DRAFT AGENDA

12:00 p.m. Meeting Convenes

I. Welcome and Opening Remarks, Judge Victor Hulslander, Chair

II. August 28th Meeting Summary

III. Continued Development of Preliminary Recommendations
    1. Scope
    2. Principles

IV. Plans for Next Meeting – January 22, 2016 – Joint Meeting with Members of the Commission on Trial Court Performance and Accountability on the Continued Development of Preliminary Recommendations

1:00 p.m. Meeting Adjourned

Background Information and Past Meeting Materials may be accessed electronically on the Florida Courts website at:

http://www.flcourts.org/resources-and-services/court-services/tcpa-pm-services.stml
I. Welcome and Opening Remarks, Judge Victor Hulslander, Chair

Judge Hulslander opened the meeting and welcomed the members.

II. June 19th Meeting Summary

The group reviewed and discussed the June 19th Meeting Summary.

III. Status Update on the Uniform Case Reporting Project

The members discussed the Supreme Court directive to TCP&A to develop a plan and vehicle to require the collection and reporting of data to the Office of the State Courts Administrator as recommended by the Judicial Management Council Performance Workgroup. The collection of these data elements will occur under a project referred to as the Uniform Case Reporting Project. An implementation plan has been finalized for review and approval by TCP&A and the Court Statistics and Workload Committee, prior to submission to the Supreme Court on October 1, 2015.

The members provided feedback on issues related to the lack of available data. For instance, when looking at their case load, it is difficult to determine the number of cases disposed over a given amount of time and the effort placed into each case. Also, when a judge is assigned to a different division, there is limited information on previously assigned cases and the amount of cases pending.

The members discussed two terms used when referring to performance: indicators and measures. Indicators are descriptive to reflect the health of the system and measures are the statistics that suggest action. Some measures involve the following categories:

- Effectiveness – degree of which the process output conforms to requirements
- Efficiency – resources and process steps used to resolve a case
- Quality – meeting the customers’ expectations
- Timeliness – meeting timeframes meaningfully
IV. Court Data Model Presentation

P.J. Stockdale provided a presentation on the Court Data Model. The model is meant to capture a significant amount of court activity through the subject areas the court is interested: Operations, Case, Event, Adjudication, and Actor. The Supreme Court made a decision, as part of the TIMS project, to focus on collection of Case and Event data because it is difficult to build a data model that treats the five subject areas equally. The model is the foundation for all data transferred from the clerks. Mr. Stockdale noted that he is participating in a workgroup that will define a standard tool for exchanging data across the state. The members discussed the philosophy of capturing as much data as possible regardless of whether its need has been determined. This data can be stored and used in the future as performance management systems expand. The idea is to capture information without much effort. Also, the members discussed not trying to solve all metrics at one time, but rather looking at a targeted and focused areas of importance. This strategy will keep the project flexible.

V. Information on the Office of Program Policy Analysis and Government Accountability (OPPAGA) Study

As result of the 2015 Legislative Session, the Legislature via proviso language of the General Appropriations Act, instructed OPPAGA to conduct a review of the trial court system. This review, conducted at the circuit-level, includes an outreach to local chief judges and trial court administrators regarding: staffing ratios, efficiency of court administration, how judges process their cases, training and travel funds for judges and staff, and best practices toward the administration of justice. The OPPAGA will also evaluate the work of the Judicial Qualifications Commission. The OSCA plans to assist the OPPAGA with information, as needed. Interviews have begun with select circuits. The OPPAGA report is due to the Legislature on December 1, 2015.

VI. “Free Thinking Zone” Envisioning an Optimal System from an Internal Operating Perspective

The members participated in an activity where they were divided into two teams. Team X was tasked with discussing and developing performance measures that demonstrate efficiency (how well resources are being used to achieve what is done) in the courts. They were asked to discuss what goals and benchmarks they would use to show that court process are efficient. Team O was asked to discuss and develop performance measures that demonstrate productivity (measure of how much work in done in a certain amount of time) in the courts while showing
what goals and benchmarks they would use to show courts processes are productive.

Team X provided the following list on *efficiency*:

- Adhere to time standards – the number of cases outside of the time standards divided by the total number of cases.
- Clearance rates – the number of incoming cases divided by the number of outgoing cases.
- Number of Continuances – the number of continuances granted divided by the number of cases.
- Due process staff utilization – hours engaged divided by the hours available.
- Effective use of jurors – hours in service divided by hours available and number of jurors divided by number of summons.
- Stability of the court process – number of events conforming to a procedure divided by the total number of events.
- Procedural intercession per case – staff assessment divided by number of cases.
- For future consideration – communication is essential to efficient court operations.

Team O provided the following list on *productivity*:

- Case closure within finite limits (pre-defined) – time to disposition
- Judicial scrutiny of individual cases with regular active case management conferences – the number of days between first case management conference and case closure; also, the number of hearings required between open/closing
- Optimal setting of mediation as soon as the case is at issue – will include measures for cases settled via mediation versus summary judgment.
- Setting case for trial – measures length of time between filing, notice of trial, and actual trial date
- Use of non-judicial resources – measures the non-judicial workload of each case

**VII. Development of Preliminary Recommendations – Scope/Goals**

The members discussed how the scope of a project is the definition of what the project is supposed to accomplish, based on the goals and tasks that are to be performed or results delivered. As the workgroup moves forward towards identifying new performance indicators and measures for the trial courts, the
members agreed its focus should remain primarily on those functions of the court system that are “essential” or necessary to effectuate the mission of the trial courts.

Thus, the workgroup reviewed the essential elements of the court system as provided for under F.S. 29.004, State courts system. At the same time, the workgroup also recognized the importance of providing accountability measures for those functions that are based on the need to effectuate public policy or respond to legitimate public expectations (e.g., specialty courts). The workgroup noted these activities should also be addressed, as part of the development of a performance management framework, as a second priority.

The next step for the workgroup is to determine the principles for using a performance management framework. One of the goals of a performance management framework is to draw a clear connection between basic principles of judges and managers and specific areas and measures of performance. The workgroup has discussed the responsibility of the judicial branch to administer these accountability mechanisms in way that does not diminish judicial independence. Thus, defining principles will ensure courts are guided by the notion of due process. These principles can be powerful in shaping how judges and court managers gauge whether administrative practices are working as desired. For this reason, principles are a critical first element in determining a performance management framework.

VIII. Plans for Next Meeting – October 23, 2015 – Continued Development of Preliminary Recommendations

The next meeting of the group will be a conference call on October 23, 2015. At that meeting it is anticipated that the workgroup will review information on administrative principles that have been recommended by the National Center for State Courts. The members also discussed scheduling another in-person meeting in early 2016. During this meeting, the workgroup will determine what measures will be needed to fill the void from those measures already established.

The meeting adjourned at 3:00 p.m.
Item III.: Continued Development of Preliminary Recommendations – Scope and Principles

Scope

The scope of a project is the definition of what the project is supposed to accomplish, based on the goals. Scope defines specifically what tasks are to be performed or results delivered. Generally, scope can be determined by answering the following questions:

1. Who is the target audience?
2. What are the expectations and goals?
3. What is already in play?
4. What constraints are there?
5. What assumptions exist?

In 1999, the Commission on Trial Court Performance and Accountability set out to define the scope of a performance and accountability program for the trial courts. They issued a report discussing the capacity of the trial courts to measure and report on their performance. The report articulated a mission of the trial courts, legitimate expectations common to all trial court divisions, program outcomes, performances measures, and standards for trial court programs. Additionally, the report recommended steps to further implement a performance and accountability program.

Since the issuance of the 1999 TCP&A report, the implementation of Revision 7 to Article V of the Florida Constitution, in 2004, resulted in the enumeration of the essential elements of the trial court system. These essential elements are provided for under F.S. 29.004:

1. Judges appointed or elected pursuant to chapters 25, 26, 34, and 35.
2. Juror compensation and expenses.
3. Reasonable court reporting and transcription services necessary to meet constitutional requirements.
4. Construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court.
5. Court foreign language and sign-language interpreters and translators essential to comply with constitutional requirements.
6. Expert witnesses who are appointed by the court pursuant to an express grant of statutory authority.
8. General magistrates, special magistrates, and hearing officers.
9. Court administration.
10. Case management. Case management includes:
    a. Initial review and evaluation of cases, including assignment of cases to court divisions or dockets.
    b. Case monitoring, tracking, and coordination.
    c. Scheduling of judicial events.
    d. Service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334
    e. Case management may not include costs associated with the application of therapeutic jurisprudence principles by the courts. Case management also may not include case intake and records management conducted by the clerk of court.
11. Mediation and arbitration, limited to trial court referral of a pending judicial case to a mediator or a court-related mediation program, or to an arbitrator or a court-related arbitration program, for the limited purpose of encouraging and assisting the litigants in partially or completely settling the case prior to adjudication on the merits by the court. This does not include citizen dispute resolution centers under s. 44.201 and community arbitration programs under s. 985.16.

12. Basic legal materials reasonably accessible to the public other than a public law library. These materials may be provided in a courthouse facility or any library facility.


14. Offices of the appellate clerks and marshals and appellate law libraries.

*Strikethrough denotes those essential elements not applicable to the trial courts.

At the August 28, 2015 meeting, the workgroup members discussed how the scope of a project is the definition of what the project is supposed to accomplish, based on the goals and tasks that are to be performed or results delivered. As the workgroup moves forward towards identifying new performance indicators and measures for the trial courts, the members agreed its focus should remain primarily on those functions of the court system that are “essential” and necessary to effectuate the mission of the trial courts. Additionally, the workgroup reviewed the essential elements. At the same time, the workgroup recognized the importance of providing accountability measures for those functions that are based on the need to effectuate public policy or respond to legitimate public expectations (e.g., specialty courts). The workgroup noted these activities should also be addressed, as part of the development of a performance management framework, as a second priority.

**Principles**

Principles provide a connection between the general court mission and specific process proposals. They articulate the values, visions, and fundamentals necessary to guide the effort and to communicate the basis for any decisions that are made. Proposals will be judged on whether they comport with these principles and will be prioritized in accordance to the extent that they advance these principles.

Three types of principles exist in the courts, when developing a performance management framework. First, governance principles involve a governance structure that is vital to successfully implementing process improvement. Adopting the most effective business processes will require a governance structure that treats a court system more like a single enterprise. The Florida State Courts System has addressed governance principles through SC11-1374 In Re: Implementation of Judicial Branch Governance Study Group Recommendations – Amendments to the Florida Rules of Judicial Administration, and through The Long-Range Strategic Plan for the Florida Judicial Branch 2009-2015.

Second, essential function principles delimit the essential functions that must be performed by courts to carry out their constitutionally mandated mission. The essential functions principles provide a normative approach to what functions must be performed by courts. As mentioned above, the implementation of Revision 7 to Article V of the Florida Constitution resulted in the determination of the essential elements of the trial court system. These essential elements are provided for under F.S. 29.004 and enumerated above.

To protect judicial independence while ensuring accountability, the TCP&A, in their 1999 report, identified several goals regarding the of accountability mechanisms for inherent functions:
Accountability to the people for the performance of the essential functions of the courts is the responsibility of the judicial branch.

Measurement of court performance of the inherent functions of courts should be descriptive rather than normative. An accountability system should not operate to impact the substantive outcomes of particular cases.

The appropriate level of inquiry is the court and the system, not the individual judge. Constitutional mechanisms exist, including judicial elections and the Judicial Qualifications Commission, to address individual judge performance.

Finally, administrative principles are general beliefs judges and court managers have about how the administrative process should work to fulfill their responsibility to ensure legal decisions are made in a manner that satisfies customer expectations. These principles can be powerful in shaping how judges and court managers gauge whether administrative practices are working as desired. If court practices are not consistent with the principles, judges will see to make them more procedurally fair. For this reason, administrative principles are a critical element in determining a performance management framework.

Generally, courts are guided by the notion of due process. As construed by the courts, due process means laws are applied equally to every individual under established rules which do not violate elemental rights. This concept is founded on the fundamental value of fairness; that every person has the right to their day in court and to have their case heard, considered, and resolved by an independent and impartial judge. Due process distinguishes two goals. Substantive due process is achieving more accurate legal rulings through the use of fair procedures. Procedural due process ensures appropriate and just procedures or processes are used to make people feel the government has treated them fairly. The rationale for court administration is to support the adjudicatory process by enhancing procedural due process. What constitutes court performance is measured independently and separately from the legal decision itself. By enhancing procedural due process through the use of performance management, judges would have more time to devote to the substantive aspects of due process.

The National Center for State Courts developed the following administrative principles, based on procedural due process, as a critical first step in achieving a high performing court.¹

1. Giving every case individual attention.
2. Treating case proportionately.
3. Demonstrating procedural justice.
4. Exercising judicial control over the legal process.

By developing principles on the appropriate administration of justice, courts can then choose what type of administrative practices to follow. High performance occurs when the principles and the practices correspond with each other.

Administrative principles can be determined by answering the following question:

- What are the important values that the courts need to demonstrate in a performance management framework?

¹ Ostrom, B. and Hanson, R., Achieving High Performance: A Framework for Courts. (National Center for State Courts, April 2010).
The current and projected fiscal conditions for state and local governments indicate unprecedented resource limitations that will encompass state-funded and locally funded courts. Courts are facing significant budget constraints and cannot count on a return to the funding of the recent past. The short-term cost reduction steps taken by courts—hiring freezes, furloughs, and layoffs—will not in the long run enable courts to provide the judicial services that form the basis of our society and system of government.

Similarly, modest attempts to change the manner in which courts operate incrementally will not meet the long-term problem. Many states need to undertake fundamental changes, such as restructuring delivery systems, redesigning business processes, expanding the use of technology, and reorganizing court structure. Such far-reaching changes are subsumed under the generic term “reengineering.”

An effort to make fundamental change is difficult in any organization. In the judicial branch of government, a system built on tradition and precedent, it is a challenge of immense proportion. Success requires:

- A clear message about the need for reengineering, i.e., this is our fiscal situation and this is why we cannot continue to operate as we have;
- Clearly articulated values and beliefs that will guide any change;
- A clear definition of the fundamental work of the court—why we do what we do; and
- A clear vision of what the courts need to become to provide timely, high-quality, and cost-effective judicial services to litigants and taxpayers.

Put more simply, reengineering projects must be based on a set of principles that then guide all work done by the courts to redesign their business processes. The up-front adoption, communication, and buy-in of principles by judges, court staff, attorneys, legislators, county commissioners, and the public will often ease tensions as specific proposals are developed and debated.

Such principles provide a connection between the general court mission and specific reengineering proposals. They articulate the values, vision, and fundamentals necessary to guide the effort and to communicate the basis for any decisions that are made. Reengineering proposals will be judged as to whether they comport with these principles and will be prioritized in accordance to the extent that they advance these principles.

**Types of Principles**

**Governance Principles**

Many reengineering proposals will require changes to governance structures to be successfully implemented. Adopting the most effective business processes will require a governance structure that treats a court system more like a single enterprise.

**Essential Functions Principles**

These principles delimit the essential functions that must be performed by courts to carry out their constitutionally mandated mission. In the absence of such principles, courts are subject to ad hoc approaches. Courts may be forced to protect low-value programs that are mandated by the funding agency or protected by especially powerful interest groups. What is needed is a normative approach to what functions must be performed by courts at what minimally acceptable level of quality.

**Case Administration Principles**

These principles lay out how courts should design their business processes for
actually handling cases from filing to disposition. These principles will necessarily balance efficiency and effectiveness. If properly designed, case administration principles will guide the development of case “triage” strategies to appropriately manage the workload of the court.

Note that all three types of principles touch on aspects of what are traditionally considered appropriate for court mission statements. These time-tested normative statements are now simply partitioned into more useful bins and leveraged at different points in the reengineering process. Most states to date have identified reengineering principles that are a mix of governance and essential functions principles. Naturally, the inclusion of one or two ad hoc principles relating to the special circumstances of that jurisdiction is also common. Case administration principles are rarely used to motivate reengineering projects simply because they deal by definition with the more routine aspects of court administration that normally fall under efforts to make business process improvements of a more incremental nature.

Proposed Governance Principles
Chief Justice Christine Durham and State Court Administrator Dan Becker of Utah have proposed a set of ten governance principles as standards for the state and local court community as seen below.

| 1. | A well-defined governance structure for policy formulation and administration for the entire state court system. |
| 2. | Meaningful input from all court levels into the decision-making process. |
| 3. | A system that speaks with one voice. |
| 4. | Selection of leadership based on competency—not seniority or rotation. |
| 5. | Commitment to transparency and accountability. |
| 6. | Authority to allocate resources and spend appropriated funding independent of the legislative and executive branches. |
| 7. | A focus on policy-level issues, delegation with clarity to administrative staff, and a commitment to evaluation. |
| 8. | Open communication on decisions and how they are reached. |
| 9. | Positive institutional relationships that foster trust among other branches and constituencies. |
| 10. | Clearly established relationships with presiding judges, court administrators, boards of judges, and court committees. |

These proposed principles will be presented and discussed during the 2010 CCJ/COSCA National Conference in July and again at the Fourth National Symposium on the Future of the Courts in October 2010. Several of the governance principles support the idea of treating the court system more like a single enterprise. Those principles are likely to be reused by other states in their reengineering projects. Of course, that idea is not without controversy, especially in states that are much more decentralized in governance than Utah.

Proposed Essential Functions Principles
The essential functions principles are newer and even more controversial. NCSC is just initiating a project to work with court experts on these principles. An initial draft set of principles is provided to the right, but they should be regarded at this point as illustrative only of the types of principles that should be identified.

The essential functions principles could be used in more than one way. Although their primary purpose initially is to justify court budgets and protect the courts’ constitutional mission in a time of resource crisis, they could also be used to design improved algorithms for case triage and disposition. The essential functions principles will also be discussed and debated at the 2010 CCJ/COSCA National Conference and the Fourth National Court Symposium.

1. Accept only cases that are contested or in controversy.
   a. Constitutional claims
   b. Criminal charges
   c. Private parties asserting legal entitlement

2. Accept only cases with two sides and only two sides in controversy.
   a. Exclude family, juvenile, traffic, and probate cases where nothing is contested
   b. Exclude cases with more than two sides

3. Accept only cases that cannot be dealt with administratively.
   a. Triage problem-solving cases to treatment
   b. Handle traffic citations as administrative fines

4. Accept only cases where the damages sought exceed the cost of the proceedings.
   a. Establish minimum damage thresholds based on cost per case

5. Accept only cases where more informal and less costly approaches have failed.
   a. Require mandatory mediation
   b. Require mandatory arbitration
Proposed Case Administration Principles
The case administration principles were proposed as part of the High Performance Courts Framework. This is a new NCSC approach to improving court performance that better integrates the various NCSC products and court best practices with a repeatable business process for solving court business problems and improving court performance over time. The case administration principles are derived from and consistent with traditional court mission statements. They are principles—not algorithms—so courts must still apply appropriate judgment in the actual handling of real cases. Still, there is value to making explicit what normative principles underlie court business processes, especially when budget reductions threaten to undermine their integrity. The proposed case administration principles are:

1. Every case receives individual attention.
2. Individual attention is proportional to need.
4. Judges control the legal process.

This third principle may be most often invoked in court-reengineering projects, since budget cuts may sometimes reduce or eliminate programs specifically designed to maintain or improve procedural justice. Acknowledging the importance of those operational programs is a key element in high court performance.

Conclusion
To date, no court-reengineering project has systematically used all three sets of principles to motivate their decisions, partly because they were not available to use. It is unlikely that an individual court system would choose to stress all of them, since each jurisdiction faces a different set of problems and feasible solutions. These sets of principles do provide a consistent benchmark and a set of good principles to select from when courts set out to identify which principles will drive their reengineering projects.
A Case for Court Governance Principles

Christine M. Durham and Daniel J. Becker

Introduction

Hard times can inspire new ways of thinking about old problems. State courts today have ample reasons for questioning the continued viability of traditional approaches to organizing their work and to providing leadership. This paper proposes a set of principles for governing state court systems that is intended to provoke a debate about how court governance can best be enhanced to meet current and future challenges. Governance is defined as "the means by which an activity or ensemble of activities is controlled or directed, such that it delivers an acceptable range of outcomes according to some established standard" (Hirst, 2000).

The principles outlined in this paper were developed by examining what courts, as institutions, need to do internally to meet their responsibilities. This is in contrast to much of the current writing about the future of court governance, which tends to focus on ways in which the state courts can improve their relationship with the other branches of government.

The next section sets the stage by describing the ways in which state court systems currently are organized. Four basic models are identified. The problems and opportunities presented by each model are described, as are some problems in governance that appear to be more or less generic in state courts today. The next section discusses the distinctive cultural problems associated with governing courts as opposed to other parts of state government. Existing discussions of court governance are not sufficiently attentive to this cultural dimension. Ten principles of court governance are then outlined, with explanatory comment which can respond to the challenges presented by court culture.

Court Organization: Contemporary Models

The state court systems of today emerged in the 1970s and 1980s as the long-standing ambitions of court reformers began to be realized at a rapid pace. Reformers had decreed the degree to which trial courts were enmeshed in local politics, subject to overlapping jurisdiction, and governed by widely divergent court rules and administrative procedures within a state.

To varying degrees in recent decades, all states have changed the organization of their courts. The principle of court unification was the main engine driving that change, which had four key components. First, the number of trial courts was to be reduced as the courts of each county were consolidated into one trial court or a simple two-level structure of a single general jurisdiction and a single limited jurisdiction court. A side benefit would be the gradual elimination of non-law trained judges.

Second, responsibility for trial court funding would be taken from county and city
governments and placed instead in the state budget process. Judicial salaries would no longer be paid out of fees and fines. The court budget could be used to distribute resources across the state courts in an equitable and efficient manner, and budget priorities could be established for the entire state court system.

Third, court administration would be centralized in a state-level administrative office of the courts that prepared the state court budget. This would standardize court policies across the state and take local politics out of the hiring and supervision of court personnel. At the same time, centralization would promote professionalization of the state court workforce.

Finally, the administrative rules for a state’s courts would be set not by the legislature, but by the state supreme court, consistent with the principle of the judiciary as an independent branch of state government.

A progress report in 2010 shows the court unification agenda was only partly realized (See Appendix A). Today, 10 states have a single trial court and another seven have a simplified two-level system. Thus, roughly one-third of the states completed the logic of consolidation. Five states retain a significant number of non-law trained limited jurisdiction court judges.

State funding was more fully realized. Forty-two states now fund 100 percent of salaries for their general jurisdiction court judges. However, only 17 (out of 44) states with limited jurisdiction courts provide full funding for their judges. Even where judges’ salaries are fully funded, however, responsibility for other court funding is still fragmented in some states.

Important steps toward centralization were taken in most states. All states have an administrative office of the courts and in the majority of states the office has sole responsibility for budget preparation, human resources, judicial education, and legislative liaison.

Most state judicial branches have taken over rule making responsibilities. In 32 states, the court of last resort has exclusive rulemaking authority (and in 21, there is no legislative veto). Legislatures retain primary rulemaking responsibility in eight states. In others, the authority is shared or held by a judicial council.

The pace of changes to state court structures slowed considerably in the 1990s. While some states continued to consolidate trial courts and shift responsibilities to the state level, in most states the model for court organization seems fixed for at least the medium term.

One reason for the slower pace is that the fundamental logic of the unification model is being questioned. There is no longer a consensus that full unification is the desired end state for all court systems to reach. Even during the heyday of the unification movement, it was speculated that “it is the individual elements of court unification—and not the overall level of court unification—which affect court performance” (Tarr, 1981:365).

The state courts today can still be classified into one of four basic models of organization
first identified in 1984.

**Constellation:** “The state judiciary is a loose association of courts which form a system only in the most general of terms... numerous trial courts of varying jurisdictions... which operate with local rules and procedures at least as important as any statewide prescriptions... Formal lines of authority among the courts are primarily a function of legal processes such as appeals...” (Henderson et al.1984:35)

Few, if any, states today have court systems in which the supreme court is the only source of policy or administrative coherence. State court administrative offices have been granted or have assumed authority to set basic standards for how local courts are organized. The quality and consistency of information reported to state administrative offices has improved, providing a mechanism through which trial courts can be compared to one another statewide.

**Confederation:** “A relatively consolidated court structure and a central authority which exercises limited power. Extensive local discretion... There are clearly defined managerial units at the local level administering the basics of judicial activity” (Henderson et al.1984:38).

The state supreme court and the administrative office of the courts in this model can lead primarily through the use of persuasion and the provision of technical assistance services in areas such as management information systems. Over time, use of those services will promote standardization in basic trial court operations.

**Federation:** “The trial court structure is relatively complex, but local units are bound together at the state level by a strong, central authority” (Henderson et al. 1984:41).

Coherence in court administration can be achieved in such systems when the state supreme court and administrative office have the authority to appoint trial court presiding judges and control over categories of funding needed by local trial courts, or when the presiding judges of general jurisdiction courts have administrative responsibilities for the limited jurisdiction courts in their area.

**Union:** “A fully consolidated, highly centralized system of courts with a single, coherent source of authority. No subordinate court or administrative subunit has independent powers or discretion” (Henderson et al.1984:46).

Court systems organized in this way tend to give a prominent role in the policy-making process to judicial councils that include representatives of all levels of the court hierarchy and also administrators at the trial court level. Regional administrative units are sometimes created to reduce the distance between local courts and the central court administration.
While each model for court organization presents its own distinctive challenges to effective governance, some challenges are more or less generic to all four organizational models. First, trial judges have a considerable amount of discretion over how they organize their courtrooms. As a result, it is difficult to standardize all aspects of court administration within a particular trial court, let alone across a state. In most states, all judges are elected by the public, giving them a claim to independence rarely found in other parts of state government, where at most only the head of an office or agency is an elected official. One consequence of this fact is that it is difficult for any individual judge to represent authoritatively a trial court’s views to the state supreme court or court administrative office.

Second, centralized court decision-making needs to demonstrate that it hears and respects the views of trial court level officials when making policy decisions. Representative forums have not developed that bring together on a regular basis state-level leaders and managers with their counterparts at the trial court level. Early in the court reform movement judicial councils were established to provide such a forum, but these did not take hold except in California and Utah, although several states (e.g., Minnesota) have recently re-established their councils.

There are some developments that will, in time, strengthen the hand of central court administration in all four models of court organization. There has been a dramatic improvement in the quantity and quality of the case level information that flows from trial courts to the state level. This provides the raw material for planning and policy-development. At the same time, sophisticated performance measurement systems and workload assessment methodologies have been developed that can provide a standard of management information never before available to court managers.

The court unification agenda focused on structural aspects of how trial courts should be organized. The next section looks at another dimension of challenges to court governance, those associated with the very distinctive organizational culture that characterizes courts.

The Culture of Court Systems

“In our country, judicial independence means not just freedom from control by other branches, but freedom from control of other judges” (Provine, 1990).

In these few words, Doris Marie Provine captures the challenge facing any effort at court governance. Accepting the above as a truism, how are decisions to be made on behalf of independent actors who see themselves first, as autonomous adjudicators and, second, if at all, as part of a system? Stated another way, how do you balance self-interest with institutional interests, while attempting to respect both?

Self-Interest Orientation

Understanding the cultural challenges to effective governance is critical if improved
governance models are to be advanced. The manner, in which judges are selected, not by their future colleagues, but by third parties—governors, legislators, or the electorate—contributes to this sense of independence from the outset of a judicial career (Lefever, 2005). As a consequence, judges’ “mandates” do not all derive from the judicial institution itself, resulting in a decreased sense of organizational identity for many new judges. This sense of individual independence poses a significant obstacle to creating a system identity and, in turn, fidelity to the decisions of a governing authority.

At the trial court level, this manifests itself in judges resisting the notion that they should be concerned about anything other than handling “my cases.” Presiding judges will frequently be heard describing themselves as “firsts among equals,” who experience great difficulty in confronting the self-interested perspective that many judges bring to issues of court administration and operations. In an environment where the first instinct is to assess any proposal from the perspective of “how will it impact me”, it is difficult to initiate change, or even make decisions.

Appreciating this self-interest orientation and working to, if not overcome it, then understand and work with it, will be critical to any form of governance. Soliciting input, providing an opportunity to be heard, providing a forum for debate, explaining why an issue is important and why a decision was made the way it was, and ensuring effective lines of communication are important in any organization. The culture of courts makes such activities imperative.

**Organizational Implications**

Any organization (including courts) operates the way it does because the people in that organization want it that way (Ostrom and Hanson, 2010). The people who create this organizational culture in courts are judges, who used to be attorneys. Attorneys operate in a professional culture where goals tend to be abstract, authority diffuse, and there is low interdependence with others. It has been said that “the conflict in professional organizations results from a clash of cultures: the organizational culture which captures the commitment of managers, and the professional culture, which motivates professionals (Raelin, 1985). Professional court administration, whether in the form of court administrators, chief judges, or judicial councils, must operate in the world of concrete goals, more formal authority, and task interdependence if the needs of the organization are to be met.

As noted above, some judges are called upon to take on administrative roles. The culture of judges being equals and a presiding judge being only a first among equals, frequently results in a lack of appreciation for the qualities needed in a leader. This can result in the practice of choosing administrative leaders based on seniority rather than administrative competence, or of selecting judges who are least likely to challenge judicial autonomy. At the state level, the practice of rotating chief justices is a manifestation of this culture, and frequently results in tenures too short to permit effective engagement or accomplishment. The desire for a personal legacy can result in a personal agenda at the expense of system needs.
The culture of courts also directly affects non-judicial, professional administrators who are responsible for ensuring effective and efficient court operation, but who, in most instances, lack the authority of chief operating officer positions found in other business or governmental environments. Court executives and presiding judges, and state court administrators and chief justices, ideally function as a management team. The extent to which this ideal relationship actually exists can vary widely, again because of court culture. Something as simple as whether a court executive has a seat at the table during bench meetings, or whether they are relegated to the back row, speaks volumes about the role of the executive in the operation of the court and the existence of a true management team.

Additional cultural challenges result from the competing interests of different court levels and state versus local orientations. The culture of a supreme court could not be more different from the culture of a trial court, yet in many jurisdictions it is the supreme court or the chief justice who sets policy for the entire system. It is not surprising that as state supreme courts have taken on more administrative oversight, budget, and policy setting, that trial courts have frequently resisted many forms of coordination and centralization. Trial courts often seek autonomy and flexibility, whereas state goals tend to be more in line with coherence and consistency.

In the policy-setting arena, how do the voices of trial judges get heard? Are there forums for expressing needs and concerns, and if so, are they viewed as effective and credible? Do judges have to speak collectively through “associations” to be heard and, if so, how will these various voices speak for the system? If multiple voices result in conflicted messages, aren’t other branches going to be free to selectivity hear, interpret, and ignore? Providing an effective means for judges to contribute, communication that is effective, and decisions that are clear, are all critical to bridging the various interests of court levels and facilitating effective system governance.

It has been suggested that striking the balance between self-interest and institutional interests, while binding separate units of an organization together, requires strategies that embrace three elements: a common vision of a preferred future, helpful and productive support services that advance the capabilities of the organization’s component parts, and a shared understanding of the threat and opportunities facing the system (Griller, 2010). The governance principles set out in section III are intended to explore these elements.

While court culture must be understood and considered when addressing governance, it cannot be allowed to serve as an excuse for failing to provide a court system with an effective means of self-governance.

**Principles of Court Governance**

It is clear that there are multiple structural models in place for governing and managing
state and local courts. Thus, it is likely that any prescriptive efforts aimed at re-alignment must be consistent with the history, culture and goals of any individual court “system,” however defined. This paper therefore attempts to posit unifying principles that can serve as a starting point for critiquing existing models, while understanding that they must be adapted to a variety of political, legal and constitutional settings. We suggest that effective court governance requires:

1. A well-defined governance structure for policy formulation and administration for the entire court system. Ideally, in our view, this principle should apply to a state court system as a whole, but in many states this will have to be a long-term and perhaps incremental goal. The principle, applied at any level, however, suggests that structure should be explicit, and the authority for policy-making and implementation well defined. The absence of such clarity can significantly undermine the ability to make decisions.

2. Meaningful input from all court levels into the decision-making process. This is a fairly obvious principle drawn from basic knowledge about system management. In the absence of any means of contributing to the process of making decisions, constituents who have to live with the decisions generally lack any sense of buy-in or ownership. This can result in, at best, indifference to the success of the enterprise or, at worst, resistance and sabotage. Perhaps more important, however, is the fact that the quality of the decision-making process is vitally enhanced by the knowledge and insights of all parts of the system.

3. A system that speaks with a single voice. A court system that cannot govern itself and cannot guarantee a unified position when dealing with legislative and executive branch entities is not in fact a co-equal branch of government. Competing voices purporting to speak for the judiciary undermine the institutional independence of the courts and leave other parts of government (and the public) free to choose the messages they prefer in relation to court policy and administration. This is potentially very damaging both to the actual welfare of court systems and ultimately to the level of respect and attention afforded them.

4. Selection of judicial leadership based on competency, not seniority or rotation. The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leadership should explicitly identify and acknowledge those skills, and judicial education should include their development. This is no easy task in the context of court cultures around the nation, but a more thoughtful conversation should begin and courts should seek ways to identify standards and practices that are better than many of those now in place.

5. Commitment to transparency and accountability. The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also, and more importantly,
the effectiveness with which resources are used. We in the courts should know exactly how productive we are, how well we are serving public need, and what parts of our systems and services need attention and improvement. And we should make that knowledge a matter of public record.

6. **Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.** If someone outside the judiciary has the power to direct the use of dollars, that entity has the power to direct policy and priorities for the third branch. Obviously, there is always negotiation over funding priorities, but budget practices like line item funding shift the policy-making from the judicial branch to the legislative, and have the effect of pitting different parts of a court system against each other. Courts with the authority to manage their own funds can ensure that priorities are dictated by agreed-upon policy and planning and not by the “project du jour.”

7. **A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.** Decisions about policy belong with the structural “head” of a judicial system, but implementation and day-to-day operations belong to administrative staff. An avoidance of micro-management by the policy-maker and clear authority for implementation in the managers are both important for the credibility and effectiveness of court governance, and can minimize the opportunities for undermining policy at the operational level. Finally, without a commitment to evidence-based evaluation of policies, practices and new initiatives, courts cannot claim to be well-managed institutions.

8. **Open communication on decisions and how they are reached.** Judicial culture generally fosters a strong sense of autonomy and self-determination amongst judges - a necessary corollary of decisional independence. In the administrative context, that same culture can make system management tricky. No one wants to tell judges how to decide cases, but we may need to tell them how to manage case records, report court performance, move to electronic filings and discovery, and handle assignments and schedules. To the extent judges, and staff, feel that decisions emerge from a “black box,” without their input and prior knowledge, the potential for discomfort and dissatisfaction, not to mention general mischief, is magnified. A good system of governance does everything it can to keep information flowing.

9. **Positive institutional relationships that foster trust among other branches and constituencies.** Given the natural constitutional and political tensions that are inherent in our system of government generally, the judiciary must work constantly to explain itself to the other branches. Care and strategic attention must be afforded to building personal and professional relationships that will ensure an adequate level of credibility when the judiciary is in conversation with the other parts of state government. This is particularly essential on the budget and finance side, and on the question of openness and
accountability. Legislative and gubernatorial staffers as well as their bosses need to know they can take information and numbers “to the bank” in terms of accuracy and transparency when they come from the courts. It also helps if courts are pro-active on the “quality” side of the equation, demonstrating commitment to things like judicial education and performance evaluation for judges and courts.

10. Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees. Nothing undermines good governance faster than muddled understanding of who is responsible for what. Judges in general have a penchant for assuming that plenary jurisdiction and authority on the decisional side should translate into equally broad individual authority on the administrative front. Thus it is particularly important in court management for the assignments and authority of leaders and managers to be clear, explicit, and included in the general orientation of new judges and staff, as well as in the training of new and potential judicial leadership.

Conclusion

American courts are not alone in re-examining the governance of our systems. In Australia, the dependence of the courts on the Ministry of Justice for the administration of the courts has given rise to a call for self-governance. A recent report entitled Governance of Australia’s Courts - A Managerial Perspective contained this observation:

"Even as the current arrangements seem to “work,” in the sense that they have not given rise to major catastrophes or dysfunctions, there is no reason why they could not be made to work even better. Good people can make bad structures work. But, good people can work even better within good structure.” (Alford et al.2004).

Many of us in the American state courts are in the same boat. Good people are doing good work in court systems hampered by a lack of good structure. We hope that this discussion will support a much broader consideration of what good court governance requires and how those principles might be brought to bear in the effort to do better work in better structures.

In conclusion, if you assume for the moment that the principles set forth are viable and appropriate, would the state-level governance of your court system stand up to these principles? What about the governance within your individual judicial districts or courts? How would you know, whose opinion would count, and how would you initiate meaningful improvements? It is our belief that these are questions well worth considering. If we ignore the question of how we make decisions and how we can make better decisions, or in other words, how we can most effectively govern our courts, then aren’t we relegating the judiciary to something less than a co-equal branch of government?
References


______________________________

Christine M. Durham, Chief Justice of the Utah Supreme Court

Daniel J. Becker, Utah State Court Administrator
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<td>Wisconsin</td>
<td>Seniority</td>
<td>Until Declined</td>
<td>With Supreme Court</td>
<td>1962</td>
<td>123</td>
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<td>Supreme Court</td>
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<td>1974</td>
<td>9</td>
<td>Legislature</td>
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