Report of the ATJ Committee

"Michigan's Blueprint for Justice"

June 10, 2010

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I. Introduction

Membership

The Access to Justice Committee of the Judicial Crossroads Task Force included judges from all of the state's trial courts and the Court of Appeals, attorneys who are leaders in the areas of poverty law, legal aid, and access and fairness issues, and distinguished representatives from public entities with expertise in public policy and poverty issues. It was chaired by the Honorable Susan Moiseev, 46th District Court, and E. Christopher Johnson, Thomas Cooley Law School. A full list of the twenty five committee members can be found in Section B. of the Access to Justice Committee Report.

Workgroups

Early in its work, the committee identified a long list of access to justice issues to examine and formed workgroups to address the following overarching questions:

Work Group A:

What ongoing mechanisms for planning, evaluation, collaboration and change management need to be in place to assure that the Michigan judicial system remains effective into the future in light of the changing nature of it and demands on it?

Work Group A was chaired by Judge Denise Page Hood

Work Group B:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics and diversity of court users?

Work Group B was chaired by Lorraine Weber

Work Group C:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice?

Work Group C was chaired by Linda K. Rexer

Dawn Van Hoek led a subcommittee of this group to review criminal law topics.

Terri Stangl led a subcommittee of this group to review civil law topics.

Principles Work Group:

> Recognizing the urgency that led to the formation of the Crossroads Task Force, the ATJ Committee developed "Essential Components" and "Guiding Principles" to help shape its recommendations to enhance access to justice in Michigan. The aspirational components were grounded in the core constitutional precepts of due process, equal protection, and the right to counsel.

The Principles Work Group was led by Linda Rexer, Candace Crowley and Lorraine Weber

Adoption Process

The Work Groups initially met in breakout sessions at the end of the December 2009. They enlisted additional experts where necessary, met by phone and in-person, and engaged in robust e-mail communications. The workgroups began developing reports and recommendations early in 2010 using a template for each of twenty two ATJ topics that had been identified. Each committee member was involved in at least one additional workgroup.

The Principles Work Group began discussing and drafting at the beginning of 2010 and presented draft Guiding Principles at the February 2010 ATJ meeting. After substantial input and discussion, the Guiding Principles were adopted to reflect the input of the committee.

Preliminary reports and recommendations in twenty two topic areas were completed by the March committee meeting. Those were presented orally to the committee, and members used an assessment grid to provide written feedback on whether the topic is consistent with core principles, impacts a large number of people, has a negative impact if not addressed, offers good timing or opportunities to address now, or carries potential for reinvestment or cost savings. The grid asked for an assessment of the level of new resources that would be required to implement the recommendations and included space for narrative comments. Immediately after the March meeting, members were provided with an electronic survey to provide any additional feedback.

Committee members were then offered another opportunity to indicate through an electronic survey their support or degree of opposition to each of the initial 216 recommendations that had been developed. Members were asked to identify any missing issues and provide additional comments.

A consent agenda and a discussion agenda of recommendations were prepared for the April 23, 2010 meeting. At that meeting, members agreed that a two thirds vote of the quorum is necessary to support any recommendation that does not readily have consensus. They agreed that the full set of reports in this Blueprint will show the author(s) and the recommendations as adopted by the ATJ Committee. From those, a handful of issues will be identified as "transformational" and will be the subject of the main ATJ Committee Report.

The committee members were then asked to identify any items that should be removed from the consent agenda or identified as requiring further discussion. Additional recommendations were moved

to the consent agenda. Several recommendations were eliminated because they failed to garner support of two thirds of the quorum. A few recommendations were revised to reflect agreements reached by the group. When a set of recommendations was identified as representing the agreements of the committee, it adopted those recommendations through motion and two thirds approval of the quorum. Some compound recommendations were split into individual recommendations and by the end of the process, 237 recommendations were identified. A set of reports and all original recommendations, including those that were not adopted, will be available online.

By consensus, the committee also identified the following seven items as the transformational issues to be highlighted in the main report to be submitted to the Judicial Crossroads Task Force:

1. Assistance for the Self-represented
2. Disparate Treatment and Language Issues in the Courtroom Environment
3. Child Welfare, including the Indian Child Welfare Act
4. Indigent Defense
5. Indigence, Fees, Fines and Costs
6. Problem-solving Courts
7. Ongoing Mechanisms for Planning, Coordination and Evaluation

The ATJ Committee reviewed a draft final report with recommendations and a draft Blueprint. It discussed the content of an Executive Summary and reviewed a draft. It agreed to conduct an electronic discussion and approval of final drafts of the documents, and that discussion was concluded on June 4, 2010.

II. Guiding Principles

ATJ GUIDING PRINCIPLES

Access to Justice Committee

Of the Judicial Crossroads Task Force

A. Introduction

The Access to Justice (ATJ) Committee has developed the following "Essential Components" and "Guiding Principles" to guide its recommendations to enhance access to justice in Michigan. These aspirational components and principles are grounded in the core constitutional precepts of due process, equal protection, and the right to counsel. The Committee believes that the principles not only promote fair and effective outcomes but also facilitate efficiencies and cost savings. The Committee requests that the components and principles always be published with their accompanying commentary which illustrates and expands on the main statements.

B. Essential Components of an Effective Justice System

The ATJ principles can be best achieved if they are part of a process that includes the following two essential components:

1. <u>Enhancing access to justice for all requires a system-wide approach with adequate resources to support it.</u>

The statewide justice system encompasses more than courtrooms and judges. It includes effective prosecutorial and defense systems, juvenile services, Friend of the Court, civil legal aid and pro bono programs, centralized support for the self-represented, alternative dispute resolution, bar services, language and cultural support, health and human services agencies, business entities, individuals and others. To be effective the justice system must coordinate efforts with all partners, working with them to promote adequate resources for all components. There is a continuum of need before, during and after going to court in which assistance and support can increase efficiency, effectiveness, access and fairness. This includes approaches such as CCJ Resolution 22 on "problem-solving courts," which calls for integrating into judicial processes multidisciplinary involvement and collaboration with community-based and government organizations to enhance judicial effectiveness and meet the needs of litigants and the community.

2. <u>Ensuring access to justice for all requires effective ongoing mechanisms that involve key stakeholders in planning, evaluation, collaboration and change management to assure the justice system remains effective into the future.</u>

These mechanisms should involve the range of stakeholders noted in the component # 1, above. They should assure evaluation of the goals set out in the process, identify new developments that affect the system, determine what ongoing structures need to be in place to assure that key stakeholders remain involved in planning, coordinating and providing services within the Michigan justice system.

C. Access to Justice Guiding Principles

An effective justice system:

1. <u>Operates in a manner that engenders public confidence and trust.</u>

To engender public confidence and trust, legal professionals must include individuals who represent the diversity of our multicultural society and underrepresented groups and who are sensitive to the changing demographic makeup of the community. Core values of the justice system must be anchored in procedural fairness, commitment to service and fair and respectful treatment. The justice system must assure access and fair treatment for all persons regardless of their race, gender, age, national origin, ethnic background, religion, economic status, disability, sexual orientation, gender identification or ability to read or speak English. Civic education and other efforts to inform the public

about the values and operations of the justice system are important in assuring support for and understanding by citizens of the justice system.

2. Is adequately funded and effectively uses resources to assure access and fairness for all.

Currently, there are not enough resources to provide a qualified attorney to persons who need attorneys and cannot afford them. Financial, in-kind and volunteer resources do not provide services in sufficient quantities to those who need legal help. Resources must be balanced between the various judicial and extra-judicial systems to address the demand for services. There is a disproportionate reliance on a user pay system and other funding models need to be explored to determine what mix of funding best creates stability and flexibility and fairness for the Michigan judicial system. Indigent defense reform needs to include state level adequate funding. The resources should be used efficiently and in ways that achieve cost savings, by identifying steps that maximize dollars and avoid duplication (e.g. uniform forms and greater centralized support for self-help may save court personnel and others time and money while increasing services for many.)

3. Provides access to understandable information about services and assures a full range of services.

Web-based and other information should be easy to find and understand regarding where persons can obtain information about the law and how to obtain self-help support and attorney assistance. This information should be responsive to language, cultural and literacy needs. Information about services and support should address needs before, during and after court, including identifying the legal problem, both rights and responsibilities, substantive and procedural legal information, and a continuum of legal help available (such as ADR, self-help, limited representation, full representation, systemic advocacy) and connections to related non-legal resources (such as community services or government agencies).

4. Provides system users with representation by a lawyer or legal counsel, as appropriate to their legal matter, including as required by the constitutionally-mandated right to counsel.

Because access to a lawyer is critical to access to and the fairness of the system, the system should assure that there is access to counsel for all system users whose legal problems need the assistance of a lawyer to resolve the matter fully and fairly. Some legal questions can be resolved with simple information or self-help assistance. Others are more complex, or more adversarial, or involve critical legal rights. However, this access should be part of a continuum of services appropriate to the subject and complexity of the matter, including a range of resources such as adequate self-help resources for simple matters; unbundled services provided by a lawyer; clinic/hotline consultation services/active pro se assistance; adequately staffed legal services programs; robust pro bono programs; a recognized right to counsel in critical civil proceedings; and quality assigned counsel in cases where the right to counsel is mandated by the state or federal constitution.

5. Promotes coordination, quality, effectiveness and efficiency of services.

All providers should comply with accepted ethics and standards (such as the ABA civil/criminal principles or ABA Standards for the Provision of Civil Legal Aid). Interdisciplinary training should be provided for judges, lawyers and relevant others; it should cover both substance and techniques for effectively assisting litigants and others at all stages of their legal and other needs. There should be mechanisms to assure coordination among judicial and extra-judicial aspects of the justice system and to evaluate the effectiveness of services and their coordination. Efficiencies and other steps should be identified that can contribute to overall cost savings, e.g. common case management and data systems and centralized web-based information and self-help tools.

6. Facilitates fair and user-friendly courts, with uniform and standardized forms, and clear and consistent rules and procedures throughout the state.

There should be uniform standards of indigency and SCAO forms should be accepted in all state courts. Access and fairness considerations should be factored into all rules, procedures and systems in the courts and broader justice system with a sensitivity to the unique populations and legal issues that may exist in a community. Examples include assuring that e-filing does not disenfranchise indigent persons without access to credit or that legalese or other language on forms does not impede ease of use and understandability by non-lawyers. Judicial leadership toward these goals should be promoted.

7. Emphasizes early community and court intervention to prevent or mitigate legal problems and their collateral consequences.

Easy access to information or advice (such as web sites, self-help centers or hotlines) may help prevent legal problems or mitigate their impact, both helping users and reducing costs. Cross training of civil and criminal lawyers may help avoid some civil collateral consequences of criminal convictions. Identifying system changes that can prevent future problems could assist with such matters as indigent persons automatically not accruing child support while in prison. The impact of fees and fines should be reviewed to avoid creating a system where those unable to pay have barriers to self-sufficiency, sometimes resulting in additional and avoidable expensive jail time. Increased connections between courts and social services may assist in juvenile, child welfare, mental health or other cases involving vulnerable persons. The justices system should work in collaboration with community-based and governmental organizations so that people can obtain services that may help prevent subsequent contact with the justice system.

8. Uses technology appropriately to achieve goals.

Technology should facilitate access to information about the law and how to handle legal problems or obtain the assistance of a lawyer. It should also help make the flow of cases and justice system administration smoother and the exchange of information easier through uniform protocols or common case management systems. It should also be responsive to the "digital divide," accommodating those who do not have access to high speed Internet or who need electronic resources in other languages or have cultural or literacy barriers to using electronic content. Changing

technologies and uses should be consistently examined for opportunities to reach more people and for potential short term and long term cost savings.

Resources used in drafting Essential Components and ATJ Guiding Principles:

American Bar Association (ABA) Principles of a State System for the Delivery of Civil Legal Aid and S

Self-Assessment Tool

ABA Principles of a Public Defense Delivery System

ABA Study of the State of Diversity in the Legal System, 2009

Access to Justice NY State Courts, ATJ Goals

Australian Government, Attorney-General's Department, A Strategic Framework for Access to Justice in the Federal Civil Justice System

Canadian Judicial Council – State of Principles on Self-represented Litigants and Accused Persons

Conference of Chief Justices Resolution 22 and Conference of State Court Administrators, Resolution IV in Support of Problem-Solving Courts

Core Principles of Procedural Fairness and a Commitment to Service for Courts, Michigan Supreme Court

Maryland Access to Justice Commission Listening Events and Interim Report

Mississippi ATJ Strategic Plan

National Legal Aid and Defender Assocition Ten Core Values for the National Civil Legl Aid System

Pew Internet & American Life Project – Report: Internet, broadband and cell phone statistics

State Bar of Michigan Eleven Principles of a Public Defense Delivery System

Washington State Access to Justice Board, Statement of Principles and Goals

Washington State Courts, Access to Justice Technology Principles

III. Compilation of Full Reports and Recommendations

Judicial Crossroads Access to Justice Committee – Workgroup B Report
Domestic Violence Issues

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Domestic Violence Issues**?

Submitted by Judith Cunningham, Rebecca Shiemke, Terri Stangl
February 17, 2010

Relevant Data and Assumptions

Identify Sources of Data:

- The American Bar Association (ABA) National Domestic Violence Pro Bono Directory
- U.S. Department of Justice, Office on Violence against Women; 2004 Teach Your Students Well: Incorporating Domestic Violence into Law School Curricula, a Law School Report.
- The American Bar Association's Commission on Domestic Violence Website Listserve and E-News Letter.
- American Bar Association Commission on Domestic Violence "Judicial Check List" prepared by the Judicial Sub-committee of the American Bar Association Commission on Domestic Violence

Summary of Data

- Domestic violence is reaching epidemic proportions in many areas, exacerbated by the Great Recession and current economic conditions. Victims' service programs are overwhelmed, and there is not enough funding to assist programs addressing the many needs of domestic violence victims.
- Domestic violence affects every segment of the population – every socioeconomic level, every community, every culture and every race.
- Access to legal representation is one of the most important needs victims have. In addition to legal representation, most victims need transitional housing, financial assistance and employment support, but many of these needs can be addressed by other community resources. There are not enough well trained attorneys willing to help with the legal needs of domestic violence victims. Victims also need legal assistance on victims' rights issues, protective orders, divorce, child custody, and bankruptcy proceedings that result from domestic violence scenarios.
- Domestic violence representation is one of the most dangerous areas of law to practice. Some training models call for collaborative efforts pairing attorneys with victim advocates for representing victims of domestic violence. Safety is the number one concern in working with victims of domestic violence. It is a life-or-death situation for the victim, her family, the service providers and the attorney handling the case.

- Children in homes where domestic violence is occurring are much more likely to suffer physical, emotional and sexual abuse than children in non-abusive homes. Victims are less likely to be in a position to protect their children from abuse after separation.
- Most victims of domestic violence do not have a lawyer for their cases. There are few resources for victims who most often cannot afford legal representation as a result of financial control exercised by the batterer.

Identify additional data desired.
- None identified

List and explain basis for informed assumptions used.
- The information contained here is based on data and reports from current reliable resources subject to citation and do not represent any assumptions that cannot be supported by those resources.

National/Other Models and Learnings

Identify and summarize relevant models or systems used in other states or relevant jurisdictions.
- None identified

Identify any other relevant resources
- No additional resources identified

Preliminary Conclusions or Findings

Identify key conclusions relevant to answering Work Group B's question.
- Attorneys can make a difference by being willing to take pro bono cases to represent victims of domestic violence. The American Bar Association (ABA) has developed a National Domestic Violence Pro Bono Directory – a comprehensive national data base of programs providing pro bono legal services to victims of domestic violence.
- The mission of the American Bar Association's Commission on Domestic Violence is to increase access to justice for victims of domestic violence by mobilizing the legal profession. The Commission addresses the need to increase the number of well trained and supportive attorneys providing representation to victims of domestic violence by providing ongoing, in person, web based, and telephonic training opportunities for attorneys, law students, and other legal advocates.
- Ongoing continuing legal education opportunities need to be available to attorneys representing victims of domestic violence, sexual assault, dating violence, and stalking.
- **S**tate and local bar associations need to collaborate with law schools and law students to integrate domestic violence education into their law school activities and courses. See U.S. Department of Justice, Office on Violence against Women; 2004 Teach Your Students Well: Incorporating Domestic Violence into Law School Curricula, a Law School Report.
- Attention needs to be paid to develop educational materials focusing on the economic-related legal rights of victims of domestic violence.

Recommendations Adopted by ATJ Committee:

Identify essential extra-judicial partners and explain their relevance.

Michigan Poverty Law Program, Legal Services Programs, Michigan Coalition Against Domestic and Sexual Violence, State of Michigan Domestic Violence Prevention and Treatment Board, domestic violence shelters, MIRC- re: Battered immigrants, PAAM.

List and Prioritize recommendations addressing work group B's question.

Policy:

- Amend the Child Custody Act to provide an exemption to the "friendly parent" standard among the best interest factors, MCL 722.23(j), where domestic violence has occurred.
- Amend the Child Custody Act, MCL 722.21 et seq., to create a rebuttable presumption against awarding custody to perpetrators of domestic violence.
- Broader exemptions for domestic violence survivors from mediation and other forms of alternative dispute resolution, such as and including parenting coordinators. Some states permit a mediated agreement to be declined by the court if domestic violence affected the victim's ability to make the agreement.
- Adopt legislation to create an address confidentiality program that will protect release of a survivor's address and other locating information across all systems.
- Prohibit courts from denying custody or parenting time to a parent who acts to protect or seek treatment for a child based on a good faith allegation and with reasonable belief that the child is a victim of child maltreatment or the effects of domestic violence.
- Explore and considering implementing "fathering after violence" programs that work with batterers as parents and seek to cause a positive change in the batterer's parenting by recognizing the impact of violence on their children and partner. Some batterer intervention programs offer this as an additional service or there are stand-alone programs.
- Investigate models across the country as well as funding that was available for fatherhood initiatives

Funding:

- Establish more funding for legal services agencies and other non profits that provide free legal representation to domestic violence survivors.
- Funding to establish and/or maintain a coordinated community response by and communications between all human services, law enforcement, and court related organizations that respond to domestic violence.

Bench and Bar

- Mandatory training on domestic violence dynamics for family law attorneys, GAL's, mediators, judges, court staff, Friend of the Court employees and child custody evaluators.
- Specialized assessment in custody cases where domestic violence is present to distinguish from other high-conflict custody cases.
- Develop a state model and guidelines for coordination among the systems with which survivors interact, including the criminal justice system, advocacy, the family court and child protection.
- Establish additional supervised visitation and safe exchange programs and adopt uniform standards and safeguards to protect victims and their children.

Judicial Crossroads Access to Justice Committee – Workgroup B Report
Language and Limited English Proficiency Issues

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Language and Limited English Proficiency Issues**?

Submitted by Lorraine Weber
February 17, 2010

Relevant Data and Assumptions

Identify Sources of Data:
- Brennan Center for Justice at New York University School of Law "Language Access in State Courts " Laura Abel 2009
- Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental Access to Justice (2007),
- Michigan State Court Administrative Office Access to Justice Grant submitted to the Kellogg Foundation September 2009
- Farmworker Legal Services, Civil Court Language Interpreter Policy,
- Michigan Court Rules
- Code of Professional Conduct for Interpreters in Michigan Courts.
- National Center for State Courts (NCSC) Court Interpretation: Model Guides for Policy and Practices in State Courts, 1995

Summary of Data
- **Limited English Proficiency in Michigan:** "LEPs" are persons who do not speak English as their primary language and who have a limited ability to read, speak, or understand English. According to the 2000 US Census, 850,000 Michigan residents speak a language other than English in the home. At that time, every county in Michigan but one reported an increase in non-English speaking residents. Not included in the census data were tens of thousands of seasonal Latino farm workers and their family members. This means that these individuals cannot protect their rights in court without the assistance of an interpreter.

  In addition, it should be noted that many of the LEP's come from countries that either do not have a well functioning judicial/legal process, or come from locations where citizens do not trust the system and are frightened of going to court. It would be helpful if LEP's had some basic information regarding what to expect from a Michigan court in the form of process; statement of their rights; tight to request and interpreter; and some information about available non-judicial remedies for their legal issues.

- **Elements Of Competent Court Interpretation** Court interpretation is a highly specialized, form of interpreting. Not only are court interactions at a significantly higher level of difficulty than

conversational language, but they also require a familiarity with legal terminology and procedures and with the cultural context affecting the parties in the court proceedings.

Court interpretation is accomplished through three types of interpreting: consecutive, simultaneous and sight. Consecutive interpreting is when the interpreter waits until a speaker has finished speaking a group of words or sentences in one language, and then interprets those words or sentences into another language. Simultaneous interpreting occurs when the interpreter is listening to the speaker and interpreting into another language contemporaneously. In the courtroom, simultaneous interpreting is often demonstrated when the interpreter is seated behind and whispering into the ear of the non English speaker, or using equipment, such as headphones, through which the non-English speaker hears the interpreter. Sight translation is when the interpreter reads a document in one language, and then translates it aloud into another language.

To be fully competent in all situations as a foreign language court interpreter, an interpreter should possess (1) strong language skills in both English and the foreign language, including knowledge of legal terminology and idiomatic expressions and slang in both languages; (2) interpreting skills in the three basic modes of interpreting (sight translation, consecutive and simultaneous), including highly developed short-term memory skills as well as experience in determining the appropriate mode to use in particular courtroom situations; and (3)an understanding of ethical and professional standards and how to apply those standards in a courtroom setting. The high level of skills needed for court interpretation greatly hinders the ability of courts and judicial systems throughout Michigan to locate and retain the services of qualified court interpreters.

- **Michigan Law Governing Appointment:** The Michigan Code of Criminal Procedure Act 175 of 1927, 775.19a requires the appointment of a language interpreter during the criminal prosecution of an LEP individual. It states: "If it appears to the judge that a defendant does not understand or speak English sufficiently to present their defense or if an interpreter's services are used in court on behalf of the prosecution, the judge shall appoint an interpreter, who will be compensated for their services as ordered by the court (with maximum amounts specified for interpreter services provided in municipal court). No similar procedural or statutory mandate exists for civil proceedings. Michigan Court Rule 2.507 provides that "the court may appoint an interpreter of its own selection." Lack of uniform criteria for the exercise of such discretion leads to inconsistent decisions and directly limits LEP litigant's access to justice. There is no statutory or regulatory authority that governs the process for appointment of a certified or highly qualified interpreter, determines who has a right to an interpreter, and no guidelines for when an interpreter should be appointed.

- **Compensation:** The Michigan Code of Criminal Procedure Act 175 of 1927, 775.19 provides for compensation in municipal courts for an interpreter to not exceed $25 for each day and 15 for each half day actually employed. Michigan Court rule 2.507 provides for the purposes of trial that "the court may appoint an interpreter of its own selection and may set reasonable compensations for the interpreter" Compensation of such interpreter may be "provided by law or by one or more parties." This rule contains no standards indicating when an interpreter must be appointed, nor criteria for allotting compensation. Although the SCAO publishes a standard "Motion and Order for Appointment of Foreign language Interpreter (MC81) it provides no guidance to judges or litigants concerning the bases for such a motion. Michigan Court rules also say that "compensation for

interpreter is to be paid out of funds provided by law or by one or more of the parties, as the court directs, and may be taxed as a cost in the discretion of the court, "

- **Qualification of Interpreters:** Existing Michigan law does not ensure that the "interpreters" that are assigned or used can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting. In 1999, Michigan joined the NCSC Consortium of Member States for Court Interpreting. Currently 46 states are members of the Consortium and most use the testing exams, recommended training and screening protocols developed by the NCSC. As a result, Michigan conducts annual testing exams for certifying court language interpreters. Courts are encouraged to use "certified" interpreters when available by the SCAO and the SCAO maintains a list of such interpreters online. However, despite this testing regimen, Michigan law does not mandate the appointment of "certified" interpreters even for criminal proceedings. Additionally, there is no requirement/nor specific guidance provided to judges (or anyone else) regarding how to effectively determine whether a non-certified" interpreter is competent to provide interpretation although all interpreters whether certified or not are required to read and abide by the requirements of the Code of Professional Conduct for interpreters in Michigan Courts.

- **Title VI of the Civil Rights Act:** An inadequate interpreter system exposes Michigan courts to potential legal liability and to the loss of Federal Funding. Washtenaw Circuit Court Family Division was recently challenged on its failure to appoint an interpreter for an indigent Spanish Speaking litigant. This challenge is based on Title VI of the Civil Rights Act of 1964 and argues that because the Family Court receives federal funding. It is brought "within the mandate of the Civil Rights Act" Such challenges pave the way for the future litigation aimed at any Michigan court receiving federal funding that does not provide for court interpreters in civil cases involving LEP litigants.

- **Executive Order 13166:** Executive Order 13166 (EO 13166) requires state courts to have a plan in place to provide meaningful access to court services to LEPs. Failure to comply with EO 13166 can lead to a federal audit and a loss of all federal funding. Michigan courts (including SCAO) receive federal funding for specialty courts, child support enforcement, and child welfare services. Several states have been audited because of citizen complaints of non-compliance with EO 13166. President Obama supports EO 13166 and so federal enforcement is expected to accelerate.

- **Case Law:** The Michigan Court of Appeals has recognized that an LEP civil litigant can arguably assert a due process right to tan interpreter. It noted that "in order to establish a due process violation, respondent must show that she was denied a meaningful opportunity to participate in the hearing due to an inability to understand and respond to the evidence presented against her." A LEP's right to a court appointed interpreter is also an inevitable extension of the Deaf and Blind Person's Interpreters Act, which mandates the appointment of an interpreter in all proceedings involving a deaf or blind person.

- **Funding:** On April 24, 2008, the Senate Judiciary Committee approved the State Court Interpreter Grant Program making federal funding in the amount of 15 Million per year over five years available for state interpreter services. However, the full Senate never acted on the proposed legislation, and it has not become law.

Identify additional data desired.

- **Court Survey:** The Office of Access and Fairness for the Michigan Supreme Court intends to conduct a limited survey of Michigan Courts to assess the scope and nature of the problems that LEP litigants and witnesses currently present to them.

- **Funding:** More information is needed to identify potential funding sources for this program.

List and explain basis for informed assumptions used.

- The information contained here is based on data and reports from current reliable resources subject to citation and do not represent any assumptions that cannot be supported by those resources.

National/Other Models and Learnings

Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

- **Wisconsin:** Several States have enacted legislation mandating the appointment of interpreters, as appropriate, in all civil proceedings. Wisconsin's model provides an especially thorough guide. In 2007, Wisconsin Act 20 established uniform criteria for the certification of interpreters, guidelines for their appointment as well as provision of costs.

- In addition states such as **California, Oregon, and Washington** have both statutory language as well as administrative processes that require the use of certified interpreters, and in situations where no certification tests exists, the use of "state approved" interpreters and specifically designates who is responsible for paying for the interpreter services and how much.

- **Pennsylvania:** Senate Bill No. 669, 2005 Section 101 of Title 2 establishes the methods for providing interpreters for persons with limited English proficiency.

- **Language Access Checklist:** The Brennan Center for Justice Report Appendix C provides a comprehensive checklist to evaluate the status of interpretation services for state courts. This state court language access checklist is an important assessment tool and should be utilized as the touchstone for Michigan's status.

Identify any other relevant learnings.

- Empire Justice Center's Language Access Resource Center, http://onlineresources.wnylc.net/pb/orcdocs/language_access.asp
- Federal Interagency Working Group on Limited English Proficiency, www.lep.gov.
- Migration Policy Institute's Language Portal, http://www.migrationinformation.org/integration/language_portal
- National Asian Pacific American Bar Association, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007), http://www.migrationinformation.org/integration/language_portal/files/NAPABA%20IncreasingAccessMay07.pdf
- National Association of Judiciary Interpreters and Translators, http://www.najit.org/

- National Center for State Courts, http://www.ncsconline.org/
- U.S. Department of Justice, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field (2004), available at http://www.lep.gov/resources/tips_and_tools-9-21-04.htm#49
- National Language Access Advocates Network (N-LAAN). N-LAAN is a national network of advocates supporting and engaging in effective advocacy to eradicate language discrimination and promote language rights at http://www.probono.net/nlaan/.

Preliminary Conclusions or Findings

- The constitutional rights of access to the courts, right to effective counsel, due process and equal protection require that the State of Michigan provide qualified interpreters in both criminal and civil cases.
- In addition to these constitutional requirements, an Executive Order and Department of Justice guideline confirm that Title VI of the Civil Rights Act of 1964 requires Michigan courts to provide language services to LEP persons to insure access to significant federal funding.
- In criminal cases, Michigan Courts do not consistently meet the minimal requirements of a qualified interpreter to assist LEP defendants as defined by Title VI.
- In all civil cases, Michigan Courts are not required to and generally do not provide qualified interpreters to assist LEP litigants as defined by Title VI.
- Michigan does not have a clear statutory or court rule requirement for setting and covering the cost of interpreter services.
- Michigan's interpreter certification program is limited to two languages and there is no clear legal requirement that a competent, certified interpreter be used.
- Training in the use of interpreters in courts is not mandatory for judges or court personnel.

Give a rationale for conclusions selected and any prioritization of them.

The discussion and summary of data provides the rationale for the above conclusions. The Conference of State Court Administrators, "White Paper on Court Interpretation: Fundamental Access to Justice" (2007) and the, Brennan Center for Justice at New York University School of Law "Language Access in State Courts " Laura Abel 2009 are the primary resources for these conclusions.

Recommendations adopted by ATJ Committee:

Identify essential extra-judicial partners and explain their relevance.
Attorneys, state advocacy groups such as the ACLU, Farmworker Legal Services, and the State Bar of Michigan, as well as interpreters associations such as NAJIT, MiTiN, ATA, and the NCSC Foreign Language Consortium can play a key role in providing guidance, support, and assistance to help Michigan courts improve their performance and services.

List and Prioritize recommendations addressing work group B's question.

Policy:

1. Michigan courts should recognize the aspirational goal that, as a matter of fundamental fairness, all persons appearing in court as a litigant or witness who do not sufficiently understand English should have access to qualified interpreter services in all court proceedings.

2. The Michigan Supreme Court should begin working with the Legislature on revising Michigan law that pertains to the use of foreign language interpreters.

3. The Supreme Court should issue an Administrative Order that requires that until there is permanent statutory language, that all judges be directed and expected to appoint state certified/approved interpreters.

4. Michigan courts should adopt standards for distinguishing qualified court interpreters from nonqualified court interpreters, incorporating a tiered system, if needed.

5. Michigan courts should enact policies supporting the required use of qualified interpreters for LEP and non-English speaking litigants in as many court proceedings as possible, recognizing fiscal and other, limitations.

6. Michigan courts should establish a process for enforcing judicial compliance with those policies. The State Court Administrative Office should be empowered to a. Establish statewide competency standards, b. Initiate new court interpreter programs or enhance existing programs, and c. Promote efficiencies associated with the "pooling" of limited interpreter and program funding resources.

7. Michigan courts should adopt ethics guidelines for court interpreters. A Model Code of Professional Responsibility for Interpreters in the Judiciary is included in the *Court Interpretation: Model Guides for Policy and Practice in the Michigan courts*, National Center for State Courts (1995).

Funding:

8. Michigan courts should educate and collaborate with the legislature to seek adequate funding to provide and pay for interpreting services as well as the costs of managing court interpreter programs.

9. Michigan courts should establish court interpreter program needs as a high budgetary priority and establish reasonable pay scales that reflect the fair market payment for such services, plus reasonable travel/mileage expenses.

10. The SCAO should support efforts to access federal and other funding to support state court interpreter initiatives, including initiatives like S. 702, "State Court Interpreter Grant Program Act," introduced by Senator Kohl (Wisconsin) in February 2007, which would authorize $15 million annually for five years to support state court interpreter programs, if enacted.

Interpreter Training, Development and Protocols

11. The SCAO should promote the development of distance learning programs for interpreter skills building training, especially in languages other than Spanish, either through court sponsored programs or partnerships with the higher education community.

12. The SCAO should develop, offer, and require training for all judges and court administrators on the importance of using competent court interpreters, on cultural diversity and culturally based behavior differences, and on the importance of following court policies regarding usage of court interpreters.

13. The SCAO should explore and support methods to better identify and track needs for interpreters – in individual cases and overall, including identification of languages for which interpretation is needed, frequency of interpreter use, and types of cases in which interpretation is required.

14. Michigan courts should explore potential technology for use in enhancing court interpreter services (including remote video interpreting technology) while ensuring the quality of interpreter services is not compromised.

15. Michigan courts should examine their practices to determine whether increased translations of important and frequently used court documents would be appropriate and provide assistance to non-English speaking litigants.

16. Michigan courts should explore the feasibility of establishing regional pools of interpreters, as well as community based interpreter testing programs, as cost-effective alternatives.

17. SCAO should establish an ongoing method for monitoring the use of interpreters, collecting data on issues related to language proficiency and interpreter use including pay scale, identifying the most frequently needed languages, and rates of usage.

Access to Justice Committee

Literacy, Educational Disparity and Plain English

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Literacy, Educational Disparity and Plain English**:

Submitted by E. Christopher Johnson

II RELEVANT DATA AND ASSUMPTIONS

A Identify Sources of Data

1) Literacy
    (a) National Assessment of Adult Literacy http://nces.ed.gov/naal/kf_demographics.asp
    (b) State and County estimates of Low Literacy http://nces.ed.gov/naal/estimates/index.aspx
    (c) Adult Literacy and Life Skills Survey Adult Literacy and Life Skills Survey http://nces.ed.gov/surveys/all/
2) Educational Disparity

(a) Educational Disparity Hispanicity and Educational Inequality: Risks, Opportunities and the Nation's Future http://www.ets.org/Media/Research/pdf/PICRIVERA1.pdf
(b) Educational Achievement and Black/White Inequality http://nces.ed.gov/pubs2001/2001061A.PDF
(c) Educational Disparity in the US; How Corporate America can Respond http://www.nccrest.org/events/leading_diversity.ppt#257,1,National Institute for Urban School Improvement

3) Plain Language/English
(a) Joseph Kimble, Plain English; A Charter for Clear Writing, 9 Thomas M. Cooley L Rev 1, 19-22 (1992) and other writings
(b) **Plain Language Association International** http://www.plainlanguagenetwork.org/Legal/
(c) **MJI Plain Language handbook** http://courts.michigan.gov/mji/resources/model_curriculum/curr_legal_terminology.htm
(d) **SCAO Plain English checklist** http://courts.michigan.gov/scao/resources/standards/aj_checklist.pdf
(e) **RF Flesch, The Art of Plain Talk, 1962, MacMillan Publishing Company and other writings.**
(f) **Plain Language.gov—** http://www.plainlanguage.gov/usingPL/government/testing.cfm
(g) **Writing For Dollars, Writing to Please,** Volume 6 of ***The Scribes Journal of Legal Writing*** (1996-1997) found at **http://www.plainlanguagenetwork.org/kimble/dollars.htm**

B **Summary of Data**
1) Literacy
(a) National Assessment of Adult Literacy-- National Assessment of Adult Literacy (NAAL)
Adults age 16 or older were assessed in three types of literacy (prose, document, and quantitative) in 1992 and 2003. Literacy is defined as "using printed and written information to function in society, to achieve one's goals, and to develop one's knowledge and potential." The average prose and document literacy scores of U.S. adults were not measurably different in 2003 from 1992, but the average quantitative literacy score increased 8 points between these years.One measure of literacy is the percentage of adults who perform at four achievement levels: Below Basic, Basic, Intermediate, and Proficient. In each type of literacy,
(i) 13 percent of adults were at or above Proficient (indicating they possess the skills necessary to perform complex and challenging literacy activities) in 2003.
(ii) 22 percent of adults were Below Basic (indicating they possess no more than the most simple and concrete literacy skills) in quantitative literacy, compared with 14 percent in prose literacy and 12 percent in document literacy.
(iii) The remainder were between these two poles with 29 percent at the basic level (can perform simple and everyday literacy activities) and 44 percent at the intermediate level (can perform moderately challenging literacy activities)

Differences in average literacy scores were apparent by sex and race/ethnicity. Women scored higher than men on prose and document literacy in 2003, unlike in 1992. Men outperformed women on quantitative literacy in both years. Male scores declined in prose and document literacy from 1992 to 2003, while female scores increased in document and quantitative literacy. In 1992 and 2003, White and Asian/Pacific Islander adults had higher average scores than their Black and Hispanic peers in the three types of literacy assessed. Black performance increased in each type of literacy from 1992 to 2003, while Hispanic average scores declined in prose and document literacy.

Additional differences in average literacy were apparent by education and age. Educational attainment is positively related to all three types of literacy: those with any education after high school outperformed their peers with less education in 1992 and 2003. Between these years, average prose literacy decreased for most levels of educational attainment, and average document literacy decreased for those with some college, associate's degrees, and college graduates. From 1992 to 2003, the average prose, document, and quantitative literacy scores of adults ages 50–64 and 65 or older increased.

(b) **State and County estimates of Low Literacy** These estimates were developed using statistical models that related estimated percentages of adults lacking Basic Prose Literacy Skills *(*BPLS*)* ranges from being unable to read and understand any written information in English to being able to locate easily identifiable information in short, commonplace prose text, but nothing more advanced.
   (i) The national direct estimates of the percentages of adults lacking *BPLS* are 14.5 percent for the 2003 NAAL and 14.7 percent for the 1992 NALS. In comparison, the national direct estimates of the percentages *Below Basic* in prose literacy are 13.6 percent for the NAAL and 13.8 percent for the NALS.
   (ii) According to the Latest Report released by NAAL, Michigan has a BPLS score of 8%, (with a margin of error that could go as low as 6% but as high as 11%) which is better than the national average (14.5%--see above) However, some of our larger counties may have numbers that are higher than the National average. Wayne's score is 12% (5.5% -- 21.2%--margin of error); Oakland is 7% (4.2%--11.3% margin of error); Macomb is 7% (3.2%--12.8% margin of error); Kent is 8% (3.8--14.6% margin of error); Ingham is 6% (3.0--11.3% margin of error). The entire listing of all counties can be found at http://nces.ed.gov/naal/estimates/StateEstimates.aspx

(c) **Adult Literacy and Life Skills Survey--I**n 2003, the United States participated in ALL along with five other countries. The study assessed the *literacy* and numeracy skills of adults ages 16–65 through a written test administered in respondents' homes. In this study, *literacy* was defined as the knowledge and skills needed by adults, in life and at work, to use information from various texts (e.g., news stories, editorials, manuals, brochures) in various formats (e.g., texts, maps, tables, charts, forms, time tables). The ALL test questions were developed to assess the respondent's ability to retrieve,

compare, integrate, and synthesize information from texts and to make inferences, among other skills.

Results from ALL showed that U.S. adults outperformed adults in Italy in 2003, but were outperformed by adults in Norway, Bermuda, Canada, and Switzerland. Adults in Bermuda, Norway, and Canada had higher *literacy* scores than U.S. adults at both the high and low ends of the score distribution. The highest performers (the top 10 percent of adults) had *literacy* scores of 353 or higher in Bermuda, 348 or higher in Norway, and 344 or higher in Canada, compared with 333 or higher in the United States. The lowest performers (those in the bottom 10 percent) in Bermuda had *literacy* scores of 213 or lower, 233 or lower in Norway, and 209 or lower in Canada, compared with 201 or lower in the United States. The lowest performers in Switzerland also outperformed their U.S. counterparts in *literacy*, scoring 216 or lower

2) Educational Disparity—Much has be written about this issue, but the report entitled **Educational Disparity in the US; How Corporate American can Respond by the National Institute for Urban school Improvement** http://www.nccrest.org/events/leading_diversity.ppt#257,1,National Institute for Urban School Improvement lays it out fairly well as follows citing 1998 US Census figures: Basically, each ethnic group starts with 100 children that complete kindergarten and then shows how many will complete High School, some college and attain a Bachelor's degree

Educational Attainment	Kindergarten	High School	Some College	Bachelor's Degree
White	100	88	59	26
AA	100	82	45	11
Latino	100	63	35	8
NA	100	58	7	

3) **Plain Language or Plain English—**

The following document prepared by Joe Kimble can be found in its entirety at on the Plain Language Network website at http://www.plainlanguagenetwork.org/kimble/dollars.htm#sub14

This document contains numerous examples of the benefits of Plain English not only from the perspective of making documents more understandable, but also in terms of the tremendous savings and efficiencies in the governmental, business, and legal arenas.

Writing for Dollars, Writing to Please
Joseph Kimble
Contents

Introduction
Getting Past the Myths About Plain Language

Gathering Evidence About Plain Language
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2. U.S.: Department of Veterans Affairs - Form Letters
3. U.S.: Naval Officers - Business Memos
4. U.S.: Allen-Bradley Company - Computer Manuals
5. U.S.: General Electric Company - Software Manuals
6. U.S.: Federal Express - Operations Manuals
7. Canada: Alberta Agriculture, Food, and Rural Development - Forms
8. U.K.: Royal Mail - Form
9. U.K.: British Telecom - Bill
10. U.K.: British Government - Forms
11. Australia: Victorian Government - Legal Forms

Category 2: Pleasing and Persuading Readers
1. U.S.: Judges and Lawyers - Various Legal Documents
2. U.S.: Appellate Judges and Law Clerks - Appellate Briefs
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5. U.S.: Law Students and Law-School Staff - Legislation
6. U.S.: General Public - Government Regulations
7. U.S.: General Public - Government Letters
8. U.S.: Naval Officers - Business Memos
9. U.S.: Army Officers - Business Memos
10. U.S.: General Public - Tax Forms
11. U.S.: General Public - Owner's Manual
12. U.S.: General Public - Medical Pamphlet
13. U.S.: General Public - Investment Documents
14. Australia: Lawyers - Legislation

A Parting Look at Precision
Footnotes

4)

(a) **MJI Plain Language handbook**—The Handbook of Legal Terms is a 67 page document produced by the Michigan Judicial Institute to meet the needs of those employees of the court system who are not legally trained, yet work with the law and court procedures. Since this Handbook is designed for non-legal personnel, the definitions are written in plain English rather than in complicated legal terms. The fact that such a document is necessary for court personnel to use in order to understand the system and help the public, suggests that our system, procedures and forms may still contain too much legal jargon to make them user friendly.

(b) **SCAO Plain English checklist**—The Checklist asks questions such as:

(i) Does your court provide information that explains in "plain English" terms, the procedures, schedules and actions of your court?

(ii) Are court forms understandable to the general public without the assistance of an attorney?

These questions suggest that the expectation of the use of plain English to Plain English and understandable forms are an expectation of the Supreme Court in the conduct of business in the court system

(c) **RF Flesch, The Art of Plain Talk, 1962, MacMillan Publishing Company**—Rudolph Flesh was a well known readability expert and writing consultant. He had numerous benchmarks of readable language such as using a conversational personal style of writing that uses short words, sentences, and paragraphs and developed a Reading Ease Test to ascertain the understandability of documents. The higher the score the more understandable the documents:
(i) 90.0–100.0 easily understandable by an average 11-year-old student
(ii) 60.0–70.0 easily understandable by 13- to 15-year-old students
(iii) 0.0–30.0 best understood by university graduates

According to Wikipedia, Reader's Digest magazine has a readability index of about 65, Time magazine scores about 52, an average year 7 student's (eleven years old) written assignment has a readability test of 60-70 (and a reading grade level of 6-7) and the Harvard Law Review has a general readability score in the low 30s.

Many government agencies require documents or forms to meet specific readability levels.

The U.S. Department of Defense uses the Reading Ease test as the standard test of readability for its documents and forms. Florida requires that life insurance policies have a Flesch Reading Ease score of 45 or greater.

There is also a Flesch-Kinkaid Grade level Test that classifies documents in a grade level format.

There are a few web tools (http://www.joeswebtools.com/text/readability-tests/ http://www.addedbytes.com/code/readability-score/) which claim to calculate the Flesch Read ease and Grade level scores, of text entered.

So I tested the Instructions for an SCAO form for a Motion Regarding Custody that provided the following results on both sites

Flesch-Kincaid Reading Ease -- 78.50
Flesch-Kincaid Grade Level ---- 5.60

The form itself tested for lower understandability, 64.90 Reading Ease and 7.0 Grade Level. I also tested an Illinois Form (which is supposed to have a state of the art self help system) and the Self help Custody form that scored even less readable with scores of 62.60 for Reading Ease and 10.30 for Grade Level.

This is obviously not a scientific test, and I would like to have a student do some more through research in this area to see where Michigan Forms currently stand

(d) **Plain Language.gov**—Website that discusses Federal Government Guidelines for utilizing plain language. Among other things it has a detailed way to test documents using Focus Groups, Protocol Testing and Control Groups. In all of these methodologies the documents are tested on users to ascertain their understandability. See, e.g. http://www.plainlanguage.gov/usingPL/government/testing.cfm

(e)

C Identify Additional Data Desired.

1) **Ascertain which state has the best Plain Language Court Documents**
2) **Ascertain the most Cost Efficient manner in which to test documents for plain English**

III National/Other Models and Learnings
See Kimble Article above

IV Preliminary Conclusions or Findings

A Findings
1) Literacy Challenges
2) Educational Disparity Challenges
3) Language Challenges
4) Increase in Self Help

B Key Conclusions
1) In light of the findings related to Literacy, Language, Educational Disparity and Self Help it is apparent that the justice system will be confronted with additional pro se litigants a number of whom will have language or literacy deficiencies of some kind.
2) As such, in order to help meet the needs of this increasing group of litigants all court documents will have to be provided in as understandable a form as possible
3) Therefore, all parts of the Michigan justice system that interface with the public forms, rules, procedures, jury instructions must be prepared in Plain English.

C This should not only be a recommendation of this Committee, but should be a mandate from the Supreme Court.

D All revisions to court forms, procedures and other documents should be completed before any documents are loaded onto the Court Information System.

E All forms rules and procedures should be made common on a state wide basis to the greatest extent possible.

F Accomplishing these changes will increase the efficiency of the Michigan justice system by making litigants more self sufficient.

Judicial Crossroads Access to Justice Committee, Workgroup B & C Report

Child Welfare

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice and the changing demographics/diversity of those users

… as it relates to: **Child Welfare System/Abuse, Neglect**

Submitted by Candace Crowley and Lorraine Weber, as informed by many thoughtful and generous experts[1]

Relevant data

Michigan has a remarkable community of people active in our child welfare system and devoted to improving conditions for Michigan's children. There is a large amount of data and many recent reports in this area. A few items are extremely relevant to the child welfare area of ATJ Crossroads work. Those are:

- "Improving Michigan's Child Welfare System: Our Children. Our Future. Our Responsibility." Prepared by Michigan Child Welfare Improvement Task Force, C. Patrick Babcock, Co-chair, and Carol Goss, Co-chair, April 2009

- Legal Representation for Parents in Child Welfare Proceedings: A 2009 performance based analysis of Michigan practice. Prepared by the American Bar Association Center on Children and the Law for the Child Welfare Services Division of the Michigan State Court Administrative Office

- Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System – the Center for the Study of Social Policy, January, 2009

- Equity: Moving Toward Better Outcomes for All of Michigan's Children -Report from the Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare

- Indian Child Welfare Act of 1978, A Court Resource Guide, ICWA Special Committee, Michigan State Court Administrative Office, September 2009

In addition, the Michigan Supreme Court's Child Welfare Services Court Improvement Program and the Governor's Task Force on Children's Justice have been working in this area for quite some time

[1] Michelle Weemhoff, Michigan Council on Crime and Delinquency; Vivek Sankaran, University of Michigan Child Advocacy Clinic; Michigan Supreme Court/State Court Administrative Office/Child Welfare Services Division staff; Mike Foley, Children's Trust Fund and Wayne County Referee David Perkins. Of special assistance in this effort are those members of the Michigan Children's Law Center who participated in a focus group conversation at Detroit's Lincoln Hall of Juvenile Justice on January 19, 2010: Fred Gruber, Troy Tipton, Reginald Thomas, Laura Kellett, Lynda Hodges.

and their efforts run parallel to our goals in many respects. The settlement provisions of Dwayne B. v Granholm address issues regarding data collection and timely placement and reunification, but those issues are cited because they remain as challenges in the system.

A complete listing of "Main written resource materials" and "Who is working on this topic" used in considering the questions raised by this committee can be found at the end of this memorandum.

What assumptions can be made in this field?

The term "child welfare" includes abuse and neglect, foster care, adoption, and termination of parental rights. Reports and activities by others address a broad range of issues and provide extremely detailed findings in each of these categories. The findings and recommendations in this memo are broad and apply generally to the entire "child welfare" category.

Keeping children with their birth or extended families, when it is safe to do so, is a priority outcome for the system. Legal mechanisms such as guardianships, child custody or personal protection orders should be used to allow family members to protect and provide for children without the need for expensive and traumatic out of extended family placement.

The detailed recommendations of the main reports referenced in this memo represent the thinking of experienced and committed experts and should be considered for adoption on a wider basis after affected groups have reviewed, debated, changed, and adopted them for their particular use.

Most parties to a child welfare case are entitled to counsel so the challenge of the unrepresented should not apply to this area of practice. However, as noted in recent Michigan Supreme Court decisions, non-custodial parents are oftentimes unrepresented until a termination of rights proceeding. Parents should be entitled to quality legal counsel in all instances as early in the process as possible.

With high quality legal representation, the outcomes for children and families are more positive. Continuity of representation is a key element of quality representation.

Michigan's economy will continue to get worse and challenges for children will be more difficult.

If changes to the current system are not made, more children will wind up in the juvenile justice and abuse and neglect system in the coming years, a more costly outcome than providing services before children get to the justice system.

In the past, barriers to licensing for foster home placement were a strong factor in preventing relatives from keeping children within the larger family structure. Significant progress has been made through the DHS Bureau of Children and Adult Licensing office to reduce the amount of time.

Children and families of color, especially African American and American Indian children, experience significantly worse outcomes in the child welfare system than do non-minority children. Children of color enter foster care at rates that are disproportional to their presence in the general population, and they remain in care longer—often far longer. Outcomes related to maintaining children in their homes, number of placements, family reunification and adoptions are far better for Caucasian children than for

children of color. The available DHS data demonstrate a persistent and troubling fact about child welfare services in Michigan—the race of children and families is a significant factor determining what happens to children and families of color who encounter these services.

The overrepresentation of children of color can result from differences at various points in the child welfare system, including the entry point (e.g. referrals for suspected child abuse and neglect or delinquency), the investigation and substantiation process, placement decisions, decisions regarding reunification and the termination of parental rights, and the types of services provided or available. Contributing factors to a disproportionate number of minority children being in the child welfare system include:

• Confusion between poverty and neglect;
• Need to educate the public and stakeholders on abuse and neglect in a cultural context;
• Need for meaningful dispositional resources for families, including substance abuse and mental health services and housing;
• Not enough neighborhood-based prevention and family preservation services;
• Limited number of culturally competent actors at all levels of the child welfare system, including the courts;
• Historic lack of trust of the system by minority communities;
• Limited public assistance and culturally sensitive service provider resources
• Individual perception and denial of the existence of racism within the system;
• Lack of data about effectiveness of all services; and
• No accountability for system outcomes

Racial equity is "a social outcomes measure that occurs when the distribution of society's resources, opportunities, and burdens are not predictable by race and when race can no longer be consistently associated with the incidence of privilege and disadvantage." (Aspen Roundtable on Comprehensive Community Initiatives, 2001)
Structural racism is "The many factors that work to produce and maintain racial hierarchies and inequities in America today which include national history, values and culture; as well as public policies, institutional practices and cultural stereotypes " (Aspen Institute, 2003).

Organizational indicators that ***structural racism*** is present include:
- Lack of leadership and/or staff knowledge or awareness of how the concept of race is defined, and how community or societal biases have been manifested within a given institution.
- Lack of a racially, ethnically diverse management/leadership team and an imbalance in representation in relation to the race and ethnicity of the families served.
- Decision-making or other practice tools have not been tested to determine if they are applicable across racial groups.
- Little or no consultation is provided to system stakeholders concerning racial or cultural issues and culturally appropriate practice methods are not encouraged or required.
- Racial inequities are not measured, or if noted, are not addressed thoroughly.

National/other models and learnings

The data report at the end of this Child Welfare report includes this information.

What findings or conclusions are most relevant?

Michigan children removed from their homes are less likely to be reunited with their families within a year than children in other states. Children and families of color, especially African American and American Indian children, experience significantly worse outcomes in the child welfare system than do non-minority children. Children of color enter foster care at rates that are disproportional to their presence in the general population, and they remain in care longer-often far longer.

The court system has played a role in the unsatisfactory permanency and reunification outcomes and in the disproportionate impact on minority children and families. These court issues not only result in negative outcomes and increased disparity, but they also create an enormous financial impact related to the high cost of out of home placement. As such, they need immediate and effective attention.

Under the leadership of Michigan Supreme Court Justices Elizabeth Weaver and Maura Corrigan and with the Governor's office and the SCAO Child Welfare Services office, much progress has been made for children in child welfare issues over the last three years. Nonetheless, efforts must continue in these areas:

Consistent judicial leadership across the state

Administrative processes including court docket control and observances of statutorily imposed timelines. Adoption forums and the data sharing agreement between SCAO and DHS (see recommendations "improve the strategic use of data collection") demonstrate the progress that can be made; these should be widely replicated where possible

Timeliness in reaching permanency decisions whether it is termination and adoption or reunification and dismissal, through strategies such as not allowing adjournments unless good cause and other similar policies.

Achieving permanency for children before they age out of the system.

Widely used training and experience among the judges in this field, including cultural awareness and competency training

Inconsistent local court/agency collaboration and cooperation

Lack of accurate and relevant statewide statistics of court use stemming from the system's decentralized funding

The legal profession plays a role in these unsatisfactory outcomes:

A lack of mandatory and general training and experience among the lawyers in this field, including cultural awareness and competency training.

Lack of continuity of representation by lawyers and lack of necessary supportive services

Insufficient advocacy on behalf of families and children and weak legal representation for parents and youth.

Attorneys have high caseloads and receive limited financial compensation from the courts for their work. Their compensation is oftentimes limited to time spent in court. They have a compromised capacity to gather information independent of the DHS record and do not have resources to hire independent investigators or other professionals or to make collateral contacts with other service providers.

The Department of Human Services plays a role in these unsatisfactory outcomes:

Lack of continuity of representation of children and families by case workers, and lack of necessary supportive services

Inconsistent local court/lawyer/agency cooperation and collaboration.

Early DHS/community intervention mechanisms must be available to address these issues and provide services to families when abuse/neglect is suspected but not substantiated.

Recommendations adopted by the ATJ Committee:

1. **Scarce resources should be directed to early childhood community based services** so that children and families are nurtured and supported and avoid punitive or placement contact with the child welfare and juvenile justice system. Once a family comes to the attention of the child welfare system, the state should focus its resources on the most vulnerable families, including teen parents; parents with physical, mental health or substance abuse problems; and relative caregivers in order to maximize family unification.

2. **Legal mechanisms such as guardianships, child custody or personal protection orders should be used to allow family members to protect and provide for children without the need for expensive and traumatic out-of-home placement.**

3. **A statewide administrative structure should be adopted to address representation in child welfare cases.** Three models have been suggested:
   a. Statewide institutional system using salaried staff attorneys with in-house supervision and support staff such as investigators, social workers and paralegals.
   b. Office of parent representation. This model relieves the counties of the administrative responsibilities for managing a panel of attorneys but does not necessarily shift the financial responsibilities to the State.
   c. Hybrid model. Representation can be provided by panels of private court-appointed attorneys and by staff attorneys in different areas.

4. **As an alternative to a statewide administrative structure, strong judicial leadership and effective case docket management should be implemented, and mandatory training should be instituted as a condition of representation contracts.**

5. **Survey local practices.** Local practices should regularly be surveyed regarding compensation, screening, appointment, use of standards, and case management. By sharing this information on a regular basis, court administrators and county policy makers could compare local practices with other counties and incorporate features that might improve management of attorney panel and representation of parties.

6. **Improve the strategic use of data collection,** analysis and reporting to improve performance of the system as measured by outcomes for families and children at each critical decision-making point. The Dwayne B. v Granholm settlement sets targets for implementing the Statewide Automated Child Welfare Information System (SACWIS) system for data collection, and similar statewide court information systems should be expanded. The progress made by the SCAO Judicial Information Systems Office in creating the Judicial Data Warehouse, extracting specific data on child welfare cases in nine counties, sharing that legal data with DHS, and receiving the social data from DHS to use in evaluating progress toward national performance measures needs to be expanded. Existing case processing protocols should be used by all courts to assist in managing caseloads in this area. Local courts, DHS offices, private child welfare agencies and other community stakeholders should establish work groups to implement new culturally proficient policies and practices, and to develop the data, information-gathering and reporting tools needed to track the impact of race and ethnicity and to craft comprehensive policies and programs to alleviate disproportionality at all stages of the child welfare system. Continue with the Court Improvement Project data sharing with DHS and courts.

7. **Provide even more opportunities for training** and workforce development to ensure that judicial officers and public/private providers have adequate skills and competencies to effectively serve the needs of children, youth, and families. Expand the availability and use of webcast or video trainings. Training recommendations also include:

    a. Mandatory training. Michigan should establish mandatory training and continuing legal education requirements so that child welfare attorneys are skilled and effective in their representation of children and families and the public's right to competent representation in court is realized.
    b. If mandatory continuing legal education is not adopted, a Michigan child welfare certification program should be established and child welfare courts should require all practitioners to achieve and maintain certification.
    c. Training plan. SCAO-Child Welfare Services is working with DHS CWTI, the Governor's Task Force to develop a multi-year training plan. Efforts to achieve this should continue
    d. Multidisciplinary training. Trainings should be taken by all attorneys, social workers, and service providers on legal and substantive topics, e.g., mental health services, behavioral health assessments, case planning, bonding and attachment, substance abuse cultural competency and other areas.
    e. Mandate that judges, referees and attorneys assigned to child welfare cases have the available training to move cases to safe and timely permanency.

f. Measures of judicial performance should be established by SCAO and utilized as a tool for training and improving outcomes for children and youth
g. There should be cross-training opportunities for judges and attorneys, DHS and private providers that prepare staff to fulfill their responsibilities in a competent manner
h. Training should be based on standards as available through Michigan and the ABA
i. More tools like Michigan's Lawyer Guardian Ad Litem Protocol should be developed and followed.

8. Establish and maintain judicial leadership

a. Judges should exercise their oversight role actively to assure that families are being adequately served and that the decisions being made are not unnecessarily intrusive.
b. Measures of judicial performance should be established by SCAO and utilized as a tool for training and improving outcomes for children and youth.
c. Courts should implement case and docket management systems that most effectively allow strong and consistent advocacy for children and families, and should design contracts for representation that require consistency in representation, sufficient family visits, allow resources for additional services, and require training on key legal and family health topics.
d. Specialized dockets and courts, such as baby court and juvenile drug courts should be implemented if feasible for that court system.
e. Judges should hold lawyers accountable to applicable Michigan or ABA practice standards.

9. Create a policy and finance environment that is supportive of achieving racial equity as an outcome by increasing the awareness among state legislators about the relationships between disproportionality/disparities and structural racism and how existing child welfare policies contribute to racial/ethnic disparities;

10. Implement an evaluation program to measure time frames, case type, and outcomes.

11. Statutory duties for parent representation should be implemented, similar to GAL duties and the work of the CIP in this area should be supported.

12. Reduce the length of time children wait for a permanent home by using innovative solutions to reduce delays in court process and procedure. Examples include the SCAO twice annual adoption/permanency forums that utilize county teams from the court/DHS/ private agencies and the "rocket dockets" used in Wayne and other counties. The Detroit Center for Family Advocacy is another creative example

13. The SCAO should identify all potential state and federal funding sources, using them as flexibly as is permissible under state and federal law to ensure that culturally proficient, courts are available to keep children with their birth families whenever safety can be assured.

14. The Courts should review their child welfare policies, procedures, programs and contracts to determine if they disadvantage children, youths and families of color and develop and enforce policies and practices that create a culture of inclusion, embrace diversity, and engage families and communities of color.

15. Active engagement and inclusion of parents, youth, and children of color (including extended families, tribal members, caregivers, and others who are significant in the life of the child and family) as true partners to shape the child welfare environment.

Who are the essential extra-judicial partners and how are they relevant?

Parent partners/coach
DHS and private agencies
Department of Community Health
Department of Labor and Economic Growth
Department of Education
Community Mental health
Youth
Parent or caretaker
Law enforcement
Teachers
Funders
Churches/places of worship
Medical profession
Advocates
Social workers
Tribes
CASAs
Foster Care alumni
Legislators

Main Written Resource Materials:

Child Welfare Task Force Report by Carol Goss and Patrick Babcock, funded by Skillman Foundation or http://www.michigan.gov/documents/cwitf/042809FinalReport_276565_7.pdf

Dwayne B. v Granholm et al - National child advocacy group lawsuit against Michigan for failing to meet needs of children in foster care. July 2008 settlement
http://www.michigan.gov/documents/dhs/DHS-LegalPolicy-ChildWelfareReform-Settlement_243876_7.pdf

Guidelines for Achieving Permanency in Child Protection Proceedings
Children's Charter of the Courts of Michigan (no longer in existence)
1999, 2004, 2009

Michigan – Gov. Office of Children's Ombudsman
2008 Annual Report and Recommendations
http://www.michigan.gov/documents/oco/OCO_AR2008_287038_7.pdf

Michigan Supreme Court Child Welfare Services Publications
Absent Parent Protocol (1/08)
Achieving Permanency in Child Protection Proceedings
Addressing the Educational Needs of Children in Foster Care in Michigan: Resources and Best Practices (2/07) Conducting Effective Post-Termination Review Hearings (7/08) Michigan Child Welfare Legal Resource Guide (8/06) Parents' Attorney Protocol (7/08) Reports

Juvenile Drug Courts: Strategies in Practice, U.S. Dept. of Justice, March, 2003
https://dccmis.micourt.org/resources/MI//NDCI_Juv%20Drug%20Courts%2016%20Strategies.pdf

Indian Child Welfare Act of 1978: A Court Resource Guide, 2009
http://courts.michigan.gov/scao/resources/publications/manuals/cws/ICWACtResourceGuide.pdf

ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases
http://www.abanet.org/child/repstandwhole.pdf

ABA Center on Children/Law for Child Welfare Services Division of Michigan SCAO: Legal Representation for Parents in Child Welfare Proceedings

Center for Study of Social Policy, 2009: Racial Equality Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System
http://www.cssp.org/uploadFiles/michigan%20report%201%2014%2009%20FINAL.pdf

Equity: Moving Toward Better Outcomes for All of Michigan's Children – Report from the Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare

Aspen Roundtable on Comprehensive Community Initiatives, 2001

Muskie School of Public Service, 2005: Michigan CIP Reassessment – How Michigan Courts Handle Child Protection Cases.

ABA Standards for Representation of Parents

ABA 2002 – Challenge for Change: Implementing GAL Statutes

Michigan SCAO Foster Care Review Board Annual Reports 2006, 2007 and 2008.2006 Annual Report or http://courts.michigan.gov/scao/resources/publications/reports/fcrb/fcrb_ar06.pdf
2007 Annual Report or
http://courts.michigan.gov/scao/resources/publications/reports/fcrb/fcrb_ar07.pdf
2008 Annual Report or
http://courts.michigan.gov/scao/resources/publications/reports/fcrb/fcrb_ar08.pdf

State Bar of Michigan
Children's Task Force Final Report
September 1995

Another document that may be useful to review is the Dellums Commission Report , http://www.jointcenter.org/publications1/publication-PDFs/Dellums%20PDFs/FinalReport.pdf . The DC was sponsored by the Joint Center on Political and Economic Studies and funded by the Kellogg Foundation. Its recommendations address issues of disparities affecting young men of color throughout the US.

A third area is the work of the MI Partners in Crises (www.mipic.org) , a relatively new coalition of judicial, legal, law enforcement and mental healthy leaders concerned about the growing incidence of youth and adults with serious mental illness in the criminal justice system. Last year the PIC was actively involved in supporting appropriations for the MI Mental Health Court pilots.

Who is working on this topic:

US Dept of HHS, Administration for Children & Families
ABA Center on Children and the Law
National Center for State Courts
National Council of Juvenile & Family Court Judges

National Center for Juvenile Justice
Michigan Governor's Office of Children's Ombudsman
SCAO Child Welfare Services
MI Supreme Court, SCAO, Child Welfare Services, Court Improvement Program – 3 grants – main, data collection and analysis, training
Michigan DHS
Michigan - Children's Trust Fund
MCJJ
Governor's Task Force on Children's Justice
Child Advocacy Clinics: UMLS, WSU
Michigan Council on Crime and Delinquency

Access to Justice Committee Work Group B Template
ICWA
Work Group B Question:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity?

Submitted by the Honorable Timothy Connors

Subject Matter: Tribal Court Relationships

1. **Relevant Data and Assumptions:**
   Congress passed the Indian Child Welfare Act in 1978. The Act is enforced through Michigan Tribal and State Courts. Congressional Findings behind the Act include that:

- There is no resource that is more vital to the continued existencand integrity of Indian tribes than their children***; that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

- States***have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

- Congressional findings behind the Act also noted that an Indian childin Michigan was 370% more likely to be adopted and 710% more likely to be in foster care than a non Indian child.

There are twelve federally recognized tribes in Michigan.

The Michigan Supreme Court formed a special committee to help Michigan judges learn about the federal Indian Child Welfare Act of 1978, the need for states to comply with the Act, and discuss its implementation in Michigan. The **Indian Child Welfare Act of 1978: A Court Resource Guide** was prepared by that committee, published in September of 2009 and can be viewed online at the State Court Administrative Office Division of Child Welfare Services website.

The Supreme Court is also providing ICWA training for all Michigan Probate and Circuit Courts at five regional locations beginning in June of 2010. The training seeks the active participation and assistance of our tribal neighbors.

As an outgrowth of this committee's work, a follow up sub committee on Court rules met, and recommended changes to our Michigan Court Rules to reflect recognition and implementation of the Indian Child Welfare Act. On January 27, 2010 the Michigan Supreme Court approved those recommended changes. They go into effect on May 1, 2010.

A second subcommittee continues to meet on proposed legislation to reflect the federal statute. This committee has followed the work of the State of Wisconsin, which after three years of meetings, proposed legislation which was submitted as SB 288 of 2009, passed unanimously and was signed by Governor Doyle in December, 2009.

In addition to ICWA, other federal laws define the relationship of our state courts to its tribal neighbors. For example, federal law explicitly proscribes state court jurisdiction in Indian country, unless explicitly authorized by Congress. Federal law allows local governments to enter into public safety cooperative agreements with Indian tribes. Leading tribal attorneys in Michigan currently articulate the proposed advantages of a statewide tribal/state police agreement and call for its serious consideration.

2. National/ Other Models and Learnings:

The following states incorporate ICWA into state statute by general reference: Arizona; Colorado; Florida; Kansas; Louisiana; Maine; Montana; New Mexico; Oregon; South Dakota; Utah; Vermont; Washington and Wyoming.

The following states took a more proactive approach and enacted all or a vast majority of the ICWA concepts into state law: California, Wisconsin, Minnesota, Iowa, Nebraska and Oklahoma.

The Native American Rights Fund publishes and maintains **A Practical Guide To The Indian Child Welfare Act** which is accessible online.

I n Michigan, Washtenaw county is developing a specialty court docket specifically to handle ICWA cases.

3. Preliminary Conclusions or Findings:

There is a recognized gap in meaningful access to all components of the Michigan judicial system for tribal court users. Leaders in our tribal courts and state courts are committed to the ongoing process of narrowing that gap. While the foundation of much of that work has been laid, and there has been some preliminary success, a great deal of work is yet to be done. This work will require the sustained, active cooperation and commitment of the tribes, state government in all three branches, and the Michigan bar. Of importance is the creation of an educated and committed judiciary, that will embrace the principles underlying the ICWA and work to implement the legal requirements of the Act in every IndianCchild Welfare case.

Recommendations adopted by the ATJ Committee:

(1) The Michigan Supreme Court, its administrative office, the tribal courts, the Michigan Indian Judicial Association as well as other stakeholders in Indian/First Nation issues should develop programs to foster awareness, acceptance and compliance by State courts with current applicable law.

(2) Ongoing partnerships between these entities should be institutionalized with the stated goal of preserving and improving meaningful access to justice in our state courts for Indian/First Nation people.

(3) The Michigan Supreme Court through its administrative office should encourage and facilitate education about these issues within the Judicial Branch as well as with the other two branches of government. That education should include fostering awareness, acceptance and compliance with current law by all branches of Michigan government.

(4) Specific efforts should be made by the Michigan Supreme Court, the State Bar of Michigan and other stakeholders to support the enactment of federal ICWA concepts into Michigan law

(5) State courts who handle ICWA cases should, where appropriate, develop specialized ICWA dockets that utilize judges and staff who are educated in and committed to following these principles and legal requirements.

(6) A statewide web-based resource on ICWA issues should be developed for use by courts, attorneys and other stakeholders, including a visible forum for dialogue and coordination with tribal courts.

Judicial Crossroads Access to Justice Committee - Work Group C Report

Access to Counsel

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice…

… as it relates to: **Access to Counsel**

Submitted by Bob Gillett
March 15, 2010

1. Relevant Data and Assumptions
   A. Identify and summarize relevant data and assumptions used.

There is a wealth of data documenting very significant unmet legal needs for low income persons. These include the two Justice Gap surveys conducted by the Legal Services Corporation in 2005 and 2009 and numerous state and national legal needs surveys. (Many of these surveys are summarized in the LSC reports, including: http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf.)

There are extensive written materials regarding access to justice and impact of the 1996 LSC restrictions on civil legal aid program published by the Brennan Center and collected on that website:
http://www.brennancenter.org/content/section/category/civil_justice/

As a whole, this data suggests that up to 80% of the civil legal needs of low income persons are not being met, largely because huge numbers of indigent prsons do not have access counsel to assist them in addressing those needs. In addition, the Justice Gap reports indicate that legal aid agencies are only able to provide assistance to 50% of the persons with meritorious civil legal claims who contact these agencies seeking assistance. The Brennan Center materials document how the LSC restrictions negatively impact access to justice in two ways: (a) by preventing access to services for some classes of clients; and (b) by causing an inefficient and duplicative delivery system.

This memo is also informed by the ABA Resolution adopted August 6, 2006 and supporting the expansion of the right to counsel in certain civil legal cases "civil Gideon" and the extensive material on this topic, much of which is collected on the ABA website http://www.abanet.org/legalservices/sclaid/atjresourcecenter/

There is also a wealth of material available on pro bono services and the role that these services play in access to counsel. These materials are referenced in this workgroup's Pro Bono report.

There are many materials regarding Michigan efforts to expand, coordinate, and integrate the delivery of legal services collected on the State Planning Body website:
http://spb.mplp.org:8080/display/SPB/Michigan+SPB+Home.
See also:
http://www.msbf.org/jfa08.pdf
www.mplp.org.
http://www.michbar.org/programs/ATJ/pdfs/plan_00.pdfhttp://www.michbar.org/programs/ATJ/pdfs/MI_Tech_Plan_03.pdf

B. Identify additional data desired.

There is not full Michigan data available at this time. In 2006, the State Bar took the findings of LSC's Justice Gap report and developed a separate report using Michigan data. We would recommend that this publication be developed in response to LSC's 2009 Justice Gap report.

In addition, there is not good data on the incidence of unrepresented persons in Michigan courts. We would urge SCAO to develop such data.

2. National/Other Models and Learnings

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

This is a very broad topic that encompasses hundreds of programs and ideas.

In general, since 1995, the national vision has been that the state is the appropriate jurisdiction for planning and implementing the legal services delivery system. There are many common themes and approaches among states; many ideas being developed from other states; and several unique strengths and challenges specific to Michigan. The state has several effective mechanisms—e.g., the Bar's Committee on Justice Initiatives; the State Planning Body; the Legal Services Association of Michigan—for tracking developments in other states.

3. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

There is a huge unmet need for access to counsel in civil legal cases—up to 80% of the civil legal needs of the poor are not being met in large part because these persons do not have access to counsel.
http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf

There is a well-established core system for providing civil legal services to the poor. This system is effective and efficient but is woefully underfunded. The mechanisms in Michigan to coordinate, integrate and innovate are noted at section 1.A. above. There area also various efforts to assure quality in the delivery of civil legal aid for the poor. These include monitoring by local, state and federal funders though grantee reports, site visits and other evaluation; establishment of a state support entity (Michigan Poverty Law Program) to support regional or statwide collaborative uses of technology and training to help individual providers build capacity; the LSC and NLADA quality initiatives; quality benchmarks and guidance in the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Principles for a State System for the Delivery of Civil Legal Aid, ABA Standards for the Provision of Pro Bono Legal Services; project-driven assessment of multi-program services (e.g. foreclosure, immigration, hotlines); and collaborative assessment of system needs through provider participation in the Legal Services Association of Michigan and other groups (e.g. State Planning Body, State Bar).

The civil legal services delivery system is a key component of the state's court system—without access to lawyers for low income persons facing critical legal events (e.g., the loss of their home or the loss of access to their children)—there is not fair and effective justice and public confidence in the system erodes.

The state needs a comprehensive approach to reduce the "justice gap"—this approach includes increased federal, state, and local funding and continued collaborative efforts to maximize coordination.

4. Recommendations:
A. Identify essential extra-judicial partners and explain their relevance.

The State Bar (including the Committee on Justice Initiatives), the Michigan State Bar Foundation, the Michigan State Planning Body, the Legal Services Association of Michigan, and local and regional legal services providers. These organizations include representatives from the major civil legal services providers and pro bono program coordinators in Michigan.

Recommendations adopted by the ATJ Committee:

1. For each recommendation, list what courts can do first, then others.

Recommendation One. The Court and the State Bar should actively support adequate federal, state, and local funding for civil legal services for the poor.

Recommendation Two. The Court and the State Bar should support increased funding for the federal Legal Services Corporation; the Court and the State Bar should actively support the reauthorization of the LSC Act; the Court and the State Bar should actively support efforts to remove the 1996 advocacy restrictions on LSC-funded programs and/or on LSC-funded services.

Recommendation Three. The Court and the State Bar should work with the Michigan State Bar Foundation and with non-profit legal services providers to increase funding to Michigan's IOLTA (Interest On Lawyers' Trust Accounts) program.

Recommendation Four. The Court and the State Bar should work with the Michigan State Bar Foundation and with non-profit legal services providers to assure that funding for civil legal services to the poor provided through the Filing Fees program remains dedicated to this function. These groups should assure that state funding for civil legal aid increases at least the rate of overall revenues into the fund.

Recommendation Five. The State Bar, the Michigan State Bar Foundation, and non-profit legal services providers should work together to build the Access To Justice (ATJ) Campaign to be an ongoing significant funding stream for civil legal services programs. The Court should, within judicial ethical constraints, work with the ATJ Campaign partners to support these efforts.

Recommendation Six. The Court and the State Bar should study the options for expanding the right to counsel (Civil Gideon) to adversarial proceedings where basic human rights are at stake, such as those involving shelter, sustenance, health, safety, and child custody.

Recommendation Seven. The Court, the State Bar, and legal services providers should work together to support and expand pro bono services.

Recommendation Eight. Support efforts by the American Bar Association to use Troubled Asset Relief (TARP) and other federal funds to employ under employed and unemployed lawyers to provide legal services to the ATJ Community.

C. Where possible for each recommendation, include thoughts on
1. Implications for justice system/courts structure

In general, these recommendations would not require structural changes in the courts.
Both State Bar and judicial leadership are critical in order to support increased funding for civil legal services. But this leadership can be provided within the current Court/Bar structure.

These changes assume some different ways that the court system might think about itself—it needs to recognize its role as part of an overall justice system and its duty to

work with legal services providers and pro bono programs to increase access to justice. As an example, courts might consolidate dockets where there are many indigent pro per litigants (e.g., in eviction cases) so that a legal aid program could provide an "attorney of the day" at those proceedings.

2. Implications for securing/balancing resources.

   In general, these recommendations are revenue neutral or revenue positive to the courts. Specifically, increased federal funding and a more robust ATJ Campaign would bring more resources into the system at no cost to the court system or the state. The IOLTA program captures funding that is otherwise unavailable to the court system (or the individual lawyers or the litigants). Pro bono program also bring new donated services into the judicial system.

   We are recommending maintenance of the Filing Fee program, not an increase; these funds are user fee funds, not state general funds.

   The creation of civil Gideon programs would require some resources. Other states are exploring these programs through pilot programs, so that a limited investment in resources produces data about the most efficient way to design such programs and the benefits of such programs.

3. Implications for use of technology

   The management of an integrated statewide legal services delivery system assumes a sophisticated technology system. For many years, the Michigan Poverty Law Program (based on advice from the Legal Services Computer Committee) has provided that support.

   There are several ways that better coordination between the Court's technology efforts and the legal services system would benefit low income court users across the state. As examples: (a) There are currently several "pro se legal information" websites; if these websites could be consolidated and coordinated into a single site, the quality of information could be improved at a lower overall cost; (b) Currently, there is not uniformity of court forms—SCAO has not mandated use of the SCAO forms and many local courts require local forms. If the Court required use of SCAO forms, that would dramatically improve the reliability of pro se support systems; it would also permit the Court and legal services providers to cooperate in developing on line document assembly programs (e.g., HotDocs). The combination of consistent forms and online forms would improve the quality and efficiency of the system.

Pro Bono

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice…

… as it relates to: **Pro Bono**

Submitted by Bob Gillett
March 11, 2010

1. Relevant Data and Assumptions

A. Identify and summarize relevant data and assumptions used.

***State Bar of Michigan Pro Bono Survey (1997)
***State Bar of Michigan Pro Bono Survey (2007)
***ABA National Pro Bono Survey (2005)
***ABA National Pro Bono Survey (2008)
***Florida Pro Bono Survey
***See materials at http://www.abanet.org/legalservices/probono/home

As a whole, this data provides a great deal of information about lawyers' attitudes toward and participation in pro bono. Overall, the data suggests that the majority of lawyers support pro bono; that 2/3 of Michigan lawyers actually do some pro bono work each year; and that 1/3 of Michigan lawyers donate to support legal services to the poor each year.

B. Identify additional data desired.

None at this time.

2. National/Other Models and Learnings

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

There are interesting model pro bono policies and programs—some on the state level and some on the local level. These models include differing policies—e.g., some states have mandatory pro bono reporting; they include differing programs; they include differing technology applications; and they include differing local and firm cultural attitudes towards pro bono.

Pro bono is implemented on a state by state basis (through a state ethics rule). Every state is, in its own way unique. Michigan is notable in two ways: (a) the Michigan pro bono rule (the Voluntary Pro Bono Standard) recognizes donations as a way for lawyers to satisfy their pro bono obligation; Michigan has implemented this rule through the coordinated Access to Justice Campaign; (b) in many states, there is an urban center that has pro bono programs

that vary dramatically from outstate pro bono. Michigan is a balanced state. There are viable pro bono programs across the state and because of the state's commitment to creating an integrated statewide legal services delivery system many of the pro bono structures are statewide structures.

3. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

The data indicates that there are barriers to participation in pro bono programs—including some confusion about the details of the pro bono rule; the need for visible judicial leadership; and the unavailability of appropriate pro bono opportunities for all lawyers.

4. Recommendations

A. Identify essential extra-judicial partners and explain their relevance.

The State Bar (including the Committee on Justice Initiatives and the Pro Bono Initiative), the Michigan State Bar Foundation, local and regional legal services providers, local and specialty bar associations.

Recommendations adopted by the ATJ Committee:

1. For each recommendation, list what courts can do first, then others.

Recommendation One. The Courts and the State Bar should work with non-profit legal services providers and other entities that provide pro bono services to support and promote a full range of pro bono opportunities for lawyers in all practice settings and in all areas of the state.

Recommendation Two. Judges should participate in pro bono recruitment and recognition efforts within judicial constraints, including participation on pro bono committees, support of the Access To Justice (ATJ) Campaign, participation in pro bono recruitment and recognition events, etc.

Recommendation Three. In order to support and promote pro bono, the State Bar should support and the Supreme Court should adopt the revisions to Michigan Rules of Professional Conduct Rule 6.1 proposed by the Pro Bono Initiative.

The current MRPC is based on the 1982 ABA Model Rule. The proposed revised 6.1 is broader and clearer and will assist the Bar in promoting pro bono service.

C. Where possible for each recommendation, include thoughts on

1. Implications for justice system/courts structure

In general, these recommendations would not require structural changes in the courts. Both State Bar and judicial leadership are critical in order to promote pro

bono service and to create an effective ATJ Campaign. But this leadership can be provided within the current Bar/court structure.

These changes assume some different ways that the court system might think about itself—it needs to recognize its role as part of an overall justice system and its duty to work with legal services providers and pro bono programs to increase access to justice. As an example, courts should work with clinics that are assisting pro se litigants.

2. Implications for securing/balancing resources.

In general, these recommendations are revenue neutral or revenue positive to the courts, in that pro bono programs are bringing new resources to assist courts in resolving cases. Since an effective pro bono system requires that cases be screened and referred and supported, ongoing funding for staffed legal services programs is critical to an expansion of pro bono resources to the courts.

3. Implications for use of technology

Pro bono services would be supported by technology recommendations from other work groups—e.g., uniform court forms and court policies would make it easier to train pro bono lawyers, especially those practicing in new legal areas or new judicial jurisdictions; a functional court-sponsored self-completing court forms system would be of great benefit to pro se litigants, legal services programs, and pro bono lawyers.

There is discussion of whether a statewide pro bono website (hosted outside of the court system) would facilitate pro bono participation in the state.

Prisoner Access to the Legal System
Criminal Task Group

Work Group C Question:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice?

Submitted by Daniel Manville

I. Relevant Data and Assumptions

A. Identify Sources of data:
B. Summary of data:
C. Additional data desired:

II. National/Other Models and Learnings

A. **Identify and summarize relevant models or systems used in other states or relevant jurisdictions:**
B. **Identify any other relevant learnings:**

III. Conclusions or Findings

A. **Identify key conclusions relevant to answering Work Group C's Questions:**

IV. Recommendations

A. **Identify essential extra-judicial partners and explain their relevance:**

(1) Michigan Council on Crime and Delinquency
(2) Center for Civil Justice
(3) Legal Aid of Western Michigan
(4) University of Michigan Clinical Law Program

Recommendations adopted by the ATJ Committee:

Prisoner Access to the Legal System
In February 2010, the ABA House of Delegates approved a set of ABA Criminal Justice Standards on Treatment of Prisoners. These Standards supplant the previous ABA Criminal Justice Standards on the Legal Status of Prisoners and, in addition, new Standard 23-6.15 supplants Standards 7-10.2 and 7-10.5 through 7-10.9 of the ABA Criminal Justice Mental Health Standards.

Recommendations addressed primarily to the courts:
Standard 23-9.3 Judicial review of prisoner complaints
(a) Judicial procedures should be available to facilitate timely resolution of disputes involving the legality, duration, or conditions of confinement.
(b) When determining whether a pleading or other court filing has stated a legally cognizable claim or complied with other requirements, courts should take into account the challenges faced by pro se prisoners.
(c) Prisoners should not be required to demonstrate a physical injury in order to recover for mental or emotional injuries caused by cruel and unusual punishment or other illegal conduct.
(d) Courts should have the same equitable authority in cases involving challenges to conditions of confinement as in other civil rights cases.

Recommendations addressed primarily to the Michigan Department of Corrections:
Standard 23-9.4 Access to legal and consular services
(a) Correctional authorities should facilitate prisoners' access to counsel. The provisions of this Standard applicable to counsel apply equally to consular officials for prisoners who are not United States citizens.
(b) A prisoner with a criminal charge or removal action pending should be housed in a correctional facility sufficiently near the courthouse where the case will be heard that the preparation of the prisoner's defense is not unreasonably impaired.

(c) Correctional authorities should implement policies and practices to enable a prisoner's confidential contact and communication with counsel that incorporate the following provisions: (i) For letters or other documents sent or passed between counsel and a prisoner:

A. correctional authorities should not read the letter or document, and should search only for physical contraband; and

B. correctional authorities should conduct such a search only in the presence of the prisoner to or from whom the letter or document is addressed.

(ii) For meetings between counsel and a prisoner:

A. absent an individualized finding that security requires otherwise, counsel should be allowed to have direct contact with a prisoner who is a client, prospective client, or witness, and should not be required to communicate with such a prisoner through a glass or other barrier;

B. counsel should be allowed to meet with a prisoner in a setting where their conversation cannot be overheard by staff or other prisoners;

C. meetings or conversations between counsel and a prisoner should not be audio recorded by correctional authorities;

D. during a meeting with a prisoner, counsel should be allowed to pass previously searched papers to and from the prisoner without intermediate handling of those papers by correctional authorities;

E. correctional authorities should be allowed to search a prisoner before and after such a meeting for physical contraband, including by performing a visual search of a prisoner's private bodily areas that complies with Standard 23-7.9;

F. rules governing counsel visits should be as flexible as practicable in allowing counsel adequate time to meet with a prisoner who is a client, prospective client, or witness, including such a prisoner who is for any reason in a segregated housing area, and should allow meetings to occur at any reasonable time of day or day of the week; and

G. the time a prisoner spends meeting with counsel should not count as personal visiting time.

(iii) For telephonic contact between counsel and their clients:

A. correctional officials should implement procedures to enable confidential telephonic contact between counsel and a prisoner who is a client, prospective client, or witness, subject to reasonable regulations, and should not monitor or record properly placed telephone conversations between counsel and such a prisoner; and

B. the time a prisoner spends speaking on the telephone with counsel should not count against any applicable maximum telephone time.

(d) The right of access to counsel described in subdivisions (a) and (c) of this Standard should apply in connection with all legal matters, regardless of the type or subject matter of the representation or whether litigation is pending or the representation has commenced.

(e) Governmental authorities should allow a prisoner to engage counsel of the prisoner's choice when the prisoner is able to do so.

(f) Rules governing attorneys fees and their recovery should be the same for prisoners as for non-prisoners.

(g) Government legal services should be available to prisoners to the same extent they are available to non-prisoners. Government-funded legal services organizations should be permitted to provide legal services to prisoners without limitation as to the subject matter or the nature of the relief

sought. The relationship between a prisoner and a person providing legal assistance under this subdivision should be governed by applicable ethical rules protecting the attorney-client relationship.

Standard 23-9.5 Access to legal materials and information

(a) A correctional facility should provide prisoners reasonable access to updated legal research resources relevant to prisoners' common legal needs, including an appropriate collection of primary legal materials, secondary resources such as treatises and self-help manuals, applicable court rules, and legal forms. Access to these legal resources should be provided either in a law library or in electronic form, and should be available even to those prisoners who have access to legal services. Correctional authorities should be permitted to regulate the time, place, and manner of prisoners' access to these resources for purposes of facility security and scheduling, but prisoners should have regular and sufficient access, without interference with the prisoners' ability to eat meals, work, receive health care, receive visits, or attend required treatment or educational programming. Prisoners who are unable to access library resources because of housing restrictions, language or reading skills, or for other reasons, should have access to an effective alternative to such access, including the provision of counsel, or of prisoners or non-prisoners trained in the law.

(b) Prison officials should provide programs for the education and training of prisoners who can help other prisoners with legal matters.

(c) Correctional authorities should allow prisoners to purchase or, if they are indigent, to receive without charge materials to support their communications with courts, attorneys, and public officials. These materials should include paper, writing implements, envelopes, and stamps. Correctional authorities should provide access to copying services, for which a reasonable fee should be permitted, and should provide prisoners with access to typewriters or word processing equipment.

(d) Correctional authorities should allow prisoners to acquire personal law books and other legal research material and to prepare and retain legal documents. Regulations relating to the storage of legal material in personal quarters or other areas should be only for purposes of safety or security and should not unreasonably interfere with access to or use of these materials.

(e) Correctional authorities should not read, censor, alter, or destroy a prisoner's legal materials. Correctional authorities should be permitted to examine legal materials received or retained by a prisoner for physical contraband. If correctional authorities have a reasonable suspicion that a prisoner's legal materials contain non-legal material that violates written policy, they should be permitted to read the materials only to the extent necessary to determine whether they are legal in nature.

Standard 23-9.1 Grievance procedures

(a) Correctional administrators and officials should authorize and encourage resolution of prisoners' complaints and requests on an informal basis whenever possible.

(b) Correctional officials should provide prisoners opportunities to make suggestions to improve correctional programs and conditions.

(c) Correctional administrators and officials should adopt a formal procedure for resolving specific prisoner grievances, including any complaint relating to the agency's or facility's policies, rules, practices, and procedures or the action of any correctional official or staff. Prisoners should be informed of this procedure pursuant to Standard 23-4.1, including any applicable timeframes or other bases for rejecting a grievance on procedural grounds.

(d) Correctional officials should minimize technical requirements for grievances and should allow prisoners to initiate the grievance process by describing briefly the nature of the complaint and the remedy sought. Grievances should be rejected as procedurally improper only for a reason stated in the written grievance policy made available to prisoners. If correctional officials elect to require use of a particular grievance form, correctional authorities should make forms and writing implements readily available and should allow a grievant to proceed without using the designated form if it was not readily available to that prisoner.

(e) A correctional agency's grievance procedure should be designed to instill the confidence of prisoners and correctional authorities in the effectiveness of the process, and its success in this regard should be periodically evaluated. Procedural protections for prisoners should include, at a minimum:

(i) access for all prisoners, with safeguards against reprisal;
(ii) methods for confidential submission of grievances;
(iii) reasonable filing and appeal deadlines;
(iv) acceptance of grievances submitted or appealed outside the reasonable deadlines, if a prisoner has a legitimate reason for delay and that delay has not significantly impaired the agency's ability to resolve the grievance;
(v) written responses to all grievances, including those deemed procedurally improper, stating the reasons for the decision, within prescribed, reasonable time limits;
(vi) shortened time limits for responses to emergencies;
(vii) an appeal process that allows no more than [70 days], cumulatively, for official response(s) to all levels of appeal except if a correctional official extends the period upon an individualized finding of special circumstances;
(viii) treatment of any grievance or appeal as denied, for purposes of the prisoner's subsequent appeal or review, if the prisoner is not provided a written response within the relevant time limit; and
(ix) an appropriate individual and, when appropriate, systemic remedy if the grievance is determined to be well-founded.

Recommendations addressed to both the courts and the Michigan Department of Corrections: Standard 23-9.2 Access to the judicial process

(a) Governmental officials should assure prisoners full access to the judicial process.

(b) Prisoners' access to the judicial process should not be restricted by the nature of the action or the relief sought, the phase of litigation involved, or the likelihood of success of the action, except if like restrictions, including filing fees, are imposed on non-prisoners. Prisoners should be entitled to present any judicially cognizable issue, including:

(i) challenges to the legality of their conviction, confinement, extradition, deportation, or removal;
(ii) assertions of any rights protected by state or federal constitution, statute, administrative provision, treaty, or common law;
(iii) civil legal problems, including those related to family law; and
(iv) assertions of a defense to any action brought against them.

(c) The handbook required by Standard 23-4.1 should advise prisoners about the potential legal consequences of a failure to use the institutional grievance procedures.

(d) A prisoner who files a lawsuit with respect to prison conditions but has not exhausted administrative remedies at the time the lawsuit is filed should be permitted to pursue the claim through the grievance process, with the lawsuit stayed for up to [90 days] pending the

administrative processing of the claim, after which a prisoner who filed a grievance during the period of the stay should be allowed to proceed with the lawsuit without any procedural bar.

(e) Upon request by a court, correctional authorities should facilitate a prisoner's participation—in person or using telecommunications technology—in legal proceedings.

(f) A prisoner should be allowed to prepare, receive, and send legal documents to courts, counsel, and public officials. Correctional officials should not unreasonably delay the delivery of these legal documents.

(g) Courts should be permitted to implement rules to protect defendants and courts from vexatious litigation, but governmental authorities should not retaliate against a prisoner who brings an action in court or otherwise exercises a legal right.

Fines and Fees for Indigents

Judicial Crossroads Access to Justice - Work Group C Report

How do we assure that an increasingly divers and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice…

… as it relates to: **Fines and Fees for Indigents**

Submitted by Jessie Rossman
March 15, 2010

1. Relevant Data and Assumptions

A. Sources of Data

The ACLU of Michigan has spent the past 18 months reaching out to area attorneys, community organizations and other experts to gather information regarding the impact of courts costs on indigent individuals. The anecdotal information we gathered was augmented by our own court watching. In addition, numerous academic and advocacy pieces helped to inform our understanding of the issue, including:

1. The Brennan Center's report on Financial Consequences of a Conviction http://www.brennancenter.org/content/resource/sentencing_for_dollars_the_financial_consequences_of_a_criminal_conviction/

2. The Brennan Center's Report on Leon County, Florida, http://www.brennancenter.org/page/-/Justice/09.03.30.Leon.County.Collections.pdf,

3. The Washington State Minority and Justice Commission Report, http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

4. Penalizing Poverty by Helen Anderson, 42 U. Mich. J.L. Reform 323

5. Economic Incarceration, by Bridget McCormack, 25 Windsor Y.B. Access Just. 223.

B. Summary of Data and Assumptions

See also section 3, below.

We all recognize and appreciate the financial constraints that face the State of Michigan today. In this economic environment, it is important to utilize creative solutions that will both meet our budgetary needs *and* comport with the constitution's access-to-justice guarantees. Currently,, our legislature has increasingly funded the justice system out of the pockets of court users in order to protect its budget,repeatedly raising criminal and civil fines, fees, and costs with no view of the aggregate impact of these multiple legal financial obligations ("LFOs").[2]Unfortunately, this system has a disproportionate and unlawful impact on the poor It is reasonable to impose LFOs on individuals who have the ability to pay. Imposing the same on individuals who do not have the ability to pay, however, unconstitutionally burdens an individual's ability to access the courts and punishes individuals for the status of being poor.

The United States Supreme Court and the Sixth Circuit have held that incarceration for failure to pay LFOs such as fines or court costs[3] when an indigent defendant is unable to pay is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[4] Nevertheless, we have repeatedly seen instances where defendants are threatened with the possibility of incarceration and/or are actually incarcerated for failure to pay LFOs even though they are indigent and have no available funds to make sufficient payments.

Although Michigan Code of Criminal Procedure expressly allows a sentencing court to impose fines, costs, counsel fees, and reimbursement as part of a sentence, (including a sentence of probation or as part of revocation of probation),[5] fines and fees should be imposed and collected in a lawful and respectful manner. This is not only necessary in order to comport with the Constitution, but also is of critical economic concern, as the State wastes valuable resources attempting to reclaim LFOs from individuals who simply cannot pay.

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[2] Though we treat them as a single category, different types of LFOs are not always treated alike in the Michigan statutory code. *See, e.g.*, Mich. Comp. Laws § 769.1k (mandating that the court impose minimum state costs but leaving the imposition of other LFOs in the court's discretion).

[3] There are four primary types of LFOs in Michigan: (i) costs, which include "any monetary amount that the court is authorized to assess and collect for prosecution, adjudication, or processing of criminal offenses . . . , including court costs, the cost of prosecution, and the cost of providing court-ordered legal assistance to the defendant," Mich. Comp. Laws § 600.4801(a); (ii) fees, which include "any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction, finding of responsibility, or other adjudication of a criminal offense . . . , including a driver license reinstatement fee," *id.* 600.4801(b); (iii) penalties, defined as "fines," *id.* 600.4801(c); and, (iv) restitution to the victim, required by The Crime Victims Rights Act, *id.* 780.766(2).

[4] Williams v. Illinois, 399 U.S. 235, 240 (1970); Alkire v. Irving, 330 F.3d 802, 816 (6th Cir. 2003).

[5] Mich. Comp. Laws § 769.1.

There is a need to bring LFOs under control and to establish realistic, mandatory and uniform indigency standards. Many LFOs arise in the criminal and traffic context, but civil fees and LFOs in the juvenile context pose also similar and significant problems absent a mandatory fee waiver that would be applicable in every civil proceeding and uniform, enforceable limitations on fines and fees assessed in the juvenile context.

2. National/Other Models and Learnings

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

A number of other states provide positive examples to emulate.

For example, in February 2008, the Virginia Attorney General repealed Virginia's law imposing excessive fees for driving violations.

In Ohio, a court may impose fines, costs of confinement, and fees for appointed counsel as part of a sentence on a convicted defendant, but the judge must consider a defendant's ability to pay the amount before ordering repayment. Ohio Rev. Code 2929.19(B)(6). Additionally, under Ohio law, a court may only commit a defendant for nonpayment of a fine if the defendant is able to pay but refuses to do so, and a defendant is statutorily entitled to counsel at the ability-to-pay hearing. Ohio Rev. Code 2947.14.[6]Finally, Ohio permits community service in lieu of mandatory costs of prosecution. Ohio Rev. Code 2947.23.

Alaska law also provides a useful model to investigate. Under Alaska law, any judgment entered against defendant for recoupment of defense costs functions as any other civil judgment, subject to same defenses, and does not subject defendant to imprisonment if judgment is not paid. Alaska R. Crim. P. 39(c)(2); State v. Albert, 899 P.2d 103 (Alaska 1995).Alaska Rule of Criminal Procedure 39(c)(1)(A), mandates that, at the time of sentencing or revocation of probation, "the court shall inquire whether there is good cause why the court should not enter judgment for the cost of appointed counsel in the amount set out in subsection (d) of this rule. . . . If it is alleged that there is good cause to reduce the normal amount, the court may either decide the issue at that time and enter judgment accordingly or schedule another hearing to consider the issue."[7]

Finally, as explained in detail below, many of the solutions *already exist* in Michigan law and need only be followed consistently by the courts.

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[6] As an alternative option, Kentucky permits the courts to order defendants to report regularly on their job search progress and to withhold funds from defendants' tax returns. Lewis v. Lewis, 875 S.W.2d 862 (Ky.1993);

[7] See Huggett v. State, 266 N.W.2d 403, 409 (Wis. 1978) (finding an extension of probation for nonpayment of restitution unlawful on the ground that "the criminal justice system should not be employed to supplement a civil suit or as a threat to coerce the payment of a civil liability or to perform the functions of a collection agency"); State v. Scott, 452 N.E.2d 517, 520 (Ohio Ct. App. 1982) (same).

3. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

There are a number of key areas in which the ACLU of Michigan believes that our judicial system can be altered to improve access to justice for indigent individuals.

With respect to the imposition of LFOs, a defendant should not be saddled with a debt that he may never be able to repay and that will impact his creditworthiness into the future without an ability to pay determination before the imposition of the LFOs. While a court may impose fees on a sliding scale for individuals who have an immediate prospect of gaining access to funds, LFOs should not be imposed at all if it is unclear that a defendant will have an opportunity to repay them. Factors relevant to an indigency determination are already listed in Mich. Court Rule 6.005(B). While judges must have the discretion and flexibility to ensure that each comprehensive assessment is properly individualized, the final determinations should be standardized throughout the judicial system in order to prevent similarly situated defendants from being treated differently. The determination must also be done on record to allow for further review.

Bearden v. Georgia, 461 U.S. 660 (1983), requires a defendant to make "sufficient bona fide efforts" to repay the LFOs. Additionally, Michigan Court Rule 1.110 already states that "[f]ines, costs and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise for good cause shown." Courts often fail to give defendants the opportunity to demonstrate good cause, and many defendants do not know they are entitled to that opportunity. It must also be clarified that defendants must make a reasonable effort to obtain employment or borrow money but is not required to expend disability-related payments or student loan funds or the funds of elderly or disabled relatives on LFOs.Making statutory the requirements of Bearden v. Georgia, 461 U.S. 660 (1983) gives courts a basis from which to work with defendants who cannot pay. If courts are given explicit alternatives, they will be more likely to pursue these measures rather impose impractical LFOs on indigent defendants.

It is also the law in Michigan that courts cannot revoke probation from indigent defendants who could not pay fines and fees. See People v. Terminelli, 243 N.W.2d 703, 704 (Mich. Ct. App. 1976) ("Payment of costs as a condition of probation is legitimate, but where indigency prevents a probationer from fulfilling such a condition, his subsequent imprisonment constitutes a discrimination on the basis of economic status.").For these same reasons, courts should not be able to limit significantly an individual's liberty by extending their probation because of nonpayment due to indigency.

Local courts should also clarify to defendants that they will not be responsible for any LFOs if they are acquitted. Indeed, this is already law in Michigan, according to Mich. Comp. Laws § 768.34, which provides that "[n]o prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office or for any charge for

subsistence while he was in custody." Unfortunately, this express mandate has not been consistently followed to date.

With respect to the assignment of counsel, the current language on posters and information sheets in the courthouses misleads indigent defendants into thinking they cannot even request appointed counsel if they do not have funds for an upfront contribution and neglects to inform them that they will not have to pay at all if their income falls below a certain level. This misinformation may dissuade individuals from exercising their constitutional right to appointed counsel. Since Michigan law makes clear that no indigent defendant will be denied appointed counsel for failure to pay upfront fees, defendants must be informed of this right.

Additionally, the right to counsel attaches at critical stages in the criminal proceeding, which includes plea negotiations. People v. Pubrat, 548 N.W.2d 595 (Mich. 1996); see alsoAlabama v. Shelton, 535 U.S. 654 (2002) (holding that a court may not revoke probation or activate a suspended sentence if the underlying conviction was uncounseled). Anecdotal evidence suggests that judges are still directing individual defendants to plea negotiations before they have had the opportunity to request appointed counsel. Additionally, the right to counsel should attach at the initial imposition of LFOs on defendant and in any subsequent proceeding where there is a chance of incarceration. See, e.g., Mich. Court Rule 6.445(B) (requiring that court inform individuals facing probation revocation of their right to an appointed attorney, if eligible).

Finally, Mich. Comp. Laws § 768.34 already provides that "[n]o prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office or for any charge for subsistence while he was in custody." Anecdotal evidence suggests that some local courts are attempting to impose costs of appointed counsel on acquitted indigent defendants.

With respect to the DRA, this system punishes those who can least afford it. Those who cannot afford insurance, for example, cannot afford to pay "no proof of insurance" fees as assessed by the Driver's Responsibility program. Since there are already fees assessed for serious violations, drivers are being punished twice. Additionally, the DRA has a disproportionate burden on communities of color.

With respect to reporting requirements, although local courts are already required to report their collection efforts and expenditures to SCAO, these reports are not publicly available. In order to allow for transparency and proper oversight, the public must have access to information regarding collection practices in the courts.

4. Recommendations

A. Identify essential extra-judicial partners and explain their relevance.

Legislature
Courts - State, Local

SCAO
Civil, Criminal and Juvenile Provider/Planning Groups
State Bar of Michigan

Recommendations adopted by the ATJ Committee

1. For each recommendation, list what courts can do first, then others.

1. Reverse People v. Jackson, 769 N.W.2d 630 (Mich. 2009), and establish that a judge has an affirmative obligation to determine the defendant's ability to pay at the time of imposition of the LFO, regardless of whether the defendant objects to the imposition itself or the amount of the LFOs. The LFO should be part of the judgment of sentence in criminal cases, and subject to appellate review with the assistance of counsel where review is undertaken. The judge must also provide the defendant with continuing opportunities for reassessment of ability to pay throughout the time of enforcement of the LFOs.

2. Establish that a judge must conduct the ability to pay determination on the record. This assessment must include, but is not limited to, consideration of the defendant's "present employment, earning capacity and living expenses," "outstanding debts and liabilities," "public assistance," and other similar matters.

3. Alter the language on posters and information sheets in the courthouses to clarify that there is a sliding scale for payment for appointed counsel and that some individuals will not be required to pay any amount based on their income.

4. Clarify that acquitted defendants will not be responsible for any LFOs.
5. Clarify that indigent defendants who have been court-ordered to pay an LFO are entitled to appointed counsel in order to challenge both the amount ordered and the enforcement of the LFO.

6. Clarify that indigent defendants who have been court-ordered to pay a legal financial obligation (LFO) are entitled to the same protections as civil judgment debtors; i.e., household goods under a certain value are exempt from consideration.

7. Because defendants must make "sufficient bona fide efforts" to repay the LFOs, clarify what "bona fide efforts" to pay the LFOs are deemed "sufficient."

8. Because incarceration for failure to pay LFOs due to indigency is permitted "[o]nly if alternative measures are not adequate to meet the State's interests in punishment and deterrence," clarify the types of alternative measures available to courts, such as "extend[ing] the time for making payments, or reduc[ing] the fine, or direct[ing] that the [defendant] perform some form of . . . public service in lieu of the fine."

9. Create an affirmative obligation for courts to explain to the defendant that he/she has the opportunity to demonstrate good cause in order to reduce or defer payment of an LFO that otherwise would be imposed immediately.

10. Prohibit courts from requiring contributions from indigent defendants for court costs or defense expenses before the entry of judgment of guilt or an order deferring such a judgment.

11. Prohibit local courts and counties from escalating court costs based on the exercise of constitutional rights such as going to trial or presenting witnesses.

12. Prohibit judges from referring indigent defendants to prosecutors for plea negotiations before defendants have been given an opportunity to request appointed counsel.

13. Prohibit judges from revoking probation from defendants who have failed to pay costs and counsel fees that were conditions of probation due to their indigency.

14. Prohibit courts from extending probation from defendants who have failed to pay costs and counsel fees that were conditions of probation due to their indigency.

15. Require local courts to log and report LFO-related activity, including but not limited to, imposition of LFOs, collection efforts, enforcement activity, and incarceration as a result of non-payment of LFOs with the Michigan Department of Corrections or on the SCAO website.

16. Reform the Driver Responsibility Act by (i) decreasing mandatory fees; (ii) allowing extensions on the 30 day deadline to pay the Driver Responsibility Fee; (iii) allowing appeals based on "substantial hardship" in order to reduce or eliminate the fee; (iv) allowing waivers of the reinstatement fee based on "substantial hardship"; and (v) allowing individuals to apply for and receive restricted licenses in order to maintain employment or fulfill child care responsibilities.

C. Where possible regarding recommendations, include thoughts on

1. Implications for justice system/courts structure

2. Implications for securing/balancing resources.

3. Implications for use of technology

The recommendations above will help to ensure that our justice system comports with constitutional mandates and will also help to unify and coordinate the manner in which LFOs are imposed throughout the court system. By eliminating the money that is currently spent attempting to reclaim fees and fines from individuals who are not able to pay, these recommendations also present the opportunity to *save* court resources.

Judicial Crossroads Access to Justice Committee – Workgroup C Report
Indigency Standards

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system regarding **economic barriers to access to justice...**

…as it relates to **Indigency Standards**

Submitted by Terri Stangl
March 15, 2010

Relevant Data and Assumptions

Identify Sources of Data:

http://www.jud.ct.gov/external/news/publicaccess/courtrec_finalreport-ORIG.pdf
Increasing Court Access Through Fee-Waiver Reform: California's Model, Clearinghouse Review July-Aug 2009.
http://courts.michigan.gov/scao/resources/standards/odr/ADRplngls.pdf (Section II-4)
www.uscensus.gov
Indigent Defense Standards and Guidelines Index (ABA 1998)
http://www.abanet.org/legalservices/downloads/sclaid/defenderstandardsindex.pdf pp 45+
MCR 8.120

Summary of Data

Increasing Poverty in State - According to the United States Census and the Michigan League for Human Services, the Michigan poverty rate has jumped 43% since 2000. In 2008, the poverty rate was 14.4%, making Michigan among the 8 states with the highest poverty rate. A number of counties, including Saginaw, Wayne, Isabella, Ingham, and Muskegon, have poverty rates at 18% over higher.
State Assistance Programs verify income eligibility - The federal poverty guidelines are a major component of indigency determinations for eligibility for state assistance programs. Verification of an applicant's indigency is a requirement of programs administered by the Department of Human Services and is verified by that Agency.

Identify additional data desired.

- **Number of fee waivers requested and number of fee waivers granted by type of case.** Ideally this would be available by local court to show areas with significant variations.

- **Funding:** More information is needed to identify potential funding sources for this program.

National/Other Models and Learnings

Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

- **Proposed Rule 34 – Washington State - uses a combination of receipt of public assistance, 125% of poverty, or reprentation by a legal services attorney or pro bono attorney working with the legal services program as proof of indigency in civil matters. This rule was proposed by the Washington Bar Association and http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=231 -** This rule allows certification by legal services providers of a client's income eligibility. It requires individual determinations of indigency by the Judge, which is more time intensive that Michigan's method which requires waiver of fees for anyone on public assistance.

- Massachusetts law requires an office of public counsel set up uniform standards of indigency in civil and criminal proceedings. http://www.publiccounsel.net/private_counsel_manual/chapter_ten.html

- 37th Circuit Court Standard on Civil Indigency http://courts.michigan.gov/scao/services/collections/BestPractices/C37-IndigentWaiverOfFees-Costs.pdf
  This permits automatic waiver of fees due to receipt of public assistance, but limits the definition of "public assistance" to cash assistance programs.

Identify any other relevant learnings.

- Legal Services providers report that there are significant variations in how MCR 8.120 is interpreted in courts around Michigan. The definition of "public assistance" varies in different courts.

- There is not a consistent method for determining indigency between civil, criminal, and juvenile cases, for purposes of fee waiver, restitution, and repayment. Different procedures and forms are used. (MC 20, MCR 287, JC 34)

- The Michigan Court Forms Committee was scheduled to consider whether to attach MCR 287 to MC 20, requiring a more complex process for determining indigency, especially for persons already determined for needs based public assistance such as TANF, Food Assistance (food stamps), State Disability Assistance, Supplemental Security Income, and Medicaid.

- Local courts vary in how indigent persons are to be provided alternative dispute resolution services. See: http://courts.michigan.gov/scao/resources/standards/odr/ADRplngls.pdf

It is not uncommon for local courts to require pro bono service of case evaluators and mediators. If payment for case evaluators is contingent upon the indigent party receiving funds through a settlement, (e.g. Jackson County) this creates a potential conflict of interest for the case evaluator. In other counties, mediators are free to decline providing services if payment is not available. (Macomb County)

- Current court rules do not clearly provide for payment of transcripts in civil appeals by indigent person.

3. Conclusions or Findings

A. Identify key conclusions relevant to answering Work Group C's Question

- The process and standard for determining indigency in civil and criminal cases is not well understood or uniformly applied in Michigan.
- The process and standard for determining indigency for waiver of filing fees is not the same as used to determine ability to pay restitution or to repay.
- The Michigan Department of Human Services has reliable methods for verifying an applicant's financial eligibility for needs based public assistance.
- Local interpretations and procedures related to determinations of indigency in civil and criminal cases are not reviewed by to verify consistency and accuracy.
- A consistent definition of "public assistance" that is widely understood by Judges and clerks and the public would streamline the process of determining indigency.
- Consistent definitions and procedures would improve local efficiency and would support local and state level efforts to help pro se litigants have access to the courts.
- In many counties, access to ADR depends on the availability of pro bono case evaluators or mediators.

4. Recommendations adopted by the ATJ Committee:

A. Identify essential extra-judicial partners and explain their relevance.

1. Legal Services Organizations, public defense service providers, and Law School clinics – may be involved in verifying income eligibility for clients handled in house or through referral to pro bono counsel.
2. County clerks - often responsible for determining whether a litigant is entitled to fee waiver due to the receipt of public assistance.
3. County Commissioners - as more litigants are indigent, there will be less revenue from court filing fees. Other sources of funding may be required.
4. Michigan Judicial Institute – provide training to Judges and court personnel on standard rules and procedures related to determination of indigency and provision of services that would otherwise require payment.

B. List recommendations addressing your Work Group's question

1. SCAO should publish a clear definition of public assistance for purposes of MCR 2.002 and MCR 6.005 that authorizes automatic fee waivers.

   This should include the following programs: Family Independence Program (TANF), State Disability Assistance, needs based Veteran's benefits, Supplemental Security Income, the Food Assistance Program (food stamps), and Medicaid. Receipt of these programs can be verified by a Case Number and/or recently dated eligibility notice. These programs should be listed on MC 20, MC 287 and JC

2. MCR 2.002 and MCR 6.005 and related court forms should be amended to provide a clear method for determining indigency for purposes of MCR 2.002 and MCR 6.005, restitution and repayment for those individuals who do not receive public assistance.

   SCAO should appoint a workgroup that includes at least local court personnel,legal services providers, and public defense service providers to develop a proposed rule, forms and procedures.

3. Local courts should report the number of filing fee waivers requested and the number granted. In each case, the report should identify whether the grounds for the request was based on receipt of public assistance or inability to pay due to indigency. This requires new data fields in case reporting systems.

4. Local Courts that use electronic filing procedures must have procedures that are accessible to low-income persons who may have access to credit or debit cards and/or who have had filing fees waived.

   This requires technology that will accommodate e-filing by persons who do not have access to funds or credit.

5. Alternative Dispute Resolution Procedures should not make payment of case evaluation or mediator fees contingent upon a judgment for the indigent party because this creates a potential conflict of interest.

   If there is a lack of local pro bono case evaluators, there may be an opportunity for volunteers from other counties who could serve in this role via video conferencing.
6. Funding levels for the appellate courts should cover the cost of transcripts for indigent appellants in civil matters. The parties may be asked to report on whether less than a full transcript of all proceedings will be required to address the issues to be addressed on appeal.

C. Implications for:

1. Justice system/courts structure

   No changes in the court system are required. New administrative rules , forms, and guidance will be required.

2. Securing/balancing resources

   Additional resources may be needed to make up for lost filing fees if the percentage of indigent litigants continues to grow due to Michigan's economic conditions. Resources

may be needed to pay for transcripts or other services for litigants for whom fees and costs are waived.

Clear and consistent rules and procedures for waiving fees should require fewer judicial and administrative resources to administer.

3. Use of technology

Any e-filing system must ensure that litigants can make fee-waiver requests and access all court services once fees are waived.

Judicial Crossroads Access to Justice Committee – Workgroup B Report
Juries

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Juries**?

Submitted by Hon. David A. Hoort, 8th Circuit Court
March 23, 2010

Relevant Data and Assumptions

Identify Sources of Data:

- *Williams v Florida*, 399 U.S. 78, 90 S Ct 1893, 26 L.Ed.2d 446 (1970)
- *Principles for Juries and Jury Trial*, American Bar Association (2005) http://www.abanet.org/juryprojectstandards/principles.pdf
- *NCSC Center for Jury* Studies, Enhancing Jury Service, Improving Jury Management *http://www.ncsconline.org/D_Research/cjs/*
- *Jury Trial Innovations-Charting a Rising Tide*, Gregory Mize and Christopher Connelly, Court Review, Chapter 41, Issue 1 (2004) http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Mize.pdf
- *Court Administration: Juries: Composition and Comprehension*, Annual Report on Trends in the State Courts, Hon. Michael Dann (2001) http://contentdm.ncsconline.org/cgi- bin/showfile.exe?CISOROOT=/juries&CISOPTR=220
- Hon. William Kelly, 62B District Judge, Kent County, MI
- *Jury Trial Innovations in New York State* (2009) www.nyjuryinnovations.org/
- *Michigan Constitution, Courtrules and Statutes*, Const 1963, art 1, Sec 20; MCR 2.508, et seq; MCR 6.401, et seq; MCL 600.1300, et seq, 768.8, et seq

Summary of Data

- **Six person criminal jury trial:** The United States Supreme Court has held that the constitutional guarantee of a trial by jury does not necessarily require a trial by exactly 12 persons. The State's refusal to impanel more than the six members provided for by Florida law did not violate defendant's Sixth Amendment rights as applied to the States through the

Fourteenth Amendment. The ABA, however, advocates 12 member juries in all non-petty criminal cases and in all civil cases whenever feasible. According to the ABA Principles for Juries and Jury Trials, larger juries deliberate longer, and have better recall of trial testimony, and are more likely to produce accurate results.

- **MCL 600.1300, et seq** provides for the selection process of jurors, with specific directives enumerated in Section 1301b to improve the existing system of jury service in the State of Michigan. Under MCL 600.1307a(2) age (70) is an allowable, upon request, exemption. Conviction for a felony was removed as an exemption by the Supreme Court, MCR 2.511(d), but retained by the legislature, MCL 600.1307a(1)(e), for offenses punishable for more than one year or expressly designated by law as a felony. Michigan uses the multi-step process to summon and qualify persons for jury service, infra.

- **The right to a jury trial and juror participation:** The American Bar Association recognizes the legal community's ongoing need to refine and improve jury practice so that the right to jury trial is preserved and juror participation enhanced. The article sets forth 19 principles that define our fundamental aspirations for the management of the jury system. Each principle is designed to express the best of current-day jury practice in light of existing legal and practical constraints. Exclusion because of a felony conviction should only be when a defendant is in actual confinement or on probation, parole or other court supervision. The time required of persons called for jury service should be the shortest period consistent with the needs of justice. Courts should use a term of service of one day or the completion of one trial, whichever is longer. Where deviation from the term of service set forth above is deemed necessary, the court should not require a person to remain available to be selected for jury service for longer than two weeks. The names of potential jurors should be drawn from a jury source list compiled from two or more regularly maintained source lists of persons residing in the jurisdiction. These source lists should be updated at least annually.

- **Jury Innovations:** 30 states have undertaken formal steps to analyze their jury trial systems and establish some innovations. These efforts have included state-organized commissions, jury innovation conferences, and written reports and studies. In general, most states' efforts follow a "top-down" format. In these instances, the judiciary creates a statewide initiative dedicated to jury innovation efforts. The initiative often produces recommendations leading to varying degrees of implementation, as state rules and procedures are altered accordingly. However, there have also been "bottom-up" jury innovation efforts. "Bottom-up" innovation can be considered more of a grassroots movement, in which some trial judges introduce innovative procedures in their own courtrooms, without instructions or recommendations from a central governing unit.

- **Concerns about lay jurors' abilities to understand and recall complex evidence** (or simple evidence in prolonged trials) and after-the-fact and often obtuse legal instructions have led over half of all states to examine traditional jury trial procedures and to suggest reforms. Common among the changes recently adopted or proposed by task forces in several jurisdictions include instructing the jury in the law to be applied before opening statements (as well as at the close of evidence); providing a written copy of all instructions for each juror; instructing jurors that they are permitted to discuss the evidence among themselves during trial recesses, but only in the

jury room when all jurors may be present and only as long as each juror refrains from forming or expressing any opinions about the outcome until the case is finally submitted to them for their decision; and reopening the case to respond to jurors' expressed needs if the jury reaches an impasse in deliberations.

- **Effective communication** between the court, counsel and jurors in court is vital to the effective administration of justice. Education and experience tells us that one comprehends and retains information exponentially upon increased use of one's senses. Use of video presentations, written materials and power point allow jurors to hear and see information for greater comprehension.

- Out of court **online correspondence** can be an effective alternative means of communication between jurors and the court. Online communication can be utilized to provide jurors with a broader array of options (e.g., document qualification information, choices for new date for jury service, name or address changes, request to be excused from jury service, reporting status check, directions and parking information for the courthouse, orientation video, etc.). For example, for jurors who request to be excused due to medical hardship, the court might develop an electronic form that jurors could download, forward to healthcare providers for the appropriate documentation, and then email back to the court. Facebook, twitter, texting all allow for the possibility of increased communication, with meaningful access. A corresponding, substantial factor in the success of online juror Web sites is the extent to which those courts publicize the Web site and formally or informally encourage jurors to use it.

List and explain basis for informed assumptions used.

- These information contained here is based on articles from legally recognized reliable resources subject to citation and do not represent any assumptions that cannot be supported by those resources. The recommendations intentionally have focused on means of providing meaningful access, but without additional expense to the State.

National/Other Models and Learnings

Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

- **South Carolina, Florida, Texas, Louisiana, Utah** provide for juries of less than 12 in felony cases where imprisonment for more than one year may be imposed. See La. Const., Art. 7, § 41; La. Crim. Proc. Code Ann., Art. 779 (Supp. 1969); S. C. Const., Art. 1, §§ 18, 25; Art. 5, § 22; S. C. Code Ann. §§ 15-618, 15-612 (1962); Tex. Const., Art. 1, §§ 10, 15; Art. 5, § 17; Tex. Code Crim. Proc., Arts. 4.07, 37.02 (1966); Tex. Pen. Code, Art. 1148 (1961); Utah Const., Art. 1, §§ 10, 12; Utah Code Ann. § 78-46-5 (1953).

- The number of peremptory challenges in non-capital felony trials ranges from three per side in **Hawaii** and **New Hampshire** to twenty per side in **New Jersey**. The degree to which jury operations are directed by state law varies tremendously by jurisdiction. For example, just over half of the states (27) give discretion to local courts to establish maximum terms of service. Of the 24 state-mandated jurisdictions, 10 set the maximum term of service at one day or one trial

(**Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Indiana, Massachusetts, and Oklahoma**). The remaining thirteen states permit longer terms of service, some of which limit the maximum number of days that a person must serve in any given period of time. For example, **Georgia** specifies that citizens cannot be required to serve more than two consecutive weeks in any given term of court or more than four weeks in any 12-month period. **Kentucky** and **North Dakota** have similar provisions, limiting jury service to 30 days and 10 days, respectively, within any 2-year period.

- For those states that mandate which source lists to use for the selection of jurors, the ones that occur most frequently are the voter registration list (38 states) and the licensed driver list (35 states). Nineteen states mandate the use of a combined voter/driver list. Eleven states mandate the use of three or more lists – typically, registered voters, licensed drivers, and state income or property tax lists, although other combinations are also common. Seven states restrict the number of source lists to a single list: **Mississippi** and **Montana** mandate the use of the registered voters list only; **Florida, Nevada,** and **Oklahoma** mandate the use of the licensed drivers list only; **Michigan** allows uses driver's license and personal id card**,** Alaska uses a list of residents who applied for payment from the Alaska Permanent Fund Corporation, which pays income to Alaskan residents from a statewide investment fund that originated from the profits from the Alaskan oil pipeline; **New York** courts added unemployment and welfare lists to make jury duty more inclusive; and **Massachusetts** employs a unique statewide census for its master jury list. The National Center for State Courts recommends that the master jury list include at least 85 percent of the total community population.

- Traditionally states exempted entire classes of citizens from jury duty on the basis that their professional or civic obligations in the community were so essential that they should be spared from jury service (e.g., political officeholders, law enforcement, healthcare providers). The trend in recent years has been to eliminate occupational and status exemptions altogether under the theory that no one is too important or too indispensable to be summarily exempted from jury service. Instead, local courts have the discretion to accommodate or excuse jurors on an individual basis. For example, **New York** eliminated all of its occupational exemptions in 1994, adding more than one million jury-eligible citizens to the master jury list as a result. Presently, **Alaska** provides an exemption to teachers from schools that fail to meet adequate progress standards under the No Child Left Behind Act; **Louisiana** allows for no exemptions whatsoever; 12 states and the **District of Columbia** allow exemptions for previous jury service. Conversely, **Florida** provides for nine exemptions related to age, occupation and prior service.

- Eighteen states and the **District of Columbia** utilize a one step process in which jurors are summoned and qualified simultaneously while five states employ a two step process whereby citizens are first surveyed to determine their eligibility for jury service, and then only qualified jurors are summoned for service. The remaining 25 states leave this decision to the discretion of the local courts.

- **Arizona** judges have been instructing jurors in all civil trials that they are permitted to discuss the evidence among themselves during trial recesses, but only in the jury room when all jurors may be present and only as long as each juror refrains from forming or expressing any opinions about the outcome until the case is finally submitted to them for their decision. **Maryland** by case law; **Colorado** and **Indiana** by court rules also permit this practice.

- In **New York** juror qualification questionnaires can be completed online, requests for first postponements can be electronically submitted and jurors can log onto the Internet to check if they must report to the courthouse the next day. Other examples that suggested a coordinated statewide effort included **Arizona**, in which three-quarters of the local courts reported the use of video during juror orientation; Iowa, in which more than half (54%) of local courts reported that citizens can check their reporting status on-line; **California**, which reported a statewide effort to equip jury assembly rooms with Internet access; **South Dakota**, which reported a legislative mandate to improve jury management technology; **Missouri**, which is implementing a statewide jury management system (30% of local courts reported that this had been completed in their jurisdiction); and **Alaska**, which is in the process of implementing an online jury software program. A **Wisconsin** Circuit Court discontinued sending stamped, self-addressed envelopes with the qualification questionnaire, and saved more than $1,200 in postage in the first year.
- In **New York** attorneys are encouraged to offer a brief statement prior to voir dire to increase the jurors' understanding of the case, and a written copy of the judge's charge is given to the jury to use during deliberation.

Identify any other relevant learnings.

- *National Program to increase citizen participation in jury service through jury innovations* (2006) http://www.ncsconline.org/juries/NCSCFlyer_2006Web.pdf
- *The State-of-the-States Survey of Jury Improvement Efforts, A Compendium Report,* Hon. Gregory Mize (ret), Paula Hannaford-Agor & Nicole Waters, April 2007 http://www.ncsconline.org/D_Research/cjs/pdf/SOSCompendiumFinal.pdf
- Jury Trial Innovations Resource Guide, National Center for State Courts http://www.ncsconline.org/wc/courtopics/ResourceGuide.asp?topic=JurInn
- A Jury Reform Pilot Project, The Michigan Experience, Hon. William Caprathe, 2009 http://www.abanet.org/jd/publications/jjournal/2009winter/pdf/Jjwin09_JuryReformPilot.pdf

Preliminary Conclusions or Findings

Identify key conclusions relevant to providing meaningful access to the Michigan judicial system in light of changing demographics/diversity as it relates to Juries.

- Meaningful access requires an acknowledgement of Michigan's changing economy and resulting changes in our demographics and diversity.
- Access can be provided via an in depth examination of the manner in which jurors are selected, qualified and serve in Michigan's judicial system.
- Technology in this ever changing world can increase the means of communication, education and understanding as it relates to the selection, qualification and service of jurors; with a corresponding reduction in cost to the State, municipality and taxpayers.
- The ideals and value inherent in the jury system can be preserved notwithstanding changes in the composition, selection, qualification and service of persons as jurors.

Give a rationale for conclusion selected and any prioritization of them.

- Keeping inviolate the ideals and worth of our jury system as our standard allows us within those parameters to advocate and accept change necessary to provide meaningful access in light of our changing economy, demographics and diversity. No prioritization is offered; each recommendation is believed to have merit. The recommendations take into account Michigan's present and future expected economy, with hopefully minimal repetition of ideas already being advocated or the subject of other, existing trial projects.

Recommendations adopted by the ATJ Committee:

List any principles identified to guide development of recommendations and to ensure quality.

- **The ABA Principles for Juries and Jury Trials.** The American Bar Association has adopted 19 principles to the right to jury trial and enhance juror participation. Each principle is designed to express the best of current-day jury practice in light of existing legal and practical constraints.

- **MCL 600.1300, et seq** provides for the selection process of jurors, with specific directives enumerated in Section 1301b to improve the existing system of jury service in the State of Michigan.
- **The NCSC Center for Jury Studies, Enhancing Jury Service, Improving Jury Management** is dedicated to facilitating the ability of jurors to fulfill their role within the justice system and to enhance the confidence and satisfaction with jury service by helping judges and court staff improve jury management.

Identify essential extra-judicial partners and explain their relevance.

- **Legislature.** Certain recommendations require legislative action to modify or enact enabling statutes, rules or regulations to modify existing law.
- **Executive branch**. The Governor's office as a possible advocate and with veto power, and related state, county and local branches of government would be financially affected by the proposed recommendations and would thereby have a significant financial interest in their adoption or the failure to enact changes in the selection, qualification and service of persons in the jury system.
- **State Court Administrator Office.** SCAO as the arm of the Michigan Supreme Court is the body responsible for the supervision and action of the corresponding state courts.
- **State Bar of Michigan.** The proposed recommendations affect the bench and bar and would be advanced by SBM advocacy.

List and prioritize recommendations.

- **Recommendation for six person criminal jury trial in the circuit court.** As long as arbitrary exclusions of a particular class from the jury rolls are forbidden, the concern that the cross-section will be significantly diminished if the jury is decreased in size from 12 to six seems an

unrealistic one. A six person criminal jury trial with (or without) the further adoption by court rule and statute of reduced peremptory challenges would preserve the right to a jury trial of one's peers without other adverse consequences. This author acting as a district, probate and circuit judge, has seen no difference and found no persuasive authority that a verdict rendered in probate, misdemeanor or civil matter has any less validity than that rendered by a twelve person jury panel. This author would also argue that minority representation, as a meaningful voice, carries less weight on the greater panel than does like service on the lesser panel.

The United States Supreme Court has held in Williams v Florida, 399 US 78 (1970) that the constitutional guarantee of a trial by jury does not necessarily require a trial by exactly 12 persons. The State's refusal to impanel more than the six members provided for by Florida law did not violate defendant's Sixth Amendment rights as applied to the States through the Fourteenth Amendment. The ABA, however, advocates 12 member juries in all non-petty criminal cases and in all civil cases whenever feasible.

According to the ABA Principles for Juries and Jury Trials, larger juries deliberate longer, and have better recall of trial testimony, and are more likely to produce accurate results.

Author: Judge David Hoort

Dissent: Judge Denise Page Hood, Judge Susan Moiseev, Dawn Van Hoek and Terri Stangl

- **Elimination of age, felony conviction, and prior accusation by prosecutor against potential juror as for cause basis as a per se allowable exemptions.** Many states have eliminated or significantly reduced mandatory exemptions. The ABA advocates that felony exemptions only be if the person is in actual confinement or on probation, parole or other court supervision. With cause being established if a person is mentally and physically unable to serve, age should not be a per se allowed exemption. The added access may not be necessarily numerically significant but would provide for a great cross selection and representation thereby of the community of one's peers.

- **Expanded communication with jurors.** Effective communication between the court, counsel and jurors is vital to the effective administration of justice. In court use of video presentations, written materials and power point allow jurors to hear and see information for greater comprehension. Online correspondence can be an effective alternative means of communication between jurors and the court, including but not limited to selection and qualification information, choices for new dates for jury service, name or address changes, request to be excused from jury service, reporting status check, directions and parking information for the courthouse, orientation, frequently asked questions, electronic forms for jurors to download and forward to employers, healthcare providers and educational institutions for appropriate documentation, Facebook, twitter, and texting; all allow for the possibility of increased communication, with meaningful access.

- **Expanded juror lists.** Eleven states mandate the use of three or more lists – typically, registered voters, licensed drivers, and state income or property tax lists, although other combinations are also common. **New York** courts added unemployment and welfare lists to

make jury duty more inclusive; and **Massachusetts** employs a unique statewide census for its master jury list. The National Center for State Courts recommends that the master jury list include at least 85 percent of the total community population. The existing and anticipated advancements in technology should allow for a centralized list with corresponding safeguards to prevent abuse or mistaken placement or removal from the list.

- **Elimination of the two step process** for the summons and qualification of jurors**.** Eighteen states and the **District of Columbia** utilize a one step process in which jurors are summoned and qualified simultaneously, with minimal adverse effect or complaints, and significant savings to the state. The one step process in conjunction with online information and qualification should minimally supplement and eventually replace existing procedures with little or no risk or disadvantages.

Give a rationale for recommendations chosen and any prioritization.

- **Michigan** has and continues to recognize the need to provide jurors with meaningful access to our judicial system. Many if not most jury innovations present in other jurisdictions have already been adopted or are presently being explored in our existing court system. The purpose of this paper is not to re-invent the wheel but to explore other possible options to expand our ability to provide jurors with meaningful access to the judicial system and to do so in recognition of our changing economy, demographics and diversity.

Access to Justice Committee: "Specialty Courts"
Problem Solving Courts

Submitted by Honorable Elizabeth Pollard Hines

I. Relevant Data and Assumptions

A. Sources of Data:

In addition to reading numerous articles and personal experience presiding over two problem-solving courts, I spoke (by e-mail and/or by phone) with experts including: **Julius Lang**, Director, Technical Assistance, Center for Court Innovation in New York, a public/private partnership with the New York State Unified Court System and technical assistance provider for court innovations across the US; **Liberty Aldrich,** Director of the Domestic Violence Division of the Center for Court Innovation; the **Hon. Harvey Hoffman** and the **Hon. William Schma** (ret.), leaders in the Michigan and national drug and DWI Court movement and the Michigan Association of Drug Court Professionals (MADCP); **Richard Woods,** Deputy Director, Trial Court Services, Michigan Supreme Court State Court Administrative Office; **Carolyn Hardin**, Executive Director of the National Drug Court Institute in Alexandria, Virginia; **Steve Binder**, Assistant Public Defender in San Diego, California, co-founder of the Homeless Court Program and member of the ABA Commission on Poverty and Homelessness; and the **Hon. John B. Williams**, Judge of the Kansas City Municipal Court. I reviewed materials and heard presentations on mental health courts from experts including the **Hon. Daniel B. Eisenstein**,

General Sessions Court in Nashville, Tennessee, and the **Hon. AnnaLisa S. Williams**, Chief Judge of the Akron Municipal Mental Health Court in Akron, Ohio.

B. Summary of Data:

"Problem-solving courts", sometimes referred to as "specialty courts" in Michigan, strive to address the underlying problems (drug addiction, domestic violence, mental illness and homelessness, for example) that bring people to court. Rather than just process cases in the conventional, adversarial way, they work to improve conditions for victims, offenders and the community. Problem-solving courts attempt to "use the authority of the judiciary in new ways and are characterized by a number of unique elements: a problem-solving focus; a team approach to decision making; referrals to treatment and other social services; ongoing judicial monitoring; direct interaction between litigants and judge; community outreach; and a proactive role for the judge inside and outside of the courtroom." *Applying the Problem-Solving Model Outside of Problem-Solving Courts,* by Francine Byrne, Donald Farole, Jr., Nora Puffet, and Michael Rempel*, Judicature, Vol. 89, Number1, July-August 2005, p. 40, http://www.courtinnovation.org/_uploads/documents/Applying%20Problem-SolvingModel.pdf.*

Michigan has the following "specialty courts": **DWI/Sobriety Courts**; **Drug Treatment Courts** for adults, juveniles and families; **Domestic Violence Courts; Veteran's Courts**; a **homeless court** (*Street Outreach Court* in Ann Arbor); **Mental Health Courts**; and **Child Support Specialty Court Projects**, many of which are listed at the SCAO website at http://courts.Michigan.gov/scao/services/tcs/spec.htm.

II. Findings:

"Studies have shown that problem-solving models reduce recidivism, improve neighborhood quality of life and lower system-wide costs." *"Breaking with Tradition: Introducing Problem Solving in Conventional Courts*," by Robert V. Wolf, *International Review of Law, Computers & Technology*, Vol. 22, Nos. 1-2, http://www.courtinnovation.org/_uploads/break%20with%20trad.pdf.

A study of Michigan DWI courts found that those who successfully completed the program were 6 times less likely to re-offend in the first year than those on traditional probation for DWI. See "*Michigan DUI Courts, Outcome Evaluation, Final Report*" at http://courts.michigan.gov/scao/services/DrugCourts/DrugDWI.htm.

In 2000, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution in support of problem-solving courts. (CCJ Resolution 22, COSCA Resolution IV, adopted August 3, 2000.) They noted that, "The public and other branches of government are looking to the courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process; … A focus on remedies is required to address these issues and problems in addition to the determination of facts and issues of law:" The Resolution "encourage[d]" the integration of principles and methods of problem-solving courts "into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community."

More recently, Chief Justice Kelly, speaking at a joint meeting of the Washtenaw County Bar Association's Juvenile Law and Criminal Law sections in December of 2009, noted that there is increasing empirical evidence that specialty courts (especially drug treatment and DUI courts) prevent recidivism and save tax dollars. "We need to be more smart on crime than tough on crime," she is quoted as saying in the *Washtenaw County Legal News*, December 17, 2009, p. 2. "The right way to do it is to demand treatment for those with addictions." Treatment in drug court is less expensive than incarceration, she explained.

Domestic Violence courts working in a coordinated community response have been shown to reduce physical violence. "The literature confirms that advocates are significantly more likely to connect with victims in domestic violence courts than in nonspecialized courts (Harrell et al. 2007; Henning and Klesges 1999; Newmark et al. 2001). In some sites, the impact was striking. For instance, the percent of victims linked to advocates rose from 55% to 100% after the Brooklyn felony domestic violence court opened (Newmark et al. 2001) and from barely any to 56% after the Shelby (TN) domestic violence court opened (Henning and Klesges 1999).

In four out of five studies to measure such an outcome, domestic violence courts also elicited more positive victim perceptions of the court process than in nonspecialized courts (Eckberg and Podkopacz 2002; Gover 2007; Gover, MacDonald, and Alpert 2003; Hotaling and Buzawa 2003; and for the one study not finding such an effect, see Davis et al. 2001)."

On February 8, 2010, the American Bar Association House of Delegates approved a policy recommendation in support of the creation of Veterans Treatment Courts to address the special needs of veterans through programs that link veterans to appropriate housing, treatment for substance abuse, mental health, and service-related injuries and disorders, by partnering with the local Veterans Affairs Medical Centers, community-based services and housing providers. The policy and report may be found at http://new.abanet.org/homeless/Pages/abapolicypositions.aspx.

Barriers:

Geographic Location: Currently, the vast majority of people going through the Michigan Court system are not in or eligible to be in drug treatment, DWI or other specialty courts.

- Most specialty courts limit admission to defendants residing in the court's jurisdiction.

- There are relatively few specialty courts (compared to conventional courts) in Michigan although the number is growing. People in one community may simply not have access to or be able to benefit from a DWI or other specialty court. Rural areas, for example, may have fewer good treatment alternatives than urban areas.

Eligibility Criteria: For adult drug courts, prosecutors are often the gatekeepers and sometimes, only a fraction of those believed to be eligible are allowed to participate.

Too few treatment alternatives: Mental health services are often the target of legislative funding cuts. There are few substance abuse or mental health treatment options for indigent defendants and others without medical insurance. Even fewer treatment services are available for people who need both (co-

occurring disorders). Even where there are programs available, there are often waiting lists to enter the program.

● Mental health treatment and substance abuse treatment are often separate line items in budgets, with restrictions on how to access each. Mental health and substance abuse treatment—even residential—is often needed in all kinds of specialty courts (for e.g., homeless courts, DV courts), but difficult to access.

● There are few culturally sensitive treatment options. For non-English speakers, treatment options may not exist or be too far away to be practical.

Lack of funding: Problem-solving courts are not a mandated responsibility of the court system. When funding cuts are considered, they are high on the list. Also, DWI courts struggle with incentives to give participants.

Lack of transportation: Most participants have had their driver's license revoked or suspended, making it difficult to get to treatment, drug testing, Probation, school and/ or work. There may not be access to reliable public transportation, especially in rural areas.

Conflicting philosophies of judges: Some judges believe that they are ethically constrained from participating in problem-solving courts and engaging with the community. They are concerned that they will appear biased.

● Some judges believe that their proper role is to decide cases, not solve problems.

Recommendations adopted by the ATJ Committee:

The following information includes a list of barriers and solutions provided by Robert Woods, TCS Deputy Director, SCAO, and others.

Geographic location: Programs could expand admission to include non-residents, or transfer jurisdiction to a specialty court closer to the residence of the defendant. This may require a change in statute, court rule, judicial assignment and/or administrative order. Regional services could be used among counties where there are few good treatment alternatives; neighboring communities could share resources.

Eligibility criteria: one suggestion is to expand the eligibility criteria and restrict local control by modifying the definition of "violent offender. Some argue that admission could then be contingent on the completion of a risk and needs assessment. In addition, program eligibility could be modified to include and target high risk offenders.

Too few treatment alternatives: Neighboring communities could share resources. Linkages should be made so that it is easier to access mental health and substance abuse treatment in all specialty courts. Carolyn Hardin noted that courts can put together a "pre-treatment" course with Probation or other agency using evidence-based treatment models where criminal behavior can be addressed while people wait to get into treatment. The National Drug Court Institute is willing to help.

Lack of funding: Courts could reallocate existing resources to target cases with complex underlying problems. For example, instead of referring every case to Probation, judges could "sentence from the bench" (jail work program, or fines and costs for *DWLS* or *Retail Fraud Third Degree*, for e.g.), freeing up the time of probation officers to work with high risk offenders and those with special needs.

- Judges can learn about resources in the community and sentence a defendant to work with an agency (with that agency's consent) with demonstrated expertise in addressing the particular treatment need rather than Probation.

- Other funding sources could be identified. There may be federal and other grants available.

- Think outside the box for additional resources. Judge Hoffman suggested that there may be a role for auto insurance companies to play in Sobriety/DWI Courts, for example. Some courts have reportedly benefited from 501(3)c organizations set up to support the specialty court.

- Judges can bring people and agencies together to identify gaps and reduce duplication of services. Coordinating and training across ***systems*** can save costs and improve outcomes. Courts can collaborate with hospitals and clinics to connect drug court participants with appropriate health services to save costs when ER visits are reduced. According to Carolyn Hardin, Buffalo, New York saved 2 million dollars when the Child Welfare agency collecting child support partnered with the Health Department. In Buffalo, participants in the drug treatment court worked out a payment plan for child support before leaving the program.

- Judges can educate legislators, funders, and the public on the importance, effectiveness, and cost-savings of specialty courts and why they should be funded.

Lack of transportation: If enacted, SB 794 and SB 795 will allow certain DWI court participants to receive a limited restricted license while they are participating in Sobriety/DWI court if they install an ignition interlock device.

- Relatives or volunteers could drive participants to counseling, Probation, drug testing, 12-Step meetings, etc.

Conflicting philosophies of judges: The Michigan Code of Judicial Conduct could be amended to make it clear that judges may participate fully in problem-solving courts. In July of 2008, the National Council of Juvenile and Family Court Judges passed Resolution No. 13, supporting Joint Resolution 8 of CCJ/COSCA, urging specific changes to the 2007 *ABA Model Code of Judicial Conduct*, to permit judges to engage in *ex parte* communications expressly authorized by law "such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others." Canon 2. Rule 2.9 Comment [4]. Judges should be allowed to participate in extra-judicial activities that "promote public understanding of and respect for the courts and the judicial system." See Canon 3. Rule 3.1 Comments [1] and [2].

- Training for judges, lawyers and law students should include the problem-solving model. MJI's "New Judges' School" could have such a component. There should be opportunities for judges to watch judges who preside over successful specialty courts to learn from their experience.

Apply problem-solving principles in traditional court: In civil and criminal cases, judges can be more proactive, ask more questions, reach out to service providers, and find ways to get more information about each case so they can fashion more individualized, effective orders. See "*Applying the Problem-Solving Model Outside of Problem-Solving Courts,"* by Francine Byrne, Donald Farole, Jr., Nora Puffet, and Michael Rempel, http://www.courtinnovation.org/_uploads/documents/Applying%20Problem-SolvingModel.pdf.

- Ongoing judicial supervision by compliance review hearings can be integrated into traditional court practice. Courts with busy dockets could "triage" cases and devote increased attention to the cases with the highest risk. (See article cited, above)
- Courts could share specialized problem-solving court case management systems with other courts. (See article cited, above)
- Courts could develop directories of community-based programs for use by all judges. (See article cited, above) See, also, "*Breaking with Tradition: Introducing Problem Solving in Conventional Court,*" by Robert V. Wolf, *International Review of Law, Computers & Technology*, Vol. 22, Nos. 1-2; http://www.courtinnovation.org/_uploads/documents/break%20with%20trad.pdf.

IV. National/Other Models:

Resources and technical assistance outside Michigan are available through the National Center for State Courts; the National Drug Court Institute; the VERA Institute (re: judicial review hearings in DV Courts); the Center for Court Innovation; the National Council of Juvenile and Family Court Judges; the American Judges Association; the Homeless Court Program in San Diego; and the US Department of Justice Office on Violence Against Women.

The following are additional examples of problem solving initiatives with courts around the country taken from "*Problem-Solving Justice in the United States: Common Principles*," No. 01, Center for Court Innovation and BJA, www.problemsolvingjustice.org:

Enhanced Information:
In Oregon, the Clackamas County Community Court developed a simple, psycho-social assessment that gathers information about each defendant including his/her mental and physical health, education, and employment history, which is given the judge before sentencing.

Community Engagement:
At San Diego's Beach Area Community Court, volunteers participate in community impact panels to explain to low-level offenders how their offense affects the quality of life in the neighborhood.

Collaboration:

The Seattle Community Court established a community advisory board with government and non-profit partners to give feedback and suggestions for improvement. Court staff members regularly attend community meetings and keep partners updated via e-mail.

Individualized Justice:
Clients with co-occurring mental illness and substance abuse are carefully assessed, then matched with appropriate services in the community to meet their specific needs in Ohio's Athens County Municipal Court Substance Abusing/Mentally Ill Court.

Accountability:
"Quality of life" offenders in the Atlanta Community Court are required to perform community service (such as graffiti removal or clean up) in the neighborhood where they committed their offense**.**

ACCESS TO JUSTICE – DISABILITIES
Disabilities

Submitted by the Honorable Elizabeth Pollard Hines

I. Relevant Data and Assumptions:

A. Source of Data: In addition to reading information on the topic including the *Disabilities Project Newsletter* available quarterly on the State Bar website at www.michbar.org/programs/equalaccess.cfm, and
A Report on Access to the Legal System in Michigan for Persons with Disabilities, State Bar of Michigan Open Justice Commission, June, 2001, www.michbar.org/programs/ATJ/pdfs/disabilities.pdf, I spoke by phone and/or e-mail with experts including:

Professor David Moss, Director of Clinical Education, Wayne State University Law School. Professor Moss runs a Disability Law Clinic and teaches a Disability Discrimination Law class;

Hon. Paul S. Teranes, Chair of the Disabilities Committee, State Bar of Michigan Open Justice Commission; and

J. Kay Felt, J.D., part of the State Bar of Michigan Equal Access Initiative.

Relevant statutes include Title II of the **Americans with Disabilities Act**, 42 U.S.C. sec. 12101 et seq., and **Persons with Disabilities Civil Rights Act**, MCL 37.1101 et seq.

B. Summary of Data:

The Open Justice Commission of the State Bar of Michigan recognized that individuals with disabilities are not treated equally in society. Accordingly, the Commission created a committee devoted solely to issues affecting individuals with disabilities. Disabilities Committee Chair Judge Paul S. Teranes wrote:

…for too long, people with disabilities have been the silent minority. They are often required to respond to stereotypical attitudes about their abilities and face physical barriers that prevent their full participation in the judicial process. See "Mission and Goal" in *A Report on Access to the Legal System in Michigan for Persons with Disabilities.*

The Committee prepared a thorough report identifying barriers to access in law schools, courthouses and the legal process, and law offices and law firms. Specific recommendations to overcome identified barriers were listed. The report may be found at www.michbar.org/programs/ATJ/pdfs/disabilities.pdf.

In addition, the *Disabilities Project Newsletter* available quarterly on the State Bar website includes issues dealing with persons who are deaf or hard of hearing, blind, or use wheelchairs. The March, 2005 newsletter discusses inexpensive ways to make the courthouse more accessible to individuals with disabilities. http://www.michbar.org/programs/disabilities_news_2.html.

II. Findings:

A. Physical Barriers to Access:

Steps to the courthouse**,** jury box or witness stand. Steps may be in the way of wheelchairs. Ramps or curb cuts for wheelchair access may be placed at inconvenient locations too far from the entrance to the courthouse. People with difficulty walking or negotiating steps may have to walk great distances. Ms. Felt noted that ramps at the Frank Murphy Hall of Justice and some other courthouses are too steep, making it difficult for wheelchairs to stop, and the ramps run into nearby streets.

Wheelchair accessibility: gates to counsel tables, the witness stand, jury box, or judges' chambers may not be wide enough for wheelchairs. Counsel tables may not be high enough to accommodate wheelchairs. Drinking fountains may not be accessible. Podiums may be too high. Microphones may not reach far enough for a witness to testify from a wheelchair. Parking may be problematic. If the lot is gravel, it is almost impossible to use a wheelchair. Parking structures may not be high enough to accommodate the high top vans needed for wheelchairs.

Restroom accessibility: restrooms may not be on the same floor as the courtroom. Hot water pipes not insulated are dangerous to people in wheelchairs who cannot access the sink without hitting the pipes. Ms. Felt explained that this is particularly dangerous if the person does not have complete feeling in his or her legs and may not even realize burning has occurred.

B. Other Barriers:

People with cognitive disabilities may be mistaken for being rebellious or acting out when the real problem is that they do not understand, they cannot articulate, or they take longer than average to formulate their words. They may be unfairly sanctioned for perceived unacceptable behavior when, in fact, they are just frustrated or don't understand. or are exhibiting symptoms of their illness.

People with a mental illness may be arrested and jailed for behavior attributable to their mental illness. Treatment is preferred over jail, if possible, and may cost less. There may not be enough staff in jail to administer necessary medications.

Unseen disabilities: Lawyers, litigants, and jurors who are **diabetic** may require special accommodations and timing for recesses and lunch breaks. People with **brain injuries** or who are **subject to seizures** need special accommodations, too, pointed out Judge Teranes.

Recommendations adopted by the ATJ Committee:

Note: Items 1-9 reflect a few inexpensive "solutions" (see also http://www.michbar.org/programs/disabilities_news_2.html)

1 "Courts should be familiar with the ADA requirements and SCAO "Request for Accommodations Form." http://courts.michigan.gov/scao/courtforms/general/mc70.pdf."
2 Courts should be aware that each court is required to have an ADA coordinator and make sure there is compliance with the ADA.
3 Make forms available in large print for people with difficulty seeing.
4 Judges can ask jurors if a juror needs to move closer to the witness stand in order to see or hear clearly, and rearrange the jury seating accordingly. Judges can ask if anyone (a lawyer, litigant, witness or juror) needs to take a break at a certain time to eat, or if any special accommodations are needed.
5 Judges can ask questions, patiently and in plain English, to make sure litigants understand their rights, especially if they are not represented by counsel or have trouble formulating their words.
6 "Establish a Mental Health Court or specialized docket with problem-solving principles, for individuals with mental illnesses in which judges mandate treatment, including taking medications as prescribed, and hold frequent judicial reviews to ensure compliance. (See section on ""specialty courts)"
7 Make sure there are enough benches in the halls of the courthouse so that people who cannot stand for extended periods of time may sit. Use empty courtrooms if necessary to make sure everyone on the jury panel may be seated, for example.
8 Do not assume that a person with a disability would prefer to be excused from jury service. Accommodate the person whenever possible.
9 When designing buildings or accommodations, seek the advice of people with the full range of disabilities. They are the experts.
10 "Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: A manual for courts should be developed by the Open Justice Commission, in cooperation with the State Court Administrator's Office (SCAO) that summarizes accessibility standards of the ADA with a list of resources that can be used to evaluate whether a court is in compliance. There should be a definition and a process to determine what constitutes an ""undue burden"" or ""fundamental alteration"" of the judicial service or activity. A list of common accommodations for physical, cognitive and psychiatric disabilities should be included. The SCAO should distribute this manual to each court as a supplement to the judicial bench book."
11 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: Sensitivity training about people with disabilities and their specific needs in

the legal system should be expanded and provided to judges and court staff, and offered to attorneys. This training should also be incorporated into mandatory diversity training for new judges consideration should be given to requiring diversity training for all judges every two years. People with disabilities and people with expertise in each disability area should be a part of the training team. The Open Justice Commission should work in cooperation with the SCAO/Michigan Judicial Institute (MJI), the Institute for Continuing Legal Education (ICLE) and the National Center for State Courts to develop such training. Training for other court staff and attorneys should be offered at the annual local bar presidents conference, the Annual Bar Association meeting, the Annual Court Administrator's meeting, deputies' training for courts, ICLE training, juvenile court training, and other appropriate venues. The Disabilities Committee should be a resource for the development of the training content. This training should be offered on an annual basis in accessible places. Consideration should be given to transportation needs of attendees with disabilities who cannot drive and need to take public transportation.

12 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The ADA Coordinator position appointed in each court pursuant to SCAO Administrative Memorandum 1998-02 should be strengthened and empowered in each court and should receive training about the responsibilities of the court under the ADA and MPDCRA. This person should be available to answer questions, investigate complaints and resolve problems relating to accessibility of the courts to individuals with disabilities.

13 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: SCAO Form MC-70 should be expanded to require, or allow for, identification of the specific judge, courtroom or proceeding for which accommodation is requested. With respect to the needs of the deaf/hard of hearing, the form should also be expanded to include space for the precise type of assistive listening system which the requestor needs, or the type of sign language interpreter needed (SEE, ASL, etc.). The form should also provide information regarding whom the requestor could contact at the local court to verify that the request has been received and is being acted on prior to the court hearing for which accommodations are being requested.

14 "Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The Open Justice Commission should work with the Standing Committee on the Unauthorized Practice of Law to explore methods to provide advocacy accommodations for individuals with disabilities without the risk of an advocate being accused of practicing law without a license. An exception to the definition of ""the unauthorized practice of law"" for advocates who assist people with cognitive disabilities should be developed that would apply when a person with a disability requests an advocate to speak for him/her in legal processes that do not require an attorney."

15 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The Open Justice Commission, in cooperation with the SCAO, should develop and distribute information to help courts, law enforcement and correctional agencies establish a mechanism for screening and identifying people with disabilities before arraignment who are defendants or victims of crime. This would enable the person to be referred to the appropriate Community Mental Health (CMH) program or other advocacy program for assistance.

16 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The SCAO should provide information to courts about their county's

statutorily required CMH diversion program so they will use it to refer people with mental illness and developmental disabilities for assistance. The courts should have policies to work cooperatively with CMH and other appropriate agencies toward developing and strengthening the diversion program if necessary. Michigan Association of Community Mental Health Boards (MACMHB) survey showed only 13 of 49 CMH's had diversion programs as required by MCL 330.1207; MSA 14.800 (207).

17 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: Judges should make clear, when ordering jail terms for criminals with disabilities, that if the person is going to be released from jail early because the jail cannot accommodate the disability, the jail should notify the judge so an alternate order can be issued if the judge finds it appropriate.

18 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The Open Justice Commission should appoint a statewide task force to examine and make recommendations to eliminate discrimination and unjust treatment in the jail, law enforcement and prison systems. These systems are inextricably related to access to legal justice systems. The task force should include representatives of the State Bar, trial lawyers associations, law enforcement agencies, courts, prosecutors, (CHM) personnel and disability and prisoner advocacy groups. A heavy emphasis should be on developing effective diversion programs for people with mental illness or mental retardation though the (CMH) systems. Studies of model programs in Michigan and other states should be undertaken. Recommendations should include education programs for jail, pretrial detention, parole, probation and law enforcement personnel about treatment of people with disabilities from the time they are questioned about crimes, as victims or potential defendants, to their treatment and release from the jail systems. It should also include resource information about other community systems, such as local CMH's, that can provide services to people with disabilities involved in the legal process. Other states have done extensive work in this area.

19 Continue work toward the following Open Justice Commission's Disabilities Committee recommendation: The State Bar of Michigan should develop a web site for disability issues that includes requirements to provide accessibility to courts and the legal process. The recommended materials in this report should be included, as well as links to other web sites with helpful information. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, a resource list for further assistance, and educational materials.

20 Promulgate a state rule requiring lawyers to notify courts of the participation of a person who is hearing impaired in a case if that person so requests.

21 "Provide any hard-of-hearing participant in the court process -whether judge, attorney, party, witness, juror, or audience member -with access to assistive listening devices (ALD's), access to computer-aided real-time transcription (CART) services, and access to interpreting services in any proceeding in a courthouse so that such a participant can communicate on an equal basis with any hearing person and thereby achieve ""effective communication,"" as mandated specifically the ADA."

22 Promulgate a statute in each state that would: (1) guarantee the rights of all court participants to sign language or oral interpreters, (2) advise all court participants that they have a right to a sign language or oral interpreters at the expense of the public, (3) ensure that at least one state governmental agency or commission would compile and maintain an inclusive list of qualified interpreters, and (4) recommend a standardized oath to communicate only what IS said, signed,

or written in the course of court proceedings and not add, delete, or otherwise misrepresent the content of any evidence or statements made during that proceeding.

23 Implement an across-the-board practice of judicial qualification of all interpreters, oral interpreters, CART reporters, and the like by administering a standardized oath to them that would (1) maintain the confidentiality of the proceedings, (2) stress the need for absolute impartiality, (3) emphasize accuracy in the translation, (4) give the person the authority to address the court on issues relating to the deaf or hard-of-hearing person's ability to perform his or her function, and (5) respect the sanctity of deliberations in the jury room.

24 "Develop a set of guidelines for use by state judges discussing what constitutes a ""qualified"" interpreter and a ""certified"" interpreter. Also discuss what steps might be taken if a ""nonqualified"" or ""noncertified"" interpreter were to be used by a court. "

25 Append a standardized sample judicial instruction to state judicial bench books as a means to clarify the neutral role of interpreters and court reporters in the jury room.

26 Require that judges meet with interpreters before court proceedings to discuss the communication needs of persons who are deaf or hard of hearing as well as other issues, such as the team approach to interpreting, physical arrangement of the courtroom, regular breaks, etc.

27 Ensure access to communications facilitators by negotiating ongoing contracts with interpreting or CART services providers to ensure that they will be available upon demand. To obtain such contracts, it may be necessary to include more than one court or one court system -even other local state or municipal agencies.

28 Ensure by a state Supreme Court rule that any documents that are provided by attorneys to clients, witnesses, or others bear TDD/TYY or relay service numbers so that the hearing-impaired may contact the courts for information, if needed.

29 Choose a sample county within each state and bring it into total compliance with the ADA.

Access to Justice Committee

Lesbian, Gay, Bisexual, & Transgender

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Specialty Courts, Special Populations and Demographic Profiles of Interest— Lesbian, Gay, Bisexual, & Transgender**.

Submitted by Alicia J. Skillman

March 6, 2010

1. Relevant Data and Assumptions
   A. Identify and summarize relevant data and assumptions used.
   B. Identify additional data desired.
   - LGBT individuals participate in the judicial system as victims, attorneys, litigants, criminals, third parties, witnesses, jurors, and judges
   - Very little research has been done on issues of access to justice for the LGBT community
   - The most egregious instances of limit to access may have involved transgender persons yet the available studies involve only LGB persons
   - Many LGBT person will fail to report incidents that bar access for fear of being outed or ridiculed

2. National/Other Models and Learnings
   A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

Sexual Orientation Fairness in California Courts: Final Report of the Sexual Orientation Fairness Subcommittee of the Judicial Council's Access and Fairness Advisory Committee, January 2001
An ongoing priority of the Judicial Council of California has been ensuring that the court system is fair and accessible to all persons in the state of California. As part of its efforts to meet this challenge, the council created the Access and Fairness Advisory Committee. There has been a growing awareness of the number of gay men and lesbians who are involved in various ways with the court system, as judges, attorneys, court users, and court employees. Reflecting this awareness, the court rules have changed to specifically prohibit sexual orientation discrimination.
In addition, in recent years, the Chief Justice has spoken to various lesbian and gay bar associations throughout the state. With this background in mind, the Access and Fairness Advisory Committee undertook to examine the question of fairness and sexual orientation in the California court system. This report is the result of that examination. This report represents the findings and conclusions of the advisory committee. The committee is made

up of judges and attorneys of differing sexual orientations and racial, political, and philosophical backgrounds from various parts of the state.
The report included findings regarding:
Overall Perceptions of Gay and Lesbian Court Users' Treatment Related to Sexual Disclosure of Sexual Orientation/Responding to Requests for Personal Information Perceptions, The Court as a Workplace, Court Employees' Experiences, Court Employees' Intervention, Court Employees' Observations /Perceptions, Court Employees' Intervention, Court Employees' Observations/Perceptions.
This report is the first of its kind in the nation and unique in its approach and results. No other court or entity in the country has undertaken such an extensive review of the issue of sexual orientation fairness in a state court system.
http://www.courtinfo.ca.gov/programs/access/documents/report.pdf

"We Need a Law for Liberation" Gender, Sexuality, and Human Rights in a Changing Turkey, 2008
Many lesbian, gay, bisexual, and transgender (LGBT) people in Turkey lead lives of fear, paralyzed by stigma. When singled out for harassment, violence, or other abuse—still an everyday occurrence for many—they also fear going to the authorities for assistance, and often for good reason: they have long experienced harassment and sadistic treatment by police and dismissive attitudes among judges and prosecutors. Despite reforms, new cases of such mistreatment continue to emerge, as this report demonstrates.
While the predicament faced by LGBT people in Turkey is similar to that faced by this community in many other countries, stringent norms for "masculinity" and "femininity" are particularly ingrained in both Turkish society and the state itself. The endurance of such norms, reflected in this report, perpetuate inequality and promote violence in many of the cases we document.
The lesbian or bisexual women Human Rights Watch spoke with reported pressure, often extreme, from their families. Some were constrained to undergo psychological or psychiatric "help" to "change" their sexual orientation. Many faced physical violence.
The picture is not unremittingly bleak; there have been positive developments in recent years. Turkey today is full of mixed signals. The situation was illustrated most pointedly by the process leading to the adoption of a revised version of the Criminal Code in mid-2005. A year before the new code was adopted, the Justice Commission of Turkey's Parliament voted to include new language in the provision barring discrimination in a wide range of areas of public life: it would have included "sexual orientation" as a protected status. The move almost certainly came in response to Turkey's pending application for admission to the European Union (EU).
http://www.hrw.org/reports/2008/turkey0508/

3. Conclusions or Findings
A. Identify key conclusions relevant to answering your Work Group's overarching question.

- Sexual orientation, gender identity and appearance bias influencing judicial decision making;
- Lack of knowledge and understanding of sexual orientation issues and nuances;
- Need for preservation of privacy;
- Disrespect and mistreatment due to sexual orientation bias and homophobia;

- Bias in the substantive law and court procedures;
- Exclusion from informal legal system networks;
- Lack of equal employment opportunities/benefits for attorneys and court personnel; and,
- Barriers to court accessibility, including lack of substantive law that addresses gay and lesbian relationship issues and language in current court forms that does not reflect the relationship status of gay and lesbian litigants.

Recommendations adopted by the ATJ Committee:

A. Identify essential extra-judicial partners and explain their relevance.
Triangle Foundation
Michigan's statewide organization working to gain LGBT equality provides LGBT sensitivity training to many government entities, and assists in making policy more inclusive, reviews documents for language issues.
Michigan Project for Informed Public Policy
This is an initiative to convey accurate psychological and social science information about LGBT issues based on cumulative scientific research rather than competing political ideologies.
Ruth Ellis Center
REC is one of three drop in centers and transitional housing in the US that is specifically for LGBT youth. They would be a great partner for the juvenile courts.

B. List recommendations[8] addressing your Work Group's question,
1. For each recommendation, list what courts can do first, then others.
- Conduct 1) a survey of court users; and 2) a survey of court employees to determine to what extent, actual or perceived sexual orientation, gender identity and appearance bias exists in the courts.
- educate judges and court personnel about the public perception that bias and insensitivity toward court users on the basis of sexual orientation exist
- To ensure the public that their views are taken seriously
- All courts should affirm the need for all courts to ensure fairness and access to LGBT people pursuant but not limited to the requirements of judicial ethical requirements
- local courts should develop a diverse pool of law students, including LGBT students, as applicants for judicial clerkships and student internships in the courts
- develop and implement of local court personnel policies and practices to eliminate lgbt discrimination and bias in the court as a workplace, including effective intervention in incidents of discrimination or bias and the prevention of retaliation against any individual reporting such incidents
- urges local courts that administer systems of alternative dispute resolution to use neutral parties trained in issues regarding sexual orientation and gender identity and appearance

- encourages the local courts to include lgbt organizations in their community outreach programs
- develop methods to familiarize judges and nonjudicial court personnel with Michigan and federal laws relating to sexual orientation fairness and nondiscrimination and implement programs to develop and provide information, training, and education for all persons concerning sexual orientation fairness. The purposes of the program would be to improve access to and fairness in the courts for persons of all sexual orientations and to improve awareness of sexual orientation issues
- incorporate the findings and recommendations of this report into their educational programs for bench officers and court staff.
- develop a training and education program for court staff that includes sexual orientation bias issues that would be delivered, on a statewide or regional basis, within six months of employment to new employees. Current employees would receive education and training on lgbt bias issues on a regular, periodic basis as part of their continuing education programs
- include sexual orientation diversity issues and fairness training for judges with specific subject-matter assignments, including but not limited to those judges assigned to criminal, family, juvenile, and probate courts, and, in particular, should include such diversity and fairness training in the orientation programs for judges with new assignments in these areas. Existing bench books for family law bench officers should include lgbt issues, as family law issues present significant opportunity for insensitivity or bias to influence decision making
- study and report on sexual orientation bias or lack of fairness in the recruitment, hiring, and promotion of court employees
- develop sample questions for voir dire that appropriately address the issues of domestic partnership and sexual orientation of gay men, lesbians, and persons of diverse gender identification and gender expression with respect to court orders, judgments, settlements, and verdicts.

C. Where possible for each recommendation, include thoughts on

1. Implications for justice system/courts structure
2. Implications for securing/balancing resources.
3. Implications for use of technology

Judicial Crossroads Access to Justice Committee—Workgroup B Report
Elders

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity as it relates to **Elders**

Submitted by Kate Birnbryer White

February 16, 2010

I. Relevant Data and Assumptions

A. Identify Sources of Data

- State Courts and Elder Abuse: Ensuring Justice for Older Americans, Brenda K. Uekert, PhD, and Denise Darcy, National Center for State Courts, June 8, 2007. White Paper
- Older Persons and the Courts: Challenge and Opportunity for Counties, Max B. Rothman, JD LLM and Burton D. Dunlop, PhD., Florida Counties, September/October 2004.
- Giving Justice to Aging: Geriatric Jurisprudence in American, Linking Courts and Elders. Max B. Rothman, JD LLM and Burton D. Dunlop, PhD., Aging Today, September/October 2004.
- En$uring Access to Ju$tice in tough economic times, Frank Broccolina and Richard Zorza, Judicature, Volume 92, Number 3, November-December, 2008.
- US Census
- The Governor's Taskforce on Elder Abuse, 2006, (Michigan) *http://www.michigan.gov/documents/miseniors/GovTaskForce_186155_7.pdf*
- Michigan Supreme Court Guardianship Taskforce, 1998 http://www.michbar.org/elderlaw/oct98.cfm

B. Summary of Data

Older adults are part of our judicial system as litigants, victims, criminals, witnesses, jurors, attorneys, judges and interested parties. Their numbers are growing dramatically. The needs of older adults are changing and increasing and courts need to be prepared to make accommodations to ensure access to justice. Key issues for older adults include:

- Physical access issues (United States Supreme Court case Tennessee V. Lane)
- Reasonable accommodation for disabilities (hearing, vision, movement, etc)
- Protection of older adults in guardianship proceedings
- Protection of older adults elder abuse and financial exploitation cases
  - Sentencing guidelines
  - Use of videotaped testimony
  - Testimony via video conferencing for homebound
  - Lack of oversight/regulation of power of attorneys
- Docket management to take into consideration age and health of parties, including cognitive issues
- Jury questionnaires
- Use of mediation (use only when appropriate and when elder is actively engaged)
- Assessment of older adults who are victims or people incarcerated following arrest or booking to assist courts in making decisions about dementia, mental illness or physical health
- Training of judges and court personnel to take necessary time and to make necessary accommodation of older adults (as jurors, witnesses, complainants, defendants, etc.)

Michigan has 1,596,162 people over the age of 60, which represents 16.1% of the state's population. The state has the 8th highest number of seniors in the nation. There are 142,460 persons aged 85 and older. This age bracket has grown by 33% in the past ten years, and now represents nearly 9% of the population. Nearly 10% of individuals aged 60 and older, **almost 160,000**, fall at or below 100% of the federal poverty level. Women aged 65 and older are more than twice as likely to live in poverty in Michigan as their male counterparts. Over 12% of the state's population aged 60 and over identify as a minority. African Americans are the largest minority group of elders at 10%. Nearly 1.2% of Michigan's older population identified themselves as Hispanic or Latino. Older Asians represent 0.8% and American Indians and Alaska Natives comprise 0.3%. Rural seniors make up 22% of the state's older adults.

Forty-two percent (42%) of adults age 65 and older in Michigan reported having one or more disabilities. Nearly 29% reported a physical disability (e.g., walking, climbing stairs, lifting), 20% reported a "go-outside-of-home" disability (e.g., going outside the home to shop or visit a doctor's office, etc.), and 14% reported a sensory disability (blindness, deafness, or hearing or vision impairment). Other disabilities include mental disabilities (10%) and self care disabilities (9%). Nearly one quarter of those aged 65 and over reported having two or more disabilities.[9]

Some accommodations or protections for older adults are relatively simple. Providing adequate *time and attention*, asking the *right questions* along with clear *communications*, are keys to many problems.

C. Identify additional data as desired. For guardianship and elder abuse, some key resources are:

A Handbook for Judges—Judicial Determination of Capacity of Older Adults in Guardianship Proceedings, from the American Bar Association, Commission on Law and Aging and the National College of Probate Judges http://www.abanet.org/aging/docs/judges_book_5-24.pdfc

American Bar Association's Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse, 1996,
http://www.ncsconline.org/famviol/elderabuse/pdf/Key%20Components%20Exercise%20Resources/ABA%20Recommended%20Guidelines%20for%20Courts%20on%20Elder%20Abuse.pdf

II. National/Other Models and Best Practices

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions

Florida

Stetson Law builds country's first high-tech, elder-friendly courtroom,
http://justice.law.stetson.edu/Communications/news.asp?id=277

"The barrier-free courtroom, a joint effort of Stetson's Centers for Excellence in Advocacy and Elder Law, is designed as a national model to increase courtroom access to the elderly and

[9] All statistics in the paragraph taken from the US Census, 2002.

disabled. It uses cutting-edge technology including flat-panel monitors to display evidence, hearing amplification devices to make speech more audible, and a multi-lingual software speech synthesizer that will read aloud words displayed on a computer screen, translate them into multiple languages, and even output words to refreshable Braille displays if needed.

For more information, visit the courtroom online at **www.law.stetson.edu/eleazercourtroom**.

For more about **accessibility** issues that impact older adults see how Stetson has designed a court room to reduce these barriers. I have summarized some of the innovations in bullet points below from articles.

http://www.thefreelibrary.com/Stetson's+courtroom+caters+to+the+elderly%3a+every+detail+was+designed...-a0152194848

- Witness boxes at floor level
- Overhead lights that buzz interfere with hearing aids (eliminate)
- Adjustable podiums
- Hearing amplification options
- Bigger windows in doors so that wheel chair bound people can see in
- Tables with rounded corners
- Satin finish on surfaces to reduce glare
- Carpet with subtle clues on the direction to move or where to sit (tape can be used as an alternative)
- Make sure air conditioning vents don't blow cold air directly on people
- Large type signs
- Large type forms
- Large type instructions

Assessing elders who have been arrested or jailed (Palm beach, FL) "However, there has been no effort to examine the implications of aging in America on judicial administration, access to the courts, appropriate jurisprudence for elders with dementia and other conditions who perpetrate violent crimes, or resolution of underlying issues that often precipitate court involvement. In fact, there is little evidence that courts in general have addressed these issues other than to achieve compliance with ADA requirements. As this Committee clearly recognizes, it is important today to understand more about the complex nature of situations that will lead these older people to the courts, how courts respond to them, and what policies, additional resources, and court administrative actions are needed to prepare for the future."

http://www.law.arizona.edu/Depts/upr-intj/rothman.html

Tampa, Florida Elder **Justice Center**

The Elder Justice Center (EJC) is a court program that helps persons age sixty (60) or older who are involved in the court system because of guardianship, criminal, family or other civil matters.

http://www.fljud13.org/ejc.htm

Justice Corps, California http://www.courtinfo.ca.gov/programs/justicecorps/index.htm
The California JusticeCorps Program recruits and trains diverse university students to assist overburdened courts with supporting self-represented litigants.

B. Identify additional data desired. Effect on providing meaningful access:

The Governor's Taskforce on Elder Abuse, 2006, (Michigan)
http://www.michigan.gov/documents/miseniors/GovTaskForce_186155_7.pdf

Michigan Supreme Court Guardianship Taskforce, 1998
http://www.michbar.org/elderlaw/oct98.cfm

C. List and explain basis for informed assumptions used.

Our society is aging. Our court system needs to accommodate the changes and opportunities offered by longevity. Accommodations (physical, systemic and cultural) for longevity are often helpful to people of other ages and abilities. For example, a pregnant woman might appreciate the use of an elevator or ramp instead of stairs.

Change can be affordable and increase efficiency. An excerpt from *En$uring Access to Ju$tice in tough economic times*, Frank Broccolina and Richard Zorza, Judicature, Volume 92, Number 3, November-December, 2008 with proven innovations that have worked.
"One: Staff and clerk training

3. Preliminary Conclusions or Findings

A. Identify key conclusions

1) Physical access to courts is limited for older adults (physical plant issues, forms, and accommodation for disability—mobility, visibility, audio, etc.). Courts vary in accessibility and accommodation.
2) Accommodations for older adults and their needs vary from court to court. Answers from clerks in filling out forms, having items in large print, docket management for health issues, etc differs significantly. Fee waivers for low income older adults are not uniformly provided. Different levels of help for pro se elders are available around the state.
3) Judges have varying degrees of expertise in managing elder abuse and guardianship cases.
    a. Oversight in guardianship cases is needed to ensure adequate support for the ward and to prevent financial exploitation or neglect.
    b. Improved sentencing guidelines for cases of elder abuse could improve opportunities for addressing elder abuse and financial exploitation.
    c. Encourage judges to participate in available training on elder abuse and financial exploitation as well as reasonable accommodation/sensitivity training.
4) Increase the use of mediation to resolve family concerns over care of elders (and guardianship) with elders represented independently.

B. Rationale for conclusions selected and prioritize them.

Conclusions were reached from speaking with older adults who have raised concerns about access or operation of courts to the Legal Hotline for Michigan Seniors, reviewing literature, speaking with advocates including colleagues at legal services programs, soliciting input from prosecutors and private attorneys, and 20 years experience operating the Legal Hotline for Michigan Seniors. They

Prioritization was made by looking at recommendations that would most immediately benefit older adults and create a frame work for longer term improvements in access to justice.

Recommendations adopted by the ATJ Committee:

A. Principles identified

1) Older adults are part of our judicial system as litigants, victims, criminals, witnesses, jurors, attorneys, judges and interested parties. Their numbers are growing dramatically. They should have a legal system that empowers their participation and does not place unnecessary obstacles in their path to justice.
2) "Nothing about me, without me." Include older adults in decision making about their cases and in how courts are designed and operated; provide strategies to maximize their input in decisions about their lives; empower them to participate in all aspects of the Michigan court system; protect their rights as victims.
3) Operations of the courts should be "person-centered." Operating with people at the center of the system and making the system work for people. Using "person-centered language" to respect individuals (i.e. no longer talking about "the handicapped" or the "the disabled"; instead "a person with a disability" or "people with hearing impairments", etc.)
4) They are drawn from recommendations from other Taskforces or committees.

B. Identify any extra-judicial partners and explain their relevance.

Partners which may or may not be part of the legal process should include: local legal assistance program and human service agencies specializing in serving older adults, elder abuse and financial exploitation experts, the Michigan Department of Human Services (APS), geriatric assessment specialists, mental health professionals that specialize in older adults, mediation experts (possibly The Center for Social Gerontology in Ann Arbor), Michigan Guardianship Association (for training opportunities), forensic accountants (volunteer?), and local law enforcement.

C. List and Prioritize

1. Increase basic accommodations that can be made for older adults and standardize across courts. These include docket management, large type forms, basic information and assistance clerks can provide, standard fee waivers for low income people, use person-centered language, and

technology to assist with vision and hearing impairments (or encourage older adults to bring their own assistive devices).

2. Implement recommendations 3, 5, 6, 7, 8, 9, and 10 of the Supreme Court Guardianship Taskforce of 1998:
   - A broad education effort emphasizing the presumption of competency and alternatives to guardianship should be targeted particularly at hospitals, nursing homes, and other medical or psychological personnel.
   - Probate Court forms used for petitioning the court for, and ordering the appointment of, a guardian or conservator should be amended so as to provide for, respectively, more screening information and separate findings on functional capacity and the necessity for the appointment.
   - Guardians ad litem should include information evaluating functional capacity in their investigations and reports to the court, and should recommend the use of mediation services to resolve disputes which may come up over the terms of a prospective guardianship.
   - Judges should have their initial mandatory training supplemented with instruction on cognitive and physical impairments, mental illness, and the aging process, and should periodically be required to receive subsequent training which both refreshes old standards and introduces new issues.
   - Minimum ethical standards for professional guardians and professional conservators should be promulgated and enforced.
   - Those courts failing to follow statutory and court rule requirements should be compelled by the Supreme Court to comply.
   - Statutes, court rules, forms, and practice should be changed so as to require the court to review the annual accountings of guardians and conservators, order bonds or restrictions in relation to property and estates, and confirm both the decision to sell real estate and the sale price.

3. Implement recommendations of the Governor's Taskforce on Elder Abuse, 2006 including: 2-2, 2-4, 3-56-1, and 6-3.

   - Increase Sentencing Guidelines.

   - Allow Judges the Option to Order Consecutive Sentences.

   - Define Rights for the Incapacitated.

   - Implement Recommendations of the 1998 Michigan Supreme Court Task Force on Guardianships and Conservatorships.

   - Create Limits on Liquid Assets that a Guardian May Control.

4. New court houses (when funded) should be designed with the accessibility needs of older adults and people with disabilities in the forefront. Court house renovations (when funded) should

include improvements to increase the accessibility of the facility for older adults and people with disabilities.

Disparate Treatment and Bias in the Court Environment

Submitted by Lorraine Weber

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan Judicial system in light of changing demographics/diversity as it relates to disparate treatment of individuals based upon factors such as their race, gender, age, national origin, ethnic background, religion, economic status, disability, sexual orientation, gender identification or ability to read or speak English.

I. Relevant Findings:

"A fundamental principle of our constitutional government is that discriminatory treatment on the basis of race, gender, economic class, religion, or physical condition cannot and will not be tolerated. Bias damages a court in its fundamental role as dispenser of justice." Michigan Supreme Court Citizens Commission to Improve Michigan Courts Report, 1986

In 1986, the Michigan Supreme Court Citizens' Commission to Improve Michigan Courts concluded that over one-third of Michigan's citizens believe that the Michigan court system discriminates against individuals based on gender, race or ethnic origin. The report called for further investigation and as a result of that call, the Michigan Supreme Court created the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts. The task forces' mission was to examine the courts and to recommend changes to assure equal treatment for men and women, free from race, ethnic or gender bias. In 1989, the Task Forces on Gender Issues in the Courts and Racial/Ethnic Issues in the Courts issued their reports. The reports concluded that a substantial number of citizens and lawyers believe that bias affects justice and that this perception of bias is based in reality. The reports contained 167 recommendations to improve the quality of justice and to eliminate bias and discrimination. A section of both reports was dedicated to the issue of courtroom treatment of litigants, witnesses, jurors and attorneys. The findings were consistent with findings from around the country and supported by surveys and public hearings.

One of the problems identified in the report was the treatment accorded females and minorities during their contact with the court system. Regardless of what role they were playing in the justice system—attorney, litigant, witness, judge or court employee—women and minorities reported incidents of demeaning behavior directed toward them in the justice system throughout the Commonwealth. While some of the incidents were intentional, most simply demonstrated a lack of understanding or knowledge about the impact of their actions on those to whom the actions were directed.

As a result of these Reports, the Michigan Supreme Court responded with a strong policy position in support of procedural fairness and bias free behavior in the courts. Here is an excerpt from a pamphlet promulgated by the SCAO outlining this position.

"No matter what role one has in the judicial process — judge, court employee, litigant, witness, juror or attorney — everyone has a right to be treated with dignity and respect. The Michigan Supreme Court is committed to equal treatment for men and women of every race, religion and economic class. The Supreme Court directed in Administrative Order 1990-3, "that judges, employees of the judicial system, attorneys and other court officers commit themselves to the elimination of racial, ethnic and gender discrimination
in the Michigan judicial system." Michigan's One Court of Justice will neither condone nor tolerate discriminatory treatment in our justice system. The Michigan Supreme Court is committed to eliminating all forms of bias from the courts and assuring the fair and equal application of the rule of law for all persons in the Michigan court system. In addition, the Supreme Court has urged all courts as well as all entities that interact with the courts, such as the State Bar of Michigan, to review and continually emphasize bias-free behavior. Fairness and equality must be the rule — not the exception — in Michigan courts. Strong, decisive steps shall be taken to ensure that justice is dispensed in a non-biased environment and manner."

In 1996, the State Bar of Michigan created the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession. Its mission was to report on the status of the recommendations made by the Supreme Court Task Forces and to develop a strategy for implementing those recommendations and identifying new areas of concern. In its Executive summary, the Task Force once again highlights the importance of maintaining a bias free courtroom environment with the following language:

Court Personnel Training: Quality training programs on race, ethnic and gender bias issues should be provided to all levels of court personnel. The Task Force recommends that funding for "on site" programs be increased in order to enable the Michigan Judicial Institute to fully implement this recommendation.

State Court Administrative Office Regulation and Enforcement: The Supreme Court should develop specific standards related to court administration and race/ethnic and gender bias. A mechanism for monitoring administrative compliance with Supreme Court standards should be developed. The State Court Administrative Office, at the direction of the Chief Justice of the Michigan Supreme Court, should be given the authority to review local court operations and make recommendations for improvements when necessary. This authority should include the ability to mandate adoption of internal administrative policies and procedures, which will enhance the fair and equitable delivery of justice to all citizens.

While much has been done in the intervening years to address these issues of treatment in the courts, concerns about procedural fairness, judicial demeanor, court service environments remain relevant.

In their recent 2007 publication, Procedural Fairness: A Key Ingredient In Public Satisfaction, A White Paper Of The American Judges Association, The Voice Of The Judiciary

September 26, 2007, Judges Kevin Burke and Steve Leben describe the current importance of procedural fairness and the impact of perceived unfair treatment.

"Americans are highly sensitive to the processes of procedural fairness. It is no surprise, then, that the perception of unfair or unequal treatment "is the single most important source of popular dissatisfaction with the American legal system. Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the key elements of procedural fairness: voice, neutrality, respectful treatment, and engendering trust in authorities. Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it. While judges should definitely continue to pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public's expectations of procedural fairness. By doing so, these judges will establish themselves as legitimate authorities; substantial research suggests that increased compliance with court orders and decreased recidivism by criminal offenders will result. Procedural fairness also will lessen the difference in how minority populations perceive and react to the courts."

Many people have little contact with the court system in their daily life, so it is understandable that they feel overwhelmed and lost when they are confronted with an unfamiliar legal system. This lack of knowledge about the court has result(s) in a state of ambivalence. In many ways, procedural fairness bridges the gap that exists between familiarity and unfamiliarity and the differences between each person regardless of their gender, race, age, or economic status. It is a value that the American public expects and demands from judges. Citizens have high expectations for how they will be treated during their encounters with the judicial system. In particular, they focus on the principles of procedural fairness because "people view fair procedures as a mechanism through which to obtain equitable outcomes—which is the goal in cases of conflict of interest." Tom R. Tyler, Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice, 67 J. PERS. SOC. PSYCHOL. 850-863 (1994); People value fair procedures because they are perceived to "produce fair outcomes." Robert J. MacCoun, Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness, Center for the Study of Law and Society Jurisprudence and Social Policy Program, JPS/Center for the Study of Law and Society Faculty Working Papers, Paper 30, at 14 (May 5, 2005).

Psychology professor Tom Tyler, a leading researcher in this area, suggests that there are four basic expectations that encompass procedural fairness:

Voice: the ability to participate in the case by expressing their viewpoint;
Neutrality: consistently applied legal principles, unbiased decision makers, and a "transparency" about how decisions are made;
Respectful treatment: individuals are treated with dignity and their rights are obviously protected;
Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants' needs

Recent studies show a wide division among different minority populations in the frequency with which people express approval of the court system. Asian populations generally hold significantly higher approval ratings for the judicial branch than do Hispanics, African Americans, or even Caucasians. However, when asked about the probability of fair outcomes in court, all of these major ethnic groups

"… perceive 'worse results' in outcomes for African-Americans, low-income people, and non-English speakers." It is troubling that 20 years after the Michigan Citizens Commission finding, a wide consensus believes that these groups consistently receive less fair outcomes.

As a group, African Americans feel that they receive less fair outcomes in their cases. When compared to Hispanics and Caucasians, 70% of African Americans believe that they are treated "somewhat" or "far" worse. African Americans are also two times more likely to believe that a court's outcome will "seldom" or "never" be fair as they would believe that the outcome will "always" or "usually" be fair. Further, African-American defendants who enter the courtroom "report worse treatment, more negative outcomes, lower perceptions of the quality of the court's decision-making process, and less trust in the motives of court actors. After the case is decided, these negative perceptions translate into less satisfaction with the court overall and less acceptance of the court's decision, all of which in turn lower compliance" However, when asked about the probability of fair outcomes in court, all of these major ethnic groups "… perceive 'worse results' in outcomes for African-Americans, low-income people, and non-English speakers." David B. Rottman, Trust and Confidence in the California Courts, Administrative Office of the Courts, 10 (2005)

Bias is a term used to describe a tendency or preference towards a particular perspective, ideology or result, when the tendency interferes with the ability to be impartial, unprejudiced, or objective. In other words, bias is generally seen as a 'one-sided' perspective. The term *biased* refers to a person or group who is judged to exhibit bias. It is used to describe an attitude, judgment, or behavior that is influenced by a prejudice. Bias can be unconscious or conscious in awareness. It can be based in the utilization of irrelevant factors, beliefs or stereotypes that influence procedures or case outcomes. It may result in statistical over or under-representation of a group as compared to others. It may manifest in disrespectful, insensitive, or patronizing treatment. It may also involve the application of unequal and unjustified expectations, standards or valuation of worth.

Disparate Treatment occurs when an individual of a defined group is shown to have been singled out and treated less favorably than others similarly situated on the basis of bias related to that individual's race, gender, age, national origin, ethnic background, religion, economic status, disability, sexual orientation, gender identification or ability to read or speak English.

Conclusions from the Michigan Reports Relevant to Disparate Treatment Issues:

- Female litigants, witnesses, judges, lawyers and court personnel in the Michigan court system are subjected to discourteous and disrespectful conduct not encountered by their male counterparts. Patronizing language, improper forms of address and references to appearance and marital status undermine credibility and isolate female litigants, witnesses, judges, attorneys and court staff. Verbal and physical actions such as interruptions, male-only conferences and directed conversations exclude women or ignore their presence. Jokes or demeaning comments are made by some judges, lawyers and court staff within the court environment. Male attorneys are allowed to "bully" female litigants, witnesses or attorneys in a manner that transcends acceptable advocacy techniques.

- Sexual harassment of women occurs in the Michigan court system, including jokes, sexual references, physical touching and implied or overt pressure for sexual favors.

- Some judges and attorneys appear to accord less credibility to the claims, testimony and statements of female litigants, witnesses and lawyers. They may express undue impatience with or harsh criticism of women in the courtroom, which they do not express with respect to men in comparable situations.

- Some judges and attorneys appear to tolerate or encourage certain behavior by male professionals, which they devalue in female professionals such as aggression, assertiveness and other departures from the "feminine" ideal.

- There is a perception on the part of racial and ethnic minorities and of many non-minorities of the justice system's discrimination and insensitivity. There is evidence that such behaviors do exist.

- A minority lawyer's ability to attract and service clients is affected by the quality of treatment afforded the lawyer by judges, court personnel and other lawyers. Testimony was received by the Task Force that indicated that minority lawyers and litigants are treated differently. The apparent ease of access that non-minority lawyers have to judges and court personnel is as detrimental to the minority lawyer as overt negative behaviors and comments.

- Michigan courts do not have uniform policies and standardized procedures relating to personnel and employment matters.

- There is a lack of standardized data collection regarding the employment status, recruitment, hiring and benefits respectively accorded employees in Michigan courts related to the race, gender, ethnic origin and other Title IV protected status categories.

Cultural competence (in the context of this discussion) refers to the capacity to interact effectively with people of a different race, gender, age, national origin, ethnic background, religion, economic status, ability, sexual orientation, gender identification or ability to read or speak English. Cultural competence comprises four components: (a) Awareness of one's own worldview, (b) Attitude towards cultural differences, (c) Knowledge of different cultural practices and worldviews, and (d) cross-cultural skills. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures and with different backgrounds, life experiences and worldviews.

Achieving cultural competency means examining our biases and prejudices, developing cross-cultural skills, searching for role models, and spending as much time as possible with people who do not share our social and cultural worldview.

Consider the following definitions of cultural competence:

- A set of congruent behaviors, attitudes and policies that come together as a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross-cultural situations.

- Cultural competence requires that organizations have a defined set of values and principles, and demonstrate behaviors, attitudes, policies, and structures that enable them to work effectively cross-culturally.
- Cultural competence is a developmental process that evolves over an extended period. Both individuals and organizations are at various levels of awareness, knowledge and skills along the cultural competence continuum.

Diversity Training University International (DTUI) isolated four cognitive components of cultural competence that are useful in the court environment. They are:

- **Awareness**. Awareness is consciousness of one's personal reactions to people who are different. A police officer who recognizes that he profiles people who look like they are from Mexico as "illegal aliens" has cultural awareness of his reactions to this group of people.
- **Attitude**. The attitude component in order to emphasize the difference between training that increases awareness of cultural bias and beliefs in general and training that has participants carefully examine their own beliefs and values about cultural differences.
- **Knowledge**. Social science research indicates that our values and beliefs about equality may be inconsistent with our behaviors, and we ironically may be unaware of it. Social psychologist Patricia Devine and her colleagues, for example, showed in their research that many people who score low on a prejudice test tend to do things in cross-cultural encounters that exemplify prejudice (e.g., using out-dated labels such as "illegal aliens", "colored", and "homosexual".). This makes the Knowledge component an important part of cultural competence development.
- **Skills**. The Skills component focuses on practicing cultural competence to perfection. Communication is the fundamental tool by which people interact in organizations. This includes gestures and other non-verbal communication that tend to vary from culture to culture.

Reference: Mercedes Martin & Billy Vaughn (2007). Strategic Diversity & Inclusion Management magazine, pp. 31-36. DTUI Publications Division: San Francisco, CA.

Much has been accomplished in Michigan in the last 20 years on these issues. The Supreme Court and the SCAO have successfully addressed these issues in a number of areas and they continue to place access and fairness as a high priory for our courts. The following recommendations are offered to augment this agenda even more successfully and to support the efforts in Michigan to ensure the trust and confidence of every individual who utilizes the court system.

Recommendations adopted by the ATJ Committee:

1. The Michigan Supreme Court should issue a Commitment to Service and Procedural Fairness pledge for each court to commit to and post publicly that behavior exhibiting arbitrary and discriminatory bias in the court environment is not acceptable and that judges must set an example by not engaging in or permitting such behavior in chambers, courtroom or administrative areas. Further that each court will strive to achieve an environment where

all litigants are heard, respected, provided meaningful information about the process in a courteous, professional and productive environment for every participant in the court process.

2. Both judges of courts of record and quasi-judicial officers (magistrates, referees, hearing officers, and any other administrative officers performing adjudicative functions as part of their official action) should be educated about this issue as a regular part of their on-going continuing legal education. Wherever possible such education should be a part of training on substantive areas of law and judging as a curriculum component of all training which is offered to the bench on a required or non-mandated basis. The training should include the four areas of attitude, awareness, knowledge and skill building. The importance of procedural fairness, cultural competency training, as well as awareness training for judges on the definition, recognition and impact of biased behavior; and the importance of language should all be part of the curriculum.

3. Educational materials and guidelines should be reviewed, amended (where needed) and designed to identify and appropriately advise judges on problems related to procedural fairness, bias and disparate treatment and impact in judicial decision-making.

4. Institute educational programs for judicial and court personnel to increase consciousness of the importance of procedural fairness and cultural competency. The training should include the four areas of attitude, awareness, knowledge and skill building. Include in the training, awareness on the definition, recognition and impact of biased behavior; and the importance of language.

5. All court administrative processes, forms, manuals, bench books, and correspondence employed by courts should be evaluated to identify cross culturally inappropriate language, assumptions and the presence of both explicit and implicit biases.

6. Jury instructions should be continually monitored to identify cross culturally inappropriate language and assumptions as well as the presence of both explicit and implicit biases. Some jury instructions should be amended to include specific examples of the types of bias jurors must guard against and the ways in which such bias might influence their decision-making.

7. Accurate and useable data should be collected on the impact of court procedures and decisions on specific groups of court users as a means of identifying whether and where disparate treatment and impact may be operating in our courts.

8. The judicial leadership should create collaborative relationships with knowledgable individuals and organizations that specialize in the unique needs and cultures of the diverse communities served in order to improve the trust and confidence of those communities in court processes and decisions.

9. A clear policy commitment should be articulated about the importance of diversity in Michigan's courts and efforts should be continued to increase the diversity of the judges, quasi-judicial officers and administrative staff in those courts.

Criminal Task Group
Employment Barriers for Ex-offenders

Submitted by Miriam Aukerman

Work Group C Question:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice?

Employment Barriers for Ex-offenders
Findings

(1) Most people in the criminal justice system were hard to employ at the time of conviction, with limited education and few job skills. After incarceration, they reenter the community even harder to employ, with a gap on their resume and the added stigma of a criminal record. In addition, even if job opportunities are available, ex-offenders often face practical barriers to employment, such as lack of transportation or identification.

(2) Moreover, laws and policies restricting the employment of former offenders make
   a. thousands of jobs unavailable. Even where former offenders can surmount these
   b. practical and legal challenges, two-thirds of employers will refuse to hire them.[10]

(3) Given these huge obstacles, it is not surprising that only 37% of parolees participating in the Michigan Prisoner Reentry Initiative are employed.[11]

(4) Because employment is strongly correlated with lower rates of recidivism, ensuring that former offenders can find and keep jobs is critical for public safety. Research has consistently shown that parolees who find decent jobs shortly after release are less likely to reoffend and return to prison.[12]

(5) According to one estimate, a 10 percent decrease in an individual's wages is associated with a 10-20 percent increase in criminal activity and likelihood of incarceration.[13]

(6) Another study found that those who are unable to find employment are three times more likely to return to prison than those who get a steady job.[14]

Post-conviction barriers to employment

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[10] Urban Institute, From Prison to Home: *The Dimensions and Consequences of Prisoner Reentry*, at 35 (2001).
[11] Judy Putnam, "Parolees Hard Pressed to Find Jobs," Lansing Bureau (Aug. 13, 2006).
[12] Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, at 196 (2003).
[13] Urban Institute, From Prison to Home: *The Dimensions and Consequences of Prisoner Reentry*, at 31 (2001).

[14] *Rebuilding Lives, Restoring Hope, Strengthening Communities: Breaking the Cycle of Incarceration and Building Brighter Futures in Chicago.* Final Report of the Mayoral Policy Caucus on Prisoner Reentry, at 15 (2006).

Recommendations adopted by the ATJ Committee:

A. Extra-judicial partners

(5) Michigan Council on Crime and Delinquency
(6) Center for Civil Justice
(7) Legal Aid of Western Michigan
(8) University of Michigan Clinical Law Program

B. **Recommendations**

Employment of former offenders is critical to reducing recidivism. In order to promote the employment of people with criminal records, Michigan should reduce the legal and practical barriers that they confront. Specifically, Michigan should:

(1) Review statutory and administrative barriers to employment.
(2) Eliminate or modify statutory and administrative barriers that create unjustified barriers to the employment of former offenders.
(3) Promote individualized decision-making in hiring decisions.
(4) Require that criminal records be reviewed at the end, not the beginning, of the hiring process.
(5) Simplify, publicize and enhance employer incentives for hiring former offenders.
(6) Remove disincentives to hiring former offenders.
(7) Ensure that former offenders can get a driver's license in order to get to work.
(8) Ensure the parolees have valid identification at the time of release.
(9) Ensure that child support arrearages do not become a disincentive to lawful employment.
(10) Adjust reporting requirements for individuals who work during the day.
(11) Expand access to expungements.
(12) Provide a documented means for former offenders to demonstrate rehabilitation and employability.
(13) Modify criminal record reporting to promote employability.
(14) Conduct a public education campaign about "no-felon" policies; work with employers and industry associations to develop model equal employment policies.
(15) Review restrictions placed on people with sex offenses and permit more individualized consideration of appropriate restrictions.

Recommendations were prepared in 2006 by the Working Group on Reentry, a statewide initiative, for the Michigan Prisoner Reentry Initiative State Policy Team. Identification of the specific entities potentially responsible for each recommendation is contained in the Working Group's report, found at http://reentry.mplp.org/reentry/images/Working_Group_on_Reentry_Employment_Barriers_Report_final.pdf

Civil Collateral Consequences of Criminal Convictions

Work Group C Question:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice…

as it relates to the civil consequences of criminal convictions.

Submitted by Miriam Aukerman

Relevant Data and Assumptions

Identify Sources of data:

- Michigan Reentry Law Wiki (reentry.mplp.org): provides information on wide range of collateral consequences in Michigan. *See particularly* Summaries Regarding Collateral Consequences in Michigan. (http://reentry.mplp.org/reentry/index.php/Summaries_Regarding_Collateral_Consequences_of_Criminal_Convictions_in_Michigan)
- Reentry.Net National Research and Policy Library (http://www.reentry.net/library/)
- Criminal Issues Initiative Data Project [add link]: Information on the number of arrests and convictions in Michigan.
- *Every Door Closed: Barriers Facing Parents with Criminal Records,* (http://www.clasp.org/admin/site/publications_archive/files/0092.pdf): Overview of collateral consequences.

Summary of data:

- Although precise numbers are unavailable, it is clear that a great many people are affected by collateral consequences. National research suggests that 25% of the population has a criminal record,[15] or 30% of adults.[16] Other estimates suggest that 15% of adults in Michigan have a felony or serious misdemeanor arrest or conviction.[17]
- People with criminal records face a dizzying array of collateral consequences in such areas as:
    - Employment and Licensing
    - Housing
    - Immigration
    - Access to Public Benefits
    - Education, School Expulsion/Suspension and Financial Aid

[15] Survey of State Criminal History Information Systems, 2003; A Criminal Justice Information Policy Report February 2006, NCJ 210297.

[16] Attorney General's Report on Criminal History Background Checks, June 2006, at 51. http://www.justice.gov/olp/ag_bgchecks_report.pdf.

[17] *Barriers to the Employment of People with Criminal Records: Report of the Working Group on Reentry,* Appendix A, at 1, *available at:* http://reentry.mplp.org/reentry/images/
1/1b/Legal_Outline_2.2009.doc

- Fees, Fines and Costs
- Sex Offender Registration
- Family Law: Custody, Termination of Parental Rights, Child Support, Adoption, Guardianship, etc.
- Property Forfeiture
- Access to State Identification
- Drivers Licenses
- Voting and Civic Participation

Additional data desired:

a. Better data is needed on the number of people affected by collateral consequences. How many individuals in Michigan have misdemeanor or felony records? How many have records for assaultive, property, sexual, or drug offenses? What are the demographics of these different groups?
b. Although the Michigan Reentry Law Wiki contains extensive information on collateral consequences, there is as yet no comprehensive, searchable database on what consequences are associated with what convictions.
c. Little data is available on the quantitative impact of collateral consequences in Michigan. For example, how many jobs are affected by record restrictions? How many people are denied subsidized housing due to criminal records?

National/Other Models and Learnings

Identify and summarize relevant models or systems used in other states or relevant jurisdictions:

a. The Uniform Law Commission has promulgated a Uniform Collateral Consequences of Conviction Act (hhttp://www.law.upenn.edu/bll/archives/ulc/ucsada/2009_final.htm)
- American Bar Association, *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations*, January 2009 (http://www.abanet.org/cecs/internalexile.pdf).

Identify any other relevant learnings:

- Human Rights Watch, *No Easy Answers: Sex Offender Laws in the U.S.,* Sept. 11, 2007 (http://www.hrw.org/en/reports/2007/09/11/no-easy-answers): comprehensive report on barriers imposed on sex offenders.

Conclusions or Findings

Identify key conclusions relevant to answering Work Group C's Questions:

(1) As the volume of criminal convictions has increased and legislation and policies imposing collateral civil penalties have proliferated, civil collateral consequences have become increasingly

significant. Successful re-entry into society post conviction is key to reducing recidivism, yet individuals often find that the civil and social consequences stemming from convictions are significant barriers to success.

(2) Technological changes have made criminal records much more easily available than in the past, leading to an explosion in the use of criminal records for non-criminal justice purposes.[18]

   a. In 2001-2002, the percentage of non-criminal justice record checks reported by the FBI increased to more than half, from around 9% in 1993.[19]
   b. A member survey by the Society for Human Resource Management revealed that 80% of members conducted criminal background checks in 2003, up from 51% in 1996.[20]

(3) There is a lack of information at all stages of the criminal process about civil collateral consequences caused by criminal convictions and incarceration. "All stages" includes pre-prosecution (when school zero tolerance policies and special education rules are important, and also when consideration of alternatives to prosecution or conviction could be considered), prior to entry of plea (when defendants need to know about the consequences to themselves and their families of various convictions), prior to entry of sentence (since type and length of incarceration may affect consequences), at time of sentencing (when defendant should try to address civil legal problems prior to incarceration), during incarceration, at time of release, and in the community (when knowledge of the consequences, as well as possibilities for mitigating those consequences, is critical).

(4) There are no standards or procedural requirements for defendants to be informed about the collateral consequences of convictions. There is little assistance available to defendants either prior to conviction or post-release to address collateral consequences.

(5) The criminal justice bar – including defense counsel, prosecutors, and judges – need training and resources regarding collateral consequences.

(6) The need for training is particularly acute in the area of immigration consequences, as the United States Supreme Court ruled on March 31, 2010, that in order to provide effective assistance of counsel, criminal defense attorneys must advise non-citizen clients of the risks of deportation before a guilty plea is tendered.[21]

(7) There is a lack of understanding by policy makers, the criminal justice system, and the public about the social and financial consequences of civil collateral consequences.

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[18] *See generally* Sharon Dietrich, *Expanded Use of Criminal Records and Its Impact on Reentry* (Paper for the American Bar Association Commission on Effective Criminal Sanctions, March 3, 2006), *available at* http://www.reentry.net/library/item.255084-ABA_Commission_on_Effective_Criminal_Sanctions_Expanded_Use_of_Criminal_Rec

[19] Woodward & Johnson, *Compendium of State Privacy and Security Legislation: 2002 Overview*, NJC 200030 (U.S. Dept. of Justice, Bureau of Justice Statistics, Nov. 2003), at 9.

[20] Evren Esen, *SHRM Workplace Violence Survey* (Jan. 2004), at 19.

[21] *Padilla v Kentucky,* ___ US ___ , #08-651 (March 31, 2010).

(8) In most cases, collateral consequences are imposed without any individualized consideration about the appropriateness of the consequences for the person in question. In many cases, there are no appeal procedures available if a consequence is imposed.

Identify essential extra-judicial partners and explain their relevance:

a. American Bar Association, NIJ Collateral Consequences Project: The ABA has received federal funding to develop a state-by-state compilation of collateral consequences.
b. Reentry Law Project, Legal Aid of Western Michigan: Legal Aid of Western Michigan has developed an initial compilation of collateral consequences in Michigan, and manages the Michigan Reentry Law Wiki.
c. Legal Services Organizations and Law School Clinics: provide client assistance in addressing collateral consequences.
d. Criminal Defense Attorneys of Michigan and State Appellate Defender Office: assist in training defense bar and disseminating materials.
e. Prosecuting Attorneys Association of Michigan: assist in training prosecutors and disseminating materials
f. Michigan Judicial Institute: assist in training judges and disseminating materials
g. Department of Corrections and Sherriff's Association: assist in distributing materials to prisoners pre-release.

Recommendations adopted by the ATJ Committee:

1. Collection of Collateral Consequences

At present, there is no comprehensive resource listing all the collateral consequences of conviction in Michigan. This makes it difficult for practitioners to advise clients accurately. The Uniform Collateral Consequences of Conviction Act calls for identification, collection, and publication of laws regarding collateral consequences.[22] The American Bar Association's Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons similarly provide that jurisdictions should collect all collateral sanctions in their statute books in a single chapter or section of the jurisdiction's criminal code, and identify with particularity the type, severity and duration of collateral sanctions applicable to each offense.[23]

It is important not simply to catalog all collateral consequences, but to research the relevant context. For example, an inventory of employment restrictions in Florida looked not only at which jobs were regulated, but how prevalent those jobs were in the

[22] Uniform Collateral Consequences Act, Sec. 4.
[23] Standard 19-2.1. *See* http://www.abanet.org/crimjust/standards/collateral_toc.html

economy; this led to a finding that almost 40% of the jobs in that state are affected by legally-imposed, record-based restrictions.[24] A comprehensive guide, on how to conduct such inventories with respect to employment is available, and could be used as a basis for a broader inventory of restrictions not just in employment, but also in housing, public benefits, etc.[25]

As the ABA's Commission on Effective Criminal Sanctions has reported with respect to record-based employment barriers, such barriers should only be in place if the "offense conduct substantially relates to the particular employment or license, or presents a present threat to public safety."[26] Once a comprehensive compilation of barriers has been assembled, those barriers (whether in employment or elsewhere) should be reviewed, and should be modified or eliminated if they do not meet these standards.

Finally, the compilation of collateral consequences should be made available in a searchable format, available to the bar and the public both on the web and in courthouse computer terminals. The compilation should be produced in such a manner as to allow all participants in a criminal proceeding to determine the likely collateral consequences of a particular conviction. The ABA is already developing a state-by-state, searchable compilation of collateral consequences that could be used as a basis for this project. A Commission should be created to maintain and update this information on collateral consequences, as well as to develop policy recommendations with respect to collateral consequences.[27]

Due to the complexity of immigration consequences, it may be necessary to develop a separate interactive compilation with respect to immigration. Given the Supreme Court's recent decision in *Padilla v. Kentucky*, [cite] (March 31, 2010), holding that defense counsel must inform a client whether a plea carries the risk of deportation, it will be critical to develop materials, or a specialized resource center, that can assist defense counsel to determine the immigration consequences of particular convictions.[28]

2. Notification of Collateral Consequences

Defendants should be notified about collateral consequences at important points in a criminal case. This would ideally occur at multiple points in the criminal case:

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[24] *See Florida's Employment Restrictions Based on Criminal Records*, January 2007 (http://www.caseyfoundation.org/upload/

PublicationFiles/Florida%20Employment%20Restrictions%20Report.pdf).

[25] Linda Mills, *Inventorying State-Created Employment Restrictions Based on Criminal Records* http://www.caseyfoundation.org/~/media/PublicationFiles/Employment%20Restrictions%20Policy%20Guide%20Sept%2008.pdf

[26] ABA Commission on Effective Criminal Sanctions: Reports with Recommendations to the ABA House of Delegates (Aug. 2004), at 7.

[27] If a Sentencing Commission is created, the collateral consequences work could be undertaken by that Commission.

[28] Models for immigration/defense partnerships can be found at the Defending Immigrants Partnership: http://defendingimmigrants.org/

at/before notification of charges so that a defendant can make an informed decision how to proceed; at/before trial or taking of a plea; at sentencing; and prior to leaving custody. The Uniform Collateral Consequences of Conviction Act requires notice of collateral consequences in pretrial proceedings, at sentencing and upon release.[29] Similarly, the ABA Criminal Justice Standards on Pleas of Guilty, and the Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons, both require that a defendant be advised of collateral consequences before plea and at sentencing.[30]

Appropriate Court Rules should be developed to ensure notification occurs during criminal proceedings. Training should be provided to defense counsel so that they can appropriately advise clients. Materials should be developed that can be distributed pre-release, in collaboration with the Department of Corrections and local jails.

3. Review the Availability, Accuracy and Content of Criminal Records in the Court System

Easy access to criminal record information on the Internet, especially when it is available immediately and at no cost, has severely undermined reentry goals by virtually eliminating any privacy for people with criminal records, not matter how old their convictions. Additional problems result due to endemic problems with record inaccuracy, as well as the fact that criminal records are often difficult for employers or other members of the public to read an understand. A comprehensive study on availability, accuracy, and content of criminal records should be undertaken, with policy recommendations for how criminal records should be maintained in the future.

a. *Availability:* The benefits of providing immediate, free public access to court records must be weighed against the damage done to people with records.[31] Given that there are strict limits on the use of arrest information (e.g. in hiring[32]), and given the disproportionate arrest rates of people of color, it is questionable whether arrest information should be publicly available prior to conviction. Thought should be given to limiting access to pre-conviction information to authorized users (e.g. attorneys). Non-conviction information (such as arrests or charges not leading to conviction) should not be accessibly on the internet. Automatic sealing of arrest information that does not result in conviction should be considered. (Currently, arrested individuals must file a motion for return of fingerprints to get such information sealed.) The public

[29] Uniform Collateral Consequences Act, Sec. 5-6.
[30] Standard 14-1.4(c) provides that before accepting a plea, the court should advise the defendant of the possibility of various collateral sanctions. Standard 14-3.2(f) provides that defense counsel should advise the defendant of collateral sanctions before the entry of a plea of guilty "to the extent possible." Standards 19-2.3(a) and 19-2.4(a) both require that the defendant be notified of the collateral sanctions that will result from the conviction, by the court or defense counsel, before pleading guilty and before sentencing, respectively.

[31] *See generally* Sharon Dietrich, *Expanded Use of Criminal Records and Its Impact on Reentry* (Paper for the American Bar Association Commission on Effective Criminal Sanctions, March 3, 2006), *available at* http://www.reentry.net/library/item.255084-ABA_Commission_on_Effective_Criminal_Sanctions_Expanded_Use_of_Criminal_Rec
[32] *See* MCL 37.2205a.

availability of juvenile records should also be reconsidered, given the severe collateral consequences that now attach to those records.

b. Accuracy: Because court records are the building blocks from which criminal records – whether public or commercial – are created, it is essential that those records be accurate. Too often they are not. Court rules and procedures should be established to ensure accuracy, and to deal with common problems such as:

   i. Failure to Report Disposition Information. Approximately have of all FBI records lack disposition information.[33] MSP records also frequently lack disposition information.
   ii. Failure to Report Probation Dismissals. Under various diversion programs, individuals can have their records sealed if they successfully complete probation. However, practitioners report that information about these probation dismissals routinely fails to reach the FBI, resulting in inaccurate background checks that still show the adjudication.
   iii. Misreporting of Misdemeanors as Felonies. Many private background check companies report cases as either misdemeanors or felonies. However, these reports are frequently erroneous, in part because it can sometimes be difficult to determine the level of an offense. Moreover, individuals are often unsure if they were convicted of a misdemeanor or felony. Requiring the judgment of sentence to specify whether the offense is a misdemeanor or felony would help to alleviate this problem.

c. Content: Employers and other public users of criminal record information often do not know how to interpret records correctly. For example, employers sometimes fail to understand that the "arrest" and "charge" columns on state police record reports are not separate convictions, and therefore erroneously conclude that a job applicant has three convictions, when there is actually one. In cases where some counts are dismissed and other lesser charges are added, record reports can appear very lengthy, and can be easily misread as involving many more offenses than actually occurred. In order to make criminal record information easier to understand, background reports produced for non-law enforcement purposes should contain only conviction information, and not arrest and charge information.

4. Expand Access to Expungement and Other Sealing Mechanisms

Because the consequences of conviction are so severe, many people with criminal records are seeking to expunge their records. There has been a 46% increase in expungements in Michigan in the last year.[34] However, expungement is only available to individuals with just one conviction. Individuals who have a second conviction – even if it arises out of the same offense or even if it is for something as minor as leaving a driver's license at home – are ineligible. Judges should be allowed to make discretionary decisions about whether individuals have been rehabilitated and deserve a clean record.

[33] Attorney General's Report on Criminal History Background Checks, June 2006, at 17. http://www.justice.gov/olp/ag_bgchecks_report.pdf.
[34] Douglas Belkin, "More Job Seekers Scramble to Erase their Criminal Past," *Wall Street Journal* (Nov. 11, 2009).

In addition, to the extent possible, low-level offenders should be allowed to participate in diversion programs that will allow their records to be sealed upon completion of probation. Court rules and sentencing guidelines should be modified to reflect a presumption that certain low-level offenders will be sentenced to programs that will allow them to avoid the life-long consequences of a criminal record.

5. Develop Mechanisms for Relief from Collateral Consequences

Individuals who are not eligible for expungement, but who have been rehabilitated, need a way to demonstrate rehabilitation and lift collateral consequences attached to their convictions. In states like Arizona, Illinois, Nevada, New York, New Jersey, and California, "certificates of rehabilitation" are used to lift statutory barriers to certain jobs or licenses. The Uniform Collateral Consequences of Conviction Act calls for states to develop both an Order for Limited Relief (lifting automatic collateral sanctions) and a Certificate of Restoration of Rights (providing assurance to employers, etc., about the person's rehabilitation).[35] Such orders can also be used by employers, etc., to address claims of negligent hiring or the like.

At present, Michigan does not have any similar mechanism for restoration of rights or relief from collateral consequences.

6. Promote Training of the Criminal and Civil Bar, Develop Written Resources and Establish a Resource Center

Collateral consequences are complex. Many factors can affect whether a conviction will lead to deportation or loss of employment. Training on collateral consequences should become an integral part of defense attorney training, as well as training for legal services attorneys. More resources, such as CII's collateral consequences questionnaire, should be developed. Finally, as the state contemplates major changes to the funding of indigent defense, funds should be allocated for a resource center or hotline that can advise defense counsel on collateral consequences. Such a hotline would help defense attorneys meet their obligations under the recent *Padilla* decision to advise clients of deportation risk, and would also provide assistance on other collateral consequences issues.

Where possible regarding recommendations, include thoughts on:

1. Implications for justice system/courts structure

While some of the recommendations above require legislative actions, other can be accomplished through court rules or administrative action. For example, decisions regarding the content of internet-available court records or court rules regarding notification of collateral consequences need not necessarily await action in Lansing.

[35] Uniform Collateral Consequences Act, Sec. 10-13.

2. Implications for securing/balancing resources

Because Michigan is already contemplating major changes in the funding of criminal defense, it would be feasible to include specified funding for a resource center on immigration and collateral consequences.

3. Implications for use of technology

Technology will be important. both in the searchable database of collateral consequences, and in addressing issues of availability/accuracy/content of records.

Criminal Task Group
Indigent Defense

Submitted by Dawn Van Hoek

Work Group C Question:

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice?

1. Relevant Data and Assumptions

A. Sources of Data

The manner in which counsel is provided by the state to indigent criminal defendants has been studied in Michigan for decades. Litigants, state and local bar associations, and task forces, and national organizations have all examined the delivery system for public defense, from local to statewide perspectives. A significant body of advocacy and academic work has informed the findings and recommendations of the Criminal Task Group on the subject of indigent defense. That work includes the following:

1. "A Race to the Bottom. Speed and Savings Over Due Process: A Constitutional Crisis," report of the National Legal Aid and Defender Association, June, 2008.
2. "Pennywise and Pound Foolish: Waste in Michigan Public Defense Spending," testimony by Dawn Van Hoek, Chief Deputy Director, State Appellate Defender Office, to the U.S. House of Representatives Subcommittee on Crime, Terrorism and Homeland Security, March 26, 2009.
3. "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts," report of the National Association of Criminal Defense Attorneys, April 28, 2009.

4. "Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel," Report of the National Right to Counsel Committee, The Constitution Project, April 14, 2009.

B. Summary of Data and Assumptions

2. National/Other Models and Learnings

3. Conclusions or Findings

Indigent Defense Findings

(1) Funding of public defense services by counties results in widely disparate, and largely inadequate, resources for the defense function.

- (a) On a spending per capita basis, Michigan ranks 44th nationally in funding devoted to the public defense function.
- (b) Michigan is one of a handful of states requiring local counties to fund the right to counsel that is guaranteed by the state, and federal, constitutions.
- (c) Significant disparities exist among counties in resources available to defend criminal charges; attorneys in one county may receive a reasonable hourly rate covering overhead and case-related expenses, while in a neighboring county attorneys on a defense services contract are paid a flat fee and no expenses for investigators or experts.
- (d) Workloads for criminal defense attorneys, particularly those working on defense contracts, are sometimes significantly greater than those recommended by national standards.

(2) Michigan's underfunded public defense system increases the risk that indigent criminal defendants receive ineffective assistance of counsel.

- (a) The State Appellate Defender Office, representing approximately one-quarter of those appealing criminal convictions for the past three decades, has observed an increase in ineffective assistance of trial counsel claims from 14% in the early 1980s to the current level of approximately 48%.
- (b) Over fifty criminal cases since 1996 have litigated an ineffective assistance of counsel claim to successful federal habeas corpus relief.
- (c) At least 9 cases of wrongful convictions in Michigan have been identified, some of which are based on mistakes at the trial court level attributable to inadequate defense resources and ineffective assistance of counsel.

(3) Michigan's underfunded public defense system wastes valuable public resources that must be spent on error correction.

(a) The financial cost of correcting mistakes due to ineffective assistance of counsel, borne by Michigan counties, is very large. Costs include appellate litigation, retrials, and civil lawsuits for wrongful conviction that result in large settlements and judgments.
(b) Correction of sentencing errors by SADO annually saves millions of dollars in prison costs incurred by the Michigan Department of Corrections, as sentences are reduced to accurate and legal levels intended by the legislature.

(4) Access to qualified and competent assigned criminal defense counsel is sometimes compromised by judicial involvement in the selection of counsel.

(a) Courts charged with balancing a local budget that includes the defense function are placed in a conflict position, and may seek defense funding that least compromises court operations.
(b) Courts that directly assign attorneys, either individually or through a defense contract, may be overly influenced to appoint those who bring the least advocacy, and cost, to the defense function.

(5) Access to qualified and competent assigned criminal defense counsel can be significantly compromised by absence of performance standards and monitoring for quality of representation, absence of adequate training, and absence of a system that matches counsel's ability, training and experience to the complexity of a case.

Recommendations adopted by the ATJ Committee:

B. Extra-judicial partners

(1) State Appellate Defender Office (SADO), currently the only state-funded public defense provider (since 1978), statutorily authorized to represent 25% of indigent appellants, pursuant to MCL 780.711 et seq.
(2) County-funded public defender offices in Washtenaw and Kent Counties, and county-funded non-profit agency in Wayne County, all providing public defense services to a substantial percentage of trial-level criminal defendants.
(3) Criminal Defense Attorneys of Michigan (CDAM), a professional membership association representing private attorneys accepting assigned criminal cases at the trial and appellate levels, statewide.
(4) Wayne County Criminal Defense Attorneys Association, a professional membership association representing private attorneys accepting assigned criminal cases at the trial and appellate levels, in Wayne County.
(5) Campaign for Justice, a statewide advocacy organization seeking reform of the public defense system in Michigan, through the legislative process.

C. Recommendations

(1) The Michigan Legislature should assume full and ongoing funding of the constitutionally mandated right to counsel for indigent defendants in criminal proceedings at the trial and appellate levels, including juvenile defendants charged with delinquency or criminal offenses.

(2) To facilitate adequate state funding for a public defense system, the Michigan Legislature should consider statutory changes that would potentially produce savings within the criminal justice system, including:
   (a) reclassification of minor and non-violent offenses to civil infraction status;
   (b) expansion of circumstances in which expungement of a criminal conviction may be obtained;
   (c) expansion of circumstances in which diversion from prosecution may be obtained;
   (d) creation of a Sentencing Guidelines Commission that can review and recommend changes in the legislative guidelines scheme.
(3) The Michigan Legislature should enact a Michigan public defense act that creates a statewide system for providing public defense services to all persons entitled to the assistance of counsel at public expense. The system must embody the Eleven Principles of a Public Defense Delivery System approved by the State Bar of Michigan (Eleven Principles) and American Bar Association (Ten Principles):
   (a) the public defense function, including the selection, funding, and payment of defense counsel, is independent;
   (b) where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar;
   (c) clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel;
   (d) defense counsel is provided sufficient time and a confidential space with which to meet with the client;
   (e) defense counsel's workload is controlled to permit the rendering of quality representation;
   (f) defense counsel's ability, training, and experience match the complexity of the case;
   (g) the same attorney continuously represents the client until completion of the case;
   (h) there is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system;
   (i) defense counsel is provided with and required to attend continuing legal education;
   (j) defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards; and
   (k) when there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

(4) The Michigan Legislature should enact a Michigan public defense act that creates a statewide system for providing public defense services to all persons entitled to the assistance of counsel at public expense. Justice system participants, including counsel, judges and prosecutors, must ensure that the right to counsel is fully realized. The system must embody the recommendations of The Constitution Project found in its 2009 Report titled "Justice Denied:"

   (a) States should adhere to their obligation to guarantee fair criminal and juvenile proceedings in compliance with constitutional requirements. Accordingly, legislators should appropriate adequate funds so that quality indigent defense services can be provided. Judges should ensure that all waivers of counsel are

voluntary, knowing, intelligent, and on the record, and that guilty pleas are not accepted from accused persons absent valid waivers of counsel. Prosecutors should not negotiate plea agreements with accused persons absent valid waivers of counsel and should adhere to their duty to assure that accused persons are advised of their right to a lawyer.

(b) States should establish a statewide, independent, non-partisan agency headed by a Board or Commission responsible for all components of indigent defense services. The members of the Board or Commission of the agency should be appointed by leaders of the executive, judicial, and legislative branches of government, as well as by officials of bar associations, and Board or Commission members should bear no obligations to the persons, department of government, or bar associations responsible for their appointments. All members of the Board or Commission should be committed to the delivery of quality indigent defense services, and a majority of the members should have had prior experience in providing indigent defense representation.

(c) The Board or Commission should hire the agency's Executive Director or State Public Defender, who should then be responsible for hiring the staff of the agency. The agency should act as an advocate on behalf of improvements in indigent criminal and juvenile defense representation and have the authority to represent the interests of the agency before the legislature pertaining to all such matters. Substantial funding for the agency should be provided by the state from general fund revenues.

(d) The Board or Commission should establish and enforce qualification and performance standards for defense attorneys in criminal and juvenile cases who represent persons unable to afford counsel. The Board or Commission should ensure that all attorneys who provide defense representation are effectively supervised and remove those defense attorneys who fail to provide quality services.

(e) The Board or Commission should establish and enforce workload limits for defense attorneys, which take into account their other responsibilities in addition to client representation, in order to ensure that quality defense services are provided and ethical obligations are not violated.

(f) Fair compensation should be provided, as well as reasonable fees and overhead expenses, to all publicly funded defenders and for attorneys who provide representation pursuant to contracts and on a case-by-case basis. Public defenders should be employed full time whenever practicable and salary parity should be provided for defenders with equivalent prosecution attorneys when prosecutors are fairly compensated. Law student loan forgiveness programs should be established for both prosecutors and public defenders.

(g) Sufficient support services and resources should be provided to enable all defense attorneys to deliver quality indigent defense representation, including access to independent experts, investigators, social workers, paralegals, secretaries, technology, research capabilities, and training.

(h) Prompt eligibility screening should be undertaken by individuals who are independent of any defense agency, and defense lawyers should be provided as soon as feasible after accused persons are arrested, detained, or request counsel.

(i) In order to promote the fair administration of justice, certain non-serious misdemeanors should be reclassified, thereby reducing financial and other pressures on a state's indigent defense system.

(j) Uniform definitions of a case and a consistent uniform case reporting system should be established for all criminal and juvenile delinquency cases. This system should provide continuous data that accurately contains the number of new appointments by case type, the number of dispositions by case type, and the number of pending cases.

Judicial Crossroads Access to Justice - Work Group B and C Report (Combined)

Alternative Dispute Resolution

Workgroups B and C each considered issues related to alternative dispute resolution, Group B from the perspective of changing demographics and diversity issues that create barriers to access to justice, and Group C from the perspective of economic barriers to access to justice.

The Access to Justice full committee considered both reports and approved a consolidated set of recommendations. This document includes the information provided in the Workgroup B Report, the information provided in the Workgroup C Report, and the single set of consolidated recommendations approved by the Committee.

Workgroup B Report

submitted by Hon. Cynthia Stephens

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of changing demographics/diversity that create barriers to access to justice?

ALTERNATIVE DISPUTE RESOLUTION

Statement of the Issue

Dispute resolution is achieved by myriad processes. We use the term "alternative dispute resolution" to describe all of those processes that are not adjudicative. The most common processes are arbitration, mediation and case evaluation, and Michigan has court rules and statues addressing those methodologies. The state provides some funding and support for Community Dispute Resolution Centers (CDRP's) and offers training and certification for mediators through the SCAO. There are many other processes not addressed by our current court rules or statutes. These tools for resolving disputes have become an integral part of the justice system.

The access and fairness issues that plague the rest of the justice system are found in ADR. Most court-annexed ADR is done through lawyers--a community with inadequate representation of cultural, racial and ethnic minorities. Even where non-lawyers are used, diversity is often lacking. Scholars like Professor Meriwether of Capitol Law School have been critical of the credentialing process for ADR providers as well as the referral or appointment process for neutrals. The 1989 Michigan Supreme Court Task Force on Gender Issues in the Courts, the Michigan Supreme Court Task Force on Racial and Ethnic Issues in the Courts, the 1997 reports from the State Bar of Michigan Task Force on Racial,

Ethnic and Gender Issues in the Courts, and the annual reports of the State Bar Open Justice Commission issued between 1998 until 2003 all addressed the lack of diversity among ADR providers.

End users within those ethnic, racial and cultural minorities have been shown to be reluctant to utilize ADR process. In the Washtenaw study several barriers were noted to the acceptance of ADR within minority communities. Among those barriers was the composition of the provider group as well as the perception of a lack of cultural competency of the provider. Additionally, with the exception of the CDRP's, the cost of ADR services serves as an impediment to use.

There is a growing consensus that ADR is a valuable tool within our justice system. ADR is mentioned in most of the preliminary reports from the committees and workgroups within Judicial Crossroads. Recognizing the important role of ADR, both the American Bar Association and the National Bar Association have done work on diversity, access and fairness in the ADR arena. The State Bar of Michigan through its Justice Initiatives Committee, Department of Diversity and the ADR Section is engaged in a Task Force on Diversity in Alternative Dispute Resolution that has examined the ADR climate in Michigan and will release recommendations this summer. Time constraints compel us to act before that report is published, however. The recommendations that follow incorporate some of the thinking that has come out of the Task Force work in progress.

These recommendations are two-fold. The first set of recommendations offers a set of guidelines or principles to be applied to an evaluation of an ADR process or program; the second relates to the improvement of the current court-annexed ADR programs in the state.

Stakeholders

The dominant stakeholder community in the ADR arena is the end-user community. In addition, the following groups have an interest in and the capacity to effect change in ADR:

- The ADR provider community including CDRP's, court-based and private service providers. Many of these service providers are non-lawyers.
- The Michigan Supreme Court and SCAO. In addition to rule-making, the Court through SCAO approves and provides training for court-approved ADR providers, funds CDRP's and approves court ADR plans.
- The State Bar of Michigan.
- Trade and industry associations.

GUIDELINES FOR EVALUATING ADR PROGRAMS AND PROCESSES

A set of principles for the creation, evaluation and improvement of ADR will promote effective ADR processes. See recommendation 11, below.

Workgroup C Report

submitted by Doug Van Epps

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice?

1. Relevant Data and Assumptions

A. Sources of Data and Summary of Data and Assumptions

General Statements

"COSCA should support an examination and evaluation of the traditional adversarial process and encourage experimentation with alternate models. In addition, alternative dispute resolution programs should be recognized as a more "friendly" forum for the self-represented and the availability of such programs should be promoted with the self-represented." Conference of State Court Administrators, "Position Paper on Self-Represented Litigants," 2000

"Finding 8. Mediation and legal services should no longer function as mutually exclusive paths, but instead function together as a joint system to serve poor and low-income disputants." "Accessing Justice Through Mediation: Pathways for Poor and Low-Income Disputants." Center for Analysis of Alternative Dispute Resolution systems, Chicago, 2007.
http://aboutrsi.org/pfimages/AccessingJusticeFull.pdf

"Access to justice, as a fundamental principle of the civil justice system, dictates that problems of cost, delay, judicial economy and proportionality must become more prominent in our approach to delivery of legal services in our free and democratic society. If litigants of modest means cannot afford to seek their remedies in the traditional court system, they will be forced to find other means to obtain relief. Some may simply give up out of frustration. Should this come to pass, the civil justice system as we know it will become irrelevant for the majority of the population. A legal system accessible only to the very poor and the very well to do presages its own demise. Our courts and the legal profession must adapt to the changing needs of the society that we serve. Mediation affords many parties an opportunity to access the civil justice system quickly and at relatively low cost." The Honourable Warren K. Winkler Chief Justice of Ontario, Canadian Arbitration and Mediation Journal 16 (1):5-9. 2007

User Satisfaction

Eighty percent of litigants in a study of small claims mediation reported being either "satisfied" or "neutral" regarding the mediation process. "District Court, Small Claims Division Mediation in Michigan: Comparing Collection Rates in Adjudicated and Mediated Cases" Michigan State University Department of Communication, 2004.
http://courts.michigan.gov/scao/resources/publications/reports/SmallClaimsEvalFinalReport.pdf

Eighty-nine percent of civil mediation parties (non-attorneys) responding to post-mediation surveys in Kent County Circuit Court in 2009 indicate that they would recommend mediation to their friends or family.
http://www.accesskent.com/CourtsAndLawEnforcement/17thCircuitCourt/pdfs/reports/2009/EVALUATION_RESULTS_CIV_PTY.pdf

Reduced time to resolution

Eight-seven percent of civil mediation parties (non-attorneys) responding to post-mediation surveys in Kent County Circuit Court in 2009 indicate that mediation saved time. Eight-two percent of respondents reported that the process also saved money.
http://www.accesskent.com/CourtsAndLawEnforcement/17thCircuitCourt/pdfs/reports/2009/EVALUATION_RESULTS_CIV_PTY.pdf

Children in child protection cases reached a permanency outcome 12 ½ months sooner than those in the traditional non-mediated process. "Permanency Planning Mediation Pilot Program Evaluation Final Report," Michigan State University School of Social Work, 2004.
http://courts.michigan.gov/scao/resources/publications/reports/PPMPevaluation2004.pdf

Agreement rates

For a number of years, SCAO has reported resolution rates between 68 percent and 72 percent when all parties participate in mediation, or in the less formal conciliation process. Community Dispute Resolution Program Annual Report 2008, Michigan Supreme Court, Office of Dispute Resolution. 2006-2008.
http://courts.michigan.gov/scao/resources/publications/reports/CDRPAnnualReport2008.pdf

Higher collectability and durability

Plaintiffs in a sample of 600 mediated small claims cases received full or partial payment 79% of the time, in contrast to plaintiffs in non-mediated small claims cases, who received full or partial payment only 52% of the time. In the same study, respondents reported reaching agreement in 82% of the cases ordered to mediation. "District Court, Small Claims Division Mediation in Michigan: Comparing Collection Rates in Adjudicated and Mediated Cases" Michigan State University Department of Communication, 2004.

In a 2008 study of 535 randomly selected cases, 81 percent of respondents reported that their agreements reached through CDRP centers were entirely upheld. An additional 8 percent said their agreements were partially upheld. "Community Dispute Resolution Program 2008 Annual Report, Statistical Supplement" Michigan Supreme Court, State Court Administrative Office.
http://courts.michigan.gov/scao/resources/publications/reports/CDRPStatSupp2008.pdf

2. National/Other Models and Learnings

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

See Oakland County Circuit Court's Early Intervention Conference program where litigants in commercial cases are brought together approximately 100 days after the response to facilitate resolution earlier in the litigation cycle.
Michigan already has mandatory case evaluation for torts claims; Washington has mandatory mediation for health care claims; South Carolina has mandatory mediation for claims over $25,000.

Several Washtenaw County Family Division judges order litigants to mediation upon filing of the first contested motions in family law matters where ongoing decision-making regarding children's needs may benefit from the collaborative process.
A number of district courts in MI currently order pro se litigants in general civil cases to CDRP centers.
Some studies have shown that Restorative Justice programs result in reduced recidivism; other studies have focused on the benefits to the victim(s) in having an opportunity to meet with the offender.

Notions of "differentiated case management" and early scheduling conferences occur in many states. The National Center for State Courts has been active in this area for over 20 years.

4. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

1. Many disputes can be effectively resolved earlier in the litigation lifecycle, if only the parties are brought together to have a meaningful conversation.
2. Approximately 98% of filings are resolved without trial; requiring parties in certain cases to meet may result in reduced late-litigation court events and better (mediated) outcomes for litigants.
3. The traditional adversarial process is ill-suited for families that require on-going decision-making regarding children's needs. Mediation of contested issues would enable parties to begin thinking of collaborative means of making decisions in the future.
4. While a number of legal services organizations make regular referrals to the centers, opportunities for greater utilization of the CDRP centers should be assessed.
5. Resolution of claims through mediation affords pro se litigants with a less formal, less intimidating experience than encountered in the courtroom setting. Research also suggests that judgments reached through mediation are more collectable.
6. Restorative justice (RJ) efforts aim to personalize an offender's judicial system contact and to incorporate the notion of harm to the community in responding to an offense.
7. Michigan-based research is showing that several mediation-based processes are resulting in truancy and expulsion reduction.
8. Too frequently, the pressure to "move cases" precludes courts' abilities to assess whether the traditional adversarial process is the most appropriate process for a particular dispute. In an ER, not all patients are taken to surgery. In courts, not all cases require trial.
9. Many agencies in a position to refer persons to mediation centers default to the courts. "If you have a problem with your neighbors, sue them." Whether in collection cases, potential ordinance violations, landlord/tenant and other matters, a first response may more appropriately be to attempt mediation.
10. Through educational programs, articles, and online resources, encourage pro bono attorneys to consider mediation as a first step in assessing clients' needs.

4. Recommendations

A. Identify essential extra-judicial partners and explain their relevance.

Trial Courts
Legislature
Community Dispute Resolution Program Centers
Legal Services Organizations
SCAO
State Bar of Michigan
Michigan Judicial Institute
Nonprofit and Public Agencies (receiving complaints from the public)
Funders

Recommendations adopted by the ATJ Committee:

1. Create a rebuttable presumption that certain case-types where there is empirical evidence of efficacy should be referred to appropriate ADR processes.
2. Evaluate for what cases mandatory mediation is appropriate, considering the full spectrum of unrepresented litigants, and who, if anyone, should be excluded (such as DV and other abuse survivors) for the requirement for mandatory mediation because significant power imbalances are present.
3. Mandate mediation in domestic relations matters, except where domestic violence, child abuse and neglect, or significant power imbalances are present.
4. In circuit and district court general civil cases, use courts' current authority to order cases to mediation where one party is unrepresented by counsel.
5. Expand relationships between legal services organizations, ADR providers and CDRP centers.
6. Increase the use of problem-solving practices in youth-related cases, including restorative justice and pre-filing truancy mediation.
7. Increase education of judges and court staff to triage conflicts by assessing the benefits that may result from mediation.
8. Increase education regarding CDRP practice, e.g., free service for indigent litigants, low cost for persons of limited means, quality of mediators, center reporting to courts.
9. Leverage legal services and pro-bono resources through increased use of both pre- and post-filing ADR processes.
10. Make program and process evaluation systemic.
11. Strategies for the creation, evaluation and improvement of ADR should reflect the following principles. Effective ADR processes should:
    a. Preserve party empowerment and self-determination.
    b. Provide adequate, clear and specific confidentiality protections and, where necessary, limited and clearly defined exceptions that would maintain mediation as an effective confidential process in which people are free to discuss issues without fear of disclosure in legal or investigatory procedures.
    c. Reflect an understanding of the diversity of ADR styles and range of disputes.
    d. Be easily understandable by the participants.
    e. Provide that providers may come from a variety of professional and nonprofessional backgrounds.
    f. Provide procedural protections for the disputants, the ADR provider and the process when exceptions to confidentiality are raised.
    g. Adequately addresses how the provider, parties, and representatives are to comply, if at all, with mandatory reporting requirements that may be required by law or professional ethical standards.
    h. Preserve the impartiality of the provider.
    i. Take into consideration the special concerns raised when the threat of violence is present.
    j. Eliminate economic barriers to ADR access through use of pro bono neutrals and other methods applicable to the particular situation.
    k. Have certification standards and training that include a pro bono standard or guideline for all providers.
    l. Provide service as close to the point of conflict as possible, utilizing community, not court-based sites, where available.

m. Include cultural competency as an ethical requirement.
n. Have trainers and providers who reflect the diversity of the communities served.
o. Be routinely evaluated for efficacy with the diverse end-users being an important component of that evaluation process.

C. Where possible for each recommendation, include thoughts on

1. Implications for justice system/courts structure

All the recommendations could be implemented under our current court structure, with the sole exception that mandating that all claims below (or over) a certain level be mediated would require legislative action.

2. Implications for securing/balancing resources.

Significantly increasing referrals to CDRP centers would require additional funding, chiefly for staff to train and manage volunteers, and for case management. The school programs, such as restorative justice initiatives, would also require funding for oversight and case management.

3. Implications for use of technology

Online dispute resolution is already a significant factor in resolving disputes involving internet-based corporations, such as eBay and Amazon. There are a growing number of private websites (e.g. CyberSettle.com) that will also manage the resolution of disputes, either applying mediation or arbitration. Documents can be electronically filed, and parties can conference collectively or individually with webcams. It seems a natural extension that for a number of case types the same principles are applied to courts, e.g., in the resolution of small claims, or where parties are far apart, or where parties simply stipulate to manage their lawsuit online. The next generation of computer hardware installed in courts will have web-conference capability. This item may be under review by the Technology subcommittee.

Judicial Crossroads Access to Justice Committee - Work Group C Report

How do we assure that an increasingly diverse and unrepresented group of court users has meaningful access to all components of the Michigan judicial system in light of economic barriers to access to justice…

… as it relates to: **Self-Help**

Submitted by Linda Rexer

1. Relevant Data and Assumptions

A. Identify and summarize relevant data and assumptions used.

Per John Greacen at March, 2009 MJI training, the studies show the following about persons representing themselves: The majority are poor; majority are women; majority are petitioners, not respondents; majority have a high school education. Also, the op reasons given for proceeding pro se are: "I can't afford to hire a lawyer." And "My case

is simple enough to handle myself." The likelihood of prevailing is more related to procedural complexity than substantive complexity of the matter, and there is high satisfaction by the self-represented.

There is increased frequency of self-representation. Courts in Michigan anecdotally report high numbers of self-represented; this data is not tracked statewide. A 1999 MI SBM survey of many (not all) MI courts showed many courts with over 40% pro se litigants and a number of courts with over 70%. Examples from other states (per Mr. Greacen's materials) are: CA, 67% divorce petitioners, 80% at dissolution; MA, >75% family, probate cases have at least 1 party in pro per; and Fl where at least1 party is pro per is up from 66% (99) to 73% (01)

The Illinois statewide web-based self-help program found that more than 50% of low-income users have access to high speed Internet. This is borne out by the Pew Internet & American Life Project study which found that 42% of persons with annual household incomes under $30,000 have high speed Internet access at home and that 74% of American adults use the Internet. www.pewinternet.org/Reports/2010

The referenced Illinois project has 10 years of experience as an interactive statewide web-based site on which dozens of county-based self-help centers are based. It uses a powerful user-friendly search engine and includes legal resources written for lower-literacy users, legal information in 25 areas of law, easy-to-use interactive forms (56) with non-legal terms for questions that automatically populate court forms; Spanish resources; self-help instructions for common legal problems; multimedia training, video tutorials & live chat help. It makes referrals to legal and other services where needed. It has >1 million users per year and has found that the following items are the most popular automated documents and resources accessed: .uncontested divorce; small estate; child support modification; order of protection; guardianship; stop wage assignment; other letters to creditors; durable power of attorney (property, health care); and unemployment benefits.

The experience of two of Michigan's self-help centers shows the following:
Grand Rapids Legal Assistance Center (2008 data):
34,000+ services provided served in 2008 (up 4,000)
75% needed court forms
72% needed help completing court forms
9% had employment, immigration other needs
4% had housing issues (7% of phone patrons)
3% had consumer problems (5% phone)
78% had family law issues (50% phone)
58% = household incomes under $20,000
14% = household incomes over $40,000
18% = less than high school education
35% = high school completion
32% = some college but no degree
16% = college degree

Funding is combination of public/private money
3.5 FTE paid staff + 3.0 volunteers

Berrien County Legal Resource Center 2009:
Opened 4/09; served 1300+ thru 9/09
39% needed forms; 25% general legal info
23% needed help completing court forms
10% = housing issues; 5% consumer, other
66% had family law issues + 10% PPOs
17% < high school; 39% graduated high school.
25% some college; 19% graduated college
44% <$10K/yr; 64% <$20K/yr; 12%>$40K/yr
Public/private $; 1.0 FTE paid staff + volunteers

The Michigan State Bar Foundation commissioned a study in 2008-2009 to collect information on what self-help resources currently exist in Michigan. The study found the following types of resources:
Web-based resources
Court-related resources
Legal aid clinics and other pro se support from legal aid programs
Self-help centers
Local bar associations
Faith-based programs
Libraries

Regarding the web-based resources, the study identified 254 web sites, including courts, legal assistance centers and legal aid. Of these 158 offered some form of self-help information. Of those 158, only 42% of these linked to SCAO self-help page and only 26% linked to any other self-help page. Some 23 represented a program which a patron could access in person and 1 was a telephone hotline; 8% were affiliated with a program and 92% were website only. Of these 158 web sites, 38 provided information on housing
62 provided information on family law, and 52 had information on consumer law.

The study found that many sites were unintuitive; many links were broken; many materials were duplicative and and/or not up to date. It also found that of 103 Friend of the Court & Circuit Court sites, 27 had their own individualized step by step family law procedures; 37 had their own family law forms on their sites. The study also highlighted these existing sites which appear to have the most self-help content: The SCAO self-help web site is a "drill down" PDF-laden site where SCAO fillable forms can be accessed; www.michiganlegalaid.org also has a fair amount of content and has a range of fillable PDF SCAO forms; the State Bar self help site has a range of mostly PDF content mixed with state bar entity information, and some legal assistance centers and legal aid programs have mainly PDF-driven self-help and legal information.

In tandem with the study, self-help materials were collected from state and local bars, court, legal aid and legal assistance center self-help materials. There were many links submitted without hard copies but the hard copies alone filled three 5 inch binders and included many duplicate materials produced by multiple entities, e.g. divorce without children, and hundreds of brochures, also many duplicative.

MJI asked Michigan court clerks to submit the most common questions members of the public ask them; the compilation of these questions fills 9 pages.

The Grand Rapids Legal Assistance Center conducted a study of time spent by clerks/staff answering questions using college students who watched and timed these occurrences, finding that the time spent was nearly equal to 3 full-time staff positions.

B. Identify additional data desired.

Michigan courts do not systematically track the number and type of cases in which one or more parties is proceeding pro se. That and related information, such as how much time court clerks spend answering questions from self-help litigants and what areas are most requested for self-help assistance would be useful in planning assisted self-help services.

In addition, there is very little empirical information regarding potential cost savings from providing self-help support other than the Kent County study noted above.

2. National/Other Models and Learnings

A. Identify and summarize relevant models or systems used in other states or relevant jurisdictions.

There are many models and resources in other states and nationally regarding self-help. For example, 41 states have adopted the ABA model rule or something similar to allow lawyers to unbundle their service and take only part of a case, allowing clients to manage other parts of the case through self-help.

Regarding judicial and court staff education, there is a national bench book, a manual of best practices, short articles on tips for effective handling/helping of self-represented litigants, and national judicial education curricula and other national training modules including video, web libraries and expert consultants available to help plan or conduct education.

There are also self-help systems in other states where years of experience can be shared. Notable among these are Minnesota, California, Massachusetts and Illinois. Some specific information about the Illinois model is included at section 1.A. above.

Much of this information is available on www.selfhelpsupport.org which is a web resource support by numerous groups including the National Center for State Courts

and the State Justice Institute. Resources are also available through the ABA ATJ Support Center.

In Michigan, models include three staffed legal assistance centers: Berrien County, Grand Rapids and Washtenaw County. Also, a number of seminars on self-help have been held by the Michigan Judicial Institute and the Michigan State Bar Foundation has convened several state meetings at which self-help experts have been brought in to discuss their programs and resources as well as gathering state and local librarians to discuss the role of libraries in providing legal self-help information to the public.

3. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

An overarching conclusion regarding pro se is reflected in NH Chief Justice Broderick's comment from his 2008 national ATJ speech:
"The single biggest challenge confronting the state courts in America in the first decade of the new century is the rising number of self-represented litigants…and the justice system…has an obligation to respond…Doing nothing will not diminish their growing number or ensure justice for those already in the system."

Another important principle is that pro se should not be viewed as "instead" of full representation by a lawyer but as part of a continuum in which some cases are resolved efficiently by pro se; others need limited legal assistance such as advice and/or unbundled services; others need mediation, and others need full representation with the aid of counsel.

In addition, it is important to note from the information above that there has already been many discussion in Michigan about how to enhance access to justice for the self-represented and to coordinate efforts, that a number of stakeholders have created resources and tools to assist self-help, so there is momentum and interest in working on this topic and doing it collaboratively. It will be important to have all affected stakeholders work together to coordinate and improve what is now a very fragmented and uneven self-help "system" in Michigan. Increased centralized support will not be possible without such coordination. Such stakeholders are noted at section 4.A. below.

Other conclusions are reflected in the "findings" from the referenced MSBF study:

1. Large numbers of people represent themselves, and most do not have any assistance with doing so. Moreover, this need has not yet been quantified because generally courts do not track this information.
2. Existing court forms and procedures are not easily understood by self-represented individuals, particularly those with literacy, language, and other barriers. Forms and instructions are written for lawyers in legalese, not to help lay persons. Document assembly resources, which can assist in reducing this barrier to self-representation, are few and limited.

3. There is a lack of uniformity in forms and procedures among jurisdictions. This impedes development of centralized resources to support self-represented litigants.
4. Some judges and court staff are responsive to the needs of self-represented litigants and some training has been made available to them. However, there is no comprehensive training program for judges and court staff to help them work more effectively with the self-represented. This promotes a wide disparity of treatment of self-represented litigants from jurisdiction to jurisdiction.
5. There are some good web resources available to assist self-represented individuals, but many web resources are incomplete, ineffective, and not well-maintained.
6. A wide range of self-help resources exist, including brochures, forms packets, websites, court staff assistance with procedures, self-help clinics, self-help centers, and legal aid programs providing limited assistance. However, there are gaps and duplication in these resources. The content and quality are not uniform, and materials are not collected in a central place, which impedes sharing of them.
7. Michigan ethics standards do not facilitate unbundling because they do not clearly specify the extent to which and the conditions when discrete task representation is OK.
8. Where staffed self-help centers exist, many more self-represented individuals are able to receive assistance, reducing court time in working with the self-represented and increasing satisfaction among court personnel as well as the self represented. However, only a few staffed self-help centers exist in Michigan, with little support available for jurisdictions which want to develop a self-help center.
9. There is no established network for collaboration, planning, and support for those providing self-help assistance in Michigan.
10. There is a serious funding challenge, and those Michigan jurisdictions which have been successful in establishing self-help centers have had to draw upon a variety of funding resources, public and private.

Last, the information and recommendations in this report assume that next steps will primarily involve civil cases in the state justice system. As these steps get underway, we must consider when/whether to add criminal pro se (e.g. many misdemeanors are pro se) and how to assist pro se in the federal courts.

Recommendations adopted by the ATJ Committee:

A. Identify essential extra-judicial partners and explain their relevance.

Stakeholders within MI include at a minimum: MSC, SCAO, MJI, local and state bars, MSBF, legal assistance centers, local and state libraries, and legal aid programs.

B. List recommendations addressing your Work Group's question,

1. In coordination with other justice system leaders, the Supreme Court should provide leadership and assistance in the development of centralized statewide programming, materials and web/other resources to assist the self-represented. In addition to the MSC Director of Access and Fairness, an implementation advisory group should include participation by local self-help centers, SCAO, state/other librarians local or special bars, the State Bar, MJI, legal aid, MSBF.

2. A statewide Self-Help Web Site Pilot Project modeled after www.illinoislegalaid.org should be implemented together with three pilot self-help centers (staffed, part time staffing and no staffing - library-based) which will use the web site to support their services. The project should select the areas of greatest need to start with implementation begun in 2010 and preliminary assessment targeted for early 2011 when expansion plans or next steps should be identified. MSBF should help fund this initial effort.

3. A more comprehensive self-help curriculum for judicial and court staff training on self-help should be developed including a plan to integrate it in modules as part of the regular core aspect of training for the education of judges, court staff and other service providers. Courts should also be regularly provided with simple suggestions and tools to improve self-help services and with links to resources available nationally and in others states. MSBF should help fund planning for this.

4. The Court should address changes needed in court rules (e.g. unbundling), administrative orders, ethics and case standards to support effective self-help assistance in Michigan. (The CJI Summit may help identify how to move to unbundling.)

5. The Court should assure that court data systems can track the number and type of pro se cases and related data throughout the state to assist in improving self-help services.

6. The Court should assure that all courts accept and use uniform SCAO forms. If this is already a requirement that courts may be unaware of, MSC and SCAO should develop information/education to make it clear to courts that even if they have locally-adapted forms, they also accept the bare SCAO form when resented with it. If this is not already a requirement for courts, MSC and SCAO should make it one.

7. The Court should work with other justice system leaders (as well as experts in literacy, cultural awareness and limited English proficiency) to improve the uniformity and understandability of forms. Successful models used in other states will be identified, with the most used forms targeted first for improvement. SCAO will advise what process is needed for this.

8. The Court will work with other stakeholders to approach self-help efforts as part of a continuum of legal services rather than a substitute for other needed services. Articles and papers can be developed to provide education on this matter for all stakeholders.

C. Where possible for each recommendation, include thoughts on

1. Implications for justice system/courts structure

Recommendations 4, 5, 6 and 7 implicate actions by the MSC, but these can be done within the current system and processes with the possible exception of tracking pro se data. Depending on the extent of centralized resources and were those end up residing, local courts may have to expend less effort and resources on self-help materials and assistance, but state level leaders may be more involved. As part of the courts, MJI will also be involved in item 3. The courts, like other stakeholders should participate in system wide coordination.

2. Implications for securing/balancing resources.

Additional self-help resources may save time for court personnel who now answer many questions from the public. Local courts may also not need to spend resources on their own self-help materials and systems if more centralized statewide resources are built. Some investment may be needed related to technology and supporting the content and quality of web-site and other resources. Should we use the Illinois model, that program advises that off the shelf technology is readily available now and that content support should have adequate support to allow high quality and dependability of those resources. Part of the "pilot" or initial efforts should be to more specifically identify funding needed in order to build an effective centralized self-help system. To take the first steps, some funding is likely available from the Michigan State Bar Foundation..

3. Implications for use of technology

Should we use the Illinois model, that program advises that adequate off the shelf technology is readily available now and that content support should have adequate support to allow high quality and dependability of those resources. This statewide web site technology does not have to reside within the court system at the beginning; a decision on that can be made later after the scope of the effort is clear and an assessment of the capability of court technology to support it can be made. It is clear that the data tracking systems in the courts should be modified to be able to track relevant information regarding pro se cases statewide; this will take some resources but perhaps not more than is already being explored for to be able to meet other technology needs in the courts.

Planning, Coordination, and Evaluation

Access to Justice Committee
Work Group A Final Report and Recommendations

April 16, 2010

Overarching WGA Question:

What ongoing mechanisms for planning, evaluation, collaboration and change management need to be in place to assure that the Michigan judicial system remains effective into the future in light of the changing nature of and demands on it?

1. Relevant Data and Assumptions

WGA's recommendations rest on the two "essential components of an effective justice system" adopted by the full ATJ Committee:

a) enhancing access to justice for all requires a system-wide approach with adequate resources to support it; and

b) enhancing access to justice for all requires effective ongoing mechanisms that involve key stakeholders in planning, evaluation, collaboration and change management to assure the justice system remains effective into the future.

This means that institutionalized structures need to be in place and involve judicial and key extra-judicial key stakeholders in order to assess progress toward Crossroads or other goals, coordinate efforts among various judicial and extra-judicial partners and identify and address new developments that affect the system.

The focus on a system-wide approach assumes that legal needs and services are part of a continuum in which many efforts are connected and fit together. Coordinating judicial and extra-judicial stakeholders and services on this continuum can enhance both efficiency and effectiveness throughout the system and its components. Here are a few examples related to self-help> Receiving legal information, assisted self-help or hotline advice before a legal issue has gone to court can mitigate or even pre-empt the need to go to court or can prepare litigants well enough to avoid multiple hearings due to adjournments or reduce time needed by court personnel. Such resources can also help someone understand that their problem is a legal issue needing the help of an attorney or help the self-represented obtain the court ordered outcome rather than letting it languish for lack of knowledge about enforcement, which can result in return trips to court. These examples show a continuum that links what happens before court, in court, and after court, and illustrates the benefits of all players in this system planning and coordinating their services as part of a larger whole in which people are more easily directed to the appropriate kind of assistance they need.

Another view of the continuum of linked resources is through the access to counsel lens. Some cases are resolved efficiently by pro se; others need limited legal assistance such as advice and/or unbundled services; others need mediation, and others need full representation with the aid of counsel. So, this construct has three parts: a) self-help (preferably assisted by tools or programs in the system), b) limited representation (e.g., everything in-between self-help and full representation, such as unbundled legal services with self-help, hotline/other advice, ADR), and c) full representation by counsel.

Also key to answering WGA's question are the "core principles" adopted by the ATJ Committee which include, among other principles, the following:

"An effective justice system promotes coordination, quality, effectiveness and efficiency of services." This principle is accompanied by the following commentary:

"All providers should comply with accepted ethics and standards (such as the ABA civil/criminal principles or ABA Standards for the Provision of Civil Legal Aid). Interdisciplinary training should be provided for judges, lawyers and relevant others; it should cover both substance and techniques for effectively assisting litigants and others at all stages of their legal and other needs. There should be mechanisms to assure coordination among judicial and extra-judicial aspects of the justice system and to evaluate the effectiveness of services and their coordination. Efficiencies and other steps should be identified that can contribute to overall cost savings, e.g. common case management and data systems and centralized web-based information and self-help tools."
http://portal.michbar.org/committees/550000s1/Committee%20Documents/ATJPrinciplesMarch2.2010.pdf

2. National/Other Models and Learnings

Staff at the American Bar Association supporting state Access to Justice Commissions provided the following information regarding efforts by various states to collaboratively plan, coordinate and evaluate justice system and access to justice goals and services. The referenced reports can be found at: http://www.abanet.org/legalservices/sclaid/atjresourcecenter/searchatj.html.

Maine had a very broad based Access planning process that involved court representatives, but did not get into much detail about court-related issues (or other structural issues). It focused on very broad measures for expanding access. The report was issued in 2007 and is now in the implementation phase.

In Massachusetts, the ATJ Commission did a series of hearings on barriers to access that focused somewhat on the courts. At the same time, the courts had a task force on self-represented litigants, which issued a report and recommendations, including increased funding for legal aid. But there has not been any broad, inclusive access planning.

Vermont recently developed a court restructuring proposal, ordered by the legislature. Though it is a court-centered plan, the courts took it upon themselves to use access as the framework for considering the issues. There was some involvement of legal aid in that there is a parallel project involving use of electronic forms already underway that legal aid is involved in.

The California ATJ Commission issued a report in 2009 with somewhat general recommendations about expanding access that applied to the courts as well as other entities. There has also been a family law commission that will be issuing a report soon.

ABA staff noted that the above examples were thin on evaluation aspects and not directly parallel with our request for samples of processes that integrate planning, coordination and evaluation of both judicial and extra-judicial access partners. However, that staff did point out that the state of

Washington did simultaneous planning – trial court operations, indigent defense and civil legal aid - that was rolled into the 2004 Board for Judicial Administration's Court Funding Task Force. This work has been carried forward under the umbrella of "Justice in Jeopardy." Justice in Jeopardy has a website that hosts all of the relevant studies, reports and articles at: http://www.courts.wa.gov/justiceinjeopardy. Their Court Funding Task Force Report and November 2009 Bar News includes numerous articles about how they have moved forward with a coordinated effort under the Justice in Jeopardy banner.

The ABA staff also noted that in Minnesota, a Coalition to Preserve Minnesota's Justice System was convened at the invitation of Chief Justice Eric J. Magnuson and composed of representatives of the Court, the State Bar, public defenders, county attorneys, and legal services. They worked to spread the message that justice is a core function of government, and that the justice system (including court operations, civil legal aid, and public defender services) must be adequately funded in times of financial shortfalls. This strong, coordinated effort prevented far more drastic cuts than were originally proposed.

ABA staff also referenced a 2002 paper by John Tull, "Statewide Evaluations, Some Thoughts." Mr. Tull was also editor for the 2008 ABA Standards for the Provision of Civil Legal Services, which includes some guidance for legal aid providers encouraging their planning for and participation in statewide and regional delivery systems.

Past Michigan planning efforts regarding access have included two state plans for the provision of civil legal aid to the poor in which work groups included judicial and extra-judicial partners, though mainly bar and legal aid related persons. (insert link to state plans). The State Planning Body now convenes judges, private lawyers, legal aid, indigent defense, bar, government, human service and others four times a year to discuss coordination and planning, mainly in selected topic areas rather than an overall state plan regarding access. http://spb.mplp.org:8080/display/SPB/Michigan+SPB+Home

The State Bar Committee on Justice Initiatives brings together a range of stakeholders and engages in planning and coordination about its projects. http://www.michbar.org/programs/justiceinitiatives.cfm Similarly, the Michigan State Bar Foundation periodically convenes grantees and related stakeholders to provide input or otherwise discuss selected topics related to access. www.msbf.org The new Director of Access and Fairness for the Michigan Supreme Court is convening judicial and extra-judicial stakeholders to facilitate coordinated planning and services.
http://courts.michigan.gov/supremecourt/Press/LWeber.pdf

The SCAO office advises that it often brings in experts or experienced people from outside the judiciary to work on planning particular projects to enhance coordination and benefit from the external perspective. They also use "court improvement project" protocols to assist the quality of project planning by courts.

Nationally, the National Center for State Courts has many tools to assist courts in becoming "high performance courts." These tools include goal-setting and evaluation methods.
http://www.ncsc.org/Web%20Document%20Library/IR_HighPerformanceCourts.aspx

Also, nationally, there are various standards and guidelines intended to assist both quality of services and the planning, coordination and evaluation of them. These include the ABA Standards for the

Provision of Civil Legal Aid
http://www.abanet.org/legalservices/downloads/sclaid/civilstandards.pdf; the LSC Performance Criteria http://www.lsc.gov/pdfs/LSCPerformanceCriteria.pdf; the ABA Criminal Principles (Michigan's state version of this has eleven principles)
http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf; and the ABA Civil Principles and Self Assessment Tool
http://www.abanet.org/legalservices/sclaid/downloads/06A112B.pdf . The last item is particularly relevant insofar as the principles take a system-wide approach and are accompanied by a self-assessment tool that jurisdictions can use to assess their own system.

3. Conclusions or Findings

A. Identify key conclusions relevant to answering your Work Group's overarching question.

In the last decade or so, Michigan has built a foundation of interconnected groups which engage in planning, coordination and assessment of needs for civil and criminal legal assistance, primarily focused on low-income and underserved populations. This is a good base on which to build toward more integrated planning, coordination and evaluation which includes the court system. Work Group A conducted a survey to identify these groups and found that they include: State Bar of Michigan Committee on Justice Initiatives (and other relevant committees); Local/Special Bar Associations; State Planning Body (and its member organizations); Michigan State Bar Foundation; Legal Services Association of Michigan; State Appellate Defender Office; Michigan Supreme Court - Director of Access and Fairness; State Court Administrative Office; Judicial Conference; Prosecuting Attorneys Association of Michigan; Council on Crime and Delinquency; Criminal Defense Association of Michigan; Michigan Prisoner Reentry Initiative; Campaign for Justice; Institute for Continuing Legal Education; Michigan Judicial Institute; Law Schools; Legislative/Government Entities; Health and Human Service and Other Non-Governmental Organizations.

It is clear from the models provided by the ABA that many states have planning and coordination efforts in the access arena that are linked in various ways but that few appear to have taken an approach that affirmatively integrates courts and extra-judicial partners in an overall planning, coordination and evaluation process to advance access to justice. It is also clear that there are few good examples of building in solid evaluation components.

4. Recommendations

A. Identify essential extra-judicial partners and explain their relevance.

See item 3.A. above.

B. List recommendations addressing your Work Group's question.

1. To promote the commitment to action regarding crossroads and other system-wide access and fairness goals for the justice system, an advisory group of leaders reflecting key judicial and extra-judicial stakeholders will convene twice each year to review progress, discuss new developments and facilitate continued coordination. This group will be known as the Justice Advisory Board for Access and Fairness ("Board").

2. The Board will engage a wide range of justice system stakeholders by having them become signatories to the "Access and Fairness Agenda" which will evidence their commitment to the ATJ Core Principles and related goals. Signatories will be offered opportunities for participation and input related to these goals and will receive reports and other information from the Board.

3. Members of this Board may include stakeholders such as the Michigan Supreme Court, State Court Administrative Office, Judicial Associations, State Bar of Michigan, Michigan State Bar Foundation, Legislature, Executive Branch, legal aid providers (civil and criminal), non-governmental organizations and others whose ongoing involvement will help promote action and collaboration. To demonstrate the value of this initiative and the importance of judicial leadership, the Board will be convened by the Chief Justice of the Michigan Supreme Court.

4. The Board will acknowledge accomplishments and offer suggestions for additional actions toward goals, using the ATJ core principles and emphasizing a system-wide approach. This could take the form of a "report card" or other report to stakeholders. The Board should seek assistance from experts as needed to plan for and develop data and information needed for evaluating progress and results. One of the Board's roles will be to facilitate more consistent, uniform procedures, forms, data and systems.

5. The Board will suggest tools and methods for the courts system and other partners to engage in meaningful evaluation of services and the overall system to determine if people are being served effectively and whether goals of the Access and Fairness agenda are being met. The Board should also evaluate its own efforts annually to determine how it can be most effective in assessing results and promoting action and coordination.

C. Include thoughts on:

1. Implications for justice system/courts structure

The range of stakeholders involved underscores the importance of a system wide approach and a continuum of services within the courts and outside that includes both courts and non-judicial processes. Improvements identified through evaluation will help the courts and other partners provide more effective services and reach more

persons in need of legal assistance. Increased planning, data sharing and coordination will leverage resources.

2. Implications for securing/balancing resources

   Significant new resources will not be required to conduct the Board's two meetings per year and related administrative support and also for simple mechanisms for planning and coordination will not require. It may be possible to obtain grant or other funding for special projects, as well as expert assistance for developing and conducting the evaluation function (see Recommendation 4 above). The communication among stakeholders that will occur through this process will also facilitate coordination.

3. Implications for use of technology

   To the extent that coordination and collaboration are encouraged and information is shared, this may be a springboard to more meaningful and uniform data collection about services and outcomes. Accurate and useful data will allow assessing the current system to help design improvements and will also help in identifying emerging needs. That in turn may improve and expand evaluation processes.

IV. Database Reports

All 237 recommendations adopted by the ATJ Committee and contained in the reports in this "Blueprint" have been entered into a database and coded in categories that may be useful for various stakeholders in Michigan's access to justice community. For example, one category is "policy - legislation" which flags all the recommendations which involve legislation.

The full list of categories into which the recommendations can be sorted is as follows:

Low Cost
Present Opportunity
Policy (Legislation, Court Rule, Ethics)
Training (Educational Sessions, Models, Resources)
Data Collection (Collection/Research/Evaluation, Technology Infrastructure)
Funding (Government, Other)
Technology (Internal Courts, Public/Other)
Procedural Fairness and Uniformity of Service (Language, Other)
Structure (Court Personnel, Facilities, Jurisdictional)
Business
Primary Leaders

Stakeholders
Miscellaneous

To obtain a particular report showing the recommendations for any of the above categories, please go to the "ATJ Committee Database Reports" web page at www.______________. This page contains hyperlinks to reports for each of the above categories; clicking on any of these will take you to a PDF version of the report which you can print or save.

Note that some categories have subcategories. Except for "Leaders" and "Stakeholders," you may choose the overall category to get a combined report including all the subcategories, or you may choose an individual subcategory for a report related only to that.

Note that there are approximately 100 stakeholder groups listed. Reports are individual to a given stakeholder so that clicking on the name of a particular group will take you to a report that lists recommendations that involve or implicate that particular stakeholder. There are also multiple entities listed in the primary leader category, also accessible only individually, for those groups that would be the likely primary leader for a given recommendation.

If you would like a customized report which combines more than one category, we will try to accommodate your request, time permitting. Please send such requests to Rick Winder at Rick@msbf.org.

V. List of ATJ Committee Members

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