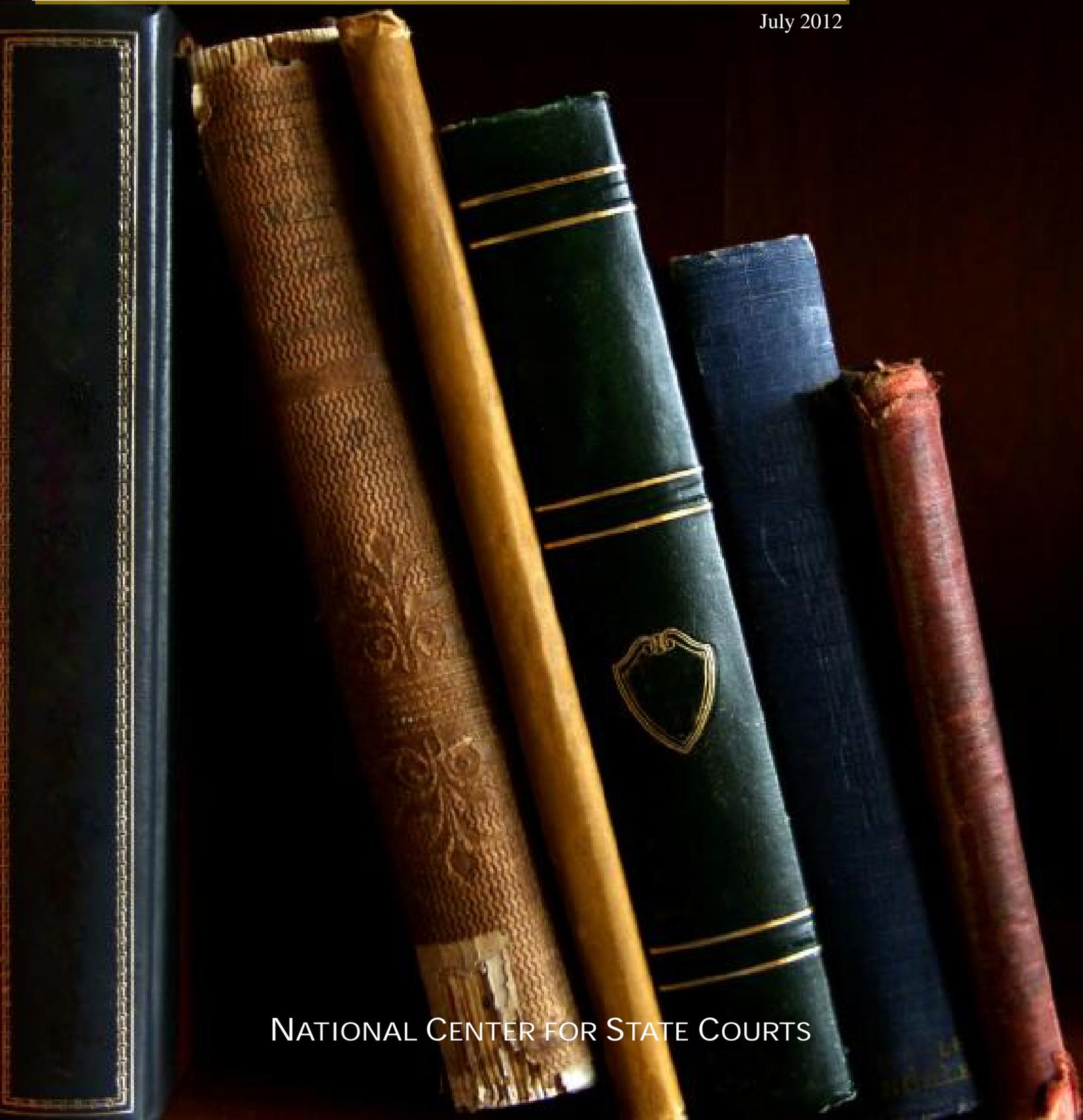


PRINCIPLES FOR JUDICIAL ADMINISTRATION

July 2012



NATIONAL CENTER FOR STATE COURTS

PRINCIPLES FOR JUDICIAL ADMINISTRATION



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PREFACE

Changing socioeconomic factors and shifting demands on our judicial institutions require courts to develop solutions that look beyond the short-term. To be relevant, courts must provide quality judicial services more efficiently. Court leadership and the legal profession have expressed a strong need for a set of principles to guide them as they seek to restructure court services and secure adequate funding. These principles relate to courts' governance structures, decision-making and case administration, and funding.

These are practical operational principles that 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. The principles are designed for use by the judicial branch leadership of each state as a basis for establishing principles for judicial administration in their states. They are also intended to help members of legislative bodies and their staff understand the difficult structural and fiscal decisions required to enable courts to enhance the quality of justice while facing increased caseloads with fewer resources.

A number of groups have worked independently to develop these guiding principles. Principles relating to effective governance have been developed in conjunction with the National Center for State Courts (NCSC) Harvard Executive Session and the reengineering experience of several states. Decision-Making and Case Administration Principles have been completed through the High Performance Court Framework. Finally, Funding Principles have been developed using the Conference of State Court Administrators (COSCA) white papers, the Conference of Chief Justices (CCJ)/COSCA policy resolutions, the Trial Court Performance Standards, *CourTools* and recent NCSC reengineering projects.

This paper is intended to serve as a unifying document for all these principles. It is clear that these principles are interdependent. The first two sets of principles, which address governance and decision-making and case administration, are foundations that courts need in place to manage their resources efficiently and effectively.

These are necessary pre-conditions for the funding principles. These principles in their whole are intended to represent a comprehensive yet succinct set of ***Principles for Judicial Administration***. While these may be analogous to the *Court Administration Principles* adopted by the American Bar Association (ABA) in the 1970s, they are designed as operational guides to assist courts as they face the challenges of the twenty-first century.

This document has three sections. The first two address aspects of court administration that are foundations to pursuing adequate funding. The third section contains specific principles relating to funding. The funding principles are the means to connect the first two sets of principles.

This document and these principles have been and will continue to be vetted with the court community and the legal community. They will be refined over time in order to ensure and maintain their relevance, usefulness and appropriate application.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Governance Principles

- Q **Principle 1:** Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.
- Q **Principle 2:** Judicial leaders should be selected based on competency.
- Q **Principle 3:** Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.
- Q **Principle 4:** Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.
- Q **Principle 5:** The court system should be organized to minimize the complexities and redundancies in court structures and personnel.
- Q **Principle 6:** Court leadership should allocate resources throughout the state or local court system to provide an efficient balance of workload among judicial officers and court staff.
- Q **Principle 7:** Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Decision-Making and Case Administration Principles

- Q **Principle 8:** Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.

- Q **Principle 9:** Court leadership should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:
 - The adversarial process.
 - A problem-solving, treatment approach.
 - Mediation, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.
 - Referral to an appropriate administrative body for determination.

- Q **Principle 10:** Court leadership should exercise control over the legal process.

- Q **Principle 11:** Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.

- Q **Principle 12:** Judicial officers should give individual attention to each case that comes before them.

- Q **Principle 13:** The attention judicial officers give to each case should be appropriate to the needs of that case.

- Q **Principle 14:** Decisions of the court should demonstrate procedural fairness.

- Q **Principle 15:** The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Court Funding Principles—Developing and Managing the Judicial Budget

- Q **Principle 16:** Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.

- Q **Principle 17:** Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.

- Q **Principle 18:** Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.

- Q **Principle 19:** Judicial Branch leadership 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.

- Q **Principle 20:** Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Court Funding Principles—Providing Adequate Funding

- Q **Principle 21:** Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff functioning in accordance with adopted workload standards.

- Q **Principle 22:** 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.

- Q **Principle 23:** The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.

- Q **Principle 24:** Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

- Q **Principle 25:** Court fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.

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 to establish administrative structures and management processes that demonstrate 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 three sections. The first two sections address aspects of court administration that form the foundation to pursue adequate funding: governance, decision-making and case administration. These are foundational in the sense that courts need to demonstrate that they are effectively managing public resources in order to pursue and compete successfully for adequate funding. The third section contains court-specific Funding Principles which connect the first two sets of principles. The Funding Principles cannot be successfully implemented if a receptive and supportive governance and organizational infrastructure is absent.

There are two parts to the Funding Principles. The first five principles relate to the responsibility of Judicial Branch leadership 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.

GOVERNANCE PRINCIPLES

Governance is the means by which an activity is directed to produce the desired outcomes. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective, fair and impartial justice.

State court systems operate under a number of different structural models. In some states, trial courts operate in accordance with local rules and procedures; any centralized authority within the state exercises limited power. Some states have a relatively complex trial court structure with local units bound together by a strong central authority. Other states have a fully consolidated, highly centralized system of courts with a single, coherent source of authority; no subordinate court or administrative subunit has independent powers or discretion.¹

Some state court systems are funded entirely by the state, some are funded entirely by local government and some court systems are funded by both state and local funding bodies.

Each model for court organization presents its own distinctive challenges to effective governance. Some challenges are structural in nature while others are cultural. For example, the sense of individual independence possessed by judges generally poses a significant obstacle to creating a system identity, and in turn fidelity to the decisions of a governing authority. It has been said that “the conflict in professional organizations results from a clash of cultures: the organizational culture which captures the commitment of managers, and the professional culture, which motivates professionals.”²

Striking the balance between self-interest and institutional interests, while binding separate units of an organization together, requires strategies that embrace three elements: a common vision of a preferred future, helpful and productive support services that advance the capabilities of the organization’s component parts, and a shared understanding of the threat and opportunities facing the system.³

The following principles are set forth as unifying concepts which can be employed in all existing court organization models and all funding models. Further, they offer a means for addressing the tension between the self-interest orientation of those working within courts and the organizational culture of the courts. They do not presuppose or advocate for any particular court organization or funding model.

¹ Henderson, Thomas et al. (1984) *The Significance of Judicial Structure: The Effects of Unification on Trial Court Operations*. Washington DC: National Institute of Justice.

² Realin, Joseph A. (1985) *The Clash of Cultures*, Harvard Business School Press.

³ Griller, Gordon A. (2010) “Governing Loosely Coupled Courts in Times of Economic Stress,” *Future Trends in State Courts: 2010*, National Center for State Courts.

Q *Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.*

Commentary: The governance structure should be apparent and explicit with clearly defined relationships among governing entities, presiding judges, court administrators and various court committees. Both the public and those working in the system need to understand how the governance structure operates, who has authority to make decisions, how decisions are made, and how all component parts relate. It is particularly important that the authority of judicial leaders, administrators and managers for policy decision-making and implementation be well-defined and articulated. The purpose of a well-defined governance structure is twofold. First, it should enable development of statewide or court wide policies that ensure uniformity of customer experience throughout the state or court. Second, the governance structure should enable reasonably uniform administrative practices for the entire court system that provide the greatest access and quality at the least cost. While flexibility, discretion and local control are desirable as they encourage initiative and innovation, standardization fosters efficiency and uniformity of treatment. The challenge of any governance structure is to define the boundaries between the appropriate level of administrative discretion and the need to enforce minimum standards through policies and administrative practices that ensure efficient expenditure of public resources and uniformity of treatment of similarly situated customers.

The Judicial Branch must have a clearly articulated mission, must state the values by which it operates and must identify its strategic objectives and goals. A well-defined governance structure enables the court system to accomplish these ends and to present a unified message to the public as well as to legislative and executive branches. The court system benefits from the continuity, stability and consistency of an effective governance structure.

Inherent in this principle is the need for open communication with meaningful input from all court levels into the decision-making process. An effective system of governance does everything possible to foster excellent communication and to keep information flowing.

Q ***Principle 2: Judicial leaders should be selected based on competency.***

Commentary: The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leaders should explicitly identify and acknowledge those skills.

The development of selection criteria may be useful in attracting specific skill sets or experience levels to these executive judicial positions. It may also help to steer courts away from the rotation, seniority or volunteer selection methods which often fail to account for a judge's general interest in the position or ability to perform the duties successfully.

States have established a number of methods for selecting chief justices and presiding judges. Whichever method is used, the selection process should take into consideration the skills and experience required to govern complex organizations.

The minimum effective term length for a chief justice or presiding judge is no less than two years. A term of less than two years does not allow the judicial leader to set goals and effectively implement action plans. Developing the necessary leadership and management skills takes time. A lesser term also impedes the development of relationships with leaders of the other branches of government, which is critical to securing funding.

A successful chief justice or presiding judge should be considered to serve renewable or successive terms in order to maintain continuity in the leadership of the court, as well as institutionalize effective management policies.

Because management responsibilities for leadership judges will continue to increase, educational opportunities to develop increased proficiency in technology, case, personnel and financial management should be available and encouraged.

Q ***Principle 3: Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.***

Commentary: Decisions about policy belong with the structural "head" of a judicial system, but implementation and day-to-day operations belong to administrative staff.

Effective governance requires a strong court management team comprising judicial leaders and court administrators. An avoidance of micro-management by the policy-maker and clear authority for implementation in the managers are both important for the credibility and effectiveness of court governance while minimizing opportunities for undermining policy at the operational level.

□ ***Principle 4: Court leaders, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.***

Commentary: Fundamental to effective management is the control of resources. Court leadership must be given the authority to manage the available resources. While this authority can be shared with professional court administrative staff within the court system, it should not be exercised by anyone outside the court system. Courts must resist being absorbed or managed by the other branches of government.

The challenge for the court leadership is to ensure the availability of sufficient resources and to administer the use of those resources to meet all judicial responsibilities within a cost range that is acceptable to society and to do so without interfering with the independence of the judiciary in the decision-making process.

□ ***Principle 5: The court system should be organized to minimize the complexities and redundancies in court structures and personnel.***

Commentary: While courts can be organized under one of several different models (see Governance Principles introduction), regardless of the model employed, every effort should be made to avoid overlapping or duplicative jurisdiction among courts within a given state. The quality of justice rendered by a court system correlates directly with citizens' ability to access the courts. The organization of the court system should promote access and the prompt, cost-effective and just discharge of the primary duty of dispute resolution. Removal of barriers such as multiple courts with similar or overlapping jurisdiction enhances citizen access while also reducing taxpayer costs. Clear and simplified structuring of the court system facilitates ease of use and engenders public understanding and ultimately support.

Q ***Principle 6: Court leadership should allocate resources throughout the state or local court system so as to provide an efficient balance of workload among judicial officers and court staff.***

Commentary: Given the geographic distribution of the population, the workloads of courts throughout a state, region or district will vary. One of the most difficult challenges of court leadership is to equitably balance workloads among judges and staff and to ensure that these resources are assigned appropriately. Resource allocation to cases, categories of cases, and jurisdictions is at the heart of court management. Assignment of judges and allocation of other resources must be responsive to established case processing goals and priorities, implemented effectively and evaluated continuously. Objective workload models should be used to identify how many judicial officers and court staff are needed and to assist in allocating staff on an equitable basis. Through technology, workload from any court within a jurisdiction can be assigned to court staff working in other courts in order to balance the workload.

Q ***Principle 7: Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.***

Commentary: To earn the public's trust and confidence and to provide quality judicial services, courts need judges with the highest ethical standards, extensive legal knowledge, and complex and unique skills in leadership, decision-making, and administration. Courts similarly need highly professional, ethical and competent staff. The court management team should work to enhance the performance of the judicial system as a whole by continuously improving the personal and professional competence of all persons performing judicial branch functions. All judicial officers and court staff should have clear expectations of effective performance along with transparent systems to evaluate that performance. The evaluations should be used by court leadership to develop education and training programs that provide judicial officers and court staff the knowledge and skills required to perform their responsibilities fairly, correctly and efficiently while adhering to the highest standards of personal and official conduct.

DECISION-MAKING AND CASE ADMINISTRATION PRINCIPLES

The legal concept of procedural due process and the administrative aspect of efficiency are components of the manner in which courts process cases and interact with litigants. Caseload management is central to the integration of these components into effective judicial administration. Defining quality outcomes is a difficult task, but with the emergence of the Trial Court Performance Standards (1990), the International Framework for Court Excellence (2008) and the High Performance Court Framework (2010), concepts and values have been developed by which all courts can measure their efficiency and quality via instruments such as CourTools (2005). These Principles of Decision-Making and Case Administration are imbedded in and fundamental to these performance management systems.

□ ***Principle 8: Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.***

Commentary: Courts serve many functions. Primary among them is determination of legal status. Courts determine whether a defendant is guilty or innocent, whether one party owes money to another party, who owns a piece of property, and who has custody of a child. Thus it is obvious that courts must accept those cases that require the adjudication of legal status. One of the hallmarks of the American judicial system and particularly state judicial systems is the constitutional requirement that courts be open to give redress according to law.⁴ This concept is expressed in most state constitutions or their statutes.⁵ The ability to go to court is a fundamental right retained by the people. Consequently, court leaders have an obligation to structure their operational systems in a manner that promotes public access to the courts. Tight economic times do not justify the courts not accepting cases.

⁴ In contrast to many state constitutions, the federal Constitution contains no “open courts” requirement. Thus it has been held in the context of federal litigation that except for those cases directly provided in the constitution, access to the federal courts is controlled by Congress, which has the authority to expand or limit access to the federal judiciary. *Ankenbrandt v. Richards*, 504 U.S. 689, 698 (1992) *citing* *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845).

⁵ Maryland’s open court provision, one of the earliest, states, “That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.” Maryland Const. art. 19. Many other states have similar constitutional provisions that mandate that courts be open, all of them ultimately tracing their origins to 1215 and the adoption of the Magna Carta. The open court requirements are typically coupled with other language of the Magna Carta conferring a right to remedy in due course of law or a clause guaranteeing administration of justice without sale, denial, or delay. See, *State ex rel. Herald Mail Co. v. Hamilton*, 267 S.E.2d 544 (W. Va. 1980). Where found, open court requirements are usually contained in states’ bills of rights and not the judicial articles. The implication to this placement is clear: the right to go to court is not an operational requirement placed on the judiciary but rather a fundamental right retained by the people. “The right to go to court to resolve our disputes is one of our fundamental rights.” *Psychiatric Assoc. v. Siegel*, 610 So.2d 419, 424 (Fla. 1992).

Q ***Principle 9: Court leadership should 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, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.*
- D. *Referral to an appropriate administrative body for determination.*

Commentary: Historically courts have been thought of as venues in which an adversarial process existed as the highest and exclusive means for case resolution in the United States. Over the years, however, there has been a growing recognition that the adversarial process need not be the exclusive means or even the best means for resolving some types of disputes. Increasingly courts, the bar, and the public have recognized that alternative means of dispute resolution could be more timely, more resource efficient, and produce more satisfactory results. The development of court mediation programs, the evolution of problem-solving courts, the use of court diversion options, and the growth of restorative justice principles all evidence a growing recognition by courts that a menu of options must be provided to litigants. Court proceedings may use a mixture of the court processes identified in this Principle. In many jurisdictions the single door court-focused courthouse has been replaced by a multi-door consumer-focused courthouse, one that affords litigants different options and opportunities for resolving their disputes. In short, the rise of “alternative” dispute resolution methods is no longer alternative; it has become mainstream.

Q ***Principle 10: Court leadership should exercise control over the legal process.***

Commentary: For years judges and lawyers have debated who should control a case. Some contend that the case belongs to the litigant/lawyer who knows the case and is in the best position to manage the flow of the case activities. Others argue that the parties and lawyers control the case until it is filed with the court, thereby calling upon the court to resolve a matter which the parties have been unable to do. Those with this view believe that invoking the jurisdiction of the court renders the court responsible for managing the adjudicatory process thus avoiding legal gamesmanship and making obtaining a just outcome the goal. Effective management of the court’s entire caseload demands that judges, with the assistance of court administrative staff, manage and control the flow of cases through the court.

Several factors have been demonstrated as key elements of effective judicial management of the docket. These include establishing a set of meaningful events, adopting a realistic schedule, creating expectations that events will occur as scheduled, exercising firm control over the granting of continuances, sharing information among the parties early in the process, and using data to monitor compliance with established case processing goals. Control of the process by the trial court management team is the basic principle upon which these evidenced-based practices are founded.

Q ***Principle 11: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.***

Commentary: Court leaders should adopt court procedures that reflect the practices that provide justice at the least expense to the litigants and taxpayers. Those procedures should be made uniform within the jurisdiction. Procedures should be proportionate to the nature, scope and magnitude of the case involved. One size does not necessarily fit all. While different rules may be required for different case types, redundancies or superfluous procedures must be eliminated.

Q ***Principle 12: Judicial officers should give individual attention to each case that comes before them.***

Commentary: Procedural fairness guarantees certain basic rights to all parties in both civil and criminal cases. These rights include ensuring that all parties receive notice of the proceedings, have the right to be heard and to present evidence. A tenet of procedural fairness also involves the court giving individual attention to each case. Some courts use master calendars for routine, non-complex matters while employing individual calendars for complex cases in order to ensure the appropriate level of judicial attention and management of the case. Regardless of the calendaring method, court procedures must allow parties and attorneys to offer relevant information and to present their respective sides of the case. This Principle, coupled with Principle 10, calls upon courts to give individual attention to a case proportionate to the nature, scope and magnitude of the case while taking into account the aggregate nature of the court's entire caseload.

Q ***Principle 13: The attention judicial officers give to each case should be appropriate to the needs of that case.***

Commentary: This Principle introduces the concept of proportionality when attempting to define the individual attention necessary for a case. Procedures should be proportionate to the nature, scope and magnitude of the case. The idea of proportionality also acknowledges that courts try individual cases within the context of their total caseloads. To a certain extent, courts have learned to reconcile the conflict between individualized attention and the overall caseload demands through the use of Differentiated Case Management. This formal, structured management strategy illustrates the concept of proportionality in a practical sense. It seeks to maintain equality and due process in the treatment of cases while recognizing the pressures of the overall court workload and the resources available. Without the proper balance, delays will occur and justice can be thwarted even when appropriate attention is given to an individual case.

Q ***Principle 14: Decisions of the court should demonstrate procedural fairness.***

Commentary: Courts should provide due process and equal protection of the law to all who have business before them. Court decisions and practices should adhere to relevant laws, procedural rules and established policies. Adherence to established law and procedure assist in achieving predictability, reliability, integrity and the greater likelihood of justice in the individual case. Perceptions that procedures are fair and just influence a host of outcome variables, including satisfaction with the process, respect for the court and willingness to comply with court rulings and orders. When justice is perceived to have been done by those who directly experience the court's adjudicatory process and procedure, public trust and confidence increase and support for the court is enhanced.⁶

⁶Tom Tyler, a leading researcher in the field, suggests there are four expectations people have for procedurally fair court processes. The first expectation, *neutrality*, is that the law is applied in a consistent, impartial manner by unbiased decision makers. The second one is that all people are treated with *respect* and dignity, and court procedures serve to clearly safeguard individual rights. Third, individuals who are affected by a given decision have the chance to be heard (or *voice*) and to present information relevant to the decision. Finally, the judge is seen as *trustworthy* by listening to both sides, shows an understanding of the issues, and clearly explains the reasoning and implications of the decision. Implementing administrative practices to meet these expectations reinforces the perception of a court's commitment to procedural due process.

Q ***Principle 15: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.***

Commentary: The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also the effectiveness with which resources are used. Such accountability requires a constant process of self-assessment and public scrutiny. Courts stand as an important and visible symbol of government. Compliance with the law is dependent to some degree upon public respect for courts. Public trust and confidence in courts stem from public familiarity with and understanding of court proceedings, actions and operations.

Courts must use available resources wisely to address multiple and conflicting demands. To do so they must continually monitor performance and be able to know exactly how productive they are, how well they are serving public needs and what parts of the system and services need attention and improvement. Courts must continually evaluate the effectiveness of their policies, practices and new initiatives. This requires the collection and use of relevant, timely and accurate information that must then be used to make decisions on how to best manage court operations to ensure the desired outcomes.

Assessments must rely on objective data and be methodologically sound. The evolution of court performance assessment led to the development of *CourTools*, a set of ten core court performance measures. These and other similar measures provide a means for self improvement and improved accountability to the funding entities and the public. Ideally courts that meet or exceed performance standards and share this information with the public will be recognized as doing so by the public. Where performance is good and public communications are effective, trust and confidence are likely to be present and support for the courts will increase.

COURT FUNDING PRINCIPLES

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 judicial branch for consideration 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.

Developing and Managing the Judicial Budget

For the court system to exist as a 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. The Judicial Branch is 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 16: Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the 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. The 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 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 15 and 17). 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.

Q ***Principle 17: Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.***

Commentary: In the past courts focused on their structures and processes not on 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,⁷ 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.

Q ***Principle 18: Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.***

Commentary: Courts are a separate branch of government responsible for executing their constitutional mandates in an efficient and effective manner. State and local legislative bodies should require that the judiciary's budget be presented directly to

⁷ NCSC, (1987) *Trial Court Performance Standards*, at http://www.ncsconline.org/D_Research/TCPS/.

them by judicial leadership without prior approval of the executive. Too often, state and local legislative bodies consider the executive's budget submission and recommendations for the judiciary's budget as if the judiciary were one of the executive branch departments. This often arises as executives address their duty to manage a balanced budget. However, the executive is not responsible for administering the judicial branch and does not have the knowledge necessary to determine needed funding levels in the judicial branch. The court management team is 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 19: Judicial Branch leadership 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 Judicial Branch is dependent on the state and local legislative bodies 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. Court leadership must have broad authority 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 20: Judicial Branch leadership 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 or local requirements.

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 proceedings that are affordable in terms of money, time and procedures.
- Process cases in a timely manner while keeping current with its incoming caseload.
- Adhere faithfully to relevant laws and procedural rules.
- Provide a reasonable opportunity for litigants to present all necessary and relevant evidence.
- 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 facilities that are safe, secure, accessible, and convenient to use.
- 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 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 21: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff 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 16) and have

performance measures (Principle 17) 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 22: 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 applies to facilities funded by local units of government as well as those funded by the state.

□ ***Principle 23: The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.***

Commentary: As socio economic conditions change and caseloads continue to grow, and as the demands for access change as citizens' use of technology to interact with government grows, state-of-the-art technology is necessary for courts to meet future demands placed on them. Courts must provide services of a kind and convenience that the public has come to expect from their experiences with the other branches of government and the commercial world. Court systems need to continue to identify 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, online jury services support, video conferencing of court hearings, centralized and automated payable processes, and virtual self-help centers to assist self represented litigants. Many states have created special technology earmark funds, consistent with Principle 25, to provide the necessary resources for these investments.

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- Q ***Principle 24: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.***

Commentary: Principle 21 addresses the need to fund courts at a level that allows them to resolve cases that come before them in a quality fashion in accordance with time standards. Principle 9 addresses the need for courts to make the necessary alternative dispute resolution mechanisms available. This principle addresses the need to adequately fund those various dispute resolution mechanisms. 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 case types that may arbitrarily be deemed a lower priority, when in fact all cases filed with the courts have constitutional standing to be properly adjudicated.

- Q ***Principle 25: Courts' fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.***

Commentary: Courts are a core function of government and as such should be primarily funded by general tax revenues. Citizens pay taxes to secure basic core services. However, most states also charge fees for court users. 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 raised so high that they become a barrier to the public's access to justice. Recognizing that fees 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.

CONCLUSION

Judicial, legislative and executive branch leaders must understand the nature of the judicial function and the role courts play in the larger world. Courts are a core function of government and must always be so recognized: 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. The governance and the decision-making and case administration principles discussed above form the foundations that courts need in place to pursue adequate funding. Funding Principles cannot be successfully implemented unless courts have basic structural, management and administrative practices in place. These provide the foundation upon which court management and subsequent funding requests are based. 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.

Court leaders can use these Principles for Judicial Administration to critique existing models in place in both state and local court systems. Critiquing how a particular court system matches up to the principles of governance, decision-making and case administration, and court funding can lead to specific and tangible assessments about strengths and weaknesses and, in turn, to real reform. It is in the spirit of providing good government that these Principles for Judicial Administration are advanced.

RESOURCES

- *ABA Court Funding Standards*, provided by Peter Kohling, April 2010
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