



A nonprofit organization improving justice through leadership and service to courts

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To: Utah Judicial Council Steering Committee
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From: Patti Tobias, Principal Court Management Consultant
National Center for State Courts
James D. Gingerich, Director, State Courts Partnership

Date: March 6, 2019

Re: Interim Report to Utah Judicial Council Steering Committee

In January 2019, the National Center for State Courts (NCSC) received a request from Judge Mary T. Noonan, Interim State Court Administrator, Utah Administrative Office of the Courts (AOC), to provide advice and assistance to a special Steering Committee of the Utah Judicial Council in a project to assess the perceptions and needs of the judges and employees of the Utah State Courts. The project was initiated in anticipation of the search for and employment of a new State Court Administrator. Patti Tobias and J.D. Gingerich, consultants with the NCSC, were assigned to the project. Telephone conferences between the consultants and members of the Steering Committee took place on January 31, 2019, February 6, 2019, and February 13, 2019 to discuss the project and in anticipation of an initial site visit scheduled for February 18, 2019 through February 21, 2019.

During the three-day visit, individual interviews were conducted by the NCSC consultants with almost fifty participants at the Matheson Courthouse in Salt Lake City, Utah, either in-person or via video teleconference. Participants included a broad spectrum of the Utah judicial branch, selected by the members of the Steering Committee, including justices and judges from the Supreme Court, Court of Appeals, district courts, juvenile courts, justice courts, and court commissioners. Included among the judicial participants were current and former members of the Utah Judicial Council and current and former members of each of the District, Juvenile, and Justice Court Boards. The group included judges in their first term of service and those with more than twenty years of service. Staff participants from local courts included judicial assistants from district and juvenile courts, chief probation officers, probation officers,

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trial court executives, court clerks, operations managers, and judicial training coordinators. Included within the judicial and staff participants were individuals from each of the eight judicial districts. Several employees of the AOC were also interviewed, ranging from senior managers to administrative assistants. Each of the potential interviewees received a written invitation from Judge Noonan which included a description of the process (a sample copy of the invitation is attached and labeled “Attachment A”).

The interviews were generally thirty minutes in length and followed a common order, utilizing seven primary questions (a copy of the interview outline utilized is attached and labeled as “Attachment B”). Several participants also accepted the invitation extended by the NCSC consultants to send additional comments following the interview via email.

Following is a summary and report of the responses, organized by the general themes provided in the questions. The responses have been combined and consolidated, in an attempt to provide the most common perceptions and concerns that were expressed. An attempt has also been made to identify issues that are deemed most relevant and potentially helpful for use during the interview of candidates and subsequent discussions surrounding the selection process for a new State Court Administrator. More detailed responses, including specific examples that were provided by interviewees and other more specific concerns not directly relevant to the selection process, will be provided as the project proceeds, to the extent that the anonymity of the interviewees can be appropriately protected.

The following information represents the views and perceptions of the participants, as shared during the interview process. None of the comments, assertions, or conclusions have been verified, nor should they be viewed as those of the NCSC consultants. Two particular comments were expressed by almost every participant and should be noted at the outset. First, there was an overwhelming appreciation expressed about the process itself and the opportunity afforded to be involved and to share suggestions and concerns. Second, as either an initial or final comment to the interview, the participants stated that, while they may have shared serious and important problems and concerns, the problems are not representative of the overall excellence of the system and its employees. They noted that they were proud of the system and its history, believe that it is served by talented and dedicated judges and staff, and that it is providing excellent service for the state’s citizens.

Governance

- Among judges at all levels and many local court management personnel there is a perception that the AOC “controls” the judicial branch, not the Judicial Council, and an expressed preference that the AOC adopt as its primary role that of supporting the state judiciary and the judicial branch.
- There is not a good understanding of the structure, organization, and governance of the judicial branch by many judges and court staff and there exists, in some instances, confusion about the role, responsibility, and authority of many of the entities/units and positions within the branch.

- Among judges who serve or have served as members of the Judicial Council, there is a perception that the AOC sometimes attempts to limit the active involvement of Judicial Council members or fails to take steps to facilitate and support the more active involvement of members through such actions as the control of information, the limited amount of time between the provision of information and required action, and requests that members limit input and discussion. There is also a perception among a more limited group that the AOC does not always follow up and implement decisions/requests of the Judicial Council where those decisions are contrary to the preferred outcome of the AOC. There was agreement that the AOC should have a role in studying policy options and making recommendations and, once adopted by the Judicial Council, implementing the policy.
- There is a perception that the members of the Judicial Council have, for many years, failed to exercise their leadership authority and responsibility for the judicial branch and have delegated that responsibility to the AOC. There is also an expressed acknowledgement by many that this outcome is primarily a result of a history of excellent service provided by the AOC and judicial confidence in the work and leadership of the AOC.
- The governance system is seen (by judges and court staff) as being complex (multiple boards and committees) and there is limited understanding about the purpose/responsibility/authority of each, current membership, or information about meetings, current activities, decisions, and recommendations.
- The complexity of the governance system is seen as causing delay sometimes in the consideration, adoption, and implementation of programs, policies, and procedures. It was also noted that the structure can result in decisions and recommendations being made without notice to and input from others who may be impacted by the decisions and without sufficient information about the impacts which the decisions may have on available personnel and financial resources. Further, there is a sense that there may be a lack of accountability for the many issues that are being considered.
- There is a perception by administrative court staff, including local line staff, managers, and within the AOC, that some judges attempt to control issues and decisions that are within the responsibility of administrative staff and that there is no adequate process to raise and address such issues when they arise.
- On the more specific issue of decision-making and governance as it relates to the consideration, adoption, prioritization, and advancement of the legislative priorities for the judicial branch, concern was expressed by some judges in all aspects of the process.
- There is a perceived fault in the structure between the Boards and the Judicial Council. There is no mechanism for reports and recommendations of official action from the Boards directly to the Judicial Council.
- No participants in the interviews expressed a need or desire for major changes in the governance structure. Some suggestions were made relating to slight revisions in the determination of representation on the Judicial Council, Boards and Committees. Overall, an assumption of a more vigorous leadership role by the Judicial Council, a clarification of some roles and responsibilities within the judicial branch, and a renewed commitment

by the AOC to the role of service to and support of the Utah State Courts were identified as the most important areas for improvement.

Communication

- Communication from the Judicial Council and Boards is perceived as good, but there is a reliance on oral reports by representatives and others involved in meetings and on the availability of written meeting minutes, neither of which were perceived to provide the most effective or accurate forms of information sharing.
- Communication does not extend far enough throughout the judicial branch; it may reach those who are directly involved and/or impacted but does not extend to all.
- Justice court judges and staff are often not included in the information sharing that does take place.
- Communication from the Judicial Council is good but there is not adequate communication from and between the Boards. The AOC does not assume the responsibility of informing others about Board activities and decisions unless directed by the Board.
- There is a reliance on the posting of meeting minutes for “communication” to have taken place; but the minutes are not complete, and some people don’t know they exist nor take the time to read them.
- During one legislative session, some judges were specifically directed not to communicate with each other, with the suggestion that, by doing so, judges would lose judicial immunity. Many judges question and/or disagree with this legal conclusion.
- The communication surrounding the adoption and advancement of legislative priorities could be strengthened.
- Sometimes, statewide communication that is provided is not effective; it often comes too late for it to be helpful.
- There are special communication problems between judicial assistants, judges, and local court managers including court clerks, trial court executives, and chief probation officers.
- Important decisions are sometimes made at the AOC that have impacts on judges without sufficient consultation and communication. One example provided involved the adoption of the policy for judicial performance evaluations and a perceived failure to request or consider input from the bench.
- Judges are at fault for failing to take the time to access or read the communication that is provided, but then complain about the communication “failures”.
- If one does not have access to or attend all of the meetings, it is very difficult to know what is really going on within the Utah State Courts.
- Court employees receive good communication about those issues that directly affect them but not about anything else going on in other parts of the judicial system.
- There are special challenges with communication between and from Trial Court Executives.
- There should be targeted training on how clerks, chief probation officers and trial court executives can communicate more effectively.

Culture

- Opportunities are sometimes provided to speak but often nothing is done based upon what was said. Some people “give up” because there is little feedback or follow-up after input is provided.
- The phrase “this is the way we have always done it” is sometimes heard; there is a perception of resistance to change generally and to any ideas that are contrary to those of the AOC leadership. One example provided referenced the AOC formula used to determine judgeship needs and a failure to recognize a problem after it was apparent. Other references were to budget priorities and needs established by judges and an unwillingness by the AOC to consider revisions. Also mentioned was a request to receive specific comments from employees provided as a part of the employee survey and an unwillingness to change the policy.
- By both their actions and their direct comments, the AOC leadership has created a perception that open and honest communication is not always welcomed, to the point that some are afraid to speak.
- Some line employees are afraid of judges and of senior management and find it difficult to speak out.
- The decision- making system is seen as complicated and it therefore takes too long for decisions to be made and action to be taken. This acceptance of slow progress on some matters has become a part of the culture.
- Judges often seek involvement in decisions about administrative issues when those issues may be outside of their responsibility or authority. Examples most often provided involved personnel matters for individuals who work with but do not report to judges.
- Especially at the local court level, there is a real emphasis on valuing the voice of all employees. However, this may be more dependent on a particular location and individual leaders rather than a result of the broader culture.
- Concerns were expressed by some judges and employees of a culture and/or an appearance of male dominance in leadership positions and the existence of an “old boys’ network”.
- In recent months the culture is improving. There seems to be a greater willingness to encourage people to speak out and share ideas and suggestions.
- There is a different culture in juvenile court and district court; juvenile courts are more focused on open collaboration, innovation, and customer service and value the contributions of employees.
- Some employees at the local courts, many of whom have no direct contact with the AOC or its staff, perceive that the AOC is only there to tell them what to do, not to provide assistance and support.
- Working at the AOC is like a “triage unit”; the staff is spread too thin and employees must answer to every judge and court in the state. The staff is required to respond to the most pressing issues and has little time to engage in planning or improvement of services and support.

- There is a perception of control by the AOC of Trial Court Executives. The AOC is seen as discouraging open communication and of potential consequences for employees who raise questions.
- Court culture is dependent on the location. This is particularly true in rural districts where one controlling person can disrupt the desired culture of the organization.

Onboarding/Training

- New judge orientation and mentoring programs have improved in recent years. There is some difficulty with the timing of the orientation since not all judges come to the bench at the same time.
- The continuing education provided to both judges and staff by the AOC is generally perceived as very good, with a few exceptions, dependent upon the group or the particular training topic.
- Onboarding provided to new Judicial Council and Board members is in need of review and improvement.
- The creation of the Training Coordinator positions at the local courts is viewed as a positive step and has been well received.
- There are concerns about out of state education programs by both judges and administrative staff. Funds are budgeted for use by judges in the districts but the decisions about programs and attendance are still controlled by the AOC. These decisions are seen as inconsistent. National conference participation and attendance by administrative staff has been greatly limited. There is a perception that a different policy is applied to employees at the AOC.
- The mentoring programs that have been developed are seen as helpful and should be given additional support and provided for all positions.
- Best practice manuals for some positions and employee groups are viewed as very helpful. They are needed for all groups.
- There should be a greater use of and access to online training.
- Some of the training documents and materials are outdated and in need of revision.
- Additional training targeted at judges and judicial assistants as teams should be developed.
- More supervisory and management training is needed, more leadership training should be provided for all judges and managing staff; and more joint training for presiding judges and Trial Court Executives would be beneficial.

Recommendations/Advice for the New State Court Administrator

- The new State Court Administrator should demonstrate support to all departments and units within the Utah State Courts.
- A philosophy of “service and support” should be adopted for the AOC. The State Court Administrator should set the tone and expectation, with a focus on internal customer service.

- There is a need to begin with a “clean slate”; no assumptions should be made and time should be taken to listen and observe.
- Strengthening all forms of communication throughout the judicial branch should be a primary focus.
- A comprehensive review of the structure, performance, expectations, and assignments of all AOC positions and personnel is needed.
- The AOC should develop the internal capacity to anticipate trends.
- Past problems within the AOC Human Resources department should be noted and reviewed and a new course should be adopted for all human resource policies and procedures.
- When working with the Judicial Council, open discussion and debate should be supported and encouraged. New approaches to the development of legislative and budget priorities is needed.
- Be seen as approachable, transparent, caring, and open to new ideas. Take actions to build trust.
- Take steps to ensure that ALL units and departments statewide understand and are aware of the availability of AOC services and support.
- Address the perception that the AOC is overstaffed versus the concerns expressed that additional staffing in some areas is critical.
- Take the time to visit local courts as a means to understand the culture and better understand the work being done daily in the districts. Seek greater input and do a lot of listening before making decisions.
- Take a fresh look at all internal business practices and departments.
- Take steps to strengthen judicial branch governance and decision-making, including a review of where decisions should be made and by whom, who should be consulted before making the decision, and who should be informed after making the decision.

Sexual Harassment Policies and Procedures

- There was a wide range and somewhat conflicting responses about the provision of sexual harassment training – whether it had been offered, the frequency of the training, the content of the curriculum, and who offered it.
- Irrespective of the response about past practices, almost all participants agreed that more frequent training in the future that is mandatory and more effective would be beneficial and supported.
- Generally, those interviewed expressed confidence they would know or could determine what to do, where to go, and how to report an incident if necessary.
- Several specific concerns were mentioned. One person noted that the list of to whom to report an incident included all men. Others noted there was not a clear line of reporting, i.e., when the supervisor is the one who is the accused. These special situations are not addressed in the training.
- There was expressed a lack of clarity on what constitutes “sexual harassment” and on the standards of conduct that should apply.

- A need for sensitivity training for male employees was mentioned.
- Specific concerns were expressed about the role of the former AOC Human Resources director and the perception that no action would be taken if and when complaints were made.
- Most of those who were interviewed indicated that they had not observed sexual harassment, nor were they aware of problems or complaints by others.
- Fear of retaliation and the observance of retaliation was expressed by some, noting that they would not report an incident if they experienced it.
- There was a sentiment that the official policy is difficult to locate and understand. The development of a brief reference tool made available to all judges and employees should be considered.
- Concern was expressed about the power differential inherent between judicial officers and employees.
- One person shared personal experience as a victim of sexual harassment. It was reported and there was satisfaction with the resolution.

Other Issues

- Several employees within the AOC noted the legacy of the reduction in force that took place in 2008 and the necessity that individuals assume additional duties, sometimes unrelated to their primary work and work assignments that occurred for reasons that no longer exist.
- Performance reviews offering written feedback for improvement should be reinstated.
- The retirement and departure of a large number of senior officials, the impending retirement of several others, and the hiring of a new State Court Administrator has created stress and concern for many.
- Concerns were expressed about the involvement by members of the Supreme Court in personnel matters and in issues within the responsibility of the Judicial Council.
- There is concern about the loss of institutional knowledge.
- The AOC is seen as being “disconnected” from the rest of the court system. In some cases, this includes a physical barrier since other court employees cannot physically access the AOC from within the building.
- Security in courtrooms is a concern. Bailiffs are provided only for criminal cases and not civil or family law cases.
- The existence of salary compression was mentioned as a problem with respect to several positions across the judicial branch.
- Several participants expressed the view that their court or their positions were overlooked by the rest of the judicial branch, that no one advocates on their behalf, and that they do not feel supported.
- Employee surveys need to be timely; otherwise they are not helpful.
- More formal opportunities to provide input, like these interviews, should be instituted on a regular basis.

- Judges have constant contact with several court employees (such as clerks and judicial assistants) but have no input in the employment or dismissal of staff nor are they invited to participate in their evaluations. Judges should not control these positions, but there should be some opportunity for input.
- There is a perception that a salary gap exists between local court salaries and the salaries of similar positions with similar responsibilities within the AOC – AOC employees receive higher salaries and have additional benefits.
- There is an “us-them” feeling between employees and judges in the 3rd District and those serving in other districts.
- The court should find ways to provide incentives and rewards for outstanding employees and other ways to show appreciation and support to employees more generally. The system should provide opportunities for employees to be engaged outside of their specific job tasks so that they can feel that they are making a difference.
- The addition of the degree requirement for clerk positions has created problems with retention and a lack of availability of the most qualified candidates.
- The employment process utilized by the AOC Human Resources Department is not effective in that it excludes input from those most knowledgeable about the positions and the relative strength of candidates in the initial review and selection of candidates.

The AOC Human Resources Department

- Several of the questions – culture, communication, governance, sexual harassment policy – prompted responses that included concerns about policies and practices of the Human Resources Department. Several participants also used specific examples of personal experiences with the department and its former director as the basis for their concerns. The comments, which were not verified, included references to nepotism, retaliatory actions, intimidation, and the failure to appropriately receive, investigate, and respond to complaints. Other concerns involved the use of insensitive language, inappropriate use of authority to control local court employment-related activities and operating the office in a way as to be perceived as inaccessible and unwilling to assist when requested. Not all of the comments were negative; the most common positive responses were in relation to the sexual harassment training provided to local courts that was deemed as being helpful and well done. Several participants indicated that they were aware of the staffing change that had occurred in the department and expressed “appreciation” and “relief”. One person stated that “so many people immediately feel better now that this action has been taken”. These comments were reflected in responses from both AOC employees and local court employees.

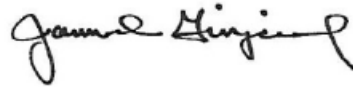
Final Note to the Interim Report

As a final note to the report, it may be appropriate to again call attention to the NCSC consultants’ initial comment that almost every one of the participants began or ended their interview with a statement that, overall, they were very pleased with the current state and operation of the Utah State Courts. These generally positive comments and perceptions can be

lost after reading a long list of concerns. The charge given to the NCSC consultants and the organization of this report created a primary focus on the concerns and suggestions for improvement raised by the participants. If and when individuals indicated that they had no concerns about particular areas of inquiry – and there were many such responses – those responses were not captured in the report. Hopefully its overall content will prove helpful in providing a better understanding of the perceptions and concerns of a significant number of judges and court employees, as one basis for helping court leaders determine appropriate responses and develop areas of focus and direction for the future.



Patti Tobias
Principal Court Management Consultant



James D. Gingerich
Director, State Courts Partnership

Attachment A

As you probably know, we are in the process of hiring a new State Court Administrator. As part of that process, the Judicial Council has decided that it is time to do an independent, comprehensive review of our governance and administrative processes to ensure that we continue to provide the citizens of Utah an open, fair, efficient, and independent system for the advancement of justice, and that we are a place that both welcomes our employees at all levels and not only accepts, but encourages their advice and input. In short, the Council believes this is a perfect time to candidly assess how we are doing, and we seek nothing less than a frank, independent evaluation to help us chart a course for the future.

The evaluation will proceed in stages, alongside the selection process for our new State Court Administrator. The first stage is a high-level review and the second stage will be conducted when the new State Court Administrator is hired and be a more in-depth assessment. Outside consultants from the National Center for State Courts (NCSC) will do the evaluation. The NCSC consultants will coordinate their work with a steering committee consisting of Judge Kate Appleby, Utah Court of Appeals, Judge Todd Shaughnessy, Third District Court, Neira Siaperas, Juvenile Court Administrator, and Judge Mary Noonan, Interim State Court Administrator.

The assessment will include a review of our governance structure, including the role of the Judicial Council, Boards of Judges, administrative committees, advisory groups and the Administrative Office of the Courts. But the goal of the review is to dig deeper than this. To get behind these structures and behind the organization charts and assess whether these systems are really working as intended. And, to the extent they are not, what exactly do we need to do to fix them. We also want to make sure we understand our culture and how that impacts the work life of our employees and the ability of our judges to fulfill their constitutional responsibilities.

The consultants have been provided a wide range of written materials, and the next step in their work will be a three-day onsite visit February 19, 20, and 21. They will be meeting with a variety of individuals from as many corners of our court system and our state as we can reasonably manage. To maximize the number of people they can speak with, the interviews will be held in the Matheson Courthouse, but videoconferencing will be available for those who can't be here in person. Each interview is anticipated to last about 30 minutes. At the conclusion of these interviews, the steering committee will get an initial report and develop a roadmap for the next stage of the process.

This is where you come in. The steering committee has identified you as someone we believe can provide helpful insight. We are hoping that you can take some time out of your busy schedule to meet with the NSCS consultants as a group of three on one of the days they will be here, or join them by videoconference if you can't be here in person.

We understand this is short notice, and we know you undoubtedly have a busy schedule. However, we believe this review will play an essential part in assessing how we are doing and what we can do better, and we believe you may have something important to add to that conversation.

Please email Jeni Wood as soon as possible with your available dates and times on February 19, 20, and 21, and whether you can meet in Salt Lake or would like to videoconference (in person meetings are preferred, but we understand that will not be possible for everyone). If you need assistance covering calendars, getting supervisor permission, or with other logistical matters, please let Ray Wahl know. If you are unable to attend, please let Jeni Wood know that as well, and feel free to pass along any thoughts or comments. Finally, we are extending this invitation to more than will be able to meet with our consultants, on the theory that some will be unable to make it. If we end up having more people sign up than time permits, we will let you know and ask for your thoughts in another form.

To make the interviews as meaningful as possible, we ask you to take some time and think carefully, critically, and constructively about your role - be it judicial assistant, probation officer, court clerk, trial court executive, AOC management, judge, presiding judge, board or Council member - and your experiences, both positive and negative. Consider providing specific examples of things that have worked and things that haven't. And if you have thoughts about how our system can do better, please come prepared to talk about them.

Thank you in advance for your help on this important project.

Judge Mary T. Noonan
Interim State Court Administrator

Attachment B

Thank you so much for taking your time to meet with us today. My name is Patti Tobias and my colleague is J.D. Gingerich. As outlined in Judge Noonan's email, we have been asked to interview you and others to listen to your insights and experience. We have a few questions to ask each of you and then at the end of these three days we will summarize the broad themes we have heard in a memorandum this weekend to Judge Noonan and the Steering Committee. We will not identify any names so please candidly share your experiences, both positive and negative. And please provide any specific examples of things that have worked and things that haven't worked. And again, thank you!

1. Governance

The Steering Committee is interested in your thoughts about the Utah Courts Governance structure which includes the Judicial Council, the Boards of Judges, Administrative Committees, advisory groups, the Administrative Office of the Courts, the local bench, Trial Court Executives, Probation Chiefs and Clerks of the Court. We know how it works on paper but we are interested to know how you think it works at a *practical* level. Do you have any comment about the various units and departments within and the organization of the judicial branch and the impacts that this governance structure has on you and the work that you do? And on the transparency of the system? (Specific examples)

2. Communications

How effective would you say the internal communication is within the judicial branch - by and between the Judicial Council, the Boards of Judges, Administrative Committees, advisory groups, the Administrative Office of the Courts, the local bench, Trial Court Executives, Probation Chiefs and Clerks of Court and other court employees and by and between those units and individual employees? (Specific example)

3. Culture

How would you rate or describe the culture of the judicial branch as it relates to the ability of employees to feel safe and comfortable asking questions, raising concerns, suggesting improvements, and feeling like their voice is heard? Do you feel supported in your work? (specific example)

4. Onboarding and Training

Did you and do you receive adequate training to succeed and advance in the courts? What suggestions do you have to improve the training you have received? (specific example)

5. New Director

You will soon have a new state court administrator. What would you advise him or her about the perception that you and others have about the AOC, its services, and the support that it provides to the judicial branch? (specific example)

6. Harassment

Have you received training on issues of sexual harassment and the judicial branch policies related to harassment? Do you feel that you have sufficient information and support should the need ever arise to report an incident?

7. Other Insights and Comments

Do you have any other thoughts about how the Utah Courts can do better? (specific example)

If we ran out of time and you have additional information to offer, please feel free to email us by the end of the day Thursday. Here is our Email address.