State Courts and the Budget Crisis: Rethinking Court Services
By Richard Y. Schauffler and Matthew Kleiman

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Introduction
The current fiscal crisis is provoking budget reductions so deep they threaten the basic mission of state courts. Massachusetts Chief Justice Margaret Marshall recently described the state courts, which handle 95 percent of all criminal and civil litigation in the country, as poised at “the tipping point of dysfunction.”1 In the 2010 fiscal year, 40 state court budgets were cut, and for the 2011 fiscal year, 48 project budget cuts. The cumulative cuts have reached as high as 20 percent of the court budget, and for many state courts, the end is not in sight.

The scale of the problem is enormous. According to the nonpartisan Center on Budget and Policy Priorities, overall state budget deficits for the 2010 fiscal year total $194 billion or 28 percent of state budgets—the largest gaps on record. Additional 2011 fiscal year gaps total $102 billion or 17 percent of budgets for the 41 states with budget gap estimates. These totals are likely to grow as state revenues continue to deteriorate, and may well exceed $180 billion.2 In addition to the macroeconomic factors driving the current recession, a growing demographic challenge is expected to persist for the next 15 years: fewer younger workers subsidizing through their taxes the retirements and social services of a large number of older workers. Put another way, income tax and payroll tax revenues are declining while social services and especially health care costs are escalating.

State courts are funded in a variety of ways—either entirely through state budgets, through a combination of state and local funding, or entirely through local funding. For the 18 state court systems that are predominantly state-funded, the judicial branch budget represents only 2 to 4 percent of the state budget, most of which is devoted to personnel costs. Court budgets do not contain significantly large program expenses that can be cut, nor are many of their dispute resolution services optional. Even though state courts are a small fiscal target from this perspective, they are not immune to the cuts imposed by state and local governments.

Like other public institutions, courts in many states are thrust into crisis mode, and forced to respond by creating immediate savings through reducing services, closing courthouses, suspending jury trials in civil cases, and attempting other short-term fixes that are not fixes at all, but simply tactics that defer the problems to a later time and create additional problems that require solutions. Unlike other institutions and social programs, courts do not have a broad and easily identified constituency, beyond the attorneys who practice in them, making budget cuts more problematic.

Profound economic crisis requires a true rethinking of what government, including the courts, does and how it does it. Radical questions must be asked: Among all the responsibilities of courts, are there any that are not truly appropriate responsibilities for courts? If so, how should the court relieve itself of those duties? And for the remaining core functions, how should the courts exploit new management approaches and new technologies to deliver those services?

I. First Impact
States across the country are responding to the current budget crisis by implementing a number of cost-saving measures. State courts are called upon to assume part of the burden of these reductions. The typical suite of short-term responses includes the following, and states currently utilizing these measures are listed. Given the rapidly evolving and ongoing nature of the budget crisis, the list of states is constantly

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expanding and out-of-date almost as soon as it is written:

- Reduction of hours of service: California, Iowa, Minnesota, Vermont and Washington
- Elimination of special court programs and staff:
  - Massachusetts (eliminate guardians ad litem)
  - Minnesota (terminate civil arbitration services, reduce staff for domestic abuse centers and reduce funding for drug courts)
- New or increased filing fees and/or court costs: Iowa, North Carolina and Oregon
- Postponement of jury trials: New Hampshire
- Furloughs: California, Connecticut, Florida, Iowa, Kansas, Michigan, Minnesota, Nevada, New Jersey, Oregon, Vermont and Washington
- Layoffs/staff reductions: Florida, Kentucky, New Jersey, Oregon and Utah
- Elimination of court reporters: Massachusetts, New Hampshire and Utah
- Programs to induce early retirement: Connecticut, Massachusetts and New Jersey
- Reduction of employer contribution to state health/insurance plans: Georgia, Nevada and Pennsylvania
- Salary freezes (including the elimination of merit increases): Alabama, Arizona, Delaware, Florida, Georgia, Indiana, Massachusetts, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania and Wisconsin
- Hiring freeze (vacancies unfilled): Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Kansas, Minnesota, New Hampshire, Pennsylvania, Rhode Island, South Carolina, Utah and Wisconsin
- Travel restrictions (limits within state, partial or full bans on out of state travel): California, Idaho, Iowa, New Hampshire, Oklahoma, South Carolina and Wyoming

These actions are remedies often used by organizations and institutions to offset short-term losses or fiscal downturns. Under normal business cycles, lost revenue—the origin of the budget reductions—is typically restored within a year or two allowing for staff and service delivery to be re-established at prior levels. Experience makes clear, however, that once resources are removed, restoring them is far from automatic. Furthermore, these traditional responses have a significant impact on people seeking services from the court. Limiting staff, reducing court hours, and imposing new fees and costs all affect the court’s ability to provide access to justice, with a disproportionate impact on self-represented litigants and indigent clients.

Short-term solutions work only if the problem they are designed to solve is also short term. But the depth and the anticipated length of the current financial crisis obviously are such that these short-term fixes are not only unsustainable, but they also induce new problems when left in place too long. Reducing service levels creates a backlog of cases, but a backlog sustained over time produces dysfunction at a higher level.

The question for state court leaders is how to respond to a crisis of this magnitude. Where politically and economically possible, some states have been able to engage in a profound re-examination of the purpose of courts and the methods used to deliver state court services. The boldest approaches utilize re-engineering to maintain service levels while becoming dramatically more efficient, through constitutional, statutory and policy changes; reorganization of judicial branch functions; and the application of information technologies. Not all states have been so fortunate, and some have experienced the crisis as wave upon wave of short-term responses that cumulatively threaten the mission of the judiciary.

II. ‘Justice Hangs in the Balance’

Iowa

Iowa offers a case study of what’s happening to state courts in this recession. Iowa has a mostly state-funded unified court system, with counties paying for facilities or some services such as security or the cost of interpreters. Each of Iowa’s 99 counties has a district court (trial court) that has general jurisdiction over all civil, criminal, juvenile and probate matters in the state. For administrative purposes, the district courts are divided into eight judicial districts, each headed by a chief judge and a district court administrator. In addition, there are two appellate courts in Iowa’s judicial system, the Iowa Court of Appeals and the Iowa Supreme Court. In the 2010 fiscal year, appropriations for Iowa’s judicial branch were $160 million, or 3 percent of the state’s general fund appropriations. Of this, 95 percent is for personnel expenses and the remaining 5 percent
goes to non-personnel expenses, such as office supplies and communications. As of Nov. 12, 2009, the judicial branch employed 1,730 people, including 116 district court judges, 58 district associate judges, 152 magistrates, and 661 clerks of court and staff.

Iowa courts have been hit very hard by both the current and the 2001 financial crisis. Since the 2002 fiscal year, the court has cut its operating expenses five times. The court has also been forced to reduce staffing levels by 16 percent to work force levels below the levels in 1987, despite a 66 percent increase in the number of cases filed (excluding simple misdemeanors and scheduled violations) over the same period. In contrast, over the same period, staffing levels for the executive branch remained about the same. By the middle of the 2010 fiscal year, state courts made a reduction of $11.4 million, or 7.1 percent to the judicial branch operating budget. Cuts included 10 days of court closures and unpaid leave for all judicial officers and court employees, an elimination of 73 vacant positions, additional layoffs of court employees, a reduction in the hours of some court personnel, and a reduction in non-personnel expenditures. Chief Justice of the Iowa Supreme Court Marsha Ternus, stated in her 2010 State of the Judiciary address that the “budget cuts of the past decade have taken a heavy toll on the ability of the judicial branch to fulfill its constitutional mission. Consequently, the ability of Iowans to receive the court services the constitution affords them has been reduced, and justice hangs in the balance.”

Reductions in the work force have resulted in caseloads and workloads surpassing available court resources in Iowa. In response, the Iowa Supreme Court issued a supervisory order at the end of 2009 directing the court system to prioritize resources and duties in an effort to deal with the backlog. The order mandates that the highest priority be given to emergency matters such as relief from domestic abuse, waiver of notification, injunctive relief involving imminent threat of serious harm to health or safety. Priority cases are defined as those “that involve a constitutional mandate that necessitates timely adjudication, as well as cases that involve the health, safety and well-being of vulnerable citizens, including children.” Lower priority will be given to cases involving dissolutions of marriage not involving children, foreclosure actions, civil actions for recovery of money damages, small claims, administrative appeals, probate other than guardianships, other law and equity cases.

The responses to the fiscal crisis in Iowa will most certainly limit citizen access to justice and increase backlog and delays in the handling of cases. For example, in cases involving children and families, delays may arise in setting temporary and permanent support and custody/visitation orders and in processing child support payments. In juvenile cases, reductions in staff levels will mean juvenile court officers will have less time to evaluate juvenile clients. In criminal cases, hearings may be delayed and reductions in court staff may slow the entering of no-contact orders. The budgetary cuts also have the potential to adversely impact cities and counties and general public safety. For example, delays in court hearings may force in-custody defendants to sit longer in jail, and thus increase county jail costs. Additionally, reductions in court staff will affect the ability of the court to collect fines and thus decrease county and city revenues. Finally, staff reductions may lead to delays in data transfers to criminal justice agencies that jeopardize public safety (e.g., providing domestic abuse protection orders to Department of Public Safety and updating criminal case history to Department of Public Safety).

In addition to the set of traditional responses to the budget crisis, Iowa is actively collecting information about ways to re-engineer its practices and procedures. Through a very open and participatory process the Iowa courts are seeking input from judges, court staff, lawyers, local government officials and stakeholders for policies, practices, procedures and technology solutions that would improve the efficiency and productivity of court operations. At this point, re-engineering efforts have not been implemented in Iowa. Utah, Vermont and Minnesota, however, have begun the rethinking process.

III. Rethinking Service Delivery

State courts in those last three states are taking advantage of the crisis to rethink court services and how they should be delivered. The range of solutions includes restructuring existing resources and statutory and constitutional arrangements to investing in new technology to implement innovative practices.

Utah

In Utah, state courts began with an immediate cost-cutting response, reducing staff in the
trial courts by 6 percent while reducing staff at the Administrative Office of the Courts by 12 percent. Staff reductions have been offset—that is, basic service levels have been maintained—by flattening court organizations, creating cross-trained teams of staff rather than seniority-based hierarchies. This allows younger workers to enrich their jobs, reduces high rates of turnover among younger workers and creates greater efficiencies.

Utah replaced court reporters taking a stenographic record with digital audio recording. The Utah Administrative Office of the Courts estimates about 50 staff throughout the state courts were at least partially engaged in managing the assignment of court reporters and the production and distribution of transcripts; today, after conversion to digital audio, this function is administered statewide by a single staff person, and transcript delivery times were reduced from 138 days to just 19 days.

Taking advantage of the budget crunch, Utah is evaluating how to make better use of existing technologies in two more ways. First, the state courts are considering reorganizing their workflow so paper documents are only accepted at one court location in each county; all other locations would accept e-filing only. Second, the state courts will soon be setting a date by which all traffic citations must be transmitted to the court electronically through wireless handheld devices utilized by law enforcement or other electronic means, thus eliminating costly data entry and paper document management tasks in the courts. Given the volume of traffic citations, the labor savings is significant.

Vermont

The state courts in Vermont are rethinking the judicial branch from top to bottom. In May 2008, the Vermont Legislature created a Commission on Judicial Operation with representatives from all three branches of state government as well as the public. The commission examined consolidation, regionalization, the introduction of new technologies, and flexible administration of the state courts. In the spirit of New England grassroots democracy, the commission held 44 focus groups throughout the state in 2008 and administered surveys seeking any and all ideas for transforming the judiciary. In November 2009 the commission issued a final report, which included such measures as:

- Restructuring courts at the local level into a single superior court with four divisions, eliminating the duplicative and inefficient court structure;
- Reducing court staff while maintaining access to justice by keeping front offices open while consolidating back office work in larger courts in the region to achieve economies of scale and make full use of staff;
- Eliminating part-time and non-law-trained judicial officers and consolidating judicial work into the workload of fully qualified judges; and
- Improving access to justice through flexible venue rules and implementing electronic filing of court documents.

The savings generated an estimated $1.2 million in property taxes at the county level, and $1.2 million in savings to the state’s general fund.

Minnesota

In a similar fashion, Minnesota’s Judicial Council created the Access and Services Delivery Committee, composed mainly of judges, in January 2008 to address the future of the state’s courts. The committee evaluated court services based on cost impact, feasibility, service impact and time impact. It identified four strategies for reshaping the courts:

1. Staffing to the most efficient norm: This strategy suggests the judicial branch should evaluate functions and seek to perform them as efficiently as possible throughout. In some cases this means standardizing business practices in all court locations, but in other functions it suggests the best way to increase staff productivity and achieve economies of scale is to centralize those functions, and thus extend the benefit of the productivity boost to all courts, even the small, rural courts. Examples include:
   - Centralizing payables processing;
   - Centralizing and regionalizing mandated services;
   - Centralizing annual probate reports; and
   - Expanding the use of subordinate judicial officers

2. Workflow re-engineering: The committee acknowledged new technologies can facilitate the work of the courts, but their greatest potential for efficiency cannot be realized without redesigning the business processes and rethink-
ing basic assumptions about the roles of justice system partners, the division of labor within and among courts, and the use of digital audio and video as well as Web-based access tools. The most immediate examples include:

- Implementing e-filing of traffic citations, criminal cases and civil cases;
- Implementing in-courtroom record updating;
- Implementing document scanning to transform records management; and
- Engaging in local level re-engineering of workflow and service delivery.

3. Legislative and court policy reform: For certain issues, the judicial branch can only rethink its services if the statutory and policy constraints under which it operates are changed. Without this precondition, many suggestions for transformations are impossible. Recognizing this, the committee recommended the courts expand the categories of infractions and petty misdemeanors that can be disposed through fines, eliminating court appearances as an immediate change that would have a large impact due to the volume of these cases.

4. Structural and governance change: Consistent with the direction taken by state funding of the courts and the creation of a Judicial Council as the policymaking body for the judicial branch, the committee suggested an immediate review of the current jurisdictional boundaries of the courts and suggested the courts redraw district boundaries.

The Minnesota Judicial Council took the short-term recommendations of the Access and Services Delivery Committee under advisement, and appointed a second such committee to review longer-term service delivery issues. The Access and Services Delivery Committee 2 was a larger group comprising trial court judges, representatives of justice system partners and a variety of staff from the judicial branch. This group provided a series of options and recommendations to the Judicial Council at its meeting in December 2009; those recommendations are currently under consideration.13

IV. Re-engineering not Reacting

State courts that have been actively rethinking their services began the process early in the current recession (early 2008), rather than proceeding incrementally and waiting to see how deep and how far the recession would extend. This is a sign of active leadership, grasping the significance of the looming budget storm early and addressing issues at a strategic and structural level, rather than a tactical and operational level.

Re-engineering court services starts with a review of the court’s mission and an understanding of its customers. A thoughtful review may reveal outdated assumptions and beliefs about who the courts serve and how those customers seek to make use of the courts. With agreement and clarity on that, the courts can proceed to a review of its business processes—how it delivers its dispute resolution services to meet the needs of those it serves. In the process of taking apart what the court does and how it does it, nothing is beyond scrutiny. Close review often exposes the fact that many court business processes are fragmented, resulting in a failure to observe the court’s overall performance in a given area.

Only through such radical review can major improvements in efficiency and effectiveness be achieved. Only this more profound approach, with major reductions in resources, offers hope that meaningful access to court services can be preserved.

Notes


3Daniel J. Hall, “Assessment and Overview of State Court Budget Summaries,” presentation at the midyear meeting of the Conference of State Court Administrators, December 5, 2009, St. Augustine FL.


9In the Supreme Court of Iowa, Supervisory Order,
“In the Mater of Prioritization of Cases and Duties” Dec 1, 2009.


12The full report of the Commission as well as documentation of its activities can be found at its Web page at www.vermontjudiciary.org/MasterPages/WhatsNew-CommissionJudicialOps.aspx.


About the Authors

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