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September 19, 2003

Hon. Leigh I. Saufley
Chief Justice
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Dear Madam Chief Justice:

The Judicial Resource Team (JRT) has completed its assessment of Maine's trial courts as authorized by the JRT Charter dated September 9, 2002. On behalf of the JRT, I am pleased to submit to you *A New Model for Scheduling Courts and Allocating Judicial Resources*, the Report of the Judicial Resource Team to the Maine Supreme Judicial Court.

Please let me know if you desire any additional information.

Sincerely,

Jon D. Levy

Chair, Judicial Resource Team

cc: JRT Members:
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A New Model for Scheduling Courts and Allocating Judicial Resources

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Report of the Judicial Resource Team to the Maine Supreme Judicial Court

September 19, 2003

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2. Berry Dunn McNeil & Parker, Summary Report for State of Maine Judicial Branch Judicial Resource Team (September 2003)

3. Statutory and Rule Case Completion Standards Applicable to JRT Recommendations (September 2003)

Introduction

The Maine Supreme Judicial Court created the Judicial Resource Team (JRT) in September 2002 to "assess the workload and judicial resources of Maine's trial courts and generate a new model for scheduling courts and allocating judicial resources." A copy of the charter creating the JRT appears in the Appendix to this report. The charter directs the JRT to present comprehensive recommendations to the Supreme Judicial Court by September 19, 2003. This report is the culmination of the JRT's year-long effort. It sets forth a new model consisting of 49 separate recommendations.

The JRT's recommendations embody the following principles:

- *Regional Structure*. Maine's District and Superior Courts should operate as constituent parts of an integrated system of case scheduling and judicial resource allocation based on a regional structure. As used in this report, "judicial resource" refers to judges, case management officers, clerks, administrators, facilities and other assets.

- *Objective Measures*. Dockets should be scheduled and resources allocated based on established case completion measures for different major case types, statutory deadlines, and the priorities established by the Supreme Judicial Court. Shared expectations regarding the timeframes within which adjudications should be completed will positively affect the management of dockets.

- *Consolidation*. Shared responsibilities between the trial courts and among the courts within a region should be consolidated to increase efficiency. The unnecessary duplication of judicial and clerical effort should be eliminated to increase efficiency.

- *Event Certainty*. Case and trial management practices should be designed and implemented to achieve event certainty; that is, to the maximum extent possible, every scheduled case event will occur as scheduled. There is

a strong correlation between court events occurring as scheduled and the promotion of earlier and less costly case dispositions.

Various resources were utilized by the JRT in the conduct of its study. Several existing internal Judicial Branch reports were considered including, but not limited to, the REPORT OF THE COMMISSION TO STUDY THE FUTURE OF MAINE'S COURTS (1993), REPORT OF THE COURT UNIFICATION TASK FORCE (1999), reports of the CUTAF Implementation Team, and various internal statistical reports prepared by the Administrative Office of the Courts and, separately, the District Court and Superior Court. Several external reports and resources were considered including, but not limited to, THE TRIAL COURTS PERFORMANCE STANDARDS AND MEASUREMENT SYSTEM initiated in 1987 by the National Center for State Courts (NCSC) and the Bureau of Justice Assistance, and CASEFLOW MANAGEMENT (2000) published by the National Center for State Courts.

Meetings were conducted with representatives of the Maine Office of the Attorney General, Maine Association of Criminal Defense Attorneys, Maine Prosecutors Association, Maine State Bar Association and Maine Trial Lawyers Association. The JRT also conducted an "open forum" at the Winter 2002 meeting of the Maine State Bar Association at which over twenty individuals offered comments and proposals regarding trial court scheduling in Maine. The JRT solicited ideas and suggestions from Maine's trial judges and clerks through an informal survey conducted in January 2003.

In February 2003, the JRT obtained a "Solutions" grant from the State Justice Institute. The grant enabled the JRT to retain the Portland consulting firm of Berry Dunn McNeil & Parker to assist with the design, implementation, and assessment of an individual survey of all Maine judges, case management officers and clerks of courts. Berry Dunn McNeil & Parker also assisted with the design, implementation and assessment of a second group survey of all Maine judges and clerks of courts organized by region that was administered in April and May 2003. A copy of the consultant's report setting forth findings and recommendations based upon the surveys appears in the Appendix to this report. The JRT also participated in the analysis of data collected as part of a time study conducted for the Maine Judicial Branch by NCSC. Because the NCSC study has not yet been completed, the data and any conclusions that may be drawn from it have not been considered by the JRT in the formulation of its recommendations.

The individual members of the JRT conducted their own research and deliberated as a Team at sixteen half and full day meetings. The JRT was also assisted by the research and recommendations of a variety of other individuals within the Judicial Branch including, but not limited to: Justice Robert Crowley and Judge John Nivison regarding judicial settlement conferences; Justice Howard Dana regarding the implementation of M.R. Civ. P. 16B; Sandra Carroll, Director of the Violations Bureau, and Administrative Law Clerk Laura O'Hanlon regarding the Violations Bureau; Administrative Law Clerk Laura O'Hanlon regarding Maine's statutory and rule-based case completion deadlines (a copy of a portion of her report appears in the Appendix); and Court Management Analyst Sherry Wilkins and Programmer Analyst Mary Heald regarding MEJIS implementation. Staff support for the JRT was provided by Administrative Law Clerk Laura O'Hanlon, former Law Clerk Dennis Carrillo and Law Clerk Michael Bigos, and by Secretaries Alison Doran and Sandra Lewis. Many Judicial Branch employees, attorneys and others, too numerous to name, provided survey answers, comments and suggestions that have been considered by the JRT.

The constraint of time did not permit the JRT to distribute a draft of its recommendations for comment before they were finalized as was originally intended. The Supreme Judicial Court may wish to consider soliciting the input of judges, case management officers, clerks and others. The JRT recommends that proposed rule and statutory changes be considered by appropriate Judicial Branch advisory committees. In those portions of this report where the JRT has proposed actual language for rule and statutory changes, the proposal is highlighted in a gray text box.

Recommendations

I. Coordinating Regions

A. Regional Structure

The JRT recommends the establishment of a regional structure to coordinate the scheduling of Superior and District Court dockets to minimize conflicts, improve communication, foster local innovation and implement the

JRT's recommendations. In sequence, the District Court will seek to organize and coordinate its scheduling to implement JRT recommendations, and separately, the Superior Court will seek to organize and coordinate its scheduling to implement the JRT's recommendations; and then, the District and Superior Courts within each region will work together to implement the JRT's recommendations.

B. Regions

Coordination of the District Court and Superior Court regions shall be as follows:

1. Region 1: Androscoggin S.Ct., Franklin and Oxford S.Ct.
   Lewiston, Livermore Falls, South Paris, Rumford and Farmington D.Cts.

2. Region 2: Cumberland S.Ct.
   Portland and Bridgton D.Cts.

3. Region 3: York S.Ct.
   York, Biddeford and Springvale D.Cts.

4. Region 4: Aroostook S.Ct.
   Fort Kent, Madawaska, Caribou, Presque Isle and Houlton D.Cts.

5. Region 5: Kennebec and Somerset S.Cts.
   Augusta, Waterville and Skowhegan D.Cts.

6. Region 6 Lincoln, Sagadahoc, Waldo and Knox S.Ct.
   Wiscasset, West Bath, Rockland and Belfast D.Cts.

7. Region 7: Piscataquis and Penobscot S.Ct.

Lincoln, Millinocket, Dover-Foxcroft, Bangor and Newport D.Cts.

8. Region 8: Hancock and Washington S.Cts.
Bar Harbor, Calais, Ellsworth and Machias D.Cts.

C. Administration

1. The Director of Court Operations in consultation with the clerks, one designated Superior Court Justice, one designated District Court Judge from each region, and other interested judges, will communicate regularly and meet periodically to design and maintain a schedule that meets regional purposes and responsibilities described in part I.D. below.

2. Each region will develop a quarterly "master calendar" setting forth a single schedule for all courts in the region and a draft of each calendar shall be provided to the Trial Chiefs and Director of Court Operations 45 days prior to the beginning of the quarter. The master calendar will be posted on the Judicial Branch website no less than 30 days prior to the beginning of the quarter.

3. Each region shall issue an annual report to the Supreme Judicial Court in a format established by the Trial Chiefs setting forth the efforts undertaken by each District Court and Superior Court in the region to coordinate scheduling and resource allocation.

D. Purposes and Responsibilities of Regions:

1. Schedule conferences, hearings, trials and other court events so as to minimize conflicts, continuances and requests for protection by counsel, and to enhance trial/hearing certainty.

2. Identify consolidation of shared dockets between and among District and Superior Court including, but not limited to:

a. Criminal cases that originate in the District Court and are transferred to the Superior Court;
b. Matters involving adult prisoners;
c. Civil jury and nonjury cases to be managed on one trial list in a Superior Court location.

3. Maximize coordination of all trailing dockets by encouraging impromptu judicial assistance to another court if a scheduled matter is postponed, cancelled or completed, and the judge has no other matters to attend to, by for example, the judge calling the clerk or judge of the nearest court who is responsible for the administration of a trailing docket.

4. Facilitate the cross-assignment of judges and clerks between the courts in non-emergency situations where intra-court coverage is not available to the affected courts to address priorities, delays and complex cases requiring special assignments.

5. Foster cooperation, communication and collaboration between the courts, and promote innovations that are responsive to the unique needs and circumstances in the region.

E. Assignment of Clerks and Judges to Regions.

1. Subject to the authority of the State Court Administrator, the assignment of Clerks is the responsibility of the Director of the Office of the Clerk of Courts.

2. The Director of Court Operations shall develop, in consultation with the trial court chiefs, a Regional Scheduling Clerk System to formalize arrangements to ensure clerks from other courthouses assist in the court hosting a regional consolidated docket.

3. Subject to the authority of the Chief Justice of the Supreme Judicial Court, the assignment of Justices and Judges is the responsibility of the respective Trial Chiefs.

4. The assignment of Case Management Officers is ultimately the responsibility of the Chief Judge of the District Court and the Director of the Family Division of the District Court.

II. Case Completion Standards

A. Purpose

The JRT recommends the adoption of case completion standards for the purpose of having known and certain goals with which to assess the effectiveness of the Judicial Branch in the delivery of justice. The extent to which these standards are met will help the Judicial Branch assess the adequacy of resources and processes for particular courts and particular dockets. Case completion standards will assist judges, clerks and administrators in the allocation of judicial resources between the priority and other dockets established by the Supreme Judicial Court.

B. Reporting Mechanisms

The JRT recommends the implementation of reporting mechanisms by the Director of Court Operations to permit the ongoing monitoring of every docket relative to the case completion standards. Because of the myriad internal and external factors that influence the time within which a particular case is completed, the case completion standards are not designed or intended to measure the performance of individual Judicial Branch employees and such use shall be expressly prohibited. The data is intended for internal Judicial Branch use only, and shall not be distributed externally without the prior approval of the Chief Justice. Moreover, the JRT has not determined whether the standards can be achieved within existing resources and anticipates that they cannot. The JRT anticipates that because of the insufficient number of judges, case management officers, and clerks in the Maine Judicial Branch, resources will be assigned to achieve compliance with the standards associated with priority dockets at the expense of compliance with the standards associated with other dockets.

C. Standards

The case completion standards recommended by the JRT are drawn from standards recommended by the American Bar Association, Conference of Chief Justices and Conference of State Court Administrators, the various jurisdictions which have adopted standards, and the collective judgment of the members of the JRT as to what is appropriate in Maine in order to serve the public interest.

1. Jury and Non Jury Civil Actions

50%	12 months
75%	18 months
99%	24 months

Jury and non-jury civil actions include cases originating in the District or Superior Court involving MEJIS case categories (docket types) General Civil (CV) and Real Estate (RE), as well as Rule 80G and Rule 80K proceedings, but excluding any casetypes that are time sensitive by rule or statute. The JRT recommends the establishment in the future of case completion standards for actions not included.

2. Family Actions

75%	9 months
90%	12 months
99%	18 months

Family actions include actions under Title 19-A including divorce, parental rights and responsibilities, paternity, judicial separation, interstate actions, annulment, UCCJEA and grandparents' visitation.

3. Criminal: Felony and Misdemeanor with Jury Request

50%	9 months

90%	12 months
99%	18 months

4. Misdemeanor with Jury Waived

90%	6 months
95%	9 months
99%	12 months

5. Juvenile

90%	3 months
95%	6 months
99%	12 months

6. Small Claims and Money Judgments

50%	4 months
75%	9 months
99%	12 months

7. Statutory and Rule Case Completion Standards

The statutory and rule case completion standards as set forth in the Appendix.

8. Additional Categories

Upon the recommendation of the Chief Justice, the Supreme Judicial Court should consider the establishment of case completion standards for additional dockets to provide guidance to clerks, judges, and case management officers in formulating schedules so as to achieve the time standards applicable to case priorities.

III. Utilization of Trial Court Efficiency Measures

A. Measures for Trial Court Efficiency

The JRT recommends the utilization of four measures for trial court efficiency guided by similar measures developed by the National Center for State Courts and the Bureau of Justice Assistance of the U.S. Justice Department. The four measures provide a means for determining the timeliness of case dispositions, the identification of backlogs, and the relative certainty of trial dates. It is anticipated that the availability of objective measures of trial court efficiency will create a greater awareness of the effect that scheduling and continuance practices have on dockets. The measures are as follows:

1. Time to Disposition

Evaluates timely case processing from case filing to disposition. Based on a large sample of cases, processing times are calculated by measuring the time between filing and disposition for each case.

2. Ratio of Case Dispositions to Case Filings

Assesses how well a court is keeping up with incoming pending caseload. An examination of the court's clearance rates (the ratio of disposed-to-filed cases) over several years will identify trends in reducing or increasing the pending caseload.

3. Age of Pending Caseload

Looks at all cases awaiting disposition and determines what percentage of those cases represent a backlog. Pending cases are ranked by age.

4. Certainty of Trial Dates

Evaluates the extent to which cases are heard when scheduled. Based on court records that indicate the number of trial settings, patterns of continuances in the court can be determined.

B. MEJIS Data Warehouse

The JRT recommends that the MEJIS Data Warehouse be utilized to implement measures for all of the major and minor case types once information from MEJIS is determined to be standardized and reliable, and the Director of Court Operations should prepare a quarterly report on the trial court efficiency measures. Because of the myriad internal and external factors that influence the time within which a particular case is processed, the efficiency measures are not designed or intended to measure the performance of individual Judicial Branch employees and any such use of that information should be expressly prohibited. The data is intended for internal Judicial Branch use only, and shall not be distributed externally without the prior approval of the Chief Justice.

IV. Eliminate Unnecessary and Inefficient Duplicate Jurisdiction Between Trial Courts

A. Homicides, Felonies and Related Misdemeanors

Homicides, felonies and related misdemeanors should originate in the Superior Court. Greater efficiency will be achieved by having homicides, felonies and misdemeanors related to a homicide or felony defendant originate in a single court. Generally, these actions currently originate in a District Court clerk's office under a District Court docket number, and are ultimately transferred to the Superior Court where a new docket number is assigned. Origination in a single court will reduce paperwork related delays, only require one arraignment,

not two, and reduce clear duplication of effort. Accordingly, the JRT recommends the amendment of the Maine Rules of Criminal Procedure as follows:

1. M.R. Crim. P. 3, 4, 4A, 5 and 5A. M.R. Crim. P. 3(b), 4(a)(2), 4A(a) and (b), 5(a), 5(a)(1) and (2), 5(b), 5(c), 5(e) and 5A should be amended to establish that for purposes of murder, Class A, B, and C offenses and related misdemeanors, a Superior Court Justice shall act. The second and third sentences of M.R. Crim. P. 5A(b), the second sentence of M.R. Crim. P 5(A)(c), the second sentence of M.R. Crim. P. 5A(e)(1), and M.R. Crim P. 5A(f) should be deleted.

2. M.R. Crim. P. 5C. Should remain unchanged.

3. M.R. Crim. P. 6 and 7. Should be evaluated by prosecutors, defense attorneys and the judiciary to determine the continued validity of the indictment/grand jury process. The JRT is not making a recommendation in this regard, recognizing that the statutory and rules changes, as well as the historical and cultural evaluation required to abolish the grand jury, would be significant.

4. 4 M.R.S.A. § 165(3) grants jurisdiction to the District Court to accept pleas in felony cases. 15 M.R.S.A. § 810 provides for appointment of counsel by the District and Superior Courts in felony cases. 17-A M.R.S.A. § 9 provides for District Court jurisdiction to impose sentences in felony cases after a plea. These statutes should remain unchanged.

B. Consolidated Criminal Trial Lists

The JRT recommends that each region consider the consolidation of all District Court criminal trials in the region to (1) a Superior Court; (2) a single District Court location; (3) some combination of (1) and (2); or (4) some other regional arrangement, including maintenance of the status quo where that is determined to be most effective.

C. Forcible Entry and Detainer

The JRT recommends the amendment of M.R.Civ. P. 80D(j) as it relates to the issuance of a stay following the entry of a judgment for forcible entry and detainer to remedy confusion and uncertainty resulting from the existing rule and the related statute. Unlike other related statutory and rule provisions, subsection 2 of Rule 80D(j) is unclear as to which court should grant the stay. *See* 14 M.R.S.A. §§ 6005 & 6008 (2003), and M.R. Civ. P. 80D(j).

As a short term solution, amend 80D(j)(2) as follows:

On motion of defendant **filed in the Superior Court** within the time provided by statute, or any extension thereof under paragraph (1) of this subdivision, the **Superior Court** may grant a stay for the whole time of the appeal or any extension thereof allowed under Rule 76D, if the **Superior Court** finds that defendant's grounds of appeal present a genuine issue of material fact or law.

It appears that if the defendant files any of the motions listed in Rule 76D, such as a motion for finding of fact or conclusions of law, a motion to alter or amend the judgment, and a motion for new trial, the stay of the issuance of the writ is automatic in the District Court because the District Court judge must act on those motions and because the file has not yet been transferred to the Superior Court.

Because it is the Superior Court that must determine whether there is a genuine issue of material fact or law, the Superior Court should also determine whether the issuance of the writ should be stayed.

As a long term solution, amend the statutes that apply to forcible entry and detainer actions so that all of the language regarding stays of the writ is found in the statute only and not both in the rule and in the statute.

V. Resource Assignments Based On Case Priorities and Scheduling Standards

A. Policy

The JRT recommends the adoption of the following Judicial Branch policy: The Trial Chiefs and the Director of the Office of Clerks of Court shall assign judicial resources in an effort to attain the case completion standards particularly as they relate to the highest priority cases as established by the Supreme Judicial Court. This will be achieved, whenever necessary, by directing judicial and clerk resources away from other dockets.

B. Case Volume Ranges

No norms currently exist for the acceptable number of cases that should be scheduled by clerks for single-day, high-volume cases in the District Court, by case type. Accordingly, the JRT recommends that the Chief Judge of the District Court establish a case volume range for the various dockets to be employed by the clerks of courts when scheduling different case types. The standards would set forth the acceptable range of the number of cases that may be assigned to any single daily docket for each case type.

VI. Case Management

A. Differentiated Case Management

The JRT recommends the amendment of M.R.Civ.P. 16 by the addition of the following provision:

Differentiated case management. Upon request of any party for cause shown or on the court's own initiative, when it appears that the case characteristics may warrant a pretrial procedure that differs from the procedure established in the standard scheduling order otherwise required by Rule 16(a), the court may issue a case management plan. The case management plan may establish, for that particular case, deadlines and procedures relating to amendments of pleadings and joinder of parties, designation of lead and liaison counsel, discovery issues, motion practice, ADR, separation of issues for pretrial purposes, multi-jurisdictional coordination and any other pretrial matter. The plan may be designed to shorten or lengthen the pretrial period otherwise created by the standard scheduling order under Rule 16(a). The issuance of such a plan ordinarily will follow a conference of counsel and unrepresented parties, at which the case characteristics may be addressed. In determining whether a case management plan should be issued in lieu of the standard scheduling order, the

court may consider factors such as the number of parties, the complexity and novelty of factual and legal issues raised in the case, the nature of discovery, the pendency of related claims in this or other jurisdictions and any other relevant factor.

The JRT also recommends that the pleading summary sheet filed under Rule 5(h) should be modified and an appropriate revision to the instruction sheet to allow the party who files a pleading to indicate that they wish to invoke the provisions of amended Rule 16, governing differentiated case management. (This may consist of something as basic as a box that the party or attorney may check.) Although any party to an action may request a conference of counsel with a view toward a differentiated case management process, and although any party may do so at any time, such an indication made in the pleading summary sheet is an easy and efficient manner for at least the party who files a pleading to make that request.

B. Business Litigation Docket

The JRT concludes that the scheduling practices of the Judicial Branch should account for the fact that the efficient resolution of significant commercial and business disputes contributes to the State's economic growth and stability. In addition, in the absence of a dedicated docket for these cases, judges and justices do not have the opportunity to develop the scientific and commercial expertise, and to develop court processes appropriate for such cases. Accordingly, the JRT recommends:

1. Over the short-term, the trial courts should apply differentiated case management, including special assignments to a judge or justice, to significant commercial and business disputes in accordance with JRT Recommendation VI.A., above, regarding Differentiated Case Management.

2. Over the long-term, the Judicial Branch should develop a Specialized Business Docket (SBD) to establish a dedicated court process and permit judicial specialization. Under this program, specially assigned and trained judges and justices would preside over the SBD. In addition, SBD court rules and

procedures should be promulgated governing case-eligibility for the docket,[1] single-judge or single-justice assignment, aggressive case management, pretrial and trial management procedures, and presumptive deadlines designed to expedite the discovery process and final disposition.

C. Pretrial Procedure in the District Court - M.R. Civ. P. 16A

The JRT recommends that M.R. Civ. P. 16A be amended to state explicitly that the District Court may order the parties, their insurers and other representatives to participate in good faith in settlement conferences. The JRT also recommends that Rule 16A be amended to require that, in the case of a represented party, the party be represented at the settlement conference by the attorney who is to conduct the trial.

These changes mirror pretrial procedures in the Superior Court. *See* M.R. Civ. P. 16. The proposed changes further the recommendations made by the bench, bar and the Clerks of Court to the JRT that there should be a much greater use of settlement conferences in the District Court.

RULE 16A. PRETRIAL PROCEDURE IN THE DISTRICT COURT

In any action in the District Court, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

[1] For example, the SBD might be limited to cases involving claims relating to the conduct and governance of commercial entities; employment agreements; shareholder actions; securities transactions; intellectual property; confidential or trade secret information; business relationships; complex U.C.C. issues; financial transactions; antitrust or other trade regulation; unfair trade practices; malpractice claims by businesses against professionals; and other commercial claims including, but not limited to those involving insurance, construction, real estate (including 80B and 80C actions) and complex consumer matters.

(4) The limitation of the number of expert witnesses;
(5) Such other matters as may aid in the disposition of the action.

On motion of a party or on its own motion, the court may defer the pretrial order and order the parties to file pretrial memoranda, briefs or such other filings as the court may direct. The court may conduct a trial management conference. Unless excused for good cause, each party shall be represented at the trial management conference by the attorney who is to conduct the trial and who shall be prepared to represent the party's position on settlement and on all matters involved in the conduct of the trial. At the trial management conference, the parties shall be prepared and authorized to discuss settlement in good faith. The court may conduct a settlement conference and may direct the parties, their insurers, and their authorized representatives to appear at the settlement conference and to participate in good faith.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings; and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish a pretrial calendar on which actions may be placed for consideration as above provided.

If a party fails to attend a pretrial conference held under this rule or to comply with any order made hereunder, the court shall impose on the party or the party's attorney, or both, such sanctions as the circumstances warrant, which may include the dismissal of the action or any part thereof with or without prejudice, the default of a party, the exclusion of evidence at the trial, and the imposition of costs, including attorney's feed and travel.

The court may expressly order, where appropriate in its discretion, that the costs of such sanctions be borne by counsel and that they shall not be passed on to counsel's client

D. Pretrial and Scheduling Orders – M.R. Civ. P. 16(a) & (b)

In a conventional civil case, the clerk and the judge often issue several pretrial orders that establish dates for various case events. In the Superior Court, those orders include a scheduling order (M.R. Civ. P. 16(a)), a pretrial order (M.R. Civ. P. 16(b)) and a trial management order. The forms presently used for those orders are not entirely consistent. For example, the scheduling order and pretrial order establish different deadlines by which the parties must file exhibit and witness lists, and the trial management conference order subsequently reopens the issue and, by its terms, establishes a new set of dates that usually differ from those previously set in the other form orders. Also, the deadlines in those various orders are based on different points of reference.

With a greater number of separate and inconsistent deadlines, there is an increasingly greater burden on the clerks to make separate docket entries and file documents in a case file more times. It also is confusing and unnecessarily complicates the work of the party or practitioner. The JRT recommends that the Director of Court Operations conduct an integrated review of these forms and any others that are used to control pretrial activities and events, and that changes should be made in order to streamline the structure of pretrial deadlines, including the elimination of conflicting provisions and the use of fewer points of reference for those deadlines.

E. Notice of Discovery Service – M.R. Civ. P. 26(f)(1)

The JRT recommends that the Maine Rules of Civil Procedure should be amended to eliminate the requirement, presently found in rule 26(f)(1), that a party file with the clerk a notification of discovery service when that party serves a discovery request, or a response to such a request, on another party. The JRT believes that the benefits of that information contained in a notification of discovery service are outweighed by the administrative burden that such filings impose on the clerks. Particularly in the busier court locations, this burden is substantial.

The JRT recognizes that one of the benefits created by the present filing requirement under Rule 26(f)(1) is that, when a discovery dispute is based on a party's failure to answer or object to a discovery request,

these filings allow a judge or justice to review the file to confirm that in fact a party has not answered or objected to a request. If that is the case, then under Rule 26(g)(2), the court may issue an order without a hearing. If Rule 26(f)(1) is amended to eliminate the need for a party to file a notification of discovery service, then the JRT also recommends that Rule 26(g)(2) be amended to provide that when a party seeks a court order based on another party's failure to answer or object to discovery requests, then that request must be accompanied by an affidavit certifying that the opposing party has not responded to the discovery request with an answer or objection. Such a certification should be made subject to the requirements and sanctions of M. R. Civ. P. 11.

The second circumstance where the existing filing requirement is useful to judges and justices is where a party seeks relief that is predicated on the status of discovery. For example, when a party moves to enlarge the discovery deadline or continue a hearing or trial due to incomplete discovery, under the present rule, the court can review the discovery filings to assess whether the parties have diligently pursued discovery and therefore whether it may be appropriate to grant relief based on the status of those discovery efforts. If Rule 26(f)(1) is amended to eliminate the filing of notifications of discovery service, then the JRT also recommends that the rule be further amended to require that when a party files a motion or otherwise seeks relief that, in whole or in part, is based on the status of discovery, then the movant must provide the court with an historical summary of the discovery that the parties have pursued in that case. This summary shall identify all the nature and dates of requests for discovery propounded by each party to the action, and it shall also identify all responses to those discovery requests.

F. Single Judge Assignment for Child Protection.

The JRT recommends that the District Court utilize single judge assignments in child protection cases for all phases of the case including post-judgment judicial review to the extent possible and subject to judge availability.-

G. Scheduling and Management of Protection from Abuse and Protection from Harassment

1. The JRT recommends that the District Court's Protection from Abuse docket and Protection from Harassment docket will be scheduled separately as independent dockets.

2. Protection from Harassment Case Management

There was a 24% increase in the number of protection from harassment petitions filed in fiscal year 2002 from the previous year. In many instances, members of the public are automatically referred to a District Court to file a civil protection from harassment complaint when they contact law enforcement officials. As a result, many neighborhood disputes (e.g., those between abutting neighbors over noise levels, conflicts between school children on the school bus, etc.) that might be resolved in their community through community policing techniques, referrals to alternative dispute resolution resources or the intervention of municipal officials, are instead channeled directly into adversarial litigation. Under current practice, the court has little or no opportunity for case management, and must seek to adhere to the statutory requirement of conducting a final hearing within 21 days. 5 M.R.S.A. § 4654(1). Contested hearings often require more than 30 minutes for trial and involve multiple witnesses.

The burgeoning protection from harassment docket of the District Court is also drawing judicial resources away from more acute cases involving domestic violence. In addition, unlike the protection from abuse statute, 19-A M.R.S.A. § 4007(1)(L), the court is not authorized to award costs and attorney's fees to the defendant if the complaint is without merit and is dismissed.

Accordingly, the JRT recommends the following revisions to the protection from harassment statute:

a. Title 5, section 4654(1):

A. Full hearing. Within 21 days of the filing of a petition in an action in which the court has issued a temporary or an emergency order, a hearing shall be ~~held at which the~~ scheduled. The plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

1. If the court determines that a hearing is required, the court may in lieu of trial conduct a case management conference to identify witnesses, exhibits, determine the settlement status, and enter a pretrial order governing the conduct and scheduling of the trial. Any temporary order shall remain in effect pending the final hearing. If there is no temporary order in effect, the court may require the parties to confer with law enforcement or governmental officials, or otherwise engage in alternative dispute resolution, to attempt to resolve the dispute, prior to the scheduled trial date.

b. Title 5, section 4655(1)(E):

E. Ordering the defendant, or if the complaint is dismissed, the plaintiff, to pay court costs or reasonable attorney's fees;

H. Expansion of Case Management Officer Jurisdiction

To maximize judicial resources and to expand the effectiveness of case management in the District Court, the JRT recommends the creation of a group within the Judicial Branch to examine the feasibility, benefits, and detriments resulting from expansion of Case Management Officer jurisdiction to include:

1. Contested family matters with and without children, in addition to child support, by agreement of the parties; and

2. Case management of child protection cases at the judicial review stage of the proceedings.

The group should also consider the constitutional, statutory, and other restrictions or concerns on this expansion of Case Management Officer jurisdiction.

I. Small Claims Case Scheduling and Jurisdictional Limit.

1. Scheduling. The JRT recommends that regions adopt a new procedure for handling Small Claims cases.

a. Small Claims cases would be called on a regular and frequent basis in their court of origin. On the day of the docket call, unresolved cases shall be mediated. Sufficient mediators shall be assigned to all small claims dockets, and they shall receive training in basic case management.

b. If a mediated case does not settle, the mediator would conduct a mini-pretrial conference and issue a pretrial report. At the conference the mediator would direct the parties to: (a) mark and exchange any trial exhibits; (b) identify necessary trial witnesses; (c) provide realistic length of trial estimates; and (d) explore adopting admissions of fact and trial stipulations. The pretrial report would recite the actions taken at the conference. At the judge's discretion, he or she may require the parties to participate in additional case management before the Judge on that day.

c. All unresolved cases would be referred for trial and assigned to a District Court small claims trial list on a regional basis or at the court of origin, on a date certain.

2. Enforcement of Jurisdictional Limit. The JRT recommends that M.R. Small Claims P. 8 be amended by the addition of the following:

(g) Enforcement of Jurisdictional Limit. In all actions in which the court determines that plaintiff's actual damages exceed the jurisdictional limit of the small claims court, the action shall be dismissed without prejudice.

J. Telephone and Video Case Conference/Hearing Rules

The JRT recommends the adoption of civil and criminal rules that will encourage the use of telephone and video case conferencing and hearings whenever appropriate. There is widespread support for the expansion of the use of telephonic and video communications as part of the judicial process because it

allows for more flexible event scheduling, increases the certainty that a matter will be reached when scheduled, and reduces the travel time and expense associated with routine judicial conferences and hearings. The JRT believes that the adoption of rules addressing the telephonic and video conferences and hearings will cause a greater number of judges, case management officers, clerks and lawyers to consider and take advantage of the option. The use of telephone and video technology in testimonial hearings is governed by M.R. Civ. P. 43 and M.R. Crim. P. 26.

Proposed Rule:

Telephone and Video Conferences and Non-Testimonial Hearings

1. The use of telephone conference calls for conferences and non-testimonial hearings is encouraged. The court, upon request of a party or its own instance, may order conferences or non-testimonial hearings to be conducted by telephone conference calls. In addition, upon motion by any party and upon such terms as the court may direct, the court may enter an order in appropriate cases providing for the conduct of conferences or non-testimonial hearings by video conference equipment.

2. Initiation and Expenses. The court shall determine the party or parties responsible for the initiation and expenses of a telephone or video conference or non-testimonial hearing.

K. Back-up Cross Assistance

The Judicial Resource Team recommends that District Court Judges and Superior Court Justices within a region should be expected and continue to regularly communicate with one another when a judge or justice's docket falls through and the judge or justice has no other matters to attend to so as to regularly provide back-up cross assistance in the other court.

L. Arraigning People in Custody

The JRT recommends that Justices and Judges communicate with one another when they have unexpected availability to handle in-custody arraignments. This will reduce Sheriffs' transport responsibilities on a given day and free another Justice or Judge to attend to other matters.

VII. Trial Management

A. Primary Case/Back-Up Case Scheduling

The Judicial Resource Team recommends that primary case/back-up case scheduling for matters requiring more than 2 hours for hearing not be utilized, and that such matters should be assigned to trailing dockets.

B. Regional Trailing Lists and Short Hearings

1. Assignments Generally. In each region, Civil, Family and Child Protection cases requiring more than two hours for hearing will be assigned for trial on regional trailing trial lists. If it is determined that for a particular court, the use of a regional trailing list is impractical, then that court may employ a multi-day trailing trial list.

2. Civil Regional Trailing Lists. Regional civil trailing lists will be managed from one or more Superior Court locations and only Superior Court Justices will be regularly assigned. As used herein, "civil" refers to cases originating in the District or Superior Court involving MEJIS case categories (docket types) General Civil (CV) and Real Estate (RE), as well as Rule 80G and Rule 80K proceedings, but excluding any casetypes that are time sensitive by rule or statute. In addition, any other matters originating in the Superior Court may be referred to the regional civil trial list including, but not limited to, short hearings of two hours or less related to cases originating in the Superior Court.

3. Short Civil Hearings in the District Court. For District Court civil hearings requiring 2 hours or less, the case shall not be referred to a regional civil trailing list in the Superior Court. In such actions, the parties

shall generally be held to their time estimates. Judges should generally allocate time for the direct and cross examination of all witnesses, within the overall time allowed for hearing.

4. Family Regional Trailing Lists. Family trailing lists will be managed from one or more District Court locations in the region and only District Court Judges will be regularly assigned.

5. Child Protection Regional Trailing Lists. Child protection trailing lists will be managed from one or more District Court locations in the region and only District Court Judges will be regularly assigned.

C. Trailing List Standards

The following presumptive standards shall govern trailing list scheduling, subject to regional development and modification taking into consideration the unique circumstances of each region upon approval of the trial chiefs:

List	Minimum # of Continuous Days	Total Day/Cases Ratio
Civil	**20**	**----**
Family	**5 to 10**	**1:3**
Child Protection	**5**	**1:2**

D. Judicial Settlement Conferences and Trial List Scheduling

The JRT recommends the institutionalization of judicial settlement conferencing as part of trial list scheduling and management, as follows:

1. Policy. The use of judicial settlement conferences in the Maine Judicial Branch has been developed in recent years at the initiative of individual judges and has proven to be highly effective in assisting parties resolve disputes. Each region should develop procedures to make judicial settlement conferences an integral part of civil, family and child protection trailing trial lists. The procedures should be flexible enough to accommodate differences among regions and specific court locations. All Superior Court Justices and District Court Judges should be expected to preside at settlement conferences, and appropriate training should be made available.

2. Models. Two primary models for the allocation of judicial resources for judicial settlement conferences should be considered:

a. Double Judging. A settlement judge, in addition to the trial judge, is assigned to a trailing docket for a fixed number of days at the outset of the list. If there are not enough cases referred for settlement conferences to occupy the settlement judge's time, the settlement judge will try cases on the trailing list.

b. Reciprocal Judging. Two judges make reciprocal arrangements for one judge to serve as the settlement judge for the other judge's trailing list. At the outset of the trailing list, the settlement judge and trial judge swap schedules so that the settlement judge attends to settlement conferences for cases on the trial list and the trial judge attends to the settlement judge's court assignments.

3. Assignment of Cases. Generally, the trial judge should have primary responsibility for assigning cases for judicial settlement conferences. If scheduling permits, the trial judge should conduct trial management conferences in person, by telephone or by videoconferencing in advance of the trailing trial list to address trial management issues and to consider (1) whether the case should be referred for a judicial settlement conference, (2) scheduling conflicts for attorneys or witnesses associated with the scheduling of the settlement conference, and (3) issues involving domestic violence or other considerations impacting on the appropriateness and structure of a settlement conference.

4. Rule. Rule 16B should be amended or a new rule adopted to address judicial settlement conferences. The rule should: (1) confirm the court's authority to compel compliance and to sanction parties for noncompliance; (2) require all parties and key decision makers (e.g., insurance adjusters, lien holders and guardians ad litem) to attend the settlement conference in person; and (3) provide that if a settlement is reached, the agreement must be reduced to writing or placed on the record at the time of the conference.

E. Pretrial and List Call Process for Family and Child Protection Cases

The JRT recommends that in order to make the most effective use of trial list time in family and child protection cases:

1. FM and PC cases will have a pretrial or case management conference before being placed on a trial list. Judges or CMOs to do pretrials for FM cases with children. Judges to do pretrials for FM cases without children and PC cases.

2. Once a case is on a trailing trial list, five to ten days prior to the start of the trial list the trial judge will conduct a trial management conference for each case on the list.

a. It is recommended that this be done by phone.

b. Purposes: to resolve any final pretrial matters, conduct mini-settlement conference, narrow issues, establish order of cases for trial.

3. Opportunity for settlement conference with a judicial officer other than the trial judge will be made prior to or during trailing docket.

a. Parties may request or a judge may direct the parties to participate in a settlement conference.

b. CMOs may conduct settlement conferences in FM cases with children. Judges will handle other settlement conferences.

F. Judicial Branch Continuance Policy

A key determinant of trial certainty is the application of consistent approaches to requests for continuances. The absence of consistency results in more frequent continuances that, in turn, increase delay and the amount of clerical work associated with a case. Because of insufficient clerk and judicial resources, a scheduled court event is a precious commodity, only to be lost for a truly substantial and unforeseeable reason. When asked what one change in current practices would most effectively improve scheduling, judges, case management officers, and clerks emphasized the adoption of more strict and consistent continuance practices. Accordingly, the Judicial Resource Team recommends:

1. M.R. Civ. P. 40(b) should be amended as follows:

(b) Continuances. A motion for continuance of an action shall be made ~~not less than 4 days before the date set for commencement of trial in the action; but if the cause or ground of the motion is not then known, the motion may be made as soon as practicable~~ immediately after the cause or ground becomes known or should have become known. The motion must specify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, (3) whether the motion is opposed, and (4) that a copy of the motion has been provided to the client by the attorney. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be ~~promptly~~ given immediately to all other parties. The fact that a motion is unopposed does not assure that the requested relief will be granted. Continuances should only be granted for truly substantial and unforeseeable reasons.

2. M.R. Crim. P. 47(c) should be amended as follows:

(c) Motion for Enlargement of Time or for Continuance. Any party filing a motion for enlargement of time to act under these rules or for continuance of trial or hearing shall file with the motion a statement indicating whether the motion is opposed or unopposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be stated. A motion for continuance shall be filed immediately after the cause or ground becomes known or should have become known. The motion must specify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, (3) whether the motion is opposed, and (4) that a copy of the motion has been provided to the client by the attorney. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be ~~promptly~~ given immediately to all other parties The fact that a motion is unopposed does not assure that the requested relief will be granted Continuances should only be granted for truly substantial and unforeseeable reasons.

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3. Judges and Justices should periodically discuss and review the continuance practices in their region to promote consistent and predictable continuance practices.

VIII. Lawyers for the Day

The JRT recommends that the regions should use lawyer for the day programs at criminal and juvenile arraignments in the District Court.

IX. Additional Clerk Resources

There is an acute need for more clerk resources in the District and Superior Courts that directly affects the quality of court operations and the delivery of justice. By way of illustration, areas where additional clerk resources would directly improve the delivery of justice include:

A. District Court Criminal and Juvenile Arraignments

The District Courts generally do not utilize courtroom clerks to assist judges with criminal and juvenile arraignments. A courtroom clerk frees the judge to focus more on the litigants, attorneys and members of the public in the courtroom, and less on the completion of the voluminous paperwork associated with arraignments. In addition, courtroom clerks reduce the frequency of paperwork errors resulting from judges serving as both scribe and judge; improve the efficiency of the arraignment process; and enhance the quality of the arraignment process by affording the judge sufficient time to make eye-contact with and speak directly to the defendant, victims, etc. in a less-hurried fashion.

B. Child Protection Case Management Conferences

As a result of the implementation of Adoption and Safe Families Act of 1997, Public Law 105-89; 111 Stat. 2115, there has been a four-fold increase in the number of case events associated with each child protection proceeding. Case management dockets can involve 20 or more case management conferences in the courtroom in a single day, and generate substantial paperwork and docketing.

C. M.R. Civ. P. 16B and M.R. Crim. P. 22

The adoption of mandatory ADR in the Superior Court pursuant to M.R. Civ. P. 16B and the transfer of a significant number of criminal cases pursuant to M.R. Crim. P. 22 have both imposed substantial new responsibilities on the Clerks of the Superior Court with associated paperwork and docketing obligations.

D. Family Division Conferences and Hearings

The Case Management Officers routinely manage dockets with case management conferences scheduled at 15-minute intervals, generally requiring the completion of five or more documents by the Case Management Officer for each case. The paperwork and docketing associated with the process is overwhelming the Case Management Officers and the Clerks.

E. Clerk Operations in General

The Superior and District Court clerks' offices are not able to remain current with the myriad important and essential clerk functions such as the preparation of warrants, SBI communications and MEJIS docketing. In addition, the adoption of this JRT recommendation will impose even greater responsibilities on the clerks of the Superior and District Courts.

Accordingly, the Judicial Resource Team recommends the Judicial Branch to fully evaluate the need for additional Superior and District Court clerks to work with judges and CMOs in the courtroom, to address the public in the courthouse and over the phone, and to perform their duties of processing cases, all of which are essential to assuring the quality of justice.

X. District Court Violations Bureau Utilization

Since its introduction in 1992, the District Court Violations Bureau has efficiently processed the thousands of motor vehicle infractions filed with the courts each year. The Bureau's centralized docketing and scheduling, and its internet-based fines collection system, have relieved the District Court clerks' offices of responsibility for a substantial volume of filings. This, in turn, has permitted the clerks' offices to dedicate efforts to other critical dockets. Of the 131,938 Violations Bureau filings in FY 2002, 80.7% were disposed of without being referred by the Bureau to a District Court. Of the 25,445 files that were referred, all but 2,031, or 8%, were concluded without a hearing before a judge. Nonetheless, the management of the cases referred to court requires the allocation of substantial judicial resources.

If the Bureau's jurisdiction is increased, there will be a corresponding decrease in the filings processed in the District Court clerks' offices. Further, many jurisdictions utilize referees or administrative hearing officers in these matters. For example, Vermont utilizes four hearing officers employed by its Judicial Branch to adjudicate many civil infractions. If some form of hearing officer position is utilized in Maine to manage and/or adjudicate matters referred for hearing, it would permit the reassignment of judges to the high priority dockets of the District Court involving families, domestic violence and individuals in custody.

The Judicial Resource Team recommends the creation of a group within the Judicial Branch to examine this issue more closely and make recommendations regarding the feasibility, benefits and detriments resulting from the increased utilization of the Violations Bureau. Specifically, the group should consider:

1. The expansion of the Violations Bureau's jurisdiction to include all civil violations or all civil violations with waiver fines, and the establishment of standardized procedures and rules for both traffic infractions and civil violations;

2. The utilization of administrative hearing officers;

3. The financial requirements of any recommended changes; and

4. Constitutional, statutory and other restrictions or concerns on the expansion of the Bureau's jurisdiction and/or the utilization of hearing officers.

XI. Technology

A. Computer Based Scheduling

The regional structure proposed by the Judicial Resource Team will promote a new emphasis on the coordination of scheduling between multiple court locations, and requires that those schedules be made available to the public on the Judicial Branch website. *See* Section I.C.2. A scheduling system could simplify the current manual scheduling process that is conducted by each court. The Judicial Resource Team accordingly recommends that the Technology Committee examine the need for and availability of an appropriate scheduling software program or programs to be utilized by each court and the regions to implement coordinated scheduling, as well as any required computer hardware.

B. Courtroom Improvements

All courtrooms should be wired and equipped to utilize telephone conferences, electronic benchbooks, laptop computers, MEJIS terminals and printers.

C. Videoconferencing

The JRT recommends regional videoconferencing capabilities for arraignments, hearings, conferences of counsel and general judicial communication.

The JRT has not attempted to undertake a comprehensive review of the technological impact of all its recommendations. The JRT urges the Technology Committee to review its current technology plan to reflect recommendations adopted by the Supreme Judicial Court.

XII. Physical Plant Issues

A. Future Facilities

The JRT recognizes that with the assistance and cooperation of the Governor and Legislature, as well as that of many state and local officials, the Judicial Branch in the past six years has been able to construct new District Court courthouses in Skowhegan, Biddeford, Lewiston, and Springvale. The Farmington and York District Courts have undergone significant renovations. The Rockland courthouses will shortly be undergoing significant renovation, and studies for improving the Augusta, Bangor, Dover-Foxcroft and Machias courts are underway. The JRT recommends that subject to statutory requirements, future court construction should account for the regional organization of the courts proposed by the JRT.

B. Existing Facilities

The JRT has not assessed changes or improvements to existing facilities that might be required to implement its recommendations. Accordingly, the JRT recommends that the Director of Court Facilities be requested to undertake such a review.

XIII. Allocation of Resources

A. Implementation

The Trial Chiefs should develop a plan and timetable for the implementation of the new model for trial court scheduling.

B. Training

The Trial Chiefs should establish a training program for judicial staff regarding the new model for trial court scheduling.

C. Periodic Assessment

The Trial Chiefs should periodically assess the need for the reallocation of judicial resources throughout the implementation of the new model and make recommendations to the Chief Justice regarding the same. Toward this end, they should:

(1) Assess how existing resources have been made or will be made more productive by the adoption of the new model;

(2) Identify for every court the amount of more or less judge time required to implement the new model.

(3) Develop a plan for the reallocation of judicial resources.

Judicial Resource Team Charter
(JRT)

9/9/02

Purpose:

The Judicial Resource Team shall assess the workload and judicial resources of Maine's trial courts and generate a new model for scheduling courts and allocating judicial resources. Ultimately, this team will present a comprehensive recommendation to the Supreme Judicial Court. It is anticipated that the Team's recommendations will be the product of, and promote, collaboration among the trial courts.

Membership:

The Trial Chiefs (3)
The State Court Administrator (1)
Two Superior Court Justices (2)
Two District Court Judges (2)
One Clerk from Each Court (2)
One Supreme Court Justice (1)
The Family Division Director (1)

The membership, including the designation of one member as the Chair, shall be appointed by the Chief Justice with input from the Trial Chiefs and the SJC.

Time frame:

Preliminary meeting, September, 2002
The Team shall make quarterly progress reports to the SJC
Final recommendations to SJC by September 19, 2003

Primary Source materials:

The Team shall make use of the NCSC Workload Assessment Report, court developed statistics, and any other reliable source of workload analysis, case-type analysis, and judicial and other resource assessments.

Authority:

The Team shall receive input, suggestions and recommendations from all judges and justices, case management officers, RCAs and clerks, and may do so through local design groups or otherwise. The Team shall also seek input, suggestions and recommendations from other individuals and groups both within and outside the Judicial Branch. The Team is authorized to undertake the process of creating the redesign as it deems appropriate. When approved by the Chiefs, pilot projects or interim changes may be implemented before the recommended statewide redesign has been approved.

To the extent the Team recommends regularized assignments of judges to other courts, such assignments may not extend to jury trials in the Superior Court, family matters under Title 19-A, or child protection proceedings under Title 22 in the District Court, except when the Trial Chiefs and the individual judges are in agreement.

The Team may, through its Chair, request such additional authority from the Chief Justice as may prove necessary to achieve the Team's goals and objectives.

Goals and Objectives:

The Team shall develop recommendations to achieve the following goals and objectives:

Goal #1: Improve the Delivery of Civil and Criminal Justice to the Public

Objective A: Establish measurable and reasonable standards for the completion of different case-types.

Objective B: Improve case administration by:

a) eliminating day-to-day breaks in trials,
b) maximizing the use of back-up lists or trailing dockets,
c) combining like cases in single dockets,
d) implementing the use of single judge/justice assignments for appropriate dockets, and
e) coordinating dockets among different courthouses to make the best use of both judicial and extra-judicial resources (including prosecutorial, bar, and law enforcement resources).Objective C: Integrate case management and ADR practices, including judicially assisted settlement conferencing, in all appropriate dockets.

Goal # 2: Make the Most Effective Use of Judicial Resources

Objective A: Allocate judicial resources based upon case-type standards, and the case priorities established by the SJC.

Objective B: Make optimum use of coordinated scheduling and resource allocation.

Objective C: Assure sufficient writing and administrative time for each judge, including back up assignments.

Objective D: Assure an equitable distribution of case work among judges, taking into account administrative duties and travel.

Objective E: Apply uniform practices to the dockets shared by the trial courts (e.g., nonjury civil cases and pretrial criminal proceedings) and, where possible, administer the dockets at a single court location with the judging remaining a shared responsibility.

Objective F: Balance the important competing interests of:

a) supporting specialized judging (including single justice programs, adult and juvenile drug courts, and other innovative specialized judging efforts), and

b) allowing for the changing assignments of individual judges by case types and geography.

Objective G. Make best use of technology

a) Whenever possible and appropriate, make use of technology for facilitating long distance hearings, conferences, and other communications.

Summary Report
for
State of Maine Judicial Branch
Judicial Resource Team

By

Berry, Dunn, McNeil & Parker
Consultant to Judicial Resource Team

September 8, 2003

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EXECUTIVE SUMMARY

In September 2002, the State of Maine Judicial Branch created a Judicial Resource Team (JRT; Team) to "assess the workload and judicial resources of Maine's trial courts and generate a new model for scheduling courts and allocating judicial resources." In doing so, the Team has been asked to use a collaborative approach and to develop recommendations that will promote collaboration among the trial courts. The Team was established by the Supreme Judicial Court, to which it will make recommendations in the fall of 2003.

The Judicial Resource Team retained Berry, Dunn, McNeil, & Parker (BDMP) to serve as a resource to the JRT to assist it in executing its mission as identified in the JRT Charter. BDMP's consulting assistance focused on collecting objective data the JRT plans to use to develop its recommendations to the Supreme Judicial Court.

Working in conjunction with the JRT Chairperson and members of the JRT, BDMP facilitated the development of a structured group survey and an online survey that was completed by individuals. The surveys were made available to all district court judges, superior court justices, case management officers, and clerks throughout the Judicial Branch in order to capture data related to current processes, future changes, and opportunities for improvement. The response rate on each of the two surveys was greater than 90%.

Feedback from both surveys was organized and analyzed within three categories:

- **Scheduling** – Addresses the current level and types of schedule coordination, including staffing and resources, that are taking place between various courts.
- **Resource Allocation** – Identifies how resources including staff, physical space, and technology are currently distributed and shared between courts.
- **Case and Trial Management** – Addresses current case and trial management processes as well as opportunities for improvement to those processes.

After completing our analysis of the survey data, we believe there are several improvements that can be made to promote collaboration among the trial courts. Our recommendations, identified below and further described in Section 2.3, address the three categories listed above.

- Organize court operations based on a regional structure
- Develop standards for common case and trial management business practices
- Create policies and procedures manuals
- Conduct a formal information technology planning and resource review project to maximize the use of existing systems and to prioritize and coordinate future projects
- Improve access to, and use of, existing information technology systems
- Increase the level of automation used by the court system
- Develop and track performance metrics

1.0 OVERVIEW

1.1 BACKGROUND

In September 2002, a Judicial Resource Team (JRT) was created to "assess the workload and judicial resources of Maine's trial courts and generate a new model for scheduling courts and allocating judicial resources." In doing so, the JRT has been asked to use a collaborative approach and to develop recommendations that will promote collaboration among the trial courts. JRT was established under the Supreme Judicial Court, to which it will make recommendations in the fall of 2003.

After conducting a series of research activities including interviews, researching other court systems, and requesting and reviewing feedback from judicial branch stakeholders, the Team sought assistance from a consultant for a specific task of its review. The task was to

conduct a survey of clerks, court administrators, judges, justices, and case management officers (CMOs) to solicit data that would help the JRT develop and make recommendations to the Supreme Judicial Court.

The consulting firm of Berry, Dunn, McNeil & Parker (BDMP) was retained to serve as a resource to the JRT. The JRT's Chairperson served as the Maine Judicial Branch's project manager and contract monitor during this engagement. As part of this project, BDMP analyzed feedback from the surveys, developed recommendations, and prepared this report.

1.2 Objective

The JRT initiated this consulting engagement to obtain additional information to help fulfill its duties as outlined in the JRT Charter. The project was focused on collecting objective data that the JRT will use as the team develops its recommendations to the Supreme Judicial Court.

1.3 Work Performed

To assist the JRT with the surveys and research, BDMP implemented an approach that included the following tasks:

- Initial meetings with project team leaders to obtain background information
- Reviewing documents provided by JRT as a result of its previous work in the project and relevant research activities
- Meeting with the JRT to discuss the survey goals and objectives
- Developing survey documents in collaboration with the JRT
- Preparing and providing materials to conduct a structured group survey of clerks, judges, justices, and case management officers
- Conducting and administering an online and paper-based survey of individual clerks, judges, justices, and case management officers
- Objectively analyzing the data collected and developing a report of the information
- Presenting the survey findings to the JRT

This report was developed by organizing and analyzing information gathered through the survey, research, and meetings with JRT members.

Based on the information collected in the survey and assembled in this report, the JRT will develop its recommendations for the Supreme Judicial Court. The findings and data collected as part of this project will be one of several pieces of information considered by the Team as it develops its recommendations on how to improve upon the current model for scheduling courts and allocating judicial resources.

2.0 SUMMARY OF SURVEY RESULTS

2.1 STRUCTURED GROUP SURVEY

2.1.1 Survey Methodology

During previous work on this project, BDMP reviewed documents and conducted relevant research in order to understand the current environment of the Judicial Branch. Having developed an understanding of the goals and objectives of the JRT, we conducted a work session with the Team to collaboratively identify topic areas for the survey and to develop sample questions. BDMP used the information identified in this work session to prepare draft and final version surveys. BDMP worked closely with the JRT Chairperson and the JRT to finalize the questions in the survey.

A structured group survey was developed to gather information based on existing knowledge of judges, CMOs, and clerks and their experience with current court operations. Structured groups organized by region were established to respond to the survey. An individual from each group was selected to act as a scribe to document the results of the discussion of each question.

The survey was divided into four topic areas including scheduling, resource allocation within a regional structure, case and trial management and associated best practices, and other ideas. In this survey, open-ended questions were used to generate discussion and to encourage sharing of ideas. A fixed amount of time was designated to discuss the questions in each topic area. For purposes of our analysis in this report, we have combined data from the topic area "other ideas" into the three topic areas listed below:

- **Scheduling** – Addresses the current level and types of schedule coordination, including staffing and resources, that are taking place between various courts.

- **Resource Allocation** – Identifies how resources including staff, physical space, and technology are currently distributed and shared between courts.

- **Case and Trial Management** – Addresses current case and trial management processes as well as opportunities for improvement to those processes.

2.1.2 Findings

Scheduling

The survey sought feedback regarding scheduling, coordination between various courts, and the use of various scheduling tools. The responses from both the clerks and the judges indicated that there is a varying degree of coordination among the courts. The following items identify the findings related to scheduling and coordination between courts.

- Only one group reported they currently coordinate specific types of cases on a regional basis. Another region reported that coordination does take place, but that it is based on county lines, not on the hypothetical regional groups identified in the group survey.

- Only two regions reported they did not make any attempts to coordinate schedules with other courts.

- All of the groups reported that the courts they represented were taking steps to distribute work more evenly among them.

- The answers provided by the groups of clerks and the groups of judges, justices, and case management officers were consistent with each other. The two groups appeared to have the same understanding of the current situation.

- The judges, justices, and case management officers cited the following advantages and concerns with pursuing coordinated scheduling:

  Advantages
  - ☑ reduced number of continuances
  - ☑ ability to use civil cases on criminal dockets
  - ☑ improved focus on the part of attorneys
  - ☑ more predictable schedules

- ☑ reduction in the amount of time sheriffs and law enforcement officials must spend on their tasks
- ☑ potential for clerks and judicial administrative assistants to perform the coordinated scheduling duties

Concerns
- ☑ the program may not help attorneys who work in multiple regions
- ☑ potential to force citizens to travel further to reach their courts
- ☑ potential to reduce the amount of flexibility, especially in multi-day cases

- The clerks cited the following to pursuing some form of coordination:

Advantages
- ☑ reduction in the length of hearings
- ☑ fewer continuances
- ☑ faster disposal of cases
- ☑ improved trial certainty
- ☑ reduction in wait time for a case to be scheduled
- ☑ improved accessibility to judges
- ☑ improved use of judicial resources
- ☑ standardized processes and more educated public
- ☑ potential to schedule similar cases in the same court
- ☑ potential for clerks and judicial administrative assistants to perform the coordinated scheduling duties

- The clerks listed the same concerns identified by the judges above and also added the following items:

Concerns
- ☑ documents could be misplaced or lost if they were traveling between courts
- ☑ challenge of keeping the status of the schedule and the amount of available clerk time up-to-date
- ☑ some Judicial Branch employees do not currently have access to a computer and/or email

- The following ideas were identified to make trailing dockets more effective: build writing time into the schedule; conduct meaningful settlement discussions before the trial; create strict, clear continuance policies; place a reasonable number of cases on the lists; prepare the trailing docket list at least 30 days in advance; conduct brief teleconferences around the time the docket is distributed; prepare a daily trailing docket that is time-specific; and schedule a settlement conference that leads into the trailing docket schedule.

- Respondents reported various types of cases that would be best suited to trailing dockets. The most popular types of cases included cases of longer than one day, cases involving the Department of Human Services and other family matters, and civil cases.

- Small claims, Forcible Entry and Detainer, Protection from Abuse, Protection from Harassment, and cases involving travel or expert witnesses were reported to be least suited to a trailing docket.

- The following ideas were identified to make single judge/justice programs more effective: assigning the judge early on in the case, ensuring that the attorneys feel they always have access to the court, providing an opportunity for an early conference, ensuring the schedule is realistic, strictly enforcing the single judge/justice assignment, and not moving cases not suited to a single judge/justice setting from list to list.

- Respondents reported various types of cases that would best suited to a single judge/justice program. Civil cases, family cases, and cases involving the Department of Human Services were deemed best suited to a single judge/justice program by both judges/justices and clerks. Small claims, Forcible Entry and Detainer, Protection from Abuse, Protection from Harassment, and routine cases were reported to be least suited to these programs by both judges/justices and clerks.

- The following tools were identified to make special assignment programs most effective: matching judges with specific experience, holding pretrial conferences, granting fewer continuances, setting definite trial dates in advance, conducting status conferences frequently, and creating a list of backup cases.
- It was reported that the program works best when cases are seen from initiation to decision without interruption of other cases.

- Civil cases and long cases were deemed best suited for a single judge/justice program.

- Judges, justices, and case management officers deemed minor offenses least suited for a single judge/justice program.

Resource Allocation

The survey posed a series of questions intended to determine the feasibility of reorganizing the courts based on a regional structure. The responses from the judges indicated that the reaction to a regional structure was mostly positive. Even so, judges identified several challenges which would have to be overcome before a regional structure could be implemented. The following bullets summarize the responses:

- If shared dockets were to be implemented, judges and clerks reported that the dockets for civil non-jury trials and pre-trial criminal proceedings could be combined at the superior court; other criminal matters could be combined at the appropriate court for that region.

- Across rural and urban regions, a significant number of the judge and justice groups cited non-jury civil, non-jury criminal, and pre-trial activities (arraignments, bail, initial appearances, etc.) as tasks that could be performed by both the district and the superior courts.

- The most commonly reported challenges to consolidating the administration of shared dockets from judges/justices and clerks were communication, cooperation, coordination, training, and support with/among clerks in multiple courts.

- File management, a lack of standard procedures and technology, inadequate clerk and staff resources, and imposing additional travel requirements upon attorneys, sheriffs, litigants, and court staff were commonly reported to be challenges. One region of clerks reported a potential challenge in gaining support from attorneys in their region and a loss of local control.

- Rural regions were specifically concerned with the travel requirements, given the distances between court locations, and the impact that would have on litigants and attorneys. One rural region noted that imposing excessive travel requirements on attorneys would be particularly problematic, since it was already faced with a shortage of attorneys.

- Respondents stated that by making improvements in resource allocation the entire process would be more efficient and effective. Suggested improvements include reallocate clerks within the district courts; rely on volunteers; produce fewer written decisions; appoint a chief clerk; conduct arraignments by videoconference; centralize arraignments; reduce the number of jurors required for a trial; assign a traveling judge, clerk, and recorder; improve MEJIS and other information systems; expand CMO duties; utilize phone conferencing; implement document management; and share staff resources.

- Judges and clerks found that the primary disadvantages to making improvements in resource allocation within their region came from a lack of sufficient staffing and institutional resistance to change. One region feared the inability to hear the case types they prefer, while others cited the travel burden of regionalization.

- To avoid duplication of tasks performed by both district and superior courts, the clerks suggested assigning judges to a specific type of case, a specific location, and combining schedules. One region of clerks suggested institution of three separate courts within their region: criminal, family, and civil.

- Regarding regionalization itself, eight groups of judges and seven groups of clerks cited distance between facilities and five groups of judges cited lack of physical space as the most problematic limitation to a regional structure. In addition, the clerks cited obtaining buy-in from judges, clerks, and attorneys as a potential limitation to a regional structure.

- Judges and clerks most frequently identified obtaining buy-in, communication, and cooperation between and among judges, justices, and clerks as the critical factors to the success of regional groups. Additional success factors included technology, adequate staffing levels, making decisions locally, identifying the individual(s) who will do the regional scheduling, and ensuring a way to provide feedback.

- When asked to brainstorm ways that courts within the region could help each other, four ideas were commonly put forward by the judges:

  ☑ have the superior courts conduct arraignments for in-custody individuals
  ☑ create better communication between courts and individuals
  ☑ have judges fill-in to provide additional assistance as time becomes available
  ☑ handle all people in custody in one court location

- Areas where the judicial branch could make better use of technology include:

  ☑ having an adequate number of phone lines
  ☑ placing phones in the courtrooms
  ☑ placing computers and printers in the courtrooms
  ☑ providing training on using existing computers
  ☑ conducting telephone conferences with attorneys
  ☑ using email to communicate with attorneys
  ☑ creation of a shared network for the Judicial Branch
  ☑ standardizing on a format for judges to submit orders and findings electronically
  ☑ creating templates and macros
  ☑ having judges and CMOs type their own decisions
  ☑ utilizing digital recording
  ☑ using videoconferencing technology
  ☑ using a document imaging/scanning system
  ☑ improving knowledge sharing capabilities

- ☑ standardizing equipment across all court locations
- ☑ electronic filing

Case and Trial Management

The survey sought feedback on how the courts were managing their workload and potential ways to improve the processes. The responses from the judges indicated that courts in different regions have found the same types of improvements provided varying levels of results. As changes are considered which would impact multiple courts, the impact they would have on the current processes which judges and clerks have deemed effective in their courts will need to be considered. The following points illustrate the findings related to best practices in case and trial management.

- The following items were identified as potential improvements which could be made within the existing procedures:

- ☑ conducting more settlement conferences
- ☑ requiring attendance at judicial settlement conferences
- ☑ linking alternative dispute resolution proceedings to an event in the case, not the filing date
- ☑ reducing the use of grand juries
- ☑ increasing the use of referees in small claims matters
- ☑ regionalizing trailing dockets
- ☑ increasing CMO responsibility
- ☑ making status conferences mandatory for all cases requesting trial
- ☑ reducing the number of continuances
- ☑ standardizing procedures
- ☑ simplifying ADR procedures
- ☑ increasing flexibility in scheduling discovery deadlines
- ☑ placing backup cases on trailing dockets
- ☑ increasing attorney accountability for the time estimates they project a proceeding will last
- ☑ choosing cases randomly from a trial list, instead of going in order, to increase the motivation to settle
- ☑ conducting one docket call with the District Attorney, attorney, and judge to discuss all cases assigned to that attorney
- ☑ grouping criminal trials by law enforcement department
- ☑ increased use of mediation
- ☑ mandated discovery deadlines

- While the judges agreed that some improvements were necessary, they made it clear that there were several strengths in their courtrooms which they wished to retain as improvements are considered and made:

  ☑ control over schedules
  ☑ adequate time to deliberate
  ☑ variety in the cases judges hear
  ☑ variety in the locations of the courts where judges sit
  ☑ single judge assignment programs
  ☑ strong working relationships between courts and attorneys
  ☑ flexibility in staffing cases
  ☑ strong working relationships between judges, clerks, case management officers, and other court personnel
  ☑ well qualified and experienced staff

- Clerks also identified strengths they wish to retain as improvements are made to current processes:

  ☑ strong communication and cooperation between courts
  ☑ single justice assignment programs
  ☑ daily trailing dockets
  ☑ adequate judge time
  ☑ adequate clerical support
  ☑ well qualified and experienced staff
  ☑ strong working relationships between clerks and judges

- The impediments to changing court proceedings cited by both the judges and the clerks were lack of judge and staff time, lack of facilities, the ability to make a rule change to 16B, and the fact that some settlement conferences can take as long as a trial. One group of clerks did not identify any impediments to changing court proceedings.

- Improving trial certainty is believed to increase the chance that parties would settle. Respondents identified various ways to increase trial certainty, including: having longer trailing dockets, conducting more settlement conferences, reducing (or eliminating) the number of continuances, eliminating the policy to stop proceedings at 4 p.m., confirming the trial list using teleconferences, conducting better pre-trial conferences closer to the trial date, better defining expectations of attorneys, eliminating last minute continuances, and increasing the number of judges available for trials.

- Judges identified several types of cases as posing the greatest problems with length of time between the initial filing and the final disposition for the parties involved. Child protection, abuse, and family matter cases were each cited by over 75 percent of the regions. Criminal cases, cases with pro-se parties, protection from harassment, small claims, contested civil, and civil jury cases were reported as problematic.

2.2 INDIVIDUAL SURVEY

2.2.1 Survey Methodology

Similar to the structured group survey, BDMP used the documents, research, and work sessions with the JRT to develop an individual survey. We based the questions on the topic areas identified and reviewed previous Judicial Branch surveys. As part of the individual survey, the JRT also elected to gather structural data from each court similar to that which had been collected in previous years. These questions were incorporated into the survey and specific questions were created for district court clerks, superior court clerks, and judges/justices/CMOs. BDMP worked closely with the JRT Chairperson and the JRT to finalize the questions in the individual survey.

The individual survey gathered information from respondents based on their existing knowledge and familiarity with current court operations. Most of the individual survey was comprised of close-ended, multiple choice questions and was conducted using an on-line tool. The survey did not require any individual to conduct research in order to answer the questions. For those individuals without access to the Internet, faxed copies were made available and the results were keyed into the on-line survey tool by BDMP for inclusion in reporting and analysis.

Our findings from the individual survey were organized into three topic areas: scheduling, resource allocation, and case and trial management.

2.2.1 Findings

Scheduling

The individual survey sought feedback on how the courts are scheduling their workload of cases. The following points illustrate relevant findings related to scheduling.

- Based on answers to the survey, we found that Regions 3, 4, 5, and 8 currently coordinate or share their schedules with other courts. Regions 2, 6, 7, 11, and 12 do not. The information for Regions 1, 9, 10, and 13 was inconclusive.

- 64% of the respondents in the five regions that are not currently coordinating schedules reported their daily dockets are overscheduled or very over-scheduled. 48% of the respondents in the four regions that are coordinating schedules reported that their daily dockets are overscheduled or very over-scheduled.

- Combined, 57% of judges/justices/CMOs and clerks felt their daily docket was over scheduled or very overscheduled. Only 40% felt their daily docket was scheduled appropriately.

- 91% of respondents reported they use trailing dockets.
- Of the 91% using trailing dockets, 74% reported they are currently using civil non-jury trailing trial dockets.

- Of the 91% using trailing dockets, 54% of the respondents reported they are currently using family (divorce/custody) trailing trial dockets.

- Of the 91% using trailing dockets, 55% of the respondents reported they are currently using child protection trailing trial dockets.

Resource Allocation

The individual survey sought feedback on how the courts are currently allocating resources. The following points illustrate relevant findings related to resource allocation.

- 42% of the respondents agree they have adequate resources to address Judicial Branch priority dockets in a timely and effective manner. 32% feel they do not have adequate resources to address Judicial Branch priority dockets in a timely and effective manner. 26% of respondents were neutral.

- When rural and non-rural regions are compared, 65% of rural regions (Regions 4, 5, 6, 8, 11) feel they have adequate resources to address Judicial Branch priority dockets in a timely and effective manner versus 31% reported by non-rural regions (Regions 1, 2, 3, 7, 9, 10, 12).

- 59% of judges and justices report that being cross-assigned to sit on the other trial court to which they are not appointed for one week per year would not have a significant negative impact on their workload. Only 17% reported that it would have a significant negative impact on their workload.

- 66% of the respondents believe that it would be more effective to have resident judges assigned to specific courts so that one sitting judge could follow cases from pretrial to trial; only 13% disagreed.

- Over 50% of the respondents reported that research and opinion writing time is rarely available.

- The judges/justices/CMOs reported they need an average of 3.3 days per month for administrative/non-public or writing time. The judges/justices/CMOs receive an average of 1.6 days per month as a result of scheduled trials which fall through due to settlements.

- 28% of respondents reported that administrative/support staff time is rarely or almost never available.

Case and Trial Management

The individual survey sought feedback on how the courts are managing their cases. The following points illustrate relevant findings related to case and trial management.

- The four regions that are coordinating schedules identified various case management procedures that are in use and most effective. These included the use of trailing dockets, back-up cases, settlement conferences, pre-trial conferences, and status conferences. In addition to the procedures identified by the regions that coordinate their schedules, the five regions that do not coordinate schedules across the region (but within their courts) identified mediation, block scheduling, single judge system, limited continuances, and priority scheduling as procedures in use that are effective.

- 19% of the judges/justices/CMOs have established guidelines to control the length of a trial or proceeding in their courts.

- 79% of the judges/justices/CMOs reported they have no formal guidelines in place for motions to continue. Of the 21% of judges that do have established guidelines on granting motions to continue, 90% reported they apply different guidelines depending on the circumstances.

- 68% of respondents reported they do not have documented case and trial management procedures. (18% of the survey participants did not answer this question)

- Approximately 25% of all respondents feel that clerk's offices are not effectively cross-training staff. Of the clerks, 20% feel they are not effectively cross-training. 25% of the judges felt that the clerk offices are not effectively cross-training (41% of judges were neutral on the subject).

- Of all respondents, 87% agree that mediation and alternative dispute resolution is effective; the other 13% were neutral. Moreover, 65% of respondents agree that these techniques could be extended to other case types.

- 82% of respondents believe more judges/justices should be trained to do settlement conferences.

- 90% believe that CMOs should be trained and used for settlement conferences in family matter conferences.

- 75% of the respondents reported that settlement conferences take place less than 20% of the time in their court.

- When settlement conferences do take place, 53% of the respondents reported that the conferences result in settlement between 50% and 80% of the time.
- 67% of respondents reported that continuances are granted more than 70% of the time.

2.3 RECOMMENDATIONS

Based on the results identified and our analysis of findings for both the structured group survey and the individual survey, we identified recommendations for the JRT to consider. We have added "Role of Technology" as a topic area within the recommendations section of this report. Throughout the project, technology considerations were identified. We included recommendations to help guide and provide structure for technology improvements.

Scheduling

The current system of scheduling cases is primarily based on the traditional court-specific framework. Through the results of this survey, it is clear that the courts have moved away from this traditional approach by beginning to work together to coordinate their dockets. Judges, justices, and clerks all reported they had begun working together with an eye towards coordination based on a geographic area. We recommend that the Judicial Branch continue this trend by implementing a formal regional framework within which courts can share resources, schedule proceedings, and manage their caseloads. The regional structure will need to balance the physical distances between courts and the people they serve, with the widely varying population density within the State. The business processes established for the regional structure will need to account for differences between rural and non-rural regions.

For many organizations, change and buy-in can be difficult to obtain for some staff. A test program or "Pilot Program" is a common strategy to testing organizational changes and developing consensus. By utilizing this type of program, the Judicial Branch could select a region(s) to test recommended changes prior to a statewide roll-out. Using a test program reduces the amount of impact on the organization and does not roll-out process changes until successful implementation has been achieved on a smaller scale. In the structured group survey, one region of clerks offered to work with the State to act as the test program for changes that will be implemented.

Consider the following:

- To the extent that caseloads vary from region to region, videoconferencing technologies can be used to shift appropriate cases to courts with more resources.
- Certain administrative duties, such as case management in MEJIS or other computer systems, processing court filings, and decision writing, could be performed by administrative staff in any court in the State.
- Judges should be given the opportunity to continue to visit multiple courts in order to continue their professional development and exposure to different case types.
- Over 90% of respondents reported they are currently using trailing dockets. The use of this technique should be expanded within each region and between regions as resources become available.
- Based on the results of the group survey, some groups did not appear to come to consensus during their discussions. In order to ensure that migration to a regional structure is successful, the parties must work well together. The Judicial Branch should work to help develop better communication within and across regions.
- Based on findings in the resource allocation section of the individual survey, the scheduling of administrative/non-public and writing time should be adequate to meet the needs of judges, justices, and CMOs.

Resource Allocation

Responses collected in the group survey identified discrepancies in the availability and use of technological resources. The requests for improvements ranged from obtaining an adequate number of telephone lines and fax machines, to conducting proceedings using videoconferencing technology and typing decisions from the bench. With varying levels of resources, and increasing time constraints, adequate access to technology becomes essential.

We recommend that the Judicial Branch improve access to all available communication tools. At the very least, each court facility should have the same basic level of access to phone, fax, and email technologies. Next, the courts should evaluate options to use

videoconferencing for appropriate proceedings. These technologies are particularly appropriate in Maine, given the distance between courts, the distribution of its population, and the robust information technology infrastructure in place.

Second, whether or not the Judicial Branch moves to a regional structure, the survey responses indicated that the court system could benefit from increased automation. Once the baseline technology infrastructure needs are met, the Judicial Branch should consider implementing document management technologies. These systems can help resolve the problems associated with file transfers between courts. This issue was cited by survey respondents as a challenge today, even without a regional structure in place. Transitioning to a more collaborative, coordinated court operation will require increased exchange of files and other information between courts.

Consider the following:

- The University of Maine system has robust videoconferencing capabilities running to locations throughout the State and could provide valuable advice based on their experiences.
- The Judicial Branch may be able to leverage a statewide computer network infrastructure to support a videoconferencing program.
- Videoconferencing and phone conferencing are less likely to be adopted if some parties are before the adjudicating body in person, and others are joining electronically. In order to be successful, it may be necessary to require all parties to "attend" proceedings via videoconference, so as not to provide a perceived advantage to a party who attends in person.
- Videoconferencing technologies provide a way for expert witnesses and out of state individuals to provide testimony.
- Automating case scheduling would allow better resource integration to take place.
- Individuals will need to be adequately trained on all new technologies. Training must include one-time and ongoing sessions, as well as programs for all new staff. Today's evolving systems make training an ongoing process.
- Standard levels of technology should help both rural and non-rural areas. Rural areas were less likely to report having inadequate time and more likely to report having inadequate access to infrastructure. Non-rural areas reported having inadequate staff time, but having better access to technology. Improved use of technology and training on existing tools should improve the effectiveness of staff in rural and non-rural regions.
- A comprehensive needs analysis should be conducted prior to implementing a document management system. The system should use open standards and be compatible with the systems that stakeholders use (i.e., attorneys, parties to lawsuits, law enforcement, etc.).

Case and Trial Management

Case and trial management is not currently standardized across or within regions in the Judicial Branch. Based on the results of the survey, judges and clerks identified standardization and documentation of procedures as opportunities to gain efficiencies in the management of cases.

We recommend developing written standards for common case and trial management business processes. This would allow regions to understand the way that systems are used, how cases are settled, and how cases are conducted, and enable them to improve consistency across regions and within courts.

Once processes have been standardized, the Judicial Branch should develop a policy and procedure manual that addresses the complexities of all the case and trial management functions to standardize the process within the Judicial Branch. We recommend that Judicial Branch leaders obtain feedback from staff on a regular basis to identify opportunities to continuously improve case and trial management processes.

The Judicial Resource Team should develop, communicate, and track performance metrics to foster and measure process improvements implemented in each court and/or region.

Consider the following:

- Policies and procedures can be identified and documented for: trailing dockets, back-up cases, settlement conferences, ADR procedures, pre-trial conferences, continuances, and status conferences, as well as other processes.
- Guidelines can be developed for length of trial, motions to continue, and mediation/ADR.
- Training standards for new and existing employees on processes and technology should be developed and existing staff should receive training to meet the standards identified.
- Improvements to current processes may include: increasing CMO responsibility, mandatory status conferences, increasing the number of settlement conferences, improving trial certainty, and initiation of 16B in district court.

Role of Technology

Throughout this report, we have made several comments related to implementation and use of technology. Because there are so many areas in which information technology is needed, the Judicial Branch should develop a written information technology plan. The technology plan should coordinate and prioritize technology initiatives using a formal planning process that is aligned with the overall goals and direction of the Judicial Branch.

The formal planning process should include renewing/refining a vision statement and identifying future goals and objectives. All information technology projects should be identified, reviewed, and prioritized; clear, effective, actionable strategies should be developed. Once developed, the technology plan will assist the Judicial Branch in gaining acceptance of an approach that encompasses the entire Judicial Branch and supports future changes and initiatives.

Information technology can be used in various areas throughout scheduling, resource allocation, and case and trial management. For example, scheduling and document management are two initiatives that could be better addressed using information technology. For example:

- A scheduling system could simplify the current manual scheduling process that is conducted by each court. Scheduling systems have the ability to automatically identify required resources (space and staff) and the necessary durations of various types of cases.

- A document management system would eliminate paper documents that are currently stored and maintained in file cabinets and in various courts, as well as create electronic files that could be accessed at any location across a shared network.

The plan itself is only as important as the communication, commitment, and momentum that is created during the planning process. A technology plan is designed to be a catalyst for positive, durable change that will benefit everyone involved. It will be an opportunity to investigate and identify key strategic issues in a single document for the purpose of opening the lines of communication, spurring discussion, and creating lasting change with positive results.

TIME STANDARDS/PRIORITIES IN STATUTES:
SORTED BY JUDICIAL BRANCH PRIORITIES

A. Urgent Matters

1. Emergency requests involving personal safety (e.g., Protection from Abuse proceedings, Protection from Harassment proceedings, Preliminary Protection Orders, Motions to Vacate Temporary Protection from Abuse Orders);
2. 48 Hour Hearings—first appearance for incarcerated persons (juveniles, adults, probation violations);
3. Preliminary or emergency orders regarding parental rights and responsibilities;
4. Temporary Restraining Orders;

5. Permanent Protection Orders

STATUTE	SUBJECT	COURT	DEADLINE	CLASS[2]
5 M.R.S.A. § 4654(1) (2002)	Harassment	District	Hearing [w] ithin 21 days of the filing of a petition	C
5 M.R.S.A. § 4654(6) (2002)	Harassment	District	on 2 days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion expeditiously.	C
15 M.R.S.A. § 3203-A (5) (2003)	Detention hearing	Juvenile	24-48 hours, excluding Saturdays, Sundays, and Holidays	R
P.L. 2003 c. 180	Probable cause determination	Juvenile	within 48 hours including Saturdays, Sundays, and Holidays	
15 M.R.S.A. § 3312(3)(C) (2003)	Juvenile in detention or removed from home	Juvenile	Shall give priority	R
STATUTE	**SUBJECT**	**COURT**	**DEADLINE**	**Class.**
15 M.R.S.A. § 3314(2) (2003)	Probation violation hearing	Juvenile	48 hours excluding Saturdays, Sundays, or Holidays	R
19-A M.R.S.A. § 4006(1) (1998)	Request for interim relief PFA	District	If denied, a hearing will be held *as soon as practicable within the 21-day period*.	F
PL 2003, ch. 372			(2-A) If the court prohibits the defendant from possessing a firearm or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification, the court must hear and	

[2] Classification C= Civil; R = Criminal; and F = Family.

			decide the motion as expeditiously as possible and must issue a written decision on the motion within 24 hours after a hearing on that motion	
19-A M.R.S.A. § 4006(2) (1998)	Interim or temporary PFA orders	District	*as expeditiously as practicable* after the filing of the complaint.	F
19-A M.R.S.A. § 4006(7) (1998)	Dissolution of interim or temporary PFA Orders	District	On 2 days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion expeditiously.	F

B. Family Matters

1. Child Protection
2. Parental Rights and Responsibilities/Paternity
3. Juvenile
4. All other matters in which a child's welfare is at stake

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
15 M.R.S.A. § 3305 (2003)	Juvenile Petition	Juvenile	set at the earliest practicable time that will allow for the completion of a predispositional study and service. . ..	R
17 M.R.S.A. § 2911(3) (1983)	Dissemination of obscene matter to minors (Class C)	Superior	shall be held not more than 10 days from the filing of the petition.	R
19-A M.R.S.A. § 903(2)(A) (1998)	Revocation or modification of a preliminary	District	the court must hear and determine the petition as expeditiously as justice requires.	F

	injunction involving divorce or Support			
19-A M.R.S.A. § 1737 (Supp. 2002)	Custody UCCJEA	District	Priority on the calendar/handled expeditiously	F
19-A M.R.S.A. § 1768(3) (Supp. 2002)	Custody UCCJEA	District	on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing *on the first judicial day possible*.	F
19-A M.R.S.A. § 1771(2) (Supp. 2002)	Child custody	District	heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the District Court shall hold the hearing *on the first judicial day possible*.	F
22 M.R.S.A. § 4032(3) (1992)	Child protective petition	District	shall set the earliest practicable time and date for a hearing.	F

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
22 M.R.S.A. § 4034(4) (Supp. 2002)	Child Protective Summary proceeding	District	summary preliminary hearing on the order within 14 days but not less than 7 days of its issuance or the request. If a parent or custodian is not served she or he may request a subsequent preliminary hearing within 10 days after receipt of the petition… Hearings must commence within 30 days of entry of the preliminary order. …	F
22 M.R.S.A. § 4035 (4-A) (Supp. 2002)	Child Protective Jeopardy order	District	issue a jeopardy order within 120 days of the filing of the child protection petition	F
22 M.R.S.A. §	Child Protective Permanency	District	within 30 days of the order to cease reunification (when the court has entered a jeopardy order, which	F

4036(G-2) (Supp. 2002)	Planning		includes a finding of an aggravating factor.) See also 22 M.R.S.A. § 4038 (7-A) (Supp. 2002)	
22 M.R.S.A. § 4038 (1) (Supp. 2002)	Child Protective Mandated review of Jeopardy order	District	If a jeopardy order was issued, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.	F
22 M.R.S.A. § 4038 (7-A) (Supp. 2002)	Child Protective Permanency Planning	District	shall determine a permanency plan within 12 months of the time a child is considered to have entered foster care and every 12 months thereafter, unless subsequent reviews are no longer required pursuant to subsection 1-A. If the court's jeopardy ruling includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification	F

C. Criminal Matters

1. Persons incarcerated pending criminal trial.
2. Cases involving sensitive victim issues.
3. Establishment of bail and consideration of motions to modify bail.
4. This priority includes timely disposition of criminal cases in accordance with constitutional and statutory requirements.

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
15 M.R.S.A. § 1028(1) (A) (2003)	Bail de novo	Superior	48 hours, excluding Saturdays, Sundays, and Holidays	R
15 M.R.S.A. § 1028(1)(B) (2003)	Bail petition	Superior	Shall have priority over any other matter	R
15 M.R.S.A. § 1028(1) (C) (Supp. 2003)	Hearing for determination of bail	Superior	not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State	R
17-A M.R.S.A. § 1265(2) (Supp. 2002)	Violation of an Intensive Supervision Program	Superior	Within 7 court days of filing of notice	R
29-A M.R.S.A. § 2603(1996)	Major Motor Vehicle Offenses	Superior	A person arrested for violation of a provision of this 29-A, except sections 2103, 2105, 2411 and 2521, must be given an immediate trial if so demanded of the officer making the arrest.	R

D. Other Statutory Mandates

1. In addition to the stated priorities, the Judicial Branch must attend to other matters where deadlines have been established by the Legislature, such as forcible entry and detainer proceedings or Freedom of Access Law actions.

2. Within these priorities, judges, clerks, and administrators must, on a day-to-day basis, make their best judgments in long and short term planning. It may be necessary to make decisions among cases with equal and competing priorities.

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
14 M.R.S.A. § 6003 (2003)	Forcible Entry & detainer	District	Hearing as soon as practicable, but no later than 10 days after the return day	C

7 M.R.S.A. § 3952(4-B)(A) (B) (2002)	Animals	Superior or District	upon 2 days' notice of a shorter period. The owner whose animal has been possessed pursuant to an ex parte order may appear and move the dissolution or modification of the ex parte order. A person aggrieved by an ex parte order may move for a modification of that order and the court must hear and determine the motion as expeditiously as possible.	C
17 M.R.S.A. § 1021(4)(C) (Supp. 2002)	Inhumane treatment of animals	District or Superior	upon 2 days' notice or a shorter period the applicant who obtained the ex parte order or the owner may appear and move the dissolution of the ex parte order. motions to modify or revoke an ex parte order concerning inhumane treatment of animals must be heard as expeditiously as justice requires.	C/R
17 M.R.S.A. § 2859(2)(C) (1983)	Public nuisance	Superior	heard at the earliest possible time but not later than 10 days from the date of the filing	R
STATUTE	**SUBJECT**	**COURT**	**DEADLINE**	**CLASS**
21-A M.R.S.A. § 337(2)(D)(E) (1993)	Validity of primary petition	Superior	the matter shall be tried, without a jury, within 10 days of [the Secretary of State's] decision and the Superior Court shall issue a written decision within 20 days of the date of the decision of the Secretary of State. Record on appeal must be transmitted within 3 days,	C
21-A M.R.S.A. § 356(2)(D)(E) (1993)	Validity of nomination petition	Superior	the matter shall be tried, without a jury, within 10 days of [the Secretary of State's] decision and Superior Court shall issue a written decision within 20 days of the date of the decision of the Secretary of State. Record on appeal must be transmitted within 3 days,	C
21-A M.R.S.A. §	Validity of	Superior	shall be tried, without a jury, within 15 days of the date	C

905(2) (1993)	Referendum petition		of that decision. . . . The court shall issue its written decision containing its findings of fact and stating the reasons for its decision within 30 days of the commencement of the trial or within 45 days of the date of the decision of the Secretary of State, if there is no trial."	
22 M.R.S.A. § 1558(2)(C)(3) (Supp. 2002)	License Suspension or Revocation in Retail Tobacco Sales	District	shall issue the decision in writing within 12 days of the hearing.	R
28-A M.R.S.A. § 803(2-A) (Supp. 2002)	Suspension or Revocation of Liquor License	District	issue the decision in writing within 12 days of the suspension or revocation hearing	C/R
28-A M.R.S.A. § 2221-A (4)(D) (1988)	Illegal manufacture, transportation or sale of alcohol	Superior	shall hold a hearing promptly, but not less than 2 weeks after notice,	R

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
30-A M.R.S.A. § 2531-A (11) (Supp. 2002)	Recount Contested ballots	Superior or ind. panel	shall determine the result of the election as soon as reasonably possible	C
30-A M.R.S.A. § 2533(1) (1996)	Contested municipal election	Superior	shall hold a hearing as soon as reasonably possible	C

E. Infrequently Used Statutes

STATUTE	SUBJECT	COURT	DEADLINE	CLASS
1 M.R.S.A. § 409(1), (2) (1989)	Freedom of Access Actions taken illegally in Exec. Session	Superior	shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.	D
4 M.R.S.A. § 184(6) (2002)	Public Health License suspension	District	Summary proceeding to temporarily suspend or revoke and then promptly schedule an expedited hearing on the agency's complaint.	C
22 M.R.S.A. § 810(2) (1992)	Custody hearing Communicable disease	Superior District	within 72 hours of apprehension, exclusive of Saturdays, Sundays and legal holidays. . ..	C
22 M.R.S.A. § 810(4) (1992)	Communicable Disease	District	hearing within 10 days of the filing of the petition for commitment exclusive of Saturdays, Sundays and legal holidays.	C
22 M.R.S.A. § 811(4) (1992)	Public Health Threat	District	Commitment hearing held within 10 days filing of the petition exclusive of Saturdays, Sundays and legal holidays.	C
22 M.R.S.A. § 820(2) (A) (D) ( ) (was to expire on October 31, 2003)	Public health Emergency	SJC Superior District	as soon as reasonably possible but not later than 48 hours after the person is subject to prescribed care Within 24 hours of completion of the hearing, the court shall enter a finding	C
PL 2003, ch 366			EXTENDED statute to October 31, 2005	

STATUTE	SUBJECT	COURT	DEADLINE	PRIORITY[3]
22 M.R.S.A. § 1559 (Supp. 2002)	Tobacco license suspension	Superior	Immediate hearing	D
26 M.R.S.A. § 968(5)(F) (Supp. 2002)	Rulemaking/decisions of the Maine Labor Relations Board concerning municipal employees	Superior Kennebec 80C	must be scheduled at the earliest possible time . . . held not less than 7 days after notice thereof.	D
26 M.R.S.A. § 979-H (7) (Supp. 2002)	Rulemaking or decisions of the Maine Labor Relations Board concerning state employees	Superior Kennebec 80C	must be scheduled "at the earliest possible time . . . held not less than 7 days after notice thereof.	D
26 M.R.S.A. § 1029(7) (Supp. 2002)	Maine Labor Relations Board decision concerning University of Maine employees	Superior	must be scheduled "at the earliest possible time . . . held not less than 7 days after notice thereof.	D

[3] Priority relates to Judicial Branch Priorities A-D.