

## PURPOSES AND RESPONSIBILITIES OF COURTS

### INTRODUCTION: What This Core Competency Is and Why It Is Important

While the Purposes and Responsibilities of Courts Core Competency requires knowledge of and reflection upon theoretic concepts, their history and development over time, this competency is practical. The Purposes and Responsibilities Competency gives meaning to, in fact properly grounds, day-to-day judicial administration and the other nine Core Competencies. Absent knowledge of the judiciary's enduring purposes and continuing responsibilities, court leaders, both judicial and managerial, can lose their way as they and their court drift among seemingly unrelated issues and demands.

The need for an **impartial** and **independent** judiciary is rooted in the human condition. Life is not or does not always seem to be fair. Neither individuals, corporations, their officers, nor the government always do the right, or even the legally correct, thing. Even when they play by the rules, or honestly think they do, there are conflicts and disagreements about legal obligations, rights, and wrongs. When cases are moved from filing to disposition in such a way to ensure, among other court purposes, individual justice in individual cases and the appearance of individual justice in individual cases -- consistency and predictability in the application of law and procedural rules -- courts resolve ever present private and public conflicts.

Achieving independence and impartiality is, therefore, as complicated as society and as simple as legally right and legally wrong. Pushes and pulls flow from the requirements of the adversarial process balanced against the strength of informal, consensual dispute resolution. Courts reinforce the authority of the state and the legitimate use of force and protect individuals against the arbitrary use of governmental power. The tension between individual freedom and social order is perpetual. First rate court leaders understand there is almost never one truth or one best way to proceed. They thrive on ambiguity and opposite but true mandates. Accomplished judicial administration is an uncanny marriage of incompatibles, a fusion of contradictions.

Court leaders respect the other branches and their leaders because, in our compound republic, each of the branches is necessary in and of itself and acts as a check and balance on the other branches and their leaders. In the words of Madison in *Federalist 10*, "If men were angels, no government would be necessary." And, in a limited government of laws rather than men, Hamilton, in *Federalist 78*, agrees with Montesquieu: "there is no liberty if the power of judging be not separated from the legislative and executive powers."

Purposes and Responsibilities of Courts should never be confused with efficiency or even the constitutional means of the separation of powers, judicial independence, and the inherent powers of the courts. Courts exist to do justice, to guarantee liberty, to enhance social order, to resolve disputes, to maintain rule of law, to provide for equal protection, and to ensure due process of law. They exist so that the equality of individuals and the government is reality rather than empty rhetoric.

Efficient and even effective judicial administration is not an end unto itself. Courts do not exist so that court leaders, either judicial or civilian, can manage them. Rather, courts must be managed well so that judges and others acting in their stead and in their shadows can do justice.

Effective court leaders have a passion for justice and courts as institutions. Whether or not they are formally trained in the law, competent court leaders understand the legal, constitutional, and historical underpinnings of the American judiciary. They know that absent purpose, court management is mere "administrivia." Court leaders take risks in the interest of justice and the courts as institutions.

Competent court managers cooperate with others, but they are tenacious, even stubborn, in their personal service to justice under law. They recognize as well that purposes, separation of powers, independence, and inherent powers demand courts that are efficient and accountable to others, both inside and outside the government. They blend purpose into each and every judicial process, office, activity, and function.

The Caseflow Management Core Competency is at the heart of everyday judicial administration because the core function of courts is to process cases from filing to closure. Leadership is the energy that drives

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courts and court processes. Visioning and Strategic Planning provides for forward momentum and is an antidote to a stagnant status quo. But the Purposes and Responsibilities of Courts is the epicenter of the NACM Core Competencies. All other nine Competencies are defined by purpose. Purposes and Responsibilities of Courts is the reason, the root, and the justification for the practice of Caseflow Management and other technical Competencies. Purposes motivate and inform Visioning and Strategic Planning and give legitimacy to the exercise of Leadership.

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### CURRICULUM GUIDELINES SUMMARY

#### What Court Leaders Need to Know and Be Able to Do

The Purposes and Responsibilities of Courts Core Competency includes five areas, each of which assumes a link between theory and practice; concept and behavior; and idea and application:

- Why Courts Exist
- Courts As Institutions
- Rule of Law, Equal Protection, and Due Process
- Accountability
- Interdependence and Leadership

#### Why Courts Exist

Only the judiciary can definitively determine who is to prevail in the inevitable conflicts that arise between individuals; between government and the governed, including those accused by the state of violating the law; between individuals and corporations; and between organizations, both public and private. The atmosphere surrounding courts and court events is formal and peculiar, because the courts are unique. They resolve disputes by applying the law to the facts of particular cases independently and impartially. When the law is applied to the facts in courts, every party has the absolute right to an arbiter who is independent of the parties to that case and their advocates.

Court processes must reflect established court purposes such as individual justice in individual cases, the appearance of individual justice in individual cases, provision of a forum for the resolution of disputes, the protection of individuals against the arbitrary use of governmental power, and the making of a record of legal status. Individual cases must receive individual attention. The law must be correctly applied to the facts. Regardless of economic or other status, there must be equal access. Everyone who comes to and before the court must be treated respectfully, fairly, and equally. Case processing and the application of the law to the facts in individual cases must be consistent and predictable.

#### Courts as Institutions

When they are impartial and independent, courts earn public trust and confidence as they balance needs for social order and individual freedom in the “ordinary administration of criminal and civil justice.” (*Federalist 17*) Justice requires courts whose ordinary everyday administration reflects the legacy of the Declaration of Independence, the U.S. Constitution, America’s compound republic, and the public’s respect for and voluntary adherence to the law and judicial decisions in individual cases.

Courts are separate from the executive and the legislative branches of government. But, at bottom, the constitutional and statutory basis of their authority dictates interdependency and independence, not autonomy. Competent court managers understand the historical basis for judicial independence, judicial authority, concepts of jurisdiction and venue, and the inherent power of the courts. Whether exercised through management and restrained activism or via adversarial relations with the other branches, the courts self-consciously protect their decisional processes and maintain their distinctive political and administrative boundaries.

Because the **Trial Court Performance Standards** persuasively and thoroughly articulate what courts should accomplish with the resources available to them, competent court leaders know what they say and take them seriously.

#### Rule of Law, Equal Protection, and Due Process

The promise of equal justice under law and the constitutional guarantees of equal protection and due process of law ground day-to-day judicial administration. Courts protect all persons equally without bias or discrimination of any type. This is equal protection. Proper judicial administration demands protection

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of private rights through regular administration according to prescribed rules, processes, and forms. This is due process. Elements of due process on the criminal and civil side include notice, discovery, right to bail, counsel, lawful and regular process, confrontation, cross examination, the right to call witnesses, the privilege against self incrimination, and public and timely resolution, among others.

Court management competency requires an informed understanding of equal protection and due process and their historical evolution from rights first granted by the English king to the Lords of the Realm, to rights now guaranteed to all Americans. Rule of law, equal protection, and due process have profound practical implications. The ends of judicial administration are not autonomy or even judicial independence, but rather liberty, social order, equal access, the equality of individuals and the state, and justice.

### Accountability

Purposes and Responsibilities of Courts require balance between independence and external and internal accountability. Courts do not serve their enduring purposes or continuing responsibilities unless their structure, governance, operations, programs, processes, and performance lead to the reality and deserved public perception that the judiciary is accountable. The justification for court control of the pace of litigation, the tracking and reporting of case disposition times, and adherence to judicial decisions is not merely efficiency. Rather it is the courts' responsibility for the proper use of public money to ensure rule of law, equal protection and due process, individual justice in individual cases, and the appearance of individual justice in individual cases.

Court managers establish, explain, and maintain the court's use of public resources. They report on court performance to the judiciary, the public, and the judiciary's political co-equals. Judges and court staff recognize the public's right to an accountable judiciary, which demonstrates service excellence

### Interdependence and Leadership

*Federalist 51* declares that a "contriving ... interior structure of government ... is ... essential to the preservation of liberty." Contriving interdependency and overlapping power assume on-going relationships and, plainly, conflict. The judiciary's relationships have a distinctive flavor in needed balance between interdependency and responsiveness to others, independence and distinctive boundaries, and leadership of the judiciary, individual judges, and the justice system.

Courts depend on the executive and legislative branches for resources. The judiciary cannot process and resolve even simple disputes without the cooperation of others who have conflicting responsibilities. Courts oversee an adversarial process as the way to truth and justice. Court leaders remain above the fray even as they actively manage cases, work to improve the justice system and court performance, and build public trust and confidence. Judicial communications and interventions are subject to public and governmental accountability. But the judiciary should never be subservient. The judicial voice must be strong and steady, yet modest and measured. The judiciary must lead the justice system in resolving criminal, civil, and family matters.

Advanced courts have leaders who not only know what the enduring purposes and continuing responsibilities are, they live it. Enduring values are acted upon, risks are taken in the interest of justice, and leadership is exercised in the interest of justice and the courts as institutions. Effective leaders are comfortable with ambiguity and with their affirmative responsibility to lead. Absent leadership, courts cannot structure and maintain distinctive relationships. Likewise, leadership allows courts to build and to protect judicial authority. Authority requires understanding and effective communication of the proper purpose behind judicial prerogatives, emoluments of office, legal and administrative processes, programs, offices and activities.

In Hamilton's words, "the judiciary has neither FORCE nor WILL, but merely judgment..." (*Federalist 78*) Judicial administration is a high calling. With their passion for justice and courts as institutions, court leaders motivate others and bring pride to everyday routines and responsibilities. They demand integrity and ethical conduct. They know that the courts integrity must be pure.

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**CURRICULUM GUIDELINES:**

**REQUIRED KNOWLEDGE, SKILL, AND ABILITY**

WHY COURTS EXIST

COURTS AS INSTITUTIONS

RULE OF LAW, EQUAL PROTECTION, AND DUE PROCESS

ACCOUNTABILITY

INTERDEPENDENCE AND LEADERSHIP

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WHY COURTS EXIST
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Courts and only courts can definitively resolve society's inevitable conflicts. When they resolve disputes between individuals; between individuals and the government, including those accused by the government of violating the law; between individuals and corporations; and between organizations both public and private, they do so in ways that preserve the court's independence and impartiality, enduring purposes, and continuing responsibilities. The courts mediate society's interest in opposite but true mandates, in particular the tension between social order and individual freedom.

- Knowledge of accepted purposes underlying judicial process and the management of cases from filing to disposition, the heart of everyday judicial administration: 1) individual justice in individual cases; 2) the appearance of individual justice in individual cases; 3) provision of a forum for the resolution of legal disputes; 4) protection of individuals from the arbitrary use of governmental power; 5) a formal record of legal status; 6) deterrence of criminal behavior; 7) rehabilitation of persons convicted of crime; and 8) separation of some convicted people from society.
- Knowledge of the historical role the courts have played in balancing efficiency, stability, and social order against individual rights; preserving the equality of the individual and the state; bringing law in line with everyday norms and values; establishing the legitimacy of the law; and in guiding the behavior of individuals and organizations;
- Knowledge of the historical context which provided impartial and independent courts as a protection from the abuse of governmental power and as a safeguard of individual rights;
- Knowledge of each and every judge's independent responsibility for case decisions, the essential elements of judicial decision making, and judicial immunity;
- Knowledge of the implications of the court as an institution and judicial decisions as immune from challenge versus the court as an organization and a bureaucracy;
- Ability to maintain judicial and staff awareness that courts were not intended to be popular;
- Knowledge of the perpetual tensions inherent in the Purposes and Responsibilities of Courts including social order versus liberty, the adversarial process versus consensual or efficient case process, and the authority of the state versus the protection of individuals against governmental power.

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COURTS AS INSTITUTIONS
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Impartiality and independence demand courts that are separate from the executive and the legislative branches. But court purposes reflect a rich historical legacy that dictates both distinctive boundaries and interdependency. Competent court leaders understand separation of powers, judicial independence, and the inherent power of the court. Alternative organizational arrangements to maintain the courts boundaries and to permit their effective management are likewise known. Direction provided by the **Trial Court Performance Standards** guides day to day court management.

- Knowledge of the **Trial Court Performance Standards**, their values, and underlying principles: 1) Access to Justice; 2) Expedition and Timeliness; 3) Equality, Fairness, and Integrity; 4) Independence and Accountability; and 5) Public Trust and Confidence;
- Knowledge of the founders' theory, the *Federalist* papers, the Declaration of Independence, the U.S. Constitution and the Bill of Rights, separation of powers, judicial independence, and the parameters and constraints of the inherent powers of the courts;
- Knowledge of Roscoe Pound's 1906 ABA speech, "The Causes of Popular Dissatisfaction with the Administration of Justice" and its profound implications for understanding courts as institutions and everyday judicial administration;
- Knowledge of historical changes in the roles of state and federal supreme courts, intermediate courts of appeal, and trial courts;
- Knowledge of alternative governance structures for courts, including chief judges, judge committees, and joint public, executive, and legislative branch committees;
- Knowledge of alternative structures for organizing courts, cases, and calendars;
- Knowledge of various judicial selection methods and their theoretic and practical impact on the courts and their accountability;
- Knowledge of the jury system and other public participation and presence in the courts;
- Knowledge of therapeutic and restorative justice, current alternative approaches such as problem solving courts and alternative dispute resolution for civil and family cases, and their relationship to court purposes;
- Ability to translate the values inherent to the Declaration of Independence, the Founders Theory, the U.S. Constitution, and the Bill of Rights into everyday practice.

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**RULE OF LAW, EQUAL PROTECTION, AND DUE PROCESS**

Effective court leaders understand and help courts deliver on the promise of the rule of law, equal protection, and due process. They know the theory, the history of the common law, and important concepts such as venue, justiciability, rule of law, equal protection, and due process and their practical implications. All types of cases, their processing, and typical forms and procedures are understood.

- Knowledge of the concept of the rule of law, growth of the common law, the common law adversarial system and other court-developed processes for truth-finding, discovery, narrowing the issues, and doing justice;
- Knowledge of differing legal traditions (civil law, common law, and socialist law) and conflicting concepts of justice;
- Knowledge of the processes by which the law is developed;
- Knowledge of the concepts of equal protection, due process, venue, justiciability, case in controversy, and standing;
- Knowledge of different types of jurisdiction;
- Knowledge of all case types and the basis for organizing disputes in categories, and the processes and procedures that courts use to resolve disputes;
- Knowledge of criminal and civil procedure and differing burdens of proof in criminal and civil cases;
- Knowledge of the essential elements of due process of law in both civil and criminal cases including but not limited to notice; discovery; probable cause; bail; the right to counsel; confrontation; cross examination; the right to witnesses; privilege against self-incrimination; speedy, timely and public disposition of disputes; jury trial; and appellate review;
- Ability to guide the organization and management of the court's structure, administration, procedures, alternative dispute resolution, and traditional case processing by the concepts of rule of law, equal protection, and due process.

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ACCOUNTABILITY
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Courts must be accountable. Accountability provides the rationale for court control of the pace of litigation, the tracking of case disposition times, and adherence to law and judicial decisions in individual cases. The judiciary establishes and maintains its boundaries, but it also assesses and reports on its performance, its use of public resources, and its conformance with its assigned responsibilities and the law.

- Ability to design court structure, programs, processes, and daily operations consistent with the purposes and responsibilities of courts, public needs, and the court's internal and external integrity and accountability;
- Ability to articulate why the courts and their programs exist;
- Ability to find ways to broaden access to justice, to increase the fairness and efficiency of the system, and to decrease public dissatisfaction with the courts;
- Knowledge of our multicultural society, differing cultures, and the public's understanding of and satisfaction with the courts;
- Ability to make courts more understandable, accessible, and fair through application of hardware and software;
- Ability to bring everyday judicial administration and case management in line with the purposes of courts, equal protection, due process, and the public's right to timely and affordable justice;
- Knowledge of why judicial decisions must be carried out as ordered;
- Ability to deliver on the promise of the rule of law, equal protection, due process, and respect for all individuals, at the counter, on the phone, electronically, and at the bench and the bar of the court;
- Ability to develop and use appropriate standards and measures of court performance and to assess and report on court performance internally, to funding authorities, the public, and the media;
- Ability to align court performance, court structure, court operations, and court processes with court purposes.

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INTERDEPENDENCE AND LEADERSHIP
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The “contriving” American constitutional structure gives the judiciary’s relationship with its co-equal partners a distinctive flavor. Court leaders must be both independent and cooperative. They must be above the fray even as they build and maintain boundaries and seek and achieve public trust and confidence. Court leaders have passion for justice and court purposes and responsibilities, and bring pride to everyday routines and jobs. They require ethical conduct and ensure that the court’s integrity is pure.

- Skill in leading the third branch and the justice system and in engaging the judiciary, the public, and the other branches in collaborative problem solving and needed change;
- Skill in working effectively with the leaders of the other branches without sacrificing the judiciary’s independence and impartiality and in drawing the line between judicial autonomy and judicial independence;
- Ability to balance judicial independence, the inherent powers of the courts, and impartial judicial case processing and decisions with the judiciary’s need to cooperate with others;
- Ability to focus staff and judges on issues which will impact the court’s purposes and responsibilities, its core processes, and justice system issues;
- Ability to be committed, passionate, courageous, and energetic about court purposes and responsibilities and the courts as institutions;
- Ability to recruit, hire, and educate staff to maintain the court’s independence, impartiality, and integrity;
- Skill in instilling in court staff an understanding of the role, purposes and responsibilities of courts, how they guide their everyday work, and why court management is a high calling;
- Knowledge of ethics and conflict of interest concepts, regulations and laws that constrain lawyers, judges, and court managers, including the ABA **Code of Professional Conduct** (for lawyers), the ABA **Canons of Judicial Ethics** (for judges), the **Federal Code of Conduct**, and the **NACM Model Code of Ethics for Court Managers**;
- Ability to inspire others in the court family to act and to appear to act with high ethical standards, before, during, and after the court day;
- Ability to lead the judiciary and the justice system and to take risks to fulfill the role of courts and justice.