

**A New Way Forward:
The Strategic Planning Committee's White Paper**

**A Blueprint for Excellence and to Greater Accountability:
Enhanced Access to Justice in Indiana's Judicial System**

PREAMBLE

In June of 2008, Chief Justice Randall T. Shepard of the Indiana Supreme Court convened the Board of Directors of the Judicial Conference for a Strategic Planning Retreat. At this Strategic Planning Retreat, R. Dale Lefever, Ph.D. and consultant, acted as a facilitator. The goal was to create a strategic planning process for the Judicial Conference Board and Judiciary of the State of Indiana. The Board of the Judicial Conference participated in this group discussion and identified several strategic planning goals, which are addressed in this document. Chief Justice Shepard then asked the Judicial Conference Board to elect six members to the Strategic Planning Committee, and he appointed three additional members to the Committee. This election/appointment process resulted in the following judges comprising the Strategic Planning Committee:

John G. Baker, Chief Judge, Indiana Court of Appeals
J. Terrence Cody, Floyd Circuit Court
Thomas J. Felts, Allen Circuit Court
Frances C. Gull, Allen Superior Court
Peggy L. Quint Lohorn, Montgomery Superior Court #2
Terry C. Shewmaker, Elkhart Circuit Court
Mark D. Stoner, Marion Superior Court
Marianne L. Vorhees, Delaware Circuit Court
Mary G. Willis, Henry Circuit Court

Chief Justice Randall T. Shepard appointed Terry C. Shewmaker and Mark D. Stoner as Co-Chairmen of the Committee.

The Strategic Planning Committee met on July 17, July 18, August 8, August 22, September 5, September 19, October 3, October 17, November 14, and December 5,

2008. On October 31 and December 4, 2008, the Strategic Planning Committee met with the full Board of the Judicial Conference to review the proposed Strategic Planning document, A New Way Forward. In 2009, the Strategic Planning Committee met on February 6, February 27, April 17, June 12, August 14, and September 15. Also, on September 15, the Strategic Planning Committee made a report to the full Board of the Judicial Conference and again reviewed this document.

In reviewing and preparing this document, committee members have talked to fellow judges, chairpersons of various conference committees and relevant Supreme Court committees, and other Board of Director members. One or more members of the Indiana Supreme Court regularly attended the meetings. Ms. Lilia Judson, Executive Director of the Division of State Court Administration, and Ms. Jane Seigel, Executive Director of the Indiana Judicial Center, also participated. In addition, Michelle Goodman, Staff Attorney with the Indiana Judicial Center, and David Remondini, Chief Deputy Executive Director with the Division of State Court Administration, also provided valuable input in this planning process.

At the December 2008 Judicial Conference in Indianapolis, the Strategic Planning Committee presented a preview of the Committee's work. The Committee then took its work "on the road" and invited all the judges in the State to a presentation in their districts. Fifteen meetings were held, and one or more Committee members attended each meeting and gathered valuable input from judges throughout the State.

The Committee adopted the following Mission Statement: ***"To improve our system of justice by assisting with the resolution of disputes under the rule of law while***

protecting individual rights and liberties in a fair, impartial, equally accessible, prompt, professional, and efficient manner.”

This document is a proposed planning outline for the future of the Indiana Judiciary. Many political and logistical obstacles may present themselves in implementing the ideas in this planning outline. This document is not intended to be a detailed implementation plan ready for adoption by the legislature, but rather an aspiration and vision for the future. It contains ideas central to improving the professionalism, efficiency, and effectiveness of the Indiana Judiciary. This plan should be used as a guideline for the Judiciary’s future in serving the needs of all Hoosiers.

The Committee recognizes not all these aspirations can be met immediately, or simultaneously, but we believe they are goals worth pursuing. The Committee wants this document to create discussion and to encourage feedback on ways to improve our judicial system. The Committee will move forward with more specific proposals on how to implement the aspiration and vision presented in this document.

Issue 1: How do we improve the professionalism of the judiciary?

Where are we now?

Education: The current continuing education requirements for the Judiciary mirror the requirements for practicing attorneys (thirty-six hours in three years, with a minimum of six hours per year, and three hours of Professional Responsibility in three years).

Probation officers, court alcohol and drug program staff, and problem-solving court program staff already attend educational conferences provided by the Indiana Judicial Center. Generally, clerks receive updates and information through the Clerk’s Association conference at which the Division of State Court Administration and JTAC

routinely participate. Administrative court staff and clerks may also receive letters or documents regarding specific matters of an urgent nature. Court Reporters also have access to a handbook to assist with some of their duties. Currently, the Indiana Judicial Center is working with an Advisory Committee to help develop and deliver more detailed training for administrative court staff.

Standards for Court Staff: The functions of the court staff are extremely important for the proper administration of justice. Court staff must produce competent work product. Court staff also have constant contact with the public, which can greatly impact the public's perception and understanding of the judiciary. Currently, only a few categories of court staff are required to meet state minimum standards or qualifications for their specific job (i.e., probation officers and court alcohol and drug program staff). Other categories of administrative court staff (e.g., court reporters and bailiffs) may have local qualifications or standards, but these standards are not uniform. There is no set job description from county to county, nor is there comparable compensation from one county to the next for the same type of work.

Performance Evaluations: Currently, there is no measure or evaluation based on objective criteria for judicial officers or court staff. A task force is now meeting to study whether there should be performance evaluations for courts and judicial officers and what kind of evaluation, if any, should be implemented.

Why should we change?

The judicial branch must review its assets and abilities to continue to improve the operation of the justice system. The judicial branch is responsible for ensuring the

citizens of Indiana that all judicial officers and court employees are properly trained and provide a high quality work product.

Judicial officers can and should be expected to improve and enhance their decision making through judicially related training. Administrative court staff have an obligation to assist the court in administering justice efficiently and fairly to all citizens in a competent and highly professional manner. Without properly trained court staff, some counties will not be providing the same level of services, compromising equal access to justice across the State.

Judicial officers and court staff should have objective expectations based on meaningful evaluations in order to measure their performance and to effectuate continued improvement and enhanced quality of the administration of justice. The judiciary should do everything within its power to ensure that citizens and stakeholders continue to have confidence in the judicial system. Without public confidence in the judicial system, citizens of this state will lose respect for the rule of law and the role of the judicial branch as a co-equal branch of government.

Where we want to be:

Increasing educational expectations for judicial officers is a priority. By adopting self-imposed, more stringent educational requirements, judicial officers will enhance their ability to administer justice for all litigants. Such educational requirements will assist in enhancing the quality and accuracy of judicial decisions, resulting in increased public confidence and perception of the judicial branch in Indiana.

Formalized training and orientation for court staff as well as minimum standards and qualifications will aid the judicial branch in providing the best services possible

while striving to improve the delivery of those services. This will result in court staff being more proficient in carrying out their duties and responsibilities. By improving the work product of court staff, the citizens of Indiana will know the judicial system is operating in the most professional manner possible.

Performance evaluations will provide needed information regarding the administration of justice by illustrating where the judicial system needs to make improvements, resulting in improved quality of service and more accountability to the citizens of Indiana.

PROPOSALS:

A) Education

i. Judges

1. All judicial officers of this State shall be admitted to the practice of law
2. Full-time judicial officers shall complete 50% more continuing legal education hours than the minimum required for attorneys admitted to practice law.
3. All judicial officers shall graduate from the Indiana Judicial College within 10 years of commencing service as a judicial officer.
4. All judicial officers shall be encouraged to complete the following supplemental educational programs:
 - a. Indiana Graduate Program for Judges
 - b. Indiana Judicial College Master's Certificate Program, or equivalent (i.e. National Judicial College course)
5. All judicial officers shall attend training with emphasis on judicially related education, including training on management, customer service, employment, courtroom decorum, jury trial management, and technology issues as well as substantive law.
6. All judicial officers should be provided sufficient resources to attain additional CLE credit beyond Judicial Center offerings.
7. All judicial officers should be encouraged to participate in Indiana Judicial Conference Committees, Supreme Court approved projects, or other projects to improve the judiciary.
8. All senior judges shall be provided with a standard training program.

- ii. Court Staff
 1. New court staff shall pass a minimum competency test on handling court records and finances and complete an orientation program provided by the Indiana Judicial Center.
 2. All Court staff shall attend staff training provided by the Indiana Judicial Center or approved by the supervising judge (customer service, Code of Judicial Conduct, records management, etc.).
 3. All Court staff shall sign an ethics agreement.
- B) Minimum standards for court staff employment should include:
 - i. Job descriptions and qualifications
 - ii. Code of conduct
 - iii. Salary structure
 - iv. Recruitment process
- C) Performance evaluations
 - i. Judges/court staff should:
 1. Adopt standards to measure performance of courts, staff, and judges
 2. Publicize clearance rates and other data related to performance
 3. Develop methods to improve performance where indicated through the use of the adopted performance measures

Issue 2: How do we improve the efficiency, promptness, and accessibility of the judicial system?

A. Court Structure

Where are we now?

Court Structure: The present Indiana court structure has several levels. At the top we have the Supreme Court with five justices. The Court of Appeals, with fifteen judges divided into five districts, hears intermediate appeals. Indiana also has a single judge Tax Court. At the trial court level, Indiana has circuit courts, superior courts, probate courts, and small claims courts. These courts may have various judicial officers handling cases with titles including judge, commissioner, referee, and magistrate. Indiana also has seventy-five city and town courts. Explaining the jurisdiction of each court is difficult, complicated and confusing. Often there is no actual difference. The General Assembly

has adopted numerous changes to the judicial system, as requested to address local concerns and specific issues. While this approach has resolved local issues and concerns, it has resulted in a complex judicial system. To the occasional court user and the public, it must appear quite bewildering and likely does not inspire much confidence. We must simplify the current structure.

Trial courts often use “pro tem” judges to perform judicial functions when regular judicial officers are not available. To the casual observer/litigant, this can create the impression that an attorney acting as a “pro tem” has some special relationship with the regularly presiding judge. The outward appearance is problematic since the “pro tem” may act as a judge one day and a lawyer in the same court the next day.

While experienced senior judges are available to all courts, they are often unavailable at one time or another for a variety of reasons. This leads to an inefficient and inconsistent use of our senior judges and affects judicial administration within and between counties.

Likewise, multiple probation departments and criminal justice agencies (e.g., public defenders, community corrections, etc.) may exist in a single county. This duplication of effort results in substantial inefficiencies and greater taxpayer costs.

Caseloads also vary from county to county within a district. Certain cases require a great deal of specialized knowledge, while other cases simply require additional judicial officer time. Further, since some courts have different levels of jurisdiction, the workload cannot be adequately shared among the courts in a county or district, resulting in some courts being overworked and litigants waiting longer for decisions.

Currently, we divide our state into judicial districts. These districts provide little if any meaningful cooperative effort currently. Some judges voluntarily unite their efforts on a regional basis, but such instances are not uniform throughout the state. Further, each individual judge usually operates his or her own court and programs in the fashion he or she selects. , There is little uniformity, peer review, or guidelines to assist new judges with these programs to ensure consistency between counties. Presently, there is no single, defined, measurable standard or policy to guide judges other than to administer justice.

Why should we change?

The current Indiana court structure remains fragmented. While some localized issues have been mitigated by adding “judicial officers” of varying titles, there is no model or pattern to follow. There is no uniformity. This undoubtedly will continue to create confusion to those participating in this fractured system.

Often, perception is reality to the public. We can improve perception. We can and should pursue uniformity and clarity of organization.

We should encourage county, district, and regional cooperation. Clearly defining a vision and plan for the judiciary will enhance the perception of the Indiana courts. Eliminating inefficient, duplicative and multiple layers of court structure will result in economy and efficiency as well as increased public confidence.

Where we want to be:

In short, the current fragmented trial court structure would be unified into a more efficient and effective system. This unified court would be guided by these concepts:

1. **Two types of judicial officers: Judges and Magistrate Judges.**

Judicial officers would be either a judge or a magistrate judge. We will eliminate all other terminology for judicial officers. By implementing this simple change, the public will more easily understand our judicial system. Judges clearly would be answerable for decisions on appeal. Magistrate judges generally would answer to judges.

2. **Unified Court System for Adjudicative Purposes.**

- A. All trial courts would have the same jurisdiction. All city and town courts would be absorbed into the trial courts.
- B. All magistrate judges would report to trial court judges.
- C. The use of “pro tem” judges would be minimized. Senior judges and other professional resources would be shifted or allocated where needed.
- D. The specialized tax court would continue to operate as it does today.
- E. Appellate review of trial and tax court decisions would continue to operate in accordance with the Indiana Constitution, applicable statutes, and rules promulgated by the Supreme Court.
- F. The Supreme Court would continue to have ultimate authority for adjudicative matters – both for decisions in individual cases and for promulgating rules, except for administrative rules discussed in #4 below.
- G. The Supreme Court would continue to have authority over the admission, conduct, and discipline of lawyers, the conduct and discipline of judges, mandatory continuing legal education, and the Judges and Lawyers Assistance Program.

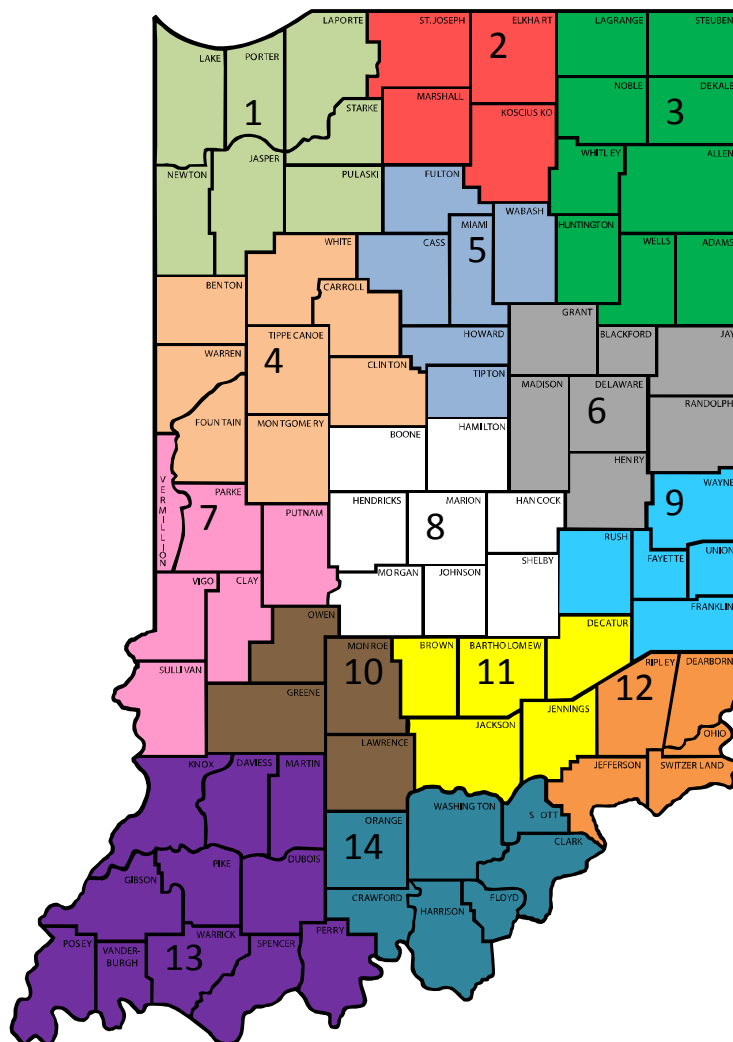
3. **Unified Court System for Administrative Purposes.**

- A. The trial courts would be organized into administrative districts, based on population and geographic considerations. Certain large counties may comprise a single district.
- B. Each district would have a presiding judge and a district court administrator.

- C. Counties with multiple probation departments or multiple community correction programs would consolidate for greater administrative efficiency.
- D. Each district would develop its own (1) governance structure; (2) caseload allocation plan; (3) felony and misdemeanor case assignment; and (4) any additional plans tailored to its own specific needs, such as specialty judges or judges with an expertise on a particular field of law supported by training or education (e.g., medical malpractice or eminent domain).
- E. Each district would submit its plan to the Board of Directors of the Judicial Conference for approval (*see #4 below*).
- F. What follows are examples of how Judicial Districts may look in a unified court system. The decision as to how districts will be organized is not final. These are some options the Strategic Planning Committee has discussed. The Committee would like to emphasize, these maps are only talking points for discussion among all the trial judges.
 - i. The first option would be the current fourteen district map. This map follows this page and is marked “Exhibit 1.”
 - ii. The second option would be an eighteen district map. The map follows the current district map and is marked “Exhibit 2.”
 - iii. The third option would be a twenty-six district map drawn by the Strategic Planning Committee and marked “Exhibit 3.” Marion, Lake, St. Joseph, and Allen Counties would be their own district. The Committee looked at the number of judges and geography in drawing the proposed map. .

Exhibit 1

Current: 14 Districts

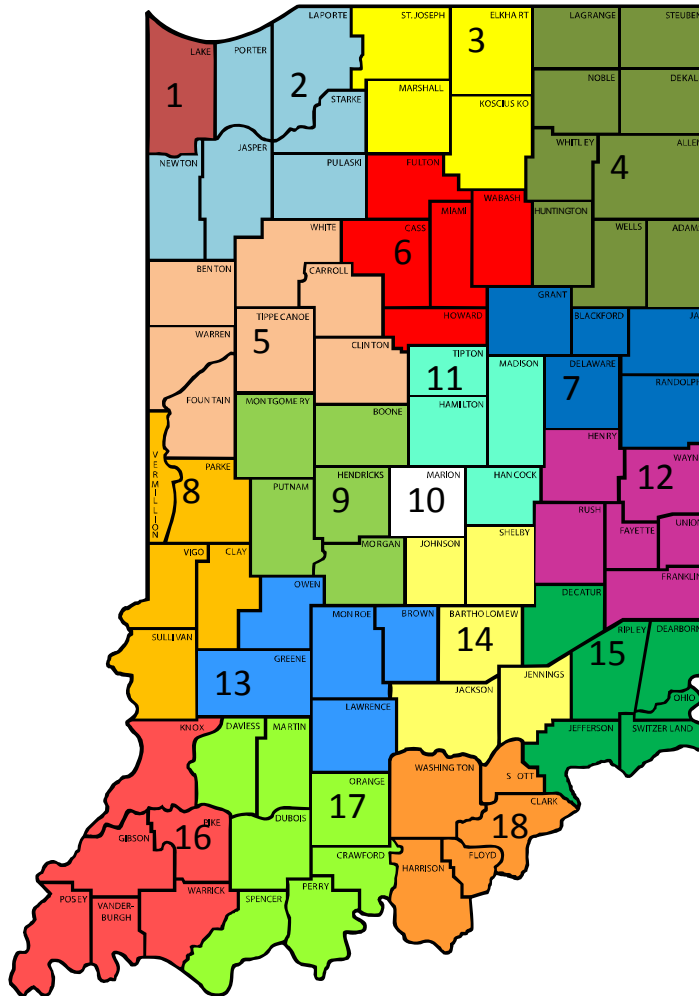


Total # trial judges by district:

- 1 = 35
- 2 = 24
- 3 = 28
- 4 = 19
- 5 = 16
- 6 = 24
- 7 = 14
- 8 = 66
- 9 = 11
- 10 = 15
- 11 = 11
- 12 = 8
- 13 = 26
- 14 = 17

Exhibit 2

Option: 18 Districts

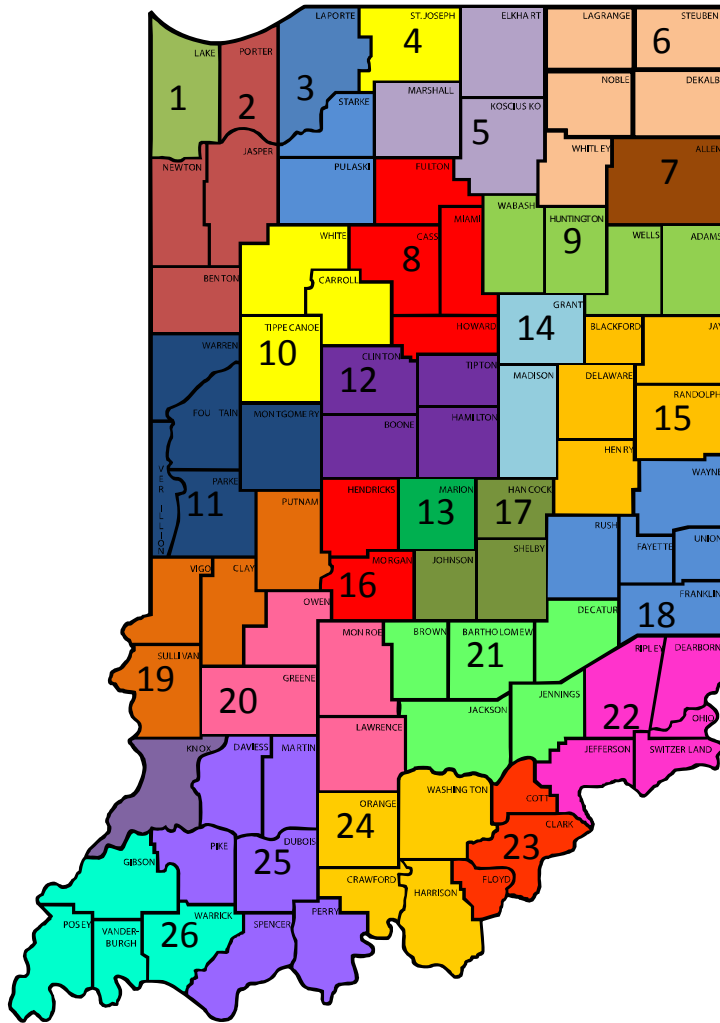


Total # trial judges
by district:

- 1 = 17
- 2 = 18
- 3 = 24
- 4 = 28
- 5 = 16
- 6 = 15
- 7 = 15
- 8 = 12
- 9 = 20
- 10 = 36
- 11 = 17
- 12 = 14
- 13 = 16
- 14 = 15
- 15 = 10
- 16 = 19
- 17 = 10
- 18 = 14

Exhibit 3

Option: 26 Districts



Total # of trial judges by district:

- 1 = 17
- 2 = 11
- 3 = 8
- 4 = 10
- 5 = 14
- 6 = 12
- 7 = 10
- 8 = 13
- 9 = 8
- 10 = 11
- 11 = 7
- 12 = 13
- 13 = 37
- 14 = 10
- 15 = 14
- 16 = 10
- 17 = 10
- 18 = 11
- 19 = 12
- 20 = 15
- 21 = 11
- 22 = 8
- 23 = 10
- 24 = 7
- 25 = 11
- 26 = 15

4. **The Judicial Conference Board of Directors would have ultimate authority for administrative matters.**
- A. The Judicial Conference would continue to consist of all Supreme Court justices, Court of Appeals judges, the tax court judge, and all trial court judges.
 - B. The present Board of Directors will determine the new districts and approve the proposed structure of the Board of Directors. A sub-committee will be assigned the task of developing a viable proposal on revising the membership of the Board to accompany the implementation of the new districts. Each member shall serve three year terms, which shall be staggered. The board shall select an executive committee. Every judge on the Board would essentially represent a comparable number of judges within each district on the Board.
 - C. The Chief Justice would chair the Board of Directors.
 - D. The Board of Directors would supervise the following functions: (1) educational development for judges and court employees; (2) support for certain programs established by the General Assembly, the Supreme Court, or the Judicial Conference; (3) administrative support services (including technology); and (4) budget and finance services for trial courts, assuming centralized funding is adopted.
 - E. The Board of Directors would prepare and submit the unified court system's budget request to the General Assembly. Each court would submit a budget request to the District, for submission to the Board of Directors.
 - F. The Board would establish an appeal process for individual judges to appeal a district decision to the Board of Directors.
 - G. Each district's governance structure, case allocation plan, felony and misdemeanor case assignment plan, and any additional plans tailored to its own specific needs, would be subject to the Board of Directors' approval.

Implementing a unified court structure will enhance public confidence in the judiciary by better defining the role of each judicial officer. Simplicity usually results in comprehension – our court structure would be simplified with these changes. A uniform,

defined structure and plan for the Indiana courts will provide direction for future efficiencies and savings.

These proposed changes will create a streamlined, modern, and cohesive court structure for Indiana's citizens.

B. Centralized Funding

Where we are now:

Under our system, each trial court has a budget which is determined by local county councils or local governing agencies. Under our present structure, the State pays salaries and benefits for judges, magistrates, and prosecutors; however, their staff, public defenders, expert witness fees in pauper defense cases, probation officers, interpreters, etc. are paid from local funding and local budgeting determined by county councils. The sources of funds for the trial courts are as follows:

1. Fines, costs, and fees paid by offenders.
2. Local property tax.
3. Certain state funding.

State funding and support currently includes court alcohol and drug scholarships and grants, drug court scholarships and grants, translation services, professional membership services, computer training, the JTAC internet access, research through Lexis Nexis, jury pool lists, jury management system, jury orientation video, Bureau of Motor Vehicle products, and many other supplemental educational and training functions provided by the Indiana Judicial Center and the Division of State Court Administration. Unfortunately, with local funding, certain trial courts receive more funding than others due to limited resources available to individual county councils. Although mandate

powers exist, judges rarely use them because they create bad feelings with their county council and other agencies.

The current system provides numerous opportunities for inequities since resources are not distributed in an equal and equitable way across the State of Indiana.

Why should we change?

If we ignore unequal funding for trial courts across the State, the status quo will be maintained. Litigants in some counties will have access to superior, progressive programs, while litigants in other counties will not have access to the same programs due to financial constraints. The current property tax circuit breaker situation may further restrict the funds available to local government agencies.

Where we want to be:

We can do better by distributing resources across the State in a more equitable manner by pursuing centralized funding. More Hoosier citizens will benefit, particularly in counties without a large tax base.

The Division of State Court Administration is pursuing three studies regarding costs associated with centralized funding. The studies are by Larry DeBoer of Purdue University, the Indiana University SPEA school, and a local consultant. These studies are in progress, and we do not know what the results ultimately will be until these studies are complete. At this point, we cannot say centralized funding will definitely create taxpayer savings. We can say, with certainty, efficiencies will result by combining resources and eliminating duplicated efforts.

We have yet to address many complex issues, including arrangements for state court personnel to use county facilities, whether to convert court employees to state

employees, and if so, which court employees should be converted. We would have to address court, probation, and security staff, public defenders and pauper counsel, as well as guardian ad litem and court appointed special advocates, interpreters and other specialized court functions. Some judicial officers who now work as commissioners and referees would become state funded Magistrate Judges under a centralized funding scenario.

We will also have to address a method for governance, budgeting, and allocating assets. It would be premature to render an opinion on how this funding change would work until such time as the three studies have been completed. Even without the results from the studies, we believe centralized funding will eliminate duplication and increase efficiency, as well as distribute resources in a uniform manner among all counties.

C. Clerk Function

Where we are now:

Presently the Indiana Constitution provides for elected county clerks. County clerks customarily handle fees, costs, fines, and revenue, maintain judgment dockets, issue marriage licenses, supervise elections, maintain court records and digital information, and make entries in certain circumstances. Often a litigant's first contact is with the clerk's office and not the courts. They often ask the clerks questions, which may amount to legal questions requiring informed legal advice. Litigants, particularly those that are self-representing, believe they are talking with "the court" when in fact they are talking with a clerk who is not under the court's direction. Courts should manage the preparation of all documents and transcripts related to an appeal since the Courts, not the Clerks, are accountable for judicial decisions.

Why we should change:

The Committee's proposed change would make the court solely responsible for its own records, information, and entries. The court should assume those clerk functions that directly involve record keeping, digital information and file maintenance, and contact with the public with respect to case filings. Additionally, the court would direct how the entries are made on the chronological case summary, and the court would assume responsibility for preparing transcripts and other documents for appeal.

This change would improve efficiency and result in one set of policies relating to the court system rather than duplicating effort with the clerk's office and court staff. It would also eliminate ethical challenges relating to alleged legal advice provided to litigants by the clerk's office. The Court should control its own records and information since the court ultimately assumes responsibility for the proper record keeping and information maintenance. Accountability should be placed upon the court and not the clerk.

Where we want to be:

The courts would assume court-related clerk functions. This would include record keeping, information and file maintenance, and contact with the public relating to case filings, entries, and preparing transcripts for appeals. The courts will assume responsibility to the public to assure this work is accomplished in a professional, timely and efficient manner. Other benefits would be eliminating confusion over what is and is not "the court" and simplifying service for litigants.

This option would transfer only limited, specific functions to the court and would leave all remaining functions with the clerks. Clerks would continue to issue marriage

licenses, supervise elections, and collect all fines, costs, and other assessments. The clerks would continue to handle all functions related to bookkeeping and collecting funds. Allowing clerks to continue to collect funds would provide an additional check and balance against the court records and would insulate the court from exchanging directly money with litigants.

Such a change would streamline the litigation process, increase efficiency and provide for one voice and one set of policies issued by the trial court and not by other elected officials. Litigants would deal with the court in one stop. The court will assume responsibility for its own records and will be held accountable to the public for maintaining these records in an appropriate and professional manner.

Issue 3: How do we improve the fairness and impartiality of the judiciary?

Where we are now:

Indiana's current method to select trial judges varies greatly depending on where you reside. Most judges are elected for a six-year terms by partisan election. Other judges are selected through nonpartisan elections, merit selection, or combinations. At least seven different selection processes exist in the State of Indiana. This creates a confusing landscape for the average citizen and outside observer.

Selection processes have been altered or created in an *ad hoc* fashion, particularly when individuals or special interest groups disapprove of a specific judicial decision or individual judicial philosophy. This largely explains why judicial selection differs among counties. Sometimes, the legislature will change the selection process for one county when one political party controls the legislature, only to change the process again when the power structure changes. Marion County, for example, has changed its judicial

selection process at least four times since the mid-1970s, and it currently has a process greatly criticized by the state and local bar associations and other community groups.

If these changes are made in a reactive mode, it runs counter to a fundamental concern for the entire American judiciary: judicial independence to make decisions based upon the rule of law and not political expediency. Judicial independence, in this context, does not mean freedom from accountability. Every decision a trial judge makes is part of the record of the case and is reviewable by the public and appellate courts. Judicial independence means judges must remain impartial and neutral and must make their decisions based on the law and not the judge's personal beliefs, interests, or friendships. Under the Code of Judicial Conduct, for example, judges are not allowed to have private conversations with litigants; they must remain impartial and independent.

In our constitutional system, the legislative and executive branches are expected to pursue partisan agendas. The judicial branch, however, has a different role. While it must be aware of majority concerns, the judiciary has an equally important task in ensuring the majority do not infringe on individual rights guaranteed by our state and federal constitutions. In this sense, the judiciary represents the concept that no man or woman, regardless of popularity or background, is above the law. This responsibility can make judges extremely unpopular, but our constitutional concept of limited government depends on courts upholding the rule of law regardless of political consequences. Again, our Code of Conduct declares, "A judge shall not be swayed by public clamor or fear of criticism." To further that end, the Founding Fathers recognized judicial independence was essential and gave federal courts lifetime appointments. In Indiana, judges do not have lifetime appointments, but the need for an impartial and independent judiciary is no

less important. The selection of qualified judges who possess these traits is, therefore, critical.

Debates concerning judicial selection are not new to Indiana. Throughout our nation's history, there has been a long tension between the competing concepts of judicial independence versus judicial accountability to the electorate. Contained within that discussion is the specific debate about whether judges should be elected by popular vote or selected by a smaller representative body based upon the concept of merit. See, for example, the excellent discussion by Chief Judge John G. Baker of the Indiana Court of Appeals in *The History of the Indiana Trial Court System and Attempts at Renovation*, 30 IND. L. REV. 233.

The direct election of judges has engendered fresh criticism in Indiana. The amount of money to wage a successful political campaign has increased rapidly. One successful incumbent raised over \$150,000; another successful challenger raised over \$80,000. While these amounts admittedly represent the high side of fundraising, particularly in larger jurisdictions, the trend encounters another fundamental concern: judges soliciting funds, through their campaign committees, from lawyers who practice before them, or from special interest groups who hope to influence future decisions. As contributions increase in size, so naturally do the contributors' expectations. While judges would deny these contributions influence them, the public perceives that justice is for sale and is controlled by the rich and powerful rather than the merits of the case.

A judicial system must provide results which the public believes are fair, consistent, and based upon an established standard of law. If the public loses faith in the

judicial branch's integrity and independence, it may try to resolve its disputes in less desirable, non-judicial ways.

Increasing fund-raising, combined with the common requirement that incumbent judges make "voluntary" contributions to the political parties even when outside their election cycle, raises the additional concern that judges will be selected based upon their ability to raise campaign funds, or who have connections to the powerful, or who are good at entertaining political crowds. The "contribution" in one county has risen to \$25,000 as a price for continued future political party support. Those with skilled legal minds and problem-solving abilities, who lack these political skills, simply need not apply. In addition, potential qualified candidates are unwilling or unable to engage in the prolonged political campaigning necessary for judicial election, because it drains their private practice and family obligations.

Some jurisdictions have attempted to counteract the influence of money in judicial elections by imposing maximum financial restrictions on the amount spent by any candidate. These restrictions recognize the potential negative influence of political contributions and acknowledge that political advertising costs, particularly in larger jurisdictions, are substantially increasing; however, it is doubtful these expenditure limits could survive First Amendment constitutional challenges in the federal courts.

Finally, in reality, the public may not have a meaningful choice in counties where direct election of judges takes place. In approximately 70% of all recent judicial elections, a judge runs for a specific court with no opposition or runs in a multiple court selection process where the judge is guaranteed to win.¹ In these elections, the general

¹ For example, in the 2008 General Election there were a total of 140 judicial seats up for either partisan or non-partisan election. Of those, 74% (104) of those seats had an incumbent or new candidate who ran

public has little or no ability to remove an ineffective judge from office.

Why we should change:

As indicated earlier, Indiana already has a confusing variety of judicial selection methods. Independence and the rule of law are the hallmarks of the judiciary's role as an effective third branch of government. Judges are often called upon to make difficult decisions that may be unpopular. A system of judicial selection must be developed where the rule of law remains paramount.

A government founded on the concept of limited powers and protections of minority rights needs judges able to make decisions independent of political pressures. Retention is an election process where voters can vote out incompetent or ineffective judges while minimizing the harmful effects partisan political campaigning brings to judges who serve their communities well.

Where we want to be:

Effective upon approval by the General Assembly and the Governor, incumbent trial judges no longer would face partisan re-election at their term's conclusion. Instead, they would face a retention election where the public would vote a simple "yes" or "no" on whether they should be retained. A judge receiving over 50% of positive votes cast on his or her election would receive another six year term. Political considerations would be eliminated as judges participating in retention elections are strictly prohibited from party affiliations under the Code of Judicial Conduct. Only if the judge faced a coordinated attack against his or her retention could the judge raise campaign funds, or the judge could self-fund their campaign. This could virtually eliminate the negative perception

without opposition. If you remove Marion County from the analysis, then 71% (88) of the 124 seats had an incumbent or new candidate who ran without opposition. In reviewing contested judicial seats, only five incumbents lost in the general election.

resulting from fundraising from lawyers who practice before the judge and other negative influences of money.

In addition, the voters would have a meaningful vote on whether a judge should be retained, as every judge would come before a retention vote every six years.

To ensure voters are able to make an informed choice, the judiciary should participate with an independent commission to develop consistent, objective reporting information on a judge's performance. This should include caseload numbers, disposition rates, length for dispositions by case types, and how that performance compares to similarly situated judges and predetermined objective standards. The judge would be given the opportunity to explain if there are extenuating circumstances why his or her rates are outside the guidelines. This may occur, for example, because of complex litigation like death penalty cases. Such reporting information also should include any negative disciplinary determinations a judge has received as well as achievements, awards, and comments/evaluations from attorneys and litigants who have appeared before the judge. The information should be available for public inspection but should also be distributed or even advertised in the local media prior to the retention election. Such an information process would establish public confidence in the judiciary. It would also counteract those who might oppose merit selection as being a closed process.

If the public voted against a judge's retention, or if the position became available for any reason, a merit commission comprised of community members representing a cross-section of both political and non-political interests would make recommendations to the Governor to fill the vacancy. The application process would allow any qualified attorney, including the incumbent judge, to apply. Commission members should make at

least two recommendations, assuming that many people apply, to the Governor to avoid the appearance of political corruption or undue influence within the commission. The Governor must choose from the list of recommended candidates. When the Governor makes an appointment, the judge would be eligible for a retention election during the first general election after the judge had served two full years. If the judge won the election, the judge would then have a full six year term. Retention elections would always be held during general, not primary, elections to maximize voter participation.

The commission members should be politically balanced with input from that community's executive and legislative branches. It also should have members from local bar associations as well as other interested business or civic groups. To counteract criticisms that merit commissions unduly favor powerful, influential "insider" interest groups, the commission should address diversity on the bench both in its mission statement and in the commission's composition. Commission members should be appointed or elected from their own individual constituencies. Members should welcome and accept open public input. They should have term limits. The public should have access to the commission's proceedings, and judicial applicants should have the opportunity for public interviews by the commission and the general public.

Having heard comments from the trial judges during district meetings in early 2009, the Committee recognizes a substantial number of trial court judges would prefer to see judicial vacancies filled by an election, and they prefer a non-partisan election. The trial judge would then face retention following his or her first election. In areas that do not already have merit selection and retention, the Committee believes this is a strong alternative and would be a step in the right direction.

After discussing and seriously considering the input from judges all over the State of Indiana on the judicial selection issue, the Committee still strongly advocates merit selection as the best system for selecting trial judges.

CONCLUSION

We hope this vision for the future will inspire judges and other stakeholders across the State to discuss these ideas and any other ideas they may have to improve the justice system. The Committee does not intend this "White Paper" to be a final plan, and we hope judges will not lose sight of that fact. This paper contains a vision, and the Committee recognizes many steps are necessary to implement the vision. We believe this is a perfect time in Indiana's history to make changes which will make our court system more responsive to all citizens, while using tax monies as efficiently as possible.