



# **Municipal Court City of Seattle, Washington**

## **Improving Criminal Case Processing**

**Final Report  
October 15, 2010**

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**National Center for State Courts**

This study was prepared under a State Justice Institute (SJI) grant for the judges and leadership staff of the Seattle Municipal Court (the Court, or SMC). The grant was administered through the Court with consulting services provided by the National Center for State Courts (NCSC, National Center, or the Center). The National Center for State Courts is a public benefit corporation targeting the improvement of courts nationwide and around the world. **The study is directed at suggesting ways to improve the operations, staffing and performance of the Court's criminal processing systems in light of shrinking resources, a reduction in the number of judges, and the desire to promote best practices in adjudicating limited jurisdiction cases.** The points of view and opinions expressed in this report are those of the authors as agents of the National Center, and do not necessarily represent the official position or policies of the State Justice Institute, or the judges and staff of Seattle Municipal Court.

Online legal research provided by LexisNexis.



## **Acknowledgements**

The consultants for this follow up Review would like to thank the Judges, Court Administrator, Judicial and Court Administrator's staff of the Seattle Municipal Court for their cooperation and assistance throughout the site visits, analysis and development of this report. The authors especially are indebted to all those who willingly gave of their time to be interviewed during two on-site visits by Center consultants, including staff at the Court, at City agencies interacting with the Court (i.e., Seattle Police Department, City Prosecutor's Office), and at contract entities providing indigent defense services. A special thanks to Presiding Judge Edsonya Charles, Court Administrator Yolande Williams, Chief Clerk Robert White, and Research, Policy and Planning Group staff Rich Cook and Nick Zajchowski.

# Municipal Court City of Seattle, Washington

## Improving Criminal Case Processing

### Table of Contents

	Page
1.0 Report Highlights and Executive Summary.....	i
2.0 Study Methodology.....	1
2.1 How to Understand and Use the Assessment Worksheets.....	2
2.2 Overall Project Goals and Objectives.....	3
2.3 Characteristics and History of the Court.....	4
2.4 Judgeship Reductions and Timely Case Processing.....	12
3.0 Criminal Caseload Improvements.....	15
3.1 Transition to Hybrid/Master Calendaring.....	16
3.2 Discovery Process.....	18
3.3 Intake (Out of Custody Arraignments).....	19
3.4 Plea Negotiation and Early Settlement.....	20
3.5 Collegial Chambers and Shared Courtrooms.....	24
3.6 Maximize Case Resolutions at Every Appearance.....	25
3.7 Streamline Warrant Adjudications.....	26
3.8 Docketing and Scheduling.....	27
3.9 Friday Calendar Enhancement.....	28
4.0 Business Process Improvements.....	29
4.1 Courtroom Clerks.....	31
4.2 Bailiffs.....	32
4.3 In-Custody Arraignments.....	33
4.4 Out-of-Custody Arraignments.....	35
4.5 Amended Complaint Process.....	36
4.6 Review Calendar.....	37
4.7 Jury Trials (Bailiffs).....	38
5.0 Specialty Courts.....	40
5.1 Mental Health Court.....	42
5.2 Domestic Violence Court.....	43
5.3 Community Court.....	44
6.0 Technology.....	45
6.1 MCIS Software Development Capability.....	46
6.2 Business System Analysis Facilitates MCIS Remodeling.....	47
6.3 MCIS Remodel Governance Process.....	48
6.4 Priority of MCIS Accounting Remodeling.....	49

## Table of Contents Continued

	<b>Page</b>
6.5 Regular and Ad Hoc Reporting Capabilities .....	50
6.6 Video Discovery .....	51
7.0 Probation and Community Corrections .....	52
7.1 Probation .....	53
7.2 Day Reporting Center.....	54
8.0 Key Staff Assets in Improving Caseflow .....	55
9.0 Procedural Fairness Feedback .....	56
10.0 Presiding Judge Authority .....	57
11.0 Judicial Independence.....	58
Appendices.....	60
Business Case Format .....	61
Accounting Functional Requirements.....	62
State Trial Court Presiding/Chief Judge Model Job Description.....	73
Adjudicatory Processes .....	77

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**Report Highlights  
And Executive Summary**

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## 1.0 PROJECT HIGHLIGHTS AND EXECUTIVE SUMMARY

This study was prepared under a State Justice Institute (SJI) grant for the judges and leadership staff of the Seattle Municipal Court (the Court, or SMC). The grant was administered through the Court with consulting services provided by the National Center for State Courts (NCSC, National Center, or the Center). The National Center for State Courts is a public benefit corporation targeting the improvement of courts nationwide and around the world. **The study is directed at suggesting ways to improve the operations, staffing and performance of the Court's criminal processing systems in light of shrinking resources, a reduction in the number of judges, and the desire to promote best practices in adjudicating limited jurisdiction cases.** The points of view and opinions expressed in this report are those of the authors as agents of the National Center, and do not necessarily represent the official position or policies of the State Justice Institute, or the judges and staff of Seattle Municipal Court.

### 1.1 STUDY OVERVIEW AND DATA GATHERING

NCSC consultants were on-site at the Court for two separate five-day periods, May 10 thru 14 and July 19 thru 23, 2010. Interviews were conducted with representatives of the City Attorney's Office, all contract public defense firms, representatives of the Seattle Police Department, all Municipal Court judges, key SMC administrators, managers and clerical staff, and telephone interviews with staff at the Administrative Office of the Washington Courts. Perspectives related in the report come from all criminal justice stakeholders as well as the consultants themselves. The consultants had access to reports, studies, performance statistics, and monographs on strategic directions, plans and problems, as well as previous studies on criminal caseload and specialty courts. Additionally, substantial time was spent observing various dockets and calendars in process.

During the initial phases of the project, the scope was changed somewhat pursuant to the Court's determination in July 2010, to move from a hybrid/individual calendar to a hybrid/master calendar as a result of a City Council decision to eliminate a Municipal judgeship effective January 1, 2011, with the retirement of one of the eight sitting judges. Originally, NCSC was contracted to review the current calendar system and determine if it was effectively meeting Court goals. Resultantly, the study focused more on the components of the criminal case processing system that could be streamlined to create efficiencies in the move to a new calendaring structure. The consultants also made recommendations on how to more effectively deploy technology and staffing to improve criminal case processing.

Grant funds for the study were limited. The total project cost was \$75,000. A State Justice Institute (SJI) grant of \$50,000 supported the bulk of the effort. Seattle Municipal Court provided a \$5,000 cash match and an in-kind match of \$15,000 related to staff time involved in interviews, project liaison, and data collection. The National Center for State Courts provided \$5,000 in Technical Assistance Funds.

The three consultants assigned to the project were Gordon Griller, John Douglas and John Matthias, all full time employees of the National Center for State Courts. Each has substantial experience in court management and urban limited jurisdiction court criminal case processing systems. Mr. Griller is a former municipal and general jurisdiction administrator, Mr. Douglas is a systems and procedures expert, and Mr. Matthias is a lawyer and information systems technologist.

## 1.2 CURRENT SEATTLE MUNICIPAL COURT CASEFLOW MODEL

Presently, the Seattle Municipal Court uses a hybrid/individual calendaring system distributing the adjudication work of the Court among 8.5 judicial officers who cover 11 different criminal courts or calendars. SMC’s model is best understood by viewing it in three major areas:

- **Initial Appearance Calendars**

*Function:* Front-end misdemeanor and gross misdemeanor processing where an incident report and sentencing recommendations are available, legal representation is ensured if not already designated, and defense attorneys explain options to defendants. When eligible, defendants may be sentenced to one of the specialty courts: Mental Health Court (MHC), Community Court (CC) DV Court, or Day Reporting (DR). DUI defendants may be eligible for MHC and DR.

Calendar	Days Scheduled
CR in-custody arraignments	Mon thru Sat; next court date after arrest
DV out-of-custody arraignments	Mon thru Fri; within 14 days of filing
DUI out-of-custody arraignments	Tue/Wed/Thu/Sat mornings; within 72 hrs of violation
Bail-out and PR’d arraignments	Tue/Wed/Thu/Sat mornings; within 72 hrs of release
CR out-of-custody intake	Tue morning; 14-21 days from date of filing
DWLS3 intake	Wed/Thu mornings; 14 days after date of violation

CR=criminal; DV=domestic violence; DUI=driving under the influence; PR’d= released on personal recognizance; DWLS3= driving with a license suspended in the third degree.

- **Pretrial and Trial Courts**

*Function:* Presently, SMC utilizes an Individualized calendaring system meaning that those cases that are not pled, settled or diverted are assigned to a specific judge who handles all subsequent proceedings until the case is disposed through settlement, dismissal or trial. For the four general trial courts, cases are evenly distributed to each of them after a plea of not guilty. For the two DV courts, cases are assigned based on the first letter of the defendants’ last name. A-K goes to one court and L-Z to the other. Once the case is assigned, it remains with the same judge through final disposition.

Calendar	Days Scheduled
4 general trial courts	Mon thru Fri
2 DV courts	Mon thru Fri

- **Specialty Courts**

*Function:* Specialty or therapeutic courts and calendars generally address difficult and protracted criminal cases generated by serious addictions, mental health issues, destructive social problems, and poverty cycles. They are a new and well accepted approach linked to a medical or diagnostic model, encouraging judges and lawyers to think of themselves as problem-solvers rather than simply case processors. These special courts and calendars break from traditional adjudication approaches directed at punishment and, instead, focus on using the law to apply more effective and successful behavior modification remedies. Mental Health



and Community Court fit that definition. DV Court is more adversarial and only classified as a “specialty court” by virtue of the fact that dedicated cross-professional evaluation teams review cases and recommend sentencing options to judges. The DWLS3 Court is a specialized traffic court handling low-level offenses where driver’s licenses have been suspended for non-payment of fines and fees. Community service is a sentencing option.<sup>1</sup>

Calendar	Days Scheduled
Mental Health Court	Mon thru Thu afternoons; Fri morning
Community Court	Tue/Wed/Thu afternoons
DWLS3 Pretrial Court	Mon/Tue mornings

### 1.3 SEATTLE’S PUBLIC LAWYER SYSTEMS

The vast majority of attorneys who practice before the Seattle Municipal Court are public lawyers, either city prosecutors employed by the city’s Law Department, or contract public defenders paid by the city. As such, the Court works closely with both groups in the day-to-day processing of hundreds of cases.

The Law Department or City Attorney’s Office is headed by a separately elected City Attorney. The office is considered a department of City Government. There is a criminal and civil division. There are approximately 30 attorneys in the criminal division with a full support staff which maintains a separate case management system, creates files, and prepares calendars. The criminal attorneys are divided into teams for purposes of courtroom and calendar assignments. There are four criminal processing teams, including two general trial units, one mental health and community court unit, a DUI unit, and a domestic violence unit with DV victim advocate staff.

As with any municipal criminal justice system, the charging and settlement practices initiated and followed by the City Attorney’s Office greatly affect criminal caseflow and disposition patterns within the Court. Special projects and crime reduction programs that spike case filings and arrests can catch courts unaware and unprepared to deal with an influx of filings. Changes in plea policies can affect trial rates. All indicating modifications in one part of the criminal justice system can easily influence other parts. Consequently, even though roles and responsibilities are different between the Court and City Prosecutor, the City Attorney is an important influence in how the Court functions.

Since many of those who appear in City Court are poor or indigent, public defense representation is another major factor affecting the daily operation of the Court. The City of Seattle contracts with three public defense agencies. The contracts are administered by the City Budget Office (CBO) located in the Executive Branch. All contracts are governed by a public defense ordinance that

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<sup>1</sup> DWLS is the most charged criminal traffic offense in Washington. DWLS3 is the lowest criminal charge permitting violators to have their license restored if they pay outstanding fines or fees assessed against them, re-apply to DOL, and substantiate they have insurance. Fines can be for non-payment of child support, unpaid speeding tickets, etc. in any community in Washington. If they can’t pay, they are permitted to perform community service. A DWLS2 charge relates to driving while being suspended, usually resulting from a DUI, administrative sanction or reckless driving conviction. DWLS1 is the most severe license suspension charge, meaning the accused is charged with being a Habitual Traffic Offender (HTO). DWLS1 is classified as a major moving violation, essentially a gross misdemeanor subjecting the violator to hefty fines and mandatory jail time.

outlines indigent defense requirements, including 380 case credits per attorney per year as a workload standard. Public defense services provided through the City of Seattle are some of the best NCSC Consultants have seen in large urban courts nationwide.

The primary public defense agency serving the Court is the Associated Counsel for the Accused (ACA). ACA has dedicated calendar attorneys who cover Initial Appearance Calendars and the Specialty Courts, and case assignment attorneys who represent defendants who have pled not guilty. By contract, ACA maintains a minimum of fifteen FTE attorneys.

The secondary agency is The Defender Association (TDA). By contract, TDA is guaranteed enough cases to support seven FTE attorneys. Considerable effort is expended by the Court to ensure cases are distributed appropriately between ACA and TDA.

The third agency is the Northwest Defenders Association (NDA). By contract, NDA is assigned cases where both ACA and TDA have conflicts. NDA has one FTE attorney. NDA also administers a Conflict Attorney Panel (CAP) and a CAP Oversight Committee. Cases are assigned to a CAP attorney if all three public defense agencies have a conflict.

Aside from special programs, staffing levels, and organizational structures, there is a more subtle influence on criminal case processing in any trial court; something called the “local legal culture,” essentially the attitudes, values and beliefs on the part of lawyers and judges regarding the pace of litigation. It is a dynamic that likely is at play in the Seattle Municipal Court which will partly shape the effectiveness of the new hybrid/master calendar system next year.

In 1982, court researchers studying the pace of litigation in a series of trial courts concluded that case delay and the speed of disposition for both civil and criminal cases was not singularly conditioned by court structure, resources, procedures, caseload, or trial rate.<sup>2</sup> Rather, speed and backlog were largely determined by the established expectations, norms, practices and informal rules of behavior of judges and attorneys. In other words, court systems become accustomed to a given pace of litigation. In courts where the practitioners expected cases to be resolved in a timely manner, they were resolved faster. Expectations for timeliness were associated with the degree of timeliness.

Ten years later, other researchers (Eisenstein, Flemming, Nardulli)<sup>3</sup> studied courts in three states and identified “work orientations” (attitudes related to one’s sense of profession, efficiency, and a pragmatic notion of “how work should be done”) as a phenomenon conditioning the speed of litigation through a trial court. Their findings essentially supported the idea of a cultural affect.

In 1999, Ostrom and Hanson at the National Center for State Courts studied 9 courts concluding that attorneys have distinctive attitudes toward four basic aspects of the work environment: (1) adequacy of available resources, (2) extent of clear court policies governing the pace of litigation, (3) the competency of opposing counsel, and (4) the effect of opposing counsel’s practices (i.e., plea bargaining,

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<sup>2</sup> Thomas Church, “The ‘Old and the New’ Conventional Wisdom of Court Delay,” *7 Justice System Journal* 3, 1982, pages 395-415.

<sup>3</sup> *The Craft of Justice: Politics at Work in Criminal Court Communities* by Roy B. Flemming, Peter F. Nardulli, and James Eisenstein. Philadelphia: University of Pennsylvania Press, 1992.

negotiating) on the timeliness of court resolution. Where lawyers had a positive reaction to those work environment features, the court tended to be more expeditious.<sup>4</sup>

#### 1.4 JUDGESHIP REDUCTIONS AND TIMELY CASEFLOW PROCESSING

**With seven judges, one commissioner, and four magistrates available to do the projected work in 2011, it is the opinion of the NCSC project team that SMC should be able to handle the caseload at current levels, but only by moving to an effectively managed hybrid calendar.** At a strategic retreat in early July 2010, the Court did decide to incorporate a new calendaring system that rotates 4 of 7 judicial assignments into master calendars for general trial court work, leaving 3 judges out of the routine master rotation to handle 1.5 DV courts, jail court, Community and Mental Health Courts, and first appearance calendars/DUI arraignments/72-hour jail releases. It should be noted that the most recent Washington State Weighted Caseload (WCL) figures indicate that 13.4 judicial equivalents are necessary to handle the current workload of SMC. The National Center is familiar with the methodology used in the Washington State WCL and considers it relatively accurate and on par with the approach and algorithms used by the National Center in its many WCL studies throughout the country. With the reduction of one judge position, the Court will have 12.0 FTE judicial officers.

**It is also likely that there will be an increase in trial court delay across most criminal case types as the Court readjusts to one less elected judge and works inefficiencies out of a new hybrid calendaring system. SMC data suggests increases in criminal pretrial processing times for in-custody defendants to rise by 6.2 days from 18.5 days to 24.7 days equating to 10,527 more jail days at a cost to the City of \$1,284,294. NCSC consultants have no disagreement with the methods used to calculate these estimates, but we do believe that reengineering court processes may possibly reduce those figures by as much as fifty percent to roughly a 3 day average increase in pretrial detainee stays and \$600,000 additional cost to Seattle. This conclusion presupposes that filing levels will stay roughly constant and the caseflow process will be restructured to shorten hearing and trial times. Any new crime reduction initiatives that have the potential to increase case volumes (i.e., new SPD patrol officers on the street as an example) will become problematic for the Court. Criminal case filings in all trial courts are fundamentally driven by law enforcement and prosecution activity which can create unintended consequences in managing the Court's caseload.**

***Recommendation:*** *It is the opinion of the National Center that the Court is at the tipping point in effectively processing the number of cases with 12 judicial officer positions.<sup>5</sup> To reduce the number of judicial positions to less than 12 full-time equivalents risks a slowdown in case processing times and delays in the disposition of cases beyond acceptable levels. Reengineering the calendaring system,*

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<sup>4</sup> Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts*. Williamsburg, VA: National Center for State Courts, 1999.

<sup>5</sup> By "tipping point" we mean the effect of "context" (the world around the court) on the work and productivity of the court itself; the point at which changes in the world around the court creates a threshold moment where unintended consequences result. There is little doubt that the court is subject to and heavily influenced by its environment. And, changes in that environment which dramatically and intimately affect the day-to-day operations and pace of litigation in the court are largely beyond its control. Examples include efforts to combat and prosecute minor crimes (i.e. new or ramped-up crime reduction initiatives), the nature of what is criminal and the degree of punishment or type of sanctions required by law (i.e. expanded time periods for DV and DUI probation), and the level of public defense or prosecution services available within the court to adjudicate cases. In all these instances, the power of context greatly conditions the capacity of the court to accommodate workload changes and still be true to its overarching purpose to render justice in individual cases.

*expanding electronic records processing, and streamlining business processes in an environment as complex as the Seattle Municipal Court will take time and experimentation. Collectively, such improvements have the potential to enhance productivity and reduce redundant work in many areas, but those benefits will not likely be realized immediately. Consequently, the prudent course of action is to avoid further cuts to core judicial staffing in the next few years especially given the potential for increased costs to the City due to lengthened jail stays resulting from adjudication delays.*

## 1.5 TRANSITION TO A HYBRID/MASTER CALENDAR SYSTEM

**Effectively moving to and managing a hybrid/master calendar will be difficult, but doable provided the Presiding Judge and Court staff are vigilant in identifying potential problems early, trial judges adopt more uniform courtroom processes and procedures, and the Court maintains a willingness to experiment with caseload and assignment adjustments.** Scrapping an individual assignment system for a master or hybrid one in a multi-judge, urban court will affect numerous work patterns. Complicating the switch is the need to continue to operate on a more-or-less individual calendar basis in the three specialty courts. Other potential problems in moving more toward master calendaring in general trial assignments will be the scheduling of motions, balancing workload among the master calendar judges, and the potential for “judge shopping” among attorneys.

***Recommendation:*** *Court leadership should routinely meet with key justice system stakeholders throughout the detailed development of a new master calendar system and during the first year of operation to assess, adjust and strategize regarding calendar processes and effectiveness. Often in master calendar systems there is a separate motions assignment allowing a motions judge to hear and rule on all motions prior to reaching the trial stage. Also, master calendaring is more effective where statistics regarding workloads, continuances, requests for changes of judges, trial length and disposition outcomes are tracked, transparent, and trigger improvements.*

## 1.6 DISCOVERY AND INFORMATION EXCHANGES

**A significant strength in the current criminal caseflow is that all parties – prosecution, defense and the Court – are very supportive of the early exchange of discovery. It is one of the key ingredients in prompting early pleas and reducing trials.**<sup>6</sup> Contract defense lawyer groups – ACA, NDA, and TDA – agree that discovery is generally received in a timely fashion prior to pretrial. All are very supportive and complimentary of e-discovery initiatives pursued by City agencies. Review hearing scheduling and timely noticing is a problem for many defense lawyers. There are a variety of types of forms used for the same purposes causing confusion in data collection and processing. Some defense attorneys are concerned that delayed probation reports on the general trial calendars arrive late (i.e., the day before or on the day of the hearing) creating difficulties in permitting them to fully understand the recommendations, work with the client, facilitate a resolution, and properly represent the defendant at the hearing. Probation and the defense agencies are addressing this problem which is largely caused by the fact that the attorney assigned to the review court is not getting a copy from the agency. The

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<sup>6</sup> American Bar Association guidelines encourage three principles in modern criminal discovery practices... *Open File Discovery* granting the defense access to all unprivileged information known to the prosecution, law enforcement or forensic testing labs working for the prosecution; *Automatic Disclosure* of police reports, witness statements, results of physical or mental exams, and evidence related to any aggravating or mitigating factors that could affect a plea or sentence; and *Early Exchange* of evidence when it initially becomes available. Seattle criminal justice agencies generally perform well in applying these values.

prosecutor receives these reports by email. It should be noted that on some Court calendars discovery is received electronically in a timely fashion. The Court is very conscientious in calendaring matters according to speedy trial guidelines; an example is the policy to set DV arraignments 14 days filing. Delays in producing police arrest videos for defense attorneys outlined by some defense attorneys were not found to be substantiated in a quick review and sample of that business process. In tracking a random DUI arrest occurring on April 17; the defendant was arraigned 4 days later; City prosecutors ordered the video 2 days after the arraignment and obtain it from SPD 19 days after it was ordered; the next day, the Law Department advised the defense attorney the video disc was ready to be picked up for a pretrial scheduled two weeks later. All well within the speedy trial requirements. Even though our review found the randomly selected sample case to have processed video evidence in a timely fashion, the Court remains concerned that pretrials often have to be re-set due to the lack of both SPD video evidence as well as 911 tapes. Additionally, there is unease on the part of Court officials about what appears to be the sporadic, late, batch filing of DUI cases and DV cases wherein some evidence, principally 911 tapes, may be erased before the case is adjudicated.

***Recommendations:*** *Currently, police reports are available electronically. Forms used during the discovery process by lawyers and the Court should be more standardized, especially regarding continuance requests and pretrial diversion. It would be helpful to initiate a fail/safe alert protocol between the Law Department and defense bar regarding police arrest videos as well as 911 tapes. Currently police officials indicate bandwidth and digital storage limitations prevent electronic transmission of videos. An alternative approach is suggested in the technology section of this Highlights document wherein videos (and perhaps 911 tapes where the case will be filed late in batch mode) could be placed on an online Law Department managed site for downloading through a secure access system by the defense bar. Such an approach presents no overwhelming technical problems, and once a case is disposed the digitized video and audio records can be archived inexpensively or destroyed should City policy or State law permit.*

## **1.7 INTAKE (OUT OF CUSTODY ARRAIGNMENTS)**

**Intake is the out-of-custody arraignment calendar for a variety of criminal cases<sup>7</sup> on Tuesday mornings. Many cases are handled administratively generating earlier dispositions and saving time in the caseflow.** According to the Court's local rule on Intake Hearings, defendants who wish to plead not guilty may appear before a clerk who shall assign a pretrial hearing date without judicial involvement. Any defendant, who desires, may appear before a judge at the Intake event for formal arraignment. At this event, eligible indigent defendants discuss their case with a public defender. Numerous negotiated pleas in less serious cases result where defendants are eligible for pretrial diversion or Community Court. On Wednesday and Thursday mornings, cases involving Driving with a License Suspended in the Third Degree (DWLS3) are calendared for Intake. Most of these matters are dismissed (60-70%) for first time offenders by the Law Department on condition that the defendant agrees to fine/fee payment and/or community service. Administratively handling out-of-custody arraignments is a significant time saver and work process improvement. Under the revamped hybrid/master approach, the current Intake arraignment calendar will be disassembled with out-of-custody criminal cases scheduled for Friday afternoons; out-of-custody DUI cases handled in the Jail courtroom at Tuesday, Wednesday and Thursday mornings; and bail-outs on the general trial calendars with those judges keeping the cases for pre-trials. The DWLS3 calendar would be eliminated.

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<sup>7</sup> Not including offenses involving domestic violence, violation of anti-harassment orders, driving under the influence, physical control, stalking or firearms offenses.

***Recommendations:*** *The Court's objective in distributing the Intake Calendar to times and places where the calendars of a reduced number of judicial officers can be set heavier to accommodate the same workload is one of the few solutions available to the Court. NCSC consultants are concerned, however, that the scattering of the present Intake docket among a number of judges/locations will diminish current economies of scale and complicate attorney scheduling. The objectives for this calendar in handling many of the matters administratively and targeting early dispositions are proven best practices. Although there are many scheduling options possible, NCSC would suggest that Court leaders explore a couple of alternatives that have proven successful in other courts nationwide (provided Washington law and judicial procedures permit): Could an appointed judicial officer be assigned full-time, five days a week to handle front-end criminal case processing including arraignments and numerous other related matters? In many urban limited jurisdiction courts first appearances and arraignments are handled by non-elected judicial officers or judges pro tem. Commissioners in other municipal courts in Washington (under RCW Title 3 as opposed to Title 35 governing SMC) handle misdemeanor and gross misdemeanor arraignments. Could a senior staff person (either a lawyer or non-lawyer) function as a hearing officer to adjudicate infractions in place of a magistrate where no jail time is possible, freeing the magistrate for other more weighty judicial proceedings? Also, we would suggest that the Law Department consider placing more experienced prosecutors at the front end of the system or permit front-line prosecutors assigned to arraignments more latitude in negotiating pleas and conditions where defendants plead not guilty. Time spent at the front-end of the caseflow system increasing the early disposition of cases is a significant characteristic of high performing urban courts.*

## **1.8 PLEA NEGOTIATION AND EARLY CASE SETTLEMENT**

**Many pretrials in traffic and criminal matters result in negotiated pleas, a common and necessary practice in limited jurisdiction courts nationwide where there is timely discovery, high volumes, clear fact situations, and the charge and sentencing consequences or sanctions for the defendant are low. Matters that reach pretrial in SMC are more severe since many minor crimes drop out at the initial appearance and intake calendars. There is roughly a 30-40 percent plea rate at this stage in the caseflow. Although respectable, many urban limited jurisdiction courts exhibit higher rates in similar types of cases.** Pretrials are normally scheduled 14-21 days from the date of an arraignment for in-custody defendants and 21-28 days for out-of-custody parties. Some defense lawyers and Court staff conclude the rate could be higher, around 50 percent (common in other urban limited jurisdiction courts), if assistant City attorneys were given more latitude to negotiate agreements. The City Attorney claims to have a plea cut-off policy where offers do not get better after pretrial. Currently, a plea offer is good until the Friday before a trial date. No formal evidence of the policy was obtainable. Later observations and trial docket results indicate there is usually a better offer by the City on the day of trial. This works as a disincentive to settle at pretrial. The Law Department is exploring an early plea program which certainly would be more effective with a strong plea cut-off policy. Two assistant City attorneys normally staff pretrials (25 pretrials in the morning; 25 in the afternoon); one operates in the courtroom and the other in an adjacent area where he/she negotiates pleas.

***Recommendation:*** *With the recent election of a new City Attorney, a written plea cut-off policy should be structured in order to facilitate early settlements and clearly advise the defense bar of negotiating parameters. The elements of a sample, successful plea cut-off policy for criminal cases are provided in the final report. Effective, streamlined front-end criminal case processing (plea bargaining) can occasion a 60 to 65 percent plea rate within the first 40 days from arraignment. The Court provides a number of different calendars and venues to aid early dispositions. Law Department leadership*

*appears supportive of the change to a hybrid/master calendar scheduling pattern and expressed a willingness to work with the Court and defense bar to maximize early dispositions.*

## 1.9 COLLEGIAL CHAMBERS AND SHARED COURTROOMS

On general trial assignments, judges have dedicated courtrooms. Space planners and courthouse architects have recently developed new models for courtroom and chambers use that are more productive and better facilitate the scheduling of cases. This new approach is called collegial chambers and shared courtrooms. Essentially, it means that judicial chambers are clustered in one area of the courthouse for safety and security reasons, judicial support staff are pooled under the Court Administrator so that they are better utilized among all judges, and judges do not “own” particular courtrooms but share them depending on the case types scheduled and their calendar assignments. This approach can be adapted to existing courthouses and improve scheduling as well as promoting better public space use.<sup>8</sup>

***Recommendation:*** *The Court should explore shared courtrooms in the interest of improving case processing and calendaring as well as public and lawyer convenience.*

## 1.10 MULTIPLE CHARGES

**Best practices in urban limited jurisdiction courts encourage the disposition of as many outstanding charges as possible at every hearing.** This means that when a defendant with multiple charges appears in court, the judicial officer having jurisdiction should resolve all cases presented. SMC consolidates cases whenever possible. For example, when the daily MCIS report shows a defendant scheduled for an arraignment has other unresolved matters pending in the Court, staff will advance those dates and consolidate all matters with a new charge. Additionally, some judges make it easy for both prosecution and defense attorneys to add-on or consolidate cases.

***Recommendation:*** *Judges and court staff do a good job at consolidating all related cases involving a defendant at the earliest possible point in the caseflow in order that all charges may be resolved as possible. Where necessary witnesses are not present in contested matters, cases must be set over.*

## 1.11 WARRANT CASES

Currently, defendants arrested on a warrant are routinely set for a Court appearance the next day. The warrant is either for failure to appear or comply with a sentencing sanction. If the defendant decides to plead or admit his/her failure to follow court directives, they are generally sentenced and the case is closed. In a not guilty plea or denial of the allegation, the judge may release the defendant on personal recognizance, assign them to the Day Reporting Center for follow-up, or order the party held in custody. Some judges allow their initial appearance custody calendars to be overset so a defendant is not held an inordinate amount of time in jail. Routinely, the Court considers a number of factors before in-custody defendants are set for a court date, including but not limited to previous history, case type, charge type, hearing type, next available dates, and custody status. **Under the new hybrid/master**

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<sup>8</sup> See *Future Trends in State Courts 2010*, “Implementing Collegial Chambers as a Means of Courtroom Sharing,” Nathan Hall. (Williamsburg, VA. National Center for State Courts, 2010).

**system, warrant case appearances will be delayed since warrant matters will be set back before the issuing court.** Jail costs are likely to increase and trial court delay will be extended.

***Recommendation:*** *The Court should consider setting warrant cases rapidly from the jail court on a special warrants docket structured as part of the new hybrid/master calendaring system. Many courts handle warrant cases swiftly and avoid having defendants wait in a queue for an open slot on a standard calendar.*

## 1.12 DOCKETING AND SCHEDULING

Docketing is the recording of decisions and judgments regarding the outcomes of adjudication decisions in a courtroom; essentially the “register of actions.” Scheduling is the logging of future court dates and events related to a defendant-in-process. Both functions are intertwined in the recordkeeping that takes place in hearings and trials. Data regarding each purpose is often entered collectively in the Court’s electronic case management system, the Municipal Court Information System (MCIS). Much of this in-court data entry, however, appears cumbersome; a confusing mix of manual and computer inputs processed by a variety of people. Although flexibility is enhanced by multiple applications and data entry sources, so too are inefficiencies when large quantities of data and different protocols are employed. **Manual and electronic data collection processes in the courtroom should be more orderly and efficient.** Some judges schedule next case dates and calendaring information on their own, others do not. The calendars themselves for various court hearings also vary quite a bit as to volume, consistency in procedures, and courtroom protocols. There is little uniformity in motion practices or readiness calendars from judge to judge according to defense lawyers. Often add-on motions (i.e., modifying conditions of release; sentences) are quickly set on calendars even though there is a Court rule on standard procedures. The practice creates substantial uncertainty and unpredictability. Observations and docket records indicate occasional wide fluctuations in numbers of items set on routine calendars creating scheduling difficulties and overset problems in what is a rather stable influx of cases. NCSC suspects numerous reasons (i.e., vacations, limited pro-tem funds, holidays, etc.) common to scheduling matters in urban municipal courts cause some of these fluctuations.

***Recommendations:*** *The time required and confusion entailed in manually maintaining and updating calendars causes inefficiencies. As the hybrid/master calendar system is instituted a more structured electronic docketing and scheduling system together with common protocols as to data entry should be a high priority. Also, judges should consider more uniform policies, practices and procedures in their courtroom operations. It is understood that judges are separately elected officials and may not agree with each other regarding courtroom decorum or processes, but where dramatic and pervasive differences occur, it works against systemwide predictability and efficiency; key ingredients in effective, smooth caseflow management.*

## 1.13 FRIDAY CALENDARS

Calendars heard on Friday are an eclectic mix of various case types and adjudication processes. Although many courts schedule miscellaneous calendars to dispose of lingering matters not resolved on regularly scheduled dockets, they are not as widespread or hectic as seen at SMC. **With a hybrid/master calendar system, it is quite possible to effectively utilize Friday mornings and afternoons for more structured, routine proceedings.** Admittedly, there are numerous scheduling problems that will complicate heavier Friday dockets, including needed clerical preparation time for the next week and Friday afternoon furloughs.



***Recommendation:*** *Fridays should have regularly assigned calendars up to normal court closing time as possible.*

#### **1.14 SPECIALTY COURTS**

Specialty or therapeutic courts and calendars have been developed by the Seattle Municipal Court to better address difficult and protracted criminal cases generated by serious addictions, mental health issues, homelessness, destructive social problems, victim vulnerability, and poverty cycles. They are a new and well accepted approach linked to a medical or diagnostic model, encouraging judges and lawyers to think of themselves as problem-solvers rather than simply case processors. These special courts and calendars break from traditional adjudication approaches directed at punishment and, instead, focus on using the law to apply more effective and successful behavior modification remedies. Substantial, evidence-based research over the past ten to twenty years supports the fact that problem-solving approaches reduce substance abuse, save jail and public defense costs, cut recidivism, decrease crime, increase offender accountability, improve victim services, promote defendant accountability, and enhance public confidence in justice.<sup>9</sup> **Data indicates all SMC specialty tribunals – Community Court, Mental Health Court and Domestic Violence Court - are worthwhile and effective programs supported by numerous justice system stakeholders. Early separate studies of these courts have confirmed their usefulness as well.** The Day Reporting Center, is both a pre and post-sentencing option, has many of the elements of a therapeutic court with ties back to judicial officers.

***Recommendations:*** *All three specialty courts should remain operational components of SMC. There has been speculation by some judges and Court leaders that Community and Mental Health Court calendars could be combined freeing time for additional pretrial and trial calendars. NCSC consultants feel the pros and cons of such an option should be fully evaluated by staff and a proposal brought to the Bench for action. It is the nature of specialty courts to schedule a substantial number of review hearings to ensure compliance with treatment and probation conditions. In some instances, namely domestic violence cases, it is expected the Washington Legislature will soon extend the two year municipal court probation term to five years as they have in DUI matters effective July 1, 2010. The DUI and potential DV increase, if adopted by the City, would undoubtedly increase the number of hearings.<sup>10</sup> If such is the case, it is likely Probation Division staffing will need to increase. Also, an analysis by the Chief Clerk, Research, Policy and Planning, and Probation to streamline and reduce, as feasible, the number of review hearings should be undertaken. Where possible and productive, probation-centered contact should be substituted for routine judicial reviews saving Court time and reducing judicial calendars.*

#### **1.15 IN-HOUSE CRIMINAL CASEFLOW EXPERTISE**

The top management team of the Court is impressive. All are skilled professionals who complement each other in stimulating and advancing major change in the Court. Caseflow management, work simplification, and process improvement – three significant directions for the Court as it confronts reduced budgets and new calendaring procedures – require high-level analytical skills, a willingness to honestly examine current realities, and the courage to change the status quo. NCSC

<sup>9</sup> See Center for Court Innovation (New York, NY) and National Center for State Courts (Williamsburg, VA) websites for background data and supporting studies.

<sup>10</sup> It is inconclusive as to whether Seattle needs a local ordinance to extend DV jurisdiction to five years. If an ordinance is necessary, it likely will not happen until later in 2011.

consultants feel the Court has the talent to do so. **In particular, the experience and creditability of the Chief Clerk and Research, Policy and Planning Group give the Court the capacity to institute needed program and management improvements as well as shepherding them to successful conclusions.**

***Recommendation:*** *Research, Policy and Planning (RPP) should continue to concentrate on increasing efficiencies and building management capacities within the Court in light of shrinking staff and programs. In doing so, the Chief Clerk can be freed to continue to oversee and coordinate day-to-day case management and calendaring operations. Current RPP statistics on case processing and trial court performance standards indicate a need for deeper management analysis (i.e., case clearance rates should consistently be at or close to 100 percent). To help identify solutions, RPP professionals should be introduced to and become conversant with limited jurisdiction caseflow performance best practices and best practice datasets. Attendance at selected Institute for Court Management seminars and collaboration with other high performing urban municipal courts would be helpful. The final report will provide more detail as to best practices and offer examples of helpful case processing statistics.*

### **1.16 COURTROOM PAPERWORK PROCESSING**

NCSC consultants focused on a number of systemwide strategies and initiatives centered on business process reengineering (BPR). BPR is the analysis and redesign of workflow within a court or any other organization. The technique gained notoriety in the 1990's as businesses began revisiting the need for speed, service and quality over control and efficiency. Many efforts ran into unanticipated problems as they attempted to use technology to mechanize old, antiquated ways of doing business and shuffle paper. Various governments and some courts followed suit in the public sector, but often fell short because the common focus was too often on quick fixes rather than breaking cleanly away from old rules about organizing and conducting business. **The strategic use of BPR teams to improve, redesign, and streamline courtroom workflow and its attendant paperflow is worthwhile and will complement the efforts of the IT strategic advisors.**

***Recommendations:*** *Consultants identified a number of process improvements; many related more fully later in this report. Three principles govern our recommendations. First, work needs to be organized around outcomes not tasks. The decision points should be placed, to the extent possible, where the work is performed and controls as to errors and quality are best placed into the process. Those who perform the work should make the decisions and the process itself can have built in controls. The ultimate objective is for the doers to be self-managing and self-controlling. Second, information should be captured only once and at its source. Recording or entering redundant data is a sin. Third, BPR is best done through ad hoc, inter-division committees or task forces of employees involved in the workflow itself by working backwards in having those who use the output of a work process engage in the reengineering analysis at the beginning stages, and utilize small self-direct project teams (not bosses leading subordinates) to focus on problem-solving, workflow mapping, decisions, and outcomes. Highly effective courts have found the regular use of employee teams improve work processes and create a culture of collaboration where staff comes to believe decisions and actions are better when done cooperatively. Effective BPR can improve court productivity by as much as 10 to 20 percent.*

## 1.17 TECHNOLOGY AND BUSINESS ANALYSIS

**The Court's IT Group has two business analysts titled "strategic advisors" who are extremely valuable.** They are necessary to advance the Court technology-wise. Currently, they are the only business system analysts in the Court. Court managers and supervisors in most courts have to perform the business analysis function themselves. They function like an internal management consultant in helping technologists understand the business needs and technology solutions.

***Recommendation:*** *SMC should maintain its current business analysis capabilities which are a critical asset. Technology business analysis complements paperwork streamlining (business process reengineering).*

## 1.18 MCIS SOFTWARE

**The Court's decision to build and maintain its own electronic case management system (CMS) in-house is responsible given the alternatives.** Consequently, Court leadership needs to renew its commitment periodically to maintain the current staffing which is well equipped to do what is asked of them. The Washington State Court System has historically struggled to both upgrade and replace its legacy SCOMIS (general jurisdiction) and DISCIS (limited jurisdiction) 20+ year old computer systems. DISCIS functionality is not currently compatible with the present or future needs of Seattle Municipal Court. No other alternatives through Washington's Judicial Information System (JIS) at the Administrative Office of the Courts are presently viable. Both *SeaJIS*, the city's integrated criminal justice system, and the e-citation project have huge potential to reduce work and improve productivity within the Court. Both initiatives can be accommodated through MCIS expansion.

***Recommendation:*** *SMC's strategic direction to upgrade MCIS as its principal electronic case management system is sensible.*

## 1.19 MCIS REMODEL

**The MCIS remodel project targets two functionality improvement areas: accounting and electronic court records (ECR). NCSC consultants agree these are major improvement areas and will significantly advance judge and staff productivity as well as stakeholder and public information access. A number of carefully planned steps must be accomplished to be successful.** A funding request to the City is planned to take place in 2011 for 2012 support. A MCIS Remodel Steering Committee will develop the project plan, remodeling requirements, business cases, and a funding request.

***Recommendations:*** *After key staff prepares preliminary business cases for remodel enhancements, the Court should conduct a priority-setting retreat to select the system changes that will produce the most business value (i.e., improved productivity). NCSC offers advice in these key areas:*

- *The In-Court Processes team should consider data entry or online forms completion in the courtroom for bailiffs.*
- *The In-Court Processes and ECR team should consider implementing an electronic complaint from the City Law Department, or otherwise creating a complete electronic record.*
- *The ECR team should consider the courtroom information needs of the magistrates in planning for leveraging e-citations from SPD.*

- *The In-Court Processes team should consider creating a “shell” or temporary case in MCIS when a person is booked in jail rather than assigning a case number to it until the prosecutor has screened the case.*
- *The In-Court Processes team should consider screens to capture day reporting data in MCIS or interfacing with the day reporting stand-alone system.*
- *The In-Court Processes team should consider mass case processing capabilities in any remodel.*
- *The management team should lead a work group to review reporting from MCIS, including implementation guidelines for standard NCSC CourTool reports and ad hoc queries, samples of some useful management statistical reports will be included with the detailed report,*
- *Reporting should be run from a copy of the database, not the production database.*
- *Video delivered for discovery should be available to defense attorneys at an online site (Law Department driven initiative).*
- *Cashiers and screeners should have access to the Booking and Arrest System (BARS).*

## 1.20 PROBATION DIVISION

**Many urban limited jurisdiction courts have no in-house probation resources. SMC is far advanced in offering assessment, treatment connections, case management and compliance services from pre-trial through post-trial stages.** The Probation Division, composed of 38 probation officers, 5 support staff, and 40 volunteers, is a sound, professionally run operation. The length of probation jurisdiction is up to two years in criminal cases and five years in DUI matters. It is likely the Legislature will expand DV probation jurisdiction to five years. Some privatization of services has recently taken place, principally regarding electronic home monitoring (EHM). A large portion of the work of the Probation Division involves DUI and DV defendant assessments, monitoring and compliance.

***Recommendations:*** *There are a series of operational improvements that could assist the work and effectiveness of Probation. Eventually, MCIS functionality should replace Probation’s stand-alone TRACKER software to promote timely noticing to Probation regarding defendant sentencing in Court. Due to heavy caseloads and work assignments, probation officers are often required to multi-task while waiting for appearances in Court. Where courtrooms have wireless capability, probation officers should be permitted to use PDA’s or laptops as necessary in the courtroom. It may be possible to limit more strategically the number and types of matters referred to probation. A special task force should be established to review such possibilities. Also, raising and aggressively mandating (via Bench policy) higher probation fees should be explored. Currently SMC probation fees are among the lowest in the state and lag nationally behind those levied in many other major limited jurisdiction courts. It is understood that the Bench is willing to support fee increases and order them more consistently to ensure where possible that violator’s bear a reasonable cost burden to offset a portion of the public expense in providing government supported evaluation, compliance and treatment services.*

## 1.21 DAY REPORTING CENTER

**The DRC began in 2006 to provide an alternative to jail, prompt reappearances, and treat chemically addicted defendants who are not aggressive but have numerous psychological and social needs.** It is operationally sound and well administered. The focus is not on rehabilitation, but on client management (i.e., housing, food, life skills, employment, and mental health services). In-house chemical and psychological evaluations are done. DRC does broker provider services to clients. The program has not traditionally accepted DV or DUI cases, although lately some selective DV cases have been assigned

to the DRC. Not many limited jurisdiction courts have DRC initiatives; more should follow the SMC model.

***Recommendations:*** *The DRC is a worthwhile and valuable program. Where possible, additional case types and defendant referrals should be explored. Operationally, the stand-alone computer software used by DRC should be replaced with a MCIS module to permit staff to better access client histories and current case status information.*

## 1.22 PROCEDURAL FAIRNESS FEEDBACK

**An increasing assist for many trial courts in improving services and strengthening public trust are efforts devoted to promoting feedback to court leaders on public perceptions about understanding, fairness, integrity, efficiency and dignity of court processes and procedures.** Such programs provide an invaluable internal quality review that top administrators and judges often do not routinely receive, and can occasion important overall court improvements. The National Center's *CourTool Measure 1, Access to Justice*, a common and relatively basic data collection instrument used to survey public impressions, has been the cornerstone of most trial court efforts to date. It touches lightly on these issues as a bellwether for change. Here, however, we are talking about more substantive information on Court processes and performance. Much of it is related to the work of New York University Professor Tom Tyler who has pioneered the idea of *procedural fairness*, which NCSC consultants believe could help the Court in the long-run as it faces major changes occasioned by revamped work patterns and continued budget reductions.

*Procedural fairness* includes not only litigant perceptions about whether judicial decisions are fair (outcome fairness), but more importantly, an assessment as to how court users perceive their case was handled and the quality of the treatment they received from judges and staff. Tyler's research, vetted by many others, identifies four primary elements of procedural fairness. Much of it is conditioned by staff behavior as well as judicial officers.

- *Respect:* People react positively when they feel they are treated with politeness and dignity; when they feel valued and that their rights are respected. Helping people understand how things work and what they must do to navigate through the court system is strongly associated with court user satisfaction.
- *Voice:* People want the opportunity to tell their story; to explain their unique situation and circumstances. Often, as patrons describe their viewpoints and reasons for seeking court intervention, court staff can help them grasp issues, terms and processes more clearly.
- *Trustworthiness:* People look for actions to indicate they can trust the character and sincerity of those in authority, including non-judicial staff, and that those in authority are aware of and genuinely concerned about their needs. People look for conduct or behavior that is competent, benevolent (e.g. putting the needs of the customer ahead of the needs of the employee), caring, and seeking to do the right thing.

- *Neutrality:* People are more likely to accept direction, decisions, and help when those in authority do things that both are, and perceived as, fair and neutral (e.g., they have been treated like everyone else), the importance of the facts are clearly understood, and the next steps or reasons for a decision or course of action have been clearly explained.

***Recommendation:*** *It is suggested that Court leaders explore the possibility of a special Citizens Task Force on Court Feedback to help in promoting procedural fairness in the courtroom and throughout the Court institution. Such a group must be apolitical and staffed by the Court Administrator's Office. Some courts have developed "court watcher" programs to provide candid, private feedback regarding perceptions about the Court (i.e., work by the Council for Court Excellence in Washington, DC is an example). Other courts have developed internal, confidential judicial and court performance improvement programs involving staff, consultants, and/or citizens with special mentoring expertise (i.e., examples include Hennepin County Minnesota District Court and the Maricopa County Arizona Superior Court where management coaches have worked with judges to improve their effectiveness in the courtroom and their interactions with lawyers and the public).<sup>11</sup> The American Judicature Society and Judicial Division of the American Bar Association both provide guidelines and endorsements toward justice performance review programs that are worthwhile to explore. A citizens group is suggested as the vehicle to perform such work to ensure the initiative is unbiased and relevant to public concerns.*

### 1.23 PRESIDING JUDGE AUTHORITY

**Washington General Rule 29, prescribing the selection, duties and responsibilities of leadership judges in trial courts, does not confer the power and authority necessary for presiding judges of multi-judge courts to effectively manage other judges or promote timely and efficient case processing by individual judges.** A major change in caseflow practices normally requires strong authority vested in a court's top judge to oversee and administer case assignments and remedy problems quickly. Rule 29, although recognizing that a presiding judge has a duty to supervise, is soft on the supporting authority to enable responsible oversight of other judicial officers. Rule 29 allows multi-judge courts to create an Executive Committee which can by local rule (occasioned by a vote of the judges) assume any and all duties of the presiding judge or establish and assign additional duties and functions to itself. Consequently, as first among equals, the presiding judge has very little power other than to chair meetings of the judges, oversee the non-judicial staff, and represent the Court to outside agencies and stakeholders. In the opinion of National Center consultants, this not only weakens day-to-day leadership capacity, but undermines the ability of the Court's top judge to make hard decisions in implementing and managing hybrid/master calendar changes. Leadership strength is also compromised by short tenures of presiding judges which is commonplace in Washington. Many high performing urban limited jurisdiction courts in other states vest considerable independent authority in top city judge positions and permit longer terms of service than at SMC.

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<sup>11</sup> Coaching is not advice, therapy or counseling; rather it targets assessments about working relationships, organization challenges, communication improvements, options building, and values clarification.

***Recommendation:*** Explore the possibility of adopting a job description for the Presiding Judge vesting the position with more independent authority to oversee master calendar policies and operation, and extending the presumptive tenure of the position to a minimum of four years. It is recognized that currently a SMC presiding judge can be re-elected to a second two year term. However, the contention here is that structurally conditioned short-term leadership is less effective than longer terms in office due to the very nature that leadership is dangerous, especially in its responsibility to challenge the status quo where most people are comfortable and ready resistance rests. In moving to a major, new calendaring system and accommodating a reduced budget as the Court will be doing, there assuredly will be tough decisions which grate on the status quo. Short tenures virtually guarantee more difficulty in changing complex organizations such as the SMC. It would be helpful for the judges of the Court to formally pass and promulgate a resolution or local rule of court to this effect. A copy of a model presiding judge job description is contained in the final draft report.

## **1.24 JUDICIAL INDEPENDENCE**

In summation, it should be noted that among the national community of trial courts, the Seattle Municipal Court has a reputation as a soundly run, innovative, urban limited jurisdiction court. Certainly, much of that standing flows from the willingness of City leaders to support and promote the Court. In doing so, however, it has not been without debate and disagreements over programs, directions and organizational structure. Often the conflict between city courts and city councils is mischaracterized as arrogance or self-importance on the part of court officials. In reality, this “healthy tension” is vested in a trial court’s larger purpose and mission as part of an interlinked, statewide judicial institution. As with all municipal courts in Washington (and other states as well), the State Constitution places it under the authority of the Washington Supreme Court. Consequently, it is not merely a department of the City Government, but a court of law obligated to maintain its independence in judicial matters. It cannot perform its purpose to make unbiased, fair decisions based on the Rule of Law without the ability to separate itself from its host government, especially where agents of that government must appear before it and have vested interests in the decisions made by the Court. The Constitution and Rule of Law requires nothing less. Greater significance and standing for limited jurisdiction judges is gained where a state Supreme Court takes a strong stand in integrating all levels of state trial courts under the judicial branch through administrative orders, supportive case law, and court rules. Such is the case in Washington, we feel. Buttressed by elective status, open communication with City officials, and a national reputation for minimizing trial court delay, the judges of the Seattle Municipal Court are obligated to exercise responsible and accountable judicial independence in working with their criminal justice partners.

**Municipal Court  
City of Seattle, Washington**

**Improving Criminal Case Processing**

**Draft Report**

**October 2010**



## 2.0 STUDY METHODOLOGY

Observations, interviews, and assessments of court issues and problems have led the NCSC project consultants to take a slightly different tact in assembling their recommendations. Normally, our report would be issued as a detailed narrative, outlining findings and suggestions buried in text, much like an expanded version of this Introduction. However, the NCSC project consultants have diverted from that style to develop something different, but hopefully more useful for court leaders: *A loose-leaf notebook segmented by major operational areas wherein our findings, conclusions and recommendations are related in a template format.* It is our contention in using this approach that

- A wide range of criminal case operational issues can be assessed quickly and succinctly.
- Identified problems and needs can more easily be reviewed and prioritized by court leaders.
- Decisions about remedies and action plans can more effectively be assigned to task forces, business teams, or specific managers for subsequent implementation.

The guides (templates) fall under numerous assessment areas ranging from workforce and personnel issues to computer system improvements. They correlate with the report's table of contents, essentially an outline of the topics the consultant's explored.

Each of the major assessment areas begins with an assessment template outlining the specific issue or topic reviewed; the observations by the consultants gathered from interviews conducted during the two on-site visits to the court and data collected prior to, during and after the site visits; the consultants' findings related to the problems and challenges detected; and their conclusions and recommendations pertaining to improvements. Best practices among urban limited jurisdiction courts are highlighted in the conclusions section and amplified in any supplemental information following the template, or in the Appendices as appropriate.

The following page outlines the format for the templates. This approach was first used in a study of the Newark New Jersey Municipal Court two years ago and proved helpful for their court leadership.

## 2.1 HOW TO UNDERSTAND AND USE THE ASSESSMENT WORKSHEETS

ASSESSMENT AREA 2.1. Workforce and Personnel Issues ⇒ <b>Morale, Absenteeism, Dedication</b>	← ①
OBSERVATIONS	← ②
FINDINGS   PROBLEMS   CHALLENGES	← ③
CONCLUSIONS   RECOMMENDATIONS	← ④

① **Assessment Area:** A functional topic representing one of the major areas of study. Some topics may not be mutually exclusive since organizational problems and solutions cannot be cleanly segmented. A descriptive phrase or two appears to help define the targeted area. The numbering scheme, 2.1 in this example, relates to the Table of Contents, and the **bold type** isolates the specific subject analyzed.

② **Observations** Conclusions about present practices, processes, procedures, work, attitudes, and operations based on interviews, on-site study, historical research, and performance data (i.e., statistics, reports).

③ **Findings | Problems | Challenges** A diagnostic analysis of the difficulties and weaknesses observed coupled with an assessment as to underlying causes that will challenge the court's leadership in applying remedies.

④ **Conclusions | Recommendations** Here, advice and suggestions are offered for corrective improvements and initiatives. Where appropriate, metrics (i.e., CourTools, etc.) are profiled to help assess and monitor changes. Where recognized best practices exist, the NCSC project consultants will amplify them in the body of the report following the assessment worksheets, or in the appendices. This section can be used by Court leaders to develop more detailed reform plans, timetables, and assignments to managers, committees, and work groups for project level tasks.

## 2.2 OVERALL PROJECT GOALS AND OBJECTIVES

The study is directed at suggesting ways to improve the operations, staffing and performance of the Court's criminal processing systems in light of shrinking resources, a reduction in the number of judges, and the desire to promote best practices in adjudicating limited jurisdiction cases. Essentially, this assessment is directed at two primary objectives:

- To ensure that criminal caseflow is effectively structured to be consistent with and achieve the Court's identified goals and objectives, principally its responsibility to provide a fair, just, neutral dispute resolution forum as an independent and accountable court of law and adjudicate matters in an expeditious and timely manner as well as reduce recidivism and promote public safety to the extent possible.
- To identify system efficiencies that will allow the Court to continue to provide quality programs and services with fewer resources.

It should be noted at the outset that the Seattle Municipal Court has a long and well deserved reputation as a well run, innovative, urban limited jurisdiction court. As with all municipal courts in Washington, the State Constitution places it under the authority of the Washington Supreme Court as part of an integrated Judicial Branch. Consequently, it is not merely a department of the City Government. As such, it is obligated to maintain its independence in judicial matters as required of all courts of law. The Constitution and Rule of Law requires nothing less.

This objective review of criminal case processing is an example of the Court's interest and intent in improving itself. No special caveats or limitations were placed on the National Center consultants in observing processes or interviewing judges, staff, and justice system stakeholders. All information requests were honored and where operational difficulties were noted, judges and staff willing provided additional data and permitted consultants to probe workflows in greater detail.

A sign of a high performing court is the willingness of its leaders to confront the brutal facts of their current reality. It is impossible to develop effective remedies and make good decisions without doing so. Essentially, then, the very fact that this operational review has been undertaken indicates to NCSC consultants a sound court desirous of maintaining a high level of access and services in the midst of shrinking resources and a continuing slow national and state recovery from the worst post-World War II economic contract on record.

Given the continued structural imbalance the late-2000s recession caused to public budgets – tax revenues struggle to sustain even the current reduced level of government expenditures – it is unlikely that states or local governments will return to budget stability anytime soon. And when they do, it will be at much lower funding levels. Resultantly, prudent court policymakers see a “new normal” where fewer resources and higher productivity will be the watchwords of the future.

## 2.3 CHARACTERISTICS AND HISTORY OF THE COURT

- **Jurisdiction**

Beginning in January 2011, the Seattle Municipal Court will have seven judges, one commissioner, four magistrates, and 250 non-judicial staff serving a City of 617,000 (2009 est.) ranking at the 23<sup>rd</sup> largest city in the United States. There are an additional 1.4 million people in metropolitan King County surrounding the City.<sup>12</sup> Many commute to jobs in Seattle expanding the client base for the Court substantially beyond the City’s residents. Between 170,000 to 200,000 daily commuters increase Seattle’s population every business day.

Essentially, the SMC is criminal and civil infractions court.<sup>13</sup> Its counterpart is the King County District Court, also a limited jurisdiction court in Washington. District courts are organized within counties and often encompass more than one city.<sup>14</sup> They have concurrent jurisdiction with superior courts over misdemeanor and gross misdemeanor violations and civil cases under \$50,000. They have exclusive jurisdiction over small claims. Traffic and misdemeanor matters committed on state highways and in unincorporated areas in King County are heard by the District Court. District Court judges may hear first appearance felony matters and preliminary hearings as well.

Over the past ten years, the SMC has periodically analyzed individual divisions, but has not conducted a study that examines cross-functionality in criminal case processing which touches numerous court operations and calendars, including such special programs as Community Court, Day Reporting and Domestic Violence Court. As a result, staffing and

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<sup>12</sup> King County ranks 14<sup>th</sup> among the nation’s most populous urban counties.

<sup>13</sup> A municipal court has exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by a city and has 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. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described for all matters filed by a contracting city. Municipal courts also may have additional jurisdiction as conferred by statute.

<sup>14</sup> There are 49 district courts in 61 locations among the 39 counties in the state of Washington.

operational improvements have not necessarily been commensurate with these changing conditions.

- **Current Seattle Municipal Criminal Caseflow Model**

Presently, the Seattle Municipal Court uses a hybrid/individual calendaring system distributing the adjudication work of the Court among 8.5 judicial officers who cover 11 different criminal courts or calendars. SMC’s model is best understood by viewing it in three major areas:

- **Initial Appearance Calendars**

*Function:* Front-end misdemeanor and gross misdemeanor processing where an incident report and sentencing recommendations are available, legal representation is ensured if not already designated, and defense attorneys explain options to defendants. When eligible, defendants may be sentenced to one of the specialty courts (Mental Health Court (MHC), Community Court (CC), DV Court or the Day Reporting (DR) Center. DUI defendants may be eligible for MHC and DR.

Calendar	Days Scheduled
CR in-custody arraignments	Mon thru Sat; next court date after arrest
DV out-of-custody arraignments	Mon thru Fri; within 14 days of filing
DUI out-of-custody arraignments	Tue/Wed/Thu/Sat mornings; within 72 hrs of violation
Bail-out and PR’d arraignments	Tue/Wed/Thu/Sat mornings; within 72 hrs of release
CR out-of-custody intake	Tue morning; 14-21 days from date of filing
DWLS3 intake	Wed/Thu mornings; 14 days after date of violation

CR=criminal; DV=domestic violence; DUI=driving under the influence; PR’d= released on personal recognizance; DWLS3= driving with a license suspended in the third degree.

- **Pretrial and Trial Courts**

*Function:* Presently, SMC utilizes an Individualized calendaring system meaning that those cases that are not pled, settled or diverted are assigned to a specific judge who handles all subsequent proceedings until the case is disposed through settlement, dismissal or trial. For the four general trial courts, cases are evenly distributed to each of them after a plea of not guilty. For the two DV courts, cases are assigned based on the first letter of the defendants’ last name. A-K goes to one court and L-Z to the other. Once the case is assigned, it remains with the same judge through final disposition.

Calendar	Days Scheduled
4 general trial courts	Mon thru Fri
2 DV courts	Mon thru Fri

- **Specialty Courts**

*Function:* Specialty or therapeutic courts and calendars generally address difficult and protracted criminal cases generated by serious addictions, mental health issues, destructive social problems, and poverty cycles. They are a new and well accepted approach linked to a medical or diagnostic model, encouraging judges and lawyers to think of themselves as problem-solvers rather than simply case processors. These special courts and calendars break from traditional adjudication approaches directed at punishment and, instead, focus on using the law to apply more effective and successful behavior modification remedies. Mental Health and Community Court fit that definition. DV Court is more adversarial and only classified as a “specialty court” by virtue of the fact that dedicated cross-professional evaluation teams review cases and recommend sentencing options to judges. The DWLS3 Court is a specialized traffic court handling low-level offenses where driver’s licenses have been suspended for non-payment of fines and fees. Community service is a sentencing option.<sup>15</sup>

Calendar	Days Scheduled
Mental Health Court	Mon thru Thu afternoons; Fri morning
Community Court	Tue/Wed/Thu afternoons
DWLS3 Pretrial Court	Mon/Tue mornings

- **Seattle’s Public Lawyer Systems**

The vast majority of attorneys who practice before the Seattle Municipal Court are public lawyers, either city prosecutors employed by the city’s Law Department, or contract public defenders paid by the city. As such, the Court works closely with both groups in the day-to-day processing of hundreds of cases.

The Law Department or City Attorney’s Office is headed by a separately elected City Attorney. The office is considered a department of City Government. There is a criminal and civil division. There are approximately 30 attorneys in the criminal division with a full support staff which maintains a separate case management system, creates files, and prepares calendars. The criminal attorneys are divided into teams for purposes of courtroom and calendar assignments. There are four criminal processing teams, including two general trial units, one mental health and community court unit, a DUI unit, and a domestic violence unit with DV victim advocate staff.

As with any municipal criminal justice system, the charging and settlement practices initiated and followed by the City Attorney’s Office greatly affect criminal caseflow and disposition patterns within the Court. Special projects and crime reduction programs that spike

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<sup>15</sup> See footnote 1.

case filings and arrests can catch courts unaware and unprepared to deal with an influx of filings. Changes in plea policies can affect trial rates. All indicating modifications in one part of the criminal justice system can easily influence other parts. Consequently, even though roles and responsibilities are different between the Court and City Prosecutor, the City Attorney is an important influence in how the Court functions.

Since many of those who appear in City Court are poor or indigent, public defense representation is another major factor affecting the daily operation of the Court. The City of Seattle contracts with three public defense agencies. The contracts are administered by the City Budget Office (CBO) located in the Executive Branch. All contracts are governed by a public defense ordinance that outlines indigent defense requirements, including 380 case credits per attorney per year as a workload standard. Public defense services provided through the City of Seattle are some of the best NCSC Consultants have seen in large urban courts nationwide.

The primary public defense agency serving the Court is the Associated Counsel for the Accused (ACA). ACA has dedicated calendar attorneys who cover Initial Appearance Calendars and the Specialty Courts, and case assignment attorneys who represent defendants who have pled not guilty. By contract, ACA maintains a minimum of fifteen FTE attorneys.

The secondary agency is The Defender Association (TDA). By contract, TDA is guaranteed enough cases to support seven FTE attorneys. Considerable effort is expended by the Court to ensure cases are distributed appropriately between ACA and TDA.

The third agency is the Northwest Defenders Association (NDA). By contract, NDA is assigned cases where both ACA and TDA have conflicts. NDA has one FTE attorney. NDA also administers a Conflict Attorney Panel (CAP) and a CAP Oversight Committee. Cases are assigned to a CAP attorney if all three public defense agencies have a conflict.

Aside from special programs, staffing levels, and organizational structures, there is a more subtle influence on criminal case processing in any trial court; something called the “local legal culture,” essentially the attitudes, values and beliefs on the part of lawyers and judges regarding the pace of litigation. It is a dynamic that likely is at play in the Seattle Municipal Court which will partly shape the effectiveness of the new hybrid/master calendar system next year.

In 1982, court researchers studying the pace of litigation in a series of trial courts concluded that case delay and the speed of disposition for both civil and criminal cases was not

singularly conditioned by court structure, resources, procedures, caseload, or trial rate.<sup>16</sup> Rather, speed and backlog were largely determined by the established expectations, norms, practices and informal rules of behavior of judges and attorneys. In other words, court systems become accustomed to a given pace of litigation. In courts where the practitioners expected cases to be resolved in a timely manner, they were resolved faster. Expectations for timeliness were associated with the degree of timeliness.

Ten years later, other researchers (Eisenstein, Flemming, Nardulli)<sup>17</sup> studied courts in three states and identified “work orientations” (attitudes related to one’s sense of profession, efficiency, and a pragmatic notion of “how work should be done”) as a phenomenon conditioning the speed of litigation through a trial court. Their findings essentially supported the idea of a cultural affect.

In 1999, Ostrom and Hanson at the National Center for State Courts studied 9 courts concluding that attorneys have distinctive attitudes toward four basic aspects of the work environment: (1) adequacy of available resources, (2) extent of clear court policies governing the pace of litigation, (3) the competency of opposing counsel, and (4) the effect of opposing counsel’s practices (i.e., plea bargaining, negotiating) on the timeliness of court resolution. Where lawyers had a positive reaction to those work environment features, the court tended to be more expeditious.<sup>18</sup>

- **Budget Cuts Squeeze Court Capacities**

As with many courts across America, the SMC has suffered extensive cuts to manager and senior staff positions as a result of the national financial crisis that began in late 2007 and began impact local governments and courts in 2008. Resultantly, staff positions were reduced in 2008 and 2009. Court leadership has instituted a series of reorganizations and calendaring changes in an attempt to provide the same level of services with diminished resources. The Seattle Municipal Court caseload is similar to other densely populated urban centers in that it has a large number of criminal non-traffic cases (often referred to as “quality-of-life” crimes involving prostitution, domestic violence, drug possession, vandalism, shoplifting, petty assault, harassment, graffiti, property destruction, etc.) due to high populations of homeless, poor, and disadvantaged persons. As such, SMC has more in common with similar courts in other large

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<sup>16</sup> Thomas Church, “The ‘Old and the New’ Conventional Wisdom of Court Delay,” *7 Justice System Journal* 3, 1982, pages 395-415.

<sup>17</sup> *The Craft of Justice: Politics at Work in Criminal Court Communities* by Roy B. Flemming, Peter F. Nardulli, and James Eisenstein. Philadelphia: University of Pennsylvania Press, 1992.

<sup>18</sup> Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts*. Williamsburg, VA: National Center for State Courts, 1999.



cities like Denver, Boston, and Phoenix than it does with other municipal courts in the state of Washington.

The Court generates \$32 million annually in revenue and spends \$27 million for operational expenses. Additional revenue is likely in the future due to an expanding intersection red light photo radar program which has recently increased from six intersection locations to twenty-eight.

As criminal caseloads have remained relatively stable over recent years and budget issues have continued to plague the City, personnel cuts have extended to judicial officers as well as staff. Recently, the number of judgeships was reduced by the City Council from eight to seven full-time positions effective January 1, 2011; occasioned by the retirement of one of the judges. Although not without controversy regarding the specific Municipal Court Department targeted to be eliminated, the City Council is within its authority to create and abolish municipal judgeships under Washington State Statutes.

Court leaders, to their credit, have taken the tact that answers to the budget dilemma are not an either / or response: either keeping costs in check or improving services. Rather, they have approached what is fast becoming a new austere normal as a “how” problem: how to keep both costs under control and improve services.

In that regard, to accommodate the judgeship reduction, the Court plans to move from a hybrid/individual to and hybrid/master calendaring system effective in January 2011 for their general trial dockets. The specialized problem-solving courts will continue to be managed and calendared separately since it is important to ensure the same judges interact with offenders over longer periods of time.

- **Decisional Adjudication Processes Predominate**

Limited jurisdiction court adjudication processes can be generally described as “decisional” in nature.<sup>19</sup> Charged with delivering justice to large numbers of people in relatively routine matters, facts presented in misdemeanor and minor criminal matters are normally clear and rapidly established. Proceedings are informal. Stakes are low and the court’s primary objective is to apply the law expeditiously and move on to the next case. Speed in the disposition of a case is a highly valued virtue. A common sense approach to case disposition reigns; decisions need to be made without delay since the court has many cases in the queue awaiting action. It is important to note, however, that swift justice is not synonymous with demeaning justice. Good judges understand the distinction and ensure that although matters are handled with dispatch, litigants and lawyers are treated with respect and dignity. In many instances, the commonplace interaction most Washingtonians have with the justice system is in municipal or district courts.

The sentences and financial awards which can be imposed in decisional adjudication tend to be limited. So, too, are its orders which are either temporary or subject to automatic review.

Rules and procedures are usually simple and easy to understand by non-lawyers. Many litigants are self-represented. The public view of these courts is that they often sacrifice fairness for efficiency, becoming in the process, revenue-generating or bill-collecting agencies for a city or county government. To ensure that decisional adjudication processes retain a semblance of justice, the judge’s role in protecting the rights and interests of the accused takes on a defining feature, separating what could be a strictly administrative tribunal from a court of law.

Rapid turnover of cases and the importance of documents outlining the issues in the case enhance the role of administrative staff. Clerical staffs predominate rather than legally

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<sup>19</sup> In 1984, a three-year research report was completed and published by the National Institute of Justice exploring the effects of unification on trial court operations. The study explored 100 trial courts in five states, compiling a wealth of data. The explanations and insights outlined in the analysis about moving from a two-tiered trial court system to a single, unified structure were informative and instructive, but the most important and long-lasting value of the research are the descriptions about the fundamental way courts process work and decide cases. These observations are as enlightening and relevant today as they were two decades ago and have significance in understanding the work of the Seattle Municipal Court. The analysis categorized work in courts as falling into three processes, all related to adjudicating specific types of cases. These three adjudicatory processes or conceptual frameworks described the basic production processes in courts. The processes dominated the operation of trial courts, distinguished one type of court from another, predetermined certain management practices, shaped the way caseload management reforms were implemented, affected the way courts were internally organized, dictated the way information was gathered and utilized by court decision-makers, and conditioned the very mindset that judges and staff used in dealing with different case types. (See related article in the Appendices).

trained clerks. A close partnership of administrative staff with the bench is generally evident. The judge has a much more active role which is characterized by aggressively managing case processing in the courtroom.

Many cases are handled administratively by non-judicial staff according to a pre-determined decisional formula with little or no supervision by the judges. Although adjudication processes are handled by judges, commissioners or magistrates in Seattle, there are some limited jurisdiction courts where senior non-lawyer staff act as hearing officers in decriminalized infraction cases (i.e., parking) and dispose of routine matters without an appearance before a judge. Some municipal courts have transferred parking ticket processing to an executive branch agency.

The need for support in processing paperwork or people, and identifying facts/charges is not a function of volume (total case load), but rather of rapid turnover in cases. Even in rural areas which have few cases, the hearings are brief and require a steady movement of files

The relationship between the court administrator and judges in a court dominated by decisional adjudication is often quite different than in a general jurisdiction court. In the decisional adjudication model there is a much greater sense of two specialists doing mutually reinforcing jobs. It is often described as a “partnership relationship.”

Courts using decisional adjudication view the litigant (customer) as their primary client, not lawyers. There are few buffers between the court and the litigant in the image of a “people’s court.” These types of courts struggle to remain free of undue influence by prosecutors, police, and funding bodies. This is especially problematic when a city council or county board appoints limited jurisdiction judges or can create or abolish positions.<sup>20</sup>

- **City and Court Governance Issues are Complex**

Many limited jurisdiction courts find themselves in a complex dual relationship. Responsible, on the one hand, to a city or county “host government,” and, on the other hand, to the state judicial branch, either through a county or regional trial court presiding judge or directly to the state Supreme Court. It is a much more intricate structural entanglement, NCSC consultants believe, than confronted by general jurisdiction courts funded by counties for several reasons. City administrations are generally more tightly interwoven with the agencies and entities they oversee and fund, including municipal and city courts; controlling such functions as email, payroll, purchasing, accounting, and facilities, as well as conducting independent performance audits regarding day-to-day operations.

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<sup>20</sup> “Adjudicatory Processes: A Review of Critical Research,” G. Griller, The Court Manager, Vol. 20, Issue 4, pp. 18-21. Winter 2005-2006. National Association for Court Management: Williamsburg, VA.

Many city judges are appointed by city councils for contractual periods (e.g. Colorado, New Jersey, Arizona, Missouri, Utah, etc.) binding them in problematical ways to local executive and legislative authorities. Where city councils have the ability to create and abolish judgeships, as they do in Seattle, decisions to eliminate judicial positions can have a “chilling effect” on not only the workings of the court but the court’s need for independence and separation that permits it to more effectively perform its duties impartially.

Other complicating factors for limited jurisdiction courts are occasioned by the large numbers of self-represented litigants and simpler proceedings often giving the false impression there is disregard for due process. Some conclude these courts function more like administrative tribunals rather than courts of law. Nothing could be further from the truth. In limited jurisdiction matters, judges often must take a more active role in all phases of the adjudicatory process even when lawyers are present. In fact, since many of the attorneys appearing in city and municipal courts are handling a high volume of cases themselves, the judge may be the only guarantee of real fairness in the proceedings by assuring the lawyers have not overlooked a critical issue.

Judges play a much more significant role in all phases of limited jurisdiction work than they do in general jurisdiction forums. Because case volumes are high, judges often must take on a more active role in establishing the facts of the case, monitoring proceedings, and make certain a record is made of the matter (where records are required) to ensure expediency.

Certainly, greater significance and standing for limited jurisdiction judges is gained where a state Supreme Court has taken a strong stand in integrating all levels of state trial courts under the judicial branch through administrative orders, supportive case law, and court rules. Such is the case in Washington, we feel. Buttressed by elective status, solid relationships with City officials, and a reputation for consistently good performance, the judges of the Seattle Municipal Court are well positioned to continue to exercise effective and responsible judicial independence in guiding the Court. One indication is the organization chart used by City officials to depict the Court’s relationship to municipal government which shows the Court as independently accountable to the citizens of Seattle. To be more accurate, the chart should show the Court’s relationship to the Washington Judicial Branch as well to indicate organizational inclusion at the state level.

## **2.4 JUDGESHIP REDUCTIONS AND TIMELY CASE PROCESSING**

The Seattle Municipal Court has had two separate reductions in the number of judges in the last eight years. Two judicial positions were cut in 2003 and one in 2010; bringing the number of full-time judges to seven as of January 1, 2011. Justification by the City Council for the diminution is that case filings have dropped over the last several years in spite of the fact that Washington State's Weighted Caseload (WCL) calls for more judges at SMC, and recent 2010 filing trends appear to be on the upward swing.

According to the National Center for State Court's National Statistics Project most recent reports, criminal and misdemeanor cases have increased by eight percent nationwide but when adjusted or normalized for the total U.S. population (number of violations per 100 adults) the rate has decreased by one to four percent in different regions of the country. Washington has shown less of an overall decrease than other states. In Washington, over 8 out of 10 criminal cases are filed in limited jurisdiction courts.

Anytime researchers or policymakers use actual or projected case filing rates to adjust judicial staffing levels, it is risky. An enormous mix of factors can change filing patterns and case processing times, many locally driven. Law enforcement special emphases on crime patterns may spike filings. Swings in illegal activity such as violators moving to new drugs of choice can complicate filings. New statutory requirements at state, county or city levels may require additional adjudication processes (i.e., monitoring domestic violence cases). Appellate case law directives can necessitate expanded judicial procedures, and local prosecution and defense capacities or philosophies in handling certain case types may require more time consuming adjustments in court caseload.

Generally, however, filing patterns change slowly over multiples of years since basic due process requirements are relatively static, entrenched in precedent and steadfast Constitutional principles. Where productivity has improved adjudication processes in greater measure is in the use of judicial adjuncts (i.e., hearing officers, magistrates, special masters, and commissioners) where high volume civil infractions subject to bench trials only are handled more rapidly through streamlined and consolidated caseflows, and in the greater use of technology for scheduling, discovery, paperless processes, clerical case data entry (electronic case and cash management systems), and post-adjudication defendant monitoring (i.e., GPS electronic surveillance). SMC has consistently moved in these directions over the years to their benefit.

With seven judges, one commissioner, and four magistrates available to do the projected work in 2011, it is the opinion of the NCSC project team that SMC can handle the caseload at current levels, but only by moving to an effectively managed hybrid/master

calendar. At a strategic retreat in early July 2010, the Court did decide to incorporate a hybrid/master calendaring system. It should be noted that the most recent Washington State Weighted Caseload (WCL) figures indicate that 13.4 judicial equivalents are necessary to handle the current workload of SMC. The National Center is familiar with the methodology used in the Washington State WCL and considers it relatively accurate and on par with the approach and algorithms used by the National Center. With the reduction of one judge position, the Court will have 12.0 FTE judicial officers.

It is also likely that there will be an increase in trial court delay across most criminal case types as the Court readjusts to one less elected judge and works inefficiencies out of a new master calendaring system. SMC data suggests increases in criminal pretrial processing times for in-custody defendants to rise by 6.2 days from 18.5 days to 24.7 days equating to 10,527 more jail days at a cost to the City of \$1,284,294.

NCSC consultants have no disagreement with the methods used to calculate the these estimates, but we do believe that hybrid/master calendaring and reengineering of court processes will reduce those figures by as much as 50 percent to roughly a 3 day average increase in pretrial detainee stays and \$600,000 additional cost to Seattle. This also presupposes that filing levels will stay roughly constant and the caseflow process will be restructured to shorten hearing and trial times. Any new crime initiatives that have the potential to increase case volumes (i.e., new SPD patrol officers on the street as an example) will become problematic for the Court. Criminal case filings in all trial courts are fundamentally driven by law enforcement and prosecution activity which can create unintended consequences in managing the Court's caseload.

It is the opinion of the National Center that the Court is at the tipping point in effectively processing the number of cases with 12 judicial officer positions.<sup>21</sup> To reduce the number of judicial positions to less than 12 full-time equivalents risks a slowdown in case processing times and delays in the disposition of cases beyond acceptable levels. Reengineering the calendaring system, expanding electronic records processing, and streamlining business processes in an

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<sup>21</sup> By "tipping point" we mean the effect of "context" (the world around the court) on the work and productivity of the court itself; the point at which changes in the world around the court creates a threshold moment where unintended consequences result. There is little doubt that the court is subject to and heavily influenced by its environment. And, changes in that environment which dramatically and intimately affect the day-to-day operations and pace of litigation in the court are largely beyond its control. Examples include efforts to combat and prosecute minor crimes (i.e. new or ramped-up crime reduction initiatives), the nature of what is criminal and the degree of punishment or type of sanctions required by law (i.e., expanded time periods for DV and DUI probation), and the level of public defense or prosecution services available within the court to adjudicate cases. In all these instances, the power of context greatly conditions the capacity of the court to accommodate workload changes and still be true to its overarching purpose to render justice in individual cases.

environment as complex as the Seattle Municipal Court will take time and experimentation. Collectively, such improvements have the potential to enhance productivity and reduce redundant work in many areas, but those benefits will not likely be realized immediately. Consequently, the prudent course of action is to avoid further cuts to core judicial staffing in the next few years especially given the potential for increased costs to the City due to lengthened jail stays resulting from adjudication delays.

### **3.0 CRIMINAL CASEFLOW IMPROVEMENTS**

On the whole, the National Center for State Courts concludes the Seattle Municipal Court criminal case processing system is effective. There are some noteworthy distinctions in the operation and performance of the criminal caseflow that we wish more courts across the nation would emulate. First, the Court holds itself accountable for processing cases from filing to disposition in a timely fashion and is earnestly interested in reducing delays in the movement of matters from filing to disposition.

Second, court leaders are open to experimenting with different ways to schedule and calendar cases to promote earlier settlements and to reduce clerical workloads. This study is an example of that sentiment.

And third, the Court has a history of justice system collaboration with City officials, the Law Department, Seattle Police Department, the defense bar, King County District and Superior Courts and the Washington State Administrative Office of the Courts. Certainly, these stakeholders may not agree on issues and directions, but they do appear committed to discussing their differences and working toward mutual accommodations. High performing courts often are defined by their willingness to work beyond the boundaries of their own court structure to promote improvements among various justice system agencies.

With that said, there are various areas NCSC consultants suggest in the following pages where criminal caseflow improvements can be achieved. The table of contents outlines the operational elements we probed and functions we evaluated.

**ASSESSMENT AREA 3.1**

**Criminal Caseflow Improvements ⇨ Transition to Hybrid/Master Calendaring**

Most urban municipal courts use master calendars in assigning judges to cases. It permits judges to specialize in certain parts of the adjudication process rather than manage a case from beginning to end, and provides a more expeditious way to handle short cause matters.

**OBSERVATIONS**

Prior to 2005, SMC operated a hybrid/master calendar but switched to hybrid/individual docketing for various reasons, including providing more accountability and curtailing judge-shopping. This was an unusual move for an urban limited jurisdiction court since hybrid/individual calendaring is more compatible with general jurisdiction courts where facts are hazy, stakes are high, and discovery exhausting; or in specialized (therapeutic) courts where judges operate as problem-solvers probing the cause of criminal behavior, and devising remedies (legal or otherwise) to treat it, eliminate it, or mitigate its most damaging effects. In both situations, continuity in judge/defendant match-ups throughout the life of the case is important. Short-cause matters in routine limited jurisdiction criminal cases typically don't require judge continuity.

With 8 to 10 judges and relatively stable case filings, it was easier to function with a hybrid/individual calendar. In a reduction to 7 FTE judges, it becomes more problematic especially since elected judges are the ones exclusively handling the more complex and time consuming matters such as pretrials, jury trials and specialty courts.

In the hybrid/individual calendar system there are noticeable differences among judges in case processing and courtroom policies, procedures and practices. It is not unusual in this type of work assignment system for individual judges to operate autonomously. However, when it becomes widespread in short-cause misdemeanor matters efficiencies and economies of scale in processing cases can suffer. With a variety of individual case processing patterns, predictability is compromised. Management flexibility to interchange courtroom support staff is more limited, varied judicial policies and practices confound lawyers and litigants, and differences in case disposition times among judges are often difficult to improve because there are no accepted, proven set of procedural norms. Informal agreements among judges to operate more uniformly are generally not binding and are often prone to fall apart over time.

**FINDINGS|PROBLEMS|CHALLENGES**

There are some disadvantages in hybrid/master calendaring that must be watched to ensure continued effectiveness of the caseflow. Chief among them is the propensity for some attorneys to "judge shop," waiting for specific judges to rotate onto a calendar or be assigned their case who they perceive may benefit their case. The practice quietly persists in many courts across the United States and can be more insidious in hybrid/master calendar systems. The lawyer a litigant chooses and the strength of the case are both important, but many lawyers conclude it's the judge who hears the case, decides what evidence is admissible, and imposes sentences that can be critical to a desired outcome. Generally, there are three areas in which a judge's individual characteristics are most influential: sentencing in criminal cases, rulings on evidence, and willingness to delay proceeding to accommodate unprepared lawyers.

Where things tend to break down in mismanaged, non-transparent hybrid/master calendar systems is at the pretrial and trial levels. Pretrials are important case settlement occasions. Half the cases scheduled for pretrial should be disposed at that point. The purpose of a pretrial conference is the meeting of two skilled lawyers who have exchanged meaningful discovery and plea offers about a case in the presence of the defendant to discuss early resolution of the case without trial. Pretrials are not so much an event as they are a good faith process in the search for truth. Unfortunately, in many courts, SMC being no exception, pretrials have too often become insignificant events due to lawyer unpreparedness on the one hand and prosecutor intransigence on the other. On the part of defense council, gamesmanship can predominate directed at clouding the facts, or delaying the inevitable – a trial – in the hope that evidence will grow stale, witness memories will fade, or exculpatory facts will suddenly appear. On the part of assistant city attorneys, they have limited capability to amend charges without supervisory approval or they may engage in brinksmanship to force the case to trial only to see it resolved on the day of trial with a quick judge-induced settlement conference. Nationwide, 95-98 percent of all criminal cases are disposed (pled) prior to trial. SMC is consistent with that pattern.

To comply with speedy trial rules and prompt early settlement, hybrid/master calendar systems encourage trial date certainty. Setting a trial date early in the case creates the necessary pressure on the parties to complete discovery and move the case toward resolution. The trial is the "mountain" at the end of the road that lawyers hate to climb if they haven't found a way to avoid it through settlement. Most don't climb it and resolve their issues in a plea negotiation. For a lawyer that has opted to try their case, the designation of the "right" trial judge often is seen as an important advantage for the reasons earlier mentioned. In spite of this, hybrid/master calendar court schedulers have an obligation to fairly and randomly distribute cases consistent with required time standards and policies of the court. In doing so, the date for a criminal trial is generally known in advance but often the designated trial judge is not made public until the trial's opening day. Lawyers know only that it is one of a few judges assigned to a criminal trial panel that day or week. Even though this methodical approach is structured to curtail "shopping" for judges, many attorneys frequently request a certain judge, finding out in advance from court personnel what judge might be scheduled at a certain time, pleading scheduling conflicts to avoid having a particular judge hear a case (i.e., requesting a continuance), keeping a close eye on scheduling patterns, or filing a formal notice to remove the assigned judge. This may become a problem for SMC judges and case schedulers since anecdotal data suggests affidavits of prejudice filed in the Court are at a relatively high level currently under the hybrid/individual calendaring system.



CONCLUSIONS|RECOMMENDATIONS

In a typical hybrid/master calendar system, once an arraignment takes place, a central or coordinating judge is normally responsible for motions and continuances. Other judges may be responsible for pretrials and still others for trials. Hybrid/master calendars offer a number of advantages for limited jurisdiction cases. Pooling available judges and “ready cases” maximizes the efficient use of judge time. Certainty of trial smoothes out errors in planned over-scheduling. Uniform application of case processing policies is more achievable, including continuances, pretrial activities and trial readiness practices. Specialization allows court leaders to match caseflow needs to judges with proven, productive abilities in specific skills such as settlement conferences or trial management processes. More predictable calendaring is possible minimizing conflicts for attorneys. Economies of scale are possible in case preparation and adjudicatory practices. As a result, it is usually not only a more efficient way to move cases from filing to disposition, but a less costly way in the cumulative amount of time devoted to resolving cases. And, a greater team spirit can result among the judges who are rotated through various hybrid/master calendar assignments since isolation inherent in hybrid/individual calendaring generally works against collegiality.

Three overall objectives are paramount in promoting a productive hybrid/master calendar criminal caseflow system. First, early and continual control. Research substantiates that in every court, the vast majority of cases never reach trial. They are pled or settled somewhere along the process, usually at court-imposed meaningful events which require the parties to prepare and discuss in earnest, the merits of the case. Where these court created events - opportunities and incentives for early case resolution - are significant and consequential, effective bargaining and admissions promote resolution. To encourage this happening, a *Doctrine of Judicial Responsibility* must be followed. Essentially, it means that the overall pace of litigation and specific points for disposition must be left to a judicial officer as an impartial decision-maker, never to the adversaries who have a vested interest in the case. Where the pace of litigation is controlled effectively by the court, at least 95 to 98 percent of all the cases can be resolved without a jury trial. That fall-out rate is evident at SMC. In high performing urban limited jurisdiction courts, at least 95 to 98 percent of the jury-eligible cases should be disposed within 180 days of arraignment.

Secondly, lawyer preparation is a key element in settling cases prior to trial. It is important to remember the following truths: Lawyers settle cases, not judges. Lawyers settle cases when they are prepared. (Unprepared lawyers shouldn't settle cases). Lawyers prepare for significant events. Significant events are set and upheld by the Court. A significant event is one in which the case is responsibly progressed closer to resolution; it is not one in which the lawyer recounts why he/she hasn't done what the court expected be done and requests more time. By creating and maintaining expectations that events will occur when scheduled; a culture of predictability will result. Wasted resources are reduced and time is better spent by all.

Third, continuances – enlargements of time - must be minimized and granted only for good cause. A written continuance policy adhered to by all judges is a must. Meticulously monitoring continuances is necessary; the case management system should be capable of recording who (name of the party or lawyer) requests each continuance, the reasons for the request, and which judge granted it and for how long. A running record of all continuances should be maintained until the case is finally disposed or otherwise resolved.<sup>22</sup> Continuance reports should be published at least monthly and distributed to all judges and key non-judicial court leaders. Where attorneys or judges become problematic in requesting or permitting continuances, court leadership should counsel with and rectify the difficulties. Continuances when granted should be for short time periods. High performing urban municipal courts are able to ensure that by the time a case reaches a jury trial date 70 to 75 percent are tried on that date.

The Court's leadership should routinely meet with key justice system stakeholders throughout the detailed development of a new hybrid/master calendar system and during the first year of operation to assess, adjust and strategize regarding calendar processes and effectiveness. Often in hybrid/master calendar systems there is a separate motions assignment allowing a judge to hear and rule on all motions prior to reaching the trial stage. Also, hybrid/master calendaring is more effective where statistics regarding workloads, continuances, requests for changes of judges, trial length and disposition outcomes are tracked, transparent, and trigger improvements.

<sup>22</sup> Some automated case management systems permit data entry clerks to overwrite older continuances and show only the current one. This should be avoided. A cumulative listing of all continuances in a case should be kept and aggregate reports listing any languishing cases be produced for court leaders on at least a bi-monthly basis. A proven caseflow adage is: “what you count changes behavior.”

**ASSESSMENT AREA 3.2**

**Criminal Caseflow Improvements ⇔ Discovery Process**

The timely and early transmission of arrest, forensic, and police incident information to defense attorneys is one of the key elements in prompting a majority of cases to settle rather than go to trial. High performing courts encourage such information exchange near the beginning of the adjudication process. In most instances, SMC is effective in doing so.

**OBSERVATIONS**

The City Law (Prosecutor) Department has four criminal processing teams: two general trial units; a mental health and community court unit, a DUI unit, and a domestic violence unit. The calendaring and docketing system used by the Court is closely intertwined with the City Attorney's organization structure and staffing patterns.

Officials at the Department claim a plea cut-off policy is in effect although a written copy of the policy was unattainable. A new City Attorney was elected recently and a number of seasoned prosecutors left the Office. The defense bar generally feels the new assistant city attorneys are effective; some conclude they are more open and collaborative than former staff. It is also the general consensus among the defense bar that the new City Attorney is not as prone to overcharge as was the contention of some lawyers regarding the previous administration. Discovery is given in a timely fashion to the defense according Law Department officials. Defense lawyers have complained, however, that in some instances they receive discovery late, especially police (patrol car) videos of arrests and 911 tapes. This becomes quite problematic in plea negotiations at pretrial and can cause unnecessary delays up to 30 days or more in moving a case toward disposition. SMC judges, too, generally agree that SPD video and tape delays are troublesome and result in higher continuances levels.

Another problem in the discovery process is the sporadic, late, batch filing of older DUI and DV cases wherein some evidence, principally 911 tapes which may be erased by SPD before the case is adjudicated.

Contract defense lawyer groups – ACA; NDA; TDA – concur that most discovery normally reaches them in a timely fashion prior to pretrial, except for video and audio digitized police evidence. The defense bar concludes that one of the supporting forces behind the current effectiveness in the early exchange of discovery is the Courts insistence that it be done to reduce caseflow delay.

**FINDINGS|PROBLEMS|CHALLENGES**

Delays in producing police arrest videos and 911 tapes for defense attorneys were researched in a quick review of the business process. In a visit to the SPD Video Unit, a random DUI arrest on April 17 was tracked wherein the out-of-custody defendant was arraigned on the Intake Calendar on April 21 (3 total business days elapse time), the City prosecutor ordered the video on April 23 (5 total business days elapse time) and picked it up on May 12 (18 total business days elapse time), and the defense attorney was advised the video was available on May 14 (20 business days total elapsed time) for a pretrial set for May 27 (29 business days total elapsed time). All well within the speedy trial rules. Audio 911 tapes appeared to be processed in a timely fashion and sent to the Law Department for cases that were being contested. Yet, there was significant disagreement from defense lawyers and judges; both concluding that late arrival of digitized police video and audio evidence is frequent and causes noticeable discovery problems. There are no Court statistics to substantiate these contentions, although the number of independent interviewees mentioning such difficulties is high and leads NCSC consultants to believe there continue to be serious problems in this area that should be researched.

Review hearing scheduling and timely noticing is a problem for the defense lawyers as well.

There are a variety of different types of forms used for the same purposes causing some confusion in data collection and processing.

Probation reports are often delayed too, arriving routinely on the day before or on the day of the hearing. It places defense attorneys in a difficult position in understanding the recommendations, working with the client, and effectively representing the defendant at the hearing. It is likely the cause is internal to the public defense contractors since Probation is often not informed as to the specific defense attorney representing a defendant so reports are sent to the office in general. Probation and the defense contractors are working on protocols

**CONCLUSIONS|RECOMMENDATIONS**

Currently, police reports are available electronically. Where possible other evidence (i.e. forensics, videos, etc.) should be as well.

Forms used during the discovery process by lawyers and the Court should be more standardized, especially regarding continuance requests and pretrial diversion.

It would be helpful to initiate a fail/safe alert protocol between the Law Department and defense bar regarding police arrest videos as well as 911 tapes. Currently police officials indicate bandwidth and digital storage limitations prevent electronic transmission of videos. An alternative process is to place them on an online Law Department managed site for downloading through a secure access system by the defense bar. Such an approach presents no overwhelming technical problems, and once a case is disposed the digitized video and audio records can be archived inexpensively or destroyed should City policy or State law permit.

All lawyers and the Court are very supportive of e-discovery initiatives pursued by City agencies, a very positive situation which portends well for further initiatives.

ASSESSMENT AREA 3.3

Criminal Caseflow Improvements ⇨ **Intake (Out of Custody Arraignments)**

The arraignment event is a principal triage point in the adjudication process where prepared lawyers are able settle a significant number of cases and recommend to the court the expeditious movement of cases out of the system or to early sentencing and treatment options.

OBSERVATIONS

Intake is the out-of-custody arraignment calendar for a variety of criminal cases<sup>23</sup> on Tuesday mornings. Many cases are handled administratively generating earlier dispositions and saving time in the caseflow. According to the Court's local rule on Intake Hearings, defendants who wish to plead not guilty may appear before a clerk who assigns a pretrial hearing date without judicial involvement. Any defendant, who desires, may appear before a judge at the Intake event for formal arraignment. At this event, eligible indigent defendants discuss their case with a public defender. Numerous negotiated pleas in less serious cases result where defendants are eligible for pretrial diversion or Community Court. On Wednesday and Thursday mornings, cases involving Driving with a License Suspended in the Third Degree (DWLS3) are calendared for Intake. Most of these matters are dismissed (60-70%) for first time offenders by the Law Department on condition the defendant agrees to pay all fines/fees ordered and complete community service if required. Administratively handling out-of-custody arraignments is a significant time saver and work process improvement.

FINDINGS|PROBLEMS|CHALLENGES

Under the revamped hybrid/master approach, the current Intake arraignment calendar will be disassembled with out-of-custody criminal cases scheduled for Friday afternoons; out-of-custody DUI cases handled in the Jail courtroom at Tuesday, Wednesday and Thursday mornings; and bail-outs on the general trial calendars with those judges keeping the cases for pre-trials. The DWLS3 calendar would be eliminated.

CONCLUSIONS|RECOMMENDATIONS

The Court's objective in distributing the Intake Calendar to times and places where the calendars of a reduced number of judicial officers can be set heavier to accommodate the same workload is one of the few solutions available to the Court. NCSC consultants are concerned, however, that the scattering of the present Intake docket among a number of judges/locations will diminish current economies of scale and complicate attorney scheduling. The objectives for this calendar in handling many of the matters administratively and targeting early dispositions are proven best practices. Although there are many scheduling options possible, NCSC would suggest that Court leaders look at a couple of alternatives that have proven successful in other courts nationwide (provided Washington law and judicial procedures permit): Could an appointed judicial officer be assigned full-time, five days a week to handle front-end criminal case processing including arraignments and numerous other related matters? In many urban limited jurisdiction courts first appearances and arraignments are handled by non-elected judicial officers or judges pro tem. Commissioners in other municipal courts in Washington (under RCW Title 3 as opposed to Title 35 governing SMC) handle misdemeanor and gross misdemeanor arraignments. Could a senior staff person (either a lawyer or non-lawyer) function as a hearing officer to adjudicate infractions in place of a magistrate where no jail time is possible, freeing the magistrate for other more weighty judicial proceedings? Also, we would suggest that the Law Department consider placing more experienced prosecutors at the front end of the system or permit front-line prosecutors assigned to arraignments more latitude in negotiating pleas and conditions where defendants plead not guilty. Time spent at the front-end of the caseflow system increasing the early disposition of cases is a significant characteristic of high performing urban courts.

<sup>23</sup> Not including offenses involving domestic violence, violation of anti-harassment orders, driving under the influence, physical control, stalking or firearms offenses.

ASSESSMENT AREA 3.4

Criminal Caseflow Improvements ⇨ **Plea Negotiation and Early Settlement**

It is the general circumstance in most large metro limited jurisdiction courts to see as many as seventy percent of the cases that move beyond arraignment settle at a pretrial conference. Pretrials are much more effective where the prosecutor has established a strong, understandable plea cut-off policy in place and the plea offers do not get better the closer a defendant gets to trial.

OBSERVATIONS

Pretrials generally result in a 30-40 percent plea rate. Although respectable, many urban limited jurisdiction courts exhibit higher rates in the early stages of misdemeanor caseflow regarding the same types of criminal matters. Pretrials are normally scheduled 14-21 days from the date of an arraignment for in-custody defendants and 21-28 days for out-of-custody parties. Some defense lawyers and Court staff conclude the rate could be higher, around 50 percent (common in other urban limited jurisdiction courts), if assistant City attorneys were given more latitude to negotiate agreements. The City Attorney claims to have a plea cut-off policy where offers do not get better after pretrial. Currently, a plea offer is good until the Friday before a Court date. No formal evidence of the policy was obtainable. Later observations and trial docket results indicate there is usually a better offer by the City on the day of trial. This works as a disincentive to settle at pretrial. The Law Department is exploring an early plea program which certainly would be more effective with a strong plea cut-off policy. Two assistant City attorneys normally staff pretrials (25 pretrials in the morning; 25 in the afternoon); one operates in the courtroom and the other in an adjacent area where he/she negotiates pleas.

FINDINGS|PROBLEMS|CHALLENGES

A “plea cut-off policy” provides both prosecutors and defendants strong incentives to evaluate the merits of their respective positions and make informed and timely decisions about whether to negotiate a plea or try the case to a jury. At first glance, the policy sounds unfair to the defendant, but in practice it operates as an incentive for both the defense and the prosecution to engage in meaningful plea negotiations. If the prosecution makes a reasonable plea offer, the defendant is required to accept it before the plea cut-off date or risk conviction on more serious charges. On the other hand, the prosecution cannot “play hardball” by refusing to negotiate a reasonable plea offer until the last possible minute. If the prosecution doesn’t have sufficient evidence to prove the charges beyond a reasonable doubt, the defense has every incentive to try the case to a jury to secure an acquittal. In either event, the Court, the jurors, and the justice system are the ultimate winners. The Court can better manage its calendar, reserving trial days for actual trials and scheduling sufficient time for plea hearings.

CONCLUSIONS|RECOMMENDATIONS

With the recent election of a new City Attorney, a written plea cut-off policy should be structured in order to facilitate early settlements and clearly advise the defense bar of negotiating parameters. The elements of a sample, successful plea cut-off policy for criminal cases follow this template. Effective, streamlined front-end criminal case processing (plea bargaining) can occasion a 60 to 65 percent plea rate within the first 40 days from arraignment. Plea cut-off policies do not, in and of themselves, violate constitutional protections for criminal defendants. They are in widespread use in many courts, including by statewide rule in New Jersey, as an example, and have been repeatedly upheld by appellate courts.<sup>24</sup> In *Michigan v. Grove*, for instance, the Michigan Supreme Court held that the trial court’s refusal to accept defendant’s plea agreement one day before trial and over one month after the plea cut-off date was proper since defendant’s procedural rights were “outweighed by judicial discretion to control the scheduling of trial procedures; plus the broad interests of docket control and effective utilization of jurors and witnesses.”<sup>25</sup>

The Court should encourage the Law Department to develop an effective, transparent and publicized plea cut-off process. The Law Department leadership appears supportive of more predictable scheduling and appears willing to work with the Court in helping to structure a variety of different calendars and venues to aid early dispositions.

<sup>24</sup> N.J. CT. R. Rule 3:9-3(g)(2009)(“Plea Cut Off. After the pretrial conference has been conducted and a trial date set, the court shall not accept negotiated pleas absent the approval of the Criminal Presiding Judge based on a material change of circumstance, or the need to avoid a protracted trial or a manifest injustice.”).

<sup>25</sup> *Michigan v. Grove*, 566 N.W.2d 547, 558-60 (Mich. 1997).

## Best Practices: Plea Cut-Off<sup>26</sup>

For courts implementing and enforcing a plea cut-off policy, the following may eliminate the constitutional concerns and avoid time-consuming appeals and the risk of reversals.

- ✓ Provide adequate notice of the plea cut-off policy as early in the litigation process as possible (e.g., arraignment). If possible, make the policy part of the court's local rules or administrative policy. At the very least, make a formal record in the court file with proof of delivery to the prosecutor, defense counsel, and defendant. Take time to educate the local bar about the policy through meetings with prosecutors, public defenders, and local bar organizations.
- ✓ Set the plea cut-off date reasonably close to the trial date. Most successful plea cut-off policies set the plea cut-off date within one week of the scheduled trial date, often coinciding with the final pretrial conference. The short timeframe between the plea cut-off date and the trial date reasonably assumes that the parties will have already engaged in meaningful plea negotiations and have had adequate time to make an informed decision. To be most effective, however, the court needs sufficient time to communicate the defendant's intent to accept a plea offer to inform the calendaring and jury staff to cancel the scheduled jury trial.
- ✓ If the prosecution and defense request to enter a late plea offer, the court should provide a hearing for the parties to justify the late plea.
- ✓ If state law requires individualized consideration to the plea agreement, the court should include the late plea offer as one facet of its decision to accept or reject the plea agreement. The decision should state *all* relevant reasons for a denial of a plea agreement, including any findings that a sentencing recommendation was part of the plea rejection.
- ✓ If the parties fail to enter a timely plea agreement, the court should not require that they proceed to trial. Rather, the defendant should be required either to plea to the full indictment or proceed to trial.
- ✓ If state law permits, the court may also impose an administrative fee on the prosecutor, the defendant, or both, if the parties cannot provide a good cause explanation for the late plea agreement.

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<sup>26</sup> Paula Hannaford-Agor, Esq., Director, Center for Jury Studies, National Center for State Courts

## Elements of a Successful “Plea Cut-Off” Policy for Criminal Cases<sup>27</sup>

### Introduction<sup>28</sup>

In view of the fact that up to and sometimes in excess of 95 percent of all criminal cases are disposed by plea or other non-trial means, criminal caseflow management should focus on ways to provide for meaningful plea discussions between prosecution and defense counsel, beginning at an early stage of proceedings. Prosecutors should be prepared to make realistic plea offers as early as possible. Defense counsel, in turn, should be prepared to negotiate, balancing the best interests and constitutional rights of their clients.

The court should establish and be prepared to enforce a “plea cut-off” policy. Under such a policy, the court in a scheduling order might establish a date for prosecution and defense counsel to meet to discuss the possibility of a plea, at which the prosecutor’s office would be prepared to make its best offer to the defendant. A plea cut-off date, perhaps a week after that conference and one or two weeks before the scheduled trial date, would be the last date on which the defendant could accept the prosecution’s best offer. If the defendant sought to plead guilty after that date, he or she would have to plead to the original charge filed by the prosecutor. There would be no benefit for the defendant to wait, since the prosecutor’s offer would not “get better” from a defense perspective.

### Necessary Features

In order for a plea cut-off policy to be successful, there are certain features that must be present. They are the following:

- The court and the prosecutor’s office must both be committed to making the program work.
- The program must provide an opportunity for a “best-and-final” prosecution plea offer after defense counsel has (a) received sufficient discoverable evidence to assess the strength of the prosecution’s case, and (b) met the defendant enough to have attorney-client credibility in discussion of the prosecution offer.
- The prosecutor’s office must make a best-and-final plea offer that is really a “good offer” – that is, one that is credible based on the evidence and what a reasonable defense attorney would expect to happen if the case went to trial.
- There should be a plea cut-off date after which the prosecution’s best-and-final plea offer is no longer available.
- Even though the court cannot be expected to reject a defendant’s guilty plea, even on the day of trial, the court must be firm in its enforcement of the plea cut-off date. This means that in almost all circumstances, absent unforeseen developments, most or all of the criminal judges must require the defendant to “plead straight up” or “make a naked plea,” without the benefit of the best offer made by the prosecutor.

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<sup>27</sup> This document was originally prepared by David Steelman, Principal Court Management Consultant, National Center for State Courts, on September 13, 2008, in response to a technical-assistance request from Suzanne H. James, Court Administrator for the Circuit Court for Howard County in Ellicott City, Maryland.

<sup>28</sup> David Steelman, with John Goerdts and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (NCSC, 2004 edition), p. 33.

### **Other Features Promoting Success**

The success of a plea cut-off policy requires that the above features be present. There are other features that can enhance the likelihood of success. These include the following:

- Court capacity to provide credible trial dates.
- Early prosecution screening of cases to assure that charges fit the evidence.
- Early determination of defendant's eligibility for representation by the public defender or otherwise at public expense.
- Early defense counsel contact with the client to develop a working attorney-client relationship.
- Early prosecution provision of a "discovery package" to defense counsel, with sufficient information to allow defense counsel (a) to identify any potential suppression issues, and (b) otherwise to assess the strength of the prosecution case.
- Timing of the final prosecution-defense plea discussion close enough to the trial date for the defendant to take the prosecution's best-and-final offer seriously, but enough in advance of the trial date to allow the court scheduling flexibility if the defendant decides to accept the prosecution offer and plead guilty on or before the plea cut-off date.

**ASSESSMENT AREA 3.5** Criminal Caseflow Improvements ⇒ **Collegial Chambers and Shared Courtrooms**  
Scheduling efficiency in high volume municipal criminal, traffic, infraction, and specialty court matters is improved where case types are routinely calendared in the same courtrooms and the judicial officers are fungible. Hybrid/master calendaring enhances that capability.

**OBSERVATIONS**

The Seattle Municipal Court in its hybrid/individual calendaring model followed a judicial space use plan common for trial judges (general trial assignment calendars) using that type of scheduling scheme... a model of one courtroom to one chamber, each one-to-one set assigned to a specific judicial officer.

Although courtroom locations in the Justice Center appear to be clustered to some extent by volume and function, there has been a significant one-to-one relationship between a judge and his/her dedicated courtroom. Cases are brought to the judge rather than the judge to the courtroom. As such, there were noticeable inefficiencies and confusions in the movement of people and case throughout the building. This is true even in light of the fact that floor stacking by case volume and process within the building is evident. In other words, high volume calendars (i.e., out of custody arraignments, pretrials, and infraction hearings) are heard on the lower floors while lower volume matters such as trials are scheduled on the upper floors of the courthouse. That certainly is a positive feature in moving people throughout the Justice Center, but it does not go far enough. Resultantly, there is more confusion and scheduling conflicts than necessary. NCSC consultants conclude.

**FINDINGS|PROBLEMS|CHALLENGES**

Hybrid/master calendar courts operate better where no judge "owns" a courtroom, but all courtrooms are shared and scheduled as necessary. Most large urban municipal courts function in such a fashion.

Many courthouses with chambers distributed throughout them can be adapted without significant expense to accommodate a shared courtroom pattern. It should be relatively easy to do so within the Justice Center given its flexible spatial layout and modern infrastructure.

**CONCLUSIONS|RECOMMENDATIONS**

A national trend is growing toward collegial judicial suites and shared courtrooms. Similar to a law office environment, collegial judicial suites and the joint use of common areas...in a law office environment, it means conference and client meeting rooms; in a courthouse, it means courtrooms...are increasing in popularity not only because of spatial economies; but, because of opportunities for shared resources, increased security for judicial officers and staff, and the indirect benefits of creating a stronger, collaborative judicial community.

Current judicial cultures in many courts are often laden with the perception of courtroom entitlement; that justice is tied to the ensured availability of a courtroom; and that the difficulties of scheduling judges to a limited number of courtrooms is an overwhelming administrative task. National Center research in space planning and calendaring does not support either contention. Quite to the contrary, where judges are mobile and courtrooms are fixed or dedicated to specific case types or case processes, staff specialization is possible, public wayfinding in the courthouse is easier, permanent support spaces specifically related and designed to case type or case processes can be structured, and more uniformity in adjudication practices is possible. Consequently, SMC court leaders are encouraged to make the best use of shared courtrooms as they move to a hybrid/master calendar system.



**ASSESSMENT AREA 3.6** Criminal Caseflow Improvements ⇨ **Maximize Case Resolutions at Every Appearance**  
To minimize inconvenience, maximize efficiency, and avoid wasted, unproductive time, sound caseflow management encourages that at each and every court appearance a case is meaningfully and productively advanced toward disposition. Consequently, at every opportunity the court should promote resolution and avoid, if at all possible, re-setting the matter for a further appearance.

**OBSERVATIONS**  
The Court strives to consolidate cases and add new charges to existing open cases throughout the adjudication process. For example, when the daily MCIS (electronic case management system) report shows a defendant scheduled for an arraignment has other unresolved matters pending in the Court, staff will routinely advance those dates and consolidate all matters with the new charge. Additionally, some judges make it easy for both the prosecution and defense to add-on or consolidate cases.

**FINDINGS|PROBLEMS|CHALLENGES**  
Best practices in urban limited jurisdiction courts encouraging the disposition of as many outstanding charges as possible at every hearing. This means that when a defendant with multiple charges appears in court, the judicial officer having jurisdiction should resolve all cases presented. Multiple court appearances waste the Court's time and discourage the defendant from exercising his/her right to trial.<sup>29</sup>  
With a move to a hybrid/master calendar system, it provides the Court and judges an opportunity to ensure more uniformity in handling cases than in an individualized docketing system. Resolving all cases/charges in fewer appearances can be a much more realizable goal as a result.  
Judges and court staff do a good job at consolidating all related matters involving a defendant at the earliest possible point in the caseflow. Where necessary witnesses are not present in contested matters, cases must be set over.

**CONCLUSIONS|RECOMMENDATIONS**  
Judges should resolve all charges brought before them that are within their jurisdiction and where the parties and necessary witnesses are present. If the case must be rescheduled to comply with due process requirements, the reasons should be entered into the record and clearly explained to the parties and any lawyers present.  
The move to a hybrid/master calendar system provides an opportunity for Court leaders to move toward more uniform and effective noticing of defense and prosecution regarding case consolidations and new charge add-ons. Consolidations and add-ons provide a further opportunity for lawyers to facilitate a negotiated agreement in a case short of formal trial.

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<sup>29</sup> ABA Standards for Traffic Court Justice.

ASSESSMENT AREA 3.7

Criminal Caseflow Improvements ⇨ **Streamline Warrant Adjudications**

To promote public trust and confidence in the judicial system, courts have a responsibility to swiftly and fairly enforce their warrants when defendants fail to comply with a court directive. Doing so promptly reduces jail costs and overcrowding as well.

OBSERVATIONS

Currently, defendants arrested on a warrant for failure to appear or comply with conditions of a sentence who are in jail are routinely set for a Court appearance the next day. If the defendant decides to plead or admit his/her failure to follow a court directive, they are generally sentenced and the case is closed. In a not guilty plea or denial of the allegation, the judge may release the defendant on personal recognizance, assign them to the Day Reporting Center for follow-up, or order the party held in custody.

Some judges allow their calendars to be overset so a defendant is not detained in custody for longer periods of time. Normally, the Court considers a number of factors before in-custody defendants are set for a court date, including but not limited to previous criminal history, case type, charge type, hearing type, next available dates, and custody status.

FINDINGS|PROBLEMS|CHALLENGES

Warrant case appearances will be delayed beginning in January 2011 with the reduction of judge time in the jail courtroom in order to accommodate the impending judicial cut. Jail costs are likely to increase and trial court delay will be extended.

In some limited jurisdiction courts, court policy permits warrant cases to be set on a general purpose warrant calendar for disposition without having to return to the sentencing judge. There are arguments for and against such a system. From a case management perspective, to delay the adjudication of a warrant case in order to calendar the offender back before the original sentencing or warrant issuing judge introduces avoidable scheduling delay. In misdemeanor or gross misdemeanor cases, the array of sanctions available to a judge to level against a scofflaw for violating a failure to appear or comply with a sentencing directive are limited and normally applied rather uniformly by most judges on the bench. Resultantly, some maintain the logic of requiring a face-to-face appearance before the warrant-issuing judge is unnecessary. On the other hand, those who argue that the sentencing and warrant judge should be the same person contend that that judge is most familiar with the facts of the case and the defendant's criminogenic behaviors, and therefore, is in a better position to understand what additional consequential sanctions would be more appropriate in order to change the offender's behavior and reduce the likelihood of further recidivism.

CONCLUSIONS|RECOMMENDATIONS

The Court should consider continuing to set warrant cases rapidly from the jail court on a special warrants docket structured as part of the new hybrid/master calendaring system. Many courts do not require warrant cases to return to the sentencing judge or wait in a queue for an open slot on a standard calendar. This is especially true of hybrid/master calendar courts.

ASSESSMENT AREA 3.8

Criminal Caseflow Improvements ⇨ **Docketing and Scheduling**

Case assignment and scheduling systems regulate the pathways and pace of litigation through the courts. All events and scheduling practices should target the crystallization of issues, greater predictability in outcomes, and more widespread lawyer preparedness.

**OBSERVATIONS**

Docketing is the recording of decisions and judgments regarding the outcomes of the adjudication of a case, essentially the “register of actions.” Scheduling is the logging of future court dates and events related to a defendant-in-process. Both functions are intertwined in the recordkeeping that takes place in hearings and trials. Data regarding each function is often entered collectively in the Court’s electronic case management system, the Municipal Court Information System (MCIS). Much of this in-court data entry, however, appears cumbersome; a confusing mix of manual and computer inputs processed by a variety of people. Although flexibility is enhanced by multiple applications and data entry sources, so too are inefficiencies when large quantities of data and different protocols are employed.

**FINDINGS|PROBLEMS|CHALLENGES**

Manual and electronic data collection processes in the courtroom should be more orderly and efficient. Some judges schedule next case dates, others do not. The calendars themselves for various court hearings also vary quite a bit as to volume, consistency in procedures, and standard courtroom practices.

There is little uniformity in motion practices or readiness calendars from judge to judge according to the defense bar.

Often add-on motions (e.g. modifying conditions of release, amending sentences, etc.) are quickly set on calendars even though there is a Court rule on customary procedures. The practice creates substantial uncertainty and unpredictability.

Observations and docket records indicate occasional wide fluctuations in numbers of items set on routine calendars creating scheduling difficulties and overset problems in what is a rather stable influx of cases. NCSC suspects numerous reasons (i.e., vacations, limited pro-tem funds, holidays, etc.) common to scheduling matters in urban municipal courts cause these fluctuations.

On the positive side regarding trial court delay, data shows the number of jury trials has remained relatively low. The reasons likely result from a combination of factors ranging from the steady decline in filings over the last few years to more streamlined administrative approaches in dealing with pretrials. One result has been the reduction in ACA trial attorneys from 17 to 13 which ACA officials attribute to fewer trials.

**CONCLUSIONS|RECOMMENDATIONS**

The time required and confusion entailed in manually maintaining and updating calendars causes inefficiencies. As the master calendar system is instituted an electronic docketing and scheduling system should be a high priority. Also, judicial policies, practices and operations in courtroom practices and policies should be more uniform, including but not limited to scheduling, docketing and motions practices.

Developing a hybrid/master calendar system gives the Court the opportunity to focus on improving its scheduling and docketing system. One direction Court officials may wish to embrace is the use of differential case management (DCM), namely scheduling criminal cases on different processing or adjudication tracks based on case type and issue complexity. The hybrid/master calendar approach permits the Court to do so in much more effective ways than the former calendaring system. A key ingredient in developing a successful DCM solution is to structure the early diagnosis or assessment of a case at the triage phase quickly, and, then, appropriately place it on an expedited, standard or complex track. Courts have selected numerous ways of doing so from requesting the lawyers involved in a case to recommend a track assignment to having an independent, skilled front-end case manager (i.e., a staff lawyer or senior staff non-lawyer) make the evaluation and assign it to a processing track.

ASSESSMENT AREA 3.9

Criminal Caseflow Improvements ⇨ **Friday Calendar Enhancement**

Many courts have found that full, tight schedules on Fridays – traditionally sparsely calendared in most courts – have improved times to disposition, enhanced case resolutions, and lightened dockets during the rest of the week.

OBSERVATIONS

Calendars heard on Friday are an eclectic mix of various case types and adjudication processes. Although many courts schedule miscellaneous calendars to dispose of lingering matters not resolved on regularly scheduled dockets, they are not as widespread or hectic as seen at SMC. With a hybrid/master calendar system, it is quite possible to effectively utilize Friday mornings and afternoons for more structured, routine proceedings.

FINDINGS|PROBLEMS|CHALLENGES

Fridays in many courts are “clean-up” days. In numerous instances, law and motion calendars are commonly set on Fridays since the time periods for those matters vary and they can be more easily set due to lawyer schedules.

Although a mix of cases is scheduled on Fridays, it was reported that the afternoons are typically clear. With the loss of judicial resources and the ever present need to do more with less, Friday afternoons should be utilized as regularly scheduled calendar time for dockets that are overset during the week such as review hearings. Under the new hybrid/master calendar plan, the current Intake Calendar will be disassembled with out-of-custody criminal arraignments and probation reviews (if the City decides to charge) scheduled for Friday afternoons.

It may also be possible to draw juries on Fridays for earlier trial starts the following week. Courts that have experimented with jury voir dire on Fridays have generally found it productive for a number of reasons. First, juries can be drawn by judges other than the trial judge, permitting better utilization of judicial officers. Second, settlements are often prompted “on the courthouse steps” permitting better use of judge time earlier in the week. Third, settlements are encouraged since once a jury is selected, the lawyers have all weekend to prepare for the trial and often in examining their case in greater detail, they’re more likely to settle (“Prepared lawyers settle cases”). Fourth, if the case does go to trial, the length of trial is usually shorter since the lawyers have developed their arguments and evidence in a more succinct fashion. Fifth, jurors have more time to effectively plan their jury duty experience.

CONCLUSIONS|RECOMMENDATIONS

Fridays should have regularly assigned calendars up to normal court closing time. This appears to be the case in developing the new hybrid/master system in order to provide more scheduling time for the remaining seven judges when a judgeship is reduced in January 2011.

Administrative bench meetings, which historically have been held on Friday afternoons, can be scheduled over the noon hour as necessary. It should also be noted that most urban city courts do not involve all judges in detailed administrative policymaking to the extent that SMC does with the bench en banc. Rather, the presiding judge and court administrator are entrusted with the details of administering the day-to-day operations of the Court and deciding upon organization-wide management issues, thereby avoiding the need for long, protracted bench meetings. Most trial judges prefer to spend the majority of their time adjudicating cases, not in bench meetings dealing with administrative policy. The clear and trusted delegation of authority and accountability for administrative matters to the presiding judge and court administrator as the executive team in managing the Court is a key feature in high performing courts. To do so effectively, presupposes widespread communication by the executive team with the bench where matters affect them and the adjudication process directly.

#### **4.0 BUSINESS PROCESS IMPROVEMENTS**

In searching for higher productivity and innovative ways to deliver SMC services around its three overarching goals - to provide an independent, neutral, accountable court of law; to promote the expeditious and timely resolution of cases; and to responsibly reduce recidivism and enhance public safety in case outcomes – NCSC consultants focused on a number of systemwide strategies and initiatives centered on business process reengineering. Business process reengineering (BPR) is the analysis and redesign of workflow within a court or any other organization. The technique gained notoriety in the 1990's as businesses began revisiting the need for speed, service and quality over control and efficiency. Many efforts ran into unanticipated problems as they attempted to use technology to mechanize old, antiquated ways of doing business and shuffling paper. Various governments and some courts followed suit in the public sector, but often fell short because the common focus was too often on quick fixes rather than breaking cleanly away from old rules about organizing and conducting business.

One of the major tenets of process reengineering is to organize work around outcomes, not tasks. The decision points should be placed, to the extent possible, where the work is performed and controls as to errors and quality are best placed into the process. There is the assumption in many organizations today, courts included, that the people doing the work have neither the time nor the inclination to monitor and control it and therefore lack the knowledge and skill to make decisions about it. Proven, modern day reengineering principles argue against that notion. Those who perform the work should make the decisions and the process itself can have built in controls. The ultimate objective is for the doers to be self-managing and self-controlling. To a large extent, National Center consultant observations supported this occurrence in many workflow situations. Where it wasn't the case, we have pinpointed it in the worksheets.

Another major principle in streamlining work through BPR is to target the capture of information only once and at its source. Recording or entering redundant data is a sin. This is especially true regarding computerization and collaborations with other justice system stakeholders. Admittedly, it is difficult where Court leaders must work beyond the boundaries of the Court system itself where linkages extend to public lawyers and law enforcement.

Lastly, although the consultants are able to point out obvious workflow and caseflow inefficiencies based on short, selective observations, long term effective BPR is best done through ad hoc, inter-division committees or task forces of employees involved in the workflow itself provided two things occur. First, teams must work backwards by having those who use

the output of a work process engage in the reengineering analysis at the beginning stages. This may mean in some instances that judges or attorneys who ultimately may use the data flowing through the system for case disposition be involved in outlining their need for specific data in their decision-making. A particular problem that needs to be addressed in doing so is not unique to SMC, but critically important in streamlining and standardizing adjudication processes, namely the use of uniform forms and data displaced by judges and judicial officers. Administrative and policy unity in using output data from a work process among the end users is important in promoting greater efficiency (the minimal expenditure of time and effort) in order to maximize productivity (the outputs per judge or staff member).

Secondly, cross organization committees and task forces work well if they are effectively led. Here, we are talking about self-directed project teams, not bosses leading subordinates. Small groups assigned a common purpose or goal by senior managers (or judges) and responsible for problem-solving, workflow mapping, decisions and outcomes. Highly effective courts have found the regular use of employee teams improve work processes and create a culture of collaboration where staff comes to believe decisions and actions are better when done cooperatively. Teams should not interfere with the normal work of the Court, but should be allowed to meet during normal business hours as possible. Team leaders should be given some training in BPR and small group dynamics. Teams should not be self-perpetuated beyond their useful purpose.

Consequently, National Center consultants encourage the Court's leadership to develop and train BPR teams to streamline work processes on a long-term basis. Some of the ideas and suggestions in this report can certainly spark further inroads by the judges and staff into system improvements. The Research, Policy and Planning Unit would be a logical coordinating body.

ASSESSMENT AREA 4.1

Business Process Improvements ⇒ **Courtroom Clerks**

Courtroom clerks are the backbone of every court's data entry and recordkeeping system. In performing these labor intensive and important responsibilities to create the court record, it is advantageous to simplify and automate as much recording and file updating as possible.

**OBSERVATIONS**

Other than trial calendars generally two clerks attend all court sessions. Prior to the start of the calendar, courtroom clerks will utilize the session sheets to check off cases as case worksheets are prepared and entered into MCIS. When cases are called, the clerk will start the digital audio recording device and type in the case number and defendant name into the digitized system. Then, as cases are adjudicated, the clerk will enter sentencing information into MICIS and also record the data on a "Register of Actions" screen within MCIS. In addition, the clerk will manually enter the data on the case worksheet. As the pace of adjudication increases in the courtroom, the clerks rotate cases so they can stay reasonable "caught up" in recording the events taking place in the courtroom. The clerks must enter all financial sanctions before the defendant can make a payment or arrange for a time payment schedule in the Court's collections department.

**FINDINGS|PROBLEMS|CHALLENGES**

The work that is performed in the courtroom by the SMC clerks is done in the back office in many, if not most, other jurisdictions. In other jurisdictions courtroom clerks will manually note the case results then enter the data themselves or other clerks will enter the data after the session adjourns. Although in the SMC there may be down times during court sessions where it appears that the clerks have no immediate tasks at hand, the time and efficiencies gained by entering disposition data within minutes of the adjudicated result is commendable and worth the effort.

The challenge in improving courtroom procedures is to utilize more electronic forms. The first data entry to "initialize" cases should also populate the headings of all the necessary documents. The necessary documents for specific case types should be pre-determined and available in electronic packages. Electronic documents could be manually included or deleted as necessary and appropriate.

**CONCLUSIONS|RECOMMENDATIONS**

An In-Court Business Process Reengineering Team should consider data entry or online forms completion in the courtroom for courtroom clerks. Rather than locating the correct form and handwriting all of the header information, clerk and bailiff forms should be available online for attorneys to complete in advance of court events. Additionally, electronic forms completion would expedite the referral sheet, work sheet / fine process by combining the manual generation of a referral and work sheet with the data entry of fine sanctions ordered by the Court.

**ASSESSMENT AREA 4.2**

**Business Process Improvements ⇔ Bailiffs**

Traditionally, bailiffs play a key role in managing and controlling the activity in a courtroom. SMC bailiffs are primarily clerical staff assigned to each judge and charged with effectively managing and overseeing courtroom efficiencies.

**OBSERVATIONS**

Bailiffs are judicial staff. Each court has one Chief Bailiff who reports to the Court Administrator and the Marshall Judge. Bailiffs prepare the courtrooms and ensure all forms are in place and in proper supply. Bailiffs manually prepare defendant referral sheets and all worksheets for defendants informing them of subsequent court dates or terms of compliance (e.g., fine and fees, etc.) Bailiffs also facilitate and oversee jurors from voir dire through deliberations and verdict.

The Court requires the attorneys to pre-fill the appropriate forms for Court dependent upon a proposed resolution. As an example, the assistant city attorney will complete the heading on Judgment and Sentencing Orders and the defense will pre-fill the top section of Guilty Plea forms. Upon case resolution, the bailiffs must complete and copy the defendant referral sheet and the work sheet before the defendant can pay any fines or arrange for time payments. There are approximately 70 Bailiff and Attorney forms.

Bailiffs also calculate jail time, time served, and number of credited days during court sessions to inform the Court. These calculations are manually generated utilizing a calendar.

**FINDINGS|PROBLEMS|CHALLENGES**

The current cadre of bailiffs is well trained and experienced in courtroom support functions. One of the primary functions of courtroom bailiffs is the manual completion of various dispositional forms that usually require copying and distribution to the prosecution and defense counsel as well as the defendants. Copy machines are located outside the courtrooms which require the bailiffs to leave the courtroom on "copying errands" as necessary during Court sessions. This puts the bailiff and workflow process in a constant state of catch up as cases are called and resolved without the presence of the bailiff. The problem is introducing new protocols to an experienced work force. Technology should be instituted to maximize the completion of forms and alleviate the need for the bailiff to leave the courtroom.

**CONCLUSIONS|RECOMMENDATIONS**

An In-Court Business Process Reengineering Team (suggested in the technology section of this report) should consider data entry or online forms completion in the courtroom to streamline the work of the bailiffs. Rather than locating the correct form and handwriting all of the header information, bailiff forms should be available electronically for attorneys to complete in advance of Court events. Additionally, electronic forms completion would expedite the referral sheet, work sheet / fine process by combining the manual generation of a referral and work sheet with the data entry of fine sanctions ordered by the Court.

Some form of mail-merge document generation will be needed to assist in completing a form, or a screen could be developed to capture merely the relevant information, depending on what event was occurring, and then a document could be generated. If the data entered by the bailiff could update MCIS or the document could be generated and transmitted to a counter clerk, it would certainly speed the process.

Bailiffs also need a software program to calculate and determine time-served, community service, and days on home electronic monitoring to alleviate the need to manually record and document defendant compliance. To write such a program is not a complicated task.



ASSESSMENT AREA 4.3

Business Process Improvements ⇒ **In-Custody Arraignments**

For security and efficiency reasons, many first appearance courts operate with courtrooms in jails where incarcerated defendants are scheduled for initial appearances (release determinations, attorney appointments, and information as to charges) and arraignments (pleas, competency assessments, and early disposition possibilities). SMC combines those two due process requirements in a jail arraignment.

**OBSERVATIONS**

In Custody Case Initiation: Individuals arrested prior to 12:00 midnight are arraigned the next morning in the jail courtroom. Once booked, the Jail produces the SMC notification form of all those held in custody. This form is printed out from the 7<sup>th</sup> floor of the jail and transmitted to the 1<sup>st</sup> floor. MCIS is pre-filed with data from the SMC notification form and the case is created. The SMC notification form contains the defendant's name, booking date, charge, arrest date and time. Clerks access the Jail Management System using a booking/arrest number to populate the MCIS database.

A City Attorney must complete the complaint prior to arraigning the defendant. However, clerks have to also enter and verify case data prior to arraignment. This results in the clerks creating a case in MCIS before the City Attorney officially files charges. Information between the court clerk's office and city attorney system is primarily exchanged manually.

All eight judges rotate through the jail assignment on a one-week basis (Monday thru Saturday); although a commissioner generally handles the Saturday calendar.

Scheduling at jail arraignment: When cases require a subsequent hearing date, the clerks print the available blocks of time in the various courts and highlight the dates manually with a marker. The Clerk manually assigns courts and dates as individuals are arraigned. Some judges will schedule their own case/calendar from the bench. There are two clerks *clerking* the jail arraignments so they rotate the cases between them to stay current in recording information. One will update the case being heard while the other clerk prepares the next case to be called. These are very seasoned staff. During heavy dockets, they often run one or two cases behind. It is a hectic calendar.

**FINDINGS|PROBLEMS|CHALLENGES**

Information exchange between the Office of the City Attorney (CA) and the Court is primarily via a runner who manually drops off and picks up paper data. For a high-volume, large urban court, the process is inefficient and places considerable stress on the clerks and bailiffs in preparing and managing the dockets. Additionally, the current process necessitates the construction of a case file in MCIS prior to the CA formerly bringing charges.

It is desirable to eventually alleviate the creation of a "formal" case before the CA officially files charges with a more streamlined electronic solution. Anecdotally, it was reported that the CA doesn't file charges on approximately 10 percent of those arrested and booked; this is quite a respectable drop rate in urban courts. (Many urban municipal courts have at least a 20 percent arrest drop rate). With defendants in custody, the Court will know within 48 hours of arrest if charges will be filed. For out-of-custody defendants the Court is advised within 72 hours.

The scheduling process during jail arraignments is dependent upon multiple factors, including the specific judge that will be assigned the case for trial, whether the arraignment judge schedules his/her own court dates, or simply which document the clerk must reference when scheduling. The process is inefficient and does not provide for the best use of clerk time in the midst of a busy arraignment calendar. The more chaotic scheduling process, consultants feel, is primarily attributable to the current hybrid/individual calendaring system. With the introduction of a hybrid/master system and an electronic scheduling solution, much of the frenzied nature of the calendar and paper recording processes should improve. The challenge will be to develop uniform protocols that all judges will accept and more importantly, follow.

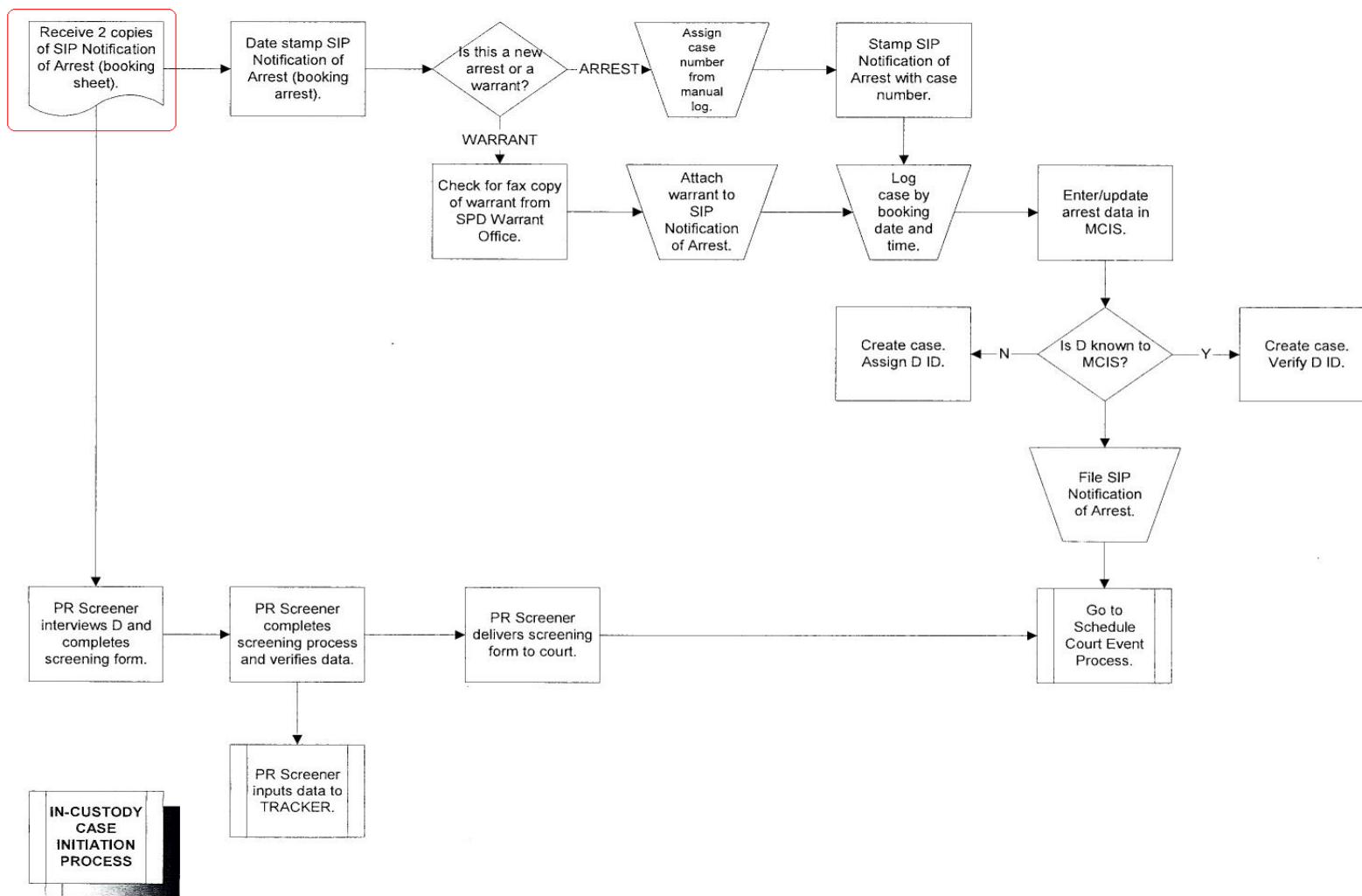
**CONCLUSIONS|RECOMMENDATIONS**

In order to expedite the exchange of data so Clerks can "conform" the complaint by validating ID charges, and verify data downloads into MCIS, the City Attorney should send complaint documents by pdf as soon as completed using the available *Paperwise®* software to electronically transfer the compliant to the jail.

The In-Court Business Processes Reengineering Team should consider creating a "shell" or temporary case in MCIS when a person is booked in jail, rather than assigning a case number to it before the prosecutor has screened the case and the cases is under the jurisdiction of the Court.

The In-Court BPR Team and an Electronic Court Records (ECR) Team should consider implementing an electronic complaint from the City Attorney's Office, or otherwise creating a complete electronic record.

Overall, the time required to maintain and update manual calendars for all eight judges is not the most efficient use of time. When the hybrid/master calendar is instituted an electronic calendaring system should be utilized to identify and automatically schedule to the available pre-trial and trial dockets.



ASSESSMENT AREA 4.4

Business Process Improvements ⇨ **Out-of-Custody Arraignments**

This first appearance calendar for non-incarcerated defendants is largely geared toward early pleas and case dispositions. Much of the case processing is administrative in nature. These procedures typify the work and orientation of high performing courts.

**OBSERVATIONS**

Intake is the out-of-custody arraignment calendar for a variety of criminal cases<sup>30</sup> on Tuesday mornings. Many cases are handled administratively which generates earlier dispositions and saves time in the caseflow. According to the Court's local rule on Intake Hearings, defendants who wish to plead not guilty may appear before a clerk who assigns a pretrial hearing date without judicial involvement. Any defendant, who desires, may appear before a judge at the Intake event for formal arraignment. At this event, eligible indigent defendants discuss their case with a public defender. Numerous negotiated pleas in less serious cases result where defendants are eligible for pretrial diversion or Community Court. On Wednesday and Thursday mornings, cases involving Driving with a License Suspended in the Third Degree (DWLS3) are calendared for Intake. Most of these matters are dismissed (60-70%) for first time offenders by the Law Department on condition the defendant agrees to pay all fines/fees ordered and complete community service if required. Administratively handling out-of-custody arraignments is a significant time saver and work process improvement.

**FINDINGS|PROBLEMS|CHALLENGES**

From a business process standpoint, there are confusions on the part of data entry clerk staff regarding charging code input. For the most part, it appears to be a training issue. Also, the master tables of defendant addresses are problematic regarding the matching of primary addresses between the Court and City Attorney's Office.

**CONCLUSIONS|RECOMMENDATIONS**

As possible, other criminal charges may be handled administratively on an expanded out-of-custody intake calendar. The Court might wish to consider having an appointed judicial officer handle this assignment or expanded versions of it to free a judge for pretrial and trial assignments if Washington state statutes, City ordinances and statewide Judicial Branch rules permit. In other RCW Title 3 municipal courts, NCSC consultants have been advised that commissioners routinely sit on misdemeanor and gross misdemeanor arraignment calendars. Also, Court leaders are encouraged to work with the Law Department to permit front-line prosecutors assigned to this calendar more latitude in negotiating pleas and conditions where defendants plead not guilty.

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<sup>30</sup> Not including offenses involving domestic violence, violation of anti-harassment orders, driving under the influence, physical control, stalking or firearms offenses.

ASSESSMENT AREA 4.5

Business Process Improvements ⇨ **Amended Complaint Process**

As criminal cases develop and more incident and defendant information is gathered, prosecutors can amend complaints prior to trial. To avoid surprises and allow the defendant and defense attorney to address additional charges, predictable and standard protocols should be followed to allow for effective discovery and an enlightened response.

**OBSERVATIONS**

Amended complaints are new, additional formal accusations filed by the City Attorney regarding a defendant-in-process, or existing charges that have been discovered that apply to a defendant either in or out of custody that has an open case in the Seattle Municipal Court. Amended complaints and additional cases are given individual attention by the clerk in constructing a case jacket and other paperwork in consolidating files to ensure the defendant is arraigned at the earliest possible date and time.

**FINDINGS|PROBLEMS|CHALLENGES**

Interviews with Court staff and lawyers lead NCSC consultants to conclude the amended complaint process lacks needed consistent application and structure. Formal Court rules and procedures regarding amended complaints and adding non-scheduled case to court calendars exist, but they are not uniformly followed and likely create some inefficiencies and confusions for all involved parties. In remedying the problems, SMC leaders need to determine why current protocols are not respected and, in turn, develop new practices that promote more streamlined approaches as well as causing better communication among the many interested stakeholders. Further, once the Court and Justice System partners have established new business processes, monitoring them will be necessary to ensure any needed improvements are instituted and necessary training of those affected take place.

**CONCLUSIONS|RECOMMENDATIONS**

The existing practices regarding amended complaints and new matters added to court calendars by attorneys appear to be somewhat problematic, causing scheduling difficulties and in some instances unnecessarily delaying cases. The efforts by the City Attorney and Court staff to quickly amend complaints or add new cases to the docket regarding a defendant are commendable, but the processes seem very cumbersome and in some instances give neither the defense attorney nor the defendant satisfactory time to contemplate plea options in relation to changed circumstances and stiffer sentencing penalties. It is suggested that the amended complaint workflow process be diagrammed and analyzed, an ad hoc stakeholder work group be developed to review the dislocations and inefficiencies in the process, and more workable procedures and Court rules be put in place that are mutually beneficial to the Court and public/private lawyers.

**ASSESSMENT AREA 4.6**

**Business Process Improvements ⇨ Review Calendar**

The court is legally and judicially responsible to hold sentenced defendants accountable for following court directives and complying with court orders. In doing so, the court must review the nature and circumstances of any non-compliance, give the defendant an opportunity to explain his/her failure to comply, and apply appropriate sanctions as a result. Violations of court directives may be technical or substantive.

**OBSERVATIONS**

Review hearings are usually scheduled as a result of a defendant's non-compliance with court ordered sanctions/restrictions or getting a new criminal charge. The hearing is precipitated by the filing of a failure to comply notice by probation. A review notice is sent to the defendant announcing a hearing date approximately two weeks from the date of issuance. If charges are denied, the hearing is continued and set for a pretrial revocation hearing. If the charges are sustained, a revocation hearing is also scheduled. Probation submits a narrative report to the Court and appropriate prosecution and defense counsels.

Some public defense attorneys have complained that the Probation Division is late in getting reports to them. In actuality, it appears that the delays are within the contract public defender offices.. The Court and public defenders are developing solutions to these dislocations.

Although limited jurisdiction courts often exhibit active judge involvement from the bench in directing events and proceedings in the courtroom in order to move calendars with dispatch (as explained earlier in this report), NCSC consultants observed dramatic differences in the judicial involvement in two separate review proceeding calendars. In one, the judge called cases, examined witnesses (defendant, probation counselor) with counsel responding directly to the bench regarding evidence of fact as articulated by the judge. The other model was more traditional; the assistant city attorney called the case, introduced evidence, and presented the City's case. Defense counsel followed with arguments and facts supporting the defendant. The judge then ruled on the facts and any mitigating circumstances presented.

The traditional model moved the calendar more methodically and with greater dispatch.

**FINDINGS|PROBLEMS|CHALLENGES**

The practice of judicial review – the practice of requiring a sentenced defendant to appear before a judge at a post-conviction review hearing for non-compliance with a court directive – is a common and necessary procedure to hold defendants accountable and sustain the importance and authority of the Rule of Law. Though most review hearings are focused on non-compliance, they can allow for terms of probation to be modified based on acceptable probationer performance.

Judges base their reviews on comprehensive reports provided by probation counselors who monitor individual offenders as to treatment and behavior objectives. Depending on these reports, judges use the influence of the court and graduated sanctions to assure those with poor compliance are held accountable. Most misdemeanor or gross misdemeanor violators are sentenced to a combination of imposed and stayed jail time that the judge can institute, in part or full, if the probationer does not comply with court orders.

For the most part review hearings seem to operate well within the Court.

**CONCLUSIONS|RECOMMENDATIONS**

Court and probation staff should assist, as necessary, contract public defender groups in streamlining their processes between their various offices and assigned attorneys to promote more timely reception of probation review reports. The assistant city attorneys receive electronic reports. If the PD Groups could identify the specifically assigned counsel of the accused, electronic transmission of review hearing reports could and should be sent to them.

**ASSESSMENT AREA 4.7**

**Business Process Improvements ⇨ Jury Trials (Bailiffs)**

In many courts, SMC included, court bailiffs are responsible for processing judicial requests for a jury, overseeing the jury, and protecting jurors from undue influence that could result in a mistrial.

**OBSERVATIONS**

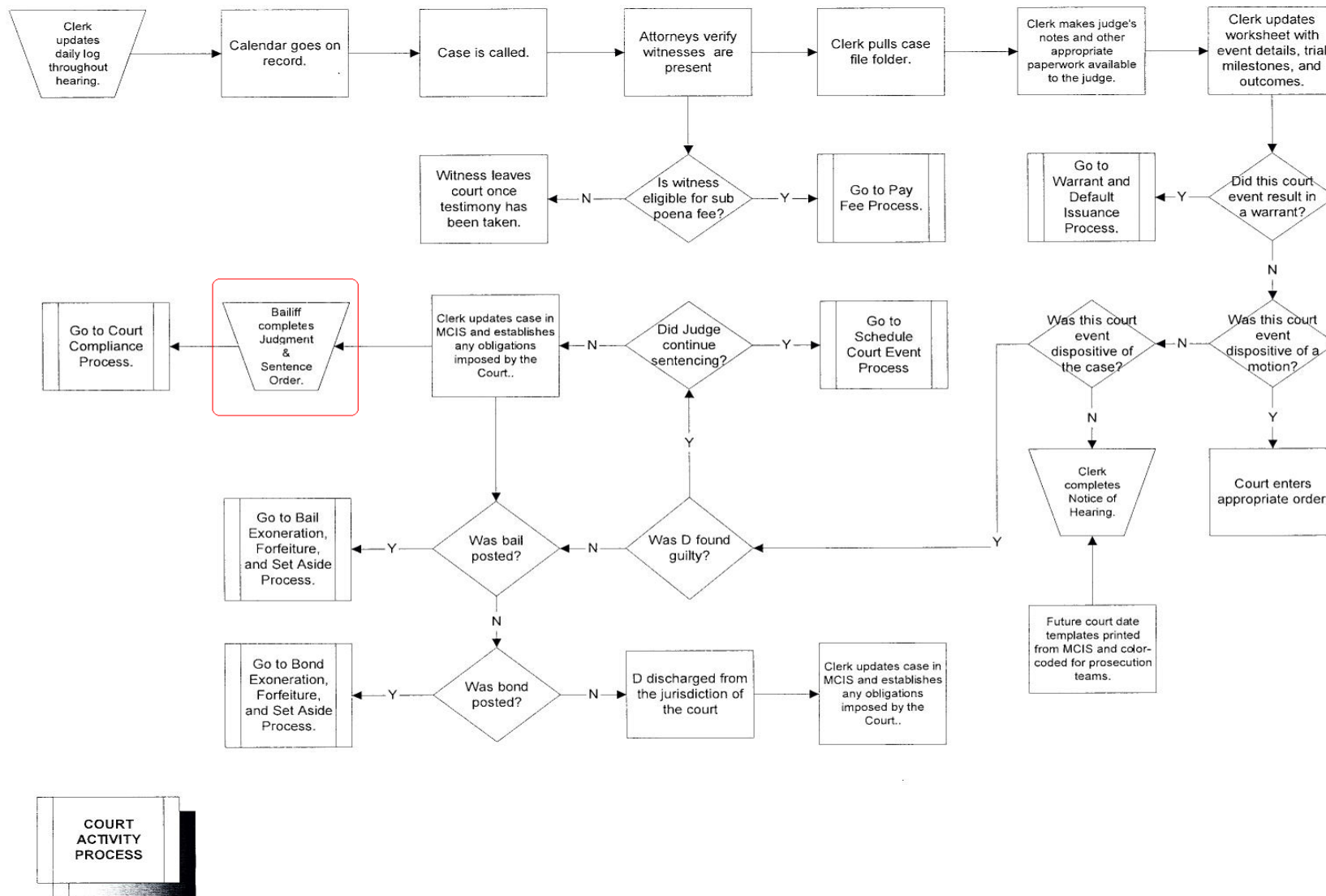
Bailiffs contact the Court's Jury Division telephonically from the courtroom to arrange for prospective jurors for a trial. Bailiffs must manually complete the request forms and then fax all appropriate paperwork to the Jury Division. Additionally, bailiffs must manually construct seating charts and photocopy jury questionnaires for the voir dire process. Generally, a bailiff will make these arrangements during a trial readiness calendar. As the calendar continues and cases are called the bailiff must leave the courtroom to fax and make the necessary copies. Consequently, cases that settle and require the attention of the bailiff must wait until she/he returns to complete a Judgment and Sentencing order.

**FINDINGS|PROBLEMS|CHALLENGES**

More consistent and uniform practices in communicating between the courtroom and Jury Division need to be devised. That communication should be electronic. Most high performing urban municipal courts have those procedures automated. Before an electronic bridge is established, however, business process should be examined and standard protocols developed, tested and evaluated to ensure the most efficient practices.

**CONCLUSIONS|RECOMMENDATIONS**

Bailiffs should have electronic connectivity to the Jury Division and should be able to develop electronically seating charts, juror questionnaire information, and other requirements in managing jurors during voir dire, trial and deliberation. This connectivity should be accessible in the courtroom in a way that is not disruptive to court proceedings, but will allow the bailiff to perform the desired tasks without leaving the courtroom.



## 5.0 SPECIALTY COURTS

Specialty or therapeutic courts and calendars have been developed by the Seattle Municipal Court to better address difficult and protracted criminal cases generated by serious addictions, mental health issues, homelessness, destructive social problems, and poverty cycles. They are a new and well accepted approach linked to a medical or diagnostic model, encouraging judges and lawyers to think of themselves as problem-solvers rather than simply case processors. These special courts and calendars break from traditional adjudication approaches directed at punishment and, instead, focus on using the law to apply more effective and successful behavior modification remedies.

For problem-solving judges and attorneys, a case is a problem to be solved, not just a matter to be adjudicated. Moreover, instead of seeing each case as an isolated incident, judges and attorneys in problem-solving settings analyze the cases in front of them for patterns and then fashion responses that seek to change the behavior of offenders, enhance the safety of victims and the community, cut incarceration costs, and improve the quality of life in the City. It is a very enlightened and productive way to handle person-based illegal activity as opposed to event-based crime. Substantial, evidence-based research over the past ten to twenty years supports the fact that problem-solving approaches reduce substance abuse, cut recidivism, decrease crime, increase offender accountability and compliance, improve victim services, and enhance public confidence in justice.<sup>31</sup>

There are generally two characteristics of problem-solving forums that are unlike traditional municipal court case processing patterns. First, problem-solving approaches generally take more time than conventional criminal case procedures. Front-end diagnostics by staff, lawyers and judges to identify social, chemical and personal issues take on more significance. Sentences must promote behavior modification not just punishment. And, treatment regimens are lengthy; aimed at holding the defendant accountable and supporting law-abiding behaviors.

Secondly, problem-solving courts measure their effectiveness by the outcomes they achieve not the number of cases they process. Problem-solving courts' emphasis on low-level crime, their focus on sparking creativity of system insiders, their reliance on rigorous research and analysis, and their desire to build new community treatment and support partnerships are all straight out of evidence-based justice reforms. And so is their call to judges and lawyers to think beyond the immediate case in front of them to see the big picture. In all of these ways,

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<sup>31</sup> See Center for Court Innovation (New York, NY) and National Center for State Courts (Williamsburg, VA) websites for background data and supporting studies.



problem-solving courts stand on the shoulders of contemporary law enforcement innovations and crime prevention strategies such as broken-windows and problem-solving policing.<sup>32</sup>

The three specialty forums operated by the Seattle Municipal Court, namely the Community Court (CC), Mental Health Court (MHC), and Domestic Violence Court (DVC) are examples of successful diagnostic jurisprudence. It should be noted, however, that in the Seattle Municipal model, DVC is diagnostic only in terms of the cross-professional team that evaluates sentencing options for a judge. The adjudication process is largely vested in the adversarial process.

Problem-solving courts have become a part of the fabric of many justice systems with over 2,000 operational tribunals and more in various stages of planning. Drug and mental health courts focus on treatment and rehabilitation. Community Courts combine treatment, community responsibility, accountability and support to both litigants and victims. Integrated youth courts utilize the full array of family court and criminal court remedies to improve outcomes for adolescents entering the courts and for their communities. Sex offense, domestic violence and integrated domestic violence courts employ judicial monitoring and the use of mandated programs and probation to ensure compliance, facilitate access to services and remove artificial barriers between case types. All have their place in an array of better and more effective ways to apply the law in a strategic way to pressure an offender into completing a treatment program and abstaining from repeating behaviors that brought them to court.

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<sup>32</sup> *Broken windows policing* theory suggests that police officers should focus renewed attention on conditions of neighborhood disorder like graffiti, broken windows and drunk and disorderly individuals. The theory posits that where these problems exist and are left unaddressed, it sends a message to potential criminals that more serious wrongdoing is permissible. In this way, low-level disorder and serious crime are inextricably linked. (See James Q. Wilson and George Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly* 249, no. 3, March 1982, 29-38.). *Problem-solving policing* focuses on underlying conditions which create crime. These conditions may include the characteristics of the people involved (offenders, potential victims and others), the social setting in which the people interact, the physical environment, and the way the public deals with the conditions. A problem created by these conditions may generate one or more incidents. These incidents, while stemming from a common source, may appear to be different. For example, social and physical conditions in a deteriorated apartment complex may generate burglaries, acts of vandalism, intimidation of pedestrians by rowdy teenagers, and other incidents. These incidents, some of which come to police attention, are symptoms of the problem. These incidents will persist as long as the problem that creates them exists. (Goldstein, H. 1990. *Problem-Oriented Policing*. Philadelphia, PA: Temple University Press.)

**ASSESSMENT AREA 5.1 Specialty Courts ⇨ Mental Health Court**

Within America's criminal justice system, mentally ill defendants are substantially overrepresented. Evidence suggests that up to 20 percent of those charged with criminal offenses suffer from a serious mental illness. Some have termed it a public health issue, but until that is embraced as government policy the courts are left to deal with it. High performing courts have turned to problem-solving approaches.

**OBSERVATIONS**

The Seattle Mental Health Court (MHC) began in 1999 and serves 500 individuals annually. It is held 4 weekday afternoons and Friday morning. Referrals to MHC come from a variety of sources, including arresting police officers, the arraignment judge, jail staff, prosecuting and/or defense attorneys, jail liaison, family/friends or a social services case worker. Most often, referrals originate in the jail court. All referrals are filtered through a Court Liaison who researches the history of the client and interviews him/her. If the liaison, defense attorney and defendant agree that the matter is eligible for MHC, the case is scheduled for a hearing. The MHC is charged with determining the competency of the defendant to understand the charges against him/her and aid in his/her own defense. The defense attorney, defense social worker and court liaison each interview the defendant and make an independent assessment of competency. This MH team meets Monday thru Thursday to develop and review cases/recommendations. Fifty percent of the MH referrals are concluded to be non-competent. A defendant can opt out of MHC at any point in the process, even if they have agreed to conditions of release. Defendants who opt out often have significant service needs. Half of the homeless defendants opt out and half of those with co-occurring mental health and substance abuse issues opt out. If the defendant is eligible for MHC monitoring, he is released under specific conditions (i.e., take meds regularly, see court liaison routinely, etc.) and overseen by the court liaison for up to 2 months. If successful and the defendant opts into the MHC, he/she can be monitored by a probation counselor for up to two years. If successfully completing probation, the defendant "graduates" and may have his/her case dismissed.

Recent research on Seattle's MHC shows that clients reduce criminal activity after participating in MHC, increase their access to mental health services, one-third complete their conditions of release without committing a new offense and only five percent are re-arrested on a warrant.

**FINDINGS|PROBLEMS|CHALLENGES**

Mental health courts grew out of the successful national drug court movement. In place of a drug court team, a MHC team is composed of a similar mix of prosecutors, defense lawyers, probation officers and treatment providers. In essence, many MHCs serve a "gap filler" function for the local criminal justice and mental health systems; frequently addressing the gaps in local services for poor and homeless petty violators with undiagnosed mental illness or who may not be taking prescribed psychotropic medications.

**CONCLUSIONS|RECOMMENDATIONS**

The Mental Health Court is a productive and worthwhile approach to dealing with a difficult client population. Since the court is well staffed, protocols are effectively researched and established, and court hearings are generally not protracted, NCSC consultants feel it may be possible to combine this problem-solving court with the Community Court. However, some court leaders feel that to do so could create caseflow difficulties and negatively affect program outcomes if one of the programs must move to a morning calendar. Each problem-solving court team performs detail case work-ups in the morning for the afternoon calendars. Also, whoever draws the morning schedule will not be able to do same day add-ons. Additionally, there is some thinking that the defendant populations are dissimilar enough that it would present problems in managing a combined calendar. For these reasons, the idea should be fully evaluated with a recommendation brought to the Bench for action.

ASSESSMENT AREA 5.2

Specialty Courts ⇒ **Domestic Violence Court**

Domestic violence can be broadly defined as a pattern of abusive behaviors by one or both adult partners in an intimate relationship against each other. A derivation of DV behavior is harassment or stalking which focuses on psychological intimidation. No contact orders (orders of protection) can be issued by a court to protect victims and where a problem-solving orientation is taken, evaluations and behavior modification techniques can be imposed.

**OBSERVATIONS**

The Domestic Violence Court is a specialty court that provides a cross between a traditional adversarial approach directed at curtailing violent/destructive behavior among intimate partners and a problem-solving approach that helps identify the underlying causes of abusive conduct and promote corrective solutions and remedies. Seattle Municipal Court hears misdemeanor domestic violence offenses including: assault, property destruction, harassment and telephone harassment, intimidation with a weapon, reckless endangerment and violation of no contact or domestic violence protection orders. Washington State law defines domestic violence offenses as virtually any criminal act committed by one "family or household member" against another. A person arrested for a domestic violence offense will always be held in jail until he/she appears before a judge, usually the following day. The Court may require a defendant charged with domestic violence to sign a No Contact Order as a condition for release from jail prior to trial. Prior to arraigning domestic violence defendants, Court probation counselors attempt to contact victims to determine whether they wish a No Contact Order to be issued. Probation staff in the jail can also determine whether or not a defendant has been released from jail. Defendants may be brought back into Court for violations of no contact orders. The City Attorney's Office will review the police report to determine whether or not to file charges. In many cases, the City will prosecute a case even if the victim refuses to testify. Defendants who are convicted of domestic violence offenses are usually placed on supervised probation for two years. The Seattle Municipal Court Probation Department has a specialized Domestic Violence Unit. Probation counselors monitor the completion of court ordered treatment programs or counseling. Defendants must report monthly, in person, to Probation until compliance with treatment is well established. If a case goes to trial, however, the defendant may walk with no conditions.

**FINDINGS|PROBLEMS|CHALLENGES**

Under the new hybrid calendar system, there will be 1.5 judges handling DV Court who will not be part of the general trial assignments.

Witness assistants have a strong role within the Domestic Violence Unit of the City Prosecutor's Office, contacting victims and assisting prosecutors with case decisions. At the jail arraignment, witness assistants contact victims, convey information to prosecutors, and assist in making charging as well as bail decisions. They continue to work with the victims they were assigned at arraignment. They make follow up calls to the victim and meet with the prosecutor prior to the pretrial. At pretrial, 2 witness assistants and 2 prosecutors cover the calendar. One team meets outside the courtroom to negotiate while another pair handles cases as they are called in court.

Specialized criminal domestic violence courts often mean additional court appearances to monitor the defendant's progress in batterer intervention programs. Review hearings are commonplace requiring the presence of prosecutors, defense attorneys and probation officers.

Review calendars deal with domestic violence probation revocation, treatment status of DV offenders, and lifting of "no contact" order requests.

Successful prosecutions where a victim recants his/her complaint are hard to achieve even in light of Washington's tough DV laws.

**CONCLUSIONS|RECOMMENDATIONS**

The Seattle Domestic Violence Court appears quite effective in addressing abusive behaviors in family/household relationships. As a specialized tribunal, NCSC consultants conclude it is able to promote the speedy disposition of cases, permit needed judicial specialization in domestic violence law, provide more consistency in sentencing, further victim satisfaction especially in egregious cases, allow escalating punishment for escalating violence, and result in reduced recidivism.

Washington's tough DV laws are not without controversy. The ability of the City Prosecutor to obtain a no contact order without concurrence of the victim can result in family hardship and costly defense lawyer fees to the parties where a DV incident was not harmful or symptomatic of criminogenic behavior. To help moderate this situation, the Court developed a calendar where the alleged victim can modify or terminate a no contact order. Not many courts take such an approach. It helped precipitate a statewide Judicial Branch inquiry into the topic by the State Supreme Court's Gender and Justice Commission. Resultantly, policies will be soon proposed to the trial courts in Washington to create mechanisms for a victim to request a modification or rescission of a no-contact order.

**ASSESSMENT AREA 5.3**

Specialty Courts ⇔ **Community Court**

Community courts, often termed “quality of life” courts, are special problem-solving tribunals focused on reducing petty street crime that disrupts and degrades a community (mostly urban in nature) making it more susceptible to higher levels of crime, blight, and decay as well as more effectively helping those who commit such offenses. Sentences normally require the defendant to engage in treatment programs that address the underlying causes of repeated illegal behavior. At best, successful clients will be more likely to reduce repeated contact with the criminal justice system, improve their quality of life, and lessen their tendency to commit petty street crimes.

**OBSERVATIONS**

The court opened in March 2005 as limited pilot project but expanded two years later citywide. The court’s orientation is problem-solving; it is not a plea court. It serves “chronic public system users” – defendants who repeatedly commit low lever crimes, fail to comply with sanctions, fail to appear in court, and use jail days when they could more effectively be rehabilitated through alternative strategies. Those referred to the program must willingly agree to participate. Sentences are usually from 16 to 48 hours of community service with a requirement to make linkages with community based and public agency social services to address underlying causes of repeated criminal behavior. Failure to comply results in swift, certain short jail terms; a proven best practice among evidence-based sanctions. The court’s jurisdiction is 30 days per sentence. Probation handles logistics and monitors compliance. Americorps staff in the City Attorney’s Office assists in coordinating community service sites.

There is a 46 percent program completion rate (2008 – 2009 data). Theft and criminal trespass are the most common charges. Jail savings in CY 2009 were estimated by the Mayor’s Office of Policy and Management (OPM) at over \$500K. There are substantiated savings in other areas of the criminal justice system as well (i.e., public defense), although at much smaller levels. A recent Justice Management Institute (JMI) evaluation of the Community Court, concluded it was significantly more effective at reducing the frequency of recidivism than the traditional court process. Community court participants had 66 percent fewer offenses in an 18 month period while a control group showed an increase of 50 percent. There was no difference in recidivism rates, however, due largely to the homeless, impoverished, chemically dependent nature of this offender group. Over 80 percent of the defendants re-offended.

Most cases originate from in-custody calendars (2/3 in-custody; 1/3 out of custody). Many low-level criminal case types are eligible for Community Court except those involving assault or thefts exceeding \$500. The city attorney screens cases for admittance to the program. Two probation officers develop case profiles (including employment history, mental health issues, past criminal history and attitude) and orient defendants in the morning for court appearances in the afternoon. Court sessions are schedule three half-days per week.

An area of possible expansion is Iraq War Veterans.

**FINDINGS|PROBLEMS|CHALLENGES**

There is little doubt that the Community Court saves a significant number of jail days by reducing significantly the likelihood that chronic low-level offenders will re-offend at high levels. The problem-solving nature of the court with its linkages to social service agencies has largely accounted for that result. Similar programs in other urban areas of the nation have experienced comparable results for the same case types according to the Center for Court Innovation in New York City.

A future challenge in providing this useful and cost-effective problem-solving alternative at the SMC will be how to accommodate the necessary court sessions with a reduction in one judicial officer in January 2011.

**CONCLUSIONS|RECOMMENDATIONS**

Occasional discussion has surfaced over the years regarding the possibility of combining Community and Mental Health Court dockets in order to free more judge time for pretrial and trial calendars. The reduction of a judicial position in 2011 has intensified the dialogue. NCSC consultants feel both the merits and disadvantages of such an option should be evaluated by court leadership and recommendations brought to the Bench for action. (See discussion in the Conclusions and Recommendations section in Assessment Area 5.1.

Also, an analysis by the Chief Clerk, Research, Policy and Planning, and the Probation Department to streamline and reduce, as feasible, the number of review hearings should be undertaken. Where possible and productive, probation-centered contact should be substituted for routine judicial reviews saving Court time and reducing judicial calendars. Numerous community courts have authorized probation officers to trigger swift, short jail terms for willful non-compliance with sentencing terms without having to bring the offender back before a judge for a violation hearing.

Many Community Courts that are municipal court based collaborate with City departments such as Human Resources, as resources for client assistance. It is suggested that SMC Community Court explore possible options in this area.

## 6.0 TECHNOLOGY

Information technology is a tool, not an end unto itself. It is both difficult to implement and to manage. With its use can come conflicts about budgets, organizational relations, administrative authority, processes and procedures, and even the best ways to process cases. Despite these potential conflicts, it clearly is one of the most productive solutions to reengineering courts and wisely addressing a more austere future.

Chief among the issues Court leaders must confront is the MCIS remodel. Legacy systems re-design creates expectations of much more efficient and instant service, struggles as to development priorities, difficulties in settling on a business plan, and uncertainties about long-term, consistent funding to support remodeling efforts. These significant changes must take place in an environment with competing interests and a reduced workforce; a daunting task even in the best of times.

As the Seattle Municipal Court develops its MCIS Remodel strategy, the issues that must be overcome include a number of commonplace ones...

- Technology changes rapidly while technology design and implementation can take time. Resulting applications can be dated almost as soon as they are implemented.
- Technology often is overlaid incrementally on complex and archaic procedures and processes.
- It is difficult and sometimes impractical to mirror the full complexity of justice system and court processes in information systems.
- Uniformity by judges in adjudication methods, practices, and options is an extremely important ingredient in developing a system that is efficient and consistent.
- Although the same rules and procedures may govern courts within a state, the size of the court, the nature of the facility and local legal culture, among other factors, drive differences in specialization and the division of labor among staff. One-size-fits-all solutions do not work.
- Many key components of information management systems, people, processes, data, and facilities are already in place. New hardware and software often are introduced without adequate attention to how they fit within this existing environment. Almost always, re-engineering of justice system and court business processes and training are needed.
- Expectations about court software are commonly unrealistic.

Yet with all these caveats, NCSC consultants feel SMC is well positioned to be successful in its remodeling efforts. Some suggestions toward the end are offered on the following pages.

**ASSESSMENT AREA 6.1**

**MCIS Remodel ⇨ MCIS Software Development Capability**

High volume urban city courts cannot survive in today's information age without an electronic case and cash management system. The Seattle Municipal Court operates a stand-alone legacy Informix-based system that has been modified and updated numerous times called MCIS. The Court has its own information technology group and software development capacity in support of MCIS. There are many major challenges in continuing to improve the functionality of MCIS in the light of the fact that no other viable options exist to replace it.

**OBSERVATIONS**

The Court's decision to build and maintain its own electronic case management system (CMS) in-house is responsible given the alternatives. New packaged or custom software would likely cost several million dollars. This occurs in the context that the Washington State Court System has historically struggled to both upgrade and replace its legacy SCOMIS (general jurisdiction) and DISCIS (limited jurisdiction) 20+ year old computer systems. DISCIS functionality is not currently compatible with the present or future needs of Seattle Municipal Court. No other alternatives through Washington's Judicial Information System (JIS) at the Administrative Office of the Courts are presently viable. The court has chosen the path of building and maintaining its case management system in-house, so it needs to renew its commitment periodically to maintain the human resources to make good on that commitment. The current Court Technology leadership and team appear to be well equipped to do what is asked of them.

The Court Technology department has 8-9 staff, including 3-4 software development staff. They use Microsoft Visual Studio software development tools which are state-of-the-art. The Informix database software was acquired by IBM in 2001 when there were more than 100,000 customers, and a major new release was issued in 2007. The technology appears to be up-to-date and able to provide the Court with whatever functions are needed.

**FINDINGS|PROBLEMS|CHALLENGES**

The Court Technology department is a relatively small shop, so its overall structure and function should be kept intact as much as possible. Loss of one or more persons could set progress back significantly because of startup time for a new person to learn about the systems. The best way to maintain a small unit is to provide an atmosphere that acknowledges their value to the organization.

The software base code has issues and areas where it needs to provide more functions. As long as the roster of the Court Technology department is maintained at current strength, the department should be able to meet the court's software maintenance and new development needs, although additional staffing would provide resources to accomplish more objectives more quickly.

**CONCLUSIONS|RECOMMENDATIONS**

SMC should maintain its current IT capabilities at least at current levels, and these capabilities should be considered a strategic asset.

ASSESSMENT AREA 6.2      MCIS Remodel ⇒ **Business System Analysis Facilitates MCIS Remodeling**  
The business system analysts in the Information Systems Group are a major component in upgrading and advancing the current legacy MCIS system.

**OBSERVATIONS**

The Court's Information Systems Group has two business system analysts titled "strategic advisors" who are extremely valuable. They are necessary to advance the Court technology-wise. Currently, they are the only business system analysts in the Court (as distinguished from technology analysts in the Court Technology department). The business system analysts function like an internal management consultant in helping technologists understand the Court's business needs and facilitate solving other problems.

**FINDINGS|PROBLEMS|CHALLENGES**

The Court may be under budgetary pressure to reduce headcount. This business system analysis capability is strategic rather than operational, and should be considered an organizational investment. Court managers and supervisors in most courts have to perform the business analysis function themselves, sometimes without input from line staff. They tend to be the subject matter experts and may or may not have both an overall view and a working-level view.

The MCIS Remodel initiative process (described in more detail below) requires business system analysis capabilities. It may be difficult for people doing specific work every day, like managers and lead workers, to see beyond their individual work units. That is part of the value of business system analysts, whose job it is to see what various points of view are on a subject and facilitate a consensus or an approach to solving problems.

Business system analysis by committee does not always produce clear and consistent direction, as committee members often do not have the time to spend on this important work. A strong business analysis capability will lead to better systems for the Court through better applications to support the work of the Court.

**CONCLUSIONS|RECOMMENDATIONS**

SMC should maintain its current business analysis capabilities which are a critical asset. System business analysis complements paperwork streamlining (business process reengineering).

ASSESSMENT AREA 6.3

MCIS Remodel ⇒ **MCIS Remodel Governance Process**

Remodeling MCIS is a major task. Technology solutions themselves are often not the stumbling block. Business process analysis is generally one of the most critical steps along with establishing workable development priorities based on the best and most productive business case. **Bold, simplified ways to address complex, intricate, intertwined work procedures takes a lot of effort and creativity.**

OBSERVATIONS

The MCIS remodeling project targets two functionality improvement areas: accounting and electronic court records (ECR). NCSC consultants agree these are major improvement areas that will significantly advance judge and staff productivity as well as stakeholder and public information access. A number of carefully planned steps must be accomplished to be successful. A funding request to the City is planned to take place in 2011 for 2012 support.

It is a commonly recited fact that business processes change frequently. System developers are always playing catch-up, so users are forced to develop work-arounds like “crib-sheets,” checklists, spreadsheets and Access databases to cope with data that there’s no way to accommodate in the system.

We were provided with some preliminary requirements in each area that, as stand-alone documents, are a good start.

FINDINGS|PROBLEMS|CHALLENGES

Each of the two functionality improvement areas has a team lead, and they report regularly to the MCIS Steering Committee, and the MCIS Remodel Steering Committee reports to the Executive Committee.

The team leader, a business person, will relegate technical aspects to the Court Technology manager. Each team lead is responsible for developing a statement of work for their respective areas. At that point the overall governance process is not clear, particularly the absence of a project plan, and a methodology for evaluating remodeling ideas.

(1) Project Plan. The first element of this recommendation is that each team lead develops a project plan to develop requirements. Such a project plan will have a work breakdown structure, staff assigned to perform various tasks, and a timeline with milestones. We were not provided with any project plan, subjecting the remodeling initiative to the risk of underachieving or of failure. We understand that the team leads are busy people with major day-to-day responsibilities in addition to developing requirements in their assigned areas of accounting and ECR. Their annual performance plans should recognize their roles in this initiative, and recognize that their work will likely extend beyond a single annual performance plan. If this additional work is silently added to their existing duties, it will have a low profile, and not reflect the Court’s view that this is a strategic initiative.

(2) Business Cases. The second element of the project plan is developing business cases. The purpose of a business case is to identify system enhancements that have more business value – what will make an impact on operations. A business case is an important part of a methodology to demonstrate that the resources to be devoted to it are worth it; it forces a hard look at the proposed impact of a system change, and is persuasive to funding authorities. Some of the requirements provided to the NCSC team are in the format of business cases, though somewhat different from the format set forth in the Appendices. There is no single correct way to prepare a business case.

(3) Priority-Setting Retreat. The third element of the project plan is a priority-setting retreat to select the system changes that will produce the most business value (i.e., improved productivity). Business cases that estimate quantitative or tangible benefits will enable priority setting. A protocol specifically for the accounting requirements is described in Appendices, also referred to in the next assessment area, and can be applied to all subject areas. One of the temptations of in-house development is to try to do too many things at once and try to give everyone the perception of movement, rather than have one project go first and other projects wait. The multi-tasking approach dilutes the available effort and makes everything go slowly. An IT department needs priorities determined by the business side of the operation because IT is unable to set priorities on its own. Another NCSC recommendation in this report is that the accounting remodeling project be given priority. Participants at the retreat should consider this and may choose to accept or reject it, entirely or partly. They may decide to prioritize elements of both major initiatives. They should also prioritize elements within each initiative, and then overall, using some pre-established criteria. Any governance process that promotes someone’s “pet” project or seems arbitrary to most people is likely not to produce the best overall result. Executives must make the final decision and not everyone may be satisfied with the result, but a reasoned approach will produce results that people can live with. Enhancements that do not “make the cut” one year should be held for review the next year.

(4) Funding Request. The fourth element, developing a funding request, is well-known to the management group.

CONCLUSIONS|RECOMMENDATIONS

The MCIS Remodel Steering Committee should (1) develop a project plan to develop MCIS Remodel requirements, (2) develop business cases, (3) conduct a priority-setting retreat to select the system changes that will produce the most business value (i.e., improved productivity), and (4) develop a funding request for the system enhancements to be developed and implemented.



ASSESSMENT AREA 6.4

MCIS Remodel ⇔ **Priority of MCIS Accounting Remodeling**

Financial fundamentals – cost accounting, spending analysis, accounting and reporting – are basic to effectively managing a large municipal court and accurately tracking and accounting for the flow of public and customer money involved in the day-to-day operations of the court. The potential for harm and mismanagement is too great to ignore, even in light of the fact that minimum standards appear to be satisfied.

**OBSERVATIONS**

MCIS was developed and implemented in 1990 and, as has been a common phenomenon of case management systems nationwide, the focus was on case processing, with accounting functions a secondary consideration. Accounting functions have been developed over the years but in an incremental, piecemeal way. The Court's accounting operation has recently passed an internal audit so it meets minimum standards, but the software's function is operationally deficient in a number of ways. The primary business problems identified by the Court include the following:

- Many business practices do not support a typical account receivable and payable environment.
- Accounting transactions are not double entry (no debit for every credit)
- No control table (general ledger accounts) in the system
- The system processes transactions without easy to access audit trail.
- The system writes checks, but does not maintain a checkbook function
- No Accounts Receivable (AR) module
- No time-pay module
- No interface with Summit

Additional deficiencies identified during the site visit include the following:

- Inability to report amount of fees collected for the crime of patronizing prostitutes
- Difficulty performing bail refunds
- Need for a write-off policy for minimal amounts and a method to implement the policy
- Inability to record who paid a defendant's bail
- Inconsistent system function: the same query produces different results when run successively
- In general, use of spreadsheets to capture a lot of information that MCIS doesn't

**FINDINGS|PROBLEMS|CHALLENGES**

Many courts face the issue of inadequate accounting functionality. Two approaches are available: remodel MCIS as contemplated, or acquire a stand-alone accounting system and customize it with court functions and integrate it with the case processing modules of MCIS. The NCSC team was told that the Court does not have funds to pursue acquisition, configuration, customization and integration of a commercial off-the-shelf accounting system. Remodeling MCIS would result in incremental improvement through implementation of enhancements identified through validation and priority setting. The observation, however, that queries to MCIS with the same query yield different results is disturbing. It raises the question whether the results can be trusted. MCIS was not developed with double entry accounting, which no doubt presents challenges in performing accounting functions according to generally accepted accounting standards (GAAP) – difficult but not impossible.

Regardless of the approach that the Court chooses, the Appendices sets forth functional requirements under the topics "receipt accounting" and "bookkeeping accounting" that the NCSC developed for Mesa (AZ) Municipal Court, and a requirement validation and ranking process. These requirements can be used as a reference point or checklist against which accounting functionality of MCIS can be gauged.

**CONCLUSIONS|RECOMMENDATIONS**

The Court should make remodeling of the MCIS accounting functionality the highest priority in the MCIS Remodel initiative.

ASSESSMENT AREA 6.5

MCIS Remodel ⇒ **Regular and Ad Hoc Reporting Capabilities**

Operational data on court processes and caseflow not only provide key diagnostics to improve court productivity and pinpoint problems early before they reach difficult proportions, but also provide court leaders with a way to monitor the “pulse beat” of the court to ensure it is meeting basic, healthy performance standards. Database and report integrity must be at the highest levels to ensure accurate and reliable results and program analysis.

**OBSERVATIONS**

MCIS generates many reports and many are emailed daily. Monthly reporting to the AOC still requires manual tabulation from various reports. The Court Technology department is implementing Microsoft Reporting Service which will enable users to develop and run their own reports without relying on technical staff. Court Technology has identified a few reports for the new process, and wants to review the inventory of current reports.

Reports currently use production data, which may slow response time for users. It is not the usual or recommended approach to use production data for reporting. Reports can be scheduled, however, to run after hours, and many daily reports are run then.

The Court has implemented MS Reporting Services and is slowly adding reports to it. Court Activity Reports (CAR) are in MS Reporting services. MS Reporting Services will be a mix of old reports “brought over” from batch reports and new ones created in conjunction with RPEG and Court management.

**FINDINGS|PROBLEMS|CHALLENGES**

Staff has limited time to work on improving the Court’s reporting capability. Some reports have been running since inception of the system, and their utility needs to be examined. Any report that is not used should be eliminated.

From a management perspective, Court management needs to identify what kinds of information will be helpful for managing the new hybrid calendar. Samples of some useful management statistical reports are included in the Appendices.

From a technical perspective, each new report since inception of MCIS has been developed as custom code, so the inventory of current reports contains hundreds of these. It takes considerable time and effort to sort through the underlying code of the reports, but it’s essential to know what’s available and what can be discarded.

Use of production data for reporting should be avoided, and a copy of data refreshed at least daily should be available for ad hoc and standard reports. A duplicate database can also serve a backup function, depending on the frequency of update. This will require a new or repurposed server to function as a reporting server.

**CONCLUSIONS|RECOMMENDATIONS**

The management team should lead a work group to review enhancement of reporting from MCIS, including implementation of a reporting database and guidelines for users running ad hoc queries. The Court has some CourTools measures in place, just not consolidated in one location. CourTools are a vetted, national set of ten vital court performance measures developed by the National Center. Growing numbers of trial courts are employing them to consistently monitor basic operations. Four of the measures are directed at caseflow management... clearance rates, time to disposition, age of active pending caseload and trial date certainty. Data on these measures can eventually all be obtained through MS Reports. The CAR reports capture much of this data now and have proven to be very useful in managing caseflow throughout the Court. The other six measures often require separate measurement efforts, some outside the data provided by MCIS. These measures are access and fairness (public surveys required), reliability and integrity of case files – essentially the congruence between the paper records and computer data on the same case – collection of monetary penalties, jury yield and utilization, court employee satisfaction (survey), and cost per case. Court leadership is on track to incorporate and use all of these measures.

ASSESSMENT AREA 6.6

Technology ⇒ **Video Discovery**

Courts are increasingly employing technology to aid in the transmission, review and analysis of digitized criminal case evidence. It is becoming a best practice between prosecutors and defense lawyers in many jurisdictions moving criminal pretrial processes from a discovery to a disclosure orientation. The result is greater case dispositions earlier in the process, greater trust levels among public lawyers, and what many believe is a higher level of practice among attorneys.

**OBSERVATIONS**

The Seattle Police Department creates and maintains video and audio files that are subject to discovery under court rules as potential evidence in a case. Police vehicles are equipped with cameras, and 911 calls are routinely recorded. The large size of these files and their format require the police to provide them on compact disc to attorneys who request them. Production of these CDs is an individualized manual process, and also depends on communicating to attorneys when the discs are ready for pickup. Defense attorneys need the video to know how to advise their clients, so time is of the essence in receiving them, so as not to delay court processes. Judges freely give a continuance if attorneys have not seen the video.

**FINDINGS|PROBLEMS|CHALLENGES**

If another means can be devised to provide video and audio files to attorneys, the method must be secure to prevent unauthorized access to the information. A user name and password is sufficient to protect this data, with attorneys able to access files for their cases only.

If the video is uploaded to a password-protected website ("the cloud"), the City Attorney's office can notify defense attorneys by email, and let them download what they are entitled to see.

**CONCLUSIONS|RECOMMENDATIONS**

Video delivered for discovery should be available to defense attorneys at an online site.

## **7.0 PROBATION AND COMMUNITY CORRECTIONS**

Many urban municipal courts have no in-house probation services, or if they do, they are very limited and modest; often dedicated primarily to one or two problem-solving court caseloads. The Seattle Municipal Court is distinctive in the fact that its Probation Division is large and very active in evaluating defendants and monitoring compliance with court orders. Aside from 40 full-time staff, an additional 40 volunteers permits the Division a high level of engagement with the Court's criminal defendants.

The Division is very well organized and managed. A large portion of its work involves DUI and DV defendant assessments, monitoring and compliance.

The Day Reporting Center is considered by the consultants to be a specialized community corrections program focused on overseeing primarily a non-violent and low aggressive, vulnerable population of criminal defendants; many of whom are homeless "street people" guilty of petty crimes and misdemeanors. It is a very effective alternative-to-incarceration for a difficult client population. Few urban courts have such an option; more should.

**ASSESSMENT AREA 7.1**                      Probation and Community Corrections ⇔ **Probation**  
SMC probation targets the array of modern day correction objectives including diagnostic review, linkages to social services and treatment options, public safety enhancement, compliance tracking and recidivism reduction. Probation programs are based on evidence-based, clinically proven approaches to address aberrant behavior.

**OBSERVATIONS**

The Probation Division staffing level is 38 FTE probation officers, 5 support staff and 40 volunteers that work with misdemeanor and gross misdemeanor violators. The Division is currently 2.0 FTE positions short of being fully staffed.

Length of probation jurisdiction is 2 years now for DV cases and 5 years for DUI cases. For the most part, Probation is a very effective operation. A few apparent problems include noticing issues, fine and fee uniformity among judges, and difficulties in scheduling review hearings.

Probation often doesn't get notice of defense attorney withdrawals from a case and has no idea which attorney to send reports. (they know which agency, but not the specific attorney). Defense lawyers have complained separately that they don't get timely probation reports before review hearings. Attorneys withdraw from case 60 days after disposition. If a defendant re-offends there is no counsel of record and the case is routinely continued. This adds to the churning of cases in the system. It is understood that probation and public defense contractors are working on solutions.

Probation fees are charged for select services such as a deferred case. Judges have the discretion via State statute to impose probation fees. There is no consistency in imposing fees and fines. Fees are low (most are \$10 per month); Probation has suggested raising them. Much of probation services are dedicated to DUI cases where the defendants could pay more for services. Other municipal courts in Washington charge higher fees (i.e., Tacoma). The Department has an AmeriCorps matching grant that may see reductions in the future. Fines and fees are considered part of the conditions of probation which are overseen by a separate Payment Compliance Unit

Probation review calendars are problematic since there are often more docketing needs than slots available.

Recently SMC privatized electronic home monitoring (EHM). Most other municipal courts have EHM programs in place

**FINDINGS|PROBLEMS|CHALLENGES**

Among the problems faced by Probation that have impacted the Department and should be addressed, include...

The likely extension of DV jurisdiction. The Legislature is expected to expand jurisdiction to 5 years in an upcoming session. It remains inconclusive, however, when and if the City will adopt such a change. Consideration by the City Council has to be triggered by a Law Department proposal and willingness to request such a probation term.

There is some confusion as to whether probation officers are routinely permitted to use PDA's and laptops in wireless courtrooms to multi-task while waiting for case appearances. Some judges permit it, some do not. Unless there is substantial disruption, probation officers should be permitted to conduct work while waiting in courtrooms. A simple court policy could remedy the situation.

MCIS has no probation module in its electronic case management system. Probation has a separate stand-alone software program called TRACKER. MCIS updates TRACKER every half-hour. In many instances when a defendant appears at the Probation Office, the staff will have no background on the case other than the paperwork the defendant brings. Often it takes time for the courtroom clerk to update MCIS.

Probation fees in other urban limited jurisdiction courts are much higher

**CONCLUSIONS|RECOMMENDATIONS**

There are a series of operational improvements that could enhance the functions and services of Probation. Some are mentioned above. It would be helpful to outline and prioritize them and appropriate solutions. It appears that a few are rather easy to implement and would be helpful. Others may be more difficult or costly to effectuate and should be weighed against other Court improvements before moving forward.

It is also suggested that a special task force, including judges, Court Administration and Probation Division leaders, review the nature and number of cases that are routinely channeled to probation to ensure that only those cases that are most appropriate receive services. As possible, Bench protocols and policies should be developed and uniformly adhered to regarding probation referrals.

All in all, Probation appears to be a well functioning part of the Court system. It should be noted that nationwide many urban municipal courts do not have an internal probation and if they do, it is much more limited than available at the Seattle Municipal Court.

ASSESSMENT AREA 7.2

Probation and Community Corrections ⇔ **Day Reporting Center**

The Day Reporting Center is an alternative-to-incarceration program operated by the Court for non-aggressive and low level aggressive chemically addicted defendants who have numerous psychological and social needs. Most are homeless, unemployed, and often victimized themselves. The program recently expanded from strictly a pre-sentencing option for judges to a post-sentencing alternative.

**OBSERVATIONS**

The DRC began in 2006 to provide an alternative to jail, prompt reappearances, and treatment connections for chemically addicted defendants who are not aggressive but have numerous psychological and social needs. It is operationally sound and well administered. The focus is not on rehabilitation, but on client management (i.e., housing, food, life skills, employment, and mental health services). In-house chemical and psychological evaluations are done. DRC does broker provider services to clients. The program has not traditionally accepted DV or DUI cases, although lately some selective DV cases have been assigned to the DRC. Not many limited jurisdiction courts have DRC initiatives; more should follow the SMC model.

There are seven basic objectives of the program... to broaden the continuum of alternatives to incarceration available to judges; to minimize failure to appear warrants for pretrial and Community Court; to reduce pre-sentence jail populations; to develop data on the social service needs of the DRC client base; to improve attorney/client contacts; and to provide and encourage basic linkages by clients to outside human service agencies. The average daily population is over 100 clients. Over 900 defendants were assigned to the program in CY2009. The average time a defendant spends in the DRC program is about one month.

**FINDINGS|PROBLEMS|CHALLENGES**

Day Reporting has experienced a significant increase in defendant assignments and average daily population over the last few years. The increase began in July 2008 with the expansion of the DRC client base to include post-sentenced defendants. The completion (successful fulfillment of a defendant's assignment to DRC) continues to hover around 50 percent; a respectable level given the client population. There are 30-something defendants on post-conviction day reporting.

The DRC alternative-to-incarceration program is estimated to have saved at least \$1.3 million dollars in jail bed costs to the City in CY2009.

**CONCLUSIONS|RECOMMENDATIONS**

The DRC is a worthwhile and valuable program. Where possible, additional cases types and defendant referrals should be explored. Some low-level domestic violence cases have currently been assigned to DRC with good results.

Operationally, the stand-alone computer software used by DRC should be replaced with a MCIS module to permit staff to better access client histories and current case status information.

DRC staff is working to develop additional services for their challenged client group which has serious needs in job training, self-esteem, affordable housing, and the like. The DRC staff is an extremely dedicated group.

## **8.0 KEY STAFF ASSETS IN IMPROVING CASEFLOW**

The top management team of the Court is impressive. All are skilled professionals who complement each other in stimulating and advancing major change in the Court. Caseflow management, work simplification, and process improvement – three significant directions for the Court as it confronts reduced budgets and new calendaring procedures – require high-level analytical skills, a willingness to honestly examine current realities, and the courage to change the status quo. NCSC consultants are convinced the Court has the talent to do so. In particular, the experience and creditability of the Chief Clerk and Research, Policy and Planning Group give the Court the capacity to institute needed program and management improvements as well as shepherding them to successful conclusions. Without their existence, the Court would face substantial difficulties navigating a challenging future.

Reducing staff at either the Chief Clerk or Research, Policy and Planning (RPP) levels should be avoided, especially during times of considerable change and uncertainty as the next few years portend for the Court. RPP staff concentrates on increasing efficiencies and building management capacities within the Court in light of shrinking staff and programs. Although the times may require RPP to engage in program management from time to time, its main focus should be independent analyses and caseflow management improvement. A major direction for RPP ought to be caseflow reforms and statistics, freeing the Chief Clerk to continue to oversee and coordinate day-to-day case management and calendaring operations. Current RPP statistics on case processing and trial court performance standards need to trigger operational changes. Data supplied by RPP on some standard case processing standards such as case clearance rates, which hover around 80 percent, indicate a need for deeper management analysis (i.e., case clearance rates should consistently be at or close to 100 percent). To help identify solutions, RPP professionals should be introduced to and become conversant with limited jurisdiction caseflow performance best practices and best practice datasets. Attendance at selected Institute for Court Management seminars and collaboration with other high performing urban municipal courts would be helpful.

## 9.0 PROCEDURAL FAIRNESS FEEDBACK

An increasing assist for many trial courts in improving services and strengthening public trust are efforts devoted to promoting feedback to court leaders on public perceptions about understanding, fairness, integrity, efficiency and dignity of court processes and procedures. Such programs provide an invaluable internal quality review that top administrators and judges often do not routinely receive, and can occasion important overall court improvements. The National Center's *CourTool Measure 1, Access to Justice*, a common and relatively basic data collection instrument used to survey public impressions, has been the cornerstone of most trial court efforts to date. It touches lightly on these issues as a bellwether for change. Here, however, we are talking about more substantive information on Court processes and performance. Much of it is related to the work of New York University Professor Tom Tyler who has pioneered the idea of *procedural fairness*, which NCSC consultants believe could help the Court in the long-run as it faces major changes occasioned by revamped work patterns and continued budget reductions.

*Procedural fairness* includes not only litigant perceptions about whether judicial decisions are fair ("outcome fairness"), but more importantly, an assessment as to how court users perceive their case was handled and the quality of the treatment they received from judges and staff. Tyler's research, vetted by many others, identifies four primary elements of procedural fairness. Much of it is conditioned by staff behavior as well as judicial officers.

- *Respect*: People react positively when they feel they are treated with politeness and dignity; when they feel valued and that their rights are respected. Helping people understand how things work and what they must do to navigate through the court system is strongly associated with court user satisfaction.
- *Voice*: People want the opportunity to tell their story; to explain their unique situation and circumstances. Often, as patrons describe their viewpoints and reasons for seeking court intervention, court staff can help them grasp issues, terms and processes more clearly.
- *Trustworthiness*: People look for actions to indicate they can trust the character and sincerity of those in authority, including non-judicial staff, and that those in authority are aware of and genuinely concerned about their needs. People look for conduct or behavior that is competent, benevolent (e.g. putting the needs of the customer ahead of the needs of the employee), caring, and seeking to do the right thing.



- *Neutrality*: People are more likely to accept direction, decisions, and help when those in authority do things that both are, and perceived as, fair and neutral (e.g. they have been treated like everyone else), the importance of the facts are clearly understood, and the next steps or reasons for a decision or course of action have been clearly explained.

It is suggested that Court leaders explore the possibility of creating a Citizens Task Force on Court Feedback to help in promoting procedural fairness in the courtroom and throughout the Court institution. Such a group must be apolitical and staffed by the Court Administrator's Office. Some courts have developed "court watcher" programs to provide candid, private feedback regarding perceptions about the Court (i.e., work by the Council for Court Excellence in Washington DC is an example). Other courts have developed internal, confidential judicial and court performance improvement programs involving staff, consultants, and/or citizens with special mentoring expertise (i.e., examples include Hennepin County Minnesota District Court and the Maricopa County Arizona Superior Court where management coaches have worked with judges to improve their effectiveness in the courtroom and their interactions with lawyers and the public).<sup>33</sup> The American Judicature Society and Judicial Division of the American Bar Association both provide guidelines and endorsements toward justice performance review programs that are worthwhile to explore. A citizens group is suggested as the vehicle to perform such work to ensure both independence and confidentiality.

## 10.0 PRESIDING JUDGE AUTHORITY

Washington General Rule 29, prescribing the selection, duties and responsibilities of leadership judges in trial courts, does not confer the power and authority necessary for presiding judges of multi-judge courts to effectively manage other judges or promote timely and efficient case processing by individual judges. A major change in caseflow practices normally requires strong authority vested in a court's top judge to oversee and administer case assignments and remedy problems quickly. Rule 29, although recognizing that a presiding judge has a duty to supervise, is soft on the supporting authority to enable responsible oversight of other judicial officers. Rule 29 allows multi-judge courts to create an Executive Committee which can by local rule (occasioned by a vote of the judges) assume any and all duties of the presiding judge or establish and assign additional duties and functions to itself. Consequently, as first among equals, the presiding judge has very little power other than to chair meetings of the judges, oversee the non-judicial staff, and represent the Court to outside agencies and stakeholders. In the opinion of National Center consultants, this not only

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<sup>33</sup> Coaching is not advice, therapy or counseling; rather it targets assessments about working relationships, organization challenges, communication improvements, options building, and values clarification.

weakens day-to-day leadership capacity, but undermines the ability of the Court's top judge to make hard decisions in implementing and managing hybrid/master calendar changes. Leadership strength is also compromised by short tenures of presiding judges which is commonplace in Washington. Many high performing urban limited jurisdiction courts in other states vest considerable independent authority in top city judge positions and permit longer terms of service than at SMC.

In this regard, it is suggested that the Court explore the possibility of adopting a job description for the Presiding Judge vesting the position with more independent authority to oversee master calendar policies and operation, and extending the presumptive tenure of the position to a minimum of four years. It is recognized that currently a SMC presiding judge can be re-elected to a second two year term. However, the contention here is that structurally conditioned short-term leadership is less effective than longer terms in office due to the very nature that leadership is dangerous, especially in its responsibility to challenge the status quo where most people are comfortable and ready resistance rests. In moving to a major, new calendaring system and accommodating a reduced budget as the Court will be doing, there assuredly will be tough decisions which grate on the status quo. Short tenures virtually guarantee more difficulty in changing complex organizations such as the SMC. It would be helpful for the judges of the Court to formally pass and promulgate a resolution or local rule of court to this effect. A copy of a model presiding judge job description is contained in the Appendices.

## **11.0 JUDICIAL INDEPENDENCE**

In summation, it should be noted that among the national community of trial courts, the Seattle Municipal Court has a reputation as a soundly run, innovative, urban limited jurisdiction court. Certainly, much of that standing flows from the willingness of City leaders to support and promote the Court. In doing so, however, it has not been without debate and disagreements over programs, directions and organizational structure. Often the conflict between city courts and city councils is mischaracterized as arrogance or self-importance on the part of court officials. In reality, this "healthy tension" is vested in a trial court's larger purpose and mission as part of an interlinked, statewide judicial institution. As with all municipal courts in Washington (and other states as well), the State Constitution places it under the authority of the Washington Supreme Court. Consequently, it is not merely a department of the City Government, but a court of law obligated to maintain its independence in judicial matters. It cannot perform its purpose to make unbiased, fair decisions based on the Rule of Law without the ability to separate itself from its host government, especially where agents of that government must appear before it and have vested interests in the decisions made by the

Court. The Constitution and Rule of Law requires nothing less. Greater significance and standing for limited jurisdiction judges is gained where a state Supreme Court takes a strong stand in integrating all levels of state trial courts under the judicial branch through administrative orders, supportive case law, and court rules. Such is the case in Washington, we feel. Buttressed by elective status, open communication with City officials, and a national reputation for minimizing trial court delay, the judges of the Seattle Municipal Court are obligated to exercise responsible and accountable judicial independence in working with their criminal justice partners.

## APPENDICES

## Business Case Format

Court staff identified a number of MCIS remodeling ideas under the three topics of accounting, in-court processing and ECR, all which seem worthy of pursuing. All of them have some benefit but it is not easy to know which ones are the most valuable and which ones are the most aligned with the Court's objectives.

One of the ways to compare MCIS features or entire projects is to require that each feature or set of features be described and justified using a common set of documentation. The business case describes the reasons and the justification for the features based on their estimated costs, the risks involved and the expected future business benefits and value.

Business cases should contain the following information:<sup>34</sup>

- **Name of the project.** This is a one-line name, and the names can be standardized for similar types of work if you choose.
- **Description of the project.** This is a brief description of what is being proposed. Keep this to a couple paragraphs maximum, but also make sure that it provides enough information so that others can understand the work that is being proposed.
- **Assumptions.** List the circumstances or events that must occur for the project to be successful. Assumptions are the things that are considered to be true even though they are not 100 percent facts for the purpose of planning and definition.
- **Risks.** List the circumstances or events that would be a major impediment to the success of the project. Risks have a probability of occurring, but they are not guaranteed to occur.
- **Financial model.** The working group should agree on the common financial model for all features developed (i.e., minutes saved per operation on one case multiplied by the number of times it occurs during a time period, translated to FTEs). This is important to compare features on an apples-to-apples basis. Estimates of time savings should be conservative and based on facts of how often the proposed feature will be used.
- **Estimated business benefit.** Determine both tangible and intangible benefits in terms of the common financial model. Some business benefit may be indirect, but the benefits should be as tangible as possible.
- **Alignment.** Validate the alignment by specifying how this work contributes and aligns to the Court's goals and objectives through priorities established.

Developing business cases may seem like a lot of work. However, the business case is used to help determine the remodeling features that get funding and those that don't, so it is important to spend the right amount of time on the business case.

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<sup>34</sup> Adapted from TenStep.com.

## Accounting Functional Requirements

This appendix describes a process for identifying and validating the priority of accounting system requirements for the MCIS remodeling initiative. The activities described would be carried out by an accounting work group of line staff who handle court money and their supervisors, facilitated by a business systems analyst.

### Requirement Validation Process

The requirements in the table below were prepared for Mesa Municipal Court (Arizona) and are intended to be a reference point or checklist against which desired accounting functionality of MCIS can be gauged. Staff familiar with the accounting functions in MCIS can, privately, mark each requirement in three categories:

1. Currently Implemented Completely
2. Currently Implemented Partially
3. Not Currently Implemented

For categories #2 and #3, staff can then provide a ranking, High or Low. (Allowing more than two ranking categories may make it difficult to distinguish – two choices allow only a “thumbs up” or a “thumbs down.”) The ranking may reflect “pain points” but not true priorities.

As a process of determining the extent to which a function is implemented, and the ranking of the requirement, management should select a group of reviewers from line staff and supervisors. These people will independently mark each requirement with these two criteria in a spreadsheet and give it to a facilitator. The facilitator will compile the results into a master spreadsheet and eliminate requirements that are implemented completely, or identify requirements for which there is a difference of opinion. Later, in a group setting, the facilitator will go through the list by priority ranking and invite discussion. A person who promotes a requirement as high-ranking can state what impact the feature would have on everyday or periodic accounting operations, and the facilitator will entertain discussion until a tentative consensus is reached, without undue attention to any one requirement, given that there are 85 in the initial list.

If SMC has accounting requirements that are not in the initial list, participants should identify and rank them as they come up during discussion, or at the end. Interfaces with other systems are addressed in the next section of this appendix.

When the accounting work group completes this stage of the work, it will provide the list of requirements to the Court Technology department who will evaluate the requirements in terms of the following:

- A. How the requirements can be grouped together. Technical groupings may correspond to the subheadings in the list, or not, because of how the system was developed.

- B. Estimates of level of effort to develop a feature or related set of features based on requirements, based on the relative complexity of the requirements. The level of effort will be used to derive an estimated cost of each feature or related set of features.

The accounting working group will review the evaluation of the Court Technology department and make a recommendation or set of recommendations to the MCIS Steering Committee which will, in turn, make final recommendations to court management for funding purposes.

**Initial List of Accounting Requirements**

<b>9. Receipt Accounting</b>	
<b>9.1 Funds Collection</b>	
9.1.1 Accept Payments for Cases Not Docketed	Permit payment to be accepted for cases not docketed (e.g., citation not received) by accepting money into trust in an unidentifiable funds case created for each calendar year. When citation is filed, move funds into appropriate case and distribute to appropriate distribution accounts.
9.1.2 Accept Range of Payment Methods	Accept full, partial, and installment payments by various methods (e.g., cash, check, credit and debit cards (for appropriate staff), money orders, electronic funds transfer).
9.1.3 Accept Multiple Payment Type per Transaction	Accept multiple types of payments in single transaction (e.g., cash, check).
9.1.4 Accept Single Payment for Multiple Cases	Accept single payment for multiple cases with capability to process separately for each case.
9.1.5 Receipt of Bonds	Record payment of bonds.
9.1.6 Process Fees Not Associated with a Case	Accept fees not associated with a case (e.g., public access fees that are deposited in a miscellaneous receipts case).
9.1.7 Record Information on Payments and Other Transactions	Record information on payments and other transactions including type of payment, payer, cashier identifier, amount tendered, payment amount, change given, and related information (case related and non-case related).
9.1.8 Associate Payments with Cases and Persons	Associate payment with proper cases and persons when monies collected.
9.1.9 Transfer Funds Between Accounts	Transfer funds from one case to other cases or between accounts in a given case with proper audit trail in a single transaction.

9.1.10 Initiate Case for Miscellaneous Receipts	Automatically initiate a case at the beginning of the year for all miscellaneous payments and receipts than do not need to be associated with an individual case.
9.1.11 Initiate Case for Unidentifiable Funds	Automatically initiate a case at the beginning of the year for all unidentifiable funds than cannot or cannot yet be associated with a case.
<b>9.2 Establish and Maintain Payment Plans</b>	
9.2.1 Notes on Payment Plan	Allow payment plan notes entry, viewing, and printing.
9.2.2 Track Cases on Payment Plans	Provide the capability to track cases and accounts that have been placed on a payment plan. Provide the ability to change status within the collection process.
9.2.3 Calculate Payment Amount	Input, but do not store, defendant financial information and calculate the payment amount range, according to local business rules.
9.2.4 Establish a Payment Plan	Establish a payment plan for one, some, or all of the defendant's obligations.
9.2.5 Allocation of Funds to Appropriate Cases and Accounts	Control allocation of payments across cases and accounts by business rule with override.
9.2.6 Variable Terms and Amounts	Provide the ability to establish payment plans with variable terms and amounts.
9.2.7 Schedule Recurring Payments	Create a payment record for the next scheduled payment. When it is resolved, schedule the next payment. If payment is not made, change its status to 'past due' and schedule the next payment.
9.2.8 Automated Notification	Interface with system that contacts payers electronically or telephonically about payments due (e.g., outbound dialer).
9.2.9 Generate a Late Payment Notice	Generate a late payment notice according to local business rules.
9.2.10 Record All Late Payment Notices Sent	Automatically log each late payment notice generated.
9.2.11 Remove a Case from a Payment Plan	Provide the ability to remove a case from a payment plan without deleting the payment plan for other cases.



9.2.12 Add a Case to an Existing Payment Plan	Provide the ability to add a case to an existing payment plan.
<b>9.3 Receipt Generation</b>	
9.3.1 Generate and Print Receipts with Appropriate Information	Generate, display, and print receipts with proper identifiers in compliance with minimum accounting standards.
9.3.2 Generate Sequential Receipt Numbers	Generate and distribute receipts (paper or electronic) with unique, locally defined, sequential receipt numbers.
9.3.3 Void Receipts	With proper authorization, user must be able to void a receipt.
<b>9.4 Cashier Close Out</b>	
9.4.1 Maintain Bookkeeping Information	Maintain bookkeeping information on receipts and disbursements (e.g., payer, payee, receipt number, case number, and purpose of payment or disbursement).
9.4.2 List Transactions and Compute Totals	List transactions and compute totals and balance for each cash drawer, register, cashier, and payment type.
9.4.3 Adjusting Entries	Permit payments to be voided and corresponding adjusting entries to be made before daily balancing, with proper security provisions.
9.4.4 Record Inventory of Cash Drawer Contents	List contents of each drawer (e.g., cash, checks, credit and debit card receipts, fee waivers, money orders).
9.4.5 Count of Bills and Coins	Provide the ability to enter counts of different denominations of bills and coins to aid the closeout process.
9.4.6 Produce Cashier Summaries	Produce summary for each cashier including totals for each type of payment (e.g., cash, checks, credit card receipts, traveler's checks, money orders).
9.4.7 Identify Discrepancies for Imbalances	Identify any discrepancies between payments, receipts, and cases (or defendants) over specific periods for each cashier for whom above summary shows imbalance for any type of payment.
<b>10. Bookkeeping Accounting</b>	
<b>10.1 Bank Account Management</b>	
10.1.1 Retrieve Bank Account Records	Retrieve, maintain, and track information on bank accounts.

10.1.2 Total and Reconcile Receipts to Calculate Deposits	Total and reconcile receipts daily for multiple cashiers to calculate deposits.
10.1.3 Calculate and Record Deposits	Calculate and record bank deposits.
10.1.4 List Deposits by Group	List deposits in various groupings (e.g., totals for cash, check, credit card, and debit card).
10.1.5 Print Deposit Slips	Print (or reprint) deposit slips for specific banks, accounts, and time periods.
10.1.6 Reconcile Court and Bank Balances	Compare court record of checks with bank record of checks monthly (or for other periods); create list of discrepancies, outstanding checks, and current court and bank balances; reconcile bank accounts; create report giving discrepancies for all reconciliations.
10.1.7 Reconcile Bank Statements Electronically	Receive bank statements and reconcile bank accounts electronically.
<b>10.2 Dishonored Payment Management</b>	
10.2.1 Dishonored Payment Management	Identify and process dishonored payments (e.g., NSF checks, credit card payments, counterfeit currency).
10.2.2 Returned Payments Alert	Provide person alert for payers with returned payments.
<b>10.3 Maintain Case Account Financials</b>	
10.3.1 Compute and Display Fees Based on Events	Compute and display fees based on occurrence of specific event (e.g., warrant issuance, establishment of payment plan).
10.3.2 Direct Cost Fee Waiver	Identify direct cost fee waivers (e.g., process service and transcript preparation fees).
10.3.3 Record Financial Changes Resulting from Court Orders	Record changes to accounting records that result from court orders (e.g., change in monthly restitution, credit for time served, imposition of new sentence upon probation revocation, suspend outstanding balance) and modify appropriate records.
10.3.4 Maintain Tables for Costs, Fees, and Fines	Maintain standard, flexible tables for court costs, fees, and fines. Some are case-based and some are charged based. (Case-based fees generally are added to the first charge.)
10.3.5 Preserve Transactions	Apply correcting entries without changing or deleting previously-recorded transactions, record and store adjusting financial entries

While Applying Corrections	(e.g., bank adjustments for errors or bad checks), and modify amounts due with proper authorization.
10.3.6 Adjust Fees When Penalty Reduced	When a penalty is reduced, adjust (percentage-based) fees according to business rules.
10.3.7 Calculate Late Fees	Calculate and track default fees.
<b>10.4 Establish Case Accounts and Payments</b>	
10.4.1 Establish a Case Account	Establish a case account upon imposition of a sentence or receipt of payment that creates a financial obligation to the court.
10.4.2 Establish a Person Account	Establish a person account that consolidates financial obligations due to the court in one or more cases.
10.4.3 Maintain and Track Person and Case Accounts and Balances	Maintain, track, and display individual case and person accounts and balances.
10.4.4 Joint and Several Liability for Restitution	Establish joint and several relationships between multiple case and person accounts that accurately reflect 1) the total amount owed to each victim; 2) the amount of liability for each debtor; and 3) that adjust individual liability appropriately when a payment is made by any of the debtors.
10.4.5 Multiple Victim Restitution	Provide ability to distribute restitution to multiple victims according to local business rules, including joint and several liability.
10.4.6 Allow Flexible Payment Methods	Allow payment of costs, fees, and other charges by a variety of methods (e.g., payment in person, electronic funds transfer, telephone, and Internet).
10.4.7 Identify and Process Arrearages	Identify (i.e., input or compute) and record arrearages, generate alerts when scheduled payments are not made (e.g., for unpaid assessments now past due), and prompt user to take appropriate action (e.g., refer to collection agency).
<b>10.5 Record and Post Transactions</b>	
10.5.1 Record Case Receipts	Record case- or person-related receipts (cash or other tender) to accounting records; associate receipts with proper case, defendant, account, and case activity; apply appropriately to distribution accounts, and display general ledger distribution.

10.5.2 Post Adjustments	Post case related adjustments (e.g., write-offs, modifying a fine up or down) appropriately adjusting distribution accounts.
10.5.3 Post and Associate Case-Related Disbursements	Post case- and defendant-related disbursements to accounting records and docket (restitution or return of a bond); associate disbursements with proper case, defendant, other person (e.g., victim), account, or case activity.
10.5.4 Post and Process Installment and Partial Payments	Post, process, and track installment payments and partial payments from litigants subsequent to judgment.
10.5.5 Record Funds Received from Other Agencies for Specific Case	Record and track funds received from other local, state, and private units for payment of specific case and party costs, fees, and judgments (e.g., tax intercept or debt setoff, bonds from other jurisdictions, collection agencies).
<b>10.6 Generate Case Account Reports</b>	
10.6.1 Consolidated Payment History	Provide a consolidated payment history for a person, showing all payments made to the court. Provide optional drill-down capability to show the cases to which the payments were applied, and the amount applied. Provide additional optional drill-down to show the distribution accounts to which the payment was applied, including amounts.
10.6.2 Produce Dunning Notices and Other Correspondence	Produce correspondence, such as dunning notices.
10.6.3 Generate Trial Balance Report	Generate deposit worksheet and trial balance report daily.
<b>10.7 Funds Disbursement</b>	
10.7.1 Hold Fund Disbursement	Provide ability to place a hold on disbursements of funds deposited for a case.
10.7.2 Disbursement Approval	Provide for electronic approval of disbursements before transmittal to the city.
10.7.3 Disburse Collected Fees and Fines	Prepare data extracts and disbursement reports for the city for disbursement of collected restitution, bonds, overpayments, surcharges, etc.

10.7.4 Set Minimum Reimbursement and Overpayment Levels	Set minimum restitution disbursement per victim and overpayment reimbursement amount, to prevent disbursements below that amount.
<b>10.8 Distribution Account Management</b>	
10.8.1 Compute Fee Distributions by Formula	Compute distribution of fees to local and state units according to user-modifiable formula from a table.
10.8.2 Post Non-Case-Related Receipts and Disbursements	Post non-case-related receipts and disbursements (e.g., for copies or public records requests) to accounting records and associate with proper account.
10.8.3 Produce Revenue Allocation Report	Produce a report that shows allocation of revenue to other local and state units over specific period.
10.8.4 Establish Priority Ranking for Funds	Provide the capability to establish a priority ranking for funds collected, funds paid out, and for reconciliation of all fund category distribution as provided in administrative code.
<b>10.9 Financial Administration</b>	
10.9.1 Account Structure	Allow flexible, user-defined and -maintained account structure that permits funds to be defined and allocated to appropriate revenue accounts.
10.9.2 Accounting Standards	Provide a double-entry accounting system that separates revenue and trust accounting and that meets relevant accounting standards (e.g., GAAP).
10.9.3 Produce Accounts Receivable Report	Produce a report to be run on demand that lists all outstanding accounts receivable.
10.9.4 Produce Report of Amounts Held in Trust	Produce a report that lists all bonds.
10.9.5 Produce Restitution Report	Produce a report showing all restitution, including both outstanding balance and amounts currently being held for distribution.
10.9.6 Produce Accounts Payable Report	Produce a report showing overpayments by check being held for distribution.
10.9.7 Produce Unpaid Obligations Report	Produce reports of unpaid obligations, including aging reports, cases in collections, referred to collections agencies, late payments, etc.

<b>10.10 Journal Maintenance</b>	
10.10.1 Create Receipts Journal	Create a paper or electronic receipts journal for a specified time period.
10.10.2 Create Disbursement Journal	Create a paper or electronic disbursement journal for a specified time period.
10.10.3 Create General Journal	Create a paper or electronic general journal for a specified time period.
10.10.4 Export Journal Information	Export journal information into commonly used formats (e.g., spreadsheet) for further analysis by users.
<b>10.11 General Ledger Maintenance</b>	
10.11.1 Maintain General Ledger	Maintain general ledger by posting journal entries, subsidiary ledger totals, and other information to each account.
10.11.2 Maintain Account Journals and Ledgers	Maintain journal and, as appropriate, subsidiary ledger for each account by posting debits, credits, and adjusting entries.

### Accounting System Interfaces

The current balance paperwork performed daily involves handling reports from MCIS and totals generated by cashiers from a variety of sources for a variety of payment types. It is primarily paper-based.

On the input side the list of inputs to the balance process includes the following:

1. Daily Balancing Report (R501010C) Pages 4 and 3 and Page 1 & 2.
2. Remittance Summary Report (R505000)
3. Cashier Totals for City Treasurer (Lockbox) Payments (R501010).
4. Cashier Totals for Continental Credit Payments (R505000).
5. Cashier Totals for Alliance One Payments (R505000).
6. Cashier Totals for Dept of Neighborhoods Payments (R501010).
7. Cashier Totals for All Employees Payments (R505000).
8. Cashier Totals for Interactive Voice Response Payments (R505000)
9. Journal Entry Register (Last Page Only) R501040
10. Treasury Lockbox Receipt Tape Report (B5000001).
11. Dept of Neighborhood Receipt Report (B500004).
12. Credit/Debit Card Balancing Report (R501042).
13. CPM Settlement Report IVR.
14. CPM Settlement Report INT.
15. Unidentified Daily Receipts (R508000)

16. Unidentified Money Resolution Report (R513000)
17. Void Report.
18. Collection Payment Tape Report (B810011).
19. Collection Batch Log Report of Exceptions (R8109998), if any.
20. MCIS AOI Collections Summary Report (From Step 5)
21. Revenue Collection Summary Report (R613000).

The reconciliation appears to be done manually, checking figures report by report, and entering numbers into a spreadsheet. Even if the numbers are entered into MCIS, the process still involves data entry. The accounting requirements above include these functions in the following requirements:

- 10.1.2 Total and Reconcile Receipts to Calculate Deposits
- 10.1.6 Reconcile Court and Bank Balances
- 10.1.7 Reconcile Bank Statements Electronically

One approach to the daily balance is to develop automated entry of data from sources to destinations into a chart of accounts that facilitates matching of debits and credits. Since MCIS does not have double entry accounting, every step must be examined, and exceptions and out-of-balance conditions do not emerge automatically.

On the output side, there is no interface with the city's Summit ERP. Details of that data export would need to be specified. The priority of input and output system interfaces should be subject to the same validation and ranking process as other accounting features.

### **Sample Screens from a Comparable Jurisdiction**

Scottsdale (Arizona) Municipal Court has provided descriptions and screenshots of their system in a 4MB zipped file which accompanies this report. Generally it is difficult for system users to visualize screen layouts that do not yet exist, when a person is immersed in a current application. The screenshots are intended to provide a source of ideas for what screens could contain and how the MCIS user interface could be to some extent be redesigned.

Scottsdale is a large, complex, stand-alone court of limited jurisdiction that is in many ways comparable to Seattle Municipal Court. Scottsdale developed an application called "AZTEC WIZARD™" written in VB.net, which is essentially an alternative front end to the state court system AZTEC (used to be PSI, then FACTS, that the Arizona Supreme Court directs us to use). The basic AZTEC was insufficient for the court to conduct business in a high volume environment, so their staff wrote this application, and is currently sharing most of it with three other municipal courts in Arizona.

The court will migrate to a new state court system in a few years. They have ongoing module enhancement, and still some development as business needs surface. Ultimately they will freeze this development and focus on migration steps toward the new AMCAD CMS. They have interfaces with their police dept, with the city prosecutor (sending them data and allowing them to view). They get

status updates from defensive driving schools and from screening and treatment providers. They have electronic disposition reporting, and feed data nightly to the Arizona Supreme Court data warehouse.

Scottsdale has four staff dedicated to financial related functions in its court. They also have three staff dedicated to court IT functions. Total staff count is 62.5 FTE (inclusive of judges).

### **Non-Accounting Requirements**

Functional requirements for all of the MCIS Remodel initiatives can be subjected to a similar validation process. Functional needs suggested by Court staff during site visits include the following:

1. Capture day reporting data in MCIS or interfacing with the day reporting stand-alone system
2. Implement “direct sets” on the calendar
3. Mass case processing capabilities
4. Give cashiers and screeners access to the Booking and Arrest System (BARS)



## **State Trial Court Presiding / Chief Judge Model Job Description**

### **Primary Responsibilities**

A chief or presiding judge provides the overall leadership and strategic direction necessary for the success of the trial court(s) and associated justice systems within his/her jurisdiction. As the top trial court policy official, this position requires high-level, demonstrated skills and abilities in overseeing the operations and functioning of the court, its adjudication processes, and needed changes to improve the administration of justice. A chief judge must have good problem-solving and conceptual skills to diagnose difficulties (trends and patterns) facing the court and justice system, and correspondingly planning and visioning capabilities to sort out options, devise corrective improvements, and promote more desirable futures. A PJ must clearly communicate the linkages between improvement objectives and the day-to-day work of the judges and staff to inspire and motivate change. Operating and decision-making interdependencies with other justice organizations, the private sector, and public and civic communities must be managed effectively by a CJ if even the simplest of cases are to be resolved and disposed efficiently and fairly. The chief judge is required to work beyond the boundaries of the judicial branch by creating and supporting coalitions to promote the health of the trial court(s) while staying true to the independence of the judiciary. Innovation and initiative should be valued and expected of leadership judges. To inspire trust and teamwork, a presiding judge must understand group process and facilitation methods and how, when and where to use teams. Further responsibilities include working effectively with a court administrator as a strategic partner, understanding and promoting caseflow management improvements to curtail unnecessary delay, devising and managing the court budget, promoting effective and meaningful information systems, establishing and maintaining a healthy, productive and affirming workplace, and creating new programs and services to enhance the administration of justice.

### **Essential Duties and Responsibilities**

Develops and oversees the implementation of policies and procedures to improve the operations and management of the court or courts under his/her direction

Works collaboratively with the Supreme Court, Administrative Office of the Courts, and civic, business, and government leaders to advance the interests of justice in the jurisdiction

Assigns judges to specific cases, calendars, divisions, problem-solving courts or to court locations across a region, as well as assigning specific judges to hear particular cases

Ensures that all cases move efficiently and effectively through the judicial system to promote justice through timely resolution of at issue matters, including the development of both pre-filing dispute resolution methods and post-adjudication programs to encourage compliance with court orders and reduce recidivism

Monitors case and docket management performance of the individual judicial officers within his/her jurisdiction, including timely resolution of under-advisement cases, oversight of continuances or case postponements, and other caseflow issues that may occasion unnecessary delays in rendering judicial decisions

Supervises judicial officers employed by the trial court, including compliance with ethical and professional standards, and policies established by the board of trial court judges or higher authorities whether they be regional leadership judges or the state supreme court

Manages the overall court calendar by coordinating the schedules of judges to make sure that a sufficient number of judicial officers will always be on duty to carry out the judicial duties of the court<sup>35</sup>

Schedules and chairs meetings of the board of judges to make or approve policy and administrative decisions not in conflict with law or state rule, including meetings of the judges of a single court or multiple courts across a circuit, region or judicial district

Develops and improves the governance structure of the court to maximize participation, teamwork, and collaborative problem-solving through divisions, task forces, committees and special study groups

Creates and disbands specialized courts or calendars as business requires when local discretion permits

Oversees the performance and directs as appropriate, the day-to-day non-judicial management of the court through a court administrator, clerk of court, and/or other court department heads consistent with court policies, rules, and statutes<sup>36</sup>

Provides for the effective maintenance and improvement of court facilities and security, including determining and assigning space, enhancing and improving the courthouse and/or ancillary court facilities, emergency preparedness and disaster recovery

Works closely with the court administrator in an executive partnership relationship<sup>37</sup>

Speaks in the name of the court to all bodies outside the court, including other government agencies both inside and outside the judicial branch<sup>38</sup>

Acts as the primary liaison with the media and public when speaking for the court

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<sup>35</sup> This may entail authorization for vacations, education, training, teaching, or other absences from the court by judicial officers.

<sup>36</sup> This includes such subject areas as human resources, information systems, transcripts and recordkeeping, procurement, and finance. Where clerks of court are independently elected officials, the chief judge often has superintendency responsibilities over the clerk by rule, statute or custom to ensure the ministerial and operational duties of that office are performed effectively, efficiently, and in concert with the court. Admittedly, to be productive and successful requires skillful exercise of diplomacy and tact.

<sup>37</sup> Some presiding or chief judges are the appointing authority for court's administrator; others are charged with working with an administrator serving at the pleasure of the board of judges (i.e. bench) or a higher authority (i.e. Supreme Court). What matters most is not the selection method or even the prescribed duties for the top administrator, but the working relationship between the chief judge and court administrator. Key components of that relationship are mutual trust, competence, maximum access to and communication with each other, a shared vision as to the direction and improvement of the court, and a commitment to joint policy-making and respect for one another's expertise. The relationship is not based on parity, but on collaboration and high regard for the skills and abilities of each other.

<sup>38</sup> Includes court outreach toward other governmental or educational institutions.

Oversees the development and definition of operational reports needed by judges and staff to ensure each and every case is progressing through the adjudication process in accordance with standards governing timeliness

Ensures that the court and its various judicial officers and staff provide necessary records to the appellate court in a timely manner when required<sup>39</sup>

### **Term of Office**

It is generally agreed among trial court governance and leadership experts that the minimum effective term length for presiding or chief judges should be no less than four years. A term of less than four years does not easily permit a strategic agenda or business plan to be accomplished for a complex organization such as a trial court. The possibility of renewable or successive terms is important as well to promote continuity of leadership when issues and changes demand longer tenures based on the situational context.

### **Appointment / Selection**

No longer is it acceptable to select presiding or chief trial court judges by default – rotating people into this highest station by seniority or hunting for volunteers when no one wants the job. Consistently high performing courts tap the best-tested leaders among the bench.

To preserve judicial independence and honor the separation of powers, the best practice is for a presiding judge to either be elected by a majority of the court’s judges or appointed by the Chief Justice or Supreme Court. Where a PJ or CJ is appointed by executive or legislative branch officials (i.e. some municipal and city courts), it is desirable to have a formal written policy, rule or statutory provision that underscores the importance of the separation of powers doctrine acknowledging that the court and its presiding judge are vested with the responsibility to operate independently in the administration of justice in the jurisdiction. One way to do so is for the appointing agent to delegate review and performance authority to an independent committee or commission made up of appointees from the judiciary, bar, and public who serve fixed terms.

### **Selection Criteria**

It is wise for a presiding judge candidate to have at least four years of experience as a judge, unless the requirement is waived for good cause by the appointing authority. Nomination and selection of a chief judge should take into consideration the candidates:

- Management and administrative ability
- Interest in serving in the position
- Experience and familiarity with the variety of trial court assignments
- Ability to motivate and inspire other judicial officers and court personnel
- Capacity to evaluate the strengths of the court’s bench officers and make assignments based on those strengths as well as the best interests of the public and court

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<sup>39</sup> The authority of a presiding or chief trial court judge to intervene in this area can vary significantly between those persons who may be employed by individual judges (i.e. court reporters) and those who may be independently elected to perform administrative duties on behalf of the entire court (i.e. clerks of court). Needless to say, the lack of express delegation can lead to confusion and unnecessary delay in the appeals process.

### **Caseload Adjustment**

Generally, in courts with more than 5-7 judges a provision should be provided for the presiding judge to reasonably reduce his/her caseload to permit sufficient time to work on administrative and court-wide policy matters. Without such an option, chief judges may feel pressured to maintain a full docket in order to assist with the work of the trial court and maintain legitimacy in the eyes of the other judicial officers. In order to address such anxiety, the best practice is to presume a caseload adjustment without prescribing the size of it.

### **Assistant and Acting Presiding or Chief Judges**

In larger courts, the position of assistant presiding judge should be created to help with the administrative workload. Often, such a position is a training ground for new presiding judges. The method of selection usually mirrors that for the chief judge. Where there is no permanent assistant presiding judge, provisions in the court's governance structure should allow for the creation of a temporary, acting presiding judge to cover absences or illnesses of the chief judge and make decisions to allow the day-to-day business of the court to proceed without interruption.<sup>40</sup>

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<sup>40</sup> The assistant presiding judge does not need to have the authority to make policy revisions to maintain the continuity of court operations.

## Adjudicatory Processes<sup>41</sup>

Gordy Griller

In 1984, a three-year research report was completed and published by the National Institute of Justice exploring the effects of unification on trial court operations. The study explored 100 trial courts in five states, compiling a wealth of data. The explanations and insights outlined in the analysis about moving from a two-tiered trial court system to a single, unified structure were informative and instructive, but the most important and long-lasting value of the research are the descriptions about the fundamental way courts process work and decide cases. These observations are as enlightening and relevant today as they were two decades ago.

The analysis categorized work in courts as falling into three processes, all related to adjudicating specific types of cases. These three adjudicatory processes or conceptual frameworks described the basic production processes in courts. The processes dominated the operation of trial courts, distinguished one type of court from another, predetermined certain management practices, shaped the way caseload management reforms were implemented, affected the way courts were internally organized, dictated the way information was gathered and utilized by court decision-makers, and conditioned the very mindset that judges and staff used in dealing with different case types.

### Procedural Adjudication

Procedural adjudication is characterized by the adversarial system; the dominant public view about how justice works in America. It is at the heart of the common law tradition. It requires lawyers on both sides in an exhaustive exploration of relevant facts and law through formal rules of evidence and procedure to promote a just resolution of a case. Cases have high stakes, facts are hazy, and the law is complicated. It is expected that truth will surface in bits and pieces over time as a patterned, predetermined array of probative procedures are unfolded. The emphasis is on careful deliberation and extended fact-finding.

Demands on the court are presented as motions. Discovery is pervasive. Trials are rare, but procedural adjudication is carried out as if all parties are preparing for trial and considering no other options. Cases are treated as a series of essentially unique and sometimes unrelated

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<sup>41</sup> *The Significance of Judicial Structure*, Thomas Henderson, Cornelius Kerwin, Carl Baar, et. al., U.S. Department of Justice, National Institute of Justice Research Report, March 1984.

events, requiring considerable time for study and tailored decision-making. Critical information to move the case from filing to disposition is largely in the hands of the litigants and lawyers. The judge's role, although mainly passive, is to ensure that proper procedures are followed.

Each case is treated as *sui-generis*, standing on its own rather than as part of a continuous flow. Only a very few number of cases are tried. When there are trials, they are typically time consuming affairs. Most often, cases are resolved prior to trial through direct negotiations between attorneys in the form of a plea bargain in criminal cases or a settlement conference in civil cases. In this situation, the judge rules on motions, serves as a referee during face-to-face discussions and as a government, public ratifying authority for private agreements.

Little direct outside administrative support is needed by a judge in procedural adjudication. Most of the information required to conduct a trial is provided by the attorneys in the case, not by the court's administrative support staff. The individual calendar predominates in this setting, as the judge and his/her support staff largely work in isolation, even in large, multi-judge courts. Case management is complicated by lawyers making variable demands at unpredictable intervals on judges for decisions and on administrative personnel for services. Lawyers are the triggering mechanism for the case to move to the next step. The lawyers are the principal players and clientele in procedural adjudication.

Due process steps are exhaustive since significant sums of money, property or life and liberty often hang in the balance. Supervising judges are often cautious and deferential in their attempts to expedite the flow of cases and usually avoid interfering in a trial judges calendar management practices. Efforts to encourage more aggressive case management are often thwarted by the discrete case orientation of judges and their deference to the practicing attorneys.

Trial court administrators in a procedural adjudication setting suffer the frustrations of role ambiguity and search out functions that render them more central to procedural adjudication, for example jury management, organization-wide calendar setting and logistics, automated information systems, facilities management and security, courtroom recordkeeping (FTR Gold, JAVS), personnel administration, etc. Although some administrators have made attempts to improve the work that goes on inside the chambers and courtroom by developing ADR options, promoting educational programs to manage trials more effectively, and spearheading jury reforms, court-wide managers (court administrators and chief judges) are often not welcome in a trial judge's procedural adjudication world.

## Decisional Adjudication

Decisional adjudication typifies those trial courts which hear large numbers of minor cases; most typically limited jurisdiction courts. Traffic citations, small claims, ordinance violations, and petty misdemeanors typify cases handled by these courts. These courts are charged with delivering justice to large numbers of people in relatively routine matters. Facts are clear and rapidly established. Proceedings are informal. Stakes are low and the court's primary objective is to apply the law expeditiously and move on to the next case. Speed in the disposition of a case is a highly valued virtue. A common sense approach to case disposition reigns.

The sentences and financial awards which can be imposed in decisional adjudication tend to be limited. So, too, are its orders which are either temporary or subject to automatic review.

Rules and procedures are usually simple and easy to understand by non-lawyers. Many litigants are self-represented. The public view of these courts is that they often sacrifice fairness for efficiency, becoming in the process, revenue-generating or bill-collecting agencies for a city or county government. To ensure that decisional adjudication processes retain a semblance of justice, the judge's role in protecting the rights and interests of the accused takes on a defining feature, separating what could be a strictly administrative tribunal from a court of law.

Rapid turnover of cases and the importance of documents outlining the issues in the case enhance the role of administrative staff. Clerical staff predominate rather than legally trained staff as in the procedural adjudication setting. A close partnership of administrative staff with the bench is generally evident. The judge has a much more active role than the procedural judge, characterized by aggressively managing case processing in the courtroom.

Many cases are handled administratively by non-judicial staff according to a pre-determined decisional formula with little or no supervision by the judges. In some instances, senior non-lawyer staff act as hearing officers and dispose of routine matters without an appearance before a judge.

The need for support in processing paper work or people, and identifying facts/charges is not a function of volume (total case load), but rather of rapid turnover in cases. Even in rural areas which have few cases, the hearings are brief and require a steady movement of files

In multi-judge courts dominated by decisional adjudication, a hierarchical structure among the judges is common. The chief judge is heavily involved in performance assessment and may be actively involved in the assignment of cases and courtrooms. (Performance assessment on individual judges in the procedural setting is almost never done). Master calendaring is the norm and judges are largely interchangeable on assignments.

The relationship between the court administrator and judges in a court dominated by decisional adjudication is different than in one with procedural adjudication. In the decisional adjudication model there is a much greater sense of two specialists doing mutually reinforcing jobs. It is often described as a “partnership relationship”.

Courts using decisional adjudication view the litigant (customer) as their primary client, not lawyers. There are few buffers between the court and the litigant in the image of a “people’s court”. These types of courts struggle to remain free of undue influence by prosecutors, police, and funding bodies. This is especially problematic when a city council or county board appoints limited jurisdiction judges.

Those who see justice compromised in decisional adjudication are typically holding it to the standards of procedural adjudication. To do so is unfair and unrealistic. The simpler proceeding is sometimes confused with disregard for due process because judges may take a more active role in all phases of the adjudicatory process even when lawyers are present. In fact, since many of the attorneys appearing in a decisional adjudication court are handling a high volume of cases themselves, the judge may be the only guarantee of real fairness in the proceedings by assuring that the lawyers have not overlooked a critical issue.

The decisions made in such a court are highly routine. The most highly patterned decisions occur in traffic courts.

Judges play a much more significant role in all phases of decisional adjudication than they do in procedural adjudication. Because lawyers are sparse in such a setting, judges take a more active role in establishing the facts of a case, monitoring proceedings, and ensuring a record is made of the matter (where records are required).

It is common to portray judges as intoxicated by the power their position gives them in this setting. Many decisional adjudication judges, however, are uncomfortable with the proactive



responsibility that is required of them, much preferring that lawyers be present so role confusion is lessened.

## Diagnostic Adjudication

Courts or cases involving diagnostic adjudication focus on the cause of a problem, and devise a remedy (legal or otherwise) to treat it, eliminate it, or mitigate its most damaging effects. Society (the government) is often represented in these types of proceedings arguing for a transformative treatment for the accused and restoration back to law-abiding status. Juvenile matters, mental health cases, and domestic violence cases are commonplace examples.

“Diagnostic adjudication is often adjudication in name only. It is not predicated on determining guilt or innocence. Nor is there an assumption that a just decision will emerge from a regulated conflict between opposing sides. Instead, the objective of diagnostic adjudication is to identify the problems which are the source of the dispute before the court or require court action for the protection of both the persons before the court and the broader societal interests at stake.”<sup>42</sup>

Other diagnostic case types include family, probate and some equity actions. In these disputes, neither the law nor the facts are necessarily dispositive; more important may be how to restore a person or family to wholeness. Finding of guilt or fault may be irrelevant, the primary objective being a socially desirable result.

The most distinctive characteristic of diagnostic adjudication is the role of non-judicial personnel in defining issues and securing outcomes in cases. These are often professionals employed by the court or under contract to the court whose research, analyses and recommendations form the substance of a treatment plan (remedy) which the judge ultimately delivers.

The role administrative staff play in diagnostic court settings is one of close association with judges and higher status. Trial and leadership judges often consult court administrators and are much more likely to adopt the perspective of administrators as to opinions and ideas on managing the court or developing treatment programs and options. Frequently, administrators in specialized courts carry treatment professional credentials as well as being management versed.

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<sup>42</sup> Ibid, page 62

The clients served by diagnostic courts are diverse and wide-ranging, including lawyers, litigants, administrative staff, professional social workers, community programs, non-profits, government social service agencies, the general public or all simultaneously.

A new generation of diagnostic courts have emerged recently termed “problem-solving courts”. The ultimate objective of diagnostic adjudication described by the researchers twenty years ago is equally applicable to today’s phenomenon, “Diagnostic adjudication is designed to embody and apply dominant social values to the analysis and remedy of social problems as they emerge in the lives of individuals and families.”<sup>43</sup>

Greg Berman and John Fleinblatt, both associated with the Center for Court Innovation, a think-tank, research, consulting, and education group linked to the New York Court System, have brought the elements of diagnostic adjudication to prominence in today’s world with their new book, *Good Courts: The Case for Problem-Solving Justice*.<sup>44</sup> They challenge the reader to think more broadly about the role of trial courts as they explore new collaborative approaches used by judges, prosecutors, defense lawyers, corrections staff and the community at large to reduce recidivism, crime and substance abuse while increasing accountability, victim services and family values.

Today, there are more than 2000 problem-solving courts throughout the country, many initially seeded by grant funds from the U.S. Department of Justice or state criminal justice initiatives. National groups ranging from the Conference of Chief Justices to the American Probation and Parole Association have endorsed the concept. Among the most common types of problem-solving courts are community courts focused on low-level “quality of life” crimes, domestic violence courts targeting serious cases of intimate abuse, and drug courts helping addicted offenders enroll and complete community-based drug treatment in lieu of incarceration.

Two important features of problem-solving courts have pushed this reinvigorated approach to diagnostic adjudication ever closer to a medical model. First, judicial roles have dramatically moved even further from their traditional underpinnings. Not only are treatment professionals closely aligned with judges to architect remedies for sentencing orders, but judges themselves are actively involved in diagnostic protocols, as Berman and Feinblatt explain,

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<sup>43</sup> Ibid, page 65

<sup>44</sup> *Good Courts: The Case for Problem-Solving Justice*, Greg Berman and John Fleinblatt, The New Press, New York, NY (2005).

*“Problem-solving justice is an umbrella term that describes a wide range of specialized courtrooms that are working to ensure not just that the punishment fits the crime (as courts have always tried to do, with varying degrees of success) but that the process fits the problem. These innovative courts encourage judges and attorneys to think of themselves as problem solvers rather than simply case processors. For problem solving judges and attorneys, a case is a problem to be solved, not just a matter to be adjudicated. Moreover, instead of seeing each case as an isolated incident, judges and attorneys in problem-solving courts analyze the cases in front of them for patterns and then fashion responses that seek to change the behavior of offenders, enhance the safety of victims, and improve the quality of life in our communities.”<sup>45</sup>*

Second, the number of case types gravitating toward diagnostic adjudication solutions has skyrocketed throughout limited, general and special jurisdictions. Problem-solving courts include mental-health courts, re-entry courts (for offenders released from incarceration), juvenile drug courts, DWI courts, family treatment courts, homeless courts, truancy courts, and youth or teen courts.

Some of this expansion likely can be attributed to the rise in the number of grants funding such programs, and the fact that the national community of courts has embraced this new slant on diagnostic adjudication with fervor since procedural and decisional approaches don't work well in addressing social ills and aberrant, addictive behavior. Another more ominous reason has been offered by some, however: society's traditional social control mechanisms – the family, schools, religion, and work – no longer work well in the Twenty-First Century, so the courts are left as a substitute.

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<sup>45</sup> Ibid, pages 4-5.

## COURTS

### General Jurisdiction

### Limited Jurisdiction

### Special Jurisdiction

#### *Procedural Adjudication*

<ul style="list-style-type: none"> <li>• Civil Trials</li> <li>• Criminal Trials</li> <li>• Equity motions/cases</li> <li>• Valuation cases</li> <li>• Class actions</li> <li>• Environmental Cases</li> <li>• Malpractice Cases</li> </ul>	<ul style="list-style-type: none"> <li>• DWI (traditional)</li> <li>• Commercial matters</li> <li>• Preliminary Hearings</li> <li>• Gross Misdemeanors</li> </ul>	<ul style="list-style-type: none"> <li>• Contested Probate</li> <li>• Mental Health Commitments</li> <li>• Terminations of Parental Rights</li> <li>• Neglect &amp; Dependency</li> </ul>
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#### *Decisional Adjudication*

<ul style="list-style-type: none"> <li>• Evidence Suppression</li> <li>• Pretrial Motions</li> <li>• Civil Damage Determination</li> <li>• Initial Appearances</li> <li>• Trial de novo from a limited jurisdiction court</li> <li>• Default Divorces</li> <li>• Orders of Protection</li> </ul>	<ul style="list-style-type: none"> <li>• Petty Misdemeanors</li> <li>• Minor Civil actions</li> <li>• Small Claims</li> <li>• Minor Bail motions</li> <li>• Ordinance violations</li> <li>• Housing matters</li> <li>• Landlord/Tenant Matters</li> <li>• Parking violations</li> </ul>	<ul style="list-style-type: none"> <li>• Support actions</li> <li>• Default Divorces</li> <li>• Simple estate actions in probate</li> </ul>
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#### *Diagnostic Adjudication*

<ul style="list-style-type: none"> <li>• Self-represented cases</li> <li>• Criminal sentencing</li> <li>• Family cases</li> <li>• Plea bargaining (judge participation)</li> <li>• ADR</li> <li>• Mental Health Courts</li> <li>• Drug Courts</li> <li>• Re-entry Courts</li> </ul>	<ul style="list-style-type: none"> <li>• Self-represented trials</li> <li>• Sentencing in gross misdemeanors</li> <li>• Contested Order of Protection hearings</li> <li>• Minor drug cases</li> <li>• DWI (problem-solving)</li> <li>• Homeless Courts</li> </ul>	<ul style="list-style-type: none"> <li>• Juvenile matters</li> <li>• Family matters – child custody, child abuse</li> <li>• Complex probate matters</li> <li>• Juvenile Status Offense Cases (truancy, alcohol possession, smoking)</li> <li>• Juvenile Drug Courts</li> </ul>
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