

Especially Now, Court Funding Must be a Priority

By Raoul G. Cantero, III

The Florida state budget, like those of every other state, is—again—suffering from multi-billion dollar deficit. This spring, the legislature will have to make tough choices about what programs to fund. It is a good time to remember that the state courts system is not just another state agency. It is a branch of government, and the branch specifically designed to ensure that citizens, whether individual or corporate, can resolve their disputes peacefully, expeditiously, and with due process. That branch is in danger.

The courts are overloaded. Citizens needing the court system encounter severe delays. Foreclosures alone have so clogged the courts that they cannot promptly address other cases important to personal lives and business. A mother desperately seeking child support payments that the father has refused to make may have to wait far longer than before. A small business owner or a major corporation seeking damages for a breach of a contract will wait years until trial.

Yet despite the undisputed overload of the court system, it is in danger of having its already meager budget cut—for the third fiscal year in a row. This action threatens everyone—individuals as well as corporations, small businesses as well as large—all those who, at one point, will attempt to settle their disputes through the courts.

My background as both a practicing attorney and a former justice on the Florida Supreme Court gives me a unique perspective on the problem: today I work with people seeking redress for legal injuries. Months earlier I, along with six colleagues, helped administer the state's highest court and the entire judicial branch. I know from working with the state court budget that the courts already are working with skeletal staff. In prior years, assistants and administrators were slashed, staff attorneys were let go, and court programs that were designed to streamline the system were eliminated. There is no more room to cut.

Part of the problem lies with the outdated system for funding the courts. Citizens pay nearly \$1 billion a year in court filing fees and other costs attendant to using the state courts. One would assume that those fees would be used to defray—or perhaps entirely pay for—the costs of running the court system. In fact, however, only a fraction of it is used to fund court operations. The rest goes to the clerks of the courts, who under the Florida Constitution are independently

elected in each county and are separate state entities. Although the clerks of court keep the courts' records, ironically the courts have no authority over them.

Strangely, the elected clerks of court get to keep enough of the court filing fees to fully fund their own budgets *and* annually return surpluses to the legislature. Again, one would assume that at least the clerks' surpluses would be returned to the court system, but again the assumption would be false. They are simply placed into the state's general fund. The result is chronic underfunding of the courts and delays in justice. Moreover, unlike the court system, the clerks operate without any meaningful legislative oversight. As a result, while the courts have been suffering crisis after crisis, some clerks of court have been swimming in enough surplus money to toss their employees hefty bonuses.

This situation is Kafkaesque. Every state agency, the court system, and even the Governor must justify his budget to the legislature. It is only fair that the clerks of court be brought under direct legislative oversight and that the courts be funded through the fees they generate.

Fortunately, the Florida Legislature is reviewing new laws that will help remedy these problems. These proposals deserve serious, thoughtful debate. At a time of grave economic crisis in our nation, we must find creative ways to make both the courts and the clerks more efficient and more accountable.

The courts' demand for equitable funding is not, as some have characterized it, a "power grab" or an attempt to impose "cash register justice." These ugly phrases are transparent efforts to frighten the people whom the courts and the clerks serve by diverting attention from the serious underfunding of the courts that is preventing swift access to justice.

The stark fact is that the current system of funding both the courts and the clerks is outdated and unworkable. In times of economic growth, these underlying structural problems are hidden under piles of state budget cash. But when the economy shrinks, the financial cover is stripped away and the ugly reality is exposed. That is where we are today. We must now work to revamp the system so that we can work smoothly and efficiently with a smaller budget.

This debate is not about power or money. It is about whether that power and money are used to provide a court system that is effective, efficient, and accountable to the public.