RESOLVED, That the American Bar Association urges all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding.

FURTHER RESOLVED, That the American Bar Association adopts the Principles for Judicial Administration (and commentary), dated August 2013 and recommends it as appropriate guidance for those states desiring to establish principles for judicial administration in their efforts to restructure court services and secure adequate court funding.
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, decision-making and case administration, 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. The principles are designed for use by the judicial branch leadership of each state as a basis for establishing principles for judicial administration in their states. They are also intended to help members of legislative bodies and their staff 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. Decision-Making and Case Administration Principles have been completed through the High Performance Court Framework. 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 two sets of principles, which address governance and decision-making and case administration, 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 three sections. The first two address aspects of court administration that are foundations to pursuing adequate funding. The third section contains specific principles relating to funding. The funding principles are the means to connect the first two 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 FOR 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 leaders should be selected based on competency.
- **Principle 3**: Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.
- **Principle 4**: Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.
- **Principle 5**: The court system should be organized to minimize the complexities and redundancies in court structures and personnel.
- **Principle 6**: Court leadership should allocate resources throughout the state or local court system to provide an efficient balance of workload among judicial officers and court staff.
- **Principle 7**: Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.

**Decision-Making and Case Administration Principles**

- **Principle 8**: Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.
- **Principle 9**: Court leadership should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:
  - The adversarial process.
  - A problem-solving, treatment approach.
  - Mediation, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.
  - Referral to an appropriate administrative body for determination.
- **Principle 10**: Court leadership should exercise control over the legal process.
- **Principle 11**: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.
- **Principle 12**: Judicial officers should give individual attention to each case that comes before them.
- **Principle 13**: The attention judicial officers give to each case should be appropriate to the needs of that case.
- **Principle 14**: Decisions of the court should demonstrate procedural fairness.
- **Principle 15**: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.

**Court Funding Principles—Developing and Managing the Judicial Budget**
Principle 16: Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.

Principle 17: Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.

Principle 18: Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.

Principle 19: Judicial Branch leadership 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 20: Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.

Court Funding Principles—Providing Adequate Funding

Principle 21: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff functioning in accordance with adopted workload standards.

Principle 22: 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 23: The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.

Principle 24: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

Principle 25: Court fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.

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 three sections. The first two sections address aspects of court administration that form the foundation to pursue adequate funding: governance, decision-making and case administration. 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 third section contains court-specific Funding Principles which connect the first two 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 principles relate to the responsibility of Judicial Branch leadership 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.

**GOVERNANCE PRINCIPLES**

Governance is the means by which an activity is directed to produce the desired outcomes. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective, fair and impartial justice.

State court systems operate under a number of different structural models. In some states, trial courts operate in accordance with local rules and procedures; any centralized authority within the state exercises limited power. Some states have a relatively complex trial court structure with local units bound together by a strong central authority. Other states have 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.¹

Some state court systems are funded entirely by the state, some are funded entirely by local government and some court systems are funded by both state and local funding bodies.

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.”²

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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.\(^3\)

The following principles are set forth as unifying concepts which can be employed in all existing court organization models and all funding 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 or funding model.

\begin{itemize}
  \item \textbf{Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.}
\end{itemize}

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 judicial leaders, administrators and managers for policy decision-making and implementation be well-defined and 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.

The Judicial Branch must have a clearly articulated mission, must state the values by which it operates and must identify its strategic objectives and goals. A well-defined governance structure enables the court system to accomplish these ends and 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 communication and to keep information flowing.

**Principle 2: Judicial leaders should be selected based on competency.**

Commentary: The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leaders 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 than two years 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 focus attention on policy level issues while clearly delegating administrative duties to court administrators.**

Commentary: Decisions about policy belong with the structural “head” of a judicial system, but implementation and day-to-day operations belong to administrative staff. Effective governance requires a strong court management team comprising judicial leaders and court administrators. An avoidance of micro-management by the policymaker 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 4: Court leaders, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.

Commentary: Fundamental to effective management is the control of resources. Court leadership must be given the authority to manage the available resources. While this authority can be shared with professional court administrative staff 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 court leadership 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 5: The court system should be organized to minimize the complexities and redundancies in court structures 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. The quality of justice rendered by a court system correlates directly with citizens’ ability to access the courts. The organization of the court system should promote access and the prompt, cost-effective and just discharge of the primary duty of dispute resolution. Removal of barriers such as multiple courts with similar or overlapping jurisdiction enhances citizen access while also reducing taxpayer costs. Clear and simplified structuring of the court system facilitates ease of use and engenders public understanding and ultimately support.

Principle 6: Court leadership should allocate resources throughout the state or local court system so as to provide an efficient balance of workload among judicial officers and court staff.

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 leadership is to equitably balance workloads among judges and staff and to ensure that these resources are assigned appropriately. Resource 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. Objective workload models should be used to identify how many judicial officers and court staff are needed and to assist in allocating staff on an equitable basis. Through technology, workload from any court within a jurisdiction can be assigned to court staff working in other courts in order to balance the workload.

Principle 7: Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.
Commentary: To earn the public’s trust and confidence and to provide quality judicial services, courts need judges with the highest ethical standards, extensive legal knowledge, and complex and unique skills in leadership, decision-making, and administration. Courts similarly need highly professional, ethical and competent staff. The court management team should work to enhance the performance of the judicial system as a whole by continuously improving the personal and professional competence of all persons performing judicial branch functions. All judicial officers and court staff should have clear expectations of effective performance along with transparent systems to evaluate that performance. The evaluations should be used by court leadership to develop education and training programs that provide judicial officers and court staff the knowledge and skills required to perform their responsibilities fairly, correctly and efficiently while adhering to the highest standards of personal and official conduct.

DECISION-MAKING AND 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 Decision-Making and Case Administration are imbedded in and fundamental to these performance management systems.

□ **Principle 8: Courts should 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 innocent, whether one party owes money to another party, who owns a piece of property, and who has custody of a child. Thus it is obvious 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.

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4 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).

5 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
Consequently, court leaders have an obligation to structure their operational systems in a manner that promotes public access to the courts. Tight economic times do not justify the courts not accepting cases.

- **Principle 9: Court leadership 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, arbitration or similar resolution alternative that allows the disputants to 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. Court proceedings may use a mixture of the court processes identified in this Principle. In many jurisdictions the single door court-focused courthouse has been replaced by a multi-door consumer-focused courthouse, one that affords litigants 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.

- **Principle 10: Court leadership 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 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. 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. Control of the process by the trial court management team is the basic principle upon which these evidenced-based practices are founded.

- **Principle 11: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.**

Commentary: Court leaders should adopt court procedures that reflect the practices that provide justice at the least expense to the litigants and taxpayers. Those procedures should be made uniform within the jurisdiction. Procedures should be proportionate to the nature, scope and magnitude of the case involved. One size does not necessarily fit all. While different rules may be required for different case types, redundancies or superfluous procedures must be eliminated.

- **Principle 12: 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, 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 10, 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 13: 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 14: Decisions of the court should demonstrate procedural fairness.**

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.⁶

□ **Principle 15: The court system should be transparent and accountable 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

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⁶ Tom 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.
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 requires the collection and use of relevant, timely and accurate information that must then be used to make decisions on how to best manage court operations to ensure the desired outcomes.

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.

**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 judicial branch for consideration 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.

**Developing and Managing the Judicial Budget**

For the court system to exist as a 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. The Judicial Branch is 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 16: Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the 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 15 and 17). 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 17: Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.

Commentary: In the past courts focused on their structures and processes not on 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, 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 18: Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.

Commentary: Courts are a separate branch of government responsible for executing their constitutional mandates in an efficient and effective manner. State and local 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, state and local legislative

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bodies 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. The court management team 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 19: Judicial Branch leadership 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 Judicial Branch is dependent on the state and local legislative bodies 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. Court leadership must have broad authority 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 20: Judicial Branch leadership 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 or local requirements.

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 21:** Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff 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 16) and have performance measures (Principle 17) 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 22:** 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 23:** The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services...
Commentary: As socio economic conditions change and caseloads continue to grow, and as the demands for access change as citizens’ use of technology to interact with government grows, 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 the other branches of government and the commercial world. Court systems need to continue to identify 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, online jury services support, 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 25, to provide the necessary resources for these investments.

□ **Principle 24: 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 21 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 9 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 case types 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 25: Courts’ fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.**

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.
However, most states also charge fees for court users. 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 raised so high that they 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.

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 and the decision-making and case administration 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.

Court leaders can use these Principles for Judicial Administration to critique existing models in place in both state and local court systems. Critiquing how a particular court system matches up to the principles of governance, decision-making and case administration, and court funding can lead to specific and tangible assessments about strengths and weaknesses and, in turn, to real reform. It is in the spirit of providing good government that these Principles for Judicial Administration are advanced.
REPORT

I. Introduction

The problem of inadequate court funding persists despite ongoing efforts by the ABA to ensure that all courts are fully and adequately funded. At both the state and federal level, court funding has long been a priority of the ABA. In particular, since the creation of the Justice is the Business of Government Task Force in 2009, followed by the creation of the Task Force on Preservation of the Justice System (“Task Force”) in 2010, ABA leadership has demonstrated its heightened awareness of the urgency with which the Association must address this problem.

Despite some success on the part of the Task Force over the past few years and slight improvement in the economy, state courts around the country continue to struggle as they face hiring freezes, pay cuts, judicial furloughs, staff layoffs, early retirements, supply shortages, increased filing fees, and outright closures, all of which undermine their ability to provide access to justice. Meanwhile, federal courts are facing sequestration, as well as the perennial problems of Congress failing to create needed judgeships, confirm judges to fill vacancies, and authorize appropriate cost of living adjustments. The financial hardships facing courts and threatening access to justice come at a time when caseloads are increasing, as are the number of pro se litigants.

The most recent state budget survey by the National Center for State Courts (“NCSC”) found that more than a third of states report that actions taken in response to the budget situation have resulted in reduced service to the public, more than a quarter report that they have resulted in limited access to court services, and more than a third report that they have resulted in delays and backlogs. Half of states reported no impact, but reported that they are meeting the challenges by restructuring and consolidating operations, by adopting new business practices, by centralizing operations, and by increasing the use of technology. Although there have been slight increases in funding in some states over the past two years, many states have not received increases, and some states continue to face additional cuts. In those states where funding has increased, it has not returned to 2007 levels. While courts are doing the best they can with limited resources, they remain in dire need of adequate funding and useful guidance.

Over the past three years, the Task Force has focused on partnering with state courts and state bar associations to assist them as they make the case for adequate funding. The Task Force has seen some success, and efforts continue. The time has come to call upon legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding as

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2 Based on the results of NCSC’s October 2012 survey, in fiscal year 2012–2013, seven states received decreased funding, six saw no change, twenty-eight received increased funding, and nine did not provide data. Approximately 70% of state court administrators responded that they expect the judicial branch budget to stay relatively the same over the next three years. NCSC 2012 Budget Survey.
well as to provide guidance to states desiring to establish principles for judicial administration to assist them as they seek to restructure court services and secure adequate court funding.

II. Task Force Background

In 2010, then ABA President Stephen N. Zack had the vision and leadership to attack the grave problem of the country’s underfunded and endangered courts by creating the ABA Task Force on Preservation of the Justice System. The following year, Immediate Past ABA President Wm. T. (Bill) Robinson III built on his predecessor’s initiative and focused a large part of his ABA presidency and resources on the court funding crisis. Their leadership, along with the extraordinary work of the ABA Task Force on Preservation of the Justice System, put this issue in the national spotlight. In the three years since the inception of the Task Force, the crisis in court funding received considerable national attention. The New York Times, USA Today, and The Wall Street Journal, among others, found this issue worthy of coverage.

Key to the success of the Task Force was the appointment and re-appointment of a dynamic and tireless membership, led by Co-Chairs David Boies and Theodore B. Olson, Honorary Co-Chairs Mary Boies and Lady Evelyn Booth Olson, and Vice Chairs Mary McQueen and William K. Weisenberg. For each of the first two years, the Task Force consisted of about twenty-two members. In its third year, at the request of ABA President Laurel G. Bellows, former Presidents Zack and Robinson co-chaired a seven-member Task Force as a subcommittee of the ABA Standing Committee on Judicial Independence (“SCJI”).

In 2011, the Task Force won approval from the House of Delegates of Resolution 302 (“Resolution 302”) in support of needed funding of state Courts. In the Report to Resolution 302, the Task Force reported that since the recession began in 2008, courts of virtually every state have been forced into “debilitating combinations of hiring freezes, pay cuts, judicial furloughs, staff layoffs, early retirements, increased filing fees, and outright closures.” That Report set forth in detail the extent of the court funding crisis. Following the adoption of Resolution 302, the Task Force worked on developing a strategy for its implementation.

In the fall of 2012, the Task Force issued a report setting forth proposed “Next Steps” to continue the work of the Task Force and implement the principles set forth in Resolution 302. Pursuant to the “Next Steps” report, in 2012–2013, the Task Force focused its efforts at the state bar level. Given limited availability of funds, the recommendations initially focused on pilot projects in three states: Kentucky, California, and Florida. Two key factors were considered in pursuing these efforts: (1) The Chief Justice of that state provided buy-in to the state court funding effort, and (2) The prevalent state bar association and other widely accepted group(s) would be needed to work in partnership with the ABA in the effort to promote adequate funding of state Courts.

The Task Force had great success in its efforts in Kentucky during Fiscal Year 2013, working with and assisting the Kentucky Bar Association to organize and implement an ABA Day-like event at the State Capitol in Frankfort in February, 2013. Kentucky Chief Justice John Minton played an active, leadership role in this successful effort and subsequently expressed appreciation for this organized bar initiative for helping to persuade the Kentucky legislature to approve $28.1 million in bond funding for a long-needed electronic case and docket management
system. The Kentucky Bar Association’s plans for a 2014 KBA Day in Frankfort are moving forward with the continuing assistance of the ABA Task Force. In California, the Task Force has worked closely with the Open Courts Coalition, led by attorney Paul Kiesel. With the cooperation and support of the Task Force, this bipartisan initiative to support the state courts of California is raising public awareness and influencing the state legislature to turn around the court funding crisis there. Both of these state efforts are ongoing. In Florida, state bar leaders were less inclined to make the state court funding issue an immediate action priority in light of potential progress toward increased court funding anticipated by the Florida Supreme Court; therefore, no active, organized Florida Bar/ABA effort has been undertaken in Florida thus far.

Although great strides have been made in the past three years, it is only a beginning. This resolution is the next step and provides valuable guidance to states that desire to establish principles for judicial administration to assist them as they seek to restructure court services and secure adequate court funding as is urged by this resolution.

III. The ABA Must Urge Adoption of Laws and Policies Ensuring Full and Adequate Court Funding

The ABA has long recognized the need to support courts through calls for adequate court funding, and over the years several resolutions have been adopted that reiterate the call in different ways and directed to different audiences. The most recent examples include Resolution 107, sponsored by SCJI and the Judicial Division, which was adopted at the 2004 Annual Meeting (“2004 Resolution), and Resolution 302. The policies contained in these two resolutions are still vitally important, but the time has come to build upon the foundation they established.

The 2004 Resolution calls for states to adopt “judicial branch budget procedures” that will ensure adequate, stable, and long-term funding of state courts and also adopts the 2004 black-letter recommendations of the ABA Commission on State Court Funding. The black-letter recommendations provide guidance on the adoption of judicial budgeting procedures and the need to demonstrate fiscal responsibility. The recommendations also encourage courts to conduct broad-based outreach and engage in coalition building with relevant stakeholders to help secure necessary funding. Resolution 302 calls upon state, territorial, and local bar associations to document and publicize the impact of funding cutbacks to the justice systems in their jurisdictions and to create coalitions to respond to the ramifications of court funding shortages. It also calls upon state, territorial, and local governments to recognize their constitutional responsibilities to adequately fund their justice systems, to develop principles to provide for stable levels of funding, and to identify and engage in best practices related to court

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3 Other recently adopted resolutions that reflect the Association’s commitment to and prioritization of adequate court funding include 2011MY10B (interception of tax refunds by states), 2010MY300 (amendment of method of determining COLA for federal judges), 2009AM105 (Revised) (American Recovery and Reinvestment Act of 2009 funding for states), 2007AM110D (Principles on Judicial Independence and Fair and Impartial Courts), and 2004AM10A (funding for federal judiciary), 2003AM105A (state court judicial compensation).
administration. Finally, Resolution 302 urges courts and bar associations to develop strategies to communicate the value of adequate court funding to public officials.

It is time to shift the focus from courts and bar associations that experience the harms that result from inadequate court funding firsthand to legislative bodies and governmental agencies with the power and authority to prevent and remedy those harms. It is also time to shift the focus from documenting the impact of funding cutbacks, creating coalitions, and communicating the value of adequate court funding to urging the adoption of laws and policies that ensure full and adequate court funding. It is only through laws and policies, adopted at every level of government, that ensure full and adequate court funding that the courts will be able to thrive and provide access to justice for all people.

This resolution urges all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding. This recommendation recognizes that there is not a uniform approach to funding courts. Significant differences exist between the federal and state level. This is also true at the state and local level, with differences existing between localities within a single state. Regardless of the budget process or funding mechanism, adequate court funding is a constitutional necessity at every level.

IV. The Principles for Judicial Administration Provide Needed Guidance

Through the Conference of Chief Justices (“CCJ”) and the NCSC, as well as other channels, court leadership and the legal profession have long expressed a strong need for a set of principles to guide them as they seek to restructure court services and secure adequate funding. In the Report to Resolution 302, the Task Force made a number of broad recommendations for improving judicial efficiency and financial predictability and adequacy. The Task Force recognized that changing socioeconomic factors and shifting demands on our judicial institutions require courts to develop solutions that look beyond the short-term.

In 2009, the NCSC developed a set of “re-engineering principles” directed to court operations, governance, and funding. The Justice is the Business of Government Task Force coordinated comments on the principles by interested ABA entities. Subsequently, in July 2012, the NCSC promulgated the Principles for Judicial Administration, which were endorsed by the CCJ and the Conference of State Court Administrators (“COSCA”) on July 25, 2012, to help court personnel nationwide address court funding issues, including long-term budget shortfalls. At the core of these principles is that state courts must provide quality judicial services more efficiently to

4 According to the NCSC 2012 Budget Survey, the general fund is the primary source of court funding in approximately two-thirds of states, and typically funds trial court judges, judicial support staff, clerical staff, technology, operating expenses, and sometimes the probation department. Counties usually provide the courthouses as well as their maintenance. In the other states, trial courts are funded by a combination of state and local funding. In a few states, trial courts are entirely locally funded. In those states where the courts are wholly state funded, the courts receive approximately two percent of the general fund.

retain relevance. In its 2012 “Next Steps” report, the Task Force urged the adoption of the Principles for Judicial Administration by the ABA.

The Task Force agrees with the CCJ and the NCSC that the Principles for Judicial Administration establish a practical, operational framework 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. The Principles for Judicial Administration provide greater specificity and clearer guidelines than what was included in Resolution 302 and the Task Force’s accompanying Report. The principles are designed for use by the judicial branch leadership of each state as a basis for establishing guidelines for judicial administration in their states. They are also intended to help members of legislative bodies 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.

These principles, together with this resolution and report, represent the continuation of the work of the American Bar Association dating back to the Standards of Judicial Administration adopted in 1974, and amended as the Standards Relating to Court Organization in 1990. Significant changes have occurred in the twenty-three years since the Standards Relating to Court Organization were last amended, and the adoption of the Principles for Judicial Administration will assist courts by providing guidance. While analogous in some ways to the ABA’s existing Standards Relating to Court Organization, the Principles for Judicial Administration are designed as operational guides for a different era and to assist courts as they face the challenges of the twenty-first century.

V. Summary of the Principles for Judicial Administration

The Principles for Judicial Administration consist of twenty-five principles contained in three sections: Governance Principles, Decision-Making and Case Administration Principles, and Court Funding Principles. The first two sections are foundations that courts need in place to manage their resources efficiently and effectively and to pursue adequate funding. The Governance Principles and the Decision-Making and Case Administration Principles are necessary pre-conditions for the Funding Principles, because courts need to demonstrate that they are effectively managing public resources in order to pursue and compete successfully for adequate funding. The Principles for Judicial Administration includes a preface, summary of the principles, introduction, each set of principles, including commentary, and a conclusion. The entire document is instructive and will serve as a useful resource for courts and policymakers.

A. Governance Principles

Governance is the means by which an activity is directed to produce the desired outcomes. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective,

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6 This summary is largely adopted from the Principles for Judicial Administration, as promulgated by the NCSC in July 2012, and as endorsed by the CCJ and the COSCA on July 25, 2012.
fair and impartial justice. State court systems operate under a number of different structural models and each model presents its own distinctive challenges to effective governance. The Governance Principles are set forth as unifying concepts, which can be used in all existing court organization models.

B. Decision-Making and Case Administration Principles

The Decision-Making and Case Administration Principles address how caseflow management integrates the legal concept of procedural due process and the administrative aspect of efficiency to improve the manner in which courts process cases and interact with litigants.

C. Court Funding Principles

The Court Funding Principles include two parts. The first part relates to the responsibility of judicial branch leadership to develop and manage the judicial budget, and the second part relates to principles that policymakers should take into consideration when determining adequate court funding. The Court Funding Principles are aimed at establishing the credibility of the courts, discharging the responsibility of accountability, maintaining necessary autonomy, and reducing obstacles to securing adequate funding.

VI. Conclusion

The need for full and adequate court funding remains an issue of urgency that should be a top priority for every lawyer, judge, government official, and citizen, as well as for the ABA. The alarm has been sounded and progress has been made, but there is significant work left to do. The ABA should continue its leadership in the area of court funding by urging legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding, and by providing guidance to states desiring to establish principles for judicial administration to assist them as they seek to restructure court services and secure adequate court funding.

Respectfully submitted,
William K. Weisenberg
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Ohio State Bar Association
1700 Lake Shore Drive
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August 2013
GENERAL INFORMATION FORM

Submitting Entity: Ohio State Bar Association (“OSBA”)
Standing Committee on Judicial Independence (“SCJI”)
Task Force on Preservation of the Justice System (“Task Force”)
Judicial Division (“JD”)

Submitted By: William K. Weisenberg, Assistant Executive Director for Public Affairs, OSBA
Peter Bennett, Chair, SCJI
Wm. T. (Bill) Robinson III, Stephen N. Zack, Co-Chairs, Task Force
Judge William D. Missouri, Chair, JD

1. Summary of Resolution(s).

This resolution addresses one of the most significant issues impacting our justice system today, namely the underfunding of our courts. This resolution urges legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding. This resolution adopts the Principles for Judicial Administration promulgated by the National Center for State Courts in 2012 as enhancing the ABA Standards Relating to Court Organization. These principles serve as appropriate guidance for those states desiring to establish principles for judicial administration to assist them as they seek to restructure court services and secure adequate court funding.

2. Approval by Submitting Entity.

The Ohio State Bar Association Board of Governors unanimously approved the Resolution on July 19, 2013. The Standing Committee on Judicial Independence approved this Resolution on July 19, 2013. The Task Force on Preservation of the Justice System approved this Resolution on July 19, 2013. The Judicial Division approved this Resolution on July 22, 2013.

3. Has this or a similar resolution been submitted to the House or Board previously?

Neither this resolution nor a similar resolution has been submitted to the House or Board previously other than the resolutions referred to below that have been adopted as ABA policy.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has long recognized the need to support courts through calls for adequate court funding, and over the years several resolutions have been adopted that reiterate the call in different ways and directed to different audiences. The most recent examples include Resolution 107 adopted at the 2004 Annual Meeting (“2004 Resolution”), and Resolution 302, adopted at the 2011 Annual Meeting (“Resolution 302”). The adoption of this resolution would not affect any existing Association policy as it is designed to enhance and expand existing policy.
The 2004 Resolution, sponsored by SCJI and the Judicial Division, calls for states to adopt “judicial branch budget procedures” that will ensure adequate, stable, and long-term funding of state courts and also adopts the 2004 black-letter recommendations of the ABA Commission on State Court Funding. The black-letter recommendations provide guidance on the adoption of judicial budgeting procedures and the need to demonstrate fiscal responsibility. The recommendations also encourage courts to conduct broad-based outreach and engage in coalition building with relevant stakeholders to help secure necessary funding.

Resolution 302, sponsored by the Task Force on Preservation of the Justice System, urges state, territorial, and local bar associations to document and publicize the impact of funding cutbacks, and to create coalitions to respond to the ramifications of court funding shortages. It calls upon state, territorial, and local governments to recognize their constitutional responsibilities to adequately fund their justice systems and to develop principles to provide for stable levels of funding. It calls upon courts to identify and engage in best practices related to court administration. Finally, Resolution 302 urges state, territorial, and local courts and bar associations to develop strategies to communicate the value of adequate court funding to public officials.

The 2004 Resolution focuses on the judicial branch, while Resolution 302 focuses primarily on state, territorial, and local bar associations and courts. The time has come to call upon federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding, as reflected in this resolution.

In addition to urging action by legislative bodies and governmental agencies, this resolution adopts the specific principles for governance, decision-making and case administration, and court funding that are set forth in the Principles for Judicial Administration promulgated by the National Center for State Courts in 2012, as enhancing the ABA Standards Relating to Court Organization, adopted in 1974 (as the Standards of Judicial Administration), and amended in 1990. Significant changes have occurred in the twenty-three years since the Standards Relating to Court Organization were last amended, and the adoption of the Principles for Judicial Administration will assist courts by providing guidance for the twenty-first century. The adoption of the Principles for Judicial Administration will not affect the validity of the Standards Relating to Court Organization. The adoption of the Principles for Judicial Administration will simply enhance and expand the resources available as chief justices, presiding judges, court administrators, and legislative bodies seek to establish principles for judicial administration and make structural and fiscal decisions to enable courts to enhance the quality of justice while facing increased caseloads with fewer resources.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

The ABA has maintained an effective effort to raise national awareness regarding the funding crisis facing state courts. This remains a marathon rather than a sprint. Testimony at Task Force hearings have detailed with specificity the impact on justice these financial cutbacks have had, from shortage of supplies to courts closing their doors on a regular basis. While the situation has stabilized in some states which are coming out of the recession, the net effect of several years of
deterioration is continuing and devastating. And while awareness has been raised over the past few years, it is essential that legislative bodies and governmental agencies adopt laws and policies ensuring full and adequate court funding. Courts also need useful guidance as they seek to restructure court services and provide quality judicial services more efficiently while securing court funding.

6. **Status of Legislation.** (If applicable)

N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

The Task Force, with the cooperation of SCJI, will move forward with its plans to reach out to additional states to institute ABA Day-like events to facilitate the adoption of laws and policies that ensure full and adequate court funding. The Task Force will work closely with the National Center for State Court and the Conference of Chief Justices to disseminate and encourage the application of the *Principles for Judicial Administration* in state courts. In addition, the Task Force will work with the Standing Committee on Federal Judicial Improvements to ensure that the policy is communicated to those within the federal judiciary.

8. **Cost to the Association.** (Both direct and indirect costs)

None.

9. **Disclosure of Interest.** (If applicable)

N/A

9. **Referrals.**

Standing Committee on Federal Judicial Improvements
Government and Public Sector Lawyers Division
Judicial Division
Standing Committee on Judicial Independence
Section of Litigation
Task Force on Preservation of the Justice System
Senior Lawyers Division
Solo, Small Firm and General Practice Division
State and Local Government Law Section
Tort Trial & Insurance Practice Section
Young Lawyers Division

10. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)
10C

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11. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This resolution urges legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding. This resolution also approves and adopts the *Principles for Judicial Administration* promulgated by the National Center for State Courts in 2012 as enhancing the ABA *Standards Relating to Court Organization*. These principles serve as appropriate guidance for those states desiring to establish principles for judicial administration to assist them as they seek to restructure court services and secure adequate court funding.

2. **Summary of the Issue that the Resolution Addresses**

For several years, courts of virtually every state have encountered severe funding challenges that have brought about hiring freezes, pay cuts, judicial furloughs, staff layoffs, early retirements, increased filing fees and outright closures. Federal courts are currently facing sequestration, as well as the perennial problems of Congress failing to create needed judgeships, confirm judges to fill vacancies, and authorize appropriate cost of living adjustments. While the judiciary is a separate branch of government, it cannot function completely independently. Courts depend upon elected legislative bodies to allocate funding. Judicial leaders have a 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, while legislative bodies and governmental agencies have a responsibility to fully and adequately fund courts.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The concept embodied in the *Principles for Judicial Administration* encourages states to establish a practical, operational framework 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 legislative bodies 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. In addition to providing needed guidance regarding principles for judicial administration, this resolution urges legislative bodies and governmental agencies adopt laws and policies ensuring full and adequate court funding.

4. **Summary of Minority Views**

Unknown at the time this Summary was prepared.