

UTAH STATE COURTS



Justice Court Reform

Presentation to the Judicial Council
October 24, 2022

Agenda

- Overview
- Background Leading to Formation of the Task Force
- Task Force Recommendations and Direction from Council
- Stakeholder Feedback (including feedback obtained by the National Center for State Courts)
- Fiscal Impacts (including analysis conducted by the Kem C. Gardner Policy Institute)
- Review Options for Moving Forward
- Discussion



UTAH STATE COURTS

Timeline

1989

- Justice Courts Created

1996

- Circuit Courts Dissolved
- Justice Court Jurisdiction Expanded

2007

- Nehring Commission

2016

- *Simler v. Chilel*, 379 P.3d 1995 (Utah 2016)

2018

- Supreme Court Advisory Committee Chaired by Judge Appleby

2019

- Task Force Formed

2021

- Task Force Report Presented to the Supreme Court and the Judicial Council

Nehring Commission (2007)

| ENACTED RECOMMENDATIONS | NOT ENACTED |
|-------------------------------------------|------------------------------------------------------------------------------|
| Judicial selection process | Judges to be state employees |
| Salary protections | Judges' salaries set at 90% |
| As a compromise, a salary range of 50-90% | Elimination of part-time judicial positions (60 FTE judges needed statewide) |
| | All judges to have at least a Bachelor's degree |

Supreme Court Advisory Committee (2018)

“The Utah Supreme Court is interested in exploring procedural reforms for cases initiated in the justice courts. This project is rooted in our ongoing commitment to promoting access to justice. We believe that small claims procedure, in particular, could benefit from streamlining and refinement. And we have convened this committee for the purpose of advising us on possible ways to implement the reforms that are outlined below.”

Supreme Court Advisory Committee (2018)

“We are interested in exploring the possibility of amendments to our rules, to controlling legislation, and (if necessary) to the Utah Constitution to pave the way for elimination of the appeal by de novo trial. Instead, we propose a more traditional appeal, but on an expedited path (restricted word limits, perhaps a decision without oral argument, and short opinions possibly lacking precedential authority).”

Supreme Court Advisory Committee (2018)

“We are unanimous in our support of the points set forth above. We are less certain, however, of the best means for implementing them. And we remain open to pushback on even these central points.”

Justice Court Reform Task Force (2019-21)

- Formed by Judicial Council and Supreme Court in December 2019
- Met from May 2020 – August 2021
- Report Submitted to the Judicial Council in August 2021
- Core Recommendations Included:
 - Eliminating de novo appeals without requiring a constitutional amendment
 - Creating a new division of the District Court (Magistrate Division) where all misdemeanor and small claims cases would be heard on-the-record by full-time judges who are members of the Bar
 - Increasing judicial independence by eliminating conflicts of interest, setting fixed judicial salaries, and standardizing practices



26 Task Force Recommendations (2021)

Structural Reform and Necessary Supporting Changes

1. Create new of Division of District Court
 - a. Magistrate duties assigned to Division judges
 - b. Class A misdemeanors transferred to Division Judges
 - c. Preliminary Hearings transferred to Division Judges
2. Justice court jurisdiction limited to infractions
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3. Division Judges required to be members of the Bar
4. All Division judges required to be full-time
5. Populate Division Court w/ eligible justice court judges. Future vacancies appointed by Gov.
6. Current justice court judges continue in office
7. The number of Division judges established by statute
8. Creation of new criminal court rules
9. Indigent defense services
10. Plea withdrawal expansion
11. Additional appellate court judges, staff, etc.

26 Task Force Recommendations (2021)

Recommendations that Compliment Reform

12. Statutes enacted clarifying all courts as part of the state judiciary
13. Judicial salaries set at a fixed amount
14. Accounting Model 2 eliminated
15. Geographic restrictions for judicial applicants being removed
16. AOC assuming greater role in administration of justice courts



26 Task Force Recommendations (2021)

Small Claims Recommendations

17. Small claims cases heard on the record
18. Small claims separation between private and commercial
19. Definition of private vs. commercial claims
20. Removal of third-party debt collection restrictions in small claims
21. Filing fee for commercial claims increased and system for representation created
22. ODR expanded to all small claims cases
23. New judicial rules created for civil / small claims cases
24. Pro tem judges discontinued and ODR facilitator system created
25. Webex hearings made available for parties, volunteers and attorneys

26 Task Force Recommendations (2021)

Simplified Infraction Process

26. Creation of a simplified process for infractions, including ODR process

Post-Task Force Report Recommendation

27. Transfer of Eviction cases to Division (post-task force recommendation)



Council Reaction and Direction (2021)

- In August 2021, the Council:
 - approved the recommendations of the Task Force recognizing that the proposals made could evolve over time with further information from stakeholders; and
 - authorized formation of a workgroup to take next steps toward exploring the implementation of the Task Force's recommendations.
- In February 2022, the workgroup requested funding for exploring the fiscal impact of implementing the Recommendations. The Council instructed workgroup to first assess legislative interest and obtain stakeholder feedback.

Stakeholder Feedback (2022)

- Outreach to:
 - Legislature – Leadership and Judiciary Interim Committee
 - Utah League of Cities and Towns – Legislative Policy Committee
 - Boards of District, Justice, and Appellate Court Judges
 - The Supreme Court



Stakeholder Feedback (2022)

- Engaged the National Center for State Courts
 - Focus groups with
 - The Board of Justice Court Judges
 - Justice Court Clerks
 - The Board of District Court Judges
 - Prosecutors
 - Defense Attorneys
 - Local Government Officials
 - Survey
 - 282 Responses representing all stakeholders listed above plus AOC Directors, TCEs and Others
 - 270 respondents (or 96.4%) were familiar with the Task Force's Recommendations

Fiscal Impacts – Expenses

| | | |
|-------------------|-------------------------------------|---------|
| PERSONNEL | Magistrate Judges (60) | \$19.1M |
| | Judicial Assistants (~260) | \$26.4M |
| | Court of Appeals | \$2.3M |
| | Administrative Office | \$2.2M |
| FACILITIES | Set Up / FF&E (one-time) | \$5.1M |
| | Rents (not including 3% escalation) | \$3.8M |
| | Court Security (bailiffs only) | \$3.6M |
| OTHER | IT Infrastructure (one-time) | \$3.6M |
| | IT Infrastructure | \$400K |
| | Education | \$768K |

Fiscal Impacts – Offsets

| | | |
|---------------------------------------------------|------------------------------------------------------------------|--------------|
| NEW STATE REVENUE | Follows cases moving from justice court to division court | \$22M |
| REALLOCATION <i>(THROUGH ATTRITION)</i> | Retiring district court judges (17) | \$3.6M |
| | Judicial assistants (34) | \$3.4M |
| OTHER | Possible Facilities Savings | Up to \$1.6M |
| | Possible revenue distribution adjustments (state / local splits) | Up to \$18M |

Options for Moving Forward

1. Do Nothing
2. Seek to Fully Implement the Task Force's Recommendations
3. Eliminate Justice Courts
4. Make Justice Courts "Of-Record"
5. A Gradual, Phased Approach



Option 1 – Do Nothing

Pros:

- No fiscal impact
- Easy to implement

Cons:

- We have identified and broadcast concerns with the current system
- We have spent a significant amount of time and money working to identify and develop solutions to those concerns
- Other stakeholders, including the legislature, also have an interest in certain reforms



Option 2 – Full Implementation

Pros:

- The Recommendations should be viewed as the Gold Standard
- Best way to achieve the principles highlighted in the Report

Cons:

- Full and immediate implementation would result in significant personnel and facilities challenges
- Full implementation may carry a fiscal note somewhere between \$20 and \$70 million dollars per year (depending on specific policy decisions)

Option 3 – Eliminate Justice Courts

Pros:

- Elimination of justice courts would accomplish most of the goals of the Recommendations

Cons:

- Elimination would arguably require a constitutional amendment (Article VIII, Sec. 1 “. . . Courts not of record shall also be established by statute”)
- Elimination would result in even more significant personnel and facilities challenges, and an even larger fiscal burden, as the entire justice court caseload would be transferred to the District Court
- May exacerbate access to justice issues



Option 4 – Make Justice Courts “Of Record”

Pros:

- This option would resolve the de novo appeal issue
- This option would have smaller fiscal impacts (Court of Appeals)

Cons:

- This option would leave some of the recommendations related to judicial independence and other issues unaddressed
- As a court-of-record, judges would be required to be members of the bar, serve full-time, and be appointed by the Governor—effectively eliminating small, rural justice courts

OR

- This option would require constitutional amendments to multiple sections, including those dealing with the judicial appointment process



Option 5 – Gradual, Phased Approach

Vision:

Encourage legislation, rules, and other changes that get us closer to the core concepts of:

1. Cases heard on-the-record;
2. Elimination of conflicts of interest that increase judicial independence; and
3. Accomplishing other recommendations.



Option 5 – Gradual, Phased Approach

Pros:

- Stays true to the Recommendations
- Accomplishes some of the goals immediately
- Establishes a framework for future implementation
- Is more fiscally responsible

Cons:

- Leaves many of the Recommendations undone—at least for now—including the primary goal of eliminating de novo appeals
- Creates uncertainty for the future



Option 5 – Phase 1 of 4

Support legislation enacting those recommendations that have no state fiscal impacts / avoid significant structural changes:

- #12 – Enact statute clarifying that all courts are part of the judiciary
- #13 – Set fixed judicial salaries (would have local financial impacts)
- #14 – Eliminate accounting model #2
- #15 – Eliminate geographic restrictions for justice court judge applicants
- #16 – Require all new justice court judges to have law degrees (grandfathering current judges)

Option 5 – Phase 2 of 4

Support legislation enacting the legal framework through which future structural changes could more easily be implemented (like the federal magistrate system).

- Create the Magistrate Judge position. (Appointed judge, full-time, bar membership, with duties set forth in statute including presiding over B & C Misdemeanors and Small Claims, magistrate functions, other duties as assigned by District Court. Salary set at 90%.)
- Concurrent jurisdiction of B & C Misdemeanors and Small Claims between Justice Courts and District Courts, with primary in justice court, and jurisdiction transferring upon certain events (dissolution of a justice court, legislative transfer of certain case types, order of a District Court judge, etc. . . where a Magistrate Judge / Division has been implemented).
- Funding of a Magistrate Judge(s) in District(s) with greatest current judicial need.

Option 5 – Phase 3 of 4

Support legislation relating to the transfer of certain small claims cases (such as HB 196 from 2022 providing for the transfer of Domestic Violence cases).

- Transferred case would be heard by a Magistrate, on-the-record (pursuant to which procedural rules, existing or new?)
- Could apply to certain case types (personal injury, insurance, expert witnesses) and at either a party's request or automatically if certain conditions exist
- Coordinate with Rule 4A, Utah Rules of Small Claims Procedure which provides for removal for the right to a jury

Option 5 – Phase 4 of 4

Recommendations to work towards in the future:

- #1a – Magistrate duties assigned to magistrate judges
- #1b – Class A misdemeanors heard by Magistrate judges (pursuant to assignment of the presiding judge)
- #1c – Preliminary hearings heard by Magistrate judges (pursuant to assignment of the presiding judge)
- #18 and 19 – Differentiate between private and commercial small claims cases
- #20 – Bring 3rd Party debt collection cases under the Small Claims umbrella, both to be heard by Magistrates
- #21 – Filing fee for commercial small claims and debt collection cases to be used to provide LLP representation
- #22 – Expand ODR to all small claims and debt collection cases
- #24 – Discontinue the use of pro tem judges for small claims and create ODR facilitator system
- #25 – By rule, make remote hearings available to parties, volunteers, attorneys, etc.
- #26 – Creation of a simplified process for infractions (i.e., Hawaii’s traffic system, referee hearings, ODR, etc.)
- #27 – Eviction cases to be heard by Magistrates

UTAH STATE COURTS



Questions/Discussion