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, administrative operations, core functions, dispositional alternatives 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. 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. 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 National Center for State Courts’ 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, 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 three sets of principles, which address governance, administration, and core functions and dispositional alternatives, 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 four sections. The first three address aspects of court administration that are foundations to pursuing adequate funding. The fourth section contains specific principles relating to funding. The Funding Principles are the means to connect the first three 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 OF JUDICIAL ADMINISTRATION

Governance Principles

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

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 Alternative Principles

**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:
   a. The adversarial process.
   b. A problem-solving, treatment approach.
   c. Mediation or other similar resolution alternative where the disputants maintain greater control over the process.
   d. Referral to an appropriate administrative body for determination.

Court Funding Principles—Developing and Managing the Judicial Budget

**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.

Court Funding Principles—Providing Adequate Funding

**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.
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 four sections. The first three sections address aspects of court administration that form the foundation to pursue adequate funding: governance, case administration, and core functions and dispositional alternatives. 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 fourth section 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. The first five relate to the judiciary’s responsibility to develop and manage the judicial budget. The second five identify the principles policy makers—both within and outside the judicial branch—should take into consideration when determining adequate funding for the judiciary.

I. 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…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. 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.” (Raelin, 1985).

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. (Griller, 2010)

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 orientation 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.**

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 leaders and managers be 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.

A well-defined governance structure enables the judiciary 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 communications and to keep information flowing.

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

Commentary: The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leadership 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 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.

**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.**

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 information must then be used to manage court operations. In addition, it can also be used to improve public trust and confidence only by making it available as a matter of public record. Without a commitment to evidence-based evaluation of policies, practices and new initiatives, courts cannot claim to be well-managed institutions.

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

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

Commentary: Fundamental to effective management is control of resources. Judicial leaders with management responsibility must be given the corresponding authority to manage the available resources. While this authority can be delegated or shared with professional court administrators 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 administrative components of the judicial system 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 6: The court system should be organized to minimize redundancies in court structures, procedures 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. Similarly court procedures should be simple, clear and streamlined to facilitate expeditious processing of cases with the lowest possible costs. Procedures should be proportionate to the nature, scope and magnitude of the case involved. One size does not necessarily fit all. Different rules may be required for different case types, but redundancies or superfluous procedures must be eliminated. Finally, objective workload models should be used to identify how many court staff are needed and to assist in allocating staff on an equitable basis thus avoiding duplication of effort or other inefficiencies.
Principle 7: The court system should be managed to provide an efficient balance of workload among courts.

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 administration is to balance equitably workloads among judges and staff and to ensure that these resources are assigned where the work is located. Resources 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.

II. 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 (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 Case Administration are imbedded in and fundamental to these performance management systems.

Principle 8: 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 used, 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 Nine, 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.
Principle 9: 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.

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

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.¹

Principle 11: Judicial officers, with the assistance of court administration, 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

¹Tom 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.
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. Where caseloads are light this discussion may be academic in nature, but where caseloads are heavy and resources limited, 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. Court control of the process is the basic principle upon which these evidenced-based practices are founded.

III. 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. Often the conclusion is that the core functions of courts are mandated by constitutional provisions or statutes thus leaving the courts little control over the inventory of work coming into the court. 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 seek to 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.

Commentary: Courts serve many functions. Primary among them is determination of legal status. Courts determine whether a defendant is guilty or innocence, whether one party owes another party money, who owns a piece of property and who has custody of a child. Thus it is obvious to state 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. This concept is expressed in most state constitutions or their statutes. 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.

**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.**

Commentary: Historically, courts accepted cases on a first-come, first-serve basis with only marginal concern for the notion of “triaging” caseloads. This traditional approach to case management was far more resource intense than a differentiated or triage approach. The traditional approach assumed that all cases, regardless of type, were of similar weight consuming approximately the same level of resource. Assuming that all case types requires the same level of support without distinction reduces flexibility, hampers creativity, and can eventually overwhelm and gridlock a case processing system.

The advent of modern case management principles and the development of advanced case management systems now enable courts to evaluate caseloads more methodically and with greater attention to the services needed. Triaging cases as they enter the system serves two primary purposes: (a) it enables courts to assign a case rapidly to an appropriate track or path for resolution and (b) it enables courts to allocate better limited resources in support of resolving a dispute. In general courts have practiced differentiated caseflow management by case type, cause of action, and case complexity distinctions. Another approach may be first to determine according to issues in the case what type of processing is required. Regardless of the approach, courts need standardized triage protocols for determining which processing stream and dispositional alternative, as addressed in Principle 14, is the most appropriate.

**Principle 14: For cases accepted, courts should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:**

a. The adversarial process.

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2 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).

3 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).
b. A problem-solving, treatment approach.

c. Mediation or other similar resolution alternative where the disputants maintain greater control over the process.
d. Referral to an appropriate administrative 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. In many jurisdictions the single door court-focused courthouse has been replaced by a multi-door consumer-focused courthouse, one that affords litigates 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.

As courts respond to budget shortfalls and the increasing demands of litigants for immediate electronic access, courts must “unbundle” their services to match the dispute with the proper resolution mechanism. Properly trained staff can perform the “triage” function addressed in Principle 13, allowing judges to concentrate on more appropriate tasks. Some cases may be directed to the most efficient case management queue by staff based on simple rules and easily identified case characteristics. Other cases may require a mediation session led by a staff attorney to properly triage for case management. Both approaches should often lead to quick case resolutions with appropriate but minimal judicial intervention. The key principles behind an “unbundled” approach to case review are (1) a formal set of processes and (2) an escalation of case review to the next higher level of roles/legal skills only as required.

IV. 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 judiciary and considered by the legislative branch, it is useful to have a set of principles which can serve as a conceptual framework within which these actions are taken. These principles may
be useful for all branches of government when exercising their respective duties and responsibilities regarding judicial budget requests and appropriations.

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

Principle 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.

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 16 and 20). This has been shown as a critical piece to building good communications and relations with the legislative branch. From the court manager’s perspective, an objective workload model can be used to identify efficiencies in one location that can be adopted by others and measure the impact of changes, such as budget cuts and institution of technologies, on the capacity of courts to handle the caseload.

Principle 16: The Judicial Branch should adopt performance standards with corresponding, relevant performance measures.

Commentary: In the past courts focused on their structures and processes not their performance. Knowing whether and to what degree a court is high performing is a matter of results. A high performance court is evidence based. Performance standards, or targets, are established. Progress towards meeting those standards is measured by
performance measures. Beginning in 1987, with the development by the National Center for State Courts of the Trial Court Performance Standards,\(^4\) attention shifted to outcome-based measurable performance standards as a means of identifying what courts actually accomplish with the means at their disposal. The evolution of court performance assessment led to the development of *CourTools* (2005), a set of ten core court performance measures. By prescribing what courts should accomplish, appropriate emphasis can be placed on performance measurement and performance management. Performance assessment provides a means for internal evaluation, self-improvement, and improved accountability to the funding entities and the public. Courts acknowledge that with judicial independence comes the corresponding right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court operations. Accountability and transparency are critical to judicial governance and to the preservation and strengthening of an independent judiciary.

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

Commentary: Courts are a separate branch of government responsible for executing their constitutional mandates in an efficient and effective manner. Legislative bodies should require that the judiciary’s budget be presented directly to them by judicial leadership without prior approval of the Executive. Too often, legislatures 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. Judicial leadership 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 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.**

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

Principle 19: The Judicial Branch should administer funds in accordance with sound, accepted financial management practices.

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

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

- Provide 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.**

Commentary: This principle must be taken in context with two earlier principles: courts must objectively demonstrate the need for resources (Principle 15) and have performance measures (Principle 16) 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 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.**

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

Commentary: As socio economic conditions change and caseloads continue to grow, 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 other government agencies and the commercial world. The NCSC has identified key technologies courts need in order to become more efficient and remain relevant in a constantly advancing technical society. Examples include electronic filing, effective case management systems, 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 24, to provide the necessary resources for these investments.

**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.**

Commentary: Principle 20 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 14 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 casetypes that may arbitrarily be deemed a lower priority, when in fact all cases filed with the courts have constitutional standing to be properly adjudicated.

**Principle 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.**

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. There is debate whether any court operations should be funded through fees. However, most states have crossed this threshold. While circumstances occur where user fees are necessary, such fees should always be minimized and should never be used to fund activities outside the court system. Courts should not become a taxing vehicle of government for purposes extraneous to the courts. Court fees cannot be allowed to become a barrier to the public’s access to justice. 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.
V. 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, case administration and core functions and dispositional alternative 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.
RESOURCES

n ABA Court Funding Standards, provided by Peter Kohling, April 2010


n CCJ Policy Resolution 23 Resolution 23 In Support of Principles of Effective Judicial Governance and Accountability, January 24, 2004

n Durham Becker, Institutional Independence and Governance in the State Courts, unpublished working paper with the NCSC Harvard Executive Session, Spring 2010.