

State Judicial Branch Budgets in Times of Fiscal Crisis

Executive Summary

Many state court systems are currently experiencing deep budget cuts, court closures, suspended jury trials, layoffs and hiring freezes. Court leaders face enormous challenges in guiding their courts through the present fiscal crisis. Many state judicial systems have found it difficult to secure adequate resources even in good economic times. This paper concludes that state courts need to operate from a position of strength in the budget process. This requires a high level of respect on the part of the other branches and the public for the expertise, accountability and commitment to positive reform demonstrated by court leaders, confidence in the quality and professionalism of the bench, satisfaction with the courts' productivity and the quality of justice being provided, and a demonstrated ability to make efficient use of scarce resources. Such an environment is possible only if court leaders dedicate themselves to establishing a judicial reputation for excellence in the management of court business -- not just now but on a continuing basis.

This white paper provides the state court community with a theoretical framework and set of principles to meet the long term challenge of creating an environment conducive to budgetary success. It also sets forth practical strategies and tools to meet the immediate challenges posed by the current fiscal crisis. State court leaders are challenged to take greater personal responsibility for the management of judicial affairs and to assert the kind of visionary leadership that will position their courts to earn the confidence and respect of the other branches and the public.

1. Courts must operate from a position of strength in the budget process, especially during times of fiscal crisis.

The most important determinant of success in obtaining adequate judicial resources during tight budgetary times is a strong reputation for accountability and credibility. A judiciary with a demonstrated track record of good governance, including wise use of the public's tax dollars, is more likely to avoid unreasonable budget cuts and external micro management that undermine the system's ability to carry out its mission during difficult fiscal times. Such a track record, however, is not developed overnight or in the midst of a budget crisis, but over an extended time period and in good economic conditions.

Courts must submit consistently prudent and transparent budget requests, maintain consistency in yearly budget priorities, measure and report on their performance, demonstrate sound financial management over time, and operate under self-imposed austerity measures during difficult budget times.

The other branches must understand the role of the judiciary in our constitutional system of government. The judicial branch's obligation to be a good partner in government during a state fiscal crisis in no way detracts from the absolute necessity and importance of providing the courts with adequate funding. Under our constitutional system, the courts are a separate and coequal branch of government responsible for upholding the rule of law upon which all our social and economic relationships are based. They perform certain core functions of government: protecting the constitutionally enshrined rights of the citizenry against government encroachment, serving as the ultimate arbiter of inter branch conflict, and resolving the legal problems and controversies of citizens in criminal, family and civil matters – and the courts are

required to accept and resolve each and every one of these cases filed with them. The other branches cannot deprive the judiciary of the basic resources needed to carry out the courts' constitutionally mandated, nondiscretionary functions.

Court leaders must work on a continuing basis to secure the active support of its natural constituencies for judicial branch priorities and funding, including the organized bar, judicial associations, district attorney associations, labor unions, etc. All of these groups can carry appropriate messages to the other branches on behalf of the courts in ways that allow the judiciary to remain above the political fray.

2. The Chief Justice is the inspirational leader of the courts and a strong, visible advocate for the courts.

The Chief Justice is the judiciary's inspirational leader and potentially its most effective advocate. The Chief Justice must clearly articulate his or her vision for the courts, setting forth a compelling, positive picture of the judicial system at its best. He or she must be the principal advocate for that vision and articulate it with boldness and imagination, presenting judges and court staff with a challenge, inspiring them with a shared sense of purpose, and calling upon the very best they have to offer in meeting that challenge.

The Chief Justice must provide a clear sense of direction and concrete, achievable goals. He or she should think systemically in initiating reforms that improve public satisfaction with the courts, educate the public and the other branches of government about the unique problems and needs of the courts, and mobilize support for the courts among the organized bar and other constituencies having a strong interest in the smooth functioning of the justice system.

The Chief Justice can be a strong and visible advocate for the courts while remaining “above politics.” It is possible to recognize and participate in the political realities of the budget process while still remaining “above politics.”

The Chief Justice must adequately empower the State Court Administrator or other appropriate individuals who are charged with translating his or her vision into reality. The Chief Justice must designate spokespersons for the judiciary to ensure that the judicial branch speaks with one voice.

3. The State Court Administrator (SCA) must be perceived by the other branches of government as a credible and highly knowledgeable representative of the courts.

The SCA bears major responsibility for the effectiveness and efficiency of court operations and for how the other branches perceive the management performance of the courts, including whether the public’s tax dollars are being spent wisely. The SCA should lead and oversee court operations to ensure that they are effective and efficient; possess a sound conceptual and functional grasp of all budget related matters; serve as an internal leader and consensus builder within the courts; promote inclusiveness when it comes to court planning, decision making and advocacy; and, be prepared to make tough budget decisions, including holding underperforming courts accountable and transferring positions or funds as necessary for the overall good of the system.

As the person responsible for translating the Chief Justice’s vision and priorities into the courts’ budget request and legislative program, and for developing institutional policies, goals and procedures, the SCA must be capable of developing sound and creative recommendations

during difficult budget times. The SCA must distill the Chief Justice's budget request into several consistent, easy to understand messages and ensure that these messages are reflected in all communications with the other branches.

The SCA must work to develop positive relationships with the opinion shapers in the other two branches, including legislative leaders, budget committee chairs and key staff and analysts. The SCA must come to be perceived as the primary source of information for opinion shapers, with quick and accurate responses to inquiries which reflect an understanding of the questions posed.

The SCA must run the Administrative Office of the Courts (AOC) in an exemplary fiscal manner, and when reductions are necessary the SCA should be prepared to make the first cuts in the AOC. All of the foregoing can best be achieved if the Chief Justice adequately empowers and supports the SCA or other representatives in their dealings with the other branches so that they can be forceful and effective advocates for their courts.

4. There are significant opportunities presented by budget crises that should be identified and pursued.

In crisis there is opportunity. State judiciaries may now be able to implement changes that were not possible in favorable economic times. Pursuing opportunities in times of fiscal crisis builds credibility for the judicial branch and can enhance the reputations of the Chief Justice and SCA.

- X Eliminate/modify mandatory sentencing
- X Consider court mergers

- X Eliminate popular but inefficient programs/locations
- X Buy new case management systems
- X Consolidate judicial districts/move judges temporarily
- X Change tactical plans to reflect new opportunities

Furthermore, despite a difficult budget environment, state judiciaries should not cease planning, policy development and program evaluation efforts. These are actually more important in tough budget times because they serve to inform the courts about which programs work, which should be eliminated or cut, and which should receive priority for preservation and expansion.

5. State courts should undertake austerity measures, but cost-cutting must not compromise the ability of the courts to provide effective justice

In the current fiscal climate, state judiciaries should take appropriate steps to cut costs. There is an obligation to the public and rest of state government to think creatively and make hard choices, whether it be laying off staff, instituting hiring freezes, closing underutilized courthouses, or expanding programs such as electronic court reporting and electronic filing. However, courts cannot cut costs or allow funding to be reduced to the extent of becoming mere “case processing centers.” The courts are often the emergency room for society’s worst ailments. Particularly in times of crisis, the millions of cases that swell state court dockets involve the cohesion of families, the safety of communities, and our most cherished liberties. These cases are not just statistics but resolutions of often complex human dramas and disputes

that litigants have brought to the courts as the venue of last resort. Such resolutions, to be lasting and effective, require the application of substantial human judgment and intelligence.

In addition to cutting costs, courts can take steps to increase revenues. In a tight budget environment, increasing fees and fines by rule may be a viable option, although there are serious risks to this approach, including creating the perception that the courts are a “pay as you go” enterprise responsible for funding themselves. Another serious risk involves impairing access to the courts by lower income litigants.

The judicial branch should not be treated like an executive branch department and is entitled to substantial input concerning its response to the budget crisis. Courts should request maximum budget flexibility as part of these discussions, including fungible use of salary/benefit funds, permission to carry over funds from year to year, and flexibility in reducing/reassigning positions.

Judicial branch budgets make up a very small percentage of state budgets, yet even a small cut for the courts can have dire consequences for the administration of justice and public safety. Confrontation and litigation with the other branches are potentially counterproductive, although much depends on the peculiar dynamics of the jurisdiction and each judiciary must determine for itself whether confrontational tactics are appropriate. However, there may be times when it is necessary to take a stand to protect the judiciary’s constitutional prerogatives in response to positions or actions taken by the other branches.

6. Conclusion

With state budget shortfalls reaching alarming levels around the country, state court systems today face unprecedented budget crises. As responsible partners in government, the courts have an obligation to share in the sacrifices being made at all levels of state government. At the same time, however, the judiciary is an independent branch of government that performs constitutionally mandated functions. Courts must have sufficient resources to perform these functions. A key to getting through difficult fiscal times is the judiciary's store of managerial and fiscal credibility. A court system with an established track record for making wise and efficient use of its resources during good economic times operates from a position of relative strength during tough economic times.