



**THE SHIFT TO STATE FUNDING AND UNIFICATION  
OF THE JUDICIAL BRANCH: FOUR STATES'S EXPERIENCE**

**Draft Technical Assistance Report**

**June 15, 2021**

**Richard Van Duizend  
Court Management Consultant**

**Daniel J. Hall, Vice President  
Court Consulting Services  
707 Seventeenth Street, Suite 2900  
Denver, CO 80202-3429  
(303) 293-3063**

In order to assist the work of the Louisiana Commission on Justice System Funding (the Commission), The National Center for State Courts (the Center, the National Center, or NCSC), a public benefit corporation targeting the improvement of courts nationwide and around the world, was asked to collect and summarize the experience in states that have unified their court systems and/or shifted the primary responsibility for funding the trial courts to the state. The points of view and opinions expressed in this report are those of the author as agent of the National Center, and do not necessarily represent the official position or policies of the Commission nor of the Judicial Systems of Alabama, Arizona, Florida, Minnesota, or New Hampshire. NCSC grants the Commission and the Louisiana Supreme Court a royalty-free, non-exclusive license to produce, reproduce, publish, distribute, or otherwise use, and to authorize others to use, all or any part of this report for any governmental or public purpose.

Online legal research provided by LexisNexis



## **ACKNOWLEDGMENTS**

*This project could not have been conducted without the thoughtful guidance and courtesy of the members of the Louisiana Commission on Justice System Funding and the staff of the Office of the Judicial Administrator. The author wishes to extend his gratitude to them and to the current and former court officials in Alabama, Arizona, Florida, Minnesota, and New Hampshire who gave generously of their time, experience, and thoughts to provide information and insights for this report.*

## **TABLE OF CONTENTS**

<b>INTRODUCTION</b>	<b>1</b>
<b>FINDINGS</b>	<b>2</b>
1. WHY DID EACH STATE MOVE TO A MORE CENTRALIZED OR STATE-FUNDED SYSTEM?	3
2. WHAT WAS EACH STATE’S ORIGINAL COURT STRUCTURE AND FUNDING SYSTEM?	5
3. WHAT STEPS DID EACH STATE TAKE TO MOVE FROM ITS ORIGINAL STRUCTURE AND FUNDING SYSTEM TO THE NEW STRUCTURE AND FUNDING SYSTEM?	6
4. WHAT IS EACH STATE’S CURRENT COURT STRUCTURE AND FUNDING SYSTEM?	10
5. WHAT WERE THE BENEFITS OF EACH STATE’S SHIFT TO A MORE CENTRALIZED STATE FUNDED SYSTEM?	12
6. HOW WERE THE STATES ABLE TO CONSOLIDATE THEIR LIMITED JURISDICTION COURTS?	14
7. WHAT WERE THE LESSONS LEARNED AND WHAT SUGGESTIONS MIGHT THE COMMISSION CONSIDER THAT WOULD BE APPLICABLE TO LOUISIANA’S EFFORT TO DETERMINE THE OPTIMAL METHODS OF SUPPORTING ITS TRIAL COURTS?	17
8. WHAT ADDITIONAL ASSISTANCE FROM NCSC MAY BE HELPFUL AS LOUISIANA MOVES FORWARD?	24
<b>APPENDIX A – COURT ORGANIZATION CHARTS</b>	<b>25</b>
<b>APPENDIX B - ARIZONA GUIDELINES ON MUNICIPAL COURT GOVERNANCE, ROLES AND RESPONSIBILITIES</b>	<b>29</b>

## A. INTRODUCTION

As authorized and directed by House Concurrent Resolution No. 3, the Louisiana Commission on Justice System Funding [the Commission] is:

[S]tudying the “financial obligations of criminal defendants and how those financial obligations are used to fund and subsidize core functions of the Louisiana court system[,] and . . . [determining the] optimal methods of supporting and funding the Louisiana court system in a way that would allow for implementation of changes made in Act No. 260 of the 2017 Regular Session of the Legislature” [that seek to ensure that the aggregate amount of financial obligations imposed upon a defendant do not cause a] “substantial financial hardship to the defendant or his dependents” [in order to avoid undermining] “the primary purpose of the justice system . . . to deter criminal behavior and encourage compliance with the law.”<sup>1</sup>

The financial obligations covered by the Commission’s mandate include “criminal fines, fees, and costs assessed in all courts, including but not limited to mayor’s courts, municipal courts, city courts, parish courts, and district court. . . .”<sup>2</sup> In addition to Act No. 260, the decisions of the U.S. Court of Appeals for the 5<sup>th</sup> Circuit in *Cain v. White and Caliste v. Cantrell*<sup>3</sup> have provided an impetus to and urgency for the Commission’s work.

In order to assist the Commission’s efforts, the National Center for State Courts (NCSC) has gathered and synthesized information regarding the experience in four states (Alabama, Florida, Minnesota, and New Hampshire) that have shifted to a state-funded and/or centrally administered trial court system. In addition, it has examined Arizona’s development and implementation of guidelines governing the relationship between municipalities and municipal courts. This inquiry has included the review of written articles and reports on the changes in each of the states as well as interviews with individuals directly involved in and affected by these changes.

The following report organizes the information obtained into responses to eight questions:

1. Why did each state move to a more centralized or state-funded system?
2. What was each state’s original court structure and funding system?
3. What steps did each state take to move from its original structure and funding system to the new structure and funding system?

---

<sup>1</sup> Louisiana House Concurrent Resolution No. 3, p.2 (2020) and Act No. 260 – 2017 Regular Session, §§1 (A), (C), and (D) (2017).

<sup>2</sup> Louisiana House Concurrent Resolution No. 3, p.3 (2020).

<sup>3</sup> *Cain v. White*, 937 F.3d 446 (2019); *Caliste v. Cantrell*, 937 F.3d 525 (2019).

4. What is each state's current court structure and funding system?
5. What were the benefits of each state's shift to a more centralized or state-funded system?
6. How were the states able to consolidate their limited jurisdiction courts? And,
7. What were the lessons learned and what suggestions or recommendations might the Commission consider that would be applicable to Louisiana's effort to determine the optimal methods of supporting its trial courts?
8. What additional assistance from NCSC may be helpful as Louisiana moves forward?

## B. FINDINGS

More than 60 percent of states directly fund their trial court systems<sup>4</sup> though the extent to which states have assumed total trial court costs varies. A few states (e.g., AK, HI, MA) fund all trial court costs including:

- judicial salaries and benefits
- staff salaries and benefits
- maintenance of court records
- alternative dispute resolution
- facilities
- equipment including information technology
- travel and general operating expenses
- indigent defense
- court security
- jurors
- interpreters
- pretrial services, and
- adult and juvenile probation

Most leave the support for some of these functions to local sources such as county government (most commonly clerk's offices, facilities, court security); carve out particular types of courts (e.g., probate courts) or levels of courts (e.g., municipal courts); assign particular functions to the state or local executive branch (e.g., indigent defense, probation); and/or rely on fees to cover some of the cost of those functions (e.g., information technology, records management, indigent defense, pretrial services, adult/juvenile probation). All states pay for all or most of the salaries of their general jurisdiction trial court judges, regardless of what other costs are covered or not covered.<sup>5</sup> The shift from local to state financing of trial courts occurred primarily between

---

<sup>4</sup> Court Statistics Project, *State Court Organization – 2004*, Table 17 (NCSC, 2004)  
<https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/sco04.pdf>.

<sup>5</sup> *Id.*

1970 and 1995 as the cost of operating a trial court system increased.<sup>6</sup> Only a few additional states have made this shift in recent year (e.g., Florida, Michigan, and Minnesota), and none have moved in the opposite direction.

Parallel, but not necessarily combined, with the shift to state funding has been the movement toward simplification of trial court structure and increased centralized administration of state court systems. Almost all states now have single-tier or dual-tier statewide trial courts, though 29 have retained municipal courts in addition, and many have established separate specialized courts to hear probate, family, tax, water, business, workers compensation, or other matters.<sup>7</sup> Even those with just a single trial court on their organizational chart often have a separate tier of quasi-judicial officers to hear minor or preliminary criminal matters and/or child support cases. Some states adopted statewide administrative governance of the courts and only later sought to unify their trial courts and shift to state funding (e.g., Florida, Minnesota, and New Jersey). Others streamlined their trial court structure but retained a mix of local and limited state funding (e.g., Illinois). A few undertook both shifts in tandem (e.g., Alabama). Centralized judicial budgeting is now a feature in nearly all states that have assumed financial responsibility for their trial courts.<sup>8</sup>

The four states that are the focus of this report have made the shift to a simplified state court structure and state funding at various points since 1970, for differing reasons, and utilizing differing methods, structures, and degrees of administrative control over court operations.

## **1. WHY DID EACH STATE MOVE TO A MORE CENTRALIZED OR STATE-FUNDED SYSTEM?**

The four states studied adopted state funding and a more centrally administered trial court system for a mix of financial and service improvement reasons. *Alabama*, under the leadership of then Chief Justice Howell Heflin, sought to unify and professionalize its judiciary.<sup>9</sup> Prior to the

---

<sup>6</sup> Tobin, Robert W., *Creating the Judicial Branch: The Unfinished Reform*, 139-141 (NCSC, 1999) <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1249/rec/6>.

<sup>7</sup> Court Statistics Project, *supra*, note 4.

<sup>8</sup> Tobin 1999, *supra*, note 6, at 139-140.

<sup>9</sup> *Id.*, at 107.

implementation of the state's new Judicial Article in 1977, Alabama's judicial system was seen as "fragmented, corrupt, and inefficient."<sup>10</sup>

"Revision 7" to the Judiciary Article of *Florida's* Constitution was adopted in 1998 to "to provide a uniform funding system for the trial courts of Florida."<sup>11</sup> Prior to passage of the implementing legislation in 2004, the state's trial courts were supported by the county in which they were located. The disparity between "have" and "have-not" counties was so great that the chief judge of one circuit regularly gave all the pens he could collect to the chief judge of a poorer circuit.<sup>12</sup> In a speech describing the effort to pass the implementing legislation, a member of the Article V Steering Committee recounted:

. . . [O]ne of . . . [the Steering Committee's] most important tasks was to inventory all of the costs the counties were presently spending and to determine what part of those costs should become part of the state budget. . . . [I]t was a real eye opener! Some circuits had day care services provided by court employees in the courthouse; judges in one circuit had their own personal bailiffs; judges in another had two judicial assistants per judge . . . . Some circuits were in the business of doing urinalysis testing for drug cases and even paternity cases. . . . The "have nots" had never seen a general master. They had no meaningful case managers. They had few mediation programs.<sup>13</sup>

The rapidly increasing burden of indigent defense costs led many counties to support the shift to state funding.<sup>14</sup>

By 1987 in *Minnesota*, counties felt they no longer had control of court budgets because of expenses mandated by the state's Legislature and Supreme Court. In some instances, these mandatory court-related costs exceeded county's levy limitations. There was also confusion over who controlled county court employees, who was responsible for defending them and paying judgments in the event of a lawsuit, and who was responsible for worker's compensation payments. Court budgets were fragmented, and lines of administrative authority confused. As in Florida, there was significant disparity among services and staffing among Minnesota's judicial districts.<sup>15</sup>

---

<sup>10</sup> James T. Gibson, "Howell T. Heflin," *Encyclopedia of Alabama*, <http://encyclopediaofalabama.org/article/h-1485>.

<sup>11</sup> <https://www.flcourts.org/Administration-Funding/Court-Funding-Budget/History-of-Court-Funding>.

<sup>12</sup> Hon. Susan Schaeffer, *A New Day in Florida's Unified Trial Court*, (2004).

<sup>13</sup> *Id.*, at p. 2.

<sup>14</sup> Interview with Florida State Court Administrator Lisa Kiel.

<sup>15</sup> Dosal, Sue, "Transition and Transformation: The Minnesota State Funding Project," *The Court Manager* Vol. 22, Issue 1, pp. 18-19 (2006) <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1309/rec/4>.



In *New Hampshire*, the state and counties have very limited taxing authority. The basic unit of government and revenue generation is the township. By 2011, the state's court system recognized "that it is no longer possible to maintain business as usual in the court system while hoping for more revenue each budget cycle. Not only . . . unrealistic, . . . [it is] also not a responsible approach to managing what resources we do have."<sup>16</sup> In its January 2011 report, the Judicial Branch Innovation Commission recommended consolidation of the state's limited jurisdiction courts and streamlining their administration and operations. The legislation authorizing the changes was adopted within four months.

## 2. WHAT WAS EACH STATE'S ORIGINAL COURT STRUCTURE AND FUNDING SYSTEM?

Prior to 1977, *Alabama* had a statewide general jurisdiction trial court and an array of limited jurisdiction courts that varied by county plus municipal courts.<sup>17</sup> Judicial system funding was primarily from local sources and fees.

In *Florida* prior to legislative implementation of Revision 7 in 2004, counties were responsible for all court costs other than judicial salaries and some specialty programs.<sup>18</sup> An amendment to Article V of the Florida Constitution adopted in 1972 consolidated 14 separate county and municipal limited jurisdiction and specialized courts into a single statewide County Court. A major impetus for the amendment was the elimination of "cash-box justice."<sup>19</sup> The 1972 amendment required state funding of all judicial salaries. It also provided for an elected public defender in each county.<sup>20</sup>

Until 1989, the primary funding for all non-judicial salary expenses of *Minnesota's* single-tier statewide trial court (the District Court) was provided by the state's counties. The state had "a plethora of limited jurisdiction courts" through 1971.<sup>21</sup> In 1972, municipal, probate and justice of

---

<sup>16</sup> *Report of the Judicial Branch Innovation Commission*, p. 1 (January 2011).

<sup>17</sup> Ellen S. Gurney, *Alabama State Court Organization Profile* (NCSC, 1979)  
<https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/372/rec/1>.

<sup>18</sup> *Supra*, note 14.

<sup>19</sup> *Ocala Star-Banner*, March 15, 1972, p.3.

<https://news.google.com/newspapers?id=bXZPAAAAIBAJ&sjid=KQUEAAAAIBAJ&pg=7316,2674969&hl=en>.

<sup>20</sup> Florida Constitution, Art. V, §§6, 14, 18.

<sup>21</sup> Dosal, *supra*, note 15. at p.18.

the peace courts were consolidated into a single County Court. County Court judges' salaries were absorbed into the state budget in 1978. In 1987, the County and general jurisdiction District Court were merged.<sup>22</sup> Other than a 1972 amendment to Article VI of the Minnesota Constitution abolishing a separate probate court, each of these changes was accomplished through legislation.

Between 1984 and 2011, *New Hampshire* had a general jurisdiction trial court (the Superior Court) and three separate statewide limited jurisdiction trial courts – District Court, Probate Court, and Family Division. All were state funded.<sup>23</sup> Earlier, New Hampshire had municipal courts as well as the District and Probate Courts. The municipal courts were merged with the District Court by legislation in 1984.<sup>24</sup>

### **3. WHAT STEPS DID EACH STATE TAKE TO MOVE FROM ITS ORIGINAL STRUCTURE AND FUNDING SYSTEM TO THE NEW STRUCTURE AND FUNDING SYSTEM?**

In 1969, a commission was established to revise *Alabama's* 1901 Constitution. The commission's proposed new state constitution was submitted to the Alabama Legislature in 1973 but attracted little support. However, Alabama Chief Justice Howell Heflin had a longstanding interest in judicial reform and championed the proposed new judicial article creating a unified court system. With his support, a considerably modified new judicial article was passed by the Legislature at the end of its 1973 session and adopted by the voters in December 1973.<sup>25</sup> The new article designated the Chief Justice of the Alabama Supreme Court as the administrative head of the judicial system and authorized the creation of an administrative office to assist in these responsibilities. As part of the political compromises made to secure passage, the county Probate Courts were not included as part of the state judicial system and municipalities were given the option of abolishing their municipal courts and having ordinance cases heard by the statewide limited jurisdiction District Court. Implementing legislation (Act 1205) was passed in December 1975 and the Alabama Unified Judicial System became operational in January 1977.<sup>26</sup>

---

<sup>22</sup> *Id.*

<sup>23</sup> *Innovation Commission Report, supra* note 16, at p.14.

<sup>24</sup> Interview with Circuit Court Administrative Judge David King.

<sup>25</sup> William H. Stewart, "The Tortured History of Efforts to Revise the Alabama Constitution of 1901," 53 *Alabama Law Review* 295, 305-312 (2001) <https://www.law.ua.edu/pubs/lrarticles/Volume%2053/Issue%201/Stewart.pdf>; Alabama Constitution, Art. VI.

<sup>26</sup> *Id.*; Gurney, *supra*, note 17.

As noted earlier, Revision 7 to *Florida's* constitution was approved by the voters in 1998. The changes in the state's judicial system were supposed to be phased in over six years, but implementing legislation was not passed until 2003.

In January 1999, the Chief Justice of the Florida Supreme Court appointed a 15-member Article V. Funding Steering Committee to:

Recommend policies and legislative implementation strategies for the transition of certain portions of the trial courts' budgets from local to state funding in accordance with Revision 7 . . . on the following matters:

1. The nature and estimated cost of those budget items currently funded in whole or in part by the counties that should become a part of the state budget, as well as an appropriate phase-in schedule and budgeting strategy for the assumption of those costs
2. The transition of personnel from county to state payrolls or other funding mechanisms so as to protect the interests of the trial courts and their employees to the greatest extent possible
3. Revenue streams that will be necessary for the effective operations of the courts
4. The appropriate entities to administer funds for certain costs (conflict attorneys, witness fees, etc.) or to provide certain services currently housed within the courts
5. Budget items that local government should be required to fund, as referenced in Revision 7
6. Draft legislation that would provide the statutory framework necessary to effectuate Revision 7 as it relates to court funding.

The Steering Committee consisted of eight chief judges of general jurisdiction courts, one limited jurisdiction court judge, one intermediate appellate court judge, and five trial court administrators. Two supreme court justices served as liaisons.<sup>27</sup>

Following submission of the Committee's report the following year, the Court established, by rule, a 21-member Trial Court Budget Commission (TCBC) to:

1. Establish budgeting and funding policies and procedures consistent with judicial branch plans and policies, directions from the supreme court, and in consideration of input from supreme court committees and from the Florida Conference of Circuit Judges and the Florida Conference of County Court Judges
2. Make recommendations to the supreme court on the trial court component of the annual judicial branch budget request
3. Advocate for the trial court component of the annual judicial branch budget request and associated statutory changes

---

<sup>27</sup> Administrative Order in re Article V Funding Steering Committee  
<https://www.floridasupremecourt.org/content/download/648803/file/sc99-3.pdf>.

4. Make recommendations to the supreme court on funding allocation formulas and budget implementation and criteria as well as associated accountability mechanisms based on actual legislative appropriations
5. Monitor trial court expenditure trends and revenue collections to identify unanticipated budget problems and to ensure the efficient use of resources
6. Recommend statutory and rule changes related to trial court budgets
7. Develop recommended responses to findings on financial audits and reports from the Supreme Court Inspector General, Auditor General, Office of Program Policy Analysis and Government Accountability, and other governmental entities charged with auditing responsibilities regarding trial court budgeting when appropriate
8. Recommend to the supreme court trial court budget reductions required by the legislature
9. identify potential additional sources of revenue for the trial courts, and
10. Recommend to the supreme court legislative pay plan issues for trial court personnel, except the commission shall not make recommendations as to pay or benefits for judges.

The initial membership of the TCBC consists of 13 general jurisdiction court judges, 1 limited jurisdiction court judge, and 7 trial court administrators.<sup>28</sup> No circuit is permitted to have more than two members. The first comprehensive judicial budget was passed by the legislature for FY 2004.<sup>29</sup>

In *Minnesota*, the implementation process stretched over 15 years. In 1989, the Supreme Court created a broad-based task force “to study the control and financing of the trial court system.”

The task force set the following goals for its efforts:

For counties:

1. Tie together, at one level of government, policy, and funding decisions
2. Achieve property tax relief
3. Lessen disparities in the level of judicial service statewide.

For courts:

1. Limit diminution in level of current funding and have adequate and stable financing in the future
2. Lessen disparities in judicial service statewide
3. Have no worse fragmentation of funding sources
4. Recognize the special posture of the judiciary as a separate branch of government and its constitutional mandate to maintain its independence and manage its own affairs.<sup>30</sup>

---

<sup>28</sup> FL. R. Jud. Ad. 2.230.

<sup>29</sup> Schaeffer, *supra*, note 12, at pp.3-10.

<sup>30</sup> Dosal, *supra*, note 15, at 19.

After considering an array of alternatives, the task force recommended:

[T]he phased transfer to a state general fund appropriation of all trial court operation costs as the only means of addressing the identified problems and achieving the . . . [specified] goals.<sup>31</sup>

The first phase created a pilot project in the smallest and poorest judicial district and provided state funding of the salaries and benefits of the district's administrative employees, referees, judicial officers, court reporters, IT expenses, and jury costs. State tax revenue shortfalls due to economic recessions together with growing reluctance by the state's best-supported urban districts, prevented further implementation for a decade. In 1999, the pilot program was made permanent and expanded to include additional rural, relatively poor districts. In addition, the state assumed the expenses of transcript preparation, guardian *ad litem* and interpreter programs, mental health examinations, and *in forma pauperis* costs for all of the state's ten judicial districts. In 2001, a phased transfer of expense assumption for the remaining six districts was set by the Legislature with two districts shifting to state funding each year between 2003 and 2005.<sup>32</sup>

As expenses were transferred from the county to the state, it was provided that the county levy limit would be reduced by the amount of the transfer. [Thus, while] . . . the counties realized no immediate gain, the responsibility for future cost growth was transferred to the state. To assure the counties continued to adequately fund the trial courts during the several year interim . . . , the judiciary successfully sought legislation guaranteeing an annual court budget increase . . . [during the second phase transition period].<sup>33</sup>

Furthermore, appropriations were passed for a "uniform judicial branch compensation system" and expanded administrative capacity in the State Court Administration Office so as to be able to effectively manage financial and human resources, and provide payroll, procurement, continuing education, travel, and internal legal services.<sup>34</sup>

A new judicial branch governance structure also was developed with the establishment of a judicial council as the branch-wide administrative policy-making body. The Minnesota Judicial Council consists of the Chief Justice, an Associate Justice, the Chief Judge of the Court of Appeals, the Chief Judges of the 10 judicial districts; the president of the District Judges

---

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, at p. 20.

<sup>34</sup> *Id.*

Association President, and five judges, appointed by the Chief Justice, three of whom must be district court judges, as well as six non-voting members -- the State Court Administrator, three Judicial District Administrators chosen by the Judicial District Administrators, and one local court administrator, and one at-large appointment from within the judicial branch, appointed by the Chief Justice. The Council was delegated administrative policy-making authority that includes, but is not limited to:

1. Development and implementation of the branch strategic plan
2. Budget priorities, budget request, and submission of the judicial branch budget request to the executive and legislative branches
3. Collective bargaining
4. Human resources
5. Technology
6. Education and organizational development
7. Finance, including budget distribution among levels of court and among districts
8. Programs including jury, guardian *ad litem*, interpreter, expedited child support, and Children's Justice Initiative
9. Core services, court performance measures and accountability.<sup>35</sup>

In March 2011, the *New Hampshire* Supreme Court established a Judicial Branch Innovation Commission charged to develop recommendations to enable New Hampshire's courts "meet increasing demand for services while faced with shrinking financial resources."<sup>36</sup> The Innovation Commission included judges, court staff, legislators, business executives, bar leaders, and educators, technical experts. The Commission's work groups conducted pilot projects to test methods for increasing access to justice, enhance the efficiency and productivity of court operations, and reduce costs. "The data [gathered from these pilot efforts were] crucial not only to establish a comfort level that the idea[s] would work, but also to sell the idea[s] to other Commission members, judicial officers and staff, and eventually the legislature."<sup>37</sup> The Innovation Commission submitted a report to the New Hampshire Supreme Court in January 2011 with 23 recommendations. Legislation adopting nearly all the recommendations was passed in April 2011. The bulk of the changes were implemented within two years.<sup>38</sup>

---

<sup>35</sup> Administrative Order ADM-04-8003, *In re Establishing Judicial Council* (2004)

<https://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/2004-12-10-Order-Establishing-Jud-Council.pdf>.

<sup>36</sup> *Innovation Commission Report, supra*, note 16, at p. 5.

<sup>37</sup> Laura Klaversma & Lee Suskin, *A Case Study: Reengineering New Hampshire's Court*, pp. 1-2 (NCSC 2012).

<sup>38</sup> *Id.*, at 7-15.

#### 4. WHAT IS EACH STATE'S CURRENT COURT STRUCTURE AND FUNDING SYSTEM?

*Alabama's* Unified Judicial System includes the Alabama Supreme Court, two intermediate courts of appeal (one for criminal and one for civil cases), and two trial courts – the general jurisdiction Circuit Court, and the limited jurisdiction District Court. The three appellate courts are totally state funded. As indicated in Table 1 (below), the two trial courts are primarily state funded. In addition, there is a county-funded Probate Court in each county and municipalities have the option of maintaining a municipal court.<sup>39</sup> Currently, there are more than 250 municipal courts. [See the Organizational Chart in Appendix A.]

*Florida's* judicial branch consists of the Florida Supreme Court, 5 District Courts of Appeal, 20 general jurisdiction Circuit Courts, and 67 limited jurisdiction County Courts (one in each county). [See the Organizational Chart in Appendix A.] Florida's appellate courts are totally state funded. Funding for the trial courts is divided between the state and counties. [See Table 1, below]

*Minnesota has* a supreme court, an intermediate appellate court, and a single-tier trial court – the District Court. [See the Organizational Chart in Appendix A.] There is a District Court in each county, but for administrative purposes, the state is divided into nine judicial districts with all but two, multi-county districts. To increase efficiency, a few districts with lesser caseloads have been assigned specialized administrative responsibilities for the whole state – e.g., processing child support orders, processing the preparation of records for appeal, and auditing conservator [curator] accounts.<sup>40</sup> The Minnesota Judicial Branch is nearly totally state-funded. [See Table 1, below] The shift to state funding transferred 2,100 employees from county payrolls to the state and \$137 million in expenditures. Minnesota has also established executive branch administrative courts that handle tax and workers compensation matters.

In *New Hampshire*, there is the New Hampshire Supreme Court, the general jurisdiction Superior Court, and the limited jurisdiction Circuit Court that hears probate, family, small civil matters, preliminary criminal proceedings, and traffic cases. [See the Organizational Chart in Appendix A.] As indicated below, the New Hampshire court system is totally state funded. A

---

<sup>39</sup> Alabama Constitution, Art. VI.

<sup>40</sup> Interview with Minnesota State Court Administrator Jeff Shorba.

centralized “call center” has been established to handle inquiries to the Circuit Court from throughout the state and a “dictation center” enables Circuit Judges and marital masters to dictate court orders over the phone and have them prepared by a specialized staff.<sup>41</sup>

**Table 1**  
**PERSONNEL & SERVICES INCLUDED IN THE STATE JUDICIAL BRANCH BUDGET<sup>42</sup>**

States	Alabama	Florida	Minnesota	New Hampshire
<b>Personnel/Services</b>				
<b>Judges</b>	√	√	√	√
<b>Judicial &amp; Administrative Staff</b>	√	√	√	√
<b>Court-related functions of Clerk’s Office</b>	√	⊕	√	√
<b>Court Reporters</b>	√	√	√	√
<b>Operating Expenses</b>	√	√	√	√
<b>Information Technology</b>	√	○	√	√
<b>Facilities</b>	○	○	○	√
<b>Indigent Defense</b>	*	*	√	**
<b>Court Security</b>	○	○	○	√
<b>Probation</b>	*	*	*	*
<b>Pretrial Services</b>	√	○	*	^

- √ State-funded
- \* Executive Branch
- County-funded
- ⊕ Fees and service charges
- ^ County, but legislation to shift to state being considered
- \*\* Independent non-profit government funded corporation

## 5. WHAT WERE THE BENEFITS OF EACH STATE’S SHIFT TO A MORE CENTRALIZED OR STATE FUNDED SYSTEM?

In *Alabama*, the shift to a largely state-funded, unified court system has led to statewide consistency in judicial and staff salaries and benefits, trial court staffing, services provided to court users, computers and court management and financial software, judicial and staff continuing education, and human resources rules and procedures. It lessened the resource disparities among counties, and greatly helped small, rural, poor counties. The option for a city

<sup>41</sup> Klaversma & Suskin, *supra*, note 37 at pp 8-10.

<sup>42</sup> Interviews with Ret. Alabama and Washington State Court Administrator Callie Dietz, Florida State Court Administrator Lisa Kiel, Minnesota State Court Administrator Jeff Shorba, and New Hampshire Circuit Court Chief Judge Hon. David King; *State Court Organization*, Table 17 (NCSC 2006)  
<https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/746/rec/1>.



to dissolve its municipal court has aided small cities. The cost of maintaining and operating the judicial branch has been lessened by centralizing certain services and capacities – for example, each county does not have to support court HR, IT, and budgeting staff. The 1973 amendments to Alabama’s Judicial Article and the subsequent implementing legislation have enabled the state to operate a modern, efficient, flexible court system.<sup>43</sup>

Similarly in *Florida*, the 1998 revisions to the state’s constitution and subsequent implementing legislation have permitted the judicial branch to act systemically and cohesively. There is now great consistency in access to Florida courts and in court practices, services, and resources. This level of consistency has not been achieved without some pain, however. Courts in larger jurisdictions had to give up some of the resources, benefits, and autonomy provided by county funding, but overall, the level of services has increased. Some specialized services such as language interpretation, are now provided on-line throughout the state.<sup>44</sup>

The change to state funding in *Minnesota* has significantly reduced the disparity among districts. In 2001, some districts had only 85.1 percent of their basic needs met; others 114.4 percent. By 2006, the range was reduced to 96.5 percent to 100 percent. There is enhanced cost-efficiency and equity (e.g, in procurement and staff allocation), and greater budget accountability and transparency.

For the first time, the Minnesota judiciary has an understanding of and control over, the allocation of resources within the entire branch, and the ability to establish and fund its priorities on a statewide basis. . . . For example, when the costs of the guardian *ad litem* function were transferred to state funding, we discovered a patchwork quilt of 56 different programs. Some used lawyers, while still others used master’s in social work, high school graduates, or volunteers. Hourly rates for paid guardians ranged from \$8 to \$65 per hour. Training and supervision varied widely among the programs. Most importantly, while there had been federal and state laws for a quarter of a century mandating the appointment of a guardian in every case of alleged abuse or neglect of a child, prior to the transfer to state funding, guardians were appointed in only 60 percent of those mandatory cases. Yet, 30 percent of the \$9 million . . . GAL program budget was being spent on appointing guardians in non-mandatory family cases.<sup>45</sup>

In addition, the state’s counties have enjoyed substantial property tax relief and greater budgetary certainty.<sup>46</sup>

---

<sup>43</sup> Interview with Ret. Alabama and Washington State Court Administrator Callie Dietz.

<sup>44</sup> Interview with Florida State Court Administrator Lisa Kiel.

<sup>45</sup> Dosal, *supra*, note 15, at p.24.

<sup>46</sup> *Id.*, at p.25.

On the other hand, the extended implementation period in Minnesota, due to state revenue shortfalls, illuminates the drawback of relying on a single sources of funds. Frequently when state revenues decrease significantly because of a recession, county and city revenues may not be as severely affected, at least initially, enabling them to take up the slack.<sup>47</sup>

The consolidation of three limited jurisdiction courts into one in New Hampshire together with investment in technology (such as electronic filing) has resulted in initial and continuing cost savings. Court staff positions were reduced by more than 55 percent. Since many of the limited jurisdiction courts were in separate locations within a county, the consolidation has reduced the number of court sites saving facilities and equipment costs. Over time, judicial positions could be reallocated on the basis of workload.<sup>48</sup>

## **6. HOW WERE THE STATES ABLE TO CONSOLIDATE THEIR LIMITED JURISDICTION COURTS?**

As indicated above, Alabama excluded county probate courts when it formed its unified judicial system and gave municipalities the option of operating a municipal court or having ordinance violations and traffic offenses committed within the city heard by the state's District Court. Florida and New Hampshire combined their limited jurisdiction courts into a single limited jurisdiction court. Minnesota consolidated all its trial court into a single general jurisdiction trial court, though some counties employ quasi-judicial officers (referees) to hear particular types of cases.

In Alabama, the municipal and probate courts were included within the original design of the unified court system. Political opposition was so great, however, that those courts were carved out in order to secure passage of the amended judicial article in 1973.<sup>49</sup>

The consolidation in Florida was accomplished through a 1972 amendment to its constitution abolishing 14 separate types of limited jurisdiction courts and incorporating their responsibilities into a new County Court. Proponents of the amendment argued that the change would result in easier access for the state's citizens, greater efficiency in operations, and abolition of practice of

---

<sup>47</sup> Interview with Arizona Judicial Branch Administrative Director David Byers.

<sup>48</sup> Klaversma and Suskin, *supra*, note 37, at pp. 7-10; interview with Circuit Court Chief Judge Hon. David King.

<sup>49</sup> Tobin, *supra*, note 6, at p. 56; Stewart, *supra*, note 25, at p. 311.

courts supporting themselves from fines and fees. The amendment was strongly opposed by justices of the peace who would have to run for office in larger districts and advocates of local control. The opposition of municipalities and counties was muted by a provision directing that revenue from violation of city ordinances be returned to the city and state absorption of some of the reduced total operating costs.<sup>50</sup>

The consolidation in *Minnesota* of separate justice of the peace, probate, and municipal courts into a statewide County Court in 1972 was relatively easy. Municipal and probate courts existed only in the state's two largest counties and revenue generated by those courts for the cities were less than their operational and personnel costs. A major concern during consideration of the subsequent merger of the County Court into the general jurisdiction District Court was whether all County Court judges were qualified to hear District Court cases. Continuing education programs were instituted and meetings conducted between the members of the County Court and District Court benches.<sup>51</sup>

The 1983 bill combining New Hampshire's municipal and town courts into the statewide District Court (HB 200) sought to increase standardization in court processes, enhance efficiency, cut costs, and "take the politics out of the courts." The overall number of limited jurisdiction judges in the state was cut in half.<sup>52</sup> In the subsequent consolidation of the District Court, Probate Court, and Family Division into the statewide Circuit Court, assurances were required that the judges and staff would receive the requisite continuing professional education so that they could competently hear and process cases in any of the Court's Divisions and that none of the then sitting judges would be forced to hear types of cases with which they were unfamiliar.

There was little opposition from New Hampshire municipalities. The shift was seen as "taking away more headaches than revenue."<sup>53</sup> This view may become more common if the current trend toward the issuance of fewer traffic cases continues. Nationally, the number of traffic cases filed in court declined by 24 percent between 2009 and 2018. In some jurisdictions this may have been due to the transfer of parking violations to an administrative agency. In others,

---

<sup>50</sup> *Ocala Star-Banner*, *supra*, note 19.

<sup>51</sup> Interview with Minnesota State Court Administrator Jeff Shorba.

<sup>52</sup> Interview with Circuit Court Chief Judge David King who was a legislator when HB 200 was passed.

<sup>53</sup> *Innovation Commission Report*, *supra*, note 16, at pp. 15-16.

it was the result of fewer citations issued.<sup>54</sup> In addition, in states that require at least one night in jail for persons convicted of driving while impaired and that authorize municipal courts to hear such cases, the cost of indigent defense, juries, and incarceration have transformed those courts from revenue generators for their municipalities to money losers.<sup>55</sup>

Arizona has taken a different approach toward its municipal courts. The state has a supreme court, intermediate courts of appeal, a statewide general jurisdiction trial court (the Superior Court), county-based Justice Courts, and city/town-based Municipal, City, and Magistrate's Courts. The Arizona judicial branch is financially supported by the state, counties, and municipalities. Designated fees are used to support court technology and defensive driving school.<sup>56</sup>

In 1994, in response to questions posed by the Arizona League of Cities and Towns, the state's Administrative Office of the Courts developed a document addressing the most frequently asked questions concerning the relationship between municipal courts and their local governing body. Over time, this document evolved into a set of Guidelines on Municipal Court Governance, Roles, and Responsibilities (the Guidelines). [See Appendix B] The Guidelines are intended to provide:

[G]uidance to judges, court staff, and city officials to assist in resolving the most common issues involving the relationship between the municipal court and other branches of city or town government.<sup>57</sup>

The guidelines were issued under the authority of an Arizona Supreme Court decision that held that municipal courts are included within the judicial department of the state under Article VI §1 of the Arizona Constitution.

Consequently, municipal courts have authority and duties under the state constitution and statutes in addition to their duties as part of municipal government, must be administered as a separate branch of municipal government . . . and are subject to the administrative authority of the Supreme Court . . . .<sup>58</sup>

---

<sup>54</sup> Court Statistics Project, *State Court Caseload Digest 2018*, p. 17 (National Center for State Courts 2020) [https://www.courtstatistics.org/\\_data/assets/pdf\\_file/0014/40820/2018-Digest.pdf](https://www.courtstatistics.org/_data/assets/pdf_file/0014/40820/2018-Digest.pdf).

<sup>55</sup> Interview with Arizona Judicial Branch Administrative Director, David Byers.

<sup>56</sup> [https://www.courtstatistics.org/state\\_court\\_structure\\_charts?SQ\\_VARIATION\\_28850=0](https://www.courtstatistics.org/state_court_structure_charts?SQ_VARIATION_28850=0); Interview with Arizona Judicial Branch Administrative Director, David Byers.

<sup>57</sup> *Guidelines on Municipal Court Governance Roles and Responsibilities*, p.3 (Arizona Administrative Office of the Courts, 2017) <https://www.azcourts.gov/Portals/0/MunicipalCourtRolesandResponsibilities.pdf>.

<sup>58</sup> *Winter v. Coor*, 144 Ariz. 56, 59, 695 P.2d 1094, 1097 (1985).

They reflect the Administrative Office's "understanding of relevant constitutional provisions, statutes, rules, case law, and court orders."<sup>59</sup>

Municipal court judges "are judicial officers, not officers or agents of the town . . . . [It is necessary to maintain] municipal courts as fair, independent, and impartial tribunals, and . . . [preserve] the public's perception of these courts as impartial and unbiased."<sup>60</sup>

The Guidelines cover supervision and management of municipal courts, their financing and budgets, personnel, facilities, and records. Among other things, the Guidelines make clear that:

- Municipal councils have the duty of approving requests for personnel to operate the court and must defer to the presiding judge's determination of the financial needs of the court unless there is a clear showing that the request is unreasonable, arbitrary, or capricious
- A presiding judge of a municipal court should not ignore the funding authority's policies or procedures
- Any state funds allocated to a municipal court pursuant to statute must be spent only for the purposes authorized and cannot be used to supplant or replace local funds
- The court must collect all fines, sanctions, restitution, and bond it imposes and deposit them with the municipal treasurer
- Any fees assessed by a municipality is subject to state surcharges
- Municipal judge salaries may not be reduced during the term of office, even if they are set by charter or ordinance, and even in the event of budget reductions, although a municipal judge may donate back to the municipality and part of the salary that the judge has been paid
- Court personnel who are directly connected with the operation of the court must be controlled by the court; municipal personnel rules apply to municipal court employees unless the rules have been superseded by rules adopted for court personnel or interfere with the operation of the court
- When there is no conflict with court operations, there is no reason why court facilities cannot be made available for other governmental purposes.<sup>61</sup>

According to Administrative Director Byers, the Guidelines have been highly effective in both forestalling and resolving disputes after they have been shared with a mayor or city manager.

## **7. WHAT WERE THE LESSONS LEARNED AND WHAT SUGGESTIONS MIGHT THE COMMISSION CONSIDER THAT WOULD BE APPLICABLE TO LOUISIANA'S EFFORT TO DETERMINE THE OPTIMAL METHODS OF SUPPORTING ITS TRIAL COURTS?**

### ***A. Lesson Learned – Time is required for responsible institutional change***

---

<sup>59</sup> *Guidelines, supra*, note 57, at p. 3.

<sup>60</sup> *Id.*, at p. 4.

<sup>61</sup> *Id.*, at pp. 8-17.

Whether it is consolidating courts or shifting from state to local funding, the transformation cannot be accomplished overnight. “You can’t throw a switch and do it overnight.”<sup>62</sup> Among other tasks:

- A governance/budgeting structure must be developed that reflects the new organization and funding system
- Appropriate staffing levels must be determined that are applicable across the court system
- Locally-determined salary and benefits may need to be reconciled with the state personnel system and unified compensation and classification schedule developed
- All locally-funded programs that may be included in court budgets (e.g., drug testing, drug treatment, mental health assessments, family assessments, mediation and other alternative dispute resolution services, ignition interlock devices, anger management programs) must be assessed to determine whether they should be continued and if so, whether they should be included in the state judicial branch budget or another state or local budget
- Personnel, financial, and operating policies must be developed
- Standards must be set for court furnishings and equipment
- Uniform data definitions and reports must be created
- A cohesive accounting structure must be implemented to replace disparate local accounting systems
- A budget development process must be established and a budget management system implemented
- Continuing professional education and staff training must be provided to ensure that judges and court employees are ready to take on their new responsibilities.<sup>63</sup>

The documents examined and court leaders interviewed for this report all stressed the importance of and time required to completing the necessary groundwork. In some states, the changes were stretched over many years; others were implemented within months. Minnesota used a phased approach which ended up taking 15 years because of volatile economic conditions. Such an extended period raises the danger that that the process may be halted before the changes can be fully implemented and the projected benefits realized. Florida’s implementation period was four years. In New Hampshire, the short implementation period for the structural changes (a matter of months<sup>64</sup>) resulted in cutting personnel too deeply which increased savings but strained operations. There is no optimal period for implementation -- all

---

<sup>62</sup> Interview with Florida State Court Administrator Lisa Kiel.

<sup>63</sup> Tobin, Robert W., *The Transition to State Financing of Courts: The Implications for Financial and Personnel Management*, pp. 17-23 (NCSC 1981) <https://ncsc.contentdm.oclc.org/digital/collection/financial/id/16/rec/8>; Minnesota Supreme Court, *State Assumption of Trial Court Administration Costs*, pp. 3-4 (2001).

<sup>64</sup> New IT systems and e-filing were implemented over a few years after the Circuit Court was formed.

depends on the scope of the changes and the needs, capacity, and constraints of a particular state.

**Suggestion:** The Commission should consider recommending that any new court organization and funding system be phased in over a period of a few years, perhaps by groups of judicial districts. This would allow for pilot testing new processes and technologies and learning from the results of those tests. Both Minnesota and New Hampshire found the pilot testing process helpful.<sup>65</sup>

**B. Lesson Learned – State funding and court consolidation require a strong judicial branch infrastructure at both the state and district levels**

The Minnesota Supreme Court’s midstream report on state assumption of trial court costs observed that:

An effective organization of any size or structure is dependent on an adequate infrastructure of administrative services to sustain itself. . . . Under county funding, . . . infrastructure services [e.g., human resources, budgeting and financial management, internal audit, purchasing, legal services, risk management, and IT services] are provided to the courts by other county departments on a no-fee basis. . . . It is clear that in order to administer a judicial system based on other than county funding, an enhanced administrative structure is needed [at both the state and district levels].<sup>66</sup>

This observation is reinforced in Robert Tobin’s analysis of the shift to state funding of trial courts across the country.

The nightmare of any state court administrator is to be saddled with the major management responsibilities of a state-financed court system without the legal authority and budgetary resources to perform the responsibilities. This is not an unreal fear since legislators, and often judges, may not fully appreciate the management burdens stemming from state financing.<sup>67</sup>

**Suggestion:** The Commission should consider recommending that any legislation increasing the scope of state funding of the judicial branch provide authority and resources to the Judicial Administrator’s Office consistent with its expanded responsibilities including authority for managing personnel and finances at all court levels, for compelling the production of management data and reports, and, in addition, provide authority and resources for trial court level administrative staff to perform functions formerly provided by parishes that cannot be performed solely at the state level.

---

<sup>65</sup> Dosal, *supra*, note 15, at pp. 19-20 ; Klaversma & Suskin, *supra*, note 37, at pp 9-10.

<sup>66</sup> Minnesota Supreme Court, *supra*, note 63, at pp. 24-25.

<sup>67</sup> Tobin, *supra*, note 63, at p.7.

**C. Lesson Learned – Despite best efforts, comparable and accurate data on local court costs is unlikely to be available at the outset**

In a section of its midstream report titled “Evolutionary Challenges”, the Minnesota Supreme Court found that the transition to state funding was being hampered by “a lack of specific and adequate data about the cost of trial court operations and data on the operation of court programs.”

Expenses included in court budgets and their definitions vary from county to county. Obtaining uniform comparable and comprehensive information prior to the transfer has proven to be illusive. For example, expenditures for psychiatric exams, hospitalizations, legal fees, interpreters, guardians *ad litem*, witness fees and bailiffs sometimes are included, without distinction, in a single budget category called “professional services.” Also, in many counties costs for court administrator copying, telecommunications, and equipment maintenance are included, undifferentiated, within countywide budgets. Court and county officials were requested to identify and include these costs in the court budget for the year of transfer, but many were unable to or did not do so for at least some of these cost categories. . . .

In addition, it was difficult to collect uniform operations data. . . . For example, it was not possible to accurately estimate the need for guardians *ad litem* on a statewide basis because the 87 counties do not keep uniform statistics. Similarly, a special, limited data collection effort was undertaken to estimate the need for interpreters since ongoing standard program data is not collected statewide. The lack of sufficient client demographic and program data makes it difficult, at best, to comprehensively plan and budget for these essential services prior to their state takeover.<sup>68</sup>

**Suggestion:** The Commission should consider recommending that a contingency fund be included in the state judicial branch for at least the initial year of the transition to state funding to supplement required trial court services when necessary. This is the approach that Minnesota had to take because of the difficulty in accurately determining total trial court expenses.

**D. Lesson Learned – for centrally owned and managed court IT systems facilitates achievement of state funding and court unification goals**

When Revision 7 to Florida’s Constitution was drafted in the mid-1990’s, IT systems were not as intrinsic a part of court operations as they are now. Accordingly, the amendment to the Judicial Article left the funding of “communications services, existing radio systems, and existing multi-

---

<sup>68</sup> Minnesota Supreme Court, *supra*, note 63, at p. 16.



agency criminal justice information systems” to the counties.<sup>69</sup> As a result, the state has 67 separate case management information systems and other trial court management systems primarily owned and operated by the elected clerks of court. This has increased the difficulty of: obtaining and compiling consistent statewide data regarding case filings, case processing, and case dispositions, and court budgets, as well as instituting cost-saving and access-easing technologies such as electronic filing and on-line hearings.<sup>70</sup>

In Alabama, Minnesota, and New Hampshire, court information technology is state-funded and managed. Having control of court-related IT, has enabled Minnesota to establish specialized processing centers in lower-caseload districts for processing child support orders, processing the preparation of records for appeal, and auditing conservator [curator] accounts, and New Hampshire to create a centralized call center.<sup>71</sup>

**Suggestion:** The Commission should consider recommending that a state-funded court management information system, case-management information system, and court communication system be installed within a reasonable time (e.g., 4-6 years), with all IT equipment purchased and owned by the state.

**E. Lesson Learned – Involvement and communication with stakeholders in the planning and implementation processes are essential**

As in Louisiana, Florida, Minnesota, New Hampshire, and to a lesser extent Alabama, all engaged in an extensive planning process involving affected stakeholders to develop the legislative or constitutional provisions modifying the organization and/or funding of their court systems, and then in implementing those changes. The midstream report from the Minnesota Supreme Court notes that state-funding requires:

. . . [J]udicial system stakeholders to collaboratively develop a new framework at both the district and state levels for . . . institutionalization of standard operational policies, procedures, and best practices. Accomplishing change of this magnitude, however, is not fast or easy. . . . The collaborative process dictates that sufficient planning and dialogue take place to ensure that proposed changes are attainable and acceptable to stakeholders. By its nature, this is an evolutionary process that requires a period of time to work through.<sup>72</sup>

---

<sup>69</sup> Florida Constitution, Article 5, §14(c).

<sup>70</sup> Interview with Florida State Court Administrator Lisa Kiel.

<sup>71</sup> Interview with Minnesota State Court Administrator Jeff Shorba; Klaversma & Suskin, *supra*, note 37, at pp. 8-9.

<sup>72</sup> Minnesota Supreme Court, *supra*, note 63, at p. 17.

The process must include continuing two-way communication with those stakeholders around the state who are most affected by the transition to convey the vision and anticipated overall benefits of the changes, discuss how dislocations and changes can best be handled, address concerns to the extent possible, and dispel rumors and misconceptions. Local judges and court officials used to operating with a great deal of autonomy can become steadfast opponents of change unless they have at least some voice in what is transpiring.<sup>73</sup>

Such involvement is especially important in allocating judicial branch appropriations and resources and determining governance policies. The states studied have developed different mechanisms for ensuring that trial court judges are part of the process. As described above, *Florida* created a Trial Court Budget Commission to allocate resources among its Circuits, and *Minnesota* established a state Judicial Council. *Alabama* has established a variety of committees and commissions to guide allocation decisions including a Judicial Resources Allocation Commission.<sup>74</sup> *New Hampshire* vested governance responsibility for its new Circuit Court in an Administrative Judge and Deputy Administrative Judge supported by staff. They have responsibility for:

- Exercising supervisory powers over judges, clerks, registers, and court personnel
- Preparing the court budget requests and supervising the financial affairs of the court
- The employment and discharge of all personnel in their courts
- Effectuating compliance by judges and court personnel with all applicable court rules, provisions of law and administrative orders
- Implementing established policies, orders and regulations concerning the court's internal management and operation, including the timely disposition of the court's business, attendance at education and training conferences
- Supervising caseload management
- Assigning judges and court personnel to court locations when workload and other factors so require, and allocating equipment and other internal court resources where needed
- Representing the court in its relations with other courts, other branches of government, the bar, the general public, the news media and in ceremonial functions.<sup>75</sup>

---

<sup>73</sup> Byrnes, Susan M., *State Funding of Trial Courts: Minnesota's Transition Experience*, at p. 59 (Institute for Court Management, 2004) <https://ncsc.contentdm.oclc.org/digital/collection/financial/id/51/rec/1>

<sup>74</sup> <https://www.alacourt.gov>

<sup>75</sup> Rules of the Supreme Court of the State of New Hampshire, Rule 54. Administrative Judges and Administrative Council.

An Administrative Council consisting of the Chief Justice of New Hampshire's general jurisdiction Superior Court, the Administrative Judge and Deputy Administrative Judge of the Circuit Court, and the State Court Administrator facilitates communication and coordination among the various courts, measures progress toward overall court goals, resolves conflicts, furthers procedural uniformity, and makes recommendations to the Supreme Court. A Supreme Court justice serves as liaison to the Administrative Council and the Chief Justice meets regularly with the Council.<sup>76</sup>

**Suggestion:** The Commission should consider recommending creation of a governing structure involving trial court leaders to guide allocation of judicial branch resources, ensure equity of allocation among urban and rural jurisdictions, and further consistency and quality of operations.

Establishment of such a governance structure is consistent with the *Principles of Judicial Administration* developed by NCSC as guides based on the reengineering experience in several states and the policies adopted by the Conference of Chief Justices and the Conference of State Court Administrators.<sup>77</sup> A few other of the *Principles* are particularly pertinent to the issues highlighted in this report:

**Principle 4:** Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.

**Principle 5:** The court system should be organized to minimize the complexities and redundancies in court structures and personnel.

**Principle 16:** Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.

**Principle 19:** Judicial Branch leadership should have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items.

**Principle 20:** Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.

---

<sup>76</sup> Klaversma & Suskin, *supra*, note 37, at p.13.

<sup>77</sup> NCSC, *Principles of Judicial Administration*, Principal 1 (2012)

<https://www.americanbar.org/content/dam/aba/administrative/tips/Court%20Funding/Principles%20for%20Judicial%20Administration.pdf>.

**Principle 23:** The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.<sup>78</sup>

## 8. WHAT ADDITIONAL ASSISTANCE FROM NCSC MAY BE HELPFUL AS LOUISIANA MOVES FORWARD?

As discussed in the initial “Lesson Learned” above, the transition to state funding and court unification will require the Judicial Administrator’s Office and to undertake a range of substantial new tasks and the trial courts to alter their longstanding administrative and financial practices.<sup>79</sup>

NCSC has assisted other states in their effort to reengineer their court systems. Experienced NCSC consultants could assist Louisiana in one or more of the following areas:

- Conducting workload studies to determine appropriate staffing levels in the trial courts as reconfigured and in the Office of the Judicial Administrator to meet its expanded responsibilities
- Facilitating the discussions needed to develop a revised governance and budgeting structure for the judicial branch
- Inventorying and assessing locally funded, court-sponsored programs to help in determining which models may be appropriate for statewide implementation (e.g., drug testing, drug treatment, mental health assessments, family assessments, mediation and other alternative dispute resolution services, anger management programs)
- Inventorying and assessing local case management, records management, financial/budget management, and communication systems to assist in determining the standards and requirements of a statewide IT systems
- Identifying opportunities for centralizing administrative processing functions (e.g., traffic citations, child support payments, audit and accounting of fiduciary accounts)
- Developing uniform data definitions and reports
- Preparing core standards for court facilities and furnishings, and/or
- Determining the continuing professional education and training needs resulting from the transformation and how best they can be addressed.

---

<sup>78</sup> *Id.*, at pp. ii, iv, & v.

<sup>79</sup> See also, Tobin, Robert W., “Managing the Shift to State Court Financing,” 7 *Justice System Journal* 70 (1982) <https://ncsc.contentdm.oclc.org/digital/collection/financial/id/104/rec/1>

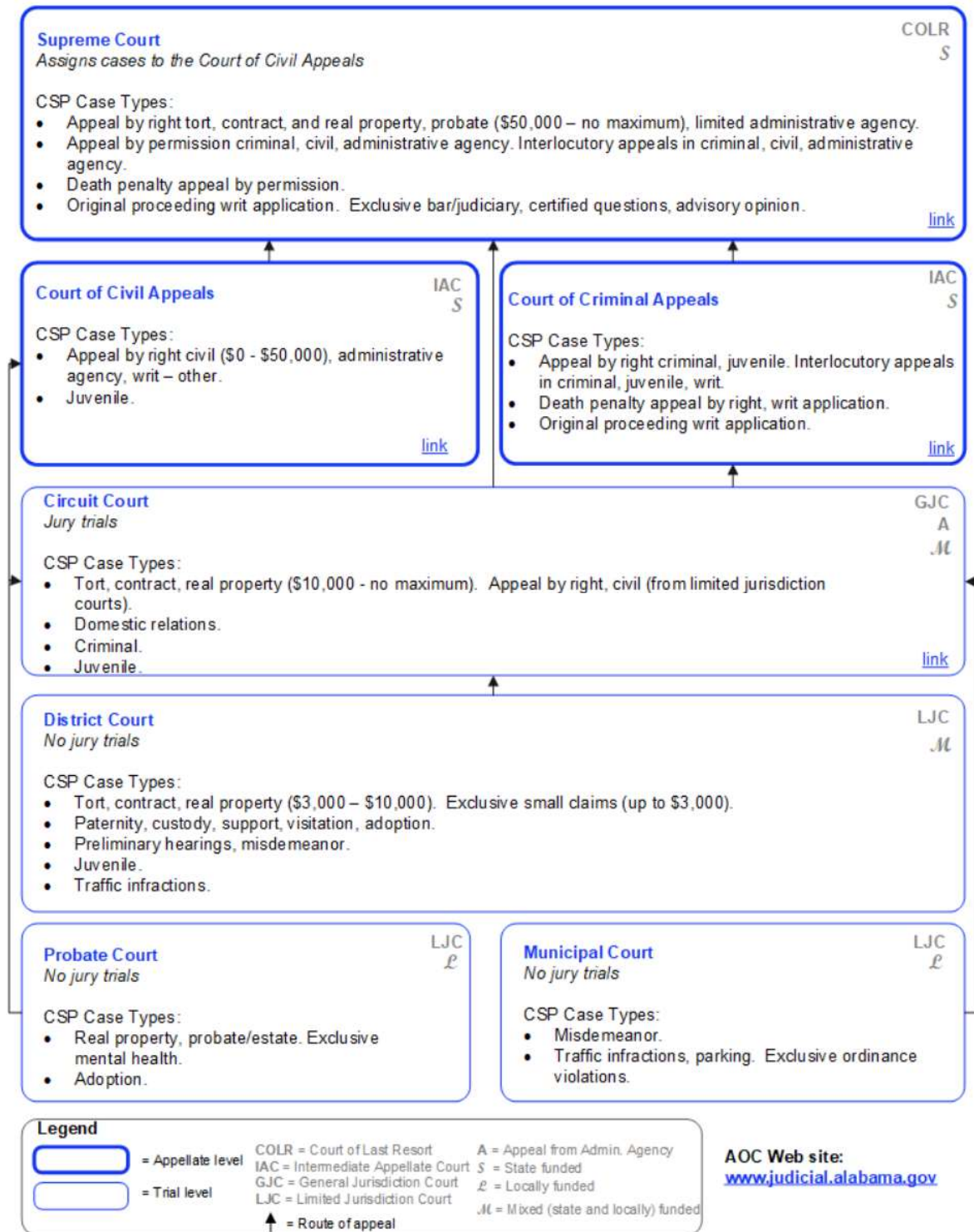
**APPENDIX A<sup>80</sup>**

**STATE COURT ORGANIZATION CHARTS**

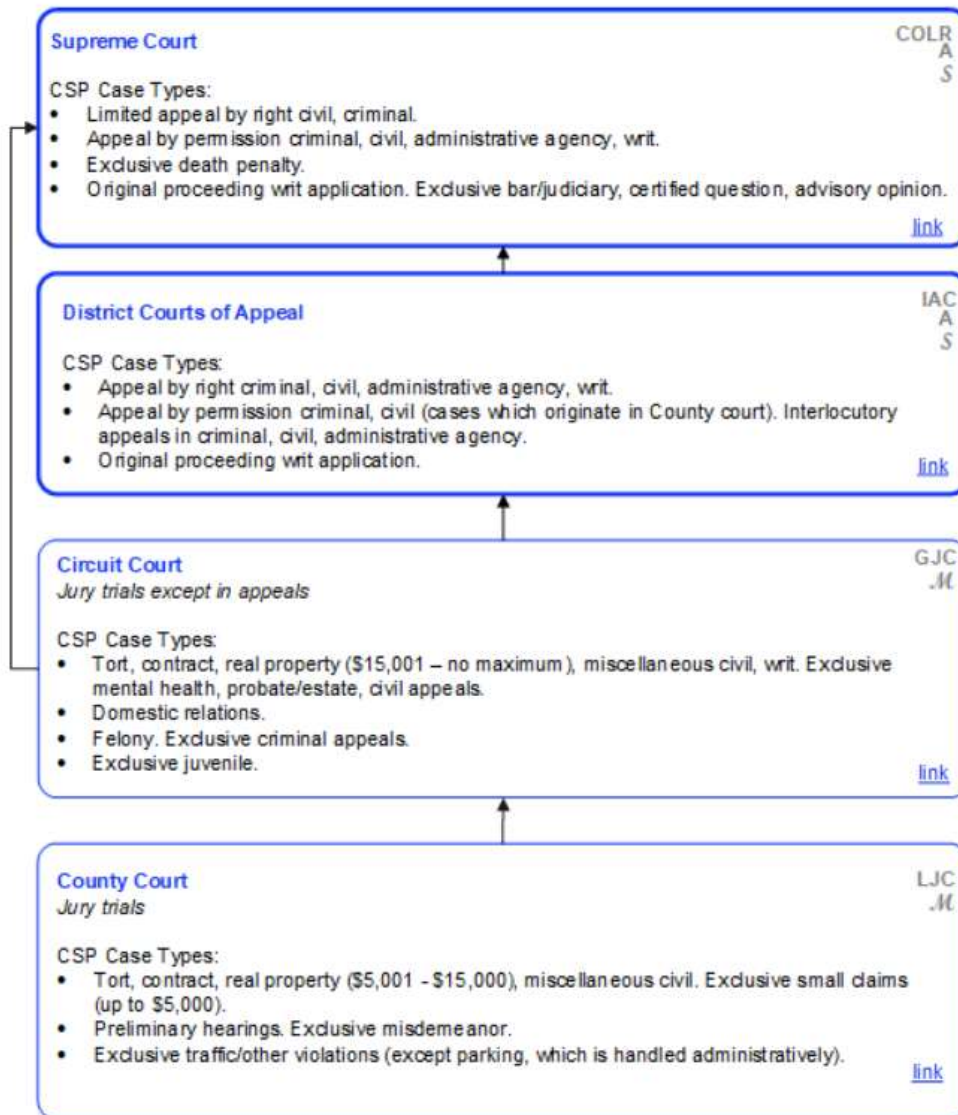
---

<sup>80</sup> [https://www.courtstatistics.org/state-court-structure-charts?SQ\\_VARIATION\\_28850=0](https://www.courtstatistics.org/state-court-structure-charts?SQ_VARIATION_28850=0)

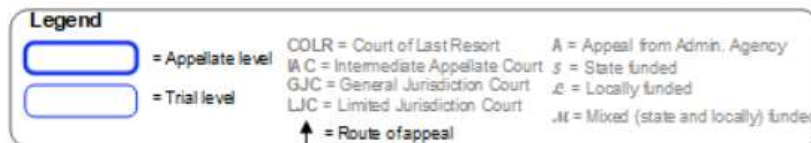
## Alabama



## Florida

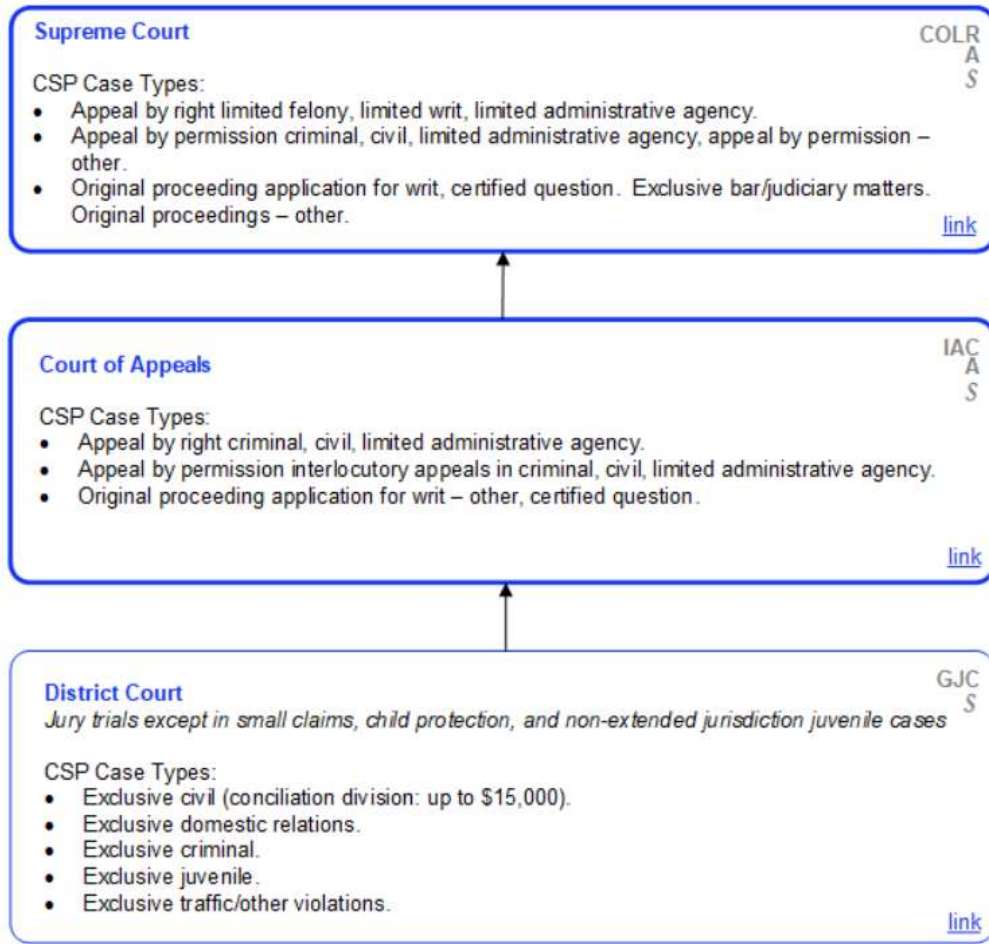


AOC Web site: [www.flcourts.org](http://www.flcourts.org)





## Minnesota



AOC Web site: [www.mncourts.gov/default.aspx](http://www.mncourts.gov/default.aspx)





**APPENDIX B**

**ARIZONA GUIDELINES ON  
MUNICIPAL COURT GOVERNANCE, ROLES AND RESPONSIBILITIES**

## Municipal Court Governance Roles and Responsibilities

### Contents

<b>A. <u>Supervision and Management</u></b> .....	4
1. <u>City or town responsibility to maintain a municipal court</u> .....	4
2. <u>Coordination in consolidating a municipal court</u> .....	4
3. <u>Legal status of municipal courts</u> .....	4
4. <u>Relationship between the municipal court and city or town</u> .....	5
5. <u>Authority to administer the municipal court</u> .....	5
6. <u>Municipal court operational reviews and audits</u> .....	6
7. <u>Authority to set municipal court hours of operation</u> .....	6
8. <u>Authority to require the judge to attend court every business day and use attendance as a criterion for evaluating the judge’s performance</u> .....	7
9. <u>Reporting judicial misconduct</u> .....	8
<b>B. <u>Budget and Finances</u></b> .....	8
1. <u>Responsibility for providing staff and other resources to ensure effective court operations</u> .....	8
2. <u>Preparation of the municipal court budget and requirement to follow city or town budget and finance procedures</u> .....	9
3. <u>Authority of the municipal judge to move funds between budget line items and to make fiscal-neutral staff reassignments</u> .....	9
4. <u>Authority to direct the expenditure of funds appropriated to the court through state statutes or municipal ordinances</u> .....	10
5. <u>Responsibility for collection of court fine, sanction, restitution, and bond payments</u> .....	10
6. <u>Court collection of fees in addition to those expressly provided in Arizona Revised Statute § 22-404</u> .....	11
7. <u>Authority to resolve fines and civil sanctions that are determined to be uncollectible</u> .....	11
8. <u>Disposition of interest earned on funds designated for use by the court</u> .....	11
<b>C. <u>Personnel</u></b> .....	11
1. <u>Appointment and reappointment of municipal judges</u> .....	11
2. <u>Obligation to pay judicial salaries</u> .....	12

3.	<a href="#"><u>Judge’s refusal/waiver of payment of the judge’s salary</u></a> .....	12
4.	<a href="#"><u>Authority of the city or town to conduct performance reviews of the presiding municipal judge</u></a> .....	12
5.	<a href="#"><u>Requirements for appointing a part time municipal judge</u></a> .....	13
6.	<a href="#"><u>Procedures for appointing "special judicial officers" such as associate magistrates</u></a> .....	13
7.	<a href="#"><u>Authority to hire, supervise, discipline, and terminate municipal court employees</u></a> .....	14
8.	<a href="#"><u>Role of the city or town manager concerning the need for court personnel</u></a> .....	14
9.	<a href="#"><u>Role of the city or town manager and finance department in approving travel arrangements for judges and court staff to attend compulsory educational conferences and meetings</u></a> .....	15
10.	<a href="#"><u>Applicability of city or town personnel rules to employees of the municipal court</u></a> .....	16
11.	<a href="#"><u>Liability for court operations and employees</u></a> .....	16
12.	<a href="#"><u>Authority over employees assigned to the court on a part-time basis</u></a> .....	17
<b>D.</b>	<b><a href="#"><u>Facilities</u></a></b> .....	17
1.	<a href="#"><u>Responsibility for providing facilities, staff, and other resources to ensure the safe and effective operation of the court</u></a> .....	17
2.	<a href="#"><u>Use of the courtroom by the city or town for non-judicial purposes</u></a> .....	18
<b>E.</b>	<b><a href="#"><u>Records</u></a></b> .....	18
1.	<a href="#"><u>Responsibility for maintaining municipal court records</u></a> .....	18
2.	<a href="#"><u>Availability of court records to city or town personnel not employed by the court</u></a> .....	18

## Introduction

In 1994, the Arizona Administrative Office of the Courts (AOC) developed the predecessor of this document, titled the Municipal Court Q&A, in response to questions posed by the Arizona League of Cities and Towns concerning the relationship between local governing bodies and their municipal courts. Since then, the AOC, Legal Services Office has received and responded to additional questions on this subject and produced additional versions of the Q&A that we provided to the League for comment and distribution to members. Recently, AOC staff worked with a committee of judges and court administrators to address suggested changes, expand, reformat, and reorganize the Q&A to produce the current municipal court document.

This document is provided as guidance to judges, court staff, and city officials to assist in resolving the most common issues involving the relationship between the municipal court and other branches of city or town government. It does not address all the issues that may arise, and the answers given may not apply in every situation, but it is designed to provide some clarification about respective roles and responsibilities concerning the operation of the municipal court. General and specific (where available) authority is provided for the content in the footnotes of this document.

This document represents the AOC's understanding of relevant constitutional provisions, statutes, rules, case law, and court orders.

1. *City or town obligation to maintain a municipal court.*

State law requires municipalities to maintain a court to adjudicate cases involving criminal, civil traffic, and ordinance violations committed within the city or town limits.<sup>81</sup> The municipality may establish its own court or enter an intergovernmental agreement with either a justice court with jurisdiction within the municipality or another municipal court within the same county to handle those cases.

2. *Coordination in consolidating a municipal court.*

A municipality is authorized to enter into an intergovernmental agreement<sup>82</sup> for performance of the services of its municipal court by either a justice of the peace court in whose jurisdiction the municipality is located or another municipal court within the same county.<sup>83</sup>

Notice of opening, closing, consolidating, collocating, or splitting of courts should be provided to the Administrative Office of the Courts and assistance will be provided upon request. To facilitate creating or changing the administration or operation of courts, Court Services has created a

---

<sup>81</sup> [C.A.R.S. § 22-402.](#)

<sup>82</sup> [C.A.R.S. § 11-952.](#)

<sup>83</sup> [C.A.R.S. § 22-402\(C\).](#)

document, [Guidelines for Courts: Opening, Closing, Consolidating, Co-locating and Splitting Courts](#), which provides checklists about governance, external agencies, automation, financial, forms, records management, and staffing.

3. *Legal status of municipal courts.*

In [Winter v. Coor, 144 Ariz. 56, 59, 695 P.2d 1094, 1097 \(1985\)](#) the Arizona Supreme Court held that magistrate (municipal) courts are part of the integrated judicial department of this state, citing Article VI, § 1 of the Arizona Constitution. Consequently, municipal courts have authority and duties under the state constitution and statutes in addition to their duties as part of municipal government, must be administered as a separate branch of municipal government pursuant to Ariz. Const. Art. III, and are subject to the administrative authority of the Supreme Court pursuant to Ariz. Const. Art. VI § 3.

4. *Relationship between the municipal court and city or town.*

In [Winter v. Coor](#), the Supreme Court held that municipal judges are judicial officers, not officers or agents of the town<sup>84</sup>. The Court further acknowledged the necessity of maintaining municipal courts as fair, independent, and impartial tribunals, and the importance of preserving the public's perception of these courts as impartial and unbiased. So, while the judge is selected in the manner set forth in the municipal charter or ordinances, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court is limited by the need for the courts to operate in a fair, independent and impartial manner. Interference that impedes the court from carrying out the impartial administration of justice violates the distribution of powers provision of the Constitution of the State of Arizona, and the fundamental principles of our constitutional form of government. The municipal court, consistent with relevant constitutional provisions, statutes, and case law, must maintain its impartiality while fostering a cooperative relationship with the executive and legislative departments of municipal government. The court is not part of the city or town administration subject to the supervision of the manager.<sup>85</sup> Rather the court is the judicial department of municipal government and part of the judicial branch of state government subject only to the judicial appointments, reasonable policy-making, and appropriations authority of the council.

5. *Authority to administer the municipal court.*

Through Supreme Court [Administrative Order No. 2005-32](#), the chief justice delegated Art. 6, § 3 administrative supervisory authority to the presiding superior court judge of each county and to the presiding judge of each municipal court. "Presiding judges shall be the Chief Judicial Executive

---

<sup>84</sup> [144 Ariz. at 62, 695 P.2d 1049, 1100.](#)

<sup>85</sup>"It is our conclusion that the magistrate courts are indeed part of the integrated judicial department of this state." [Winter v. Coor, 144 Ariz. 56, 59, 695 P.2d 1094, 1097 \(1985\).](#)

Officers of their respective counties and shall exercise administrative supervision over the superior court including all of its divisions and judges thereof in their counties. “Presiding judges shall also exercise administrative supervision over the municipal courts in their counties.” The presiding judge of the county delegates administrative duties to the presiding municipal court judges in the county.

[Administrative Order 2005-32](#) specifically provides that presiding municipal court judges may appoint a court administrator according to local charter or ordinance provisions. The presiding municipal court judge supervises judges, judicial staff, and non-judicial staff while they are performing work for the court. Presiding municipal court judges are also specifically authorized to supervise the internal administrative functions of the court including personnel, training, facilities, procurement, finance, and court security. Presiding municipal court judges oversee court administrative operations including:

- Preparing and submitting an annual budget for the court.
- Establishing and maintaining docketing, calendaring, case management policies and procedures, and court automation systems.
- Setting bond schedules.
- Reporting case activity statistics.
- Jury management.
- Records management.
- Compliance with the Minimum Accounting Standards adopted by the Supreme Court.

#### 6. *Municipal court operational reviews and audits*

Court operations are reviewed periodically by the AOC as part of the Supreme Court’s A.R.S. Const. Art. VI § 3 supervisory duties. Operational review reports may be obtained upon request by city officials.

The city or town may conduct a separate audit of the municipal court in a manner that does not impair the ability of the court to conduct business as required by [C.A.R.S. § 22-402\(A\)](#) and court rules. Fiscal or management audits or an organizational review of a municipal court may proceed with the agreement of the presiding judge as to the timing, scope, and nature of the audit or review in order to minimize the disruption of judicial proceedings. This agreement should not be unreasonably withheld. Any audit or review must not target a judicial decision of a court.<sup>86</sup>

The presiding municipal judge should be given the results of any such audit or review to determine whether any responsive action is warranted. The court is required to “provide the presiding judge

---

<sup>86</sup> [Ariz. Const. Art. III.](#)

of the county and the AOC Court Services Division a copy of all final reports, findings and evaluations from any audit within seven business days of receipt.” ACJA § 1-401(G)(3).

7. *Authority to set municipal court hours of operation.*

The city or town legislative body may set the days and hours of operation of the municipal court in the same manner as the hours of other municipal offices are established under a charter or ordinance. This could include closing the court some days of the week, requiring furlough days, and holding night sessions, in addition to regular day time hours, if the city or town provides sufficient judicial and support staff for such sessions.<sup>87</sup> The presiding judge's recommendation regarding the optimal hours of court operation should be sought and given great deference.

Such hours must not conflict with hours of the municipal court set by other authority such as statutes, the Arizona Rules of Court, or the presiding judge of the county. The hours must not be set in such a manner as to unreasonably impede the public's access to justice or impair the court's ability to conduct its business consistent with the operation of the entire justice system in the county.<sup>88</sup> This includes effective arrangements for coverage of orders of protection, initial appearances, and any other matters required to be addressed over a weekend.

8. *Authority to require the judge to attend court every business day and use of attendance as a criterion for evaluating the judge's performance.*

Such an ordinance would be unreasonably intrusive upon the administration of the municipal court and is, therefore, inconsistent with distribution of powers principles. Due to illness and other necessary absence for personal reasons, no officer or employee can perform or reasonably be expected to perform assigned duties every day of the year except weekends and holidays. Leave policies are established for employees to provide for absence for personal reasons. Of course, a leave policy for judges could be adopted as well. However, a judge is expected to perform the established duties of the office for the established salary without regard for the time required. Leave policies and practices are matters of internal court administration appropriately within the authority of the presiding municipal judge to operate the court in a manner that best serves the administration of justice.<sup>89</sup>

---

<sup>87</sup> [C.A.R.S. § 22-402](#).

<sup>88</sup> Ariz. Const. Art. III; [C.A.R.S. § 22-402\(A\)](#).

<sup>89</sup> “Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal court including a. Determining judicial assignments for each judge and, within guidelines established by city or town council, establishing and maintaining standard working hours and times to effectively discharge those assignments.” Administrative Order 2005-32(C)(3). A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them. Rule 81, Supreme Court Rules, Code of Judicial Conduct, Rule 2.12 (B).

Consistent with distribution of powers, an ordinance could require that the municipal court be open and appropriately staffed to conduct court business. This is also consistent with the approach to court hours taken in Art. 6, § 17 that requires the superior court be open except on non-judicial days, and the requirement in [C.A.R.S. § 38-401](#) that requires all state offices be open at specified times. However, requiring that a judge be present during all hours that the court is open goes far beyond what is reasonably needed to assure that the court be open and operating effectively and, instead, intrudes upon the presiding municipal judge's discretion to manage the court in a manner that achieves this legitimate objective of municipal government.

[Winter, 144 Ariz.at 64, 695 P.2d at 1102](#) and [H.Jett v. City of Tucson, 180 Ariz. 115, 123, 882 P.2d 426, 434 \(1994\)](#), imply that the city or town council clearly has responsibility and authority to evaluate judges in order to determine whether a judge should be appointed for an additional term. However, it would not be reasonable to negatively evaluate a judge for not being present at the municipal court due to absence for legitimate personal reasons or to perform other professional duties as discussed above.

9. *Reporting Judicial Misconduct.*

The Arizona Commission on Judicial Conduct, created by Article VI.I of the Arizona Constitution receives and investigates reports of judicial misconduct. The Commission posts information on its website about the complaints it has received and how they were resolved for complaints dating back to 2006, see [azcourts.gov/azcjc](http://azcourts.gov/azcjc).

B. Budget and Finances

1. *Responsibility for providing staff and other resources to ensure effective court operations.*

The case law is clear that municipal courts are part of the state's integrated judiciary ([Winter v. Coor](#)) and therefore the same, or at least similar, standards apply to municipal courts as to the superior court.<sup>90</sup> In [Maricopa County v. Dann](#), the Supreme Court held that courts have a right to necessary personnel to carry out the court's constitutional and statutory duties, and that legislative bodies have the duty of approving personnel requests unless there is a clear showing that the judges acted unreasonably, arbitrarily, or capriciously in making the request. First, the

---

<sup>90</sup> [C 157 Ariz. 396, 758 P.2d 1298 \(1988\)](#) (Superior Court). "The municipal court can only engender proper respect for the law and provide justice in the individual case if the court is provided with sufficient judges, support staff, legal resource materials such as the Arizona Revised Statutes, training opportunities for court personnel and physical facilities to assure prompt, fair and dignified administration of justice. The Presiding Municipal Court judge responsible for the administration of the Municipal Court should be mindful of the needs of the court and seek the cooperation of the funding authority to provide the funds required to meet those needs." Standard 8, Standards for Municipal Courts Revised Administrative Order 83-11 (Jan 17, 1990).



presiding judge must follow the “procedure to request employment of necessary court personnel.”<sup>91</sup> The presiding judge should not ignore the funding authority’s policies or procedures because the judge merely disagrees with the policies and “an orderly fiscal policy is a governmental necessity and to order expenditures for personnel in excess of budget provisions might be unreasonable, arbitrary and capricious.”<sup>92</sup> Additionally, courts should be mindful if a municipality is experiencing a fiscal deficit or shortfall and work cooperatively with the municipality to achieve a mutually agreeable solution. If the court follows the funding authority’s policies and is still denied adequate staff or facilities, the court may, through its inherent powers, order the funding authority to provide for adequate staff or facilities.<sup>93</sup>

2. *Preparation of the municipal court budget and requirement to follow city or town budget and finance procedures.*

The presiding judge of the municipal court and the court administrator, if any, must prepare a budget for the municipal court.<sup>94</sup> In doing so they must follow any budgeting and finance procedures established by the city or town.<sup>95</sup> The state judicial department budget is separate from the Governor’s budget and is presented directly to the legislature. Likewise, the municipal court’s budget may be presented with the manager’s budget or directly to the council. The budget process must yield funding necessary for the proper operation of the court. The local government must defer to the judge’s determination of the financial needs of the court and the advisability of implementing any recommendations, unless the judge’s determination is arbitrary, capricious, or unreasonable.<sup>96</sup>

The municipal court must follow city or town expenditure procedures unless the Procurement Code for the Judicial Branch (PCJB)<sup>97</sup> has been adopted by the Presiding Judge of the county to apply to the municipal court. Every court is required to follow a procurement procedure substantially equivalent to the PCJB.<sup>98</sup> The authority of the municipal judge to make individual

---

<sup>91</sup> [C Maricopa County v. Dann, 157 Ariz. 396, 398, 758 P.2d 1298, 1300 \(1988\).](#)

<sup>92</sup> *Id.*

<sup>93</sup> “Thus, while we recognize the inherent power of a justice court to require the providing of personnel in order to perform its necessary functions, this power should be exercised only when there is no established method for obtaining needed personnel or when a reasonable, good faith, diligent effort to utilize such methods has been attempted and has failed.” [C Reinhold v. Board of Supervisors of Navajo County, 139 Ariz. 227, 232, 677 P.2d 1335, 1340 \(Ct.App. Div. 1, 1984\).](#)

<sup>94</sup> Administrative Order 2005-32, Presiding Judge – Municipal Court:

<sup>95</sup> [C Maricopa County v. Tinney, 183 Ariz. 412, 904 P.2d 1236 \(1995\)](#), [C Maricopa County v. Dann, 157 Ariz. 396, 758 P.2d 1298 \(1988\).](#)

<sup>96</sup> [C Reinhold v. Board of Supervisors of Navajo County, 139 Ariz. 227, 232 \(Ct. of Appeals 1984\)](#) recognized the inherent power of a justice court “to require that personnel necessary for its function as a court be supplied by the board of supervisors unless such a request is arbitrary, capricious or unreasonable.”

<sup>97</sup> ACJA § 1-402.

<sup>98</sup> ACJA § 1-402(B)(2).

expenditures within the court's budget should be equivalent to the authority of the manager and subordinates to make expenditures within executive agency budgets.

3. *Authority of the municipal judge to move funds between budget line items and to make fiscal-neutral staff reassignments.*

The authority of the presiding municipal judge over the court's budget is provided by the city or town council and [Administrative Order 2005-32](#). In order to avoid distribution of powers conflicts between the presiding judge, the manager, and the council, the council should provide funding for the court in a manner that allows the presiding judge flexibility similar to the manager regarding how the monies are allocated. This avoids placing the manager in the role of approving court expenditures in a manner that intrudes upon the authority of the presiding judge to administer the court impartially pursuant to [Administrative Order 2005-32](#) or that interferes with court operations. As noted below, the presiding judge already has independent authority under state statutes to manage and expend monies collected or granted pursuant to statute.

4. *Authority to direct the expenditure of funds appropriated to the court through state statutes or municipal ordinances.*

If the monies at issue are state funds, such as judicial collection enhancement fund monies granted to the court under [C.A.R.S. § 12-113](#) or time payment fees authorized to be expended under [C.A.R.S. § 12-116](#), these monies must be spent only for the purposes stated in such grant or authorization. These funds are expressly provided for use "by the court" which means the presiding judge rather than the manager. Additionally, state statutes and the terms of grants typically prohibit use of state or grant funds to supplant or replace local funds for a particular court program or expenditure.<sup>99</sup> If the monies at issue are generated pursuant to a municipal ordinance, the ordinance should provide how expenditure of the monies is authorized. Such ordinances should respect distribution of powers principles by providing the presiding judge discretion over expenditure of monies dedicated to funding court operations.

5. *Responsibility for collection of court fine, sanction, restitution, and bond payments.*

Under the direction of the presiding judge, the court must collect all fine, sanction, restitution, and bond payments imposed by the court and deposit them with the city or town treasurer, as required by [H.A.R.S. § 22-407](#) and [C.A.R.S. § 41-2401](#). The Supreme Court has adopted detailed minimum accounting standards to govern the handling of court payments by court personnel.<sup>100</sup>

---

<sup>99</sup> See, e.g., A.R.S. §§ 12-102.02(E)(state aid to the courts fund); 12-113(C) (judicial collection enhancement fund); and 12-135(D)(alternative dispute resolution fund).

<sup>100</sup> ACJA § 1-401.

[Arizona Rules of Criminal Procedure Rule 26.12\(b\)](#), provides that payment of a fine, restitution, or both, must be made to the clerk of the superior court unless the court expressly directs otherwise. [A.R.S. § 22-423](#) extends this rule to municipal courts. Although [A.R.S. § 22-404](#) provides for ultimate payment to the city or town treasurer of all fines and forfeitures collected, the statute clearly implies that the municipal court must collect the payments. Other statutes also require or imply that procedure. With regard to bail and civil sanction deposits, [A.R.S. § 22-424](#) requires the judge to establish schedules for traffic offenses and violations that do not involve death or a felony and to permit receipt of bail bonds and provided for acceptance of deposits for civil traffic violations on behalf of the court.

Further, [A.R.S. § 28-1559\(A\)\(2\)](#) requires every judge, magistrate, or hearing officer to, “keep a record of each official action by the court” and the “amount of the civil penalty, fine or forfeiture resulting from each traffic complaint deposited with or presented to the court...” Pursuant to the requirements of this section, it appears that fines and forfeitures should be collected by the court in order to ensure the accuracy of the records that the court is required to maintain. Consistent with judicial department Minimum Accounting Standards, the disposition of the funds received may be provided by ordinance or city policy to the extent it is not otherwise provided by law.

6. *Court collection of fees in addition to those expressly provided in [A.R.S. § 22-404\(B\)](#).*

[A.R.S. § 22-404\(E\)](#) provides that any city or town may establish and assess fees for court programs and services. Unless specifically prohibited by law, a particular fee is subject to deferral, reduction, or waiver by the Judge in a case. Local fines and many local fees are subject to state surcharges.<sup>101</sup>

7. *Authority to resolve fines and civil sanctions that are determined to be uncollectible.*

There is currently no statutory authority that would allow courts to forgive outstanding obligations in total.<sup>102</sup> While the city or town may adopt procedures to “write-off” court obligations owed to the city or town, amounts to be transmitted to the state general fund or other state agencies may only be written off by the state or those agencies pursuant to state law.

8. *Disposition of interest earned on funds designated for use by the court.*

Unless otherwise provided, interest earned on an account must be deposited in that account to serve the purpose for which the account was established, [ACJA § 5-107\(C\)\(14\)](#) specifically provides “interest earned remains with the fund and may be used in support of the approved case processing plan.”

---

<sup>101</sup> Ariz. Atty. Gen. Op. 100-015 (June 22, 2000).

<sup>102</sup> [A.R.S. § 13-824](#) authorizes a court to convert an order to pay fines, fees, assessments, or incarceration costs to community restitution, if the court finds the defendant is unable to pay.

C. Personnel

1. *Appointment and reappointment of municipal judges.*

The Winter case requires appointment to at least a two-year term from which a judge may not be removed without cause. Jett v. City of Tucson suggests “Under contemporary standards, a 4-year term seems appropriate.”<sup>103</sup> Additionally, a change in the number of judges may not affect removal of a judge during the judge’s term.<sup>104</sup> Both cases imply that at the end of the term the judge may be removed without cause. However, a decision not to reappoint a judge may be held invalid when it is in retaliation for the judge’s refusal to “commit an act or omission that would violate the Constitution of Arizona or the statutes of this state,”<sup>105</sup> such as the separation of powers provided in Article III of the Arizona Constitution. Cities and towns have established judicial selection and performance review committees to make recommendations for appointment and reappointment of judges based upon merit. The recommendations of these committees should be given great weight by city and town councils in order to avoid invalid reappointment decisions.

2. *Obligation to pay judicial salaries.*

Municipal judge salaries may not be reduced during the term of office even if they are not set by charter or ordinance, and even in the event of budget reductions.<sup>106</sup>

3. *Judge’s refusal/waiver of payment of the judge’s salary.*

Since the constitution prohibits reduction of the current salary, however established, during a municipal judge’s term, a judge cannot effectively waive part of the judge’s salary during the term.<sup>107</sup> However, a municipal judge may voluntarily donate back to the city or town any part of the salary the judge has been paid.

4. *Authority of the city or town to conduct performance reviews of the presiding municipal judge.*

Another implication of the Winter and Jett cases is that since councils have discretion regarding renewal of a municipal judge's appointment, they must have the discretion to review the

---

<sup>103</sup> Id. [H 180 Ariz. 115, 125 n.6, 882 P.2d 426, 436 n.6 \(1994\)](#).

<sup>104</sup> See also Ariz. Const. Art. VI § 33.

<sup>105</sup> [A.R.S. § 23-1501\(3\)\(c\)](#).

<sup>106</sup> [U Ariz. Const. Art. VI § 33](#).

<sup>107</sup> [Glavey v. United States, 182 U.S. 595, 609 \(1901\)](#) (holding that a failure to demand a salary guaranteed by statute was not a waiver of the same).

performance of that judge prior to renewal.<sup>108</sup> Of course, the review must be performed in a manner that does not interfere with performance of the judge's duties and carefully avoid criteria for non-renewal that conflict with federal or state law, court rules, the impartiality of the court, or any other ethical obligation of the judge. Municipalities may use the results of audits and reviews conducted by the city or town and any review conducted by the judiciary. Any city or town council wishing to establish a system for evaluating the performance of a municipal judge may seek assistance from the Administrative Office of the Courts.

5. *Requirements for appointing a part-time municipal judge.*

There is no statutory authority for appointing a pro tem judge in a municipal court as there is in justice court. However, a city whose charter provides for judges pro tempore may appoint them.<sup>109</sup> Additionally, the constitutional provision that permits non-lawyer judges pro tem in justice courts does not cover municipal courts.<sup>110</sup> Consequently, it appears that a pro tem municipal court judge would need to be an attorney.<sup>111</sup>

A municipality needing the services of a part-time judge may want to consider appointment of an “associate” or “special” magistrate instead of a pro tem judge. Under Winter v. Coor a magistrate must have at least a two-year term. Therefore, an associate or special magistrate must be appointed for a two-year term, rather than at the pleasure of the council or the judge but could serve part time or “on call.” The municipal ordinance would need to establish the qualifications and the process for the appointment. If it provides for the municipal court judge to make or recommend the appointment, § 1-305 of the Arizona Code of Judicial Administration applies. An elected justice of the peace whose precinct is located in a city or town is authorized by [C.A.R.S. § 22-403\(B\)](#) to serve as a municipal court judge for that city or town.

6. *Procedures for appointing “special judicial officers” such as associate magistrates.*

---

<sup>108</sup> “In our opinion, an interpretation of the amendment [to Article VI.I, Section 5 of the Arizona Constitution] that accommodates parallel processes of removal furthers its underlying purpose, i.e., providing citizens with added protection against magistrates who engage in misconduct. By preserving a city's authority to remove its magistrates from office, such an interpretation places magistrates in the same position as all other judges in the state, who are subject to removal by means other than a disciplinary proceeding initiated by the Commission.” [H.Jett v. City of Tucson, 180 Ariz. 115, 1240, 882 P.2d 426, 431 \(1994\).](#)

<sup>109</sup> [C.State v. Mercurio 153 Ariz. 336, 339, 736 P.2d 819, 822 \(App. 1987\).](#)

<sup>110</sup> [U.Ariz. Const. Art. VI § 31\(A\).](#)

<sup>111</sup> “Qualifications. Persons applying for judicial office shall meet the minimum qualifications required by law and such special qualifications for the position as may be established by the chief justice, the chief judge, the presiding judge, or the chief magistrate. Persons applying for judge pro tempore offices, except justice of the peace pro tempore, shall be at least 30 years of age, of good moral character, and admitted to the practice of law in and a resident of the State of Arizona for five years next preceding their taking office as required by article 6, § 31 of the Arizona constitution.” ACJA § 1-305(C).

A municipality has the initial responsibility to determine who appoints a judge.<sup>112</sup> If the municipality gives the presiding judge responsibility to appoint or recommend appointment of other judicial officers, then the presiding judge must follow the requirements of [ACJA § 1-305 of the Arizona Code of Judicial Administration](#) in carrying out that responsibility. The presiding judge must establish a selection process consistent with § 1-305 and with municipal charter and ordinance provisions. If the city or town council selects other judicial officers without the presiding judge's official involvement, [ACJA § 1-305](#) does not apply. However, it is recommended the council follow a similar procedure.

7. *Authority to hire, supervise, discipline, and terminate municipal court employees.*

The appellate courts of this state have consistently held that the employees of courts within the state must be under the direct control and supervision of the presiding officer of each court.<sup>113</sup> While there are no cases that specifically address the issue of control over municipal court employees, Winter v. Coor made it clear that municipal courts are a part of the state's integrated judiciary. Court personnel who are directly connected with the operation of the court must be controlled by the court. Ethical Rule 2.12, require judges to supervise court officials and staff to assure conformance with the codes of conduct applicable to judges and other court employees.<sup>114</sup>

Therefore, the municipal court judge or appointee has exclusive authority to hire, supervise, discipline, and fire its employees under applicable policies and procedures, though the judge may consult and receive assistance from another department of the municipal government such as the human resources office. The city or town manager has a limited role or no role in court personnel matters depending upon the duties the council assigns to the manager. In order for the court to function as a co-equal branch of municipal and state government the personnel of the court must be subject to the exclusive control of the presiding judge.<sup>115</sup> This includes employee hiring, supervision, dismissal, and compensation consistent with reasonable personnel, job classification, and budget policies.<sup>116</sup> The manager has a role in these matters only if the manager also serves as the human resources director. Otherwise, the presiding judge looks to the human resources director for advice concerning court employees, just as the manager looks to the human resources director for advice concerning other municipal employees.

---

<sup>112</sup> [C.A.R.S. § 22-403\(A\)](#).

<sup>113</sup> E.g. [Broomfield v. Maricopa County, 112 Ariz. 565, 544 P.2d 1080, 1082 \(1975\)](#); (referring to "the judiciary's inherent power of control over personnel directly connected with the operation of the courts . . . includes bailiffs, probation officers, court reporters, court administrators, secretaries, and others working directly in connection with the administration of justice."), citing [Mann v. County of Maricopa, 104 Ariz. 562, 563, 456 P.2d 931, 933 \(1969\)](#) (superior court bailiff and probation officer).

<sup>114</sup> A.R.S. Sup.Ct.Rules, Rule 81, Code of Jud.Conduct, Rule 2.12.

<sup>115</sup> Administrative Order No. 2005-32(C)(1).

<sup>116</sup> [Mann v. County of Maricopa](#), at 566, [456 P.2d 931, 936 \(1969\)](#) ("The department of government which has the power of control of personnel directly connected with the operation of the Courts is the Judicial Department.").

8. *Role of the city or town manager concerning the need for court personnel.*

Distribution of powers principles and the Supreme Court’s administrative orders require that the presiding judge have the opportunity to make recommendations to the city or town council concerning the need for court positions.<sup>117</sup> The budgeting policies or ordinances adopted by the council should state what, if any, role the manager has in evaluating the need for court positions. Budget related decisions such as this must be made ultimately by the council with deference to the presiding judge’s assessment of funding required to operate the court in the manner required by the constitution, statutes, and court rules.

9. *Role of the city or town manager and finance department in approving travel arrangements for judges and court staff to attend compulsory educational conferences and meetings.*

The municipal court is part of the integrated judicial department of the state.<sup>118</sup> All Arizona courts and the judges of these courts are subject to the [C.A.R.S. Const. Art. 6 § 3](#) administrative supervisory authority of the chief justice. Within their first year of taking the bench, all new judges must complete judicial orientation training approved by the Supreme Court’s Committee on Judicial Education and Training.<sup>119</sup> All judges are required to obtain a minimum of 16 hours of judicial education each year and any additional judicial education required to maintain competence in the law. Similarly, all judicial branch employees are obligated to complete 16 hours of judicial education pertaining to their job duties, including at least six hours of live training.<sup>120</sup> The number of credit hours is pro-rated for part-time employees. The Arizona Code of Judicial Administration also requires every judge to attend the state judicial conference unless a judge is excused in writing by the Chief Justice.<sup>121</sup> Requiring all judges to meet minimum judicial education requirements and to attend the annual judicial conference clearly fosters the integration of the judicial department contemplated by the Arizona Constitution by allowing consistent administrative direction and judicial education of all judges and court personnel. Judicial educational activities sometimes include hotel arrangements that place the judge in close proximity to education programs, meetings, and other judges. Attendance by judges and court staff at these events is a necessary cost of operating the municipal court and should be accommodated in the municipal travel policies and budget. Therefore, there should be no basis for the manager or the finance department to veto attendance at these events. Of course, the court must operate within reasonable budgetary limitations and reimbursement for travel should

---

<sup>117</sup> [C Maricopa v. Dann, 157 Ariz. 396, 401, 758 P.2d 1298, 1303 \(1988\)](#) (“The presiding judge of the superior court must follow the county procedure to request employment of necessary court personnel.”).

<sup>118</sup> [C Ariz. Const. Art. 6 § 1.](#)

<sup>119</sup> [C Arizona Code of Judicial Administration § 1-302\(I\)\(5\).](#)

<sup>120</sup> “All full-time judges and court personnel governed by these standards shall complete at least sixteen credit hours of judicial education each year, including ethics training.” ACJA § 1-302(H)(1).

<sup>121</sup> For example, [C Arizona Code of Judicial Administration § 1-302\(I\)\(1\)\(c\).](#)



be governed by reasonable travel policies which apply equally to travel by council members, administrative employees, and municipal judges.

10. *Applicability of city or town personnel rules to employees of the municipal court.*

City or town personnel rules apply to municipal court employees unless these rules have been replaced by rules adopted for court personnel or they interfere with the operation of the court. The presiding judge of a county may adopt reasonable judicial personnel rules required for the court to operate effectively.<sup>122</sup> Separate judicial personnel rules that are inconsistent with city or town rules concerning some matters such as hiring, supervision, and dismissal of employees may be reasonable. On the other hand, separate rules concerning matters such as employee benefits may be unreasonable due to the imposition of additional cost on the city or town. The effect of rules on the ability of the court to operate must be considered. The Supreme Court has adopted administrative orders and administrative code provisions which set reasonable minimum standards for courts addressing sexual harassment allegations and the needs of persons with disabilities, for judges involved in appointing special judicial officers, and a Code of Conduct for Judicial Employees.<sup>123</sup>

As the chief executives of co-equal branches of government, the presiding municipal judge and the city or town manager should make every effort to reach agreement regarding which municipal personnel rules apply to court personnel, which rules need to be modified to recognize the authority of the presiding judge, and which personnel matters should be governed by separate rules covering court employees.<sup>124</sup> Rules that make the manager or a personnel board the ultimate authority over other municipal employees must not be applied to court employees. Instead, the presiding municipal judge stands in the place of the manager with respect to court employees. Where agreement cannot be reached, the reasonable judgment of the presiding municipal judge will prevail.

11. *Liability for court operations and employees.*

As provided by statute, municipal judges are officials of municipal government just as Supreme Court justices are officials of state government.<sup>125</sup> Any liability resulting from the official acts of these judges are liabilities of the municipalities and state, respectively.<sup>126</sup> The degree of manager or council control over these acts does not affect this liability.

---

<sup>122</sup> Administrative Order No. 2005-32.

<sup>123</sup> E.g. Administrative Order No. 2010-13; see also ACJA § 1-303: Code of Conduct for Judicial Employees.

<sup>124</sup> Ariz. Const. Art. III.

<sup>125</sup> [C.A.R.S. § 22-403\(A\)](#).

<sup>126</sup> “Given our decision that justices of the peace are local officers, it follows that, pursuant to [C.A.R.S. § 11-532](#), the county attorney is responsible for providing legal advice and representation to justices of the peace so requesting. Liability coverage for justices of the peace is the county's responsibility, as set forth in [C.A.R.S. §§ 11-261](#) and –981.” [Collins v. Corbin, 160 Ariz. 165, 167, 771 P.2d 1380, 1382 \(1989\)](#).




12. *Authority over employees assigned to the court on a part-time basis.*

A: The presiding municipal judge must have full authority over all court employees during the time they are performing court duties including part-time employees who perform other duties for the city or town.<sup>127</sup> For the portion of their employment during which part-time employees perform court duties, they must be governed by personnel and operational policies established by the court and supervision by the court. The court should not be required to hire and retain a part-time employee simply because that employee is performing other duties for the city or town. The principles of distribution of powers and conflict of interest preclude assigning an employee both court duties and duties related to the administration of justice in the executive branch of municipal government such as the police department or the prosecutor's office.<sup>128</sup>


D. Facilities

1. *Responsibility for providing facilities, staff, and other resources to ensure the safe and effective operation of the court.*

In  [Mann v. County of Maricopa 104 Ariz. 561, 456 P.2d 931 \(1969\)](#), the Arizona Supreme Court held that courts of general jurisdiction have the right to quarters appropriate to the office and personnel adequate to perform their functions. The presiding judge is authorized to provide for court security, including implementation of reasonable security standards. Presiding municipal judges may establish court security policies and procedures to provide a safe work environment for judicial employees, litigants, and users of the court that meet established court security standards and are consistent with any direction provided by the Presiding Judge of the county, who exercises administrative supervision over municipal courts.<sup>129</sup> Court security may include procedures, technology, security personnel, or architectural features needed to provide a safe work environment. The presiding judge may control access, including prohibiting or regulating the possession of weapons or potential weapons in the area of any building in which the court is located.

2. *Use of the courtroom by the city or town for non-judicial purposes.*

---

<sup>127</sup> “The department of government which has the power of control of personnel directly connected with the operation of the Courts is the Judicial Department.”  [Mann v. County of Maricopa, 104 Ariz. 561, 566 \(1969\)](#).

<sup>128</sup> “A judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” ACJA § 1-303, Canon 1, Rule 1.2. See also Standard 3, Standards for Municipal Courts Revised Administrative Order No. 83-11 (Jan. 17, 1990). “No judge should be a member of an association, the purpose of which is to advance the interests of law enforcement officers, prosecutors or defense attorneys.”

<sup>129</sup> Admin. Order No. 2005-32.

While the courtroom must be available as needed for court business and should not be used in a manner which conflicts or has the appearance of conflicting with the judicial function of the court, it is both a court and municipal facility.<sup>130</sup> When there is no conflict with court operations, there is no reason why these facilities cannot be made available for other governmental purposes. However, the court must ensure that any court records maintained in the area and the facility are secured from access by other than authorized court personnel.<sup>131</sup>

## E. Records

### 1. *Responsibility for maintaining municipal court records.*

The court must maintain court records, [C.A.R.S. § 22-428](#). [C.A.R.S. § 39-121.01\(B\)](#) provides that, “All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities which are supported by funds from the state or any political subdivision thereof.” As the officer in charge of the court, the presiding judge is charged with the responsibility of maintaining the records of the court. [C.A.R.S. § 39-121.01\(C\)](#) further provides that the officer responsible for maintaining records is also responsible for the “preservation, maintenance and care of that officer’s public records” and must “secure, protect and preserve public records from deterioration, mutilation, loss or destruction....” Therefore, it is clear the presiding judge of the municipal court is the sole and proper custodian of all records relating to the court and its operations.

### 2. *Availability of court records to city or town personnel not employed by the court.*

Although access to most public records in Arizona is governed by state statute, the Supreme Court has chosen to exercise its administrative authority over all court records by the adoption of Rule 123, Rules of the Supreme Court. Access to records held by any court, including municipal courts, is governed by Rule 123.

The presiding judge of the municipal court has discretion, within limits, to determine what court records are available for inspection by the public, including city or town officials, and should establish procedures for the inspection of records to ensure their preservation.<sup>132</sup> Court files and pleadings must at all times remain in the care and custody of the judge and designated court staff unless a written order from the judge authorizes otherwise.<sup>133</sup> Likewise, all mail addressed to the court must be opened and read by authorized court staff.

---

<sup>130</sup> [C.A.R.S. § 22-402\(A\)](#).

<sup>131</sup> [Arizona Supreme Court Rule 123](#).

<sup>132</sup> Rule 123(c)(2).

<sup>133</sup> Rule 123(i)(1).

Security measures should be implemented to secure court records in the municipal court during the hours the court is not open or in situations where court staff are out of the office.<sup>134</sup> For example, court files should be locked at night and at any time when the file room is left unattended. “The only individuals who should have keys to the court facility are the judge, court personnel so designated by the judge, and individuals responsible for building maintenance and security.”<sup>135</sup> Use of this access must be limited to the authorized purpose.

---

<sup>134</sup> *Id.*

<sup>135</sup> Recommendation 6, Bullhead City Report, Administrative Office of the Courts, October 1988.