



## **Seven Principles for Stabilizing Court Funding**

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### **INTRODUCTION:**

For a number of reasons, the judicial branch is particularly vulnerable to economic instability.

The State Courts System consumes a very small part of the state budget – only 0.7% of the total – even though it handles millions of cases every year. At the same time, most of the court system’s budget – 87% – is devoted to salaries. And more than half of the salary dollars – 53% – must be used to pay the salaries of judges, those constitutional officers without whom the judicial branch could not exist. The remaining portion of salary dollars is used to fund essential support and professional operational functions that are critically important to administering an efficient and effective court system. Because the total number of judges is set by state law, it is a fixed allocation in the court system’s budget. Consequently, budget reductions disproportionately erode the funding for staff support necessary for courts to perform their constitutional mandates.

Also, unlike other parts of government, the court system does not have the scale or range of activities and projects to absorb significant budget cuts because it has a very specific, circumscribed mission: judges, magistrates, and court support personnel are there for only one essential purpose – to ensure that society has a forum for the peaceful and orderly resolution of disputes in a timely manner. Without judges, magistrates, and court support staff, society would be deprived of fundamental constitutional due process for those whose rights could be taken away and there would be no safeguard to ensure adherence to the laws made and executed by the other two branches. Truly, there would be no mechanism to prevent the state from falling into lawlessness.

In order to maintain the timely administration of justice and to preserve the viability of the court system, new budgeting practices must be adopted to better stabilize the operations of the courts during times of economic crisis. Outlined below are seven principles for stabilizing court funding. These principles are offered to address both the immediate crisis and solutions for long-term, sustainable funding stability for a truly unified state courts system.

## **PRINCIPLE ONE:**

***The elements of the State Courts System codified in section 29.001, Florida Statutes, should be adequately funded by the State to ensure the guarantee of court access by Florida's citizens.***

The court system has developed a statement of need that defines what is reasonable and necessary to fund the elements of the court system and ensure adequate and equitable funding for all courts in every part of the state. Adequate and equitable funding has been compromised by the recent budget reductions. Funding should be restored through a combination of general revenue and trust funds.

For the purpose of analysis, resources that fund Florida's courts can be considered as going into one of four distinct categories:

- Adjudication – resources that directly contribute to processing cases through the court system;
- Due process – resources that directly protect the fundamental constitutional and legal rights of court litigants;
- Governance – resources that perform critical oversight, direction, work processes, logistics, and operations management for the branch; and
- Infrastructure – resources that provide for technology, access to legal resources, and safe and clean environments for staff and the public as they conduct court business.

But in the real world, it takes an interdependent combination of these four categories for Florida's court system to manage its workload.

Without sufficient funding in each of these four areas, Florida's state court system cannot operate efficiently and effectively. The common purpose linking all of these elements is the ability to process cases through the court system expeditiously without compromising quality and shortchanging the public good. Cases must have a presiding judicial officer with the ability to thoroughly research the law and provide a ruling. Litigants must have their rights protected throughout the court process. All stakeholders in the court process must be able to carry out case activities in secure facilities. Officers in the court system must have a management structure that ensures that payroll is processed, contracts are administered, and training is provided. Thus, without any one of these elements, the court process falters.

When funds are not there for staff who provide adjudication and administrative support, their tasks are left for judges to handle. The cost associated with using judges to cover this workload is significantly higher than the expense of the essential complement of non-judge resources. When their adjudication and administrative support is eliminated, judges are diverted away

from the most difficult adjudicative functions – and that means cases take longer and access to the court is diminished, thereby potentially placing the due process rights of litigants in jeopardy and compromising public safety.

#### **PRINCIPLE TWO:**

***Court fees assessed and paid by Florida’s citizens to access their court system should be dedicated to the court system, as already provided for by state law.***

Section 28.37(1), Florida Statutes, states: “Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and costs collected by the clerks of court.” In reality, only a small portion of filing fee revenue is dedicated to the courts to support mediation and judicial education programs. The rest of the revenues – from fees, fines, and costs that are not being held by the clerks to fund their offices – is going into Florida’s general revenue fund to fund the general purposes of Florida government.

In Florida’s system of government, user fees are commonly dedicated back to those functions of government being used by a citizen paying the fee. It is an easily understood, widely accepted, common sense concept. But the filing fees that court users are paying are not being allocated to the courts. As a consequence of the budget reductions that have occurred, citizens are beginning to experience unreasonable delays in having their cases addressed. A vivid example of this phenomenon is the mortgage foreclosure crisis. Filings have increased from FY 2005-06 to FY 2007-08 by 396%. Clearance rates have dropped to 41%. The fee revenue generated by those additional foreclosure filings could be used by the courts to expand their capacity to process cases more quickly. But that is not happening because the revenue is going to the clerks of court and to the State’s general revenue fund. In short, people continue to pay filing fees for timely justice, but the justice they are receiving is being delayed.

#### **PRINCIPLE THREE:**

***Unless adequate safeguards are in place, court-related revenue other than filing fee revenue (revenue derived from fines, service charges, and costs) should not be dedicated to court funding but used to support other justice system partners.***

One of the reforms brought about by the 1972 amendment to Article V of Florida’s Constitution was the elimination of the courts’ reliance on fines for funding. A return to such cash register justice would be a step backward for Florida.

Filing fees are a more appropriate source of revenue for the courts because they are more directly related to court workload and activity. Such funding is also considered more of a reasonable user fee and is paid by those who are choosing to avail themselves of court services. Filing fees are paid by litigants who can afford those costs. Those who cannot afford the costs still have access to court under protections provided by law.

Penalties and fines rely on judicial discretion to establish the severity of the monetary punishment. Isolating the discretion of a judge to impose reasonable punishment from the funding of the court prevents any pressure on judges to impose fines to fund the court budget.

#### **PRINCIPLE FOUR:**

***All current court-related revenue being collected should be reevaluated to determine what portion of current filing fee revenue should be dedicated to court funding.***

In addition to the filing fee revenue being directed into the State's general revenue fund, a substantial portion is being held by court clerks to pay for the court record keeping functions performed by the clerks. Pursuant to Article V, section 14(b), of the state constitution, the offices of the clerks of court are funded through filing fees, fines, service charges, and court costs. However, the clerks' budgets are not appropriated by the Legislature, but are instead overseen by a corporation created in section 28.35, Florida Statutes – The Florida Clerk of Court Operations Corporation – that reviews and certifies clerks' budgets as prescribed by law. All trial court clerks are members of the corporation whose functions are carried out by an executive council comprised of eight clerks of court elected by the member clerks of court. For those clerks who project the revenue within their county will be insufficient to fund their court-related activities, the statutory process established for the certification of the clerks' budgets provides for the shortfall to be funded from revenue "surpluses" from other counties. Further, the maximum budget amounts authorized for the clerks' court-related activities are a function of the total amount of revenue anticipated in a given fiscal year. (See s. 28.36, Fla. Stat.)

The Legislature should review the current distribution of filing fees to determine whether additional filing fee revenue currently distributed to the State's general revenue and to support clerks should be shifted to support court operations.

#### **PRINCIPLE FIVE:**

***Additional or increased filing fees should be considered, but only after an adequate review of the distribution of the current filing fee revenue has been made.***

Any additional fees should be assessed only if there is no chilling effect on Florida citizens' right of access to the court system, and only in an amount necessary to properly fund court operations so that access is assured.

The funding gap between what Florida courts need and what they get exists even though Florida currently charges an initial civil filing fee that ranks second highest in the nation. Those two facts together underscore the need to reassess the distribution of filing fee revenue.

If such additional fees are instituted, studies from other states indicate that the following sorts of fees are fairly common:

- An increased filing fee to reopen cases for dissolution and child support (non Title IV-D). These modifications often take as much or more judicial time and court resources than the initial filing. Requests for waivers of such fees based on the parties' ability to pay should be allowed.
- A filing fee for all repeat violence cases. Very few of the cases currently being filed are legitimate claims of repeat violence. Litigants are filing many different types of complaints under the repeat violence category to avoid a filing fee. Fifty-six percent (56%) of the current cases are dismissed either prior to or after the hearing. Imposition of this fee would increase docket efficiency by reducing the number of cases inappropriately filed, allowing judges more time to hear legitimate issues of domestic, dating, and sexual violence.
- A new filing fee for selected motions that involve significant judicial workload in the civil and probate divisions of court. This new fee would help offset costs but also might help discourage the filing of unproductive motions; for example, unwarranted discovery motions. Judges would be able to award costs to the prevailing party so as not to discourage meritorious motions. A majority of the other states already impose some form of fees on selected motions.
- A sliding scale fee for probate and guardianship cases based on case value. Probate and guardianship cases involving substantial amounts of property require a significant amount of court resources which could be partially offset by a sliding scale fee.
- New fees in the appellate courts for pre-opinion and post-opinion motions, a new fee for *amicus curiae* briefs, a fee increase for cross appeal/joinder/intervenor filings, and a new service charge for file review. These fees and service charges would help offset the cost of court resources required to address these filings and services.
- A reschedule fee in civil cases when hearings are cancelled without reasonable notice. If adequate notice is not given, judges' staff do not have time to arrange for other cases to be scheduled during that vacated block of time. The new fee would also discourage the practice of cancelling without adequate notice.

## **PRINCIPLE SIX:**

***Some components of the State Courts System are more appropriately funded from the general fund and should remain so.***

The balance between what the state must pay as a general obligation of government and what users should pay in order to access their court system should be carefully considered as part of the stabilization of court funding and, once properly determined, the balance needs to be carefully guarded so Florida citizens are always assured of their constitutional right of access to the courts without sale, denial, or delay.

In particular, the cost for judges should remain as a general obligation of Florida government. The process for determining the number of judges Florida needs is based in Article V, Section 9, of the Florida Constitution. The constitution requires the Supreme Court to certify the need to the Legislature, which has the ultimate power to decide how many judgeships to establish. Given that prerogative of the Legislature, it would be inappropriate to tie that process to the revenue in a trust fund.

The operating and staff resources needed to keep the courts functioning can be paid from trust funds and, once a baseline is set, should only need adjusting based on workload growth, which would be accompanied by growth in filing fee revenue.

## **PRINCIPLE SEVEN:**

***State Court Trust Funds are the appropriate depositories for court filing fee revenue.***

The State Courts System Operating Trust Fund is established in section 25.3844, Florida Statutes, “...for use as a depository of fees and related revenue for the purpose of supporting the program operations of the judicial branch and for such other purposes as may be appropriate...”

The Legislature could also establish a new trust fund to be used as a depository solely for filing fee revenue.

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In addition to this short paper, more detailed background information is available at [www.flcourts.org](http://www.flcourts.org) on the following topics:

- *A Brief Description and History of the State Courts and Their Constitutional Mandates*
- *Detailed Descriptions and Funding Methodologies for the Essential Adjudicative Elements, Due Process Elements, Governance Elements, and Infrastructure Elements that Comprise the State Courts System*

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