

# Embracing the Courts of the Future

Final Report of the Next Generation Courts Commission



State Bar  
of Georgia





# Embracing the Courts of the Future

Final Report of the  
Next Generation Courts Commission

A partnership between the  
Supreme Court of Georgia and State Bar of Georgia

Honorable Lawton E. Stephens, Chair  
Superior Court Judge  
Western Judicial Circuit

Tracy J. BeMent, Reporter  
District Court Administrator  
10th Judicial Administrative District

Hon. Lawton E. Stephens, Chair

Hon. Louisa Abbot  
Ms. Dena M. Adams  
Mr. Greg G. Allen  
Hon. Charles E. Auslander, III  
Ms. Patricia Baker  
Ms. Therese S. Barnes  
Mr. Tracy J. BeMent  
Hon. Harold G. Benefield  
Hon. Stephanie S. Benfield  
Hon. Diane E. Bessen  
Hon. G. Grant Brantley  
Mr. Carter Brown  
Ms. Sharon L. Bryant  
Mr. Peter C. Canfield  
Hon. Jason J. Carter  
Hon. Michael P. Cielinski  
Ms. Robin Frazer Clark  
Mr. Walter J. Clarke  
Hon. Alec Glenn Dorsey  
Hon. Sara L. Doyle  
Hon. John J. Ellington  
Hon. David T. Emerson  
Hon. Ronald E. Ginsberg  
Hon. Kathlene F. Gosselin  
Hon. William G. Hamrick, III  
Mr. Daniel B. Hauck  
Mr. Kenneth B. Hodges, Jr.  
Mr. Bart W. Jackson  
Mr. Eric J. John

Hon. Lynwood D. Jordan, Jr.  
Mr. Jeffrey R. Kuester  
Ms. Sandy Lee  
Hon. Edward H. Lindsey, Jr.  
Ms. Cindy Mason  
Mr. Daniel W. Massey  
Hon. Harold D. Melton  
Ms. Marla S. Moore  
Ms. Mary L. Pierce  
Hon. A. Gregory Poole  
Hon. Julius A. Powell, Jr.  
Mr. William M. Ragland, Jr.  
Hon. Robert V. Rodatus  
Hon. J. Stephen Schuster  
Ms. Sarah Marie Shalf  
Hon. Robin W. Shearer  
Mr. Kenneth L. Shigley  
Hon. Ben W. Studdard, III  
Ms. Sheila Studdard  
Ms. Carolyn V. Sullivan  
Hon. Susan P. Tate  
Hon. Curt B. Thompson, II  
Hon. Robert E. Turner  
Mr. David C. Wall  
Hon. Margaret G. Washburn  
Hon. Brenda S. Weaver  
Mr. Kevin P. Weimer  
Ms. Melanie F. Wilson  
Hon. Nelly F. Withers

# Table of Contents

Foreword .....	iii
Introduction.....	1
Executive Summary .....	3
Research Findings.....	6
Recommendations of the Commission.....	15
Education & Outreach.....	15
Program Improvements.....	22
Technology.....	29
Business Process Improvements .....	35
Funding of the Courts .....	39
Conclusion .....	40
Appendices.....	41
A: Survey Invitation .....	41
B: Survey Questions.....	42

By Lawton E. Stephens, Chair

John F. Kennedy once said “And our liberty, too, is endangered if we pause for the passing moment, if we rest on our achievements, if we resist the pace of progress. For time and the world do not stand still. Change is the law of life. And those who look only to the past or the present are certain to miss the future.” So too is justice in danger if we fail to prepare our judicial system and ourselves for the future.

This project is a unique experience. In the midst of the busy days in which we work, it is hard to take a moment and reflect. Even harder is to commit oneself to the mental exercise of reviewing the shortcomings of the judicial system to which we have committed our public service. Add to that the challenge of determining what trends and unforeseen forces will guide how our courts will look in the future. This task is one in to which we must enter not only with humility and introspection but also with an open mind. After all, we cannot know what the future holds. We can only make decisions now that we think will shape the future for the better.

We hope that the insight and recommendations presented will be met not only with understanding but also with a healthy dose of skepticism. We do not have the solutions. Rather the solutions will come by working collaboratively towards a common vision for the future of the judicial system of Georgia.

A special thanks to former Chief Justice Carol W. Hunstein and former State Bar President Kenneth L. Shigley for having the foresight to realize that we must continue to look to the future so as to better make decisions today. Of course, we must also thank all of the members of the Commission for all of their hard work, especially the chairs – Judge John Ellington, Judge David Emerson, Judge Ben Studdard, Judge Charles Auslander, and Ms. Marla S. Moore.

### *Creation of the Commission*

The Next Generation Courts Commission is a partnership between the State Bar of Georgia and the Judicial Branch. The Commission was formed after discussions between then-President of the State Bar, Ken Shilgley and the Chief Justice at the time, Carol W. Hunstein. The Chief Justice and Mr. Shigley recognized that the judicial system was perceived as not adapting to emerging technology and trends as quickly as perhaps it could.

The Commission was divided into committees to review and make recommendations to the full Commission. These committees were as follows:

- *Education & Outreach*  
(Chair, Ben Studdard - Chief Judge, Henry County State Court)
- *Program Improvements*  
(Chair, Charles Auslander - Judge, Athens-Clarke County State Court)
- *Technology*  
(Chair, David Emerson - Judge, Douglas Judicial Circuit)
- *Business Process Improvements*  
(Chair, Marla S. Moore - Director, Administrative Office of the Courts - AOC)
- *Funding of the Courts*  
(Chair, John Ellington - Judge, Court of Appeals)

The Commission and its committees met several times throughout 2012 and early 2013 via meetings, conference calls, and online collaboration. A large volume of strategic plans, trend information, and research was reviewed. The Commission then used all of the information gathered to prioritize its work and to make recommendations to the State Bar and the Supreme Court.

The recommendations are broad in nature. The next steps of the Commission are to develop proposed action items and tasks based on these recommendations followed by a strategy to achieve consensus between the State Bar and the Judiciary on a joint plan to implement and/or respond to the recommendations.

### *Charge of the Commission*

The Commission was tasked to consider what the court system might look like in 20 years and to develop a strategy for how to get from here to there including, but not limited to, court structure, technology, funding, caseload management, and judicial selection. Given the structure of the judicial system in the state and the number of policy-making councils and bodies, the Commission opted to develop a list of recommendations that it hopes will be used collectively by the judicial branch in collaboration with the State Bar in an effort to make forward progress.

### *Input from the Judicial Community*

The voice of judicial community cannot be overlooked in a project of this scope. As part of its work, the Commission developed a survey to solicit input about how to improve the courts. The statewide survey was sent to a wide variety of individuals both inside and outside the judicial system - judges, court staff, clerks, members of the state bar, legislators, media, and others. The Commission itself was a representation of the judicial community, most of whom are also well connected both locally and at the state level in a wide variety of the activities related to the courts. Through its committee representation and the statewide survey, the Commission heard from a wide variety of respondents in an effort to capture the breadth of issues facing the courts currently.



The Next Generation Courts Commission is a partnership between the State Bar of Georgia and the Judicial Branch. It is tasked to consider what the court system might look like in 20 years and develop a strategy for how to get from here to there, including but not limited to, court structure, technology, funding, caseload management, and judicial selection.

Below is an executive summary of the recommendations from the various committees. The full report discusses these recommendations in more depth and places them in context of issues facing the courts both in Georgia and nationally. The recommendations are broad in nature.

### *Education & Outreach*

#### Education Recommendations

- Commit to primarily state-funded Institute of Continuing Judicial Education (ICJE) while making judicial education more cost-effective;
- Improve and enhance training programs including both remote training and in-person training, use of national-level speakers and materials, cross-training between classes of courts, use of technology in the courts and interdisciplinary training on non-routine issues and the sciences - accounting, psychology, etc.;
- Ensure that judicial benchbooks are more widely available and relevant;
- Develop a robust multi-day new judge orientation for each class of courts;
- Provide advanced training for career judges with more than 10 years on the bench;
- Promote an ethics component in all trainings to include cultural awareness - gender, sexual orientation, Limited English Proficiency (LEP), etc.;
- Support training for clerks, court administrators and court support personnel.

#### Outreach Recommendations

- Promote transparency and timely public access to court procedures, schedules, records and proceedings;
- Practice and promote transparency by adopting strong public service-oriented products such as news releases and informational portals to provide greater access to court information;
- Encourage public understanding and support of the judicial system. Train judges to educate the public about the role of the courts and importance of an independent judiciary, encourage ICJE to instruct judges on how to do so consistent with codes of judicial conduct;
- Support local and statewide civics education efforts by the State Bar, local bar associations, and other civic groups, including encouraging judges to participate;
- Support appropriate efforts to make court procedures more intelligible to, and navigable by, *pro se* litigants.

### *Program Improvements*

- Endeavor to create a *pro se* center within each circuit so that resources for low income and *pro se* litigants are more in-line with the majority of states;
- Deploy plain-language, standardized, statewide forms, including easy-to-use, interactive online versions of those forms to help ensure that needed information is provided to the court;
- Expand or modify county and circuit law libraries to include user-friendly online materials and/or books that contain updated information that the general public finds useful;
- Expand Alternative Dispute Resolution (ADR) programs to make them available to all litigants in Georgia and include reduced-cost mediation services for low income and *pro se* litigants;
- Expand ADR instructional opportunities and promote the establishment of mediation clinical programs at all law schools to bring students into the courtrooms to mediate real cases at no charge to the parties;
- Increase the involvement of lawyers in Juvenile Court proceedings including Guardians Ad Litem (GALs), mentors, child advocates, etc.;
- Support the establishment of accountability courts or alternatives for substance abuse and mental health treatment throughout the state.

### *Technology*

- Support the establishment of a statewide e-filing portal for electronic filing of civil case documents across all levels of courts;
- Promote electronic access to civil and criminal court records across all levels of courts;
- Encourage the adoption of legislative and rule changes to ensure the protection of personally identifiable information found in court records;
- Support the adoption of a web-based central registry of attorney conflicts and leaves of absence.

### *Business Process Improvements*

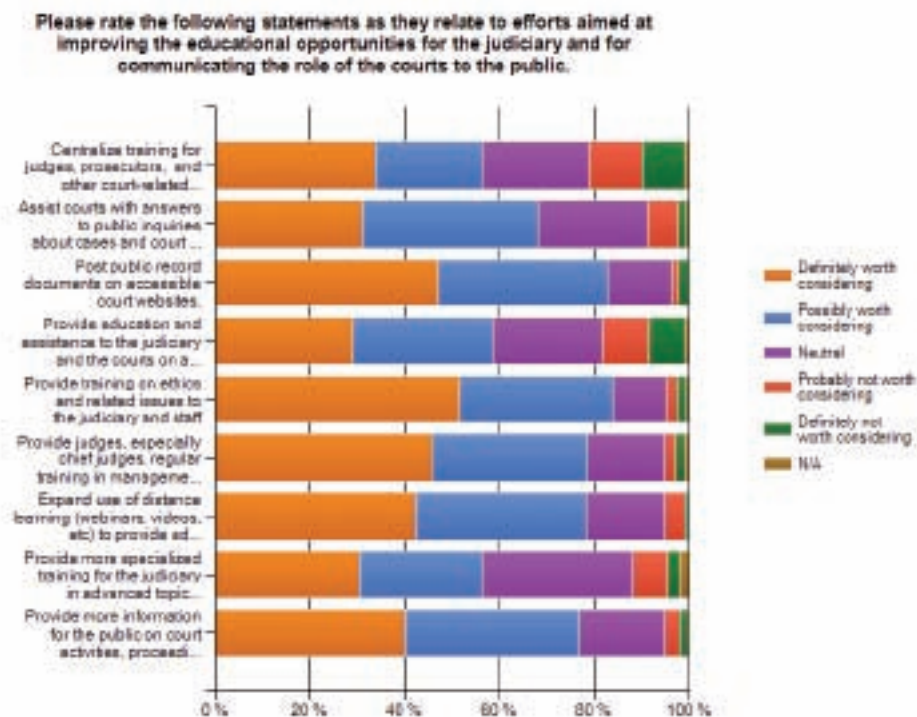
- Promote a uniform approach for the clerk of court to maintain all trial evidence, to mark and note all evidence during a trial and retain such evidence in compliance with appropriate retention schedules;
- Support the ability of clerks of court to charge reasonable, cost-based fees for copies;
- Encourage the Judicial Council and the Board of Court Reporting to collaborate with clerks of superior court and other courts of record when developing the rules and regulations for transcript preparation and storage to effect implementation;
- Encourage the adoption of appropriate technologies for court reporting and court interpreting to enhance business processes;
- Promote increased availability of interpretation services including remote interpretation, translation of court forms, etc.

### *Funding*

- Support an increase in state-based funding necessary to provide statewide court improvement programs in the future;
- Encourage legislative changes that allow for the currently established self-funded programs and user fees to actually be used for their intended purposes rather than simply going over into the general revenue funds of both state and local government.

## Statewide Survey

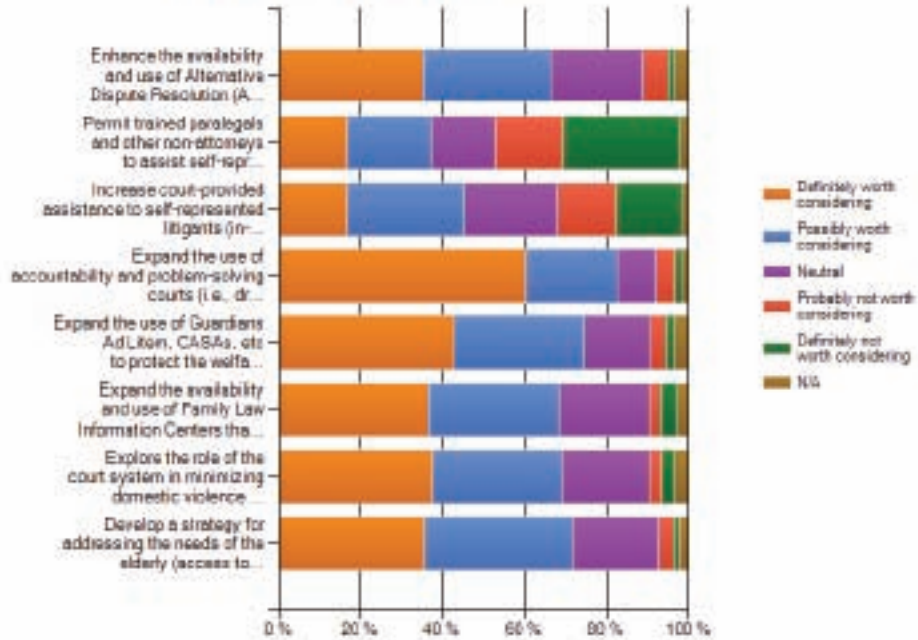
As part of its research, the Commission created a survey to be distributed statewide to gather thoughts and suggestions on issues facing the courts.<sup>1</sup> While the response rate was less than expected, the respondents echoed trends and needs in the community. The following slides are the tabulated results from the survey of 435 responses. The more orange (definitely) and blue (probably), the more likely the concept was worth considering. For a full list of the scenarios presented, please see Appendix B to this report. Excerpts from responses to the survey will be provided later in the discussion of the Commission's recommendations.



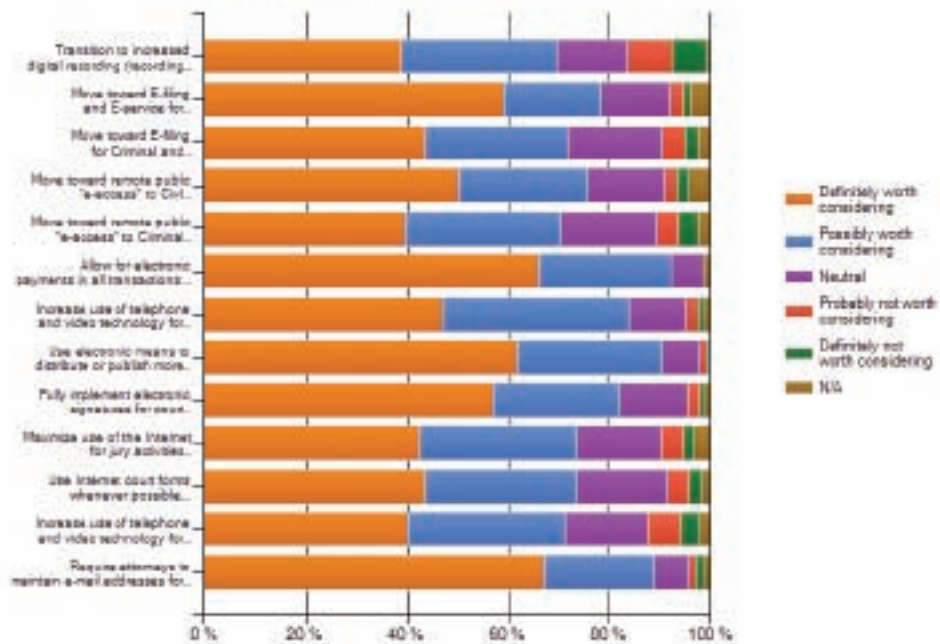
<sup>1</sup><http://www.surveymonkey.com/s/NGCC>

# Research Findings

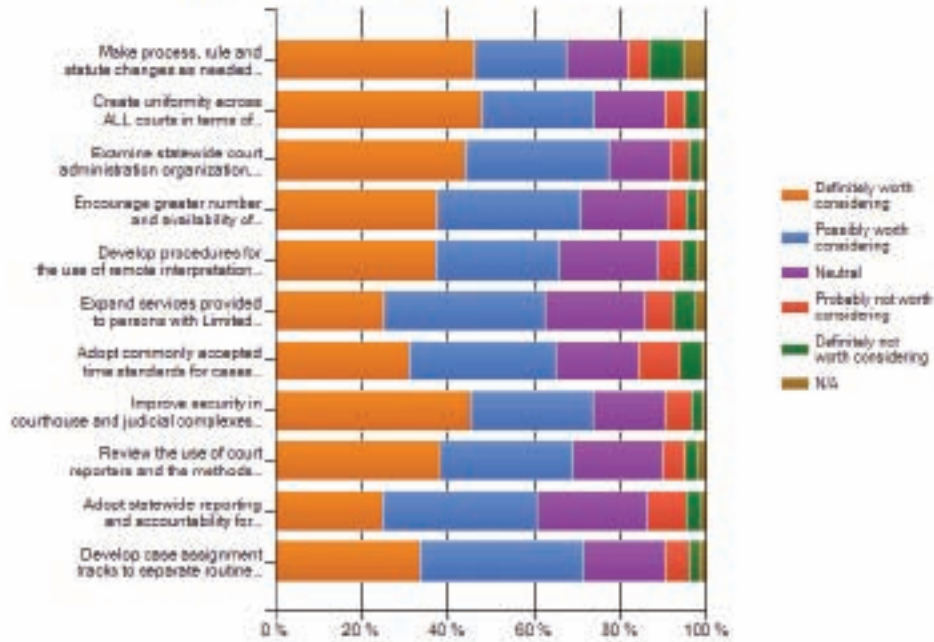
Please rate the following statements as they relate to the use and expansion of court-related programs.



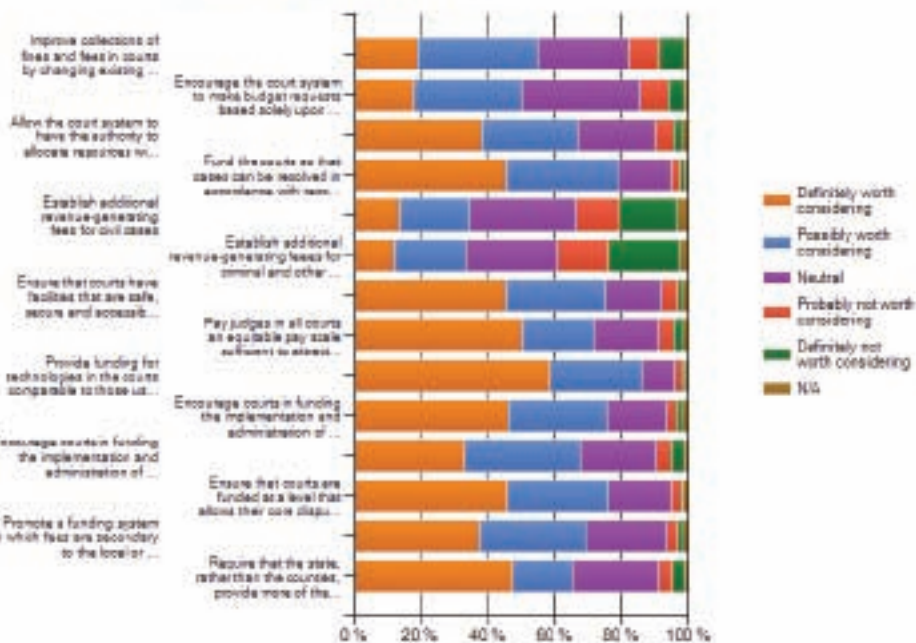
Please rate the following statements as they relate to the possible use of technology in the courts.



Please rate the following statements as they relate to business process improvements in the courts.



Please rate the following statements as they relate to opportunities to improve funding for the courts.



## State Trends and Analysis

### **Blue Ribbon Commission on the Judiciary**

In its review of emerging trends and issues, the Commission reviewed a multitude of documents and reports relevant to the court system in Georgia. Of particular note was the 2001 Blue Ribbon Commission on the Judiciary's report *Georgia Courts in the 21st Century*.<sup>2</sup> A brief summary of that guiding document is below:

#### I. Trial Court Structure and Processes

##### *Recommendations*

- That the Supreme Court amend the Uniform Rules to encourage the creation of drug court calendars;
- That the Supreme Court amend the Uniform Rules to encourage the creation of Family Courts.

#### 2. Appellate Structures and Processes

##### *Recommendations*

- That the Court of Appeals continue to receive additional judgeships in the future as may become necessary to accommodate its caseload;
- That the Supreme Court's responsibility for appeals in divorce cases and equity cases be reassigned to the Court of Appeals.

#### 3. Technology and the Judiciary

##### *Recommendations*

- That electronic filing should be available statewide;
- That the Superior Court Clerks' Cooperative Authority and the Supreme Court work together, invite participation by the Georgia Technology Authority where appropriate, to develop uniform standards, to create a central repository of electronic court records, and to control collection, storage, access and marketing of data that might be collected from court records;
- That, because the data in the courts is public, it should be accessible on the Internet;
- That the lines of authority among the Superior Court Clerks' Cooperative Authority, the Georgia Court Automation Commission, the Administrative Office of the Courts, and the Georgia Technology Authority be clarified;
- That all strategic planning for Georgia courts should include planning for technology.

#### 4. Enhancing the Effectiveness and Efficiency of Juries

##### *Recommendations – Treatment of Jurors*

- That courts adopt "one day/one trial" system wherever practicable;

<sup>2</sup><http://www2.law.mercer.edu/lawreview/getfile.cfm?file=531011.pdf>

## Research Findings

- That judges personally address jurors at their orientation sessions;
- That the Administrative Office of the Courts undertake a study of financial burdens by jurors and make recommendations for their amelioration through legislation if necessary.

### *Recommendations – Juror Understanding of Issues at Trial*

- That the Judicial Council propose Uniform Rules requiring that written instructions be provided to jurors for use in their deliberations;
- That Uniform Rules and jury instructions be developed to allow and govern the taking of notes by jurors during trial and asking of questions by jurors;
- That the Judicial Council of Georgia, in connection with the Institute of Continuing Legal Education, sponsor a “Georgia Jury Summit”.

### *Recommendations – Jury Pools, Size of Jury*

- That the General Assembly revise the “Motor Voter Jury Statute” to require that necessary information be provided to Jury Commissioners;
- That short juror questionnaire forms should be sent out, with a return envelope, along with the jury summons in courts throughout the state;

- That all civil juries be composed of six persons, rather than twelve;
- That all divorce, alimony, equitable division of property, and child support cases be decided by bench trial, rather than by jury trial.

## 5. New Tools for Judges in the Administration of Justice

### *Recommendations*

- That Alternative Dispute Resolution services should be available to trial courts throughout the state;
- That Guardians Ad Litem should be available to courts throughout the state;
- That the Uniform Rules be amended to authorize the appointment of Special Masters for resolving discovery disputes.

## 6. Attracting and Retaining Excellent Personnel in Judicial Service

### *Recommendations*

- That each full-time judge be provided with a law assistant;
- That the Institute of Continuing Legal Education and the Institute of Continuing Judicial Education provide seminars for law assistants and for trial judges about the proper roles law assistants might play for trial court judges;
- That all Magistrate Court judges be attorneys;



- That all candidates for State and Superior Court judgeships be required to have ten years of experience as an attorney;
- That counties with part-time Magistrate Court and State Court judges partner with adjoining counties so that all would become full-time judges;
- That all elections be non-partisan for Magistrate Court and Probate Court Judges and for Superior Court Clerks
- That Superior and State Court judgeships be changed to six year terms;
- That the General Assembly adopt a plan to adjust State judicial salaries in light of cost-of-living variance and to phase out the allowance of a county-paid supplement for Superior Court judges.

### 7. Making Courts More User-Friendly *Recommendations*

- That judges and judicial staff seek to be proactive in educating and informing the public about the work and processes of the courts;
- That the State Bar and the Supreme Court provide recognition for judges, clerks, and courts that are outstanding in their outreach efforts to inform the public about the judicial system;
- That judges and judicial staff should seek to make courthouses and courts more service oriented in their dealings with litigants,

lawyers, witnesses, victims, jurors, and the general public.

### 8. Financial Resources for the Judicial Branch *Recommendations*

- That the General Assembly be receptive to the inevitable future need to fund more judgeships to ensure the availability of reasonably prompt justice to every person within the state;
- That all Juvenile Courts be provided with adequately compensated staff in sufficient numbers to handle the case volume;
- That state funding be provided to establish drug court programs in all circuits adopting this judicial innovation and that the State provide drug treatment programs in areas where they are not currently available;
- That the General Assembly be responsive to the recommendations of the Supreme Court Commission on Indigent Defense.

### ***Court Governing Councils***

From 2008 through 2011, the various classes of courts underwent strategic business and operation planning through their judicial councils. Those reports were helpful to the Commission in noting central themes. Of particular note were the recurring issues of training, access to the courts, outreach by the courts to the public, and technological improvements.

### ***Local Issues***

Of course, the most notable discussion of trends in the state came from the members of the Commission itself. The judicial members, representative of the judicial system as a whole, were well connected in both their court's governing councils as well as in their local community. Legislators and various non-attorney and court leaders also shared helpful background and local experiences.

### ***State Bar of Georgia***

In dialogue with leadership from the State Bar, several issues were raised by the State Bar for consideration by the Commission. Below is a brief summary of the highlights.

- Technology improvements including e-filing and video conferencing and use of new technology;

- State-level commitment to accountability courts with standards;
- Standardization in policies and procedures for caseload management;
- Expansion of the Fulton County Business Court to other jurisdictions;
- Court reporting in the digital age;
- Increased need for court interpreters;
- Improved court security.

A preliminary draft of the proposed recommendations contained herein was presented to the Board of Governors of the State Bar at their annual meeting on June 22, 2013. The recommendations were approved unanimously.

## National Trends and Analysis

The Commission reviewed numerous articles and materials as part of its research efforts. These materials helped ground the Commission's work with regard to trends and issues around the country. Some of the highlights are noted below for background.

### **American Bar Association (ABA)**

The Commission also learned about national trends likely to affect the courts in the not-too-distant future. From the American Bar Association, the Commission reviewed the February 2011 speech from the Task Force on Preservation of the Justice System<sup>3</sup>, which noted:

- Develop/Administer growing array of specialized services/courts
- Provide adequate state court funding
- Invest in technology to overcome insufficient staff resources

The ABA also noted the issues of model time standards for state courts, electronic filing processes and drug court standards as emerging concerns of interest.

### **National Center for State Courts (NCSC)**

The National Center for State Courts is an independent, nonprofit court improvement or-

ganization that serves as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts. All of NCSC's services - research, information services, education, consulting - are focused on helping courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision-making.

For more than a decade, NCSC has published the *Future Trends in State Courts*<sup>4</sup> that focuses on scholarly attention to issues facing state courts around the country. In the latest issues reviewed, several topics were useful to the Commission in its research. From the 2011 edition, the issues surrounding increased access to the courts through:

- Technology – courtroom technology, online outreach
- Social Media – communication and outreach in the digital age
- Specialized Courts and Services – problem-solving courts, business courts, security
- Special Programs – adult guardianships, juvenile sentencing reform, mental health court accountability

<sup>3</sup><http://cjj.ncsc.org/News/-/media/Microsites/Files/CCJ/Web%20Documents/De%20Muniz%20Remarks.ashx>

<sup>4</sup><http://www.ncsc.org/trends>

From the 2012 edition, the issues surrounding the courts role in the community:

- Problem Solving Approaches – housing, intensive case management, due process for the self-represented, civics education;
- Education – reducing costs through “blended” learning, generational issues, court management training.

### ***National Association for Court Management (NACM)***

The National Association for Court Management has over 2,000 members from the United States, Canada, Australia, and other countries. NACM is the largest organization of court management professionals in the world with members from all levels and types of courts. NACM provides court management professionals the opportunity to increase their proficiency while working with colleagues to improve the administration of justice. The NACM National Agenda drives program priorities and improvements in

the court management profession. The six 2010–2015 NACM National Agenda priorities are<sup>5</sup>:

1. Emphasizing Caseload Management Improvements;
2. Sustaining Excellence in Difficult Budget Times;
3. Enhancing Public Perceptions of the Courts and Increasing Community Collaboration;
4. Promoting Improved Court Leadership and Governance;
5. Preparing For and Responding to Trends;
6. Supporting Professional Court Management Education.

These priorities are the core surrounding NACM’s educational and outreach activities and were helpful in the Commission’s research.

---

<sup>5</sup><https://nacmnet.org/nationalagenda.html>

In the pages that follow, the recommendations of the Commission are explained in more detail and placed in appropriate context. The Commission openly acknowledges that many of the recommendations are very broad in nature. We feel that the implementation of these recommendations may take years of work by judges, court staff, and the judicial community as a whole to fully realize. Many of these efforts will require support from the executive and legislative branches as well as public support from the State Bar, media, and the public as a whole.

Just as important, if not more so, is the need for the judicial community, not just judges but the judicial community as a whole, to work collaboratively on the implementation of these recommendations across jurisdictional, funding, and political lines. Only with such a community can the courts of Georgia be prepared for the future.

The following sections note the recommendations of the Commission along with contextual background and notes. When appropriate, general action steps are provided. Selected quotes from respondents to the statewide survey are also provided.

### **Education & Outreach**

*The provision of justice is central to the purpose of state government.* To that end, Georgia has long recognized the fundamental state obligation to provide an educated judiciary. Even in a system where most classes of judges are employed by local governments, the state has accepted the duty to provide uniform training and education within each class of judges. As a result, our Institute of Continuing Judicial Education (ICJE) has been a leader both nationally and internationally.

*In recent years, however, the duty to educate the judiciary has been questioned,* as indeed, each function of state government has been scrutinized in the face of falling revenues. The Judicial Branch, which already receives less than one percent of the state budget, has been particularly hard hit by budget cuts, and the state outlay for ICJE has been cut by more than half.

*As stewards of our justice system, the bench and bar have a duty to remind the legislature, the executive, and the public of the importance of an educated judiciary as a core function of government.* But stewards also have a duty to make wise, effective use of the public resources entrusted to them. To these ends, then, the Commission makes the following recommendations.

***“The courts are essential to constitutional democracy, which we know is the key to freedom in this country. But some of our fellow citizens don’t recognize what our courts do and what our courts mean to freedom in our country. So it’s our job to reach out and increase that understanding. This is not a lawyer issue, not a judge issue—it’s a public issue of significant policy proportions.”***

*- William T. Robinson, III  
2011-2012 President of the  
American Bar Association*

## Recommendations: Education & Outreach

***Recommendation: Commit to primarily state-funded Institute of Continuing Judicial Education (ICJE) while making judicial education more cost-effective***

***Discussion:*** The Institute of Continuing Judicial Education is a resource consortium of the Georgia Judicial Branch, the State Bar of Georgia, and the ABA accredited law schools of the State (Emory, Georgia State, Mercer, John Marshall Law School, and the University of Georgia). ICJE bears primary responsibility for basic training and continuing education of elected officials, court support personnel, and volunteer agents of the state's judicial branch. Conferences and seminars signify the products traditionally identified with ICJE by its constituents. During a typical program year, more than 50,000 attendee contact hours of training will be designed and delivered, involving more than 3,000 program participants.<sup>6</sup>

The ICJE is governed by a Board of Trustees comprised primarily of judges but also with the Executive Director of the Administrative Office of the Courts, representation from the Dean of each law school in the state, and a superior court clerk. ICJE provides training to judges of all six levels of trial courts (Superior, State, Juvenile, Probate, Magistrate, and Municipal) as well as to the clerks of those courts.

State funding for ICJE is minimal. For FY 2014, state appropriations are \$471,789. These limited funds support the six (6) full-time staff dedicated to coordinating the training of the

thousands of judges and court staff noted above. ICJE's current budget is less than half of what it was just five years ago and about one-third of what it was ten years ago. By way of a quick comparison, Michigan, whose population is approximately that of Georgia, spends approximately \$2.2 million on judicial education.

In a nutshell, state funding provides the framework for the educational program but those it trains must pay for the actual costs of training in the form of their own conference costs and travel. The Bench and Bar must not shirk from consistently reminding those in a position to affect the funding of judicial education that the provision of an educated judiciary is a core function of state government. That's not to state opposition to all local contributions, particularly for those judges dealing with local matters such as ordinance violations; but clearly, judicial education can be most effectively and efficiently organized through a single state agency. ICJE must constantly look for ways to make judicial education cost-effective. We believe that ICJE already does that in many ways, not least of which is allowing member-judges to take the lead in teaching their fellows, with no remuneration other than travel reimbursement. As technology advances, however, ICJE must continue to look for ways to rein in costs.

***Recommendation: Improve and enhance training programs including both remote training and in-person training, use of national-level speakers and materials, cross-training between classes of courts,***

---

<sup>6</sup><http://icje.uga.edu/annualreports.html>

*use of technology in the courts and interdisciplinary training on non-routine issues and the sciences - accounting, psychology, etc.*

**Discussion:** Generally speaking, the small amount of state funding places the burden on the local cities and counties. While arguably this should be the case for some of the courts that only serve a local function, limiting judicial training to the bare minimum that local governments can support in turn limits the depth and breadth of education that ICJE can provide.

ICJE should consider seeking additional state funding and/or grant funding for expansion of both learning modalities and curriculum. Additional learning modules could include self-learning with assessment whether online or via hardcopy materials; distance learning such as webinars or video conferences; regional training sessions; and cross-training with other classes of judges or courts. ICJE and the rest of the judicial branch must make use of advances in online communication to make meetings and materials available to judges remotely, either in real-time or by recording. Printed materials likewise should be available on websites managed either by ICJE or the respective classes of courts.

While Georgia is blessed with well-educated judges and attorneys who will provide training to their colleagues, ICJE needs the resources to bring in the occasional national-level instructor and materials. National speakers can be an invaluable resource and should remain a part of Georgia's judicial education. It may sometimes

be possible to have them speak remotely, by videoconference, but the interaction between live speaker and audience should not be discounted or completely eliminated. Many states' judicial education systems have developed training that is more evolved than Georgia. Funding permitting, ICJE, should assess how other states are effectively incorporating various aspects of adult learning styles.

Additional training is needed on a wide range of topics. The Commission has identified the potential need for specialized training and/or elemental training in disciplines that interface with our courts. With varying degrees of regularity, our courts are asked to make judgments on matters relating to finance and accounting; psychology; pharmacology; various sociological disciplines, such as domestic violence and criminology; and basic scientific theory, among others. It is important that our judges have the opportunity to receive training in these fields of study as they relate to judicial proceedings. A nationally-based scientific training, Advanced Science & Technology Adjudication Resource (ASTAR)<sup>7</sup> exists to train judges in the basics of the scientific method, and Georgia judges now have the opportunity to participate in ASTAR.

While travel makes up a large portion of the expense of judicial education, there is no substitute for the learning that takes place, formally and informally, in a group of peers. In-person conferences must be preserved as a cornerstone of the judicial education experience.

---

<sup>7</sup><http://www.astarcourts.net>

## Recommendations: Education & Outreach

**Recommendation:** *Ensure that judicial benchbooks are more widely available and relevant*

**Discussion:** All classes of courts should strive to ensure that judicial benchbooks are available on the most pressing topics such as civil, criminal, domestic violence, and family law. Judges and judicial educators should discuss the need for additional topics or “mini” benchbooks as appropriate. Further, such benchbooks should be kept current and relevant and made available in downloadable, searchable formats. The creation and updating of benchbooks should be a collaborative process involving judges, educators and attorneys as needed.

**Recommendation:** *Develop a robust multi-day new judge orientation for each class of courts*

**Discussion:** Currently, while new judge orientation exists for the different classes of courts, such training is sometimes inconsistent. The timing of new judge orientation also varies greatly. Some judges may not get orientation for nearly a year from the date they take office. Topics may include: case management, court administration, personnel management, inter-government departmental relations, public outreach and education, ethics, and professionalism.

**“There should definitively be a focus on educating the Court on current and upcoming technology that can be implemented in resolving cases.”**

**- Survey Respondent**

**Recommendation:** *Provide advanced training for career judges with more than 10 years on the bench*

**Discussion:** There is a wealth of national and even international educational opportunities for our judges. Georgia judges must remain active in the exchange of ideas and knowledge with judges from around the country and around the world. We have much to learn, and much to share with others. We must carefully ensure that the expense of such training is money well invested, but the returns on those investments should not be discounted.

ICJE should develop a curriculum for experienced, career judges – those with ten or more years on the bench. Such a curriculum could dramatically advance judicial administration as well as combating judicial burnout and the sorts of mid-career ethical/professional issues that have made so many headlines in recent years. For some, it could be coordinated with the Masters Degree or Certificate programs of the National Judicial College<sup>8</sup> or the American Institute for Justice.<sup>9</sup> For others, it could evince the aspect of accomplishing a fine-tuned project akin to that expected of court administrators completing the National Center for State Court’s Executive Development Program.<sup>10</sup>

<sup>8</sup><http://www.judges.org>

<sup>9</sup><http://www.aijinc.org>

<sup>10</sup><http://www.ncsc.org/Education-and-Careers/>



**Recommendation: Promote an ethics component in all trainings to include cultural awareness - gender, sexual orientation, Limited English Proficiency, etc.**

**Discussion:** The rash of judicial resignations and removals from the bench in recent years related to ethics investigations makes it clear that we need a stronger effort to stress to our judges, not just the Code of Judicial Conduct, but the fundamental virtues embodied therein — honesty, integrity and fairness. Too often it is assumed that such discussions amount to wasted words, but studies show that they do have an effect on behavior. Virtually every judicial training program should contain some ethical and/or professional component. Further, the Bar has suggested, and the Commission confirms, that cultural awareness should be woven into ethics training for both judges and court personnel.

**Recommendation: Support training for clerks, court administrators, and court support personnel**

**Discussion:** The judicial branch consists not just of judges, but also of clerks and other support personnel. In an effort to promote a well-trained judiciary, clerk, court administrator and support staff should receive appropriate training related to their role in the court. Whether underwritten by attendee fees or state resources, continuing education for

**“[C]ourt staff needs to be trained more on ethics, and this includes the judges.”**  
- Survey Respondent

court support personnel is in need of persistent attention and significant improvement. ICJE, for example, provides training for the clerks of the various classes of courts. Such training is generally focused on legal and procedural issues. The Georgia Council of Court Administrators (GCCA)<sup>11</sup> conducts its own training seminars for court managers throughout all levels of courts and focuses primarily on management issues – human resources, technology, caseload management, etc. Judges, clerks, and court administrators should work together to share their collective expertise with one another on topics of mutual interest and assistance.

**Recommendation: Promote transparency and timely public access to court procedures, schedules, records and proceedings**

**Discussion:** The Supreme Court of Georgia has long recognized that transparency and public outreach are critical to public confidence in Georgia’s judicial system and its constituent courts. See, e.g., *Atlanta Journal v. Long*, 258 Ga. 410, 411 (1988) (“Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose.”); *R.W. Page Corporation v Lumpkin*, 249 Ga. 576 n.1 (1982) (“This court has sought to open the doors of Georgia’s courtrooms to the public and to attract public

<sup>11</sup><http://www.gccaonline.org>

interest in all courtroom proceedings because it is believed that open courtrooms are a sine qua non of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society.'"). See generally *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1985) (recognizing that the U.S. Constitution and First Amendment afford a right of access to court records and proceedings: "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.").

Transparency and public outreach are now largely incidental to the judicial system's operation. The State Bar stewards a highly popular statewide civic education effort that reaches tens of thousands of students annually and occasionally runs public service announcements in support of the Georgia judicial system. But while there are notable exceptions – e.g., the Supreme Court – most courts in Georgia are not making systematic efforts to promote public access, interest, understanding or awareness, particularly with respect to their day-to-day work and decisions.

The need for such transparency and public outreach is growing exponentially:

*Traditional media coverage of the courts is declining. As the recession and the internet have roiled the media industry, local newsroom budgets have been slashed and their traditional court reporting sharply curtailed.*

- *Pro se* court use is up. As a result of the economic downturn, more and more court-users are untrained and uninformed do-it-yourself litigants.

- Court information seems increasingly inaccessible. As the public has come to expect information, particularly government infor-

mation, to be freely available on the internet, court information and records that may be public at the courthouse but not readily available free and online now seem anachronistically inaccessible, almost secret.

**"Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial."**

- Jeremy Bentham, 1843

may be public at the courthouse but not readily available free and online now seem anachronistically inaccessible, almost secret.

- Courthouses seem increasingly inhospitable. As a result of security concerns and budget cuts, the news services and citizens that do make the trip to the courthouse often find not a welcoming place that reflects the courts' fundamentally public nature but a cold and inhospitable fortress.

The Judicial Qualifications Commission recently observed that, "It is difficult to catalog succinctly the volume and variety of complaints we regularly receive on this issue." Opinion 239 (approved August 28, 2013).

**Recommendation:** Practice and promote transparency by adopting strong public service-oriented products such as news releases and informational portals to provide greater access to court information

**Discussion:** Courts at all levels in Georgia must promote long-term public confidence and support of the judicial system by demonstrating and practicing transparency, establishing as one of their core functions the effective provision of convenient and timely public access to court procedures, schedules, records and proceedings. The judicial system and each of its constituent courts should:

- Acknowledge as did the Supreme Court in *Long, supra*, decades ago that “like a candle” court records — and proceedings — “hidden under a bushel make scant contribution to their purpose” and that transparency and public outreach are essential court functions.
- Adopt strong public service-oriented products, including at a minimum free onsite non-delayed public access to procedures, schedules, records and proceedings.
- Regularly prepare and issue timely news releases understandable to the media and the general public accurately previewing or describing important decisions, events, initiatives and procedures, e.g., for a number of years now, the Supreme Court has been

preparing and issuing comprehensible summaries of the facts and issues in the cases to be argued before it.

- Establish effective portals, via social media or otherwise, for the dissemination of such releases.
- Seek funding to employ for this purpose single or multi-court public information officers with an understanding of the importance of providing excellent service to the press and public.
- Require that any court e-filing system developed locally or for implementation statewide be designed and operated to serve the public by:

i. Affording the public free and immediate access to e-filings at the time of filing via public access terminals at the courthouse;

*Court filings, like other events of significance, are newsworthy and of interest to the public when they occur, not days afterwards. Accordingly, courts in Georgia and elsewhere have long recognized that the public’s right of access to court records is a right of “immediate access.” Long, 258 Ga. at 414. No matter whether a court record is filed in paper or electronically, immediate access means the record should be available to the press and public at the courthouse on the day of filing, prior to processing or ‘acceptance’ by the clerk. See, e.g., Globe Newspaper Co. v. Pokaski, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”). Courthouse access, via*

## Recommendations: Education & Outreach

paper or public terminal, should also be free as “imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden,” *McFrugal Rental of Riverdale, Inc. v. Garr*, 262 Ga. 369 (1992). Federal courts in Georgia provide free public terminal access at the courthouse to e-filed documents immediately upon filing and prior to any processing or acceptance by a clerk.

ii. Having built-in provision for remote electronic access by registered members of the public for free or for a fee set at the lowest possible level sufficient to cover administrative costs; and

*The bar, press, and public have been conditioned by the Internet and the federal PACER system to minimal charges for remote online access to millions or billions of reams of public records, including the records of the nation’s federal courts.*

iii. Efficiently addressing privacy and ‘practical obscurity’ concerns not by curtailing or delaying remote public access to e-filings but by requiring e-filers to redact prior to filing on penalty of contempt certain specified categories of sensitive information.

See, e.g., *In re Adopting a Policy on Sensitive Information and Public Access to Electronic Case Files*, Standing Order No. 04-02 (N.D. Ga. 2004) (prohibiting the filing, on penalty of contempt, of full social security numbers,

dates of birth, etc.); Fed. R. Civ. P. 5.2 (Privacy Protection for Filings Made with the Court).

**Recommendation: Encourage public understanding and support of the judicial system. Train judges to educate the public about the role of the courts and importance of an independent judiciary and encourage the Institute of Continuing Judicial Education to instruct judges on how to do so consistent with codes of judicial conduct**

**Discussion:** As the Supreme Court observed in *R.W. Page*, “the dry prose of most judicial proceedings is not deemed ‘newsworthy’ by either the general public or the news media.” 249 Ga. at 576 n.1. As a result, the promotion of long-term public confidence and support of the judicial system requires proactive effort by judges at all levels to interest and inform the public about the nature and importance of the courts’ work and it is important that judges be trained on how to do so consistent with codes of judicial conduct.

**Recommendation: Support local and statewide civics education efforts by the State Bar, local bar associations and other civic groups, including encouraging judges to participate**

**Discussion:** Civics education should be a core function of the judicial branch. There is no more important task than the development of an informed, effective, and responsible citizenry. The American system of a three branch government

with checks and balances must be understood by the public. It is imperative, therefore, that judges, educators, and policymakers make the case and ask for the support of civics education from all segments of judiciary. The AOC<sup>12</sup> as well as the State Bar<sup>13</sup> have already developed some public outreach materials on the courts. But much more is needed. That information needs to be brought to the community – both to schools and adults – on an ongoing basis. The judiciary and the State Bar together must promote age-appropriate civics education on the Rule of Law and the role of courts in modern American society.

**Recommendation:** *Support appropriate efforts to make court procedures more intelligible to, and navigable by, pro se litigants*

**Discussion:** As a result of the economic downturn, more and more court users are untrained and uninformed do-it-yourself litigants. The abundance of information on the Internet, whether right or wrong, can be very empowering. The judiciary must be willing to support a system that is open to the self-represented litigant and, to that end, support efforts to ensure that such parties have access to the courts. See more in *Program Improvements*.

## Recommendations: Program Improvements

### **Program Improvements**

Courts, much like most government functions, are facing significant budget constraints and cannot expect the level of funding received in the past. The short-term cost reductions taken by courts – furloughs, training cutbacks, no investment in improvements – will not enable the courts in the long-term to provide their constitutional and statutory mandates to the public. Similarly, “band-aid” type of fixes to change how the courts will not meet the long-term problem. The Georgia courts must commit to planned, systemic changes to redesign key business processes. Such changes require collaboration but must also adhere to a coordinate strategic vision.

***“The increasing inaccessibility of legal services - for the poor, for even the middle class - undermines the rule of law for us all. We are a nation and state that believes the law provides protection for those who are most powerful, for those who are most vulnerable.”***

- Chief Justice Wallace B. Jefferson,  
*Texas State of the Judiciary 2011*

<sup>12</sup><http://www.georgiacourts.org/index.php/georgia-courts/learn-about-the-courts>

<sup>13</sup><http://www.gabar.org/forthepublic/forteachersstudents/lre/index.cfm>

## Recommendations: Program Improvements

**Recommendation: Endeavor to create a pro se center within each circuit so that resources for low income and pro se litigants are more in-line with the majority of states**

Discussion: The Fourteenth and Sixteenth Amendments of the US Constitution guarantee the right of the accused to refuse legal representation and act without a lawyer by proceeding “for oneself” or “on one’s own behalf,” otherwise known as *pro se*. With the number of self-represented litigants increasing, especially within domestic relation cases, courts are responding by improving access to justice and making courts more user-friendly and by establishing *pro se* centers where users can get access to simplified court forms, one-on-one assistance, and instructions on how to proceed *pro se*. This has not only empowered people to solve their own problems and improve the public’s trust and confidence in the courts, but has likewise benefited the courts through more efficient caseload and increased quality of information presented to judges.

The civil legal needs of low income Georgians cannot be ignored and are only becoming more pressing due to tough economic times. After a two-year legal needs study, the 2009 report of the *Civil Legal Needs Low and Moderate Income Households*<sup>14</sup> in Georgia noted the following needs:

- Consumer (e.g., abusive collection, oppressive contract terms, disputes over amount owed);

- Housing (e.g., utility issues, vermin, home and housing repairs, homelessness);
- Health (e.g., disputes with insurance company or provider over charges, refusal of provider to accept Medicaid, invasion of privacy issues, access to mental health services, denial of emergency care, and problems with nursing home);
- Employment (e.g., discrimination based on disability, criminal record, race or age, unemployment benefits; wage claims);
- Public Benefits (e.g., difficulty in applying, denials);
- Education (e.g., school discipline, poor quality);
- Family (e.g., child support, domestic violence, visitation, custody).

The report further noted that:

Court personnel report that unrepresented or self-represented litigants impede the efficient operation of the court system. More than 95% of these respondents stated that a lack of understanding as to how the court process works represents an obstacle to the courts’ ability to administer justice for all. Additionally, over 90% of court personnel listed “*pro se* expectations for assistance” as an obstacle to smooth court operations. These problems are exacerbated by the reality that there is a limited amount of pro bono or low cost legal services available. (More than 88%

<sup>14</sup>[http://www.georgiacourts.org/files/legalneeds\\_report\\_2010%20final%20with%20addendum.pdf](http://www.georgiacourts.org/files/legalneeds_report_2010%20final%20with%20addendum.pdf)

of court personnel cited the lack of pro bono or low cost services as an obstacle.)

While several self-help centers exist in Georgia, more are needed. Generally, programs exist in the metro Atlanta area (Fulton and DeKalb counties) with a few more scattered around the state (Appalachian and Northeastern circuits). These programs are, unfortunately, more often limited to family and domestic law issues such as divorce and child support. Additional resources are needed for probate, landlord-tenant, and other civil legal issues.

Many other states are much farther ahead than Georgia in development and state assistance for these programs.

Such programs should partner with local schools, local bar associations, and legal aid programs such as Georgia Legal Services Program in a cooperative and collaborative approach. Local attorneys should be actively involved while also recognizing that such programs are not meant to put them out of business. Attorneys too should assist these *pro se* centers with pro bono hours.

**“Forms and educational materials are not substitutes for a legal education. I believe that our profession should require that attorneys participate in pro bono programs which provide some level of legal services to needy litigants at no or reduced fees paid either by the party or paid by the system from fees assessed for this purpose.”**

**- Survey Respondent**

Rather, such programs often reinforce to *pro se* litigants that some legal actions that they would have otherwise attempted on their own are actually better handled with the assistance of a competent local attorney.

***Recommendation: Deploy plain-language, standardized statewide forms, including easy-to-use, interactive online versions of those forms to help ensure that needed information is provided to the court.***

***Discussion:*** Currently, some circuits have forms and others do not, which means some Georgia citizens are at a severe disadvantage in navigating the court system. When *pro se* litigants have no forms to use as a guide and file their paperwork incorrectly, this is a completely inefficient result for all involved; it delays entry of child support and visitation orders, and is not in the interest of any party. Additionally, reviewing incorrect paperwork creates more work for judges and their staff as it takes away time they could be spending on other matters.

The deployment of plain-language, standardized statewide forms, including easy-to-use, interactive online versions of those forms, can help ensure that needed information is provided to the court. A majority of the states already use state approved forms. All courts should allow for acceptance of standardized statewide forms.

## Recommendations: Program Improvements

**Recommendation:** *Expand or modify county and circuit law libraries to include user-friendly online materials and/or books that contain updated information that the general public finds useful.*

**Discussion:** County or circuit law libraries are an appropriate fit for providing services to the public. The law libraries in every courthouse should include user-friendly online materials and/or books that contain updated information that the general public finds useful. Materials should be organized by topic, then by type of action. Additionally, pro bono attorneys can provide brief lectures on basic elements of certain types of cases (i.e., divorce, 10 minutes) that could be video recorded and available for viewing at the library. The State Bar could also partner with local libraries as state repository of forms and information. The State Bar could provide assistance to generate recommendations for printed and online materials to provide consistency among the counties.

**Recommendation:** *Expand Alternative Dispute Resolution (ADR) programs to make them available to all litigants in Georgia and include reduced-cost mediation services for low income and pro se litigants.*

**Discussion:** Courts reap many benefits by using the Alternative Dispute Resolution (ADR) processes. They are generally touted as increasing participant satisfaction, reducing time, and saving money. No matter what the motivating factor, the court must always be focused on pro-

viding a just process through ADR. Additionally, while the outcomes may not be exactly the same as those reached through traditional litigation, the parties must perceive the process and the outcomes as fair. Well run ADR programs will result in three major benefits:

1. *Increasing Satisfaction* – Improving the experience that participants have while resolving their disputes is an important motivator for many court ADR programs. Whether framed in terms of justice or in terms of customer satisfaction, ADR is very successful. Either way, serving the party well is central to this motivation.
2. *Reducing Time* – Many courts have looked to ADR processes to reduce time spent on a case both by the court and by the parties. This time savings can be measured in many ways, including: time from filing to case closure; number of court appearances prior to resolution; and amount of attorney and/or judge time spent on discovery and other case tasks. Virtually all courts can look to ADR to reduce backlogs of cases by lessening the caseload of judges as many cases can be dealt with through the ADR process.
3. *Saving Money* – Courts see ADR as potentially saving parties money by reducing the number of attorney hours spent on the case, by decreasing the amount of discovery done, and/or settling the case sooner with fewer court appearances. For the courts,



savings are seen as coming from fewer court hearings and trials, and other time that would be spent by the judge and other court personnel on the case.

ADR processes are currently available in the courts of 121 of 159 Georgia counties. In some counties, ADR is available in just one court in just one county. In other counties, ADR is available in all of the trial courts – superior, state, magistrate, probate, and juvenile. Mediation is popular in superior courts as a way to reduce the caseload of family law cases. Magistrate courts appreciate ADR to help the courts handle the sheer volume and nature of disputes. Mediation is also appropriate and productive in juvenile and probate cases and in many minor criminal warrant applications. Courts, lawyers, parties, and taxpayers will benefit from more resolution options, more efficient courts, and less crowded dockets. ADR programs should be expanded to include all courts in all counties.

ADR programs should be made available to all Georgia residents – adults, juveniles, and the elderly – regardless of income. That said, such services should be made available at little to no cost for those who are low income.

***Recommendation: Expand ADR instructional opportunities and promote the establishment of mediation clinical programs at all law schools to bring students into the courtrooms to mediate real cases at no charge to the parties.***

***Discussion:*** Mediation clinics give those students

who may make mediation part of their professional lives a good start in terms of both skills and ethics. These programs help students see the benefits and limitations of mediation and other dispute-resolution techniques so that they can responsibly counsel their future clients about their choices. Such clinics also help students understand how feelings, background values, and personal style affect performance in a professional role. Participants benefit from these programs, as there is little to no cost for them. But just as important is that law students are highly motivated to help the parties resolve their conflict and will spend more time and effort to reach that goal.

ADR is a mandatory subject in only one Georgia law school, Walter F. George School of Law at Mercer University, where an overview class is required of all students at the start of their third year. At other schools, the available ADR classes are electives, yet they are chronically oversubscribed. There is great student interest and need, as ADR has become mainstreamed into legal practice. ADR instruction can be integrated into the law school curriculum in many ways. Introduction into the concepts and theories of ADR should be mandatory for students at all Georgia law schools.

All students at accredited Georgia law schools have access to at least one clinical ADR experience. Law students are hungry for practical experience, as reflected by the fact that current ADR clinics are chronically oversubscribed.

## Recommendations: Program Improvements

Courts will benefit by having cases handled by law students for academic credit rather than fees, and the legal profession will benefit from having lawyers who have hands-on experience in ADR. Law schools should continue to foster these clinical ADR opportunities and seek ways to expand them to benefit both law students and the courts.

**Recommendation:** *Increase the involvement of lawyers in Juvenile Court proceedings including Guardians Ad Litem (GALs), mentors, child advocates, etc.*

**Discussion:** The Commission is fully supportive of the efforts of the last few years by the Special Council on Criminal Justice Reform for Georgians. As part of its mandate, that Council recently made several recommendations with regard to juvenile justice reform. One of the primary goals of those reforms is to encourage treatment and services at the community level where taxpayer dollars can be more effective. Local attorneys can play a variety of roles in juvenile court in the form of:

1. Guardians Ad Litem (GALs):
  - a. Fulfill state and federal statutory mandates to protect and promote the best interests of juveniles in abuse and neglect court proceedings and specifically, the training of Guardians ad Litem in particular for their new GAL duties in HB242;<sup>15</sup>

- b. Help the courts work efficiently toward safety and permanence for children;
- c. Conduct independent investigations to determine the facts, needs of the child, and the resources appropriate to meet those needs;
- d. Determine the wishes or expressed preferences of the child and report those to the court; and
- e. Provide a voice for abused and neglected children in every county of the state.

2. Mentors – encourage attorneys to become involved as mentors

3. Child Advocates

- a. Work in conjunction with the new child advocacy section of the bar to identify juvenile court issues; and
- b. Assist with development at the local and state level of protocols for Child in Need of Services (CINS) and Family in Need of Services (FINS) designations.

**Recommendation:** *Support the establishment of accountability courts or alternatives for substance abuse and mental health treatment throughout the state.*

**Discussion:** The first drug court in Georgia began operations in 1994 in Bibb County. Since that day, over 100 more accountability courts have begun operations in the State of Georgia. In ad-

<sup>15</sup><http://www.legis.ga.gov/Legislation/20132014/135887.pdf>

dition to felony drug courts, accountability courts also comprise mental health courts, juvenile drug courts, DUI courts, family dependency courts, veteran treatment courts and problem solving courts. Currently, approximately half of the counties in state have at least one accountability court but 44 counties still have no adult felony drug court or mental health court.

In 2011, the Special Council on Criminal Justice Reform for Georgians,<sup>16</sup> first recommendation was to “create a statewide system of accountability courts.”<sup>17</sup> Following the report’s recommendations, the State of Georgia appropriated \$11.7 million to the Criminal Justice Coordinating Council (CJCC) to be used by the Accountability Courts Funding Committee to accomplish that recommendation. The Accountability Court Funding Committee’s objectives are to: 1) take Georgia’s accountability courts to scale; 2) reduce incarceration rates; 3) determine accountability court funding priorities; 4) encourage adherence to standards; and 5) save lives, restore families.<sup>18</sup>

In 2012, HB 1176<sup>19</sup> the Georgia Legislature mandated that the Judicial Council develop standards and best practices for each type of accountability court. The Judicial Council has

developed Certification and Peer Review processes for each type of accountability court. Additionally, the Judicial Council has established statewide performance measures to monitor the performance of these programs.

The Commission recommends the establishment of a felony drug court, mental health court and juvenile drug court in every judicial circuit to provide the opportunity for access to accountability courts for all Georgians. Further, the Commission supports efforts to ensure that accountability courts are operating under approved standards and complying with best practices.

Fortunately, following the issuance of the Report of the Special Council on Criminal Justice Reform, Gov. Nathan Deal and the Georgia Legislature have helped to provide the mechanisms to accomplish the two goals. The Judicial Council is completing the process of approving the required standards for accountability courts and the certification and review process.<sup>20</sup> The funding provided by the legislature will help to implement courts in areas that might not have been able to completely fund them on a local level.

The implementation of accountability courts

<sup>16</sup>[http://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/press\\_release/Report%20of%20the%20Special%20Council%20on%20Criminal%20Justice%20Reform%20for%20Georgians%202012%20-%20FINAL.pdf](http://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/press_release/Report%20of%20the%20Special%20Council%20on%20Criminal%20Justice%20Reform%20for%20Georgians%202012%20-%20FINAL.pdf)

<sup>17</sup>Report of the Special Council on Criminal Justice Reform for Georgians, November 2011, page 13. The Report specifically provided that:

“The Council recommends expanding the number of accountability courts and implementing a comprehensive standards and evaluation system to ensure all accountability courts are effective at improving public safety. Georgia has a number of accountability courts currently operating, including drug courts, mental health courts, veterans’ courts, and others, but some areas of the state do not have any accountability courts. Drug courts, for example, have been proven effective when they follow specific best practices both here in Georgia and across the country. By creating a statewide system of accountability courts that establishes best practices, collects information on performance measures, increases funding and conditions funding on adherence to best practices, Georgia can ensure that its accountability courts are making the most of their potential to increase public safety and controlling costs.”

<sup>18</sup><http://www.gaaccountabilitycourts.org>

<sup>19</sup><http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/1176>

<sup>20</sup><http://www.georgiacourts.org/index.php/aoc/court-services/accountability-courts>

## Recommendations: Program Improvements

faces greater challenges than just money alone. It requires the commitment of a judicial circuit and the local government officials to put together a team and secure local funding and support. The Judicial Council and CJCC, with the assistance of the District Court Administrators, should consider developing a team of specialists in implementing accountability courts that could:

1. Identify circuits without accountability courts;

2. Provide encouragement to those circuits to establish a program and meet with local officials, if needed; and,

3. Support to help develop the local team, find funding, implement a program and begin operations.

More evaluation and study of accountability courts targeting domestic violence offenders should be completed to determine the effectiveness. If determined effective, the Judicial Council should consider a similar plan of implementation as with other accountability courts.

## Recommendations: Technology

### *Technology*

The courts are still a system that requires large resources of people – judges, court staff, lawyers, and the parties in each case - and time – for arguments and discussion and thoughtful deliberation. And those people generate a great deal of paper for their arguments, discussion, and deliberation. The world is changing around us. Some days it feels as if technology is advancing faster and faster. Everything is going digital. That makes the courts a sort of anathema in the eyes of a technologically focused world. But how can a system that revolves around people, time, and paper embrace a technological world? Only by understanding the role that the people, time, and paper play in the system can technology be used to improve the efficiency of each of those elements.

***"Technology is a powerful enabler that can empower courts to meet core purposes and responsibilities, even while severe economic pressures reduce court staff, reduce hours of operation, and even close court locations."***

*Chris Crawford, deceased  
Former President of Justice Served, an alliance of court management and justice experts*

**Recommendation:** Support the establishment of a statewide e-filing portal for electronic filing of civil case documents across all levels of courts.

**Discussion:** Disputes in court require the exchange of information. The primary medium of that exchange has been paper. Georgia courts struggle to process, manage, and store countless court documents. With current technology, it is now possible to receive and store those documents digitally. But sorting documents digitally is

**“The need for a state-wide e-filing and remote access system is paramount, especially in civil cases.”**  
- Survey Respondent

only the first step. Courts need to be able to accept

and eventually transmit and share documents electronically. With electronic filing (“e-filing”), storage expenses can decrease dramatically. Clerks who formerly spent time sorting and file-stamping documents can be assigned to more productive activities. Documents will no longer be damaged or lost. The public, lawyers, and judges can instantly access vital pleadings, accelerating the progress of litigation.

The federal courts, including the bankruptcy courts, district courts and courts of appeals, offer e-filing through a unified, nationwide system known as PACER<sup>21</sup>, and most of those courts require lawyers to file electronically. The Public Access to Court Electronic Records (PACER)

system currently has nearly one million users. A recent PACER survey shows that 90% of users were satisfied or highly satisfied with the system. Twenty-three states mandate e-filing to varying degrees.

Courts who have embraced e-filing have reported dramatic improvements in efficiency and decreased costs. Numerous court systems from Alabama<sup>22</sup> to Iowa<sup>23 24</sup> and Alaska<sup>25</sup> to Vermont<sup>26</sup> have developed or are developing systems. Georgia too could see benefits from e-filing including:

- Quicker access to e-filed documents;
- Increased efficiency for attorneys and litigants;
- Reduced printing and mailing costs for attorneys and litigants;
- Reduced storage costs for clerks since documents arrive in original format rather than scanned;
- Greater security of court documents in the event of disaster;
- More efficient use of court staff, as employees typically assigned to accept documents at the clerk’s office counter can be retrained for higher skilled positions; and
- Increased transparency and access to the courts;

<sup>21</sup><http://www.pacer.gov>

<sup>22</sup><http://efile.alacourt.gov>

<sup>23</sup><http://www.iowacourts.gov/wfdata/files/StateofJudiciary/2012/EDMSInformation.pdf>

<sup>24</sup><https://www.iowacourts.state.ia.us/efile/>

<sup>25</sup><http://www.courts.alaska.gov/lynx/>

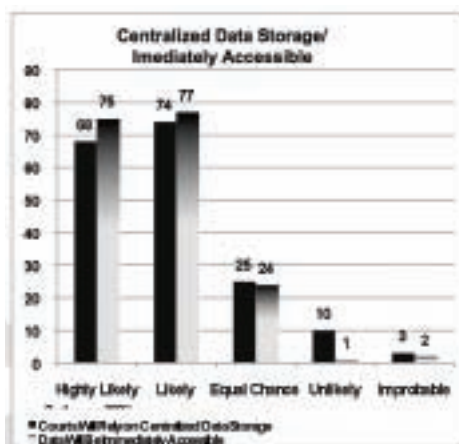
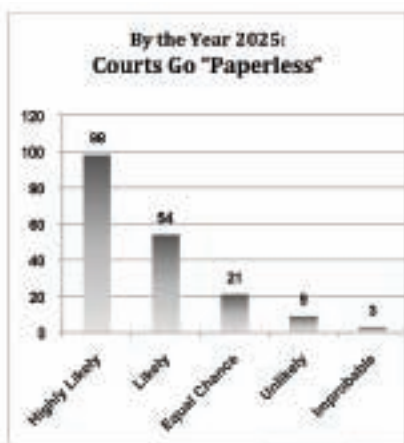
<sup>26</sup><https://efiling.eservices.crt.state.vt.us>

## Recommendations: Technology

- Information can generally be found more quickly in an e-filed document because of the capacity to search for words and phrases. Documents can also be easily cross-referenced and hyperlinks can facilitate direct citation to other filings, legal databases, and exhibits.

All of this enhances the quality of the judicial process.

A recent national survey of court administrators conducted by members of the National Association for Court Management revealed some interesting trends. By 2025, the survey noted that many courts will be “paperless” and that court data will be more accessible.



Georgia should embrace e-filing in the courts. The Commission fully supports this effort and also notes the following:

- E-filing should be a statewide effort with each class of court setting its own standards and protocols with input from judges, clerks, attorneys, and court administrators. An overarching governing group should be in place with broad representation to set overall standards and protocols;
- The courts should develop a uniform set of case initiation forms and information required for filing at the various levels of court and case type;
- Any e-filing system should use a uniform method of access and filing throughout the state. All courts should be accessible through one initial web site that directs users either through links or dropdown boxes to specific courts and counties;
- E-filing should be mandatory and eventually available in all levels of courts;
- Every attorney registered to practice law within the State of Georgia should be required to file and maintain an e-mail address to accept service of any electronic filing;
- Pro se* litigants who apply for a filing fee waiver should be not required to participate in e-filing unless an approved protocol is setup up to allow those filings at no cost to the user (i.e., receive a code from the clerk);

7. Appropriate enabling legislation should be in place to support a statewide e-filing system;
8. If a user fee is required, allowing for use by credit card, account billing, and ACH should be in place and such fees should be reasonable and used only for the support and maintenance of the e-filing system and/or shared with the clerk's office where the filing is made.

**Recommendation: Promote electronic access to civil and criminal court records across all levels of courts.**

**Discussion:** Digital storage of electronic documents provides litigants, courts, and the public the additional benefit of instant access to court papers anytime and anywhere. This creates greater transparency in the judicial system. This efficient access to documents is not present in traditional paper filing systems. Overall, this is beneficial to lawyers and court personnel because of the ability to access documents electronically without leaving their offices.

Some of the benefits of electronic access ("e-access") are:

- Elimination or reduction of many paper records in law firms and court storage facilities;

- Immediate access to court records thereby reducing delay and waiting times;
- Many documents may be in native digital format allowing for text to be searched electronically;
- Access to court records is critical to public confidence in Georgia's judicial system and its constituent courts.

Electronic access to court records bolsters the openness of Georgia's courts, the "*sine qua non* of an effective and respected judicial system." *R.W. Page*, 249 Ga. at 576 n.1. The state government and local law enforcement will benefit as well. Accordingly, the Commission also supports the establishment of a statewide judicial data warehouse or clearinghouse system. Several years ago, Michigan began a statewide effort to share judicial information. Like Georgia, each of Michigan's 241 trial courts could use its own local case management system of which there were 29. It was difficult, if not nearly impossible, to know if a person had a case in more than court without going to the each court individually<sup>27</sup> that resulted in<sup>28</sup>:

- Ability to obtain complete Michigan Judicial history on individuals in an efficient manner;
- Effective data sharing between other Michigan government agencies,
- Access to consistent data within one, statewide database with standardized court data,

<sup>27</sup><http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FOC/Documents/Pundits/2012%2001%20Pundit.pdf>

<sup>28</sup><http://www.enterprise.bull.com/references/WebmichiganSCAO.html>

## Recommendations: Technology

- Complete picture of an individual's history with the Michigan Judicial system,
- Assistance with locating individuals for collection purposes and making more informed sentencing decisions,
- User-friendly applications for searching and querying data, and
- Statewide performance tracking in areas such as abuse and neglect cases and recidivism rates of drug court participants.

Statewide efforts such as these require support and cannot be successful without support from the State Bar.<sup>29</sup>

The federal judiciary too recognizes the benefits of data sharing. Recent efforts have identified:

- Reduced data entry costs
- Increase data consistency and reliability
- Improved data analysis for trends and decision making.

The federal judiciary has included data sharing along with many other technology improvements in its 2013 long range information technology plan.<sup>30</sup>

The importance of transparency cannot be understated. Wider, more immediate access to court records assists journalists and advocacy groups as well as citizens. Many other states are much farther along with than Georgia in the race to make court records more accessible.<sup>31</sup> This

fosters public safety while increasing confidence in the government's actions. The courts exist to serve the community and are the custodians of the records filed. Those records must be available to the community.

***Recommendation: Encourage the adoption of legislative and rule changes to ensure the protection of personally identifiable information found in court records.***

***Discussion:*** With the increase in electronic access to court records, personal information about parties in a case may be more readily available for identity thieves. The National Institute of Standards and Technology defines Personally Identifiable Information<sup>32</sup> as: "any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, Social Security Number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information."

With court records becoming more widely available in electronic format, the possibility for misuse of a person's information is increasing. In order to curb these problems, the legislature must enact statutes prohibiting the online publication of Personally Identifying Information. These statutes, though, should place a burden on lawyers, and not the courts, to remove this infor-

<sup>29</sup>[http://www.michbar.org/generalinfo/jcft\\_only/TechCrossroadsFullReport.pdf](http://www.michbar.org/generalinfo/jcft_only/TechCrossroadsFullReport.pdf)

<sup>30</sup><http://www.uscourts.gov/uscourts/FederalCourts/Publications/2013ITLongRangePlan.pdf>

<sup>31</sup><http://www.rcfp.org/rcfp/orders/docs/EACR.pdf>

<sup>32</sup><http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf>



mation from court documents. Such legislation should help curb the amount of personal information on the Internet while holding attorneys responsible for safeguarding the interests of their own clients.

In their e-filing systems, federal courts have effectively protected against such illegal conduct while preventing unnecessary closure of records or delays in access by adopting clear rules requiring parties and their counsel to redact certain information (e.g., full social security numbers and dates of birth, etc.) from pleadings and other documents prior to filing and limiting remote access to certain types of electronic files. See, e.g., *In re Adopting a Policy on Sensitive Information and Public Access to Electronic Case Files*, Standing Order No. 04-02 (N.D. Ga. 2004); Fed. R. Civ. P. 5.2 (Privacy Protection for Filings Made with the Court). A number of state e-filing courts, including Alabama, have followed this lead without incident. See, e.g., *Administrative Policies and Procedures for Electronic Filing at 9-10* (Ala., September 6, 2012) (privacy and security provisions)<sup>33</sup>; Ala. R. Civ. P. 5.1 (Privacy Protection for Court Filings) and Committee Comments (emphasizing at 5.1(f) “that this procedure does not impose any responsibility on court officers or personnel to review documents for redactions or to redact documents”).<sup>34</sup>

**Recommendation: Support the adoption of a web-based central registry of attorney conflicts and leaves of absence.**

**Discussion:** There is an often quoted saying that “justice delayed is justice denied.” While there

**“A state wide conflict / leave of absence system that is primarily electronic would be ideal so that attorneys, judges and clerks all have up to date information.”**

**- Survey Respondent**

are many causes for delay in the judicial process, the availability of the attorneys in a

particular matter are crucial to that case moving forward. Likewise, if a case is scheduled before a judge with a busy calendar, and if that case ends up not having its day in court due to the unavailability of one or more of the attorneys, that is an inefficient use of judicial resources. Another matter could have been scheduled instead.

Attorneys are required to submit conflicts and leaves of absence to the courts. And they do and sometimes at considerable time and expense if that attorney has a busy practice with many open cases. An attorney who wishes to go on a family vacation may have active cases in several dozen courts or counties. A centralized statewide registry of conflicts and leaves of absence would make this process more efficient by allowing the attorneys to submit their information once and have it instantly available to every court and to other attorneys.

<sup>33</sup><http://www.alabar.org/media/AdministrativePoliciesandProcedures.pdf>

<sup>34</sup>[http://judicial.alabama.gov/rules/rcvp\\_5\\_1.pdf](http://judicial.alabama.gov/rules/rcvp_5_1.pdf)

### ***Business Process Improvements***

According to the Court Business Process Enhancement Guide produced by the National Center for State Courts and SEARCH<sup>35</sup>, Business Process Improvement or Enhancement is defined as:

“The establishment of goals or expectations for one or more processes, analysis of how those processes are actually carried out in a court or any other organization, and adjustment of those processes if their results do not meet the goals or expectations. Process improvement and process reengineering refer to the scope of the process review, from process improvement of a specific function or activity to a fundamental restructuring or reengineering of a major function or system. . . . Process improvement is a disciplined approach to the simplification and streamlining of business processes, using measurements and controls to aid continuous improvement.”

The courts, like any good government function, must improve service delivery while reducing costs. To do this effectively, the courts cannot make such changes overnight. It takes a thoughtful and deliberate process involving planning and collaboration.

The Business Process Improvement Committee determined early on that it would focus on two major areas: Court Reporting and Court Interpreting. The committee reviewed information gathered and reports written by the Judicial

Council and Board of Court Reporting, the Commission on Interpreters and the Department of Justice. Additionally, questions pertaining to these two issues were included in the survey conducted by the Commission.

Of the responses received for the survey, the responses around the two major issues seem to be split. For instance, under the Business

***"The courts recognize that things aren't going to get back to whatever 'normal' is and that there will be less revenue in the future, and they are preparing for that."***

*Daniel J. Hall, Vice President of the National Center for State Court's Denver, Colorado-based Court Consulting Services*

Process Improvement section of the survey the rating for encouragement of a greater number of qualified interpreters, development of procedures to use technology for remote interpreting and expansion of services for Limited English Proficiency (LEP) persons were not seen as high priorities. Likewise, there was little interest or recognition of the need to review the practice of court reporting in terms of new technology. However, under technology, use of telephone and video technology to conduct certain court activities and provide access to court interpreters was given a high ranking as was the use of electronic means to distribute and publish more court communications and implementation of electronic signatures for court docu-

<sup>35</sup><http://www.search.org/files/pdf/CourtBPEGuide.pdf>

ments. Use of technology in these areas would certainly open the way to use of technology for court interpreting as well as court reporting. Another closely aligned use of technology was an increase in the use of telephone and video technology for various in-court proceedings, including use of video conferencing for off-site live testimony. In other states this same technology is being used as the basis to provide remote interpreting, for both Limited English Proficiency and hearing impaired, and court reporting services.

Also of interest to those surveyed was the provision of “funding for technologies in the courts comparable to those used in other governmental agencies and private businesses.” The private sector and other governmental entities have been using technology to record proceedings and to provide language and hearing impaired access for some time. The development of these technologies gives us the opportunity to adapt them to court use.

Numerous business process improvement topics came up as a result of the survey. Case-flow, scheduling, training and many more issues were raised. Judicial leaders should make note of these and include them in their long-term planning for improvements.

***Recommendation: Promote a uniform approach for the clerk of court to maintain all trial evidence, to mark and note all evidence during a trial and retain such evidence in compliance with appropriate retention schedules.***

***Discussion:*** The clerk of court, whether in a municipal court or a superior court, is the custodian of the court’s records and is therefore responsible for their maintenance and storage. The maintenance of the trial record is an important part of the overall court record. In Georgia, while the ultimate responsibility for the record will lie with the clerk of court, court reporters and other court staff are often responsible for the interim record. That is, someone other than the clerk, usually a court reporter, will maintain the trial records until such time as the trial is completed and a transcript filed. There are, of course, some exceptions when appeals are made, etc., but that is not of consequence here.

The Commission recommends that training be given to anyone who may play a role in handling trial evidence. As the clerks are the ultimate custodians, their councils would be the logical entity that should be responsible for developing a training process for those involved in the trial process. This training, whether in-person, web-based, or a written guide, will promote both uniformity in the marking and maintenance of trial records but also outline expectations to ensure that trial records are maintained and preserved securely.

**Recommendation:** *Support the ability of clerks of court to charge reasonable, cost-based fees for copies.*

**Discussion:** Georgia law properly permits clerks of court to impose reasonable, cost-based fees in response to requests for access to court records that seek copies of the records or that otherwise involve an unusual administrative cost or burden. See *McFrugal Rental*, 262 Ga. at 369 (“a fee may not be imposed ... when a citizen seeks only to inspect records that are routinely subject to public inspection”). The Commission fully supports the ability of clerks of court to charge and collect such fees. Further, the Commission supports sharing with the clerks any fees received from electronic access to court records.

**Recommendation:** *Encourage the Judicial Council and the Board of Court Reporting to collaborate with clerks of superior court and other courts of record when developing the rules and regulations for transcript preparation and storage to effect implementation.*

**Discussion:** The Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council are the bodies responsible for certification and licensing of court reporters; for setting rules and regulations for the practice of court reporting; and for setting the fees that may be charged for per diem and the preparation of transcripts. Over the past two years, a committee of the Judicial Council has been reviewing

the fee schedule, transcript production and business process. At its meeting in April 2013, the Judicial Council adopted a set of recommendations for action by the Board of Court Reporting and the Judicial Council.<sup>36</sup> Suggested time periods are included for meeting the demands of the recommendations with the exception of Recommendation 3.2.

**Recommendation:** *Encourage the adoption of appropriate technologies for court reporting and court interpreting to enhance business processes*

**Discussion:** The Commission on Interpreters (COI) has been very cognizant of issues surrounding court interpreters for the Limited English Proficiency population and the hearing impaired and the impact on access to our courts. The COI has adopted language in its rules governing the use of court interpreters to meet the standards set by the American Bar Association in 2011 and the requirements of the 1964 Civil Rights and subsequent acts to ensure equal access to the courts and that no group is discriminated against because of their inability to speak English well enough to understand court proceedings and their ramifications.

The COI is also working on a language access plan that may be adopted as part of the rules but may also be used as a template for each court to develop its own language access plan.

The recommendations adopted by the Judicial Council in April 2013 require the Judicial

<sup>36</sup><http://www.georgiacourts.org/index.php/judicial-council>

Council to develop standards for electronic reporting. Also, the Board of Court Reporting is to develop certification criteria for electronic monitors in courtrooms.

**Recommendation:** *Promote increased availability of interpretation services including remote interpretation, translation of court forms, etc.*

**Discussion:** The Administrative Office of the Courts, the administrative arm of the Judicial Council, sought and received an appropriation to pilot a remote interpreting project to determine the feasibility of providing remote interpreting services. The premise of the project is that interpreting resources are found primarily in the metro Atlanta area and that remote interpreting would help minimize the cost to a court in a rural area by the provision of court interpreter services at a flat rate with no minimum guarantee and no travel associated with the services. The pilot was set up at two sites and limited to Spanish interpretation. Unfortunately, the sites chosen have not generated enough use

of the service to allow a meaningful evaluation. One of the sites will be closed down and the equipment moved to another site where it is anticipated there will be more use of the interpreters.

On the national front, remote interpreting and the technology for interpreting services has come to the forefront with the National Center for State Courts (NCSC), the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) developing standards for remote interpreting<sup>37</sup> and providing technical assistance to states on these standards.<sup>38</sup> At the Court Technology Conference in September 2013, one of the six educational tracks was devoted to the use technology for court interpreting and remote interpreting.<sup>39</sup> Special attention should be given to what national experts and other states have done in this area. As appropriate, Georgia should develop and adopt standards for remote interpretation.

<sup>37</sup><http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-Access/LA-Summit/Program/-/media/Files/PDF/Conferences%20and%20Events/Language%20Access/Abstract-Remote%20Interpretation%20National%20Standards%20V3.ashx>

<sup>38</sup>[http://www.sji.gov/articles.php?pg=LEP\\_and\\_state\\_courts](http://www.sji.gov/articles.php?pg=LEP_and_state_courts)

<sup>39</sup><http://www.ctc2013.com>

### *Funding of the Courts*

Money. It makes the wheels of government turn. Money keeps the doors to justice open. While the adage of “doing more with less” imparts both a duty and sense of professional accomplishment, we must be mindful that the courts are primarily people and that even automated processes cannot replace the human interaction that is inherent in the judicial process. Judicial leaders from around the country have been lamenting for several years now about the effects of budget cuts, furloughs, staff reductions and the like on the judicial system. Entire conferences and educational seminars have been dedicated to the topic and how to cope with reduced funding while streamlining business processes and procedures.

In 2011, retired US Supreme Court Associate Justice Sandra Day O’Connor gathered with leaders of the American Bar Association and other judicial leaders to share thoughts on the crisis in court funding.<sup>40</sup> A few key items were noted:

- Courts must forge alliances with the Bar and legislature to be “true partners” in supporting the courts;
- Reengineering court processes to be cost effective must be embraced;
- Courts must still provide essential services regardless of a person’s ability to pay and some services cannot be compromised;
- Outreach efforts about the role of the courts and the impact of reduced funding.

***“Courts across the state have reduced spending, cut staff, and made reductions through temporary furloughs. Courts are different than public agencies. We can compromise on budgets, but we cannot compromise on justice.”***

*Former Chief Justice Thomas J Moyer,  
2009 Speech to the Ohio State Bar*

The American Bar Association’s Task Force on Preservation of the Justice System documented in their 2011 report “Crisis in the Courts”<sup>41</sup> the extent of judicial underfunding. That report noted four major harms created by the chronic underfunding:

1. *Adverse Impact on Public Safety* – delays in resolving criminal dockets results in jail and prison overcrowding or early release of violent offenders;
2. *Adverse Impact on the Economy* – effects of delays outweigh cost savings from reduction;
3. *Adverse Impact on Those Who Need the Protection of the Courts* – divorce, custody, property, and other cases become increasingly complex as everybody fights for the little dollars there are with more of those cases being *pro se* and taking more judicial time;
4. *Adverse Impact on Our System of Government* – the judicial system is at the mercy of the executive and legislative branches for its support and funding thereby diluting its role as a co-equal branch of government.<sup>42</sup>

<sup>40</sup><http://www.abanow.org/2011/08/time-to-act-for-adequate-court-funding-is-now-say-oconnor-bar-leaders/>

<sup>41</sup>[http://www.micronomics.com/articles/aba\\_report\\_to\\_the\\_house\\_of\\_delegates.pdf](http://www.micronomics.com/articles/aba_report_to_the_house_of_delegates.pdf)

<sup>42</sup>[http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Better-Courts/-/media/Microsites/Files/Future%20Trends%202012/PDFs/Crisis\\_Grossi.ashx](http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Better-Courts/-/media/Microsites/Files/Future%20Trends%202012/PDFs/Crisis_Grossi.ashx)

**Recommendation:** *Support an increase in state-based funding necessary to provide statewide court improvement programs in the future.*

**Discussion:** While the Commission supports increased funding for the courts in general, it fully recognizes that the courts must be good stewards of the public's trust – both in terms of confidence and funding. We recognize that the courts may never return to funding levels of the past nor may they reach sufficient levels in the future.

The Commission does feel strongly that in order for the courts to be successful in their missions, there must investment. But like any investment, strategy must be involved. Funding must be made available for the courts to support initiatives that promote cost effective improvements. These include:

- Supporting educational and training programs that promote better efficiency and effectiveness of the courts, judges and court staff
- Supporting programs that can be evaluated for effectiveness or are evidence-based such as accountability courts, alternative dispute resolution, business courts and family-centered approaches (family courts, juvenile reforms, etc.), pro se programs, etc.
- Supporting the use of technology to improve efficiency of court processes, including the adoption of technology fees only if needed, dedicated to court technology initiatives

- Supporting business process improvements and enhancements based on sound principles and measures that may result in:

- (a) Eliminating functions and processes that are no longer necessary, have less priority or can no longer be afforded by the courts;
- (b) Consolidating functions or removing redundancies to improve effectiveness.

**Recommendation:** *Encourage legislative changes that allow for the currently established self-funded programs and user fees to actually be used for their intended purposes rather than simply going over into the general revenue funds of both state and local government.*

**Discussion:** In Georgia there are numerous fees attached to case filings, criminal fines or as separate fees for service.<sup>43</sup> These range from the Indigent Defense Application Fee (O.C.G.A. § 15-21A-6), Local Victims Assistance Program (O.C.G.A. § 15-21-130) and Crime Lab Fee (O.C.G.A. § 42-8-34) to charges for copies. Unfortunately, many of these functions ultimately receive far less than the funds actually collected as such funds are deposited in the state or local general funds. In tough economic times, those funds have been reallocated to other government priorities oftentimes putting some of those services and functions at risk. Statutory support for provision of funds for various court programs and services from user fees is inconsistent at best.

<sup>43</sup>[http://www.georgiacourts.org/aoc/publications/courtfeesbook10\\_2004.pdf](http://www.georgiacourts.org/aoc/publications/courtfeesbook10_2004.pdf)

## Recommendations: Funding

Prime examples of self-funded court programs in Georgia are the Alternative Dispute Resolution programs, county law libraries, and accountability courts. All of these have statutory authorization for their existence. But, whereas the ADR and law library programs have specific authorization under O.C.G.A. § 15-23-8 and O.C.G.A. § 36-15-5, respectively, and the fees collected to be deposited into a special fund for use only by those programs, no specific authorization exists for drug courts, mental health courts, and other accountability courts. Many other court programs would benefit from statu-

tory preservation of their funds. Such programs may include city or county probation programs, technology and administrative fees that support court services, as well as a myriad of user fees for various clerk functions.

The Commission further recommends that any future user fees established for court services, such as those for an e-filing or e-access program or technology initiatives in general, be statutorily separated from the general funds so that the funds can only be used to support the program or services for which they are intended.



## Conclusion

The Commission thanks all of its members for their hard work and dedication. The Commission recognizes that many reports such as this generate thoughtful discussion and debate and then the report gets put on a shelf to gather dust. Where we hope to be different is that we intend to leverage the discussion generated into verifiable action. The Commission and its members cannot act alone. Rather, due to the diversity of the membership of the Commission, we will be encouraging our members to take this report back to their courts, councils, committees, legislatures, etc. in an effort to promote turning these recommendations into realities.

The Commission will work with the legislative team of the Judicial Council along with the State Bar to review any necessary legislative changes highlighted by these recommendations. The Commission is reviewing the need to develop an action plan to outline steps necessary to implement these recommendations.

Finally, the Commission recognizes that the future can be uncertain and many factors can change the outlook and the future of the courts in Georgia. Nonetheless, we hope that Georgia will not only be prepared for the next 20 years but take its place as the leader in judicial reform and best practices.





## Next Generation Courts Commission

*The future has yet to be decided...*

November 16, 2012

Dear Judicial Stakeholder,

We are joining together to encourage you to complete the attached survey to ensure you have a voice in the future of our courts. The survey will take no more than 15 minutes of your time to complete. As a stakeholder in the judicial system here in Georgia, we are confident that you are concerned about the future of the courts. Consequently, we ask that you join us in developing a plan for the future of **our** courts!

Last year, as a partnership between the Judicial Branch and the State Bar, we collectively created the Next Generation Courts Commission (“NGCC”). This Commission is tasked with considering what the court system might look like in 20 years and developing a strategy for how to get from here to there. The topics we hope to cover include e-filing, court structure, technology, funding, caseload management, public outreach and judicial selection.

The Commission has developed a survey to solicit input about how to improve the courts. We hope to hear from a wide variety of respondents in an effort to capture the breadth of issues facing the courts. We plan to use the results of the survey to help prioritize the Commission’s discussions and to make recommendations to the State Bar and the Supreme Court.

We need your input to help guide us! We ask that you share this letter and the survey with your colleagues or members of your organization as well as anyone else who may be interested in the future of the courts. We encourage you to complete the survey by December 31<sup>st</sup> online at:

<http://www.surveymonkey.com/s/NGCC>

Your response and time is greatly appreciated. Thank you for your participation!

Sincerely,

Hon. Carol W. Hunstein  
Chief Justice  
Supreme Court of Georgia

Robin Frazer Clark  
President  
State Bar of Georgia

Hon. Lawton E. Stephens  
Chair, NGCC  
Chief Judge, Western Circuit

The following are the questions and scenarios presented in the statewide survey.

*Please rate the following statements as they relate to efforts aimed at improving the educational opportunities for the judiciary and for communicating the role of the courts to the public.*

- Centralize training for judges, prosecutors, and other court-related staff so that all training for the judicial system and its justice system partners are managed through one entity;
- Assist courts with answers to public inquiries about cases and court processes by expanding the use of court based kiosks and web based information systems;
- Post public record documents on accessible court websites;
- Provide education and assistance to the judiciary and the courts on appropriate use of social media such as Facebook, Twitter, blogs, etc.;
- Provide training on ethics and related issues to the judiciary and staff;
- Provide judges, especially chief judges, regular training in management and administration;
- Expand use of distance learning (webinars, videos, etc.) to provide additional training options;
- Provide more specialized training for the judiciary in advanced topics such as the sciences, taxation, etc.;
- Provide more information for the public on court activities, proceedings, etc., on court websites.

*Please rate the following statements as they relate to the use and expansion of court related programs.*

- Enhance the availability and use of Alternative Dispute Resolution (ADR) including: mandatory ADR in certain case types, prior to moving to trial, as well as greater availability of ADR in cases where it is not mandatory;
- Permit trained paralegals and other nonattorneys to assist self represented litigants with certain limited case types or court actions without being engaged in the unauthorized practice of law;
- Increase court-provided assistance to self represented litigants (in person by court staff or by computers at the courthouse, through the Internet, Help Centers, etc.);
- Expand the use of accountability and problem solving courts (i.e., drug courts, mental health courts, DUI courts, domestic violence courts) around the state, especially in areas where no programs exist;
- Expand the use of Guardians Ad Litem, CASAs, etc. to protect the welfare of children, the elderly and those with mental deficiencies involved in the court process;
- Expand the availability and use of Family Law Information Centers that assist self represented parties and low income families with various legal needs;
- Explore the role of the court system in minimizing domestic violence (i.e., Temporary Protection Order matters, firearms possession, divorce and family law cases, juvenile delinquency and deprivation cases, etc.);
- Develop a strategy for addressing the needs of the elderly (access to the courts, elder abuse, fraud, nursing home abuse, etc.).

***Please rate the following statements as they relate to the possible use of technology in the courts.***

- Transition to increased digital recording (recording court proceedings rather than have the record created by a stenographic or voice writer court reporter);
- Move toward Efiling and Eservice for all civil cases;
- Move toward Efiling for Criminal and other non-civil cases;
- Move toward remote public "eaccess" to Civil case orders and filings;
- Move toward remote public "eaccess" to Criminal and other noncivil case orders and filings;
- Allow for electronic payments in all transactions: fines, fees, restitution, and initiating a civil case.;
- Increase use of telephone and video technology for activities such as courtto court conferences, access to certified court interpreters, and mediations;
- Use electronic means to distribute or publish more communications such as court dockets and schedules, notices to jurors, and announcements of special court activities;
- Fully implement electronic signatures for court documents as permitted in the Georgia Electronic Records and Signatures Act;
- Maximize use of the Internet for jury activities (e.g., orientation, juror questionnaires, and payments to jurors);
- Use Internet court forms whenever possible, particularly in areas with a high number of self represented litigants;
- Increase use of telephone and video technology for various in court proceedings, including use of video conferencing for offsite live testimony;
- Require attorneys to maintain email addresses for notification by the courts.

***Please rate the following statements as they relate to business process improvements in the courts.***

- Make process, rule and statute changes as needed so that traffic violations can be handled as petty offenses, civil or administrative proceedings;
- Create uniformity across ALL courts in terms of how self represented litigants access the courts including the availability and use of forms, interpreter services, access to counsel, etc.;
- Examine statewide court administration organization, practices, and resources to ensure accountability, transparency, and customer focused service delivery;
- Encourage greater number and availability of qualified interpreters for Spanish and other languages;
- Develop procedures for the use of remote interpretation by qualified interpreters for persons with Limited English Proficiency to have meaningful access to the courts;
- Expand services provided to persons with Limited English Proficiency so as to have meaningful access to all court services, including language access services, provided by the court;
- Adopt commonly accepted time standards for cases in Georgia (time to disposition, etc.) such as those adopted by the American Bar Association and Conference of State Court Administrators;
- Improve security in courthouse and judicial complexes to ensure that they meet minimum safety standards;
- Review the use of court reporters and the methods for producing a true and accurate record of court and for producing an accurate and timely transcript of court proceedings in the digital age;
- Adopt statewide reporting and accountability for various benchmarks of performance based on systems like CourTools (case aging, pending caseload, etc.);
- Develop case assignment tracks to separate routine cases from complex cases to speed disposition (sometimes called differentiated case management).

## Appendix B

***Please rate the following statements as they relate to opportunities to improve funding for the courts.***

- Improve collections of fines and fees in courts by changing existing assessment and collection processes, perhaps including regional or centralized collections;
- Encourage the court system to make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures;
- Allow the court system to have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items;
- Fund the courts so that cases can be resolved in accordance with recognized time standards by judges and court staff functioning in accordance with adopted workload standards;
- Establish additional revenue generating fees for Civil cases;
- Establish additional revenue generating fees for Criminal and other Non Civil cases;
- Ensure that courts have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines;
- Pay judges in all courts an equitable pay scale sufficient to attract and retain highly qualified and competent judicial officers;
- Provide funding for technologies in the courts comparable to those used in other governmental agencies and private businesses;
- Encourage courts in funding the implementation and administration of remote e filing and public e-access that charge minimal, cost based user fees for Civil cases;
- Encourage courts in funding the implementation and administration of remote e filing and public e-access that charge minimal, cost based user fees for Criminal and other Non Civil cases;
- Ensure that courts are funded at a level that allows their core dispute resolution functions to be resolved by using the least costly and most effective method applying the appropriate dispositional alternative;
- Promote a funding system in which fees are secondary to the local or state general funds as a means of producing revenue for the courts and that the level of fees does not deny reasonable access to dispute resolution services provided by the courts;
- Require that the state, rather than the counties, provide more of the cost of continuing education for the judges of ALL levels of courts.



