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Court Funding: A Question Delayed

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On July 10, 2019, the Michigan Supreme Court denied an appeal in the matter of *People v. Cameron* (Docket No. 155849). In a concurring statement, Chief Justice McCormack questioned the constitutionality of the statute contested in the case, MCL 769.1k(b)(iii), and urged the Legislature to consider a list of recommendations developed by the Trial Court Funding Commission (TCFC) which was created by the Legislature in 2017. The TCFC issued an interim report in April 2019, and has a final report due in September 2019 (see Public Act 65 of 2017). The issue that concerns Justice McCormack is best stated by a single sentence from her concurring statement: "Assigning judges to play tax collector erodes confidence in the judiciary and may seriously jeopardize a defendant's right to a neutral and detached magistrate."

The Court's denial in *Cameron* keeps the current court funding system intact by allowing district and circuit court judges to assess operational costs to defendants convicted by plea or trial. Had the Court struck down the statutory provision that allowed for the assessment of operational costs, or determined those costs to be an unconstitutional tax upon criminal defendants, initial assessments from the TCFC interim report estimated the cost to local trial courts would have been close to \$300.0 million statewide, with additional losses in excess of \$100.0 million in restricted revenue transferred to the State and revenue transferred to other local units of government.

Background

In 2014, the Michigan Supreme Court, ruled that State law did not grant trial courts the authority to assess costs on criminal defendants to fund court operational costs (*People v. Cunningham*, 496 Mich 145). The Legislature responded by adding language to the Code of Criminal Procedure, MCL 769.1k, allowing a trial court to impose "any cost reasonably related to the actual costs incurred by the trial court." A sunset provision set to expire on October 17, 2020, was added with Public Act 64 of 2017. By the summer of 2017, the application for leave to appeal had been filed in *Cameron*, and it was evident that the statutory solution enacted in 2014 would not resolve the issue of operational court funding via the assessment of costs upon criminal defendants. The Legislature created the TCFC to review the court funding system and make recommendations for changes. The TCFC's interim report, issued on April 8, 2019, made five recommendations for changes. A final report is due in September 2019. In her concurring statement in *Cameron*, Chief Justice McCormack specifically called upon the Legislature to review the TCFC's recommendations, and to work to find a permanent solution "before the pressure placed on local courts causes the system to boil over".

The Problem

It costs between \$1.14 and \$1.44 billion to operate Michigan's trial courts each year. The State's contribution, covers about 23% of the overall costs, mostly for judicial salaries. Federal sources cover a little over 7%. Nearly 45% is covered by the local units of government in which each court sits, and the remaining 26% is generated by cost assessments by the trial courts themselves. How these revenue sources fund the entire system is complicated. Some of the revenue flows through the State and gets dispersed into no fewer than five different funds under the current funding system: the State Court Fund, Court Equity Fund, Court Fee Fund, Justice System Fund, and Civil Filing Fee Fund. Each of these funds put money back into the court system for different reasons through the appropriations process. About \$200.0 million of General Fund/General Purpose(GF/GP) is added

to round out the Judiciary budget. But much of the rest of the revenue stays with the local court and can even flow back to the local unit of government in which the court sits.

By having to cover much of its own operational expenses, a court has the potential to create a real or perceived conflict of interest between a judge's impartiality and the need to generate operating revenue during sentencing. The two prominent examples identified in Chief Justice McCormack's concurrence were: 1) where a city threatened to evict court staff from a district court building or suggest the court eliminate staff because it was unable to generate enough revenue; and 2) where a representative of a local unit of government referred to the district court as "the cash cow of our local government."

One Potential Solution

The only published solution currently comes from the TCFC, which made five recommendations in its April 2019 Interim Report:

1. Establish a Stable Court Funding System
2. Provide All Court Technology Needs
3. Establish Uniform Assessments and Centralized Collections
4. Move Toward a Uniform Employment System
5. Establish a Transition Plan for the New Court Funding Model

The details behind each of these recommendations, and a more extensive description of the solutions developed by the TCFC, can be found in the Interim Report. The report can be found online, or a copy can be provided by Senate Fiscal Agency upon request.

To summarize, for the purposes of this abbreviated document, the TCFC proposes to do away with the many different court funds listed above and create a single fund, through which 100% of all court operational costs are covered. The State, local units of government, and trial courts all would contribute to this single fund, with local governments maintaining their current contributions. Also, the fee assessments made by the courts would be sent to the fund. Under this model, it is likely the State would have to contribute a greater share of GF/GP than it has in the past, particularly as it would be responsible for all the information technology needs of the State's court system. The operational costs of each court would be determined by the chief judge of that district or circuit court. The fund likely would have to be managed by the State Court Administrative Office, which could require additional staff and accounting systems. Uniform and standardized costs or court fees would have to be established and implemented statewide. The additional cost to the State to implement these changes could range between \$30.0 million and \$50.0 million, provided local governments contributed to a statewide fund at their current levels.

These solutions would have to be implemented statutorily. The denial of the appeal in *Cameron* allows the current court funding system to remain in place, giving the State time to review the TCFC's recommendations, but the real or perceived conflicts that result from it still are present. Had the Supreme Court decided to prohibit the practice of assessing operational costs on criminal defendants, the cost to the State would have been substantial and immediate: \$291.0 million, per the TCFC report. Instead, the Court's denial in *Cameron* keeps the cost assessment practice in place, allowing court funding to sustain itself in its current format and giving the Legislature time to come up with a viable, statewide solution.