

REPORT TO THE
UTAH LEGISLATURE

Number 2004-05

A Performance Audit
of the
Administrative Office of the Courts

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Audit Performed by:

Audit Manager	Rick Coleman
Auditor Supervisor	Leslie Marks
Audit Staff	Susan Verhoef
	Aaron Eliason

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Digest of A Performance Audit of the Administrative Office of the Courts

The Judiciary Interim Committee of the Legislature requested an audit of the Administrative Office of the Courts (AOC) in April 2002 after conducting a Sunset (re-authorization) review of the agency. The request included AOC growth and judicial budget prioritization issues as well as issues of education costs, law clerk availability, and task force spending. We believe the Judicial Council can improve the effectiveness of the AOC; improving the information used in the Judicial Council's budgeting and prioritization decisions and addressing communication issues should improve the relationship between the AOC and the judges it supports.

The Judiciary, as one of the three branches of Utah government, is overseen by the constitutionally created Judicial Council, a policy body comprised of judges from each of the state court levels plus representatives of the locally funded Justice Courts and a representative from the Utah Bar Association. The Administrative Office of the Courts, as the staff support office, reports to the Judicial Council and is responsible for implementing the policy decisions made by the council. Although we were asked to review the AOC, the audit request included issues that fell into policy and governance areas, which are the purview of the Judicial Council; thus, some of the discussion in this report extends to the Judicial Council as well.

Summary information about each chapter's findings is provided below.

**Chapter II
recommendations
deal with improving
the AOC's budget
structure.**

AOC's Growth Comparable to Rest of Judicial Branch: Based on how we defined the AOC and the historical data we were able to obtain, we estimate that from 1992 to 2002, expenditures increased 29 percent while staff increased by 53 percent. Some judges perceive that the AOC's growth has been excessive; although AOC growth was substantial during the 10 years, the office grew less than the Judiciary as a whole. Our assessment was complicated by the fact that the AOC is not a defined program budgeting and accounting unit, but it includes staff and activities funded through other Judiciary programs. The main differences between our data and those of the AOC can be explained by timing differences in

Chapter III
recommendations
deal with
communication
issues and
improving weighted
caseload studies.

Chapter IV provides
information only,
and so has no
recommendations.

Chapter V
recommendations
seek clearer
budgeting,
assessing whether
costs can be
reduced, and
tracking fulfillment
of requirements.

the data used and some definitional differences in positions counted.

Prioritization Process Is Reasonable, But Better Information Is Needed: Some judges are concerned about the fairness of the Judicial Council’s budget prioritization process. We found that the process used to prioritize the Judiciary’s budget appears to be reasonable, but better information is needed for the process to function optimally. The Judiciary Interim Committee asked us to review how the Judiciary establishes funding priorities. Our concerns are not so much with the process itself as with the budget and expenditure information feeding into the process. This information includes the financial data discussed in Chapter II as well as the results of weighted caseload studies used when determining staffing needs. We believe that improvements can be made in budgeting and expenditure information, including the data that results from the weighted caseload studies, to aid the Judicial Council’s budgeting and resource allocation decisions.

Law Clerks Ranked Lower Than Other Judiciary Needs: Although increasing the number of law clerks has been one of the top priorities of the Board of District Court judges in recent years, the Judicial Council has given other needs higher priority in its budget prioritization process. District Court judges overwhelmingly stated that additional law clerks would improve the quality and timeliness of court decisions. While we do not question the value of law clerks, the current law clerk-to-judge ratio shows that Utah is in relatively good shape when compared to nearby states.

Judicial Education Is Valuable But Costly: The Judiciary Interim Committee asked us to determine how much is spent on the education of judges and staff, in part because of concerns that non-essential classes were being provided while clerk jobs were being cut. As discussed in Chapter II, the Judiciary’s budget is sometimes confusing. For example, in the education area we found that some costs to educate Appellate and District Court judges are paid through the Juvenile Court budget. Thus, the Judicial Education Program budget includes part but by no means all of the expense incurred to educate judges and staff. Including amounts from other program budgets, the AOC’s Education Department spent about \$562,570 in fiscal year 2002. Added to the funds managed by the Education Department are expenses at the program and district level and the cost of time not devoted to primary duties while in education activities.



**Chapter VI
recommendations
deal with improving
cost accounting and
collection processes
for receivables.**

Task Force Used Judiciary Resources: The AOC provided over \$72,000 in funds to the Racial and Ethnic Fairness Task Force and Commission through fiscal year 2003. From fiscal years 1997 through 2003, the task force and commission spent approximately \$546,800, while revenue totaled \$556,600 (including AOC contributions), for a balance of almost \$10,000. AOC staff indicate they did not spend all of the fiscal year 2002 state appropriation of \$60,000, which would account for much of the balance. Beyond cash resources, we were unable to identify the cost of employee involvement because task-specific timekeeping is not required at the AOC. We did find that studying racial and ethnic fairness issues is a relatively common activity among judiciaries nationally; studying bias issues seems to be a reasonable activity for Utah's Judiciary to pursue.

**Chapter VII
recommendations
deal with the
communication of
policy requirements
regarding possible
conflict of interest.**

Allegations Were Reviewed But Not Substantiated: We reviewed a number of allegations that were brought to our attention by employees or former employees of the AOC. Our review failed to substantiate allegations of mismanagement or improper use of public funds.

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Chapter I

Introduction

Improvements are possible in the communication and overall relationship between judges and the AOC.

The Judicial Council can improve the effectiveness of the Administrative Office of the Courts (AOC). Our review as well as input from District and Juvenile Court judges indicates that improving the information used in budgeting and prioritization decisions and addressing communication issues should improve the relationship between the AOC and the judges it supports. For example, many judges perceive that the AOC's growth has been excessive; we found that its 1992-2002 staff growth of 53 percent, while substantial, has been less than that of the Judiciary as a whole. In another area, some judges are concerned about the fairness of the Judicial Council's budget prioritization process. We found that the process is reasonable; however, the information feeding into the process can be improved by making the budget structure more logical and by addressing problems in the weighted caseload studies.

Judiciary Interim Committee concerns led to the audit being done. Concerns were also raised by some AOC employees.

The Judiciary Interim Committee of the Legislature requested an audit of the AOC in April 2002 after conducting a Sunset (re-authorization) review of the agency. Committee members indicated that, while clearly the AOC should be re-authorized because it performs a needed service to the Judiciary, there were a number of areas about which they wanted more information. In addition to the AOC growth and judicial budget prioritization issues listed above were issues of education costs, law clerk availability, and task force spending.

Separately, concerns raised by several AOC employees (who registered with the State Auditor's Office as whistle-blowers) were brought to our attention. The concerns included allegations of mismanagement, violation of policy and procedure, and misuse of public funds. We found no evidence of mismanagement or misuse of funds.

Courts Have Become More Centralized Over Time

Utah's current Judiciary looks very different from the Judiciary that existed in the early 1970's. Consolidation of several independent components into a state-funded Judiciary under the policy direction of the

The Judicial Council is the policy body that oversees the Utah Judiciary; the AOC provides administrative support to the courts.

Judicial Council and an increase in the support functions performed by the AOC have affected the size of the Judicial branch and the AOC within it. The background that follows provides some perspective against which to view the discussions of the AOC's growth, the Judiciary's prioritization process, and other audit issues.

The Judiciary, as one of the three branches of Utah government, is overseen by the constitutionally created Judicial Council, a policy body comprised of judges from each of the state court levels plus representatives of the locally funded Justice Courts and a representative from the Utah Bar Association. The Administrative Office of the Courts, as the staff support office, reports to the Judicial Council and is responsible for implementing the policy decisions made by the council.

Prior to 1973, most courts in Utah were courts of local jurisdiction. There were District Courts maintained by the 29 counties, City Courts in some municipalities, Justice Courts in some municipal or county governments, and the state Supreme Court, the court of last resort. A Juvenile Court existed as a quasi-judicial agency under the Department of Welfare in the executive branch. Each court had its own rules, forms, and procedures.

State Court Administrator's Job Created in 1973

Passage of the 1973 Court Administrator Act called for "...an administrative system for district, city and justice courts to provide uniformity and coordination in the administration of justice." The law set up a Judicial Council as a policy-making body and created an Administrative Office of the Court to provide administrative support to the courts.

The first state court administrator, selected by the Supreme Court, was charged with supervising and directing the work of all non-judicial employees of the courts; duties included personnel administration, in-service training, budget preparation, planning, and research. Initially there were three staff. Early activities included an annual judicial conference, the first of which was held in the fall of 1973; establishment of consistent record-keeping and uniform forms and procedures; monthly information reporting to the AOC; and designation of both an assistant court administrator and district level administrators in each district.

The state took over the funding of the city courts, which became Circuit Courts, in 1978.

Revision of the state constitution's Judicial Article made several changes to the Judiciary.

Boards of judges advise and report to the Judicial Council and serve as liaisons between their courts and the council.

Judiciary Soon Began to Consolidate

In 1978, the state Judiciary assumed funding responsibility for the previously existing city courts, renamed to Circuit Courts. This move added 33 judges plus their staff to the number being served by the AOC. In 1984, legislation passed which would revise the state constitution's Judicial Article (subject to approval by voters) to provide for an intermediate appellate court, revise the method of selecting and retaining judges, bring the Judicial Council under the leadership of the Supreme Court Chief Justice, and bring all courts under the umbrella of the council. The constitutional amendment was passed by the state's citizens on the November 1984 general ballot.

The Current Governance Structure Came into Being When the Judicial Article Was Revised. A Governor's task force made recommendations for implementing the revised Judicial Article; these recommendations were passed as enabling legislation in the 1986 Legislative Session. The structure of the appellate court and representation on the Judicial Council (two representatives from the Supreme Court and one from the Court of Appeals, three District Court, two Juvenile Court, two Circuit Court judges, and two Justices of the Peace, one representative of the Bar Association) were set as well as the designation of the Chief Justice as the Council's presiding officer.

Additionally, peer-elected boards of judges were created with a court administrator for each court level, and a judge certification process was developed. The membership of the Judicial Council has since been amended to include five District Court (Circuit Court became part of District Court) and three Justice Court judges.

The Judicial Council is advised by a board of judges for each court: Appellate, District, Juvenile, and Justice. The boards' members are elected by the full bench at the annual conference for each court and represent each court. Boards meet monthly. The boards have authority to adopt rules for their courts consistent with the rules, standards, and goals of the Judicial Council, subject to ratification by the council. The boards also propose rules of procedure and evidence, coordinate the adoption of local supplemental rules, advise the council, supervise implementation of council policies, serve as liaisons between their courts and judges and the council, and make recommendations to the council on

The Judicial Council is the sole authority for establishing the official position of the Judiciary on matters within its jurisdiction.

Court consolidation brought the Circuit Courts into the District Courts in the early 1990's.

legislation and budgets. The boards report to the council which holds the authority to ratify board rules.

The Judicial Council, as the principal authority for the administration of the Judiciary, develops uniform policies, and is the sole authority for establishing the official position of the Judiciary on matters within its jurisdiction. Representatives to the Judicial Council are elected by the full bench of each court at the annual conference for that court. The Bar Association representative is selected by the Board of Commissioners of the Utah State Bar. Council members cannot serve as voting members of the boards or as members of Judicial Council standing committees. The Judicial Council meets according to a schedule set by its Management Committee.

Consolidation Continued with Circuit Courts Joining District Courts

The 1988 Legislature passed a bill to provide state funding for the previously locally-funded District Courts. District and Circuit Court consolidation legislation passed the 1991 Legislative session with provision for the circuit courts to be brought into the statewide system over a five-year period, further expanding the size and funding needs of the Judiciary.

Other events that affected the size of the Judiciary and/or the funding needs include passage of an Alternative Dispute Resolution (ADR) bill in 1994 that created an ADR office under the administration of the AOC. The number of the Juvenile Court's probation officers was expanded in the mid-1990's, and the intensive State Supervision program came into being with passage of legislation in 1997 that provided \$5 million for this program, \$3.3 million of which went to the Courts. Generally, Juvenile Court funding increases occurred as the system responded to an increasing emphasis on child welfare; the Guardian ad Litem program also expanded significantly.

Input from Judges Was Sought On All Audit Areas

Early in the audit, we determined that it would be helpful to obtain feedback from judges on the major issues being reviewed. A former

We sent judges a survey on the major audit areas; very high response rates reflect their interest in the issues.

employee of the AOC had stated that judges voiced numerous complaints about the office. In order to gather independently the views of judges, we interviewed several in person, then decided to contact all District and Juvenile Court judges in the state.

We designed a survey to ask for information on each of the major issues listed as objectives for the audit. Both District and Juvenile Court judges were asked the same questions with the exception that the section on law clerks was excluded from the survey of Juvenile Court judges because Juvenile Court has no law clerks. Both close-ended and open-ended questions were included. Our response rates were quite high: 52 of 68 District Court judges responded for a response rate of 76.5 percent; 21 of 24 Juvenile Court judges responded for a response rate of 87.5 percent. The surveys with responses can be found in Appendices A and B of this report.

Survey Responses Addressed Each Assigned Audit Area

Areas of the survey relevant to an issue are discussed in each chapter of this report. Below we have summarized major themes that emerged as responses were tabulated.

- Judges believe the AOC provides needed services, but about a quarter of the respondents feel they cannot get the information they want about the AOC's budget and/or staff
- Most judges agreed that the Judicial Council's prioritization process is fair and effective, but some have concerns about budget priorities and the weighted caseload studies
- The AOC's Education program was both praised and criticized; some said cut, but more said increase its budget
- District Court judges stated emphatically that they need more law clerks and feel concern that their needs aren't being addressed
- Judges are divided on the need for and value of task forces

It's important to remember that our audit work was conducted during a time of serious budgetary stress. To a certain extent, the frustration

expressed by some judges may simply reflect the difficulty agencies throughout state government had implementing the required budget reductions in fiscal years 2002 and 2003.

Scope and Objectives

This audit was requested by the Judiciary Interim Committee at the time of Sunset Act re-authorization of the Administrative Office of the Courts. While the committee felt the AOC served a necessary purpose, some questions remained that were referred to our office for additional review. In addition, some issues were raised as the result of several employees registering as whistle blowers with the State Auditor's Office. When deemed appropriate, these issues have been included in the scope of this review. Although we were asked to review the AOC, the audit request included issues that fell into policy and governance areas, which are the purview of the Judicial Council; thus, some of the discussion in this report extends to the Judicial Council as well.

Audit work included interviews with AOC staff and a sample of judges and court staff in District and Juvenile Courts; review of reports, budget documents, and other documentation from the AOC; attendance at Board and Judicial Council meetings and review of meeting minutes; and review of reports and information from national judicial organizations. We talked with most of the members of the Judicial Council about our audit issues. In addition, we conducted a written survey of all District Court and Juvenile Court judges, asking for input on each of the main audit areas. We also conducted a telephone survey of a statewide sample of court clerks, primarily asking questions about the Education program.

Specifically, the objectives of this audit as listed in the audit request were to:

- Determine the extent of the budget growth and increase in staff of the AOC over the last ten years
- Determine how the AOC establishes funding priorities
- Determine how much money is spent on educational courses for all judges and staff

- Determine how many judges have law clerks to assist them with core judicial functions
- Determine the extent to which the AOC contributes resources to programs or task forces which are beyond the initial scope of the administration of the courts
- Determine the merit of allegations raised by employees of the AOC

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Chapter II

AOC's Growth Comparable to Rest of Judicial Branch

AOC expenditures grew 29% while staff grew 53% between 1992-2002. The AOC's growth was less than that of the Judiciary as a whole.

We reviewed the growth from 1992-2002 to compare with AOC data reported to the Legislature in 2002.

Analyzing AOC growth is difficult because staff and funding are dispersed into many programs' budgets.

The Judiciary Interim Committee asked us to determine the Administrative Office of the Court's (AOC) staff and budget growth. Our assessment was complicated by the fact that the AOC is not a defined program budgeting and accounting unit, but it includes staff and activities funded through other Judiciary programs; thus, deciding what to include in the AOC became the first step in assessing growth. Based on how we defined the AOC and the historical data we were able to obtain, we estimate that from 1992 to 2002, expenditures increased 29 percent while staff increased 53 percent. Although AOC growth was substantial during the 10 years, the office grew less than the Judiciary as a whole.

The AOC presented growth information to the Judiciary Interim Committee at the AOC's Sunset review in April 2002. Their data focused mainly on staff growth from 1992 to 2002 but included some expenditure data as well, and reflected the AOC's size in April, partway through staff reductions that took place in fiscal year 2002. Our analysis of staff growth for the ten-year period used data for the beginning of fiscal years 1992 and 2002. In 2002, starting at the beginning of the fiscal year allows us to show the AOC's size (and growth) before the cutbacks began, then show its decrease through fiscal years 2002 and 2003.

As a result of the timing difference and some definitional differences in the staff to include, our analysis found more staff growth than the AOC presented. The nature of the AOC's organizational structure and the need to access quite old information resulted in some difficult judgment calls on whether or not to count some staff. For example, because of sketchy historical data, some of the AOC's 1992 staffing information was adjusted based on the recollections of some senior staff whose tenure went back to that time.

As we discuss throughout this chapter, there is not a clear definition of which staff and expenditures should be attributed to the AOC. Instead, staff and costs from many programs must be accumulated to determine the size of the AOC. Our own analysis followed the functional breakdown used by the state court administrator fairly closely because we

believe it presents a reasonable picture of the AOC. Figure 1 below shows the growth information prepared and presented by the AOC.

Figure 1. The AOC Reported 1992 and 2002 Staff Levels and Expenses to the Judiciary Interim Committee to Show Growth. The AOC distinguished between administrative and direct service activities as shown below.

Figure 1 shows AOC growth information presented to the Judiciary Interim Committee by the AOC.

Later in the chapter, Figures 4 and 5 show AOC growth information as estimated by this audit.

AOC Functions	1992		2002	
	Staff	Growth	Staff	Growth
Internal Audit	3.0		4.0	+1.0
Legal	4.0		4.0	0
Human Resources	4.0		4.8	+0.8
Education	3.0		5.0	+2.0
Information Technology	26.0		27.0	+1.0
Information Services	7.0		8.0	+1.0
Finance, Facilities, Purchasing	14.0		15.0	+1.0
Admin. & Trial Court Support	21.0		21.0	0
Administrative Services	82.0		88.8	+6.8 8%
Alternative Dispute Resolution	0		7.4	+7.4
Guardian ad Litem Administration	0		2.0	+2.0
Capital Law Clerk	0		1.0	+1.0
Direct Services	0		10.4	+10.4 n/a
Total AOC Staff	82.0		99.2	+17.2 21%
Expenditure Growth				
	1992		2002	Growth
Admin. Services	\$4,820,400		\$7,533,300	\$2,712,900 56%
Direct Services	0		\$ 564,885	\$ 564,885 n/a
Total	\$4,820,400		\$8,098,185	\$3,277,785 68%

Note: Although the AOC identified three "direct services" above as services that directly support court activities (not administrative support), the GAL line is administrative staff.

As seen in the above figure, the AOC showed staff growth of just over 17 staff and budget growth of \$3.3 million for the ten-year period. The AOC reported growth of seven staff in its administrative service functions.

Some Judges Have Concerns About AOC Budget and Staff Levels

District and Juvenile Court judges value the services provided by the AOC, but some judges have concerns about the AOC’s size and growth. In their responses to our survey, some judges felt they did not have enough information about the AOC to comment on its growth while a number of judges believed the AOC has grown at the expense of the courts. Figure 2 below summarizes responses to survey questions about the AOC’s staff and budget.

Figure 2. Virtually All Judges Agree that the AOC Provides Valuable Services to the Judiciary. Judges also report they understand the AOC’s role and function, but some indicate they cannot get information they want about AOC staff and budget.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
I have a good understanding of the role and function of the AOC.	34%	49%	12%	4%	0%	0%
The AOC provides valuable services for the Judiciary.	47%	48%	3%	1%	0%	1%
I have confidence in the Judicial Council's oversight of the AOC's budget and staff.	33%	34%	15%	14%	3%	1%
I am able to get the information I want about the AOC's budget and staff.	23%	26%	22%	15%	8%	5%

Judges don't question the value of the AOC; some do have questions about its budget and staff.

While almost all judges agreed that the AOC provides valuable services for the Judiciary, a number of the written comments revealed a sense of discomfort and even frustration about the size and growth of the AOC. The expressed concerns are illustrated in the following comments:

- Information not forthcoming—size & detailed budget not disclosed. . . . No one knows the accurate number of employees at AOC. Estimates range from 95-103 persons.
- I do not believe the AOC’s budget has been clearly presented to the district court judges.
- It seems there are a lot of AOC folks who don’t do work we see directly, but I’ve never been told what those people do behind the scenes. So, it seems like there is too large a staff, but without more information, I’m reluctant to say for sure.

As we interviewed and then surveyed judges, it seemed that quite a few were concerned about the AOC’s accountability to the Judiciary as a whole. Some judges were so frustrated with their access to information that they distrusted and questioned the motives of the AOC. One judge we interviewed said the AOC needs to realize it’s supposed to serve the judges, not “run the Judiciary.” Given that the AOC is not a program unit, it’s not surprising that judges commented they don’t have good information about the size of the AOC’s staff and budget. On the other hand, as shown in Figure 2, the majority of judges have confidence in the Judicial Council’s oversight of the AOC.

Many Judicial Programs Contain AOC Staff and Budget

The AOC includes staff and associated funding from nearly every program in the Judiciary. The fact that the AOC is not a defined unit in the Judiciary’s program structure prevents a straightforward analysis of the AOC’s size and growth. Instead, AOC functions budgeted within many Judiciary programs need to be identified and added together to estimate an AOC budget.

Our AOC Definition Similar to State Court Administrator’s

Since the AOC is not a defined program unit, identifying its boundaries was subjective. In completing our work, we followed fairly closely the AOC definition used by the state court administrator as shown in Figure 1. For the most part, we feel the distinctions made by the state

The AOC is not a defined program unit, but rather, staff and funds are found in most Judiciary programs.

court administrator were reasonable. We differ somewhat on grant-funded employees. The state court administrator only included employees paid with state general funds and did not count grant-funded employees. In Figure 4, while we didn't count grant staff in the AOC staff total, we noted the number of AOC staff on grants for informational purposes.

Even after deciding which employees to count as part of the AOC, the distributed nature of AOC in many judicial program budgets still made identifying AOC expenditures difficult. Figure 3 lists the Judiciary's actual expenditures by program for fiscal year 2002 and shows the amounts from each program that were AOC expenditures.

Figure 3. Judiciary and AOC Expenditures for Fiscal Year 2002.
Portions of the AOC are located in most every Judiciary program.

Judicial Program	FY2002 Actual Expenditures	Expenditures by the AOC
Administrative Office	3,079,594	2,972,831*
Judicial Education	351,855	351,855
Data Processing	4,599,480	4,599,480
Supreme Court, Law Library, Court of Appeals	5,149,284	103,694
District Courts	33,403,521	1,149,119
Court Security-Bailiffs	2,268,779	
Juvenile Courts	26,004,940	503,679
Justice Courts	147,708	147,708
Guardian ad Litem	<u>3,587,560</u>	<u>261,506</u>
Subtotal	\$78,592,721	\$10,089,872
Grants Program**	1,719,563	1,119,326
Contracts/Leases	\$18,568,237	
Juror/Witness/Grand Jury	<u>1,687,946</u>	<u> </u>
Total	\$100,568,467	\$11,209,198

* Senior judges' expenditures were moved from the AOC to the District Courts (\$80,072) and the Juvenile Courts (\$26,691). Senior judges serve as temporary judges under specific circumstances.
**Grant Programs involve some AOC programs: Alternative Dispute Resolution, Juvenile Re-engineering Project, Racial & Ethnic Minority Over-representation.

Our evaluation showed that AOC expenditures were over \$10 million in fiscal year 2002.

The first three programs listed in Figure 3, Administrative Office, Judicial Education, and Data Processing, are administrative in nature. These programs cost \$8 million in fiscal year 2002. However, other administrative costs are found in other programs. Though the AOC data reported to the Judiciary Interim Committee was about \$8 million, our analysis as shown in Figure 3 indicates that when expenses from within other programs are added in, AOC expenses from General Fund dollars are over \$10 million.

To illustrate, the statewide administrators and relevant support staff for each court (Appellate, District, Juvenile, and Justice) are funded from each respective court's budget. However, these administrators are considered part of the AOC staff. In addition, the District Court budget funds the ADR program and the Capital Law Clerk while the Juvenile Court budget funds many education costs.

In a few cases, the budget organization doesn't seem to make sense. For example, even though the ADR program is budgeted through the District Courts and considered to be part of the AOC, much of the expenditures involve child welfare mediation for the Juvenile Court. On the other hand, the Juvenile Court's budget funds AOC Education Department activities not only for Juvenile Court judges but also for District Court and Appellate Court judges as well; this funding includes expenditures for the statewide judicial conference, new judges' orientation, and all out-of-state education travel for all judges.

Program-based Budgeting Initiative Is Underway. During our audit, the Judiciary initiated a program-based budget review. This process provides a good opportunity to address an issue raised repeatedly in this report: the accessibility of staff and expenditure information. In a number of instances, it was difficult to get the data we needed to address the audit issues.

We believe that the current budget structure has the effect of making it difficult to determine the full costs of some programs. Based on our experience, we came to understand why some judges have been frustrated with their inability to get information about the AOC. At the same time, we found the AOC sincere in their efforts to provide good information and willing to consider ways to improve the quality and accessibility of its information.

The program-based budgeting initiative is a good example of how the Judicial Council and the AOC are trying to improve the quality of information. Although our focus was just on the AOC, we encountered a number of areas that merit review. As noted above, we don't think some education and mediation expenditures are logically placed. Although we didn't review them as closely, other organizational units raised questions. For example, there is a separate State Supervision Program, but both its probation officers and those assigned to districts carry similar mixed

The program-based budgeting initiative provides an opportunity to address concerns about the accessibility of current program expenditure information.

caseloads. Also, funding and staff for Drug Courts are budgeted in the Juvenile Court budget but they also serve District Courts.

We commend the Judicial Council on the program-based budgeting initiative that is underway; as part of this assessment, the structure and alignment of budgets should be reviewed. Given the importance of accurate reporting in making good policy decisions, we believe the budget structure of the AOC needs to be reviewed with the goal of logically placing program expenses in the appropriate budget to increase financial accountability to the Judicial Council, the Judiciary in general, the Legislature, and the public.

AOC Growth Was Significant But Less Than Judiciary as a Whole

Based on how we defined the AOC and the historical data we were able to obtain, we estimate that from the beginning of fiscal year 1992 to the beginning of fiscal year 2002, AOC staff increased by 37 full-time equivalent employees (53 percent). Expenditure data reflects year-end actual expenditures; we found that expenditures increased by \$2.3 million (29 percent) in the ten years from fiscal year 1992 to 2002. For staff growth, we used the beginning of the fiscal year 2002 in order to show the AOC staff count before budget cuts began partway through the year. Largely because we used the beginning of the fiscal year data for both years, our calculation of staff growth is greater than the AOC's, which presented information in April 2002 after some budget cuts had been implemented. The growth resulted at least in part from new legislative directives. Our data also shows that the AOC's staff and expenditure growth rates over the ten years were both less than that of the Judiciary as a whole.

Evaluating the AOC's growth presented a number of challenges. The prior section described how the courts' budgeting structure distributes AOC activities among other programs' budgets so that identifying the current AOC size is difficult. Not surprisingly, it's even harder to determine the 1992 size of the AOC. Historical data are more difficult to obtain, and organizational changes made under three state court administrators since 1992 affect the data's comparability. For example, the AOC's financial system reported 1992 data in a somewhat different format from 2002 data.

Over a ten-year period, we estimate that AOC staff grew 53% while expenses grew 29%; the Judiciary grew at a higher rate.

As mentioned earlier, the AOC told us they had tried to reflect changes that had occurred in staffing during the 1992 year, adjusting the figures based partly on staff memory. Thus, we referred to many sources in developing our estimates. These sources included historical financial reports, budgets, organization charts, personnel records, and telephone directories. We recognize the difficulty in providing us with accurate and complete data from as far back as 1992. In the end, we relied more on the AOC work plan and the staffing information from the beginning of both fiscal years, and corroborated it with historical personnel data. Thus, the staff growth analysis in Figure 4 below is the result of our best estimate based on the information that was available.

Figure 1 on page 10 shows the growth information put together by the AOC.

A major reason for differences in growth between the AOC and our data is the use of different points in time.

Figure 4. Our Calculation of AOC Staff Growth from Fiscal Years 1992 to 2002 Includes AOC Activities Budgeted Elsewhere. These data present our estimate of AOC staff growth for the ten-year period from the beginning of fiscal year 1992 to the beginning of fiscal year 2002.

AOC Functions	Staff		Growth	
	FY92 Start	FY02 Start		
Internal Audit	3.0	4.0	+1.0	
Legal	3.0	4.0	+1.0	
Human Resources	4.0	4.8	+0.8	
Education	3.0	5.0	+2.0	
Information Technology and Information Services	28.5	36.0	+7.5	
Finance, Facilities, Purchasing Admin. & Trial Court Support	<u>28.6</u>	<u>41.2</u>	<u>+12.6</u>	
Administrative Services	70.1	95.0	+24.9	36%
Alternative Dispute Resolution**	0	7.9	+7.9	
Guardian ad Litem Administration	0	3.5	+3.5	
Capital Law Clerk	<u>0</u>	<u>1.0</u>	<u>+1.0</u>	
Direct Services*	0	12.4	+12.4	n/a
Total AOC Staff	70.1	107.4	37.3	53%
Grants Programs**	--	4.0	--	--

* We use the term "Direct Services" to be consistent with the AOC presentation in Figure 1, but note that administrative costs are included in the Direct Service amounts.

** Grants include Alternative Dispute Resolution and Racial and Ethnic Fairness Task Force staff.

As previously noted, our analysis used the staff count from the AOC's work program which reflects staffing at the start of a fiscal year. Using this starting point shows the size of the AOC before the 2002 budget and staff cutbacks began. Much of the difference between our ten-year growth of 37.3 staff and the AOC's staff growth of figure of 17.2 can be attributed to differences in the points in time used. Among the definitional differences we've referred to were some contract workers that

the AOC counted in 1992 who were not state employees; we did not count these staff. We also judged some staff should be included that the AOC excluded, such as a couple Guardian ad Litem staff. Figure 5 below shows the expenditure analysis.

The AOC reported expenditure growth of 68%, but we calculated 29%.

Figure 5. The Year-end Expenditure Data for Fiscal Years 1992 and 2002 Includes AOC Activities Budgeted Elsewhere. These data present our estimate of AOC expenditure growth for the ten-year period from fiscal year 1992 to 2002.

FY92-FY02 Year-End Expenditure Growth				
	1992	2002	Growth	
Admin Services	\$7,797,389	\$9,352,968	\$1,555,579	20%
Direct Services*	0	736,904	736,904	n/a
Total	\$7,797,389	\$10,089,872	\$2,292,483	29%
Grant Programs**	--	\$1,119,326	--	--

* We use the term "Direct Services" to be consistent with the AOC presentation shown in Figure 1, but note that some administrative costs are included in the Direct Service amounts.

** Grant program expenditures are for Alternative Dispute Resolution, Information Technology, and Racial and Ethnic Fairness Task Force.

Added responsibilities have contributed to the AOC's growth.

Legislative Directives Resulted in Some AOC Growth. Since 1992, the AOC has assumed responsibilities that increased staff and expenditures; AOC administrators indicated that some of this growth occurred in response to legislative directives. For example, the Data Processing Department implemented a court assistance program and developed databases to be accessible to the entire judicial system. Information Technology and Information Services staff increased by 7.5 FTEs between 1992 and 2002. Additional services to the Judiciary added since 1992 include the Alternative Dispute Resolution (ADR) program (7.9 staff), a Capital Law Clerk (1 staff), and administrative services for the Guardian ad Litem program (3.5 staff).

The AOC's expenditure growth can be explained in part by the funding increases needed for the just listed activities. For example, the additions of the ADR program, a Capital Law Clerk, and GAL administrative staff added \$737,000 to the AOC's expenditures in this time frame.

Our Growth Estimates Differ from Those AOC Presented to Legislature

We started our calculations prior to the staff cuts taken at the AOC, thus showing more AOC staff growth than the AOC reported to the Judiciary Interim Committee.

Timing differences were the biggest factor in different growth estimates.

Definitional differences also contributed to different growth estimates.

Comparing Figures 1 and 4, there are several differences between the information presented to the Judiciary Interim Committee by the AOC and our estimates. Overall, the AOC reported a staff increase of 17.2 while we calculated 37.3. In the Administrative Services subtotal, the AOC reported an increase of 6.8 staff compared to our estimate of 24.9. Looking at the expenditure information, the AOC reported a much higher percentage growth than we calculated, but we found the AOC cost data was understated in both years. We identified reasons for some of the discrepancies between their information and ours, but we could not fully reconcile the differences.

The primary difference between our data and the AOC's is that our analysis used numbers from a different point in time. As previously noted, we felt it was important to show the growth in the AOC prior to the start of the budget cuts that occurred in fiscal year 2002 and 2003. However, the AOC reported to the Judiciary Interim Committee in April 2002, partway through staff reductions and budget cutbacks. Thus, our staff count for fiscal year 2002 reflects the approved budget work plan at the beginning of the fiscal year, eight months prior to the AOC being asked to compile information to the committee. Similarly, our 1992 data was from the beginning of the fiscal year while the AOC's was from a later point in time.

There are some other discrepancies between our analysis and the AOC's data, such as in the Information Technology area. In 1992 the AOC counted as staff several contract workers we didn't count because they were not state employees. When AOC administrators first provided staff lists to us, they explained that the contract workers had been counted because the positions were funded by General Funds and became permanent positions a couple years later. Counting these staff contributed to the difference between the AOC's starting staff count in 1992 and our count.

The AOC indicated they did not count grant-funded staff because the employees were not permanently funded. Although we found that the AOC has some grant-funded employees every year, the 1992 data was too limited to enable us to attribute the appropriate number of staff or level of expense to the AOC. Thus, we did not include grant staff or funds in our

We think we know why some of the AOC's expenditure data differ from ours, but the AOC could not explain all the differences.

Both the AOC and Judiciary grew significantly but the AOC's growth was less than the Judiciary's.

totals but show the staff and funding for the start of fiscal year 2002 for informational purposes in Figures 4 and 5.

Turning to the expenditure data, we found significant differences between our data and the AOC's. According to a report provided by the AOC's Finance Director, the expenditure data reported in April 2002 was low for a couple reasons. First, the data included personnel costs but no associated current expense for the data processing department in both years. Second, the data included personnel expenditures for the staff termed "direct services" but not any current expense associated with them. For these and possibly other reasons, we believe the total spent for all AOC activities was significantly greater than the amounts they reported in both 1992 and 2002.

AOC Grew Less Than Judiciary as a Whole

While the AOC has grown significantly over the last ten years, it has grown less than the Judiciary as a whole. According to our estimates, the AOC's staff grew by 53 percent while the Judiciary's increased by 58 percent for the period of fiscal year 1992 to 2002. Excluding contracts and leases and grants, AOC expenditures increased by more than 29 percent while Judiciary expenditures increased 85 percent overall. All areas of the Judiciary then sustained budget reductions starting in fiscal year 2002 and continuing in fiscal year 2003. Figure 6 shows the major Judiciary programs' staff growth compared to AOC staff growth for the period of fiscal year 1992 to 2002 plus reductions to the beginning of fiscal year 2004.

Figure 6. AOC Staff Growth Over Ten Years Was Less Than The Judiciary's. Also, AOC staff decreases to the start of fiscal year 2004 were greater than the Judiciary as a whole.

Program*	FY92 Beginning	FY02 Beginning	Percent Change '92-'02	FY04 Beginning	Percent Change '02-'04
Staffing Levels (FTEs)					
Appellate Courts	58	67	14%	66	-1.5%
District Courts	477	581	22	512	-12.0
Juvenile Courts	214	485	127	464	-4.2
Guardian Ad Litem	0	55	–	51	-6.5
AOC	<u>70</u>	<u>107</u>	<u>53</u>	<u>94</u>	<u>-12.0</u>
Total	819	1,295	58%	1,187	-8.3%

* Numbers shown for each program are net of adjustments we made for the AOC staff who are budgeted in other programs.

From fiscal year 2002 to the start of fiscal year 2004, the AOC reduced staff by 12%.

As previously noted, our analysis used staff data for the beginning of fiscal year 2002 in order to show the size of the AOC prior to the start of the budget cuts. We then looked at reductions that occurred during fiscal years 2002 and 2003 in both the AOC and the Judiciary as a whole. Questions had been raised about whether AOC reductions were as great as those taken by the courts. We found that the AOC staff reductions taken during fiscal year 2002 through the start of fiscal year 2004 were greater than those of the courts as a whole (12 percent at the AOC versus 8.3 percent across the Judiciary).

The District Court's staff reduction of 12 percent includes 47 court clerk positions that were not eliminated because of budget cuts but because of a shift in caseload to two new Justice Courts in the Third District. Although the Judicial Council initially intended to reallocate the freed-up resources to other needs, the funds were used instead to mitigate the effects of budget cuts on the Judiciary.

Figure 7 below shows the ten-year growth in expenditures and then the fiscal years 2002 and 2003 reductions in expenditures for the AOC and the Judiciary as a whole.

Figure 7. AOC Expenditure Growth Over Ten Years Was Less Than The Judiciary's. Decreases at the AOC from fiscal year 2002 year-end through 2003 were greater than decreases throughout the Judiciary.

Program*	Fiscal Year 1992	Fiscal Year 2002	Percent Change '92-'02	Fiscal Year 2003	Percent Change '02-'03
Expenditures (millions)					
Appellate Court	\$3.36	\$5.05	50%	\$4.96	-1.8%
District Court	22.20	34.62	56	33.43	-3.4
Juvenile Court	9.09	25.51	181	24.85	-2.6
Guardian Ad Litem	0	3.33	–	3.17	-4.7
AOC	<u>7.80</u>	<u>10.09</u>	<u>29.4</u>	<u>9.39</u>	<u>-7.0</u>
Total	\$42.46	\$78.60	85.1%	\$75.79	-3.6%

* Amounts shown for each program are net of adjustments we made for the AOC staff and expenditures they included.

Overall, the Judiciary reduced expenditures by 3.6% while the AOC reduced its expenditures by 7%.

As the figure shows, expenditures across the Judiciary decreased by 3.6 percent; the AOC's expenditures decreased by 7.0 percent. Much of the Judiciary's ten-year expenditure growth occurred in the Juvenile Court. For example, in 1998 the Juvenile Court appropriation was increased 42 percent to implement new juvenile sentencing guidelines. This increase included a new state supervision program which required 60 additional probation officers. Overall, the Judiciary increased by over 85 percent, then decreased by 3.6 percent through fiscal year 2003.

In summary, the AOC's growth from 1992 to 2002 has been lower than that of the Judiciary as a whole. AOC budget reductions in fiscal year 2003 were greater with the Judiciary as a whole. We encountered difficulty in conducting our growth analysis, much of which was caused by the difficulties involved in defining who to conclude as AOC staff and by a complicated budget structure. The structure can be improved to increase accountability and allow for more informed budget and resource allocation decisions.

Recommendations

1. We recommend that the AOC consult with the Judiciary Interim Committee and the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee to determine whether it should revise its designation of organizational units to clearly segregate those that constitute the AOC and report staff and expenditures accordingly as part of the Administrative Office Program.
2. We recommend that organizational sub-units of the AOC continue to identify staff and expenditures that specifically support different courts.
3. We recommend that the Judicial Council use the ongoing program-based budgeting process to comprehensively review the Judiciary's financial organization structure to relocate budget/expense accounts to the program budgets responsible for those activities.

Chapter III

Prioritization Process Is Reasonable, But Better Information Is Needed

While the budget process itself seems reasonable, information used in prioritization and resource allocation decisions should be improved.

The process used to prioritize the Judiciary’s budget appears to be reasonable, but we found that better information is needed for the process to function optimally. The Judiciary Interim Committee asked us to review how the Judiciary establishes funding priorities. Our concerns are not so much with the process itself as with the budget and expenditure information feeding into the process. This information includes the financial data discussed in the previous chapter as well as the results of weighted caseload studies used in determining staff needs. We believe that improvements can be made in budgeting and expenditure information, including the data that results from the weighted caseload studies, used in the Judicial Council’s budgeting and resource allocation decisions.

The Judicial Council currently has an added incentive to ensure that financial data used in budgeting and resource allocation decisions are the best possible: the Judiciary has embarked on a system-wide program-based budgeting project. In order to review all the Judiciary’s various programs to assess whether its resources are aligned properly with established priorities, good data are needed. As seen in the previous chapter, the budget structure of the AOC in particular does not always logically align a program’s expenses within its own budget area to provide good data on that program.

Audit Concerns Were Echoed in Judges’ Survey Responses

Judges’ survey responses show some judges are concerned about the composition of the Judicial Council and some have little confidence in the weighted caseload studies used in resource allocation.

Responses to the survey of District and Juvenile court judges indicate that a number of judges have concerns with certain aspects of the budget prioritization process, including the composition of the Judicial Council itself. We also found in some initial discussions with judges that they had concerns with the weighted caseload studies; as a result, we included questions in the survey to assess the depth of those concerns.

The figure below shows the responses to the questions relating to the establishment of budgeting and legislative priorities.

Figure 8. Feedback on the Judiciary’s Budget Prioritization Shows Some Concerns. Although the majority of judges agree that the prioritization process is fair, there are concerns about the composition of the Judicial Council and the weighted caseload studies.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don’t Know
The Judicial Council’s budget prioritization process is a fair and effective way to set the court system’s budget.	21%	41%	15%	10%	3%	11%
The Judicial Council has the information needed to effectively manage the Judiciary.	22%	51%	10%	3%	1%	14%
The composition of the Judicial Council is appropriate to make fair budget decisions.	22%	33%	12%	21%	8%	4%
I have access to and can get information on issues from the AOC’s legislative team.	44%	47%	7%	0%	1%	1%
I have confidence in the results of the clerical weighted caseload study.	5%	22%	19%	16%	25%	12%
I have confidence in the results of the judicial weighted caseload study.	5%	32%	16%	23%	16%	7%

Generally, judges think the budget prioritization process is fair, but some expressed concern about the council’s composition and the weighted caseload studies. Some concerns about prioritization may have arisen simply from inevitable disagreements over how judicial resources should be allocated; any prioritization process can result in frustration for those who disagree with the outcome. Recent budget cuts also seem to have heightened the concern felt by judges working with fewer resources.

The budget prioritization process will be discussed first, then some specific concerns with the Judiciary’s weighted caseload studies will be presented.

Process Itself Seems Reasonable

The Judiciary’s method of setting its budgeting priorities is reasonable and provides for input from all parts of the Judiciary.

The Judiciary establishes funding priorities through a well-developed, multi-layered process that starts with court staff input, includes judges’ input, and progresses through several stages, ending when the Judicial Council develops a final list of funding priorities to submit to the Legislature.

As noted, District and Juvenile Court judges generally agree that the process is fair and reasonable. Specifically, 62 percent of judges agreed or strongly agreed that the budget prioritization process is a fair and effective way to set the Judiciary’s budget. To illustrate the general perspective, one judge commented, “Compare the Judicial Council’s system of establishing budget and legislative priorities to any agency or division in the legislative or executive branches. I believe you will find no better.”

Input Is Given From All Parts Of Judiciary

Information on needs is collected from each court and sent to the boards for consideration.

The first stage of the judicial budgeting process involves gathering and reviewing information from the Judiciary’s various areas on their funding needs. Information on funding needs is prepared and funneled upward for consideration and prioritization by the boards of judges over each state-funded court (District, Juvenile, and Appellate). Requests are also developed by Judicial Council standing committees and sometimes by the Justice Court.

In the Spring of each year, the AOC requests that each court’s trial court executives (TCE) obtain input from judges and staff and then develop a list of needs for their own district. The AOC also provides information about the Governor’s budget guidelines for the year. The resulting lists are submitted to the boards of District, Juvenile, and Appellate court judges. From the requests of each district or area, these boards develop a statewide prioritized list of the needs they believe to be most important for their courts with explanations for each request. These meetings typically occur in June. Several standing committees of the Judicial Council (Education, Information Technology, Contracts and Leases) also develop requests to be submitted to the council.

The AOC compiles each court’s needs for the Judicial Council’s use in its budget prioritization meeting.

Each list is forwarded to the AOC, which then compiles the information for council members’ use during the prioritization meeting.

In addition to the requests representing the needs of each court, a staff budget committee develops a system-wide set of recommendations from a staff perspective. Committee members include the state court administrator, several AOC managers, and two TCEs from District or Juvenile courts. TCEs from various courts rotate onto the committee to give different districts' managers an opportunity to participate.

Judicial Council Determines Final System-wide Prioritization

The requests put together by the courts and standing committees are presented to the Judicial Council in August during its annual two-day budget planning meeting. As the policy-making body for the Judiciary, the council is responsible for developing the final list of Judiciary budget needs to be presented to the Legislature in the upcoming legislative session. This list includes the items the council determines are most critically in need of funding.

Each court and the standing committees present their list of funding requests to the Judicial Council.

The AOC compiles each list into an information packet provided to council members prior to the meeting, and representatives of each court's board and the standing committees also present their requests directly to the council at the meeting. The Judicial Council also receives data on case filing trends, types of cases being filed, and other information relevant to the budgeting discussion. Finally, the state court administrator gives staff recommendations for a system-wide prioritization of the various requests. Once all the information has been presented, the council begins its discussion to narrow the requests to the final list.

The Judicial Council sets the final order of priorities based on results of a secret ballot.

The Judicial Council's established process begins by categorizing each request into one of several groupings. The categories include items that are mandates or obligations, items to consider for possible fiscal note funding, those to be deferred, and items to be prioritized for new funding requests. At that point a ballot is prepared listing the items needing new funding; members individually prioritize these items. A tally of the votes decides the final prioritization. However, if the result of this vote caused concern for some reason, Judicial Council members with whom we spoke indicated that further discussion would resolve those issues.

Last year's ranking was cut short by a motion to prioritize four items and defer all others.

Some judges responding to the survey were critical of the departure from the usual process.

Cutting the accepted process short prevented some needs from being discussed and considered.

2003's Ranking of Priorities Differed From the Established Process

This past August, as the Judicial Council began to slot the requests into categories for consideration, deferral, and so on, one member suggested that the process could be shortened somewhat. The judge proceeded to make a motion to prioritize four items within a one percent growth range. The items included in the motion were the following:

1. A Juvenile Court commissioner for Second District
2. Partial restoration of juvenile intensive supervision funds
3. Restoration of the appellate mediation program
4. A Sanpete juvenile day reporting center

During discussion on the motion, the Chief Justice and AOC staff recommended that the Council should complete the established process. However, a vote on the motion under consideration was called for; the motion passed with two opposing votes.

As a result, a number of the requests from the courts were not discussed and a ballot was not used. For example, two high priority requests of the District Court board (court clerks and law clerks) were not considered by the Judicial Council. We observed this Judicial Council meeting and were surprised that the council's prioritization process was not followed. Some surveyed judges were critical of this abridgement of the process. One survey comment read: "This year the council did not follow its own rules in setting the budget. There was very little discussion or debate (almost none). Decisions were made at a break by a group that brokered a compromise."

We questioned several Judicial Council members about the departure from their established process. Most commented that since there was no money to work with this year, they felt the process could be shortened. One council member commented that, while needed, some items on the list had no chance of being funded; he felt that the juvenile programs had the best chance of getting funds. Finally, some commented that what happened this year was not an indication of dissatisfaction with the process itself.

Given the state's budget situation going into the 2004 Legislative Session, it's possible that few requests for new money would have received

funding. However, the Judicial Council has set its prioritization process in place for valid reasons. Completing the process as established gives consideration to all the needs that have been sent to the council; following the process enables judges to maintain their confidence in its fairness. One Judicial Council member commented that he had not supported the move to shorten their process. He felt that other items on the list were legitimate and needed; he would have liked them to be considered as well. He also stated, however, that he felt the outcome was defensible on its merits, and he wasn't upset by it.

Some District Court Judges Believe Budget Process Works Against Their Needs

In addition to a concern that the usual prioritization process had not been followed, some District Court judges expressed concerns that the composition of the Judicial Council prevents District Court needs from receiving due consideration. A third of District Court judges disagreed or strongly disagreed that the composition of the Judicial Council is appropriate to make fair budget decisions. Many also expressed the view that the Utah Bar Association and Justice Court representatives (whose funding is outside the appropriations process) should not vote on Judiciary funding issues. However, we spoke with Judicial Council members who emphasized the value of the current council membership and stated that the prioritization process should include the votes of all members.

Some District Court Judges Feel They Should Have More Seats on the Judicial Council. The judges stated that although they are the largest court, they have a minority of the total seats on the council, and they believe this composition prevents their needs from receiving adequate consideration. The council has 14 members: two from the Supreme and one from the Appellate courts, two from Juvenile Court, five from District Court, three from the Justice Court, and one representative of the Utah Bar Association. The District Court has 5 seats of the 14 (36 percent) on the Judicial Council; although this is a minority, no other court has more representatives. Additionally, the state court administrator pointed out that the Judicial Council is intended to be a "senatorial" not a representative body that provides proportional representation.

Minority representation may not be as significant for the hearing of one court's issues as some judges believe. The general philosophy of the

District Court judges often commented that the number of their court's representatives on the Judicial Council put District Court issues at a disadvantage.

Judicial Council prevents the championing of specific court issues by members. Judicial Council members indicate that they adopt a different perspective when they serve on the council. Rather than lobby for their own court, Judicial Council members “rise above their own court’s interests” and make decisions based on the overall good of the system. Council members stated that it’s important to have the “greater vision” with the good of the entire Judiciary in mind. Members may bring their own court level’s view or information forward, but when it comes to a decision, they represent the Judiciary as a whole.

Another concern is that some council members whose organizations are not funded with state funds vote on state budget issues.

Concern Exists over the Justice Court and Bar Association Representatives Voting on State Budget Issues. A number of District Court judges take issue with the three Justice Court and one Utah Bar Association representatives who are not state-funded voting on Judiciary funding issues. For example, one judge wrote, “Justice Court representation on the Judicial Council is inappropriate with respect to budget issues, since Justice Courts are funded by local governments.” Another judge wrote, “I see no basis for state bar representative to have a voting membership on the Judicial Council.” Prior to 1993, the Bar representative was a non-voting member.

However, Judicial Council members’ perspective supports the current process. Several members commented that these representatives bring an unbiased perspective because they don’t have a vested interest in the budget vote’s outcome. They also assist in promoting the broader perspective the council needs to take. One council member also pointed out that only about 30 to 40 percent of their decisions deal with the budget; the rest of the subjects brought before them are policy issues that affect the entire Judiciary, so Justice Court and Bar Association representatives should have a voice in these discussions.

Reconsidering Judicial Council composition would address expressed concerns.

Judicial Council Should Consider Reviewing its Membership. It is apparent from the surveys that some District Court judges are dissatisfied with what they perceive to be problematic Judicial Council composition. Given the expressed concerns, a revisiting of the council’s composition may be worthwhile. The last change to council composition occurred after the Circuit Courts consolidated with the District Courts; in 1996 the Circuit Court seats were converted to District Court seats. At the same time, an additional Justice Court member was added, increasing the council from 13 to 14 members.

One step to improve communication with judges is to post the minutes of the Judicial Council's budget meeting on the courts' web site.

Some judges also expressed concern that appellate courts were over-represented on the council. Including the chief justice, who only votes in case of a tie, there are three appellate court judges on the council. However, since there are an even number of members, there would not normally be a tie vote for the Chief Justice to break unless another member was absent or abstained.

Formally reconsidering the composition of the council may address the expressed concerns and provide an opportunity to assess whether any changes to the council should be considered. If changes appeared to be needed, the Judicial Council would then make appropriate recommendations to the Legislature. Even if the Judicial Council found that no changes in its existing membership and voting procedures were warranted, a formal review would provide the opportunity to articulate to the rest of the Judiciary the rationale for the status quo.

Communication Outreach Efforts Are Important

As discussed in this section, the budget prioritization process seems reasonable, yet a fair number of judges expressed some concerns about it. While the Judicial Council, under the direction of the Chief Justice, is the appropriate body to direct the AOC, other judges want better information about resource utilization and budget decisions. Certainly, it's important that the Judicial Council be accountable to the Judiciary as a whole by providing adequate information about its decision-making process and the decisions reached. One step the council should take is posting minutes of its annual budget meeting on its web site; currently regular meeting minutes are posted, but not budget meetings. Notwithstanding past efforts and recent improvements, adequate communication is an area that always needs ongoing attention.

Although some judges commented that communication problems in the Judiciary have existed in the past, it is apparent that some improvements have occurred recently. For example, a number of judges commented on the openness of the Chief Justice and complimented her communication style, while others commented on the positive response to the Chief Justice's trips to meet with judges in each judicial district. Further, judges told us that recently, more representatives on the Judicial Council have begun to attend meetings of the boards of judges to foster the flow of information between the council and judges.

The AOC has taken steps to improve communication with the rest of the Judiciary.

We have also noted steps taken by the AOC. During the budget cuts, the AOC sent out a number of memos to explain and update the courts on the steps being taken to meet the courts' share of the reductions. The AOC has issued memos on the results of the Judicial Council's annual budget meeting to communicate those budgeting decisions to all judicial employees. The AOC also has a publication "Navigating the Budget Process" that helps explain how budget decisions are made. In addition, the AOC's public information officer recently began issuing a newsletter about court news to all employees. These types of communication outreach efforts should be continued.

Turning from the budget prioritization process, the next section presents concerns we have about the information available to decision makers. Resource allocation decisions depend not just on the process, but on the quality of the information that feeds into the prioritization process. As discussed in Chapter II, we believe the AOC can provide better budget and expenditure information; at present, reports generated for use by management or the Judicial Council do not necessarily provide an accurate picture of actual program expenditures. The rest of this chapter discusses another very important type of data used to make budgeting decisions – weighted caseload information.

Weighted Caseload Information Should Be Improved

We have a number of concerns with the weighted caseload studies that provide information that the Judicial Council relies on to make resource allocation decisions. Because some case types entail much more work than others, many judicial systems, including Utah's, use weighted caseload studies to estimate workload. Utah has developed weighted caseload studies for both clerks and judges in District and Juvenile courts. Such studies are appropriate and useful tools to help make resource allocation decisions—if they are accurate.

There are two basic parts to a caseload study. One part is to estimate the amount of time needed to complete case work in each court location. This time is estimated by multiplying the number of cases filed with the weight of each case. A case weight is simply the amount of time needed to complete the work required by an average case in each type. The second part is to estimate how many hours per year judges and clerks have

Improvements are needed to the workload data used in court resource allocation decisions.

Allocation of judicial and clerk resources are based in large part on the results of weighted caseload studies.

available to work on cases. Then the number of full-time equivalent (FTE) judges and clerks needed in each court location is determined by dividing the total time needed to complete all the workload by the work time available in a year.

Caseload Studies Are Very Important. The Judicial Council relies heavily on weighted caseload information to make resource allocation decisions. For example, in 2001 the Judicial Council had to address the impact on state court resources caused by the establishment of Justice courts in West Valley City and Salt Lake City. Cases filed in the new Justice courts (funded by the cities) reduced the cases in the Third District Court (funded by the state). The Judicial Council formed a special ad hoc committee to identify the amount of and possible uses for resources freed up by the workload transfer. The resources available for redistribution—2 judges and 47 clerks—were determined simply by applying the weighted caseload formulas. In addition to this type of use, court personnel routinely use weighted caseload results to justify budget requests, distribute available resources, and estimate the fiscal impact of proposed legislation.

Utah's judicial weighted caseload studies were independently developed at different times by Juvenile and District Courts. According to the Chief Justice, the Juvenile Court developed its judicial weighted caseload study first; the clerical weighted caseload studies were developed around 1996. At about that time, the Judicial Council directed the development of the judicial weighted caseload study for District Court judges. The independent development of the studies by different work groups helps to explain some of the differences we found in the studies.

The remainder of this chapter discusses the following concerns with the weighted caseload information:

- Some judges lack confidence in studies
- Study methodology has limitations
- Urban/rural factors make results of the clerical weighted caseload study questionable
- Oversight of clerical study has been inadequate
- District and Juvenile Court judicial studies are not comparable

Some Judges Lack Confidence in Studies

We initially became concerned with the weighted caseload information because some judges and court staff told us they didn't feel the results were valid. Since weighted caseload studies are a major resource allocation tool, it's important that judicial branch personnel have confidence in them. Therefore, we included questions about both the clerical and judicial weighted caseloads in our survey of judges. As shown earlier in Figure 8, many judges lack confidence in the weighted caseload studies. We reviewed the studies to assess their validity, but the fact that so many judges lack confidence in this key workload measure is in itself a matter of concern.

Judges have had concerns about the caseload studies for some time.

Concern with the accuracy of the studies is longstanding. For example, the Board of District Court Judges formed a subcommittee in 2000 to review the District Court judicial weighted caseload study, and particularly the judge year. The subcommittee reported that "like many elements of the weighted caseload, the judge year was criticized for being based on unreliable data." After reviewing the judge year calculation, "the subcommittee was not persuaded that this methodology should be preserved." In addition, the subcommittee reported that it "shared the belief held by most judges that reliability of many case weights is suspect." The subcommittee suggested that the AOC adopt a plan for ongoing refinement of the weighted caseload tool. However, many District Court judges remain concerned that needed changes have not been made. As discussed later, the judge year calculation has not been changed.

Study Methodology Has Limitations

A major concern with workload estimates is that they rely so heavily on subjective estimates made by judges and clerks even when actual case data may be available. In the clerical weighted caseload study in particular, both case weights and the count of some case events may be based on staff judgment and may not be reliable.

Case Weights May Not Be Reliable. Utah has largely relied on the Delphi technique to determine case weights. The Delphi technique is a commonly used survey that asks a judge or clerk to estimate the time needed to process specific case types. According to the National Center for State Courts (NCSC), "This technique can result in inflated weights because of the all too human tendency to remember the unusually long or

complex cases and to neglect the larger volume of ordinary cases.” Furthermore, respondents know the purpose of the survey. Thus, there could be a tendency for people to inflate the time needed to complete their work to help justify staffing levels.

Not surprisingly, the Delphi technique yields time estimates that vary widely among respondents. For example, in the Juvenile Court judicial weighted caseload study, clerks in the Sixth District Juvenile Court estimated a misdemeanor case took a judge 30 minutes while clerks in the First District Juvenile Court gave a time estimate of 120 minutes, four times as long. Judges in the Fifth District Juvenile Court estimated a misdemeanor case took them 35 minutes while Eighth District Juvenile Court judges estimated the same type of case took 120 minutes. Although the extreme low and high estimates are discarded, the wide range of responses seen is another reason to be cautious about using survey results to make resource allocation decisions.

Counts of Case Events May Not Be Reliable. The AOC also uses the Delphi technique to estimate the number of case events in some instances. For example, in the District Court clerk study, some case types may be divided into different levels of complexity based on clerk estimates so that more time can be allowed for more complex cases. In the Juvenile Court clerk study, besides case complexity, a number of events, such as reviews, order-to-show-cause hearings, motions, and warrants, as well as the likelihood of using an interpreter or appointed counsel may be based on survey responses rather than actual case data. While we think clerk estimates provide a valuable source of information, this type of data should be used cautiously because of the reasons noted above; both selective memory and self-interest may affect the estimates.

AOC staff are trying to improve the accuracy of case type estimates by relying more on actual case data. For example, the District Court clerk caseload study has used survey responses rather than actual data to estimate the percentage of filings without legal counsel (called *pro se* filings). However, by reviewing data available in the court computer system, AOC staff were able to determine that the actual percentages of cases that are *pro se* are much different from the *pro se* estimates currently being used. We think staff need to continue their efforts to validate or improve on the subjective estimates by using case data whenever possible.

The widely varying time estimates from respondents show these data may not be reliable.

The caseload study formulas should use actual data whenever they are available.

Use of Urban/Rural Factors in District Court Clerk Study Is Questionable

Designations made years ago as an urban or rural location may no longer be valid but affect the present computation of staff needs.

Another major concern we have with the weighted caseload studies involves the use of urban or rural categories in the District Court clerk study. The clerk study applies different case weights to an office based on its designation as either urban or rural. The designation was made some years ago based on the number of filings; the urbanization of the area was apparently not a factor. Based on the number of filings, larger volume offices are designated urban and smaller offices are designated rural.

The District Court clerk study is unique because, based on the urban/rural designation, it allows some offices much more time than others to process cases. Unfortunately, we were unable to review the data used to determine the different urban and rural case weights because AOC staff had not retained the original surveys completed by clerks. Even assuming the different case weights are appropriate, the categorization of offices into rural or urban was made years ago and may no longer be valid. We found some relatively large offices classified as rural, which significantly affects the calculation of staff needed. Study conclusions would change dramatically if some of the larger rural offices were reclassified as urban.

The rural vs. urban factor lacks consistent application in the different studies.

Each Study Handles Urban/Rural Issue Differently. The District Court clerk study is unique in having very different case weights in some locations than in others. The other studies have a slight difference or no difference in case weights among offices or districts.

- **District Court Clerk Study:** Six offices are categorized as urban and twenty-two as rural. Three districts have at least one urban office. Rural offices are allowed about 60 percent more clerks than urban offices for the same cases.
- **Juvenile Court Clerk Study:** Five offices are categorized as urban and sixteen as rural. Three districts have at least one urban office. Urban offices are allowed about 5 percent more clerks than rural offices for the same cases.
- **District Court Judicial Study:** There are no distinctions by office, but the Third District is treated differently than the other seven. Other districts are allowed about 10 percent more judges than the Third District for the same cases.

Inconsistencies are found in the judicial weighted caseload studies' assigned case weights as well.

While the urban/rural factor can be helpful, its current use in the caseload studies is a concern and needs to be examined.

- **Juvenile Court Judicial Study:** There are no differences in case weights among locations.

In discussing the development of case weights with AOC staff, we learned that different philosophical approaches were used. For the two clerical weighted caseload studies, offices were first designated as urban or rural, and the case weights simply reflected times reported by clerks. In the District Court judicial weighted caseload study, the Third District has lower case weights than other districts even though the survey data from judges does not support them. The lower case weights were used because the NCSC had reported that other states had lower case weights in their most urban districts. In the Juvenile Court Judicial study, it's assumed that a case takes the same amount of judge time regardless of the location, so the same case weights are used.

Urban/Rural Designations Need Review. The designation of District Court offices as urban or rural for the clerical weighted caseload study was made some years ago based on the number of filings in each court. We agree that the size of a court may affect its efficiency, so some type of distinction is reasonable. What is not clear is where the line should be drawn between urban and rural courts and how great the efficiency difference is. Our concern is that some relatively large offices are classified as rural and that the 60 percent difference in case weight may be excessive in those offices.

Figure 9 below illustrates the dramatic difference in how many clerks are needed depending on how an office is designated. The figure includes the two smallest urban offices and the two largest rural offices in District Court. The Sandy office (urban) has a greater workload than the Layton office (rural), but the study allows Layton more staff. Similarly, the Orem location (urban) has more work than Farmington (rural), but it gets less staff. While smaller offices may be less efficient, we don't think it makes sense when the study shows that lower-workload offices actually need more staff than higher-workload offices.

Figure 9. District Court Clerical Caseload Formulas Allow Rural Offices 60 Percent More Staff than Urban Offices. The formulas may allow one office more staff than another even though it has less work.

District Court Office	Current Designation	FTEs Allowed if Urban	FTEs Allowed if Rural	Difference if Designation Changed
Sandy	Urban	18.7	32.3	12.6
Orem	Urban	12.4	19.3	6.9
Layton	Rural	13.3	21.2	- 7.9
Farmington	Rural	10.9	18.2	- 7.3

It's reasonable to expect greater efficiency in larger offices, but it's not clear where the line should be drawn. Certainly the Salt Lake office may be more efficient than very small offices, such as those in Duchesne, Beaver, and Nephi. However, we question whether larger offices like Layton and Farmington deserve the same efficiency adjustment that very small offices receive. Besides Layton and Farmington, three other offices designated as rural need more than 10 clerks according to the study. These are St. George (14.7 clerks needed), Logan (12.2) and American Fork (12.0). The AOC needs to review the designation of District Court offices as urban or rural as well as the difference in case weights used in the weighted caseload study.

Reclassifying Some Offices Would Change Allocations. The conclusions of the weighted caseload study change dramatically depending on whether offices are designated urban or rural. The results of the 2003 clerical weighted caseload study presented to the Judicial Council showed that the Second District had the greatest need for additional clerks. According to the study, 95.55 clerks were needed but only 81 were available, a shortage of 14.55 clerks.

As shown in Figure 9, reclassifying two Second District offices, Layton and Farmington, would greatly change the study results. Applying the urban weights to these two relatively large offices reduces their combined clerk needs by 15.2 FTEs. Rather than a shortage of 14.55 staff, the study would then indicate the Second District was slightly overstaffed.

In addition to the examples in the figure, other offices currently designated as rural should be reassessed.

Calling an office urban vs. rural has a significant effect on the results of the clerical weighted caseload studies (number of staff needed).

A final point about the designation of Layton as a rural court is that it may simply have been a mistake. According to minutes from a May 1999 meeting of a caseload study oversight committee, Layton was supposed to be included with the urban courts. We couldn't find documentation that its designation was changed to rural, but as discussed in the next section, decisions about the study have not been well documented.

Oversight of Clerical Study Has Been Inadequate

We found it difficult to get reliable information about the clerical caseload study because there were many misunderstandings and a lack of documentation about the study. The rationale and justification of important formula factors need to be clearly articulated. Also, as we reviewed the study, we discovered a number of errors in the formulas. Some of the problems with study oversight may have arisen because of turnover in AOC staff; current staff seem to be making good progress in improving study documentation.

A clerical weighted caseload committee provides guidance and oversight to AOC staff about the study. A Judicial Council rule establishes a caseload study committee to be comprised of court executives; in practice, the committee includes a mix of trial court executives, clerks of court, clerks, and AOC staff. Minutes of the committee meetings are helpful in understanding decisions that have been made. However, many aspects of the clerical formulas are not addressed in available minutes.

Oversight Committee Hasn't Adequately Understood the Study.

We found there was confusion about the clerical weighted caseload study even among the committee and staff that oversee the study. For example, at one committee meeting we attended, some members stated that there were not different weights for urban and rural locations. These long-time committee members were convinced that all locations were treated equally. As described above, the different urban and rural case weights are a major factor in the District Court clerk study. Committee members responsible for the study should have a thorough understanding of such an important factor.

Better Documentation Is Needed. One reason for uncertainty about the clerical weighted caseload study is the lack of written information about it. The many decisions made over the years have

Study concerns include a lack of familiarity among oversight staff, inadequate study documentation, and errors in formulas.

Oversight committee members did not know about the rural and urban factors.

Surveys and other documentation need to be maintained for validation purposes.

resulted in a complex and confusing study that has not been well understood by committee or staff. AOC staff are working to develop a description of the clerical weighted caseload study. A clear and comprehensive study description is an important step towards improving understanding of the formula.

Another documentation concern is that we were unable to verify the validity of the case weights because survey data were not available. Without an “audit trail” of documentation, we cannot confirm the reasonableness of the study’s formulas or the credibility of the results.

Formula Rationale Needs Clear Articulation. As discussed earlier, unlike other studies, the District Court clerk study has very different case weights for offices designated as urban versus rural. Although the survey data were not available, we were told that the different weights were based on what clerks in the different offices reported. Incorporating existing practices at face value into the formula runs the risk that it may simply “enshrine inefficiency.” An NCSC report states, “Case weights should be realistic and, to a degree, aspirational. If the weights simply codify existing practice, whether it be sound or not, the weights lose credibility.”

Similarly, a 1998 memo from the Third District Court to the clerical weighted caseload committee stated, “An understanding of why and to what extent productivity differs from site to site and district to district is an integral component of deriving a clerical weighted caseload.” Finding out the differences in productivity and the reasons behind them would help the clerical weighted caseload committee make better decisions regarding distinctions between offices.

Study Errors Must Be Corrected. As we reviewed the clerical weighted caseload study results, we discovered a number of mistakes in the calculations. Either amounts were not correctly tabulated or incorrect case weights or case counts were used. These errors were apparently made in past years by AOC staff and remained in the formulas we reviewed because current staff have relied on the prior work. While the particular errors we found don’t greatly affect the number of FTEs calculated for each office, the very existence of these many errors found in our limited review is of concern. Examples of the errors we found include the following:

Mistakes in formulas within the clerical caseload study need to be corrected.

Vertical line

- In the Juvenile Court clerk study, the number of FTEs needed to process adoption cases in each office is calculated, but it isn't added into the total needed.
- In the District Court clerk study, the case weight for garnishments in West Valley City is double that of other urban offices though all urban offices should have the same weight assigned.
- In the Juvenile Court clerk study, the formula doesn't correctly multiply the time for order-to-show-cause hearings by the number of cases in one type of delinquency case. For example, both Salt Lake and Castle Dale are credited with 238 cases when the correct amounts were 1,177 and 22 respectively.

We informed AOC staff about these and other errors we found, and we understand that they will be corrected for future studies.

District and Juvenile Court Judicial Studies Are Not Comparable

The Judicial Council should address differences between the two judicial weighted caseload studies. The methods for computing the weighted caseloads were developed independently and contain differences that do not seem appropriate. Most significantly, District Court judges are expected to be able to devote far more time to cases than are Juvenile Court judges. The results of the judicial studies also raise questions about how workload is calculated.

Judges and AOC staff have long been aware of the differences in the judicial workload formulas. For example, a 1997 AOC report stated that the Judicial Council should consider integrating the two studies into a unified approach. Since then, the boards of both Juvenile Court Judges and District Court Judges have reviewed the disparities and discussed reconciling the two studies but have not done so.

Judge Year Differences Should Be Reconciled. The Juvenile Court judicial weighted caseload study has nine fewer net judge days than the District Court study because it allows more time for sick days and education than the District Court study allows. All judges must meet the same education requirement (30 hours per year), but the time allowed to meet this requirement differs between the studies. Further, the Juvenile

Judicial weighted caseload studies contain significant differences in some calculations.

Differences occur in areas of the formulas that should be standardized, such as education time.

Court study estimates that Juvenile Court judges have only 6 business hours a day to spend on casework (and travel) while the District Court study estimates that the judges have 7.6 business hours (9 less 1.4 non-case work hours) each day. See the figure below for a comparison of the two judicial weighted caseload studies.

Figure 10. District and Juvenile Court Caseload Studies Calculate Judge Years Differently. District Court judges are expected to devote much more time to casework than are Juvenile Court judges.

Items Factored into Base Judge Year	Juvenile Court	District Court
Total days per year	365	365
Less: Weekends	104	104
Holidays	11	11
Vacation	20	20
Sick	4	1
Education	<u>15</u>	<u>9</u>
Net judge days	211	220
Business hours per day	<u>x 6*</u>	<u>x 9**</u>
Total judge work hours	1,266	1,980
Less: Non-case work hours	<u>0</u>	<u>307</u>
Net judge hours	1,266	1,673
Less: Average travel hours***	<u>53</u>	<u>97</u>
Average hours available for casework	1,213	1,576

* Net of non-case work hours

** Amounts to 7.6 hours per day when the 307 non-case hours are subtracted.

*** Travel hours vary by district. The range for Juvenile Court judges is 13 to 242 hours. The range for District Court judges is 58 to 343 hours. The average shown is weighted by number of judges. District Court travel includes 9 hours for out-of-state education conferences while in the Juvenile Court out-of-state education travel is part of the education category.

District Court judges have long felt it is unfair to expect them to work so many more hours than Juvenile Court judges. AOC staff indicate the difference in judge years hasn't been important because the studies are not used to compare District against Juvenile Court judges. However, the Judicial Council is now reviewing this issue.

Workload Study Results Raise Questions. The results of the Juvenile Court judicial workload study show that most Juvenile Court judges are completing much more than a full workload. One interpretation of this result is that many new Juvenile Court judgeships are required. However, another explanation is that either the judge year or the time needed to complete work may need to be adjusted. We question whether the study results should be accepted “as is” or whether they indicate a flaw in the formula methodology.

The results of the judicial workload studies are very different because different philosophies were used in their development. The District Court study was developed with the assumption that the results should reasonably correspond with existing practice. Thus, contrary to the survey responses from judges, Third District’s case weights are less than other districts’; otherwise, the initial study would have indicated the need for a large shift in judges. Similarly, the time available in a judge year may have been established, in part, to balance the calculated workload (given its inherent weaknesses) with the existing number of judges.

In contrast, the Juvenile Court judicial workload study was not designed to produce results that seemed reasonable given existing practices. Instead, the time needed to complete workload is based on survey results with the assumption that all judges should be the same. The survey asked judges (and their clerks) to estimate how long an average hearing took. When the resulting case weights were applied, it showed rather unrealistically that judges were working as much as 172 percent of a full workload.

According to the most recent workload studies we were able to review, over half of the Juvenile Court judges work at 150 percent of capacity or more. In the Third District Juvenile Court, judges had 158 percent of a full workload; in comparison, District Court judges were at 98 percent. As the Judicial Council addresses the caseload formulas, it should address to what extent the differences in formula results reflect methodological flaws rather than actual workload differences.

Recommendations

1. We recommend that the Judicial Council determine whether a re-evaluation of council membership is needed to address concerns

The District Court judicial caseload study was set up to reflect the work conditions that existed at the time.

The Juvenile Court judicial caseload study used survey time estimates without any revision for current practices.

about the council's composition and voting on budget issues. Any changes they feel are warranted should be forwarded to the Legislature for consideration.

2. We recommend that the Judicial Council consider posting the minutes of its budget meetings on its website.
3. We recommend that the Judicial Council and the AOC continue to encourage and facilitate communication outreach efforts including:
 - a. council member attendance at board of judges meetings.
 - b. the AOC newsletter.
4. We recommend that the Judicial Council use on-going communication outreach efforts to provide:
 - a. information on the Judicial Council's prioritization process and its philosophy of adopting a system-wide focus on the good of the entire Judiciary to all judges.
 - b. information on the rationale for current council composition and voting rights.
 - c. information on the important factors in the weighted caseload studies along with information on efforts to improve the studies.
5. We recommend that the AOC and the Weighted Caseload Study Committee take the following steps regarding the weighted caseload studies:
 - a. Use actual case data instead of subjective estimates in study formulas when data are available.
 - b. Review the use of urban and rural designations with the goal of achieving consistency among the studies and accurate categorization of court locations.
 - c. Correct other errors as identified in this report to increase the accuracy of these important tools.

- d. Develop a resource tool (such as a manual or handbook) to describe and document the study and the use of study results. The rationale for assumptions, formulas, methodology, and other important items should be clearly described.
 - e. Ensure that, as data are gathered in future caseload surveys, these raw data be retained by the AOC to enable future verification if needed.
6. We recommend that the Judicial Council proceed with a reconciliation of differences between the District and Juvenile Court judicial weighted caseload studies.

Chapter IV

Law Clerks Ranked Lower Than Other Judiciary Needs

Additional law clerks is a District Court priority, but the ratio of law clerks per judge is fairly good compared to nearby states' ratios.

Although increasing the number of law clerks has been one of the top priorities of the Board of District Court judges in recent years, the Judicial Council has given other needs higher priority in its budget prioritization process. District Court judges overwhelmingly stated that additional law clerks would improve the quality and timeliness of court decisions. Although we do not question the value of law clerks, the current law-clerk-to-judge ratio shows that Utah is in relatively good shape when compared to nearby states.

Judges are assisted by two types of clerks: court clerks and law clerks. Court clerks provide essential administrative and clerical support to judges and process the many types of paperwork associated with cases. Law clerks are attorneys who assist judges by conducting legal research and analysis on legal issues involved in cases. Duties may also include preparing summaries of cases for judges; reviewing records, briefs, and oral arguments of cases; and drafting or editing legal opinions according to a judge's instructions.

Judges' Survey Responses Reflect Their Need for More Law Clerks

Most of the District Court judges responding to our survey stated that they have access to a law clerk and that they share the law clerk among two to ten judges. We asked three questions on our survey to assess District Court judges' opinions about why more law clerks are needed. Figure 11 shows the responses to these questions.

86% of District Court judges said more law clerk help would improve the quality of their decisions.

Figure 11. District Court Judges Express a Strong Need for More Law Clerks to Assist Them. The judges say that timeliness and quality of court decisions would improve if judges had better access to law clerks.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
Additional law clerks would improve the quality of district court decisions.	69%	17%	8%	2%	0%	4%
Additional law clerks would improve the timeliness of district court decisions.	71%	19%	4%	6%	0%	0%
Additional law clerks would reduce the need for additional judges.	23%	12%	23%	23%	13%	6%

As can be seen, 86 percent agreed or strongly agreed that the assistance of more law clerks would improve the quality of District Court decisions. Even more judges indicated that additional law clerks would improve timeliness of decisions. However, judges were evenly split on whether more law clerks would reduce the need for additional judges.

The judges' written comments illustrate their views in this area. One asserted that "...The better job we do at the district court level the fewer appeals that will be made." Another indicated one of the benefits of law clerk assistance is that "A good law clerk frees up judicial time now in legal research and writing opinions for more bench time, which may reduce, somewhat, the need for additional judges." A third judge also referred to appeals in this comment: "The caseload is increasing in the most difficult and complex areas of the law. Without additional law clerks we cannot keep up. The quality of our work will suffer and appeals will increase."

It's clear that District Court judges feel a need for more law clerks and believe their work would benefit from the help. However, we found that the Judicial Council has determined that needs in other areas of the Judiciary should be addressed first.

Competing Judiciary Needs Have Out-ranked Adding Law Clerks

The Board of District Court Judges' requests for more law clerks have not been prioritized at the top of the Judicial Council's funding request list in recent years. At the council level, competing priorities for needs such as additional judges or commissioners have been ranked ahead of law clerks. Even so, requests for law clerks have been forwarded to the Legislature in three of the last five budget cycles. However, some judges still believe that the budget prioritization process neglects their needs.

The figure below shows recent District Court requests for law clerks and the corresponding prioritization by the Judicial Council.

Figure 12. The Judicial Council Has Approved Requests for Law Clerks in Three of the Last Five Years. However, the requests for law clerks have been prioritized near the lower end of the Judicial Council's list.

Fiscal Year	District Board Request	Priority	Judicial Council Request	Priority
2005	5	2 and 3	0	0 of 4
2004	5	2	3	3 of 4
2003	15	2, 3, 4	0*	0 of 0
2002	7	2	7	5 of 8
2001	10	2	5	5 of 5

** For 2003, the Judicial Council planned to reallocate some resources from surplus court clerk positions to create 5 new law clerk positions. The surplus clerk positions were used instead to meet required budget cuts, but the Judicial Council's intent had been to increase the number of law clerks.*

The Board of District Court Judges ranked law clerks as its second priority each year in the last five, splitting the total number of requested law clerks with a request for court clerks so that law clerks were part of more than one priority in fiscal years 2003 and 2005. The only higher priority for District Court has been for judges and once for court clerks.

The Board of District Court Judges has a responsibility to present the needs of the District Court specifically. The Judicial Council, however, is

Other Judiciary needs have taken precedence over requests for more law clerks.

District Court has usually put law clerks second on its list of requests for funding, behind judges or more court clerks.

responsible for considering requests from all courts and components of the Judiciary. Other needs that the Judicial Council has prioritized ahead of the request for law clerks over the last five years include deputy court clerks, data processing staffing, child welfare mediation, and Guardian ad Litem funding. For fiscal year 2003, the Judicial Council intended to reallocate some resources to add law clerks, but the budget cuts were partially met with those resources. For fiscal year 2005, the four items on the council's final list included a Juvenile Court commissioner, restoration of an intensive supervision juvenile program, restoration of the Appellate Court mediation program, and a juvenile day reporting center. The first priority of the Board of District Court Judges was still addressed, however, since the Judicial Council supported their request for an additional judge, which was funded with fiscal note funding in the 2004 Legislative Session.

The Legislature approved funding for two law clerks in fiscal year 2002.

Requests to the Legislature for funding for law clerk positions met with some success for fiscal year 2002, though only one law clerk of the two approved was hired in the Eighth District; the rest of the funds were lost in budget cuts.

Finally, as noted in Chapter III, some District Court judges fault the Judicial Council's budget prioritization process and the composition of the council itself for the lack of funding for law clerks, as seen in the following survey comments:

The district court makes up the majority of the workload of the Judiciary. However, because of the makeup of the Judicial Council their 5 representatives are only a small minority. As a result District Court issues historically have not received the attention they otherwise should given the proportion of workload. This is particularly true in requests for law clerks which in our area is a substantial need.

Since I am a District Court judge I have a bias toward budget items dealing with this court such as law clerks. However, the Judicial Council does not always give priority to District Court priorities. This concerns me particularly as in this year District Court priorities were not included as budget item requests as detailed by the Board of District Court judges. For example clerks/law clerks.

Though District Court judges feel that more law clerks are urgently needed, we found that Utah is far from the worst off in the number of law clerks per judge when compared to other western states.

Utah's Ratio of Law Clerks to Judges in Middle of Western States

Utah's ratio of law clerks to District Court judges is 1:5; other states range from 1:1 to 1:34.

Utah compares fairly well with the ratios of law clerks to judges in nearby states. There are currently 15 law clerks in the districts for 77 District Court judges and commissioners, a ratio of one law clerk for every five judges and commissioners (1:5) across the state, plus a Capital Law Clerk available to the District Court judges as needed. Nearby states' ratios of law clerks to judges range from 1:1 up to 1:34, putting Utah in the middle of the ranking for law clerk assistance to trial court judges.

The figure below details how the 15 law clerks are distributed in Utah's judicial districts. In addition to the law clerks in the districts, a staff attorney (referred to as the Capital Law Clerk) housed at the AOC specializes in capital offense cases and provides assistance to judges as needed on a statewide basis; the Capital Law Clerk is included in the total but not assigned to a specific district.

Figure 13. The Ratio of Law Clerks to District Court Judges Ranges from 1:2 to 1:8 in the 8 Judicial Districts. There are 8 bailiff/law clerks in Fourth District who are counted as 4 law clerks.

District	Law Clerks	Judges and Commissioners	Ratio
First	1	4	1:4
Second	2	13 + 3	1:8
Third	6	28 + 4	1:5
Fourth	4	12 + 1	1:3
Fifth	1	5	1:5
Sixth	0	2	--
Seventh	0	3	--
Eighth	1	2	1:2
Statewide	16*	69 + 8	1:5

* Includes the Capital Law Clerk position housed at the AOC.

Two judicial districts have no law clerks.

As can be seen in figure 13, Utah has two judicial districts with no law clerk assistance at the present time. The Eighth District in the southern part of the state received its law clerk in fiscal year 2002.

The need for additional law clerk assistance was emphasized by urban and rural District Court judges alike. In one rural district, one law clerk is shared among geographically dispersed judges. A judge in this district commented that their situation was “absolutely ridiculous.” The judge stated that more law clerk assistance was his/her “... most pressing need as a judge.” And an urban district judge commented, “the ratio of law clerks to judges...is unrealistically low and inequitable, especially for a district along the Wasatch Front.”

The ratio of one law clerk to five judges is less than the long-range goal of one to two desired by District Court judges, but it is still better than the ratios in about half the nearby states surveyed. Figure 14 provides the ratios of law clerks to judges in trial courts in western states.

Figure 14. Law Clerks per Judge Ratios Range Widely in Western States. The data for Arizona and Nevada are for a single populous county, not the entire state.

State	Ratio of Law Clerks to Judges
Idaho	1:1
Montana	1:1
Nevada (Clark County)	1:1
Colorado	1:2
Wyoming	1:2
Washington	1:8
New Mexico	1:26
Arizona (Maricopa County)	1:30
Oregon	1:34

Note: Utah's statewide ratio is 1:5.

Five of the nine comparison states have a better ratio in place than does Utah, but judges in the states with fewer law clerks per judge are significantly worse off than Utah's judges.

The District Court judges' comments on the benefit of law clerks are supported by the National Center for State Courts (NCSC). NCSC states that "Research has demonstrated that the number of law clerks per judge is a very good predictor of an intermediate appellate court's timeliness." Although this publication was discussing appellate court staff and administration (we could find no research or studies about law clerks in the trial courts), one can reasonably expect that the benefit of law clerks would extend to trial court judges as well. Certainly Utah's judges believe so.

And, in fact, Judicial Council members believe so as well. However, as members themselves asserted, the mission of the council is to make decisions for the good of the entire Judiciary. One Judicial Council member noted that increasing the number of law clerks at the present time (while basic needs such as adequate compensation for clerks go unmet) is not going to happen. Inevitably, allocating limited resources

Judicial Council members acknowledge the value of law clerks but stated their role is to consider the good of the Judiciary as a whole.

will leave some dissatisfied. As the policy-making body for the Judiciary, it is up to the Judicial Council to make those difficult decisions.

Chapter V Judicial Education Is Valuable But Costly

Educating the Judiciary's judges and staff involves not only the program's expenses and expenses found in other budgets but also the cost of employee time.

The Judiciary Interim Committee asked us to determine how much the Judiciary spends on education of judges and staff, in part because of concerns that non-essential classes were being provided while clerk jobs were being cut. As discussed in Chapter II, the judicial budget is sometimes confusing. For example, in the education area we found that some costs to educate Appellate and District judges are paid through the Juvenile Court budget. Thus, the Judicial Education Program budget includes part but by no means all of the expense incurred to educate judges and staff.

In fiscal year 2002, the amount budgeted to the Judicial Education Program through the appropriation process was \$384,000, but actual education expenditures were far more. Including amounts from other program budgets, the AOC's Education Department spent about \$562,570. Added to the funds managed by the Education Department are expenses at the program and district level. Beyond the program expenses, the cost of employees' time devoted to education is perhaps the largest cost of all. For judges alone, we estimate that the cost of time spent on education is over \$500,000. While costly, continuing professional education in the Judiciary is valuable, and it is highly valued by judges. In fact, we found that judges take almost twice as many hours of education as the 30 hours that are required. Thus, if the Judicial Council wishes to decrease the cost of education, it could reduce the amount of education taken.

Judicial Council Requirements in Rules Drive Much of the Cost of Education

Working under the direction of the Judicial Council's Education Standing Committee, AOC's Education Department provides classes and conferences for about 1,200 state Judiciary employees and about 475 employees in the locally-funded Justice Courts. Helping employees meet their education needs drives most of the department's activities.

Judges are required to take 30 hours of education a year; staff must take 20 hours annually.

The Education Dept. has 4.2 FTEs who develop, organize, and manage classes and conferences for judges and staff.

The Judicial Council has put in place annual education requirements for all employees, including judges, clerks, juvenile probation officers, and AOC staff: judges must complete at least 30 hours of continuing education each year while staff must complete at least 20 hours per year. Justice Court staff have a 10-hour annual education requirement. Judicial rules require that education activities for judges and staff provide a mix of professional and personal development classes, with the emphasis on professional skills development. The Education Standing Committee, composed of judges and staff, oversees the Education Program on behalf of the Judicial Council and provides program direction.

The Education Department's responsibilities include developing curricula, organizing conferences, managing career ladder classes, and serving as staff to the Judicial Council's Education Standing Committee, which directs the department's work. The department employs 4.2 full-time equivalent (FTE) employees: a director, three education program coordinators, and an administrative assistant. One of the three program coordinators was added in 1999 when the Justice Court education program was started. Some staff time is spent on mandated Divorce Education classes for people filing for divorce, a public service provided through the District Courts; we have not included this time in our count of Education staff. For example, 10 percent of the Education Director's cost is assigned to the District Court program, so she is only counted as 0.9 FTE in the Education Program.

The Education Department organizes annual conferences for judges in each court, including the Justice Court, plus a statewide judicial conference and conferences for state and Justice Court employees. The department also manages the funds for education-related, out-of-state travel for judges. Judges can attend national or regional training annually or every other year depending on the cost of the event and the availability of funds; judges are allotted \$1,500 each year (or \$2,500 every two years) for the cost of out-of-state education. Other education activities include an ongoing curriculum of classes for staff to meet annual and career ladder requirements. The career ladder requires clerks and probation officers to complete certain education requirements to progress to the next salary level in their jobs.

In addition to the activities managed by the Education Department, judges may attend a Utah Bar Association conference (not presented or funded by the AOC Education Department) for which financial assistance

up to \$400 annually is available from district-level budgets. The Judicial Council provided this amount for Bar Association conference costs to promote participation by judges in those events. Reimbursement records from one large district indicated that only about 20 percent of the judges used these funds to attend a bar conference. Judges may also use half the funds on law-related books and materials or memberships in other professional organizations; about 45 percent used the funds for these purposes.

Education Valued by Judges

We included questions about judicial education in our survey of District Court and Juvenile Court judges. Most judges commented favorably about the AOC’s Education Department. The figure below shows the responses to survey questions about education.

Figure 15. Survey of Judges Shows Appreciation of Education. Most judges approve of the program and derive value from it.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
There are enough AOC-sponsored education options offered to meet my needs.	23%	52%	10%	10%	5%	0%
AOC-sponsored education for judges has needed and appropriate content.	35%	49%	10%	6%	1%	0%
The cost of AOC-sponsored education conferences is reasonable and appropriate.	29%	51%	7%	5%	3%	5%

Written comments show that out-of-state education conferences and classes are important to judges. While expressing appreciation for AOC-sponsored activities, judges stated that attendance at national conferences is important to their continued development as judges. One judge commented, “While the education committee does an excellent job, we need to have out-of-state education so we can interact with judges from other systems.” A number of judges said that the budget cuts to out-of-

Most judges felt the AOC’s Education Department offers sufficient, needed, and appropriate options for education.

A number of judges stated that out-of-state education classes are important to them.

state travel should be reversed, and some stated the travel budget should be increased further.

The Education Department, like the AOC, recently incurred budget cuts. In fiscal year 2003, reductions occurred in spending for conferences and out-of-state travel. According to the AOC finance director, most of the reductions were one-time reductions with an ongoing reduction of \$25,000.

While judges value education, the cost of education conferences in times of budget reductions has been a concern. For example, in January 2003, the Third District judges sent a memo to the Judicial Council stating:

By unanimous vote at the January Meeting of the Third District Judges, it is requested that no funds be expended for any conferences, including but not limited to travel, reimbursement or per diem until the issues of furloughs or staff reductions have been resolved.

The Judicial Council did reduce the Education Department's budget, including eliminating out-of-state travel for the rest of the fiscal year and halving the budget for the annual judicial conference.

Thus, both judges and legislators have expressed concern with education costs. The next section provides information on the budget and expenditures of the Education Department and discusses other costs beyond those managed by the department.

Education Costs Exceed Amount Budgeted to Judicial Education Program

The AOC's Education Department expenditures were \$562,570 in fiscal year 2002, significantly more than the \$384,000 allotted to the Judicial Education Program through the appropriations process. The additional expenses, though managed by the Education Department, are found in other judicial programs' budgets. We discussed this concern in Chapter II: spreading one program's costs among other programs' budgets reduces accountability. Beyond the expenses managed by the department, additional education expenses are incurred by various

programs and judicial districts. Finally, significant costs to the Judiciary are incurred in the time spent by judges and staff participating in education and education-related activities.

Significant Education Funding Comes From Other Programs’ Budgets

In addition to the amount budgeted for the Judicial Education Program, the Education Department draws funding from other programs’ budgets, especially in the Juvenile Court budget. The figure below shows the funds managed by the Education Director and the judiciary program budget that provides the funding.

Numerous expenses managed by the Education director are found in other Judiciary programs’ budgets.

Figure 16. Education Department Manages Funds From a Number of Other Programs. In addition to the Judicial Education Department’s expenditures, over \$210,700 in education funds came from other programs’ budgets.

Program	Funded Activities	FY 2002 Expenditures
Judicial Education	Staff compensation Staff travel Employee conferences Career track classes	\$ 351,860
Appellate Court	Appellate Judges’ conference	4,190
District Court	District Judges’ conference	22,330
Justice Court	Justice Judges’ conference Clerks’ conference	25,940
Juvenile Court	Juvenile Judges’ conference Out-of-state travel* Annual judicial conference* New judge education*	<u>158,250</u>
Total Managed by Education Department		<u>\$ 562,570</u>

* Out-of-state travel, the annual judicial conference, and the new judge orientation are system-wide activities for all judges.

In the case of the Juvenile Court, the budget includes several system-wide education activities: out-of-state travel costs, the annual Judicial

Several statewide education activities are inappropriately located in the Juvenile Court’s budget.

Conference for all judges, and the new judge orientation program. These system-wide education expenses in the Juvenile Court budget totaled nearly \$150,000 in fiscal year 2002. We don't think it makes sense to have costs for Appellate and District court judges paid for through the Juvenile Court budget. Further, even though the education activities funded within the other courts' budgets are specific to that court, we are concerned about the reduced accountability that results; placing these education activities in the Education Department's budget would increase the clarity of the education budget on a program or functional basis.

System-wide education events have been in the Juvenile Court budget since fiscal year 1998.

These system-wide costs have been paid through the Juvenile Court program budget since fiscal year 1998 when the Legislature reduced the Judicial Education program budget by 50 percent. Not wanting to eliminate the activities, the Judiciary identified some available funds in the Juvenile Court budget and have used them since then for system-wide education costs. AOC's Finance Director agrees that it doesn't make sense to pay Appellate and District Court judge education costs through the Juvenile Court budget, but the director reports the Legislative Fiscal Analyst put them there.

We tried to determine the legislative intent for the Judicial Education budget reduction. Audio tapes of the Judiciary's appropriation subcommittee meeting show that although the subcommittee voted to cut the Education Program budget in half, it also agreed with the concept that the Judiciary should have flexibility to move funds from other programs within the line item. According to the Legislative Fiscal Analyst, since most court programs are funded in the same appropriation line item, the courts have flexibility to move the funds as needed. However, it's also the Judiciary's responsibility to logically account for their expenditures. Whether intentional or not, paying Education Program costs through the Juvenile Court budget has the effect of hiding them. In our opinion, Education Program costs should be paid and accounted for through the Judicial Education program budget.

The Education director is managing funds in other programs' budgets.

The courts' budgeting also seems inconsistent with the Judicial Council's Rules of Judicial Administration. These rules divide the Judiciary into programs and state that each program's budget is to be managed by the designated program director. The dispersed nature of the Education Program's budget puts the Education director in the position of managing funds in other programs' budgets in violation of this rule. In addition, locating Education budget and expenditure items in a court's

budget increases that court's budget and expenditures while understating those of the Education Department. In our opinion, accountability is reduced.

Some Additional Education Expenses Are Managed at the Program Level

Beyond the \$562,570 managed by the Education Department, additional education-related expenditures are paid from program level and local district budgets. Though not under the management of the AOC's Education Department, these expenses add to the total cost of judicial education.

For example, AOC departments or courts occasionally organize conferences or workshops that are paid from their own budgets. Some locally held classes are also funded from each district's discretionary funds. In addition, district funds are used to pay a portion of expenses for those judges who choose to attend Bar Association conferences. Examples of these activities are listed below:

- RESTA conference (on restorative justice)
- Juvenile Court case management workshop
- AOC-sponsored workshops for trial court executives
- Alternative Dispute Resolution and Guardian ad Litem staff training
- Education-related staff travel expenses such as per diem and mileage that are paid at the district level
- Classes offered to staff by the districts
- Utah Bar Association conference expenses

The costs of these activities cannot always be readily identified in program budgets. For example, expenditure accounts for per diem and mileage include education and non-education expenses. Due to time constraints, we did not conduct the detailed analysis needed to determine the costs of education at the program and district level.

The Biggest Cost Is Personnel Time Used for Education

Beyond the actual program costs for education, significant costs are incurred for the time judges and staff spend in education-related activity.

Program and district budgets include education activities that aren't managed by the Education Department.

Estimating the cost of time spent in education yields over \$500,000 just for District and Juvenile Court judges.

As some judges noted, a half-day class uses up an entire day when travel time is included. Though education is valuable, we believe the cost versus benefit of the time spent away from the bench for education needs to be assessed, as will be discussed in the next section. We were unable to estimate staff costs because education is not centrally reported, but the estimated expense for just the District and Juvenile Court judges' time spent in education illustrates the cost to the Judiciary.

The time allocated by the AOC's judicial weighted caseload studies for judges to complete their annual education requirement gives District Court judges 9 days and Juvenile Court judges 15 days a year for education. We used these allocations because they include an estimate of travel and other "down" time in addition to class time. Using this allotment of time given to education activities, we estimated it cost over \$500,000 just in judges' time last year for education, and this estimate didn't include any cost for Appellate Court judges.

Information was not readily available to us to estimate how much work time clerks and other staff spend on education. Judicial rules require that clerks get 20 hours of education per year and the clerical weighted caseload studies allow each clerk 33.3 hours for education. Actual education hours are supposed to be kept in personnel files, but the files we reviewed generally did not include that information. Some clerks also told us they had not taken the required 20 hours. In fact, we were told that education requirements had been suspended for a time by one district. We question a district's authority to suspend a Judicial Council rule, but if the rule is important, the council should have a mechanism to monitor compliance with it.

As the next section shows, we found that most judges take more hours than required, adding to the personnel cost incurred for time away from the job.

Costs Could Be Cut by Reducing Education Amounts

While there is consensus that Judicial Education is needed and valuable, judges raised issues of alternate use of education resources which deserve attention. In their survey comments, some judges stated that attending conferences, particularly out-of-town or out-of-state, was wrong

when the courts were losing staff. Although the recent budget constraints may have eased, concerns about the costs of education may remain. Simply put, the cost of education can be reduced by reducing the amount of education required or actually taken by judges and staff.

The cost of Judicial Education is partly driven by the annual requirements spelled out in judicial rules but more significantly by the actual hours of education taken. Some savings should be possible if either the annual requirement or the total amount of education taken is reduced.

In the judges' survey comments, some judges raised the issue of the education requirement being too high. Utah's 30-hour judicial education requirement is the highest in the nation; other states average 15 hours. In response to our survey, 16 judges indicated that the 30-hour requirement was too high, but none indicated that it was too low; most judges (55) responded that the requirement was about right. One judge commented, "Lawyers are only required to have 30 hours of CLE every 2 years. There is no reason the judges should be required to have two times the amount that lawyers must have." Requiring twice the education hours that other states require carries costs in both program development and employee time away from the job.

Although Utah's education requirement is high, the amount of education actually taken by judges is even higher. We found that judges average 56 hours of education a year, nearly twice the hours required. We recognize that some of these hours can include public outreach and teaching; however, in our opinion, significant costs in time that could have been spent on case work can accrue when judges meet, let alone exceed, the required number of education hours.

Legislators expressed concern about the cost of judicial education; some judges also expressed concern in their comments about using limited funds for education when staffing was being reduced. Reducing the amount of education hours required or actually taken can reduce the cost of education in the Judiciary. The Judicial Council may want to consider whether some resources can be freed up in this area.

Utah's education requirement for judges is twice as high as the national average.

Judges average 56 hours of education a year; they are required to take 30 hours.

Recommendations

1. We recommend that all education costs managed by the AOC's Education Program be consolidated and reported as part of the Judicial Education Program.
2. We recommend that the Judicial Council's Education Standing Committee review data on the amount of education actually taken by judges to determine whether the cost of judicial education can be reduced.
3. We recommend that the Judicial Council review their Rule 3-403 and determine whether the minimum number of education hours required of judges, clerks, and other staff should be changed.
4. We recommend that the Judicial Council implement a mechanism to monitor whether clerks and other staff are complying with the education requirements.

Chapter VI

Task Force Used Judiciary Resources

The Racial and Ethnic Task Force and Commission used Judiciary resources in the form of federal grants, state funds, and employee time.

We reviewed the Judicial Council's Racial and Ethnic Fairness Task Force in response to the audit request that we determine the extent to which the Administrative Office of the Courts (AOC) contributes resources to programs (like task forces) that are beyond the initial scope of the administration of the courts. The commission created to implement task force recommendations was included in our review. The AOC provided over \$72,000 in funds to the task force/commission through fiscal year 2003. From fiscal years 1997 through 2003, the task force and commission spent approximately \$546,800, while all sources of funding totaled \$556,600 (including the AOC contribution), leaving a balance of almost \$10,000. AOC staff indicate they did not spend all of the fiscal year 2002 state appropriation of \$60,000, which would account for much of the balance.

Beyond cash resources, we were unable to identify the cost of employee involvement because task-specific timekeeping is not required at the AOC. We did find that studying racial and ethnic fairness issues is a relatively common activity among judiciaries nationally; studying bias issues seems to be a reasonable activity for Utah's Judiciary to pursue.

The Racial and Ethnic Fairness Task Force involved judges and other Judiciary employees as well as AOC staff. Other task force members came from all levels of the state's justice system and included community members as well. Although other task forces have occurred in the Judiciary, we reviewed the Racial and Ethnic Fairness Task Force because it was specifically mentioned in our audit request and because it involved a significant effort (running from 1997 through 2000) that included agencies outside the Judiciary. Other task forces or committees mentioned by judges occurred earlier in the early 1990's. A commission was created in 2001 to promote implementation of the task force's recommendations, so the work is ongoing; commission finances through fiscal year 2003 are included in this chapter's discussion.

The task force was set up by the Judicial Council after judges attended a national conference on bias issues.

The formation of the Racial and Ethnic Fairness Task Force was approved by the Judicial Council late in 1996 on the recommendation of a group of judges who had attended a national conference on the topic of

racial and ethnic fairness in the courts. The council's approval included a directive that funding would need to be secured prior to the start of task force work. Initial funding came from three donations totaling \$11,500 in fiscal year 1997. Other funding included more donations; federal grants; AOC funds to meet grant match requirements and in at least one case, to cover an over-expense in a grant; and a one-time state appropriation plus some agency contributions. The task force functioned as a multi-entity effort under the auspices of the council: agencies throughout the criminal justice system in Utah were represented as were members of Utah's minority communities. Members from a variety of participating entities served as committee chairs.

To paraphrase the mission statement, the task force set out to organize and lead an effort to examine and address bias toward racial and ethnic minorities within the criminal justice system. Conducting research, developing and disseminating findings and recommendations, and advocating for implementation of the recommendations were activities included in the mission statement. The task force's mission statement and its operating structure were developed by the members. The 37 members included judges, a legislator and a former legislator, directors of Utah state criminal justice agencies, attorneys, representatives of local law enforcement agencies, university professors, and representatives of community-based organizations.

The task force conducted much of its work through subcommittees and used consultants and the University of Utah to assist the research efforts. According to the task force report, each participating agency or entity was responsible for its own response to the recommendations and for determining whether and how those recommendations would be implemented.

Judges' Opinions Vary on the Racial and Ethnic Fairness Task Force

We were asked to review the use of Judiciary resources for task force and similar projects that are beyond the initial scope of the administration of the courts. We surveyed judges to assess the level of concern they might have about the task force and whether it fell within the core mission of the Judiciary. Responses showed that more judges supported than opposed the Racial and Ethnic Fairness Task Force though a third of

respondents voiced no opinion. The figure below summarizes the responses to the questions about task forces.

Figure 17. Judges Split in Opinions about the Racial and Ethnic Fairness Task Force. Though more judges were supportive than not, less than half responded that this task force was not beyond the Judiciary’s core mission. A third of the judges voiced no opinion.

Task Force Question	Yes	No	No Opinion
Do you feel that the purpose of the Racial and Ethnic Fairness task force was <u>beyond</u> the core mission of the Judiciary?	29%	39%	32%
Please list any other judicial task force(s) of which you are aware.	Gender and Justice, Justice in the 21 st Century, Family Court, Court Consolidation, Juvenile Justice		
Was (were) the purpose(s) of this (these) task force(s) <u>beyond</u> the mission of the Judiciary?	14%	40%	46%

Judges’ view of the task force usually aligned with how broadly they defined the courts’ mission.

Some judges were supportive of the task force as an appropriate activity that promotes fairness while others felt the Judiciary should focus more on hearing cases, using its limited resources in support of that focus. A factor in judges’ opinions seemed to be how broadly or narrowly the Judiciary’s mission was interpreted. As stated, “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.” In response to a question asking whether the task force’s purpose was beyond the core mission of the Judiciary, one judge replied, “this area of inquiry depends on how broadly “core mission” is defined. The most “core” duty of a judge is to decide cases. The broader duty is to further justice on all fronts. There should be room for both.”

Some of the respondents, however, felt the Judiciary’s mission should be interpreted more narrowly, focusing on hearing cases and reducing involvement in other activities, including task forces such as the Racial and Ethnic Fairness Task Force. For example, one judge stated that “...the Courts are doing too many things that have minimal relationships to our core function. Task forces top the list.” Also, some judges who

commented against involvement in task forces were concerned about the use of courts resources; one judge commented, “While the purposes of the task forces are important they should not be funded or staffed with judicial funds.” However, judicial resources were used in this effort.

Task Force Received a Combination of Grants, Donations, and AOC Funds

The task force and commission spent approximately \$546,833 while revenues were \$556,622; the AOC contributed \$72,000.

As of the end of fiscal year 2003, the task force and commission showed a balance of \$9,789 of revenues over expenditures. Revenues totaled \$556,622 while expenses were \$546,833. Revenues took the form of the following:

- federal grants
- AOC funds used to match federal funds and to cover an over-expense in one grant
- private donations
- a one-time state appropriation in fiscal year 2002
- contributions referred to as “match” to the appropriation from the Department of Corrections and the AOC

Expenses were largely for compensation of the staff coordinator, professional and technical services associated with the research conducted, plus other current expense such as contracts, printing, and travel. In another area, we were unable to estimate the personnel cost for judges and staff involved with the task force or commission because employees do not complete detailed time sheets.

The figure below shows task force and commission revenues and expenditures through fiscal year 2003. These figures include activity from three grant accounts used by the AOC to track task force and commission finances plus identified expenditures from the AOC’s General Fund account.

Figure 18. Fiscal Years 1997-2003 Funding for the Racial and Ethnic Fairness Task Force and Commission Came from Several Sources. We estimate that AOC funds supported the task force/commission by at least \$72,000.*

Expenditure Type	Expenditures
Compensation (Salary and Benefits)	\$274,239
Professional/Technical Services	205,408
Other Contractual	31,050
Printing/Binding	15,490
Travel	7,113
Other Expense	<u>13,533</u>
Total	<u>\$546,833</u>
Funding Type	Revenue
Federal Grants (Title II, SJI, Byrne)	\$343,682**
Donations	78,618
AOC Funds (match and over-expense)	71,322
State Appropriation to AOC	60,000
AOC & Corrections "Match" to Appropriation	<u>3,000</u>
Total	<u>\$556,622</u>
Difference Between Revenues & Expenses	\$9,789

* AOC contributed \$71,322 plus \$1,000 to add to the state appropriation.

** Grant total does not include \$3,789 in an unpaid reimbursement.

Our revenue figures include \$60,000 in state appropriation given by the Legislature to support the task force/commission staff coordinator's position in fiscal year 2002. The AOC indicated and provided records showing it spent \$53,953 of the funds.

Revenues Included Federal, State, and Private Funds

As shown in Figure 18, federal grants provided the largest source of funding for the Racial and Ethnic Fairness Task Force and commission.

Federal funds including Title II, Byrne grants, and Juvenile Accountability Incentive Block Grant (JAIBG) funds were obtained from the Commission on Criminal and Juvenile Justice (CCJJ). State Justice Institute (SJI) federal funds were granted directly to the AOC for the task force. All federal grants except the Title II grants required a commitment of matching funds to be paid by the AOC.

In addition, various law firms, the Utah Bar Foundation and other foundations, and several corporations donated \$78,618 to the task force from fiscal year 1997 through 2001. Finally, a one-time state appropriation of \$60,000 was provided by the Legislature for fiscal year 2002 to support the staff coordinator position as the commission began its work; \$2,000 in funds from the Department of Corrections and \$1,000 from the AOC were added to the appropriation. In the request for the funding, the AOC indicated that half of the position would be used to implement task force recommendations internally in the courts.

In the process of putting together financial information on the task force and commission for us, the AOC discovered that two requested payments had never been received. First, \$3,789 in reimbursement of task force expenses had not been processed by the State Justice Institute (SJI), a grantor. Although the AOC submitted a new request for payment, the SJI did not send the funds; according to the AOC's finance director, the grace period for late payments had expired. Second, the AOC discovered that the Department of Public Safety (DPS) had not sent its \$2,000 in "match" money for the one-time state appropriation. The AOC requested and recently received payment from DPS; this amount is not shown in Figure 18, however, since the figure shows finances through fiscal year 2003.

Separate Accounting Would Facilitate Revenue and Expense Tracking

The portion of revenue appropriated by the Legislature was put in one of the AOC's large General Fund accounts, making it difficult to identify how these task force funds were spent. In our opinion, it makes sense to keep funds to be used for a specific purpose like a task force separate from the main, multi-purpose expenditure accounts. Although the AOC was able to identify compensation expense and limited current expense for the task force from the General Fund account, we are unsure that all expenses have been accounted for.

When the AOC initially provided revenue and expense reports for the Racial and Ethnic Fairness Task Force, they included the \$60,000 appropriation as revenue in one of the grant accounts or “orgs.” However, we found that corresponding expenses were not provided. The AOC then indicated the \$60,000 had been put into one of the General Fund accounts because it was after all a General Fund appropriation. They provided the personnel expenses but were unsure whether there had been any current expense for the task force from the appropriation.

Entries into this account do not allow for a unique identifier of the program spending the money, unless the data entry person identifies the program in a comment field. AOC staff reviewed account transactions and identified a handful of expenses that specified the task force in the comment field. However, the account processes thousands of transactions dealing with AOC expenses and we simply do not know whether the AOC was able to manually identify all the relevant current expenses.

We asked if the AOC knew what happened to the unspent portion of the appropriation. According to the Director of Finance, since these funds were being kept in an AOC General Fund account, they would have become part of unexpended monies that would have been eligible for reallocation by the Judicial Council toward the end of the fiscal year.

Difficulties Echo Accounting Concerns Found in Other Areas.

The difficulty in obtaining complete financial records of task force and commission expenses from the General Fund account echoes our concerns about budgeting and accounting in other chapters of this report. In our opinion, these expenses should have been better tracked and monitored to provide accountability for costs. This need for tracking and monitoring is especially true as the AOC has stated that the task force and the commission are independent of the AOC and just relying on it for administrative support. Putting General Funds for task force and commission purposes into the “all-purpose” account of the AOC without the ability to trace the expenses blurs that distinction.

The lack of detailed timekeeping records prevented us from estimating the amount of employee time used for task force purposes.

Judiciary Employee Time Involved Could Not Be Determined

In addition to determining the monetary resources used for the task force, we attempted to determine how much AOC staff time was

involved. However, we were unable to measure this use of resources because the AOC lacks detailed timekeeping reports.

The available records kept by the staff coordinator (agendas and minutes) show that at least nine AOC staff attended either full task force meetings or committee meetings. A number of judges also sat on the task force or its committees. Except for the state court administrator, the AOC staff who were participants sat on committees which met monthly or every other month. The state court administrator was a member of the full task force; records show he attended about 60 hours of task force meetings over three years. However, the attendance at meetings would not account for all the time put into the task force; preparation or review time and possible travel time would not be reflected in the reviewed records.

We reviewed the committee meeting records to try to assess whether an estimate of staff time could be developed but found some meetings had agendas but not minutes in the files. Minutes would have provided a record of AOC or Judiciary employees in attendance. It appears that committee meetings occurred over slightly more than two years, and most meetings were about 1.5 hours to 3 hours in length. We turned to the meeting records kept by the task force staff coordinator because the AOC does not use a timekeeping system that tracks employee time by specific activities. Thus, we were unable to determine the amount of time devoted to the task force by staff or judges. We note, however, that one of the judges responding to our survey stated the following regarding time put into the Racial and Ethnic Fairness Task Force: “The judges I know who were on the Racial and Ethnic Task Force did their work on their own time, so it didn’t burden the courts.”

Utah’s Task Force Is Similar to Efforts in Other States

According to staff of the Judiciary Interim Committee, some legislators were concerned about whether the Judiciary, through the Racial and Ethnic Fairness Task Force, might be overstepping its bounds by giving policy direction to other entities. We researched what other states’ judiciaries might be doing in endeavors similar to the Racial and Ethnic Fairness Task Force and also looked for policy perspective from national judiciary organizations. Almost 30 states’ judiciaries are involved

Almost 30 states’ judiciaries are involved in task forces or similar activities dealing with bias issues.

in task forces or similar projects to study racial and ethnic fairness, and a national judicial officers' organization states that judiciaries should lead the way in these efforts for several reasons. Utah's task force and commission, then, follow the national efforts and appear to have been a reasonable activity for the state Judiciary to pursue.

Studying Fairness Is a Common Judicial Activity

Racial and ethnic fairness in the justice system is an issue of national interest. As of December 2001, the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts had 28 members, showing that numerous judiciaries around the country, Utah's among them, have taken an active role in studying this issue.

According to a position paper issued by the national Conference of State Court Administrators (COSCA), "...precisely because the public looks to the courts above all for fairness and equal treatment, the courts should take the lead role in addressing the issue of racial and ethnic bias throughout the justice system..." Listing best practices implemented by various states, the position paper cited establishment of state court task forces or commissions first as a strategy being used to address the bias issue. COSCA's policy statement, based on the position paper, listed as a general principle inter-branch dialogue and cooperation at all levels of government. "The judiciary should take the lead to bring together its governmental and institutional partners, as well as community leaders, to engage in an ongoing dialogue about bias issues...."

The task force's report included recommendations for various state and local entities throughout the justice system in Utah. A review of the task force report's Plan of Action shows that while certainly encouraging criminal justice system entities to address bias issues, the responsibility to address the recommendations belongs to each of the entities involved.

Task Force Report Also Recommended the Creation of a Commission to Advocate for Implementation. For example, in the report's Plan of Action, the following elements are spelled out:

- The Commission would be a stand-alone entity, sponsored by the Judicial Council for the purpose of administrative support by the Administrative Office of the Courts, but would report to the Council just as it would report to any of the other participating entities

- Membership would include representatives from the entities responsible for implementation (i.e., criminal and juvenile justice system agencies, community-based organizations)
- Each member agency would be responsible for implementing its own recommendations from this Task Force report

The vision of the Plan of Action was that the commission would be a “collaborative partnership” among the various justice system entities and community-based organizations in Utah. Generally, although the task force did present broadly ranging recommendations that crossed agency lines, the intent seemed to have been to involve all those entities in an implementation effort in which each agency was responsible for assessing the need for change in its own area.

As previously noted, the commission began work during fiscal year 2002, convening on September 1, 2001. Funding for the commission included the one-time state appropriation discussed previously and the continuation of some grant funding (Title II, Byrne, and JAIBG monies). According to the staff coordinator, the funds have been spent on his compensation plus report printing. As already noted, we found some of the commission’s expenses difficult to trace.

Recommendations

1. We recommend that in the future when the Judicial Council authorizes creation of a task force, it should instruct the AOC on how cost information should be tracked. At a minimum, we recommend expenditures be tracked in dedicated organization codes.
2. We recommend that the Judicial Council should consider whether time spent by staff or judges on future task forces merits tracking.
3. We recommend that the AOC Finance Department establish procedural controls to ensure timely collection on account receivables.

Chapter VII

Allegations Were Reviewed But Not Substantiated

A number of allegations were raised at the start of the audit; our review did not substantiate these allegations.

In addition to the audit areas requested by the Judiciary Interim Committee, we reviewed a number of allegations that were brought to our attention by employees or former employees of the AOC. Our review failed to substantiate allegations of mismanagement or improper use of public funds.

Six AOC employees filed for protection with the State Auditor's Office under the Utah Protection of Public Employees Act (*Utah Code 67-21-3*), commonly known as the Whistle Blower's Act. The law prohibits an employer from taking adverse action in reprisal against an employee who communicates in good faith any waste of public funds or suspected violation of laws or rules. One of the six employees, who also had discussed some concerns about AOC management with us, was terminated before we began our on-site audit work. Although our audit supervisor was not yet available, out of concern for the whistle blowers we immediately assigned some audit staff to begin work. Audit staff began by interviewing all AOC employees, not just the whistle blowers, to determine how prevalent the concerns were and to preserve the anonymity of those who had filed for protection.

We found that employee concerns with management were not widespread. In fact, two whistle blowers withdrew their complaints; one because the employee felt that AOC management was addressing the concerns, and the other because the employee felt manipulated into signing a whistle blower complaint in the first place. However, simply because allegations had been made, we felt it important to review the following concerns that had been raised by the employees:

- An allegation that policies were violated when two AOC staff were transferred from permanent positions funded with General Funds to contingent positions funded by a grant
- An allegation that funds appropriated for child welfare mediation were spent on other types of mediation

- An allegation that one education workshop was unnecessarily expensive and another provided irrelevant courses during a time of budget cuts
- An allegation that an employee was given preferential treatment and hired for a position for which the individual was not qualified
- An allegation that an AOC employee's outside business presented a conflict of interest

The audit team reviewed reports and other documentation as well as policies or rules relevant to the issues raised and interviewed staff and management as needed in order to assess the validity of the allegations. The following areas of this chapter deal with these allegations and report the information found by the audit team.

Policy Not Violated in Transfer of Staff To Contingent Funding

An allegation was made that the AOC moved two staff from positions funded with General Funds to positions funded by a temporary grant without following established procedures. It was alleged that this action constituted a reduction in force (RIF) and that the RIF policy had not been followed. We agree with the AOC that the two staff were simply reassigned and that no RIF occurred. A secondary allegation was also made that these employees were reassigned to grant-funded positions so they would not be counted as AOC staff.

The AOC's position is that there was no RIF in these cases. Because of a reorganization and concurrent budget cuts, the AOC eliminated some positions funded with General Funds, primarily through attrition; these two employees were put on grant funding during this process. The AOC Human Resources director stated that putting the two experienced staff on grant funding kept them employed rather than terminating them. The director also stated that the position control number (a unique position identifier) for the two employees didn't change, which indicated that the positions had not been eliminated though the funding source did change. We confirmed that the position control numbers did not change at the time the funding changed.

The AOC addressed issues involving transfers of staff from permanent to contingent funding.

The two staff were understandably concerned about their job security. They were also concerned because they felt they could not get information on the duration of the grant funding and had not been given the opportunity to protest the decision as allowed in the RIF policy. The employees approached their supervisor and AOC management about their concerns. The supervisor's response to the two staff stated the AOC's position that the Reduction-in-Force policy applied to them only in a limited way. The policy states that management must try to resolve the need for reduction through transfers and reassignments prior to implementing an actual RIF. The supervisor stated that since the two staff were reassigned and did not face termination, the rest of the RIF policy (allowing preferential treatment for hiring consideration into other positions) did not apply to them.

The supervisor also stated there would be several months' notice before the grant ended, but because the source of funds was a federal grant, future funding by Congress was unknown. The supervisor stated that it was a priority to have the two positions funded to support the project that was under way and maintained that if General Fund money could not be found to fund their positions, "...at that time we would look at reassignment into another position within the court system."

Although it is undeniable that the two employees felt insecure in their situation, the AOC did provide, in writing, what assurance it could to the employees. The eventual resolution of the situation was that the grant funding did run out; both employees found or were offered other permanently funded positions within the Judiciary.

A Related Allegation Stated the Move to Grant Funding Was Motivated by a Desire to Reduce the AOC's Staff Count. As discussed in Chapter II, the growth data that the AOC presented to the Judiciary Interim Committee did exclude staff funded with contingent or grant money. However, we cannot conclude that this transfer of staff to grant funding was motivated by a desire to under-report AOC employees.

The two employees were put on grant funding several months before the Judiciary Interim Committee requested AOC growth data, reducing the likelihood that the move to grant funding was done in an effort to minimize AOC growth data reported to the committee. In addition, we found some staff were also transferred from contingently funded positions to permanent positions and thus counted in that data; this move runs

We cannot conclude that these staff were transferred to grants to under-report AOC employees.

Funds intended for child welfare mediation were not diverted to other ADR programs.

counter to the notion of “hiding” grant-funded staff. Finally, the cuts required to meet the budget shortfall required General Fund reduction. Transferring staff from General Funds to grant funding seems an appropriate way to achieve the required reductions.

No Evidence of Inappropriate Use of Child Welfare Mediation Funds

An allegation was made that funds designated by the Legislature for child welfare mediation programs were being used in other alternative dispute resolution (ADR) programs. A review of the ADR program’s budget and accounting records showed that appropriate portions of the budget were being allocated to and spent on the child welfare mediation program.

The Legislature has twice appropriated ongoing funding for child welfare mediation. The fiscal year 2001 budget included a \$150,000 appropriation to replace a federal child welfare mediation grant and the fiscal year 2002 budget provided an additional \$170,000 to extend the program to all judicial districts. When agencies were required to reduce planned fiscal year 2002 spending due to budget shortfalls, the Judiciary chose to cut some of the recently appropriated \$170,000 in child welfare funding. Thus, only about \$235,000 remained earmarked for child welfare mediation by fiscal year 2003.

The ADR program at the AOC also has other funding sources for other types of mediation. For fiscal year 2003, these included \$140,000 of restricted General Funds, an additional \$30,000 of unrestricted General Funds, and grant funding. Other mediation activities include the court-annexed ADR program, victim-offender mediation, and co-parenting mediation. Additional mediation activities such as appellate and district-level mediation exist that are not part of the ADR program at the AOC.

Child Welfare Mediation Costs Meet Expectation. The AOC finance director and the director of the ADR program provided us with budget and expenditure records for the child welfare mediation program. After reviewing these records, we found no evidence that funds earmarked by legislative appropriation for the child welfare mediation program were used inappropriately. Our analysis indicated that child welfare mediation staff expenditures in 2003 were almost \$300,000, which exceeded the amount specifically earmarked to the program after budget cuts.

Although the ADR program includes several types of mediation, most of the program's expenditures are for child welfare mediation because staff mediators are used. Most ADR staff, including mediators and support staff, were assigned either full- or part-time to child welfare mediation activities. The other ADR staff generally do not mediate cases but recruit and train volunteers or coordinate services provided by private mediators who are paid by the parties involved.

Specific Programs Were Appropriate Judicial Education Activities

Because of allegations made about expenses for certain education events, we reviewed two programs and found them to be relevant and appropriate activities. One event, a workshop for trial court executives (TCEs), was developed by AOC management in conjunction with another state's court administrator and offered several times. The other was a Senior Clerk Academy, funded on a one-time basis for senior court clerks.

**TCE workshops
were not overly
expensive and had
reasonable content.**

The Trial Court Executive Workshops Offered Were Reasonable Training. Although a former AOC employee raised a concern that an AOC training event was a waste of limited funds, we found that the TCE workshops (held in conjunction with Idaho's Court Administrative Office) provided valid training for court managers in both states. Contrary to the allegation, costs for lodging for a Sun Valley, Idaho workshop were reasonable.

According to a national publication, "Issues and Trends in Judicial Branch Education 1999," collaborative training events are fairly common; 60 percent of state judiciaries participate in some form of collaborative training with other states. The National Association of State Judicial Educators recommends cooperative events to foster the exchange of ideas and sharing of experiences between states.

Three workshops were held in 1998, 2000, and 2001, two in Utah and one in Sun Valley, Idaho. According to AOC administration, the two states shared the cost of a trainer. Workshop content was based on a nationally developed set of core competencies recommended for court managers' professional education. Attendees reported that the training and interaction with Idaho managers were beneficial.

The host state handled logistical arrangements; thus, the Idaho Court Administrator's Office arranged for lodging in Sun Valley while the AOC made arrangements in two Utah cities. The average lodging cost was \$80 per night in Sun Valley, \$65 in Moab, and \$84 in Park City. Utah's out-of-state travel policy reimburses actual cost for conference hotels or \$65 for non-conference hotels. Although a concern had been raised that the AOC unnecessarily incurred high costs at Sun Valley, lodging costs in Idaho were reasonable in comparison to the two in-state locations.

The Content of a Senior Clerks' Academy Was Primarily Job-Related. Allegations of inappropriate clerk training, based on two classes that were part of a Senior Clerks' Academy, proved to be overstated. The content of the academy was mostly work-related. In addition, the general curriculum for clerks' education classes offered throughout the year emphasizes professional development over personal development classes.

The academy was specially developed with one-time funds, approved by the Judicial Council, for senior clerks who had been with the Judiciary for 10 years or longer. According to AOC management, the council recognized that senior clerks had unique education needs because they had been with the courts for so long that they had taken most of the existing courses. The academy was presented twice and well-received; 94 percent of participants rated the first academy either excellent or good, and all attendees rated the second academy either excellent or good.

The academy offered mostly work-related classes and some personal development classes; course descriptions revealed content that could apply either to on- or off-the-job situations, such as interpersonal skills. One class of the seventeen included in the academy, however, titled "Weekend Getaways in Utah," had no apparent applicability to work situations.

The current non-conference class curriculum for clerks contains 87 percent skills-based classes and 13 percent personal development classes. Judicial Council education policy requires clerks to complete at least 75

The Senior Clerks' Academy was rated highly by attendees and composed mostly of job-related classes.

percent of their education requirement in professional development classes; supervisors are supposed to approve an annual education plan for each staff to ensure compliance with the rule.

Allegation of Preferential Hiring of Unqualified Applicant Not Substantiated

There was no evidence that an employee was not qualified for a position and received preferential treatment in the hiring decision.

An allegation was made that a Judiciary employee was given preferential treatment and hired for a position for which the individual was not qualified. Discussion with Human Resources staff (one of whom was involved in the interview process for the position in question) and review of the application file and other records did not corroborate the allegation.

We were told that the applicant did not have the necessary experience required for the position. In fact, the applicant had worked for the courts in various positions for more years than required in the job announcement, including a number of years in the position from which the hiring agency hoped to draw an applicant. An analyst in the AOC's Human Resources office stated that the applicant had some post-secondary education, related work experience, and as much or more experience as the other applicants who were interviewed. It should be noted that the AOC's hiring procedures allow for management flexibility to choose among the pool of qualified applicants more so than allowed by the executive branch's ranking of applicants.

We wanted to review the interview notes to assess how the successful applicant was rated in relation to the other applicants, but the trial court administrator was unable to provide all the interview notes. However, one of the staff who sat on the interview committee stated that the successful applicant had been "outstanding." A review of the individual's first performance evaluation in the new position showed that the supervisor felt the staff was capable and was very satisfied with the individual's job performance.

We were told that the job had been upgraded to a higher pay scale to accommodate this particular employee. Although the advertised pay range in the job announcement did increase, the AOC's Human Resources director stated that when the job opening was first posted at a lower pay rate than had been paid to the employee who left the position, only one application was received. At the request of the hiring district's

An AOC director's outside businesses were not disclosed as potential conflicts of interest.

management, Human Resources increased the salary and re-posted the announcement. The Human Resources director stated that staff made an error in the pay range in the second announcement, corrected the error, and posted the job announcement a third time.

AOC Manager's Outside Employment Not Properly Disclosed

Another allegation was that an AOC division director had outside business interests that conflicted with the director's employment. The director stated that no conflicts with the AOC position had occurred; however, the director had not formally notified AOC management about the outside business involvement as required. After we asked about it, the director filed the required "Request for Approval of Secondary Employment" form, which was approved by AOC management.

The specific concern involved a training session provided by a contractor that the program's staff attended. Later, the director was involved as a trainer providing the same type of training with the contractor. The director told us that there had been no prior involvement with the contractor before the original staff training. Subsequent to the staff workshop in 2001, the director reports having assisted in providing the training once on a volunteer basis and once with compensation. The director reports taking leave time for these outside activities.

In 2002, the director registered a consulting business but did not complete the required outside employment disclosure form. Reportedly, AOC management was verbally informed about the business activities. We recommended to the director that formal completion of the required outside employment disclosure form would be in order. In addition, we believe the AOC should develop a procedure to ensure that employees complete the required forms when there is outside employment that may constitute a conflict of interest.

Recommendation

1. We recommend that the AOC communicate to its employees and those of the entire Judiciary the policy requirements to formally declare the possible existence of a conflict of interest to management.

Appendices

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Introduction to Appendices

The following two appendices include the responses to our surveys of District Court judges and Juvenile Court judges. In addition to the responses to the close-ended questions, we transcribed the comments that judges provided. We feel the comments provide an important source of information that should be public.

Despite the valuable perspective provided by the comments, we considered not including them out of concern that some judges may have felt their comments would be kept private. If any judges expected the content of their comments would remain private, we regret the misunderstanding. The survey instructions stated “The survey is designed to be confidential so we have no method to follow-up with those who do or do not respond.” That statement was intended to assure judges that the identity of those responding to the survey would remain confidential, not that the content of the responses would remain confidential.

Since the surveys did not include any identifying codes, we do not know the identity of judges who did respond, nor did we have any way to resend the survey to judges who did not respond. Even though we could not follow up to encourage judges to respond, we were impressed that response rates were so high: 52 of 68 District Court judges responded, for a response rate of 76.5 percent; 21 of 24 Juvenile Court judges responded, for a response rate of 87.5 percent. We were also impressed with the thoughtful comments written by many judges. We have transcribed and included in these appendices all the comments provided by judges except for information that has been classified as protected.

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Appendix A

District Court Judges

Dear Judge,

The Legislature's Judiciary Interim Committee asked the Office of the Legislative Auditor General to audit the Administrative Office of the Courts (AOC), focusing mostly on resource use and budget prioritization issues. We plan to complete our work and issue a public report before the next legislative session. Although our audit request is primarily to review the AOC, you'll note that some of the specific audit issues in the request are broader in scope. We've been asked to review the following:

1. The extent of staff and budget growth of the AOC
2. How the judiciary's funding priorities are established
3. The amount of educational expenditures for judges and staff
4. How many judges have law clerks to assist with core judicial functions
5. The amount of resources spent on programs or task forces that are beyond the initial scope of administration of the courts

It's important that we understand judges' perspectives on these issues as fully as possible. Since we have only been able to interview a limited number of judges, the purpose of this survey is to invite the input of all District Court judges. We tried to keep the survey as brief as possible. Please attach additional pages for your comments if necessary. Please complete the survey even if audit staff have interviewed you.

The survey is designed to be confidential so we have no method to follow-up with those who do or do not respond. If you have any questions about the survey or would like to discuss these issues with the auditors, please contact Leslie Marks, Audit Supervisor, at 538-1033, ext. 105 or lmarks@utah.gov.

Thank you for taking the time to respond to this survey. Please return it to us at your earliest convenience.

Sincerely,

Wayne L Welsh
Auditor General

Survey of District Court Judges

Issue 1: AOC Staff and Budget Growth

1. I have a good understanding of the role and function of the AOC.	__17__ Strongly Agree	__27__ Agree	__7__ Neutral	__1__ Disagree	_____ Strongly Disagree	_____ Don't Know
2. The AOC provides valuable services for the judiciary.	__19__ Strongly Agree	__30__ Agree	__2__ Neutral	_____ Disagree	_____ Strongly Disagree	__1__ Don't Know
3. I have confidence in the Judicial Council's oversight of the AOC's budget and staff.	__14__ Strongly Agree	__21__ Agree	__9__ Neutral	__6__ Disagree	__1__ Strongly Disagree	__1__ Don't Know
4. I am able to get the information I want about the AOC's staff and budget.	__9__ Strongly Agree	__16__ Agree	__11__ Neutral	__8__ Disagree	__4__ Strongly Disagree	__4__ Don't Know

Through our Judicial council representatives

5. Please list any areas where you think the AOC needs additional staff or budget.

Do not know

None I know of.

None

None

I don't think the AOC needs either, but the judiciary does. Especially clerks!

Education

Education

None that I am aware of.

None

Education, Information Technology, Alternative Dispute Resolution, on-line and other assistance for non-represented litigants.

Unable to say--Judge's role is not to supervise AOC, its budget or staff.

AOC doesn't need it. Trial courts need it.

The AOC does not need additional staff or budget!

Education opportunities are essential and the AOC needs more money.

It appears to be providing adequate services at this time with present staff.

None

None

Provide law clerks for District Court Judges.

None

Judicial Education

We need more education dollars. Locally produced education is not wholly adequate.

Specialized law clerk assistance to the trial courts, such as the capital litigation staff attorney, but in other specialized areas.

None. The Human Resources and Education departments provide superb service to the judges.

None.

I think AOC is appropriately staffed for the functions they perform – can't think of areas where additional staff is needed.

Judicial education is terribly underfunded.

6. Please list any areas where you think the AOC could reduce staff or budget.

Do not know

I know too little to say.

Not privy to AOC enough to know.

Judicial training, or Education and the Administration Function

Data processing/Guardian Ad Litem (actually the GAL belongs in the executive branch)

Staff attorneys

Information technology is poorly administered and terribly Inefficient. With competent management it could be significantly reduced.

Without a break down of who is hired to do what task, I'd have no valid thoughts.

The Guardian Ad Litem program is a good one, but it should not be a part of the Judiciary.

Education department. AOC is generally overstaffed.

None that I am aware of unless the courts reduce the scope of service significantly.

Unable to say.

All areas

I don't have access to this information.

Unknown

Don't need public information officer. Don't need mediation section—let private mediators handle mediation. Education Department overstaffed.

ADR/Mediation; Information Technology; Education; Public Relations

In the areas of GAL (which I think should not be under the courts), funding for task force involvement on non-court related matters.

Don't know or I am not privy to AOC staffing or budget.

None.

Information technology -- stop wasting time and money on "e filing".

7. Please provide any comments you have on the size of the AOC's staff or budget.

I do not believe the AOC's budget has been clearly presented to the district court judges

It appears they have a staff who does things I know nothing about.

Not privy to AOC enough to know.

I think judges are "unrealistic" in what they expect the AOC to accomplish and still remain small in size and budget. Judges give problems to the AOC to solve and then complain when they believe the AOC has grown too big. Mostly, the growth has come in areas where the judges have perceived problems.

In light of the current state financial condition I believe that the AOC staff and budget should be drastically cut before any more essential court services or personnel are cut again.

It seems there are a lot of AOC folks who don't do work we see directly, but I've never been told what those people do behind the scenes. So, it seems like there is too large a staff, but without more information, I'm reluctant to say for sure.

The AOC is appropriate or too small if it is understood that the AOC substantially supports and supplements court level functions. If the AOC is cut, court level resources must be correspondingly increased, often with less efficiency.

If I had to choose between more AOC staff and law clerks for trial judges, I would choose law clerks.

I think on the whole the AOC does a great job and I much appreciate what they do. Budget matters are always the result of competing demands and compromises. Though I feel the District Court comes out on the short end too often -- that is probably largely a result of my perspective.

None

One competent receptionist would be enough. ½ of the data processing, information services, administrative services, administration, human resources, public information, education & counsel staffs they now have. I'm not sure ADR mediation should be part of AOC at all. In less than 20 (closer to 10 years) the AOC staff has grown from 3-5 people to almost 1 to 1 staff to judge ratio (excluding Justices of Peace) where it has stayed for 5 to 10 years. Some growth was needed for the Judicial Branch to be adequately maintained. The problem is that the use of budget (& time) on AOC administration takes away from the functioning of the courts' day-to-day work in both money & time--its core judicial functions.

It appears adequate.

1. AOC too top heavy. 2. State court administrator either can't or will not communicate with trial judges. 3. Does AOC senior staff have car allowances? 4. Out of town or out of state judicial education or judicial conferences are wrong when state budget requires reduction in trial court staff.

Information not forthcoming--size & detailed budget not disclosed. Direction is increasing insular/secretive/non-cooperative. No one knows the accurate number of employees at AOC. Estimates range from 95-103 persons.

Clearly administrative responsibilities are important. (As a judge, I do not want to have to be involved in them.) Appropriate staff and budget needs should be met. But they need to be weighed against clerical & Court needs, as well. It certainly appears that more judicial & clerk positions have been cut than AOC positions. If numbers bear this out, then AOC should bear its share of reductions.

I think the budget and staff are too large mainly because we are involved in too many things that are not related to the courts and thereby our main focus is diverted as well as our resources and funds.

I served on the Judicial Council for a term and believe myself well informed on these issues.

AOC does excellent work. AOC is well organized and very professional. AOC is very helpful for District Court.

Because of state-wide mandated cuts, I believe the staffing and budget level is currently appropriate.

Growth has been inevitable since it started from nothing. The AOC now renders functions and provides services not in existence 30 years ago. To retreat would be unthinkable. Periodic review is appropriate.

I have no idea how many persons are on the AOC staff. I honestly don't know what they all do.

AOC's emphasis ought to be on providing support to the judiciary and being an advocate for judicial needs.

As a district court judge I have very little interaction with AOC's staff or budget. In discussion with other judges there are concerns raised however those discussions are based upon perception without information. Without any direct knowledge I can't provide an

informed opinion. I do believe the AOC budget has grown more than other areas of the judicial budget, however I have no knowledge of why or where.
None.

I recognize that the AOC staff & budget have grown over the years. Part of that I assume was in response to the consolidation of the courts, the increased need to coordinate with the expanding base of Justice courts, and normal growth as new functions are added incrementally. I know some of my colleagues believe the AOC is larger than it needs to be but, personally, I would have a hard time identifying functions I would cut.

Like virtually all of state government, the AOC is underfunded and struggling to do what's necessary. Mr. Becker has done a masterful job of keeping the ship afloat.

Issue 2: Establishment of Judiciary Budget and Legislative Priorities

8. I have confidence in the results of the clerical weighted caseload study.	2	10	9	10	14	7
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
9. I have confidence in the results of the judicial weighted caseload study.	2	10	11	14	10	5
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
10. The Judicial Council's budget prioritization process is a fair and effective way to set the court system's budget.	8	22	10	6	1	5
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
11. The Judicial Council has the information needed to effectively manage the judiciary.	9	29	5	2		7
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
12. The composition of the Judicial Council is appropriate to make fair budget decisions.	8	18	7	12	5	2
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
13. I have access to and can get information on issues from the AOC legislative team.	21	25	5			1
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

14. Please provide any comments you have on the establishment of budget and legislative priorities.

I don't see that I have ever been asked for input, even indirectly. The Boards seem to assume I want what they want.

I think the council has "access" to the information that it needs to effectively manage the judiciary. I am not sure that it always utilizes the information correctly. I lack confidence in either weighted caseload study. The judicial council composition is not entirely appropriate, but not just in budget decisions.

It seems to me there is too much appellate court input on the judicial council. They have 2 votes and three voices and they are fairly isolated and without much experience as regards the day-to-day workings of the trial courts. Other than that imbalance, the council seems fairly representative of the "real world"

There should be more District Court Judge representation on the Judicial Council.

I have concern that members of the Judicial Council, such as Justice Court members have little appropriate insight to the needs of the state courts and their involvement on the Judicial Council is of some concern to me.

None

I think it works well overall as is.

This year the council did not follow its own rules in setting the budget. There was very little discussion or debate (almost none). Decisions were made at a break by a group that brokered a compromise. [On question 12] Too many Justice Court Judges.

The composition of the Judicial Council favors the appellate courts that are relatively small in number of judges. District judges need more representation, for it is in the district courts where most of the work of the judiciary is done in this state.

I take issue with Justice/Peace on the Judicial Council voting on District Court budgets & priorities.

Since I am a District Court Judge I have a bias toward budget items dealing with this court such as law clerks. However, the Judicial Council does not always give priority to District Court priorities. This concerns me particularly as in this year District Court priorities were not included as budget item requests as detailed by the Board of District Court Judges. For example clerks/law clerks.

I see no basis for state bar representative to have a voting membership on the Judicial Council. Same for Justice Court judges now that most are separate from state judicial system.

Too many "fellow travelers" not directly connected with courts have too much input e.g. state bar representative and justice court representatives. Furthermore AOC budget directly conflicts with court budget. AOC representatives (lobbyists) plead for both courts and their own AOC interests. This creates a clear conflict of interest.

I have access to the Legislative team. My confidence is not high that (1) they always understand the subtle political nuances involved in dealing with the Legislature, or (2) they best represent judicial concerns, rather than AOC or Legislative concerns. Examples: (1) Allowing legislation extremely detrimental to the judiciary to pass because they "assumed the high fiscal note would kill it," rather than deal with it substantively, (2) Expecting Judges to promote or oppose legislation directly with "legislators with whom we have association" rather than represent and promote or oppose our issues at the legislature.

The budget and legislative priorities are set by the Judicial Council. I feel that the Council is unduly weighted toward the Justice and appellate Courts when the bulk of the work and involvement in critical judicial issues takes place in the District Courts.

Justice Court representation on the Judicial Council is inappropriate with respect to budget issues, since Justice Courts are funded by local governments.

Complexity requires trusting others involved in the process.

Budget priorities ought to be refocused on judicial assistance — compensation (our judges are the poorest paid lawyers in the state); assistance – law clerks to provide assistance on case research; clerical support.

Comment Question 12: The district court makes up the majority of the workload of the Judiciary. However, because of the makeup of the Judicial Council their 5 representatives are only a small minority. As a result District Court issues historically have not received the attention they otherwise should given the proportion of workload. This is particularly true in requests for law clerks which in our area is a substantial need.

Legislative team provides good information & allows wide input.

--Justice court judges should not be involved in budgeting decisions. -- The weighted caseload studies have some value, but too often they are over-emphasized, as an easy way to justify a decision -- The studies are not sufficiently reliable to be more than a factor among other factors.

Issue 3: Judiciary’s Education Program Administered by the AOC

15. The minimum mandated annual education requirement of 30 hours for judges is:	_____	_____	43	6	3	_____
	Definitely Too Low	Probably Too Low	About Right	Probably Too High	Definitely Too High	Don't Know
16. There are enough AOC-sponsored education options offered to meet my needs.	9	28	5	6	4	_____
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
17. AOC-sponsored education for judges has needed and appropriate content.	14	28	6	3	_____	_____
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
18. The cost of AOC-sponsored education conferences is reasonable and appropriate.	10	29	4	4	1	4
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
19. The minimum mandated annual education requirement of 20 hours for clerks is:	_____	2	31	4	1	14
	Definitely Too Low	Probably Too Low	About Right	Probably Too High	Definitely Too High	Don't Know
20. AOC-sponsored education for clerks has needed and appropriate content.	_____	8	7	7	1	28
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

21. Please provide any comments you have on the Education Standing Committee’s education program for judges and clerks (or other staff) as administered by the AOC.

Good programs.

I think they do an excellent job -- all things considered

Too much spending on travel and accommodations. Education staff is inefficient and could be reduced. The clerks need mandatory education regarding CORIS and other software. All supervisors should be able to train people within their district in all areas in which they supervise. We fall so far short of this standard that it's tragic.

It seems the clerical training deals with "fluff"--self esteem and diversity sensitivity and the like. The judicial component is helpful and seems to me to be well focused.

Overall it is very worthwhile.

Lawyers are only required to have 30 hrs of CLE every 2 years. There is no reason the judges should be required to have two times the amount that lawyers must have.

There should be no charges to judges for CLE conferences.

The out-of-state programs are essential to keep a well educated and enlightened judiciary. Efforts to limit it further are misguided and short sighted.

None

A good program but too many people in education justify their jobs to create programs at the expense of court time for judges and clerks to do core judicial functions. Some of this is good. It simply has a tendency to expand when there are more, rather than less, people in the education department trying to think of things to create.

On question 15-- it is too high, unless the education budget can be raised for CLE attendance. Present budget really discourages CLE attendance. I am very much in favor of annual CLE for judges which requires a higher budget allotment.

The Education Committee and, especially, the staff do a terrific job.

Our annual conferences are usually an excellent source to obtain educational hours. Diane Cowdrey does an excellent job. However, we do not have many other options with the budget crunch for obtaining out of state education. Often if one cannot go to the conferences it creates a problem in getting 30 hours in.

As previously noted, out of town (Snowbird resort) and out of state education or conferences totally improper when trial courts are losing critical staff.

Too many hours required. More than twice what bar requires. Too much emphasis on silly classes just to accumulate hours. Cuts into core duties. Like tail wagging dog. Education commitment is out of hand.

The recent attempts to have the conferences located in areas that reduce travel and housing costs for the highest number of participants is a good idea. [on question 15] Note that it is nearly 2 ½ times that required for attorneys.

This is obviously under budgetary stress which I hope will soon be relieved.

I feel that the AOC budget for education of Judges needs to be restored to the level that existed before the recent cuts. As new Judges are added it needs to be increased to accommodate their increasing numbers. As to clerk training, I question the relevancy of some of the provided training.

While the education committee does an excellent job, we need to have out-of-state education so we can interact with judges from other systems. There are other programs which are excellent, though more costly. The Legislature wants good judges but won't provide adequate dollars for our continuing education.

I have always enjoyed and gained from my involvement in AOC sponsored Educational programs. More funding is needed for out of state education opportunities.

Judges are charged (minimally) for attendance at AOC conferences. Given judicial compensation levels, this seems to me to be only one more indicator of lack of concern for judges. Additionally the allotment for non-AOC sponsored education, including these sponsored by the National Judicial College is so minimal, that judges are required to personally pay for education associated costs, which is likewise not a tenable situation. Judges, with present compensation and reimbursement can't afford to go to these seminars.

(1) The programs are generally very good and provide good training on a limited budget. (2) The only area that needs improvement is the lack of a training program for new law clerks and continuing training for law clerks. They are not included with Judges or Clerks.

Out of state training I believe is beneficial above and beyond AOC courses.

Note on question 16 about there being enough AOC-sponsored education options offered to meet the judge's needs: "Most years yes, other years I find out-of-state offerings to be more targeted to my specific needs.

I think the Education Department and the Standing Committee do an exceptionally good job in offering work-related educational offerings (with some "sprinkling in" of personal-development offerings), at least for the judges. The conferences are uniformly well done, and by and large, offer skilled presenters on highly relevant topics. I have heard greater variability of opinion from the clerks regarding the offerings available to them, but I have no direct personal knowledge of what is offered or what the basis are for positive & negative opinions.

--The AOC-sponsored programs are excellent and vital to the work of judges. There is a need for better funding. -- The AOC cannot provide all that I need through in-state programs, however. Out-of-state programs allow me to learn from national experience and to improve my work in ways not possible through the AOC.

Issue 4: Law Clerks in District Courts

- | | | |
|--|--------|------|
| 22. Do you have access to the services of a law clerk? | Yes 47 | No 5 |
| 23. If yes, do you share that clerk with other judges? | Yes 42 | No 5 |

24. If yes, with how many judges do you share one clerk's services? _____

[Grouped by Auditors]:

Group	<u>2-4</u>	<u>5-7</u>	<u>8-10</u>
Count	13	21	7

25. Additional law clerks would improve the quality of district court decisions.

<u>36</u>	<u>9</u>	<u>4</u>	<u>1</u>	<u> </u>	<u>2</u>
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

26. Additional law clerks would improve the timeliness of district court decisions.

<u>37</u>	<u>10</u>	<u>2</u>	<u>3</u>	<u> </u>	<u> </u>
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

27. Additional law clerks would reduce the need for additional judges.

<u>12</u>	<u>6</u>	<u>12</u>	<u>12</u>	<u>7</u>	<u>3</u>
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

28. Please provide any comments you have on the number of law clerks in district courts.

Law clerks are an invaluable resource to the trial bench. I could keep one busy full time. Resources should be allocated to increase the number of clerks assigned to the district courts.

I have a clerk 1 day a week and I could use a full time clerk easily. I need more law clerk help! AOC should reduce itself and hire law clerks.

We are in dire need of more law clerks.

We simply need more law clerks.

The entire state court system should have at least one law clerk for every two judges. In the Federal courts with much lighter caseloads and many less issues to consider a judge may have about as many law clerks as the judge wants. In the state court appellate courts, with a very small caseload and plenty of time to devote to each case each judge has 2 law clerks. This is backwards.

This is an area beyond my understanding. The appellate judges have a couple of law clerks each and render an opinion or two each month. The district judges share clerks and render a decision or two every day. It seems so out of kilter that (1) they do it that way without giving it any thought or (2) they don't have a clue on how resources like law clerks impact the quality of the finished product. It just seems so clear that trial judges who do a lot of civil work are desperate for good help in reaching hard decisions on a very frequent basis.

One for seven judges is too low. One more clerk would be very helpful. I question why the appellate courts should have the excessive amount of support staff that they have. If I have to go it alone why shouldn't they?

The present situation is almost meaningless. In over 8 years I have not had assistance on a single case. Reasonable levels are at least one clerk to two judges, but I do not anticipate any substantial change.

1 law clerk for 6 judges and a commissioner.

It is a shame to have so few law clerks. In considering the demand and the import of this work, a higher priority (except judges' salaries) is difficult to conceive.

5th District could use one more law clerk.

In my district there are enough. They're simply not equitably distributed or used.

While we have 8 clerks for 10 judges, our clerks are all first year lawyers and serve for only a year at a time. (They cross-train by attending POST and are deputy sheriffs to be bailiffs. Full time clerks who stay around would probably give better clerk service, but, of course, the

sheriff would have to provide deputies for the courtroom and pay more than we pay for our law clerk/bailiffs. On the whole I think what we are doing is very cost effective.

Clerks in some districts may make a difference in quality and timeliness of decisions. In others, it is more an issue of access and allocation.

The caseload is increasing in the most difficult and complex areas of the law. Without additional law clerks we cannot keep up. The quality of our work will suffer and appeals will increase. The costs to the public to resolve their issues will obviously increase. Federal District Judges who have about one-third the caseload as we do have 2 law clerks each.

The ratio of law clerks to judges (2 for 13 judges and 3 commissioners) in the 2nd district is unrealistically low and inequitable, especially for a district along the Wasatch Front.

I believe I have access to a clerk. However, I did not know the identity (other than name) of this person. She has left the courts employment and we are in the process of replacing her. I believe the clerk assigned to me has 8 or 9 other judges assigned. Not a good situation.

This appears to be a priority for funding among District Court Judges. Most state trial court benches have the assistance of at least a clerk per judge.

Under the Rules we are required to make our decisions within 60 days of the cases being submitted to us. We do that; however, because of lack of clerical help some of these decisions are not as well reasoned as they could be and sometimes cases go to trial that could be resolved before hand by the judge if additional clerk assistance were available. Because of the lack of law clerks most of the research and writing is done by the judge himself without clerk assistance.

As a judge in the 4th district, we have better access to law clerks than most, however ours have to serve as bailiffs as well. While more law clerks would not lessen need for more judges, they would increase quality & timeliness of judicial decisions. Do these issues matter to the Legislature?

Need more law clerks. So many legal issues to resolve. Not enough time for Judges to research topics. Briefs from attorneys are some times slanted or inaccurate or misleading.

Woefully inadequate

It is presently inadequate.

We have only one law clerk for 9 judges who are spread out in Uintah, Duchesne, Carbon, Emery, Grand, San Juan, Sanpete, and Sevier. This is absolutely ridiculous. I could use a law clerk full-time. Why does 3rd District in SLC have so many clerks? This is my most pressing need as a judge. It would be interesting to know why 9 judges must share one clerk who is geographically isolated from all but 3 judges!

Having one law clerk for 6 district judges means that it is very difficult to have that clerk do any substantial writing. As a consequence, judges are often having to do written decisions after hours, weekends. Sometimes issues cannot be given the level of written analysis that produces a decision which is sufficiently supported on its face to convince parties of its full merits. Some appeals could be avoided by more thoroughly written decisions that would be possible with additional law clerks. The work will be done without this, but it would add a level of quality & timeliness that I believe would be significant.

Again compensation affects quality. The quality of our clerks is not high and I imagine will continue to remain such given compensation levels.

This is an area that District Judges have felt very strongly about for several years. Yet there continues from both the Legislature and Judiciary inadequate support for sufficient law clerks for Trial Judges. The questions you have asked indicates that you already understand that additional law clerks would substantially improve the quality of judicial opinions. This would probably have the greatest impact on the Appellate and Supreme Court caseload. The better job we do at the district court level the fewer appeals that will be made. Also additional law clerk support early in a case – summary judgment stage – helps a great deal to resolve issues and clarify those that need to go to trial. A good law clerk also frees up judicial time now in legal research and writing opinions for more bench time, which may reduce somewhat the need for additional judges.

None.

Having worked in both the federal, and now, state, systems I am amazed at how little support is provided to the district judges in performing their work in an appropriate and timely manner. We are all professionals and try sincerely to do good work within the constraints of available time & staff support. Having a well-staffed cadre of law clerks (with a more realistic ratio than 1:8) would significantly improve our ability to render timely decisions. We are expected to issue rulings within 60 days of submission. That is fine if you have ample time to think, write & research. The reality is far different. We are in court every day or almost every day; complex civil cases (including domestic) require more than a quick decision "on the fly," and serious criminal cases demand careful attention to constitutional requirements. Law clerks can provide the necessary support in reviewing the record, & researching the law and helping process rulings. Utah appellate judges each have 2 law clerks and plenty of time to consider their decisions. District judges must rule quickly, hopefully correctly, and have meager support to do so. Please help!

The state-wide average is about 1 law clerk to 6 judges, and this barely allows the judges to find some benefits from having law clerks. If we have 1 law clerk to 7 judges, I can personally talk to him or her only about 30 minutes per week. As a result, I just don't use the law clerk the way I should -- I do get good help from the law clerk, but I have to limit my requests and do some of the work myself because he or she is not available enough.

My law clerk (and all law clerks in the 4th district) also acts as my courtroom bailiff. Part (I think ½) of her salary comes from the sheriff's office. This was the only way that we could get our law clerks. This means that whenever I am in the courtroom, she is in the courtroom acting as a bailiff -- not a law clerk. This leaves only 1/3-1/2 of her time for law clerk duties. Of our 12 judges in the 4th district, only 8 judges have law clerks, all of whom act as bailiffs.

Issue 5: Use of Resources for Task Forces That Are Beyond the Scope of Administration of the Courts

29. Concern has been raised that the purpose of the Racial and Ethnic Task Force was beyond the mission of the judiciary. Do you feel that the purpose of the task force was beyond the core mission of the judiciary?

Yes 16 No 20 No Opinion 16

30. Please list any other judicial task force(s) of which you are aware.

Gender and Justice; Twenty-first Century

Gender Bias

Gender task force, Consolidation, Justice for the 21st century, Unification of Juvenile and District Courts

Jury reform

There are far too many committees & task forces in general.

Family Court, Justice in Twenty-first Century

We have other committees that look at other aspects of judicial service--family law, technology, and etc.

Gender and Justice

Gender and Justice was another beyond scope of judiciary.

Aware of none--Also aware that the above Task Force has changed status and is no longer task force.

Family Court Task Force

There have been several ad hoc task forces in the past such as those involving the Justice Courts and Family Courts.

Committee on Privacy and Public Court Records.

31. Was (were) the purpose(s) of this (these) task force(s) beyond the mission of the judiciary?

Yes 3 No 11 No Opinion 13

32. Please provide any comments you have on the use of court resources for task forces.

By and large, the T.F.'s have addressed issues facing the judiciary. The Racial and Ethnic T.F. was formulated to study, investigate and research claims that the judiciary was not responsive to minorities.

The judges I know who were on the Racial and Ethnic task force did their work on their own time, so it didn't burden the courts. I don't know how the task force was staffed at the AOC.

They should be eliminated.

A core function of the judiciary is to promote a forum in which justice has the best chance to be accomplished, and this requires a perception of fairness and impartiality. Race and ethnicity are critical factors, but not the only ones. We need input and increased understanding to accomplish our mission.

Some are valuable for improvement within the judiciary. Some appear to be window dressing and geared to satisfy other needs—not core to judicial branch.

The courts, as an independent branch of government, must have the ability to study any concern or issue related to the judiciary, even if that relationship is tangential.

Trial Judges often (always) work alone. We don't know what's going on in other courtrooms. Committees and task forces allow us to "see the forest" by studying what is working and what isn't. They are essential to effectively serving the public.

It is my firm understanding that the majority of the resources for the Race and Ethnic Fairness Task Force were grant monies and contributions from outside entities. The Utah Judiciary sits at the head of the table of our State's criminal justice system. If insuring the equal administration of justice in the criminal justice is not a core mission of the judiciary, the judiciary will not honor its responsibilities of making fair and just determinations about the rights of all people, regardless of their racial or ethnic background. The criminal justice system does not begin on the courthouse steps. Leadership is essential to address the difficult issue of race and without the leadership of the courts, this effort would have failed. How can a matter of fundamental fairness not be a core mission of the judiciary? Are we just here to process cases irrespective of the quality of justice we deliver? I am highly suspect of anyone who has to ask this question.

[on question 29] Absolutely yes—Findings were based upon unsubstantiated stories, not on reliable data. Had the findings been from a court the decision would have been overturned on appeal for lack of credible evidence. The whole process was a sham and a waste of money. The ongoing funding for an FTE is shameful. We have not heard one thing by way of education or recommendation for change.

Task forces can be productive if they are used to improve the judiciary and the service it provides.

While the purposes of the task forces is important they should not be funded or staffed with judicial funds.

Resources are scarce. We are constantly faced with the prospect of reducing personnel. Hence wasteful activities consuming time and money are foolish.

All branches & departments are conservative with resources, but many issues can only be addressed by judiciary. I think racial & ethnic task force dealt with such issues.

The response to this question goes back to one of my prior answers. I think the Courts are doing too many things that have minimal relationships to our core function. Task forces top the list. Because we do them well anything that is remotely related to the courts is assigned to us. In addition, I feel the AOC is too aggressive in taking on task force type programs.

We need to be sensitive to the concerns raised by the racial & ethnic fairness task force, but this was not really a judiciary issue—the main gripes were about law enforcement issues.

When the subject matter of the task force is appropriately linked to the mission of the Judiciary it is helpful to have members of the Judiciary involved.

This area of inquiry depends upon how broadly "core mission" is defined. The most "core" duty of a judge is to decide cases. The broader duty is to further justice on all fronts. There should be room for both.

I believe that Judicial involvement in Task Forces is very valuable. It is very important for Judges to participate in areas—Educational, Judicial, Constitutional, Legal to improve the quality of the Law & Courts. I have served on several like Tax Recodification, Constitutional Revision, various Bar Committees etc. that I believe are extremely valuable to the State. A Judge's perspective on these various Task Forces and committees help to solve problems before they become major legal issues and as a result save the public & taxpayer considerable cost and problems. [on question 29] Yes, because they addressed significant issues with Law Enforcement outside of Judicial issues. But I believe that is valuable in many instances.

None.

Not sure if you are limiting your request to "task forces" only or mean to include the various ad hoc committees on which many of us serve. I personally serve on two advisory committees and one standing committee to the Supreme Court/ Judicial Council. I firmly believe the work of those committees is strictly within the core mission of the judiciary, and the limited resources spent on those committees are well worth the benefit derived.

Task forces are for times of plentiful budgets and significant needs. I have received zero benefit from the Racial and Ethnic Task Force. There are better ways to solve or identify problems. [On question 29] "Little more than a "feel good" project."

33. Please provide any comments you have on any other court-related issues.

I, as a judge, am not at all convinced that AOC has my career goals at the center of their radar. We need more judicial involvement directly in what they do.

None

Do we really need a mediation program in the appellate courts?

The Judicial Conduct Commission is essentially a body that deals with trial court issues. For all practical purposes the appellate courts are exempt. Certification of judges for retention election unfairly targets trial courts with the attorney survey--appellate courts are very insulated from this critique. Too much emphasis is given to attorney evaluations.

Why is the legislature launching this investigation of another branch of government? How are finances of the legislative branch supervised?

*I believe it is appropriate, within the bounds of Judicial ethics, and even critically needed, for the Judicial Branch to have more contact with the community off the bench--particularly in an educational role so that people understand better our form of government. (The Legislature and Governor, being in different roles and less restrained, also have that duty.) I think some of our resources should be reserved to that end.

*I hope the Legislature sees itself as a co-equal branch of government with the Judiciary and the Governor exercising appropriate self-restrained checks and balances (and expecting the same from the other branches) and not as an overseer of all public office.

Of major concern is my observation that trial judges have little or no faith in the administrative office to function in support of the trial courts. It is perceived as being secretive and aloof. This perception is most strong with judges who have worked with prior state court administrators.

AOC personnel have been provided vehicles (state) to drive and/or car allowances. Why?

I have concern over the ability of the individual districts to control their budgets. I feel they should have more say in allocation of turn over savings and other savings that occur within the district over the course of a budget year.

Why are there no questions about the Judicial Conduct Commission? Do we feel it is fair? No. -- Do we feel it truly is unbiased? No. -- Do we have confidence with legislators serving on the JCC? No, especially when they say things like "they are out to get Judges" -- articles in media confirm they say such things. -- Would you want a judge to have such a preconceived bias? No!

I have extensive professional experience working in the Utah Legislative , Executive and now Judicial Branches of Government and have discussed these other issues with Ms. Leslie Marks. Thank you for your time in this area.

None.

This may sound self-serving since I am now a part of the system, but Utah really has (by and large) a great group of well-qualified and professional judges committed to doing their best -- even in the face of severe financial constraints on available support. The nominating commission process works. While there occasionally are cases of intemperate action or comments by a member of the state judiciary, most of the more egregious violations of the judicial canons do not arise from judges that were selected through the nomination commission process. And, the cases of judicial misconduct that do arise are (again in general), far less serious than judicial misconduct cases reported from other jurisdictions that elect their judges in contested partisan elections. It would be a serious mistake for Utah to move away from a system that has given us a high caliber of judges. Contested partisan election of judges would be a terrible step backwards.

The biggest threat to the proper functioning of the courts is the Utah Legislature. The attempts by some legislators to inject politics into the Courts is more than disturbing. Why do members of the Legislature think they know all the facts and have all the answers for everything? Why do they ignore the separation of powers principle?

I am a fairly new judge, so I really don't have enough experience with the AOC to comment on some of your questions.

Optional: if desired, please check below as appropriate.

10 member of district or juvenile court board _5_ member of Judicial Council

8 member of a Council standing committee _11_ work in a rural district _24_ work in an urban district

Thank you for completing this survey. Please return your responses in the enclosed postage paid envelope.

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Appendix B

Juvenile Court Judges

Dear Judge,

The Legislature's Judiciary Interim Committee asked the Office of the Legislative Auditor General to audit the Administrative Office of the Courts (AOC), focusing mostly on resource use and budget prioritization issues. We plan to complete our work and issue a public report before the next legislative session. Although our audit request is primarily to review the AOC, you'll note that some of the specific audit issues in the request are broader in scope. We've been asked to review the following:

1. The extent of staff and budget growth of the AOC
2. How the judiciary's funding priorities are established
3. The amount of educational expenditures for judges and staff
4. How many judges have law clerks to assist with core judicial functions
5. The amount of resources spent on programs or task forces that are beyond the initial scope of administration of the courts

It's important that we understand judges' perspectives on these issues as fully as possible. Since we have only been able to interview a limited number of judges, the purpose of this survey to invite the input of all Juvenile Court judges. We tried to keep the survey as brief as possible. Please attach additional pages for your comments if necessary. Please complete the survey even if audit staff have interviewed you.

The survey is designed to be confidential so we have no method to follow-up with those who do or do not respond. If you have any questions about the survey or would like to discuss these issues with the auditors, please contact Leslie Marks, Audit Supervisor, at 538-1033, ext. 105 or lmarks@utah.gov.

Thank you for taking the time to respond to this survey. Please return it to us at your earliest convenience.

Sincerely,

Wayne L Welsh
Auditor General

Survey of Juvenile Court Judges

Issue 1: AOC Staff and Budget Growth

- | | 8 | 9 | 2 | 2 | | |
|--|-------------------|-------|---------|----------|----------------------|---------------|
| | Strongly
Agree | Agree | Neutral | Disagree | Strongly
Disagree | Don't
Know |
| 1. I have a good understanding of the role and function of the AOC. | 8 | 9 | 2 | 2 | | |
| 2. The AOC provides valuable services for the judiciary. | 15 | 5 | | 1 | | |
| 3. I have confidence in the Judicial Council's oversight of the AOC's budget and staff. | 10 | 4 | 2 | 4 | 1 | |
| 4. I am able to get the information I want about the AOC's staff and budget. | 8 | 3 | 5 | 3 | 2 | |
| 5. Please list any areas where you think the AOC needs additional staff or budget. | | | | | | |
| None known | | | | | | |
| Information Technology | | | | | | |
| Data processing, CARE development | | | | | | |
| I would like to see more resources put into reducing judge's isolation, improving facilities, increasing clerk competence, and providing law clerks. | | | | | | |
| Attorneys to help judges with research would be very beneficial. | | | | | | |
| None | | | | | | |
| Information Technology | | | | | | |
| The general counsel for the AOC appear to be over worked. In the past several years the AOC and judiciary have been targets of suits by disgruntled employees, judges who have resigned. That part of the AOC office may need para-legals to assist them in representing the courts. | | | | | | |
| Mediation---a core judicial function. | | | | | | |
| Brent Johnson, Legal Counsel for Courts, could probably benefit from having additional counsel. | | | | | | |
| Information Technology, Mediation. | | | | | | |
| Additional public relations staff to let the public know some of the good things we are accomplishing. Additional budget to maintain and upgrade older court houses and equipment. Grant-writing experts to access funding. | | | | | | |

6. Please list any areas where you think the AOC could reduce staff or budget.

None known – but I would be interested in looking at non-core court services.

None known

Don't know.

All other areas [except mediation] — especially for the court Administrator and his senior staff. Especially his various expenditures on racial training and general education budget.

Across the board except Information Technology, mediation.

7. Please provide any comments you have on the size of the AOC's staff or budget.

I don't have enough information to comment.

It is very helpful. Years ago it was unable to provide much support. Particularly in the area of Judicial Education it is much improved.

Those with whom I have worked appear to be well engaged, helpful and very busy.

The staff and budget of the AOC appears very appropriate. The staff has always been very responsive to my requests and needs.

Too large. The courts clerks are high school Graduates with very limited experience and given heavy and important responsibilities to serve the public and the judiciary. The AOC has executive secretaries and experienced office managers and higher pay. Where is the priority?

Dan Becker, Myron March, Ray Wahl all do a great job & manage resources well.

The AOC's staff and budget are significantly bloated.

It appears to me that there is an over abundance of AOC personnel at most court meetings and conferences. They seem to always be there at great expense without contributing much. [on question 1] I think I know what it should be but I can't believe my understanding coincides with theirs. [on question 3] I don't think they exercise enough oversight.

Issue 2: Establishment of Judiciary Budget and Legislative Priorities

8. I have confidence in the results of the clerical weighted caseload study.

<u>2</u>	<u>6</u>	<u>5</u>	<u>2</u>	<u>4</u>	<u>2</u>
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

9. I have confidence in the results of the judicial weighted caseload study.

<u>2</u>	<u>13</u>	<u>1</u>	<u>3</u>	<u>2</u>	_____
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

10. The Judicial Council's budget prioritization process is a fair and effective way to set the court system's budget.

<u>7</u>	<u>8</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>3</u>
Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know

16. There are enough AOC-sponsored education options offered to meet my needs. 8 10 2 1
 Strongly Agree Neutral Disagree Strongly Don't
 Agree Disagree Disagree Know
17. AOC-sponsored education for judges has needed and appropriate content. 11 7 1 1 1
 Strongly Agree Neutral Disagree Strongly Don't
 Agree Disagree Disagree Know
18. The cost of AOC-sponsored education conferences is reasonable and appropriate. 11 8 1 1
 Strongly Agree Neutral Disagree Strongly Don't
 Agree Disagree Disagree Know
19. The minimum mandated annual education requirement of 20 hours for clerks is: 3 12 6
 Definitely Probably About Probably Definitely Don't
 Too Low Too Low Right Too High Too High Know
20. AOC-sponsored education for clerks has needed and appropriate content. 1 8 4 1 7
 Strongly Agree Neutral Disagree Strongly Don't
 Agree Disagree Disagree Know

21. Please provide any comments you have on the Education Standing Committee's education program for judges and clerks (or other staff) as administered by the AOC.

Very well done

Great staff; education conferences cover vital, pertinent issues

Excellent program

Training for judges at large conferences should be broken down somewhat to address the type of work we do—district court, juvenile court, appellate court, domestic, criminal, civil, drug court, etc.

The education program has been excellent at both the annual meetings (court and Juvenile court). I think judicial education is what the AOC does best!

Excellent given their financial constraints.

Out of state travel for judges should be increased or reinstated. This is not only very educational but allows Utah Judges to share & learn from other judges from other parts of the country. Also, we can select a specific conference where we need additional education or specific training. Without this opportunity we become less likely to see ways to improve our performance & the judiciary as a whole. A waste of tax payers' money!

I think the AOC does a great job in providing for judges.

Clerical training seems too often to be unrelated to their duties

The education program has been very helpful in addressing case management problems and also in making me aware of methods I can use to address the needs of the public with regard to treatment and public safety. I do not have the time to read the many journals and newsletters that are published every year, but find that by attending the AOC education programs, I am able to keep current.

Issue 4: Use of Resources for Task Forces That Are Beyond the Scope of Administration of the Courts

22. Concern has been raised that the purpose of the Racial and Ethnic Task Force was beyond the mission of the judiciary. Do you feel that the purpose of the task force was beyond the core mission of the judiciary?

Yes 5 No 8 No Opinion 7

23. Please list any other judicial task force(s) of which you are aware.

Buildings & Facilities

None

Juvenile Justice Task Force

Juvenile Justice Task Force, 1997-1998

Gender & Justice

24. Was (were) the purpose(s) of this (these) task force(s) beyond the mission of the judiciary?

Yes 2 No 3 No Opinion 3

25. Please provide any comments you have on the use of court resources for task forces.

We seem often to be under represented.

Racial and Ethnic Task force involved more than just judges. It was appropriate. It could have been sponsored by the Legislature, but they never did it.

Citizens, lawyers, police officers, government workers, and others look to the judiciary to take the lead in promoting justice. Part of doing that is assessing how the delivery of justice can be improved.

Once a task force becomes a "political" entity promoting a certain position i.e. affirmative action etc., it moves beyond the scope of its initial purpose.

I feel they are very appropriate when recommended by the Judicial Council.

Regrettably I have rather unenlightened view. I have always believed that the matters described in the above paragraphs were a more proper subject for the legislature or the University.

26. Please provide any comments you have on any other court-related issues.

Take a look at "therapeutic Justice" and specialty courts designed to have court take over Executive functions in delivery of services. These are being improperly defined in the Modern age as core functions of courts, but are not under constitutional design originally, and turn courts into Social Service entities lacking true objectivity.

I strongly feel that Ray Wahl is the best administrator the Juvenile Court has ever hired.

The greatest threats to our justice system are lack of public confidence, which is caused by delay in getting cases resolved & by the exorbitant cost of litigation, and by unfunded mandates from the legislature to the judiciary, law enforcement, & cities & counties, and secondly legislative hostility, which diverts precious scarce resources, undermines public confidence, & discourages good people from applying for judgeships.

Utah enjoys a well respected national reputation which speaks highly of the system. I am convinced that the lack of judicial raises for

2-3 years is having a negative effect on morale & could cause many well qualified applicants to not seek appointment to the Bench.

I don't believe that you can compare District Court Clerks with Juvenile Court Clerks. I think that Juvenile Court Clerks are over-worked and underpaid.

I think Utah is very fortunate to have an excellent court administrators office. With the tremendous caseload we have in our district, we would never be able to adequately handle the tasks the AOC addresses on a daily basis.

Optional: if desired, please check below as appropriate.

5 member of district or juvenile court board member of Judicial Council

5 member of a Council standing committee 3 work in a rural district 7 work in an urban district

Thank you for completing this survey. Please return your responses in the enclosed postage paid envelope.

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Agency Response

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

This response consists of a general response by the Chief Justice on behalf of the Judicial Council, followed by an overview of the administrative structure of the judicial branch of government in Utah, and finally a chapter by chapter response to the audit by the AOC.

Judicial Council Response

May 11, 2004

Members of the Legislative Audit Committee:

The State Court Administrator has provided a thorough response to the audit report and recommendations, with which I am in complete agreement. As a preface to his comments, I would like to place that response in what I believe is an important and appropriate context, the governance of the judicial branch of government.

As the Chair of the Utah Judicial Council, the entity charged by the Utah Constitution with the duty to “make rules governing the administration of the courts,” I offer the following comments on the Report of the Office of the Legislative Auditor General regarding its performance audit of the Administrative Office of the Courts. As acknowledged by the Report there are a number of observations and recommendations therein which are properly addressed not to the AOC, but to the Council, which supervises the AOC and is responsible for all policy decisions taken on behalf of the judicial branch of government. Thus, for example, when the Report asserts in its Digest (pp.ii and iii) that “[t]he AOC provided over “72,000 in funds to the Racial and Ethnic Fairness Task Force through fiscal year 2003,” it inaccurately suggests that funding and support for the Task Force was the result of AOC initiative and control rather than, as was the case, specific policy direction and authorization from the Council.

-1-

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

Furthermore, in attempting to address the ways in which services provided by the AOC are perceived within the judiciary, the Report relies heavily on responses to a questionnaire distributed, not to members of the Judicial Council (except to its district and juvenile court representatives), the 125 judges of the Justice Courts, the 12 judges of the appellate courts, or the 1,100 non-judge members of the judicial branch, but instead only to the 90 judges of two of the trial courts of the state. The views of these judges are of course significant and of value to the Council and the judiciary as a whole but, as the Report itself reflects, the AOC is the staff and support arm of the Judicial Council and performs its functions at the Council's direction, not at the direction of individual judges.

As Chair of the Council, for example, I had only one opportunity early in the audit process to meet with the auditors and on that occasion was not asked to respond to any of the questions contained in the questionnaire. On behalf of the Council, therefore, I observe that the audit process appears to have overlooked to some degree the very nature of the governance system within the judicial branch and the proper functions performed by the Council and the AOC.

Another manifestation of the above-described issue, in my view, is the fact that the Report, in offering observations on a variety of functions performed by the AOC, including most notably budget prioritization processes and judicial branch education policies, omits any meaningful examination of the Judicial Council Rules of Judicial Administration, which entirely control and govern both activities. The Council has made detailed and extensive policy choices about the need for, purposes of, and standards governing education for judges and staff in the judicial branch, and for the way in which information from the boards of judges regarding budget priorities is obtained for use in the budgeting process. Some of the narrative in the Report, however, seems to suggest that such decisions and policies originate with the AOC, rather than with judges in leadership positions who have responsibility therefor.

For example, scant mention is made in the Report of C.J.A. Rule 3-403., "Judicial Branch Education," which details the standards adopted by the Council and summarizes the extensive duties and responsibilities of the Judicial Branch Education Committee, staffed by judges, to oversee and monitor all educational programming. The AOC's judicial education officer is staff to and administers programs and policies as directed by, the Education Committee, not the state court administrator.

With the caveat that there has been insufficient time since the delivery to me of the preliminary draft of the Report to permit a review of these comments with the Judicial Council, I feel comfortable in observing that, notwithstanding my concerns about some of the objectives, assumptions, and methods of the audit, I do not see problems in any of its recommendations. Many of them have already been incorporated and others contain useful suggestions for the Council's consideration. I would also like to compliment the courtesy and diligence of the auditing staff members who have conducted this review.

Finally, for me the results of the audit confirm what those of us who are directly involved in the administration of our court system have always known, that the Administrative Office of the Courts is a professional organization that provides extremely effective and efficient support to Utah's courts.

Sincerely,


Chief Justice Christine M. Durham
Chair, Utah Judicial Council

Administrative Office of the Courts Response

Overview

The Administrative Office of the Courts recognizes the important role played by the Office of the Legislative Auditor General in ensuring the efficient operation of government. The audit has been a long and sometimes difficult process, but we have welcomed the opportunity for an independent review, along with suggestions for improvement.

The report's historical review provides a useful perspective on the judiciary's growth and consolidation. However, the report does not fully describe the structure of the judiciary, an understanding of which is important to understanding the administration of the judiciary and the AOC's role within the administration of the branch as a whole.

The Utah Constitution provides that the Judicial Council is the administrative head of the judiciary. Ultimately, all authority concerning the administration of the judiciary flows from or resides in the Judicial Council. In order to accomplish its management goals, the Judicial Council has established a two-part administrative structure. The structure is described in Chapter 3 of the Code of Judicial Administration. This chapter places responsibility for the administration of the judicial branch with the Council, and the Council has chosen to implement that responsibility through the creation of the Administrative Office of the Courts (AOC).

The Judicial Council has created and manages a variety of programs and services. The AOC was created to house those programs and services that benefit from centralization. In Rule

3-301, the Judicial Council stated: “Administrative support services for the judiciary shall be organized into a central office known as the Administrative Office. Local trial court administrative offices shall be established when determined necessary by the Council and shall be known as Offices of the Court Executive.” The AOC is thus not a separate program, but an entity that exists to house and manage programs on the administrative side of the judiciary.¹

While all judges have adjudicative responsibilities, only some have direct administrative responsibilities as well. Those judges assume those administrative responsibilities by assumption of an additional position - presiding judge, member of a Board of Judges, or Judicial Council member. Those administrative roles are spelled out for each of those positions in the Code of Judicial Administration, which is a series of rules promulgated by the Judicial Council pursuant to its constitutional grant of authority. Those rules also provide for input to the administrative functions of the courts via inclusion of judges on committees and by the comment process, but the performance of those administrative tasks is reserved for the presiding judges, boards, and the Council.

For example, although budgets are primarily managed by the Judicial Council and the AOC, the Council has created opportunities for input and recommendations by the judges. Rule 1-304 states that the boards of judges “develop and recommend . . . budget and legislative priorities.” The boards also act as liaisons between individual judges and the Judicial Council on budgetary and other issues. Rule 3-104 states that presiding judges “coordinate” with the trial court executives on budget issues. Thus, while there are parts of the judiciary that have direct authority over certain matters, the Judicial Council has established a system in which all of the parts work together.

The rules also describe the role of the AOC in assisting court level boards, presiding judges, and the Council. The AOC has no inherent authority, and no separate agenda from that given it by those judges with administrative authority. Policy is set by the Council, then implemented by the component administrative parts of the judiciary, one of which is the AOC. Given that background, our response to many of the individual recommendations that follow will be to refer the matter to the Judicial Council for further consideration, while other recommendations have already been administratively implemented.

Chapter references below are to the chapters in the audit report.

¹Although the Legislature has statutorily approved the creation of the AOC, the Judicial Council’s authority to create the programs that are housed within the AOC exists because of its constitutional role as the head of the judiciary. Some sort of administrative structure is inherent to the operation of a branch of government, and while there is no concern with the Legislature’s statutory delineations, the Judicial Council has authority to create programs and to create a structure in which those programs are housed and managed.

Chapter II Size of the AOC

Recommendations

The AOC concurs in the recommendations of the auditor in this chapter, and they will be referred to the Judicial Council for further consideration.

Additional Responses

CJA Rule 3-406 sets out the budget program areas to be used by the AOC. These areas have been the same since the inception of the rules, were the same when the AOC was last audited by the Legislative Auditor in 1991, and are consistent with the program areas used by the Legislative Fiscal Analyst. While we appreciate the needs of an audit that is directed at the AOC for a budget structure that separates out the AOC distinctly, the more usual and frequent need met by budget information is for the Judicial Council and the legislature to account for and manage *programs*. Funding decisions are generally made on a programmatic level rather than an administrative one, and in order to have optimal accountability for each of the program areas in the judiciary, the Council and the fiscal analyst have always found it more useful to organize the budget along program lines. Also this is the same budget organization used for each of the other major departments funded by the Executive Offices, Criminal Justice and Legislature Appropriations Subcommittee.

Admittedly this functional distinction leads to judgment calls when deciding what functions should be placed in our "Administrative Office" program versus another program, but it seems reasonable that the *function* should drive that placement, not the physical location of the office or the expenditure sign-off responsibility. Administrators will by definition almost always have the responsibility to approve expenditures from various program budgets, but that doesn't mean the function related to the expenditure is administrative. For example, the audit counts 100% of the Justice Court budget as administration. Yet some of those funds are used to reimburse individual justice courts and judges for performing preliminary hearings, as magistrates, in district court cases. For the internal operations of the courts, the Council has determined it is more important to allocate and track those funds by the function of the court level and the use of the money rather than to assign the entire cost as an administrative expense.

We point out these issues in attributing costs to the AOC as opposed to programs not to disagree with the audit conclusions, but to echo the point made in the audit that these are subjective decisions. Either approach is reasonable and defensible, depending on whether the purpose is to audit the AOC, or to fund and manage programs within the judiciary.

Similarly, whom to count as AOC employees and when to count them leads to slight differences in conclusions about the growth of the AOC. We explained to the Judiciary Interim Committee in 2002 the assumptions we made in arriving at the counts we did, and our use of

general fund budget numbers². It serves little purpose to focus on our relatively minor methodological differences so long as we both conclude that the AOC has grown at a slower pace than the programs and courts that we serve, that growth was directed by the legislature, primarily for new initiatives to directly serve the public, and that the budget reductions were applied to the AOC at nearly twice the level they were applied to the rest of the judiciary.

Chapter III Budget Prioritization Process

Recommendations

The five recommendations in recommendation #5 have already been implemented. We also note that with respect to recommendation #6, the Board of Juvenile Court Judges and the Board of District Court Judges have already developed a joint proposal for a uniform judge year, and that proposal will be forwarded to the Judicial Council. The remaining items will be referred to the Judicial Council for its review.

Additional Response

We agree that the budget process as implemented and as set forth in CJA Rule 3-406 is a fair and balanced method of determining the needs of the various components of the court system and of developing a well reasoned budget request for consideration by the Governor and the Legislature.

The audit questions in a general way the accuracy of data used to make budget decisions, but the only suggestion of inaccurate data relates to the weighted caseload studies. While we agree that there are drawbacks to the Delphi method, it is important to note that it is the nationally accepted standard in weighted caseload studies, and is used by most states employing objective and rigorous workload measures. Other methods, such as time and motion studies, are prohibitively expensive and time consuming in a court environment. Also, relying on the median response negates the kind of wide variance used as an example in this report.

A small number of errors in calculations were identified, and they have been corrected. For perspective, we note that the Judicial Council makes decisions about dozens of budget requests each year, most of which do not involve weighing relative inter-district clerical and judicial needs. The only purpose for which the weighted caseload studies are used is to determine the clerical or judicial needs of a particular district *as compared to another district of*

²We stand by the report given to the Judiciary Interim Committee. The assumptions we used were noted and were consistent with the purpose of the requested report. We have now verified those FTE counts with a detailed review of individual personnel records. Any differences now are due to the different purpose of this audit, and as the audit notes, are primarily the product of the auditors' use of a different start date for the count, and an earlier end date that did not include the results of the 2002 budget and FTE cuts in the AOC.

the same court level, and even then other factors are also used in the determination. The boards and the Council have long understood the limitations of the studies and have used them accordingly.

Chapter IV Law Clerks

Recommendations

None.

Additional Response

We concur in the long-standing need for additional law clerks.

Chapter V Judicial Education

Recommendations

The AOC concurs in recommendation #1, and will restructure the budget programs accordingly. The remaining recommendations of the auditor in this chapter go to issues under the purview of the Judicial Council, and will be referred for the Council's further consideration.

Additional Response

The Judicial Council manages judicial branch education for judges and employees through the Judicial Branch Education Committee. CJA Rule 3-403 provides that the committee, comprised equally of judges and court staff, shall "develop and evaluate a comprehensive education program for all judges, commissioners and court staff." The AOC provides staff support to the committee and to education programs, while policies, requirements, budgets and curriculum are directed by the standing committee and the Judicial Council.

The audit suggests reducing the judicial education hours requirement as a way of reducing costs. Since the actual number of hours historically reported by judges does not appear to bear a direct relationship to the current requirement, lowering that requirement would not seem to be an effective way of reducing hours spent on education, nor is that a goal that would serve the public well, in our view. In a variety of typical proceedings in Utah's courts, the judge and court staff are already among the lowest in terms of continuing education requirements of state employees present in the courtroom. The DCFS worker in a child welfare proceeding is required to complete a minimum of 40 hours per year. The Youth Corrections (now Juvenile Justice Services) officer testifying in the delinquency proceeding also has a 40 hour annual continuing education standard. The corrections officer that transported the prisoner to district court also has a 40 hour requirement, as does the bailiff.

The position of the Judicial Council has been that judicial education is not a "frill," but rather performs an essential function for a judiciary that has a weighty responsibility to provide

competent jurists and staff to conduct the business of the people. When judges and staff are engaged in continuing judicial education they are not "incurring costs for time away from the job;" they are *doing* their jobs in ensuring that they are competent and knowledgeable in the way they serve the public.

Chapter VI Racial and Ethnic Fairness Task Force

Recommendations

The AOC agrees, in general terms, with the recommendations of the auditor in this chapter, and the recommendations will be referred to the Judicial Council for further consideration.

Additional Response

The fairness of the judicial process, and the public's perception of that fairness, constitute the very foundation of the rule of law in our society. The Judicial Council initiated and then led an effort to assess, increase and promote that fairness throughout Utah's justice system. The AOC did provide staff support to the initiative. The AOC did not unilaterally "provide \$72,000 in AOC funds" to the process; rather, the Judicial Council directed the expenditure of \$72,000 of judicial branch funds over the course of six years, and in return was able to secure a half million dollars used to increase fairness across the entire criminal justice system in Utah. The public, the legal community, the faith community, the component criminal justice agencies, numerous federal entities, and the Utah Legislature all supported and funded this endeavor.

The tracking of funds for the task force was consistent with our usual grant funds practice: the grant funds and other donations were maintained and tracked in a grants account, and the general fund money appropriated by the legislature was kept in our Administrative Office general fund org. Suggesting, as the report does, that all funds should have been lumped together in a separate account, by function, leads to the same discourse about program budgeting versus organizational budgeting as was had in Chapter II. In this instance the auditor was tasked to look at a program, rather than administration, and found that it would have been easier to examine if the funds were arranged programmatically.

The extent of support lent by court employees is an area of some discussion and speculation in the audit. It is also an area of some pride for the judiciary. Eighty-nine percent of all Task Force meetings were held during lunchtime; 92% of all Task Force public hearings were conducted outside work hours, some on weekends; 100% of all Commission meetings were held at lunchtime; and 100% of Commission hearings were held outside work hours. Task Force and Commission members and involved court staff gave most generously of their own time. Public hearings were conducted at times and in locations so as to encourage the greatest attendance by members of the public, frequently at night and on weekends. What work time judges and staff did spend on Task Force and Commission business was and is part of their jobs, and contributed to the furtherance of the core mission of the judiciary as defined by the Judicial Council.

Chapter VII AOC Allegations

Recommendation

The AOC has implemented the recommendation in this chapter.

Additional Response

None.

Conclusion

The opportunity to respond to the report and recommendations is very much appreciated. As we have noted in our response, many of the recommendations have already been addressed, and others we will be working on with the Judicial Council.

Finally, we would like to acknowledge the thorough and professional manner in which the staff of the legislative auditor's office conducted themselves throughout this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Becker", written over a circular stamp or seal.

Daniel J. Becker
State Court Administrator