Future Trends in State Courts 2011

Special Focus on Access to Justice

 Principles of Judicial Administration: The Lens of Change

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Courts nationwide are making do with fewer resources even in the face of rising caseloads. A set of principles is needed to guide the courts as they restructure their operations in the face of budget challenges.

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, administrative operations, core functions, dispositional alternatives, and funding. These are practical operational principles 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. They are also intended to help members of the legislature and their staffs 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. Case Administration Principles have been completed through the High Performance Court Framework (NCSC, 2010). Core Functions and Dispositional Alternatives Principles—defining the mission and core function of courts—have been developed in the context of the budget crisis with the NCSC’s Research Division. 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 (NCSC, 1990), CourTools (NCSC, 2005), and recent NCSC reengineering projects.

These principles 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 21st century. These new principles, which are still in draft form, will continue to be vetted with the court community and the legal community and will be brought to the Conference of Chief Justices and Conference of State Court Administrators for adoption later this year. Nevertheless, they will be refined over time to ensure and maintain their relevance, usefulness, and appropriate application.

There are four sets of principles. The first three address aspects of court administration that form the foundation for pursuing adequate funding: Governance, Case Administration, and Core Functions and Dispositional Alternatives. These are foundational in that courts need to demonstrate that they are effectively managing public resources to pursue and compete successfully for adequate funding. The fourth set contains court-specific Funding Principles, which connect the first three 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: Developing and Managing the Judicial Budget and Providing Adequate Funding.
Below is a summary of the principles. In the full document each principle is accompanied by commentary to help explain the meaning and uses of each principle. For sake of brevity, this article contains only the specific principles. (These principles are being vetted, and a final version should be available in winter 2012. For the full document with the attendant commentaries, see Principles of Judicial Administration at www.ncsc.org.)

Governance Principles
Governance is the means by which an activity is directed to produce the desired outcomes. Court governance flows from one of four basic structural court system models first identified in 1984.

1. **Constellation**: “The state of the judiciary is a loose association of courts which form a system only in the most general of terms . . . [with] numerous trial courts of varying jurisdictions . . . which operate with local rules and procedures at least as important as any statewide prescriptions. . . . Formal lines of authority among the courts are primarily a function of legal processes such as appeals” (Henderson et al., 1984: 35).

2. **Confederation**: “A relatively consolidated court structure and a central authority which exercises limited power. Extensive local discretion. . . . There are clearly defined managerial units at the local level administering the basics of judicial activity” (Henderson et al., 1984: 38).

3. **Federation**: “The trial court structure is relatively complex, but local units are bound together at the state level by a strong, central authority” (Henderson et al., 1984: 41).

4. **Union**: “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” (Henderson et al., 1984: 46).

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

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

**Principle 2**: Judicial leadership should be selected based on competency, not seniority or rotation.

**Principle 3**: Judicial leaders should demonstrate a commitment to transparency and accountability through the use of performance measures and evaluation at all levels of the organization.

**Principle 4**: Judicial leaders should focus attention on policy-level issues while clearly delegating administrative duties to staff.

**Principle 5**: Judicial leadership, whether state or local, should exercise management control over all resources, including staff and funding that support judicial services within their jurisdiction.

**Principle 6**: The court system should be organized to minimize redundancies in court structures, procedures, and personnel.

**Principle 7**: The court system should be managed to provide an efficient balance of workload among courts.

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. Caseflow 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 (NCSC, 1990), the International Framework for Court Excellence (International Consortium for Court Excellence, 2008; Van Duizend, 2010), and the High Performance Court Framework (NCSC, 2010), concepts and values have been developed by which all courts can measure their efficiency and quality via instruments such as CourTools (NCSC, 2005). These Case Administration Principles are embedded in and fundamental to these performance management systems.
Principle 8: Judicial officers should give individual attention to each case that comes before them.

Principle 9: The attention judicial officers give to each case should be appropriate to the needs of that case.

Principle 10: Decisions of the court should demonstrate procedural justice.

Principle 11: Judicial officers, with the assistance of court administration, should exercise control over the legal process.

Core Functions and Dispositional Principles

At times of decreasing resources, to handle ever-increasing litigation, both state legislatures and judicial leaders often are forced to examine ways to make the courts more efficient in order to align work with resources. Such inquiries address what truly are the essential functions of courts and what are the most effective means of discharging those functions. Although courts must accept mandated cases, not every case requires the same procedures or disposition process. Over the years, evidence demonstrates that the adversarial process is not the most effective means of resolving all types of disputes. Having a variety of dispositional alternatives allows the court to fit the forum to the fuss, thus providing better dispositional outcomes while also devoting the appropriate level of resources to the different case types. The following principles acknowledge the core functions of courts and set forth an affirmative process by which courts can assign cases to the most effective dispositional alternatives.

Principle 12: Courts accept and resolve disputes in all cases that are constitutionally or statutorily mandated.

Principle 13: Courts accept cases, quickly evaluate service needs, and through a systematic triage assign the cases to a process suited for speedy and effective resolution.

Principle 14: For cases accepted, courts 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 or other similar resolution alternative where the disputants maintain greater control over the process
- Referral to an appropriate administrative body for determination

Court Funding Principles

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.

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. 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 15:** The judicial branch should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and application of appropriate performance measures.

**Principle 16:** The judicial branch should adopt performance standards with corresponding, relevant performance measures.

**Principle 17:** Judicial branch budget requests should be considered by the legislature as submitted by the judiciary.

**Principle 18:** 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.

**Principle 19:** The judicial branch should administer funds in accordance with sound, accepted financial management practices.

**Providing Adequate Funding**

The basic function of the court system is to provide an independent, accessible, responsive forum for the just resolution of disputes 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 20:** 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.

**Principle 21:** 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.
Principle 22: Courts should be funded to provide for technologies comparable to those used in other governmental agencies and private businesses.

Principle 23: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

Principle 24: Courts should be funded so that fees 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.

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.

RESOURCES


