

***Florida's State Courts' Financial Crisis May Soon Have Us All Saying . . . "BROTHER, CAN YOU SPARE A DIME?"*** By Magistrate Diane M. Kirigin, Palm Beach County

As the late in life child of depression era parents, I have heard dozens of anecdotal stories about the financial horrors of The Great Depression. Sadly for the first time in many generations, Americans are not enjoying a boom economy, we are not suffering a temporary recession, but instead, we are experiencing a national financial crisis. Since the new millennium, Floridians, who have often been buffered from the effect of national recessions, have experienced natural disaster, sky rocketing homeowners' insurance rates, the burst of an unprecedented real estate bubble, job losses and soaring foreclosures.

Twenty-five (25) states have faced major budget crises this year because of the nationwide downturn in the economy. Florida is 1 of those states. As a result of this financial crisis, our State and local governments have projected budget shortfalls and are wisely tightening their proverbial belts in the hope of surviving the next fiscal year. *However*, of the 3 branches of Florida's State government, Florida's judicial branch appears to have been the hardest hit by the budget cuts. Why?

Well, I'm not an economist, but my perspective is that Florida's State court system's financial woes harken back to the implementation of the Article V, Revision 7 Amendment to Florida's Constitution.

What is Article V, Revision 7? Well, as part of Florida's most recent Constitutional Revision Committee's survey of Florida's needs, it noted an inequality in Florida's court system and its ability to serve citizens uniformly throughout the State. This failure was causally connected by the Constitutional Revision Committee to variations in the availability and willingness of local governments to fund the State court system. As a result some of Florida's Courts were "haves" and others were "have nots." The "have nots" could not provide a comparable level of services to those offered by the "haves."

In 1998 Florida's voters were given an opportunity to "fix" this alleged inequity in funding and thereby provide for the State funding of a uniform State court system by amending Article 5, of Florida's Constitution via Revision 7. Florida's voters overwhelmingly supported this amendment. As a result, instead of Florida's courts relying on

local government to fund its needs, the obligation to fund Florida's courts was transferred *primarily* to the State.

At first blush, this seemed a logical and fair change. However, the actual implementation of the funding of Florida's State court system appears, in hindsight, to have fallen short of the mark envisioned by the Constitutional Revision Committee. This occurred when the State subsequently defined and limited its funding responsibility to "core" essential functions which it defined as: Judges and their judicial assistants, court administration and staff, case management, court interpreters, court reporters, general magistrates and child support hearing officers, staff attorneys, experts and witness expenses, and psychological evaluations. Local government continued to be responsible for court security {including staff, supplies and equipment}, court facilities {the physical buildings} and finally, court technology and communications {staff, supplies and equipment}.

Unfortunately, because the State's funding obligations were limited to "core" essential functions, many local governments were called upon to continue to fund the gap in State court services not assigned to either the State or local governments. Some local governments were willing and able to do so, others were not. In many instances the pre-Article V, Revision 7 funding numbers were never equaled by the State and local government co-participation. This funding "gap" resulted in reduced primary and ancillary court services and staff, the consequences of which were a reduction in Court access and efficiency. From this seminal event, funding of Florida's State court system has gotten progressively worse. Lack of parity in salaries for State court system employees, coupled with little, if any, meaningful cost of living increases, has prompted many of our best and brightest employees to seek employment elsewhere.

The Florida State court system receives .7% of the total State budget. The budget is based on Florida's fiscal year which just began July 1, 2008. A furlough of State Court employees was narrowly averted during the 4<sup>th</sup> quarter of the prior fiscal year {i.e. April 1<sup>st</sup>, 2008 – June 30<sup>th</sup>, 2008}. This year's budget cuts represent a 9.8% cut (\$18.4 million dollars) in funding for Florida's State Court system from where we were last year; \$14.5 million of those cuts were from the trial courts. This is the third consecutive year of funding cuts in the State court system's budget, thus, compounding the tenuous circumstances originating with the 2004 baseline reductions in the wake of Article 5, Revision 7.

Eighty-five (85%) percent of the State court system's budget is comprised of salaries. Presently judges, trial court administrators and the chief court technology officers are exempt from the budget cuts. Everyone else is fair game.

Oversight of the trial courts budget is the responsibility of the Trial Court Budget Commission {T.C.B.C.} which is comprised of 21 members appointed by the Chief Justice of Florida's Supreme Court. The T.C.B.C. establishes budget and funding policies, determines each Circuit's budget allocation, and makes recommendations to the Supreme Court regarding the allocation formula(s). On May 15<sup>th</sup>, the T.C.B.C. announced the effect the budget cuts would have on the courts of this State - - - with 227 total positions being eliminated. The T.C.B.C. implemented a mixed formula for trial court staff cuts. It mandated that each Circuit cut a specific number of positions based upon job type {i.e. 35 court administrators, 47 case managers and 10 general magistrate support staffers statewide}, leaving the remainder of the staff cuts to the discretion of the Chief Judges of each Circuit to meet his or her Circuit's specific dollar budget shortfall.

The T.C.B.C. met in early July, 2008 and it is possible that another 200 job positions may be slashed in the future. Lisa Goodner, State Court Administrator stated that Justice Quince will release a plan by August 1<sup>st</sup>, 2008, indicating how she wants the Florida Department of Financial Services to release the Florida State court systems monies during the 4 quarters of this fiscal year.

***How will this budget crisis impact the Florida State court system and your practice?***

The Florida state court system budget crisis will adversely impact your ability to practice law, advocate for your clients, "grow" or "maintain" your practice; and in turn, affect your income and quality of life. In very broad brush strokes you can expect:

**(a) Increased filing and related Clerk's fees:** Senate Bill 1790 became effective July 1<sup>st</sup>, 2008, in an effort to raise revenue via increased court fees to help finance the State court system. Besides a big increase in traditional fees and costs, new fees are being charged. For example, there is now a fee to have a summons issued, and most noteworthy, as a sign of Florida's movement toward a pay-as-you file system which exists in some other states, now, if you file a counter-claim there is a mandatory filing fee. You can expect additional increases in current fees, as well as additional "new" fees in the near

future. To cover the cost of court services, some of our sister states have already adopted a per-page filing fee/surcharge as an additional revenue component. Florida may soon follow this trend.

**(b) Staff reductions and other restrictions:** It takes a village to move a unified family case through the State court system. Staff cuts = gridlock because there will be less staff to perform intake, case management, schedule, respond to written and telephonic inquiries, process mail, and prepare orders and reports. The problem of staff reductions is further compounded by the fact that the State currently has a hiring freeze in effect which prevents the replacement of needed staff for positions which have not been cut altogether. Finally, current Department of Revenue (D.O.R.) policies prohibits D.O.R. funded child support hearing officers and their staff from participating in non-D.O.R. unified family division proceedings. What does this mean? Uncovered health care, child care, summer camp, extracurricular activities and educational cost matters, items which are in the nature of child support, must be heard by a non-D.O.R. funded general magistrate. This means 2 rather than 1 hearing on the same or near same issues. Similar restrictions apply to the type of work that a D.O.R. staff person can perform. These restrictions exacerbate the staff shortage and the ability of the Florida State court system to efficiently serve its citizens.

**(c) Diminishment/delays in accessibility to courts:** Judicial officers will have to share staff and/or assume some of the functions performed by staff that was cut. What is the consequence thereof? Ultimately it will reduce the number of hours available for hearings or trials and result in longer delays in getting matters heard by judicial officers who already have overcrowded dockets. In unified family court where what we do impacts families this could have potentially devastating adverse effects.

**(d) Potential reduction in quality/humanity of Florida's judicial system and Unified Family Court in particular:** My experiences as a litigant, an attorney and now as a quasi-judicial officer, in what we now call Unified Family Court, leads me to the conclusion that by and large all of the stakeholders and participants in the State court system are dedicated to serving Florida's families and to providing those families with meaningful, efficient, fair and well-crafted resolutions of their legal problems. Florida compares favorably, in fact, it is probably doing a better job, than many of its sister states in this area. The current trial court budget crisis if unchecked has the potential of overwhelming those who want to serve and provide the same quality

and level of services that were being rendered prior to the budget crisis. It is likely this will result in the loss of highly qualified judges, general magistrates, child support hearing officers and other professionals and paraprofessionals to the private sector. But of greater concern, is the potential for a general malaise or indifference within the infrastructure of the Florida State court system and ultimately, a diminution in its overall humanity.

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***What can we do about this State court funding crisis?*** Here are some practical tips that will help all of us get through this crisis:

- \*Explain the existence of the State court budget crisis to your staff, colleagues and your clients. Because the crisis is fluid, policies, practices and procedures may change. Your staff, colleagues and clients, if cautioned about this possibility will be prepared for the changes and will be less likely to react adversely to same.
- \*Explain the availability of and use alternative dispute resolution procedures {collaborative divorce, mediation, arbitration, life coaches, parenting coordinators, etc.} to resolve issues;
- \*Realistically evaluate the merit of your client's case and litigation posture.
- \*Give valid and realistic time estimates for hearings and trials.
- \*Prepare and be efficient at hearings and trials with the time allocated to you.
- \*Provide early notice of settlement, cancellations or the necessity for continuances.
- \*Comply with discovery requests timely and completely. Avoid gamesmanship.
- \*Cooperate with opposing counsel/party and court staff by coordinating and scheduling trials and hearings.
- \*Provide envelopes with appropriate postage for all hearings and trial requests, as well as at hearings and trial.
- \*Bring original exhibits and the necessary copies with you to hearings and trials.
- \*Be realistic about applications for emergency or exigent relief.
- \*Do not imbue unrealistic or misleading expectations to your client about the scope or timeliness of resolutions by the court.

I urge you to educate yourselves, and in turn, your colleagues, other professionals, staff, friends and family about this issue and remind them that the judicial branch is 1 of 3 co-equal branches of State government. Remind everyone you talk with that the judicial branch is entitled to adequate funding, from a dedicated source, so it can continue to serve the needs of the citizens of this State. Be sure to stay current on any prospective developments in connection with the budget crisis.

Aside from State court funding cuts, Florida's state attorneys, public defenders and guardians' *ad litem* office have faced budget cuts as well. The ability of all of us connected with the justice system will be hard pressed to continue to deliver services as we have in the past. Historically, we know during times of downturns in the economy, crime increases, foreclosure and eviction actions escalate, as do civil lawsuits, marital/relationship strife increases, support modifications abound, as do mental health case filings for substance abuse and mental illness. The irony is that without proper funding these increased court filings cannot be timely and properly addressed.

***From where can adequate funding be obtained?*** We need to look to the other branches of government. When voting, consider the knowledge and experience of gubernatorial and legislative candidates as it pertains the issues of importance to the Florida State court system; question their willingness to fund the judicial branch; and otherwise educate the participants in the other 2 branches of government to understand the functions of the Florida State court system, ensure that they are invested in it, the services it provides and the need for continued adequate funding.

These sister branches of government need to be creative and realistic and consider alternative revenue mechanisms to pay for the State court system. For example, the State's tax base could be expanded by taxing services hitherto exempt; by taxing luxuries; by increasing the sales tax and dedicating that increase to funding the State court system; by imposing a state income tax; and otherwise seeing to it that the dollars annually generated by court fees, costs and fines, *much of which is diverted to non-court-related agencies*, be retained within the State court system.

Finally, we should look to the example of our sister states. At this time, approximately 21 other states already have judicial compensation commissions which determine the funding of state court salaries from dedicated source(s). Because 85% of the Florida State

court system's budget is allocated to salaries, Florida should likewise consider the establishment of such a commission whose mission it should be to ensure that dedicated funding sources for State court salaries are established and maintained. Such a commission should be *objective, separate and wholly independent from the vagaries of partisan politics.*

Currently, the Florida Supreme Court is conducting a strategic long-range planning survey to assist it in analyzing the needs of Florida's State court system. I encourage each of you to participate in this process. Please go on-line to complete the survey which will take only minutes, but may help immensely with regard to the future course of our court system, to-wit:

[http://www.flcourts.org/gen\\_public/stratplan/surveys.shtml](http://www.flcourts.org/gen_public/stratplan/surveys.shtml).