

Response of the Ohio Judicial Conference to the 2011 Legislative Program of the CCAO

The Executive Committee of the Ohio Judicial Conference, representing all of Ohio's 725 judges, and all six of the judicial associations, has reviewed the Legislative Program of the County Commissioners Association of Ohio (CCAO) to determine how the proposals apply to the operation and management of Ohio courts. In their written documents and oral presentations, the CCAO has recently requested expanded statutory authority that would impact Ohio's court system. CCAO's Legislative Program also mentions support for the consolidation of some strategic local government operations, for the enhancement of shared services, and for the realignment of some state and local services. While the Judicial Conference finds some valuable proposals in the CCAO materials, many of their recommendations raise significant concerns about elevating the role of county commissioners to a position that is superior to the court.

The Ohio Constitution creates a judicial branch that is co-equal to and independent of the other branches of government, and grants certain inherent powers and responsibilities that include the operation of Ohio's courts. The budget conditions facing Ohio today present challenges to all branches of Ohio government but do not neutralize the essential principles of governance. Despite the local costs associated therewith, the efficient management of Ohio courts is the responsibility of the courts and judiciary, not the county commissioners. Because the CCAO is likely to continue to present this misguided approach, the Ohio Judicial Conference is obliged to respond and encourage the executive and legislative branches to pursue fiscal management that respects the essential principles of governance outlined in the Ohio Constitution. Ohio judges are willing partners in the effort to efficiently manage the costs of government. They are also committed to maintaining the administration of justice consistent with the constitutional and statutory mandates.

Our specific response to the CCAO Program is outlined below:

Local Court Budgets and Litigation Reduction.

CCAO recommends: CCAO seeks commissioner control over local court budgets, including the authority to determine what is reasonable and necessary to operate the courts. The CCAO seeks to avoid litigation over court budget disputes by enlarging its own power vis-à-vis that of the courts.

OJC response: *The Ohio Judicial Conference is truly committed to promoting understanding and harmony between courts and their local funding authorities. The Judicial Conference has a long tradition of educating judges about their legal responsibility to operate Ohio courts effectively and efficiently, of promoting judicial knowledge of the budget process and of encouraging judges to cooperate with local funding authorities whenever possible. The Judicial Conference has developed educational programming around the topic of local budgeting, has published articles in the Ohio Judges Resource Manual on the subject of local budgeting, has supported the training of judges who are mediators of intergovernmental disputes, and has formed a budget collaborative with the County Commissioners Association of Ohio, the Ohio Municipal League, the Supreme Court of Ohio, and the Commission on Dispute Resolution. All of these initiatives are concrete instances where the Judicial Conference has shown leadership and demonstrated a sincere commitment to reducing budget conflicts and encouraging mediation as an alternative to litigation between judges and their local funding authority. Nonetheless, the Ohio Constitution makes it clear that the judiciary has the responsibility and the authority to determine the reasonable and necessary funding needed to operate the courts.*

County Operations and Services.

CCAO recommends: CCAO suggests the need for consolidating, sharing and realigning certain local operations and services. The Commissioners request the statutory authority and tools needed to incorporate these changes and to make further improvements in the efficiency and modernization of county operations.

OJC response: *Ohio judges are interested in efficiency and modernization of court operations and are anxious to hear details of how this can be accomplished. Nonetheless, it would be a violation of the constitutional principle of separation of powers for county commissioners to regulate how courts operate, including but not limited to how cases are docketed, which employees are hired or fired, what jobs need to be performed, which employees are qualified to perform a specific task, which positions are crucial to court operations, which legal research materials should be purchased, how case files should be maintained, how trial court proceedings should be recorded, or other decisions affecting the operation of the courts. It would be an unconstitutional violation of the separation of powers doctrine for the county to interfere with the judiciary's inherent power to operate Ohio courts.*

Special Revenue Funds.

CCAO recommends. CCAO seeks access to special revenue funds during periods of fiscal stress.

OJC response: *Ohio courts and judges should retain control of court special project funds. To give funding authorities control over court special revenue funds would contradict the purpose for which these funds were established. Historically, the court special project funds were created by the Ohio General Assembly to enable courts to develop new or innovative projects that the county commissioners were either unwilling or unable to fund out of general revenue funds. The establishment of a limited special revenue fund by the Ohio General Assembly demonstrates the recognition by the legislative branch of government that the advancement of the administration of justice is an independent local priority. The Ohio judiciary has used these funds to provide for innovations in court technology, case management, rehabilitative and treatment initiatives, community service programs, mediation or dispute resolution services, court facility renovations, and other essential projects. These funds are collected as court costs and are established at the discretion of the court at a level that is consistent with the purpose of their collection. Court costs are not a tax revenue that should be used for the general revenue of the community, but rather a nominal user fee to supplement funding to courts. These special funds are not county general revenue funds and it is misleading for the CCAO to suggest otherwise. Indeed, the General Assembly has established a level of flexibility in the court funding structure that helps to avoid confrontation. Were judges unable to obtain funding for needs such as security and technology through "special project funds" established by the General Assembly, courts would be forced to use their mandamus power to order the county commissioners to provide the funding. The creation of this alternative funding mechanism goes a long way to reduce litigation between the courts and their funding authority. During periods of fiscal stress it is more important than ever that the courts retain control over these monies. Today, many individual courts voluntarily use their special project funds to cover court operations in times of economic hardship which then frees county general funds to be used elsewhere. It would be counterproductive to grant the county commissioners the ability to declare a surplus and divert the court's discretionary funds to the county general fund over the objection of the court. Furthermore, the unilateral and unauthorized seizure of these funds by county commissioners or municipal authorities should not be tolerated.*

Public Defender Services.

CCAO recommends. CCAO recommends that the state increase its share of the expense for indigent defense and suggests the use of non-GRF revenue sources (like court costs and fees) to reimburse counties for indigent defense expenditures.

OJC response: *The Ohio Judicial Conference has a fervent interest in preserving fairness in Ohio's justice system and a steadfast commitment to improving the quality of indigent defense in this State. Historically, we have been at the forefront of discussions to improve the quality of indigent defense. Our Court Administration Committee has a permanent subcommittee that deals exclusively with indigent defense. Many of our achievements in this area have been accomplished in collaboration and partnership with the County Commissioners Association of Ohio, the Ohio State Bar Association, the Public Defender's Office, and the Supreme Court of Ohio. High among our priorities is to implement recommendations of the 2006 Report of the Task Force on Pro Se and Indigent Litigants. We want to do everything we can to help the State of Ohio meet its constitutional obligation to provide for the legal defense of indigent defendants. General Revenue Funds are an appropriate source of financial support for this essential constitutional feature of our criminal justice system. However, court costs are not an appropriate source of revenue to support indigent defense. Court costs should be reasonable, nominal and directly related to the operation and maintenance of the court. This is a longstanding position of the Ohio Judicial Conference and was also the number one recommendation of the July 2008 Joint Committee to Study Court Costs and Filing Fees.*

User Fees and Revenues.

CCAO recommends: CCAO supports the increased utilization of and reliance on user fees to fund specific county services and seeks authority to establish those fees.

OJC response: *Ohio judges have supported sensible increases in some court costs which have remained stagnant for many years. Judges are also sensitive to the concerns of the Ohio General Assembly regarding increasing fees in times of economic hardship. The Ohio Judicial Conference maintains a policy on court costs that seeks balance between the need to fund the justice system and basic principles of justice. It discourages the use of the courts as a taxing authority to raise funds for the general allocation of county commissioners. Thus the Ohio Judicial Conference maintains that the current structure of the Ohio General Assembly setting reasonable court costs consistent throughout the state is a prudent practice. Alternatively, local judges are focused on the proper administration of justice and are in a better position to set court costs than county commissioners who are influenced by many demands and interests, only some of which are mandated.*

Court System Restructuring.

CCAO recommends: CCAO seeks a complete review and restructuring of the misdemeanor court system. It also suggests that the state assume full responsibility for the operation and management of the common pleas court system and further suggest that it become a "unified" or centralized system.

OJC response: *The CCAO suggestion is a pursuit of redistribution of revenues to counties from Municipal courts that are traditionally well managed and generate substantial revenue from misdemeanor and traffic fines as well as the redistribution to the state of expenses of common pleas courts where costs considerably exceed revenues. Consideration of unified court systems requires a multitude of policy determinations, many of which are not consistent with Ohio's traditional home rule perspective and the expectations of the people to elect local judges who are qualified and trained in a particular jurisdiction and who can be held accountable for the operation of the local courts. The Ohio court structure is diverse to meet the desires of local communities. Ohio's Constitution already includes a provision that allows for voluntary cooperation*

among counties and cities to facilitate efficiencies. Ohio court statutes are replete with provisions drawn to meet local needs. The operations of Ohio's courts should not be beyond scrutiny. The Supreme Court of Ohio, the Ohio Judicial Conference, and Ohio's judges are in the best position to counsel on appropriate changes to the Ohio judicial system which should be structured and managed to best administer justice. The focus of the CCAO on revenues and expenditures should not be the measure of justice.

Periodic Review of Judgeships.

CCAO recommends: CCAO seeks a periodic review of judgeships.

OJC response: *The Ohio Judicial Conference supports the periodic review of judgeships. We believe that current law permits the elimination of judgeships just as it permits the creation of judgeships. While we believe the periodic review of judgeships already occurs, in recent years we have worked to clarify how this process could be improved. We have encouraged the Ohio General Assembly to develop a system for re-evaluating the need for a judgeship every time there is a judicial vacancy and the governor needs to make an appointment. This would be a perfect time to re-examine whether the judgeship is needed and to require that the position be justified by caseload and other factors that are used when a new judgeship is contemplated. The Judicial Conference has developed statutory language that we believe will encourage periodic review of existing judgeships, ensure that transitions will be carried out in ways that maintain the quality and integrity of the judicial system, maintain the quality of the candidates who run for office by eliminating any fear that the position will be eliminated in term, and contribute to public confidence in the electoral process and the judiciary.*

Judicial Education and Training.

CCAO recommends: CCAO seeks state funding for judges to comply with the mandatory continuing education requirements.

OJC response: *The Ohio Judicial Conference supports the continuing legal education of Ohio's judges and believes that the cost associated with this training should be the responsibility of the state. We are not opposed to county funding of judicial education, especially since the county receives direct benefits from the training. But unlike county prosecutors, sheriffs, coroners, engineers, and others with training needs, Ohio judges are not county officials. Ohio courts are established by the Ohio Constitution as the judicial branch of government. We believe it would be a conflict of interest for continuing judicial education to be funded by the Supreme Court of Ohio because that court sets the educational requirements and approves the courses that receive continuing education credit. Indeed, we can see why the CCAO singles out judges from other county elected officials that are also required to take continuing education or receive re-certification training. In effect, the CCAO makes the point that judges are part of the judicial branch of state government rather than a county entity.*

Legal Advertising Notices.

CCAO recommends: The CCAO supports replacing published announcements with electronic or internet messages and legal advertising notices.

OJC response: *Ohio judges support the sensible use of modern communication techniques by government agencies. The Ohio Judicial Conference cautions against a wholesale abandonment of traditional publication of legal notices and adoption of internet or electronic notices. While it may be good to post some information on websites and other non-traditional forums, the choice of where to post court notices should remain discretionary for the judges and courts of Ohio consistent with the demands of due process and justice.*

Other Miscellaneous Proposals.

CCAO recommends: CCAO proposes the development of a state-sponsored building program, adoption of a less costly records retention policy, reduction in statutory requirements to use certified mail, and a reduction in government's exposure to liability.

OJC response: *Ohio judges support these miscellaneous proposals because they will save the counties money.*

- *Capital Improvements to Courthouses. It would be a positive development for the state to provide capital expenditures to improve the Ohio courthouses. There are several judges who currently use their special projects money to support maintenance of their county courthouse. Despite the tremendous need for improving courthouses across the state, there are a number of counties that cannot afford these improvements. Efficiencies in utility expenses and other benefits could be achieved if the state could take over the responsibility for a statewide effort to repair or replace aging courthouses.*
- *Storage of Court Records. The Ohio Judicial Conference has conducted research on the cost related to Ohio's record retention policies, especially as they relate to criminal records. This is an area that differs by county. Some counties have adequate space to physically retain original files and others are technologically advanced enough to be able to convert their records to digital formats that take less space. Nonetheless, the vast majority of counties have some difficulty meeting the record retention policies that are unique to courts. Many courts must rent space to retain case files and evidence. Most counties do not have the resources needed to transform written records into digital formats that are more easily stored. The Ohio Judicial Conference supports the adoption of a less costly records retention policy.*
- *Certified Mail. The Ohio Judicial Conference believes that mailing costs should be reduced whenever possible. Courts typically do not rely on certified mail unless it is statutorily required or constitutionally mandated. We recommend a thorough examination of the Ohio Revised Code to determine if there are instances when the certified mail standard could be replaced with regular mail or some other less expensive method of communication or notification.*
- *Judicial Liability. The Ohio Judicial Conference has developed statutory language to eliminate code sections that could subject juvenile and probate judges to personal liability for actions of judges and their staff performed during the normal course of business. Though we know of no instances where judicial liability has been a financial burden on the county, modification of these statutes will reduce that possibility in the future. We expect passage of this legislation during the 129th General Assembly.*

Final Statement.

The Ohio Judicial Conference recognizes that judges have a responsibility to operate Ohio's courts in the most effective, efficient, and cost-effective manner. We only have reservations about the CCAO proposals that we believe will undermine the court's constitutional obligations and institutional responsibilities. We remain committed to moving forward in areas where court operations can be improved.