



Background

Adequate, stable funding for the courts has been a quest for as long as anyone can remember. Alan Carlson, Kate Harrison, and John Hudzik summed it up in their 2008 article; “In order to manage trial courts responsibly, its leaders must have funding streams they can rely on from year to year and which do not fluctuate significantly or unpredictably.”ⁱ In 2012 the *Principles for Judicial Administration* exhorted funding bodies to provide adequate funding for courts to resolve cases in accordance with recognized time standards, ensure facilities are built and maintained in accordance with adopted courthouse guidelines, and provide technologies comparable with other branches of government. For just as long as anyone can remember we, court professionals, have complained that we are the victims of inadequate, uneven, sporadic, sometimes capricious budget allocations. Added to that, major economic downturns are now a regular feature of American life and even today courts face huge gaps between what is allotted and what is needed to operate.ⁱⁱ

Conventionally state courts are funded from the general fund (either county or state), fines, filing fees, user fees, and some grants. These sources are at the core of any funding strategy when times get hard. Strategies include asking to be considered differently from other agencies when budget cuts are contemplated; requesting to increase filing fees, fines, and bail forfeitures; proposing new and different user fees and increasing the fees that already exist; searching for grant funding; possibly developing special funds for donations and 501(c)(3) support organizations.

Each of these strategies has a weakness. Funding bodies tire quickly of the “we’re different and special” argument. Filing fees and fines are usually divided between a variety of recipient agencies and courts can find themselves at the bottom of the filing fee food chain. User fees have become more popular in the past decade though some argue they restrict access to the courts and might be spawning a new form of “debtors’ prison.” This argument was recently buttressed by the Department of Justice’s investigation of the Ferguson police department, which included a description of the Ferguson Municipal Court’s practice of imposing additional fees to local code violation cases then issuing arrest warrants when defendants fail to make payments.ⁱⁱⁱ Also in vogue is a more aggressive search for grant money, but again this can sometime be inhibiting. Grant money is usually time limited and must be replaced by permanent funding. Specialized donation funds and 501(c)(3)s are usually not considered serious funding sources.

Do courts in the future take a more robust funding approach? Could developing a diversified approach embracing all avenues in good financial time as well in bad be a wiser long term strategy?

The Scenario

Monday, January 6, 2025:

Court administrator Willow Wilcox reviews her court's latest monthly financial reports. It has not been an easy decade for Willow's court but she is satisfied. In early 2012 the court relied totally on the county general fund, some state funding for judges salaries, and a smattering of Federal grants.

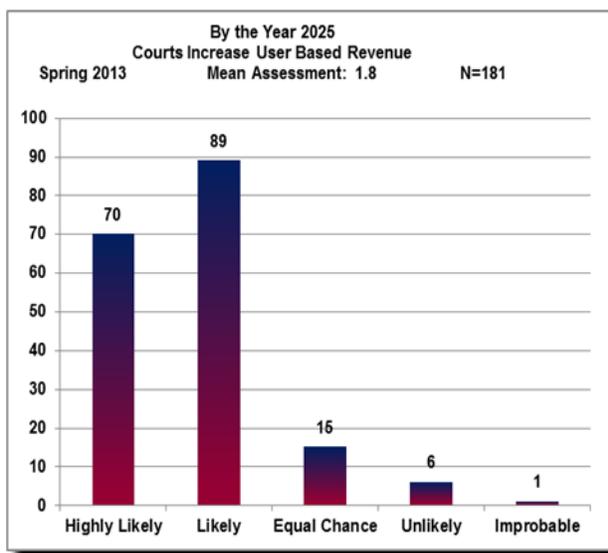
With new budget cuts looming Willow embarked on a long term funding diversification campaign. She lobbied for an array of new user fees. The court now charges for making probation visits, for establishing deferred payment plan, for having a court reporter at a hearing instead of using electronic audio–video recording, for looking up court records, even online – the list goes on.

Willow next explored semi–private funding opportunities like Walmart's Community Foundation. She was warned off from receiving such grants directly due to possible conflicts of interest. Instead she arranged to have the county accept private grant funding, then the county used the funds to build a combination court, community justice center, and holding facility. The county took over several court functions like interpreting, court reporting management, information processing, family mental health counseling, and mediation.

To avoid having more court functions transferred to the county, Willow got a legal opinion that the court could accept grant money if the private funding entity signed an agreement that the money tendered to the court was free and clear of financial, operational, or legal expectations. Finally the court's 501(c)(3) aggressively explored crowd funding because the 501(c)(3) would never appear in court as a party.

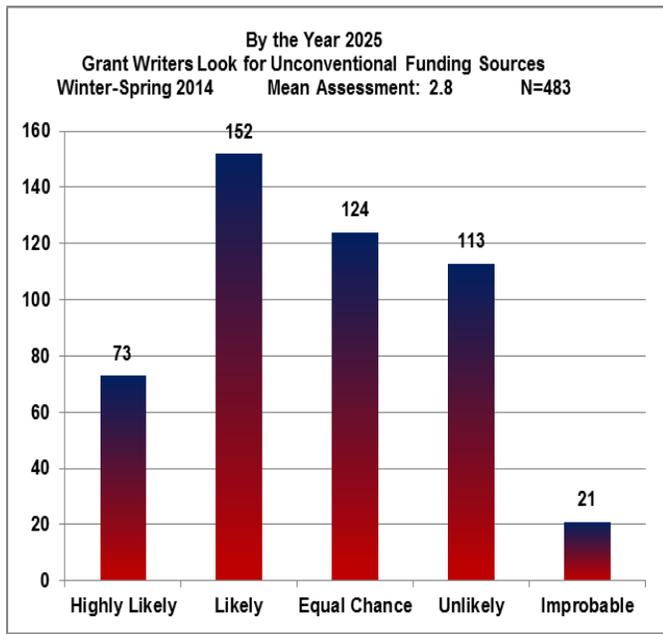
Willow has been uneasy about how much of her court's funding comes from user fees, money funneled through the county, from the Internet through the 501(c)(3), and through other semi-private foundation grants. However, without these creative funding streams the court would have been decimated and adequate judicial service would have been a distant dream.

What the Survey Said



The Spring 2013 Future of the Courts survey canvassed 181 respondents who assessed Increases in User–Based Revenue as *Highly Likely* with a 1.8 average^{iv}. This assessment was basically carried across the age cohorts. *Baby Boomers* assessed it with an average of 2.0; *Millennials* gave it an average assessment of 2.1. *Generation Xers* assessed it as less likely giving it a 2.4.

The various jurisdiction levels were also fairly uniform in their *Likely* assessment. *State General Jurisdiction* respondents assessed it at an average 2.0; *State Administrative Office* respondents assessed it at 2.2; *Limited Jurisdiction* respondents thought it was less likely assessing it at a 2.4 average.



The Winter–Spring 2014 survey received 483 responses that assessed Grant Writers Expanding Their Role and Looking for Unconventional Funding Sources as having a 50–50 Chance with a 2.8 average. This assessment varied somewhat across the age cohorts. *Traditionals* thought it Unlikely with a 3.0 assessment; *Baby Boomers* gave it a 2.7 assessment; *Generation Xers* and *Millennials* assessed as slightly more likely with a 2.6 assessment.

There was some slight diversity in how the different jurisdictional levels assessed the scenario. *State General Jurisdiction* respondents assessed it at a 2.6 average; *Limited Jurisdiction* respondents: 2.5 average; *State Administrative Office* respondents thought it was *Likely* assessing it at 2.4

The Respondents

To comment on the scenario we asked Robin Sweet, State Court Administrator for the State of Nevada; Michael D. Evans, Administrative Director of the Courts for the Oklahoma Court System; Timothy H. Sheridan, Court Administrator for the Circuit Court for Baltimore County, Maryland; Lisa Morris, Assistant Deputy Executive Officer, Superior Court of California for Riverside County; and Alexis Allen, Deputy Court Administrator, City of Tempe Municipal Court, Arizona.

What are the Drivers Pressing for More User–Based Charges?

Robin Sweet commented that user based charges weren’t increased during the legislative session two years ago even though the Nevada legislature often looks to user fees as a solution. “When the legislature created the Foreclosure Mediation Program six years ago, they made sure it was funded through fees, including funding the mediation process through the user and bank fees; however, now that the fees are not fully supporting the program, they are looking at discontinuing it at the end of the next biennium.”

Lisa Morris remarked that courts are directed to provide more and more services with fewer and fewer resources so the court consumer feels the pinch. As a result she has seen user fees expand over the years.

Tim Sheridan thinks the probability of courts increasing user fees in the future is very high. He said that his court receives about ten percent of its Family Services budget from user fees.

Alexis Allen said that the Tempe Municipal Court doesn't rely heavily on user-based charges, but the funds are used for more efficient case processing and increased access to justice. "Courts previously reliant on user-based charges have depleted funding reserves. What was once used for special projects or rainy days is more commonly used for day-to-day operations. As more standards are placed on case processing, courts may feel this drives them to add and/or increase fees simply to keep up."

What Counter Drivers are Trying to Restrain User-Based Charges?

Tim sees the biggest counter driver to expanding user charges is dealing with financially strapped self-represented clients who can't afford the fees. "At some point the fee becomes a deterrent to filing or the provision of needed services. The Court provides all of these services for free to parties that can't pay."

Michael Evans commented that a third of the user fees, fines, and costs Oklahoma trial courts collect (at the direction of the state legislature) goes to finance executive branch agency functions – not court services. "At the same time, the legislature and Supreme Court have both rejected the idea of increasing user fees for the trial courts."

Alexis felt that public perception and comments could drive funding sources to vote against increasing fees or adding new ones.

Robin thought that the "Ferguson Effect" might have a real effect on the user/assessment fee structure in courts.

Are there Drivers Pressing for More Creative Funding Sources?

Alexis can see that as times change the impetus for courts to look "outside the box" will continue to grow.

Robin said that Nevada looks for grant funding; however usually on the normal federal or state levels. "Although we watch for others, they seldom match our program needs. We have learned the hard way that it is better to have a project or idea and look for ways to fund it than to let the funding drive the project or idea." The potential that alternative funding sources could cause conflicts of interest in a future court case is a particular concern.

Are there Counter Drivers to Looking Creative Funding Sources?

Michael Evans said the Oklahoma courts have historically rejected grants from any governmental body except the state's Court Improvement Program grants for child deprived cases. "Several if not most of our justices believe the courts should be funded by direct appropriations from the legislature, but the legislature itself has reduced our direct appropriations, raided all of our revolving fund accounts, and placed our future long-term funding needs in jeopardy."

Tim and Lisa agreed that the potential for a perceived conflict of interest could be a powerful counter driver. Tim said that creative funding is a way out, but at some point the Court's integrity could become an issue. "The maintenance/improvement of the Court's public trust and confidence is why traditional direct funding of services should be a goal of the Court system."

Lisa mentioned that the public’s perception concerning potential conflicts of interest could possibly prompt legislative involvement to inhibit “creativity.”

Is there a More Likely Scenario?

Michael advised that courts should focus on the fact that they provide vital, constitutionally based, core government services that have funding priority over many other government expenditures. “Until the courts assert (through litigation if necessary), their status as a branch of government and demand adequate funding, it will not happen.”

Robin said that the “Ferguson Effect” may impact our funding more than folks realized. The Nevada biennial legislature has repeatedly stated on the record this session that they need to look at how the courts are funded. “Nevada courts have a large percentage of their funding based on fees and assessments from criminal and traffic cases. If they do truly study the issue in the interim, we may start moving toward more stable funding. I have to wonder if that has caused other states to re-evaluate as well.”

Lisa noted that California’s court funding formula changed two years ago to provide more funding to counties with a higher number of filings, but fewer judicial officers. Another change was that, “California courts can only save 1% of their annual budget from year-to-year. This has been extremely challenging for fiscal services with regard to just the basics of meeting payroll each month.”

What Should Courts Be Doing Now?

Alexis advised that courts should be looking for more creative funding sources now. “What may have been considered out of reach in years past may no longer fit into that category.”

Robin saw the need for continuing discussions with funding bodies and the public about the need for an independent judiciary. “. . . help funding bodies find areas that can appropriately be funded with user fees or the like (e.g., not primary functions); continue to be transparent and accountable with the public funds. All these will help built trust and confidence in the judiciary so that as funding sources change or opportunities become available, there can be a productive dialog with the courts at the table.”

Michael was concerned that his court system will be forced to issue a writ in the future to provide adequate funding for the courts.

Lisa recommended that courts look at every area of law to determine if each service a court is providing is mandatory, and if it is, whether or not it is the court’s responsibility to provide the service; non-mandated services need to be cut in order to provide the mandated service with limited resources. “For example, in Family Court Services, we eliminated in-house evaluators and juvenile court mediators. While both are extremely valuable services, neither is mandated for the court to provide.”

We Want to Hear from You!

Thanks to Robin, Michael, Timothy, Lisa, and Alexis for their comments and insights on the unceasing issue for courts and funding. Write to us at the following email address for a copy of the entire combined list of survey results and send us your comments to: pkiefer@superiorcourt.maricopa.gov

Phillip Knox & Peter C. Kiefer
July 2, 2015

ⁱAlan Carlson, Kate Harrison, & John Hudzik, Adequate, Stable, Equitable, and Responsible Trial Court Funding: Reframing the State vs. Local Debate, U.S. Department of Justice, September 2008.

ⁱⁱDaniel J. Hall & Thomas Clarke, “Delivering Justice Services in Hard Times,” Future Trends in State Courts 2008. National Center for State Courts, 2008.

ⁱⁱⁱ United States Department of Justice Civil Rights Division, Investigation of the Ferguson Police Department, March 4, 2015

^{iv}the three surveys we have so far distributed respondents were asked to assess scenarios using a 1 to 5 scale(1: highly likely, 2: Likely, 3: Maybe (50-50 Chance, 4: Unlikely, 5: Improbable). We then grouped responses by average assessment. (1.0–1.9: Highly Likely, 2.0–2.4: Likely, 2.5–2.9: Maybe (50–50 Chance, 3.0–3.4: Unlikely, Above 3.4: Improbable).