**Court Funding Task Force** 

Courts of Limited Jurisdiction Delivery of Services Workgroup

### **FINAL REPORT**

October 12, 2004

#### **Court Funding Task Force**

### Courts of Limited Jurisdiction Delivery of Services Workgroup Final Report

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### **EXECUTIVE SUMMARY**

#### Background

Washington's courts of limited jurisdiction are some of the busiest courts in our state. In 2003, the Administrative Office of the Courts reported that over two million cases were filed in courts of limited jurisdiction. Infractions make up roughly 57% of those cases; parking offenses account for 20% of the caseload; criminal acts account for approximately 15%; civil, including small claims are 4% of the total caseload; domestic violence and anti-harassment protection make up an additional .05%.

Courts of limited jurisdiction and their judicial officers play a critical role in ensuring confidence and respect for the judicial system. The impressions individuals receive from this experience shapes their opinion of the entire judicial system, our laws and law enforcement. For most Washington citizens, this contact with the court system is in a court of limited jurisdiction either as a party, a witness or a juror.

The overlapping character of municipal and district court jurisdiction and local decisions about jurisdiction can be confusing. For some citizens, confusion may prevent them from using our courts and obtaining protection. Washington's parallel delivery system for courts of limited jurisdiction has also led to concerns about the efficient use of public resources and providing effective services.

Article IV of the Washington Constitution provides that the judicial power of the state shall be vested in a supreme court, superior courts, and such inferior courts as the legislature may provide. The legislature has authorized courts of limited jurisdiction for both counties (district courts) and cities (municipal courts).

District courts have jurisdiction to hear misdemeanors and gross misdemeanor offenses in violation of state laws or county or city ordinances; including matters involving traffic, non-traffic, and parking infractions; orders for protection from domestic violence; civil anti-harassment matters; civil impoundment matters; civil actions involving \$50,000 or less; small claims up to \$4,000; and preliminary hearings for felonies. Municipal courts have authority to hear misdemeanors and gross misdemeanor offenses, traffic infractions in violation of the city's ordinances occurring within their jurisdictions, civil impoundments, and domestic violence protection orders. (See appendix B outlining the precise jurisdictional differences between district and municipal courts.)

The Court Improvement Act of 1984, Chapter 3 RCW, provided cities and counties with options for different court structures to adjudicate offenses within their jurisdictions. These structures are exclusive in nature. District courts are county-wide, independent, stand-alone courts with elected judges. Cities currently have three authorized options for providing municipal court services by:

(i) forming an independent stand-alone full-time or part-time municipal court, (ii) entering into a contract with the county and filing city cases with the local district court, or (iii) creating a municipal department within the district court. RCW 3.50.055 provides that a municipal court judge must be elected when the judge is compensated for 35 hours per week.

Previously commissioned court studies have identified a number of issues and concerns with the operation of the courts of limited jurisdiction including judicial independence and accountability; parallel and overlapping jurisdictions between district and municipal courts; citizen access and confidence; and the efficient use of public resources (see appendix D).

Currently, there are 426 judges from all levels of court in the state of Washington, 340 of who are elected. All superior and district court judges are elected. There are 19 full-time elected municipal court judges and 86 part-time municipal judges who are not elected. The 86 part-time municipal court judges are appointed and serve at the pleasure of the appointing city official. They are the only trial court judges in Washington who are not elected.

Some municipal courts have chosen not to exercise jurisdiction authorized in statute. The jurisdiction they choose to exercise and the insistence that courts generate revenues to meet the cost of operation has led to criticism that municipal courts exist only to generate revenue. As illustrated by information provided to the Courts of Limited Jurisdiction Work Group (CLJWG) by the Association of Washington Cities (AWC) and Washington State Association of Counties, there are many small municipalities operating their own independent municipal courts that do not provide a full panoply of services to the public. Some of these courts are in operation for as little as four hours per month or restrict their caseload exclusively to traffic infractions. For other matters such as obtaining a domestic violence protection order, the public is referred to the district court or told to come back on designated days or times.

Because of the recent significant decrease in revenues for local jurisdictions and the continuing increase in costs related to courts, county and city governments are exploring other options to provide mandatory court services to their citizens. As an example, in 2003 the King County Executive terminated contracts with 17 cities because of the costs associated with providing district court services. After long and protracted negotiations, King County agreed to an interim extension of these contracts but only through 2006. In an effort to provide additional options for municipal courts, cities, with the support of the AWC, introduced Senate Bill 5500, during the 2003 legislative session. SB 5500 authorized cities to contract with one another to provide court services and would have provided the benefits of a regional court system as an alternative to each city establishing its own stand-alone court. This legislation failed to pass.

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The current financial constraints and demands on local governments and the courts are anticipated to last into the foreseeable future. These circumstances brought renewed attention to long standing statewide issues in courts of limited jurisdiction, particularly in small part-time courts. Over time, the distinctions between municipal and district court jurisdiction and services have become minimal. Municipal courts are as competent as district courts to handle cases. This suggests a judicial resource that should be more fully utilized.

The Board for Judicial Administration (BJA) charged the Courts of Limited Jurisdiction Work Group (CLJWG) to:

Study structural and court funding issues in courts of limited jurisdiction, district and municipal courts that result from multiple delivery systems in the same geographic area and recommend efficient and effective methods of delivering judicial services and whether changes such as consolidation of district and municipal courts should be made to the current system.

The BJA recognized that the CLJWG membership needed to be broad-based and composed of representatives from divergent groups having an interest in improving the quality of services and the delivery systems in the courts of limited jurisdiction. Representation was solicited from the legislature, individual cities and counties and their professional associations, the Washington State Bar Association (WSBA), both trial lawyers and public defender associations, court administrators, probation officers, and judges. All branches of government; executive, legislative, and judicial were represented on the Work Group.

A critical aspect of the CLJWG's work was to develop and adopt a set of principles and implementation concepts to provide the necessary analytical framework to propose legislative changes and to assess legislative proposals and concepts. The following principles and concepts were adopted by the Work Group and the Court Funding Task Force in October 2003. While the principles and concepts were adopted by both groups, there are specific recommendations contained in this report that continue to represent points of disagreement among the participants. In October 2004, BJA unanimously voted to adopt the principles and concepts.

A draft final report was circulated to CLJWG members with a request for review and comment. Consideration of the comments received resulted in revisions to this final report. For example, the recommendation that the statute be amended to allow jurors to be called from areas served by the court is eliminated and the recommendation for amendments to Title 3 has been modified. A complete set of comments are attached to the report at appendix I.

#### **Principles for Courts of Limited Jurisdiction**

I. Courts will maintain their constitutional role as a separate, equal, and independent branch of government.

II. Courts will be structured and function in a way that best facilitates the expeditious, efficient, and fair resolution of cases.

III. Courts will be accessible to the community they serve and provide services that enable the public to navigate through the court process with a minimum of confusion.

IV. The primary mission of the courts of limited jurisdiction is to expeditiously, efficiently, and fairly resolve cases and serve the residents of the community, not to generate revenue.

V. Courts will operate in compliance with court rules and statutes.

VI. Courts will be administered with sound management practices, which foster the efficient use of public resources and enhance the effective delivery of court services.

#### Implementation Concepts

- To promote public accountability and independence, all judges in courts of limited jurisdiction should be elected, including part-time judges. (*Principles I-VI*)
- 2. Title 3 should provide different court options for local governments to provide court services to their community. (*Principles V, IV*)
- 3. Provision should be made for expanded subject matter jurisdiction in district and municipal courts. *(Principles I-VI)*
- 4. A court of limited jurisdiction should be accessible to residents of the community it serves. Each court of limited jurisdiction should provide services on a regularly scheduled basis at established hours that are posted for the public. (*Principles III, IV, V, VI*)
- 5. Costs for court services provided by another government should be calculated based on the amount of resources used. *(Principles II, IV)*
- 6. All statutory provisions relating to the structure, governance and operation of the courts of limited jurisdiction should be contained in Title 3. *(Principle II)*

#### Recommendations

This report presents an analysis of the current status of the courts of limited jurisdiction and proposes legislative or other changes for the long and short term.

Short term, the CLJWG recommends the following changes to Title 3 RCW in support of a more regionalized court structure.

1. Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All courts of limited jurisdiction court models should be contained in Title 3 RCW.

2. Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.

3. Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.

4. Elect judges at all levels of court to promote accountability and the independence of the judiciary.

5. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.

6. Amend Title 3 to emphasize a collaborative regional approach to the provision of district and municipal court services by expanding the role and membership of the districting committee.

7. Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.

8. Authorize municipal courts to hear anti-harassment protection petitions.

9. Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.

10. Increase the civil jurisdiction amount in dispute that can be filed in district court to \$75,000.

11. Require district courts to implement dedicated civil calendars and case scheduling.

Long term, the Courts of Limited Jurisdiction WG recommends that courts of limited jurisdiction should be reorganized into regional courts funded by the state.

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These regional courts of limited jurisdiction would have jurisdiction over all applicable state laws and county and city ordinances, and causes of action authorized by the legislature. Regional courts would be located in convenient locations serving both the public and other court users including law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, have elected judges, and offer predictable recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the proliferation of small limited operation part-time courts. Ideally, regional courts would offer convenience, consolidated services, staff and administration, and would achieve economies of scale savings for all participating jurisdictions. Regional courts would allow jurisdictions to reduce the duplication of administrative costs among individual courts and improve the quality of services to the public.

### INTRODUCTION

#### **CLJWG and its Charge**

BJA charged the CLJWG to:

Study structural and court funding issues in courts of limited jurisdiction, district and municipal courts that result from multiple delivery systems in the same geographic area and recommend efficient and effective methods of delivering judicial services and whether changes such as consolidation of district and municipal courts should be made to the current system.

The CLJWG began its work in February 2003. Subsequent meetings were held in March, May, June, July and October 2003, and April and May of 2004. The CLJWG reviewed past court studies and solicited a broad range of court perspectives, including prosecutors, defenders, domestic violence advocates, city officials, and civil practitioners (see appendix F). Those providing information were asked to describe their experiences with district or municipal courts and offer suggestions about ways to improve court operations. The Administrative Office of the Courts also commissioned the Justice Management Institute (JMI) to conduct a study of Washington's limited jurisdiction courts to determine if a preferred structure could be identified. *ALWAYS THE PEOPLE: Delivering limited jurisdiction court services throughout Washington* can be found at appendix G.

The CLJWG also studied the overlapping delivery systems between district and municipal courts in the same geographical area in order to recommend more efficient and effective methods of delivering such services, including considering whether additional changes such as consolidation of district and municipal courts should be made to the current system.

#### Background: Washington's Courts of Limited Jurisdiction

Article IV of the Washington Constitution provides that the judicial power of the state shall be vested in a supreme court, superior courts, and such inferior courts as the legislature may provide. The legislature authorized courts of limited jurisdiction (CLJ) for both counties and cities. Currently, there are 426 judges from all levels of court in the state of Washington, 218 judges are in courts of limited jurisdiction. Of those 218 judges, 113 are district court judges (85 full-time, 28 part-time); and 105 sit in municipal courts (19 full-time, 86 part-time). Of the 426 judges statewide, 340 are elected; the remaining 86 part-time municipal court judges are appointed by and serve at the pleasure of the appointing municipal official.

Municipal courts have authority to hear crimes and infractions that are violations of the city's ordinances occurring within their jurisdictions. They can also hear civil impoundment matters, and issue domestic violence protection orders. District courts have authority to hear misdemeanors and gross misdemeanor offenses in violation of state laws; including matters involving traffic, non-traffic, and parking infractions; orders for protection from domestic violence; civil anti-harassment matters; civil impoundment matters; concurrent jurisdiction with superior courts over civil actions involving \$50,000 or less; small claims up to \$4,000; and preliminary hearings of felonies.

District courts have concurrent jurisdiction over all violations of city and county ordinances within their judicial district. Municipal courts do not. Municipal courts only have jurisdiction over crimes and infractions arising under city ordinances. District courts have broader authority to hear and determine traffic infractions under state law. (See appendix B outlining the precise jurisdictional differences between district and municipal courts.)

In 2003, the Administrative Office of the Courts (AOC) reported that over two million cases were filed in limited jurisdiction courts. Of the cases filed, 57% were for traffic infractions, 20% were for parking infractions, 15% were for misdemeanors, 0.5% were for domestic violence and anti-harassment protection orders, and 4% for small claims.

In the past 40 years, the legislature has reorganized the courts of limited jurisdiction in an effort to make them more effective and less confusing to the public. First, in 1961 the legislature passed the Justice Court Act and in 1967 the legislature enacted the Optional Municipal Code. The last major court reorganization occurred in 1984 with the Court Improvement Act, codified as Title 3 RCW.

The legislative intent behind the 1984 Court Improvement Act was to eliminate the multitude of statutes governing the municipal courts of the state which were confusing and misleading to the public and those that worked with those courts. The legislature found that a reorganization of the municipal courts would allow those courts to operate in a more efficient and effective manner (RCW 3.50.005). The Act provided a court structure available to cities and counties to adjudicate local offenses. The Act created two separate and distinct categories of courts; municipal courts and county district courts. The Court Improvement Act required cities with populations of fewer than 400,000 to choose among three specific court structure options to adjudicate criminal and civil cases. Those options were: (i) forming an independent stand-alone full or part-time court, (ii) entering into a

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contract with the county and filing cases with the local district court, or (iii) creating a municipal department within the local district court system.<sup>1</sup>

Washington law is clear that cities are responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in each of their respective jurisdictions (RCW 39.34.180). Further, cities are required to either use their own courts, staff and facilities, or contract for the services with the district courts by interlocal agreement. The legislature also required that certain principles be followed in negotiating interlocal agreements or contracts for court services, including the anticipated costs of services, the potential revenues to fund the services, including fines and fees, criminal justice funding, and state authorized sales tax funding levied for criminal justice purposes.

Since the passage of the Court Improvement Act, many municipalities have filed their cases directly into the district courts for adjudication pursuant to a contractual interlocal agreement. This practice peaked in the early 1990's when due to the desire for increased local control of cases, greater flexibility in scheduling and financial predictability, many cities created their own independent municipal courts.

#### **Current Courts of Limited Jurisdiction Structure**

The Court Improvement Act of 1984, Title 3 RCW, provided cities and counties options for different court structures to adjudicate offenses occurring within their jurisdictions. These structures are exclusive in nature and only municipal courts were granted the flexibility to select a delivery system appropriate for its local jurisdiction. Cities could either create a third branch of local government by forming an independent stand-alone court, file all cases with the local district court for adjudication, create a municipal department within the district court, or create an independent stand-alone part-time municipal court.

As illustrated by a survey provided by the AWC (see appendix C) there are a number of small part-time municipal courts that are in operation for very limited hours. Follow up by the AOC suggests that many of these courts meet less than 20 hours per week, and some meet less than four hours a month. Many part-time courts hear only infraction matters; only 12 of 72 courts surveyed exercise their statutory authority to provide domestic violence protection.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Seattle Municipal Court, the only Washington city with a population of over 400,000, is governed by Title 35 RCW.

<sup>&</sup>lt;sup>2</sup> The Association of Washington Cities (AWC) identified and surveyed some of the municipal courts in Washington. AWC prepared a chart showing the number of hours the surveyed courts meet. AOC followed up by determining services provided and estimated judicial need for those courts. A chart reflecting court hours and services provided is contained at appendix C.

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In addition to the legislative court structure options set out in Title 3 RCW, some cities have created "hybrid" court delivery systems that were not anticipated by the Court Improvement Act. For example, one part-time municipal court hears only traffic infraction cases deferring all other matters to the local district court. Other jurisdictions have contracted with one another to provide court services to their communities by use of Title 39 RCW, the Interlocal Cooperative Act. These arrangements have resulted in a wide array of structures that are not clearly defined and are confusing to the public and court professionals alike.

### RECOMMENDATIONS

These principles and concepts will provide the analytical framework for current and future proposed legislative and rule changes related to the courts of limited jurisdiction.

#### **Principles for Courts of Limited Jurisdiction**

I. Courts will maintain their constitutional role as a separate, equal, and independent branch of government.

II. Courts will be structured and function in a way that best facilitates the expeditious, efficient, and fair resolution of cases.

III. Courts will be accessible to the community they serve and provide services that enable the public to navigate through the court process with a minimum of confusion.

IV. The primary mission of the courts of limited jurisdiction is to expeditiously, efficiently, and fairly resolve cases and serve the residents of the community, not to generate revenue.

V. Courts will operate in compliance with court rules and statutes.

VI. Courts will be administered with sound management practices, which foster the efficient use of public resources and enhance the effective delivery of court services.

#### Implementation Concepts

- To promote public accountability and independence, all judges in courts of limited jurisdiction should be elected, including part-time judges. (*Principles I-VI*)
  - Elected judges ensure the independence of the courts.
  - Elected judges are accountable to the voters for the administration of justice and the effective delivery of court services in their community.
  - Judicial positions in independent municipal courts would be filled by election at the same time and in the same manner as other municipal offices.
  - Vacancies would be filled by the local appointing authority as set forth in RCW 3.50.093, until the next scheduled election.
  - Elected district court judges would be required to reside in the district court district and electoral district, if any, in which the court is located. Elected municipal court judges would be required to reside in the county in which the court is located. (current law)

- To reinforce the importance of judicial officers who are accountable to the citizens who elect them, the authority of appointed court commissioners should be limited.
- 2. Title 3 should provide different court options for local governments to provide court services to their community. (*Principles V, IV*)
- 3. Provision should be made for expanded subject matter jurisdiction in district and municipal courts. *(Principles I-VI)*
- 4. A court of limited jurisdiction should be accessible to residents of the community it serves. Each court of limited jurisdiction should provide services on a regularly scheduled basis at established hours that are posted for the public. (*Principles III, IV, V, VI*)
- 5. Costs for court services provided by another government should be calculated based on the amount of resources used. (*Principles II, IV*)
- 6. All statutory provisions relating to the structure, governance and operation of the courts of limited jurisdiction should be contained in Title 3. (*Principle II*)

While the CLJWG and the Court Funding Task Force by majority adopted the principles and concepts, there are points of disagreement that are unlikely to be resolved. A major point of disagreement concerned the concept that all municipal court judges, whether part-time or full-time, should be elected instead of appointed. All other Washington judges, including part-time district court judges, are elected. The inevitable consequences of agreeing that courts must maintain their constitutional role as a separate, equal, and independent branch of government is that judges must be accountable to the citizens they serve and not just to the municipal officials who appoint them.

Another point of disagreement concerned the decision to explicitly state that the primary mission of the courts of limited of jurisdiction is to serve citizens and not to generate revenue. However, as reflected in the concurring opinion in <u>In re</u> <u>Hammermaster</u> and a recent Ethics Advisory Opinion (04-5), in some jurisdictions generating revenue is the goal for courts of limited jurisdiction. (See appendix H.)

Long term, the CLJWG recommends state funded regional courts having jurisdiction over all applicable state laws, and county and city ordinances. Regional courts would be located in convenient locations serving both the public and other court users such as law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, with elected judges, and offer predictable recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the plethora of small parttime courts, offer convenience, and consolidation of services, staff and administration and achieve economies of scale savings for all participating jurisdictions.

Short term, the Courts of Limited Jurisdiction Work Group recommends the following legislative and other changes in supportive of a more regionalized approach.

1. Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All courts of limited jurisdiction court models should be contained in Title 3 RCW.

2. Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.

3. Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.

4. Elect judges at all levels of court to promote accountability and the independence of the judiciary.

5. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.

6. Amend Title 3 to emphasize a collaborative regional approach to the provision of district and municipal court services by expanding the role and membership of the districting committee.

7. Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.

8. Authorize municipal courts to hear anti-harassment protection petitions.

9. Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.

10. Increase the civil jurisdiction amount in dispute that can be filed in district court to \$75,000.

11. Require district courts to implement dedicated civil calendars and case scheduling.

#### **Discussion of Recommendations**

# 1. Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All courts of limited jurisdiction models should be clearly authorized and described in Title 3 RCW.

Historically, studies of Washington's limited jurisdiction courts have concluded that one single court model is not suited to Washington's diverse geography and communities. JMI reiterated this conclusion. However, statewide economic conditions and the increased costs associated with offering a minimum level of services in district and municipal courts leads to a conclusion that a less fragmented set of options for cities and counties may be beneficial. A statutory framework that encourages jurisdictions to pool resources and coordinate services is desirable.

Title 3 RCW contains provisions related to the creation and structure of courts of limited jurisdiction. Counties and cities currently rely on Chapter 39.34, the Interlocal Cooperation Act, as authority for creating local court arrangements. This Act was passed in 1967 and certain provisions of the Act may be inconsistent with the 1984 Court Improvement Act. For instance, Title 3 RCW does not explicitly discuss cities contracting with cities for court services unless a municipality opts to terminate its court. Significant confusion about these arrangements can be overcome by recognizing and defining the process for establishing interlocal agreements between jurisdictions for court services, setting forth a format and the various elements that should be addressed or considered in the formation of such an agreement, and leaving room for incorporation of local differences. Modified language from RCW 39.34.180 should be added to Title 3 RCW thus placing all aspects of court operations in Title 3 RCW exclusively. Instead of a separate chapter authorizing municipal departments, Title 3 should also include a chapter covering contracts or interlocal agreements for court services that will accommodate the various incarnations of municipal departments and other types of arrangements. Flexibility to fit local situations should be retained.

Washington law provides that each county, city, or town is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed in their respective jurisdictions. Cities that do not choose to create an independent stand-alone municipal court must enter in to an agreement with the county to become a municipal department or to file cases directly into the district court.

For district and municipal courts, court structure options are codified in Title 3 RCW, the Court Improvement Act of 1984. There are three basic limited jurisdiction court models as discussed below:

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RCW Chapter 3.30 provides for a county-wide district court with elected judges. District courts have jurisdiction over violations of state statutes defining infractions, and misdemeanor and gross misdemeanor criminal acts. They also have jurisdiction over civil cases up to \$50,000 in value, small claims cases, and domestic violence and anti-harassment protection orders.

RCW Chapter 3.46 allows for creation of a municipal department of the district court, with authority to hear and resolve cases for which adjudication is the responsibility of the contracting city. Most often, municipal department judges are appointed by the city from the elected district court bench; staff and facilities are provided by the city.

Many jurisdictions have organized their municipal court as a municipal department of the local district court. However, an analysis of these courts reflects more differences than similarities. In Tacoma, the municipal department is wholly separate from the district court. While the City of Tacoma judges are elected as district court judges, unlike district judges, they are actually elected from within the Tacoma city boundaries. These judges hear only city matters and do not sit on the district court bench. Court staff, administration, facilities and operation of the Tacoma Municipal Court are completely separate from the district court.

In Spokane, while the municipal and district courts have separate staff, both courts are housed in the same area and supervised by a common administrator. The municipal judges are appointed from the district court bench by Spokane's mayor. The Spokane County District Court judges also sit as municipal department judges in outlying municipalities which provide their own staff and court facilities.

Grant County's district court judges sit as municipal department judges on a rotating basis in Grant County cities. The cities provide facilities and staff, compensating Grant County only for judge time.

Municipal departments can reflect a variety of organization and operational differences depending on the historical development in each community and the contractual agreement that is negotiated between participating jurisdictions. Because of the latitude that may be exercised within the statute governing municipal departments and the existing confusion about which particular provisions govern their courts, a simplification of the RCW 3.46 is warranted.

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RCW Chapters 3.50 and 35.20<sup>3</sup> provide for independent municipal courts for cities under or over 400,000 in population respectively. The contracting city is responsible for all judicial officers, staff and facilities. Chapter 3.50 cities have responsibility for all infractions and misdemeanors in violation of municipal ordinances occurring within their boundaries. They also have authority to enter temporary domestic violence protection orders. Judges in Chapter 3.50 courts may be appointed or elected or the local district court judge may serve as the municipal court judge but only in a part-time court. Municipal court judges are required to be elected if their judicial responsibilities involve more than 35 compensable hours per week.

Variations on these statutory models exist.<sup>4</sup> RCW 3.30.090 and RCW 3.50.030 provide for violation bureaus under the supervision of the district or municipal court. Violation bureaus are an independent structure created and supervised by an existing court. Typically a city will establish a violation bureau to collect payments on infractions or bail forfeitures and contract with the county to handle only contested cases in the district court. Violation bureaus allow court staff to resolve specified offenses under the supervision of the court, but without direct judicial involvement. Generally, this means the bureau can mitigate and accept payments for those offenses approved by the judge. In practice, some violation bureaus have been set up without court supervision or for the sole purpose of accepting payments for infractions. Some of these arrangements ignore the city's responsibility under RCW 39.34.180 to provide for enforcement and adjudication of offenses committed within its boundaries. Deleting outdated provisions in Title 3 is warranted to clearly specify the role of violation bureaus.

RCW Chapter 35.20 (Seattle Municipal Court) should also be incorporated into Title 3 so that all statutory language governing courts of limited jurisdiction can be found in one place.

# 2. Update current provisions in Title 3 to authorize municipalities and counties to provide joint court services by interlocal agreement.

The Court Improvement Act of 1984 (Title 3 RCW) was the last major court reorganization by the legislature and was an attempt to reorganize courts of limited jurisdiction into an integrated and consistent court system with the intent to eliminate public confusion and provide greater access to courts. While Chapter 3 RCW sets forth distinct options on court structure available to cities,

<sup>&</sup>lt;sup>3</sup> RCW Chapter 35.20 applies only to the city of Seattle. Seattle Municipal Court has jurisdiction concurrent to district and superior court for all criminal matters over which the district court has jurisdiction, as well as over infractions defined by city ordinance. Seattle also has civil authority, including small claims, and domestic violence and anti-harassment protection orders. At this time, Seattle has not exercised its small claims or civil jurisdiction, but is considering the creation of a small claims system.

<sup>&</sup>lt;sup>4</sup> RCW 3.38.060 provides for joint district court districts involving two or more counties, or parts thereof. This option has not been exercised.

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other "hybrid" court arrangements have emerged throughout the state. For these jurisdictions, the authority for actual interlocal contracting arrangements and for court services is not always clear.

Interlocal agreements should clearly specify the expectations, requirements, and the costs associated with contracting with another jurisdiction for court services. Contracting cities expressed concerns about cost of services and the need to control law enforcement costs and minimize overtime. Cities that contract with district courts expect access to court clerks to assist with scheduling cases and coordinating court services. Additionally, cities expressed concerns about their citizens' inability to access the local district court. Some city representatives describe an unwillingness of the district courts to communicate with and accommodate city needs. From the counties' perspective, there are ongoing concerns about the expense to the county for handling municipal court cases and a belief that county government subsidizes the cost of handling city cases.

Interlocal agreements between local jurisdictions should be encouraged because they often make the best use of scarce resources by avoiding duplication of administrative costs and overhead. Title 3 needs to clarify the interlocal agreement process and identify important elements that should be included in a contract for court services.

Interlocal agreements are frequently negotiated between city and county executive branch officials with little or no involvement of the district or municipal court presiding judge. The JMI Report indicates that in eight out of 12 courts participating in their survey, the presiding judge was not made a participant in negotiations of contracts for court services. The presiding judge and court manager should participate in negotiations about workload associated with contracting to file a city's cases and the related costs and services that can be expected in contracting with a city and should participate in the negotiations.

## 3. Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.

Joint municipal courts are consistent with the CLJWG's view that regional courts offer a cost effective, less confusing, more efficient means of providing court services to communities. A provision should be added to Title 3 to clearly authorize municipalities to form a regional or community court with a judge elected by the citizens of the participating jurisdictions. Title 3 should include the exclusive authority and format for interlocal agreements for court services. Title 3 should include more detail than is currently provided in Title 39 RCW by describing elements to be considered in all agreements for provision of court services. All court related mandates in Chapter 39.34 RCW should be included in Chapter 3 RCW (without disturbing the provisions related to general interlocal agreements contained in Title 39).

Some cities take the position that RCW Chapter 39.34 currently authorizes regional or community courts created by interlocal agreement between participating cities. While Chapter 39.34 may provide authority for entering into an agreement, it does not provide any detail about formation of those courts, their jurisdiction, and the geographic relationship among the participating cities, where jury venires are to be drawn from, and a whole host of other practical matters laden with due process implications. Addressing these issues in Title 3 will clarify that the legislature intends Title 3 to control the formation and structure of courts of limited jurisdiction.

Consistent with other CLJWG principles, courts created by interlocal agreement between cities should be organized to provide their customers with access to a full range of services. Compensation for services used by each city should be based on actual resources used.

Based on AWC's comments, this recommendation has been changed to allow for part-time regional courts. AWC, in its comments to the draft final report, gave as an example the interlocal agreement for court services between the cities of Battleground, Ridgefield, and La Center in Clark County that allows for citizen access, reduces jail costs, and law enforcement overtime, but that is not a full-time court.

Regional courts could result in some citizens in some locations traveling further for court access. However, JMI noted that "[t]he gain in convenience that may exist as a result of having a local municipal court would appear to be negated by the fact that the court staff may not be available as frequently in the smaller courts. JMI at 32. Courts with multiple locations with accommodations for judges to travel to those locations could address this issue.

# 4. Elect judges at all levels of court to promote accountability and independence of the judiciary.

An independent judiciary is a fundamental principle of our democracy that was adopted to preserve the separation of powers and the balance of power. Each branch of government has its own powers to assure that no single branch is dominant. Under the principle of separation of powers, each branch must preserve its core power. The judiciary's core power is to decide individual cases independent of the desires and constraints of the executive and legislative branches of government. The framers of the constitution recognized that an independent judiciary is necessary to guard the constitution and protect the rights of individuals.

Washington has a long history of electing judges. The 1996 Walsh Commission on Judicial Selection re-affirmed the preference of Washington citizens to elect judges. There are 426 judges from all levels of court in the state of Washington, 340 of whom are elected. All superior and district court judges are elected, Courts of Limited Jurisdiction Work Group Final Report Page 19 of 32

regardless of hours worked. There are 19 full-time elected municipal court judges. Part-time municipal court judges (of which there are 86) are the only trial court judges in Washington who are not elected; they are appointed and serve at the pleasure of the appointing city official.

RCW 3.50.055 provides that a municipal court judge becomes full-time, and must therefore be elected, when the judge is compensated for 35 hours per week. Once the 35 hour threshold requiring election is met, any additional judges in that court must also be elected if they work half-time.

The "compensated time" standard has been subject to diverse application and manipulation, much of which at least outwardly appears intended to avoid elections and to control the appointment and tenure of the judge. Some cities by contract, limit compensation to some number of hours per week under 35, regardless of number of hours worked. Others limit what is counted toward compensated time. Still other cities have employed two part-time judges, or added a part-time commissioner to ensure that no single judicial officer's time exceeds the 35 hour standard triggering election. Under current statutes, there is no difference in authority between a municipal court judge and a municipal court commissioner. RCW 3.50.075.

The 1999 Courts of Limited Jurisdiction Assessment Survey Report (Wilson Report) strongly stated that the independence of courts depends on independence of the judge. Wilson at 166. If the local funding authority is telling the judge how and when to function, "the judge clearly works for the local funding authority, but not necessarily for the public." Id. (See also <u>Discipline of Hammermaster</u>, 139 Wn.2d 211 (1999) appendix H.)

Part-time courts frequently employ attorneys who have a private practice or other endeavor outside the court. Wilson stated that "[c]onflicts of interest are almost unavoidable if the judge is only a part-time judicial officer, with other responsibilities involving a private practice of law or other position." Wilson at 166-7.

The CLJWG also heard about incidents in which highly rated appointed judges were not reappointed due to policy disagreements with executive or legislative branches of government. Non-elected judges may be concerned about expressing views or taking positions contrary to the appointing authority.

The question of broadening the election requirement for all municipal court judges raised considerable opposition from AWC and city officials on the CLJWG. The concern was that elections will increase the cost to cities' for putting the position on the ballot, and introduce new costs for those interested in becoming a municipal court judge. There were also concerns about the loss of control by the executive or legislative branches.

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Cities currently elect part-time mayors and city council members. Additional election cost concerns can be addressed by scheduling judicial elections to coincide with the elections for mayors and city council members. Judicial candidates for municipal court judge would run for office at the same time and in the same manner as candidates for other elected city offices. Vacancies would be filled by appointment until the next scheduled election, like other city positions.

Cities have also expressed the concern that there might not be lawyers willing to run for judicial positions in small communities. While some very small cities may not have resident lawyers, or too few qualified candidates from which to draw, current law allows municipal court judges to reside outside the city, but within the county. Cities may also appoint a district court judge under RCW 3.50.040. All Washington counties have elected district court judges.

Representatives from the cities pointed to appointment of federal judges as support for continuing to allow for appointment of part-time municipal court judges. But, unlike part-time municipal court judges who are appointed for a limited period and who are subject to reappointment, federal judges are appointed for life, thereby insuring their ability to be independent precisely because they need not be concerned that politically unpopular actions will result in their removal or non-reappointment.

Some currently appointed municipal court judges also expressed opposition to a requirement that they be elected, file public disclosure statements and campaign for judicial positions. However, public disclosure requirements are consistent with the notion that all judges should be held to the highest standards of public accountability similar to those for other elected or public officials.

Some municipal court judges indicated that their independence as experienced part-time, appointed judges was not affected. The CLJWG confirmed, however, that many other appointed judges do admit to feeling beholden to the legislative and executive appointing authority and expressed serious concerns about their independence and autonomy.

Washington has a strong public policy favoring elections. All municipal court judges should be accountable to and elected by the people they serve. There will be no additional cost incurred by these elections and the current statutory authority addresses the issues raised by small cities.

### 5. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.

Commissioners in both district and municipal courts play a crucial role in assisting the courts with high caseload volumes. Current statutory language allows for the appointment of district and municipal court commissioners with

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unrestrained authority to hear and dispose of cases similar to that of the sitting appointed or elected judge. This unrestricted authority allows non-judges to conduct trials and preside over the same types of hearings and proceedings similar to an elected or duly appointed judge.

Employment of court commissioners in lieu of creating additional judicial positions has been used in some jurisdictions to circumvent the statutory need for additional judicial positions or to avoid judicial election requirements. For example, in municipal courts current law requires judges to be elected when a part-time appointed judicial position receives 35 or more hours per week of compensated time. In some jurisdictions, judges are paid for less than 35 hours of compensated time per week despite the number of hours per week the judge actually works. The excess judicial workload is then covered by a court commissioner under the illusion that the commissioner time is not "judicial time" attributable to the appointed judge.

Counties have also employed district court commissioners to fill needed judge positions because commissioner positions cost less than judge positions. Some jurisdictions argue that relying on commissioners to cover excess judicial workload fits within the letter of the law; however, such interpretation may be strained, and the practice of the substitution of commissioners presiding over bench and jury trials in lieu of duly elected judges defeats public expectation, and legislative intent of public accountability.

In keeping with the CLJWG's recommendation that the judicial system is best served by judges who are elected by the citizens they serve, the use and authority of commissioners in district and municipal courts should be curtailed to the same degree as that of superior court commissioners. Consequently, current statutes governing superior court commissioner authority was used as the model for the CLJWG's recommendation to limit commissioner duties in courts of limited jurisdiction. The authority of court commissioners in courts of limited jurisdiction should be restricted and prescribed by statute, and preclude commissioners presiding over bench or jury trials.

# 6. Amend Title 3 to emphasize a collaborative regional approach to the provision of district and municipal court services by expanding the role and membership of the districting committee.

The proliferation of courts with different jurisdiction and practices leads to public confusion and functional redundancies. As an alternative to consolidated trial courts, the Project 2001 study recommended increased levels of cooperation between courts in providing court services. The experience of existing Trial Court Coordinating Councils strongly suggests that greater cooperation, coordination and collaboration among limited jurisdiction courts would benefit the public through increased service and reduction in costs.

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Title 3 RCW establishes a districting committee in each county for the purpose of developing a plan for the county district court. The plan is to specify the locations of the district court and the number of judges to be assigned, as well as the number of court commissioners and the resources required, if any, for municipal department matters.

With some expansion in membership and duties, the districting committee will be a more effective vehicle for planning the delivery of limited jurisdiction court services throughout the county. By considering the location and services of all courts, including municipal courts, more informed decisions can be made about the needs of the various communities within the county, and the county as a whole.

Districting committees currently function on an ad hoc basis; they are not required to convene on a routine schedule. The committee may be convened by the chairperson or a majority of members to amend the district plan. The plan established by the districting committee is essentially advisory. County legislative authorities may, and routinely do, substantially revise the districting committee plan prior to adoption. The CLJWG recommends that the districting committee have responsibility for limited jurisdiction court planning and coordination, that it meet on a regular basis, and that its membership should include presiding judges of the district and municipal courts in the county and elected and appointed officials for the cities and county. This structure will promote greater coordination of services among courts and provide an opportunity for decision makers to see the limited jurisdiction courts as a whole rather than a fragmented and overlapping array of courts.

Additional requirements should be in place for the districting plan. Plans should take into consideration the location of all courts in a county, not just the district court, and should document the services provided in those courts, including the hours and days of operation. Plans should incorporate all interlocal agreements that are in place between jurisdictions for the provision of court services. The districting committee should determine the method that will be used to establish the cost of providing such services.

While counties may tend to view the districting committee's expanded membership and duties as an unnecessary and perhaps unwelcome addition to the traditional role it has played in establishing the operation of the district court, there are potential benefits to be gained. Regional cooperation is essential as is coordination of regional needs and services. The CLJWG recognizes that an expanded role for the districting committee can be most effective with increased state financial support of the limited jurisdiction courts, as contemplated by proposals of the Court Funding Task Force.

## 7. Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with

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#### the Administrative Office of the Courts.

The Court Improvement Act requires municipal courts to be open and to hold both regular and special sessions of court as may be prescribed by the legislative body of the city or town. Most jurisdictions have local ordinances prescribing the city's hours of operation which are typically Monday through Friday. Yet, many city courts are open only a few hours per month and do not have either a judicial officer present or accessible or adequate staff to process urgent requests such as petitions for domestic violence protection orders.

A large percentage of municipal courts are part-time, as are a small number of district courts. It is incumbent on jurisdictions that have part-time courts that do not meet during all usual and expected business hours to clearly post and adhere to regularly scheduled court days and times. To the extent possible, court staff should be readily available at other times to meet the public, accept payments and schedule cases. The CLJWG is not recommending a number of hours, or which hours, that courts should be open.

JMI noted that "[t]he gain in convenience that may exist as a result of having a local municipal court would appear to be negated by the fact that the court staff may not be available as frequently in the smaller courts." JMI at 32.

Courts should also provide this information to the Administrative Office of the Courts, which should maintain the information and post it as part of its court directory for easy statewide access.

#### 8. Authorize municipal courts to hear anti-harassment protection petitions.

The idea of municipal courts accepting civil and small claims jurisdiction met with considerable resistance by the city representatives on the CLJWG due to the additional costs associated with these cases. After considerable debate, CLJWG discussion subsequently focused only on the addition of anti-harassment jurisdiction to the authority of municipal courts. However the preference of city representatives is that this jurisdiction, if granted by the legislature, be optional rather than mandatory.

# 9. Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.

Independent courts in small cities are often not equipped to provide critical services available in larger courts. During times when such courts are not in session, they often lack an on-site judge, adequate court security, professional court administration and other resources. This is particularly true with respect to domestic violence matters given the legislative mandate that victims of domestic violence be given the maximum protection which the law can provide. An AOC

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survey of mostly part-time courts found that 60 of 72 courts surveyed did not provide access to domestic violence protection order (appendix C).

Currently, many small courts find themselves without staff or a judge to process a Petition for a Temporary Order for Protection from a domestic violence victim who walks through the court's front door unannounced. The petitioner may be referred to the district court for assistance. Encouraging small courts to regionalize would likely increase the level of services for citizens in rural areas.

#### JMI noted that:

In jurisdictions outside Washington of which JMI staff is aware, female domestic violence victims with children have been reluctant to bring DV incidents to the attention of courts that exercise juvenile abuse and neglect/dependency jurisdiction for fear of losing custody of their children for not leaving the household of an abusive partner. The statutory circumstances that require jurisdiction to vest in the superior court need to be clear to all courts. The impact of turning away any victim also needs to be clearly understood. JMI at 37.

#### JMI recommended that:

Steps should be taken, consistent with applicable statutes, to make protective order services (at least temporary orders) available as conveniently as possible for victims of domestic violence. Where by agreement local courts have decided to offer these services at centralized locations materials need to be prepared that explain the operations of the system to all who might seek these services.

A statewide protocol for providing domestic violence orders of protection needs to be developed. Training needs to be provided to local court staff so that everyone is clear on the statutes and practices governing these orders. Those who work at the counters in local courts need to be particularly aware of the requirements of statutes and local practice. Written material needs to be available that describes the practices for domestic violence victims seeking the court's assistance. Id.

The CLJWG accepts that judges and court staff may not always be available, particularly in part-time courts. However, the importance of domestic violence protection requires that all courts have in place some protocol for ensuring that all domestic violence protection petitioners have ready, easily understood access to the protection afforded by a hearing and entry of an appropriate order; if not in that court at that time, then that court has an obligation to provide a clearly understood reasonable alternative arrangement for ensuring access. At a bare minimum, the court should have clear concise information available providing victims with direction to a court that will provide assistance.

# 10. Increase the civil jurisdiction amount in dispute that can be filed in district court to \$75,000.

The CLJWG considered the question of expanding civil jurisdiction in district courts. In 2000, the legislature increased the monetary value of cases the district court is able to hear to \$50,000. As with earlier increases, this increase in jurisdiction did not result in a significant increase in district court filings. Nor have relaxed discovery rules in district courts led to increased filings.

The CLJWG requested a presentation by district court civil practitioners to ascertain reasons that more practitioners do not litigate civil cases in district court. Both plaintiff and defense bars were represented.

The suggestion that district court civil jurisdiction be increased was favorably received. A threshold of \$75,000 met with general acceptance. It was noted that judges have the authority to grant additional discovery in appropriate cases.

# 11. Require district courts to implement dedicated civil calendars and case scheduling.

District court civil practitioners expressed general satisfaction with their district court practices. They noted that they practice in larger courts that have some form of dedicated civil docket, which results in less time between filing and trial. One impediment to filing in district courts in smaller jurisdictions is that there is often no dedicated civil trial calendar, leaving civil cases to compete with criminal cases for trial time. Implementation of dedicated civil dockets or calendars and trial date certainty would make district courts much more attractive as venues for civil cases.

### **OTHER ISSUES**

The CLJWG studied other issues in courts of limited jurisdiction but either did not reach consensus on these issues or deferred to other efforts underway to address these issues. The other issues are briefly described in the following sections of the report.

#### **Expanded Jurisdiction**

At the request of the Court Funding Task Force the CLJWG looked at expanding jurisdiction in both district and municipal courts. For municipal courts the CLJWG discussed expanding municipal court jurisdiction to include civil, small claims matters, and anti-harassment petitions. This would allow city residents to file their cases directly in their local municipal court, eliminating confusion and increasing public access.

While city representatives agreed to extension of anti-harassment jurisdiction, to be exercised at local option, the CLJWG did not agree on any additional changes or expanded jurisdiction. The cities expressed considerable resistance, particularly to the idea of accepting civil and small claims jurisdiction because of the additional costs. District court judges also opposed shifting any civil workload to municipal courts.

The CLJWG also considered the desirability of increasing the monetary thresholds for property crimes so that lower level felonies could be adjudicated as misdemeanors in district and municipal courts. The monetary thresholds have not been adjusted in decades. A proposal to raise the threshold for property crimes has been introduced to the legislature the past two sessions.

Limitations on the kinds of cases that a court will hear raised concerns. The selective exercise of jurisdiction is viewed, rightly or wrongly, as an attempt to exercise only that jurisdiction which is revenue generating.

#### Part-time Courts

Part-time courts are another issue of longstanding concern that was discussed but about which no consensus was reached. As illustrated by information provided to the CLJWG by the AWC and AOC, there are small municipalities operating their own independent courts that do not provide the services contemplated by the legislature. Of municipal courts surveyed by the Association of Washington Cities, 23 of 74 reported meeting less than 20 hours per month; 51 of 74 reported being under half-time (appendix C). Some of these courts restrict their caseload exclusively to traffic infractions. Most do not offer domestic violence protection orders or court security. Selective exercise of jurisdiction, Courts of Limited Jurisdiction Work Group Final Report Page 27 of 32

and the insistence that courts generate revenues to meet operating costs, create a perception that municipal courts exist only to generate revenue.

JMI noted in its report that "[t]he gain in convenience that may exist as a result of having a local municipal court would appear to be negated by the fact that the court staff may not be available as frequently in the smaller courts." The part-time nature of some courts has an impact on many of the other issues addressed by the Work Group; discussions of judicial independence, elections, and access to court services all take on an added dimension when discussed in the context of part-time courts.

Based on the information provided by AWC and AOC, the CLJWG was asked to consider the possibility of eliminating small municipal courts in cities not meeting an objective threshold such as that based on a relationship to population or caseload size. No consensus was reached and therefore no recommendation is included in the final report. City representatives made clear their position that cities should have the right to establish a court without regard to population or caseload size or the services provided.

Part-time judicial officers play a vital role in the courts of limited jurisdiction and the majority of them serve with distinction. However, the potential for conflicts of interest, coupled with the limitation in services that can be provided by a court with a part-time judge also raises concerns. Part-time courts frequently employ attorneys who have a private practice or other endeavor outside the court. Wilson stated that "[c]onflicts of interest are almost unavoidable if the judge is only a part-time judicial officer, with other responsibilities involving a private practice of law or other position." Wilson at 166-7. In a presentation to the CLJWG by the Commission on Judicial Conduct, it was noted that part-time judges, because they are also able to practice law, have a greater potential for ethical conflicts than do full-time judges. Isolation and some tendency to not attend judicial education were also identified as issues that may lead to ethical problems for those judges.

#### Driving While License Suspended (DWLS)

Driving while license suspended (DWLS) cases comprise a significant portion of limited jurisdiction court workloads. In some courts, an estimated 40% of caseload is made up of DWLS charges. License suspension is used as a sanction to enforce financial obligations imposed by the court for traffic infractions. When an offender fails to appear for a hearing or fails to pay a penalty, the Department of Licensing is mandated to suspend the offender's driver's license. Reinstatement of the driving privilege is dependent on paying the underlying penalty. DWLS warrants constitute a significant part of the number of outstanding warrants.

The Spokane and King County District Courts, Seattle Municipal Court and a number of other jurisdictions have instituted re-licensing programs to address DWLS cases. Other courts work with collection agencies in an attempt to assist drivers to pay off their obligations in order to become re-licensed.

After the CLJWG held its last meeting, the Washington Supreme Court issued an opinion in <u>City of Redmond v. Moore</u>, 151 Wn.2d 664 (2004) that held the DWLS statutes that provide for mandatory suspension of driver's licenses without an administrative hearing violate procedural due process and are unconstitutional. It is anticipated that the decision in <u>City of Redmond</u> will result in decreased DWLS caseloads and revenue, which in turn will lead to increased interest in exploring other options for provision of court services.

# Indigent Defense and Prosecutor Availability in Courts of Limited Jurisdiction

Every person charged with a crime possesses certain constitutional and due process rights including the fundamental right to an attorney and the right to be advised of their constitutional right to make an informed decision about their case.

The United States Supreme Court has made it clear that a fundamental principle of our criminal justice system is that counsel must be provided for individuals who cannot afford counsel. <u>Gideon v. Wainwright</u>, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). The Washington State Supreme Court in <u>McInturf v. Horton</u>, 85 Wn2d 704, 705, 538 P2d 499 (1975) held that the right to counsel extends to all criminal proceedings for offenses punishable by loss of liberty regardless of whether the crime is a felony or a misdemeanor, <u>McInturf v. Horton</u>, 85 Wn2d 704, 705, 538 P2d 499 (1975); CrR 31(a).

The Washington State legislature has determined that effective legal representation should be provided for indigent persons, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. RCW 10.101.005. The expense for providing indigent representation has historically been almost wholly a responsibility of local government.

Numerous reports regarding the adequacy of indigent defense in Washington note significant resource deficiencies. The CLJWG reviewed an ACLU report, *The Unfulfilled Promise of Gideon: Washington's Flawed System of Defense for the Poor* and Washington Defender Association Standards for Public Defense Services, as well as hearing presentations by the ACLU and various public defenders. It is evident that many jurisdictions do not provide attorneys for defendants at critical stages necessary for legal advice, particularly at arraignment. At arraignment defendants charged with a misdemeanor often Courts of Limited Jurisdiction Work Group Final Report Page 29 of 32

plead guilty to a crime without the benefit of counsel or being told they have a right to counsel.

Unavailability of counsel sometimes results in defendants being presented with a choice of proceeding without counsel and remaining incarcerated or waiting until the court can reschedule the hearing and a lawyer can be present. Resource issues also result in the lack of availability of certified interpreters for indigent defendants. The lack of an interpreter may result in non-English speaking defendants remaining in jail until an interpreter is brought to court. These types of resource related choices result in additional cost to the jurisdiction in the form of jail time or additional court hearings, or in defendants going forward without an adequate understanding of their case or the ramifications of a particular course of action.

While the CLJWG was meeting, the Washington State Bar Association empanelled a Blue Ribbon panel to review indigent defense in Washington and make recommendations for changes. The panel's report was presented to the WSBA and Court Funding Task Force. Their recommendations will be addressed in the larger context of trial court funding and administration of justice.

The CLJWG also recognizes a concern that because of budgetary constraints prosecutors are not always available or present for all contested proceedings in courts of limited jurisdiction. The absence of the prosecutor can place the judge in an improper role and undermines the appearance of fairness and judicial independence.

#### Driving Under the Influence (DUI)

The state has adopted a DUI policy that mandates treatment of DUI offenders. Local governments bear responsibility for the cost to implement this policy.

The results of an Administrative Office of the Courts review suggest there is great disparity in the application of statutory DUI requirements.

Given the many possible combinations of prosecutorial decisions and court decisions, DUI outcomes vary significantly among all sizes of court jurisdictions. In particular, decisions about amending or deferring DUI charges appear to be driven by a variety of local factors reflecting difference in both resources and philosophy. The way DUI cases are treated by different courts in the same population group can vary widely. For example, in nearby adjacent counties with very similar demographic characteristics, the likelihood of a DUI charge being either amended or dismissed varies from 12% to 69%.

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#### Probation

Probation officers provide services designed to assist the court in the management of criminal justice and thereby aid in the preservation of public order and safety. Probation is an effective method for enforcing court orders. protecting public order and safety, reducing recidivism, and minimizing jail costs. In an attempt to provide options for jurisdictions, differing levels of probation supervision are allowed under the Administrative Rules for Courts of Limited Jurisdiction, Rule 11 (ARLJ 11). ARLJ 11 authorizes the presiding judge to determine both the level and method of probation services given the specific needs of the court. To that end, courts may employ professional probation officers or designate a court employee to monitor compliance with court orders. ARLJ 11 sets out the gualifications and core services for probation department personnel. Probation officers must possess the necessary education and skills in dealing with complex legal and human issues and must be competent in making decisions using discretionary judgment. They must also possess education and training concerning a wide variety of offender problems including; alcoholism, domestic violence, mental illness, and sexual deviancy. Court employees who are designated as probation clerks have typically a lesser role of simply monitoring compliance with treatment obligations with professional treatment agencies and reporting offender non-compliance with the conditions of sentence.

Whatever level of probation is chosen, caseloads have historically been high. The JMI Report notes that "[i]n both types of courts, officers have more cases than they can effectively supervise, which is probably due to the universal problem that the probation departments are not funded or staffed at levels that allows them to provide meaningful supervision and control." JMI at 44. Ideally, a court would have both probation officers and clerks to assign as appropriate to effectively meet the goals of supervision for each individual offender. Instead, the level of supervision depends on locally available resources. The same person with the same charge may be treated quite differently depending upon where the offense is committed.

If courts undertake to provide probation supervision without the resources to adequately carry out that level of supervision, it may subject the jurisdiction to liability. The ability to adequately supervise offenders is directly related to probation officer caseloads, written supervision policies, funding, and the ability of the presiding judge to develop a probation program whereby probationers can be assigned to either probation officers or court monitored probation depending on individual risk assessments.

The expense of providing probation services frequently drives decisions about levels of supervision. In CLJWG discussion, some cites noted that with the decline of county budgets, municipal courts are able to provide a more effective level of supervision than the district court. This serves to highlight the disparity of

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treatment that can occur when jurisdictions with differing resources fund critical services.

### CONCLUSION

The Court Improvement Act of 1984, Title 3 RCW should be amended and include the recommendations of the CLJWG. Some provisions found in the 1984 Act have proven unnecessary; others do not adequately describe the court structures that have developed. All provisions relating to CLJ structure should be contained in Title 3 in order to minimize confusion about the authority of these courts. Title 3 must strike a balance between the flexibility required to meet changing needs of diverse populations while at the same time providing sufficient structural guidance so as to ensure courts maintain their independence and ability to implement statewide policy.

#### WORKGROUP MEMBERSHIP

Mr. Ron Ward, attorney at law and president of the Washington State Bar Association, and Judge Ann Schindler, Court of Appeals, Division I, were appointed co-chairs.

Membership on the workgroup was structured to represent diverse groups interested in the efficacy of courts of limited jurisdiction. Workgroup membership was as follows:

#### Chairs:

Mr. Ron Ward, President WSBA Judge Ann Schindler, Court of Appeals Division 1

#### **Representing the Legislature:**

Honorable Ruth Kagi, Washington House of Representatives Honorable Lois McMahan, Washington House of Representatives

#### **Representing Cities and Counties:**

Ms. Sophia Byrd, Washington Association of Counties
Ms. Diane Carlson, City of Bellevue
Ms. Edsonya Charles, Association of Washington Cities
Mr. Mike Doubleday, City of Bellevue
Ms. Tammy Fellin, Association of Washington Cities
Mr. Jay Fossett, King County Executives Office
Mr. Ted Gathe, City Attorney, City of Vancouver
Mr. Mike Kenyon, Kenyon Dornay Marshall
Honorable Mike Killian, County Clerks Association
Honorable Jim Pearman, Councilman, Association of Washington Cities
Ms. Karen Reed, King County Management and Budget Office Honorable
Ms. Skye Richendorfer, Association of Washington Cities
Mr. Dan Satterberg, King County Prosecuting Attorney's Office

#### **Representing Court Administrators:**

Ms. Linda Bell, Pierce County District Court Ms. Tricia Crozier, King County District Court Ms. Joan Ferebee, Edmonds Municipal Court Mr. Joe McGuire, Renton Municipal Court Ms. Pam Springer, Skagit County District Court

#### **Representing the Judiciary:**

Justice Susan Owens, Washington Supreme Court Judge Sara Derr, Spokane County District Court

#### Appendix A

Judge Stephen Dwyer, Snohomish County District Court (Judge Kato appointed to replace Judge Dwyer when he was appointed to superior court) Judge David Edwards, Okanogan County District Court Judge Richard Fitterer, Grant County District Court Judge Stephen Holman, Bainbridge Island Municipal Court Judge Eileen Kato, President, District and Municipal Court Judges' Association, King County District Court Judge Robert McSeveney, Kent Municipal Court Judge Wesley Saint Clair, Presiding Judge, King County District Court Judge Larry Wilson, Retired Judge Susan Woodard, Yakima Municipal Court

#### **Other Representatives:**

Mr. Jack Connelly, Washington State Trial Lawyers Association
Ms. Ann Danieli, Mercer Island Public Defender
Ms. Deanna Dawson, League of Women Voters
Ms. Rebecca Roe, Washington State Trial Lawyers Association
Ms. Glenda Ward, Misdemeanant Probation Association

#### **Other Participants:**

Mr. Wayne Blair, Chair, Court Funding Task Force Ms. Mary McQueen, Administrative Office of the Courts

#### Staff:

Ms. Janet McLane, Administrative Office of the Courts Mr. Doug Haake, Administrative Office of the Courts Ms. Jennifer O'Hern, Administrative Office of the Courts

Subject Matter	Municipal Court	Municipal Court	District
	or Department		Court
		Cities over	(County
	(Within	400,000	Wide)
	Geographic City	Population	
	Limits)		
		RCW 3.50.005,	
	RCW 3.46.030	35.20.030, and	
	and 3.50.020	35.20.250	
Infractions	XX	XX	XX
	RCW 46.63.040		RCW
			46.63.040
Misdemeanors/Gross			XX
Misdemeanors	XX	XX	RCW
			3.66.060
Domestic Violence			XX
(criminal)	XX	XX	RCW
			3.66.060
Domestic Violence	XX	XX	XX
(civil)	RCW 26.50.020		RCW
			26.50.020
Impoundment	XX	XX	XX
	RCW 46.55.120		RCW
			46.55.120
Criminal Anti-	XX	XX	XX
Harassment	RCW 10.14.150		RCW
			10.14.150
Civil Anti-Harassment		XX	XX
			RCW
			10.14.150
Civil		XX	XX
			RCW
			3.66.020
Small Claims		XX	XX
			RCW
			12.40.010
Felony (PC/1st			XX
Appearance)		XX	RCW
17F			3.66.060
			0.00000

## JURISDICTION IN LIMITED JURISDICTION COURTS

# of Appointed Judges / Judges / Commissioners       Urt     1       La Center) Municipal     1       I     1       Urt     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1       I     1		Judge Hours per Week 3 - 4 3 - 4 8 - 12 8 - 12 15 - 17 15 - 17	FT or PT PT P	Population 16.320 4.5355 21,350 59,850 59,850 3,985		eload Profile froi Caseload Rpt Criminal • • • •	Caseload Profile from 2002 Caseload Rpt. Caseload Rpt. Caseload Rpt. Caseload Rpt. Prob	ation	2003 AOC Judicial Needs Assessment 0.58 0.33
# of Appointed Judges / Commissioners 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		Judge ours per Week Week 3 - 4 20 20 8 + 12 8 + 12 25 - 30 25 - 30 25 - 30	FT or PT7 PT PT PT PT PT	Population 16.320 4.590 21,350 21,350 69,850 69,850 3,985		Caseloc Caseloc Criminal Criminal	file from 2 ad Rpt.	ation	2003 AOC Judicial Needs Assessment 0.58 0.33 0.33
Commissioners / Judges / Commissioners / 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	╾╾┫╌┼╴╎╴┼╶╎╴┼╴╎	Week Week 3 - 4 8 - 12 8 - 12 15 - 17 15 - 17	F1 or Р17 Р1 Р1 Р1	Population 16,320 4,590 21,350 21,350 69,850 69,850 12,950		Caseloc Caseloc Criminal	ad Rpt.	ation ess ?	Judicial Needs Assessment 0.58 0.33
		3 - 4 3 - 4 8 - 12 8 + 12 8 + 12 15 - 17 15 - 17		16,320 16,320 21,355 21,3560 69,850 69,850 69,850 12,956				Probation Fees?	0.58 1.33 0.33
	- 0 0 - 0 0 - 0 0		PT P	16,320 4,590 21,355 21,350 69,850 69,850 69,850 12,950		<ul> <li>.</li> <li>.&lt;</li></ul>	• •	Fees 5	0.58 1.33 0.33
	000000000		PT PT PT PT PT PT	16,320 4,590 4,590 21,350 21,350 69,850 69,850 69,850 12,950		• • • • • • •	••	• • •	0.58 1.33 0.33
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	0 +	15 - 17	PT		•	•			
	-			30,910	•	•		+	
		40J	Ŀ	38,730	•	•	•	•	1.02
	0	20	Ы	15,110	•	•			0.40
	0	. 8 - 10	ΡT	7,010	•	•		•	0.23
	0	10 - 20	ЪТ	3.600	•		•	•	
	0	6 hrs./mo.	Ы	3,190	• 0	•	•	•	
	0	8 hrs./mo.	ΡΤ	1,630	•	•			
Des Moines Municipal Court	0	21	PT	29,120	•	•		•	0.57
East Wenalchee Municipal Court	0	up to 30 hrs./mo.	Ы	8,140	•	•	•		
Eatonville Municipal Court	0	15 hrs./mo.	PT	2.095	0				
Edmonds Municipal Court	0		ЪТ	39,580	•	•		•	0.55
Elma Municipal Court	0	20 hrs./mo.	PT	3,060	•	•			
Enumclaw (Maple Valley) Municipal Court	0	16 - 20/mo.	PT	11.140	•	•		•	
Everett Municipal Court	2		FT	95,470	•	•		•	1.45
Court	0	32: 30	ЬI	83,890	•	•		•	1.16
Eife Municipal Court	0	30	ΡŢ	4,905	•	•		•	0.92
Fircrest Municipal Court 1	0	3-6	Fq.	5,935	واري •	•			
Gig Harbor Municipal Court	0	15	Ы	6.655	•	•		٠	0.23
Hoquiam Municipal Court	0	30 hrs./mo.	PT	8.855	5	•			

## Appendix C

Infractions         Criminal 2         Probation 2         Probation 2         Probation 2           1 hr/mo         FT         940         •
1 hr/mo.         PT         940         • <t< th=""></t<>
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30         PT         45.630 $\cdot$ </td
1 $1$
20         PT $12/50$ •         •
26; 3         PT $56,940$ •         •
under 10/mo.         PT         1005         •
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20       PT       28,370       •<
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3.4       FT       3.345       •       •         3.5.4       FT       3.345       •       •         up to 10       up to 10       615       •       •         his./mo       PT       1.330       •       •         12 his./mo       PT       680       •       •         np to 15       T       680       •       •         ns./mo       PT       630       •       •         ns./mo       PT       4,065       •       •         10-15/mo       PT       4,2860       •       •         33       PT       37,580       •       •       •         30       PT       37,580       •       •       •       •         30       PT       7,910       •       •       •       •       •         31       BT       35,490       •       •       •       •       •       •         31       PT       35540       •       •       •       •       •       •       •       •       •       •       •       •       •       •       •       •       •       •       •
6 hrs/mo       PT       1,330       •       •         up to 10       up to 10       615       •       •         hrs/mo       PT       635       •       •         12 hrs/mo       PT       660       •       •         up to 15       A,065       •       •       •         hrs/mo       PT       4,065       •       •       •         10 - 15/mo       PT       4,286       •       •       •         33       PT       4,286       •       •       •       •         10 - 15/mo       PT       4,285       •       •       •       •       •         30       PT       37,580       •       •       •       •       •       •         10 - 15/mo       PT       7,910       •<
up to 10     up to 10       hrs./mo     PT       12 hrs./mo     PT       up to 15     FT       up to 15     FT       up to 15     A.065       hrs./mo     PT       35     FT       4280     •       10-15/mo     PT       30     PT       30     PT       31     5.665       32     PT       33     PT       33     90       16     PT       30     PT       31     5.665       32     90       33     580       33     580       9     9       9     9       9     9       9     9       9     9       9     9       9     9       9     9       9     9       9     9
12 his/mo.       PT       660       •       •         up to 15       up to 15       +       •       •         up to 15       nis/mo.       PT       4,065       •       •         35+       FT       4,286       •       •       •       •         10-15/mo       PT       4,285       •       •       •       •         30       PT       5,665       •       •       •       •       •         30       PT       37,580       •       •       •       •       •       •         30       PT       37,580       •       •       •       •       •       •       •       •         30       PT       37,580       •
up to 15         up to 15         4,065         •
354       FT       42,860       •       •       •         10 - 15/mo.       PT       4,295       •       •       •       •         6 - 9       PT       5,665       •       •       •       •       •         30       PT       37,580       •       •       •       •       •       •         24       PT       7,910       •       •       •       •       •       •         30       PT       35,490       •       •       •       •       •       •         30       PT       35,490       •       •       •       •       •       •       •         30       PT       3,5490       •       •       •       •       •       •       •       •         5.6 hrs./mo       PT       2,650       •       <
10 - 15/mo.     PT     4.295     •     •       6 - 9     PT     5.665     •     •     •       30     PT     37,580     •     •     •       24     PT     7,910     •     •     •       16     PT     7,010     •     •     •       30     PT     35,490     •     •     •       30     PT     2,455     •     •     •
6 - 9         PT         5,665         •
30         PT         37,580         •<
24         PT         7.910         • </td
16         PT         7.010         • </td
30         PT         35.490         •<
5 -6 hrs./mo PT 1.515 • • •

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dge         FT or         Caseload Profile from 2002           s per         FT or         Caseload Profile from 2002           sek         PT7         Population           rs.         DV         Caseload Rpt.           rs./mo.         PT         S4.900         •           rs./mo.         PT         S4.900         •         •           rs./mo.         PT         S4.900         •         •         •           rs./mo.         PT         S4.900         •         •         •         •           rs./mo.         PT         S4.900         •	dge         FT or         Caseload Profile from 2           s per         FT or         Population         Caseload Rpt.           a35 - 40         FT         S4,900         •         •           35 - 40         FT         54,900         •         •         •           a15 - 20         PT         54,900         •         •         •         •           a15 - 20         PT         54,100         •	dge         FT or         Caseload Profile from 2002           sk         PT7         Population         Caseload Rpt.           a5.40         FT         S4900         •         •           35.40         FT         54.900         •         •         •           15.20         PT         870         •         •         •         •           15.20         PT         54.900         •         •         •         •         •           15.20         PT         870         •         •         •         •         •         •         •           15.20         PT         571.900         •	dge         FT or         Caseload Profile from 2002           sek         PT7         Population         Caseload Rpt.           a55.40         FT         S4.900         •         •         •           35.40         FT         54.900         •         •         •         •           15-20         PT         870         •         •         •         •         •           15-20         PT         745         •	dge         FT or         Caseload Profile from 2002           s per         FT or         Caseload Profile from 2002           sek         PT7         Population         Caseload Rpt.           35-40         FT         S4.900         •         •           15-20         PT         S7.900         •         •         •           15-20         PT         S7.1.900         •         •         •         •           15-20         PT         S7.1.900         •         •         •         •         •           15-20         PT         S7.1.900         •         •         •         •         •         •         •           15-20         PT         9080         •	dge         FT or         Caseload Profile from 2002           sek         PT?         Population         Caseload Rpt.           Propertions         Criminal         Probation           35:40         FT         Strainal         Propertions           15:20         PT         Strainal         Probation           15:20         PT         Strainal         Propertions           15:20         PT         Strainal         Propertions           15:20         PT         Strainal         Propertions           15:20         PT         Strainal         Propertions           15:20         PT         745         •         •           15:20         PT         25;100         •         •         •           15:20         PT         1,775         •         •         •         •           10:12         PT         1,210         •         •         •         •         •           10:12         PT         1,210         •         •         •         •         •         •           10:12         PT         1,210         •         •         •         •         •           10:10	dge s per s per s per s per s per s per s per p 17         Caseload Profile from 2002 Caseload Rpt.           Caseload Profile from 2002         Caseload Rpt.           Probation         Caseload Rpt.           35-40         FT         54.900         •         •           35-40         FT         54.900         •         •         •           35-40         FT         54.900         •         •         •         •           15.20         745         •         •         •         •         •         •           15.100         FT         57.1900         •         •         •         •         •         •         •           16.12P         PT         9.080         •	COURT			,							•
S per         FT or PT7         Caseload Profile from 2002           eek         PT7         Population         Caseload Rpt.           35-40         FT         54.900         •         •         •           35-40         FT         54.900         •         •         •         •           15-20         PT         870         •         •         •         •         •           15-20         PT         870         •         •         •         •         •         •         •           15-20         PT         870         •	S per         FT or PT?         Caseload Profile from 2 aseload Rpt.           35.40         FT         Population         Caseload Rpt.           35.40         FT         54.900         •         •           15.20         PT         870         •         •         •           15.20         PT         54.900         •         •         •         •           15.20         PT         870         •         •         •         •         •           15.200         PT         25,100         •         •         •         •         •           15.100         PT         25,100         •         •         •         •         •           16.12         PT         25,100         •         •         •         •         •           10.12         PT         25,100         •         •         •         •         •           10.12         PT         25,100         •         •         •         •         •         •         •           10.12         PT         25,100         •         •         •         •         •         •         •         •         •	S per bek         FT or PT7         Caseload Profile from 2002           eek         PT7         Population         Caseload Rpt.           35-40         FT         54.900         •         •         •           35-40         FT         54.900         •         •         •         •           15-20         T45         •         •         •         •         •         •           15-20         T45         •         •         •         •         •         •         •           15-20         T45         •	S per bek         FT or PT7         Caseload Profile from 2002           BT7         Population         Caseload Rpt.           35-40         FT         54,900         •         •         •           35-40         FT         54,900         •         •         •         •           35-40         FT         54,900         •         •         •         •         •         •           15-20         PT         870         • </th <th>S per ek         FT or PT?         Caseload Profile from 2002 Caseload Rpt.           25.40         FT         S4.900         •         •         Probation DV?         Fees?           35.40         FT         54.900         •         •         •         •         •           15.200         PT         870         •         •         •         •         •         •           15.200         PT         54.900         •</th> <th>S per ek         FT or PT?         Caseload Profile from 2002           ek         PT?         Population         Caseload Rpt.           35-40         FT         S4,900         •         •         Probation           35-40         FT         54,900         •         •         •         •         •           15-20         PT         54,900         •         •         •         •         •         •         •           15-20         PT         54,900         •</th> <th>S per ek         FT or PT?         Caseload Profile from 2002           ek         PT?         Population         Caseload Rpt.           35-40         FT         Simol         PT           15-20         FT         Signo         •         •           15-20         FT         Signo         •         •         •           15-20         FT         Signo         •         •         •         •           15-20         FT         Signo         •         •         •         •         •           15-20         FT         Signo         •<th>COURT</th><th># of Appointed</th><th># of</th><th>Judae</th><th></th><th></th><th></th><th></th><th></th><th></th><th>2003 AOC</th></th>	S per ek         FT or PT?         Caseload Profile from 2002 Caseload Rpt.           25.40         FT         S4.900         •         •         Probation DV?         Fees?           35.40         FT         54.900         •         •         •         •         •           15.200         PT         870         •         •         •         •         •         •           15.200         PT         54.900         •	S per ek         FT or PT?         Caseload Profile from 2002           ek         PT?         Population         Caseload Rpt.           35-40         FT         S4,900         •         •         Probation           35-40         FT         54,900         •         •         •         •         •           15-20         PT         54,900         •         •         •         •         •         •         •           15-20         PT         54,900         •	S per ek         FT or PT?         Caseload Profile from 2002           ek         PT?         Population         Caseload Rpt.           35-40         FT         Simol         PT           15-20         FT         Signo         •         •           15-20         FT         Signo         •         •         •           15-20         FT         Signo         •         •         •         •           15-20         FT         Signo         •         •         •         •         •           15-20         FT         Signo         • <th>COURT</th> <th># of Appointed</th> <th># of</th> <th>Judae</th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th>2003 AOC</th>	COURT	# of Appointed	# of	Judae							2003 AOC
35 - 40         FT         54 900         •	35-40     FT     54.900     •     •       7     7     870     •     •       15-20     PT     745     •     •       10-12     PT     25,100     •     •       statistics/data     PT     1,775     •     •       statistics/mo     PT     1,210     •     •       10 <pt< td="">     8,545     •     •     •       10<pt< td="">     8,780     •     •     •       10<pt< td="">     1,775     •     •     •       10<pt< td="">     1,210     •</pt<></pt<></pt<></pt<>	35.40         FT         54.900         · <th< th=""><th>35.40         FT         54.900         •         <th< th=""><th>35.40         FT         54,900         •         <t< th=""><th>3540         FT         54.900         •         <t< th=""><th>All         FI         54.900         •</th><th></th><th>Judges / Commissioners</th><th>Elected Judges</th><th>Hours per Week</th><th>FT or PT?</th><th>Population</th><th>Case</th><th>sload Pro</th><th>file from ad Rpt.</th><th>2002</th><th>Judicial Needs Assessment</th></t<></th></t<></th></th<></th></th<>	35.40         FT         54.900         • <th< th=""><th>35.40         FT         54,900         •         <t< th=""><th>3540         FT         54.900         •         <t< th=""><th>All         FI         54.900         •</th><th></th><th>Judges / Commissioners</th><th>Elected Judges</th><th>Hours per Week</th><th>FT or PT?</th><th>Population</th><th>Case</th><th>sload Pro</th><th>file from ad Rpt.</th><th>2002</th><th>Judicial Needs Assessment</th></t<></th></t<></th></th<>	35.40         FT         54,900         • <t< th=""><th>3540         FT         54.900         •         <t< th=""><th>All         FI         54.900         •</th><th></th><th>Judges / Commissioners</th><th>Elected Judges</th><th>Hours per Week</th><th>FT or PT?</th><th>Population</th><th>Case</th><th>sload Pro</th><th>file from ad Rpt.</th><th>2002</th><th>Judicial Needs Assessment</th></t<></th></t<>	3540         FT         54.900         • <t< th=""><th>All         FI         54.900         •</th><th></th><th>Judges / Commissioners</th><th>Elected Judges</th><th>Hours per Week</th><th>FT or PT?</th><th>Population</th><th>Case</th><th>sload Pro</th><th>file from ad Rpt.</th><th>2002</th><th>Judicial Needs Assessment</th></t<>	All         FI         54.900         •		Judges / Commissioners	Elected Judges	Hours per Week	FT or PT?	Population	Case	sload Pro	file from ad Rpt.	2002	Judicial Needs Assessment
35 - 40 $FT$ $54.900$ •       •	35 - 40     FT     54.900     •     •       15 - 20     PT     870     •     •       15 - 20     PT     25,1000     •     •       ns./mo.     PT     25,1000     •     •       10 - 12     PT     25,1000     •     •       Mk. 2     B     PT     1,775     •       Mk. 2     B,745     •     •       Mk. 2     PT     1,775     •       Ins./mo.     PT     1,775     •       Ins./mo.     PT     1,210     •       10 <pt< td="">     8,780     •     •       110<pt< td="">     8,780     •     •       12,100     •     •     •       110<pt< td="">     8,780     •     •       111     120     •     •       12,100     •     •     •       110<pt< td="">     8,780     •     •       12,100     •     •     •       12,10     •</pt<></pt<></pt<></pt<>	35 - 40       FT       54,900       •       <	35 - 40       FT       54,900       •       <	35 - 40       FT $54.900$ •       •	35 - 40       FT $54,900$ •       •	$35 \cdot 40$ FT $54 \cdot 300$ •       •						1	Infractions ?		۰۸۵	Probation Fees?	
urs/mo.       PT $870$ •       •       •         15-20       745       •       •       •       •       •         15-20       PT       745       •       •       •       •       •       •         ris/mo.       PT       25,100       •       •       •       •       •       •       •         ris/mo.       PT       25,100       • </td <td>ust,mo.       PT       <math>870</math>       •       •         15-20       71       745       •       •         ns.mo.       PT       25,100       •       •       •         ns.fmo.       FT       25,100       •       •       •       •         ns.fmo.       FT       25,100       •       •       •       •       •         10-12       PT       25,1900       •       •       •       •       •       •         Mx. 2       PT       9,080       •</td> <td>urs/mo.       PT       <math>870</math>       •       •       •       •         15-20       T       745       •</td> <td>wishing       PT       870       •       •       •         15-20       T       745       •       •       •       •         15-20       PT       25,100       •       •       •       •       •         rishing       FT       571,900       •       •       •       •       •       •         rishing       FT       5,100       •       •       •       •       •       •       •         10-12       PT       9,080       •</td> <td><math>rs/mo.</math> <math>PT</math> <math>g70</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math>           15-20         <math>PT</math> <math>25,100</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>rs/mo.</math> <math>PT</math> <math>9,080</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>rs/mo.</math> <math>PT</math> <math>9,080</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>rs/mo.</math> <math>PT</math> <math>1,775</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>rs/mo.</math> <math>PT</math> <math>1,7750</math> <math>\bullet</math> <math>\bullet</math></td> <td>IS-20         FT         B70         •</td> <td>IS-20       FT       <math>870</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math>         15-20       FT       <math>745</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math>         15-20       FT       <math>745</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math>         15-20       FT       <math>745</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math>         16-12       PT       <math>25,100</math> <math>\bullet</math> <math>\bullet</math></td> <td>tenton Municipal Court</td> <td>0</td> <td>-</td> <td>35 - 40</td> <td>FT</td> <td>54.900</td> <td></td> <td>•</td> <td>•</td> <td>•</td> <td>1.02</td>	ust,mo.       PT $870$ •       •         15-20       71       745       •       •         ns.mo.       PT       25,100       •       •       •         ns.fmo.       FT       25,100       •       •       •       •         ns.fmo.       FT       25,100       •       •       •       •       •         10-12       PT       25,1900       •       •       •       •       •       •         Mx. 2       PT       9,080       •	urs/mo.       PT $870$ •       •       •       •         15-20       T       745       •	wishing       PT       870       •       •       •         15-20       T       745       •       •       •       •         15-20       PT       25,100       •       •       •       •       •         rishing       FT       571,900       •       •       •       •       •       •         rishing       FT       5,100       •       •       •       •       •       •       •         10-12       PT       9,080       •	$rs/mo.$ $PT$ $g70$ $\bullet$ $\bullet$ $\bullet$ 15-20 $PT$ $25,100$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $rs/mo.$ $PT$ $9,080$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $rs/mo.$ $PT$ $9,080$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $rs/mo.$ $PT$ $1,775$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $rs/mo.$ $PT$ $1,7750$ $\bullet$ $\bullet$	IS-20         FT         B70         •	IS-20       FT $870$ $\bullet$ $\bullet$ $\bullet$ 15-20       FT $745$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ 15-20       FT $745$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ 15-20       FT $745$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ 16-12       PT $25,100$ $\bullet$	tenton Municipal Court	0	-	35 - 40	FT	54.900		•	•	•	1.02
15.20 $745$ •       •	15.20 $745$ 15.20       FT $25,100$ 10.12       FT $25,100$ 1012       PT $25,100$ $1012$ PT $9,080$ $1012$ PT $9,080$ $571,900$ $50,080$ $50,080$ $50,080$ $50,080$ $50,080$ $50,080$ $50,080$ $50,080$ $50,080$ $50,090$ $10,070$ PT $1,756$ $10,0712$ PT $1,210$ $11,0700$ PT $1,210$ $11,012$ PT $1,210$ $11,012$ PT $1,2565$	15-20       745       •       •       • $15.100$ $PT$ $25,100$ •       •       • $10.12$ $PT$ $25,100$ •       •       •       • $1012$ $PT$ $25,100$ •       •       •       •       • $1012$ $PT$ $9,080$ •       •       •       •       •       • $1012$ $PT$ $9,080$ •       •       •       •       •       •       • $8,45$ $PT$ $1,775$ •       •	15-20       745       •       •       • $15.20$ $FT$ $25,100$ •       •       • $15.71,900$ •       •       •       •       •       • $10.12$ $FT$ $25,100$ •       •       •       •       • $10.12$ $FT$ $9,080$ •       •       •       •       • $Mk. 2$ $E_1$ $FT$ $9,080$ •       •       •       •       • $Mk. 2$ $FT$ $9,080$ •       •	15-20       745       • </td <td>15-20       745       •<!--</td--><td>1520       <math>745</math> <math>745</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>1520</math> <math>FT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>10.12</math> <math>PT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>1012</math> <math>PT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>9,080</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>9,080</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>10</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math></td><td>Roy Municipal Court</td><td>-</td><td>0</td><td>9 hrs./mo.</td><td>ЪТ</td><td>870</td><td></td><td>•</td><td></td><td>•</td><td></td></td>	15-20       745       • </td <td>1520       <math>745</math> <math>745</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>1520</math> <math>FT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>10.12</math> <math>PT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>1012</math> <math>PT</math> <math>25,100</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>9,080</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>9,080</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math>         Mk.       <math>2</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>\cdot</math> <math>10</math> <math>PT</math> <math>1,775</math> <math>\cdot</math> <math>\cdot</math></td> <td>Roy Municipal Court</td> <td>-</td> <td>0</td> <td>9 hrs./mo.</td> <td>ЪТ</td> <td>870</td> <td></td> <td>•</td> <td></td> <td>•</td> <td></td>	1520 $745$ $745$ $\cdot$ $\cdot$ $\cdot$ $1520$ $FT$ $25,100$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ $10.12$ $PT$ $25,100$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ $1012$ $PT$ $25,100$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ Mk. $2$ $PT$ $9,080$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ Mk. $2$ $PT$ $9,080$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ Mk. $2$ $PT$ $1,775$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ Mk. $2$ $PT$ $1,775$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ $10$ $PT$ $1,775$ $\cdot$	Roy Municipal Court	-	0	9 hrs./mo.	ЪТ	870		•		•	
Institute       F1       25,100 $\cdot$	Institute       FT $25,100$ ·       ·         10-12       PT $25,1,900$ ·       ·       ·         Mkt. 2       B       PT $9,080$ ·       ·       ·         Mkt. 2       B       PT $9,080$ ·       ·       ·       ·         Mkt. 2       B       PT $1,775$ ·       ·       ·       ·         is.(day       PT $1,775$ ·       ·       ·       ·       ·       ·         is.(day       PT $1,775$ ·       ·	Institute       F1       25,100       •       •       •         16-12       PT       9,080       •       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •       •         Mk. 2       PT       1,755       •<	Instruct       FI       25,100 $\cdot$	Its./mo.       FT       25,100       ·	Its./mo.       FT       25,100       ·	Its. frime       FT $25,100$ ·       ·			c	15 - 20	ΥC	746		•		•	
FT $571,900$ •       • $10 - 12$ PT $9,080$ •       • $mk. 2$ $8,545$ •       •       • $ms./day$ PT $9,080$ •       •       • $ms./day$ PT $9,080$ •       •       •       • $ms./day$ PT $8,545$ •       •       •       •       • $ms./day$ PT $1,775$ •       •<	FT       571,900       •         10-12       PT       9,080       •         wk 2       B       PT       9,080       •         wk 2       B       PT       9,080       •       •         ns./day       PT       8,545       •       •       •         ns./day       PT       1,775       •       •       •         ns./mo.       PT       1,775       •       •       •         ns./mo.       PT       1,775       •       •       •         us./mo.       PT       1,775       •       •       •         us./mo.       PT       1,210       •       •       •         us./mo.       PT       1,210       •       •       •         us./mo.       PT       1,210       •       •       •         us./mo.       PT       1,230       •       •       •       •         12       PT       1,730       •       •       •       •       •         12       PT       5,665       •       •       •       •       •       •         13/mo.       PT       7,300	FT       571,900       •       •         10 - 12       PT       9,080       •       •         Mk. 2       B;545       •       •       •         ms./day       PT       1,715       •       •       •         ms./day       PT       1,715       •       •       •       •         ms./day       PT       1,715       •       •       •       •       •         ms./day       PT       1,710       •       •       •       •       •       •         ms./mo.       PT       1,210       • <td< td=""><td>FT       571,900       •       •         10-12       PT       9,080       •       •         Mk. 2       PT       9,080       •       •       •         Mk. 2       PT       9,080       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •         Mk. 2       PT       1,775       •       <t< td=""><td>FT       571,900       •       •         10-12       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •       •         Mk. 2       B       PT       1,775       •       •       •       •         Mis. 4       PT       1,775       •       •       •       •       •       •         Mis. 10       PT       1,775       •</td><td>FT       571,900       •       •         10-12       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •       •         is.(day       PT       8,545       •       •       •       •         is.(day       PT       1,775       •       •       •       •       •         is.(no)       PT       1,210       •</td><td>FT       571,900       •       •         10-12       PT       9,080       •       •       •         Mk. 2       PT       9,080       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •         Mk. 2       PT       8,545       •       •       •       •       •       •         Mk. 2       PT       8,780       •       <t< td=""><td>Kuston Municipal Court</td><td></td><td></td><td>50 hrs /mo</td><td>L Ld</td><td>25 100</td><td></td><td>•</td><td>•</td><td>•</td><td>0.47</td></t<></td></t<></td></td<>	FT       571,900       •       •         10-12       PT       9,080       •       •         Mk. 2       PT       9,080       •       •       •         Mk. 2       PT       9,080       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •         Mk. 2       PT       1,775       • <t< td=""><td>FT       571,900       •       •         10-12       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •       •         Mk. 2       B       PT       1,775       •       •       •       •         Mis. 4       PT       1,775       •       •       •       •       •       •         Mis. 10       PT       1,775       •</td><td>FT       571,900       •       •         10-12       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •       •         is.(day       PT       8,545       •       •       •       •         is.(day       PT       1,775       •       •       •       •       •         is.(no)       PT       1,210       •</td><td>FT       571,900       •       •         10-12       PT       9,080       •       •       •         Mk. 2       PT       9,080       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •         Mk. 2       PT       8,545       •       •       •       •       •       •         Mk. 2       PT       8,780       •       <t< td=""><td>Kuston Municipal Court</td><td></td><td></td><td>50 hrs /mo</td><td>L Ld</td><td>25 100</td><td></td><td>•</td><td>•</td><td>•</td><td>0.47</td></t<></td></t<>	FT       571,900       •       •         10-12       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •         Mk. 2       B       PT       9,080       •       •       •         Mk. 2       B       PT       1,775       •       •       •       •         Mis. 4       PT       1,775       •       •       •       •       •       •         Mis. 10       PT       1,775       •	FT       571,900       •       •         10-12       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •         wk. 2       B       PT       9,080       •       •       •         is.(day       PT       8,545       •       •       •       •         is.(day       PT       1,775       •       •       •       •       •         is.(no)       PT       1,210       •	FT       571,900       •       •         10-12       PT       9,080       •       •       •         Mk. 2       PT       9,080       •       •       •       •         Mk. 2       PT       9,080       •       •       •       •       •         Mk. 2       PT       8,545       •       •       •       •       •       •         Mk. 2       PT       8,780       • <t< td=""><td>Kuston Municipal Court</td><td></td><td></td><td>50 hrs /mo</td><td>L Ld</td><td>25 100</td><td></td><td>•</td><td>•</td><td>•</td><td>0.47</td></t<>	Kuston Municipal Court			50 hrs /mo	L Ld	25 100		•	•	•	0.47
$ \begin{array}{c ccccccccccccccccccccccccccccccccccc$	10-12     PT     9,080     •     •       Mk. 2     PT     9,080     •     •       Mk. 2     PT     1,755     •     •       nis./day     PT     1,775     •     •       nis./day     PT     1,775     •     •       nis./mo.     PT     1,710     •     •       nis./mo.     PT     1,210     •     •       J0     PT     8,780     •     •       J10     PT     1,210     •     •       J10     PT     8,780     •     •       J11     PT     1,210     •     •       J2     PT     1,495     •     •       J2     PT     5,655     •     •       J10no.     PT     420; 440     •     •       J340     PT     3,830     •     •       J35     FT     79,20     •     •	10 - 12     PT     9,080     •     •     •       Muk. 2     PT     9,080     •     •     •       ns./day     PT     1,775     •     •     •       ns./day     PT     1,775     •     •     •       ns./day     PT     1,775     •     •     •       ns./day     PT     1,715     •     •     •       ns./day     PT     1,716     •     •     •       ns./day     PT     1,210     •     •     •       ns./mo.     PT     1,210     •     •     •       ns./mo.     PT     1,210     •     •     •       ns./mo.     PT     1,295     •     •     •       ns./mo.     PT     1,7230     •     •     •       ns./mo.     PT     1,7230     •     •     •       ns./mo.     PT     1,7330     •     •     •       ns./mo.     PT     1,340     •     •     •       ns./mo.     PT     1,340     •     •     •       ns./mo.     PT     1,340     •     •     •       ns./mo.     PT     3530	10-12       PT       9,080       •       •       •         Mwk. 2 $e.8$ $e.6$ $e.6$ $e.6$ $e.6$ $e.6$ ms./day $PT$ $1,775$ $e.6$ $e.6$ $e.6$ $e.6$ ms./day $PT$ $1,775$ $e.6$ $e.6$ $e.6$ $e.6$ ms./day $PT$ $1,775$ $e.6$ $e.6$ $e.6$ $e.6$ ms./mo. $PT$ $1,775$ $e.6$ $e.6$ $e.6$ $e.6$ ms./mo. $PT$ $1,775$ $e.6$ <td>10-12     PT     9,080     •     •     •       Mk. 2     B     T     9,080     •     •     •       Mk. 2     B     T     1,775     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(mo.     PT     1,775     •     •     •     •       ms.(mo.     PT     1,210     •     •     •     •       pto 12     PT     1,295     •     •     •     •       13     PT     1,495     •     •     •     •       12     PT     1,495     •     •     •     •       12     PT     1,495     •     •     •     •       13     PT     1,340     •     •     •     •       15/mo.     PT     3,330     •     •     •     •       15/mo.     PT     3,330     •     •     •     •       15/mo.     PT     3,830     •     •     •     •</td> <td>10-12     PT     9,080     •     •     •       Mk. 2     B;545     •     •     •     •       ms./day     PT     1,775     •     •     •       ms./day     PT     1,210     •     •     •       ms./mo.     PT     1,210     •     •     •       ms./mo.     PT     1,295     •     •     •       mp to 12     PT     1,7230     •     •     •       mp to 12     PT     1,7230     •     •     •       ms./mo.     PT     1,7230     •     •     •       mo.     PT     1,340     •     •     •       ms./mo.     PT     1,340     •     •     •       ms./mo.     PT     1,340     •     •     •       ms./mo.     PT     3,330     •     •     •       ms./mo.     •     •     •</td> <td>10-12       PT       9,080       •       •       •         <math>Mk. 2</math> <math>E.B</math> <math>PT</math> <math>1,755</math>       •       •       •         <math>mk. 2</math> <math>B,545</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>ms./day}       <math>PT</math> <math>1,775</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>\bullet</math> <math>ms./day}</math> <math>PT</math> <math>1,775</math> <math>\bullet</math> <math>\bullet</math><!--</math--></math></td> <td>seattle Municipal Court</td> <td>5</td> <td>00</td> <td></td> <td>FT</td> <td>571,900</td> <td>ł</td> <td>•</td> <td></td> <td></td> <td></td>	10-12     PT     9,080     •     •     •       Mk. 2     B     T     9,080     •     •     •       Mk. 2     B     T     1,775     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(day     PT     1,775     •     •     •     •       ms.(mo.     PT     1,775     •     •     •     •       ms.(mo.     PT     1,210     •     •     •     •       pto 12     PT     1,295     •     •     •     •       13     PT     1,495     •     •     •     •       12     PT     1,495     •     •     •     •       12     PT     1,495     •     •     •     •       13     PT     1,340     •     •     •     •       15/mo.     PT     3,330     •     •     •     •       15/mo.     PT     3,330     •     •     •     •       15/mo.     PT     3,830     •     •     •     •	10-12     PT     9,080     •     •     •       Mk. 2     B;545     •     •     •     •       ms./day     PT     1,775     •     •     •       ms./day     PT     1,210     •     •     •       ms./mo.     PT     1,210     •     •     •       ms./mo.     PT     1,295     •     •     •       mp to 12     PT     1,7230     •     •     •       mp to 12     PT     1,7230     •     •     •       ms./mo.     PT     1,7230     •     •     •       mo.     PT     1,340     •     •     •       ms./mo.     PT     1,340     •     •     •       ms./mo.     PT     1,340     •     •     •       ms./mo.     PT     3,330     •     •     •       ms./mo.     •     •     •	10-12       PT       9,080       •       •       • $Mk. 2$ $E.B$ $PT$ $1,755$ •       •       • $mk. 2$ $B,545$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $ms./day}       PT 1,775 \bullet \bullet \bullet \bullet \bullet ms./day} PT 1,775 \bullet \bullet$	seattle Municipal Court	5	00		FT	571,900	ł	•			
Mwk. 2       8,545       •	Mwk. 2         Swk. 2         Swk. 2         Sight         •	Mwk. 2       ms./day       PT       8,545       •	Mwk. 2	ww. 2       ms.(Jay       PT       8,545       •	Mwk. 2       ms./day       PT       8,545       •	MMK. 2	Sedro Wooley Municipal Court	1	0	10 - 12	ΡŢ	9,080		•		•	
6-8     PT     1,775     •     •       nis./mo     PT     6,120     •     •       nis./mo     PT     1,210     •     •       10     PT     1,495     •     •       34     PT     1,495     •     •       12     PT     1,495     •     •       12     PT     1,7,230     •     •       12     PT     5,655     •     •       12     PT     5,656     •     •       13     PT     1,7,230     •     •       10/mo     PT     4,20;440     •     •       35+     FT     79,220     •     •       35+     FT     3,830     •     •	6-8     PT     1,775     •     •       its./mo.     PT     6,120     •     •       its./mo.     PT     1,210     •     •       pto12     PT     1,295     •     •       34     PT     1,7230     •     •       12     PT     5,665     •     •       its./mo.     PT     420;440     •     •       10/mo.     PT     1,340     •     •       its./mo     PT     3,830     •     •	1         0 $6 \cdot 6$ $FT$ $1.775$ $\bullet$	6-8       PT       1,775       •       •       •         its./mo.       PT       6,120       •       •       •       •         its./mo.       PT       1,210       •       •       •       •       •         its./mo.       PT       1,210       •       •       •       •       •       •         its./mo.       PT       1,210       •       •       •       •       •       •         up to 12       PT       1,495       •	6-8     PT     1.775     •     •       its./mo     PT     6.120     •     •       its./mo     PT     1.210     •     •       its./mo     PT     1.210     •     •       its./mo     PT     1.210     •     •       p1012     PT     1.210     •     •       p112     PT     1.216     •     •       34     PT     1.77.230     •     •       10/no     PT     4.20; 440     •     •       15/mo     PT     1.340     •     •       15/mo     PT     3.830     •     •	$6 \cdot 8$ $PT$ $1.775$ $\bullet$ $\bullet$ $\bullet$ its./mo. $PT$ $6.120$ $\bullet$ $\bullet$ $\bullet$ its./mo. $PT$ $1.210$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ its./mo. $PT$ $1.210$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ its./mo. $PT$ $1.3780$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ its./mo. $PT$ $5.665$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $10/mo$ $PT$ $5.665$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $10/mo$ $PT$ $3.40$ $\bullet$ <td< td=""><td><math>6 \cdot 8</math> <math>FT</math> <math>1.775</math> <math>\bullet</math>         &lt;</td><td>Shelton Municipal Court</td><td></td><td>0</td><td>3 days/wk 2 6 hrs./dav</td><td>PT</td><td>8.545</td><td></td><td>•</td><td></td><td>•</td><td>0.39</td></td<>	$6 \cdot 8$ $FT$ $1.775$ $\bullet$ <	Shelton Municipal Court		0	3 days/wk 2 6 hrs./dav	PT	8.545		•		•	0.39
Its./mo.       PT       6,120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •         34       PT       1,7,230       • <td>Tis./mo.     PT     6.120     •     •       10     PT     1,210     •     •       10     PT     1,210     •     •       110     PT     8,780     •     •       111     PT     1,495     •     •       112     PT     1,495     •     •       12     PT     1,495     •     •       12     PT     1,7,290     •     •       12     PT     1,7,290     •     •       12     PT     1,7,390     •     •       12     PT     1,7,300     •     •       12     PT     1,7,300     •     •       13     PT     1,7,300     •     •       10     PT     4,20;440     •     •       10     PT     4,20;440     •     •       15,mo.     PT     7,330     •     •       15,mo.     PT     3,830     •     •</td> <td>Its./mo.       PT       6,120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         211       PT       1,495       •       •       •       •       •       •         34       PT       17,230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         34       PT       17,230       •</td><td>IIS./mo.       PT       6.120       •       •       •         10       PT       1.210       •       •       •       •         10       PT       1.210       •       •       •       •       •         110       PT       1.495       •       •       •       •       •       •         12       PT       1.495       •       •       •       •       •       •         34       PT       17.233       •       •       •       •       •       •         12       PT       17.233       •       •       •       •       •       •       •       •         12       PT       17.230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         10       PT       1,210       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •         34       PT       1,7,230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         23       PT       1,7,230       •<td>Conthe Bond Municipal Court</td><td></td><td></td><td>6 - 8</td><td>pT</td><td>1 775</td><td></td><td>•</td><td></td><td>•</td><td></td></td></td></td></td>	Tis./mo.     PT     6.120     •     •       10     PT     1,210     •     •       10     PT     1,210     •     •       110     PT     8,780     •     •       111     PT     1,495     •     •       112     PT     1,495     •     •       12     PT     1,495     •     •       12     PT     1,7,290     •     •       12     PT     1,7,290     •     •       12     PT     1,7,390     •     •       12     PT     1,7,300     •     •       12     PT     1,7,300     •     •       13     PT     1,7,300     •     •       10     PT     4,20;440     •     •       10     PT     4,20;440     •     •       15,mo.     PT     7,330     •     •       15,mo.     PT     3,830     •     •	Its./mo.       PT       6,120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         211       PT       1,495       •       •       •       •       •       •         34       PT       17,230       • <td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         34       PT       17,230       •</td> <td>IIS./mo.       PT       6.120       •       •       •         10       PT       1.210       •       •       •       •         10       PT       1.210       •       •       •       •       •         110       PT       1.495       •       •       •       •       •       •         12       PT       1.495       •       •       •       •       •       •         34       PT       17.233       •       •       •       •       •       •         12       PT       17.233       •       •       •       •       •       •       •       •         12       PT       17.230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         10       PT       1,210       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •         34       PT       1,7,230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         23       PT       1,7,230       •<td>Conthe Bond Municipal Court</td><td></td><td></td><td>6 - 8</td><td>pT</td><td>1 775</td><td></td><td>•</td><td></td><td>•</td><td></td></td></td></td>	Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         34       PT       17,230       •	IIS./mo.       PT       6.120       •       •       •         10       PT       1.210       •       •       •       •         10       PT       1.210       •       •       •       •       •         110       PT       1.495       •       •       •       •       •       •         12       PT       1.495       •       •       •       •       •       •         34       PT       17.233       •       •       •       •       •       •         12       PT       17.233       •       •       •       •       •       •       •       •         12       PT       17.230       • <td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         10       PT       1,210       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •         34       PT       1,7,230       •<td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         23       PT       1,7,230       •<td>Conthe Bond Municipal Court</td><td></td><td></td><td>6 - 8</td><td>pT</td><td>1 775</td><td></td><td>•</td><td></td><td>•</td><td></td></td></td>	Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •       •         110       PT       1,210       •       •       •       •       •       •         10       PT       1,210       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •         34       PT       1,7,230       • <td>Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         23       PT       1,7,230       •<td>Conthe Bond Municipal Court</td><td></td><td></td><td>6 - 8</td><td>pT</td><td>1 775</td><td></td><td>•</td><td></td><td>•</td><td></td></td>	Its./mo.       PT       6.120       •       •       •         10       PT       1,210       •       •       •       •         10       PT       8,780       •       •       •       •       •         110       PT       8,780       •       •       •       •       •       •         10       PT       1,495       •       •       •       •       •       •       •       •         23       PT       1,7,230       • <td>Conthe Bond Municipal Court</td> <td></td> <td></td> <td>6 - 8</td> <td>pT</td> <td>1 775</td> <td></td> <td>•</td> <td></td> <td>•</td> <td></td>	Conthe Bond Municipal Court			6 - 8	pT	1 775		•		•	
Trs./mo.       PT       1,210       •       •       •         10       PT       8,780       •       •       •       •         pto12       PT       1,495       •       •       •       •       •         34       PT       1,495       •       •       •       •       •       •       •         34       PT       17,230       •	Trs./mo.     PT     1,210     •     •       10     PT     8,780     •     •       10     PT     8,780     •     •       110     PT     1,495     •     •       34     PT     1,7230     •     •       12     PT     17,230     •     •       12     PT     565     •     •       12     PT     510     •     •       12     PT     565     •     •       12     PT     510     •     •       13.400     PT     1,340     •     •       15./mo.     PT     1,340     •     •       15./mo.     PT     3,830     •     •	Trs./mo.       PT       1,210       •       <	Trs./mo       PT       1,210 $\bullet$ $\bullet$ $\bullet$ 10       PT       8,780 $\bullet$ $\bullet$ $\bullet$ pt to 12       PT       1,495 $\bullet$ $\bullet$ $\bullet$ 34       PT       1,495 $\bullet$ $\bullet$ $\bullet$ $\bullet$ 12       PT       510 $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ 12       PT       566 $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ $\bullet$ 10/mo       PT       1,340 $\bullet$	Ins./mo       PT       1,210       • <t< td=""><td>Trs./mo.       PT       1,210       <math>\bullet</math> <math>\bullet</math></td><td>Trs./mo       PT       1,210       <math>\bullet</math> <math>\bullet</math></td><td>stellacoom Municipal Court</td><td></td><td>0</td><td>9 hrs./mo.</td><td>РТ</td><td>6,120</td><td></td><td>•</td><td></td><td>•</td><td></td></t<>	Trs./mo.       PT       1,210 $\bullet$	Trs./mo       PT       1,210 $\bullet$	stellacoom Municipal Court		0	9 hrs./mo.	РТ	6,120		•		•	
$\begin{array}{c ccccccccccccccccccccccccccccccccccc$	10         PT         8,780         •         •           .p to 12         PT         1,495         •         •         •           .34         PT         1,7230         •         •         •         •           .12         PT         1,7230         •         •         •         •         •           .12         PT         5655         •         •         •         •         •           .12         PT         5655         •         •         •         •         •           .12. PT         510         •	10         PT         8,780         • </td <td>10         PT         8,780         •<!--</td--><td>10         PT         <math>8,780</math> <math>\bullet</math> <math>\bullet</math>&lt;</td><td>10     PT     8,780     •     •       .p to 12     PT     1,495     •     •       .34     PT     1,7230     •     •       .12     PT     17,230     •     •       .12     PT     5,665     •     •       .15.10     PT     5,100     •     •       .10/mo     PT     420; 440     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     3,330     •     •       .15.100     PT     3,830     •     •</td><td>10       PT       <math>8,780</math> <math>\bullet</math> <t< td=""><td>stevenson Municipal Court</td><td></td><td>0</td><td>10 hrs./mo.</td><td>PT</td><td>1,210</td><td></td><td>•</td><td></td><td>•</td><td></td></t<></td></td>	10         PT         8,780         • </td <td>10         PT         <math>8,780</math> <math>\bullet</math> <math>\bullet</math>&lt;</td> <td>10     PT     8,780     •     •       .p to 12     PT     1,495     •     •       .34     PT     1,7230     •     •       .12     PT     17,230     •     •       .12     PT     5,665     •     •       .15.10     PT     5,100     •     •       .10/mo     PT     420; 440     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     3,330     •     •       .15.100     PT     3,830     •     •</td> <td>10       PT       <math>8,780</math> <math>\bullet</math> <t< td=""><td>stevenson Municipal Court</td><td></td><td>0</td><td>10 hrs./mo.</td><td>PT</td><td>1,210</td><td></td><td>•</td><td></td><td>•</td><td></td></t<></td>	10         PT $8,780$ $\bullet$ <	10     PT     8,780     •     •       .p to 12     PT     1,495     •     •       .34     PT     1,7230     •     •       .12     PT     17,230     •     •       .12     PT     5,665     •     •       .15.10     PT     5,100     •     •       .10/mo     PT     420; 440     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     1,340     •     •       .15.100     PT     3,330     •     •       .15.100     PT     3,830     •     •	10       PT $8,780$ $\bullet$ <t< td=""><td>stevenson Municipal Court</td><td></td><td>0</td><td>10 hrs./mo.</td><td>PT</td><td>1,210</td><td></td><td>•</td><td></td><td>•</td><td></td></t<>	stevenson Municipal Court		0	10 hrs./mo.	PT	1,210		•		•	
Dp to 12         PT         1,495         •         <	Dp to 12         PT         1,495         •         <	Image: Depindence of the state of the st	Into 12     PT     1,495     •     •       34     PT     17,230     •     •       12     PT     17,230     •     •       12     PT     5665     •     •     •       12     PT     510     •     •     •       13.400     PT     420; 440     •     •     •       10/mo     PT     1.340     •     •     •       35+     FT     79,220     •     •     •       35+     FT     3,830     •     •     •       4     PT     3,830     •     •     •	Interface	Image: black	Image: Dec 12       PT       1,495       •	Sumner Municipal Court	-	0	10	PT	8,780		•			
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## LIMITED JURISDICTION COURT STUDIES

<u>Courts of Limited Jurisdiction Assessment Survey Report (Wilson Report)</u> was a study of Washington limited jurisdiction court operations conducted in 1995 through 1997. It is based on surveys of limited jurisdiction courts in all Washington counties.

The Wilson Report made 102 recommendations for ways to improve the operation of limited jurisdiction courts. The conclusions focused on judicial independence, minimum court standards, and delivery of services. The Report noted that confusion is engendered by a parallel delivery system wherein courts have diverse jurisdiction and provide disparate services. It also found that not all courts were in compliance with statutes and court rules. The Report argued that enforcement of minimum standards would support apparent and factual independence. The legitimacy of courts within Washington's judicial system depends on all courts being subject to the same rules, statutes, policies, and procedures. Election of judges is essential to perceptions of legitimacy and independence.

<u>Coordinating Judicial Resources for the New Millennium, Project 2001</u> was conducted by the Board for Judicial Administration to evaluate Washington's two-tiered court system to identify inefficiencies and recommend ways in which Washington courts could operate more efficiently and better utilize court resources.

Project 2001 addressed the confusion created by multiple court structures with different charges and procedures by recommending greater cooperation among courts. Trial Court Coordination Councils, with membership from all courts in an area, were recommended as a way for courts to cooperatively identify and respond to deficiencies and overlap in the provision of services. Minimum standards for courts of limited jurisdiction, including an educated and elected judiciary, were viewed as a necessary step towards full participation as members of the court community.

## <u>Always the People, Delivering Limited Jurisdiction Court Services throughout</u> <u>Washington</u>, prepared by the Justice Management Institute (JMI), was commissioned by the Board for Judicial Administration's Trial Court Funding Task Force, Courts of Limited Jurisdiction Structure Workgroup. The study was conducted by surveying a select group of limited jurisdiction courts to assess court structure, practices, and the effects of parallel systems for providing limited jurisdiction court services.

JMI stressed the relationship between judicial branch independence and public trust and confidence. Public confidence is based on the perception that courts are a buffer between citizens and government. In order for courts to be a buffer, citizens must have ready access to a full range of court services. The appearance of independence is heightened if judges are selected by other than the court's funding authority. Factual independence is premised on educated, publicly accountable judges administering courts. JMI did not find that any current court structure was clearly superior as a model for independence and service delivery.

## Appendix D

## MATERIALS CONSIDERED

ACLU, Report on Criminal Justice Agency Fiscal Notes; Crimes Against Property Always the People, Delivering Limited Jurisdiction Court Services throughout Washington, Justice Management Institute Association of Washington Cities, Nexus Grid (state mandated services) Chapter 39.34 RCW—Interlocal Cooperation Act Chart—Court Organization Chart—District and Municipal Court Judges Chart—Jurisdiction in Limited Jurisdiction Courts Chart—Municipal Courts in the State of Washington Chart—Public Safety and Education Account Expenditure History, Current **Appropriations** Commission on Washington Trial Courts: Final Report Coordinating Judicial Resources for the New Millennium, Project 2001 Courts of Limited Jurisdiction Assessment Survey Report (Wilson Report) DMCJA 1988 Minimum Services for Courts of Limited Jurisdiction DUI Outcome Measures in Courts of Limited Jurisdiction Interlocal Agreements for Services—Various John Bell, Memorandum, WSP filings in Municipal Courts King County Commission on Governance—Final Report and Recommendations Memorandum: Failure to Provide Counsel in Courts of Limited Jurisdiction Memorandum: Interlocal Agreements for Municipal Court Services Providing Municipal Court Services, RCW Chapter 3.46—Municipal Departments SHB 2179, 2003 Regular Session—Municipal Departments SSB 5500, 2003 Regular Session—Interlocal Agreements for Court Services SSB 5628, 2003 Regular Session; SSB 5262, 2002 Regular Session—Crimes against Property, Threshold Property Values Summary of Recommendations from Selected Reports Title 3 RCW—Courts of Limited Jurisdiction Washington Defender Association, Standards for Public Defense

Washington Civil Legal Needs Study, Executive Study

## **POWER POINT PRESENTATIONS**

Overview of RCW Title 3 (February 2003) Warrants and DWLS (July 2003)

## PRESENTERS

## **Judicial Officers:**

Judge Sara Derr, Spokane District Court Judge Corinna Harn, King County District Court Judge Steven Holman, Bainbridge Island Municipal Court Judge Robert McSeveney, Kent Municipal Court Judge Wesley Saint Clair, King County District Court Judge Larry Wilson, Ret. Judge Susan Woodard, Yakima Municipal Court

## **Court Administrators:**

Ms. Linda Bell, Pierce District Court Ms. Tricia Crozier, King County District Court Ms. Joan Ferebee, Edmonds Municipal Court Mr. Joe McGuire, Renton Municipal Court Ms. Pam Springer, Skagit District Court

## **Cities:**

Mr. Mike Doubleday, City of Bellevue Ms. Nina Rivkin, City of Redmond

## **Prosecutors/City Attorneys:**

Ms. Margita Dornay, Kenyon Dornay Marshall Mr. Ted Gathe, City of Vancouver Mr. Jeffrey Jahns, Kitsap County Mr. Larry Mitchell, City of Redmond Mr. Michael Weight, City of Bothell

## **Defenders:**

Mr. Bob Boruchowitz, Snohomish County Ms. Kim Gordon Colleen Kenimond, City of Burlington, Skagit County

## **Civil Practitioners:**

Mr. James Dixon Mr. John Scholbe

## **DV Advocates:**

Ms. Grace Huang, Washington State Coalition against Domestic Violence Ms. Sandra Shanahan, King County Domestic Violence Protection Unit Ms. Patty Wheeler, Spokane County YWCA

## **Department of Licensing**

Mr. Dirk Marler

## **Commission on Judicial Conduct:**

Ms. Reiko Callner

## Law Enforcement:

Chief Glenn Merryman, City of Duvall

## ACLU:

Mr. Aaron Caplan

# Justice Management Institute: Mr. Douglas Somerlot

# The Justice Management Institute

1900 Grant Street, Suite 630 Denver, Colorado 80203

# **ALWAYS THE PEOPLE:**

## Delivering limited jurisdiction court services throughout Washington

<sup>By</sup> Douglas K. Somerlot and Aimee Baehler

Submitted to:

# The Courts of Limited Jurisdiction Delivery of Services Work Group

Washington Court Funding Task Force

October 2003

# **ALWAYS THE PEOPLE:**

Delivering limited jurisdiction court services throughout Washington

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## **ALWAYS THE PEOPLE:** Delivering limited jurisdiction court services throughout Washington

## **EXECUTIVE SUMMARY**

The Washington Court leadership has created a statewide Task Force to look at court funding in general. One of the five sub-committees of this Task Force is examining the variations in limited jurisdiction courts, where there is a wide range of practices and operations, and the consequent costs and financial impacts of these courts. Currently, some limited jurisdiction services are provided by district courts that are primarily organized on a county wide basis. There are also free standing municipal courts providing limited jurisdiction services within the geographic boundaries of the cities, and other areas where a municipality contracts with the local district court to provide limited jurisdiction court services.

This study will serve as an aid to the Courts of Limited Jurisdiction Delivery of Services Work Group as they examine the limited jurisdiction court systems in Washington. The purpose of the study is to compare the practices and procedures in the various courts, identifying promising practices and suggesting changes in structure and practice that will improve the overall delivery of limited jurisdiction court services through the State of Washington.

Because of the limits imposed by the funds and time available to complete the study, site visits and in-person interviews could not be conducted. Instead, the study involved development and administration of two survey instruments, one to a selected sample of independent municipal courts and one to selected sample district courts who provide limited jurisdiction services to municipalities through contracts with the municipalities. Based on the survey results a series of follow-up interviews were conducted with a sample of the courts that completed the surveys.

While there are differences between the ways in which the types of courts function, these differences were more related to the variances among the demographics, staffing levels, and practices than they were to the structural differences among the three types of courts. There are suggestions for structural changes, but the changes either do not deal with the organizational patterns of the courts or apply equally to each organizational pattern. We specifically do not find any of the three models of providing limited jurisdiction court services to be clearly superior on inferior to the other models.

In developing the survey questions the JMI staff relied on the advice provided by members of the working group as to the criteria that should be present in a well functioning limited jurisdiction court. The primary criteria identified by the work group, and the primary conclusions as to each of these criteria, are set out below.

## Judicial Branch Independence and Public Trust and Confidence

Selection of those who serve the courts that is merit based and independent of the funding authority increases the appearance of justice. This independence in selection, supervision, and retention is as important for court staff members as it is for judicial officers. In a limited jurisdiction court setting court staff have a very important role not only in preparing for court hearings and trials, but also in meeting the public, accepting payments, and scheduling cases. Washington has a rule in place requiring that court administrators are selected by the presiding judge. This rule needs to be enforced. Currently the work group is considering revisions to the judicial selection process. Because of the central role that staff plays in the operation of limited jurisdiction courts, courts need to place emphasis on providing ongoing education and training to both judges and staff members.

The presiding judicial officer must exercise management and decisional authority free from inappropriate influence by executive or legislative branch. The judicial officer needs to have time available to spend on management related activities. Training on management related issues needs to be provided to the judge/administrator teams.

Budget preparation, presentation, monitoring, and amendment should be conducted in a manner that comports with generally accepted accounting principles but should not be conducted in such a way as to infringe upon the independent exercise of the judicial power by a court of limited jurisdiction. The presiding judicial officer and court administrator should prepare and present the budget to the funding authority. Monitoring of expenditures should be an ongoing responsibility of the court. Those preparing the budgets must be mindful of the financial situation faced by the funding authority. However, budgets should not be predicated on revenue produced by the court. A uniform system for construction and monitoring of limited jurisdiction court budgets would be helpful. Even if local funding bodies have their own budget documents, a uniform process that courts could use to prepare budgets would be of assistance both to the courts and to local funding agencies.

While good management practices suggest that a court should maintain working relations with stakeholders in the justice process and with all parts of the government structure, both the court and the other branches of government must remain mindful of the need to protect the separation of powers and promote the appearance as well as the fact of judicial independence. While it may be good practice for representatives of the local court to attend meetings of funding authority in order to remain aware of issues facing the local government, a clear line needs to be maintained between the executive branch and the judicial branch in order to protect both the fact and the appearance of judicial independence.

The public, including offenders, witnesses, victims, and jurors should have quick and convenient access to the courtrooms, court offices, defense services, and probation services so as to encourage public trust and confidence in the court system. Court offices and clerk of court offices need to be available during reasonable hours and convenient to the public. It may be possible to establish local offices for the purpose of receiving payments for infractions and/or scheduling hearings which are convenient to the court's customers but which do not contain courtrooms. Consideration should be given to establishing court hearing hours during the evening to make the court more convenient to customers. Either the establishment of satellite locations or the establishment of evening hours would require management changes related to the scheduling of staff and judge time.

## **Equal Access to Justice**

Consistent with the statutes and with due process, victims of domestic violence should have the greatest possible access to court services related to obtaining protection for themselves and their children. Courts should take steps, consistent with applicable statutes, to make protective order services (at least temporary orders) available as conveniently as possible for victims of domestic violence. Where local courts have agreed to offer these services at centralized locations they need to prepare materials that explain the operations of the system to all who might seek these services. A statewide protocol for providing domestic violence orders of protection needs to be developed. The AOC and local courts need to provide training to local court staff so that everyone is clear on the statutes and practices governing these orders. Those who work at the counters in local courts need to be particularly aware of the requirements of statutes and local practice.

Local courts or the AOC should develop methods to ensure that fines and costs are paid and that court judgments and orders are followed. A statewide system for processing payments of fines and cost would assist local courts in the management of this system, would assist offenders in making periodic payments on time, and would make the system more uniform across the state. A statewide system should be developed that permits acceptance by any local court of payments for infractions cases filed anywhere in the state. A statewide procedure governing the collection and monitoring of fines and costs should be developed. Technological support for such a process would be vital to its successful implementation.

Courts should hold hearings with sufficient frequency to dispose of the business of the courts within acceptable time limits. In order to keep scheduling lead times to reasonable levels the courts should have the ability to allocate sufficient judicial and staff resources for these hearings. The state's court information systems should be capable of producing information related to the timeliness of case processing, including incremental and overall case processing time information for individual cases and the entire caseload. Judicial officers and court staff should regularly review this information in order to make sure that cases are concluded as promptly as possible consistent with the needs of justice.

Advisements of rights, determinations of indigency, appointment of counsel, and availability of interpreter services should discharge the court's management and financial responsibilities while providing appropriate levels of service to those who appear. Each time the resources of the courts, defendants, witnesses, and counsel are used to schedule and conduct a court event, as many tasks should be accomplished as possible during that event to advance the case toward resolution. The location of courthouses, court offices, and court services should be such that an alleged offender can make use of these services with as few trips to the court as possible. To the extent possible an offender's first appearance needs to be a meaningful event. Every additional event requires the expenditure of resources, takes time that could be devoted to other cases, and increases the possibility that the offender will not appear. This requires that the forms for requesting the appointment of counsel be made available to alleged offenders prior to the appearance date, that the alleged offender should be aware of what, if any, documentation is required to verify financial status, that counsel be available to consult with offenders as soon as the indigency decision is made, and that space be provided for such consultations to take place in privacy. Administrative arrangements need to be made so that needed forms and information can be provided as early as possible. Early resolution of as many cases as possible will help to reduce the caseload and provide better service to the offenders.

## **Judicial Administration and Management**

Courts must be managed well so that judges, court administrators, and other judicial staff can accomplish their mission. The presiding judges appear to be actively leading and managing the court. Under the leadership of the presiding judges, courts need to work on building interagency cooperation and collaboration. Courts cannot achieve their mission without the assistance of other agencies and stakeholders outside of the court. Currently, the limited jurisdiction courts do not have forums, or if they do exist they are not well attended, not well functioning, or regular events, to exchange ideas about how to solve problems or to continually diagnose and evaluate performance on the justice system level.

## **Enforcement of Judgments**

In terms of providing probation services, there is not a significant difference in approach or services between the municipal and contracted courts. The majority of municipal and contracted courts provide probation services on a case-by-case basis through probation departments, which is one of the two methods allowed by ARLJ II, and assess offenders a fee for probation services. In both types of courts, probation officers have more cases than they can effectively supervise, which is probably due to the universal problem that probation departments are under-funded or are not staffed at levels that allows them to provide meaningful supervision and control. One recommendation for providing probation services more economically and effectively is to connect the probation department and court's MIS so information on offenders is entered only once and can be shared between the two entities.

There is no easy answer to explain why incarceration use was increasing in some jurisdictions, decreasing or not changing in other jurisdictions. The use of incarceration depends on various factors, including jurisdictional resources, judicial attitudes towards sentencing, and legislated mandatory minimums. Finding an explanation requires an individualized look at the various factors. Regardless of a jurisdiction's use of incarceration, all of the courts surveyed routinely employ alternatives to incarceration.

The survey and interview results showed that judicial officers do not feel pressured to increase the collection rate to generate revenue or use alternatives to incarceration to control costs. The result of effectively imposing fines and collecting payments can relieve pressure on the jail populations and pressure on probation services that are suffering from high ratios of probation officers to offenders, while at the same time promoting confidence that sentences are fair and punishment is certain. Courts should consider (a) implementing additional notification techniques that remind, encourage, and facilitate completion of periodic payment obligations, (b) accepting payment for each other and enabling payments to be made at multiple and convenient locations other than the courthouse, and (c) centralizing the collection agency on a countywide or statewide basis. Collection effectiveness is a critical performance indicator and data should be collected and analyzed in order to improve program operations.

## **Compliance, Competence, and Training**

The bottom line is that training is essential. The AOC and courts at all levels need to make reliable and consistent funding for training a top priority. This is especially important given the fact that limited jurisdiction judges and court administrators do not meet monthly with other justice system entities in their jurisdictions. Training should educate judges and staff together, reinforcing judicial and justice system interdependency.

## **ALWAYS THE PEOPLE:** Delivering limited jurisdiction court services throughout Washington

## FINAL REPORT

#### INTRODUCTION

The Washington Court leadership has created a statewide Task Force to look at court funding in general. One goal of this group is to examine and consider ways to re-balance the funding between state and local courts. At present, the state pays half of the salary of general jurisdiction judges. All of the other costs of the trial courts are borne by local units of government.

One of the five sub-committees of this Task Force is examining the variations in limited jurisdiction courts, where there is a wide range of practices and operations, and the consequent costs and financial impacts of these courts. Currently, some limited jurisdiction services are provided by district courts that are primarily organized on a county-wide basis. There are also free standing municipal courts providing limited jurisdiction services within the geographic boundaries of cities, and other areas where a municipality contracts with the local district court to provide limited jurisdiction court services. Municipal courts in Washington do not have civil jurisdiction, except in limited areas as conferred by statute such as domestic violence protection petitions. Thus, in places where a municipal court exists, or where the municipality contracts with the district court for limited jurisdiction services, the judges who handle traffic misdemeanors and infractions and criminal misdemeanors are not the judges who handle civil matters, and the citizens may actually have to go to different courts in different locations for these services.

In recent years there has been a trend toward the establishment of separate, free standing municipal courts and away from contracting with district courts for limited jurisdiction services. Cities feel that they can provide limited jurisdiction court services less expensively by creating a separate municipal court, and also know that they will be able to retain a greater share of the revenue produced by a municipal court than they could if they were contracting with a district court. This trend is exacerbated by the general state of state and local budgets throughout the State.

Given the three basic models for providing limited jurisdiction services that exist, as well as the wide variety of issues that must be addressed by these courts, the purpose of the study is to compare the practices and procedures in the various courts, identifying promising practices and suggesting changes in structure and practice that will improve the overall delivery of limited jurisdiction court services through the State of Washington. As will be discussed in the section on methodology, below, our approach to the project was to gain an in-depth understanding of each court's organizational design, caseflow management and operational practices, decisionmaking processes, the legal, social, and historical factors deemed important from the point of view of the key decision-making court personnel, which JMI identified as either the judge and court administrator.

We have concluded that it is not possible to develop a single structural model or even a pair of such models. Rather, we will list the issues that the surveys and interviews disclosed, describe what we thought were promising practices, and suggest other changes in practice that any structural model might incorporate.

At the outset we would like to thank everyone who has participated in the development and implementation of this project. The development of both the survey instruments and interview questions was a collaborative effort with the Washington AOC. We very much appreciate the strong support and assistance we received from that office. In spite of the daunting nature of the task, judges and administrators from thirty-one courts expended the time to prepare responses to the surveys and forward them to us. Each person from the courts who participated in the follow-up interviews spent an additional hour with JMI staff responding to our questions. Our appreciation goes to the judges and court administrators who took the time to complete the documents and to share their thoughts and experiences with us.

We were struck with the level of commitment of everyone with whom we spoke to providing service to those who come before their courts. It was very clear, although not surprising, that those with whom we talked take their jobs and responsibilities to the people very seriously. As one administrator put it when describing the priorities of operating a limited jurisdiction court: "Always the people."

#### METHODOLOGY

#### **REVIEW OF BACKGROUND INFORMATION**

The AOC shared prior reports, statistical information, and minutes of the task force with JMI. This material served as useful background information, framing the issues and describing past approaches to study the issue. Additionally JMI used this material throughout the study as reference documents.

## INITIAL MEETING WITH WORK GROUP

On May 15, 2003 JMI staff members Doug Somerlot and Aimee Baehler met with members of the limited jurisdiction court work group in Seattle. Those who attended this meeting included:

- Judge Ann Schindler, Co-Chair
- Ron Ward, Co-Chair
- Judge Robert McSeveney
- Linda Bell,
- Pam Springer,
- Mary McQueen,
- Janet McLane, and
- Doug Haake

The purposes of the meeting were to review the plan for the project, establish the

priorities of the working group, and develop issue areas that would form the basis of the survey

and interview questions.

Those in attendance came up with a list of six areas that might be used to define an

effective limited jurisdiction court and identified several criteria within each of those areas. The

areas of inquiry included:

- Judicial Branch Independence,
- Public Trust and Confidence,
- Equal Access to Justice,
- Judicial Administration and Management,
- Enforcement of Judgments, and

Compliance, Competence, and Training

The discussions at that meeting also revealed some perceptions that we wanted to test by the surveys and interviews. Among those perceptions were that there is inconsistency in processing cases among the various structural types, that there is unequal access to limited jurisdiction services, and that case results might be influenced by interests in revenue generation. Those six areas, the specific criteria, and the perceptions mentioned previously formed the basis for the survey and interview questions developed by JMI.

#### SURVEY METHODOLOGY

JMI elected to employ qualitative research methods, specifically survey and interview research, in order to investigate the variations in Washington State's limited jurisdiction court structure and to compare the costs and standards of practices between the various structures. The overall objective of the survey and interviews was to gain an in-depth understanding of each court's organizational design, caseflow management and operational practices, decision-making processes, the legal, social, and historical factors deemed important from the point of view of the key decision-making court personnel, which JMI identified as either the judge and court administrator. JMI sought to obtain the perspective of the individuals who are actually leading and managing these courts. In addition to providing individual justice in individual cases, an important purpose of courts is the appearance of justice. Qualitative methods allowed us to capture the perceptions of key court personnel in limited jurisdiction courts to assess if the two broad structures not only were doing justice but appeared to be doing justice.

In coordination with the Washington Administrative Office of the Courts (AOC), JMI developed two similar questionnaires in order to take into account the differences between the two broad structures - independent municipal courts and those where the municipalities contract

for services with the local district courts - when wording the questions. JMI used predominately structured response formats, although a few questions in the surveys used an unstructured format that asked respondents to write down text as a response.<sup>1</sup> After pre-testing the survey instrument, JMI e-mailed the questionnaire to a select sample of limited jurisdiction courts, specifically 15 independent municipal courts and 15 courts where the municipalities contract for services with the local district courts. JMI had an 80 percent response rate.<sup>2</sup> The sample is small, a factor of the limited availability of funds and short project deadline, but is representative of the various limited jurisdiction court structures operating in the State. The AOC and JMI selected an equal number of courts in each broad category based upon their size, geographic location, urbanity (urban, suburban, rural), years of operation, and willingness to participate in the study.

#### **FOLLOW-UP INTERVIEWS**

Based upon a cursory analysis of the survey data, JMI designed a semi-structured interview to ask follow-up questions and to further probe certain issues since structured survey response formats isolate responses and have a tendency not to capture the full context of the response or allow clarification of responses. JMI conducted these follow-up telephone interviews with a subset of the survey respondents, interviewing six separate, freestanding municipal courts and six courts where the municipalities contract for services with the local district courts. These interviews lasted approximately one hour. JMI informed respondents of both the questionnaire and interviews that their anonymity and confidentiality would be preserved unless a JMI staff member notified them before sharing information. For example, if

<sup>&</sup>lt;sup>1</sup> An example of an unstructured response format is "If you were not bound by the current structural, financial, and physical limitations imposed by the way that your court provides district and municipal court services, what would you do differently?"

 $<sup>^{2}</sup>$  24 of the courts out of the 30 completed and returned the survey.

there was a practice that merited attention, JMI contacted the respondent to get approval from

them before detailing the practice in this report.

#### **FINDINGS**

For purposes of this study we will refer to instances where independent municipal courts provide limited jurisdiction services as *municipal courts*. We will refer to municipalities that contract with a district court to provide limited jurisdiction services as *contracted courts*. Instances where the district court provides limited jurisdiction services will be referred to as *district courts*.

#### **CONCEPTS**

As indicated earlier, the purpose of the study is to compare the practices and procedures in the various courts, identifying promising practices and suggesting changes in structure and practice that will improve the overall delivery of limited jurisdiction court services through the State of Washington. In addressing this purpose, it became clear that several concepts required consideration. **The first is the basic idea of** *caseflow management.*<sup>3</sup> The second word in the name of that doctrine, *management*, suggests that those examining courts need to consider what constitutes the major share of the courts' operations, the routine matters that the courts must process, consider, and decide. Management implies building and measuring systems to deal with what is normal and routine. While limited jurisdiction courts conduct trials, the bulk of the business conducted by these courts involves either relatively few appearances or no court appearances at all. To an even greater degree than general jurisdiction courts, the cases in these courts are not concluded as a result of a trial. Staff plays a vital role in the vast majority of the work of these courts.

<u>Structural Implications</u>: As discussed further below, court structures need to respond to the type and frequency of the major aspects of what the courts do. In limited jurisdiction courts this

<sup>&</sup>lt;sup>3</sup> <u>See</u> Solomon and Somerlot, *Caseflow Management in the Trial Court: Now and for the Future*, ABA Press, 1987.

means that there needs to be a high level of competent and trained staff supporting the decisional and enforcement process. It also means that those who manage these courts, judges and administrators, need to have ready access to information based upon which policy and practice decisions can be made. Policy decisions need to be based on information, not impression. Management also means allocation of scarce resources. As discussed below in the section on fines, a consolidated method for managing the collection process might reap dividends in terms of effective collections and more effective use of staff resources available to the courts.

<u>Practice Implications</u>: Management requires that those who administer an activity must have input on policy development and the ability to act on information in order to improve performance. The judges and court administrators who manage the court should prepare and manage the budgets and select and supervise the staff. Additionally, presiding judges in district courts need to be a part of the process of developing contracts with municipalities in order to ensure understanding of the needs of the contracting cities and the protection of the independence of the court.

The second concept has to do with the purposes of courts generally. Dean Ernest

Friesen, a nationally known expert on caseflow management and delay reduction, frequently uses an introductory exercise in teaching caseflow management where he asks the attendees to list the reasons courts exist. Over time, Friesen developed a list of eight purposes of courts based on this exercise. The attendees at most of the courses Friesen used to develop the list were primarily general jurisdiction judges and court managers.

The eight "Purposes of Courts" suggested by Friesen's work are as follows:

- o Individual Justice in Individual Cases
- Appearance of Justice
- Forum for the Resolution of Disputes
- o Protection from the Arbitrary Exercise of Government Power

- o Maintain Records
- o Deter Criminal Behavior
- Correct Criminal Behavior
- Separate Criminals From Society

## (Emphasis added)

Several of these purposes (those which are italicized) are relevant to this discussion of limited jurisdiction courts. Friesen would define individual justice in individual cases to mean applying the law to the facts. As indicated above, while this remains a function of limited jurisdiction courts, the normal process in these courts establishes pertinent facts rapidly and applies the law expeditiously.<sup>4</sup> Individual justice in limited jurisdiction cases may be more related to just and equal imposition of sanctions and the enforcement of judgments than to establishing the facts and applying the law. In addition to whether the court achieves a just result on the merits of the case, whether a limited jurisdiction court achieves justice may be measured by how fines and costs are collected, whether treatment and education conditions are completed, and how convenient the court is to the large number of people it serves.

The appearance of justice will be defined for purposes of this study as judicial independence, public trust and confidence, and access to justice. All of these attributes are discussed below as they relate to limited jurisdiction courts in Washington. It is important to remember that whether decisions are just is determined as much in the eye of the citizen as it is by appellate tribunals. Both actual justice and the appearance of justice in limited jurisdiction courts are routinely gauged against the actions and interests of local governmental entities. Providing a buffer between the citizen and the local government is a fundamental function of these courts. The appearance of justice may be measured by the independence of the judge and

<sup>&</sup>lt;sup>4</sup> Kerwin, Henderson, and Baar, "Adjudicatory processes and the organization of trial courts," *Judicature*, Vol.70, pp. 99-106, (Aug-Sept 1986)

staff, the location and appearance of the facilities, equal access to services, fundamental fairness, an opportunity to be heard, and the respect accorded litigants by everyone with whom they come in contact. Limited jurisdiction courts are the *fora* in which the deterrence of criminal behavior, correction of those convicted of crimes or infractions, and separation of those adjudicated guilty of an offense is formally accomplished. While the steps taken to get the case in front of the court are accomplished by executive branch agencies, the decision on the case, the protection of the citizen's rights, and imposition of the judgment are within the authority of the judicial branch, in this instance the limited jurisdiction court.

<u>Structural Implications</u>: Any of the structures currently in use in Washington can accommodate the basic purposes of courts as defined by Friesen. Since few cases are actually tried, more time and resources need to be assigned to the portions of the case process that impact the achievement of justice and the appearance of justice in the limited jurisdiction setting. Staff and facilities need to be adequate to the volume of work and convenient to the court's users. While convenient local access to court offices is necessary, statewide monitoring and management of the post adjudication payment process would ease the burden on individual court staffs and assist the offenders in complying with the judgments of the courts.

<u>**Practice Implications</u>**: The practices used by the limited jurisdiction courts should facilitate the achievement of the court's purposes. Courts need to place more emphasis on early resolution of the vast majority of cases that will not be tried. Information systems that provide time-related information that will allow the local courts to monitor the prompt processing of the early stages of cases need to be in place and in use.</u>

The third concept relates to the characteristics of limited jurisdiction courts. In an article in *Judicature* Kerwin, Henderson and Baar describe a typology of trial court adjudicatory

processes,<sup>5</sup> which they called *Decisional Adjudication*, *Procedural Adjudication*, and *Diagnostic* 

Adjudication. Their description of Procedural Adjudication is as follows:

Procedural adjudication embodies the adversarial values which dominate the traditional Anglo-American view of justice. It provides for an exhaustive exploration of relevant facts and law through formal rules of evidence and procedure. Cases in which procedural adjudication is employed are usually ones with comparatively high stakes and where facts and law are complicated and in dispute. The parties use the court as a means of communicating their versions of a dispute and their preferences for its resolution. Demands on the court are presented as motions on which judges must rule and in a variety of pretrial and trial proceedings at which the judge presides.

 $\dots$  Integration of judges with non-judicial staff outside their personal offices was not a prominent aspect of procedural adjudication  $\dots^{6}$ 

It is clear from this description that decisional adjudication describes the process that takes place

in general jurisdiction state trial courts. It is the starting point against which most people

measure how courts function. While limited jurisdiction courts conduct trials, this is not the

method they use to dispose most of their cases.

Kerwin, Henderson, and Baar describe *Diagnostic Adjudication* as follows:

... diagnostic adjudication is largely devoted to determining the cause of a problem and devising the proper treatment to eliminate it. ... Perhaps the most distinctive feature of diagnostic adjudication is the role of non-judicial personnel in defining issues and securing outcomes in cases. ... (t) he non-judicial personnel are frequently professional s whose research, analysis, and recommendations form the substance of the treatment which the judge ultimately delivers.<sup>7</sup>

Limited jurisdiction court judgments that include treatment or training have some elements of

this adjudication type, but unlike the description, the rehabilitative efforts are only one purpose

of the court's action, not the entire purpose.

Decisional adjudication, the type most directly germane to this discussion, is described as

follows:

<sup>&</sup>lt;sup>5</sup> Kerwin, Henderson, and Baar (1986)

<sup>&</sup>lt;sup>6</sup> Kerwin, Henderson, and Baar (1986)

<sup>&</sup>lt;sup>7</sup> Kerwin, Henderson, and Baar, (1986)

... decisional adjudication establishes pertinent facts rapidly and applies the law expeditiously. ... Speed in the disposition of the present case is imperative because there are so many like it awaiting their day in court. ...

Many of the judges we interviewed noted that they felt a particular responsibility to make the proceedings and implications of various outcomes understandable to the participants. This special role for the judge in the absence of attorneys or where the attorneys present are juggling large caseloads is a cause of concern...

Rapid turnover of cases and the importance of documents outlining the issues in the case enhances the role of administrative staff. These non-judicial personnel organize the flow of papers to and from the judges. Large numbers of people must also be moved in and out of the court, thus security staff may be more prominent and their role more directly related to the actual flow of business than in procedural adjudication. . . . A close integration of administrative staff with the bench in decisional adjudication in generally evident – a partnership made necessary by the peculiar demands made on trial courts operating in this manner.<sup>8</sup>

Kerwin, Henderson, and Baar use courts which process traffic cases, small claims, and

the least serious misdemeanors as the reference model for their description of decisional adjudication. The significance of Kerwin, Henderson, and Barr's article is that it articulates and compares the characteristics, judicial and staff rolls, and overall processes that govern how various types of trial courts function. The description of decisional adjudication captures a picture of what limited jurisdiction courts in Washington, and in most other states, do on a daily basis. While the other two models have relevance to parts of the limited jurisdiction process, it is the decisional adjudication model that provides the focus for how this paper will approach the analysis of limited jurisdiction services.

<u>Structural Implications</u>: There are many implications of the description of decisional adjudication noted above. First, those reviewing the structure of limited jurisdiction courts must be mindful of judging them based on their mission and how they must accomplish it. Limited jurisdiction courts establish the law and facts quickly and normally in a relatively summary

<sup>&</sup>lt;sup>8</sup> Kerwin, Henderson, and Baar (1986)

fashion. The judge's primary exercise of discretion is normally not applying the law to the facts, but rather imposing an appropriate sanction. The court's staff plays a major role in the administration of these courts, and is in contact with the litigants frequently, before the case goes to court, on the day of the court hearing, and after the court hearing has been held. If present, counsel are providing services to a large number of litigants and do not spend the time on individual cases that they might spend on more complex or serious matters. Given the differing roles of judges, lawyers, and non-judicial staff, applying the classic procedural adjudication model to the operations of a limited jurisdiction court would be both inaccurate and unfair. The services provided by limited jurisdiction courts differ in both kind and application. The classic role of the court - applying the law to the facts – remains a part, but only a fraction, of what these courts do. Doing justice in courts administering procedural adjudication is as much about the imposition of a just sentence and monitoring the enforcement of the court's judgments, two postadjudication functions, as it is about making a finding of guilt or innocence. The pervasive issue of jail overcrowding implies either the need to address sentencing structures or the need to provide for more jail space.

<u>Practice Implications</u>: There are a number of variables that affect the way limited jurisdiction courts conduct their business. As described above, the size of the pending caseload greatly impacts the way the court must process cases. Yet, even between limited jurisdiction courts there are significant differences in caseload size. A court located adjacent to a major city, or along a major highway, may service a high proportion of offenders who are not residents of the court's jurisdiction. Imposition of appropriate sentences, collection of fines, and completion of sentences that require treatment or educational activities are much more difficult to enforce with a transient offender population. Furthermore, many courts in Washington routinely face issues

of jail overcrowding. The sentencing options that a particular court may consider are frequently limited by the availability of beds and the cost of incarceration as a sanction.

Taken together the three concepts described above provide theoretical justification for the proposed *Common Principals for Courts of Limited Jurisdiction* under development by the work group. The findings set out below provide factual justification for the proposed Implementation Concepts that are being developed along with the *Common Principles*.

## LIMITED JURISDICTION COURT STRUCTURE

The interviews conducted under this project spent significant time eliciting the observations of the interviewees on the issue of court structure. The observations by the interviewees mirror the concern that is paramount to this study - efficiently providing convenient service to the people. We asked each interviewee the following question:

• From the perspective of the court, the clients of the court, the public, and the funding authority, what are the most significant reasons why the structure that your court uses to provide limited jurisdiction services is a good one?

The responses of the representatives of independent municipal courts focused on providing convenient service, enforcement of local community values, and the efficiencies associated with having the court and the other justice system stakeholders in the local community.

The representatives from contracted courts emphasized that fact that services could be provided economically, and that the courts were well managed.

We also asked the interviewees for the most significant reasons why the structure that their court uses to provide limited jurisdiction services is not a good one. The municipal court interviewees emphasized the need for selection of staff to be under the control of the court, and the limited resources available to these courts. The contracted courts emphasized problems with allocating costs between units of local government, and multiple court locations.

We asked those we interviewed to list the most important services that their court

provides. The responses that occurred most frequently were:

- Response to individual needs of the defendants, includes probation services and payment options
- Provide a forum for people to present their side of the case
- Prompt issuance of DV orders
- Fairness of decisions
- o Accessibility

During the interviews we asked whether there should be structural changes in the way

limited jurisdiction services are provided, and if so, what were viable changes. The responses

track those mentioned elsewhere in this study and in the proposed Common Principals for Courts

## of Limited Jurisdiction.

- o Appointed judges
- o Limited staff
- Mixing the branches of government
- Size of courts and budgets.
- Staffing based on revenue rather than workload

#### JUDICIAL BRANCH INDEPENDENCE AND PUBLIC TRUST AND CONFIDENCE

The two surveys asked a total of 27 questions that were related to this area of inquiry.

The specific criteria that were examined included:

- The authority of the presiding judicial officer over the operation of the court,
- Selection of the court administrator and staff,
- Budget issues,
- Relations with the funding authorities, and
- Customer Service

## **Authority of Judge**

One indicator of judicial independence is that the court should have the authority to control its own operations. In response to a direct survey question on the authority of the presiding judge most contracted and municipal courts indicated that the judge had the authority to set office and hearing hours. A smaller number, but still a majority, indicated that the judge had the authority to close the court for security reasons, for inclement weather, or for other reasons. There were no significant differences between the authority of municipal, contracted, or district court presiding judges to control the operations of the court.

In all but two of the 12 municipal courts that responded the presiding judge or court administrator is the appointing authority for the court administrator or staff. In the remaining two instances a city official has this authority. In all of the district courts the presiding judge or court administrator was the appointing authority. Because of the strong and central role of court staff members in all aspects of the processing of limited jurisdiction court cases, the independence of the staff is a major part of the independence of the court. Judicial appointment of staff extends authority over court operations to include control of the non-judicial staff members who are central to the work of the court.

#### **Budget Preparation and Monitoring**

While the legislative branch of government is responsible for allocating the public's dollars, and the executive branch has the responsibility to ensure that these funds are spent in accordance with the law, excessive control over the requests for, allocation of, and expenditure of funds appropriated to the court has an adverse effect on the court's ability to independently exercise the judicial function.

The first step in the budget process is control over the preparation of the budget documents. Two of the 12 municipal court respondents indicated that the budget was prepared by the city clerk or treasurer, in one instance with the input of the judge. In the remaining instances the judge or administrator prepared the budget. In only four of twelve instances did the survey report that the presiding judge of the contracted courts participated in the negotiation of the contract for services between the county and the contracting municipalities.

Both surveys asked the respondents to prioritize several basic concepts both from the perspective of the court, and from the perceived perspective of the funding authority. The significance of the question is that it represents respondents' perceptions of the priorities of the funding authorities, whether or not the funding authorities actually felt this way. There is a marked degree of agreement between the municipal courts' statement of priorities and their perception of their funders' priorities. Both groups give highest priority to protection of rights and equal treatment, and both groups appear to place a lower priority on generation of revenue. There is a somewhat greater divergence between the priorities of the district courts and their perception of their contracting municipalities. While both groups value protection of rights and equal treatment, enforcement of laws is also a significant value for both. The priorities of the courts' are similar with two exceptions. Twice as many district courts ranked enforcement of the

laws as a high priority. While three municipal courts ranked prompt and efficient disposition of the court's business as a high priority, none of the district courts rated it as a high priority.

More contracted courts ranked the perception of funders' priority of revenue generation as high than did municipal courts. However, more contracted courts than municipal courts ranked revenue production as a low priority. The district court responses were at wider extremes than the municipal courts.

The survey inquired about the degree of significance that the funding authority places on revenue production when determining the court's budget. The responses are illustrated by the table below.

Perceived Degree of Significance	Municipal Court Responses	District Court Responses
None	3	1
A little	2	1
Some	6	3
A significant amount	1	7

Perceived Significance of Revenue Production on Determination of Budget

The degree of perceived significance of revenue production was higher in the contracted courts than in the municipal courts. This is contrary to the suggestion that municipal courts exist primarily as revenue producing devices for their municipalities. During the interviews those who indicated a larger amount of significance placed on revenue production suggested that the funding authority is likely to cap court expenditures at or near the level of revenue generated. If the funding authority connects revenue production to the size of the court's budget, the appearance and the fact of judicial independence may suffer. The interviews revealed several court responses to this pressure to produce revenue.

Most of the responses dealt with improving collection procedures. However, some indicated that fine assessments were increased to the maximum amount allowable.

Other interviewees indicated that although revenue production was not of significance the funding authority placed emphasis on efforts by the courts to contain or reduce costs. Cost reduction techniques included:

- o Reviewing procedures for cost reimbursement
- Exploring jail alternatives
- o Printing own forms or providing forms on-line
- o Reducing or eliminating travel
- o Reducing court commissioners' salaries and using them less.
- Swapping judges for use as *pro tems* with adjoining county instead of paying for this service.
- Personnel Actions (e.g., leaving staff positions vacant, making staff part time, hiring interns, using volunteers)

The form that the budget appropriation takes and the limitations on transferring appropriated funds between line items is technique that the executive and legislative branch can use to control the actual expenditures of specific governmental entities. To the extent that executive and legislative branch entities can control the ability of the court to transfer appropriated funds between line items, they can exercise real authority over court operations. Three of the 12 municipal courts indicated that they needed permission to move funds between line items, or that the municipality managed their budget. One of the 12 contracted courts required approval to move funds.

Budgets should be prepared and presented to the funding authority by the presiding judicial officer and court administrator. Monitoring of expenditures is an ongoing responsibility

of the court. Those preparing the budgets must be mindful of the financial situation faced by the funding authority. However, budgets should not be predicated on revenue produced by the court.

A uniform system for construction and monitoring of limited jurisdiction court budgets would be helpful. Even if local funding bodies have their own budget documents, a uniform process that courts could use to prepare budgets would be of assistance to the courts.

## **Evaluation of Court Operations and Relations with Funding Authority**

Four district courts responded on the survey that a city official outside of the court reports to the funding authority on court business and three others indicated that they did not know whether this was done. Five municipal courts reported that a city official outside the court reported to the funding authority on the court.

The presence of this outside evaluation implies an infringement on judicial independence. During the interviews we asked courts who did not have an outside person evaluating what they thought of this practice. Most respondents in this category felt that this was a potential encroachment onto judicial independence. We also interviewed courts where this practice was followed. Those with direct experience indicated that the evaluation was about financial matters, and not about the substance of court operations or judicial decision making. Both surveys asked if the court provided information to the funding agency on a routine basis. The following table summarizes the results.

Type Of Information Provided	Municipal Court Responses	District Court Responses
Summaries of criminal dispositions	3	4
Summaries of infraction dispositions	3	4
Summaries of collections and court revenue	9	9
Workload information	9	7
Other	2	2

**Information Provided to Funding Authority** 

The two municipal courts who responded "other" both gave specific information about the passage of financial-related information to the local government for purposes of accounting for funds. The two District Courts that responded "other" both indicated that nothing was forwarded, one with no further explanation, the other with a comment that information is now available on-line.

The information submitted to the funding authority is similar to the information collected by the "outside evaluator." Since the courts perceive that the funding authorities are interested in the amount of revenue generated and in the court's workload, they routinely provide the information.

This series of questions illustrates a distinction between judicial independence and the appearance of justice. There is an implication of infringement on judicial branch independence inherent in the idea that an executive or legislative branch agency is collecting and reporting information about the courts. Yet a majority of the courts surveyed provide similar information to the funding authority on a regular basis. An effective court management practice, e.g., providing information may interfere with the appearance of independence if done by the funding agency without court involvement.

A similar question relating to judicial independence comes to light relating to ongoing relations with executive and legislative branch agencies. Both surveys asked whether and how frequently the judge and court administrator meet with the other stakeholders in the local justice system. A third of the municipal courts and a sixth of the contracted courts report monthly stakeholder meetings. However, many of the municipal courts that we interviewed indicated that either the judge or administrator regularly attends the municipality's staff meetings. While most would suggest that periodic meetings with justice system stakeholders is an indicia of a well-managed court system, attending the staff meetings of executive branch agency heads or otherwise having any ongoing relationship with the funding authority may give the appearance of an intrusion on the separation of powers. JMI's general impression is that these courts feel

that they are an independent branch of government. One judge suggested that the court was more independent as a result of this participation because the court is aware of issues facing local government. However, courts should be concerned with the appearance of "departmental status" as opposed to "third-branch status". On balance, attendance at these meetings by court representatives is probably in the best interest of the court, as long as it remains clear that the court is attending because of their interest in government operations and problems, and not because they feel an obligation to "report" to or answer to the executive branch with respect to judicial branch issues.

One perceived advantage of the municipal court structure is that the court is more aware of the issues facing the local community. There may be advantages to the judge having knowledge of local situations, such as the extra steps that might be taken to provide service to the extensive senior citizen community in one jurisdiction, or the judge being aware of local efforts to deal with alcohol abuse issues perceived to be present in a college town. The court's local knowledge should not extend to charging issues or enforcement measures which are the appropriate role of the prosecution and law enforcement departments of the executive branch. Both surveys asked whether the use of incarceration as a sentence was increasing, decreasing, or remains the same. The details of that issue are discussed below in the section on enforcement. In instances where the rate was decreasing the interview responses indicate the change is due to a combination of jail overcrowding, judicial cognizance of the costs of incarceration, and a feeling that jail is less effective as a deterrent or corrective measure than alternative measures. Those we interviewed indicated that cases involving repeated DUIs, domestic violence, and other assaults are still sentenced to incarceration. Jail overcrowding is a problem that is common to many of the jurisdictions that we interviewed, and while it constitutes a limit on the sentencing discretion of the judicial officer, it is not one that can be dealt with here. The decision that incarceration is

not an effective deterrent or rehabilitative aid in a particular case is an example of the discretion that judges should exercise. A decision not to incarcerate that is predicated exclusively on executive branch interest in saving jail costs may be a limit on judicial discretion.

# **Customer Service<sup>9</sup>**

# **Geography/Convenience – Generally**

The surveys asked two questions about convenience of accessing court services. We asked both groups what percent of the court's customers - alleged offenders, and witnesses, litigants - can reach the courthouse from their home in certain specific amounts of time. The question asked for estimated percentages of the court's clients who could travel to the court from home in

- Less than 5 minutes
- 6 to 15 minutes
- 16 to 25 minutes
- 26 to 35 minutes, and
- More than 35 minutes.

In order to report the results of this question we have chosen to display the two highest percentages reported by each court. Thus, there should be two responses from each court on the table below.

# Two Highest Percentages Reported for Length of Time Required to Reach the Court Location

Length of Time to travel from home to court	Municipal Court Responses	District Court Responses
15 minutes or less	13	10
16 – 35 minutes	4	11
More than 35 minutes	1	4

<sup>&</sup>lt;sup>9</sup> In preparing the survey and interview questions and in drafting this report we felt that the issues surrounding customer service had relevance to both the discussion of public trust and confidence and the discussion of access to justice. Although we have chosen to address the customer service issue here, the responses are also applicable to the access to justice discussion that appears in the next section.

<u>Note</u>: Totals in the table above include instances where there were ties in the highest scores and do not include surveys that did not respond to this question.

The responses to this question (e.g., the greater frequency of longer travel to the court in district courts) are consistent with the idea that municipal courts are more convenient to the customers that they serve than are district courts that may serve larger geographic areas. The size and make up of the sample selected for the surveys would have an impact on these responses, so the best that can be said here is that the responses establish tendencies.

During the interviews we asked the respondents to choose between two statements and explain their choice. We acknowledged that both statements could be true, but asked which statement was more applicable in their particular jurisdiction. Because this question came late in the interview, we did not receive responses from everyone. The two statements, and a summary of the responses, are as follows:

<u>Statement A</u>: Residents are looking for close and convenient access to limited jurisdiction services.

Five of the seven interviewees who favored this statement were from contracted courts. The remaining interviewees were from municipal courts. The reasons for the selection had to do with providing service to the customers of the court.

<u>Statement B</u>: It is an important value in the community to have its own municipal court.

Three of the five interviewees who favored this statement were from municipal courts. Two of the municipal court interviewees who favored this statement indicated that local government officials preferred to have a court in their city. A third municipal court representative indicated favored this statement because most of the court's clients were not residents of the community. Having a local court ensured that decisions would comport with community values. The remaining interviewees who favored this statement, from contracted courts, did not elaborate on their choice.

## **Domestic Violence Orders of Protection**

The second geography/convenience survey question inquired whether a person could get a domestic violence protection order in their court during normal working hours, and if not, how far the victim would have to travel to reach a court where such an order could be obtained. The following table illustrates the responses.

Response	Municipal Court Responses	District Court Responses
Yes, a victim could get an order in our court	3	10
No - Must travel less than 5 miles	3	0
No - Must travel 6 to 15 miles	4	1
No – Must travel 16 to 25 miles	0	0
No – Must travel more than 25 miles	1	0

**Domestic Violence Order Travel Distances** 

The inconvenience necessitated by the domestic violence victim's need to travel to a distant location might cause some victims not to seek court protection. Please see the section below under access to justice for a more complete discussion of how domestic violence cases are handled.

### Access to Court Services

### **Defense and Probation Services**

The survey asked both groups whether offenders needed to travel to a location outside the courthouse to access probation, defense, or other services. Only five of 12 municipal respondents and two of 12 contracted district courts provide probation and public defense service within the courthouse. In all other instances at least one of these services is provided at a location other than the courthouse. It is not surprising that this should be the case in instances where defense services are provided on a contracted basis. However, when taken together with

the process used for appointment of counsel the need to make an appointment and meet with counsel at another location then return to the court for the next scheduled event can work a hardship on the offender and increase the likelihood of the offender not appearing for the hearing at the scheduled time.

In the May meeting the work group indicated that there was a problem with offenders going to the wrong court to pay a fine or schedule a hearing. Nine of the 12 municipal court respondents and seven of the 12 district courts indicated that this sometimes or frequently happens. There was near unanimous consensus that the confusion was more likely to result from instances where the citation was issued by the highway patrol than by local law enforcement. The explanation seemed to relate to the fact that jurisdictional boundaries of the various courts are either not clearly marked, or not understood by the highway patrol officers.

#### Court and Clerk's Office Services.

Every district court that responded to the survey indicated that staff was full time with the court. Three of the twelve municipal court respondents indicated that their staff worked part time. The gain in convenience that may exist as a result of having a local municipal court would appear to be negated by the fact that the court staff may not be available as frequently in the smaller courts. In each instance where the municipal court judge is appointed by the executive branch the judge worked less than full time

Court offices and clerk of court offices need to regularly available during reasonable hours and with a reasonable level of convenience. It may be possible to establish local offices for the purpose of receiving payments for infractions and/or scheduling hearings which are convenient to the court's customers but which do not contain courtrooms. Consideration should be given to establishing court hearing hours during the evening to make the court more convenient to customers. Either the establishment of satellite locations or the establishment of evening hours would require management changes related to the scheduling of staff and judge

time.

### ACCESS TO JUSTICE

#### **Domestic Violence**

In one of open ended questions JMI asked the interviewees to list the most important services provided by their court. Several interviewees listed domestic violence protective orders as one of their most important services. On the other hand, we asked interviewees whose courts did not provide DV services why they had chosen not to provide this service. The conflicting responses suggest that many local courts are not clear on the statutory authority in this area.

When questioned as to why persons came to a court that had decided not to issue domestic violence protective orders, the consensus of respondents was that victims who had an interaction with the DV system (e.g., with a police agency or DV service provider) generally went to the correct court. Those who went to the wrong court had not had a formal contact with the DV system. In most instances it is the court's counter staff who talk with those seeking a DV order. About half of the courts interviewed provide brochures or other descriptive information to the person seeking the order. The remainder just provide verbal directions to the location where an order can be obtained.

We asked interviewees whose courts did not provide DV services why they had chosen this option. The interviews demonstrated that this is an area where there has frequently been conversation and cooperation between the district, municipal, and superior courts. Most of those we interviewed felt that they were unable to issue an order if there were children because jurisdiction was pre-empted by the superior court. The interviewee comments were not clear as to whether this ceding of responsibility to the superior court was as a result of agreement among the local courts or because of their reading of the statute. Aside from any statutory interpretation, it was clear that victims seeking protective orders may have been turned away from the court because of the presence of children. In jurisdictions outside Washington of which JMI staff is aware, female domestic violence victims with children have been reluctant to bring DV incidents to the attention of courts that exercise juvenile abuse and neglect/dependency jurisdiction for fear of losing custody of their children for not leaving the household of an abusive partner. The statutory circumstances that require jurisdiction to vest in the superior court need to be clear to all courts. The impact of turning away any victim also needs to be clearly understood.

Steps should be taken, consistent with applicable statutes, to make protective order services (at least temporary orders) available as conveniently as possible for victims of domestic violence. Where by agreement local courts have decided to offer these services at centralized locations materials need to be prepared that explain the operations of the system to all who might seek these services.

A statewide protocol for providing domestic violence orders of protection needs to be developed. Training needs to be provided to local court staff so that everyone is clear on the statutes and practices governing these orders. Those who work at the counters in local courts need to be particularly aware of the requirements of statutes and local practice. Written material needs to be available that describes the practices for domestic violence victims seeking the court's assistance.

### Frequency of Hearings; Length of time to Hearings

The surveys contained several questions related to the length of time required to get to a hearing date. The range of responses varied widely. Three of 12 municipal courts and two of 12 district courts indicate that misdemeanor arraignments are scheduled less frequently than once a week. One municipal court and three district courts indicated that an incarcerated defendant would need to wait three or more days for a first appearance.

Four of 12 municipal courts and four of 12 district courts hold infraction hearings less than weekly. The majority of municipal and district courts indicate that infraction mitigation hearings are schedule three to four weeks out, or less. However, two municipal courts and one district court are scheduling infraction hearings six or more weeks out.

Courts should schedule hearings with a sufficient degree of frequency so that those awaiting court action do not need to wait excessive amounts of time. This requires the allocation of sufficient resources to allow judicial and staff availability for these hearings. Information systems need to regularly produce information related to the timeliness of case processing, including incremental and overall data. Judicial officers and court staff need to regularly review this data in order to make sure that cases are concluded as promptly as possible consistent with the needs of justice.

### **Advisement of rights**

Both surveys contained questions related to how the advisement of rights was conducted. Most jurisdictions advise as a group and again on individual case level. In some instances the respondents indicated that the public defender conducts a third advisement. If only a single advisement is indicated, it most usually occurs to the group at the beginning of the arraignment. Fewer municipal courts report rigorous verification that the offender understood his/her rights than district courts.

## **Indigency Determination**

Each survey asked about the practice of indigency determination. The interviews asked a follow-up question about the process of indigency determination. The survey question concentrated on who made the indigency determination. In 58 percent of both the municipal and district courts the judicial officer makes the determination. While one third of the municipal courts surveyed use court staff to perform this function, none of the district courts in the survey

use staff for either contracted cases or regular district cases. Two of the district courts use probation staff to make the indigency determination, while none of the municipal courts use probation. Two of the district courts and one municipal court use public defenders officers to make the decision. In only one district court was the practice different for contracted cases than for regular district cases. That court uses court staff to make the determination in contracted cases but uses assigned counsel in regular district cases.

In most jurisdictions the person requesting appointed counsel does not have to bring in supporting documentation, although one of the interviewed courts requires this. The practices used by the courts during the indigency determinations varied widely as to when the state forms were distributed, and the court did if counsel was appointed. In most, but not all jurisdictions a not guilty plea is entered and the case set on a pre-trial track. Most courts use a mandatory pretrial hearing of some type as a means of bringing closure to the plea negotiation process. In cases involving the appointment of counsel due to indigency, the defendant must make at least two appearances and the case is on a court docket on two occasions. Some jurisdictions adjourn the arraignment to another date without requiring the entry of a plea. This may result in an additional appearance by the defendant because the pretrial track still sets a mandatory appearance prior to trial. In only one jurisdiction interviewed is the defendant able to see an attorney, albeit a temporary attorney, on the day of arraignment. It is not clear from the interview how many cases are resolved at the initial appearance because of this early opportunity to consult with counsel. The court that follows this procedure has problems providing a space for the attorney and client to talk confidentially on the first hearing date.

To the extent possible the first appearance by the offender needs to be a meaningful event. This requires that the forms for requesting the appointment of counsel should be made available to offenders prior to the appearance date, that the offender be aware of what, if any, documentation is required to verify financial status, that counsel be available to consult with offenders as soon as the indigency decision is made, and that space be provided for such consultations to take place in privacy. Administrative arrangements need to be made so that needed forms and information can be provided to offenders as early as possible.

# **Location of Court Rooms and Offices**

Both groups were asked two questions relating to the courts facilities. The first of these questions related to the courtroom itself, the second related to the court's staff offices. The following table summarizes the responses.

Courtroom			
Location information	Municipal Court Responses	District Court Responses	
In a separate building not shared with any executive or legislative branch entity	1	4	
In a building used by several governmental entities but courtrooms are specifically set aside for use only by the court	4	6	
In a building used by several governmental entities where courtrooms are used also for public functions of other governmental entities	5	1	
Other	2	2	
"Other" responses included "building sh buildings, one with shared functions, the Government buildings where the room u higher levels of security in mind, e.g., fe	e other shared only with district and superior of the shared only with district and superior of the shared as a courtroom was planned as a co	erior court" urtroom <u>tend</u> to be designed with	

## **Location of Court Facilities**

e.g., fewer access doors, better separation between hearing participants, lit the public. Facilities designed to be used for other public functions, most frequently city counsel or other public entity meetings and hearings, tend to have more means for entrance and exit, less separation between meeting participants and spectators, and less frequent use of magnetometers and x-ray machines.

Offices			
Location information	Municipal Court Responses	District Court Responses	
In a separate building not shared with any executive or legislative branch entity	1	3	
In a building used by several governmental entities but the court staff and administrator's office space is set aside specifically for use only by the court	7	8	
In a building used by several governmental entities with the court staff and administrator's office space is jointly shared with other city or county staff	2	1	
In a building where offices for municipal court and district court share space	1		
Other	1		

The intermingling of court staff space and other governmental office space may have a deleterious effect on the perception by the public of the independence of the court. On the other hand, since some members of the public who come to court offices may be angry or frustrated, the presence of other governmental entities may have a positive effect on the safety of court staff who meet the public.

# Location of Services

In order to ascertain the convenience of services that an offender might seek each survey

asked whether public defender services and probation services were located within the building

that housed the court. The following table summarizes the results.

# **Location of Services**

Location of Services	Municipal Court Responses	Contracted Court Responses	District Court Responses
PD and Probation Inside the Courthouse	5	2	2
Public Defender Outside the Courthouse	5	7	6
Probation Outside the Courthouse	3	3	4

## JUDICIAL ADMINISTRATION AND MANAGEMENT

Efficient and effective judicial administration contributes to the goal of doing justice under the law. Courts must be managed well so that judges, court administrators, and other judicial staff can accomplish this goal. Effective court leaders ensure that the various components of the court are a productive whole. Organizational cohesion happens when court leaders, the presiding judge and court administrator, have the ability to unite the organization to create a synergistic effect. Effective leaders model desired behavior and set standards for behavior, creating a tone that hopefully permeates the court's culture. In the municipal and contracted courts, the survey revealed that a significant amount of respondents agree or strongly agree that the presiding judge is intimately involved in the various affairs, or parts, of the court.

For example,

- Twelve out of 12 municipal court respondents and 11 out of 12 contracted court respondents agree to strongly agree that the presiding judge works with administration on a regular basis to discuss court operations and management.
- Nine out of 12 municipal respondents and 11 out of 12 contracted respondents agree to strongly agree that the presiding judge is involved in developing and monitoring the court's budget.
- Nine out of 12 municipal respondents and ten out of 12 contracted respondents agree to strongly agree that the presiding judge is kept informed of the processes for collecting and accounting for fees and fine.
- Ten out of 12 municipal respondents and eight out of 12 contracted respondents agree to strongly agree that the presiding judge supervises the operation of the court.
- Seven out of 12 municipal respondents and seven out of 12 contracted respondents agree to strongly agree that the presiding judge is actively involved in case assignment and management issues.
- Eleven out of 12 independent respondents and nine out of 12 contracted district respondent agree to strongly agree that the presiding judge determines qualifications and monitors performance.

• Nine out of 12 municipal respondents and ten out of 12 contracted respondents marked that the presiding judge is always available should the court administrator run into a problem.

There is no one best way to manage courts or any organization. The changing and complex nature of courts demands effective court leadership at all levels of the organization. Of the courts surveyed, the presiding judges in the municipal and contracted courts are demonstrating several of the characteristics of effective leaders. Many scholars believe that leadership can be learned; therefore, training should focus on honing leadership traits.

While judicial independence is an indispensable means to justice under the law, it should not be confused with interdependency. System interdependencies put power and resources needed by courts in the other two branches of government. Therefore, effective court leaders must have the ability and skill to develop partnerships not only within the court, but also with the entire justice system community, other government agencies and stakeholders, and the public. Courts and their leaders must be independent and impartial on the one hand and accountable and cooperative one the other. The survey revealed that in five of the 12 contracted courts surveyed the presiding judge does not meet formally with other justice system entities from the contracted municipality to discuss court operations. Four of the 12 contracted courts meet formally on an as needed basis.<sup>10</sup> In the contracted courts, only two of the 12 courts meet monthly. For the municipal courts, the survey showed that seven out of 12 responding courts meet on an as needed basis and four of the 12 courts meet on a monthly basis. Seven out of the eight courts interviewed concurred that the atmosphere of these meetings was informal and cordial. One of the interviewees described its past jurisdiction's meetings as tense, but after addressing problems and tensions, it has successfully created a non-adversarial and productive environment. Regardless of the structure, JMI advocates that courts dedicate time and energy to routinely meet

<sup>&</sup>lt;sup>10</sup> The response, "on an as needed basis," was not further defined.

with other justice system entities in order to cultivate productive working relationships, to resolve current problems, anticipate developments and analyze political conditions that will affect court operations, to create and support coalitions, and to make positive changes. Courts are often placed in a difficult position when their capacity to carry out a central function or operation, such as fine enforcement, is dependent upon the resources of agencies they do not control. Therefore, it is beneficial to establish an environment where key stakeholders can regularly address systemic issues in an open environment.

### **ENFORCEMENT OF JUDGMENTS**

#### **Probation**

In terms of providing probation services, there is not a significant difference in approach or services between municipal and contracted courts. Probation services are provided in the majority of both municipal and contracted courts on a case-by-case basis. Out of 12 survey responses, nine independent municipal courts provide probation services, with five of the nine courts determining the need for probation on an individual case basis. Two of the nine municipal courts provide probation only to serious cases, which include DUI and domestic violence cases, cases that involve a repeat offender or an offender that is a risk to the community or in a case where treatment is part of the sentence. Likewise, ten of the 12 surveyed contracted courts provide probation services to both contracted municipal jurisdiction cases and district court cases, with eight of the ten courts selecting cases for probation on a case-by-case basis for both contracted municipal and district court cases. From these survey results, it appears that the district courts treat contracted municipal and district court cases equally in terms of providing probation services.

The majority of the survey respondents provide probation services through a probation department, which is one of the two methods allowed by ARLJ II. For independent municipal courts, nine out of 12 responded that a probation department provides probation services. Two of the 12 municipal courts make use of the second method approved by ARLJ II, the use of a probation department and a court probation clerk. One of these two courts specified that its probation department handles supervised cases and the court probation clerk handles unsupervised cases. In the district courts, eight of the 12 responding courts indicated that a probation department handles not only the contracted cases, but also the district court cases.

Three of the 12 courts use the second method allowed by ARLJ II, the use of a probation department and court probation clerk, for contracted municipal court cases.

The overwhelming majority of municipal and contracted courts assess the offender a fee for probation services. Seven out of eight of the municipal courts and eight out of ten in the contracted courts assess the offender a fee. Neither the survey questionnaire or interview inquired as to why the courts assess a fee or how that fee is determined, but in general courts shift some of the cost of probation to sentenced offenders using a sliding scale for fee determination in order to lessen the costs to the courts and justice system and to increase offender accountability and compliance. In the municipal courts, the median<sup>11</sup> active caseload was 262.50 cases per probation officer. In the district courts, the median caseload of active cases for a probation officer was 300. While contracted court probation officers have on average 37.5 more cases per officer than independent courts, the difference is hardly significant. In both types of courts, probation officers have more cases than they can effectively supervise, which is probably due to the universal problem that the probation departments are not funded or staffed at levels that allows them to provide meaningful supervision and control. Fortunately limited jurisdiction courts do not handle the most serious offenses. It is not surprising that six out of the seven decision-makers asked in the interview if probation had a significant impact on recidivism rates answered that in their opinion it did not. However, those responding to the interview question stated their response was not based upon statistical evidence.

During the interviews, JMI asked how probation could be provided more economically and effectively. One recommendation seems appropriate for all the courts, which is to connect

<sup>&</sup>lt;sup>11</sup> The median, or middle value, was used to describe the data for a probation officer's active caseload because the median is unaffected by extreme values. In both the independent municipal and contracted district courts, there were extreme values. One of the eight respondents indicated that the probation officer has 25 active cases, which was nowhere near any of the other seven responses. In the contracted district court responses, 15 and 900 were the extreme values and could not be used to describe the typical caseload. Calculating the arithmetic mean would not have come up with a value to describe the typical case because this measure is impacted by extreme values.

the probation department and court's MIS so information on offenders is entered only once and can be shared between the two entities. This would make better use of resources, save personnel time, eliminate duplicative data entry, and ensure that the data is updated. Additionally, it would improve case management. Information from probation could assist judges in making better bail decisions and imposing more appropriate sentences. JMI realizes that linking independent computer systems is not necessarily feasible and that confidential information could not be shared between the two entities.

### Incarceration

The survey asked respondents if incarceration as a sentence was increasing, decreasing, or not changing in their respective jurisdictions. There was no clear pattern to the responses. In five of the 12 municipal courts surveyed, the use of incarceration as a sentence was decreasing, in four courts it was increasing, and in the remaining three there was no change. In contracted courts, five out of the 12 courts responded that incarceration use was decreasing (same as in the independent municipal courts), five responded that there was no change in its use, and two of the 12 stated that incarceration was increasing. These answers almost exactly mirror the use of incarceration with district court cases, again demonstrating that the district courts do not distinguish between contracted and district court cases, but treat them equally.

JMI sought to explain why incarceration use was increasing in some jurisdictions, but decreasing or not changing in other jurisdictions. In the interviews, JMI asked courts to explain their survey response and if they thought their court's use of incarceration reflected a statewide trend. Similar to the survey responses, the interviews did not elicit a cohesive response. In courts where the use of incarceration is decreasing or the interviewee felt this was the dominant trend in most of the limited jurisdiction courts, the majority of interviewees specified that the use of incarceration is decreasing as a result of the jails' limited capacity to handle offenders

(overcrowding) and the rising costs of incarceration. A small proportion expressed the belief that alternative programs (non-incarceration) had a greater positive impact on offender's behavior than locking them up.

On the reverse side, several interviewees stated that the mandatory minimum for a DUI charge is contributing to the increase in the use of incarceration. One interview respondent attributed the increase in usage to the judge's belief that incarceration is the only viable alternative. One independent municipal court with its own jail is actively advertising the availability of bed space and encouraging other jurisdictions to contract with its jail, but this was an anomalous response. JMI concludes that the use of incarceration depends upon individual jurisdictional resources and judicial attitudes toward the use of jail time as a punishment.

Regardless of a jurisdiction's use of incarceration, all of the courts surveyed routinely employ alternatives to incarceration. The majority of municipal and contracted courts use at least seven alternatives, including community service, work release, electronic home monitoring, day detention, and some form of treatment. Four interviewees mentioned that they use alternative (non-incarceration) programs to help manage the size of the jail population. It is important to point out that while five out of eight courts that we interviewed believed that the judge was to some degree aware of or considered the size of the jail population when sentencing offenders, seven of the eight interviewees stated that this knowledge did not limit the judge's decision to incarcerate offenders.

#### Fines

Courts annually collect a substantial amount of revenue from the imposition of fines, especially for traffic-related offenses and for violations of municipal ordinances. JMI hypothesized that in some jurisdictions local authorities who control court budgets pressure judicial officers to use alternative sentences rather than short terms of custody. This pressure might be greater for municipal courts where local authorities strongly encourage judicial officers to impose fines that generate revenue for local use. However, the survey and interview results showed that judicial officers do not feel pressured to increase the collection rate to generate revenue or use alternatives to incarceration to control costs. While courts do not feel pressured to produce revenue, seven out of 12 interviewees shared that they are trying to increase collection rates by making payment easier for offenders, keeping better track of payments, staying up-to-date, and providing payment information to offenders in an effort to generate revenue. Two of the 12 courts interviewed are increasing fines and fees (e.g., probation fees) as a way to produce revenue. The result of effectively imposing fines and collecting payments can relieve pressure on jail populations and pressure on probation services that are suffering from high ratios of probation officers to offenders, while at the same time promoting confidence that sentences are fair and punishment is certain. However, if judges are not convinced that fines will be paid in a high proportion of cases and if offenders assume that fines need not be paid, the usefulness of fines as a sanction is seriously eroded.

The research on fine payment, while inconclusive, indicates that there are a few ways to increase the prospects for full payment, including (a) setting reasonable and appropriate terms of payment and communicating those terms to offenders; (b) setting relatively short periods for payment, particularly if accepting installment payments; (c) making it convenient for offenders to pay fines; and (d) taking prompt follow-up action for nonpayment to increase compliance.<sup>12</sup> For the municipal and contracted courts, 18 out of 20<sup>13</sup> survey respondents indicated that they send notices to offenders who are delinquent in making periodic payments of fines prior to

<sup>&</sup>lt;sup>12</sup> Bureau of Justice Assistance Monograph: *How to Use Structured Fines (Day Fines) as an Intermediate Sanction.* November 1996. NCJ 156242

<sup>&</sup>lt;sup>13</sup> Breaking out the responses, 11 out of 12 contracted district courts and 7 out of 8 independent municipal courts send notices to nonpaying offenders.

sending the case to a collection agency and Department of Licensing (DOL). All but two<sup>14</sup> of the surveyed courts are complying with the Washington State statue which mandates that courts must notify delinquent offenders that they have 30 days to pay their fine in full before the court sends their case to a collection agency and the DOL that suspends licenses for failures to pay. JMI discussed the notification process with courts during the interviews. Five of the 12 courts issue two notices, four of the 12 issue only one notice, and two courts issue monthly notices before sending the case to collections. One court summons nonpaying offenders back to court.

Although routine mail notification procedures are labor intensive, research suggests they are likely to produce payments in a significant percentage of cases.<sup>15</sup> This technique might contribute to increased compliance, increased revenue, and increased avoidance of issuing warrants and reduce the burgeoning Driving While License Suspended 3rds (DWLS 3) caseload. Many courts are trying to address the problem of DWLS 3<sup>rd</sup> cases through the operation of a community re-licensing programs, which assist offenders who are charged primarily with DWLS 3<sup>rd</sup> to get their driver's license reinstated. Frequently the court suspends a defendant's license because of failure to respond or pay within certain timelines and over time the defendant could face additional fines, penalties, collection fee, and jail time if the matter is not addressed.

The private sector has established a variety of techniques that remind, encourage, and facilitate completion of periodic payment obligations.<sup>16</sup> No parallel routine exists in the court. While requiring immediate payment of substantial fines may work a hardship on the defendant that the court should mitigate, sanctioning the non-receipt of periodic payments from a defendant without establishing the procedures and routines created in the private sector to facilitate the

<sup>&</sup>lt;sup>14</sup> JMI is not sure if these two courts misread the question, incorrectly marked the survey and thus are not complying with the State statue.

<sup>&</sup>lt;sup>15</sup> BJA (1996).

<sup>&</sup>lt;sup>16</sup> Mortgage companies and automobile loan companies provide payment books. Medical offices send voicemail notices of appointments.

periodic payment process may ultimately cause a greater hardship. During times of economic constraints, limited staff and resources can make this approach prohibitive. The recent US Supreme Court case of Alabama v. Shelton<sup>17</sup> may require representation by counsel in infractions cases or a waiver of that right if the results of non-payment include incarceration. This decision may cause significant changes in the way courts process infractions. One effect of this case might be that those found to have committed an infraction might be more fully advised as to the consequences of failure to pay. Full advisement of the consequences of non-payment, completed in a variety of ways and at a variety of times, coupled with the establishment of routines borrowed from the private sector to encourage payment might reduce the number of cases referred for collection, including DWLS 3<sup>rd</sup> offenses with their associated system and jail costs, as well as increasing the amount of revenue recovered. It is certainly fair to question whether it is an appropriate function of courts, or any other branch of government, to assist those who choose not to obey lawfully imposed orders or pay lawfully imposed fees and fines. However, courts should consider taking actions that decrease local government expense, increase collection of revenue rightfully due, and make it possible for offenders to remain productive citizens.

Many of the interviewees expressed their dislike of playing the role of bill collector, especially when the administrative costs may be greater than the amount of the fine. The process of imposing, collecting, and enforcing fines and other monetary penalties can occupy a significant amount of court administrators' and other court personnel's time, not to mention that of other justice system personnel (for instance, the police who have to issue warrants for nonpayment or the Department of Licensing that suspends an offender's license for non-payment of a fine). Making it convenient for offenders to pay fines could significantly increase the

<sup>&</sup>lt;sup>17</sup> (U.S. Supreme Court Case Number 001214, decided May 20, 2002)

likelihood of prompt payment, thus reducing the burden of establishing and monitoring payment plans and tracking down and reminding offenders when they are negligent. During the interviews JMI proposed having courts accept payment for each other. Several interviewees liked the idea as long as it could be done easily, which would mean upgrading the capacity of DISCIS to accept these payments. One judge disagreed with the notion of collecting payments for other courts because he thought his clerk would not like the idea and it would be too challenging to divide up the revenue between jurisdictions. Courts should enable payments to be made at multiple convenient locations other than the courthouse.

Fine administration is fragmented within and across a variety of agencies, including the court, probation, and collection agencies. This fragmentation can lead to confusion for offenders, inequities in pay schedules and interest rates, fractured accountability structures, and increased administrative burdens for the court. JMI spoke with 12 of the key decision-makers in the courts regarding the management of installments and follow-up action for nonpayment. The majority of courts specified that DISCIS manages periodic payments and generates the delinquency notices before sending cases to a collection agency and DOL. Two of the 12 indicated that an outsourced service or finance company that is a division of the collection agency places offenders on time payment plans and one court uses the probation to monitor payments. Some jurisdictions use multiple collection agencies, while typically smaller jurisdictions will contract with one agency.

JMI proposed centralizing the collection agency. In other words, JMI suggested to interviewees that fine administration should be controlled by a single entity that would be responsible for the outcome of all fine sentences and for insuring that the fine process is rational and properly administered. More courts than not welcomed the idea, suggesting that the advantages would be that:

- Offenders could make payments to a single agency (half of the courts interviewed acknowledged this as an advantage);
- Pay schedules and interest rates would be uniform, thereby making the process more equitable;
- There would be only one set of protocols and policies, which would make the collection process easier to understand; and
- The burden of fine administration, collection and enforcement would not be the responsibility of the court.

The courts also identified disadvantages of creating a centralized collection agency, including:

- Courts would lose their individual control and the flexibility to tailor punishments;
- The creation of a less personalized system;
- The creation of another large bureaucratic organization with which the court would have to collaborate; and
- The challenge of getting all courts to agree upon uniform policies and procedures.

Whether fine collection is centralized or outsourced to several organizations, the court must be integrally involved in the development and implementation of collection policies. Fines are a court order and the court has a stake in ensuring offender compliance with that order.

Systematic information does not seem to be readily available to these courts on collections. Although these courts keep adequate records of individual fine payments, our sample of courts does not appear to possess developed systems for aggregating and analyzing this type of data in order to monitor collection and enforcement performance and to support improvement initiatives. The failure of courts to develop the ability to monitor collection performance, which is usually expressed as an aggregate collection rate, is unfortunate, especially since economic pressures, jail overcrowding, and the use of alternative sanctions is increasing. Collection effectiveness is a critical performance indicator and data should be collected and analyzed in order to improve program operations.

### TRAINING

Education and training help courts improve their performance and achieve their mission. The survey showed that a significant majority of judges in the municipal and contracted courts (11 out of 12 for independent and ten out of 12 for contracted) attend the DMCJA Spring Conference. A significant majority of contracted court judges (10 out of 12) also attend the Annual Fall Judicial Conference, in comparison to only five of the 12 municipal court judges. For the court administrators, eight out of 12 municipal administrators and seven out of 12 contracted court administrators attend the DMCMA Spring Conference. While only four of the 12 municipal administrators attend the Washington Court Managers' Spring Conference, nine out of 12 contracted court level administrators attend this conference. Attendance and enthusiasm for training was not readily apparent from the interviews.

JMI understands the reality that training budgets are often the first to get slashed during economic constraints and restrictions are placed on out-of-state travel so attending a national training is not possible. However, according to Peter Drucker, the well-known management expert, information and knowledge drive economics and productivity,<sup>18</sup> making it imperative for individuals and organizations in the public and private sectors to commit to continuous learning. Effective leaders recognize the importance of training.

The National Association of Court Management Education, Training and Development Curriculum Guideline<sup>19</sup> suggests that training be:

- 1. Continuous and creative, meaning that it focus on the law and legal procedures as well as on the future;
- 2. Inclusive, meaning that all justice system personnel, including judges and court staff, are trained;

<sup>&</sup>lt;sup>18</sup> Post-Capitalist Society by Peter Drucker (New York: Harper Business, 1993).

<sup>&</sup>lt;sup>19</sup> Core Competency Curriculum Guidelines: Education, Training and Development. National Association of Court Managers (April 25, 2003).

- 3. Accessible and tailored, meaning that training is available to and geared towards the gamut of target audiences;
- 4. Well-managed in the sense training is up-to-date and focused on important court issues; and
- 5. Evaluated to ensure that the training contributed to individuals' personal and professional growth and skill development in a meaningful way.

Whether the AOC develops statewide training programs or it is a regional or individual

training, these guidelines form the basis of development. Across the board court leaders need to

cultivate a learning organization.

## **UNSTRUCTURED QUESTION**

The last question in each survey asked the respondents "If you were not bound by the current structural, financial, and physical limitations imposed by the way that your court provides limited jurisdiction services, what would you do differently?"

Not surprisingly, the results of the open ended question mirror the comments made by the respondents in the more structured questions. Like everything else about the survey and interview process, the open ended responses reflect two primary areas of concern: items that relate to proving services to the court' customers and items that are the result of the lack of available resources for the courts. For purposes of displaying the responses, we have separated them based on service and resource issues and sub-divided the responses between municipal courts and district courts.

# Customer Service Issues Municipal Courts:

- o Daily arraignments, including holidays and weekends
- Expanded hours and more flexible scheduling of cases
- Public Defender present at all hearings
- Prosecutors present at all contested hearings
- Police present at all hearings
- Legal Services present at all hearings
- Better use of probation
- Better access to interpreters
- Hold own jury trials
- Establish statewide collection agency
- o Expand alternatives to incarceration programs
- o Establish specialty courts (Drug Court, Mental Health Court)

### **District Courts**:

- o "Provide for a more efficient, seamless justice system statewide"
- Public Defenders present at all hearings
- Prosecution present at all hearings

## **Resource Issues:**

## Municipal Courts:

- More Public Defenders
- More Prosecutors
- More probation officers

- Facilities Issues
  - Better facilities
  - Have our own building
  - o More courtrooms
  - Have our own courtroom
  - More area for court staff
  - o Secure/private probation interview area
  - Use video for in-custody hearings
  - o Be in same complex as police and jail for security and prisoner transport

### District Courts:

- o More court staff
- Better pay for court staff
- More probation staff
- o Facilities Issues
  - o Better handicapped access
  - o Single location
  - o Better Security
  - "Build a larger, more efficient courthouse including within probation department, Public Defenders, Prosecutors, law library, conference rooms, cafeteria, and plenty of parking."
- Technology and Equipment Issues
  - Purchase updated equipment
  - o E-mail and internet access for court staff
  - Public Access Terminal
  - o Competent IT department

## **CONCLUSIONS**

The purpose of the study is to compare the practices and procedures in the various courts, identifying promising practices and suggesting changes in structure and practice that will improve the overall delivery of limited jurisdiction court services through the State of Washington.

Our primary methods for collecting the information that we present in this report was through survey and interview. As the development of the project went forward one of the things that became clear was the extent to which respondents' proximity to information affected their perceptions. For the most part the respondents thought that the way their court was organized was the best way. The closer a respondent was to the situation the more accurate their evaluations were. The further from the actual situation the respondent was the more likely the respondent was to make evaluations based on appearances rather than realities. While the appearance of justice is one of the purposes of courts identified by Dean Friesen, those who are knowledgeable about court systems should understand when they are substituting opinion for objective information.

Another tendency that also became clear was the degree to which each group felt that "the other way" to provide limited jurisdiction services was flawed. Most municipal courts thought their structure was superior because it was more convenient to the litigants and more responsive to local needs than a contracted court status would be. Most respondents from contracted courts thought that their system was better because it is more efficient and less costly that a municipal court would be. Most people from contracted courts thought that there were issues of judicial independence and executive branch control related to the method of selecting judges and court staff, the method for managing budgets, and the supposed perception that municipalities want courts as a revenue producing devices. However, municipal court respondents reported less pressure from the legislative and executive branch to produce revenue than did contracted courts and district courts. Only four of the twelve district courts surveyed indicated that their presiding judge was involved in (had any input or control over) the negotiation of the contract for limited jurisdiction court services between the municipality and the county.

While there are differences between the ways in which the types of courts function, these differences were more related to the variances among the demographics, staffing levels, and practices than they were to the structural differences among the three types of courts. There are suggestions for structural changes that emerged during the completion of this project, but those changes either did not deal with the organizational patterns of the courts or applied equally to each organizational pattern. We specifically do not find any of the three models of providing limited jurisdiction court services to be clearly superior on inferior to the other models.

It became clear during the interviews that there were the many variables that must be considered when a particular court structure or practice is evaluated. The manner in which limited jurisdiction courts have evolved in a particular area appears to be related at least in part to the demographics of the community, the resulting citizen expectations, and the practices that have evolved to meet those expectations.

For purposes of discussion the variables that may affect structure and practice are roughly divided into two types, those relating to the population served and those relating to the peculiarities of government operations.

#### VARIABLES RELATED TO THE POPULATION SERVED

The geographic characteristics of the jurisdiction and its surrounding areas may play a great role in caseload while creating challenges to drafting or enforcing appropriate judgments. Proximity to a major urban area, to a park or other tourist attraction, to a commercial or

industrial area, to a major national or local highway may all have an impact on the nature of the offender population. The interviews disclosed wide variations in the mobility of the offender population. In some jurisdictions the majority of offenders come from within the community. In others the offender population may not live within the jurisdictional boundaries, but may travel through the jurisdiction on a regular basis. In still other jurisdictions the offender population might be passing through on a more-or-less one time basis, visiting a tourist destination or traveling on an interstate highway.

The demographic characteristics of the residents of the jurisdiction may also impact court structure and process. Presence of significant numbers of people with identifiable similar traits should cause the management of the court to create processes and structures that are responsive to the needs of the citizens. The presence of a college or university within a jurisdiction may cause the court to establish certain treatment programs and remote service locations. The presence of a significant single ethnic and linguistic minority might require the court to provide signage and interpreter services on a regular, rather than an as needed, basis. The presence of a significant senior citizen community might require the court to be more mindful of providing access for persons with physical disabilities.

### VARIABLES RELATED TO GOVERNMENTAL SERVICES OR ISSUES

Many of the courts that we interviewed are dealing with jail overcrowding issues. The scarcity of jail beds and the lower priority given to misdemeanor defendants conspire to limit the sentencing alternatives available to the judges. All of the issues that limited jurisdiction courts are otherwise facing are exacerbated by the current economic situation faced by state and local governments. Jail beds are not only scarce, they are also expensive. Depending on the particular local jurisdiction there may be more or less pressure for the court to cut costs or increase

revenues. In any event, the chances of obtaining increases in the number of staff or judicial positions or of obtaining improved technology are bleak and likely to remain so.

We will summarize our findings based on the major issue areas identified by the Working Group at the May meeting.

# JUDICIAL BRANCH INDEPENDENCE AND PUBLIC TRUST AND CONFIDENCE

Selection of those who serve the courts that is merit based and independent of the funding authority increases the appearance of justice. This independence in selection, supervision, and retention is as important for court staff members as it is for judicial officers. In a limited jurisdiction court setting court staff have a very important role not only in preparing for court hearings and trials, but also in meeting the public, accepting payments, and scheduling cases.

The presiding judicial officer must exercise management authority and decisional independence free from inappropriate influence by executive or legislative branch. Budget preparation, presentation, monitoring, and amendment should be conducted in a manner that comports with generally accepted accounting principles but should not be conducted in such a way as to infringe upon the independent exercise of the judicial power by a court of limited jurisdiction.

While sound management practices suggest that a court should maintain good working relations with stakeholders in the justice process and with all parts of the government structure, both the court and the other branches of government must remain mindful of the need to protect the separation of powers and promote the appearance as well as the fact of judicial independence.

The public, including offenders, witnesses, victims, and jurors should have quick and convenient access to the courtrooms, court offices, defense services, and probation services so as to encourage public trust and confidence in the court system.

### **EQUAL ACCESS TO JUSTICE**

Victims of domestic violence should have the easiest possible access to court services related to obtaining protective orders.

Hearings should be held with sufficient frequency to dispose of the business of the courts within acceptable time limits. The court should keep scheduling lead times to reasonable levels.

Advisements of rights, indigency determinations, and presence of interpreters should all be completed by the court is such away as to discharge the court's management and financial responsibilities while providing appropriate levels of service to those who are called to appear in the courts. Each time the resources of the court, defendant, witnesses, and counsel are used to schedule and conduct a court event, as many tasks should be accomplished as possible to advance the case toward resolution. The location of courthouses, court offices, and court services should be such that an alleged offender can make use of these services with as few trips to the court as possible.

#### JUDICIAL ADMINISTRATION AND MANAGEMENT

Courts must be managed well so that judges, court administrators, and other judicial staff can accomplish their mission. The presiding judges appear to be actively leading and managing the court. Under the leadership of the presiding judges, courts need to work on building interagency cooperation and collaboration. Courts cannot achieve their mission without the assistance of other agencies and stakeholders outside of the court. Currently, the limited jurisdiction courts do not have forums, or if they do exist they are not well attended, not well functioning, or regular events, to exchange ideas about how to solve problems or to continually diagnose and evaluate performance on the justice system level.

#### **ENFORCEMENT OF JUDGMENTS**

#### **Probation:**

In terms of providing probation services, there is not a significant difference in approach or services between the municipal and contracted courts. The majority of municipal and contracted courts provide probation services on a case-by-case basis through probation departments, which is one of the two methods allowed by ARLJ II, and assess offenders a fee for probation services. In both types of courts, probation officers have more cases than they can effectively supervise, which is probably due to the universal problem that probation departments are under-funded or are not staffed at levels that allows them to provide meaningful supervision and control. One recommendation for providing probation services more economically and effectively is to connect the probation department and court's MIS so information on offenders is entered only once and can be shared between the two entities.

#### Incarceration:

There is no easy answer to explain why incarceration use was increasing in some jurisdictions, decreasing or not changing in other jurisdictions. The use of incarceration depends on various factors, including jurisdictional resources, judicial attitudes towards sentencing, and legislated mandatory minimums. Finding an explanation requires an individualized look at the various factors. Regardless of a jurisdiction's use of incarceration, all of the courts surveyed routinely employ alternatives to incarceration.

### Fines:

The survey and interview results showed that judicial officers do not feel pressured to increase the collection rate to generate revenue or use alternatives to incarceration to control costs. The result of effectively imposing fines and collecting payments can relieve pressure on the jail populations and pressure on probation services that are suffering from high ratios of probation officers to offenders, while at the same time promoting confidence that sentences are fair and punishment is certain. Courts should consider (a) implementing additional notification techniques that remind, encourage, and facilitate completion of periodic payment obligations, (b) accepting payment for each other and enabling payments to be made at multiple and convenient locations other than the courthouse, and (c) centralizing the collection agency on a countywide or statewide basis. Collection effectiveness is a critical performance indicator and data should be collected and analyzed in order to improve program operations.

#### COMPLIANCE, COMPETENCE, AND TRAINING

The bottom line is that training is essential. The AOC and courts at all levels need to make reliable and consistent funding for training a top priority. This is especially important given the fact that limited jurisdiction judges and court administrators do not meet monthly with other justice system entities in their jurisdictions. Training should educate judges and staff together, reinforcing judicial and justice system interdependency.

The Justice Management Institute

1900 Grant Street, Suite 630 Denver, Colorado 80203

### **ALWAYS THE PEOPLE:**

Delivering limited jurisdiction court services throughout Washington

### **APPENDIX ONE**

# **SURVEY INSTRUMENTS**



#### **RESPONDENT INFORMATION**

Respondent Name: _	
	Judge Court Administrator
	Other (specify):
Respondent Phone:	
Court Name:	
County:	
City:	

The Board for Judicial Administration has created a statewide Court Funding Task Force to look at funding in general. A subcommittee of this Task Force is charged with examining the variations in court structure and the consequent costs and financial impacts in the State's limited jurisdiction courts. The Justice Management Institute (JMI) is working with the Task Force to examine the wide range of practices and operations of these courts. JMI developed this survey in order to conduct comparisons of costs and standards of practices between separate, freestanding municipal courts and those where the municipalities contract for services with the local district court. Your court has been selected as part of the sample group of courts being asked to complete the survey.

The presiding judge and the court administrator should each complete a copy of this survey and return it directly to JMI. Survey responses will be kept confidential and individual results will not be released. JMI is asking for respondent contact information (above) to enable us to conduct follow-up telephone interviews with selected jurisdictions. Individual court responses to this survey will not be identified in any way. Responses will be presented in aggregate form only.

In answering the following questions, please respond only as the information applies to cases within your municipal court. The questions are designed to obtain information about the routine case or situation, not the unusual, complex, complicated, or notorious case or issue.

This survey takes approximately one hour to complete. Thank you for participating.

1. Judge(s) in this court are (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Elected by the People of the Municipality

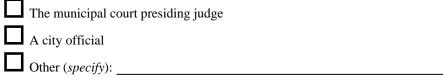
Appointed by the Mayor or City Manager (*please circle which individual*)

Appointed by the City Council

Other (*specify*):

2. If part time, how are the judge's hours determined? (*Check all the boxes* 🗵 *that represent the experience in your jurisdiction*)

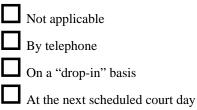
	experience in your jurisdiction)
	Not applicable
	Workload demand
	Mayor or City Council
	By contract provisions
	Other ( <i>specify</i> ):
3.	The space that the court uses for the courtroom is located ( <i>Check the one box</i> $\boxtimes$ <i>that most closely represents the experience in your jurisdiction</i> )
	In a separate building not shared with any executive or legislative branch entity
	In a building used by several governmental entities but courtrooms are specifically set aside for use only by the court
	In a building used by several governmental entities where courtrooms are used also for public functions of other governmental entities
	Other ( <i>specify</i> ):
4.	The space that the court uses for staff and administrator's office space is located ( <i>Check the one</i> box $\boxtimes$ that most closely represents the experience in your jurisdiction)
	In a separate building not shared with any executive or legislative branch entity
	In a building used by several governmental entities but the court staff and administrator's office space is set aside specifically for use only by the court
	In a building used by several governmental entities with the court staff and administrator's office space is jointly shared with other city staff
	In a building where offices for municipal court and district court share space
	Other ( <i>specify</i> ):
5.	Staff of the court work on court functions (Check the one box $\boxtimes$ that most closely represents the experience in your jurisdiction)
	Full Time Part Time
6.	The appointing authority for the court administrator is ( <i>Check the one box</i> $\boxtimes$ <i>that most closely represents the experience in your jurisdiction</i> )



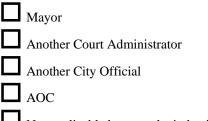
7. The appointing authority for the court staff is (*Check all the boxes*  $\boxtimes$  *that represent the experience in your jurisdiction*)

The municipal court presiding judge
The court administrator
A city official
Other ( <i>specify</i> ):

8. If the presiding judge of the municipal court is part-time, how is he/she available to the court administrator if a problem arises? (*Check all the boxes* 🗵 *that represent the experience in your jurisdiction*)



9. If the presiding judge is not available, who does the court administrator typically contact if a problem occurs? (*Check all the boxes* 🗵 *that represent the experience in your jurisdiction*)



Not applicable because the judge is always available.

- 10. The Presiding Judge of the court has the authority to (*Check all boxes*  $\boxtimes$  *that represent the experience in your jurisdiction*)
  - Set court office and hearing hours
  - Close for security reasons
    - Close for inclement weather
    - Close for other reasons
- 11. Responsibility for efficient and effective distribution of tasks rests with (*Check all the boxes in that represent the experience in your jurisdiction*)
  - The presiding judge
  - The court administrative staff
    - Another city official (e.g. city manager, city finance officer)
  - The city council

12. What information about court operations does the court regularly provide the city? (*Check the one box* 🖂 *that most closely represents the experience in your jurisdiction*)

Summaries of criminal dispositions
Summaries of infraction dispositions
Summaries of collections and court revenue
Workload information (e.g., filings, proceedings)
 Other ( <i>specify</i> ):

13. Does another city official outside the court evaluate and report to the Mayor or City Council on court operations? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)



- 14. If yes, whom? (*please describe*)
- 15. How are defendants advised of their rights? (Check the one box 🗵 that most closely represents the experience in your jurisdiction)

Judicial officer advises them as a group at arraignment.

Judicial officer advises each individual defendant when his/her case is called.

The public defender explains rights.

Other (*specify*):

16. How does the judicial officer verify if the attendees understand the proceedings? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

The judicial officer asks defendants if they have read the printed advice of rights.

The judicial officer asks defendants if they understand they have a right to an attorney.

The judicial officer asks defendants if they can read.

- Other (*specify*):
- 17. If a defendant requires an interpreter, is one made available on the first appearance? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)



a. If "no," what is the court's procedure for handling non-English speaking defendants (e.g., proceed with or reschedule arraignment, use court staff or a family member)? (*Please explain briefly*).

18. Is a prosecutor present at arraignment? (Check the one box  $\boxtimes$  that most closely represents the experience in your jurisdiction)

19. Does the court accept pleas of guilty without defendant's counsel present? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)



20. Persons who choose to represent themselves at criminal hearings (*Check all boxes* 🗵 *that represent the experience in your jurisdiction*)

Can obtain all needed forms and instructions written in non-technical terminology by contacting the court's website

Can obtain all needed forms and instructions written in non-technical terminology by going to the court

Can obtain assistance through the court's self-help program

Are advised of their right to a public defender

Are told that they should hire an attorney

Are on their own

21. On a scale of 1 to 7 with 7 being the most important, please rank the importance of the following court functions from the perspective of the groups identified. *Only one characteristic should be given a rank of 7, one given the rank of 6, etc.* 

#### **GROUP I: COURT JUDGES AND STAFF**

Characteristic	Group's Perceived Actual Priority
Enforcement of State and local Laws	
Generation of Revenue	
Protection of the Rights of Offenders	
Convenience of Governmental Employees	
Prompt and efficient disposition of the court's business	
Equal treatment of all without regard to race, gender, ethnicity, sexual preference, or age	
Responsiveness to local criminal justice enforcement priorities	

#### **GROUP II: LOCAL GOVERNMENT**

Characteristic	Group's Perceived Actual Priority
Enforcement of State and Local Laws	
Generation of Revenue	
Protection of the Rights of Offenders	
Convenience of Governmental Employees	
Prompt and efficient disposition of the court's business	
Equal treatment of all without regard to race, gender, ethnicity, sexual preference, or age	
Responsiveness to local criminal justice enforcement policies	

22. How frequently do people come to your court to pay an infraction penalty or schedule a hearing for a ticket that was filed in another court? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

Never	Rarely	Sometimes	Frequently
Happens	Happens	Happens	Happens

23. Can a petitioner get a domestic violence protection order in your court during normal business hours (8:00 AM to 5:00 PM, Monday through Friday)? (*Check the one box* 🖾 *that most closely represents the experience in your jurisdiction*)



a. If no, how far is the closest court that you direct petitioners to go to file for a protection order? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

Less than 5 miles	6 to 15 miles	16 to 25 m	niles
Over 25 miles			

24. The budget for the court is prepared and monitored by (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

The municipal court presiding judge or court administrator
A city department ( <i>specify</i> ):
Other ( <i>specify</i> ):

25. From your perspective, how much weight does the city legislative authority place on the amount of revenue generated by your court in granting the court's budget requests? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

□ None □ a Little □ Some □ a Significant Amount

26. What percent of the court's customers - alleged offenders, and witnesses, litigants - can reach the courthouse from their home in the following amount of time? (*Fill in percentages that represent the experience in your jurisdiction. The numbers should total to 100%*)

5 % minutes or less	%	6 to 15 minutes	%	16 to 25 minutes	%	26 to 35 minutes	%	More than 35 minutes
---------------------------	---	--------------------	---	---------------------	---	---------------------	---	----------------------------

27. How frequently does the court hold arraignments for misdemeanor cases? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

week Delow)	Daily	Twice a week	Three times a week	Once a week	Other (specify below)
-------------	-------	--------------	--------------------------	-------------	-----------------------------

- Time Hearings Begin: \_\_\_\_\_ Other: \_\_\_\_\_
- 28. What is the longest time an incarcerated defendant would wait to have a first appearance in your jurisdiction? (Check the one box ⊠ that most closely represents the experience in your jurisdiction)



29. How frequently does the court hold infraction hearings? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

Daily Twice a week	Three times a week	Once a week	Other (specify below)
--------------------	--------------------------	-------------	-----------------------------

```
Time Hearings Begin: _____ Other: _____
```

30. When a driver requests a mitigation hearing in an infraction case, within how many weeks out would the hearing be set? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

One Two week Weeks	Three to four weeks	Five to six weeks	Over six weeks
-----------------------	---------------------------	-------------------------	-------------------

31. Does the court offer alternatives to in-person mitigation hearings? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

 $\Box$  Yes  $\Box$  No

a. If so what are they? (Check all the boxes  $\boxtimes$  that represent the experience in your *jurisdiction*)



32. Are court users required to travel to locations outside the court's facility to access the following services? (*Check all boxes*  $\boxtimes$  *that represent the experience in your jurisdiction*)

	Public Defender	Probation Depa	artment		
<ul> <li>33. Who makes initial indigence determinations? (<i>Check the one box</i> ⊠ <i>that most closely represents the experience in your jurisdiction</i>)</li> <li>□ Probation Department □ Court Staff □ Public Defender's Office</li> </ul>					
☐ Proba	1		Public Defender's	Office	
34. The Presiding Judg disagreement with		Court (Indicate the ex ents by checking the o		nt or	
	s with the administration	ator and staff on a reg	ular basis to discuss	court operations	
Strongly Agree	Agree	Neither agree or disagree	Disagree	Strongly Disagree	
Is act	ively involved in dev	veloping and monitor	ing the court's budge	t	
Strongly Agree	Agree	Neither agree or disagree	Disagree	Strongly Disagree	
Is ker	ot informed of the pro-	ocesses for collecting	and accounting for f	ees and fines	
Strongly Agree	Agree	Neither agree or disagree	Disagree	Strongly Disagree	
Super Strongly	rvises the operation of	Neither	Disagree	Strongly	
Agree	Agree	agree or disagree	Disagree	Disagree	
Is act	ively involved in cas	se assignment and cas	e management issues	·	
Strongly Agree	Agree	Neither agree or disagree	Disagree	Strongly Disagree	
Determine commissio		of an monitors the per	rformance of pro tem	judges and	
Strongly Agree	Agree	Neither agree or disagree	Disagree	Strongly Disagree	
35. Authority for order one box $\boxtimes$ that mo		ipment for the norma the experience in you		rt is (Check the	
	The municipal court	's responsibility			
	A city department's	responsibility (specify	y):		
	Other (specify):				

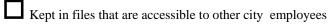
36. In appropriating funds for your court, does the funding authority (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

	Appropriate a "lump sum" for which the court can determine how monies should be spent
	Appropriate line item authority for spending, but the court can, on its own, move funding from one needed line item to another
	Authorize line item authority for spending; the court must get approval for moving funds from one line item to another
	The funding authority manages the budget
i <i>i</i>	w often does the presiding judge meet formally with other governmental entities that are volved in the justice system? ( <i>Check the one box</i> $\boxtimes$ <i>that most closely represents the experience your jurisdiction</i> )
	Monthly Twice a year Annually
	Does not have formal scheduled meetings As needed
i: <i>i</i> :	w often does the court administrator meet formally with other governmental entities that are rolved in the justice system? ( <i>Check the one box</i> 🗵 <i>that most closely represents the experience your jurisdiction</i> ) Monthly 🔲 Twice a year 🔲 Annually
	As needed Does not have formal scheduled meetings
39. (	average, how many days after disposition are abstracts of judgment mailed to the Department Licensing? (Check the one box $\boxtimes$ that most closely represents the experience in your isdiction)
	1 to 5 days6 to 10 days11 to 15 daysMore than 15 daysOther (specify below)
	Other time frame ( <i>specify</i> ):

40. Case files and other court records are (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

Kept in a separate secure place that is accessible only to court personnel

Kept in locked files accessible only to court personnel but in an office space that is accessible or shared by other city employees



41. Case files may be accessed directly (without court staff assistance) by (*Check all boxes* 🗵 *that represent the experience in your jurisdiction*)

Public defender	
-----------------	--

City prosecutor or city attorney

City law enforcement officer

Other city staff (specify):

None of the above/ Not applicable

42. Does your court send notice to offenders who are delinquent in making periodic payments of fines and costs prior to sending the case to the collection agency? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Yes No Not applicable because we don't use a collection agency

43. Are probation services provided in your court? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

If "Yes:"	Yes U No (If no,	skip to question 49)		
In every case	In every serious case	In every case where there is a previous violation	On a case- by-case basis	Other (specify below)

- Other (*specify*):
- 44. If you answered "yes" to the above question ARLJ 11 allows courts two methods for providing probation services. Which method is used in your court? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

P	robation Department
	Court probation clerk

We do not have probation services (*Skip to question 49*)

- 45. Average caseload for Probation Department officers is \_\_\_\_\_ active cases. (*Fill in the blank space*)
- 46. Average caseload for court probation clerk is \_\_\_\_\_ active cases. (Fill in the blank space)
- 47. Does the court assess the offender a fee for probation services? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

	Yes		No
--	-----	--	----

48. Describe the type of probation services provided by your court your court.

49. Describe the alternatives to incarceration that are routinely used by your court. (*Check all boxes* ⊠ *that represent the experience in your jurisdiction*)

Community Service

Domestic Violence Treatment/Counseling

Work releaseRoadside clean-up

Anger Management Counseling

Electronic Home Monitoring

	Restitution Traffic Safety Education
	Alcohol/drug treatment   DUI Victims Panel
	Other (specify):
50.	The use of incarceration as a sentence in your court is ( <i>Check the box</i> ⊠ <i>that most closely represents the experience in your jurisdiction</i> ) □ Increasing □ Decreasing □ No change □ Incarceration is not used by my court
51.	During the last three years which of the following annually offered programs has the judge attended? ( <i>Check all the boxes</i> $\boxtimes$ <i>that represent the experience in your jurisdiction</i> )
	DMCJA Spring Conference
	Annual Fall Judicial Conference
	National Judicial College
	Other ( <i>specify</i> ):
	During the past three years which of the following annually offered programs has the court inistrator attended? (Check all the boxes $\boxtimes$ that represent the experience in your jurisdiction)
	DMCMA Spring Conference
	Washington Court Managers' Spring Conference
	DMCMA Regional Education Meeting
	Other ( <i>specify</i> ):
53.	To the best of your knowledge, list the three major reasons why your city provides municipal court services in the manner they are presently provided.

(1)	
(2)	
(3)	
What steps has the court taken to educate the public a policies, and operations? ( <i>Check all boxes</i> $\boxtimes$ <i>that re</i>	
Brochures	□ Speaking engagements
Participation in programs	Periodic reports

Annual report

54.

Use of local media

 $\Box$  Other (*specify*):

55. If you were not bound by the current structural, financial, and physical limitations imposed by the way that your court provides limited jurisdiction services, what would you do differently? (*please briefly describe*)

Thank you for taking the time to complete the survey.



#### **RESPONDENT INFORMATION**

Respondent Name:	
	Judge Court Administrator
	Other (specify):
Respondent Phone: _	
Court Name:	
County:	
City:	

The Board for Judicial Administration has created a statewide Court Funding Task Force to look at funding in the trial courts. A subcommittee of this Task Force is charged with examining the variations in court structure and the consequent costs and financial impacts in the State's limited jurisdiction courts. The Justice Management Institute (JMI) is working with the Task Force to examine the wide range of practices and operations of these courts. JMI developed this survey in order to conduct comparisons of costs and standards of practices between district courts, independent municipal courts and those municipalities that contract for services with the district court. Your court has been selected as part of the sample group of courts being asked to complete the survey.

The presiding judge should complete the survey in coordination with the court administrator and return it directly to JMI (303/831-4564). Survey responses will be kept confidential and individual results will not be released. JMI is asking for respondent contact information (above) to enable us to conduct follow-up telephone interviews with selected jurisdictions. Individual court responses to this survey will not be identified in any way. Responses will be presented in aggregate form only.

In answering the following questions, please note that you are asked to answer some questions as they apply to cases <u>WITHIN THE CONTRACTED MUNICIPAL JURISDICTION OF YOUR DISTRICT</u> <u>COURT</u> and other questions as they apply to district court cases. The questions are designed to obtain information about the routine case or situation, not the unusual, complex, complicated, or notorious case or issue.

This survey takes approximately one hour to complete. Thank you for participating.

- 1. For how many municipal jurisdictions does the district court provide court services? (*Please fill in the blank with the correct number*)
- 2. List the municipalities for which the district court provides court services?

- 3. Contracted municipal jurisdiction cases in this court are (*Check all boxes*  $\boxtimes$  *that represent the experience in your jurisdiction*)
  - Assigned to jurisdiction-specific calendars without regard to which judge will hear the calendar
  - Assigned to jurisdiction-specific calendars for a specific judge who always hears cases from the jurisdiction
  - Assigned to judge-specific calendars for the next available date so that county/state cases and contracted municipal jurisdiction cases may appear on the same calendar on same date and session
  - Other (*specify*):
- 4. If contracted municipal jurisdiction cases are assigned to judge specific calendars, how are judges assigned to hear those calendars? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

The municipality selects the judge to be assigned to contracted cases The district court presiding judge assigns judges to these calendars Judges rotate in and out of these calendars

- 5. What percentage of total available judicial time is devoted to contracted municipal court cases? *(Fill in the blank space)* \_\_\_\_\_%
- 6. The space that the court uses for the courtroom is located (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)
  - In a separate building not shared with any other judicial, executive or legislative branch entity
  - In a building used by several governmental entities but courtrooms are specifically set aside for use only by the court
  - In a building used by several governmental entities where courtrooms are used also for public functions of other governmental entities

Other (specify):\_\_\_\_\_

- 7. The space that the court uses for staff and administrator's office space is located (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)
  - In a separate building not shared with any other judicial, executive or legislative branch entity
  - In a building used by several governmental entities but the court staff and administrator's office space is set aside specifically for use only by the court
  - In a building used by several governmental entities with the court staff and administrator's office space is jointly shared with other city staff In a building where offices for municipal court and district court share space Other (*specify*):
- 8. Staff of the court work on court functions (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

Full Time Part Time

9. The appointing authority for the court staff is (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

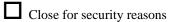
The district court presiding judge The district court administrator Other (*specify*):

- 10. If the judge of the district court is part-time, how is he/she available to the court administrator if a problem arises? (*Check all boxes* 🗵 *that represent the experience in your jurisdiction*)
  - Not applicable By telephone On a "drop-in" basis At the next scheduled court day
- 11. If the judge works part-time and is not available, who does the court administrator typically contact if a problem occurs? (*Check all boxes* ⊠ *that represent the experience in your jurisdiction*)

Not Applicable Another judge Another court administrator Another government official AOC

12. The presiding judge of the court has the authority to (*Check all boxes*  $\boxtimes$  *that represent the experience in your jurisdiction*)

Set court office and hearing hours



Close for inclement weather

Close for other reasons

13. Responsibility for efficient and effective distribution of tasks rests with (*Check all the boxes in that represent the experience in your jurisdiction*)

The presiding judge The court administrative staff Another county employee The city council The county commissioners Other (*specify*):

14. What information about contracted municipal jurisdiction cases does the court regularly provide the contracting city? (*Check all the boxes* 🗵 *that most closely represent the experience in your jurisdiction*)

Summaries of criminal dispositions Summaries of infraction dispositions Summaries of collections and court revenue Workload information (e.g., filings, proceedings) Other (*specify*):

15. Does a city official outside the court independently evaluate and report to the Mayor or City Council on contracted municipal jurisdiction operations or costs? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Yes I No I I do not know

If "Yes," to whom?

16. How are defendants advised of their rights? (*Check all the boxes* 🗵 *that represent the experience in your jurisdiction*)

Judicial officer advises them as a group at arraignment. Judicial officer advises each individual defendant when his/her case is called. The public defender explains rights. Other (*specify*): 17. How does the judicial officer verify if the attendees understand the proceedings? (*Check all the boxes* 🗵 *that represent the experience in your jurisdiction*)

The judicial officer asks defendants if they have read the printed advice of rights. The judicial officer asks defendants if they understand they have a right to an attorney.

The judicial officer asks defendants if they can read. Other (*specify*):

18. If a defendant requires an interpreter is one made available on infractions hearings? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

Yes	ΠN	C
-----	----	---

If "no," what is the court's procedure for handling non-English speaking defendants (e.g., proceed with or reschedule arraignment, use court staff or a family member)? (*Please explain briefly*).

19. If a defendant requires an interpreter is one made available on the first appearance? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

<b>V</b> es	D <sub>No</sub>
-------------	-----------------

If "no," what is the court's procedure for handling non-English speaking defendants (e.g., proceed with or reschedule arraignment, use court staff or a family member)? (*Please explain briefly*).

20. For contracted municipal jurisdiction cases, the prosecutor is (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

A city attorney/prosecutor A county prosecutor Other (*specify*):

21. Is a prosecutor present at arraignment for contracted municipal jurisdiction cases? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)



22. Are public defender services available at arraignment? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

Yes 📙 No

23. Does the court accept pleas of guilty without defendant's counsel present? (*Check the one box* 🗵 *that represents the experience in your jurisdiction*)



- 24. Persons who choose to represent themselves at criminal hearings (*Check all boxes* 🗵 *that represent the experience in your jurisdiction*)
  - Can obtain all needed forms and instructions written in non-technical terminology by contacting the court's website
  - Can obtain all needed forms and instructions written in non-technical terminology by going to the court
  - Can obtain assistance through the court's self-help program
  - Are advised of their right to a public defender
  - Are told that they should hire an attorney
  - Are on their own
- 25. On a scale of 1 to 7 with 7 being the most important, please rank the importance of the following court functions from the perspective of the groups identified. *Only one characteristic should be given a rank of 7, one given the rank of 6, etc.*

Characteristic	Group's Perceived Actual Priority
Enforcement of State and local Laws	
Generation of Revenue	
Protection of the Rights of Offenders	
Convenience of Governmental Employees	
Prompt and efficient disposition of the court's business	
Equal treatment of all without regard to race, gender, ethnicity, sexual preference, or age	
Responsiveness to local criminal justice enforcement priorities	

#### **GROUP I: COURT JUDGES AND STAFF**

#### **GROUP II: CONTRACTED CITY GOVERNMENT**

Characteristic	Group's Perceived Actual Priority
Enforcement of State and Local Laws	
Generation of Revenue	
Protection of the Rights of Offenders	
Convenience of Governmental Employees	
Prompt and efficient disposition of the court's business	
Equal treatment of all without regard to race, gender, ethnicity, sexual preference, or age	
Responsiveness to local criminal justice enforcement policies	

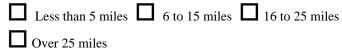
26. How frequently do people come to your court to pay an infraction penalty or schedule a hearing for a ticket that was filed in another court? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)



27. Can a petitioner get a domestic violence protection order in your court during normal business hours (8:00 AM to 5:00 PM, Monday through Friday)? (*Check the one box* 🖾 *that most closely represents the experience in your jurisdiction*)



If "no," how far is the closest court that you direct petitioners to go to file for a protection order? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)



28. Does the district court presiding judge or court administrator participate in negotiating the contract for services for contracted municipal court cases? (*Check the one box* 🖾 *that most closely represents the experience in your jurisdiction*)



29. From your perspective, how much weight does the county legislative authority place on the amount of revenue generated by your court in granting the court's budget requests? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

None a Little Some a Significant Amount

30. What percent of all the court's customers - alleged offenders, and witnesses, litigants - can reach the courthouse from their home in the following amount of time? (*Fill in percentages that represent the experience in your jurisdiction. The numbers should total to 100%*)

%	5 minutes or less	%	6 to 15 minutes	%	16 to 25 minutes	%	26 to 35 minutes	%	More than 35 minutes
---	-------------------------	---	--------------------	---	---------------------	---	---------------------	---	----------------------------

31. How frequently does the court hold arraignments for contracted municipal jurisdiction misdemeanor cases? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

	Daily		Twice a week		Three times a week		Once a week		Other (specify below)	
	Time Hearings Beg	gin:			Other	:			_	
	This frequency is (Check the one box								ses.	
32.	32. What is the longest time an incarcerated defendant would wait to have a first appearance on a contracted municipal court case in your jurisdiction? ( <i>Check the one box</i> $\boxtimes$ <i>that most closely represents the experience in your jurisdiction</i> )									
		One day	Two days		Three days or more		We don't inca	arcerate		
	This time is $\square$ g	reater thar	n 🗖 less	than 🗖	the same a	us other d	istrict cour	t cases.		

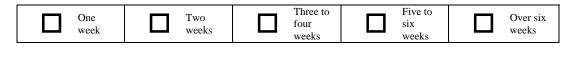
(*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

33. How frequently does the court hold contracted municipal jurisdiction infraction hearings? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Daily	Twice a week	ti	hree mes a veek	Once a week	Other (specify below)
Time Hearings Beg	gin:	·	Other:		
г	-	-, r	-		

This frequency is  $\square$  greater than  $\square$  less than  $\square$  the same as other district court cases. (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

34. When a driver requests a mitigation hearing in a contracted municipal jurisdiction infraction case, within how many weeks out would the hearing be set? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)



This time is  $\square$  greater than  $\square$  less than  $\square$  the same as other district court cases. (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

35. Does the court offer alternatives to in-person mitigation hearings? (*Check the one box* 🗵 *that most closely represents the experience in your jurisdiction*)

	Yes No	in your jurisaiction)		
	If so what are they? (Chajurisdiction)	eck all boxes $\boxtimes$ that	represent the experi	ence in your
	Hearing by mail			
	Hearing by e-ma			
	$\Box \text{ Other } (specify):$			
36.	For contracted municipal jurisdiction c the court's facility to access the follow <i>experience in your jurisdiction</i> )	ing services? (Check	k all boxes $\boxtimes$ that re	
	$\square$ No $\square$ Public Defend	er 📙 Probation I	Department	
37.	For district court cases, are court users access the following services? ( <i>Check jurisdiction</i> )	all boxes $\boxtimes$ that rep	present the experience	
			<i>Separation</i>	
38.	For contracted municipal jurisdiction of the one box 🖾 that most closely represent Probation Department Judicial Officer	sents the experience Court Staff	in your jurisdiction) Public Defender'	s Office
30	For district court cases, who makes init	tial indigence determ	instions? (Chack th	e one hor 🛛 that
57.	most closely represents the experience			e one box 🖂 indi
	Probation Department	Court Staff	Public Defender'	s Office
	Judicial Officer Oth			
		ner ( <i>specify</i> ):		
40.	The presiding judge (Indicate the exten		t or disagreement wi	th the following
	statements by checking the appropriate	$e box \boxtimes.)$		
	Works with the administr	ator and staff on a re	gular basis to discus	s court operations
г	and management issues	•		•
	Strongly Agree Agree	Neither agree or disagree	Disagree	Strongly Disagree
	Is actively involved in de	veloping and monito	ring the court's budg	get
	Strongly Agree	Neither agree or	Disagree	Strongly
	Agree Agree	disagree		Disagree
	Is kept informed of the pr	rocesses for collectin	g and accounting for	fees and fines
	Strongly Agree	Neither agree or	Disagree	Strongly
	Agree Agree	disagree		Disagree

Su	pervises the operation	of the court								
Strongl Agree	y Agree	Neither agree or disagree	Disagree	Strongly Disagree						
Is	actively involved in ca	se assignment and ca	ase management issu	ies						
Strongl Agree	y Agree	Neither agree or disagree	Disagree	Strongly Disagree						
Determines the qualifications of and monitors the performance of <i>pro tem</i> judges and commissioners										
Strongl Agree	y Agree	Neither agree or disagree	Disagree	Strongly Disagree						

41. Authority for ordering supplies and equipment for the normal business of the court is (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

The court's responsibility

A government department's responsibility (*specify*): Other (*specify*):

42. In appropriating funds for the district court, does the funding authority (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

Appropriate a "lump sum" for which the court can determine how monies should be spent

Appropriate line item authority for spending, but the court can, on its own, move funding from one needed line item to another

Authorize line item authority for spending; the court must get approval for moving funds from one line item to another

The funding authority manages the budget

ju				ed with the contracted nost closely represents					
City costs are a proportion of the total district court budget based on the numl filings from the contracted municipal jurisdiction as compared to total dis court filings.									
	City	costs are a proportion contracted munic		t court budget based on cases as compared t					
	<ul> <li>court filings.</li> <li>City costs are established based on the actual cost of personnel, supplies, equipmen and other items devoted to contracted municipal jurisdiction cases.</li> <li>The county retains all or a portion of revenue from contracted municipal jurisdiction cases to pay for the costs of city cases.</li> <li>Other (<i>specify</i>)</li> </ul>								
m		cuss court operation		tice system entities fr one box ⊠ that most					
	Monthly	Twice a year	Annually						
C	As needed	Does not have f	formal scheduled me	etings					
fr m	om the contracted ost closely repres	I municipality to dis	scuss court operation in your jurisdiction	i justice system and fu issues? ( <i>Check the o</i> )					
Ľ	As needed	Does not have f	formal scheduled me	etings					
ju	risdiction cases n		ment of Licensing?	of judgment from con $(Check the one box \boxtimes$					
	1 to 5 days	6 to 10 days	11 to 15 days	More than 15 days	Other (specify below)				
0	ther time frame (	specify):							
				as other district court erience in your jurisd					

47. Case files and other court records are (*Check all boxes* ⊠ *that represent the experience in your jurisdiction*)

Kept in a separate secure place that is accessible only to court personnel Kept in locked files accessible only to court personnel but in an office space that is accessible or shared by other city employees

Kept in files that are accessible to other county or city employees

48. Case files may be accessed directly (without court staff assistance) by (*Check all boxes* ∑ *that represent the experience in your jurisdiction*)
 Public defender

County prosecutor or city attorney Law enforcement officer Other county/city staff (*specify*):

49. Does your court send notice to offenders in contracted municipal jurisdiction cases who are delinquent in making periodic payments of fines and costs prior to sending the case to the collection agency? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Yes No Not applicable because we do not use a collection agency

Other (specify

below)

50. Are probation services provided for contracted municipal jurisdiction cases in your court? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Yes	No(	If no.	skip	to a	question 58	)

In every case In every case Case In every serious case Case In every where there is a previous violation In every	If "Yes:"				
		serious	case where there is a previous	by-case	(specify

Other (*specify*):

П

51. Are probation services provided for district court cases in your court? (*Check the one box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)

previous violation

		Yes 🗖	No ( <i>lf no</i> ,	skip to qu	estion 58)		
If "Yes:"	,						
	In every case		In every serious case		In every case where there is a	On a case- by-case basis	

Other (*specify*):

52. How are probation services provided for contracted municipal jurisdiction cases? (*Check the one box* ⊠ *that most closely represents the experience in your jurisdiction*)

Not applicable because we do not provide probation services (*Skip to question 58*) The municipality contracts with the district court to provide services, using the district court's probation services.

The city provides its own probation service or department. Other (*specify*):

- 53. ARLJ 11 allows courts two methods for providing probation services. If probation services are provided by the district court for contracted municipal jurisdiction cases, which method is used? (Check the one box ⊠ that most closely represents the experience in your jurisdiction) Probation department Court probation clerk Both probation department and court probation clerk We do not have probation services (Skip to question 58)
- 54. If probation services are provided for district court cases, which method is used? (Check the one box ⊠ that most closely represents the experience in your jurisdiction)
  Probation department
  Court probation clerk
  Both probation department and court probation clerk
  We do not have probation services (Skip to question 58)
- 55. Average caseload for Probation Department officers is \_\_\_\_\_ active cases. (*Fill in the blank space*)
- 56. Average caseload for court probation clerk is \_\_\_\_\_ active cases. (Fill in the blank space)
- 57. Does the court assess the offender a fee for probation services? (*Check the box*  $\boxtimes$  *that represents the experience in your jurisdiction*)

 $\Box$  Yes  $\Box$  No (*Skip to question 58*)

58. Describe the alternatives to incarceration that are routinely used by your court for contracted municipal jurisdiction cases. (Check all boxes 🗵 that represent the experience in your jurisdiction)

Community Service	Domestic Violence Treatment/Counseling
U Work release	Anger Management Counseling
Roadside clean-up	Electronic Home Monitoring
Restitution	Traffic Safety Education
Alcohol/drug treatment	DUI Victims Panel
Other (specify):	

59. Describe the alternatives to incarceration that are routinely used by your court for district court cases. (Check all boxes is that represent the experience in your jurisdiction)

Work release	Anger Management Counseling
Roadside clean-up	Electronic Home Monitoring
Restitution	Traffic Safety Education
Alcohol/drug treatment	DUI Victims Panel
Other ( <i>specify</i> ):	

- 60. T *box*  $\boxtimes$  *that most closely represents the experience in your jurisdiction*)
  - $\Box$  Increasing  $\Box$  Decreasing  $\Box$  No change  $\Box$  Incarceration is not used by my court
- 61. The use of incarceration as a sentence for district court cases is (Check the box 🖾 that most closely represents the experience in your jurisdiction)

	Increasing		Decreasing		No change		Incarceration is not u	sed by	/ my	court
--	------------	--	------------	--	-----------	--	------------------------	--------	------	-------

62. During the last three years which of the following annually offered programs has the judge attended? (Check all the boxes  $\boxtimes$  that represent the experience in your jurisdiction) DMCJA Spring Conference Annual Fall Judicial Conference

National Judicial College Other (specify):

63. During the past three years which of the following annually offered programs has the court administrator attended? (*Check all the boxes* 🖾 *that represent the experience in your jurisdiction*)

DMCMA Spring Conference Washington Court Managers' Spring Conference DMCMA Regional Education Meeting Other ( <i>specify</i> ):
To the best of your knowledge, list the three major reasons why the city or cities provide municipal court services by contracting with the county.
(1)
(2)
(3)
What steps has the court taken to educate the public about the district court's objectives, policies, and operations? (Check all boxes 🗵 that represent the experience in your jurisdiction) Brochures Speaking engagements Participation in programs Periodic reports Use of local media Annual report Other (specify):
If you were not bound by the current structural, financial, and physical limitations imposed by the way that your court provides district and municipal court services, what would you do differently?

Thank you for taking the time to complete the survey.

The Justice Management Institute

1900 Grant Street, Suite 630 Denver, Colorado 80203

### **ALWAYS THE PEOPLE:**

Delivering limited jurisdiction court services throughout Washington

### **APPENDIX TWO**

## **INTERVIEW QUESTIONS**

#### **THE JUSTICE MANAGEMENT INSTITUTE** 1900 Grant Street, Suite 630 Denver, Colorado 80203 Interview Questions

Instructions:

As you know, the Board for Judicial Administration has created a statewide Court Funding Task Force to look at funding in general. A subcommittee of this Task Force is charged with examining the variations in court structure and the consequent costs and financial impacts in the State's limited jurisdiction courts. The Justice Management Institute (JMI) is working with the Task Force to examine the wide range of practices and operations of these courts. JMI developed a survey in order to conduct comparisons of costs and standards of practices between separate, freestanding municipal courts and those where the municipalities contract for services with the local district court. Your court responded to the survey.

The next stage in the process that JMI is using involves conducting follow-up interviews with a sample of the courts that responded to the survey. The questions that we will be asking are designed to gather additional information and to elaborate on the results from the surveys. As in the survey itself, responses to the interview questions will be kept confidential and individual results will not be released. Individual court responses to the interviews will not be identified in any way. Responses will be presented in aggregate form only.

In answering the following questions, please respond only as the information applies to cases within your court. The questions are designed to obtain information about the routine case or situation, not the unusual, complex, complicated, or notorious case or issue.

A member of JMI's staff will contact you to schedule the interview. The interviews will take no more than one hour.

The following are the questions that we will be covering during the interviews Thank you in advance for participating.

- 1. From the perspective of the court, the clients of the court, the public, and the funding authority, what are the most significant reasons why the structure that your court uses to provide limited jurisdiction services is a good one? What are the most significant reasons why the structure that your court uses to provide limited jurisdiction services is not a good one? What could be done within the existing structure to make your local system more effective?
- 2. (Reference Question: Does another city official outside the court evaluate and report to the Mayor or City Council on court operations?)

The survey demonstrates that in 50% of responding courts a city official outside the court evaluates and report to the mayor or city council on court operations.

Are you knowledgeable of why and how this practice is used?

Do you perceive there to be any encroachments on the independence of your court?

3. (Reference Question: From your perspective, how much weight does the city and county legislative authority place on the amount of revenue generated by your court in granting the court's budget requests?)

The majority of courts answered that they at least felt some weight from the city or county legislative authority to generate revenue.

In what ways, if any, has this funding authority placed pressure on your court?

How has your court responded from the standpoint of revenue production?

How has your court responded from the standpoint of cost control or cost reduction?

4. (*Reference Question: How often does the presiding judge meet formally with other justice system entities that are involved in the justice system?*)

Many courts reported that they meet on an as needed basis.

What are the reasons that you meet with other justice system entities?

In general, what is the atmosphere (culture) of these meetings? Who runs the meetings?

5. (Reference Question: The use of incarceration as a sentence in your court is increasing; decreasing; no change; incarceration is not used by my court )

According to our survey results, the use of incarceration as a sentence is decreasing in some courts, increasing in others, and in a few courts there is no change in the use of incarceration. In your court, incarceration usage is

Why do you think this is the trend in your jurisdiction?

Why is the trend occurring in only select jurisdictions (is there a pattern)?

How is your court managing the jail population?

What methods, if any, has the court employed to contain or reduce jail costs?

Is the funding authority for the jails suggesting that your court use incarceration for only select types of cases? If so, has this pressure impacted the use of alternative to incarceration?

6. (*Reference Question: Does your court send notice to offenders who are delinquent in making periodic payments of fines and costs prior to sending the case to the collection agency?*)

The survey results showed that many courts send a notice to offenders who are delinquent in making periodic payments of fines and costs prior to sending the case to the collection agency.

Does your court permit monthly installments of fines, penalties, and costs? If so, how do you manage periodic payments? If an individual misses a payment, what steps do you take to ensure that the fine/penalty gets paid?

What would be the advantages of a centralized collection agency? The disadvantages?

How do you measure enforcement success (e.g., collection rate, revenue generation)?

7. (*Reference Question: Can a petitioner get a domestic violence protection order in your court during normal business hours?*) – refer to survey for answer

If NO:

Do you frequently have petitioners coming to your court to get a domestic violence protection? Is this a problem?

Who informs petitioners that your court does NOT issue protection orders?

What kind of information does the court give these individuals on the correct court, location and process for filing a protection order?

If YES or NO:

Why did your court elect (not) to issue protection orders?

8. (*Reference Question: How frequently do people come to your court to pay an infraction penalty or schedule a hearing for a ticket that was filed in another court?*)

Preliminary survey results indicate that citizens will often attempt to pay an infraction penalty or schedule a hearing for a ticket that was filed in another court.

What primary factors do you attribute to this confusion?

What steps have you taken or would you take to reduce and eliminate this confusion?

From your perspective, are there areas of duplication between district and municipal courts that could be eliminated to increase efficiency and reduce litigant confusion?

9. From your perspective, which statement is more accurate and why? (Both statements can be correct, but please select the statement which holds more value)
Statement A: Residents are looking for close and convenient access to limited jurisdiction services.

Statement B: It is an important value in the community to have its own municipal court.

10. In what ways do you think your court is serving/addressing the local needs of your community?

<u>For independent municipal courts</u>: Do you think a municipal jurisdiction contracted to a district court will not be able to adequately address the needs and values of the community? If not, why?

11. From your perspective, what are the top 3 services your court provides?

Do you think you are more or less likely to provide each of the identified services if your court was structured differently?

Do you think structural changes need to be made in the trial courts? If so, what are viable changes?

Do you feel that the district and municipal courts work cooperatively? If so, what is an example of this cooperation? If not, what could be done to improve the courts' relationship?

<u>For independent municipal courts</u>: Does the district court provide any services for your court (e.g., jury trials, case processing, administrative, probation)?

<u>For contracted municipal courts</u>: Does the district court accommodate municipal court cases (e.g., take into consideration law enforcement schedules or are municipal court cases sprinkled throughout the day)?

12. (*Reference Question: To the best of your knowledge, list the three major reasons why your city provides municipal court services in the manner they are presently provided.*)

Does your experience agree with these reasons?

- 13. If you were not bound by the current structural, financial, and physical limitations imposed by the way that your court provides limited jurisdiction services, what would you do differently?
- 14. (*Reference Question: Are probation services provided by your court?*) refer to the written survey to check the answer

If NO: Do any types of cases get put on probation?

If YES: Which types of cases get probation?

Does probation have a significant impact on recidivism rates?

How could probation services be provided more economically and effectively?

- 15. Are statistical reports on the caseload and other issues routinely produced and shared with staff? Does this information (reports) influence the way your court manages/processes cases?
- 16. Does the court monitor the average time for any incremental events in the case process, e.g., Arraignment to trial; Trial to sentencing, *etc*.
- 17. Does the court monitor the number of appearances required to conclude the routine case?
  - Misdemeanor Guilty Plea
  - Misdemeanor Trial
  - Infractions Hearing
  - Infractions Mitigation hearing
  - Pay out of infraction
- 18. Have you had any training (national, state, or local) related specifically to caseflow management?
  - Training of *Pro Tem* Judges and Commissioners

• Training for Judges and Staff

# State of Washington

Ethics Advisory Committee Opinion 04-05

## STATE OF WASHINGTON ETHICS ADVISORY COMMITTEE OPINION 04-5

# <u>Question</u>

May a judicial officer approve a Stipulated Order of Continuance (SOC) that requires the defendant perform some treatment conditions and make a monetary "donation" to the city in return for the dismissal of a criminal charge when the court does not collect the "donation"?

Does it matter if the only condition in the agreement is a monetary "donation" that the court does not collect in exchange for a dismissal of the criminal charge?

May a judicial officer agree to continue a case where there is an agreement between the parties either to dismiss the case or conduct a stipulated trial where the parties do not initially advise the court of the specific terms of the agreement and the agreement includes a "donation" to the city?

May a judicial officer find that a defendant has violated the terms of an agreement by failing to pay a "donation" where the defendant was financially able to pay?

Does it matter that the "donations" are not collected by the court but are placed in a fund administered by the city for the benefit of particular programs?

Is there an ethical difference between approving these agreements in civil infraction cases versus criminal cases?

The city prosecutors negotiate pre-trial diversion agreements to resolve criminal and civil cases that at times include payments, usually to the city human services fund.

For cases involving domestic violence crimes, the prosecutors negotiate a stipulated order of continuance (SOC). The negotiated agreement normally includes the prosecutors' commitment to dismiss the case in exchange for the defendant: (1) agreeing to a stipulated trial and waiving speedy trial rights; (2) completing applicable treatment programs (i.e. DV victims panel, DV counseling, mental health treatment, and/or alcohol treatment, etc); (3) payment of any restitution; and (4) payment to the city human services fund. Some agreements could only require a "donation". The terms are presented to the court for approval and an order of the court is signed acknowledging the posture of the case. Probation usually monitors the defendant's compliance with the agreement and sets hearings for the prosecutors to review alleged violations. The prosecutors ask the court to find a violation of the terms of the agreement and proceed to the stipulated trial if there has been noncompliance.

With non-DV cases such as Theft 3° and Assault 4°, the parties are entering a statement of defendant on submittal or stipulation to facts that is accepted without finding but then set over for a time period to allow the defendant to complete certain conditions that could include a "donation".

For cases involving traffic infractions the prosecutors may agree to dismiss an infraction if the driver (1) waives any objection to the infraction and (2) makes an agreed payment to the human services fund. If the driver does not remit the payment, the prosecutors do not dismiss the case. The court places the case on a summary calendar whereby the defendant's driving abstract reflects the infraction and applicable penalties are imposed.

Since 1999, the city has received funds from a community development block grant to fund a part-time DV advocate in the prosecutor's division. The city's human services commission, which administers the grant funds, notified the city that it would not recommend using the grant funds in 2004 to fund the part-time DV advocate. Although the city has used these agreements in the past to fund some community services, it would now like to partially fund the part-time DV advocate from human services funds received in accordance with the prosecutors' diversion agreements.

# <u>Answer</u>

CJC Canon 2(A) provides in part that judges should respect and comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. CJC Canon 3(A) requires judges to perform their duties of office impartially and diligently. RCW 3.62.090 provides that the public safety and education assessment shall be assessed and collected in addition to any fines, forfeitures and penalties. That statute also provides that the assessment may not be suspended or waived when a fine, forfeiture or penalty is imposed.

The conduct of a judicial officer must promote the public confidence in the integrity and impartiality of the judiciary. In weighing whether a judicial officer should approve agreements made between the city and defendants in criminal and infraction cases, the judicial officer must consider the affect the agreement will have on the integrity and impartiality of the judiciary.

The legislature by enacting RCW 3.50.100 and RCW 3.62.090 has determined how revenue received by the court shall be distributed. A judicial officer has an ethical obligation to ensure that money is disbursed according to these statutory provisions. In furtherance of that obligation, a judicial officer should not approve agreements which deviate from statutory provisions.

CJC Canon 2(A) imposes on a judicial officer an obligation to promote the public confidence in the judiciary. If a judicial officer routinely approves of agreements wherein the city and a defendant have agreed to case dispositions in which money is to be paid to the city which is not in accord with statutory provisions, the public confidence in the court system is undermined.

This opinion does not rule out other approaches; by way of example, it may be possible to impose an additional penalty in a domestic violence case, provided that such a penalty is authorized by statute and that the payment is allocated in compliance with statutory requirements.

Opinion 04-05

8/16/2004



139 Wash.2d 211, 985 P.2d 924 View Washington Reports version

Supreme Court of Washington,

En Banc.

In the Matter of the Disciplinary Proceeding Against A. Eugene

HAMMERMASTER, Municipal Court Judge.

No. JD # 15.

Argued June 10, 1999.

Decided Oct. 7, 1999.

Following disciplinary investigation, Commission on Judicial Conduct (CJC) ordered censure of municipal court judge and recommended suspension for 30 days without pay. The Supreme Court, Madsen, J., held that violations of Canons of Judicial Conduct arising from conduct of judge, who was guilty of pattern of misconduct committed in his official courtroom capacity, warranted order of censure and six-month suspension without pay.

Censure and suspension ordered.

Talmadge, J., concurred and filed opinion.

West Headnotes



<u>227</u> Judges
 <u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(5)</u> Proceedings and Review
 <u>227k11(8)</u> k. Reference and Review. <u>Most Cited Cases</u>

State Constitution establishes a Commission on Judicial Conduct (CJC), which is empowered to investigate complaints against judicial officers, conduct hearings, make recommendations for discipline to Supreme Court, and establish rules of procedure for commission proceedings. <u>West's RCWA Const. Art. 4, § 31</u>.



227 Judges
227I Appointment, Qualification, and Tenure
227k11 Removal or Discipline
227k11(5) Proceedings and Review
227k11(7) k. Evidence. Most Cited Cases

Commission on Judicial Conduct (CJC) bears burden of proving alleged ethical violations of judge by clear, cogent, and convincing evidence.

[3] KeyCite Notes

Independent of the second state of the seco

Supreme Court's review of judicial disciplinary proceedings by Commission on Judicial Conduct (CJC) is de novo.

[4] KeyCite Notes

<u>227</u> Judges
 <u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(5)</u> Proceedings and Review
 <u>227k11(8)</u> k. Reference and Review. <u>Most Cited Cases</u>

Supreme Court's de novo review of judicial disciplinary proceedings requires an independent evaluation of the record, and findings or conclusions by Commission on Judicial Conduct (CJC) do not bind Supreme Court.

[5] KeyCite Notes

<u>≔227</u> Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(5)</u> Proceedings and Review
 <u>227k11(8)</u> k. Reference and Review. <u>Most Cited Cases</u>

While Supreme Court gives considerable weight to credibility determinations made by Commission on Judicial Conduct (CJC), and serious consideration to CJC's recommended sanctions, use of the word "recommend" in provision of State Constitution establishing CJC indicates an intent to place the ultimate decision to discipline in the Supreme Court. <u>West's RCWA Const. Art. 4, § 31</u>.

[6] KeyCite Notes

<mark>≔227</mark> Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

Conduct of municipal court judge in threatening to impose life imprisonment, or indefinite jail sentences, against defendants who had failed to pay fines imposed as part of sentencing obligations, which were penalties outside his lawful authority, violated Canons of Judicial Conduct under which judges should comply with law and act in manner that promotes public confidence in judiciary, should be faithful to the law, and should be patient, dignified, and courteous to persons with whom they deal in their official capacity. CJC 2(A), 3(A)(1, 3).

[7] KeyCite Notes

(=<u>110</u> Criminal Law (=<u>110XX</u> Trial (=<u>110XX(B)</u> Course and Conduct of Trial in General (=<u>110k654</u> Remarks and Conduct of Judge (=<u>110k655</u> In General (=<u>110k655(1)</u> k. In General. <u>Most Cited Cases</u>

While a judge is entitled to latitude in discussions with defendants, using threats which exceed judicial authority is unacceptable, even if the judge believes such threats are the only way to

coerce compliance.

[8] KeyCite Notes

Criminal Law
 <u>110XX</u> Trial
 <u>110XX(B)</u> Course and Conduct of Trial in General
 <u>110k654</u> Remarks and Conduct of Judge
 <u>110k655</u> In General
 <u>110k655(1)</u> k. In General. <u>Most Cited Cases</u>

Concept of judicial independence does not equate to unbridled discretion on part of judge to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants.

KeyCite Notes

Constitutional Law
 <u>92111</u> Distribution of Governmental Powers and Functions
 <u>92111(B)</u> Judicial Powers and Functions
 <u>92k67</u> k. Nature and Scope in General. <u>Most Cited Cases</u>

Doctrine of judicial independence requires a judge to commit to following the constitution, statutes, common law principles, and precedent without intrusion from or intruding upon other branches of government, and does not refer to independence from judicial disciplinary bodies, or from higher courts.

[10] KevCite Notes

<u> ←227</u> Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

Practice of municipal court judge in accepting guilty pleas without first determining whether pleas were knowing, intelligent, and voluntary, which failed to comply with requirements of due process and criminal rules, violated Canon of Judicial Conduct under which judges should be faithful to the law and maintain professional competence in it, even though judge claimed that he was acting in good faith belief that practice complied with law, and had relied on input of attorneys. <u>U.S.C.A. Const.Amend. 14</u>; CrRLJ 4.2; <u>CJC 3(A)(1)</u>.



Criminal Law
 <u>110</u> Criminal Law
 <u>110XV</u> Pleas
 <u>110k272</u> Plea of Guilty
 <u>C110k273.1</u> Voluntary Character
 <u>110k273.1(4)</u> k. Ascertainment by Court; Advising and Informing Accused. <u>Most Cited</u>

Cases

Judge has a duty to ensure that guilty pleas are knowingly, voluntarily, and intelligently made, and at a minimum, this requires the defendant to be apprised of the essential elements of the offense, as well as any mandatory minimum sentence and the statutory maximum.



₽ 227 Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

A judge's action need not be undertaken in bad faith or malice to warrant disciplinary action, and discipline may be appropriate even though the judge acted out of neglect or ignorance.

[13] KeyCite Notes

₽ 227 Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>C227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

While legal error by judge is usually a matter for appeal and does not generally trigger judicial discipline, a repeated pattern of failing to protect a defendant's constitutional rights can constitute judicial misconduct.



<u>≔227</u> Judges

<u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(1)</u> k. In General; Constitutional and Statutory Provisions. <u>Most Cited Cases</u>

Judicial conduct creating the need for disciplinary action can grow from the same root as judicial conduct creating potential appellate review, but one does not necessarily exclude the other; one path seeks to correct past prejudice to a particular party, while the other seeks to prevent potential prejudice to future litigants and the judiciary in general.

[15] KeyCite Notes

<u>≔227</u> Judges

<u>C=2271</u> Appointment, Qualification, and Tenure
 <u>C=227k11</u> Removal or Discipline
 <u>C=227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

Practice of municipal court judge in conducting trials in absentia, by requiring criminal defendants to sign constitutionally defective "not guilty" form at arraignment which waived rights to counsel, to jury trial, and to be present, violated Canon of Judicial Conduct under which judges should be faithful to the law and maintain professional competence in it, even though judge claimed that he was acting in good faith belief that practice complied with law. CrRLJ 3.4(a); CJC 3(A)(1).



Under criminal rules, trial may not commence in the absence of the defendant regardless of his purported waiver of his right to be present. CrRLJ 3.4.



;<u>⇒227</u> Judges

<u>Carrier Construction</u>
 <u>Carrier Construc</u>

Municipal court judge's pattern of making intemperate comments to defendants, which were consistent with his tendency to bully and intimidate defendants, violated Canons of Judicial Conduct under which judges should comply with law and act in manner that promotes public confidence in judiciary, should be faithful to the law, and should be patient, dignified, and courteous to persons with whom they deal in their official capacity. CJC 2(A), 3(A)(1, 3).



;<u>⇒227</u> Judges

<u>Appointment</u>, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(2)</u> k. Standards, Canons, or Codes of Conduct, in General. <u>Most Cited Cases</u>

Actions of municipal court judge in routinely asking Hispanic criminal defendants about their immigration status, ordering them to enroll in English courses, and/or ordering them to leave the country, constituted pattern and practice which violated Canon of Judicial Conduct under which judges should be faithful to the law and maintain professional competence in it.  $\underline{CJC}$  <u>3(A)(1)</u>.

[19] KeyCite Notes

<u>≔227</u> Judges

Violations of Canons of Judicial Conduct arising from conduct of municipal court judge who was guilty of pattern of misconduct committed in his official courtroom capacity, which included improper threats of indefinite jail sentences to defendants who had failed to pay fines, violating rights of defendants by improperly accepting guilty pleas without proper colloquy and holding trials in absentia, and making intemperate comments, warranted order of censure and sixmonth suspension without pay.

[20] KeyCite Notes

<u>227</u> Judges
 <u>2271</u> Appointment, Qualification, and Tenure
 <u>227k11</u> Removal or Discipline
 <u>227k11(4)</u> k. Grounds and Sanctions. <u>Most Cited Cases</u>

In imposing sanction for judicial misconduct, Supreme Court must consider (1) whether the misconduct is an isolated instance or evidenced a pattern of conduct, (2) nature, extent and frequency of occurrence of acts of misconduct, (3) whether the misconduct occurred in or out of courtroom, (4) whether the misconduct occurred in judge's official capacity or in his private life, (5) whether judge has acknowledged or recognized that acts occurred, (6) whether judge has

evidenced an effort to change or modify his conduct, (7) length of service on the bench, (8) whether there have been prior complaints about judge, (9) effect misconduct has upon integrity of and respect for judiciary, and (10) extent to which judge exploited his position to satisfy his personal desires.



<u> 227</u> Judges

<u>2271</u> Appointment, Qualification, and Tenure
<u>227k11</u> Removal or Discipline
<u>227k11(4)</u> k. Grounds and Sanctions. <u>Most Cited Cases</u>

Municipal court judge who served part-time, and who had been ordered to take judicial education courses as part of sanction imposed in disciplinary proceeding, would not be required to pay for courses, and was free to request assistance in paying for courses from his employers, in light of his willingness to change his behavior.

\*\*926 \*213 Kurt Bulmer, Seattle, for Judge Hammermaster.

Byrnes & Keller, <u>Paul R. Taylor</u>, Seattle, for Commission on Judicial Conduct. <u>Beth M. Andrus</u> of Skellenger Bender P.S., for amicus curiae American Civil Liberties Union of Washington.

## MADSEN, J.

Municipal Court Judge A. Eugene Hammermaster appeals a determination by the Commission on Judicial Conduct (the Commission) ordering censure, and recommending suspension for 30 days without pay. The Commission found that Judge Hammermaster violated the Code of Judicial Conduct (CJC) Canons 2(A), 3(A)(1) and \*214 3(A)(3) by making improper threats of life imprisonment and indefinite jail sentences, improperly accepting guilty pleas, holding trials in absentia, and engaging in a pattern of undignified and disrespectful conduct toward defendants. Judge Hammermaster admits that he engaged in the alleged conduct, but maintains that his conduct was a reasonable exercise of judicial independence which did not violate the Canons. We affirm the Commission's findings of misconduct, but also find that Judge Hammermaster's practice of ordering defendants to leave the country constitutes a violation of Canon 3(A)(3). We substantially agree with the Commission's order of censure but find that a six-month suspension without pay is more appropriate than the sanction recommended by the Commission.

#### Facts

Judge Hammermaster is an appointed part-time municipal court judge for the Sumner, Orting, and South Prairie courts of Pierce County, Washington. He has been a judge for one or more of these courts for 30 years. Report of Commission Proceedings (RP) at 322. On June 25, 1996, the Commission on Judicial Conduct received a letter of complaint about Judge Hammermaster from an inmate at the Sumner City Jail who was serving jail time because he had not paid a fine imposed by the judge. In the letter the inmate stated that "Judge Hammermaster has told me before that if I didn't pay my 300\$ (sic) fine he would throw me in jail for life. I've sat out the time in jail to pay off the fine but thats (sic) not exaptbl (sic) to him." CJC, Finding of Probable Cause (May 13, 1998). The letter goes on to request an investigation of the inmate's situation. In response to the complaint, the Commission reviewed 21 cases in which Judge Hammermaster had presided between June and November 1996, to determine whether and to what extent any misconduct occurred. A number of those cases are discussed below and serve

as examples of the Commission's case in chief. On March 17, 1998, the Commission filed a Supplemental *\*215* Statement of Allegations and informed Judge Hammermaster that the Commission was pursuing initial proceedings against him.<u>[FN1]</u> On April 22, 1998, the Commission *\*\*927* filed its final amended Statement of Charges, alleging that Judge Hammermaster had engaged in misconduct which violated Canons 1, 2(A), 3(A)(1) through (5), and 3(B)(3) of the Code of Judicial Conduct. Amended Statement of Charges (April 22, 1998) at 8 (hereafter Statement of Charges).

<u>FN1.</u> The Statement of Charges against Judge Hammermaster indicated that prior to initiating formal proceedings, the Commission had twice amended the Statement of Allegations. The first statement was served on Respondent Judge May 14, 1997. The Commission amended it on

The Commission's first allegation charged that the judge had abused his authority and exhibited a demeanor that is not respectful or dignified by threatening defendants with life imprisonment or indefinite jail sentences; routinely ordering Spanish-speaking defendants to enroll in English courses, become citizens or leave the country; issuing or threatening to issue orders beyond his legal authority as a municipal court judge; and making statements or issuing orders that denigrate unmarried individuals who lived together. Statement of Charges at 1-4. The Commission's second allegation charged the judge with conducting criminal proceedings in a manner which violated defendants' basic due process rights, thus calling into question the integrity and impartiality of the judicial office and his own competence and faithfulness to the law. The allegation was based on Judge Hammermaster's practice of accepting guilty pleas without first determining whether defendants' pleas were knowingly, voluntarily, and intelligently made; the use of guilty plea forms which failed to comply with CrRLJ 4.2; holding trials in absentia; and using unlawful not guilty plea forms. Statement of Charges at 3-4, 6. The Commission's third allegation charged that the judge's conduct raised the appearance of impropriety as a result of (1) his relationship with the City of Orting Police Chief whom he allowed to act as a city attorney before the \*216 court and (2) an alleged arrangement that his son serve as a pro tem judge in his absence. Statement of Charges at 7-8. The allegation regarding the Police Chief was dismissed by stipulation.

Judge Hammermaster admitted that he engaged in conduct which the Commission has grouped into five types of inappropriate behavior: (1) improper threats of life imprisonment; (2) denial of basic due process in taking guilty pleas; (3) trials in absentia; (4) conduct that is not "dignified, patient or courteous"; and (5) ordering Hispanic defendants to leave the country. Commission Decision (CD) at 2-5. He disagreed with the Commission's characterization of that conduct as improper, however.

The Commission held a hearing on May 13 and 14, 1998, and filed its decision on August 7, 1998. With regard to the allegation regarding Judge Hammermaster's son serving as a pro tem judge, the Commission found no intentional arrangement had been made and thus concluded no violation had been committed. CD at 5. The Commission also found that the allegation charging the judge with abuse of authority in his treatment of Hispanic defendants was proved, but declined to find a violation of the Canons because federal law regarding a court's authority to order persons to leave the country is ambiguous and because the orders were alternatives to other lawful conditions of sentencing. CD at 6. Eight members found that Judge Hammermaster had committed the remaining acts of alleged misconduct and concluded that such misconduct violated <u>Canons 2(A)</u>, <u>3(A)(1)</u> and <u>3(A)(3)</u>. CD at 5-6.

After considering aggravating and mitigating factors, the Commission ordered censure and recommended suspension for 30 days without pay. CD at 7-8. The Commission also ordered that Judge Hammermaster take a corrective course of action including (1) completing judicial education courses in criminal procedure, ethics, and diversity, approved in advance by the Commission and paid for at his own expense; (2) meeting with a judicial mentor prescribed by the Commission; and (3) Commission monitoring for a period of two years. CD at 7-8. *\*217* One member of the Commission filed a dissenting opinion. He found only one violation based on Finding of Fact 3(a) [FN2] and disagreed with the majority's recommended *\*\*928* discipline, arguing instead for reprimand. CD at 3-4, 8 (Dissent by Judge Schultheis).

FN2. Finding of Fact 3(a) relates to City of Sumner v. Amburgy, No. C00010460 discussed infra.

### 1. Improper threats of life imprisonment

Judge Hammermaster told 12 different defendants that he would either impose an indefinite jail sentence or life imprisonment until fines and costs were paid. The following excerpts from a few of those cases are illustrative.

In *City of Sumner v. Link*, No. 15779, the defendant requested another chance to make arrangements to pay his fines:

Judge: Then why shouldn't I treat you the same way you treated me? So that's back to my original question, should I not just allow you to remain in jail?

Defendant: By rights I would, that's what I'm expecting you to do, but I ask of you not to. Judge: Why should I not do it?

Defendant: Because this is the last time I will allow myself to not comply with what I tell you. I

can't believe that, this is the third time I've had to see you for this, such matter and--Judge: In other words what I should do is find you in contempt of court, should I not? Defendant: Yes, you should.

Judge: And if I do that, then you're going to have to pay 40 dollars a day, each day you're in jail, which means you'd be in jail the rest of your life because every week you'd owe another 300, every month you'd owe another roughly 1200, every year you'd owe roughly another 15 thousand.

#### ....

. . . .

\*218 Defendant: Okay, after I leave here today and if I don't make contact with somebody that would do this for me, what do I do then?

Judge: I guess you stay in jail the rest of your life. I can't think of any other alternative. I've given you two alternatives. If you want to come up with a third one, do so, but I gave you two of them. And I guess you don't like either one of them....

Defendant: No, no I just can't, I can't call my grandmother to call because she will then call my mother and my mother will say I won't do it, so why should you. Nobody just thinks that I[sic] worth giving the chance to. I haven't given anybody a reason for that. Judge: Well, you've sure given me reasons. You've lied to me time after time after time. Maybe you've lied to them too, I don't know. You've given me lots of reasons to throw away the key.

Defendant: I know that sir.

Judge: In fact, I guess you should feel fortunate that at this point I've not found you in contempt of court.

Exhibits Notebook (Link) at 1-2, 6-7.

In seven other cases, Judge Hammermaster made nearly identical comments regarding the defendant's debt compounding to such a high amount that he would have to find the defendant in contempt of court, and the defendant would have to stay in jail either indefinitely or for life. *See City of Orting v. Lybeck*, No. 5382; *City of Sumner v. Sattler*, No. C00010554; *City of Orting v. Sita*, No. 4605; *City of Orting v. Powell*, No. 6120; *City of Sumner v. Leggitt*, No. 13846; *City of Sumner v. Ceras-Campos*, Nos. 960127601, C00010522; *City of South Prairie v. Batten*, No. C00058228; *City of Orting v. Cebula*, No. C00000189.

In *City of Sumner v. Reisenauer*, No. 13361, the defendant appeared before the court on a warrant for failure to make payment on his fine.

\*219 Defendant: I haven't paid anything because I didn't have a real job. I was only working part-time.

Judge: Go ahead. **\*\*929** Defendant: I don't make a lot of money when I'm working part-time, I made 5 dollars an hour.

Judge: Wouldn't it make sense that you spend the rest of your life in jail?

Defendant: No.

Judge: Why not?

Defendant: Because I don't want that.

Judge: What difference does it make? What's the other choice?

Exhibits Notebook (Reisenauer) at 4.

In *City of Orting v. Deen,* No. C00000280, where the defendant was explaining why he did not contact the court, Judge Hammermaster stated, "Well, is that what the answer is, that you should stay in jail indefinitely?" In his concluding remarks, after making arrangements for the defendant to pay, Judge Hammermaster then stated: "The only time I throw the key away is when they act like you."

In *City of Sumner v. Luddington,* No. 16210, Judge Hammermaster remarked: "So I should find you in contempt of court and throw the key away."

In Judge Hammermaster's testimony before the Commission he admitted that he knew the law did not allow for life imprisonment for failure to pay fines [FN3] and that he has no authority as a municipal court judge to impose such sentences. Judge Hammermaster also testified that he did not know if a fact-finding hearing was required before imposing sanctions on delinquent defendants. Further, when asked whether he believes that he has the authority \*220 to impose any sanction he wants, Judge Hammermaster responded "I don't think so, but I don't know where the limitations are. I don't know that I've ever thought about that." Verbatim Report of Proceedings (RP) at 94.

<u>FN3.</u> For the offense of driving with a suspended or revoked driver's license, for example, which make up many of the cases referred to by the Commission, <u>RCW 46.20.342(1)(a)</u> provides that the sentencing range for persons convicted under the statute ranges from 10 days to 180 days.

## 2. Denial of due process in taking guilty pleas

The defendants in 10 cases under review expressed an intent to plead guilty. In each case, Judge Hammermaster required the defendant to sign a guilty plea form, which the judge had approved. <u>[FN4]</u> These forms contained neither the elements of the offense charged nor the penalties available, but says simply:

<u>FN4.</u> Judge Hammermaster testified that he has used this form in hundreds of cases.

I am the defendant in this case. I plead guilty to the crime(s) of \_\_\_\_\_\_

I understand that, by this process, I am giving up my constitutional right to a jury or bench trial, the right to hear and question witnesses, the right to call witnesses in my own behalf, the right to testify or not to testify, and the right to appeal the determination after trial. I understand that the judge can impose any sentence up to the maximum, no matter what the prosecution or I or my attorney recommends. I further understand that the State of Washington may suspend or revoke my drivers license. (to be deleted if not applicable). No one has made any threats or promises to get me to plead guilty.

\_\_\_\_\_ DATE DEFENDANT

Comm'n Ex. at 3.

A comparison of the form used by Judge Hammermaster \*221 with that recommended by CrRLJ

4.2 demonstrates that much of the vital content has been omitted. Among other things, CrRLJ

4.2 requires that the plea form include: the elements of the charged offense, an indication that the defendant has been informed of and understands the nature and elements of the offense, and the potential penalties for the offense. CrRLJ 4.2.

Not only were the plea forms deficient, the omissions were not corrected during the plea colloquy. The judge accepted these pleas *\*\*930* without first determining whether the defendant was aware of the elements of the crime charged and whether the guilty pleas was knowing, voluntary, and intelligent. Further, he did not inform defendants of the maximum and minimum sentences for the offenses to which they plead. His colloquy with defendants regarding the plea was typically limited to the following:

Judge: [Y]ou've been charged with a violation of an ordinance of the City of Sumner allegedly taking place on or about April 29, 1995, when you were charged with driving while your license is suspended or revoked in the third degree. As to this charge you have two choices. First, you have the right to enter a plea of not guilty, in which event a trial date will be set. Second, you have the right to enter a plea of guilty, in which event sentencing would take place at this time. Are you prepared to make some disposition of the matter?

Defendant: Yeah, guilty.

Judge: Plea of guilty will be entered.

Exhibits Notebook (Petroff) at 1; City of Sumner v. Petroff, No. C00010269. [FN5]

<u>FN5.</u> The judge testified that this colloquy is illustrative of the typical colloquy between him and a defendant on a plea of guilty in hundreds of cases.

In two cases in which the defendants inquired specifically as to the penalties associated with their charges Judge Hammermaster failed to provide the information. In *City of Sumner v. Potter*, No. C00010615, the defendant asked Judge Hammermaster

\*222 "What is the recommended or the standard days?"

The judge replied:

I don't have any idea. I'll hear from you and I'll make my decision on that. All right, you want to step up here and take that statement on your plea of guilty, take it back to the table, read it and sign it. Right at the table there. All right, Mr. Potter, why were you driving when you didn't have a valid license?

Exhibits Notebook (Potter) at 2.

In another case involving a Spanish interpreter, *City of Sumner v. Perez-Cuiriz,* No. C00010069, Judge Hammermaster accepted the defendant's written plea of guilty and proceeded with the

terms of the defendant's penalty without engaging in any discussion regarding the defendant's ability to understand the nature of the offense, the maximum penalties, or the rights he was giving up by pleading guilty. *See also* Comm'n Ex. 3.

In all of the cases reviewed by the Commission in which the form was used, these defendants were unrepresented. [FN6] Judge Hammermaster did not ask any of the defendants whether they could afford counsel or if they wished to give up the right to an attorney prior to signing the form or pleading guilty.

#### FN6. Comm'n Ex. at 3.

Judge Hammermaster testified that he believed his method of accepting guilty pleas was sufficient because defendants also receive forms and pamphlets explaining their constitutional rights in addition to court information and procedures. Judge Hammermaster further testified that he believed the form was in substantial compliance with CrRLJ 4.2 because city prosecutors and defense attorneys had assisted in the drafting. At the same time, he conceded that it is ultimately his responsibility to make sure guilty pleas by defendants are knowing, voluntary, and intelligently made. One prosecutor for the City of Sumner testified that she believed the forms were in substantial compliance with the rule, and that ultimately, it was the prosecutor's *\*223* job to inform defendants of their rights. The Sumner City Attorney further indicated that at the time the forms were drafted, she "took comfort" in the fact that an American Civil Liberties Union (ACLU) attorney had reviewed the language and did not raise concerns about it. RP at 230. However, she also conceded that the ACLU never indicated the form was satisfactory. Judge Hammermaster testified that he did not know that an explanation of the elements of the offense was required. He further testified that he did not understand that he was also required to explain the maximum *\*\*931* and minimum sentences when accepting guilty pleas.

#### 3. Trials in absentia

Judge Hammermaster admits that since 1993, he has routinely held trials without defendants being present. He purports to obtain authority for this practice by securing defendant's signature on a form entitled, "Statement of Defendant on Plea of Not Guilty," in which the defendant not only waives the right to counsel at arraignment and right to a jury trial, but also the right to be present at trial. Comm'n Ex. 2. The following is an example of the forms Judge Hammermaster used:

I AM THE DEFENDANT IN THIS CASE. I WISH TO ENTER A PLEA OF NOT GUILTY.

I understand that I have the right to be represented by a lawyer and that the court will appoint one for me if it is determined I cannot afford one. I waive the right to be represented by a lawyer at this time. I understand this does not preclude me from asserting the right to a lawyer later in the proceedings.

I hereby waive my right to a jury trial. I may withdraw this waiver and request a jury trial, provided I do so within 10 days of this arraignment date.

I will appear on the time for court dates or a warrant may be issued for my arrest. If I am not in attendance at the time of trial, including the commencement thereof, it is because I \*224 have deliberately and intentionally refused to be present, and under such circumstances request that I be deemed "excused" by the court pursuant to CrRLJ 3.4.

If I fail to appear, the State of Washington may suspend or revoke my driver's license. (if applicable).

\_\_ Date Defendant

\_\_\_\_\_ Defense Attorney

Comm. Ex. 2.

In eight of the cases examined by the Commission, Judge Hammermaster used the above forms. <u>[FN7]</u> In two of those cases, the judge proceeded to trial in the defendants' absence. When the defendants finally appeared in the later two cases, Judge Hammermaster proceeded to sentencing.

FN7. Comm'n Ex. at 2.

In *City of Sumner v. Potter*, No. C00010615, the defendant stated that he had intended to plead not guilty at his trial, but ultimately pleaded guilty when he learned the court had proceeded to trial in his absence.

Judge: All right. What is your intention concerning these two charges, driving while your license

is suspended in the second degree and negligent driving resulting in a collision.

Defendant: First degree.

Judge: Beg your pardon?

Defendant: Negligent driving in the first degree?

Defendant: I was going to plead not guilty at the trial, but I guess--

Judge: All right. Are you going to change your plea to guilty right now?

\*225 Defendant: I wanted to plead not guilty, but I guess I have to if you guys went ahead to the trial with me not being there.

Judge: Well, that's, you need to tell me if you're to going to ask me for a new trial date, you need to tell me why I should do that when you failed to show up the first time.

....

Defendant: I was going to try and see if I can get a second trial, but if you don't.

Judge: Well, you can talk away, but I'm certainly not going to let you out of jail until the trial date.

Defendant: I guess I'm going to have to plead guilty then.

Judge: It's up to you. Is that what you want to do?

Defendant: Yes, I'll just plead guilty. \*\*932 Judge: All right.

Exhibits Notebook (Potter) at 1, 2.

Similarly, in *City of Sumner v. Erroll Cayald*, Case No. C00010318, the defendant appeared before the court after a trial was held in his absence.

Judge: City of Sumner and Erroll Cayald, C-a-y-a-I-d. All right, Mr. Cayald your matter went to trial in your absence. Any reason why I should not enter a finding of guilty and proceed to sentence you?

Defendant: Yes, sir. Last week, I was disoriented. What happened was I thought it was one o'clock and not this, that morning. I came in and talked to the clerk that afternoon. Judge: And what's your defense to this matter?

Defendant: I didn't receive any kind of a notification or anything that the license was suspended.

. . . .

Judge: Anything else that I should know before I proceed to sentence on this matter? *\*226* Defendant: No, sir.

Exhibits Notebook (Cayald) at 1, 2.

According to Judge Hammermaster, the not guilty form effectively excuses the defendants when they do not appear at trial, and thereby provides him with the authority to hold trials in absentia. Moreover, Judge Hammermaster testified that the method in which he holds trials in absentia provides defendants an opportunity to request a continuance or to ask for a new trial, once a defendant does appear after his or her trial has been held.

# 4. Conduct that is not "dignified, patient or courteous"

Judge Hammermaster admits to making various remarks in at least four of the cases examined by the Commission, one involving a mentally ill individual, and three others involving the relationship of unmarried individuals. Judge Hammermaster testified that in each of those cases, he did not intend his remarks to be offensive and that they were reasonable given the context in which they were made.

The defendant in *City of Sumner v. Amburgy*, No. C00010460, had bipolar disorder and attempted to explain his condition to the Judge:

Defendant: All right, well, I was in Western State for, since that happened. I was sick and I didn't have any medication cause I've got a bipolar disorder, manic depressant and I, I did it because I just can't stand, I can't get a job, I can't get a job. I've filled out applications already, I did, they put me in Western State because of this, part of this. At the same time they put me in Western State. I was in there, first it was a couple of weeks at Puget Sound, then it was 90 days in Western State. They released me on Halloween this year and I've already filled out applications and I was, I was happy to be alive today just to be able to come down here because I can't handle it, I'm ready to go to the hospital again today. I can't handle it. I try to get a job everywhere man and \*227 nobody will f----- hire me. I can't stand being alone and being bored all the time.

••••

Judge: For somebody to say they're bored is ridiculous. If you're bored it's your own fault. It sounds to me like a bunch of pity pot, feeling sorry for yourself, which as far as I'm concerned is garbage.

••••

I mean it appears to me you're just sticking your head in the sand and feeling sorry for yourself, and frankly I don't buy that. For somebody to say they're bored, then go volunteer some place. \*\*933 ....

I mean I just don't agree with your analysis of being bored. That's a ridiculous excuse. I mean, see how bored you'd be if you were sitting in jail with nothing.

. . . .

You'll probably be coming back next time and saying they're keeping me so busy I'm going to crack up. Now you're telling me you're so bored you're going to crack up and if you say well, I'm so busy I'm going to crack up, I know how to solve that too. There's a place here where you can have free room and board where you won't be busy at all, called the crow bar hotel. Ridiculous, is it not?

Exhibit Notebook (Amburgy) at 1, 2, 3, 4, 6.

In his testimony before the Commission, Judge Hammermaster indicated that he used the term "bored" in this conversation in an attempt to motivate the defendant to become involved in the community.

In *City of Sumner v. Elliot*, No. C00010705, Judge Hammermaster threatened to order the defendant to stop living with his girl friend and also order the car that belonged to defendant's girl friend sold:

Defendant: It's just a money problem, you know, I'm trying, trying to get them paid, but you know rent, and the power and the phone, it's just ... I have a girlfriend with two young daughters, it's very hard.

Judge: Any reason why I shouldn't order you to sell your car?

\*228 Defendant: I don't own a car, your honor.

Judge: Well, who's car were you driving?

Defendant: That was my girlfriend's.

Judge: Well, Maybe I should order you to stop living with your girlfriend, then, if that's causing your problem. I mean, if you're supporting her, and not taking care of your situation, you're driving her car, sounds like you better terminate that.

Exhibits Notebook (Elliot) at 3.

Judge Hammermaster testified that the above remarks were intended to determine the appropriate sentence and the defendant's ability to pay.

In *City of Orting v. Sita*, No. 4605, Judge Hammermaster criticized the defendant's living arrangement with his girl friend when discussing defendant's inability to pay his fine: Defendant: I'm spending over a hundred dollars worth of food a week.

Judge: Why so much?

Defendant: Because I have a girlfriend that lives with me.

Judge: Ah, so you're supporting somebody else, why didn't you get rid of that? Is she employed?

Defendant: She's trying to find work.

Judge: So you're supporting somebody.

Defendant: Yes.

Judge: I'd suggest you get rid of her. So you're just throwing away money there. Why is she not working?

Defendant: I don't know, sir, I really don't.

Judge: Then why are you allowing her to live with you and freeloading off of you?

Exhibits Notebook (Sita) at 7. Again, Judge Hammermaster \*229 explained that such remarks were meant to determine the defendant's ability to pay.

In *City of Sumner v. Petroff*, No. C00010269, Judge Hammermaster indicated that, in light of defendant's "meretricious relationship" with his girl friend, he would order the car owned by defendant's fiancee sold if it was not licensed and insured by the end of the year. Here, Judge Hammermasterexplained that his remarks were based on his belief that defendant had a legal interest in his girl friend's car.

# 5. Ordering Hispanic defendants to leave the country

Judge Hammermaster admits that he frequently asks Hispanic defendants if they are **\*\*934** "legal" and orders them to enroll in English classes, "become legal," and/or leave the country within a set time. RP at 76-92; Comm'n Exs. 6-12, 15 (Municipal Court of Sumner Docket Record of Proceedings summarizing the penalties imposed on various Hispanic defendants included enrollment in an English course and becoming legal); Comm'n App. 19, at 1. Judge Hammermaster sometimes threatened Hispanic defendants with immediate deportation. Although Judge Hammermaster testified that he has told defendants to leave the country, he also admitted that he was aware that he did not have the authority to order defendants to leave the country immediately and that such remarks were wrong. When asked why he frequently asked Hispanic defendants about their legal status, Judge Hammermaster testified that he asked those questions as part of the sentencing process. Judge Hammermaster could not explain the relevancy of the legal status of Hispanic defendants. He stated his questions were based on a "gut instinct" that the defendant was illegally in the United States, though occasionally a person's inability to speak English would also prompt him. RP at 76-85. *Analysis* 

The Washington State Constitution establishes a commission *\*230* on judicial conduct and empowers the commission to investigate complaints against judicial officers, conduct hearings, make recommendations for discipline to the Supreme Court, and to establish rules of procedure for commission proceedings. Const. art. IV, § 31 (amend.77); <u>In re Disciplinary</u> <u>Proceeding Against Buchanan, 100 Wash.2d 396, 399, 669 P.2d 1248 (1983)</u>. Further, the constitution provides:

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct....

••••

The supreme court may not discipline or retire a judge or justice until the commission on judicial conduct recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

Const. art. IV, § 31 (amend.77).

ЕÇ, The Commission bears the burden of proving the alleged ethical [3] [4] <sup>L</sup> [2] violations by clear, cogent, and convincing evidence. In re Disciplinary Proceeding Against Sanders, 135 Wash.2d 175, 181, 955 P.2d 369 (1998); CJC RP 7. Our review of the CJC's judicial disciplinary proceedings is de novo. In re Disciplinary Proceedings Against Anderson, 138 Wash.2d 830, ----, 981 P.2d 426, 432 (1999); In re Disciplinary Proceeding Against Deming, 108 Wash.2d 82, 87-89, 736 P.2d 639, 744 P.2d 340 (1987). This requires an independent evaluation of the record; the Commission's findings or conclusions do not bind us. In re Anderson, 138 Wash.2d at ----, 981 P.2d at 432: In re Disciplinary Proceedings Against Turco, 137 Wash.2d 227, 246, 970 P.2d 731 (1999); DRJ 9(c). This Court gives considerable weight to credibility determinations made by the Commission and serious consideration to the Commission's recommended sanctions. In re Disciplinary Proceeding Against Ritchie, 123 Wash.2d 725, 870 P.2d 967 (1994). But the constitution's use of the word "recommend" indicates an intent to place the ultimate decision to discipline in the Supreme Court. *Deming*, 108 Wash.2d at 88, 736 P.2d 639.

\*231 The Commission in this case found that Judge Hammermaster's conduct, as outlined above, violated Canons 2(A), 3(A)(1) and 3(A)(3). Although the judge does not dispute that he engaged in the alleged conduct, he argues that the Commission has failed to demonstrate, by clear, cogent, and convincing evidence, that such conduct demonstrated a pattern of misconduct violative of Canons 2 and 3. We disagree.

Canon 2(A) states:

Judges should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 3(A)(1) states:

Judges should be faithful to the law and maintain professional competence in it. Judges should be unswayed by partisan **\*\*935** interests, public clamor, or fear of criticism. Canon 3(A)(3) states:

Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials, and others subject to their direction and control. The Comment which accompanies Canon 3(A)(3) explains:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

A. Improper threats of life imprisonment

[6] <sup>[22]</sup> The Commission found that in 12 cases, Judge Hammermaster's threats of life imprisonment or indefinite jail sentences constituted a pattern and practice violating <u>Canons</u>

# 2(A), 3(A)(1) and 3(A)(3).

\*232 Judge Hammermaster argues that his comments were reasonable given their context. The defendants were back before his court for failing to comply with sentencing obligations. Judge Hammermaster claims that he made those remarks as a technique of obvious exaggeration, in order to alert the defendants to the serious consequences of their actions. While Judge Hammermaster admits he does not have the authority to impose life sentences or indefinite jail sentences, he apparently believes he has the statutory authority to impose an extended jail sentence for a defendant who fails to pay fines. [FN8] RP at 60-61. Ultimately, Judge Hammermaster defends his conduct on grounds that a judge is entitled to latitude in dealing with defendants and that his statements were a reasonable exercise of judicial independence.

<u>FN8.</u> See, e.g., <u>RCW 10.01.180</u> allowing for the commitment of defaulting defendant on grounds of contempt of court; <u>RCW 10.82.030</u> allowing imprisonment until amount of fine and costs paid; <u>RCW 10.01.160</u> allowing costs of incarceration to be imposed against defendant.

 $^{33}$  Although we agree that a judge must have latitude when speaking with defendants, Judge Hammermaster's practice of consistently intimidating defendants with life imprisonment or indefinite jail sentences falls outside the bounds of such latitude. The record belies his assertion that his comments were mere rhetoric and were intended to alert defendants of the consequences of nonpayment of fines. His repeated statements that appear to break down the daily, weekly, monthly, and yearly accumulation of fines had no use other than to bully defendants, some of whom were very apologetic and confused by Judge Hammermaster's remarks. See, e.g., Lybeck, No. 5382. As this Court noted in In re Deming, "threats of improper sentencing do not befit the dignity of our judicial system." In re Deming, 108 Wash.2d at 117, 736 P.2d 639. While a judge is entitled to latitude in discussions with defendants, using threats which exceed judicial authority is unacceptable, even if the judge believes such threats are the only way to coerce compliance. In re Sadofski, 98 N.J. 434, 440, 487 A.2d 700 (1985) (improper \*233 threats of imprisonment constitute misconduct regardless of judge's belief that threats are the only effective means to communicate or method of securing compliance). Judge Hammermaster also defends his conduct as an exercise of judicial independence. This argument misses the mark and demonstrates a misunderstanding of that concept. In the traditional sense, the concept of an independent judiciary refers to the need for a separation between the judicial branch and the legislative and executive branches. As Alexander Hamilton observed in The Federalist No. 78:

There is no liberty, if the power of judging be not separated from the legislative and executive powers ... the complete independence of the courts of justice is particularly essential in a limited constitution.

*The Federalist No. 78*, at 402 (Alexander Hamilton) (George W. Carey & James McClellan eds., 1990).

Underlying the concept of judicial independence is the belief held by the framers over 200 years ago that an independent judiciary **\*\*936** is an essential tool in guarding the constitution and the rights of individuals. As the Supreme Court said of the judiciary nearly one hundred and thirty years ago:

It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a ... judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences. *Bradley v. Fisher*, 13 Wall. 335, 80 U.S. 335, 349 n. 16, 20 L.Ed. 646 (1871).

# KC.

[8] Judicial independence does not equate to unbridled \*234 discretion to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants. While a judge must insist on compliance with his or her judgments, in this case Judge Hammermaster's threats, coupled with his failure to ascertain the defendants' ability to pay, demonstrate the judge exceeded his role as judge. A judge's primary function is the administration of justice, not the collection of fines.

stand the "judicial independence of the courts of this state will be threatened." Opening Br. of Resp't Judge at 35. Judicial independence requires a judge to commit to following the constitution, the statutes, common law principles, and precedent without intrusion from or intruding upon other branches of government. It does not refer to independence from judicial disciplinary bodies (or from higher courts). Decision making is constrained by the evidence, by appropriate procedural rules, records and legal principles. *See* Deanell Reece Tacha, *Independence of the Judiciary for the Third Century*, 46 Mercer L.Rev. 645 (1995). Judge Hammermaster's actions in the cases reviewed by the Commission demonstrate an

unwillingness to follow the law or to protect the rights of those defendants appearing in front of him. His actions do not represent an exercise of judicial independence.

We agree with the Commission that Judge Hammermaster's improper threats are contrary to the directive of  $\underline{\text{Canon 3(A)(3)}}$  that judges be patient, dignified, and courteous.

The judge's threats also demonstrate a failure to remain faithful to the law and maintain professional competence in violation of <u>Canon 3(A)(1)</u>. Judge Hammermaster acknowledged that he lacked authority to impose the sentences he threatened. He also testified that he has never thought about the limits of his ability to make defendants pay fines. Although the judge acknowledged there are limits on his sentencing authority, he does not know what the limits are. Judge Hammermaster has been a municipal \*235 court judge for 30 years. A large percentage of the business of such courts involves traffic violations and the imposition of fines. Under these circumstances, the judge's ignorance and disregard for the limits of his authority is particularly disturbing.

We also agree with the Commission that the judge's threats of life imprisonment or indefinite jail sentences undermine public confidence in the judiciary in violation of <u>Canon 2(A)</u>. For most citizens, appearing as witnesses, spectators, or defendants in municipal court is their only contact with the judicial system. A 1998 comparison of case loads between the superior courts and the district and municipal courts reveals that the lower courts considered 2,154,748 cases as compared with 280,682 cases considered by the superior courts of this State. Office of the Administrator of the Courts, *Caseloads of the Courts of Washington* (1998). The impressions which individuals involved in court proceedings receive help form their opinion of our justice system and of the manner in which our laws are enforced. It is a judge's duty to see that the opinion is one of confidence and respect. <u>In re Yengo</u>, 72 N.J. 425, 433, 371 A.2d 41 (1977) (discussing importance of municipal courts on public's perception of judicial system). The defendants in the cases at issue were not represented by counsel. People appearing pro se and without legal training are the ones least able to defend themselves against rude, intimidating, or incompetent judges. The conduct here \*\*937 denigrates the public view of municipal courts as places of justice. <u>Id. at 57</u>.

B. Denial of basic due process in taking guilty pleas

[10] The Commission found that Respondent's method of accepting guilty pleas failed to comply with the requirements of due process and CrRLJ 4.2, and constituted a pattern and practice violating Canon 3(A)(1). CD at 4-5. Judge Hammermaster does not dispute that he accepted guilty pleas without first determining whether the guilty pleas were knowing, intelligent, and voluntary. Judge Hammermaster claims, however, that he was acting in the good \*236 faith belief that his use of the guilty plea form in combination with the information sent to a defendant regarding his or her rights and court procedures substantially complied with the law. He also relies on the fact that prosecutors and defense attorneys had input in drafting the form and that no attorney ever complained about his method of taking pleas. Finally, the judge argues that his process, which is subject to appellate review, has never been reversed. He reasons that judicial discipline is inappropriate because an appeal is available to correct any legal error in the taking of guilty pleas. Again, we disagree.

The law is clear that a judge has a duty to ensure that guilty pleas are knowingly, voluntarily, and intelligently made. <u>Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)</u>. At a minimum, this requires the defendant be apprised of the essential elements of the offense as well as any mandatory minimum sentence and the statutory maximum. <u>State v. Holsworth, 93 Wash.2d 148, 607 P.2d 845 (1980)</u>. In addition, CrRLJ 4.2 sets out the information to be included in a guilty plea form.

There is no question that Respondent's method of accepting guilty pleas is defective. Judge Hammermaster failed to explain the nature of the charges and the potential consequences, in either his colloquy with defendants or in the written forms he required defendants to sign. *See, e.g., Amburgy,* No. C00010460. Further, the additional procedural information mailed to the

defendants was not tailored to the particular defendant and therefore did not advise the defendant of the requisite information. In his colloquy the judge did not determine whether the defendants had received or read the court information pamphlet. In testimony the judge stated his belief that he is only required to explain the minimum and maximum penalties if he is asked to do so. That is not so. Moreover, even in response to direct questions about the consequences of a guilty plea, the judge declined to provide the information and, in one case, became hostile. *See, e.g., Cebula,* No. C00000189; *Potter,* No. C00010615.

\*237 Neither Judge Hammermaster's good faith belief nor his misguided reliance on attorneys can excuse the deprivation of constitutional rights which resulted from the judge's conduct. Judge Hammermaster testified that as a municipal court judge, he has presided over thousands of cases. In light of this fact, his continued acceptance of defective guilty pleas makes his conduct even more egregious. Judge Hammermaster's reliance on other attorneys for validation of his guilty plea forms cannot excuse his duty to be faithful to the law and to maintain professional competence.

[12] Other states have held that a judge's failure to honor the basic rights of defendants is evidence of judicial misconduct. *In re Reeves*, 63 N.Y.2d 105, 480 N.Y.S.2d 463, 469 N.E.2d 1321 (1984); *In re Field*, 281 Or. 623, 576 P.2d 348 (1978); *Ryan v. Commission on Judicial Performance*, 45 Cal.3d 518, 754 P.2d 724, 247 Cal.Rptr. 378, 76 A.L.R.4th 951 (1988). A judge's action need not be undertaken in bad faith or malice. Discipline may be appropriate even though the judge acted out of neglect or ignorance. *Mississippi Comm'n on Judicial Performance*, 49 Cal.3d 826, 782 P.2d 239, 264 Cal.Rptr. 100, 89 A.L.R.4th 235 (1989). A judge has an affirmative duty to learn the relevant legal procedures of which he or she is ignorant. *In re Inquiry Concerning a Judge*, 265 Ga. 843, 462 S.E.2d 728 (1995); *In re Hamel,* 88 N.Y.2d 317, 668 N.E.2d 390, 645 N.Y.S.2d 419 (1996). As the Commission and Amicus Curiae ACLU point out, CrRLJ 4.2 provides a ready source for the requirements of written \*\*938 guilty pleas. Additionally, case law explicitly sets forth requirements for a constitutional guilty plea.

[13] [14] The judge's argument that he cannot be disciplined because his decisions have not been overturned or appealed is similarly unpersuasive. The judge has the basic duty to ensure that courtroom practice conforms with the law. While we recognize that legal error is usually a matter for appeal and does not generally trigger judicial discipline, a repeated pattern of failing to protect a defendant's constitutional rights \*238 can constitute misconduct. In re Reeves, 63 N.Y.2d 105, 469 N.E.2d 1321, 480 N.Y.S.2d 463 (1984); In re Yengo, 72 N.J. 425, 371 A.2d 41 (1977); In re Seraphim, 97 Wis.2d 485, 294 N.W.2d 485 (1980). As the Michigan Supreme Court noted:

Judicial conduct creating the need for disciplinary action can grow from the same root as judicial conduct creating potential appellate review, but one does not necessarily exclude the other. One path seeks to correct past prejudice to a particular party; the other seeks to prevent potential prejudice to future litigants and the judiciary in general.

<u>In re Laster, 404 Mich. 449, 462, 274 N.W.2d 742 (1979)</u>. The record in this case establishes a pattern and practice of accepting guilty pleas in a manner which denied defendants basic due process rights. The Commission has met its burden of establishing this conduct violated <u>Canon</u> 3(A)(1) by clear, cogent and convincing evidence.

C. Trials in Absentia

The Commission found that Respondent's method of conducting trials in absentia constitutes a pattern and practice of violating defendants' basic due process rights, and is contrary to this Court's holdings in <u>State v. Hammond</u>, 121 Wash.2d 787, 854 P.2d 637 (1993) and <u>State v. Jackson</u>, 124 Wash.2d 359, 878 P.2d 453 (1994), constituting a violation of <u>Canon</u> 3(A)(1). As described above, Judge Hammermaster conducted trials in absentia by requiring defendants to sign a "not guilty" form at arraignment, which waived the rights to counsel, to a jury trial, and to be present at trial. Judge Hammermaster does not dispute the fact that since 1993, he has regularly held trials in absentia. Again, his defense to this charge is that he believed in good faith that his practice was in accordance with the law and that appeal, not judicial discipline, is the appropriate remedy to any error in his procedure. He believes that the last paragraph of the "not guilty" plea form he fashioned gave him authority to hold a trial without the defendant's presence:

\*239 If I am not in attendance at the time of trial, including the commencement thereof, it is because I have deliberately and intentionally refused to be present, and under such circumstances request that I be deemed "excused" by the court pursuant to CrRLJ 3.4. Comm'n Ex. 2. He is mistaken about the significance of this form.

[16] CrRLJ 3.4(a) provides that a defendant "shall" be present at trial unless "excused or excluded by the court for good cause shown." The rule also says the defendant's absence "after the trial has commenced" does not prevent it from continuing to verdict. CrRLJ 3.4(b). Thus, trial may not commence in the absence of the defendant regardless of his purported waiver of his right to be present. *Jackson*, 124 Wash.2d 359, 878 P.2d 453; *Crosby v. United States*, 506 U.S. 255, 113 S.Ct. 748, 122 L.Ed.2d 25 (1993). In *Jackson*, the defendant appeared for several pretrial hearings but failed to appear for a competency hearing and for trial. The trial court held that the defendant had voluntarily absented himself and proceeded in absentia. This Court reversed, holding that CrR 3.4 permits trials to continue, not commence, in the defendant's absence. [FN9]

FN9. CrRLJ 3.4 and CrR 3.4 are the same.

Even if the rule did permit trial to begin without the defendant, his absence would have to be knowing, intelligent, and voluntary. The language in Judge Hammermaster's form purports to be a request by the defendant that his or her absence at the time of trial be deemed excused. It is unlikely that a defendant who signs the form is aware that he or she is thereby waiving a constitutional *\*\*939* right and consenting to be tried in his or her absence. In fact, the records in two cases demonstrates that the defendants were confused that they had waived their right to be present at trial. In *Potter*, No. C00010615, for example, the defendant stated, "I wanted to plead not guilty, but I guess I have to [plead guilty] if you guys went ahead to the trial with me not being there." Additionally, the defendants in all the *\*240* cases reviewed were unrepresented and their "permission" for trials in absentia was initiated by the judge. As Amicus ACLU points out, in order to assert the constitutional right to plead not guilty, the defendant is required to sign the form which essentially forces a waiver of other basic procedural rights, including the right to consult with counsel.

In short, the forms which the judge had a part in drafting are constitutionally defective in several respects. Under <u>Canon 3(A)(1)</u>, Judge Hammermaster has a duty to ensure that he be faithful to the law and maintain professional competence. His habitual use of the "not guilty" forms that force defendants to waive basic procedural rights, and his treatment of at least two defendants who appeared before him after being tried in absentia, demonstrate the extent to which Judge Hammermaster is unwilling to faithfully adjudicate cases in accordance with the law.

We find that clear, cogent and convincing evidence supports the Commission's finding that Judge Hammermaster's practice of holding trials in absentia constituted a pattern and practice which violated Canon 3(A)(1).

D. Conduct that is not "patient, dignified, and courteous"

[17] The Commission found that Respondent's various remarks to defendants constituted a pattern and practice that violated <u>Canons 2(A)</u>, <u>3(A)(1)</u> and <u>3(A)(3)</u>. CD at 6. Similar to his response to the Commission's first charge, Judge Hammermaster defends his conduct on grounds that a judge should have reasonable latitude when addressing defendants without the fear of being criticized.

Judge Hammermaster admits that the remarks he made to the defendant suffering from bipolar disorder and his various remarks regarding the unmarried relationship of defendants are routine in his courtroom. However, he also believes that his comments do not rise to the level of misconduct because they were not outrageous or vulgar. Further, he maintains that such rhetoric, similar to his remarks regarding life sentences, was used to alert defendants \*241 to the consequences of their actions. The judge testified that he believed he was getting through to defendants and that comments like the ones above are helpful to defendants. However, the record in the various cases does not indicate that defendants have reacted as positively as Judge Hammermaster believes.

Washington judicial discipline cases provide some guidance on the extent to which intemperate or rude remarks will constitute actionable conduct. In *In re Thronson*, No. 93-1548-F-45, Comm'n on Judicial Conduct (Aug. 5, 1994), the Commission considered a complaint of

misconduct in a single case. There the judge called the defendant a "smart aleck," told him to "shut up before you go to jail" and lectured him on "being a loser." The judge stipulated that his conduct constituted a violation of <u>Canons 1</u>, <u>2(A)</u>, and <u>3(A)(3)</u>. In *In re Warren*, No. 95-2015-F-55, Comm'n on Judicial Conduct (Oct. 13, 1995), the Commission considered several cases involving inappropriate comments from the judge. Among other comments, the judge's remarks included the following:

[I]t's bullshit. This thing was sentenced on July 9, 1991. You've had 11 months and you have not paid a single dime to this man. You've screwed him....

••••

In this country you use bathrooms. And if you can't use bathrooms, you go back to Morales. ....

[A]II you're doing is making her look like like an idiot....

All I want to do is chew butt on Mr. Wybenga at the moment.

Now, if, Mr. Flores, she didn't post the money, deciding that she had some other good lookin' guy she'd rather spend the **\*\*940** time with, ah, if it wasn't posted you could certainly post it now.

. . . .

. . . .

\*242 All you've done to these courts is say, "screw you, judge" every time down the line, including ours from back in 1991....

In re the Matter of Warren, No. 95-2015-F-55, Comm'n on Judicial Conduct (Oct. 13, 1995). The Commission found, and the judge agreed, that this conduct violated Canons 1, 2(A), 3(A)(2) and 3(A)(3).

In <u>In re Turco</u>, a municipal court judge was disciplined for the remarks he made in the course of sentencing which demonstrated insensitivity to victims of domestic violence. In one case the judge stated, "[Y]ou didn't need to bite her. Maybe you needed to boot her in the rear end...." In another matter he told the defendant, "[F]ifty years ago I suppose they would have given you an award...." In another case he said, "[T]he police do 95% of the work when they separate the parties.... [A]II we're doing is slapping someone after the police have remedied the situation." <u>Turco</u>, 137 Wash.2d at 252, 970 P.2d 731. The Commission found and the judge agreed that the remarks violated <u>Canons 1</u>, 2(A) and <u>3(A)(1)-(4)</u>.

This Court has also found offensive comments by judges both in and out of the courtroom have violated the Canons. In <u>In re Deming</u>, 108 Wash.2d 82, 736 P.2d 639, a district court judge was removed for attempting to enhance the position of a probation officer with whom he was personally involved. There the court also found that the judge's myriad of improper and offensive comments and sexual innuendoes to women were actionable misconduct. <u>Deming</u>, 108 Wash.2d at 110-17, 736 P.2d 639. The Court found that his behavior was inconsistent with service as a judge. <u>Id. at 117, 736 P.2d 639.</u>

Opinions from other states are also helpful. In <u>Dodds v. Commission on Judicial Performance, 12</u> <u>Cal.4th 163, 906 P.2d 1260, 48 Cal.Rptr.2d 106 (1995)</u>, the court found the appearance of rudeness and prejudgment by a Superior Court judge on four occasions relating to his conduct in presiding over settlement hearings to be "unjudicial." <u>Id. at 172, 48 Cal.Rptr.2d 106, 906</u> <u>P.2d 1260.</u> The judge there argued that his "assertive" judicial style enabled him to effect settlement in difficult cases. <u>Id. at 176, 48 Cal.Rptr.2d 106, 906 P.2d 1260.</u> \*243 The California Supreme Court rejected his explanation, and held that "when a judge, clothed with the prestige and authority of his judicial office, repeatedly interrupts a litigant and yells angrily and without adequate provocation, the judge exceeds his proper role and casts disrepute on the judicial office." <u>Id. at 177, 48 Cal.Rptr.2d 106, 906 P.2d 1260.</u>

Considering the other conduct Judge Hammermaster has engaged in, his remarks are consistent with his tendency to bully and intimidate defendants. His repeated conduct shows that Judge Hammermaster fails to take seriously his duty to act patiently, and in a dignified and professional manner toward defendants. The record thus contains clear, cogent, and convincing evidence supporting the Commission's finding that Judge Hammermaster's various remarks to defendants constituted a pattern and practice that violated Canons 2(A), 3(A)(1) and 3(A)(3). E. Ordering Hispanic defendants to leave the country

[18] The Commission found that Judge Hammermaster routinely asked Hispanic defendants about their immigration status, ordered them to enroll in English courses, and/or ordered them to leave the country. CD at 3. Due to the ambiguity in the federal law regarding a nonimmigration court's authority to issue such orders, the Commission concluded that Judge Hammermaster had not violated any specific canon. The Commission did not separately address

the allegation that the judge's conduct violated Canon 3(A)(3).

This Court is not bound by the Commission's decision. *Turco*, 137 Wash.2d at 246, 970 P.2d 731. Judge Hammermaster admitted that he routinely asks Hispanic defendants about their immigration status, and orders them to enroll in English classes, in addition to threatening them with deportation. *See Ceras-Campos*, No. 960127601, C00010522; *Aparicio-Zaldivar*, No. C00010365. Respondent's testimony before the Commission on this issue provided no \*\*941 reasonable explanation for his treatment of Hispanic defendants. He could not explain why he was concerned only with the citizenship of Hispanic defendants and not of other defendants. \*244 Setting aside the question of whether a municipal court judge has the authority to order deportation under federal law, Judge Hammermaster's practice of inquiring only about the citizenship of Hispanic defendants about Judge Hammermaster's motivation and undermines the public's confidence in the judiciary.

A 1999 national survey conducted by the National Center for State Courts questioning citizens about their view of state courts has revealed a significant issue regarding the perceptions of the justice system among minority respondents. Although the report found that "overall, people have a good deal of confidence in American institutions", confidence in those institutions varies systematically across racial groups with minority respondents expressing significantly less confidence. Nat'l Ctr. for State Courts, *How the Public Views the State Courts: A 1999 National Survey* (1999).

A recent publication developed by the Washington State Office of the Administrator for the Courts under a grant from the State Justice Institute has summarized the issues relating to the Mexican immigrants in our courts. Mexican immigrants come to the United States to face grossly incorrect perceptions, negative stereotypes, both malignant and benign prejudices, hostility, and antipathy. The history of U.S. aggression, the cycles of welcome and rejection of Mexican labor, the climate of suspicion and fear of immigrants and their children, and incidents of discriminatory behavior combine to reinforce the immigrants' need to exercise extreme caution in their interactions with U.S. institutions and individuals of authority. The sheer numbers of Mexican immigrants in the United States and their great diversity assure that they will, with increasing frequency, come into contact with the U.S. courts, as plaintiffs, defendants, witnesses, or subjects of actions. It is incumbent upon personnel in the courts--law officers, clerks, attorneys, mediators, arbitrators, and judges--to assure that all have equal access to justice. In the case of Mexican immigrants--especially those from rural Mexico--additional effort probably will be required to assure access and equal protection.

\*245 Juan-Vicente Palerm et al., *Mexican Immigrants in Courts, Immigrants in Courts* 96, (Joanne I. Moore, ed., 1999).

Judge Hammermaster's treatment of Hispanic defendants described above falls far below the levels of dignity and respect litigants have a right to expect from judges. We find this conduct constitutes a pattern and practice that violates Canon 3(A)(3).

Sanctions

A majority of the Commission ordered censure of Judge Hammermaster, and ordered that he take a corrective course of action by completing judicial education courses in ethics, criminal procedure, and diversity, in addition to meeting with a judicial mentor, paid for at his own expense and approved in advance by the Commission. CD at 8. The Commission also ordered that Judge Hammermaster's conduct be monitored by the Commission, in a manner prescribed by the Commission, for a period of two years. *Id.* Additionally, the Commission recommended that this Court impose a sanction of suspension for 30 days without pay. *Id.* Judge Hammermaster urges that a sanction is not appropriate in his case.

This Court must consider 10 factors when imposing sanctions for judicial misconduct: (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been \*\*942 prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

<u>In re Matter of Deming, 108 Wash.2d at 119-20, 736 P.2d 639.</u> As outlined above, Judge \*246 Hammermaster is guilty of a pattern or practice of misconduct, committed in the courtroom, in

his official capacity. Although he admits the actions, he does not acknowledge their impropriety or the adverse effect they have on the integrity of and respect for the judiciary. Nor, therefore, has he made any effort to change his behavior (though he may be willing to do so in the future). In considering the level of discipline, the Commission considered some of these factors but also found several mitigating circumstances: Judge Hammermaster did not exploit his judicial position to satisfy personal desires, he is willing to change his behavior, no prior disciplinary action has been taken against him during his 30 years of service, and he fully cooperated with the Commission's investigation.

We do not agree that these factors are so mitigating as to justify only a 30- day suspension. The Code of Judicial Conduct, particularly <u>Canons 2(A)</u>, <u>3(A)(1)</u> and <u>3(A)(3)</u>, requires judges to be faithful to the law, to maintain professional competence, and to act in a manner that is patient, dignified, and courteous toward defendants. Judge Hammermaster violated all of these obligations by demonstrating a pattern of intimidating and offensive behavior, ignorance or disregard of basic legal principles, particularly in regard to sentencing and an ambivalence toward maintaining professional competence in his courtroom.

As we observed earlier, courts of limited jurisdiction perform an important function and their impact on Washington citizens is great. In days gone by, these courts were frequently termed police courts or justice courts, often presided over by justices of the peace or non-lawyer judges. *See* Laws of 1961, ch. 299, § 15. Now these courts are on the record and presided over by professional judges and have achieved important strides in gaining the confidence of the community. To maintain and enhance that confidence the judges of these courts must meet the high standards expected of all members of the judiciary. Judge Hammermaster's conduct fails to meet those standards. We find *\*247* that the Commission's recommended 30 day suspension is insufficient to restore public confidence. Judge Hammermaster's conduct has significantly damaged the credibility of the courts of justice.

There are few cases in Washington with which to compare the judge's conduct. *In Warren*, No. 95-2015-F-55, the judge made several inappropriate comments to defendants. Most occurred at arraignment to persons who were unrepresented. The Commission reprimanded the judge and required completion of a cultural diversity program. As distinguished from this case there was no allegation that the judge threatened unlawful sentences or attempted to deprive defendants of basic constitutional rights. Similarly, in *In re Thronson*, No. 93-1548-F-45, the Commission admonished a pro-tem judge for inappropriate remarks in a single case.

Although prior cases decided by the Commission and this Court offer little for comparison, there are a few cases from other states involving conduct similar to Judge Hammermaster's. In a majority of these cases the judge was removed from office. For example, Sardino v. Commission on Judicial Conduct, 58 N.Y.2d 286, 448 N.E.2d 83, 461 N.Y.S.2d 229 (1983) involved the removal of a judge who routinely denied criminal defendants their rights, ignored the mandates of law, disregarded the jurisdiction of other courts, disparaged attorneys, demeaned defendants and generally acted in a manner which discredited the court. In another case the Oregon Supreme Court ordered the removal of a judge for general incompetent performance of judicial duties and disregard for the statutory and constitutional rights of defendants. In re Field, 281 Or. 623, 576 P.2d 348 (1978). Removal was also ordered in In re Inquiry Concerning a Judge, 265 Ga. 843, 462 S.E.2d 728 (1995) where the judge refused to issue mandatory appeal bonds, issued warrants unsupported by probable cause, and forced a defendant to enter a plea without his attorney. The case **\*\*943** for removal in the cases above was more compelling than in this one. In Sardino, for example, in addition to his consistent \*278 failure to inform accuseds of their right to counsel or to inform them of their rights at arraignment, the judge refused to set bail, even where required by law, and ordered defendants held for mental examinations without cause. In *In re Field*, the court found the judge's conduct stemmed from mental health problems, which could not be brought under control, even with professional help. And the conduct of the judge in In re Inquiry Concerning a Judge included issuance of warrants without probable cause in addition to his disregard for basic constitutional rights.

Judge Hammermaster's conduct involved more than the rude and inappropriate remarks in *Warren* and *Thronson*, but was not as egregious as the conduct in the cases outlined above. Nevertheless, we are persuaded that his actions demand a very serious sanction. Therefore, we order Judge Hammermaster suspended for six months without pay.

[21] We uphold the Commission's order of a corrective course of action with the exception of the Commission's order that Judge Hammermaster pay for the judicial education courses. The purpose of completing the recommended courses is to educate Judge Hammermaster and modify his behavior. In view of Judge Hammermaster's part-time status as a municipal court judge and

his willingness to change his behavior, he is free to request assistance in paying for the required education from his employers, Sumner, Orting, and South Prairie.

GUY, C.J., SMITH, JOHNSON, ALEXANDER, TALMADGE, IRELAND, JJ., and AGID, J.P.T., concur.

#### TALMADGE, J. (concurring).

I agree with the majority's disposition of this case, both as to Judge Hammermaster's culpability under the Code of Judicial Conduct and the sanction for his violations of the Code. I write separately to emphasize my views on the operation of some courts of limited jurisdiction in the state of Washington.

Justice Madsen appropriately notes in the majority \*249 opinion that concerns have arisen regarding the independence of courts of limited jurisdiction, particularly municipal courts, in our state. Indeed, in this case, involvement of the City executive authorities in the development of Judge Hammermaster's "rules" creates separation of powers and judicial independence concerns. Our opinion today conveys a very strong message to the judiciary and local governments in Washington that the Supreme Court will not tolerate short cuts in due process. While many municipalities have established municipal courts because they want to administer justice locally, it is also true many jurisdictions establish municipal courts for purely avaricious reasons--as revenue agencies to be operated if they "make money" and be dispensed with if they become inconvenient to administer or generate insufficient revenues. See, e.g., Whatcom County v. City of Bellingham, 128 Wash.2d 537, 909 P.2d 1303 (1996) (upholding statutory limitation on ability of city to repeal municipal criminal code). Some local jurisdictions have even attempted to control performance of duties by municipal court judges through devices such as performance audits, the provision of substandard court facilities, or nonjudicial control of court personnel. Occasionally, in some jurisdictions, when the judge has been too independent and has refused to generate sufficient revenue for the municipality, the city's legislative or executive authorities have forced the ouster of the judge.

The Washington Supreme Court has inherent authority to supervise the administration of justice in the lower courts. We should strictly enforce the Code of Judicial Conduct in the operation of courts of limited jurisdiction. Moreover, we must not condone any derogation of the independence of the judicial branch of government by officials intent on revenue collection; we should not permit our *\*250* courts to degenerate into collection agencies for local government at the expense of due process of law.

Wash.,1999. In re Hammermaster 139 Wash.2d 211, 985 P.2d 924 END OF DOCUMENT

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#### Appendix I



September 16, 2004

ASSOCIATION OF WASHINGTON CITIES

Courts of Limited Jurisdiction Work Group Members c/o Douglas H. Haake Administrative Office of the Courts 1206 Quince Street NE PO Box 41170, Olympia, WA 98504-1170

1076 Franklin St. SE

Olympia, WA 98501-1346 Dear CLJ Work Group Members:

Phone: 360-753-4137 Toll Free: 1-800-562-8981 Fax: 360-753-0149

Thank you for the opportunity to comment on the draft final report of the Courts of Limited Jurisdiction Work Group. Unfortunately, the limited timeframe that we have in which to comment will not allow a full response to this report. Accordingly, our comments must be brief. We will first provide some grounding in our approach to this effort, comment on the most significant of the website: www.awcnet.org recommendations, and finally speak to the process in which the Work Group conducted business. We will not address factual errors, typos, or misstatements in the draft that apply to less significant issues.

#### **Our Approach**

The Association of Washington Cities represents all 281 incorporated cities in the state, including 61% of the state's population or nearly 3.8 million residents. Washington's cities are very diverse, ranging from Seattle with a population of 572,000 to the city of Krupp with 65 residents. Of the 281 cities, 178 have populations of fewer than 5,000.

Each one has a statutory responsibility for prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed in their jurisdictions. Nearly half provide court services through an independent municipal court. Some contract with a neighboring city or cities. Many contract with the county for court services. And, they differ in other important ways. For instance, some are contiguous to larger metropolitan areas. Some are very isolated geographically. We draft this response on behalf of all Washington's cities, including our city representatives on the CLJ Work Group.

There are several themes that guide AWC's actions when representing our members and seem particularly appropriate here. First, we seek to preserve and expand the role of local elected officials in decision-making at the local level, including opposing proposals to preempt local control. Because our local elected officials are closest to the voters, we believe they are in the best position to reflect local priorities and preserve home rule. Suggesting the elimination of municipal courts, reducing the structural options for establishing a court, or defining the elements to be included in a local contract will be opposed on this basis.

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Next, our local elected officials are responsible for balancing revenue and expenses for every activity undertaken at the local level, including the municipal court system. We seek fiscal adequacy and flexibility sufficient to meet local needs, and oppose efforts to reduce funding for mandated programs while leaving program requirements. We also oppose unfunded mandates. This approach applies to every local function, including municipal courts. While courts are not funded based on the revenue they produce, that revenue is clearly and very practically considered when cities (and counties and the state) develop their annual budgets. Mandating new activities without providing funding, whether in the court or elsewhere at city hall, violates this principle.

Finally, we work to promote intergovernmental partnerships. Local governments must be treated as equal partners in developing new approaches to complex challenges. Any delegation of programs to local governments should take place only after consultation with, and the consent of, local governments. State law bolsters this concept of collaboration between levels of government.

In keeping with this final theme, we were encouraged by the invitation to participate in the Court Funding Task Force and it's work groups. Staff and elected officials from member cities spent thousands of hours over the last two years on this effort. We regret our comments, perspectives, and participation were not more fully integrated into this final report. As a result, we are submitting our comments under this separate cover.

### **Specific Recommendations**

The following recommendations included in the draft final report are of particular concern. We have used the list included in the body of the report, which differ from those listed in the Executive Summary.

Clarify the statutory court options and encourage regionalization of courts. All courts of limited jurisdiction models should be clearly authorized and described in Title 3 RCW.

We disagree that "significant confusion" exists about the requirements for establishing a court under Chapter 39.34 RCW. That statute specifically authorizes a wide variety of contracting provisions in local government. To repeat those provisions in Title 3 is unnecessary. We do support, however, ensuring local options exist to pursue the structure of court that best meets local needs, including independent municipal courts, contracts with the city or county, or a yet undefined regional model. We do not understand this recommendation to support court consolidation, as we were routinely assured that, in the words of Co-Chair Ward in the April 5 Court Funding Task Force minutes, "court consolidation is not one [issue] that is being considered." In fact, the Work Group dismissed consolidation several times and there was never a thorough discussion of what was meant by this term. More specificity is needed in this relatively new recommendation before we may comment further. Courts of Limited Jurisdiction Work Group Members Page 3 September 16, 2004

Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.

While we believe this "update" to Title 3 is unnecessary, we support the provision of joint court services between cities and counties via an interlocal agreement.

Interlocal agreements are something that cities negotiate with other cities and counties on a regular basis, for everything from procurement activities to animal control. These are undertaken as a matter of good public policy. They are sought for precisely the reasons cited in this report – they often make the best use of scarce resources by avoiding duplication of administrative costs and overhead. However, the elements considered in these agreements should be left to the negotiating parties. The circumstances and interests of the parties for each potential interlocal agreement are likely to vary widely. Attempting to mandate a structure or provisions for the interlocal agreements makes little sense. Therefore, we strongly oppose any effort to amend state law to require that certain provisions are included in any interlocal agreement.

# Create a new section in Title 3 authorizing cities to contract with other cities to form full-time regional municipal courts with elected judges.

Currently, 19 cities in 8 counties provide court services through an interlocal agreement with a neighboring city. The authority for these "community courts" is found in Title 39.46 RCW, making this new section in Title 3 RCW unnecessary. We understand that Mike Kenyon of Kenyon, Disend PLLC will be submitting a response generally limited to cities' authority to contract for court services and will defer to his expertise on this subject to comment further.

In Clark County, Battle Ground provides court services for the cities of Ridgefield and La Center. Providing court services in this manner allows these cities to keep the court local, while avoiding the costly duplication that might occur if each city were required to have their own court. It increases access for citizens in these communities by allowing them to access court services much closer to home, rather than driving to Vancouver to appear in the District Court. And, it reduces jail transport costs and law enforcement overtime that would be required to travel to and from the District Court. It also allows law enforcement to spend more time ensuring public safety. Yet, the combined caseload of these courts requires a part-time judge to serve between 8 and 12 hours per month. It would be counterproductive and costly to require that such beneficial court arrangements have a full-time judge. We oppose any effort to require a judge is elected, or that mandates that these courts must be full-time. Courts of Limited Jurisdiction Work Group Members Page 4 September 16, 2004

Elect judges at all levels of court to promote accountability and the independence of the judiciary.

AWC and city representatives spoke often in opposition to a requirement that all judges must be elected and ultimately voted against it when it was considered as part of the Principles for the Courts of Limited Jurisdiction Work Group, and again when it was presented to the Task Force. We agree that judges must be independent. But we disagree that electing those judges ensures their independence. Federal judges are all appointed and they are required to be both independent and accountable. Additionally, due to the restrictions of the Judicial Code of Conduct, judges can't campaign the way other elected officials do, as they are prohibited from sharing views and concerns. Voters are faced with electing a judge with very little information.

Yet, an appointing authority has the advantage of interviewing candidates, reviewing their experience and education, and speaking to references. Because the appointing authority is made up of elected officials, they are accountable to the voters. We have heard from many judges who do not want to run for election, and would likely not serve as a municipal court judge if that were a requirement, further limiting the pool of qualified candidates.

Judges have also expressed a preference for the appointment process, saying that they are able to be much more independent when facing re-appointment review by a city council every 4 years than if they had to face an election. Making hard and potentially unpopular decisions is more possible when faced with only having to "educate" a council that has a duty to do the hard work for the city's citizens to really try to understand the issues rather than facing a potential "sound bite" election campaign that would quite possibly be full of emotion and mis-statements and rather devoid of substantive, constructive debate.

Contrary to information included in the report, every appointment or reappointment of a judge requires the entire city council to provide an opportunity for public comment. If there are further misunderstandings of the local appointing process, we would be happy to clarify those under a separate cover.

Finally, to take isolated instances, such as the 1999 censure of a municipal court judge included in the report, and broaden that into a condemnation of all is inappropriate.

# Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.

Discussions of this recommendation were very limited in the Work Group, thus we have had insufficient time to consult our members and will not comment on the merit. However, we disagree with the assertion that "employment of court commissioners in lieu of creating additional judicial position has been used in

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some jurisdiction s to circumvent the statutory need for additional judicial position or to avoid judicial election requirements." According to our research, there is only one city that does not elect their judge and the combined judicial and commissioner hours exceed 35 per week. To suggest this is a widespread practice is misleading.

Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.

As noted in the draft report, cities generally maintain regular working hours. This practice makes city staff available in smaller courts during regular business hours, providing access to most court services necessary for the public when court is not in session. We disagree with the assumption that small courts that do not have the volume of "business" to be open at all times impedes justice. Generally, small courts ensure the judge is accessible by phone or page, even if it is not a day where court is in session. Or, they have agreements with other area courts to meet a situation that may arise if a judge is not immediately available.

If this recommendation is limited to requiring courts to provide the Administrative Office of the Courts with information related to their regular operating schedule, we would not oppose it. However, any effort to mandate specific hours that courts must be open is unacceptable.

#### Authorize municipal courts to hear anti-harassment protection petitions.

Consistent with our principle to oppose unfunded mandates and to support local authority, we appreciate the Work Group's recommendation to authorize, but not mandate, municipal courts to hear anti-harassment protection petitions. We support this recommendation, as written, but would not support this expansion of caseload if it becomes a mandate.

Amend juror provisions to allow jurors to be called from the area served by the court.

Some smaller jurisdictions are concerned that this may make the pool of jurors too small to seat a jury. Therefore, this should provide authority to draw jurors from the area served by the court, but not mandate it.

# Require part-time limited operation courts to make provision for timely hearing and processing temporary domestic violence protection orders.

Current law provides municipal courts with the option to process temporary domestic violence protection orders. We support giving local communities the authority to decide whether to provide this service or to refer parties to the District Court or other appropriate venue. We believe this is appropriate given Courts of Limited Jurisdiction Work Group Members Page 6 September 16, 2004

the enormous investment in staff, training, and other services that are required to adequately support victims of domestic violence. It is impractical to expect that infrastructure would be duplicated in part-time municipal courts, as it has taken years to develop the system and expertise in the District Courts.

If this recommendation is meant to require municipal courts to make available clear instructions to petitioners seeking a domestic violence protection order, we ask the Administrative Office of the Courts to assist in the preparation of such materials. If, however, this recommendation is intended to require municipal courts to provide this service, we would oppose it.

Finally, the long-term recommendation to "reorganize into regional courts funded by the state," leaves more questions than it answers. It is unclear what "regional" courts are meant to be. Some would argue that District Courts are regional courts. We would argue that multiple cities contracting for court service may be considered a regional court and that in doing so, these cities are providing convenient service to the public and court users. We recognize this is intended as long-term recommendation, but it's meaning is unclear.

#### **Process Concerns**

We feel it is important to reiterate our concerns about the overall representative balance of the Work Group and the process utilized to develop the recommendations. To summarize our concerns (some of which were expressed in the May 28<sup>th</sup> letter from city representatives):

Membership on the Work Group and the Task Force disproportionately represented the judicial interests, not the legislative or executive interest of local governments.

As stated before, nine city legislative or executive representatives participated in the out of over 100 participants on the Task Force. Of the 32 members of the CLJ Work Group (contrary to the attendees listed as members in the report), eleven are judges while cities have a total of six members. This does not appear to meet the Board of Judicial Administration's stated goal in the report to be "broad based".

### Collaboration was not achieved.

Work Group members were often presented with new information as they arrived for a meeting, without the opportunity to review it or consult with their members. For example, at the April 7, 2004 meeting of the CLJ, a proposal was made to eliminate small cities municipal courts. It was a completely new proposal that had never before come before the group. However, when presented to the task Force, this recommendation had changed again, without any further discussion by the Work Group. Under such conditions, collaboration was impossible. Courts of Limited Jurisdiction Work Group Members Page 7 September 16, 2004

# The scope of the work was not approved by the Work Group and had little relationship to funding.

The Task Force was formed to look at issues of court funding. Many of the city representatives hoped that the work would focus on funding and on looking for operational best practices to improve the efficiency and effectiveness of the courts of limited jurisdiction. Instead, the scope of work seemed primarily to focus on making recommendations to increase mandates for municipal courts, limit the authority of cities to structure their courts as best fit their communities, and to mandate election of judges. There is still a considerable amount of work that could be done to identify and discuss operational changes across courts that would improve the efficiency and effectiveness of courts of limited jurisdiction. We would welcome participation in this type of discussion.

# The report characterizes these recommendations as approved by the Work Group.

One of the more disturbing issues about the report is that dissenting opinions are not recognized. An outsider reading the report would clearly make the mistake of thinking that the Work Group was unanimous in approving the recommendations and that there was little concern expressed otherwise. In only one place buried in the report (on the election of judges and the mission of courts) is there even a mention that there were different opinions or disagreements about the principles and implementation concepts. In fact, the section entitled "Other Issues" implies the recommendations had been agreed to by consensus. The Executive Summary does not contain any reference to the disagreement. From the city perspective, the report should clearly outline which issues were unanimous recommendations and should provide the reasons why there were dissenting opinions about those that were not unanimous.

### The process for development of recommendations was seriously flawed.

The Work Group spent many meetings gathering information, hearing from interested parties and discussing proposals. It was not clear when something was discussed that it would somehow be characterized as a recommendation. Some of the ideas presented in the report as recommendations of the Work Group, such as the one proposing to limit district and municipal court commissioner authority and the one for long term "regionalization" of courts, were not really agreed to at all. Another cause for concern about the process is that the draft final report was provided to Work Group members only on September 9<sup>th</sup> with a request to turn around comments within one week. This is a short time frame in which to provide thorough comment on a document we are just seeing for the first time. Given that the Work Group is not meeting again, we are left wondering who will decide what the final report will contain and how our comments will be considered.

Courts of Limited Jurisdiction Work Group Members Page 8 September 16, 2004

In closing, we reiterate our commitment to seeking solutions to the issues of court funding and efficiencies. Municipal courts remain an essential service to the residents of our communities – one that we are committed to supporting. We would encourage continued discussion on the items contained in this report in the hope that we may find mutually agreeable solutions to these issues.

Sincerely,

Stan Finkels teen

Stan Finkelstein Executive Director

SF/tf

cc: Diane Carlson Mike Kenyon Ted Gathe Edsonya Charles Jim Pearman

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October 7, 2004

Stan Finkelstein Executive Director Association of Washington Cities 1076 Franklin St. SE Olympia, WA 98501

Dear Mr. Finkelstein,

Thank you for your letter of September 16, 2004, which reflects your review and comment on the draft final report of the Courts of Limited Jurisdiction Work Group (CLJWG). As you may know, the CLJWG was one of five work groups convened by the Court Funding Task Force. As chair of the Task Force, I attended most of the various work group meetings and am quite familiar with the issues discussed by the CLJWG. I would like to briefly address some of your comments about the work group's draft report.

The charge of the CLJWG was to..."Study structural and court funding issues in courts of limited jurisdiction, district and municipal courts, that result from multiple delivery systems in the same geographic area and recommend efficient and effective methods of delivering judicial services and whether changes such as consolidation of district and municipal courts should be made to the current system."

While the work group *was* asked to look at the desirability of consolidating limited jurisdiction courts, it did not recommend such a restructuring of the district and municipal courts. Rather, the work group identified benefits that can come from a regional approach to providing court services, such as more efficient use of scarce resources and reduction of administrative overhead costs. You are correct in noting that the work group has only generally outlined a long term vision for the concept of regionalized courts. This vision is, in part, dependent on a rebalancing of state and local responsibility for funding the courts, which is a long term undertaking for the judiciary. Nonetheless, the work group has made specific recommendations for the short term that are consistent with the concept of a more regionalized approach for court services. Members of the work group and indeed the full Task Force are mindful that one model does not fit all jurisdictions; however, the fundamental principles of accessibility and effective use of public resources compel us to find new and better ways to manage the judicial branch.

In keeping with the view that regional courts promote more efficient and effective courts, one outcome that appears to have broad support is the recommendation that municipalities be authorized to contract with each other for judicial and other court services. The continuation of lawsuits that address the legality of rulings in regional "community courts" suggests the current state of the law in this area is unclear. It would

STATE OF WASHINGTON 1206 Quince Street SE • P.O. Box 41170 • Olympia, WA 98504-1170 360-753-3365 • 360-586-8869 Fax • www.courts.wa.gov Stan Finkelstein October 7, 2004 Page 2 of 3

seem that this question is most appropriately and expeditiously resolved by the legislature rather than the courts. Since there is general agreement that it is desirable for cities to have the option to form regional community courts, why not request the legislature to clearly authorize by statute the ability of cities to enter into such contacts? As you point out, allowing cities to combine their court operations is likely to result in greater public access and reduced costs. This is certainly the position of the work group, and one I would hope we could propose to the legislature together.

I am disappointed however, that your organization no longer supports the agreement reached last year to require judges in regional "community courts" to be elected. When Senate Bill 5500 was considered by the Legislature in 2003 and 2004, after considerable debate, the AWC and court representatives reached agreement that community courts with elected judges could provide a good model for cities, particularly in locations where the viability of interlocal agreements between counties and cities was in question, e.g., King County. The presence of an elected judge is a cornerstone of this model. Is it correct to assume from your letter that the agreement of earlier this year is no longer intact?

Regarding the election of judges in general, the city representatives on the work group have repeatedly voiced their opposition. It has become increasingly likely that this is an issue on which members must "agree to disagree". I would respectfully point out that the comparison you make in your letter between appointed judges in Washington State and appointed federal judges overlooks a significant difference between the two positions. Federal judges enjoy a life time appointment which reinforces their independent decision making. In contrast, appointed judges in Washington who serve at the pleasure of city officials have considerably less protection from unpopular decisions than their federal counterparts.

Regardless of our differing views on this issue, in Washington State election of judges is strong public policy. As you know, Supreme Court Justices, court of appeals judges, superior court judges, and district court judges, even part-time district court judges are all elected. Even full-time municipal court judges are elected. Why are part-time municipal court judges excepted from this strong public policy? In this state, part-time mayors and those serving on a city council are all elected. Election in Washington is the traditional manner in which officials, including judges, who act on the public's behalf are held accountable to the public. So again, why are part-time municipal court judges excepted from elections? The 1996 Walsh Commission on Judicial Selection affirmed the preference of Washington citizens to elect their judges. A telephone poll of voters conducted in 2003 reflects continued strong sentiment in Washington for an elected judiciary. While no system of judicial selection guarantees perfection, election insures that judges are directly accountable to the citizens, not to an appointing government official or body.

Finally, I want to comment on your concern that the membership of the work group was imbalanced and "disproportionately represented judicial interests". In my participation with the work group I observed that there was frequently agreement between those individuals officially appointed by the Association of Washington Cities and those appointed by judicial system associations. This should not be too surprising Stan Finkelstein October 7, 2004 Page 3 of 3

since judges and court managers face some of the same challenges as officials in the other branches of local government. Regardless of their affiliation, many on the work group share a common view that insufficient resources are a pervasive problem for the judicial branch. This fundamental problem manifests itself in a variety of ways that include inadequate court services to the public and an overemphasis on the revenue generating activities of district and municipal courts. I believe the "head count" comparison of judges and city representatives you noted in your letter to illustrate disproportionality of work group membership is a misleading characterization of the work group effort on these very complex matters. You might be interested to know that members of the judiciary have made a similar assertion, suggesting instead that the participation on the work group was imbalanced toward the city perspective. Perhaps we can assume from the two polar opinions that the membership of the work group was actually more symmetrical than either camp believes!

While we do not always agree on the solutions to this problem, I want to assure you that your comments and the participation of representatives appointed to the work group by the Association of Cities are invaluable to this work. We share many common goals. First and foremost we want the citizens of Washington to have convenient access to district and municipal courts and confidence that these Washington courts can meet their needs. I appreciate your commitment to seeking solutions to the issues of court funding and efficiencies.

Sincerely,

Warne Blin

Wayne Blair, Chair Board for Judicial Administration's Court Funding Task Force

cc: Diane Carlson Mike Kenyon Ted Gathe Edsonya Charles Jim Pearman

# KENYON DISEND, PLLC

Michael R. Kenyon Bruce L. Disend

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September 16, 2004

Hon. Ann Schindler c/o Douglas H. Haake Administrative Office of the Courts 1206 Quince Street NE P.O. Box 41170 Olympia, Washington 98504-1170

Re: Trial Court Funding Task Force - Courts of Limited Jurisdiction Workgroup

Dear Judge Schindler:

Thank you for providing a review copy of the Draft Final Report of the Courts of Limited Jurisdiction Delivery of Services Workgroup. I very much appreciate your able co-chairmanship of the Workgroup, and I look forward to continued involvement with the Trial Court Funding Task Force and the Board for Judicial Administration as this and other related reports are finalized and their respective recommendations considered for implementation.

I understand that you will be receiving additional review comments from the Association of Washington Cities and other persons and organizations wishing to share a municipal perspective with the Task Force and its Workgroups. Given that, I will largely confine these review comments to an issue which recurs throughout the Draft Final Report -- whether the Interlocal Cooperation Act currently authorizes cities to contract together to provide court services.

Legal challenges to contractual arrangements between and among cities for court services have increased in number over the recent past. This increase can be traced in time to the release by the Administrative Office of the Courts of a paper prepared by the Hon. Robert McSeveney to all judges in the state and its subsequent publication in the *Bar News*.

Judge McSeveney's arguments opposing contracts among cities for court services are not new. Long before the release of Judge McSeveney's paper, many cities in many counties for many years had contracted together for court services. For years, legal challenges to those contractual arrangements were few, and unsuccessful. More recently, legal challenges to those contractual arrangements have been many, and unsuccessful.

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Hon. Ann Schindler September 16, 2004 Page 2

In Judge McSeveney's defense, he has quite clearly declared that his paper was intended only to begin discussion, and was not intended as an exhaustive analysis of the law. Unfortunately, Judge McSeveney's paper has taken on a life of its own among certain defense attorneys. Even more unfortunately, it has taken on a life of its own among certain members of the judiciary.

Judicial adherence to Judge McSeveney's arguments, without the benefit of opposing briefing and argument, is particularly problematic for the municipal community. Many there see AOC's distribution of His Honor's paper as a none too subtle intrusion by the judiciary into the province of the executive and legislative branches. Others see it in a more benign sense, but are simply tiring of the expense and inconvenience of responding to the increase in unsuccessful legal challenges spawned by Judge McSeveney's paper.

Binding judicial resolution of this question will be required absent legislative clarification. Despite the apparent prejudgment of this issue by certain members of the judiciary, municipal leaders nonetheless remain optimistic about the quality and integrity of the judiciary, and the related ability of its members to rule fairly and impartially when this question reaches the appellate courts.

With that background, I offer these non-exhaustive comments to those portions of the Draft Final Report dealing with the ability of cities to provide court services by contract.

A. Edit Short Term Recommendations for Internal Consistency.

The Report enumerates short term recommendations on both pages four and eleven. On page four, the third listed recommendation reads, "Create a new section in Title 3 *authorizing* cities to contract with other cities to form full-time regional municipal courts with elected judges." On page eleven, the listed short term recommendations correctly omit this item, since the Legislature long ago authorized cities to form courts, both full-time and part-time, by contract. Beginning on page fifteen, the Report then continues with partial analysis of this recommendation.

To promote both internal consistency of the Report and to avoid legal redundancy by the Legislature, we encourage the Workgroup to delete this recommendation from the final Report. The issues that would otherwise arise from this recommendation seem equally ripe for discussion under the first listed short term recommendation, which more accurately urges the Legislature to, "*Clarify* the statutory court options ....."

B. The Law Authorizes Cities to Contract for Court Services.

From the debate within the several meetings of the Workgroup, it seems clear that the various members simply agreed to disagree on the legal merits of municipal contractual arrangements for court services. Given that, it is appropriate for the Report to contain a simple outline of the extensive legal authority supporting those contracts.

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Hon. Ann Schindler September 16, 2004 Page 3

1. <u>Constitutional Authority</u>. The Washington Constitution provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." Wash. Const. art. XI, sec. 11; see *Lenci v. City of Seattle*, 63 Wn. 2d 664, 667, 388 P.2d 926 (1964), the exercise of municipal police powers under article II, section 11 of the Washington Constitution requires no legislative sanction for its exercise so long as the subject-matter is local, and the regulation reasonable and consistent with the general laws.

2. <u>Statutory Authority</u>. Under RCW 35A.11.020, for example, code cities are endowed with "[a]ll powers possible for a city or town to have under the Constitution of this state, and *not specifically denied* to code cities by law." No authority exists to support the notion that a contract among cities for municipal court services is "in conflict with general laws" or "specifically denied" by law. Rather, overwhelming contrary authority exists.

Those who argue against the existence of authority for cities to contract for court services universally rely on the portion of RCW 3.50.020 which confers jurisdiction on municipal courts to hear violations of ordinances adopted by the city in which the court is "located." That very same section, however, likewise provides that a "municipal court shall have such other jurisdiction as conferred by statute." In that regard, a partial and non-exhaustive list of statutory support includes:

a. RCW 39.34.010, which expressly authorizes cities to "cooperate with other localities on a basis of mutual advantage and thereby to provide services and *facilities*" in the most efficient manner;

b. RCW 39.34.180(1), which expressly authorizes cities to provide for their "prosecution . . . and incarceration of misdemeanors and gross misdemeanor offenses . . . by entering into contracts or interlocal agreements under this chapter. . . . "; and

c. RCW 35A.11.040, which expressly authorizes a code city to "exercise any of its powers or perform any of its functions . . . jointly or in cooperation, as provided for in chapter 39.34 RCW."

3. <u>Common Law Authority</u>. Those who argue against the existence of authority for cities to contract for court services rely on *State v. Edmonds Municipal Court*, 27 Wn. App. 762, 621 P.2d 171 (1980), which stands for the unremarkable proposition that a city may only establish a form of a municipal court authorized by statute. In that case, the City of Edmonds clearly did not adhere to the then-applicable statute in creating its court. Here, all involved agree that a city has express statutory authority under RCW 3.50 (for all cities other than Seattle) to form a municipal court and appoint or

Hon. Ann Schindler September 16, 2004 Page 4

elect its judge. Once done, certain cities then choose to contract together under both the constitutional and statutory authority set forth above.<sup>1</sup>

Finally, and to the extent that observers believe that an ambiguity exists among the many applicable statutory provisions, the ambiguity must be resolved according to the "plain meaning rule." Application of that rule cuts wholly in favor of cities' ability to contract together for court services. For example, under *State v. Campbell, 146 Wn.2d 1, 11 (2002)*, "The rule requires courts to consider legislative purpose appearing on the face of the statute" and also includes "examining closely related statutes because legislators enact legislation in light of existing statutes." Under RCW 3.50.005, the express purpose of the Court Improvement Act is to operate municipal courts in a "more effective and efficient manner," without any limitation whatsoever as to location. Under RCW 39.34.010 and .180, cities are entitled to work together to make the most efficient use of facilities and services, expressly including the ability to contract together for court services.

Put most simply, broad constitutional and statutory authority exists for cities to contact together for any service or function imaginable, unless that authority is "in conflict with general laws" or "specifically denied" by law. Had the Legislature illogically singled out court services as the sole function for which cities could not contract, it easily - very easily - could have said so.

Thank you again for your time and commitment on the important issue of the remaining vitality of trial courts, including the courts of limited jurisdiction, in Washington. I look forward to continuing our efforts to reach a solution acceptable to all three branches of both local and state government.

Very truly yours,

KENYON DISEND, PLLC Michael R. Kenyon

cc: Ron Ward Wayne Blair Hon. Robert McSeveney

<sup>&</sup>lt;sup>1</sup> Judge McSeveney's paper argues that the contract among Kirkland, Clyde Hill, Medina, Hunts Point and Yarrow Point is invalid in part because the latter four cities failed to establish their own respective courts by ordinance and appoint their own judges. That is incorrect. The ordinances, and written judicial appointments, are all a matter of public record and are included in the judicial record of a pending RALJ appeal consisting of several consolidated cases challenging the contract among Kirkland and the other four cities. The RALJ appeal will be heard in King County Superior Court on October 19. Regardless of the result there, a virtual certainty exists that your court will then be asked to accept review pursuant to RAP 2.3.

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# **Kent Municipal Court**

1220 S. CentralPhotoKent, WA 98032Fax

Phone(253) 856-5730Fax(253) 856-6730

Robert B. C. McSeveney, Judge Glenn M. Phillips, Judge Margaret M. Yetter, Administrator

September 29, 2004

Hon. Ann Schindler C/o Douglas Haake Administrative Office of the Courts 1206 Quince Street NE P.O. Box 41170 Olympia, Washington 98504-1170

Re: Reply to Kenyon letter of September 16, 2004

Dear Judge Schindler,

I recently reviewed Mike Kenyon's letter of September 16, 2004. I am writing to clarify several errors and suppositions made by Mr. Kenyon and to further supplement the record with respect to the current use of interlocal agreements under Title 39.34 RCW to circumvent the statutory territorial jurisdiction requirements for municipal courts.

In October 2002, at his request, I researched and wrote a legal memorandum to Rick Neidhardt, legal analyst at the Administrative Office of the Courts, examining the propriety of cities using interlocal agreements as a vehicle for the delivery of court services. Judge Chris Culp then president of the District and Municipal Court Judges Association was also concerned about the legality and growth of such arrangements and expressly asked me to write an analysis on the issue on behalf of the DMCJA. City of Kent officials were also considering similar arrangements involving my court.

At the time, the Kirkland municipal court "model" involving the cities of Medina, Clyde Hill, Hunts Point and Yarrow Point was touted by various city representatives as the "flagship" King County example of how to deliver court services by interlocal agreement. I lived in Clyde Hill at the time and was concerned about the city's court arrangements given my knowledge and understanding of the Court Improvement Act. Further, the courts were local and it was convenient to conduct an exhaustive search of all of the contracting cities public records and ordinances. During my research, I also spoke to city clerks and researched King County records to verify compliance by each city with all of the mandatory filing and reporting requirements set forth in Title 3.50 RCW and Title 39.34.

Mr. Kenyon's assertion that my memo was "intended only to begin discussion and was not intended as an exhaustive analysis of the law" is therefore incorrect. The memo was in fact intended to be a complete analysis of the current state of affairs as of November 1, 2002. All of the legal and ethical concerns identified in section III of the memo pertained exclusively to the Kirkland model. My memorandum was also never published in the Bar News as alleged. The Bar News did publish an article of mine in the October 2002 issue entitled Judicial Independence, Municipal Courts and the Board for Judicial Administration.

In any case, after my memo was circulated in November of 2002, there was indeed an extensive amount of "damage control" by city officials to file mandatory oaths, appointments, and agreements as required by law. Mr. Kenyon's claim in footnote 1 that my memo and research was in error fails to acknowledge this post memo "scramble" by court and city officials to correct the identified statutory non-compliance issues referenced in section III of my memo.

I agree with Mr. Kenyon that interlocal agreements have been a viable resource for many cities since the Interlocal Cooperation Act was enacted in 1967. I do disagree with his assertion that "[f]or years, legal challenges to those contractual arrangements were few and unsuccessful" and that "[m]ore recently, legal challenges to those contractual arrangements have been many, and unsuccessful." To my knowledge and despite numerous opportunities to do so, none of these alleged "unsuccessful" legal challenges were ever presented to the Task Force or documented in any substantive way. Similarly, no reported appellate decisions exist on the issues raised before the Task Force on the propriety of interlocal agreements for court services. (Note: AOC has documented at least one egregious DUI case recently dismissed with prejudice by a municipality in Snohomish County for fear of an adverse ruling on the writ of prohibition.)

The real issue is whether a criminal or infraction case can be adjudicated outside the territorial jurisdiction of the municipal court where the offense occurred despite the existence of an interlocal agreement.

In 1999 Washington State Supreme Court Commissioner Geoffrey Crooks sought a legal opinion from staff counsel on the propriety of the city of Seattle holding court outside its city limits in anticipation of defendants being booked at the RJC in Kent due to overflow conditions at the downtown King County jail. (This detailed and thorough memo on the issue at hand is attached.) As you may recall, Seattle wanted to hold arraignments in Kent so that defendants would not have to be transported back to Seattle. Recognizing that setting the jurisdiction and territorial limits of municipal courts is within the legislature's sole authority, the memo concluded that "no such authority exists and courts of limited jurisdiction are confined to acting within the geographical boundaries of their territorial jurisdiction." The memo further notes that RCW 35.20.100 specifically granted Seattle Municipal Court with the authority to enter into an interlocal agreement to have the county district court judges handle any excess caseload. But this was not done. It should also be noted that the legislature was very specific by including this option in court legislation under Title 35 RCW.

Subsequent to the Crooks memorandum and Seattle's WTO issues, the legislature amended RCW 3.66.070 and added a temporary venue provision for courts of limited jurisdiction which reads in pertinent part:

(2) In the event of an <u>emergency</u> created by act of nature, civil unrest, technological failure, or other hazardous condition, temporary venue for court of limited jurisdiction matters may be had in a court district not impacted by the emergency. <u>Such</u> <u>emergency</u> venue is appropriate only for the duration of the emergency. [Emphasis added]

Otherwise, municipal courts must be located within the territorial jurisdiction of the city. As stated:

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes... [Emphasis added]

#### RCW 3.50.020.

Both cited statutes read in conjunction with each other permit a properly constituted court to conduct court proceedings <u>only</u> within the municipality's territorial boundaries. When and if an emergency situation arises, the municipality may hold court sessions outside its geographical boundaries, but for only as long as the emergency persists and further limits these extraordinary court sessions to be conducted within the county where the city is located.

This year, there have been two appellate cases relevant to the location of courts and government offices. In <u>Thurston County v. City of Olympia</u>, 151 Wn.2d 171 (2004) the county sought a declaration that it could lawfully relocate its courts, prosecutors, and other county offices to a new regional justice facility to be constructed one-half mile outside of the current boundaries of the county seat in Tumwater. The case turned on the statutory interpretation of the words "in" or "near" the county seat. The court ruled that the new court could not be relocated; that it had to be located in the county seat "in" the city of Olympia. Id. at 178. The court stated, "Where the object is an identifiable place, it alone defines the place to which the preposition applies." Id. At 178. The court then emphasized the legislature's intent "to provide a central convenient location for county business, which is readily known and available to all inhabitants of the county. This purpose is best served by providing a principal location where county government functions." Id. at 179. (Also see <u>Staples v. Benton County</u>, 151 Wn.2d 460 (2004))

In his concurring opinion in <u>Staples</u>, Justice Alexander distinguished the two cases above by noting in <u>Staples</u> that there was no "wholesale removal of all of the functions of county government" as opposed to "transferring the entire court operation to an adjoining city not at the county seat..." as in the <u>Thurston County</u> case. Id. at 468-469.

In the Kirkland model, each contracting city established by ordinance a third branch of local government: a municipal court. Their respective ordinances identify each court as the "municipal court of" Medina, Clyde Hill, Hunts Point or Yarrow Point. All inferences from each city's enabling court ordinances are that each city has a court located in and operational within city limits. Unfortunately, no physical court exists in <u>any</u> of these cities. All judicial functions, the third branch of these governments, have suffered "wholesale removal" to another jurisdiction, Kirkland.

The proponents of this practice rely solely on the authority and common use of general interlocal agreements; specifically, the Interlocal Cooperation Act that became law in 1967. This Act by its own terms is supplemental to other laws. RCW 39.34.100. When the legislature reorganized the courts of limited jurisdiction in 1984, it stated that cities "shall" operate their courts according to the 1984 Act. RCW 3.50.007. In the case of <u>State v. Edmonds Municipal Court</u>, 27 Wn.App. 762 (1980) the court confirmed that cities are expected to operate their courts in accordance with the structures authorized by the legislature. Nowhere in Title 3 are cities authorized to contract with each other for court services. Only county-city contracts are permitted to facilitate authorized court arrangements. Even in RCW 39.34.180, cities are expected to use their own courts and facilities if they operate an independent municipal court. This is further affirmed by the Supreme Court venue rules contained in CrRLJ 5.1.

Under Mr. Kenyon's analysis, and the above referenced fact patterns, Thurston county could have circumvented their problem by entering into an interlocal agreement with the city of Tumwater. Seattle could have entered into an interlocal agreement with adjoining municipal courts like Kirkland or Shoreline to adjudicate WTO cases in spite of Title 35 RCW. However, given both RCW 3.50.020, which requires municipal courts be located within city limits, and the temporary venue language of RCW 3.66.070, authorizing municipal courts to hold court outside of the jurisdiction in an emergency only, I fail to see how any interlocal agreement preempts or becomes superior to the relevant statutes contained in the Court Improvement Act. Therefore, the cities of Medina, Yarrow Point, Hunts Point and Clyde Hill

cannot justify establishing a constitutional court within their boundaries, and then opt to have no physical court structure, court staff or a judge within their city limits and relocate the court outside the jurisdiction by contracting with the city of Kirkland for the adjudication of all their cases. RCW 3.50.020 and RCW 3.66.070 simply do not support this interpretation or municipal court schematic. In my opinion, the Kirkland model ignores Title 3 RCW provisions and gives inappropriate deference and authority to the non-specific general provisions of the Interlocal Agreement Act.

In conclusion, I agree with the BJA Court Funding Task Force recommendation that Title 3 RCW be amended to allow municipal courts to form regional courts in this state. This will benefit the public and offer greater efficiencies in the delivery of court services. I also concur with all of the recommendations contained in the draft report and thank both you and Ron Ward for your diligent service in this massive undertaking.

Sincerely,

Judge Robert McSeveney Kent Municipal Court

cc. Ron Ward Wayne Blair Mike Kenyon November 1, 2002

## MEMORANDUM

TO:	Rick Neidhardt, Legal Analyst Administrative Office of the Courts
FROM:	Judge Robert B.C. McSeveney BJA Representative for DMCJA
SUBJECT:	Interlocal Agreements For Municipal Court Services

#### I. <u>INTRODUCTION</u>

Washington law provides that each county, city, or town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions. RCW 39.34.180. Cities have traditionally processed criminal justice responsibilities by either forming their own municipal courts within each of their respective jurisdictions, by creating a municipal department within the local district court, or by simply filing cases into the district court, all as authorized by the Court Improvement Act of 1984, codified in Title 3 RCW.

Given current statewide economic conditions and the desire of some county officials to terminate the adjudication of municipal cases due to shrinking budgets and increasing costs, some cities have creatively entered into joint or cooperative undertakings for court services under Title 39.34 RCW, the Interlocal Cooperation Act, contrary to and independent of Title 3 RCW. For example, some King County cities have formed a regional task force and are currently studying alternative methods of

delivering court services to their communities in anticipation of diminished county services and unpredictable costs once current contracts expire.

The legality of the current practice of municipalities contracting with other municipalities for court services by the use of interlocal agreements is questionable. Some cities have recently sought support from the DMCJA and BJA by proffering a proposed amendment to Title 39.34 giving them ability to go outside their jurisdictions for court services. This proposal as submitted was not supported by the BJA or DMCJA given the legal language presented. An additional concern by the District and Municipal Court Judges Association, the Administrative Office of the Courts, the Supreme Court, and the Board for Judicial Administration is that municipal courts be legitimate and remain independent and constitutional in order to provide equal access to justice to all citizens.

This memorandum analyzes the propriety of using interlocal agreements by cities to form joint or regional municipal courts or to offer municipal court services given Title 3 RCW, the Court Improvement Act, Title 39.34, the Interlocal Cooperation Act, GR 29, the Presiding Judge Rule, and case law.

The analysis consists of a review of relevant and applicable law and concludes with a summary of identified legal issues present in most of the municipal courts currently operating under interlocal agreements.

## II. <u>THE COURT IMPROVEMENT ACT OF 1984 - Title 3 RCW</u>

There are two chapters in the RCW that apply to the issues at hand. The Court Improvement Act of 1984 (Title 3 RCW) and the Interlocal Cooperation Act (RCW

39.34). When considering these statutes, it is important to understand that the Court Improvement Act takes precedence over the Interlocal Cooperation Act in two distinct ways. First, no interlocal agreements for joint or cooperative action "shall relieve any public agency of any obligation or responsibility imposed upon it by law..." and, second, the "powers and authority" conferred by RCW 39.34 "shall be construed in addition and supplemental to powers conferred by any other law..." RCW 39.34.030(5) and RCW 39.34.100.

The Court Improvement Act of 1984 (Title 3 RCW) governs all courts of limited jurisdiction in this state. The Act is the result of the legislature exercising its constitutional prerogative of creating courts of limited jurisdiction consisting of both district and municipal courts. In Re Eng. 113 Wn.2d 178, 185, (1889). Without authorization from the state legislature, municipalities have no independent authority to establish local courts. In Re Cloherty, 2 Wash. 137 (1891); State ex rel. Fugate v. Milroy, 71 Wash. 592, 595 (1913); Young v. Konz, 91 Wn. 2d 532 (1979). Cities are to be subject to the general laws of the state, "and their existence as municipal governments depends upon legislative will; their areas can be extended only in the manner prescribed by statute." In Re Cloherty at 139.

Over the years, the state legislature has periodically reorganized the courts of limited jurisdiction. In 1961 the legislature passed the Justice Court Act (RCW 3.30-3.74), in 1967 the Optional municipal code (RCW Title 35A), and in 1984 the Court Improvement Act (Title 3 RCW). In each instance, the impetus was to reorganize the courts of limited jurisdiction into an integrated and consistent court system thereby eliminating public confusion and other access to justice impediments. <u>State v. Edmonds</u>

Municipal Court, 27 Wn. App. 762 (1980); In Re Eng, 113 Wn. 2d 178 (1989). Express

legislative policy states:

The legislature finds that there is a multitude of statutes governing the municipal courts of the state. This situation is confusing and misleading to attorneys, judges, court personnel, and others who work with the municipal courts. The legislature therefore finds that a reorganization of the municipal courts of the state would allow those courts to operate in a more effective and efficient manner. This chapter provides a court structure, which may be used by cities and towns with a population of four hundred thousand or less which choose to operate under this chapter.

RCW 3.50.005.

Close examination of the Court Improvement Act reveals the legislature only authorized three judicial systems that municipalities could adopt to adjudicate their civil and criminal cases: 1) create a "stand-alone" municipal court (RCW 3.50); 2) create a municipal department within a district court (RCW 3.46); or, 3) have no court and directly file all civil and criminal cases into the district court located within the judicial district of the city where the court is located. (RCW 39.34.180, RCW 3.62.070.)

These three court formats are also the basis upon which the Supreme Court has enacted court venue and jurisdiction rules. As stated:

All actions alleging a violation of a municipal ordinance shall be commenced in the municipal court, in the municipal department of the district court where the municipality is located, or in a district court pursuant to an interlocal government agreement.

CrRLJ 5.1 (Also see RCW 46.63.040 regarding jurisdiction and venue of traffic infractions)

Nowhere in the Court Improvement Act does the legislature authorize cities to contract with or enter into joint ventures or cooperative undertakings for court services with other municipalities, except for the one exception discussed below. The practice of

one city filing its cases into another municipal court similar to cities filing cases into the county court under RCW 3.62.070 is not authorized. Further, the practice of one municipal court delegating the adjudication of its cases to another municipal court is nowhere mentioned. In fact, the Court Improvement Act contemplates that all "stand-alone" municipal courts are located within the jurisdictional limits of the city and fully operational. RCW 3.50.020. RCW 39.34.180(1).

Title 3 of the Court Improvement Act always contemplates that a district court is the other party to any interlocal agreement with one exception: When a city that is already operating a municipal court elects to terminate its court, prior to any termination, the city must contract with the county or another city, "for costs associated with the prosecution, adjudication, and sentencing in <u>criminal</u> cases filed in district or municipal court as a result of the termination" (emphasis added). RCW 3.50.805. Notice that the adjudication of traffic infraction cases cannot be adjudicated by interlocal agreements between cities. Statutes governing venue, jurisdiction and the adjudication of infractions limit their resolution to stand alone municipal courts, district courts or municipal departments within a district court. For example, RCW 46.63.040 restricts contracts for the adjudication of traffic infractions to city-county agreements. (Also see RCW 7.80.010 addressing non-traffic infractions) The Supreme Court venue rules also parallel the RCW limitations:

Except as otherwise specifically provided by statute, an infraction case shall be brought in the district court district or the municipality where the infraction occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party.

**IRLJ 2.3** 

District courts have concurrent jurisdiction over all violations of city ordinances within their judicial district. RCW 3.66.060. Municipal courts do not. Further, municipal courts only have jurisdiction over traffic infractions "arising under city ordinances." RCW 3.50.020. District courts have broader jurisdiction to "hear and determine traffic infractions under RCW 46.63." RCW 3.66.060.

Establishing a local court system contrary to the options and alternatives provided for by the legislature has been previously held improper in <u>State v. Edmonds</u> <u>Municipal Court</u>, 27 Wn. App. 762 (1980). In <u>Edmonds</u>, the city of Edmonds had been filing its cases into the district court pursuant to the Justice Court Act of 1961. In 1975, the City of Edmonds created its own police court, and thereafter, it subsequently stopped filing municipal ordinance violation cases into district court. The issue presented in the case was whether optional municipal code cities situated in district court counties could forego the provisions of the 1961 justice court act and elect to create a police court pursuant to RCW 35A.20.

Reviewing the legislative histories of the justice court act of 1961 and the 1967 optional municipal code, the court concluded that the justice court act of 1961 was exclusive in nature and that the creation of RCW 35A.20 type courts applied only to cities located in counties not mandatorily or voluntarily subject to the justice court act. Id at 767. The court strictly construed the intent and options of the justice court act concluding:

The legislative history of the 1961 act reveals an intent to create an integrated and consistent court system to replace the maze of lower courts provided in RCW 3.04-3.28 and RCW Title 35. The legislature rejected, for example, proposed amendments which would have permitted any city to retain its existing court system...<u>Cities situated in counties subject to</u>

the justice court act of 1961 were required to select a municipal court system only from the alternatives provided in the act. (Emphasis added)

Id at 765.

The legislative policy language contained in RCW 3.50.007 and the municipal court options promulgated by the legislature in Title 3 RCW are nearly identical to the options and language of the 1961 justice court act. <u>Edmonds</u> is precisely on point. Under the <u>Edmonds</u> analysis, cities can only opt for the court system and case disposition alternatives expressly provided for by the legislature in the Court Improvement Act of 1984.

### III. INTERLOCAL COOPERATION ACT (Interlocal agreements)

As a general rule, the legislature has authorized cities and counties to enter into contracts or joint ventures in order to cooperate together on the basis of mutual advantage for services or facilities. RCW 39.34.010. As stated:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform..."

RCW 39.34.080. Also see RCW 39.34.030.

All interlocal agreements are in "addition or supplemental to powers or

authority conferred by any other law..." RCW 39.34.100.

Some cities argue that chapter 39.34 RCW gives them broader powers to create court arrangements beyond those set forth in the Court Improvement Act. They claim that as long as all contracting cities are independently authorized by law to perform the service, then interlocal agreements for court services are valid.

When reconciling different pieces of legislation, resorting to rules of statutory interpretation can be helpful. Multiple legislative enactments relating to the same subject matter and not actually in conflict should be interpreted to give meaning and effect to both acts of the legislature. Davis v. County of King, 77 Wn.2d 930 (1970). Further, if two statutes deal with the same subject matter and a conflict does exist to such an extent that they cannot be harmonized, preference must be given to the more specific statute. State v. Thomas, 121 Wn.2d 504 (1993). Also, declarations of legislative policy in an act serve as an important guide in determining the intended effect of the operative sections. Oliver v. Harborview Med. Center, 94 Wn.2d 559 (1980). Finally, if alternative interpretations are possible, the one that best advances the overall legislative purpose should be adopted. Id. at 716.

The Court Improvement Act expressly allows cities and counties to enter into RCW 39.34 interlocal agreements for court services but only in the following four situations:

1. Termination of a Municipal Department Within a District Court. RCW 3.46.150. A city may terminate a municipal department within a district court only at the end of the four-year judicial term. However, the city may not give the written notice required by this section unless the city has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in <u>criminal</u> cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the

the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. RCW 3.46.150. (Emphasis added) (Note that traffic infractions are excluded again.)

2. Termination of a City Municipal Court. A municipality may elect to terminate its already established municipal court and contract with another municipality or county for judicial services. RCW 3.50.805. Thereafter, if the municipality and the county or municipality are unable to agree on the terms for renewal of the agreement, they are deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. RCW 3.50.805. (Infractions excluded per previous analysis)

3. Termination of a "Host" Municipal Court. When a "host" municipal court contracting with other municipalities who have previously terminated each of their respective courts decides to dissolve it's court, the "host" court and all of the contracting municipalities, prior to terminating their respective courts, must first "reach an agreement with the appropriate county in accordance with" RCW 3.50.805. Thereafter, if the municipality and the county or municipality is unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. RCW 3.50.805. [Infractions excluded per RCW 3.50.805(1)].

4. Direct Filing of City Cases with the District Court. RCW 3.62.070. When a city that has not created its own court opts to file criminal actions or traffic infractions into the district court, the county "shall" charge the city a filing

fee the amount previously determined by an interlocal agreement pursuant to RCW 39.34. In the event no agreement is reached between a city and the county providing the court service, either party may invoke binding arbitration on the fee issue by notice to the other party. RCW 3.62.070. Also see RCW 46.63.040 authorizing interlocal agreements for infractions. The Interlocal Cooperation Act does proscribe criminal justice responsibilities and authorizes interlocal agreements for court services in certain limited situations. As stated:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services...

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a <u>city and county</u>, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The <u>city and county</u> each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A <u>city or county</u> that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010. (Emphasis added)

RCW 39.34.180.

# III. ETHICAL, STATUTORY AND CONSTITUTIONAL ISSUES

There are a number of cities statewide adjudicating cases through interlocal agreements. Unfortunately, most of these agreements are statutorily and constitutionally deficient and create ethical issues for the presiding judge and court staff. Some actual examples and areas of concern are identified as follows.

#### A. Lack of Authority under the Court Improvement Act of 1984.

<u>Example</u>: Several established part-time municipal courts contract with another part-time municipal court for all judicial services. Each city's enabling ordinances and the interlocal agreement itself cite RCW 3.50.805 and RCW 39.34.180 as the authority for the interlocal agreement.

<u>Analysis</u>: Given the discussion in sections I and II of this memorandum, RCW 3.50.805 does not authorize this arrangement since none of the cities involved had effectively terminated their municipal courts or were contracting for adjudication of their criminal cases prior to entering into the interlocal agreement as contemplated in RCW 3.50.805(1). Additionally, the host municipal court has no jurisdiction over the contracting cities infractions under RCW 3.50.805.

B. <u>Creation of a Defacto Judge</u>.

<u>Example</u>: In accordance with chapter 3.50 RCW, several cities establish their own part-time municipal courts "for statutory purposes only;" then by interlocal agreement, the cities delegated all judicial services to a host part-time court and judge. The interlocal agreement reads: "this agreement does not require a Contracting City to

appoint judges of their municipal court." In effect, the arrangement is similar to a city filing cases into the district court under RCW 3.62.070. None of the cities ever appointed a named judge pursuant to RCW 3.50.

Analysis: In this situation, the cities adopted by reference chapter 3.50 RCW. The Interlocal Cooperation Act states that no interlocal agreements for joint or cooperative action "shall relieve any public agency of any obligation or responsibility imposed upon it by law..." and, second, the "powers and authority" conferred by RCW 39.34 "shall be construed in addition and supplemental to powers conferred by any other law..." RCW 39.34.030(5) and RCW 39.34.100.

Here, the applicable law requires:

Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court for a term of four years....

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

RCW 3.50.040.

Additionally, each city's own ordinances require a written appointment and council confirmation of the municipal judge. The judge is also required to take an oath of office and file it with the city clerk and county auditor. RCW 3.50.097.

Here, there is no record of any of these contracting cities appointing or confirming a named judge as required by law. No oaths of office of the host judge are on file with the county auditor despite several election and appointment cycles by each city. Besides potential ethical issues, the "host" judge has no authority beyond that of a "defacto" judge. <u>State v.Edmonds</u>, 27 Wn. App. 762, 767 (1980).

# C. <u>Court Administrator as Administrator of the Interlocal Agreement</u> <u>Conflict of Interest and Separation of Powers Violation</u>.

Example: Pursuant to RCW 39.34.030(4)(a), five cities to an interlocal agreement appointed the host municipal court administrator to administer the agreement. The contract reads that the court administrator "shall be responsible for administration of this agreement." The agreement was signed by all executive officers.

<u>Analysis</u>: RCW 39.34 identifies two types of interlocal agreements. First, there is an agreement for a "joint or cooperative action" and second an agreement by "contract." A "joint or cooperative action" involves "two or more public agencies entering into agreements with one another for joint or cooperative action." RCW 39.34.030 (2). A "contract" involves one or more public agencies that:

may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform:

## RCW 39.34.080.

Interlocal agreements for "joint or cooperative" undertakings must meet the legal requirements of RCW 39.34.030 (3). One of those requirements is that the agreement must have an administrator "responsible for administering the joint or cooperative undertaking." RCW 39.34.030(4)(a). Interlocal agreements can be administered several ways; by a separate legal or administrative entity such as a nonprofit corporation; or, if no separate entity is created, the agreement "shall contain…Provision for an administrator or joint board responsible for the joint or cooperative undertaking…" (3)(a)(4)(a).

Here, the interlocal arrangement consists of a "contract" for services as discussed in RCW 39.34.080 with the host municipal court administrator being appointed by all of

the contracting executive officers as the administrator of the interlocal agreement. This appointment is a conflict of interest; it violates GR 29 and runs afoul of the separation of powers doctrine. The court administrator wears two hats. First, pursuant to RCW 3.50.080, he/she is an "at will" court employee appointed by and serving at the pleasure of the judge. GR 29 identifies the court administrator as an employee of the judicial branch who reports directly to the presiding judge. See <u>Crossler v. Hille</u>, 136 Wn.2d 287 (1998). Further, only the presiding judge can be the "official spokesman for the court in all matters with the executive or legislative branch…" GR 29(c)(10).

Second, the court administrator in this situation now has a fiduciary and administrative obligation to administer the agreement according to law and is accountable, not only to the judge, but also to the executive branch of each contracting city. For example, if a lawyer were to mount a legal challenge to the constitutionality of the interlocal agreement, or if the administrator was negligent in his or her administration or fiduciary responsibilities or called into question for the administration of the agreement, then, the presiding judge has an automatic conflict since one of his own employees performing court administrative duties has loyalties to both the court and the contracting cities.

# D. Judicial Information System— Access and Breach of Confidentially Requirements.

<u>Example</u>: Four courts file their cases into the host court which inputs the cases into the judicial information system. In the interlocal agreement, the host municipality agrees that it will provide access to and information from the JIS system under the control of its own municipal court to the four other contracting courts who have

not sought or been granted access to JIS by AOC or the JIS committee. In addition, the host city agrees to "Provide each Contracting City with performance data at least quarterly..." to all other courts. The court administrator who administers the interlocal agreement also provides the data as mandated by city executives.

Analysis: The JIS system and corresponding confidentiality and data dissemination policies provide for unique user access given the confidentiality of statewide records. Use of the JIS system is unique to authorized courts. City executives have no authority to require their own municipal court to divulge JIS information to other courts that have not been granted access to the system and data by the JIS committee or AOC. Providing access and information to unauthorized users is beyond the authority of city officials, the judge and court administrator. Here, none of the contracting cities followed standard protocol to obtain JIS for their respective courts.

Additionally, the interlocal agreement requires the host municipal court "Provide each Contracting City with performance data at least quarterly..." The interlocal agreement cannot mandate that the host court obtain statistical data or require court staff on court time to compile information. This authority is within the purview of the presiding judge.

Another issue with the JIS system involves case entry and identification. If a person looks up a contracting city case on DISCIS, the authorized host municipal court screen appears, not the unauthorized contracting city court screen. A JIS user accessing an unauthorized court case would view the authorized court's screen. Only the ticket number and LEA code would distinguish the charge as originating from a contracting city. None of the courts, except the host court, are differentiated as they would be had

they been granted individual JIS access. This situation is confusing and misleading to other court users.

# E. Failure to Ratify the Interlocal Agreement.

Example: Each municipality entering into the interlocal agreement fails to

obtain local ratification of the contract.

Analysis: RCW 39.34.030(2) requires:

...Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force. (Emphasis added).

Legislative ratification of the interlocal agreement for court services is necessary because such agreements involve the allocation of fiscal resources that properly fall under the function of local legislative bodies. <u>State v. Plaggemeier</u>, 93 Wash. App. 472, 478-479 (1999).

# F. Failure to File Interlocal Agreement with the County Auditor.

Example: Each city fails to file the interlocal agreement with the county

auditor prior to commencing the contract.

Analysis: As stated, "Prior to its entry into force, an agreement made

pursuant to this chapter shall be filed with the county auditor." RCW 39.34.040.

Failing to file the interlocal agreement with the county auditor as required has fatal consequences. Failure to file as required means; " the Agreement as a whole is invalid under the Interlocal Cooperation Agreement Act." <u>Plaggemeier</u> at 481-482.

G. <u>Failure to Submit the Interlocal Agreement to the Supreme Court</u> for Approval.

Example: A city providing court services through an interlocal agreement

fails to submit the agreement to the Supreme Court for review prior to commencing operations.

Analysis: RCW 39.34.050 requires the following:

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of <u>services</u> or facilities with regard to which an <u>officer</u> or agency of the state government has <u>constitutional or</u> <u>statutory powers of control</u>, the agreement shall, as a <u>condition precedent to its entry into force</u>, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. (Emphasis added).

This statute is interesting. The Supreme Court has inherent authority to regulate Washington courts. While the legislature has the authority to prescribe the jurisdiction and powers of "inferior" levels of court, it is the Washington State Supreme Court that has inherent and exclusive authority to supervise the administration of justice in the lower courts. <u>Discipline of Hammermaster</u>, 139 Wn. 2d 211, 249 (1999) and <u>The Washington State Bar Asociation v. State of Washington</u>, 125 Wn.2d 901, 909 (1995). [The definition of "officer" includes members of the Supreme Court. See RCW 1.16.065 and RCW 9A.04.110(13)].

The argument here is that municipal courts provide judicial services to the public. The manner and method of delivery of the services must comport with access to justice and due process principles. The Supreme Court has constitutional authority to control and

review the delivery of judicial services. A "quality assurance" review by the AOC could avoid potential conflicts mentioned previously, conflicts created by non-judicial officers.

# H. <u>Miscellaneous Issues and Concerns</u>.

Space does not permit a detailed analysis of the accounting practices of courts participating in an interlocal agreement. Reception and disbursement of public funds can often be an issue given Title 3 RCW requirements. With the increase in workload, the judge's "compensated time" will be increased possibly necessitating the need for an election or additional judicial positions. RCW 3.50.070. Cities have traditionally manipulated or "played with" the judge's hours and compensation in an effort to avoid having an elected judge. Although studies have shown that elected judges are preferable given judicial independence issues, certain municipalities will continue to manipulate judicial time. Its all about power and control over the judge and court operations.

# IV. SEPARATION OF POWERS

For courts to effectively maintain their independence as a separate branch of local government, they must have the power to do all things that are reasonably necessary for the proper administration of their office within the scope of their jurisdiction. Zylstra v. Piva, 85 Wn.2d 743, 754 (1975). This includes the power to control decision making, the adjudicatory process and ancillary functions subordinate to the decision making process. *Id.* at 755

The constitutional provisions in Washington vesting judicial power in the courts carry with them the authority necessary to the exercise of that power, including rule making and judicial administration. *Id.* at 755.

It is sometimes possible to have an overlap of responsibility in governing the administrative aspects of court-related functions. "The branches of government need not be hermetically sealed off from one another; rather they must remain partially intertwined if for no other reason than to maintain an effective system of checks and balances, as well as an effective government." <u>In Re Juvenile Director</u>, *supra* at 239-240.

The separation of powers doctrine then, allows for some interplay between the branches of government. <u>Spokane County v. State</u>, 136 Wn.2d 663, 672 (1998). However, the spirit of reciprocity and interdependence requires that if checks by one branch undermine the operation of another branch or undermine the rule of law, which all branches are committed to maintain, those checks are improper and destructive exercises of the authority. <u>In Re Juvenile Director</u>, 87 Wn.2d 232, 243 (1976).

Thus, the purpose of the separation of powers doctrine is "to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed." Commonwealth ex rel <u>Carroll v. Tate</u>, 442 Pa. 45, 53 (1971) *cert. denied* 402 U.S. 974 (1971), *as cited in* <u>In Re Juvenile Director</u>, 87 Wn.2d 232,245 (1976).

The test to determine whether a separation of powers violation has occurred is whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another. <u>Zylstra v. Piva</u>, 85 Wn.2d 743, 750 (1975). If it does, then the damage caused by a separation of powers violation accrues directly to the branch invaded. <u>Commodity Futures Trading Comm'n. v. Schur</u>, 478 U.S. 833, 851 (1986), *as cited in* <u>Carrie v. Locke</u>, 125 Wn.2d 129, 136 (1994).

Although interlocal agreements are authorized by the Court Improvement Act and the Interlocal Cooperation Act, drafting one for court services can be complicated given

the presiding judge rule, GR 29, and the ethical constraints of the Code of Judicial Conduct. Judges are not party to these agreements for good reason; yet, they are affected by the ultra vires decisions of the executive and legislative officials. An interlocal agreement for a regional jail may comport with the powers of each participating city; however, given the ethical and constitutional issues previously identified, the validity of interlocal agreements for court services may be in doubt.

### IV. <u>CONCLUSION</u>

The Court Improvement Act expresses the intent of the legislature to create an integrated and consistent court structure in Washington. Under Edmonds, *supra*, cities have limited court options beyond the legislatively created alternatives provided in Title 3 RCW. Provisions of The Court Improvement Act take precedence over any conflicting provisions of Title 39.34 RCW. This includes both court rules and statutes governing jurisdiction and venue in criminal and infraction matters that cannot be circumvented by a "hybrid" court created under RCW 39.34.

Municipal courts facing termination or fee increases involving their interlocal agreements with county officials have a remedy at law. The remedy is statutorily authorized binding arbitration under RCW 7.04. RCW 3.62.070. The legislature never authorized counties to deny access to the district court system. RCW 3.62.070 specifically authorizes arbitration in the "case of renewal or proposed nonrenewal" of the interlocal agreement.

Hybrid court operations exist in Washington. Their formation and continued existence is problematic. Ethical, separation of powers, and judicial independence issues

are ever present. This has been the major criticism surrounding municipalities and how they choose to operate and treat their respective courts and judges. All interlocal agreements are drafted by and negotiated by city executives, not the presiding judge. As a consequence, the end product frequently imposes duties, obligations and restrictions on the municipal court staff and judge(s) contrary to Title 3 RCW, the presiding judge rule (GR 29), the Code of Judicial Conduct, and the separation of powers doctrine. Judicial personnel service contract provisions and municipal ordinances containing language in disregard of the duties and prerogatives of the presiding judge further complicate matters.

The incursion of executive or legislative branch officials into court operations or into the prerogatives of the judge is a persistent sore spot in courts of limited jurisdiction. (See <u>Municipal Courts</u>, Judicial Independence and the Board for Judicial Administration, by this author, <u>Bar News</u>, October 2002). These incursions have generated court rules and ethics opinions addressing judicial independence and separation of powers issues and fostered language in appellate decisions admonishing municipalities that access to justice is paramount and short cuts in due process will not be tolerated.

The current interest in creating regional municipal courts through the use of interlocal agreements for court services or in amending jurisdictional statutes to accomplish this effort may be tantamount to applying a band-aid to a broader problem. The role of district and municipal courts in Washington needs to be reviewed by the BJA and consideration should be given to rewriting the Court Improvement Act of 1984 given significant changes in court operations and the concerns of cities and counties. The ultimate goal is court efficiency and access to justice resulting in greater public confidence in the judiciary.