

A Changing Landscape





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Ohio Courts Futures Commission
Report

May 2000

May 1, 2000

Chief Justice Thomas J. Moyer
Supreme Court of Ohio
Rhodes State Office Tower
30 East Broad Street
Columbus, OH 43266

Dear Chief Justice Moyer:

It is our pleasure to transmit to you the final report of the Ohio Courts Futures Commission.

The recommendations spelled out in the following pages are the product of nearly three years of work by 52 independent citizens who were drawn from a broad spectrum of backgrounds, professions and interests. Our deliberations benefited greatly from the interaction and diverse perspectives of the 25 lawyers and judges and the 27 non-lawyers who served as commission members.

We appreciate the energy and dedication of two hard-working staff directors, Laralyn Sasaki and Steve Stover, who kept the project organized and moving forward.

The members of the Commission were also aided by a talented and diverse advisory committee which provided invaluable background information, insightful testimony and candid feedback as our ideas for the best possible future court system evolved. We also received valuable input from the hundreds of citizens from all walks of life who testified at last Spring's public hearings across the state, or submitted comments on our preliminary proposals by letter, phone, fax and through the Commission's Internet site.

From the outset of its work, the Commission took to heart your admonition that we envision the best possible judicial branch in the year 2025 by looking beyond current issues and immediate concerns facing state courts today. As a result of that long-range focus, a number of the recommendations in this report call for new approaches and expanded court functions that depart significantly from traditional practices

Among the most significant of the Commission's recommendations are those aimed at continuing and reinforcing the excellence of judicial officers who dispense justice in our state courts.

To that end, the Commission has recommended that a statewide Judicial Qualifications Commission be created to develop more stringent minimum qualifications for judicial officeholders; to review and approve judicial candidates' compliance with those standards; to conduct periodic evaluations of serving judges; and—perhaps most importantly—to assist the

Governor by reviewing all nominees to fill in-term judicial vacancies and developing a list of best-qualified candidates from which the Governor would choose his or her appointee.

Also significant is the Commission's vision of civil courts in the year 2025 which will have evolved from their current emphasis on the filing, processing and disposition of lawsuits into a "triage system" to which citizens of all income and education levels can come to have their disputes "diagnosed" and channeled into a broad continuum of resolution processes. That continuum begins with mediation and other forms of assisted negotiation, and reserves traditional litigation only for cases in which the formality and adversary process of a trial are truly necessary.

The Commission believes it is vital that our state courts become and remain current with evolving communication and information-processing technologies in order to maximize the efficiency, accessibility, affordability and convenience of their services to the public. If our courts are to retain public respect and confidence in 2025, they must provide taxpayers with the same level of timely, cost-effective, user-friendly service they expect and receive from other public and private sector organizations.

As Ohio nears the bicentennial of its statehood in 2003, we can look back with pride on two centuries of amazing growth and achievement modulated and sustained by the rule of law. Looking ahead, it will continue to be the unique challenge of judicial institutions to measure up to ever-higher standards of efficient performance while re-affirming timeless principles of justice and due process that are periodically threatened by economic scarcity, public outrage over isolated crimes and occasional bouts of political expediency.

The ongoing challenge we see for Ohio courts over the next 25 years is to hold on to core values and preserve the best in our current system, while actively embracing new concepts, structures and processes that provide the best possible justice services to the greatest number of Ohioans.

On behalf of our fellow members of the Futures Commission, we thank you for the opportunity to address that challenge, and to help shape the future of Ohio's state courts.

Sincerely,



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A Government Of Laws

"Justice is the ligament which holds civilized beings and civilized nations together."

Daniel Webster

"The system of government passed down to us from the Founding Fathers has flourished for two centuries because it is, above all else, 'a government of laws, not men.' If we want to pass on that legacy to our descendants intact, we need to plan a 21st century court system that will uphold historic standards and principles of justice, but be flexible enough to meet the needs and earn the confidence of a rapidly changing society."

Chief Justice
Thomas J. Moyer

When the U.S. Constitution was drafted in Philadelphia in 1787, and when Ohio's first state constitution was adopted 16 years later, one of the most important checks and balances built into both documents was a strong, independent judicial branch of government.

Nothing better illustrates how important impartial justice under law was to the framers of American democracy than the oath of office prescribed for federal officials. From George Washington's day to the present, our nation's leaders have sworn allegiance not to the American people, or the Congress, or the flag...or even to the country itself. They have sworn to "preserve, protect and defend the Constitution...and to faithfully execute the laws..."

Over the past two centuries, through economic booms and depressions, liberal and conservative legislative majorities, popular and unpopular presidents, and periods of great racial, generational and social unrest, Ohioans and other Americans have brought their most significant civil and criminal disputes to the courts for resolution. And more importantly, they have **accepted and abided by the decisions handed down by those courts**—even when the verdicts went against their own strongest beliefs and personal interests.

In a very real sense, public confidence in the courts and willingness to accept their pronouncements as "the final word" in deciding public and private disputes has been the glue holding America's social contract together.

While this should be a source of satisfaction and pride to those who direct and work in our courts, it is also grounds for deep concern. It is difficult to imagine the chaos that could result if the public should ever lose confidence in judges and the legal process over which they preside—that is to say, if the day ever comes when average citizens find our courts so hard to understand, so expensive to access, so difficult to navigate, so slow to act or so ineffective in solving real-world problems that the public no longer relies on them to seek justice.

The Futures Commission & Its Charge

To help ensure that day never comes, and to focus the attention of Ohioans on the key issues our courts must confront to remain relevant and effective in the 21st century, Chief Justice Thomas J. Moyer established the Ohio Courts Futures Commission in 1997.

In his charge to the Commission, the Chief Justice pointed out that the basic structure of Ohio's state court system has changed very little since 1851. He noted that in recent years courts across the state have adapted well to vast new areas of law and government regulation, and have worked hard to keep pace with huge increases in their caseloads including a 125 percent increase in common pleas court filings since 1979.

But in light of the breakneck pace of technological change during the 1990's, and accelerating demographic and cultural trends that are already changing the needs and expectations of court users, Chief Justice Moyer said the



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time has clearly come to take a comprehensive and fearless look into the future of Ohio's courts.

Rather than focusing primarily on current data or short-term solutions to immediate problems, he challenged the Commission to "take the long view" and develop an ambitious vision of what Ohio's courts could and should look like in the year 2025—and to recommend workable strategies to move the system toward that vision from where it stands today.

As the first step in that process, the Commission was asked to identify a set of essential attributes or characteristics of a desirable future court system. These attributes were to serve as objectives toward which all recommended changes or innovations proposed by the Commission should lead.

Key Attributes of Ohio Courts In 2025

The Commission identified the following as key characteristics of a desirable Ohio judicial system in the year 2025:

- Courts that are physically, economically and functionally accessible to all Ohioans;
- Courts that are, and are perceived to be fair, impartial, open and approachable to all citizens;
- A court system that works at making itself understandable, and a well-informed public which understands and has confidence in its courts;
- Court operations that make optimum use of technology to enhance speed, efficiency, accessibility, affordability, public understanding and quality of service;
- Streamlined court processes that focus on resolving legal matters quickly, efficiently and affordably with maximum convenience for court users;
- A court-linked continuum of dispute resolution "tracks"—including mediation and other types of assisted negotiation—by which courts promote early settlement of civil cases and use trials as a last resort;
- Courts that deliver consistent, predictable outcomes by operating within a uniform structure, using standardized rules and procedures and employing uniform technology;
- An improved jury system that respects jurors and lets them take a more active role in trials;
- Judges who are chosen on the basis of superior legal and personal qualifications, well trained and continually re-educated on topics relevant to the courts;
- Court officers and support staff who are highly motivated and skilled, well-trained and reflect an attitude of professionalism and entrustment rather than entitlement.

How The Commission Worked

The 52-member Commission was comprised of 10 judges, 15 attorneys in private or public-sector practice, and a majority of 27 non-lawyer members with expertise in key fields from small and large business, the news media and local government to education, law enforcement and urban affairs.

Beginning in June, 1997, the Commission worked in five task forces which focused on different aspects of the court system. Over 18 months each task force gathered statistical data, conducted primary and secondary opinion research and solicited innovative ideas from legal experts and court users in Ohio and many

other states. Task forces also examined the best available projections about demographic, social and technological factors likely to affect the delivery of civil and criminal justice over the next 25 years.

In late 1998, following detailed analysis and discussion of the information they had gathered, each task force prepared a list of preliminary concepts or "What If" propositions aimed at achieving one or more of the objectives of the Commission's envisioned future court system. Many of these propositions suggested innovations in the current structure, operations and procedural rules governing Ohio courts. Some ideas (such as potential changes in the way Ohio's judges are selected) would require passing legislation or possibly amending the state constitution. Although the Commission did not attempt to identify financial resources to fund each of the recommendations in this report, it acknowledges that economic considerations will be among the most important to be addressed in the implementation process.

In January 1999, these preliminary concepts were compiled into a Progress Report and Summary of Concepts that was released to statewide news media and widely disseminated for public discussion and comment.

For four months during the spring of 1999, the Commission held public hearings across the state offering any interested citizen or group the opportunity to support, oppose or comment in depth on any aspect of its preliminary propositions. Transcripts of the public hearing testimony and additional input received by the Commission by letter, phone, e-mail and through its World Wide Web site were reviewed through the summer and fall of 1999. During the course of that review, some of the Commission's preliminary concepts were reaffirmed. A number of others were amended, redrafted or discarded altogether in response to the input the Commission received from concerned citizens and professional groups during the public comment period.

The end product of that review, and the culmination of the Commission's three-year process, is this Final Report. It sets forth the Commission's carefully-considered vision statements and action recommendations for a healthy and effective Ohio court system in the year 2025. The system it projects is one that has successfully addressed today's imperfections, dealt effectively with projected changes in the technological, demographic and socio-economic profile of our state, and made planning for future change an integral function of court management at all levels.

The Commission is aware that intelligent and well-intentioned people inside and outside the legal community may disagree with some of its proposals. Its members make no claim to omniscience or infallibility.

The Commission's hope and request is that the concepts set forth in the following pages be given serious and open-minded consideration as the best thinking of 52 citizens with considerable expertise in a variety of legal and professional areas—citizens who spent nearly three years conducting extensive research, engaging in many hours of thoughtful discussion and listening to a wide spectrum of opinion on how Ohio's courts can best serve the public in the new century we have just begun.

The Commission's most important recommendations are presented and discussed succinctly in the Overview which follows. Fuller discussion and rationale for recommendations is provided in the body of the report, which is divided into eight sections corresponding to the sections of the Overview.

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II Overview of Recommendations

A Changing Landscape

"If you don't know where you're going, you might wind up somewhere else."

Yogi Berra

In his remarks to the Ohio Judicial Conference announcing creation of the Futures Commission, Chief Justice Thomas J. Moyer acknowledged that trying to anticipate developments that will impact the court system 25 years from now is an uncertain proposition at best: "Think back 25 years ago. No one...could have foreseen the realities we face today in our courtrooms. The nightmare of AIDS, the promise of digital technology, the mystery of in vitro fertilization—not one was imagined 25 years ago. Yet these and countless other developments have profoundly shaped the reality of our dockets today.

Reviewing our 200-year history, we know that judges cannot sit back and wistfully hope that somehow the future will take care of itself. As an independent branch we know it is our responsibility not simply to cope with change, but to lead it."

Among a long list of social, demographic and technological trends the Futures Commission considered in developing its vision for the future were:

- **An Aging Population**

In 1999 Ohio ranked seventh in the nation for population over age 65. By 2020, one in five Ohioans will be 65 or older—and the fastest-growing segment will be those over 85! As people live longer with better health, more elderly citizens will participate in our legal system—as jurors, witnesses, parties in lawsuits, crime victims, etc.—than ever before. Maturing IRA accounts and pensions, combined with cycles of divorce and remarriage, will complicate probate matters. Increasing incidence of crime involving the elderly will call for reexamination of current attitudes about diversion and rehabilitation.

- **Increasing Cultural Diversity**

While Ohio is not California, Texas or Florida, our state has experienced a significant increase in immigration. Sociologists tell us the American "melting pot" is rapidly becoming the American "mosaic," and that newcomers from different racial, cultural and religious traditions will challenge the ascendancy of once-unquestioned Middle-American values and social norms in our courts. Differing attitudes about personal liberty, toleration and unconventional lifestyles will also affect the legal system as Generation X and its successors replace Baby Boomers in the legislature and on juries.

- **The Technology Explosion**

Technologically savvy 21st century consumers are already making it clear in the marketplace that they expect all kinds of information and services to be available around the clock, and they want what they need NOW. Many of us who did not own or perhaps even use a computer five years ago have already become impatient with the momentary delays we encounter surfing the Web. We are impatient with delay and increasingly resistant to traveling to centralized locations and waiting in line to complete routine transactions. Perhaps most important, today's court-users put high value on self-determination and the ability to make choices, and they are accustomed to accessing a world of information and services from the comfort of home or the office. The Commission learned from its own focus groups and futures studies in other states that people who have had recent first-hand experience with the courts are those most dissatisfied and least confident in the legal system. Improving electronic access to court services and providing clear online information about the law should be priority items if public confidence and support for our judicial system are to be maintained.

2025



- **Cyberlaw & Private Justice**

Two other trends the judicial system must accommodate sooner rather than later are the explosion in legal issues related to scientific and technological advances (e.g. intellectual property rights to software and electronic media, international commerce and e-trade issues, genetic engineering, HMO liability issues...) and the growing availability of fast but expensive private dispute resolution channels. Courts must provide knowledgeable judges and effective forums to deal with increasingly specialized disputes...or possibly watch our civil justice system evolve into separate public and private systems in which those who can afford to do so "opt out" of the public courts.

The Commission's Mission

When he established the Commission Chief Justice Moyer asked it to:

- define guiding objectives that state courts should pursue in the 21st century;
- envision and describe a state court system in 2025 which would meet those objectives;
- as a first step toward that envisioned future, assess current strengths and weaknesses in the structure, methods and performance of the state court system;
- anticipate future social, economic, scientific and technology trends, and predict their potential impact on the delivery of civil and criminal justice services by the year 2025;
- recommend practical strategies Ohio's state court system should pursue between now and 2025 to achieve the Commission's envisioned future.

Commission members were challenged to focus on the future, all the way to the year 2025. That challenge presented some interesting opportunities to "think outside the box" and imagine a distant court system redesigned from the ground up. One problem inherent in looking ahead is that the accelerating rate of social change makes it very difficult to imagine what life will be like 25 years from now. Another problem is that the windows of opportunity for our social institutions to respond to change promise to get ever-narrower.

On one hand, the "long view" they were asked to take required Commission members to think beyond today's problems and suggest innovations that might not be achievable within the next few years. On the other hand, the Commission could not undertake a serious look into the future unless it began with a comprehensive review and evaluation of current strengths and weaknesses in Ohio's judicial structures, rules and processes. That forced members to consider present-day concerns like growing and uneven caseloads, protracted technical litigation and the increasingly prohibitive costs of going to court for many businesses and most private households.

The Commission conducted its own focus groups, and carefully reviewed recent research by top legal scholars, national judicial organizations and court futures studies from California, North Carolina, Tennessee and a number of other states. One consistent finding was that many of those who had used the courts found them difficult to navigate, hard to understand and not designed for the convenience of court users. Another strong negative perception, shared by more than 80 percent of respondents to a 1993 Ohio University/Ohio State Bar Association study, was that people and organizations with money were seen as consistently receiving more favorable outcomes in the court system than people with limited economic resources. On the other hand, some business litigants believe that the state court system is stacked against *them*.

In setting parameters for its exploration of the future of Ohio's state courts, the Futures Commission was careful to avoid duplicating the efforts of several expert study commissions and blue-ribbon panels which had recently completed or were at work developing recommendations on various important public policy topics related to court operations. Those topics included:

- **Criminal Sentencing** was covered in great depth by the Ohio Criminal Sentencing Commission, which completed a multi-year review and overhaul of felony sentencing concepts in 1996 and worked closely with the General Assembly in 1997 to achieve passage of major legislation addressing issues including "truth in sentencing" and elimination of the traditional parole process. The Commission has continued to work in a variety of areas including adult misdemeanor and juvenile sentencing and forfeiture issues. Those interested in recent and future developments should contact the Sentencing Commission.
- **"Family Court,"** an experimental approach that unifies related functions of the domestic relations, juvenile and probate courts, is addressed briefly in this report as one of the types of "specialty courts" which the Commission recommends local courts be given the flexibility to create or abolish to meet community needs. A wide-ranging exploration of this innovative concept is provided in the *Family Court Feasibility Study* conducted jointly by the Supreme Court and Ohio Department of Human Services and available through the Supreme Court.
- **Racial Fairness** issues in Ohio's courts were explored in depth by the Commission on Racial Fairness jointly established and underwritten by the Supreme Court and the Ohio State Bar Association. The Racial Fairness Commission recently completed several years of research and analysis and published a final report of its findings and recommendations, a number of which are reflected in the Futures Commission's discussion of access and diversity issues, in the fall of 1999. Copies of the Racial Fairness Commission Report are available through the Supreme Court and the Ohio State Bar Association.

Other significant court-related topics the Futures Commission touched upon but did not address in-depth due to ongoing studies included:

- **domestic violence** (addressed in a 1996 report issued by the Supreme Court Task Force on Domestic Violence);
- **collaborative rule-making and public policy dispute resolution**, which is the subject of several innovative pilot programs currently being conducted by the Ohio Commission on Dispute Resolution and Conflict Management; and
- **the practice of law and future of the legal profession.** While attorney conduct and responsibilities in dealing with the courts are discussed in several recommendations, the Commission is aware of many ongoing initiatives sponsored by the Ohio State Bar Association and local bars across the state to improve lawyer performance and professionalism, and felt that its time and resources should be focused specifically on the courts.

What follows is an overview of vision statements and specific action recommendations the Futures Commission has developed in the eight key areas where it focused its attention: Access; Public Understanding; Technology; Court Structure & Management; Court Rules and Processes; Non-Adversarial Dispute Resolution; Jury Reform and Judicial/Court Staff Professionalism. Following that are eight "chapters" corresponding to the eight sections of the summary. Each chapter includes more detailed versions of the recommendations, provides background information on the issues and discusses the Commission's rationale for the actions being suggested.

Access to the Courts

Vision Statement... In 2025, Ohio courts and court-related offices will be readily accessible to all citizens regardless of their physical limitations, economic resources, educational levels or ability to come to court offices during traditional working hours. By the way they dispense justice and the way they treat all court users, Ohio's courts will be perceived as open, fair, impartial and respectful of citizens of both sexes and of all socioeconomic, racial and cultural backgrounds.

Summary of Recommendations

In order to enhance the physical, economic and functional accessibility of the judicial system, the Futures Commission recommends that Ohio courts:

- **Go beyond mere compliance with current and future legal requirements regarding physical accessibility.** Court administrators and court-affiliated offices should make extraordinary efforts to anticipate and meet the special needs of court users with visual, hearing, speech, mobility, and other disabilities. As the places where citizens come to seek equal justice under law, courts should incorporate best-available structural and technological accommodations. The goal should be to empower physically and cognitively challenged citizens to use the justice system on an equal footing with others, and to fully understand and participate in legal proceedings.
- **Expand current days and hours of operation.** A reasonable range of evening and weekend hours should be made available for delivery of in-court services. Within appropriate security limits, available communication technologies should be used to make other services (such as docket and record searches and document filings) available by remote access technologies around the clock. Flexible staffing arrangements should be developed to support such expanded hours.
- **Increase availability of legal aid attorneys, appointed counsel, pro bono representation and other affordable sources of professional legal services for low-income citizens.** Court officials should aggressively explore cooperative programs with the Ohio Legal Assistance Foundation, Ohio State Bar Association, local bar associations and law schools to expand legal internships, appropriate use of paralegals and non-lawyer volunteers and other innovative alternatives.
- **Provide adequate resources for public defenders, appointed counsel and legal aid lawyers to effectively represent their clients.** Ensure that lack of funds to pay court costs and fees or to obtain essential trial support services do not deprive low-income citizens of equal justice.
- **Simplify court rules and procedures** and provide clear, plain-language notifications, instructions, forms and explanatory materials to guide citizens through their dealings with the courts. Wherever possible, explanatory materials should be accessible to court users around the clock online or by other remote-access technologies. Court users who lack remote-access technology should have other expeditious means to obtain user-friendly written materials to prepare for their appearance or transaction with the court.
- **Ensure equal access and treatment of all persons regardless of age, gender, race, religion, ethnicity, sexual orientation, physical or learning disabilities, and cultural differences.** Judges, magistrates and other court personnel should recognize and acknowledge the growing trend toward a more multi-cultural society. Courts should reflect the racial and cultural diversity of the communities they serve. In their dealings with court users, staff at all levels should clearly convey an even-handed attitude of helpfulness, respect and courtesy to all. Respectful and unbiased treatment of court users should be a significant factor in periodic evaluations of judicial officers and other court employees.

- **Make court records and other public information easier for the public to access and search.** Courthouses and county law libraries should be linked in a statewide network, and court users in all 88 counties should be able to access that network's resources through court-provided terminals or other user-friendly means. Staff assistance should be available to help persons with special needs conduct public information searches.

Section B:

Public Understanding & Confidence in the Courts

Vision Statement... In 2025, courts at all levels will have incorporated public education as an important and ongoing part of their institutional mission. Ohioans will be well-informed about the legal system and the operation of their state courts, encouraging trust and confidence in the judicial process. Courts will be engaged in active working partnerships with schools, community groups, news media and a variety of other agencies and institutions to proactively share information and respond to citizen inquiries about courts and the legal system in general.

Summary of Recommendations:

In order to enhance public understanding and confidence in the judicial system, the Commission recommends that Ohio's courts:

- **Make public education materials available in all current media to explain court procedures and frequently-encountered legal issues in clear, non-technical language.** These materials should be available to the public at or through court offices, and should be directly accessible by the public 24 hours a day online or via other remote-access technologies. Clear plain-language forms, instructions and sample documents should also be developed and made available to accommodate persons representing themselves before the courts.
- **Aggressively seek opportunities for judges and other appropriate court staff to speak before local civic, service and community organizations.** An active "speakers bureau" can be an effective outreach strategy enabling judges to talk face-to-face with citizens about current issues facing the courts, respond to questions or perceived problems in the justice system and explain procedural rules and ethical guidelines that govern the judicial process. To the extent that current judicial ethics rules may be construed to restrict such non-political community outreach activities, appropriate rule changes should be sought.
- **Reach out to local and statewide news media to build relationships, improve the quality of law-related journalism and enhance editorial understanding of issues facing the courts.** Courts should establish constructive and mutually-respectful relationships with local reporters and commentators who cover the courthouse "beat." Within ethical constraints established by the Code of Judicial Conduct, judges or other knowledgeable court staff should be readily accessible to assist journalists in providing the public with accurate, thorough and balanced information about breaking news stories on legal topics.
- **Work with educators at the state and local levels to help develop comprehensive law-related curricula for students at all grade levels.** With the assistance of the Ohio Center for Law-Related Education (OCLRE), many school districts have already implemented successful court-school strategies including:
 - creating age-appropriate lesson plans and classroom materials for grades K-12;
 - bringing judges and lawyers into classrooms;
 - bringing students to the courthouse to observe the system in action;
 - helping to implement student peer mediation/dispute resolution programs;

– integrating materials from the Ohio Mock Trial competition and similar programs into building-wide or district-wide learning activities.

- **Share information about successful public education programs.** The Supreme Court of Ohio should establish and maintain a clearinghouse of successful adult and school-based public education programs, and should be actively involved in developing and disseminating innovative materials and program ideas to courts at all levels.

Section C:

Building a Technological Infrastructure

Vision Statement... In 2025 all Ohio courts will be linked to one another and to the Supreme Court through an interactive communications network. That network will allow instant transmission and remote access to current docket information, statistical data, public records, court opinions, administrative reports and a wide variety of other valuable information compiled and maintained by the courts. In addition to being routinely used for official business by judges and court staff across the state, this technology will also allow court users and the public to access all but legally-restricted information in the system 24 hours a day from home or office computers or public access facilities. Case filings, docket updates, transmittal of trial records, document retrievals, legal research and virtually all other transactions will be accomplished electronically, allowing courts at all levels to make more efficient allocation of personnel and office space. All hardware, software and communication links used by courts everywhere in the state will be fully compatible as a result of statewide standards, policies and procedures developed by a Court Technology Standards Committee.

Summary of Recommendations

In establishing a statewide technology infrastructure, the Futures Commission recommends that:

- **The Supreme Court should work with local courts to develop specifications, budgets and realistic planning parameters to implement a high-speed interactive communications network linking all Ohio courts. That network should also assist court users and the public in accessing public education materials and transacting business with the courts.** Training programs, technical support and materials should be provided to help courts become part of the network and incorporate other new technologies into everyday operations.
- **A statewide Court Technology Standards Committee should be created.** This committee should establish standards to ensure full compatibility and “interoperability” of technology systems employed in Ohio courts. These standards should incorporate existing standards established by business and government entities and international technology standards organizations (ISO, ANSI...). Careful attention should be paid to protecting the integrity of court records and data by maintaining the strictest practical security procedures.
- **State funding should be sought to ensure reasonable access to technology for all Ohio courts.**
- **As new technologies emerge, the Technology Standards Committee should evaluate them on an ongoing basis** and make recommendations regarding their compatibility with current court systems and potential value in enhancing court operations statewide.
- **As courts incorporate technological advances, they should be aggressively applied to improving accessibility of court information and convenience of services to court**

users. This should include expediting 24-hour online or other direct communication links through which citizens can transact business with the court and obtain a wide range of plain-language public education materials explaining the operation of the courts and basic legal concepts and procedures.

Section D:

Court Structure, Organization & Management

Vision Statement... In 2025 Ohio will have retained but refined its three-tier structure of locally-based trial courts, regional courts of appeals and a Supreme Court. Trial courts will have wide flexibility to allocate staff and other resources in innovative ways that best meet local needs and circumstances—including voluntary combining of trial courts within a county, creation of specialty and community courts to meet local needs and voluntary collaboration between jurisdictions to create multi-county regional courts if they wish to do so. Trial courts will deliver consistent, predictable outcomes by operating within standardized statewide rules and procedures. The Chief Justice will retain authority to temporarily re-assign appellate judges across district lines based on changing needs. Mayors courts will be replaced by localized delivery of services by trained judicial officers.

Summary of Recommendations

With regard to the structure of state courts in the 21st century, the Futures Commission recommends that:

- The Chief Justice's authority to assign Court of Appeals judges across district lines should be continued and expanded, to assure equitable caseloads and expedite case handling.
- A commission should be appointed to review and, if necessary, recommend changes in the geographic boundaries of Court of Appeals districts every ten years. Such a review will enable the Supreme Court to support recommendations to the General Assembly that appellate district boundaries be periodically adjusted to reflect changes in population, caseloads and other pertinent factors.
- In order to maximize flexibility and responsiveness to local needs, **each county (and municipality where applicable) should continue to operate its own trial courts.** Independent local courts are important symbols of community pride and identity. They play a major role in the fabric of county government.
- Within each county, with the approval of the Supreme Court and General Assembly, trial courts should consider the merits of organizing according to one of three structural models:
 - a) **retaining their current structure;**
 - b) forming a **two-tier trial court** which retains a distinct common pleas level but combines municipal and county courts into a unified county-wide court of limited jurisdiction served by fulltime judicial officers; or
 - c) **combining common pleas, municipal and county courts into a single trial court,** served by full-time judges and magistrates who are authorized to hear cases and provide judicial services at whatever level they are needed at any given time.
- Whichever structural model is adopted locally, **local trial courts should have wide flexibility to allocate judicial and other resources to meet local needs and circumstances.** For example, with approval as required from the Supreme Court and General Assembly, trial courts in each county should be empowered **to create and abolish**

specialized courts that deal with particular types of cases or legal issues—such as environmental/housing courts, family courts, drug courts and business courts.

- **Mayor's courts should be replaced by local delivery of services by trained judicial officers at decentralized locations convenient to the public.**
- **Local trial courts should be authorized to create one or more "community courts" within a county or municipality** which could assume many of the functions of mayors courts. In states where they have been created, community courts are typically convened in smaller towns or decentralized neighborhood locations in large cities at convenient times for the public. They hear misdemeanor criminal matters (traffic cases, graffiti, disorderly conduct...) and low-level civil cases (small claims, landlord-tenant, neighborhood disputes...). They typically work in partnership with neighborhood associations, churches, business, etc. and often use mediation and restorative justice approaches to help deliver "street level" solutions which will work best in the communities themselves.
- At their discretion, and with the approval of the Supreme Court and General Assembly, **trial courts in any county should consider the option of forming partnerships with courts in other counties to operate multi-county regional courts or justice centers where such courts would optimize the use of judicial resources.** For example, some individual counties in Ohio have found that although they cannot alone maintain a specialized court, a joint venture with neighboring counties would make such a project feasible. **Ohio voters gave common pleas courts constitutional authority to organize multi-county partnerships when the Modern Courts Amendment was adopted in 1968.** Local courts should consider all available options, and decide how best to make best use of resources to provide the best possible service for all court users.
- **The Supreme Court should develop statewide standards to guarantee that court users in all areas of Ohio benefit from appropriate facilities, information technology, personnel qualifications, staff training and criteria for court operations and performance. Local trial courts should govern themselves, within the framework of standards adopted by the Supreme Court.** These standards should be developed, published for comment, adopted and take effect according to the same procedures used in promulgating statewide rules of practice and procedure. The Supreme Court should seek extensive input from local courts in designing such standards, and assist local courts in interpreting and meeting such standards once adopted.
- **Each court should continue to select its own presiding and administrative judges, and hire its own professional administrator and staff.** Courts are strongly encouraged to employ fulltime professional administrators.
- **The state court system should move increasingly toward state funding for essential court functions** in order to provide equal access to justice and consistent adjudication services statewide. Essential functions are those necessary to resolve disputes—including compensation of judges, court staff and related personnel; equipment and supplies; and administrative expenses, including technology and a portion of the cost of operating court facilities.
- The Commission acknowledges that many of its recommendations will require new or increased funding for courts, and **recommends that supplemental state funding should be used to pay for implementing state-mandated changes and improvements.** Increased state funding to pay for essential court functions should be phased in gradually over a period of years, according to an orderly and deliberate process. As the state share of court funding increases, distribution of court costs and possibly some fines and fees may need to be altered with the state receiving an increased share. Local courts should retain flexibility to increase or decrease fees to meet local needs.

- Trial and appellate courts should be encouraged to continue exploring innovative programs to enhance the efficiency and public convenience of judicial services, and **the Supreme Court should continue to finance such pilot projects.**

Section E:

Enhancing Court Rules & Processes

Vision Statement... In 2025 Ohio's courts will continue to be indispensable dispute resolution centers of our society. Thanks to technological advances, many transactions that formerly required travel to the courthouse will be accomplished electronically from virtually anywhere. Adoption of standard statewide rules, procedures and forms will make electronic access to courts and uniform administration of justice much easier. Lawyers and parties in civil disputes will be aided by integrated case-flow management systems. They will be encouraged to explore a range of court-assisted negotiation processes aimed at reaching early settlement without the costs and delays of preparing for trial. Trials will be available to resolve cases that require them, but even in those cases active pre-trial participation by the judge will resolve preliminary issues and help trials focus on the key evidence and issues that remain in dispute.

Summary of Recommendations

In order to facilitate faster, more effective and cost/resource efficient problem solving by Ohio courts, the Futures Commission recommends that:

- **Ohio courts should continue to use, adopt and evaluate standard statewide rules, forms and procedures** which promote efficiency and uniform statewide administration of justice and make best use of the time and resources of court users, attorneys and courts. Individual courts should retain authority to adopt additional local rules they deem necessary, consistent with the intent and requirements of the general rules.
- In writing rules, including local rules, courts should strive to use clear language that a lay person can understand. Rules should be published or posted according to a process prescribed by the Supreme Court, and be accessible to persons in remote locations online or by other equivalent means.
- The Supreme Court Rules Advisory Committee, or its future equivalent, should continue to be responsible for drafting, implementing and monitoring rules of general practice and procedure. The committee should be alert to opportunities to improve existing rules, and should recognize and incorporate innovations created by local rules.
- Each trial court in the state should implement an integrated, effective case-flow management process. This process should promote early and continuous court involvement, adaptability to changing circumstances, and optimum use of resources. Case management should move cases from filing to disposition in a timely, cost-effective manner using the best means available—which often may mean employing mediation or arbitration before resorting to traditional litigation.
- The Supreme Court should build its current statewide case reporting system into a computerized management tool that will allow it to gather and evaluate case handling data, evaluate performance on an ongoing basis and help local courts anticipate backlogs.
- Judges should become actively involved soon after civil cases are filed, and should communicate to counsel for both sides that the court expects civility, professional conduct and cooperation in advancing the case toward resolution. Judicial officers should meet with counsel at regular intervals, and intervene quickly and decisively in cases when discovery or other issues between parties or counsel threaten unwarranted delay.

- Judges, magistrates, court staff and lawyers should make maximum use of available technology to speed transmission of documents, communicate with the court or opposing counsel and generally advance the dispute toward resolution.
- Courts of Appeals should explore aggressive case management practices, including early conferences with counsel to seek stipulations, narrow disputed issues and direct civil cases to mediation or other appropriate dispute resolution.

Section F:

Encouraging Alternatives in Dispute Resolution

Vision Statement... In 2025, Ohio courts will offer the public a wide and diverse range of options for resolving disputes short of traditional litigation. Rather than being required to initiate a lawsuit in order to gain the court's involvement, parties who bring civil disputes to the courts will be able to file a request for mediation or other court-assisted negotiation process as a first step. The system will offer disputants a spectrum of fast, cost-efficient, non-adversarial means of reaching a voluntary agreement—with the right to a traditional civil trial remaining as their final option. With the victim's consent, some low-level, non-violent criminal cases may also be referred to mediation in which defendants may agree to make restitution and accept penalties without going through a formal trial.

Summary of Recommendations

To promote faster, more efficient, less costly and mutually satisfactory resolution of disputes, the Futures Commission recommends that:

- Ohioans should be able to use the courts to initiate non-adversarial dispute resolution processes without filing a lawsuit.
- All courts should routinely make available a continuum of dispute resolution tools, from mediation and other forms of assisted negotiation to arbitration and traditional litigation. Court intake staff should be familiar with all of these options, and trained to evaluate disputes and assign them to an appropriate track. In some types of cases, (e.g., juvenile and domestic cases in which vital relationships need to be preserved) mediation may be a mandatory first step—but the right to a trial should be preserved and parties should not be penalized if they fail to reach agreement through mediation.
- Courts should employ well-qualified mediators as deemed appropriate and make effective use of outside resources to deliver non-adversarial dispute resolution services.
- Courts should make appropriate use of collaborative/consensus-based processes in resolving mass tort cases and public policy disputes.
- With the consent of crime victims, mediation should be employed prior to filing of charges in some lower-level criminal and delinquency cases such as neighborhood disputes, graffiti or shoplifting. Mediation/restorative justice processes should also be considered, with the victim's consent, after charges are filed in some non-violent delinquency, misdemeanor and low-level felony cases involving first offenders.
- The Supreme Court and intermediate Courts of Appeals should explore ways in which mediation and collaborative policy-setting can expedite resolution of appellate cases and public policy disputes.

Jury Reform

Vision Statement... In 2025, jury trials will continue to be a vitally important feature of Ohio's court system. Communities will realize that without willing jurors it would be impossible for civil and criminal cases to be decided according to traditional standards of justice. Courts will acknowledge that they must make thoughtful and efficient use of jurors' time, make serving as comfortable and convenient as possible and compensate jurors adequately for their service and expenses. Persons called for jury duty will respond as responsible citizens performing a valued community service. Jury pools will reflect the full diversity of the communities they serve. As respected agents of the court, jurors will be thoroughly informed about and empowered to participate in the trials they decide.

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Summary of Recommendations

In order to improve public respect for jury service, increase participation by persons called to serve on juries and enhance the value of jury trials as a method of resolving disputes, the Futures Commission recommends that Ohio's courts:

- **Use expanded source lists to develop jury pools that are demographically representative of the jurisdiction.** In addition to voter registration lists, pools should be drawn from driver license and non-driver ID card files, vehicle registration lists, public directories and other sources.
- **Provide prospective jurors with ample and detailed advance notice.** Besides allowing prospective jurors time to rearrange their schedules, the jury summons should include detailed explanatory information about the courts and jury service and offer an opportunity to ask questions and clarify details prior to reporting. When jurors report for service, they should receive a thorough orientation and explanation of their role in civil and criminal processes.
- **Encourage active judicial management of the voir dire process** (preliminary questioning of prospective jurors). For example, in some cases judges should consider allowing "mini opening statements" by opposing counsel before voir dire to put issues in context for prospective jurors.
- **Respect jurors' time, comfort and convenience** by limiting service to the shortest term consistent with the court's needs; providing a comfortable, accessible waiting room; compensating them adequately for the time and expenses of serving, and providing nearby parking, transportation, or both when feasible.
- Consider modifying court procedures to allow jurors, with proper instruction, to:
 - take notes during the trial and during deliberations;
 - ask questions during the trial so long as both parties' rights are protected;
 - maintain notebooks to keep documents and notes during lengthy or complex trials;
 - have printed text of jury instructions and trial testimony during deliberations;
 - discuss evidence during trials, when all jurors are together.
- **Provide jury instructions at the point in a trial when the court feels they will be most useful to the jury.** In many cases, the Commission believes it is more useful for the jury to receive the judge's instructions **before**, rather than after, opposing counsel have made their closing arguments. The Commission also believes that providing the text of jury instructions for reference during deliberations can help jurors come to a proper verdict.

- Exercise judicial discretion to provide jurors who reach an impasse not only with legal instructions, but with other information, possibly including testimony and stipulated evidence, when the court believes such action is appropriate.
- Create a statewide jury commission to assist the Supreme Court in evaluating and implementing changes such as those recommended in this section. The jury commission could conduct and review experiments and pilot projects testing jury reform concepts, encourage uniform practices statewide and sponsor continuing examination of innovative practices to enhance the value of juries and jury trials.

Section H:

Supporting Excellence in Judicial Officers & Court Personnel

Vision Statement... In 2025, as for the past two centuries, the professionalism and performance of judicial officers will be a vital factor in sustaining public trust and confidence in Ohio's courts. Special interest money and partisan politics will have been minimized in the judicial selection process. In order to guarantee that only well-qualified persons dispense justice in our state courts, a judicial qualifications commission will set objective minimum qualifications for seekers of judicial office and determine whether prospective candidates meet those criteria. This commission will also assist the Governor in appointing judges to fill in-term vacancies. Among the minimum qualifications to be elected or appointed to the bench, nominees will be required to complete prescribed courses on practical, job-related topics. First-term judges will be mentored by an experienced colleague, and all judges will continue to attend professional education classes on an ongoing basis. The prohibition against running for judicial office after reaching age 70 will be re-examined in light of changing life expectancy and improved health. Compensation for judges and other skilled court staff will reflect a realistic effort to attract and retain highly-skilled legal and management professionals.

Summary of Recommendations

In order to assure that the judges and other professional staff serving Ohio courts are of the highest quality, the Futures Commission recommends that:

- Whatever form it takes in the future, Ohio's judicial selection process should incorporate the following desirable characteristics:
 - Contested races should be non-partisan at both the primary and general election stages with no party identification on campaign materials, advertising or ballots;
 - Judicial officers should reflect the demographic diversity of the jurisdiction, and efforts should be made to identify and encourage potential candidates from under-represented groups to seek judicial office;
 - Criteria for nomination/appointment/retention should be based on objective factors related to faithfully performing the duties of judicial office. Those criteria should be widely published;
 - The process should include mechanisms to ensure that voters have extensive access to information about each candidate's qualifications, the objective criteria established for seekers of judicial office and a clear explanation of the selection process itself;

- To avoid the reality or the perception of potential conflicts of interest, every effort should be made to minimize the impact of campaign contributions;
 - The selection process should be conducted in a manner most likely to maintain and enhance public confidence in the competence, impartiality and integrity of the judicial system.
- **A Judicial Qualifications Commission should be created.** That commission should:
 - be nonpartisan, reflect the demographic diversity of the state and be comprised of lawyer and non-lawyer members;
 - assist in developing formal rules that establish clear, relevant and objective qualifications for holding judicial office at various levels of the state courts;
 - evaluate and approve or disapprove the qualifications of all candidates for election or appointment to judicial office according to the established standards;
 - **When in-term judicial vacancies arise, the Judicial Qualification Commission should be employed to further evaluate qualified nominees for gubernatorial appointment, and should develop a list of best-qualified candidates from which the Governor will select the appointee;**
 - **The mandatory minimum qualifications set by the qualifications commission should include—but not be limited to—experience relevant to the position sought, sufficient length of time as a practicing lawyer and successful completion of a required curriculum of courses covering topics such as court rules, judicial procedure and professional ethics.**
 - **First-term judges should complete a mandatory in-service training program during their first six months in office and be mentored by an experienced sitting judge.** Thereafter they should be required to complete a mandatory minimum course load of approved continuing judicial education course work annually throughout their term on the bench, as with all other judges.
 - **The Supreme Court should establish a mechanism by which all sitting judges are periodically evaluated according to relevant, reasonable criteria known to judges, evaluators and the public.** A report based on case management, performance evaluations, court user input and other appropriate information should be provided to judges as a self-improvement tool, and widely disseminated to voters considering the reelection or retention of incumbents.
 - **In order to attract and keep outstanding judges and court employees, judicial and staff salaries, benefits and retirement contributions should be adequate to attract well-qualified legal and management professionals.** A permanent state judicial compensation commission should periodically recommend judicial compensation changes to the General Assembly. Those recommendations should become law automatically unless formally rejected by the legislature.
 - **The Supreme Court should establish reasonable, relevant job qualifications, position descriptions and performance evaluation criteria for skilled court staff positions.** All local court employees and officers of the court should be employed by and answerable to the judges who appoint them.

- **The General Assembly should establish qualifications for clerks of court.** Those criteria might include, among others, minimum standards for education, training and management experience. Clerks should also demonstrate knowledge of appropriate technologies and other practical competencies necessary to discharge their duties in administering state courts. The value of maintaining the status of clerks of court as elected officials is recognized, however the Commission believes that setting relevant minimum standards for those who seek this important office is a prudent and necessary step.
- **All court staff members should be constantly mindful of their duty to serve the public with civility, respect, impartiality and to carefully observe ethical guidelines for public employees.** Judicial officers should take the lead in setting a tone of courtesy and respect toward all court users to be emulated by other staff. Detailed information about ethical duties should be provided to all court employees at the time of employment, and updated regularly.
- **Ohio's current constitutional provision prohibiting persons 70 or older from running for judicial office should be re-examined.** People are living longer and continuing to be productive later in life than was true when the current provision was adopted in 1968. In light of those trends, and the expectation they will continue, the Commission believes that the current judicial age limit should be re-examined.

III Implementation: Making Change Happen

Ohio Courts Futures Commision *Report*

pages: 32–35

Making Change Happen

The Ohio Courts Futures Commission has spent nearly three years gathering information and public input, reviewing court reform successes and failures in other states and analyzing projections about the future in order to arrive at the recommendations in this report.

Now comes the hard part: implementing the proposed changes in an effort to actually achieve a more accessible, more understandable, more convenient and more efficient state court system.

The Commission recognizes that the changes it has recommended will not happen overnight. Some may not happen in the next 25 years. It is important, however, that these forward-looking proposals be considered promptly and thoroughly by those responsible for our state court – and that follow-through be accomplished in ways that maintain and foster the best aspects of our current judicial system.

A number of the Commission's suggestions can be implemented administratively by the Chief Justice. Many more, such as creation of special commissions to set court technology standards, judicial qualifications and jury procedures, fall within the plenary powers of the Supreme Court.

Other proposals may require legislative or constitutional changes (e.g., authorization to establish new and reorganized trial courts to meet local needs).

As an essential first step, the Futures Commission urges the Supreme Court to appoint an ongoing implementation/advisory committee to:

- prioritize and consider funding implications of this Commission's recommendations, with immediate attention to court technology, jury reform and dispute resolution proposals;
- assist the Court with an evaluation of current court systems, including gaps in service and issues that may impair achievement of the Futures Commission's goals;
- serve as the coordinating body for statewide court modernization issues, including implementation of the other new commissions recommended in this report (court technology, jury issues, judicial qualifications and appellate district review);
- continuously evaluate new/best practices as they develop and recommend them for statewide adoption where appropriate;
- provide a forum for continuing discussion of trends and future needs of the judicial system.

In his original charge to the Futures Commission, Chief Justice Moyer challenged its members to look beyond current needs and limitations of the state court system and to think beyond solutions that could be accomplished in the near term.



In envisioning a highly efficient, user-friendly judicial branch 25 years from now, and recommending long-range strategies to achieve that vision, the Commission's five task forces took those admonitions seriously. Rather than waiting to "fix" various aspects of our state courts until after they have broken down—or become hopelessly obsolete—the Commission has recommended an ambitious agenda for preventive maintenance and systems improvements that it believes will boost productivity and prevent breakdowns in service **before they happen.**

Consistent with that approach, and recognizing that the "pricetag" for various changes will depend on when and in what context they are pursued, the Commission was mindful of cost considerations in designing various proposals but did not attempt to estimate specific costs or identify specific financial resources to fund each of the recommendations in this report. The Futures Commission acknowledges that funding considerations will be among the first and most important issues to be addressed by the advisory committee appointed to oversee implementation of its recommendations.

The ultimate judges of the Commission's vision, and of that vision's realization in the years ahead, will be Ohio court users of 2025—who will rely on the judicial system they inherit from us.

IV Full Recommendations & Discussion

Ohio Courts Futures Commission *Report*

pages: 36–71

Section A:

Ensuring Equal, Convenient & Affordable Access to Ohio Courts

The vision... In 2025, all Ohioans have ready and affordable access to a wide variety of administrative and dispute resolution services offered by or through the judicial system. Courts and court-affiliated offices in all jurisdictions accommodate all persons. There is no bias against individuals based on age, gender, race, ethnicity, religion, sexual orientation, physical or cognitive disability. In an increasingly diverse society, published materials and procedural guidelines for court staff reflect system-wide sensitivity to differences in culture and literacy levels. Professional legal services are available to meet the needs of all who seek to use the courts in civil as well as criminal matters, including those who lack the economic resources to retain private attorneys.

Instructional and procedural information is available to court users in a variety of media, and is presented in clear language designed to promote understanding by non-lawyers and expedite service delivery. Days and hours of court operation have been expanded to meet citizens needs and contemporary standards of consumer service and convenience. Interactive technology has greatly expanded the ability of citizens to communicate and do business with the courts around the clock from their homes, workplaces and free public access stations.

Current Realities & Future Concerns

The 1991 statewide legal needs assessment co-sponsored by the Supreme Court and the state's major bar associations found that only one of six low-income Ohioans with legal problems were able to secure professional legal advice or representation. Other studies such as the 1993 Ohio University/Ohio State Bar Association survey of public perceptions found that even financially secure and well-educated citizens often do not feel competent or financially able to use the judicial system to resolve conflicts. An essential first step toward maintaining and improving public confidence in our legal system in the 21st century is to guarantee that all citizens have open and effective access to the courts.

In the 1990's, persons with physical disabilities gained legal entitlement to reasonable accommodation in public buildings and availability of specially-adapted materials, equipment and personal assistance with the goal of full and equal access to the courts. Further legislation requiring additional accommodations for physically and cognitively disabled citizens is likely.

Digital, wireless telecommunications technologies and the Internet already provide instant, around-the-clock access to an ever-increasing menu of consumer transactions, services and information from virtually any location. As more and more people use more and more sophisticated technologies to shop, invest, obtain medical advice and book hotels and air travel from the comfort of their homes or offices at any hour, court-user expectations about the availability, convenience and user-friendliness of court services will inevitably continue to rise.

With increasing availability of information, both the courts and the General Assembly will be called upon to address issues involving the tension between a party's right to privacy and the public's right to know. The aging and increasing diversity of the population, continuing de-

centralization of retail and employment hubs and growing divergence between incomes in the upper and lower strata of the economy will all put pressure on our state courts to re-examine accessibility issues. It is in this context that the Futures Commission has developed the following recommendations to enhance access to the justice system over the next 25 years.

Recommendations:

Enhancing Physical Access to Courts

In order to assure that all citizens have equitable and convenient physical access to the judicial system in the future, Ohio courts should:

- **At minimum comply with, and exceed where possible, legal requirements regarding physical accessibility.** Court administrators and court-affiliated offices should make extraordinary efforts to anticipate and meet the special needs of persons with visual, hearing, speech, mobility and other disabilities. As the places where all citizens come to seek equal justice under law, courts should incorporate best-available structural and technological accommodations. This will empower disabled citizens to use the justice system on an equal footing with everyone else, and to fully understand and participate in legal proceedings.
- **Expand current days and hours of operation where possible.** A reasonable range of evening and weekend hours should be made available for delivery of court services.
- **Within appropriate security limits, use current communication technologies to make a wide range of court services such as docket and record searches and document filing available by remote access around the clock.** Flexible staffing arrangements should be developed to support expanded hours of in-court service and user support for remote access services. The Supreme Court should continuously monitor developments affecting physical accessibility of state courts, and regularly update service and technology criteria.

Discussion/Rationale: Courts should fully address physical accessibility issues, and at a minimum all court facilities should fully comply with the Americans With Disabilities Act and future legal requirements. The aging of Ohio's population (by 2020 one of every five residents will be 65 or older) will almost certainly increase the demand for physical and technical accommodation of medical disabilities. Courts should be constantly mindful that they exist to serve the public, and that the public—not simply those who run the courts—are the owners of the system. Enhancing public respect and confidence in the judicial system in the new century will require bringing government closer to the people and using technology to meet contemporary norms of efficiency, customer service and user convenience. Just as ATM machines and online banking did away with the notion of "banker's hours," it seems clear that 21st century consumer/taxpayer/voter expectations are already speeding the demise of the "nine-to-five courthouse." The Commission urges judges and court administrators to be proactive in designing and initiating these changes, rather than waiting for them to be imposed from outside. Continually monitoring new operating systems and court facilities requirements will help Ohio become and remain a leader in enabling citizens to use their courts.



Enhancing
Functional
Access to Courts

The Commission recommends that Ohio courts:

- **Simplify rules and procedures and provide straightforward, plain-English notifications, instructions, forms and explanatory materials to guide citizens through their dealings with the courts.** Wherever possible, simplified standard forms, instructions and explanatory materials should be available to court users around the clock through online or other remote-access technologies. Court users who cannot access online material should be able to quickly and easily obtain user-friendly written materials by fax, phone, automated telephone service or other means before their appearances or transactions with the court. *Also see discussion of simplifying court structures and processes in Sections D and E of this report.*
- **Develop multi-lingual written materials and increase availability of translators and interpreters** to assist those who speak English as a second language. Alternative audio-visual materials should also be developed for those who are unable to read or comprehend written instructions.
- **Adopt ongoing procedures to identify and remove other informational barriers** that interfere with citizens' ability to make full, effective use of the courts.

Discussion/Rationale:

Rules & Procedures—*State and national research has found that many citizens currently perceive the courts as a confusing, even threatening environment governed by technical "hocus-pocus" they cannot understand—rather than as a helpful place ordinary people can come to solve problems and resolve disputes fairly. A few of many such findings include an Illinois study in which 79 percent of respondents found their courts "hard to understand;" a 1999 national Hearst Corporation survey in which only 21 percent of respondents felt well-informed about court processes; and Ohio's own 1995 Just Solutions Conference Report in which 43 percent of respondents agreed with the complaint that "citizens do not feel welcome in the court system."*

Terminology—*One obvious key to "demystifying" the legal system and enhancing public confidence is to eliminate needlessly complex and confusing legal terminology in the notification letters, forms, instructions and other documents citizens encounter when they deal with our courts. Making these documents more understandable to lay persons, and developing new materials that explain court procedures and legal options are important steps that the Commission believes will promote both the appearance and reality of a more user-friendly justice system.*

Language Barriers—*The 1990 census identified 445,000 adult Ohioans who spoke a language other than English at home. More than 150,000 of those people indicated they did not speak English well. With 10–15,000 immigrants coming to Ohio each year during the past decade, the current number of non-English speakers is undoubtedly much higher today than in 1990—and there is no reason to suppose it will not continue to grow. The Commission concurs with suggestions it received from social service agencies and advocates for immigrant groups that courts should:*

- *Create foreign-language translations of frequently-used legal forms and materials;*
- *Increase the number, availability and use of interpreters and translators statewide;*
- *Collaborate with social service agencies serving elderly, low income and immigrant populations; and*
- *Reach out to communities with a proposed mini-curriculum on state courts for use in ESL (English as a second language) programs and similar types of programming statewide.*



In striving to improve access to state courts, an often-overlooked consideration is the difficulty citizens encounter in identifying which courtroom or office at the courthouse they need to contact in order to obtain information or address a legal problem. The Superior Court of Arizona in Maricopa County (Phoenix) has pioneered several innovative ways of using technology to meet these needs:

- Dedicated computer consoles or "kiosks" and walk-in "self service centers" have been established in local courthouses, allowing visitors to type inquiries into a terminal or use touch-screen panels to find the information they need. The self-service centers provide access to more than 400 user-friendly forms and instructions useful in completing common transactions; resource lists of lawyers, mediators and social service agencies; and general information about the courts including courthouse maps and explanations of what offices handle which types of transactions. These facilities are designed to accommodate many needs of individuals pursuing legal matters on a pro se (self-represented) basis, and also to provide practical assistance to persons unsure what legal help they need or who to talk to. These centers are supplemented by kiosks with touch-screen terminals that were placed

not only in courthouse lobbies, but also at public libraries, community colleges and other public access locations. Users can receive instant access to consumer-oriented information on a wide range of legal topics, guidance in dealing with the courts including docket calendars, and locations and phone numbers of various court offices and ancillary agencies able to answer further questions on specific types of legal matters.

- To meet the strong demand for access to understandable information about child support guidelines, the Arizona Office of Court Administration has also established an online child support "calculator" service. Accessed through the Arizona Supreme Court's Web site, the calculator program uses Adobe Acrobat software to help persons involved in a divorce or dissolution enter basic financial and personal data, then displays appropriate tables spelling out approximate support payment schedules. The calculator was designed as a web-based application to make it readily accessible to both current and former residents and insure that the Court has firm control of the data and can update it promptly if changes are made in state support guidelines or procedures.

Recommendations:

Enhancing Diversity in the Court System

The Commission recommends that:

- Courts should acknowledge the trend toward a more multi-cultural society and should ensure equal access and treatment of all persons in Ohio courts regardless of age, gender, race, ethnicity, sexual orientation, physical or learning disabilities and other cultural differences.
- Judicial officers and other court personnel should reflect the racial and cultural diversity of the communities they serve. In their dealings with court users, all court personnel should clearly convey an even-handed attitude of helpfulness, respect and courtesy.
- Diversity, gender sensitivity and customer service training should be institutionalized in each court and should include information about the needs, limitations and talents of people with disabilities. Respectful and unbiased treatment of all court users should be an important performance factor assessed in periodic evaluations of judges and other court employees.

Discussion/Rationale: *The recent report of the Ohio Commission on Racial Fairness found that, despite perceived improvements in race equity since the 1960's, a significant percentage of African-Americans who offered testimony and responded to surveys believed they had received unequal treatment in the judicial system because of their race. The persistence of such perceptions among many Ohioans is a barrier to the Commission's goal of a judicial system that is trusted, respected and supported by all segments of the*



community. The increasing influx of Asian, Latin American and other immigrants into Ohio will also challenge our courts to examine and enhance their sensitivity and accessibility to court users with different cultural backgrounds. Judges are not and should not be selected as “representative” of any constituency. The Commission believes, however, that aspirations and efforts to have our state judiciary mirror the composition of the general population will help produce a court system in which all people feel welcome and well received regardless of personal circumstances.

Recommendations:

Enhancing Access to Affordable Legal Services

In order to assure that Ohioans have access to effective legal advice and representation regardless of their economic circumstances, the Commission recommends that:

- Courts and lawyers should focus public attention on the moral imperative that all citizens have access to the justice system, including adequate professional advice and representation. This includes raising awareness of shortfalls in the availability of affordable legal service.
- Courts and lawyers should lead efforts to maintain and increase the resources of legal aid societies, public defender offices and appointed counsel; and should develop effective programs to provide pro bono representation and other affordable sources of professional legal services for low-income citizens.
- Courts should work in partnership with appropriate public and private entities to increase availability of affordable legal services. Among such entities are the Ohio Legal Assistance Foundation, Ohio State Bar Association, local bar associations, law schools, legal internship programs, and programs promoting appropriate use of paralegals and non-lawyer volunteers and other innovative alternatives.

Discussion/Rationale: *The primary mechanisms for providing civil legal services to low income individuals throughout the state are currently Ohio’s 18 local/regional legal aid societies. They are funded primarily by court-collected filing fees from civil cases and IOLTA funds (interest earned on trust accounts held by attorneys or title agents).*



Unmet Needs—*In the early 1990’s, a statewide legal needs assessment commissioned by Ohio’s state and metropolitan bar associations (the Spangenberg Report) found that 83 percent of low-income households with legal problems were unable to obtain professional advice or services. The Ohio Legal Assistance Foundation, established in response to the Spangenberg Report, is committed to increasing resources for Ohio’s legal services programs and developing innovative methods for closing the gap on the unmet civil legal needs of the poor. In considering ways to make legal services more accessible, including expanded pro bono activities and other innovative approaches, courts should acknowledge that many individuals who do not meet official indigency criteria also may face financial hardships in accessing the courts during times of economic, personal or emotional stress.*

Recommendations:

Ensuring Meaningful Access for the Self-Represented

The Futures Commission firmly believes that appropriate legal representation should be available to all Ohioans. It also recognizes that there are simple legal matters, such as small claims cases and name changes, in which it is customary for individuals to represent themselves; that there are many Ohioans who encounter great difficulty obtaining professional representation; and that some individuals will choose to exercise their right to represent themselves. While the Commission strongly recommends that all persons involved in complex cases seek the assistance of an attorney, in order to accommodate Ohioans who represent themselves in our courts, the Commission recommends that:

- Courts should develop simple legal instructional materials, including sample pleadings and forms designed for use by non-lawyers, and make them available at court facilities and via online and other remote access technologies. In addition to printed materials, self-help videos and online tutorials that can be accessed at any time from a home computer or public access terminal should also be explored.
- Court personnel may respond to questions from self-represented persons in civil cases by explaining court processes, answering questions regarding preparation and filing of simple or form documents, and supplying informational pamphlets and court forms. This assistance is limited to providing neutral information and does not include giving legal advice to disputants.



Discussion/Rationale: *In Ohio courts, the number of cases brought by individuals representing themselves has increased in recent years. While the Futures Commission strongly encourages persons with significant legal problems to seek the services of an attorney, citizens who are unable to obtain professional counsel or who choose to represent themselves must be able to do so in an informed manner. Courts must also be mindful of the rights of opposing parties and the responsibility of the court to see that justice is provided to all. Historically, self-representation has posed a procedural challenge for courts and court personnel. Elsewhere in this report the Commission recommends simplifying and streamlining court rules and procedures, using court-annexed mediation and "community courts" to handle lower-level civil disputes and redrafting notifications, forms and instructions to be more easily understood by lay persons. As these changes are undertaken, courts should take note of the particular needs of self-represented court users and opposing parties.*

Recommendations:

Ensuring Access in the Future

The Commission recommends that:

- **All courts should establish performance and service standards** and encourage ongoing evaluation and continuous improvement practices.
- Under the guidance of the Supreme Court, **all courts should regularly assess their status and implement needed changes to optimize public safety, accessibility, and convenience in court facilities.** The courts should strive at all times to maintain balance between the need for security and the need for open access.



Discussion/Rationale: *Ongoing review and assessment is the most efficient way to anticipate and respond to changing accessibility needs in the judicial system. Local courts should be encouraged to explore innovative approaches, and share information about effective strategies through all appropriate channels.*

Section B:

Building Public Understanding & Confidence

The vision... In 2025, an acknowledged part of every Ohio court's mission is to enhance public trust and confidence in the justice system by proactively educating court users and the general public about court structure, operations and procedures. Courts are engaged in independent public outreach programs and in ongoing partnerships with schools, community groups, news media and other public and private institutions to share practical information which "demystifies" the judicial process. Citizens of all socioeconomic backgrounds and education levels have ready access to clear and simple materials in a variety of media which render the judicial system more understandable and empower citizens to participate in it fully. Educational materials are available via online services and other remote access technology seven days a week, 24 hours a day.

Current Realities & Future Concerns

Legal Literacy

A 1993 Ohio University/Ohio State Bar Association study found that only 29 percent of adult Ohioans could pass a 25-question "literacy test" on elementary legal principles and basic court procedures. A few findings from that study:

- 47 percent of respondents **thought a grand jury hears witnesses and cross examination from both the prosecution and defense before handing down an indictment;**
- **55 percent didn't know that search warrants limit what police may search for; and**
- **half of all respondents thought appellate courts recall and re-question trial witnesses.**

That study, confirmed by similar findings in other states and public input to the Futures Commission, also found that a majority of Ohioans rely on television and print media for most of their information about the legal system—and are not comfortable about their level of understanding. In the 1993 OU/OSBA Public Perception Study, *71 percent of respondents* said the average Ohioan "doesn't know enough about the legal system to protect his/her basic rights." Because courts depend on public trust and support for their legitimacy, the Commission believes that the better the public is informed about the courts, the stronger the judicial system will be. As a first step, educating the public will require that courts develop and disseminate clear, plain-English printed materials explaining how and why the judicial system operates as it does, and how individuals can use that system most effectively.

New Technologies

In the rapidly changing arena of 21st century communications, court users and the general public are already accustomed to and becoming dependent upon online or other direct access technologies to conduct business and instantly access detailed, understandable information in all areas of their lives—from personal finance and medical advice to legal transactions. The courts must become proficient in adapting traditional print and audio-visual education materials to these technologies, including hiring staff with the technical expertise and training to maintain and update them.

Journalists

Public reliance on print and broadcast journalists for information about the courts is not likely to change anytime soon—even if the media through which those journalists' work is accessed are evolving rapidly. If the information citizens receive through journalists is going to become more accurate, balanced and authoritative, courts must cultivate working relationships with reporters and commentators (while recognizing that those relationships may at times have adversarial overtones). Courts should seek opportunities to help train and orient the media regarding the law and local court operations; update journalists regularly on rules and procedures; and make knowledgeable spokespersons readily available as sources of objective, reliable background information on breaking news stories. In all of their public pronouncements and interactions with the press, judges should be careful to observe ethical constraints prescribed by the Code of Judicial Conduct.

Recommendations:

A Fully Developed Public Information System

In order to institutionalize public education as an ongoing part of the courts' social role, the Futures Commission recommends that Ohio courts:

- **Make public education materials available in all current media formats explaining court procedures and frequently-encountered legal issues in clear, non-technical language.** These materials should be available to the public at or through court offices, and should be directly accessible by the public around the clock through online or other remote-access technologies. Clear plain-language forms, instructions and sample documents should also be developed and made available to accommodate persons representing themselves before the courts.
- **Reach out to local and statewide news media to build relationships, improve the quality of law-related journalism and enhance editorial understanding of issues facing the courts.** Courts should establish constructive and mutually-respectful relationships with local reporters and commentators who cover the courthouse "beat." Within ethical constraints, judges or other knowledgeable court staff should be readily accessible to train and orient journalists regarding local court operations, and to assist journalists in providing the public with accurate, thorough and balanced coverage of breaking news stories on legal topics.
- **Encourage live coverage of appropriate judicial proceedings** through traditional media as well as through all appropriate new technologies.
- **Encourage law schools to cooperate with media in presenting programs on justice** and on current and emerging legal issues.
- **Share information about successful public education programs.** The Supreme Court of Ohio should establish and maintain a clearinghouse of successful adult and school-based public education programs, and should be actively involved in developing and disseminating innovative materials and program ideas to courts at all levels.
- **Make court records and other public information maintained by the courts easier for the public to access and search.** Courthouses and county law libraries should be linked in a statewide network, and court users in all 88 counties should be able to access that network's resources around the clock through remote media including court-provided terminals or other user-friendly means. Resource sharing and information delivery should be organized through regional centers in each appellate district, while preserving local control and autonomy of law libraries. Points and hours of public access to this system must be adequate to meet the public's needs.

- Train staff in the latest record-search techniques and provide software to assist with public information searches, including language-based aids and accommodations for persons with special needs.

Recommendations:

In order to enhance courts' real and perceived role as a constructive, approachable, problem-solving force in their communities, the Commission recommends that:

Enhancing Community Outreach

- **Court officials should work willingly with educators to help develop comprehensive curricula to provide students of all ages a fundamental understanding of the court system and how it affects their lives.** Courts and schools should cooperate to bring lawyers and judges into classrooms and young people into the courts to talk with court personnel and see the system at work. Court-aided curriculum development should include dispute resolution and conflict management training, helping young people understand that the courts are not always the best place to resolve every dispute. State-financed creative programs such as street law—in which first-year law students teach basic law affecting their lives—should be supported.
- **Judicial officers and court personnel should continue to seek opportunities to learn about and interact with the communities and people they serve, because such efforts build bridges of cultural understanding and respect.** Judges should be allotted reasonable time away from their primary responsibilities on the bench to participate in such community outreach activities. Court employees and law enforcement officers should be encouraged to gain proficiency in languages used by growing segments of the community
- **As a normal part of their duties, judges should reach out to individuals and community groups to provide knowledge about the court system's values and processes.** A rotating judicial speakers bureau should be created as a central repository of topics and materials for judges to use in speaking with these groups. Judges should be able to discuss with legislators the practical impact of legislative mandates on the courts.
- **Appropriate changes should be sought in judicial ethics rules** to the extent that current rules may be construed to restrict non-political community outreach or public education activities by judges.

Discussion/Rationale: *Based on input from the public, the Commission has concluded that schools must play a key role in educating the next generation of Ohioans about justice.*



Judicial officers and other court personnel can offer vital help to educators in developing curricula and classroom materials, and in offering opportunities for students of all ages to talk with judges and lawyers and see the judicial branch in action. On a larger scale, formal education about the judicial system is only the beginning of a lifetime of education. The Commission also strongly encourages active participation by judges and court personnel in community and neighborhood activities as often as possible to gain insight into issues that directly affect their fellow citizens. This is a critical strategy not only for conveying accurate information to the public, but in making courts more approachable to all citizens and promoting public "ownership" of the judicial system.

To the extent that the judicial canons may be interpreted to prohibit such activities by judges, the commission suggests a re-examination of those rules. Although the independence of the judiciary is a most important principle, it does not follow that to maintain their independence judges must live in isolation or avoid interacting and sharing information with their fellow citizens.

As a co-sponsor of the Ohio Center for Law-Related Education since the mid 1980's, the Supreme Court of Ohio has been an aggressive promoter of in-school legal education programs like the Ohio Mock Trial Program—which engages thousands of students from more than 500 high schools in the state's largest annual non-athletic competition.

State court systems, bar associations and other law-related organizations across the country have been assuming an increasingly proactive role in outreach programs to share information about the civil and criminal justice systems with their fellow citizens. A few of many innovative programs Ohio courts may wish to consider include:

- The Florida Supreme Court has created a Justice Teaching Institute which awards fellowships to teachers for intensive training on the legal system. Institute attendees are exposed to top-rated curricula, classroom materials and teaching strategies for different grade levels; and return to their home school districts equipped to share information with colleagues and help integrate effective law-related content into a variety of classroom subjects.
- The Arizona State Bar Association and Office of Court Administration have jointly created a "Law for Kids" Web site which introduces and explains everyday legal topics of particular interest to teens and younger children. With input from an advisory committee of high school students, the site provides referrals to other Web resources and information of interest to young people, and includes an area where specific questions on "teen law" issues (e.g. driver licensing, underage drinking...) can be entered and detailed answers from attorneys and judges are provided.
- The Washington State Bar Association has formed a working partnership with the state education department and several statewide teacher professional associations. The alliance is called the Public Education Workgroup, and its declared mission is to develop a workable strategic plan for improving law-related education in public schools across the state.

Section C:

Building a Technological Infrastructure

The vision... In 2025, Ohio courts will employ technology wherever practicable to enhance the administration of justice and to improve the quality of service. All courts are linked through an interactive data/communications network. That network enables courts in every Ohio county and municipality to: accept electronic case filings; share information, exchange data in real-time; post rules, proposals and announcements; provide electronic continuing education courses; and automate most court services and case management activities. This technology also includes multimedia broadcast capabilities which allow courts to transmit video of court proceedings and allows citizens to transact business with the courts and access public records and public information in the system 24 hours a day from home or office computers or public access facilities.

An Ohio Court Technology Standards Committee works closely with local court administrators to ensure that the hardware, software and communication links employed by Ohio courts, clerks of courts and other custodians of judicial information are compatible. By enabling court computer systems across the state to "talk with one another" and maintain data in uniform ways, adoption of statewide standards has greatly improved data sharing, reporting and analysis of court successes, problems and future needs. Ohio is an active participant in public and proprietary information networks, and has established two-way communication links with government, social and human service agencies, bar associations, schools, universities, continuing professional education programs,

and other users or managers of data useful to the courts. All automated systems and communication links are carefully designed and managed to safeguard the integrity of court records and protect the constitutional and due process rights of court users.

Current Realities & Future Concerns

Few people outside of Silicon Valley research and development labs can predict what technologies will be available in five years—let alone in the 25-year time frame the Futures Commission was asked to envision. What is certain is that there will be sweeping changes, and that Ohio courts must be able to deliver judicial services in ways that meet the public's needs and contemporary expectations of efficiency and user convenience. Therefore, rather than attempting to predict or prescribe the technology courts will need in 2025, the Commission felt it would be better to suggest how the courts should position themselves to deal with ongoing technological change. In other words, it focused not on the machines of the future, but on suggesting management systems and structures that will enable courts to deal with whatever new technologies may emerge.

Recommendations:

Statewide Computer Information Network

The Futures Commission recommends that Ohio's courts:

- **Plan and create a statewide electronic communications network linking all Ohio courts to one another.** This network should be used to streamline case filing and scheduling functions; permit the rapid exchange and dissemination of statistical information; transmit rules, proposals and announcements; provide court management information; speed routine internal and external communications via e-mail; and post general information including updates on legislation and other bulletins. Courts should work with clerks and other custodians of court information to make filings, decisions, and other public documents instantly available to other courts and to the public through this interactive network.
- **Apply the capabilities of the network to making court information and services more accessible and convenient to court users.** This should include expediting 24-hour online or other direct communication links through which citizens can check dockets, file documents with the court, search public records and obtain a wide range of plain-language informational materials from their homes, offices or designated public access points. The network should enable courts to broadcast and receive multi-media content including live video of and for trials and other programming, and to provide accessibility to court services for all.
- **Make materials and information available in other appropriate formats at each court location to help persons who do not have direct electronic access** obtain relevant information and interact with the court. Pamphlets, videos, interactive displays, public kiosks and other means of communication should be provided to enhance their contact with the system and make it easy for them to complete court business.

Discussion/Rationale: *Ohio's state courts are a massive enterprise that currently employs more than 700 full-time judges working in 88 county courthouses handling more than three million cases annually. Few public or private entities would even attempt to manage a system of that size without "real-time" access to management information or direct two-way electronic communication links among its "branches." And unlike private enterprises, the "transactions" courts must manage and keep records on involve the exercise of government power over thousands of people's lives and property.*



The proposed data/communications network will enable appellate and trial courts across the state to exchange information instantly, monitor the latest decisions, respond promptly to administrative and procedural directives and access a vast reservoir of useful information on demand, when and where it is needed. It will also greatly enhance the Supreme Court's ability to compile statistical reports, respond to inquiries, gather information on case dispositions, transmit advisories and provide helpful information to judicial officers and court staff across the state.

Sophisticated data monitoring and collection systems employed by private industry have shown that active monitoring of processes often reveals previously overlooked methods of enhancing efficiency. The Commission believes that equipping courts to maintain files and provide user-driven services electronically can result in significant efficiency gains and cost savings. For instance, electronic data storage and retrieval can reduce staff work hours now devoted to manual docketing and record searches; and free up expensive floor space required for storing paper files. If our state courts are going to provide efficient service and earn the trust and confidence of the public in a 21st century environment, they need the management tools available to other well-run private and public sector organizations.

Courtroom 21 Project Testing "Virtual Trial" Technologies

When we try to look into the future impact of technology on Ohio's judicial system, factors such as the rapid pace of change, limited resources, and the strong probability of utter technological or social surprise make it advisable to proceed carefully. Certainly anyone predicting the future in 1900 would have had to be incredibly visionary to anticipate the huge impact of the automobile and air travel—let alone today's rapidly developing and converging world of electronics, computers, and broadband communications.

The Courtroom 21 Project (www.courtroom21.net) is an ongoing effort of the National Center for State Courts and the College of William and Mary School of Law. Its mission is to probe the near future of legal technology. Part of that project has involved developing the conceptual framework for "virtual trials" and "virtual courthouses;" and researching the technologies needed to make remote participation in court proceedings a practical reality.

Within a few months of the publication of this report, the Courtroom 21 project expects to conduct a demonstration trial in which at least six participants, including the judge, witnesses, counsel, and parties, all participate remotely from separate locations around the

world, with evidence presented to jurors and public access to the trial available through a web-based information management system.

While that represents a radical change from traditional practices, there are strong indications that each year a significantly higher percentage of public and private sector transactions are being completed via remote access technologies. If our courts fail to use available technologies to deliver justice that is more efficient, convenient and affordable; they risk losing public confidence in legal institutions. At the same time, if courts allow technological change to subvert important due process rights and constitutional safeguards, they risk abdicating their fundamental duty to dispense public justice while safeguarding individual liberties.

What we really need is a reliable crystal ball. But until a team of time-travel wizards at some future "dot-com" come up with a foolproof way to look into the future, court officials need to constantly scan the environment for new concepts, processes and products—while remembering that innovation should never be an end in itself, but rather a means to deliver the best possible justice services to the greatest number of Ohioans.

Recommendations:

Statewide Technology Standards & the Ohio Court Technology Standards Committee

In order to establish and operate the interactive communications network described above, and manage the efficient implementation of evolving technology in Ohio courts, the Futures Commission recommends that:

- **The Supreme Court should establish an Ohio Court Technology Standards Committee.** This committee should establish standards to ensure full compatibility and "interoperability" of technology systems employed in Ohio courts. In formulating these standards, the committee should incorporate existing standards established by business and government entities and nationally and internationally accepted standards organizations (i.e., ANSI, ISO, etc.).
- **The technology standards committee should establish knowledge, skills and ability standards and continuing educational requirements for technology personnel employed in the courts.**
- **In establishing statewide standards, careful attention should be paid to protecting the integrity of official records and data** in all Ohio courts by setting and maintaining the most stringent security procedures practicable.
- **The standards committee should provide training programs, technical support and materials** to help all courts incorporate new methods into everyday operations, and place special emphasis on assisting courts with limited prior training in technology applications.



Discussion/Rationale: *As business, industry, higher education and governmental agencies across the country have embraced new technologies to improve efficiency and customer convenience, the creation of technology standards committees has been an essential early step. Such a committee serving Ohio's courts should be made up of technical experts with first-hand knowledge of both the practical needs of court staff and court users and the technical capabilities of evolving technologies. The committee should set appropriate specifications and operating parameters for hardware and software and qualifications for technology staff positions; help local courts acquire, install and incorporate current technology; be a reliable resource for training staff and resolving technology problems; and stay current with the capabilities of emerging hardware, software and linking systems to keep our state courts operating efficiently.*

Recommendations:

Applying Technology

- To improve efficiency and reduce expense and delay, courts and attorneys should be encouraged to use technological advances to:
 - expedite litigation processes including discovery and witness depositions
 - assist those responsible for managing cases and dispute resolution processes;
 - gather statistical data on similar cases and outcomes;
 - reduce or eliminate delay in transmitting trial court records for appeal.

Section D:

Court Structure, Organization & Management

The vision... In the future, each Ohio county continues to operate its own trial courts, organized according to the needs and expectations of its local constituency, but operating within general rules and procedural guidelines promulgated by the Ohio Supreme Court. Trial and appellate courts across the state deliver consistent, predictable outcomes. Appellate judges are routinely assigned across district boundaries. District boundaries are regularly evaluated and, when necessary, adjusted based on local need and other considerations to optimize allocation of judicial resources. Organizationally, trial courts are encouraged to innovate—for example, by establishing and abolishing specialized courts within a county or by joining with other counties to set up regional partnerships—to manage caseloads and allocate resources efficiently according to local needs. Mayors courts have been replaced by convenient, localized delivery of services by trained professional judicial officers.

**Current
Realities &
Future
Concerns**

Ohio's Court System

The basic structure of Ohio's state court system was established in 1851 and has not changed substantially since 1912. There are three levels of state courts: a Supreme Court with statewide jurisdiction, intermediate courts of appeals organized in single or multi-county districts, and local trial courts, which include common pleas, municipal and county courts.

The Supreme Court of Ohio is the highest court, or court of last resort in our state court system. It consists of a Chief Justice and six Justices who are elected to six-year terms by voters in statewide elections. Most cases it hears are appealed from the 12 district courts of appeals. It also hears automatic appeals on matters from the Board of Tax Appeals, Public Utilities Commission and Industrial Commission, and has special duties in dealing with habeas corpus and death penalty cases. The Supreme Court also exercises powers of superintendence over all the courts in Ohio, and makes rules governing practice and procedure. Finally, the Court has authority over admission to the bar the practice of law, and adoption and enforcement of the rules of professional responsibility and judicial conduct.

The intermediate courts of appeals are organized in 12 appellate districts which cover geographic areas of from one to 17 counties in size. Based on their population and caseload, appellate districts are served by from four to 12 judges. Appellate cases are heard by three-judge panels.

There is a common pleas court in each of Ohio's 88 counties. The common pleas court is the court of general jurisdiction and may be divided into general, domestic, juvenile and probate divisions. The general division has jurisdiction in felony criminal cases and civil cases involving \$15,000 or more. The domestic relations division has jurisdiction over divorces, dissolution, and child custody. Probate divisions manage the administration of estates of deceased persons, guardianships of minors and adults who are incompetent to handle their own affairs. Juvenile divisions deal primarily with delinquency offenses by children under 18 years of age.

Municipal and county courts are courts of limited jurisdiction. They handle most traffic and other misdemeanor criminal offenses and can hear civil actions up to \$15,000. These courts have jurisdiction to hear felony arraignments, however felony trials are held in the common pleas court. County courts are primarily part-time courts that serve those geographic areas within a county that are not under the jurisdiction of a municipal court. In a number of counties there is no county court because municipal courts cover all areas within the county. There has been a recent trend toward developing municipal courts that exercise county-wide jurisdiction.

Cities or villages that do not have their own municipal court are permitted by law to operate a mayor's court in which the mayor (who is not required to be an attorney) decides cases and collects fines involving violations of municipal ordinances and traffic offenses within the city or village limits. The continuing operation of mayor's courts has been a subject of debate for many years, and for reasons explained below, the Futures Commission recommends that their role be assumed by the trial courts.

The Commission believes the structure of the Ohio court system is fundamentally sound, but complicated. In studying ways to streamline state courts, realize efficiencies and balance local control with consistent administration of justice, the Commission identified several opportunities to build more flexibility into the system. These included enabling counties to voluntarily create community courts and specialized courts to hear specialized legal matters such as drug, housing, family and business matters, and encouraging trial courts to explore forming multi-county partnerships where collaboration is in the best interest of the courts and area residents.

Finally, the Commission recommends that the essential functions of state courts should be increasingly funded by the state to improve funding equity among the courts.

Recommendations:

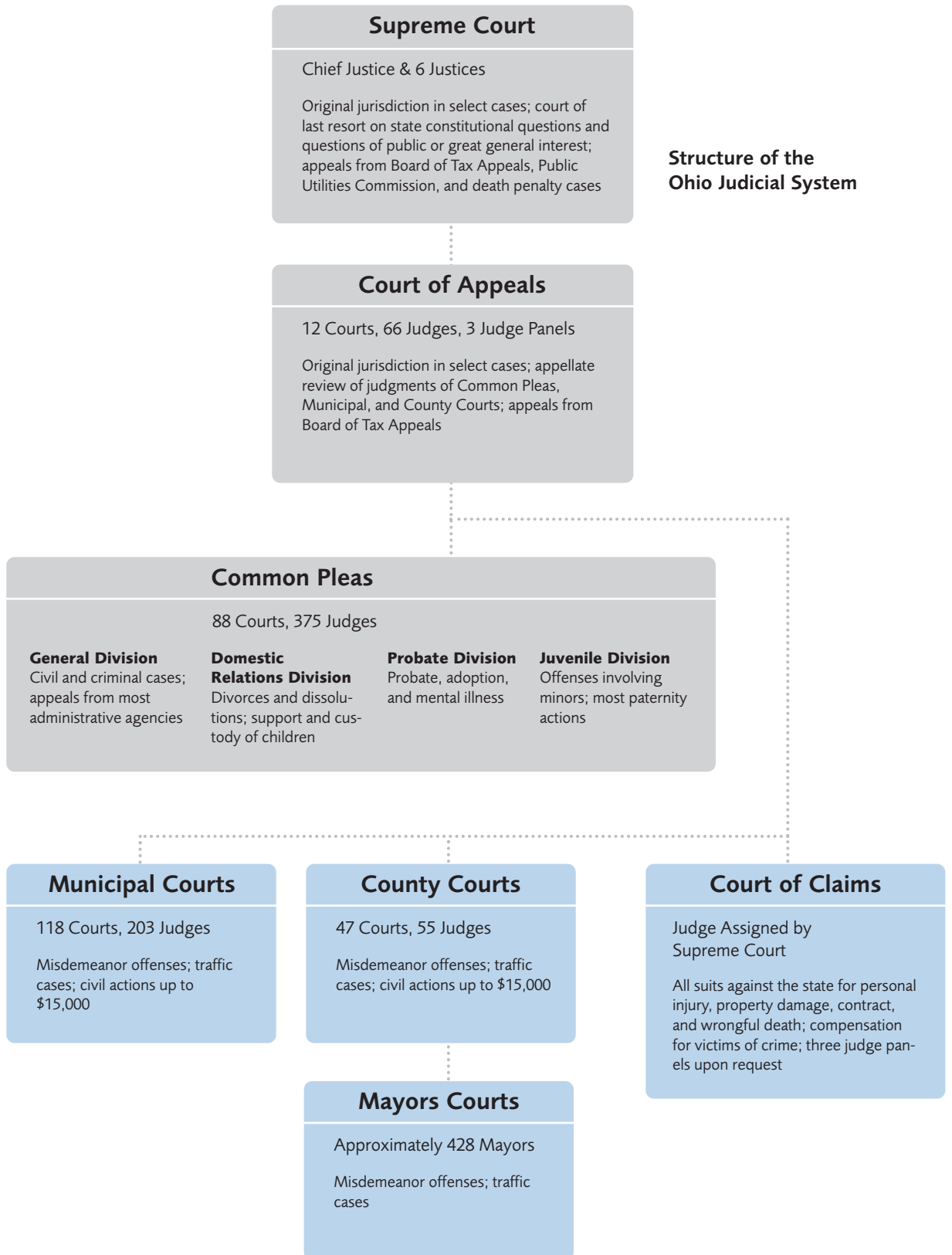
Court Structure

Courts of Appeals– With regard to the courts of appeals, the Futures Commission recommends that:

- The Chief Justice should continue to make assignments of court of appeals judges across district lines to balance workloads, respond to special situations and improve the timely disposition of cases.
- The Supreme Court should exercise its authority to appoint an appellate redistricting commission every ten years to ensure an equitable distribution of cases.



Discussion/Rationale: Annual caseloads for which the state's 12 appellate districts are responsible can vary dramatically—from a high of 222 new cases per judge in one district to a low of 125 new cases per judge in another district during the 1998 calendar year. In seeking ways to use judicial resources more efficiently, the Futures Commission recommends continuing and expanding the Chief Justice's authority to assign appellate judges across district lines to assure relative equity in caseloads and expedite case handling. The Commission also recommends that appellate court geographic boundaries be reviewed every ten years by a commission appointed by the Supreme Court for the purpose of ensuring relative equity in caseloads and the prompt disposition of cases. (Such a review was underway on an ad hoc basis in early 2000 as a result of specific legislation—but there is no current requirement that similar reviews be conducted at regular intervals in the future).



The commission would, if necessary, make recommendations to the General Assembly regarding adjustments to district boundaries based on population growth, caseload, and other relevant factors. But whatever the means, the process should be flexible enough to make adjustments efficiently.

Recommendations:

Trial Courts

*Common Pleas,
Municipal &
County Courts*

With regard to the structure of Ohio's trial courts, the Futures Commission recommends that:

- **Ohio should retain three levels of courts:** trial courts, appellate courts, and the Supreme Court.
- **Each county (and municipality where applicable) should continue to have and operate its own trial courts, and be empowered to organize them according to local need.** Independent local courts are important symbols of community pride and identity and play a major role in the fabric of county and municipal government.
- Within each county, with the approval of the Supreme Court and General Assembly, **trial courts should consider the merits of organizing according to one of three structural models:**
 - a) **retaining their current structure.**
 - b) forming a **two-tier trial court** that retains a distinct common pleas level but combines municipal and county courts into a unified county-wide court of limited jurisdiction served by full-time judicial officers; or
 - c) **combining common pleas, municipal and county courts into a single trial court**, served by full-time judges and magistrates who are authorized to hear cases and provide judicial services at whatever level they are needed at any given time.

Discussion/Rationale: *The Commission recommends that counties and municipalities within a county have the flexibility, with the approval of the Supreme Court and the General Assembly, to make adjustments in the basic structure of their trial courts to make best use of available resources. One option would allow voluntary combination of current common pleas, municipal, and county courts into a single trial court. This single-court model provides maximum efficiency by combining the functions of several courts and permitting judges and administrators to allocate judicial and other resources on a day-to-day basis as necessary to administer various types of court business.*

Another option is a two-tier trial court that retains the common pleas court and its various divisions, but creates a second tier combining municipal and county courts presided over by full-time judicial officers. This option would maintain separation of common pleas from lower level trial courts within a county, but improve efficiency by sharing resources among the county and municipal courts and enhance professionalism by allowing all cases in the combined county/municipal system to be heard by full-time judicial officers.

Trial courts that choose to do so should be free to retain their current structures.

Recommendations:

Court Governance & Management

With regard to the governance of Ohio's state court system, the Futures Commission recommends that:

- Local courts should continue to govern themselves, within an expanded framework of statewide standards adopted by the Supreme Court.

- Statewide standards for court facilities, technology, personnel qualifications, training, operations and performance should be implemented to provide court users in all areas of Ohio with access to consistent, predictable judicial processes and outcomes.
- Virtually every Ohio court should employ a full-time administrator and be guided by a comprehensive management plan.



Discussion/Rationale: The Commission recommends retaining the current system of governance for trial and appellate courts, under which local courts select their own presiding or administrative judge, hire their own administrative staff and operate under uniform Rules of Superintendence promulgated by the Supreme Court.

The Commission believes that the overall efficiency of the court system and the consistency of judicial services provided to court users across the state could be improved by implementing additional statewide standards in certain areas, including information technology, facilities, personnel qualifications, training, operations, and performance. These standards would provide courts with general guidelines for establishing procedures and performance criteria, and provide benchmarks against which individual courts can measure and compare themselves with other courts across the state. The Supreme Court should assist local courts in interpreting and meeting these standards.

The Commission emphasizes the importance of professional court administration and believes each Ohio court should have the services of a trained, professional court administrator. While not every court needs or can afford a full-time administrator at present, it is anticipated that by 2025 virtually all should and will have taken that step. The Commission also urges courts at all levels to employ a comprehensive management/court operations plan, developed, implemented and monitored by the court administrator, to assist the court in assessing service needs, allocating resources, evaluating performance, and planning for continuous improvements.

Recommendations:

Local Delivery of Court Services

Mayor's Courts

- The Commission recommends that mayor's courts be replaced by local delivery of judicial services through trial courts with locations convenient to the public.



Discussion/Rationale: Over the years, mayor's courts have been a continuing source of controversy for the judicial system. While some legal training is now required for mayors who preside at mayor's courts, there is no requirement that they be licensed as attorneys. The current training requirements are in no way comparable to the legal education and experience required of judges who decide cases in trial and appellate courts. Some mayors have responded by appointing magistrates to preside at mayor's court. There is also an apparent conflict of interest when a mayor, the executive officer of a city, decides guilt and levies fines that are in turn used to support any portion of city government. In a recent federal court decision, *City of Macedonia v. DePiero*, (6th Cir. 1999), 180 F.3d 770, cert. denied 120 S.Ct. 844 (Jan. 10, 2000), the Sixth Circuit Court of Appeals found that a constitutional problem is created in jurisdictions where mayors control budgets and law enforcement, and also serve a judicial function by presiding over a mayor's court and deciding cases there.

Community Courts

- The Commission recommends that, at their discretion, local **trial courts should be authorized to create one or more "community courts" within a county** that could assume many of the functions of mayors' courts and provide many additional judicial and dispute resolution services.

Discussion/Rationale: *In states where they have been authorized, community courts are convened in smaller towns and in decentralized neighborhood locations in larger cities at convenient times for the public. They hear misdemeanor criminal matters (traffic cases, graffiti, disorderly conduct...) and low-level civil cases (small claims, landlord-tenant and neighborhood disputes). Successful experience with local 'street level' mediation in juvenile and municipal courts, such as the Times Square/Midtown Community Court in New York City, have spurred interest in similar projects elsewhere. Community court restorative justice programs (in which offenders agree to compensate victims and the community) have been particularly effective when community service punishment is imposed in a small town or neighborhood setting and drug and alcohol treatment are part of the correction effort. Community courts, which typically work in partnership with neighborhood associations, churches, businesses and other community groups:*



- bring the court system to the community it serves;
- make the court more accessible, the activities and benefits of the courts more visible, and the need to abide by the law more apparent and immediate; and
- resolve many neighborhood disputes through mediation by providing a place for parties to sit down and talk about their differences in a controlled environment with the assistance of a neutral third party.

NY Midtown Court Dispenses Justice at Neighborhood Level

New York City's Midtown Community Court, established in 1993, has become a model for similar programs being considered in other areas of the country. Building on the example of community policing, the court mobilizes local residents, businesses and social service providers to collaborate with the criminal justice system in addressing lower-level, non-violent offenses (e.g., graffiti, public intoxication, prostitution, vandalism...) that are often dealt with ineffectively by the larger justice system, and have a very real negative impact on the quality of life in a neighborhood setting.

Because the city's huge central court system lacked jail space or effective alternative punishments to deter these types of offenses, neither offenders, victims nor community residents felt that these violations were being taken seriously or that defendants were being held accountable for their actions. Residents and business owners in Manhattan's Times Square area and the nearby neighborhoods of Clinton and Chelsea worked with city and federal officials and private funding sources to address these concerns by creating the Midtown Community Court.

Drawing on local resources, the court provides swift, visible enforcement that typically sentences offenders to community service work right in the neighborhood, assesses violators for alcohol, drug and mental health issues and refers them directly to local treatment providers. Space for counseling sessions, educational programs, meetings of Alcoholics Anonymous and Narcotics Anonymous groups, mediation of neighborhood disputes, etc. is provided by local businesses and organizations. In most cases, community service sentences are imposed immediately to reinforce individual accountability.

The court has developed individualized sanctions designed to restore the costs of crime to the victim and the community. In its first two years, the community court sentenced more than 8,600 offenders to community service and compliance with those sentences was 75 percent--nearly twice as high as the city-wide average for similar sentences. During that same period, despite increased police emphasis on arrests for these types of crimes, prostitution arrests in the

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Midtown area dropped by 36 percent and arrests for unlicensed street vending was down 24 percent.

While the New York pilot project focused on issues and tactics appropriate to a high-density urban area, proponents of the community court approach point out that most of its key concepts can be applied in small towns where local residents want to address minor crime and quality of life issues in their own community rather than sending them to the county courthouse.

No Ohio cities currently have full-fledged community court programs in place; however

Dayton, Toledo, Columbus, Cleveland, Youngstown and several other cities employ various forms of community mediation/diversion programs that channel non-violent offenders into community service projects, and specialized drug courts in several Ohio communities steer defendants toward substance abuse counseling and other treatment alternatives where appropriate.

For additional information about the New York City Midtown Community Court project, check their website at www.communitycourts.org.

Voluntary Regional (Multi-County) Partnerships

- The Commission recommends that, with the approval of the Supreme Court and General Assembly, **local trial courts should consider forming partnerships with courts in nearby counties to operate regional courts or justice centers** if such cooperative arrangements would optimize the use of economic and judicial resources.

Discussion/Rationale: *The Commission believes that local trial courts are capable of deciding how best to allocate their resources. In its preliminary discussions about innovative approaches to court structure in the future, one of many options considered was creation of regional or "circuit" courts serving multiple counties. In light of the many benefits of the existing local court system cited during the public comment period, the Commission wishes to emphasize that this recommendation envisions possible introduction of multi-county courts **only as a limited and voluntary option that should be considered by those who may wish to pool their judicial resources with other counties as a means to enhance court services and promote efficiency.** When Ohio voters approved the Modern Court Amendment in 1968, they granted common pleas courts the option of forming multi-county partnerships to maximize efficient delivery of judicial services to the public. In cases where several adjacent small counties may not have the judicial, administrative, or financial resources to support their own specialized family court or drug court, for example, the Commission believes local residents might benefit greatly if their courts exercised the option to establish regionally-appropriate solutions.*



Specialized Courts

- The Commission recommends that **trial courts within a single county or multi-county court system be authorized to recommend to the Supreme Court and the General Assembly the creation of specialized courts** (e.g. environmental or housing court, family court, drug court, business court) to serve identified local needs.

Discussion/Rationale: *A specialized court is a flexible concept. It does not necessarily require a separate judge or courtroom. It is a case management strategy that allocates particular types of cases to a judge with a particular interest or expertise in the subject area. For example, a judge interested in business or commercial law may be willing to handle more commercial cases than would ordinarily be assigned under the random selection assignment process, or a specialized court may be simply a separate docket for drug offenders who are in a court-supervised rehabilitation program. There are several specialized courts in Ohio now. "Family courts" have been created in 16 counties by consolidating some combination of*



domestic relations, juvenile, probate and/or general division functions into a separate judicial entity that deals with cases that cut across these jurisdictions. There are 26 drug courts currently in operation across the state and 10 more in planning. The Toledo Municipal Court has both a drug and a housing division, the Cleveland Municipal Court has a housing division and the Franklin County Municipal Court has an environmental court.*

Recommendations:

Court Funding

The Futures Commission did not seek to estimate specific cost items or identify specific funding sources for each proposed improvement in the state courts at this initial stage, but understands that funding issues must be addressed as a first and essential element of implementing its recommendations. In general terms, the Commission recommends that:

- The essential functions of state courts should increasingly be funded from state general tax revenues supplemented by cost-based user fees and county and municipal appropriations, based on a relative share of the cost of operating the courts. Essential functions are those necessary to resolve disputes. These include the compensation of judges, court staff and related personnel; equipment; supplies; and administrative expenses including technology and a portion of the cost of operating court facilities.
- New requirements and standards imposed by the state should be supported by state funding or other available funding sources.
- State funding should be phased in through an orderly and deliberate process over a period of years.

Discussion/Rationale: *The administration of justice is enhanced when funding for courts is adequate and there is funding equity among courts. The Ohio Courts Futures Commission recognizes that many of its recommendations will require new or expanded funding for courts. The Commission also recognizes that it may be necessary to shift the balance between state and local funding to achieve adequate funding. With the assumption by the state of financial responsibility for essential court functions, formulas should be developed to assure adequate fiscal resources for those functions. The distribution of court costs and possibly some fines and fees may need to be altered, with the state receiving an increased share of these revenues. Local courts should retain the flexibility to increase or decrease fees to meet local needs.*

The Supreme Court should continue to fund pilot programs in county or multi-county court systems to test experimental techniques for improving the administration of justice. To meet fiscally extraordinary cases, the Commission suggests that the General Assembly be asked to set aside a special contingency fund that local courts may seek permission to access.



Section E:

Enhancing Court Rules & Processes

The vision... In the future, Ohio's courts continue to be indispensable dispute resolution centers of our society. Thanks to technological advances, transactions such as case and motion filings, record searches, hearings and many others that formerly required coming to court can be accomplished electronically from virtually anywhere. Standard statewide rules, procedures and forms govern practice and general case process in all Ohio courts. These standard rules and forms not only facilitate convenient remote access to the courts, they help ensure that Ohioans will benefit from consistent and predictable administration of justice regardless of their geographic location within the state.

By 2025, lawyers and parties in civil disputes are aided by integrated case-flow management systems in all courts, and are conducted through a continuum of court-assisted negotiation processes aimed at helping disputants reach early, mutually agreeable settlements without unnecessary costs and delays of preparing for trial. Trials remain available to resolve all cases that require them, but even in those cases early and active participation by judges helps dispose of preliminary issues and allows trials to focus effectively on the key evidence and issues that remain in dispute. Appellate courts are able to receive case materials from lower courts electronically, reducing delays in case processing and helping them render timely decisions.

Within standards established by the Supreme Court, courts use other current communication and data processing technologies to enhance court administration and case management and provide a consistently high level of service to the public.

**Current
Realities &
Future
Concerns**

Research done by the Commission and many other states found that court users want court processes that are more understandable, and that help them resolve disputes faster, more affordably and more appropriately. (In the 1993 Ohio University/Ohio State Bar Association Public Perception Study, 85 percent of respondents called for wider access to mediation and other dispute resolution strategies short of litigation. In its summary of recommendations to improve public confidence in the legal system, Ohio's 1995 Just Solutions Conference Report found that the public's most persistent demands were for courts that are "more affordable, more accessible and more user-friendly.")

Simple, comprehensible rules and solution-oriented procedures are critical to appropriate movement of cases through the court system. So are professional, well-trained court staff, and lawyers who help their clients use the system effectively. Of course, each court, defined by either geography or jurisdiction, has distinctive functions and a particular culture, so standard statewide policies and procedures must retain flexibility to support local requirements. The Commission recommendations that follow are designed to enhance the speed and effectiveness of current court practices and equip Ohio courts to deal with increased caseloads and escalating consumer expectations in the century ahead.

Recommendations:

Clear, Uniform Rules & Procedures

The Commission recommends that:

- Court rules, forms, and procedures regarding the practice and general case process should be as uniform as possible throughout the state to enhance the efficient and fair administration of justice. A primary value served by all rules and procedures should be efficiency in resolving disputes and best use of party, attorney and court resources.
- All court rules, forms, and procedures, and all changes as soon as adopted, should be timely published and available to court users and the public online and via other current electronic media according to a process and standards adopted by the Supreme Court.

Discussion/Rationale: *During the Commission's research and public comment process, one of the most significant concerns expressed by the public was that litigation takes too long and costs too much. The Supreme Court has made ongoing efforts to encourage courts to expedite the disposition of cases. The Commission encourages the Supreme Court to continue those efforts.*



The Commission recommends that court rules, forms, and procedures regarding practice and general case process be as uniform as possible throughout the state and consistently applied. We live in a mobile society. Ohioans conduct business and personal affairs across city, county, and state lines. The effectiveness, efficiency, and credibility of the court system depends in part on the ease with which the constituents of the court system can make use of the processes that are available to them.

As remote access to the courts becomes more familiar and acceptable to lay persons and lawyers alike, and as court-user interactions with the system multiply, the benefits of uniform statewide rules, forms and processes will become increasingly clear. For example, electronic compilation of timely statewide reports on court transactions and case dispositions can only be accomplished if courts across the state record those data in the same fields on the same standardized forms, using the same software platform.

Finally, uniform court rules and procedures promote quality decisions that are based on the legal merits of a case rather than technicalities. The Commission acknowledges, however that uniformity is not without its risks and that "one size" does not always fit everyone. It recommends that all courts retain the flexibility to adopt local rules that are consistent with the intent and requirements of the rules of general application.

The Commission believes the Supreme Court Rules Advisory Committee, or its future equivalent, should continue to draft, implement, and monitor rules of general practice and procedure and foster innovations and improvements. It should monitor pending legislation for consistency with the rules of practice and procedure. As in current practice, the committee should identify innovations created by local rules, and if appropriate, incorporate those improvements into statewide application. All rules, procedures, and related documents should be written in clear, simple language that will facilitate understanding by and among parties, lawyers and judges and the public.

Recommendations:

Role of Judges & Counsel

With regard to the proper roles of judges and counsel in moving cases efficiently through the judicial process, the Commission recommends that, where these practices are not already in use:

- Judges should communicate to counsel, early and consistently, that the judge expects a high level of professionalism and civility in their conduct and management of the case.

- **Judges should discuss with counsel and map a schedule for the case** and meet with counsel at regular intervals to monitor progress. This can be accomplished through appropriate use of magistrates, however the judge retains ultimate responsibility for case management. Counsel must be responsible for promptly bringing difficulties in meeting the schedule to the attention of the judge or magistrate.
- **Judges should be available to promptly resolve discovery disputes.** Magistrates may be utilized as appropriate to identify cases that may need active intervention, schedule more frequent conferences and recommend sanctions if necessary to discourage and reduce incidents of noncompliance. Judges retain ultimate responsibility for management of the discovery process.
- **Court decisions should be written clearly and articulate the basis for all substantive issues.**
- **Counsel should deliver services professionally and in a manner designed to promote efficient and fair resolution of the dispute,** consistent with the law, court rules, and professional standards. They should cooperate with and facilitate problem solving through effective dispute resolving mechanisms.
- **Courts and counsel should use available technologies** (electronic mail and document transmission, teleconferencing, online legal resources) whenever possible to expedite discovery, manage cases, and assist in the presentation of trials.
- **Counsel should resort to judicial involvement only where necessary to resolve an issue,** and not for areas in which they should normally cooperate. **Local counsel should be responsible for communicating practice requirements to out of town counsel since both** are responsible for the content and tone of pleadings.

Discussion/Rationale: *Judges are key to setting the tone, pace and direction of cases.*



Counsel in similar vein, bear responsibility for delivering services in a professional manner designed to serve their client's best interests while promoting the integrity of the process.

Traffic Courts: Where Judicial System Most Often "Meets The Road"

Meting out fines for speeding and running stop signs obviously isn't as impressive as bringing killers or bank robbers to justice. But traffic court is the point at which citizens have their most frequent—often their only—personal contact with the judicial branch of government. (In 1996, for example, more than 52 million traffic cases were filed in state courts across the U.S. That was more than all other types of cases combined—about 60 percent of the total state court caseload.)

It is a maxim in corporate public relations that any business looking to improve its public image needs to start with the receptionists and switchboard personnel who deal with their customers most frequently. In the same manner, any program to improve public respect for and confidence in Ohio's state courts must include a serious effort to enhance the efficiency, convenience and professionalism of traffic courts.

Since the vast majority of traffic violations involve parking and non-hazardous moving

violations, rather than DWI or other serious offenses, the vast majority of traffic cases are largely administrative in nature. In cases where no court appearance by the offender is required, performance boils down to case management and collecting fines through a traffic or parking violations bureau. There have been a number of recent innovations in these areas that Ohio courts may wish to consider:

- Some courts are now permitting individuals to pay traffic fines over the Internet, and courts are providing additional public information on fines and procedures through electronic means.
- In some jurisdictions, greater attention has been placed on calendaring and scheduling contested traffic cases. One important calendaring issue is the time police officers are "off the street" to testify in court. In large

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urban areas and increasingly in smaller courts as well, automated scheduling modules that include officers' work schedules are being used to avoid inefficient and costly re-scheduling.

- Austin, TX has developed an innovative scheduling program which emphasizes early disposition of cases and limited continuances, with firm trial dates. Under this program, courts schedule all cases with "not guilty" pleas for a pre-trial "docket call" which is the defendant's opportunity to plea bargain, enroll in driving safety school or request deferred prosecution with early disposition. Times for disposition of cases with initial "not guilty" pleas were significantly shortened

under this system, and in just two years the backlog of cases in local courts was reduced from 6,800 cases to 578 cases.

- Florida recently adopted a constitutional amendment permitting the use of "traffic infraction hearing officers," to hear routing traffic cases in place of judges. This has freed the time and resources of judges to deal with more serious offenses, and speeded the disposition of cases. Most large Florida counties are making increasing use of hearing officers, and the state has provided grants in support of the practice. One important advantage is that it is much easier to schedule traffic hearing officers than judges to conduct night court sessions.

Recommendations:

Integrated Case-Management Systems & Reporting

The Commission recommends that:

- Each court should implement an integrated, effective, case flow management process to promote predictability, early and continuous court involvement, flexibility, adaptability to changing circumstances, and optimum use of resources. Judges within a division of a multiple-judge court should cooperate to manage case flow. Case management processes should move individual cases from filing to disposition in a timely, cost-effective manner using the best means consistent with their content and circumstances. Such means may include mediation, arbitration, and conventional litigation. Cases should be reported as closed only when all matters have been disposed.
- The Supreme Court should continue to improve its computerized reporting system and enforce mandatory reporting guidelines. The Commission also recommends periodic audits by the Supreme Court. Any computerized reporting system and supporting technology should provide compatibility and interoperability of data that are consistent with statewide standards, and meaningful sanctions should be enforced for noncompliance.



Discussion/Rationale: *Since the early 1990's, each court in Ohio has been required to develop and file with the Supreme Court a case management plan. The Commission supports this requirement and recommends that the case management process continue to be improved. An integrated case management system allows courts to monitor their dockets in a systematic way that requires each case to be dealt with pursuant to a formal, recorded plan of action designed to move that dispute toward appropriate resolution. By requiring that a specific management plan be developed for every case entering the system, courts establish a presumptive calendar of key dates by which parties, counsel and court officers must take appropriate steps and initiate necessary legal actions to arrive at a negotiated settlement or bring the matter to final disposition. The Commission recommends that the Supreme Court continue to improve its computerized reporting system and enforce mandatory reporting guidelines through periodic audits, so the system can be developed into an effective evaluation tool. This computerized reporting system and supporting technology should provide compatibility and interchangeability of data that are consistent with statewide standards, and meaningful sanctions should be enforced for noncompliance.*

Recommendations:

Efficient Appellate Case Management

- The Commission encourages appellate courts to adopt streamlined case processing strategies that will accelerate case handling and disposition of appeals while guaranteeing fundamental fairness and promoting finality.

Discussion/Rationale: *The same types of case management practices and technology proposed for trial courts are also applicable in many instances to the courts of appeals.*

Appellate issues should be consolidated for presentation, and a citation system developed that encompasses all forms of case publication, including technological means. Where such standards are not already in place, appellate courts should consider fixed time limits for filings, scheduling arguments and rendering decisions.

The Commission recommends that appellate courts adopt case management practices and conferences to direct cases to mediation, identify and narrow issues, and seek stipulations using a multi-tiered evaluation and tracking process. In civil appeals, appellate courts should require dispute resolution, as appropriate, with cases assigned by the administrative judge. In some types of cases where time is of the essence, such as custody disputes and cases involving juveniles, parties may use expedited appeals. Criteria should be developed to prescribe which cases qualify for these appeals.



Section F:

Encouraging Alternatives in Dispute Resolution

The vision... In the future, Ohio's courts model a cultural change in the way the public and the legal profession approach disputes. This culture change has been accomplished in part by directly involving the parties and others affected by a dispute, as well as their lawyers, in negotiating resolutions. The judicial system has incorporated a wide continuum of less adversarial and more collaborative problem-solving processes. The general public, law schools, judges and lawyers have learned that using these processes to resolve disputes often results in faster, more cost-efficient settlements that provide greater satisfaction to the disputants than they could have achieved through traditional litigation.

By 2025, the court system has institutionalized alternative, non-adversarial dispute resolution techniques while retaining the right of all disputants to a trial if other means fail to achieve a satisfactory result. Arbitration is also available to parties to finally resolve the matter. Mediation and other forms of negotiation assistance are now the first step in most civil cases, and a full partner with litigation in the resolution of disputes. All Ohio courts encourage mediation and other forms of negotiation assistance such as case evaluation, fact-finding, and mini-trials in appropriate cases soon after the parties have exchanged sufficient information to assess settlement possibilities. Courts maintain high quality mediation programs and work with other, non-judicial service providers, including social service agencies, churches and civic institutions, cultural resource centers and private mediation programs, to develop negotiation assistance on a voluntary basis within the community. Community advisory committees assist courts in establishing and monitoring these negotiation assistance programs.

Current Realities & Future Concerns

Traditional litigation is and will continue to be an appropriate mechanism to resolve disputes where a clear winner or precedent is needed. However current processes require people to prepare simultaneously for settlement and for trial, which is expensive and time-consuming for the parties as well as for the courts. Support for non-adversarial court processes is nothing new. During his career as a lawyer, future president Abraham Lincoln said in 1850, “Discourage litigation. Persuade your neighbors to compromise whenever you can...” Yet, until recently there were few tools other than litigation available to solve disputes. With 95 percent of lawsuits settling out of court—many just before going to trial—it seems most people would prefer an alternative.

Ohio has been a leader in the alternative dispute resolution (ADR) movement. Under the guidance of Chief Justice Moyer and through the efforts of the Ohio Commission on Dispute Resolution and Conflict Management the number of court and community mediation programs had grown from 11 in 1991 to 121 programs in 44 counties in 1999. These efforts have been extremely successful because they allow people, with the assistance of a neutral party, to solve their own problems in ways that best satisfy their personal needs. Early settlements also permit courts to move litigation more quickly and to focus on cases that most likely will go to trial. The Supreme Court’s Office of Dispute Resolution currently makes grant funding available to courts in all areas of the state, with the goal of having ADR programs in all of Ohio’s common pleas courts by 2006. To support this cultural change, promote non-violence and teach children better ways to resolve differences as they move toward adulthood, peer mediation programs have been established in more than 360 of Ohio’s 670 school districts under the guidance of the Department of Education and the Commission on Dispute Resolution and Conflict Management.

Recommendations:

Civil Mediation

In order to promote faster, more efficient, less costly and mutually satisfactory resolution of disputes, the Futures Commission recommends that:

- Users of all Ohio courts should be able to file a request for mediation without filing a lawsuit.
- Each trial court should have an array of tracks or systems besides traditional litigation that parties may use to resolve their disputes. Court personnel should be trained in all dispute resolution options, and should assign new cases to appropriate tracks or systems consistent with the nature of the controversies. There may be mandatory mediation in some cases or situations, but there should be no penalty for proceeding with litigation if a dispute remains unresolved.
- The courts should develop strong, high quality in-house mediation programs which complement private sector mechanisms and enhance efficient and appropriate dispute resolution.
- Courts should have a sound process and criteria in place for selecting and maintaining qualified mediators and administrators who serve independent of the litigation process. The selection process may include a committee, representing a spectrum of litigant interests, to interview and recommend candidates to the court. The confidentiality and independence of the mediation process is essential to effective dispute resolution, and should be carefully maintained.



Discussion/Rationale: The effectiveness of court-based programs will depend on getting disputes on the right track of the dispute resolution continuum as early as possible. Advice from counsel may be the first step in this process, followed by assistance from professional court staff who will guide disputants through their choice of mediation, case evaluation, fact finding, mini-trials, summary jury trials, or other assisted negotiation methods or combinations of such options. If non-adversarial methods are not successful, fast-track trials, arbitration or traditional litigation remain as options. Even when cases are on the litigation and arbitration tracks, early in the process, the judge or arbitrator may again suggest assisted negotiation after sufficient information has been obtained in discovery to evaluate them for settlement. High quality intake staff, mediators and other neutrals will be a necessity. Involvement of community advisory committees in these court programs will increase awareness, support and use of these programs.

Recommendations:

Civil Family Matters

- Courts should provide mediation, counseling, and education services at the initial stages of civil family conflicts and as appropriate throughout the proceedings. In cases involving children, non-adversarial processes that sustain parent/child and parent/parent relationships should be preferred and traditional litigation should be used only when other approaches are not successful.



Discussion/Rationale: Mediation works best when there are ongoing relationships between the parties that they want or need to maintain. This is why child custody, visitation, truancy and many other juvenile and domestic problems are excellent for mediation and have been among the first areas of the system to adopt non-adversarial techniques. In light of the high success rate for juvenile court mediations, it may be reasonable for courts to mandate mediation in such cases—at least to the extent of ordering parties to attend a mediation. Parties should not, however, be required to reach an agreement or be punished for failing to do so. The right to a trial should be preserved.

Recommendations:

Public Policy Disputes & Mass Tort Cases

- To obtain more appropriate outcomes and speed up the process, courts should use mediation to assist in the resolution of public policy disputes, mass torts and product liability litigation.



Discussion/Rationale: The use of mediation, or consensus-based processes, in public policy disputes and mass tort cases is increasing across the country. Mediation is ideal for resolving many public policy disputes because of the continuing relationship between the disputants and the balancing of interests that is required to reach agreement—the “win-win” solution. Mediation has been used successfully in resolving asbestos, Agent Orange, breast implant and other mass torts and was recommended in federal legislation as a preferred first step in addressing high technology problems. Several states already use mediation to resolve disputes over water, fishing and hunting rights, land development and plant sitings. Such mediations, as a prelude to legislation, have been very effective in getting various interest groups to reach consensus on priorities. In Ohio, consensus-based processes have been used to develop state-county partnership agreements regarding welfare reform, to develop the Great Lakes Water Quality Rules and to revise the state’s Medicaid long-term reimbursement system.

Confidentiality & Disclosure Issues

Confidentiality is a cornerstone of mediation—a premise upon which parties rely when they negotiate openly and reveal their interests and what it will take to settle. On matters of public policy, however, the public has broad rights to know the basis for decisions. Balancing these interests will be important as the use of mediation in public policy disputes increases.

NY Midtown Court Dispenses Justice at Neighborhood Level

Innovative uses of mediation across the country are proliferating almost as fast as new technology stocks. Following are a few promising "initial offerings" that implementers of the Futures Commission's recommendations may wish to monitor and copy:

- Local governments are dealing with potentially contentious issues by involving the stakeholders in collaborative discussions BEFORE public conflicts arise. For example, as a first step in dealing with environmental hazards which affect several political entities, local officials have been using mediation to settle differences over their respective regulatory responsibilities and to agree on effective strategies for dealing with offenders. For examples, see: <http://www.ispa.fsu.edu> and <http://www.agree.org>.
- The U.S. Air Force has in place a department-wide effort to settle purchasing and other contract claims and to resolve EEO, labor and environmental disputes through the use of ADR as early in the process as possible. This program involves billions of dollars and affects 500,000 employees. For additional information see: <http://www.adr.af.mil>.
- Mediating on the Internet is becoming commonplace for attorneys, insurance companies and businesses involved in e-commerce. Although cyberspace mediation is primarily text-based as this report is written, it is expected to have audio and video features in the near future. For more information and a list of current mediation web sites see: <http://aaron.sbs.umass.edu/center/Default.htm> and the Ohio State Journal of Dispute Resolution at <http://www.law.ohio-state.edu/JDR/JDRHOME.htm>
- Truancy is often the first public sign that a child may be headed toward delinquency. The Truancy Prevention Through Mediation Project, which began in Lucas County, Ohio, requires families, schools, juvenile courts and social service agencies to work collaboratively to address truancy prevention. The project has been extremely successful in reducing absences from school without invoking more formal intervention by the courts, and will soon be in use in five Ohio counties. For more information contact the Supreme Court's Office of Dispute Resolution: <http://www.sconet.state.oh.us> and the Ohio Commission on Dispute Resolution and Conflict Management at <http://www.state.oh.us./cdr>. Both agencies are involved in supporting and expanding this initiative.
- Mediations in court before a case has been filed have been very successful in Ohio municipal and juvenile courts, with 7,000 cases resolved annually. Mediations of filed cases in common pleas courts have also been well received. Based on this record, the Supreme Court's Office of Dispute Resolution (<http://www.sconet.state.oh.us>) is developing a grant proposal to provide funding for a pre-filing mediation program in the common pleas courts. This expansion of mediation to resolve disputes before they become lawsuits is on point with the Futures Commission's vision that courts should provide value-added services to communities, and model appropriate problem-solving strategies.

For more information on dispute resolution innovations contact the CPR Institute for Dispute Resolution at www.cpradr.org.

Recommendations:

Criminal Mediation

- At the pre-filing stage, community-based mediation should be available on a voluntary basis in certain lower level cases, such as neighborhood disputes, graffiti, and shoplifting.
- At the victim's request, mediation through courts should be available after charges are filed in some lower level felony, misdemeanor and delinquency cases (nonviolent cases, defendants with no prior criminal records).
- After a more serious criminal or delinquency case is concluded, restorative mediation programs should be available through the court with the victim's consent.



Discussion/Rationale: The Commission recognizes that the application of mediation or dispute resolution may be different in criminal cases than in civil cases. The value of voluntary mediation in dealing with lower level criminal offenses has been proven in a number of programs like the Columbus Night Prosecutor Program. Restorative justice programs give the victim some restitution and sometimes permit the offender to avoid a criminal record. As the offenses move up the criminal ladder, use of these programs is more carefully controlled to avoid setting a pattern of excusing serious offenses. The victim's rights and the prosecutor's separate responsibilities must be recognized. Thus, most of these programs that deal with felonies and delinquencies only permit mediation with the consent of the victim and after conviction. Time and experience will tell whether these restrictions are justified or should be loosened.

Recommendations:

Mediation at the Appellate Level

- The Supreme Court should increase its use of mediation in appeals and original actions in appropriate cases.
- Mediators should be available on-call and utilized when appropriate to assist in public policy and other similar disputes at the state level or within an appellate district.
- The Supreme Court should continue to lead and monitor ADR programs in state courts.



Discussion/Rationale: The Supreme Court and courts of appeals are using mediation for appeals and original actions at an increasing rate. While it might seem there is little chance of worthwhile settlement negotiations at this late stage of litigation, recent reports from the 10th District Court of Appeals and several other Ohio appellate districts indicate a settlement rate of 40 percent of those disputes they have referred to mediation. These successful programs should be expanded. Furthermore, the appellate courts should have mediators for public policy, mass tort and similar disputes, available within the appellate district or statewide, depending on the breadth of the dispute. The Ohio Commission on Dispute Resolution and Conflict Management, with members appointed by all three branches of government, is already involved in moderating collaborative public policy solutions and could be a valuable source of assistance if political pressures make it unwise for court mediators to become involved in some public policy disputes.

Confidentiality & Disclosure Issues

Confidentiality is a cornerstone of mediation—a premise upon which parties rely when they negotiate openly and reveal their interests and what it will take to settle. On matters of public policy, however, the public has broad rights to know the basis for decisions. Balancing these interests will be important as the use of mediation in public policy disputes increases.

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- The U.S. Air Force has in place a department-wide effort to settle purchasing and other contract claims and to resolve EEO, labor and environmental disputes through the use of ADR as early in the process as possible. This program involves billions of dollars and affects 500,000 employees. For additional information see: <http://www.adr.af.mil>.
- Mediating on the Internet is becoming commonplace for attorneys, insurance companies and businesses involved in e-commerce. Although cyberspace mediation is primarily text-based as this report is written, it is expected to have audio and video features in the near future. For more information and a list of current mediation web sites see: <http://aaron.sbs.umass.edu/center/Default.htm> and the Ohio State Journal of Dispute Resolution at <http://www.law.ohio-state.edu/JDR/JDRHOME.htm>
- Truancy is often the first public sign that a child may be headed toward delinquency. The Truancy Prevention Through Mediation Project, which began in Lucas County, Ohio, requires families, schools, juvenile courts and social service agencies to work collaboratively to address truancy prevention. The project has been extremely successful in reducing absences from school without invoking more formal intervention by the courts, and will soon be in use in five Ohio counties. For more information contact the Supreme Court's Office of Dispute Resolution Office: <http://www.sconet.state.oh.us> and the Ohio Commission on Dispute Resolution and Conflict Management at <http://www.state.oh.us./cdr>. Both agencies are involved in supporting and expanding this initiative.
- Mediations in court before a case has been filed have been very successful in Ohio municipal and juvenile courts, with 7,000 cases resolved annually. Mediations of filed cases in common pleas courts have also been well received. Based on this record, the Supreme Court's Dispute Resolution Office (<http://www.sconet.state.oh.us>) is developing a grant proposal to provide funding for a pre-filing mediation program in the common pleas courts. This expansion of mediation to resolve disputes before they become lawsuits is on point with the Futures Commission's vision that courts should provide value-added services to communities, and model appropriate problem-solving strategies.

For more information on dispute resolution innovations contact the CPR Institute for Dispute Resolution at www.cpradr.org.

Recommendations:

Criminal Mediation

- At the pre-filing stage, community-based mediation should be available on a voluntary basis in certain lower-level cases, such as neighborhood disputes, graffiti, and shoplifting.
- At the victim's request, mediation through courts should be available after charges are filed in some lower-level felony, misdemeanor and delinquency cases (nonviolent cases, defendants with no prior criminal records).
- After a more serious criminal or delinquency case is concluded, restorative mediation programs should be available through the court with the victim's consent.



Discussion/Rationale: The Commission recognizes that the application of mediation or dispute resolution may be different in criminal cases than in civil cases. The value of voluntary mediation in dealing with lower level criminal offenses has been proven in a number of programs like the Columbus Night Prosecutor Program. Restorative justice programs give the victim some restitution and sometimes permit the offender to avoid a criminal record. As the offenses move up the criminal ladder, use of these programs is more carefully controlled to avoid setting a pattern of excusing serious offenses. The victim's rights and the prosecutor's separate responsibilities must be recognized. Thus, most of these programs that deal with felonies and delinquencies only permit mediation with the consent of the victim and after conviction. Time and experience will tell whether these restrictions are justified or should be loosened.

Recommendations:

Mediation at the Appellate Level

- The Supreme Court should increase its use of mediation in appeals and original actions in appropriate cases.
- Mediators should be available on-call and utilized when appropriate to assist in public policy and other similar disputes at the state level or within an appellate district.
- The Supreme Court should continue to lead and monitor ADR programs in state courts.



Discussion/Rationale: The Supreme Court and courts of appeals are using mediation for appeals and original actions at an increasing rate. While it might seem there is little chance of worthwhile settlement negotiations at this late stage of litigation, recent reports from the 10th District Court of Appeals and several other Ohio appellate districts indicate a settlement rate of 40 percent of those disputes they have referred to mediation. These successful programs should be expanded. Furthermore, the appellate courts should have mediators for public policy, mass tort and similar disputes, available within the appellate district or statewide, depending on the breadth of the dispute. The Ohio Commission on Dispute Resolution and Conflict Management, with members appointed by all three branches of government, is already involved in moderating collaborative public policy solutions and could be a valuable source of assistance if political pressures make it unwise for court mediators to become involved in some public policy disputes.

Section G:

Jury Reform

The vision... In 2025, jury trials continue to be a vitally important feature of Ohio's court system. Communities realize that without willing jurors it would be impossible for civil and criminal cases to be decided according to traditional standards of justice. Courts acknowledge that they must use jurors' time thoughtfully and efficiently, make serving as comfortable and convenient as possible, and compensate jurors reasonably for their service and expenses. Persons called for jury duty are treated and respond as responsible citizens performing a valued community service. Thanks to improved court technology and use of expanded source lists to identify potential jurors, juries reflect the diversity of the communities they serve. Jurors are thoroughly informed about, and empowered to participate in, the trials they decide.

Current Realities & Future Concerns

Juries are the essence of democracy in our courtrooms. Thomas Jefferson described the citizen jury as "the only anchor by which a government can be held to the principles of its constitution..." Surveys of persons completing jury duty across the country have identified a number of areas in which the courts can and should improve their care and treatment of the responsible citizens who perform this vital civic duty. Over the last 15 years, numerous efforts have been made across the country to improve the quality of juror service by eliminating exemptions for various professions and age groups, making jury service as convenient and comfortable as possible, and providing adequate compensation for expenses. Various strategies have been explored to expand jury pools to reflect more fully the diversity of the jurisdiction, and to enhance jurors' ability to participate in trials in an informed and involved manner.

In 1998, based on recommendations by the Chief Justice, the Ohio General Assembly enacted legislation eliminating most former occupational and age exemptions from jury service, and increasing the stipend courts are authorized to pay jurors to cover realistic costs for their expenses of serving.

On the basis of its research, including a 1995 Gallup Poll which found that "public interest in serving on juries had dropped more than 50 percent since 1990, while 51 percent of the American public now believes the jury system no longer works properly" the Commission concluded that strong efforts should be made to enhance the quality of jury service in the 21st century. In adopting the following recommendations, the Futures Commission emphasizes that most are already in use or being tested in Ohio and elsewhere. In 1998, the first statewide Jury Management Conference, sponsored by the Ohio State Bar Foundation, was held to discuss and implement improvements in the management of juries. This gathering was scheduled to reconvene in April 2000. In light of the groundwork that has already been laid, the Commission urges the Supreme Court to move forward with recommended jury reforms as soon as possible.

Improving the Jury Process in Ohio Courts

In order to improve public respect for jury service, increase participation by persons called to serve on juries and enhance the value of jury trials as a method of resolving disputes, the Futures Commission recommends that:

Recommendations:

Jury Summons

- The jury summons should provide adequate notice, be clear and understandable and include background materials explaining the court system and jury service in lay person's terms. Advance material should also provide an opportunity for potential jurors to ask questions before reporting for service.



Discussion/Rationale: Improving the quality of jury service begins with the jury summons. The summons and the accompanying information should be encouraging to potential jurors. There is evidence that some people may avoid jury service because they feel inadequate to serve as jurors. Others avoid jury service based on their own prior experiences or negative experiences reported by friends or family members. In either case, the jury summons should encourage a positive attitude toward jury service. Courts should have appropriate procedures for addressing persons who simply do not respond to jury summons.

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Recommendations:

Jury Pools

- Courts should use expanded jury source lists to achieve more representative juries. The development of jury pools should be managed to ensure that all qualified citizens have the opportunity to participate in jury service.



Discussion/Rationale: According to the Ohio Jury Standards, juries should include "all cognizable groups within the community." Courts should aggressively pursue that objective by considering sources such as voter registration lists, drivers' license lists, motor vehicle registration lists, telephone directories, state non-driver ID card lists and other sources to ensure a diverse and widely representative jury pool. Courts in several large counties (e.g. Lucas County) are currently combining their efforts to create a single jury pool, in one location and administered by a single jury commission, serving all trial courts in the county. Courts using the single jury pool report that it is more efficient, avoids duplication of personnel and technology, and minimizes overlaps in jury lists and otherwise. The Commission recommends that other jurisdictions consider the creation of single jury pools to serve all of the trial courts of the county.

Recommendations:

Voir Dire

Questioning of Jurors

- Judges should be involved in and actively manage the voir dire portion of the jury selection process.



Discussion/Rationale: Voir dire is the process ideally directed toward questioning and selecting jurors who will fairly and impartially consider the evidence and decide the case. It is the means by which jurors are introduced to the case. Managed effectively, it can lead to better juror response to questions as well as their better understanding of trial issues, and heightening trial efficiency. Active judicial involvement can enhance all of these ends as well as minimize juror embarrassment and abuse of the process.

Participants in the 1997 Ohio Bench-Bar Conference, which focused on jury management and selection, believed that a judge should determine the extent and nature of judicial involvement on a case by a case basis. The nation's top jury management expert, G. Thomas Munsterman, goes further. He notes that judges "setting clear guidelines about appropriate voir dire examination during the pretrial conference helps curb excessive or inappropriate advocacy by the lawyers." Munsterman, G. Thomas, Paula L. Hannaford and G. Marc Whitehead, cds., *Jury Trial Innovations*, National Center for State Courts, 1997 at p. 54. Judges who do so agree. Id.

The Futures Commission recommends that all judges become actively involved in managing the voir dire process, and that procedural rules acknowledge and accommodate this activity. This might involve, for example, permitting judges to excuse jurors outside the jurors'

presence to prevent possible embarrassment or authorizing judges to allow "mini opening statements" by counsel prior to jury selection so potential jurors have a context for voir dire questioning and later trial testimony. The Commission urges, however, that any changes in the process of jury selection continue to respect and safeguard the privacy and dignity of jurors.

Recommendations:

Juror Service & Treatment

- Courts should make efficient use of jurors' time, and make jury service as comfortable and convenient as possible. Jurors should receive adequate compensation and expenses and should be treated as a respected and valuable part of the justice system.
- Judges and courts should address language and cultural differences to enhance juror participation and understanding of judicial proceedings.



Discussion/Rationale: Jurors provide a unique and vital public service. Courts should take into account jurors' personal lives or employment, make efficient use of their time and ensure that jurors are not unnecessarily burdened by jury service. Jurors should have comfortable, accessible waiting rooms designed specifically for that use. Jurors should be adequately compensated, including incidental expenses associated with jury service such as parking. Where practicable, courts should make an effort to provide transportation and parking.

To minimize inconvenience to jurors and their employers, jurors should serve the shortest possible term consistent with the needs of the trial court. Currently, courts in Ohio are experimenting with methods such as "one day-one trial" and "on call." In "one day-one trial," jurors are summoned for a single day or a single trial and, to the extent possible, know when they will be called and what they will be doing. The "on call" or "call in" method uses technology to permit jurors to call in at the beginning of the day to determine whether they will be needed on that day—allowing those not needed to go to work or take care of other business rather than driving to the courthouse and waiting for hours before being dismissed. Courts also can and should use technology to monitor case status and minimize wasted time and inconvenience caused by last minute settlements and rescheduling. By making jury service more efficient and less burdensome, these strategies can foster positive word-of-mouth, which will increase future juror participation.

Expert Says Jury Reform A Recent/ Growing Phenomenon

At a recent public hearing in another state on proposed jury reforms, one citizen said: "I have no problem with any of your proposals. I only wonder why it took you 200 years to finally get around to it."

According to nationally recognized jury scholar G. Thomas Munsterman of the National Center for State Courts, although the right to trial by jury was enshrined in the Bill of Rights in 1791, most major changes in the U.S. jury system have been concentrated in the last three or four decades. He cites several examples of important changes that have only come about in the last 25 years:

- It was not until 1975 that the U.S. Supreme Court ruled that states could not exempt people from jury service because of their sex. At that time, three of the 50 states still exempted women—just because they were women.
- In the 1980s an Indiana jury commissioner assembling jury pools from voter lists was challenged for routinely selecting three men for every woman. He explained that he had been told that men made better jurors. The factor of three to one was his idea.
- In the mid-80s a mistrial was declared in the case of several defendants in the Attica, NY prison uprising because the local jury

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commissioner systematically excluded all students from jury pools. He explained that students "only want to be excused, anyway."

- It was 1985 before the U.S. Supreme Court ruled, in *Kentucky vs. Batson*, that peremptory challenges of prospective jurors based solely on race were impermissible.

The cumulative effect of these and other recent changes have produced a much more diverse and "democratic" jury system than existed previously. That may account for the high percentage of respondents (78 percent) who said jury trials "are the fairest way to determine guilt or innocence," and the 69 percent who identified juries as "the most important part of the justice system," in a 1999 national survey conducted by the American Bar Association.

What lies ahead? Munsterman notes that scientific and technology advances are already impacting the jury process in a number of ways that seem likely to gain wider acceptance.

Some examples include:

- courts which allow prospective jurors to respond to their summons and complete forms by using touch-tone telephone software and e-mail;
- use of the Internet and World Wide Web by courts to make information on jury service available around the clock, allow jurors to interact with commissioners' offices from remote locations, and even present testimony and other evidence to juries during trials;
- increasing use of DNA evidence and other scientific testing to establish positive identification of individuals and to clarify the timing and sequence of crime-related events. This not only helps juries come to verdicts more quickly, but also appears to prompt more defendants to plead guilty--reducing the number jury trials.

Ironically, while recent tort reform legislation in some U.S. states has limited juries' powers to set damage awards and otherwise reduced their role, Munsterman notes that adopting or reinstating trial by jury has been one of the first steps taken by Russia and other eastern European nations attempting to establish democratic political reforms.

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**Jury Activities,
Juror
Understanding
of Evidence**

- In order to effectively process, evaluate, and comprehend the evidence and the law and make informed decisions, **jurors should be permitted, under appropriate instruction, to**
 - take notes, including the use of electronic means, during the trial and during deliberations to aid their memory for both factual and conceptual items;
 - ask questions in a manner in which both parties' rights are protected;
 - at the court's direction, have technical issues clarified and explained by neutral experts selected by the court;
 - in lengthy trials and trials of complex cases, have notebooks for keeping documents and other information about the case;
 - have the alternate jurors randomly designated just before deliberations;
 - have access to projected real-time transcripts during the trial and access to the written text of jury instructions and trial testimony during deliberations; and
 - discuss evidence during the trial, when all jurors are together.

Discussion/Rationale: *Recent studies, including an American Judicature Society field study cited in the bibliography of this report, have demonstrated that using various tools to increase juror involvement enhances juror comprehension and satisfaction with the process, without notable disadvantages.*



A majority of participants in the 1992 ABA/Brookings Symposium on juries ("Charting a Future for the Civil Jury System") recommended enhancing juror comprehension by using means such as note-taking, using information technology, and permitting jurors to ask questions. They also identified techniques that would aid jurors' participation in the process: simplifying trials, allowing mini-opening statements before voir dire, and allowing counsel to make mini-summary statements through the trial to explain the relevance of certain evidence throughout the trial. The symposium also strongly recommended greater use of visual exhibits, videotape and computer presentations, and visual summaries.

Along this line, responses to a 1998 the Futures Commission survey showed Ohio judges overwhelmingly (201-19) supported the concept that "juries [should] have a variety of tools to help them best decide cases, such as copies of exhibits, clear and timely oral/written instructions, and the ability to take notes."

Multi-sensory presentation of information to a jury benefits jurors, the trial process, and also benefits the parties whose lawyers use these tools. "A large body of knowledge shows that information presented in more than one sensory modality—for example, verbal and visual or audiovisual—is understood more easily and is retained longer." National Law Journal, Sue Seif, "Aids Can Convince Jurors by Appealing to Senses," September 11, 1995.

The Commission believes that there is similar value in reinforcing verbal jury instructions by also providing jurors with a written copy.

Finally, it is important to ensure that judges address cultural or linguistic differences among jurors.

Recommendations:

Jury Instructions & Deliberations

- The judge should provide jury instructions when they are most useful to jurors, using clear, simple language.
- If jurors reach an impasse, the judge should be able to provide the jury not only with legal instructions but also, with agreement of counsel, with additional information including testimony and stipulated evidence to assist them in deciding the case.



Discussion/Rationale: *The Commission concluded that the traditional method of providing juror instructions at the end of the trial is not always of maximum value to jurors. For example, it may be more helpful and appropriate for a judge to provide final instructions before closing arguments instead of after them. Many judges now provide instructions in writing or even in electronic format available to all jurors. Judges should also instruct jurors on effective techniques for selecting a foreperson and deliberating.*

The Commission also felt it would be useful to have jury instructions and trial testimony available to jurors through technological means during deliberations, just as historically they have had access to physical evidence. This support, and more active assistance from the judge in attempting to resolve impasses, will help to preserve the integrity of the jury system and promote judicial economy and finality.

Recommendations:

Statewide Jury Commission

- The Supreme Court should establish a jury commission to evaluate jury practices statewide, establish uniform standards for jury service, foster the development of innovative jury practices and make recommendations to the Supreme Court and the General Assembly regarding improvements in jury service.



Discussion/Rationale: *A statewide jury commission should be appointed to assist the Supreme Court in implementing the changes recommended in this report. Some of the Commission's recommendations could be implemented immediately or through pilot projects. Such a commission could also help conduct a statewide evaluation/assessment of jury practices if the Supreme Court required such a study in considering proposed jury reforms.*

Section H:

Supporting Excellence in Judicial Officers & Court Personnel

The vision... In 2025, as it has been for the past two centuries, the professionalism and quality performance of our judicial officers is a vitally important factor in sustaining public trust and confidence in Ohio's courts. Judges are chosen on the basis of superior professional qualifications, appropriate experience and demonstrated integrity, fairness and impartiality. Special interest money and partisan politics have been minimized in the judicial selection process. To ensure that only well-qualified persons dispense justice in our state courts, the Supreme Court has established a Judicial Qualifications Commission which sets objective minimum qualifications for seekers of judicial office and determines whether nominees meet those criteria. All judicial officers (the term as used in this report includes court magistrates as well as judges) and other court staff are committed to ongoing fulfillment of mandatory continuing education and other professional requirements. The Supreme Court monitors compliance to assure that court users in all areas of the state will receive quality judicial services.

There are 702 active judges currently serving on the Supreme Court, courts of appeals, and trial courts (common pleas, municipal, and county courts). An additional 130 retired judges serve on assignment by the Chief Justice when they are needed.

Ohio's judges have demonstrated national leadership. Within the past several years, Ohioans have served as president of the National Conference of Chief Justices, Chairman of the Board of the National Center for State Courts; President of the American Judges Association and as senior officers of the National Association of Juvenile and Family Court Judges and the National Association of Women Judges to name just a few. Numerous Ohio judges have served as faculty at the National Judicial College, and seven of the 74 judges in the nation who have earned a master of judicial studies degree are from Ohio—the highest number from any state.

It is widely recognized that Ohio's judicial officers meet high standards of quality and performance. The infrequent instances of poor performance or ethical lapses that have been reported in recent years have been notable as departures from the norm. All that notwithstanding, the Commission's fact-gathering and public hearing processes revealed major areas of concern about the manner in which our judges are selected and the rising cost of judicial campaigns. Particularly troubling are statistics like the 90 percent of respondents to a 1994 survey by an Ohio Supreme Court commission who said they believe judicial decisions are influenced by campaign contributions from attorneys and interest groups who appear before the courts.

In order to maintain and enhance public trust and confidence in our state courts, the Commission strongly recommends that Ohio judicial officers of the future continue to be held to high standards. These should include initial professional requirements, experience qualifications, performance criteria, continuing education and unblemished professional ethics. High standards must also be set for the nominating process for judicial officers.

Currently in Ohio, all open, full-term judicial seats are filled by non-partisan general election—after candidates are selected through partisan primaries. Judges at all levels serve six-year terms. In the event of an in-term judicial vacancy, the Governor makes an interim appointment. The electorate then has an opportunity to decide in the next general election whether that appointee or an opponent will serve out the remainder of the unexpired term. In pursuing opportunities to maintain and raise standards of quality in Ohio's judiciary, the Commission considered the experience of other state court systems as well as national trends in judicial evaluation and selection.

Many states use a merit selection process in which some or all judges are nominated by multi-partisan panels based on objective criteria, and appointed either by the Governor or an appointing body. Other states select all judges by election. Some of these elections are partisan; some are not. None of the methods is perfect. Each has its merits, and the Commission included strong supporters of both elective and appointive systems. (*Note: For a comparative discussion of issues related to judicial selection, see Appendix A: "Analysis of Judicial Selection Systems" at the conclusion of this Report.*)

Rather than taking a position in favor of either an elective or appointive system, the Commission opted to recommend a number of improvements which can and should be made in Ohio's judicial selection process of the future, *regardless of whether it is elective or appointive.*

**Improving
Judicial
Selection**

Whatever method of judicial selection is employed in the future, Ohio's judicial selection process should:

- **Be non-partisan at all levels**—The Commission recognized that it is difficult if not impossible to remove all politics from the judicial selection process. However, it urges that every effort be made to make the system evenhandedly multi-partisan and, to the extent practicable, non-partisan. This may involve eliminating party identification of judicial candidates from all judicial ballots and campaign materials.
- **Promote diversity**—An appropriately diverse judiciary best reflects the community and promotes public confidence in the court system. Efforts should be made to identify and encourage potential candidates from under-represented groups to seek judicial office.
- **Provide published, objective qualifications**—Criteria for judicial selection should be based on objective factors related to faithfully and competently performing the duties of judicial office. Those criteria should be widely published.
- **Include mechanisms to ensure that voters are well-informed about all judicial candidates.** Exit polls and opinion surveys reveal voters do not feel sufficiently informed about judicial candidates. A major effort to inform the public and voters about the judicial system, criteria for judicial office and individual candidates' qualifications is essential to selecting qualified judges.
- **Minimize the role of money to avoid conflicts of interest**—Every effort should be made to minimize the role of money in judicial selection generally, and specifically in the election process, and to continue limiting campaign contributions that create actual or apparent conflicts of interest or decrease public confidence.
- **Maintain and enhance public confidence in the justice system**—The selection process should be conducted in a manner most likely to maintain and enhance public confidence in the competence, impartiality and integrity of individual judges and the system as a whole.

Discussion/Rationale: *Canon 7 of the Code of Judicial Conduct makes it clear that judges are not like other elected officials. The Canon prohibits judges from engaging in such standard executive and legislative branch political practices as:*



- publicly endorsing or opposing candidates for other political offices;
- acting as a leader or officer of a political party;
- jointly raising campaign funds with candidates for non-judicial offices;
- making public statements on disputed legal or political issues likely to come before the court or statements that appear to commit them to positions on pending cases;
- making any other "campaign promises" other than faithfully and impartially fulfilling the duties of their office; and
- personally soliciting or accepting campaign contributions from any source.

In the next 25 years, the Commission believes it is imperative that judicial selection processes reflect not only the letter, but also the spirit of Canon 7—which is clearly to distance judges and judicial candidates from partisan political activity and fundraising. This prohibition is designed to avoid the appearance of alliances with, or obligations to, interest groups engaged in public policy disputes, because such appearances undermine public confidence in the integrity and impartiality of the judicial system itself. Other recommendations in this section, including creation of meaningful qualifications for judicial office that go beyond the current minimal statutory criteria, are likewise designed to sustain and enhance public respect for state courts and the "government of laws" they represent.

Recommendations:

Judicial Qualifications Commission

In order to assure that only well-qualified persons are selected to serve in judicial positions, the Futures Commission recommends that:

- The Supreme Court should establish a Judicial Qualifications Commission. That commission should:
 - a) Be nonpartisan, reflect the demographic diversity of the state and be comprised of lawyer and non-lawyer members.
 - b) Use input from state and local bar associations, judicial professional associations, court users and other knowledgeable individuals and groups in developing qualifications for judicial positions. The criteria adopted by this commission should establish clear, relevant and objective qualifications for judicial officeholders at each level of the state courts. Those rules should be developed, published for comment, adopted and become law unless disapproved by the legislature under the same procedures as new rules of practice and procedure.
 - c) Assist the Supreme Court in administering and enforcing qualification rules by evaluating and approving or disapproving the qualifications of candidates for election or appointment to judicial office.

Discussion/Rationale: *A diverse, non-partisan Judicial Qualifications Commission should be established to set qualifications for judges at all levels of the state court system. The Futures Commission believes these criteria should be more demanding than Ohio's current statutory minimums of admission to the bar and six years in any type of legal practice. New criteria could include a required number of years of experience relevant to the position sought, increasing the number of years of experience as a practicing lawyer from six years to up to ten years, and setting a required preliminary curriculum to prepare an individual to serve as a judicial officer. Required courses could include, but not be limited to: court rules and processes, court technologies and case management procedures, the duties of the judicial officer, judicial ethics, and substantive law.*



Recommendations:

Filling In-Term Judicial Vacancies

When a judge dies or leaves office before completing his/her full term, the Commission recommends that:

- Only persons who meet minimum criteria set by a judicial qualification commission should be eligible for appointment;
- The judicial qualification commission should assist the Governor in making appointments to fill in-term judicial vacancies by receiving and reviewing the credentials of all applicants, identifying applicants who qualify for appointment and recommending a list of best-qualified nominees from which the Governor would select the appointee.

Discussion/Rationale: *Currently, the Governor appoints individuals to fill all in-term vacancies in judicial positions. Recent Governors have varied in the selection process. Some have consulted with bar associations and other knowledgeable sources to identify the best-qualified candidates. Some have deferred to state or local political party leaders. Others have not consulted with local officials. On those occasions when judges are to be placed in office by appointment, the Futures Commission recommends that the selection process be improved and strengthened. When in-term vacancies arise, a knowledgeable, non-partisan judicial qualifications commission should evaluate all applicants—including political*



independents who are effectively excluded from the bench by the current party-driven appointment system. After identifying all applicants who meet minimum qualifications, the commission should assemble a list of those nominees it finds best qualified, from which the Governor would make the appointment.

Recommendations:

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Orientation, Training & Judicial Education

The Futures Commission recommends that:

- An individual who has been selected for a judicial position should complete a mandatory training program within six months of taking office, including mentoring by a sitting judge. Continuing education requirements for all judicial officers should continue throughout a judge's judicial career
- Equitable funding should be provided for judicial officers to attend continuing judicial education programs coordinated with Ohio law schools and other sources. Continuing education requirements for judicial officers should include programs that incorporate cultural and diversity issues.

Discussion/Rationale: Many foreign countries have implemented degree programs, internships and extensive multi-year judicial training curricula which individuals must complete before joining the judiciary. In Ohio, there is currently no formal degree program, and the preliminary training required for new judges is minimal. The Commission believes that an important way to help Ohio judges provide quality service is to provide them with intensive practical training before they take the bench. In the past, newly elected judges received a one or two day voluntary orientation by the Ohio Judicial College. In 1999, a one-week judicial orientation became mandatory. The Commission recommends that judges have an opportunity for at least one week of training courses before being seated as a judge with a follow up training session after the judge has been serving for several months. Training for first-term judges should also include mentoring by an experienced sitting judge. Well-funded continuing education for all judicial officers is important.



Recommendations:

Judicial Evaluation

- The Supreme Court should establish criteria and set procedures for the periodic evaluation of all sitting judges. Periodically during a judge's term in office, a report based on case disposition data, performance evaluations, input from court users and other appropriate information should be prepared as a self-assessment tool and disseminated to voters considering the re-election or retention of incumbents.

Discussion/Rationale: Currently, Ohio has no formal mechanism for evaluating judicial performance. The Commission recommends that the Supreme Court establish a judicial evaluation process using objective criteria that are well-known and openly accessible to judges, evaluators and the public. Evaluations should blend objective performance criteria as case flow management and disposition data with peer and attorney assessments of legal knowledge, judicial temperament, courtesy, work habits and other criteria. (A joint study committee of the National Center for State Courts and U.S. Department of Justice has recommended standards for evaluating court and judicial performance that could help guide this process). Arizona and other states have incorporated court-user input into this process, but with varying levels of success. Periodically during a judge's term of office, the selected criteria should serve as the basis for formal, objective judicial performance reports. Such feedback can and should be of great value to judges for self-assessment, and should be widely disseminated to voters.



Recommendations:

Judicial Compensation

- Judicial salaries, benefits, and retirement should be sufficient to attract and retain well-qualified professionals. A separate and permanent judicial compensation commission should be established to recommend compensation changes to the legislature. Those recommendations should become law automatically if they are not formally rejected by the General Assembly.

Discussion/Rationale: The National Center for State Courts publishes a bi-annual report on judicial salaries in the fifty states and some territories. Those figures indicate that Ohio's judges' salaries are significantly lower than judicial salaries in other comparable states.



According to the latest available data from the National Center for State Courts, the standard salary for Ohio common pleas court judges is 14 percent lower than for comparable judges in Pennsylvania, 17 percent lower than in Michigan, 30 percent lower than in Illinois and 40 percent lower than in New York.

The Commission recommends that every effort be made to ensure that in Ohio judicial salaries, benefits and retirement are sufficient to attract and retain well-qualified individuals. The Futures Commission recommends appointment of a separate, permanent judicial compensation commission to study judicial salaries and to recommend changes to the legislature. In an effort to remove politics from the issue of judicial compensation, the Commission recommends that recommendations of the judicial compensation commission become effective automatically unless there is formal legislative rejection. This process is similar to the process for promulgating rules of practice and procedure for Ohio courts in Article IV, Section 5(B) of the Ohio Constitution.

Recommendations:

Judicial Age Limits

- Ohio's current prohibition against persons 70 or older from running for judicial office should be reexamined.



Discussion/Rationale: As part of the Modern Courts Amendment in 1968, Ohio's state constitution was amended to prohibit individuals who have reached the age of 70 from running for judicial office. Thanks to medical advances, people are living longer and continuing to be productive later in life. In light of those trends, and the expectation they continue, the Commission believes that the judicial age limit should be re-examined.

Recommendations:

Judicial Officers Should Not Engage in Private Practice

The Futures Commission recommends that:

- Judicial officers should not engage in the private practice of law; however judicial officers may serve more than one court or perform more than one function for the same court.



Discussion/Rationale: Real and perceived conflicts of interest arise from private attorneys serving as advocates for clients in a courtroom one day and as part-time judges in the same courtroom the next. In jurisdictions where caseloads do not support full-time judicial officers, judges should be permitted to serve more than one court, and court magistrates should be permitted to serve in more than one court or perform more than one court function. This is one improvement that can be realized if courts within a county opt to reorganize into a single-tier or two-tier structure and share judicial resources.

Recommendations:

Legal & Judicial Ethics & Discipline

The Futures Commission recommends that:

- Attorneys and judicial officers should continue to exemplify the highest professional and personal standards to ensure public confidence in the legal system.
- Attorneys and judicial officers should be held accountable for their professional and personal ethics, in the broadest sense of the term.
- Ohio's Board of Commissioners on Grievances and Discipline should review public concerns about real or apparent conflicts of interest, insularity, lack of courtesy and timeliness in the legal and judicial discipline system. Where appropriate, processes and rules should be strengthened to enhance public trust and confidence.
- The legal and judicial ethics process should be, and be perceived to be open, visible, understandable, and accessible to the public as possible, taking into account that complaints should not be made public until probable cause has been established. One means to this end could be to increase the number of public, non-lawyer members of the Board of Commissioners on Grievances and Discipline.
- Law schools and continuing legal education programs should continue to place substantial emphasis on legal and judicial ethics. The legal profession should initiate or expand training for new lawyers, including "bridge the gap" and mentoring programs.
- All active lawyers who represent private clients should have legal malpractice insurance.

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Recommendations:

Magistrates & Other Court Personnel

The Futures Commission recommends that:

- In filling staff positions, courts should seek out applicants who meet and exceed relevant job qualifications and training standards. Formal performance standards should serve as the basis for regular evaluations, and be supported by ongoing training and professional development opportunities. Continuing educational requirements for technology personnel are essential to ensure the presence of knowledgeable individuals who are able maintain and upgrade critical systems and keep operating hardware and software current.
- Hiring and administration of court personnel should continue to be the prerogative of local jurisdictions under guidelines developed by the Supreme Court to ensure that court users in all areas of the state benefit from fair and consistent administration of justice.
- The Supreme Court should clarify the appropriate roles and responsibilities of employees and officers of the court and promulgate standards for use by courts.
- Allocation of resources for personnel matters should remain at the local court level.
- Court employee salaries, benefits, and retirement should be sufficient to attract and retain well qualified individuals.
- Behavior in the courts should continue to be guided by civility, ethical behavior, a fundamental concern for the treatment of the public, as well as respect for courts, the judicial system and participants.
- Comprehensive codes of professional responsibility for judges, court personnel, and attorneys should guide behavior and be enforced consistently with these priorities.

Recommendations:

Clerks of Court

- **The Ohio General Assembly should establish qualifications for clerks of court.**
These might include, among others, minimum standards for education, training and work experience.
- Clerks should also meet performance standards, receive continual training necessary to discharge their duties and be able to use technologies appropriate to the court-related functions of their office.

Discussion/Rationale: *Testimony at the Commission's public hearings and a substantial volume of other feedback from interested groups and individuals has convinced*



Commission members that clerks of courts should remain elected officials. The Commission also believes that clerks of court play such a pivotal role in the day-to-day and long term operations of the judicial system that the General Assembly should establish relevant minimum standards of education, management experience and technical training for those who seek this important office.

Conclusion

In the preceding pages, the Commission has spelled out in detail its vision of a desirable state judicial system for the year 2025. Our ideas about how these recommendations might be implemented are discussed in the implementation section of this report, at the end of the Overview of Recommendations.

The courts envisioned by the Commission will continue to uphold the ideals of equal justice and due process that have preserved our “government of laws, not men,” for the past two centuries. But they will approach their duties—especially the ways in which they help citizens resolve civil disputes—with a broader perspective and a more versatile set of tools than their 20th century predecessors.

By embracing new technologies and procedural innovations that deliver faster, more efficient, more convenient and more affordable access to justice, the future court system described in this report will earn the confidence of court users. By reinforcing and enhancing the professionalism of judicial officers and court staff, the judiciary envisioned here will continue to deserve the trust and respect of a public that remains skeptical of most public institutions.

During its research and deliberations, the Futures Commission was mindful of the admonition that it should not be overeager to “fix” things that do not appear to be “broken.”

In arriving at their recommendations for change in various aspects of the state court system, Commission members were guided by two key considerations:

- 1) Successful organizations do not wait until essential systems break down or become obsolete; they are proactive in undertaking preventive maintenance and embracing new processes and technologies that have proven their value;
- 2) Like all institutions, courts exist to meet the needs of society. It seems clear that the society of 2025 will be characterized by constant, rapid and pervasive change—and that the success of courts and other institutions in this environment will depend greatly on their flexibility, responsiveness and ability to innovate.

In short, the Commission believes that 21st century courts must make it an ongoing part of their mission to constantly re-examine their structures and practices; and to constantly assess emerging technologies that have potential to improve their performance as problem-solvers, justice-givers and conflict managers.

We are confident that Ohio’s judicial branch can and will meet these challenges in the years ahead; and that it will provide future generations of Ohioans with an ever-improving quality of justice under law.

VI Acknowledgements

Acknowledgements

The Ohio Courts Futures Commission would like to thank the hundreds of people who donated their time and energy to help us identify and recommend the best possible state judicial system for the next generation. Through appearances before the Commission, written submissions, research, ideas, and experience, individuals and organizations within and outside of the state provided the resources necessary to accomplish our work. Funding by the Ohio State Bar Foundation and Ohio State Bar Association was integral to this project.

In particular, the Commission would like to acknowledge those individuals who demonstrated their commitment to the judicial system of the future by discussing and debating the Commission's work from the very beginning. Everyone concerned has been striving to achieve a system that is fair, timely, and just. Those who publicly identified the strengths of the current system and who weighed future possibilities had a significant impact upon the results of this body.

Deserving of special thanks are the co-chairs of the five task forces through which the Commission conducted most of its research, gathered input from experts inside and outside the legal system and developed recommendations in their respective areas of focus. Those co-chairs, who devoted hundreds of hours to the work of the Commission over a three-year period were:

Access and Quality Task Force: John Bryant of the Cincinnati Youth Collaborative and Judge Leslie Spillane of the Butler County Domestic Relations Court;

Organization and Structure Task Force: William Gaskill of Jones, Day, Reavis & Pogue in Cleveland and Judge William H. Wolff, Jr. of the Second District Court of Appeals in Dayton;

Public Education and Awareness Task Force: Dr. Ralph Izard of Ohio University and Judge Judith Lanzinger of the Lucas County Common Pleas Court;

Rules and Procedures Task Force: Attorney Sam Porter of Porter, Wright, Morris and Arthur in Columbus and Judge Ann Marie Tracey of the Hamilton County Common Pleas Court; and

Technology Task Force: F. Dale Kasperek of the National Center for State Courts and attorney Keith A. Throckmorton of Akron.

Finally, the Commission expresses its gratitude to its volunteers, former Commission members, staff, researchers, advisory committee members and consultants, as well as to the staff of the Supreme Court of Ohio and related offices, for their unqualified support. In particular, the Commission wishes to publicly acknowledge the unique contributions of Commission member Simon Karas, whose death during the course of this project underscored the inevitability of the future.

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VII Appendices & Attachments

Appendix A:

Analysis of Judicial Selection Systems

Given the mission of the Ohio Courts Futures Commission to envision a strong, effective and respected judicial system for the future, and to recommend strategies for achieving that future, the topics of how Ohio judges should be nominated and selected were addressed at considerable length.

The Commission spent many hours researching and debating the relative advantages and disadvantages of the two predominant models for judicial selection, and found that opinions among its 52 members were very closely divided. After careful consideration, the Commission decided that the best way for judicial selection issues to be addressed in this report would be to summarize the arguments supporting both sides, so that readers can educate themselves and form their own considered opinions

Judicial Selection Systems: Merit Appointment vs. Election

There are two basic judicial selection models in use across the U.S.:

1) **Elective Systems**– In these systems:

- Judicial candidates are nominated by political parties in the same manner as candidates for other state or local offices, and are chosen by voters in either partisan (identified by political party) or non-partisan election contests.
- When judges reach the end of their terms, assuming they are re-nominated by their party, they run in another election. Although many judicial elections are contested between candidates from opposing parties, a significant number of incumbent judges running for re-election—and some first-time candidates—run unopposed because the opposition party either could not find or chose not to nominate an opponent.
- When a judge dies, retires or leaves office in mid-term, an interim judge is appointed (usually by the Governor) to fill the vacancy.

2) **Merit Appointment Systems**– While not all merit plans are the same, in most of these systems:

- When a judicial position becomes vacant, candidates apply to a nominating committee (typically, but not always, balanced between lawyers and non-lawyers and of balanced political makeup). Many states use regional committees organized according to appellate district boundaries to fill trial and appellate court vacancies, and a statewide committee drawn from the regional committees to nominate judges who will have statewide jurisdiction.
- The committee screens applicants and assembles a list of the best-qualified nominees. That list is transmitted to the appointing authority (generally the Governor), who appoints one of the nominees on the list. In some merit systems, if the Governor fails to act within a specified time, the nominating committee itself is empowered to step in and appoint someone from the list.
- When judges reach the end of their terms, they run in "retention elections" in which there is no opponent. The judge's name appears on the ballot by itself, and voters are asked to vote "yes" or "no" on whether he/she should be retained

in office for another term. If the judge receives a majority of "yes" votes, he/she is retained to serve another term. If a majority of voters vote "no," the position is declared vacant and a nominating committee draws up a new list of nominees for appointment.

- If a judge leaves office in mid-term, the position is filled through the nominating/appointment process described above.

Ohio's Current System

Prior to 1850, Ohio judges were appointed. The Ohio Constitution was amended in 1851 to require that all judges be elected. Under Article IV, Section 6 of the Ohio Constitution, Ohio judges at all levels (trial court, appellate, and Supreme Court) are currently nominated through partisan primaries, and are elected to six-year terms through non-partisan general elections. If a judicial vacancy occurs in mid-term, under Article IV, Section 13, the Governor has the sole power to fill the vacancy. When a mid-term vacancy is filled by appointment, the appointee serves until the next general election (held every two years) at which time he or she must win a new election to complete the remainder of his/her predecessor's six-year term. In those elections, the appointee may face an opponent from the opposing political party, but may find him or herself unopposed.

Over the past 60 years there have been periodic efforts to adopt some version of a merit plan in Ohio. The most recent was a statewide ballot issue in 1987 that would have established a merit selection/voter retention process similar to that described above *for Ohio Supreme Court and court of appeals judges only*. That proposal, which was defeated at the polls, also would have given residents of each county a local option to vote on whether to continue electing trial court judges or adopt the merit system for those courts as well.

In light of the strong similarities in executive and legislative processes of state governments across the country, there is a surprisingly wide divergence in the judicial selection systems employed by the 50 states. Like Ohio, most states elected judges from the mid-19th through the mid-20th centuries. However, between 1940 and the mid-1980's there was a significant national trend in favor of partial or total conversion to merit selection. Of the 50 states, approximately 15 now use merit selection to select all of their judges, and another 12 states use merit selection to choose their state supreme court justices. All told, approximately 35 states currently employ some form of merit selection of judges. [This data is based on recent articles by Robert M. O Neil in *Trial* (Sept. 1998); Traci V. Reid in *Judicature* (Sept./Oct. 1999); and Bruce I. Petrie, Sr. in *Ohio Lawyer* (Jan./Feb. 2000).]

Following is a summary of what their proponents identify as the major arguments in favor of elective and merit systems:

Arguments in Favor of Merit Selection

In a democracy, all three branches of government—the executive, legislative, and judiciary—should be accountable to the public. Periodic, contested, partisan elections have long proven to be well-accepted devices to make the first two branches accountable.

Proponents of merit selection contend that judges are, and should be, different from the other branches of government. Judges are sworn to enforce the law in a non-partisan, fair, impartial, even-handed manner. They should not be subject to pressures to rule in a particular way that are appropriate for members of the other branches of government. Nor should judges be pressured by the other branches of government to rule in a certain way, especially in cases where constitutional issues are at issue. Of course, judges, like other public officials, should be accountable. Decisions can be reversed on appeal, and judges can be disciplined or removed for violations of the Code of Judicial Conduct. Proponents believe that merit selection makes it more likely that capable individuals will become judges, and that retention elections preserve the ultimate right of the public to hold judges accountable.

There are also practical problems with judicial elections. There is much evidence that judicial elections are plagued by very low turnout and a lack of information permitting voters to make truly informed choices. This has been true in Ohio, where, perhaps ironically, most judges are initially appointed by the governor to fill an unexpired term, many judges run unopposed, and there is low turnout and little substantive discussion of issue in judicial election campaigns. Merit selection proponents contend that the low turnout and high incidence of unopposed candidates create a real danger that judges in Ohio, often appointed in the first place, will essentially be chosen behind closed doors. When judicial elections are contested, the low level of information available has meant that most Ohio voters use factors such as partisan affiliation, name recognition, or incumbency to select a particular candidate.

Proponents of merit selection note other concerns, including: (1) the public has low regard for judicial elections; (2) voters have few incentives or easy ways to investigate the decision-making or courtroom practices of individual judges; (3) the media do a very uneven job of covering the courts, usually focusing on sensational criminal cases; and (4) complex rules place limits on what judges and judicial candidates can say during elections. In addition, recent surveys indicate that a large majority of Ohioans felt that political campaign contributions directly influenced judicial decisions.

Proponents also assert that merit selection is more likely to insure the representation of women and African-Americans and other minorities on the Ohio bench.

Arguments in Favor of Elective Systems

Proponents of the current elective system assert that in a constitutional democracy, it stands to reason that all of the branches of government affecting citizens' lives be accountable to those people. Proponents of the current elective system for judges argue that the best, simplest, most straightforward way to make judges accountable is to elect them periodically, as we do with the other branches of government.

In Ohio, all judges have been elected since an amendment to the Ohio Constitution in 1851, and a majority of the United States still elect most or all of their judges. Proponents of the current system assert that there are no compelling reasons to change this practice. In 1987, Ohioans soundly defeated a merit selection proposal, based on the argument that voters should not give up

their right to vote for judges. Like the executive and legislative branches, judges make policy by rendering decisions in civil and criminal cases brought before them that have important consequences that affect our daily lives. If a particular judge makes bad policy, voters should have the option not to elect, or re-elect, that person. Likewise, a judge who is doing a good job will have the opportunity to be re-elected.

Proponents of judicial elections recognize that judicial elections are not perfect, as they sometimes suffer from poor turnout, lack of information, or other problems, but they counter that elections for the other branches of government often suffer from the same problems. Persons running for the office, political parties, the media, and others can certainly do a better job informing the public.

Proponents of judicial elections argue that merit selection is no panacea. Proponents of the status quo argue that there are politics in the appointment process. The nominating commissions to select judges under such plans are usually not chosen in a democratic manner, and assert there is a real danger of elitism and interest-group control of the process. Moreover, they contend, there is little evidence that the qualifications of judges differ in any meaningful way between elective and merit selection states. Finally, they argue that as more women and minorities participate as candidates for our various elective offices, it is probable that electing judges is as good if not a better way, compared to merit plans, to insure the judiciary is more representative of those groups.

Appendix B:

Analysis of Judicial Retention Elections for Unopposed Candidates

*A second important question arose during the Futures Commission's deliberations over judicial selection: If Ohio retains an elective system, when a judicial term ends should the judge seeking a new term in office **be required to receive majority voter approval for retention—even if unopposed on the ballot?***

That question, debated at great length by the Commission, was raised because of the current reality that a significant number of judicial candidates—most often incumbent judges seeking re-election—are unopposed and thus all but “automatically” returned to office. A number of Commission members saw this as a flaw in the current “elective” system, and proposed that the Commission recommend requiring unopposed incumbents to win more than 50 percent favorable votes in “retention elections” (described in Appendix A as part of a merit plan rather than an elective system) in order to be retained in office for another term. Under such a system, unopposed judges who did not receive more than 50 percent of the “yes” votes for retention would be replaced by an appointee—who would then face either an opponent or a retention election in the next general election cycle.

As with the discussion of elective vs. merit appointment judicial selection models, there was a very close division of opinion on this issue among the members of the Commission. In light of its importance, the Commission again felt its wisest course of action on this topic would be to provide the arguments advanced for and against the use of retention elections in an elective system, and allow readers of this report to form their own judgments.

Arguments in Favor of Retention Elections for Unopposed Incumbents

Those who support retention elections point out that, when an incumbent seeking reelection is opposed by another candidate on the ballot, the traditional election process offers voters the opportunity to approve the past performance and qualifications of the incumbent—or remove that judge by opting for the opposing candidate.

But currently, an incumbent judge for whom no opponent is nominated is effectively guaranteed another six-year term—even if only a single favorable vote is cast and regardless of how well or poorly that judge may have performed in office.

It may be true that many incumbent judges are unopposed for re-election because of their strong performance records and outstanding qualifications—which make it difficult to campaign against them successfully. It is also true, however, that a significant number of political “deals” are struck in which local political party leaders agree not to field challengers to one another’s incumbent judges in order to eliminate the costs of contested campaigns and/or to preserve some “balance” of offices held by the respective parties.

While incumbent judges and party treasuries are “winners” in this deal-making process, the clear losers are the voters and court-users in these communities. The lack of a contested race deprives them of any meaningful opportunity to register their approval or disapproval of the way these judges

have conducted themselves in office to date—and leaves them with no practical way to remove a judge they believe to be incompetent or otherwise unsuitable.

This situation thwarts the primary justification for electing judges—which is to insure that they are responsive and accountable to the community. And when a judge who was appointed to fill a mid-term vacancy subsequently runs unopposed for “re-election,” the current process automatically retains in office a person who was selected by political party officials for reasons that may or may not be related to legal skills or suitability for office—a person who has never been approved by a majority of local voters.

Facing the voters in a “yes or no” retention election should not constitute a major obstacle for incumbents who are unopposed for re-election because of their outstanding performance and reputation in the community. If there is a balancing of interests to be considered, that balance should be struck on the side of allowing citizens a meaningful opportunity to choose the judges who administer justice in their community.

Arguments in Favor of the Current System for Re-electing Incumbents

Those who oppose retention elections for unopposed incumbents point out that retention elections have generally been used only in states with a merit selection system (in which judges are *appointed* to the bench). According to the National Center for State Courts, only four states in the country now have a system that requires retention elections even for elected judges seeking re-election. Opponents contend there is no valid reason for Ohio to add a retention election requirement to its current elective system.

Whether or not the other major political party nominates a candidate to oppose an incumbent seeking reelection, there is nothing to prevent that judge from drawing an opponent who is affiliated with an alternative party, is a registered independent, or is completely apolitical. Furthermore, a credible candidate can usually be found to challenge someone whom lawyers believe can be defeated for poor judicial performance. In the worst case scenario, such an individual is subject to disciplinary action, including removal from the bench.

An important part of a judge’s duty is to render legally correct decisions in cases that may attract the hostility of single-issue advocacy groups. Retention elections would require all incumbents to create campaign committees and raise money on the chance that a single issue group, or a few well-financed individuals displeased with a particular decision (or their perception as to the reason for a decision) may organize a “vote no” campaign to unseat a particular judge. Since a “vote no” campaign could materialize at the very end of a campaign cycle, every judge would need to prepare for the possibility of a “stealth” campaign. This is not a hypothetical concern. Single issue politics is credited with several high profile defeats among the judiciary in recent years.

Opponents of retention elections argue that such an uncertain system would exacerbate the problems that already exist with the election of judges—and would be at complete cross-purposes with the Futures Commission’s other recommendations regarding judicial selection. They point out that the Commission has recommended that Ohio move toward a judicial selection process with fewer unseemly campaign expenditures, less fundraising from lawyers who appear before judges, reduction of perceived influence by contributors and fewer philosophical threats to the independence of the judiciary.

Opponents contend that all of those undesirable elements would be increased rather than decreased by forcing judges to run retention campaigns when they are unopposed for re-election.

Glossary

ANSI Acronym for the American National Standards Institute.

arbitration A method of dispute resolution in which an impartial third party listens to arguments from both sides, then issues a decision. In a typical arbitration the disputants agree in advance on who the arbitrator(s) will be, how the process will be conducted and whether the arbitrator's decision will be binding (i.e., both sides must abide by it) or non-binding. (See also: *mediation*).

appellate courts In Ohio, this term is generally used to refer to the 12 divisions or districts of the Court of Appeals, which provide intermediate review of state trial court decisions in their respective geographic areas. The Supreme Court of Ohio is the state's highest court or "court of last resort."

arraignment In criminal cases, the initial appearance in court at which a defendant is informed of the charge and a plea is entered. If the defendant cannot afford an attorney, counsel is usually appointed at the arraignment.

appointed counsel An attorney appointed by the court to represent a criminal defendant who cannot afford to hire private counsel. Courts may appoint attorneys from the local public defender's office or lawyers in private criminal practice for this purpose. (See also: *public defender*).

case management system An organized process by which judges set and enforce deadlines for completion of various stages of cases before their courts and communicate regularly with parties in order to move each case from filing to final disposition.

case reporting system A system of written reports which all Ohio courts must file on a monthly basis with the Supreme Court of Ohio. These reports allow the Supreme Court to track the volume and flow of cases in the state court system, and to evaluate the performance of individual courts and judges in handling and disposing of cases.

civil case A case filed with a court to right a private wrong (tort), or a lawsuit to enforce rights through legal remedies of a private or non-penal nature. All legal proceedings which are not criminal cases are considered "civil actions." (See also: *criminal case*).

code of judicial conduct The rules of ethical conduct that govern the behavior of Ohio judicial officers (and in some cases judicial candidates). The code includes brief, broadly-stated Canons and more detailed rules that set forth the scope of permissible and impermissible conduct by judicial officers. Penalties for violating the Code of Judicial Conduct can include public reprimand, suspension or removal from office.

common pleas court Each Ohio county has a court of common pleas, which is the trial court of general (county-wide) jurisdiction. All common pleas courts have a general division which hears felonies (serious criminal cases) and civil cases involving amounts greater than \$15,000. Common pleas courts also have jurisdiction over domestic relations cases (divorce, child custody and support...); probate matters (disposition of a person's property after death, adoptions, guardianships...); and juvenile cases involving children under 18. In large counties, the common pleas court has separate domestic relations, probate and juvenile divisions staffed by judges who deal only with cases in those specialized areas. In smaller counties, cases in some or all of these specialized areas are handled by the same judge(s) who hear civil and criminal cases in the general division.

county court In Ohio, county courts are lower-level trial courts that have jurisdiction only in geographic areas of a county not covered by a municipal court (see *Municipal Courts* below). In counties where all areas are covered by municipal courts, there is no county court. County courts have jurisdiction to hear civil lawsuits involving amounts less than \$15,000 and misdemeanor criminal offenses, and to hold preliminary hearings in felony cases.

criminal case The prosecution of a person by local, state or federal government for an alleged violation of a criminal ordinance or statute. Criminal cases, which are classified as either misdemeanors or felonies, are those that deal with public wrongs and their punishment—as opposed to civil cases in which rights and remedies of private individuals are enforced or protected. (See also: *civil case*)

discovery Any of various pre-trial procedures by which a party to a case may find out information or examine evidence in the possession of another party, a witness or another person. Typically, during discovery each party in a civil case may demand disclosure and copies of documents or records which it believes are relevant to the case, and lawyers for each party may interview or “depose” other parties’ witnesses. The purposes of discovery are to prevent unfairness resulting from surprise, to facilitate intelligent preparation of the case and to help narrow the issues to be resolved by the court during the trial.

felony A crime of a more serious nature than a misdemeanor, carrying a potential penalty of imprisonment for more than one year up to and including death. Unless the sentence is modified by a judge, a sentence of imprisonment for a felony must be served in a state penitentiary or reformatory. (See also: *misdemeanor*)

ISO Acronym for the International Organization for Standardization.

jury pool A group of local residents who are selected from various source lists (e.g., voter registration lists) and summoned by a court to serve for a period of time as prospective jurors.

judicial officers As used in this report, the term “judicial officer” encompasses judges at all levels and court magistrates who perform quasi-judicial functions with the approval of a judge.

legal aid Free civil (non-criminal) legal services provided to low-income Ohioans through 18 locally-managed, publicly-funded agencies. Only persons with annual income below 125 percent of the federal poverty level qualify to receive legal aid services. Legal aid attorneys typically provide advice and representation to victims

of domestic violence; to persons who have been denied government benefits such as public assistance, social security etc.; and to those with other legal problems encountered by low-income households. They do not provide criminal defense services. (See also: *public defender*).

magistrate An attorney licensed to practice in Ohio who is appointed by a court (other than a mayor’s court) to conduct certain types of hearings and other legal proceedings, and to perform quasi-judicial functions according to specific rules and subject to approval by the court. A magistrate may also be a referee. Many Ohio courts use magistrates to conduct hearings and various other functions in the juvenile and domestic relations areas.

mass tort A civil lawsuit in which a large number of plaintiffs are seeking to recover damages from the same defendant or group of defendants based on the same or similar claims. A recent example would be the late 1990’s “class action” suit filed by a number of state attorneys general against the major tobacco companies to recover medical costs paid by the states on behalf of smokers.

mediation A dispute resolution process in which an impartial third party assists disputants in reaching a mutually acceptable agreement. The mediator guides the parties in developing their own resolution of the dispute, and does not impose a decision on them. (See also: *arbitration*)

misdemeanor A criminal offense less serious than a felony, carrying a potential penalty of imprisonment up to one year. A fine may be imposed in place of or in addition to imprisonment. Imprisonment sentences for misdemeanor offenses are usually served in a county jail or municipal workhouse. (See also: *felony*)

municipal court In Ohio, a lower-level trial court whose territorial jurisdiction is set by statute (by an act of the legislature) to cover the incorporated area of a city, or a group of cities, or one or more cities plus unincorporated areas of the county, or an entire county. Municipal courts have jurisdiction to hear civil lawsuits involving up to \$15,000. In criminal matters, they have authority to try misdemeanors and hold preliminary hearings in felony cases.

non-partisan As used in this report, non-partisan means without regard to or mention of a person's membership or participation in any political party; or identification with any political cause or ideology.

pleadings Formal written allegations filed with the court by the parties in a case stating their respective claims and defenses. The plaintiff's pleading is called a petition (in federal court, a complaint); the defendant's pleading is called an answer.

pro bono From the Latin *pro bono publico* ("for the public good"). In this report, the term is used to describe free or reduced-fee legal services voluntarily provided by private attorneys as a public service—usually to indigent or low-income clients.

pro se (In Latin "for oneself") A person serving or appearing in court as his or her own attorney—whether or not that person is licensed as a lawyer.

product liability litigation A class of civil lawsuits typically involving claims against a manufacturer by one or more persons who allege that they have suffered damages as a result of an unsafe or defective product.

public defender A lawyer employed by the government whose job is to provide free legal representation to criminal defendants who cannot afford to hire their own private attorneys. Public defenders provide only criminal defense services. They do not represent low-income persons who have civil (non-criminal) legal problems. (See also: *legal aid*).

restorative justice As used in this report, restorative justice refers to attempts by the courts to gain full or partial restitution by offenders to victims of crimes—especially in cases involving non-violent property crimes.

summary jury trial A dispute resolution process in which a court helps opposing parties in complex civil cases explore settlement possibilities. The court impanels a jury and has it render a non-binding "advisory" verdict after hearing condensed opening and closing arguments and summaries of key witness testimony by the opposing parties.

trial courts As used in this report, the term "trial courts" refers collectively to common pleas, municipal and county courts—as distinct from intermediate appellate courts or the Supreme Court.

voir dire The process by which prospective jurors are questioned by the judge and by attorneys representing all parties in order to determine each individual's fitness to sit in judgment of that case. Based on their responses during voir dire, prospective jurors are either included on the jury panel, excused by the court for cause, or dismissed by one of the parties through a limited number of "peremptory challenges."

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