



# Report of the ATJ Committee

June 10, 2010



## Table of Contents

<i>A. Letter of Transmittal</i> .....	3
<i>B. Committee Members</i> .....	4
<i>C. Executive Summary</i> .....	5
<i>D. Report</i> .....	14
I. Introduction.....	14
II. ATJ Principles .....	15
III. Major Opportunities for Transformation and Impact: ATJ Principles in Action.....	18
A. Introduction.....	18
B. Transformation and Impact Topics.....	20
1. Assistance for the Self-Represented .....	20
2. Disparate Treatment and Language Issues in the Courtroom Environment.....	23
3. Child Welfare including the Indian Child Welfare Act.....	28
4. Indigent Defense .....	31
5. Indigence, Fees, Fines and Costs .....	33
6. Problem-solving Courts.....	35
7. Ongoing Mechanisms for Planning, Coordination, and Evaluation .....	37
IV. Implications for Judicial Crossroads Committees.....	41
A. Technology.....	41
B. Business Impact.....	42
C. Structure & Resource .....	42
V. Recommendations for Low Cost Present Opportunity Innovations.....	44
VI. Acknowledgements.....	51

## *A. Letter of Transmittal*

June 10, 2010

Barry L. Howard  
Lipson Neilson Cole Seltzer & Garin PC  
3910 Telegraph Road, Suite 200  
Bloomfield Hills, MI 48302

Edward H. Pappas  
Dickinson Wright PLLC  
38525 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304

Dear Messrs. Howard and Pappas:

As co-chairs of the ATJ (ATJ) committee, it is our pleasure to submit the attached Report and Recommendations to the Judicial Crossroads Task Force. We encourage you to review the entire report and look forward to meeting with you on June 24, 2010.

As previously reported, the ATJ Committee began its work by adopting a set of core principles, which incorporate the constitutional precepts of due process, equal protection, and the right to counsel. With these ATJ Principles as our foundation, we developed recommendations that not only promote access to justice but, if adopted, will maximize efficiencies and achieve cost-saving benefits.

In particular, the ATJ Committee identified seven areas of transformation that are referenced in Section III of the report. We understand that implementation of a number of these proposals will require additional resources, but we believe the overall impact will result in substantial cost-savings to the justice system over time. Additionally, we offer several low-cost proposals that can be accomplished in the near future without significant additional funding. Those recommendations are found in Section V of the report.

Because we recognize that efforts to enhance access to justice extend beyond the judicial branch, a system-wide approach is reflected in both the transformational areas and the ATJ Committee's complete report, "Michigan's Blueprint for Justice." The Blueprint is available in its entirety as an addendum and contains our Committee's full set of recommendations as well as further opportunities for planning, coordination, and collaboration beyond the work of the Judicial Crossroads Task Force.

As this aspect of our work ends, we must acknowledge those who spent countless hours researching and analyzing issues, and drafting recommendations. Accordingly, we want to thank our committee members who enthusiastically delved into this time-intensive project, including the chairs of its work groups: Dawn Van Hoek, Hon. Denise Page Hood, Linda Rexer, Terri Stangl and Lorraine Weber. We extend our gratitude to those who assisted the committee with data collection by responding to our grids and surveys. We certainly benefitted from the dialogue with our fellow co-chairs and the members of their respective committees. We are especially grateful to our staff liaisons, Candace Crowley, Nkrumah Johnson-Wynn, and Gregory Conyers for their tireless, and effective and efficient support.

Sincerely,

Susan M. Moiseev  
Judge, 46th District Court  
26000 Evergreen Road  
Southfield, MI 48076

E. Christopher Johnson, Jr.  
Director, Graduate Program Corporate  
Law & Finance  
Thomas M. Cooley Law School  
2630 Featherstone Road  
Auburn Hills, MI 48326

## **B. Committee Members**

**E. Christopher Johnson, Jr.**, Co-Chair, Thomas M. Cooley Law School, Auburn Hills MI

**Hon. Susan M. Moiseev**, Co-Chair  
46th District Court  
Southfield MI

**Elizabeth M. Arnovits**  
Michigan Council on Crime and  
Delinquency, Lansing MI

**H. Lynn Jondahl**  
Okemos MI

**C. Patrick Babcock**  
Lansing MI

**Sister Monica Kostielney**  
Michigan Catholic Conference,  
Lansing MI

**Hon. Alfred M. Butzbaugh**  
Berrien County Trial Court 2nd Judicial  
Circuit, Saint Joseph MI

**Michael K. Lee**  
Law Offices of Lee and Correll,  
Southfield MI

**Hon. Timothy P. Connors**  
22nd Circuit Court, Ann Arbor MI

**Linda Rexer**  
Michigan State Bar Foundation,  
Lansing MI

**Judith K. Cunningham**  
Oakland County Office of Corporation  
Counsel, Pontiac MI

**Ronald Schafer**  
Ionia County Prosecutor's Office,  
Ionia MI

**J. Otis Davis**  
Detroit MI

**Alicia J. Skillman**  
Triangle Foundation, Detroit MI

**Robert Fair Gillett**  
Legal Service of South Central Michigan,  
Ann Arbor MI

**Terri L. Stangl**  
Center for Civil Justice, Saginaw

**Hon. Libby Pollard Hines**  
15th District Court, Ann Arbor MI

**Hon. Cynthia Diane Stephens**  
Michigan Court of Appeals, Detroit  
MI

**Mary I. Hiniker**  
Institute of Continuing Legal Education,  
Ann Arbor MI

**Dawn Van Hoek**  
State Appellate Defender Office,  
Detroit MI

**Hon. Denise Page Hood**  
US District Court Eastern District of  
Michigan, Detroit MI

**Lorraine H. Weber**  
Michigan Supreme Court, Lansing  
MI

**Hon. David A. Hoort**  
8th Circuit Court, Ionia MI

**Kate Birnbryer White**  
Elder Law of Michigan Inc, Lansing  
MI

**Benjamin D. Inquilla**  
Farmworker Legal Services, Bangor MI

Special thanks to **Hon. Fred M. Mester** who assisted the committee through correspondence.

## ***C. Executive Summary***

### **I. Mission of the ATJ Committee**

The Judicial Crossroads Task Force Access To Justice (ATJ) Committee, appointed in October 2009, was asked to identify constitutional, statutory, court rule, or other changes that could be implemented to overcome barriers to access to justice in light of current funding and other challenges. The committee agreed that overcoming these barriers would require a system-wide approach; an effective justice system is more than what happens in courts and entails coordination of efforts by judicial and extra-judicial stakeholders. The committee also articulated guiding principles as touchstones for its work and identified two overarching questions: (1) what are the economic and demographic/diversity barriers to access to justice; and (2) what ongoing methods can be used to facilitate the planning, coordination, and evaluation of access efforts? The committee identified seven areas of transformation and impact in response to the first question and proposed creating a Justice Advisory Board for Access and Fairness to address the second.

### **II. Three Access and Fairness Themes: The Guiding Principles in Action**

Three important themes emerged throughout the committee's work:

#### **Efficiency and Effectiveness through a Continuum of Services**

The justice system should be viewed as a continuum whose components affect each other. There are many interrelated aspects in a system-wide view of access to justice. If this continuum is seen as services before people get to court, in court, and after court. Chief among those is that having pre-court assistance can keep a problem from growing worse or can better help resolve it.<sup>1</sup>

#### **Public Trust and Confidence in the Justice System**

People lose trust and confidence in the justice system unless they have meaningful access to it. All of this committee's transformational topics articulate ideas that would enhance meaningful access and fairness, and reduce the barriers that prevent it.<sup>2</sup>

---

<sup>1</sup> Some examples include more effective counsel for indigent defense. This not only meets a constitutional mandate but prevents huge downstream costs from wrongful convictions or unnecessary prison costs. Support for the self-represented results in correct paperwork that reduces unneeded filings and adjournments and helps judges make speedier decisions. Linking litigants with community services can help children and their families solve underlying issues and avoid the need to return to court due to chronic unsolved problems. For problem-solving courts, community outreach and ongoing judicial monitoring help address problems that brought the person to court in the first place. Clarifying that poor persons can receive fee waivers and are eligible for payment plan alternatives prevents unpaid costs from multiplying beyond their control.

<sup>2</sup> For example, non-English-speaking persons need interpreters to fully participate in court processes. Indigents who face jail or are not offered alternatives to fees or fines because they have no ability to pay have a negative view of the justice system, as do those wrongly convicted because of lack of effective counsel. Children, whose encounters with the courts do not include links to needed community services, may grow up without respect for the system. Non-majority persons experiencing disparate impact in the courtroom will feel disenfranchised and unfairly treated.

## **Ongoing Planning, Coordination and Evaluation**

Mechanisms for planning, evaluation, collaboration and change management are necessary to ensure that the Michigan justice system remains effective into the future in light of the changing nature of and increased demands on it. The committee proposed the Justice Advisory Board to address this, together with the additional planning, coordination and evaluation recommendations described under the transformation and impact heading below.

### **III. Justice Advisory Board for Access and Fairness**

The committee viewed ongoing planning, coordination and evaluation as central to implementing its recommendations. Duplications or gaps in services can be avoided when key players within the justice community communicate with each other rather than operate in silos without collaboration or accountability. Therefore, the committee recommends the creation of a Justice Advisory Board for Access and Fairness (Board), with membership reflecting key judicial and extra-judicial stakeholders.<sup>3</sup> The Board would convene twice each year to review progress, acknowledge accomplishments, discuss new developments and facilitate continued coordination toward access and fairness goals. The Board would develop tools and propose mechanisms for the courts and other stakeholders to evaluate whether the Access and Fairness goals are being achieved. The Board would also work toward more consistent and uniform procedures, forms, data and systems in order to support greater system-wide coordination. The Board would be convened by the Chief Justice of the Michigan Supreme Court to underscore its broad scope and its importance in enhancing access and fairness.

### **IV. Seven Areas of Transformation and Impact**

The committee chose seven out of the 23 topics it examined as transformational<sup>4</sup> in light of both current exigencies and longer term impact potential. Taken together, they reflect a system-wide approach to address challenges facing those with economic, demographic or diversity barriers to access to justice. The strategies can enhance access to justice and fairness, maximize limited resources, and in some instances even facilitate savings and offer opportunities for early and more effective intervention or follow up. This will help courts and court users better solve or alleviate problems. A longer report on each topic, including a complete presentation of recommendations as well as data, findings and other information supporting those recommendations, appears in the addendum to the report, Michigan's Blueprint for Justice (Blueprint).

---

<sup>3</sup> The Board will engage a wide range of justice system stakeholders, such as the Michigan Supreme Court, State Court Administrative Office, Judicial Associations, State Bar of Michigan, Michigan State Bar Foundation, Legislature, Executive Branch, legal aid providers (civil and criminal), non-governmental organizations and others whose ongoing involvement will help promote action and collaboration.

<sup>4</sup> Criteria used to define transformational included: having a current opportunity for action; avoiding significant injustice or loss of resources; impacting a large number of people; touching many parts of the justice system; being part of a swelling need; and facilitating major positive change.

## **Ongoing Mechanisms for Planning, Coordination and Evaluation**

The opportunity to build on the work of the Judicial Crossroads Task Force and other ATJ initiatives could be lost without a plan to convene a group tasked with reviewing progress, discussing new developments and facilitating continued coordination. Further, joint efforts, including both courts and others, can help centralize support, avoid duplication of efforts and promote more uniform processes. Better evaluation of needs and services at the court, community, program and system level can help procure additional resources by demonstrating why an investment is necessary and why it will pay off. Evaluation also focuses improvement efforts where they are needed. Recommendations include:

1. The Justice Advisory Board should be established, with the membership noted in footnote 3.
2. The Board will engage a wide range of justice system stakeholders by having them become signatories to an Access and Fairness Agenda which will evidence their commitment to the ATJ Guiding Principles and related goals.
3. The Board should seek assistance from experts as needed to plan for and develop data and information needed for evaluating progress and results. One of the Board's roles will be to facilitate more consistent, uniform procedures, forms, data and systems.
4. The Board should also evaluate its own efforts annually to determine how it can be most effective in assessing results and promoting action and coordination in addition to addressing evaluation of access and fairness goals as described above.

## **Assistance for the Self-Represented**

A large and growing number of persons represent themselves in civil matters, and most have no help doing so. Only a few self-help centers exist in the state and other self-help resources are fragmented, duplicative and of uneven quality. Court forms and procedures are not uniform or easily understood and not all judges and court staff have received self-help training. Improved, centralized support would provide early intervention, reduce unnecessary or rejected filings and adjournments, and facilitate speedier decisions and higher compliance. Recommendations<sup>5</sup> include:

1. Establish a statewide self-help web site pilot project linked to pilot self-help centers.
2. Develop a comprehensive self-help curriculum for training judges and court staff.
3. Implement rule, ethics and related changes to better facilitate self-help assistance.
4. Utilize court data systems to improve self-help services statewide.
5. Ensure that all courts accept and use uniform SCAO forms.

---

<sup>5</sup> These recommendations are very similar to action items being addressed by the new Solutions on Self-Help (SOS) Task Force appointed by Chief Justice Kelly in April, 2010; access and fairness partners should support this effort.

6. Improve the uniformity and understandability of court forms for all court users through strategies such as the use of plain English and other methods to address literacy and language barriers whenever possible.

### **Disparate Treatment and Language Issues in the Courtroom Environment**

Perceptions of discrimination, insensitivity and lack of cultural competence in relation to non-majority groups challenge the credibility, effectiveness and equitable nature of our judicial process. Without this competence, there can be little public confidence and trust in the justice system. Language issues compound this situation; 850,000 Michigan residents speak a language other than English in the home. Moreover, interpretation services in Michigan courts are underfunded, inconsistently applied across courts and, in many instances, in violation of the constitutional requirements for due process and equal protection. An inadequate interpreter system exposes Michigan courts to potential legal liability and to the loss of federal funding. Recommendations include:

1. The Michigan Supreme Court should promulgate a Commitment to Service and Procedural Fairness pledge for each court to adopt and post publicly.
2. Educate judges and quasi-judicial officers about implicit and explicit bias, procedural fairness and the impact of discrimination and stereotyping on court processes.
3. Evaluate all court administrative processes, forms, manuals, bench books, jury instructions and correspondence to ensure they are written in plain English and to identify cross-culturally inappropriate language and explicit and implicit biases.
4. Collect accurate and useable data on the impact of court procedures and decisions on specific groups of court users to identify any disparate treatment and impact in our courts.
5. Judicial leadership should create collaborative relationships with knowledgeable individuals and organizations that specialize in the unique needs and cultures of the diverse communities served.
6. The Michigan Supreme Court should articulate a clear policy on the importance of diversity of court personnel and continue efforts to increase the diversity of the judges, quasi-judicial officers, administrative staff and other persons used by courts through contract or court annexed processes.
7. Michigan courts must educate and collaborate with the legislature to seek adequate funding for interpreting services as well as the costs of managing court interpreter programs.
8. The Michigan Supreme Court should work with the legislature to revise Michigan law pertaining to the use of foreign language interpreters, and identify reasonable and adequate funding for that effort. In the interim, the Court should issue an Administrative Order that requires that until there is permanent statutory language, all

judges be directed and expected to appoint state certified/approved interpreters for limited English proficient (LEP) and non-English speaking litigants in as many court proceedings as possible, recognizing fiscal and other limitations.

9. Michigan courts should establish a process for enforcing judicial compliance with those policies.
10. The State Court Administrative office (SCAO) should develop, offer, and require training for all judges and court administrators on the importance of using competent court interpreters, on cultural diversity and culturally based behavior differences, and on the importance of following court policies regarding usage of court interpreters.
11. SCAO should explore and support methods to better identify and track needs for interpreters in the system and establish an ongoing method for monitoring the use of interpreters, collecting data on issues related to language proficiency and interpreter use.

### **Child Welfare, including the Indian Child Welfare Act**

A large number of children wind up in the juvenile justice and abuse and neglect system despite the work of many groups in Michigan. This is a more costly outcome than providing services before children get to the justice system. Children and families of color, especially African American and American Indian children, experience significantly worse outcomes in the child welfare system than do non-minority children. Even with guidance provided by the Indian Child Welfare Act, courts have often failed to recognize the cultural and social standards prevailing in Indian communities and families. Recommendations include:

1. Direct scarce resources to early childhood community-based services so that children and families are nurtured and supported, and punitive or out-of-home placement and contact with the child welfare and juvenile justice system is avoided.
2. Increase strong judicial leadership and effective case docket management as a method of ensuring quality representation and reducing the length of time children wait for a permanent home.
3. Collect, analyze, and report data that can be used strategically to improve the performance of the system as measured by outcomes for families and children at each critical decision-making point.
4. Mandate training and continuing legal education for lawyers and judges so that the public's right to competent representation and fair adjudication is realized
5. Review child welfare policies, procedures, programs and contracts to determine if they disadvantage children, youths and families of color. Develop and enforce policies and practices that create a culture of inclusion, embrace diversity, and engage families and communities of color.
6. Engage parents, youth and children of color (including extended families, tribal members, caregivers, and others who are significant in the life of the child and family) as true partners to shape the child welfare environment.
7. Institutionalize ongoing partnerships between the Michigan Supreme Court, its administrative office, the tribal courts, the Michigan Indian Judicial Association, lawyers

and other stakeholders in Indian/First Nation issues with the stated goal of preserving and improving meaningful access to justice in our state courts for Indian/First Nation people. Establish programs to foster awareness, acceptance and compliance by state courts with current tribal law.

8. Support the enactment of federal ICWA concepts into Michigan law.

### **Indigent Defense**

The Committee believes that indigent defense presents a particularly urgent need for action by the Task Force. Michigan has tolerated a system so lacking in resources that assigned counsel can only occasionally provide the effective assistance of counsel that is guaranteed by the state and federal constitutions. Litigation is likely to require costly remedies. Errors by under-resourced defense counsel produce huge downstream costs for the State of Michigan. Wrongful conviction lawsuits are proliferating, and putting local government budgets in jeopardy. The problem affects thousands of Michigan defendants who are indigent, and virtually every Michigan taxpayer is affected, with precious tax revenues going to support a wasteful indigent defense system. Recommendations include:

1. The Crossroads Task Force should make indigent defense its top legislative priority, supporting HB 5676 or any substitute that fully embodies the Eleven Principles for an Effective Public Defense System approved as policy by the State Bar in 2005.
2. The Michigan legislature should consider statutory changes related to indigent defense which can produce costs savings and facilitate adequate state funding for a public defense system.
3. The Michigan legislature should assume full and ongoing funding of the constitutionally-mandated right to counsel for indigent defendants.
4. Indigent defense service providers should collaborate with civil legal aid providers to help defendants and their families have access to civil assistance as needed.

### **Indigence, Fees, Fines and Costs**

Michigan's judicial system imposes and collects fees, fines and costs in both civil and criminal cases. It is reasonable to impose these legal financial obligations (LFOs) on individuals who have the ability to pay, but imposing the same on individuals who do not have the ability to pay burdens an individual's ability to access the courts. Unintended consequences for litigants, courts, and the public include limiting access to justice for those unable to pay and increased costs for taxpayers when these persons are prosecuted and jailed for failure to pay even modest court-related obligations. There is also a lack of consistency about who qualifies for a waiver of fees and costs, as well as appointed counsel, under definitions of indigence. Recommendations include:

1. Produce a set of clear and consistent standards, court rules and legislation about who must pay and who is indigent, and how payment may be enforced in the courts, and reinforce them with SCAO policies and MJI training materials.

2. Ensure that any improved statewide system for aggregating court data ensures that local courts have a way to report information about: a) the number of fee waivers requested and granted; b) when legal financial obligations (LFOs) are imposed; and c) collection efforts, enforcement activity, and incarceration for non-payment of LFOs.
3. Clarify the definition of "sufficient bona fide efforts" to repay LFOs and the types of alternatives to incarceration available to courts.
4. Reform the driver responsibility act to address these issues.
5. Limit the extent to which court fines, fees, and costs are assessed and used to shore up budget deficits in the state. Such obligations, especially when imposed on parties with limited means, may require court and county resources to assess a party's ability to pay, and to enforce the obligations.

### **Problem-solving Courts**

Problem-solving courts, sometimes referred to as specialty courts in Michigan, strive to address underlying problems such as drug addiction, domestic violence, mental illness and homelessness that bring people into the criminal justice system. Expanding the current eligibility criteria and jurisdictional restrictions would make the benefits accessible to more people. Communities would be safer as recidivism is reduced. Regional problem-solving courts in rural areas could share resources and save costs. Amending the Code of Judicial Conduct to clearly allow judges to participate fully in problem-solving courts would increase access and ensure better outcomes for litigants, victims and the community. Recommendations include:

1. Expand admission into specialty courts to include non-residents of the court's jurisdiction, or transfer jurisdiction to a specialty court closer to the residence of the defendant, or allow neighboring counties to share resources and use regional specialty courts. This may require a change in statute, court rule, judicial assignment and/or administrative order.
2. Expand the eligibility criteria for specialty courts to include and target high risk offenders, and/or restrict local control by modifying the definition of "violent offender," and make admission contingent on completion of a risk and needs assessment.
3. Improve links to services so that it is easier to access mental health and substance abuse treatment in all specialty courts. Neighboring communities should share resources.
4. Reallocate existing court resources to target cases with complex underlying problems by sentencing from the bench and referring to probation for pre-sentence reports only cases with high risk offenders or special needs.
5. Bring people and agencies together, including the defense bar as well as the prosecutor, to identify gaps and reduce duplication of services, and coordinate and train across systems to save costs and improve outcomes.

6. Support legislation such as SB 794 and SB 795 that would allow certain drunk driving (OWI) court participants to receive a limited restricted license while they are participating in sobriety/OWI court.
7. Clarify the existing intent and application of the Michigan Code of Judicial Conduct to expand the capacity of judges to participate fully in problem-solving courts by adopting the 2007 ABA Model Code of Judicial Conduct (CCJ) as amended by the 2008 Resolution No. 13 of the National Council of Juvenile and Family Court Judges supporting Joint Resolution 8 of CCJ/COSCA.

## **V. Full ATJ Committee Report and Michigan's Blueprint for Justice**

The committee's full report more completely records and explains key strategies for addressing the economic, demographic and diversity barriers to access to justice that face the increasingly diverse and underrepresented groups of court users. Importantly, it notes the cost-effectiveness of many of the recommendations as well as their impact on both effectiveness and efficiency in the courts and on those outside the courts who provide related services. For each transformational topic, Section III responds to the following questions: what is its current status; what is in most jeopardy; what opportunities exist now and in the expected future; and what immediate steps should be taken?

Also included in the full report are sections which collect the ATJ Committee recommendations relevant to the other three Judicial Crossroads Task Force Committees - Technology, Business Impact and Structure and Resources. In addition, Section V lists low-cost proposals and those which represent present opportunities for action. A few examples are to define specialized areas for *pro bono* services to be adopted by firms that agree to provide such services throughout the state; expand access to expungement and other mechanisms to avoid unnecessary employment barriers for ex-offenders; include the problem-solving courts model in training for judges and lawyers; and ensure that all courts accept and use uniform SCAO forms even if they also accept locally-modified versions.

The report's addendum contains more details about the committee's process, information about a web page where the committee's complete recommendations can be accessed,<sup>6</sup> and the reports on all 23 committee topics compiled in an addendum titled Michigan's Blueprint for Justice. Many additional suggestions appear in the Blueprint. A few examples are to educate judges and court staff to triage conflicts by assessing benefits of mediation; increase accommodations for older adults, such as large type forms and technology to assist with vision and hearing impairments; institute a one-step process using online resources in which jurors are summoned and qualified simultaneously; and encourage the Court and the State Bar to study the options for expanding the right to counsel (civil Gideon) in civil adversarial proceedings where shelter, sustenance, health, safety, and child custody are threatened.

---

<sup>6</sup> The web page will use the database created to organize the committee's more than 200 recommendations so that users can easily locate those coded in two dozen categories, e.g. those that implicate training or involve legislative changes.

## **VI. Conclusion**

Given the breadth of the ATJ arena and the number of topics that relate to access and fairness, the ATJ Committee achieved remarkable consensus, consistent with its guiding principles, in prioritizing just seven of the 23 areas it examined. This Executive Summary highlights information about why the seven transformational topics have particular potential to improve services, obtain important returns on investments and prevent future problems. It emphasizes the importance of a system-wide approach and the creation of coordination, planning and evaluation mechanisms involving both judicial and extra-judicial stakeholders. It frames these focus areas within the committee's overall work product, Michigan's Blueprint for Justice. In this context, the ATJ Committee is pleased to offer this Executive Summary and its full report for consideration by the Judicial Crossroads Task Force.

June 2010

## ***D. Report***

### **I. Introduction**

This report is submitted by the ATJ Committee (ATJ Committee) of the Judicial Crossroads Task Force. It explains the key strategies identified by the committee to address the barriers to access to justice facing the increasingly diverse and underrepresented groups of court users. The Committee considered economic, demographic and diversity barriers in the course of identifying those strategies.

The common thread woven throughout this report is articulated in the ATJ Committee's guiding principles (ATJ Principles), and commentary described more fully in Section II. These core principles were referenced throughout the committee's deliberative process to ensure that its recommendations met these ATJ benchmarks.

The ATJ Principles affirmatively state that efforts to address access and fairness issues must include a system-wide approach, and ongoing mechanisms that bring stakeholders together to continue planning, coordination, and evaluation.<sup>7</sup> We defined "system-wide" as all relevant components of the justice system statewide, not just the courts. The term "ongoing mechanisms" refers to the development of a defined process to convene ATJ partners to maximize resources, coordinate improvements, and respond to emerging needs.

The Committee believes that the principles not only promote fair and effective outcomes but also facilitate efficiencies and cost savings. The Committee requests that the components and principles always be published with the accompanying commentary.

Section III identifies seven areas, which encompass our individual and collective vision at the current time. The seven areas were selected because they offer the greatest opportunities for transformation. They address the current challenges facing Michigan's justice system and lay a foundation for long-term solutions.

While Section III contains brief descriptions of each of the seven areas, the complete report provides a broader context for the transformational areas and serves as a record of all 23 topic areas examined by the ATJ Committee. This collection of data, models, findings, and recommendations is compiled in an addendum titled Michigan's Blueprint for Justice and is available not only to the Task Force but also to those who will continue to work toward access to justice for all in the future.<sup>8</sup> We also included, in Section V of this report, low-cost proposals that represent present opportunities for action.

---

<sup>7</sup> The ATJ Committee felt strongly that this broader perspective was needed.

<sup>8</sup> In December 2009, the ATJ Committee undertook extensive research, enlisted additional experts, consulted with constituent and focus groups, and began drafting over 200 recommendations. More information about the committee's methodology can be found in the addendum.

## II. ATJ Principles <sup>9</sup>

### A. Essential Components of an Effective Justice System

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

**1. A system-wide approach with adequate resources to support it.**

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

**2. Effective ongoing mechanisms that involve key stakeholders in planning, evaluation, collaboration and change management to ensure the justice system remains effective into the future.**

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

### B. ATJ Guiding Principles

An effective justice system must:

---

<sup>9</sup> Resources used in drafting Essential Components and ATJ Guiding Principles include the American Bar Association (ABA) Principles of a State System for the Delivery of Civil Legal Aid and Self-Assessment Tool; ABA Principles of a Public Defense Delivery System; ABA Study of the State of Diversity in the Legal System, 2009; ATJ NY State Courts, ATJ Goals; Australian Government, Attorney-General's Department, A Strategic Framework for ATJ in the Federal Civil Justice System; Canadian Judicial Council – State of Principles on Self-represented Litigants and Accused Persons; Conference of Chief Justices Resolution 22 and Conference of State Court Administrators, Resolution IV in Support of Problem-Solving Courts; Core Principles of Procedural Fairness and a Commitment to Service for Courts, Michigan Supreme Court; Maryland ATJ Commission Listening Events and Interim Report; Mississippi ATJ Strategic Plan; National Legal Aid and Defender Association Ten Core Values for the National Civil Legal Aid System; Pew Internet & American Life Project – Report: Internet, broadband and cell phone statistics; State Bar of Michigan Eleven Principles of a Public Defense Delivery System; Washington State ATJ Board, Statement of Principles and Goals and Washington State Courts, ATJ Technology Principles.

**1. Operate in a manner that engenders public trust and confidence.**

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

**2. Ensure adequate funding and resources.**

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

**3. Provide access to understandable information about services and ensure a full range of services.**

Information about the law and how to obtain self-help support and attorney assistance should be easy to find and understand. This information should be responsive to language, cultural and literacy needs, and written in plain English. Information about services and support should address needs that arise throughout the legal process, including identifying the legal problem, rights and responsibilities, substantive and procedural legal information, and the continuum of legal help available. Information about the availability of such things as alternative dispute resolution (ADR), self-help, limited representation, full representation, systemic advocacy and connections to related non-legal resources such as community services or government agencies should be widely distributed to all participants in the process.

**4. Provide system users with representation by a lawyer or legal counsel, as appropriate to their legal matter, including as required by the constitution.**

Because access to a lawyer is often critical to access to and the fairness of the system, the system should ensure that there is access to counsel for all system users. While some legal questions can be resolved with simple information or self-help assistance others may be more complex, or more adversarial, or involve critical legal rights. This access should be part of a continuum of services appropriate to the subject and complexity of the matter, including a range of resources such as adequate self-help

resources for simple matters; unbundled services provided by a lawyer; clinic/hotline consultation services/active pro se assistance; adequately staffed legal services programs; , robust *pro bono* programs; a recognized right to counsel in critical civil proceedings; and quality assigned counsel in criminal cases where the right to counsel is mandated by the state or federal constitution.

**5. Promote coordination, quality, effectiveness and efficiency of services.**

All providers should comply with accepted ethical standards such as the ABA civil/criminal principles or ABA Standards for the Provision of Civil Legal Aid, in addition to the Michigan Rules of Professional Responsibility and the Canons of Judicial Ethics. Interdisciplinary training should be provided for judges, lawyers and others covering both substantive matters and techniques for effectively assisting litigants and others at all stages of the legal process as well as with other related needs. There should be mechanisms to ensure coordination and collaboration among judicial and extra-judicial aspects of the justice system, and to evaluate the services and the effectiveness of the collaboration. Efficiencies and other steps should be identified that can contribute to overall cost savings, e.g. common case management and data systems and centralized web-based information and self-help tools.

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

The use of standardized, SCAO forms should be required in all state courts. Uniform standards for determining indigence should be developed and used throughout the state. Access and fairness should be considered in the development of all rules, procedures and systems in the courts and broader justice system, along with a sensitivity to unique populations and legal issues that may exist. For example, ensuring that e-filing does not disenfranchise indigent persons without access to credit or a computer; that legalese or other language on forms does not impede ease of use and comprehension by non-lawyers. Judicial leadership toward these goals should be promoted.

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

Easy access to information or advice, such as web sites, self-help centers or hotlines, may help prevent legal problems or mitigate their impact, both helping users and reducing costs. Cross training of civil and criminal lawyers may help avoid some civil collateral consequences of criminal convictions. Identifying system changes could prevent future problems such as suspending child support obligations while the payer is imprisoned. The impact of fees and fines should be reviewed to avoid creating a system where those unable to pay have barriers to self-sufficiency, sometimes resulting in expensive jail time. Increased connections between courts and social services may assist in juvenile, child welfare, mental health or other cases involving vulnerable persons. The justice system should work in collaboration with community-based and governmental organizations so that people can obtain services that may help prevent further contact with the justice system.

8. **Use technology to achieve goals.**

Technology should facilitate access to information about the law and how to handle legal problems or obtain the assistance of a lawyer. Uniform protocols or common case management systems should help cases to flow smoothly, and make justice system administration and the exchange of information easier. The system should also be responsive to the digital divide, accommodating those who do not have access to high speed Internet or who need electronic resources in other languages or have cultural or literacy barriers to using electronic content. Changing technologies and uses should be consistently examined for opportunities to reach more people and for potential short term and long term cost savings.

### **III. Major Opportunities for Transformation and Impact: ATJ Principles in Action**

#### **A. Introduction**

Using the ATJ Principles noted above, the ATJ Committee identified the following areas of transformation and impact<sup>10</sup>:

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

All of these topics share three common themes discussed below. Taken together, the topics reflect a system-wide approach to challenges facing those with economic, demographic or diversity barriers to access to justice. The strategies identified have the potential to enhance access to justice for those in need. Importantly, they also can maximize limited resources and offer opportunities for earlier and more effective intervention or follow up to help courts and court users better solve or mitigate problems.

#### **Efficiency and Effectiveness through a Continuum of Services**

Repeated throughout these topics is the concept that services in the larger justice system should be viewed as part of a continuum in which all of the components affect each other. If this continuum is viewed as what happens before people get to court, in court, and after

---

<sup>10</sup> The ATJ Committee used the following criteria to decide which topics were “transformational:”

- i. opportunity: timing, efficiencies/savings, attention of the ‘system,’ ability to move it forward now, reinvestment opportunities
- ii. jeopardy: type and scope of risk, presence of significant injustice, loss of financial or other resources will occur
- iii. impact: numbers of people affected, their presence in the system, makes a difference to those in jeopardy and to the justice system
- iv. breadth: touches many parts of the system, affects many desired changes, broadly supported by a number of stakeholders
- v. urgency: swelling need, breaking point nearing, significant injustice, financial impact is immediate and significant
- vi. major, positive change: helps the system evolve to a higher, better place

court, there are many interrelated aspects in the transformational topics. Chief among those is that having pre-court assistance can keep a problem from growing worse, or better help resolve it.

Some examples:

- More effective counsel for indigent defense meets the constitutional mandate, and also prevents huge downstream costs from wrongful convictions or unnecessary prison costs.
- Support for the self-represented results in correct paperwork, reduces unneeded filings, processing time and adjournments, helps judges make speedier, better decisions and ensures that enforcement of outcomes is not a forgotten step.
- Linking litigants before and after court processes with community services will help children and their families improve their lives and potentially avoid the need to return to court due to chronic unsolved problems.
- For problem-solving courts, community outreach and ongoing judicial monitoring helps address underlying problems that brought people to court in the first place.
- Regarding fees, fines and costs, clarifying that poor persons can receive fee waivers and are eligible for payment plan alternatives prevents unpaid costs from multiplying beyond the control of indigent persons or causing additional contact with the courts and unnecessary hardship for their families.

### **Public Trust and Confidence in the Justice System**

People lose trust and confidence in the justice system unless they have meaningful access to it. All of the transformational topics articulate ideas that would enhance meaningful access and help overcome the barriers that prevent it. For example,

- People who do not speak English as their primary language need interpreters to fully participate in court processes.
- Indigents facing fees, fines or costs who encounter financial penalties or even jail because they have no ability to pay and are not offered alternatives have a negative view of the justice system.
- Those wrongly convicted because of lack of effective counsel have no confidence that they really had their day in court.
- Children, whose encounters with the courts do not include links to needed community services, will grow up without respect for the system.
- Non-majority persons experiencing biased behaviors or disparate impact in the courtroom will inevitably feel disenfranchised and unfairly treated by our justice system.

## **Ongoing Planning, Coordination and Evaluation**

In light of the changing nature of and increased demands on the Michigan justice system, mechanisms for planning, evaluation, collaboration and change management are essential to ensure that it remains effective into the future. A simple system designed to bring together key stakeholders at defined intervals to review progress, discuss new developments and facilitate continued coordination will build on the Crossroads process and Michigan's existing network of ATJ groups.

- In a time of scarce resources, our system of justice cannot afford multiple groups reinventing the wheel instead of sharing it.
- Gaps exist in services if key players fail to communicate with each other in planning and operating in silos without collaboration and coordination.
- Better and more coordinated evaluation will lead to helpful improvements, greater uniformity of systems, increased efficiency and effectiveness.
- The need for more uniformity of processes is an important theme flowing throughout the transformational topics. Uniformity ensures that users do not have to learn multiple local requirements, and that more centralized support is possible, avoiding the frustration and expense of multiple local requirements.
- Useful, uniform data is key to assessing progress, promoting accountability and identifying emerging needs.

Though not the only important aspects of the transformational topics, the above common themes underscore the impact that addressing the transformational topics will have on access to justice, particularly for those with economic, demographic or diversity barriers.

## **B. Transformation and Impact Topics**

This section examines each of these transformational topics in terms of its current status, what is in most jeopardy, what opportunities exist and what steps should be taken.

### **1. Assistance for the Self-Represented**

#### **What is the current status of self-help in Michigan?**

Comprehensive data about self-represented litigants is not systematically collected by the courts, but selected information indicates that a large and increasing number of people are choosing to represent themselves. A 1999 State Bar survey found that 40% or more of the litigants in many courts appeared in *pro per*. The Berrien County Circuit Court found at least one party representing themselves in 80% of divorce cases. This is consistent with other states where the number of cases with at least one party in *pro per* reached between 66% and 80% in family or probate cases. The national research about self-represented litigants is that most are women, poor, with a high school education, and are petitioners. Research also shows

that most come to court without counsel because they cannot afford a lawyer or believe their cases are simple enough to do on their own.<sup>11</sup>

A 2009 Michigan State Bar Foundation (Foundation) study found that many courts, judges and others have tried to develop self-help resources but that there are frequent gaps and duplications in the availability, quality and uniformity of these resources. For example, some 158 different web sites note self-help resources, but many have materials that are incomplete, out of date, or of poor quality; have broken links; and are not well-maintained or user-friendly. Hundreds of pages of hard copies collected had similar gaps and duplications, such as multiple separately-developed family law packets.

The study also concluded that there is a lack of uniformity of materials, forms and procedures among jurisdictions, which makes designing centralized resources for the self-represented difficult. Court forms and procedures, many of which are not written in plain English, are not easily understood, particularly by those with language, literacy or other barriers. Not all judges and court staff have been to self-help educational sessions, resulting in a wide disparity in the treatment of the self-represented. Unlike many other states, Michigan does not have an ethics rule that directly addresses limited appearances and limited representation. A recent State Bar ethics opinion, RI-347, clarifies that a lawyer may assist a pro se litigant by ghostwriting pleadings and other documents, or by giving advice on documents or what to do in court without appearing in a proceeding or disclosing the lawyer's assistance, so long as the lawyer complies with the Michigan Rules of Professional Conduct and other law.

Michigan has four staffed legal assistance centers in Berrien, Kent, Oakland and Washtenaw counties. The Grand Rapids Legal Assistance Center (LAC) responded to more than 34,000 requests in 2008, with 75% of patrons requiring help completing court forms. Nearly 60% of those helped had annual household incomes under \$20,000. In Berrien County, the annual income of over 40% of those assisted was below \$10,000. These people would otherwise have nowhere to turn because legal aid and *pro bono* services do not have the resources to serve all who need assistance.

### **What is in most jeopardy now and in the expected future?**

If self-represented people with legal needs cannot access the justice system because they do not have assistance proceeding *pro se*, they lose trust and confidence in it. Persons who cannot effectively access the justice system are in most jeopardy of suffering loss of their rights and suffering negative impacts on their lives, their finances and their families. Quality self-help support systems which could help prevent such results, early assistance which may mitigate legal problems before getting to court, and follow up help in enforcing outcomes would promote more confidence in the system.

Quality self-help support systems have been found to have benefits that include reducing unnecessary filings and case processing time; reducing rejected filings, providing judges with better information to make hearings more efficient, leading to fewer adjourned hearings and speedier decisions, saving litigant and attorney time, and resulting in higher compliance.

Court staff spends considerable time answering questions from the public. For example, when MJI asked Michigan court clerks for a list of the common questions, it was seven pages long. Similarly, the LAC conducted time studies at one circuit court of court clerk staff time spent

---

<sup>11</sup> For national self-help research, information and innovations in other states see [www.selfhelpsupport.org](http://www.selfhelpsupport.org).

assisting the self-represented before and after the LAC was established. It concluded that there was a difference equal to 2.5 fewer FTE staff positions once the LAC was open.

Chief Justice Kelly has appointed the Solutions on Self-Help Task Force (SOS Task Force) which will consider the recommendations below to coordinate efforts among judicial and extra-judicial partners and to develop centralized resources which can help local communities and courts. Its work will acknowledge that even if self-help resources are improved, they should not be considered a substitute for other assistance that those with legal needs should have. Self-help is part of a continuum in which some matters can be resolved effectively by self-help, some need limited legal assistance representation (such as unbundled legal services), and others need full representation by a lawyer. Because not all resources to address needs along this continuum reside in the courts, solutions are at risk if judicial and extra-judicial partners do not work together to help coordinate efforts in and outside courtrooms.

### **What opportunities exist now and in the expected future?**

A key opportunity is the SOS Task Force, which has been charged with developing methods to implement recommendations such as these, and to take other appropriate actions to promote greater centralization, coordination and quality of support for the self-represented in Michigan. This effort is also timely because other groups have recently been focusing on the problems of the self-represented, including the following groups represented on the SOS Task Force: the Foundation, the SCAO, the State Bar of Michigan's Justice Initiatives Committee, the State Planning Body, the Domestic Violence Treatment and Prevention Board, Michigan libraries and this ATJ Committee as part of the State Bar's Judicial Crossroads Task Force. In addition, the Foundation has allocated resources toward assisting with these recommendations. This is a perfect storm of timely opportunity to act.

### **What immediate steps should be taken?**

Consistent with the underlying principle of a continuum of services, all partners, including the State Bar, should assist the SOS Task Force with addressing the recommendations below. Many of these initiatives involve few new resources.

1. Establish a statewide self-help web site pilot project, likely modeled after [www.illinoislegalaid.org](http://www.illinoislegalaid.org). It will be implemented along with several new pilot self-help centers (some staffed, some with part time staffing and some with no staffing but library-based) that will use the web site to support their services.
2. Develop a more comprehensive self-help curriculum for judicial and court staff training, using, for example, modules integrated as part of the regular core training. Routinely provide courts with simple suggestions and tools to improve self-help services with links to national resources.
3. Recommend court rule changes (e.g. unbundling), administrative orders, and ethics and case standards to support effective self-help assistance in Michigan.
4. Track the number and type of *pro per* cases throughout the state using court data systems to assist in improving self-help services.
5. Ensure that all courts accept and use uniform SCAO forms, even if local courts also accept their own modified versions.
6. Work with the Supreme Court and other justice system leaders as well as experts in literacy, cultural awareness and limited English proficiency to improve the uniformity and

understandability of forms, including ensuring that all forms and other documents which may be used by the self-represented are written in plain English.

## 2. Disparate Treatment and Language Issues in the Courtroom Environment

### PART ONE: Disparate Treatment in the Courtroom Environment

#### What is the current status?

Michigan has a long history of investigating and responding to issues of bias and discrimination in court processes. Since 1986, a number of reports have been issued<sup>12</sup>. The Michigan Supreme Court has responded with a strong policy position in support of procedural fairness and bias free behavior in the courts.<sup>13</sup> While much progress has been made to address these issues, concerns about procedural fairness, judicial demeanor, and the court service environment, remain. In the 2007 publication, *Procedural Fairness: A Key Ingredient In Public Satisfaction, A White Paper Of The American Judges Association, The Voice Of The Judiciary September 26, 2007*, authors describe the current importance of procedural fairness and the impact of perceived unfair treatment. “Americans are highly sensitive to the processes of procedural fairness. It is no surprise, then, that the perception of unfair or unequal treatment is the single most important source of popular dissatisfaction with the American legal system.”<sup>14</sup>

---

<sup>12</sup> Michigan Supreme Court Citizens’ Commission to Improve Michigan Courts, 1986; Michigan Supreme Court Task Force on Gender Issues in the Courts Report, 1989; Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, 198; State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession Report, 1996; Michigan Supreme Court Guardianship Taskforce, 1998; A Report on Access to the Legal System in Michigan for Persons with Disabilities, State Bar of Michigan Open Justice Commission, June, 2001; and The Governor’s Taskforce on Elder Abuse, 2006, (Michigan).

<sup>13</sup> See this example from a pamphlet promulgated by the SCAO: “No matter what role one has in the judicial process — judge, court employee, litigant, witness, juror or attorney — everyone has a right to be treated with dignity and respect. The Michigan Supreme Court is committed to equal treatment for men and women of every race, religion and economic class. The Supreme Court directed in Administrative Order 1990-3, “that judges, employees of the judicial system, attorneys and other court officers commit themselves to the elimination of racial, ethnic and gender discrimination in the Michigan judicial system.” Michigan’s One Court of Justice will neither condone nor tolerate discriminatory treatment in our justice system. The Michigan Supreme Court is committed to eliminating all forms of bias from the courts and assuring the fair and equal application of the rule of law for all persons in the Michigan court system. In addition, the Supreme Court has urged all courts as well as all entities that interact with the courts, such as the State Bar of Michigan, to review and continually emphasize bias-free behavior. Fairness and equality must be the rule — not the exception — in Michigan courts. Strong, decisive steps shall be taken to ensure that justice is dispensed in a non-biased environment and manner.”

<sup>14</sup> “Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the key elements of procedural fairness: voice, neutrality, respectful treatment, and engendering trust in authorities. Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it. While judges should definitely continue to pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public’s expectations of procedural fairness.

Many people have little contact with the court system in their daily life, so it is understandable that they feel overwhelmed and lost when they are confronted with an unfamiliar legal system. This lack of knowledge about the court creates a state of ambivalence in court participants. In many ways, procedural fairness bridges the gap that exists between familiarity and unfamiliarity and the differences between each person regardless of their gender, race, age, or economic status. Citizens have high expectations for how they will be treated during their encounters with the judicial system. In particular, they focus on the principles of procedural fairness because “people view fair procedures as a mechanism through which to obtain equitable outcomes—which is the goal in cases of conflict of interest.” Tom R. Tyler, *Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice*, 67 *J. PERS. SOC. PSYCHOL.* 850-863 (1994)

### **What is in most jeopardy now and in the expected future?**

The existing perception of the justice system's discrimination, insensitivity and lack of cultural competence in relation to non-majority groups represents a serious concern for the courts and challenges the credibility, effectiveness and equitable nature of our judicial process. Cultural competence refers to the capacity to interact effectively with people of different race, gender, age, national origin, ethnic background, religion, economic status, physical ability, sexual orientation, gender identification or ability to read or speak English.<sup>15</sup> Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures and with different backgrounds, life experiences and world views.<sup>16</sup> Without this competence, there can be little public confidence and trust in the justice system.

### **What opportunities exist now and in the expected future?**

In the last 20 years, the Supreme Court and the SCAO have successfully addressed many aspects of procedural fairness, cultural competency and disparate treatment. The following recommendations augment this agenda and support efforts to ensure the trust and confidence of every individual who utilizes the court system. As the demographic profile of Michigan residents becomes increasingly diverse and culturally mixed, the need for culturally sensitive processes will also increase. These processes do not require a high level of additional funding, but can result in the improved effectiveness of our courts and increased confidence of the public and court users in the judicial process. Less time will be spent in hearings, fewer appeals will be taken, and compliance with court orders will improve when litigants experience an environment where procedural fairness is a clear and present priority.

The recommendations below address the broad issues of disparate treatment, procedural fairness and cultural competency in the courts. For recommendations concerning specifically identified groups such as women, racial and ethnic groups, persons with disabilities, gay, lesbian, bisexual and transgendered individuals as well as recommendations about the elderly, refer to the detailed reports located in Section II of the Addendum.

### **What immediate steps should be taken?**

1. The Michigan Supreme Court should promulgate a Commitment to Service and Procedural Fairness pledge for each court to adopt and post publicly.<sup>17</sup>

---

<sup>15</sup> Cultural competence comprises four components: (a) awareness of one's own worldview, (b) attitude towards cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) cross-cultural skills.

<sup>16</sup> Achieving cultural competency means examining our biases and prejudices, developing cross-cultural skills, searching for role models, and spending as much time as possible with people who do not share our social and cultural worldview. Cultural competency is a set of congruent behaviors, attitudes and policies that come together as a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross-cultural situations. It requires that organizations have a defined set of values and principles, and demonstrate behaviors, attitudes, policies, and structures that enable them to work effectively cross-culturally.

<sup>17</sup> This Commitment to Service will provide that behavior exhibiting arbitrary and discriminatory bias in the court environment is not acceptable and that judges must set an example by not engaging in or permitting such behavior in chambers, or the courtroom. The court will strive to achieve an environment where all litigants are heard, respected, and provided meaningful information about the process in a courteous, professional and productive environment for every participant in the court process.

2. Educate judges of courts of record and other neutrals (quasi judicial officers such as special masters, magistrates, referees, hearing officers, and persons performing alternative dispute functions), court administrators and staff, as well as agencies and individuals under contract to the court to perform client or constituent services about implicit and explicit bias, procedural fairness and the impact of discrimination and stereotyping on court processes.<sup>18</sup>
3. Evaluate all court administrative processes, forms, manuals, bench books, jury instructions and correspondence employed by courts to (i) identify cross culturally inappropriate language, assumptions and the presence of both explicit and implicit biases and (ii) ensure that these documents are written in plain English to facilitate ease of use and understanding by a broader segment of the populace.
4. Collect accurate and useable data on the impact of court procedures and decisions on specific groups of court users as a means of identifying whether and where disparate treatment and impact may be present in our courts.
5. Judicial leadership should create collaborative relationships with knowledgeable individuals and organizations that specialize in the unique needs and cultures of the diverse communities served.
6. The Michigan Supreme Court should articulate a clear policy commitment concerning the importance of diversity of personnel in Michigan's courts, and continue efforts to increase the diversity of the judges, quasi-judicial officers and administrative staff in those courts.

## **PART TWO: Language and Interpretation in Michigan Courts**

### **What is the current status?**

According to the 2000 US Census, 850,000 Michigan residents speak a language other than English in the home. Not included in the census data were tens of thousands of seasonal Latino farm workers and their family members. This means that these individuals cannot protect their rights in court without the assistance of an interpreter. Moreover, interpretation in Michigan courts is underfunded, inconsistently applied across courts and, in many instances, in violation of the constitutional requirements for due process and equal protection.<sup>19</sup> A related problem exists for those litigants who, while native English speakers, still suffer from literacy challenges that affect their ability to adequately protect their rights.

Court interactions occur at a significantly higher level of difficulty than conversational language and require a familiarity with legal terminology, procedures and the cultural context impacting the parties in the court proceedings. This higher level of skill needed for court

---

<sup>18</sup> This education should be a regular part of their on-going continuing legal education. Educational materials and guidelines should be reviewed, amended (where needed) and designed to identify and appropriately advise judges on problems related to procedural fairness, bias and disparate treatment and impact in judicial decision-making.

<sup>19</sup> As found in the Brennan Report (Brennan Center for Justice at New York University School of Law "Language Access in State Courts" Laura Abel 2009): "Across the nation, as documented in our study of 35 states (including Michigan), state court systems are failing to provide essential, legally required language assistance to people who need it. Many fail to provide interpreters in all civil cases. Many charge civil litigants for interpreter services. Moreover, when states do provide interpreters, far too many provide interpreters whose competence is unknown. This must change. Federal law, principles of fundamental fairness, and our need for equal access to the justice system all demand it".

interpretation greatly hinders the ability of courts and judicial systems throughout Michigan to locate and retain the services of qualified court interpreters.

The Michigan Code of Criminal Procedure Act 175 of 1927, 775.19a requires the appointment of a language interpreter during the criminal prosecution of a limited English proficient (LEP) individual. No similar procedural or statutory mandate exists for civil proceedings. Furthermore, existing Michigan law does not ensure that the interpreters that are assigned or used can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting.

### **What is in most jeopardy now and in the expected future?**

An inadequate interpreter system exposes Michigan courts to potential legal liability and to the loss of federal funding. The Michigan Court of Appeals has recognized that an LEP civil litigant can arguably assert a due process right to an interpreter.

Washtenaw Circuit Court Family Division was recently challenged on its failure to appoint an interpreter for an indigent Spanish-speaking litigant based on an alleged violation of Title VI of the Civil Rights Act of 1964. Such challenges pave the way for future litigation aimed at any Michigan court receiving federal funding that does not provide for court interpreters in civil cases involving LEP litigants. Executive Order 13166 (EO 13166) requires state courts to have a plan in place to provide LEPs with meaningful access to court services. Failure to comply with EO 13166 can lead to a federal audit and a loss of all federal funding. Michigan courts and the SCAO receive federal funding for specialty courts, child support enforcement, and child welfare services.

### **What opportunities exist now and in the expected future?**

The cost of providing adequate and comprehensive language support in Michigan's courts will be significant. However, the cost of not addressing this issue may be even more financially disastrous. Unless there is compliance with Title VI, which requires Michigan to ensure that LEP persons can participate in or benefit from their programs and activities, federal funding that Michigan receives to support many court operations could be threatened.<sup>20</sup>

Recently, the Department of Justice (DOJ) has added two important clarifications to the language access obligations of state courts. First, it has made clear that funding recipients' language access obligations have increased: "[A]s time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful

---

<sup>20</sup> In 2000, President Clinton added specificity to the Title VI mandate by issuing Executive Order 13166, requiring both federal agencies and the recipients of federal funding to "ensure that the programs and activities they normally provide in English are accessible to LEP persons..." (Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000)). A 2002 Department of Justice policy guidance document issued pursuant to the Executive Order reiterated that "failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964...and Title VI regulations against national origin discrimination." (67 Fed. Reg. 41455, 41457 (June 18, 2002)). Because "America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom," and because each encounter with the courts "is a critical encounter to participants in the judicial process," Title VI imposes certain minimal requirements on state court systems receive federal funding.

access increases over time. This is not a new concept. We cannot reward past non-compliance with lenient enforcement today.”<sup>21</sup>

Second, DOJ emphasizes that budget problems are no more an excuse for violating Title VI than they would be for violating any other legal obligation: “[E]ven in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a “frill” when determining what to cut in a budget. We need to be asking hard questions and holding the line when resources are used as a defense to compliance with any civil rights obligations.”<sup>22</sup> The DOJ mandate is clear: state courts receiving federal funding must comply now.

### **What immediate steps should be taken?**

1. The Judicial branch, individual courts and their local funders as well as other interested stakeholders must seek innovative funding mechanisms for this effort. Michigan courts must educate and collaborate with the legislature to seek adequate funding to provide and pay for interpreting services as well as the costs of managing court interpreter programs. Court interpreter programs must be a high budgetary priority. We should actively support efforts to access federal and other funding for state court interpreter initiatives, including initiatives like S. 702, “State Court Interpreter Grant Program Act,” introduced in February 2007, which would authorize \$15 million annually for five years to support state court interpreter programs. In addition, outside grant funding for interpreter programs must be explored to identify additional revenue sources for language and interpretation assistance in the short term.
2. Michigan must recognize that, as a matter of fundamental fairness, all persons appearing in court as litigants or witnesses who do not sufficiently understand English should have access to qualified interpreter services in all court proceedings. To that end, the Michigan Supreme Court should begin working with the Legislature on revising Michigan law that pertains to the use of foreign language interpreters, and identify reasonable and adequate funding for that effort. In the interim, the Court should issue an Administrative Order that requires that until there is permanent statutory language, all judges be directed and expected to appoint state certified/approved interpreters for LEP and non-English speaking litigants in as many court proceedings as possible, recognizing fiscal and other limitations.
3. Michigan courts should establish a process for enforcing judicial compliance with those policies. The SCAO should be empowered to establish statewide competency standards, promote efficiencies associated with the pooling of limited interpreter and program funding resources and adopt ethics guidelines for court interpreters.
4. The SCAO should develop, offer, and require training for all judges and court administrators on the importance of using competent court interpreters, on cultural

---

<sup>21</sup> Prepared Remarks of Acting Assistant Attorney General for Civil Rights Loretta King, at the April 20th, 2009 Meeting of the Federal Interagency Working Group on Limited English Proficiency, available at [www.lep.gov](http://www.lep.gov) (quoting Letter from Merrily A. Friedlander, Chief, Dep’t of Justice Civil Rights Division Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Division of State Ct. Admin. (Feb. 4, 2009)).

<sup>22</sup> id

diversity and culturally based behavior differences, and on the importance of following court policies regarding usage of court interpreters. SCAO should explore and support methods to better identify and track needs for interpreters in the system, and establish an ongoing method for monitoring the use of interpreters, collecting data on issues related to language proficiency and interpreter use (including pay scale), identifying the most frequently needed languages, and rates of usage.

### 3. Child Welfare including the Indian Child Welfare Act

#### What is the current status?

Michigan has a remarkable community of people active in our child welfare system who are devoted to improving conditions for Michigan's children who suffer abuse and neglect, foster care, adoption, and termination of their parents' rights. There is a large amount of data from outside the court system, including several recent reports that provide strong guidance for immediate improvement in this area<sup>23</sup>. In addition, the Michigan Supreme Court's Child Welfare Services Court Improvement Program and the Governor's Task Force on Children's Justice have pointed the way to improvements that must be made throughout the entire child welfare system by community service providers, the Department of Human Services (DHS), courts, lawyers and advocates alike.

What we do not know, however, is to what extent the valuable resources and recommendations for improvement offered by these studies are being applied in jurisdictions throughout Michigan. The lack of consistent and accurate data makes it difficult to assess the situation. Through anecdotal information, we fear that the lessons of this recent work are not widely known and are not being consistently carried forward.

#### What is in most jeopardy now and in the expected future?

Despite recent efforts, outcomes for children in Michigan remain dismal.<sup>24</sup> Projections are that Michigan's economy will continue to get worse and challenges for children will be more difficult. If changes to the current system are not made, more children will wind up in the juvenile justice and abuse and neglect system, a more costly outcome than providing services to children before they get to the justice system.

---

<sup>23</sup>

- "Improving Michigan's Child Welfare System: Our Children. Our Future. Our Responsibility." Prepared by Michigan Child Welfare Improvement Task Force, C. Patrick Babcock, Co-chair, and Carol Goss, Co-chair, April 2009
- Legal Representation for Parents in Child Welfare Proceedings: A 2009 performance based analysis of Michigan practice. Prepared by the American Bar Association Center on Children and the Law for the Child Welfare Services Division of the Michigan State Court Administrative Office
- Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System – the Center for the Study of Social Policy, January, 2009
- Equity: Moving Toward Better Outcomes for All of Michigan's Children -Report from the Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare
- Indian Child Welfare Act of 1978, A Court Resource Guide, ICWA Special Committee, Michigan State Court Administrative Office, September 2009.

<sup>24</sup> According to Michigan National KIDS COUNT demographic information presented to the ATJ Crossroads Committee by Jane Zehnder-Merrell, there is a 36% increase in child poverty36% of children live in a family where the parent has no full-time job. Minority children experience double and triple risk of poverty compared with white children. Two of five children live in economically insecure families. The poverty rate is spread throughout the state. The number of neglected young children rose rapidly between 2003 and 2007.

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

The Indian Child Welfare Act of 1978 (ICWA) is enforced through Michigan tribal and state courts.<sup>25</sup> States have often failed to recognize the essential tribal relations of Indian people, and the cultural and social standards prevailing in Indian communities and families.

### **What opportunities exist now and in the expected future?**

The Judicial Crossroads Task Force provides an opportunity to build on the progress achieved through the leadership of the Michigan Supreme Court, the DHS, the legislature, the Governor's office and the SCAO Child Welfare Services Office. Now is the time to make improvements in the areas noted below where investment in prevention will save the high cost of out-of-home placement. There is a good likelihood that grant support is available for this purpose.

#### **A system-wide approach**

The ATJ Principles include an essential component that “enhancing access to justice for all requires a system-wide approach with adequate resources to support it.” This is especially evident in the child welfare system where strong community support for families, appropriate social service programs, wise intervention of the legal system, effective representation and judicial leadership work to improve the lives of children.

#### **Court improvements**

Consistent judicial leadership together with effective administrative processes, including court docket control and observance of statutorily imposed timelines, will reap benefits. Adoption forums and the data sharing agreement between SCAO and DHS should be widely replicated where possible. Any final decision, whether it is termination and adoption or reunification and dismissal, must be timely. Strategies such as not allowing adjournments without good cause can help with this. Local courts and agencies must consistently collaborate and cooperate.

#### **Tribal court relationships**

In the area of Indian child welfare, there is a recognized gap in meaningful access to all components of the Michigan judicial system for tribal court users. Leaders in our tribal courts and state courts are committed to the ongoing process of narrowing that gap. This work will require the sustained, active cooperation and commitment of the tribes, state government in all three branches, and the Michigan bar. Of importance is the creation of an educated and committed judiciary that will embrace the principles underlying the ICWA, and work to implement the legal requirements of the Act in every Indian child welfare case.

---

<sup>25</sup> Congressional findings behind the Act show that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children; that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions. In addition, an Indian child in Michigan was 370% more likely to be adopted and 710% more likely to be in foster care than a non Indian child.

### **The legal profession**

A lack of mandatory and general training and experience among the lawyers in this field, including cultural awareness and competency training, contributes to insufficient advocacy on behalf of families and children, poor outcomes, and a lack of public trust and confidence in the system. The lack of continuity of legal representation and the absence of necessary supportive services must change.

Attorneys oftentimes have high caseloads, and their compensation is often inadequate and limited to time spent in court. They do not have resources to gather information independent of the DHS record, hire independent investigators or other professionals, or make contact with other service providers.

### **The Department of Human Services**

Local courts, lawyers, and agencies can consistently cooperate and collaborate to improve outcomes. Early DHS/community intervention mechanisms must be available to address these issues and provide services to families when abuse or neglect is suspected but not substantiated. This will help address the lack of continuity of representation of children and families by caseworkers, and the lack of necessary supportive services.

### **What immediate steps should be taken?**

Michigan Blueprint for Justice contains fifteen recommendations for improvement in the child welfare area, and six recommendations specific to the Indian Child Welfare Act and tribal court relationships. While all of these recommendations should be implemented, some key ideas are:

1. Direct scarce resources to early childhood community-based services so that children and families are nurtured and supported, and punitive or out-of-home placement contact with the child welfare system is avoided.
2. Increase strong judicial leadership and effective docket management as a method of assuring quality representation and reducing the length of time children wait for a permanent home.
3. Collect, analyze, and report data that can be used strategically to improve the performance of the system, as measured by outcomes for families and children at each critical decision-making point.
4. Mandate training and continuing legal education for lawyers and judges so that the public's right to competent representation and fair adjudication is realized.
5. Review child welfare policies, procedures, programs and contracts<sup>26</sup> to determine if they disadvantage children, youths and families of color. Develop and enforce policies and practices that create a culture of inclusion, embrace diversity, and engage families and communities of color.
6. Engage parents, youth and children of color (including extended families, tribal members, caregivers, and others who are significant in the life of the child and family) as true partners to shape the child welfare environment.

---

<sup>26</sup> This review should be undertaken by courts, lawyers, DHS, and agency providers.

7. Institutionalize ongoing partnerships between the Michigan Supreme Court, SCAO, the tribal courts, the Michigan Indian Judicial Association, lawyers and other stakeholders in Indian/First Nation issues with the stated goal of preserving and improving meaningful access to justice in our state courts for Indian/First Nation people. Establish programs to foster awareness, acceptance and compliance by state courts with current tribal law.
8. Support the enactment of federal ICWA concepts into Michigan law.<sup>27</sup>

#### 4. Indigent Defense

##### **What is the current status?**

That a crisis exists in Michigan's indigent defense system is by now beyond question, as reports and litigation bring the eyes of the nation to one of the last states to provide state funding for defense counsel provided by the government to indigent criminal defendants. For at least two decades the State Bar of Michigan has been joined by numerous advocacy groups in calling for some systemic oversight to the county-based delivery of this constitutionally-mandated service. There was little widespread acknowledgment that a problem even existed until 2008 when the National Legal Aid and Defender Association (NLADA) released its in depth study "A Race to the Bottom: Speed and Savings over Due Process, A Constitutional Crisis" done in response to a joint legislative resolution. NLADA's examination of defense delivery systems in ten Michigan counties delivered a powerful indictment: the quality of justice for Michigan defendants varies widely from county to county.. With no statewide oversight, standards, or funding, Michigan has tolerated a system so lacking in resources that assigned counsel can only occasionally provide effective assistance.

##### **What is in most jeopardy now and in the expected future?**

Over time, policymakers have ignored or assigned a very low value to a problem whose constituency is often vilified in efforts to wage a war on crime. Without pressure to focus on the problem, legislators have little incentive to find resources to solve it. What distinguishes this point in time from prior years, however, is the mounting and indisputable evidence that a policy of neglect is exceptionally expensive, as well as unjust. The cost of neglect is clear:

Litigation is likely to require costly remedies. Plaintiffs challenging the adequacy of defense services in three Michigan counties (Berrien, Muskegon and Genesee) have survived motions to dismiss in the trial and appellate courts in *Duncan v Michigan*. The Michigan Supreme Court recently affirmed the decisions to deny dismissal and sent the case back to the Ingham County Circuit Court for further hearings. Litigating the claims will consume scarce governmental resources, and the potential result, a wide-reaching declaratory judgment, may compel expensive solutions.

Errors by under-resourced defense counsel produce huge downstream costs for the State of Michigan. For the first time, sentencing errors have been quantified in a systemic way: a report to Congress by the Chief Deputy Director of the State Appellate Defender Office (SADO) established that in one year alone, three appellate attorneys corrected errors that would have produced over \$3 million in

---

<sup>27</sup> Specific efforts should be made by the Michigan Supreme Court, the State Bar of Michigan and other stakeholders.

unnecessary prison costs. The same appellate office raises ineffective assistance of trial counsel claims in over 40% of its pleadings, often based on inadequately resourced defense.

Wrongful conviction lawsuits are proliferating, and putting government budgets in jeopardy. Just two recent settlements involving innocent defendants totalled over \$7 million, a figure that must be added to the cost to Michigan of their time in prison (nearly another \$1 million). At least six other civil lawsuits against counties are pending. If the state legislature passes a wrongful conviction compensation bill, which has occurred in many other states, a state payout will be added to that existing through the civil process.

The scope of the problem is widespread, affecting thousands of Michigan defendants who are indigent and accused of crimes. Thousands seek the appointment of defense counsel each year when facing misdemeanor and felony charges, and court dockets carry a very high percentage of criminal cases. Virtually every Michigan taxpayer is affected, with precious tax revenues going to support an indigent defense system that wastes time and money because of inadequate investments in the system itself.

### **What opportunities exist now and in the expected future?**

Michigan's current indigent defense system is inefficient and ineffective. The time is ripe to support efforts now underway to transform the system into one that has stable and substantial state funding, rather than one that relies on fluctuating local tax revenue and on fines affecting indigent persons. A strong central commission, independent of influence from any branch of government, can administer a well-resourced system that provides criminal defense counsel in all circumstances where it is legally required. Providing those attorneys with the resources, such as experts and investigators and training they need will lead to just verdicts and accurate sentences that avoid expensive appeals, lawsuits over wrongful convictions and waste correctional resources. Finally, the creation of performance standards, enforcement of workload standards, and oversight by qualified monitors will go far toward ensuring that the Sixth Amendment guarantee of effective assistance of counsel is realized.

### **What immediate steps should be taken?**

The ATJ Committee believes that its Indigent Defense recommendations present an urgent case for for action by the Task Force. The complete recommendations and report are in the addendum, but key ideas include the following:

1. Make indigent defense the top legislative priority of the Crossroads Task Force, supporting HB 5676 or any substitute that fully embodies the Eleven Principles for an Effective Public Defense System approved as policy by the State Bar in 2005.<sup>28</sup>

---

<sup>28</sup> Counties are reducing indigent defense budgets as their tax bases dwindle, costs of errors mount daily, and systems that rush to judgment leave real perpetrators on the streets. The cost of neglect finally has the attention of lawmakers. Opportunity for transformation is here now, in the form of a defense bill that is widely supported by stakeholders. HB 5676 would create a state-funded, trial-level, defense system that complies with national standards adopted by both the American Bar Association and the State Bar of Michigan. The change possible through this or any standards-based bill is truly transformational, presenting Michigan with both the opportunity to put meat on the bones of the constitutional guarantee of the right to counsel, and to provide a solid return on investment for Michigan taxpayers.

2. Examine statutory changes related to indigent defense which can produce cost savings and thereby facilitate adequate state funding for a public defense system.<sup>29</sup>
3. The Michigan Legislature should assume full and ongoing funding of the constitutionally-mandated right to counsel for indigent defendants.<sup>30</sup>
4. The indigent defense system should maintain institutional collaboration with civil legal aid providers to help defendants and their families have access to civil assistance as needed.

## 5. Indigence, Fees, Fines and Costs

### What is the current status?

Michigan law imposes a variety of criminal and civil fines, fees, and costs with no view of the aggregate impact of these multiple legal financial obligations (LFOs) on those unable to pay them, or the courts and counties that are expected to enforce them.<sup>31</sup> This approach has a disproportionate and unlawful impact on the poor, precisely at a time when more people are in poverty and unable to pay.<sup>32</sup> It is reasonable to impose LFOs on individuals who have the ability to pay. However, imposing the same on individuals who do not have the ability to pay as a condition of access to certain court procedures or services, or with the threat of jail, unconstitutionally burdens an individual's ability to access and protect their rights in the courts. Unintended consequences for litigants, courts, and the public include limiting ATJ for those unable to pay and increased costs for taxpayers when these persons are prosecuted and jailed for failure to pay even modest court-related obligations.<sup>33</sup>

At the same time, local judges, courthouse staff, and litigants have growing uncertainty about who qualifies for a waiver of fees and costs, as well as appointed counsel, under definitions of "indigence."<sup>34</sup> As courts feel pressure to collect more fees, the question of when and how fees are to be waived or who is indigent becomes even less clear in some courts about when

---

<sup>29</sup> These changes would include such items as reclassifying minor and non-violent offenses to civil infraction status, expanding circumstances in which records may be expunged, expanding circumstances for diversion from prosecution, and creating a commission to recommend changes in the legislative sentencing guidelines scheme.

<sup>30</sup> This includes proceedings at the trial and appellate levels, including juvenile defendants charged with delinquency or criminal offenses.

<sup>31</sup> The primary types of LFOs in Michigan are (i) costs, Mich. Comp. Laws § 600.4801(a); (ii) fees, which include "any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction, finding of responsibility, or other adjudication of a criminal offense . . . , including a driver license reinstatement fee," *id.* 600.4801(b); (iii) penalties, defined as "fines," *id.* 600.4801(c); and, (iv) restitution to the victim, required by The Crime Victims Rights Act, *id.* 780.766(2).

<sup>32</sup> According to the United States Census and the Michigan League for Human Services, the Michigan poverty rate has jumped 43% since 2000. In 2008, the poverty rate was 14.4%, making Michigan among the 8 states with the highest poverty rate. A number of counties, including Saginaw, Wayne, Isabella, Ingham, and Muskegon, have poverty rates at 18% or higher.

<sup>33</sup> An analysis of the costs have been explored, for example, by the Brennan Center's report on Financial Consequences of a Conviction, the Washington State Minority and Justice Commission Report, [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf), Penalizing Poverty by Helen Anderson, 42 U. Mich. J.L. Reform 323, and Economic Incarceration, by Bridget McCormack, 25 Windsor Y.B. Access Just. 223.

<sup>34</sup> MCR 2.002 requires that fees be waived when someone is on public assistance but does not define public assistance, so some courts include Food Assistance (formerly "food stamps") and others do not. MCR 2.002 doesn't require this when someone's income is low enough for them to be "indigent" and qualify for a waiver of fees.

and how fees are to be waived or who is indigent. Because state or local courts do not keep any data about how often waivers of fees and costs are requested and what percentage of requests are granted, it is difficult to know the extent of the problem.

### **What is in most jeopardy now and in the expected future?**

The lack of consistent statewide definitions or procedures about who must pay, and the use of high-cost enforcement tools (such as criminal contempt and incarceration) to punish non-payers threatens to create and maintain a system which is chaotic, uncertain, and often neither accessible nor fair to courts or court users. This results in inconsistencies and uncertainties for local courts, attorneys, and court users about when and how LFOs are to be imposed and enforced.<sup>35</sup>

### **What opportunities exist now and in the expected future?**

The new SOS Task Force appointed by the Chief Justice of the Michigan Supreme Court offers an immediate opportunity to examine how current definitions of indigence and procedures for imposing and collecting fines, fees and costs impact unrepresented and indigent persons, courts, and courthouse procedures in both civil and criminal proceedings. The Michigan Court Forms Committee has already begun to consider whether to attach MC 287 to MC 20, requiring a more complex process for determining indigence, especially for persons already determined for needs based public assistance such as Temporary Assistance to Needy Families (TANF), Food Assistance (food stamps), State Disability Assistance, Supplemental Security Income, and Medicaid.

Any redesign of the Court system should consider carefully the aggregate impact of multiple fines and costs on low-income parties, and on local courts that are expected to set and enforce them. Such obligations may have unintended consequences on the courts and on low-income litigants. For example, the Driver's Responsibility Fee, which has added millions to the state treasury, has also created a substantial burden on those least able to pay it. Despite the potential impact on revenues, the legislature is revisiting the penalty and whether it should be eliminated or reduced because of these collateral consequences.<sup>36</sup>

### **What immediate steps should be taken?**

- \*1. Produce a set of clear and consistent standards and rules, which are reinforced by SCAO policies and MJI training materials, about who must pay and who is indigent, and what remedies and procedures may be used by courts to collect payment.<sup>37</sup>

---

<sup>35</sup> Just a few of the examples of the areas where there are inconsistent procedures include: Who is indigent and what factors are considered in determining indigence; Whether and when access to a court process can be denied because of lack of money (e.g. mediation, case evaluation, appellate transcripts, etc.); What consequences of non-payment (contempt, revocation of parole, extension of parole, imprisonment, civil collection) are permissible or prohibited, and whether counsel is afforded whenever someone faces potential jail time; Whether persons subject to legal financial obligations have similar protections from collection as other civil debtors; Whether acquitted persons are responsible for any of the costs of their prosecution; What criteria should courts use to find that someone has made "bona fide efforts" to pay or has other "good cause" for not paying legal financial obligations, and Whether an indigent litigant can be required to pay any costs prior to the entry of judgment or to receive access to any court proceedings.

<sup>36</sup> The Attorney General in the State of Virginia has already invalidated fees under that state's comparable Driver's License Act as excessive .

<sup>37</sup> A more detailed list of what should be clarified or changed is included in the attached recommendations in section II of the Addendum. Other states, including Massachusetts, Ohio, Washington State and Alaska have used a variety of methods to reexamine and clarify their definitions of indigence that could be instructive to Michigan.

2. Assure that any improved statewide system for aggregating court data ensures that local courts have a way to report information about a) the number of fee waivers requested and granted, b) LFOs imposed, and c) collection efforts, enforcement activity, and incarceration as a result of non-payment of LFOs.<sup>38</sup>
3. Clarify what sufficient bona fide efforts to repay LFOs are, and the types of alternatives to incarceration available to courts.<sup>39</sup>
4. Reform the driver responsibility act to address these issues.<sup>40</sup>
5. Evaluate the aggregate cost and impact of fines, fees and costs on those ordered to pay them, and on courts and counties. Such evaluation should include a review of the time and resources spent by courts and county jail systems on assessing a party's ability to pay, and enforcing and collecting LFOs.
6. Provide judges and courthouse personnel with guidance and supervision to ensure that they assess a person's ability to pay LFOs and enforce those obligations in a reasonable and consistent manner.

## 6. Problem-solving Courts

### What is the current status?

Problem-solving courts, sometimes referred to as specialty courts in Michigan, strive to address the underlying problems such as drug or alcohol addiction, domestic violence, mental illness and homelessness that bring people into the criminal justice system. Rather than process cases in the traditional, adversarial way, problem-solving courts “attempt to use the authority of the judiciary in new ways”.<sup>41</sup> Michigan currently has the following problem-solving courts: OWI/Sobriety Courts; Drug Treatment Courts for adults, juveniles and families; Domestic Violence Courts; Veterans’ Courts; a homeless court (*Street Outreach Court* in Ann Arbor); Mental Health Courts; and Child Support Specialty Court Projects.

Problem-solving courts have been shown to be effective at reducing recidivism, improving quality of life in neighborhoods, and reducing system-wide costs.<sup>42</sup> A study of Michigan OWI

---

<sup>38</sup> Local courts are already required to report their collection efforts and expenditures to SCAO, but these reports are not publicly available. In order to allow for transparency and proper oversight, the public must have access to information regarding collection practices in the courts.

<sup>39</sup> Alternatives may include such measures as extending the time for making payments, or reducing the fine or directing that the defendant perform some form of public service in lieu of the fine, etc.

<sup>40</sup> Changes could include decreasing mandatory fees, extending the 30 deadline to pay fees, allowing appeals or waivers of the reinstatement fee based on substantial hardship and allowing restricted licenses in order to maintain employment or fulfill child care duties.

<sup>41</sup> Problem solving courts are characterized by the following elements: a problem-solving focus; team approach to decision making; referrals to treatment and other social services; ongoing judicial monitoring; direct interaction between litigants and judge; and community outreach and a proactive role for the judge inside and outside of the courtroom. See *Applying the Problem-Solving Model Outside of Problem-Solving Courts*, by Francine Byrne, Donald Farole, Jr., Nora Puffet, and Michael Rempel, *Judicature*, Vol. 89, Number 1, July-August 2005, p. 40, <http://www.courtinnovation.org/uploads/documents/Applying%20Problem-SolvingModel.pdf>

<sup>42</sup> “Studies have shown that problem-solving models reduce recidivism, improve neighborhood quality of life and lower system-wide costs.” *Breaking with Tradition: Introducing Problem Solving in Conventional Courts*, by Robert V. Wolf, *International Review of Law, Computers & Technology*, Vol. 22, Nos. 1-2.

courts found that those who successfully completed the program were six times less likely to re-offend in the first year than those on traditional probation for OWI.<sup>43</sup> A growing body of empirical evidence indicates that these courts save money by encouraging treatment in the case of drug and sobriety courts, and reducing violence in the case of domestic violence courts.<sup>44</sup> Problem-solving courts have been endorsed and encouraged by many, including the Conference of Chief Justices and the Conference of State Court Administrators.<sup>45</sup>

### **What is in most jeopardy now and in the expected future?**

Even though problem-solving courts work, there are relatively few problem-solving courts in Michigan.<sup>46</sup> Moreover, most problem-solving courts restrict admission to defendants residing in the court's jurisdiction, thereby limiting the defendants who can benefit and the number of participants the court can serve. People in one community may simply not have access to or be able to benefit from a problem-solving court, even though there may be a problem solving court in the community where the offense was committed. This kind of geographic limitation is more appropriate for a 19<sup>th</sup> rather than a 21<sup>st</sup> Century Court system. Problem-solving courts are not a mandated responsibility of the court system. When funding cuts are considered, they are high on the list. In addition, some judges believe that they are ethically constrained from participating in problem-solving courts and engaging with the community.

### **What opportunities exist now and in the expected future?**

Expanding the current eligibility criteria and jurisdictional restrictions would make the benefits of problem-solving courts accessible to more people. Communities would be safer as recidivism is reduced. Regional problem-solving courts in rural areas could share resources and save costs. Amending the Code of Judicial Conduct to clearly allow judges to participate fully in problem-solving courts would increase access and ensure better outcomes for litigants, victims and the community. With little or no extra cost, problem-solving principles could be applied in traditional courts.<sup>47</sup>

### **What immediate steps should be taken?**

---

<sup>43</sup> See "Michigan DUI Courts, Outcome Evaluation, Final Report" at <http://courts.michigan.gov/scao/services/DrugCourts/DrugDWI.htm>

<sup>44</sup> Domestic Violence courts working in a coordinated community response have been shown to reduce physical violence. "The literature confirms that advocates are significantly more likely to connect with victims in domestic violence courts than in nonspecialized courts (Harrell et al. 2007; Henning and Klesges 1999; Newmark et al. 2001). In some sites, the impact was striking. For instance, the percent of victims linked to advocates rose from 55% to 100% after the Brooklyn felony domestic violence court opened (Newmark et al. 2001) and from barely any to 56% after the Shelby (TN) domestic violence court opened (Henning and Klesges 1999).

<sup>45</sup> CCJ Resolution 22, COSCA Resolution IV, adopted August 3, 2000.

<sup>46</sup> Related concerns are that there are not enough substance abuse or mental health treatment options for indigent defendants and others without medical insurance. Even fewer services are available for people who need both (co-occurring disorders). Mental health services have been the target of legislative funding cuts. Even where there are programs available, there are often waiting lists to enter the program. Mandatory suspension or revocation of a person's driver's license upon conviction for drug and certain alcohol-related offenses make it difficult for probationers to get to treatment without reliable, accessible public transportation.

<sup>47</sup> See "Applying the Problem-Solving Model Outside of Problem-Solving Courts," by Francine Byrne, Donald Farole, Jr., Nora Puffet, and Michael Rempel, [http://www.courtinnovation.org/\\_uploads/documents/Applying%20Problem-SolvingModel.pdf](http://www.courtinnovation.org/_uploads/documents/Applying%20Problem-SolvingModel.pdf)

1. Expand admission into specialty courts to include non-residents of the court's jurisdiction, or transfer jurisdiction to a specialty court closer to the residence of the defendant, or allow neighboring counties to share resources and use regional specialty courts. This may require a change in statute, court rule, judicial assignment and/or administrative order.
2. Expand the eligibility criteria for specialty courts to include and target high risk offenders, and/or restrict local control by modifying the definition of "violent offender," and make admission contingent on completion of a risk and needs assessment.
3. Improve links to services so that it is easier to access mental health and substance abuse treatment in all specialty courts. Neighboring communities should share resources.
4. Reallocate existing court resources to target cases with complex underlying problems by sentencing from the bench and referring to probation for pre-sentence only cases with high risk offenders or special needs.
5. Bring people and agencies together including the defense bar as well as the prosecutor to identify gaps and reduce duplication of services, and coordinate and train across systems to save costs and improve outcomes.<sup>48</sup>
6. Support legislation such as SB 794 and SB 795 that would allow certain OWI court participants to receive a limited restricted license while they are participating in sobriety/OWI court.
7. Clarify the existing intent and application of the Michigan Code of Judicial Conduct to expand the capacity of judges to participate fully in problem-solving courts by adopting the 2007 ABA Model Code of Judicial Conduct as amended by the 2008 Resolution No. 13 of the National Council of Juvenile and Family Court Judges supporting Joint Resolution 8 of CCJ/COSCA 42.<sup>49</sup>

## 7. Ongoing Mechanisms for Planning, Coordination, and Evaluation

### **What is the current status of ATJ planning, collaboration and evaluation in Michigan?**

Currently, planning, coordination, and evaluation in the area of access to justice in Michigan often involves coordination and collaborative planning or services in selected topic areas rather than overall integrated and comprehensive planning or evaluation on a statewide or regional basis. Nonetheless, groups exist which bring stakeholders together toward greater coordination and collaboration.

---

<sup>48</sup> Judges should learn about resources in the community and sentence a defendant to work with an agency (with that agency's consent) with demonstrated expertise in addressing the particular treatment need, with or in lieu of probation. Judges should also seek and identify funding sources such as federal and other grants, 501(c)(3) organizations, or private "partners" in the community. Judges should educate legislators, funders, and the public on the importance, effectiveness, and cost-savings of specialty courts and why they should be funded.

<sup>49</sup> This resolution permits judges to engage in ex parte communications expressly authorized by law "such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others." Canon 2. Rule 2.9 Comment [4]. Allow judges to participate in extra-judicial activities that "promote public understanding of and respect for the courts and the judicial system." See Canon 3. Rule 3.1 Comments [1] and [2].

In the last decade or so, Michigan has built a foundation of interconnected groups which engage in planning, coordination and assessment of needs for civil and criminal legal assistance, primarily focused on low-income and underserved populations.<sup>50</sup> Some of the groups are broad-based and foster coordination among many within selected topic areas, some have restrictions on what they can undertake, and still others have a narrower focus or purpose. The groups offer the opportunity to cross-communicate, learn about relevant issues and coordinate efforts. This network of stakeholders is a good base on which to build toward more integrated planning, coordination and evaluation that includes both courts and others.

The Blueprint more fully describes the work of major groups in this network. For example, the last collaboratively-produced state plan for the provision of civil legal aid to the poor was produced in 2000 and is out dated and no longer viable. The current State Planning Body convenes judges, private lawyers, legal aid, indigent defense, bar, government, human service and others four times a year, to work on, plan and coordinate on specific issues.<sup>51</sup> The State Bar Committee on Justice Initiatives brings together a range of civil and criminal stakeholders regarding bar-sponsored projects.<sup>52</sup> Similarly, the Michigan State Bar Foundation periodically convenes grantees and related stakeholders to provide input on issues affecting its use of Foundation funds.<sup>53</sup> The new director of Access and Fairness for the Michigan Supreme Court convenes a range of leaders to help facilitate coordinated planning and services relevant to the Michigan Supreme Court.<sup>54</sup> SCAO often brings in experienced people from outside the judiciary for particular projects to enhance coordination and benefit from an external perspective. They also use court improvement project protocols to assist the quality of project planning by courts.

Evaluation is conducted sporadically and typically on a project or individual agency level.<sup>55</sup> The overall state justice system or legal aid delivery system is not evaluated from a system-wide perspective, nor have shared goals, principles or agendas been adopted for use as common evaluation measures. There are national standards and guidelines that Michigan stakeholders can look to for assistance with planning and evaluation.<sup>56</sup> The ATJ community

---

<sup>50</sup> The ATJ Committee conducted a survey to identify these groups and found that they include: State Bar of Michigan Committee on Justice Initiatives (and other relevant committees); Local/Special Bar Associations; State Planning Body (and its member organizations); Michigan State Bar Foundation; Legal Services Association of Michigan; State Appellate Defender Office; Michigan Supreme Court - Director of Access and Fairness; State Court Administrative Office; Judicial Conference; Prosecuting Attorneys Association of Michigan; Council on Crime and Delinquency; Criminal Defense Association of Michigan; Michigan Prisoner Reentry Initiative; Campaign for Justice; Institute for Continuing Legal Education; Michigan Judicial Institute; Law Schools; Legislative/Government Entities; Health and Human Service and Other Non-Governmental Organizations.

<sup>51</sup> <http://spb.mplp.org:8080/display/SPB/Michigan+SPB+Home>

<sup>52</sup> <http://www.michbar.org/programs/justiceinitiatives.cfm> Note: The State Bar works within "Keller" limitations regarding what dues in a mandatory bar may be used for.

<sup>53</sup> [www.msbf.org](http://www.msbf.org)

<sup>54</sup> <http://courts.michigan.gov/supremecourt/Press/LWeber.pdf>

<sup>55</sup> Funders evaluate some individual legal aid agencies or their projects (e.g., the Foundation's grantees self-report on their services, except for periodic site visit evaluations by peer reviewers), but that evaluation generally addresses organizational processes and case statistics and typically does not focus on outcomes. Some civil and criminal legal aid agencies do their own internal evaluations at the program level. Rarely, a multi-program project is evaluated.

<sup>56</sup> These include the ABA Standards for the Provision of Civil Legal Aid <http://www.abanet.org/legalservices/downloads/sclaid/civilstandards.pdf>; the LSC Performance Criteria <http://www.lsc.gov/pdfs/LSCPerformanceCriteria.pdf>; the ABA Criminal Principles (Michigan's state version of this

can now also use the ATJ Principles<sup>57</sup> adopted by the ATJ Committee of the Judicial Crossroads Task Force in these deliberative processes.

### **What is in most jeopardy now and in the expected future?**

Current efforts provide a base to build on, but do not themselves form a system-wide, integrated approach to planning, collaboration and evaluation. Without such mechanisms for planning, evaluation, collaboration and change management, it will be harder to ensure that the Michigan justice system remains effective into the future in light of the changing nature of and demands on it. It will be more difficult to respond adequately to emerging needs and the rapid pace of change. It will also be challenging to determine the highest and best use of limited resources if the many groups in the justice system stay in their silos and do not have regular formal methods of communicating for the purpose of coordination and collaboration. In addition, this type of ongoing dialogue and connection allows for the identification of trends and of emerging needs in order to be better able to respond to change. The opportunity to build on the work of the Judicial Crossroads Task Force and other ATJ initiatives could also be lost without a plan to convene those involved to review progress, discuss new developments and facilitate continued coordination.<sup>58</sup>

Further, joint efforts, including both courts and others, can help determine which efforts can benefit from more centralized support to avoid waste and maximize resources, (e.g. working together toward a main self-help web site instead of reinventing web resources separately in all 83 counties). Collaboration on goals and evaluation reduce fragmentation and increase quality as well as promote more uniform procedures and information, resulting in more meaningful and accurate data, which can be used to improve services and outcomes.

The ATJ Committee also identified two key elements essential for an effective planning and evaluation system: a) involvement of both judicial and extra-judicial stakeholders and b) a system-wide approach to planning, collaboration and evaluation. If the first element is ignored and courts do not plan and coordinate with relevant stakeholders outside of courts, the opportunity for increasing both efficiency and effectiveness is undermined.<sup>59</sup>

In the second element, system-wide means all relevant components of the justice system statewide, not just what happens inside a courtroom. It acknowledges that many services are linked or interrelated, both inside and outside courts.<sup>60</sup> The system-wide approach also recognizes that there is a continuum of legal needs from before court (e.g., assistance may mitigate legal problems), to inside the courtroom (e.g., the support a self-represented litigant

---

has eleven principles) <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>; and the ABA Civil Principles and Self Assessment Tool which take a system-wide approach <http://www.abanet.org/legalservices/sclaid/downloads/06A112B.pdf>.

<sup>57</sup> See "ATJ Principles" at Section D.2 of this report.

<sup>58</sup> This is particularly important in a time with decreased resources and increased needs. Fully one-third of Michigan's 10 million people now qualify for free civil legal aid because they live at or below 200% of the Federal Poverty Level (about \$29,000 for a family of two). A similar mountain of need faces indigent defense advocates. There are not enough resources to meet the need, so we must work together to capitalize collectively on our best ideas and coordinate efforts to avoid duplication and gaps in services.

<sup>59</sup> A simple example is sharing legal aid *pro bono* tools with courts so judges can help enhance *pro bono* services in their jurisdictions. Another example is exploring together the impact of widely differing approaches to indigence standards in many jurisdictions.

<sup>60</sup> For example, work with human service agencies can impact what happens in drug courts regarding the defendant's ongoing involvement with the court, or a holistic approach to child welfare cases involving human and support services may help resolve issues that caused contact with the courts in the first place.

receives makes the process go smoothly and prevents the need for adjournments), to post court (e.g., follow up may prevent recidivism).

Without better evaluation of needs and services at the court, community, program and system level, we lose the opportunity to accumulate data that can help procure additional resources by demonstrating why an investment is necessary and why it will pay off, not only in the courts but also in the communities they serve. We also lose the chance to focus improvement efforts where they are needed and to learn whether any justice system users are being harmed in ways that can be prevented.

### **What opportunities exist now and in the expected future?**

The opportunity exists now to build on the many groups that work in various ways to facilitate coordination, collaboration, planning and evaluation. In addition, the Judicial Crossroads process itself has broadened those connections and collected expertise and insights from a wide range of participants. Together, these have greater collective impact. Toward that end, the steps listed at question 4 below are transformational strategies. Significant new resources will not be required to enact these proposals. Expenses for two meetings per year of the suggested advisory board will not be great, nor are there high costs for simple mechanisms for planning and coordination prompted by those meetings. Grant funding could be sought for special projects or for special expertise, such as the evaluation function. Improvements and data identified through evaluation may not only enhance services, but have the potential to offer cost savings where use of technology, coordination or other collaborative efforts are involved.

### **What immediate steps should be taken?**

1. To promote the commitment to action regarding crossroads and other system-wide access and fairness goals for the justice system, an advisory group of leaders reflecting key judicial and extra-judicial stakeholders will convene twice each year to review progress, discuss new developments and facilitate continued coordination. This group will be known as the Justice Advisory Board for Access and Fairness (Board).
2. The Board will engage a wide range of justice system stakeholders by having them become signatories to an Access and Fairness Agenda evidencing their commitment to the ATJ Principles and related goals. Signatories will be offered opportunities for participation and input related to these goals and will receive reports and other information from the Board.
3. Members of this Board may include stakeholders such as the Michigan Supreme Court, State Court Administrative Office, judicial associations, State Bar of Michigan, Michigan State Bar Foundation, Legislature, Executive Branch, legal aid providers (civil and criminal), non-governmental organizations and others whose ongoing involvement will help promote action and collaboration. To demonstrate the value of this initiative and the importance of judicial leadership, the Board will be convened by the Chief Justice of the Michigan Supreme Court.
4. The Board will acknowledge accomplishments and offer suggestions for additional actions toward goals, using the ATJ Principles and emphasizing a system-wide approach. This could take the form of a report card or other report to stakeholders. The Board should seek assistance from experts as needed to plan for and develop data

and information needed for evaluating progress and results. One of the Board's roles will be to facilitate more consistent, uniform procedures, forms, data and systems.

5. The Board will suggest tools and methods for the court system and other partners to engage in meaningful evaluation of services and the overall system to determine if people are being served effectively and whether goals of the Access and Fairness agenda are being met. The Board should also evaluate its own efforts annually to determine how it can be most effective in assessing results and promoting action and coordination.

## **IV. Implications for Judicial Crossroads Committees**

The issue of access to justice has implications for nearly all aspects of the judicial system. As such, the ATJ Committee found that many of our reports and recommendations affected areas assigned to other Judicial Crossroads Committees. Throughout the process, information about the ATJ Committee process and findings were shared with those committees through co-chairs, staff, and liaison assignments. Following is a summary of those ATJ recommendations that have implications for Technology, Business Impact, and Structure and Resources. A detailed list of specific recommendations relevant to these areas is available in Section IV of the addendum to this report.

### **A. Technology**

1. Create a comprehensive statewide database with an identified consistent set of protocols, parameters and data collection requirements for every court. Set these requirements based on the following needs and uses for the data:
  - a. Identifying and confirming trends, problems and issues for the courts.
  - b. Creating strategic plans and solutions for those issues.
  - c. Implementing programs based on the data collected and the identified issues.
  - d. Evaluating the success of such programs.
  - e. Developing data platforms which allow for data sharing, both within the court system and with external stakeholders, to support a comprehensive approach to using information for improvements in the justice system.
2. Areas where the need for accurate and useful data are particularly important are:
  - a. Child welfare
  - b. Demographic profiles of court users to identify and assess disparate treatment, language issues, unrepresented litigants, and the assessment of fees, fines, and costs.
  - c. Criminal proceedings, including data that accurately reports on appointments and dispositions by case type, attorneys' workloads and fees paid, costs and fees assessed and collected from indigent defendants, and collateral consequences of convictions.
3. Technology can improve court processes in the following areas:
  - a. Language interpretation

- b. Juries and jury selection
  - c. Long distance court proceedings and cross-jurisdictional sharing of resources.
  - d. Public defense system
4. Improve Public Access to information about court processes.
    - a. Self help
    - b. Disabilities
    - c. Indian Child Welfare Act
  5. Training and Education for Judges and court staff
    - a. Increase the availability and convenience of training on many of the issues the ATJ Committee discussed by offering technologically advanced methods such as webinars and long distance learning alternatives.

## **B. Business Impact**

The ATJ Committee report has no specific recommendations related to the proposals regarding management of business disputes. However, the ATJ Committee asks that the proposal to create a business docket be considered in the context of the broader use of specialty dockets proposed in this report. Enhanced services and expedited case management for one group of court users (business litigants) should not result in diminished services and resources for other equally important groups of court users. In that same vein the ADR recommendations contained in the Blueprint for Justice outline a comprehensive approach to the availability and use of ADR across the full spectrum of Michigan's courts and cases. The ATJ Committee underscores the importance of including business dockets in a comprehensive ADR plan and suggests that including business related matters in such a plan will increase efficiencies, assist in achieving docket management goals and free up judicial resources for more complex business litigation.

## **C. Structure & Resources**

1. Michigan courts should be structured to provide a comprehensive menu of dispute resolution mechanisms including:
  - a. Triage and Specialized Case Assessment to determine the best mechanisms and timing for a variety of dispute resolution techniques.
  - b. Use Alternative Dispute Resolution mechanisms where appropriate.
  - c. Create Specialty Courts and Dockets with specifically trained court personnel and judges.
  - d. Expand admission into specialty courts to make community of residence irrelevant to whether one may participate in such a court. This may be accomplished by including non-residents of the court's jurisdiction, or transferring jurisdiction to a specialty court closer to the residence of the defendant, or allow neighboring counties to share resources and use regional specialty courts. We should advocate increasing specialty courts/dockets in appropriate circumstances beyond the current courts so as to leverage

- expertise more appropriately and move from a geographical based court system to a specialty court/docket system aided by the creative use of technology, such as distance education and video conferencing. Specialty dockets could then exist in multiple courts based upon anticipated caseloads.
- e. Structure courts and train judges in problem solving principles and processes such as restorative and therapeutic justice. Judges should be more proactive, ask more questions, reach out to service providers, and find ways to get more information about each case so they can fashion more individualized, effective orders.
  - f. Create dispositional and sentencing alternatives that include problem solving principles and focused treatment.
2. Articulate a clear policy that diversity is important and continue efforts to increase diversity regarding personnel in Michigan's courts, including judges, quasi-judicial officers and administrative/other staff in those courts and in services otherwise provided through or procured by the courts in court-annexed programs, contracts or referrals by court orders.
  3. Provide more opportunities for training and workforce development to ensure that judicial officers and public/private providers have adequate skills and competencies to effectively serve the needs of diverse court users. Workforce development should include training in procedural fairness, unbiased and non-discriminatory practices, cultural competency, language.
  4. Increase accommodations that can be made for older adults and people with disabilities, and standardize them across courts. These include docket management, large type forms, basic information and assistance provided by clerks. Use person centered language and technology, and standard fee waivers for low income people.
  5. Facilitate adequate state funding for a public defense system. The Michigan Legislature should consider statutory changes that would potentially produce savings within the criminal justice system, including:
    - a. reclassification of minor and non-violent offenses to civil infraction status;
    - b. expansion of circumstances in which expungement of a criminal conviction may be obtained;
    - c. expansion of circumstances in which diversion from prosecution may be obtained;
    - d. creation of a Sentencing Guidelines Commission that can review and recommend changes in the legislative guidelines scheme;
    - e. Use caution before recommending additional fees, costs, or fines without first evaluating the aggregate impact of such obligations on low-income persons, and the local resources required to assess and enforce those obligations.
  6. The Uniform Collateral Consequences of Conviction Act calls for the identification, collection, and publication of laws regarding collateral consequences. The American

Bar Association’s Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons similarly provide that jurisdictions should collect all collateral sanctions in their statute books in a single chapter or section of the jurisdiction’s criminal code, and identify with particularity the type, severity and duration of collateral sanctions applicable to each offense.

7. A statewide self-help web site pilot project modeled after [www.illinoislegalaid.org](http://www.illinoislegalaid.org) should be implemented together with three pilot self-help centers (staffed, part time staffing and no staffing - library based) which will use the website to support their services.

## **V. Recommendations for Low Cost Present Opportunity Innovations**

While some of the seven transformational recommendations found in Section III of this report require initial funding strategies and upfront costs, others require little or no cost. To the extent funding is needed, the ATJ Committee believes that these investments are justified because they hold the potential for long-term financial savings and a significant increase in public trust and confidence in the justice system. In addition, several recommendations can be accomplished at minimal cost and in the near future, meaning these changes can be implemented now and have an immediate impact.

Furthermore, Section III of the Addendum’s Blueprint for Justice offers detailed recommendations in 23 substantive reports, many of which also offer immediate opportunities for low cost improvements to Michigan’s ATJ agenda. These low cost/present opportunity recommendations are offered here to highlight where immediate low cost change can be made to improve justice for users of Michigan’s courts. Individual recommendations can be found in their entirety in Section III of the Addendum.

### **A. Judicial Leadership, Procedural Fairness and a Commitment to Service**

1. Achieving public trust and confidence in the justice system requires judicial leadership. The Michigan Supreme Court should issue a Commitment to Service and Procedural Fairness pledge for each court to adopt and post publicly to ensure that those who enter our courthouses are welcomed, respected, heard and provided meaningful information about the process in a courteous, professional and productive environment and that behavior exhibiting arbitrary and discriminatory bias in the court environment is not tolerated.
2. Michigan courts should work with other community stakeholders to identify self-help initiatives as part of a continuum of legal services rather than a substitute for other needed services.
3. A clear policy commitment should be made to the importance of diversity in Michigan’s courts, and efforts to increase the diversity of the judges, quasi-judicial officers and administrative staff in those courts should be continued.

4. Expand the use of problem solving courts in Michigan where dockets and caseloads warrant specialized review and determinations.
5. In civil and criminal cases, judges should incorporate problem-solving techniques. They should be more proactive, ask more questions, reach out to service providers, and find ways to get more information about each case so they can fashion more individualized, effective orders. Ongoing judicial supervision of compliance review hearings should be integrated into court practice wherever possible.
6. Implement triage protocols in high volume courts and utilize case screening to determine the need for self-help resources or other legal assistance, case suitability for alternative dispute mechanisms and problem-solving justice, and to identify high-risk cases requiring non-traditional intervention and increased supervision.
7. Increase awareness of the requirements of the Americans with Disability Act and the SCAO Request for Accommodations Form, the requirement to have an ADA coordinator to ensure compliance with the ADA, availability of forms in large print, ability of jurors to move closer to the witness stand to see or hear clearly, use of plain English, and the presence of enough benches in the halls of the courthouse. Encourage persons with a disability to participate in jury service, and more.
8. Standardize basic accommodations for older adults across courts and jurisdiction, including docket management, large type forms, basic information and assistance by clerks. Utilize person centered language and standard fee waivers for low income people.

## **B. Stakeholder Collaboration**

1. Judicial leaders should create collaborative relationships with knowledgeable individuals and organizations that specialize in the unique needs and cultures of the diverse communities the court serves in order to improve the trust and confidence of those communities in court processes and decisions. These groups should not be limited to law-related organizations, but should include a wide range of community and non-governmental groups. Recommended outreach efforts would include cross cultural and ethnic based organizations, Indian and First Nation groups, women's groups, lesbian, gay, bi-sexual and transgendered organizations, as well as organizations focused on the issues of persons with disabilities and the elderly. These collaborations should be developed and institutionalized with the stated goal of preserving and improving meaningful access to justice in our state courts for these diverse communities.

2. Neighboring communities should share resources related to problem solving and/or specialty courts.
3. Connections should be made so that it is easier to access mental health and substance abuse treatment in all specialty courts. Judges can learn about resources in the community and sentence a defendant to work with an agency (with that agency's consent) that has demonstrated expertise in addressing the particular treatment need rather than probation. Courts can put together a pre-treatment course with probation or other agency using evidence-based treatment models where criminal behavior can be addressed while people wait to get into treatment.
4. Judges can bring people and agencies together to identify gaps, reduce duplication of problem solving services, coordinate and train across systems to save costs and improve outcomes. Courts should share specialized problem-solving court case management systems with other courts whenever feasible.
5. Courts should develop directories of community-based programs and encourage use by all judges.

### **C. Uniformity of Practice**

1. The Michigan Supreme Court should ensure that all courts accept and use uniform SCAO forms that use plain English. The Supreme Court should support other methods to address literacy and language barriers whenever possible. If this is already a requirement that courts may be unaware of, MSC and SCAO should develop information and education to make it clear to courts that even if they have locally adapted forms, they should also accept the bare SCAO form.
2. Establish uniform definitions of a case and a consistent uniform case reporting system for all criminal and juvenile delinquency cases. This system should provide continuous data that accurately contains the number of new appointments by case type, the number of dispositions by case type and the number of pending cases.

### **D. Education**

1. Education of judges, quasi-judicial officers, administrative officers and all courthouse employees should occur regularly. The following should be offered as part of the curricula:
  - Procedural fairness, cultural competency, the definition, recognition and impact of biased behavior and the importance of language.
  - Cognitive and physical impairments, mental illness, and the aging process.
  - Information on the public perception and reality that bias and insensitivity toward court users based on sexual orientation exists.

- Training to ensure that those who enter our courthouses are welcomed, respected, heard and provided meaningful information about the process in a courteous, professional and productive environment.
  - More comprehensive education on handling the self-represented incorporated into ongoing training for judges and court staff.
2. **Self-Help:** Develop articles and papers to educate stakeholders on self help issues and initiatives.
  3. **Indian Child Welfare Act:** The Michigan Supreme Court, through its administrative office, should encourage and facilitate education about the Indian Child Welfare Act within the Judicial Branch as well as within the other branches of government. The Supreme Court and SCAO should regularly convene tribal judges and state family court judges for joint training. That education should include fostering awareness, acceptance and compliance with current law by all branches of Michigan government.
  4. **Problem-solving Courts:** Training for judges and lawyers should include information about the many problem-solving court models and opportunities for judges to observe successful specialty courts or problem solving techniques, as well as the chance to learn from more experienced judicial colleagues.

## E. Policy and Statutory Changes

1. **Indian Child Welfare Act:** Specific efforts should be made by the Michigan Supreme Court, the State Bar of Michigan and other stakeholders to support the enactment of federal Indian Child Welfare Act concepts into Michigan law
2. **Indigence:** Ensure that acquitted defendants will be absolved of any Legal Financial Obligation (LFO). Clarify that indigent defendants who have been court-ordered to pay an LFO are entitled to (1) appointed counsel to challenge both the amount ordered and the enforcement of the LFO, (2) the same protections as civil judgment debtors.
3. **Right to Counsel:** Prohibit Judges from referring defendants to prosecutors for plea negotiations before they have been given an opportunity to request counsel.
4. **Problem-solving Courts:** Make acceptance into problem solving court programs available to non-residents, or transfer jurisdiction to a specialty court closer to the residence of the defendant. Create statewide and regional specialty courts and establish procedures to share services and resources among counties where there are few good treatment alternatives.
5. **Problem-solving Courts:** Expand the eligibility criteria for specialty courts and problem-solving dockets to include and target high-risk offenders. Modify the

definition of violent offender. Make admission contingent on the completion of a risk and needs assessment.

6. **Problem-solving Courts:** Support the enactment of SB 794 and SB 795, allowing certain OWI court participants to receive a limited restricted license while they are participating in Sobriety/OWI court if they install an ignition interlock device.
7. **Collateral Consequences:** Promote the Uniform Collateral Consequences Act as a way to compile collateral consequences, notify defendants, and develop mechanisms for relief from these consequences.
8. **Expungement:** Expand access to expungement and other sealing mechanisms to expand employment opportunities for people with records.

#### F. Michigan Court Rules

1. **Interpretation:** Michigan courts should adopt ethics guidelines and standards for court interpreters.
2. **Problem-solving Courts:** Clarify the existing intent and application of the Michigan Code of Judicial Conduct to expand the capacity of judges to participate fully in problem-solving courts by adopting the 2007 ABA Model Code of Judicial Conduct, as amended by the 2008 Resolution No. 13 of the 2008 National Council of Juvenile and Family Court Judges Resolution supporting Joint Resolution 8 of CCJ/COSCA. This resolution permits judges to engage in ex parte communications expressly authorized by law “such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.” Canon 2. Rule 2.9 Comment [4]. Allow judges to participate in extra-judicial activities that “promote public understanding of and respect for the courts and the judicial system.” See Canon 3. Rule 3.1 Comments [1] and [2].
3. **Indigence:** SCAO should publish a clear definition of public assistance for purposes of MCR 2.002 and MCR 6.005, that authorizes automatic fee waivers. This should include the following programs: Family Independence Program (TANF), State Disability Assistance, needs based Veteran’s benefits, Supplemental Security Income, the Food Assistance program (food stamps), and Medicaid.
4. **Indigence:** Amend MCR 2.002 and MCR 6.005 and related court forms to provide a clear method for determining indigence for purposes of MCR 2.002 and MCR 6.005, restitution and repayment for those individuals who do not receive public assistance. SCAO should appoint a workgroup to develop a proposed rule, forms and procedures.

5. **Indigence:** Incorporate the factors that are relevant to an indigence determination into the determination regarding whether legal financial obligations (LFOs) should be imposed (i.e., whether a defendant has the ability to pay) in a standardized manner and on the record.
6. **Juries:** Eliminate age, felony conviction, and prior accusation by a prosecutor against a potential juror as a for-cause or per se allowable exemption from jury selection. Eliminate or significantly reduce mandatory exemptions, including felony exemptions, except for persons in actual confinement or on probation, parole or other court supervision. Age should not be a per se allowed exemption. With cause should be required if a person is mentally and physically unable to serve.
7. **Juries:** Eliminate the two-step process for the summons and qualification of jurors. Utilize a one-step process in which jurors are summoned and qualified simultaneously, with minimal adverse effect or complaints, and significant savings to the state. The one-step process in conjunction with online information and qualification should minimally supplement and eventually replace existing procedures with little or no risk or disadvantages.
8. **Juries:** Expand effective communication between the court and potential jurors. Use video presentations, written materials, and power point presentations that allow jurors to hear and see information for greater comprehension. Use online correspondence to convey selection and qualification information, choices for new dates for jury service, name or address changes, requests to be excused from jury service, reporting status check, directions and parking information for the courthouse, orientation, frequently asked questions and electronic forms (for jurors to download and forward to employers, healthcare providers and educational institutions for appropriate documentation). Facebook, Twitter, and texting allow for the possibility of increased communication, with meaningful access.
9. **Domestic Violence:** Adopt broader exemptions for domestic violence survivors from mediation and other forms of alternative dispute resolution, such as and including parenting coordinators. Permit a mediated agreement to be declined by the court if domestic violence affected the victim's ability to make the agreement.

## **G. Funding and Resource Strategies**

1. The SCAO should support efforts to access federal and other funding to support state court interpreter initiatives.
2. Courts could reallocate existing resources to target cases with complex underlying problems. For example, instead of referring every case for a pre-sentence investigation, judges could sentence from the bench (jail work program, or fines

and costs for DWLS or Retail Fraud Third Degree, for example), freeing up the time of probation officers to work with high-risk offenders and those with special needs. Increase the use of electronic reporting for low risk offenders.

3. Judges can educate legislators, funders, and the public on the importance, effectiveness, and cost-savings of specialty courts and why they should be funded.
4. Think outside the box for additional financial resources and funding partners. Some courts have reportedly benefited from 501(3) c organizations set up to support specialty court initiatives. Investigate federal funding and grants.

#### **H. Legal Services and Pro Bono**

1. The courts and the State Bar should work with non-profit legal services providers and other entities that provide *pro bono* services to support and promote a full range of *pro bono* opportunities for lawyers in all practice settings and in all areas of the state.
2. Judges should participate in *pro bono* recruitment and recognition efforts within judicial constraints, including support of the ATJ Campaign, and participation on *pro bono* committees and in *pro bono* recruitment and recognition events, .
3. Recruit firms who agree to provide specialized *pro bono* services throughout the state in order to make expertise in these specialty areas more widely available.
4. Support efforts by the American Bar Association to use Troubled Asset Relief Program (TARP) and other federal funds to employ under employed and unemployed lawyers to provide legal services to the ATJ Community.

#### **I. Substantive Legal Topics**

**Child Welfare:** Use legal mechanisms such as guardianships, child custody or personal protection orders to allow family members to protect and provide for children without the need for expensive and traumatic out-of-home placement.

## VI. Acknowledgements

The ATJ Committee was assisted in its work by a significant number of subject matter experts and other skilled people. The co-chairs, drafters, members and staff liaisons would like to acknowledge and thank them for their contributions to this work. Their affiliations and expertise are widely known and recognized. Jane Zehnder-Merrell and Kurt Metzger provided demographic information. Rebecca Shiemke, Miriam Aukerman, Jessie Rossman, Doug Van Epps and Daniel Manville contributed to topic area report writing, and Rebecca presented the domestic violence report at the March committee meeting. Professor David Moss, Judge Paul S. Teranes and J. Kay Felt provided advice for the disabilities report. Fred Gruber, Michelle Weemhoff, Vivek Sankaran, Mike Foley, Referee David Perkins, Troy Tipton, Reginald Thomas, Laura Kellett and Lynda Hodges contributed to the child welfare and Indian Child Welfare reports. Fran Alexander lent her facilitation expertise at key points of committee work. Rick Winder created the recommendations data base and reporting system.

We acknowledge the contributions of the State Planning Body, the Legal Services Association of Michigan, and the State Bar Committee on Justice Initiatives. We appreciate the meeting space provided, when necessary, by the Hall of Justice. A special thanks to the Michigan State Bar Foundation for its leadership and support.

The State Bar staff works as a unified team and we acknowledge that team support for all of the committee's work. We recognize Michelle Erskine, Judy Hershkowitz, Heather Anderson, Carrie Sharlow, Sandi Barger and Joan Kreutzman for their special services.