

Relocating Appellate Courts in the Aftermath of Disaster

Background

The impact, both physical and otherwise, of the hurricanes of 2005 continues to present challenges to the legal systems of the affected states. Courts were confronted with the challenge of survival and continuation as their courthouses and designated locations for sitting were submerged or obliterated outright. Federal district courts, whose statutory framework permitted sessions to be held anywhere within their district, quickly found their districts too damaged to be used for court. While Federal legislation was introduced within days to provide for holding of Federal court outside their normal territorial jurisdictions, several states were unable to do the same for state courts in the absence of state legislative sessions. State courts relied on emergency orders based on their inherent authority transferring their sessions to other locations or simply suspending

operations outright for limited periods of time.

In this issue of *Case-load Highlights*, we look at the state appellate courts to examine their administrative ability to function and hold sessions either amid or after a crisis devastates their court. While the focus will be on statutes and constitutional provisions, this discussion seeks to answer questions on administrative degrees of freedom and is not a legal discussion. As courts seek to recover from disaster, or strive to prepare for such occurrences, the proper legal authority is critical. The need for continuity of judicial operations is essential for returning to normalcy.

Response Factors: Flexibility and Authority

In examining this issue, we note the link between a court's *flexibility* in being able to respond to situations and its *authority* to so respond. The more authority a court has to deter-

mine where it will meet, the more flexibility it has to meet the challenges of crisis. Authority for these purposes comes in three forms: constitutional provisions, statutes, and the unwritten inherent power a court possesses.

Turning to the state constitutions, we find provisions that specify a court's authority to name its places of sitting, thus acknowledging the maximum amount of flexibility for each court. In other cases involving intermediate appellate courts, the constitution specifies that a court of last resort or a judge of that court has the authority to determine location; the intermediate court's flexibility in acting hinges either on that court of last resort or on whatever inherent powers the court itself possesses. Nevertheless, because the decision remains within the judicial branch, it is perhaps more flexible than the third option, in which constitutional grants of authority are made

to the legislature or shared between the two branches. This could give rise to situations such as occurred in the Federal example, where courts acted under their inherent powers first and legislation was passed to catch up. Even more troubling is legislation that is so inflexible that it directly undermines the court's inherent authority to conduct its own proceedings. Finally and most restrictively are those cases where the constitution specifies locations for sessions and makes no provisions as to alternate locations or the power to name them. At worst, this precludes the court from meeting in the event that the designated location is impossible to make use of or reach. At best, it creates confusion as to whether the court has the inherent authority to meet at locations in addition to the ones specified or whether they are limited to only those that are listed.

Relocating Appellate Courts in the Aftermath of Disaster

Where the constitutions are silent, the state courts may look to legislation. The vast majority of appellate courts are governed by statutes that deal directly with where they can and cannot meet, either as the result of a constitutional provision giving such power to the legislature or because in the absence of a constitutional provision the legislature has crafted its own. Here, we find the same basic structure as with constitutional provisions: some courts are specifically granted power to relocate at their discretion, others must receive consent from a higher court, while others have specific locations. On the one hand, statutes are

easier to change than constitutional provisions, making them more flexible. On the other hand, the legislature's assertion of authority can impact the judiciary's ability to administer its operations. The current situation in terms of legislation is far better than even a few decades ago. Roscoe Pound in his *Organization of Courts* (1940) noted the sheer volume of statutes dedicated to determining appellate court sittings. Today, where such statutes exist, they are limited. Efforts at simplification and Cold War concerns of civil defense and continuity of government helped to reduce the size and number of these laws.

Finally, in some states there simply are no constitutional or statutory provisions whatsoever that address the sittings of the court. In those cases, the court's flexibility is unrestrained. However, the inherent power of the court is the only authority that can be relied upon in order to move the court's proceedings to a safer location. This may cause questions, confusion, and delay at a time when clarity and quickness is needed.

Thus, five distinct categories of courts can be identified.

Category A

These courts have specific, unrestricted, or nearly unrestricted power to name primary and alternate locations for court sessions. They have maximum constitutional or statutory authority and maximum flexibility. Examples of this are the Arizona Supreme Court, whose constitution specifies the court "shall sit in accordance with rules adopted by it" (A.R.S. Const. Art. VI, § 2) and Alaska's Supreme Court which "shall hold sessions on dates and at places fixed by court rule" under its statutes (Alaska Stat. § 22.05.030). Where restrictions do exist, they tend to remain within the judicial branch, as intermediate appellate courts rely on courts of last resort to determine the location of sessions.

5 Categories of Authority to Name Court Locations

Category	Provisions
A	Courts with specific, unrestricted, or nearly unrestricted power to name primary and alternate locations.
B	Courts with specified primary locations but unrestricted or nearly unrestricted authority to name an alternate.
C	Courts that have restrictions in naming primary and alternate locations.
D	Courts with specific provisions for primary locations and no provisions for alternates.
E	Courts with no provisions or restrictions as to their locations.

Category B

These courts face provisions that specify primary locations but also establish the court's unrestricted or nearly unrestricted authority to name an alternate. Most of these courts can point to statutes, but like any statute, they may be changed by the legislature. The benefit in terms of disasters, however, is that this statutory authority does not require the legislature's passage of emergency laws after the fact. A distinction is made within this category between the court's power to decide on an alternate location and the chief justice's ability to move sittings. In cases of disaster where contact among the court members can be hampered or cut off, the ability of a single person to reestablish the court's operations aids in recovery. Of note here is the Connecticut Supreme Court, whose statute on the subject specifies terms at Hartford with special terms elsewhere to be conducted as determined by the members of the court or the chief justice (Conn. Gen. Stat. § 51-200).

Category C

These courts are mixed in their ability to point to specific provisions on session locations. For example, Washington's Supreme Court sessions are constitutionally to be held at the seat of government, which was determined by 1861 referendum to be Olympia, unless otherwise provided by law. (Wash. Const. Art. IV, § 3). Two other courts offer an interesting perspective in terms of authority and flexibility. Tennessee's constitution (Tenn. Const. art. VI, § 2) specifies its Supreme Court will be held at Knoxville, Nashville, and Jackson. In this sense, there are alternate locations specified. In addition, statutory language includes a provision that the court may be held in such other places as the chief justice may from time to time designate (Tenn. Code Ann. § 16-2-102). Thus, Tennessee's Supreme Court has both constitutional authority to meet at specified alternates (i.e., meeting in Knoxville if Nashville is unviable) and statutory authority that

goes beyond even these three locations. California's Courts of Appeal offer examples of all different levels of authority and flexibility within the same court. Their 1st, 3rd, 5th, and 6th Appellate Districts are required to meet at specific places (San Francisco, Sacramento, Fresno, and San Jose, respectively) with no provisions as to who can name alternates or how. One half of the 2nd Appellate District may meet in Ventura, Santa Barbara, or San Luis Obispo counties as they decide; the other half must meet at Los Angeles. Finally the 4th Appellate District is divided into thirds: one part to meet at San Diego, another "in the San Bernardino/Riverside area" and the third in Orange County. (Cal Gov Code § 69101-69106). Both of these courts help demonstrate at least in part that constitutional or statutory specificity does not always mean a lack of flexibility in the face of disaster.

Category D

These courts have specific provisions as to primary locations and no provisions as to alternates. These courts must rely more heavily in their inherent powers should the need to move locations arise. Most include references to constitutionally or statutorily defined seats of government or specific cities as the place for holding sessions. Others, such as Florida's Supreme Court, specify a building (Fla. Stat. § 25.051) or a courtroom as is the case of the Michigan Supreme Court (MCLS § 600.211).

Category E

These courts have no provisions as to their sittings and must therefore rely exclusively on their inherent powers to locate their business. While this lack of restriction on locations grants the court the maximum amount of flexibility, it also lends itself to the potential for confusion as questions about a court's legal authority to move and to where arise amid disaster.

State Courts of Last Resort - Provisions For Establishing the Location of Courts

State	Court Category					Authority			Provisions specify:
	A	B	C	D	E	Constitutional	Statutory	None	
Alabama	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Alaska	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Arizona	●	○	○	○	○	✓			Court's power to name primary and alternate locations
Arkansas	●	○	○	○	○	✓			Court's power to name primary and alternate locations
California	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Colorado	○	○	○	●	○	✓			Primary locations but is silent on alternates or the power to name alternates
Connecticut	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
DC	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Delaware	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Florida	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Georgia	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Hawaii	○	●	○	○	○		✓		Primary location, but also specify chief judge's power to name alternate
Idaho	○	●	○	○	○	✓			Legislature names primary and alternate locations, also allows court to name alternates
Illinois	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Indiana	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Iowa	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Kansas	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
Kentucky	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Louisiana	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Maine	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Maryland	●	○	○	○	○	✓			Primary locations, but also specify court's power to name alternates
Massachusetts	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Michigan	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Minnesota	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Mississippi	○	○	○	●	○	✓			Primary locations but is silent on alternates or the power to name alternates
Missouri	○	○	○	●	○	✓			Primary locations but is silent on alternates or the power to name alternates
Montana	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Nebraska	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
Nevada	○	●	○	○	○	✓			Legislature names primary and alternate locations, also allows court to name alternates
New Hampshire	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
New Jersey	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
New Mexico	○	○	○	●	○	✓			Primary locations but is silent on alternates or the power to name alternates
New York	●	○	○	○	○		✓		Court's power to name primary and alternate locations
North Carolina	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
North Dakota	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Ohio	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Oklahoma	○	○	●	○	○	✓			Supreme Court: legislature's power to name primary and alternate locations
	○	○	○	●	○		✓		Court of Criminal Appeals: primary and silent on other alternates or power to name alternates
Oregon	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
Pennsylvania	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Rhode Island	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
South Carolina	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
South Dakota	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Tennessee	○	○	●	○	○	✓			Primary and alternate and is silent on other alternates or the power to name alternates
Texas	●	○	○	○	○	✓			Supreme Court: court's power to name primary and alternate locations
	●	○	○	○	○	✓			Court of Criminal Appeals: court's power to name primary and alternate locations
Utah	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Vermont	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Virginia	○	●	○	○	○		✓		Primary location, but also specify chief judge's power to name alternate
Washington	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
West Virginia	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
Wisconsin	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Wyoming	○	○	○	○	●	✓			Primary locations but is silent on alternates or the power to name alternates

A B C D E

- Courts with no provisions or restrictions as to their locations.
- Courts with specific provisions for primary locations and no provisions for alternates.
- Courts that have restrictions in naming primary and alternate locations.
- Courts with specified primary locations but unrestricted or nearly unrestricted authority to name an alternate.
- Courts with specific, unrestricted, or nearly unrestricted power to name primary and alternate locations.

State Intermediate Appellate Courts - Provisions For Establishing the Location of Courts

State	Court Category					Authority			Provisions specify:
	A	B	C	D	E	Constitutional	Statutory	None	
Alabama	●	○	○	○	○		✓		Court of Civil Appeals: court's power to name primary and alternate locations
	●	○	○	○	○		✓		Court of Criminal Appeals: court's power to name primary and alternate locations
Alaska	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
Arizona	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Arkansas	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
California	○	○	●	○	○		✓		Some specific primary locations and some specific alternates, some court permitted alternates
Colorado	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Connecticut	●	○	○	○	○		✓		Higher court or judge's power to name primary and alternate locations
Florida	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Georgia	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Hawaii	○	●	○	○	○		✓		Primary location, but also specify chief judge's power to name alternate
Idaho	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Illinois	●	○	○	○	○	✓			Higher court or judge's power to name primary and alternate locations
Indiana	○	●	○	○	○		✓		Court of Appeals: primary location, and chief judge's power to name alternate
	○	●	○	○	○		✓		Tax Court: primary locations, and court's power to name alternates
Iowa	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Kansas	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Kentucky	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Louisiana	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Maryland	○	○	●	○	○		✓		Primary and alternate and is silent on other alternates or the power to name alternates
Massachusetts	○	●	○	○	○		✓		Higher court or judge's power to name primary and alternate locations
Michigan	●	○	○	○	○		✓		Higher court or judge's power to name primary and alternate locations
Minnesota	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Mississippi	○	●	○	○	○		✓		Higher court or judge's power to name primary and alternate locations
Missouri	●	○	○	○	○	✓			Court's power to name primary and alternate locations
Nebraska	○	●	○	○	○		✓		Primary location, but also specify chief judge's power to name alternate
New Jersey	○	○	○	○	●			✓	No provisions for primary, alternate or power to name either
New Mexico	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
New York	●	○	○	○	○		✓		Appellate Div. of Supreme Court: court's power to name primary and alternate locations
	●	○	○	○	○	✓			Appellate Terms of Supreme Court: higher court or judge's power to name primary and alternate locations
North Carolina	○	○	●	○	○	✓			Legislature's power to name primary and alternate locations
Ohio	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Oklahoma	○	○	○	●	○		✓		Primary and is silent on other alternates or the power to name alternates
Oregon	●	○	○	○	○		✓		Higher court or judge's power to name primary and alternate locations
Pennsylvania	○	●	○	○	○		✓		Commonwealth Court: primary locations, but also specify court's power to name alternates
	○	●	○	○	○		✓		Superior Court: primary locations, but also specify court's power to name alternates
South Carolina	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Tennessee	○	●	○	○	○		✓		Court of Appeals: primary location, but also specify chief judge's power to name alternate
	○	●	○	○	○		✓		Court of Criminal Appeals: primary location, but also specify chief judge's power to name alternate
Texas	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Utah	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Virginia	●	○	○	○	○		✓		Court's power to name primary and alternate locations
Washington	○	●	○	○	○		✓		Primary locations, but also specify court's power to name alternates
Wisconsin	○	●	○	○	○		✓		Higher court or judge's power to name primary and alternate locations

A
 B
 C
 D
 E

| Courts with no provisions or restrictions as to their locations.
 | Courts with specific provisions for primary locations and no provisions for alternates.
 | Courts that have restrictions in naming primary and alternate locations.
 | Courts with specified primary locations but unrestricted or nearly unrestricted authority to name an alternate.
 | Courts with specific, unrestricted, or nearly unrestricted power to name primary and alternate locations.

Conclusion

All appellate courts universally face the prospect of disaster, but each court's response will be unique. The above categories reveal different approaches among the courts, giving their judges and administrators the ability to see how others are structured among the states and even within their own. This

is critical, for in knowing what statutes and constitutional provisions impact on the court's ability to administer itself post-crisis, courts may adapt or adjust long before disaster strikes. Indeed, they must do so prior, as legislative or executive branches may be unwilling or unable to act to support

their actions. When statutes or constitutional provisions exist which affirm or restate the court's ability to move its proceedings to safety, the court can operate with clarity. Where provisions exist that hinder or restrict the court's sittings, they should be addressed. The great potential for confusion arises

where nothing exists to support a court's actions or to curtail them. While it may be the case that court orders and rules can fill the void, prudence suggests the wiser course of action is for the courts to know their legal framework and make sure it serves their business continuity needs.

The Court Statistics Project (CSP)

In existence since 1975, the CSP is administered by the National Center for State Courts, with generous support by the Bureau of Justice Statistics. The CSP receives general policy direction from the Conference of State Court Administrators through its Court Statistics Project Advisory

Committee. Those wishing a more comprehensive review and analysis of the business of state trial and appellate courts are invited to read the CSP's latest publication, *Examining the Work of State Courts, 2005*. For more information go to <http://www.ncsc.dni.us> and click on Court Statistics Project.



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