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State Funding of Trial Courts: What We Know Now

By John K. Hudzik and Alan Carlson

About thirty years ago, a process began in earnest that shifted the funding of trial courts from the local level to the state. This trend has continued inexorably through the years. Today, approximately 70 percent of the states have trial courts primarily or significantly funded from state sources. Larger states such as California, Florida, and Michigan have recently adopted the funding level change. Given this experience, what can one say about the impact of the shift? Research about the changes that have occurred have been minimal until recent years, and the results are decidedly mixed. The portrait that is beginning to emerge seems to indicate that few universal benefits or disadvantages have arisen through shifting to greater state funding. In this article, we look at some of the expectations held by proponents and opponents of the state

funding transition and offer opinions as to whether these expectations have indeed become the current realities of court systems around the country.

Implications Beyond Money

If state funding were only about money, its impact on trial courts would have been less far reaching than it actually has been. A host of other changes, tied to the transition to state financing, have significantly affected trial court systems over the last decade or two. These include trial court consolidation; trial court performance standards; significant revisions to strategic, operational, and budget planning; and significant alterations to trial court employee status and relations.

Not surprisingly, state funding has brought other reforms as well. In part, this fact reflects the application of the

golden rule of budgeting: He who has the gold makes the rules. But the reasons run deeper than this. State financing was conceptually part of the movement to reform judicial localism, which dates back fifty years and more. Merit selection and judicial ethics constituted one of the reform rails. The parallel rail fell under the title "unification" and included (1) centralized rule making headed by the state's supreme court, (2) consolidation and simplification of the types of trial courts, (3) centralized management, (4) centralized or unitary budgeting, and (5) state financing.

Most states moved early to implement versions of merit selection, canons of judicial ethics, central rule making, and simplified court structures. Centralized management, budgeting, and state financing came later. As state funding expanded, it

reinvigorated interests in improved trial court management, priority setting, budgeting, consolidation, and wider reforms.

While early judicial branch reforms focused on reducing variance in standards, structures, and rules, reforms over the last twenty years have focused more on trial court efficiency and effectiveness, that is, reducing costs or improving services. This change in the focus of reform was prompted by severe state and local budget shortfalls in the early 1980s and 1990s, and has been reinforced by the situation in which courts have found themselves since 2001. Also, once trial court costs became aggregated at the state level and more visible as a result, interest in controlling costs intensified.

State Funding: Intentions and Outcomes

What were the goals of transitioning to state financing, and what actually happened? Deciphering the intentions is comparatively easy. Measuring the actual outcomes is much harder because systematic data about outcomes is just now being collected. However, as the number of states with state funding of trial courts grows, information improves. From the more recent data, albeit still largely anecdotal, a picture is emerging about the impacts of state financing.

Proponents. Various proponents of state financing argue that the transition from local to state funding will provide courts with more money, reduce funding inequities across courts, enhance efficiency and cost savings through economies of scale, increase flexibility in moving judicial and other staff resources across trial court boundaries to where they are most needed, improve financial management, result in better performance monitoring, and improve personnel systems.

The evidence to date is mixed with respect to anticipated outcomes.

- **Total funds:** Some evidence suggests that state funded systems fare a little better over time in aggregate appropriations than locally funded systems, but massive increases to courts have not occurred nor are they to be expected.

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- **Inequities:** Evidence suggests that state funding generally decreases inequities. Usually this means increasing funding to the poorest trial courts while often holding constant or decreasing funds to wealthier courts. However, there are issues about how equity is defined—according to a formula, based on caseloads, or by fiscal ability to provide specialized services (e.g., drug courts). Yet priority setting at the state level may result in more consistent implementation of key programs throughout the state.

- **Savings:** Evidence exists that state-financed systems can achieve economies of scale for selected areas. Bulk purchasing, shared infrastructure such as data systems, availability of qualified interpreters, or temporary transfer of staff are examples of areas where savings have been obtained. However, economies are often offset by increased bureaucracy and red tape, especially at the state administrative office level. In addition, there are often problems with shared infrastructure accommodating diverse local needs. On balance, it is very difficult to demonstrate that the transition to state financing, on its own, produces cost savings. Real economies and costs savings, if realized, probably stem more from accompanying

reforms—for example, consolidation—than state level funding or centralized budgeting per se.

- **Improved planning and management:** There are mixed reviews and little systematic evidence to suggest that budgeting, management, or personnel systems improve per se. Anecdotal evidence suggests that the budgeting and management practices of smaller courts become more sophisticated, but similar anecdotal evidence suggests that well-run medium and larger courts see fewer management system improvements. Well-run courts have a tendency to view state assumption as just adding another layer of bureaucracy. Evidence exists that internal controls and

accounting procedures improve with state funding, but views are very mixed as to whether budget planning and management improve.

Opponents. Those skeptical of the benefits of state financing believe that it places courts at greater risk of unstable funding. They also fear the loss of local control and worry that less attention will be paid to local needs because of simplistic formula funding models. They expect a weakening of personal relationships in negotiating budgets, increased red tape and bureaucracy, and less local innovation and initiative. They see state funding as merely switching the politics of the budgetary process from the local to the state level, and to greater levels of competition with powerful state agencies.

The potential for the more negative outcomes is heavily dependent on the character of accompanying policies and procedures and less on state funding itself. Consequently, the evidence is mixed from state to state on the negative results.

- **Funding instability:** Opponents fear greater funding instability because state sources of revenue are more sensitive to recession than local sources. Also, there is increasing competition for state dollars because other key



areas of public expenditure—for example, K–12 education—are in transition from local to state funding as well. While it is true in principal that state revenue receipts (e.g., from income and sales taxes) tend to be more sensitive to recession than those of local sources (e.g., property taxes), the picture is not so simple these days. Property tax revenues are declining as a percentage of total local revenue and are supplemented heavily from other sources (e.g., fees, income, and sales in some larger cities, and state revenue sharing). Furthermore, even though budget shortfalls from 2001 through 2003 were arguably the worst since World War II, initial data suggests that courts, on average nationally, fared as well as or better than expected—and as well as or better than most other agencies of state government. This is not to say that courts were not stung by budget reductions or that reductions in some states did not threaten catastrophic consequences. Rather, on balance, court systems fared comparatively well. Little systematic evidence is available to assess whether this general outcome was significantly different when comparing local- and state-financed systems. We are currently researching this issue, however.

- **Greater competition:** Whereas locally funded courts are in competition with other agencies of city or county government for scarce resources, competition intensifies *among trial courts* for scarce resources under state-funded systems. Significant evidence exists of increased competition across trial courts, arising from attempts to reduce inequities and especially when defining formulas for allocations. This is in addition to the increased competition for resources between the judicial branch and the executive branch agencies of state government.

- **Loss of local autonomy and ability to collaborate:** The skeptics worry about loss of local control because of reliance on formula funding, diminished power of the local bench to allocate resources, diminished ability to address unique

local priorities, and a switch from face-to-face budget negotiations with local authorities to impersonal negotiations with bureaucrats in the state's administrative office of the courts (AOC).

Anecdotal evidence to date suggests that the loss of local autonomy is less dependent on the mere switch to state funding and more on whether the accompanying budget planning, allocation, and management procedures are highly centralized in the state capital. Where decentralized management practices exist, trial courts maintain important input and control. Whether there are regional administrators and whether local trial court administrators have authority to reallocate funds are critical.

- **Simplistic formula funding:** Formula funding is the product of a search for common standards and the result of political compromise. For ease of administration, formulas are often fairly simple, for example, based on numbers of judicial officers, or on weighted or unweighted caseloads. More sophisticated allocation systems that take additional variables into consideration, such as socioeconomic and other demographic characteristics of trial court jurisdictions, are more sensitive to local conditions but also are more complex and costly to design and administer. No formula can, by itself, adequately account for all legitimate local variability and nuance.

The real question is, Formula funding compared to what? Many local funding systems are, in effect, “formula”-driven by arbitrary assumptions regarding maintenance of base budgets, across-the-board increases from year to year, or historical views about the court's “rightful” share of the local revenue to which it can lay claim. Block grants to local trial courts may avoid increased bureaucracy but must still rely on formulas.

Evidence suggests that an important issue is whether straight formula-driven allocations can be adjusted by some combination of the following:

- (1) Is there an appeal process from the trial court level to the AOC or to a trial court budgeting commission to consider special local circumstances?


- (2) Does the budget planning and submission process permit justification of “incremental” requests for new or out-of-formula program allocations?

- (3) Whereas state funding can help address inequities, access to local funding generates support for programs that respond to unique community needs and values. Is there a “local option” for funding special programs responsive to peculiar local needs? Are locally funded “add-ons” and “top-ups” permitted? Does the transition to state funding leave local authorities with the view that trial courts are now purely a matter for the state?

- **Interbranch relations:** How well trial courts fare in the aggregate under state funding is heavily dependent on the relationship between the judicial branch and the other branches of state government. The evidence is strong from the last three to four years in particular that general relations among the state supreme court (and the AOC) and the other branches are critical. Perceptions that the judicial branch is actively improving management practices, setting priorities, controlling costs, and improving accountability to performance standards is crucial for positive relationships. The perception that the judicial branch is aware of constraints and engages in joint problem solving in tight budget times is also critical. An active attempt to “educate” the other branches about genuine court needs is also crucial.

- **Intrabranh relations:** Plenty of evidence supports the observation that some of the stormiest relationships in the shift to state funding are between trial courts and the state AOC. How civilized and productive the relationship becomes is heavily dependent on how the issues noted above play out (e.g., decentralized financial management, the presence of appeal processes, and the quality of the AOC staff).

Angst can arise also from interdepartmental relations. Because budget decision makers are no longer locals, personal relationships cannot be relied on so easily. There are strong prohibitions against trial courts using their local or legislative contacts for their



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own benefit. Issues of allocation authority may dominate in terms of whether the budget is controlled by line item or lump sum. Whose permission is needed to spend what or to move money across line items? What are the “reporting back” procedures? (And, because reporting requirements often proliferate, the companion question arises, Why is all of this reporting necessary?) What sort of oversight bureaucracy is there? (And, because the monitors are in the state capital and not local, what assurances are there that they understand and advocate local needs, rather than being a “foreign occupying” administration?) Not surprisingly, evidence thus far suggests that the quality of intrabrand relations is inversely related to the degree of centralized management and bureaucracy imposed from the AOC and positively related to the establishment of productive, frequent, and collaborative relationships between trial court management and AOC staff.

- **Red tape:** State budget planning cycles tend to be longer than local ones, extending the planning horizon. Transitions to a new budget process, new forms, new planning requirements, new performance measures, and new data requirements pose daunting learning curves. Many new requirements may be, or seem to be, “busy work.” Cost of planning and administering the budget can increase, and, at times, with no apparent payoff to the local trial

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courts.

- **Stifling innovation:** Some evidence suggests that shifts to more state funding can concentrate the control of innovation and experimentation within a very few hands, that is, those who allocate the money at the state level and those who set statewide judicial branch strategic priorities.

Much good innovation is “bottom up” and comes out of “skunk works” and from people who are not good rule followers. Centralized state control of funding and formula funding militates against variance and innovation. The introduction of an innovation grant program to which trial courts can apply for start-up or experimentation funding can help alleviate some of this problem, however.

- **Personnel systems:** To the extent that the transition to state funding affects court personnel systems—for example, staffing numbers and patterns, and sometimes personnel classification, representation, and compensation—serious questions can surface over who actually works in the local trial court and under what terms and conditions. Further, trial courts often find state personnel systems cumbersome. A shift to state personnel status can also distance the trial court’s hiring and recruitment from the local labor market. The shift can also place state court employees side by side with local employees, doing similar jobs but with significantly different compensation and work expectations. On the other hand, evidence suggests that there are reductions in the “irregularities” associated with “personalized” systems of hiring and firing after the transition to state funding.

Caveat Emptor and Due Diligence

Transitions to state funding and leadership and management of the judicial branch under conditions of state funding involve complex inter- and intrabrand

issues and relationships. In addition to the issues already noted, there are others that are relevant not only during the time of transition, but afterward as well. The experiences of several states suggest that ignoring them has serious consequences. We provide a list of these issues, with comments, below.

- **Avoid underestimates of costs and overestimates of revenues for state funding.** As the transition to state funding takes place, remember that the initial state budget is the important one. It is very difficult to correct errors or omissions in subsequent budgets.

- **Carefully consider the authorities, responsibilities, and incentives and disincentives for trial courts to “manage” their budgets.**

- **Consider the pace of assumption, that is, whether it occurs all at once or is phased in.** Experience suggests that phased assumption in either percentage increments or functional areas complicates the budget management and planning process during the phase-in period. Also, phased introduction usually delays full implementation of other reforms. On the positive side, phased-in changes are easier in financial terms. But be careful to consider how the current phase-in stage interacts with previous and subsequent planned stages.

- **Anticipate expenditure “buck passing” and expenditure delay behaviors under mixed local/state models of funding.** When state and local responsibilities for costs are not clearly divided, a natural tendency exists for each level to off-load costs to the other. Where additional state assumption of costs is being discussed, localities may defer expenditures. Conversely, as the probability of state assumption increases, localities may commit to high-cost enhancements, getting them “on the books” for state assumption.

- **Be wary of unrealistic expectations for improvements in operational effectiveness.** The evidence thus far is very mixed. More so, there is usually little pre-existing agreement between the branches about enhanced perform-

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would be maintained at FY 2003 levels and that, as revenues increased, these programs would share in the increases. Local governments will also share in the increased revenues; they now receive approximately one-third of the increase in court filing fees. Our proposals also provided local governments with an opportunity to retain certain costs that formerly went to the state.

Structuring our proposals in this manner made it much easier for us to persuade the executive branch, the legislature, and other interested parties of the great merits of this approach. We met with the state budget office, members of our legislature's appropriations and judiciary committees, legislative staff and policy advisors, analysts from the House and Senate fiscal agencies, representatives of executive branch departments affected by our proposals, judges' associations, the State Bar of Michigan, the Michigan Association of

Counties, and other interested parties. We also worked closely with the Legislative Service Bureau to draft the appropriate legislation to implement the proposals. We feel that our success principally arose from meeting with all these stakeholders to explain the bill package and address their concerns. We sought to include those who would implement the bill package as well as those affected in other ways.

Where We Stand Today

In the end, nineteen separate bills were passed with little dissent and with bipartisan sponsorship. The communication process did not stop once the bills were signed, however. We have continued to work with the courts and other interested parties to make the transition to the new system as smooth as possible. This effort included both written communication and training

sessions, which can be found on the Michigan Supreme Court Web site at <http://courts.michigan.gov/scao/resources/other/ffc.htm>.

The bills provided us with a means of addressing the requested FY 2004 general fund reductions. Moreover, we anticipate that, as the new statutory scheme is phased in, increased revenues will offset further reductions in our FY 2005 budget. And, as it appears that funding issues will continue to be a problem for state governments for at least the next few years, the bill package has provided us with more reliable funding sources for such court initiatives as drug courts and technology. We are also finding that the relationships forged during the FY 2004 budget development process are assisting us as we now turn to FY 2005. Thus, despite the prospect of lean times in the foreseeable future, we have hope that our economic future is in order.

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ance and minimum standards. State funding per se does not guarantee better performance.

- Be careful not to underestimate AOC needs for increased numbers of qualified personnel to provide support to local courts and expanded state level budget planning and management responsibilities. Underestimation of staff needs is common and has serious consequences for budgeting and performance.

- Increased state-level staff cannot substitute for competent budget staff at the trial court level.

- Consider whether any or all of the following issues should be addressed as part of a state funding package: (1) whether the judicial branch should undertake trial court consolidation or coordination; (2) whether the judicial branch should develop performance standards and measures; and (3) whether minimum standards and funding levels should be defined, and if so, by whom.

- Preserving judicial branch independence requires attention to issues of (1) designing a budget process that does not turn the judicial branch into another agency of the executive branch; (2) preserving the court's appropriate authority to allocate and reallocate funds in the interest of fair and equitable justice; (3) providing for the authoritative participation of the chief justice and the AOC in reviewing, approving, forwarding, and monitoring trial court budgets; and (4) determining to whom the judicial branch's budget request will be submitted.

- Critical management questions include (1) who should prepare and transmit supporting budget request information to the legislature, (2) who has authority to allocate and reallocate budgets, (3) who will decide appropriate performance expectations and standards, and (4) who will decide and define "core" functions.

- Carefully consider what is included for transition to state funding within

the judicial branch budget. Critical functions (e.g., probation, clerk functions), if separately funded, will increase management complexity.

Concluding Thoughts

Transitions to state funding of trial courts are likely to continue nationwide over the next several years. The movement to state funding will carry other reforms and changes with it. Judicial branch leaders need to consider the issues raised in this article, both before the transition and afterward. Planning and management systems evolve in almost any administrative setting, especially following an initial change as large as that of moving from local to state sources of funding. As these systems evolve, an active judicial branch leadership has the opportunity and responsibility to maximize the potential benefits and minimize the potential drawbacks of the transition.

