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Memorandum

To: Members,
Council for Court Excellence Board of Directors
From: Patrick McGlone and Dwight D. Murray, Co-Chairmen
Long-Range Planning Committee
Date: December 8, 2011
Subject: CCE Program Plan for 2012 - 2016

Introduction

This plan, adopted by the Council for Court Excellence Board of Directors on December 7, 2011, is the product of a several-month effort led by an ad hoc Long-Range Planning Committee of the Council for Court Excellence Board. We acknowledge and thank the members of the committee, whose names are listed at the end of this memorandum, for their diligence and commitment to the Council's mission to improve the administration of justice.

The charge to the committee from Board President Earl Silbert was to identify the issues or projects which should become the Council for Court Excellence's top priorities over the next five years, and to submit its report to the Council's Board of Directors for final decision at the semi-annual meeting scheduled for December 7, 2011. The committee was further asked to engage the entire membership of the Council for Court Excellence, the bench, and other key stakeholders in the process of identifying these top priorities.

The steps we have followed are:

- An internal scan of issues by the Planning Committee and staff;
- External solicitation of views by survey of the Council's Board and stakeholders from the legal, business, civic, judicial, and government communities, with 145 surveys returned;
- External solicitation of views by personal interview of fifteen key stakeholders from the courts, the government, and the nonprofit community; and
- Convening a planning retreat September 26, 2011, attended by sixty-seven Board members and external stakeholders.

We emphasize that the major program themes and projects proposed below would occupy most, but not all, of this organization's energy and resources over the next few years. We would continue the Council's commitment to community education outreach, and the Council would also remain entrepreneurial and responsive to emerging issues and opportunities to improve the administration of justice.



Council for Court Excellence Major Program Priorities

The Council for Court Excellence Board of Directors adopts the following four major program priorities for the years 2012-2016:

- Criminal Justice
- Access to Justice
- Court Efficiencies and Effectiveness
- Youth in the Legal System

Each of these program priorities is elaborated on below, beginning with the Council's rationale for selecting the topic as a priority. Possible projects follow, with the initial priority projects listed before additional projects in each program area. All of the projects listed were identified by one or more of the research methods the committee used: survey, interview, and retreat.

The Long-Range Planning Committee does not assign any priority order among the four program priorities nor among the projects labeled as "additional projects."

The Council's capacity during the next five years to undertake the projects identified is governed by the availability of both financial and human resources. We may not be able to do everything in this ambitious list, but the Long-Range Planning Committee believes each of the potential projects listed has significant support within the Council's Board and in the broader community.

► Criminal Justice

The DC community remains very interested in the operations of the city's criminal justice system. Surveys and interviews continue to generate suggestions for learning about and improving the system. In addition, although the crime rate is significantly reduced in the District from 20 years ago, high-profile arrests and criminal trials still draw attention to how the court system responds to crime. Irrespective of whether they have direct roles in the system or not, people still support making improvements in the quality of the system. This is true whether the priority is public safety, justice and fairness, the rights of criminal defendants, the rights of victims of crime, or some combination.

Several changes have taken place since 2006 when the last long-range planning process took place. The balance of the District's population among the various demographic groups has shifted; the District has had five years of experience after the enactment of the Criminal Record Sealing Act of 2006, which dramatically changed the law governing the sealing of criminal records in the District; criminal prosecutions in Superior Court remain at levels more than 50% below those of twenty years ago; and much more is known about the hurdles faced by persons with an arrest or conviction record. Each change provides an opportunity to better understand how the criminal justice system operates, how it achieves fairness, and how it impacts individual lives.



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Minorities in general and Latinos in particular, according to anecdotal evidence, remain underrepresented on jury pools, as they have been for years. Many people have petitioned the court to expunge all or part of their criminal records in the hope of improving their prospects as applicants for jobs, education, and housing. Statistics showing the outcomes and the processing of DC Superior Court cases have been of limited availability, making it more of a challenge to fully understand on a macro level how cases get resolved.

The Council for Court Excellence has a long history of productive activity in criminal justice and is well-positioned to increase the community's understanding of each of these significant developments and to explore and propose improvements to other fundamental aspects of the system's functioning.

Top Priority Projects

1. CCE should undertake a project to assess the appointed counsel system for criminal cases in the DC Superior Court. Individual attorneys' qualifications are reviewed during the process of forming an approved panel of attorneys, but there is no formal evaluation of whether quality legal services are being provided. Issues warranting consideration include the case-assignment system, the balance of caseload between Criminal Justice Act and Public Defender Service attorneys, whether the panel attorneys who accept court appointments in criminal cases are independent of the judiciary, whether the appointed attorneys provide quality representation, whether there should be a system for evaluation by both clients and judges of defense attorneys' performance, whether practice standards should be adopted, and how proper compensation for appointed counsel should be determined. Any study should revisit the several DC Bar and other local and national studies of appointed counsel systems that have been done over the past thirty years.
2. CCE has released a report with findings and recommendations to reduce barriers to employment for people with a criminal record. The Council should continue its efforts on this Reentry topic to advocate implementation of the recommendations, but should also focus on other issues that influence the successful reentry of former offenders. Such issues could include the implementation of the Criminal Record Sealing Act; the availability of education, training, and substance abuse services in prison; the ability of prisoners to participate in ongoing family and civil litigation during their incarceration; the post-prison community supervision process; and others.

Additional Projects

1. CCE is currently studying a variety of case-processing issues related to the multitude of low-level, non-violent misdemeanors included in the DC Code. This work should continue and result in recommendations to improve the effective administration of justice.



2. CCE could undertake a focused study of the DC criminal justice system's structural response to the mandate to make "reasonable accommodations" to support persons with mental illness or disability within any agency in the justice system.

► Access to Justice

Improving the access to and quality of justice afforded to vulnerable populations is critical to courts' overall success in delivering and ensuring transparency and equality for the community they serve. The DC Access to Justice Commission has reported that the majority of low-income residents are not aware of their legal rights, and those who are aware often do not know where to go for assistance. Improving the community's access to justice has been part of the CCE mission since its founding. Much remains to be done, both to provide information on legal rights and to increase residents' ability to exercise their legal rights.

Eighty-two percent of CCE's survey respondents said that it is important for CCE to address access to justice issues in the coming period, and several respondents suggested some of the projects listed below. CCE's survey and interview respondents cited numerous vulnerable populations who could benefit from improved access to the justice system: non-English speaking minorities and immigrants, mentally impaired individuals, self-represented litigants, the disabled, the homeless, low-income tenants, and those affected by the foreclosure crisis.

Top Priority Project

1. CCE should explore opportunities to increase the availability of non-lawyer assistance to otherwise-unrepresented individuals, while also shielding such individuals from unscrupulous or incompetent providers who are not subject to Bar discipline. Such assistance might include guides to legal rights and responsibilities as well as other educational initiatives. As one example, there is a significant issue of "notario" fraud against immigrants that warrants increased education to courts about recognizing it and to immigrants about protecting themselves against it. There is also reportedly a significant need for elder law assistance. CCE should partner with other organizations that are pursuing these issues to ensure CCE's efforts address unmet needs.

Additional Projects

1. Ensuring language accessibility in all courts in the District of Columbia is an increasing challenge given the proliferation of native languages among immigrants in the Washington region. Partnering with other organizations that are working on aspects of this issue, CCE should explore regional solutions to improve the availability of interpretation services.
2. CCE should assess and propose improvements to the debt collection process in DC Superior Court in both Small Claims and Calendar 18, to ensure fairness and due process especially for unrepresented parties.



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3. CCE should assess the apparent underrepresentation of Latinos and other minorities on jury panels and propose methods to increase their participation if the assessment supports that such groups are underrepresented.
4. CCE should publicize to the general public the processes for selection and appointment of DC Superior Court Magistrate Judges and for making and resolving complaints about Magistrate Judges.

► **Court Efficiencies and Effectiveness**

Conducting studies and making recommendations to improve the efficiency and effectiveness of the local and federal courts, with an emphasis on civil justice and broad court management issues, is some of the most important work the Council for Court Excellence has done in support of its mission to improve the administration of justice in the District of Columbia. Yet there is always more work to be done in this area.

Effectiveness and efficiency of the Courts was a recurring theme in interviews conducted of key judges and other officials connected with the justice system, as well in survey responses. For example, 46% of those surveyed responded that the quality and timeliness of the local and federal judicial system is most important, and 83% said it is important for CCE to continue this work.

Many respondents proposed specific focus topics, including some of those listed below. Among the most often mentioned is work to support the more speedy resolution of motions and cases, advancing the use of technology to provide ready access to the public, and improving mediation programs.

Whether reporting on best practices from other jurisdictions, surveying court users, studying current practices, or recommending possible improvements, CCE has many opportunities to provide concrete contributions to the system overall.

Top Priority Projects

1. CCE should participate in the DC Superior Court's current assessment of the Judge in Chambers process, to identify ways to improve the system, which is currently plagued by long and unpredictable waits to be heard, even with an appointment. Such assessment should include comparison to practices in other jurisdictions, identification of ways to improve scheduling and efficiency without impairing due process, and ways to provide guidance about the system to the public and the bar.
2. CCE should study the DC Superior Court's Multi-Door Dispute Resolution Division to identify ways to improve the utility and quality of its mediation services. Among the issues to be studied should be whether a panel system of experienced mediators trained in particular areas of expertise would be preferable to the current system of using generalist volunteer mediators. The study should also revisit relevant recommendations made in



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CCE's 2002 report *Superior Court Success Story: Civil Case Reform in the District of Columbia*.

3. CCE should analyze various options for increasing the capacity of the DC Court of Appeals to reduce the overall time on appeal which, despite improvements, continues to be unacceptably high, and then make and pursue appropriate recommendations. Over the past 20 years, the Court of Appeals' caseload has increased 4%, while that of the Superior Court has decreased 50%. CCE's analysis should include comparison with other state-level judicial systems that, like ours, has no intermediate court of appeals. The analysis should also include all steps in the process beginning with the notice of appeal.

Additional Projects

1. CCE should continue to advocate for increased transparency of court performance data from all segments of the DC Courts. The Superior Court has published standards that set time goals for resolving each type of court proceeding. The public has a right to know how current performance compares to each stated goal. The public also has a right to know the aggregate outcomes of criminal and juvenile cases: how many dismissed; how many resolved by guilty plea; how many resolved by trial; how many trials result in acquittal or conviction; how many adults found guilty are sentenced to probation, or jail, or prison; how many juveniles found involved are sentenced to probation or committed to DYRS; and so forth.
2. CCE should partner with the DC Superior Court, and perhaps the US District Court, to offer judicial training on commercial law topics.
3. CCE should study the Office of Administrative Hearings, established in 2004 at CCE's recommendation, including the role of its judicial nomination commission, and should identify any areas where improvements are warranted to enhance the quality of OAH's service to the public.
4. CCE should continue to advocate for advances in technology in the DC Superior Court, including improving and then extending e-filing capacity, providing electronic access to court dockets, and enabling pleadings to be downloaded. CCE should assist the court in appropriate ways to make such advances possible.

► Youth in the Legal System

Recent events, including high-profile crimes committed by children, have maintained attention on the juvenile justice system. Much public debate has occurred concerning such issues as the proper balance between punishment and rehabilitation of juveniles committed to the juvenile system, whether enough juvenile offenders are in secure confinement, and what other contacts juvenile offenders have had with the District's social services providers.



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The responses to the Council for Court Excellence's long-range planning survey, however, document that the interest is not confined to just the juvenile justice system: survey respondents ranked the child protection and neglect system and the juvenile justice system as the highest-priority issues for CCE's next five years. Eighteen of the sixty-five narrative responses to a question asking for specific issues that CCE should address mention youth in various parts of the justice system.

The quality of services that the courts and executive branch agencies provide to youth in relation to legal proceedings has a direct effect on the lives of the involved children, their families, and the public's confidence in security. The speed and efficiency with which matters such as temporary or permanent custody are decided, the skill with which a child's psychological or special education needs are identified, and the effectiveness of specialty courts in dealing with issues relating to youth are all issues which affect the larger community.

Further analysis might be undertaken of the operations of the relatively new Department of Youth Rehabilitation Services, the functions of agencies which supervise juvenile offenders in the community, the speed with which the courts resolve family court cases, including appeals, and the Superior Court's implementation of the "one family, one judge" policy as a method of coordinating a family's contacts with social service providers and the civil and criminal legal systems.

Top Priority Projects

1. CCE should study and report on how truancy is handled in the District and what policies and procedures might reduce truancy, with a focus on the roles of the Metropolitan Police Department, Office of the Attorney General, the Child and Family Services Agency, and the DC Superior Court. The District's public schools have a well-documented, chronic high rate of truancy. All national research shows that truancy increases the likelihood of involvement in juvenile crime, and involvement in juvenile crime increases the likelihood of contact with the adult criminal justice system, so the issue of truancy bears directly on public safety, court workloads, and the future economic viability of the District's youth.
2. As it has for the past two years, CCE should continue to advocate for resolution by responsible public officials of the significant public policy issues facing the juvenile justice system. Such issues include whether the District has sufficient secure detention capacity, whether the District should increase its local capacity to serve juveniles who need residential treatment rather than sending them to distant facilities, whether there are evidence-based practices for community supervision and rehabilitation of juveniles that are not being used or used effectively in the District, whether there is sufficient integration and coordination between the Family Court and DYRS in managing the juvenile justice system, and whether the rehabilitation services now being provided by the probation and commitment systems are effective. CCE should use the Superior Court's coming report on recidivism and other outcomes of the juvenile justice system to identify where improvements can be made.



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3. CCE should work with the Family Court to ensure the implementation of practice standards for children's court-appointed attorneys in custody cases. CCE has proposed model standards to the Court.

Additional Projects

1. CCE should identify options for reducing the overall time the District's child welfare system takes to achieve permanent homes for children in foster care. Particular attention should be paid to reducing the overall time to permanency, including any time on appeal, for those foster children whose permanency comes by adoption.
2. CCE should study ways to reduce the reliance on juvenile arrest in school disciplinary cases, and ways to increase the District's capacity to divert appropriate juveniles from formal prosecution procedures.

Members of the Long-Range Planning Committee:

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