

2022 STATE OF THE JUDICIARY

Chief Justice Matthew B. Durrant

President Adams, Speaker Wilson, and members of the Senate and House:

I'm honored by this opportunity to address you today. As I have mentioned to you before, I am fortunate to serve on the Supreme Court with four individuals who are not just brilliant and dedicated jurists, but wonderful colleagues--Associate Chief Justice Thomas Lee, and Justices Deno Himonas, John Pearce, and Paige Petersen. I'd like to take a moment to specifically acknowledge the contributions made by Justice Himonas. As you know, he has announced he will soon be retiring from the court.

Justice Himonas has devoted over seventeen years of his legal career to judicial service, first as a highly-respected district court judge for more than a decade, and then as a justice for the last seven years. In addition to his extraordinary contributions as a jurist, his vision and commitment to expanding access to justice have been a source of inspiration for many court initiatives—initiatives that have dramatically improved the judiciary's ability to ensure justice for Utah's citizens. His thoughtful, careful, and intellectually-rigorous body of work will reverberate in the courtrooms of this state for many years to come.

The mission of the judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law. This mission is the focus and foundation for every decision we make. It has guided our response to the unprecedented challenges of the pandemic and has led us to innovate and adapt the way in which we provide access to justice. Nearly every aspect of our work has been impacted to some degree by the pandemic. Some changes have proven to be beneficial to the people and will continue in the future. Some remain temporary, at least until we can return to something similar to pre-pandemic operations. I'm pleased to report that the Judicial Council, the governing body of the judicial branch, is engaged in close study of the operational changes made over the last two years and is carefully evaluating their impacts on the people, on our partners, and on the courts. Permit me to describe some of what we have learned and accomplished over the last year.

Virtual Court Proceedings

It will come as no surprise that, like many organizations and individuals, the Utah judiciary has implemented and relied heavily on virtual meeting technology throughout the course of the

pandemic. All our courts have made use of this technology to conduct virtual hearings in nearly every kind of proceeding other than jury trials (which, I should note, we have been actively conducting in person since May 2021). Such hearings helped the courts provide continued access to justice during a critical time.

In fact, in many respects, virtual court has provided greater access to justice than ever before, bringing court to the people, rather than requiring people to come to a courthouse. Tens of thousands of individuals have been able to fully engage in their court cases by appearing in virtual court, without the need to take time off work or interrupt home responsibilities. Attorneys, parties, and witnesses have avoided travel time and expenses by appearing remotely. People located in rural areas were able to seek the help of a far-broader array of attorneys from all areas of the state without having to pay the often-prohibitive expense associated with travel.

Now, we are also aware that virtual court has brought new complications. Though remote appearances were usually efficient, they occasionally caused proceedings to slow, as some people encountered problems with their internet or with audio or video connections. On some occasions, background noise has impacted the quality of the court recordings. Solving such problems has resulted in increased judicial assistant work, many hours of IT staff work, and sometimes, delays in court proceedings.

The judiciary has worked to address issues relating to remote technology and appreciates the ARPA funding you authorized for these purposes. These are worthy investments, and we take seriously the responsibility to develop robust judicial systems that can see us through these, and any future, challenges. When this funding is combined with and informed by our careful study of what practices best provide access to justice, the judiciary is poised for a productive, responsive, and effective future. Virtual hearings for certain matters will almost certainly be part of the operation of the courts moving forward. We will continue to collaborate with our community partners, our urban and rural judicial districts, and the people to determine the best way to deploy virtual and in-person proceedings.

The Access to Justice Gap

I have spoken to you before about the access to justice gap—the inability of low and middle income people to get the legal help they need. It is a modern reality that legal problems of all kinds are imbedded in our everyday lives. It's true of you; it's true of me; it's true of everyone. Whether it be a question about a lease, a dispute with a landlord, an issue with Medicare or

other governmental benefits, a dispute over a boundary, an argument over a debt, or a problem with a divorce settlement, legal problems are as inevitable as death and taxes, which, of course, bring with them their own constellation of legal problems. The list goes on and on. But for most people, legal assistance is out of reach. Put in simple terms, our challenge is this—to bring more legal help to more people. Lawyers as a group are civic-minded people. They give of their time on a pro bono basis at admirable levels. But we cannot pro bono our way out of the access to justice crisis. Today, I'd like to tell you about our efforts in the judiciary to address this critical challenge. I'll begin by describing a number of programs we have implemented to make our courts more accessible, and then tell you about our efforts to allow the free market to work to bring more legal service to more people in a more affordable way.

My Case and the Self-Help Center

The first such program I'll touch on is called MyCase. It's a free online portal developed and maintained by the courts that allows parties in certain types of common cases to access information about their case easily, directly, and securely. Users can view the case history and most of the documents filed in their case from their own computer or device, and can make payments when applicable. In some case types, users can also file documents through the portal, a feature that will be expanded in the coming year. This is not only convenient, but allows for greater transparency into court operations.

Of course, court staff (including the experts at the Self-Help Center) remain available, assisting thousands of court patrons each year with any case-related questions for those who choose not to use MyCase or who need assistance beyond what is currently available through the application. For instance, the Self-Help Center responded to over 23,000 contacts from all across the state in 2021.

Online Dispute Resolution

I'll next report on our progress with an initiative I've mention to you before, our Online Dispute Resolution Program (ODR, or as some call it—pajama court). ODR has now been operating for three years, and as you'll recall, this program allows litigants in small claims disputes to communicate asynchronously with each other and with an online facilitator to try to resolve their issues on mutually acceptable terms before they present their case to a judge. ODR started with a single justice court in 2018. By the end of January 2022, there will be 28 justice courts using

the platform. We will continue to expand the service to additional justice courts with a goal of all small claims litigants having system access by mid-2022.

The Office of Fairness and Accountability

An even more important step forward in our effort to increase access to justice is a new office we launched this year, the Office of Fairness and Accountability. Access to justice is a crucial component of the work of the office as it works to fulfill its mission of addressing any bias in the courts. It began its work by focusing on building public trust and confidence among the people of historically marginalized communities. Throughout the year, the office has been meeting with and engaging community partners in unprecedented ways, including involvement with community-based organizations and working with the people of these populations to better understand their needs and experiences. Because access to justice problems cannot be resolved without the trust of those affected by the work of the courts, these relationships and partnerships are of critical importance.

The Office of Legal Services Innovation

Finally, before I discuss our budget requests, I'd like to describe our efforts to revise some of the existing barriers to the practice of law. We are not seeking funds from the general fund to support these efforts, as they are almost entirely grant funded, but I think it's important to update you. This initiative is designed to invite more of a spirit of entrepreneurship into the legal profession, to allow the free market more room to work its magic, while at the same time ensuring that consumer protection remains high. To this end, we have created, under the supervision of the Supreme Court, the Office of Legal Services Innovation, which operates a sandbox—a controlled environment that allows applicants to seek regulatory waivers so they might offer legal services in new and innovative ways.

To date we have approved 31 entities, some owned by non-lawyers in whole or in part, some offering services by trained non-lawyers under the supervision of lawyers. This kind of ownership by non-lawyers and the provision of legal services by non-lawyers could not be done absent regulatory waivers. Here are some examples of approved innovations:

- A group attorneys who serve domestic violence victims asked permission for their non-lawyer victim advocates to assist victims in obtaining protective orders and stalking injunctions. These advocates will receive training and be supervised by lawyers.

- A non-lawyer owned entity will offer legal assistance through small brick and mortar locations in traditionally underserved areas. These locations will have computer terminals with software to guide users through the completion of legal documents. Non-lawyer staff will answer informational questions and help with using the software. They will be trained and overseen by lawyers.
- A corporation will provide a Turbo Tax-like technology platform to generate legal documents in divorce and custody cases, eviction cases, and debt-related property seizure cases.
- Another organization will provide no-cost or low-cost legal services to assist clients in preparing various documents in employment and housing eviction cases. They will use chat bots, instant messaging, and automated interviews and will use trained non-lawyers under lawyer supervision. Much of what they do will be done remotely.

Other services we have approved include: assistance with those facing medical debt; software for real estate transactions; AI-enabled software for contract negotiation, drafting, and management; services related to veterans' benefits; services related to workers compensation benefits; and a software-based platform for connecting Utah lawyers and licensed legal practitioners to consumers. We even approved an application from a solo practitioner who wanted to give his paralegal a 10% ownership interest in his law firm to reward her years of dedicated service.

What I have described is only the beginning. Innovation and entrepreneurship offer the potential for making real progress in narrowing the access to justice gap. You can learn more about our Innovation Office, including information about authorized entities, how the sandbox is operated, and sandbox activity reports at <https://utahinnovationoffice.org>.

Budget Priorities

Now, to our budget requests. These many innovations in delivering court services to the people have been the result of careful planning and coordination. They have been accomplished only by the dedicated work of hundreds of individuals, devoted public servants committed to the judiciary's mission on behalf of the people. I want to make special mention of two noteworthy groups who, so much of the time, have collectively had their hands on the laboring oar during the last two years: our judicial assistants and our IT department.

Judicial Assistants' Critical Role Within the Courts

Judicial assistants make up 40% of all court employees and are critical to the courts' mission. They act under the authority of their assigned judicial officers to ensure that all administrative needs are met. I want to publicly acknowledge the critical importance of our judicial assistants and thank them for their dedication and service, particularly in the challenging times we've experienced in the last two years.

Currently, the average pay rate for judicial assistants is more than 20% below market value, more than double the 10% difference just five years ago. And a decade ago, the three-year average turnover rate for judicial assistants in Utah was a manageable 8.65%. Over the past 10 years, that percentage has dramatically increased to where, at the end of 2021, our judicial assistant turnover rate is now at a completely unsustainable 25%. Continuing to pay our judicial assistants at rates so significantly below market value puts critical judicial branch functions at risk. Despite doing everything possible to address this issue internally, we need legislative assistance and budget prioritization. For this reason, the Judicial Council has made securing funding to increase judicial assistant compensation its number one budget request priority for FY2023. The Judicial Council is asking you to appropriate \$3.9M in ongoing funds to ensure we can recruit and retain well-trained, professional, and qualified judicial assistants. The people, including court patrons, attorneys, and so many others, deserve this from their judiciary.

Information Technology

The Judicial Council's second budget priority concerns our information technology needs. I am extremely proud of the innovative and dependable work our IT staff has consistently delivered over the last two years. Last session, you graciously appropriated \$802,000 in one-time funds to address several critical IT needs, from cybersecurity infrastructure to necessary software licensing to rural courthouse bandwidth. This session the Judicial Council asks that you readdress this one-time funding structural imbalance and convert this funding to an ongoing appropriation.

Other Requests

In addition to those requests, the Judicial Council has prioritized requests for the following:

- ongoing funding for a public outreach coordinator;

- a much-needed second juvenile court judge in the Sixth Judicial District, where the people of Sanpete, Sevier, Piute, Wayne, Garfield, and Kane Counties are presently served by a single juvenile court judge;
- ongoing funding for a coordinator to assist with providing judges detailed information in guardianship cases; and
- ongoing funding for a statewide treatment court coordinator.

In the coming weeks, we will be presenting detailed information on these requests to our appropriations subcommittee and to the Executive Appropriations Committee. We hope to have your support when it is time to vote on these budget requests.

CONCLUSION

As with all the judiciary's efforts, each of these requests, and the underlying work this funding supports, is on behalf of the people. As I see the work that you accomplish each legislative session, I am firmly convinced that the legislature and the judiciary have a shared commitment to serve the people to the best of our abilities. We value our partnership with you in this solemn service to the people. Thank you for your interest in, and support of, the work of the courts. And may your efforts this session be efficient, productive, and rewarding.

Thank you.