



**Principles for Judicial Administration:
*Governance, Case Administration,
Essential Functions and Funding***

Draft Report

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Preface

Court leadership and the ABA have expressed a strong need to develop a set of principles relating to courts' essential functions, its governance structures its administrative operations, and funding that can be used by courts, both at the state and local levels, as they seek to restructure court services and secure adequate funding. These are operational principles that provide practical guidance to courts as they develop strategies to meet the future; they also serve as a lens to help judicial and legislative policymakers make difficult decisions. The principles articulated here are intended to assist chief justices and state court administrators—as well as presiding judges and trial court administrators in locally funded jurisdictions— as they address the long-term budget shortfalls and the inevitable restructuring of court services. Moreover, members of the legislature, their staff as well as judges and court staff should also find these useful.

A number of groups are developing these various principles, each on its own track. Principles relating to effective governance are being developed in conjunction with the CCJ/COSCA Harvard Executive program; Case Administration Principles have been completed through the High Performance Court initiative; Essential Function Principles—defining the mission and core function of courts— are being developed by the NCSC Research Division in collaboration with a working group of court leaders; and finally, Funding Principles are being developed using COSCA white papers, CCJ/COSCA policy resolutions, the Trial Court Performance Standards, CourTools and recent NCSC reengineering projects. The Governance, Case Administration and Funding Principles are further along than the essential function principles. The latter will take longer because of the complexity and implementation implications.

This paper is intended to ultimately serve as a unifying document for all these principles. It is clear that these principles are interdependent. The first three sets of principles—governance, administration, and essential functions—are foundations that courts need in place to manage their resources efficiently and effectively. These are necessary conditions for the Funding Principles. However, we recognize that this distinction is not always clear. For example, determining the court's essential functions is integral to the Funding Principles. Nevertheless, it is becoming clear that these principles in their whole represent a comprehensive yet succinct set

of ***Principles for Judicial Administration***. While these may be analogous to the *Court Administration Principles* adopted by the ABA in the 1970's they are designed as operational guides to assist courts as they face the challenges of the twenty-first century.

The document has two sections. The first deals with the aspects of court administration that are foundations to pursuing adequate funding. The second section contains specific principles relating to funding. The Funding Principles are the means to tie the first three sets of principles together. It is important to keep in mind that this is a working document and in its early condition may seem disjointed. Specifically, the Funding Principles are more fully developed with each principle having an attendant commentary. Because each set of principles is being developed through different tracks, commentary has been developed only for the Funding Principles. When all four sets of principles are completed and brought together in a unifying document such as this, they will appear in similar format.

This document marks the beginning of a vetting process with the court community and the ABA to gain comment on the appropriateness and usefulness of these proposed principles. In future drafts the governance, Case Administration and essential function principles will look similar to how the Funding Principles look in this document.

Introduction

As a separate branch of government, courts have the duty to protect citizens' constitutional rights, to provide procedural due process and to preserve the rule of law. Courts are a cornerstone of our society and provide a core function of government – adjudication of legal disputes. An adequate and stable source of funding is required for courts to execute their constitutional and statutory mandates. While the judiciary is a separate branch of government, it cannot function completely independently. Courts depend upon elected legislative bodies at the state, county and municipal levels to determine their level of funding. Judicial leaders have the responsibility to demonstrate what funding level is necessary and establish administrative structures and management processes that show they are using the taxpayers' money wisely. With these processes as a foundation, principles can be established that guide efforts to define what constitutes adequate funding.

As mentioned in the preface. This document is divided into two sections. The first deals with the aspects of court administration that are foundations to pursuing adequate funding. These are foundational in the sense that courts need to demonstrate that they are effectively managing public resources in order to successfully pursue and compete for adequate funding. The second section contains specific Court Funding Principles. These tie the first three sets of principles in the foundations section together. The Funding Principles cannot be successfully implemented absent a receptive and supportive governance and organizational infrastructure. There are two parts to the Funding Principles. The first five relate to the judiciary's responsibility to develop and manage the judicial budget. The second five identify the principles policy makers— both within and outside the judicial branch— should take into consideration when determining adequate funding for the judiciary.

I. The Foundation: Governance, Case Administration, and Essential Functions

Funding Principles cannot be successfully implemented unless courts have in place basic structural, management, and administrative practices which provide the foundation upon which court management and subsequent funding requests are based. These practices help establish respect and trust between the branches of government and increase the credibility not only with funders but within the judicial branch. Although not all encompassing, the following represent some necessary fundamentals to securing adequate funding.

Governance Principles—essentials of effective governance¹

1. A well defined governance structure for policy formulation and administration for the entire state court system.
2. Selection of leadership based upon competency not seniority or rotation.
3. Commitment to transparency and accountability through the use of performance measures.
4. Management control by judicial leadership, whether state or local, over all resources including staff and funding that support judicial services within their jurisdiction.
5. Organized to minimize redundancies in court structures, procedures and personnel.
6. Managed so as to provide an efficient balance of workload among courts.

Case Administration Principles—commitment to procedural due process²

1. Every case receives individual attention
2. Individual attention is proportional to need
3. Decisions and process demonstrates procedural justice
4. Judicial control is exercised over the legal process

Essential Functions Principles—clearly defining the mission and core functions of the court³

1. Courts accept cases that are constitutionally or statutorily mandated.
2. Courts accept cases where determination of legal status is required.
3. For cases accepted, courts provide a process to determine the best means of resolving each case and make available within the court system or by referral alternative dispositional approaches. These approaches include:
 - a. The adversarial process
 - b. A problem-solving, treatment approach
 - c. Mediation or other similar resolution alternative where the disputants maintain greater control over the process
 - d. Referral to an appropriate administrative determination

¹ There are two sources from which these Governance Principles were drawn. Durham, Becker, *Institutional Independence and Governance in the State Courts*, unpublished working paper CCJ/COSCA Harvard Executive program, Spring, 2010. And the Vermont Commission on Judicial Operations: Final Report to the Legislature, November 6, 2009. Pg. 8. In subsequent drafts commentary will be developed for each of these principles.

² These principles are part of the High Performance Court Framework. See Ostrom, Hanson, Achieving High Performance: A Framework for Courts, a working paper, NCSC, April 2010 at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1510>. In subsequent drafts commentary will be provided to clarify these principles.

³ This set of Essential Function Principles continues to be developed through the NCSC Research Division and an associated committee of court leaders. Principles in this group will likely be modified upon completion of their work.

II. Court Funding Principles⁴

Under our tripartite system of government the judicial system is dependent on the legislative branch for its funding. Given the high degree of interdependence among the branches and given that the courts often are competing with executive branch agencies for appropriations, it is critical that each branch understand and respect each others' constitutional roles in order to reach mutually accepted funding decisions. Further, as budget requests are prepared by the judiciary and considered by the legislative branch, it is useful to have a set of principles which can serve as a conceptual framework within which these actions are taken. These principles may be useful for all branches of government when exercising their respective duties and responsibilities regarding judicial budget requests and appropriations.

- A. Developing and Managing the Judicial Budget.** For the court system to exist as preserver of legal norms and as a separate branch of government, it must maintain its institutional integrity while observing mutual civility and respect in its government relations. Courts are necessarily dependent upon the other branches of government, thus they must clarify, promote, and institutionalize effective working relationships with all branches. Effective court management together with transparent budget requests supported by well-documented justification enhances the credibility of the courts and reduces obstacles to securing adequate funding. The following principles are aimed at establishing that credibility, discharging the responsibility of accountability, and maintaining necessary autonomy.

Principle I: The Judicial Branch should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models, identification of essential functions and application of appropriate performance measures.

Commentary: The Judicial Branch recognizes that there is fierce competition for scarce public dollars and that budget requests must be made based solely on need. NCSC's High Performance Court Framework (HPC) offers a comprehensive means to understand and assess how well courts are fulfilling their role and responsibilities. The HPC integrates key reform initiatives into a single view and offers insights into how courts can elevate the way they do business consequently justifying the resources needed to succeed. It has been shown that credible and

⁴ The funding principles were drafted using multiple resources. See the references at the end of the document for specific sources.

objective workload models, such as the NCSC's Workload Assessment Model, successfully identify how many judges and court staff are needed to handle the diversity of cases filed in the courts. Such a model tells policy makers and court managers what the capacity of the current staffing structure is and can be related to performance measures (see Principles II and VI). This has been shown as a critical piece to building good communications and relations with the legislative branch. From the court manager's perspective, an objective workload model can be used to identify efficiencies in one location that can be adopted by others and measure the impact of changes, such as budget cuts and institution of technologies, on the capacity of courts to handle the caseload.

Principle II: The Judicial Branch should adopt performance standards with corresponding, relevant performance measures.

Commentary: In the past courts focused on their structures and processes not their performance. Knowing whether and to what degree a court is high performing is a matter of results. A high performance court is evidence based. Performance standards, or targets, are established. Progress towards meeting those standards is measured by performance measures. Beginning in 1987 with the development by the National Center for State Courts of the Trial Court Performance Standards,⁵ attention shifted to outcome-based measurable performance standards as a means of identifying what courts actually accomplish with the means at their disposal. The evolution of court performance assessment led to the development of *CourTools* (2005), a set of ten core court performance measures. By prescribing what courts should accomplish appropriate emphasis can be placed on performance measurement and performance management. Performance assessment provides a means for internal evaluation, self-improvement, and improved accountability to the funding entities and the public. Courts acknowledge that with judicial independence comes the corresponding right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court operations. Accountability and transparency are critical to judicial governance and to the preservation and strengthening of an independent judiciary.

Principle III: The Judicial Branch budget requests should be considered by the legislature as submitted by the judiciary.

Commentary: Courts are a separate branch of government responsible for executing their constitutional mandates in an efficient and effective manner. Legislative bodies should require that the judiciary's budget be presented directly to them by judicial leadership without prior approval of the Governor. Too often, legislatures consider the Governor's budget submission and recommendations for the judiciary's budget as if the judiciary were one of the Governor's executive branch departments. This often arises as governors address their duty to manage a

⁵ ***Trial Court Performance Standards***, NCSC, 1987 at http://www.ncsconline.org/D_Research/TCPS/.

balanced budget. However, the Governor is not responsible for administering the judicial branch and does not have the knowledge necessary to determine needed funding levels in the judicial branch. Judicial leadership are in the best position to know what resources are needed to fulfill its constitutional mandates and how best to present and justify its need for those resources.

Principle IV: The Judicial Branch should have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items.

Commentary: The judiciary is dependent on the legislative branch for its budget. Notwithstanding that fact, under the separation of powers doctrine, no branch should exercise the powers properly belonging to the other branches. Inherent in the functioning of a branch of government is the ability to manage and administer its appropriated funds subject to the responsibility of being accountable for such management. Budgets which delegate broad judicial control to administer the operation of the judicial branch, without being unduly directed through detailed budget line items, allow reasonable autonomy by the judicial branch to manage scarce resources.

Principle V: The Judicial Branch should administer funds in accordance with sound, accepted financial management practices.

Commentary: Much like the measurement of court performance demonstrates a commitment to effective management, administering all funds in accordance with sound, generally accepted financial management practices maintains the court system's credibility. The other branches will not place confidence in the judiciary's ability to manage its own operations without external oversight. Effective and reliable financial management practices must be adopted and applied to all types of funds administered by the courts including appropriated funds, revenues and fees received, and trust funds held on behalf of litigants or other parties. To ensure transparency and accountability in financial operations, the courts should undergo regular internal and external fiscal audits in accordance with state requirements.

B. Providing Adequate Funding. The basic function of the court system is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution. To fulfill this mission courts must:

- Provide facilities that are safe, secure, accessible, and convenient to use.
- Allow participation by all litigants, witnesses, jurors, and attorneys without undue hardship or inconvenience including those with language difficulties, physical or mental impairments, or lack of financial resources.

- Provide proceedings that are affordable in terms of money, time and procedures.
- Process cases in a timely manner while keeping current with its incoming caseload.
- Faithfully adhere to relevant laws and procedural rules.
- Provide a reasonable opportunity for litigants to present all necessary and relevant evidence.
- Make a complete and accurate record of all actions.
- Provide for inclusive and representative juries.

While these broad responsibilities of the courts are clear, it is more difficult to clearly determine the level at which the judicial branch is adequately funded to accomplish these duties. Compounding this issue is the fact that funding for any given court system may vary because of jurisdictional, structural and operational differences. Principles that address the adequacy of court funding provide a useful context to aid judicial leaders and funders in assessing and addressing their respective budgetary responsibilities and promote development of more stable and adequate funding. Principles focus budget discussions on policy and program issues as opposed to line item detail. The set of principles below help define when a court system is adequately funded. Many of these principles can be supported by nationally accepted performance measures or by such measures adopted by the judicial leadership in each state.

Principle VI: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judges and court personnel functioning in accordance with adopted workload standards.

Commentary: This principle must be taken in context with two earlier principles: courts must objectively demonstrate the need for resources (Principle I) and have performance measures (Principle II) which include those that demonstrate the extent that courts are meeting time to disposition standards. Both timeliness and quality are requirements of satisfactory performance. Thus having guidelines for timely case processing is fundamental to determining satisfactory performance. Workload models demonstrate when judges and staff are working to capacity. Courts should be funded so as to enable satisfactory performance by adjudicating cases in accordance with time standards with judges and court personnel working to capacity as measured by workload models.

Principle VII: Responsible funding entities should ensure that courts have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines.

Commentary: Existing national standards relating to courthouse facilities should be used to assess compliance with this principle. The physical structure of a courthouse is the most obvious factor affecting access to justice. To ensure that all persons with legitimate business before the court have access to its proceedings, court facilities need to be safe, accessible, and convenient to use. This principle recognizes that most court facilities are funded through local units of government. Other than furnishings, state courts typically do not receive funds for facilities.

Principle VIII: Courts should be funded so as to provide for technologies comparable to those used in other governmental agencies and private businesses.

Commentary: Technology is the linchpin for courts to meet future demands, particularly when budget shortfalls are expected to continue into the foreseeable future. Courts must provide services of a kind and convenience that the public has come to expect from their experiences with other government agencies and the commercial world. The NCSC has identified key technologies courts need in order to become more efficient and remain relevant in a constantly advancing technical society. Examples include electronic filing, effective case management systems, expanding the use of video conferencing, centralizing and automating the payable processes, and establishing virtual self-help centers to assist self-represented litigants. Many states have created special technology earmark funds to provide a stable source of funding for these investments but should be used consistent with Principle X. If courts do not have sufficient funds to invest in this area they run the risk of not being able to achieve the efficiencies demanded in an era of fewer resources.

Principle IX: Courts should be funded at a level that allows their core dispute resolution functions to be provided through essential dispositional alternatives.

Commentary: Principle VI addresses the need to fund the essential functions of courts to a level that allows them to resolve cases in a quality fashion in accordance with time standards. In addition, for courts to function as efficiently as possible the legislature needs to adequately authorize and fund the necessary dispositional methods. Research has revealed that one dispute resolution size does not fit all disputes. Some cases, such as criminal matters, may require the full adversarial process. Others, such as those with drug use as the underlying issue, may be more suited to a problem-solving, treatment approach. Some family cases may be amenable to mediation or some other similar resolution alternative where the disputants maintain greater control over the process and outcome. Still other cases can be resolved through purely administrative determinations. Appropriations must be sufficient to enable courts to offer

various dispositional options as well as a triage process which allows courts to analyze the issues or causes of action in each individual case to determine the appropriate dispositional alternative. Without proper dispositional alternatives legislative funding decisions may prevent courts from adjudicating entire casetypes that may arbitrarily be deemed a lower priority, when in fact all cases filed with the courts have constitutional standing to be properly adjudicated.

Principle X: Courts should be funded so that fees and fines are secondary to the general fund as a means of producing revenue for the courts and that the level of fees does not deny reasonable access to dispute resolution services provided by the courts.

Commentary: Courts are a core function of government and as such should be primarily funded by general tax revenues. Recognizing that fees and fines should be secondary to appropriations from general revenue funds, courts should be able to retain the major portion, if not all, of the revenue generated by those fees and fines. Citizens pay taxes to secure basic core services. While circumstances occur where user fees are necessary, such fees should always be minimized and should never be used to fund activities outside the court system. Courts should not become a taxing vehicle of government for purposes extraneous to the courts. Court fees cannot be allowed to become a barrier to the public's access to justice.

III. Conclusion

Judicial, legislative and executive branch leaders must understand the nature of the judicial function and the role courts play in the larger world. From maintaining a peaceful and orderly society, to providing stable resolution of business and commercial disputes which is the basis for a vibrant economy, to maintaining the rule of law so fundamental to a democratic nation, courts are a core function of government and must always be so recognized. The Funding Principles set forth herein provide a framework in which judicial and legislative leaders can secure stable and adequate funding so key to the successful discharge of the judicial branch mission.

Resources

- ABA *Court Funding Standards*, provided by Peter Kohling, April 2010
- NCSC, *Trial Court Performance Standards, 1987*.
- COSCA Position Paper on State Judicial Branch Budgets in Times of Fiscal Crisis, December, 2003.
- COSCA Position Paper on Effective Governance and Accountability, December 2001.
- CCJ Policy Resolution 22 State Judicial Branch Budgets in Times of Fiscal Crisis, January 24, 2004.
- CCJ Policy Resolution 23 Resolution 23 In Support of Principles of Effective Judicial Governance and Accountability, January 24, 2004
- Durham Becker, *Institutional Independence and Governance in the State Courts*, unpublished working paper with the CCJ/COSCA Harvard Executive program, Spring 2010.