



INDEPENDENCE AND ACCOUNTABILITY

The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary.

--JOHN MARSHALL

ISSUE 20: APPROPRIATENESS OF THE JUDICIAL ELECTION PROCESS/CONSIDERATION OF MERIT SELECTION

MAJORITY OPINION

Nationwide, judicial selection for appellate and general jurisdiction courts is accomplished under four generally recognized methods. Eight states, including West Virginia, utilize partisan elections for the selection of all of their appellate and trial judges. Thirteen other states also select their judges by popular election, but on nonpartisan ballots. In sixteen states, judges are chosen by means of a merit selection process involving a nonpartisan nominating commission, typically made up of lawyers and members of the public who investigate and evaluate applicants for the bench. This nominating commission then submits the names of the most highly qualified applicants to the governor of the state for final selection. Five other states utilize gubernatorial or legislative appointment to the bench without a nominating commission. Finally, nine states employ a combination of merit selection and other methods (usually popular election) for selection of judges at

various appellate and trial court levels.

Currently, in West Virginia all Supreme Court justices, circuit judges and magistrates are selected in partisan elections. Supreme Court justices are elected for 12-year terms; circuit judges for 8-year terms; and magistrates for 4-year terms. Family law masters are appointed by the Governor for 4-year terms.

Obtaining qualified, competent, fair and impartial judges is, of course, the central concern under any judicial selection method. The ongoing debate in this State, as well as in other states, focuses upon which selection method best serves this end. The partisan election system now used in West Virginia preserves the electorate's choice of local judges and the Supreme Court justices who serve on a statewide basis. Concerns raised about this method of judicial selection include impartiality problems (real or perceived) arising from the political process when judicial candidates must campaign for a position for which they are ultimately expected to remain impartial. Much of this concern arises from the practice of financing these campaigns through contributions that often come from

lawyers and litigants.

Nonpartisan election of judges presents similar problems, but is considered to remove some of the political aspects from a campaign. Nonpartisan elections for judges are also sometimes criticized because party affiliation is removed from the limited information available to voters regarding judicial candidates. Specifically, because judicial candidates are ethically prohibited from stating their positions on (or "prejudging") particular issues, nonpartisan status further limits the information voters have about a candidate. Proponents of nonpartisan elections believe, however, that party affiliation should be considered irrelevant when selecting judges who are expected to act fairly and impartially.

Merit selection methods eliminate the campaign and related financing issues presented by the elective process. Merit selection is viewed as a screening process where the commission or other body making the initial selections has available a substantial amount of information about each applicant not generally available to the public in a judicial election. This selection method also draws from a larger pool of candidates since many well-qualified applicants are reluctant to engage in the popular election process. Merit selection, however, deprives voters of their right to choose their own judges directly, and still remains a "political" process in the nominating commission as well as in the final appointment decision by the governor or legislature. Retention elections are often used in merit selection states after an appointed judge's initial term, where the voters get to choose whether to retain or reject the appointed judge. Critics of the merit selection/retention election process point out that a sitting judge, whether it be an incumbent

by popular election or by merit selection, holds a substantial advantage, and is not likely to be removed from the bench absent some significant controversy regarding the judge's performance.

A political process is invariably involved in whatever method is chosen for the selection of circuit court judges, whether it be by nominating commission and subsequent appointment or by popular election at the polls. Although each system of judicial selection has its own positive and negative attributes, the current method of selecting judges by the vote of the electorate should remain as the principal method in this State unless and until another selection method is proven superior.

A system of merit selection is currently used on a voluntary basis under Executive Order of the Governor for the selection of judges to fill midterm vacancies. That process utilizes a nominating commission and subsequent appointment by the Governor. This method appears workable and beneficial, and should continue in all vacancies occurring at the Supreme Court level as well as the Circuit Court level.

To ensure the appropriateness of the judicial election process:

- 20.1 The **State of West Virginia** should continue to use the popular partisan election system for the selection of Supreme Court justices, circuit court judges and magistrates.
- 20.2 If a Unified Family Court judge system is created by the **Legislature**, its judges should be selected in the same manner as Supreme Court justices,

circuit court judges and magistrates, that is, by partisan election.

20.3 The **Legislature** should pursue a course of action that would enable it to codify the system of selection and appointment of justices and judges currently utilized on a discretionary basis under Executive Order of the Governor to fill vacancies on the Supreme Court and in Circuit Courts for all midterm vacancies.

Comments on the Commissions Deliberations:
The Commission spent considerable time reviewing and deliberating the Independence and Accountability subcommittee's proposed recommendations. Those recommendations included both a majority and a minority report. The subcommittee's majority report was approved with two exceptions. First, the majority report recommended that judicial candidates (justices, judges and magistrates) be elected on a nonpartisan basis. At the Commission's October 13, 1998 meeting, a large majority of those voting amended that recommendation, 20.1, to read as it does now. Second, the subcommittee's majority report recommended that Unified Family Court judges be selected by a merit selection/retention election system. A large majority of those voting amended the recommendation, 20.3, to read as it now.

The Independence and Accountability subcommittee's minority report included only one recommendation:

20.1m The **Legislature**, by proposed constitutional amendment for voter approval, should establish a merit selection and retention election method

for selection of all appellate and trial court judges in this State. The constitutional amendment should provide for one judicial nominating commission for the Supreme Court of Appeals (and any other intermediate appellate court later created); and one nominating commission for each judicial circuit. Appointment by the Governor to an initial term would be made from those qualified applicants selected by the nominating commission. The appointed judge would then be subject to retention election by majority vote for each subsequent term. If the voters chose not to retain a particular judge, the nomination and appointment process would begin over again.

A motion to amend recommendation 20.1 with recommendation 20.1m was made at the Commission's October 13, 1998 meeting. That motion was defeated by a majority of those voting.

The Independence and Accountability subcommittee's minority report has been filed herein as a dissent to the Commission's recommendations.

ISSUE 20: APPROPRIATENESS OF THE JUDICIAL ELECTION PROCESS/ CONSIDERATION OF MERIT SELECTION

MINORITY OPINION

A minority of the Commission file this dissenting opinion.

Our judicial system is based on the principle that an independent, fair and

competent judiciary will interpret and apply the laws that govern us. In this country, the public debate regarding various judicial selection methods is driven by two divergent values--judicial independence and judicial accountability. While not diametric opposites, each of these values emphasizes different facets of the judicial role. Judicial independence emphasizes the need for effective isolation and separation of our judges from political influences; while judicial accountability focuses on the connection between those who govern and the democratically governed. The method chosen for selecting our judges, therefore, should be the one that best serves the central values of maintaining the independence of the judiciary, under the leadership of judges who are qualified, competent and impartial decision-makers; yet also recognizes that some form of accountability to the people will prevent abuse of judicial powers.

The isolation required by judicial independence is necessary to preserve the unbiased nature of judicial decisions. Such decisions must be based upon the legal merits of each controversy, not personal favor, whim or other prejudicial influences. Judicial accountability, on the other hand, emphasizes the judge's responsibility to society as a whole and its citizens. As with all public stewards, judges should be occasionally called upon to render an accounting of their stewardship. Merit selection of judges with judicial retention elections is the system of judicial selection best suited to keeping in proper balance the vital principles of judicial independence and judicial accountability.

Merit selection is a way of choosing judges that uses a nonpartisan commission of public officials, lawyers and non-lawyers to

locate, investigate and evaluate applicants for judgeships. The nominating commission then submits the names of the most highly qualified applicants (usually three) to the appointing authority (usually the governor), who must make a final selection from the list. Retention elections for subsequent terms of office permit the citizenry to determine whether each appointed judge should continue in office or whether the appointment process should begin anew.

West Virginia is one of only eight states that utilize partisan elections for the selection of all of their appellate and trial judges. Thirteen other states also select their judges by popular election, but on nonpartisan ballots. These methods do not allow for rational judicial selection for several reasons. Elections are premised on the assumption that the public is well-informed about the judicial candidates. In fact, it is common knowledge that, principally due to the nature of judicial campaigns, the public is largely uninformed about judicial candidates, and in many cases must simply rely upon name recognition as the basis for voting decisions. Most incumbent judges are easily re-elected and often run unopposed. Elections also discourage many well-qualified people from seeking judicial office. Many qualified attorneys have a philosophical distaste for politics and political campaigning, and thus refrain from seeking office. Elections also compromise the independence of the judiciary. Judicial officers, unlike other elected officials, should not be governed by political issues and policies. Judges should be left to impartially interpret the laws made by the policy-makers. Finally, with regard to judicial elections, a significant problem is presented by judges who must campaign and seek campaign contributions, often from the lawyers and

litigants who appear before them. These judicial campaigns also interfere with getting court business accomplished during re-election time.

A merit selection and retention system for choosing judges is better for the following reasons:

- a. Merit selection not only sifts out unqualified applicants, it searches out the most qualified.
- b. Judicial candidates are spared the potentially compromising process of party slating, raising money and campaigning.
- c. Professional qualifications are emphasized and political credentials are de-emphasized.
- d. Judges chosen through merit selection do not find themselves trying cases brought by attorneys who gave them campaign contributions.
- e. Highly qualified applicants will be more willing to be selected and serve under merit selection because they will not have to compromise themselves to get elected.
- f. A more diverse bench, inclusive of women and minorities, will be encouraged.

Although no method can completely eliminate politics, a merit selection/retention system does spare candidates from the potentially compromising process of raising money and campaigning. This system gives the public a better-informed voice through

participation on nominating commissions and voting in retention elections. A substantial majority of the states in this country use a system of merit selection for choosing some or all members of the judiciary. In fact, in this State, governors over the past decade have utilized a nominating commission to select qualified appointees to fill midterm vacancies on the trial court bench. While no system of judicial selection is perfect, the merit selection and retention election method is best-suited to balancing the central principles of judicial independence and judicial accountability.

To ensure the appropriateness of the judicial election process, a minority of the Commission makes the following recommendation:

20.1m The **Legislature**, by proposed constitutional amendment for voter approval, should establish a merit selection and retention election method for selection of all appellate and trial court judges in this State. The constitutional amendment should provide for one judicial nominating commission for the Supreme Court of Appeals (and any other intermediate appellate court later created); and one nominating commission for each judicial circuit. Appointment by the Governor to an initial term would be made from those qualified applicants selected by the nominating commission. The appointed judge would then be subject to retention election by majority vote for each subsequent term. If the voters chose not to retain a particular judge, the nomination and appointment process would begin over again.

Commentary: Judges are public officials different than the officials of the other two branches of government--executive and legislative. Judges are not makers of law or policy, but are to impartially interpret the law. Judges must interpret the law without the pressures of day-to-day politics.

There is a high correlation between the amount of money raised in a judicial campaign and election. Judges should not be put in a position of raising money, that often comes from lawyers and litigants, a practice which undermines the perceived and actual impartiality of the judiciary.

The lack of background and significant information on judicial candidates available to voters, coupled with inability of judges to speak to specific issues because of the Code of Judicial Conduct, leads to an uninformed electorate when it comes to choosing judges at the polls. By contrast, a nominating commission under a merit selection system has the ability to carefully screen and investigate the qualifications, competency and fitness of every applicant seeking appointment to the bench.

ISSUE 21: ADEQUACY OF PUBLIC EDUCATION AND COMMUNITY OUTREACH EFFORTS RELATED TO THE COURTS

Much of what the public knows about the courts is gleaned from either media accounts of actual cases or fictional stories of courtroom drama in books, on television and at the movies. A lack of understanding about how the court system works, or worse, misperceptions about how judicial matters are handled, can lead to significant public dissatisfaction with the courts.

Citizens come into contact with the courts at key points in their lives, such as when they are divorced, involved in a custody

dispute, or are a party to civil litigation. Citizens also come into contact with the court system when they serve as jurors. Adequate juror orientation prior to jury duty is critically important so that jurors can fairly and knowledgeably carry out their vital role as fact-finders.

Many different governmental bodies have a role in educating the public about the judicial system.

The State Board of Education requires secondary schools to offer an elective course in government.

The Young Lawyers section of the West Virginia State Bar is in the process of revising and reissuing a basic information booklet on the magistrate court system for the general public and litigants. There is a need for development and distribution of a similar information booklet on civil and criminal matters in circuit courts.

The Supreme Court has developed an Internet website for public access to Supreme Court information. Moreover, the Court recently appointed an Information Services Director to facilitate the flow of information to the public and press, and to develop projects for public education and outreach regarding the courts. Some projects being proposed include: a public education program--Legal Advancement for West Virginia Students (LAWS)--involving local circuit courts and schools, culminating in Supreme Court argument hearings in various locales; production, in association with West Virginia Public Radio, of a week-long series on the State's court system; the update of an informational brochure on the Supreme Court; and the establishment of a regularly held media

day to promote greater understanding among press members regarding the workings of the courts.

To ensure that there is adequate public education and community outreach efforts related to the courts, the Commission makes the following recommendations:

21.1 The efforts of the **Supreme Court** and the **State Bar** directed toward public education and community outreach should be continued. The Supreme Court's LAWS program should be coordinated with the state and local boards of education as an adjunct to the government course offered in secondary schools.

21.2 The **Legislature** and local **courts** should establish and expand parent education and mediation programs statewide.

Commentary: Court-annexed mediation programs are a valuable component of the judicial system, as an alternative means of early and effective resolution of civil disputes, particularly those in the family law area excluding cases involving family violence. There is a need for more public education regarding mediation and mediation programs.

21.3 The **Supreme Court** should design a uniform comprehensive program for juror orientation and then implement it on a statewide basis. Judges and circuit clerks should be trained to provide juror instruction under this program.

21.4 The **Supreme Court** should encourage and assist local circuit courts and magistrate courts to

establish programs to bring students into the local courts, with the aid of each local bar, for educational sessions culminating in mock trial participation by the students.

21.5 The **Supreme Court** and the **State Bar**, including its **Young Lawyers Section**, should coordinate their efforts and develop informational booklets and video tapes for public distribution that explain basic court functions, procedures and operations.

ISSUE 22: RESPONSIBILITY FOR INDIGENT DEFENSE REPRESENTATION

Under the Sixth Amendment to the United States Constitution and under Article 3, Section 14 of the West Virginia Constitution, an indigent person must be provided, without cost, an attorney to represent him or her in the defense of a criminal, juvenile or other case involving significant jeopardy to liberty or due process interests of the indigent individual. In West Virginia, the responsibility for indigent representation is carried out by two methods.

First, the appointed counsel system, utilizing private attorneys, operates in all 55 counties of the State. Approximately 800 appointed counsel and service providers are reimbursed annually by the West Virginia Office of Public Defender Services (PDS) for fees and expenses incurred in the representation of indigents. The PDS office now pays in excess of 28,000 bills per year.

The second method for providing indigent representation is through the Public

Defender Corporation system, that is overseen by the PDS. The Public Defender system operates 18 offices in 15 circuits (involving 23 counties); each office operates as a non-profit legal corporation with its own board of directors. The system provides 102 full-time lawyers and 59 support personnel devoted exclusively to indigent defense.

The total number of cases handled by private appointed counsel and public defenders continues to increase, growing approximately 16% per year. This increase stems from a variety of causes including: significant increases in drug-related cases; increased filings involving domestic violence and child abuse and neglect; and the substantial increase in the number of State Police (over 200 new officers) that has resulted in more arrests.

In each of the past eight years, the Public Defender offices handled cases at the average rate of less than \$200 per case. Private appointed counsel costs have risen yearly over the same period, currently averaging \$545 per case. However, attorneys fees, whether charged by a public defender or appointed counsel, average \$250 or less in almost half (48%) of all cases. Because caseloads have continued to increase dramatically over the past several years, budget shortages of the funds necessary for the payment for appointed counsel are a recurrent problem.

To ensure adequate and cost-effective indigent defense representation, the Commission makes the following recommendations:

22.1 The **Legislature** should consider alternate methods of compensation for appointed private attorneys, such as

flat-rate contracts or part-time employment by Public Defender offices.

22.2 The **Legislature** should establish additional Public Defender offices in the counties most likely to achieve the greatest cost savings and to avoid negative economic impact on the local private bar.

22.3 Because conflicts of interest arise in many criminal cases, so that both the Public Defender office and private counsel must be appointed, the **Public Defender Corporations** in conjunction with **Public Defender Services** should establish a “separate-office method” to keep those cases in the Public Defender office.

22.4 The **Legislature** should establish a pilot project to study the accuracy of self-reported financial information on “client eligibility affidavits” used to determine whether or not an individual is indigent. The results of that program would indicate whether a statewide audit program would result in significant savings because fewer persons would qualify for free attorney representation.

22.5 The **Legislature** should review whether the current list of offenses where indigents must be provided counsel without cost involve some proceedings where appointed counsel is not constitutionally required. If such proceedings are identified, consideration should be given to eliminating them from the statutory list of cases where appointed counsel is

required. Child abuse and neglect and mental hygiene proceedings should not be considered in the Legislature's review.

- 22.6 Under its rule-making authority, the **Supreme Court** should require that circuit and magistrate courts schedule hearings and other court appearances in criminal matters so as to reduce "waiting in court" time that increases costs in appointed counsel cases.
- 22.7 The **Legislature** should adjust penalties with regard to a number of minor offenses so as to avoid possible jail time and, therefore, the right to counsel.
- 22.8 The **Supreme Court** should require that all judges assess costs against all defendants whether or not the defendants are represented by a Public Defender.

Comments on the Commission's Deliberations: In view of the heightened vulnerability and needs of participants in child abuse and neglect and mental health proceedings, the Commission added the last sentence to recommendation 22.5 which removes child abuse and neglect and mental hygiene proceedings from the list of cases the Legislature should consider in its review.

Upon further review of these recommendations, the Commission added recommendation 22.8.

ISSUE 23: ENFORCEMENT OF THE ETHICS CODE

Public confidence in the courts, and the actual effectiveness of the judicial system, is largely dependent upon the ethical conduct and leadership of its judges. The West Virginia Supreme Court of Appeals is required by Article 8, Section 8 of the West Virginia Constitution to use its inherent rule-making power to "from time-to-time, prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof." Under this constitutional authority the Supreme Court "is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement."

Under the current constitutional provision the Supreme Court has no absolute removal authority (except in cases of disability retirement) in disciplinary cases involving judges, but the court does have the authority to suspend a judge for up to one year. Ultimate removal authority should be left to existing methods, including impeachment and the ability of voters not to re-elect a particular judge.

The Supreme Court has established the Judicial Investigation Commission (Commission) for the investigation and handling of complaints against judicial officers including justices, judges, family law masters, mental hygiene commissioners and magistrates. The Commission determines whether probable cause exists to formally charge a member of the judiciary with a

violation of the CODE OF JUDICIAL CONDUCT. If probable cause is found, the Commission either issues a written admonishment to the judge, or in more serious circumstances, the matter is referred for further proceedings before the Judicial Hearing Board. Following proceedings before the Judicial Hearing Board, a recommendation is submitted to the Supreme Court for its final determination of the appropriate sanction, if any.

One of the most problematic complaints heard by the Judicial Investigation Commission arises from actions taken by judicial candidates in conducting election campaigns. These complaints are often not resolved under the Commission's normal procedure until after an election has been won or lost. Consequently, a need exists for the creation of a system to promptly resolve those complaints prior to election day. The establishment of an election committee to deal with charges of judicial election violations in an expedited process would better address campaign conduct complaints.

A second problematic issue involves campaign financing practices in judicial elections, where substantial amounts of money are raised from lawyers and litigants. Campaign fund-raising is a matter of public concern because the practice negatively affects the perception of fairness in the judicial system. However, the current rules of ethics and procedure whereby judges are prohibited from knowing who contributes to a judicial campaign are sufficient safeguards as long as they are strictly enforced. The suggestion of a blind trust procedure for election financing would create more problems than solutions.

Utilization of the highest appellate court as the final arbiter of judicial ethics

complaints is common to virtually every state, and appears to be the most workable solution in view of separation-of-powers issues as well as other practical problems of establishing a panel of persons outside of the judiciary to make findings and conclusions on judicial ethics issues. Therefore, the current procedures for the handling of complaints against judicial officers including justices, judges, family law masters, mental hygiene commissioners and magistrates through the Judicial Investigation Commission, the Judicial Hearing Board and the Supreme Court of Appeals is a workable and effective system in most respects. However, the final sanctions imposed upon judicial officers by the Supreme Court in cases of judicial ethics violations are often too light, and leave the public with the impression that judges are above the law.

To ensure the enforcement of the ethics code, the Futures Commission makes the following recommendation:

23.1 The **Supreme Court** should promulgate rules and procedures for the establishment of an election committee to deal promptly with charges of election violations made against judicial candidates, so that such charges are dealt with in an expeditious fashion prior to elections where possible.

ISSUE 24: ACCOUNTABILITY OF JUDICIAL OFFICERS AND OTHER COURT PERSONNEL

In the process of resolving criminal charges and civil controversies in the judicial system, there will always be perceived "winners" and "losers" in every case. The adversarial process leaves many litigants

dissatisfied with the final judgment. A properly functioning court system cannot provide every litigant with his or her desired final outcome, however, it can be expected to provide a fair and regular process leading to the final outcome.

It is well-documented that when litigants are afforded an opportunity to have their cases heard in the regular course of established procedures with prompt hearings and trials, views of fairness and satisfaction in the judicial process are shared by both the winners and losers. A vital part of this fair and regular process is the justified expectation that judges will render decisions in a timely manner.

One of the greatest public concerns over the operation of the State's judicial system is delay in the judicial decision-making process. Under both the CODE OF JUDICIAL CONDUCT and the RULES ON TIME STANDARDS, the judicial officers in this State are required to conduct case proceedings in a reasonably prompt manner and render decisions in a timely fashion.

Litigants who believe that their cases are not being timely adjudicated have two options: (1) file an ethics complaint against the judicial officer; or (2) petition a higher court for an order to compel the offending judicial officer to proceed with the case. This order is known as a "writ of mandamus." However, the judicial ethics procedures and sanctions, while generally effective under most circumstances, are not well-suited to provide relief when a judicial officer fails to make a timely decision. Moreover, it is unfair to require attorneys or parties in a particular case to either file an ethics charge or a petition for a writ of mandamus when a judicial officer

fails to make a timely decision.

To ensure the accountability of judicial officers, the Commission makes the following recommendations:

- 24.1 In order to provide a better system for enforcement of case processing time standards, the **Supreme Court** should require "exception reporting" of all out-of-compliance cases to the Administrative Office of Courts on a regular basis under a formalized process.
- 24.2 The **Supreme Court** should specifically define time standard violations and promulgate a system of immediate and automatic sanctions to be imposed when judicial officers are out-of-compliance.

ISSUE 25: FITNESS OF PHYSICAL FACILITIES

Many of West Virginia's counties suffer from a lack of adequate court facilities. These inadequacies include insufficient space, poor design for functional efficiency and security; inaccessibility for individuals with disabilities; decentralized locations; and insufficient parking spaces.

Adequate facilities for the fair and prompt administration of justice are a concern not only of judges, lawyers and court personnel, but also of central importance to the citizens of this State whose lives and property are only as secure as the courts which adjudicate and protect their rights. The concepts of efficient judicial operations and public confidence are closely related to the question of facilities. Poorly designed,

cramped or otherwise inadequate courtrooms can markedly reduce the efficiency of court functions, and thereby diminish public confidence in the judiciary. Failure to adequately provide appropriate and well-designed space for supporting judicial personnel can seriously impair the competency of the courts to resolve issues properly.

The cost of designing, building or otherwise providing, and maintaining a proper courthouse is the principal responsibility of each county, through its county commission; but that responsibility should also be shared by the Judiciary and the Legislature for the benefit of all citizens in this State.

To date, neither the Supreme Court nor the Legislature has adopted standards for court facilities. However, in 1994, the Supreme Court did promulgate STANDARDS FOR FAMILY LAW MASTER FACILITIES to provide beneficial guidance to local courts and county commissions in establishing appropriate family law master facilities.

Uniform minimum standards for all court facilities in the State need to be developed and adopted. While justice is not guaranteed by adequate courthouse facilities, the absence of adequate facilities undermines the effectiveness of the entire judicial system.

To ensure the fitness of court facilities, the Commission makes the following recommendations:

25.1 The **Legislature** should establish a court facilities commission made up of persons with the expertise and background to establish minimum physical facility standards.

25.2 Once minimum standards are established, each **county commission** should be required to file a proposed compliance plan under the standards. Provision should be made for waivers or exemptions from this requirement when a county's facilities already satisfy the minimum standards.

25.3 The **Legislature** should establish funding sources to provide supplemental funding for county commissions to achieve compliance with the minimum standards.

ISSUE 26: SUFFICIENCY OF TRAINING OPPORTUNITIES FOR JUDICIAL OFFICERS AND OTHER COURT PERSONNEL

Adequate training for all judicial officers and other court personnel is critical for the proper functioning of any judicial system. Without initial training and continuing education regarding developing areas of the law, judicial officers and staff are left without the fundamental guidance necessary for the proper performance of their duties. The Supreme Court of Appeals, the Administrative Office of Courts and the West Virginia Judicial Association have exhibited substantial dedication to the task of judicial training and continuing education for court officers and support personnel. Training programs for judicial personnel are conducted separately for each discipline or position, such as family law master training, probation officer training, magistrate assistant training, judicial secretary training, etc.

Current educational/training requirements and opportunities for existing Supreme Court justices and circuit judges are

adequately provided through the cooperative efforts of the Supreme Court Administrative Office and the West Virginia Judicial Association in accordance with the court rules requiring continuing judicial education. Justices and judges attend two 3-to-4-day-long education seminars annually. Newly elected or appointed judges attend the Supreme Court's "New Judge Orientation Program" and, additionally, are offered the opportunity to take specialized training courses at either the National Judicial College or the American Academy of Judicial Education; judicial officers are not required to take this training.

Magistrates are currently provided one, 2-3 day training seminar annually; additional training is needed to provide timely training on new and amended legislation.

Under a new program established by the Supreme Court, in the next few years all circuit judges will be provided law clerks; the first ten of those law clerks began work during August 1998. A system of formalized training for these law clerks has been put into place by the Supreme Court's Office of Counsel.

All court officers and staff would benefit from interdisciplinary regional meetings or training sessions that would include all judicial officers and staff from each county or circuit. Moreover, it is vital that the Court train judicial officers and court personnel about issues relating to all forms of family violence including child abuse and neglect and elder abuse.

To ensure the sufficiency of training opportunities for judicial officers and other court personnel, the Commission makes the following recommendations:

- 26.1 The **Supreme Court** through its Administrative Office of Courts should provide a second training session for Magistrates each year, to be held shortly after the conclusion of the legislative session, to provide updates on changes in the law.
- 26.2 Under its rule-making authority, the **Supreme Court** should require newly elected and appointed judges to take specialized training courses.
- 26.3 The **Supreme Court** should consider providing more training sessions for judicial secretaries and other support personnel.
- 26.4 The **Supreme Court's** training program for all existing and new circuit court law clerks should be expanded to include at least once-annual training sessions. This training could, in part, satisfy the State Bar's continuing legal education requirements applicable to all licensed attorneys in this state.