created with the assistance of the Court Access Program and the Self-Help Center, and translated into Spanish, Vietnamese and Arabic.




With the assistance of the Council's appropriation and Utah Bar Foundation funding totalling \$34,000, we were able to conduct a public awareness ad campaign in the months of September and October.

Ads encouraging the public to contact the courts by email and phone for help ran on KSL Radio, FM100, Arrow 103.5 in English and LaGrand D, Latino 106.3, and Juan 1600 radio stations in Spanish.

Ads and a Facebook Live Event also ran on Telemundo TV (Thanks to Self Help-Center Director Nathanael Player for helping out). Ads also ran on Facebook across the state. In total an estimated 785,386 people were reached. Additional Bar Foundation funds allowed us to pay for two more weeks of radio ads on KSL over the holidays.

Utah Courts also teamed up with the Utah Division of Multicultural Affairs to hold a series of live virtual town halls to discuss how people can get help issues involving domestic violence, evictions/small claims, and divorce/custody. Each town hall was held in English and in Spanish. Thanks to Nathanael Player and Amy Hernandez for helping rally our partners, including SL Legal Aid Society, Utah Housing Coalition, Utah Domestic Violence Coalition, Timpanogos Legal Center, and People's Legal Aid. Each event reached over 1,400 people.


# UTAH STATE COURTS



## UTAH STATE COURTS

### Divorce Education for Children Online

#### WHAT WE DO



- ▶ Free of cost
- ▶ For children ages 9-12
- ▶ Classes in English and Spanish
- ▶ Taught by licensed mental health professionals

- 1 IDENTIFY FEELINGS  
Help children identify and express difficult feelings common in divorce
- 2 EMPOWER KIDS  
Teach coping techniques and communication skills kids can use at home
- 3 ENHANCE UNDERSTANDING  
Clarify divorce related misconceptions and emphasize divorce is not their fault
- 4 ENCOURAGE SUPPORT  
Foster a supportive group environment by connecting kids with other kids going through similar situations

Register your child online or by phone  
[www.utcourts.gov/divorceedforchildren/](http://www.utcourts.gov/divorceedforchildren/) | 801-578-3897

## TRIBUNALES DEL ESTADO DE UTAH

### Educación sobre el divorcio para los hijos en línea

#### QUÉ HACEMOS



- ▶ La clase es gratuita
- ▶ Para niños de 9 a 12 años de edad
- ▶ Clases disponibles en inglés y español
- ▶ Impartida por profesionales de salud mental health professionals

- 1 IDENTIFICAMOS SENTIMIENTOS  
Ayudamos a los niños a identificar y a expresar sentimientos sobre el divorcio que son comunes
- 2 EMPODERAMOS A LOS NIÑOS  
Enseñamos destrezas para superar problemas y habilidades de comunicación que los niños pueden usar en casa
- 3 MEJORAMOS LA COMPRENSIÓN  
Aclaramos conceptos erróneos relacionados con el divorcio y hacemos énfasis en que el divorcio no es culpa de los niños
- 4 FOMENTAMOS EL APOYO  
Promovemos un entorno grupal de apoyo al poner en contacto a los niños con otros niños que atraviesan situaciones parecidas

Inscribir a sus niños en línea o por teléfono  
[www.utcourts.gov/specproj/dived/children.php](http://www.utcourts.gov/specproj/dived/children.php) | 801-578-3897

Like many court services, the Divorce Education for Children program was impacted due to the pandemic. Thanks to program coordinator Ana Velasquez, the core curriculum was adapted to an online format. The secondary consequence is that classes are now available to parents statewide. In addition, the Divorce Education for Children program has recently contracted with a Spanish-speaking instructor and is holding classes for Spanish-speaking children 9-12. A working group is being formed to create a curricula for children 5-8 and 13-17.



Another outreach project was the creation of an instructive video for jurors participating in the COVID Jury Trial Pilot. The Public Information Office collaborated with IT staff in producing this video. A big thank you to all of the AOC staff and judges who volunteered to gather at Matheson and play the various roles to make this video possible. Also recognition needs to go to the Utah Bar Foundation for providing funding to hire professional voice talent. What would take a few months was accomplished in two weeks.

Another outreach initiative has been the Law School for Journalists series. This series is supported by the Utah Courts, Utah State Bar, and Utah Society of Professional Journalists. This past year, the group teamed up with the Utah Sentencing Commission to hold a seminar on sentencing to help reporters gain a better understanding of the roles and influences the parties play in sentencing. This stemmed from recent news reports where judges were directly blamed for sentences in controversial cases. We are working on a next seminar, which will be understanding the Justice Courts.

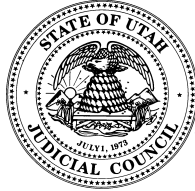


Last but not least, the Standing Committee and its Community Relations Subcommittee, chaired by Judge Shauna Graves-Robertson, collaborated with the Utah Division of Arts & Museums to create an environment diversity at the Matheson Courthouse. The members recognized the need for people to see reflections of the broad diversity of Utah's community in a public space. The pieces were carefully selected and installation was going to be arranged, but the pandemic hit. Finally, last month the artwork was installed and we were able to get some media attention on our diversity outreach effort. Unfortunately, due to the earthquake, several chosen pieces were damaged. Arts & Museums has told us they might be able to set up two more art boxes with new pieces later this year.



# Tab 8

## Agenda



## Administrative Office of the Courts

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

February 9, 2021

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Judicial Council**  
**FROM: Keisa Williams**  
**RE: Rules for Final Approval**

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The Judicial Council approved the following rules for public comment. During the 45-day comment period, no comments were received on either rule. Policy and Planning recommends the following rules to the Judicial Council for final approval, with a May 1, 2021 effective date.

#### **CJA 3-101. Judicial Performance Standards (AMEND)**

The proposed amendments to Rule 3-101 establish a definition for “submitted” for purposes of the case under advisement performance standard. The proposed amendments also clarify that judges will be considered compliant with education and case under advisement standards if their failure to meet one or both of those standards was due to circumstances outside of the judge’s control. All material relied upon by the Judicial Council in making a certification decision or explanation shall be forwarded to JPEC and shall be made public to the extent that the information is not confidential personal health information.

Policy and Planning received feedback from the Board of District Court Judges and JPEC. Neither group expressed strong objections. The language in (7)(D) was recommended and approved by JPEC. At JPEC’s recommendation, Policy and Planning will conduct a separate review of the self-declaration forms to ensure they are consistent with the rule.

#### **Rule 3-108. Judicial Assistance (AMEND)**

The proposed amendments to Rule 3-108 (lines 26 and 60-63) authorize the presiding officer of the Judicial Council to appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge’s district. The length of the assignment may coincide with the judge’s term as presiding judge.

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

**Rule 3-101. Judicial performance standards.****Intent**

~~To establish standards of performance for application by the Judicial Performance Evaluation Commission.~~ To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

**Applicability**

This rule applies to all justices and judges of the courts of record and not of record.

**Statement of the Rule****(1) Certification of performance standards.**

(1)(A) The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

~~(42) Definition of cCase under advisement standard.~~ A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(2)(A) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(2)(B) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(2)(C) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

**(3) Satisfactory Performance by a justice or judgeCase under advisement performance standards.**

~~(23)(A) Supreme Court justice.~~ A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

~~(23)(B) Court of Appeals judge.~~ A judge of the Court of Appeals demonstrates satisfactory performance by:

(23)(B)(i) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(23)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(23)(C) **Trial court judge.** A trial court judge demonstrates satisfactory performance by holding:

(23)(C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(23)(C)(ii) no case under advisement more than six months after submission.

(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.

**(4) Case under advisement performance standards—compliance.** A judge or justice shall decide all matters submitted for decision within the applicable time period prescribed by this rule, unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

**(35) Judicial eEducation performance standard.**

**(5)(A) Education hour standard.** Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

**(5)(B) Education hour standard—compliance.** A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

**(46) Physical and mental competence performance standard.** Satisfactory performance is established if the response of the judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

**(7) Judicial Council certification.** As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

**(7)(A) Compliant;**

**(7)(B) Compliant with explanation,** meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

69       (7)(C) Non-compliant, which may include a judge who has certified his or her own  
70       compliance but the Judicial Council has received credible information inconsistent with that  
71       certification.

72       (7)(D) All material relied upon by the Judicial Council in making a certification decision or  
73       explanation shall be forwarded to JPEC and shall be made public to the extent that the  
74       information is not confidential personal health information.

75  
76       *Effective May/November 1, 20\_\_*

**1 Rule 3-108. Judicial assistance.****2 Intent:**

3 To establish the authority, procedure and criteria for judicial assistance.

**4 Applicability:**

5 This rule shall apply to judicial assistance provided by active senior judges and judges of courts  
6 of record.

**7 Statement of the Rule:**

8 **(1) Criteria for requesting assistance.** Judicial assistance shall be provided only for the  
9 following reasons:

10 (1)(A) to prevent the occurrence of a backlog in the court's calendar;

11 (1)(B) to reduce a critical accumulated backlog;

12 (1)(C) to handle a particular case involving complex issues and extensive time which  
13 would have a substantial impact on the court's calendar;

14 (1)(D) to replace a sitting judge who is absent because of assignment as a tax judge,  
15 illness or to replace the judges in that location because of disqualification in a particular  
16 case;

17 (1)(E) to handle essential cases when there is a vacant judicial position;

18 (1)(F) to handle high priority cases during vacation periods or during attendance at  
19 education programs by the sitting judge, following every effort by that judge to adjust the  
20 calendar to minimize the need for assistance and only to handle those matters which  
21 cannot be accommodated by the other judges of the court during the absence;

22 (1)(G) to provide education and training opportunities to judges of one court level in the  
23 disposition of cases in another court level; ~~and~~

24 (1)(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of  
25 the Utah Code of Judicial Administration; ~~and~~

26 (1)(I) to handle automatic expungement cases.

27 **(2) Criteria for transferring or assigning judges.** The transfer or assignment of judges shall  
28 be based upon the following priorities:

29 (2)(A) experience and familiarity with the subject matter, including, in district court cases  
30 involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial  
31 Administration, knowledge of the theory and practice of ad valorem, excise, income,  
32 sales and use, and corporate taxation;

33 (2)(B) active judges before active senior judges with consideration of the following:

34 (2)(B)(i) active judges from a court of equal jurisdiction in a different geographical  
35 division than the court in need, who are physically situated nearest and are most  
36 convenient to that court;

37 (2)(B)(ii) active senior judges from a court of equal jurisdiction to the court in  
38 need who are physically situated nearest and are most convenient to that court;

(2)(B)(iii) active judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is most closely related to that court and who are in close proximity to it;

(2)(B)(iv) active judges from a court of equal jurisdiction in a different geographical division than the court in need who are far removed from that court;

(2)(B)(v) active or active senior judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is similar to that court who are not in close proximity;

(2)(C) availability;

(2)(D) expenses and budget.

**(3) Assignment of active judges.**

(3)(A) Any active judge of a court of record may serve temporarily as the judge of a court with equal jurisdiction in a different judicial district upon assignment by the presiding judge of the district in which the judge to be assigned normally sits or, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with the approval of the presiding officer of the Council.

(3)(B) Any active judge of a court of record may serve temporarily as the judge of a court with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer of the Council or assignment by the state court administrator with the approval of the presiding officer of the Council.

(3)(C) The presiding officer of the Council may appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge's district. The length of the assignment may coincide with the judge's term as presiding judge.

(3)(~~CD~~) The assignment shall be made only after consideration of the judge's calendar. The assignment may be for a special or general assignment in a specific court or generally within that level of court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state court administrator shall report all assignments to the Council on an annual basis.

(3)(~~DE~~) Requests for the assignment of a judge shall be conveyed, through the presiding judge, to the person with authority to make the assignment under paragraphs (A) and (B). A judge who is assigned temporarily to another court shall have the same powers as a judge of that court.

(4) **Notice of assignments.** Notice of assignments made under this rule shall be made in writing, a copy of which shall be sent to the state court administrator.

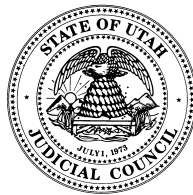
(5) **Schedule of trials or court sessions.** The state court administrator, under the supervision of the presiding officer of the Council, may schedule trials or court sessions and designate a judge to preside, assign judges within courts and throughout the state, reassign cases to judges, and change the county for trial of any case if no party to the litigation files timely objections to the change.

*May/November 1, 20\_\_*

# Tab 9



## Agenda



# Administrative Office of the Courts

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

February 22, 2021

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

## MEMORANDUM

**TO: Members of the Utah Judicial Council**

**FROM: Bart Olsen, Director of Human Resources, Administrative Office**  
**Judge Derek Pullan, Chair, Policy & Planning Committee**  
**Keisa Williams, Staff, Policy & Planning Committee**

**RE: Revised Human Resource Policy Manual for Approval**

The purpose of this memorandum is to provide important context on the accompanying revised Human Resource Policy Manual for Judicial Council review and approval.

### Background

Some time ago, the Judicial Council asked that the Human Resources Policy Review Committee (HRPRC) focus its efforts and energy on a head-to-toe examination and overhaul of the current human resource policy manual. In its efforts, the HRPRC identified the following broad categories of challenges to resolve in its policy review efforts:

1. Lack of clear, well-vetted policy/guidance on topics such as:
  - a. Career service protections and due process procedures
  - b. Compensation tools
  - c. Employee Development and Performance Management
  - d. Teleworking
2. Inconsistencies:
  - a. Between published policy and widely accepted practices
  - b. Amongst varying sections of current policy addressing similar issues
3. Absence of certain policies to support recent legislation applicable to our branch, such as Abusive Conduct Prevention and Postpartum Recovery Leave.
4. Lack of information regarding payroll procedures from State Finance, health benefits under PEHP, and retirement benefits under URS.

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

Additionally, the HRP RC considered these three realities when determining the best approach to take on this project:

1. The sheer volume of outdated policy
2. The purposes behind ad hoc groups and subcommittees (such as the HRP RC) to support both Judicial Council and its Executive Committees in order to help them accomplish their important work
3. [UCJA Rule 3-402\(5\)](#)<sup>1</sup> clearly establishes the role of the HRP RC in making proposals to human resources policy

Therefore, the HRP RC determined that the work ultimately submitted to the Policy & Planning Committee and to the Judicial Council had to be baselined with extremely well-researched and widely vetted policies in the first place.

### **Approach**

The HRP RC determined to “baseline” a new HR policy manual with the Executive Branch Department of Human Resource Management (DHRM) rules for a number of reasons, two of which are perhaps the most critical to understand:

1. Although the Judicial Branch is a separate and independent branch of government, the Judicial Branch has long adopted the same systems to govern numerous aspects of personnel administration, including State Payroll, the Human Resources Information System (HRIS), the Public Employees Health Program (PEHP), and Utah Retirement Systems (URS).
2. DHRM rules are under a constant state of review from DHRM employment law attorneys, the Employment Law section of the Attorney General’s Office, State Risk Management, and offices of general counsel from all Executive Branch agencies.
  - a. DHRM rules are formally updated in an annual review process that has taken place for decades.
  - b. On some occasions, DHRM rules have been updated even more frequently than the annual cadence to respond to urgent, fluctuating business needs.

Using DHRM rules as the baseline, the HRP RC discarded policies that should only apply to the Executive Branch, and included current Judicial Branch policies that were recently approved by the Judicial Council such as Professional Dress/Appearance and Workplace Harassment. The HRP RC also included other long-standing HR policies *if* those policies are still helpful to managers and staff in their roles, and made other updates to tackle the challenges mentioned in the “Background” section above.

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<sup>1</sup> (5) Human resources policies, including a Code of Ethics for non-judicial officer employees, shall be adopted by the Council in accordance with the rulemaking provisions of this Code.

(5)(A) There is established a Human Resources Policy Review Committee responsible for making and reviewing proposals for human resources policy amendments. The committee shall review human resource policies at least every three years.

If adopted, it is recommended that the new policy manual become effective July 1, 2021, in part to comply with recent Utah legislation on Abusive Conduct and Postpartum Recovery Leave that becomes effective in May and July 2021. It is also recommended that the HR Department collaborate with the Education Department to provide expedited online training, available on demand to both staff and management, and to develop a long-term plan of ongoing human resource training incorporating various training delivery methods.

**Summary Recommendations**

An expectation that the Judicial Council read every word of the new draft HR policy manual prior to approval is both unreasonable and unnecessary, since it has already been meticulously reviewed by the HRPSC and the Policy & Planning Committee. Instead, the Committee opted to draw specific attention only the most substantive policy changes being advanced for approval. Notwithstanding the summarization of those policies, the full draft HR policy manual is viewable/accessible to you [at this link](#).



# Administrative Office of the Courts

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

February 22, 2021

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

## ADDENDUM

### SUMMARY OF SIGNIFICANT HR POLICY UPDATES

#### HR01 Definitions

This section provides a much more robust library of terms with accompanying definitions. Currently, only 57 terms are defined in HR policy. The updated definitions section now defines 137 terms. Below are just three highlights identified for your attention.

Term #	Summary of Update
#88, #116	Separately defines Occasional Teleworking and Routine Teleworking
#122	Defines “substantial evidence” with a reasonable person standard and a footnote reference to recent Utah case law.
#127	Defines a Time Limited Law Clerk for a clear distinction from Attorney/Law Clerks

#### HR02 Administration

Policy Reference	Summary of Update
HR02-5 Records	Removes reference to a “local personnel file” for a solitary and official source of a personnel file to reside in the HR information system.

#### HR04 Filling Positions

Policy Reference	Summary of Update
HR04-2 Career Service Exempt	Establishes clear direction and tools for which management may appoint temporary employees on a time-limited basis.
HR04-4(2)(b) Recruitment & Selection	Reduces the required minimum length of time to advertise a career service position to three business days.

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

HR04-13 Career Mobility Programs	Provides greater detail and guidance on Career Mobility Programs for employee development and to fulfill specific business needs.
HR04-15 Background Checks	Clarifies proper use of background check information in the hiring process to avoid unnecessary liability in hiring decisions.

#### HR05 Career Service Status and Probation

Policy Reference	Summary of Update
HR05-2 Probationary Period	Clarifies when the probationary period is required for career service status and when/how other appropriate tools may be used either in place of or in connection with a probationary period.
HR05-3 Career Service Exempt Positions	Clarifies precisely what the determining factors are to distinguish between career service and career service exempt positions.
HR05-3(2) Career Service Exempt Positions	Memorializes with transparency a decision adopted in July 2008 to move the Clerk of Court and Chief Probation Officer positions to career service exempt and preserve career service status for employees already in those positions by grandfathering.
HR05-3(4) Career Service Exempt Positions	Memorializes with transparency a decision adopted in January 2019 to convert all IT positions to career service exempt once vacated, and recruit future employees as career service exempt.

#### HR06 Total Compensation & Benefits

Policy Reference	Summary of Update
HR06-3 Compensation for Unclassified Employees	Provides information pointing to appropriate pieces of Utah Code and UCJA Rules that determine compensation and benefits for commissioners, judges, justices, and time-limited law clerks.
HR06-4 Additional Compensation for Presiding Officers	Provides information pointing to Utah Code that determines additional compensation for presiding officers.
HR06-5 USERRA Placements	Establishes procedures for qualifying military service members returning to work in compliance with USERRA.
HR06-6 Salary	Removes a cap of 11% on an increase for internal promotions. Clarifies administration of personnel actions such as promotion, reclassification, longevity increase, reassignment, transfer, etc.

HR06-7 Incentive Awards & Bonuses	Establishes the following as standard incentive/bonus tools for management use and provides accompanying guidance: Performance-based incentive, Cost-savings bonus, Market-based bonus, and Second Language Stipend.
HR06-8 Employee Benefits	Clarifies a number of previously obscure and/or unclear elements governing the administration of employee benefits under PEHP. Establishes procedures for reemployed veterans in compliance with USERRA.
HR06-9 Conversion to Career Service Exempt	Establishes an incentive program and accompanying procedures for any position or group of positions to convert to a status exempt from career service provisions, if the conversion is approved by the Judicial Council. This comes from DHRM Rules to implement <a href="#">UCA §63F-1-106</a> and <a href="#">UCA §67-19-15.1(4)</a> which do not apply to the judicial branch. However, borrowing from this DHRM rule allows us to be prepared with supporting policy already in place if at any point the Judicial Council sees a need to do something similar.

### HR07 Leave

Policy Reference	Summary of Update
HR07-1(6) Conditions of Leave	Identifies an important and employee-friendly clarification that employees may not be required to maintain a minimum balance of accrued leave (tools for management to address potential abuse in use of accrued leave are provided elsewhere).
HR07-1(7) Conditions of Leave	Prohibits a loophole practice of recording leave use in payroll that results in accrual of excess hours. Example: On a week with a state holiday, an employee should record only 32 hours of work (8 hours of holiday are automatically calculated). An employee <i>could</i> record 32 hours of work and 8 hours of sick leave, resulting in the accrual of 8 hours excess leave which can now be paid down. Excess is only intended to accrue when an employee actually works more than 32 hours on a week with a state holiday.
HR07-1(10) Conditions of Leave	Establishes a practice to protect the judicial branch from being required to retain an employee who chooses to be absent from work longer than four cumulative months in a 24-month period, unless prohibited by law (seven cumulative months if the employee used three months leave protected under the FMLA).
HR07-4(4) Sick Leave	Clarifies the difference between Program I, Program II, and Program III sick leave, allows an employee to use leave accrued in those programs in any combination desired, and establishes the method for

	employees to designate the use of accrued leave under Programs I and II (Program III is the default in payroll).
HR07-4(7) Sick Leave	Establishes the right of management to request administratively acceptable evidence if there is reason to believe an employee is abusing sick leave.
HR07-5 Converted Sick Leave	Provides a much needed explanation of a program that ended in January 2014, but current employees who accrued hours in the program prior to January 2014 are still eligible to preserve converted sick leave hours for valuable retirement benefits.
HR07-19 Leave for Law Clerks	Memorializes in policy the practices that have long been established to allow leave use for time-limited law clerks.
HR07-20 Leave Bank	Establishes clear administrative parameters around a leave bank program subject to the approval of the Judicial Council that allows for flexibility to meet business needs and respond to legitimate needs of employees facing life-threatening or catastrophic circumstances.
HR07-21 Postpartum Recovery Leave	Establishes policy to support legislation passed during the 2020 General Legislative Session to support eligible employees in recovery from childbirth.

### HR08 Working Conditions

#### Policy Reference      Summary of Update

HR08-1 Workweek	Clarifies the precise begin and end times of a standard workweek, the ability of management to approve flexible start and end times for shifts of work, the expectation for employees to comply with assigned schedules and account for any lost time, and the calculation of hours worked in compliance with federal labor standards.
HR08-2 Teleworking	Establishes a teleworking program with guidance to help meet business needs while providing a positive work environment, clarifies differences between routine teleworkers and occasional teleworkers.
HR08-4 Overtime Standards	Provides more robust explanation and guidance to employees and management to avoid problems with overtime.
HR08-13 Excess Hours	Provides a previously absent explanation of a bank of leave accrued when working hours exceed the expected number of hours on a state holiday or a week when a state holiday occurs. Establishes expectations in connection with those hours.
HR08-15	Establishes clear guidance for employees seeking reasonable

Reasonable Accommodation	accommodation under the Americans with Disabilities Act (ADA) to work with HR who will also coordinate with General Counsel and Risk Management.
HR08-17 Temporary Transitional Assignment	Establishes a tool widely accepted outside the Utah Judicial Branch that will be highly valuable to our branch for use with employees temporarily unable to perform essential job functions.

### HR09 Code of Ethics and Conduct

#### Policy Reference      Summary of Update

HR09-1 General Standards	Emphasizes that violations of Workplace Harassment Prevention policies and Abusive Conduct policies are also a violation of the Employee Code of Ethics and Conduct subject to disciplinary action up to and including dismissal from employment.
HR09-1(7)(a) General Standards	Clarifies that allegations of misconduct may be subject to fact-finding administrative reviews by management in consultation with HR.
HR09-1(16) Performance of Duties	Establishes professionalism as a standard of conduct expected in the performance of duties.
HR09-1(31) Professional Appearance	Allows a court executive or court level administrator to give exceptions to statewide standards if needed (such as during a pandemic)
HR09-7 Acceptable Use of IT Resources and HR09-8 Social Media	Makes modifications to ensure clear understanding of support for an employee's freedom of expression under the constitution without placing court information systems or data at risk.
HR09-10 Workplace Violence	Adds a tool of protection to employee victims of domestic violence to include flagging of an employee personnel record in the Human Resource Information System (HRIS) as "protected" (a function already available in our HRIS).

### HR10 Employee Development

#### Policy Reference      Summary of Update

HR10 Employee Development	Encourages the use of the electronic Utah Performance Management (UPM) system to document performance expectations.
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HR10-1 Expectations and Evaluation	Establishes a policy that management identifies basic performance expectations of employees and provides regular feedback. Clarifies that although formal, written evaluations are not required, an employee may request a written performance evaluation not to exceed a cadence of once per fiscal year.
HR10-2 Performance Improvement	Provides more robust guidance including the right of an employee to submit written comments accompanying a formal performance improvement plan, and clarifies that once an employee has proven proficiency through formal performance improvement, recurrent deficiencies of the same performance problems may be considered willful misconduct.
HR10-5 Education Assistance	Removes unneeded red-tape for employees to be eligible for education assistance with approval by management, and streamlines the application and tracking process. Management would now be able to work directly with Finance for tuition reimbursement rather than having to obtain prior approval from HR.

#### HR11 Discipline

Policy Reference	Summary of Update
HR11-1 Disciplinary Action	Establishes clear policy and procedures to ensure due process for career service employees. Provides a much-needed clarification between a response and a grievance: due process requires an employee to receive (1) notice and (2) an opportunity to respond before being deprived of a property right. A response occurs before the property right is deprived. A grievance occurs after the property right is deprived.
HR11-3 Discretionary Factors	Provides clear guidance on factors to be considered when determining type and severity of appropriate disciplinary action. Clarifies that issues of comparability allow reasonable differences between past and current administration.

#### HR14 Substance Abuse, Drug-Free and Smoke-Free Workplace

Policy Reference	Summary of Update
HR14 Drug-Free Workplace	Provides much needed updates on reasonable-suspicion drug testing, random drug testing for highly sensitive positions (should the judicial branch determine at some future point to implement), and other related procedures in compliance with current state and federal law including the Utah Medical Cannabis Act.

HR14-4 Smoke-Free Workplace	Removes the antiquated allowance of smoking in state vehicles under certain circumstances which is no longer allowed under state law.
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### HR15 Workplace Harassment Prevention

#### Policy Reference      Summary of Update

HR15-1 Policy	Clearly establishes all forms of discrimination and harassment based on protected classes, identifies those protected classes, and defines with clarity a policy against which harassment investigators may evaluate allegations and fact patterns to determine whether or not policies have been violated.
HR15-4 Investigative Procedure	Clarifies procedures to be followed when allegations of workplace harassment arise and specifies that allegations against a judicial officer are only investigated by HR when authorized by the Judicial Council.
HR15-6 Training	Establishes a requirement that employees and supervisors complete workplace harassment prevention training upon hire and at least every two years thereafter.

### HR16 Abusive Conduct Prevention

#### Policy Reference      Summary of Update

HR16-1 Policy	Establishes policy required by legislation passed in the 2020 General Legislative Session to prohibit abusive conduct as now codified in <a href="#">UCA §67-26</a> . This code becomes effective July 1, 2021.
HR16-4 Training	Establishes the expectation as required by code to ensure employees and supervisors receive annual training on the prevention of abusive conduct in the workplace.
HR16-5 Complaint Records	Establishes the expectation that the HR Department report the number of complaints, investigations, and outcomes to the Executive Branch DHRM annually as required by code.

### HR17 Grievance and Appeal

The entire section on grievance and appeal is updated to discard previously muddy procedures, clarify which matters are eligible to grieve to which level of grievance, to provide crystal-clear timelines, and to clarify the membership, role, and procedures of the Grievance Review Panel.

# Tab 10

Agenda

January 13, 2021

Jim Peters  
Justice Court Coordinator  
Administrative Office of the Courts  
450 South State  
PO Box 140241  
Salt Lake City, Utah 84114-0241

**Re: NOTICE OF INTENT TO DISSOLVE JUSTICE COURT**

Dear Mr. Peters:

Pursuant to UCA 78A-7-123(2), this letter provides notice to the Utah Judicial Council that Levan Town intends to dissolve the Levan Town Justice Court. Enclosed with this letter is Resolution No. 01132021-01 adopted by the Levan Town Council on January 13, 2021. UCA 78A-7-123(3) allows for the usual time minimum of one year for court dissolution to be shortened upon request. Pursuant to 78A-7-123(3) of the Utah Code, Levan Town requests that this time frame be shortened to allow a March 1, 2021 dissolution date, or as soon thereafter as the Judicial Council allows the dissolution to take effect.

If you require any further information regarding this notice, please contact us.

Sincerely,

LEVAN TOWN MAYOR



Corey Christensen  
[levantown@gmail.com](mailto:levantown@gmail.com)  
435-623-1959

**RESOLUTION NO. 01132021-01**  
**A RESOLUTION AUTHORIZING THE DISSOLUTION OF**  
**THE LEVAN TOWN JUSTICE COURT.**

WHEREAS, Levan Town ("Town") currently has the Levan Town Justice Court (the "Court") to serve the town's justice court needs; and

WHEREAS, the Town Council has determined the Court no longer justifies its cost to the Town, and

WHEREAS, the Town Council has determined that it would be in the best interests of the residents of the Town that the Court be dissolved and that the cases be handled by the Juab County Justice Court which serves any areas of Juab County that do not fall within the jurisdiction of a municipal justice court; and

WHEREAS, the Town wishes to now dissolve the Court,


NOW THEREFORE, be it resolved by the Town Council of Levan, Utah as follows:

1. The Town shall take those steps required to meet all the statutory conditions outlined in UCA 78A-7-123-(2) & (3) necessary to dissolve the Levan Town Justice Court and the Mayor and Town Clerk are authorized and directed to prepare, sign and file with the appropriate agencies all documents necessary to dissolve the Town's Justice Court; and
2. Upon the completion of all the requirements, the Levan Town Justice Court shall be dissolved on March 1, 2021, or as soon thereafter as the Judicial Council allows the dissolution to take effect.
3. The Resolution shall become effective immediately upon adoption.

APPROVED and SIGNED this 13<sup>th</sup> day of January 2021.



LEVAN TOWN

  
Corey Christensen, Mayor

ATTEST:

  
Elizabeth H. Hone, Levan Town Clerk

**78A-7-123 Dissolution of justice courts.**

- (1)
  - (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.
  - (b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.
  - (c) The municipality or county shall provide notice to the Judicial Council.
  - (d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.
  - (e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.
- (2)
  - (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.
  - (b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.
  - (c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.
- (3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

Renumbered and Amended by Chapter 3, 2008 General Session

# Tab 11



## Weighted Caseload Review

### *Executive Summary*

**Background:** In the Fall of 2020 the Administrative Office of the Court (AOC) engaged the National Center for State Courts (NCSC) to conduct a review of the methodology of the court's annual weighted caseload analysis. The NCSC reviewed about 20 years worth of weighted caseload reports and supporting documentation concerning changes and updates to the methodology over the years. The NCSC has prepared a report with their findings and suggestions for improvements to the annual weighted caseload report and delivered it to Court Services Director.

**Key Points:** The report identified several opportunities for improvement, but found no major critiques that would result in the discontinuation of the court's current methodology.

**1. *Use a three year average of case filings when determining judicial need.***

The NCSC recommends taking the average filings over the most recent three years worth of data and applying the case weights to that average. This will help smooth the impact of any anomalies that might occur in a single year such as a global pandemic or new legislation. This helps certify that judicial need is based on observed trends rather than outlier data.

**2. *Revisit the standard judicial year.***

The Council sets the value used for a judicial year. The NCSC recommends reviewing this formula and making adjustments to the bench hours allotted per day and the number of days in a judicial year. The report notes that Utah's numbers are higher than the national average, meaning we expect judges to spend more time on the bench each day and work more days than what they have observed in other states.

Additionally the NCSC suggests using the distance and a lower MPH to calculate the travel time allotted for judges when calculating judicial need.

**3. *Validate hearing times captured in the case management system through observation of court recordings.***

The NCSC recommends validating the hearing times captured in our case management system with observation of court recordings. If the times captured in our case management system is consistent with the recordings, this could replace a large portion of our surveys to determine the time spent in hearings.

**4. *Establish expert panels to review weighted caseload changes and reports annually.***

The report recommends that expert panels of judges be created to review the case weights and offer recommendations on a regular basis and not only when the case weights are being studied.

**5. *Update a few case weights each year instead of waiting several years then updating all the case weights.***

Typically, Court Services has updated the case weights every 3 to 5 years. Occasionally, there have been updates when there have been exceptional changes (usually in rule or statute) that greatly impact on the time required by judges and staff. The NCSC recommends that large chunks of the case weights be reviewed annually to prevent lag and subsequent large swings in the data.

**6. *Improve survey instructions.***

The NCSC recommends making improvements to survey instructions so that the purpose and questions are more clear to respondents in order to reduce reporting errors and biases.



**Proposal:** Court Data Services is confident in preparing the weighted caseload analysis using the current case weights. The department will implement the recommendations of the NCSC moving forward with future revisions of the case weights to continually improve the weighted caseload reports. Several near term objectives have been identified by the director and proposed the State Court Administrator for consideration. Below is a summary of the primary objectives and a proposed timeline.

#### Timeline for Implementation of Weighted Caseload Proposals

	FY21 Q3	FY21 Q4	FY22 Q1	FY22 Q2
Objective 1: Begin using a 3 year average to calculate judicial need.				
Objective 2: Study and make necessary changes to Judicial Year				
Objective 3: Re-evaluate analyst resources in Court Data Services				
Objective 4: Establish best practices for documenting changes to the methodology.				
Objective 5: Create expert panels				
Objective 6: Establish a long-term roadmap for updating case weights				
Objective 7: Establish a long-term plan for regular third party reviews				



## Administrative Office of the Courts

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

February 8, 2021

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO:** Judge Noonan, State Court Administrator  
Cathy Dupont, Deputy State Court Administrator

**FROM:** Clayson Quigley, Court Services Director

**RE:** Response to the NCSC's Weighted Caseload Analysis

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The NCSC has provided an analysis of the court's weighted caseload report and methodology. The analysis supports our practices and even gives compliment to the consistency by which we conduct the studies. The research supports continued use of the existing formulas with suggestions on improvements that can be implemented as we continually maintain case weights and prepare the annual report.

Having reviewed the recommendations, I am confident in preparing an interim weighted caseload report after the 3<sup>rd</sup> quarter of this fiscal year and a final report to the Judicial Council at the beginning of FY22. There are some recommendations that can be implemented immediately, and others that will take some time to implement and see the result of implementation. Many of the recommendations were consistent with concerns I shared with you in previous discussions.

A quick review of how the weighted caseload is completed will help put the recommendations in context. There are two parts to calculating the weighted caseload. The first is determining what the case weights are going to be, and the second is determining judicial need by applying those case weights to the previous year's filing numbers. This is important to understand because recommendations that apply to the first process, determining case weights, require more time to research and implement than changes to the second part, which is the application of the weights. I propose we move forward with the weighted caseload report using the current case weight values. At the end of this memo, I have prepared a plan for implementing the recommendations that will impact future analysis of the case weights.

There are two recommendations that can be implemented as we apply the case weights to prepare the FY21 weighted caseload report. One recommendation is to apply the case weights to

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efficient, and independent system for the advancement of justice under the law.**

a three year average of case filings rather than a single year. The other recommendation is for the Council to re-evaluate the time allotted for the standard “Judicial Year.”

The purpose of using a three year average is to help diminish anomalies that occur in a single year. This is a departure from previous years, but it comes at an important time. The impacts of COVID-19 may make any meaningful application of FY21’s numbers difficult, if we rely on a year’s worth of data alone.

With regards to the standard Judicial Year, Court Data Services would be able to assist the Council in such a review and apply any changes to the FY21 analysis if those changes are adopted to the Council prior to April 2021.

### **Impacts of the NCSCS Analysis on the 2019/2020 Juvenile Weighted Caseload Analysis.**

The analysis from the National Center for State Courts supports the methodology used to determine the case weights used in the reassessment of the 2019/2020 Juvenile Weighted Caseload analysis. The center recommends applying those weights to a three year average of case filings to determine judicial need for budget and policy decisions. The researchers indicated that using a three year average has become the best practice over the past several years. I propose we move forward using the case weights developed by the Board of Juvenile Judge’s Weighted Caseload Workgroup in 2019/2020. Court services will determine a three year average of filings for FY21, FY20 and FY19 to use for calculating the judicial need. Additionally, using a three year average will help smooth the impacts of COVID-19.

The filing categories in the FY20 preliminary report differed from the FY19 report. This means Court Services will need to reassess the case filing numbers for FY19 to calculate an accurate average. This will not impact previous reports but will be necessary for reporting moving forward.

### **Summary of the NCSC Analysis**

The report breaks down the recommendation into four parts, the standard year value, case and event weights, case and event frequency/distribution of filings, and policy issues and documentation. The following is a summary of the key points from those recommendations and a plan for implementing the recommendations.

#### **Standard Year Value**

The value used by the Utah Courts for the standard judicial year is determined by the Judicial Council. The Juvenile Board raised concerns about the judicial year during the 2019 study. The Council should study revisions to the standard judicial year and consider input from the various court benches as well as the recommendations presented in the analysis. Special consideration should be given to comparison with the national averages for the number of days in a judicial year as well as the number of hours in a judicial day.

The Council may also consider having different standard values for different court levels. This was one of the primary concerns raised during the 2019 Juvenile weighted caseload study. Currently the Standard Year is the same for district and juvenile judges. The Council could consider allowing for more administrative (non-case) time for a different bench if there is a reasonable argument to do so.

The report also recommended that the Council provide direction on how travel time should be calculated for the standard year value and the frequency with which it should be reviewed. Consideration could include whether travel time should be determined by local administrators, self-reported surveys, or distance between court houses. The Council should also set a schedule for updating the calculation of travel time. Following the direction of the Council, the travel time could be calculated each year to account for changes in practice or changes to the make-up of the bench, but the methodology for calculating the travel time would remain the same.

The standard year can be easily updated upon receiving instruction from the Judicial Council. These changes could be implemented immediately and be reflected in the FY21 Weighted Caseload Reports.

### **Case Weights and Events**

These recommendations focus on the analysis of case weights and how we arrive at those values. The case weights and events are at the heart of these studies. The NCSC report provides excellent recommendations to increase the validity of the weights used but most of these recommendations are dependent on time to implement and/or see their impact.

The analysis is slightly critical of the court's use of the Delphi method to determine the case weights. The NCSC relies on Time in Motion style studies where a sample of work is measured rather than relying on survey responses which may be subject to self-reporting biases. While there is no recommendation to abandon the Delphi method, the research suggests action that can be taken to improve the quality of the surveys to promote more accurate responses. Data Services can implement better survey tools moving forward and should consider the various technologies at our disposal to gather and collect accurate information. Including supplying the judges or survey respondents with the tools necessary to assess their work accurately.

The report recommends validating the hearing times captured by our case management system against the actual recordings of those same events. If we find the hearing times in our case management systems are reliable, they can serve as proxy for determining time values for events when assessing a case weight. This will improve the accuracy of our case weights by eliminating self-reporting biases that may be present in data from surveys. This will be a time intensive process that will require us to listen to/measure thousands of hearings and compare those times with the time stamps in our data. This can be accomplished as we review the caseload studies or it could be completed as a large undertaking by Data Services in conjunction with Court Administration staff.

Another recommendation is to employ expert groups to review case weights as they are revised. After conversing with the researcher, I was able to clarify this means to include judicial officers as experts to review the various changes to the case weights. To some degree we have done this in the past by creating a weighted caseload work group. These expert panels could exist on a permanent basis as a standing subcommittee of the various benches. This would help provide consistency and continuity from year to year as opposed to only convening the workgroups every few years to re-evaluate the case weights.

The report recommends updating the weighted caseload in smaller chunks on an annual basis rather than a complete review after longer periods of time. This is an important recommendation that I believe will help resolve many of the issues we have seen these past few years. To accomplish this, I will need to re-evaluate the assignments of the data analysts. This is easily a full time job for an analyst to own the coordination with various boards and workgroups, the analysis, and final reporting of weighted caseload each year. This person may also take ownership of related reports, such as the filings reports, that are used to inform the weighted caseload. This would also give that person an opportunity to provide several touchpoints throughout the year to avoid any big surprises with the weighted caseload reports.

### **Case Event Frequency, Distribution and Filings**

This section only included two recommendations. The first being frequent revisions to the admit/deny ratios used in some of the weighted caseload studies. I clarified with the researcher that admit/deny ratios were eliminated from the formula to determine judicial need in the Juvenile Court's analysis in 2019 and are not used in the District Court's report. The researcher understood and approved the use of different hearing times for contested matters when determining case weights. This method was used for the Juvenile Court's case weights which are based on the hearing data reviewed to calculate the case weights. These will be updated periodically when the case weights are reviewed.

The second recommendation is actually an exciting one that I think could really benefit the court. The researchers recommend using a three year average where possible to help smooth out inconsistencies from year to year. This would have helped absorb the swings we saw in FY19 and FY20. Additionally, this is an important observation given that the FY21 data will not be representative of a "normal" year. This will be a departure from much of the information that has been provided in previous years. A change like this would require buy-in from the Council and a narrative explaining the decision should accompany those reports, especially if provided to external audiences.

After receiving the report, I've had the opportunity to further discuss the three year average with the researcher. She was able to expound on this point and shared that many states have moved to using a three year average. This has been a common trend over the past 10 years or so. While not every state uses a three year average, it is the prevailing method and preferred by the NCSC.

### **Policy Issues and Considerations**

The recommendations from this section of the report deal less with the content of the report and more with the administrative pieces of conducting this type of analysis. An important take away is the importance of meticulously documenting each step so that the process can be recreated by anyone stepping into a role with Data Services. This is paramount to the long term success of Data Services and the historical value of these studies.

Data Services will continue to make strides to improve our documentation. One suggestion is that the weighted caseload be accompanied by the methodology document each year rather than just the transmittal letter. The methodology document then becomes a living history recorded in tandem with the results of the weighted caseload study.

Finally, the report recommends periodic third-party reviews of the weighted caseload. I echo this recommendation and would encourage the Judicial Council to determine a regular schedule for this sort of review so that it does not get forgotten and so that finances can be budgeted to make sure that the review happens.

### **Predicative Analytics**

The report does not mention the use of predicative analytics or the consideration of other factors, in conjunction with case filing data to estimate future filings or judicial need. In conversations with the researcher I've come to understand that to their knowledge, no other state is doing this sort of analysis. This type of work is not uncommon in other areas of government. It may not have an application in year to year assessments considering that case filings typically tend to not have large shifts. However, this type of analysis could be helpful in determining long term plans.

## **Proposal to Incorporate the Recommendations**

- Objective 1:** **Introduce a 3 year average for calculating the weighted caseload.**  
This is a big change and will likely result in a change to the way the information is presented/formatted in the report. This should be done only with the approval and buy in from the Judicial Council.
- Timing: FY21-Q4 and FY22-Q1
- Objective 2:** **The Council should make any necessary changes to the Standard Judicial Year.**  
This needs to be studied by the Council and likely wouldn't be able to be implemented until the FY22 weighted caseload report.
- Timing: FY21-Q4 through FY22-Q2
- Objective 3:** **Re-evaluate analyst resources in Data Services. Temporarily make assignments to support expert panels and regular revisions the weighted caseload. Seek additional personnel that can be dedicated to coordinating review and revision of case weights, staffing expert panels, and preparing related reports.**  
Reassignment of duties can begin immediately and in step with decisions to establish expert panels. Additional staffing can be presented to the appropriate committee(s) for consideration by the council for the upcoming fiscal year.
- Timing: FY20-Q3 & Q4
- Objective 4:** **Determine best practices for documenting the reports and modifications made to our methodology.**  
Court Data Services will work with expert panels to determine best practices for document the process and decisions of the panels to preserve a record of changes made over the years. The goal would be to create a process that is easily replicated by someone with little or no background on the weighted caseloads.
- Timing: FY22-Q1
- Objective 5:** **Create standing workgroups/expert panels to review and approve regular changes to their bench's weighted caseload reports.**  
This process should be determined by the Council. I recommend creating a panel or workgroup that reports to each board concerning that court's weighted caseload.
- Timing: FY22-Q1
- Objective 6:** **Develop a long-term plan for revising the case weights.**  
Data Services will work with the expert panels to establish a plan for revising case weights each year.
- Timing: FY22-Q1

**Objective 7: Ask the Council to adopt a schedule for third-party reviews of our studies.**

Data Services will recommend an schedule for third party review to the Judicial Council for approval.

Timing: FY22-Q2

**Timeline for Implementation of Weighted Caseload Proposals**

	FY21 Q3	FY21 Q4	FY22 Q1	FY22 Q2
Objective 1: Begin using a 3 year average to calculate judicial need.				
Objective 2: Study and make necessary changes to Judicial Year				
Objective 3: Re-evaluate analyst resources in Court Data Services				
Objective 4: Establish best practices for documenting changes to the methodology.				
Objective 5: Create expert panels				
Objective 6: Establish a long-term roadmap for updating case weights				
Objective 7: Establish a long-term plan for regular third party reviews				



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# A Review of Utah's Juvenile and District Court Judicial Weighted Caseload Formula Methodology

*Final Report*

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## **PROJECT STAFF**

*Suzanne Tallarico, M.A.*

**COURT CONSULTING DIVISION | NATIONAL CENTER FOR STATE COURTS**

*December 2020*

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## Introduction

Across the country, judicial branches in the majority of states rely on weighted caseload models to determine the need for an adequate number of judicial officers to handle the workload in a jurisdiction in a fair, timely, and efficient manner. Judicial weighted caseload models are based on a set of case weights (average case processing times for each identified case type) and established averages for non-case-related work. To arrive at the total judicial workload expected, the case weights are multiplied by the number of case filings in each court location. This information is applied to the standard judge year (the average number of days judges are expected to work) and the judge day (the average number of hours judges are expected to work each day).

The weighting of cases is critical because it reflects the fact that court locations do not have the same complement of filings in a given year, and different types of filings require different amounts of judicial work. To that end, case weights ensure that cases involving a small amount of judge time, such as traffic infractions, are not given the same value as cases that require a lot of judge time, such as capital murder cases. When applying the expected workload to the judge year, the model provides an estimate of the number of judicial officers needed in each court location across the state to resolve the cases filed.

## Utah's Judicial Weighted Caseload Model Review

In Utah, the Administrative Office of the Courts has conducted its own judicial weighted caseload studies since the late 1990s. The earliest model reviewed was completed for the juvenile court in 1999; and the district court's earliest model was developed in 2001. The models are prepared separately for the district court and juvenile court. Weighted caseload models have also been developed for justice courts, court clerical staff and probation officers; however, these were not reviewed as part of this assessment. It is presumed that the methodology used to develop all of the weighted caseload models is consistent with the methodology used for the district and juvenile court judges, so the limited time available to conduct the assessment focused on the judicial models.

The development of the model is a joint effort between judicial boards and committees and the Administrative Office of the Courts (AOC). The Utah Judicial Council is the policy making body for the judiciary. The sixteen-member body has representatives from all levels of courts in the state. The Judicial Council is required to establish a Board of Judges for each level of court; the judicial weighted caseload model development is overseen by the Judicial Workload Formula Committees of the Boards of District Court Judges and Juvenile Court Judges. Each Board oversees the weighted caseload model for their respective courts. The AOC is responsible for establishing and maintaining uniformity and coordination across all courts in the state, and the Court Services Division is responsible for developing the judicial weighted caseload models for both courts.

This document provides the results of an independent review of the judicial weighted caseload models used in Utah's district and juvenile courts that was conducted by the National Center for State Courts (NCSC). The NCSC is the leader in conducting workload assessment studies for courts and justice system partners in the U.S. and internationally, employing a sophisticated multi-method approach to translating caseload into workload.

At the outset of this project, the Director of Court Services transferred all documents associated with workload assessment studies conducted in Utah, since 1999 to a private and secure server maintained by the NCSC. These documents, including excel spreadsheets containing models and analytical data, and written documents, including notes, memos and reports, were reviewed, with an eye toward the appropriateness and completeness of the methodology, looking for ways in which the judicial weighted caseload models could be strengthened, if at all. Though scant written documentation exists to provide a clear description of the weighted caseload methodology used by the AOC, it was possible to review historical spreadsheets and intermittent notes and memos to determine how the models and their data elements were used, revised, and sometimes, how they were determined.

The basic methodology has remained relatively consistent since the initial weighted caseload models were developed some twenty years ago by the AOC. There are five main elements used in the weighted caseload models, as shown below, and discussed in the next section of this report.

- Standard Judicial Year value
  - Day value
  - Administrative time
  - Travel time
- Case and event weights
- Case and event frequency
- Case and event distributions (for juvenile court only)
- Case filings

## Standard Judicial Year Value

The standard judicial officer year is used to determine the amount of time a full time equivalent judicial officer has available for case-related work. In the juvenile court, the base year value has changed only once since the first weighted caseload model was developed for juvenile court in 1999.<sup>1</sup> Travel time has been adjusted from time to time, but not on a regular basis. From 1999 through 2002, the year value in the juvenile court was based on 6 bench hours per day (case-specific time) and a total of 211 working days. In 2003, the juvenile court judicial year value was revised to reflect a 220-day year. This change is the result of decreasing days associated with sick leave (reduced by 3 days) and training (reduced by 6 days).<sup>2</sup> In addition to increasing the total number of working days to 220, the juvenile court model increased the number of bench hours per day to 7. Since 2003, the base judicial officer year is the same for district and juvenile courts; the only variation is in the number of travel hours across districts.<sup>3</sup> The two variations of the year value are provided in Figure 1, below.

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<sup>1</sup> In the 2010 *Juvenile Judicial Workload Formula* report, reference is made to models in 1998 and before, but these were not available for the current review.

<sup>2</sup> For the 2003 juvenile court judicial officer weighted caseload model, documentation is noted in the spreadsheet that the change to the year value was authorized by AOC officials, but does not explain why. Presumably, the change was made to reflect the same base year value as used in the district court model.

<sup>3</sup> The 2010 *Juvenile Judicial Workload Formula* report states that the juvenile court judicial year value was changed to represent 1,540-hour bench-year; however, that figure was used in reports beginning in 2003.

**Figure 1: Standard Judicial Year Values: District and Juvenile Courts**

Year Value Elements	Year Value 1999 – 2002: Juvenile Court		Year Value 2003 – 2020: District & Juvenile Court	
<i>Bench hours per day</i>	<b>6</b>		<b>7</b>	
	Days	Hours	Days	Hours
Annual days	365	2,190	365	2,555
Weekend days	-104	-624	-104	-728
Holidays	-11	-66	-11	-77
Vacation	-20	-120	-20	-140
Average sick leave days	-4	-24	-1	-7
Training	-15	-90	-9	-63
Bench days per year	211	1,266	220	1,540
Travel hours	Specific to district		Specific to district	

**Bench hours.** The weighted caseload formula assumes all judicial officers work a standard number of hours each day. This standard day value represents the amount of time each judicial officer has available for case-specific work each day. This value is determined by subtracting time for lunch, breaks and non-case-related work, such as administrative duties, meetings and other work that is essential for judicial officers to engage in but is not related to a specific case. The only documentation that reflects how the bench hours per day figure was determined, is from the 2010 *Juvenile Judicial Weighted Workload* report that documents the revisions made to the model in 2010. Appendix B of this report contains the questionnaire that was distributed to all juvenile court judges. The questionnaire asked judges to provide the number of minutes per week they spend (a) serving on committees and (b) engaging in other off-bench activities, such as speaking to groups, completing paperwork, engaging in moot court, etc. Memos contained in the 2010 file folder for the district court judicial weighted caseload model contains references to updates made in that model, but there is no report that clearly documents all of the changes. It is assumed that the non-bench time estimates for both the district and juvenile courts were collected via survey.

**Annual days/Weekend days.** To begin the computation of the number of days worked per year, the model begins with the full year (not accounting for leap years) of 365 days and subtracts the number of weekend days (104), yielding the starting year value of 261 non-weekend days per year.

**Non-working days.** The next step in determining the year value is to subtract the number of days associated with holidays, a standard number of vacation days, average sick days taken, and the number of days judicial officers are away from court to attend training.

**Travel hours.** The travel hours are based on a self-reported number provided by each judicial district. In some cases, the trial court executive provides this value; in others individual judges report their annual travel time. Notes embedded in the spreadsheets often (but not always) indicate who reported this information and what the raw numbers are. Typically, the report provides the number of miles traveled from one court location to another, for one month, and then annualizes this figure by multiplying the monthly travel miles by 12. This figure is translated into hours by dividing the number of miles traveled by the speed of 60 mph (e.g., 90 miles/60 mph = 1.5 hours of driving). The travel hours for all judges in each district are summed, and the product is divided by the number of judges, to arrive at the average annual travel time per judge. The travel time is not updated on a regular basis;

in fact, the travel time in district court has only been adjusted once, for use in the 2012 model and beyond; in the juvenile court, travel times have changed at least five times since 1999. According to a footnote (number 10) found in the 2010 *Juvenile Judicial Workload Formula* report, travel time is defined as traveling to or from a courthouse, other than the judge's home court, to conduct court business. Travel associated with training is included in the training deduction of the standard year value and all other travel is included in the judicial administrative time deduction (non-bench hours); however, this is not the way the questions are asked on the survey provided in that report. For example, the travel-related questions in the 2010 juvenile judge questionnaire are: "How many days a week do you travel as part of the workday (not including commuting to your designated office)?" And "What is your average travel time per travel day?" Similarly, the question regarding committee work did not explicitly instruct respondents to include travel time. When conducting survey research, it is critical to be exceedingly clear in each of the questions asked, so all respondents are answering the questions within the same specific parameters.

**Discussion.** The development of the standard work year follows the model used by the National Center for State Courts, in terms of its computation and makeup. The AOC could make refinements to the time associated with work-related travel time computations.

**Standard work year.** As discussed above, the standard work year was established in juvenile court with a 211-day work year at 6 bench hours per day; and revised in 2003 to a 220-day work year with a 7-bench hour workday. Compared to the average year values established in ten years' worth of judicial officer time studies conducted by NCSC's Court Consulting Division, this is a relatively high work year. The average year value of 23 studies conducted over that time, the average standard year value is 211, with a range of 204 to 215 working days per year. The AOC should consider periodically reviewing the standard year value, either through the use of a judicial panel of experts or through the use of a survey to determine the average number of days worked by judicial officers. Specific areas to review include the number of days taken for vacation and illness. In the NCSC's experience, most states set 25 as the average number of vacation days, and sick leave is usually set at approximately 10 days. Most states base these averages on actual time that is available to be taken by senior level employees.

**Travel hours.** As described above, travel estimates are provided by either the trial court executive or judges in each district and then divided by a factor 60 mph to translate mileage into time. While this methodology is certainly acceptable, it could be refined in a couple of ways. While Utah uses 60 mph as a standard division factor with which to translate mileage into time traveled, most states with whom the NCSC works choose to use a lower travel rate, such as a traveling speed of 50 or 55 mph, reasoning that most travel is not done on roads allowing for travel at that rate. Changing this traveling speed factor and adding in travel time could result in a more accurate deduction for this data element.

In terms of what the travel time represents, questionnaires must be extremely specific in what time elements are expected to be included in each question to ensure that all respondents complete their responses in a consistent manner. It is likely travel time not related to between-court travel is not accurately estimated in the judicial weighted caseload models. The AOC should refine the travel-related questions and instructions in the next round of updates on standard year value and travel-related time.

## Recommendations:

- The AOC should consider periodically reviewing the standard year value, either through the use of a judicial panel of experts or through the use of a survey to determine the average number of days worked by judicial officers. Specific areas to review include the number of days taken for vacation and illness. In the NCSC's experience, most states set 25 as the average number of vacation days, and sick leave is usually set at approximately 10 days. Most states base these averages on actual time that is available to be taken by senior level employees.
- The AOC should consider reducing the speed by which the number of miles is divided by from 60 mph to either 50 or 55 mph. This change reflects the fact that a good portion of between courthouse travel is not conducted on highways. The AOC should also consider periodically validating the mileage deduction data by quantifying travel reimbursement logs for each judicial district.
- The AOC should refine the travel-related questions and instructions in the next round of updates on standard year value and travel-related time.

## Case and Event Weights

The most critical elements of a weighted caseload model are the case weights, or the average time needed to process a particular case type from filing to disposition. The case weight includes all activities associated with each case (event weights), including in and out of court time. There are only two reports that provide written documentation of the full judicial weighted caseload methodology used in Utah. The *Juvenile Judicial Workload Formula report*, dated January 2010, is a thorough report that provides clear documentation on the updates made to the juvenile judge formula. The May 2019 report, entitled *Utah Judicial Weighted Caseload Methodology Judicial Officers – District & Juvenile* provides some detail about the revisions to the 2019 juvenile and district court formulas, but this report lacks details. The latter report states that “a variant of the Delphi technique is used to gather information via survey from a group of respondents within their domain of expertise. The survey results are compiled and then reviewed for accuracy while an aggregate opinion or weight is then established for the amount of time needed to complete work tasks. As the judicial officers participate in the process of weight creation, this provides credibility for the case weights (P. 3).”

The methodology reports from 2010 and 2019, along with a handful of memos and PowerPoint presentations, provide some insight into the case weight development process. Taken together, these documents provide the ability to piece together details regarding the case weight development and validation process, assuming the process has remained consistent over the years. Various documents indicate that survey results were validated by reviewing a sample of hearings – selected from different courts and different judges - and comparing the actual hearing times (recorded digitally) to the time estimates provided by judges. When there are discrepancies between the survey data and the digital hearing review, it is unclear how the discrepancy is resolved. For example, if the survey data and validation data are inconsistent on average hearing times, how is the inconsistency handled? It appears that the decision is generally to accept the time estimates provided by the judges. One PowerPoint presentation described one of these inconsistencies, and the final decision on how to handle the inconsistency was reported, but not the process by which it was resolved. Additional memos found scattered amongst the documents provided for review indicate that significant amounts of time and energy are used to resolve perceived inconsistencies in time estimates. In the 2010 juvenile judicial workload

formula update, there was a discrepancy between the judicial response data and the digital recordings in one case type. The 42-minute discrepancy (the digitally recorded times were 42 minutes lower than the judges' estimates) was attributed to a small sample of digital recordings (n=63) for that case type, and the judicial responses were accepted. Another discrepancy, in which collectively, judicial respondents estimated the hearing time to require 43 minutes, but the digital record from 200 cases resulted in a 17-minute average hearing time, was not even noted as a discrepancy and, instead, all judicial time estimates were accepted.

There also appears to be a process by which one or more members of the Board of District Court Judges or the Judicial Workload Formula Committee raises a concern about a particular case weight and an AOC staff member(s) conducts research and then returns with a recommended resolution, but the resolutions do not appear to be data-based. For example, see Figure 2, below for an example of how concerns regarding drug court hearing weights were resolved in 2011 (*Judicial weighted Caseload Update After May 4<sup>th</sup> Board Meeting*):

**Figure 2: Sample Resolution of Case Weight Concerns**

<u>Drug Court Time</u>	
· <u>Drug Court hearings.</u> Add factor for staffing. Drug court staffings are 2.19 minutes. Judge __ indicates	
· their staffings last about an hour and their drug court calendar is about 100 per calendar.	
·	
· <b>Resolution: Change weight from 2.19 to 3 minutes.</b>	
·	
· If we round the length of each hearing up to 3 minutes per hearing, we should be adequately be	
· reflecting the time spent.	
·	

A copy of one survey, sent to district court judges in 2010 was reviewed to get a sense of the data collection process. In that year, district court judges were asked to respond to a survey that focused on a small number of data elements for which they were asked to provide estimates of the time required to engage in specific activities. In this example, judges were asked to provide time estimates for in-district travel, out-of-district travel, specialty court time, e-warrant time and for three specific activities in certain case types with a total of 19 questions. Responding judges are asked to provide their name and judicial district. A few questions from that survey are provided below.

**Figure 3: Sample Survey to Update Case Weights/Event Weights**

<u>Specialty Court Time</u>	
· Do you preside over a specialty court?	____ Yes ____ No
· How many specialty court calendars do you hold <b>per month</b> (e.g. how many times per month do you hold this specialty court)?	____ calendars/month
· About how many participants are on each specialty court calendar?	____ participants
·	
· How many minutes on average do you spend per participant in each calendar?	____ minutes/participant
·	
· How many minutes on average do you spend per week preparing for your specialty court calendar?	____ minutes/week



**Discussion.** The development of case weights is based on event and case processing time estimates provided by survey respondents. These times are partially verified, then aggregated and averaged to obtain the case weight. That general methodology is consistent with best practices; however, some improvements could be made.

**Questionnaires and survey process.** The AOC relies on a modified Delphi process (a single survey of judges), with some level of verification, to determine case weights. The NCSC does not generally recommend using the Delphi method as the primary means of establishing case weights, because, in our experience, respondents tend to overestimate the time it takes to complete certain tasks, even when going through multiple iterations of the survey process. While this method has been used in some NCSC studies, it is typically used in a limited capacity (i.e., for a single case type) or where time and funding constraints prohibit the use of a full-blown time study. A true Delphi method entails a system of multiple rounds of questionnaires sent to a panel of experts. Several rounds of questionnaires are sent out to the group of experts, and the anonymous responses are aggregated and shared with the group after each round. The experts are allowed to adjust their answers in subsequent rounds, based on how they interpret the "group response" that has been provided to them. Since multiple rounds of questions are asked and the panel is told what the group thinks as a whole, the Delphi method seeks to reach the correct response through consensus. The AOC's process entails a single survey with varying levels of guidance or instructions provided to assist judges on how to think about the one's responses. The district court judicial questionnaire used for the 2010 survey process had very limited instructions or explanations, whereas the questionnaire used with juvenile court judges contained excellent explanations and instructions. Future updates conducted through the survey process should more closely resemble the process and tools used with the juvenile court update in 2010.

**Survey findings accuracy and validation.** In terms of accuracy and validation, the survey responses are reviewed for accuracy; however, there is no explanation regarding this process. The AOC has the ability to partially validate case weight estimates by sampling cases and tracking the length of time for various types of hearings occurring within that case type. They can also obtain the average number of hearings within various case types, which can be used as a multiplying factor to establish case weights. This validating process strengthens the estimated case processing times; however, they can only use this process to validate in-court hearing activity, not out-of-court case processing activity, including hearing/trial preparation and post-hearing/trial time. It is unclear at this time how often the case weights are updated and validated through this extensive process, or whether all case types have undergone such a rigorous review. NCSC consultants have attempted to partially validate case weights in other states by relying on hearing times stored in various states' case management systems; however, for each state that has that capacity, none had confidence that the hearing start/stop time was accurate across all courts. The AOC should consider conducting a validation on the hearing start and stop time stamp process across court locations for a variety of hearing and case types by observing hearings and manually tracking start/stop times. If the hearing times contained in the case management system are accurate, the AOC could consider not relying on surveys to estimate judges' time for this activity, and simply rely on the surveys to address out-of-court work. This would reduce the burden on judges and improve the accuracy of the overall case weight.

**Consensus.** In terms of consensus, there were no documents found to describe if or how consensus on case weights is reached. By reviewing various PowerPoint presentations and memos, it appears the average case processing times are computed based on survey responses and partial validation and then provided to the

Committee and/or Board for response. Based on memos, if even one judge raises a concern, the case weight may be researched and adjusted. The AOC should consider employing directed expert groups (e.g., civil case experts, family case experts, etc.) to act as consensus groups when case weights are revised. This eliminates what could be seen as a self-serving interest to have a particular case weight adjusted by a single judge.

**Case weight computation.** After the survey results have been cleaned and validated, the data is used to compute case weights. The following three measures of time are combined to develop case weights:

- Jury Trials - the average number of days associated with jury trials in each case type is gathered via query from the case management system and the data are confirmed for accuracy through a manual review of the data. Each jury trial day is given a standard weight of 420 minutes.
- Bench Trials – the average amount of time required to prepare for, hold, and memorialize bench trial by case type, is based on the judicial officer survey findings.
- Hearings – the average amount of time required to prepare for, hold, and memorialize hearings by case and hearing type, is based on the judicial officer survey findings; the average number of hearings held for each case type is derived from the case management system data.

Once the three data elements are determined, the case weight is computed as follows:

Calculating the Case Weight	
<b>Total Weighted Minutes<sup>4</sup></b>	Jury Trial Minutes + Bench Trial Minutes + Hearing Minutes
	Weighted minutes per case type
<b>Case/Event Weight</b>	÷
	Case Filings (number of cases filed)/Events (average number of hearings)
	(Count of cases/events * Number of weighted minutes)
<b>Workload Weighted Hours</b>	÷
	60 min. per hour

The process for obtaining data and computing the case weights is reasonable and, in fact, is strengthened by the ability to apply real-time data on the length and frequency of jury trials and the frequency of bench trials and specific hearing types.

**Delphi Survey Instructions.** Including detailed instructions on the questionnaire can improve the integrity of the survey and ensure clarity in the survey responses. For example, judges should understand what is being asked of them and why; they should also be asked to direct their attention to specific issues. Consider the two introduction instructions presented in Figure 4, below. In both examples, respondents are told what they are being asked to do (provide time estimates) and why (to update a weighted caseload model); however, the

<sup>4</sup> Hearing minutes are adjusted by the frequency with which they occur. For example, if a jury trial occurs in 5% of all criminal cases, the jury trial weight is only applied for 5% of the cases. This same weighting process occurs for bench trials.

district court instructions do not provide guidance on the “how.” In the juvenile court example, judges were asked to consult with clerks and/or attorneys to generate estimates of time for hearings of a particular type. Psychologists refer to this process as *directed attention*. This process is used to manage one’s thoughts on a particular area or event by eliminating competing thoughts. Using this technique, respondents are likely to provide more thoughtful responses. If the AOC continues to use the modified Delphi process to collect case weight data, they should consider adding some additional instructions, that include a more detailed reason for the survey (e.g., annual update, recent change in statute) and guidance to judges on how to direct their attention to “average” cases. The instructions could even suggest that judges time their activities for a short period of time so that their responses are grounded in recent experience and not just based on non-directed memory.

**Figure 4: Comparative Instructions for Case Processing Time Questionnaires**

Utah’s 2010 District Court Questionnaire Instructions	Utah’s 2010 Juvenile Court Judge Questionnaire Instructions
<p>The Judicial Workload Formula Committee of the Board of District Court Judges, led by Judge Terry Christiansen, is updating the judicial workload formula. Your participation in this survey will help the judicial workload better reflect the demands on judge and commissioner time. This survey asks for your estimates on time spent on travel, specialty courts, e-warrants, and some specific case activities. These are areas of the existing workload formula identified as needing to be updated.</p>	<p><b>Introduction:</b> The Judicial Workload Formula Committee, chaired by Judge Dane Nolan, is updating the judicial workload formula to improve the Utah State Court’s understanding and tracking of <b>in-court</b> judicial processes. Your participation in the is survey will provide valuable information that is essential to the Committee’s ability to produce the most accurate and informative workload formula possible.</p> <p>Please complete the following survey and return it by May 4 to Susan Burke (email: <a href="mailto:susanvb@email.utcourts.gov">susanvb@email.utcourts.gov</a>; fax: 801-578-3843).</p> <p>If you have any questions regarding the survey, please contact Ray Wahl (phone: 801-578-3812; email: <a href="mailto:rayw@email.utcourts.gov">rayw@email.utcourts.gov</a>).</p> <p><b>Methodology:</b> The committee will be using two methods to arrive at the final workload formula. This survey utilizes the Delphi method whereby experts on a system are surveyed and their collective responses calculated. The committee will also review a random sample of digital recordings.</p> <p>Instructions and Suggestions: This survey relies upon your best estimates of time spent. To complete this survey, it may be helpful to consult with your clerk and/or involve attorneys that appear frequently in front of you.</p> <p>If the spaces provided below, please indicate in minutes the amount of time you spend in each of the following hearings. For delinquency cases, include the amount of time spent through disposition. For child welfare cases, include the amount of time spent per listed hearing type.</p> <p>Note: Please indicate your court time only. If you digitally sign and produce orders in court, include that time in your estimates and note that below. Do not include time spent preparing for hearings outside of court.</p>

**Respondents and response rates.** There is no clear indication regarding how many judges are asked to participate in any given survey, nor what the corresponding response rates are. As noted earlier, the 2019 methodology report indicates that the AOC surveys a group of respondents within their domain of expertise, but it is not clear how “expert” judges are selected. In a 2012 PowerPoint presentation, reporting indicates that 22 juvenile court judges responded to the survey, and a review of authorized judges for that year indicates that there were 32.59 judges. This indicates an adequate response rate of 67.5%; in the 2010 report on the

updated juvenile judges' weighted caseload formula, all juvenile court judges were surveyed, and 88% responded. Similarly, in a 2011 PowerPoint presentation, 54 district court judges reportedly responded to the survey. Models from that time period indicate there were 80.5 district court judges, so there was a 67.1% response rate. These response rates are sufficiently strong as to not have concerns about reliability; however, this information should be clearly documented any time surveys are conducted.

***Which weights get updated?*** In the district court weighted caseload model there are well over 100 case types for which case weights have been developed; that number is significantly less for juvenile court, where the number of case types has ranged from 12 to 27. It is clear that periodic updating of case weights occurs; what is not clear is which criteria drive those changes. Furthermore, how did so many case weights originally get computed for the district court? There are simply too many to have derived weights from an initial survey process. Throughout this review, various memos were found that noted a need to update certain weights, but the memos never included the reasons for the updates. For example, a partial excerpt from a 2010 memo to the District Court Judicial Weighted Caseload Committee (*District Court Judicial Weighted Caseload 2010 Notes.doc*), the author states the following:

"I've completed a review of the existing district court weighted caseload to identify areas that may need attention. I have included my observations as well as concerns noted in the weighted caseload document prepared by Judge Memmott, Second District Court.

Attached is a list of current case weights with notes on weights. Other areas in the current weighted identified as needing review include:

- 1) travel time
- 2) time for specialty court overhead (hearings and staffings)
- 3) time spent on e-warrants is not included

Other

- 1) Orders to show cause in criminal and domestic cases were raised as work that was not being counted. Tim Shea has indicated that time was factored into the original criminal and domestic case weights.
- 2) Tax court cases that were transferred from one district to another were identified as not being counted. The transfer process should result in that case being counted in the receiving court as well. A review of all tax court case filed in the last 2 years showed these cases were counted in the receiving district.
- 3) Extradition counts were identified as not correlating with experience in 2<sup>nd</sup> district. This requires more research."

Below this, in the memo, is a listing of a number of case types, with their corresponding case weights, some containing notes (a sample of these is displayed below). While it is clear that the 2010 survey included questions about the issues raised above, it is unclear whether any adjustments were made to the other cases identified in the memo, such as those listed below.

Cohabitant Abuse	10	The accuracy of this case weight was called into question in the Memmott memo. I've pulled a few case histories to help the committee decide how to proceed.
Conservatorship	30	In 2007(ish), emphasis was placed on post-appointment requirements: status reports and annual accountings. This has affected

		clerical workload greatly. Has it affected judicial work in a significant way?
Contempt	35	<p>These cases are filed primarily in 1<sup>st</sup> Dt and Weber Cty District Ct. to calendar OSC hearings for non-appearance for jury service. The case weight of 35 minutes is an artifact of this activity once being counted under the Miscellaneous Civil case type.</p> <p>The weight needs to be revisited. Discussion as to whether there is a better way to get at this work that is more equitable across districts might also be appropriate.</p>

To maintain credibility in, and objectivity of the model, the AOC should consider updating case weights on a regular basis, for example, by selecting ten or twenty case types each year for updates. These could include two or four case types, each, within the civil, family, criminal, juvenile and probate categories, for example. A panel of experts could be named to address each case type so as to not overburden any single judge with too many questions. This would allow for constant updating of the case weights and could alleviate any potential illusions of case weight revisions for personal reasons. Of course, if new case types are created, or significant case processing or legislative changes are made that would impact case weights, these should be updated as well. The AOC should also look at the number of district court case types that are used in the models. The number currently used is quite excessive compared to most states, and this might add unnecessary complexity to the model and process of determining judicial officer need. To begin, the AOC could look at case types within a broad category, such as criminal cases, to determine whether case type groupings, such as violent felonies and non-violent felonies can be created.

### Recommendations

- The AOC should consider conducting a validation hearing start and stop time stamp process across court locations for a variety of hearing and case types by observing hearings and manually tracking start/stop times. If the hearing times contained in the case management system are accurate, the AOC could consider not relying on surveys to estimate judges' time for this activity, and simply rely on the surveys to address out-of-court work.
- The AOC should consider employing directed expert groups (e.g., civil case experts, family case experts, etc.) to act as consensus groups when case weights are revised.
- If the AOC continues to use the modified Delphi methodology to update case weights, they should consider providing additional instructions that include the reason for the survey and guidance for judges on how to direct their attention to "average" cases. The instructions could even suggest that judges time their activities for a short period of time so that their responses are grounded in recent experience and not just based on non-directed memory. The questionnaire used in the 2010 juvenile judicial weighted caseload update provides a very good template that could be replicated.

- To maintain credibility in, and objectivity of the model, the AOC should consider updating case weights on a regular basis, for example, by selecting ten or twenty case types each year for updates. These could include two or four case types, each, within the civil, family, criminal, juvenile and probate categories, for example. A panel of experts could be named to address each case type so as to not overburden any single judge with too many questions. This would allow for constant updating of the case weights and could alleviate any potential illusions of case weight revisions for personal reasons.
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## Case and Event Frequency, Distribution and Filings

The final elements of a weighted caseload study include counting the number of cases filed. Ultimately the case counts are multiplied by the case weights to obtain the expected judicial workload. This in turn, when measured against the time a judge has to engage in case work (the standard judge year value), produces the number of judges needed to process that work.

Case and event counts are strong elements of the Utah model, because they are based on consistent and accurate data elements that are relatively easy to extract. Within the AOC's case management systems (CORIS in district court, CARES in juvenile court), each case filed is assigned to a particular case type. In the district court, this appears to be a straightforward process. The case type is determined by the plaintiff or petitioner. Twice annually, a query is run within the case management system's database to obtain case counts and, where necessary, event counts, or event frequency. These queries can be saved and used to obtain the case and event frequency counts annually. Presumably, this query only needs to be tweaked when there is a new case type or when a case type moves from the juvenile court to the district court, or vice versa.

In the juvenile court, the query is slightly more involved, because each case represents a single child and represents either a referral or an incident specific to the case. As described in the 2019 methodology report "Event counts are derived from data base queries of the CARE case management system. There are primarily three types of counting used to determine workload events in Juvenile Court. They are:

1. Incidents - Offense frequency counts. Counts all incidents (offenses, charges or counts) reported for each youth. The "offense" and associated "statute" terms are used interchangeably.
2. Incident of Record (IOR) - Referral frequency counts. Counts the most serious incident (offense, charge or count) of a single intake referral (episode). The "Incident of Record" (IOR) and "referral" terms are used interchangeably.
3. Hearings - Counts of hearing types that have occurred (not rescheduled).

Event counts are broken into several categories based on the amount of judicial time they take. The file ratio indicates the percentage of referrals requiring judicial involvement (percent petitioned). The admit/deny ratio is calculated from the number of hearings associated with each category (P. 10).” Again, this query seems well reasoned and straightforward; however, the filing ratio seemingly should change annually, based on the data, which it doesn’t. Similarly, the admit/deny ratios have remained relatively constant, with only a few changes over the years. Since the filing ratio and admit/deny rates are simple calculations, based on empirical data, they should be updated annually to maintain a closer alliance to the data.

Over the years, the judge need has fluctuated in both the district and juvenile courts. This is likely a function of both the case counts, which are decreasing in the juvenile court and could also be impacted by the standard filing ratios and admit/deny rates discussed above. The AOC should consider using a three-year average of filings, filing ratios and admit/deny rates as the basis against which the model is developed. Applying three-year averages of these metrics could smooth out the inconsistencies experienced with the juvenile court model, particularly in recent years.

#### Recommendations:

- Since the filing ratio and admit/deny rates are simple calculations, based on empirical data, they should be updated annually to maintain a closer alliance to the data.
- The AOC should consider using a three-year average of filings, events, filing ratios and admit/deny rates as the basis against which the model is developed. Applying three-year averages of these metrics could smooth out the inconsistencies experienced with the juvenile court model, particularly in recent years.

### Judicial Weighted Caseload Model

Once all of the data elements have been updated, the formula on which the judicial weighted caseload model is built is relatively simple. Figure 5 presents an explanation of the case weight computation; Figure 6 presents each key variable and computation used to determine judicial need; the column to the right of the written explanation in each of the two figures displays how the computations look, numerically.

**Figure 5: Case Weight Development Computation**

Model Variable	Description of Computation	Numerical Computation
<b>Case Weight</b>	Jury Trial Minutes + Bench Trial Minutes + Hearing Minutes	26 + 9 + 173 = 209 minutes per case

**Figure 6: Judicial Workload/Judicial Need Computations**

Model Variable	Description of Computation	Numerical Computation
<b>Annual Judicial Workload (total needed minutes)</b>	Case Weight x Case Filings for each case type	405,722
	Annual Judicial Workload	405,722
<b>Judicial Officers Needed</b>	÷ Standard Judicial Year Value – Travel Time	÷ 90,180 <sup>5</sup> = 4.50 judicial officers

<sup>5</sup> Standard year value minus travel equals 92,400 – 2,200 = 90,180 minutes available for case-specific work annually.

<b>Authorized Judicial Officers</b>	Number of Current Judicial Officers Authorized per Judicial District	4.34
<b>Need Exceeds Authorized Judicial Officers</b>	Judicial Officers Need	4.5
	-	-
	Authorized Judicial Officers	4.34 = .16
<b>Caseload as a % of Standard</b>	Total Needed Minutes per Judicial Officer = (Judicial Workload ÷ Authorized Judicial Officers)	(405,722 ÷ 4.34) = 93,496
	÷	÷
	Standard Judicial Year Value	90,180 = 103%

The computations are conducted individually, for each judicial district and, as described earlier in this report, the standard year value varies across judicial districts, based on the individual districts' travel requirements. In short, the need for judicial officers in each judicial district is determined by:

- (1) Multiplying the case weight for each of the case types in the workload assessment model by the most recent annual number of filings for each of those case types, which yields the total estimated number of judicial work minutes required to handle the case-related workload in the judicial district;
- (2) Dividing the result in step one by the average available time (minutes) judges have available for case-related work, which varies by district due to differences in the average amount of judicial travel time;
- (3) The result in step two yields the number of full-time equivalent (FTE) judicial officers needed to handle the case-related work in the judicial district;
- (4) Subtracting the judicial officers needed obtained in step three from the number of authorized judicial officers per district produces the number of FTE judicial officers over/under the current number of judges per judicial district;
- (5) Finally, the percentage of work above or below one FTE is expressed by first determining the average number of minutes each judge would be required to work, given no additional staffing. This is expressed by dividing the annual workload, determined in step one by the number of authorized judicial officers. The product of that equation is then divided by the standard judicial officer year value for each judicial officer; the product of this calculation is the percent of work each judicial officer is expected to undertake as a percentage of one FTE. For example, 103% means that judicial officers in a judicial district are expected to work 3% over the capacity of a judicial officer FTE.

The computations used to compute both the average case weights, judicial need and the diagnostic variables used to determine the threshold of need (*need exceeds authorized judicial officers* and *caseload as % of standard*) are standard computations used to determine judicial officer need and needs assessment threshold metrics, and no recommendations for change are offered at this time.

## Policy Issues and Considerations

The AOC develops two weighted caseload models for each staffing entity twice each year. Preliminary results are completed in mid-May, using filings from the previous 12 months. Results are provided to trial court



executives (TCEs) and the Boards of District Court and Juvenile Court Judges for budget prioritization. This gives TCEs and the Boards of Judges time to review the numbers for planning purposes and allows the branch to estimate potential judgeship needs (and for prioritizing these needs) for the next fiscal year. *Final results* are completed each July, using filings from the previous fiscal year (July 1-June 30). Results are provided to the Judicial Council for budget prioritization. This two-step process, though apparently somewhat time consuming allows for the Judicial Council, TCEs and the AOC to use preliminary numbers for planning purposes, thus preventing any major surprises in staffing needs that might otherwise exist if only a single set of needs models were developed closer to the budget request deadlines. This practice should definitely continue.

The judicial branch has established a threshold system to determine when new judgeships should be requested based on the judicial weighted caseload model. Prior to 2019, a threshold of 130% of the standard workload for a year was used by court administration to trigger the need for additional judgeships. That is, if the *Caseload as % of Standard* metric was 130% or above, an additional judgeship would be requested. In 2018, concerns were raised that the application of this static metric was not a suitable benchmark, because the addition of a new judicial officer position impacts this metric in significantly different ways, given the varying bench sizes of districts. For example, as shown in Figure 7 below, consider a scenario in which a judicial district has two authorized judges, and they are at 130% above standard. If one judge is added to that district, they move to 87% of the standard for all three judges. Alternatively, if a judicial district has 10 judges and they are at 130% above standard, adding one judge only reduces their workload standard to 118%. Given this disparity, the Judicial Council adopted a graduated range of workload standards to be applied to the judicial need model from FY 2019 and beyond, as shown in the Figure 7 below. Using this approach, the addition of a judicial officer resource will not cause a district to fall outside of 90% – 110% of the standard workload/standard work year.

**Figure 7: Revised Thresholds for New Judicial Officer Requests Beginning FY 2019**

Number of Judges in Judicial District	Target % of Standard	% of Standard with 1 Additional Judge	% of Standard with 2 Additional Judges
1 to 4	130%	65%-104%	43%-87%
5 to 6	125%	104% - 107%	89% - 94%
7 to 10	120%	105% - 109%	93% - 100%
11 to 19	115%	105% - 109%	97% - 104%
20 to 50	110%	105% - 108%	100% - 106%

The use of a threshold to prioritize judicial officer need is a reasonable approach to requesting judicial officer positions and adjusting them in the manner above adequately addresses the concern raised regarding the disproportional impact of staffing thresholds, given the size of the bench.

**Documentation.** The joint Boards of District Court/Juvenile Court Judges’ and AOC’s weighted caseload project has been ongoing for over twenty years in Utah; however, in the documents provided for this review only one report providing documentation on the methodology was included in those materials, and that report is incomplete and has no attribution as to the report’s author. Periodic notes and memos were also included in the material, but they generally are not detailed enough to determine the reasons for model changes. Currently, the only “official” document that accompanies the final weighted caseload model is a *Transmittal Letter* from the Director of Court Services to the State Court Administrator. This letter provides a very brief

overview of the goal of a weighted caseload study, then indicates the changes in judicial officer need from the previous year.

Detailed documentation of how weighted caseload studies are conducted annually is important for a number of reasons. First, documentation ensures that the process of updating weighted caseload models will be done consistently from year to year, or if processes are changed, documenting those changes will memorialize the changes, as well as the underlying reasons for making them. Second, documenting the process could actually streamline the work, as potentially repetitive processes could be eliminated. For example, when data queries are made, if no changes have been made, the analyst should simply be able to use the query from the previous use; if changes have been made, the documentation will allow that employee to identify the change, incorporate it into the query and submit the query for data extraction. Third, documentation of the process allows the organization to train new employees on the process and, thus, not rely on the institutional knowledge of one or more employees who have been intimately involved in the process. When thoroughly documented, the knowledge is not lost in the face of planned or unexpected employee absences or turnover.

The AOC should document each step of the process for updating the weighted caseload models annually. The documentation should include sufficient detail that would allow someone else to repeat the process with minimal additional explanation. All steps of the process should be identified, with a brief description of each step. If steps 1, 2 and 3 are identical to the previous year's project, simply cut and paste those steps into the new document. The 2010 *Juvenile Judicial Workload Formula* report offers a good example of documentation that could easily be built upon. When changes are made to any step in the process, they should be documented and explained, including what the change was and the reason for making the change. For example, if the committee believes three case types should be updated, the reasons for the update should be explained and the outcome should be presented (i.e., the difference in the case weight from the previous year). All relevant data associated with the model development, such as data queries, survey findings, etc. should also be kept in an easy-to-find location.

The AOC is to be commended for seeking this independent, third-party review of their weighted caseload model development and process. From the documentation reviewed, it appears that the weighted caseload work has been solely conducted within Utah's judicial branch. Again, as commendable as it is that the branch has developed a relatively sophisticated system which has been maintained for nearly 20 years, there is the potential to become tunnel-visioned and to appear to be self-serving, rather than seeking to be good stewards of state funds. This is not to say that a state's AOC cannot credibly produce their own weighted caseload models, but periodic reviews are a good idea to ensure that credibility. In the future, the AOC should seek periodic third-party reviews of their process, especially when new weighted caseload methodology and processes, or other significant changes are being contemplated.

## Recommendations

- The AOC should continue its practice of developing two models; a preliminary model for planning, and a final model, using the most recent fiscal year's data (or a three-year average) that can be used to make budget requests.
- The AOC should document each step of the process for updating the weighted caseload models annually. The documentation should include sufficient detail that would allow someone else to repeat

the process with minimal additional explanation. All steps of the process should be identified, with a brief description of that step.

- The AOC should seek periodic third-party reviews of their weighted caseload methodology and process, especially when new processes, or other significant changes are being contemplated.

## Conclusion

The review of the judicial weighted caseload study process and model development was conducted by the NCSC at the request of the Utah Administrative Office of the Court's Court Services Division. Simply making this request indicates the desire of the AOC to generate weighted caseload models that use the best methodological approaches and that maintains consistency and credibility. Again, the NCSC commends the AOC for requesting this external review.

While this review offers several recommendations that could be undertaken to improve and/or to validate the results, it is by no means indicating that the current approaches are without merit. With a few exceptions, the judicial weighted caseload models reviewed have maintained a remarkable consistency over the years. The AOC and the Judicial Workload Formula Committees have taken the process of updating the models seriously over the years and have generally focused on the right areas when certain model elements no longer appeared to be accurate.

The recommendations presented below are offered as a means of strengthening the judicial weighted caseload models. The recommendations can be applied to the other workload study groups as well (e.g., justice courts, court staff and probation officers).

## Recommendations

Weighted Caseload Model Components:

### *Standard Year Value*

- The AOC should consider periodically reviewing the standard year value, either through the use of a judicial panel of experts or through the use of a survey to determine the average number of days worked by judicial officers. Specific areas to review include the number of days taken for vacation and illness. In the NCSC's experience, most states set 25 as the average number of vacation days, and sick leave is usually set at approximately 10 days. Most states base these averages on actual time that is available to be taken by senior level employees.
- The AOC should consider reducing the speed by which the number of miles is divided by 60 mph to either 50 or 55 mph. This change reflects the fact that a good portion of between courthouse travel is not conducted on highways. The AOC should also consider periodically validating the mileage deduction data by quantifying travel reimbursement logs for each judicial district.
- The AOC should refine the travel-related questions and instructions in the next round of updates on standard year value and travel-related time.

### *Case and Event Weights*

- The AOC should consider conducting a validation hearing start and stop time stamp process across court locations for a variety of hearing and case types by observing hearings and manually tracking start/stop times. If the hearing times contained in the case management system are accurate, the AOC could consider not relying on surveys to estimate judges' time for this activity, and simply rely on the surveys to address out-of-court work.
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- If new case types are created, or significant case processing or legislative changes are made that would impact case weights, these should be updated as well.

### *Case and Event Frequency, Distribution and Filings*

- Since the filing ratio and admit/deny rates are simple calculations, based on empirical data, they should be updated annually to maintain a closer alliance to the data.
- The AOC should consider using a three-year average of filings, events, filing ratios and admit/deny rates as the basis against which the model is developed. Applying three-year averages of these metrics could smooth out the inconsistencies experienced with the juvenile court model, particularly in recent years.

### *Policy Issues and Documentation*

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- The AOC should document each step of the process for updating the weighted caseload models annually. The documentation should include sufficient detail that would allow someone else to repeat the process with minimal additional explanation. All steps of the process should be identified, with a brief description of that step.
- The AOC should seek periodic third-party reviews of their weighted caseload methodology and process, especially when new processes, or other significant changes are being contemplated.