

## Introduction

In June, 2009 the Cowlitz County Superior Court requested the Administrative Office of the Courts (AOC) to conduct an analysis of the adequacy of the court's resources relative to the court's caseload. The court expressed concerns that recent budget reductions had rendered the court incapable of meeting its constitutional and statutory obligations to administer justice.

The AOC responded to this request in two parts:

First, the AOC's Washington State Center for Court Research (WSCCR) completed a "*Comparative Analysis of Six Washington Courts*<sup>1</sup>," providing an objective baseline report on the resources and workload demands for Cowlitz County and five comparison courts selected for their similar population and caseload.

Second, this analysis serves as a companion to the *Comparative Analysis*, providing an assessment of the court's resources under the standard set forth by the Supreme Court in *In re Juvenile Director*, 87 Wn.2d 232 (1976).

## "Adequate and Sufficient Resources"

In 1976, the Washington State Supreme Court articulated the standard that a court<sup>2</sup> must have "adequate and sufficient resources...[n]ecessary for the holding of court, the efficient administration of justice, or the fulfillment of its constitutional duties." *In re Juvenile Director* at 245, 250. The Court stated:

It is axiomatic that, as an independent department of government, the judiciary must have adequate and sufficient resources to ensure the proper operation of the courts. It would be illogical to interpret the Constitution as creating a judicial department with awesome powers over the life, liberty, and property of every citizen while, at the same time, denying to the judges authority to determine the basic needs of their courts as to equipment, facilities and supporting personnel.

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<sup>1</sup> Appel, J., Austin, G., Backus, B., Zipoy, J. (2009) *Comparative Analysis of Six Washington Superior Courts*. Olympia: Washington State Center for Court Research.

<sup>2</sup> The analysis of the adequacy of resources for the Cowlitz County Superior Court necessarily includes the County Clerk's Office. Although an independently elected official, the County Clerk is, by virtue of office, the Clerk of the Superior Court. *Const. Art. IV § 26*. Acting in the capacity of Clerk of the Superior Court, the County Clerk is also therefore necessary to support the judicial branch and the resources dedicated to the support and operation of the Superior Court are subject to the "adequate and sufficient" standard.

*In re Juvenile Director*, at 245 (1976).

In establishing the “adequate and sufficient” standard, the Supreme Court did not provide a bright line standard by which one could assert, after applying some explicit mathematical calculation, that one dollar less in funding would be inadequate or one dollar more would be sufficient. Rather, the standard requires an analysis that encompasses the totality of the court’s circumstances.

## Operating Environment

Before engaging in the analysis, two contextual items warrant recognition:

First, the general financial circumstance of Cowlitz County is dire. County officials report cutting 32 staff positions in December 2008 and 42 more in May 2009. The county reports spending 74% of its general fund on “law and justice.”<sup>3</sup> According to a September 2, 2009 local news report, “decreases in real estate taxes and investments are expected to reduce 2010 revenue by about \$930,000 from 2009...and 2011 revenue is expected to remain flat.”<sup>4</sup>

It is appropriate to recognize, and important to note, the difficult challenge faced by the county commissioners who, especially in these unprecedented economic circumstances, must resolve myriad competing interests and priorities. However, the constitutional obligation to provide adequate and sufficient funding for the administration of justice remains.

Second, felony crimes are a significant driver of the Superior Court’s caseload. From 2003 through 2007, Cowlitz County had 18% more felonies reported to law enforcement per capita than the average of the comparison counties. This, combined with a higher case filing rate per reported crime and the unfilled judge position, leads to the stark result that the Cowlitz County Superior court experiences 55% more adult criminal and juvenile offender case filings per judicial officer than in any comparison county.

Neither of these factors ultimately alters the analysis of the adequacy of the courts resources. However, both are significant environmental factors which contribute to the circumstance of the Cowlitz County Superior Court.

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<sup>3</sup> *Board of Cowlitz County Commissioners’ Minutes April 21, 2009*; “Cowlitz County General Fund Expenditures by Service Area: 2009”, *2009 Amended Budget Message*, p. 5. It should be noted that by the county’s own account, only 15.3% of the general fund budget is devoted to “judicial services” while more than three times that amount (48.5%) is categorized as “security of persons and property”. “Judicial services” include Superior Court, District Court, Family Court, Juvenile Court, Clerk, Courthouse Facilitator Program, and Office of Public Defense. The “Security” category includes Sheriff Extradition Services, Law Enforcement Records, Offender Services, Probation Services, Jail & Jail Concessions, Emergency Management Juvenile Detention, 911 Communications, and Physical Environment.

<sup>4</sup> “Commissioners get clearer picture of revenue forecast, budgeting demands,” Barbara LaBoe, *The Daily News*, September 2, 2009.

## Analysis

### Comparing Cowlitz to similar courts

The *Comparative Analysis* shows that, relative both to its peer group and to statewide averages, Cowlitz County Superior Court struggles with too few staff and too few judicial officers for a comparatively large caseload.<sup>5</sup>

In summary, the *Comparative Analysis* shows:

- More cases per capita are filed in Cowlitz County Superior Court than in any other superior court in the state and 46% more than the statewide average.
- 55% more criminal cases per judicial officer are filed in Cowlitz County Superior Court than the average of similar counties.<sup>6</sup>
- Despite this high caseload, Cowlitz County provides one less staff member per judicial officer to process the work than comparable counties.
- Cowlitz County Superior Court staff handled 54% more filings per staff member than the average comparable court in 2008. Although 2009 data are not yet available, it is likely that cuts in staffing levels for 2009 for the Clerk (18.2%) and Juvenile Court (11.4%) have made a difficult situation even worse. That condition may be further exacerbated by the reduction in available work hours for the remaining employees as a result of furloughs.

It is important to emphasize that the court has no ability to control case filings. Filings are, however, an objective and easily understood measure of the court's workload.

In determining the number of judges needed in a given jurisdiction, the Washington State Legislature relies on an objective workload analysis performed by the AOC pursuant to RCW 2.56.030. The resulting judicial needs estimate is a consistent and objective benchmark.

The objective workload analysis shows a need for 5.85 judicial officers for Cowlitz County. Relying on such an analysis, the Legislature authorized a fifth judge in 2006. Cowlitz County has not provided funding for that position and it remains unfilled<sup>7</sup>.

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<sup>5</sup> Neither the *Comparative Analysis* nor this report reaches any conclusion about the adequacy of resources in the comparison counties. The fact that some other jurisdictions may fare better than Cowlitz by comparison should not be viewed as an indication that any represents a "gold standard."

<sup>6</sup> Includes juvenile offender cases.

<sup>7</sup> "The additional judicial positions created by section 1 of this act in Clallam and Cowlitz counties are effective only if each county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the existing and additional judicial positions as provided by statute and the state Constitution." *Ch. 20, L. 2006 § 2.*

Because judicial and clerical staff expenses make up the lion's share of the budget, there is a direct correlation between the sufficiency of staffing and the adequacy of court funding. As the American Bar Association observed, "reductions in court budgets have a disproportionately negative impact on services since court budgets are overwhelmingly composed of personnel expenses, accounting for 70-90 percent of total court expenditures."<sup>8</sup> Cowlitz County is no exception.

Although Cowlitz County's case filings are comparatively high, court funding is comparatively low. Funding on a per case basis for Cowlitz County Superior Court in 2008 was 27% less than the average of similar courts. Since Cowlitz was the only county in the comparison group to budget less in 2009 than the court spent in the previous year, today's gap in funding between Cowlitz County and other jurisdictions is probably even greater.<sup>9</sup>

This 27% per case funding gap closely correlates with the unmet judicial need (4.61<sup>10</sup> in Cowlitz vs. 5.85 shown by the objective workload analysis) and staffing per judicial officer (4.36 in Cowlitz vs. 5.36 average of comparison counties).

## Operational Impacts

The impact of this resource deficiency on the court and the public is significant and worsening:

- **The case backlog is growing:** Case clearance rates for Cowlitz County have suffered since 2007, a time during which they actually improved in similar jurisdictions. In short, new cases are coming to the court faster than the court can resolve them. As the *Comparative Analysis* indicates, this "suggests that the court's capacity to handle cases has been exceeded and that its backlog of cases is growing."
- **The timeliness of case resolutions is suffering:** The time it takes to resolve cases in Cowlitz County has increased significantly. The proportion of criminal cases resolved within nine months of filing has declined. Cowlitz County once compared favorably to other jurisdictions, but has now dropped significantly below similarly sized courts and the statewide average.

As reported by the court, the impacts of inadequate resources are also reflected in tangible changes to basic operations that impair access to justice and efficient court administration:

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<sup>8</sup> *Funding the Justice System: How are the Courts Funded?*, American Bar Association, p. 25.

<sup>9</sup> Budget analysis is based on budget and actual expenditure data available in July 2009, including revised and amended 2009 budgets.

<sup>10</sup> Judicial staffing FTE was current as of December 31, 2008. Court Commissioner time was reduced to approximately .2 FTE in May 2009, making the current judicial FTE approximately 4.2 rather than 4.61.

- Budget cuts have forced the court to eliminate mandatory family law settlement conferences which it reports once resulted in the settlement of 85% of dissolution cases before trial. Now the court faces an increasing trial backlog in cases affecting Cowlitz County families.
- Limited clerk and support staff have led to closure of the juvenile court one day per week except for detention hearings.
- One courtroom cannot be used for trials one day per week because courtroom clerks are not available, which also contributes to trial backlog.
- The clerk's office is not able to keep up with document filing. This results in inefficiency when documents are not available to the judge in a timely manner.
- The clerk's office is not able to keep up with state reporting requirements. Most serious is the transmission of child support orders to the Washington State Support Registry. If time requirements are not met, revenue will be lost and the office risks the loss of federal grant money.
- The public waits for service at the clerk's office as much as one hour.
- The clerk's family law facilitator and collection clerks have been shifted to other duties resulting in service reductions and loss of revenue. There is also concern these changes may violate agreements with the state that provides funding for those positions.
- Security for the juvenile court was eliminated, violating the Washington State Courthouse Public Safety Standards, leaving case participants and the public vulnerable to violence and intimidation, and creating liability exposure for the county.<sup>11</sup>

These are clear and objective indicators which, in addition to the results of the objective workload analysis of judicial needs, demonstrate that the court lacks a sufficient number of judicial officers and supporting staff to effectively administer justice and adjudicate the incoming caseload.

## **Conclusion**

The recent economic downturn has exacerbated the longstanding financial challenges facing Cowlitz County. The Cowlitz County Superior Court has operated for years on

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<sup>11</sup> After the court directed the sheriff to provide security for proceedings at the Youth Services Center, security for some juvenile court proceedings was re-established in September 2009 using Trial Court Improvement Account funds intended for court improvements and innovations. This is viewed as a temporary measure for 2009 and the future outlook is unclear. Lystra, T., "Sheriff's office to provide security in juvenile court," *The Daily News Online*, September 14, 2009.

the margins, with the need for an additional judge identified as early as 1994<sup>12</sup>. This need was formally recognized when the County sought the additional judicial position in 2006. The court has, and continues to operate without the help of paralegals, judicial assistants, or law clerks that help shoulder the load and increase efficiency in some courts. In 2005 the court switched from using court reporters to electronic recording to make the official record. Notably, these are the areas where some courts turn to reduce expenses in tough economic times. In Cowlitz County, these options are no longer available to the court.

The objective data comparing the Cowlitz County Superior Court both to a peer group and courts statewide leads to the inescapable conclusion that resources for Cowlitz County Superior Court are not adequate and sufficient for the holding of court, the efficient administration of justice, and to administer justice “openly and without unnecessary delay.”<sup>13</sup>

While no easily defined “bright line” standard exists for determining whether the court has adequate and sufficient resources, Cowlitz County is so far outside the mainstream on nearly every objective measure, that line—however defined—has clearly been crossed.

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## Author’s Note

The Washington Judiciary has long recognized the inadequacy of funding for the State’s trial courts. The 2004 Trial Court Funding Taskforce, established under the auspices of the Board for Judicial Administration, concluded that a more balanced sharing of the costs of trial court operations between state and local government should be pursued. The Task Force “recognized that state interests, criminal statutes, and state agencies, including the State Patrol, drive a significant portion of the work of the trial courts. State requirements have driven the cost of the trial courts beyond the funding mechanisms available to local government.”<sup>14</sup>

Through its Justice in Jeopardy Initiative<sup>15</sup>, the judicial branch has vigorously pursued the goal of increasing the state’s contribution to the cost of trial court operations toward a goal of 50%. Despite successes in securing state funding in areas such as indigent defense services, district court judge salaries, and parents’ representation in termination and dependency proceedings, Washington still ranks last among the 50 states in the

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<sup>12</sup> “History of Judicial Position Needs Based On Weighted Caseload Methodology,” *Superior Court 1998 Annual Caseload Report*, Administrative Office of the Courts.

<sup>13</sup> Const. art. I, § 10

<sup>14</sup> *Justice in Jeopardy: The Trial Court Funding Crisis in Washington, State*, Board for Judicial Administration Court Funding Task Force, December 2004, p.13.

<sup>15</sup> The Washington State Association of Counties was an important partner in the Trial Court Funding Task Force and the ensuing Justice in Jeopardy Initiative.

state's contribution toward trial court, prosecution, and indigent defense funding, leaving local governments like Cowlitz County to shoulder 80% of the expense.<sup>16</sup>

Ensuring adequate funding for all of Washington's trial courts will, in the long term, only be achieved through the continued partnership of the judiciary, state and local legislative leaders, and other partners in the Justice In Jeopardy Initiative.

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<sup>16</sup> Chief Justice Gerry L. Alexander, "State of the Judiciary", January 16, 2009.