

ESSENTIAL COMPONENTS

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

Judges do not only consider evidence provided by the parties, rule on motions, and decide cases. Increasingly, information used to make a judicial decision is provided to the court by programs and services annexed to the court and the case rather than by parties to the litigation. Effective courts must be able to accept and use this information and to manage other programs and services ranging from the basic, such as court facilities, clerks and reporters, and court security, to the more specialized, such as child custody evaluations, legal research staff, and indigent defense. These services, programs, and infrastructure constitute the court's Essential Components.

Essential Components greatly impact court performance and the quality of justice. Court leaders must, therefore, understand the need, nature, level of service, and how Essential Components are delivered. Competent court leaders understand and keep pace with the scope and the essence of all such activities, programs, and services and ensure their proper management even if these components are not under the direct authority of the court.

Without effective Essential Components, court performance is compromised and litigants neither feel nor are well served. When aligned with the court's role and vision, and well managed, these activities, programs, and services contribute as much to prompt and affordable justice, equal access to justice, judicial independence and accountability, and public trust and confidence as caseload management, the budget process, human resources, and information technology.

Essential Components are of several types and serve several functions. They are grouped here according to how and when they occur and how they contribute to the court and the judicial process in: 1) case preparation, 2) adjudication, 3) enforcement, and 4) court infrastructure.

Case Preparation: Better prepared cases and litigants mean cases can be presented more quickly and succinctly, reducing use of judicial resources and the cost of litigation and improving the pace of litigation. Better prepared cases can improve the quality of justice and result in a stronger perception that justice is being done. These Essential Components include the gathering and preparation of information to file a case, social interventions on behalf of parties prior to and in support of litigation, representation of some parties to litigation, and assisting parties who cannot afford a lawyer or who choose to file cases without a lawyer representing them.

Essential Components also include programs that identify and gather evidence and information after the case has been filed. These activities both supplement and replace information gathering by the parties and its presentation to the court. This reflects a paradigm shift away from a pure adversarial process to a process that encourages, if not requires, information gathering by a third party neutral working for and being supervised by the court rather than the parties. A faster and less expensive fact gathering process contributes to public trust and confidence as well as more equal justice, especially to the extent it counteracts real and perceived resource and power imbalances between parties.

A related aspect of Essential Components is education of litigants, particularly those who may come to court without lawyers, about how to proceed, what will be expected of them, and what they can reasonably expect from the judicial process.

While such services challenge traditional thinking and the court's managerial skills, neutral fact gathering can contribute to faster, cheaper and more equal justice. These services and programs aim to: 1) reduce litigation costs and time, 2) enhance the traditional processes, and 3) improve the quality of life of individuals and communities.

Adjudication: The judiciary resolves disputes. This can occur a number of ways. In most cases, the parties and their lawyers resolve the dispute. Increasingly, however, others are engaged by the parties and/or are appointed by the court after cases are filed to help resolve disputes without formal judicial processes. Alternative dispute resolution (ADR) such as mediation and arbitration, or use of masters or hearing officers supplements, enhances and even replaces traditional adjudicatory processes for civil cases. New approaches to criminal and other litigation include problem solving courts such as

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drug courts, community courts, mental health courts, and teen courts. These programs may or may not be part of the court and may be arranged by the parties and their lawyers with or without court involvement.

If none of these approaches are used, or they are not successful in resolving the dispute, parties resolve their dispute through the traditional adversary process, up to and including trial. The traditional process also includes functions and activities that support and facilitate completion of hearings and trials. In many cases, the parties are entitled to a jury trial, so there must be a program that provides qualified trial jurors to courts. Parties or witnesses may not understand English sufficiently to allow them to understand, much less to participate meaningfully in the judicial process, so interpreters must be provided.

The traditional process includes reporters and clerk staff who facilitate the process and “make the record” of the court proceedings -- what the court heard and decided. This includes the documents and exhibits that form the court’s file and which contain the court’s decision, and the verbatim record, electronic or paper, of what was said in court. The record not only provides the record of what happened, it is the basis for appeals and allows the public, often through the media, to exercise their right to open public proceedings, and to hold courts and judges accountable.

Enforcement: When, as it is often true, court orders and judgments are not self-executing, courts and their surrogates must take action to ensure compliance. Probation, fine collection, and child support enforcement are the obvious examples of these types of Essential Components. These mechanisms recognize that often one or more parties do not understand or have no incentive to implement the court’s decision. Absent court intervention, some parties decide not to comply with court ordered remedies, whether equitable or monetary. This undermines the rule of law and erodes public trust and confidence in the judiciary.

Court Infrastructure. Essential Components also encompass the court’s facilities, equipment, communications, court security, and the movement of prisoners to and from and in the courthouse. The existence, location, arrangement, efficiency, and usability of court facilities significantly impact the level and quality of court services as well as the efficiency and effectiveness of court and clerk of court staff. These concerns must be addressed when designing or remodeling court facilities. Another important aspect of facilities is physical access, as required by the Americans with Disabilities Act (ADA) and related state and local laws and regulations.

Program Management and Evaluation: Many Essential Components operate as a distinct unit or organization. In order to complement and enhance the judicial process, it is important that all of these programs are aligned with and supportive of the role and mission of the judiciary and its many functions and workflows. They must be well managed regardless of who has formal authority. Continuous oversight and evaluation ensure that needed services are present, effective, and coordinated with judiciary and justice system operations and workflows.

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CURRICULUM GUIDELINES SUMMARY

What Court Leaders Need to Know and Be Able To Do

The curriculum guideline areas for Essential Components move from the judicial context in which they operate, through specific groupings of Essential Components based on when they occur in the litigation process and their effectiveness. The five curriculum guidelines areas are:

- Purpose, Role, and Vision
- Case Preparation
- Adjudication and Enforcement
- Court Infrastructure
- Program Management

Purpose, Role, and Vision

Essential Components can support or undermine the judicial decision-making process. They can provide relevant information and services to the litigants and the court, or hinder the judicial process. They constitute much of internal court operations and infrastructure, even though many are not in the courts' budget. In order to integrate Essential Components into court operations, a court leader must know why these programs and services are needed, what they provide, and how they relate to court purposes, responsibilities, and processes. Essential Components support the court's basic roles, purposes and responsibilities, in particular impartial and independent judicial decisions and decision-making processes.

Courts that are managed effectively have a strategic vision for fulfilling the court's roles and responsibilities in their community. The goals and objectives of Essential Components must be aligned with the courts preferred future and vision. New Essential Components often emerge and evolve independently and incrementally, requiring court leaders to stay current with the emerging services and the continual need to align them with the court's purpose, vision, and strategic direction.

Case Preparation

Essential Components facilitate the decision-making process by helping litigants prepare and present their case, both before the case is filed and during initial case processing. These programs contribute to equal justice, especially to the extent they counteract real and perceived resource and power imbalances between parties. Before cases are filed, courts provide assistance to prospective litigants as they prepare a case for filing. In many jurisdictions, the court is also responsible for the grand jury, which reviews and screens criminal charges prior to filing. In a few jurisdictions, a civil grand jury oversees local governmental entities.

Other programs and services gather information that is provided directly to the judge after the case is filed. The information can be evidence relevant to the court's decisions or summaries of the applicable law. Examples include but are not limited to pretrial services, psychiatric and psychological evaluations, drug testing, self-help and assistance programs, legal research, law libraries, and pre-sentence reports. In criminal and some juvenile cases, the Constitution requires the court to provide a lawyer to individuals who cannot afford legal representation to help them prepare, file, and present their case.

Generally these activities supplement, but often they substitute for, information gathering by the parties. This reflects a shift away from a pure adversarial process to problem solving and the gathering of information by a third-party neutral, who reports directly to the court, rather than to the parties to litigation. These Essential Components can increase the quality of justice, reduce the cost of litigation, and speed information gathering when compared to advocates and their competing experts.

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Adjudication and Enforcement

This area includes three categories of Essential Components: traditional adjudication processes, alternatives to adjudication, and enforcement of court orders.

Courts have always included certain essential activities that form the traditional adjudication process or facilitate the taking of testimony or resolution of the case. Essential activities include those associated with making the record of what was said in court (the verbatim record function) and what the court decided (the clerk of court function). Many cases involve a jury trial, so there must be a program that provides qualified jurors when they are needed. If witnesses or parties cannot understand English sufficiently to understand or participate meaningfully in judicial proceedings, qualified interpreters must be provided. When vital Essential Components are missing, court proceedings must be suspended.

Other programs replace, supplement, or enhance the traditional adversarial judicial process. This includes alternative dispute resolution (ADR) programs (such as arbitration, mediation, and settlement programs), as well as problem solving courts (such as drug courts, domestic violence courts, community courts, and teen courts). These programs may or may not be part of the court and may be arranged by the parties with and without court involvement.

Once the court has made an order or rendered a judgment, there are activities and programs associated with the enforcement of the decision. Many, if not most, court orders and judgments are not self-executing. Over time, numerous programs and services have been developed to help with the enforcement of the courts' orders. They range from enforcement of judgment clinics, probation, restitution and fine collection, to child support enforcement.

Court Infrastructure

The physical infrastructure within which the court operates is an Essential Component. There are a number of elements to the infrastructure. The most basic is the court facility itself: courtrooms; jury assembly rooms; offices for court and clerk of court employees, programs, and services; spaces for records management; and public spaces. Physical spaces must adequately serve the people who use them and comply with requirements of the Americans with Disabilities Act. Courts should provide safe work places for both staff and the public, though, for example, separate circulation for court personnel, the public, and prisoners. The environmental aspects of facilities, including heat, light, and air, also affect court operations and outcomes. Security is another Essential Component, including building security, courtroom security, security of in-custody defendants, and of the people who are in the courthouse. Finally, there is the communications infrastructure that must be designed and managed to support the court's telephones, video conferencing, security systems, and information technology.

Program Management

Essential Components must be well managed if the court is to accomplish its mission and make the most effective use of public resources. Many Essential Components have their own staff and internal management structure, some of which lie outside the courts. Court leaders must ensure that all these programs are coordinated with other court and justice system operations and workflows. Whatever their formal structure and accountability, Essential Components must be well managed. This involves cooperation with others, the development and use of management information systems, evaluation measures and systems, and funding and resource development.

Incorporation of Essential Components into the court's management requires court leader understanding of the operations of Essential Components; what programs and services are needed and in place; their effectiveness; and alternative ways to organize them to achieve consistency and alignment with other court and justice system operations. Understanding of alternative service delivery models, basic case management principles, including intake and screening, client assessment, referral processes, and monitoring through technology, staff training, and supervision is critical, as is performance evaluation against reasonable program and service outcome expectations.

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Well-managed Essential Components support court purposes and responsibilities such as rule of law, judicial independence and impartiality, equal protection, due process, societal values such as privacy, and court management values such as efficiency and good customer service. When managed well, Essential Components promote court performance excellence and help maintain and improve public trust and confidence in the judiciary.

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**CURRICULUM GUIDELINES:
REQUIRED KNOWLEDGE, SKILL, AND ABILITY**

PURPOSE, ROLE, AND VISION

CASE PREPARATION

ADJUDICATION AND ENFORCEMENT

COURT INFRASTRUCTURE

PROGRAM MANAGEMENT

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<p>PURPOSE, ROLE, AND VISION</p>

Essential Components must be organized and managed in a way that is consistent with and contributes to the purposes, responsibilities, and role of the judiciary. The court's vision and strategic direction should comprehend and include its Essential Components.

- Knowledge of the Purposes and Responsibilities of the Courts Curriculum Guidelines and how they apply to Essential Components;
- Skill in articulating a preferred future for the court and the justice system that acknowledges and includes Essential Components;
- Ability to design, manage, and evaluate Essential Components that is consistent with and supports the purpose and role of the judiciary;
- Knowledge of the traditional, and evolving, role of judges regarding support services and programs;
- Knowledge of the expanding role of the court from resolving disputes to problem solving by collaborating with other public agencies and the community to better serve litigants and provide justice;
- Ability to monitor the trends generating the need for Essential Components and to respond to the trends that affect program and service expectations;
- Knowledge of how race, ethnicity, and gender differences impact needed Essential Components and service levels;
- Skill to use Essential Components to educate the public about the role and purpose of the judiciary and its performance;
- Ability to manage Essential Components to strengthen rule of law, judicial independence and impartiality, equal protection, due process, judicial accountability, and public trust and confidence.

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CASE PREPARATION

Court leaders oversee programs that assist parties in preparing their case and in gathering information used in the judicial decision-making process. The activities can involve pre-filing case preparation, pre-trial case preparation, gathering information relevant to the resolution of the dispute, and educating parties about the process.

- Ability to identify programs and services supporting preparation of cases is needed in the community served by the court, the ability to find or develop such programs and services;
- Knowledge of the role and objectives of programs that investigate or initiate cases such as children's protection services, the grand jury, and pre-trial services and probation;
- Knowledge of programs and services that provide information to the court on indigency issues, detention alternatives, and jail crowding;
- Knowledge of types of treatment and referral recommendations, and information such as drug testing results provided to problem solving courts and how to organize and manage these services;
- Knowledge about when the court must appoint counsel, supported by investigators and experts when necessary, in criminal and juvenile cases and how to coordinate programs providing adequate representation;
- Ability to establish and manage self-help programs to assist self represented litigants, particularly for domestic violence, civil harassment orders, family law, and small claims cases, and to educate the public about the availability and use of these services;
- Skill to coordinate services providing clinical, forensic, psychiatric, or psychological evaluations of a party's mental state or treatment options in criminal, juvenile, child abuse and neglect, child custody, mental health, probate, and guardianship cases;
- Ability to coordinate legal research provided to judges by research attorneys, whether in-house or contractual;
- Knowledge of probation services that provide the court information about factors relevant to sentencing and sentencing alternatives;
- Knowledge of child advocacy and public guardian programs and services and how to coordinate them with judicial processes;
- Skill in collaborating with community resources and referral programs to help litigants with housing, education, and health needs , and in offering resources to support pre- or post-trial detention alternatives, diversion, mediation, or counseling services for litigants and victims.

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<p>ADJUDICATION AND ENFORCEMENT</p>
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Cases can be resolved through traditional judicial processes, or through alternative dispute resolution (ADR) techniques. Court leaders must be aware of alternative approaches and what is needed to support them. Court leaders must also manage the preparation and maintenance of the court record. Enforcement of court orders is essential to the rule of law and the integrity of the judicial process and judicial decisions.

- Ability to manage court record keeping function to produce a complete, accurate, and timely record of judicial actions and decisions;
- Ability to establish court records management policies and practices, including record preparation, records retention, public access, and privacy protections;
- Ability to organize and manage the creation of the verbatim record and provide the record on appeal, including court reporters and electronic recording (audio and video), in a timely manner;
- Ability to manage a cost-effective program that provides sufficient jurors in a timely manner who represent a cross section of the community;
- Ability to establish and maintain a program that provides qualified interpreters when required;
- Ability to provide services and technology to supporting the presentation of evidence;
- Knowledge of the application of caseflow management principles to Essential Components;
- Ability to integrate ADR programs that resolve cases, such as arbitration, mediation, and settlement programs, and other techniques such as summary jury trials, into court processes;
- Ability to coordinate programs that enhance or substitute for court resolution of some issues in a case, for example, a child custody mediation service;
- Knowledge of probation practices, services, and programs related to sentencing;
- Skill in coordinating sentencing alternatives, including intermediate sanctions, community corrections alternatives, and traffic safety programs;
- Knowledge of follow-up treatment and post-judgment activities of problem solving courts;
- Knowledge of child support enforcement services and programs;
- Ability to collect fees, forfeitures, and other judgments to enforce judgments;
- Ability to develop and manage post-judgment assistance, especially for self-represented litigants, in family law, eviction, small claims, and other cases.

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<p>COURT INFRASTRUCTURE</p>

Court leaders must be able to acquire and effectively manage the court facilities and infrastructure within which the court operates. This includes courthouse security and facilities, how they are used, and their environmental aspects.

- Knowledge of court facility design options and the impact of facilities on public perceptions, access, court performance, people flow, workflow continuity, and staff effectiveness;
- Knowledge of the Americans with Disabilities Act requirements regarding access and use of facilities;
- Skill to direct and to assist program planners and architects in the design of court facilities;
- Ability to determine the appropriate location of court services;
- Knowledge of court facility financing alternatives;
- Ability to identify alternative work practices and physical modifications to improve employee workplace ergonomics, safety, effectiveness, and performance;
- Ability to modify business practices and physical characteristics of the workplace to avoid or alleviate court employee and judicial space concerns and issues;
- Knowledge of security, including the courthouse and its perimeter, courtrooms, and other offices and how to work with others to maintain and improve courthouse and courtroom security and safety;
- Knowledge of prisoner (adult and juvenile) transportation and detention issues as they affect case management, facility, and other needs;
- Knowledge of court communication needs and alternative technologies available to meet them;
- Ability to specify communication needs of the court for telecommunications, information technology, and court security to architects and contractors;
- Ability to serve as an effective liaison to agencies outside the court supplying essential services to the court, such as personnel, fiscal and financial, purchasing, collections, or physical infrastructure and utilities;
- Ability to develop and implement effective security, disaster recovery, and business continuity plans.

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<p>PROGRAM MANAGEMENT</p>

Court leaders must lead, oversee, coordinate, and evaluate Essential Components. This requires an understanding of what services they provide, service delivery model alternatives, funding, and evaluation. Essential Components and other court and justice system operations and workflows must also be aligned with and support the judiciary's purposes and roles.

- Knowledge of the roles, functions, operations, and values of all the agencies, programs, and services that provide the court with Essential Components and their impact on court performance and specific court operations;
- Knowledge of the actual tasks performed by Essential Components;
- Ability to manage Essential Components so as to promote justice values such as independent and impartial judicial decisions, due process, equal protection, fairness, consistency, and predictability;
- Skill in working with others to solve justice system problems such as jail over-crowding;
- Knowledge of alternative service delivery models, including outsourcing and use of volunteers, interns, practicum students, and community service organizations for diverse Essential Components;
- Knowledge of alternative case management techniques and practices used in Essential Component services and programs;
- Ability to use information systems and technologies to support program operations and to link the court and all other aspects of the justice system - juvenile, family, civil, and criminal;
- Knowledge of funding alternatives for Essential Components and which funding models are appropriate for which programs and services;
- Skill in allocating and, when necessary, acquiring needed funding, technology, and other resources needed for effective Essential Components;
- Ability to read and understand accounting reports covering Essential Components;
- Ability to develop relevant measures and measurement systems to monitor and evaluate Essential Component performance, to hold them accountable, as well as to achieve expected outcomes for litigants, including fair, efficient, and prompt case processing;
- Skill to create needed collaborative partnerships among courts, ancillary programs, community services, non-profits, and legislative and executive branch agencies at the state and local level.