



CORE[®]

National Association
for Court Management

Curriculum Design
**Court
Governance**



Court Governance

Table of Contents

| | |
|--|----|
| Table of Contents..... | i |
| Use of Curriculum Design..... | 1 |
| Needs Assessment..... | 1 |
| NACM Core® Reference..... | 2 |
| Learning Objectives | 2 |
| Target Audience..... | 2 |
| Special Notes to Faculty..... | 2 |
| Educational Content..... | 4 |
| Section 1 – Governance History and Principles..... | 4 |
| 1.1 History of Court Governance..... | 4 |
| 1.2 Court Governance Defined | 5 |
| 1.3 Principles of Court Governance..... | 5 |
| 1.4 Governance and the NACM Core®..... | 6 |
| Section 2 – Governance in Today’s Courts..... | 7 |
| 2.1 Why Is Court Governance Important? | 7 |
| 2.2 Rule of Law | 7 |
| 2.3 Procedural Justice | 8 |
| 2.4 Judicial Independence | 9 |
| 2.5 The Intersection of Governance and High Performing Courts..... | 10 |
| Section 3 – Organization and Governance Models | 10 |
| 3.1 Governance in Court Organizations | 10 |
| 3.2 Types of Organizations | 10 |
| 3.3 Federal, State, and Local Court Organization | 11 |
| 3.4 Court Governance Models | 16 |
| 3.5 Courts as Loosely Coupled Organizations | 16 |
| Section 4 – Building an Effective Court Governance Structure | 17 |
| 4.1 Change Management Principles | 18 |
| 4.2 Step 1: It Starts with Commitment..... | 18 |
| 4.3 Step 2: Assess Your Readiness | 19 |
| 4.4 Step 3: Identify the Key Participants..... | 20 |
| 4.5 Step 4: Define the Governance Model | 20 |
| 4.6 Step 5: Design the Governance Model | 20 |
| 4.7 Step 6: Implement and Communicate the Governance Model..... | 21 |

| | |
|--|----|
| Section 5 – Evaluating the Effectiveness of the Governance Structure | 22 |
| 5.1 Purpose | 22 |
| 5.2 Internal and External Evaluation | 22 |
| 5.3 Planning and Managing the Evaluation | 24 |
| 5.4 Evaluation Methods..... | 24 |
| 5.5 Evaluation Tools..... | 25 |
| Faculty Resources..... | 26 |
| Section Two..... | 27 |
| Procedural Justice..... | 27 |
| Section Three..... | 28 |
| Federal Court Organization | 28 |
| Court Structure of the Judicial Branch of Arizona in Maricopa County | 29 |
| Participant Activities | 30 |
| Activity One: Applying the Court Governance Principles | 31 |
| Activity Two: Fair and Free..... | 33 |
| Activity Three: Court Governance Models..... | 35 |
| Activity Four: Organizational Readiness..... | 37 |
| Activity Five: Planning and Managing the Evaluation | 42 |
| Bibliography..... | 44 |

Use of Curriculum Design

Taken together, the curriculum designs in this series provide an overarching plan for the education of court managers; this overarching plan constitutes a curriculum. Individually, each curriculum design and associated information provide faculty with resources and guidance for developing courses for court managers.

The designs are based on the NACM Core®. Each of the curriculum designs, organized by thirteen competencies, may be used either in its entirety or in segments to meet the needs of the individual circumstance or situation, the particular audience, and time constraints, among many other contextual factors.

Each curriculum design includes a series of learning objectives and educational content to support those learning objectives. Associated information for each curriculum design includes: (1) faculty resources, (2) participant activities, and (3) a bibliography. Each faculty resource and participant activity includes information explaining its use. Also included in each design is a section entitled “Special Notes to Faculty,” which provides important information to assist faculty in effectively preparing to design and deliver a course, and a section entitled “Target Audience,” which provides some guidance on which audiences are most appropriate for the curriculum design.

Participant Activities

Participant activities have been designed to measure whether the learning objectives have been achieved. Participant activities include many types of group and individual interaction. Information on participant activities includes how to use, direct, and manage each activity. Instructions may be modified for the audience and setting, but the highest goal is to integrate each activity into the learning process and the content of the course. Faculty should incorporate additional activities to ensure that participants remain actively engaged throughout the course. Additional activities may include asking participants questions about the content, engaging them in sharing their experiences with the content, encouraging them to ask questions, and more.

Faculty Resources

Faculty Resources provide written information and/or graphics that support certain content and may also be used as handouts for associated topics in the **Educational Content**. Faculty Resources are a combination of resources referenced within the Educational Content and recreations of those images embedded in the Educational Content as sample images that could be used in PowerPoint® slides. They may be used in any course, but their applicability and use need to be determined by faculty, based on the topics, length of the course, audience, and other factors. Faculty Resources often include examples of documentation and other data that are time-based. Faculty members are encouraged to update time-based material as well as use material that is specific to the presentation and/or audience. As with participant activities, faculty are encouraged to provide additional materials based on the needs of the participants.

Bibliography

While a bibliography may be viewed as optional by faculty, they are often important adult learning tools, foster reflection, and offer sources follow to up research and study.

Needs Assessment

A needs assessment gathers information about the participants’ proficiency on the topic of the session. Without a needs assessment, you may provide content participants cannot or will not use, or already know, or that fails to satisfy their expectations.

Assessing needs enables you to choose and deliver content with much greater accuracy. Conducting a needs assessment before your presentation may include a written survey or focus group discussion; and/or at the beginning of your presentation, you may conduct an informal question and answer exercise or a short pre-test.

Using surveys or focus groups in advance of a course is preferred as it provides you the opportunity to adapt and adjust your presentation to your audience in advance of the actual course. However, it is also advisable to use some time at the beginning

of your presentation to seek information about your audience.

Whether you are able to conduct a needs assessment prior to the day of the session or not, the goal is to determine the essential knowledge, skills, and abilities the court managers who will be attending the session must have to perform their duties competently. Two key areas to explore are as follows:

- What level of knowledge, skills, and abilities do the participants currently have about the topic?
- What gaps in their knowledge would they like to close?

Questions enable the faculty member to make necessary adjustments to meet learning needs. If you find out that participants are much more knowledgeable about your topic than you had thought, you can adapt your presentation to a higher-level discussion. If you find that they are less knowledgeable, you can adapt your presentation to be more basic.

NACM Core[®] Reference

Competency: Court Governance

Court Governance is the framework by which courts operate, managing day-to-day operations and developing long term strategies. Effective court governance provides consistency and predictability of operations, increases transparency and accountability, and promotes meaningful input into the decision-making process. It is essential as it supports judicial independence, enhances public trust and confidence in the courts, and improves the overall administration of justice.

Learning Objectives

The following learning objectives are designed for a comprehensive course on court governance.

As a result of this education, participants will be able to:

1. Define court governance principles and structure;
2. Describe the role and importance of court governance in promoting the rule of law, judicial independence, procedural justice, and developing and maintaining a high performance court;
3. Identify various organization and governance models, observe and explore his or her own court organization, and list the inherent complexities of courts as public organizations;
4. Conduct an organizational readiness assessment and identify areas and issues that require attention and resolution before adopting a governance structure; and
5. Develop and implement a comprehensive governance structure evaluation process that will enhance effectiveness and encourage improved planning.

Target Audience

This curriculum is designed for leadership judges and senior court managers responsible for the overall operation of courts. It is suitable for small, medium and large jurisdictions and all type of courts. The best class composition is participation by court teams (leadership judges and court executive officers). It will provide the most benefit to participants from similar size jurisdictions although individual participants will benefit as well.

Special Notes to Faculty

The educational content for court governance derives from numerous sources, including much of the previous work of the National Center for State Courts. It also draws on some international perspective on trial court leadership, and is designed to include the entire NACM Core[®].

The content of this curriculum includes numerous group and individual activities designed to allow individual reflection while promoting a collaborative, team approach. In

many instances, it uses a problem-centered approach and seeks to draw out the experiences of the participants to enhance the learning process.

Faculty should be aware no two courts are alike in their governance structure or practices, regardless of size or type of court. Additionally, local policies and practices of the

court's funding authorities differ widely and, therefore, can be either an impediment to or a facilitator of a sound court governance structure. As a result, faculty should be sensitive to the varying local cultures that affect the use of this curriculum design.

Educational Content

Section 1 – Governance History and Principles

Learning Objectives

As a result of this section, participants will be able to:

1. Define court governance principles and structure.

1.1 History of Court Governance

Formalized governance of court organizations has no readily identifiable beginning but its roots can be traced as far back as the famous speech, “The Causes of Popular Dissatisfaction with the Administration of Justice,” given by Harvard Law School Dean Roscoe Pound at the American Bar Association’s annual conference in 1906.¹ While not specific to governance, his call to improve the administration of justice launched an era, in which we still are engaged today. That era is to continually seek new and innovative ways to better the operations of our courts.

More recently, the creation of the Institute for Court Management, National Center for State Courts (NCSC) and The National Judicial College (NJC) in the early 1970’s, at the urging of U.S. Supreme Court Chief Justice Warren Burger, ushered in a new and focused agenda to improve the administration of justice in the nation’s trial courts. From that historic event until now, the intervening years have demonstrated an increasing public demand to improve the court’s accountability, transparency, and efficiency of operations. As such, establishing an effective court governance structure has emerged as a critical component not only to satisfy these requirements, but also to advance the independence of the judiciary and promote the public’s trust in the courts.

The method of court governance, i.e. centralized systems vs. decentralized organizations, has seen much discussion and debate in recent times. Researchers, including Geoff Gallas, Thomas Henderson, and others have argued both sides of the issue, proffering both positive and negative consequences of moving to a unified, statewide approach to court governance. It is noted this curriculum neither endorses nor recommends centralization or decentralization as strategies for governance, but rather seeks to identify and promote those key characteristics deemed necessary for successful governance of court organizations.

Additional noted events that impacted the development of improved court governance include:

- Court Performance Metrics – Since 1968, various bodies (American Bar Association (ABA), NCSC, Conference of State Court Administrators (COSCA)) have adopted recommended time standards for the disposition of cases, thus adding pressure on courts to manage to these goals.
- Recognition and advancement of responsibility of managing cases – Including the NCSC, many states introduced statutes and rules to improve the authority of the court to manage cases (New Jersey, Massachusetts, Michigan, et al.).
- Advancement of court institutions and resources – Organizations such as NJC, Bureau of Justice Assistance and the State Justice Institute have emerged and provided resources for courts to focus on improved management and governance.

¹ Pound, R. (1906). The Causes of Popular Dissatisfaction with the Administration of Justice. Retrieved from: <https://law.unl.edu/RoscoePound.pdf>.

- Publications of the ABA Standards Relating to Court Organization and Administration,² Standards Relating to Trial Courts,³ Recommendations on State Court Judicial Councils, and Court Unification Efforts.
- Judicature and other court reform organizations such as, Conference of Chief Justices, COSCA, NACM, Justice at Stake

1.2 Court Governance Defined

The complexity of governance is difficult to capture in a single definition. The need for governance exists anytime a group of people come together to accomplish an end. Though the governance literature proposes several definitions, the majority identify three common dimensions: authority, decision-making, and accountability.

For court organizations, governance provides the framework by which courts reach and communicate organizational decisions, establish business activities, and develop short and long-term strategies. In its most effective capacity, court governance promotes meaningful input into the decision making process, provides consistency and predictability of operations, and increases transparency and accountability.

It is also important to identify what court governance is not. Governance is not tactical management of the organization. Governance is providing planning, direction, leadership, and strategy to the organization and focusing on the “big picture.” It is the framework used to define the decision making process, implement strategy, and define organizational boundaries. This is often difficult, especially in smaller court organizations where boundaries are not easily defined. As much as possible, implementation and completion of court governance initiatives should be left to management and employees.

Court governance activities in each court will vary depending on size of the court, state statutes governing court operations, state and local rules, administrative orders, and the local organizational culture. The following list is not meant to be inclusive, but some typical duties and responsibilities of court governing structures include:

- Establishing the organizational structure of the court
- Authorizing caseflow and workflow management projects
- Establishing personnel policies for all court employees
- Developing budget requests and subsequent allocations
- Authorizing intergovernmental agreements covering personnel, financial management, technology, and space
- Authorizing contractual agreements with outside vendors, contractors, and service providers

1.3 Principles of Court Governance

In their paper titled “A Case for Court Governance Principals,” Utah Supreme Court Justice Christine M Durham and State Court Administrator Daniel Becker put forth eleven unifying principles of effective court governance:⁴

² American Bar Association. (1980) Standards Relating to Court Organization and Administration.

³ American Bar Association. (1992) Standards Relating to Trial Courts (Chicago, IL). Retrieved from: http://www.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/trialcourtstandards_authcheckdam.pdf.

⁴ Durham, C. M. and Becker, D. *A Case for Court Governance Principles*. Williamsburg: National Center for State Courts. Retrieved from <http://www.sji.gov/wp/wp-content/uploads/Becker-Durham-A-Case-for-Court-Governance-Principles.pdf>.

- A well-defined governance structure for policy decision making and administration for the entire court system.
- Meaningful input from all court levels into the decision-making process.
- Selection of judicial leadership should be based on competency, not seniority or rotation.
- Commitment to transparency and accountability
- A focus policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.
- Open communication on decisions and how they are reached.
- Clear, well-understood and well-respected roles and responsibilities among the governing entity, presiding judges, court administrators, boards of judges and court committees.
- A system that speaks with a single voice.
- Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.
- Positive institutional relationships that foster trust among other branches and constituencies.
- The Judicial Branch should govern and administer operations that are core to the process of adjudication.

1.4 Governance and the NACM Core®

Understanding that the management of our courts is becoming more professionalized and diverse, NACM recently revamped its original core competencies for court managers. The revisions include competencies that are covered under three specific modules, Principle, Practice, and Vision:

- Principle - While the specific functions court leaders perform and the environments in which they work vary significantly, fundamental and enduring principles serve as the foundation for the profession. Competencies in this module outline those principles.
 - Public Trust and Confidence
 - Purposes and Responsibilities
- Practice - These competencies relate to both daily and long-term functions court leaders must perform, either individually or in collaboration with others. Not all court leaders will individually perform all of the functions associated with these competencies but they should be aware of their relevance, the key skills they entail and their application, as appropriate, to their specific roles in the courts.
 - Caseload and Workflow
 - Operations Management
 - Public Relations
 - Educational Development
 - Workforce Management
 - Ethics
 - Budget and Fiscal Management
 - Accountability and Court Performance

- Vision - The competencies included in this module focus on the creation of a strategic vision for the court. To perform this function, the court leader must demonstrate creativity, stamina, drive, conceptual and analytical skills, and the ability to execute. These traits position the court leader to work with judicial officers and other system leaders as part of a leadership team, to assess and respond to trends, and to promote overall court capacity
 - Leadership
 - Strategic Planning
 - Court Governance

In summary, these competencies represent what court managers, need to know to be successful leaders in today's court environment. Court governance is not only identified as a separate competency, but it has a significant role in advancing all of the competencies.

Activity One: Applying the Court Governance Principles: In this first activity, participants will introduce themselves and their jurisdiction type and court size, define their courts' governance structure, review the principles of court governance, and assess which ones are currently in place. **NOTE:** This information will be used in Activity Four.

Section 2 – Governance in Today's Courts

Learning Objective

As a result of this section, participants will be able to:

2. Describe the role and importance court governance has in promoting the rule of law, judicial independence, procedural justice, and developing and maintaining a high performance court.

2.1 Why Is Court Governance Important?

Courts are complex organizations that must provide for a myriad of responsibilities, including balancing the requirements of individual justice in individual cases with organizational consistency and fairness for all persons. Generally, individual judges are largely responsible and successful in assuring the former. But achieving the latter is much less attainable when no means of organizational coordination is present. Governance fulfills this requirement for the organization as a whole, establishing the authority and means to continually focus on accountability, timeliness, access, fairness, and a myriad of other organizational responsibilities.

Court governance acts as the umbrella from which all organizational policies, procedures, projects and initiatives, both internally and externally, emanate. It provides the forum for leadership to exchange and evaluate new ideas, analyze operations, plan for the future, and communicate effectively with both employees and external stakeholders and sister branches of government.

Additionally, effective court governance plays an important role in advancing the fundamental tenants embodied in the principles of rule of law, judicial independence, and procedural justice.

2.2 Rule of Law

While no single agreed upon definition of the Rule of Law exists, the Secretary General of the United Nations defines the rule of law as “a principal of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to

the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁵

From this broad definition, four universal principals emerge:

- The government (officials and agents), as well as individuals and private entities, are accountable under law.
- Laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- The process by which laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

2.3 Procedural Justice

Procedural justice, also commonly referred to as procedural fairness, first emerged in the mid 1970's through the experimental research conducted by John Thibaut and Laurens Walker. In their study of trials, Thibaut and Walker found that irrespective of the outcome of the trial, the participants were more willing to accept and comply with the decisions of the judge if the court procedure was fair.⁶ This was followed by research conducted in the late 1980's by Professor Tom R. Tyler of Yale University and E. Allan Lind, Senior Research Scientist of the RAND Corporation, which demonstrated the correlation between how disputes are handled by courts and litigant's perception and evaluation of the court system.⁷ Subsequently, additional research work by Tyler and others has continued to build on the important role of procedural justice. Tyler has identified four key principles of procedural justice⁸:

- People want a **voice** – having the opportunity to tell one's side of the story to an interested, empathetic authority
- People want **neutrality** – having the opportunity to bring their disputes to an impartial, principled decision-maker who will apply rules consistently across people
- People want **respect** – having their concerns and problems taken seriously by the court system. This also includes treating people with courtesy and politeness and providing information about what to do, where to go, and when to appear
- People want **trust** – having confidence the decision-maker is listening and considering their views, are being honest and open about the basis for their actions, and acting in the best interest of all parties

When courts are consistently able to achieve these four principles, Tyler's research suggests that regardless of case outcomes:

1. Compliance with court decisions increases
2. A positive climate among the parties is enhanced
3. Litigant's respect of the court system increases

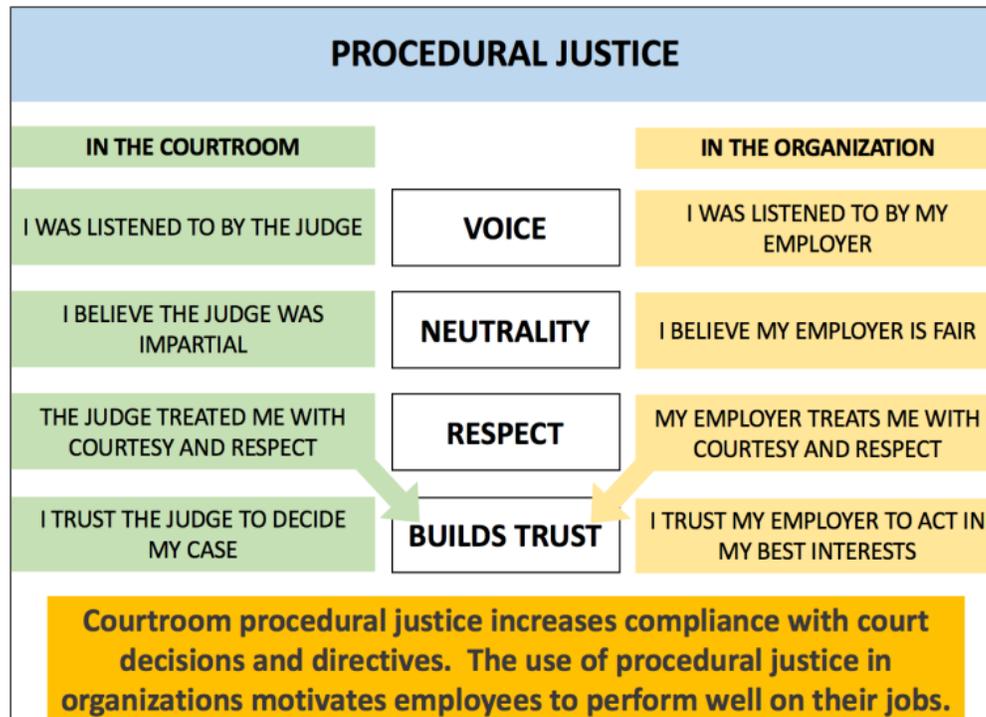
⁵ Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. (2004). Retrieved from <http://www.un.org/en/ruleoflaw/>.

⁶ Thibaut, J., & Walker, L., (1975). Procedural Justice: A Psychological Analysis.

⁷ Lind, E. A., & Tyler, T., (1988). The Social Psychology of Procedural Justice.

⁸ Tyler, T., (2008) Procedural Justice and the Courts, Court Review, Vol. 44.

For court organizations, effective governance enhances procedural justice not only in the courtroom and with litigants, but application of the four principles to organizational business, through policy and procedures, can also greatly increase employee satisfaction, commitment, and attainment of goals. The following diagram demonstrates the importance of procedural justice in both the courtroom and organization.



2.4 Judicial Independence

Judicial independence is freedom from improper control or influence, whether by agencies or individuals. It includes two primary aspects:

- Decisional independence – the ability of a judge to decide cases solely based on the law and facts without regard to political or popular pressure, partisanship, fear of intimidation or retaliation, or special interests. At its core, decisional independence requires judicial integrity, impartiality, and fairness.
- Institutional independence – the ability of the court, as a separate but equal branch of government, to govern and manage its own affairs (policies and procedures), secure necessary and adequate funding, hire and direct the workforce, and provide for adequate space and facilities absent improper influence and control of the sister branches of government. Institutional independence is greatly enhanced by effective governance and accountability of the organization.

Activity Two: Fair and Free: The purpose of this activity is to assist the participants in understanding the importance of court governance and its role in creating a fair, free, and independent branch of government.

2.5 The Intersection of Governance and High Performing Courts

The High Performance Court Framework⁹ developed by National Center for State Court Researchers Brian Ostrom, Ph.D., and Roger Hanson, Ph.D., clarifies what court leaders can do to produce and maintain high quality administration of justice. Court governance bodies can utilize this work to guide their organizations in achieving this goal.

High performance courts are characterized by a series of key elements that integrate performance improvement into a court's on-going operations. These include:

- Focusing on key administrative principles that clarify high performance. These include 1) giving every case individual attention; 2) treating cases proportionately; 3) demonstrating procedural justice; and 4) exercising judicial control over the legal process.
- Understanding how a court's managerial culture can promote common goals and collegial cooperation. Moving the organization toward a more collective decision-making entity, characterized by solidarity and consensus building.
- Using customer, internal operating, innovation and social value perspectives to help guide performance assessment, measurement and management.
- Developing the capacity to measure and manage performance.
- Learning to use the results for procedural refinements and communication with a variety of stakeholders. Employing a defined quality cycle protocol to promote continuous

Section 3 – Organization and Governance Models

Learning Objective

As a result of this section, participants will be able to:

3. Identify various organization and governance models, observe and explore his or her own court organization, and list the inherent complexities of courts as public organizations.

3.1 Governance in Court Organizations

Significant attention, analysis, and research have been devoted to understanding best practices in governing court organizations. Much of the work sought to apply private sector and executive branch structures and methods of operation to help courts be more effective as organizations. While some initiatives showed early promise, the majority led to only minimal improvements. Courts are complex organizations with diverse legal and societal responsibilities, often with competing internal and external priorities. Additionally, judicial leadership within court organizations is often characterized by a "first among equals" philosophy, which results in a reduction of both the perceived and actual authority of a chief/presiding judge. Therefore, the application and use of principles built upon a more traditional, hierarchical public and private organizations have not proved to be consistently effective in court organizations.

Courts can and do use a variety of organization and governance models and no one structure fits all courts. Generally, the larger the court, the more propensity for a typical hierarchical organization. Conversely, smaller courts may tend to the flatter side, where there are fewer layers of management between the leadership judge and the employees.

3.2 Types of Organizations

- A. Hierarchical – Typically, hierarchical organizations are structured in a pyramid layout, with everyone in the organization with the exception of Chief Executive Officer (for courts, the judges), are subordinate to someone else. At the base of the pyramid are the front line

⁹ Ostrom, B & Hanson, R., High Performance Court Framework – A Road Map for Improving Court Management, Williamsburg: National Center For State Courts, 2010.

employees, with numerous supervisory and management levels above them. Hierarchical organizations tend to follow a “command and control” type of management, with organization decisions flowing from the top to those at the base of the pyramid.

- Strengths:
 - Coordinates activities (especially in large organizations)
 - Promotes an environment for the development of specialists and experts
 - Increases employee loyalty to department (function)
 - Provides clear opportunities for employee advancement
 - Levels of authority are easily defined
- Weaknesses:
 - Less effective communication across organizational departments
 - Limits and slows decision making (all decisions made at the top)
 - Less flexible
 - Reduces creativity
 - Decreases morale (limited employee involvement in decisions about operation of organization)
 - Increases costs (additional supervisory and management levels)

B. Flat – Operating with fewer levels of supervisory and management personnel, employees have greater access to those at the highest level of the organization. Flat, or flatter organizations, focus more on increasing employee participation in the management decision-making process and less on supervision of day-to-day activities.

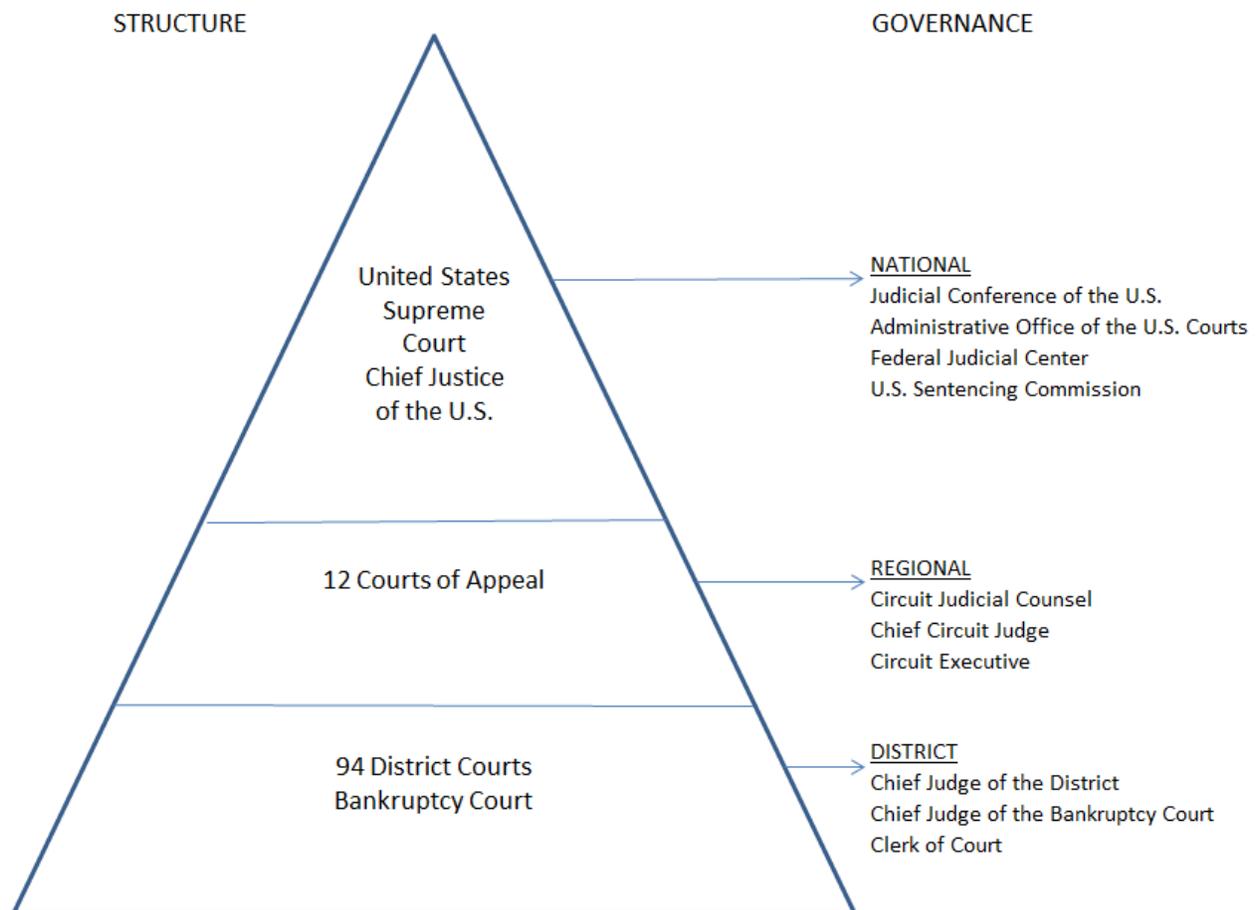
- Strengths:
 - Increases employee responsibility and commitment
 - Improves communication (fewer organizational levels)
 - Encourages easier and faster decision making
 - Decreases costs (fewer supervisors and managers)
 - Increases organizational confusion (reporting lines, power struggles, etc.)
 - Limits employee expertise and specialization
 - Loss of accountability and control (particularly in large organizations)

3.3 Federal, State, and Local Court Organization

C. Federal Court Organization

While the organization of state courts can and does differ from state to state, federal courts are organized under a single national model. The federal court consists of the United States Supreme Court, twelve regional circuit courts and ninety-four district courts as depicted on the chart on the next page.

FEDERAL COURT ORGANIZATION



Governance and administration of the federal courts also follow a consistent design throughout the system. Because the federal court system is so large and diverse, much of the policy formulation is addressed at the national level while the operational responsibility rests at the circuit and district levels. The governance structures and administrative duties include:

- National Level
 - Judicial Conference of the United States –Chaired by the Chief Justice of the United States, the Conference is comprised of twenty-six circuit and district judges and is responsible for establishing national policies for the administration of the federal courts. Much of the Conference’s work is done through some twenty committees made up largely of court of appeals, district, bankruptcy, and magistrate judges. These committees consider and make recommendations to the Conference on issues relating to the judiciary’s budget, human resources, security, space, facilities, and automation, as well as the Federal Civil, Criminal, Bankruptcy, and Appellate Rules. The Chief Justice appoints all the members of Conference committees.
 - Administrative Office of the U.S. Courts – Managed by a director appointed by the Chief Justice in consultation with the Conference, the Administrative Office functions as the national agency for policy guidance and administrative support. The Administrative Office administers the federal court’s budget and is responsible for space, facilities, personnel matters, and a multitude of other aspects of administering the federal court.

- Federal Judicial Center – Created by Congress in 1967, the Center is charged with furthering the development and adoption of improved judicial administration. As such, the Center presents a full range of educational programs for judges and other court employees and provides research and analysis of federal court procedures and operations, often for the committees of the Conference.
- U.S. Sentencing Commission – The Commission is responsible for establishing uniform policies to guide federal judges as they sentence criminal offenders.
- Judicial Panel on Multidistrict Litigation – The Panel is responsible for considering the transfer of civil cases that are pending in different districts to a single district for coordinated or consolidated pretrial proceedings.
- Regional Level
 - Circuit Judicial Council – Chaired by the chief judge of the circuit and includes an equal number of court of appeals and district judges, the council monitors the state of business of the courts in the circuit, including any backlogs of cases. It approves district court operating plans in such areas as juror utilization and court reporters, and plays a key role in acting upon complaints charging a judge with disability or misconduct. The council also appoints the circuit executive.
 - Chief Circuit Judge - is the chief judge of the circuit's court of appeals, presides over the circuit's judicial council, and serves as one of the circuit's two members on the Judicial Conference of the United States. The chief judge generally supervises the administration of the court of appeals, assisted by the circuit executive and the clerk of court and by committees that the various courts of appeals create, and serves as the court's chief representative to other components of the federal judicial system and others in the community. The chief judge of the circuit presides over meetings of the circuit council and, with the assistance of the circuit executive, sees to it that the council's many responsibilities are carried out.
 - Circuit Executive – Appointed by the Circuit Judicial Council, the circuit executive is responsible for all nonjudicial, administrative activities, including but not limited to, budget administration, personnel administration, information technology services. The circuit executive also serves as a liaison to other agencies and the media.
- District Level
 - Chief Judge of the District – The Chief Judge generally supervises the administration of the court, assisted by the clerk of court and by committees that the various district courts create. The chief judge's major statutory assignment is to enforce whatever rules the court has adopted for the assignment of cases to the judges. In addition to this and a few other formal assignments, the chief judge is generally expected to see to it that the district court operates effectively and that nonjudicial officers of the court perform their responsibilities properly.
 - Chief Judge of the Bankruptcy Court - The Chief Judge of the Bankruptcy Court has primary responsibility to oversee bankruptcy operations and ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.
 - Clerk of Court – The Clerk of Court is appointed by the court to work with the chief judge and other judges in overseeing the court's administration, especially managing the flow of cases through the court. The clerk of court's structure and functions vary somewhat depending on the type of court, and some courts also have divisional offices in which some of the work is handled. In addition, clerk's office functions include:
 - Screening pleadings and other documents submitted to the court to ensure that they comply with legal requirements and court rules;
 - Recruiting, hiring, and training staff;
 - Managing the process by which potential jurors are identified and summoned;
 - Developing and implementing a records management system;
 - Maintaining a system for collection, accounting, and disbursement of funds;

- Preparing budgetary requests and spending plans to meet the court's goals;
- Monitoring the construction of court space and alterations; and
- Maintaining a liaison with all branches of the court and related government agencies.

B. State Court Organization

Unlike the federal court where a single, unified structure exists governing all the courts, state court organization can and does differ from state to state. Some states, such as Utah and California, are more similar to the federal model and vest significant authority in Judicial Councils to oversee the judicial system. As identified in the Judicial Council of California Governance Policies, the primary purposes and responsibilities of the Council include¹⁰:

- Purposes
 - Acts as a governing body for the judicial branch to ensure statewide administration of justice.
 - Ensures that justice on a statewide basis is properly administered and coordinated.
 - Provides leadership for preserving and enhancing an independent and impartial justice system.
 - Guides the Judicial Branch in advancing the highest standards of accountability.
 - Surveys judicial business and trends, and adopts rules to improve and promote a high quality court system.
- Responsibilities
 - Establishing broad goals and policies that set the direction and priorities for the continuous improvement of the court system
 - Establishing standards for performance and accountability of the administrative operations and procedures of the branch.
 - Developing and maintaining administrative, technological and physical infrastructures.
 - Establishing the Judicial Branch's fiscal priorities, securing appropriate funding, allocating branch appropriations and ensuring fiscal accountability.
 - Sponsoring and taking positions on pending legislation consistent with Council objectives and that promote a high quality of administration of justice and an impartial judiciary.
 - Developing high-quality educational and professional development opportunities.
 - Communicating with and reporting to legislative and executive branches of state government.

Others states have created judicial councils to function in more advisory capacity. In Arizona, the Judicial Council assists the Supreme Court and Chief Justice in the development and implementation of policies and procedures for the administration of the state's courts. In the majority of states, however, the chief justice and the state supreme court exercise system oversight and often rely on a variety of organizational structures to assist in this endeavor.

The use of a judicial council or a chief justice model of governance is often influenced by numerous factors within the state, including size, complexity, executive and/or legislative branch influence, and the legal culture. Both models have proven track records of success, and share the following operational characteristics:

- Rule Making Authority – the ability to uniformly apply a procedural course of conduct that litigants are required to follow on a statewide basis.

¹⁰ Judicial Council of California. (2016) Judicial Council Governance Policies.

- Administrative Orders – the ability to uniformly apply an internal policy (not directly applicable to litigants) to provide more efficient and effective management and disposition of cases on a statewide basis
- Establishment of Performance Measures – the ability to establish and apply measurements, including time standards, to meet legal requirements, increase productivity and enhance the public’s trust and confidence.
- Program Specifications and Standards – the ability to adopt operating rules and regulations for any program or project to increase access and promote consistency.
- Delegation of Authority – the ability to assign duties and responsibilities to standing and ad hoc committees and administrative directors.
- Financial Management – the ability to allocate and reallocate resources and prioritization resources based on goals, objectives and needs.
- Information Technology – the ability to establish, implement sustain a technology plan that improves operational efficiencies, promotes easy access to information, and safeguards the records of the court.

NCSC’s State Court Organization (SCO) [www.ncsc.org/sco] presents detailed comparative data about how state trial and appellate courts are organized and administered in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam and Northern Mariana Islands. With topics ranging from the types of courts established in each state to specific aspects of law or procedure, SCO is the source for authoritative answers to fundamental questions about the operations of each state’s court system.

For the first time, the information compiled for SCO is available through a web-based, interactive application that allows users to customize the display of data so that it best answers their questions. Comparison is facilitated by the ability of users to sort and filter data to focus on specific issues of interest and characteristics of courts. This new, interactive approach to information facilitates the examination of differing state approaches to court administration and related procedures and rules.

Note: Faculty should use this opportunity to go-online at www.ncsc.org/sco to demonstrate the application and how participants may use this information when considering revising their organizations and improving governance.

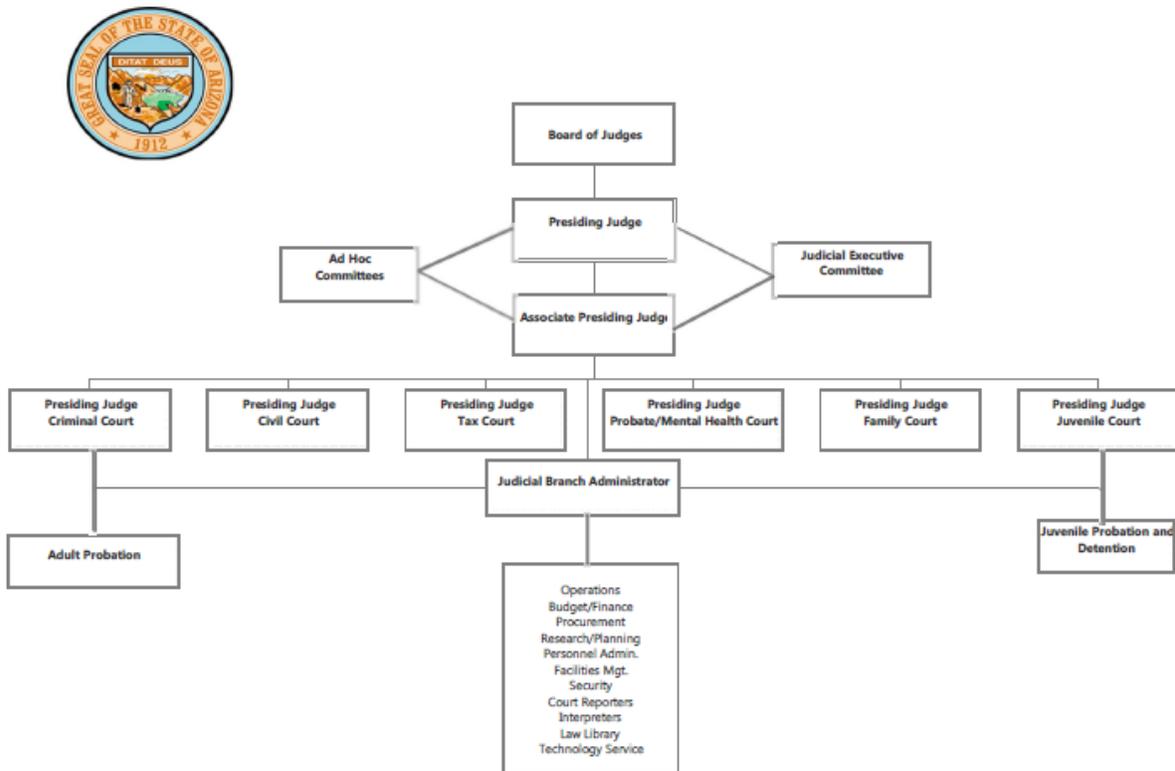
C. Local Court Organization

Local court organization is not only impacted by how its state court system is organized and managed, but also highly influenced by the size of its district (population, number of judges, geographical issues) and scope of responsibilities. Regardless of size, a presiding judge with oversight responsibilities for probation services, lower court judges, and pretrial services faces an increased need for coordination than one that is not charged with these duties. Additionally, size does have a significant impact on how courts are organized and managed. For example, a court with a large number of judges, conducting judicial business in multiple, disparate sites, will face additional challenges of consistency that may not be present in smaller size courts.

Governance authority at the local court level have similar characteristics present at the state court level but are only applicable to the local court. These include the use of rule-making authority, administrative orders, performance measures, program/project standards, delegation of authority, financial management, and information technology management.

On the next page is the organization chart for the Judicial Branch of Arizona in Maricopa County, an example of a local court organization.

Judicial Branch of Arizona in Maricopa County



3.4 Court Governance Models

R. Dale Lefever, Ph.D, faculty emeritus from the University of Michigan, identified three forms of governance typical in today’s courts. In his 2007 article for NACM’s *Court Manager*, Dr. Lefever, described these models as follows;

- A model based on rights – Organizational members have a strong sense of individual freedom and discretion. A very low sense of organizational identity and commitment is present. The autonomy of judicial officers, not just freedom from other branches of government, but the freedom from control of other judges, is present.
- A model based on administrative rules -- A common model used in both federal and state systems, the organizational authority based system relies on a system of rules, often in the form of bylaws supported by the Bench, delegating specific administrative authority to judicial leadership.
- A model based on relationships – Organizational members willfully share authority, recognizing the importance of individual rights and decisional autonomy, as well as the need for administrative authority and coherence.¹¹

3.5 Courts as Loosely Coupled Organizations

In June of 2013, NCSC’s President Mary C. McQueen published a paper entitled “Governance, The Final Frontier” challenging court leaders to move away from traditional private and public

¹¹ Lefever, R.D. (2009). The Integration of Judicial Independence and Judicial Administration. *Court Manager*, 24, 5

sector governance models and consider structures more akin to loosely coupled organizations, such as higher education and health care. The concept of loosely coupled organizations was first noted in higher education and health care organizations and is defined by the existence of the following core components:

- Federated Governance Structure – characterized by a high degree of individual and group autonomy. Extensively trained professionals (judges) may create their own governance norms and feel restricted by a central administration (governance) and adherence to organizational policies.
- Accountability versus Autonomy – competing values of the individual’s desire for autonomy (judicial independence) with the organization’s governance needs (organizational accountability)
- Unpredictable Connections – alliances within the organization are often unclear and lines of authority are often blurred or ignored
- Complex and Knowledge Extensive Decision-Making – members of the organization maintain a high level of independent knowledge and retain independent decision-making authority.
- Competing Demands of Integration and Specialization – the organization is structured to support specialized work units and facilitates expertise within individual autonomous work units.¹²

Even though such complexities exist and a high level of autonomy and flexibility is present, courts still require direction and oversight to effectively meet their constitutional mandates and efficiently provide necessary services. To meet this responsibility, McQueen suggests four governance mechanisms essential for governing in the loosely coupled environment.

- Mechanism 1: Leadership – legitimacy of the leadership must be recognized and be built upon experience, expertise and respect. Authority based leadership alone will likely fail.
- Mechanism 2: Process – a balancing process, leaders must provide a protecting environment that monitors events and trends to prevent crisis and excessive fragmentation without excessive interference.
- Mechanism 3: Fairness – using a collaborative decision-making process and coalition building practices, leaders must gain the trust of the organization’s members. Leadership is recognized and valued through transparency of the process and the effectiveness of the process framework.
- Mechanism 4: Communication – providing accurate and timely information to the organizational members fosters greater understanding and support for leadership and organizational needs and objectives.¹³

Activity Three – Court Governance Models: The purpose of this activity is to explore one’s own court governance model while learning about other participants’ court governance models, as well as exploring the pros and cons of each model.

Section 4 – Building an Effective Court Governance Structure

Learning Objectives

As a result of this section, participants will be able to:

4. Conduct an organizational readiness assessment and identify areas and issues that require attention and resolution before adopting a governance structure.

¹² McQueen, M. (2013). *Governance: The Final Frontier*. Williamsburg, VA: National Center for State Courts. Retrieved from: http://www.ncdsv.org/images/HKSPCJPMetal_Governance-the-final-frontier_6-2013.pdf.

¹³ Id.

4.1 Change Management Principles

This section is intended to offer court leaders a blueprint to build an effective court governance structure. It provides a series of recommended steps that, when followed, will provide a comprehensive and holistic method of designing, developing, implementing, and evaluating a governance structure.

Similar to introducing a new case management system or adopting a new judicial calendaring method, revising a governance structure requires change to the organization, and more specifically, requires people to think and act differently. Court leaders wishing to modify their governance structure or build an entirely new one will be well served by understanding the core principles of leading change management that are applicable to court governance. They include:

- Lead with the culture – leaders must look to the existing culture to both utilize the elements that are aligned and be cognizant of those that are not.
- Start at the top – successful change must start at the top of the organization.
- Involve every layer – resist the temptation to involve only those that may be directly affected; engage all levels of employees.
- Make the rational and emotional case together – employees need both the business justification for the change as well as the personal cause.
- Act your way into new thinking – it cannot be just about the spoken word, the email, or the memo; the new way must be acted out daily by both leadership and employees.
- Engage and communicate – sustained change requires constant involvement of the workforce and a continuous flow of information.
- Assess and adapt – following through on the change, evaluating the effectiveness, and implementing improvements reinforces consistency, flexibility, and commitment.

As courts work through the following steps to create/modify their governance structure, understanding and applying these principles throughout the process will increase the opportunity for success and acceptance within the organization.

4.2 Step 1: It Starts with Commitment

The creation and continued use of an effective court governance structure must be realized through the commitment of court leadership, including leadership judges and senior court managers. Court leadership should consider the following:

- A. Shared leadership of the organization – sharing leadership, or encouraging the active participation and voice of a representative population of the organization, promotes a collective commitment to achieving goals, objectives, and desired outcomes.
- B. Common vision, mission, and values - key elements of an organization's larger purpose, desired future and principles by which business is conducted are important to the process. For court organizations, which are often complex and may have employees engaged in an array of disparate activities, it is important that all within the organization have a common purpose, objective, and code of conduct.
- C. Accountability and transparency – conducting the governance activities with openness and commitment to observation and evaluation enhance understanding, credibility, and success.
- D. Judicial and organizational independence – the freedom from improper control or influence, whether by agencies or individuals, is crucial to self-governing.
- E. Short and long range planning – both short- and long-range planning is important to the organization because it provides a sense of direction, giving employees a sense of confidence that leadership is sensitive to the needs and objectives of the organization. Further, planning helps guide day-to-day decisions and evaluating programs and modifying approaches to problem solving.

- F. Executive Component of the Court - the presence of a strong executive team, comprised of leadership judges and senior court managers, greatly furthers a court's success in building and sustaining an effective court governance structure. A strong executive component can be defined by the following components:
- Clearly defined roles and responsibilities
 - Commitment to continuous business process and organizational improvement
 - Respect for each other's competencies
 - Tolerance for open and frank discussions

Court leaders are strongly encouraged to further their knowledge and understanding of the necessary roles to achieve a strong executive component. In the recent era of court administration, the leadership component has emerged as a key component found in successful organizations, and much has been written on the subject. Of particular note, court leaders may find the prior work of Mark Zaffarano, "Understanding Leadership in State Trial Courts", and Barbara Rodriguez Mundell & Wallace B. Jefferson, "Herding Lions," as helpful tools to improve individual and team leadership concepts. These references are listed in the bibliography section.

4.3 Step 2: Assess Your Readiness

Before undertaking a project to build and/or improve the governance structure, court leaders must assess their organization and its readiness for change. These factors include:

- Court Culture – What is the culture of your court? In their High Performance Court Framework, NCSC researchers Brian Ostrom, Ph.D., and Roger Hanson, Ph.D., identified four distinct court cultures;
 1. Communal – emphasizes the importance of getting along. This culture is characterized by high sociability (cordial communication, acknowledgment and interaction) and low solidarity (unified goals/tasks)
 2. Networked – emphasizes the importance of inclusion and coordination. This culture is characterized by high sociability and high solidarity.
 3. Autonomous – emphasizes the importance of allowing judges wide discretion to conduct business. This culture is characterized by low sociability and low solidarity.
 4. Hierarchical – emphasizes the importance of established rules and procedures. This culture is characterized by low sociability and high solidarity.¹⁴

While it is unlikely a court will be exclusively one of the four identified cultures, it is important to understand the predominant culture under which the court currently conducts business and, more importantly, help court leaders build a successful governance structure conducive to the local environment. For example, a court organization that is autonomous in nature may initially resist a governance body that seeks to establish too many court-wide initiatives that infringe on the individuality of a judge.

- Funding Structure – Does the method by which the court is funded affect the ability to self-govern? How courts are funded and the authority over those funds may have a significant impact on the success of a governance body, particularly when governance initiatives require budgeting, reallocation, and expense of the funds.
- Leadership Judges – What method is used to select chief/presiding judges – merit, seniority, others? What authority do they currently have? Court leaders should assess the

¹⁴ Ostrom, B. Hanson, R. (2010). *High Performance Court Framework. Achieving High Performance: A Framework for Courts*. Williamsburg, VA: National Center for State Courts. Retrieved from: http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/CTF/Achieving_HPC_April_2010.ashx.

impact of how judicial leaders are selected when determining an appropriate governance structure. Operational procedures should account for these business practices, considering how best these practices can be used to enhance governance operations and mitigate any potential sources of conflict.

- Communication – Both internally and externally, does the court communicate well with its employees, funders, stakeholders, and the public? Communication is a critical component of transparency and accountability, which are key building blocks of a successful governance structure. Court leaders must understand their organization’s effectiveness in keeping all internal and external stakeholders informed and take the necessary action to address any deficiencies.

Activity Four – Organizational Readiness: The purpose of this two-part activity is to begin the assessment process of each participant’s court governance structure and to determine areas for improvement.

4.4 Step 3: Identify the Key Participants

Courts should consider creating a governance structure with diverse participants who provide a comprehensive understanding of court operations and responsibilities. The size of the body should correlate to the size of the organization, providing an opportunity for all groups to be represented. Recommended for inclusion in a governing body are:

- Leadership judges (presiding/chief judges)
- Senior court managers (court administrators)
- Additional judge representatives
- Management representatives
- Employee representatives

Additionally, ad hoc members may be appointed to specialized committees or workgroups and participate at the invitation of the governance stakeholder. From time to time, governing bodies may require, and benefit from, the participation of individuals and agencies external to the local court.

4.5 Step 4: Define the Governance Model

Before beginning the work of creating the new structure, court leaders will benefit by conducting a comprehensive review of various internal and external forces that may influence or impact a practicing governance body. The following areas should be addressed:

- Define the current state of governance, as well as gaps and considerations – a review and analysis of the existing governance structure will facilitate the planning process.
- Identify potentially useful governance frameworks – look to other similar size/jurisdiction courts that maintain an effective governance structure.
- Identify applicable governance requirements - a review of existing statutes, rules, etc., that may impact court governance. It is also important to assess how the creation of a governance structure will be viewed by others, including supreme courts and funding bodies.
- Consider governance scope and needs – begin to identify how governance will affect existing operations; anticipate needs that will arise and develop plans to address.

4.6 Step 5: Design the Governance Model

The basis for any governance model is to create an inclusive system from which all organizational policies, procedures, projects, and initiatives, both internally and externally, are identified, vetted,

and implemented. Further, it provides the forum to evaluate performance and achieve outcomes. To achieve this model, court leaders should:

- Define the Purpose –It is suggested that information in **Section 1.3** – “Principles of Court Governance and **Section 2.1** – Why Is Court Governance Important?” provide the basis. Individual courts may have additional reasons for creating or changing a court governance structure.

Additionally, courts should consider including within the governance documents commitment to the tenets identified in **Section 5.2**:

- Shared Leadership of the organization
 - Common vision, mission and values
 - Accountability and transparency
 - Judicial and organizational independence
 - Short and long range planning
 - Executive Component
- Formally adopt bylaws and/or operating procedures, that:
 - Clearly identify the purpose
 - Designate membership
 - Establish meeting and participation expectations
 - Identify and authorize committees
 - Build the structure – answer the questions to help define the structure:
 - What will governance look like (define its structure)?
 - How will it work (operating procedures)?
 - To what areas of the organization does it apply (theater of operations)?
 - What does it mean for the stakeholders, for the employees, and for the public?
 - Develop a change-management plan – this is particularly important for those courts that have never utilized a formal governance structure; consideration must be given to how leadership can foster the attitudinal and behavioral changes needed to implement the new governance structure.
 - Strategize with judicial officers and court managers – the implementation of a new or revised governance structure should not be a surprise to any judicial officer or court manager. Court leadership should, throughout the development process, seek the involvement of judges and court managers. This can be achieved through a variety of methods, including:
 - Focus group discussions
 - Surveys and feedback
 - Informal presentations

4.7 Step 6: Implement and Communicate the Governance Model

A. First Steps

Implementing a governance structure, particularly if none previously existed, will require commitment, patience, and perseverance. Before moving forward with the new/revised structure, court leaders should:

- Define how the new governance structure facilitates the desired future

- Understand the impact on court operations and be prepared to make and structural changes
- Identify the effect on judicial officers and court employees
- Seek stakeholder and justice system partner support

Court leaders must be prepared to face criticism and negativity when implementing governance. It can often be viewed, if not properly structured, defined, and presented, as another layer of bureaucracy. Judicial leadership must be able to “sell” the change, both in terms of individual satisfaction as well as organizational success. Further, court leaders may consider “low hanging fruit” as projects that may facilitate success and engender support of the organization.

B. Communicating the Change

Often overlooked is, how change is communicated to an organization can greatly impact how employees react, see, and feel about what is happening. Ultimately, communications can impact the success of the change. Courts should spend significant time and attention on assuring the organization is properly informed. Tips for improving the success of communicating the new governance structure include:

- Utilize various communication methods, e.g. emails, newsletters, videos, and “town hall” type meetings. Use face to face communications whenever possible.
- Communicating the change should not be solo – teams of court leadership should be employed to convey the change and demonstrate cohesiveness and commitment.
- Make the benefits relevant -- Answer the questions “why is this happening,” “what happens if we do not,” and “what is in it for me.”
- Allow for feedback and two-way communication.
- Provide the communication early enough to allow organizational preparation and adjustment, but not too late to create uncertainty and confusion.

See the **NACM Core® Public Relations Curriculum Design** for more ideas on how to effectively communicate the plan. See the **NACM Core® Workforce Management Curriculum Design** for more information about how to manage changes in the court.

Section 5 – Evaluating the Effectiveness of the Governance Structure

Learning Objectives

As a result of this section, participants will be able to:

5. Develop and implement a comprehensive governance structure evaluation process that will enhance effectiveness and encourage improved planning.

5.1 Purpose

Evaluation promotes a systematic, comprehensive method of determining how well the governance system is achieving its objectives and provides a roadmap to addressing problem areas and improving performance. Moreover, it sends a strong message to the organization that judicial and employee opinions are encouraged and valued on how the organization will be managed. Similar to any organization, project or program, evaluation of the governance system, and proper use of the information and analysis obtained, can make the difference between failure and ineffectiveness and success and a productive, healthy organizational governance.

5.2 Internal and External Evaluation

Evaluation should include two primary areas; 1) internal - looking inside at all the activities that impact how the governance structure operates; and 2) external – examining how the governance structure interacts with the court as a whole and its wide array of stakeholders. Below are a

series of questions that should be addressed in any evaluation of the governance system. It is noted these questions are at a minimum; each jurisdiction should consider expanding these evaluation questions based on the individual circumstances and work of its own governance system.

A. Internal

- Are the right people involved? - The governing body should include judicial and administrative leadership and a representative group of the organization consistent with the size of the organization. Consider board membership carefully, as the involvement of key leadership personnel increases productivity, improves the value of the decision-making process, and enhances confidence of organization's members that each group has input.
- Are the roles and responsibilities of the governing body understandable? – Misunderstanding the purpose or using the governance structure for reasons other than those defined may cause governance ineffectiveness and disillusionment for board members and those within the organization. Members, whether old or new, should be properly informed and agree to the stated purposes and work of the governance body.
- Is the right information being collected? – Information is critical to accurate assessment and good decision-making, and the governance system should assure timely and accurate information is the norm. Implementing a new policy or procedure based on inaccurate or incomplete data is not only detrimental to the success of the organization, it undermines the confidence stakeholders have in the governance body.
- Are the governance meetings effective? – Generally, decisions of the governing body are most well considered when all members are actively engaged and participating. The chair should take the necessary action to assure everyone has an opportunity to be heard and understand the basis for the decision/action. It is also important to note that governing board activity should not be primarily adversarial in nature. While a substantive critical debate on the issues may be warranted from time to time, it must also be combined with a collaborative, unified approach to achieve successful resolution.

B. External

- Have actions (policies, procedures, etc.) been integrated into the organization? – Decisions and actions of the governing body, if not implemented correctly and monitored, will likely be inconsistently applied or in the worst case scenario, ignored totally. The effectiveness of the governance system is diminished when follow-up and analysis on actions is not routinely accomplished.
- Does the governing body communicate effectively? – Publishing agendas, providing routine reports of governing board activity, issuing memos (emails) defining the need and importance of new policies and procedures are a few methods of keeping the organization informed of governing board activities. Effective communication enhances transparency and trust.
- Do we listen to our organization? – Encouraging and receiving active feedback from the court's workforce can be fundamental to the success of the governance system. The governing body should provide both formal and informal means for organization members to provide their problems and concerns as well as their support for governance decisions.
- Are we collaborating with our stakeholders? – Today's justice systems are both complex and diverse, often requiring the active participation of system stakeholders to achieve success. The governance body should assure proper lines of communication are established and a means of working collaboratively are in place with prosecution and defense agencies, workplace security entities, local and state bar associations, detention and correctional agencies, and service and treatment providers.

5.3 Planning and Managing the Evaluation

Designing and implementing an evaluation may seem complex, but successful planning can help governance bodies mitigate the confusion and bring clarity and purpose to the endeavor. The scope of the planning should be in direct proportion to the size of the evaluation (larger evaluation projects require more detailed design and greater coordination) and seek to comprehensively, yet succinctly, solicit meaningful information that can be used by the governance structure to assess its work, identify organizational needs, and identify possible future projects.

Before embarking on an evaluation project, governing boards should consider the following four steps:

- **First**, determine what will be evaluated and the expectations - While this may seem simple, attempting an evaluation without a clear and concise understanding of the purpose can lead to confusion and results that are suspect and unreliable. As an example, conducting an evaluation to determine if a new caseload management procedure has improved case processing is much less definitive than conducting an evaluation of the same program to determine if disposition times have decreased and by what amount, if any.
- **Second**, determine what information/data will be needed and who will be involved – Critical to the success of an evaluation project is to assure that the right information regarding the project/program is available. Further, including all individuals/organizations that are impacted both directly and indirectly provides a more comprehensive understanding and assessment of the project/program.
- **Third**, determine how the evaluation will be conducted – Smaller evaluations may be more conducive to management and oversight of single individual or a small group of the governing board. However, larger more comprehensive evaluations may require the appointment of an internal team comprised of board members who manage the project, including collecting data, designing and circulating surveys, analyzing results and providing reports to the governing board. Additionally, use of external personnel (consultants, evaluators) may also be considered for complex evaluation projects or when the governing board considers it appropriate, given the nature of the evaluation.
- **Fourth**, determine how the results will be managed and used – Evaluations that are not used waste time and resources and undermine the credibility of the governance system. Prior to beginning the evaluation, the governance body should be prepared to share the results with those impacted and anticipate reactions and responses, both positive and negative. Credibility of the governance system and evaluation process will be enhanced by adopting a plan that encourages responses and how these will be used in further planning activities.

5.4 Evaluation Methods

Two methods of evaluation are generally common. Depending on the areas identified for evaluation, both methods can be appropriately used alone or in combination. When considering the method or methods to use, assure the method selected will actually measure what is intended and answers the question asked.

- Quantitative approach – this method is most often used when assessing the outcome (success or failure) of a project or program through data-driven analysis. Examples of quantitative analysis may include the assessing the impact of a new case management procedure intended to reduce delay or revised jury selection methods that seek to increase juror utilization.
- Qualitative approach – this method is most often used to facilitate feedback on views, attitudes and perceptions about a particular program or initiative. Rather than focusing solely on the numbers as in a quantitative analysis, this approach seeks out narrative and descriptive data most often through the use of surveys or structured interviews. Examples include employee satisfaction with new or revised personnel policies and attorney feedback on a new continuance policy.

5.5 Evaluation Tools

Governance systems can use an array of tools to facilitate both quantitative and qualitative analysis. Some of the more common tools and tactics include¹⁵:

- Surveys/Evaluation Forms – a set of predetermined questions regarding the project/programs directed to a target audience. These can produce both quantitative and qualitative data.
- Statistical Reports/Documentation – primarily quantitative, these seek to produce information and data to measure outcomes.
- Interviews – individual meetings with program/project participants based on a series of predetermined questions. Like surveys, interviews can produce both quantitative and qualitative results.
- Knowledge/Skill Tests – a set of questions that determine the level of knowledge and skills of project/program participants. These will provide quantitative data.
- Focus Groups – convening small groups to seek feedback on predetermined questions can produce qualitative information.
- Anecdotal Information – while an evaluation cannot solely rely on anecdotal information, including experiences and narratives of project/program participants can be used to enhance the completeness of an evaluation.

Activity Five – Planning and Managing the Evaluation: The purpose of this activity is to begin the process of defining the evaluation needed for the new or revised court governance structure.

¹⁵ Zarinpoush, F. Project Evaluation Guide for Nonprofit Organizations. Toronto. 2006, Imagine Canada.

Faculty Resources

Faculty Resources are intended to be used as references and illustrations of content, methodology, and purpose for each topic. Faculty resources are annotated in the content outline in places where their use may be most effective. Faculty for a course based on this curriculum design may have supplemental resources that would be useful to court managers. These faculty resources are not intended to be the only participant materials; they are intended to provide some materials that are considered vital to the content.

Section Two

Procedural Justice

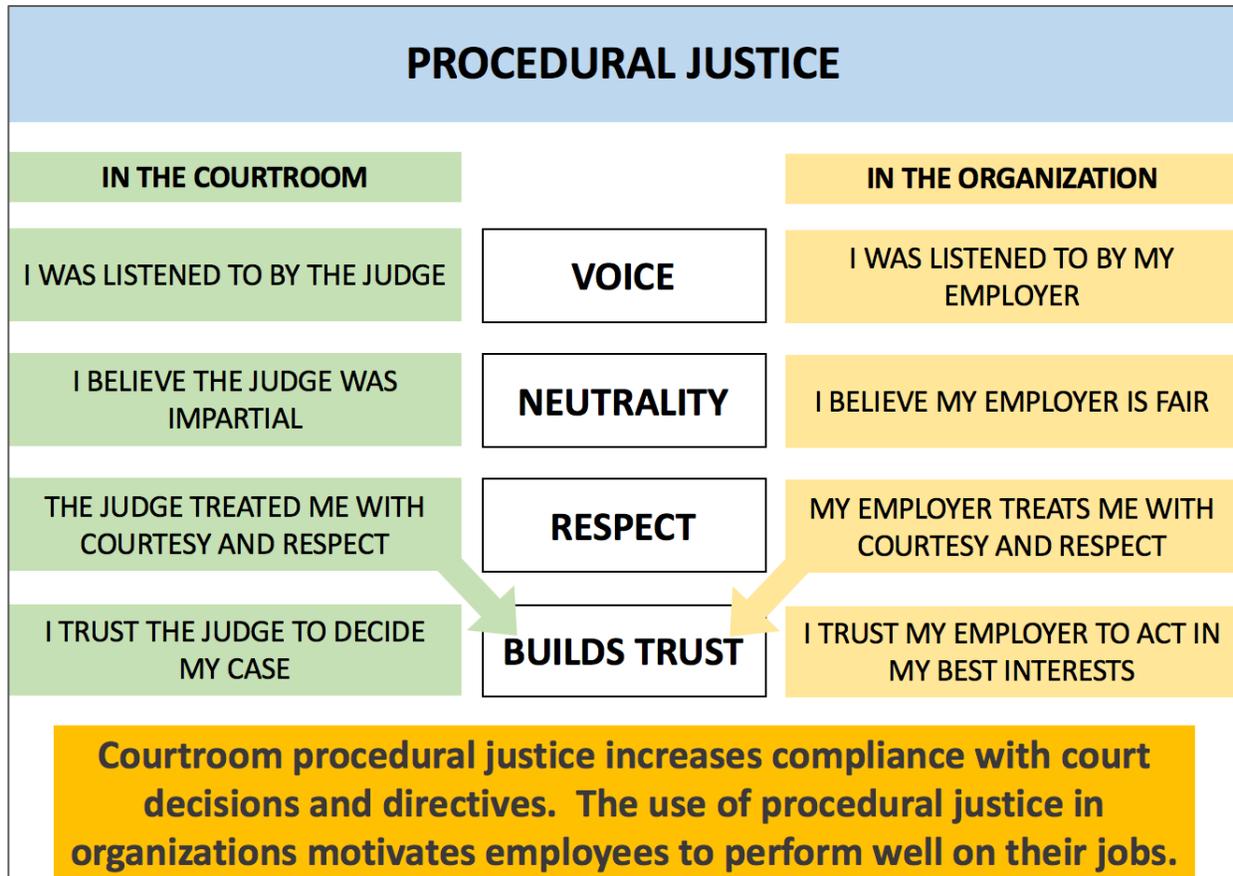
Section Three

Federal Court Organization

Court Structure of the Judicial Branch of Arizona in Maricopa County

Section Two

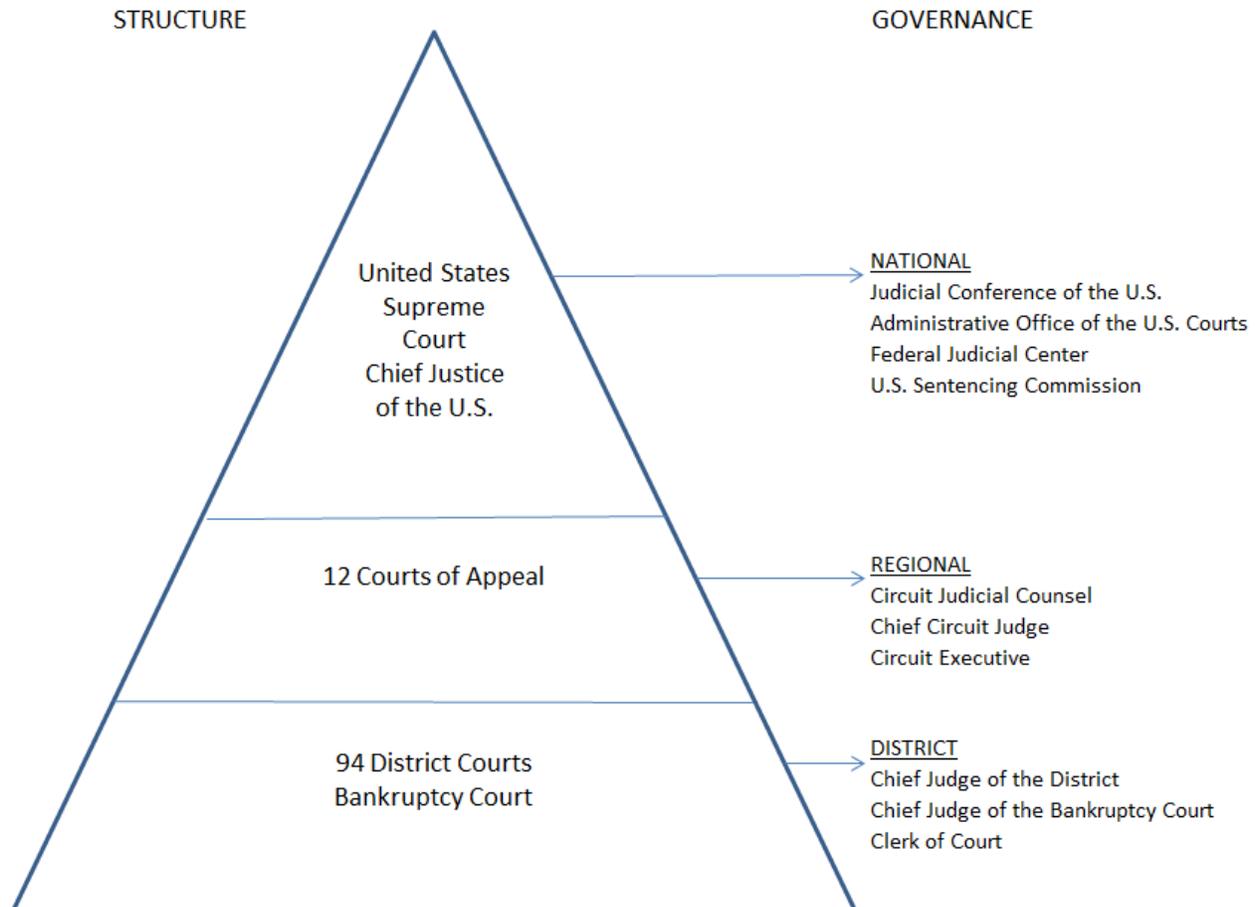
Procedural Justice



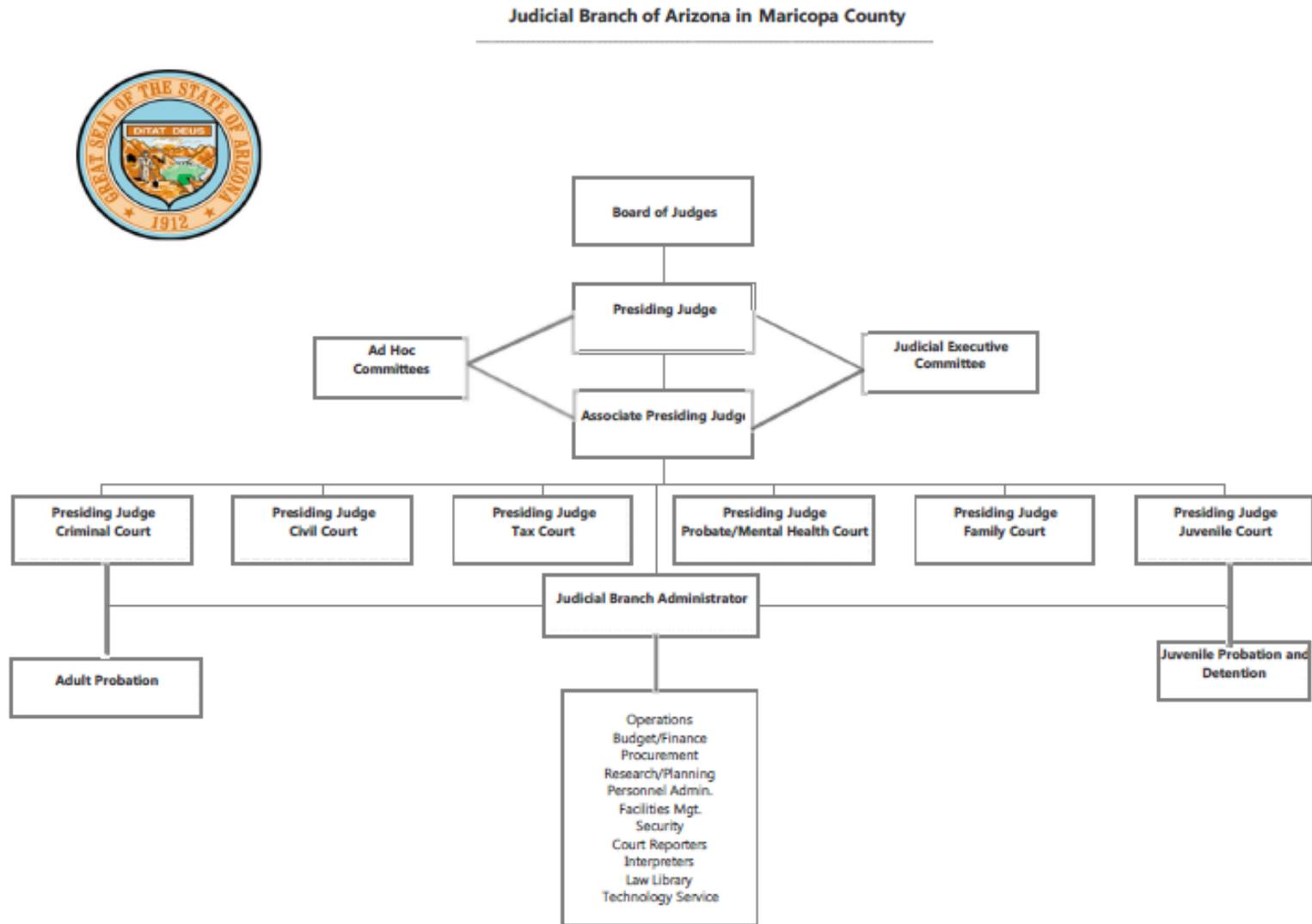
Section Three

Federal Court Organization

FEDERAL COURT ORGANIZATION



Court Structure of the Judicial Branch of Arizona in Maricopa County



Participant Activities

The participant activities are one of the most important parts of the curriculum design as they are the tools faculty members are able to use to determine if participants have achieved the outcomes defined in the learning objectives. Also, participant activities provide tools to faculty to ensure that the training, course, or session is not only informative, but also interactive.

Participant activities are annotated in the content outline in places they may be effectively used. Each activity has a cover page explaining its purpose, the specific learning objective being measured, and how to use the activity. The activities themselves are on a separate page(s) for ease of duplication.

The following activities are to measure achievement of stated learning objectives. Faculty are encouraged to incorporate additional strategies to engage court managers and keep them active during their educational experience, for example, asking questions about content before presenting it, having learners discuss content and provide feedback to faculty on their perspectives, and more.

Activity One – Applying the Court Governance Principles

Learning objective: *Define court governance principles and structure.*

Activity Two – Fair and Free

Learning objective: *Describe the role and importance court governance has in promoting the rule of law, judicial independence, procedural justice, and developing and maintaining a high performance court.*

Activity Three – Court Governance Models

Learning Objective: *Identify various organization and governance models, observe and explore his or her own court organization, and list the inherent complexities of courts as public organizations.*

Activity Four – Organizational Readiness

Learning objective: *Conduct an organizational readiness assessment and identify areas and issues that require attention and resolution before adopting a governance structure.*

Activity Five – Planning and Managing the Evaluation

Learning objective: *Develop and implement a comprehensive governance structure evaluation process that will enhance effectiveness and encourage improved planning.*

Activity One: Applying the Court Governance Principles

Purpose

The purpose of this activity is for the participants to assess how their court aligns with the court governance principles and what obstacles may be in place to keep any of those which are not in place from being implemented.

Notes about Using the Activity

Split the participants in small groups and ask them to complete the questions and share their responses within their small groups. Once that has occurred, reconvene the whole group and ask for volunteers to share their observations about the application of the court governance principles in their courts.

Below is a matrix you can use to collect responses to the first two questions about size and jurisdictional type. This information will be used again in Activity Four.

Relevant Learning Objective

1. Define court governance principles and structure.

| Type | Size | | |
|----------|-------|--------|-------|
| | Small | Medium | Large |
| General | | | |
| Limited | | | |
| Unified | | | |
| Family | | | |
| Criminal | | | |
| Other | | | |

Applying the Court Governance Principles

Read and answer the questions below. Then, share your responses in your small group and be prepared to discuss your answers with the class.

Court Governance Principles

- A well-defined governance structure for policy decision making and administration for the entire court system.
- Meaningful input from all court levels into the decision-making process.
- Selection of judicial leadership should be based on competency, not seniority or rotation.
- Commitment to transparency and accountability
- A focus policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.
- Open communication on decisions and how they are reached.
- Clear, well-understood and well-respected roles and responsibilities among the governing entity, presiding judges, court administrators, boards of judges and court committees.
- A system that speaks with a single voice.
- Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.
- Positive institutional relationships that foster trust among other branches and constituencies.
- The Judicial Branch should govern and administer operations that are core to the process of adjudication.

1. What is the size of your court?
 Small (< 100 employees) Medium (100-500 employees) Large (> 500 employees)
2. What type of court is it?
 General Jurisdiction Limited Jurisdiction Unified Family Criminal Other (specify)
3. What is the governance structure of your court?
4. Which principles listed above are in place in your court?
5. Which principles are not in place in your court and why?
6. What obstacles are present that would prohibit you from implementing these principles?
7. Is anything missing from this list?

Activity Two: Fair and Free

Purpose

The purpose of this activity is to assist the participants in understanding the importance of court governance and its role in creating a fair, free, and independent branch of government.

Notes about Using the Activity

Play the video “Fair and Free” produced by the National Organization of Women Judges [<https://vimeo.com/84244168>] (4:28). The video focuses on the important role of judges and courts in our society and the need for fair, free and independent judicial branch of government. Next, split the participants into small groups.

Relevant Learning Objective

2. Describe the role and importance court governance has in promoting the rule of law, judicial independence, procedural justice, and developing and maintaining a high performance court.

Fair and Free

In your small groups, discuss and answer the following questions. Be prepared to share your answers with the class.

1. Identify how court governance can support the application of the video contents and procedural fairness.
2. Discuss how the rule of law, judicial independence, and procedural fairness play into the building of the public's trust and confidence. What does mistrust and lack of confidence look like if these principles are not a priority?
3. Discuss the rule of law and procedural justice and how they apply to ALL employees in the organization.
4. What opportunities do court officials have in applying these principles in their daily activities?

Activity Three: Court Governance Models

Purpose

The purpose of this activity is to explore one's own court governance model while learning about other participants' court governance models, as well as to explore the pros and cons of each model.

Notes about Using the Activity

Using the court matrix of court types and sizes used in Activity One ask the participants to join the small group that best describes their court. In the small groups, these similar jurisdictions and court size groups are to identify the court governance models that are applied in their courts. They are to list those and then determine the pros and cons that may affect their courts. Reconvene the class and ask for volunteers to share their answers and discussions.

Included as a faculty resource is the organizational chart of the Judicial Branch of Arizona in Maricopa County. You may wish to use this example to facilitate a discussion about the strengths and weaknesses of this organization type. Questions that can be asked for this facilitation may include the following

- What benefits does this organization realize from how it's organized?
- How could it be better?

Relevant Learning Objective

2. Identify various organization and governance models, observe and explore his or her own court organization, and list the inherent complexities of courts as public organizations.

Court Governance Models

Small Group Type: _____ (size and court type)

Your Court's Governance Model: _____

| Pros | Cons |
|------|------|
| | |

List any interesting information or court governance models about which you learned from the others in your group:

Activity Four: Organizational Readiness

Purpose

The purpose of this two-part activity is to begin the assessment process of each participant's court governance structure and determine areas for improvement.

Notes about Using the Activity

First Activity

Have each participant complete the Organizational Readiness page to begin the organizational assessment process. Once complete, seek volunteers to share their evaluations, focusing on what challenges must be addressed.

Second Activity

Using the Ostrom/Hanson Culture Matrix, have participants determine where their court culture fits in the model. Ask each participant write down his or her own organization's obstacles and opportunities as related to the court culture. Have each participant complete this task for funding structure, leadership judges, and communication. Once complete, ask participants to share their responses with the group.

As a third or alternative activity, use the Framework for Court Governance Structure to ask participants to complete the third column about strengths and weaknesses their court has in each area.

Relevant Learning Objective

4. Conduct an organizational readiness assessment and identify areas and issues that require attention and resolution before adopting a governance structure.

Organizational Readiness¹⁶

Are conditions right for a court governance structure?

Carefully read each statement. Circle the number that most closely resembles your court.

- | | | | | | | | |
|---|---|---|---|---|---|---|--|
| 1. Organizational leaders are interested in establishing a shared leadership approach to managing the organization | 6 | 5 | 4 | 3 | 2 | 1 | The existing leadership prefers limited involvement by others in managing the organization |
| 2. The organization has adopted a common mission, vision and values for the organization | 6 | 5 | 4 | 3 | 2 | 1 | No formal establishment of mission, vision, and values |
| 3. Leaders have time to participate in governing board activities | 6 | 5 | 4 | 3 | 2 | 1 | Everyone is too busy with other, more pressing matters |
| 4. There is stability in the organization leadership | 6 | 5 | 4 | 3 | 2 | 1 | There is a volatile, political internal or external climate increasing the likelihood that both the leadership and organizational priorities will change |
| 5. There is an urgent and compelling reason to utilize a governance board structure | 6 | 5 | 4 | 3 | 2 | 1 | An urgent, compelling reason, need or opportunity is not present |
| 6. The organization is functions as an equal branch of government and routinely exercises control over finances, personnel, and space | 6 | 5 | 4 | 3 | 2 | 1 | The organization functions as department within the executive branch; little or no authority to manage finances, personnel, and space |
| 7. The organization routinely adopts both short and long term plans | 6 | 5 | 4 | 3 | 2 | 1 | Little or no planning process established; goals and objectives are unclear and not shared across the organization |
| 8. The organizational culture supports an open and transparent governance structure that facilitates organizational decision-making | 6 | 5 | 4 | 3 | 2 | 1 | The existing leadership wants primary control over this |

¹⁶ Adopted with permission of Brenda J. Wagenknecht-Ivey, Ph.D., Praxis Consulting.

Curriculum Design Court Governance

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 9. Judges and administrators work collaboratively to address organizational issues to improve the administration of justice | 6 | 5 | 4 | 3 | 2 | 1 | Judges stick to judging, administrators stick with managing; little or no collaboration on issues related to the organization |
| 10. The outcome to be achieved and the benefits to be gained by utilizing a governance structure are clear | 6 | 5 | 4 | 3 | 2 | 1 | The desired outcomes and benefits to be gained are unclear; Judges and staff are wondering why the court needs a governance structure |

Instructions:

1. Add up the numbers and place the total on the line below.
2. See the table below for interpreting your score.
3. Compare and contrast how you rated your organization's readiness to do strategic planning and how other members rated the organization's readiness. Discuss the differences.
4. Determine what steps you/others need to take to increase the likelihood of having a successful strategic planning effort.

Total Score: _____

INTERPRETING YOUR RESULTS

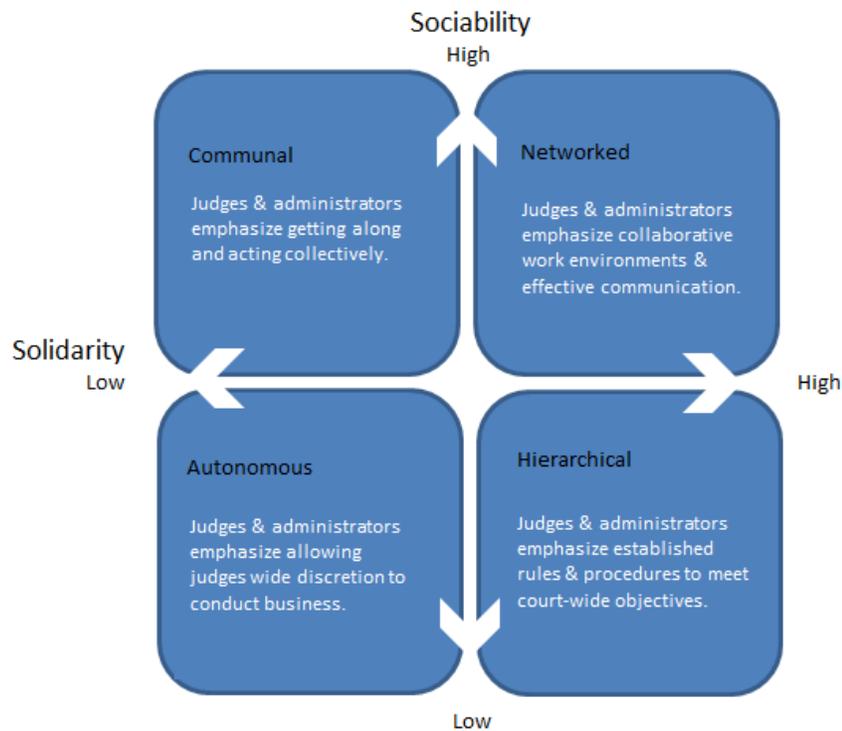
Total Score:

| | |
|---------|--|
| 50 – 60 | GREEN LIGHT Proceed with your planning effort. |
| 30 – 49 | CAUTION Identify the areas that need attention; take the necessary steps and time to improve those areas and then proceed deliberately and carefully. |
| < 30 | STOP Do not proceed with your planning effort at this time; take the necessary steps and time to build support for the planning effort before proceeding; only proceed once you have successfully addressed the areas that need attention. |

Organizational Readiness

Using the Ostrom/Hanson Culture Matrix below, answer the following questions. Be prepared to share your answers with the class.

1. Where does your court fit in the model below?
2. What obstacles and opportunities does your court have?
3. Apply the model to the following areas:
 - Funding Structure
 - Leadership Judges
 - Communication



| Framework for Court Governance Structure | | |
|---|---|--|
| Determine Commitment | <ul style="list-style-type: none"> • Shared Leadership • Common Vision, Mission and Values • Accountability and Transparency • Judicial and Organizational Independence • Short and Long Range Planning • Executive Component | |
| Assess Readiness | <ul style="list-style-type: none"> • Court Culture • Funding Structure • Leadership Judges • Communication | |
| Identify Key Participants | <ul style="list-style-type: none"> • Leadership Judges (presiding/chief judges) • Court Executive Officers (court administrator) • At-large appointed judges • Management Representatives • Employee Representatives | |
| Define Governance Model | <ul style="list-style-type: none"> • Current state of governance • Potential useful governance frameworks • Applicable governance requirements • Governance scope and needs | |
| Design Governance Model | <ul style="list-style-type: none"> • Define the purpose • Formally adopt bylaws and/or operating procedures • Build the structure • Develop change management plan • Strategize with Judicial Officers and Court Managers | |
| Implement and Communicate | <ul style="list-style-type: none"> • Define how it facilitates the desired future • Understand the impact on operations • Identify the effect on Judicial Officers and Court Employees • Seek stakeholder and partner support | |

Activity Five: Planning and Managing the Evaluation

Purpose

The purpose of this activity is to begin the process of defining the evaluation needed for the new or revised court governance structure.

Notes about Using the Activity

Ask each participant to answer the questions in conjunction with the new or revised court governance structure he or she plans to implement. Once they have completed the worksheet, ask for volunteers to share their plans.

Relevant Learning Objective

5. Develop and implement a comprehensive governance structure evaluation process that will enhance effectiveness and encourage improved planning.

Planning and Managing the Evaluation

Complete the following questions to build your evaluation approach for the new or revised court governance plan. Be prepared to share your approach with the class.

1. What will be evaluated?
2. What are the expectations of the evaluation?
3. What information and/or data will be needed?
4. Who will be involved in the information and data collection?
[recommend creating a table or matrix that diagrams which pieces of information are collected from whom]
5. Who shall receive the collected information and data collection?
6. How will the evaluation be conducted?
7. Who will be conducting the evaluation?
8. What is the type of evaluation approach (qualitative/quantitative or a mixture)?
9. What is the methodology of the evaluation?
10. How will the results be managed and used?

Bibliography

- Aguirre, D. & Alpern, M. (Summer 2014). 10 Principles of Leading Change Management. *strategy+business*, 75.
- National Governors' Association. (2015). Twenty Questions – Key questions every governing board should ask itself. *All Party Parliamentary Group on Education Governance and Leadership*.
- Basu, C. B. (2015) Weakness of Hierarchical Organizational Structures. *Demand Media*.
- Bunjevac, T. (2011) Court Governance In Context: Beyond Independence. *International Journal for Court Administration*.
- Business Dictionary “*Governance Definition*,” www.businessdictionary.com.
- Cushman, R. C. (2002). *Guidelines for Developing a Criminal Justice Coordinating Committee*. U.S. Department of Justice, National Institute of Corrections.
- Deloitte Development, LLC. (2013). *Developing an effective governance operating model*.
- Democracy Web “*Rule of Law: Essential Principles*,” www.democracyweb.org.
- Durham, C. M. & Becker, D. J. (2013) A Case for Court Governance Principles. Harvard Executive Session for State Court Leaders in the 21st Century.
- Federal Judicial Center “*Inside the Federal Courts: Federal Court Governance and the Other Branches of Government*,” www.fjc.gov
- Gallas, Geoff (Spring 1976) “The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach,” *The Justice System Journal*
- Greacen, J. M. (Winter 2002) An Administrator’s Perspective: Trial Court Governance. *The Judges’ Journal*.
- Institute on Governance “*Defining Governance*,” www.iog.ca/defining-governance.com.
- Intuit QuickBase. (2012). 10 Best Practices in Change Management. *The Fast Track*.
- Judicial Council of California (2016). “Judicial Council Governance Policies.”
- Lefever, R. D. The Integration of Judicial Independence and Judicial Administration: The Role of Collegiality in Court Governance. *The Court Manager*, Volume 24, Issue 2.
- Martin, J. A., Wagenknecht-Ivey, B. J., Weller, S., & Price, D. A. (Spring 1997). Shaping the Future of Justice: Strategic Planning in the Courts. *The Judges’ Journal*.
- McQueen, M. C. (2013). Governance: The Final Frontier. *Harvard Executive Session for State Court Leaders in the 21st Century*
- Meehan, C. L. (2015). Flat vs Hierarchical Organizational Structure. *Demand Media*.
- MindTools, “*Change Management – Making Organization Change Happen Effectively*,” www.mindtools.com.

Minnesota Judicial Council “*Bylaws of the Minnesota Judicial Council,*”
www.mncourts.gov/MinnesotaJudicialCouncil.aspx.

Minnesota Judicial Council “*Overview – Mission Statement of the Judicial Council,*”
www.mncourts.gov/MinnesotaJudicialCouncil.aspx.

Morgan, J. (2015) The 5 Types of Organizational Structures: Part 1, The Hierarchy. *Forbes*.

Morgan, J. (2015). The 5 Types of Organizational Structures: Part 2, Flatter Organizations. *Forbes*.

Mundell, B. R., and Jefferson, W. B. (2013). Herding Lions: Shared Leadership of State Trial Courts. *Harvard Executive Session for State Court Leaders in the 21st Century*.

National Center for State Courts. (July 2012). *Principles for Judicial Administration*. Retrieved at:
www.ncsc.org

National Center for State Courts. (2014). The Verdict Is In: Judge and Administrator Perceptions of State Court Governance. *Justice System Journal*. 35(4), 344-361.

Ostrom, B., Ph.D. & Hanson, R. Ph.D. (2010). *High Performance Framework: A Road Map for Improving Court Management*. Williamsburg, VA: National Center for State Courts.

Ozyasar, H. What Are the Differences Between Flat & Hierarchical Organizations? *Demand Media*.

Pratt, E. M., PMP. (2011). *Applying a Life Cycle Framework to Implementing a Governance Model*.

Project Management Institute Virtual Library – www.PMI.org.

Prosci. Communication Checklist – best practices in managing change. *Change Management Tutorial Series, 2005 Best Practices in Change Management*.

The World Justice Project “*What is the Rule of Law?*” www.worldjusticeproject.org/what-rule-law.

The Wheel “*Management vs Governance,*” www.wheel.ie.

Thibaut, J. & Walker, L. (1975). *Procedural Justice: A Psychological Analysis*. Hillsdale, N.J.: Lawrence Erlbaum Associates. Pp. vii, 150.

Tyler, T. R. (2008). Procedural Justice and the Courts. *Court Review - The Journal of the American Judges Association*. Volume 44, Issue 1/2.

United Nations Rule of Law, “*What is the rule of law?*” www.unrol.org.

United States Agency International Development (2008; Updated 2010). *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework*. Retrieved from: www.usaid.gov.

Utah Courts, “*Judicial Council Rules of Judicial Administration,*”
www.utcourts.gov/resources/rules/ucja/.

Washington, E. T. & VanDeVeer, L. R. (2013). Sustainable Court Governance: The Critical Role of Strategic Management. *Harvard Executive Session for State Court Leaders in the 21st Century*.

Wikipedia, “*Governance,*” www.wikipedia.com.

Zaffarano, Mark A. (1985). “Understanding Leadership in State Trial Courts: A Review Essay,” *Justice System Journal*. Volume 10, No. 2

Zarinpoush, F. (2006). Project Evaluation Guide for Nonprofit Organizations: Fundamental Methods and Steps for Conducting Project Evaluation. *Imagine Canada*.