



A Review of the Administrative Infrastructure of the Unified Judicial System of South Dakota

**Final Report
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I. INTRODUCTION

The South Dakota court system was unified in 1975, at a time when professional court administration was embryonic. Thus, the State Court Administrator's Office (SCAO) was required to play a primary role in establishing a system of court administration. It continues to provide many centralized administrative services including human resources, judicial and staff training, budget and finance, information technology, statistical and analytical reports, public information, and services and coordination for court clerks and for adult and juvenile probation. The SCAO has grown substantially over time, particularly during the past decade. Much of the expansion has been in technology operations. The current six divisions vary greatly in staff size and scope of the functions they perform.

The population of South Dakota has been increased steadily over the past decade and has become increasingly urbanized. The rural counties are at best maintaining a stable population and many are losing population. Two-thirds of the State's attorneys are located in just three counties. This affects court administration in various ways. In the more rural circuits, circuit court administrators are virtually sole operators and perform a number of non-managerial functions. In the more urbanized areas, there are employees assisting the circuit administrator.

These changes and other changes plus the development of a new case management system that will affect operations throughout the State made it a propitious time for an independent assessment of the operations, structure, and staffing of the SCAO as well as the services it provides and its role in the governance of the Unified Judicial System (UJS) and the recruitment of Circuit Administrators. Accordingly, the UJS contracted with the National Center for State Courts (NCSC) to conduct this assessment. Experienced NCSC consultants (the NCSC project team) conducted two extensive site visits to South Dakota to observe operations and speak with the members of the Supreme Court of South Dakota and its staff, the Presiding Judge of each Circuit, the

State Court Administrator and the managers and key staff of the SCAO, and the Circuit Administrators. They reviewed the written documentation of the SCAO and compared its functions and organization with those of state administrative offices of other state court systems.

Six sets of issues emerged from that assessment – Organization of the SCAO; SCAO services to the Circuits; Friction between the SCAO and Supreme Court staff; Human resources; Management of the case management system development process; and Overall system governance. This report contains the findings regarding these issues and recommendations intended to assist what is already a very good office to become an even more efficient and effective one.

II. FINDINGS AND RECOMMENDATIONS

A. Organization of the SCAO:

Current Organization: The State Court Administrator’s Office currently operates with six divisions and an Office of Legal and Legislative Counsel. The six divisions are: Human Resources, Court Information and Publications, Budget and Finance, Trial Court Services, Information and Technology Operations, and Case Management Systems. The Directors of the six divisions and the Legal and Legislative Counsel all report directly to the State Court Administrator. [See Appendix A – Current Organization of the SCAO.]

The current structure makes it difficult for the State Court Administrator to administer the South Dakota Unified Judicial System. The State Court Administrator has too many direct reports. Reducing the number of direct reports over time to no more than five would better distribute responsibility and reduce the State Court Administrator’s personnel oversight duties.

One approach is to create the position of Deputy State Court Administrator who would then directly supervise some of the division directors. The NCSC project team

examined the organization of the administrative offices of the courts in a number of other states of similar size and with a similar scope of responsibilities. We also took into account the value that SCAO Division Directors place on being able to directly report to the State Court Administrator. Based on this examination, this input, and the review of the current operation of the Office, we could not develop a rationale to recommend creating a deputy position.

However, there is a need for the State Court Administrator to designate one of the Division Directors to be in charge when the State Court Administrator is not available. There also is a need for the State Court Administrator to develop a contingency plan for ensuring that the interests of the UJS are effectively represented in the Legislature should the State Court Administrator need to take a long-term absence during the legislative session.

Recommended Organization: In considering what, if any, changes to recommend in the structure of the SCAO, the NCSC project team took a long-term (five year) view and sought to address several concerns:

- Reducing the number of direct reports to the State Court Administrator
- Strengthening the capacity of the UJS to communicate effectively internally and with the public and other branches of government
- Enhancing the capacity of the UJS to identify and address demographic, economic, and societal changes that will affect the courts
- Increasing the ability of the UJS to utilize federal grant opportunities
- Enabling the SCAO to assist Circuits during the design phase of courthouse construction or renovation projects

Recommendation 1: Within five years, the SCAO should include no more than the following five Divisions:

- ***Human Resources***
- ***Financial Services***
- ***Information Technology Services***
- ***Trial Court Services***
- ***Policy and Planning¹***

¹ See the Recommended Organization Chart contained in Appendix B.

Policy and Planning Division and Trial Court Services Division: The most significant of these proposed changes would be the elimination of the current Court Information and Publications Division and incorporation/expansion of its functions in other units, particularly a new Policy and Planning Division. In addition to performing the functions of the Legal Council/Legislative Liaison, this new Division, as the name suggests, would be responsible for identifying the needs of the UJS; developing or assisting with the development and implementation of policies, programs, and procedures to address those needs; and communicating the court system's needs and accomplishments. One of the immediate strategic planning tasks of this Division would be to develop a leadership succession plan that will facilitate UJS operations after the retirement of most of the justices and judges in leadership positions over the next five years. Potentially, this generational change could be quite disruptive. Having a succession plan will permit the judges who will lead the UJS in the future to prepare for their new responsibilities.

Another immediate task of the Policy and Planning Division will be to monitor implementation of the new UJS Strategic Plan. There does not appear to be consensus on whether the Planning and Administrative Advisory Council has responsibility for implementation of the Plan or whether that responsibility lies with the Chief Justice and/or the Presiding Judges. The new Division would help to ensure that the appropriate committees or individuals are taking the lead on developing and implementing the plan.

Developing a planning and monitoring capacity is an immediate need. The State Court Administrator should consider shifting the position being opened by the retirement of the Human Resources Director to the new Policy and Planning Division and hiring a person with the requisite skills to address this need.

In the future, the Division would also help to identify a long term vision for the UJS and communicate that vision internally throughout the UJS, to the other branches of government, and to the public at large, as well as to analyze, not simply compile the data produced by the current and new case management systems regarding the short- and long-term trends in court performance, caseload, and workload.

The Policy and Planning Division should not take on all of the current responsibilities of the Court Information Division, however. The Court Improvement Program, which focuses on improving the court's response to cases involving abused and neglected children, is more appropriately housed as a responsibility of the Trial Court Services Division, since it works directly with the Circuit Courts. Transferring this responsibility would have the added benefit of building the grant capacity within that Division.

The responsibility for conducting record searches does not belong with the SCAO. One approach is to create the ability for persons to conduct record searches online via the Court's website in a way that is secure and ensures that no confidential information will be shared. Alternatively, the responsibility could be shifted to the Division of Trial Court Services or to a deputy clerk(s) who are currently underutilized.

In addition, the NCSC project team took note of the number of courthouse construction/renovation projects around the state, the need for changes within the work areas of Supreme Court and SCAO staff in the Capitol, and the suggestion that guidance in designing/planning court facilities would have been helpful. While providing such guidance will not require a full time position, it could be offered through the use of a contract with a court facilities expert in the private sector, or through an arrangement with the Administrative Office of the Courts in a state that has such an expert on staff. This service could be housed either within Trial Court Services or within the Policy and Planning Division.

Similarly, following the departure of the current law-trained Director of Human Resources, the Attorney General's Office can be asked to provide legal guidance regarding personnel matters whenever the need arises.

RECOMMENDATION 2:

The State Court Administrator should:

- A. Create a Division of Policy and Planning, responsible for legal counsel and legislative liaison services, long-term strategic planning, monitoring implementation of UJS plans and programs, data analysis, and internal and external communication.***
- B. Hire a person qualified to perform the strategic planning and implementation monitoring functions as soon as possible.***
- C. Transfer the responsibility for the Court Improvement Program to the Division of Trial Court Services.***
- D. Develop the capacity within the SCAO to provide guidance on court-related renovation or construction projects.***
- E. Shift the task of conducting record searches to those requesting the information through a secure, confidential electronic protocol, or to one or more deputy clerks in a County with a caseload that does not require all their time for case processing.***

Information and Technology Operations Division: While it may make sense in the short-run to separate the responsibility for developing the new case management system from the responsibility to operate and maintain the UJS's current information technology, in the long-run one division should be responsible for all aspects of information technology. As discussed more fully below, CMS development requires close coordination with the persons responsible for the network and for technology training. In the meantime, the IT Director and the CMS Development Director need to work in harmony. Their offices need to be close together to optimize communication. In that the IT Director will be responsible for the ongoing maintenance of the CMS and for the network that supports it, he or she must play a greater role in the development process.

Clerical Support: The SCAO currently has a very limited number of support staff. While the Office cannot be considered “top-heavy” given its responsibilities, it does appear to be “bottom-light.” Thus, the time of professional staff is taken up episodically with clerical tasks, especially when reports are being assembled, training materials prepared, or materials being distributed.

Recommendation 3: When it is possible, a clerical staff position should be added to support professional staff throughout the SCAO.

Initially, this position could be a part-time post until the volume of work is better defined.

B. Management of the Case Management System Development Process: The South Dakota UJS has embarked on a massive effort to develop a new case management system. The SCAO has established an organizational structure to guide its development. The Director of Case Management Systems serves as the Project Manager and reports to a CMS Steering Committee. Multiple groups have been established to do the necessary business analysis and user configuration and also to work on integration, training, conversion, interfaces, infrastructure and testing.

This structure has been established in an effort to maximize input and buy-in from users and stakeholders while at the same time establishing a process to ensure that decisions are made promptly and with finality. There is some concern that while the committee structure is doing a good job of encouraging discussion, it is not doing so well at making timely decisions. Some express the belief that no one is in charge.

To develop a single case management system, case processing and scheduling practices will need to be essentially the same in each of the Circuits. Users’ groups are working to develop these common practices. But, some believe that only the Presiding

Judges could make such uniformity happen and that the Presiding Judges are not sufficiently engaged.

CMS Development requires that at least three other SCAO Division Directors be fully engaged in the process.

- Trial Court Services needs to ensure that the Circuit Court Clerks and Probation Officers who will use the system on a daily basis are involved in developing a system that will work for them.
- The Judicial Branch Educator needs to ensure that training materials are being developed as the system is developed and that users learn what they need to know when they need to know it. It will be helpful if users learn some concepts about the system prior to implementation.
- The Director of Information and Technology Operations needs to be fully engaged in the development process, in the short run because he must ensure that the network can accommodate all the features of the new CMS and, more importantly, in the long term because once developed, the Director will own the system and take on responsibility for making the necessary modifications and enhancements that will be required on a yearly if not a daily basis.

To prepare all court users and stakeholders for the new Case Management System, the CMS Director must routinely communicate progress on the CMS development, including decisions made and expected completion dates of each of the phases of development.

Recommendation 4: The State Court Administrator's Office should review the CMS Project Organizational Structure to ensure that all key persons are involved in the process, that training plans are in place when needed, that everyone understands who is responsible for making final decisions and when, and that all decisions are communicated on a timely basis to all users and stakeholders.

C. SCAO Services to the Circuits. The UJS may be a unified court system, but it is not a uniform system. Administrative responsibilities are shared. Each Circuit is able to implement Supreme Court and SCAO policy in a manner that fits its own circumstances and court culture. Under its current leadership, the SCAO is effectively providing

guidance and service to the Circuits, balancing the need for consistent application of internal policies with the tradition of local autonomy. Presiding Judges and Circuit Administrators commented that they are able to and comfortable with calling on the State Court Administrator and SCAO staff for assistance, particularly when they have personnel problems and IT issues. The SCAO is now working more closely with clerks to encourage use of consistent, more efficient practices. One area in which the State Court Administrator can be of assistance to the Circuit Presiding Judges, particularly given her experience as a Circuit Administrator, is in the selection of a Circuit Administrator when there is an opening.

RECOMMENDATION 5: Reflecting shared administration principles:

- ***Recruitment of new Circuit Administrators should be based on a standard position description.***
- ***The State Court Administrator should screen applicant resumes and provide the Presiding Judge of the Circuit with a list of the three to five best qualified applicants.***
- ***The Circuit Presiding Judge should use this list to select the applicants to interview for the open position.***

D. Human Resources (HR):

HR Infrastructure and Services: There have been significant improvements in the SCAO's human resources infrastructure over the past two years. These improvements include but are not limited to:

- Written job descriptions for each position
- Clarification of the rules regarding sick leave
- Improved monitoring of use of sick leave and vacation leave
- Preparation of a retirement schedule
- Development of new employee packets for use by the Circuits
- Provision of benefit information to the families of UJS employees

Circuit Presiding Judges, Circuit Administrators, and SCAO Division managers all feel comfortable in calling the HR Division for information and guidance regarding personnel issues, although they are not always sure whether to call the HR Director or HR Manager. The advice and information provided is seen as being accurate and helpful.

Additional items/services that various interviewees suggested would be useful were a checklist for the steps and materials required when a new employee is scheduled to report for duty at the SCAO, greater assistance in screening applications for SCAO positions, greater guidance to ensure consistent application of the Family Medical Leave Act throughout the UJS, and more uniform performance evaluation procedures for UJS employees.

Training: Similarly, training has improved over the past two years. Judicial and staff training are now managed by a training professional; a thorough educational needs assessment was conducted; increased training opportunities are being provided; UJS staff are being strongly encouraged to take advantage of these opportunities; and a resource lending library has been established. While questions have been raised about the approach taken in one of the training workshops, overall, interviewees appeared pleased with the enhancement of training opportunities. This increased capacity and the coordination of judicial and staff training will be important as the new case management system is implemented, since the new system will inevitably change the ways things are done, how information is recorded, and how records and reports are retrieved.

RECOMMENDATION 6: The Judicial Branch Education Director, the Director of the Case Management System Division, the Court Technology Council, the Judicial Training Committee, and the Clerks Advisory Committee should work together to ensure that sufficient coordinated, effective, and timely training is provided to judges and UJS staff to ensure that the transition to the new Case Management System is as smooth as possible and the operation of the trial courts is not impeded.

Internal Communication: The State Court Administrator is viewed by the Presiding Judges, the Circuit Administrators, and most SCAO managers as accessible, open, and direct. She communicates effectively and as one interviewee put it, "you know where

she stands.” As indicated previously, communication between the Circuits and SCAO has increased and appears open and easy as well.

However, the SCAO itself is somewhat siloed. Staff and even some managers are not clear about what other units are doing and what near-term challenges the Office and the UJS may be facing. Given the relatively small size of the SCAO, these gaps can be closed through strengthening existing communications mechanisms.

RECOMMENDATION 7: The State Court Administrator should conduct quarterly all staff meetings to brief SCAO personnel on recent UJS accomplishments, upcoming events, and new legislation, policies, and issues that will be affecting the Office in particular and the UJS as a whole. In addition, each issue of the SCAO newsletter should include an article describing the mission, activities, and accomplishment of one of the SCAO Divisions as well as updates on the progress of the new Case Management System.

Position Classification System and Salary Structure: Nearly every interviewee expressed concern about the current system for classifying positions. The coherence and applicability of the UJS position classification system instituted nearly twenty years ago has been eroded by changes in the skills and responsibilities required by UJS staff (e.g., the greater reliance on automation); the economic and demographic changes that have taken place in the state (e.g. the increased urbanization and consequent concentration of workload); and the personnel policies and practices adopted by other branches and levels of governance. The current system is almost universally viewed as dysfunctional, unfair, and unexplainable.

The current salary system used by the UJS is also confusing and dysfunctional. While the salary table offers a broad range for each position, the actual salary ceiling is the so-called “mid-point,” which many if not most employees can reach quickly -- within five to six years. After that, to receive a raise in pay, employees must be promoted, have

their position reclassified to a higher bracket, or hope that the state economy will permit the Legislature to consider a public employee cost-of-living increase. In addition, the salary levels do not take into account the differences in living costs between rural and urban areas of the state. The effect is to encourage employees who have been with the UJS for a few years to seek employment, where it is available from public or private sector employers, at the point of their career where they are becoming the most productive.

Recommendation 8:²

- A. The SCAO should contract for a comprehensive study of all UJS management and staff positions with the objective of recommending a new position classification system that takes into account the responsibilities, necessary qualifications, and workload of each position; clarifies which positions should be considered exempt and which positions should be considered non-exempt under the federal Fair Labor Standards Act; provides career ladders for entry-level positions; and establishes criteria and procedures for classifying a new position or re-classifying an existing position.***
- B. The SCAO should contract for a comprehensive study of the UJS salary structure as part of or parallel with the reclassification study with the objective of recommending a revised salary structure that takes into account the salary levels for similar positions in state and local government as well as the private sector in South Dakota and comparable states, and long-term forecasts for the State economy.***
- C. These studies should be overseen by a special UJS Task Force that includes representatives from all sections of the state and employee levels.***

In undertaking these studies, the SCAO should make clear that the objective is to establish classification and salary structures that can be applied in a consistent, explainable, and fair manner and not to lay the groundwork for wholesale promotions

² Subsequent to the briefing provided to the State Court Administrator by the NCSC project team after the site visits, the SCAO contracted for an in-depth examination of the classification and compensation systems.

and salary increases. It must be recognized that after three years without cost-of-living increases, any action to address the current classification and salary structures is likely to generate unrealistic expectations among at least some employees and some disquiet and disruption when, as is also likely, short-term compensation increases do not materialize. The proposed system-wide oversight committee is intended to provide a means for providing accurate information both to the contractors and to staff colleagues throughout the re-design process so as to dampen rumors and keep disappointment to a minimum.

E. Friction Between the SCAO and Supreme Court Staff: Several interviewees commented on the tension between the “law side” (the Supreme Court Clerk’s Office, Supreme Court Library and Staff Attorneys) and the “administrative side” (the SCAO). While all acknowledged that interactions between the two sides are minimal and that the tension did not impact the performance of the SCAO or that of the Supreme Court, there is a general view that the tension impacts the working conditions of all UJS staff working in the Capitol.

Compensation appears to be a major source of tension between the two sides. Some on the “law side” believe that the compensation system is not fair, is not applied equally, and does not appropriately value a law degree. The classification and salary studies called for in Recommendation 8 may address some of the substantive concerns but are unlikely to dispel all the sense of grievance that has built up over time.

Some believe that the SCAO’s offices have more space and are better furnished. The NCSC project team had an opportunity to observe the Supreme Court Clerk’s Office which is cramped, poorly equipped, and does not meet accessibility standards. One of the first tasks of the facilities design expert called for in Recommendation 2 should be to determine to what extent the space needs of the Supreme Court Clerk’s Office and

the Supreme Court Staff Attorney Offices can better be met given the constraints of the limited space available within the Capitol.

Overall, there is a sense that the SCAO does not provide to the Supreme Court staff the same excellent level of service that it provides to the Circuit Courts. For example, many of the training programs that apply to the Circuit Courts, such as working with self-represented litigants, would also be helpful to the staff at the Supreme Court. However, there is a feeling that Supreme Court staff are invited to trainings, if at all, only as an afterthought. There is also a belief that at times, new legislation, as well as changes in filing fees, and policies are communicated to the Circuit Courts but are not communicated directly to the staff at the Supreme Court. In addition, there is a need for greater communication and clarity on the role of the Supreme Court staff in developing the Court's budget, in making purchases and in making sure that funds are spent only in accord with the budget.

RECOMMENDATION 9:

- A. The classification and salary studies called for in Recommendation 8 should cover UJS employees at both the Supreme Court and Circuit Court levels as well in the SCAO.***
- B. A study should be undertaken of the space needs of the Supreme Court Clerk's Office and the Supreme Court Library and Staff Attorneys and a design developed for the optimal utilization of the available space.***
- C. The SCAO should send announcements of training programs to all Supreme Court staff at the same time they are sent to Circuit Court staff, and include Supreme Court staff in the planning and presentation of those training programs as appropriate.***
- D. The SCAO should send information regarding new legislation and changes in fees and policies to the Supreme Court staff at the same time it is sent to Circuit Court staff and consult with the Supreme Court Clerk as appropriate on potential legislative, fee, and policy changes that may affect the Supreme Court Clerk's Office.***

E. The SCAO, in collaboration with the Supreme Court Clerk and the Supreme Court Law Librarian and Chief Staff Attorney, should develop clearer protocols for developing and managing the annual budgets for the Supreme Court Clerk's Office, Law Library, and Staff Attorneys.

F. Overall System Governance: The governance structure of the UJS is straight forward. The Supreme Court serves as a board of directors with the Chief Justice as the chair. Major policy issues are decided by the Court; day-to-day decisions by the Chief. The State Court Administrator serves as the equivalent of a Chief Operating Officer responsible for administering and monitoring court policy and supporting its implementation. Broadly based UJS committees such as the Planning and Administrative Advisory Council (PAAC) and the Technology Council are charged with developing policy. The Circuit Presiding Judges are responsible for policy implementation. Coordination of implementation efforts is through the Presiding Judges Council.

The UJS has adjusted well to the changing demographics of the state. By riding Circuit, judges are able to provide trial court services in even the smallest counties on an as needed basis while keeping the overall complement of judges small. Administrative functions such as the back-office processing of traffic citations and small claims cases have been shifted to UJS staff in counties with low caseloads from the State's urban centers. This permits effective utilization of staff resources, balances workloads, and enables Clerk's offices in small counties to remain open.

While the policy development and determination elements of the UJS structure appear to be functioning well, the implementation portion was not as well defined. The 2009 Annual Statistical Report of the South Dakota Unified Judicial System³ states that the Presiding Judges meet regularly "to discuss policy, design and implement uniform

³ South Dakota Unified Judicial System, *Annual Statistical Report of the South Dakota Unified Judicial System*, 9 (Pierre, SD: October 2009).

programs and procedures, and keep abreast of the latest developments in the court system [to] ... promote uniformity and administrative efficiency" Yet, the NCSC project team received almost as many differing descriptions of what the Presiding Judges Council does and how well it functions as there are members of the Council. Some see it as an informal problem sharing/solving body; others as a policy making body; and still others as a group that talks about the same issues repeatedly without coming to a conclusion. As noted earlier, there was a similar lack of clarity about how the recently adopted UJS Strategic Plan is being implemented and who is monitoring its implementation.

The functions performed by the Presiding Judges Council have varied over time. At one point or another, it has played each of the roles cited in the preceding paragraph. The uncertainty over its purpose has not impeded the operation of the UJS during the recent period of relative stability. However, the major technological and demographic changes that will challenge South Dakota's court system over the next few years suggest the need to strengthen the UJS's policy implementation capacity. The development of the new UJS case management system will have significant impact on current policies and practices. A flexible and effective ability to examine the changes needed and the effects of those changes will be necessary to ensure the continued fair and efficient operation of the court system. In addition, establishing a clear, effective and well-understood governance structure in advance of the retirement of approximately 40 percent of the state's judges is necessary to ensure a smooth transition to new leadership and continuity of system operation.

Setting goals and objectives through a strategic planning and setting uniform policies governing the state's court system are important, but the impact of this effort is limited without definition of appropriate implementation approaches and monitoring both of the progress being made and the effects, both good and bad, of the changes being made.

Voluntary efforts and anecdotal information are helpful but not sufficient. Consequently:

Recommendation 10: The Presiding Judges Council should develop and adopt a mission statement defining the Council's responsibilities (as opposed to those of individual Circuit Judges) and guidelines describing how it will operate. The mission statement and operating guidelines should be submitted for review and approval to the South Dakota Supreme Court.

Recommendation 11: The Policy and Planning Division of the SCAO described in Recommendation 2 should be responsible for monitoring the level of implementation of significant system-wide policies and strategic objectives and the impact of those changes, and reporting its findings at least annually to the Supreme Court.

Neither of these recommendations is intended to substitute a top-down centralized approach for South Dakota's shared administration model. Both can be accomplished without impairing the flexibility needed to accommodate the differences in population density, workload, and geographic size of the UJS Circuits.

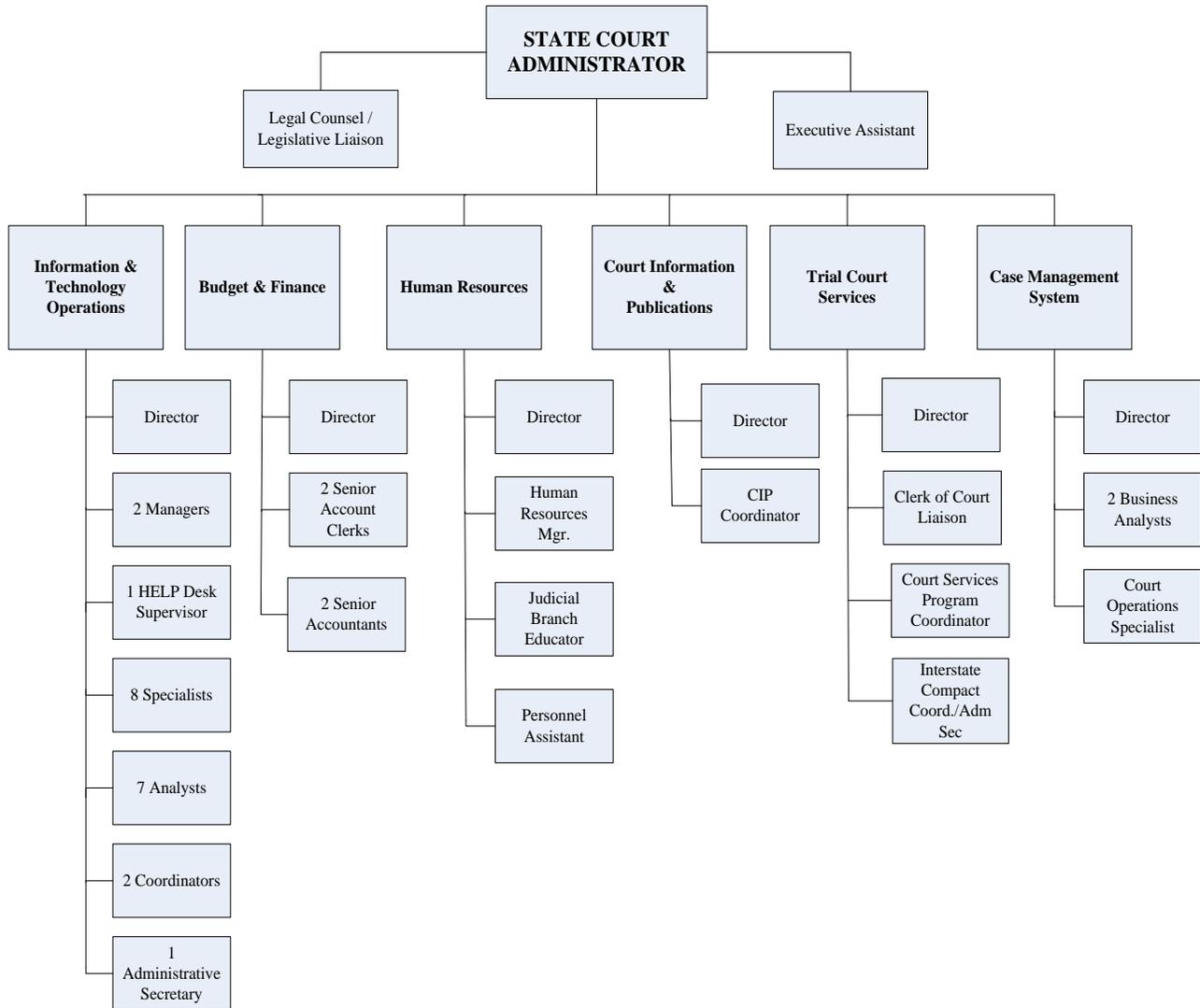
III. CONCLUSION

As is evident from the above findings, South Dakota's Unified Judicial System is operating effectively and efficiently. There is remarkably little tension between the levels of the system and good communication from the Supreme Court and SCAO to the Circuit Courts and from the Circuit Presiding Judges and Circuit Administrators to the Chief Justice and State Court Administrator. The UJS has demonstrated flexibility in utilizing the resources to provide judicial services throughout the state and has made significant strides over the past two years in increasing the consistency of operations throughout the state. The level of consistency is likely to increase as a result of the development and implementation of the new case management system.

The recommendations offered are not intended as criticisms. Rather, they offer approaches designed to continue and guide the court system as it strives to achieve and maintain excellence.

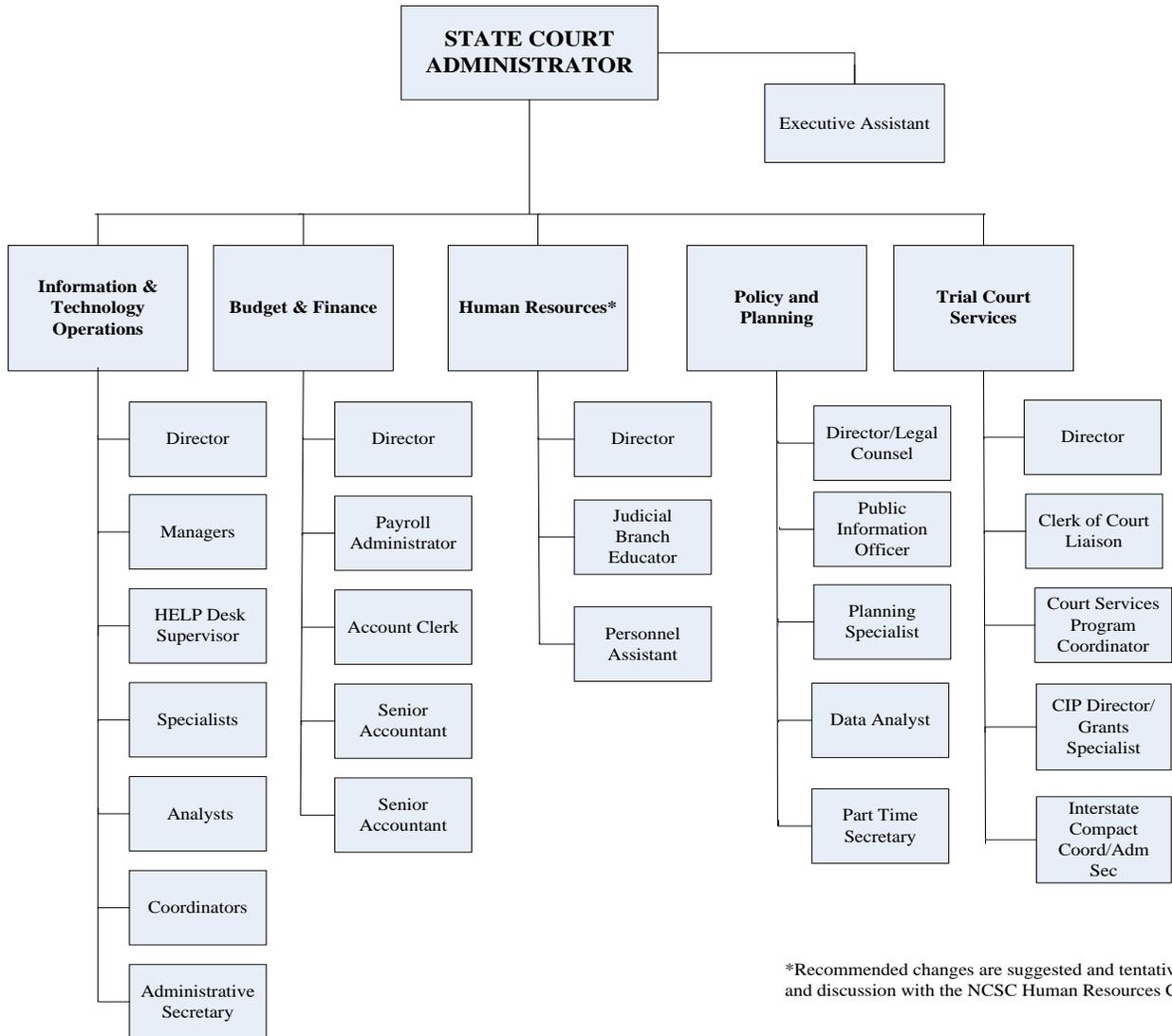
APPENDIX A
CURRENT SCAO ORGANIZATION CHART

CURRENT ORGANIZATION OF THE SCAO



APPENDIX B
RECOMMENDED SCAO ORGANIZATION CHART

RECOMMENDED ORGANIZATION OF THE SCAO BY 2015



*Recommended changes are suggested and tentative until further analysis and discussion with the NCSC Human Resources Consultant.