

JUDICIAL COUNCIL MEETING

AGENDA

May 23, 2022

**Meeting held in person and through Webex
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111**

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. State Court Administrator's Report.....Ron Gordon
(Information)
4. 9:20 a.m. Reports: Management Committee Chief Justice Matthew B. Durrant
Budget and Fiscal Management Committee Judge Kara Pettit
Liaison Committee..... Judge Kara Pettit
Policy, Planning, and Technology Committee Judge Derek Pullan
Bar Commission.....Margaret Plane, esq.
(Tab 2 - Information)
5. 9:30 a.m. Court Facility Planning Committee ReportJudge James Brady
(Tab 3 - Information) Chris Talbot
6. 9:40 a.m. Board of Juvenile Court Judges Report Judge Elizabeth Knight
(Tab 4 - Information) Neira Siaperas
7. 9:50 a.m. Board of District Court Judges Report.....Judge Heather Brereton
(Information) Shane Bahr
8. 10:00 a.m. GAL Oversight Committee Report..... Bob Yeates
(Tab 5 - Information) Stacey Snyder
9. 10:10 a.m. Budget and Grants.....Karl Sweeney
(Tab 6 - Action) Alisha Johnson

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| 10. | 10:15 a.m. | Justice Court Reform | Jim Peters
Ron Gordon |
| | 10:30 a.m. | Break | |
| 11. | 10:40 a.m. | Judicial Performance Evaluation Commission Report
(Information) | Dr. Jennifer Yim
Justice Christine Durham |
| 12. | 11:00 a.m. | CJA Rules 1-204, 1-205, 3-421, 4-508, 4-903, 6-104, and HR Policies for
Final Action
(Tab 7 - Action) | Keisa Williams
Bart Olsen |
| 13. | 11:10 a.m. | Utah Bar Foundation Debt Collection and Eviction Report ...
(Tab 8 - Discussion) | Erika Rickard
Lester Bird
Kim Paulding |
| 14. | 11:40 a.m. | Old Business/New Business
(Discussion) | All |
| 15. | 11:50 a.m. | Executive Session | |
| 16. | 12:00 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.

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|---|---|
| 1. Committee Appointments
(Tab 9) | MUJI – Civil Committee – Stacy Haacke
Forms Committee – Nathanael Player
Child Support Guidelines Advisory Committee – Ron Gordon |
| 2. Forms Committee Forms
(Tab 10) | Kaden Taylor |
| 3. CJA Rules for Public Comment
(Tab 11) | Keisa Williams |

Tab 1

Agenda

**JUDICIAL COUNCIL MEETING
Minutes**

**April 25, 2022
Meeting conducted through Webex**

9:00 a.m. – 11:45 a.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Todd Shaughnessy, Vice Chair
Hon. Keith Barnes
Hon. Samuel Chiara
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Michelle Heward
Hon. Elizabeth Lindsley
Hon. David Mortensen
Justice Paige Petersen
Hon. Kara Pettit
Margaret Plane, esq.
Hon. Derek Pullan
Hon. Brook Sessions

Excused:

Hon. Augustus Chin

Guests:

Jonathan Adams, OLRGC
Hon. Judith Atherton, Senior Judge

AOC Staff:

Ron Gordon
Cathy Dupont
Michael Drechsel
Brody Arishita
Shane Bahr
Valeria Jimenez
Alisha Johnson
Bryson King
Meredith Mannebach
Bart Olsen
Jim Peters
Jon Puente
Keri Sargent
Neira Siaperas
Nick Stiles
Melissa Taitano
Keisa Williams
Jeni Wood

Guests Cont.:

Hon. Rick Romney, Provo Justice Court
Hon. Jennifer Valencia, Second District Court

1. WELCOME AND APPROVAL OF MINUTES AND OATH OF OFFICE – JUDGE ELIZABETH LINDSLEY: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. The Council held their meeting through Webex. Chief Justice Durrant administered the Oath of Office to Judge Elizabeth Lindsley and welcomed her to the Judicial Council.

Motion: Judge David Connors moved to approve the March 11, 2022 Judicial Council meeting minutes, as amended to add to page 11 “Judge Connors asked for confirmation that ABA Judicial Division dues, Inns of Court dues, and similar items, would continue to be funded. It was noted that this restructuring of the former judicial operations budget is intended to expand the uses of

those funds rather than limit those uses. Therefore, the uses mentioned by Judge Connors, and similar uses, would continue to be funded.” Judge Todd Shaughnessy seconded the motion, and it passed with Judge Derek Pullan abstaining.

2. SELECTION OF EXECUTIVE COMMITTEES: (Ron Gordon)

The Management Committee approved having Judge Lindsley serve on the Budget & Fiscal Management Committee and having Judge Michelle Heward serve on the Management Committee to fill Judge Mark May’s position. Judge Michelle Heward will retire at the end of July, leaving a vacancy on the Management Committee and the Policy and Planning Committee. Those vacant positions will remain unfilled until after the September, 2022 elections.

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

Chief Justice Durrant thanked the Education Department for their work on the in-person appellate conference, noting the conference went well and it was nice to see everyone again.

4. STATE COURT ADMINISTRATOR’S REPORT: (Ron Gordon)

Ron Gordon thanked judges and staff for their support for creating the Green Phase Workgroup, which will begin work soon. The courts should not wait for the recommendations of the workgroup to conduct their normal work, while following the Administrative Order. Judge Samuel Chiara informed the Council that UCRrP Rule 17.5. Hearings with Contemporaneous Transmission from a Different Location. should be reviewed because without the consent of the defendant, the courts are limited in hearings that can be held remotely. Judge Pullan suggested the courts create statewide normal procedures for in person versus virtual hearings, such as anyone who is sentenced on a felony or someone who may have their liberty taken from them, should have an in person hearing. Mr. Gordon found that other states have begun identifying which hearings should be conducted in person and which can be held through virtual means.

Mr. Gordon has been working with AOC staff and individuals in the districts to identify what other states and the Utah Judiciary offer judges, court personnel, and jurors in terms of follow up support and services when dealing with emotionally difficult or traumatic cases. Once the work is complete, recommendations for services will be offered to the Council.

Mr. Gordon thanked the AOC and district court staff for planning and executing successful spring conferences.

Judge Mandy Larsen was confirmed by the Senate for the Sixth District Court and David Johnson was confirmed for the Third Juvenile Court. Judge Diana Hagen has a confirmation hearing on May 4th regarding her appointment to the Utah Supreme Court.

Mr. Gordon thanked the Council for their historic level of support of compensation for judicial staff across the state. Judicial assistants increase in FY 2023 will be approximately 18%. Courts are working on the ongoing performance-based increases as well.

Mr. Gordon is working with members from the PEW Trust and the Utah Bar Foundation to schedule a presentation of the Utah Bar Foundation Report on Debt Collection and Utah’s Courts Report.

Bryson King was introduced as the new Associate General Counsel.

5. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Kara Pettit welcomed Judge Lindsley to the committee.

Liaison Committee Report:

Judge Pettit thanked Michael Drechsel for a successful Legislative Update. There are no meetings scheduled at this time; however, the committee is working on justice court reform and other legislative topics.

Policy and Planning Committee Report:

Judge Derek Pullan thanked Judge Connors for acting as the temporary chair to the committee. There was no new activity with the committee since the last meeting was cancelled. The committee will meet soon for an all-day session.

Bar Commission Report:

Margaret Plane said the Bar Election results are complete. President Elect is Erik Christiansen; Second Division is Matt Hansen; Third Division is Beth Kennedy and Cara Tangaro; and the Fifth Division is Tom Bayles. The Bar created a committee that continues to review the services that are offered for lawyer health and mental health benefits. The Bar contributed a nice contribution to the new And Justice for All building. The Bar is planning more in person meetings, which impact the budget.

6. BOARD OF SENIOR JUDGES REPORT: (Judge Judith Atherton)

Chief Justice Durrant welcomed Judge Judith Atherton. The Board of Senior Judges, on behalf of the 32 active senior judges and 30 inactive senior judges, was pleased to have played an important part in the court's efforts to resume bench trials and address the trial backlog. The Board consists of Judge Judith Atherton, Chair; Judge Kate Appleby, Vice Chair; with members Judge Gordon Low, Judge Kim Hornak, and Judge Russell Bench. Last year the Board met several times to work on senior judge rules revisions, including serving on a Policy and Planning Committee workgroup. Revised senior judge rules were adopted in June, 2021.

Topics covered in exchanges between the Board and the TCEs included the senior judges desire to have more law clerk help for jury instructions. Since the court resumed jury trials, senior judges have provided 421 hours of coverage, which does not include the trials for which a senior judge agreed to cover, but the case settled.

The budget for senior judge coverage has been supported with the ARPA funds which help pay for the senior judge coverage for jury trial backlog and for judicial assistants for the trial. The Legislature approved additional ARPA funds in the 2022 Legislative General Session which includes senior judge coverage through June 30, 2023. Senior judge coverage that is not jury trial backlog coverage is paid from the court's annual senior judge budget of \$168,100.

Judge Atherton mentioned that last year senior judges were asked to block off several weeks to be available for trials, however, many of them settled. These commitments have been difficult for senior judges, who often have other things scheduled. Judge Atherton thought better communication from the districts would help. Judge Shaughnessy understood that it's common for cases to settle and wondered if it would help to offer a per diem for senior judges who have committed to work but then cases were settled. Judge Atherton appreciated the offer but thought senior judges didn't want to get paid for work they didn't do. Judge Pettit felt senior judge assistance was greatly appreciated, stating that senior judges are being assigned to first appearance calendars.

Chief Justice Durrant thanked Judge Atherton.

7. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Rick Romney and Jim Peters)

Chief Justice Durrant welcomed Judge Rick Romney and Jim Peters. There are 76 judges over 110 justice courts, with two judicial vacancies and four more anticipated. Of the judges, there are 61 males, 15 females; 54 judges have law degrees and 22 judges do not have law degrees. The Board's goals include continue to provide subject matter expertise for justice court reform, recommend improvements for the judicial selection process, study payment options for justice court patrons, and develop a workload study for justice court clerks. The Board recognizes that the Council is considering credit card payment options and is working towards those goals, as well.

The justice court clerks conference went very well. Judge Romney thanked the AOC for their presentations at the conference.

The Board will release assessments to determine whether the information provided in the court clerk certification program is effective. Judge Brook Sessions said the feedback has been positive for the clerk certification program. Judge Romney thanked Mr. Peters for creating this program. The Eighth District Court received approval from the Council for clerk assistance in a different court. This has been working well and the Board is looking at using remote services in other areas. The Board is concerned about the morale of justice court clerks when they learn about the district court judicial assistants pay increases and are hoping the local cities and counties will make efforts to increase clerk wages.

Chief Justice Durrant thanked Judge Romney and Mr. Peters.

8. JUSTICE COURT REFORM: (Jim Peters and Ron Gordon)

Chief Justice Durrant welcomed Jim Peters and Ron Gordon. Mr. Peters reminded the Council that in August, 2021, the Council approved the recommendations from the Justice Court Reform Task Force – in concept, but wanted a workgroup formed to study the impact of the recommendations with the objective to create a fiscal note. In February, 2022, the Council rejected the proposed costs for the data collection and analysis and instead directed the workgroup to work with the Legislature and local entities.

Mr. Gordon believed the courts need to be prepared to have a solid fiscal impact by this fall and asked the Council if they would give permission to work with outside groups, such as, the National Center for State Courts (NCSC) and the PEW Foundation (PEW), who have offered their assistance. The AOC has been conducting preliminary fiscal analysis on two justice courts but would like to conduct further research to have a more accurate fiscal note. At this time, there are no cost to the courts through the assistance of the NCSC or PEW.

The courts have been meeting with legislators and will have additional information in the coming months. The courts are not certain at this time which reform efforts will be presented in the 2023 General Legislative Session, but understand that any efforts should be phased-in over the course of several years. Judge Shaughnessy was concerned about how the courts would be effected if too many changes were made too quickly. The courts have created a lengthy list of questions, including how revenue will be divided, that need to be addressed before anything can be implemented.

Chief Justice Durrant thanked Mr. Peters and Mr. Gordon.

Motion: Judge Sessions moved to allow the AOC to engage with other outside stakeholders to pursue input regarding reforms and to gather information. Judge Connors seconded the motion, and it passed unanimously.

9. APPLICATIONS FOR JUDICIAL VACANCIES IN THE JUSTICE COURTS: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. The current justice court judge's application process requires an original and 6 copies of the application form, an original and 6 copies of 4 different notarized documents, a resume attached to each application, a summary of education and work history, and a fee of \$8.70. The Board of Justice Court Judges proposed that the application be converted to an online format by the Division of Technology Services (DTS). This would be modeled after the process used by CCJJ for applicants of other court levels. The one-time cost for doing so would be around \$10,000 and the ongoing cost would run between \$9,600 and \$17,600 per year, depending on whether additional programming changes are requested. It is anticipated that all costs associated with the development and maintenance of this application could be covered by the budget for Justice Court Administration.

Mr. Peters confirmed that judges are not precluded from serving as references but they are not required either and that applicants are not required to be attorneys. The application will skip many questions when an applicant indicates that they are not attorneys.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Connors moved to approve converting the justice court judicial application process to an online format with the Division of Technology Services, as presented. Judge Sessions seconded the motion, and it passed unanimously.

**10. TECHNOLOGY COMMITTEE MOVE TO AN EXECUTIVE COMMITTEE:
(Brody Arishita and Justice John Pearce)**

Chief Justice Durrant welcomed Brody Arishita. The Technology Committee consists of 13 members representing the AOC, State Bar, judges of all court levels, TCEs, and Clerks of Court. The committee was formed to gather information about technology needs from all levels of the court system as well as to make recommendations to the Council. The IT leadership, members of the committee, and managers from all levels have expressed concerns regarding the effectiveness of the committee. Mr. Arishita recommended designating the committee as a Judicial Council executive committee for the following reasons.

- Demand for technology continues to increase in all aspects of the courts
- The committee has not been an effective mechanism in gathering information
- The committee needs decision-making authority to effectively address constant changing conditions in a timely manner
- There is a critical need for a policy-making committee that can establish policies related to technology in the courts and determine statewide IT priorities
- The courts must remain nimble, staying informed of internal and external factors impacting court business, and act decisively to adapt to the impact
- Addressing cybersecurity must be prioritized due to frequent and escalating cyber threats that all organizations face

The proposed committee would follow the process of the Budget and Fiscal Management Committee in prioritizing requests for the Council to make a final decision. This proposal has been discussed and is supported by the State Court Administrator, Technology Standing Committee Chair, Court Level Administrators, TCEs, and Clerks of Court.

Judge Pullan stated that as the Council expands the executive committees, the Council members' time is stretched and wondered if this would be better housed within a current executive committee. Judge David Mortensen agreed with Judge Pullan. Judge Farr explained that there are not enough justice court judges to spread throughout the executive committees and wanted the Council to consider adding a justice court judge to the Council if another executive committee is formed. Judge Pullan thought adding Council members would make the Council less nimble and thought the Policy & Planning Committee could take on the work of the Technology Committee. Mr. Arishita thought blending in the current committee with the prioritizing tasks moving to the Policy & Planning and the budget needs moving to the Budget & Fiscal Management Committee executive committees might work. Mr. Arishita said currently each court level has their own core team that helps with managing technology application prioritization, then those lists are sent to a higher team to make a prioritization list based on requests from all districts.

Judge Shaughnessy supported bringing this issue to the Council and remembered that prioritizing was a problem a while ago that did not seem to get resolved. Judge Pettit wasn't clear how frequently the Budget & Fiscal Management Committee would need their assistance. Judge Pullan asked how frequently the prioritization driving by a policy question vs a budget question. Mr. Arishita felt the policy and budget needs were about an even mixture and requests would need to be sent to the respective executive committees on a monthly basis, but noted, that it

would be important for the items to be addressed by both committees in the same month to avoid delays. Judge Pettit agreed to Judge Pullan's recommendations and agreed that the two committees should coordinate the requests to not hold up budget items. Judge Pullan recommended a name change to the Policy, Planning, and Technology Committee.

Chief Justice Durrant thanked Mr. Arishita.

Motion: Judge Pullan moved to 1) change the Policy and Planning Committee's name to the Policy, Planning, and Technology Committee; 2) for the Policy, Planning, and Technology Committee to take on the prioritization of the Technology Committee; 3) to not create another executive committee; 4) to dissolve the existing Standing Technology Committee; and 5) to amend the rules appropriately, as amended. Judge Shaughnessy seconded the motion, and it passed unanimously.

11. COMMITTEE ON JUDICIAL OUTREACH REPORT AND REAUTHORIZATION: (Valeria Jimenez)

Chief Justice Durrant welcomed Valeria Jimenez. The Committee on Judicial Outreach requested reauthorization for another six years in accordance with CJA Rule 1-205(1)(D). The committee provides immense support and work for the Utah Judiciary in improving public trust and confidence, fostering a greater role for judges in service to the community, and providing leadership and resources for outreach.

Committee accomplishments

- Collaborating with the Utah Division of Arts & Museums to install artwork showcasing diverse communities in the Matheson Courthouse
- Creating an instructive video for jurors participating in the COVID jury trial pilot
- Partnering with the Utah Division of Multicultural Affairs to hold a series of live virtual town halls on domestic violence, evictions/small claims, and divorce/custody
- Increasing awareness of court resources, processes, and programs with historically marginalized communities
- Creating a fulltime Public Outreach Coordinator position
- Holding community listening tours to engage with the public
- Tabling at the University Neighborhood Partners' Partners in the Park, Muslim Heritage Festival, Neighborhood House Summer Celebration, and Pacific Island Heritage Month Kickoff
- Organizing a variety of community conversations and presentations, such as the Pacific Island Knowledge 2 Action Resources', Community Health Worker Conversation, Mexican Consulate of Salt Lake City's Labor Rights Week, My Discovery Destination's Parent Conversation, and Cada Domingo Radio Show
- Collaborating with Utah K-12 schools to bring awareness of the Judiciary
- Conducting a public awareness ad campaign in both English and Spanish to encourage the public to contact the Utah Courts for help by email or phone

Ongoing Projects

- Mexican Consulate of Salt Lake City Monthly Tabling
- Salt Lake City Homeless Resource Fair

- Creating a website for the Divorce Education for Children Program, which will provide resources and additional help for teens whose parents are going through divorce
- Currently assessing which topics would be most helpful to the media for the Journalists Law School event in the fall

Future Projects

- Exploring the possibility of putting together a Community Court
- Creating a pamphlet/brochure on the Utah State Courts for Utah K-12 students
- Putting together the Journalists Law School event in the fall for the media

Judge Pullan would like to see standard curriculums for each school level, such as, the lesson plans the American Bar Association uses. And, further suggested school visits be held on a regular basis.

Chief Justice Durrant thanked Ms. Jimenez.

Motion: Judge Connors moved to reauthorize the Committee on Judicial Outreach for six years, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

12. BUDGET AND GRANTS: (Judge Kara Pettit, Karl Sweeney, Alisha Johnson, Bart Olsen, Melissa Taitano, Shane Bahr and Jordan Murray)

Chief Justice Durrant welcomed Judge Kara Pettit, Alisha Johnson, Bart Olsen, Melissa Taitano, and Shane Bahr. The Finance Department expects \$3,200,000 in carryforward funds from FY 2022 and \$341,316 from ongoing turnover savings.

Special Request for Ongoing Turnover Savings to Address Salary Compression on Clerks of Court Positions Relative to \$3.9 Million JA Increase \$59,000 ongoing funds

The courts request of the Legislature encompassed all judicial assistant type positions, including Judicial Assistants, Case Managers, Team Managers, and Training Coordinators. These positions had the highest turnover rates and all needed to be adjusted in order to reduce compression. Because of this compression, the Clerks of Court only saw a \$.58 cent per hour wage increase based mostly on the 3.5% COLA. Without these funds, there would be some team managers whose pay exceeds some Clerks of Court. Judge Pettit clarified that the request was for FY 2023, not FY 2022 and explained that although this is an unusual request, the Budget and Fiscal Management Committee felt it was significant.

Motion: Judge Connors moved to approve the Special Request for the Clerks of Court Salary Compensation of \$59,000 in ongoing funds, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

Proposed Court Commissioner FY 2023 Salary Increase \$110,550 ongoing funds

The recommendation is for commissioners to receive a 3.5% COLA and a 2% targeted pay increase, making the total increase in commissioner pay 5.5%. This would bring each commissioner's salary to an amount that maintains the 90% of the statutory judge salary level re-established for FY 2022. These funds are already approved by the Legislature.

Motion: Judge Sessions moved to approve the Proposed Court Commissioner FY 2023 Salary Increase of \$110,550 in ongoing funds, as presented. Judge Connors seconded the motion, and it passed unanimously.

Mr. Bahr sought approval for a State Asset Forfeiture Grant provided by the Utah Commission on Criminal and Juvenile Justice in the amount of \$25,000, to exclusively support the reimbursement of one-time travel and training costs associated with a drug/treatment court training conference. No conditional cash or in-kind matching contribution is required.

Drug/treatment courts are one of the most effective programs in existence to address substance use and mental health disorders. The courts collaborate with the Division of Substance Abuse and Mental Health to co-sponsor a drug/treatment court training every other year for teams across the state. Team members include judges, prosecutors, defense counsel, probation, law enforcement and court staff. Local and national experts will provide training on program improvement plans. Training is best delivered in a team setting where team members can learn from each other and better understand the unique roles of each team member.

Motion: Judge Connors moved to approve the State Asset Forfeiture Grant in the amount of \$25,000, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Judge Kara Pettit, Alisha Johnson, Bart Olsen, Melissa Taitano, and Shane Bahr.

13. UNIFORM FINE SCHEDULE COMMITTEE REPORT AND UNIFORM FINE SCHEDULE: (Judge Jennifer Valencia, Shane Bahr, and Meredith Mannebach)

Chief Justice Durrant welcomed Judge Jennifer Valencia, Shane Bahr, and Meredith Mannebach. Following the General Legislative Session, the Uniform Fine Schedule Committee is tasked, per CJA Rule 4-302. Recommended Uniform Fine Schedule, with reviewing and updating the uniform fine schedule with legislative changes, then submitting a revised schedule first to the Management Committee and then to the Judicial Council for approval before new legislation goes into effect May 4. Judge Sessions asked how judges and clerks were notified when there was a mandatory fine. Judge Valencia wasn't sure there was a way to notify judges. Mr. Bahr said there are tools that the committee is working on so that judges and staff will be able to remain in compliance with mandatory fines.

Chief Justice Durrant thanked Judge Valencia, Mr. Bahr, and Ms. Mannebach.

Motion: Judge Sessions moved to approve changes to the Uniform Fine Schedule, as presented. Judge Connors seconded the motion, and it passed unanimously.

14. COMMITTEE ON FAIRNESS AND ACCOUNTABILITY VACANCY: (Jon Puente)

Chief Justice Durrant welcomed Jon Puente. CJA Rule 1-205. Standing and Ad Hoc Committees was approved by the Council with an effective date of May 1, 2022. The revised rule states the committee shall be composed of one sitting judge; three current or former judicial officers; and the General Counsel or designee. Jon Puente sought approval to add the following people to the newly created committee. Committee appointments are normally placed on the Council consent calendar, however, since this is a new committee and has a Council member on it, the Management Committee believed this item was best suited for the Council agenda.

- Justice Paige Petersen, sitting judge
- Judge William Thorne, former judicial officer
- Judge Tyrone Medley, former judicial officer
- Judge Mary T. Noonan, former judicial officer
- the General Counsel or designee

Chief Justice Durrant thanked Mr. Puente.

Motion: Judge Farr moved to approve Justice Paige Petersen, Judge William Thorne, Judge Tyrone Medley, Judge Mary T. Noonan, and the General Counsel or their designee to the Committee on Fairness and Accountability, as presented. Judge Connors seconded the motion, and it passed unanimously.

15. HUMAN RESOURCE POLICIES FOR FINAL APPROVAL: (Keisa Williams and Bart Olsen)

Chief Justice Durrant welcomed Keisa Williams and Bart Olsen. Policy and Planning recommended the amendments be approved as final with a May 1, 2022 effective date.

HR 08-22. Out-of-State Work. This is a new policy related to recent rules adopted by State Finance.

HR 01. Definitions

HR 08-14. Dual State Employment

HR 09-11. Conflict of Interest

HR 09-12. Political Activity. Judicial branch employees are subject to more ethical restrictions than employees in other branches of government. The Policy and Planning Committee believed the restrictions on court employees with respect to their ability to participate on local boards and committees was too stringent (HR 09-12(3)) and asked Ms. Williams to submit a request to the Ethics Advisory Committee for consideration and a revised opinion on this issue. Until then, the committee recommended that HR 09-12 be adopted to ensure the policy is consistent with current opinions. The Management Committee approved HR 09-12, with removing paragraph 9 until Ms. Williams can address.

Chief Justice Durrant thanked Ms. Williams and Mr. Olsen.

Motion: Judge Connors moved to approve HR 08-22, HR 01, HR 08-14, HR 09-11, HR 09-12, as amended to remove the paragraph 9, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

16. OLD BUSINESS/NEW BUSINESS

The Council decided to hold future meetings in person with a hybrid scenario, allowing for remote attendance as well.

17. EXECUTIVE SESSION

An executive session was not held.

18. CONSENT CALENDAR ITEMS

- a) Forms Committee Forms. Memo asking for authority to allow OCAP to collect VIN numbers and add them to petition, Findings of Facts and Conclusions of Law, and Decree in divorce cases; Petition for Minor's Name Change and Sex Change; Summons – In Utah (Minor's Name or Sex Change) ; Summons – Outside Utah (Minor's Name or Sex Change); Consent to Petition for Minor's Name and Sex Change; Notice of Hearing on Petition for Minor's Name and Sex Change; Order Changing Minor's Name and Sex Change; Motion to Waive Fees Motion to Waive Fees (Inmate); Order on Motion to Waive Fees; Memo concerning Changes to OCAP Provisions on Parent-time. Approved without comment.
- b) Committee appointments. Appointment of Judge Sean Petersen to the Committee on Children and Family Law; the appointment of Judge Jennifer Valencia as Chair to the Uniform Fine Schedule Committee; and the appointments of Judge Jeffrey Ross and Shelly Waite to the Language Access Committee. Approved without comment.

19. ADJOURN

The meeting adjourned.

Tab 2

Agenda

**JUDICIAL COUNCIL'S
MANAGEMENT COMMITTEE**

Minutes

May 10, 2022

**Meeting held through Webex and in person
12:00 p.m. – 2:00 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. Michelle Heward
Hon. David Mortensen

Excused:

Michael Drechsel
Neira Siaperas

Guests:

Lester Bird, Manager, PEW Charitable Trusts
David McNeill, PEW Charitable Trusts
Kim Paulding, Executive Director, Utah Bar Foundation
Hon. Kara Pettit, Third District Court
Hon. Paige Petersen, Supreme Court
Erika Rickard, Project Director, PEW Charitable Trusts

AOC Staff:

Ron Gordon
Cathy Dupont
Brody Arishita
Shane Bahr
Todd Eaton
Stacy Haacke
Bryson King
Meredith Mannebach
Tania Mashburn
Bart Olsen
Jim Peters
Nathanael Player
Jon Puente
Keri Sargent
Nick Stiles
Melissa Taitano
Keisa Williams
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 April 12, 2022 Management Committee minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

2. STATE COURT ADMINISTRATOR'S REPORT: (Ron Gordon)

Ron Gordon thought the Education Department did a great job with creating a meaningful agenda for the Juvenile Court Judges Conference, held at the Homestead Resort. Mr. Gordon believed the court data team is phenomenal with the amount of data they are able to collect and share, noting that the courts could enhance the profile of the data team to allow for internal analysis, research capability, and internal studies.

3. **UTAH BAR FOUNDATION DEBT COLLECTION AND EVICTION REPORT: (Erika Rickard, Lester Bird, and Kim Paulding)**

The Utah Bar Foundation (Foundation), in conjunction with the Pew Charitable Trusts released the Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns Report in April 2020. The report identified that some of the highest unmet legal needs in Utah center around debt collection in both district and justice courts, as well as the district courts eviction process.

Erika Rickard explained that this project sought to understand the processes and outcomes tied to small claims debt cases in the justice courts and third-party debt collection, eviction, and eviction-related debt cases heard in the district courts. The project researchers found the following:

- About 89% of plaintiff's are represented in district court cases, while less than 5% of defendants had attorney representation.
- Some policies, statutes, and court rules, serve to disincentivize defendant participation in debt lawsuits. In some cases, policies around attorney fees and court-awarded damages lead to worse outcomes for defendants who engage with the courts than for defendants who do not participate in their cases and receive a default judgment.
- Civil courts are primarily being used by financial institutions and their subsidiaries to collect debts. As a result, individuals and/or small business owners represent a minority of plaintiffs.
- In Utah, 6 plaintiffs account for roughly 50% of all debt collection cases filed in the district courts and 9 plaintiffs account for roughly 50% of small claims filed in the justice courts.
- The size of debt being pursued in district court is very similar to that pursued in justice court, but outcomes for defendants are very different due to contrasting policies.
- While the small claims rules in justice courts are easier to navigate for debtors, the rules for district court were written assuming both parties involved in a case would have legal representation. Defendant confusion around their rights and obligations can discourage participation with a case.
- Utah's eviction policies are among the least renter-friendly in the nation; only two other states have a three-day "pay or vacate" window coupled with treble damages, which may be assessed in addition to any back rent owed for residential evictions.

Additionally, the report identified several overarching themes related to the debt litigation process in the state:

1. Court is expensive for all parties.
2. Court processes are difficult to navigate without specialized training.
3. Court is a less efficient vehicle for resolving debt claims than upstream solutions.
4. People seldom understand their rights and obligations.
5. The length of time between case initiation to judgment is a significant factor in defendant outcomes.

Debt collection and statewide standards

Judges expressed a desire to have more judicial flexibility with treble damages in eviction cases. Kim Pauling recommended the courts set standards and guidance for handling debt collection cases throughout the state, especially with the vast amount of variations in the justice courts' procedures.

Judgments

Ms. Paulding found that the satisfaction of judgments do not include dollar amounts; which could result in people paying significantly more than the judgment amount because of post-judgment interest or people are paying less than the judgment amount because the plaintiff's attorneys are writing off debt.

Subject	Debt Collection	Eviction	Small Claims
Median Amount at Filing	\$1,189	\$640	\$1,289
Median Amount at Judgment	\$1,575	\$4,070	\$1,301
Average Days to Judgment	39	26	76
Average Post-Judgment Interest	12.59%	24%	4.59%
Outcome Percentages	71% default judgment	40% default judgment	29% default judgment, 38% dismissed
Satisfaction of Judgments	\$1.94B total \$1.22B unsatisfied	\$164M total \$143M unsatisfied	\$169M total \$119M unsatisfied

Judge Shaughnessy wasn't sure the comparisons made between district and small claims courts would be useful because a plaintiff would request the same treble damages in small claims that they do in the district courts. Ms. Paulding said it's complicated because some complainants are forced to file in certain courts, whereas, defendants do not have a choice where a case is filed. Judge Shaughnessy thought having complete disclosure of the debt would accomplish more whether it was in district or small claims.

Dedicated Calendars

Dedicated calendars provide pro bono representation, which results in less people defaulting. Ms. Paulding questioned whether the courts could offer statewide jurisdiction when holding dedicated calendars.

10-Day Summons and MyCase

The next step would be to meet with the courts IT Department to identify MyCase capabilities. Stakeholder feedback showed multiple calls to the courts asking if a case has been filed when they receive a 10-day summons. Ms. Paulding wondered if a message could be added to MyCase to notify a person when a case is filed. Nathanael Player believed the Debt Collection Bar uses the 10-day summons to find someone for service before paying the filing fee. Mr. Player thought the Council could require, in debt collection cases, some to file a case and could

collect the filing fee a certain number of days after filing. Judge Shaughnessy thought if there was a way to accomplish this, it would help the courts when dealing with these summonses. Chief Justice Durrant said, at a minimum, the courts could change the misleading language about a lawsuit having been filed.

Next Steps

Pew Trusts would like to meet with the IT Department to ascertain the value in the courts collecting demographic information. Ms. Paulding expressed appreciation of the assistance of the Utah State Courts in fulfilling the court data requests, specifically thanking the IT Department for their participation.

Judiciary Interim Committee

The Foundation will present the findings of this Report to the Judiciary Interim Committee (JIC). Cathy Dupont mentioned the JIC will hear about justice court reform, including the creation of a division court and felt one important message was to inform the JIC that the courts are addressing the issues found in the Report. Ms. Dupont thought it was important that the Foundation be very clear when addressing statutes with the Legislature, rather than issues that are driven by court rules. Judge Shaughnessy thought the Foundation should focus on subjects that the Legislature has jurisdiction over, rather than court policies.

4. COMMITTEE APPOINTMENTS: (Nathanael Player and Stacy Haacke)

The committee decided to no longer require presentations from staff regarding committee appointments, but to have staff be available for questions.

Forms Committee

The Forms Committee sought the appointment of Judge Marvin Bagley, Keri Sargent, David Head, AJ Torres, Judge Brent Bartholomew to replace Judge Elizabeth Lindsley's position, and Bret Hayman to fill Mary Westby's position. Kara Mann's position will be filled at a later time.

Model Utah Jury Instructions-Civil Committee

The Model Utah Jury Instructions-Civil Committee sought the appointment of Mark Morris to fill Joel Ferre's position and William Eggington to fill Marianne Di Paolo's position.

Motion: Judge Shaughnessy moved to approve the appointment of Judge Marvin Bagley, Keri Sargent, David Head, AJ Torres, Judge Brent Bartholomew, and Bret Hayman to the Forms Committee; and the appointment of Mark Morris and William Eggington to the Model Utah Jury Instructions-Civil Committee, as presented, and place this on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

5. JUSTICE COURT REFORM: (Jim Peters and Ron Gordon)

Jim Peters reported there are meetings with JIC and Senate leadership in the coming weeks to provide an overview. Mr. Gordon and Mr. Peters spoke with the National Center for State Courts (NCSC). The NCSC is willing to prepare a comprehensive caseload analysis and review revenue and expenses. NCSC may also be able to provide the services of an economist to ascertain at the local level what justice courts are costing, and provide a couple of consultants to

be a liaison with stakeholders. The data collected will be put into a report and presented to the Council. They anticipate the report being completed within the next few months. The NCSC will allow the courts to identify which stakeholders need to be addressed, including members of the Council.

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

Chief Justice Durrant addressed the Judicial Council agenda.

Motion: Judge Farr moved to approve the Judicial Council agenda, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

7. OLD BUSINESS/NEW BUSINESS

The committee decided to hold future meetings in a hybrid setting.

8. EXECUTIVE SESSION

An executive session was held.

9. ADJOURN

The meeting adjourned.

Agenda

**JUDICIAL COUNCIL'S
BUDGET & FISCAL MANAGEMENT COMMITTEE**

**Minutes
May 9, 2022
Meeting held through WebEx
12:00 p.m. – 1:30 p.m.**

Members Present:

Hon. Kara Pettit, (Chair)
Hon. Keith Barnes
Hon. Elizabeth Lindsley
Justice Paige Petersen
Margaret Plane, Esq.

Excused:

Bart Olsen
Shane Bahr
Michael Drechsel

Guests:

Mark Urry, TCE, Fourth District Court
Joyce Pace, TCE, Fifth District Court
Glen Proctor, TCE Second District Court
Keisa Williams
Jeremy Marsh

AOC Staff Present:

Ron Gordon
Cathy Dupont
Nick Stiles
Jim Peters
Neira Siaperas
Brody Arishita
Todd Eaton
Jonathan Puente
Chris Talbot
Lauren Andersen
Nathanael Player
Jordan Murray
Karl Sweeney
Alisha Johnson
Melissa Taitano
Suzette Deans, Recording Secretary

1. **WELCOME AND APPROVAL OF MINUTES (Judge Kara Pettit – “Presenter”)**
Judge Kara Pettit welcomed everyone to the meeting.

Motion: Judge Keith Barnes moved to approve the April 11, 2022 minutes, as presented. Justice Paige Petersen seconded the motion, and it passed unanimously.

2. **Selection of New Committee Chair (Cathy Dupont – “Presenter”)**
Judge Keith Barnes nominated Judge Kara Pettit for committee chair. Margaret Plane seconded the nomination. None opposed.

3. Financials and Turnover Savings Update (Alisha Johnson – “Presenter”)

Alisha Johnson reviewed the period 10 financials and gave an update on ongoing turnover savings. As of 5/2/2022, the Courts generated forecasted Ongoing Turnover Savings (“Ongoing TOS”) net of uses of Ongoing TOS of \$331,895. Line 1 carried over Ongoing TOS from 2021 is \$244,454. Line 2 Ongoing TOS for FY 2022 \$937,391. Forecasted Total Savings is \$1,181,845. Line 4 forecasted total uses amount is (\$849,950). Actual TOS for FY22 is forecasted to be \$331,895. In June, the legislature-provided case processing ongoing funds will be combined with the \$331,895 and various requests to use the ongoing funds will be presented.



FY 2022 Ongoing Turnover Savings - Update as of 05/02/2022

#		Funding Type	Actual	Forecasted
			Amount YTD	Amount @ YE
1	Carried over Ongoing Savings (from FY 2021, includes unallocated ongoing appropriation)	Internal Savings	244,454	244,454
2	Ongoing Turnover Savings FY 2022 (forecast includes \$50k x 2 remaining months)	Internal Savings	837,391	937,391
3	TOTAL SAVINGS		1,081,845	1,181,845
	2021 Hot Spot used (balance available at beginning of FY was \$99,950)		(99,950)	(99,950)
	2022 Hot Spot used (\$110k initially available raised to \$200k in October Judicial Council)		(200,000)	(200,000)
	2022 Additional Targeted (\$100k allocated by Judicial Council in March)		(91,542)	(100,000)
	2022 Authorized Ongoing for Performance Based Raises (will be used at the end of the FY)		-	(450,000)
4	TOTAL USES		(391,492)	(849,950)
5	Actual Turnover Savings for FY 2022 as of 04/04/2022 and Forecast at YE 6/30/2022		\$ 690,353	\$ 331,895
Prior Report Totals			\$ 648,775	\$ 341,316

Alisha Johnson stated that we have now gone through 1656 out of our 2088 payroll hours. We are projecting +/- \$4.2M in one time turnover savings available at the end of fiscal year 2022 and feel confident this is a conservative forecast.



FY 2022 One Time Turnover Savings

Updated as of Pay Period Ending 04/15/2022 (1656 out of 2088 hours)

#		Funding Type	Actual Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 03/18/2022)	Internal Savings	2,966,410
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 03/18/2022)	Reimbursements	515,836
3	Est. One Time Savings for 432 remaining pay hours (\$1,750 / pay hour)	Internal Savings (Est.)	756,000
Total Potential One Time Savings			\$ 4,238,246
Prior Report Totals			\$ 4,382,711

We are spending our ARPA money. We did receive \$3M in the legislative session for 9 different projects. We know the \$3M is not going to cover all of the cost of those projects. We cannot spend the new \$3M until the new fiscal year begins. From the original \$12M we have spent almost \$1.0M for IT Access to Justice project and \$540K for Courts case backlog.

#	Funded by	GOPB	Budgeted	Actual	Balance	Activity	Description
	Legislature	Approved		Amount YTD	Available	Code	
1	IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	975,635	ITCV	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part I*	May-21	Yes	1,000,000	543,195	BKLG	See detail below.
	Subtotal			12,000,000	1,518,830		
	Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature			Requested			
1	IT Access to Justice - Response to COVID - Part II	N/A	Submitted 10/21	1,373,400		ITC2	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part II	N/A	Submitted 10/21	1,000,000		BKL2	Projects case backlog will take thru 6/30/2023
3	COVID-19 Supplies	N/A	Submitted 10/21	640,000	59,303	CV19	Updated as of 5/2/2022
4	Legal Sandbox Response to COVID	N/A	Submitted 10/21	649,000			
5	Self-Help Center	N/A	Submitted 10/21	64,000			
6	Interpreter Equipment	N/A	Submitted 10/21	97,000			
7	Eviction Court	N/A	Submitted 10/21	166,000			
8	Public Outreach & Engagement	N/A	Submitted 10/21	30,000			
9	IT Access to Justice - Response to COVID - Part III	N/A	Submitted 10/21	1,881,500			
	Subtotal			5,900,900	59,303		
				\$ 17,900,900	\$ 1,578,133	\$ 10,481,170	

Personnel Expenses (as of PPE4/15/22):	\$	515,836
Mileage Expenses (as of PPE 4/15/22):	\$	2,082
Sr. Judge Travel Expenses (as of 5/2/2022):	\$	2,092
		<u>\$ 520,010</u>
COVID Testing Kit purchase:	\$	23,185
	\$	<u>543,195</u>

Year-to-date 1x turnover savings (“1xTOS”) is \$3,482,246 and the 1xTOS estimated for the rest of the year is \$756,000. Total potential 1xTOS of \$4.2M ties to the One-time turnover savings chart above. The TCE and Directors have operational savings of \$868,160 along with reserve balance from August Judicial Council approval of \$414,829. Maximum carryforward is currently shown as \$3,143,581 of the \$3.2M the legislature approved, but AOC Finance is certain that the full \$3.2M will be available to the Judicial Council when the YE is closed. Current spending requests for this meeting total \$563,000.

[illegible]

Brody Arishita requested \$415,000 for firewalls and 5 years of service. Payment up front on either option. There are additional services and discounts in the 5-year contract. IT and AOC Finance recommend the 5-year option.

Motion: Judge Elizabeth Lindsley made the motion to approve. Judge Keith Barnes seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

Brody Arishita requested \$148,000 to cover the increased cost of Google Renewal in FY2022-2023. This will be added to IT's 2023 Judicial Priority request for ongoing funds for FY2024.

4

Suite Enterprise. This request will enable us to sign a new contract in FY 2022 and pay for the increased cost for 1 year of services.

The upgraded Google software contains some improvements to our existing Google software including the following additional end user features available once we migrate to Enterprise:

- User storage increases from 30GB to 5TB per user
- All Google accounts will have Vault email retention (which cost extra in the prior version)
- Shared Google Drive will now be available

We request this one-time funding for FY 2022 to renew our Google system and will solicit ongoing funds from the legislature as part of a 2023 IT Judicial Priority request to cover the annual increase for the remaining 3 years of the contract.

Motion: Judge Elizabeth Lindsley made the motion to approve. Judge Keith Barnes seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

CARRYFORWARD SPEND REQUESTS PRESENTED FOR APPROVAL TO FORWARD TO JUDICIAL COUNCIL

Funding Sources

	One Time	Ongoing
Total Case Processing Amounts from 2022 General Session Fiscal Notes (to be entered prior to June 2022 BFMC Meeting)	\$ 247,900	\$ 818,200
Expected Carryforward Amount from Fiscal Year 2022 (as of 4/4/2022)	\$ 3,200,000	\$ -
Ongoing Turnover Savings (forecasted as of 5/2/2022 - funding for Hot Spot, Targeted, and Performance Raises already included)	\$ -	\$ 331,895
Total Available Funding	\$ 3,447,900	\$ 1,150,095

Ongoing Requests

	Presented		Judicial Council Approved	
	One Time	Ongoing	One Time	Ongoing
4 Clerk of Court Supplemental to JA Increase			N/A	\$ 59,000
5 Public Outreach Coordinator	N/A	\$ 120,000		
	\$ -	\$ 120,000	\$ -	\$ 59,000

One Time Requests

	Presented		Judicial Council Approved	
	One Time	Ongoing	One Time	Ongoing
1 AALL Conference Attendance Funds - Law Library	\$ 2,172	N/A		
2 ODR Program Development	\$ 46,200	N/A		
3 Bountiful District Courtroom #2 Audio Upgrade	\$ 40,000	N/A		
4 Law Clerk Commitment Fulfillment	\$ 11,000	N/A		
5 IT - Delayed Delivery of Statewide Routers and WIFI Access Points	\$ 258,000	N/A		
6 TSOB Probation Office A/V System - Phase 2	\$ 61,509	N/A		
7 HR - Onboarding and Recruitment Software	\$ 19,030	N/A		
8* Education - In Person Conferences and Education Team Training	\$ 168,500	N/A		
9* Employee Incentive Awards	\$ 280,000	N/A		
10* ICJ Operations Funding	\$ 21,000	N/A		
11* Education Assistance Program Funding	\$ 85,000	N/A		
12* Secondary Language Stipend	\$ 83,200	N/A		
13* Public Transportation Reimbursement Program	\$ 50,000	N/A		
	\$ 1,125,611	\$ -	\$ -	\$ -
Balance Remaining After Judicial Council Approvals			\$ 3,447,900	\$ 1,091,095
Balance Remaining Inclusive of "Presented"	\$ 2,322,289	\$ 971,095		

1. AALL Conference Attendance (Nathanael Player – “Presenter”)

After receipt of a tuition grant of \$1,327 from AALL, Nathanael Player is requesting \$845 to provide travel and conference funds to the State Law Library to allow Kaden Taylor, our State Law Librarian, to attend and present at the American Association of Law Library’s (AALL) Annual Conference in Denver, Colorado July 16-19, 2022.

Motion: Judge Elizabeth Lindsley moved to approve. Margaret Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

2. ODR Funding (Nathanael Player – “Presenter”)

Nathanael Player is requesting \$46,200 for ODR Program Development.

\$43,200 would pay for Nancy McGahey’s time to further develop the Online Dispute Resolution (ODR) program as follows:

- Recruitment, retention, training, and support of ODR facilitators (55%);
- ODR facilitation (10%);
- Consulting with IT to make software changes to enable management of larger caseloads (10%);
- Assessing stakeholder needs in anticipation of expanding ODR into more case types (15%); and
- Assisting in creating a framework and definition for a full-time position to assume these responsibilities in the future (10%).

\$3,000 would pay for:

- Volunteer incentives to help with volunteer retention.

Motion: Judge Elizabeth Lindsley moved to approve. Judge Keith Barnes seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

3. Bountiful District Courtroom #2 Audio Upgrade (Glen Proctor – “Presenter”)

Glen Proctor is requesting \$40,000 to upgrade the audio system in Bountiful Courtroom #2 as it was last updated in 2007 and lacks the current audio technology to best support hybrid/remote hearings.

Bountiful Courtroom #2 was last updated 15 years ago. The audio technology necessary to handle today's virtual and hybrid hearings and jury trials is not present in the courtroom and the current system does not have the minimum specifications necessary to consider a lesser system revamp.

A new system will bring the courtroom in line with current Court A/V standards, this includes, but is not limited to, the following:

- Audio Digital Signal Processor - improved recording, local sound, and control
- Teleconference Phone System - tied directly into the sound and recording system
- Touch Panel Control System - Simple, flexible user interface
- Whole room, Secure Hearing Impaired System
- In-room sound reinforcement
- Direct Web Conferencing Audio
- USB Recording enabled to Digital Recording PC
- Wireless Microphones
- Side-bar Privacy mode

Motion: Judge Keith Barnes moved to approve. Judge Elizabeth Lindsley seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

4. Law Clerk Commitment Fulfillment (Nick Stiles– “Presenter”)

Nick Stiles is requesting \$11,000 to fund the final seven weeks of salary and benefits for one of Justice Himonas’ law clerks in the event the new Justice immediately hires their own law clerks.

Associate Justices of the Supreme Court have two law clerks. Generally, these law clerks are hired for one-year terms beginning and ending in August. In March 2022, Justice Himonas and one of his law clerks left the employment of the Supreme Court (#1); one law clerk is still employed at the Courts through mid-August 2022 (#2).

Initial estimates are that a new Justice will be seated between 2-3 months after Justice Himonas’ departure. This results in the new Justice and potentially two new law clerks beginning in late May or June. Due to the Supreme Court’s 1x turnover savings in March and April after the departure of clerk #1, there will be adequate 1x turnover savings to offset the additional costs of potentially having three law clerks for the final month of FY22. So, no funds are sought for FY 2022.

Motion: Justice Paige Petersen moved to approve. Judge Keith Barnes seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

5. Delayed Delivery of Statewide Routers (Todd Eaton – “Presenter”)

Todd Eaton requested and received approval for \$160,000 for the purchase of 25 statewide routers in July 2021. Due to supply chain issues, none of the routers are expected until September 2022. We are releasing the FYE 2022 funds of \$160,000 and request these same funds be transferred to 2023 carryforward to pay for the FY 2023 delivery of the routers.

Motion Judge Keith Barnes moved to approve. Margert Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

6. TSOB Probation Office – Phase II (Chris Talbot – “Presenter”)

Chris Talbot is requesting \$61,509 to fund the second phase of AV equipment and installation at the new Taylor State Office Building (“TSOB”) offices which opened in April of 2022. The first phase was already funded through a FY 2022 YE spending request in January 2022 for \$47,806 (net of 3rd District Juvenile funding of \$30,000). The second phase budget is \$61,509, which will bring the total expenditure to \$139,315 for the complete AV system.

Motion: Margaret Plane moved to approve. Judge Keith Barnes seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

7. Onboarding and Recruitment Software (Jeremy Marsh – “Presenter”)

Jeremy Marsh is requesting \$19,029.54 to allow for one more year of funding for ApplicantPRO - a more secure and independent Onboarding and Recruitment software application and process. Last year, with the approval of the council, HR implemented ApplicantPRO for a one-year trial. This system has drastically reduced the time HR staff spends on recruitment and onboarding. Additionally, this system empowers Court management with more control and more agility in recruitment and onboarding practices and provides new hires a smooth, efficient, and secure onboarding system. These systems are unprecedented to the Courts and created efficiency gains throughout the Courts.

The invoice for the coming fiscal year to maintain ApplicantPRO’s Applicant Tracking System (ATS) and Onboarding system is \$19,029.54 which is level with the first year spend.

Motion: Judge Keith Barnes moved to approve. Margaret Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

8. Education – In Person Conference & Education Team Training (Lauren Anderson “Presenter”)

Lauren Anderson is requesting \$168,500 to fund the shortfall in Education’s budget for FY 2023 to enable Education to be responsive to the requests of the various Boards of Judges to continue to offer in-person and hybrid (or streaming) conferences, as well as additional professional development needs for court employees. Education is requesting that \$143,000 in one-time funding be allocated to support three hybrid conferences (All Judicial, District and Juvenile), \$10,500 in one-time funding to allocate for Education teams’ professional development, and \$15,000 to be used to continue developing

performance-based, soft-skilled, mid-level manager courses for all districts – made necessary to transition away from Career Ladder toward a performance-based rewards system. There is a possibility that \$50,000 of ongoing savings will be approved to reduce this request to \$118,500.

Motion: Deferred action until next month when the ongoing savings funding will be considered.

9. Employee Incentive Awards (Karl Sweeney – “Presenter”)

Karl Sweeney, speaking on behalf of Bart Olsen, is requesting \$280,000 to fund Employee Incentive Awards.

The Courts have established a program to provide on-the-spot recognition for outstanding service as well as a formal nomination process to reward employees for their service in the following ways:

- An innovative idea or suggestion, implemented by the courts, which improves operations or results in cost savings
- The exercise of leadership beyond that normally expected in the employee’s assignment
- An action which brings favorable public or professional attention to the courts
- Successful completion of an approved special individual or team project
- Continually outstanding performance of normal responsibilities.

The incentive can be issued in cash or a gift card. If deserved, a single employee can receive multiple incentive awards in a given year.

The FY 2023 request is identical to the FY 2022 request and provides:

- \$200,000 for cash or gift card awards +
- \$60,000 for the funds required to cover assumed personal taxes at 30% +
- \$20,000 for the funds required to cover retirement costs and employer FICA (32%) for cash incentive payments. Incentive awards issued as gift cards do not incur the retirement fund contribution. The extra \$20,000 covers up to \$60,000 of incentive awards given out as cash payments.

Motion: Justice Paige Petersen moved to approve. Margaret Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

10. ICJ Operations Funding (Neira Siaperas – “Presenter”)

Neira Siaperas is requesting \$21,000 in funding for mandatory Interstate Compact for Juveniles (ICJ) annual dues and other expenses related to administration of the ICJ office.

In past years, Federal JABG funds supported the payment of national ICJ dues, but JABG funding is no longer available. Therefore, other funding is necessary to support ICJ dues which are currently assessed at \$17,000/year. This amount is calculated based on the

criteria outlined in ICJ Rule 2-101 (attached) and the calculations for each state are revised every five years. ICJ dues recalculation was postponed to FY23, and will go into effect in FY24. The recalculated amount of ICJ dues will be known after the 2022 Annual Business Meeting in October 2022.

As a member of the Interstate Compact for Juveniles, the state of Utah is responsible for working with other states to return runaway/absconded youth to his/her home state, including home to Utah. Although the financial obligation rests with the parents, in some instances parents are unable to pay for the child's return. The request for \$3,000 enables Utah to comply with return timeline requirements when other logistical or financial return options are unavailable.

Motion: Margaret Plane moved to approve. Justice Paige Petersen seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

11. Education Assistance Program Funding (Alisha Johnson – “Presenter”)

Alisha Johnson is requesting \$85,000 for Educational Assistance Program for fiscal year 2023.

The Utah Courts encourage employees to seek further education in order to perform their jobs more effectively and to enhance their professional development. These requests are tracked by AOC Finance which evaluates all requests and thereby assists employee in the pursuit of educational goals by granting a reimbursement of educational expenses to Court employees under specified circumstances.

This request will subsidize education assistance for court employees for FY 2023. The amount requested is \$10,000 higher than FY 2022. We are increasing the request for FY 2023 due to increases in tuition and our desire to provide a higher level of reimbursement to each person who applies.

Motion: Margaret Plane moved to approve. Justice Paige Petersen seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

12. Secondary Language Stipend (Jonathan Puente – “Presenter”)

Jonathan Puente is requesting \$83,200 for a secondary language stipend. There is a great diversity in languages spoken by court patrons. In order to facilitate court proceedings for non-English speaking patrons, the Utah Courts (1) employs court interpreters [for in-court interpreting] or (2) utilizes the foreign language talents of current court employees [for front-counter interpreting].

This request deals with the front-counter interpreting which involves qualified employees receiving \$50 per pay period for being available as needed. This is a very cost-effective

use of our current court employees who use their language skills in the service of court patrons in situations for which a certified, registered or approved interpreter is not required. The Court's pay \$50 per pay period to our court interpreters or \$1,300 per year.

There are 64 slots available to receive this stipend. In FY 2022, the Courts did a better job at filling all of the slots therefore we are requesting the amount needed if all 64 of the slots were filled (\$83,200) for the entire year.

Motion: Justice Paige Petersen moved to approve. Margaret Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

13. Public Transportation Reimbursement Program (Karl Sweeney – “Presenter”)

Karl Sweeney is requesting \$50,000 to provide Court employees state-wide with an opportunity to receive a 75% reimbursement of the costs paid for utilizing public transit until the funds are depleted.

Motion: Justice Paige Petersen moved to approve. Margaret Plane seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

ONGOING SPEND REQUESTS PRESENTED FOR APPROVAL TO FORWARD TO JUDICIAL COUNCIL

5. Public Outreach Coordinator (Jonathan Puente – “Presenter”)

Jonathan Puente is requesting \$120,000 to fund the Public Outreach Coordinator position with Court-funded ongoing turnover savings. This position has been filled by Valeria Jimenez since May 2021 and is currently funded with Legislature-funded 1x general funds for FY 2022. Those funds expire at the end of FY 2022. The Legislature did not choose to fund this position with either one-time or ongoing funds for FY 2023 leaving the funding up to the Courts to provide.

Motion: Margaret Plane moved to approve. Justice Paige Petersen seconded the motion, and it passed unanimously to be sent to the Judicial Council with recommendation to approve.

Meeting adjourned: 1:57 p.m.

Next meeting: TBD (held virtually through WebEx)

Tab 3

Utah State Courts

Agenda

Court Facility Planning Standing Committee 2022 Annual Report

Committee Intent

Rule 3-409

- To provide for the responsibilities of the Court Facility Planning Committee.
- To provide for the effective planning of court capital facilities.
- To promote the efficient use of new and existing courthouses through application of co-location and multi-use court facility concepts.
- To establish a framework for the conceptual, planning, developmental and implementation phases of court capital facilities.
- To provide for Council review and approval of all proposed court capital facilities.
- To ensure adherence to the design and space guidelines and other requirements of the Utah Judicial System Capital Facilities Master Plan.

Committee Responsibilities

1. **Review trends and projections in population, caseload, and other growth indicators to anticipate courthouse construction needs:**

Planning Studies Identified by Committee

- Heber City / Wasatch County - Add juvenile courtroom to County facility. Feasibility study still pending. Possible funding through retiring bonds in FY23
- Davis County Consolidated Courthouse (Layton , Farmington & Bountiful replacement) - New future courthouse with 16 courtrooms. Feasibility study to be completed in FY23. Possible partial funding through retired bonds in FY26
- Cedar City / Iron County - Courthouse expansion of 3 courtrooms. No action planned in FY23

Active Capital Development Projects

- Manti Sixth Judicial District Courthouse– New District and Juvenile courthouse with 2 courtrooms (one to be shelled). Property purchased and demolition of existing structures completed in February 2020. Legislature funded design process in May 2021 and full project in March 2022.

2. Review the evaluations of courthouses required by this rule and recommend the prioritized placement of courthouse construction projects within the Master Plan:

The Committee annually evaluates and prioritizes all court sites and court facilities for the Facility Master Plan. The information is used to evaluate each facility for capital development, capital improvement, facility maintenance and remodel projects. The Master Plan priority list was last updated by the Standing Committee on 5/2/22

3. Review recommendations from the facility coordinator on construction projects and the Master Plan:

As part of the budget process the facility coordinators (Trial Court Executives) are required to submit a list of capital improvement projects in their districts for funding consideration to the Committee. These requests are reviewed, evaluated and prioritized for the annual Capital Improvement Project funding by the Legislature. 31 projects were approved in FY23 for a total of \$6.9M.

4. Make recommendations to the Council regarding the reordering of Master Plan priorities and amendments to design and space guidelines:

The Master Plan is reviewed as events, conditions or opportunities develop. The Committee evaluates the prioritization of the Master Plan annually and presents recommendations and changes to the Judicial Council as needed. The Standing Committee does not recommend reordering of any priorities at this time.

The Design and Space Guidelines are updated at the end of each Capital Development project to reflect the lessons learned at the completion of each new courthouse project. The guidelines were updated by VCBO Architects in 2020.

5. Compare construction requests with the Design and Space Guidelines of the Master Plan to ensure the current and anticipated needs of the court are met:

All construction renovation requests are reviewed for compliance to the Design and Space Guidelines. The guidelines are also updated as needed to ensure they meet the current needs for court renovations in the future.

6. Develop timetable for construction requests so that the Committee presents its recommendations to the Council in advance of the Annual Planning Workshop:

The Master Plan prioritizes all court facilities requests. This prioritization is used to select the order of Capital Development and Capital Improvement requests based on the needs of the courts and is included in the annual report of the Standing Committee.

7. Make recommendations to the Council for the approval, modification or disapproval of construction requests:

All Capital Development Project Requests are evaluated for need and compliance with the Master Plan and Design Guide Lines before presentation to the Council for approval. The Council can modify or change the list before any action is taken by the Standing Committee.

8. Develop procedures for the delegation of committee responsibilities to the facility coordinator:

The Committee has delegated the responsibility of defining and requesting improvement projects to the facility coordinators (Trial Court Executives) and their DFCM Facilities counterparts in each district. The procedures for evaluating and developing these requests have been incorporated into the annual budget request process. Once a project is funded, the facility coordinators are an integral part of all construction meetings through the completion of the project.

Facility Master Plan Last Year

FY22 State Court Facility Replacement Ranking

Facility #	District	County	Facility Type	Unit Name	Leased / Owned / Contract	Courtrooms	Square Feet	Security	Condition	Adequacy	Total score	Court FSC Priority Ranking
2607	2	Davis	Courthouse	Bountiful	Leased	2	24,804	8	8	9	25	3
2607	2	Davis	Courthouse	Bountiful	Leased	2	24,804	8	8	9	25	3
2608	2	Davis	Courthouse	Farmington	Owned	10	131,699	6	8	9	23	3
2610	2	Davis	Courthouse	Layton	Owned	2	20,025	7	6	9	22	3
2637	4	Wasatch	Courthouse	Heber City	Leased	1	10,043	8	7	5	20	2
2641	5	Iron	Courthouse	Cedar City	Owned	3	17,037	7	7	7	21	4
2651	6	Sanpete	Courthouse	Manti	Leased	2	7,301	2	2	5	9	1

Utah State Courts

5-Year Capital Development Plan

for State Courthouse Replacement or Expansion

Updated April 2022

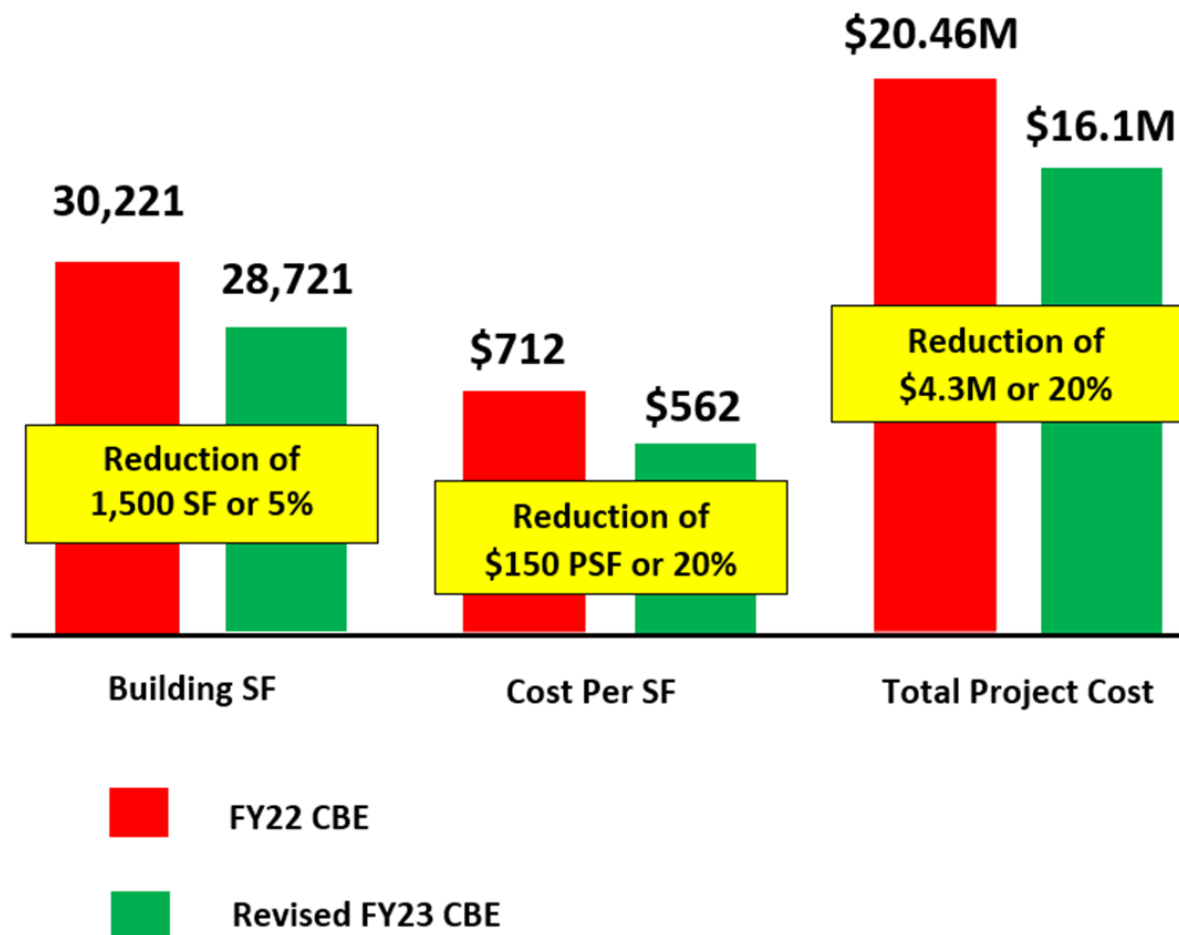
- Project #1 Wasatch County, Heber City Courthouse
Proposed expansion of County owned facility to add a new juvenile courtroom
Estimated cost: \$3.8M spread out over a new 15-year lease
- Project #2 Davis County Courthouse
Proposed new courthouse with up to 14 courtrooms to consolidate the existing Farmington, Layton and Bountiful courthouses into one facility. Feasibility study to be completed in FY23.
Estimated cost: TBD
- Project #3 Iron County, Cedar City Courthouse
Proposed expansion of the existing courthouse to add 3 courtrooms.
Estimated cost: TBD
- Project #4 Grand County, Moab Courthouse
Proposed substantial remodel of existing leased 2 courtroom courthouse.
Estimated cost: TBD
- Project #5 Utah County, American Fork / Lehi Courthouse
Proposed new courthouse with 4 courtrooms to replace the city owned leased facility

Capital Development Projects

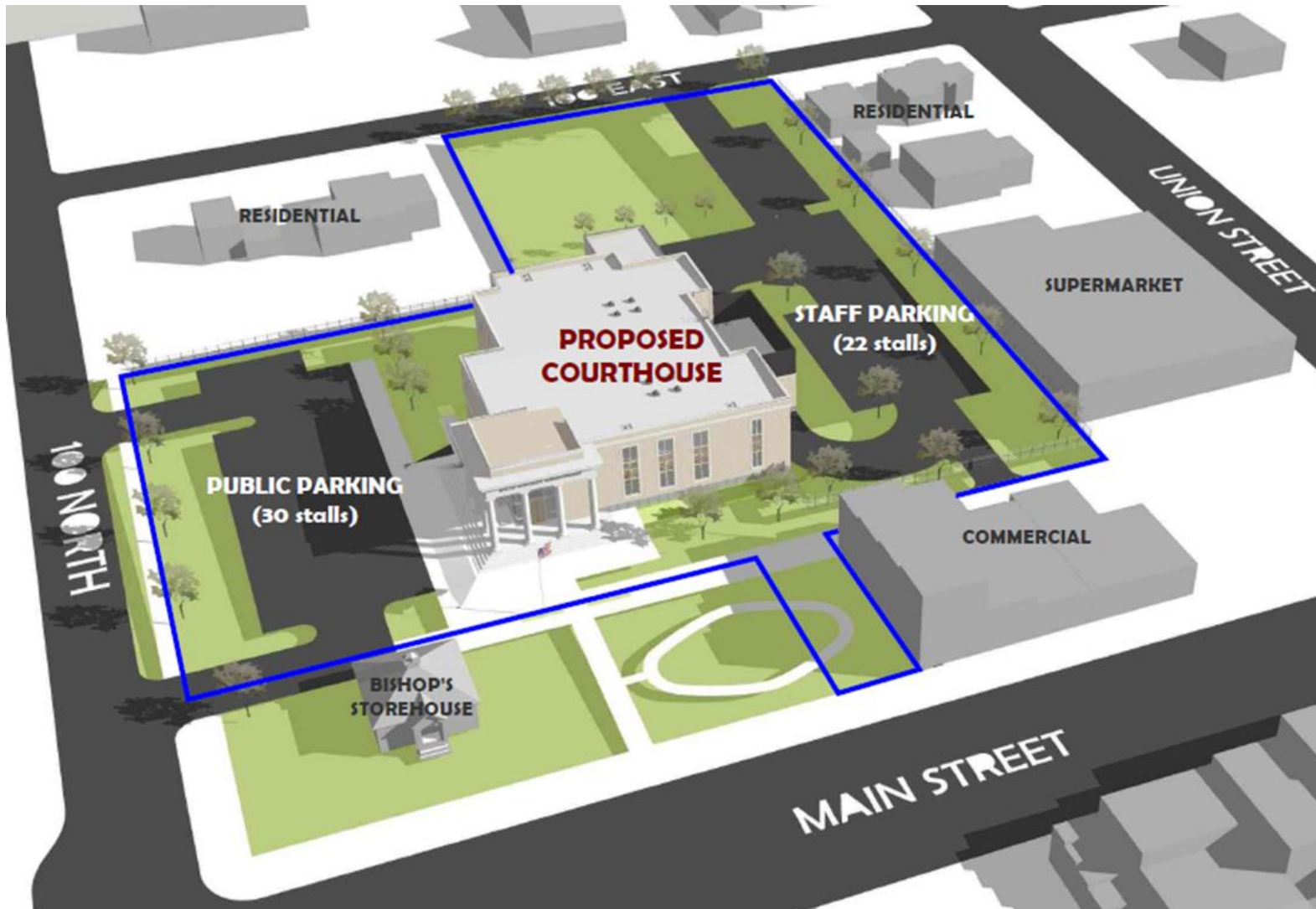


Manti Sixth District Courthouse

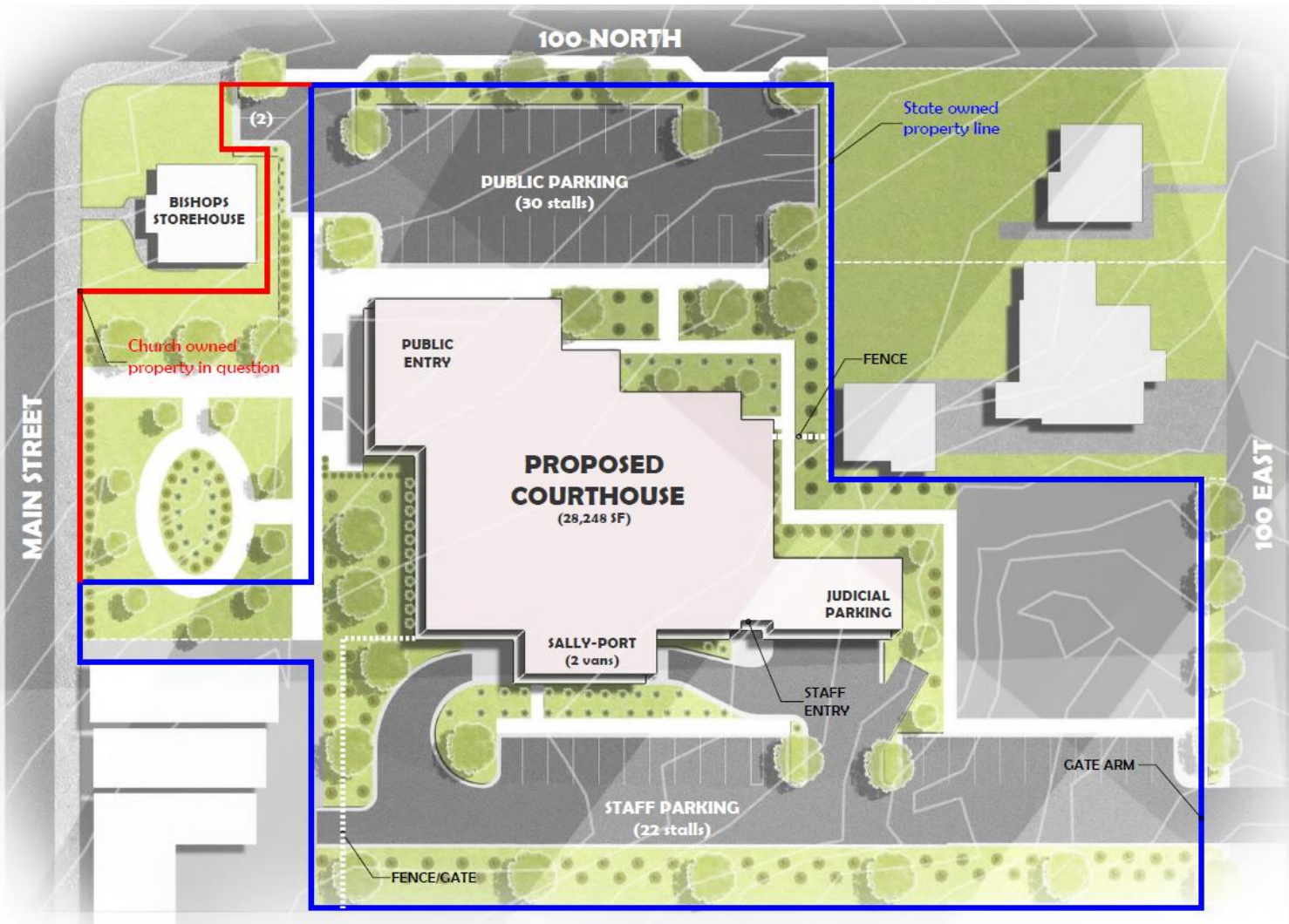
FY23 Capital Development Request – Reduced Scope



Site Plan



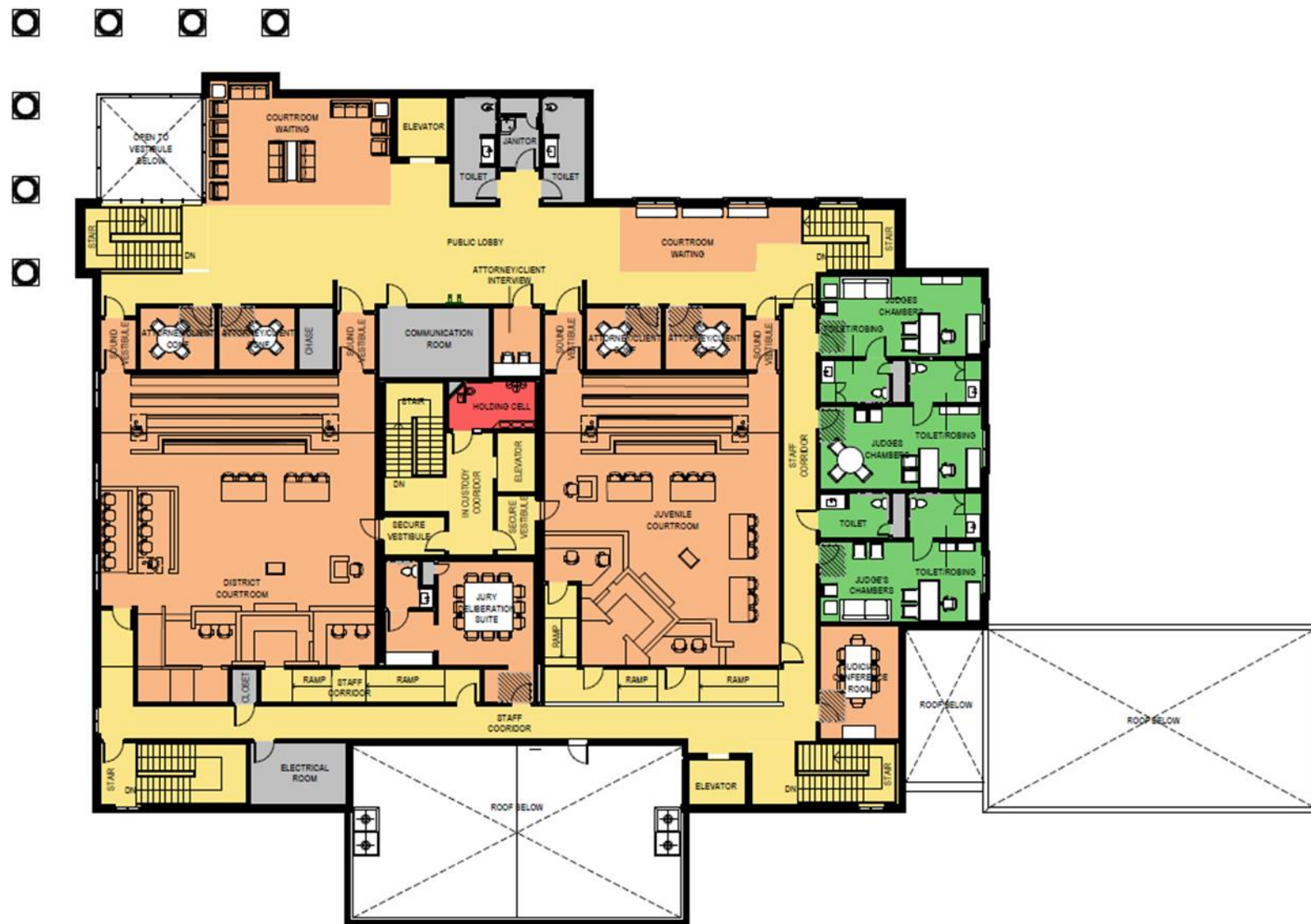
Purchase of Church Property



First Floor Plan



Second Floor Plan



Second Floor Plan – Shelled Courtroom



Exterior Facade



- Less expensive exterior finishes selected
- Concrete Masonry Unit (CMU) exterior walls
- Fiberglass entry columns and entablature
- Concrete entry plaza and steps

Courtroom Finishes

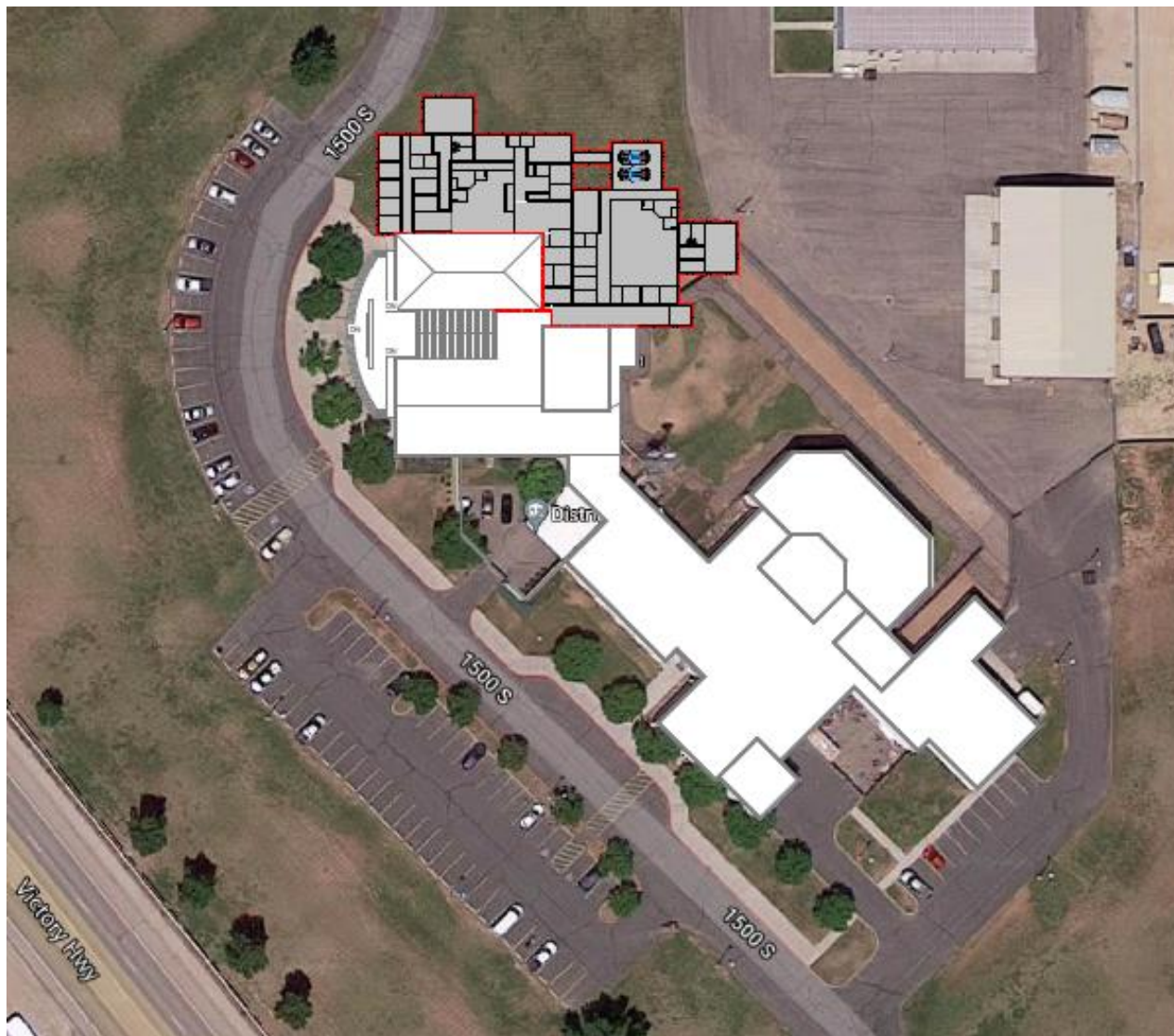


- Limited use of more expensive finishes
- Use of reconstituted wood (recycled) paneling
- Most interior walls are painted drywall
- Suspended ceiling grid over the gallery public seating area

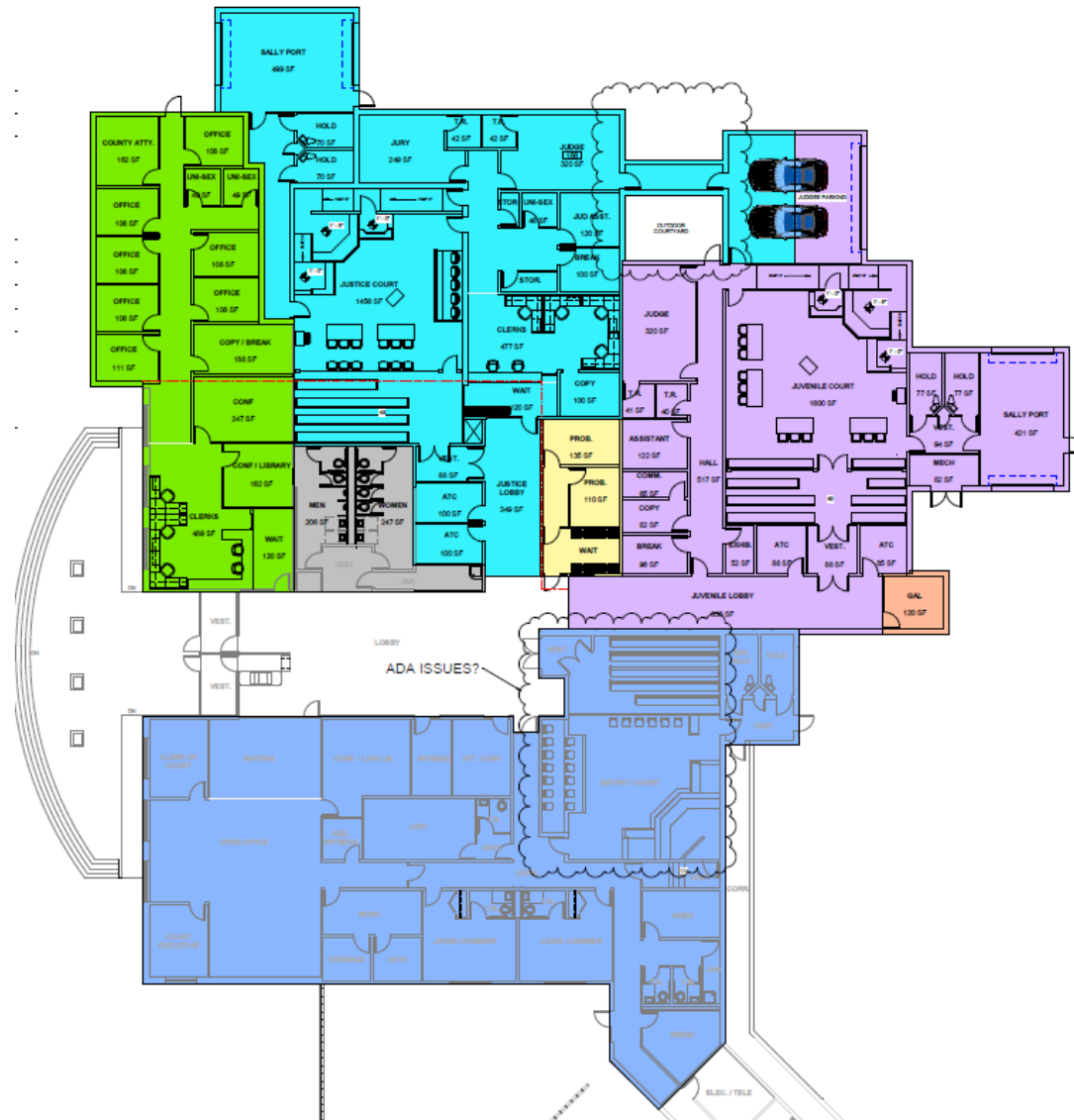


Construction to start in July 2023
with estimated opening winter 2024

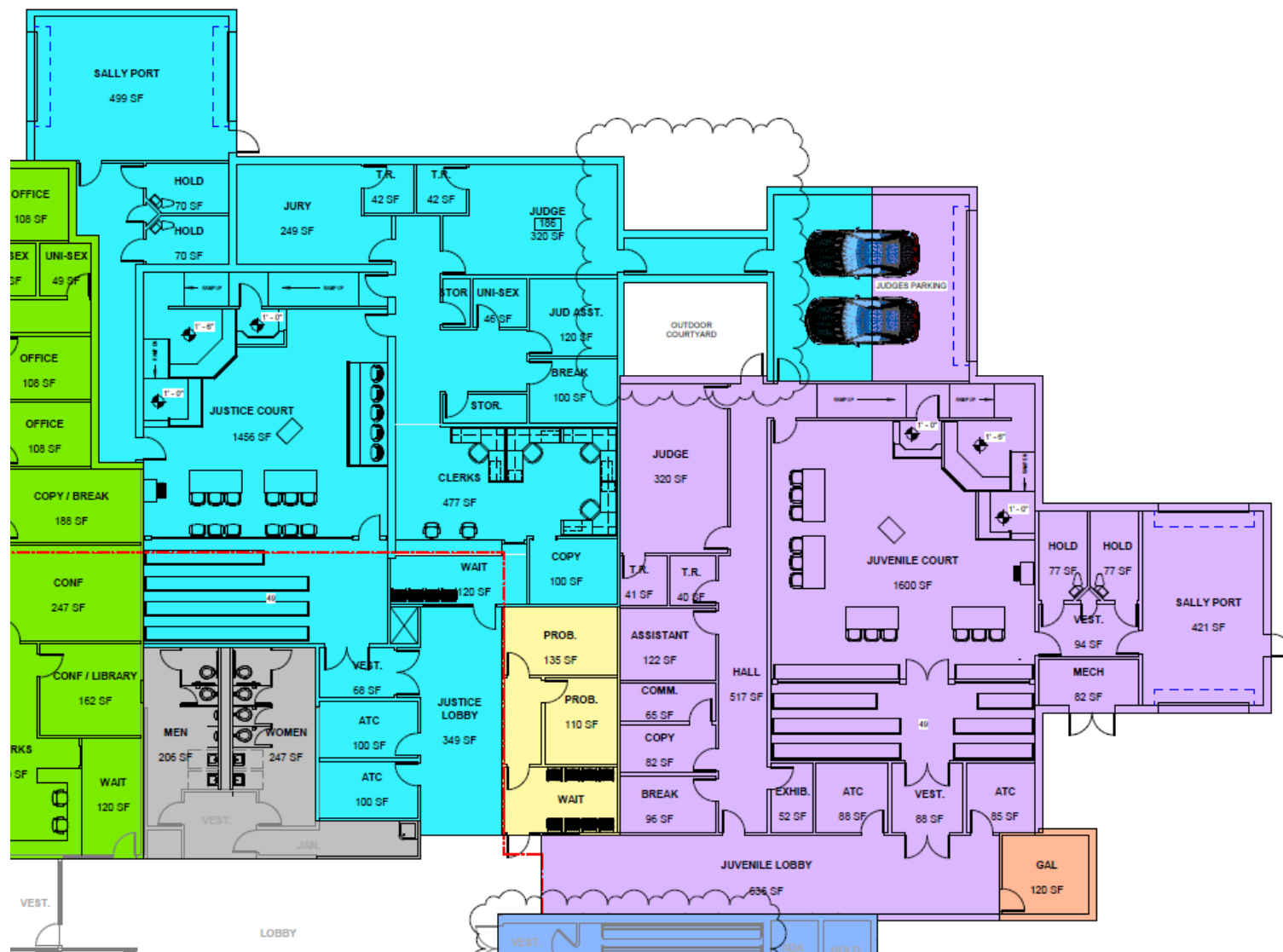
Wasatch Justice Center Expansion



Floor Plan



Partial Floor Plan



Estimated Capital Lease Cost

000053

Wasatch Justice Center Expansion Estimate - Revised 3/24/22

	Rent	Construction Cost	Total Annually
Current Lease through June 2025			
10,044 SF	\$ 90,396		\$ 90,396
\$9 psf rent / O&M*			
*Cap Improvement fund not included			
New Proposed Lease for 15 years			
23,183 SF	\$ 215,602		\$ 215,602
(existing + 13,139 SF new)			
\$9.30 psf rent / O&M			
Estimated Cost of new Courthouse Construction			
13,139 SF			
\$3,565,981 / 15 years		\$ 237,732	\$ 237,732
Cost includes 15% contingency, but no escalation			
Estimated Courts portion of A&E service fees			
7% of Const Cost = \$249,618 / 15		\$ 16,641	\$ 16,641
Total Estimated Annual Payment			\$ 469,975

Summary of Wasatch Lease Budget

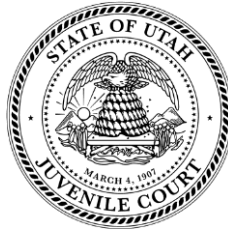
Current Lease Payment in Budget	\$ (95,413)
Reallocated Richfield bond Staying in Budget	\$ (219,155)
Estimated Cost of New Lease / Const	\$ 469,975
Estimated New Annual Increase to Budget	\$ 155,407

Capital Improvement Projects

- Current list of Court requested projects = 71. List annually updated by DFCM, Court Facilities and TCEs.
- FY 22 - prioritized 23 projects approved by Legislature with a total funding of \$5.2M with 70% of projects complete YTD.
- Notable Projects from FY22 – West Jordan HVAC system replacement, Layton Basement waterproofing, St. George emergency battery system (UPS) replacement and Ogden jury assembly room tenant improvement.
- Top 31 prioritized projects approved by Legislature for FY23 with a total funding of \$6.9M.

Tab 4

Agenda

**Board of Juvenile Court Judges**

Elizabeth Knight
Chair, Board of Juvenile Court Judges

May 13, 2022

M E M O R A N D U M

TO: Judicial Council

FROM: Elizabeth Knight, Chair, Board of Juvenile Court Judges

RE: Report to the Judicial Council

Since the last report to the Judicial Council in October 2021, The Board of Juvenile Court Judges has initiated or continued working on:

1. Racial and Ethnic Disparities (RED) initiatives

The phase I of the Board's Fairness and Accountability data project was completed in April 2021. It entailed a high level analysis of the disparities at the referral and disposition points of the juvenile justice process. Some of the key findings included that minority youth receive disproportionately more referrals to juvenile court than non-minority youth. Minority youth are also diverted at a lower rate and receive dispositions that typically include a higher level of supervision. Phase II of the project had to be paused while the juvenile court searches for a research partner with capabilities to conduct complex data analysis.

As part of RED initiatives, the Board also endorsed the creation of the Judicial Racial Justice Network working group led by Judge Monica Diaz. The working group has been meeting regularly and is tasked with exploring bias and implementing an action plan to address racial and ethnic disparities in delinquency.

2. Judicial Weighted Caseload study

The Board established a standing Juvenile Judicial Workload committee which held its first meeting on May 2, 2022. The committee will select and review the workload case weights most impacted by the pandemic or by legislative and other changes in judicial work. The selected case weights will be updated to accurately reflect the current workload of juvenile court judges. This review and update of case weights will occur on an ongoing basis to ensure that judicial workload is represented accurately on a consistent basis. The Board greatly appreciates the support of the Judicial Council with the court level Boards taking "ownership" of applicable workload studies.

3. Assessment of Juvenile Defense

Juvenile Court judges and staff will participate in the upcoming assessment by The Gault Center to evaluate access to counsel and quality of legal representation for Utah youth in delinquency

cases. The Center has conducted similar assessments in 28 states to date. There are six components to the assessment:

1. Access to Counsel and Quality of Representation
2. Indigent Defense Structural Overview
3. System Impacts to Justice and Fairness
4. Promising Practices
5. Recommendations for the State
6. Recommendations for Local Systems

The Utah assessment will involve select counties and include court observations and interviews with judges, administrators, district leadership and employees, and other stakeholders. It is anticipated that the assessment will start in August or September 2022

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

Tab 5



UTAH STATE COURTS

Agenda

2021 Annual Report

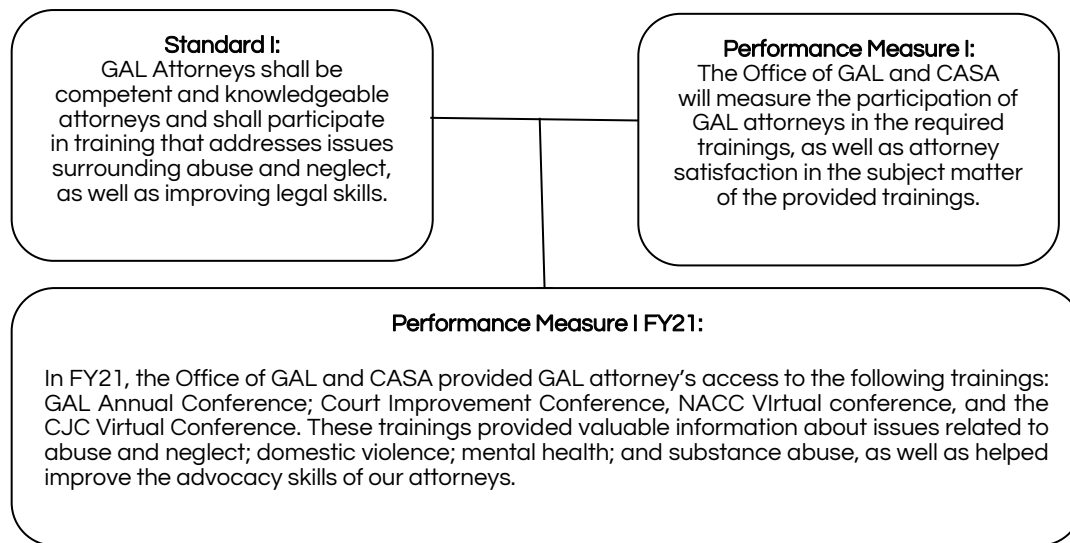
UTAH OFFICE OF GUARDIAN AD LITEM AND CASA

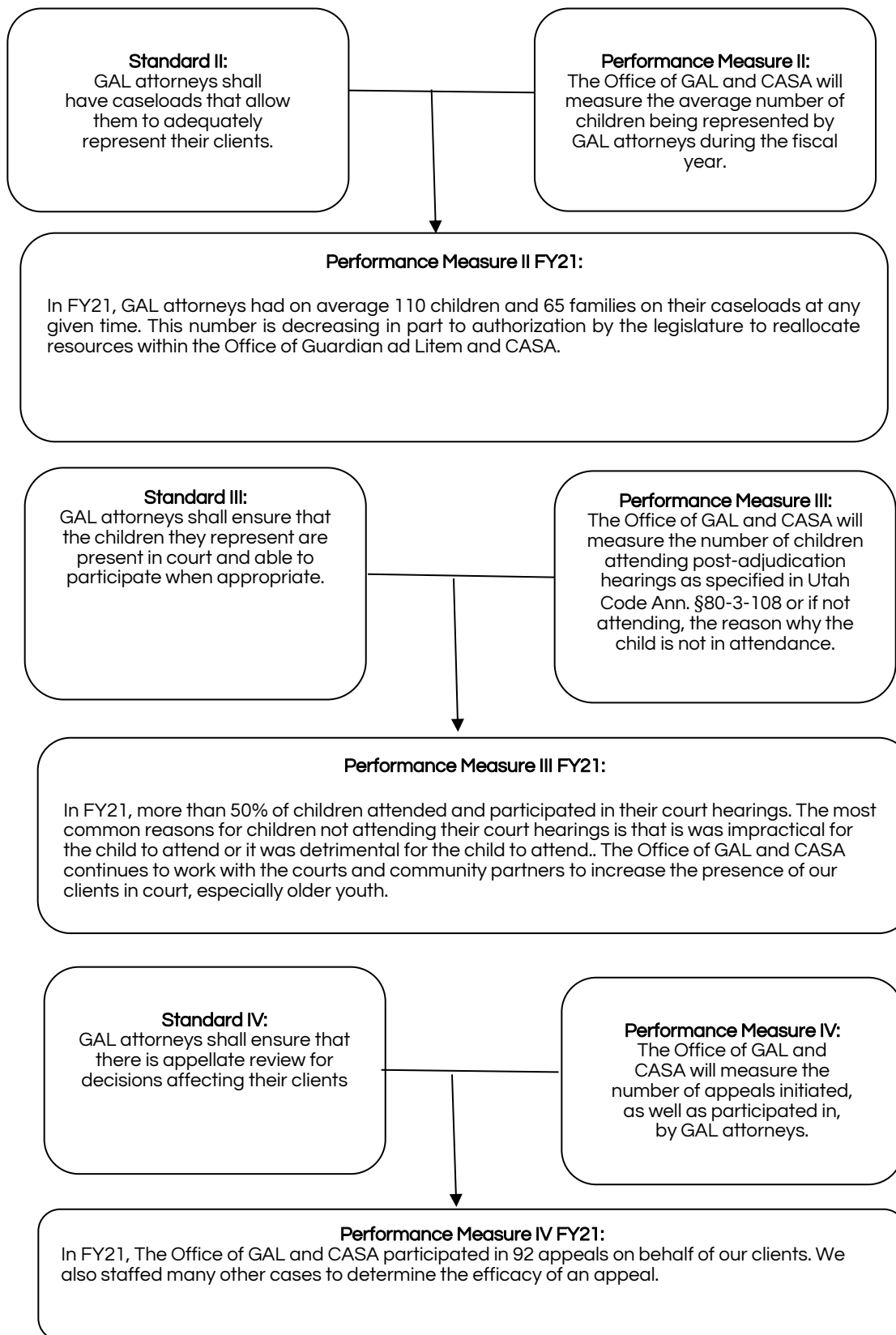
UTAH OFFICE OF GUARDIAN AD LITEM AND CASA

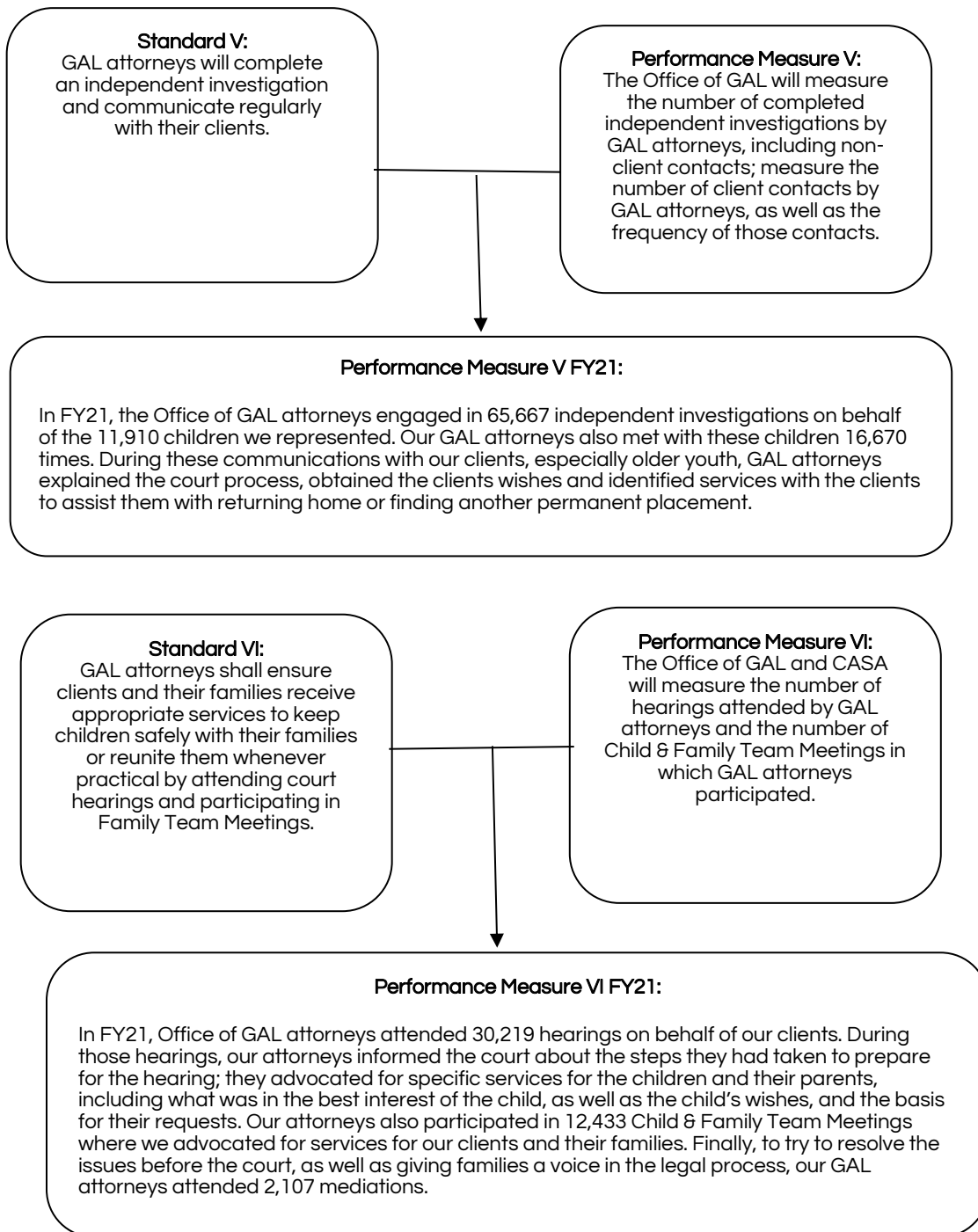
The job of a Guardian ad Litem attorney carries with it a tremendous responsibility. It is their job to stand in the shoes of the child and zealously advocate for the children the Office of Guardian ad Litem and CASA represents. Our attorneys are committed and well trained, and as such, are an asset to the State of Utah.

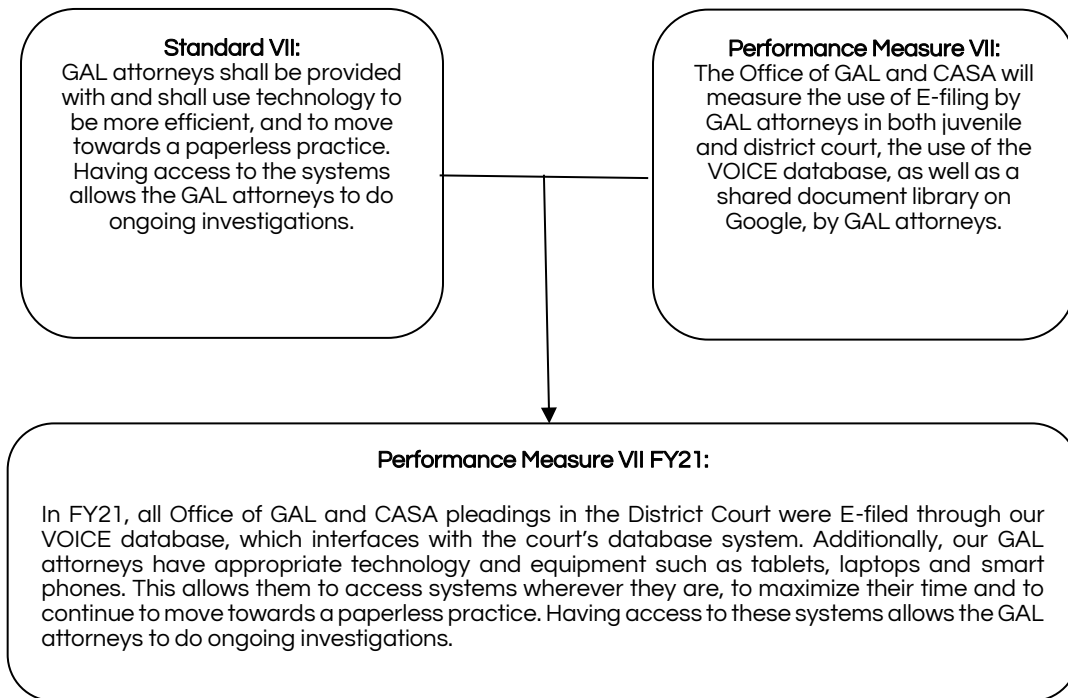
In FY2013, the Office of Guardian ad Litem and CASA was asked to develop performance measures and to report on those measures annually to the Executive Offices and Criminal Justice Subcommittee. In FY2014, the Office of Guardian ad Litem and CASA developed these Standards and Performance Measures and they were approved by the Executive Offices and Criminal Justice Subcommittee. The approved Standards and Performance Measures, as well as supporting FY2021 data, are listed below.

STANDARDS & PERFORMANCE MEASURES









PRIVATE GUARDIAN AD LITEM PROGRAM

In FY21, the Private Guardian ad Litem program continued to be active. We currently have 79 private attorneys who have accepted over 448 cases this past year, including over 93 pro bono cases. Dixie Jackson, our Private Guardian ad Litem Coordinator, continues to support these private attorneys by responding to questions, providing guidance and attending hearings when necessary. Also, the Best Practice Guidelines were expanded significantly, in the form of a Private Guardian ad Litem Manual, for the Private Guardians ad Litem to be better equipped to handle these difficult cases.

We continue to update our website monthly to keep the list of available Private Guardian ad Litem attorneys as well as the collection of pleadings that attorneys can use and modify. We also provide a Newsletter with information relevant to the role of the Private Guardian ad Litem each month. Finally, to assist the private attorneys comply with CJA R4-906, The Office of the Guardian ad Litem and CASA has hosted sessions of Continuing Legal Education throughout the state.

COURT APPOINTED SPECIAL ADVOCATE (CASA) PROGRAM

The CASA program is a valued resource for the Office of Guardian ad Litem and CASA. During FY21, 937 volunteer advocates served 1,549 children and donated 27,275 hours. Advocates are appointed pursuant to U.C.A. § 78A-2-803, subsection (4) (a) that states:

“An attorney guardian ad litem may use trained volunteers,
in accordance with U.C.A. § 67-20-1 et seq...to assist in investigation and
preparation of information regarding the cases of individual minors
before the court.”

CASA volunteers are assigned to an individual case and gather information for the GAL attorneys by visiting consistently with child clients, attending child and family team meetings and court hearings, and tracking the child's progress in school. In addition, these advocates ensure that the child is receiving needed services and is in a safe, nurturing environment by monitoring court orders and reporting to the GAL attorney.

CASA volunteers are carefully screened; they receive a background check and are provided with 32 hours of pre-service training and 12 hours of annual in-service training. Research conducted by the National CASA Association has found that children with CASA volunteers do better in school, spend less time in the foster care system, are less likely to re-enter foster care and are more likely to have a consistent, responsible adult present than other children in care.

UTAH'S FRIENDS OF CASA

Utah's Friends of CASA is a 501(c) (3) nonprofit organization that supports the CASA program by providing supplemental funding for volunteer recruitment, training and retention.

Tab 6

**Budget and Grants Agenda
for May 23, 2022 Judicial Council Meeting**

1. FY 2022 Year End and FY 2023 Ongoing Spend Requests Judge Kara Pettit
(Action) Karl Sweeney
Alisha Johnson

FY 2022 Year End Spend Requests Presented for Approval by Judicial Council

17. Edge Firewalls w/Increased Bandwidth Brody Arishita
18. Google Enterprise Plus Renewal Brody Arishita

FY 2023 Ongoing Spend Requests Presented for Approval by Judicial Council

5. Public Outreach Coordinator Jonathan Puente

Forecasted Available One-time Funds			#	One-time Spending Plan Requests	Current Requests	Judicial Council Prev.
	Description	Funding Type	Amount		Amount	Amount
	Sources of YE 2022 Funds					
*	Turnover Savings as of pay period ending 04/15/22 (including anticipated ARPA reimbursement)	Turnover Savings	3,482,246	1	Judicial Council Room Upgrades	39,48
**	Turnover savings Estimate for the rest of the year (\$1,750 x 432 pay hours)	Turnover Savings	756,000	2	Statewide Router Upgrades	160,000
(a)	Total Potential One Time Turnover Savings		4,238,246	3	WiFi Access Points Upgrades	120,000
				4	FY 2022 Career Ladder Payments	243,000
(b)	Operational Savings From TCE / AOC Budgets	Internal Operating Savings	890,160	5	FY 2022 Performance Bonus Payments Q1/Q2	365,000
(c)	Reserve Balance (from August Judicial Council meeting net of approved reserve uses)	Judicial Council Reserve	414,829	6	Software for Clean Slate Legislation	19,667
				7	My Case Account Creation Enhancements	130,000
	Uses of YE 2022 Funds			8	For The Record Upgrade	187,000
	Carryforward into FY 2023 (Maximum is \$3,200,000)	Desired Carryforward	(3,165,581)	9	Supplemental Secondary Language Stipend	5,200
				10	Taylorsville State Office Building AV Build-out Part 1	47,806
				11	Utah Criminal Justice Center Funding	5,000
	Total Potential One Time Savings = (a) + (b) + (c) less Carryforward		\$ 2,377,654	12	Performance Bonus Payments Q3/Q4	365,000
				13	Law Library - Delayed Subscription Payments	39,150
				14	Jury Assembly Room - Ogden	25,300
				15	SJI Grant Match for NCSC Concept Paper on Rule 26	23,050
				16	Matheson Carpeting Project	200,000
				17	Edge Firewalls w/ increased bandwidth	415,000
				18	Google Enterprise Plus Renewal	148,000
	Less: Judicial Council Requests Previously Approved		\$ (1,814,654)		Current Month One-time Spending Requests	563,000
	Less: Judicial Council Current Month Spending Requests		\$ (563,000)		Previously Approved 1x FY 2022 YE Spending Request (net of cxl'd requests)	1,814,654
	Remaining Forecasted Funds Available for FY 2022 YE Spending Requests		\$ -			

Updated 05/10/2022

* Actual turnover savings as calculated on a pay period basis through 04/15/2022. Data can be found in the Budget Summary Excel workbook on the Personnel tab.

** Actual per hour turnover savings for the last 4 pay periods (oldest to newest) are \$1,776.90, \$1,392.55, \$1,970.69, and \$1,582.12.

The average per hour turnover savings YTD is \$2,102.81. We are estimating an amount of \$1,750 per hour. As we get additional data, we will refine our estimates. These numbers do include expected ARPA reimbursements.

Many 1x hot spot bonuses were paid in the 3/18 pay period which brought its savings per hour down.

(b) This amount has been updated based on forecasts from budget managers (TCEs, AOC Directors, etc) which were received in January/February, 2022.

17. FY 2022 YE Spending Request – IT – Firewall Bandwidth Request

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2022 are to be spent between July 1, 2021 and June 30, 2022; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2022. 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, 2022.**

Date: 5/4/2022

Department or District: AOC Information Technology

Requested by: Brody Arishita

Request title: New Edge Increased Bandwidth Firewalls (includes 5-year service contract on the new servers)

Amount requested: \$ 295,000 for firewalls and 3 years of service or \$415,000 for firewalls and 5 years of service. Payment up front on either option. There are additional services and discounts in the 5 year contract. We recommend the 5 year option.

Purpose of funding request:

Replace current Cisco edge Firewalls with new Palo Alto edge firewalls, move Cisco edge firewalls to VPN firewalls and retire existing VPN firewalls which reach end of support in 2022.

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

We have two different sets of firewalls in place--the Cisco edge firewalls which protect our network and the VPN firewalls which provide VPN access when outside of the courts' network. The VPN firewalls are nearing end of life. We propose moving the current Cisco edge firewalls over to handle the VPN connections (and allow us to retire the current VPN firewalls) and replacing the Cisco edge firewalls with new the Palo Alto firewalls which have increased bandwidth capacity.

Due to the demands on bandwidth during the pandemic, IT has increased bandwidth for sites throughout the state. With all sites coming back to and going out of the Matheson internet connection, we are very close to exceeding the capacity of our Cisco edge firewalls causing a bottleneck in traffic to the internet. These new Palo Alto edge firewalls will take us from a 1GB throughput to up to 6GB of throughput. This aligns with the current 3GB internet pipe we have for Matheson and allows for future expansion up to 10GB.

In addition to increased capacity the Palo Alto edge firewalls will further improve the security posture of our network, as shown below:

"Palo Alto Networks' next-generation firewalls (NGFWs) scan all traffic, including apps, threats, and content, and associate it with the user, regardless of location or device type

Palo Alto facilitates efficient traffic scanning in a single flow. It improves each user's response time and contributes to the network's seamless operation. The most unique feature of Alto Palo is Automatic Verdict, which can recognize any threat range. It sends out immediate alerts to all subscribers who have access during a security breach.

Palo Alto's PA-5220 firewall was determined to be more cost-effective than Cisco's, with a total cost of ownership (TCO) per protected Mbps of \$7

17. FY 2022 YE Spending Request – IT – Firewall Bandwidth Request

compared to \$28 for the Cisco Firepower 2120 in recent NSS Labs testing. The Cisco Firepower's failure to block three of the 190 evasion tactics assessed by NSS contributed to the low ranking. Palo Alto also won in terms of performance."

IT has a vendor that can ship the firewalls in time to be received by June 30, 2022. These firewalls are a critical part of the fixes IT has done to increase bandwidth at the courts. If all parts of the systems that deliver increased bandwidth are not updated, we will find performance limited to the parameters of the lowest performing component.

With BFMC approval, we intend to place the firewall order – which will have a contingency clause that allow us to return the firewalls if Judicial Council approval is not received on May 23, 2022. Placing the order now will ensure delivery before June 30, 2022. We have requested an extended 5 year service contract for the Palo Alto servers – which is desirable since the price per year is less when you buy a longer service contract and there is protection against inflation increases.

These firewalls have an expected 8 – 10 year life.

Alternative funding sources, if any:

If this request is not funded through year end spending, we will need to request it through the carryforward request process.

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

Current firewalls will remain in place. VPN firewalls will still need to be replaced in FY23.

18. FY 2022 YE Spending Request – IT – Google Enterprise Plus Renewal

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2022 are to be spent between July 1, 2021 and June 30, 2022; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2022. 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, 2022.**

Date: 5/4/2022

Department or District: IT

Requested by: Brody Arishita

Request title: Google Enterprise Plus Renewal

Amount requested: \$ 148,000

One-time funds

Purpose of funding request:

Cover increased cost of Google renewal in FY 2022-2023. We will add this to our 2023 Judicial Priority request for ongoing funds for FY 2024.

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

The courts first contracted with Google in 2012. Since that time we have paid the same amount annually (approximately \$109,000) for Google licenses meaning there have been no cost increases for 10 years. Our current system is G Suite Basic which provides email and google docs/sheets/forms etc. In FY 2022, Google notified us that G Suite Basic would no longer be available and the current contract would end in July 2022 and to continue we must upgrade to G Suite Enterprise. This request will enable us to sign a new contract in FY 2022 and pay for the increased cost for 1 year of services.

Since 2019 we have been expecting a large increase in our Google contract. Our initial offer from Google increased our annual cost 4x as compared to our current amount. IT was able to partner with the State Dept. of Technology Services (DTS) pricing on a new Courts IT contract which allows us to maintain pricing that is pari passu with DTS for the final 4 years of their 5 year contract at an annual cost of only \$257,300 (135% increase instead of 400% increase) per year which is an increase of \$148,000 per year to the current contract.

The upgraded Google software contains some improvements to our existing Google software including the following additional end user features available once we migrate to Enterprise:

- User storage increases from 30GB to 5TB per user
- All Google accounts will have Vault email retention (which cost extra in the prior version)
- Shared Google Drive will now be available

We request this one-time funding for FY 2022 to renew our Google system and will solicit ongoing funds from the legislature as part of a 2023 IT Judicial Priority request to cover the annual increase for the remaining 3 years of the contract.

Alternative funding sources, if any:

None.

18. FY 2022 YE Spending Request – IT – Google Enterprise Plus Renewal

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

We will lose the ability to access our Google system (Gmail, Drive, Calendar, etc) and the back end system for digital signatures through Court eFiling will no longer be available.



FY 2023 Carryforward and Ongoing Requests - Period 10

Funding Sources

	One Time	Ongoing
Total Case Processing Amounts from 2022 General Session Fiscal Notes (to be entered prior to June 2022 BFMC Meeting)	\$ 247,900	\$ 818,200
Expected Carryforward Amount from Fiscal Year 2022 (as of 4/4/2022)	\$ 3,200,000	\$ -
Ongoing Turnover Savings (forecasted as of 5/2/2022 - funding for Hot Spot, Targeted, and Performance Raises already included)	\$ -	\$ 331,895
Total Available Funding	\$ 3,447,900	\$ 1,150,095

Ongoing Requests

		Presented		Judicial Council Approved	
		One Time	Ongoing	One Time	Ongoing
4	Clerk of Court Supplemental to JA Increase			N/A	\$ 59,000
5	Public Outreach Coordinator	N/A	\$ 120,000		
		\$ -	\$ 120,000	\$ -	\$ 59,000

One Time Requests

		Presented		Judicial Council Approved	
		One Time	Ongoing	One Time	Ongoing
		\$ -	\$ -	\$ -	\$ -

Balance Remaining After Judicial Council Approvals		\$ 3,447,900	\$ 1,091,095
Balance Remaining Inclusive of "Presented"	\$ 3,447,900	\$ 971,095	

FUTURE ANTICIPATED REQUESTS

LEGEND

Highlighted items are currently being presented to the Budget and Fiscal Management Committee.

Highlighted items have been approved by the BFMC and are currently being presented to the Judicial Council.

Highlighted items have been previously approved by the Judicial Council.

* - items have been presented and approved in prior years.

NOTE 1: BFMC approval to submit request to Judicial Council does not imply Judicial Council must approve the recommendation. If more funds than requests are received, prioritization is optional.

5. FY 2023 Ongoing Turnover Savings Spending Request – Public Outreach Coordinator

The Judicial Council approves uses of Ongoing Turnover Savings. This is a request to the Budget and Fiscal Management Committee and the Judicial Council to allocate the use of some of these Ongoing Turnover Savings for ongoing personnel needs that will be utilized in FY 2023.

Date: April 29, 2022

Department or District: AOC Office of Fairness and Accountability (“OFA”)

Requested by: Jon Puente

Request title: Ongoing Funding for Public Outreach Coordinator

Amount requested: **One-time \$** N/A

Ongoing \$ 120,000

Purpose of funding request: To fund the Public Outreach Coordinator position with Court-funded ongoing turnover savings. This position has been filled by Valeria Jimenez since May 2021 and is currently funded with Legislature-funded 1x general funds for FY 2022.

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

See attached 2022 Judicial Priority request which was submitted for the 2022 legislative session but not funded.

See attached June 2021- April 2022 Public outreach data.

Alternative funding sources, if any:

Continued use of 1x funds from the Courts carryforward funds.

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

This position is critical to the success of the OFA. Not only may we face retention issues with the incumbent person if we do not fund this position with ongoing funds but we may seriously damage the trust and confidence we are building with historically marginalized communities. By not funding this position, we cast doubts on our good faith efforts in our community engagement with these groups. Not funding this position sends a message that efforts and engagement with these communities is not a priority to the Courts. Due to her excellent work, the incumbent has become in many instances the only trusted point of contact these communities have with the Courts. Not funding this role would be incredibly detrimental not only to Courts outreach efforts but its very mission.



GOVERNOR'S OFFICE OF Planning & Budget

FY 2022 / FY 2023 Budget Request

Agency: JUDICIAL BRANCH (courts)
Request Title: Public Outreach Coordinator
Request Priority: 3

Amount Requested:

FY 2022 One-time	FY 2023 One-time	FY 2023 Ongoing	Total Request
\$0	\$0	\$120,000	\$120,000

Funding Sources*:

* Additional details on funding sources, timing, and appropriation units will be provided in [Budget Prep](#).
A different form should be submitted for American Rescue Plan Act (ARPA) funding requests.

Background & Budgetary Details

Name and describe the project or program that will utilize the requested resources.

The Office of Fairness and Accountability is requesting ongoing funding for 1 FTE to continue providing support for public outreach and education in all of Utah's communities. This need has been amplified due to the COVID-19 pandemic and its future impact in years to come. The Legislature provided 1x funding for this position in the FY 2022 budget appropriation.

Summarize the current budget for the project or program that is being funded. If this is a new project or program, please summarize resources that are available for like-objectives within the agency.

The current ongoing general fund budget for the Office of Fairness and Accountability is \$180,000. This position is currently only funded 1x for FY 2022.

What problem would be solved with additional funding? What has been done or considered to address this problem with existing resources (including non-General Fund and Education Fund resources if this is a General Fund/Education Fund request) instead of requesting this additional funding? What were the results, including any efficiencies or savings that were identified and have been or could be redirected?

The problem that would be resolved with additional funding will be the distrust from historically marginalized communities towards the Courts. The impact of the Public Outreach Coordinator position (which was filled using 1x funds) was immediately felt as community organizations, the Court had not engaged with in years, saw the establishment of the Public Outreach Coordinator and of the Office of Fairness and Accountability as good-faith effort by the Courts to genuinely engage them and establish a relationship in which historically marginalized communities

can gain trust and confidence in the Courts. This trust and confidence create legitimacy in the Courts, which has not always been felt in historically marginalized communities.

Provide an itemized budget, including revenue and expenditure sources, for how the funding will be utilized.

The \$120,000 in ongoing general funding would be used as follows:

\$90,000 – personnel

\$30,000 – current expenses and travel

Creating Value

What value will these additional resources create for Utah and how will that value be measured?

Funding this position on-going will have the following effects:

- The coordinator will continue to open new fields of outreach that will inform and improve on court services and increase public trust and confidence in the courts. The Public Outreach Coordinator is helping to create outreach programs that provide training to community case workers, establishing working relationships within marginalized communities, and creating events tailored to the needs of those communities. The coordinator is also acting as an education resource for schools at all levels. The coordinator will work with educators to create a formalized educational experience about the Judiciary by providing mock trial materials, worksheets about the courts, coordinate judicial speakers and tours well-timed with a school's curriculum.
- Funding the Public Outreach Coordinator on-going shows the public (particularly historically marginalized communities) that the courts are not only serious about engaging them but they are genuinely trying to build trust and confidence. It shows that the Courts are being intentional and purposeful in closing any access to justice gap that affects these communities.

Outreach results will be included in regular reporting to the Judicial Council through the Office of Fairness and Accountability.

Please provide details and sources on any research or analysis that supports the evidence-basis for this request or the associated program (e.g., cost benefit analysis, program evaluation, results from pilot program, etc.).

In a paper published by the National Center for State Courts researchers showed how community outreach and engagement is crucial for courts to gain the trust of marginalized communities.

https://www.ncsc.org/_data/assets/pdf_file/0023/51719/Court-Outreach-to-Minority-Communities-Rottman.pdf

As the Utah Courts try to engage and build trust with marginalized communities, the Public Outreach Coordinator is and will continue to be crucial in these efforts.

Is this request related to an effort to streamline, modernize, or innovate state government? If so, please describe how this request furthers those efforts.

A number of state courts have recently started similar types of public outreach roles. "To educate the public, the courts have instituted community outreach programs. These outreach and educational activities are necessary considering that trust by the American public in the judiciary has declined since the 1970s." *Civic Education in the Twenty-First Century: A Multidimensional Inquiry* (ed. Rogers pg 189). These new and innovative positions are being started to stem the tide of misinformation and distrust in the courts as well as building trust with historically marginalized communities. Having the Public Outreach Coordinator funded ongoing is an effort to modernize/update Utah's third branch of government.

Strategic Planning, Coordination & Thinking Outside the Budget Window

What is the statewide purpose of the project or program funded by this request? How does the request align with the agency's core mission?

The mission of the courts is to provide an open, fair, efficient and independent system for the advancement of justice under the law. Public Trust and Confidence surveys as well as feedback the OFA has received from community based organizations show that there is a perception of bias felt by members of historically marginalized communities from the courts towards them. This perception of bias creates a lack of trust in the courts as an institution and in the judicial system as a whole. The courts cannot meet their mission to be open and fair when communities in the state distrust them, don't know how they function, and sometimes even fear them. As the Public Outreach Coordinator engages these historically marginalized communities through outreach and education it helps the courts meet its mission to be open, fair, efficient and independent. The Public Outreach Coordinator will work with historically marginalized communities throughout the state.

Please provide statutory references that allow or require the activity for which funding is requested and indicate if this request requires any statute changes.

Utah Constitution, Article V, Section 1 and Article VIII, Section 12.

Utah Code, Title 78A, Title 78B, and Title 80.

No statutory changes are necessary in connection with this request.

Which other agencies or stakeholders have you coordinated with during the development of this request? Please describe why this activity should be executed by the requesting agency and not a different agency, local government entity or third party.

This request has been presented and approved by the boards of district, and juvenile courts, the judiciary's Budget & Fiscal Management Committee, and the Judicial Council. Due to the nature of this request no other agency or government entity should make this request.

Are there any future funding obligations (operations and maintenance, multi-year scale up, etc.) created by this request?

None.

What are the long term funding or policy needs for this project or program outside the current budget window of two years? How should the state prepare to address those longer-term needs?

This is an ongoing funding request and will continue past the 2 year budget window.

Expanding Access and Opportunity

Which populations or geographic areas will benefit most from this request (e.g., users of a new state park, those eligible for enrollment in a given social service program, rural or urban communities, or all Utahns)?

Historically marginalized communities all throughout the state will benefit most from this request.

What safeguards will be implemented to prevent inequities or other unintended distributional consequences as it relates to this request?

This request is being made to prevent any further inequities in the courts.

June 2021 – April 2022 Public outreach data

Outreach events/meetings	Quantity
Judicial school visits	50
Community-based organization meetings	62
Court tours	1
Judicial community speaking events	3
Community presentations & workshops	13
Community member calls/emails received	18
Outreach tabling events*	17

**In only 10 months, the Public Outreach Coordinator tabled at 17 community events whereas the Courts within 17 months participated in 19 community events. These events provide an opportunity to meet with members of the public and answer general questions about court and its services.*

Tab 7

Agenda



Administrative Office of the Courts

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

May 11, 2022

Ronald Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee / Judicial Council
FROM: Keisa Williams
RE: Rules for Final Approval

Following a 45-day comment period, Policy and Planning recommends that the following rules be approved as final with a **November 1, 2022 effective date**:

CJA 3-421. WINGS Committee. (NEW)

Outlines the roles and responsibilities of the new Standing Committee on Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

CJA 4-903. Uniform custody evaluations. (AMEND)

Limits the circumstances under which a custody evaluation can be ordered, outlines the training requirements of those who conduct custody evaluations, and shortens the time period in which a party must request a custody evaluation from 45 days to 28 days after the custody evaluation conference.

CJA 6-104. Water law judges. (NEW)

New rule creating designated water judges in district court to handle cases involving water law and the adjudication of water rights.

Rule 6-104 received four (4) public comments and Judge Appleby submitted a memo outlining her recommendations in response to the comments (attached). After careful consideration, Policy and Planning changed “publish” to “post” in subsection (5) to remedy concerns about the precedential impact of water judge decisions on issues of first impression. Rule 6-104 is modeled after [6-103](#), the district court tax judge rule. Like the tax judge rule, rule 6-104 does not make any changes to venue principles and does not require or prohibit the reassignment of existing water law cases.

Several recommendations from commenters would have significantly expanded the scope of the rule, resulting in an unfunded fiscal impact and potential legislative changes that would delay the appointment of water law-trained judges. Policy and Planning recommends that the Judicial Council form an ad hoc committee one year after the adoption of rule 6-104 to evaluate how the

**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 has been implemented and to recommend amendments. Water law stakeholders should be invited to serve as members of the committee.

Policy and Planning recommends that the following rules be approved on an expedited basis with a **May 25, 2022 effective date**, followed by a 45-day public comment period:

CJA 4-508. Guidelines for ruling on a motion to waive fees. (AMEND)

The proposed amendments are in response to [S.B. 87](#), effective May 4, 2022. Among other things, SB 87 amends provisions regarding affidavits of indigency and requires a court to find an individual indigent under certain circumstances.

CJA 1-204. Executive committees. (AMEND)

CJA 1-205. Standing and Ad Hoc Committees. (AMEND)

Creates a Standing Committee on Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Per the Judicial Council’s direction, Policy and Planning will be renamed the “Policy, Planning, and Technology Committee.” In addition to its current responsibilities, the committee will now review and recommend technology policies and priorities. The Standing Technology Committee will be dissolved.

**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 3-421. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Intent:

To establish a committee of stakeholders from various disciplines to improve the state's guardianship and conservatorship services and processes.

Applicability:

This rule shall apply to all members of the WINGS committee.

Statement of the Rule:

(1) The WINGS committee shall provide leadership to identify the needs in guardianship and conservatorship matters and to secure and coordinate resources to meet those needs.

(2) The WINGS committee shall:

(2)(A) assess available services, forms, and rules for guardianship and conservatorship and gaps in those services, forms, and rules;

(2)(B) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving guardianship and conservatorship processes;

(2)(C) support policy initiatives for the enhancement of guardianship, conservatorship, and related infrastructure;

(2)(D) identify and develop education and outreach opportunities regarding guardianships, conservatorships, and their alternatives;

(2)(E) provide training and support to those engaging the guardianship/conservatorship system;

(2)(F) promote high standards for guardians and conservators;

(2)(G) promote collaboration between WINGS members and other stakeholders;

(2)(H) regularly evaluate the needs and priorities of WINGS's efforts; and

(2)(I) strive to maintain interdisciplinary representation of members drawn from the organizations, entities, and individuals related to guardianship and conservatorship matters.

(3) **Chair.** The Chair of WINGS shall be a Utah District Court judge.

(4) **Executive Committee.** The WINGS Executive Committee shall consist of the Utah WINGS chair, the GRAMP Coordinator, the Court Visitor Program Coordinator, a staff attorney from the

Administrative Office of the Courts, and up to three members of Utah WINGS, as determined by the chair.

(5) **Community stakeholders.** One of the purposes of WINGS is to receive input from community stakeholder organizations. Community stakeholder organizational representatives (Rule 1-205(1)(B)(xv)(b)) will be designated by their organizations and not subject to the term limitations of Rule 1-205(3)(B).

Effective November 1, 2022

Rule 4-903. Uniform custody evaluations.**Intent:**

To establish uniform guidelines for the performance of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

~~(1) Custody evaluations shall be performed by professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a:~~

~~(1)(A) Licensed Clinical Social Worker;~~

~~(1)(B) Licensed Psychologist;~~

~~(1)(C) Licensed Physician who is board certified in psychiatry;~~

~~(1)(D) Licensed Marriage and Family Therapist; or~~

~~(1)(E) Licensed Clinical Mental Health Counselor.~~

(14) The purpose of the a custody evaluation will be is to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the a child's best interest. Unless otherwise specified in the order, evaluators must consider and respond to the custody factors set forth in Utah Code sections 30-3-10 and 30-3-10.2.

(2) Custody evaluations shall be ordered only when a party requests it or when the court makes specific findings that extraordinary circumstances exist that warrant an evaluation. In either case, before appointing a custody evaluator, the court must find that the parties have a present ability to pay for the evaluation.

(32) Every motion or stipulation for the performance of a custody evaluation shall include:

(32)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(32)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(32)(C) specific factors, if any, to be addressed in the evaluation; and-

(3)(D) a copy of each proposed evaluator's recent curriculum vitae attached as exhibits
The curriculum vitae must demonstrate compliance with the training
requirements in paragraph (7).

(43) Every order requiring the performance of a custody evaluation shall:

(43)(A) require the parties to cooperate as requested by the evaluator;

(43)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(43)(C) assign responsibility for payment from the beginning of the evaluation through the custody evaluation conference, as well as the costs of the written report, if requested subject to reallocation at the time of trial;

(43)(D) specify dates for commencement and completion of the evaluation;

(43)(E) specify any additional factors to be addressed in the evaluation;

(43)(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion (of information-gathering) or termination of the evaluation and, if terminated, the reason;

(43)(G) require counsel and parties to complete a custody evaluation conference with the court and the evaluator within 45 days of notice of completion (of information gathering) or termination unless otherwise directed by the court so that evaluator may issue a verbal report; and

(43)(H) require that any party wanting a written custody evaluation report give written notice to the evaluator within 45-28 days after the custody evaluation conference.
The party requesting the written report shall pay for the costs of the same,
subject to reallocation at the time of trial.

~~(4) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. Unless otherwise specified in the order, evaluators must consider and respond to the custody factors set forth in Utah Code sections 30-3-10 and 30-3-10.2.~~

(54) Custody evaluations shall be performed by mental health professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a:

(54)(A) Licensed Clinical Social Worker;

(54)(B) Licensed Psychologist;

(54)(C) Licensed Physician who is board certified in psychiatry;

(54)(D) Licensed Marriage and Family Therapist; or

(54)(E) Licensed Clinical Mental Health Counselor.

(6) Child custody evaluators shall gain and maintain specialized knowledge and training in a wide range of topics specifically related to child custody work. Evaluators shall gain broad knowledge of family dynamics. Since research and laws pertaining to the field of divorce or separation and child custody are continually changing and advancing, child custody evaluators shall secure ongoing specialized training and education.

(7) Before accepting appointment, a child custody evaluator shall have completed 18 hours of education and training within the past two years, coinciding with the professional's licensure reporting deadlines, which must include all the following topics:

(7)(A) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and parent-time;

(7)(B) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships; and

(7)(C) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults.

(85) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(9) Evaluators having conducted fewer than three (3) evaluations shall consult with another professional who meets the education, experience, and training requirements of this rule, sufficient to review, instruct, and comment on the entire evaluation process.

(106) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. ~~If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.~~ The evaluator shall consider the psychological testing results with the understanding that they are hypotheses that need to be supported by and integrated with all other data gathered.

Effective November 1, 2022~~19~~

Rule 6-104. District court water judges**Intent:**

To designate certain district court judges as water judges.

To establish a procedure whereby district court water cases are heard by designated water judges.

To designate a supervising water judge.

Applicability:

This rule shall apply to district court judges.

Statement of the Rule:

(1) **Council Designation.** The Judicial Council shall formally designate at least three district court judges who volunteer as water judges. In making the designation, the Judicial Council shall consider the knowledge and experience of the judge in relation to cases involving the adjudication of water rights, or the willingness of that judge to become familiar with this area of the law.

(2) **Request for Assignment.** If a party to an action filed under Utah Code Title 73, Chapter 3 or Chapter 4 makes a request, as part of the complaint or first responsive pleading, to have the case assigned to a water judge, the case will be assigned to a water judge. Thereafter, a request to have the case assigned to a water judge may be granted in the discretion of the judge assigned to the case. Additionally, a party may request that a non-Chapter 3 or Chapter 4 case be assigned to a water judge. Non-Chapter 3 or 4 cases will be reviewed and assigned by the supervising water judge if the case is of sufficient legal complexity as related to water law to warrant assignment to a water judge.

(3) **Assignments.** Assignment of cases involving water law to a water judge shall be made on a random basis. Assignment may include an adjustment in the judge's calendar to allow the judge to handle the case.

(4) **Supervising Water Judge.** The water judges shall elect one of the water judges to be the supervising water judge. The term of office of the supervising water judge is two years beginning July 1. The supervising water judge shall be primarily responsible for:

(4)(A) the assignment of water law cases to water judges;

(4)(B) the coordination of schedules of water judges and the assignment of courtrooms and facilities in conjunction with the state court administrator and the presiding judge of each district court;

44 (4)(C) addressing concerns of water judges, other district court judges, or the Judicial
45 Council regarding the management of district court water law cases;

46
47 (4)(D) overseeing the water law education of the water judges, in conjunction with the
48 Standing Committee on Judicial Branch Education and the Utah Judicial Institute;

49
50 (4)(E) presiding over meetings of the water judges;

51
52 (4)(F) the use of law clerk resources to develop water expertise, to assist the water
53 judges, and to facilitate consistency in the development of case precedents in the water
54 law area and otherwise assist in the transition as new water judges are designated; and

55
56 (4)(G) coordinating with the water judge's presiding judge regarding any appropriate
57 adjustments to the water judge's caseload.

58
59 (5) **Posting Decisions.** If a water judge decides a water law case of first impression, the water
60 judge shall cause the decision to be posted. A decision need not be posted where the case
61 deals with settled rules of law.

62
63 (6) **Term.** Water judges shall serve only so long as they are district court judges. Water judges
64 may, however, resign as water judges, at their own request or the request of the Judicial
65 Council, while still serving as district court judges.

66
67 (7) **Caseload.** If a water judge does not have a full workload of water law cases, the judge shall
68 hear non-water law district court cases to maintain a full workload of cases.

69
70 (8) **Venue.** Nothing in this rule affects venue.

71
72 *Effective November 1, 2022*

MEMORANDUM re: PROPOSED CJA RULE 6-104

To: Policy and Planning Committee
From: Senior Judge Kate Appleby
Date: April 29, 2022
Re: Responses to Comments Posted to Proposed Rule 6-104

The Policy and Planning Committee's subcommittee drafted proposed Rule 6-104 to create a mechanism by which a volunteer group of judges willing to be assigned water law cases could develop the necessary expertise and have appropriate cases assigned to them. The proposed rule is based upon the long-established District Court Tax Judges Rule (Rule 6-103), and is intended to address the pressing need, given the complexity and importance of some types of water law cases, for cultivating judicial proficiency in water law without requiring a substantial commitment of resources or the substantive restructuring of our District Courts to create a water court. Establishing a water court is an ambitious and lengthy endeavor, and it would require legislative support in the form of statutory changes and the commitment of significant financial resources. The Judicial Council and water law stakeholders may be interested in seeking to establish a water court, but that is not what the proposed rule is intended to accomplish: it is a modest attempt to quickly improve the existing system with better training for volunteer judges, and a means of assigning to those judges certain types of water law cases.

Proposed Rule 6-104 was posted for public comment, and four comments were submitted before the April 28, 2022 deadline: from a law firm with water-related practice (SCM); from the Utah Water Task Force (UWTF); from the Attorney General's Office in its capacity as counsel for the Utah State Engineer (SE); from Dave Decker (DD). All comments favor the concept of designating water judges and of the proposed rule. The commenters continued with specific concerns, comments, and suggestions. Because these are similar and focus on the same themes, I address them by category. The proposed rule already covers some of what's being suggested; in other cases, the suggestions are not addressed by the rule and the Committee could adjust the proposed language; some of the suggestions, if adopted, would make it difficult to develop a pool of volunteer judges; and finally, some of the suggestions bear consideration but delaying the implementation of the proposed rule would be unwise. Instead, the rule could be adjusted as we learn more after its implementation.

The Proposed Rule Already Covers Some of the Suggestions

The commenters suggest that the Council designate more than three judges as water judges. The proposed rule calls for the Council to designate "at least three district court judges who volunteer as water judges." The "at least three" language is a floor, not a ceiling; it's modeled on the Tax Judges Rule. At present there are six designated tax judges, and if more qualified judges were to volunteer, I assume they would be designated. The greater concern is

that we won't get even three judges to volunteer to be designated as water judges, and the Council has no authority to compel them to.

UWTF notes a concern that if a water judge must be removed from a case, "there must be a sufficient pool of other water judges" to take the case. It would be nice to think there will be enough volunteer judges to make this possible, but the reality is that the case may need to be reassigned to a judge who has not volunteered to receive special training. In that event, a party is no worse off than if the case had been assigned to a judge with no water law education, as is the case now without the adoption of the proposed rule.

The Proposed Rule Could Be Amended to Take Account of Some of the Suggestions

SCM suggests "requiring the availability of remote, virtual proceedings or that the assigned judge travel to the district in which the case was filed." From a practical standpoint, the suggestion is easily accommodated now that the courts have the capacity for remote hearings and parties are accustomed to appearing that way. District court judges have long had the discretion to allow this, though, and I don't think the proposed rule differs from other types of proceedings in which the exercise of this discretion would be a good thing.

Every comment raised concerns about the proposed rule's provision for "publishing opinions." The concern seems to be that practitioners will have the impression that publishing the "opinion" means that it has "precedential value." This part of the proposed rule was based upon the Tax Judges Rule, and I am unaware of any problems in those cases along the lines raised here. At present, only a handful of tax decisions have been posted on the courts' website (the last one was in 2018), and I doubt that knowledgeable practitioners will think a district court decision available on the courts' website creates precedent. If the Committee prefers, the language could be edited to substitute the word "posted" for "published." Similarly, the word "opinion" could be replaced by "decision" or "ruling", as UWTF and the SE suggest. I urge the Committee to consider whether substituting these words and being explicit about whether a district court's ruling is binding is consistent with current general practice and applicable law. UWTF also asks how and where publication takes place, and we could be transparent about it, although the Tax Judges Rule is not explicit about it, either. If the Committee thinks it wise to make these adjustments, it should consider similar adjustments in other contexts bearing in mind the potential for unintended consequences.

Some of the comments suggest a concern that existing adjudications might be transferred to a water judge after years of active litigation. This could only happen upon request and "in the discretion of the judge assigned to the case." It is difficult to imagine a scenario in which a judge assigned for some years to, for example, an active general stream adjudication, would grant a request to transfer the case, but the rule could be amended to circumscribe a judge's discretion. Another word of caution though: a long-dormant case when it becomes active might be better transferred to a judge with water training rather than remaining with a judge to whom it was assigned during its dormancy.

Suggestions That Will Make the Concept Difficult to Realize

SCM suggests that “the designation include a public comment process similar to that used for the appointment of judges,” “given the substantial, important role the water judges will play in developing this area of the law.” In my view, this argument could be made concerning judges assigned to many kinds of cases, including tax cases, but setting that aside, it seems unwise if we hope to encourage volunteers who have already been through a public comment process to become judges in the first place. The Council is in a position to evaluate “the knowledge and experience of the judge in relation to cases involving the adjudication of water rights, or the willingness of that judge to become familiar with this area of the law,” and that ought to be enough, as it is with judges who volunteer to take tax cases.

Suggestions That May Warrant Further Consideration, But Not at the Expense of Delay

SCM suggests that mandatory assignment of water cases “be broadened to include all of Title 73, which is the entire Utah Water Code.” The drafting subcommittee considered that approach but rejected it as overbroad: although a number of case types determine water rights such as those identified by SCM, many of these do not require the special expertise we hope to cultivate by adopting the proposed rule. Nevertheless, a party may request that cases outside Chapters 3 and 4 be assigned to a water judge “if the case is of sufficient complexity as related to water law.” If a party made that request, the supervising judge would decide whether assignment to a water law judge is warranted. Although SCM’s suggestion may warrant further consideration, the subcommittee contemplated that adjustment to the designated statutory origination of the case could be made in the future if experience with the cases warrants it.

The proposed rule states that assignments “shall be made on a random basis.” UWTF questions whether assignments should be random, and suggests that other criteria might control, such as using the same judge to address litigation involving “a river drainage, rather than based on the boundaries of a judicial district.” This makes sense, although in practical terms, this is what happens with stream adjudications. The committee might consider making this explicit. Related to this is UWTF’s suggestion that venue continue at the water source point of diversion. If proceedings can be conducted remotely, I do not see this as a burden on the judges undertaking these cases or to the litigants who appear before them.

UWTF and the SE propose appointing a drafting committee; this could be done now, but it will delay implementing a rule that is arguably overdue given the urgency of determining these important cases with the best-educated judges possible. A committee perspective could be useful in fine-tuning the approach we’ve taken here, which has worked well in the Tax

Judges context, but the proposed rule, should it be adopted, may need adjustment as we learn more after its implementation. I suggest as an alternative that the Policy and Planning Committee proceed with recommending adoption by the Council of the proposed rule with the anticipation of amending it in future. An alternative is implementation of the proposed rule followed by establishing a committee of stakeholders to work with the courts in considering whether to propose legislation, with appropriate funding, to establish a water law court. This would be a serious, long-term endeavor, but in the meantime, Utah would be well-served by having better educated judges consider water law cases. The proposed rule accomplishes that.

The SE suggests that the rule state that a Special Master can continue in his present assignment, and that water judges can assign a special master. Nothing in the proposed rule precludes this, but the rule could be adjusted to make it explicit. I see no urgency in addressing this now.

Conclusion

The commenters generally support the concept proposed in this rule, and stress the importance of this issue to our State. (SCM: “this is an idea whose time has come;” UWTF: its members have “long supported the concept . . . to maintain and enhance both Utah water common law and statutory cases,” and “[w]ater issues will only become more critical and new significant matters will emerge”; the SE “supports the Judicial Council’s interest in designating water law judges in Utah.”). Their suggestions may help the Committee and the Council fine-tune the existing proposed rule—modeled upon the longstanding Tax Judges Rule—but I urge both bodies to avoid delay in moving this important but modest initiative forward. It is a tool that will efficiently and inexpensively improve the status quo.

**CJA Rule 6-104
Public Comments**

Sarah Shechter

April 28, 2022 at 2:35 pm

To: Utah Judicial Counsel

From: Norman Johnson, Gordon Rowe, and Sarah Shechter, Assistant Attorneys General, Counsel for the Utah State Engineer

RE: Utah State Engineer's Comments Regarding CJA06-0104 – Water Law Judges

INTRODUCTION

The State Engineer appreciates the opportunity to review and comment on the proposed amendments to Rule 6-104 of the Code of Judicial Administration, which would designate certain district court judges as water judges and establish procedures for the water judges to handle cases involving water rights. As the State water rights administrator and the Director of the Utah Division of Water Rights, the State Engineer has a statutory duty to participate in actions brought under Utah Code Title 73, Chapters 3 and 4, as well as other water rights disputes brought before the Utah courts. Due to her critical role in the water rights cases contemplated by the proposed rule, the State Engineer has a unique and important interest in the potential designation of water law judges and their administration.

The State Engineer supports the Judicial Council's interest in designating water law judges in Utah. However, the State Engineer humbly suggests that the proposed rule could be more beneficial to the litigants as well as water users throughout the state with certain modifications, clarifications, and additional stakeholder input. The State Engineer specifically suggest the following items for the Judicial Council to consider:

1. Additional stakeholder involvement in drafting the proposed rule

During the April 13, 2022, meeting of the Utah Executive Water Task Force, the body passed a motion recognizing general support for the proposed rule and requesting the formation of a committee of stakeholders to help the Council develop the rule designating water law judges. Though not a member, the State Engineer supports Task Force's motion. She believes that a committee of stakeholders could assist the Council in creating a rule that would benefit the courts as well as the Utah water law community.

2. Designation of Water Judges

As the Council is aware, the State Engineer has initiated general adjudications in all fifteen (15) of the river drainage systems in Utah. Twelve of those adjudications remain pending in district courts around the state. The State Engineer is concerned about transferring these adjudications out of their current venues. The State Engineer agrees with the Council that designating a water judge to hear the adjudications would be

beneficial; however, she believes that each of the designated water judges should sit in the judicial districts in which the adjudications have been initiated. As currently formulated, Section (1) of the proposed rule does not specify which venues the water law judges would preside over. If each water judge could hear a case from any part of the state, the State Engineer reiterates her comments stated above about the general adjudications. In addition, the State Engineer is concerned that litigants would incur greater costs if they have to travel to a distant part of the state.

The State Engineer has similar concerns for de novo review cases brought under Utah Code Title 73, Chapter 3. Currently, appeals from administrative orders of the State Engineer are entitled to de novo review in the local district court. These cases involve participation from local water users and the State Engineer's regional offices. The State Engineer is concerned that if there are only three water law judges across all of the state's district courts, the parties in these de novo review cases would be required to travel throughout the state to participate in the cases.

Accordingly, the State Engineer recommends that the Judicial Council designate one water judge in each of the districts. For general adjudications, a single water judge could preside over all adjudications in their district. As an example, the First District has two pending adjudications – the Bear River adjudication and the Western Box Elder adjudication. The Judicial Council could designate single water judge for the First District, who would preside over both adjudications. In addition to allaying concerns about cases pending in geographically distant venues, this approach would also mirror the approach taken in Colorado of designating water judges by river basin. The Colorado system allows for the water judges to develop knowledge of regional issues and consistently apply the law throughout the entire drainage.

3. Effect on the Role of the Special Master in Water Rights General Adjudications

The two most active general adjudications pending in the state—the Utah Lake and Jordan River adjudication and the Virgin River adjudication—have been assigned to a Special Master to help handle objections to lists of unclaimed rights and proposed determinations. The State Engineer believes that the Special Master has been very effective in increasing the efficiency of these portions of water rights general adjudications. While the proposed rule does not contemplate removing the Special Master from his assignments, the State Engineer would prefer if the rule specifically stated that the Special Master could continue in his current assignment and that the water judges presiding over other adjudications could assign a special master.

4. Publishing Opinions

Section (5) of the proposed rule requires certain water law opinions to be published. This rule should be revised to clarify what types of “opinions” are to be published. The terminology in this rule is somewhat confusing as district court rulings are typically described as decisions, orders, or decrees. Additionally, the proposed rule should be modified to clarify what precedential value, if any, these decisions carry. The rule

contemplates the ability of a district court judge to “create new law,” which seems to imply that their decisions could carry precedential value. The State Engineer requests that the rule be modified to establish that a decision of a district court is not binding on any other court and only carries persuasive value.

Dave Decker

April 28, 2022 at 6:09 pm

I am generally supportive of the creation of water judges as currently outlined. Having judges with specific knowledge of water concepts and the associated law are generally helpful. However, care should be taken to protect the current process with adjudications and current level of review and opinions of the State Engineer’s office. While the legal process has an appropriate role in water and water rights, the involvement, review, and opinion of the State Engineer, in it’s current role and process, is important to maintain.

The assignment of these judges should be random and the process of assignments must maintain a neutral, equal-footing for all parties involved. Having only one judge, as the only option in a water basin or specific area of the state, should be avoided.

There are a number of questions related to publishing opinions which must be clarified in the current draft. The Utah Water Task Force members may be a good source to provide clarification language and to distinguish the potential precedent an opinion may set.

From: Utah Water Task Force

To: Utah Supreme Court and Utah Judicial Council

Date: April 27, 2022

Re: Comments to proposed rule for water law judges – CJA06-0104

The Utah Water Task Force supports the designation of district court water judges and respectfully submits its comments. Members of the task force have long supported the concept of appointing district court water judges to maintain and enhance both Utah water common law and statutory cases.

The Task Force was organized under the auspices of the Utah Department of Natural Resources in 2008 as a body that analyzes state-wide water challenges and issues brought before it. The Task Force initiates and drafts proposed water legislation, and also reviews proposed water legislation brought to it by members of the Utah Legislature to provide recommendations. In addition, given the broad representation of interests represented on the task force, it assists in developing water policy and consensus solutions that consider the wide spectrum of interests represented by the task force members and the task force executive branch co-chairs. Please see the task force membership roster appended below. Task force projects and discussions are not limited to the members listed. Any interested person or organization is granted opportunity to participate in task force work committees and meetings, thus providing the benefit of diverse stakeholder engagement.

The Task Force respectfully submits these specific comments to the proposed rule. This is not an exhaustive list describing all concerns raised by task force participants, but represent issues highlighted during the meeting, on April 13, 2022, of the Utah Water Task Force and which task force members and public participants expressed consensus. The Task Force also proposes the Judicial Council appoint a drafting committee to address certain matters raised in the comments and other items that may arise which require further thought and discussion.

- (1) Council Designation. The knowledge and experience of judges to be considered for appointment as water judges are tied to “cases involving the adjudication of water rights.” To broaden the types of cases described elsewhere in the Rule, the task force recommends changing the proposed rule to read “cases involving water law, including the adjudication of water rights.” The Task Force suggests for your consideration that three district court water judges may not be sufficient for addressing water cases throughout the state. Please see our comment under (3)(a).

(2) Request for Assignment. The proposed rule states that if a party in a Title 73, Chapter 4 general determination of water rights proceeding requests to have the case assigned to a water judge, the case will be so assigned. There is concern that numerous general determination cases have been pending for years before various district court judges across the state. In some instances, assignment of the pending general adjudication cases, or new filings in such cases, should remain with those judges because of their case knowledge regardless of whether they volunteer to be water judges.

(3) Assignments.

- a. There are various factors and criteria that should be considered. For example, should it always be a random assignment from the total pool of water judges, or should other criteria be controlling in certain circumstances, such as designating a water judge, along with an alternate water judge, to all cases within a certain water drainage basin? Most drainage basins have controlling decrees and other circumstances that are unique to the basin. Having one judge interpreting the same decree(s) could lead to more consistent rulings. This would also allow an assigned judge to develop familiarity with the unique basin hydrology and the appropriation and distribution of water within the basin. River drainage basins often travers several judicial districts, and for that reason, it may make sense to appoint judges to the position of water judges on a river basin basis rather than based on the boundaries of a judicial district.
- b. The general venue rule for water cases should likely continue to be where the water source point of diversion is located. This minimizes the travel burden on the parties. This may require assigned judges to travel to a different district than where the judge resides for matters requiring in-person proceedings.
- c. If the need arises to seek removal of a water judge assigned to a case, there must be a sufficient pool of other water judges available from which to assign a new water judge.

(4) Supervising Water Judge. No specific comments.

(5) Publishing Opinions. This section has raised numerous questions and concerns, as follows:

- a. Rather than an “opinion,” are they better termed “rulings” or “decisions,” or is the contemplated opinion something in addition to or separate from typical district court rulings or decisions?
- b. Who determines and how is it determined that a water law case warrants an opinion?
- c. A definition of “opinion” is needed.
- d. How and where is a district court water judge’s opinion published?
- e. Does a district court water case opinion have any precedential value or force outside the given case? If so, what is the scope of the precedent?
- f. May non-parties potentially affected by any precedent be given an opportunity to intervene or otherwise participate?

Again, the Utah Water Task Force fully supports the appointment of district court water judges. Water issues will only become more critical and new significant matters will emerge. We support the Supreme Court and Judicial Council’s efforts. The Task Force desires that the adopted rules sufficiently address the unique nature of Utah water cases. We recommend that a water judge rule drafting committee be appointed before the proposed rule is adopted to advise on these issues and others that may arise during the rulemaking process. The task force offers the assistance of its members to serve on the drafting committee, if so requested.

Respectfully Submitted,

UTAH WATER TASK FORCE

A handwritten signature in dark ink, appearing to read "Brian C. Steed", is written over a horizontal line.

Brian C. Steed, Co-Chair and

Executive Director of the Utah Department of Natural Resources

UTAH WATER TASK FORCE

March 2022

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Dave Ure,
SITLA, Director (Retired)

April 27, 2022

Via e-mail and on-line submission

Utah Judicial Council

**RE: Comments re: [Proposed] CJA Rule 6-104. District Court
Water Judges (Draft 1/5/22)**

Dear Judicial Council Members:

On behalf of Snow, Christensen & Martineau (SCM), we offer the following comments to the above-referenced proposed rule. SCM enjoys a long-standing and diverse collection of water-related clients and holds itself out as a leader in Utah water law and practice. As part of its water-related practice, SCM is very involved in matters of policy and legislation – consistently participating in the Utah Water Task Force and numerous legislative and bar committees and organizations. We appreciate the opportunity to comment on this proposed rule.

Generally, we are very supportive of the concept of water judges, and this proposed rule. We believe this is an idea whose time has come. As such, we urge the rule's adoption and look forward to the installation of water judges and our practice before them.

However, we offer a few conceptual suggestions that we ask guide some limited changes to the proposed rule.

6-104 (1) Council Designation. We suggest that more than three judges be designated statewide. Specifically, we suggest that the Judicial Council formally designate at least six district court judges. We additionally suggest that the designation include a public comment process similar to that used for the appointment of judges, while ensuring confidentiality for those providing comments. We believe the opportunity for public comment is important given the substantial, important role the water judges will play in developing this area of the law.

6-104(2) Request for Assignment. We agree with the concept that actions involving chapters 3 and 4 of Title 73 should be assigned to the sitting district water judge. However, we suggest that the scope of mandatory assignment be broadened to include all of Title 73, which is the entire Utah Water Code. More specifically, there are other chapters of Title 73 that would likely be better applied by a water judge – e.g., chapters 1 and 5 that include, among other things water right forfeiture claims, canal/ditch interference, and diligence claims, respectively. All of these are relatively common topics found in water litigation.

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Utah Judicial Counsel
April 26, 2022
Page 2

We also suggest that it be clear the proposed rule does not affect Rule 63A of the Utah Rules of Civil Procedure, although it could provide that the reassignment will be to another water judge.

6-104(3) Assignments. We understand that Rule 6-104(3) is not intended to change the venue of water cases. To minimize the travel burden on the parties in water cases in the event the case is assigned to a water judge outside of the district in which the case is filed, we suggest considering requiring the availability of remote, virtual proceedings or that the assigned judge travel to the district in which the case was filed (or a district agreed upon by the parties, including the judge's district) for matters requiring in-person proceedings.

6-104(5) Publishing Opinions. Paragraph (5) of the proposed rule raises some concerns. While it appears the rule may be intended to merely establish a repository of substantive decisions in water cases involving matters of first impression, that create new law, or give new guidance, the reference to "published" "opinions" may leave the impression that something more is required and the decisions have some new precedential value. We would suggest clarifying language to address these concerns, and the associated concern that district court judges' role may be seen as transforming to a role better suited for the appellate courts.

Thank you for your attention to this matter.

Very truly yours,

SNOW CHRISTENSEN & MARTINEAU

Scott H. Martin
Shawn E. Draney
Dani N. Cepernich

Cc: Utah Water Task Force

Rule 4-508. Guidelines for Ruling on a Motion to Waive Fees.**Intent:**

To promote statewide consistency in deciding motions to waive fees in civil cases and in the expungement of criminal records in which the moving party is not incarcerated a prisoner.

To promote statewide consistency in deciding motions to waive fees in juvenile court cases in which the moving party is not incarcerated a prisoner.

~~Nothing in this rule should be interpreted as limiting the discretion of the judge to decide a motion to waive fees.~~

Applicability:

This rule applies to all civil and small claims cases and in the expungement of criminal records in which the moving party is not incarcerated a prisoner.

This rule applies to all juvenile court cases in which the moving party is not incarcerated a prisoner.

As used in this rule “fee waiver” and similar phrases include waiving the court filing fee and any ancillary fees in full or in part, as may be ordered by the judge.

Statement of the Rule:

(1) The moving party must complete a ~~motion~~ Motion to ~~waive~~ Waive fees ~~Fees and a financial affidavit~~ approved by the Judicial Council’s Standing Committee on Court Forms. If requested by the court, the moving party must provide supporting documentation of the claims made in the affidavit. In juvenile court, the minor or a minor’s parent, guardian or authorized representative may move to waive fees.

(2) Upon the filing of a ~~motion~~ Motion to ~~waive~~ Waive f ~~Fees and financial affidavit~~, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.

(3) A motion to waive fees may be decided without notice to the other parties, requires no response, request to submit for decision or hearing. The court will review the affidavit and make an independent determination whether the fees should be waived. The court should apply a common sense standard to the information and evaluate whether the information is complete, consistent and true. Section 78A-2-304 requires a party to pay a full or partial fee if the financial affidavit and any further questioning demonstrate the party is reasonably able to pay a fee.

(4) ~~In general, a~~ party is reasonably unable to pay a fee if the moving party:

(4)(A) receives gross monthly income that exceeds is at or below 1050% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);~~:-~~

(4)(B) ~~the moving party has liquid assets that can be used to pay the fee without harming the party’s financial position~~ receives benefits from a means-tested government program, including the Family Employment Program, Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

~~(4)(C) (C) the moving party has credit that can be used to pay the fee without harming the party's financial position; receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or~~

~~(4)(D) the moving party has assets that can be liquidated or borrowed against without harming the party's financial position; has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual's family of food, shelter, clothing, or other necessities;~~

(5) At the time of hearing the cause, the court must question the moving party as to the moving party's ability to pay. If the reason for the moving party's inability to pay is insufficient income under paragraph (4)(D), the court must consider the moving party's:

(5)(A) identity and residence;

(5)(B) amount of income, including any government financial support, alimony, or child support (but not government programs where it would be unlawful to do so, such as the Supplemental Nutrition Assistance Program under 7 CFR 272.1(a));

(5)(C) assets owned, including real and personal property;

(5)(D) business interests;

(5)(E) accounts receivable;

(5)(F) securities, checking and savings account balances;

(5)(G) debts; and;

(5)(H) monthly expenses.

~~(4)(E) expenses are less than net income;~~

~~(4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the moving party; or~~

~~(4)(G) in the judge's discretion, the moving party is reasonably able to pay some part of the fee.~~

(65) If the moving party is represented by private counsel, the motion to waive fees may be granted in proportion to the attorney's discount of the attorney fee. The moving party's attorney must provide an affidavit describing the fee agreement and what percentage of the attorney's normal, full fee is represented by the discounted fee.

(76) A motion to waive fees should be ruled upon within ten days after being filed.

(67) (A) If the fee is fully waived, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.

(76) (B) If the fee is not fully waived, the court, sheriff or any other provider of a service offered by or through a government entity may require payment of the fee before doing what is necessary and proper. If the service has already been performed, the court, sheriff or service provider may do what is necessary and proper to collect the fee, including dismissal of the case.

(76)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee amount, the procedure to challenge the fee, and the consequences of failing to pay the fee.

(76)(D) If the motion is rejected because of a technical error, such as failure to complete a form correctly or to attach supporting documentation, the court shall notify the moving party, and the moving party may file a corrected motion and affidavit within 14 days after being notified of the decision.

(87) In addition to any statutory remedies, an order granting a fee waiver may be reviewed at any time if the court has jurisdiction of the case. If the court determines, after waiving a fee, that the moving party is reasonably able to pay the fee, including from the proceeds of a judgment, the court may modify its previous order. The court may allocate the fee among the parties under Utah Rule of Civil Procedure 54, Utah Code Section 30-3-3, or as otherwise provided by law.

Effective: May 25, 2022

Rule 1-204. Executive committees.**Intent:**

To establish executive committees of the Council.

To identify the responsibility and authority of the executive committees.

To identify the membership and composition of the executive committees.

To establish procedures for executive committee meetings.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Executive Committees.** The following executive committees of the Council are hereby established:

(1)(a) the Management Committee;

(1)(b) the Policy, ~~and~~ Planning, and Technology Committee;

(1)(c) the Liaison Committee; and

(1)(d) the Budget and Fiscal Management Committee.

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

(3) **Policy, ~~and~~ Planning, and Technology Committee.** The Policy, ~~and~~ Planning, and Technology Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration. ~~The committee shall recommend to the Council,~~ new and amended policies, ~~or repeals,~~ for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402, and new or amended- technology policies and priorities. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient

43 administration of justice. ~~The committee, and~~ shall research and make recommendations
44 regarding any matter referred by the Council.

45
46 (4) **Liaison Committee.** The Liaison Committee shall recommend to the Council legislation to
47 be sponsored by the Council. The committee shall review legislation affecting the authority,
48 jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative
49 process preclude full discussion of the issues by the Council, the Committee may endorse or
50 oppose the legislation, take no position or offer amendments on behalf of the Council.

51
52 (5) **Budget and Fiscal Management Committee.** The Budget and Fiscal Management
53 Committee shall review court budget proposals, recommend fiscal priorities and the allocation of
54 funds, and make recommendations to the Council regarding budget management and budget
55 development in accordance with Rule 3-406.

56
57 (6) **Members.** Members of the executive committees must be members of the Council. Each
58 executive committee shall consist of at least three members appointed by the Council to serve
59 at its pleasure. The members of the Policy, ~~and~~ Planning, ~~and Technology~~ Committee, the
60 Budget and Fiscal Management Committee, and the Liaison Committee shall elect their
61 respective chairs on a schedule deemed appropriate by each Committee. Chairs must be
62 members of the Council.

63
64 (7) **Meetings and Judicial Council Reports.** Each committee shall meet as often as necessary
65 to perform its responsibilities, but a minimum of four times per year. Each committee shall report
66 to the Council as necessary.

67
68 (8) **Staff.** The Administrative Office shall provide staff support to the executive committees.

69
70 *Effective: ~~November 1, 2021~~ May 25, 2022*

Rule 1-205. Standing and Ad Hoc Committees.**Intent:**

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:**(1) Standing Committees.**

(1)(A) **Establishment.** The following standing committees of the Council are hereby established:

~~(1)(A)(i) Technology Committee;~~

~~(1)(A)(ii)~~ (1)(A)(i) Uniform Fine Committee;

~~(1)(A)(iii)~~ (1)(A)(ii) Ethics Advisory Committee;

~~(1)(A)(iv)~~ (1)(A)(iii) Judicial Branch Education Committee;

~~(1)(A)(v)~~ (1)(A)(iv) Court Facility Planning Committee;

~~(1)(A)(vi)~~ (1)(A)(v) Committee on Children and Family Law;

~~(1)(A)(vii)~~ (1)(A)(vi) Committee on Judicial Outreach;

~~(1)(A)(viii)~~ (1)(A)(vii) Committee on Resources for Self-represented Parties;

~~(1)(A)(ix)~~ (1)(A)(viii) Language Access Committee;

~~(1)(A)(x)~~ (1)(A)(ix) Guardian ad Litem Oversight Committee;

~~(1)(A)(xi)~~ (1)(A)(x) Committee on Model Utah Civil Jury Instructions;

~~(1)(A)(xii)~~ (1)(A)(xi) Committee on Model Utah Criminal Jury Instructions;

~~(1)(A)(xiii)~~ (1)(A)(xii) Committee on Pretrial Release and Supervision; and

~~(1)(A)(xiv)~~ (1)(A)(xiii) Committee on Court Forms; and

~~(1)(A)(xiv)~~ Committee on Judicial Fairness and Accountability; and

(1)(A)(xv) Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

(1)(B) **Composition.**

~~(1)(B)(i) The **Technology Committee** shall consist of:~~

~~(1)(B)(i)(a) one judge from each court of record;~~

~~(1)(B)(i)(b) one justice court judge;~~

~~(1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;~~

~~(1)(B)(i)(d) two court executives;~~

~~(1)(B)(i)(e) two court clerks; and~~

~~(1)(B)(i)(f) two staff members from the Administrative Office.~~

~~(1)(B)(ii)(1)(B)(i)~~ The **Uniform Fine Committee** performs the duties described in rule 4-302 and shall consist of:

~~(1)(B)(ii)(a)(1)(B)(i)(a)~~ one district court judge who has experience with a felony docket;

~~(1)(B)(ii)(b)(1)(B)(i)(b)~~ three district court judges who have experience with a misdemeanor docket; and

~~(1)(B)(ii)(c)(1)(B)(i)(c)~~ four justice court judges.

~~(1)(B)(iii)(1)(B)(ii)~~ The **Ethics Advisory Committee** performs the duties described in rule 3-109 and shall consist of:

~~(1)(B)(iii)(a)(1)(B)(ii)(a)~~ one judge from the Court of Appeals;

~~(1)(B)(iii)(b)(1)(B)(ii)(b)~~ one district court judge from Judicial Districts 2, 3, or 4;

~~(1)(B)(iii)(c)(1)(B)(ii)(c)~~ one district court judge from Judicial Districts 1, 5, 6, 7, or 8;

~~(1)(B)(iii)(d)(1)(B)(ii)(d)~~ one juvenile court judge;

~~(1)(B)(iii)(e)(1)(B)(ii)(e)~~ one justice court judge; and

~~(1)(B)(iii)(f)(1)(B)(ii)(f)~~ an attorney from either the Bar or a college of law.

~~(1)(B)(iv)(1)(B)(iii)~~ The **Judicial Branch Education Committee** performs the duties described in rule 3-403 shall consist of:

~~(1)(B)(iv)(a)(1)(B)(iii)(a)~~ one judge from an appellate court;

~~(1)(B)(iv)(b)(1)(B)(iii)(b)~~ one district court judge from Judicial Districts 2, 3, or 4;

~~(1)(B)(iv)(c)(1)(B)(iii)(c)~~ one district court judge from Judicial Districts 1, 5, 6, 7, or 8;

~~(1)(B)(iv)(d)(1)(B)(iii)(d)~~ one juvenile court judge;

~~(1)(B)(iv)(e)(1)(B)(iii)(e)~~ the education liaison of the Board of Justice Court Judges;

~~(1)(B)(iv)(f)~~(1)(B)(iii)(f) one state level administrator;
~~(1)(B)(iv)(g)~~(1)(B)(iii)(g) the Human Resource Management Director;
~~(1)(B)(iv)(h)~~(1)(B)(iii)(h) one court executive;
~~(1)(B)(iv)(i)~~(1)(B)(iii)(i) one juvenile court probation representative;
~~(1)(B)(iv)(j)~~(1)(B)(iii)(j) two court clerks from different levels of court and
different judicial districts;
~~(1)(B)(iv)(k)~~(1)(B)(iii)(k) one data processing manager; and
~~(1)(B)(iv)(l)~~(1)(B)(iii)(l) one adult educator from higher education.
~~(1)(B)(iv)(m)~~(1)(B)(iii)(m) The Human Resource Management Director
and the adult educator shall serve as non-voting members. The
state level administrator and the Human Resource Management
Director shall serve as permanent Committee members.

~~(1)(B)(v)~~(1)(B)(iv) The **Court Facility Planning Committee** performs the duties
described in rule 3-409 and shall consist of:

~~(1)(B)(v)(a)~~(1)(B)(iv)(a) one judge from each level of trial court;
~~(1)(B)(v)(b)~~(1)(B)(iv)(b) one appellate court judge;
~~(1)(B)(v)(c)~~(1)(B)(iv)(c) the state court administrator;
~~(1)(B)(v)(d)~~(1)(B)(iv)(d) a trial court executive;
~~(1)(B)(v)(e)~~(1)(B)(iv)(e) two business people with experience in the
construction or financing of facilities; and
~~(1)(B)(v)(f)~~(1)(B)(iv)(f) the court security director.

~~(1)(B)(vi)~~(1)(B)(v) The **Committee on Children and Family Law** performs the
duties described in rule 4-908 and shall consist of:

~~(1)(B)(vi)(a)~~(1)(B)(v)(a) one Senator appointed by the President of the Senate;
~~(1)(B)(vi)(b)~~(1)(B)(v)(b) the Director of the Department of Human Services or
designee;
~~(1)(B)(vi)(c)~~(1)(B)(v)(c) one attorney of the Executive Committee of the Family
Law Section of the Utah State Bar;
~~(1)(B)(vi)(d)~~(1)(B)(v)(d) one attorney with experience in abuse, neglect and
dependency cases;
~~(1)(B)(vi)(e)~~(1)(B)(v)(e) one attorney with experience representing parents in
abuse, neglect and dependency cases;
~~(1)(B)(vi)(f)~~(1)(B)(v)(f) one representative of a child advocacy organization;
~~(1)(B)(vi)(g)~~(1)(B)(v)(g) the ADR Program Director or designee;

~~(1)(B)(vi)(h)~~(1)(B)(v)(h) one professional in the area of child development;
~~(1)(B)(vi)(i)~~(1)(B)(v)(i) one mental health professional;
~~(1)(B)(vi)(j)~~(1)(B)(v)(j) one representative of the community;
~~(1)(B)(vi)(k)~~(1)(B)(v)(k) the Director of the Office of Guardian ad Litem or
designee;
~~(1)(B)(vi)(l)~~(1)(B)(v)(l) one court commissioner;
~~(1)(B)(vi)(m)~~(1)(B)(v)(m) two district court judges; and
~~(1)(B)(vi)(n)~~(1)(B)(v)(n) two juvenile court judges.
~~(1)(B)(vi)(o)~~(1)(B)(v)(o) One of the district court judges and one of the juvenile
court judges shall serve as co-chairs to the committee. In its
discretion the committee may appoint non-members to serve on
its subcommittees.

~~(1)(B)(vii)~~(1)(B)(vi) The **Committee on Judicial Outreach** performs the duties
described in rule 3-114 and shall consist of:

~~(1)(B)(vii)(a)~~(1)(B)(vi)(a) one appellate court judge;
~~(1)(B)(vii)(b)~~(1)(B)(vi)(b) one district court judge;
~~(1)(B)(vii)(c)~~(1)(B)(vi)(c) one juvenile court judge;
~~(1)(B)(vii)(d)~~(1)(B)(vi)(d) one justice court judge; one state level
administrator;
~~(1)(B)(vii)(e)~~(1)(B)(vi)(e) a state level judicial education representative;
~~(1)(B)(vii)(f)~~(1)(B)(vi)(f) one court executive;
~~(1)(B)(vii)(g)~~(1)(B)(vi)(g) one Utah State Bar representative;
~~(1)(B)(vii)(h)~~(1)(B)(vi)(h) one communication representative;
~~(1)(B)(vii)(i)~~(1)(B)(vi)(i) one law library representative;
~~(1)(B)(vii)(j)~~(1)(B)(vi)(j) one civic community representative; and
~~(1)(B)(vii)(k)~~(1)(B)(vi)(k) one state education representative.
~~(1)(B)(vii)(l)~~(1)(B)(vi)(l) Chairs of the Judicial Outreach Committee's
subcommittees shall also serve as members of the committee.

~~(1)(B)(viii)~~(1)(B)(vii) The **Committee on Resources for Self-represented Parties**
performs the duties described in rule 3-115 and shall consist of:

~~(1)(B)(viii)(a)~~(1)(B)(vii)(a) two district court judges;
~~(1)(B)(viii)(b)~~(1)(B)(vii)(b) one juvenile court judge;
~~(1)(B)(viii)(c)~~(1)(B)(vii)(c) two justice court judges;

~~(1)(B)(viii)(d)~~(1)(B)(vii)(d) three clerks of court – one from an appellate court, one from an urban district and one from a rural district;

~~(1)(B)(viii)(e)~~(1)(B)(vii)(e) one representative from a social services organization providing direct services to underserved communities;

~~(1)(B)(viii)(f)~~(1)(B)(vii)(f) one representative from the Utah State Bar;

~~(1)(B)(viii)(g)~~(1)(B)(vii)(g) two representatives from legal service organizations that serve low-income clients;

~~(1)(B)(viii)(h)~~(1)(B)(vii)(h) one private attorney experienced in providing services to self-represented parties;

~~(1)(B)(viii)(i)~~(1)(B)(vii)(i) two law school representatives;

~~(1)(B)(viii)(j)~~(1)(B)(vii)(j) the state law librarian; and

~~(1)(B)(viii)(k)~~(1)(B)(vii)(k) two community representatives.

~~(1)(B)(ix)~~(1)(B)(viii) The **Language Access Committee** performs the duties described in rule 3-306.02 and shall consist of:

~~(1)(B)(ix)(a)~~(1)(B)(viii)(a) one district court judge;

~~(1)(B)(ix)(b)~~(1)(B)(viii)(b) one juvenile court judge;

~~(1)(B)(ix)(c)~~(1)(B)(viii)(c) one justice court judge;

~~(1)(B)(ix)(d)~~(1)(B)(viii)(d) one trial court executive;

~~(1)(B)(ix)(e)~~(1)(B)(viii)(e) one court clerk;

~~(1)(B)(ix)(f)~~(1)(B)(viii)(f) one interpreter coordinator;

~~(1)(B)(ix)(g)~~(1)(B)(viii)(g) one probation officer;

~~(1)(B)(ix)(h)~~(1)(B)(viii)(h) one prosecuting attorney;

~~(1)(B)(ix)(i)~~(1)(B)(viii)(i) one defense attorney;

~~(1)(B)(ix)(j)~~(1)(B)(viii)(j) two certified interpreters;

~~(1)(B)(ix)(k)~~(1)(B)(viii)(k) one approved interpreter;

~~(1)(B)(ix)(l)~~(1)(B)(viii)(l) one expert in the field of linguistics; and

~~(1)(B)(ix)(m)~~(1)(B)(viii)(m) one American Sign Language representative.

~~(1)(B)(x)~~(1)(B)(ix) The **Guardian ad Litem Oversight Committee** performs the duties described in rule 4-906 and shall consist of:

~~(1)(B)(x)(a)~~(1)(B)(ix)(a) seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

~~(1)(B)(xi)~~(1)(B)(x) The **Committee on Model Utah Civil Jury Instructions**

performs the duties described in rule 3-418 and shall consist of:

~~(1)(B)(xi)(a)~~(1)(B)(x)(a) two district court judges;

~~(1)(B)(xi)(b)~~(1)(B)(x)(b) four lawyers who primarily represent plaintiffs;

~~(1)(B)(xi)(c)~~(1)(B)(x)(c) four lawyers who primarily represent defendants; and

~~(1)(B)(xi)(d)~~(1)(B)(x)(d) one person skilled in linguistics or communication.

~~(1)(B)(xii)~~(1)(B)(xi) The **Committee on Model Utah Criminal Jury Instructions**

performs the duties described in rule 3-418 and shall consist of:

~~(1)(B)(xii)(a)~~(1)(B)(xi)(a) two district court judges;

~~(1)(B)(xii)(b)~~(1)(B)(xi)(b) one justice court judge;

~~(1)(B)(xii)(c)~~(1)(B)(xi)(c) four prosecutors;

~~(1)(B)(xii)(d)~~(1)(B)(xi)(d) four defense counsel; and

~~(1)(B)(xii)(e)~~(1)(B)(xi)(e) one person skilled in linguistics or
communication.

~~(1)(B)(xiii)~~(1)(B)(xii) The **Committee on Pretrial Release and Supervision**

performs the duties described in rule 3-116 and shall consist of:

~~(1)(B)(xiii)(a)~~(1)(B)(xii)(a) two district court judges;

~~(1)(B)(xiii)(b)~~(1)(B)(xii)(b) two justice court judges;

~~(1)(B)(xiii)(c)~~(1)(B)(xii)(c) one prosecutor;

~~(1)(B)(xiii)(d)~~(1)(B)(xii)(d) one defense attorney;

~~(1)(B)(xiii)(e)~~(1)(B)(xii)(e) one county sheriff;

~~(1)(B)(xiii)(f)~~(1)(B)(xii)(f) one representative of counties;

~~(1)(B)(xiii)(g)~~(1)(B)(xii)(g) one representative of a county pretrial services
agency;

~~(1)(B)(xiii)(h)~~(1)(B)(xii)(h) one representative of the Utah Commission on
Criminal and Juvenile Justice;

~~(1)(B)(xiii)(i)~~(1)(B)(xii)(i) one commercial surety agent;

~~(1)(B)(xiii)(j)~~(1)(B)(xii)(j) one state senator;

~~(1)(B)(xiii)(k)~~(1)(B)(xii)(k) one state representative;

~~(1)(B)(xiii)(l)~~(1)(B)(xii)(l) the Director of the Indigent Defense
Commission or designee;

~~(1)(B)(xiii)(m)~~(1)(B)(xii)(m) one representative of the Utah Victims'
Council;

~~(1)(B)(xiii)(n)~~(1)(B)(xii)(n) one representative of a community
 organization actively engaged in pretrial justice issues;
~~(1)(B)(xiii)(o)~~(1)(B)(xii)(o) one chief of police; and
~~(1)(B)(xiii)(p)~~(1)(B)(xii)(p) the court's general counsel or designee.
~~(1)(B)(xiv)~~(1)(B)(xiii) The **Committee on Court Forms** performs the duties
 described in rule 3-117 and shall consist of:
~~(1)(B)(xiv)(a)~~(1)(B)(xiii)(a) two district court judges;
~~(1)(B)(xiv)(b)~~(1)(B)(xiii)(b) one court commissioner;
~~(1)(B)(xiv)(c)~~(1)(B)(xiii)(c) one juvenile court judge;
~~(1)(B)(xiv)(d)~~(1)(B)(xiii)(d) one justice court judge;
~~(1)(B)(xiv)(e)~~(1)(B)(xiii)(e) one court clerk;
~~(1)(B)(xiv)(f)~~(1)(B)(xiii)(f) one appellate court staff attorney;
~~(1)(B)(xiv)(g)~~(1)(B)(xiii)(g) one representative from the Self-Help Center;
~~(1)(B)(xiv)(h)~~(1)(B)(xiii)(h) the State Law Librarian;
~~(1)(B)(xiv)(i)~~(1)(B)(xiii)(i) the district court administrator or designee;
~~(1)(B)(xiv)(j)~~(1)(B)(xiii)(j) one representative from a legal service
 organization that serves low-income clients;
~~(1)(B)(xiv)(k)~~(1)(B)(xiii)(k) one paralegal;
~~(1)(B)(xiv)(l)~~(1)(B)(xiii)(l) one educator from a paralegal program or law
 school;
~~(1)(B)(xiv)(m)~~(1)(B)(xiii)(m) one person skilled in linguistics or
 communication;
~~(1)(B)(xiv)(n)~~(1)(B)(xiii)(n) one representative from the Utah State Bar;
 and
~~(1)(B)(xiv)(o)~~(1)(B)(xiii)(o) the LPP administrator.
~~(1)(B)(xv)~~(1)(B)(xiv) The **Committee on Fairness and Accountability** performs
 the duties described in rule 3-420. The committee shall include members who
 demonstrate an interest in, or who have experience with, issues of diversity, equity,
 and inclusion and shall consist of:
~~(1)(B)(xv)(a)~~(1)(B)(xiv)(a) one sitting judge;
~~(1)(B)(xv)(b)~~(1)(B)(xiv)(b) three current or former judicial officers;
~~(1)(B)(xv)(c)~~(1)(B)(xiv)(c) the General Counsel or designee; and
~~(1)(B)(xv)(d)~~(1)(B)(xiv)(d) the Director of the Office of Fairness and
 Accountability.

(1)(B)(xv) The **Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)** performs the duties described in rule 3-421, and shall consist of:

(1)(B)(xv)(a) **Judiciary** representatives:

- (i) two or more district court judges;
- (ii) two or more district court judicial support staff with experience in guardianship matters;
- (iii) one representative from the Guardianship Reporting and Monitoring Program (GRAMP)
- (iv) one representative from the Court Visitor Program; and
- (v) the General Counsel or designee.

(1)(B)(xv)(b) **Community stakeholder** representatives:

- (i) one representative from Adult Protective Services;
- (ii) one representative from Disability Law Center;
- (iii) one representative from Adult and Aging Services;
- (iv) one representative from Office of Public Guardian;
- (v) one representative from the Utah State Bar;
- (vi) one representative from Office of the Attorney General;
- (vii) one representative from the Utah legislature;
- (viii) one representative from the Utah Commission on Aging;
- (ix) one representative from Utah Legal Services; and
- (x) the Long-Term Care Ombudsman or designee.

(1)(B)(xv)(c) **Individual community** representatives:

- three or more community stakeholders representing:
- (i) mental health community;
 - (ii) medical community;
 - (iii) private legal community that specializes in guardianship matters;
 - (iv) aging-adult services community;
 - (v) educator from a legal program or law school;
 - (vi) organization serving low-income, minorities, or marginalized communities;
 - (vii) citizens under or involved in guardianship; and

(viii) other organizations with a focus including, but not limited to guardianship, aging, legal services, or disability.

(1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Except for the Committee on Judicial Fairness and Accountability, council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) **General provisions.**

(3)(A) **Appointment process.**

(3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

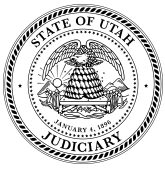
(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.



Agenda

Memorandum

From: Bart Olsen, Director of Human Resources, Administrative Office of the Courts
Keisa Williams, General Counsel, Administrative Office of the Courts
[Human Resources Policy Review Committee](#)

To: Policy & Planning Committee

Re: **Summary of draft HR Policy amendments**

This memorandum summarizes the context and intended impacts of proposed amendments.

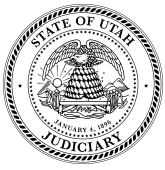
BACKGROUND

Consistent with [Rule 3-402\(5\)](#), the Human Resources Policy Review Committee (HRPRC) meets regularly to review policy suggestions and assist Policy & Planning and the Council in keeping policies current and effective. Certain bills passed during this year's General Legislative Session require HR Policy amendments to be considered, and other pressing matters have come to the HRPRC's attention for recommendations to Policy & Planning. Proposed policy amendments in your packet were approved by Policy & Planning in their May 6, 2022 meeting to be advanced for full Judicial Council approval.

AMENDMENTS TO COMPLY WITH LEGISLATIVE REQUIREMENTS

The following bills apply to the judicial branch as an employer, requiring policy amendments:

- [HB238](#) State Holiday Amendments, making Juneteenth a state holiday
- [HB449](#) and [SB63](#) Bereavement Leave Modifications/Amendments, requiring certain state employers (including the judicial branch) to provide bereavement leave for employees affected by the miscarriage or stillbirth of a child
- [SB100](#) Paid Leave Modifications, requiring certain state employers (including the judicial branch) to offer paid parental leave upon the birth of the employee's child or the adoption of a minor child
- [HB104](#) State Employment Amendments makes modifications that apply almost exclusively to the Executive Branch, but removes "merit increase" as a salary tool the Legislature might consider for state employees, including the judicial branch.



The Utah Judicial Branch
Department of Human Resources



Proposed amendments for HR01 and HR07 support legislative requirements by removing the term “merit increase” and its definition and syncing leave policy with legislative language.

CAREER SERVICE EMPLOYMENT AMENDMENTS

These proposed amendments require significant context regarding (1) the protection of property rights, (2) the myth of an attraction tool, (3) dysfunctional grievance and appeal support structures. A summary of the amendment proposals and their intended impacts will follow context on those three matters.

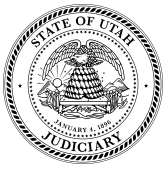
Protection of Property Rights

“Career service” is a tool used to require due process for certain employment transactions. An employee must compete publicly and demonstrate competence on the job for a predetermined period of time, after which a “property right” to the job is established. Constitutional protections then kick in, prohibiting the employer from depriving that property right without due process. Utah case law, including Supreme Court decisions such as *Worrall v. Ogden City Fire* and *Lucas v. Murray City* affirm due process requirements for employers: before adverse action may be taken on a career service employee, the employee must receive notice of the proposed action and must have an opportunity to respond.

Principles of due process are helpful and will always be championed in HR practice and guidance - these principles build trust, boost morale and aid in transparency. However, the required procedures necessary to demonstrate protection of property rights under career service employment are labor intensive, cumbersome, and generally not well-known in both the employee and management groups at the Courts. This combination carries the dangerous potential of interfering with the mission of the Courts more than advancing it.

The Myth of an Attraction Tool

If career service protection helped attract the right talent in the past, its effectiveness has probably expired. Most of today’s job seekers are entirely unfamiliar with career service. In 2005, our own Cathy Dupont was the drafting attorney for [HB109](#), a bill that consolidated all executive branch agency technology staff into one department and



The Utah Judicial Branch Department of Human Resources



made their jobs exempt from career service. At the time, numerous people raised strong voices of warning that the new department would not be able to attract talented personnel without career service jobs and that existing personnel would likely launch a mass exodus.

Nevertheless, the bill passed with a July 2006 effective date and the new department did not experience any significant drop in its ability to hire top talent. Nor did employees launch a mass exodus. On the contrary, the department's turnover rate remained stable and consistent with years past, and went on to receive [top national honors two years in a row](#) shortly after moving away from career service (in 2009 and 2010).

There are many indicators that our Legislature does not view career service as an attraction tool worth preserving. Bills have surfaced in recent years to move the Executive Branch away from career service, and this year the Legislature passed [HB104](#) which will move all levels of supervisory jobs in every agency away from career service.

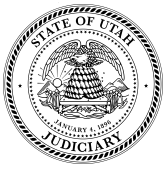
Interestingly, Utah code [§63A-10-301\(1\)\(i\)](#) has long identified employees of the judicial branch as exempt from career service ("schedule AO"). It is only our own rule and policy that provides career service protection for Courts employees.

Dysfunctional Grievance and Appeal Support Structures

In March 2019, the National Center for State Courts (NCSC) issued an [interim report](#) as part of a full courts "System Review" requested by interim State Court Administrator, Judge Mary T. Noonan. One of the many problematic areas identified in the report related to poor management support from HR on personnel matters and supervisory responsibilities.

Numerous observations since the March 2019 interim report confirm that in general, judicial branch management is inadequately trained in procedures of basic due process to protect career service rights and best practices based on case law. Although HR has developed and is delivering management training modules to address this, it only solves a piece of the problem.

At least one other major piece of the problem lies with the inadequate resources dedicated to the internal Grievance Review Panel established by [Rule 3-402\(6\)](#). The Panel of Court Level Administrators has very little guidance to steer their reviews when claims of career service protection violations come before them. Furthermore, Panel members are not inherently separate from the organization to preserve impartiality.



The Utah Judicial Branch Department of Human Resources



In contrast, most organizations in Utah's state, county, city, and municipal governments have separate, impartial bodies or staff dedicated to the function of career service protection and review of career service violations.

Legislative code establishes an independent [career service review office](#) with contracted attorney hearing officers for executive branch agencies. Similar "career service councils" are established for [county governments](#). State law also [requires municipality ordinances](#) to designate membership of independent "career service appeal boards" with sufficient knowledge of personnel matters to adjudicate in such proceedings. Adjudicative decisions from these independent councils/appeal boards normally function as quasi-case law on career service protections for these government entities.

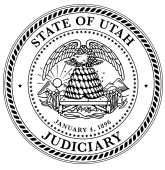
Career service grievances and appeals at the Courts are not assigned to impartial hearing officers experienced with career service employment law frameworks. Internal court level administrators are expected to somehow set aside other time-sensitive, mission-critical work when a grievance is advanced for their review. There is little time for them to make legal analyses and render written decisions that can feasibly function as quasi-case law. This leaves Courts management with unreliable career service guidance at best from its HR and Legal Departments.

Summary Career Service Amendment Proposals/Intended Impacts

HR04 and HR05 govern the filling of positions and career service status. The proposed amendments draw a line in the sand for the creation and filling of career service positions on July 1, 2022: vacant career service positions will convert to at-will positions.

This change already has a successful precedent in our branch: Clerks of Court and Chief Probation Officers moved away from career service in 2008, and our entire Courts IT Department moved away from career service hiring in 2018 [see [HR05-3\(2\) and \(4\)](#)]. These amendments also preserve an employee's right to previously earned career service status until the employee voluntarily moves to a career service exempt position.

The amended draft of HR17-9 provides much needed guidance to the Grievance Review Panel on evidence and testimony to consider from grievant/appellant and from Courts management, and the applicable HR policies against which the Panel should analyze the case.



The Utah Judicial Branch Department of Human Resources



HR17-9 as amended also moves authority to overturn management decisions from the Panel to the State Court Administrator, which is more consistent with the language of [Rule 3-402\(6\)](#). The Panel would retain authority to review actions grieved or appealed by career service employees, but would simply make recommendations to the State Court Administrator who would make a final decision.

The authority to review and recommend rather than overturn is more consistent with the language in [Rule 3-402\(6\)](#) which only gives the Panel authority to “review any [personnel] action taken.” It is also more consistent with [UCA §78A-2-107](#) which authorizes the State Court Administrator to “assign, supervise, and direct the work of the nonjudicial officers of the courts; implement the standards policies, and rules established by the council; and formulate and administer a system of personnel administration.”

POLITICAL ACTIVITY

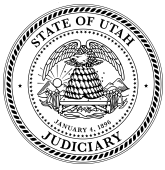
The Employee Code of Ethics and Conduct covers political activity in HR09-12. In the process of publishing the new policy manual last July 2021, a less restrictive political activity policy from another agency inadvertently transferred to HR09-12. Reverting to previous policy was needed.

Additionally, questions regarding political and religious displays and discussions in the workplace surfaced over the past few months. Discussions with the Management Committee and Policy & Planning led to a recommendation that bifurcates restrictions depending on public accessibility.

The draft of HR09-12 restores the previous political activity policy and adds Committee recommendations on political and religious statements, displays and discussions in the workplace. The intent is to clarify that employees should always exercise caution, but prohibitions only apply when statements, displays or discussions are visible to or within earshot of the public.

PROFESSIONAL APPEARANCE

The judicial branch dress code was last addressed in 2018 with a significant amount of effort and coordination. Although less than four years have passed since this substantial update, much has changed the landscape of societal expectations, cultural norms, and workplace dress



The Utah Judicial Branch
Department of Human Resources



standards during the same time period. 2018's lens on [this policy](#) was acceptable. Today's lens on the same policy is uncomfortable and at times feels overly restrictive and inconsiderate.

Some have voiced concerns that the dress code might feel discriminatory against protected classes, even if completely unintentional. In addition, the shift to remote work during the pandemic brought with it a slight relaxation of generally accepted expectations in business attire.

The proposed amendments to HR09-9 governing Professional Appearance are based on the best examples gathered from other state court systems. The draft deliberately moves away from lengthy lists and photos of approved and prohibited attire. Instead, it gives overarching principles of professionalism in appearance, and a small table of examples, discretionary guidance to court executives in consultation with presiding bench leadership, and clear support of protected class rights.

Section 1 – Definitions

(84) Merit Increase: ~~A legislature approved and funded salary increase for employees to recognize and reward successful performance.~~

Section 7 – Leave

HR07-2. Holiday Leave.

1) The following dates are paid holidays for eligible employees:

- a) New Year's Day (January 1)
- b) Dr. Martin Luther King Jr. Day (third Monday of January)
- c) Washington and Lincoln Day (third Monday of February)
- d) Memorial Day (last Monday of May)
- e) Juneteenth – observed as follows:
 - i. June 19 if that day is on a Monday;
 - ii. If June 19 is on a Tuesday, Wednesday, Thursday or Friday, the holiday is observed immediately preceding Monday; or
 - iii. If June 19 is on a Saturday or Sunday, the holiday is observed on the immediately following Monday.
- e)f) Independence Day (July 4)
- f)g) Pioneer Day (July 24)
- g)h) Labor Day (first Monday of September)
- h)i) Columbus Day (second Monday of October)
- i)j) Veterans Day (November 11)
- j)k) Thanksgiving Day (fourth Thursday of November)
- k)l) Christmas Day (December 25)
- l)m) Any other day designated as a paid holiday by the Governor or approved by the Chief Justice.

2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

- a. Except as described in HR07-2(1)(e): If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.
- b. Except as described in HR07-2(1)(e): If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

HR07-9. Bereavement Leave.

~~An employee may receive a maximum of~~ Management may authorize three work days bereavement leave per occurrence with pay, ~~at management's discretion,~~ following the death of a member of the employee's immediate family. Additional leave may be authorized at management discretion depending on circumstances. Bereavement leave may not be charged against accrued sick or annual leave.

- 1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:
- a) Spouse;
 - b) Parents;
 - c) Siblings;
 - d) Children;
 - e) All levels of grandparents; or
 - f) All levels of grandchildren.
- 2) Management may ~~grant~~ authorize bereavement leave for other unique family relationships.
- 3) Management may authorize three work days of bereavement leave to an employee when a pregnancy ends in stillbirth or miscarriage consistent with UCA § 63A-17-106. Additional bereavement leave for stillbirth or miscarriage may be authorized at management discretion depending on circumstances.
- 3)4) Bereavement leave hours shall be coded as OE (Other - Emergency) in the employee timesheet through the payroll system.

HR07-21. Parental and Postpartum Recovery Leave.

- 1) ~~"Postpartum recovery leave" means leave hours a state employer provides to an eligible employee to recover from childbirth.~~ An employee is eligible for parental or postpartum recovery leave when:
- a) The employee is eligible for leave benefits under HR07-7-1(1), and
 - ~~b) The employee is not reemployed post-retirement as defined in UCA §49-11-1202.~~
 - ~~c) The employee gives birth to a child.~~
- 2) Parental Leave
- a) An employee is qualified for parental leave when the employee:
 - i. Is a birth parent as defined in UCA § 78B-6-103;
 - ii. Legally adopts a minor child, unless the employee is the spouse of the pre-existing parent;
 - iii. Is the intended parent of a child born under a validated gestational agreement; or
 - iv. Is appointed the legal guardian of a minor child or incapacitated adult.
 - b) Management shall grant up to three weeks of paid parental leave to an employee who gives notice that they intend to use paid parental leave.
 - c) Management calculates the amount of leave for each employee based on the number of hours the employee would have worked per week if they had not taken parental leave.
 - d) An employee may use parental leave within the six months immediately following:
 - i. The birth of the employee's child;
 - ii. The adoption of a minor child; or
 - iii. The appointment of legal guardianship of a minor child or incapacitated adult
 - e) An employee may use parental leave intermittently when:

- 96 i. The employee and management have written mutual consent for
97 intermittent use; or
98 ii. A health care provider certifies the need for intermittent leave due to the
99 child's serious health condition.
- 100 f) Parental leave:
101 i. Runs concurrently with leave under the Family and Medical Leave Act
102 (FMLA);
103 ii. Runs consecutively with postpartum recovery leave consistent with HR07-
104 21(3)(ii);
105 iii. Is limited to three weeks within any 12-month period;
106 iv. Does not increase when:
107 1. More than one child is born from the same pregnancy;
108 2. More than one child is adopted;
109 3. The employee is appointed legal guardian of more than one minor
110 child or incapacitated adult.
- 111 3) Postpartum Recovery Leave
112 a) An employee is qualified for postpartum recovery leave when the employee gives
113 birth.
114 b) Management shall grant up to three weeks of paid postpartum recovery leave to
115 an employee who gives notice that they intend to use paid postpartum recovery
116 leave.
117 c) Management calculates the amount of leave for each employee based on the
118 number of hours the employee would have worked per week if they had not taken
119 postpartum recovery leave.
120 d) Postpartum recovery leave begins on the date the employee gives birth unless a
121 health care provider certifies the medical necessity of an earlier start date.
122 e) An employee shall use postpartum recovery leave in a single continuous period.
123 f) Postpartum recover leave:
124 i. Runs concurrently with leave under the Family and Medical Leave Act
125 (FMLA);
126 ii. Runs consecutively with parental leave under HR07-21(2) with postpartum
127 recovery leave used first pursuant to restrictions in HR07-21(3)(d); and
128 iii. Does not increase when more than one child is born from the same
129 pregnancy.
- 130 4) An employee or a spokesperson shall notify management of their plan to use parental or
131 postpartum recovery leave:
132 a) Thirty days in advance; or
133 b) As soon as practicable in emergencies.
- 134 5) Management may not charge parental or postpartum recovery leave against any accrued
135 leave balance on the employee's record
- 136 6) No person may interfere with an employee's intent to use postpartum recovery leave or
137 retaliate against an employee who receives postpartum recovery leave.
- 138
- 139 ~~2) Management shall grant paid leave to an eligible employee who requests postpartum~~
140 ~~recovery leave.~~
141 ~~a) The eligible employee may receive up to three weeks of paid leave based on the~~
142 ~~employee's normal work schedule, including normally scheduled work hours in~~
143 ~~excess of 40 hours per week. The amount of leave does not change if there are~~
144 ~~multiple births from a single pregnancy.~~

- ~~b) Postpartum recovery leave shall begin on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.~~
- ~~c) Postpartum recovery leave may not be used intermittently.~~
- ~~d) Postpartum recovery leave runs concurrently with leave under the Family and Medical Leave Act (FMLA). If an employee applies to use leave under the FMLA through the HR Department, leave requests for postpartum recovery leave should also be coordinated through HR.~~
- ~~e) Postpartum recovery leave may not be charged against any accrued leave balance on the employee's record. Appropriate payroll leave codes to protect accrued leave are "PF" if the employee is using this leave concurrently with FMLA; otherwise, the appropriate leave code is "P."~~
- ~~f) To request postpartum recovery leave, the employee or an appropriate spokesperson shall notify management of the need for leave:~~
- ~~i. Thirty days in advance; or~~
 - ~~ii. As soon as practicable in emergencies.~~
- ~~3) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.~~

Section 4 – Filling Positions

HR04-1. Authorized Recruitment System.

1. Management shall use the HR approved recruitment and selection system unless an alternate system has been pre-approved by HR.
2. Management shall notify HR of the filling of any position at least 3 working days prior to the employee's start date.

HR04-2. ~~Career Service Exempt Positions~~Position Creation and Appointments to Positions.

1. ~~Upon management request, the HR Department~~ The HR Director may ~~approve~~ facilitate the creation ~~and filling of career service exempt~~ positions.
2. Management may use any process pre-approved through HR to select an employee for a ~~career service exempt~~ new or vacant position. Appointments may be made without competitive examination, especially for hard-to-fill and highly specialized positions, provided job requirements are met. However, public announcement of ~~career service exempt~~ new or vacant positions is encouraged.
3. Appointments to fill an employee's position who is on approved leave shall only be made temporarily.
4. Appointments made on a temporary basis shall ~~be career service exempt and:~~
 - a) be in a position whose working title includes "PT-IN", in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or
 - b) be in a position whose working title includes "Time-Limited", in which the employee is hired to work on a time limited basis;
 - c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.
 - d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for "PT-IN" or if the position exceeds anticipated time limits for "Time Limited" positions, management shall consult with HR to review possible alternative options.

~~5. Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under HR04-8.~~

6.5. Management shall ensure that all new hires submit to a Bureau of Criminal Investigation (BCI) background check through HR as described in HR04-15.

HR04-3. ~~Career Service~~Competitive Selection for Positions.

Competitive selection is strongly encouraged as a standard business practice for positions commonly filled in the judicial branch. Selection of a career service employeeCompetitive selection shall be governed by the following principles:

1. ~~HR business~~business practices recommended by the HR Department;
2. career service principles as outlined in [HR02-3](#) "Fair Employment Practice," emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
3. equal employment opportunity principles;
4. [UCA §52-3-1](#), employment of relatives;
5. reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

HR04-4. ~~Recruitment and Selection for Career Service Positions.~~

1. Prior to initiating recruitment, management may administer any of the following personnel actions:
 - a) reemployment of a veteran eligible under USERRA;
 - b) reassignment within the judicial branch initiated by an employee's reasonable accommodation request under the ADA;
 - c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
 - d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;
 - e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;
 - or
 - f) reclassification;~~or,~~
 - ~~g) conversion from career service exempt to career service as authorized by HR05-1(3).~~
2. If the personnel actions authorized by [HR04-4\(1\)](#) are undesirable or do not apply, management shall use the HR-approved recruitment and selection system for all career service announcements of competitive position vacancies. This includes recruitments open within a team, office, or district, across multiple districts and/or to the entire judicial branch, or to the general public. Recruitments shall comply with federal and state laws, these HR policies, and applicable HR procedures.
 - a) All recruitment announcements shall include the following:

- 87 i. Information about the HR-approved recruitment and selection
88 system; and
89 ii. opening and closing dates.
- 90 b) Recruitments for ~~career service positions~~competitive position vacancies
91 shall be posted for a minimum of three business days, excluding state
92 holidays.
93
- 94 3. Management may select a qualified candidate for any vacant position so long as
95 the candidate appears on a hiring list for the same job classification as the vacant
96 position, indicating minimum qualifications for the position are met. ~~carry out all~~
97 ~~the following steps for recruitment and selection of vacant career service~~
98 ~~positions concurrently. Appointments may be made according to the following~~
99 ~~order:~~
100 ~~a) From the judicial branch reappointment register, provided the applicant~~
101 ~~applies for the position and meets minimum qualifications;~~
102 ~~b) From a hiring list of qualified applicants for the position~~
103
- 104 4. A job application may be rejected from further consideration if the applicant:
105 a) does not meet minimum qualifications;
106 b) is unable to perform essential job functions with or without a reasonable
107 accommodation under the Americans with Disabilities Act and other state
108 and federal laws;
109 c) has falsified a material fact;
110 d) has failed to complete or submit the application in a timely manner;
111 e) has an unsatisfactory employment history or poor work references; or
112 f) does not meet requirements of the background check as established in
113 [HR04-15](#).
114
- 115 5. Management may request assistance from the HR department for any portion of
116 the recruitment or selection process.
117
- 118 6. Management is encouraged to build an interview panel of at least two or more
119 subject matter expert panelists with as much diversity as reasonably possible in
120 terms of gender, age, race/ethnicity, or other classes protected under state or
121 federal law.
122

Section 5 – Career Service Status

HR05-1. Career Service Status.

- 1) Only an employee hired through a competitive, pre-approved HR process shall be eligible for appointment to a career service position.
- 2) An employee shall complete the probationary period defined in the job description prior to receiving career service status.
- 3) Effective July 1, 2022, the judicial branch will no longer create career service positions.
 - a) When a career service position is vacated for any reason, the position shall convert to career service exempt before announcing a vacancy, making an appointment, or selecting a candidate through a competitive process as described in HR04 governing provisions of filling positions.
 - b) A vacated career service position may continue to be a career service position only if management initiates a reassignment, as defined in HR01(110), of a career service employee to the vacant position consistent with HR04(5)(2).
- 4) An employee has the right to maintain previously attained career service status so long as the employee remains in the current career service position, or is moved by a management-initiated reassignment as described in HR05-1(3)(b).
- 5) When an employee initiates a move to a different position such as applying for and receiving a promotion as defined in HR01(105), applying and being selected for any other position vacancy, or requesting a transfer as defined in HR01(126), the employee shall convert to a career service exempt status.
- ~~3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range, when:
 - a) ~~the employee previously held career service status with no break in service between the last career service position held and career service exempt status;~~
 - or
 - b) ~~the employee was hired from a public hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by HR04-8.~~~~

HR05-2. Probationary Period.

The probationary period allows management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period is considered part of the selection process for career service.

1. An employee shall receive an opportunity to demonstrate competence in a career service position. Performance expectations shall be established and the employee should receive frequent feedback on performance in relation to those expectations.

- 47 a) During the probationary period, an employee may be separated from state
48 employment in accordance with [HR11-2\(1\)](#).
49 b) On or shortly before the end of the probationary period, management shall
50 complete a formal, written evaluation of an employee's performance relative to
51 established expectations.
52 c) At a minimum, the evaluation should indicate overall successful or unsuccessful
53 completion of performance expectations during the probationary period.
54 d) Management shall give a copy of the written evaluation to the employee and to
55 HR.
56 e) The evaluation shall be maintained in the personnel file.
57
58 2. Each career service position shall be assigned a probationary period consistent with its
59 job.
60 a) The probationary period may not be extended except for periods of leave without
61 pay, long-term disability, workers compensation leave, temporary transitional
62 assignment, or donated leave from an approved leave bank; and extensions may
63 only be granted in consultation with the court level administrator and the HR
64 Director.
65 b) The probationary period for a position may not be reduced for an individual
66 employee after the employee is hired into the position.
67 c) An employee who has completed a probationary period and obtained career
68 service status shall not be required to serve a new probationary period for the
69 judicial branch unless there is a break in service.
70
71 3. An employee in a career service position and works at least 20 hours per week/40 hours
72 per pay period has the same probationary period as a full-time employee in the same or
73 similar position.
74
75 4. Employees in career service positions that normally work less than 20 hours per week or
76 40 hours per pay period may be subject to a longer probationary period established in
77 writing by management in consultation with HR.
78
79 5. An employee serving probation in a career service position may be ~~transferred,~~
80 ~~reassigned, or promoted~~ to another career service position ~~including a career mobility~~
81 ~~assignment as follows:~~
82
83 a) ~~Each new appointment~~Reassignment to a career service position shall include a
84 new probationary period unless the court executive or court level administrator, in
85 consultation with the HR director, determines that the required duties or
86 knowledge, skills, and abilities of the old and new position are similar enough not
87 to warrant a new probationary period.
88 b) The probationary period shall be the full probationary period defined in the job
89 description of the new position.

90 HR05-3. Career Service Exempt Positions.

91
92 Unclassified jobs identified in [HR06-3](#) are exempt from provisions of career service. Additionally,
93 all vacant positions on July 1, 2022 or vacated after July 1, 2022 are exempt from provisions of
94 career service. Employees are considered to be appointed, serving at the will and pleasure of

the judicial branch. ~~Additionally, the~~The following principles relating to the nature of the job also result in exemption from career service provisions whether or not the positions were vacated on or after July 1, 2022:

1. The employee reports directly to the state court administrator.
2. The employee is in a management position and reports directly to a court executive or a court level administrator.
 - a) Employees in a Clerk of Court or a Chief Probation Officer position prior to July 11, 2008, and had already attained career service status in those positions are considered "legacy career service" employees and retain career service status ~~until they choose to move to another career service exempt position.~~
 - b) ~~If a legacy~~The rights of "legacy career service" Clerks of Court ~~or and~~ Chief Probation Officers ~~s chooses to move into a different career service exempt position, the employee's career service rights end on the effective date of the move to the new position do not supercede, but are consistent with, the provisions of HR05-1(4) and HR05-1(5).~~
3. The employee is in a law clerk or an attorney position for the judicial branch.
4. The employee is an employee of the Information Technology Department.
 - a) Employees hired into the IT department prior to January 1, 2019, and who had already attained career service status are considered "legacy career service" employees and retain career service status ~~until they choose to move into a different career service exempt position.~~
 - b) ~~If The rights of a~~ "legacy career service" IT employee ~~chooses to move into a different career service exempt position, the employee's career service rights end on the effective date of the move to the new position does not supercede, but is consistent with, the provisions of HR05-1(4) and HR05-1(5).~~

Section 9 – Employee Code of Ethics and Conduct

HR09-9. Professional Appearance

- 1) Employees of the judicial branch are expected to comply with the following professional responsible to adhere to dress and grooming standards; as established by management.
- a) Clothing should be neat, clean and appropriate for the business environment. General professional attire and appearance standards are located here.
- i) Written messages on clothing should be avoided, although minimal brand/logo writing may be considered acceptable, subject to management discretion.
- ii) Management may exercise reasonable discretion to require that staff wear traditional business or business casual attire (e.g., suit/tie, sport coat/slacks and button down shirt, dress or blouse/skirt, etc. as determined appropriate by management and in consultation with the presiding judicial officer as needed) to meetings, court hearings, or other events as needed.
- iii) Management may designate certain days, events, or circumstances when a dress standard more casual than normal is allowed.
- b) Exceptions to these standards may be made by a court executive or designee, or court level administrator or designee. Perfumes or colognes should be avoided if possible or used sensitively in moderation considering individuals sensitive to strong fragrances.
- a)c) Table 1 is provided as a guideline, giving suggested examples of appropriate business attire and attire not usually recommended.

Table 1.

Appropriate Attire	Not Recommended
<u>Dress slacks/khaki-style pants</u>	<u>Tank-top or halter top</u>
<u>Dress shirt (button-down long or short sleeved) or blouse</u>	<u>Strapless or spaghetti strap dress/shirt</u>
<u>Polo or golf-style shirt</u>	<u>Shorts</u>
<u>Sweater</u>	<u>Hat</u>
<u>Dress</u>	<u>Beach-style flip flops</u>
<u>Skirt</u>	<u>Athletic slides</u>
<u>Jeans/sneakers (casual day or event only)</u>	<u>Tee shirt</u>

- 2) Exceptions to these standards may be made on a case by case basis by management, in consultation with an appropriate judicial officer with authority over a courtroom or courthouse, as needed.
- 3) Requests for exceptions to this policy to accommodate religious beliefs, health conditions

34 or disabilities should be referred immediately to a member of the HR Department.
35 2)4) Employees may safely comply with this policy in a manner consistent with their
36 gender identity, gender expression, etc., with protections under HR15 and HR16.
37
38

Section 17 – Grievance and Appeal

HR17-9. Grievance Review Panel.

Panel Membership

- 1) A grievance review panel is established consistent with [UCJA §3-402\(6\)](#). The panel includes Court Level Administrators of Juvenile, District, and Appellate Courts, and the Assistant Court Administrator.
- 2) In consultation with the State Court Administrator or General Counsel, if a ~~Court Level Administrator~~ ~~from member of~~ the panel is unable or unavailable to participate in a grievance review, or is the subject of the grievance brought to the panel, a designee may be appointed by the HR Director or HR Manager.

Panel Procedures

- 3) The HR Department shall notify panel membership established in [HR17-9\(1\)](#) of the request for a Level 4 review within five (5) business days of receipt of the request.
- 4) The grievance review panel shall have 15 business days to establish a grievance review meeting date with grievant.
 - a) The grievance review meeting date shall be set no later than 30 calendar days after the panel receives the request for a Level 4 review unless mutually agreed upon by grievant and the panel.
 - b) A representative assistant may be appointed by the panel to coordinate and communicate logistics such as date, time, meeting location, etc.
- 5) Grievant shall have an opportunity to present relevant facts and ~~for~~ evidence to the panel during the grievance review meeting.
- 6) The panel shall consider the following items in its review of the employment action being grieved:
 - a) The testimony of grievant, relevant evidence, witness statements, and so forth as described in HR17-1(5) and HR17-1(6).
 - b) Testimony, relevant evidence, witness statements and so forth provided by individuals with decision-making authority over grievant at the time the action being grieved was taken.
 - c) Relevant organization policies, including but not limited to the human resources policies in this manual.
- 7) The panel shall have 10 business days following the grievance review meeting to issue a written review of the employment action being grieved, and shall provide a copy to the HR Director, General Counsel, and State Court Administrator.
- 8) The panel's written review shall include the following:
 - a) An analysis of all information presented to the panel during the grievance review process from grievant and other relevant stakeholders such as grievant's line of

- 48 management, including credibility analyses of testimony and evidence, if
49 applicable.
- 50 b) An analysis of relevant human resources policies, including discretionary factors
51 under HR11-3 for disciplinary actions, and the degree to which the panel believes
52 the action being grieved complies with or does not comply with those policies.
- 53 c) The recommended course of action to remedy noncompliance, if the panel
54 believes the action being grieved does not comply with relevant human
55 resources policies.
- 56
- 57 9) The State Court Administrator (SCA) or designee shall have 10 business days to certify
58 the panel's written review.
- 59 a) If the SCA or designee agrees with the panel's written review, the SCA or
60 designee shall issue a written consent and send a copy of the review and
61 consent to grievant, the grievance review panel, and to the HR Director.
- 62 b) If the SCA or designee disagrees with the panel's written review, the SCA or
63 designee shall issue a written dissent to the grievance review panel and to the
64 HR Director. In this event, the SCA or designee will issue a final written decision
65 to grievant with a copy to the HR Director.
- 66
- 67 ~~6) The panel shall have 15 business days following the grievance review meeting to~~
68 ~~consider facts and/or evidence presented and issue a written decision, including the~~
69 ~~reasons for the decision, and shall provide a copy to grievant and to the HR Director.~~
- 70 ~~7)–~~
- 71 ~~8)10) The certified consenting or dissenting decision of the SCA or designee is~~
72 ~~considered final.~~
- 73 ~~The decision of the grievance review panel is considered final.~~

HR01. Definitions.

(97) “**Prohibited Political Activity**”: Running for or holding political or elective public office; making or influencing governmental policy unrelated to the performance of official court responsibilities; ~~or~~ active support of a partisan or special interest public policy agenda; ~~or any activity that violates HR09-12 governing political activity.~~

HR09-12. Political Activity.

- (1) An employee may only participate in political activity that does not jeopardize the confidence of the public or of government officials in the impartiality of the judicial branch of government.
- (2) Prohibited political activity includes, but is not limited to:
 - (a) Political activity which conflicts with or otherwise affects the mission and activities of the judicial branch;
 - (b) Running for, being appointed to, or holding an elected office at any level of government;
 - (c) Serving on boards, councils, committees, or other entities in the executive or legislative branches, unless the entity deals with the law, the legal system, or the administration of justice (applicable at both the state and local levels);
 - (d) Membership in an organization that practices unlawful discrimination;
 - (e) Political activity during work hours, unless on management-approved leave;
 - (f) Use of any state owned equipment, supplies or resources when engaged in political activity;
 - (g) Discrimination in favor of or against any person, including but not limited to court patrons, employees, or applicants for employment, based on political activities; and
 - (h) Use of any information related to employment in the judicial branch while engaging in political activity, including but not limited to the employee's job title, position, assignments or activities as an employee of the judicial branch.
- (3) Trial Court Executives, directors, court administrators, and other employees in policy-making positions may be subject to additional restrictions on political activity. If there is a question about further restrictions, prior to engaging in such activity, the employee must submit the information to the HR director and the employee's supervisor who will seek a legal opinion from the AOC General Counsel's Office before approval, denial or conditional approval.
- (4) Political and religious statements, displays, and discussions are prohibited in areas visible to or within earshot of the public. Employees should exercise caution with political and religious displays, statements, and discussions in all other areas of the workplace. Employees and judicial officers shall carry out their responsibilities behaving with dignity, respect, and professionalism toward coworkers, management, court patrons, and the public.

Tab 8

Agenda

Utah Bar Foundation Report on Debt Collection and Utah's Courts

Released April 2022



Table of Contents

Message from the Executive Director	4
Overview	5
Introduction	6
Debt Collection	6
Eviction	7
Methodology	8
Research Findings	9
Summary	9
Debt Litigation in Utah	9
Debt and Evictions Are a Statewide Issue	9
Debt Litigation Is Brought by a Small Number of Plaintiffs	11
Defendant Representation Is Rare, but It Can Have an Impact	13
Pre-Judgment	17
Confusion About the Ten Day Summons Inhibits Defendant Participation, Leading to Worse Outcomes for Defendants in Cases Reaching Judgment	18
Complex Response Requirements Inhibit Defendant Participation, Leading to Higher Default Judgment Rates in District Court	19
Waiting for Defendant's Answer to File Documentation of Debt With District Court Is Inefficient and a Barrier to Legal Assistance	20
District Court Is Being Used to Pursue Relatively Low-Dollar Claims	21
Three (Business) Days Is Too Short a Timeframe for Renters to Move	23
Case Outcomes	25
Court Process Adds Unexpected Costs	26
Combined Use of Three Day Notice to Pay or to Vacate and Treble Damages Results in Extremely High Judgments in Eviction Cases	27
The Current Attorney Fee Schedule Disincentivizes Defendants From Contesting Small-Dollar Debt Claims in District Court	28

Post-Judgment	29
Many Judgments Remain Unsatisfied Years Later	32
Post-Judgment Interest Rates Are Applied Incorrectly	35
Service to Vacated Addresses	36
Practice and Policy Recommendations	37
Potential Solutions for Utah	37
Increase Opportunities for Settlement Prior to Hearing	37
Target Resources for Rural Areas with High Concentrations of Debt Litigation	38
Require Plaintiff to File Documentation Proving They are Entitled to Recover From the Defendant Before Granting a Judgment by Default	38
Reconsider Response Requirement for Low-Dollar Claims in District Court Debt Cases	39
For District Court Debt Claims, Require Disclosures at Time of Filing, Similar to Rule 26.3 Requirements in Evictions	39
Training for Court Personnel and Judiciary	40
General Data Recommendations	40
Add MyCase Functionality Prior to Filing	40
Continue Improving Forms for Readability and Accessibility	40
Reconsider Flat Attorney Fee Rates for Claims Less Than \$350/\$750	40
Increase Court Oversight of the Post-Judgment Process	41
Clarify the Statute of Limitations/Allowable Amount of Time Between Occupancy Judgment and Suit for Damages	41
Conclusion	42
Methodological Notes	42
Definitions	42
Methods and Limitations	42
Appendices	44
Appendix A. Debt Case Stages	44
Appendix B. Lists of Top Filers	45
Appendix C. Recent Utah Initiatives	46

Message from the Executive Director

In 2019, the Utah Bar Foundation (UBF), in conjunction with the Utah Foundation, commissioned an unmet legal needs study that was completed in February 2020. The final report from that study, titled *The Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns*,¹ was released in April 2020. That report showed that some of the highest unmet legal needs in Utah center around debt collection, in both District and Justice Courts, as well as the eviction process, handled in District Court. Most concerning was that the majority of plaintiffs have attorney representation in the eviction and debt collection matters, while less than 5% of defendants (renters and/or debtors) had attorney representation. The Utah Bar Foundation wanted to take a deeper look into ways to improve this legal system for all parties involved.



**Kim Paulding, Director
Utah Bar Foundation**

In support of its mission to increase knowledge and awareness of the law in the community, improve the administration of justice, and serve law-related public purposes, the Utah Bar Foundation (UBF) has undertaken a months-long effort to explore issues arising from the prevalence of debt collection litigation in Utah and to identify opportunities for systemic improvement. Nationwide, state courts are increasingly burdened with high-volume, low-dollar debt claims brought by plaintiffs with legal representation and defendants with no legal help. For various reasons, defendant participation rates in the legal system can be low, leading to a high rate of default judgments. Utah's courts are not immune to these problems. The Utah Bar Foundation has taken a data-driven, non-partisan approach to studying these issues. Support for this project was provided by The Pew Charitable Trusts.

We appreciate the assistance from the Utah State Courts in fulfilling our court data requests, the many hours of time freely given by numerous community stakeholders with expertise in the eviction and debt collection legal system in Utah, members of The Pew Charitable Trusts Civil Legal System Modernization (CLSM) team and to the members of the Utah Bar Foundation Working Committee for making this project a success.

Members of the Utah Bar Foundation Working Committee include:

Kim Paulding, Executive Director, Utah Bar Foundation
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Overview

This project sought to understand debt collection activities and the processes and outcomes tied to two levels of the judiciary in Utah: Justice Courts, which hear small claims debt cases, and District Courts, which hear cases involving third-party debt collection, evictions, and eviction-related debt. The project researchers found the following:

- ◆ Some policies, including statutes and court rules, serve to disincentivize defendant participation in debt lawsuits. In some cases, policies around attorney fees and court-awarded damages lead to worse outcomes for defendants who do engage with the courts than for defendants who do not participate in their cases and receive a default judgment.
- ◆ Civil courts are primarily being used by financial institutions and their subsidiaries to collect debts. As a result, individuals and/or small business owners represent a minority of plaintiffs even in Justice Court small claims.
- ◆ In Utah, six plaintiffs account for roughly 50% of all debt collection cases in District Court and nine plaintiffs account for roughly 50% of small claims filed in Justice Court.
- ◆ The size of debt being pursued in District Court is very similar to that pursued in Justice Court (median amounts in controversy are approximately \$1,200), but outcomes for defendants are very different due to contrasting policies.
- ◆ While the rules for small claims² in Justice Courts are easier to navigate for debtors, the rules for District Court were written assuming both parties involved in a case would have legal representation.³ Defendant confusion around their rights and obligations can discourage participation with a case.
- ◆ When it comes to evictions, Utah's policies are among the least renter-friendly in the nation; only two other states have a three-day “pay or vacate” window coupled with treble damages, which may be assessed in addition to any back rent owed, for residential evictions.⁴

Additionally, we identified several overarching themes related to the debt litigation process in the state:

- 1 Court is expensive (for all parties).**
- 2 Court processes are difficult to navigate without specialized training.**
- 3 Court is a less efficient vehicle for resolving debt claims than upstream solutions.**
- 4 People seldom understand their rights and obligations.**
- 5 The length of time between case initiation to judgment is a significant factor in defendant outcomes.**

Utah's courts have a unique opportunity to improve adjudication of debt collection and eviction lawsuits. This report proposes policy solutions to modernize, streamline, and improve the eviction and debt collection system for all parties.

Introduction

Beginning in July 2021, the UBF began gathering data from the Utah Administrative Office of the Courts on eviction and debt collection lawsuits. The scope also included dozens of stakeholder interviews on their experiences with small claims, District Court debt claims, and evictions in the legal system. This report describes the scope of these lawsuits as they move through Utah's District and Justice Courts as well as their impact on courts, the parties involved, and Utahns generally. It concludes with recommendations for reform at various stages of the debt collection litigation process from the initial notice and filing of a lawsuit through the post-judgment enforcement of a claim. These recommendations aim to promote a more open, fair, and efficient justice system.

Debt Collection

As of 2013, debt collection lawsuits – which include unpaid auto loans as well as medical and credit card bills – have become the single most common type of civil litigation, according to The Pew Charitable Trusts (Pew). In its 2020 report on individual debt, Pew also found that the number of debt cases nationwide rose from fewer than 1.7 million to about 4 million between 1993 and 2013. That leap corresponds with Consumer Financial Protection Bureau (CFPB) national survey data that found nearly 1 in 20 adults with a credit report were sued by a creditor or debt collector in 2014.

While courts are an important resource for businesses needing to collect debts owed by their customers or renters, civil dockets in state courts, including Utah's, are dominated by corporate plaintiffs. Companies attempting to collect consumer debt are often able to use serial filing⁵ to integrate the civil court process into their collections processes. Nationwide, these companies file millions of lawsuits⁶ each year, and commonly receive default judgments, meaning they are granted court authority to garnish a defendant's wages and assets without the defendant ever engaging with the lawsuit or court process.⁷ A majority of these filings are attributable to debt buyers who purchase debt from original creditors such as banks or hospitals for a fraction of their worth⁸ but sue consumers for the full amount plus collection costs.⁹

Much of the debt being collected by these plaintiffs can be classified as household debt, meaning it was incurred primarily as a result of expenses such as paying for rent and utilities, medical bills, or credit card usage. Nationally, household debt has exceeded \$15 trillion¹⁰ and the COVID-19 pandemic initially exacerbated the growing housing and financial instability of the past decade.¹¹ Utah has not been immune to these trends. While the state has experienced rapid economic growth with a 37% increase in GDP from 2010 to 2020 – one of the fastest in the nation¹² – Utah still has one of the highest debt-to-income ratios in the country.¹³ As of December 2020:

- ◆ 21% of Utah's population had some form of debt in collections, with a median amount of \$1,992.
- ◆ 41% of consumers in communities of color have some form of debt in collections.
- ◆ Medical debt represents the highest share of past due bills, at 14% – above student loan, auto/retail, and credit card debt.¹⁴

Eviction

In recent years, evictions have garnered significant attention from policymakers nationwide, leading several states to adopt policy and process reforms to serve the needs of all court users.¹⁵ In addition to substantive changes to landlord-and-tenant law, states are updating court processes around notice, service of process, and court forms.¹⁶ The COVID-19 pandemic and exacerbated threat of housing instability in particular has focused policymaker and public attention toward judgments on eviction.¹⁷ This focus has led to both local¹⁸ and national¹⁹ innovation and expansion of resources, many of which could be adapted in Utah, especially given the recent adoption of the judiciary's regulatory sandbox.²⁰

In 2016, Utah's eviction rate, or the percentage of renters who are removed from occupancy through the court process, was 0.93% – significantly lower than its adjacent and southern neighbors, and only slightly higher than Idaho and Wyoming to the north.²¹ From the years 2013-2020, more than 56,000 eviction cases were filed with the Utah Courts.²²

Utah is one of three states in the nation that combine a three-day notice period with the availability of treble damages for landlords in residential eviction cases; of these three states, Utah is the only state where the award of treble damages is mandatory and not in the discretion of the court.²³ The combination of these eviction policies can leave Utah renters scrambling for new housing while burdened with crushing housing-related debt judgments and garnishments, which can hinder efforts to secure a new place to live.

Treble Damages

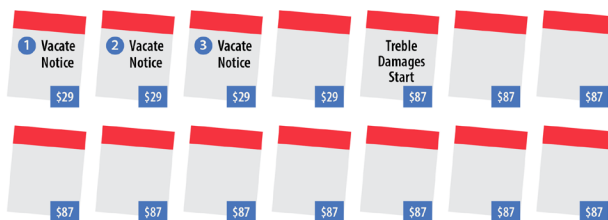
In Utah, nonpayment of rent can lead a landlord to demand that a renter either “pay or vacate” the premises within three business days. If the renter doesn’t comply, the landlord will initiate an action for “unlawful detainer” (eviction).²⁴ Evictions are structured as rent collection proceedings, but with different notice requirements and other policies from debt collection cases. Utah is unique in its explicit statutory allowance for plaintiffs (landlords) to seek mandatory treble damages, which are additional damages for each day the defendant occupies a property after the three-day notice to pay or vacate has expired.²⁵ The wording of the statute requires these damages to be awarded by the court, without discretion, to plaintiffs who request them as part of an eviction. We believe that policy change around these two statutes could continue to achieve the landlord’s goal of removing a renter who is not paying rent but could also be improved so that the renter is not left with crushing debt and the inability to find new housing as a result of their eviction.

The following diagram illustrates how quickly this debt can add up for a renter who is already behind on rent.

How TREBLE DAMAGES are Calculated

Monthly rent: \$875

Case Study – The Jones family received an eviction notice on Monday, here are how treble damages is calculated if they move out within two weeks.



Totals:

Past Due Rent (2 months and 4 days)	\$1,866
Attorney's fees and collection costs	\$300
Treble Damages (10 days)	\$870
Total	\$3,036

Policy change could also help address rental debt and racial disparities around evictions in the state. Approximately 23.9% of Utah's population are people of color,²⁶ but the Utah Division of Multicultural Affairs found that over 80% of evictions in Utah take place in zip codes where the majority of residents are people of color.²⁷

When an eviction is filed against the renter, it can significantly impair their ability to secure quality, affordable rental housing²⁸ and employment down the line.²⁹ Understanding what happens when debts come to court and how the policies and processes governing these lawsuits – which were intended for a very different structure of court usage and civil legal need – can make case outcomes more fair and help prevent further economic instability of low-income Utahns.³⁰

Methodology

To understand how the national trends surrounding debt and the civil legal system manifest in Utah, we conducted a research study of quantitative data informed by stakeholder context. In addition to docket data provided by the Utah's Administrative Office of the Courts (cases filed from January 1, 2013, through September 30, 2021), hand samples of court documents, and data from the Utah Department of Financial Institutions' annual reports, researchers analyzed data collected via stakeholder interviews with judges, court staff, both plaintiff and defense attorneys, and community-based organizations as well as over 30 hours of virtual courtroom observations of District Court debt collection cases. We also conducted an inventory of the patchwork of statutes, court rules, and forms that govern debt collection, eviction, and small claims litigation in Utah. Judges and practicing attorneys were consulted throughout to contextualize our understanding of all this data. Additionally, some information about court procedures has been included in order to meaningfully situate research findings into the greater context of Utah's civil justice system.³¹ Detailed methodology, data analysis protocols, and court resources are included in the conclusion.

While the initial focus of this report was on debt collection claims in District Court and small claims in Justice Court, we chose to expand our analysis to include eviction cases, as most evictions are brought due to non-payment of rent, rather than for other reasons that might warrant a lease termination, and landlords seeking to collect rent-related debt can pursue these amounts as debt claims after the issue of occupancy has been determined. We include data on small claims cases, as they are part of a bigger picture of how debt collection lawsuits go through the court system, although Utah does not permit third-party debt buyers or collectors to file in small claims court.

The scope of this report is limited to the overlap between two trends: the changing civil courts and rising household debt. We do not discuss collection practices or landlord-renter interactions that take place before the court is involved, nor do we address questions surrounding why these debts allegedly incur and become delinquent.

The survey of unmet legal needs conducted immediately prior to the pandemic by the Utah Bar Foundation identifies this nexus of personal finances and the courts as the primary underserved civil legal issue being faced by low-income Utahns. The survey found that 26% of low-income Utah households were facing financial legal needs and more than two-thirds said they could not afford a lawyer if they needed one.³² While Utah has a wide range of civil legal aid services that are accessible for both urban and rural Utahns, the vast majority of these resources focus on family law, immigration, or domestic violence issues, often leaving debt collection and eviction defendants to navigate lawsuits on their own.³³

Research Findings

Summary

Debt collection lawsuits are governed by the state's general rules of civil procedure. Utah also has specific debt collection court forms and the Ten Day Summons – an alternative to the traditional summons that allows plaintiffs in District Court to serve notice of a lawsuit 10 days prior to filing anything with the court, which can have a significant impact on the lawsuit process. The state judiciary has also adopted some court practice-related reforms, such as designating debt collection lawsuits as a unique case type in case management systems. Utah is one of just a few states that has done this.³⁴ Data from Utah's Administrative Office of the Courts provided valuable information about the landscape of debt litigation across the state. Deeper analysis of this data illuminates specific problems that arise when debt collection practice interacts with Utah's civil legal system.

Debt Litigation in Utah

Debt and Evictions Are a Statewide Issue

From January 1, 2013, through September 30, 2021, a grand total of 755,410 District Court debt claims, Justice Court small claims, and evictions were filed in Utah's courts. Of these:

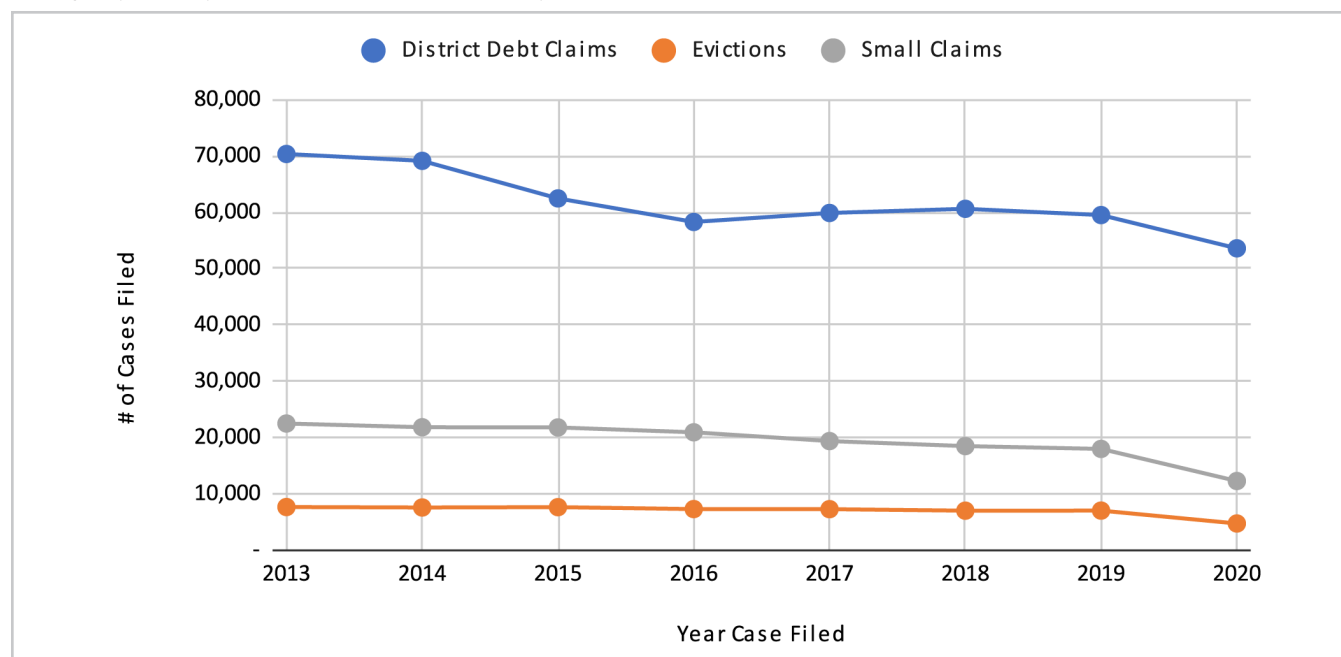
- ◆ 59,668 were eviction cases, representing 9% of general civil legal claims filed in District Court
- ◆ 163,028 were small claims,³⁵ and
- ◆ 532,714 were District Court debt claims, representing 85% of general civil legal claims filed in District Court.³⁶

Some variation in case filings occurred over this span of time. From 2013 to 2019, the numbers of eviction filings and small claims filings were relatively flat, with decreases beginning in early 2019. Debt claims showed a decline from about 70,000 in early 2013 to about 60,000 by 2016; debt claims filings remained relatively level for the next three years with a slight decline between 2019 and 2020, possibly due to a drop in case filings associated with the COVID-19 pandemic.



Fig. 1: Number of Case Filings by Year and Type

Filings by case type have remained relatively constant



Case filings from 2019 reveal that debt litigation impacts all areas of the state, with some areas experiencing higher per capita rates of filings than others. Of Utah's rural counties,³⁷ the counties of Box Elder, Cache, Carbon, Duchesne, Morgan, Rich, and Tooele present a relatively higher rate of case filings for at least one of each of the case types analyzed in this report (debt claim, small claim, or eviction). The highest per capita rate of debt case filings took place in Tooele County. Carbon County experienced the second-highest per capita rate of debt claims as well as the highest rate of evictions. Non-rural Salt Lake County experienced the second highest rate of small claims filings and eviction filings, and the fourth-highest rate of debt claims. The Weber-Morgan area had the highest small-claims filing rate and the third-highest debt claims filing rate. These numbers indicate that any resources that could improve the court experience for debt litigants must be accessible in all areas of the state to support equitable outcomes between Utah's rural and non-rural communities.

Table 1: Debt Collection Impacts Rural and Non-Rural Utah

Carbon, Tooele, and Salt Lake County experience relatively higher rates of case filings

County	Cases Filed per 100k population (2019)		
	Debt	Evictions	Small Claims
6th District	929	66	148
Beaver/Iron	1,142	119	154
Box Elder	1,791	143	501
Cache/Rich	1,723	60	353
Carbon	2,385	352	323
Davis	1,614	161	559
Juab/Millard	1,341	79	198
Salt Lake	2,211	337	709
Southeastern	921	91	157
Summit	802	78	235
Tooele	2,458	165	241
Uintah Basin	1,462	196	201
Utah	1,681	138	386
Wasatch	1,053	79	173
Washington	1,301	102	341
Weber /Morgan	2,227	310	1,170

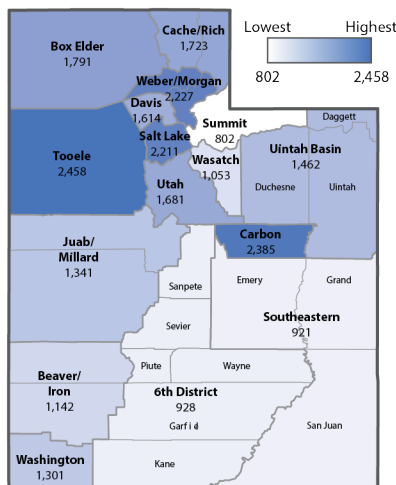
Fig. 2: Debt Is a Statewide Issue

Rural areas saw slightly higher per capita filing rates in 2019, but all of Utah was affected

Cases Filed per 100k People (2019)

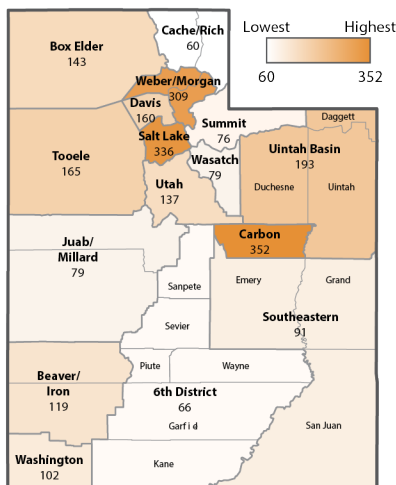
District Debt Claims per 100k People

Cases Filed in 2019



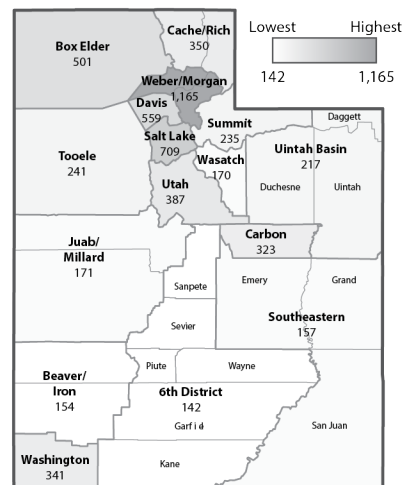
Eviction Cases per 100k People

Cases Filed in 2019



Small Claim Cases per 100k People

Cases Filed in 2019



Debt Litigation Is Brought by a Small Number of Plaintiffs

While debt litigation affects thousands of Utahns across the state, analysis of court data revealed that these claims are being brought by a small number of plaintiffs.³⁸ In 2019, six plaintiffs accounted for approximately 50% of all District debt claims, and nine plaintiffs accounted for approximately 50% of small claims.

In contrast, for eviction cases, 294 plaintiffs account for 50% of cases filed in 2019, with the top 10 filers accounting for just under 6% of eviction filings in that year.

The vast majority of plaintiffs in both District Court debt claims and small claims are companies.³⁹ A hand-sample of small claims filed in 2019 revealed that 83% of small claims were filed by companies, not people.⁴⁰ Seventy-two (72)% of small claims were filed by companies registered as financial institutions with the Utah Department of Financial Institutions (DFI), and 11% were filed by a company not registered with the DFI. Only 17% of small claims, or less than 1 in 5, were brought by individuals in 2019.

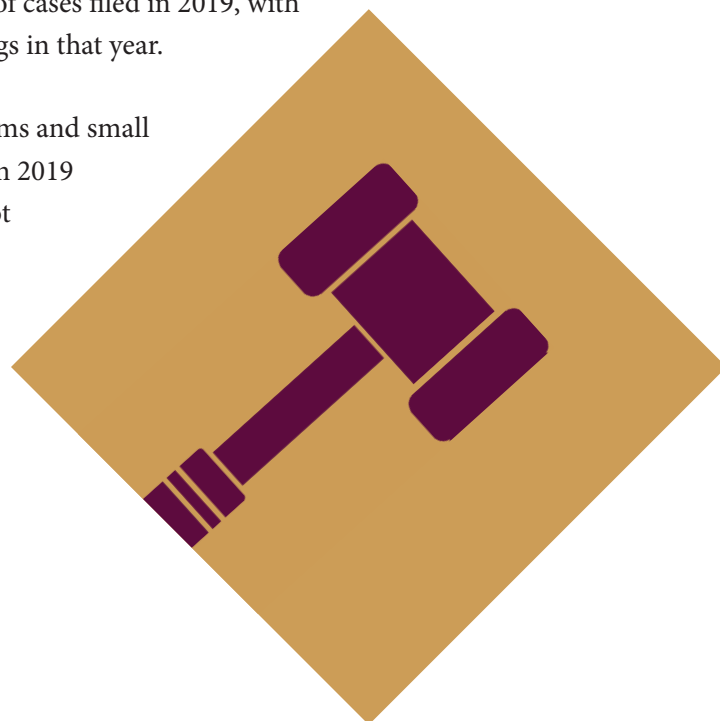


Fig. 3: Companies Are Most Common Debt Plaintiffs

Only 17% of Utah small claims – less than 1 in 5 – were initiated by individuals in 2019

Nearly all debt claims examined in our study were brought by companies; in contrast, the vast majority of District Court debt claims defendants are individuals, not companies. From 2013 through 2020, the percentage of defendants who were companies in District Court debt claims ranged from 1%-3%;

the numbers of companies that were being evicted from a property were 1%-2%. For small claims, the percentage of defendants who were companies ranged from just over 5% to just over 7%.

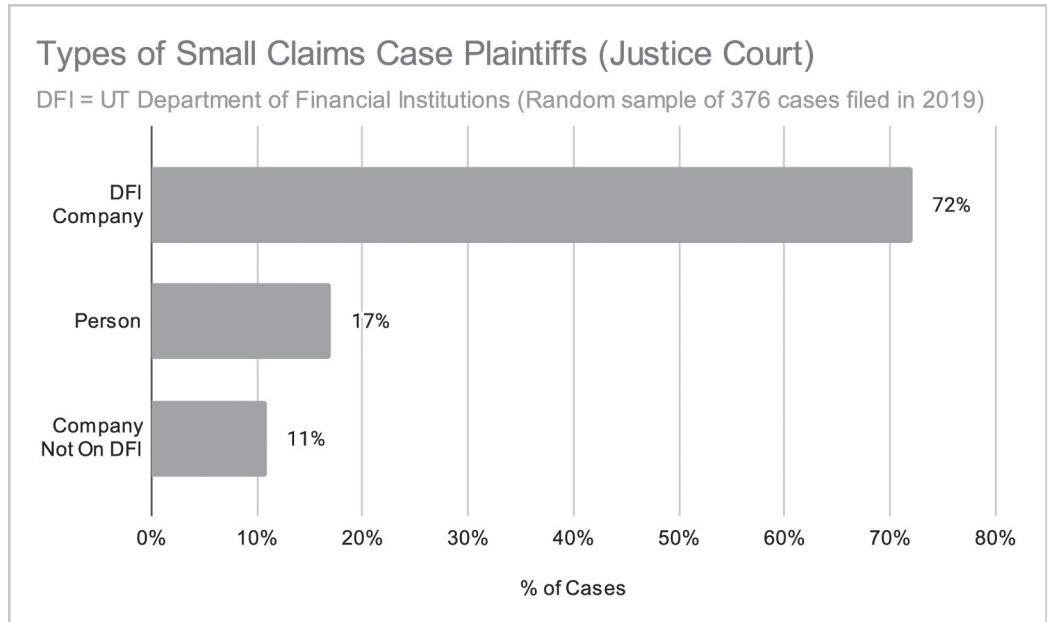
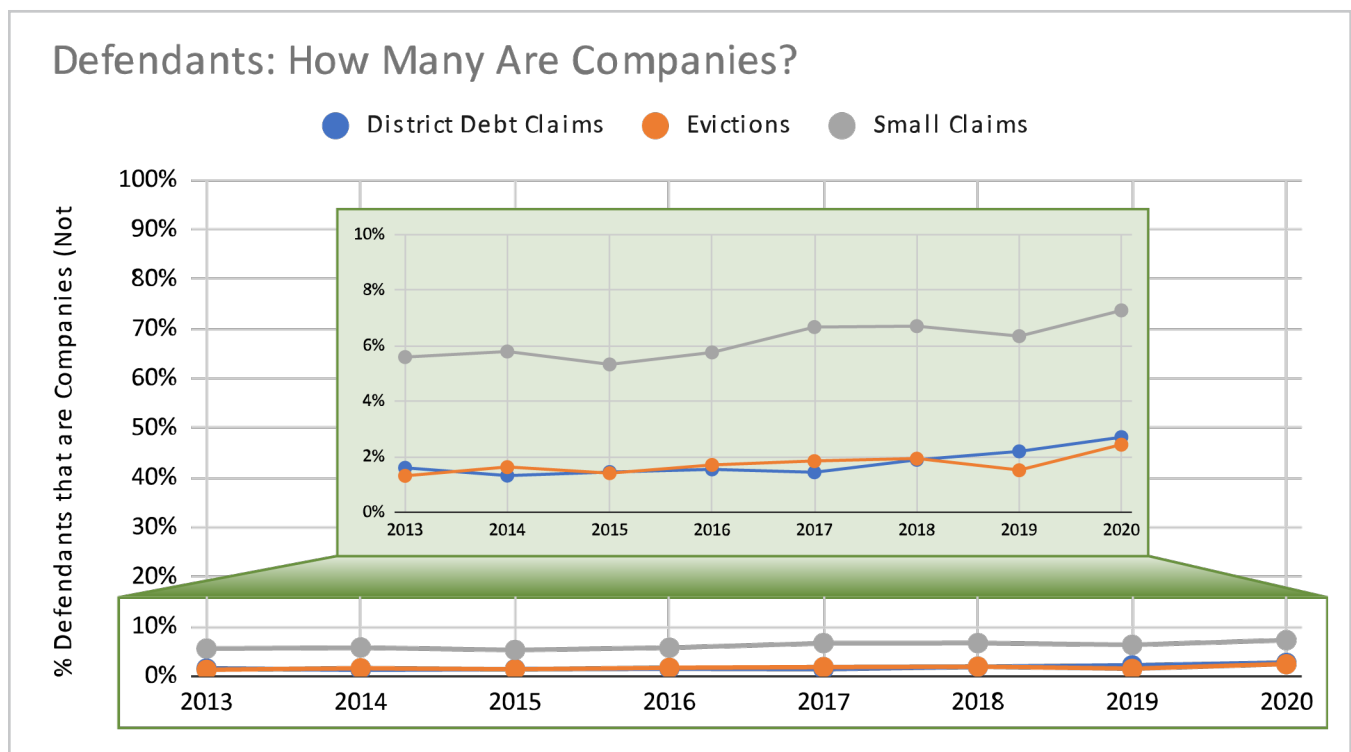


Fig. 4: Debt Defendants Are Almost Always Individuals

From 2013 to 2020, no more than 3% of defendants in District Court and fewer than 10% of defendants in Justice Court were companies

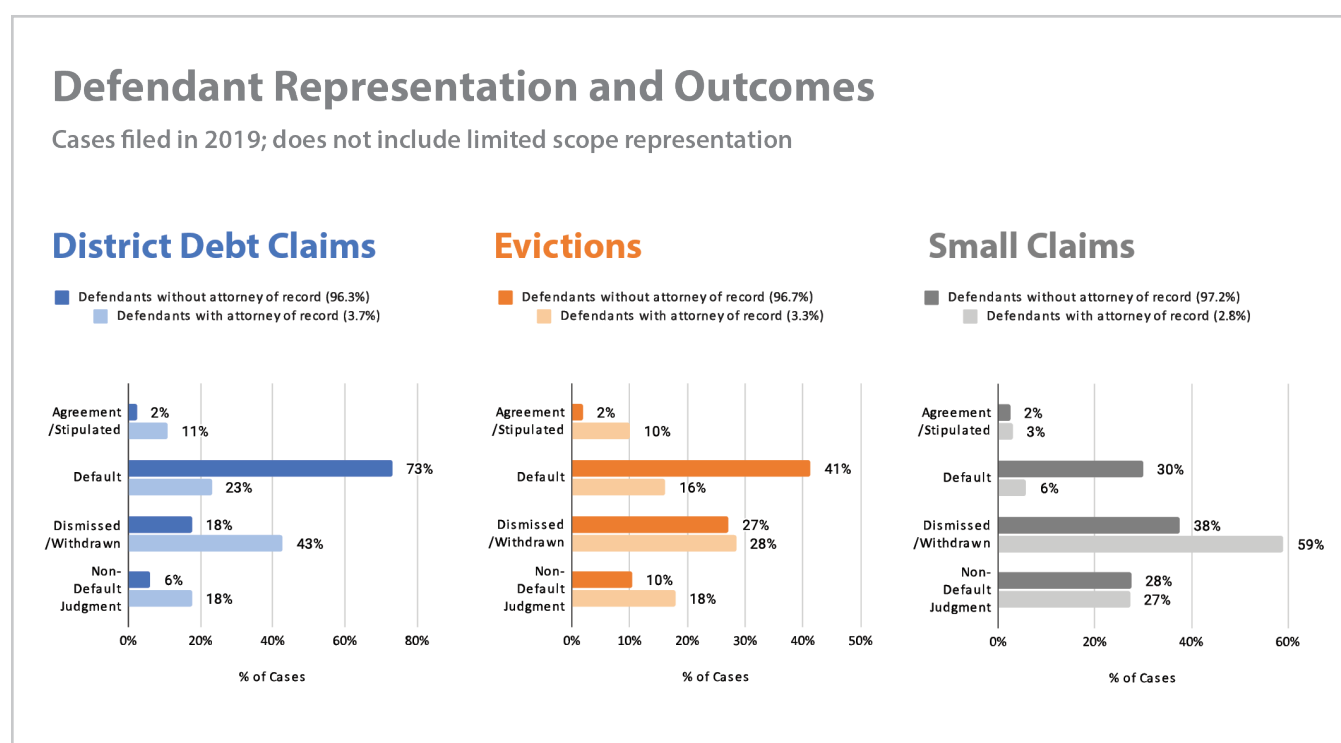


Defendant Representation Is Rare, but It Can Have an Impact

In District Court debt claims filed in 2019, only 3.7% of defendants had some form of court-recorded attorney representation at some point during the case. A breakdown comparing case outcomes by representation for each case type (District Court debt claims, small claims, and evictions) suggests that attorney representation does have an impact on case outcomes for defendants. However, because representation is rare, these impacts are not felt by the vast majority of defendants. It should be noted that in some parts of the state, volunteer attorneys offer limited scope assistance, such as brief advice and counsel, but the nature of this assistance does not rise to full representation and therefore there is no attorney of record listed in these cases. Thus, any impact of this volunteer program to assist defendants in District Court debt collection cases would not be measurable using this court data.

Fig. 5: Attorneys Improve Outcomes for Defendants

Default judgment rates dropped for debt defendants with lawyers



For cases filed in 2019 where the defendant was represented by an attorney:

- ◆ The share of District Court debt claims with a default judgment was 23%, compared to 73% of District Court debt cases where the defendant did not have an attorney.
- ◆ For small claims, the share of cases resulting in a default judgment was only 6%, compared to 30% for defendants without representation.
- ◆ In eviction cases, 16% of cases resulted in a default judgment, compared to 41% of cases where the defendant did not have representation.

In both District Court debt claims and small claims, a larger share of cases where the defendant had representation resulted in the case being withdrawn or dismissed, compared to those cases where the defendant did not have representation. Representation did not appear to impact the rate of case withdrawal or dismissal in evictions.

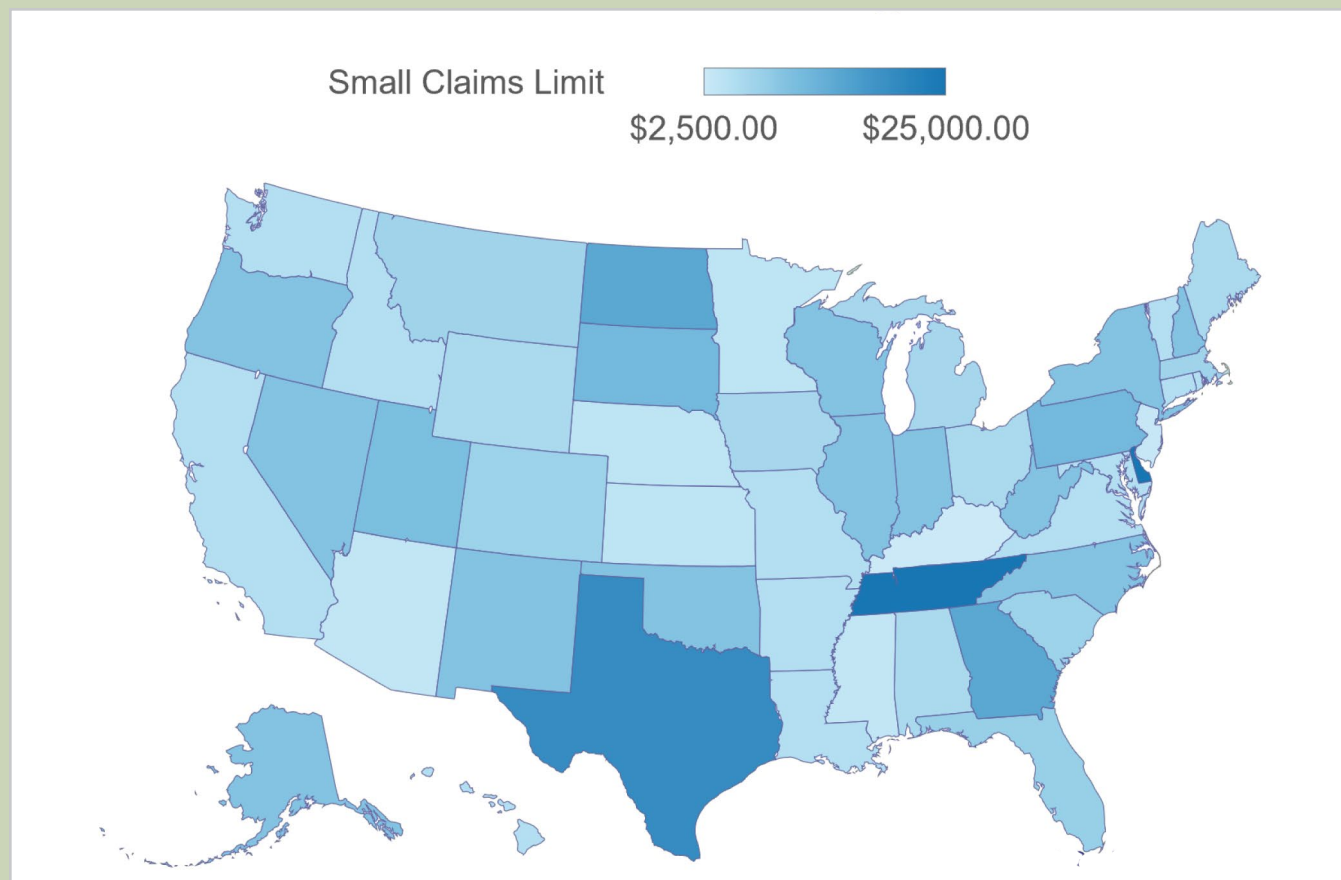
In evictions and District Court debt claims, the percent of cases that included an agreement or stipulation was higher where the defendant had representation. Defendant representation did not appear to have this impact in small claims.

Small Claims

“Small claims” are legal actions to recover relatively small sums of money. “Small claims court” generally refers to a specific docket or calendar where a judge, or frequently a pro tem judge,⁴¹ hears only these types of cases. Small claims dockets were originally conceived as a way for individuals with relatively straightforward cases and relatively low stakes to have their cases heard in court without complicated evidentiary or procedural hurdles that would require the assistance of an attorney.⁴² Small claims exist as a case type in all 50 states, and each state has specific laws or court rules governing how small claims are handled. These policies generally include the maximum amount that can be sought, ranging from \$2,500 in Kentucky⁴³ to \$25,000 in Tennessee and Delaware.⁴⁴

Fig. 6: Utah Among Highest in Nation in Small Claims Maximums

Utah is one of a handful of states with small claims limits over \$10,000



In Utah, small claims can be brought for the recovery of money, so long as the amount claimed does not exceed the small claims limit⁴⁵ (including attorney fees, but not including court costs or interest).⁴⁶ In Utah, small claims court is a division of the Justice Courts, which has jurisdiction over cases filed as small claims. A legal action to recover a debt may be filed either in Justice Court as a small claim or in District Court as a debt claim. Because third-party debt collectors are prohibited from filing in small claims court, claims for sums less than or equal to the small claims limit could be brought in District Court as debt claims rather than as small claims, and many are, according to this report's analysis of Utah court data.⁴⁷

A decision in small claims court is binding upon the parties just as it would be in any other court, and if a party wishes to appeal the decision, they may do so by filing an appeal in District Court.⁴⁸ Justice Courts are not "courts of record," which means that a Justice Court hearing would not create a written record of the matter that could then be reviewed upon appeal. Thus, no transcript would be prepared by a court reporter nor any evidence or testimony provided by the parties to the Justice Court preserved as part of a case record.

De Novo Hearings

When a small claims case is heard on appeal, it must be heard "de novo," or as if it were a brand-new case. In a de novo hearing, the new court is not obligated to give deference to (or take into consideration) the first court's findings of fact or conclusions of law. The new court sees the case as if it had never been brought before any court. There are advantages and disadvantages to a de novo trial. If you made a mistake at the first hearing or left out important evidence, a de novo hearing is an opportunity to try again and put forth a better case. On the other hand, if there is nothing new to add to the case and a party believes that the court made a mistake or the wrong decision given the evidence, a de novo trial presents an additional expense of time, money, and effort without any guarantee of a better outcome.

Additionally, court rules state that, when a small claims case is appealed in a location where a program for small claims mediation exists, parties are required to go to mediation before a Third District Court Judge will hear the matter.⁴⁹

How Debt Collection Cases Move Through the Courts

In Utah courts, the debt litigation process typically takes place in three distinct stages: pre-judgment, case outcome, and post-judgment. Many of the research findings speak to these different stages of the debt litigation process, which were identified through national research on debt collection and generally apply to most high-volume, business-to-consumer civil dockets.

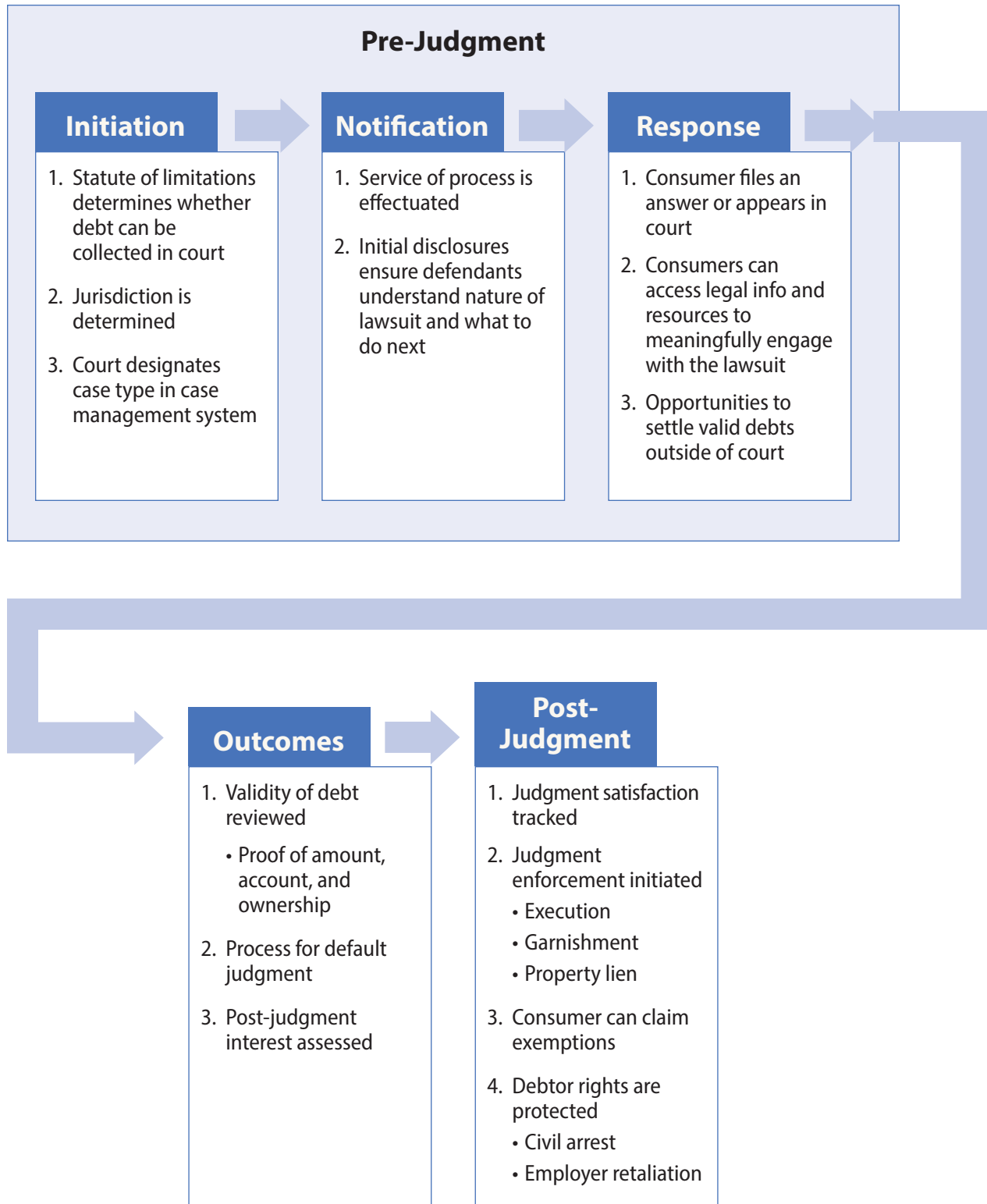
The pre-judgment stage includes the plaintiff's filing of a lawsuit in court, notifying the defendant that they are being sued, and the defendant responding to the lawsuit. The case outcome stage involves a money judgment, settlement, or dismissal of the lawsuit. In debt cases, some judgments are issued "by default," meaning that the defendant did not respond to the case or appear at the hearing. In the post-judgment stage, a plaintiff who has received a judgment in their favor is able to enforce the judgment using collections measures that would not otherwise be available to them, such as garnishing wages, seizing assets, and even issuing an arrest warrant for the defendant.

Generally speaking, these stages apply across debt claims in District Court, small claims in Justice Court, and eviction cases in District Court.

Image 2: Initiation, notification, and response occur prior to a hearing date

How Debt Collection Cases Move Through the Courts

Initiation, notification, and response occur prior to a hearing date



Pre-Judgment

The first phase of debt litigation, called “pre-judgment,” includes everything that takes place prior to a judge making a formal decision on a case. This phase includes the plaintiff’s complaint and summons (case initiation), service of process (notification), and defendant’s answer and/or counter-claims (response). Due to the inherent complexity involved with navigating the court system, this early stage of the court process is often marked by litigant confusion, which can prevent defendant engagement and potentially affect case outcomes.⁵⁰

The Utah courts have taken steps to reduce confusion around the complaint and response process. For example, the courts implemented a custom debt collection lawsuit answer form⁵¹ in December 2017, followed by a complaint form⁵² in July 2021. These tools were intended to create a more accessible and usable system for court users without lawyers. The forms follow user-friendly design principles with checklists and plenty of white space; however, there is still a substantial amount of “legalese”⁵³ that may be confusing for defendants.⁵⁴

Debt Collections Complaint Form

The image displays three overlapping copies of the "Debt Collections Complaint Form".

- Page 1 (leftmost):** Contains fields for Name, Address, City, State, Zip, Phone, and Email. It includes a "Check your email" note. Below this are checkboxes for "I am" (Plaintiff, Plaintiff's Attorney, Plaintiff/Petitioner's Licensed Paralegal Practitioner) with corresponding Utah Bar # fields. It also has fields for "In the [] District [] Justice Court of Utah" and "Judicial District" and "County". A "Court Address" field is present. A table-like structure separates Plaintiff and Defendant information. The bottom section is titled "1. Jurisdiction and Venue" and "2. Contract or Agreement".
- Page 2 (middle):** Continues the form with a section titled "My claims are based on defendant's failure to pay a debt owed to someone else. I have the right to collect that debt. Defendant had a contract with: (name of creditor). A copy of that agreement is attached as Exhibit A. The defendant agreed to the following:". It includes a section for "agreement allowed for:" with checkboxes for interest, attorney fees, and collection costs. It also has a section for "Contract or Agreement" where the defendant broke the agreement.
- Page 3 (rightmost):** Contains a section for "I have attached the following documents in support of this complaint:". It includes a signature line for the "Licensed Paralegal Practitioner of record (if applicable)" and a printed name field. The bottom of the page has a footer with the date "4/ July 16, 2021" and the page number "Page 3 of 3".

Despite such efforts, court data and stakeholder input still revealed several problematic aspects in the pre-judgment phase of litigation. The research team identified six significant pre-judgment problem areas: 1) confusion caused by the Ten Day Summons in District Court cases, 2) complex response requirements for District Court debt defendants, 3) issues with how documentation of debt is communicated in both District Court and small claims, 4) prevalence of low-dollar cases in District Court, 5) inadequacy of the three-day “pay or vacate” window for renters to vacate, and 6) combination of the three-day pay or vacate period and treble damages leading to life-altering debt for renter households.

Confusion About the Ten Day Summons Inhibits Defendant Participation, Leading to Worse Outcomes for Defendants in Cases Reaching Judgment

In Utah, plaintiffs who intend to file a debt lawsuit in District Court have the option of using the “Ten Day Summons,”⁵⁵ a tool used by the plaintiff to serve notice of a lawsuit (including the complaint) on a defendant up to 10 days prior to filing anything with the court or paying any fees. Some plaintiffs attorneys reported that this process is useful in getting debtors’ attention and creating opportunities to settle out of court without formally filing litigation.

Form: Ten Day Summons

The form consists of three pages. The first page (Page 1 of 4) contains fields for the plaintiff's contact information: Name, Address, City, State, Zip, Phone, and Email. It also includes checkboxes for the role of the filer: Plaintiff/Petitioner or Defendant/Respondent, and a section for the court address. The second page (Page 2 of 4) contains instructions in English and Spanish, including a QR code and a deadline of 21 days. The third page (Page 3 of 4) contains a QR code and a deadline of 21 days.

Other stakeholders, often representing the defendants, cited the Ten Day Summons as a significant source of confusion for defendants. The Ten Day Summons posted on the Utah Courts website includes the following language at the bottom of the first page: “A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.”⁵⁶ At the top of the second page, the Ten Day Summons says: “Call the court to see if a Complaint or Petition has been filed. The plaintiff must file the Complaint with the court within 10 days after service of this Summons on you. If the complaint is not filed within that time, the case is considered to be dismissed and you do not need to file an answer.” Thus instructed, a defendant receiving a Ten Day Summons might call the court clerk for information about their case; however, because the plaintiff has up to 10 days to file, the court will not have a record of the case and cannot provide information to the caller. Stakeholder feedback indicated that some defendants may conclude that because the case has not been filed with the Court and the clerk indicates there is no record of it, the summons was fraudulent or served in error, and they fail to respond or engage further with the case.

Reading further, the Ten Day Summons instructs the recipient to call the court “at least 14 days after service of this Summons to ask if the Complaint has been filed,” but, further down the page, the form states that “The Complaint

or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.” The form also tells the defendant that “Your Answer must be filed with the court and served on the other party within 21 days of the date you were served with this Summons.” The defendant may attempt to respond to the Ten Day Summons by filing an Answer, but if they do so too early, there will be no corresponding case and the Answer may get lost. If they wait 14 days, as instructed, to find out whether a case has been filed against them, the defendant will have only 7 days to file the answer. This contradictory information, coupled with instructions that the defendant may not be able to follow, inhibits defendant engagement with their case.

Because defendant participation is a significant factor in the ultimate outcome of the case, the court should strive to simplify the language and better explain the timeline and process on the Ten Day Summons to help reduce barriers to participation for defendants.

Complex Response Requirements Inhibit Defendant Participation, Leading to Higher Default Judgment Rates in District Court

In District Court debt claims, defendants are required to file an answer with the court within twenty-one days after the date of service.⁵⁷ The answer must meet certain legal standards that are outlined in the Utah Rules of Civil Procedure. Utah does provide a specific answer form for debt claims on the Court’s Self-Help website for responding to a debt claim, but the amount of legal language used in the form may reduce accessibility for the general public.⁵⁸ In contrast, defendants are not required to file an answer in small claims; accordingly, the answer rate for Justice Court small claims (2.3%) is much lower than for District Court debt claims (9.2%). The Utah Courts are currently piloting the use of a web-based application called MyCase that allows individuals involved in debt collections, evictions, and small claims cases to be able to access court documents for their particular case, electronically file court documents, and file a notice of updated contact information.⁵⁹

Form: Debt Collections Answer

The image displays a series of overlapping forms titled "Answer – Debt Collection Case". The forms are numbered 1 through 6, indicating they are multiple pages of a single document. The forms contain various fields for personal information (Name, Address, City, State, Zip, Phone, Email), legal representation (Plaintiff/Petitioner, Defendant/Respondent, Attorney, Licensed Paralegal Practitioner), and case details (Judicial District, County, Court Address). There are also checkboxes for "Agree" and "Disagree" with the complaint, and sections for "I agree completely with everything stated in the following numbered paragraphs of the complaint" and "I disagree with all or part of the following numbered paragraphs of the complaint". The forms are presented in a way that shows the progression of the document across multiple pages.



Answer Requirements

The low answer rate for District Court debt claims has significant legal consequences for defendants. If a defendant does not deny the allegations made in the plaintiff's complaint, the court will consider the defendant to have admitted to the allegations.⁶⁰ In small claims court, where the answer is not required, the consequence of not filing an answer is the opposite of what happens in debt claims. If a defendant does not file an answer in small claims, allegations are treated as denied.⁶¹ The Court should consider a change to the Rules of Civil Procedure that would lessen the answer requirements in District Court debt cases for amounts in controversy under a certain debt limit (perhaps following the same monetary guidelines as the limits outlined in small claims court).

Waiting for Defendant's Answer to File Documentation of Debt With District Court Is Inefficient and a Barrier to Legal Assistance

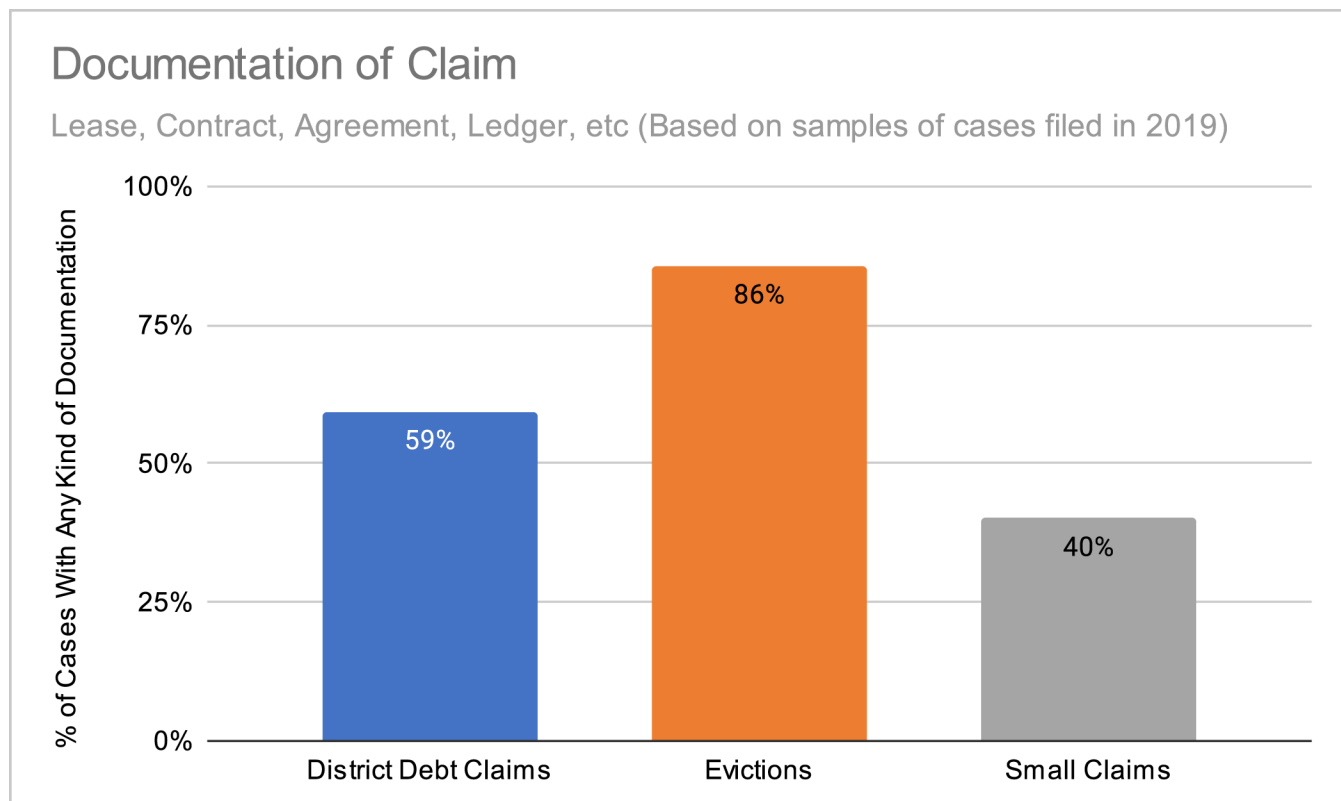
Stakeholders (representing the interests of plaintiffs and defendants) indicated that a lack of documentation on file with District Courts contributes to confusion about the merits of a claim, and is a barrier for defendants seeking help with their cases.

Documentation of debt is essential to determining whether a plaintiff has the right to use the courts to collect that debt as well as for proving the nature and extent of that debt. It can also impact whether a defendant engages with the case. In cases where a debt has been sold or assigned, a defendant may not recognize the name of the party suing them and believe they have received a summons in error without documentation showing the original debt and chain of ownership. Rule 26 of the Utah Rules of Civil Procedure⁶² does require plaintiffs in District Court⁶³ to provide defendants with, among other things,⁶⁴ the documentation regarding the debt "within 14 days after the filing of the first answer to that plaintiff's complaint." However, there is no requirement that this information be filed with the Court or provided to defendants who do not file an answer. Stakeholders stated that having documents on file with the court would make it much easier for defendants to seek appropriate advice because the documents would be available online for review or download.

A hand sample⁶⁵ of cases filed in 2019 showed that only 59% of District Court debt claims and 40% of small claims had any form of documentation, such as a contract or payment ledger, filed with the courts at the initiation of the case.⁶⁶ In contrast, 86% of eviction cases had documentation (in the form of a lease).⁶⁷ These data only show whether the documentation was filed with the court at the initiation of the lawsuit; the data do not capture whether a defendant received documentation from the plaintiff prior to or at a hearing nor whether documentation was filed at a later date. While the answer rate for debt claims in 2019 was only 9.2%, the documentation rate was much higher. Stakeholders indicated that some plaintiffs are voluntarily filing documentation with the court in the absence of any requirement to do so because the burden to do so is minimal and it can lead to more efficient resolution of the claim. The Court should consider a rule change that would require that the original creditor be listed on the summons and that plaintiffs be required to file documentation of the debt with the court.

Fig. 7: Debt Collection Cases Often Lack Documentation

With the notable exception of evictions, initial filings frequently do not include proof of debt



District Court Is Being Used to Pursue Relatively Low-Dollar Claims

Utah's Rules of Civil Procedure determine whether a debt claim should be brought to District Court or to Justice Court as a small claims case. One important consideration is the "amount in controversy," or how much money is at stake in a debt collection lawsuit before the addition of court costs, fines, or fees that the court may later assess if it finds in favor of the plaintiff. For example, under Utah Code § 78A-8-102(3), "the judgment in a small claims action may not exceed \$11,000 including attorney fees, but exclusive of court costs and interest."⁶⁸ In addition to the amount in controversy, it also matters who is bringing the claim.⁶⁹ Per Utah Code § 78A-8-103, only original creditors are permitted to pursue a debt as a small claims action.⁷⁰

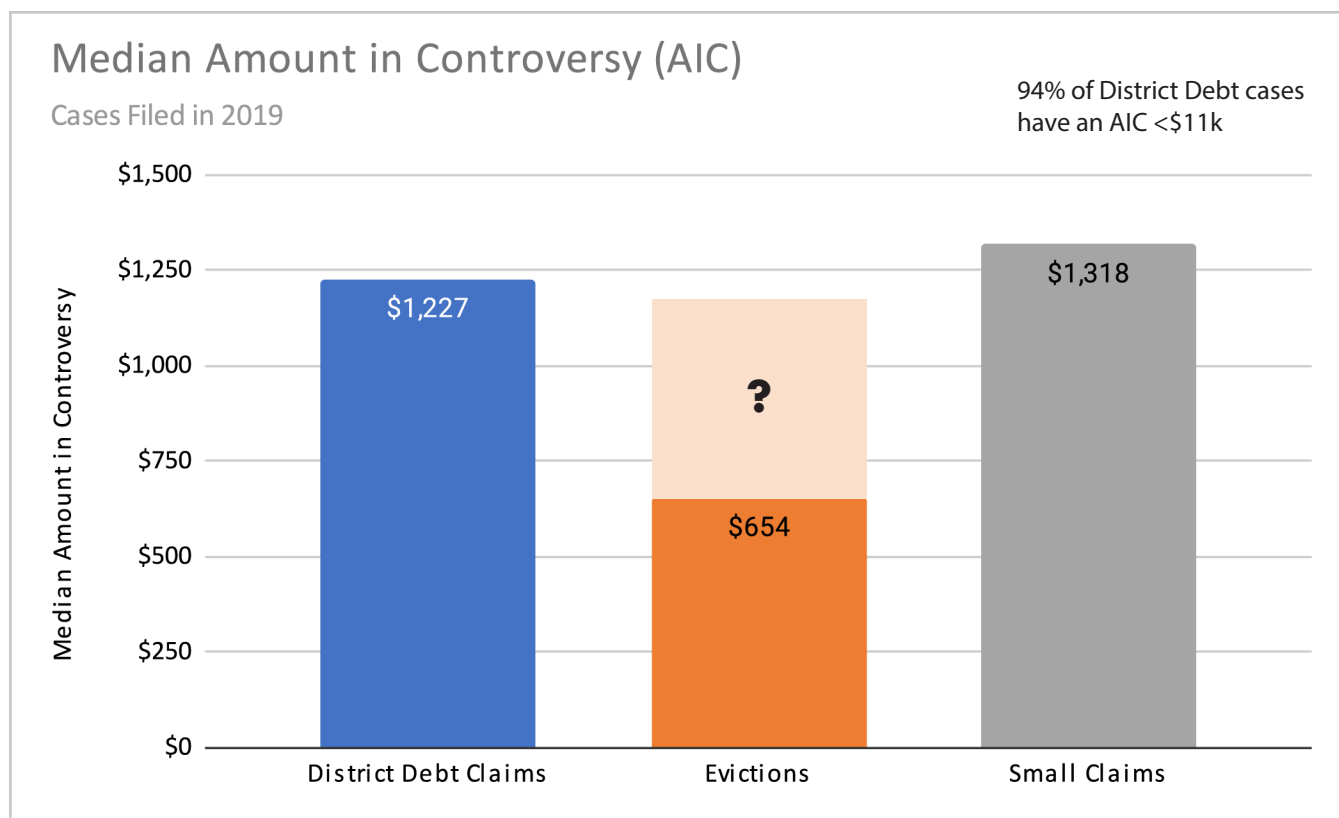
A plaintiff who would like to use the courts to collect on a debt that they obtained from a previous owner (by either purchasing the debt from the original owner or having the original owner transfer their rights to the debt through a process called "assignment") must file a debt claim in District Court.

We compared the amounts in controversy for District Court debt claims, small claims, and eviction cases (which take place in District Court) to understand what is at stake for defendant debtors. For District Court debt claims, the median amount in controversy is \$1,227; for small claims, the median amount in controversy is slightly higher at \$1,318. Further analysis revealed that 94% of debt claims in District Court were brought for amounts less than the small claims limit. Thus, 94% of debt claims filed in District Court could potentially have been brought as small claims, but for the prohibition on third-party debt collectors filing in small claims court or an original creditor's preference.

For evictions, the amount in controversy entered by the Court tells an incomplete story. The median amount in controversy for eviction cases is \$654, which is not only lower than the median amounts in controversy for District Court debt claims, but also lower than the median monthly rent from cases in this study of \$966..⁷¹ These numbers could indicate that eviction cases are being brought where renters are less than a full month behind on rent, that the amount of rent arrears is not accurately reflected in the court data, or that something else is happening that is not captured in the available data.⁷² Stakeholders reported that the \$654 amount in controversy for evictions reflects the amount of rent due starting from the beginning of the month through the expiration of the pay or vacate notice. The court uses this number when entering data for the amount in controversy, and the amount does not generally include the remainder of the rent due on the lease, fees, or other alleged damages. Due to treble damages, by the time an eviction is heard in court, the actual amount in controversy would have continued to increase so long as the defendant remained on the premises. Thus, the ultimate amount in judgment would vary greatly from the initial amount in controversy entered in court data. In short, court data around amounts in controversy for eviction cases does not accurately reflect the true amount at stake at the time an eviction case reaches hearing.

Fig. 8: Low Dollar Claims Dominate in Debt Collection Lawsuits

The median amount in controversy for District Court debt claims is similar to that for Small Claims



Three (Business) Days Is Too Short a Timeframe for Renters to Move

Utah is one of 12 states (along with CA, FL, ID, IA, KS, MS, NM, ND, OH, WY, and MT) that requires three days' notice before a landlord can file an eviction for non-payment of rent.⁷³ In Utah, this is known as the "three day notice to pay or to vacate."⁷⁴ This notice is often posted on the renter's door. Upon receiving this notice, the renter has three business days to either pay all past due rent and fees or move out of the property. Many stakeholders commented that they themselves would not be able to pack all of their belongings, rent a moving truck, find new housing, and physically relocate within three days, especially given Utah's lack of affordable housing.⁷⁵ Even if the renter is able to move out in three days, they are still responsible for all rent and fees associated with the remainder of the lease agreement.⁷⁶ If they do not move out and comply with the notice, the landlord is able to begin assessing treble damages.⁷⁷

Form: Evictions Three Day Notice to Pay or to Vacate

THREE DAY NOTICE TO PAY OR TO VACATE

This Notice is given to: _____ This Notice is given by: _____

Tenant/Occupant Name _____ Landlord/Owner Name _____

Street Address _____ Street Address _____

City, State, Zip _____ City, State, Zip _____

You are behind in your payments required by your rental agreement with your landlord.

You are required to either pay everything you owe as indicated below, or move out within three business days. (Utah Code 78B-6-802(1)(c)) Move out means leave the premises, take all your belongings and leave any keys or access cards.

1. Within three business days, you must pay the entire amount of money that is now owed to your landlord for rent. Business days do not include weekend days and holidays. You do not count the day you receive this notice. The total amount due is _____. Rent is due for the following time period(s): _____
2. Within three business days, you must pay the entire amount of money that is now owed to your landlord for amounts due under the rental agreement other than rent. Business days do not include weekend days and holidays. You do not count the day you receive this notice. The total amount due is _____. The amounts due other than rent are as follows: _____
3. If you do not pay all of the money you owe within three business days, you must move out of the premises you have rented. Move out means leave the premises, take all your belongings and leave any keys or access cards. Business days do not include weekend days and holidays. You do not count the day you receive this notice.

If you do not comply you may be determined by a court to be in "unlawful detainer" and evicted. If that happens, you would be removed from the property and may be liable for amounts due under your rental agreement plus attorney fees, court costs and treble damages. Treble damages means three times the amount of the damages. This could include rent, late fees, and property damage.

Information about the eviction process can be found at:
www.utcourts.gov/howto/landlord/eviction.html

100161VJ Approved December 18, 2017 / Revised May 11, 2020 Three Day Notice to Pay or Vacate Page 1 of 2

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Date _____ Landlord/Owner Signature ► _____
Printed Name _____

RETURN OF SERVICE

This Notice was served upon _____ (name) on _____ (date) in the following manner (check the appropriate boxes):

☐ A copy was delivered to the tenant/occupant personally.

☐ A copy was sent through certified or registered mail to the tenant/occupant's address.

☐ A copy was posted in a conspicuous place on the premises, as no one was home.

☐ A copy was left with _____ a person of suitable age and discretion at:
☐ tenant/occupant's residence or ☐ tenant/occupant's place of business
AND
a second copy was mailed to ☐ tenant/occupant's residence or ☐ place of business.

Print here _____
Name of person serving this notice

Sign here _____
Name of person serving this notice


100161VJ Approved December 18, 2017 / Revised May 11, 2020 Three Day Notice to Pay or Vacate Page 2 of 2

This study only examines data for cases that had a legal court action filed against the renter for remaining in the property after the three-day notice period. Stakeholders stated that data is not tracked on the number of renters who comply with a posted three-day "pay or vacate" notice, thus potentially avoiding legal action for both parties altogether. It should be noted that in May 2020, the unlawful detainer statute⁷⁸ was amended to require three business days, rather than calendar days, as the minimum period of notice to "pay or vacate."⁷⁹ While this was a positive change, most stakeholders and advocates who work with renters agreed that this is still too short of a time period for a renter to move and recommended lengthening the time period a renter has to comply with a pay or vacate notice. Moreover, stakeholders reported anecdotally that, following the switch to three business days' notice, landlords are more likely to post notice to pay or vacate on a Monday or Tuesday rather than on a Thursday, Friday, or weekend day.

We used data from a random hand sample of eviction cases filed in 2019 to estimate how long treble damages typically accrue in eviction cases. For 155 cases in our sample of 364 eviction cases, we were able to determine both the amount of treble damages and the monthly rent on the lease. From these two numbers we were able to estimate how long treble damages had accrued for each of these 155 cases. For these cases:

- ◆ the median number of days for which treble damages accrued was 18,
- ◆ the minimum was 5, and
- ◆ the maximum was 458 days.

Based on these findings, the Utah legislature could consider lengthening the three-day timeframe before treble damages begin to accrue, particularly in light of the lack of affordable housing options and sharp rent increases in the Utah market.⁸⁰



“The Utah legislature could consider lengthening the three-day timeframe before treble damages begin to accrue, particularly in light of the lack of affordable housing options and sharp rent increases in the Utah market.”

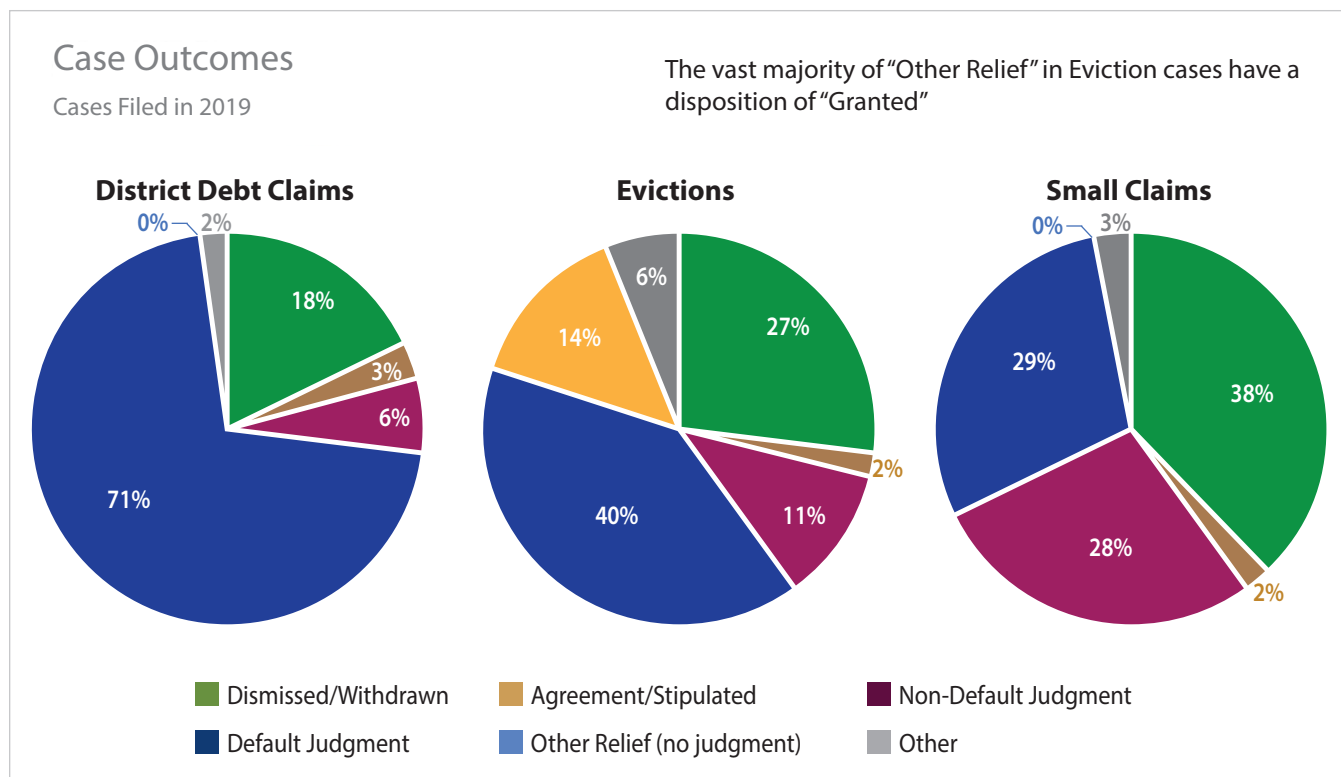
Case Outcomes

Not all cases filed in court ultimately result in a money judgment. Other outcomes include settlement or dismissal of the lawsuit.⁸¹ In eviction cases, an initial occupancy hearing may determine whether or not the defendant may continue to live in the unit, while any disputes about back rent, damages, or other matters are reserved for a future hearing. For all three case types filed in 2019 – District Court debt claims, Justice Court small claims, and evictions – the most common outcome was some form of judgment: 78% of debt claims,⁸² 57% of small claims, and 51% of evictions resulted in either a default or non-default judgment.⁸³

A defendant who does not respond to the complaint or appear in court risks having a default judgment entered against them. When a default judgment occurs, a plaintiff has won the case without necessarily proving their claims. If a defendant does participate in their case, it is still possible that a judgment will be entered against them, but it would not be by default (“non-default judgment”). It is also possible for a judgment to be entered against the plaintiff if the defendant filed a successful counterclaim.

Fig. 9: Case Outcomes Vary Across Case Types

Default judgments occur in more than 70% of District Court debt claims



Among the three case types, there is a notable difference in the proportion of default to non-default judgments. In District Court debt claims, 71% of judgments are by default and only 6% are non-default. For small claims, there is a nearly even split between default (29%) and non-default (28%) judgments. For evictions, 40% of cases resulted in a default judgment and 11% resulted in a non-default judgment.

Court Process Adds Unexpected Costs

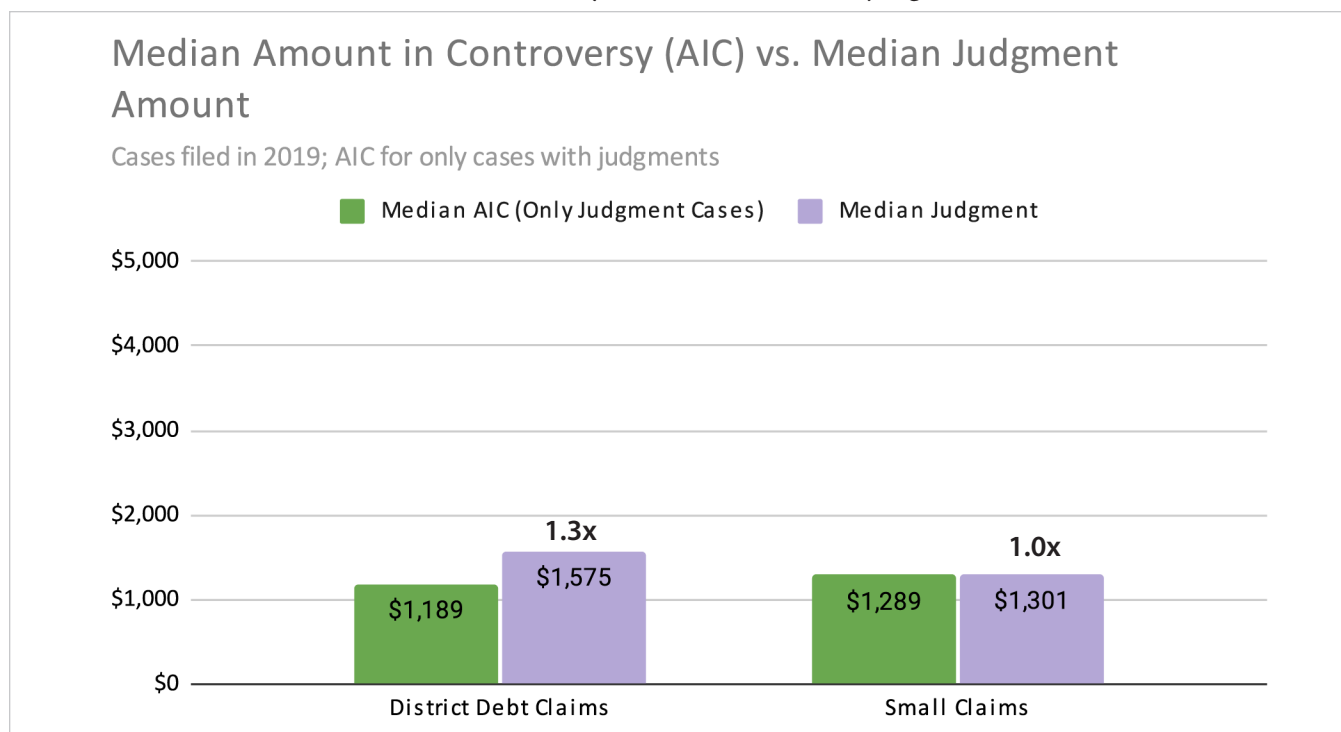
A relatively low-dollar debt claim that goes through the court process usually results in a money judgment that is greater than the original amount in controversy.⁸⁴ Court costs, attorney fees, interest rates,⁸⁵ and treble damages (in eviction cases) mean that an amount in controversy for debt claims and rental debt can continue to grow even after a lawsuit is filed.

Further, the amount of time it takes to obtain a judgment can impact the ultimate judgment amount.⁸⁶ Settling out of court may provide the best outcome for defendants if it means they can avoid the costs⁸⁷ of going to court.⁸⁸ However, in order for a case to be settled, the defendant in the case has to be willing and able to engage with the landlord/creditor in order to discuss a potential settlement. The original amount in controversy listed on a complaint may not provide defendants with enough information to properly understand the true costs at stake in the case. Access to trained mediators and/or legal assistance for defendants would provide them with a better understanding of their debt obligations, and could aid in deciding whether to settle or seek representation at a debt collection hearing. Legal representation would also be extremely beneficial for a defendant who is being sued by mistake. For those defendants who legitimately do owe a debt, the court process creates additional costs that could have been avoided if the defendant had been better informed earlier in the process. Access to legal services early in the litigation process, such as upon receipt of a debt collector's validation notice or the Ten Day Summons, would help debtors become better informed about their rights and obligations and able to work confidently with their creditors before a lawsuit is even filed.

Without a clear understanding of how the court process can increase their costs, defendants are unable to assess the risk of ignoring the complaint or weigh the potential benefits of engaging with their cases earlier rather than later. We would encourage the Court to consider providing referrals to mediation and/or legal services much earlier in the process rather than at the time of hearing. This could potentially help save court resources with the parties reaching a settlement and avoiding a hearing altogether. The Court could also consider strategies to allow more transparency around the true amount of money at stake, such as by providing an online calculator or worksheet where the parties can input amounts for balanced owed, interest, back rent, treble damages, fees, and other potential costs.

Fig. 10: Judgment Amounts Higher in District Court

Even in cases with similar amounts in controversy, defendants see lower judgment amounts in small claims court



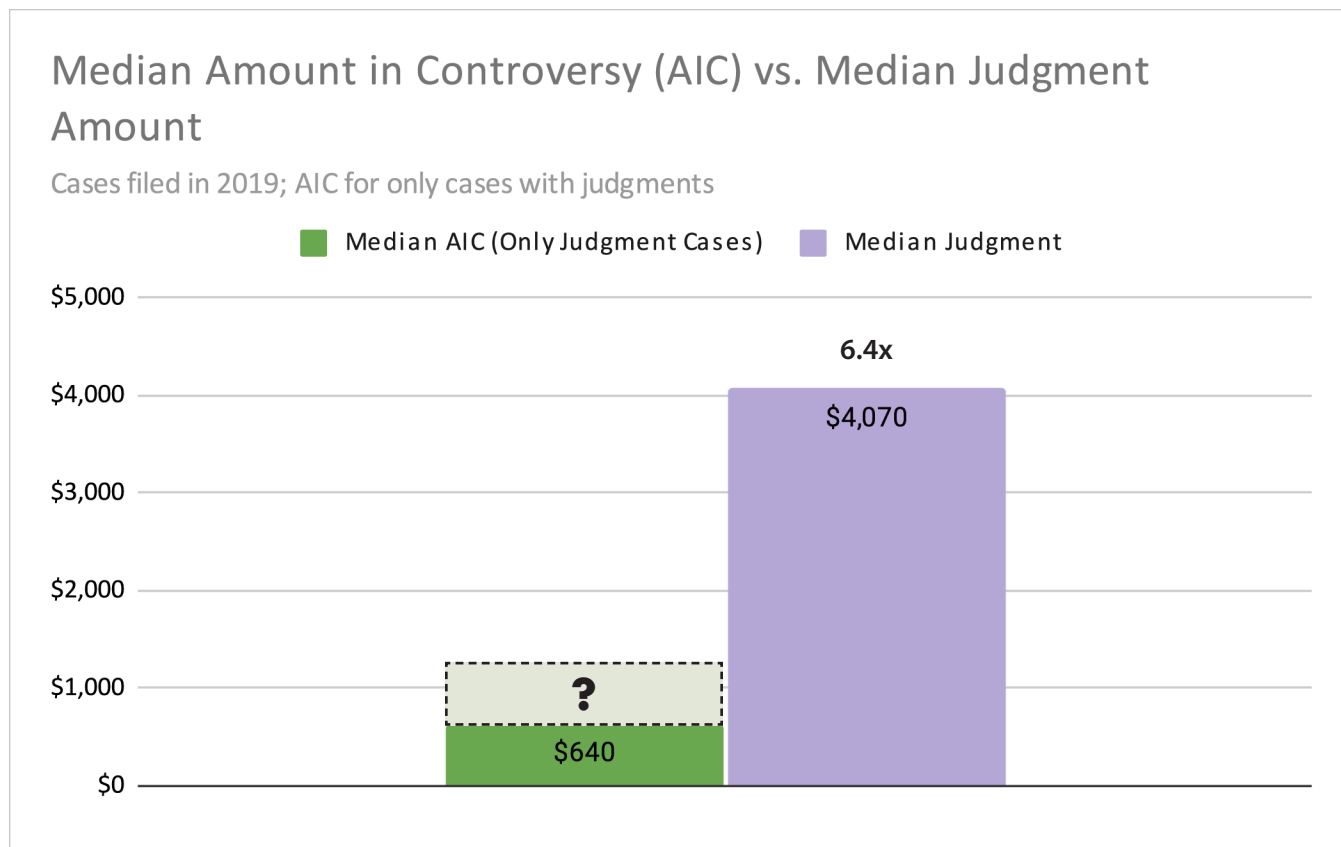
The data from this project reveals that judgment amounts are higher in District Court debt claims than in Justice Court small claims, even for similar amounts in controversy.⁸⁹ A median small claims debt of \$1,289 resulted in a median judgment of \$1,301, while a median District Debt Claim of \$1,189 resulted in a median judgment of \$1,575, which is \$274 higher than the median judgment in small claims. Thus, defendants allegedly owing the same amount of debt are likely to experience a worse outcome if the plaintiff pursues the debt in District Court rather than in small claims court. Comparing the median amount in controversy to the median judgment amount suggests that this result is driven by attorney fees⁹⁰ and other costs associated with District Court that are not applicable in small claims Justice Court.⁹¹

Combined Use of Three Day Notice to Pay or to Vacate and Treble Damages Results in Extremely High Judgments in Eviction Cases

Utah is one of three states in the nation that allow for the combined use of a three-day pay or vacate notice and the award of treble damages in residential eviction cases; of these three states, Utah is the only state where the award of treble damages is mandatory and not in the discretion of the court.⁹² As illustrated in the chart below, for eviction cases that result in a judgment, the median amount in controversy recorded in the court data is \$640, which is less than the median amount of one month's rent in Utah and may not accurately reflect the amount in controversy.⁹³ However, for cases filed in 2019 that ultimately reached judgment, due to the combined use of the three day notice to pay or to vacate and the assessment of treble damages for renters that do not vacate, the median judgment amount escalated to \$4,070 in 26 days, the median amount of time between filing of the case to award of the judgment.

Fig. 11: Utah's Outlier Evictions Policies Yield High Judgment Amounts

In 2019, the median eviction judgment was more than six times higher than original amount in controversy

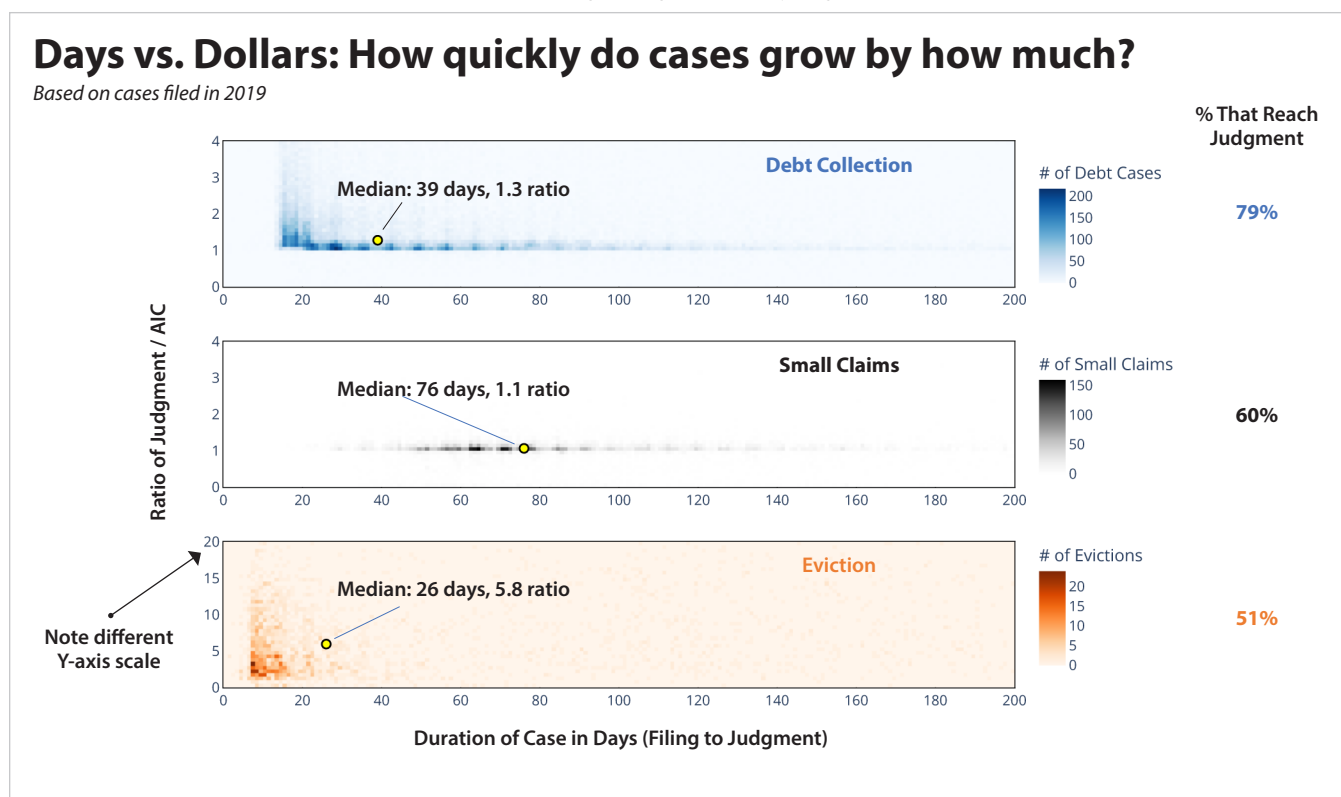


We looked at the relationship between the amount of time it takes for a case to reach judgment and the ultimate amount of the judgment. For cases filed in 2019, we found the following, illustrated in the figure below:

- ◆ The median duration between case filing and judgment is highest for small claims at 76 days.
- ◆ 79% of District Court debt claims filed ultimately resulted in a judgment, compared to 60% of small claims and 51% of evictions.
- ◆ Evictions have the shortest duration at 26 days, but have the fastest growth in judgment amounts.

Fig. 12: Different Case Types Move Through the Courts at Different Rates

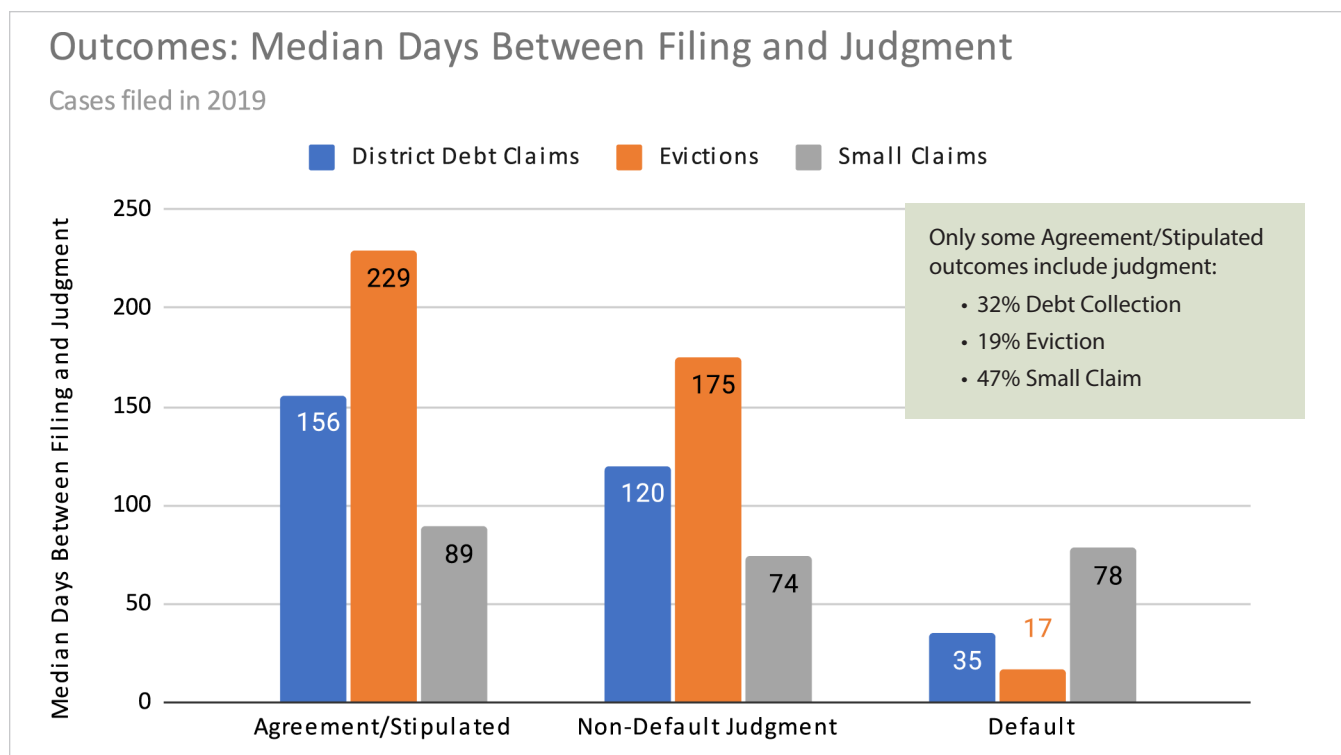
Eviction cases have the shortest duration but highest growth in judgment amounts



The rapid growth in judgment amount for evictions is driven by mandatory treble damages, which the data showed are awarded in 85% of eviction cases. Treble damages begin to accrue three business days after a landlord provides the renter with notice to pay or vacate, and they continue to accrue until the case reaches judgment, even in cases where a renter may have had a valid reason to contest the eviction in court.⁹⁴ For cases filed in 2019, the median amount of time for cases to reach judgment was 17 days for cases resulting in a default judgment.⁹⁵ For cases with a non-default judgment, the median time to judgment was 175 days, suggesting that defendants who participate in their cases and attempt to defend themselves in court could be exposed to as much as ten times the costs in the form of mandatory treble damages.

Fig. 13: Median Days Between Filing and Judgment by Case Outcome

Agreements/Stipulations take longer for all case types than default or non-default judgments



We reviewed the data to see how ultimate judgment amounts compared for different outcomes, and found the following:

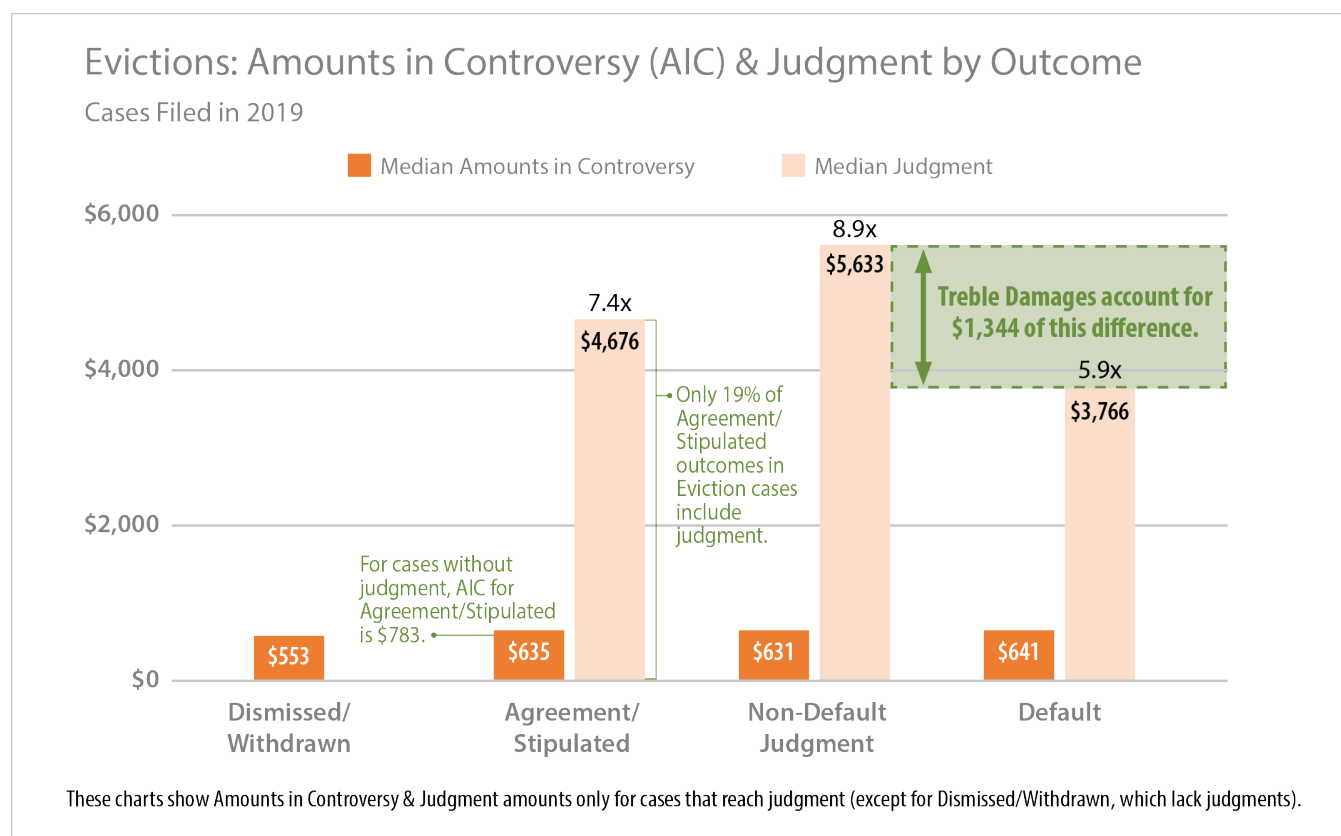
- ◆ The median judgment amount for defendants receiving a default judgment was \$3,766, or 5.9 times the amount in controversy.
- ◆ For cases resulting in a stipulation, the median judgment amount was \$4,676, or 7.4 times the amount in controversy.
- ◆ For defendants whose cases resulted in a non-default judgment, the median judgment amount was \$5,633, or 8.9 times the amount in controversy.

This data appears to show that contesting the claim is more costly for defendants in eviction cases than accepting a default judgment, due to the additional amount of time between case filing and judgment in these cases.



Fig. 14: Evictions: Amount in Controversy Compared to Amount of Judgment by Case Outcome

Defendants who engage in their eviction cases receive far higher judgment amounts than those who lose their cases by default



The Current Attorney Fee Schedule Disincentivizes Defendants From Contesting Small-Dollar Debt Claims in District Court

Changes to Rule 73 of the Utah Rules of Civil Procedure in 2018 decoupled the amount of attorney fees allowed from the amount of damages sought, reasoning that an attorney's fee should be based on their time and effort, not the amount at stake in a case. Thus, per Rule 73(f)⁹⁶ of the Utah Rules of Civil Procedure, a plaintiff in a District Court debt claim may be awarded up to \$350 in attorney fees for uncontested cases (that end in default judgment) and up to \$750 in attorney fees for contested cases (where the defendant shows up to defend themselves).⁹⁷ In contrast, attorney fees were awarded in fewer than 1% of small claims cases in 2019. For some low-dollar debt claims, the current rule can lead to an award of attorney fees greater than the original amount of debt that was filed with the court.

From January 1, 2019, through September 30, 2021, 106,281 District Court debt collection cases resulted in a default judgment.⁹⁸ Of these, 14,228, or 13%, concerned an amount in controversy less than the \$350 attorney fee that was awarded as part of the default judgment. These cases had an average amount in controversy of \$144, meaning that the attorney fee was 2.4 times greater than the amount of debt at stake in the claim.

In other words, the District Court awarded attorney fees that were greater than the amount in controversy against defendants in more than 14,000 debt claims that resulted in a default judgment. We recommend that the Court consider a different approach to award of attorney fees in cases with amounts in controversy up to the \$350/\$750 attorney fee amounts in the current schedule.

Post-Judgment

After a judgment has been entered by the court, several things may happen, depending on the nature of the debt, how the judgment was obtained, or the plaintiff's behavior and/or priorities. One outcome is that a defendant pays (or "satisfies") the amount owed on the judgment. Under Rule 58B of the Utah Rules of Civil Procedure,⁹⁹ the plaintiff must acknowledge that the judgment has been satisfied by filing an acknowledgement of satisfaction with the court within 28 days after full satisfaction.¹⁰⁰

However, as with pre-judgment and case outcome phases, researchers found common issues occurring during post-judgment: 1) judgments often go unsatisfied, 2) interest rates are incorrectly applied to unpaid judgments, and 3) courts often have no way of contacting defendants if the defendant does not provide updated contact information. In short, the time-consuming, expensive process of collecting debt through the courts not only upends the lives of defendants, but rarely results in plaintiffs receiving the money they are owed.

A court judgment provides plaintiffs a vehicle for court-enforced debt collection against a defendant. Even a default judgment can lead to harmful consequences for defendants, including garnishment.

Garnishment is the process by which a creditor can seize a defendant's property, including money in a bank account and/or wages, in order to satisfy a judgment. Garnishment laws cover issues such as how much of a debtor's wages can be taken at once, what property might be exempt from garnishment, and the process by which a judgment debtor might assert any exemptions. These laws vary at the state level according to what is being garnished and what type of debt the garnishment is meant to satisfy.¹⁰¹ For example, states may grant more latitude for collecting on back taxes or unpaid child support than for collecting consumer debt. Federal law limits the maximum amount of wages that may be garnished per week,¹⁰² and prohibits employers from retaliating against employees who have their wages garnished.¹⁰³

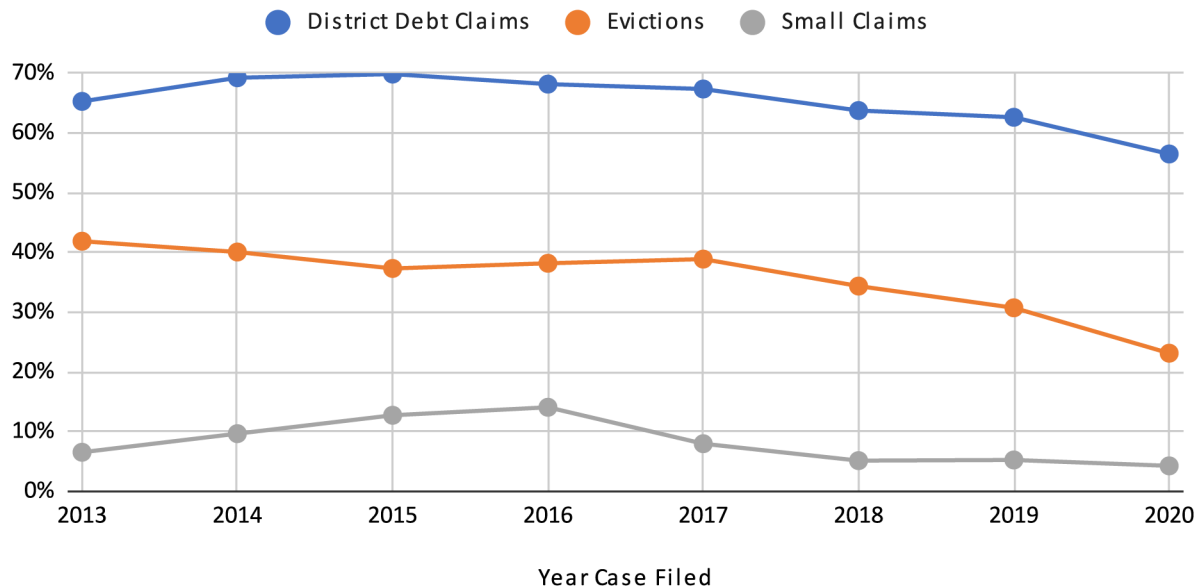
From 2013 through 2020, we found a consistently high incidence of garnishments in District Court debt claims, and in a substantial number of eviction cases. Garnishment appears to occur less frequently in small claims court. Utah limits garnishment to either 25% of a person's disposable earnings per week or 30 times the federal minimum wage, whichever is less.¹⁰⁴ We were not able to ascertain what percentage of a defendant's wages were garnished, but note that District Court debt claims had both the highest incidence of garnishments as well as the highest incidence of default judgments.¹⁰⁵

Fig. 15: Percent of Judgments Resulting in Garnishment

The vast majority of District Court debt collection judgments are followed by some form of garnishment

Garnishment Rate

Cases with Garnishments / Cases with Judgments



Many Judgments Remain Unsatisfied Years Later

Analysis of court data showed as long as four years after a judgment has been entered that only 50% of judgments in District Court debt claims, 35% of judgments in small claims, and 18% of judgments in evictions are reported to the court as satisfied, which plaintiffs are required to do within 28 days of the judgment being satisfied. For District Court debt cases alone, Utah courts awarded plaintiffs more than 385,000 judgments from 2013 through 2020, totaling nearly \$2 billion. Together, the unsatisfied judgments amount to \$1.22 billion. Among the cases examined, the median amount of debt in judgments that went unsatisfied was 1.5 times higher than the median amount in judgments that were paid off. Because the courts do not track ultimate satisfaction amounts or progress in paying off judgments over time, it is not clear from the available data why so few judgments are satisfied. It is possible that some debts are satisfied, but neither party files notice of satisfaction with the court. Stakeholders reported anecdotally that a satisfaction would not be filed in cases where the judgment debtor ultimately filed for bankruptcy.¹⁰⁶ Rule 58B does require that, if the satisfaction is filed for part of the judgment, “it must state the amount paid or name the debtors who are released.”¹⁰⁷ We believe a deeper look at the post-judgment process may shed light on potential impacts on plaintiffs, such as the costs associated with renewing and enforcing judgments; however, a lack of data around the post-judgment process may hinder an evaluation of its impact on defendants.

For those judgments that are satisfied, it is not clear whether defendants ultimately paid the entire amount of the judgment (plus post-judgment interest and other costs), or whether plaintiffs are writing off some portion of the amount awarded by the court. Stakeholders speaking from the perspective of eviction plaintiffs stated that they frequently write off portions of the debt related to treble damages and applied interest once a defendant has paid all hard costs that the landlord incurred during the eviction process. Because the court does not track payment on judgments, require accounting to be filed, nor record the actual amount paid at the time of satisfaction, it is not possible to measure whether or to what extent this post-judgment debt is being written off. It is also not possible to measure the impact of post-judgment interest rate amounts on satisfaction rates. What we can see is that evictions result in the highest median judgment amounts, have the highest median post-judgment interest rates, and the lowest rate of satisfaction.

A hand sample of cases filed in 2019 revealed the following median post-judgment interest rates:

- ◆ 4.59% interest rate in Justice Court small claims;
- ◆ 12.59% interest rate in District Court debt claims; and
- ◆ 24% interest rate in eviction cases.

Fig. 16: Four Years Later, a Majority of Money Judgments Are Not Satisfied

Eviction cases, which result in the highest amount of post-judgment debt, are the least likely to be satisfied

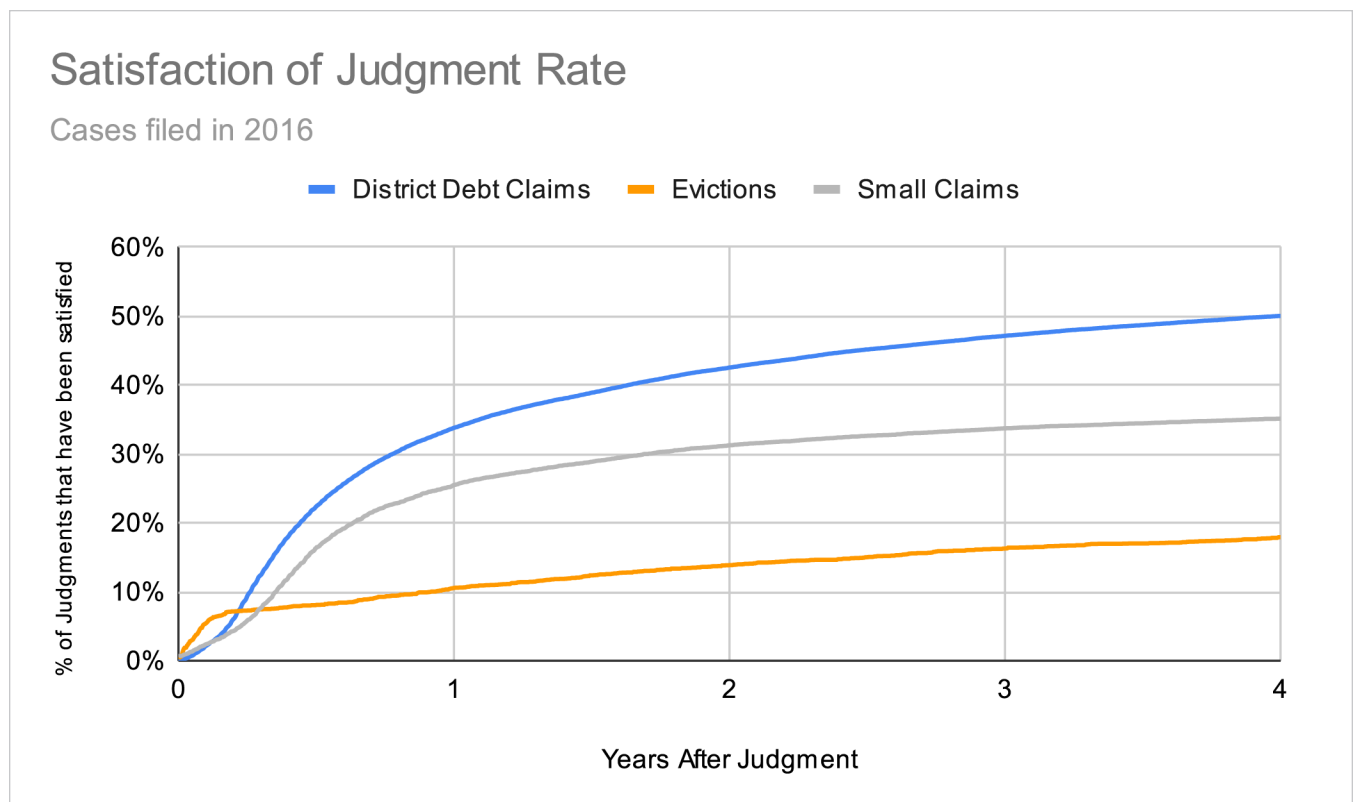
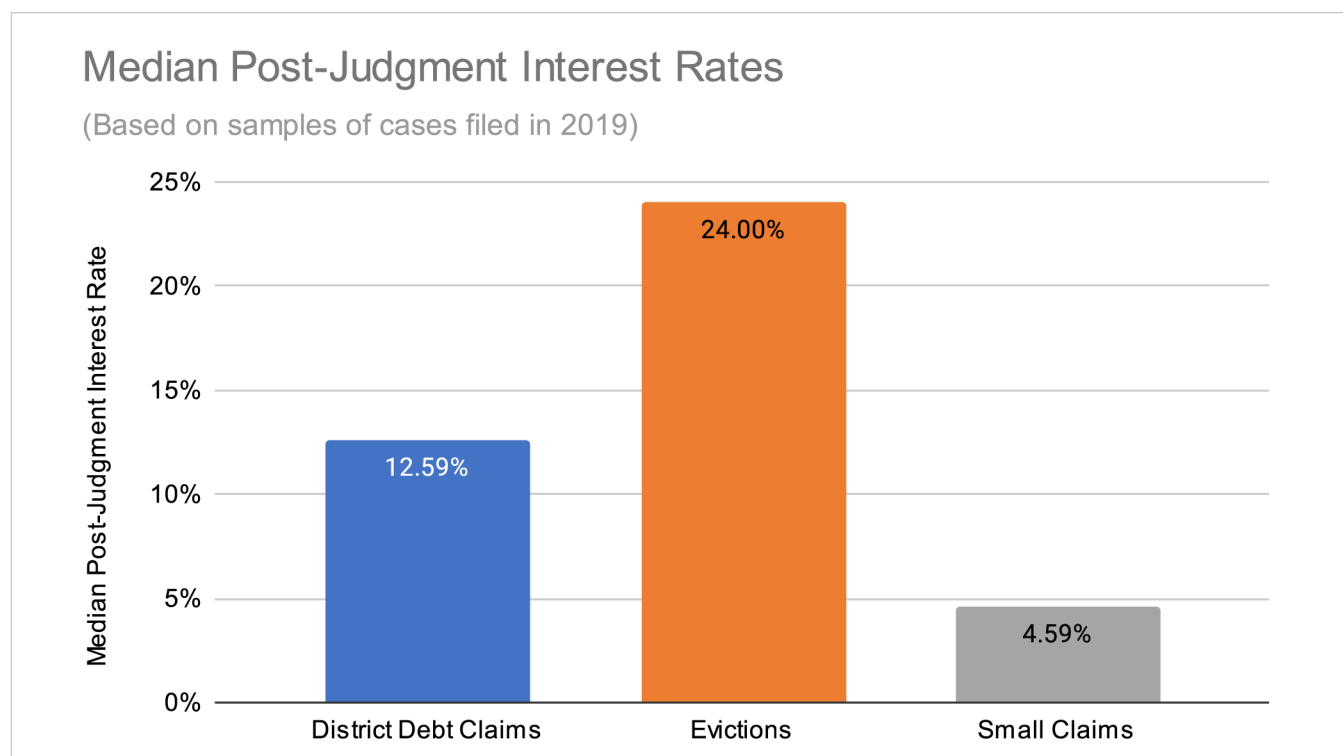


Table 3: Satisfaction Statistics

Cases from 2013–2020	District Debt Claims	Evictions	Small Claims
Total Amounts in Controversy	\$2.68 Billion	\$112,869,852	\$323 Million
# of Cases with Judgment Awarded	385,886	28,026	89,145
Total Dollars of Judgments Awarded	\$1.94 Billion	\$165 Million	\$169 Million
# of Judgments remaining unsatisfied (As of December 2021)	202,360	22,925	58,317
% of Judgments remaining unsatisfied as of December 2021	52%	82%	65%
Total Dollars of Unsatisfied Judgments (As of December 2021)	\$1.22 Billion	\$143 Million	\$119 Million
% Dollars of Unsatisfied Judgments	63%	86%	70%
Median Unsatisfied Judgment	\$1,706	\$3,517	\$1,200
Median Satisfied Judgment	\$1,124	\$2,946	\$1,089
Ratio	1.5	1.2	1.1
% of all Judgments with Garnishment	66%	36%	8.5%
# of Unsatisfied Judgments with Garnishments	137,207	2,501	3,480
% of Unsatisfied Judgments with Garnishments	68%	11%	6.0%

Fig. 17: Post-Judgment Interest Rates Are Highest in Evictions

District Court debt claims and small claims apply the statutory rate; evictions include post-judgment interest in the lease



Post-Judgment Interest Rates Are Applied Incorrectly

Interest continues to accrue on a debt after judgment according to the rate specified in the contract or lease where the debt originated. If the interest rate is not specified or the contract is not available, Utah law provides a statutory rate of the federal rate plus 2% or 10%, pursuant to Utah Code §15-1-1 and Utah Code §15-1-4. A hand sample of cases filed in 2019 revealed that the vast majority of judgments include the post-judgment interest rate set by statute, which changes each year according to the federal rate.¹⁰⁸

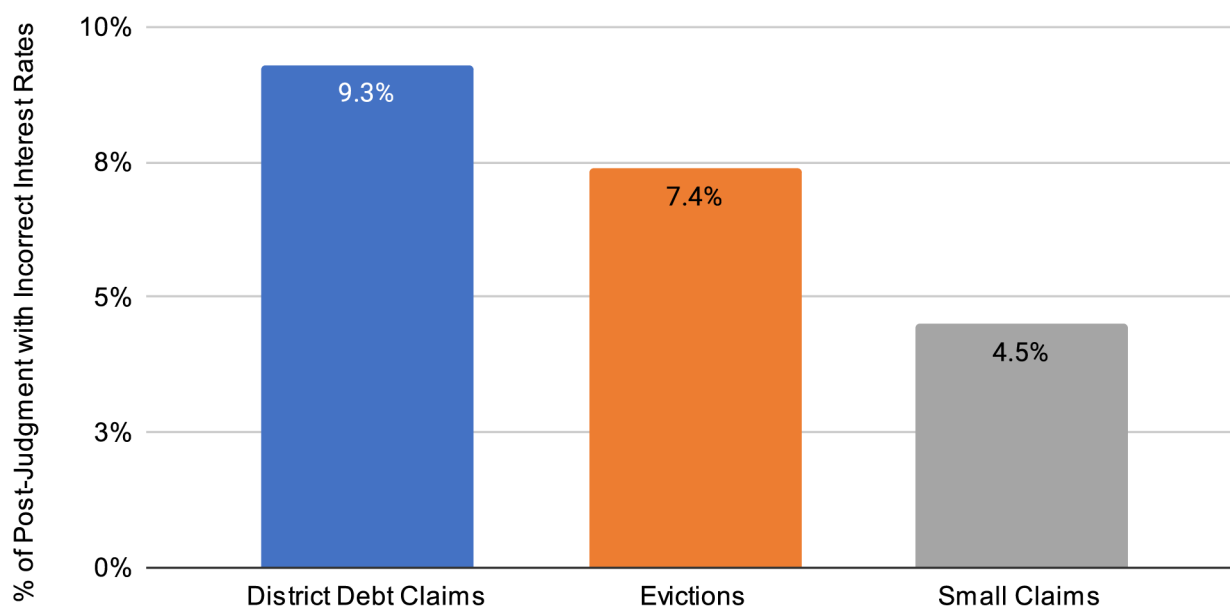
However, for 4.5% of small claims, 7.4% of evictions, and 9.3% of debt claims, the interest rate applied to the judgment appears to be in error. When the researchers reviewed the interest rates applied, the errors appeared to result from either applying the prior year's rate (perhaps due to a plaintiff's attorney failing to update forms for the new year) or failing to add the applicable 2% or 10%¹⁰⁹ interest rate at time of judgment. Because the applicable interest rate fluctuates from year to year, the consequences of applying a prior year's rate could be a lower or higher award for the plaintiff, and thus a lower or higher post-judgment cost for the defendant.

Fig. 18: Rate of Mistakes in Applying Correct Post-Judgment Interest Rates

Post-judgment interest errors can increase or decrease the amount owed by a defendant

Post-Judgment Interest Mistake Rate

Incorrectly applying Utah Code Section 15-1-4 (Based on samples of cases filed in 2019)



Historic Post Judgment Interest Rates

Current Post Judgment Interest Rates

Pursuant to Utah Code Section 15-1-4, the post judgment interest rates for the current and previous years are as follows. This rate does not apply to judgments based on contracts or statuses specifying a different post judgment interest rate, or to judgments under \$10,000 regarding purchase of goods or services.

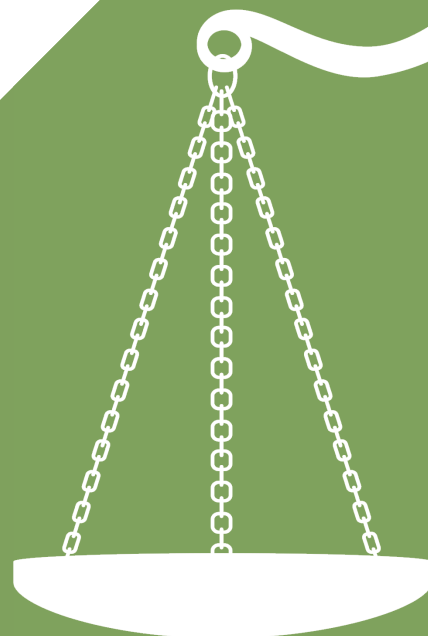
2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
2.29%	2.09%	3.53%	4.59%	3.76%	2.87%	2.65%	2.27%	2.13%	2.16%	2.12%	2.30%

Service to Vacated Addresses

After an eviction, a landlord may pursue an action against their former renter seeking compensation for damage to the rental unit that the landlord alleges is beyond normal wear-and-tear. Some stakeholders stated that, in these cases, the landlord often sent notice to the address where the renter had been evicted; this action is referred to as “service to vacated addresses.” We reviewed a random hand sample of eviction cases filed in 2019 to better understand this issue, and found that in 15% (53/364) of cases, at least one document was served on the defendant at the rental property more than 14 days after the defendant had moved out. The actual percentage may be higher than we could measure with a high degree of certainty for the available data. Utah law was recently updated to state that it is the former renter’s responsibility to provide an updated address to the landlord and the court.¹¹⁰ The burden of tracking down the renter does not fall to the landlord.

Under Utah law, a landlord must return a former renter’s security deposit within 30 days, which could be an incentive for a renter to provide their former landlord with their contact information.¹¹¹ Some former renters may believe that the landlord will withhold the security deposit and apply it against back rent or damages owed. The MyCase system, recently launched by the Utah courts, allows defendants with ready access to the internet to file a “Notice of Change of Address and/or Contact Information” with the court.¹¹² Filing the notice through MyCase may satisfy the requirement of serving notice of the change of address on the other party, per UCRP 5.¹¹³

It should be noted that in some cases where notice is served to a vacated address, it is possible for a former renter (defendant) to receive actual notice by other means, such as through mail forwarding. If the defendant has provided the court with their new address, the court may send notice of hearing, even though the plaintiff used the wrong address.¹¹⁴ Additionally, plaintiff attorneys sometimes email documents to defendants as well as serving them by mail. However, out of the 53 cases we identified with service of a document to the vacated address, only 7 (13%) were both emailed and mailed, with the remaining 46 (87%) only mailed. Further, in our sample, we only flagged whether cases had at least one occurrence of service to a vacated address. It is possible that, in some cases, multiple documents were served to the vacated address. The majority of the documents we identified in our sample that were served at the vacated address were notices of judgment (30/53 or 57%). The MyCase system also allows renters to review legal documents, find appropriate answer forms, and file forms electronically with the court.



Practice and Policy Recommendations

The following solutions serve as a starting point for addressing some of the problems identified in the findings. Some proposed solutions are relatively straightforward, codifying best practices identified by stakeholders in the field. Some solutions may be pursued alone, while others are best pursued in tandem as part of an overall strategy to reduce the burden of debt litigation on courts and promote efficient use of resources. A precedent exists for this kind of problem-solving, as states across the country have enacted policies meant to improve standards for notice, disclosures, response, evidence, and other aspects of the debt collection litigation process.

Potential Solutions for Utah

Increase Opportunities for Settlement Prior to Hearing

Many District Court debt claims or small claims cases that end up in the court system could have been settled at any point prior to the case reaching judgment, including pre-hearing and even before case filing. However, consumers may be reluctant to engage with plaintiffs outside of court for a number of reasons, including lack of information about how to respond or the consequences of not responding, power imbalance between represented plaintiffs and unrepresented defendants, fear of being scammed, or belief that engaging with the case may require a greater investment of time, money, and effort than they are able to expend. Thus, for some plaintiffs, filing a court case is the last resort once they have exhausted allowable options for communicating with a debtor under debt collection regulations. For defendants of legitimate debt claims, settling a filed claim prior to judgment could be less costly than receiving a judgment, due to court-imposed fees, post-judgment interest, attorney fees, and potential garnishment. For plaintiffs, settling out of court also avoids court costs and the time and effort required to enforce judgments. Courts would be relieved of processing claims where there is no issue in controversy. Cases that are ripe for settlement could be diverted from the court system entirely; failing that, case management by the courts (after filing but prior to hearing) can ensure more efficient use of court resources.

Pre-court diversion, originating in the community or the court, could promote productive communication between the parties and help defendants make informed decisions. Pre-court diversion could take place prior to or upon the issuance of the Ten Day Summons and could include access to resources such as financial counseling, mediation and/or legal counsel to help a debtor understand their rights, debt obligations, and potential risks. Existing case management interventions currently available for filed claims, such as mediation and online dispute resolution, could also be offered prior to case filing. These measures should include resources such as court navigators or representation to help defendants understand court procedures and costs, and to support communication between the parties.

Once a case has been filed, these resources could be made available as part of case management before a hearing is scheduled. Pre-trial conferences could ensure that both parties are available and ready to proceed. Each of these interventions can ensure that hearings are reserved for cases in which court intervention is truly needed for case resolution.

Eviction diversion is a growing movement across the nation. The University of Utah S.J. Quinney College of Law has signed on in support¹¹⁵ of the August 2021 “Call to Action” from the United States Department of Justice to prepare to address a “looming housing and eviction crisis.”¹¹⁶ The National Center for State Courts (NCSC) has launched an eviction diversion initiative to help courts build on best practices and knowledge gained during the pandemic and “create permanent change to their high-volume, high-impact eviction dockets.”¹¹⁷ NCSC has also issued a whitepaper with best practices, informed in part by an evaluation of Utah’s Online Dispute Resolution Platform,¹¹⁸ and emphasizing clear, holistic goals, cross-sector collaboration, comprehensive communication, accessibility, and data-driven evaluation and learning.¹¹⁹

Target Resources for Rural Areas with High Concentrations of Debt Litigation

The data from this project show that debt litigation activity is not evenly distributed across Utah’s counties. In rural counties with higher concentrations of debt litigation, the burden of administering these claims may be out of proportion to the resources allocated to the courts. Resources impact the courts’ ability to provide each case the attention required to ensure that the plaintiff has met their evidentiary burden and that the defendant has been provided with a meaningful opportunity to engage with their case. Without these assurances, it is unclear how consistent outcomes can be achieved. In order to support the fair administration of justice in all counties, court resources should be allocated so that there is parity based on case volume. Pursuing parity in combination with diversion and other case management methods outlined in this report should result in court resources being targeted where they are most needed. These resources can include funding for legal services (from brief advice or counsel to full representation), mediation, training for court personnel on how to communicate with defendants, and dedicated dockets administered by personnel and members of the judiciary who have been thoroughly trained in the laws that govern debt collection in Utah.

Require Plaintiff to File Documentation Proving They Are Entitled to Recover from the Defendant Before Granting a Judgment by Default

In most civil lawsuits, a plaintiff must show they are entitled to the relief they are seeking before they can be heard by the court. Once a plaintiff is before the court, they must prove their claims using evidence. The data show a high volume of District Court debt collections cases, with a high rate of default judgments, but the data did not show whether the necessary evidence was made available for review by the court. The Rules of Civil Procedure regarding failure to respond to a District Court debt claim permit, but do not require, the court to review plaintiff’s evidence before entering a default judgment. Requiring this evidence to be filed with the court promotes transparency and public faith in the administration of justice.¹²⁰ In other words, while the data have shown that the amounts in controversy in District Court debt claims and small claims are similar, different standards of law will apply to a defendant depending more on where the case was filed than on the merits of the case. While default judgments were far lower in small claims court than in District Court debt claims, the low rate of documentation filing in small claims indicates that increased documentation requirements for plaintiffs are warranted in these cases also.

In all District Court debt claims and small claims, plaintiffs should have to demonstrate they own the debt through a credible chain of title; that the defendant is the debtor; and if the debt was sold to them by the original creditor, that the debtor was properly notified of the transaction. Plaintiffs' proof must be more than a robo-signed affidavit; at the very least, plaintiffs should have to provide documentation of the debt. Evidence in the form of business records must be properly offered, authenticated, and accepted into evidence by the court in accordance with the rules of evidence and applying relevant hearsay considerations. One potential way to implement this recommendation is by adding a special rule for debt collection cases in District Court, analogous to Rule 26.3 in eviction cases.

Reconsider Response Requirement for Low-Dollar Claims in District Court Debt Cases

When a defendant fails to respond in small claims court, they are presumed to have denied the allegations in the claim. In District Court, when a defendant fails to respond, this results in a default judgment. As the data showed, the median amount in controversy for small claims and debt claims is similar. However, the consequences for a defendant in a case with similar stakes are very different depending on whether the litigation is filed in District Court as a debt claim or in Justice Court as a small claim. With 94% of District Court debt collection cases falling under the current small claims threshold of \$11,000¹²¹ and with the prohibition of third-party debt buyers from filing in small claims court, opposite procedural conclusions result in inequitable outcomes for defendants who have no say in where a case has been filed. This practice of not requiring a response for low-dollar claims could be adopted in District Court to ensure equitable outcomes without flooding small claims court with the high volume of District Court debt claims.

For District Court Debt Claims, Require Disclosures at Time of Filing, Similar to Rule 26.3 Requirements in Evictions

Rule 26.3 of the Utah Rules of Civil Procedure is an exception to Rule 26 that applies in evictions. Rule 26.3 ties a plaintiff's duty to provide the defendant with documentation supporting their legal claim to the filing of the complaint, rather than to the defendant's answer as Rule 26 requires in general civil claims. Debt claims and evictions together make up ninety-four percent (94%) of general civil case filings; having analogous filing requirements would standardize the procedure across the bulk of District Court general civil claims. Requiring proof of debt to be available at the time of filing decreases the chance that non-meritorious claims will be brought to court.

With limited resources for legal assistance available to Utahns, practices that promote efficient use of legal assistance are invaluable. For those defendants who are able to access legal assistance, their attorneys are better equipped to provide valuable advice and counsel when the documents filed against their clients are available via XChange for review. When the documents have been filed online with the courts, defendants' attorneys can more quickly review the case and assess whether to go to hearing or negotiate a settlement prior to going to court. When documents are not filed online, attorneys must rely on clients, who may lack access to transportation, technology, or secure document storage to provide this critical information.

Both our data and stakeholder input suggests that at least 59% of plaintiffs are already voluntarily filing documentation with the court in the absence of any requirement to do so, because the burden to do so is minimal and it can lead to more efficient resolution of the claim. This practice should be codified throughout the state courts to ensure that documentation of original debt is available to all parties and to the court from the beginning of the claim.

Training for Court Personnel and Judiciary

The recommendations for improvement are twofold: 1) through training, ensure the spread of and subsequent use of best practices in courts throughout the state, and 2) through such training promote consistency, predictability, and the assurance of public trust in the judicial process.

It will be vital for Utah's courts to improve and make widely-known standards for reviewing filings and scheduling hearings for these types of cases.

General Data Recommendations

The Utah Courts should be commended for being willing to look at ways to improve their data collection processes. We would recommend that they consider streamlining the data entry process, reduce errors in data entry and categorization, and improve the functionality of existing technology such as XChange and MyCase to better serve the needs of all court users.

Add MyCase Functionality Prior to Filing

To promote defendant engagement and facilitate communication between the parties to a debt lawsuit, it would be helpful if a consumer who anticipates a lawsuit being filed against them (for example, a pending eviction case), to be able to create a MyCase profile in advance of litigation. This would allow the defendant to update their contact information with the court when necessary, which in turn could help provide additional assurance that the defendant receives proper notice that a legal action has been taken against them. Additionally, this would allow a defendant to also upload any documentation received (such as a Ten Day Summons that might not have been filed with the court yet) so that it is accessible as they are seeking pre-court guidance and throughout the life of the claim. Using MyCase to set up notifications when/if the plaintiff decides to file the case with the court helps keep the consumer apprised of upcoming hearing dates and whether it is time to file an answer to the complaint.

Continue Improving Forms for Readability and Accessibility

Making court forms readable and accessible is not an issue unique to Utah. Considerable thought and effort go into ensuring that forms meet the needs of constituents. Utah has already begun this work, by creating forms that include Spanish and QR codes for readability in other languages. Investments in improving form readability and accessibility ultimately assist in reducing defendant confusion while promoting equitable access to the courts. Reducing “legalese” in forms by promoting “plain language” reduces the need for technical training to understand how to properly use the forms. Continuing to invest in improvements for form readability and accessibility also reduces complexity for small business owners who may bring their cases to small claims court, or who may find the garnishment process confusing.

Reconsider Flat Attorney Fee Rates for Claims Less than \$350/\$750

Allowing a flat fee for all cases may provide predictability and reduce confusion about what is at stake for a defendant in a debt claim. The \$400 difference between attorney fees (\$350 in uncontested claims and \$750 in contested claims) promotes the idea of defendants not actively seeking justice in their case but instead encourages defendants to default. This is particularly true for low-dollar claims. Moreover, the ability to collect an outsized fee

for a small-dollar debt incentivizes bulk filing of minor claims that clog court dockets and contribute to courts being used to generate revenue for debt collectors rather than to resolve issues between two parties. We recommend that the Court consider a different approach to attorney fees in cases with amounts in controversy up to the \$350/\$750 attorney fee amounts in the current schedule.

Increase Court Oversight of the Post-Judgment Process

The court's role in debt collection litigation should not end upon entry of judgment. By maintaining some oversight of the post-judgment process, the court can promote transparency around the efficacy of specific policies, such as post-judgment interest rates and garnishment as well as the utility of courts as a vehicle for debt collection generally. Examples of court oversight could include:

- ◆ Requiring creditors to file periodic statements with the Court of judgments currently in payment.
- ◆ Providing a payment calculator on the website so parties can ascertain the timeline for a payment plan, including post-judgment interest.
- ◆ Requiring that all Notices of Satisfaction of Judgment filed with the Courts include the actual amount paid by the defendant from the entry of the initial judgment.

Further research/data is needed to investigate why so many judgments remain unsatisfied year after year.

Clarify the Statute of Limitations/Allowable Amount of Time Between Occupancy Judgment and Suit for Damages

Rule 59 of the Utah Rules of Civil Procedure limits the amount of time to modify a judgment to 28 days.¹²² In May 2020, Utah's unlawful detainer statute was amended to allow up to 180 days (from the time an order of restitution is enforced or the defendant no longer occupies the premises) for a party to ask the Court to modify the judgment.¹²³ This change has led to some confusion among practitioners, which the courts should clarify. Stakeholders indicated that the change may have been prompted by landlords needing more than 28 days to assess damages from a former renter, as the next occupant is frequently the one to discover problems with the rental unit. Stakeholders also indicated that 180 days is too long, such that the discovery of damages is too attenuated from the evicted renter's occupancy to be fairly assessed.

Conclusion

The problems and solutions outlined in this report offer a path forward for improving debt collection litigation processes for all Utahns.

Like other state courts around the country, Utah's District Courts and Justice Courts are handling a large and growing number of debt collection cases primarily involving corporate plaintiffs and individual defendants who are navigating the civil system without an attorney. Although the current system was not designed to perform under such circumstances, implementing policy changes can help ensure that Utah's courts are appropriately utilized as a place where every person facing a debt collection case has a fair chance at a just outcome.

Methodological Notes

Definitions

HAND SAMPLE

Because the Court's database did not contain certain variables of interest, such as type of debt and post-judgment interest rates, we analyzed random samples of cases to obtain this data and get a more complete picture of debt collections in Utah's courts. If a random sample was needed for any of the three case types studied (District Court debt claims, small claims, and evictions), that sample was chosen at random from cases filed in 2019. To calculate sample sizes, we chose a 95% confidence level and a confidence interval of 5, which, together with the total number cases filed by case type, gave us the number of cases to sample for each case type.¹²⁴ No cases were excluded from the sample.

COURT OBSERVATIONS

For purposes of this project, Court observations were conducted virtually, as the Court had an administrative order that all civil cases be heard virtually due to the COVID-19 pandemic.¹²⁵

STAKEHOLDER INTERVIEWS

For the purposes of this project, stakeholder interviews were conducted to assist with identifying needs, concerns, and professional expertise on debt collection issues in Utah. A semi-structured interview protocol was created asking questions on the debt collection process, effects on defendants, court process related to debt collection, and more. Stakeholders were offered the choice of meeting virtually or in-person depending on the current COVID-19 pandemic restrictions.

Methods and Limitations

GENERALLY

Data from 2013 through 2020, the most recent years for which we have complete data, are used to show trends over time. Utilizing a snapshot comparison among case types, the data is from 2019, the most recent year unaffected by the COVID-19 pandemic's impact on court activity and policies such as moratoria on evictions.

Because the Utah courts do not collect demographic data (such as race, age, disability status, or family status) at least in civil cases, opportunities for direct analysis of whether debt litigation impacts some people more than others were limited. Without this knowledge, it may be difficult for Utah Courts to evaluate and adopt policies that serve the justice needs of all Utahns. We would recommend that the Utah Courts Office of Fairness and Accountability work with stakeholders to identify and collect useful aggregated demographic data so that they can further the mission of their office.

PRE-JUDGMENT

Unless stated otherwise, the analysis of the data sets included in this report did not separate cases where a defendant was a company rather than a person; however, because these cases are relatively rare, excluding them from the analysis would not significantly change the result.

CASE RESOLUTION

Legal assistance can range from brief advice and counsel to full representation. We were interested in measuring the impact of defendant participation on case outcomes; however, the limitations of the available data mean that not all possible impacts could be observed. In particular, it is not possible to observe the potential impact of diversion of the Ten Day Summons using court data, because potential cases that resolve after the Ten Day Summons is served yet before formal court filing is required would not appear in the court's data. Moreover, for cases that are filed with the court but resolve prior to entry of judgment, the court may or may not capture an outcome regarding ultimate settlement if the parties choose to withdraw their case rather than enter into a stipulated agreement.

POST-JUDGMENT

With available court data, we were able to review whether a satisfaction of judgment was filed, the amount of time that elapsed between entry of judgment and satisfaction of that judgment, and whether garnishment took place between entry of judgment and prior to satisfaction. Court data does not include the actual amount paid by the defendant, which could be higher or lower than the judgment amount.

EVICCTIONS

As with debt collection, this report does not cover evictions that occur prior to court involvement where a renter voluntarily vacates the rental property after receiving the three day pay or vacate notice from the landlord.

BANKRUPTCY

The topic of bankruptcy came up in conversations with both creditor and debtor stakeholders. While federal bankruptcy data is public record, it is beyond the purview of the state courts to provide, and is beyond the scope of this project.

Appendices

Appendix A. Debt Case Stages

- I. Pre-Judgment.** This stage includes the plaintiff's filing of a lawsuit in court and notifying the defendant that they are being sued, and the defendant responding to the lawsuit.
- II. Case Outcomes.** This stage represents the outcome of a debt collection lawsuit, which generally includes a money judgment, settlement, or dismissal of the lawsuit. A judgment could be by default, meaning that the defendant did not respond or appear at the hearing, and thus the plaintiff wins the case. A non-default judgment usually requires some engagement by the defendant, and could be in favor of the plaintiff or defendant. A settlement is generally an agreement by the parties as to payment of the debt (in whole or in part), including the terms of a payment plan, applicable interest rates, and who is responsible for any fees. A settlement can occur before a lawsuit is initiated and at any point until a judgment is entered (post-judgment settlement is covered under "satisfaction of judgment"). A case could be dismissed at the discretion of the judge if the case lacks merit or if the proper procedures have not been followed. A plaintiff could also withdraw the claim or request a voluntary dismissal for a variety of reasons such as the defendant agreeing to settle the claim or the plaintiff learning the defendant's only sources of income are not subject to garnishment. Depending on the circumstances of the case and the type of dismissal granted, a dismissed case may or may not be brought into court again in the future.
- III. Post-Judgment.** If a plaintiff receives a judgment in their favor, they are able to enforce the judgment using collections measures that would not otherwise be available to them. These include garnishing wages, seizing assets, and even issuing an arrest warrant for the defendant. From 2016-2019, an average of 35.6% of eviction cases resulting in a judgment included a writ of garnishment. Other than these enforcement measures, which require additional court process, the court is not actively involved in monitoring payments on the debt unless the defendant requests a modification or the plaintiff renews the garnishments or files a satisfaction of judgment.

Appendix B. Lists of Top Filers

Top 20 Plaintiffs: District Debt Claims

Plaintiff	# of Cases	% of cases	Cumulative %
1. Express Recovery Services	8667	14.56%	14.56%
2. NAR	5426	9.12%	23.68%
3. Bonneville Billing and Collect	5083	8.54%	32.22%
4. Mountain Land Collections	4356	7.32%	39.54%
5. Midland Funding	3584	6.02%	45.56%
6. Portfolio Recovery Associates	3500	5.88%	51.44%
7. Knight Adjustment Bureau	2547	4.28%	55.72%
8. LVNV Funding	2144	3.60%	59.32%
9. Capital One Bank	1729	2.90%	62.22%
10. Desert Rock Capital	1455	2.44%	64.67%
11. Discover Bank	1182	1.99%	66.65%
12. RC Willey	1083	1.82%	68.47%
13. American Express National Bank	884	1.49%	69.96%
14. Cavalry SPV I	774	1.30%	71.26%
15. Meade Recovery Services	725	1.22%	72.48%
16. Titanium Funds	671	1.13%	73.60%
17. Synchrony Bank	659	1.11%	74.71%
18. Outsource Receivables	639	1.07%	75.79%
19. Barclays Bank Delaware	540	0.91%	76.69%
20. Citibank NA	507	0.85%	77.54%

Top 20 Plaintiffs: Small Claims

Plaintiff	# of Cases	% of cases	Cumulative %
1. Money 4 You	2573	14.18%	14.18%
2. Mr Money	2348	12.94%	27.11%
3. 1st Choice Money Center	902	4.97%	32.08%
4. Dollar Loan Center	837	4.61%	36.69%
5. Tosh	602	3.32%	40.01%
6. Lift Credit	571	3.15%	43.16%
7. Tosh Inc DBA Check City	550	3.03%	46.19%
8. USA Cash Services	534	2.94%	49.13%
9. Mariner Finance	447	2.46%	51.59%
10. Loyal Loans	325	1.79%	53.38%
11. Loans for Less	311	1.71%	55.10%
12. Goldenwest Federal Credit Union	299	1.65%	56.74%
13. Lend Nation	295	1.63%	58.37%
14. Red Rock Financial	259	1.43%	59.80%
15. Cash in Minutes	256	1.41%	61.21%
16. Weber State University	183	1.01%	62.21%
17. Horizon Credit Union	160	0.88%	63.10%
18. LendNation	143	0.79%	63.88%
19. Action Rent to Own	139	0.77%	64.65%
20. (Check City) Tosh	120	0.66%	65.31%

Appendix C. Recent Utah Initiatives

During the 2021 legislative session, the Utah Legislature approved \$300,000 in one-time funding to pilot a statewide housing mediation program. Utah Community Action (UCA), which is one of nine agencies in the Community Action Partnership of Utah,¹²⁶ was awarded the pilot funding through a statewide grant process. UCA had been providing mediation services in local communities for five years, and this funding allows UCA to offer mediation services statewide through the Utah Community Action Partnership (CAP) network as of January of 2022. UCA provides low-income families and individuals with holistic support through wrap-around services.¹²⁷ Participants in the UCA Landlord Tenant Mediation Program will be able to access these statewide resources to assist with stabilization and self-sufficiency when their immediate housing crisis has been resolved. More information about UCA and its mediation programs is available at their website.¹²⁸

Endnotes

1. Available at: <https://www.utahfoundation.org/uploads/rr776.pdf>
2. At the time of writing, a statutory amendment raising the \$11,000 limit for small claims up to \$25,000 by year 2030 had been passed by the legislature and was awaiting the Governor's signature.
3. In Utah, as in other jurisdictions, a corporation is required to be represented by an attorney in court. See *Tracy-Burke Assocs. v. Department of Employment Sec.*, 699 P.2d 687, 1985.
4. The other two states are Idaho (Idaho Code § 6-31) and Montana (M.C.A. § 70-27-206), all of which permit, but do not require, the court to award treble damages in residential evictions. The notice periods for Idaho (Idaho Code § 6-303(2)) and Montana (M.C.A. §70-24-422(2)) are three calendar days.
5. Garboden, P.M.E. & Rosen, E., *Serial Filing: How landlords use the threat of eviction*, City & Community (2019).
6. Williams, G.A., Recent developments concerning the purchase of consumer debt; defining potential problems and proposals for suggested solutions, 11 J. Bus. Entrepreneurship & L. 255 (2018).
7. Wilf-Townsend, Daniel, "Assembly-Line Plaintiffs," *Harvard Law Review*, forthcoming, <https://ssrn.com/abstract=3919050>
8. Williams, J. Bus. Entrepreneurship, 11.
9. P. Kiel, "So Sue Them: What We've Learned about the Debt Collection Lawsuit Machine," ProPublica, May 5, 2016, <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine>.
10. Center for Microeconomic Data, "Household Debt and Credit Report (Q4 2021): Auto Loan Originations Help Drive Total Household Debt to \$15.58 Trillion," Federal Reserve Bank of New York, accessed March 11, 2022, <https://www.newyorkfed.org/microeconomics/hhdc.html>.
11. Analysis from the Center for Budget and Policy Priorities: Federal and state relief efforts targeting pandemic-related hardships appear to have worked for a time, but issues persist in 2021. <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and>
12. K. McKellar, "Utah ranks No. 1 in the nation for GDP growth – despite the pandemic," Deseret News, August 11, 2021, <https://www.deseret.com/utah/2021/8/11/22620136/utah-ranking-in-nation-gdp-growth-despite-pandemic-economy-growth-forbes-ranking-salt-lake-city>

13. Data from the Board of Governors of the Federal Reserve System, https://www.federalreserve.gov/releases/z1/dataviz/household_debt/state/map/#year:2020.
14. Urban Institute, “Debt in America: An Interactive Map,” March 31, 2021, https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=49.
15. The Pew Charitable Trusts, “State Policymakers Are Working to Change How Courts Handle Eviction Cases” (2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policy-makers-are-working-to-change-how-courts-handle-eviction-cases>.
16. *Id.*
17. *Id.*
18. In August 2020, the Utah Supreme Court launched the Office of Legal Services Innovation to oversee testing new services and model policies. See: <https://evictioninnovation.org/>.
19. National Center for State Courts, <https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program>.
20. <https://utahinnovationoffice.org/about/what-we-do/>.
21. Data from the Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&type=er&locations=49,-112.183,38.88%2B16,-115.31,43.929%2B56,-107.562,43.004>.
22. For an idea of how evictions move through the court system in Utah, see the “Eviction Roadmap” on the Utah Courts website: https://www.utcourts.gov/howto/landlord/docs/Eviction_Summary.pdf
23. In Idaho and Montana, treble damages may be awarded for unlawful detainer pursuant to Idaho Code § 6-31 and M.C.A. § 70-27-206, respectively. In Arkansas, treble damages are mandated for unlawful detainer in commercial or mixed-use property, not for residential property. A.C.A. § 18-60-309.
24. In Utah, evictions are actions for “Unlawful Detainer,” but the same remedies apply as for Forcible Entry and Forcible Detainer.
25. Utah Code § 78B-6-811.
26. Data from the U.S. Census Bureau, <https://www.census.gov/quickfacts/UT>.
27. <https://multicultural.utah.gov/race-eviction-rates/>.
28. K. Sabbath, “Erasing the ‘Scarlet E’ of Eviction Records,” *The Appeal*, April 12, 2021, <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/>.
29. M. Desmond and C. Gershenson, “Housing and Employment Insecurity among the Working Poor,” *Social Problems*, Advance Access, January 11, 2016, 1-22, <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.
30. Aspen Institute, “A Financial Security Threat in the Courtroom” (2021), https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_DebtCollectionsPaper_092221.pdf.
31. More thorough information on these procedures as well as legal self-help resources can be found at <https://www.utcourts.gov/>.
32. <https://www.utahfoundation.org/uploads/rr776.pdf> at 1.
33. *Id.* at 9.
34. The Pew Charitable trusts, “How Debt Collectors Are Transforming the Business of State Courts” (2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>

35. Justice Courts handle criminal misdemeanors, traffic cases, and small claims. Small claims are essentially the only civil case type heard in Justice Court.
36. In Utah, the category of “General Civil” case types does not include probate, domestic, or tort cases.
37. Of Utah’s 29 counties, 24 are classified as “rural” pursuant to Utah’s Rural County Grant Program (Utah Code Ann. § 17-54-102) and the recently amended county classification statute (Utah Code Ann. § 17-50-501, revised effective May 5, 2021) Utah’s 5 non-rural counties are: Salt Lake, Utah, Davis, Weber, and Washington.
38. The lists of top filers for Justice Court small claims and District Court debt claims are included in the Appendices below.
39. Small claims courts were developed as a way for people to seek justice without needing an attorney and without having to navigate complicated, technical legal and administrative requirements. Most people probably think of small claims court as a place to go if a friend or family member owes them money or if a neighbor has caused damage to their property. Increasingly, small claims are being brought not by natural persons, but by businesses, large and small.
40. In order to get a rough understanding of the types of debts being brought to small claims court, we utilized data from the Utah Department of Financial Institutions to match a plaintiff’s name with a specific lending type; because some plaintiffs engage in multiple types of lending activity, this method was not able to determine what type of lending activity was involved in a given case. However, we were able to determine that most small claims are being brought by financial institutions against individual consumers.
41. A “pro tem” judge is a practicing attorney working on a volunteer basis to hear cases in small claims court.
42. National Center for State Courts, “The Landscape of Civil Litigation in State Courts” (2015), https://www.ncsc.org/data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf at v; see also Steele, Eric H. “The Historical Context of Small Claims Courts,” American Bar Foundation Research Journal, Spring, 1981, Vol. 6, No. 2 (Spring, 1981), pp. 293+295-376 (<https://www.jstor.org/stable/828089>).
43. KRS § 24A.230.
44. National Center for State Courts, “The Landscape of Civil Litigation in State Courts” (2015), https://www.ncsc.org/data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf at 13.
45. At time of writing, H.B. 107 had received legislative approval and was awaiting the Governor’s signature, which would raise the small claims limit to \$15,000 on or after May 4, 2022, to \$20,000 on or after January 1, 2025, and to \$25,000 on or after January 1, 2030. <https://le.utah.gov/~2022/bills/static/HB0107.html>.
46. Small claims can also be brought to recover the costs of property damage (but not bodily injury) from motor vehicle accidents. Utah Code § 78A-8-102.
47. Utah Code § 78A-8-103.
48. <https://www.utcourts.gov/howto/smallclaims/#appeal>
49. Rule 10-1-305 of the Utah Code of Judicial Administration, which applies to the Third Judicial District, reads, in part, “(1) For appeals filed in locations where a program for mediating small claims appeals exists, the parties are required to mediate the dispute prior to the case being scheduled for pretrial or trial.” <https://www.utcourts.gov/rules/view.php?type=ucja&rule=10-1-305> At the time of writing, programs for mediating small claims appeals appear to exist in one location in Cache County (First Judicial District), one location in Weber County (Second Judicial District), and in several locations in Salt Lake County (Third Judicial District). If the parties make use of the Utah Dispute Resolution program prior to receiving a judgment in small claims court, this requirement is waived. There is currently no mediator’s fee associated with this program. <https://www.utahdisputeresolution.org/court-program>.
50. Discussed more fully below in “Case Outcomes.”
51. https://www.utcourts.gov/howto/answer/docs/1013GE_Debt_Collection_Answer.pdf.
52. https://www.utcourts.gov/howto/judgment/debt_collection/docs/1001DC_Debt_Collection_Complaint.pdf.

53. For example, on the Answer form, “Laches, estoppel, or unclean hands” is offered as number 16 on a list of 27 possible defenses. “Statute of Limitations” is offered as item number 26, the final option before “Other.” Both options have some element of the plaintiff waiting too long to bring the claim, but only the option of laches includes this plain language explanation. A defendant may select “laches” when the “Statute of Limitations” option is more appropriate.
54. Given the recent adoption of the complaint form, analysis of its impact falls outside the sample of our court docket data analysis.
55. https://www.utcourts.gov/howto/filing/summons/docs/1017GE_Ten_Day_Summons.pdf
56. *Id.*
57. <https://www.utcourts.gov/howto/answer/> Note that if a defendant is served via the Ten Day Summons, there may not be an opportunity for the defendant to file an answer until and unless the plaintiff files the complaint with the court, which must occur within 10 days of serving the complaint and summons on the defendant. So a defendant may functionally only have 10 days to submit the answer, wait to see if the answer is accepted or returned, and then make revisions and re-submit.
58. See footnote 53 above.
59. Information updated in the MyCase profile alone may not be reflected in other databases used by the courts. See: <https://www.utcourts.gov/mycase/>.
60. See Rule 8(d) of the Utah Rules of Civil Procedure.
61. See Rule 5 of the Utah Rules of Small Claims Procedure: <https://www.utcourts.gov/rules/view.php?type=srpe&rule=05>.
62. For debt claims, URCP Rule 26 governs; for evictions, URCP Rule 26.3 governs. See: <https://www.utcourts.gov/rules/view.php?type=urcp&rule=26> and <https://www.utcourts.gov/rules/view.php?type=urcp&rule=26.3>, respectively.
63. Rule 6 of Utah’s Rules of Small Claims Procedure do not permit formal discovery, but do encourage the parties to “exchange information” prior to hearing. See: <https://www.utcourts.gov/rules/view.php?type=srpe&rule=06>.
64. URCP Rule 26 requires disclosure of contact information for potential witnesses, names of each witness the plaintiff intends to use and a summary of their expected testimony, a copy of all documents that may be used as exhibits, a calculation of damages claimed and a copy of the documents or evidence used to make the calculation, a copy of any agreement regarding payment of judgment, and a copy of all documents that are referred to in the pleadings (complaint). If a plaintiff does not make these disclosures, then the evidence may not be used by the plaintiff to make their case unless they can show the court there was a good reason for not making the disclosures.
65. Of all cases filed, not of cases where the defendant answered.
66. Note: the researchers can make no representations as to the validity or quality of the documentation filed; it was only possible to see whether or not something was filed.
67. These data only show whether the documentation was filed with the court at the initiation of the lawsuit; the data do not capture whether a defendant received documentation from the plaintiff prior to or at a hearing, nor whether documentation was filed at a later date.
68. At time of writing.
69. See: <https://le.utah.gov/xcode/Title78A/Chapter8/78A-8-S102.html>.
70. See: <https://le.utah.gov/xcode/Title78A/Chapter8/78A-8-S103.html>.
71. The median monthly rent amount was determined by pulling a hand sample of 364 eviction cases filed in 2019.
72. Stakeholders noted that this number is likely attributable to the amount of rent due for the days that have elapsed between the end of the three day “pay or vacate” notice window and the filing of the action for unlawful detainer, and that, due to court practices around data entry, the amount of back-due rent that led to the posting of the “pay or vacate” notice is not reflected in the data.

73. Like Utah, California and Florida require three business days' notice (Cal. Civ. Proc. Code § 1161(2); Fla. Stat. Ann. § 83.56(3)). Kansas requires three days' notice, plus 2 days if notice is served by mail (Kan. Stat. Ann. § 58-2564(b)). See also: Idaho Code § 6-303(2); Iowa Code § 562A.27(2); Miss. Code Ann. §§ 89-7-27, 89-7-45; N.M. Stat. Ann. § 47-8-33(D); N.D. Cent. Code § 47-32-01; S.D. Codified Laws §§ 21-16-1(4), 21-16-2; Wyo. Stat. Ann. §§ 1-21-1002 to 1-21-1003; Mont. Code Ann. § 70-24-422(2).
74. https://www.utcourts.gov/howto/landlord/docs/1001EV_3_Day_Notice_to_Pay_or_Vacate.pdf.
75. <https://gardner.utah.edu/more-than-half-of-utahs-households-unable-to-afford-median-home-price-report-shows/>.
76. The landlord does have a duty to mitigate damages, such as by making reasonable attempts to lease the premises to a new occupant. See Utah Code Ann. § 78B-6-811; *Reid v. Mut. of Omaha Ins. Co.*, 776 P.2d 896, 1989 Utah LEXIS 55, 110 Utah Adv. Rep. 12.
77. For an explanation of treble damages, see “Treble Damages” inset above, p. 4.
78. Utah Code § 78B-6-802; <https://le.utah.gov/xcode/Title78B/Chapter6/78B-6-S802.html>.
79. 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329, 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329.
80. <https://www.deseret.com/utah/2022/1/31/22910742/how-much-is-rent-in-utah-texas-new-york-nyc-florida-average-home-price-redfin-apartment-association>
81. If the parties come to an agreement regarding repayment of a debt, they may ask the court to order a stipulated judgment. For cases filed in 2019 resulting in a stipulation or agreement, the court also recorded a judgment in 32% of District Court debt claims, 47% of small claims, and 19% of evictions.
82. Due to a small subset of cases with an agreement or stipulation that also result in a judgment, as well as rounding, the overall judgment rate can be slightly higher than the sum of default and non-default judgments shown in Fig. 9.
83. Another 14% of eviction cases resulted in a form of relief other than a money judgment, which may include an order of restitution.
84. Of cases filed in 2019, 3.6% of District Court debt claims, 16.8% of small claims, and 2.3% of evictions resulted in an amount in judgment that was less than the original amount in controversy. Because the data does not include information about cases settled out of court, it is not possible to compare settlement amounts to money judgment amounts nor to ascertain whether settlements include waiver of interest, fees, or other costs that would constitute the amount in controversy.
85. Different interest rates apply prior to and after a judgment has been entered. Court data revealed frequent errors in the rate of post-judgment interest applied to all three case types. This data is discussed in more detail under “Post-Judgment,” but is mentioned here as an additional confounding factor for someone trying to assess their potential costs in debt litigation.
86. Engaging with the court process is especially costly for defendants in eviction cases; this topic is explored below in relation to treble damages.
87. <https://www.utcourts.gov/resources/fees.htm>.
88. Because court data does not include the amounts agreed to in settlements nor does it include complete data on the amounts in stipulations, it is not currently possible to compare cost outcomes for defendants in cases with similar amounts in controversy that settle versus going through the court system.
89. We excluded from these calculations the cases that did not have a judgment amount entered at the time of analysis.
90. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>.
91. Discussed in more detail below, under “The Current Attorney Fee Schedule Disincentivizes Defendants from Contesting Small-Dollar Debt Claims in District Court.”

92. See Footnote 23.
93. As discussed above under “District Court Is Being Used to Pursue Relatively Low-Dollar Claims.”
94. See, e.g., *Martin v. Kristensen*, 2021 UT 17, P29, 489 P.3d 198, 203-204 (affirming that a temporary possession order precludes a renter’s eviction but does not affect the availability of statutory remedies such as treble damages).
95. See Fig. 13.
96. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>.
97. Per the 2018 Advisory Committee notes regarding a change in allowable attorney fees, the previous schedule of allowable amounts had been based on the amount of damages sought: <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>
98. Total debt claims filed over that time period = 151,908.
99. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2058B%20Satisfaction%20of%20judgment.&rule=urcp058b.html>.
100. UCRP 58B. If a plaintiff does not file the satisfaction of judgment, there is a process whereby the debtor-defendant can do so.
101. For a comparison of state limitations on garnishments, see the National Consumer Law Center’s “No Fresh Start 2021: Will States Let Debt Collectors Push Families into Poverty as Pandemic Protections Expire?” available in pdf format at: https://www.nclc.org/images/pdf/debt_collection/Rpt_NFS_2021.pdf. The web version of the report is available here: <https://www.nclc.org/issues/no-fresh-start-in-2021.html>.
102. 15 USCS § 1673.
103. 15 USCS § 1674; *but see Cheatham v. Virginia Alcoholic Beverage Control Board*, 501 F.2d 1346, 1974 U.S. App. (4th Cir. Va. August 1, 1974) (holding that USC § 1674 applies to garnishments for “one indebtedness,” not multiple garnishments). Multiple debts for which there is a single judgment and court order for garnishment constitute “one indebtedness.”
104. Other limits apply where the garnishment is sought to satisfy an education loan or a debt for child support. See Utah Code Ann. §70C-7-103 and URCP 64D.
105. See Fig. 9.
106. Data on bankruptcy filings, and any relationship between debt litigation in Utah and bankruptcy, is beyond the scope of this project.
107. URCP 58B.
108. Current and historic post-judgment interest rates are available on the Utah Courts website here: <https://www.utcourts.gov/resources/intrates/interestrates.htm> and <https://www.utcourts.gov/resources/intrates/historic.html>.
109. See Utah Code §§15-1-1(2) “Interest Rates– Contracted Rate– Legal Rate” and 15-1-4(4) “Interest on Judgments”.
110. Utah Code Ann. § 78B-6-811.
111. Utah Code Ann. § 57-17-3.
112. https://www.utcourts.gov/howto/filing/info_change/docs/Notice_of_Change_of_Address.pdf.
113. UCRP 5. Per a 2015 Advisory Committee note, “electronically filing a document has the effect of serving the document on lawyers who have an e-filing account.” <https://www.utcourts.gov/rules/view.php?type=urcp&rule=5>
114. One case in the hand sample had the following fact pattern:

- The defendant, who had filed an answer, had already moved out on 1/11/2019, according to their answer. They allege (in their answer) that the Landlord had changed the locks (if true, this could be a self-help eviction and unlawful).
 - The plaintiff moved for a hearing, purporting to serve this motion on the defendants at the rental property, which the defendants had alleged they no longer had access to. Standing alone, these facts constitute an example of a case where a plaintiff served the defendant at an old address.
 - The hearing notice itself, however, was sent to an updated address, and therefore the defendants had a warning of the hearing date from the court.
115. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/28/fact-sheet-the-white-house-and-department-of-justice-announced-99-law-schools-in-35-states-and-puerto-rico-continue-to-answer-the-attorney-generals-call-to-action-for-stronger-access-to-just/>.
 116. <https://www.justice.gov/ag/page/file/1428626/download>.
 117. [https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program#:~:text=NCSC's%20Eviction%20Diversi%20Initiative%20\(EDI,%2C%20high%2Dimpact%20eviction%20dockets](https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program#:~:text=NCSC's%20Eviction%20Diversi%20Initiative%20(EDI,%2C%20high%2Dimpact%20eviction%20dockets).
 118. <https://perma.cc/V9LU-VD2D>.
 119. https://ncsc.org/_data/assets/pdf_file/0022/71914/Eviction-diversion-whitepaper-Jan.pdf.
 120. See https://www.ncsc.org/_data/assets/pdf_file/0027/25578/meeting-the-challenges.pdf.
 121. See Fig. 9 “Case Outcomes Vary Across Case Types,” illustrating that District Court debt claims have a far higher rate of default judgments (71%) than small claims (29%).
 122. URCP 59.
 123. 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329, 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329.
 124. We used the Creative Research Systems sample size calculator: <https://www.surveysystem.com/sscalc.htm>.
 125. <https://www.google.com/url?q=https://www.utcourts.gov/alerts/docs/20200320%2520-%2520Pandemic%2520Administrative%2520Order.pdf&sa=D&source=docs&ust=1647470033626884&usg=AOvVaw1-3Jw4yUVdpoticmyD-Inl>.
 126. <https://caputah.org/what-we-do/advocacy/the-work-of-community-action-in-utah/>
 127. <https://caputah.org/who-we-are/>
 128. <https://www.utahca.org/housing/>



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Tab 9

Agenda



Administrative Office of the Courts

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

April 29, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: The Management Committee of the Judicial Council

FROM: Standing Committee on Model Utah Civil Jury Instructions
Stacy Haacke, Associate General Counsel

RE: New Appointments

New Appointment for Defense's Counsel:

The Committee received several applicants to fill the defense's counsel seat that will be vacant after the two terms served by Mr. Joel Ferre. The applicants for this seat included Michael Dodge, Gary Wight, Meghan Sheridan, and Mark Morris. After discussion the Committee agreed they would recommend Mark Morris to fill this position, and as an alternate Gary Wight.

Mr. Morris currently practices with Snell & Wilmer and has over 35 years of experience in general commercial litigation, including construction law, real estate, securities, legal malpractice employment, professional liability, trade secrets, general business disputes, and defense of class action matters. Mr. Wight is a shareholder at Kipp & Christian, P.C. and has over 15 years of experience as a civil defense lawyer, primarily defending professionals in malpractice lawsuits.

New Appointment for Linguist:

The Committee received several applicants to fill the linguist seat that will be vacant after the many years of dedicated service by Ms. Marianne Di Paolo. The applicants for this seat included Brett Hashimoto, William Eggington, and Meg Glasman. After discussion the Committee unanimously agreed to recommend William Eggington to fill this position.

Mr. Eggington is an emeritus professor of linguistics in the Linguistics Department at Brigham Young University. Since retirement he has remained involved in the application of linguistics to the law and is heavily involved as a forensic linguistic consultant.

The Committee looks forward to approval and any feedback from the Management Committee and Judicial Council as to these new appointments.

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



Administrative Office of the Courts

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

April 29, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee of the Judicial Council

FROM: Nathanael Player, on behalf of the Forms Committee

RE: Forms Committee membership

The recent change to Code of Judicial Administration 1-205(1)(B)(xiv) modified Forms Committee membership. Pursuant to those changes, and to other changes in the committee's composition, the following new members are submitted for approval:

- Judge Marvin Bagley (chosen by the Board of District Court Judges);
- Judge Brent Bartholomew (chosen by the Board of Juvenile Court Judges);
- Keri Sargent – the district court administrator's designee;
- AJ Torres – the LPP administrator;
- David Head – the representative from the Utah State Bar;
- Bret Hayman – the appellate court staff attorney.

The table on page two details the current, and proposed, composition of the committee.

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

Name	Position	Comment
Randy Dryer	Chair, and educator from a paralegal program or law school	
Judge Chon	One of two district court judges	
Judge Bagley	One of two district court judges	Submitted for approval
Commissioner Minas	Court commissioner	
Judge Bartholomew	Juvenile court judge	Submitted for approval
Judge Birch	Justice court judge	
Guy Galli	Court clerk	
Bret Hayman	Appellate court staff attorney	Submitted for approval
Nathanael Player	Self-Help Center representative	
Kaden Taylor	State Law Librarian	
Keri Sargent	District court administrator	Submitted for approval
Stewart Ralphs	Legal services org. that serves low-income clients	
Amber Alleman	Paralegal	
	One person skilled in linguistics or communication	We are currently searching for a replacement for Kara Mann
David Head	Representative from the Utah State Bar	Submitted for approval
AJ Torres	LPP Administrator	Submitted for approval



Administrative Office of the Courts

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

May 12, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Ron Gordon

RE: Appointment to the Child Support Guidelines Advisory Committee

Judicial Council members, Commissioner T.R. Morgan was assigned to represent the Judiciary on the Child Support Guidelines Advisory Committee. Utah Code § 78B-12-401. Advisory Committee Created, requires one representative recommended by the Judicial Council. After careful consideration, Chief Justice Matthew B. Durrant and I recommend that Commissioner Marian Ito replace Commissioner Morgan on the Child Support Guidelines Advisory Committee for a term of four years, as defined by statute.

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

Tab 10

Agenda

Name

Address

City, State, Zip

Phone

Email

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the matter of the (choose all that apply):

- ☐ name change of
☐ sex change of

(Minor's name)

A minor.

Consent to Petition for (choose all that apply):

- ☐ **Minor's Name Change**
 (Utah Code 42-1-1)
☐ **Minor's Sex Change**
 (Utah Code 26-2-11)

Case Number

Judge

1. My name is _____, and I have the following relationship to the minor:
 - ☐ natural or adoptive father
 - ☐ natural or adoptive mother
 - ☐ custodian by court (attach court order)
 - ☐ guardian by court (attach court order)
 - ☐ other (explain): _____
2. I have read the petition and agree with it.
3. I know that I have the right to discuss the petition with a lawyer.

4. I know I have the right to disagree with the proposed changes. I know I can challenge the proposed changes by filing a written response to the petition.
5. I know I have the right to take part in this case, either by myself or through a lawyer.
6. I understand that if the court grants the name change the new legal name of the minor will affect me as follows:

☐ The minor will no longer have the same name as I do.

☐ The minor will have the same name as I do.

☐ Other (explain): _____

7. I understand that changing the minor's legal name does not affect my legal relationship to the minor. I will keep my lawful rights or obligations to the minor. Depending on my situation, this could include the following:

- custody,
- guardianship,
- parent time,
- child support,
- day care,
- health care,
- tax deductions,
- inheritance, and/or
- providing for the minor's daily and ongoing physical, emotional, and moral care and well-being.

8. ☐ I agree and consent to changing the minor's current legal name:

First	Middle	Last

to this proposed new legal name:

First	Middle	Last

and believe this name change is in the minor's best interest.

9. ☐ I agree and consent to changing the minor's current legal sex from:

☐ male to female

☐ female to male

I believe that this legal sex change is in the minor's best interest.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

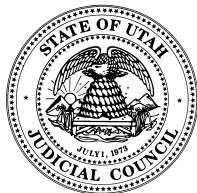
Signature ►

Date

Printed Name

Tab 11

Agenda



Administrative Office of the Courts

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

May 11, 2022

Ronald Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee / Judicial Council
FROM: Keisa Williams
RE: Rules for Public Comment

The Policy and Planning Committee recommends that the following rules be approved for a 45-day public comment period:

CJA 4-202.03. Records access. (AMEND)

Allows a petitioner in an expunged case to obtain a certified copy of the expungement order and case history upon request and in-person presentation of positive identification. This mirrors the process for adoptive parents in obtaining a certified copy of the adoption decree.

CJA 6-501. Reporting requirements for guardians and conservators. (AMEND)

Incorporates changes related to [H.B. 320](#) (Guardianship Bill of Rights), streamlines and clarifies exceptions to reporting requirements, outlines procedures and timelines for approval of and objection to reports, and requires the use of a Judicial Council-approved cover sheet and report forms that are substantially the same as Judicial Council-approved forms.

CJA 9-109. Presiding Judges. (AMEND)

[S.B. 98](#) approved compensation for Presiding Judges and Associate Presiding Judges, but not for Education Directors. The proposed amendments simplify the leadership structure of the justice courts and address the compensation disparity by eliminating the position of Education Director. The Associate Presiding Judge will assume education duties.

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 4-202.03. Records Access.**Intent:**

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. A petitioner in an expunged case may obtain certified copies of the expungement order and the case history upon request and in-person presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) **Private Court Records.** The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) Protected Court Records. The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

(4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(4)(G) anyone by court order;

(4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

(4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) Juvenile Court Social Records. The following may access a juvenile court social record:

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and

(5)(M) anyone by court order.

(5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

(5)(N)(i) the subject of the record, if age 18 or over;

(5)(N)(ii) an attorney or person with power of attorney for the subject of the record;

(5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(N)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(N)(vi) anyone by court order.

(5)(O) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

(6) Juvenile Court Legal Records. The following may access a juvenile court legal record:

(6)(A) all who may access the juvenile court social record;

(6)(B) a law enforcement agency;

(6)(C) a children's justice center;

(6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family;

(6)(E) the victim of a delinquent act may access the disposition order entered against the minor; and

(6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.

(7) Safeguarded Court Records. The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

(9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

Effective: ~~11/1/2019~~ November 1, 2022

Rule 6-501. Reporting requirements for guardians and conservators.**Intent:**

To establish standards and procedures for annual reports and accountings that guardians and conservators are required to file under ~~the requirements sufficient to satisfy~~ the Utah Uniform Probate Code.

Applicability:

This rule applies to individuals seeking appointment as guardians and conservators and individuals who are appointed by the court as guardians and conservators. ~~with the following exceptions:~~

~~This rule does not apply if the conservator or guardian is the parent of the ward.~~

~~Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school.~~

~~Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.~~

~~Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school. A person interested in the minor may request a report under Utah Code Section 75-5-209.~~

~~Paragraph (6)(D) does not apply to the guardian of a minor if the minor's estate is deposited in an account requiring judicial approval for withdrawal or if there is no estate. A person interested in the minor may request an accounting under Utah Code Section 75-5-209.~~

Statement of the Rule:**(1) Definitions.**

(1)(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

(1)(B) "Interested person" means the respondent, if he or she is not a minor, the respondent's guardian and conservator, the respondent's spouse, adult children, parents and siblings, and any other person interested in the welfare, estate, or affairs of the respondent who requests notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the respondent's closest adult relatives, if any can be found. For purposes of minor guardianship, interested persons include the persons listed in Utah Code Section 75-5-207.

(1)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

(1)(D) “Serve” means any manner of service permitted by Utah Rule of Civil Procedure 5.

(1)(E) “Protected person” means a minor or an incapacitated person for whom the court appoints a guardian or a protected person for whom the court appoints a conservator.

(1)(F) “Report” means the inventory, accounting, or annual report on the status of the protected person under Utah Code Sections 75-5-209 and 75-5-312, and the final accounting under Sections 75-5-210 and 75-5-419

(1)(G) “Respondent” means a person who is alleged to be incapacitated and for whom the appointment of a guardian or conservator is sought.

(2) Exceptions.

(2)(A) Paragraph (4) does not apply to the following:

(2)(A)(i) a guardian licensed under Utah Code Section 75-5-311(1)(a);

(2)(A)(ii) the Office of Public Guardian; or

(2)(A)(iii) a conservator licensed under Utah Code Section 7-5-2.

(2)(B) Paragraphs (6), (7), (8), (9), and (10) do not apply if the guardian or conservator is a parent of the protected person.

(2)(C) Paragraph (7)(C) does not apply to the guardian of a minor if the minor’s estate consists of funds that are deposited in a restricted account, which requires judicial approval for withdrawal, or if there is no estate.

(2)(D) Paragraph (9) does not apply to a conservator who is appointed for the purpose of receiving a personal injury settlement for a minor if 1) no funds are to be distributed until the minor reaches the age of majority, or 2) no structured settlement payments are to be made until the minor reaches the age of majority.

(3) Examination and private information record.

(3)(A) Before the court enters an order appointing a guardian or conservator, the ~~proposed~~ guardian or conservator ~~shall~~must file a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator.

(3)(B) ~~After~~Before the court enters ~~an~~the order of appointment, the ~~proposed~~ guardian or conservator ~~shall~~must file ~~within 7 days~~ a completed and verified Private Information Record form provided by the Administrative Office of the Courts.

(3)(C) The guardian or conservator ~~shall~~must continue to keep the court apprised of any

changes to the guardian or conservator's contact information.

(42) Recordkeeping. The guardian ~~shall~~must keep contemporaneous records of significant events in the life of the ~~ward~~protected person and produce them if requested by the court. The conservator ~~shall~~must keep contemporaneous receipts, vouchers or other evidence of income and expenses and produce them if requested by the court. The guardian and conservator ~~shall~~must maintain the records until the appointment is terminated and then deliver them to the ~~ward~~protected person, if there is no successor, to the successor guardian or conservator, or to the personal representative of the ~~protected person~~ward's estate.

~~(3) Definitions.~~

~~(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.~~

~~(B) "Interested persons" means the ward, if he or she is of an appropriate age and mental capacity to understand the proceedings, the ward's guardian and conservator, the ward's spouse, adult children, parents and siblings and anyone requesting notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the ward's closest adult relatives, if any can be found.~~

~~(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.~~

~~(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.~~

~~(E) "Report" means the annual report on the status of the ward required by Utah Code Section 75-5-209 and Section 75-5-312.~~

~~(F) "Ward" means a minor or an incapacitated person for whom the court appoints a guardian or a protected person for whom the court appoints a conservator.~~

~~(54) Report forms.~~ Subject to the requirements of Paragraph ~~(65)~~:

~~(54)(A) forms substantially conforming to the Judicial Council-approved forms ~~produced by the Utah court website~~ are acceptable for content and format ~~for the report and accounting filed under the Utah Uniform Probate Code~~;~~

~~(54)(B) a corporate fiduciary may file its internal report or accounting; and~~

~~(54)(C) if the ward~~protected person~~'s estate is limited to a federal or state program requiring an annual accounting, the fiduciary may file a copy of that accounting.~~

~~(65) Information required in reports, cover sheet, and service.~~Report information.

~~(6)(A) The annual report, inventory, and annual accounting ~~shall~~must contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court may direct that a report or accounting be prepared with content and format as it deems necessary.~~

~~(6)(B) The annual report and annual accounting must include the Judicial Council-approved report coversheet, which must be filed as a proposed document.~~

(6)(C) The guardian, conservator, or both must serve a copy of the report, inventory, and accounting under Rule 5 of the Utah Rules of Civil Procedure on all interested persons. The annual report and annual accounting must include the following language at the top right corner of the first page, in bold type: **You have the right to object to ~~the~~is report or accounting within 28 days of service. If you do not object within that time, your objection may be waived.**

(7) ~~Annual s~~Status reports.

(67)(A) The guardian ~~shall~~must file with the appointing court a report on the status of the wardprotected person no later than 60 days after the anniversary of the appointment. The status report must be in substantially the same form as the status report form approved by the Utah Judicial Council, including the required attachments. The guardian ~~shall~~must file the report with the court that appointed the guardian unless that court orders a change in venue under Utah Code Section 75-5-313. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the guardian. The guardian may not file the report before the close of the reporting period. For good cause the court may extend the time for filing the report, but a late filing does not change the reporting period.

~~(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(7)(GB) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge shall approve it.~~

(67)(DC) If there is no conservator, the guardian ~~shall~~must file the inventory and accounting required of a conservator under Utah Code Section 75-5-312.

(87) Inventory ~~reports.~~

(87)(A) Within 90 days after the appointment, the conservator ~~shall~~must file with the appointing court the inventory required by Utah Code Section 75-5-418. The inventory must be in substantially the same form as the inventory form approved by the Utah Judicial Council, including the required attachments. ~~For good cause t~~he court may extend the time for filing the inventory for good cause.

~~(7)(B) The conservator shall serve a copy of the inventory on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(87)(GB) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection~~

~~with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed. If the judge finds that the inventory is in order, the judge ~~shall~~must approve it.

(98) Annual accounting reports.

(98)(A) The conservator ~~shall~~must file with the appointing court an accounting of the estate of the wardprotected person no later than 60 days after the anniversary of the appointment. The accounting must be in substantially the same form as the accounting form approved by the Utah Judicial Council, including the required attachments. The conservator ~~shall~~must file the accounting with the court that appointed the conservator unless that court orders a change in venue under Utah Code Section 75-5-403. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the conservator. The conservator may not file the accounting before the close of the reporting period. For good cause the court may extend the time for filing the accounting, but a late filing does not change the reporting period.

~~(8)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(98)(CB) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in order, the judge ~~shall~~must approve it.

(109) Final accounting.

(109)(A) The conservator ~~shall~~must file with the court a final accounting of the estate of the wardprotected person with the motion to terminate the appointment.

~~(9)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(109)(CB) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing.~~ The ~~judge court~~ may conduct a hearing even though no objection is filed. If the ~~judge court~~ finds that the accounting is in order, the ~~judge court~~ ~~shall~~must approve it.

(11) Objections.

~~(11)(A) If an interested person objects to a report or accounting, the person must file a written objection with the court and serve a copy on all interested persons within 28 days from the date of service of the report or accounting. A request to submit must be included with the~~

objection. The court may for good cause, including in order to accommodate a person with a disability, waive the requirement of a writing and document the objection and request to submit in the court record.

(11)(B) The objection must specify in writing the entries to which the person objects and state the reasons for the objection.

(11)(C) An objection to a report or accounting may not contain a request to remove or substitute the guardian or conservator. Any request for removal or substitution of the guardian or conservator must be filed as a separate petition consistent with Utah Code Section 75-5-307 or 75-5-415.

(11)(D) If an objection is filed, the court must conduct a hearing unless the court determines that a hearing is not necessary. If the court determines that a hearing is not necessary, the court must issue a minute entry or order stating why a hearing is not necessary.

(11)(E) At the hearing, the court may require the guardian or conservator to supplement or amend the report or accounting if the court determines there is good cause for the objection.

(11)(F) If the court determines that the objection is unfounded or is filed in bad faith, the court may deny the objection and approve the report or accounting.

(12) **Waiver.** If an interested person does not object to a report or accounting within 28 days of service, the interested person waives any objection unless:

(12)(A) the objection relates to matters not fairly disclosed by the report or accounting; or

(12)(B) the time for objection is extended by the court under Rule 6 of the Utah Rules of Civil Procedure. If the request for an extension is made before the time has run, the court may extend the time for good cause. If the request is made after the time has run, the court may extend for excusable neglect.

(13) **Report approval.**

(13)(A) **Approval.** The court must examine and approve reports as required by Utah Code sections 75-5-312 and 75-5-417. Approving a report means the judge has reviewed it, to the court's knowledge notice has been given to every person entitled to notice, no objection has been received, the report meets the requirements set forth by the report form, and the court has not requested additional information or scheduled a hearing. Such approval does not foreclose a valid claim permitted under paragraphs (11)(A) or (11)(B), nor does it start an appeal time.

(13)(B) **Notice to interested persons.** When a court approves a report, the court must note that approval on the Judicial Council-approved coversheet and place the coversheet in the case file. When a court does not approve a report, the court must indicate on the coversheet,

258 or in an order, the reasons for non-approval, any additional actions required, and serve the
259 coversheet or order on all interested persons entitled to notice.

260
261 (14) **Report on a minor.** Under Utah Code Section 75-5-209, a person interested in the welfare
262 of a minor may petition the court for a report from the guardian on the minor's welfare or the
263 minor's estate. If the court orders a report from the guardian, the status report must be in
264 substantially the same form as the status report form for guardianships of adults approved by the
265 Utah Judicial Council, including the required attachments.

266
267 *Effective May/~~November~~ 1, 20~~22~~¹⁸*

Rule 9-109. Presiding judges.**Intent:**

To establish the procedure for election, term of office, role, responsibilities, and authority of presiding judges, and associate presiding judges, ~~and education directors~~ for Justice Courts.

Applicability:

This rule shall apply to presiding judges, and associate presiding judges, ~~and education directors~~ in the Justice Courts.

Statement of the Rule:**(1) Election and term of office.****(1)(A) Presiding judge.**

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active judges present at the district meetings held at the ~~2018~~ Justice Court Conference. ~~Thereafter, regular elections shall take place at the annual conference~~ in odd years for odd-numbered districts and in even years for even-numbered districts. In the event that a majority vote cannot be obtained, the presiding judge shall be determined by the Board of Justice Court Judges. Interim elections, if necessary, shall take place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of presiding judge.

(1)(A)(ii) The presiding judge's term of office shall commence on July 1 following his or her election ~~be from the time of his or her election or immediately upon~~ appointment, as applicable, and run until he or she resigns or until June 30 of an odd year for odd-numbered districts or of an even year for even-numbered districts ~~the next regular election~~, whichever occurs first. A presiding judge may serve successive terms.

(1)(B) Associate presiding judge.

(1)(B)(i) The active judges of a district ~~may, at their discretion, shall~~ elect one judge of the district to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). An associate presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of associate presiding judge.

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall serve on the justice court Education Committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level. In addition, the associate presiding judge shall perform other duties assigned by the presiding judge.

~~(1)(C) District education director.~~

~~(1)(C)(i) The active judges of a district may, at their discretion, elect one judge of the district to the office of education director. An education director shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). Senior judges are ineligible to vote for the office of district education director but may hold the office. If a district does not elect an education director, the associate presiding judge, if there is one, shall serve as the education director. If the district elects neither an education director nor an associate presiding judge, the presiding judge shall serve as the education director.~~

~~(1)(C)(ii) The education director shall serve on the justice court education committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level.~~

(1)(C) Compensation. Presiding judges and associate presiding judges shall be compensated for their service at the end of each fiscal year, in proportion to the percentage of the year they served in office, and as otherwise contemplated by Section 78A-7-209.5 of the Utah Code.

(1)(D) Removal and Other Vacancies of Office.

(1)(D)(i) If the office of presiding judge becomes vacant, then the associate presiding judge shall serve the rest of the presiding judge's term. ~~If there is no associate presiding judge, the district education director shall, if the education director is an active judge, serve the unexpired term. Otherwise, the Chair of the Board of Justice Court Judges shall appoint a judge to serve until the next district meeting.~~

(1)(D)(ii) A presiding judge may appoint, on an interim basis, an eligible judge of the district to fill an unexpired term of the associate presiding judge ~~or education director~~ until the next district meeting. At the district meeting, the active judges present shall ratify the appointment by majority vote. If they do not ratify the appointment, or if the presiding judge does not make an interim appointment, nominations and an election shall then be held at that meeting to fill the unexpired term.

(1)(D)(iii) A presiding judge, or associate presiding judge ~~or education director~~ may be removed from that office by a two-thirds vote of the active justice court judges in the district. A successor presiding judge or associate presiding judge shall, ~~or an associate presiding judge or education director may,~~ then be elected to fill the unexpired term of the vacant office.

(1)(D)(iv) In extraordinary circumstances, to preserve confidence in the fair administration of justice, the Presiding Officer of the Judicial Council may remove a judge from any office described in this rule. Vacancies shall be filled as provided in this rule.

(2) District meetings.

(2)(A) Each district shall have regular meetings to discuss and decide district business, receive training, or address issues and concerns specific to the district.

(2)(A)(i) The presiding judge shall call and preside over a meeting of other justice court judges in the district at the annual Justice Court Conference.

(2)(A)(ii) Each district shall have at least one other meeting during the calendar year in which a majority of active justice court judges is present, including the presiding judge or associate presiding judge.

(2)(B) In addition to regular meetings, the presiding judge or a majority of the active judges may call additional meetings as necessary.

(2)(C) An agenda shall be circulated among the judges in advance of any meeting with a known method on how matters may be placed on the agenda.

(2)(D) Other than judges and the Justice Court Administrator, attendance at district meetings shall be by invitation of the presiding judge only.

(2)(E) The issues on which judges vote shall be left to the sound discretion and judgment of each district and the applicable sections of the Utah Constitution, statutes, and this Code.

(3) Administrative responsibilities and authority of presiding judge and associate presiding judge.

(3)(A) **Generally.** The presiding judge is charged with the responsibility for the effective operation of the justice courts within a district. He or she is responsible for the implementation and enforcement of statutes, rules, policies, and directives of the Judicial Council and the Board of Justice Court Judges as they pertain to the administration of the courts. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(B) Coordination of required training.

(3)(B)(i) The ~~presiding judge~~, associate presiding judge, ~~or education director~~ shall: (a) be responsible to see that judges in his or her district are appropriately trained, (b) assist in planning statewide trainings as part of the Education Committee, (c) plan district training to be held in connection with the meetings required by section (2), (d) recommend mentors for new judges, and (e) arrange for individual training, as needed.

(3)(B)(ii) Presiding judges ~~are encouraged to~~ shall occasionally observe ~~the~~ hearings of judges within the district to assess training needs.

(3)(C) **Court committees.** The presiding judge shall, where appropriate, make use of committees composed of other judges and court personnel to investigate problem areas and improve the administration of justice.

(3)(D) Outside agencies and the media.

(3)(D)(i) The presiding judge shall be available to meet with outside agencies, such as prosecuting attorneys, city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs, police chiefs, bar association leaders, probation providers, government officials of cities or counties located within the district, civic organizations, and other state agencies.

(3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in the district.

(3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative responsibilities of an appointed judge to the appointing authority of a court.

(3)(E) **Judicial officers.** The presiding judge shall discuss significant concerns, problems or complaints regarding the judges in his or her district with the Justice Court Administrator, who shall work together to resolve the concern. In the event that another judge in the district fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment, or violates the Code of Judicial Conduct, the presiding judge may, depending on the severity of the issue and consistent with legal and ethical obligations:

(3)(E)(i) Consult with appropriate staff at the Administrative Office of the Courts and/or discuss the issue with other presiding judges;

(3)(E)(ii) Meet with the judge to explain the reasons for the directive given or the position taken, consult with the judge about alternative solutions and reevaluate the directive or position, as appropriate;

(3)(E)(iii) Present the problem to the Board of Justice Court Judges for input;

(3)(E)(iv) Require the judge to participate in appropriate counseling, therapy, education or treatment; or

(3)(E)(v) Refer the problem to the Judicial Council, the Chief Justice, or the Judicial Conduct Commission, as appropriate.

(3)(F) **Liaison.** The presiding judge or his or her designee shall serve as a liaison between the justice courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile Court and District Court.

(3)(G) **Reassignment.**

(3)(G)(i) In the event that a motion to disqualify a judge or judges is filed and no appointed judge of the court is available or empowered to hear the motion, the presiding judge shall consider the motion and, if necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(G)(ii) In the event that all of the appointed judges of a court recuse themselves from a matter, the presiding judge shall assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(H) **Compliance with standards.** The presiding judge shall monitor and ensure that judges are complying with performance standards established by the Council or as otherwise required by law.

(3)(l) **Performance evaluations.** Pursuant to Utah Code 78A-12-203, the presiding judge shall receive the midterm reports prepared by the Judicial Performance Evaluation Commission for the other justice court judges in his or her district. The presiding judge shall consult with the evaluated judge and the Justice Court Administrator to develop a plan for addressing the issues resulting in less than satisfactory scores.

Effective: ~~August 21, 2020~~ May 25, 2022