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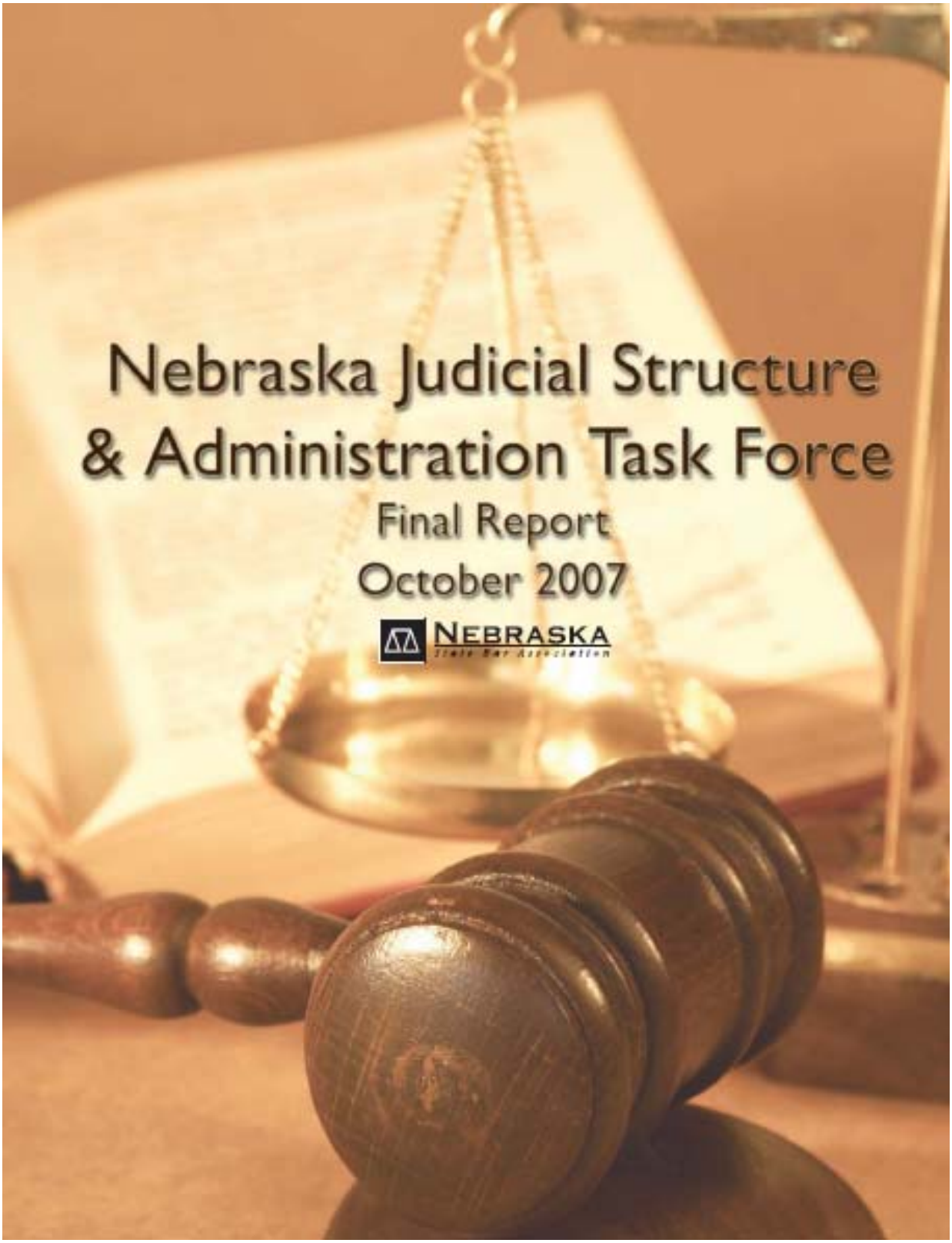
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Nebraska Judicial Structure
& Administration Task Force
Final Report
October 2007
NEBRASKA

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ACKNOWLEDGMENTS

The Nebraska Judicial Structure and Administration Task Force (Task Force) is grateful for the contributions, commitment and support of those persons who assisted in its examination of Nebraska's court system. The Task Force acknowledges the generous professional and financial support of the Nebraska State Bar Association (NSBA). The Task Force also extends a special note of appreciation to the University of Nebraska Public Policy Center for its contributions.

The Task Force received direction from a number of states that have previously investigated these issues in the courts and appreciates the help and insight received from court administrators offices from across the country, including the U.S. territories, and state bar associations, attorneys and judges from Arkansas, Iowa, Kansas, Michigan, Minnesota, North Dakota and South Dakota.

The Task Force received many documents from the Knowledge and Information Services at the National Center for State Courts (NCSC). In addition, the Task Force received guidance and expertise from the Research Division of the NCSC, especially David B. Rottman, Ph.D., Principal Court Research Consultant.

The Task Force conducted several surveys to better understand the operation of the justice system. The Task Force gratefully acknowledges those NSBA members, judges and court staff who took the time to respond to the surveys.

Finally, a number of additional individuals gave their intellect and energy to this project. They include: Janet Bancroft, Nebraska Administrative Office of the Courts; Debora Brownyard, Nebraska Office of Dispute Resolution; the Honorable William Cassel, Nebraska Court of Appeals; Professor G. Michael Fenner, Creighton University School of Law; Lorin Galvin, NSBA Alternative Dispute Resolution Section; Mitchel Herian, University of Nebraska Public Policy Center; the Honorable John Irwin, Nebraska Court of Appeals; Mary Johnson, Ruth Mueller and Robak; Robert Kirby, NSBA Alternative Dispute Resolution Section; Carole McMahon Boyes, Judicial Branch Education; Kathy Moore, Nebraska Administrative Office of the Courts; Michael Mullin, NSBA Alternative Dispute Resolution Section; Professor Yunwoo Nam, University of Nebraska-Lincoln; Elizabeth Neeley, University of Nebraska Public Policy Center; Amy Prenda, University of Nebraska Public Policy Center; Vickie Prince, Nebraska Clerks of the District Court Association; Jane Schoenike, Nebraska State Bar Association; and Alan Tomkins, University of Nebraska Public Policy Center.

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EXECUTIVE SUMMARY

Establishment of the Judicial Structure and Administration Task Force

The Nebraska courts face a challenge shared by many state courts, determining the optimum number of judges needed to successfully do the work of the district, county and juvenile courts. Maintaining an adequate level of judicial resources is essential to effectively manage and resolve court business while providing meaningful access to the courts for the citizens of Nebraska. In order to meet these challenges, an objective assessment of the number and allocation of judges needed to handle caseloads is necessary. To this end, the Administrative Office of the Courts contracted with the National Center for State Courts (NCSC) to conduct a judicial workload assessment for Nebraska's district, county and juvenile courts.[1]

In December 2006, the Final Report of the *Judicial Workload Assessment, Nebraska District, County and Juvenile Court* was released. The findings of this study, which indicate the need for more district, county and juvenile court judges in Nebraska, coupled with a budget climate that may not be conducive to such expansion, prompted the Nebraska Judicial Resources Commission to search for alternative approaches to meet the state's judicial resource needs. On January 8, 2007, the Nebraska Judicial Resources Commission (JRC) requested that the Nebraska State Bar Association (NSBA) study the current judicial district boundaries. In response to this request, the NSBA established the Judicial Structure and Administration Task Force (Task Force). The NSBA Judicial Resources Committee formed the core of the Task Force with additional representatives added from the JRC, the Supreme Court, trial courts, and the Legislature. The NSBA contracted with the University of Nebraska Public Policy Center to conduct policy-relevant research and provide administrative support to the Task Force.

The Task Force was specifically charged by the JRC to study the judicial caseload data and the allocation of judicial resources in relation to Nebraska's judicial district boundaries. In an effort to comprehensively identify and thoroughly examine ways in which the judicial system can more efficiently utilize judicial resources, the Task Force expanded its initial charge. The expanded charge included: jurisdiction of the courts, authority of the Supreme Court to reallocate existing judicial positions, the feasibility and utility of trial court consolidation, and any technological upgrades required by Task Force recommendations. In order to accomplish these

[1] Ann Jones, Mary Beth Kirven, and Suzanne Tallarico. *Judicial Workload Assessment: Nebraska District, County and Juvenile Courts*. National Center for State Courts. (December 2006).

charges, the Task Force divided itself into four Subcommittees. The scope of the Subcommittees is discussed in more detail below.

Powers and Boundaries Subcommittee – The Subcommittee studied two issues: 1) Should Nebraska's judicial boundaries be changed to allow for a more equitable distribution of judicial resources; and 2) Are constitutional or statutory changes necessary to allow for the more efficient allocation of trial court judges?

Jurisdiction Subcommittee – The Subcommittee studied: 1) To what extent should concurrent jurisdiction between the district and county courts be expanded or restricted to create efficiencies in the system; and 2) To what extent would Nebraska benefit from the use of referees, quasi-judicial officers or alternate dispute resolution to address caseload concerns?

Single Tier Subcommittee – The Subcommittee studied the utility of consolidating Nebraska's district and county court system into a "single-tier" trial court and made recommendations for the more efficient organization and management of the court system.

Technology Subcommittee – In consultation with the Nebraska Supreme Court Technology Committee, the Subcommittee studied: 1) Appropriate technological updates/policies to improve the efficient handling of cases and the administration of justice; and 2) The technology required by Task Force recommendations.[2]

Core Values

The Task Force determined that the following core values would guide the study:

Accessibility – Trial courts must be physically, geographically, economically, procedurally, and psychologically accessible to the citizens of Nebraska.

[2] For a more complete discussion of the Nebraska Supreme Court Technology Committee, as well as the suggestions and recommendations of the committee, see the *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*. Available online at: http://www.supremecourt.ne.gov/court-information-tech/pdf/NSC_Technology_Committee_SP_11012006.pdf

Accountability – Within the organizational structure of the Judicial Branch, trial courts must establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance.

Fairness – Trial courts must provide due process and equal protection under the law.

Efficiency – Because of the relatively large number of people and stakeholders, it is imperative that the courts continue to operate in an efficient manner so as not to cause significant delays in the processing of justice.

The Task Force recognized that recommendations should not compromise the integrity of the court system. Thus, any potential changes meant to encourage the core value of efficiency must not detract from the other identified core values of accessibility, accountability, and fairness, and when possible, should enhance the court system's adherence to these three core values.[3]

Task Force Membership

Task Force membership included Supreme Court Justices, state senators, trial court judges, and attorneys representing all areas of the state and was staffed by the University of Nebraska Public Policy Center. Recognizing that "one size does not fit all," the membership of the Task Force and its Subcommittees was intended to be both geographically diverse, to provide the perspectives of Nebraska's rural and urban court systems, and representative of a number of areas of practice.

NSBA Membership Forums

The Judicial Structure and Administration Task Force held 20 meetings with NSBA members across the state. Members were asked to provide comment on the (at the time, preliminary) recommendations of the Task Force. The Task Force reviewed and considered the comments prior to finalizing this report and the recommendations.

[3] Each of these core values are in line with the *Trial Court Performance Standards* that have been accepted by a number of prominent professional organizations within the legal profession. A description of these concepts and their application can be found in: Pamela Casey and William E. Hewitt. *Court Responses to Individuals in Need of Services: Promising Components of a Service Coordination Strategy for Courts*. Williamsburg, VA: National Center for State Courts. (2001).

RECOMMENDATIONS

Judicial District Boundaries

The Task Force recommends that the existing judicial district boundaries remain in place. The Task Force determined that judicial resource deficiencies would be better resolved by moving judges rather than changing judicial district boundaries. (See recommendation under *Judicial Allocation of Powers).* The Task Force came to this conclusion after examining a number of different judicial district models with the use of GIS mapping to more accurately evaluate current workload data. The distribution of judicial resources was not the only factor considered. The Task Force also considered the following criteria in relation to each model: political feasibility, practicality of implementation, population/filing trends, longevity of the scenario's utility, meaningful retention districts, and historical county relationships.

Judicial Allocation of Powers

The Task Force recommends that legislation be introduced delegating to the Supreme Court authority to determine where a judicial vacancy should be filled subject to the current statutory framework for determining vacancies by the Judicial Resources Commission (JRC). Under current law, in order for the Supreme Court to administer its judicial resources (e.g., moving a judicial vacancy to another judicial district or reallocating a current judicial position to another judicial district), it must first go through the legislative process to amend the statutes. The legislative process does not allow the Supreme Court to promptly and efficiently administer its judicial resources. Therefore, the Task Force supports legislation that would provide the Supreme Court with more flexibility to administer its judicial resources, but would not weaken the current role of the JRC. Because the authority to determine where a vacancy should be filled can result in a county/judicial district losing a judicial position, the Task Force favored the involvement of the JRC, which includes statewide judicial, attorney and public representation. The loss of a judge not only impacts caseload, but the practice of law in the affected judicial district, and the public's access to the court system. The Task Force recommends:

- The Legislature will statutorily provide for the total number of judgeships. Until a vacancy occurs, the specific number of district, county, and separate juvenile court judges

would be equal to the number of judges that exist at the time the legislation was enacted and the judges would serve in the judicial districts where they were originally appointed.

- When a vacancy occurs and the JRC determines that the vacancy should be filled in the same judicial district where it occurred, the JRC would notify the appropriate judicial district nominating commission to fill the position in the same judicial district. This is the current statutory procedure and should not be changed.
- When a vacancy occurs and the JRC determines that the vacancy should be filled in a different judicial district and/or that the vacancy should be filled by another type of judge (district, county or juvenile), the JRC would make its recommendation to the Supreme Court. The Supreme Court, by a majority vote, would then make an independent determination of where that vacancy should be filled based upon the recommendation from the JRC and a number of other factors, including caseload statistics and access to justice factors. Once the Supreme Court makes its determination, it would notify the appropriate Judicial Nominating Commission to fill the position.
- If the JRC recommends to the Supreme Court that a sitting judge should be reallocated to another judicial district, then the Supreme Court may reallocate the position based on the recommendation of the JRC; current caseload statistics and access to justice factors; *and* the consent of the sitting judge being asked to relocate.
- If the JRC makes a determination to increase or reduce the number of judges, change judicial district boundaries, or change the number of judicial districts, the JRC would make these recommendations to the Supreme Court. If the Supreme Court agreed with the recommendations of the JRC, the Supreme Court would then ask the Legislature for the necessary statutory changes.

Court Jurisdiction

The Task Force recommends legislative concepts that allow the courts to better administer their judicial workload. One legislative concept allows the district and county courts to cross-assign cases with the remainder of the concepts offering legislative solutions for improving the process. These legislative concepts are meant to minimize the need for additional judicial resources. The statutory concepts are as follows:

Appeal Process

- Authorize the district court to review small claims appeals on the record.

- When appealing from the county court to the district court, the process for admitting the bill of exceptions would conform to the process used by the Nebraska Court of Appeals and Nebraska Supreme Court.
- When appealing an excessive sentence from the county court to the district court, the process would conform to the process used by the Nebraska Court of Appeals and Nebraska Supreme Court.

Mediation & Quasi-Judicial Officers

- The courts should inform the parties and their attorneys about the availability of mediation as an alternative method of dispute resolution and that judges should encourage parties and their attorneys through some type of formalized process to consider the use of mediation as a means to resolve their disputes. Such a process could include a certification by the attorney to the court that the client has been fully informed of the benefits of mediation as an alternative means of resolving the client's dispute.
- Authorize county and separate juvenile court judges to appoint child support referees.
- Expand the authority of the courts to appoint a referee for any equity matter.

Caseload & Scheduling Management

- All non-evidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings do not include trials before a jury. Conducting hearings in this manner shall be consistent with the public's access to the courts.
- Require mandatory filing of felony and misdemeanors in district court when they arise from the same incident.
- Require the presiding judges of the district and county court in each judicial district to meet at a minimum of every six months to review the caseload of the two benches. In an effort to equalize the caseload, the presiding judges are authorized to assign between the courts cases arising out of Chapter 42 (domestic relations including protection orders), harassment orders (Neb. Rev. Stat. §28-311.09) and Class IV felonies. The consent of the parties shall not be required and the cases shall remain filed in the court where they were originally filed. A written report of the assignment(s) will be sent to the Supreme

Court, and, if the presiding judges cannot agree on a particular assignment, the matter shall be forwarded to the Supreme Court for resolution.

Court Structure

After studying "single-tier" court structures as they exist in various forms, the Task Force recommends that the consolidation of the trial courts into a one-tier trial court should not be pursued. Such consolidation will not result in greater efficiency nor reduce costs.

The Task Force determined:

- Consolidation does not decrease the costs associated with the court system, but instead leads to increased costs in: higher salaries and higher fringe benefit and retirement contributions for judges and employees of a limited jurisdiction court being absorbed into a general jurisdiction court; training for judges on their expanded jurisdictional responsibilities; additional expenditures in support of judges being elevated to the status of a general jurisdiction judge, such as enhancements in chambers and courtrooms and entitlement to specialized employees (for example, court reporters, bailiffs, and administrative assistants);[4] and allocating additional resources to the Court of Appeals to enable it to administer the additional caseload that would come from removing the level of appeal from county to district court.
- States with one-tier court systems tend to re-create a limited jurisdiction court by establishing an unofficial lower level of judges and staff who process routine, high-volume cases.
- Many of the efficiencies realized through court reform may in actuality come from the administrative reforms that accompany trial court consolidation and not the actual consolidation itself.

The Task Force recommends support for administrative functions that may help in reducing the immediate need for additional judicial resources. The Task Force recommends the following:

[4] Robert Tobin. *Managing Budget Cutbacks,* Court Manager (Winter 1995), p. 3.

- Access to certified language interpreters impacts the ability of judges to effectively process cases. The Task Force recommends the recruitment and efficient use of additional certified language interpreters.
- Legal research assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply additional legal research assistance for judges.
- Administrative assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply administrative assistance for judges.
- Technology enhances the ability of the entire court system to efficiently function. The Task Force recommends the acquisition of and efficient use of technology.
- All levels of the court system need to be responsive to the Supreme Court and this includes the clerks of the district court. This will assist the courts in administering judicial resources by allowing the Judicial Branch to effectively supervise the system in its entirety, improve its ability to provide administrative assistance to the district courts, and allow for the more efficient implementation of training and technological advances, while maintaining current levels of access.
- Judges' travel to provide services should not be characterized as an administrative "inefficiency."
- Mediation can impact the court system's ability to effectively process cases, and, therefore, could assist the courts in administering judicial resources.

Technology Use within the Courts

The Task Force recommends the expanded use of technology. This recommendation will help the courts become more efficient and potentially minimize the need for additional judicial resources. Therefore, the Task Force:

- Supports all recommendations that implicate the use of technology.
- Supports the Nebraska Supreme Court Technology Committee Strategic Plan.
- Encourages the Nebraska State Bar Association and its membership to support technology advances being promoted by the Supreme Court, including participation in pilot projects.

- Encourage the further advancement of technology and its use in an effort to help the courts become more efficient and to potentially conserve the need for additional judicial resources.
- Recommends Nebraska State Bar Association works with the Supreme Court to find adequate resources to fund the application and use of technology for the court system.

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CHAPTER 1: INTRODUCTION

Establishment of the Judicial Structure and Administration Task Force

The Nebraska courts face a challenge shared by many state courts, determining the optimum number of judges needed to successfully do the work of the district, county and juvenile courts. Maintaining an adequate level of judicial resources is essential to effectively manage and resolve court business while providing meaningful access to the courts for the citizens of Nebraska. In order to meet these challenges, an objective assessment of the number and allocation of judges needed to handle caseloads is necessary. To this end, the Administrative Office of the Courts contracted with the National Center for State Courts (NCSC) to conduct a judicial workload assessment for Nebraska's district, county and juvenile courts.[1]

In December 2006, the Final Report of the *Judicial Workload Assessment, Nebraska District, County and Juvenile Court* was released (See Appendix A). The findings of this study, which indicate the need for more district, county and juvenile court judges in Nebraska, coupled with a budget climate that may not be conducive to such expansion, prompted the Nebraska Judicial Resources Commission to search for alternative approaches to meet the state's judicial resource needs. At its December 2006 meeting, the Nebraska Judicial Resources Commission (JRC) requested that the Nebraska State Bar Association (NSBA) study the current judicial district boundaries. In January 2007, the NSBA established the Judicial Structure and Administration Task Force (Task Force). The NSBA Judicial Resources Committee formed the core of the Task Force with additional representatives added from the JRC, the Supreme Court, trial courts, and the Legislature. The NSBA contracted with the University of Nebraska Public Policy Center to conduct policy-relevant research and provide administrative support to the Task Force.

The Task Force was specifically charged by the JRC to study the judicial caseload data and the allocation of judicial resources in relation to Nebraska's judicial district boundaries (See Appendix B). In an effort to comprehensively identify and thoroughly examine ways in which the court system can more efficiently utilize judicial resources, the Task Force expanded its initial charge. The expanded charge included: jurisdiction of the courts, authority of the

[1] Ann Jones, Mary Beth Kirven and Suzanne Tallarico. *Judicial Workload Assessment: Nebraska District, County and Juvenile Courts*. National Center for State Courts. (December 2006).

Supreme Court to reallocate existing judicial positions, the feasibility and utility of trial court consolidation, and any technological upgrades required by Task Force recommendations. In order to accomplish theses charges, the Task Force divided itself into four Subcommittees. The scope of the Subcommittees is discussed in more detail below.

Powers and Boundaries Subcommittee – The Subcommittee studied two issues: 1) Should Nebraska's judicial boundaries be changed to allow for a more equitable distribution of judicial resources; and 2) Are constitutional or statutory changes necessary to allow for the more efficient allocation of trial court judges?

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Technology Subcommittee – In consultation with the Nebraska Supreme Court Technology Committee, the Subcommittee studied: 1) Appropriate technological updates/policies to improve the efficient handling of cases and the administration of justice; and 2) The technology required by Task Force recommendations.[2]

It should be noted that there is substantial overlap between the subcommittees. Clear lines of communication were developed so that overlapping content areas did not translate into duplication of duties.

[2] For a more complete discussion of the Nebraska Supreme Court Technology Committee, see Appendix H.

Core Values

The Task Force determined that the following core values would guide the study:

Accessibility – Trial courts must be physically, geographically, economically, procedurally, and psychologically accessible to the citizens of Nebraska.

Accountability – Within the organizational structure of the Judicial Branch, trial courts must establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance.

Fairness – Trial courts must provide due process and equal protection under the law.

Efficiency – Because of the relatively large number of people and stakeholders, it is imperative that the courts continue to operate in an efficient manner so as not to cause significant delays in the processing of justice.

The Task Force recognized that recommendations should not compromise the integrity of the court system. Thus, any potential changes meant to encourage the core value of efficiency must not detract from the other identified core values of accessibility, accountability, and fairness and when possible, should enhance the court system's adherence to these three core values.[3]

Task Force Membership

Task Force membership included Supreme Court Justices, state senators, trial court judges, and attorneys representing all areas of the state and was staffed by the University of Nebraska Public Policy Center. Recognizing that "one size does not fit all," the membership of the Task Force and its Subcommittees was intended to be both geographically diverse, to provide

[3] Each of these core values are in line with the *Trial Court Performance Standards* that have been accepted by a number of prominent professional organizations within the legal profession. A description of these concepts and their application can be found in: Pamela Casey and William E. Hewitt. *Court Responses to Individuals in Need of Services: Promising Components of a Service Coordination Strategy for Courts.* Williamsburg, VA: National Center for State Courts. 2001.

the perspectives of Nebraska's rural and urban court systems, and representative of a number of areas of practice.

Dan Fullner and John Grant co-chaired the Task Force. Woody Bradford chaired the Single Tier Subcommittee. Howard Olsen chaired the Powers and Boundaries Subcommittee. Mike Borders chaired the Jurisdiction Subcommittee. Thomas W. Tye II chaired the Technology Subcommittee. Task Force members included:

Senator Brad Ashford, Omaha
Hon. Mark Ashford, Omaha
Julie Bear, Plattsmouth
Jeff Beaty, Lincoln
Mike Borders, Broken Bow
Woody Bradford, Omaha
Hon. Alan Brodbeck, O'Neill
David Buntain, Lincoln
Hon. Ted Carlson, Omaha
Sam Clinch, Lincoln
Hon. John Colborn, Lincoln
Hon. William Connolly, Lincoln
Linda Crump, Lincoln
Bill Dittrick, Omaha
Hon. James Doyle, Lexington
Mike Dunn, Falls City
Brad Easland, Norfolk
Hon. Mike Fitzgerald, Fort Calhoun
Senator Mike Flood, Norfolk
Ronald Furse, Aurora
Hon. John Gerrard, Lincoln
Hon. Alan Gless, Seward
Hon. Michael Heavican, Lincoln
Hon. Marcena Hendrix, Omaha
Mitchel Herian
Bob Hillis, Fremont
Hon. John P. Icenogle, Kearney
Hon. Robert Ide, Holdrege
Eileen Janssen, Lincoln
Jerom Janulewicz, Grand Island
Mark Johnson, Norfolk
Hon Max Kelch, Papillion
Hon. Jeffrey Marcuzzo, Omaha
Wayne Mark, Omaha
Hon. Mike McCormack, Omaha
Hon. Patrick McDermott, Schuyler
Bill Miller, Lincoln
William Mueller, Lincoln
Elizabeth Neeley
Howard Olsen, Scottsbluff
Mike Pirtle, Omaha
Hon. Linda Porter, Lincoln
Amy Prenda
Hon. Patrick Rogers, Norfolk
Robert F. Rossiter, Jr., Omaha
Hon. Matthew Samuelson, Pender
Jane Schoenike, Lincoln
John Sennett, Broken Bow
Hon. Brian Silverman, Alliance
Mark Sipple, Columbus
Hon. Frank Skorupa, Columbus
Paul Snyder, Scottsbluff
Susan Spahn, Omaha
Hon. Edward Steenburg, Ogallala
Hon. John Steinheider, Nebraska City
Hon. Kenneth Stephan, Lincoln
Clarissa Suarez-Russell, Omaha
Hon. Donna Taylor, Neligh
Alan Tomkins
Stacey Trout, Lincoln
Thomas W. Tye II, Kearney
Janice Walker, Lincoln
Bradley White, Hastings
Hon. John Wright, Lincoln

"The contributions of time and assistance to the Task Force by Justices of [the Nebraska Supreme] Court were not intended to be on the basis of a 'voting member' status. Members of the Court viewed their responsibility to the Task Force as providing only guidance and direction not as playing a role which would warrant recognition, either expressly or implicitly, as an 'author' of the final product."

- Letter from Chief Justice Michael Heavican dated October 3, 2007

NSBA Membership Forums

The Judicial Structure and Administration Task Force held 20 meetings with NSBA members across the state in the month of September. Members were asked to provide comment on the (at the time, preliminary) recommendations of the Task Force. Meetings were held in the following communities: Columbus, North Platte, Lincoln (2), Omaha (2), Lexington, Ogallala, Scottsbluff, Papillion, Grand Island, Hastings, Kearney, Holdrege, McCook, Norfolk, Fremont, Broken Bow, O'Neill, and Nebraska City. The Task Force reviewed and considered the comments prior to finalizing this report and the recommendations.

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CHAPTER 2: NEBRASKA'S CURRENT COURT STRUCTURE

CURRENT COURT STRUCTURE

The Nebraska State Courts are comprised of four tiers. Hierarchically, the Nebraska Supreme Court sits at the top of the state's court structure, as the appellate court of last resort. The Nebraska Court of Appeals sits at the second tier, serving as the state's intermediate appellate court. The District Courts sit on the third tier as courts of general jurisdiction and also serve as an intermediate appellate court to the County Courts and Administrative Tribunals. Finally, comprising the fourth tier are the County Courts, the Separate Juvenile Courts and the Workers' Compensation Courts, which are all courts of limited jurisdiction. Appeals from the Separate Juvenile and Workers' Compensation Courts go directly to the Court of Appeals and not to the District Courts (see Appendix C).

In this report, the Judicial Structure and Administration Task Force (Task Force), makes a number of recommendations regarding the court structure and some of the administrative relationships within the Judicial Branch. The purpose of this chapter is to give the reader a brief, general overview of the current court structure in Nebraska and to provide the reader with a greater understanding of the Task Force's recommendations. This chapter also describes the extent to which Nebraska's court structure, court administration and judicial budgeting process are considered unified.

Nebraska Supreme Court

The Nebraska Constitution vests general administrative authority in the Supreme Court over all courts and provides that this authority shall be exercised by the Chief Justice. It also states that the Chief Justice will be the executive head of the courts.[1]

The Nebraska Supreme Court is composed of seven members – one from each of six Nebraska Supreme Court judicial districts and the Chief Justice is chosen from the state at large. Like all Nebraska judges, the Chief Justice and Supreme Court judges are appointed to the bench through merit selection. The six Supreme Court judicial districts that exist in Nebraska vary greatly in size, but, as required by state law, contain roughly

[1] Neb. Const., Art. V, §1

equal populations;[2] as of 2000, the year of the last constitutionally mandated round of redistricting, each district served about 200,000 to 300,000 people (see Appendix D).

The Nebraska Supreme Court is Nebraska's court of last resort. The Supreme Court hears appeals from the Nebraska Court of Appeals, as well as mandatory appeals in cases involving capital punishment, life imprisonment, and those cases involving constitutional matters and impeachment. The Supreme Court can also hear appeals directly from trial courts if it so chooses. The Supreme Court has original jurisdiction in cases relating to revenue, civil cases in which the state is a party, mandamus, quo warranto, habeas corpus, and election contests involving state officers other than members of the Legislature.[3]

In addition to the Supreme Court's basic responsibility to hear appeals, it also provides administrative leadership for the Judicial Branch, including the Office of Probation Administration. This includes the regulation of the practice of law in Nebraska; handling the admission of attorneys to the Nebraska State Bar Association; disciplining attorneys; and appointing and monitoring attorneys that serve on local committees of inquiry, as well as state committees on discipline and professional responsibility.

The Supreme Court, through an appropriation of state funds, provides for all salaries, benefits, and expenses related to the education and travel of judges and county court employees, in addition to various operational expenses of the courts.[4] Examples of the Supreme Court's authority over the lower courts include: clerk magistrates of the county courts are subject to the personnel rules adopted by the Supreme Court;[5] clerk magistrates must partake in continuing education as directed by the Supreme Court;[6] clerk magistrates must file dockets and records in accordance with Supreme Court rules;[7] the Supreme Court sets the salaries of court magistrates and other court employees;[8] and

[2] Neb. Const., Art. V, § 5
[3] Neb. Rev. Stat. §24-204 and §24-204.01
[4] Neb. Rev. Stat. §24-514
[5] Neb. Rev. Stat. §24-507
[6] Neb. Rev. Stat. §24-508
[7] Neb. Rev. Stat. §24-511
[8] Neb. Rev. Stat. §24-513

the Supreme Court also pays the district courts' cost of data processing and data storage on machines that are owned by the Supreme Court.[9]

Court of Appeals

The Court of Appeals is the intermediate appellate court for Nebraska. The court was created in 1991 to take appellate burden off of the Supreme Court, as it hears appeals from lower trial courts that had previously been appealed directly to the Supreme Court.[10] The Nebraska Court of Appeals is comprised of six judges, representing the six Nebraska Supreme Court Judicial Districts. The Court of Appeals sits in two panels of three and hears cases in Lincoln, or in various other locations throughout the state. The composition of the panels periodically changes, so that each judge serves roughly equal time working with all members of the court; the chief judge, elected for two year terms by the other members of the court, makes the determination of which three judges will serve together at any given time.[11]

The appeal process requires all cases (except cases in which a sentence of death or life imprisonment is imposed and cases involving the constitutionality of a statute) be appealed to the Court of Appeals rather than to the Supreme Court. In cases appealed to the Court of Appeals, a petition to bypass may be filed with the Supreme Court. If the Supreme Court deems it necessary, the petition will be granted and the case will be moved to the Supreme Court docket without first being heard by the Court of Appeals. Besides a petition to bypass, a petition for further review may be filed. This petition is filed after a case has been decided by the Court of Appeals and one of the parties involved is not satisfied with the ruling. The Supreme Court has the discretionary power to grant or deny the petition. If the petition is denied, the Court of Appeals' ruling stands

[9] Neb. Rev. Stat. §24-228

[10] The creation of an intermediate appellate court in Nebraska was consistent with the creation of similar courts in other states in this time period; the primary goal of the creation of these courts was to relieve the dockets of the states' courts of last resort and to increase the appellate discretion of those courts. Melinda Gann Hall, "State Judicial Politics: Rules, Structures, and the Political Game," in *American State and Local Politics: Directions for the 21st Century*, Ronald E. Weber and Paul Brace, eds. New York, NY: Chatham House Press. (1999).

[11] Neb. Rev. Stat. §24-1101

as the final decision. If the Supreme Court grants the petition, the case is then moved to the Supreme Court for review and disposition. [12]

District Courts

The district court system in Nebraska is divided into 12 judicial districts with 55 district court judges serving throughout the state (see Appendix D). District courts in Nebraska are constitutionally created and have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided.[13] Although the district courts have concurrent jurisdiction with county courts, the district courts primarily hear all felony criminal cases, equity cases, and civil cases involving more than $51,000. District courts also function as intermediate appellate courts in deciding appeals from county court and administrative agencies.

The district court judges in each judicial district may elect a presiding judge. They are also permitted to divide the court's docket into jurisdictional divisions in each judicial district as they deem necessary for the effective administration of justice.[14]

County Courts

The county court system in Nebraska is also divided into 12 judicial districts with 58 county court judges serving throughout the state (See Appendix D). All county court judicial districts are identical to the district court judicial districts with the exception of Clay, Fillmore, and Nuckolls Counties; these three counties are in the 1st Judicial District in the district court system, whereas they make up of the eastern-most section of 10th Judicial District in the county court system.[15]

County courts handle misdemeanor cases; traffic and municipal ordinance violations; preliminary hearings in felony cases; civil cases involving up to $51,000; small claims cases; some divorce cases; probate, guardianship, conservatorship, and adoption proceedings; and juvenile matters. In Douglas, Lancaster, and Sarpy Counties, the separate juvenile courts hear juvenile matters.

[12] Neb. Rev. Stat. §24-1106
[13] Neb. Const., Art. V, §9
[14] Nebraska Uniform District Court Rules of Practice and Procedure, Rule 2.
[15] Neb. Rev. Stat. §24-503

The county court judges in each judicial district annually select a presiding judge. They are also are permitted to divide the court's docket into jurisdictional divisions in each judicial district as they deem necessary for the effective administration of justice.[16]

Separate Juvenile Courts

Separate Juvenile Courts are permitted in Nebraska counties that contain more than 75,000 people;[17] in each of the three counties (Douglas, Lancaster, and Sarpy) that meet this statutory requirement, voters have decided to create such courts. Presently, there are 11 Separate Juvenile Court judges: 5 in Douglas County, 4 in Lancaster County, and 2 in Sarpy County. In the remaining counties, juvenile matters are heard in the county courts.

Separate Juvenile Courts are courts of record and handle matters involving neglected, dependent, and delinquent children. The court also has jurisdiction in domestic relations cases where the care, support, or custody of minor children is an issue. The three Separate Juvenile Courts have the same jurisdiction and employ the same procedures as the county courts acting as juvenile courts. Appeals from the Separate Juvenile Court are made directly to the Court of Appeals.

Worker's Compensation Courts

The Nebraska Workers' Compensation Court consists of 7 judges with statewide jurisdiction. Because they have statewide jurisdiction, these judges are required to travel to all parts of the state to hold hearings.

The Workers' Compensation Court administers and enforces all provisions of the Nebraska Workers' Compensation Act, which includes original jurisdiction of all claims for workers' compensation benefits resulting from occupational injuries or illnesses. All industrial accidents are required to be reported to this court.

Disputed claims for workers' compensation are submitted to the compensation court for finding, award, order, or judgment. Appeals from the Workers' Compensation Court are made to the Court of Appeals.

[16] Neb. Rev. Stat. §24-506
[17] Neb. Rev. Stat. §43-2,111

To what extent is Nebraska's court structure unified and consolidated?

The term unification is typically used to describe efforts to bring the entire court structure under the central control of a statewide entity.[18] In terms of the court structure Nebraska is unified, with central authority over the courts vested in the Supreme Court. The term consolidation is used to describe combining the trial courts into one general jurisdiction trial court or a specific number of specialized trial courts. Historically speaking and in comparison to many states, Nebraska's court structure is consolidated (See Appendix E for legislative history of judicial districts and judgeships in Nebraska).[19] One of the purposes of this examination, as detailed in Chapter 6, is to determine the benefit, if any, of further consolidating Nebraska's trial courts.

ADMINISTRATIVE OFFICE OF COURTS AND PROBATION

Office of the State Court Administrator

The State Court Administrator serves as the administrative center for the entire court structure. Working under the direction of the Nebraska Supreme Court, the Administrative Office of the Courts provides leadership and direction for the effective operations of the Nebraska Judicial Branch as well as central administrative infrastructure services for the Judicial Branch. This includes finance, human resources, technology, public information, education and organization development, and intergovernmental relations. The State Court Administrator plans for statewide Judicial Branch needs, develops and promotes statewide administrative practices and procedures, oversees the operation of trial court programs and strategic initiatives, and serves as a liaison with other branches of government.

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[18] For a full discussion of these concepts and topics, see David B. Rottman and William E. Hewitt. *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts. (1996).

[19] "The Nebraska court system is consolidated and unified…. In 1970, the judicial article of the state constitution was amended, resulting in several significant changes in the state court system. The amendment gave the Nebraska Supreme Court general administrative authority over all Nebraska courts, eliminated the constitutional basis for the justice of the peace, consolidated the local courts and other courts of limited jurisdiction to form a uniform county court system and created the position of state court administrator." *Nebraska Blue Book 2006-2007*, p. 771.

Office of Probation Administration

The Office of Probation Administration provides central management of probation services in the state, which enhances public protection and offender rehabilitation. The Probation Administrator also coordinates with other state agencies whose programs affect the courts.

Office of Dispute Resolution

The Office of Dispute Resolution coordinates the development of mediation centers throughout the state. All types of civil cases, such as family matters, landlord/tenant, employer/employee, community, and business disputes can be handled by the mediation centers. The office oversees the development of dispute resolution and collaborative problem solving programs in Nebraska, and works collaboratively with Nebraska's nonprofit mediation centers.

Clerks of the District Courts

Clerks of the District Courts are county employees and are funded through county funds. Each county in the state has a clerk of the district court performing the administrative duties associated with the district court. Nebraska law states that counties with 7,000 inhabitants are required to have a clerk of the district court elected by the voters. In counties with less than 7,000 inhabitants, the county board and district judge determine whether there should be a clerk of the district court. If the position of clerk of the district court does not exist in the county, the county clerk is the ex-officio clerk of the district court.[20] Besides being the clerk of the district court, he or she also serves as the court's administrative officer.

Clerk Magistrates & Judicial Administrators of County Courts

Clerk magistrates and judicial administrators of the county courts are state employees and funded through state general funds. Except in Douglas, Lancaster, and

[20] The 38 counties with ex-officio Clerks of the District Court are: Arthur, Banner, Blaine, Boyd, Brown, Chase, Deuel, Dundy, Franklin, Frontier, Garden, Garfield, Gosper, Grant, Greeley, Harlan, Hayes, Hitchcock, Hooker, Howard, Johnson, Keya Paha, Kimball, Logan, Loup, McPherson, Nance, Pawnee, Perkins, Polk, Rock, Sherman, Sioux, Stanton, Thomas, Valley, Webster, and Wheeler.

Sarpy Counties, clerk magistrates are responsible for the administrative functions of the county court offices. In Douglas, Lancaster, and Sarpy Counties, these duties are performed by judicial administrators.

Besides administrative duties, clerk magistrates also have the statutory authority to accept pleas in traffic and misdemeanor cases, set bail, and perform weddings or other judicial services. These officers are hired by county judges of the district in which they serve.[21]

To what extent does Nebraska have unified court administration?

Under a unified administrative structure, all components and employees of the court system would be responsive to the Supreme Court and its administrative policies and procedures. Under the current structure, Nebraska's court administration is not unified because the clerks of the district courts are county employees and are funded through county funds. Under this arrangement, neither the Supreme Court, the Court Administrator, nor the district court judges have clear authority over the clerks of the district court.

FUNDING OF AND BUDGET PROCESS FOR THE JUDICIAL BRANCH

The budget process for Nebraska's court system is not unified. By examining the information presented in Appendix F, it is clear to see that the court's funding is split between state and local funding sources. The bifurcation in funding sources results in disparities in the administration of justice and variability in court resources by county. For example, because office supplies are provided by counties rather than the state there are some clerk of the district court offices in Nebraska without fax machines and others with cutting edge software applications. In some district courts, judges are provided with county funded support staff, while others are not.

CONCLUSION

Nebraska's *court structure* is unified and can be considered consolidated. The *administration* and *funding* of the court system, however is not unified, since some

[21] Neb. Rev. Stat. §24-519

portions are administered and funded at the local rather than the state level. The recommendations of the Task Force include findings regarding the court structure and some of the administrative relationships within the Judicial Branch. The Task Force has presented these findings in an effort to facilitate a more unified system. The Task Force believes that Nebraska should have a court system with centralized decision making on budgeting, personnel, judicial resource allocation, and state funding. This will encourage more autonomy of and efficiency within the Judicial Branch.

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CHAPTER 3: JUDICIAL BOUNDARIES

INTRODUCTION

In December 2006, the Final Report of the *Judicial Workload Assessment, Nebraska District, County and Juvenile Court* was released. The findings of this study, which indicate the need for more district, county and juvenile court judges in Nebraska, coupled with a budget climate that may not be conducive to such expansion, prompted the Nebraska Judicial Resources Commission to search for alternative approaches to meet the state's judicial resource needs. Therefore, at its January 2007 meeting, the Nebraska Judicial Resources Commission (JRC) requested that the Nebraska State Bar Association (NSBA) study the current judicial district boundaries.

According to 2006 weighted caseload data, the 2nd, 3rd, 4th and 6th county court judicial districts are under-resourced and the 2nd, 4th, and 7th district court judicial districts are under-resourced (see Table 3-1, Maps 1 and 2).[1] Based on the identified deficiencies, the Subcommittee proposed several boundary changes meant to address some of the discrepancies between judicial supply and demand. For a full listing of the scenarios proposed by the Subcommittee see Appendix G. The Subcommittee worked with faculty from the University of Nebraska-Lincoln to analyze the proposed boundary changes with Geographic Information Systems (GIS) software.[2] In addition to examining the impact on judicial resources, information was also compiled on population trends, case filings, language diversity, and poverty rates across counties.

[1] In May of 2007, Neb. Rev. Stat. §24-503 was amended to move a district court judge position from the 12th judicial district (Dawes County) to the 9th judicial district (Buffalo County) and a county court judge position from the 12th judicial district (Scotts Bluff County) to a separate juvenile court position in the 3rd judicial district (Lancaster County). The statistics and scenarios presented in this chapter reflect this legislative change.

[2] GIS is a collection of computer hardware, software, and geographic data for capturing, managing, analyzing, and displaying all forms of geographically referenced information and is increasingly being used to address public policy issues at state and local levels. *See* Peter Jankowski and Timothy Nyerges, *GIS-Supported Collaborative Decision Making: Results of an Experiment.* Annals of the Association of American Geographers, 19(1), (March 2001), p. 48-70; and Stephen Ventura, *The Use of Geographic Information Systems in Local Government.* Public Administration Review, 5 (5), (October 1995), p. 461-467.

Table 3-1: Status Quo - Judicial Resource FTE by District[3]

District	County Court	District Court
1	-0.02	0.13
2	-0.59	-0.21
3	-1.41	0.46
4	-2.25	-0.69
5	1.16	0.19
6	-0.35	0.39
7	0.15	-0.25
8	0.58	0.24
9	-0.09	0.79
10	-0.19	0.10
11	-0.18	0.56
12	0.26	0.51

EVALUATION CRITERIA

The Subcommittee determined that Lancaster and Douglas Counties should remain their own separate judicial districts for both political and administrative reasons. That being said, it is impossible to address the judicial resource deficiencies in either Lancaster or Douglas Counties through re-districting, unless boundaries can be drawn in such a way as to over-supply a non-metro judicial district by more than 1.0 FTE, so that a judicial position can be re-allocated to either Lancaster or Douglas Counties. Therefore, there are two primary approaches to assessing the value of each scenario.

1. The first approach is to determine which scenario creates judicial districts in the non-metro areas where the difference in supply and demand for each district is at an acceptable level.[4]
2. The second approach is to draw boundaries in such a way as to over-supply a judicial district by more than 1.0 FTE, so that the position can be re-allocated to districts with significant demand.

Additional factors considered by the Subcommittee include: political feasibility, practicality of implementation, population/filing trends, longevity of the scenario's utility, meaningful retention districts, maintaining similar judicial districts between the county and district court systems, and historical county relationships.

[3] Please note that judicial resource demand fluctuates based on case filings, therefore current judicial workload assessments must be reviewed each time the JRC meets.

[4] Ideally, each judicial district would have either a surplus or minimal difference in supply/demand (close to zero). The PPC staff defines an acceptable deficiency as less than -0.20 FTE.

DISCUSSION

Based on the results of GIS mapping, three of the proposed scenarios place judicial resource deficits at an acceptable level in the non-metropolitan districts. The viable scenario options explored by the Subcommittee fall into three categories: 1) a six judicial district model that deviates from the Supreme Court judicial districts, 2) minor tweaks to the existing judicial district boundaries, and 3) a nine judicial district model.

Model for Six Judicial Districts

Originally the Subcommittee proposed a six judicial district model based on the existing Nebraska Supreme Court judicial districts.[5] Because the Nebraska Supreme Court judicial districts split Douglas County, and because the Subcommittee believed that Lancaster County should be its own judicial district, a few modifications were made to the original Supreme Court judicial districts. Specifically, Douglas County became its own judicial district (the 2nd judicial district), Lancaster County became its own judicial district (the 1st judicial district) and Sarpy, Cass and Otoe, became the 4th judicial district. This configuration alone was analyzed but did not yield any improvements in the distribution of judicial resources. Additional changes were made to the model. Specifically, Saunders County was moved from the 5th to the 4th judicial district (in essence creating a corridor district between Lancaster and Douglas Counties) and Rock, Keya Paha, and Brown Counties were moved from the 6th to the 3rd judicial district (See Map 3). This improved the dispersion of judicial resources for both the county and district court systems. In the county court system only the 1st and 2nd judicial districts (Lancaster and Douglas Counties) would remain under-resourced (see Table 3-2).

In the district court system, only the 2nd judicial district (Douglas County) would have a judicial resource deficit. Since a surplus of 1.0 FTE would exist in the new 6th judicial district, this judicial position could be reallocated to the 2nd judicial district, thereby creating a district court system with a surplus in every judicial district. It is also

[5] Neb. Rev. Stat. § 24-201.02

possible that the 1.0 FTE surplus could be reallocated to the county court system (see Table 3-3).[6]

Minor Tweaks to the Existing Districts

The second viable approach to realigning judicial district boundaries for the more efficient distribution of judicial resources involves minor changes to the existing judicial districts. Unfortunately, scenarios that improve the situation for county courts are not the same as those that improve the situation for district courts and visa versa. Of the numerous scenarios tested, the following scenarios have the greatest positive impact.

County Court

Moving Saunders from the 5th to the 2nd judicial district and moving Colfax from the 5th to the 6th judicial district reduced the judicial deficit in the 2nd judicial district from -0.59 FTE to -0.14 FTE. The scenario also converts the judicial deficit in the 6th judicial district from -0.35 FTE to a surplus of 0.17 FTE and retains a judicial surplus in the 5th judicial district (reduced from 1.16 FTE to 0.19 FTE) (see Table 3-2, Map 4).

District Court

Under the current boundaries, the 7th judicial district is predicted to be short one-quarter of a judge (-0.25 FTE). By moving Cuming County from the 7th to the 6th judicial district the deficit of judicial resources reduces from -0.25 FTE to -0.07 FTE. The judicial surplus in the 6th judicial district would be reduced from 0.39 FTE to 0.21 FTE (see Table 3-3, Map 5).

Model for Nine Judicial Districts

The third viable approach to realigning judicial district boundaries for the more efficient distribution of judicial resources involves a complete redrawing of the judicial district boundaries into nine judicial districts. The Subcommittee considers this option comparable, in terms of FTE, to the variation of the model of six judicial districts. One

[6] Neb. Rev. Stat. § 24-503. There is recent precedent for judgeships to be reallocated across systems (i.e., district, county, juvenile).

slight advantage to the model of nine judicial districts is that the size of the judicial districts in western Nebraska would likely be more manageable (both in terms of travel and ensuring meaningful retention) (see Tables 3-2 and 3-3, Maps 6 and 7).

Comparing the Three Models

The goal is to align judicial resources in a way that most efficiently matches supply with demand. Table 3-2 compares the FTE balances across the three models for county court. All three models place the judicial resource deficits at an acceptable level, except for the deficits in Lancaster and Douglas Counties, which, as was previously noted, cannot be alleviated through boundary changes.

Table 3-2: Model Comparisons for County Court

	Status Quo	**6 District Model Variation**	**Moving Saunders and Colfax**	**9 District Model**
District 1	-0.02	-1.41	-0.02	0.01
District 2	-0.59	-2.25	-0.14	0.07
District 3	-1.41	0.05	-1.41	0.48
District 4	-2.25	-0.14	-2.25	-0.09
District 5	1.16	0.32	0.19	0.52
District 6	-0.35	0.49	0.17	-0.08
District 7	0.15		0.15	-1.41
District 8	0.58		0.58	-2.25
District 9	-0.09		-0.09	-0.14
District 10	-0.19		-0.19	
District 11	-0.18		-0.18	
District 12	0.26		0.26	
Total	-2.93	-2.93	-2.93	-2.93

Table 3-3 compares the FTE balances across the three models for district court. All three models place the judicial resource deficits at an acceptable level (especially the six and nine judicial district models), except for the deficit in Lancaster County, which, as explained earlier, cannot be alleviated through a judicial boundary change.

Table 3-3: Model Comparisons for District Court

	Status Quo	6 District Model Variation	Moving Cuming County	9 District Model
District 1	0.13	0.46	0.13	0.32
District 2	-0.21	-0.69	-0.21	0.21
District 3	0.46	0.47	0.46	0.23
District 4	-0.69	0.21	-0.69	0.79
District 5	0.19	0.77	0.19	0.36
District 6	0.39	1.00*	0.21	0.33
District 7	-0.25		-0.07	0.46
District 8	0.24		0.24	-0.69
District 9	0.79		0.79	0.21
District 10	0.10		0.10	
District 11	0.56		0.56	
District 12	0.51		0.51	
Total	2.22	2.22	2.22	2.22

*Could potentially be reallocated to the 2nd judicial district or to the county court system.

CONCLUSION

Again, the distribution of judicial resources is not the only factor considered when revising judicial district boundaries. Among other things, the Subcommittee discussed the following criteria in relation to each model: political feasibility, practicality of implementation, population/filing trends, longevity of the scenario's utility, meaningful retention districts, and historical county relationships. Specific criticisms of the models were that: 1) the six judicial districts model was too large for implementation purposes, it would increase the likeliness that judges would continue to be reallocated from the western to the eastern part of the state, and would not allow for meaningful retention votes for judges;[7] 2) making minor changes to the existing judicial district boundaries creates larger discrepancies between the district and county courts and may not be a long term solution; and 3) the nine judicial districts model would break up historical county relationships.

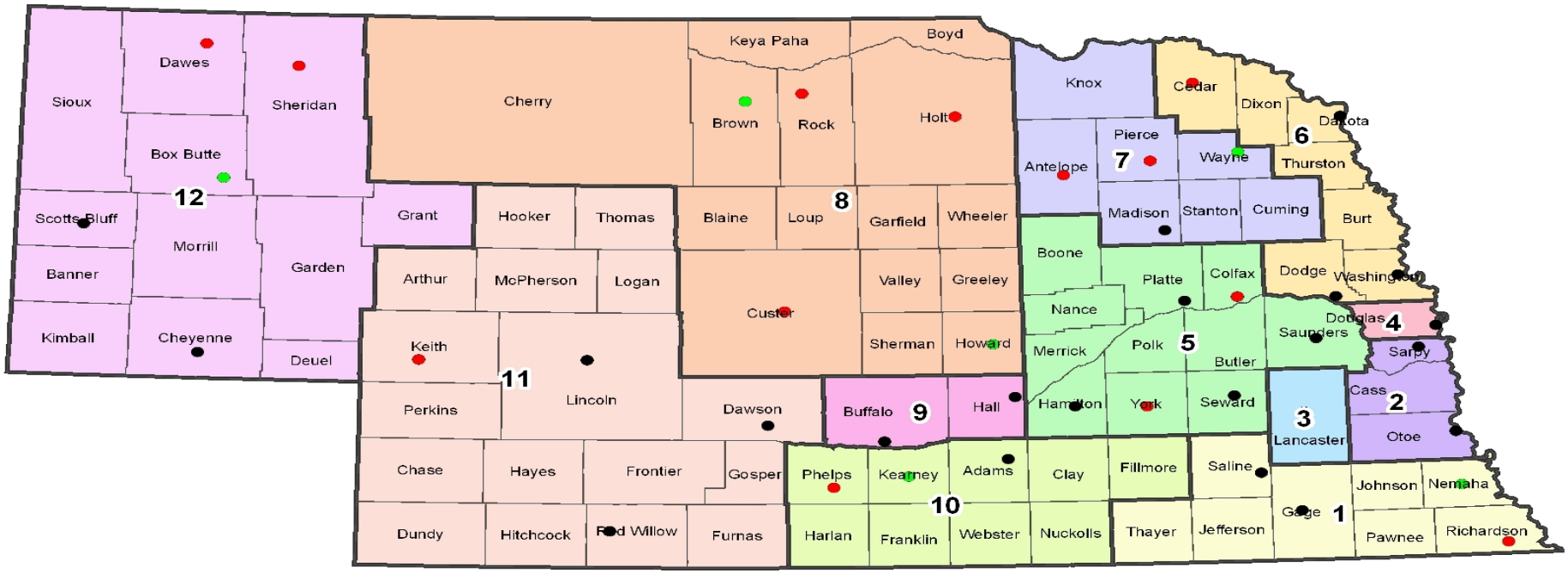
[7] Research has shown that the size of retention districts may impact the meaningfulness of retention elections. See Larry T.Aspin, and William K. Hall, *The Friends and Neighbors Effect in Judicial Retention Elections*. The Western Political Quarterly 40(4), (1987), p. 703-715; and Larry T.Aspin and William K. Hall, *Friends and Neighbors Voting in Judicial Retention Elections: A Research Note Comparing Trial and Appellate Court Elections*. The Western Political Quarterly, 42(4), (1989), p. 587-596.

After lengthy debate the Subcommittee ultimately decided that judicial resource deficiencies would be better resolved by moving judges rather than changing judicial district boundaries. The recommendation of the Subcommittee, and subsequently the Judicial Structure and Administration Task Force (Task Force), was to not alter the existing judicial district boundaries. The Subcommittee, however, finds utility in the use of GIS mapping to more accurately evaluate current workload data and suggests that GIS information regarding case filings be utilized in determining the future placement of judges and in future evaluations of judicial district boundaries. The Subcommittee's review of the geographic reallocation of judicial positions is discussed in Chapter 4.

RECOMMENDATIONS

- No changes should be made to the current judicial district boundaries or the number of judicial districts.
- At the present time, judicial resource deficits should be resolved through the strategic placement of judges rather than changing judicial district boundaries (see Chapter 4).
- The future positioning of judicial vacancies should take into account the dispersion of case filings within a district.

Map 1: Status Quo
County Court Judicial Districts

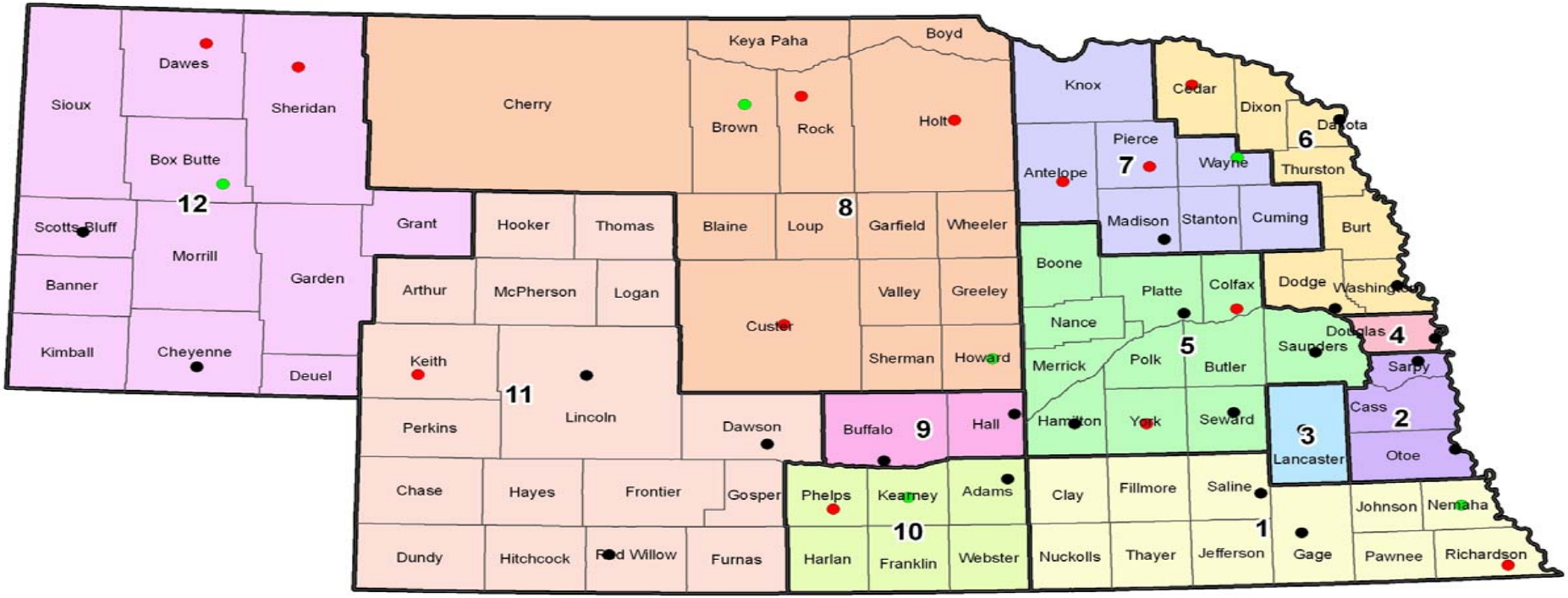


Court Home
- District Court Home
- Both
- County Court Home

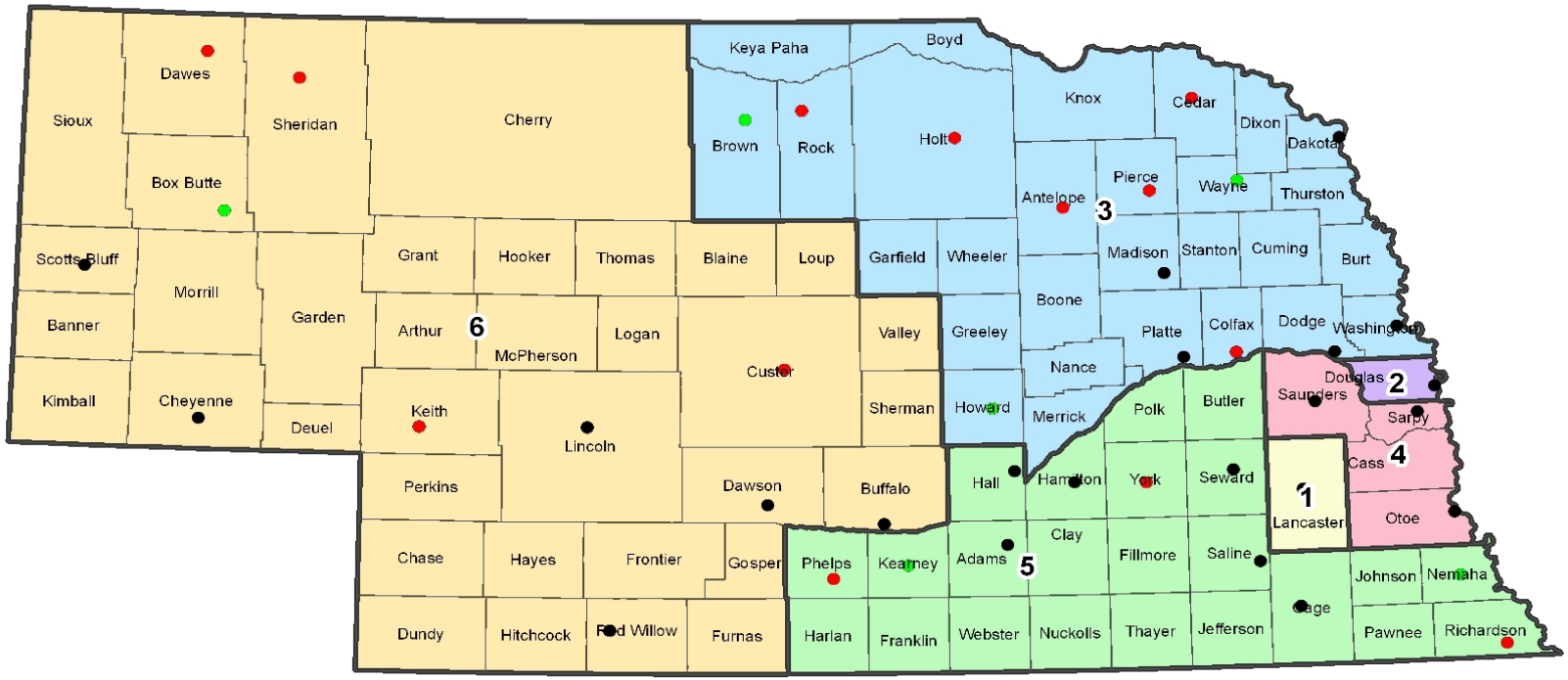
County

Court District Boundary

Map 2: Status Quo
District Court Judicial Districts



Map 3: Variation of a 6 District Model
County and District Court Judicial Districts

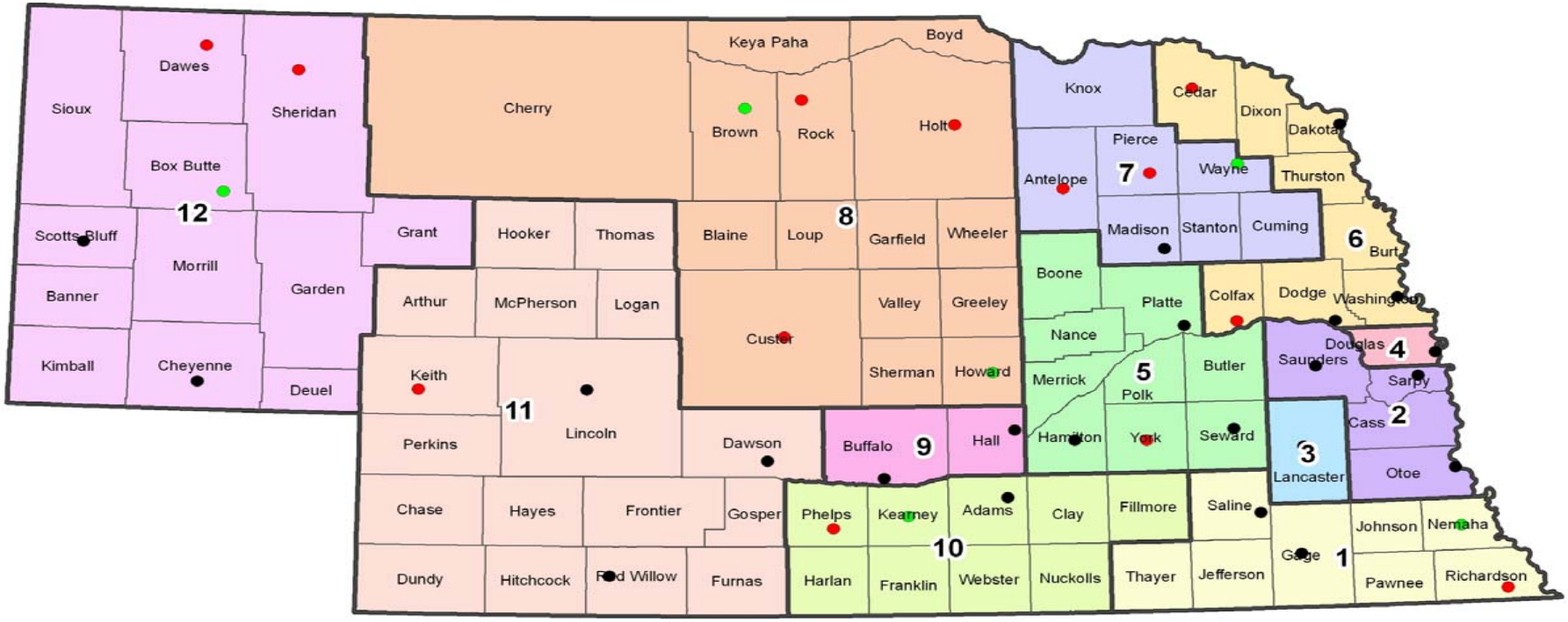


Court Home
- District Court Home
- Both
- County Court Home

County

Court District Boundary

Map 4: Saunders to the 2nd District and Colfax to the 6th District
County Court Judicial Districts

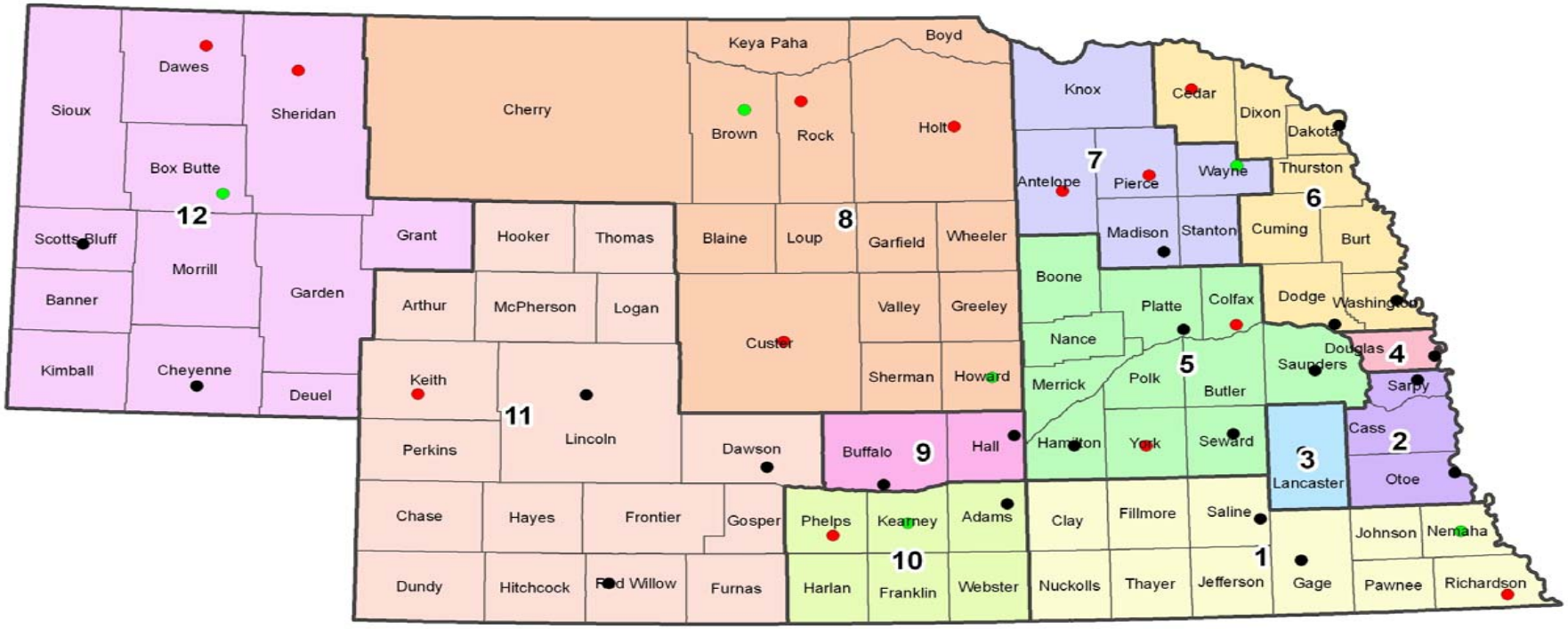


Court Home
- District Court Home
- Both
- County Court Home

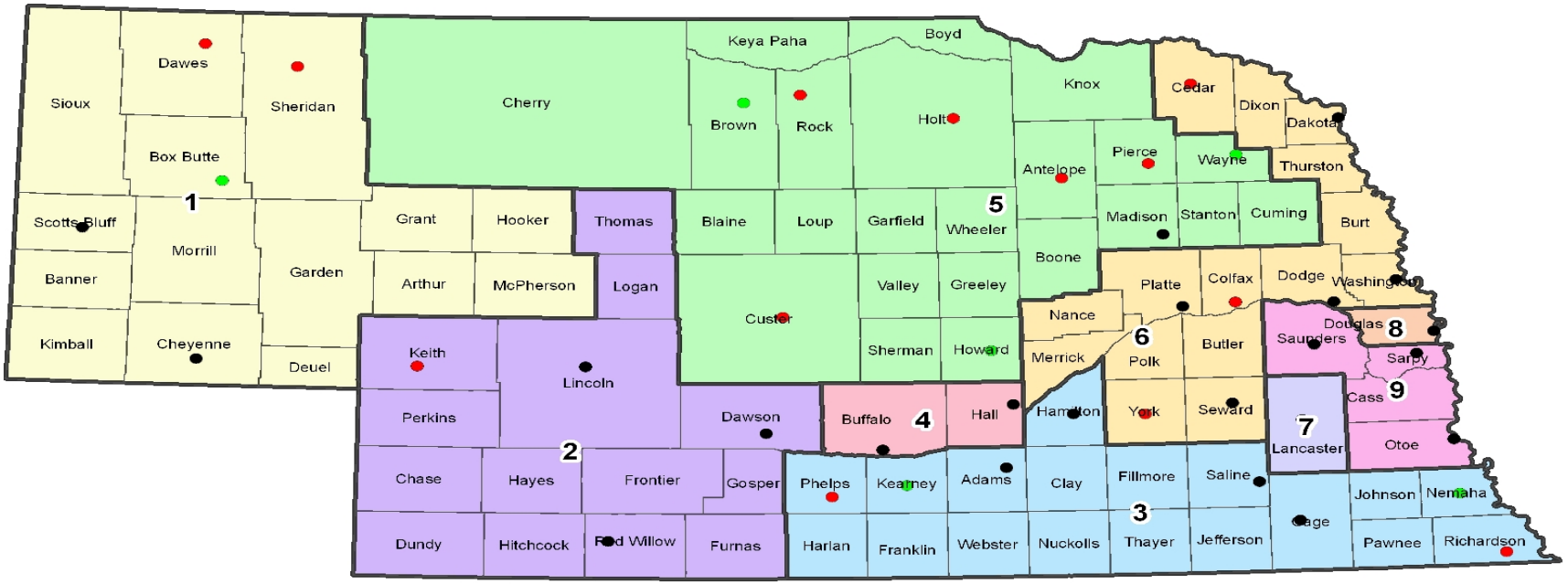
County

Court District Boundary

Map 5: Cuming to the 6th
District Court Judicial Districts



Map 6: Nine Judicial District
County Court Judicial Districts

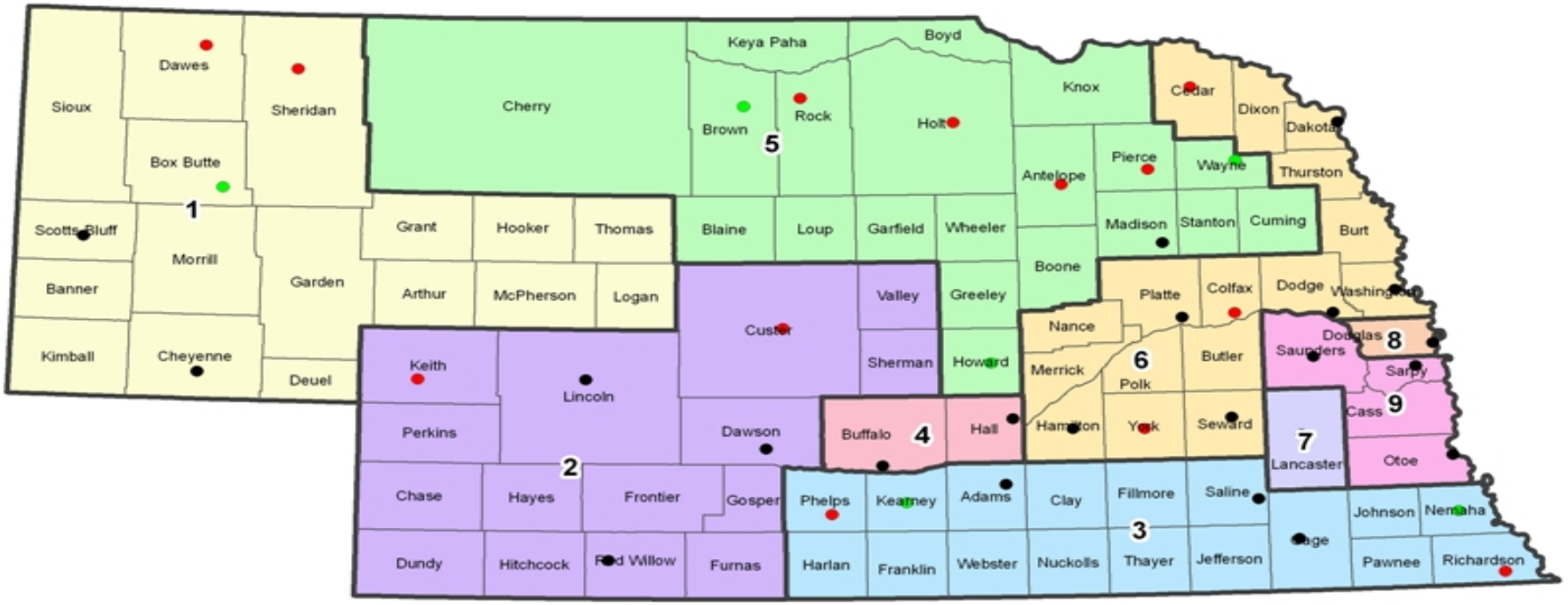


Court Home
- District Court Home
- Both
- County Court Home

County

Court District Boundary

Map 7: Nine Judicial District
District Court Judicial Districts



Court Home
- District Court Home
- Both
- County Court Home

County

Court District Boundary

CHAPTER 4: JUDICIAL POWERS

INTRODUCTION

The Powers and Boundaries Subcommittee studied whether constitutional or statutory changes were necessary to allow for the more efficient allocation of trial court judges. In Nebraska, the Legislative Branch controls the allocation and reallocation of trial court judges, leaving the Judicial Branch minimal control over administering its judicial resources. For example, legislation must be introduced and passed before: the number of judges is increased or decreased, a judge is moved from one judicial district to another judicial district, or the number of judicial districts or judicial district boundaries can be changed (See Appendix E for legislative history of judicial districts and judgeships in Nebraska). Recommendations for such legislative changes are usually made by the Judicial Resources Commission (JRC),[1] a statutorily created body whose membership includes: 1) four judges appointed by the Supreme Court to represent the courts (district, county, separate juvenile, and supreme); 2) six members of the Nebraska State Bar Association (NSBA) appointed by the NSBA's Executive Council to represent each of the six Supreme Court judicial districts; and 3) seven public citizens representing the six Supreme Court judicial districts, and one at large public member all appointed by the Governor.

When a vacancy occurs in a judicial district because a judge dies, retires, resigns or is removed, the JRC, after holding a public hearing, determines whether a new judge should be appointed in the same judicial district where the vacancy occurred or whether the judge's position should be moved and filled in another judicial district. If the JRC determines that the vacancy should be filled in the same judicial district where the vacancy occurred, the JRC notifies the appropriate Judicial Nominating Commission, through the Clerk of the Supreme Court, of its determination. The nominating commission selects at least two qualified candidates for consideration by the Governor. If the Governor does not make the appointment within 60 days, the Chief Justice of the Supreme Court must make the appointment from the list of recommended candidates.

[1] Neb. Rev. Stat. §24-1201, et. seq.

If the JRC determines that the vacancy should be filled in a judicial district other than where it occurred, the JRC reports its determination in the form of a recommendation to the Legislature. The vacancy will remain unfilled until legislation is passed statutorily moving the position from one judicial district to the recommended judicial district. Once the legislation goes into effect, the appropriate Judicial Nominating Commission is notified.

The JRC is also responsible for making recommendations to the Legislature as to whether there should be an increase or decrease in the number of judgeships or whether the current number of judicial districts or judicial district boundaries should be changed. These recommendations are formulated after holding a public hearing and are based upon: 1) an analysis of judicial workload statistics; 2) whether litigants in the judicial district have adequate access to the courts; 3) the population of the judicial district; 4) other judicial duties and travel time involved within the judicial district; and 5) other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service.

Since the creation of the JRC over 10 years ago, it has proven to be an important resource to the Legislature, the courts and the public. The JRC's statutory obligation to hold annual public hearings and to continually analyze judicial workload statistics and other access to justice factors means that the Legislature and the Supreme Court have an annual assessment of the state's judicial needs. Unfortunately, the challenges experienced with getting legislation passed by the Legislature often means that immediate judicial needs are not met. In other words, a judicial district that is under-resourced and has an immediate need may have to lobby through a number of legislative sessions before legislation passes that would allow for a judge to be appointed in the under-resourced district.

Separation of powers, or *independence*, between the three branches of government is necessary to protect democracy. However, the reality of the separation is that it also slows the process of governing or, as in the case of the Judicial Branch, administering. In the specific instance of the Judicial Branch administering its *existing* judicial resources it does not appear on its face that the Judicial Branch is independent of

the Legislative Branch, but instead is dependent upon the Legislature to perform the very basic function of any "employer," administering the court's judicial workload and judges.

A number of states as well as the District of Columbia and U.S. territories have constitutional and statutory provisions that grant the Judicial Branch the flexibility to manage its judicial resources, including determining the best geographic placement for judgeships.[2] For example, in Iowa, when a vacancy exists, the chief justice may, with the majority approval of the judicial council, "apportion" the judgeship to another judicial district "based upon the substantial disparity finding."[3] In North Dakota, when a vacancy occurs, the supreme court makes the determination based on the necessity for "effective judicial administration and after consulting with the judges and attorneys in the affected judicial district whether the judgeship should be filled in the judicial district where it occurred or another judicial district."[4] In South Dakota, the supreme court determines by rule the number of circuits and judges and the chief justice has the authority to administer the workload as "deemed necessary to expedite the work of the courts, alleviate congestion, secure prompt disposition of cases and distribute the work load in the circuits among the judges and between the circuits."[5] In Minnesota, the supreme court determines in what judicial district a vacancy exists after consulting with judges and attorneys and after determining whether the "vacant office is necessary for effective judicial administration or is necessary for the adequate access to the courts" including whether such "abolition or transfer of the position would result in the county having no chambered judge."[6]

Because of the limitation presented to the court system to immediately fill vacancies and upon a preliminary analysis of other states' authority for allocating and reallocating judicial resources, the Subcommittee decided to closely examine statutory concepts that would expand the authority of the Nebraska Supreme Court to reallocate judicial resources. Part of that examination included research and discussion into the demise of what has been referenced as the "First Nebraska Judicial Resources Commission."

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[2] Connecticut, Iowa, Minnesota, North Dakota, South Dakota, Vermont, Guam and Puerto Rico.
[3] Iowa Code Ann. §602.6201
[4] N.D. Cent. Code §27-05-02
[5] South Dakota Const., Art.5, §3 and S.D. Codified Laws §16-2-20
[6] Minn. Stat. §2.722

STATE OF NEBRASKA V. STATE OF NEBRASKA JUDICIAL RESOURCES COMMISSION

In 1980, the Nebraska Legislature provided that the 21st Judicial District would have two district judges (LB 618, 1980). In 1986 (LB 516), the Legislature created the Nebraska Judicial Resources Commission (JRC). LB 516 authorized the Supreme Court after holding a public hearing to determine whether a judicial vacancy existed. The Supreme Court's determination was based on an "analysis of the caseload, travel time, and other factors necessary to assure efficiency and service." After the Supreme Court decided that a vacancy did exist, the JRC was the body authorized to determine the location of such vacancy. The JRC would then notify the Clerk of the Supreme Court of the location where the vacancy should be filled and the clerk would in turn notify the appropriate Judicial Nominating Commission.

In April of 1990, Judge John Brower of the 21st Judicial District retired and in February 1991, the Nebraska Supreme Court declared a vacancy. In March 1991, the JRC met and declared that the location of the vacancy was no longer in the 21st Judicial District but instead existed in the 4th Judicial District. In March 1991, the Clerk of the Supreme Court, contacted the Nominating Commission for the 4th Judicial District, informed the commission that a vacancy existed in the 4th Judicial District, and determined a meeting date and time of April 12, 1991.

On April 8, 1991, residents of the 21st Judicial District filed a lawsuit and received a temporary restraining order from the Nebraska Supreme Court prohibiting the Nominating Commission for the 4th Judicial District from meeting and designating judicial candidates for submission to the Governor. After the temporary restraining order was granted, a settlement was reached between the parties that filled Judge Brower's position in the 21st Judicial District, therefore allowing the 21st Judicial District to retain its two judges while adding a new judicial position in the 4th Judicial District.

In the *Memorandum Brief of Plaintiffs in Support of Temporary Injunction* (plaintiff brief), the plaintiffs argued that it was a well settled principal that legislative functions cannot be delegated, citing a number of Nebraska cases that supported this principle. In the *Memorandum Brief in Opposition to Request for Temporary Restraining Order* (defendant brief), the defendant argued that the ascertainment of fact is a function

often delegated to an administrative entity and not generally a legislative function. The defendant concluded that the Legislature delegated an administrative fact finding function to the JRC to declare the location of a judicial district vacancy. However, the plaintiff countered that even if such power delegate is permissible, the acts of the JRC must still fail because the Legislature did not provide any standards by which the JRC may determine the necessity of moving a judgeship from one district to another and no procedural safeguards to protect against abuse of discretion by the JRC. The plaintiff offered Minnesota as an example of a judicial resource scheme that was "politically accountable and based on concrete standards"[7] and stated that Nebraska's JRC paled in comparison because it did not include a weighted caseload analysis. The plaintiffs also posited that the determination by the JRC was highly political rather than merely administrative.

As a result of the temporary restraining order granted by the Supreme Court, and not on any formal written opinion issued by the Supreme Court, the statutes creating the first JRC were repealed. In 1992 (LB 1059), the Legislature revisited the need for a JRC and passed legislation creating the existing JRC with the purpose of gathering information on the state of the judicial system for the Legislature. The main difference between the two JRCs is that the first JRC was specifically delegated the authority to reallocate judicial resources; whereas the second is purely an advisory body to the Legislature.

A number of the members of the Powers and Boundaries Subcommittee, one of whom was an attorney for the plaintiffs, were very familiar with *State, ex rel. Jenny Robak v. State of Nebraska Judicial Resources Commission* and the imbedded political issues surrounding the case. Because the Supreme Court did not have opportunity to issue a formal written opinion on the issue, the Subcommittee decided to request an opinion from G. Michael Fenner, James L. Koley '54 Professor of Constitutional Law from Creighton University School of Law, as to whether the Legislative Branch could delegate its authority to allocate judicial resources to the Judicial Branch (See Appendix H for complete letter from Professor Fenner).

[7] At that time, Minnesota made judicial vacancy determinations based on the State Judicial Information System (SJIS) that captured data regarding the number of case filings, by case type, and charted the progress of litigation through the court system until final disposition and a weighted caseload analysis.

CONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY TO SUPREME COURT

Two questions were asked of Professor Fenner: 1) Whether the delegation of authority to determine the location of judicial vacancies to the Supreme Court or the Judicial Resources Commission (JRC) is constitutional; and 2) Does this kind of delegation require a constitutional amendment?

This specific matter involves a particular subset of the separation of powers, the nondelegation doctrine, which arises when one branch, usually the Legislative Branch, voluntarily delegates some of its power to a coordinate branch.[8] Therefore, the question becomes "when has one branch abdicated its constitutionally assigned duty by delegating too much of its power to another branch?"[9] The Nebraska Supreme Court has written that "[t]he dividing line between constitutional and unconstitutional delegation of legislative power under the decisions of many states, including our own, is difficult to determine exactly." *Anderson v. Tiemann*, 182 Neb. 393, 400, 155 N.W.2d 322, 328 (1967).[10] That being said, however, a great deal of delegation of legislative power to another branch of government is not only constitutional, but is essential for the purposes of carrying out the day-to-day functions of government.[11]

Federal Constitutional Law

A statute delegating federal legislative power is "'constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.'" *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)). United States Supreme Court cases have spoken of the "intelligible principles" test, *id*. at 376—does the legislation include a statement of "intelligible principles" under which the delegated power is to be exercised?[12]

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[8] G. Michael Fenner, Letter to Amy E. Prenda, Program Manager of the Judicial Structure and Administration Task Force, Creighton University School of Law, Omaha, NE. 1 June 2007, at p. 2 (Appendix H). Hereinafter "Fenner."
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid. at p. 3.

Only twice in history has the U.S. Supreme Court struck a statute down on the grounds that it violated the nondelegation doctrine. In the *Schechter Poultry* case, the Court struck down a provision of the National Industry Recovery Act that gave the President the power to approve "codes of fair competition." Schechter *Poultry Corp. v. United States*, 295 U.S. 495, 521-22 (1935). The Constitution provides Congress with the flexibility and practicality necessary to enable it to establish broad policies and standards, while delegating to other branches of the Federal Government the power to make subordinate rules—within prescribed limits. *Id.* at 530. However, the Constitution does not allow Congress to delegate *unfettered discretion* to the other branches (emphasis added). Congress may not give the President the power to make whatever laws he thinks may be needed; Congress may not delegate its lawmaking power to another branch of government. *Id.* at 537. According to the Court, the problem in *Schechter*, was that Congress had given the President "unfettered discretion" to write law and failed to prescribe limits on its delegation of power. *Id.* [13]

In the *Panama Ref. Co.* case, the Court struck down a provision of the National Industrial Recovery Act that gave the President the power to prohibit the transportation of petroleum in interstate and foreign commerce. *Panama Ref. Co. v. Ryan*, 293 U.S. 388 (1935). The Court stated that in this particular provision, Congress "declared no policy, has established no standard, has laid down no rule. There is no requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited." *Id.* at 388, 430. In order to prevent a pure delegation of legislative power, the Legislature must "enjoin [upon an administrative agency] a certain course of procedure and certain rules of decision in the performance of its function." *Id.* at 388, 432.

The question then becomes how much discretion is "unfettered discretion" or how many procedures and rules are necessary? Based on the aforesaid opinions, it would seem that such discretion must be contained. However, since 1935 it is almost as though a violation of the nondelegation doctrine is only a theoretical possibility and not a real

[13] Ibid.at p. 4.

threat to the validity of Congressional acts.[14] One Justice has, in fact, stated that "the scope of delegation is largely uncontrollable by the courts…." *Mistretta v. United States*, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting). "[A] certain degree of discretion, and thus of lawmaking, inheres in most executive or judicial action, and it is up to Congress, by the relative specificity or generality of its statutory commands, to determine—up to a point—how small or how large that degree shall be." *Id.*[15]

Nebraska Constitutional Law

Nebraska cases are similar to these federal cases in that the delegation of legislative power is constitutional so long as the legislation contains sufficient standards governing the exercise of the delegated power.[16] Professor Fenner offers the following:

1. "The language of article II [of the Nebraska Constitution] prohibits one branch of government from encroaching on the duties and prerogatives of the others or *from improperly delegating its own duties and prerogatives*." *State ex rel. Spire v. Conway*, 238 Neb. 766, 767, 472 N.W.2d 403, 404 (1991) (emphasis added).[17,18]

2. "The dividing line between constitutional and unconstitutional delegation of legislative power under the decisions of many states, including our own, is difficult to determine exactly." *Anderson v. Tiemann*, 182 Neb. 393, 400, 155 N.W.2d 322, 328 (1967).[19]

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[14] *See Mistretta v. United States*, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting) ("[I]t is small wonder that we have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law.") The opinion goes on to point out that only twice has the Court invalidated laws under the nondelegation doctrine, citing *Panama Ref. Co. v. Ryan* and *Schechter Poultry Corp. v. United States*.

[15] Fenner at p. 4.

[16] Ibid. at p. 8.

[17] "The language of a constitutional provision is to be interpreted with reference to established laws, usage, and customs of the country at the time of its adoption, but its terms and provisions are constantly expanded and enlarged by construction to meet the advancing affairs of humankind." *State ex rel. Spire v. Conway*, 238 Neb. 766, 775, 472 N.W.2d 403, 409 (1991). There is almost no legislative history for article II, § 1. "[T]he proceedings of the 1875 Constitutional Convention are lost. …. [T]he Journal of the 1875 convention has survived, [but] it is of little help." *State ex rel. Spire v. Conway*, 238 Neb. 766, 775-76, 472 N.W.2d 403, 409 (1991).

[18] Fenner at p. 5.

[19] Ibid. at p. 5.

3. "Where the Legislature has provided reasonable limitations and standards for carrying out the delegated duties, there is no unconstitutional delegation of legislative authority." *Mann v. Wayne County Bd. of Eq.*, 186 Neb. 752, 759, 186 N.W.2d 729, 734 (1971).[20]

4. "In construing an act of the Legislature, all reasonable doubt must be resolved in favor of constitutionality." *Id*. at 756, 186 N.W.2d at 733. This axiom is particularly important in this area of the law where there are not really any clear lines, where delegation of power has been held to be essential, and where the action anticipated by the legislature is dependent upon ever-changing facts and circumstances and the precise facts and circumstances under which the delegated power will be exercised are impossible to predict.[21, 22]

5. The Nebraska Supreme Court has recognized that one situation where "[d]elegation of legislative power is most commonly indicated" is the situation that "requires a course of continuous decision." *Anderson v. Tiemann*, 182 Neb. 393, 401-02, 155 N.W.2d 322, 328 (1967). [23]

6. "[T]he Legislature may condition the operation of the law upon the existence of certain facts, and may submit to the courts the judicial power for the determination of those facts. But, it cannot delegate to the courts the power to make a law; that is, delegate the power for the court itself to determine the facts or

[20] Ibid at p. 6.
[21] And in an area where one United States Supreme Court Justice—a strict constructionist at that—has stated that "the scope of delegation is largely uncontrollable by the courts…." *Mistretta v. United States*, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting). Somewhat related hereto, referring to the constitutionality of the delegatee's exercise of the delegated power, the Nebraska Supreme Court has stated that "the courts are not inclined to interfere with rules established by legislative direction where they bear a reasonable relation to the subject of the legislation and constitute a reasonable exercise of the powers conferred." *Anderson v. Tiemann*, 182 Neb. 393, 401, 155 N.W.2d 322, 328 (1967).
[22] Fenner at p. 6.
[23] Ibid. at p. 6.

fact standards which invoke the operation of the power granted in the law itself." *McDonald v. Rentfrow*, 176 Neb. 796, 803, 127 N.W.2d 480, 485 (1964).[24]

It is not that every delegation of legislative power is upheld. It is, instead, that every delegation of legislative power that contains any limitations upon and standards under which the discretion is to be exercised is upheld.[25] Nebraska cases that have struck down delegations of legislative power have all involved legislation that was a product of either ignorance of the rule or poor legislative drafting. The court has, for example, struck down a delegation of legislative power that "delegated a free hand without legislative limitations or standards." *School Dist. No. 39 v. Decker*, 159 Neb. 693, 699, 68 N.W.2d 354, 359 (1995).[26] (And, the court continued, "it would have been a simple matter for the Legislature ... to have incorporated limits and standards in the statute." *Id*. The court has struck down a delegation that contained "*no* limitations, standards, rules of guidance or criterion for the guidance of the [delegatee]." *Smithberger v. Banning*, 129 Neb. 651, 660, 262 N.W. 492, 497 (1935) (emphasis added).[27, 28]

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[24] *Accord Terry Carpenter, Inc. v. Nebraska Liquor Control Comm*., 175 Neb. 26, 36-37, 120 N.W.2d 374, 380 (1963) ("The Legislature does have *power to authorize* an administrative agency or executive department to make rules and regulations to carry out an expressed legislative purpose, or for *the complete operation and enforcement of a law within designated limitations*.") (emphasis added); *School Dist. No. 39 v. Decker*, 159 Neb. 693, 702, 68 N.W.2d 354, 360 (1995) (A legislative delegation of "'discretion is not an unconstitutional delegation of a legislative function, where adequate standards to guide the exercise of such discretion are provided for by the statute authorizing it.'") (quoting headnote 10 in *Lennox v. Housing Auth. Of City of Omaha*, 137 Neb. 582, 290 N.W. 451 (1940)); *Bd. of Regents v. The County of Lancaster*, 154 Neb. 398, 403, 48 N.W.2d 221, 224 (1951) ("The exercise of a legislatively-*delegated authority* to make rules and *to carry o*ut an expressed legislative purpose, of for *the complete operation and enforcement of a law with designated limitations*, is not an [unconstitutional delegation].") (emphasis added); *Lennox v. Housing Auth. of the City of Omaha*, 137 Neb. 582, 591, 290 N.W. 451, 458 (1940) ("It cannot be seriously disputed that the legislature is clothed with power to delegate … the power of ascertaining the facts upon which the laws are to be applied and enforced. It may also authorize the doing of specific acts necessary to the furtherance of the purposes of the act.")

[25] Fenner at p. 9.

[26] In *School Dist. No. 39, v. Decker*, 159 Neb. 693, 699, 68 N.W.2d 354, 359 (1995) (the court struck down a delegation to the Superintendent of Public Institutions because the superintendent was "delegated a free hand without legislative limitations or standards to make or change at will any numerical ratio or standard required for approval of high schools for the collection of free high school tuition money when it would have been a simple matter for the Legislature, which had the power and authority, to have incorporated limits and standards in the statute.").

[27] A later case, characterized *Smithberger* as having struck down an appropriation of $4,000,000 that did not "provid[e] *any* rules or standards for its expenditure." *The Bd. of Regents v. The County of Lancaster*, 154 Neb. 398, 402, 48 N.W.2d 221, 223 (1951) (emphasis added).

[28] Fenner at p. 9.

There is one Nebraska case that may be troubling. In *Dinsmore*, the court wrote: "It is urged that it is the function of the legislature solely to determine the organization, practice and proceedings of the courts, and that it cannot delegate that function to a judge or court. The proposition is undoubtedly true…" *Dinsmore v. State of Nebraska*, 61 Neb. 418, 426, 85 N.W. 445, 447 (1901). The unfinished sentence in that quotation continues to say, in effect, that the proposition has nothing to do with that case and is dictum and not a complete statement of the law.[29] Professor Fenner's opinion is that the "quoted statement…does not—cannot, really—stand for the proposition that the judiciary cannot be given any power regarding its own organization, its own practices, or the proceedings before it. The quoted statement is not literally and absolutely true. These functions can be delegated so long as the delegation contains standards, so long as the delegation is not an absolute, unlimited delegation to write law."[30]

PROFESSOR FENNER'S CONCLUSION

As to whether the delegation of authority to determine the location of judicial vacancies to the Supreme Court or the JRC is constitutional, Professor Fenner concluded that if attention is paid to how the statute delegating the authority is drafted,[31] a delegation of this authority to the Supreme Court can be constitutional and no constitutional amendment is necessary.[32] Delegating this power to private individuals is more problematic and should be avoided.[33, 34]

This problem is easily avoidable. The delegation of the vacancy-transfer decision should be to the Court and not to a non-governmental or quasi-governmental entity that consists of some public officials and private individuals (e.g., JRC). However, this being said, Professor Fenner, did not think that a governmental agency would be nor should it

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[29] Ibid. at p. 10.
[30] Ibid. at p. 10.
[31] "The statute must contain 'intelligible principles,' guiding the Judicial Branch's exercise of the discretion granted." Fenner at 13.
[32] Fenner at p. 12.
[33] Ibid. at p. 12.
[34] "That the legislature may not delegate to private persons a legislative function is abundantly established by authority." *Rowe v. Ray*, 120 Neb. 118, 124, 231 N.W. 689, 691 (1930) Ibid. at p. 10. *See also Bierman v. Campbell*, 175 Neb. 877, 882, 124 N.W.2d 918, 921 (1963) ("The Legislature cannot delegate legislative authority to an individual." Citing *Rowe*.). This language appears in a case where the legislature delegated power to a county superintendent. A county superintendent does not really seem to be a "private person," as opposed to a "public official."

be, prohibited from relying upon research and input from private individuals or a commission."[35]

CONCLUSION

Based on the barriers experienced by the Supreme Court to administer its judicial resources, and therefore its judicial workload; the flexibility of other states to administer their judicial resources; and on the written opinion of Professor Fenner; the Powers and Boundaries Subcommittee agreed that legislation should be introduced delegating to the Supreme Court legislative authority to determine where a vacancy should be filled. Many options were discussed. Because the Subcommittee's charge was to recommend changes that would support the Supreme Court in administering its judicial resources in the most efficient manner, several members strongly advocated that the Supreme Court should be given complete authority to determine where a judicial vacancy should be filled regardless of whether it was determined that it should be filled in the same judicial district where it occurred or in another judicial district. Although Subcommittee members uniformly agreed that the Supreme Court should be given more control over its judicial resources, many also felt strongly that granting final authority to the Supreme Court over all judicial vacancies had the potential to negatively impact predominantly rural judicial districts. Because the authority to determine where a vacancy should be filled can result in a county/judicial district losing a judicial position, many Subcommittee members favored the involvement of the JRC, which includes statewide judicial, attorney and public representation; the loss of a judge not only impacts caseload, but also the practice of law in the judicial district, and the public's access to the court system.

The Subcommittee deliberated over additional factors indicative of the politics often surrounding the process, including: political feasibility of legislation being passed and considerations as to how judicial vacancies historically have been filled. Consensus was reached that the proposed legislation would delegate administrative authority to the Supreme Court; however, such delegation would be subject to the current statutory framework for determining vacancies by the JRC.

[35] Fenner at p. 11.

RECOMMENDATIONS

- The Legislature will statutorily provide for the total number of judgeships. Until a vacancy occurs, the specific number of district, county, and separate juvenile court judges would be equal to the number of judges that exist at the time the legislation was enacted and the judges would serve in the judicial districts where they were originally appointed.
- When a vacancy occurs and the JRC determines that the vacancy should be filled in the same judicial district where it occurred, the JRC would notify the appropriate judicial district nominating commission to fill the position in the same judicial district. This is the current statutory procedure and should not be changed.
- When a vacancy occurs and the JRC determines that the vacancy should be filled in a different judicial district and/or that the vacancy should be filled by another type of judge (district, county or juvenile), the JRC would make its recommendation to the Supreme Court. The Supreme Court, by a majority vote, would then make an independent determination of where that vacancy should be filled based upon the recommendation from the JRC and a number of other factors, including caseload statistics and access to justice factors. Once the Supreme Court makes its determination, it would notify the appropriate Judicial Nominating Commission to fill the position.
- If the JRC recommends to the Supreme Court that a sitting judge should be reallocated to another judicial district, then the Supreme Court may reallocate the position based on the recommendation of the JRC; current caseload statistics and access to justice factors; *and* the consent of the sitting judge being asked to relocate.
- If the JRC makes a determination to increase or reduce the number of judges, change judicial district boundaries, or change the number of judicial districts, the JRC would make these recommendations to the Supreme Court. If the Supreme Court agreed with the recommendations of the JRC, the Supreme Court would then ask the Legislature for the necessary statutory changes.

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CHAPTER 5: JURISDICTION

INTRODUCTION

The Jurisdiction Subcommittee studied two issues: 1) To what extent should concurrent jurisdiction between the district and county courts be expanded or restricted to create efficiencies in the system; and 2) To what extent would Nebraska benefit from the use of referees, quasi-judicial officers or alternate dispute resolution to address caseload concerns? These two issues were assessed to identify changes to current court procedure or process that would allow judges to better administer their current judicial workload, thereby minimizing the immediate need for additional judicial resources.

The Subcommittee divided itself into three working groups respectively assigned to review jurisdictional issues in the areas of civil and domestic law; criminal law; and juvenile and probate law. Each working group: 1) examined the current jurisdiction of the district and county courts specific to their area of law; 2) determined where efficiencies exist and where efficiencies could be achieved; and 3) developed proposed jurisdictional changes for review by the Subcommittee. The Subcommittee then weighed the potential of each proposed jurisdictional change to enhance efficiency in the court system against preserving the other core values of access, accountability, and fairness.

Because all the proposed jurisdictional changes require the introduction of legislation, the proposals were presented to the Task Force as legislative concepts. This chapter presents a brief statement of each proposed legislative concept, the purpose for the concept, and the potential impact on the efficiency of the court system. While some of the proposed jurisdictional changes have a greater impact than others, the greatest impact on the efficiency of the court system would be achieved by having the concepts collectively considered as a legislative package.

LEGISLATIVE CONCEPTS

Appeal Process

Authorize the district court to review small claims appeals for error on the record

Pursuant to current law, the district court reviews all cases appealed from county court, except appeals from Small Claims Court, for error on the record.[1] In other words, with the exception of small claims cases, the district court reviews the formal record of the county court to determine whether the county court made a reversible error in its decision. In small claims appeals, however, the district court must try such appeals de novo without a jury.[2] De novo is a form of appeal in which the appeals court holds a trial as if no prior trial had been held. In essence, the party who files the appeal (appellant) has the right to two separate trials, one by the Small Claims Court and one by the district court. The appellant is not restricted to the evidence heard in Small Claims Court and has the opportunity to develop all the issues and evidence anew.

In Nebraska, Small Claims Court is a division of county court and the hearings are conducted by a county court judge. Small Claims Court provides a prompt and inexpensive way to resolve minor disputes because there are minimum legal procedures and parties may not be represented by an attorney. Small Claims Court is limited to civil (non-criminal) actions involving disputes over amounts of money owed, damage to property, or seeking the return of personal property. The party being sued in a small claims court action (defendant) may remove the case from Small Claims Court and have it considered as a regular civil case on the county court docket. The defendant or defendant's attorney must request the transfer at least two days before the hearing scheduled in Small Claims Court and must pay the difference in fees between the Small Claims Court and the regular docket of county court.[3] When this is completed, the case is automatically transferred by the court, and the law does not permit the party suing the defendant (plaintiff) to object to the transfer. After the transfer, both the plaintiff and

[1] Neb. Rev. Stat. §25-2733
[2] Neb. Rev. Stat. §25-2734
[3] Neb. Rev. Stat. §25-2805

defendant may have an attorney represent them during the trial. A defendant desiring a jury trial must request one at the same time that the transfer is requested.[4]

Authorizing the district court to review small claims appeals for error on the record makes small claims appeals consistent with all other appeals from the county court to the district court and, therefore, saves the district court from having to schedule time on the trial calendar to consider such appeals. According to 2006 caseload data, of the 6,857 Small Claims Court cases, only 131 (1.9 percent) of the cases were appealed to the district court. Although 131 small claims appeals distributed across 55 district court judges does not appear to be an inefficient use of judges' time, depending on the number of witnesses called and the amount of foundation that is offered to introduce evidence, a district court judge may have to schedule as much as a full day to *rehear* a case that has already been heard by a county court judge. In contrast, it may take only between 5 and 10 minutes to dispose of an appeal on the record.

The Subcommittee, therefore, recommends that *in all cases, including appeals from the Small Claims Court, the district court shall review cases for error appearing on the record made in the county court.*

The appeal process for a district court admitting evidence from the county court shall conform to the appeal process of the Court of Appeals and Supreme Court

Prior to the creation of the Nebraska Court of Appeals, the district court was the state's only intermediate court of appeals for county court decisions. However, the district court appeal process in place before and since the creation of the Court of Appeals does not truly allow one to describe the district court as an intermediate court of appeals; statutory procedures remain that still require the district court to operate as a quasi-trial court when handling appeals from the county court.

The bill of exceptions is the verbatim transcription of the trial court proceedings in proper form for use on appeal; the bill of exceptions is the only way to submit the evidence and oral trial court proceedings into an appellate court record for review on appeal. Appellate courts do not take evidence or create bills of exceptions from their own proceedings on appeal for use in further appeals. Only trial courts take evidence and

[4] Nebraska Judicial Branch website www.supremecourt.ne.gov: *A Guide to Small Claims Court.*

create bills of exceptions.

However, under current law, a district court hearing an appeal from a county court still must make a record of receiving a county court's bill of exceptions into evidence. Doing so entails: marking into evidence the bill of exceptions and any accompanying exhibits with new exhibit numbers and page numbers; orally identifying them on the record in an open district court session; getting the appellant's lawyer to offer them into evidence; asking appellee's lawyer if they have objections; and ruling on the offers and any objections; or, after the marking and identifying, asking both lawyers if they have any objections to deeming the now district court exhibits admitted and then ruling on any objections made.

This appeal procedure, assuming there is only a one volume bill of exceptions and one accompanying county court exhibit envelope, requires the district court to schedule, *at a minimum*, 5 minutes of court time, which sounds negligible. However, according to 2006 caseload data, the district courts across the state heard a total of 1,336 appeals, which means that if 5 minutes of court time is scheduled, the district courts spent 112 hours (nearly three weeks), *at a minimum*, just accepting on appeal county courts' records. The district court then consumes additional time by creating its own bill of exceptions of the county court appeal for further appeals to the Court of Appeals or the Supreme Court. This appeal process is neither efficient nor does it reflect the appeal process of an intermediate appeals court.

The Subcommittee, therefore, recommends that, *when appealing from the county court to the district court, the appeal process for admitting evidence from the county court shall conform to the appeal process of the Court of Appeals and Supreme Court.*

The process for appealing a claimed excessive sentence from the county court to the district court shall conform to the appeal process of the Court of Appeals and Supreme Court

As explained in the section above, when hearing appeals from the county court, the district court is not treated as an intermediate appeals court, but as a quasi-trial court. In instances when the only issue appealed is that the sentence imposed is excessive, the district court must, similar to a trial court, create a record through receiving the bill of

exceptions *and* hearing oral arguments, which are available to read in the bill of exceptions. The Supreme Court and Court of Appeals do not allow oral arguments in cases in which a defendant tendered guilty or no contest pleas nor when the sole alleged error is a claim of excessive sentence, except for life imprisonment and death sentences.[5] Based on a rationale similar to that found in the section above, the excessive sentence appeal process is neither efficient nor does it reflect the appeal process of an intermediate appeals court.

The Subcommittee, therefore, recommends that, *when appealing an excessive sentence from the county court to the district court, the appeal process for excessive sentences shall conform to the appeal process of the Court of Appeals and Supreme Court.*

Mediation & Quasi-Judicial Officers

Mediation

The Task Force believes that the need for additional judicial resources can be minimized if a mechanism existed for the effective referral of cases to mediation. Such a mechanism could result in cost savings for the state by alleviating the need for additional judges and by allowing for the more efficient use of trial judges and juries. Research generally shows that mediated cases are resolved more rapidly than litigated cases,[6] and that individuals appreciate the opportunity to work their differences out among themselves with the advantage of salvaging their relationships with opposing parties.[7] Research also shows that mediation can be effective in reducing the cost of dispute resolution for litigants even where attorneys have already been retained by the parties.[8]

It should be noted that the state already has the statutory framework in place to allow for mediation of certain types of cases through approved mediation centers,[9] and

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[5] Neb. Ct. R. 11(E)(5)

[6] *Evaluation of the Ontario Mandatory Mediation Program* (2001); Institute for Court Management Court Executive Development Program (1996). *A Comparative Analysis of the Benefits of Mediation in the Cobb County Superior Court.*

[7] *Evaluation of the Ontario Mandatory Mediation Program* (2001); Institute for Court Management Court Executive Development Program (1996); Institute for Court Management Court Executive Development Program (1996). *A Comparative Analysis of the Benefits of Mediation in the Cobb County Superior Court;* State of Oregon Department of Justice, (2001). *Collaborative Dispute Resolution Pilot Project*

[8] State of Oregon Department of Justice, (2001). *Collaborative Dispute Resolution Pilot Project*

[9] The Nebraska Dispute Resolution Act, Neb. Rev. Stat. §25-2901, et seq. (1991).

has a training and certification system in place for mediators working at those centers through the Supreme Court's Office of Dispute Resolution and the six regional ODR-approved mediation centers. These centers are located in Omaha, Lincoln, Beatrice, Fremont, Kearney, and Scottsbluff. These centers are open to the referral of civil claims and disputes, including, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities. However, the Task Force recognizes that these centers are not reasonably accessible to citizens living in predominantly rural judicial districts nor are they equipped at this time to handle a high volume of civil cases in which the parties are represented by attorneys. The Task Force also recognizes that despite the existence of six ODR-approved mediation centers, there is no mechanism available in litigated civil matters for the effective referral of civil cases to mediation in any of the judicial districts.

In addition to the problems identified above, the Task Force recognizes several other problems with mandating mediation. First, by mandating mediation, judges in effect would be ordering litigants to engage in a process to which they did not consent and to pay the cost of that process which could be as much as several thousand dollars in mediation fees and associated costs. Second, mandating mediation may present a potential infringement on a person's right to seek redress of wrongs through the courts as guaranteed by the Nebraska Constitution.[10] These concerns led the Task Force to the conclusion that they should not make a recommendation that would empower the courts to *compel* mediation in litigated civil matters.

However, because the Task Force recognizes the value of using mediation to resolve disputes and reduce the need for additional judicial resources, the Task Force recommends that *the courts should inform the parties and their attorneys about the availability of mediation as an alternative method of dispute resolution and that judges should encourage parties and their attorneys through some type of formalized process to*

[10] Art. I, §13, "All courts shall be open, and every person, for any injury done him or her in his or her lands, goods, person, or reputation, shall have a remedy by due courts of law and justice administered without denial or delay, except that the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract.

consider the use of mediation as a means to resolve their dispute. Such a process could include a certification by the attorney to the court that the client has been fully informed of the benefits of mediation as an alternative means of resolving the client's dispute.

Authorize county and separate juvenile courts to appoint child support referees

Current law authorizes all the courts (district, county, and juvenile) to issue support orders for child, spousal, or medical support. However, only the district court is authorized to appoint a child support referee to help in handling the "establishment, modification, and enforcement of child, spousal, or medical support…in an expeditious manner so that parties may obtain needed orders and other action as quickly as possible."[11]

Establishment, modification, and enforcement of child, spousal, or medical support can be a complicated and time consuming process; therefore, the Subcommittee recommends that *the child support referee statutes be amended to allow county and separate juvenile courts authority to appoint child support referees.*

Expand the authority of the courts to appoint a referee for any equity matter

Under current law, the courts have the authority to appoint a referee, but only under limited circumstances and only when there are issues arising out of mutual accounts.[12] A cost effective means to relieving judicial workload is to grant courts the authority to appoint a referee for any equity matter. This authority gives judges another resource to efficiently administer their workload.

The Subcommittee, therefore, recommends that *current law be expanded to allow the courts to appoint a referee for any equity matter. If the parties do not consent, the courts may, upon the application of either, or of their own motion, refer the case to a referee. A referral to a referee shall be the exception and not the rule.*

[11] Neb. Rev. Stat. §43-1608, et. al.
[12] Neb. Rev. Stat. §25-1129, et. al.

Caseload & Scheduling Management

Authorize evidentiary and non-evidentiary hearings to be heard by a court telephonically or by videoconferencing or similar equipment

Authorizing the courts to conduct hearings telephonically or by videoconferencing will not only help judges more efficiently administer their judicial workload, but will also benefit attorneys and parties. States, such as Wisconsin, specifically authorize certain court proceedings to be conducted telephonically or by videoconferencing, or allow other proceedings to be conducted telephonically or by videoconferencing upon stipulation of the parties and the court. Examples for using such technology in civil proceedings include: various types of motions; oral argument; non-evidentiary court hearings; and pretrial matters. Examples for using technology in criminal proceedings include: initial appearances; waiver of preliminary examination; motions for extension of time; arraignment if the defendant intends to plead not guilty or refuses to plead; setting, reviewing, or modifying bail and other conditions of release; motions for testing of physical evidence or for protection orders; motions in limine; motions to postpone; motions directed to the sufficiency of the complaint or the affidavits supporting the issuance of a warrant for arrest or search; and providing an opportunity to victims who are incarcerated to attend court proceedings. Other examples for using such technology include: language interpretation; cross-jurisdictional hearings; and prisoner litigation.[13]

Teleconferencing and videoconferencing offer people the ability to share resources and information, cooperatively solve problems, and work from a distance. Teleconferencing and videoconferencing have the potential to not only make the court system more efficient, but also make better use of taxpayer resources in state and county government operations by: reducing travel requirements for all courtroom participants; saving time and costs associated with prisoner and patient transportation; improving courthouse security; reducing logistical barriers to conducting meetings or hearings;

[13] "Bridging the Distance: Implementing Videoconferencing in Wisconsin." (2005). The Planning & Policy Advisory Committee Videoconferencing Subcommittee.

providing access to additional training and educational opportunities; and increasing efficiency of legal proceedings.[14]

The Subcommittee, therefore, recommends that *all non-evidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings do not include trials before a jury. Conduct of such hearings in such manner shall be consistent with the public's access to the courts.*

Require mandatory filing of felonies and misdemeanors in district court when they arise from the same incident

Under current law, the district court has jurisdiction over all felonies,[15] and the county court has concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor.[16] Therefore, if an individual commits a crime for which he or she is charged with a felony *and* a misdemeanor, it is possible that the misdemeanor could be filed in the county court and the felony could be filed in the district court, even though both charges arose from the same incident.

This possibility could result in an individual having two separate trials for crimes stemming from the same incident, which exposes the individual to inconsistency and unfairness and wastes court resources (i.e., jury resources, probation resources if a pre-sentence investigation is ordered, time and expense for attorneys, judge and court staff time, etc.). County court, because of the nature of its jurisdiction, administers its caseload more quickly than the district court; therefore, the misdemeanor case often remains pending in the county court awaiting the outcome of the district court. Additionally, filing the misdemeanor with the felony in district court reduces the county court workload without shifting the workload to district court.

[14] Ibid.
[15] Neb. Const., Art. V., §9
[16] Neb. Rev. Stat. §24-517

The Subcommittee, therefore, recommends that *the district court shall have exclusive original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony.*

Expand the authority of the district and county courts to cross-appoint each other without the consent of the parties

Under current law, a district court judge may appoint by order a consenting county court judge to "act as a district judge in specific instances on any matter" over which the district court has jurisdiction, except for appeals from the county court.[17] However, such appointment can only happen if 1) all parties have consented to the appointment or 2) no party has objected to the appointment within ten days after the appointment. The only exception to consent of the parties is for any matter arising under Chapter 42 (domestic relations, including protection orders), in which case consent of the parties is not required and a party does not have the right to object to the appointment of a county court judge to act as a district court judge. Under current law, a county court judge may appoint by order a consenting district court judge to "act as a county judge in specific instances on any matter" over which the county court has jurisdiction.[18] The law does not require that the parties consent to such appointment. In both instances, any order or act by the appointed judge shall have the same effect as if made or done by the appointing judge.

The Subcommittee proposes that the presiding district and county court judges be authorized to review the caseload of all judges in their districts to determine whether cross-appointment without the consent of the parties on Chapter 42, harassment orders, and Class IV felony cases might help equalize the workload between the two courts.[19] The Subcommittee identified harassment orders because of the provisions within Chapter 42 dealing with protection orders and because current law (Neb. Rev. Stat. §28-311.10) permits the county courts to hear harassment order proceedings. The Subcommittee

[17] Neb. Rev. Stat. §24-312(2)
[18] Neb. Rev. Stat. §24-516(3)
[19] The Subcommittee originally proposed to the Task Force that the district court should have the ability to appoint a county court judge, without the parties' consent, to act as a district court judge on civil matters within the district court jurisdiction. The Task Force, however, rejected this proposal, out of concern that the appointed county court judge might not have the experience necessary to preside over a complex, civil litigation case.

identified Class IV felonies as a prudent expansion of the current law since, like Chapter 42 cases, the county court has experience with many of the crimes which, as first offenses, are classified as misdemeanors and, as second offenses, are elevated to Class IV felonies (e.g., driving under the influence; stalking; resisting arrest; carrying a concealed weapon; and property crimes). The Task Force conceded that the current legislative concept may do little to relieve the workload of the county court, because it was limited to just Chapter 42, harassment orders, and Class IV felony cases, but adopted the proposal in an effort to encourage the process of allowing the presiding district and county court judges to review the caseload of the two benches and accordingly assign cases in an effort to equalize the caseload.[20]

The Subcommittee, therefore, recommends *the presiding judges of the district and county court in each judicial district are required to meet at a minimum of every six months to review the caseload of the two benches. In an effort to equalize the caseload, the presiding judges are authorized to assign between the courts cases arising out of Chapter 42 (domestic relations, including protection orders), harassment orders (Neb. Rev. Stat. §28-311.09) and Class IV felonies. The consent of the parties shall not be required and the cases shall remain filed in the court where they were originally filed. A written report of the assignment(s) will be sent to the Supreme Court, and, if the presiding judges cannot agree on a particular assignment, the matter shall be forwarded to the Supreme Court for resolution.*

RECOMMENDATIONS

Appeal Process

- The Task Force recommends that *in all cases, including appeals from the Small Claims Court, the district court shall review cases for error appearing on the record made in the county court.*
- The Task Force recommends that *when appealing from the county court to the district court, the appeal process for admitting evidence from the county court shall conform to the appeal process of the Court of Appeals and Supreme Court.*

[20] *Judicial Structure and Administration Task Force Meeting Minutes* from August 30, 2007.

- The Task Force recommends that *when appealing an excessive sentence from the county court to the district court, the appeal process for excessive sentences shall conform to the appeal process of the Court of Appeals and Supreme Court.*

Mediation & Quasi-Judicial Officers

- The Task Force recommends that *the courts should inform the parties and their attorneys about the availability of mediation as an alternative method of dispute resolution and that judges should encourage parties and their attorneys through some type of formalized process to consider the use of mediation as a means to resolve their dispute. Such a process could include a certification by the attorney to the court that the client has been fully informed of the benefits of mediation as an alternative means of resolving the client's dispute.*
- The Task Force recommends that *the child support referee statutes be amended to allow county and separate juvenile courts authority to appoint child support referees.*
- The Task Force recommends that *current law be expanded to allow the courts to appoint a referee for any equity matter. If the parties do not consent, the courts may, upon the application of either, or of their own motion, refer the case to a referee. A reference to a referee shall be the exception and not the rule.*

Caseload & Scheduling Management

- The Task Force, therefore, recommends that *all non-evidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings do not include trials before a jury. Conduct of such hearings in such manner shall be consistent with the public's access to the courts.*

- The Task Force recommends that *the district court shall have exclusive original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony.*
- The Task Force recommends that *the presiding judges of the district and county court in each judicial district be required to meet at a minimum of every six months to review the caseload of the two benches. In an effort to equalize the caseload, the presiding judges are authorized to assign between the courts cases arising out of Chapter 42 (domestic relations, including protection orders), harassment orders (Neb. Rev. Stat. §28-311.09) and Class IV felonies. The consent of the parties shall not be required and the cases shall remain filed in the court where they were originally filed. A written report of the assignment(s) will be sent to the Supreme Court, and, if the presiding judges cannot agree on a particular assignment, the matter shall be forwarded to the Supreme Court for resolution.*

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CHAPTER 6: CONSOLIDATION AND UNIFICATION OF THE NEBRRASKA COURT SYSTEM

INTRODUCTION

The Single Tier Subcommittee studied the utility of *further* consolidating Nebraska's district and county court systems into a single trial court of general jurisdiction.[1] The Subcommittee was asked to compare, in a neutral capacity, the advantages and disadvantages of a consolidated trial court system and to determine whether Nebraska could realize a more efficient application of justice under such a structure, while upholding the other identified core values of accessibility, accountability, and fairness.[2] To this end, the Subcommittee conducted an extensive review of the literature regarding court consolidation, an analysis of the experiences of other states, and an analysis of the expected savings and costs if Nebraska were to adopt a more consolidated trial court structure. Based on its analysis, the Subcommittee concluded that the consolidation of the trial courts into a one-tier trial court will not result in greater efficiency or reduced costs and should not be pursued. Recognizing that some inefficiencies can be mitigated with administrative, rather than structural reforms, the Subcommittee made several recommendations meant to enhance efficiency in the administration of Nebraska's court system.

CONSOLIDATION OF THE COURT STRUCTURE AS A COMPONENT OF UNIFICATION

For purposes of this chapter, a distinction will be made between the term "unification" and "consolidation." The term "unification" is typically used to describe efforts to bring the entire court structure under the central control of a statewide entity. For Rottman and Hewitt, the term unification "[i]mplies a shift to statewide, centralized

[1] "The Nebraska court system is consolidated and unified….In 1970, the judicial article of the state constitution was amended, resulting in several significant changes in the state court system. The amendment gave the Nebraska Supreme Court general administrative authority over all Nebraska courts, eliminated the constitutional basis for the justice of the peace, consolidated the local courts and other courts of limited jurisdiction to form a uniform county court system and created the position of state court administrator." *Nebraska Blue Book 2006-2007*, p. 771.

[2] Efficient, in this case, refers to the timely processing of cases, as well as a cost-effective processing of cases.

decision making on budgeting, personnel, and resource allocation matters, and also to state funding of all court operations."[3] In simpler terms, the concept refers to centralized administrative functions and budgeting processes. The Subcommittee was initially charged with looking at one specific aspect of unification—*consolidation* of the trial courts.

"Consolidation," according to Rottman and Hewitt, is "[a] way to describe courts with a single bench and self-contained administrative arrangements."[4] Consolidation can be thought of as a move toward: 1) one trial court of general jurisdiction for the entire county, district, or state (horizontal integration); or 2) more than one special jurisdiction court for the entire county, district, or state (vertical integration). According to Berkson and Carbon (1978), the consolidation and simplification of the court structure lies at the heart of attempts at court unification.[5] Thus, the term "unification" will be used to describe the broader, more general move to centralize administrative and structural functions. The term "consolidation" will be used to describe combining the trial courts into one general jurisdiction trial court or a specific number of specialized trial courts.[6]

Expected Advantages of Trial Court Consolidation

Based upon its research, the Subcommittee identified the expected advantages to trial court consolidation and to the extent possible, simulated the expected impact trial court consolidation would have on Nebraska. First, consolidation of the trial courts is expected to provide greater flexibility in the assignment of judges. This expectation is supported by a formal evaluation of a pilot project in Michigan that assessed the impact of trial court consolidation.[7] In regards to judicial availability, the pilot project found that although consolidation created a broader pool of local judges that allowed for greater

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[3] David B. Rottman and William E. Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996) p. 9.
[4] Ibid.
[5] Larry Berkson and Susan Carbon, *Court Unification: History, Politics, and Implementation*. Washington, D.C.: U.S. Department of Justice; National Institute of Law Enforcement and Criminal Justice; Law Enforcement Assistance Administration, (1978).
[6] For a full discussion of these concepts and topics, see David B. Rottman and William E. Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996).
[7] David C. Steelman, Karen A. Gottlieb, Dawn M. Rubio, *Michigan Trial Court Consolidation: Final Evaluation Report*, (1999).

flexibility and availability, the judges subsequently started to specialize in handling certain types of cases. In other words, the courts came to an operational balance between flexibility and specialization in the use of judicial resources by having judges assigned to specific areas of concentration (i.e. division assignments), while at the same time having local judges provide ad-hoc mutual cross-assignment assistance to one another.[8] Thus, it appears that, while the consolidation project allowed for greater flexibility in the assignment of judges, the benefits of such flexibility may have been offset by the fact that judges began to specialize. It should be noted, that there can be a point when specialization can begin to negatively impact availability and citizen access to the courts. For example, if a large judicial district designates one judge as the juvenile court judge, then that judge would be expected to travel from county to county, limiting citizens to those days in which the "juvenile court judge" is available in their county.

Second, if every trial court judge has the same jurisdiction, a consolidated trial court is expected to reduce judicial travel time. Table 6-1 depicts the home location of every Nebraska district and county court judge. Currently, in Nebraska, there are 28 counties that house district court judges; as a result there are now 65 counties that rely upon district court judges to periodically travel to their courthouses. If, under a one-tier court structure, county court judges were able to hear cases that are currently handled by district court judges, the number of counties that require district judge travel would be reduced by 13, from 65 to 52. Similarly, there are currently 35 counties that house county court judges. As a result, there are 58 county courts that depend upon county court judges to travel to their courthouses. The number of counties relying upon county court judicial travel would be reduced by 6, from 58 to 52, if Nebraska were to adopt a one-tier trial court structure.

In other words, if Nebraska consolidated its trial courts, then the assumption is that travel would likely not be required to 19 counties (the 16 counties that are home to county court judges, but not to district court judges and the 6 counties that are home to district court judges, but not to county court judges). *In spite of this assumption, the Subcommittee noted that: 1) the majority of counties, 52 of Nebraska's 93 counties,*

[8] David C. Steelman, Karen A. Gottlieb, Dawn M. Rubio, *Michigan Trial Court Consolidation: Final Evaluation Report,* (1999).

would still have neither a home county or district court judge and therefore, judges would still need to travel to provide services to these counties (see Table 6-1); and 2) this assumption fails to take into consideration judges' inclination to specialize.[9]

[9] Michigan's pilot study illustrates that judicial travel can actually increase subsequent to consolidation.

Table 6-1: Change in Judicial Travel upon adoption of Single Tier Trial Court in Nebraska								
County	**Dist**	**County**	**County**	**Dist**	**County**	**County**	**Dist**	**County**
Adams	x	x	Frontier			Nance		
Antelope		x	Furnas			Nemaha	x	
Arthur			Gage	x	x	Nuckolls		
Banner			Garden			Otoe	x	x
Blaine			Garfield			Pawnee		
Boone			Gosper			Perkins		
Box Butte	x		Grant			Phelps		x
Boyd			Greeley			Pierce		x
Brown	x		Hall	x	x	Platte	x	x
Buffalo	x	x	Hamilton	x	x	Polk		
Burt			Harlan			Red Willow	x	x
Butler			Hayes			Richardson		x
Cass			Hitchcock			Rock		x
Cedar		x	Holt		x	Saline	x	x
Chase			Hooker			Sarpy	x	x
Cherry			Howard	x		Saunders	x	x
Cheyenne	x	x	Jefferson			Scotts Bluff	x	x
Clay			Johnson			Seward	x	x
Colfax		x	Kearney	x		Sheridan		x
Cuming			Keith		x	Sherman		
Custer		x	Keya Paha			Sioux		
Dakota	x	x	Kimball			Stanton		
Dawes		x	Knox			Thayer		
Dawson	x	x	Lancaster	x	x	Thomas		
Deuel			Lincoln	x	x	Thurston		
Dixon			Logan			Valley		
Dodge	x	x	Loup			Washington	x	x
Douglas	x	x	Madison	x	x	Wayne	x	
Dundy			McPherson			Webster		
Fillmore			Merrick			Wheeler		
Franklin			Morrill			York		x

x = Current Presence of Judge in County

No longer require District Judge Travel

No longer require County Judge Travel

Third, if every trial court judge has the same jurisdiction, a consolidated trial court is expected to eliminate the need for individuals arrested without a warrant to be detained longer than necessary while waiting for a judge to determine probable cause and set a bond. Upon the Subcommittee's analysis, this justification for consolidation is without merit. No evidence was found to substantiate the claim.

Two U.S. Supreme Court cases and a Ninth Circuit case provide Nebraska with guidance on this issue as applied to warrantless arrests. *Gerstein v. Pugh*, 420 U.S. 103, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975), held that the Fourth Amendment to the United States Constitution requires a determination of probable cause by a judicial officer "promptly" after a warrantless arrest. *County of Riverside, California v. McLaughlin*, (500 U.S. 44, 114 L.Ed.2d 49, 111 S.Ct. 1661 (1991), held that determinations of probable cause that occur within 48 hours of arrest are generally "prompt" and thus comply with the dictates of *Gerstein.* The Court further provided that the government may prove that a detention longer than 48 hours is not unreasonable by demonstrating the "existence of a bona fide emergency or other extraordinary circumstance" to justify the detention. However, weekends and holidays do not qualify for an exception to the 48-hours rule, nor does the fact that it may take longer than 48 hours to consolidate pretrial proceedings. *McLaughlin* at 57.

In *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996), the court, in a footnote addressing *McLauglin* provided that "[s]*uch probable cause determinations can be made solely on the basis of written affidavits and do not require the services of any personnel beyond the judicial officer*."[10]

In Nebraska, if an individual is arrested on weekday, the individual charged with a misdemeanor or felony is brought before the court the day of or the day after his or her arrest. If an individual is arrested without a warrant and charged with a *misdemeanor* and it is a weekend or holiday, Neb. Ct. R., County Ct. Rule 16 (2007) provides that the sheriff or the jailer may follow the bond schedule furnished by the judges of the court. In unusual cases, the sheriff or jailer may consult a judge about the bond and the judge may verbally order (e.g. by telephone) the appropriate bond. If an individual is arrested without a warrant

[10] *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996), Footnote 6, p. 294.

and charged with a *felony*, a judge either personally reviews or is faxed within 48 hours of the individual being detained the probable cause affidavit from which the judge determines the appropriate bond. The Subcommittee does recognize that the practice for *bond reviews* is not uniform throughout the state. However, this issue would need to be resolved by jail administration, and would not be addressed by trial court consolidation.

Fourth, a consolidated trial court is expected to increase the likelihood that extra money would be available for the court system. This issue is explored in its own section later in this chapter. Results strongly indicate that this expectation is incorrect.

Misperceptions about Trial Court Consolidation

Based upon its research, the Subcommittee determined that there are a number of misperceptions and potential disadvantages to consolidation that merit careful consideration. First, the Subcommittee found that consolidation of Nebraska's two trial courts into one trial court will not automatically produce efficiencies and will even lead to some significant expenditure increases such as: 1) higher salaries and higher fringe benefit and retirement contributions for judges of a limited jurisdiction court (county court) being absorbed into a general jurisdiction court (district court); 2) additional expenditures in support of judges being elevated to the status of a general jurisdiction judge, such as enhancements in chambers and courtrooms and entitlement to personal employees (for example, court reporters, bailiffs, and administrative assistants);[11] 3) a short-term expenditure increase for training, as former county court judges would need to receive training regarding the jurisdiction of district court judges and visa versa; and 4) the additional resources that would need to be allocated to the Court of Appeals to enable them to administer the additional caseload that would result from removing the level of appeal from county to district court. These costs are further detailed later in this chapter.

Second, the Subcommittee found that over time one-tier court systems tend to re-create a limited jurisdiction court by establishing an unofficial level of judges, quasi-judicial officers and staff who process routine, high-volume cases. Juvenile and domestic relations cases tend to gravitate to the intermediate level, maximizing problems to the

[11] Robert Tobin. *Managing Budget Cutback*. Court Manager, (Winter 1995), p. 3.

extent that determinations are being made by part-time judicial officers who do not participate in setting the court's priorities.[12]

For example, in South Dakota, the court system relies upon the use of clerk magistrates and a number of part-time magistrates to carry out the processing of high volume cases. In South Dakota, the "Unified Judicial System" has indeed consolidated its trial court structure, but it added the Magistrate Court as an extra layer of judicial officers to handle the caseload. Therefore, though South Dakota's court system allows for some level of flexibility, the two de facto classes of judges at the trial court level "maintain a division of judicial business that parallels the traditional distinction between general jurisdiction and limited jurisdiction trial courts."[13]

The introduction of such unofficial courts has drawn criticism from researchers that have extensively studied state courts. The criticism stems from the fact that consolidated courts face many of the same jurisdictional and case processing issues that more complex court structures face, but tend to relegate the handling of high volume cases to areas of justice where the competence of those administering justice may be questioned,[14] and where the confidence of the public may be low. [15]

Third, through its research the Subcommittee found that many of the efficiencies realized through court reforms may in actuality come from the administrative reforms that accompany court consolidation.[16] In November of 1995, Michigan instituted pilot sites to evaluate the effectiveness of consolidating its courts. Despite an initial positive evaluation, the assessment came into question because it was unclear whether consolidation alone produced the improvements in efficiency or whether other factors such as recently passed legislation, budget and technology integration reforms, and

[12] David B. Rottman and William E. Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996).
[13] Carl Baar. *Trial Court Unification in Practice*. Judicature, 76, (1993), p. 179-184.
[14] Table 7 in *The Bureau of Justice Statistics 2004 State Court Organization* indicates that legal training/credentials are not required in many state's lower levels of court.
[15] David B. Rottman and William E. Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996).
[16] Allan Ashman and Jeffrey Parness, *The Concept of a Unified Court System*, DePaul Law Review, 24 (Fall, 1974); and David B. Rottman and William E. Hewitt. *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996).

centralization of administrative services influenced the results.[17] The evaluators even stated in their conclusion that even without formal consolidation, courts can accomplish many of the same benefits through cross-assignment of judges; providing for felony pleas to be taken at the time of preliminary examinations; centralization of jury management and of contracts for court-appointed counsel; enhanced attention to compliance with court orders relating to fines and fees; greater communicability and compatibility of case information systems, as well as other technology improvements; and greater budget coordination.[18] One Michigan judge's perspective was that one of the keys to the successful consolidation of the court was the centralization of administration (e.g. filing centers). This Michigan judge also made clear that centralization of administration should not be confused with the consolidation of judicial jurisdiction,[19] which is a very costly proposition.[20]

SIMULATION OF THE CONSOLIDATION OF NEBRASKA'S TRIAL COURTS: SAVINGS VS. COSTS

Predicted Savings

Savings from county court judges becoming district court judges

In 2005, Nebraska contracted with the National Center for State Courts (NCSC) to conduct a weighted caseload study to determine the state's judicial resource needs.[21] According to 2006 weighted caseload data, the state needs 117.56 judicial FTE to cover its caseload in the trial courts (60.76 FTE in the county court system and 56.80 FTE in the district court system). Given the state's current judicial resources, if Nebraska's county court judges became district court judges, the state would have 116.98 FTE. [22] Therefore, on the aggregate, the state would have a judicial resource deficit of only -0.57 FTE. However, in actuality judicial resources are spread across 12 judicial districts and

[17] James P. Hill, "Rethinking Michigan's Trial Court Consolidation Experiment," *Judicature,* (Nov.-Dec. 2001).
[18] Steelman at p. 53.
[19] Alton Davis, "*The Court Consolidation Demonstration Projects-Unqualified Success" Judicature* (Nov.-Dec. 2001) at 131.
[20] Kurt Hansen, "*Some Real Doubts about the Court Consolidation Demonstration Projects," Judicature* (Nov.-Dec. 2001) at 133.
[21] Ann Jones, Mary Beth Kirven and Suzanne Tallarico, *Judicial Workload Assessment: Nebraska District, County and Juvenile Courts*. National Center for State Courts, (December 2006).
[22] Includes county and district judicial positions and child support referees.

therefore some judicial districts would continue to remain over resourced (5th, 8th, 9th and 12th judicial districts) while others would remain under resourced (2nd, 3rd and 4th judicial districts) (see Table 6-2).

Table 6-2: Judicial Resource FTE if County Judges Became District Judges

	Predicted Demand FTE	Existing FTE	FTE Balance
District 1	5.87	6.00	0.13
District 2	9.29	8.49	-0.80
District 3	14.95	14.0	-0.95
District 4	32.94	30.0	-2.94
District 5	8.77	10.08	1.31
District 6	7.03	7.00	-0.03
District 7	5.16	5.07	-0.09
District 8	4.10	5.00	0.90
District 9	7.52	8.23	0.71
District 10	5.16	5.11	-0.05
District 11	8.6	9.00	0.40
District 12	8.16	9.00	0.84
Total	117.55	116.98	-0.57

Savings from Reduced Travel

Table 6-1, presented earlier in this chapter, indicates that if Nebraska's trial courts were consolidated, it would remove the need for travel to 19 counties. County court judges would no longer be required to travel to: Box Butte, Brown, Howard, Kearney, Nemaha, or Wayne Counties because these counties would now have a home judge (previous district court judge) with county court jurisdiction. District court judges would no longer be required to travel to: Antelope, Cedar, Colfax, Custer, Dawes, Holt, Keith, Phelps, Pierce, Richardson, Rock, Sheridan, and York Counties because these counties would now have a home judge (previous county court judge) with district court jurisdiction.

The NCSC *2006 Judicial Workload Assessment* calculated the amount of judicial time used to travel to each county within judicial districts. By removing the need to travel to these 19 counties, the total amount of judicial travel time would be reduced by 9.5 percent which translates to a savings of 0.66 judicial FTE. This 0.66 judicial FTE would be spread across the 12 judicial districts. The table below presents the new predicted judicial resource demand by judicial district and compares it to the existing judicial FTE. The savings in reduced travel would not be uniform across the state; the 2nd, 3rd, 4th, 9th, and 11th judicial districts would not be impacted by the reduction in travel.

Table 6-3: Judicial Resource FTE if County Judges Became District Judges and Judicial Travel Time was Reduced by 9.5%

	Predicted FTE Demand Based on Reduced Travel	Existing FTE	FTE Balance
District 1	5.76	6.00	0.24
District 2	9.29	8.49	-0.80
District 3	14.95	14.0	-0.95
District 4	32.94	30.0	-2.94
District 5	8.69	10.08	1.39
District 6	7.02	7.00	-0.02
District 7	5.02	5.07	0.05
District 8	3.98	5.00	1.02
District 9	7.52	8.23	0.71
District 10	5.07	5.11	0.04
District 11	8.6	9.00	0.40
District 12	8.06	9.00	0.94
Total	116.90	116.98	0.08

It is also likely that a reduction in mileage costs would coincide with a reduction in travel. It is difficult to predict the reduction in mileage, nevertheless, since mileage costs comprise less than one percent of the total Judicial Branch budget, it is likely that the total impact would be minimal.[23]

Savings from No Appeals from County to District Court

In 2006, 1,336 appeals were made from the county to the district court. Consolidation of the trial courts removes the additional level of appeal. The appeals currently made from the county court to the district court would be directly appealed to the Nebraska Court of Appeals. This reduction of 1,336 cases at the trial court level means that the state would need 1.46 judicial FTE less in trial court resources. Table 6-4 presents the new predicted judicial FTE demand by judicial district and compares it to the existing judicial FTE. It should be noted, however, that the small savings that would result from eliminating appeals from the county courts to the district courts would be offset by the costs involved in essentially doubling the number of appeals to be heard by the Nebraska Court of Appeals (see section on Predicted Costs).

[23] In 2006, Nebraska trial court judges spent $295,055.96 in mileage.

Table 6-4: Judicial Resource FTE if County Judges Became District Judges, Travel was Reduced by 9.5% and there were No Appeals from County and District Court

	Predicted FTE Demand	Existing FTE	FTE Balance
District 1	5.66	6.00	0.34
District 2	9.15	8.49	-0.66
District 3	14.67	14.00	-0.67
District 4	32.57	30.00	-2.57
District 5	8.61	10.08	1.47
District 6	6.94	7.00	0.06
District 7	4.97	5.07	0.1
District 8	3.94	5.00	1.06
District 9	7.43	8.23	0.8
District 10	4.96	5.11	0.15
District 11	8.56	9.00	0.44
District 12	8.01	9.00	0.99
	115.47	116.98	1.51

Summary of Predicted Savings

If the predicted savings are considered in the aggregate, a transition to a consolidated trial court would reduce the need for 1.51 judicial FTE in Nebraska. However, it should be noted that the reduced demand for 1.51 judicial FTE does little to address the resource deficiencies in the metropolitan districts. By examining the impact of consolidation in the context of current resource demand and supply, we can predict that it is likely that trial court consolidation would not result in the reduction in the number of judicial positions (and therefore would not "free up" money that was being spent on judicial compensation) rather it would likely result in the reallocation of a judgeship from the 5th, 8th or 12th judicial district to the 2nd, 3rd or 4th judicial district.

Predicted Costs

Cost of Judicial Compensation

In Nebraska, district court judges are paid 92.5 percent of the salary of the Supreme Court judges,[24] while county court judges are paid 90 percent.[25] The average salary and benefits of a district court judge in Nebraska equate to $143,975.28 and $140,638.56 for a county court judge (difference of $3,336.72). Therefore, making each county court judge a district court judge would annually impact the overall budget by $193,529.76 (58 county judges x $3,336.72).

[24] Neb. Rev. Stat. §24-301.01
[25] Neb. Rev. Stat. §24-513

Cost of Court Reporter

Nebraska law and court rule require district courts to have a court reporter. [26] Currently, the average annual salary and benefits of a court reporter equate to $72,216.79.[27] The impact on the budget for providing each "new judge" with a court reporter equates to $4,188,573.82 ($72,216.79 x 58 court reporters).

Cost of Bailiff

District court judges have authority to, if the business of the court requires, appoint a bailiff. The cost associated with providing former county court judges with bailiffs is not included because it is a county expense.[28]

Cost of Training

Once the transition is made, Nebraska's trial court judges would need to receive training regarding their expanded duties. Nebraska's former county court judges would need to receive training regarding the jurisdiction of district court judges and visa versa. The Nebraska Judicial Branch Education Office indicates that these trainings would be implemented in-house and would consist of a conference for each bench (former county court judges and original district court judges). Each conference would cost $30,000 for a total training cost of $60,000. This is a cost associated with the initial transition, additional on-going training related to the expanded jurisdiction would not likely be necessary.

Cost of Expanding Court of Appeals

In 2006, 1,410 new cases were filed in the Court of Appeals. If the trial courts were consolidated, an additional 1,336 cases would be appealed to the Court of Appeals representing an increased workload of nearly 100 percent. While the gravity of each of these new cases may not equate to a traditional appeal, the Court of Appeals would need, *at a minimum*, an additional panel of judges to accommodate the increased caseload. In addition to judicial compensation for a new panel of Court of Appeals judges there are

[26] Neb. Rev. Stat. §24-1003 and Neb. Sup. Ct. R. 1(A).
[27] Information provided by the Nebraska Administrative Office of the Courts.
[28] Neb. Rev. Stat. §24-350

several additional costs to adding a panel including: training, career law clerk compensation, law clerk compensation, and administrative assistant compensation (see Table 6-5). Again, the cost of adding an additional panel to the Court of Appeals easily offsets the expected savings, discussed in the section on Predicted Savings, that would result at the trial court level by removing appeals from the county court to the district court.

Table 6-5: Costs Associated with an Additional Court of Appeals Panel[29]

Type of Expense	Cost
Costs associated with Judicial Compensation	$441,915.09
Training for new court of appeals judges	$9,450.00
Costs associated with Career Law Clerk Compensation	$212,671.23
Costs associated with Law Clerk Compensation	$187,068.96
Costs associated with an additional shared administrative assistant	$53,226.78
Total Additional Costs of Additional COA Panel	$904,032.06

Cost of Travel

Although, the cost of travel is not calculated into the total costs associated with transitioning to a one-tier trial court, research suggests that judges may revert to traveling again because they begin to focus on special jurisdictions. Therefore, travel may again become an issue impacting the cost of further consolidation.

Summary of Predicted Costs

The estimated costs associated with transitioning to a consolidated trial court system are presented in Table 6-6. The total estimated costs are $5,346,136 for the first year and approximately $5,276,686 thereafter.

Table 6-6: Costs Associated with Transitioning to a Consolidated Trial Court System

Type of Expense	Cost
Initial Costs in Judicial Compensation	$193,529.76
Initial Costs in Court Reporter Compensation	$4,188,573.82
Training for Trial Court Judges	$60,000.00
Additional Court of Appeals Panel	$904,032.06
Total Additional Costs with Consolidation	$5,346,135.64

Savings vs. Costs

In comparison to the expected savings, the costs of consolidating Nebraska's trial courts seem overwhelming. It appears as though Nebraska would need to request an

[29] This does not include costs associated with rent, furniture, computer equipment, phone, and postage.

additional $5.2 million annually to support the operation of a consolidated trial court in Nebraska.

CONCLUSION REGARDING COURT CONSOLIDATION

Based on its review of relevant literature, the experiences of other states, and a simulation of the costs and benefits of transitioning to a consolidated court, the Subcommittee concluded that *the consolidation of the trial courts into a one-tier trial court should not be pursued. Such consolidation will not result in greater efficiency nor reduce costs.*

EFFORTS TO IDENTIFY PERCEIVED INEFFICIENCIES

Although the Subcommittee determined that further consolidation of the trial courts was not appropriate for Nebraska at this time, the Subcommittee did recognize that several efficiencies could be achieved with administrative, rather than structural reforms.[30] Therefore, the Subcommittee resolved to identify perceived inefficiencies in the delivery of judicial services and to develop recommendations, if any, to address those inefficiencies.

To this end, the Subcommittee administered two surveys. First, the Subcommittee conducted an open ended e-mail survey, asking judges, attorneys, and clerks of the courts to identify any perceived efficiencies and inefficiencies in the court system. Generally, respondents to the open-ended survey felt that there were eight areas in which the efficiency of the court could be approved: the granting of continuances and the imposition of progression orders; the overall timeliness of decisions; the uniformity of court rules and court forms; the scheduling of cases and allocation of judges; the overall management of the courts and public access to them; the training of court personnel; access to judges; and judicial travel. These responses were used to generate a formal online survey to further examine those issues initially identified as areas of concern. All active members of the Nebraska State Bar Association who are familiar with the trial

[30] Allan Ashman and Jeffrey Parness, *The Concept of a Unified Court System*, DePaul Law Review, 24 (Fall, 1974); and David B. Rottman and William E. Hewitt. *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, VA: National Center for State Courts, (1996).

courts, as well as all trial court judges, clerks, and bailiffs, were invited to participate in the second survey.

Responses to the second survey were obtained from 53 judges, 271 attorneys, and 87 clerks. Given the low response rate, the Subcommittee could not, with confidence, use the results to "definitely prove" or generalize to the entire judicial system. However, the Subcommittee is comfortable utilizing the results as an indication of what their peers perceive to be inefficiencies with the administration of justice. A summary of the survey results is provided below.

Continuances and Progression Orders – Respondents indicate that continuances, and to a much lesser extent the lack of progression orders, are perceived as a source of court delay. Respondents indicate that this was particularly true in those cases where attorneys were simply unprepared, or where they felt the judge had only given light consideration to the granting of a continuance. However, respondents overwhelmingly believe that continuances and progression orders, although perceived to be inefficient, are necessary tools for judges and that any attempt to limit the discretion of judges in their issuance is inappropriate. Upon examination, the Subcommittee concurred that continuances are in fact a necessary component of the justice system and that it is not in the purview of the Task Force to limit necessary judicial discretion.

Timeliness of Decisions – The majority of responding judges and attorneys indicate that cases are generally disposed of in a timely manner in their judicial districts either *very often* or *always*. Identified factors that inhibit the timely disposition of cases include: heavy caseloads; poor processing by court clerks; no coordination of scheduling across counties that share judicial resources; lack of resources; scheduling conflicts; complexity of cases; unprepared attorneys; travel or judges not in county enough; and lack of judges. Respondents were also asked to identify changes that could assist in the disposition of cases; responses included: lower caseloads; management training; law clerks for each judge; technology training for judges; better trained court staff; master calendars for judicial districts; a shorter briefing schedule; increasing the number of judges and staff, including research staff; better organizational skills and work ethic of

judges; fewer continuances granted; use of progression orders; fewer cases under advisement; and case progression accountability oversight by the Supreme Court.

Interpreters – The lack of language interpreters was identified in the first survey as a barrier to the efficient administration of justice. The majority of respondents indicate that cases which require the services of an interpreter will often take one and one half the time of other cases or twice the time of other cases. Judges emphasize the need for more interpreters so that cases do not need to wait for their availability, and the need for more certified interpreters, as interpreters who are certified provide a higher quality and more efficient service. According to attorneys, having an interpreter not only requires more time, but also makes it more difficult to schedule cases. Attorney respondents mention the importance of having qualified interpreters, the need for better trained Sudanese and Arabic interpreters, and the fact that simultaneous rather than consecutive interpreters save time.

Uniformity of Court Forms – A majority of respondents agree that uniformity of court forms would benefit the courts either a *great deal* or *somewhat*. Clerks and administrators are more likely than judges to agree that uniformity of court forms would benefit the courts. Judges indicate that uniform forms may assist clerks in accurately entering information into JUSTICE. Clerks overwhelmingly favor the uniformity of court forms, particularly for bond forms, protection orders, criminal forms, and garnishments.

Uniformity of Court Rules – Judges do not tend to believe that local court rules create inefficiencies in the system. However, judges, attorneys and clerks appear to believe that uniform court rules for each trial bench would ease practice for attorneys and litigants. A number of attorneys said that all rules should be uniform and offered the federal courts as an example. Clerks tend to favor uniform rules, but no particular rules were mentioned as a major concern. Respondents also acknowledge that even if there were uniform rules, individual judges would differently apply the rules, so it is questionable whether uniformity could actually be achieved.

Scheduling – The scheduling of cases and the frequency of scheduling conflicts were initially identified as problems for the courts. The majority of judges indicate that cases were *very likely* to be heard on the first scheduled date, while attorneys and clerks are less optimistic in their perceptions. There is great variability in how far out judges currently have to schedule hearings: nearly one-quarter of responding judges indicate that a hearing can typically be scheduled in less than a month; nearly one-quarter indicate hearings are typically scheduled approximately a month in advance; and nearly half indicate that hearings must be scheduled anywhere from six weeks to four months in advance. There is also great variability in how far out judges currently have to schedule trials. About one-third of responding judges indicate that trials were scheduled in the next two months and about one-third indicate that trials were scheduled in the next two to four months. Two-thirds indicate that trials were typically scheduled anywhere from four to nine months in advance.

The majority of judges, attorneys and court clerks/administrators indicate that attorneys either *frequently* or *occasionally* have scheduling conflicts when they are to appear in court. There is division among judges and court clerks on the utility of developing district-wide master calendars so that staff would know where other judges were located in the event that they need assistance. Court clerks are more supportive of this concept than are judges. Among court clerks, there is some agreement that there should be a master calendar or some similar tool that permits everybody to see when judges and courtrooms would be available.

Judges were asked to indicate how they currently schedule cases. Half of responding judges use a non-electric (paper) system of scheduling. Over one-fourth use the JUSTICE case scheduler and approximately one-fifth use a different automated case scheduler. Several judges noted that they were not even aware that JUSTICE case scheduler was an available option. Judges were asked what solutions, if any, they could offer to improve scheduling. The majority of judges indicate a desire for electronic scheduling.

Management and Public Access – A number of questions concerning the management of court clerks' offices and the cooperation between such offices were

included in the survey. Overall, respondents indicate that cooperation between clerk magistrates' offices and clerks of the district courts' offices is effective. In total, nearly half of respondents either *agree* or *strongly agree* that there is effective cooperation, while a substantial number are *undecided* on the issue.

Of the judges that responded to the question of whether they felt that the two clerks' offices should be consolidated, approximately one-third *agreed* or *strongly agreed,* and one-third *disagreed* or *strongly disagreed.* Similar percentages of attorneys expressed their views on the consolidation of the clerks' offices. Clerks were much less enthusiastic about the idea of consolidating the offices of the clerks. Overall, there are no clear trends in the responses as to whether the offices should be consolidated.

Training – Respondents were asked to identify areas in which additional training of judges, attorneys, and court clerks would benefit the courts. While there is a broad range of areas mentioned in which judges, attorneys, and court clerks need training, there are two main issues that stand out: the use, familiarity, and proficiency with technology; and respondents note that members of each group need training to gain more knowledge regarding the workings and operations of the others.

Access – Attorneys and court clerks were asked that if they did not have a home judge in their county, if they believe that the judge visits the county often enough to adequately serve the county's judicial needs. The majority of attorneys are *undecided* on this issue and one-third agree that judges are in fact adequately available. Court clerks and other court staff are more positive, the majority indicating that they either *agree* or *strongly agree* that judges are adequately available.

Travel – Judges were asked to indicate if they have a set travel schedule. Nearly two-thirds of responding judges indicate that they do, while just over one-third of responding judges indicate that they do not have a set travel schedule. Judges were also asked to indicate when their workday typically begins when traveling to a remote county. Approximately two-thirds indicate that they travel so that court can begin at 9 a.m. or 1

p.m. Over one-third of respondents indicate that it depends on how many cases they are scheduled to hear and other factors.

A question was asked of judges designed to measure perceptions about the adequacy of judicial travel time. The large majority of responding judges indicate that the amount of travel required of judges to serve their counties is adequate indicating that, though travel is a considerable part of the job of many of the state's trial court judges, very few judges indicated that travel requirements are unreasonable or an unnecessary burden.

Although there are anecdotal stories about judges' travel schedules, a preliminary analysis of district judges recorded travel time based on the December 2006, *Judicial Workload Assessment* showed that those district judges who are required to travel as part of delivering judicial services to the public (22 non-metro district judges) only spend approximately 11.8 percent of their time traveling and do the majority of this 11.8 percent of traveling outside the traditional workday of 8 a.m. to 5 p.m. Moreover, the fiscal impact of reimbursing judges' mileage is less than 1.0 percent of the total court budget.[31]

RECOMMENDATIONS

Based on its review of relevant literature, the experiences of other states, and a simulation of the costs and benefits of transitioning to a consolidated trial court, the Subcommittee, and subsequently the Task Force, concluded that:

- The consolidation of the trial courts into a one-tier trial court should not be pursued. Such consolidation will not result in greater efficiency nor reduce costs.

The Subcommittee deliberated on each issue identified via the survey, recognizing that although a process or procedure may be perceived as inefficient, it may be a necessary component of the court system (i.e., continuances should be granted, individuals must have access to interpreters, judges must travel, etc.). Based on the results of the surveys and the deliberation that followed, the Subcommittee, and

[31] In 2006, Nebraska trial court judges spent $295,055.96 in mileage.

subsequently the Task Force, made a number of recommendations meant to advance efficiency in the court system. The resolutions are as follows:

- Access to certified language interpreters impacts the ability of judges to effectively process cases. The Task Force recommends the recruitment and efficient use of additional certified language interpreters.

- Legal research assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply additional legal research assistance for judges.

- Administrative assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply administrative assistance for judges.

- Technology enhances the ability of the entire court system to efficiently function. The Task Force recommends the acquisition of and efficient use of technology.

- All levels of the court system need to be responsive to the Supreme Court and this includes the clerks of the district court. This will assist the courts in administering judicial resources by allowing the Judicial Branch the ability to effectively supervise the system in its entirety, improve its ability to provide administrative assistance to the district courts, and allow for the more efficient implementation of training and technological advances, while maintaining current levels of access.

- Judicial travel to provide services should not be characterized as an administrative "inefficiency."

- Mediation can impact the court system's ability to effectively process cases, and, therefore, could assist the courts in administering judicial resources.

CHAPTER 7: TECHNOLOGY SUBCOMMITTEE

INTRODUCTION

The Technology Subcommittee was asked, in consultation with the Nebraska Supreme Court Technology Committee, to: 1) Recommend appropriate technological updates/policies to improve the efficient handling of cases and the administration of justice; and 2) Assess the technological implications, if any, of the Task Force's recommendations.

The Subcommittee's recommendations are based on a review of three sources of information: 1) recommendations of the Judicial Structure and Administration Task Force (Task Force) that directly or indirectly have technological implications; 2) data gleaned from surveys conducted by the Single Tier Subcommittee that relate to technology; and 3) the reports and of the Nebraska Supreme Court Technology Committee Strategic Plan (See Appendix I).

TASK FORCE RECOMMENDATIONS THAT HAVE IMPLICATIONS FOR TECHNOLOGY

The Task Force recommendations that were considered to have potential technological implications are presented below. The Subcommittee discussed the technological issues surrounding these recommendations and concurs with the Task Force's recommendations.

Powers & Boundaries

During its analysis of judicial district boundaries, the Subcommittee utilized Geographic Information Systems (GIS) software (see Chapter 3) to model potential changes to judicial district boundaries. The application of this software was beneficial to the Task Force and therefore the Task Force recommends that *GIS mapping is a valuable tool that could be used by the Supreme Court and the Judicial Resources Commission when making any future recommendations on the current judicial district boundaries or the allocation or reallocation of judicial resources.*

Court Jurisdiction

The Task Force recommends that *all non-evidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings do not include trials before a jury*. This recommendation is consistent with the Supreme Court Technology Committee Strategic Plan (see *Enabling Technology Goal 4.3.3*). Right now videoconferencing is being piloted for juvenile court arraignments and is scheduled to be piloted for interpreters. Currently, bandwidth to support videoconferencing is available in 32 of the state's courtrooms. Approximately 15 courtrooms have marginal bandwidth and 46 courtrooms have sub-marginal bandwidth to support videoconferencing.

The Task Force recommends *requiring the presiding judges of the district and county court in each judicial district to meet at a minimum of every six months to review the caseload of the two benches. In an effort to equalize the caseload, the presiding judges are authorized to assign between the courts cases arising out of Chapter 42 (domestic relations, including protection orders), harassment orders (Neb. Rev. Stat. §28-311.09) and Class IV felonies. The consent of the parties shall not be required and the cases shall remain filed in the court where they were originally filed. A written report of the assignment(s) will be sent to the Supreme Court, and, if the presiding judges cannot agree on a particular assignment, the matter shall be forwarded to the Supreme Court for resolution*. The Subcommittee recognizes that in order for this recommendation to have the desired effect: 1) the appropriate technology/data systems must be in place to provide presiding judges with the necessary information on caseloads to make accurate decisions regarding the assignment of caseloads; and 2) any changes in caseloads for district and/or county court judges based on this change should be accurately accounted for in future caseload studies.

Court Structure

The Task Force recommends *increasing access to and the more efficient use of technology because technology enhances the entire court system's ability to efficiently function.* More specifically, the Task Force recommends *increasing legal research and administrative assistance for judges in those areas in which they are needed because such assistance enhances the ability of judges to manage their workload.* Additional technology tools identified by the Subcommittee to enhance efficiency include: enhanced scheduling/calendaring options that allow judges and staff within districts to communicate; adequately equipped courtrooms; electronic filing; the ability to waiver and pay fines via the internet; and the expansion of DOCKET software (discussed in the following section) to the district and juvenile courts.

The Task Force also recommends *that all levels of the court system should be responsive to the Supreme Court, including the clerks of the district court because this will allow the Judicial Branch to effectively administer the entire court system, improve its ability to provide administrative assistance to the district courts, and allow for the more efficient implementation of training and technological advances.* The Supreme Court Technology Committee is aware of the challenges associated with integrating and efficiently using technology as long as the clerks of the district courts remain elected officials and has been diligent in overcoming these barriers as it relates to technology.

SURVEY RESULTS

In July and August of 2007, the Single Tier Subcommittee conducted one informal and one formal survey of judges, attorneys, and clerks across the state. Among other findings, survey results indicate the need for additional technology and the necessary resources and training to efficiently utilize technology. A listing of survey results is provided below (*in italics*), followed by a brief discussion on the extent to which these concerns have been, or currently are being, addressed by the Supreme Court Technology Committee.

- *Douglas County District Court should be on JUSTICE*: The Supreme Court Technology Committee is in the process of examining integrating the Douglas County District Court case management system to JUSTICE. This will require

working with Douglas Omaha Technology Commission to plan for a possible conversion of their court data to JUSTICE. The financial aspect for this project is to be determined. The timeframe is estimated to be January 2008 through December 2008.[1]

- *Courtrooms are not equipped for technology*: Fundamental to this goal is ensuring that every courtroom has suitable bandwidth to use technology in an effective and efficient manner. The Supreme Court Technology Committee now participates in planning for network and technology services in new and remodeled courtrooms to ensure that these courtrooms will be properly equipped.[2] Providing courtrooms with new software applications is also fundamental to enhancing efficiency. In 2006, a new application for JUSTICE known as "DOCKET" was completed. DOCKET is a JUSTICE system application which provides interactive programs designed to record judicial proceedings in the courtroom thereby creating a printed record for a judge to digitally sign and issue.[3] Imaging software is also being introduced. The Lancaster County District Court initiated a project to develop the capability for a court to scan, store, index, and retrieve documents filed with the court using the JUSTICE case management system. As a result of this project, JUSTICE was modified to allow a court to link an image of a document to an action recorded in JUSTICE, and to later retrieve that document image by selecting the action from the register of actions. There are currently 29 district courts and 3 county court using imaging in their courts.
- *No electronic filing system available in Nebraska's state court system*: The Supreme Court is currently piloting two electronic filing projects in Sarpy and Lancaster Counties. The Supreme Court Technology Committee plans to have electronic filing in all district and county courts within five years. It is the Subcommittee's position that electronic filing should be provided at a minimal cost to the filer.
- *Judges and clerks need training regarding JUSTICE and DOCKET and other basic forms of technology*: The Supreme Court Technology Committee concurs

[1] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; *Sec. 1.1.3.*
[2] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; 4.1.1.7.
[3] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; 1.2.3.

that technology training is a high priority and should be made available for court employees statewide.[4] Computer based technology training via the Internet will continue to be available for trial court judges and court employees. Computer Based Training (CBT) was launched in the Spring of 2006. CBT provides training courses on personal computer software (Windows, Word, PowerPoint, Excel, etc.) and information technology applications via the Internet. District and county court judges and staff need only a personal computer and Internet access to take advantage of this service. As JUSTICE projects were/are moved into production Business Analysts spent/will spend time training judges and court staff in how to use the new applications.[5]

- *More resources*: With the goal of identifying technology investments that move the courts toward a common system and use of technology, the Supreme Court Technology Committee will participate with Nebraska Information Technology Commission to obtain funding for court related technology projects throughout the state;[6] participating in Court Improvement Project (CIP) funding for juvenile court projects;[7] and seeking additional funding through a variety of grant applications.[8]
- *Calendaring tools needed/Judicial district-wide calendaring*: In reference to the use of technology for calendaring, the Supreme Court Technology Committee notes that the and staff use county owned personal computers; the Douglas County District Court's desktop and notebook computers are standardized on Windows 2000 or greater and Microsoft Office 2003, which includes email and calendaring which is shared between judge, bailiff and court reporter.[9] The Douglas County District Court will continue to work towards an electronic filing system that will integrate/eliminate the Electronic Docketing System and include a comprehensive court calendar.[10] Currently, JUSTICE includes a case scheduling feature that is used by all of the county courts and approximately 70

[4] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 1.3.3.
[5] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 1.2.3.
[6] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 4.1.3.1.
[7] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 4.1.3.2.
[8] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 4.1.3.3.
[9] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 1.3.3.
[10] *Nebraska Supreme Court Technology Committee Strategic Plan 2006-2011*; Sec. 1.3.3.

percent of district courts. The Supreme Court Technology Committee is now working to make case schedules available through the Internet, and a pilot project is in place in Lancaster County that allows one to view court dates online. Another smaller project that is being administered that allows attorneys (who are Nebraska.gov subscribers) to use the Internet to schedule motions, hearings, etc.[11]

RECOMMENDATIONS

Based on the recommendations of the Task Force, survey responses from Nebraska judges, attorneys and court staff, and a review of the Nebraska Supreme Court Technology Committee Strategic Plan, the Subcommittee and the Task Force:

- Support the recommendations of the Task Force which implicate the use of technology.
- Support the Supreme Court Technology Strategic Plan.
- Recommend that the Nebraska State Bar Association encourage its membership to support technology advances being promoted by the Supreme Court, including participation in pilot projects.
- Encourage the further advancement of technology and its use in an effort to help the courts become more efficient and to potentially conserve the need for additional judicial resources.
- Encourage the Nebraska State Bar Association to work with the Supreme Court to find adequate resources to fund the application and use of technology for the court system.

[11] Communication with William M. Miller, Deputy Supreme Court Administrator for Information Technology, September 21, 2007.

CHAPTER 8: RECOMMENDATIONS

Judicial District Boundaries

The Task Force recommends that the existing judicial district boundaries remain in place. The Task Force determined that judicial resource deficiencies would be better resolved by moving judges rather than changing judicial district boundaries. (See recommendation under *Judicial Allocation of Powers).* The Task Force came to this conclusion after examining a number of different judicial district models with the use of GIS mapping to more accurately evaluate current workload data. The distribution of judicial resources was not the only factor considered. The Task Force also considered the following criteria in relation to each model: political feasibility, practicality of implementation, population/filing trends, longevity of the scenario's utility, meaningful retention districts, and historical county relationships.

Judicial Allocation of Powers

The Task Force recommends that legislation be introduced delegating to the Supreme Court authority to determine where a judicial vacancy should be filled subject to the current statutory framework for determining vacancies by the Judicial Resources Commission (JRC). Under current law, in order for the Supreme Court to administer its judicial resources (e.g., moving a judicial vacancy to another judicial district or reallocating a current judicial position to another judicial district), it must first go through the legislative process to amend the statutes. The legislative process does not allow the Supreme Court to promptly and efficiently administer its judicial resources. Therefore, the Task Force supports legislation that would provide the Supreme Court with more flexibility to administer its judicial resources, but would not weaken the current role of the JRC. Because the authority to determine where a vacancy should be filled can result in a county/judicial district losing a judicial position, the Task Force favored the involvement of the JRC, which includes statewide judicial, attorney and public representation. The loss of a judge not only impacts caseload, but the practice of law in the affected judicial district, and the public's access to the court system. The Task Force recommends:

- The Legislature will statutorily provide for the total number of judgeships. Until a vacancy occurs, the specific number of district, county, and separate juvenile court judges would be equal to the number of judges that exist at the time the legislation was enacted and the judges would serve in the judicial districts where they were originally appointed.
- When a vacancy occurs and the JRC determines that the vacancy should be filled in the same judicial district where it occurred, the JRC would notify the appropriate judicial district nominating commission to fill the position in the same judicial district. This is the current statutory procedure and should not be changed.
- When a vacancy occurs and the JRC determines that the vacancy should be filled in a different judicial district and/or that the vacancy should be filled by another type of judge (district, county or juvenile), the JRC would make its recommendation to the Supreme Court. The Supreme Court, by a majority vote, would then make an independent determination of where that vacancy should be filled based upon the recommendation from the JRC and a number of other factors, including caseload statistics and access to justice factors. Once the Supreme Court makes its determination, it would notify the appropriate Judicial Nominating Commission to fill the position.
- If the JRC recommends to the Supreme Court that a sitting judge should be reallocated to another judicial district, then the Supreme Court may reallocate the position based on the recommendation of the JRC; current caseload statistics and access to justice factors; *and* the consent of the sitting judge being asked to relocate.
- If the JRC makes a determination to increase or reduce the number of judges, change judicial district boundaries, or change the number of judicial districts, the JRC would make these recommendations to the Supreme Court. If the Supreme Court agreed with the recommendations of the JRC, the Supreme Court would then ask the Legislature for the necessary statutory changes.

Court Jurisdiction

The Task Force recommends legislative concepts that allow the courts to better administer their judicial workload. One legislative concept allows the district and county courts to cross-assign cases with the remainder of the concepts offering legislative solutions for improving the process. These legislative concepts are meant to minimize the need for additional judicial resources. The statutory concepts are as follows:

Appeal Process

- Authorize the district court to review small claims appeals on the record.
- When appealing from the county court to the district court, the process for admitting the bill of exceptions would conform to the process used by the Nebraska Court of Appeals and Nebraska Supreme Court.
- When appealing an excessive sentence from the county court to the district court, the process would conform to the process used by the Nebraska Court of Appeals and Nebraska Supreme Court.

Mediation & Quasi-Judicial Officers

- The courts should inform the parties and their attorneys about the availability of mediation as an alternative method of dispute resolution and that judges should encourage parties and their attorneys through some type of formalized process to consider the use of mediation as a means to resolve their dispute. Such a process could include a certification by the attorney to the court that the client has been fully informed of the benefits of mediation as an alternative means of resolving the client's dispute.
- Authorize county and separate juvenile court judges to appoint child support referees.
- Expand the authority of the courts to appoint a referee for any equity matter.

Caseload & Scheduling Management

- All non-evidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the

preservation of an accurate record. Such hearings do not include trials before a jury. Conducting hearings in this manner shall be consistent with the public's access to the courts.

- Require mandatory filing of felony and misdemeanors in district court when they arise from the same incident.
- Require the presiding judges of the district and county court in each judicial district to meet at a minimum of every six months to review the caseload of the two benches. In an effort to equalize the caseload, the presiding judges are authorized to assign between the courts cases arising out of Chapter 42 (domestic relations including protection orders), harassment orders (Neb. Rev. Stat. §28-311.09) and Class IV felonies. The consent of the parties shall not be required and the cases shall remain filed in the court where they were originally filed. A written report of the assignment(s) will be sent to the Supreme Court, and, if the presiding judges cannot agree on a particular assignment, the matter shall be forwarded to the Supreme Court for resolution.

Court Structure

After studying "single-tier" court structures as they exist in various forms, the Task Force recommends that the consolidation of the trial courts into a one-tier trial court should not be pursued. Such consolidation will not result in greater efficiency nor reduce costs.

The Task Force determined:

- Consolidation does not decrease the costs associated with the court system, but instead leads to increased costs in: higher salaries and higher fringe benefit and retirement contributions for judges and employees of a limited jurisdiction court being absorbed into a general jurisdiction court; training for judges on their expanded jurisdictional responsibilities; additional expenditures in support of judges being elevated to the status of a general jurisdiction judge, such as enhancements in chambers and courtrooms and entitlement to specialized employees (for example, court reporters, bailiffs, and administrative assistants); and allocating additional resources to the Court of Appeals to enable it to

administer the additional caseload that would come from removing the level of appeal from county to district court.

- States with one-tier court systems tend to re-create a limited jurisdiction court by establishing an unofficial lower level of judges and staff who process routine, high-volume cases.
- Many of the efficiencies realized through court reform may in actuality come from the administrative reforms that accompany trial court consolidation and not the actual consolidation itself.

The Task Force recommends support for administrative functions that may help in reducing the immediate need for additional judicial resources. The Task Force recommends the following:

- Access to certified language interpreters impacts the ability of judges to effectively process cases. The Task Force recommends the recruitment and efficient use of additional certified language interpreters.
- Legal research assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply additional legal research assistance for judges.
- Administrative assistance enhances the ability of judges to manage their workload and leads to the more effective use of judicial resources. The Task Force recommends that adequate funds are necessary to supply administrative assistance for judges.
- Technology enhances the ability of the entire court system to efficiently function. The Task Force recommends the acquisition of and efficient use of technology.
- All levels of the court system need to be responsive to the Supreme Court and this includes the clerks of the district court. This will assist the courts in administering judicial resources by allowing the Judicial Branch to effectively supervise the system in its entirety, improve its ability to provide administrative assistance to the district courts, and allow for the more efficient implementation of training and technological advances, while maintaining current levels of access.

- Judges' travel to provide services should not be characterized as an administrative "inefficiency."
- Mediation can impact the court system's ability to effectively process cases, and, therefore, could assist the courts in administering judicial resources.

Technology Use within the Courts

The Task Force recommends the expanded use of technology. This recommendation will help the courts become more efficient and potentially minimize the need for additional judicial resources. Therefore, the Task Force:

- Supports all recommendations that implicate the use of technology.
- Supports the Nebraska Supreme Court Technology Committee Strategic Plan.
- Encourages the Nebraska State Bar Association and its membership to support technology advances being promoted by the Supreme Court, including participation in pilot projects.
- Encourage the further advancement of technology and its use in an effort to help the courts become more efficient and to potentially conserve the need for additional judicial resources.
- Recommends Nebraska State Bar Association works with the Supreme Court to find adequate resources to fund the application and use of technology for the court system.

Appendix A

Judicial Workload Assessment Nebraska District, County and Juvenile Courts, Final Report December 2006

Please note that the caseload numbers in the Judicial Workload Assessment are from 2005. The caseload numbers used for analyses in the Judicial Structure and Administration Task Force Final Report, October 2007, are from 2006, and reflect changes as a result of the passage of LB 377 (2007). LB 377 reallocated a district court judge from the 12th Judicial District to the 9th Judicial District and reallocated a county court judge from the 12th Judicial District to the Separate Juvenile Court in the 3rd Judicial District.

Judicial Workload Assessment

Nebraska District, County and Juvenile Courts

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Final Report December 2006

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Executive Summary

The Nebraska courts face a challenge shared by many courts, determining the optimum number of judges needed to successfully complete the work of the district, county and juvenile courts. Maintaining an adequate level of judicial resources is essential to effectively manage and resolve court business while upholding a high level of customer service. In order to meet these challenges, an objective assessment of the number and allocation of judges needed to handle caseloads is necessary. To this end, the Administrative Office of the Courts contracted with the National Center for State Courts (NCSC) to conduct a judicial workload assessment for the district, county and juvenile courts.

As is true in all courts, cases in the Nebraska court system vary in the level of complexity and amount of judicial time and attention needed to be successfully resolved. Given that judges and judicial officers handle multiple cases with varying levels of complexity, measuring judicial workload can appear to be an arduous task. This study utilized a weighted workload assessment methodology with a time study data collection procedure to translate judicial workload into an estimate of judicial need. The two primary analyses used by the weighted workload assessment are:

- **Judicial workload estimate**—judicial workload calculation is based upon the average amount of time a judge needs to resolve a case and the annual number of cases in the court

- **Judicial resource assessment**—this is a series of calculations comparing the current available judicial resources to the resource demand predicted by the model

Judicial Workload Estimate

The judicial workload value represents the total number of minutes of annual case-related work and is calculated from case weights and annual filings. This measure is based upon baseline data and current practices, the challenge is to provide judges sufficient time to *reasonably* engage litigants, listen to victims, clearly explain rulings and orders—features fundamental to the public perception of fairness and appropriate treatment by the court. Calculating an estimate of judicial workload is the first phase in a weighted workload assessment. Components of the workload estimate include the following:

- Time study is an event-based data collection process designed to measure the actual time judges currently spend in resolving different types of cases
- Adequacy of time survey designed to collect perspectives on the level of time currently available to conduct the business of the court
- Qualitative adjustment of the case weights based on an examination of current practice and expert judicial opinion

Time study

The major products from the time study portion of a weighted workload assessment are the individual case weights. Case weights are used to calculate the overall judicial workload values. In this study, individual case weights were generated as follows:

- District court – 6 case types
- County court – 12 case types and
- Juvenile Court – 4 case types

legal research, non-case-related administration and court related travel.

When the FTE required for non-case-related activities is subtracted from the judicial FTE currently available to conduct all the work of the court, the remaining value represents the FTE available to conduct the *case-related* work of the court (i.e., judicial resource supply). The judicial resource supply calculated is 50.84 FTE for the district court, 45.68 FTE for the county court and 8.20 FTE for the juvenile court.

Judicial Demand

The judicial demand value[3] is calculated by dividing the judicial workload value by the judicial average annual availability value and represents the judicial full time equivalent (FTE) needed to process the case-related work of the court. The judicial average annual availability value is the total amount of time per year that a judge has available to process his or her workload. This value is reached by the advisory committee after careful consideration of the typical number of days per year and hours per day that a judge should be available to work on case-related and non-case-related activities. This value accounts for weekends, holidays, sick days, vacation time, and administrative leave time.

Applying the case weights to the 2005 filings to obtain the workload and dividing that value by the judge year value produces the judicial demand. The calculated judicial demand for case-related activities in the district court is 52.47 FTE, 48.81 FTE in the county court and 8.37 FTE in the juvenile court.

Judicial Need

The judicial need value[4] is the comparison of the predicted judicial demand to the judicial resource supply currently available to process cases.

This study determined that the district, county and juvenile courts require greater judicial resources to complete the work of the court. Specifically, the additional judicial FTE needed for the district court is 1.63, 3.13 FTE for the county court, and .17 FTE for the juvenile court. A comparison of the judicial demand, availability and need values is shown in Table 1.

Table 1: Total Judicial Need

Judicial Resources (FTE)	District Court	County Court	Juvenile Court
Judicial Case-Related Resource Supply	50.84	45.68	8.20
Judicial Case-Related Resource Predicted Demand	52.47	48.81	8.37
Supply/Demand Difference	-1.63	-3.13	-.17

[3] This value is labeled "Judicial Case-Related Resource Predicted Demand" in the models in Appendices C-E.

[4] This value is labeled "Supply/Demand Difference" in the models in Appendices C-E.

Overview: Workload Assessment Model

A judicial workload assessment model is a quantitative representation of the inter-related variables that work together to determine judicial resource needs. The core of the workload assessment model is a time-study whereby judges keep track of the amount of time spent working on each of the case types under investigation. When the time-study data are joined with case filing data for the same time period, it is possible to construct a "case weight." The case weights represent the average judicial time required to handle a case from filing to disposition.

The utility of a case weight is that it summarizes the variation in judicial time by providing an average amount of time per case. Some cases take more time than the case weight and some take less time than the case weight, but, on average, the case weight accurately reflects the typical amount of time needed to dispose of specific case types. Once developed, case weights can be used to calculate the total judicial workload for the court.

Applying the case weights to current or projected annual case filing numbers results in a measure of annual judicial workload. These workload values are then divided by the amount of work time available for an individual judicial officer, resulting in an estimate of required judicial resources. This approach is straightforward and sufficiently rigorous to measure resource needs and evaluate resource allocations.

It is important to note that even the most widely used and accepted resource assessment techniques, including the workload assessment model, will not determine the *exact* number of judges needed to stay current with caseloads. No quantitative resource assessment *model* by itself can accomplish that goal. Results from a workload model should be used in concert with other considerations, including budget constraints, population trends, and other more qualitative, court-specific factors that may impact the need for judicial resources.

To account for some of these qualitative factors, NCSC uses an adequacy of time survey to determine whether judicial officers believe that they have adequate time effectively meet the demands of their workload. Depending on the results of the survey, the case weights may be adjusted upward or downward to more accurately reflect the amount of time that should be spent on case processing and/or non-case-related activities. To determine which case types may need to be adjusted, the advisory committee is asked to review the individual case weights to ensure that they are reasonable and reflect the practices of the court.

Methodology

Two fundamental pieces of information are necessary to determine the judicial resources required to handle the total court workload demand. The two pieces of information are:

- *Workload Estimate.* Workload is generated from two components, 1) the case weights which represent the average amount of time spent on case processing as determined by the time study and 2) the annual number of case filings. Multiplying these two values produces the workload estimate.
- *Resource Assessment.* The assessment of judicial resources is based upon the following three calculations 1) judicial resource supply, 2) judicial demand, and 3) judicial need.

The primary goal of the Workload Assessment Study is to provide an accurate picture of the amount of time judges need to resolve different types of cases in an *efficient*

the clerk magistrates recorded the time spent on judicial activities.

Case Weight Calculation

The calculation of case weights involves summing the time spent on case-related activities and dividing that value by the case filings during the data collection time period.

For criminal cases, the district court case weight is 175 minutes. As noted earlier, perhaps no case is an "average" case, taking exactly 175 minutes of judge time, but on average, district court judges spend this amount of time on a single criminal case. Some cases take more time and some cases take less time. Generally, case weights are lower for those high volume case types with a lower likelihood of appearance in court. Not surprisingly, in the county court, juvenile cases take the most amount of judge-time on average, while traffic cases take the least. Case weights for dedicated juvenile courts are also higher than the weights for juvenile cases heard in county court; again, this is expected when dedicated courts are present.

The final individual case weights for each of the case types measured for the district, county and juvenile courts are shown in Tables 2-4.

Table 2: Case Weights for District Court

Type of Case	Minutes per Case
Problem solving court cases	66
Protection Orders	32
Civil	214
Criminal	175
Domestic relations	84
Appeals	107

Table 3: Case Weights for County Court

Type of Case	Minutes per Case
Domestic Relations	33
Felony	25
Misdemeanor	18
Traffic	2
Civil	10
Probate	57
Small Claims	10
Adoption	33
Juvenile: Abuse/Neglect/ Dependency & TPR	274
Juvenile: Delinquency	50
Juvenile: Status Offender 3B/ Mentally Ill & Dangerous 3C	105
Juvenile: Problem solving court case	54

Table 4: Case Weights for Juvenile Court

Type of Case	Minutes per Case
Abuse/Neglect/ Dependency & TPR	367
Delinquency	107
Status Offender 3B/ Mentally Ill & Dangerous 3C	115
Problem solving court case	133

Adequacy of Time Survey

Judicial officers were also asked to participate in an adequacy of time survey to examine whether current staffing levels were sufficient to provide reasonable and satisfactory service to the public. This survey asked judicial officers to evaluate how well specific tasks, covering pre-trial, trial, post-trial, and general court management events, were actually being performed by the court. The survey was administered via a Web-based data collection instrument which was made available to judicial officers over an

activity includes education and training (in addition to the three days of standard education and training accounted for in the model), community activities, speaking engagements, committee meetings, general legal research, non-case-related administration and court related travel (accounted for separately in the model).

To determine current available judicial resources, the number of funded FTE judicial officer positions was used for each court. To adjust for the amount of time spent on non-case-related activities and travel, the average amount of time recorded during the time study as pertaining to non-case-related activities and travel was extrapolated to estimate an annual time value and converted to FTE. The number of FTE required to conduct non-case-related activities was then subtracted from the number of funded FTE judicial officer positions.

Although the district court has 59 funded FTE judicial officer positions[5], because 5.20 FTE are required for non-case-related activities and 2.95 FTE are required for travel the total number of FTE available to process cases is 50.84. In the county court, the number of FTE available for case-related activity is 44.68 and juvenile court has 8.20 FTE.

Judge Demand

The judicial demand value is calculated by dividing the judicial workload value by the judge year value and represents the judicial FTE needed to process the case-related work of the court. The judge year value is defined as the number of days a judge has to process his or her assigned caseload in a one year period. Weekends, holidays, vacation, sick leave and administrative leave are deducted from 365 days to arrive at the judge year value. The average workday is defined as 7.5 hours. Converting the workday into minutes and multiplying that by the number of available days results in the average annual availability of judges. In Nebraska, judges average 98,100 minutes of availability annually (218 days x 7.5 hours x 60 minutes). Calculations for the judge year value are shown in Table 5.

Table 5. Calculation of Judicial Annual Availability Value

	Days	Minutes
Available Time	**365**	**164,250**
LESS		
Weekends	104	46,800
Holidays	12	5,400
Vacation	20[6]	9,000
Sick leave	8	3,600
Education/training	3[7]	1,350
TOTAL TIME	**218**	**98,100**

[5] The district court FTE total includes child support referees.

[6] When the Advisory Committee met in October, 2005, they were asked to determine the "judge year value," for Nebraska judges. This task involves determining the number of days judges are expected to work in a year, and requires the committee to identify the number of state holidays, average vacation and sick leave and time required for education and training. While the number of weekend days and holidays are easily accessible, data on vacation, sick and education/training days was not, which required the committee to make an educated guess regarding the average amount of time allotted to each of these categories. Upon reflection, the number of vacation days was decreased from 25 days in the original model to 20 days annually in the revised model. While some judges may take 25 or more days of vacation in a year, it was agreed that the state average is closer to 20 days than 25.

[7] Education and training days were agreed to in the same fashion as described above. While the state's education requirement for judges is only ten hours annually, the committee originally reasoned that if all judges attended two annual bar-sponsored events in addition to fulfilling their ten hours of required training, ten *days* of education and training would be required, and this figure was built into the original model. A closer review of this assumption prompted the committee to revise the average number of judicial education days judges in Nebraska reasonably do and should take is three rather than ten.

court 1.63 FTE, the county court needs an additional 3.13 FTE judicial officers, while the court requires an additional .17 FTE judicial officers.

The case weights generated in this study are valid and credible due to the techniques employed. The TIME STUDY provided a quantitative basis for assessing judicial need which was further enhanced by the addition of the ADEQUACY OF TIME SURVEY, and the court's Advisory Committee review of individual case weights, which allowed for qualitative adjustments to the case weights. Although the case weights generated in this study should be valid for many years, periodic updating should be conducted to ensure the continued accuracy and integrity of the case weights. Multiple factors may impact the affect of case weights, such as changes in court rules, jurisdiction, technology and legal practices. Periodic reviews should be conducted to evaluate whether changes have occurred that are acting to impact the judicial workload.

Appendix B: Adequacy of Time Survey Results

District Court (n=34)

I typically have time to complete this task in a reasonable and satisfactory way...

1=almost never, 2=seldom, 3=usually, 4=almost always, 5=always

Pre-Trial Activity	N	Mean	Median	Std. Dev.	Min	Max
treat parties appropriately	33	4.58	5.00	0.61	3	5
treat members of the bar appropriately	33	4.52	5.00	0.57	3	5
conduct the advisement or first appearance	29	4.24	5.00	0.87	3	5
arraignment/1st appearances	32	4.22	5.00	0.94	2	5
warrant/failure to appear	33	4.18	4.00	0.88	3	5
take pleas	32	4.09	4.00	0.89	3	5
drug court-time spent in court or formal situation	11	4.00	5.00	1.34	1	5
perform pre-trial case management activities	33	3.73	4.00	0.94	2	5
conduct pre-trial/preliminary hearings and motions	33	3.64	3.00	0.93	2	5
conduct hearings on temporary custody, support, etc	33	3.61	3.00	1.06	2	5
interact appropriately with pro se litigants	32	3.59	3.00	0.95	2	5
adequately explain orders and rulings	28	3.54	3.00	0.96	2	5
conduct settlement conferences	25	3.44	3.00	1.12	1	5
prepare and issue orders	32	3.25	3.00	0.92	2	5
adequately review the case file	33	3.24	3.00	1.03	1	5
monitor timeliness of required case events	32	3.19	3.00	1.20	1	5

Trial Activity	N	Mean	Median	Std. Dev.	Min	Max
conduct a jury trial	30	3.77	4.00	0.86	2	5
prepare for a jury trial	30	3.73	3.50	0.83	3	5
conduct a contested adjudication	19	3.68	3.00	0.95	2	5
prepare for a bench trial	32	3.66	3.50	0.90	2	5
prepare for a contested adjudication	19	3.58	3.00	1.22	1	5
conduct a bench trial	33	3.58	3.00	0.83	2	5

Non-Case-Related Activity	N	Mean	Median	Std. Dev.	Min	Max
search warrant (when case type unknown)	21	3.95	4.00	0.86	3	5
education and training-continued legal education (CLE), judicial education courses and training, court-related training	33	3.73	4.00	1.10	2	5
community activities, speaking engagements	29	3.59	3.00	0.87	2	5
committee work and meetings	29	3.59	3.00	1.02	1	5
jury matters, jury questionnaires, jury-related work before case type is known	26	3.54	3.00	0.99	2	5
non-case-related administration- grand jury activity, non-case-related phone calls, miscellaneous meetings, budget activities, personnel issues	31	3.45	3.00	1.06	2	5
general legal research- keeping current on the law, reading case law	33	2.91	3.00	1.31	1	5

County Court (n=65)

I typically have time to complete this task in a reasonable and satisfactory way...

1=almost never, 2=seldom, 3=usually, 4=almost always, 5=always

Pre-Trial Activity	N	Mean	Median	Std. Dev.	Min	Max
treat members of the bar appropriately	63	4.37	5.00	0.73	3	5
treat parties appropriately	63	4.35	5.00	0.77	3	5
take pleas	57	3.96	4.00	0.82	2	5
conduct the advisement or first appearance	53	3.77	4.00	0.87	2	5
warrant/failure to appear	58	3.72	4.00	0.87	2	5
conduct pre-trial/preliminary hearings and motions	42	3.67	4.00	0.85	2	5
arraignment/1st appearances	58	3.62	4.00	0.99	1	5
perform pre-trial case management activities	56	3.59	4.00	0.78	2	5
prepare and issue orders	59	3.49	3.00	0.94	1	5
interact appropriately with pro se litigants	62	3.47	3.00	0.90	2	5
adequately explain orders and rulings	52	3.46	3.00	1.04	1	5
conduct settlement conferences	27	3.44	3.00	1.31	1	5
monitor timeliness of required case events	56	3.43	3.00	0.93	2	5
conduct hearings on temporary custody, support, etc	33	3.42	3.00	0.83	2	5
adequately review the case file	59	3.34	3.00	0.99	1	5
drug court-time spent in court or formal situation	5	1.60	1.00	0.89	1	3

Non-Case-Related Activity	N	Mean	Median	Std. Dev.	Min	Max
education and training-continued legal education (CLE), judicial education courses and training, court-related training	59	3.78	4.00	0.95	1	5
search warrant (when case type unknown)	42	3.67	3.50	0.87	2	5
community activities, speaking engagements	43	3.58	3.00	0.91	1	5
committee work and meetings	51	3.45	3.00	0.88	2	5
non-case-related administration- grand jury activity, non-case-related phone calls, miscellaneous meetings, budget activities, personnel issues	57	3.39	3.00	0.84	2	5
jury matters, jury questionnaires, jury-related work before case type is known	31	3.23	3.00	1.02	1	5
general legal research- keeping current on the law, reading case law	53	2.98	3.00	0.97	1	5

Juvenile Court (n=3)

I typically have time to complete this task in a reasonable and satisfactory way...

1=almost never, 2=seldom, 3=usually, 4=almost always, 5=always

Pre-Trial Activity	N	Mean	Median	Std. Dev.	Min	Max
drug court-time spent in court or formal situation	2	4.50	4.50	0.71	4	5
treat members of the bar appropriately	3	4.00	4.00	1.00	3	5
treat parties appropriately	3	4.00	4.00	1.00	3	5
conduct the advisement or first appearance	3	3.67	4.00	1.53	2	5
warrant/failure to appear	3	3.67	3.00	1.15	3	5
arraignment/1st appearances	2	3.50	3.50	0.71	3	4
conduct settlement conferences	2	3.50	3.50	0.71	3	4
take pleas	3	3.33	3.00	0.58	3	4
perform pre-trial case management activities	3	3.33	3.00	0.58	3	4
conduct pre-trial/preliminary hearings and motions	3	3.33	3.00	0.58	3	4
interact appropriately with pro se litigants	3	3.33	3.00	1.53	2	5
conduct hearings on temporary custody, support, etc	3	3.33	3.00	0.58	3	4
monitor timeliness of required case events	3	3.00	3.00	1.00	2	4
prepare and issue orders	3	3.00	3.00	1.00	2	4
adequately explain orders and rulings	3	3.00	4.00	1.73	1	4
adequately review the case file	3	2.33	3.00	1.15	1	3

Non-Case-Related Activity	N	Mean	Median	Std. Dev.	Min	Max
education and training-continued legal education (CLE), judicial education courses and training, court-related training	3	4.00	4.00	1.00	3	5
community activities, speaking engagements	3	3.67	4.00	0.58	3	4
non-case-related administration- grand jury activity, non-case-related phone calls, miscellaneous meetings, budget activities, personnel issues	2	3.50	3.50	0.71	3	4
committee work and meetings	3	3.33	3.00	0.58	3	4
general legal research- keeping current on the law, reading case law	3	2.67	2.00	2.08	1	5
jury matters, jury questionnaires, jury-related work before case type is known	0					
search warrant (when case type unknown)	0					

Appendix D: County Court Model Worksheet

			Judicial District												
	Case Type Categories	Case weight (Minutes)	1	2	3	4	5	6	7	8	9	10	11	12	STATE
1	Domestic relations (referred cases)	33.00	276	240	492	0	225	271	100	72	289	26	0	152	2,143
2	Felony	25.00	435	1,324	1,865	4,261	881	700	573	300	1,040	372	986	767	13,504
3	Misdemeanor	18.00	3,824	12,299	21,751	36,002	7,289	6,489	4,835	3,326	7,542	3,575	7,027	6,440	120,399
4	Traffic	2.00	9,207	20,622	27,470	28,439	12,899	12,085	8,489	6,504	8,347	6,851	18,010	10,927	169,850
5	Civil	10.00	2,437	4,186	11,029	22,085	4,435	3,790	2,315	1,884	5,710	3,487	4,266	3,035	68,659
6	Probate	57.00	428	519	921	1,821	757	534	497	408	427	514	617	524	7,967
7	Small Claims	10.00	317	417	757	1,663	612	403	418	391	481	391	785	704	7,339
8	Adoption	33.00	26	107	148	256	63	40	39	38	36	48	53	42	896
9	Juv: Abuse/Neglect/ Dependency & TPR	274.00	113	35	0	0	187	127	59	55	115	90	178	199	1,158
10	Juv: Delinquency	50.00	391	196	0	0	937	461	291	195	453	486	749	689	4,848
11	Juv: Status Offender 3B/ Mentally Ill & Dangerous 3C	105.00	48	24	0	0	79	27	45	16	76	61	209	68	653
12	Juv: Problem solving court case	54.00												11	11
13	Total Annual Filings		17,502	39,969	64,433	94,527	28,364	24,927	17,661	13,189	24,516	15,901	32,880	23,558	397,427
14	Case-Specific Workload (minutes)= Sum (Weights x Filin		215,629	404,754	684,614	1,161,218	388,585	301,840	214,074	166,566	337,618	213,291	382,805	826,790	4,787,784
15	Judicial Average Annual Availability (AAA)		117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450	117,450
16	State holidays (- 12 days)		5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400
17	Vacation (-20 days)		9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000
18	Sick leave (-8 days)		3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600
19	Education/training (-3 days)		1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350
20	AAA for Case-Related Workload		98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100	98,100
21	Judicial Resource Calculations														
22	Funded FTE Judge Positions		3.00	4.00	6.00	12.00	6.00	4.00	3.00	3.00	4.00	3.00	5.00	5.00	58.00
23	Travel FTE Credit (-)		0.57	0.16	0.13	0.15	0.43	0.64	0.43	0.50	0.08	0.43	0.35	0.73	4.59
24	Non-Case-Related Activity FTE Credit (-)		0.36	0.46	0.68	1.98	0.68	0.65	0.34	0.37	0.45	0.34	0.77	0.66	7.73
25	Judicial Case-Related Resource Supply (FTE) line 22-(line 23 + line 24)		2.07	3.38	5.20	9.88	4.89	2.71	2.23	2.14	3.47	2.23	3.88	3.61	45.68
26	Judicial Case-Related Resource Predicted Demand (FTE) (line 14 / line 20)		2.20	4.13	6.98	11.84	3.96	3.08	2.18	1.60	3.44	2.17	3.90	3.33	48.81
27	Supply/Demand Difference (line 25 - line 26)		-0.13	-0.75	-1.78	-1.96	0.93	-0.37	0.05	0.54	0.03	0.06	-0.02	0.28	-3.16
28	Total Predicted Judicial Resources need (line 23+ line 24 +line 26)		3.13	4.75	7.78	13.96	5.07	4.37	2.95	2.46	3.97	2.94	5.02	4.72	61.13
29	Percentage under (+%) or over (-%) resourced (line 28 - line 22)/line 22 *100		4.34%	18.72%	29.74%	16.36%	-15.54%	9.20%	-1.81%	-17.92%	-0.64%	-1.95%	0.38%	-5.58%	5.39%

Appendix F: Case Weight Composition

District Court

Case Type Category	Case weight	Activity	Case weight composition
Problem Solving Court Case	66	Drug Court - In Session	25.92
		Case-Related Administration	40.08
		Total	66.00
Protection Orders	32	Pre-Trial	12.38
		Trial/Contested Adjudication	9.29
		Post-Trial	3.22
		Case-Related Administration	7.11
		Total	32.00
Civil	214	Pre-Trial	59.19
		Trial/Contested Adjudication	59.17
		Post-Trial	51.41
		Case-Related Administration	44.23
		Total	214.00
Criminal	175	Pre-Trial	52.13
		Trial/Contested Adjudication	30.75
		Post-Trial	67.66
		Case-Related Administration	24.46
		Total	175.00
Domestic Relations	84	Pre-Trial	19.44
		Trial/Contested Adjudication	28.94
		Post-Trial	21.70
		Case-Related Administration	13.91
		Total	84.00
Appeals	107	Pre-Trial	8.57
		Trial/Contested Adjudication	34.90
		Post-Trial	50.17
		Case-Related Administration	13.36
		Total	107.00

County Court (continued)

Case Type Category	Case weight	Activity	Case weight composition
Adoption	33	Pre-Trial	5.52
		Trial/Contested Adjudication	9.89
		Post-Trial	6.46
		Case-Related Administration	11.13
		Total	33.00
Juvenile: Abuse/Neglect/Dependency + TPR	274	Pre-Adjudication	56.12
		Adjudication	30.51
		Post-Adjudication	137.30
		Case-Related Administration	50.07
		Total	274.00
Juvenile: Delinquency	50	Pre-Adjudication	15.91
		Adjudication	5.15
		Post-Adjudication	23.27
		Case-Related Administration	5.66
		Total	50.00
Juvenile: Status Offender 3B/ Mentally Ill & Dangerous 3C	105	Pre-Adjudication	35.54
		Adjudication	3.31
		Post-Adjudication	48.52
		Case-Related Administration	17.63
		Total	105.00
Juvenile: Problem Solving Court Case	54	Drug Court - In Session	54.00
		Total	

District Court Weighted Caseload Need for Judges				
District	*Current Number of Judges*	*Current Number of Child Support Referees*	*Total Number of Judges and Child Support Referees*	*Total Judicial Resources Need*
1	3		3	3.09
2	4	.49	4.49	5.17
3	7	1.02	8.02	8.07
4	16	2	18	19.86
5	4	.08	4.08	4.11
6	3		3	2.70
7	2	.07	2.07	2.54
8	2		2	1.96
9	3	.23	3.23	3.58
10	2		2	2.02
11	4	.11	4.11	3.70
12	5		5	3.81

-- based on January 1, 2005 - December 31, 2005 filings

Administrative Office of the Courts
December 2006

Juvenile Court Weighted Caseload Need for Judges		
District	Current Number of Judges	Total Judicial Resources Need
Sarpy	2	1.46
Lancaster	3	3.60
Douglas	5	5.12

-- based on January 1, 2005 - December 31, 2005 filings

Administrative Office of Courts
December 2006

Appendix B

Letter from Nebraska Supreme Court Judge Michael McCormack on behalf of the Judicial Resources Commission

(Reprinted with Permission)

NEBRASKA SUPREME COURT

MICHAEL MCCORMACK
JUDGE

P.O. BOX 98910
STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509
(402) 471-4345

January 25, 2007

CHARGE TO THE NSBA JUDICIAL STRUCTURE AND ADMINISTRATION TASK FORCE 2007

I am, and have been for the last nine years, the Chairman of the Judicial Resources Commission. While I have not met with the Commission on this charge because of time constraints, I believe I am correctly indicating what it is that the Commission wishes you to do. The Commission was formed by the Legislature and consists of 17 members, one representative from the district, county, and juvenile courts, six members are appointed by the Bar, and seven members are appointed by the Governor. One of the functions of the Commission is to recommend to the Legislature any change in the number of judges in any district, and any change of boundaries of the judicial districts.

Presently there are 6 Supreme Court districts, 12 district court districts, and 12 county court districts. Attached are maps of each of those districts. The Supreme Court districts are based on census and were changed after the 2000 census to reflect population change.

The Legislature provided money to the Supreme Court in 2006 to have the National Center for State Courts do a study on judicial workloads. I believe a copy of this study has or will be given to you. I am, however, attaching to this charge from that workload study Appendix C, which is the district court model, Appendix D, which is the county court model, and Appendix E, which is the juvenile court model. Prior to this study, the Commission relied upon weighted caseload statistics kept by the Court Administrator's office to try and determine if a judicial vacancy should not be filled (this only happened once in my nine years as Chairman), or whether an additional judgeship should be created (which happened a couple of times in my nine years as Chairman).

When you look at line 23 of the district court model, and line 27 of the county court model, you will see that these lines

list, by district, the number of judges needed in that district. This is never expressed in terms of one judge, but always in a decimal point. With the present district boundaries, what is the Commission or the Legislature to do with these figures? If a district is in need of .5 judges, do you appoint an additional judge and, if you do, what does that judge do with the remaining 50 percent of his or her time which, according to the study is not needed?

If the majority of the districts were either abolished or made much larger, this could be handled by the judges themselves within the district. The presiding judge of the district could say "Judge 'Smith,' Judge 'Jones' needs a little help, so why don't you go over there for two days a week until he is caught up." Under the present system a district judge can go outside of his or her district to assist another judge but, as a rule, it does not happen unless there is a death or a serious illness. I think there is probably a reluctance for district judges to say they cannot handle their docket and need some help. This is not a reflection on the judge because, as we all know, certain things, such as the five murders in Norfolk, can wreak havoc on a docket.

In county court, a judge cannot go outside his or her district to assist another judge without applying to the Chief Justice, who will then enter an order allowing this. This does not foster cooperation among the judges.

In the past nine years when a district needed an additional judge they would ask the Commission who would then recommend to the Legislature whether that additional judge was needed. The Legislature usually responded positively. Since the tight budget of approximately 2001, I do not believe there have been any new judges appointed. The Governor's budget for the court system this year recommends a 1.9 percent increase, and this certainly is not going to allow for any additional judges. In other words, if the judiciary is going to serve the people well, it needs to become flexible and more efficient.

There are several options that come to mind. Omaha with 16 district judges and 12 county judges, and Lincoln, with 7 district judges and 6 county judges, should probably be stand alone districts. As to the rest of the state, some options that come to mind are: (a) the state could be divided into the six Supreme Court districts, which is based on population; (b) the rest of the state could be divided geographically such as northwest, northeast, southwest, and southeast, as suggested by

one judge at a prior meeting. I am sure there are several other options which you will consider.

A couple of examples that I would give you as to what could be done with larger districts would be that in the county court system the workload study shows that the county court, 2nd Judicial District, is .75 judges short while the adjacent 5th Judicial District is .93 judges long. If these districts were combined, or we simply took Saunders County with its county judge and moved it to the 2nd Judicial District, there would be an approximate balance. In the district court, 7th Judicial District, they are .47 judges short while in the adjacent 6th Judicial District, they are .30 judges long.

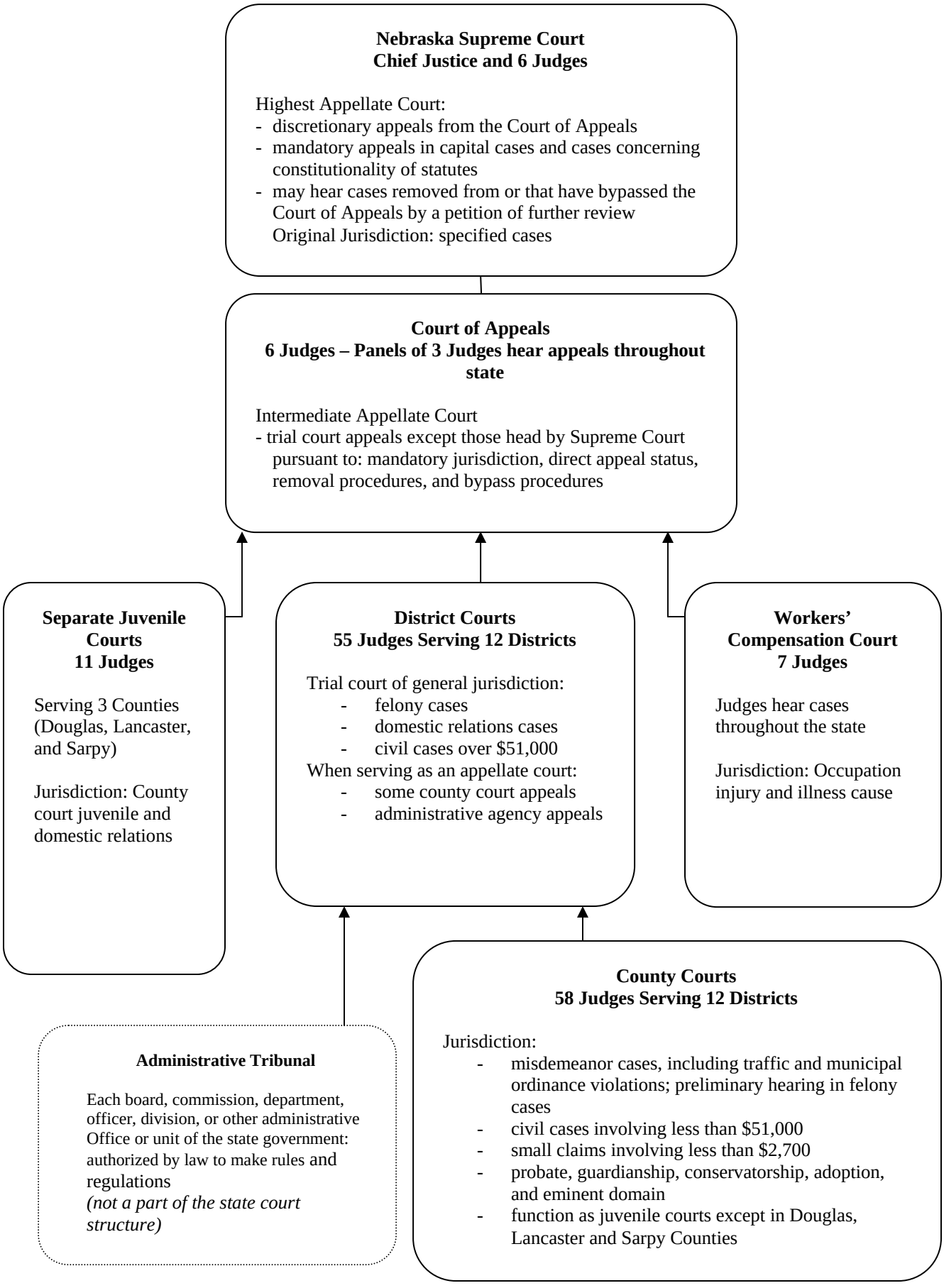
The districts can be changed by simply changing the statutes which set out the number of districts and the number of judges in each district. The last time this was done was approximately 1991, and I am sure that you will be provided with that study.

I want to thank you for your efforts.

pc: Members of the Judicial Resources Commission

Appendix C

Current Nebraska Court Structure


Nebraska Supreme Court
Chief Justice and 6 Judges
Highest Appellate Court:
- discretionary appeals from the Court of Appeals
- mandatory appeals in capital cases and cases concerning constitutionality of statutes
- may hear cases removed from or that have bypassed the Court of Appeals by a petition of further review
Original Jurisdiction: specified cases
Court of Appeals
6 Judges – Panels of 3 Judges hear appeals throughout state
Intermediate Appellate Court
- trial court appeals except those head by Supreme Court pursuant to: mandatory jurisdiction, direct appeal status, removal procedures, and bypass procedures
Separate Juvenile Courts
11 Judges
Serving 3 Counties (Douglas, Lancaster, and Sarpy)
Jurisdiction: County court juvenile and domestic relations
District Courts
55 Judges Serving 12 Districts
Trial court of general jurisdiction:
- felony cases
- domestic relations cases
- civil cases over $51,000
When serving as an appellate court:
- some county court appeals
- administrative agency appeals
Workers' Compensation Court
7 Judges
Judges hear cases throughout the state
Jurisdiction: Occupation injury and illness cause
County Courts
58 Judges Serving 12 Districts
Jurisdiction:
- misdemeanor cases, including traffic and municipal ordinance violations; preliminary hearing in felony cases
- civil cases involving less than $51,000
- small claims involving less than $2,700
- probate, guardianship, conservatorship, adoption, and eminent domain
- function as juvenile courts except in Douglas, Lancaster and Sarpy Counties
Administrative Tribunal
Each board, commission, department, officer, division, or other administrative Office or unit of the state government: authorized by law to make rules and regulations
(not a part of the state court structure)

Appendix D

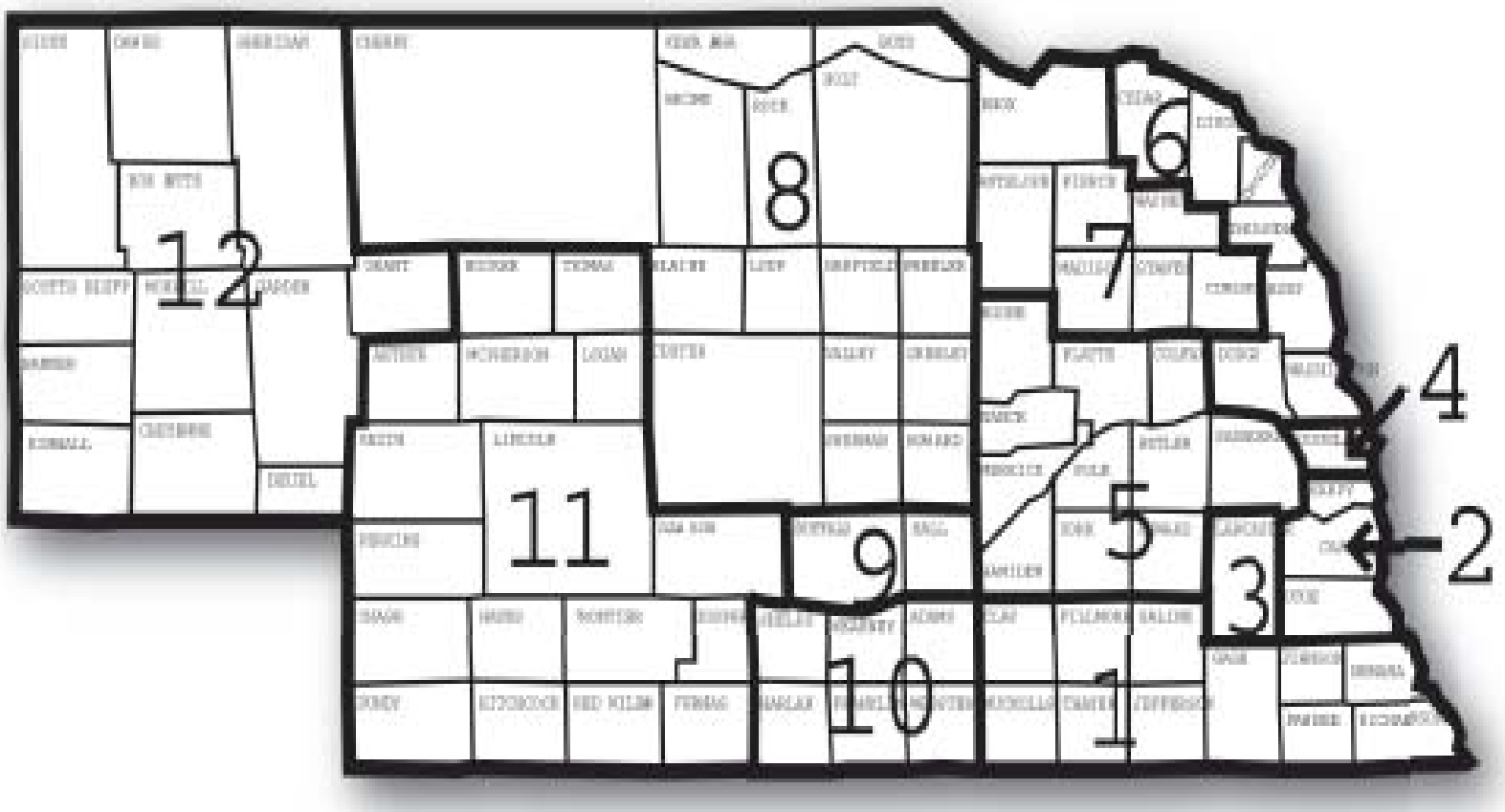
Current Judicial District Boundaries

Current Judicial Boundaries

Nebraska Supreme Court and Court of Appeals Judicial Districts[1]

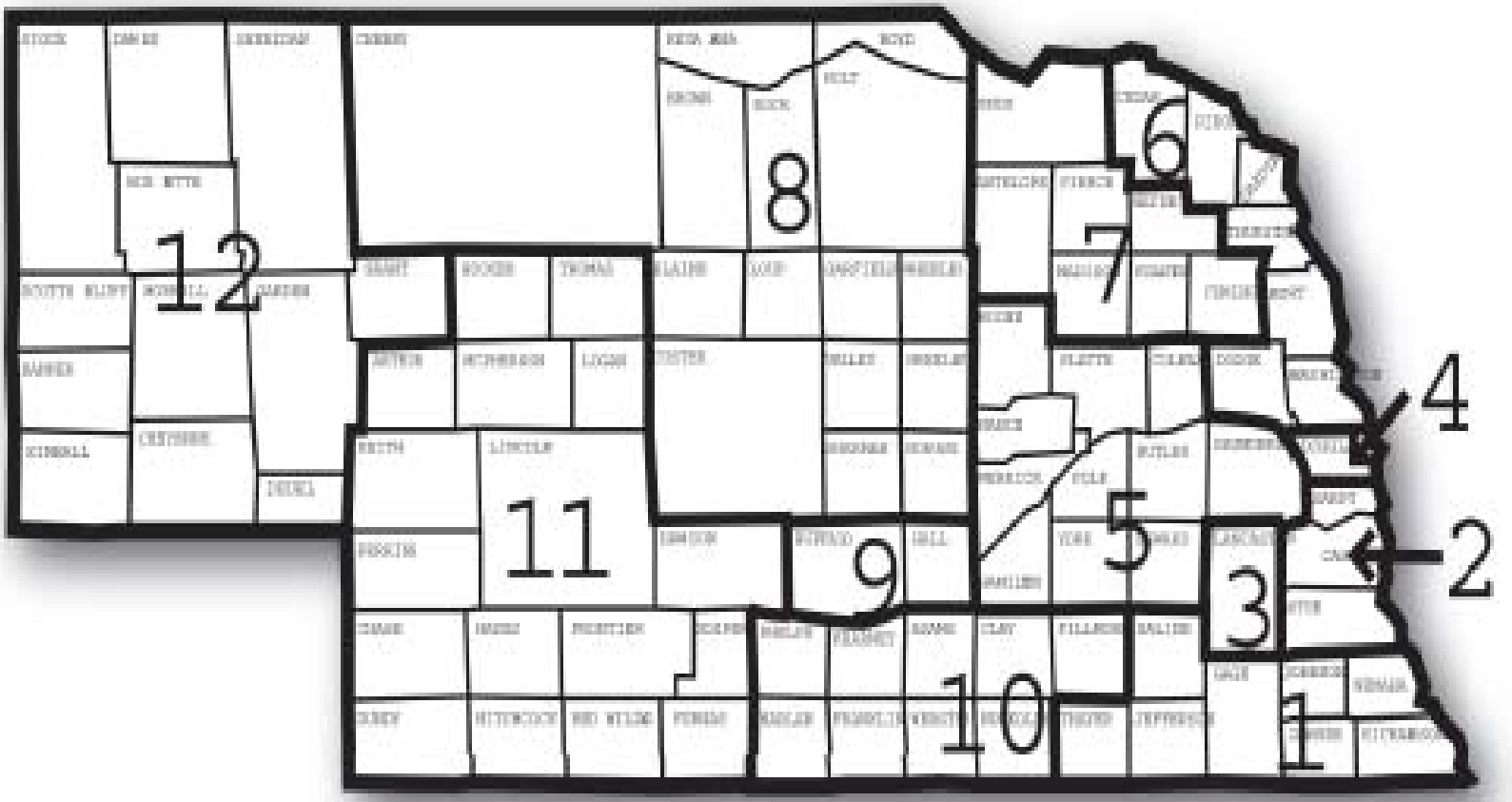
[1]Boundaries established by L.B. 865 in the 2011 legislative session

Nebraska Judicial Districts — District Courts*



*Boundaries established by LB 1207 in the 2004 legislative session

Nebraska Judicial Districts — County Courts*



*Boundaries established by LB 1059 in the 1992 legislative session.

Appendix E

Legislative History of Judicial Districts and Judgeships in Nebraska

Legislative History of Judicial Districts and Judgeships in Nebraska

1911 to 1962	18 judicial districts in state.
1962	22 judicial districts in state.
1963	20 judicial districts in state.
1965	21 judicial districts in state.
1972	Combine County Courts, Justice of Peace courts and Police Magistrate courts. Create 21 county court districts. Elect county judges to serve a four year term.
1974	Provide that county court judges be appointed by Governor.
1975	Move Grant County from 13th to 16th judicial district (Sheridan, Grant, Dawes, Box Butte, and Sioux).
1980	Add district judge in 16th district (Sheridan, Grant, Dawes, Box Butte, and Sioux), Add district judge in 21st district (Boone, Platte, Colfax, Nance, and Merrick).
1983	Add district court judge in Lancaster County. Add county court judge in 11th district (Hall and Howard).
1984	Merge municipal courts in Douglas and Lancaster County into county court system.
1985	Move Morrill County from 17th to 16th district court district. Move Garden County from 17th to 19th district court district. Scottsbluff County only county in 17th district court district. County court district 16: Sheridan, Grant, Dawes, Box Butte, and Sioux Counties. County court district 17: Scottsbluff, Morrill, and Garden Counties. County court district 19: Banner, Kimball, Cheyenne, and Deuel Counties.
1986	Judicial Resources Commission created by Legislature.
1987	Move Thurston County from county court district 6 to county court district 8. County court district 6: Burt, Dodge, and Washington. County court district 8: Dakota, Dixon, and Cedar.

1991	On January 1, 1993 divide state into two district court judicial districts: (1) Johnson, Pawnee, Nemaha, and Richardson, and (2) all other counties. LB 181 adds two judges to the 4th district, Douglas County
1992	Create 12 district court judicial districts from 21 and reenact an amended Judicial Resources Commission.
1993	Move Grant County from 11th to 12th district court judicial district. Create 12 county court judicial districts.
1995	Add district court judge in Lancaster County. Add juvenile court judge in Sarpy County. Add juvenile court judge in Douglas County. Add district court judge in district 2 (Sarpy, Cass, and Otoe). Charge Supreme Court Administrator with compiling uniform and accurate statistics on an annual basis which will assist in the evaluation of judicial workloads.
1998	Add district court judge in Douglas County. Add county court judge in Douglas County. Add juvenile court judge in Lancaster County.
2001	Add district court judge in the 11th judicial district (Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas). Add juvenile court judge in Lancaster County. Add juvenile court judge in Douglas County.
2004	Move the counties of Clay and Nuckolls from district 10 to district 1.
2007	Moved a vacant county court judgeship in the 12th county court judicial district (Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant and Deuel) to the Lancaster County Juvenile Court. Moved a vacant district court judgeship in the 12th district court judicial district (Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant and Deuel) to the 9th district court judicial district (Buffalo and Hall Counties).

William J. Mueller
Legislative Counsel
Nebraska State Bar Association

Updated 06/30/07

Appendix F

Judicial Branch Funding of the Courts

JUDICIAL STRUCTURE AND ADMINISTRATION TASK FORCE
NEBRASKA COURT SYSTEM'S BUDGET ITEMS

Court Expenditure Item	State Funding	Local Funding	Mixed State/Local Funding	Other Funding
1. Judges: • Salaries • Travel • Education • Benefits • retirement	 X X X X			 Judges/court fees
2. Judges recalled to service	X[1]			Judges retirement
3. Quasi-judicial officers • referees • clerk magistrates • mediators/conciliators	X[2] (40%)	X[3] (40%) X X[4]		Federal (60 %)
4. Law clerks/staff attorneys	X[5]	X[6]		
5. Court reporting – district court[7] • reporters • transcription • travel Court reporting – county court[8] • reporters • transcription • travel	 X X	 X X		 parties parties

[1] Neb. Rev. Stat. §24-729, et. seq.: A retired judge holding court shall receive, in addition to his or her retirement benefits, for each day of temporary duty an amount established by the Supreme Court. Such amount, when taken together with 1/20 of the judge's monthly retirement benefit, shall not exceed 1/20 of the monthly salary he or she would receive if he or she were an active judge of the court (§24-730).
[2] 1FTE
[3] 2 FTE in Douglas County and 1 FTE in Lancaster County
[4] Douglas County Conciliation Court
[5] Each judge on Supreme Court and Court of Appeals has 2 law clerks (14 FTE); Supreme Court has 2 staff attorneys; Court of Appeals has 1 staff attorney; district court judges have 1 research clerk
[6] Court may have clerks that are either county funded or volunteer
[7] Each district and separate juvenile court judge has a court reporter. Transcription fee paid directly to court reporter by the parties.
[8] County clerks record the proceedings. Transcription fee paid to the county by the parties.

JUDICIAL STRUCTURE AND ADMINISTRATION TASK FORCE
NEBRASKA COURT SYSTEM'S BUDGET ITEMS

Court Expenditure Item	State Funding	Local Funding	Mixed State/Local Funding	Other Funding
6. Trial court administration		X[9]		
7. Clerks • District Court • County Court	X	X		
8. Juries • Administration • Juror payment		X X		
10. Indigent Defense • Public defender • Court-appointed • Public Advocacy Commission	X[10]	X X		
11. Witness fees • Ordinary • Expert		X[11] X[12]		X[13] X[14]
12. Guardian ad litem • Juvenile • Mental health		X X		
13. Interpreters			X	
14. Pre-trial sanity exams/medical services		X		
15. Alternative Dispute Resolution	X[15]			
16. Court bailiffs		X		
17. Courtroom security		X		
18. Building security		X		
19. Prisoner transportation		X		
20. Service of process		X		X
21. Adult/juvenile probation	X			

[9] Douglas County has a court administrator's office with 7 employees.
[10] Public Advocacy Commission is a state agency that is cash funded.
[11] Criminal cases – county pays the cost
[12] Criminal cases – county pays the cost
[13] Civil cases – parties pay the cost
[14] Civil cases – parties pay the cost
[15] Supreme Court/Office of Dispute Resolution receives a combination of state general and cash funds. Court fees make up the cash fund allocation. General funds pay for the administration costs of the Supreme Court ODR and the cash funds are disseminated to the ODR centers across the state in the form of state aid.

JUDICIAL STRUCTURE AND ADMINISTRATION TASK FORCE
NEBRASKA COURT SYSTEM'S BUDGET ITEMS

Court Expenditure Item	State Funding	Local Funding	Mixed State/Local Funding	Other Funding
22. Pretrial release		X		
23. Juvenile intake/counseling		X		
25. Child Support enforcement			X[16]	
26. Community Corrections • Probation	X[17]			
27. State Law Library	X			
28. Data processing	X[18]			
29. Court equipment and furnishings[19]: • Computer hardware and software for word and data processing, including communication line costs • Tape recorders, microphones, & playback units used in county court • Office space, furnishings, supplies, maintenance	X X	X		

[16] State funds within the Nebraska Department of Health and Human Services.
[17] Community corrections depends on the support it receives from the Supreme Court/Office of Probation Administration.
[18] Douglas County is on its own system.
[19] Neb. Rev. Stat. §24-514 and §24-515

Appendix G

District and County Court Boundary Scenarios

District and County Court Boundary Scenarios

A Six District Model

1) The first scenario was to adopt 6 judicial districts, the designs of which were based upon the current Nebraska Supreme Court districts.[1] Because the Nebraska Supreme Court districts split Douglas County in half, and because the Subcommittee believed that Lancaster County should be its own district, a few modifications were made to the original Supreme Court districts. Specifically, Douglas County would become its own district (the 2nd judicial district), Lancaster County would become its own judicial district (the 1st judicial district) and Sarpy, Cass and Otoe, would become the 4th judicial district.

2) The second scenario was a variation of the 6 judicial district model detailed above. Specifically, Saunders County would be moved from the 5th to the 4th judicial district, in essence, creating a judicial district in the corridor between Lancaster and Douglas Counties. Additionally, Rock, Keya Paha and Brown Counties were moved from the 6th judicial district to the 3rd judicial district.

Tweaks to the Existing Boundaries

3) The third scenario was to move Saunders County from the 5th to the 2nd judicial district. The intent of the scenario was to relieve the burden on the 2nd judicial district by moving a county with a judge to that judicial district.

4) The fourth scenario was to move Stanton County from the 7th to the 5th judicial district. The intent of the scenario was to relieve the burden on the 7th judicial district by moving a county's caseload to another judicial district.

5) The fifth scenario was to dissolve the 2nd judicial district by moving Sarpy County to the 4th judicial district and Cass and Otoe Counties into the 1st judicial district. The intent of the scenario was to move Sarpy County into a metropolitan district.

6) The sixth scenario was designed only for the county court judicial district boundaries and would move Colfax County from the 5th to the 6th judicial district. The intent of the scenario was to relieve the burden on the 6th judicial district by moving a county with a judge to the district.

7) The seventh scenario was designed only for the district court judicial district boundaries and would move Fillmore, Clay and Nuckolls Counties from the 1st judicial district to the 10th judicial district. This option was not proposed to address judicial resource needs but to explore the possibility of bringing the county and district court judicial districts back into alignment.

8) The eighth scenario was designed only for the district court judicial district boundaries and would move Cuming County from the 7th to 6th judicial district. The intent of the scenario was to relieve the burden on the 7th judicial district by moving a county's caseload to another district.

[1] Neb. Rev. Stat. § 24-201.02

A Nine District Model

9) Straying from the original district boundaries, the research staff also modeled the realignment of judicial boundaries into a nine district model (see Map X). The nine district model has some similarities with the 6 district model, but creates smaller (probably more manageable) western districts.

Appendix H

Letter from Professor G. Michael Fenner

(Reprinted with Permission)

Creighton
UNIVERSITY
School of Law

G. Michael Fenner
James L. Koley
Professor of
Constitutional Law

June 1, 2007

Amy E. Prenda, Program Manager
Judicial Structure & Administration Task Force
Nebraska State Bar Association
635 S. 14th Street
Lincoln, NE 68508-2701

Dear Amy,

What follows is the opinion letter you requested of me. I will send it to you via postal mail and as an attachment to an e-mail.

I want to apologize for the length of this letter. I did not have enough time to make it shorter. As you know, I have been on vacation and I am leaving town again later today. In addition, I am not sure how much detail you want and, knowing that it is easier to delete what you see than it is to add what you do not see, I wrote more rather than less.

Please let me know if there is anything more you would like for me to do. (I will be back in my office next Tuesday.)

I. INTRODUCTION

The questions asked of me are these three: First, "whether the delegation of authority to determine the location of judicial vacancies to the Supreme Court or the Judicial Resources Commission is constitutional." Second, does this kind of delegation require a constitutional amendment. The third question has to do with how to "make sure that the delegated power [includes] very clear standards and procedural safeguards."

These are, of course, questions of separation of powers, which is a particularly difficult part of Constitutional Law. There are fewer cases. What cases there are tend to be decided on the basis of each case's own particular facts instead of on the application of clear rules to the set of facts at hand. The stakes are high, and coordinate, coequal branches of government are involved. The Judicial Branch is asked to review things such as how the Legislative and Executive Branches exercise their powers, how they divide between themselves powers held in common. The cases are some of the most political and, therefore, some of the most emotional and, in turn, some of the most controversial. As a general rule, answers are harder to come by.

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The matter at hand involves a particular subset of separation of powers problems: the nondelegation doctrine. This doctrine comes into the picture when one branch of government, almost always the Legislative Branch, voluntarily delegates some of its power to a coordinate branch. The question is this: How much of its own power can one branch delegate to another? Or, stated a bit differently, when has one branch abdicated its constitutionally assigned duty by delegating too much of its power to another branch?

Regarding this doctrine, the Nebraska Supreme Court has written that "[t]he dividing line between constitutional and unconstitutional delegation of legislative power under the decisions of many states, including our own, is difficult to determine exactly." Anderson v. Tiemann, 182 Neb. 393, 400, 155 N.W.2d 322, 328 (1967).

II. THE CONSTITUTIONAL SOURCE FOR THE DOCTRINE

The constitutional source for this doctrine in Nebraska is Article II, § 1 and Article III, § 1 of the Nebraska Constitution. Article II, § 1: "The powers of government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly provided or permitted."[1] Article III, § 1, states that, except for direct vote of the people through the initiative or the referendum, "the legislative authority of the state shall be vested in a Legislature consisting of one chamber."

III. SOME DELEGATION IS ESSENTIAL

It is important to note up front that a great deal of delegation of legislative power is not only constitutional, but is in fact essential if we are to carry out the practical, day-to-day functions of government. Federal cases on the subject make the following kinds of statements. The Constitution does not "'deny to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function.'" Mistretta v.

[1] Regarding article III, § 1, the court has stated that "The purpose of the clause is to establish the permanent framework of our system of government, to assign to the three departments their respective powers and duties, and to establish certain fixed principles upon which our government is to be conducted. The clause prohibits one department of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives." State ex rel. Stenberg v. Murphy, 247 Neb. 358, 364, 527 N.W.2d 185, 192 (1995) (citation omitted). Accord State ex rel. Spire v. Conway, 238 Neb. 766, 773, 472 N.W.2d 403, 408 (1991) ("[A]rticle II prohibits one branch ... from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives.").

In the interest of avoiding confusion, section 1 of article II of the Nebraska Constitution is the only section article II has ever contained. There is not and never has been a section 2. State ex rel. Spire v. Conway, 238 Neb. 766, 767, 472 N.W.2d 403, 404 (1991).

The federal constitutional basis for limits on Legislative Branch delegation is Article I, § 1 of the United States Constitution: "All legislative Powers herein granted shall be vested in a Congress of the United States." U.S. CONST., Art. I, § 1. Mistretta v. United States, 488 U.S. 361, 371 (1989).

United States, 488 U.S. 361, 372 (1989) (quoting Panama Refining Co. v. Ryan, 293 U.S. 388, 421 (1935)). Flexibility and practicality includes Congress delegating to the other Branches the power to make rules and regulations—the power to draft the details. A system where no Congressional delegation was possible, would not work. [2]

"Once it is conceded, as it must be, that no statute can be entirely precise, and that some judgments, even some judgments involving policy considerations, must be left to the officers executing the law and to the judges applying it, the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree." Mistretta v. United States, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting). The question, then, is this one: How much delegation does the Constitution allow? When does delegation become abdication? This is a difficult (impossible?) line to draw in any way but on a case-by-case, fact-by-fact basis, taking into consideration "imperatives of events and contemporary imponderables." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).

IV. CASE LAW ON THE LIMITS OF THE NONDELEGATION DOCTRINE

Though Nebraska nondelegation cases do not rely on federal case law, the general principles laid down by the Nebraska Supreme Court are the same as those in federal court. Here, then, is a brief summary of federal case law.

A. FEDERAL CONSTITUTIONAL LAW

A statute delegating federal legislative power is "'constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.'" Mistretta v. United States, 488 U.S. 361, 372 (1989) (quoting American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946)). United States Supreme Court cases have spoken of the "intelligible principles" test, *id.* at 376—does the legislation include a statement of "intelligible principles" under which the delegated power is to be exercised? Each of the above statements is pretty vague, but, in this area of the law, perhaps such statement must necessarily be vague. Perhaps nothing more concrete can be said and we must turn to the facts of various cases.

In each of two judgments handed down in 1935, the United States Supreme Court found a violation of the nondelegation doctrine; it has not found a violation since.[3] In

[2] *See, e.g.,* J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 407 (1928) ("[O]ne of the great functions conferred on Congress by the Federal Constitution is the regulation of interstate commerce and rates to be exacted by interstate carriers for the passenger and merchandise traffic. The rates to be fixed are myriad. If Congress were to be required to fix every rate, it would be impossible to exercise the power at all.").

[3] *See* Clinton v. New York, 524 U.S. 417, 485-86 (1998) (Breyer, J., dissenting) (only twice in its history has the Court struck a statute down on the ground that it violated the nondelegation doctrine).

one, the *Schechter Poultry* case, the Court struck down a provision of the National Industry Recovery Act that gave the President the power to approve "codes of fair competition." Schechter Poultry Corp. v. United States, 295 U.S. 495, 521-22 (1935). On the one hand, the Court reasoned, the Constitution provides Congress with the flexibility and practicality necessary to enable it to establish broad policies and standards, while delegating to other branches of the Federal Government the power to make subordinate rules—within prescribed limits. *Id.* at 530. On the other hand, the Constitution does not allow Congress to delegate unfettered discretion to the other branches. Congress may not give the President the power to make whatever laws he thinks may be needed; Congress may not delegate its lawmaking power to another branch of government. *Id.* at 537.[4] The problem in *Schechter*, said the Court, was that Congress had given the President "unfettered discretion" to write law. *Id.* Congress failed to prescribe specific limits on its delegation of power.

The question, then, is how much discretion is too much? The theory is that the other branch's discretion must be contained. In practice, however, not much "containment" is required. Since 1935 it is almost as though a violation of the nondelegation doctrine is only a theoretical possibility and not a real threat to the validity of Congressional acts.[5] One Justice has, in fact, stated that "the scope of delegation is largely uncontrollable by the courts...." Mistretta v. United States, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting). "[A] certain degree of discretion, and thus of lawmaking, inheres in most executive or judicial action, and it is up to Congress, by the relative specificity or generality of its statutory commands, to determine—up to a point—how small or how large that degree shall be." *Id.*

The United States Supreme Court has upheld federal "statutes authorizing the War Department to recover 'excessive profits' earned on military contracts, authorizing the Price Administrator to fix 'fair and equitable' commodities prices, and authorizing the Federal Communications Commission to regulate broadcast licensing in the 'public interest." Touby v. United States, 500 U.S. 160, 165 (1991) (citing, respectively, Lichter v. United States, 334 U.S. 742, 778-86 (1948); Yakus v. United States, 321 U.S. 414, 426-27 (1944); and National Broadcasting Co. v. United States, 319 U.S. 190, 225-26 (1943)).

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[4] *See also* Panama Ref. Co. v. Ryan, 293 U.S. 388 (1935). And, in a statement that is of almost no help, the Court has said that it is the difference between a delegation of the power to make law, which is unconstitutional, and a statutory delegation of the authority to execute the law, under and in pursuance of the statute in which the delegation is found, which is constitutional. J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 407 (1928).

[5] *See* Mistretta v. United States, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting) ("[I]t is small wonder that we have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law." The opinion goes on to point out that only twice has the Court invalidated laws under the nondelegation doctrine, citing *Panama Ref. Co. v. Ryan* and *Schechter Poultry Corp. v. United States*, both cited in footnotes above).

The controlled Substances Act makes it illegal to manufacture, possess, or distribute drugs that are listed on any of five "schedules." The Supreme Court upheld the statutory delegation to the Attorney General of the power to add new drugs to the schedules temporarily when he or she finds that doing so is "necessary to avoid an imminent hazard to the public safety." This designation by the Attorney General carries with it criminal penalties. For some caught under this law, the Attorney General has defined their crime. Congress delegated to the Attorney General the power to determine, in part and temporarily, what acts would be criminal. The Court held that the restriction placed on the AG that he act when doing so is "'necessary to avoid imminent hazard to the public safety'" is a "sufficiently intelligible principle." Touby v. United States, 500 U.S. 160, 165 (1991) (citations omitted). It is not a standardless (and, therefore, unconstitutional) delegation of legislative power.

Federal constitutional law simply requires some limits on the exercise of the delegated power; in National Broadcasting Co. v. United States, 319 U.S. 190, 225-26 (1943), it was enough of a limit that Congress told the Executive Branch to exercise the power "in the public interest." That is not an uncontrolled delegation, it is not a grant of "unfettered discretion," it is not an abdication of legislative power. That makes it pretty hard to imagine what is. It is pretty hard to imagine how poorly a federal statute would have to be drafted so that it would grant "unfettered discretion."[6]

In federal court (and in Nebraska's courts as well, as will be seen) the nondelegation doctrine should properly be called the "delegation doctrine," because it is a doctrine that allows almost any delegation that includes any words of limitation, no matter how broad, no matter how vague.

B. NEBRASKA CONSTITUTIONAL LAW

This may be the first principle in a case such as the one at hand: "The language of article II [of the Nebraska Constitution] prohibits one branch of government from encroaching on the duties and prerogatives of the others or *from improperly delegating its own duties and prerogatives*." State ex rel. Spire v. Conway, 238 Neb. 766, 767, 472 N.W.2d 403, 404 (1991) (emphasis added).[7]

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[6] One more federal case of interest: *Clinton v. City of New York*, 524 U.S. 417 (1998). The Court declared the Line Item Veto Act (LIVA) unconstitutional on the grounds that it gave the President the unilateral power to change the text of duly enacted statutes, to authorize the President to create a different law. This violated the Return Clause of the Constitution, which states that if the President objects to a legislative bill he shall veto it—"he shall return it, with his Objections to that House in which it shall have originated." U.S. CONSTIT. art. I, § 7, cl. 2. In a concurring opinion, Justice Kennedy argued that the LIVA also violated the nondelegation doctrine as it "enhances the President's powers beyond what the Framers would have endorsed. It is no answer, of course, to say that Congress surrendered its authority by its own hand...That a Congressional cession of power is voluntary does not make it innocuous." *Id.* at 451, 452.

[7] "The language of a constitutional provision is to be interpreted with reference to established laws, usage, and customs of the country at the time of its adoption, but its terms and provisions are constantly expanded and enlarged by construction to meet the advancing affairs of humankind." State ex

This may be the second: "The dividing line between constitutional and unconstitutional delegation of legislative power under the decisions of many states, including our own, is difficult to determine exactly." Anderson v. Tiemann, 182 Neb. 393, 400, 155 N.W.2d 322, 328 (1967).

Third: "Where the Legislature has provided reasonable limitations and standards for carrying out the delegated duties, there is no unconstitutional delegation of legislative authority." Mann v. Wayne County Bd. of Eq., 186 Neb. 752, 759, 186 N.W.2d 729, 734 (1971).

And fourth: "In construing an act of the Legislature, all reasonable doubt must be resolved in favor of constitutionality." *Id.* at 756, 186 N.W.2d at 733. This axiom is particularly important in this area of the law where there are not really any clear lines, where delegation of power has been held to be essential, and where the action anticipated by the legislature is dependent upon ever-changing facts and circumstances and the precise facts and circumstances under which the delegated power will be exercised are impossible to predict.[8]

The Nebraska Supreme Court has recognized that one situation where "[d]elegation of legislative power is most commonly indicated" is the situation that "requires a course of continuous decision." Anderson v. Tiemann, 182 Neb. 393, 401-02, 155 N.W.2d 322, 328 (1967). When a judge dies or retires a decision must be made as to the district in which the replacement judge should sit, that is, where the replacement judge will best promote the fair and efficient administration of justice and thereby best serve the people of Nebraska.

Take a judicial district that has four judges and that has seen a 25% decrease in its caseload. Assume that the judges of this district are under-worked. And assume that one judge from that district dies. It might best serve the people of Nebraska and their interest in the fair and efficient administration of justice to create the vacancy in a district that has seen a 30% increase in its caseload.

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rel. Spire v. Conway, 238 Neb. 766, 775, 472 N.W.2d 403, 409 (1991). There is almost no legislative history for article II, § 1. "[T]he proceedings of the 1875 Constitutional Convention are lost. .... [T]he Journal of the 1875 convention has survived, [but] it is of little help." State ex rel. Spire v. Conway, 238 Neb. 766, 775-76, 472 N.W.2d 403, 409 (1991).

[8] And in an area where one United States Supreme Court Justice—a strict constructionist at that—has stated that "the scope of delegation is largely uncontrollable by the courts...." Mistretta v. United States, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting).

Somewhat related hereto, referring to the constitutionality of the delegatee's exercise of the delegated power, the Nebraska Supreme Court has stated that "the courts are not inclined to interfere with rules established by legislative direction where they bear a reasonable relat5ion to the subject of the legislation and constitute a reasonable exercise of the powers conferred." Anderson v. Tiemann, 182 Neb. 393, 401, 155 N.W.2d 322, 328 (1967).

In which district a vacancy will be declared is a legislative decision. That decision is based upon ever changing facts and circumstances. The legislature cannot predict when the judge will die. It cannot predict what the caseloads will look like when the judge dies. It cannot predict what, at that future moment, will best serve the fair and efficient administration of justice.

It is perfectly appropriate for the legislature to recognize that this decision is based on ever changing facts and circumstances and that the decision must be made more quickly that will often be possible if all of this must be done without delegation, and it is perfectly appropriate for the legislature to decide that a delegation of this power is reasonable—perhaps even essential.

This is a legislative decision that can be delegated—so long as the delegation includes reasonable standards to guide the decision maker's exercise of discretion.

The only question remaining is whether the legislation containing the delegation includes reasonable limitations and standards.[9]

"[T]he Legislature may condition the operation of the law upon the existence of certain facts, and may submit to the courts the judicial power for the determination of those facts. But, it cannot delegate to the courts the power to make a law; that is, delegate the power for the court itself to determine the facts or fact standards which invoke the operation of the power granted in the law itself." McDonald v. Rentfrow, 176 Neb. 796, 803, 127 N.W.2d 480, 485 (1964).[10]

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[9] "Once it is conceded, as it must be, that no statute can be entirely precise, and that some judgments, even some judgments involving policy considerations, must be left to the officers executing the law and to the judges applying it, the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree." Mistretta v. United States, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting).

[10] *Accord* Terry Carpenter, Inc. v. Nebraska Liquor Control Comm., 175 Neb. 26, 36-37, 120 N.W.2d 374, 380 (1963) ("The Legislature does have *power to authorize* an administrative agency or executive department to make rules and regulations to carry out an expressed legislative purpose, or for *the complete operation and enforcement of a law within designated limitations*.") (emphasis added); School Dist. No. 39 v. Decker, 159 Neb. 693, 702, 68 N.W.2d 354, 360 (1995) (A legislative delegation of "'discretion is not an unconstitutional delegation of a legislative function, where adequate standards to guide the exercise of such discretion are provided for by the statute authorizing it.'") (quoting headnote 10 in Lennox v. Housing Auth. Of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940)); Bd. of Regents v. The County of Lancaster, 154 Neb. 398, 403, 48 N.W.2d 221, 224 (1951) ("The exercise of a legislatively-*delegated authority* to make rules and *to carry* out an expressed legislative purpose, of for *the complete operation and enforcement of a law with designated limitations*, is not an [unconstitutional delegation].") (emphasis added); Lennox v. Housing Auth. of the City of Omaha, 137 Neb. 582, 591, 290 N.W. 451, 458 (1940) ("It cannot be seriously disputed that the legislature is clothed with power to delegate ... the power of ascertaining the facts upon which the laws are to be applied and enforced. It may also authorize the doing of specific acts necessary to the furtherance of the purposes of the act.")

In *McDonald v. Rentfrow*, the court was reviewing an article II challenge to a state statute "relating to the transfer of land between adjoining school districts and the requirements for the fixing of new school district boundaries." *Id.* at 798, 127 N.W.2d at 482. It granted school boards the power to transfer land from one school district to another. The statute stated the class of persons who could file a petition for transfer of land from one school district to another: owners. It stated that the land had to be adjacent to the district to which transfer was sought. It required that there be school children living on the land. And, finally, it had provisions regarding distance from schools or bus lines and the class of the district transferred to, in relation to the one transferred from. Those things stated, the statute delegated to the school board the power to change the school district's boundaries.

> "'The board may, after a public hearing on the petition, thereupon change the boundaries of the districts so as to set off the land described in the petition and attach it to such adjoining district as is called for in the petition *whenever they deem it just and proper and for the best interest of the petitioner or petitioners so to* do.'"[11]

The challengers argued that the standards here—"whenever [the board] deem[s] it just and proper and for the best interest of the petitioner or petitioners so to do"—"is not a reasonable one and that it is so vague and indefinite as to not constitute any ascertainable fact standard at all." *Id.* at 802, 127 N.W.2d at 484.

The court noted that "'the establishing of boundaries of public school districts for school purposes is a legislative function...'" *Id.* at 806, 127 N.W.2d at 486 (citation omitted).[12] The legislature had delegated this legislative function to the school board. The court interpreted the statute as requiring that the board act in "the best educative interest of petitioner or petitioners and not the best noneducational interests of petitioner or petitioners." McDonald v. Rentfrow, *supra*, at 805, 127 N.W.2d at 486 (emphasis removed). The court held that "the statute ... did not unconstitutionally delegate legislative power to the courts." *Id.* at 806, 127 N.W.2d at 486.

The Nebraska cases are not so far from the federal cases. Delegation of legislative power is constitutional so long as the legislation contains sufficient standards governing the exercise of the delegated power. The legislative standards controlling the exercise of the delegated power needn't be very detailed, very specific, very lengthy, or very

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[11] 176 Neb. 796, 798-99, 127 N.W.2d 480, 482-83 (1964) (quoting "section 79-403, R.S. Supp., 1961") (emphasis added by the court).

[12] *Accord* School Dist. v. Bellevue, 224 Neb. 543, 552, 400 N.W.2d 229, 235 (1987) ("'The fixing of boundaries of school districts is exclusively a legislative function, and it may be properly delegated to a subordinate agency, providing the Legislature prescribes the manner and the standards under which the power of the designated board may be exercised.'" (quoting McDonald v. Rentfrow, 176 Neb. 796, 800, 127 N.W.2d 480, 483 (1964)).

confining. It does not take all that much in the way of standards to get around the nondelegation doctrine.

This discussion of the *McDonald* case began with the court's statement that "the Legislature may condition the operation of the law upon the existence of certain facts, and may submit to the courts the judicial power for the determination of those facts. But, it cannot delegate to the courts the power to make a law; that is, delegate the power for the court itself to determine the facts or fact standards which invoke the operation of the power granted in the law itself." *Id.* at 803, 127 N.W.2d at 485.

The operation of the law in question was conditioned upon the petition for transfer of the land was filed by the owner of the land that is the subject of the transfer request, and the land in question is adjacent to the district to which transfer is requested. In addition, the board was required to take into account distance from schools or bus lines and the class of the district transferred to, in relation to the one transferred from. With those things before it, the board could order the land transferred if the board determined that the transfer was "just and proper and for the best [educative] interest of the petitioner." This is a constitutional delegation. "There are certainly limits to the school district's discretion in that scheme." School Dist. v. Bellevue, 224 Neb. 543, 552, 400 N.W.2d 229, 235 (1987).

It is not that every delegation of legislative power is upheld. It is, instead, that every delegation of legislative power that contains any limitations upon and standards under which the discretion is to be exercised is upheld.

Nebraska cases that have struck down delegations of legislative power have all involved legislation that was a product of either ignorance of the rule or poor legislative drafting. The court has, for example, struck down a delegation of legislative power that "delegated a free hand without legislative limitations or standards." School Dist. No. 39 v. Decker, 159 Neb. 693, 699, 68 N.W.2d 354, 359 (1995).[13] (And, the court continued, "it would have been a simple matter for the Legislature ... to have incorporated limits and standards in the statute." *Id.* The court has struck down a delegation that contained "*no* limitations, standards, rules of guidance or criterion for the guidance of the [delegatee]." Smithberger v. Banning, 129 Neb. 651, 660, 262 N.W. 492, 497 (1935) (emphasis added).[14]

[13] In *School Dist. No. 39*, v. Decker, 159 Neb. 693, 699, 68 N.W.2d 354, 359 (1995) (the court struck down a delegation to the Superintendent of Public Institutions because the superintendent was "delegated a free hand without legislative limitations or standards to make or change at will any numerical ratio or standard requir4ed for approval of high schools for the collection of free high school tuition money when it would have been a simple matter for the Legislature, which had the power and authority, to have incorporated limits and standards in the statute.").

[14] A later case, characterized *Smithberger* as having struck down an appropriation of $4,000,000 that did not "provid[e] *any* rules or standards for its expenditure." The Bd. of Regents v. The County of Lancaster, 154 Neb. 398, 402, 48 N.W.2d 221, 223 (1951) (emphasis added).

C. ONE NEBRASKA CASE THAT, AT FIRST GLANCE (AND ONLY AT FIRST GLANCE), MAY SEEM TROUBLING

There is also one more Nebraska case that it, at first glance, troubling. In 1901, the court wrote the following: "It is urged that it is the function of the legislature solely to determine the organization, practice and proceedings of the courts, and that it cannot delegate that function to a judge or court. The proposition is undoubtedly true..." Dinsmore v. State of Nebraska, 61 Neb. 418, 426, 85 N.W. 445, 447 (1901). The unfinished sentence in that quotation continues to say, in effect, that that proposition has nothing to do with that case.

The first thing to say about the quoted statement is that it is dictum. The second thing to say is that this dictum does not seem to pretend to be a complete statement of the law, but rather just a statement of a jumping off point. The quoted statement, in my opinion, does not—cannot, really—stand for the proposition that the judiciary cannot be given any power regarding its own organization, its own practices, or the proceedings before it. The quoted statement is not literally and absolutely true. These functions can be delegated so long as the delegation contains standards, so long as the delegation is not an absolute, unlimited delegation to write law.

D. DELEGATION OF LEGISLATIVE FUNCTIONS TO PRIVATE PERSONS

"That the legislature may not delegate to private persons a legislative function is abundantly established by authority." Rowe v. Ray, 120 Neb. 118, 124, 231 N.W. 689, 691 (1930) (citing treatises and cases). *See also* Bierman v. Campbell, 175 Neb. 877, 882, 124 N.W.2d 918, 921 (1963) ("The Legislature cannot delegate legislative authority to an individual." Citing *Rowe*.). This language appears in a case where the legislature delegated power to a county superintendent. A county superintendent does not really seem to be a "private person," as opposed to a "public official." *Id.*

In my opinion, what the court really meant in this case was that delegating the power in question to a few individuals was a violation of the due process rights of others affected by the decision and was a taking of private property without just compensation. "[T]hose who are interested or affected thereby" must be allowed to vote on the matter. (Nebraska Mid-State Reclamation Dist. v. Hall County, 152 Neb. 410, 432, 41 N.W.2d 397, 433 (1959) interprets the case *Rowe* relied upon, and by inference *Rowe* itself, as a due process and Takings Clause case. The constitutional problem addressed here was not a delegation problem in any sense except that the Court called it "a clear attempt to delegate to private individuals legislative functions." *Id.*

Nonetheless this language exists and since it is easy to avoid this possible problem, then the problem should be avoided. The delegation of the vacancy-transfer decision should be to the Court and not to a non-governmental or quasi-governmental

entity. (The delegation of the decision should be to a governmental agency, but, as discussed below, there is no reason that governmental agency cannot rely upon research done by and input from private individuals, even from a commission established to provide such research.)

My understanding of the questions asked me is that I was not asked to give an opinion on the constitutionality of the current legislation establishing the Judicial Resources Commission and setting out its duties. Neb.Rev.Stat. §§ 24-1201, *et seq.* A word on that statutory scheme does, however, seem appropriate here. This Commission consists of some public officials and some private individuals. Such a commission should not be given the authority to make a final decision regarding the district in which a vacancy is declared. Though *Rowe v. Ray* does not really seem to apply to the situation at hand since there is no due process or takings problem and though *Rowe* seen to have been overruled *sub silentio*, it does contain that troubling language about delegation to private individuals. If there is to be a commission, it should engage in fact-finding and its role should be advisory. Such a commission could be created by statute or it could be called together by the Court, in an advisory capacity.

E. THE BRIEF FILED IN THE *ROBAK* CASE

The brief filed in *State* ex rel. *Jennie Robak v. State of Nebraska Judicial Resources Commission* argues, first, that a delegation like the one discussed in this letter is unconstitutional: the power in question cannot be delegated. For that proposition, the plaintiffs cite cases that say the power cannot be delegated *without standards*—the delegation cannot be limitless. These cases do not stand for the proposition that this power cannot be delegated. In fact, they stand for the opposite proposition: it can be delegated ... so long as there are standards.

Second, the brief argues that a delegation of this authority must prescribe standards. I agree. Though I do point out that this requirement of "standards" does not require much. It is just that the standard must not be "so vague and indefinite as to not constitute any ascertainable fact standard at all." McDonald v. Rentfrow, *supra* at 802, 127 N.W.2d at 484. As I wrote above, "[t]he legislative standards controlling the exercise of the delegated power needn't be very detailed, very specific, very lengthy, or very confining. It does not take all that much in the way of standards to get around the nondelegation doctrine."

The brief also argues that the Court has rejected the "'one entity' theory." Brief at 14. "The phrase 'judges of the district courts' must therefore refer to judges of each judicial district rather than to judges of all of the judicial districts." *Id.* This is irrelevant to the issue of whether the legislature's power over districts and judges—the legislature's power to declare the vacancy in a different district—is delegable. The power to change the number of judges in each district is a legislative power and it is a legislative power

that can be delegated, and this is so whether or not the Court rejected the one entity theory.

The brief further argues that the Judicial Resources Commission is unconstitutional. While the plaintiffs may have a point here as regards the current statutory authority of the Commission, I see nothing in Nebraska law that says that the body to which the authority is delegated cannot engage others to find facts upon which the decision will be made. The power to make the decision can be delegated to the courts and the courts may enlist the aid of others to investigate and report on relevant facts. The fact finders, reporting to the Court, could be the bar association, a commission, etc.

As discussed above, the legislative power in question should not be delegated to private individuals. It should be delegated to the Court. There is nothing wrong with—unconstitutional about—the Court or the legislature relying on fact finding done by others who are not on the Court, who are not members of the Judicial Branch, and, in fact, who are private individuals.

V. CONCLUSION

A. THE QUESTIONS PRESENTED TO ME

The first question asked of me is this: "[W]hether the delegation of authority to determine the location of judicial vacancies to the Supreme Court or the Judicial Resources Commission is constitutional." My conclusion is that with minimal attention paid to how the statute delegating the authority is drafted a delegation of this authority to the Supreme Court can be constitutional. Delegating the power to private individuals—nongovernmental entities is more problematic. The statute would more clearly be constitutional if the power is delegated to the Court.

The second question has to do with the need for a constitutional amendment should the answer to the first question be "No." Since my answer to the first question is "Yes," there is no need to address the second question.

The third question has to do with how to "make sure that the delegated power [includes] very clear standards and procedural safeguards." My answer is that there must be limitations on the delegated power, there must be standards, but I do not believe that they have to be all that "clear." Below I present my suggestions as to how such a statute should be drafted.

B. A SUMMARY OF MY CONCLUSIONS, INCLUDING MY SUGGESTIONS FOR HOW TO DRAFT THE STATUTE

My conclusion is that declaring the judicial district in which a vacancy occurs is a legislative function. This decision is one that the Legislative Branch can, by statute,

delegate to the Judicial Branch. The statute delegating the authority to make this decision must contain adequate standards.

The statute must contain "intelligible principles," *Touby*, *supra* at 165, guiding the Judicial Branch's exercise of the discretion granted. The statute must "provide[] reasonable limitations and standards for carrying out the delegated duties." *Mann*, *supra* at 759, 186 N.W.2d at 734.The best way to write the law would be to "condition the operation of the law upon the existence of certain facts, and ... submit to the court[] the judicial power for the determination of those facts." *McDonald v. Rentfrow*, *supra* at 803, 127 N.W.2d at 485.

McDonald v. Rentfrow, *supra*, is a good case to use as a model for drafting this statute in Nebraska. It involved article II challenge to a state statute that granted school boards the power to transfer land from one school district to another. The Court recognized that establishing these boundaries is a legislative function and proceeded to uphold the delegation of this function to the school boards.

- *McDonald*'s statute stated who could file the petition requesting the transfer of land from one district to another. Our statute could provide that State of Nebraska Judicial Resources Commission or that the Nebraska State Bar Association make the request for the transfer of the vacancy.

- *McDonald*'s statute required that the delegatee take into account distance from schools or bus lines. Our statute could require that the court take into account caseloads, other judicial duties, and travel time. It could also include other factors such as district population, though the other three mentioned seem the most relevant.

  The current Judicial Resources Commission statute states that the Commission's report to the legislature shall be based on "judicial workload statistics..., (2) whether litigants in the judicial district have adequate access to the courts, (3) the population of the district, (4) other judicial duties and travel time involved within the judicial district, and (5) other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service." Neb.Rev.Stat. § 24-1206. Some of that language could be added.

- *McDonald*'s statute addressed the class of the district the land can be transferred to in relation to the class of the district it is to be transferred from. Our statute could limit the "transfer" of the vacancy by reference to the level of the court where the vacancy occurs: county court to county court; district court to district court.

  (I have not considered whether it would be constitutional for the legislature to delegate to the Court the power to declare a county court vacancy in one district

to be a district court vacancy in the same or a different district. I do not see that as within the scope of the questions I was asked and I must leave town. My initial reaction is that such a power could be delegated, but I have not researched that particular point. In any event, limiting the transfer so that it must be county court to county court or district court to district court provides one more argument—not that you need one more argument—that there are "intelligible principles" and "reasonable limitations and standards.")

- *McDonald*'s statute required that the board's decision be made "whenever they deem it just and proper and for the best [educative] interest of the petitioner." (This quotes the statute with the court's interpretation of the statute added in brackets.) Our statute could require that the court's decision be made when the court deems it in the best interest of the fair and efficient administration of justice in the State of Nebraska.[15]

Sincerely,

G. Michael Fenner
James L. Koley '54 Professor
of Constitutional Law

[15] This part of the statute could be worded in various ways. You provided me with your research into laws in other states. I purposefully held off looking at those laws until I had completed the above letter so that I would not be led down some other state's path. Having looked at those statutes, I do not change anything I have said in this letter.

For whatever assistance this may provide in the drafting of delegating legislation, here is how some other states handle this or similar problems. **Connecticut** includes this language: decisions regarding the assignment of judges shall be made "in the best interest of court business, taking into consideration the convenience of litigants and their counsel, and the efficient use of courthouse personnel and facilities." Con.Gen.Stat. § 51-16t. **Iowa** provides that "[i]f a vacancy exists, the chief justice makes a finding that a substantial disparity exists in the allocation of judgeships and judicial workload between judicial election districts, the chief justice may apportion the judgeship for the judicial district where the vacancy occurs to another judicial election district based upon the substantial disparity finding...." Iowa Code Ann. § 602.6201. **Minnesota** provides that the Supreme Court can declare a vacancy to be in a different district based on consideration of "adequate access to the courts." Minn.Stat. § 2.722. **North Dakota** law speaks of a decision based on considerations of "effective judicial administration" and the "need for judicial services." N.D.Cent. Code § 27-05-02.1.

Appendix I

Strategic Plan of the Nebraska Supreme Court Technology Committee



Nebraska Supreme Court Technology Committee

Strategic Plan

2006-2011

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1 Introduction

In January 2006 the Nebraska Supreme Court set in motion a new Technology Committee to help guide the Supreme Court with its deployment of information technology. One of the outcomes of this decision was the creation of a Strategic Planning subcommittee. This document reflects the work of that subcommittee.

Section One of the Strategic Plan covers the Court's technology planning in three areas, Where We Are, Work In Progress and What We Would Like to Do. Section Two is the Technology Committee's Mission Statement. Section Three covers the six high level goals. These goals are further identified and defined in Section Four of the Strategic Plan as Enabling Technology Goals. In Section Five of the Strategic Plan, Benchmark Areas for measuring the progress toward the goals are defined.

1.1 Where We Are

This section provides a brief snapshot of where the courts are with regard to technology use and deployment in 2006.

1.1.1 Supreme Court

The Nebraska Supreme Court is the state's court of last resort. Its decisions are binding on all trial courts, as well as the Court of Appeals. The Supreme Court is composed of a Chief Justice and six Associate Justices representing the six Judicial Districts of the State. The Chief Justice represents the State at large and also serves as the executive head of the Nebraska Judicial Branch.

The Supreme Court and the Clerk of the Supreme Court and Court of Appeals utilize an IBM i-Series mid-range system as a server for their case management system. The Supreme Court Justices and staff use leased personal computers, printers and monitors that are replaced on a three-year basis. These personal computers operate in a Windows Server 2003 environment.

The Supreme Court recently used a variety of technologies in hearing a high-profile case. This particular case was broadcast live via a video feed from the courtroom to the Nebraska Educational Telecommunications Commission's control room in the Capitol. The court also allowed the use of state-of-the-art evidence presentation equipment in the court during the trial. The Supreme Court utilized the Court's web site to provide the very latest information on court filings involved with this case to the public.

The Court has recently updated scanning and document conversion equipment to take advantage of optical character recognition technologies to improve staff productivity.

In 2005 wireless network access was added in the Nebraska State Library and the Court's Consultation room. The Nebraska State Library installed a Public Access Internet work station, becoming the only Public Access for Internet service in the Capitol.

The Court has added virtual private network (VPN) access to the local area network to allow for access from remote locations when needed.

1.1.2 Court of Appeals

The Nebraska Court of Appeals is the state's intermediate appellate court. There are currently six judges, who sit in panels or divisions of three judges each. The task of the Court of Appeals is to provide the citizens of Nebraska with clear, impartial and timely resolution of appealed orders and judgments as provided by law.

The Court of Appeals is generally the first court to hear appeals of judgments and orders in criminal, juvenile, civil, domestic relations and probate matters. In addition, the Court of Appeals has appellate jurisdiction over decisions originating in a number of state administrative boards and agencies. Its determination of an appeal is final unless the Nebraska Supreme Court agrees to hear the matter.

The Court of Appeals operates on the same IBM i-Series mid-range system with the Supreme Court. The Court of Appeals has four remote locations that operate from a network base as stand-alone offices.

The Court of Appeals Judges and staff use leased personal computers, printers and monitors that are replaced on a three-year basis. These personal computers operate in a Windows Server 2003 environment.

1.1.3 Trial Courts

District Courts

Twelve district court judicial districts serve the state's ninety-three counties and fifty-five district court judges serve within these judicial districts. Judges are required to preside at trials before the court and sit as the judge and fact finder in bench trials. Judges must hear and rule on pre-trial discovery motions, pre-trial and trial evidentiary matters, pre-trial and trial matters relating to rules on pleadings, practice and procedure before the courts. In matters tried before a jury, a judge must supervise and make rulings on jury selection issues, prepare and deliver proper jury instructions and decide matters which arise during jury deliberations.

Douglas County District Court

The Douglas County 4th District Court and staff use county owned personal computers, printers, and monitors that are generally budgeted for replacement on a four-year basis. The Judges, administrative staff and Drug Court also use notebook computers which are also budgeted for replacement on a four-year basis. These personal computers and notebooks operate in a Microsoft Windows 2003 Active Directory network environment primarily over a wireless network infrastructure. The court's desktops and notebooks are standardized on Windows 2000 or greater and Microsoft Office 2003 including email and calendaring which is shared between Judge, Bailiff and Court Reporter.

Case Information and Management: The Douglas County 4th District Court uses the Douglas County Criminal Justice Information System for case management (Douglas County Case Management System "DCCMS"); Lotus Notes Database for Electronic Docketing; Oracle accounting for financial management; and IBM Content Manager to view archived Clerk of the District Court files. The DCCMS includes all Douglas County Clerk of Court records including case history and document filings, case scheduling information, and case financials. To access the DCCMS the courts use Attachmate 6.7 or greater terminal emulator that is loaded on all Court personal computers providing access to the mainframe system. The Douglas County Criminal Justice Information System consists of integrated information from various criminal justice organizations as well as Douglas County departments. The Douglas County Criminal Justice Information System is supported by DOT.Comm which provides all development, maintenance and support. This integrated system includes interfaces with state agencies to exchange data. In addition, DOT.Comm on behalf of the county provides a fee based subscription service called CPAN to the public.

Electronic Docketing System: The Douglas County 4th District Court utilizes a Lotus Notes database program, Electronic Docketing System (EDS) to electronically record docket sheet information. The EDS electronically transmits docket sheet information to the Clerk of Court and to Douglas County Attorneys, Public Defenders and other criminal justice partners who are on the Douglas County Network. EDS can also be accessed by the pubic on computers located in the Clerk of Court office.

Content Manager Software: The Douglas County 4th District Court has electronic access to the Clerk of Court's case files. All case files and case related documents from 1997 to date are scanned for archival purposes using the IBM Content Manager Program. The court can view these scanned files using Content Manager which is installed on desktop PCs.

Web Page: The Douglas County 4th District Court has a Web Site developed and supported by DOT.Comm. The web site provides information about the Court and its divisions including Conciliation and Mediation Services, Drug Court, Child Support Referees, Library and Administration. The web site can be viewed at www.dc4dc.com .

CaseviewII/Real Time Reporting: The Douglas County 4th District Court provides notebook computers to Judges for use in the courtroom and many Judges use the notebooks to view court reporter's real time translation of the testimony live on CaseviewII software.

Notebook Computers: Douglas County 4th District Court Judges are provided with notebook computers for use in the courtroom, for travel and to work at home. From the courtroom the notebooks access the Douglas County network with a wireless connection and have Microsoft Communicator software for Judges to electronically communicate with the Bailiff when the Judge is in the courtroom as well as internet access for electronic legal research and access to EDS and Content Manager files. For travel and

work at home the notebooks have wireless cards and upon request Judges are provided access to their work desktop through a VPN program ENKOO.

Drug Court Case Management Software: Douglas County 4th District Court uses case management software developed by Analyst International.

Separate Juvenile District Courts

Nebraska has three separate juvenile courts located in Douglas, Lancaster, and Sarpy counties. In the remaining counties, juvenile matters are heard in the county courts. Separate juvenile courts are courts of record and handle matters involving neglected, dependent, and delinquent children. The separate juvenile courts also have jurisdiction in domestic relations cases where the care, support, or custody of minor children is an issue. The three separate juvenile courts have the same jurisdiction and employ the same procedures as the county courts acting as juvenile courts.

Separate Juvenile Court judges now serve in counties having populations of seventy-five thousand or more. There are currently ten separate juvenile judges sitting in Nebraska's three largest counties: five in Douglas, three in Lancaster and two in Sarpy.

Lancaster and Sarpy County Separate Juvenile District Courts use JUSTICE as their case and financial management system. Efforts are ongoing to provide additional features and functions in JUSTICE to meet the federal guidelines of the American Safe Families Act (ASFA). In 2006 JUSTICE upgraded the reports connected with Juvenile cases to provide Judges and court staff with faster and more accurate data. A data feed from The Health and Human Services NFOCUS group was provided to update court information on wards of the State of Nebraska.

County Courts

There are fifty-nine county judges in twelve county court districts. Jurisdiction of these courts is established by state law which provides that county courts have exclusive original jurisdiction in estate cases, probate matters, guardianship, and conservator ship cases, actions based on a violation of a city or village ordinance, juvenile court matters in counties without a separate juvenile court, adoptions, and eminent domain proceedings. There are approximately three hundred and seventy-five full-time equivalent employment positions in the county court system in additional to the fifty-nine county judges. At minimum there is a clerk magistrate or judicial administrator in each county who is assigned to act as the clerk of the court and court administrator.

The Nebraska District and County courts use the Judicial Users System To Improve Courtroom Efficiency (JUSTICE) system for their case and financial management systems. Currently All District and County courts with the exception of the Douglas County District Court and Separate Juvenile District Court use JUSTICE.

In 2005 JUSTICE handled 395,741 County Court cases, 27,597 District Court cases and 2,699 Separate Juvenile District Court cases or 96.04% of Nebraska's trial court caseload.

The JUSTICE system consists of an IBM i-Series mid-range computer located in every county seat and networked to a central i-Series computer located in Lincoln. A variety of terminals, printers and personal computers are connected locally in each county seat. The network and hardware are leased by the State Court Administrator's Office from the State of Nebraska's, Office of the Chief Information Officer's, Intergovernmental Services Division.

JUSTICE is supported by seven Business Analysts who provide system support, training, court on-site visits and help desk support. JUSTICE is maintained by four contract Technical Analysts. The Technical Analysts provide maintenance and development of the programming code used in JUSTICE applications.

The Lancaster District Court initiated a project to develop the capability for a court to scan, store, index, and retrieve documents filed with the court using the JUSTICE case management system. As a result of this project, JUSTICE was modified to allow a court to link an image of a document to an action recorded in JUSTICE, and to later retrieve that document image by selecting the action from the register of actions. Although the system was developed to meet the requirements of the Lancaster County District Court, the system was designed to allow any court using the JUSTICE case management system to link a document image to an action recorded in JUSTICE. The Lancaster document image project uses the same technology that was developed to support electronic filing. There are currently thirteen District Courts and one County Court using imaging in their courts.

JUSTICE provides data to many other state agencies including Department of Motor Vehicles, State Patrol, Health and Human Services NFOCUS and CHARTS systems, Commission on Law Enforcement and Criminal Justice, via a direct data inter-exchange. The State Attorney General's Office, Secretary of State's Office and many County Attorney Offices access JUSTICE data through the Nebraska.gov web portal.

JUSTICE provides a fee based subscription service to the public through the State of Nebraska's web portal Nebraska.gov.

1.1.4 Nebraska Workers' Compensation Court

The Nebraska Workers' Compensation Court is composed of seven judges who are initially appointed by the governor and who then remain on the bench for successive six-year terms upon approval of the electorate. Every two years one of the judges is elected as presiding judge by the judges of the court, subject to approval of the Supreme Court. Four judges are located in the State Capitol in Lincoln and three judges are located in the Hall of Justice in Omaha. A judge will travel to any county in the state where an accident occurred to hear a disputed case. A case is first heard by a single judge and, if appealed, the case is then heard by a review panel of three judges of the court. The review is based on the record created at the original hearing, and no new evidence may be introduced. The next level of appeal is to the Nebraska Court of Appeals and ultimately a case may go to the Nebraska Supreme Court.

For administrative purposes, the judges and staff of the court are organized into two operating divisions and eight operating sections. The adjudication division, under the direction of the presiding judge, includes the judges, the Office of the Clerk of the Court, and the Judicial Support Section. The administration division, under the direction of the court administrator, includes the remaining sections as identified below. The court administrator also serves as the chief administrative officer for the court.

Over the last four years, this court invested substantial time and effort to properly analyze and strategize the possibilities for moving towards a "paperless" court. This work included an extensive analysis of the possibility of collaboration with the Nebraska Supreme Court in its efforts to increase ability to electronically file and store documents and information on a statewide basis. That effort at collaboration showed that extensive collaboration was not possible because of extensive differences in the specific missions of the Nebraska Workers' Compensation Court and all other courts of the state of Nebraska. Some of the differences in mission relate to significant agency type functions of the court arising from statutory obligations in the Nebraska Workers' Compensation Act. These functions relate to coverage and claims enforcement, re-education and retraining oversight, dissemination of information, and the process used to review and approve or disapprove applications for lump sum settlements. Another key difference is that the court's statewide jurisdiction requires statewide judicial mobility, which significantly complicates scheduling and information dissemination on a case-by-case basis.

As a result, the continued expertise developed by this court over the last decade through development of the court's own IT staff is a positive resource as this court steadily moves forward on IT issues in order to satisfy our client base. This client base includes attorneys representing parties to contested cases, employers (including self-insured employers,) insurance companies, third party administrators, and injured employees without contested cases on file. Without question, all of these clients support this court's advancement toward electronic filing of documents, storage of those documents and information contained therein, management of that information, and dissemination of decisions, orders, and other administrative information back to the very clients involved in the information input. The mandate for continued, decisive, and productive movement towards a paperless court is clear.

To productively meet this mandate the court engaged in extensive and detailed business process re-engineering efforts across all sections of the court. The latest effort in this regard was recently finalized in the adjudication (clerk of the court and judges) section of the court. The specific results of this entire court wide project resulted in the creation of the broad goal of being paperless by the end of the 2009/2010 biennial budget, or June 30, 2011 – two new budgets away.

As this re-engineering effort proceeded, the extensive interrelationship of information flow across all sections of the court became clear. That interrelationship is beneficial because as work towards paperless processes are successful in one section, there will be cross sectional benefits to other sections of the court. This became particularly clear

when reviewing Vocational Rehabilitation's goal of document management through the use of a message composer system that allows direct filing of documents in the court's Oracle database. Focus of efforts at successful implementation of this system will receive high priority, as success in Vocational Rehabilitation will lead to fairly immediate functional benefits in Adjudication as well as other sections of the court.

The beneficial impact of the Vocational Rehabilitation Section's efforts at message composing and document management has a clear positive impact on efforts made in Coverage and Claims to improve insurance coverage enforcement. Satisfying the statutory mandate for monitored insurance coverage and application of related enforcement efforts increases the need for efficient and effective tracking of bi-directional communication. The benefits of better message composing, storage, and dissemination, carries with it the requirement that Coverage and Claims be able to document, track, and reply to specific questions, requests for proof of coverage, and other related enforcement matters. This creates a significant need for inter-active Telephonic Response Systems and computerized Call Tracking to proceed with increased enforcement and maintain a "paperless" capability. This court is not in a position to hire new people to expand enforcement activity.

It is also fundamentally clear that an analysis of the adjudication section of the court involves defining workflow, and deciding if a change in workflow is appropriate depending upon what software and hardware solutions are implemented. The only way to correctly choose between any proposed implementation of computerized solutions is to track workflow and anticipate or define the inputs required to reach the targeted result while keeping the analysis in a "people" perspective. Any change must not merely make paperless the actual daily work process the court is engaged in at present. That may be the end attained, but broad solution sets must be reviewed prior to implementation. Tools exist in the software market to perform both workflow analysis and workflow implementation with managed change in a real time environment. Implementation of such tools must be a high priority - similar to the prioritization of resources and effort applied towards Vocational Rehabilitation's document management effort - in order to attain a workflow product that is as broadly usable across the Court, not only in adjudication, but in other sections.

1.1.5 Specialty Courts

Drug courts in Nebraska were officially recognized by the State Legislature in January of 2003 with passage of Legislative Bill 454 (LB 454). In April of 2006, the Legislature and Governor approved an appropriations request through Legislative Bill 1060 (LB1060) to assist and implement a statewide system of problem-solving courts.

Nebraska, like many other states, has come to view drug courts and other problem-solving courts as an effective means of addressing substance abuse, domestic violence, mental health issues, child abuse and neglect, and other contributors that lead to crime and associated negative behaviors. Problem-solving courts uniquely combine common and established practices such as drug testing, enhanced supervision, substance abuse and mental health treatment, and judicial monitoring to better address the needs of the offender, the community and the justice system. Available resources and professionals

within a community require each court to tailor programs and procedures to meet local needs and realities.

The Nebraska Supreme Court recommends that each of the 12 judicial districts of the State of Nebraska establish problem-solving courts which shall include *graduated sanctions and rewards, treatment services, close court monitoring and supervision of progress,* and *educational or vocational counseling as appropriate* in addition to requirements established by each local jurisdiction.

The Goals of Problem-Solving Courts
The goals of problem-solving courts in Nebraska are:

- To redirect their participants out of the court system;
- To reduce the incidence of the problems that brought the participant into the court system—i.e. substance abuse, domestic violence, child abuse/neglect;
- To hold participants accountable for their behavior; and
- To reduce re-entry into the court system

All problem-solving courts are based upon fundamental principles that both define them and account for their success. These principles initially served as the foundation of drug courts throughout the country and are now being successfully adapted by other problem-solving courts. Known as the 10 Key Components, these principles are required by the U.S. Department of Justice Office of Justice Programs, with little modification, to serve as the framework for drug courts under its authority.

<u>10 Key Components</u>

- Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and placed promptly in the drug court program.
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent alcohol and other drug testing.
- A coordinated strategy governs drug court responses to participant compliance.
- Ongoing judicial interaction with each drug court participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

Currently there are sixteen Specialty Courts operating in Nebraska. From a technology viewpoint these courts are operating on a variety of servers and software applications. Douglas County supports a server operated by the County's DotComm organization.

Sarpy County operates a server, supported by their information technology group. The remaining counties and courts operate on a single server located in Kearney at the University of Nebraska – Kearney.

The software used by the Specialty Courts creates routine reports on their clients.

1.1.6 Administrative Office of the Courts

The Nebraska Constitution gives general administrative authority over all courts to the Supreme Court and to the Chief Justice as executive head of the judicial branch. The Administrative Office of the Courts provides most services to the court system including developing plans for improvement of the judicial system, serving as a central source of information about the courts, and developing coordination within the branch and with other state agencies.

The Administrative Office of the Courts (AOC) currently operates on a Windows 2003 server using leased personal computers, printers and monitors. The hardware is refreshed on a three year basis. The AOC is supported by a Network Administrator and a Computer Support Technician. These positions also provide support for the Supreme Court, Clerk of the Supreme Court, Court of Appeals, Reporter's Office, Nebraska State Library, Probation and Counsel for Discipline.

The AOC completed bids for Digital Audio recorders in 2006. The intent is to begin replacement of the aging analog audio recorders in the county courtrooms.

The AOC created "Fill-In" forms for the Judicial Vacancy Application Package available on the Supreme Court web site. A revised Acceptable Use Policy was created and distributed to all courts in June 2006.

The AOC moved the Windows 2003 server to a more secure (both in a physical and network environment) location. The new location provides an automated backup of data on a daily basis and eliminates the use of tape. The new location provides clean power with generator and battery emergency power.

The AOC participated with several meetings of the State Government Council of the Nebraska Information Technology Commission. The AOC's Office joined the Court Information Technology Officers Consortium (CITOC) in January 2006. Membership in this group will help the AOC stay current with technology activities and solutions around the United States.

The AOC staff has the opportunity to expand their knowledge in various areas of their field through Computer Based Training which is available through the Internet for access at any time. Also, informational flyers have been provided to staff to help improve skills in the areas of day to day computer software usage.

1.1.7 Probation

Nebraska Probation's service system includes juvenile intake, traditional probation, and intensive supervision (ISP) probation statewide in addition to its collaboration with the Department of Correctional Services in the Work Ethic Camp. Specialized substance abuse, drug court, other problem solving courts and domestic violence and sex offender supervision services, as well as juvenile-specific probation services, are offered in select areas of the state.

Of probation's 15 probation districts, 2 are juvenile probation exclusively, and 2 are adult probation exclusively. One probation district has separate juvenile and adult probation supervision divisions. The 10 probation districts serve both juveniles and adults on probation, the 6 intensive supervision probation (ISP) regions located throughout state. Each probation district has a principal office, and there are 32 satellite offices that augment the principal offices. Probation personnel consist of line staff probation officers, specialized probation officers, techs, intake officers, support staff, supervisors, coordinators, chief deputies, and a chief probation officer who is responsible for the overall district/region management. Staff allocation is primarily determined measuring task-oriented workloads rather than counting caseloads.

The Office of Probation Administration has a separate Strategic Plan that includes their information technology goals from 2006 to 2011.

1.2 Work In Progress

This section describes the current technology work in progress in 2006.

1.2.1 Supreme Court

The Supreme Court is testing the use of digital audio recorders to replace the analog tape recoding equipment in the courtroom. The advantage of this system is that the digital audio file can be stored electronically and accessed simultaneously by many judges and staff to listen. The file can also be sent as a file attachment to remote users.

Work continues on virtual private network (VPN's) connections that could be used in the event of a disaster or business continuity applications.

The Nebraska State Library is working through the Library Automation committee to automate the card catalog and delivery of Internet based card catalog service for providing patrons' easy access and searching of the library's collections.

Work on a web site redesign for the Supreme Court is well underway. This is a cooperative project involving the AOC's Public Information Office and the Information Technology staff along with Nebraska.gov. The redesigned web site will have new pages created for JUSTICE clients, and the Specialty Courts. One new service will be Real Simple Syndication (RSS) feeds. This service will allow members of the court community and the public to subscribe to select web pages to be notified when a change or update has occurred. The rules and opinions web pages are expected to offer the RSS feeds.

1.2.2 Court of Appeals

The Court of Appeals is testing the use of digital audio recorders to replace the analog tape recoding equipment in the courtroom. The advantage of this system is that the digital audio file can be stored electronically and accessed simultaneously by many judges and staff to listen. The file can also be sent as a file attachment to remote users.

Work continues on using virtual private network connections to connect the remote Court of Appeals offices into the Supreme Court server. This provides better backup of data and centralizes data in one location for security and disaster recovery services.

1.2.3 Trial Courts

In 2006 a new application for JUSTICE was completed and placed into production. Docket is a JUSTICE system application which provides interactive programs designed to record judicial proceedings in the courtroom thereby creating a printed record for a judge to digitally sign and issue.

A new printer application was developed and placed into production in late June 2006. The new application will provide the ability to use laser printers in an enhanced manner and provide for the use of a digital signature on JUSTICE documentation.

District and County Court Judges were given the opportunity to receive new personal computers in 2006. Desktop and Tablet PC's were distributed in the April-July 2006 timeframe.

Statewide Statistic Reports were automated in JUSTICE in 2006. No longer do Clerk Magistrates and Clerks of the District Court need to manually run and mail in these statistical reports.

Work continues on a variety of Problem Log issues in JUSTICE. Working with the Automation Committee the JUSTICE Business Analysts were able to pare down a large list of problem logs and prioritize them for 2006.

The AOC continues to work with State of Nebraska's, Office of the Chief Information Officer's, Information Services Division on obtaining better hardware for the JUSTICE users.

Work continues on a phased approach for the use of digital recorders to replace the analog tape devices in the County Courts.

Computer Based Training (CBT) was launched in the spring of 2006. CBT provides training courses on personal computer software (Windows, Word, PowerPoint, Excel, etc) and information technology applications via the Internet. District and County Court judges and staff need only a personal computer and Internet access to take advantage of this service. The service is available 24 hours per day and can be used from the office or from home.

Douglas County District Court

Automated Jury Management: The Douglas County 4th District Court has recently purchased "ACS Juror" software and is partnering with the Douglas County Court the Clerk of the District Court and Douglas County Jury Commissioner to implement the electronic jury management system. This system automates the jury process from creation of a jury pool up to payment of the juror after service is complete. The software is scheduled to begin printing summonses in August 2006 for jurors scheduled to report in October 2006. ASC Juror has an E-Juror component that will be added to the software in the future. E -Juror will allow a prospective juror to use the internet to answer their summons and prepare to serve on jury duty.

Case Management Software: The Douglas County Drug Court case management software is being modified by the developer, Analyst International (AI), for use in the Douglas County 4th District Court Young Adult Court and the Douglas County 4th District Court Conciliation and Mediation Services Office.

Web Page: The content and user friendliness of the Douglas County 4th District Court Web Page continues to be monitored and upgraded.

Standardized Court Orders: EDS is being modified to include an automated order feature allowing entries to generate orders in a word processing format.

Access to Scanned Court Files: In conjunction with the adoption of District Court Local Rule 4-16 limiting the removal of court files from the Clerk of Court office, the Douglas County 4th District Court is working with the Clerk of Court and DOT.Comm to provide the public access to scanned court files with content manager on computers located in the Clerk of Court office and Law Library and is also exploring providing the public remote access to the scanned files over the internet.

Separate Juvenile District Courts

Work on JUSTICE to better meet the needs of the Juvenile Courts continues. Court Improvement Project (CIP) funding is being requested to assist the Court in updating JUSTICE to allow for better and more reliable data.

JUSTICE Juvenile Case Reporting Enhancements NFOCUS Ward Placement Information – This application would involve obtaining and developing a data feed from Nebraska's Health and Human Services Department's NFOCUS group. The data provided would be developed into additional reports for Judges. The data would provide the latest HHS Ward placement information to Judges and court staff. This report would speed up the review process a judge goes through for making decisions. Time period for development and production is August 2006 to October 2006.

JUSTICE Juvenile Case Reporting Enhancements Time Standards -
A second report to be developed is a report that measures Time Standards for Judges based on Federal Guidelines (American Safe Families Act) ASFA. This report would measure the time a judge is taking in the number of days for: a. adjudication of juveniles, b. time for dispositions, and c. days for review hearings. By using a report that actually measures a judge's time in days when involving a juvenile case the Court will be in position to know which judges are meeting the ASFA guidelines and which judges need to be brought up to speed to improve their handling of juvenile cases. Level of effort for this application development is approximately 400 hours at $75.00 per hour. Time period for development and production is October 2006 to February 2007.

Training Judges and Court Staff on New Applications - A JUSTICE Business Analyst specializing in County Court Case and Financial Management will provide in-depth training on Juvenile court issues. As the above projects are moved into production in JUSTICE; a JUSTICE Business Analyst will be spending time training Judges and court staff in how to use the new applications to keep better informed on the welfare of Nebraska's HHS Ward placements. We estimate this will be approximately 1000 hours from October 2006 through June 2007. Training will be conducted in JUSTICE Training rooms in Lincoln and North Platte, Nebraska as well as on-site in District and County courts throughout Nebraska.

Attend Child Welfare Data Conference – Have one staff member attend the Children's Bureau's National Child Welfare Data Conference. Timeframe June 2007.

Planning further data collection/analysis and judicial performance measurement – The State Court Administrator for Information Technology, the Court Improvement Director, and the CIP Staff Attorney will be working closely with local court-agency collaborative groups to develop a long range plan that will work towards the goal of all Nebraska Courts having the ability to track individual cases, cases in the aggregate, outcomes for children, and the performance of judges. This planning will include close collaboration with the Nebraska Department of Health and Human Services.

1.2.4 Nebraska Workers' Compensation Court

This court has just completed a re-engineering analysis of the lump sum settlement process. This court's settlement process differs markedly from every other court in the State of Nebraska. The lump sum settlement process is tightly controlled by statute and rule. One focus of this analysis is the amount of control that can be exerted on information required in the filings for approval of these lump sum settlements. It appears going into the analysis that controlling and standardizing inputs to separate and classify specific case information will allow the court to decrease "turn around time" which is the time it takes to approve or disapprove lump sum settlement applications. This approach uses a basic triage of the applications for approval of lump sum settlement and depends on information received and documented electronically.

Successful work toward classification of electronic information in the lump sum settlement process will provide benefits to other sections of the court. An example of this will be the implementation of the ability to categorize petition filings in contested cases to determine case progression guidelines including the setting of trial dates. This categorization will be made according to nature and type of claimed injury; whether or not the claimant is receiving benefits; the complexity of the issues to be presented to the court; and other valid criteria to be developed in the future.

Lastly, with the document management and workflow efforts outlined above, case management will almost be self-fulfilling. Case management, however broadly or narrowly that term is used, involves control of the timing of information flow, whether that be electronic filing, receipt, storage, dissemination of information, or timing of motion or trial practice in differing localities. Effective changes in case management will significantly meet the demands of this court's client base.

In summary, the ground level work in vocational rehabilitation with respect to internal document management and composing, followed closely by implementation of a broad and powerful workflow tool set will be given all reasonable priority through the 2005/2006 biennium – the next biennium. In that regard, a consultant has been retained and will be used early in the second half of this biennium (from August through December, 2006) to analyze the results of all re-engineering efforts discussed above and make narrow recommendations with respect to the direction to most effectively proceed. This will be followed by direct implementation of the chosen solution sets for document

management, composing, and implementation of tools to analyze and change business workflow.

1.2.5 Specialty Courts

The Specialty Courts continues to look for hardware and software that will allow for consolidation of all of the Specialty Courts onto a single system. The proposed new system would have common reporting and data entry structures.

Possible collaboration with the Nebraska Probation Management Information System (NPMIS) is being researched. It appears the NPMIS system has many features and functions required by the Specialty Courts.

1.2.6 Administrative Office of the Courts

The AOC is working on Disaster Recovery and Business Continuity planning for the Supreme Court and Court of Appeals.

The AOC is working with the Counsel for Discipline's office to create a history file of discipline actions and place the file on the Court's web site. This will provide the public a place to review attorney discipline actions.

Information Technology goals that affect Supreme Court, Court of Appeals, Clerk of the Supreme Court and Court of Appeals, Probation, Reporter's Office, Law Library and Counsel for Discipline.

Place a Windows Server Update System (WSUS) into service. This will be used to keep client PC's up-to-date with Microsoft patches.

Upgrade the Dynamic Host Control Protocol (DHCP) server - currently on a 5+ year old Dell server which could fail. DHCP is used to assign nodes on the network an IP address so they can communicate on the Local Area Network.

Move the Electronic In-Out (EIO) software onto a server box in place of a workstation. EIO is an application the AOC uses that helps track staff location, calendar times and conference room scheduling.

Research and implement procedures that allow software patches and upgrades to be pushed from the server to our clients.

Allow all remote offices to VPN into the Supreme Court's network. This work that carries over into fulfilling data backup and disaster recovery needs.

1.2.7 Probation

The Office of Probation Administration has a separate Strategic Plan that includes their information technology goals from 2006 to 2011.

1.3 What We Would Like To Do

This section briefly describes what we would like to do with technology in the courts going forward.

1.3.1 Supreme Court

The Supreme Court will through the work of the Technology Committee move forward on a variety of technology issues and projects.

The Supreme Court will continue to make progress with the use of technology. Consolidation of systems to a single application that provides case and financial management services for all courts is the ultimate goal.

Integration of the existing Supreme Court and Court of Appeals Clerk's case management system with JUSTICE is a high priority and should occur within the next two years. This will provided additional benefits including public fee based access through Nebraska.gov and allow for seamless transfer of case management data from the District Courts.

Disaster Recovery and Business Continuity plan development and adoption will occur within the next year for the Judicial Branch.

Research into national organizations and other State Judicial branches with regard to technology issues, rules and policies will be ongoing to assist the Technical Committee in development of solutions for Court's use of technology.

1.3.2 Court of Appeals

Integration of the existing Supreme Court and Court of Appeals Clerk's case management system with JUSTICE is a high priority and should occur within the next two years.

Work will continue to network the remote locations of the Court of Appeals into the Supreme Court local area network. This is for the purpose of better data backup and disaster recovery planning.

1.3.3 Trial Courts

District and County Courts will move forward on Electronic-filing and credit card payment of fines and fees. Digital Recorders will replace the analog tape recorders in County Courts.

Computer based technology training via the Internet will continue to be available for Trial Court Judges and court employees. It is a high priority that technology training is made available for court employees statewide.

Web site templates for Trial Courts will be developed and made available for courts to use. Disaster Recovery plans will be developed and tested in trial courts.

Planning will occur to assist the Small Claims and Pro Se filers in making for a better experience for doing business with the trial courts.

Providing additional personal computers for staff and upgrading or refreshing of older equipment are also on the list of improvements. A five year goal is to eliminate all green screen terminals in the trial courts.

Standards for technology use in a courtroom will be developed and adopted into court rules. Video Arraignment and Video Interpreter systems will be reviewed. More imaging systems will be placed into the trial courts.

Exploring the option of integrating the Douglas County District Court case management system to JUSTICE will take place. An interface between JUSTICE and the Nebraska Probation Management Information System (NPMIS) will be created to allow for the seamless flow of data from JUSTICE to NPMIS.

An evaluation of the long-term direction of JUSTICE will be completed with recommendations given to the Technology Committee for guidance.

Douglas County District Court
The Douglas County 4th District Court will continue to work towards an E-filing system that will integrate/eliminate the EDS system and include a comprehensive court calendar. The Douglas County 4th District Court will continue to explore ways to provide electronic resources to Pro Se litigants seeking to understand and access the court system.

Separate Juvenile Courts
Replace the current paper delivery of Court Orders to the HHS NFOCUS Division, with electronically transmitted Court Orders from JUSTICE to HHS NFOCUS. This will cut down delivery time from days to hours and will reduce data entry errors into NFOCUS applications. The financial aspect for this project is to be determined. Timeframe is estimated to be July 2007 to December 2007.

Analyze the performance of the improvements made in FY 2006. This will be accomplished by establishing performance measures based upon a survey of Judges and court staff. The survey results will set a baseline for planning improvements going forward. . The financial aspect for this project is to be determined. Timeframe is estimated to be July 2007 to December 2008.

Explore the option of integrating the Douglas County Separate Juvenile District Court to JUSTICE. This will require a conversion cost estimate and working with Douglas County Dot.Comm to plan for a possible conversion of their court data to JUSTICE data. The financial aspect for this project is to be determined. Timeframe is estimated to be January 2008 to June 2008.

Attend Child Welfare Data Conference – Have one staff member attend the Children's Bureau's National Child Welfare Data Conference. Timeframe June 2008.

Continued development and assessment of progress regarding data collection/analysis and judicial performance measurement – The Deputy State Court Administrator for Information Technology, the Court Improvement Project Director, and the CIP Staff Attorney will be working closely with local court-agency collaborative groups to continue to work towards the long range goal of all Nebraska Courts having the ability to track individual cases, cases in the aggregate, outcomes for children, and the performance of judges. This planning will include close collaboration with the Nebraska Department of Health and Human Services.

1.3.4 Nebraska Workers' Compensation Court

The Nebraska Workers' Compensation Court has a separate Strategic Plan that includes information technology goals from 2006 to 2011.

1.3.5 Specialty Courts

Potential utilization of the Nebraska Probation Management System (NPMIS) as the default Specialty Court database system residing on a single server will be explored.

Work will continue to provide technology to the Specialty Courts that will enable their staff to be more productive and create better more useful reports with data collected.

1.3.6 Administrative Office of the Courts

The AOC work with Nebraska.gov to explore additional services via the state web portal.

The AOC will develop written policies on data sharing with other state agencies and on data security.

The AOC will continue to look for ways to get better technology out to all courts. Finding ways to provide training and educating staff on technology and the uses of technology to improve court processes is a very high priority.

1.3.7 Probation

The Office of Probation Administration has a separate Strategic Plan that includes their information technology goals from 2006 to 2011.

2 Mission Statement

To proactively represent the computing, communications, and information technology concerns of the judicial branch and legal community in visioning, policy setting, and strategic planning.

To provide timely input, advice, and feedback to the Chief Justice on policy, proposals, implementation projects, and other information technology related issues.

To be a catalyst within the judicial branch in adapting technology to meet the mission of the judiciary and the needs of the people of the State of Nebraska.

3 Business Goals

In Section Three of the Strategic Plan six high level goals have been developed. These goals are further identified and defined in Section Four of the Strategic Plan as Enabling Technology Goals. In Section Five of the Strategic Plan, Benchmark Areas for measuring the progress toward the goals are defined.

3.1 Technologies

Nebraska's courts will have equal distribution of technology and bandwidth across all courts. Equal distribution of technology and bandwidth will allow Nebraska's court system to provide a better experience for all citizens of Nebraska.

3.2 Standards

Through the use of standards Nebraska courts will make every effort for the uniform collection of information.

3.3 Jurisdictional Boundaries

Nebraska courts will use technology to identify and respond to trends that are challenging today's traditional jurisdictional boundaries, recognizing these efforts must consider existing laws, court rules and professional ethics.
(The purpose of this goal is to recognize that through technology there are opportunities to cross geographical and jurisdictional boundaries. It is our intent to be mindful to review and suggest changes to relevant statutes and rules to restrict if appropriate.)

3.4 Technology Rules and Statutes

Nebraska courts will proactively explore and update court rules to be useful in working with technology advances.

3.5 JUSTICE

Nebraska courts will develop a long term plan for the JUSTICE case and financial management system.

3.6 Data Collection and Sharing

Nebraska courts will collect and share data in an appropriate manner.

4 Enabling Technology Goals

Section Four of the Strategic Plan contains Enabling Technology Goals that are drilled down and expanded into sub-goals and objectives.

4.1 Technologies

Nebraska's courts will have equal distribution of technology and bandwidth across all courts. Equal distribution of technology and bandwidth will allow Nebraska's court system to provide a better experience for all citizens of Nebraska.

4.1.1 Identify and define court technology improvements.

4.1.1.1 Utilize digital recorders to replace analog tape recorders in County courts.

4.1.1.2 Initiate Electronic Filing services in the trial courts

4.1.1.3 Establish the use of the E-Citation in more jurisdictions and accept credit card payments for paying fines and fees.

4.1.1.4 Establish the minimum hardware requirements for evidence presentation in trial courts.

4.1.1.5 Implement electronic or credit card payment in courts.

4.1.1.6 Implement electronic claim process in courts statewide.

4.1.1.7 Participate in planning for network and technology services in new or remodeled courtrooms in Nebraska

4.1.1.8 Plan for and participate in the implementation of video arraignment technology in trial courts.

4.1.1.9 Participate and plan for the use of Remote Video Interpreter services in Nebraska courts.

4.1.2 Create and define technology training for court staff.

4.1.2.1 Provide appropriate software (word processing, spreadsheet, presentation, and e-mail) for trial court staff.

4.1.2.2 Provide computer or web based technology training to court staff

4.1.3 Identify technology investments that move the courts toward a common system and use of technology.

4.1.3.1 Participate with Nebraska Information Technology Commission to obtain funding for court related technology projects throughout the state.

4.1.3.2 Participate in Court Improvement Project (CIP) funding for juvenile court projects.

4.1.3.3 Seek additional funding through a variety of grant applications.

4.1.4 Create centralized and uniform web site information standards and guidelines for trial courts.

4.1.4.1 Plan and deploy standardized trial court web pages on the Supreme Court web site.

4.1.5 Identify appropriate communications bandwidth services for all courts.

4.1.5.1 Work with the Office of the CIO, Network Services group to ensure the appropriate amount of bandwidth is available to all courts to engage in judicial proceedings.

4.1.5.2 Anticipate and plan for increased technical capabilities in courts, this includes but is not limited to use of the Internet, digital video, audio recordings, remote access to a court.

4.1.6 Explore outsourcing of technology applications through the use of electronic service providers or off-the-shelf software applications.

4.1.6.1 Evaluate how other states are deploying systems for court and administrative use.

4.1.6.2 Participate with national organizations to explore the use of electronic service providers and off-the-shelf software.

4.1.7 Ensure that technology does not create a segment of society that is not able to participate in the judicial process. Plan for the "Pro Se" filer to use technology through public access.

4.1.7.1 Plan for the "Pro Se" client when developing technical applications. Anticipate how the general public will communicate with the courts when deploying new technology.

4.1.8 Provide rural courts the same technical functionality as urban courts.

4.1.8.1 Provide additional personal computer hardware for trial court staff.

4.1.8.2 Ensure an equal distribution of technology assets and functionality between rural and urban courts.

4.1.9 Plan and assist Specialty Courts use of technology.

4.1.9.1 Work closely with the Specialty courts to appropriately invest in new technology that meets the needs of the courts.

4.1.9.2 Anticipate and plan for additional Specialty courts across Nebraska.

4.1.10 Set the correct level of expectation with regard to use of technology in the Judicial Branch.

4.1.10.1 Communicate with the Court Administrator and court staff to ensure the level of expectation is set correctly with regard to the use of technology in the judicial branch.

4.1.11 Create Disaster Recovery and Business Continuity plans for the Judicial Branch.

4.1.11.1 Develop and implement a disaster recovery and business continuity plan for the judicial branch.

4.2 Standards

Through the use of standards Nebraska courts will make every effort for the uniform collection of information.

4.2.1 Identify the need and define courtroom technology standards.

4.2.1.1 Identify and define technology standards for Nebraska courts.

4.2.1.2 Where applicable use national technology standards.

4.2.1.3 Participate with national organizations in the development of technology standards.

4.3 Jurisdictional Boundaries

Nebraska courts will use technology to identify and respond to trends that are challenging today's traditional jurisdictional boundaries, recognizing these efforts must consider existing laws, court rules and professional ethics.

4.3.1 Understand the issues presented by pro se litigation, use technology to adapt.

4.3.1.1 Improve the filing experience for Small Claim Filers

4.3.1.2 Improve the filing experience for Pro Se Filers.

4.3.2 Understand and plan for efforts among lawyers to practice law in multiple jurisdictions subject to the requirements of State of Nebraska statutes, court rules and profession ethics.

4.3.2.1 Take notice of national trends with regard to jurisdictional boundary issues.

4.3.2.2 Work with the Nebraska State Bar Association to monitor developments in this area.

4.3.3 Understand and plan for the desire for litigants and lawyers to appear by telephone, video or the Internet in lieu of appearing in person at a courtroom.

4.3.3.1 Assist in the development of standards and policies on the use of video arraignment in Nebraska courts.

4.3.3.2 Initiate the use of a video interpreter service in a pilot court.

4.4 Technology Rules and Statutes

Nebraska courts will proactively explore and update court rules to be useful in working with technology issues.

4.4.1 Ensure that court rules are up-to-date with current technology practices

4.4.1.1 Ensure the Rules for Digital Signatures are adhered to when deploying this technology. Inform the Supreme Court when changes are necessary.

4.4.1.2 Ensure the Rules for E-Filing are adhered to when deploying this technology. Inform the Supreme Court when changes are necessary.

4.4.1.3 Ensure the Rules for Electronic Payment are adhered to when deploying this technology. Inform the Supreme Court when changes are necessary.

4.4.1.4 Ensure the Rules for Uniform Traffic Citation and Complaint form are adhered to when deploying this technology. Inform the Supreme Court when changes are necessary.

4.4.1.5 Ensure the Rules for Bill of Exceptions are adhered to when using technology. Inform the Supreme Court when changes are necessary.

4.4.1.6 Develop processes and procedures the allow for the highest level of protection and privacy of personal data

4.4.2 Work proactively with Judicial Branch committees on technology matters as they apply to suggested changes in State Statutes.

4.4.2.1 Meet with judicial branch committees on an as needed basis to plan and discuss technical matters as they apply to changes in state statutes.

4.4.3 Keep abreast of technology policy changes as they apply to court proceedings or processes by national judicial organizations.

4.4.3.1 Maintain an active interest and understanding of national judicial organizations' technology policy issues.

4.5 JUSTICE

Nebraska courts will develop a long term plan for the JUSTICE case and financial management system.

4.5.1 Evaluate the long term use or potential replacement of the JUSTICE financial and case management system.

4.5.1.1 Continue the replacement of terminals with personal computers for judges and court staff.

4.5.1.2 Implement continuous refreshing of older equipment/hardware on a scheduled three to four year basis.

4.5.1.3 Evaluate the JUSTICE case and financial management system for long term direction and change. What is the expected life of this system? What changes can be reasonably and appropriately made to improve the system? What type of user interface should be used for JUSTICE? Should an investment be made to change the user interface from a "green screen" format to be more of a web based look and feel?

4.5.1.4 Develop a plan to integrate JUSTICE with the Douglas County District Court.

4.5.1.5 Determine and develop system requirements to replace JUSTICE

4.5.2 Create a JUSTICE interface with Probation's NPMIS system to allow data to be electronically transferred from JUSTICE to NPMIS to reduce re-entering of data and creation of errors in the data.

4.5.2.1 Develop an interface between JUSTICE and NPMIS.

4.5.2.2 Continue to explore other opportunities to share JUSTICE data with other governmental entities as appropriate.

4.6 Data Collection and Sharing

Nebraska courts will collect and share data in an appropriate manner.

4.6.1 Proactively be alert for the potential and actual misuse of collected data for court systems.

4.6.1.1 Ensure systems and applications are not compromised for the misuse of collected data.

4.6.2 Use technology appropriately.

4.6.2.1 Ensure systems and applications in use are utilized in an appropriate manner.

4.6.3 Proactively use redaction where possible on personal/private information in accordance with court rules and state statutes.

4.6.3.1 Redact personal/private information in accordance with court rules and state statutes.

4.6.4 Continue to expand court data sharing with other state agencies where appropriate.

4.6.4.1 Continue to expand JUSTICE data sharing with other state agencies where appropriate.

4.6.4.2 Continue to expand court data sharing with other state agencies where appropriate.

4.6.5 Continue to allow subscription based public access to court data via the Internet.

4.6.5.1 Use Nebraska.gov to provide subscription based public access to court data.

4.6.6 Expand subscription based public access to appellate court data via the Internet.

4.6.6.1 Expand public access to appellate court data with Nebraska.gov.

4.6.7 Encourage increased accountability through the use of technology.

4.6.7.1 Use technology to increase system and application accountability.

4.6.8 Insure the highest level of security for collected and shared data.

4.6.8.1 Monitor security issues on collected and shared data.

4.6.9 Stay current of new security matters regarding technology.

4.6.9.1 Increase knowledge of technical security issues and practices.

4.6.9.2 Participate with Nebraska Information Technology Commission's Information Security committee.

4.6.10 Be clear in the issue of "ownership of data" court filings and court generated data are owned by the court.

4.6.10.1 Establish clear delineation on the ownership of court generated data.

4.6.11 Develop a standard set of data elements to be used in data sharing applications.

4.6.11.1 Work with other judicial entities to develop a standard set of data elements to be used in the sharing of data.

4.6.12 When creating/changing forms in JUSTICE; engage the trial court judges and staff in the development phase.

4.6.12.1 Engage the JUSTICE Automation Committee when creating or changing forms in JUSTICE.

4.6.12.2 Engage the District Court Judges Association and the County Court Judges Association as appropriate when creating or changing forms in JUSTICE.

4.6.13 Use national resources when developing new processes do not rely solely on Nebraska based resources.

4.6.13.1 Explore on a national basis the use of new technology and processes for the judicial branch of government.

5 Benchmark Areas

Section Five contains the benchmark measurements for success for each on the sub-goals and objectives in Section Four.

5.1 Technologies

Nebraska's courts will have equal distribution of technology and bandwidth across all courts. Equal distribution of technology and bandwidth will allow Nebraska's court system to provide a better experience for all citizens of Nebraska.

5.1.1 Identify and define court technology improvements.

In one year success will be measured for this goal by:

- Replacing 20 analog recording devices in County Courts,
- Electronic Filing will be in place in 10 District Court and 10 County Courts,
- The use of credit card payments will be expanded to 10 additional Courts,
- Participate as appropriate in network and technology planning for new or remodeled courtrooms,
- Participate as appropriate with courts implementing video arraignment,
- Participate as appropriate with the implementation of video interpreter services.

In two years success will be measured for this goal by:

- Replacing an additional 20 analog recording devices in County Courts,
- Electronic Filing will be in place in 15 District Court and 15 County Courts,
- The use of credit card payments will be expanded to 30 additional Courts,
- Minimum hardware requirements for evidence presentation will be established through Court Rules.

In five years success will be measured for this goal by:

- Replacement of all analog recording devices in County Courts,
- Electronic Filing will be in place in all District Court and all County Courts,
- The use of credit card payments will be expanded to all Courts.

5.1.2 Create and define technology training for court staff.

In one year success will be measured for this goal by:

- Providing computer based training courses for all judges and court employees,
- Providing up-to-date word processing, spreadsheet, presentation software with every PC that is state funded and delivered to a court,
- Providing government electronic mail accounts to all judges and court employees.

In two years success will be measured for this goal by:

- Requiring 50% of court employees to have completed at least one technology training course,

In five years success will be measured for this goal by:

- Requiring 100% of court employees to have completed at least two technology training courses,

5.1.3 Identify technology investments that move the courts toward a common system and use of technology.

In one year success will be measured for this goal by:

- Having a minimum of one technology related funding request to the Nebraska Information Technology Commission approved for funding.
- Using Court Improvement Project funding to assist in the development of juvenile court programming in JUSTICE to meet American Safe Family Act guidelines.
- Submitting at a minimum one grant proposal for additional technology funding.

In two years success will be measured for this goal by:

- Using Court Improvement Project funding to complete the development of juvenile court programming in JUSTICE to meet American Safe Family Act guidelines.
- Submitting at minimum one grant proposal for additional technology funding.
- Converting the Supreme Court and Court of Appeals Clerk's case management system to JUSTICE with appropriate interfaces for seamless electronic transfer of case data.

In five years success will be measured for this goal by:

- Identifying costs for the upgrade/conversion of JUSTICE to a graphical user interface.

5.1.4 Create centralized and uniform web site information standards and guidelines for trial courts.

In one year success will be measured for this goal by:

- Appointing a committee to build guidelines to create uniform web site standards and guidelines.
- Building a web site template suitable for use by trial courts.

In two years success will be measured for this goal by:

- Bringing 50% of trial courts on to the web site template.

In five years success will be measured for this goal by:

- Having 100% of trial courts using the web site template.

5.1.5 Identify appropriate communications bandwidth services for all courts.

In one year success will be measured for this goal by:

- Having verified with the Office of the CIO bandwidth uses and needs at each courthouse.

In two years success will be measured for this goal by:

- Ensuring the every courtroom has suitable bandwidth to use technology in an effective and efficient manner based on the technology recommendations from the Courtroom Enhancement subcommittee.

In five years success will be measured for this goal by:

- Ensuring the every courtroom has suitable bandwidth to use technology in an effective and efficient manner based on the technology recommendations from the Courtroom Enhancement subcommittee.

5.1.6 Explore outsourcing of technology applications through the use of electronic service providers or off-the-shelf software applications.

In one year success will be measured for this goal by:

- Researching other states through the National Center for State Courts data to learn what systems they use for court and administrative use. Report to the Technology Committee on findings.

In two years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

5.1.7 Ensure that technology does not create a segment of society that is not able to participate in the judicial process. Plan for the "Pro Se" filer to use technology through public access.

In one year success will be measured for this goal by:

- Updating the Court's web site with information targeting the Pro Se filer.

In two years success will be measured for this goal by:

- Including Pro Se filers for using E-Filing when submitting files to the court.

In five years success will be measured for this goal by:

- Providing additional services for Pro Se filers.

5.1.8 Provide rural courts the same technical functionality as urban courts.

In one year success will be measured for this goal by:

- Replacing green screen terminals with personal computers and updating other hardware as appropriate.
- Working with the Courtroom Enhancement subcommittee to ensure technical functionality is equal between urban and rural courts.
- Identifying any gaps in technology and work to eliminate them.
- Reporting to the Technology Committee findings.

In two years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

5.1.9 Plan and assist Specialty Courts use of technology.

In one year success will be measured for this goal by:

- Planning for the conversion of Specialty Courts on to a single server system with robust reporting capabilities and adding of new Courts into the system.
- Using JUSTICE to record receipts of fees.

5.1.10 Set the correct level of expectation with regard to use of technology in the Judicial Branch.

In one year success will be measured for this goal by:

- Reporting to the Technology Committee successes and failures of the pervious year.

In two years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

In five years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

5.1.11 Create Disaster Recovery and Business Continuity plans for the Judicial Branch.

In one year success will be measured for this goal by:

- Having in place a Disaster Recovery and Business plan for the Nebraska Supreme Court and Court of Appeals.
- Conducting a minimum of one test of the plan using a desktop scenario.
- Building a Disaster Recovery and Business Continuity plan template for use by trial courts.
- Incorporating in the Disaster Recovery and Business Continuity plans a special section regarding evidence safekeeping.

In two years success will be measured for this goal by:

- Conducting an annual test of the Disaster Recovery and Business Continuity plan.
- Ensuring the Disaster Recovery and Business Continuity plan is updated on a quarterly or semi annual basis.
- Having Disaster Recovery and Business Continuity plans in place for 50% of trial courts.

In five years success will be measured for this goal by:

- Having Disaster Recovery and Business Continuity plans in place for 100% of trial courts.

5.2 Standards

Through the use of standards Nebraska courts will make every effort for the uniform collection of information.

5.2.1 Identify the need and define courtroom technology standards.

In one year success will be measured for this goal by:

- Working with the Technology Committee and the Courtroom Enhancement Subcommittee to identify and define technology standards for Nebraska Courts.
- Researching National Judicial organizations for the standards they recommend and utilize for Courts.
- Participating as a member of the Court Information Technology Officers Consortium.
- Reporting to the Technology Committee findings.

In two years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

In five years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

5.3 Jurisdictional Boundaries

Nebraska courts will use technology to identify and respond to trends that are challenging today's traditional jurisdictional boundaries, recognizing these efforts must consider existing laws, court rules and professional ethics.

5.3.1 Understand the issues presented by pro se litigation, use technology to adapt.

In one year success will be measured for this goal by:

- Researching how other states are using technology to assist Small Claims and Pro Se filers.
- Developing a report for the Technology Committee that contains recommendations on how we can improve in the area of Small Claims and Pro Se filers.

5.3.2 Understand and plan for efforts among lawyers to practice law in multiple jurisdictions subject to the requirements of State of Nebraska statutes, court rules and profession ethics.

In one year success will be measured for this goal by:

- Staying aware of national trends in this area.
- Monitoring developments in this area along with the Nebraska State Bar Association.

In two years success will be measured for this goal by:

- Monitoring developments in this area along with the Nebraska State Bar Association.

5.3.3 Understand and plan for the desire for litigants and lawyers to appear by telephone, video or the Internet in lieu of appearing in person at a courtroom.

In one year success will be measured for this goal by:

- Participating as appropriate with the implementation of video interpreter services.
- Participating as appropriate with the implementation of video arraignments.
- Recommending Rules/Policies for using technologies in Nebraska Courts.
- Staying up-to-date on newer technologies that may find use in a courtroom (i.e. pod-casting, internet access, etc).

In two years success will be measured for this goal by:

- Monitoring the use of technology with regard to Court Rules and policies.
- Recommending Rules/Policies changes for using technologies in Nebraska Courts.
- Staying up-to-date on newer technologies that may find use in a courtroom (i.e. pod-casting, internet access, etc).

In five years success will be measured for this goal by:

- Monitoring the use of technology with regard to Court Rules and policies.
- Recommending Rules/Policies changes for using technologies in Nebraska Courts.
- Staying up-to-date on newer technologies that may find use in a courtroom (i.e. pod-casting, internet access, etc).

5.4 Technology Rules and Statutes

Nebraska courts will proactively explore and update court rules to be useful in working with technology issues.

5.4.1 Ensure that court rules are up-to-date with current technology practices

In one year success will be measured for this goal by:

- Reviewing annually Court Rules regarding the use of technology.
- Notifying Technology Committee of recommended changes or additions.
- Being current on national and state trends regarding the protection and privacy of personal data.

5.4.2 Work proactively with Judicial Branch committees on technology matters as they apply to suggested changes in State Statutes.

In one year success will be measured for this goal by:

- Working with Judicial Branch committees as appropriate to review and discuss technical matters as they apply to state statutes.
- Monitoring the potential impact of legislation as it applies to technology used in courts.

- Setting up a process to report findings to the Technology Committee.

In two years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

In five years success will be measured for this goal by:

- To be determined by the Nebraska Supreme Court based upon recommendations from the Technology Committee.

5.4.3 Keep abreast of technology policy changes as they apply to court proceedings or processes by national judicial organizations.

In one year success will be measured for this goal by:

- Maintaining an active interest and understanding of national judicial organizations' technology policy issues and reporting to the Technology Committee areas for concern or further research.

5.5 JUSTICE

Nebraska courts will develop a long term plan for the JUSTICE case and financial management system.

5.5.1 Evaluate the long term use or potential replacement of the JUSTICE financial and case management system.

In one year success will be measured for this goal by:

- Reducing the number of green screen terminals to less than 200 statewide.
- Adding personal computers in the trial courts so that 75% of court employees are using computers when using JUSTICE.
- Implementing conversion of the Supreme Court and Court of Appeals Clerk's case management system to JUSTICE.
- Developing a plan to integrate the Douglas County District Court and Separate Juvenile Court case management system with JUSTICE.
- Implementing as appropriate problem log refinements and updates to JUSTICE.

In two years success will be measured for this goal by:

- Reducing the number of green screen terminals to less than 100 statewide.
- Adding personal computers in the trial courts so that 100% of court employees are using computers when using JUSTICE.
- Ensuring older hardware and personal computers are refreshed on a three year basis.
- Processing 100% of all Nebraska Court cases filed through JUSTICE.
- Determining system requirements to replace or convert the JUSTICE financial and case management application.
- Implementing as appropriate problem log refinements and updates to JUSTICE

In five years success will be measured for this goal by:

- Elimination of all green screen terminals.
- Ensuring older hardware and personal computers are refreshed on a three year basis.

5.5.2 Create a JUSTICE interface with Probation's NPMIS system to allow data to be electronically transferred from JUSTICE to NPMIS to reduce re-entering of data and creation of errors in the data.

In one year success will be measured for this goal by:

- Implementation of data sharing between NPMIS and JUSTICE.

In two years success will be measured for this goal by:

- Successfully passing of case information between NPMIS and JUSTICE.

In five years success will be measured for this goal by:

- Continuing to share JUSTICE data with other governmental entities as appropriate.

5.6 Data Collection and Sharing

Nebraska courts will collect and share data in an appropriate manner.

5.6.1 Proactively be alert for the potential and actual misuse of collected data for court systems.

In one year success will be measured for this goal by:

- Working with the Office of the CIO and other state agencies to ensure court collected data is not misused.
- Establishing written agreements on data use with agencies that share court generated data.
- Working with Nebraska.gov to ensure JUSTICE data placed in a fee based subscription service is not misused.
- Staying current on schemes surrounding the use of court data.

5.6.2 Use technology appropriately.

In one year success will be measured for this goal by:

- By annually reviewing the Court's written Acceptable Use Policy on the use of technology.
- By annually reviewing and updating the Court's Security Policies

5.6.3 Proactively use redaction where possible on personal/private information in accordance with court rules and state statutes.

In one year success will be measured for this goal by:

- By being aware of Court Rules or State Statutes regarding the protection of personal data.

- By maintaining awareness in Court Rules or State Statutes regarding the use of redaction in safeguarding personal data.

5.6.4 Continue to expand court data sharing with other state agencies where appropriate.

In one year success will be measured for this goal by:

- Annually reviewing the number of agencies receiving data for JUSTICE or other Court generated data and providing a report to the Technology Committee.
- Working appropriately with state agencies when expanding data sharing of the Court's information.

5.6.5 Continue to allow subscription based public access to court data via the Internet.

In one year success will be measured for this goal by:

- Meeting quarterly with Nebraska.gov management to review number of subscribers including individual and bulk subscriptions.
- Working with the Technology Committee and Nebraska.gov management to define improvements or changes to this service.
- Providing an annual report to the Technology Committee summarizing public access to court data.

In two years success will be measured for this goal by:

- Increasing fee based subscription by 10%.
- Developing at a minimum one new service product for the public.

5.6.6 Expand subscription based public access to appellate court data via the Internet.

In one year success will be measured for this goal by:

- Planning for public electronic access to appellate court data.

In two years success will be measured for this goal by:

- Delivering public electronic access to appellate court data.

5.6.7 Encourage increased accountability through the use of technology.

In one year success will be measured for this goal by:

- Providing a report to the Technology Committee regarding accountability efforts within case management systems.

5.6.8 Insure the highest level of security for collected and shared data.

In one year success will be measured for this goal by:

- Developing a written security policy for collected and shared data.

In two years success will be measured for this goal by:

- Developing a training course for court employees regarding the security of court data.

5.6.9 Stay current of new security matters regarding technology.

In one year success will be measured for this goal by:

- Attending at least one conference that deals with data security issues and practices.
- Participating with Nebraska Information Technology Commission's Information Security committee.

5.6.10 Be clear in the issue of "ownership of data" court filings and court generated data are owned by the court.

In one year success will be measured for this goal by:

- Including in the written security and data sharing policy a clear definition of court generated and owned data.

5.6.11 Develop a standard set of data elements to be used in data sharing applications.

In one year success will be measured for this goal by:

- Working with other judicial entities to develop a standard set of data elements to be used in the sharing of data.

5.6.12 When creating/changing forms in JUSTICE; engage the trial court judges and staff in the development phase.

In one year success will be measured for this goal by:

- Engaging the JUSTICE Automation Committee when creating or changing forms in JUSTICE.
- Engaging the District Court Judges Association and the County Court Judges Association as appropriate when creating or changing forms in JUSTICE.

5.6.13 Use national resources when developing new processes do not rely solely on Nebraska based resources.

In one year success will be measured for this goal by:

- Exploring on a national basis the use of new technology and processes for the judicial branch of government.

6 Appendices

6.1 Appendix A – List of Technology Committee Members

The Honorable William Cassel, Chair, Nebraska Court of Appeals
The Honorable Kenneth C. Stephan, Nebraska Supreme Court
The Honorable Gary B. Randall, Douglas County District Court
The Honorable John A. Colborn, Lancaster County District Court
The Honorable Michael K. High, Nebraska Workers' Compensation Court
The Honorable Douglas F. Johnson, Douglas County Separate Juvenile Court
The Honorable Roger J. Heideman, Lancaster County Separate Juvenile Court
The Honorable L. Curtis Maschman, Richardson County Judge
Warren R. Whitted, Jr., Attorney at Law
William J. Lindsay, Jr., Attorney at Law
William E. Olson, Jr., Attorney at Law
Les Seiler, Attorney at Law
Thomas W. Tye, II, Attorney at Law
William L. Howland, General Counsel, Accountability & Disclosure Commission
Richard Leiter, UNL College of Law
Craig Dallon, Professor, Creighton School of Law
Rudy Tesar, Clerk of the Douglas County District Court
Ann Rosenberry, Clerk of the District Court, Scotts Bluff County District Court
Barbara Pousson, Judicial Administrator, Sarpy County Courthouse
Janet Bancroft, Court Administrator's Office
Dave Wegner, Deputy Probation Administrator
Janice Walker, State Court Administrator
William Miller, Court Administrator's Office

Individuals participating but not appointed:
Paula Crouse, JUSTICE Business Analyst
Randy Cecrle, Chief I.T. Officer, Nebraska Workers' Compensation Court