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# Concurrent Jurisdiction:

## A LOCAL APPROACH TO COURT REFORM

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### "Unification" Breaks Jurisdictional Barriers

By Jill Booth and Jim Inloes

**T**he concept of concurrent jurisdiction in the trial courts is not new. As early as 1990, the Commission on the Courts in the 21st Century recommended that, by the year 1997, "all trial courts should be unified into one trial court in each of the current circuits."<sup>1</sup>

This proposed "unification" of the courts was intended to collapse the jurisdictional barriers among the circuit, district, and probate courts. It resulted in pilot and demonstration projects being implemented around the state that tested these concepts.

#### History

In 2002, Gov. John Engler signed Public Act 678 authorizing Michigan courts to develop and implement concurrent jurisdiction plans. Codified in MCL 600.401 *et seq.*, it states:

A plan of concurrent jurisdiction shall provide for the transfer or assignment of cases between the trial courts affected by the plan and to individual judges of those courts as necessary to implement the plan and to fairly distribute the workload among those judges.<sup>2</sup>

**FAST FACTS:**

- Concurrent jurisdiction is intended to give local courts the tools to collaborate and cooperate with each other to provide judicial services that fit the needs of their communities.
- With the reduction of judgeships, some courts have decided to use concurrent jurisdiction plans as a way to distribute all local court cases among the remaining judges.
- Concurrent jurisdiction plans can help remove institutional barriers to efficiency, innovation, and enhanced public service.

Recently, the Judicial Crossroads Task Force of the State Bar of Michigan recommended that Michigan “[b]egin immediately to build a new trial court operational design based on collaboration and streamlined delivery of service, with a council to guide it.”<sup>3</sup> The task force also suggested that Michigan

[s]implify the design and operation of the trial court system through a sustained commitment to effective consolidated court functions. Use the experience and successes of the jurisdictions that have already adopted concurrent jurisdiction plans as instructive models, but allow local judges to adapt them to local experience and conditions.<sup>4</sup>

In his comments about the Judicial Crossroads Task Force report, Michigan Supreme Court Chief Justice Robert P. Young Jr. stated that “many of our courts could benefit from consolidating some functions with other courts in the same judicial circuit. The Supreme Court has long urged the right-sizing of our court system and appropriate court consolidation.”<sup>5</sup>

On October 17, 2012, Gov. Rick Snyder signed Public Act 338, requiring that each judicial circuit adopt a concurrent jurisdiction plan by a majority vote of all the judges of the trial courts within that circuit, unless a majority of those judges vote not to have one.<sup>6</sup>

## Opportunity to Improve Service

Most citizens generally know that the courts in their communities deal with criminal, civil, divorce, estate, and traffic cases. However, the public often has little knowledge of the jurisdictional distinctions among the circuit, district, and probate courts.

So when courts were given the authority to blur those jurisdictional distinctions in an effort to improve public service, many saw it as an opportunity to make some significant changes in a judicial system that hadn’t changed much in more than 40 years. In fact, some local courts that had implemented changes under previous Supreme Court initiatives<sup>7</sup> also developed plans of concurrent jurisdiction. And now with the reduction of judgeships in many jurisdictions throughout Michigan, some courts have decided to use concurrent jurisdiction plans as a means to distribute all local court cases among the remaining judges.

As a byproduct of these efforts, local courts can also review other efficiencies that go far beyond simply dividing up the judicial workload more equitably. The plan may include substantive administrative and staff reorganization to improve services to the public. This could mean anything from a single administrative staff for all three courts to shared probation and support services.

Overall, these plans can remove institutional barriers to efficiency, innovation, and enhanced public service.

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## Concurrent Jurisdiction Benefits

The following chart depicts the continuum of concurrent jurisdiction plans:

Levels of Concurrent Jurisdiction <sup>8</sup>					
↓	↓	↓	↓	↓	↓
Traditional court structure	Limited cooperation	Working together regularly	Regular cooperation and collaboration	Consolidation	Complete unification
Each court is a separate entity	Irregular work sharing	Regular work sharing	Uniform policies and pay	Regular sharing of workload based on objective standards	<ul style="list-style-type: none"> <li>• One vision</li> <li>• A judicial council</li> <li>• One chief judge</li> <li>• One administrator</li> </ul>
No sharing of workload		Regular meetings	Coordinated scheduling	Cross training of staff	<ul style="list-style-type: none"> <li>• One staff</li> <li>• One budget</li> </ul>
No sharing of resources			Uniform policies for caseflow management, ADR, etc.	Sharing of resources	<ul style="list-style-type: none"> <li>• One pay scale</li> <li>• One employee policy</li> </ul>
No coordination of activities			Regular meeting of a judicial council	Sharing authority	One collection plan
Separate staffs, policies, and budgets				One management information system	One caseflow plan

Some real benefits of developing a plan of concurrent jurisdiction include opportunities to:

- design a local court system customized to meet the specific needs of the community;
- assign and organize the judicial and administrative workload to maximize access to the courts and the timely resolution of cases;
- develop and assign support services that improve public availability and fully utilize the multiple skills of experienced staff;
- improve local communication and cooperation among the judges and staff;
- standardize practices and reduce appearances by counsel and litigants; and
- combine duplicative programs and services.

These perceived benefits greatly impact court administration. For example, imagine a fictional jurisdiction with a two-judge circuit court, three-judge district court, and one-judge probate court.

The circuit court and the district court each have court administrators. The probate court has a probate register who performs many administrative tasks. In addition, the district court has a dedicated collections department with two staff persons. And the circuit court relies solely on the probation department to enforce the collection of court-ordered fines, costs, and restitution.

If this fictional jurisdiction decided to explore concurrent jurisdiction, it would—in addition to reviewing the case distribution among the judges—begin to examine ways in which it could consolidate administrative functions, including collections. This effort may result in a complete restructuring of administration, and the bottom line might very well be cost savings and greater efficiency. But more importantly, the effort will likely result in a local court that will be more responsive and less confusing to its citizens. It will expand the view of each court to include its impact on the other courts in the jurisdiction. And this expanded view will force court administrators to become more knowledgeable about the broader issues facing each court.

### “Generalization” of Duties?

Questions remain about court consolidation. Won't the “generalization” of duties have some negative consequences? After



all, the judges and staffs are currently “specialists”; e.g., they are experts in medical malpractice, landlord-tenant law, and guardianships. So by requiring them to move beyond that specialization, will they lose their expertise over time? There are many answers to this question.

Currently, circuit judges preside over anything from a capital felony case to an employment discrimination case. They hear divorces, personal injury cases, and appeals. District judges preside over drunk-driving cases and do preliminary examinations on capital felony cases. They hear civil cases and misdemeanors. Probate judges preside over mental health proceedings and decedents’ estates. They grant petitions for guardianship and conservatorship. Many probate judges are currently in the family division of the circuit court, so they also hear divorce, juvenile delinquency, and child protective proceedings.

As you can see, there is already a generalist nature to all judges’ work. With that said, concurrent jurisdiction may, in fact, increase specialization should a court decide to create criminal, civil, and family divisions. Cases that previously crossed jurisdictional boundaries will, in effect, stay in the same court. For example, misdemeanors *and* felonies will be processed within the same court and assigned the same judge.

And what about court staff? Case processing requires some degree of specialization that is different than what judges require. A clerk who processes traffic tickets must be trained to complete all the required tasks involved in correctly processing a traffic citation. These processes can be complicated and require a significant amount of training. Actually, the degree of generalization has more to do with the volume of cases filed within a jurisdiction than the ability of staff to learn how to process more than one type of case. In fact, smaller jurisdictions—out of necessity—must have staff trained to do many tasks. Smaller jurisdictions do not have the luxury of adding personnel in order to specialize.

The bottom line is that each jurisdiction is different and must examine the services it currently provides to the community. Each jurisdiction must then determine whether it can improve the way these services are provided if a concurrent jurisdiction plan is developed. Can it consolidate some functions to support all the courts, thus reducing the need to duplicate efforts from one floor of the courthouse to another? Can the judges more equitably divide the total caseload to move cases more expeditiously?

If these questions are currently being asked, then it is highly likely that a leader in the jurisdiction is doing the asking. And leadership is critical in developing, implementing, and sustaining a concurrent jurisdiction plan.

## Systemic Change

In the article “Another View of Local Legal Culture: More Than Court Culture,” Judge Kevin Burke and Frank Broccolina state:

The real challenge to courts is the culture within the courthouse, especially as it relates to the issue of court leadership. Leadership

is the single most important variable in court performance. It relates to the leadership of judges by judges and the need to create and sustain effective court leadership teams of presiding judges and court managers. It transcends the local legal culture.<sup>9</sup>

Concurrent jurisdiction may be an important prelude to real systemic change in Michigan trial courts. Its successes—and failures—may provide insight into future changes that will ultimately improve the way justice is delivered to the citizens of Michigan.

Consolidation has long been embraced by the private sector as a way of both saving costs and providing better service to customers. It is time for courts to do the same. ■



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## FOOTNOTES

1. Commission on the Courts in the 21st Century, *Michigan's Courts in the 21st Century: A Report to the Legislature, Governor, and Supreme Court* (December 1990), p 4.
2. MCL 600.401(3).
3. State Bar of Michigan, *Report and Recommendations: Delivering Justice in the Face of Diminishing Resources*, January 26, 2011, p 6, available at <<http://spb.mplp.org:8080/download/attachments/425986/Judicial-Crossroads-Report-Final-1-11.pdf?version=1>> (accessed October 7, 2012).
4. *Id.*
5. Michigan Supreme Court Office of Public Information, Statement of Chief Justice Robert P. Young Jr. regarding State Bar of Michigan “Judicial Crossroads” report, January 26, 2011, available at <[http://www.mirsnews.com/pdfs/pdfs/Press\\_Releases/1296073928\\_MSC1.pdf](http://www.mirsnews.com/pdfs/pdfs/Press_Releases/1296073928_MSC1.pdf)> (accessed October 7, 2012).
6. 2012 PA 338, effective January 1, 2013.
7. Examples include unified trial court pilot projects, demonstration projects, and next generation projects.
8. Chart is on file with the authors and was originally developed by Hon. James Fisher (retired), Barry County Circuit Court. Modifications were made for purposes of this article.
9. Burke & Broccolina, *Another view of local legal culture: More than court culture*, 20 *Court Manager* 29 (Winter 2005).