



UTAH STATE COURTS

Recommendations to the Utah Judicial Council's Task Force on Justice Court Reform



**Board of Justice Court Judges
June 30, 2020**

Table of Contents

Letter from the Board of Justice Court Judges iii

Introduction v

Recommendation #1 1

Replace de novo appeals to district courts with on-the-record appeals to the Utah Court of Appeals.

Recommendation #2 4

Expand justice court jurisdiction to include Class A misdemeanors.

Recommendation #3 7

Require newly appointed justice court judges to be members of the Utah Bar.

Recommendation #4 10

Remove geographic restrictions for applying for a justice court judgeship to follow the district court practice in which judicial applicants throughout the state may apply and the new judge is required to relocate to the district.

Recommendation #5 12

Transition to full-time judges as part-time judges voluntarily resign or retire.

Recommendation #6 14

Set judicial salaries for full-time justice court judges at 90% of a district court judge’s salary. Full-time justice court judges should receive the same benefits as all other judges in the state.

Recommendation #7 16

Use justice court judges more extensively in their magistrate capacity.

Recommendation #8 17

Bring justice courts under the umbrella of the Administrative Office of the Courts for administrative purposes.

Recommendation #9 19

The Utah Code should state clearly that justice courts, even if under local sponsorship, are a part of the judicial branch of government and are governed by the Utah Judicial Council, not local officials.

Recommendation #10 20

Standardize the budget of any justice courts that remain in local control by basing them on weighted caseload. Courts should be funded by general government funds. Funds used to supply advocates, like indigent defense services and prosecutorial services, should be excluded from court budgets. Court activities should be decoupled as much as possible from revenue generation.

Recommendation #11 24

Consolidate part-time clerical positions to the extent possible through interlocal agreements or by utilizing district court clerks with excess capacity.

Recommendation #12 26

The Council should determine the best judicial structure to implement the foregoing recommendations.



TEL 801 852 6878
FAX 801 494 1091
75 EAST 1700 SOUTH
SUITE 100
PROVO, UT 84606

June 18, 2020

Dear Utah Justice Court Reform Task Force Members:

Justices of the peace (the predecessors of modern-day justice court judges) existed in England since the mid-1300's. They were part of our common law system which the colonists brought with them from England as they settled in what later became known as the United States of America.

Justices of the peace were recognized in Utah in 1850, when Congress established the Utah Territory. The Utah Constitution, in 1896, contained a provision that courts not of record were to be established by statute, and that requirement was satisfied by the continuing function of justices of the peace.

In 1989, the office of justice of the peace was eliminated, and the state created justice courts, presided over by justice court judges. Justice courts are established by counties and municipalities and have authority to handle class B and C misdemeanors, violations of ordinances, small claims cases, and infractions which are committed within their territorial jurisdictions. The jurisdiction of justice courts is determined by the boundaries of local government entities such as cities or counties. The local government entities hire the justice court judges.

The two types of justice court judges are county judges who are appointed by a county commission and stand for retention election every six years, and municipal judges who are appointed by the city executive and stand for retention election every six years, as well.

Some justice court judges in busier courts hear cases daily, while others have more limited hours each week. Justice court judges are not required to be attorneys, except in Utah's five most populous counties. They are required to receive thirty hours of continuing legal education annually to retain their certification as judges. In July, 2019, there were eighty-one justice court judges who serve in one hundred and fifteen county and municipal courts.

The Utah Judicial Council is the policy-making body for the judiciary in Utah, and it has the constitutional authority to adopt uniform rules for the administration of all the courts in the state. This council sets standards for judicial performance, court facilities, and support services. By rule, this council established a Board of Judges for each level of court. These boards adopt administrative rules in accordance with the Utah Judicial Council guidelines, advise the Judicial Council, supervise implementation of Council policies, and serve as liaisons between judges and the Council.



TEL 801 852 6878
FAX 801 494 1091
75 EAST 1700 SOUTH
SUITE 100
PROVO, UT 84606

Present members of the Board of Justice Court Judges include: Judge Vernon F. Romney (Provo City justice court), chair of the board; Judge Brian Brower (Clearfield justice court), vice-chair of the board; Judge Jon Carpenter (Carbon County justice court); Judge Augustus Chin (Holladay justice court); Judge Morgan Cummings (Lehi justice court); Judge Paul Farr (Sandy justice court); Judge Mark McIlff (Sixth District justice courts); Judge Cyndee Probert (Fillmore justice court); Judge Brook Sessions (Wasatch County justice court); and Judge Clay Stucki (Ogden City justice court).

Justice Courts have continued to evolve over time, and the task force which you are a member of has been created to evaluate the structure and operations of justice courts, and to also propose potential improvements and reforms to justice courts in Utah. The Justice Court Board has been working on potential improvements to Utah's justice courts for many years. The recommendations in this report to the task force have been vetted by the Justice Court Board, and we recommend them to you for your consideration, and suggest their implementation as improvements to the structure and operation of justice courts in Utah.

If you have questions about these recommendations, or about Justice Court Board input on the recommendations, please feel free to contact members of the Board for their input.

Thank you for your service on the task force.

Sincerely,

Vernon F. Romney

Provo City Municipal Justice Court Judge

Introduction

The mission of the Utah Courts is to “provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.”¹ While that system is governed in its entirety by the Utah Judicial Council, many of Utah’s courts are not operated by the state’s judicial branch. In fact, the majority of Utah cases are heard in courts of limited jurisdiction known as “justice courts” that are managed by city and county governments in more than 100 different communities.

Because ordinary citizens interact with justice courts more than all other courts combined, the public’s trust and confidence in the judicial system as a whole may be largely based on their experience with a justice court. As the most commonly encountered face of Utah’s judiciary, justice courts must reflect the integrity, transparency and accountability of other court processes and proceedings. They already do so in many respects, but there is room for systemic improvement.

As such, the Board of Justice Court Judges has compiled the recommendations that follow. These recommendations were largely inspired by a 2014 policy paper from the Conference of State Court Administrators (COSCA)² which asserted that limited jurisdiction courts require:

- A qualified judge,
- Dispositions on the record that are reviewable,
- Judicial independence supported by processes for appointment or election of limited jurisdiction judges and court funding, and
- Professional court governance.

The Utah Judicial Council and the Board of Justice Court Judges have been working on these “essential elements” for over a decade, but they have yet to fully implement COSCA’s recommendations. The recommendations that follow describe the work that remains to be done. Adopting any one of them would improve the justice courts and strengthen Utah’s judiciary as a whole. Recommendations are presented in order of importance, but all are worthy of your consideration. The Board appreciates your taking the time to review them.

¹ See www.utcourts.gov.

² *Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century* (COSCA, Policy Paper, 2013-2014), https://cosca.ncsc.org/_data/assets/pdf_file/0016/23641/2013-2014-policy-paper-limited-jurisdiction-courts-in-the-21st-century.pdf (last visited Jun.23, 2020).

Recommendation #1

Replace de novo appeals to district courts with on-the-record appeals to the Utah Court of Appeals.

In 2019, justice courts adjudicated approximately 60% of all cases filed in Utah.³ Justice courts are generally the *first* (if not the *only*) courts with which most of Utah's residents have experience. As the face of Utah's judiciary, justice courts have a critical impact on the trust and confidence that the public has in all courts. To the extent that the current justice court system:

- is inefficient,
- lacks transparency,
- provides no feedback to judges regarding the correctness or quality of their decisions,
- requires victims to testify twice,
- allows defendants to appeal and endure a second trial simply to get a lighter sentence,
- gives attorneys no precedent they can look to when formulating their arguments for court, and
- deprives pro se litigants, attorneys, justice court judges and the public generally of a body of law that would otherwise develop through appellate review,

these issues must be addressed. Even if no other reforms were adopted, converting justice courts into courts of record would strengthen Utah's judiciary by ameliorating each of the foregoing concerns.

If this proposal were adopted and justice courts were converted to "courts of record," there would necessarily be other reforms to consider as well. As currently written, the Utah Constitution and the Utah Code set forth requirements for courts of record that would then apply to justice courts. The Constitution would require that justice court judges be selected by the governor and ratified by the Senate (with appropriate input

³ According to data provided by Court Services on April 23, 2020.

from the jurisdiction to be served),⁴ compensation would be fixed,⁵ and the appointment of new justice court judges would be restricted to those admitted to the practice of law.⁶

History of the Current Reform Effort

The Utah Legislature created the justice courts in 1989 pursuant to Article VIII, Section 1 of the Utah Constitution, which allows the statutory establishment of “courts not of record.”⁷ Although records are maintained by this court in the form of paper, digital files and audio recordings, Utah’s justice courts have been, and continue to be, courts “not of record” because nothing that is said or done in the proceedings of a justice court is considered when a case is appealed.⁸ Instead, appeals from justice court decisions are heard in district courts as appeals *de novo*—as though the case were being heard for the first time.

Appeals *de novo* did not start with the justice courts.⁹ Justices of the peace were common throughout the United States at the time Utah was settled.¹⁰ The Organic Act of the Territory of Utah created a Supreme Court, district courts, probate courts and justices of the peace when Congress organized the Utah Territory in 1850. The Organic Act authorized appeals in all cases from the final decisions of the district courts, but said nothing about appealing a decision from a justice of the peace. It was also silent about the need to maintain a record in any of these original courts, even though it called for a secretary to “record and preserve all the laws and proceedings of the legislative assembly ... and all the acts and proceedings of the governor in his executive department.”¹¹

When Utah’s Constitution was ratified in 1895, it included “the right to appeal in all cases” among the “fundamental rights” listed in Article I. Section 9 of Article VIII provided that “[a]ppeals shall also lie from the final judgment of justices of the peace in civil and criminal cases to the district courts on both questions of law and fact, with such limitations and restrictions as shall be provided by law; and the decision of the district

⁴ UTAH CONST. Art. VIII § 8.

⁵ UTAH CODE ANN. § 67-8-2. See also Recommendation #6 *infra*.

⁶ UTAH CONST. Art. VIII § 7. See also Recommendation #3 *infra*.

⁷ UTAH CODE ANN. § 78A-7-101.

⁸ *Bernat v. Allphin*, 2005 UT 1, ¶ 8, 106 P.3d 707, 710, as corrected (Apr. 1, 2005).

⁹ Newton, Samuel P.; Welch, Teresa L.; and Hamilton, Neal G. (2012) “No Justice in Utah’s Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah’s Infamous Local Courts,” *Utah OnLaw: The Utah Law Review Online Supplement*. Vol. 2012, Article 2, <https://dc.law.utah.edu/onlaw/vol2012/iss1/2>.

¹⁰ Paul C. Farr, *Evolution of Utah’s Justice Courts* (2016).

¹¹ Organic Act of the Territory of Utah, UTAH CODE ANN. § 3, 9 Stat. 453 (1850).

courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute.”¹²

The Utah Constitution continues to require “an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.”¹³ When a case is initiated in the justice courts, a party unsatisfied with the judgment has the right to try its case again—*de novo*—in the district court.

In 2014, the Conference of State Court Administrators (COSCA),¹⁴ an organization dedicated to the improvement of state court systems, published a policy paper outlining “Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century”¹⁵ urging that dispositions be “on the record” and “reviewable.”¹⁶ Accordingly, it recommended that the practice of not creating a record and then providing for an appeal *de novo* be abandoned.¹⁷

Following its 2016 decision in *Simler v. Chilel*,¹⁸ which held that a litigant has a right to a jury trial in a small claims trial *de novo* in district court, the Utah Supreme Court created an Advisory Committee on Procedural Reforms for Justice Courts. The Supreme Court expressed its interest in “exploring the possibility of amendments to [its] rules, to controlling legislation, and (if necessary) to the Utah Constitution to pave the way for elimination of the appeal by *de novo* trial.”¹⁹ In addition, the Court invited the committee to make recommendations with regard to (1) the nature and extent of the “record” to be established in the justice court; (2) the form and nature of the expedited appeal from a justice court decision; (3) whether the reforms to the appeal process or to other procedures should be limited to small claims cases or should extend to criminal cases filed in justice courts; and (4) whether a limited right of disclosure or discovery should be available in small claims actions. After studying the issue for more than a year, the Advisory Committee joined the Supreme Court in recommending that the appeal *de*

¹² *Id.*

¹³ UTAH CONST. Art. VIII, § 5.

¹⁴ Established in 1955, COSCA is dedicated to the improvement of state court systems. Its membership consists of the state court administrator or equivalent official in each of the fifty states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.

¹⁵ https://cosca.ncsc.org/_data/assets/pdf_file/0016/23641/2013-2014-policy-paper-limited-jurisdiction-courts-in-the-21st-century.pdf.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ 2016 UT 23, 379 P.3d 1195.

¹⁹ Memorandum from the Advisory Comm. of the Utah Sup. Ct. Procedural Reforms for Justice Cts. (March 7, 2018) (on file with author).

novo be abolished. In addition, the Advisory Committee recommended forming the Task Force on Justice Court Reform to explore other improvements.

Although the Board of Justice Court Judges did not come to a consensus regarding the details of the Supreme Court's proposal, members of the Board unanimously agree that all misdemeanors adjudicated by the justice courts should be on the record with appeals heard by the Court of Appeals. The Board believes that this one change would strengthen the entire court system and is the most critical reform to be addressed.

Recommendation #2

Expand justice court jurisdiction to include Class A misdemeanors.

Jurisdiction for criminal cases in Utah is split between the district and justice courts. Generally, felonies are heard in district court, while all other crimes,²⁰ with the exception of Class A misdemeanors, are heard in justice court. The reasons for the exception for Class A misdemeanors are unclear, as are the specific reasons they are currently heard in district court. Although transferring jurisdiction for Class A misdemeanors to the justice courts would increase their workload, the Board of Justice Court Judges believes that there are a number of reasons for recommending this change. First, this change would clarify the role of each court, bringing some additional order to a system that, at times, must seem arbitrary to the public. Second, justice court judges are more than capable of performing the work. And third, it makes good, economic sense to restructure this way. Together, all three reasons can be employed to strengthen the trust and confidence the public has in the justice courts.

The Public Would Benefit from Clearer Division of Judicial Responsibility

The primary reason to adopt this recommendation is to benefit the public and those who interact with the courts on a professional level. Although most lay people don't know the difference between state courts and federal courts, or between trial courts and appellate courts, organizing the system so that felony cases are heard in district court and misdemeanor cases are heard in justice court would provide greater clarity to the public.

²⁰ Such crimes include offenses classified as Class B misdemeanors, Class C misdemeanors, infractions and violations of local ordinances.

This would reduce confusion in a system that can be very confusing to lay people—particularly when the difference between offenses classified as Class A misdemeanors and those classified as Class B misdemeanors seems fairly arbitrary. Those who interact with the courts on a professional level would also benefit by being able to align their teams and their expertise with the courts that handle the corresponding type of offense.

Justice would be better served by moving Class A misdemeanors to the justice courts. Although Class A misdemeanors are serious offenses, they are less important than the felony charges before a district court. As such, judicial economy may favor dismissing them in connection with plea negotiations. In a justice court, however, a Class A misdemeanor would be the most serious offense charged against a defendant, and it would therefore warrant the strongest intervention available to a justice court. Rather than being dismissed, defendants would be held accountable for the behaviors charged as Class A misdemeanors.

Justice Court Judges are Willing and Able to Do This Work

Data provided by Court Services in April 2020 indicate that the Class A misdemeanors most commonly filed in Utah in 2019 included the following:

- Possession or Use of a Controlled Substance,
- Enhanced Retail Theft (Shoplifting),
- Failure to Stop at the Command of Law Enforcement,
- Aggravated Assault,²¹
- False Personal Info with Intent to be Another Actual Person, and
- Violation of Protective Order.

Possession, theft and assault charges are already filed in justice courts as Class B misdemeanors. Other Class A offenses are similar to charges currently filed in the justice courts. For example, the skills and expertise required to adjudicate a marijuana offense effectively apply directly to other drug use and possession cases. Justice court judges may similarly apply experience with adjudicating a charge of failing to yield to an emergency vehicle to a charge of failing to stop at the command of law enforcement, apply experience with adjudicating a charge of disorderly conduct to a charge of assault; apply experience with adjudicating a charge of providing false information to law enforcement officers to a charge of impersonating another person, and apply

²¹ Generally, assault is a Class B misdemeanor. But “[a]ssault is a class A misdemeanor if: (a) the person causes substantial bodily injury to another; or (b) the victim is pregnant and the person has knowledge of the pregnancy.” UTAH CODE ANN. § 76-5-101(3).

experience issuing protective orders to deciding a charge involving the violation of protective orders. As such, the Board anticipates that very little training would be required to prepare the justice court judges to effectively adjudicate Class A misdemeanors.

Economic Arguments

Moving Class A misdemeanors to the justice courts makes better use of taxpayer resources. Data provided by Court Services indicate that cases in which a Class A misdemeanor is the most severe charge account for enough work to occupy 12.9 district court judges on a full-time basis. If Class A misdemeanors were handled by the justice courts instead, that work would be performed by judges who cost *at least* 10% less (see Recommendation #6). Assuming that the number of judges in district court were reduced by ten,²² the savings generated by adopting this recommendation would cover the cost of converting at least 11 justice court judges to state employees (see Recommendation #9).²³ Of course, savings could be utilized in other ways. Expanding the use of problem-solving courts, funding more mental health resources and involving AP&P in DUI and Domestic Violence cases are all options that should be explored in order to make justice courts even more effective than they already are.

Summary

Justice court judges have skills and expertise that are currently underutilized. They are capable of strengthening Utah's judiciary, and they are willing to do so. Justice court judges already preside over preliminary hearings, probable cause determinations and warrant reviews, so entrusting them with Class A misdemeanors that resemble work they already do only makes sense. This is especially true when that work would cost taxpayers less money and provide a more effective intervention for defendants by holding them accountable for charges that might otherwise be dismissed.

²² Because this work is currently performed on a district level, only whole numbers of judges were considered in the potential reduction. Fractional shares of workload associated with Class A misdemeanors would remain with the district court. These fractional shares amount to 2.9 judges.

²³ This assumes that justice court judges would receive the same benefits as district court judges. If they did not, even more positions could be converted.

Recommendation #3

Require newly appointed justice court judges to be members of the Utah Bar.

The idea of requiring all judges to have a law degree has been gaining momentum for some time, both in Utah and throughout the country. Half of the states now require judges of all their courts to be attorneys.²⁴ Of the remaining half, four of them limit non-attorney judges to solely civil proceedings or those that do not place defendants at risk of incarceration. Amid increasing concern about due process violations for defendants who are incarcerated by nonlawyer judges, 29 states now completely ban non-lawyer judges from presiding over criminal proceedings with the potential for incarceration.²⁵ Given this trend, the Board fully expects that membership in the bar will become a universal requirement.

For more than 150 years, the only formal education required of a justice court judge was a high school diploma or its equivalent. Such minimal requirements were reasonable back when lawyers were few in number, cases were simple in nature, and transportation was difficult. In the twenty-first century, however, such justifications no longer exist and a high school diploma is simply insufficient. In 2016, the Utah Legislature recognized the need to update judicial education requirements and passed HB 160 that required judges in Weber, Davis, Salt Lake, Utah and Washington counties to have a law degree that would qualify them for admission to the bar. Initially the bill required a law degree of judges *throughout* the state—but this proposal ultimately failed because the residency requirement for justice court judges to live in or adjacent to the county in which the court is located (see Recommendation #4) proved too difficult for sparsely populated areas to find qualified candidates. The final version of HB 160 struck a compromise by requiring only judges in the above-mentioned counties to have a law degree, thereby providing nearly 81% of the state’s population with justice court judges who have law degrees.²⁶

²⁴ See generally David Carroll, *Should Non-Lawyer Judges Be Sending People to Jail? SCOTUS Asked to Review*, SIXTH AMENDMENT CENTER (Dec. 12, 2016), <https://sixthamendment.org/should-non-lawyer-judges-be-sending-people-to-jail-scotus-asked-to-review/>; and Task Force on Justice Court Reform’s State Municipal Court Survey, (May-Jun. 2020) (on file with author).

²⁵ *Id.*

²⁶ As of July 1, 2019, Weber County had a population of 260,213, Davis County had a population of 355,481; Salt Lake County had a population of 1,160,437, Utah County had a population of 636,235 and

The Board anticipates that bar membership will be required of every judge at some point—particularly if its recommendations to convert the justice court to a court of record (see Recommendation #1) and relax the residency requirements for new judges (see Recommendation #4) are adopted. The Board has therefore resolved to support the requirement that newly appointed justice court judges be members of the Utah Bar, provided that (i) judges currently serving without a law degree are able to retain their positions and (ii) that they be allowed to apply for and serve in other justice court positions that open up in the future—as long as they meet other eligibility requirements and are selected for the position.²⁷

The Board recognizes that requiring judges to be members of the Utah Bar creates complications and may seem to come at an odd time given that the Utah Supreme Court is currently considering expanding the practice of law beyond those who are members of the bar.²⁸ Of the 81 Utah justice court judges currently serving, 32 (or 40%) of them do not have a law degree.²⁹ Many of these judges are demonstrating that the job can be done well without a law degree or passing the Bar exam. The Board opposes any policy that would remove a judge who is currently serving, but also acknowledges that retaining these judges once the justice courts have been converted to courts of record presents a significant challenge. Section 7, Article VIII of the Utah Constitution requires that judges of courts of record be admitted to practice law in Utah. As such, the Task Force could consider the following solutions:

Amend the Constitution

One option is to amend the Utah Constitution to eliminate the requirement that judges in courts of record be “admitted to practice law in Utah.”³⁰ Given the increased emphasis in all professions on credentials and licensure and the fact that eliminating this requirement would lower qualifications for the district courts, Court of Appeals, and Supreme Court, this option might well fail in the legislature or when it is proposed to the state’s citizens in a general election. The Board does not recommend this option.

Washington County had a population of 177,556. The population for all of Utah was 3,205,958 as of the same date. See <https://www.census.gov> (last visited May 27, 2020).

²⁷ This might be accomplished by amending UTAH CODE ANN. § 78-7-201(7) to read as follows: “A justice court judge holding office on May 10, 2016, who does not meet the qualification in Subsection (2)(a) may ~~continue~~ **serve** in the **any** judge’s position until the judge resigns, retires, is not retained in a retention election, or is removed from office.”

²⁸ *Utah Implementation Task Force on Regulatory Reform*, Initiative of the Utah Sup. Ct., <https://www.sandbox.utcourts.gov/> (last visited Jun. 23, 2020).

²⁹ *Judges’ Bio. Info.*, (last modified Jan. 27, 2020), <https://www.utcourts.gov/judgesbios/index.htm>.

³⁰ See UTAH CONST. Art. VIII, § 7.

Restructure the Justice Courts

A second option is to split the justice courts into two tiers. Justice court judges who are not admitted to the practice of law could continue to serve as long as justice courts were restructured so that some cases were handled by a court of record and others were handled by a court not of record (see Recommendation #12). The court not of record would hear only infractions, which do not put defendants at risk of jail time or entitle them to public defenders. Judges who are not admitted to the practice of law could preside over these cases as they do now. The court of record would hear misdemeanors (see Recommendation #2), perform magistrate functions (see Recommendation #7) and, if retained by the justice courts, hear small claims cases (see Recommendation #12). As required by Utah's Constitution, only judges admitted to practice law in Utah would preside in this court of record.

Admit All Justice Court Judges to the Utah Bar

A third option is to allow all judges to be admitted to the bar. If nothing about the current requirements were changed, financial assistance could be made available for those who want to attend law school and sit for the exam from the Justice Court Technology, Security and Training Account. But the Board would recommend that the requirements for bar admission, currently codified in Article 7 of Chapter 14 of the Code of Judicial Administration, be amended to add criteria for judicial applicants who would not otherwise qualify for admission. These admission criteria would apply to current justice court judges only and might require that applicants have a certain amount of time on the bench, obtain a certain number of education hours, or pass all or parts of the Utah Bar exam.³¹ Whatever the requirements, fulfilling them would result in their being admitted to the bar for the limited purpose of serving as a justice court judge.

If the Task Force is unable to support any of the foregoing proposals, the Board would strongly recommend, as a last resort, that judges who are not admitted to the practice of law be replaced only through attrition. As new vacancies occur, only candidates who are members of the bar would be able to apply and only then would that court transition to a court of record.

³¹ Due to COVID-19, the Utah Supreme Court recently authorized the admission of certain applicants without their having to take the bar exam at all. Similar accommodations might be considered for those who have been serving as justice court judges.

Recommendation #4

Remove geographic restrictions for applying for a justice court judgeship to follow the district court practice in which judicial applicants throughout the state may apply and the new judge is required to relocate to the district.

Those applying for a judgeship with the district or juvenile court are subject to eligibility requirements imposed by the Utah Constitution, which requires that judges of those courts “be at least 25 years old, United States citizens, Utah residents for three years preceding selection, and admitted to practice law in Utah. If geographic divisions are provided for any court, judges of that court shall reside in the geographic division for which they are selected.”³² As a practical matter, these requirements allow an attorney the opportunity to apply for a judgeship in *any* of the state’s courts of record; provided that, if selected, the new judge relocates to that district before taking the bench.

Unlike the judges of district and juvenile court, the Constitution provides that “judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by *statute*.”³³ The statute imposes a more restrictive residency requirement. Those applying for a justice court judgeship must have lived in the “county in which the court is located or an adjacent county for at least six months immediately preceding appointment.”³⁴ This requirement ensures that only local candidates may qualify to serve as a justice court judge, while excluding candidates from elsewhere in the state.

Restricting the applicant pool to local candidates complicates the neutral role of a judge. Being from the community or having family, friendships or business dealings in the community is more likely to compromise the judge’s neutrality. The Board does not recommend that the local candidates be overlooked in favor of nonresidents; it simply sees no downside to expanding the applicant pool to include those residing elsewhere in Utah—especially when judges for the district and juvenile courts are recruited statewide. As such, the Board of Justice Court Judges recommends eliminating the

³² UTAH CONST. Art. VIII, § 7.

³³ *Id.* at § 11 (emphasis added).

³⁴ UTAH CODE ANN. § 78A-7-201.

requirement that candidates live in “the county in which the court is located or an adjacent county for at least six months immediately *preceding* appointment.”³⁵

As for residency requirements *following* appointment, the Board recommends distinguishing between full- and part-time positions. The same standard used for district and juvenile courts should apply to full-time justice court judges. A nonresident appointed to serve as a full-time judge would have to relocate to the district in which the court is located before taking the bench.

The Board recommends a less restrictive standard for part-time judges. Justice court judges are currently allowed to reside in (a) the county in which the court is located or (b) a county adjacent to it.³⁶ Going forward, the Board recommends expanding the area in which a part-time judge must reside to include (i) the county where the court is located, (ii) a county adjacent to the county where the court is located, or (iii) anywhere within the judicial district in which the court is located. Unlike full-time judges, part-time judges often piece together multiple judgeships to make a full-time living. Even after expanding “residency” to include the entire district, there are judges currently on the bench who would lose one or more jobs if they were prohibited from living in a county adjacent to the one in which the court is located. As it is clearly to the advantage of the part-time courts to have a judge with full-time expertise, the Board recommends that judges with a part-time appointment to any single justice court be accommodated by combining the ability to reside in the district with the current ability to reside in an adjacent county. Accordingly, the Board recommends that Section 78A-7-201 of the Utah Code be modified as follows:

78A-7-201. Justice court judge eligibility -- Mandatory retirement.

- (1) A justice court judge shall be:
 - (a) a citizen of the United States;
 - (b) 25 years of age or older; and
 - (c) a resident of:
 - (i) Utah for at least three years immediately preceding his appointment; and
 - ~~(d)——~~(ii) the judicial district in which the court is located if the position is full time; or
 - (iii) the judicial district in which the court is located or a resident of the county adjacent to the county in which the court is located or an adjacent county if the position is part time. ~~for at least six months immediately preceding appointment.~~

³⁵ UTAH CODE ANN. § 78A-7-201 (emphasis added).

³⁶ UTAH CODE ANN. § 78A-7-201.

Recommendation #5

Transition to full-time judges as part-time judges voluntarily resign or retire.

Utah's justice courts are well served by numerous part-time judges. Two thirds of all justice court judges serve less than full-time.³⁷ Out of 81 current judges, 39 serve part-time in one court and 14 serve part-time in multiple courts. Only 28 justice court judges serve full-time in a single court.

Most of the full-time judges serve in heavily populated areas along the Wasatch Front. But even in Weber, Davis, Salt Lake, and Utah counties, part-time positions outnumber full-time positions.³⁸ And in the state's rural areas, part-time judges outnumber full-time judges by more than five to one.

Part-time positions appeal to sponsoring localities for a variety of reasons. They are less expensive for the counties and municipalities that employ them. Many part-time judges do not receive benefits, which significantly decreases the cost of the position. And the salary required by statute can be as little as 50% of a district court judge's salary *before* it is reduced in proportion to the jurisdiction's workload.³⁹

Part-time positions also appeal to many judges. Most applicants are simply not interested in full-time work. Applicants have often retired from a different career and want to work fewer hours. They may need to balance a judgeship with other personal or professional pursuits.⁴⁰ Some judges actually *are* interested in full-time work, but they combine part-time positions from multiple jurisdictions.

But more than the appeal of part-time judgeships to any judge or jurisdiction, the prevalence of these positions is more likely the result of a system deliberately designed

³⁷ Whether a judge is full-time or part-time depends on the workload for each court, as calculated by the Administrative Office of the Courts. Judges with a combined workload of 1.0 or greater are considered full-time; those with a workload of 0.99 or less are considered part-time.

³⁸ Because some of these part-time *positions* have been filled by judges with other courts, the Wasatch Front has more full-time *judges* than part-time judges.

³⁹ See UTAH CODE ANN. § 78A-7-206(1).

⁴⁰ Part-time judges have more latitude with their extracurricular activities than do full-time judges. See Canon 3 of the Code of Judicial Ethics.

to allow each municipality to have its own justice court—and its own judge—as each has its own mayor and city council.⁴¹ The American tradition of governance has featured separation of legislative, executive and judicial power, but justice courts present a unique challenge in this regard. Bringing the three branches of government together at the *local* level, when Utah’s Constitution vests the powers of the judiciary at the *state* level,⁴² has generated some confusion as to who “controls” the justice courts. From a legal perspective, justice courts are essentially state courts operated at the local level. But from an operational standpoint, it is not uncommon for local government to view the justice court as a “department” of the executive branch—rather than as a subsidiary of the state’s judicial branch (see Recommendation #9)—and manage it accordingly.

The recommendation that justice courts transition to full-time judges, as well as the suggestions made in connection with Recommendation #11, are as much about clarifying roles as they are about improving operational efficiencies. But perhaps the most important reason to transition to full-time judges is to create a bench that is wholly dedicated to a single profession. By hearing cases throughout the week, judges will become proficient faster than would otherwise be the case, they will be available to assist their peers in other jurisdictions, and they can take on the magistrate functions more fully described in Recommendation #7. For these reasons, the Board of Justice Court Judges recommends that caseloads be consolidated so that justice court judges serve full-time to the extent possible.

This could be accomplished in several ways, but the Board feels strongly that the total number of justice court judges should only be reduced as judges voluntarily resign or retire. As this occurs in jurisdictions whose workload is below some threshold amount, those judges should be replaced by judges already serving. This will require a change in the appointment process, a change in the appointing authority or both (see Recommendation #9). As the Task Force determines the best way to transition to full-time judges, it should consider which judges may resign or retire in connection with the retention election in 2022, expanding the use of interlocal agreements to combine jurisdictions, rolling up municipal courts into state or county courts (see Recommendation #12), and/or requiring that a jurisdiction support a minimum caseload to continue as a justice court.

⁴¹ Justice courts may have been established at the county level to serve the unincorporated areas of the county or as a fallback for municipalities that chose not to have a justice court of their own.

⁴² UTAH CONST. Art. VIII, § 1.

Recommendation #6

Set judicial salaries for full-time justice court judges at 90% of a district court judge's salary. Full-time justice court judges should receive the same benefits as all other judges in the state.

At present, justice court judges are compensated according to a statutory formula⁴³ that results in a wide range of pay for the same work. Because some variation in *annual* salary is to be expected because of local government's power to establish a salary that is commensurate with part-time workloads, one option for understanding the breadth of the range is to compare compensation calculated on an *hourly* basis. Doing so removes a judge's full- or part-time status from the analysis and, for 2019, results in a pay scale for justice court judges that ranged from \$26.67 to \$142.75 per hour.⁴⁴

One argument for such disparate pay is that qualifications among justice court judges vary so dramatically. Some have only a high school diploma with little to no prior experience, while others have a law degree with significant relevant experience. But neither relevant experience nor formal education fully explains current differences in pay. If relevant experience were a stronger consideration, then judges who have been on the bench longer would receive more pay, while newer judges—whatever their education—would be paid less. One reason that this may not be the case is because there is little coordination among the all the jurisdictions that are setting salaries for justice court judges.

Of even greater concern, the current approach to establishing justice court judges' salaries requires the judges to negotiate those salaries every year with local executives.

⁴³ If the Administrative Office of the Courts determines that a judge is full time, then UTAH CODE ANN. § 78A-7-206(1) requires that the judge be paid between 50% and 90% of a district court judge's salary. The salary of a district court judge is set by the legislature and is the same for every district court judge in the state. If the Administrative Office of the Courts determines that the judge is less than full-time, then the pay range is prorated by the same fraction that represents the percentage of a full-time workload for that judge in that location. A judge with 10% of a full-time workload, for example, should be paid between 5% and 9% of a district court judge's salary.

⁴⁴ These figures were derived from a survey in which each judge was asked to report the average number of hours worked each week or each month. The judge's annual salary, as reported by cities and counties pursuant to UTAH CODE ANN. § 78A-7-207, was then divided by the annualized number of hours for each judge who responded to the survey. By comparison, a district court judge receiving \$170,450 for 2080 hours of work is making approximately \$82 per hour.

County and municipal officials may be more concerned with expenses and revenue than with judicial independence. These conversations may rely on an analysis of whether the court is “making money” or “losing money” for the city or county. It may be the case that judges who negotiate better get paid more, while those who do not negotiate as well (or at all), have to settle for less.

The Board of Justice Court Judges recommends that full-time justice court judges be paid a fixed sum equal to 90% of a district court judge’s salary. Part-time judges would be prorated according to the judicial weighted caseload formula, as they are now. Fixing a salary for justice court judges, as is done for judges in courts of record, relieves the justice court judges of any pressure to increase fines and fees to justify an appropriate salary (see Recommendation #10). Justice court judges deserve to be fairly compensated for their work.

There are at least three other benefits of adopting this recommendation. Standardized salaries would attract a larger pool of candidates for the bench that hears nearly 60% of the state’s cases. The Elected Official and Judicial Compensation Commission found in 2018 that the pay gap between what a person can make in the private sector and what that person would receive as a judge could be discouraging qualified attorneys from applying for open judgeships.⁴⁵ Secondly, standardized salaries would resolve the discrepancy between the Utah Constitution and state statute, which has been invoked in many discussions regarding a judge’s salary.⁴⁶ Thirdly, standardized salaries would justify the additional work that would come with adoption of the proposal that justice court judges take on additional magistrate functions (see Recommendation #7) and Class A Misdemeanors (see Recommendation #2).

The salary of a district court judge is established each year in the Appropriations Act, subject to the limitation set forth in the Utah Constitution, which prohibits diminishing

⁴⁵ See Bethany Rodgers, *Salary Panel Recommends Pay Bump for Judges, Cost-of-Living Adjustments for Governor and Other Elected Leaders*, Salt Lake Tribune (Nov 14, 2018), <https://www.sltrib.com/news/politics/2018/11/14/salary-panel-recommends/>. See also Elected Official and Judicial Compensation Commission 2018 Report for the full report, <https://le.utah.gov/interim/2018/pdf/00004532.pdf>.

⁴⁶ UTAH CODE ANN. § 78A-7-207(2) says “The salary fixed for a justice court judge may not be diminished during the term for which the judge has been appointed or elected” while UTAH CONST. Art. VIII § 14 says “The salaries of justices and judges shall not be diminished during their terms of office.” The discrepancy between “term” and “terms” has led to confusion as to whether a city or county may reduce a judge’s salary every six years, which adds pressure to justice court judges to “perform” in such a way as to not tempt their employer.

judges' salaries during their terms of office.⁴⁷ Salaries for judges of other courts of record are then based on Section 67-8-2 of the Utah Code. The Board recommends that this statute be modified as follows:

67-8-2. Salaries of judges established annually in appropriations act -- Bases of salaries -- Additional compensation.

(1) The salaries of judges of courts of record, as described in Section 78A-1-101, shall be set annually by the Legislature in an appropriations act.

(2) Judicial salaries shall be based on the following percentages of the salary of a district court judge:

- (a) justice court judges: 90%;
- (ab) juvenile court judges: 100%;
- (bc) Court of Appeals judges: 105%; and
- (cd) justices of the Supreme Court: 110%.

Recommendation #7

Use justice court judges more extensively in their magistrate capacity.

The authority of justice court judges is generally limited to the geographical boundaries of the county or municipality in which they serve. However, justice court judges can also perform certain functions for cases outside of those boundaries in their capacity as magistrates.⁴⁸ This magistrate authority allows judicial officers to determine whether there was probable cause for a suspect arrested without a warrant, to approve warrants requested by law enforcement, and to conduct preliminary hearings to determine whether sufficient evidence exists to bind over a defendant charged with a Class A misdemeanor or a felony for trial in the district court.⁴⁹

District court judges and justice court judges share these responsibilities in every district. In some areas, district court judges handle most magisterial functions. In others,

⁴⁷ See UTAH CONST. Art. VIII, §14 and UTAH CODE ANN. § 67-8-2(1).

⁴⁸ UTAH CODE ANN. § 77-1-3(4) indicates that a magistrate can be "a justice or judge of a court of record or not of record or a commissioner of such a court..."

⁴⁹ See Utah R. CRIM. P. 7 and 7A.

justice court judges carry more of the load. However the caseload is divided, presiding judges for each court level are directed by Rule 3-104(3)(O) to “develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate’s caseload, location, and willingness to serve.” Because judicial action on probable cause determinations and warrants could be required at any time of day on any day of the week, each rotation includes nights and weekends.

Full-time justice court judges have been generally willing to help with the magisterial caseload, even though they are not compensated for such work.⁵⁰ However, it is unfair to impose such duties on part-time judges—many of whom only serve on the bench for 10-20 hours each month and are legitimately engaged in other pursuits. Most (if not all) districts exclude part-time judges from the rotation for this reason.

If the recommendations proposed by the Board of Justice Court Judges are adopted, justice court judges could make a much greater contribution to the judiciary. Justice court judges would be transitioned to full-time positions to the extent possible (see Recommendation #5) and fairly compensated for their work (see Recommendation #6) as state employees (see Recommendation #9). They could then assist district courts to a greater extent with the magistrate functions performed currently, and they could serve as a resource for future reforms involving fines, fees and pretrial release.

Recommendation #8

Bring justice courts under the umbrella of the Administrative Office of the Courts for administrative purposes.

Justice courts are well supported by the Judicial Council and the Administrative Office of the Courts. That support has never been stronger than now, and for that the Board of Justice Court Judges is profoundly grateful. The Council itself includes three justice

⁵⁰ Justice court judges are compensated pursuant to a workload formula that does not presently consider magistrate work.

court judges, each of whom serves on the Council’s executive committees⁵¹ and on the Board of Justice Court Judges. As such, justice court judges are an integral part of the judiciary’s governing body and the board that makes recommendations to that body.⁵²

The Administrative Office of the Courts, which serves as staff to the Judicial Council, supports the justice courts as well. For many years it has provided equipment and training through Information Technology, provided analytics through Court Services, organized conferences and other training events through the Education Department, and provided training through the Audit Department—all beyond that which the Justice Court Technology, Security and Training Account pays for each year.⁵³ In addition, without any contribution from the Justice Court Technology, Security and Training Account—the Administrative Office of the Courts has provided advice and training from the Legal Department and, more recently, has provided services from the Communications Director and the Court Security Director that justice courts had not enjoyed previously.

Another recent improvement is the 2016 creation of a full-time Justice Court Administrator. Before the Council approved that position, only the district courts, the juvenile courts and the appellate courts had a full-time administrator; the justice courts were supported by an Assistant State Court Administrator who was involved in numerous initiatives, served as the Council’s Legislative Liaison, and supported dozens of problem-solving courts throughout the state.

The Board of Justice Court Judges recommends that justice courts be supported by the Administrative Office of the Courts to the same extent as all other courts—whether the Justice Court Technology, Security and Training Account can pay for these services or not. In particular, the Task Force should explore the idea of supporting the justice courts with the Trial Court Executives and Clerks of Court who already support the district courts. This recommendation is made without regard to the question of whether justice court judges become state employees (see Recommendation #9).

⁵¹ These include the Management Committee, the Policy and Planning Committee, the Liaison Committee and the Budget and Finance Committee.

⁵² This overlap between the Judicial Council and a court-level board is unique to the Justice Courts. Pursuant to Rule 1-201(7) of the UTAH CODE OF JUD. ADMIN., these Council members are not allowed to vote at board meetings, but their involvement over the years has provided continuity that has proven to be a significant benefit to the justice courts.

⁵³ The Justice Court Technology, Security and Training Account is a restricted account funded by a portion of the surcharge imposed by UTAH CODE ANN. § 78A-7-122(4)(b)(iii). “Money shall be appropriated from the account to the Administrative Office of the Courts to be used for audit, technology, security, and training needs in justice courts throughout the state.” UTAH CODE ANN. § 78A-7-301(2).

Recommendation #9

The Utah Code should state clearly that justice courts, even if under local sponsorship, are a part of the judicial branch of government and are governed by the Utah Judicial Council, not local officials.

The Utah Judiciary aspires “to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.”⁵⁴ In so many respects, it is the envy of other court systems throughout the country.⁵⁵ But there is one way in which it could be significantly improved. At present, the Utah Judiciary is not operated as a unified, independent system; rather, it is bifurcated into two systems that must be combined in order to achieve its vision. One system is comprised of the trial and appellate courts that are operated by the state; the other system is comprised of the justice courts that are operated by cities and counties. In theory, the justice courts are governed by the Judicial Council, but in practice they are governed by local officials. Ceding operational control to local government has often compromised the independence of the judiciary at the very level where the majority of Utah’s citizens interface with the judiciary. As such, the Board of Justice Court Judges strongly recommends that justice courts be consolidated into the state system so that (i) judges and clerks who do the work of the justice courts are employed by the state and supported by the Administrative Office of the Courts (see Recommendation #8) and (ii) to the extent possible, hearings are conducted in state facilities.

If the foregoing recommendations are not implemented, the Board recommends the enactment of a statute that recognizes the judiciary as an independent third branch of government at the local level. There are some who dispute the justice courts’ status as part of the judicial branch, which is one reason that the justice court is often viewed as a “department” to be managed by the executive branch. This new statute, together with the Judicial Council’s rules, should clarify the roles and responsibilities of Utah’s justice courts, their judges, and the staff who support them.

⁵⁴ See www.utcourts.gov.

⁵⁵ Mary C. McQueen, president of the National Center for State Courts, touted Utah’s court system as the “international gold standard” when she spoke at the annual judicial conference in October 2016. Salt Lake Tribune (Oct. 6, 2016), <https://archive.sltrib.com/article.php?id=4440373&itype=CMSID>.

It may also be time to reconsider the requirement that a clerk be available on-site five days a week—for just an hour in some cases. Instead, the courts might develop a system using Webex (like “Telehealth” or video banking) whereby centrally located (and state employed) clerks would be available during all business hours to assist justice court patrons with payments, filings and questions. In some jurisdictions, such a system could replace the front counter; in others, it would be available in addition to the front counter. Either way, it would spare the local government from having to allocate resources to this function, it would provide more separation between the judicial clerk and functions of the executive branch, and it would improve customer service in locations where clerical assistance is not currently available during all business hours.

Recommendation #10

Standardize the budget of any justice courts that remain in local control by basing them on weighted caseload. Courts should be funded by general government funds. Funds used to supply advocates, like indigent defense services and prosecutorial services, should be excluded from court budgets. Court activities should be decoupled as much as possible from revenue generation.

In the late 1800s, Judge Roy Bean was a Texas judge who owned the saloon that doubled as his courtroom. Customers were charged 25 cents for a beer but received no change if they paid with a dollar. If they complained, they were charged with disturbing the peace and fined 75 cents. Judge Bean reportedly kept the fine proceeds.⁵⁶

Such unethical behavior would not be tolerated today, and yet the perception persists for some that a justice court’s *primary* objective is to make money. Several reforms designed to decouple the courts from revenue generation have been implemented in

⁵⁶ Paul C. Farr, *An Introduction to the Utah Judicial Council Justice Court Reform Task Force*, Utah B.J., May/June 2020, at 12. https://www.utahbar.org/wp-content/uploads/2020/05/May_Jun_2020_FINAL.pdf.

recent years,⁵⁷ but practices persist that may cast doubt on whether some courts are motivated more by an interest in generating revenue than in dispensing justice. Examples include placing court clerks under the supervision of the city treasurer or manager, paying prosecutors, defense counsel or even the city attorney out of the court's budget, operating the justice court as an "enterprise fund" or, in extreme cases, closing the court altogether because it is "losing money." Such practices may cause the public to question the justice courts' purposes and responsibilities and thereby weaken public trust and confidence in the judiciary as a whole.

To strengthen public trust and confidence in the court system, the Board of Justice Court Judges believes that court operations, budgets and accounting practices should be kept as independent of other governmental agencies as possible. The Board therefore recommends the following:

Court Clerks Should Be Supervised by the Judge

The Code of Judicial Conduct provides an ethical framework for all judges. Rule 2.4(C) requires that a judge not "convey or permit others to convey the impression that any person or organization is in a position to influence the judge."⁵⁸ In addition, Rule 2.12(A) of the Utah Code of Judicial Conduct requires that a judge "take reasonable measures to require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's fulfillment of his or her obligations under this Code." This latter standard implies that court staff are subject to the judge's "discretion and control," and clearly requires that court staff avoid conveying any impression that the judge can be inappropriately influenced.

Supervision of judicial staff by anyone but a judge is inconsistent with these requirements. If judicial staff report to the executive branch, it confuses the roles of the two branches—both internally and externally—and the public may make inferences (whether justified or not) from the clerks' supervision by the treasurer or the city manager as the clerks prepare the orders imposing the fines and they are involved in collecting the fines. Court operations must be structured to prevent public perception that the court exists to generate revenue for the city or county that is sponsoring it.

⁵⁷ In Utah, for example, a change was enacted in 2008 that requires a judge's salary to be established within a statutory range (see Recommendation #6). Once set, that salary can be increased, but it cannot be reduced.

⁵⁸ This would include officials from the other branches of government. Comment [1] to Rule 2.4 explains that "[a]n independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences."

The Board recognizes the challenges of a judge supervising staff when that judge is physically present only part time. The Board also understands how other branches of government came to be involved with the day-to-day supervision of judicial staff. But now that technology offers many options for maintaining clerks' communication with the judge, there is no longer any reason that a judge would be unable to supervise court staff.⁵⁹

Court Budgets Should Be Standardized

To further disabuse the public of the notion that justice courts exist to make money, the Board recommends that court budgets be standardized and submitted to the Judicial Council in connection with recertification. Budgets should include the personnel and other costs essential to court operations, such as the judge, the number of clerks required to perform the amount and type of work referred to the court⁶⁰ and the funding necessary for interpreter services. They should also include equipment, supplies and an appropriate allocation for overhead expenses. Court budgets should *not* include costs for the city attorney, prosecution or defense counsel or any other expense that should be covered by the executive branch. The inclusion of prosecutorial and other advocates' expenses has allowed many jurisdictions to argue that justice courts cost too much, that fines and fees are not sufficient to cover those costs, and that the justice court should close because the court is losing money. Courts must not be required to financially support executive functions.

Courts Should Be Supported by General Funds

Justice courts should be supported by general fund dollars generated from taxes.⁶¹ Funding justice courts through tax revenue is consistent with the benefit they provide to the entire community, which justifies their being supported by all taxpayers. Schools, parks, playgrounds, libraries and fire departments are all funded this way—with no expectation that those who use these services will cover the costs of providing them. Viewed from the perspective of private enterprise, these services are all “losing money.” However, public services do not exist to “make money.”

The suggestion by some government officials that some services can “lose money” while justice courts need to cover their costs (and then some) only validates the

⁵⁹ At a minimum, the judge should supervise the local court administrator who, in turn, supervises any other staff involved in the court's operations.

⁶⁰ The Board further recommends that this number be determined by a clerical weighted workload formula to be developed by the Administrative Office of the Courts.

⁶¹ A general fund is the primary fund used by a government entity. The activities being paid for through the general fund constitute the core administrative and operational tasks of the government entity.

perception that justice courts exist to “make money.” At least one jurisdiction has gone so far as to structure the justice court as an “enterprise fund,” which means that “operations ... are financed and operated in a manner similar to private business enterprises.” When a justice court is structured as an enterprise fund, operations are funded with the fines and fees retained by the jurisdiction. If fines and fees were not ordered and collected in an amount at least equal to the court’s budget, there would not be enough money to pay the judge and staff. The Board recommends the termination of any arrangement by which a justice court is structured as an enterprise fund as such arrangements delegitimize justice courts by making them dependent on the fines they impose.

Summary

As noted by the National Association for Court Management, “The degree to which the judicial branch can promote the rule of law and protect individual rights is, in large part, determined by the respect of the public for its authority.”⁶² That respect is commensurate with the trust and confidence that the public has in the judiciary.

“Maintaining the public’s trust and confidence in the courts is integral to the credibility of the judicial branch. This trust cannot be assumed. The court must establish and nurture public trust through its core responsibility of resolving disputes. The court process must not only *be* just, it must have the *appearance* of being just.”⁶³ Public belief that the core responsibility of the justice courts is to make money undermines their ability to promote the rule of law and protect individual rights. The Board recommends that every effort be made to prevent the perception that justice courts exist to “make money.”

⁶² *Competency: Public Trust and Confidence*, Nat’l. Ass’n for Court Mgmt. (last visited June 23, 2020), <https://nacmcore.org/competency/public-trust-and-confidence/>.

⁶³ *Id.* (emphasis added).

Recommendation #11

Consolidate part-time clerical positions to the extent possible through interlocal agreements or by utilizing district court clerks with excess capacity.

Rule 9-105(3) of the Code of Judicial Administration sets the “hours of operation” required of each justice court. As a practical matter, these hours do not indicate when a judge will conduct hearings—or even when a judge will be present in the courthouse. Instead, these hours inform the public when a clerk will be available to assist them.

Only the busiest justice courts have “hours of operation” that align with traditional business hours. In other courts, those hours vary based on the number of average monthly filings. A justice court that receives 60 or fewer filings per month, for example, is required to make its clerk available to the public for only one hour per day.⁶⁴ As the number of average monthly filings increases, so does the number of hours that a clerk must be available. Once a court averages over 500 filings in a month, it is required to make one or more of its clerks available to the public for at least eight hours per day.

As such, Rule 9-105(3) requires each court to provide a level of public access that is commensurate with the need. All jurisdictions comply with this rule, but many of the smaller ones do so in ways that make clerical services more available and less expensive than they would be otherwise. The Board recommends that the Task Force identify ways to expand such efficiencies so that they benefit justice courts throughout the state.

Use the Same Clerk for District and Justice Court

The Sixth District Court located in Junction, Utah is co-located with the Piute County Justice Court, a Class IV Court⁶⁵ that is required to provide access to a court clerk at least one hour each day. Several other justice courts throughout the state are co-located with the district court in their respective counties,⁶⁶ but only Sixth District and Piute County use the same clerk for both courts. Since both district and justice court use

⁶⁴ Courts may be open for longer than the minimum number of required hours—and many are.

⁶⁵ UTAH CODE ANN. § 78A-7-101(2) divides justice courts into four classes based on the number of cases filed each month. A Class IV Court is the smallest court, receiving 60 or fewer case filings per month.

⁶⁶ These include justice courts in Rich, Morgan, Davis, Tooele, Millard, Sanpete, Wayne, Garfield, Kane, Grand, San Juan and Daggett counties.

the CORIS case management system, clerks are already cross-trained to support both courts.

Where justice courts are *not* co-located with a district court, it may still be feasible to share clerks between two nearby sites. A district court clerk could spend time each day at the justice court or justice court patrons could simply be directed to the district court for everything but the court hearings (although arrangements could be made to hold those at the district court as well).

Use the Same Clerk for Multiple Justice Courts

Another example from the Sixth District is an interlocal agreement that involves six different municipalities. In this case, the same judge presides in each of the six courts, and the same clerk accompanies him to each one to take minutes for the hearings. Personnel specific to each city are still deputized as court clerks so they can receive payments, as the contracted clerk is only on-site for hearings.

This arrangement solves a number of problems. If one clerk is in court taking minutes for a hearing, that clerk cannot easily check people in, process payments or answer the phone. Most, if not all, sites have developed other work-arounds for these challenges, but deputizing municipal employees solves the problem efficiently.

When a single clerk travels with the judge, that clerk becomes more proficient. The public benefits from this change because it creates a more experienced clerk, employers pay less for higher quality work, and such work is produced in less time. For these same reasons, the Board recommends exploring the possibility of combining front counters—either physically or electronically—so that a patron could be assisted by a clerk at a different counter locally or connect with a clerk electronically who is farther away (see Recommendation #9). If internet connectivity is a concern, that portal could be located at the justice court itself—in lieu of a front counter. Conceivably, a jurisdiction that subscribed to both of these concepts could maintain a justice court without needing to employ its own clerk.

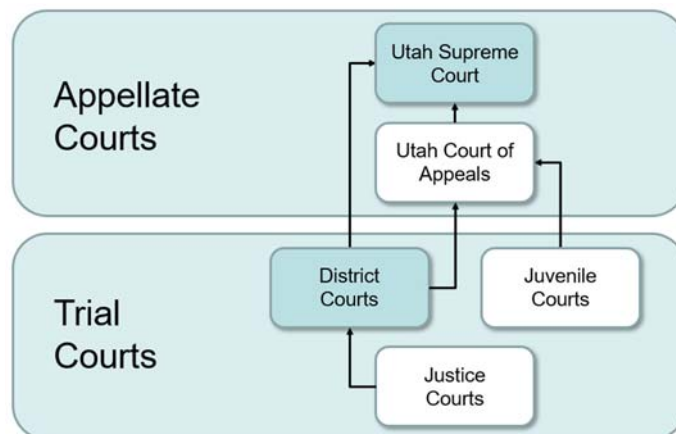
Create a Subcommittee

There are many ways that customer service could be improved for court patrons while lowering costs for taxpayers. To explore these and other ideas, the Board recommends that the Task Force create a subcommittee where justice court judges, administrators, and others could develop proposals for consideration by the Task Force.

Recommendation #12

The Council should determine the best judicial structure to implement the foregoing recommendations.

Related to the question of whether justice courts should be courts of record (see Recommendation #1) is how the court system as a whole would need to be restructured (if at all) to implement the Board's recommendations. Presently, as shown below, justice courts are one of three trial courts. As indicated by the black arrows, appeals from justice court go to another trial court, while those from the juvenile and district court are taken up by an appellate court. Courts in the shaded boxes were created by the Utah Constitution; those in white boxes were created by statute.



The Board of Justice Court Judges takes no position with regard to how Utah's court system might be restructured in connection with justice court reform, but it does recommend that various alternatives be explored. These include:

- Maintaining the status quo
- Dividing case types currently heard by the justice courts between a court of record and a court not of record
- Bringing all case types heard by the justice courts into a court of record

Status Quo

At present, justice courts are courts not of record. They operate in 113 county and municipal sites throughout the state. It is a fragmented system in which the number of part-time judges is double that of full-time judges. As a result, many clerks have an

insufficient amount of court work to occupy their part- or full-time schedules. To keep them busy, they are tasked with executive branch work to perform in their locations, which makes it difficult to learn and retain the clerical expertise they need to have. Even so, if certain recommendations are not ultimately adopted or implemented, then justice courts could continue to operate as they are.

Creating a Court of Record for Misdemeanors and Small Claims

One alternative to leaving the system as it is or transforming *all* justice courts into courts of record is to divide justice court cases between a court of record and a court not of record. This could be done in several ways, each of which merits further consideration. The first is to model the court of record after juvenile court. Like justice courts, juvenile courts are courts of limited jurisdiction. Unlike justice courts, however, juvenile courts are operated at the *state* level by *state* employees in *state* facilities. In this regard, justice courts could be patterned after the juvenile court. Misdemeanors and small claims cases would be handled at the state level by state employees in a court of record. That would leave infractions to be handled by courts not of record by the county and/or municipal courts.

A second option would be to divide the cases between the counties and the municipalities. Courts of record could be created at the county level, which house all the services for justice court defendants. Some of these services include the jail, substance abuse, mental health, and pretrial release services. Infractions would be handled by courts not of record at the municipal level. If judges for courts of record *must* be admitted to the practice of law, either of these two options would preserve the jobs of current justice court judges who are not members of the bar.

Create a Court of Record for All Misdemeanors and Infractions

A third option is that all case types heard by the justice courts could be heard in courts of record. These could be operated by the cities and counties that currently have a justice court or they could be divided between state operated courts and those operated by local government.

Other Considerations

Justice court reform might necessitate two other changes to the court system. Each of these changes merits the formation of additional subcommittees that can make recommendations to the Task Force.

The first relates to the dissolution of the circuit courts in 1996. From 1978 to 1996, circuit courts handled many of the same cases that justice courts do now. When they were merged into the district court, some circuit court sites remained intact at the

request of their host cities and became district courts. As a result, there are several district courts that hear cases more traditionally associated with district court, but they also hear cases that would otherwise be heard by justice court. The Board recommends forming a subcommittee comprised of Trial Court Executives (and others) from the Second, Fourth and Eighth Districts to study this issue and make recommendations to the Task Force.

A second subcommittee should study whether small claims cases should remain in justice court. This decision could impact the structure of the trial courts and is highly contingent on the success of Online Dispute Resolution (ODR). This technology was introduced in West Valley City as a pilot in September 2018; Orem City and Carbon County were added in 2019. In June 2020, the Judicial Council approved the expansion of ODR for small claims cases to all justice courts. Given the vast reduction in workload that the pilot sites have experienced and the plan to make this technology available statewide, some consideration should be given to whether small claims are best adjudicated at the municipal level, the county level, or the district level, and the future role, if any, of judges pro tem in justice courts.