

**JUDICIAL INDEPENDENCE, INTERDEPENDENCE, AND  
JUDICIAL ACCOUNTABILITY:  
Management Of The Courts From The Judges' Perspective.**

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## ABSTRACT

The chief judge in conjunction with the court administrator establishes legal and organizational boundaries, monitors the control of the courts operations, and accounts publicly for its performance. Although the judiciary is independent in its decisions and its administration, it is interdependent upon the co-equal branches of government for its services and finances. Furthermore, excellent judicial administration requires a degree of involvement of the chief judge for successful day to day administration of justice. The chief judge and the court administrator must manage sophisticated interdependent relationships and administrative duties related to court management in order to maintain judicial independence and to insure the effective administration of justice. The division of the administrative duties between the chief judge and the court administrator is not uniform. The focus of this paper is to identify the role of the chief judge in court management, identify primary and secondary duties related to court management including “how” or” why” those duties are divided between the chief judge and the court administrator, and to explore attitudes and opinions towards matters related to court administration from the perspective of the chief judge. In addition to a review of literature, case law, and relevant state statutes, this project summarizes the responses to a questionnaire survey of a focus group consisting of twelve chief judges from courts of limited and general jurisdiction from approximately nine different states<sup>1</sup> across various regions around the country. Based upon the judges surveyed, it appears that despite the rules, statutes and a code identifying the chief judges’ administrative responsibilities, each court divides or delegates these administrative duties related to court management

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<sup>1</sup> Arizona, California, Georgia, Kansas, Minnesota, New Mexico, Nevada, Ohio, Utah, Washington.

through informal understanding and internal policy. Also the judges determine that their primary duties are the duties that they are most effective, or perform those particular duties related to court management because they have a particular interest, the time, and expertise. This paper concludes that in the absence of uniformity in the division of clearly defined duties related to court management between the chief judge and court administrator, judicial independence is compromised; that court administrators should be professionally trained and educated and that an amendment clarifying the *Uniform Code of Judicial Conduct* wherein judges are required to maintain competence in matters related to judicial administration is required to preserve judicial independence, interdependence, and accountability.

## INTRODUCTION

***The Greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people, was an ignorant, a corrupt, or a dependent Judiciary.***

John Marshall<sup>2</sup>

An essential precondition for the protection of the constitution within the framework of a democracy is that the judge and the judiciary enjoy independence: “the judiciary can effectively fulfill its role only if the public has confidence that the courts, even if sometimes wrong, act wholly independently”<sup>3</sup>. The Founders of our Constitution established the judiciary as an independent, co-equal branch of government for two enduring reasons:

1) Making the judiciary independent of inappropriate outside influence within and without government would better enable the judiciary to render impartial decisions in individual cases’ hence, the need for decisional judicial independence.

2) Making the judiciary a third branch of government independent of the legislature and executive would enable the judiciary to check over-concentrations of power in the political branches’ hence, the need for institutional judicial independence.<sup>4</sup>

Judicial independence is dependent upon effective working relationships with all of the other branches. There must be effective interdependent relationships in form and practice

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<sup>2</sup> As quoted in the American Bar Association, *An Independent Judiciary: Report of ABA Special Commission on Separation of Powers and Judicial Independence*. 197, available at <http://www.abanet.org/govaffairs/judiciary/report.html>.

<sup>3</sup> Johan Steyn, *The Case for the Supreme Court*, 118 Law. Q. Rev. 382, 388 (2002).

<sup>4</sup> American Bar Association, *An Independent Judiciary: Report of ABA Special Commission on Separation of Powers and Judicial Independence*. 197, available at <http://www.abanet.org/govaffairs/judiciary/report.html>

within the court as well as with other components of the justice system.<sup>5</sup> Consequently, the exploration of the symbiotic relationship between the chief judge and the court administrator is essential to maintain the independence of the judiciary. The chief judge in conjunction with the court administrator establishes legal and organizational boundaries, monitors the control of the court's operations, and accounts publicly for its performance. The division of the administrative duties among the chief judge and the court administrator is a delicate internal balance of relationships within the judiciary. These internal relationships are sophisticated, necessary, and relevant to each individual court so that the external interdependent relationships with the other branches are maintained and the administration of justice is not adversely affected.

Excellent judicial administration requires a degree of involvement of the chief judge for successful day to day administration of justice. The judicial role offers a chance for leadership within the court system that is consistent with the canons of judicial ethics. Chief judges are held publicly accountable and represent the third branch of government before the public, legislative branch, and executive branch. The focus of this paper is to identify the role of the chief judge in court administration and evaluate "how" or "why" the administrative duties are divided among the chief judge and the court administrator in order to preserve judicial independence, interdependence, and judicial accountability but also identify what impact, if any, the introduction of the Professional Court Administrator has had upon the judiciary.

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<sup>5</sup>The Trial Court Performance Standards and Measurement Systems, *Standard 4.1: Independence and Comity*, (Williamsburg, VA: National Center for State Courts.)

## LITERATURE REVIEW

### Judicial Independence, Interdependence, and Judicial Accountability

*Judicial Independence.* Judicial independence is an ideal fundamental to the idea of justice.<sup>6</sup> Values of judicial independence compete or at times conflict with values of democracy and accountability.<sup>7</sup> The inherent tension within the system is what creates and maintains the checks and balances anticipated by the Framers of the Constitution. Judicial independence is one of the touchstones of our constitutional system of government.<sup>8</sup> Alexander Hamilton's best argument in defense of Article III's provisions for judicial independence is grounded in separation of powers and asserted that independence in office was needed for the judiciary to be a reliable check on the legislature by holding unconstitutional laws to be void in cases that come before them.<sup>9</sup> Crucial to judicial independence is the impartial decision making, free of the stain of personal preference, public opinion, or interbranch pressure which can or some say do influence judicial decisions.<sup>10</sup> Judicial independence concerns the judiciary's freedom from improper control, influence or interference in the decision of cases, and in the governance and management of the judiciary's affairs. Sometimes we forget that judicial independence is not an end in itself but merely a means to an end.<sup>11</sup> As Colleen Cox

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<sup>6</sup> Rodney Smolla, *Chief Justice Harry L. Carrico and The Ideal of Judicial Independence*, The University of Richmond Law Review vol 38 no 3 p571 (March 2004).

<sup>7</sup> Rodney Smolla, *Chief Justice Harry L. Carrico and The Ideal of Judicial Independence*, the University of Richmond Law Review Vol. 38 no 3, p571 ( March 2004).

<sup>8</sup> Hon. William H. Rehnquist, Chief Justice, Supreme Court of the United States, discussing Judicial Independence.

<sup>9</sup> Alexander Hamilton, The Federalist No. 78, note 1, at 522-523 as cited by Michael G. Collins, *Judicial Independence and the Scope of Article III-A View From The Federalist*. University of Richmond Law Review vol 38 no. 3 (March 2004).

<sup>10</sup> Stephen Burbank and Barry Friedman, *Judicial Independence at the Crossroads: An Interdisciplinary approach* p. 103.(Sage 2002)

<sup>11</sup> Roger Warren, *Judicial Accountability, Independence, and Fairness*, The Court Review p. 5 (2006 )

identified in her thesis titled, *The Nature of Judicial Independence Movement: Origins Goals, Activities, and Motives*, there are a host of threats to judicial independence which exist at all levels of government.<sup>12</sup> These threats include: 1) judicial elections; 2) judicial appointments; 3) personal attacks on and criticisms of the character of judges and/or their judicial decisions; 4) impeachment or disciplinary threats based on unpopular judicial decisions; 5) procedural, administrative, and legislative threats; and 6) other judges.<sup>13</sup>

*Judicial Interdependence.* Although we tend to think of the doctrine of separation of powers as a stone foundation created by the founding fathers, in reality it is a continually evolving doctrine predating them that changes with the times and with the current state of interbranch conflict.<sup>14</sup> The Framers of the Constitution realized that in a system in which the powers of government are separate from and independent of each other, unchecked independence and separation would enable one branch to usurp power from the other two. To keep the judiciary in check, it was essential that the Constitution include provisions making the judiciary accountable to both the political branches and the electorate. The constitution thus creates a tension between judicial independence and accountability that some have called a contradiction. Interbranch conflict arising out of the inherent tension between judicial independence and accountability is not new. There has been emphasis upon judicial accountability at the expense of judicial independence with the attitude of the public being that public officials in the judiciary are not

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<sup>12</sup> Colleen Cox, *The Nature of Judicial Independence Movement*, Thesis, University Of Arizona, Masters Public Administration Program (May 2003).

<sup>13</sup> Colleen Cox, *The Nature of Judicial Independence Movement*, Thesis, University Of Arizona, Masters Public Administration Program (May 2003).

<sup>14</sup> David Saari, *Separation of Powers, Judicial Impartiality, and Judicial Independence: Primary goals of Court Management Education*, *The Handbook of Court Administration and Management* (Dekker 1993).

trustworthy, therefore, judges must be made to be accountable.<sup>15</sup> The challenge is neither how to make judges independent nor how to control them but to find a common medium in order to optimize the costs and benefits of judicial independence and accountability.<sup>16</sup>

A review of the separation of powers doctrine and the interbranch conflicts created will enhance the understanding of judicial independence. Separation of powers does not specifically mean creation of a barrier that positively prevents any connection or contact between the branches. Preferably, it finds expression mainly in the existence of a balance among the branches' powers, in theory and in practice that makes possible independence in the context of specific reciprocal supervision.<sup>17</sup> Although the judiciary is an independent coequal branch of government, the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental functions.<sup>18</sup> This overlap is sometimes referred to as the "doctrine of overlapping functions" wherein a violation of the "doctrine of separation of powers" does not occur because such action is constitutionally permissible. The other branches of government have exhibited political jealousy toward the judiciary.<sup>19</sup> It is reasonable to state that there are an abundant number of members of the executive and legislative branches that exhibit many of the jealousies of their predecessors and have made a career out of promoting public misunderstanding

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<sup>15</sup> David Saari, *Separation of Powers, Judicial Impartiality, and Judicial Independence: Primary goals of Court Management Education*, The Handbook of Court Administration and Management (Dekker 1993).

<sup>16</sup> ABA, *An Independent Judiciary: Report of ABA Special Commission on Separation of Powers and Judicial Independence*. 1997, available at <http://www.abanet.org/govaffairs/judiciary/report.html>. (1997).

<sup>17</sup> Aharon Barak, *A Judge on Judging: The Role of the Supreme Court*, 116 Harvard Law Review 16, (November 2002).

<sup>18</sup> *Mowrer v. Rusk*, 618 P.2d 886 (NM Sup. Ct. 1980).

<sup>19</sup> Chief Justice Kevin Burke, *A Judiciary That Is as Good as Its Promise: The Best Strategy for Preserving Judicial Independence*, *The Court Review* (Summer 2004).

Of the role of the courts.<sup>20</sup> Unfortunately, some political leaders are too easily prone to speak of judicial tyranny when there is disagreement with the outcome of a case.<sup>21</sup>

*Judicial Accountability.* Judicial independence can affect judicial management attitudes to the point where lack of efficiency and accountability are defended in the name of separation of powers. This does nothing for the management credibility of the judicial branch and is not what judicial independence is all about.<sup>22</sup> Judicial Independence is a means to an end—a fair trial according to the law.<sup>23</sup> The state constitutions and the sixth and fourteenth amendments to the U.S. Constitution guarantee the right to an impartial judge in criminal and civil cases. These guarantees of impartiality are the legal backbone of judicial independence which exists for the protection of the litigants and the public, not for the protection of the judge.<sup>24</sup> The judge as well as the court is responsive to the change in the laws which are the product of public opinion. The judges remain independent in their decision making while judiciary maintains its responsiveness to the needs of a changing society. The judge is always exposed to criticism for decisions made on the bench as well as administrative decisions made on behalf of the court. If the criticisms are unjust or unwarranted and persist then they may affect the administration of justice. There is always a struggle to maintain a balance between the protections of judges from the pressures generated from the public's expectations with the desire for the courts to be responsible to changes in public views of what is competent administration

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<sup>20</sup> Chief Justice Kevin Burke, *A Judiciary That Is as Good as Its Promise: The Best Strategy for Preserving Judicial Independence*, *The Court Review* (Summer 2004).

<sup>21</sup> Chief Justice Kevin Burke, *A Court And A Judiciary As Good As Its Promise*, *The Hennepin Lawyer*, (Dec 30, 2003).

<sup>22</sup> Robert Tobin, *Creating The Judiciary: The unfinished Reform*, p. 116 (NCSC 1999).

<sup>23</sup> See *Symposium: Perspectives on Judicial Independence: Thorny Issues and Slippery Slopes: Perspective on Judicial Independence*, 64 Ohio St. L. J. 3 (2003).

<sup>24</sup> See *Symposium: Perspectives on Judicial Independence: Thorny Issues and Slippery Slopes: Perspective on Judicial Independence*, 64 Ohio St. L. J. 3 (2003).

of justice. Judicial independence and accountability are considered two different sides of the same coin, just as the independence of an individual judge and the independence of the court from which the judge presides, and is best described as follows:<sup>25</sup>

*The capacity of the judiciary to function independently of control by the executive and legislative branches requires the capacity of individual judges to enjoy a measure of extra institutional independence. It also requires that the judiciary, as a system of courts, function and be perceived to function according to law. This in turn requires that individual judges yield some intra institutional independence.*

Judicial accountability is used in order to maintain judicial independence. Judicial accountability refers to the accountability under democratic government of those who govern to those whom they govern as well as to the rule of law.<sup>26</sup> Unfortunately, unfair attacks on the courts and other inappropriate acts undertaken in the name of judicial accountability-have tended to give the concept of judicial accountability itself a bad name.<sup>27</sup> But unlike the concept of judicial independence, accountability is an end in itself and applies to all three branches of government. The judiciary is not exempt from the requirement of accountability to the people it serves for the proper performance of its duties.<sup>28</sup> Why should judges be accountable and for what? Historically our nation has always been critical of the judiciary. Chief Justice John Marshall was nearly impeached in an effort fostered by Thomas Jefferson; and Marshall, not having the benefit of a court public information officer, was forced to respond to critics by writing a series of letters to

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<sup>25</sup> Stephen Burbank, *Judicial Independence at the Crossroads* p. 16 (Sage 2002).

<sup>26</sup> Roger Warren, *Judicial Accountability, Independence, and Fairness*, The Court Review (Vol. 42, No. 1)

<sup>27</sup> Roger Warren, *Judicial Accountability, Independence, and Fairness*, The Court Review (Vol. 42, No. 1)

<sup>28</sup> Roger Warren, *Judicial Accountability, Independence, and Fairness*, The Court Review (Vol. 42, No. 1)

the editor in his own defense, using a pseudonym.<sup>29</sup> Also President Theodore Roosevelt, upset with a ruling from the Supreme Court, said of Justice Oliver Wendell Holmes that he could carve out of a banana a judge with more backbone than the backbone of Oliver Wendell Holmes.<sup>30</sup> Remarkably billboards populated the nation demanding the impeachment of Chief Justice Earl Warren, as well as, former President Gerald Ford at one time wanted to impeach Justice William Douglas.<sup>31</sup> The dissatisfaction is not limited to case decisions but also administrative decisions. To guide their actions while performing adjudicative and administrative duties, judges rely upon the American Bar Association's Model Code Of Judicial Conduct. Each state adopts its own version of the Model Code of Judicial Conduct and these specified rules that provide guidance to judges in the performance of their administrative and adjudicatory responsibilities. For example, Model Canon 300 (C) (1) of the *ABA's Model Code Of Judicial Conduct* provides:

*“a judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business.”*<sup>32</sup>

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<sup>29</sup> Chief Justice Kevin Burke, *A Court And A Judiciary As Good As Its Promise*, The Hennepin Lawyer, (Dec 30, 2003).

<sup>30</sup> Chief Justice Kevin Burke, *Court And A Judiciary As Good As Its Promise*, The Hennepin Lawyer, (Dec 30, 2003).

<sup>31</sup> Chief Justice Kevin Burke, *A Court And A Judiciary As Good As Its Promise*, The Hennepin Lawyer, (Dec 30, 2003)

<sup>32</sup> NMRA 21-300 C (1) quoting the administrative responsibilities of judges. (West 2005) ( The language is universal in the model code of canons of judicial ethics.)

There are other canons of the *ABA's Model Code Of Judicial Conduct* which are less explicit but still impose an affirmative duty upon the judge to perform duties that relate to court administration, for example:

- Canon 300(B)(8): *“A Judge shall dispose of all judicial matters promptly, efficiently, fairly.”*
- Canon 500 (B): *“ A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of the Code.”*
- Canon 500 (C) (1): *“A judge shall not appear before a public body or consult with an executive or legislative body or official except on matters concerning the law, the judiciary or matters relating to the judiciary or which affect the interests of the judiciary, the legal system or the administration of justice...”*

The Code of Judicial Conduct, however, does not prohibit a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government.<sup>33</sup> In fact, as judicial officers, judges are specially learned in the law and are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice.<sup>34</sup> The Code of Judicial Conduct doesn't exclude judges from contributing to the improvement of administration of justices system but encourages judges to make a contribution when time permits.

It is significant to note how a minor threat to judicial independence is implicit in most instances that seem to call for accountability.<sup>35</sup> Accountability and independence are not mutually exclusive, and in most instances both can exist. However there are situations

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<sup>33</sup> *Commentary, NMRA 21-500 Code of Judicial Conduct* (West 2005)

<sup>34</sup> *Commentary NMRA 21-500(B ) Code of Judicial Conduct* (West 2005)

<sup>35</sup> Steve Lubet, *Judicial independence and Judicial discipline*, Law and Contemporary Problems Vol. 61 No. 3 ( Summer 1998).

where the possibility of discipline does endanger the independence of the judiciary where the most serious threat arises when sanctions are imposed upon the content of a judge's decision.<sup>36</sup> It is apparent there existed a trend to discipline judges for their decisions, which may include unpopular decisions, or serious misruling that denies individuals their fundamental procedural due process.<sup>37</sup> Judges who engage in administrative decisions or communications under the pretext of preserving judicial independence are also exposed to discipline for the content of such communications especially when such communications are critical of the other branches or interdependent agencies.<sup>38</sup> The Code of Judicial Conduct which forbids judges from becoming embroiled in local controversy further exposing allegations of injudicious behavior bordering on misconduct. Notably there is interplay between decisional and behavioral accountability in the context of judicial disciplinary proceedings.<sup>39</sup> Depending upon the legal and political landscape of the judge's environment, the judge is potentially exposed to allegations of bias or that the judge's administrative actions or communications somehow compromised the integrity and independence of the judiciary. The motive of the judge is always considered, and although the judge is engaged in a judicial act when performing administrative functions, punishment is imposed when there is bad faith or ill motive in the decisions made, not *necessarily* the content of the decision itself.<sup>40</sup> The prospect of being charged with

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<sup>36</sup> Steve Lubet, *Judicial independence and Judicial discipline*, Law and Contemporary Problems Vol. 61 No. 3, p 65 ( Summer 1998).

<sup>37</sup> Steve Lubet, *Judicial independence and Judicial discipline*, Law and Contemporary Problems Vol. 61 No.3, p. 73 ( Summer 1998).

<sup>38</sup> Daniel E. Witte, Esq., *Bad Precedent: Inquiry Concerning a Judge Prompts an Inquiry about Civil Liberty and Judicial Independence*, at <http://www.sjlpp.org/documents/badpresident.pdf>. ( 2004 Sutherland J. L. & Pub. Pol'yL1).

<sup>39</sup> Wendell L. Griffen, *Comment: Judicial Accountability And Discipline*, Law and Contemporary Problems", Vol. 61 No. (Summer 1998).

<sup>40</sup> Steve Lubet, *Judicial independence and Judicial discipline*, Law and Contemporary Problems Vol. 61 No.3, p. 73 ( Summer 1998).

misconduct and forced to finance one's defense increases timidity of the judges to become involved in administrative decisions or actions which potentially expose them to discipline.<sup>41</sup> Uniformity in the definition and delegation of administrative duties of the chief judge and the court administrator as well as providing public funding for the legal defense of judges who are exposed to complaints that are eventually dismissed or improperly lodged would illuminate accountability and enhance judicial independence.

### **Judicial Administration And The Judges Role**

Public trust and confidence is won or lost by the judge, gradually, case by case, day by day, in the courtroom simply by doing his or her job.<sup>42</sup> For the most part, the public is satisfied when the court gives each litigant his or her day in court, listens to what they say, and then explains to them in terms they can understand as to why they win or lose. As much as they want to win, most persons even if they don't win are content, if they are afforded dignity in the process and receive a straight and honest answer in the end.<sup>43</sup> If the public's access to justice is denied or compromised by the routine failures of the prosecution or executive branch, then it is the judge's job to insure that the system of administration of justice is upheld by fulfilling their jobs as judges so that the public's trust and confidence is not diminished. That is the role of the judge in the courtroom, but what is the role and responsibilities of the judge in judicial administration? There are many definitions of what it means to be a judge and interestingly enough none of these speak of or allude to the role of the judge in administrative matters.

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<sup>41</sup> Wendell L. Griffen, *Comment: Judicial Accountability*, Law and Contemporary Problems, Vol. 61 No. ( Summer 1998).

<sup>42</sup> American Judges Association, Benchmark, AJA Awards Luncheon Address: *Our job as Judges*, Chief Justice William Ray Price, (Sept 11, 2000).

<sup>43</sup> American Judges Association, Benchmark AJA Awards Luncheon Address: *Our job as Judges*, Chief Justice William Ray Price,( Sept 11, 2000).

Below are Chief Justice Joseph P. Nadeau opinions of what it means to be a judge.

The Top Ten Definitions Of What It Means To Be A Judge:<sup>44</sup>

1. Being a judge means having self-confidence without conceit, decisiveness without arrogance, and passion without pretension.
2. Being a judge means using common sense as well as the law to handle problems.
3. Being a judge means being temperate under circumstances that at time would try the patience of the most serene.
4. Being a judge means being civil to those who are uncivil.
5. Being a judge means using awesome judicial power sparingly and with restraint.
6. Being a judge means accepting criticism, justified or unjustified, without always being able to respond.
7. Being a judge means not being afraid to make mistakes.
8. Being a judge means having confidence in the system, that mistakes can be corrected, and that justice is attainable.
9. Being a judge means recognizing that the great principles upon which this country was founded and endures apply not just to the best of us, not just to the worst of us, but to all of us.
10. Being a judge means accepting the responsibility to represent the justice system at your very best---to exhibit patience, tolerance, and understanding.<sup>45</sup>

Judges have a more profound duty besides the ordinary citizen to be concerned about justice. It is in the courts and not the legislature that citizens primarily feel the well-developed, cutting edge of the law. If they have respect for the work of the courts their respect for the law will survive the shortcomings of every other branch of government.<sup>46</sup>

The modernization of the courts is achieved primarily from the bench and secondarily from the bar through the development and improvement of judicial administration.

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<sup>44</sup> Chief Justice Joseph P. Nadeau, New Hampshire Superior Court, *What it means to be a Judge* The Handbook for Judges, (American Judicature Society 2004).

<sup>45</sup> Chief Justice Joseph P. Nadeau, New Hampshire Superior Court, *What it means to be a Judge* The Handbook for Judges, Page 24, (American Judicature Society 2004).

<sup>46</sup> Arthur T. Vanderbilt, *The Need for Reform*, The Handbook for Judges, (American Judicature Society 2004).

Also there is a demand for judges and the courts to be more involved and assume a stronger administrative, protective or rehabilitative role toward those appearing before them.<sup>47</sup> Trial Court Judges are expected to assume the management of people's problems and coordinating social services to address those problems in addition to being responsible for judicial administration of the court.<sup>48</sup> The added demands and changing role of the court places additional emphasis upon the judge's role in court administration since the average citizen's perception of the legal system is more profoundly shaped by how courts are run than by the content of the law.<sup>49</sup>

The role of the judges in the administration of the judicial branch has been termed judicial administration. As Robert W. Tobin observed in his book, *Creating the Judicial Branch: The Unfinished Reform*, judges began to reject the premise that their independence in matters of adjudication could not be preserved without control of the administrative aspects of court operations and sought to protect their independence by taking administrative control of the courts.<sup>50</sup> Judges started to perceive more clearly their joint and several responsibilities for managing a court system that rises or falls on its ability to cope with major social and legal changes.<sup>51</sup>

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<sup>47</sup> Michael D. Zimmerman, *A New Approach to Court Reform*, The Handbook for Judges, (American Judicature Society 2004).

<sup>48</sup> Michael D. Zimmerman, *A New Approach to Court Reform*, The Handbook for Judges, (American Judicature Society, 2004.)

<sup>49</sup> Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts are Run*, The Handbook for Judges, (American Judicature Society, 2004).

<sup>50</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p 146, (NCSC 1999) (discussing administrative rule making, administrative orders and directives).

<sup>51</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 149 ( NCSC 1999)(discussing the affect of unification).

With the passing of each decade, there is an impact upon judicial administration because of the new cases involving civil rights, public protests, class action suits and consumer complaints which occur in both federal and state courts.<sup>52</sup> Judicial administration includes goal setting and leadership, formulation and implementation of management policy, dealing with judges, relationships with the bar, relations with the other branches, noncourt agencies, and the public, delegation and oversight of the detailed aspects of court administration.<sup>53</sup> Also the changing role of judges in the post adjudication matters reflects a changing view about the meaning and scope of justice and impacts judicial administration.<sup>54</sup> Judges are no longer a loose combination of individuals engaged in adjudication but are mutually responsible for managing a system that rises or falls on its ability to cope with the social and legal changes that have reshaped the courts.<sup>55</sup> Also the “judicial accountability” movement has had some influence upon the role judges play in maintaining the independence of the judiciary.<sup>56</sup> In the eighteenth century, separation of powers among the agencies of state government was developed and in the nineteenth century the gradual transfer of almost all judicial functions from the state executive and legislative branches to the state courts was experienced; and in the twentieth century a quest for an administratively self-sufficient and more highly professional judicial branch came into existence.<sup>57</sup> The rationale for

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<sup>52</sup> Theodore Fetter, *A History of the Conferences of State Court Administration*, (NCSC 1994).

<sup>53</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 149 (NCSC 1999).

<sup>54</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform* at p 223,(NCSC 1999).

<sup>55</sup> Robert Tobin, *an Overview of Court Administration in the Untied States*, p 7, (NCSC 1997).

<sup>56</sup> David Saari, “*Separation of Powers, Judicial Impartiality, and Judicial Independence: Primary goals of Court Management Education*”, *The Handbook of Court Administration and Management* (Dekker 1993).

<sup>57</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, (NCSC 1999.)

separation of powers among three branches of government is the protection of liberty by diffusion and counterbalancing of government authority.<sup>58</sup> To judges, the term judicial independence encompasses separation of powers, inherent powers of the judiciary and the freedom to adjudicate without external pressure.<sup>59</sup> The judicial branch is not a coequal branch of government unless it has the ability and the authority to manage its internal operations, including the trial courts.<sup>60</sup> Historically the administration of the courts was under the control of the other branches of government as well as influenced by the lawyers demand for scheduling cases to accommodate their particular needs as opposed to accommodating the best interest of the court and its operations. The creation of an enhanced judge's role in court control of branch operations and the legal profession sometimes pits judges against attorneys. There is an issue of the ability of the judges to manage their own affairs as opposed to the catering to the preference of most judges to be part of the local government scene. Judges are reluctant to assume a management role in the trial courts and some judges take the position that it is inappropriate for the judge to assume such a role in the administration.<sup>61</sup>

*Management Training.* The lack of management experience is prevalent among those judges who become chief judge primarily because there are a number of other reasons “why” judges ascent to that position. The reasons include: longevity on the bench, prestige, obligation, urging of the other judges and honor.<sup>62</sup> The symbolism of being chief judge overshadows the significance of the role in the administration of the courts.

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<sup>58</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, (NCSC 1999).

<sup>59</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, (NCSC 1999).

<sup>60</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 21 (NCSC 1999).

<sup>61</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 104 (NCSC 1999).

<sup>62</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 104 (NCSC 1999).

The ceremonial role that the chief judge fulfills as the sole representative of the judicial branch although highly valued is not as important as the management ability of the chief judge and the willingness to exercise it. Judges themselves are placing less emphasis on seniority and rotation when selecting the chief judge as well as some judges actively pursue the position of chief because of its management responsibilities.<sup>63</sup> However, absent uniformity in the selection of the chief judge as well as uniformity in defining the administrative duties in correlation with the administration of the court's operation, there will always be judges who accept the position of chief judge who knowingly lack any management ability.

*Time Allocation.* The time the chief judge allocates to administration reflects the low priority of judicial administration. The balancing act of managing a caseload as well as providing the required attention to the court's management issues places a heavy burden upon the chief judges who often pride themselves with carrying equal caseloads as their colleagues.<sup>64</sup> The perception of the members of the judiciary that adjudication is the judge's primary function influences the degree of participation the chief judge has in the management of the court operations.

*Perception of Administrative Role.* The administrative duties related to court management are perceived as an extra burden as opposed to being perceived as the primary responsibility of the chief judge in conjunction with the

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<sup>63</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 104 (NCSC 1999).

<sup>64</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 105 (NCSC 1999).

court administrator or clerk of the court.<sup>65</sup> Collegiality can also influence the effectiveness of the chief judge in the performance of their administrative duties. Chief Judges have legal authority to impose administrative authority over their fellow judges but use it cautiously. When judges empower one of their own to distribute work and deal with issues that affect the court as a whole, the chief judge is usually restricted.<sup>66</sup> Chief Judges spend allot of time concerning themselves with their colleagues issues and preventing divisions while staying within the conventional limits of the local judicial culture. Since there are differences between state court systems, there will never be a specific definition of the role of chief justice.

In *Creating The Judicial Branch: The Unfinished Reform*, Robert W. Tobin identified various components court administration which can be applied to chief judges of all levels of courts and their court administrators. The administrative role of the chief judge in relation to full court and professional court administrators has six generic components.<sup>67</sup>

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<sup>65</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 105 (NCSC 1999).

<sup>66</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 107 (NCSC 1999).

<sup>67</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 149-153 (NCSC 1999).

Component <sup>68</sup> :	Duties:
<u>Goal setting and leadership:</u>	Chief judge <sup>69</sup> acts as a “change agent” identifying the needs and objectives of the courts operations, securing funding, and overseeing the administration of court programs. Goals may be personal to the chief judge and lack institutional support or incorporated in the court system of which the chief judge is committed.
<u>Formulation and implementation of management policy:</u>	Administrative rulemaking is collegial and requires the participation of all judges or at times a judicial council and or committee. Chief judge controls the administrative docket and the implementation of the administrative matters which requires the involvement of the entire court.
<u>Dealing with judges:</u>	Chief judges and the supreme court concern themselves with the education, behavior, and discipline of other judges. Also influence morale, look out for their compensation, retirement, and working conditions.
<u>Relationships with the bar:</u>	Two levels of relationships with the bar: the formal relationships, which concern common areas of concern and agreement and the less-public, informal relationships, where there may exist differences.
<u>Relations with the other branches, noncourt agencies, and the public:</u>	Chief judge is the official spokesperson for the judiciary in ceremonial matters and businesslike contacts with the other governmental bodies. Court administrative staff may have the majority of the external contact but chief judge does nurture these relationships informally and may be required to take the lead.
<u>Delegation and oversight of the detailed aspects of court administration:</u>	The nature of the responsibilities and the demeanor of the chief judge determine whether they can be delegated to the court administrator.

<sup>68</sup> Robert W. Tobin, *Creating the Judicial Branch The Unfinished Reform* (NCSC 1999)

<sup>69</sup> The use of the word “chief judge” in lieu of “chief justice” is intentional because this author believes the concepts discussed by Tobin, are faced by all judges who have administrative responsibilities regardless if they are a Chief Justice.

## **Court Administrator's Role**

Judges in positions of management authority tend to react to proposals they receive rather than to initiate policy simply because the judges are groomed to resolve issues that are presented to them by choosing between well-defined positions.<sup>70</sup> The person who controls the administrative agenda has great influence because the role of the court is reactive.<sup>71</sup> Although the chief judge may personally control the agenda, as a practical matter, the court relies upon the court administrator to bring issues forward for resolution and to provide background information.<sup>72</sup> Regardless if the administrative issue at hand is complex and requires the consideration of a committee, or if the issue is related to the technological future of the court operations and requires the skills of a consultant, the person who is providing the background information is most influential on the courts administrative decisions. Since there is not any uniformity in the determination of the duties of the chief judge and the court administrator in such matters, the level of involvement of the court administrator may be ministerial, depending upon the detailed role the chief judge plays in the administrative decisions. Court administrators are not accepted as co-managers primarily because judges have been reluctant to give up authority to one of their own much less to a nonjudge administrator.<sup>73</sup> Court administrators are becoming involved in new areas of court system operation.<sup>74</sup> The administrative needs of one court were replaced with the responsibility of the administration for a court system. With this change developed an

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<sup>70</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 149-153 (NCSC 1999).

<sup>71</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 108 (NCSC 1999).

<sup>72</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 108 (NCSC 1999).

<sup>73</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, p. 112 (NCSC 1999).

<sup>74</sup> Theodore Fetter, *A History of the Conference of State Court Administration*, p 16, (NCSC, 1994).

increased professionalism of the court administrator which placed emphasis upon management ability and court related experience and less emphasis upon political connections or established friendships.<sup>75</sup> The need for judges to delegate more management authority is apparent but is at times outweighed by the judges want to preserve control. Absent an institutionalized approach of court management through the adoption of a uniform rule, the division of the administrative duties between the court administrator and the chief judge is determined by the kinship between the two. The nature and scope of the duties determines whether or not they are delegated to the court administrator.<sup>76</sup> The entire court is challenged with striking a balance between micromanagement and aloof detachment depending upon the relationship of the chief judge and the court administrator.<sup>77</sup> Whether the responsibilities are delegated also depends upon the nature of the decision. Generally decisions which affect lawyers and judges are treated with priority and primarily by the judge especially if the decision is of intrinsically legal nature and the more technical and administratively complex decisions, the judge's delegate to the court administrators.<sup>78</sup> However the evolution of the court administration profession has produced a number of categories of trial court administrators. These categories are as follows:

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<sup>75</sup> Theodore Fetter, *A History of the Conference of State Court Administration*, p 17,( NCSC, 1994 )

<sup>76</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 152 (NCSC 1999).

<sup>77</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 152 (NCSC 1999) .

<sup>78</sup> Robert W. Tobin, *Creating the Judicial Branch: The unfinished Reform*, p. 153 (NCSC 1999)

Categories of Trial Court Administrators <sup>79</sup>	Definition:
<u>Intruders:</u>	Are defined as the court administrators who have marginal roles carved out of local turf over the objections of the elected clerks, lack clear mandate, and always operating in the cracks of the system or in new areas that no one else has claimed.
<u>Technicians:</u>	Primary expertise is their technological qualification, may not have management responsibility but judges delegate the technology and technological development to these individuals.
<u>High Level Assistants:</u>	Routine responsibilities in personnel administration, purchasing, space, and budgeting and a small role in case flow management, court programs, and low profile in interbranch relations.

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<sup>79</sup> Robert W. Tobin, *Creating the Judiciary: The Unfinished Reform* p. 178-180 ( NCSC 1999).

Categories of Trial Court <sup>80</sup> Administrators(cont):	Definition:
<u>Strong Manager:</u>	Broad and clear definition of authority from the Chief Judge has power to execute court policy in administrative matters, important role in interbranch relations, public relations, and case flow management. Perceived as a limited partnership with the Chief Judge and can only exist if the court is administratively coherent, and the trial court administrator is truly the court administrator for the court.
<u>Entrepreneurs:</u>	Tend to wheel and deal and develop faster, cheaper ways to get things accomplished. Highly valued in times of limited resources, Judges tend not to favor them due to their innovative and adventurous management style which conflicts judges who are conscious of the dignity of the court.
<u>Fixture:</u>	Administrator whose longevity gives them special security and respect, very few of these exist, incumbent administrator who has survived the changes of chief judges in perceived as indispensable by a new chief judge as well as the full court.

The scope of trial court administration and the degree of delegation vary and are highly influenced by the relationship between the chief judge and the court administrator.

Since there are the varying degrees of delegation and scope of administration, the responsibilities of the court administrator are most considered by category.<sup>81</sup> Most trial court administrators concern themselves with “bread and butter” functions related to trial court administration: *budgeting, personnel management, financial management,*

<sup>80</sup> Robert W. Tobin, *Creating the Judiciary: The Unfinished Reform*, (NCSC 1999)

<sup>81</sup> Robert W. Tobin, *Creating the Judiciary: The Unfinished Reform* p.182, (NCSC 1999) (Discussing the budget functions of trial court administration).

*and purchasing, contracting, inventory, facility and space management.*<sup>82</sup> Although court administrators are charged with the enhancement of court effectiveness there appears to be a differentiation between the leadership role of the judge and that of the court administrator.<sup>83</sup> Court leadership however requires a team effort, where certain leadership activities can be assigned to either the judge or the court administrator, while other activities require a joint effort between the two.<sup>84</sup> Judges as well as court administrators have certain comfort zones for which they are effective operating as court leaders but the effectiveness of the team concept is challenged when either the judge or the court administrator are faced with performing functions outside of their comfort zone. It is unrealistic that judges have to learn to perform all court leadership tasks but unmistakable that judges recognize that court leadership responsibilities are shared with others thereby resulting in enhanced court effectiveness.<sup>85</sup>

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<sup>82</sup> Robert W. Tobin, *Creating the Judiciary: The Unfinished Reform* p. 183 (NCSC 1999).

<sup>83</sup> Stephen Hays and Cole Blease Graham Jr., *Handbook of Court Administration and Management*, citing “*Judicial Leadership in Court Management*” by Sue R. Fraeman and Laurie Newman DiPadova and Robert E. Quinn.

<sup>84</sup> M. A. Zaffarano. *Understanding Leadership in the State Trial Courts: A Review Essay*, *The Justice System Journal*, 10: 229-242 (1985).

<sup>85</sup> Judith Kaye, *Changing In Times: The Need for a Fresh Look at How Courts Are Run*, *The Handbook for Judges*, (American Judicature Society 2004).

## **The Role And Responsibilities Of The Courts**

A court or a judiciary that is as good as its promise is known not just for speed and efficiency but also for less quantifiable aspects of justice: fairness and respect, attention to human equality, a focus on careful listening and a demand that people leave the courts understanding orders.<sup>86</sup> Courts cannot be content with just being speedy or clever but must endeavor to be fully just to every person who leaves the courthouse.<sup>87</sup> The concepts that underpin case-flow management, trial court organization and generally court administration were developed in the 1960's and 1970's.<sup>88</sup> These concepts are continuing to become outdated because justice is not a widget and the administration of courts requires not only the counting of cases but also insuring that every case counts.<sup>89</sup>

The ever changing values in the community, advances in technology, declines in the community institutions, all impact court administration.<sup>90</sup> How well the court is functioning is essential to maintaining a viable legal system that is responsive to the needs and concerns of the public.<sup>91</sup> The root concept of "courtiness" is that whenever two persons come into a conflict that they cannot themselves solve, the one solution is to call upon a third for assistance in achieving resolution.<sup>92</sup> The basic social logic of the

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<sup>86</sup> Chief Judge Kevin Burke, *A Court and a Judiciary As Good As Its Promise*, The Hennepin Lawyer, (Dec 30, 2003).

<sup>87</sup> Chief Judge Kevin Burke, *A Court and a Judiciary As Good As Its Promise*, The Hennepin Lawyer, (Dec 30, 2003).

<sup>88</sup> Richard Fruin and Bryan Borys, *The Next Society and the Public Courts*, The Handbook for Judges, (American Judicature Society 2004).

<sup>89</sup> Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, The Handbook for Judges ( American Judicature Society 2004).

<sup>90</sup> Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, The Handbook for Judges ( American Judicature Society 2004).

<sup>91</sup> Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, The Handbook for Judges, p. 180 (American Judicature Society 2004).

<sup>92</sup> Martin Shapiro, *A Comparative And Political Analysis* (1986)

courts involves the previously described triad for purposes of conflict resolution. Since the basic social logic of the courts has become compelling, the courts have become a universal political phenomenon.<sup>93</sup> Along with the prototype, the need for proper administration of the courts was recognized.

Court administration issues relate to: *court organization, structure, accountability, efficiency, effectiveness, caseload management and processing time standards, sources of funding.*<sup>94</sup> Effective courts and competent court leaders understand and keep pace with the scope and the essence of all activities, programs and services ranging from basic, such as court facilities, clerks and reporters, and court security to the more specialized, such as child custody evaluations, legal research staff, and indigent defense.<sup>95</sup> These activities, programs, and services and infrastructure constitute the court's Essential Components and require proper management even if these components are not under the direct authority of the court.<sup>96</sup> The courts need management which busy and overworked judges with vastly increased caseloads cannot give.<sup>97</sup> Judges need trained help in administration or management in the same way they need skilled secretaries and court reporters that do for the judge what he cannot do for himself.<sup>98</sup>

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<sup>93</sup> Martin Shapiro, *A Comparative And Political Analysis* p. 1 (1986)

<sup>94</sup> Harry O. Lawson and Dennis E. Howard, *Development of the Profession of Court Management: A History With Commentary*, *The Justice System Journal*, Vol. 15, No. 2 (1991).

<sup>95</sup> *The Court Manager*, Vol. 18 Issue 2 ,(NACM 2003). (Discussing essential components of core competency).

<sup>96</sup> *The Court Manager*, Vol. 18 Issue 2, (NACM 2003). (Discussing essential components of core competency).

<sup>97</sup> Chief Justice Warren Burger, *Court Administrators: Where would we find them?* *Judicature* Vol. 53, No. 3 (October 1969).

<sup>98</sup> Chief Justice Warren Burger, *Court Administrators: Where would we find them?* *Judicature* Vol. 53, No. 3 (October 1969).

The evolution of the National Association for Court Management (NACM) Core Competency Curriculum Guidelines provide for the first time a comprehensive statement of what court leaders need to know and be able to do.<sup>99</sup> The Core Competency Curriculum Guidelines are not final statement on court leader competency and must evolve as the court's issues and challenges change. The Ten Core Competencies in brief are:

<u>Competency:</u>	<u>Definition:</u>
<u>Purpose and Responsibilities of the Courts</u>	The reason, root, and the foundation for the other nine Core Competencies. Purpose it gives legitimacy to the exercise of Leadership, informs Visioning and Strategic Planning, and orients the practice of Caseflow Management and the other six more technical competencies.
<u>Case-flow Management</u>	Considered the heart of court management and the primary function is moving cases from filing to closure includes pre-trial events, trials, and events that follow disposition to ensure the integrity of court ordered and timely completion of post-disposition case activity.
<u>Leadership</u>	Necessary system of action which is an observable and learnable trait which is different than management and is the energy behind the court system.

<sup>99</sup> The Court Manager, Vol. 18 Issue 2, ( NACM 2003)(Introduction and Overview)

Competency: <sup>100</sup>	Definition:
<u>Court Community Communication</u>	Courts and Court leaders must learn from and educate the public. Courts use the media for skillful community outreach and inform the public so as to improve court performance and enhance public trust and confidence.

<u>Visioning and Strategic Planning</u>	<p><u>Visions</u>: holistic, inspirational future snapshots looking forward and relate to justice, service, judicial independence, substantive and procedural due process, equal protection, access, and fair efficient application to the facts.</p> <p><u>Strategic</u>: a process involving principles, methods, and tools to assist court leaders in deciding what to do and how and when, to do it. Strategic planning translates vision into plans and action.</p>
<u>Essential Components</u>	Information provided to the court through programs annexed to the court or case rather than by the parties to litigation. Additional components range from court security, courtrooms, clerks, and reporters, evaluations, legal research staff and indigent defense.

<u>Resources, Budget, and Finance</u>	Skillful allocation, acquisition, and management of the court’s budget impacts all court operations and determines the achievement of their mission, preserves their independence, increase public trust.

<sup>100</sup> The Court Manager Vol. 18, No. 2 (NACM 2003)

Competency: <sup>101</sup>	Definition:
<u>Human Resources Management</u>	Effective Human Resources Management enables performance but also increases morale, employee perceptions of fairness, and self-worth.
<u>Education, Training, and Development</u>	Improves court and justice system performance and achieve the desired future. A judicial branch education helps actuate all other competencies and assists the courts to maintain balance between the forces of change and enduring principles. Effective court leaders take responsibility for it.
<u>Information Technology Management</u>	Assists all courts to perform their tasks faster, cheaper, and better and improves court justice systems operations, public access to the courts, and the quality of justice.

<sup>101</sup> The Court Manager Vol.18, No.2 ( NACM 2003)

## **METHODOLOGY**

During the month of August a questionnaire survey was developed using the *Core Competency Curriculum Guidelines*.<sup>102</sup> The questionnaire was designed to survey attitudes and opinions of chief judges of limited and general jurisdiction courts who presently oversee the administrative functions of the court in conjunction with the court administrator. The questionnaire and cover letter<sup>103</sup> were distributed to a focus group of thirty (30) chief judges across the nation.<sup>104</sup> Twelve (12) out of the thirty (30) of the questionnaires were returned from nine different states<sup>105</sup> for a response rate forty percent (40%). The survey was crafted to generate information on the following:

- To identify what chief judges perceive as their primary and secondary duties
- To identify methods, if any, primary and secondary duties of the chief judge are defined, delegated, or assigned to the court administrator.
- To identify when the duties of the chief judge and the court administrator diverge and the reasons behind the divergence.
- To evaluate opinions, perceptions, attitudes of chief judges towards their administrative duties within the court system.
- To evaluate opinions, perceptions, attitudes of chief judges toward the professional court administrator

Using the NACM's Core Competency Guidelines, chief judges were asked to identify the areas that relate to court management and rank the areas which they perceived as their primary duties as chief judge and indicate what they perceive as secondary duties.

Using the same areas that relate to court management, the participants in the

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<sup>102</sup> *The Court Manager*, Vol. 18, issue 2 (NACM 2003)

<sup>103</sup> A complete copy of the cover letter and the survey are in Appendix 1 and Appendix 2.

<sup>104</sup> Georgia, Minnesota, Michigan, Arkansas, Arizona, Utah, Washington, New Mexico, California, Kansas, Ohio

<sup>105</sup> Regions of the country include: West, Southwest, Northwest, Midwest and the South. No responses from Northeastern states were returned.

questionnaire were also asked to identify which duties are the primary duties of the court administrator and indicate what they perceived as secondary duties of the court administrator. These were questions 4 through 5 on the questionnaire. Once the areas were properly identified and ranked as primary and secondary, the participants were asked to list five areas which they perceive themselves as most effective as chief judge and identify five areas where the court administrator is most effective, and lastly, identify five areas where the chief judge and court administrator share decision-making functions. These were questions 7 through 9 on the questionnaire.

The chief judges were asked to describe the method by which the duties related to matters of court management are allocated between themselves and the court administrator including any policy, rule, statute, or informal understanding as well as identify any judicial canon of the code of judicial conduct which governed their administrative duties.

Questions 12 through 22 consist of a series of questions that were designed to evaluate the opinions and attitudes of the chief judges towards their role in the day-to-day administrative matters related to court management, evaluate the chief judges' understanding of the importance of their administrative role, and to gauge the chief judges' perceptions of their colleagues' understanding of the chief judge's administrative role in matters of court administration. Lastly, participants were asked questions regarding their opinions related to professionally trained court administrators and whether there is a demand that the court administrators be professionally trained.

## **FINDINGS**

The focus of the survey was to identify the role of the chief judge in court administration and evaluate “how” or “why” the administrative duties are divided between the Chief judge and the court administrator so that judicial independence is preserved, and to identify what impact, if any, the introduction of the Professional Court Administrator has had upon the judiciary. Using language taken from NACM’S Core Competency Curriculum Guidelines<sup>106</sup> and language derived from the Trial Court Performance Standards,<sup>107</sup> the chief judges were asked to identify the areas of duties related to court management that were their primary and secondary responsibilities; and from the same areas of duties related to court management, identify what they perceived as the court administrator’s primary and secondary duties. The chief judges were then asked to identify the areas of duties related to court management in which they were most effective, and identify the areas of duties related to court management which they believed the court administrators were most effective, and lastly, to identify the areas of duties related to court management where the chief judge and the court administrator share decision-making functions.

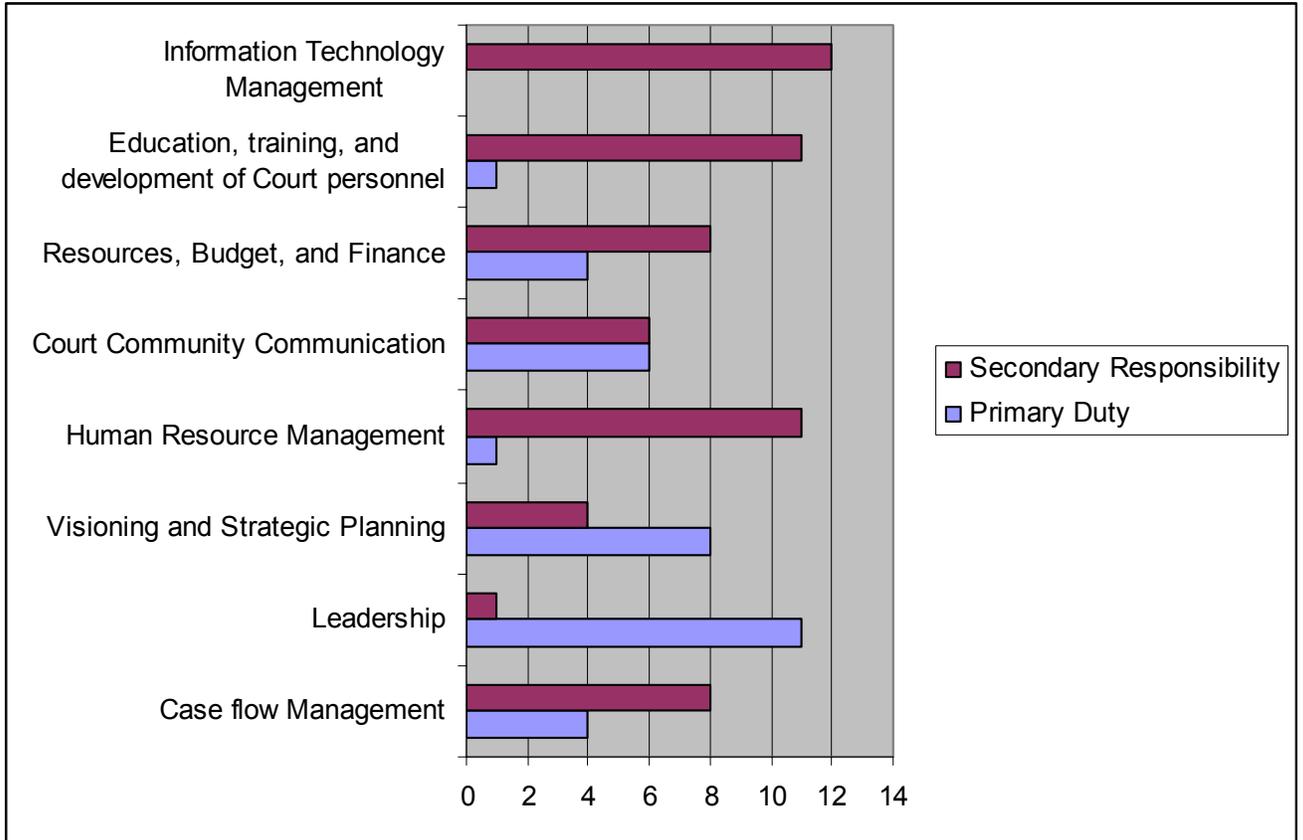
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<sup>106</sup> The Court Manager , Vol. 18 Issue 2 ( NACM 2003)

<sup>107</sup> The Trial Court Performance Standards Desk Reference Manual (NCSC 2003).

**Chart 1:**

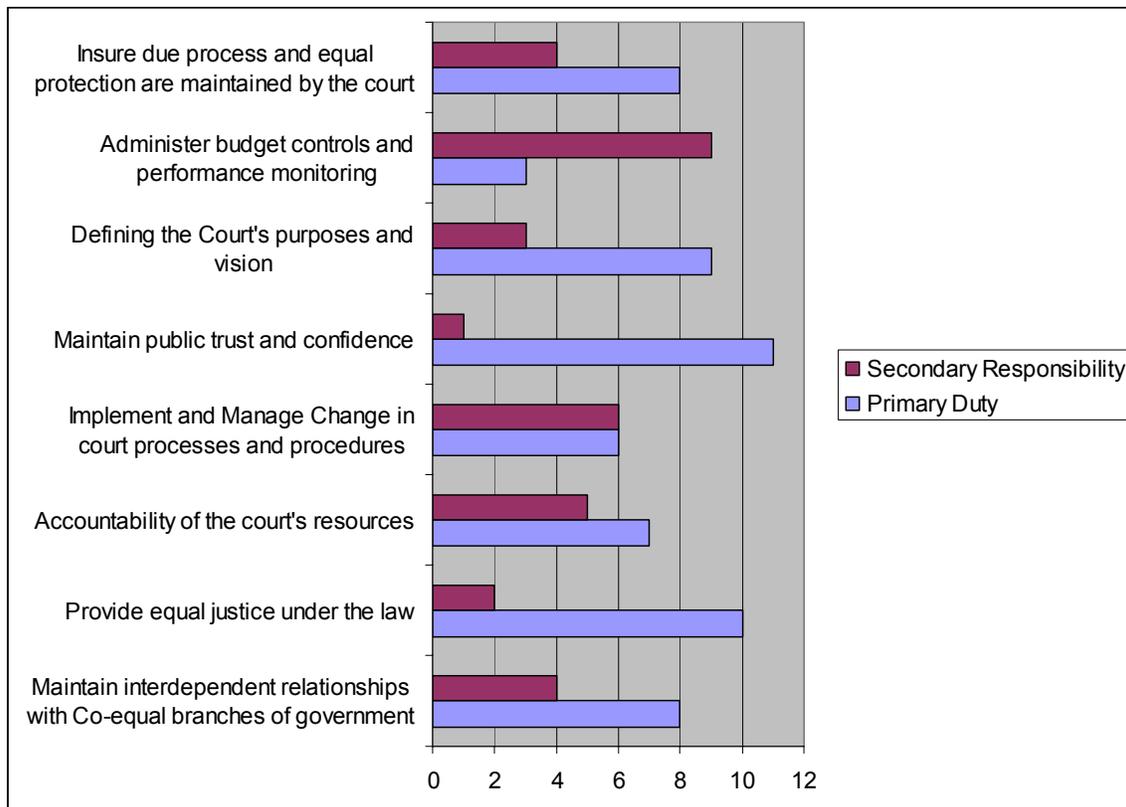
**Areas of primary and secondary duties as perceived by chief judges that relate to court management which are described in terms of NACM 's Core Competency Curriculum Guidelines<sup>108</sup>**



The chief judges ranked *Court Community Communication*, *Visioning and Strategic Planning*, and *Leadership* as the most commonly perceived primary duties related to court management. *Education, training and development of Court personnel*, and *Human Resource Management*, *Case flow Management*; *Resource, Budget, and Finance* and *Information Technology Management* being secondary.

<sup>108</sup> The Court Manager, Vol 18, Issue 2 ( NACM 2003)

**Chart 2: Areas of primary and secondary duties as perceived by chief judges that relate to court management which are described in terms derived from the Trial Court Performance Standards<sup>109</sup>**



In terms of the Trial Court Performance Standards, the judges identified as their primary duties related to court management as: *Maintain public trust and confidence, provide equal justice under the law, defining the court’s purposes and vision, and maintain interdependent relationships, accountability, insure due process and equal protection* are maintained at the court. The secondary duties include *administration of budget controls and performance monitoring, implement change and manage court processes and procedures and accountability for court’s resources* ranking as a primary and secondary duty.

<sup>109</sup> The Trial Court Performance Standards Reference Manual (NCSC 2003).

Using the same areas of duties related to court management, the chief judges were asked to identify the areas of duties related to court management that they were the most effective and explain why. The majority of the surveys listed areas of duties as the most effective were the same as the areas of duties which were identified as their primary duties.

“*Case flow Management and Budget*” the two areas which were identified as secondary duties by the majority of the judges, were subsequently identified as areas that the judges felt that they were most effective. With regard to “*Budget*,” one judge explained that although the budget was a secondary responsibility, he was the most effective in these areas because he was the one who requests the monies every year. Another judge explained that he was most effective in this area because he has the expertise and the interest in the finances of the court. As for *caseflow management*, the judges explained that by setting case flow standards to persuade other judges that they were most effective in this area. The most common explanation as to why the judges listed the areas that they were most effective was because they had a particular interest in that area had the time to perform the duties, and enjoyed them the most.<sup>110</sup>

The judges were asked to describe the method by which the duties related to matters of court management are allocated between the chief judge and the court administrator in their jurisdiction. Although all of the states from which the judges preside have a

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<sup>110</sup> One judge listed “Peace Keeper” and “communicate well with others” as areas of duties related to court management which were not even on the list. Human Resource Management was listed by one judge as to which he was most effective since he had the final word.

statute or local rule<sup>111</sup> by which the duties related to court management are identified, the most common manner by which the chief judge and the court administrator duties are allocated is through informal understanding and internal policy<sup>112</sup>. The exception to this finding is that judges from states with unified court systems<sup>113</sup> rely upon the guidance of the Judicial Council and/or the Administrative Office of the Courts to assist them in the determination of which duties related to court administration are allocated between the chief judge and the court administrator.

Using the same areas related to court management, the judges identified what they perceived as the court administrators primary and secondary duties. The results were as follows:

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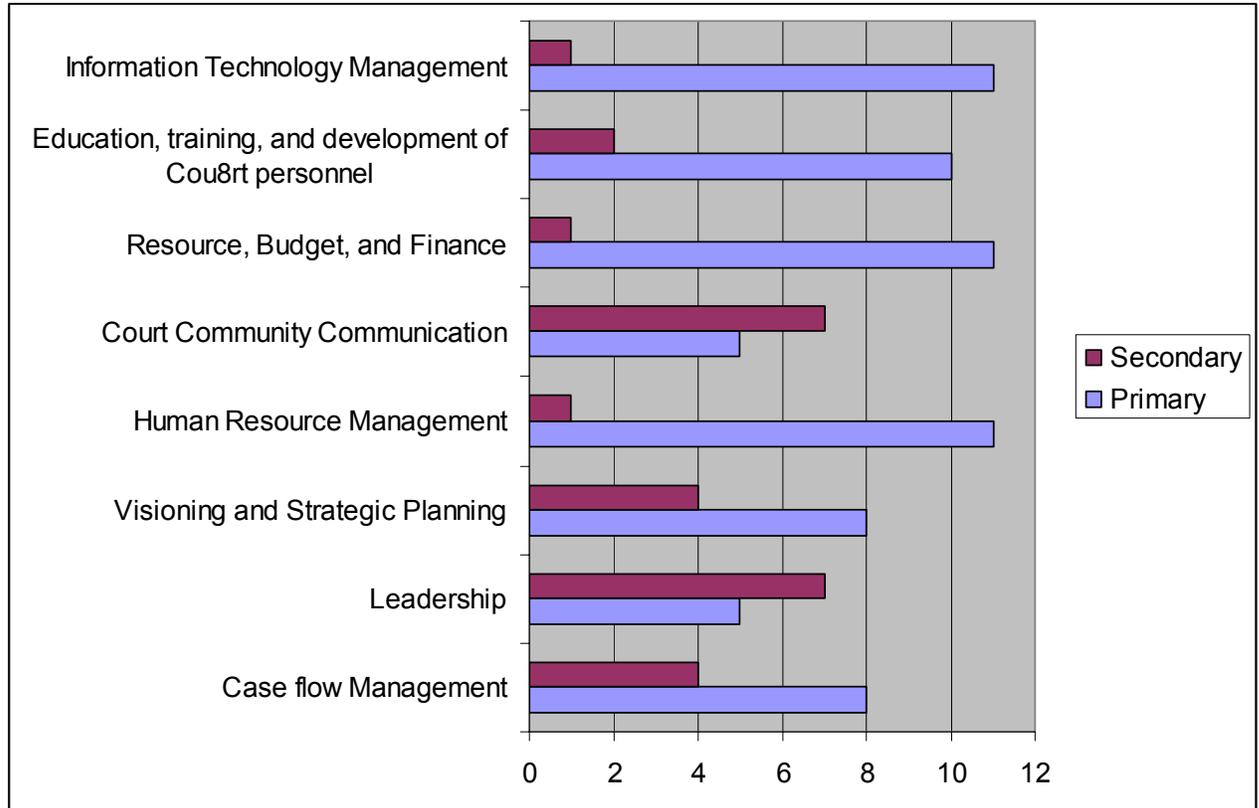
<sup>111</sup> See Appendices 3 through 12 Presiding Judges duties from each state that responded to survey.

<sup>112</sup> One judge disclosed “he does whatever the court administrator tells him to do” and “stays out of her way.”

<sup>113</sup> Of the twelve judges involved in the focus group, there were 9 different states, 5 states were unified court systems.

**Chart 3:**

**Areas of duties related to court management which the judges perceived as the court administrator’s primary and secondary duties which are described in terms of NACM’s Core Competency Curriculum Guidelines<sup>114</sup>**

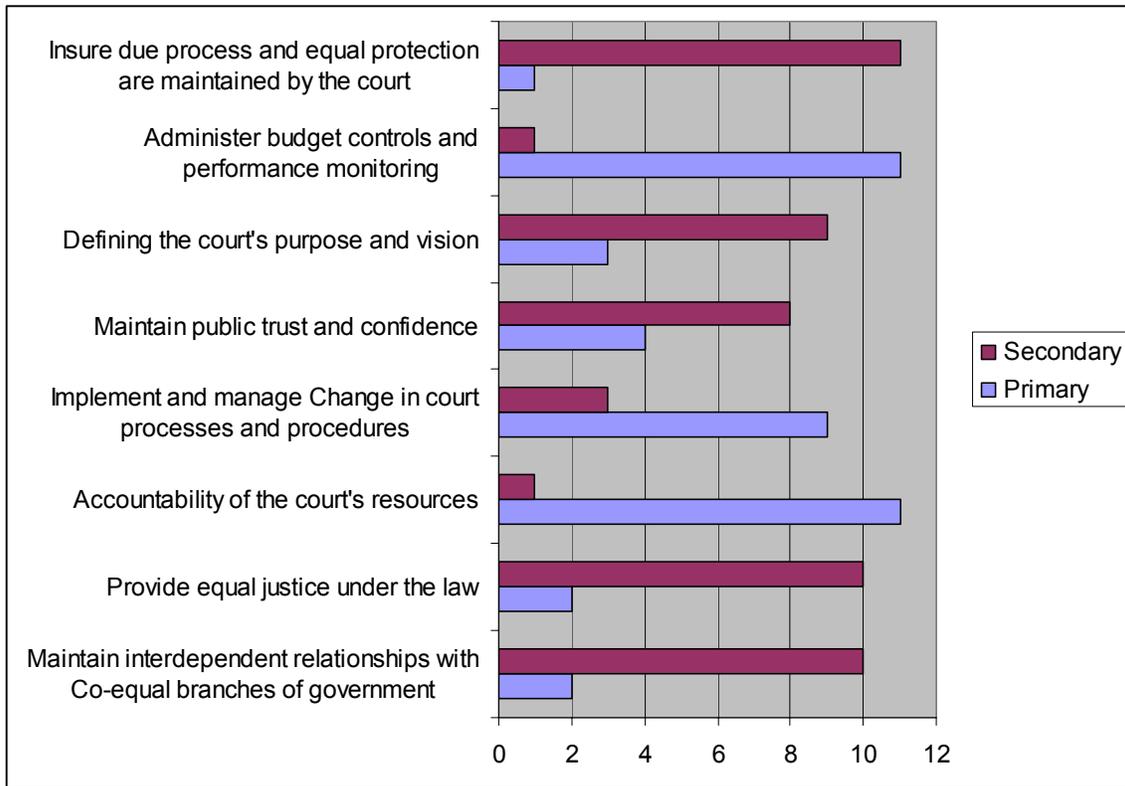


With the exception of *Visioning and Strategic Planning*, from the perception of judges, the areas of duties related to court administration listed as primary duties of the court administrator were previously identified as the judges’ secondary duties.

<sup>114</sup> The Court Manager, Vol. 18 Issue 2 ( NACM 2003)

**Chart 4:**

**Areas of duties related to court management which the judges perceived as the court administrators' primary and secondary duties which are described in terms of Trial Court Performance Standards.<sup>115</sup>**



Accountability for the *court's resources and administering budget controls and performance monitoring* were strongly perceived as the primary duties of the court administrator by the judges. The judges were then asked to identify the areas of duties related to court management which they perceived as the areas in which the court administrator was most effective. *Information Technology Management; Education, training and development of court personnel; Resource, Budget and Finance; Human Resource Management, and Case flow Management* were listed consistently by all of the judges as the areas which the court administrator was most effective. The explanation

<sup>115</sup> The Trial Court Performance Standards Desk Reference Manual (NCSC 2003).

provided by the judges as to why they felt these areas were the areas in which the court administrator was most effective included:

- operational knowledge
- experience and training
- organizational skills
- keen financial interest and expertise in these areas;
- these areas relate to the day to day operational needs of the court and its personnel which are the responsibility of the court administrator.

Subsequently, the judges were asked to identify the five areas of duties related to court administration which the judges shared decision-making functions. The five most common areas where shared decision-making functions were:

- *Visioning and Strategic Planning for the court,*
- *Resource, Finance, and Budget,*
- *Case flow Management,*
- *Implement and manage change in Policy and Procedures for the Court*
- *Educating and Training of Personnel.*

One judge explained that the delegation process determines whether there is shared decision-making and the Chief judge should not make decisions independent of the court administrator once the duties have been delegated. Various judges indicated that shared decision-making functions were not defined by areas of duties but by the situation and occurred most when the court administrator needed the authority from the

chief judge or his assistance in a matter or when the chief judge sought the advice of the court administrator.

The judges were asked a series of questions related to their perception of their role in court administration, their colleague's perception and understanding of their role as chief judge and their impression of the court administrator's understanding of their role in court administration<sup>116</sup>. All of the judges agreed that the ever-changing role and responsibilities of the court requires the chief judges to change their perception and understanding of their role in matters related to court management.<sup>117</sup> One judge explained that the court's efforts in trying to alleviate the "police court" perception requires the chief judge to change their understanding of her role in administrative matters. Another judge offered that judges with administrative responsibilities were perceived as glorified supervisors not as judges. Interestingly, another judge indicated that when problems arise and budget considerations are considered, the role of the chief judge takes on a broader significance.

Eight of the twelve judges *agreed* that their role in matters of court management was understood by their colleagues in the judiciary.<sup>118</sup> One of the judges who *agreed* with this statement indicated that through good communications and regular meetings the other judges understand his role in administration. Another judge explained that the other judges realize how much easier their job is if the court is operated efficiently through the involvement of the chief judge. Of the three judges that *disagreed*, one

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<sup>116</sup> See Appendices 13, 15, 16, 18 for charts of their responses.

<sup>117</sup> See Appendix 13 Chart 5.

<sup>118</sup> See Appendix 15 Chart 7.

judge explained that among her colleagues of the judiciary, the role of the chief judge is perceived as nothing much more than ceremonial or public relations oriented.

Nine of the twelve judges *agreed* that the importance of their administrative role in matters of court management is understood by members of the co-equal branches of government.<sup>119</sup> One judge that *agreed* disclosed that she is perceived as part of the executive team that manages the city. Another judge who *disagreed* with this statement indicated that the court was only perceived as a revenue generating entity by the other branches. Additionally, a judge who disagreed indicated that the members of co-equal branches perceived her role as chief judge as one who oversees other judges, rulings and courtroom action. One judge who strongly disagreed stated that in her twenty years of experience nothing indicates that the members of the co-equal branches of government care, pay any attention, or have any need to know the importance of the chief judge in matters of court management.

Nine of the twelve judges *agreed* that the perception and understanding of the role of the chief judge in matters related to court management needs improvement among the members of the court administration profession.<sup>120</sup> A judge who *strongly agreed* with this statement indicated that because there lacks a clear understanding among judges and court personnel the importance of the role of chief judge is diminished. Another judge indicated that he *agreed* with this statement because when he attended court management programs there often was a theme of “how to get around the judge” and

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<sup>119</sup> See Appendix 16 Chart 8.

<sup>120</sup> See Appendix 18 Chart 10.

the judge was perceived as an obstacle not as part of the management team. No explanation was provided by the three judges who *disagreed* with this statement.

Another series of questions were provided to the judges to probe their attitudes toward their decisions as administrators and to gauge their opinions if they felt any ethical or professional conflict in the performance of their administrative duties as chief judge. Seven of the twelve judges *disagreed* that there were situations in the day to day administrative matters related to court management that required them to choose between abiding by the *Canons Of The Code Of Judicial Conduct* over the administration of the court.<sup>121</sup> One judge indicated that he *disagreed* with this statement because the day to day matters are handled by the court administrator so that there is not any compromise of this nature. Another judge who *disagreed* indicated that although these situations don't come up on a day-to-day basis, they do occur with some regularity. That judge also indicated that the remedy is to create an atmosphere within the court so that these conflicts don't arise on a daily basis. A judge who *strongly disagreed* stated he has never encountered this conflict which would require him to choose between one action over another but believes that any issue should be addressed in a manner consistent with the code of judicial conduct. One judge indicated he *strongly disagreed* because he doesn't see any inconsistency between his role as judge and his role as administrator. Another judge who *strongly agreed* with this statement because he hears each day comments and complaints from judges and attorneys about each other and some are serious. Another judge who *agreed* stated that "due process" is

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<sup>121</sup> See Appendix 14 Chart 6.

not always the most efficient way to do business but the legal requirements (judicial code of conduct) always trumps efficiency.

The judges were asked if they perceived that the decisions made in cases or from the bench were their most important decisions and do not include decisions made in their administrative capacity.<sup>122</sup> Nine of the twelve judges *disagreed* that their most important decisions were rendered from the bench or in legal opinions. The explanations provided by the judges who *disagreed* with this statement because all decisions made as chief judge are important. Another judge who *disagreed* indicated that he does not have levels of decisions, that they are all important. Additionally another judge who *disagreed* stated that “case decisions” are not made by him as “chief judge” but as a “District Judge” therefore decisions made in his capacity as “chief judge” can not be compared to “case decisions” in terms of importance.

When asked if their state code of judicial conduct or any other court rule from which the judges preside required the chief judge to maintain competence in matters related to judicial administration seven of the twelve judges responded “No”.<sup>123</sup> When asked how often the judges attend training or educational seminars solely related to matters of court management the twelve judges responded as follows:

- Three judges stated they “never” attend training solely related to matters of court management.

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<sup>122</sup> See Appendix 22 Chart 14.

<sup>123</sup> This author reviewed the appropriate codes of the nine states that were represented by the 12 judges surveyed all of which have adopted ABA Model Canon 300 which requires judges to maintain competence in judicial administration.

- Three judges stated that they attend more than one annually.
- Six judges stated they attend one annually.

Judges from all categories of responses explained that there were not enough of these seminars offered for their use.

The judges were presented a series of questions regarding the role of the court administrator and their impressions of the profession of court administration. Eleven out of the twelve judges *agreed* that successful day-to-day administration of justice requires the chief judge and the court administrator to work together as a team.<sup>124</sup> Explanations provided by the judges include claims that court efficiency requires the chief judge and the court administrator to work together as a team and is absolutely essential. The one judge that *disagreed* with this statement explained that while some day-to-day cooperation is important at times, the functions of these two offices are quite different. Notably this is the same judge who indicated that there is not a clear understanding among judges or personnel as to the role of the chief judge in matters related to court management.

Eight out of twelve judges surveyed *agreed* that absent the services of a professionally trained court administrator the independence and the integrity of the judiciary are compromised.<sup>125</sup> One judge who *agreed* with the statement indicated that his court administrator was a retired judge who knew the court well and is an excellent court administrator. Another judge indicated that he *strongly agreed* with the statement

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<sup>124</sup> See Appendix 20 Chart 12.

<sup>125</sup> See Appendix 21 Chart 13.

because there are restrictions placed upon a judge as to what they can say or do and it makes it necessary to have a professional court administrator to handle these areas. Another judge who *agreed* disclosed that it is preferred that court administrators be professionally trained even though some court administrators who are not professionally trained can understand the concept of the independence and integrity of the judicial branch. A judge who *agreed* with the statement indicated that he was not sure what “professionally” trained meant, but that an administrator must have training and understand the role and functions of the judiciary. This same judge indicated that his chief clerk was a lawyer which is consistent with three of the judges who *agreed* with this statement that also indicated that their “professionally trained court administrator” had a law degree, while two others disclosed that their administrators had advanced degrees in management. One judge who had a court administrator with a law degree, *disagreed*, stating that it is “just better to have a professionally trained court administrator.” Another judge who *disagreed* stated the independence of the judiciary is not an administrative product necessarily and may be damaged by some administrative actor or philosophies. This same judge concluded that the integrity of the court can be compromised but not necessarily linked to the level of professional administrative training.

Ten out of twelve judges *agreed* that the increased use of specialty courts (i.e. drug courts) advancement of technologies, and the diminishing of court resources require the services of a professionally trained court administrator.<sup>126</sup> A judge who *strongly agreed* with this statement because specialty courts require specialized procedures and different

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<sup>126</sup>See Appendix 17 Chart 9.

sources of funding which in turn requires the services of professional managers. Another judge *agreed* with the statement but added “court experience” is a good alternative. Another judge who *strongly agreed* indicated that the question was “obvious” and asked “whether I expect any other answer”. A judge who *disagreed* stated that the administrator can be qualified by experience rather than education, but continued education is important. This same judge has a chief clerk who is also an attorney.

Nine out of twelve judges *agreed* that the development of the professional court administrator is essential to maintain equilibrium among the co-equal branches of government.<sup>127</sup> One judge *disagreed* with the statement because his court administrator was a retired judge who knew the court well. A judge who *strongly agreed* and stated that accountability must be demonstrated in order to maintain judicial independence and professional management ensures this concept. A judge who *disagreed* indicated “why” as an explanation. Additionally a judge who *strongly disagreed* with the statement UNLESS the development was defined as training the court administrator as a lobbyist with the other branches.

Ten out of twelve judges *agreed* that the ever-changing role and responsibilities of the courts in our communities requires that the court administrator be professionally trained and educated in matters related to court management.<sup>128</sup> A judge who *strongly agreed* stated that the complexity of the work of the courts requires that the court administrator

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<sup>127</sup> See Appendix 23 Chart 15.

<sup>128</sup> See Appendix 19 Chart 11.

be professionally trained. A judge who *agreed* disclosed although court experience is good training, it is better to have a professionally trained court administrator. Another judge who *strongly agreed* indicated that his court manager and deputy court manager were both ICM Fellows. A judge who *disagreed* indicated that his court administrator is a former judge who has great knowledge of the system and is an excellent administrator.

## **CONCLUSIONS AND RECOMMENDATIONS:**

Excellent judicial administration requires a degree of involvement of the chief judge for successful day-to-day administration of justice. The division of the administrative duties between the chief judge and the court administrator is not uniform. Courts of limited and general jurisdiction have rules, statutes and codes which identify the administrative duties of the chief judge. Based upon the judges surveyed, it appears that despite the rules, statutes and codes identifying the chief judges' administrative responsibilities, each court divide or delegates these administrative duties related to court administration through informal understanding and internal policy. Additionally, it appears that judges determine their primary duties relating to court management were the duties that they were most effective, or performed those duties because they had a particular interest, or possessed the time and expertise.

This paper concluded in terms of the respondents' answers the following propositions as provided in the conclusions below. Additionally, this paper summarizes recommendations which address each proposition in the interest of improving the symbiotic relationship of the chief judge and court administrator while preserving judicial independence and judicial accountability so that the administration of justice is not compromised. Below is a summary of conclusions and recommendations as follows:

(1) **Conclusion**: Absence of uniformity in the division of clearly defined duties related to court management between the chief judge and the court administrator, judicial independence is compromised. Uniform identification of the chief judges' administrative duties to a certain degree is necessary to insure effective administration of the courts. Without clearly defined duties for the chief judge and the court administrator, the effectiveness of the court is compromised because court administration involves the management of the court's organizational structure, accountability for the court and its resources, including case-flow management and processing time standards, management of human resources, budget and finance. A well established and defined administrative relationship between the chief judge and the court administrator is the cornerstone of the overall performance of the court. A court which fails to be properly managed is eventually absorbed by the other branches, the citizen's access to justice with meaningful participation is affected, and the principles of due process and equal protection under the law are compromised. In other words, the role and responsibilities of the third branch become obscure and the court becomes a sub-agency of the executive and legislative branches, heightening the public's dissatisfaction with the administration of justice.

**Recommendation 1-1**: The development of a model rule clearly identifying the administrative duties of the chief judge to be adopted by each state may reduce the friction in the relationship between the chief judge and the court administrator and increase effectiveness of the court. The duties related to court management would not be determined by the judges' interests, skills, or time. The court administrators would possess the knowledge of what is expected from them and the chief judges would have

an understanding of what duties which related to court management that will be held accountable.

**Recommendation 1-2:** Clearly define the duties related to court management and their delegation between the chief judge and the court administrator. Each state through their respective state judicial education centers could implement an “judicial-executive conclave” or other program designed specifically to address the administrative relationship between the chief judge and the court administrator, the division or delegation of duties related to court management, with the focus being the improvement of the overall performance of the court.

**Recommendation 1-3:** The program should include any associate or assistant chief judge who is interested in becoming the next chief judge in addition to the chief judge and court administrator. The program would assist in training judges who have an interest in administrative matters and prepare them to become chief judge. The newly appointed chief judges who have the benefit of prior administrative training in court management would assist in reducing the friction which occurs when there is a change in leadership.

**Recommendation 1-4:** The court’s performance and administration would less likely be impacted with the appointment of a new “chief judge” who has completed the “judicial executive” program. Such a program would be similar to the “*Court Executive Leadership Team*” program promoted by the *National Association for Court Management*. The implementation of a “*Court Executive Leadership Team*” program in each state in addition to the adoption of the uniform rule clearly defining duties

related to court management would clearly benefit the court administration profession, the judiciary, as well as improve administration of justice.

**(2) Conclusion:** An amendment clarifying the *Uniform Code of Judicial Conduct* wherein judges are required to maintain competence in matters related to judicial administration is required to preserve judicial independence, interdependence, and accountability. Notably the *Uniform Code Of Judicial Conduct* requires judges to “maintain competence in judicial administration”. However, the majority of the judges surveyed claimed that they were unaware of any requirement under the *Uniform Code Of Judicial Conduct* adopted by their state which mandated that they maintain a certain degree of competence in judicial administration. Interestingly, the judges claimed that their compliance with the *Uniform Code Of Judicial Conduct* took precedence over any perceived responsibility for the performance of administrative duties.

**Recommendation 2-1:** The *Uniform Code Of Judicial Conduct* should be more explicit in identifying what it means to be “competent” in matters of judicial administration such as identifying the level of training required of judges who have administrative duties. The permissive language in the *Uniform Code Of Judicial Conduct* should be amended to clarify the affirmative duty imposed upon the judges with regard to their role in judicial administration.

**Recommendation 2-2:** Each state adopts mandatory “*Judicial Educational Credits*” solely related to court administration for the judges who performed the judicial administration duties of their courts. All states should be encouraged to sponsor such seminars necessary for the judges to maintain the judicial educational credits. With the

increased judicial education requirement, understanding of the role of the chief judge in administration of the court would improve among the judges and the court administrators. Additionally, an increase in “judicial accountability” would be more apparent because the court administrators as well as the judiciary would be defining and communicating the standards by which the judges’ performance can be properly measured. However, once the standards for which judges are held accountable are clearly defined, the judges are exposed to unwarranted political attacks and unfair personal attacks for unpopular administrative decisions, which create a threat to “judicial independence.”

**Recommendation 2-3:** In order to protect the independence of the judiciary as well as to insure judicial accountability in the administration of the court, an additional recommendation for public funding to provide for the legal defense of judges who are exposed to disciplinary complaints regarding their administrative actions which are eventually dismissed or found to be improperly lodged. As previously stated the motive of the judge is always considered, and although the judge is engaged in a judicial act when performing administrative functions, punishment is imposed when there is bad faith or ill motive in the decisions made, not *necessarily* the content of the decision itself.<sup>129</sup> The prospect of being charged with misconduct and forced to finance one’s defense increases timidity of the judges to become involved in administrative decisions or actions which potentially expose them to discipline.<sup>130</sup> Uniformity in the definition and delegation of administrative duties related to court management in

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<sup>129</sup> Steve Lubet, *Judicial Independence and Judicial discipline*, Law and Contemporary Problems Vol. 61 no.3, p. 73 (Summer 1998).

<sup>130</sup> Wendell L. Griffen, *Comment: Judicial Accountability*, Law and Contemporary Problems, Vol. 61 No. (Summer 1998).

addition to the increased training provided to judges through the judicial education credits related to judicial administration would reduce the amount of speculation regarding the motive behind administrative actions performed by the judge thereby resulting in the reduction of complaints against the judge erroneously alleging misconduct. Also the creation of a state defense fund specifically designed to defend judges against these type of complaints related to their administrative actions would reduce the amount of timidity displayed by the judges with regard to their involvement in court administration.

**(3) Conclusion:** Court administrators should be professionally trained and educated to preserve judicial independence, interdependence, and accountability. Based upon the survey, the judges clearly valued the services of the “Professional Court Administrator” with regard to the day-to-day operations of the court related to personnel, finance, training, education, and the implement of the change in court procedures. The majority of the judges defined the “Professional Court Administrator” in terms of advanced formal education and work related experience. For example, while the judges agreed that institutional knowledge and experience is valuable, most disclosed that it is best to have a “professional court administrator.” The judges that expressed this opinion all had court administrators with advanced degrees either in law, management, or finance. One judge disclosed that both the Court Administrator and the Deputy Court Administrator were “Fellows” from the Institute of Court Management through the National Center of State Courts.

**Recommendation 3-1:** Since the judges obviously value the advanced training and education of the court administrator as well as the contribution such training and education made to their court, then a recommendation that the judges should not only encourage such training but also endeavor to make the funding for such training and education available to their court administrators. Utilizing their alliances with the members of the legislative and executive branches which established through the necessary interdependent relationships, the judges could pursue funding from the appropriate legislative body and establish a “tuition reimbursement” program designated *specifically* for the advanced education and training of the “Professional Court Administrator.” The increase in the role and responsibilities of the courts has increased the demand for the “professional court administrator” which is apparent in the development of advanced degree programs currently being offered. Various educational institutions have developed programs and opportunities for higher education in judicial administration.<sup>131</sup> The judicial administration degree could potentially be combined with a master’s degree in public administration and or a juris doctorate degree or an advanced management degree. The continued development of these advanced degree programs related to judicial administration will enhance, but also secure the future of the court administration profession as well as improve the administration of justice.

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<sup>131</sup> Several institutions include: Michigan State University (Judicial Administration Program); Norwich University (Master of Justice Administration Degree); University of Denver (Masters of Science in Legal Administration); National Judicial College/ University of Nevada/Reno(Master’s and Ph. D of Judicial Studies).

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## APPENDICES

### Appendix 1

August XXX. 2005

Hon, John Doe  
XXXX  
XXXXX  
XXXXxxx

Re: Interview / Questionnaire for Chief / Presiding Judge regarding the division of duties related to court management.

Dear Hon. Doe:

Thank you for agreeing to complete the questionnaire described above. The questionnaire is designed to explore the opinions and perceptions of Chief / Presiding Judges of courts and how they affect the division of the duties related to court management. The results will be used to analyze and discuss methods which determine the division of duties between the Chief / Presiding Judge and the Court Administrator / Clerk of Court which is relevant to the topic of my thesis requirement for the Court Executive Development Program through the Institute of Court Management of the National Center for State Courts. Once the questionnaire is completed, please place in the attached self addressed stamped envelope return by August... 2005. Your name as a survey participant will not be disclosed nor will your answers to these questions be associated with your name.

Thank you in advance for your participation.

Sincerely,

Hon. Melissa Miller-Byrnes

**Interview / Questionnaire for Chief/Presiding Judge regarding the division of duties related to court management.<sup>132</sup>**

- 1) How long have you been a Chief/Presiding Judge?
- 2) How is your court system funded?(i.e. state or locally funded)
- 3) How often is the Chief/Presiding Judge selected and how?
- 4) Of the areas listed below that relate to court management, indicate which of these duties are the **PRIMARY duties of the Chief/ Presiding Judge** by placing the number “1” next to the named area; and indicate which of these duties SECONDARY duties of the Chief / Presiding Judge are by placing the number “2”.

**Areas<sup>133</sup> of duties related to court management include but are not limited to:**

- \_\_\_ Case flow Management
- \_\_\_ Leadership
- \_\_\_ Visioning and Strategic Planning
- \_\_\_ Insure due process and equal protection are maintained by the court
- \_\_\_ Human Resource Management
- \_\_\_ Court Community Communication
- \_\_\_ Resources, Budget, and Finance
- \_\_\_ Education, training, and development of Court personnel
- \_\_\_ Information Technology Management
- \_\_\_ Maintain interdependent relationships with Co-equal branches of government
- \_\_\_ Provide equal justice under the law

<sup>132</sup> Submitted by Hon. Melissa Miller-Byrnes, CEDP 2006, pages 1 through 7.

<sup>133</sup> Areas are derived from NACM’s Core Competency Curriculum Guidelines and supporting Curriculum Guidelines, as cited in **The Court Manager, Vol.18 Issue 2 (2003)**.

- \_\_\_ Accountability of the court's resources
- \_\_\_ Implement and Manage Change in court processes and procedures
- \_\_\_ Maintain public trust and confidence
- \_\_\_ Defining the Court's purposes and vision
- \_\_\_ Administer budget controls and performance monitoring

5) Of the areas listed below that relate to court management, indicate which of these duties are the **PRIMARY duties of the court administrators/clerk of court** by placing the number "1" next to the named area, and which of these duties are **SECONDARY duties of the court administrator /clerk of court** by placing the number "2".

**<sup>134</sup>Areas of duties related to court management include but are not limited to:**

- \_\_\_ Case flow Management
- \_\_\_ Leadership
- \_\_\_ Visioning and Strategic Planning
- \_\_\_ Insure due process and equal protection are maintained by the court
- \_\_\_ Human Resource Management
- \_\_\_ Court Community Communication
- \_\_\_ Resources, Budget, and Finance
- \_\_\_ Education, training, and development of Court personnel
- \_\_\_ Information Technology Management
- \_\_\_ Maintain interdependent relationships with Co-equal branches of government
- \_\_\_ Provide equal justice under the law
- \_\_\_ Accountability of the court's resources
- \_\_\_ Implement and manage Change in court processes and procedures
- \_\_\_ Maintain public trust and confidence
- \_\_\_ Defining the Court's purposes and vision
- \_\_\_ Administer budget controls and performance monitoring

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<sup>134</sup> Areas are derived from NACM's Core Competency Curriculum Guidelines and supporting Curriculum Guidelines, as cited in **The Court Manager, Vol.18 Issue 2 (2003)**.

6) Describe the method by which the duties related to matters of court management are allocated between the Chief/Presiding Judge and the court administrator/clerk of court in your jurisdiction. (I.e. by statute, local court rule, internal policy, or informal understanding).

7) Of the areas of duties related to court management previously identified in questions #4 and #5, list five areas which you are **most effective** as **Chief/Presiding Judge and explain why.**

8) Of the areas of duties related to court management previously identified in question #4 and #5, list five areas which **the court administrator/clerk of court is most effective and explain why.**

9) Of the areas of duties related to court management previously identified in questions #4 and #5, list five areas which **you share decision-making** functions **with the court administrator/clerk of court and explain why.**

10) Does the state code of judicial conduct or any other court rule from which you preside require the Chief/Presiding Judge to maintain competence in matters related to judicial administration? **If yes,** identify which canon(s) of the code and /or court rule.

11) As Chief/Presiding Judge, indicate how often you attend training or educational seminars solely related to matters of court management?

- a) Never, I send the court administrator / clerk of court
- b) Attend at least one seminar annually
- c) More than one annually
- d) Other: (describe)

**Of the following statements, indicate whether you strongly agree, agree, disagree, or strongly disagree. A space for explanation /comment is provided.**

12) As Chief/Presiding Judge, there are situations in the day to day administrative matters related to court management that require me to remain loyal to my profession(i.e. action may compromise the Code of Judicial Conduct) over the administration of the Court.

**Strongly Agree                      Agree                      Disagree                      Strongly Disagree**  
**1    2    3    4**

Explanation/comment:

13) As Chief / Presiding Judge, the importance of my administrative role in matters of court management is understood by my colleagues in the judiciary.

**Strongly Agree                      Agree                      Disagree                      Strongly Disagree**  
**1    2    3    4**

Explanation/comment:

14) As Chief / Presiding Judge, the importance of my administrative role in matters of court management is understood by members of the co-equal branches of government.

**Strongly Agree                      Agree                      Disagree                      Strongly Disagree**  
**1    2    3    4**

Explanation/comment:

15) The ever changing role and responsibilities of the court requires Chief / Presiding Judges to change their perception and understanding of their role in matters related to court management.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

16) The increased use of specialty courts (i.e. drug courts), advancement of technologies, and the diminishing of court resources require the services of a professionally trained court administrator / clerk of court.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

17) The perception and understanding of the role of the Chief/ Presiding Judge in matters related to court management needs improvement among members of the court administration profession.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

18) The ever changing role and responsibilities of the courts in our communities requires that court administrators be professionally trained and educated in matters related to court management.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

19) Successful day to day administration of justice requires the Chief / Presiding Judge and the court administrator / clerk of court to work together as a team.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

20) Absent the services of a professionally trained court administrator the independence and the integrity of the judiciary is compromised.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

21) As Chief / Presiding Judge, my most important decisions are “case decisions” which do not include decisions made in my administrative capacity.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

22) The development of the professional court administrator / clerk of court is essential to maintain equilibrium among the co-equal branches of government.

<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

Explanation/comment:

23) Does your court have a professionally trained court manager? Explain.

**17A A.R.S. Sup.Ct.Rules, Rule 92**

. Superior Court Administration

➔**Rule 92. Presiding Judge; Associate Presiding Judge**

**(a) Powers and Duties of Presiding Judge.** The **presiding judge** in each county, in addition to exercising general administrative supervision over the court and the **judges** thereof shall:

(1) Make regular and special assignments of all **judges**, except as otherwise provided by A.R.S. Section 8-202(B), and, unless otherwise directed by the Chief Justice, assign **judges** within the county to other counties;

(2) Exercise general supervision over all court personnel;

(3) Prescribe the powers and **duties** of the clerk of the court, in addition to those prescribed by law and the Supreme Court;

(4) Appoint with the approval of the Supreme Court an associate **presiding judge** to serve as acting **presiding judge** during the **presiding judge's** absence or unavailability;

(5) Determine the need for and approve (i) the allocation of space and furnishings in the court building; (ii) the construction of new court buildings, courtrooms and related physical facilities; and (iii) the modification of existing court buildings, courtrooms and related physical facilities;

(6) Identify and develop programs that provide alternative methods for the resolution of civil disputes to which actions may be referred pursuant to the authority conferred by Rule 16(g) of the Arizona Rules of Civil Procedure, and promulgate such local rules as a majority of the **judges** of the county may approve establishing and governing such alternative dispute resolution programs.

In order to facilitate the business of the court the **presiding judge** or associate **presiding judge** may delegate the **duties** prescribed in these rules to other **judges**.

**(b) Associate Presiding Judge.** The associate **presiding judge** shall serve at the pleasure of the **presiding judge** and shall exercise and discharge all powers and **duties** of the **presiding judge**, except the associate **presiding judge** may not appoint court commissioners or appoint **judges** permanently to special assignments.

**(c) Assignment of Cases.** In counties with more than one **judge**, the **presiding judge** may, upon the **presiding judge's** motion or upon the motion of any party, assign a case permanently to one **judge** for all purposes.

**NRS 3.025 Chief Judge in certain judicial districts: Selection; duties; assignment of certain cases to same department of family court.**

1. In each judicial district that includes a county whose population is 100,000 or more, the district judges of that judicial district shall choose from among those district judges a Chief Judge who is to be the presiding judge of the judicial district.

2. The Chief Judge shall:

- (a) Assign cases to each judge in the judicial district;
- (b) Prescribe the hours of court;
- (c) Adopt such other rules or regulations as are necessary for the orderly conduct of court business; and
- (d) Perform all other duties of the Chief Judge or of a presiding judge that are set forth in this chapter and any other provision of NRS.

3. If a case involves a matter within the jurisdiction of the family court and:

(a) The parties to the case are also the parties in any other pending case or were the parties in any other previously decided case assigned to a department of the family court in the judicial district; or

(b) A child involved in the case is also involved in any other pending case or was involved in any other previously decided case assigned to a department of the family court in the judicial district, other than a case within the jurisdiction of the juvenile court pursuant to title 5 of NRS,

↳ the Chief Judge shall assign the case to the department of the family court to which the other case is presently assigned or, if the other case has been decided, to the department of the family court that decided the other case, unless a different assignment is required by another provision of NRS, a court rule or the Nevada Code of Judicial Conduct or the Chief Judge determines that a different assignment is necessary because of considerations related to the management of the caseload of the district judges within the judicial district. If a case described in this subsection is heard initially by a master, the recommendation, report or order of the master must be submitted to the district judge of the department of the family court to which the case has been assigned pursuant to this subsection for consideration and decision by that district judge.

(Added to NRS by 1971, 1502; A 1981, 873; 1999, 706, 2020; 2003, 1114)

**NRS 3.026 Chief Judge in certain judicial districts: Additional duties.**

1. In each judicial district that includes a county whose population is 100,000 or more, in addition to the other duties set forth in NRS 3.025:

(a) The Chief Judge shall ensure that:

(1) The procedures which govern the consideration and disposition of cases and other proceedings within the jurisdiction of the district court are applied as uniformly as practicable; and

(2) Cases and other proceedings within the jurisdiction of the district court are considered and decided in a timely manner.

(b) Except as otherwise provided in subsection 2, the Chief Judge shall establish procedures for addressing grievances that are:

(1) Submitted to the Chief Judge by a party in a case or other proceeding within the jurisdiction of the district court; and

(2) Directly related to the administration of the case or other proceeding.

2. For the purposes of paragraph (b) of subsection 1, a party in a case or other proceeding within the jurisdiction of the district court may not submit to the Chief Judge a grievance that:

(a) Addresses, in whole or in part, the merits of the case or other proceeding; or

(b) Challenges, in whole or in part, the merits of any decision or ruling in the case or other proceeding that is made by:

(1) The district court; or

(2) A master or other person who is acting pursuant to an order of the district court or pursuant to any authority that is granted to the master or other person by a specific statute, including, without limitation, NRS 3.405, 3.475 and 3.500.

**Rule 3-104. Presiding judges.**

Intent:

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

Statement of the Rule:

(1) Election and term of office.

(1)(A) Presiding judge. The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office is presumed to be two years. A district, by majority vote of the judges of the court, may opt for a one year term of office and may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

(1)(B) Associate presiding judge.

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1) (A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(2) Court organization.

(2)(A) Court en banc.

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing judicial business. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

(2)(A)(iv) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(2)(A)(v) Minutes of each meeting shall be taken and preserved.

(2)(A)(vi) Other than judges and court executives, those attending the meeting shall be by court invitation only.

(2)(A)(vii) The issues on which judges should vote shall be left to the sound discretion and judgment of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

(2)(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge may be by supplemental court rule or at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) Administrative responsibilities and authority of presiding judge.

(3)(A) Generally. The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive.

(3)(B) Coordination of judicial schedules.

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge.

(3)(C) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(D) Outside agencies and the media.

(3)(D)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court at ceremonial functions.

(3)(D)(ii) Generally, the presiding judge or court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law and about court procedures, practices and rulings where ethics permit.

(3)(E) Docket management and case and judge assignments.

(3)(E)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(E)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(E)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the Administrative Office, request assistance of visiting judges when needed to handle the workload of the court.

(3)(E)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(F) Local supplemental rules.

(3)(F)(i) Prior to submission of a local supplemental rule to the Board, the presiding judge shall submit the rule to a vote of the judges of that jurisdiction. Upon a majority vote, the rule shall be submitted to the Board and the Council for review, adoption and ratification as provided in this Code.

(3)(F)(ii) The presiding judge shall ensure that copies of local supplemental rules are available and disseminated to interested persons.

(3)(G) Court executives.

(3)(G)(i) The presiding judge shall review the proposed appointment of the court executive made by the state court administrator and must concur in the appointment before it can be affected. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year.

(3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) Courtrooms and facilities. The presiding judge shall coordinate the assignment of courtrooms and facilities in accordance with supplemental court rules.

(3)(I) Recordkeeping. Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for computerization within the court in compliance with administrative rules.

(3)(J) Budgets. The presiding judge, in consultation with the court executive, shall oversee the development of the budget for the court.

In courts for which the county clerk serves as the clerk of court, the presiding judge shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with Utah Code Ann. Section 78-3-29(5).

(3)(K) Judicial officers. In the event that another judge of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, or violates the Code of Judicial Conduct, the presiding judge shall consider one or more of the following options:

- (3)(K)(i) Explain to the judge the reasons for the directive given or the position taken and consult with the judge.
- (3)(K)(ii) Reevaluate the position.
- (3)(K)(iii) If the problem persists, determine the available alternatives. Discuss and evaluate the alternatives with the judge.
- (3)(K)(iv) Discuss the position with other judges and reevaluate the position.
- (3)(K)(v) Present the problem to the court en banc or a committee of judges for a recommendation or establish a procedure within the court for resolving disputes between judges and the presiding judge, such as requiring the judge and the presiding judge to state in writing, within a stated and reasonable time, the reasons for their positions.
- (3)(K)(vi) Refer the problem to a higher authority such as the appropriate Board.
- (3)(K)(vii) Where the refusal is willful and continual, refer the problem to the Council or the Judicial Conduct Commission.
- (3)(L) Cases under advisement.
  - (3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination.
  - (3)(L)(ii) Once a month each judge shall submit a signed statement on a form to be provided by the Administrative Office notifying the presiding judge of any cases or issues held under advisement for more than 60 days and the reason why the case or issue continues to be held under advisement.
  - (3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than 60 days to the Chair of the appropriate Board and indicate the reasons why the case or issue continues to be held under advisement.
  - (3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the Board shall report that fact to the Council.
- (3)(M) Board of judges. The presiding judge shall serve as a liaison between the court and the Board for the respective court level.
- (3)(N) Supervision and evaluation of court commissioners. The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

**General Rules, GR 29**

**➡RULE 29. PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT**

**(a) Election, Term, Vacancies, Removal and Selection Criteria-Multiple Judge Courts.**

(1) *Election.* Each superior court district and each limited jurisdiction court district (including municipalities operating municipal courts) having more than one judge shall establish a procedure, by local court rule, for election, by the judges of the district, of a Presiding Judge, who shall supervise the judicial business of the district. In the same manner, the judges shall elect an Assistant Presiding Judge of the district who shall serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge and who shall perform such further duties as the Presiding Judge, the Executive Committee, if any, or the majority of the judges shall direct. If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

(2) *Term.* The Presiding Judge shall be elected for a term of not less than two years, subject to reelection. The term of the Presiding Judge shall commence on January 1 of the year in which the Presiding Judge's term begins.

(3) *Vacancies.* Interim vacancies of the office of Presiding Judge or Acting Presiding Judge shall be filled as provided in the local court rule in (a) (1).

(4) *Removal.* The Presiding Judge may be removed by a majority vote of the judges of the district unless otherwise provided by local court rule.

(5) *Selection Criteria.* Selection of a Presiding Judge should be based on the judge's 1) management and administrative ability, 2) interest in serving in the position, 3) experience and familiarity with a variety of trial court assignments, and 4) ability to motivate and educate other judicial officers and court personnel. A Presiding Judge must have at least four years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court.

## COMMENTARY

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It is the view of the committee that the selection and duties of a presiding judge should be enumerated in a court rule rather than in a statute. It is also our view that one rule should apply to all levels of court and include single judge courts. Therefore, the rule should be a GR (General Rule). The proposed rule addresses the process of selection/removal of a presiding judge and an executive committee. It was the intent of the committee to provide some flexibility to local courts wherein they could establish, by local rule, a removal process. Additionally, by delineating the selection criteria for the presiding judge, the committee intends that a rotational system of selecting a presiding judge is not advisable.

**(b) Selection and Term--Single Judge Courts.** In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office.

**(c) Notification of Chief Justice.** The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge to the Chief Justice of the Supreme Court within 30 days of election.

**(d) Caseload Adjustment.** To the extent possible, the judicial caseload should be adjusted to provide the Presiding Judge with sufficient time and resources to devote to the management and administrative duties of the office.

## COMMENTARY

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#### 2006 Electronic Pocket Part Update

Whether caseload adjustments need to be made depends on the size and workload of the court. A recognition of the additional duties of the Presiding Judge by some workload adjustment should be made by larger courts. For example, the Presiding Judge could be assigned a smaller share of civil cases or a block of time every week could be set aside with no cases scheduled so the Presiding Judge could attend to administrative matters.

**(e) General Responsibilities.** The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources in a way that

maximizes the court's ability to resolve disputes fairly and expeditiously.

**(f) Duties and Authority.** The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges.;

(3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4) Develop and coordinate statistical and management information;

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

## COMMENTARY

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#### 2006 Electronic Pocket Part Update

The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

#### 2006 Electronic Pocket Part Update

With respect to the function of the court clerk, generally the courts of limited jurisdiction have direct responsibility for the administration of their clerk's office as well as the supervision of the court clerks who work in the courtroom. In the superior courts, the clerk's office may be under the direction of a separate elected official or someone appointed by the local judges or local legislative or executive authority. In those cases where the superior court is not responsible for the management of the clerk's office the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel.

#### 2006 Electronic Pocket Part Update

A model job description, including qualification and experience criteria, for the court administrator position shall be established by the Board for Judicial Administration. A model job description that generally describes the knowledge, skills, and abilities of a court administrator would provide guidance to Presiding Judges in modifying current job duties/responsibilities or for courts initially hiring a court administrator or replacing a court administrator.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request;

(7) Appoint standing and special committees of judicial officers necessary for the proper performance of the duties of the judicial district;

(8) Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;

(9) Supervise the preparation and filing of reports required by statute and court rule;

(10) Act as the official spokesperson for the court in all matters with the executive or legislative branches of state and local government and the community unless the Presiding Judge shall designate another judge to serve in this capacity;

#### COMMENTARY

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This provision recognizes the Presiding Judge as the official spokesperson for the court. It is not the intent of this provision to preclude other judges from speaking to community groups or executive or legislative branches of state or local government.

(11) Preside at meetings of the judicial officers of the district;

(12) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners; and

(13) Perform other duties as may be assigned by statute or court rule.

## COMMENTARY

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#### 2006 Electronic Pocket Part Update

The proposed rule also addresses the duties and general responsibilities of the presiding judge. The language in subsection (d), (e), (f) and (g) was intended to be broad in order that the presiding judge may carry out his/her responsibilities. There has been some comment that individual courts should have the ability to change the "duties and general responsibilities" subsections by local rule. While our committee has not had an opportunity to discuss this fully, this approach has a number of difficulties:

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- It would create many "Presiding Judge Rules" all of which are different

#### 2006 Electronic Pocket Part Update

- It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel

#### 2006 Electronic Pocket Part Update

- It would impede the ability of the BJA through AOC to offer consistent training to incoming presiding judges

#### 2006 Electronic Pocket Part Update

The Unified Family Court subgroup of the Domestic Relations Committee suggested the presiding judge is given specific authority to appoint judges to the family court for long periods of time. Again the committee has not addressed the proposal; however, subsections (e) and (f) do give the presiding judge broad powers to manage the judicial resources of the court, including the assignment of judges to various departments.

**(g) Executive Committee.** The judges of a court may elect an executive committee consisting of other judicial officers in the court to advise the Presiding Judge. By local rule, the judges may provide that any or all of the responsibilities of the Presiding Judge be shared with the Executive Committee and may establish additional functions and responsibilities of the Executive Committee.

## COMMENTARY

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*Subsection (g) provides an option for an executive committee if the presiding judge and/or other members of the bench want an executive committee.*

**(h) Oversight of judicial officers.** It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer's failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge's substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

**(i) Multiple Court Districts.** In counties that have multiple court districts, the judges may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

**(j) Multiple Court Level Agreement.** The judges of the superior, district, and municipal courts or any combination thereof in a superior court judicial district may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

**(k) Judicial Services Contracts.** A judicial officer may contract with a municipal or county authority to serve as a judicial officer. The personal service contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial

**NMRA, Rule 23-109**

**➔RULE 23-109. CHIEF JUDGES**

**A. Selection; Term.** Each judicial district and each metropolitan court shall have a **chief judge**. The **chief judge** of a judicial district or metropolitan court shall be selected in the manner provided by the constitution for a three (3) year term. A **chief judge** may be re-elected to serve successive terms. In the event of a tie vote, the senior **judge** shall be the **chief judge**.

**B. Duties and Responsibilities.** The **chief judge** of each judicial district and each metropolitan court district shall have the administrative responsibility for that judicial district or metropolitan court and shall:

(1) administer established policy concerning the court's internal operations;

(2) call and preside over regular and special meetings of the **judges**;

(3) appoint standing and special committees as may be advisable to assist in the proper performance of the **duties** and functions of the court;

(4) designate one of the **judges** to act in the **chief judge's** absence or inability to act;

(5) exercise responsibility as the administrative authority in accordance with the provisions of law and the New Mexico Judicial Branch Personnel Rules and ensure the enforcement of those rules;

(6) exercise general supervision, coordination and direction of business of the court;

(7) supervise performance of the court's administrative office;

(8) supervise court finances, including financial planning and preparation and presentation of court budgets;

(9) coordinate the use of space, equipment and facilities of the court;

(10) assign, reassign or consolidate cases among the several **judges** as equitably as possible. Except with respect to specialty courts consisting of a single **judge**, cases shall be assigned by random selection designed so that each **judge** will receive substantially the same number and type of cases. If a **judge** is unable to administer the cases assigned to such **judge** within a reasonable time, or if there are other justifiable reasons, the **chief judge**, in consultation with the other **judges**, may reassign cases to other

**judges** within the **district**;

(11) have published for general distribution copies of a current calendar setting forth the judicial assignments of the **judges**, the times and places assigned for hearing court matters, and any special calendaring requirement deemed necessary by the **chief judge**;

(12) prepare an orderly plan of vacations for all court personnel, and for attendance at schools, conferences and workshops for **judges** and other court personnel;

(13) provide an orientation program for new **judges** as soon as possible after their election or appointment;

(14) provide for liaison between the court and other governmental or civic agencies;

(15) when appropriate, meet with or designate a **judge** or **judges** to meet with committees of the bench, bar, news media or community to review problems and to promote understanding of the administration of justice;

(16) oversee juror management;

(17) implement and monitor compliance with all policies, rules and regulations issued by

the supreme court;

(18) perform such other administrative and substantive functions as are necessary for the efficient operations of the court on a day-to-day basis.

**C. Reporting.** The **chief judge** shall advise the supreme court of the failure or refusal of any **judge** of such court to comply with the Code of Judicial Conduct or an established policy, rule or regulation of such court or the supreme court.

**Rule 120, GA R FULTON CTY SUP CT Rule 120**

**(Fulton Co. Rule 120)**

**➡RULE 120. (A.J.C.) DUTIES OF CHIEF/ADMINISTRATIVE JUDGE**

(a) In order to regulate the manner in which the **Judges** of this Court shall dispose of the business thereof, the **Chief/Administrative Judge**, with the assistance of the Court **Administrator**, shall be responsible for the **administration** and the expeditious disposition of the business of this Court. To this end the **Chief Judge** shall have the power from time to time to establish procedures and to amend, modify or revoke the same as he/she shall deem necessary or proper so long as such procedures are not inconsistent with these Rules and do not conflict with the general laws of this State.

(b) In the event of illness of a **Judge** or other unusual circumstances, the **Chief/Administrative Judge** may make provision for the orderly trial and disposition of cases and legal matters pending in any division of the Court. Included in this authority is the power of the **Chief/Administrative Judge** to call in a Senior **Judge** or visiting **Judge** as the need may arise growing out of illness or unusual circumstances. No **Judge**, other than the **Chief/Administrative Judge**, may call upon the service of a visiting **Judge** except with the approval of the **Chief Judge**.

***(APPROVED BY ORDER OF THE SUPREME COURT JUNE 20, 1985 EFFECTIVE:  
JULY 20, 1985)***

**Cal.Rules of Court, Rule 6.603**

➔ **Rule 6.603 Authority and duties of presiding judge**

**(a) [General responsibilities]** With the assistance of the court executive officer, the presiding judge is responsible for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. The **presiding judge** is responsible for:

- (1) Ensuring the effective management and **administration** of the court, consistent with any rules, policies, strategic plan, or budget adopted by the Judicial Council or the court;
- (2) Ensuring that the **duties** of all **judges** specified under rule 6.608 are timely and orderly performed; and
- (3) Ensuring that the court has adopted written policies and procedures allowing the **presiding judge** to perform efficiently the **administrative duties** of that office.

**(b) [Authority]**

- (1) The **presiding judge** has the authority to:
  - (A) Assign **judges** to departments and designate supervising **judges** for divisions, districts, or branch courts;
  - (B) Apportion the business of the court, including assigning and reassigning cases to departments;
  - (C) Call meetings of the judges;
  - (D) Appoint standing and special committees of judges;
  - (E) Act as the spokesperson for the court;
  - (F) Authorize and direct expenditures from the court's Trial Court Operations Fund; and
  - (G) Perform all acts necessary to accomplish the duties specified by the rules of court.
- (2) No local rule or policy may limit the authority of the presiding judge as granted in the rules of court.

**(c) [Duties]**

- (1) (*Assignments*) The presiding judge has ultimate authority to make judicial assignments. The presiding judge must:
  - (A) [Presiding and supervising judges] Designate a judge to preside in each department, including a master calendar judge when appropriate, and designate a presiding judge of the juvenile division and a supervising judge for each division, district, or branch court. In making judicial assignments, the presiding judge must take into account the following: (i) the needs of the public and the court, as they relate to the efficient and effective management of the court's calendar; (ii) the knowledge and abilities demanded by the assignment; (iii) the judge's judicial and nonjudicial experience, including specialized training or education; (iv) the judge's interests; (v) the need for continuity in the assignment; (vi) the desirability of exposing the judge to a particular type of assignment; and (vii) other appropriate factors. Judicial assignments must not be based solely or primarily on seniority;
  - (B) [Master calendar judge] Assign to a master calendar judge any of the duties

that may more appropriately be performed by that department;

(C) [Calendar] Supervise the court's calendar, apportion the business of the court among the several departments of the court as equally as possible, and publish for general distribution copies of a current calendar setting forth the judicial assignments of the judges and the times and places assigned for hearings;

(D) [Reassignments] Reassign cases between departments as convenience or necessity requires; and

(E) [Judge unable to act] Designate a judge to act if by law or these rules a matter is required to be presented to or heard by a particular judge and that judge is absent, deceased, or unable to act.

(2) *Judicial schedules*

(A) The presiding judge shall adopt a process for scheduling judges' vacations and absences from court for attendance at schools, conferences, workshops, and community outreach activities, and shall prepare a plan for these vacations and absences from court.

(B) The plan should take into account the principles contained in sections 25.1 through 25.3 (on judicial education) and section 39 (on community activities) of the Standards of Judicial Administration.

(C) The presiding judge shall review requests from judges for time absent from court and may approve any request that is consistent with the plan and with the orderly operation of the court.

(D) The presiding judge shall allow each judge to take two days of personal leave per year. Personal leave may be taken at any time that is approved by the presiding judge.

(E) The presiding judge shall allow the following number of days of vacation for each judge annually:

(i) 24 days for judges with less than 7 years of service as a California judge;

(ii) 27 days for judges with at least 7 but less than 14 years of service as a California judge; and

(iii) 30 days for judges with 14 or more years of service as a California judge.

(F) The presiding judge may authorize a judge to take more time off than is specified in subdivision (c)(2)(E) as justified by extraordinary circumstances, if the circumstances are documented and the authorization is in writing.

(G) The presiding judge, in his or her discretion, may allow a judge to take additional vacation days equal to the number of vacation days that the judge did not use in the previous year, up to a maximum of 30 such days. A court may, by local rule, establish a lower maximum number of such days. This subdivision applies only to vacation days accrued after January 1, 2001. It does not affect

any unused vacation days that a judge may have accrued before January 1, 2001, which are governed by local court policy, nor does it create any right to compensation for unused vacation days.

(H) The court shall, by local rule, define a day of vacation. Absence from court to attend an authorized education program, conference, or workshop for judges, or to participate in Judicial Council or other authorized committees or community outreach activities, shall not be considered vacation time if attendance is in accordance with the plan and has the prior approval of the presiding judge. Absence from court due to illness is not considered vacation time. This rule does not limit the time a judge may be absent from court when unable to work due to illness.

(I) To ensure compliance with the plan, the presiding judge shall establish a system to monitor judges' absences from court and maintain records of those absences.

(3) *Submitted cases* The presiding judge shall supervise and monitor the number of causes under submission before the judges of the court and ensure that no cause under submission remains undecided and pending for longer than 90 days. As an aid in accomplishing this goal, the presiding judge shall:

(A) Require each judge to report to the presiding judge all causes under submission for more than 30 days, and with respect to each cause, designate whether it has been under submission for 30 through 60 days, 61 through 90 days, or for over 90 days;

(B) Compile a list of all causes under submission before judges of the court which shall be designated as the submitted list and which shall include the name of each judge, a list of causes under submission before that judge, and the length of time each cause has been under submission;

(C) Circulate monthly a complete copy of the submitted list to each judge of the court;

(D) Contact and alert each judge who has a cause under submission for over 30 days and discuss ways to ensure that the cause is timely decided;

(E) Consider providing assistance to a judge who has a cause under submission for over 60 days; and

(F) Consider requesting the services of the Administrative Office of the Courts to review the court's calendar management procedures and make recommendations whenever any of the following conditions exist in the court for the most recent three months:

(i) More than 90 civil active cases are pending for each judicial position; or

(ii) More than 10 percent of the cases on the civil active list have been pending for one year or more.

(4) (*Oversight of judicial officers*) The presiding judge shall:

(A) [Judges] Notify the Commission on Judicial Performance of

(i) A judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, persistent refusal to carry out assignments as assigned by the presiding judge, or persistent refusal to carry out the directives of the presiding judge as authorized by the rules of court; or

(ii) Any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences authorized under subdivision (c)(2) of this rule.

(B) [Notice] Give the **judge** a copy of the notice to the commission under subdivision (A) if appropriate. If a copy is not given to the **judge**, the **presiding judge** shall inform the commission of the reasons why so notifying the **judge** was deemed inappropriate;

(C) [Commissioners] Prepare and submit to the **judges** for consideration and adoption procedures for receiving, inquiring into, and resolving complaints lodged against court commissioners and referees, consistent with rule 6.655, giving due consideration to section 16 of the Standards of Judicial **Administration**;

(D) [Temporary **judges**] Be responsible for the recruitment, training, supervision, approval, and performance of temporary **judges**; and

(E) [Assigned **judges**] For each assigned retired **judge**,

(i) Complete a confidential evaluation form;

(ii) Submit the form annually to the **Administrative** Director of the Courts;

(iii) Direct complaints against the assigned **judge** to the Chief Justice, by forwarding them to the attention of the **Administrative** Director of the Courts, and provide requested information in writing to the **Administrative** Director of the Courts in a timely manner; and

(iv) Assist the **Administrative** Director in the process of investigating, evaluating, and making recommendations to the Chief Justice regarding complaints against retired **judges** who serve on assignment.

(5) (*Personnel*) The **presiding judge** shall provide general direction to and supervision of the court executive officer, or, if the court has no executive officer, perform the **duties** of the court executive regarding personnel as specified in rule 6.610(c)(1).

(6) (*Budget and fiscal management*) The **presiding judge** shall:

(A) Establish a process for consulting with the **judges** of the court on budget requests, expenditure plans, and other budget or fiscal matters the **presiding judge** deems appropriate;

(B) Establish responsible budget priorities and submit budget requests that will best enable the court to achieve its goals; and

(C) Approve procurements, contracts, expenditures, and the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. In a court with an executive officer, the **presiding judge** may delegate these **duties** to the court executive officer, but the **presiding judge** shall ensure that the

court executive officer performs such delegated **duties** consistent with the court's established budget.

(7) (*Meetings and committees*) The **presiding judge** shall establish a process for consulting with the **judges** of the court and may call meetings of the **judges** as needed. The **presiding judge** may appoint standing and special committees of **judges** as needed to assist in the proper performance of the **duties** and functions of the court.

(8) (*Liaison*) The **presiding judge** shall:

(A) Provide for liaison between the court and the Judicial Council, the **Administrative Office of the Courts**, and other governmental and civic agencies;

(B) Meet with or designate a **judge** or **judges** to meet with any committee of the bench, bar, news media, or community to review problems and to promote understanding of the **administration** of justice, when appropriate; and

(C) Support and encourage the **judges** to actively engage in community outreach to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the **administration** of justice, consistent with the California Code of Judicial Ethics and section 39 of the Standards of Judicial **Administration**.

(9) (*Planning*) The **presiding judge** shall:

(A) Prepare, with the assistance of appropriate court committees and appropriate input from the community, a long-range strategic plan that is consistent with the plan and policies of the Judicial Council, for adoption in accordance with procedures established by local rules or policies; and

(B) Ensure that the court regularly and actively examines access issues, including, but not limited to, any physical, language, or economic barriers that impede the fair **administration** of justice.

(10) (*Appellate records*) The **presiding judge** is responsible for ensuring the timely preparation of records on appeal.

(A) The **presiding judge** ordinarily should delegate the following **duties** to the executive officer:

(i) Maintaining records of outstanding transcripts to be completed by each reporter;

(ii) Reassigning court reporters as necessary to facilitate prompt completion of transcripts; and

(iii) Reviewing reporters' requests for extensions of time to complete transcripts in appeals of criminal cases.

(B) After reasonable notice and hearing, the presiding judge shall declare any reporter of the court who is delinquent in completing a transcript on appeal not competent to act as a reporter in court, under [Government Code section 69944](#).

(11) (*Local rules*) The presiding judge shall prepare, with the assistance of appropriate court committees, proposed local rules to expedite and facilitate court business in accordance with [Government Code section 68071](#) and rules 981 and 981.1.

#### **(d) [Delegation]**

(1) (*All courts*) The presiding judge may delegate any of the specific duties listed in this rule to another judge or, if the duty does not require the exercise of judicial authority, to the court executive officer. The presiding judge remains responsible for all duties listed in this rule even if he or she has delegated particular tasks to someone else.

(2) (*Coordinated courts*) Notwithstanding any other provision in this rule, any of the duties and responsibilities of the presiding judge may be transferred to a single presiding judge or oversight committee in accordance with rule 991 and an approved coordination plan.

Minnesota Statutes Annotated

▶484.69. Chief judge

**Subdivision 1. Election; term; removal.** The **judges** of the district court resident in each of the judicial districts shall meet and elect from among their number a single **chief judge** and an assistant **chief judge**. The **chief judge** and the assistant **chief judge** shall serve a term of two years beginning July 1 of the year in which they are elected. No **judge** may serve as **chief judge** or assistant **chief judge** for more than two consecutive two year terms, except as provided in subdivision 1a. For the term beginning July 1, 1991, and after that, the **chief judge** and assistant **chief judge** in the odd-numbered judicial district shall be elected to a term of two years. For the term beginning July 1, 1991, the **chief judge** and assistant **chief judge** in the even-numbered judicial districts shall be elected to a term of one year. For the term beginning July 1, 1992, and after that, the **chief judge** and assistant **chief judge** in the even-numbered judicial districts shall be elected to a term of two years.

The seniority of **judges** and rotation of the position of **chief judge** or assistant **chief judge** shall not be criteria for the election of the **chief judge** or the assistant **chief judge**.

A **chief judge** or assistant **chief judge** may be removed for cause as **chief judge** or assistant **chief judge** by the **chief justice** of the supreme court, or by a majority of the **judges** of the judicial district.

**Subd. 1a. Chief judge and assistant chief judge.** The individuals who serve as **chief judge** and assistant **chief judge** in the even-numbered judicial districts during the 1991 term may serve as **chief judge** or assistant **chief judge** for a total of five consecutive years. Any provision of a reorganization plan filed pursuant to [section 487.191](#) which allows any **judges** to decline assignment to particular cases because of their subject matter is void and of no effect, and shall be given no consideration in making judicial assignments.

Subd. 2. Repealed by Laws 1990, c. 553, § 15.

**Subd. 3. Administrative authority.** In each judicial district, the **chief judge**, subject to the authority of the **chief justice**, shall exercise general **administrative** authority over the courts within the judicial district. The **chief judge** shall make assignments of **judges** to serve on the courts within the judicial district, and assignments may be made without the consent of the **judges** affected. The **chief judge** may assign any **judge** of any court within the judicial district to hear any matter in any court of the judicial district. When a **judge** of a court is assigned to another court the **judge** is vested with the powers of a **judge** of the court of assignment. A **judge** may not be assigned to hear matters outside the **judge's** judicial district pursuant to this subdivision.

**Subd. 4. Semiannual meetings; judicial conference.** The **chief judges** shall meet at least semiannually to consider problems relating to judicial business and **administration**. After consultation with the **judges** of their respective districts the **chief judges** shall prepare in conference and submit to the **chief** justice of the supreme court a suggested agenda for the judicial conference held pursuant to section 480.18.

**Subd. 5. Judges' meetings.** The **chief judge** shall convene a conference at least semiannually of all **judges** of the judicial district to consider **administrative** matters and rules of court and to provide advice and counsel to the **chief judge**.

**Minnesota Statutes Annotated**



**484.68. District administrator**

**Subdivision 1. Appointment.** By November 1, 1977, the **chief judge** of the judicial district in each judicial district shall appoint a single district **administrator**, subject to the approval of the supreme court, with the advice of the **judges** of the judicial district.

The district **administrator** shall serve at the pleasure of a majority of the **judges** of the judicial district.

**Subd. 2. Staff.** The district **administrator** shall have such deputies, assistants and staff as the **judges** of the judicial district deem necessary to perform the **duties** of the office.

**Subd. 3. Duties.** The district **administrator** shall:

(a) Assist the **chief judge** in the performance of **administrative duties**;

(b) Manage the **administrative** affairs of the courts of the judicial district;

(c) Supervise the court **administrators** and other support personnel, except court reporters, who serve in the courts of the judicial district;

(d) Comply with the requests of the state court **administrator** for statistical or other information relating to the courts of the judicial district;

(e) With the approval of the **chief judge**, determine the needs of the **judges** of the district for office equipment necessary for the effective **administration** of justice and develop a plan to make the equipment available to the **judges** of the district; the plan must be submitted to the state court **administrator** for approval and determination of eligibility for state funding under section 480.15, subdivision 12; and

(f) Perform any additional **duties** that are assigned by law or by the rules of court.

**Subd. 4. Secretary.** The district **administrator** shall serve as secretary for meetings of the **judges** of the judicial district.

**Subd. 5. Budget for office.** The office budget of the district **administrator** shall be paid by the state. The budget must include sufficient money for the staff authorized by this section and other staff and expenses authorized under law. A county shall provide office facilities for the district **administrator**.

Subd. 6. Repealed by Laws 1986, c. 464, § 3.

**Subd. 7. Accumulated benefits.** A court **administrator** of district court who, without interruption of public service, is appointed a district **administrator** shall be given credit by the state of Minnesota for vacation time and sick leave accumulated while serving as a court **administrator** of district court but for which no compensation has been received, except that credit shall be restricted in the same manner and amount as state employees.

Credit for accumulated vacation time and sick leave for which no compensation has been received shall be extended to the district **administrators** of the fifth judicial district and the eighth judicial district holding such office on April 6, 1978. These two **administrators** may elect to retain their membership in the public employees retirement association.

**Subd. 8. Retirement.** A member of the public employees retirement association appointed as district **administrator** pursuant to this chapter, shall remain a member of the fund unless the member elects, within 12 months of the appointment, to be covered by the Minnesota state retirement system. If a district court **administrator** elects retirement coverage by the Minnesota state retirement system pursuant to this subdivision, that coverage shall commence with first day of the first payroll period occurring after the election. No person shall receive credit for more than one month of service from the affected retirement funds for the month in which the change in retirement coverage is elected.

# *Constitution of the State of Kansas*

## **Article 3.--JUDICIAL**

**§ 1: Judicial power; seals; rules.** The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

**§ 2: Supreme court.** The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. The term of office of the justices shall be six years except as hereinafter provided. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

**§ 3: Jurisdiction and terms.** The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

**§ 4: Reporter; clerk.** There shall be appointed, by the justices of the supreme court, a reporter and clerk of said court, who shall hold their offices two years, and whose duties shall be prescribed by law.

**§ 5: Selection of justices of the supreme court.**

(a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement

of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall \_\_\_\_\_  
(Here insert name of justice.)

\_\_\_\_\_  
(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the

"supreme court nominating commission." Said commission shall be organized as hereinafter provided.

(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.

(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

**§ 6: District courts.**

(a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

**§ 7: Qualifications of justices and judges.** Justices of the supreme court and judges of the district courts shall be at least thirty years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

**§ 8: Prohibition of political activity by justices and certain judges.** No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

**§ 12: Extension of terms until successor qualified.** All judicial officers shall hold their offices until their successors shall have qualified.

**§ 13: Compensation of justices and judges; certain limitation.** The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

**§ 15: Removal of justices and judges.** Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court nominating commission that such justice is so incapacitated as to be unable to perform adequately his duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

**§ 16: Savings clause.** Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 6 hereof, and all such

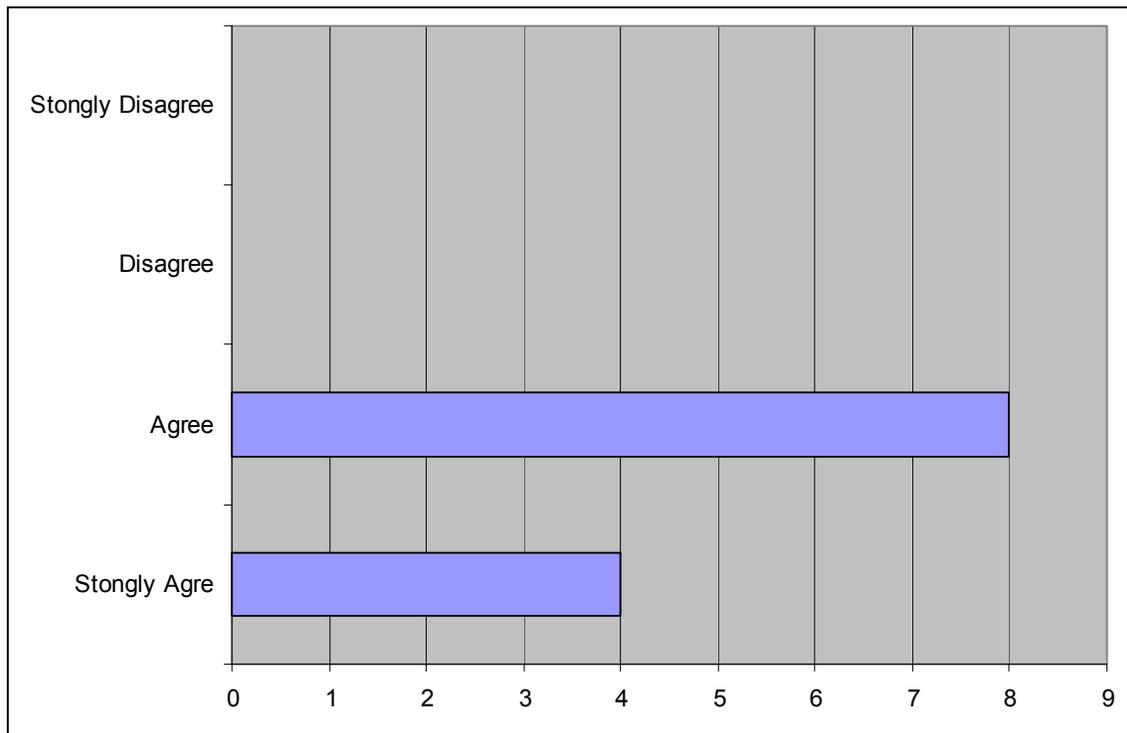
justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature.

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### Appendix 13

**QUESTION:** The ever changing role and responsibilities of the court requires Chief/Presiding Judges to change their perception and understanding of their role in matter related to court management.

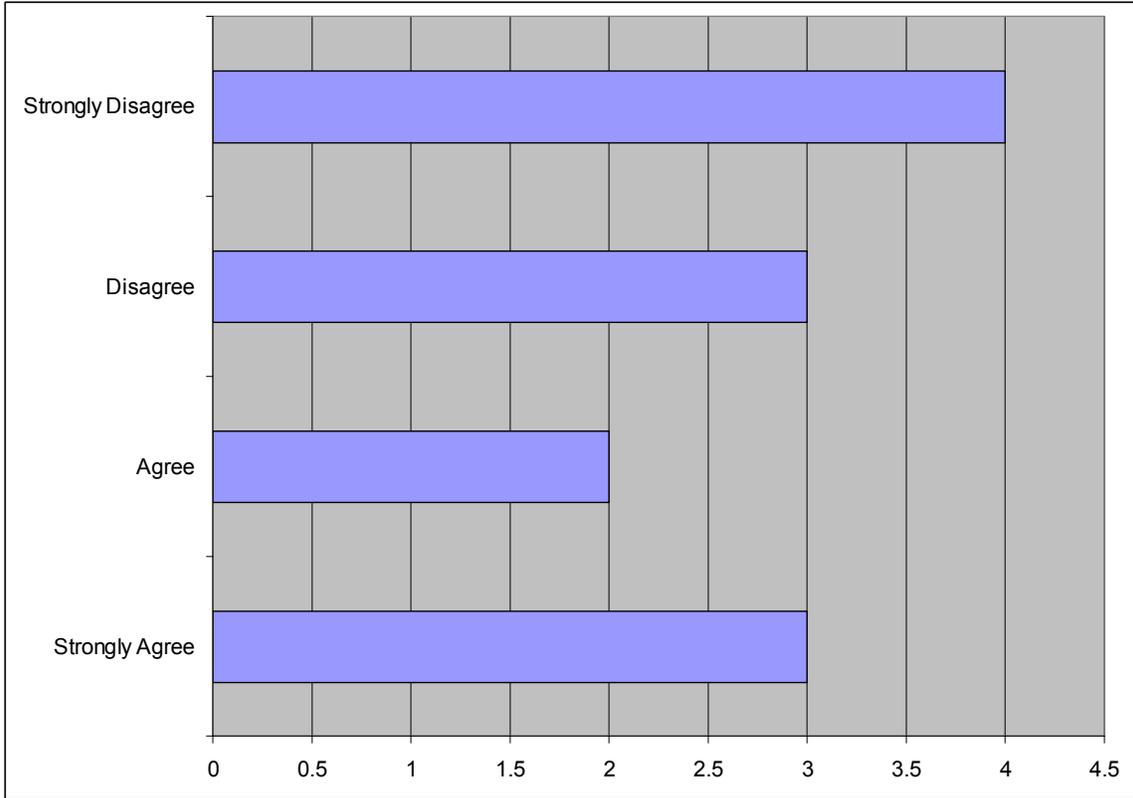
**Chart 5**



## **Appendix 14**

**QUESTION:** As Chief/Presiding Judge, there are situations in the day to day administrative matters related to court management that require me to remain loyal to my profession (i.e.. Acton may compromise the Code of Judicial Conduct) over the administration of the Court.

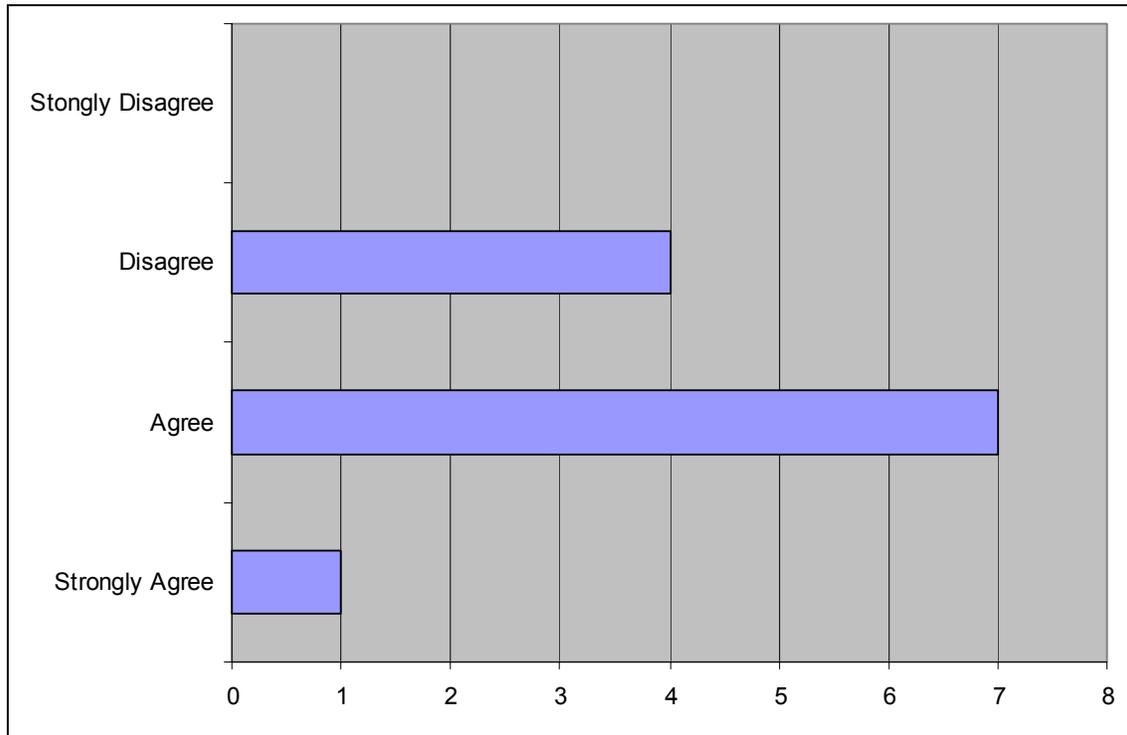
### **Chart 6**



**Appendix 15**

**QUESTION:** As Chief/Presiding Judge, the importance of my administrative role in matters of court management is understood by my colleagues in the judiciary.

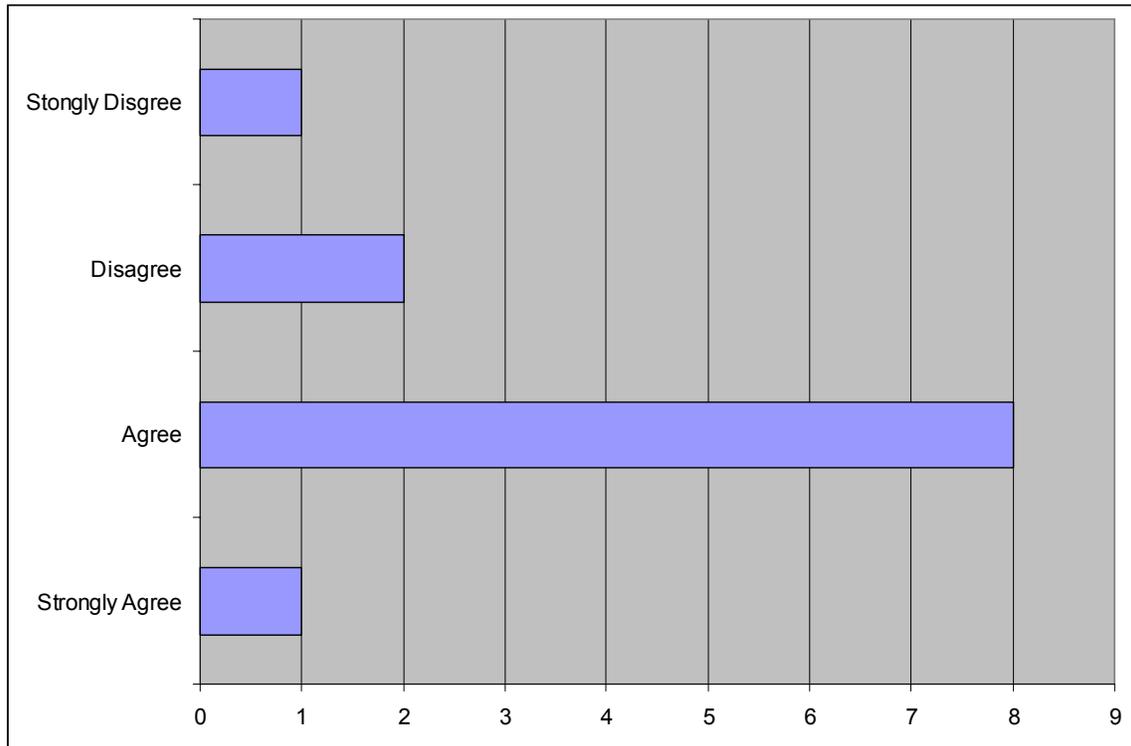
**Chart 7**



**Appendix 16**

**QUESTION:** As Chief/Presiding Judge, the importance of my administrative role in matters of court management is understood by members of the co-equal branches of government.

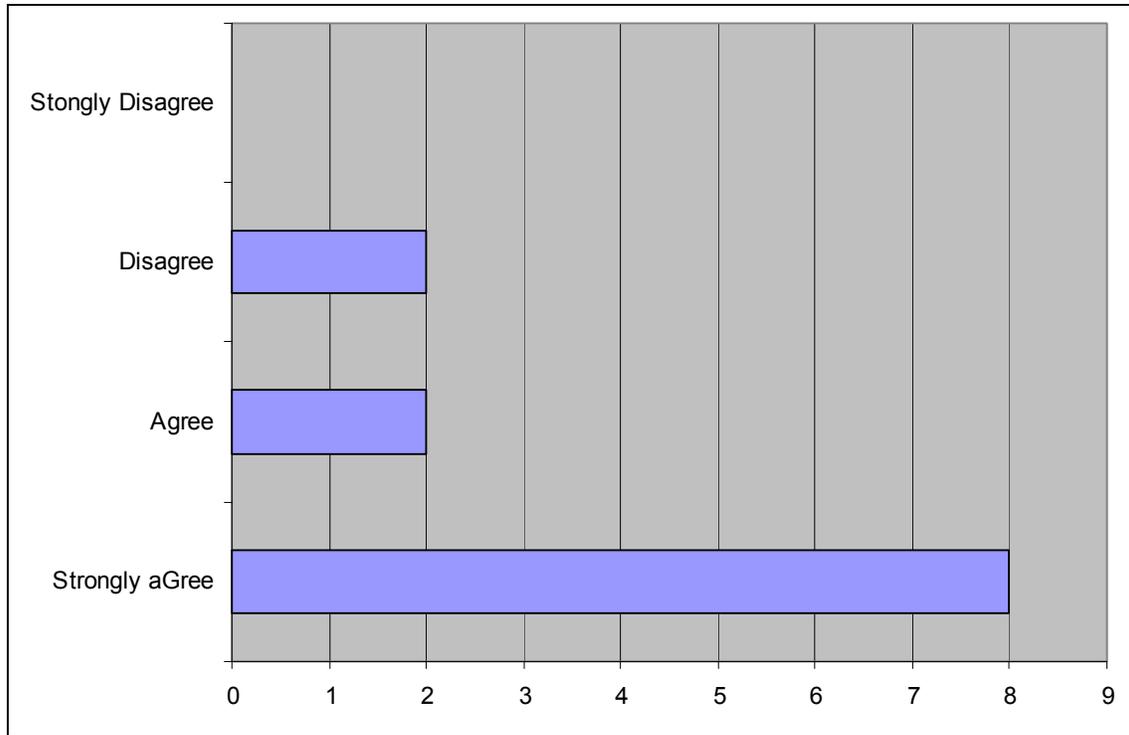
**Chart 8**



**Appendix 17**

**QUESTION:** The increased use of specialty courts (i.e. drug courts), advancement of technologies, and the diminishing of court resources require the services of a professionally trained court administrator/ clerk of court.

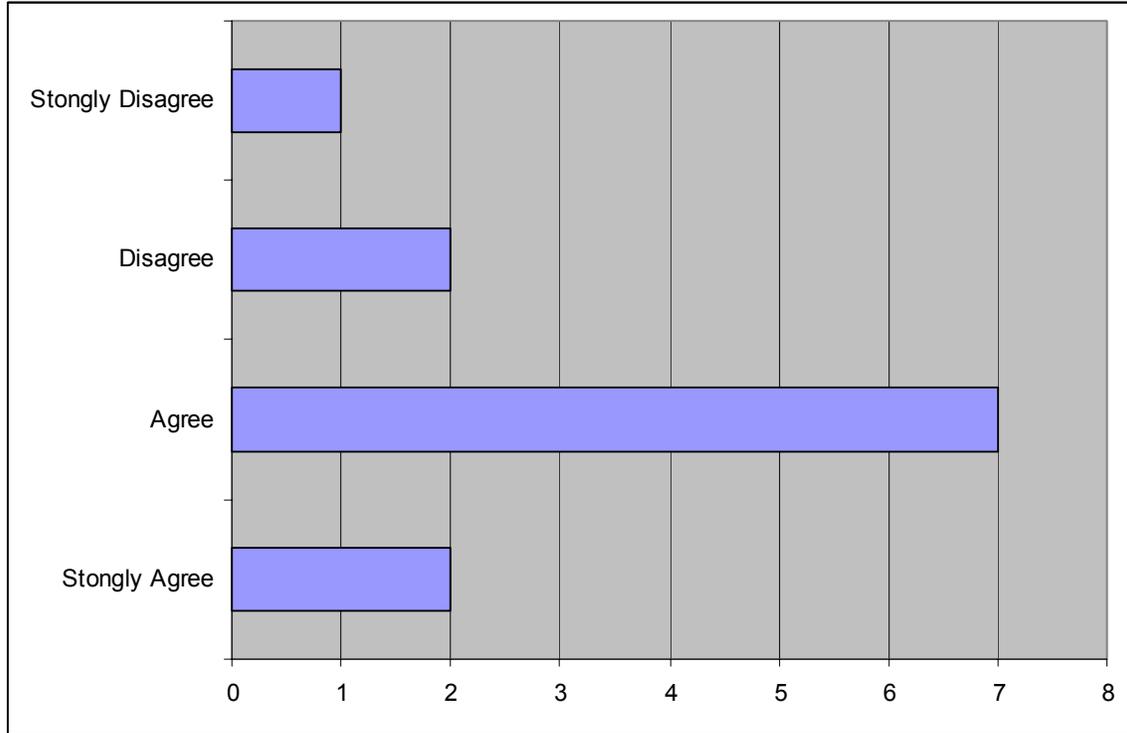
**Chart 9**



**Appendix 18**

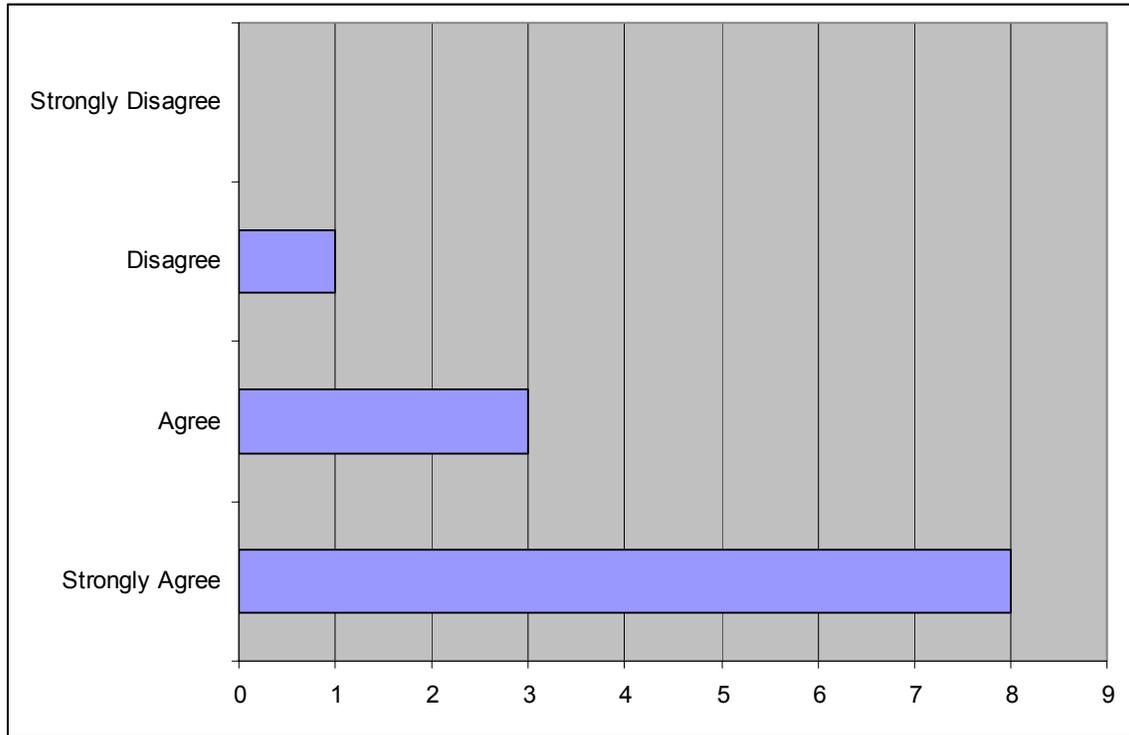
**Question:** The perception and understanding of the role of the Chief/Presiding Judge in matters related to court management needs improvement among members of the court administration profession.

**Chart 10**



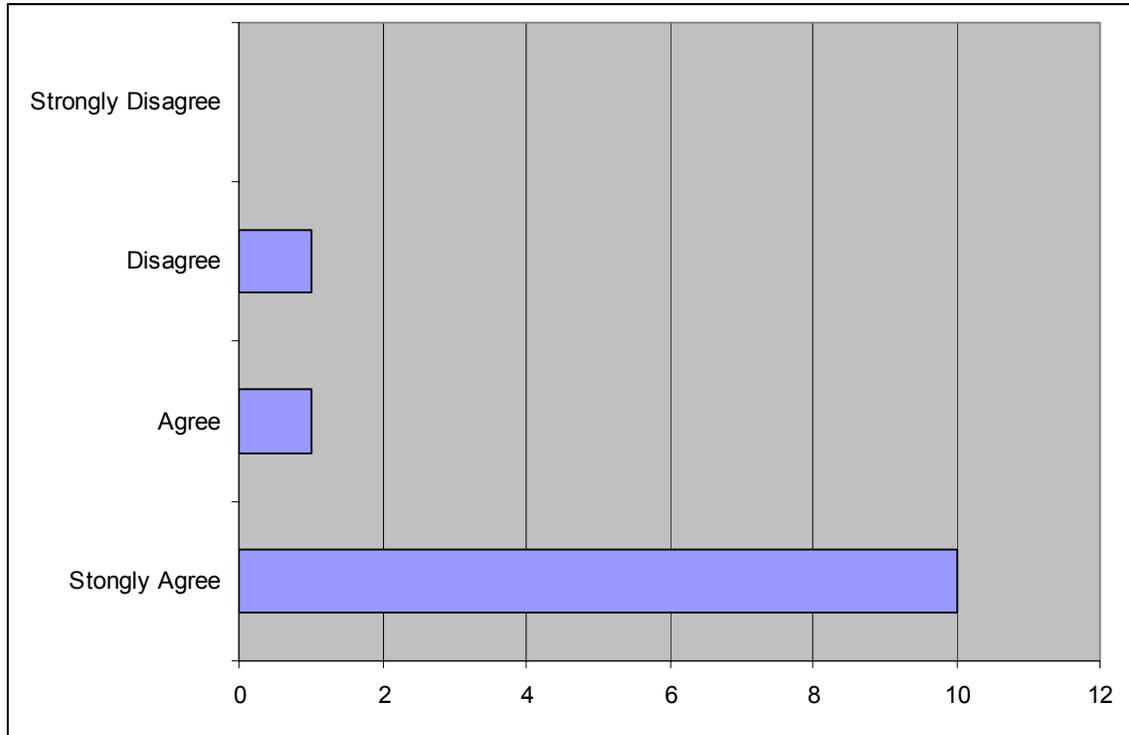
**QUESTION:** The ever changing role and responsibilities of the courts in our communities requires that court administrators be professionally trained and educated in matters related to court management.

**Chart 11**



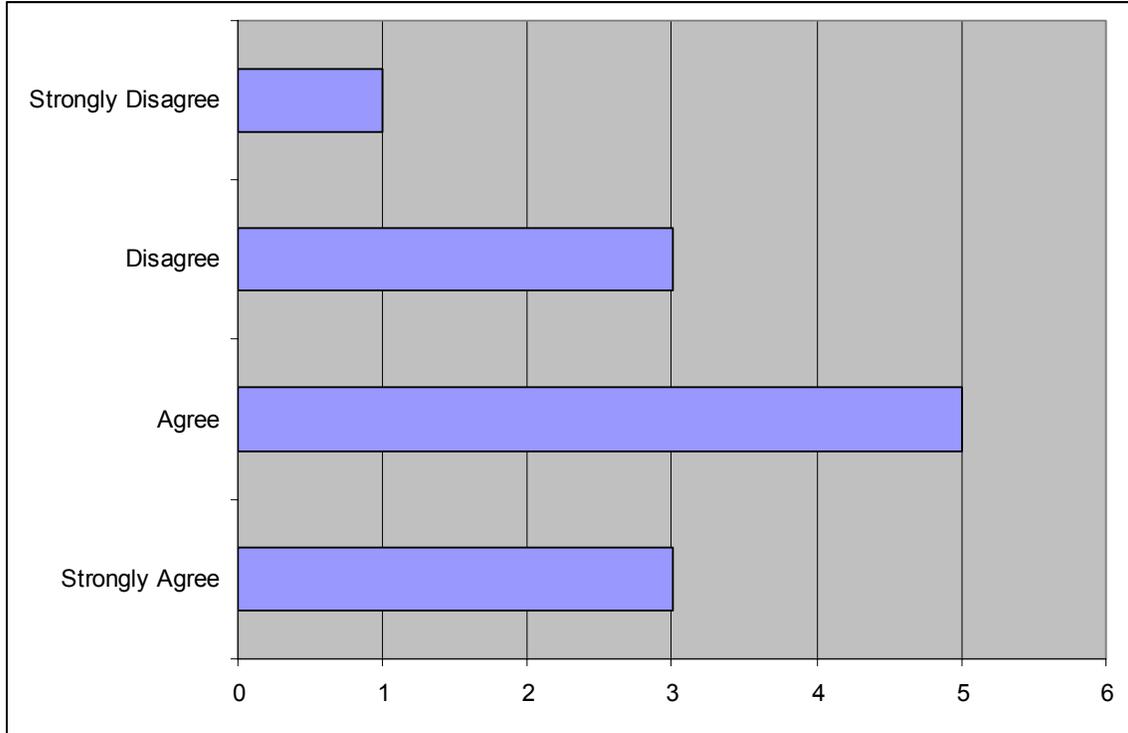
**QUESTION:** Successful day to day administration of justice requires the Chief/ Presiding Judge and the court administrator/clerk of the court to work together as a team.

**Chart 12**



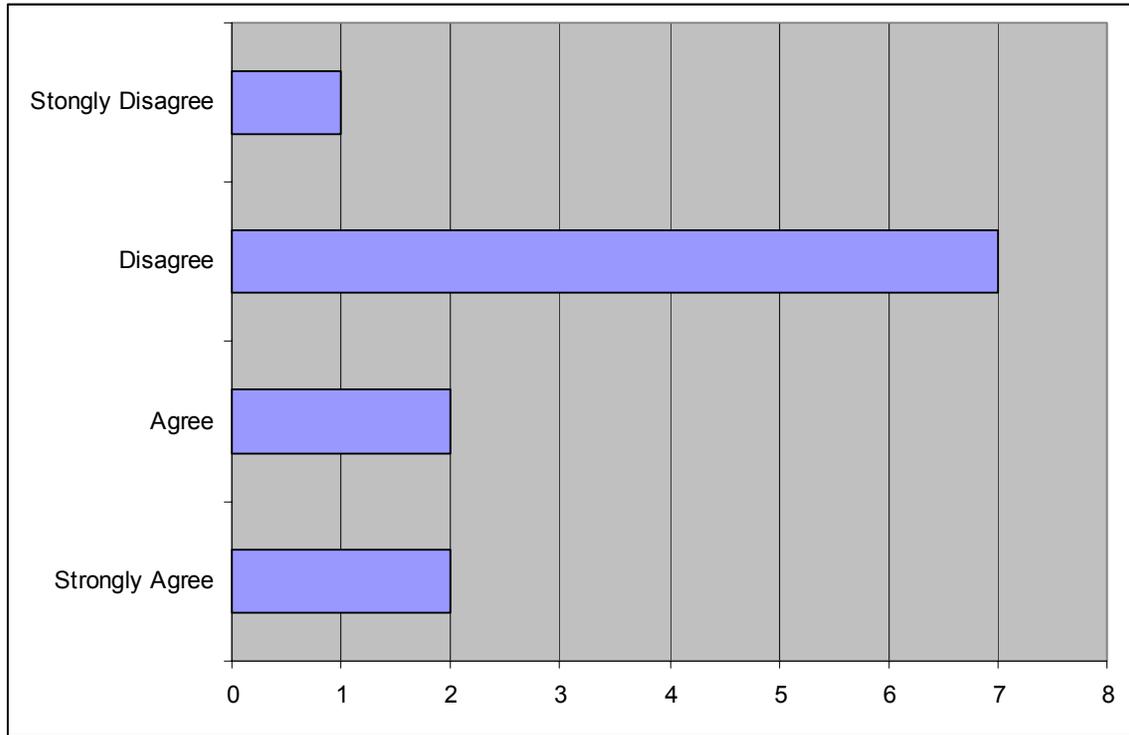
**QUESTION:** Absent the services of a professionally trained court administrator the independence and the integrity of the judiciary is compromised.

**Chart 13**



**QUESTION:** As Chief/ Presiding Judge, my most important decisions are "case decisions" which do not include decisions made in my administrative capacity.

**Chart 14**



**QUESTION:** The development of the professional court administrator/clerk of court is essential to maintain equilibrium among the co-equal branches of government.

**Chart 15**

