

Charting a New Course for Funding Our Courts

Lawmakers will convene next month for a constitutionally mandated session to redraw Florida's legislative districts, an exercise that will undoubtedly present important challenges.

Another challenge is just as crucial: Legislators must redo the boundaries of Florida's budget to ensure court funding is stable and secure.

The current situation has become unworkable.

As Florida Supreme Court Chief Justice Charles Canady said, "We need to have something where we don't have to go hat in hand to the governor asking him for a loan."

Last-resort pleas from the judicial branch to the executive and legislative branches for loans have happened twice this year.

In 2009, the legislature made significant changes to the budgetary structure of the State Courts System and the Circuit and County Clerks of Court, creating the State Courts Revenue Trust Fund for the courts, which supports nearly 83 percent of the entire court system.

The flaw in this scheme is that this trust fund is heavily reliant on an extremely volatile source: foreclosure filing fees revenue. Driven by paperwork snafus and bank moratoriums on foreclosures, a substantial decrease in the number of foreclosure filings sent the court budget into a downward spiral. In short, revenue from court filing fees was insufficient to cover the monthly bills. And you can't ask people to work if you can't pay them.

The emergency of not bringing in



enough revenue to meet expenses threatened to close the courts with crippling furloughs for judicial branch employees.

Hit with a \$72.3 million cash flow crisis caused by the dramatic drop in foreclosure filings, the State Courts Revenue Trust Fund balance was headed to zero by the end of March 2011.

Thankfully, on April 6, crisis was averted when the governor and legislature approved a \$19.5 million loan that had to be paid back by June 30, using funds provided in a supplemental appropriation.

Obviously, it was a temporary reprieve.

Decreased filing revenues continued, and a second loan of \$45.6 million was approved in October and will sustain the courts only through March 2012.

Without these loans, the consequences of resulting court shutdowns and case delays would have been far-reaching. Without the courts,

adoptions would not be approved, employment agreements would not be enforced, trade secrets not protected, and medical recoveries, criminal sentencing, and divorces would not occur.

It's important to remember that Florida's judicial branch receives only 0.7 of one percent of state revenues. Responsible for serving 18 million people, Florida's courts bring resolution to myriad disputes affecting all citizens. By comparison with other large states, Florida's courts are underfunded.

Also noteworthy is that Florida's courts earn more than they spend.

Floridians will pay \$1 billion in fees, fines, and other court costs this year, but only two-thirds of it is dedicated to funding courts (\$228 million) and clerks (\$432 million). The other third of the \$1 billion will go into the state's general revenue fund and a wide variety of agency trust funds dedicated to other purposes.

Out of crisis springs opportunity.

Our legislature can lead the nation by setting a new budgetary course — to fund the judicial branch in a manner consistent with the needs of Florida.

Given economic pressures, a key question must be answered: How should Florida fund its courts?

A study group co-chaired by 10th Circuit Judge John Laurent and Karen Rushing, Sarasota County clerk of court, analyzed this issue and has recommended a new approach to funding. It's all detailed in a 70-page report titled, "Stabilizing

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Revenues for the State Courts System and Clerks of Court.”

Given the instability in this funding mechanism, a new approach is needed to ensure the judicial branch is adequately funded in a secure and sustained manner.

Florida Bar leaders have been meeting with legislators to discuss the funding pressures facing Florida's courts and in anticipation of other issues that may arise this year. Last year saw proposals to

split the Supreme Court, reconfigure the judicial nominating commission process, and remove the confidentiality of certain judicial qualifications procedures. In addition to funding, some of these issues may resurface and the Bar is vigilant in monitoring these issues.

Importantly, lawyers must educate themselves, their clients, their families and friends about court funding and other issues impacting the judicial branch.

I urge you to reach out to your friends and colleagues in the legislature to stress the important role of the courts in our constitutional democracy.

We have the best system of government in the world — and attorneys have a vital role to play in keeping it that way.

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property.

Furthermore, the case law confirms that one spouse is a separate entity from a TBE, and can, therefore, transfer property to the marital unit without the use of a strawman, as explicitly held in the 1939 Florida Supreme Court decision of *Johnson v. Landefeld*, 138 Fla. 511 (Fla. 1939). Florida courts have followed suit with respect to personalty. *See, e.g., Hurlbert v. Shackleton*, 560 So. 2d 1276 (Fla. 1st DCA 1990) (recognizing a spouse's right to transfer stock he owned individually to both himself and his wife as TBE); *In re*

Kossow, 325 B.R. 478 (Bankr. S.D. Fla. 2005) (permitting a spouse to assign his interest in tangible personal assets he owned before marriage to TBE) for some of the several cases that reach the same conclusion. Language in the Beal Bank decision supports this as well, as described in the article mentioned below.

Florida case law may not allow one spouse to add another spouse to an existing bank account or stock certificate, but that is much different than one spouse making a distinct transfer from himself or herself to *facilitate* the creation and funding of

a new TBE account, stock certificate, or other asset.

For an in-depth analysis of these issues and the current state of Florida law, please read our article, “Florida Supreme Court Cases Confirm Tenancy by Entireties in Personal Property and Ability of One Spouse to Transfer Assets to Tenancy by the Entireties,” available at the following website: Floridatenancybythentiretiesjurisprudence/gassmanlawassociates.com.

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