



COMMISSION ON COURTS

Legislative Services Agency
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Members

Sen. Richard Bray, Chairperson
Sen. Randall Head
Sen. Lonnie Randolph
Sen. Timothy Lanane
Rep. Linda Lawson, Vice-Chairperson
Rep. Matt Pierce
Rep. Kathy Richardson
Rep. Eric Koch
Chief Justice Randall Shepard
Thomas Felts
David Whicker
Michael J. Kruk
Jill Jackson

LSA Staff:

Mark Goodpaster, Fiscal Analyst for the
Commission
Timothy Tyler, Attorney for the Commission

Authority: IC 33-23-10

MEETING MINUTES¹

Meeting Date: October 15, 2010
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Richard Bray, Chairperson; Sen. Lonnie Randolph; Sen. Timothy Lanane; Rep. Matt Pierce; Rep. Eric Koch; Chief Justice Randall Shepard; Michael J. Kruk; Jill Jackson.

Members Absent: Sen. Randall Head; Rep. Linda Lawson, Vice-Chairperson; Rep. Kathy Richardson; Thomas Felts; David Whicker.

Chairman Bray called the meeting to order at 1:36 p.m.

Presentation by Judges representing the Indiana Judicial Conference

After an introduction of members, Senator Bray recognized Judge Cale Bradford, Indiana Court of Appeals, to speak about two efforts by the Indiana Judicial Conference to improve the courts in Indiana.

He told the Commission members that standardizing and simplifying the court structure would help to unclog civil dockets and ease jail overcrowding by allowing the cases to be transferred between judges within the same circuit. He also indicated that requiring city and town court judges to be attorneys would fulfill the expectation of the public that judges are law-trained. He said that this would also eliminate any appearance of impropriety.

Rep. Koch asked whether all administrative law judges at the state level are required to be attorneys. Diane Mains, attorney for the Indiana Judicial Center, told Commission members that she would try to find out.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

The members discussed the fiscal impact that requiring city and town court judges to be attorneys would have on city and towns. Mark Goodpaster distributed a fiscal note of SB 211–2009, introduced by Senator Randolph (see Exhibit A) and directed the Commission members' attention to the first table on page 2. The table compared the salaries paid to city and town courts which had attorneys with the courts which had judges who were not attorneys in CY 2007. City and town courts with attorney judges paid almost twice the amount that city and town courts paid to judges who were not attorneys.

Judge Bradford suggested that the salary differences will not be as significant as described in the fiscal note and will depend on the size of the community. He provided more recent information from the Indiana Judicial Center that showed Indiana having 74 city and town courts. Of these, 39 judges were attorneys and 35 judges were not attorneys.

Judges Mark Stoner, Marion Superior Court (Criminal Division 6), and Judge Peggy Lohorn, Montgomery Superior Court #2, followed up by discussing the strategic plan being proposed by the Judicial Conference. Judge Stoner distributed to the Commission members a chart depicting the current organization of the court structure and a proposal by the Indiana Judicial Conference to simplify the structure (Exhibit B). His prepared remarks are in Exhibit C.

Essentially, the Judicial Conference proposes that all trial courts of record should have the same jurisdiction and that any specialization be done by rules at the local level. This would give courts greater flexibility in dealing with caseloads.

Chairman Bray commented that a bill to establish these jurisdictions might be lengthy because specialized jurisdiction language, which is already in statute, would have to be rewritten. He noted that drafting rules would prevent LSA from including a series of "notwithstanding" sections and with conflicting sections in statute.

Judge Lohorn spoke about the need to improve the professionalism of the courts. She said that when the Judicial Conference surveyed judges about how to improve the professionalism of the courts, the responding judges overwhelmingly wanted all judges to be attorneys. She told the Commission that, currently, all judges are required to attend 36 hours of continuing legal education every three years and that the Judicial Conference proposes to increase the number to 54 hours over three years.

She said that it was important that city and town court judges be attorneys because even city and town court judges need to have a good working knowledge of several portions of both state and federal statutes and when they are judging truck violations.

Judge Lohorn told Senator Lanane that any legislation proposed in the 2011 General Assembly would affect city and town court judges.

When asked about residency requirements, Judge Lohorn said that city and town court judges have to live in the same municipality in which they are judge. Depending on the number of attorneys who live in a city or town with a court and the size of the community, the local community may have a difficult time finding an attorney.

Rhonda Cook representing the Indiana Association of Cities and Towns, introduced three city and town court judges who opposed requiring all city and town court judges to be attorneys. Ms. Cook told the Commission members that IACT supports home rule and feels that city and town courts are currently performing well. She also said that being an attorney doesn't mean the judges are necessarily professional.

Judge Susan Lieb of the Mooresville City Court told the Commission members that she is a

practicing attorney and indicated that the Indiana Constitution requires that all officers in a political subdivision reside in the town. She also indicated that, currently, some of these towns have no attorneys in the towns. She concluded that if an attorney does not reside in a city or town, that municipality will not be able to have a court.

Judge Mark Peden of the Martinsville City Court told the members that he is also a practicing attorney. He indicated that he gets a request for a jury trial about once every three years. He told the Commission members that the Judicial Conference did not seek the opinions of city and town court judges before making this proposal. He also expressed concern that smaller communities won't be able to have judges if no attorneys live there.

Judge Kenneth Pierce, Jeffersonville City Court, told the Commission that he is also a practicing attorney. He told the Commission that in Jeffersonville, citizens have a problem of accessibility because the courts of record in Clark County have large caseloads, making it hard for them to get their cases heard in a timely manner. He gave the example of one superior court in Clark County having a six-week trial. His court was able to dispose of at least 200 smaller cases during this same period. He said that he considered city and town court judges who are nonattorneys to be apprentices.

Judge Pierce also indicated that if a bill that required all city and town court judges to be attorneys would pass, he would favor a grandfather provision to permit current judges who are not attorneys to remain in office. He also cited these reasons to retain city and town courts in the current state:

- these individuals have been elected as judges by the local population;
- individuals can have the case tried in the court of record as an entirely new case;
- city and town courts can resolve most of these small cases quickly; and
- the prosecuting attorney has discretion in whether the cases should be filed in the city and town courts.

Judge Bradford responded that he did not think it was appropriate policy to have apprentices and said it was better to have judges who are attorneys in these positions. He indicated that if the city or town court cannot have a law-trained attorney, he didn't think the city or town should have a court

Chairman Bray indicated that the next item on the agenda was the Automated Record-keeping Fee. He recognized Justice Frank Sullivan to speak on the topic. Justice Sullivan proposed increasing the fee from the current \$7 to \$10 from July 1, 2011, to June 30, 2015, when the fee would become \$7 again.

Review of Preliminary Drafts²

Chairman Bray stated that the Commission would consider legislative proposals discussed at earlier meetings.

PD 3058: Unified Circuit Courts in Clark, Henry, and Madison Counties – Chairman Bray called for PD 3058 to be distributed. PD 3058 would make the circuit and superior courts in Clark, Henry, and Madison Counties unified circuit courts. The Commission members discussed whether to include Clark County in the bill because of some objections by the circuit court judge. Judge Vicki Carmichael, Clark Superior Court, told the members that the four judges in Clark County had been discussing this issue in several previous meetings in which there had

²Note: All preliminary drafts will be posted on the Commission on Courts website.

been unanimous agreement. She told the Commission members that the judge's concerns about case allocation would be addressed by changing the local rules.

The Commission members voted 8 to 0 to recommend PD 3058 to the 2011 General Assembly.

PD 3318: New Court Officers in Allen, Bartholomew, Hamilton, Johnson, and Warrick Counties – Chairman Bray called for consideration of PD 3318, which adds two judges and three magistrates to the state's payroll.

The Commission members voted 8 to 0 to recommend PD 3318 be introduced during the 2011 General Assembly.

The Commission members prioritized the need for new court officers by the 2009 weighted caseload study if there were insufficient funds to pay for all new judicial officers.

The priorities are in the following order:

1. New Johnson County Superior Court
2. Allen County Conversion of Title IV-D Hearing Officers to Magistrate
3. New Hamilton County Magistrate
4. New Warrick County Magistrate
5. New Bartholomew County Superior Court

PD 3227: Extending the Commission on Courts – Under current law, the Commission on Courts will expire in June 30, 2011. PD 3227 will extend the life of the Commission on Courts to June 30, 2015. PD 3227 passed by a show of hands, 7 to 1.

PD 3438: Possession of Handguns by Judicial Officers – Chairman Bray distributed PD 3438 for the Commission's consideration. This bill provides that certain judicial officers may not be prohibited from possessing a handgun on land or in buildings and other structures owned or leased by a political subdivision.

During discussion about the bill, Staff Attorney Tim Tyler indicated that there is no statute that specifies all the places a law enforcement officer may carry a firearm and no statute that specifies a judge may carry a firearm in the same places a law enforcement officer may carry one. There is a provision in the handgun licensing law that allows law enforcement officers and judges to carry handguns in public without first obtaining a license to do so. But while the statute that prohibits firearms on school property or school buses exempts law enforcement officers from the prohibition, it does not exempt judges because judges are not considered law enforcement officers for purposes of that statute.

A motion to recommend PD 3438 for introduction in the 2011 General Assembly was defeated by a 3-to-5 vote.

PD 3437: Require City and Town Court Judges Be Attorneys – Senator Bray brought PD 3437 to the Commission for a vote. This bill would require city and town courts be attorneys in good standing.

The Commission recommended that this bill be introduced to the General Assembly by a 7-to-1 vote.

PD 3436: Automated Record-Keeping Fee – The Commission members considered PD 3436, which would increase the Automated Record-keeping Fee from the current \$7 to \$10, beginning in July 1, 2011, and lowering again to \$7, effective June 30, 2015.

The Commission recommended that PD 3436 be introduced during the 2011 General Assembly by a 7-to-1 vote.

Renter's Safety and Termination of Residential Leases – The Commission members examined HB 1073-2010, which was reprinted on January 26, 2010. As written, this bill would permit renters to terminate their rental leases after a court hearing. The members discussed the issue of permitting a contract to be broken without a court considering the merits. Rep. Pierce indicated that another version of this concept that the House of Representatives considered would have permitted renters to terminate their leases if they had an official police report that documented that renters were victims of certain crimes.

After discussion, Sen. Randolph proposed tabling the issue because of too many unresolved issues. His proposal to table the issue was approved by a voice vote.

Standardized Jurisdiction (No PD) – Chief Justice Shepard told the Commission members that standardized jurisdictions in all courts of record would make reassigning workload between courts much easier and would not require judges to have to propose legislative changes in order to get the same thing done. He also indicated that recent statutes that have been drafted have provided a standard jurisdiction, but the older sections of the code are more likely to assign specific jurisdictional matters to different courts. He told the Commission that the courts could run a cleaner ship if uniform jurisdiction language could be enacted. Given that county courts no longer exist in Indiana, it was suggested that the law establishing county courts be repealed instead of being amended as part of any legislation concerning uniform jurisdictions.

The Commission members endorsed this concept, but no specific legislative language, by an 8-to-0 vote.

Review and Approval of Final Report Draft – The Commission members tentatively approved the final report as distributed and updated, by a vote of 8 to 0. Mark Goodpaster told the Commission members that after he prepares the minutes of today's meeting, he would update the final report to reflect today's votes and would forward the draft of the final report to each member. After the Commission reviews the minutes and the draft of the final report, Mr. Goodpaster said he would make any appropriate corrections and edits and will post the final report on the Commission on Courts website.

The meeting was then adjourned at 3:45 p.m.

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6860
BILL NUMBER: SB 211

NOTE PREPARED: Jan 17, 2009
BILL AMENDED:

SUBJECT: City and Town Courts.

FIRST AUTHOR: Sen. Randolph
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Judges Required to be Attorneys* – It requires the judge of a city or town court to be an attorney in good standing admitted to the practice of law in Indiana. It allows a person who is: (1) a judge of a city or town court serving on June 30, 2009; and (2) not an attorney in good standing admitted to the practice of law in Indiana; to continue to serve only for the remainder of the person's term.
- B. It repeals a superseded provision concerning qualifications for town court judges.
- C. *Change in Jurisdiction* – It provides that: (1) the city courts and town courts in Lake County; and (2) the city court in a second class city; have original and concurrent civil jurisdiction with the circuit court and superior courts of the county in which the city and town courts are located over: (A) civil actions in which the amount sought or value of the property sought to be recovered is not more than \$6,000; (B) possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed \$6,000; and (C) emergency possessory actions between a landlord and tenant.
- D. *Courts of Record* – It provides that a city court in a second class city is a court of record.

Effective Date: July 1, 2009.

Explanation of State Expenditures:

Explanation of State Revenues: *Change in Jurisdiction* – If more cases are filed in these city and town courts, then the state General Fund would receive less revenue from court fees and the local units of government. A specific revenue loss could not be determined since the shift in the number of cases from trial

courts to the 17 city and town courts could not be predicted. (See *Explanation of Local Revenue.*)

Explanation of Local Expenditures: Judges Required to be Attorneys – Of the 73 city and town courts in 2007, 44 had judges who were not attorneys and 29 had judges who were. The average salary of judges who are attorneys (referred to as attorney judges) is more than twice as high as the salary of those judges who are not (non-attorney judges). Consequently, the expenditures of city and town courts with non-attorney judges could likely increase if they are required to be attorneys.

<u>Background of Judges</u>	<u>Number of Courts</u>	<u>Average Salary</u>
Not an Attorney	44	\$18,505
Attorney	29	\$37,969
Total / Average	73	\$26,237

Courts of Record – This bill would affect the jurisdictions of nine city courts which are located in either second class cities (between 35,000 and 599,999 in population).

In CY 2007, these courts reported to the Division of State Court Administration that roughly 93% of the cases filed in their courts were either misdemeanors, miscellaneous criminal, infractions, or ordinance violations.

Misdemeanors	Miscellaneous	Infractions	Ordinance Violations	Civil
21,301	224	61,008	18,963	8,073
19%	0%	56%	17%	7%

Courts of record require court reporters to make a record of all court proceedings. In 2007, five city or town courts reported having court reporters on their staff at an average expenditure of \$17,600.

Change in Civil Jurisdiction – Increasing the civil jurisdiction of these nine courts might require them to hire additional staff if they receive more case filings. Generally, the estimated time needed to dispose of civil cases is more than for misdemeanors, infractions, and ordinance violations, as shown in the following table.

Misc. Criminal	Misdemeanor	Infractions and Ord. Violations	Civil Plenary	Civil Collections	Civil Tort	Civil Miscellaneous	Small Claims
18	40	2	121	26	118	87	13

Explanation of Local Revenues: Courts of Record and Change in Jurisdiction – If more cases are filed in these city and town courts, then the general fund of cities and town courts and the general fund of the county in which the court is located would receive more revenue from court fees.

A \$100 civil costs fee is assessed when a civil case is filed in either a trial court or a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

The state General Fund receives a smaller share of revenue from the civil costs fee when cases are filed in city and town courts rather than in trial courts. [The state receives all of the revenue from the other fees mentioned above.]

The following table compares the distribution of court fee revenue depending on whether a case is filed in a trial court or a city or town court.

	Trial Courts	City or Town Courts
State Share	70%	55%
County Share	27%	20%
City or Town Share	3%	25%

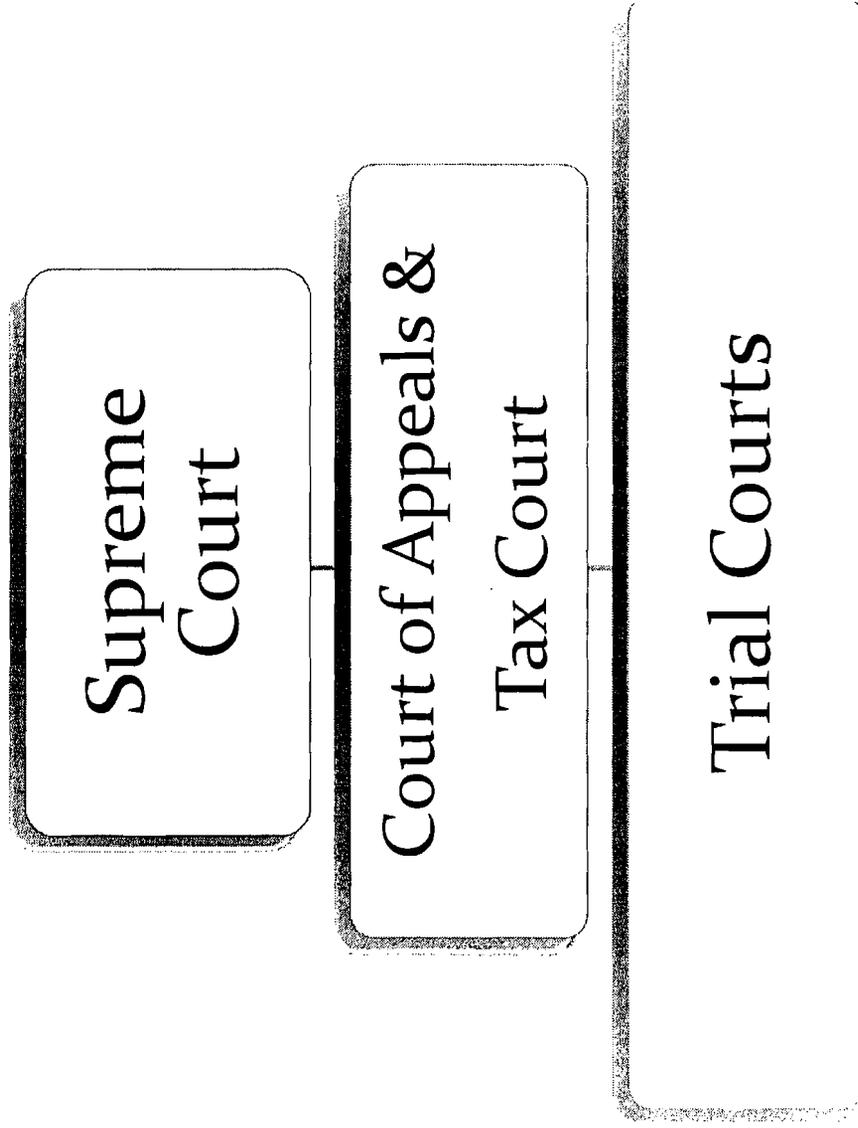
State Agencies Affected: Division of State Court Administration.

Local Agencies Affected: City courts in Muncie, Elkhart, Noblesville, Carmel, Greenwood, Hammond, Gary, Anderson, and Terre Haute.

Information Sources: Division of State Court Administration, Indiana Judicial Center, Indiana Code.

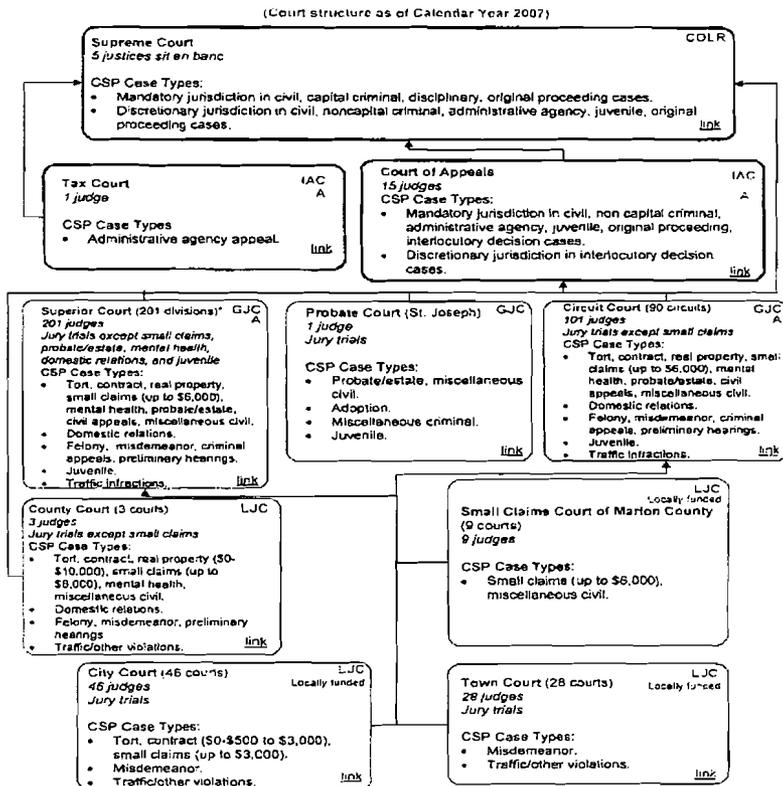
Fiscal Analyst: Mark Goodpaster, 317-232-9852.

The New Structure

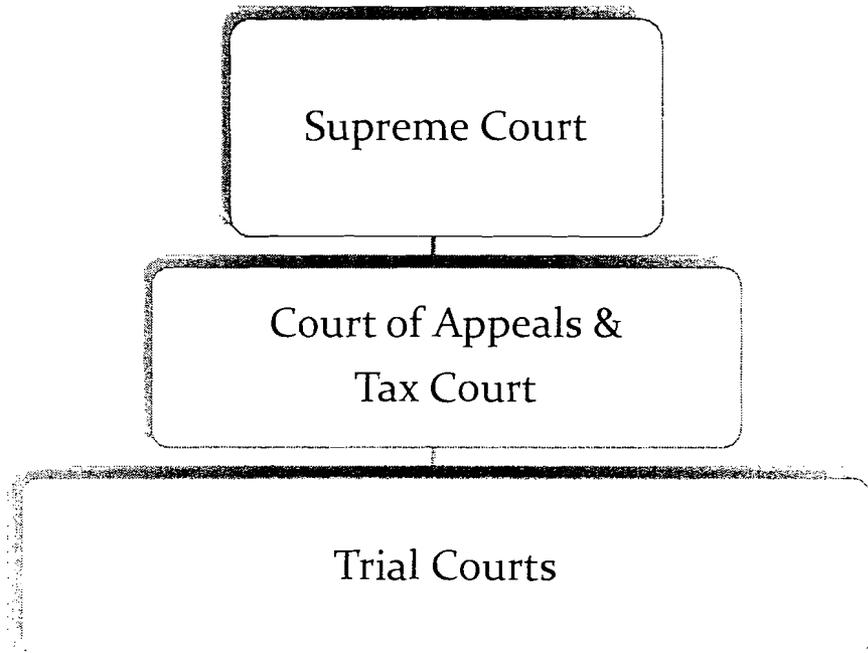


You Choose

The Old Way



The New Way



Members of the Commission:

I am grateful for the opportunity to address you today. What Judge Lohorn and I are presenting is a direct follow-up to the presentation made by my colleague and fellow co-chair of the strategic planning committee, Judge Terry Shewmaker from Elkhart County who spoke to you back in July. One of the points Judge Shewmaker addressed was the need to make fundamental changes to the structure of our trial courts from a 19th century agrarian model to one more reflective of the advanced technology needs of the 21st century. This is particularly appropriate in a time of economic downturn where courts can anticipate increased caseloads while receiving fewer taxpayer dollars. It is also appropriate for a new generation of computer literate, more caseload management savvy judicial officers who want to manage their caseloads professionally and efficiently to better serve the taxpayers.

As a basic review, I want to refer to two handouts. One reflects the current organizational structure of the Indiana's court system. By anyone's account, it is confusing and complex, and is almost impossible to explain to the average citizen. It has been criticized by scholars and political scientists. Professor Henry Glick wrote in his book *Courts, Politics and Justice* that Indiana's system is one of the least efficient, most confusing and archaic systems in the country. This chart represents how we have done business for the last 150 years. In the past, whenever we needed a new court, or encountered a problem which required a judicial solution, we came to our friends in the legislature to request piece-meal changes in court structure to address individual problems. The legislature worked with us toward solutions, but, often with the best of intentions, frequently passed legislation with definitions and restrictions which ultimately limits the flexibility of courts to adapt to

changing circumstances and citizen needs. The result is this organizational chart.

The second handout is our proposed structure for Indiana's judiciary. It has 3 simple, basic tiers: a Supreme Court, an intermediate court level consisting of our Appeals Courts and Indiana's Tax Court, and finally Indiana's trial courts. It is easy to understand and explain to the average citizen. This is our long term goal.

To begin this process, we are proposing approval of legislation which would give all trial courts of record the same jurisdiction. You should have copies of three legislative proposals affecting I.C. 33-28-1-2 regarding: circuit courts, I.C. 33-29-1-11 regarding superior courts, and I.C. 33-31-1-9 for probate court. In each instance, we are requesting language which eliminates more restrictive language and grants all courts with the same authority to have concurrent jurisdiction of all civil and criminal cases and de novo appellate jurisdiction for appeals from city and town courts or small claims courts. With these simple proposals, we grant every local court system the flexibility to assign cases as they think best. Courts could assign difficult cases to judges having specific subject matter expertise or proficiencies in caseload management to handle matters in the most expeditious manner possible. If a particular jurisdiction gets overwhelmed with certain types of cases, regardless of case type, local courts will have the authority to transfer cases to even out caseloads so individual judges don't become overburdened. The goal is to give courts the maximum flexibility to handle crises or minor adjustments without coming back to the legislature to ask for specific statutory authorization. Clearly, this would be more efficient and less expensive for the taxpayers and would save the legislature the time and expense of addressing what simply could be a temporary problem.

Finally, this legislation gives courts the flexibility to address inequities in caseloads. We know from the state weighted caseload studies that gross inequities exist between Indiana's courts. There are some courts which handle as many as 15,000 cases annually while other courts, with the same judicial salary and resources, may process as few as 300 cases. Some of this can be explained by the differences in case type handled by the courts, but there are numerous wide disparities between courts in this state. As a judiciary, we must address these inequities and inefficiencies. We owe it to the taxpayers to run our courts with the utmost efficiency without sacrificing the principles of impartial and fair justice for all. If we fail to address these inequities, we run the risk of providing unequal justice for our citizens. Justice cannot vary from county to county simply based on unequal resources.

In asking you to support this legislation, I want to emphasize what the legislation does not require. It does not mean any local jurisdiction has to change their current caseload assignments or operating procedures. For example, it does not mean juvenile courts will no longer exist. They will continue to exist and play a critical role in Indiana's judicial structure. Nor will specialty courts, like drug treatment and mental health courts, be eliminated. They will continue to exist under local rules and governance. They simply will no longer have specific grants of legislative authority which limit their reach and purpose. The legislation does not change how judges are selected for office nor does it affect in any way the constitutional office of the County Circuit Court and the appointments that rest exclusively with that office. It does not affect city and town courts, nor small claims courts in Marion County. It only affects circuit, superior, and probate courts. The city and town courts merit further review and study before the strategic planning committee and State Board of Directors would propose any legislation in

these areas other than the proposal we have made today to ensure these courts have judges who are lawyers in good standing. Finally, and perhaps most important, this legislation does not change funding sources in any way and will not cost the taxpayers additional funds to implement. It simply gives courts for maximum flexibility to run their operations in the most efficient manner in a way that will hopefully create taxpayer savings.

I would urge the commission to adopt these proposals and am willing to entertain any questions you might have. Thank you.