



# Ohio Judicial Conference Budget Resource Handbook

For Ohio Judges and Their Funding Authorities

Third Edition

Edited by Judge Deborah J. Nicastro  
08/01/2020

## TABLE OF CONTENTS

INTRODUCTION.....	4
BUDGET PROCESS PARTICIPANTS .....	5
Court Jurisdiction .....	5
Appellate Courts .....	5
Common Pleas Courts.....	5
Municipal and County Courts .....	5
Chart of Funding Authorities by court .....	6
Budgeting Personnel and Decision Makers.....	6
COURT FUNDING IN OHIO .....	7
The General Fund.....	7
Appellate Courts .....	7
Common Pleas Courts.....	7
Municipal and County Courts .....	8
The purpose of Court Costs .....	9
Statutory Authority for Court Costs .....	9
Allocation of and Restrictions on the Use of Court Costs .....	9
Task force on funding of ohio courts .....	9
Grant Resources.....	9
Inherent Powers of Ohio Courts .....	10
Writ of Mandamus.....	11
Contempt .....	11
Writ of Prohibition .....	11
Significant Cases .....	11
EVOLVING STANDARDS—THE BALANCING ACT CONTINUES .....	15
Inherent Powers .....	15

Unconstitutional Statutes .....	15
<b>PERSPECTIVES ON THE BUDGET PROCESS .....</b>	<b>16</b>
Contrasting Perspectives on Local Court Funding.....	16
The Case for Empathy .....	17
Funding Authorities' Perspective .....	18
Other Resources .....	18
Courts' Perspective .....	19
Contrasting Perspectives On Standard Terms of The Budget Process.....	20
<b>BEST PRACTICES .....</b>	<b>21</b>
Relationship Building .....	21
Meet Regularly and Share Information.....	22
Professional Budget Staff.....	23
The Duties of the Participants.....	24
Duties of Local Funding Authorities .....	24
Duties of Courts .....	24
<b>CONFLICT RESOLUTION.....</b>	<b>26</b>
DISPUTE Resolution Services for PUBLIC Officials.....	26
Resources .....	26
<b>BUDGET CRISIS.....</b>	<b>26</b>
Court's action plan in a budget crisis .....	27
Funding authorities action plan in a budget crisis .....	27
local government fiscal distress.....	28
special project funds .....	28
<b>THE BUDGET PROCESS AND TIMETABLE.....</b>	<b>29</b>
Statutorily Mandated Budget Deadlines.....	29
Step One: Tax Budget (January 1 through August 15) .....	30
Step Two: Court Budget (July 15).....	31

Step Three: Budget Hearings (August 15-October 30)..... 31

Step Four: Appropriation Budget (November 15)..... 32

Step Five: Budget Work Session (November 15-30) ..... 33

Step Six: dispute resolution services..... 33

Step Seven: Appropriation Resolution (December 1-30)..... 34

Step Eight: Writ of Mandamus/Contempt..... 34

Step Nine: Evaluation of Expenditures and planning for the next year ..... 35

Chart of the Budget Process ..... 36

## INTRODUCTION

Even in the best of circumstances, judges and their funding authorities occasionally encounter conflicts over the amount of funding which is “reasonable and necessary” for the courts to operate effectively. The Court Administration Committee of the Ohio Judicial Conference (“Committee”) identified budget conflicts as a recurrent problem which unnecessarily impedes the administration of justice. Budget conflicts result in part from a lack of understanding about the budget process, a lack of communication between judges and their funding authorities, and available but under-utilized dispute resolution services.

In early 2008, Judge James Shriver, Co-Chair of the Court Administration Committee, established a subcommittee on the local budget process and asked Judge Deborah Nicastro to chair, and Judges John Collier, Charles Kurfess, and Jerry McBride to serve as members. These judges established the Collaborative Project on the Local Budget Process (“Collaborative Project”) which included representatives from the Supreme Court of Ohio, court administrators, county auditors, county administrators, county commissioners, mayors/council members, and related associations.

The Collaborative Project members agreed that mechanisms should be developed to reduce conflict between judges and their funding authorities; improve understanding, cooperation, collaboration, and partnership among the branches of government, with a particular emphasis on judges and local funding authorities; clarify budgetary procedures; develop best practices; and sponsor joint training and workshops for local government officials involved in the budgeting process.

This Budget Resource Handbook is one tool developed by the Collaborative Project to improve the understanding among the branches of government and clarify procedures for participants in the local budget process.

This Third Edition updates relevant case law through 2020; links and resources; and includes a new segment on “Budget Crisis” issues.

## BUDGET PROCESS PARTICIPANTS

The system of funding Ohio courts is a mosaic of state constitutional and statutory provisions with an overlay of case law interpreting those provisions and local practice and tradition. The diversity of local government practices prevents a comprehensive analysis of all local issues that may affect the budget process but this Chapter explains the parameters of the budget process.

Understanding the jurisdiction of each level of the Courts, the funding authorities for each level of the Court and the budget decision makers and key personnel is essential for understanding the funding mosaic.

## COURT JURISDICTION

Ohio's court system has three levels: Trial, Appellate, and Supreme. The trial courts are typically the place of entry into Ohio's court system and include each of the 88 counties' courts of common pleas, municipal courts and county courts, and the court of claims for certain types of cases. The Appellate Courts review the trial courts' application of the law. The Supreme Court of Ohio is the final appellate court in Ohio.

---

### APPELLATE COURTS

The courts of appeals are established by Article IV, Section 1 of the Ohio Constitution, and their jurisdiction is outlined in Article IV, Section 3. As intermediate level appellate courts, they hear appeals from the common pleas courts as well as the municipal and county courts. Ohio is divided into twelve appellate districts. The number of judges in each district varies from four to twelve, depending on a variety of factors, including the court's caseload and size of the district. Each court of appeals selects one of the counties in its district as its principal seat.

---

### COMMON PLEAS COURTS

Each county in Ohio has a court of common pleas. The work of the Ohio courts of common pleas is divided into four different jurisdictions: general, domestic relations, juvenile and probate. In some counties, the judge has responsibility for all four jurisdictional areas. In larger counties with higher caseloads, multiple judges may serve one division.

---

### MUNICIPAL AND COUNTY COURTS

Municipal courts jurisdiction is defined statutorily. Municipal and county courts are trial courts for misdemeanor offenses, traffic cases, misdemeanor OVI cases, preliminary hearings for felony OVI, and civil actions up to \$15,000. Municipal and county courts are the courts with the highest volume of cases in the state.

Municipal Courts may have a jurisdiction that is within the corporate limits of the municipal corporation or they can have a territorial jurisdiction that includes areas outside the corporate limits of the municipal corporation (i.e., including the unincorporated territory).

CHART OF FUNDING AUTHORITIES BY COURT	
Court	Funding Authority
Supreme Court of Ohio	State of Ohio
Court of Appeals	Combination of state, host county, guest counties
Common Pleas	Combination of state and county
County Courts	Combination of state and county
Municipal (Single City)	Combination of state, county, and city council
Municipal (Multi-Districts)	Combination of state, county, host city council, guest city councils

BUDGETING PERSONNEL AND DECISION MAKERS		
Court	Court Decision Makers	Funding Decision Makers
<b>Supreme Court</b>	Chief Justice Administrative Director	Governor Ohio General Assembly State Budget Director
<b>Appellate Courts</b>	Presiding / Administrative Judge; Administrator/Fiscal Officer	Host County Commissioners District Counties Host county administrator
<b>Common Pleas</b>	Presiding / Administrative Judge; Court Administrator/Fiscal Officer	County Commissioners County Administrator
<b>County</b>	Presiding Judge	County Commissioners County Administrator
<b>Municipal (Single city)</b>	Presiding / Administrative Judge; Clerk/Administrator/ Fiscal Officer	Mayor City Council City or Village Manager Finance Director
<b>Municipal (Multi-district)</b>	Presiding / Administrative Judge; Clerk/Administrator/ Fiscal Officer	Mayor Host city council Guest city councils Host city / village manager Finance Director

## COURT FUNDING IN OHIO

Ohio courts are funded from three sources: the general fund of the state, county and/or local governments; court costs paid by litigants; and grant monies from public and private sources.

### THE GENERAL FUND

As a general rule, any expense of court operations which is not specifically provided by statute to be paid from a special court fund is paid from the General Fund of the applicable state, county and/or local governments.

---

### APPELLATE COURTS

The county designated as the principal seat of the Appellate Court, and each county in the appellate district, fund the court's operation based on their proportion of the district's population ([ORC §2501.181](#)).

- The clerk of court must provide stationary and law books and the county commissioners must supply facilities "and such other conveniences as the court deems necessary." ([ORC §2501.18](#)).
- The state must provide shorthand reporters, law clerks, secretaries, and any other employees that the court considers necessary for its efficient operation. ([ORC §§ 2501.16, 2501.17](#))
- The county commissioners must provide the compensation of constables when the appellate court deems that "business thereof so requires " the appointment of constables ([ORC §§ 2701.07, 2701.08](#))

---

### COMMON PLEAS COURTS

In order to fund common pleas courts, county commissioners are authorized annually to levy a property tax to create a judicial and court fund that can be used for court related expenses, including those for common pleas general division ([ORC §307.01](#)) probate division ([ORC §2101.11](#)) and juvenile division ([ORC §2151.10](#)). This power is limited by the Ohio Constitution's limit of 10 mills for property tax levies within a county imposed without a vote of the people. As a practical matter, these monies are unavailable because they are almost entirely used to support education and existing county programs. Therefore, county commissioners often rely on the General Fund to pay for all divisions of common pleas courts ([ORC §5707.02](#)).

- County commissioners are required to purchase and furnish such things as a courthouse, a juvenile court building, and detention facilities. They are also required to supply the "equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices and such facilities as will result in expeditious and economical administration of such offices." ([ORC §§ 307.01, 307.02](#) and [5707.02](#))



- All common pleas courts, including probate courts, in counties with more than 70,000 inhabitants may appoint and fix the salary of “constables.” Constables may be hired “when, in the opinion of the court, the business thereof so requires.” The compensation of the constables is paid “from the county treasury upon warrant of the county auditor.” (ORC §§[2701.07](#), [2701.08](#))

---

## MUNICIPAL AND COUNTY COURTS

The entities responsible for paying the operational expenses of the municipal and county courts depend on the territorial jurisdiction of the court. Municipal courts may have a jurisdiction that is within the corporate limits of a single municipal corporation or they may have a territorial jurisdiction that includes other municipalities outside the corporate limits of the municipal corporation (i.e., including the unincorporated territory). ([ORC §§ 1901.02, 1901.01](#)) In county-operated municipal courts (like Hamilton, Lawrence, and Ottawa counties), the county commissioners pay all of the municipal court’s operating expenses. ([ORC §1901.024](#)) In municipal courts that are not county-operated, the municipal corporations and townships that are within the territorial jurisdiction pay the costs of operating the court based on their proportionate share by caseload. ([ORC §1901.026](#)) The legislative authorities of the municipal court are required to provide the following:

- Suitable facilities/employees from the city treasury; a county-operated municipal court shall be paid out of the treasury of the county in which the court is located. ([ORC §1901.36](#))
- Liability insurance for judges and other personnel in an amount not less than \$50,000.00. ([ORC §1901.38](#))
- Compensation for one or more interpreters, one or more mental health professionals, one or more probation officers, an assignment commissioner, deputy assignment commissioners, other court aides, typists, stenographers, statistical clerks, and official court reporters as the municipal/county court may appoint ([ORC §1901.33](#))
- Health care coverage for the judges, clerks and deputy clerks ([ORC §§1901.111; 1901.312](#))
- Compensation for one bailiff of in the same proportion as the compensation for judges ([ORC §1901.33](#))
- Compensation for the Clerk of Court in the same proportion as the compensation of judges ([ORC §1901.31 \(C\) \(1\)](#)) but the legislative authority shall provide the compensation for deputy clerks.
- Premiums for bonds for the clerk and bailiff ([ORC §1901.37](#))

## THE PURPOSE OF COURT COSTS

Court costs and fees assessed against litigants or court users may be a significant but must not be a complete source of court funding. As stated in the [Ohio Judicial Conference's Policy Statement on Court Costs \(11/18/2005\)](#),

*Although it may be appropriate in some circumstances for the government to charge a user fee for services received, such is not the case for access to justice for it is an essential right of the people. Further any requirement upon the court to depend on its own order to levy fines, costs, fees or taxes upon the people in order to provide for its support encourages corruption and injustice and should be resisted.*

Chief Justice Maureen O’Conner reiterated through a [public letter](#) to all Ohio judges on January 29, 2018 that “courts are centers of justice, not automatic teller machines whose purpose is to generate revenue for governments, including themselves.”

The Supreme Court’s [Bench Card on Collection of Court Costs and Fines](#) reaffirms that “Fines are a criminal sanction, while costs are a civil obligation. Although separate and distinct, the purpose of both is **not** to generate revenue for the local municipality, county, or the State of Ohio.”

---

## STATUTORY AUTHORITY FOR COURT COSTS

Court costs are authorized by state statute and implemented by a court order. The amount of any court cost is set by state statute unless the statute authorizes the court through the administrative judge to set the amount of a particular cost. [The 2008 Report and Recommendation of the Joint Committee to Study Court Costs and Filing Fees](#) contains a list of statutorily authorized court costs

---

## ALLOCATION OF AND RESTRICTIONS ON THE USE OF COURT COSTS

The allocation of court costs between the General Fund of the state, county or local governments and specially designated court funds is also set by state statute. The proper use of the court costs by the state, county or local governments or the courts is also designated by state statute. For instance, all courts are authorized by statute to assess a court cost for computer aided legal research and computerization of the clerk of court's office. Once collected, the monies must be deposited into a specially designated fund and can only be used for the stated purposes.

---

## TASK FORCE ON FUNDING OF OHIO COURTS

In 2015, the Ohio Supreme Court Task Force on Funding of Ohio Courts issued a [Report](#) making nine recommendations for the study and reform of court funding statewide.

## GRANT RESOURCES

Grant sources are not addressed in this Handbook as they are usually project specific, do not generally provide for the day-to-day operation of the courts and information changes rapidly. However, for current grant opportunities and information, contact the [Office of Judicial Services](#) and the [Ohio Department of Public Safety, Office of Criminal Justice Services](#).

## THE LEGAL FRAMEWORK

Ohio courts have been called upon to interpret the principles and doctrines of the constitutional and statutory provisions which are the legal framework for the budget process. The decisions in these cases establish precedent and constitute the "rule of law."

In summary, the case law states that Ohio courts have the inherent power to issue an order requiring the funding authority to pay for the reasonable and necessary expenses of operating the courts and that it may not impede a court's business by refusing reasonable funding requests. The determination of what is a reasonable and necessary funding request rests solely with the court and the other branches of government may not substitute their judgment for that of the court. Requests for funding from courts are presumptively reasonable and valid. The funding authority may only refuse to fund a court's request if the funding authority can demonstrate that the order constitutes an abuse of discretion and is unreasonable. Even if the court's request would work a hardship or burden on other offices or agencies, the funding authority must comply with the order if the funding request is reasonable.

### INHERENT POWERS OF OHIO COURTS

The Ohio Constitution establishes the legislative, executive, and judicial branches of government. The judiciary is a separate and co-equal branch of government, with separate and distinct powers and responsibilities.

Article IV of the Ohio Constitution vests the judicial power "in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law."

When the Ohio Constitution vests judicial power in the courts, it is granting certain inherent powers to the courts that enable them to preserve and protect their own existence and to safeguard their capacity to perform judicial functions. It is widely understood that courts have the power to keep the judiciary secure from any encroachment, direction, control or impediment from the other branches of government. Correspondingly, the other branches of government have a responsibility and duty to ensure that the judiciary has reasonable and necessary funding and resources to administer justice. It is under the theory of inherent powers that courts are constitutionally entitled to financial support and authorized to order funding authorities to provide reasonable and necessary support.

---

## WRIT OF MANDAMUS

This extraordinary writ is used to command the funding authority to perform its duty to provide reasonable and necessary funds for the administration of the court's business. If the writ is issued against the funding authority by a higher court and the public official(s) refuse or fail to comply "without just cause," then the higher court may punish that failure with a fine up to \$500. ([ORC §2731.01 to 2731.13](#))

In addition to granting a Writ of Mandamus, the higher court may also use its inherent power to enforce its orders, by punishing the public officials for contempt of court which includes incarceration until compliance.

A writ of mandamus may be issued by the Supreme Court, a court of appeals, or a court of common pleas. ([ORC §2731.02](#)) A municipal court may apply for a writ of mandamus in any higher court. [The State ex rel Cleveland Municipal Court v. Cleveland City Council, 34 Ohio St. 2<sup>nd</sup> 120 \(1973\).](#)

The writ of mandamus may not be issued when there is plain and adequate remedy in the ordinary course of the law. ([ORC §2731.05](#))

---

## CONTEMPT

The courts have the inherent power to find the funding authority in contempt of court for the failure to provide funds reasonable and necessary to the administration of the court's business. "When the contempt consists of the omission to do an act which the accused yet can perform, he may be imprisoned until he performs it." ([ORC §2705.02, 2705.06](#)); [State ex rel Edwards v. Murray, 48 Ohio St.2d 303 \(1976\).](#)

---

## WRIT OF PROHIBITION

Theoretically, the funding authority may file a petition for a writ of prohibition in the appropriate higher court against the court's ordered budget. The funding authority has the burden of proving the order is for unreasonable and unnecessary funds. However, very little case law is available to support this action. [State ex rel Edwards v. Murray, 48 Ohio St.2d 303 \(1976\)](#); [State ex rel Gains, Pros. Atty. v. Maloney, Judge, 102 Ohio St. 3<sup>rd</sup> 254, 2004-Ohio-2658 \(2004\)](#)

---

## SIGNIFICANT CASES

The following is a summary of significant cases which constitute the precedent in the area of court funding.

- The legislative authority has a duty to fund courts. Courts have the inherent power to command funding in the event that the legislative authority fails to provide what the court believes is sufficient funding for the proper administration of justice. [Zangerle v. Cuyahoga County, Court of Common Pleas, 141 Ohio St. 70 \(1943\)](#); [State ex rel Foster v. Board of County Commissioners of Lucas County, 16 Ohio St. 2d 89 \(1968\)](#); [State ex rel Edwards v. Murray, 48 Ohio St.2d 303 \(1976\)](#); [State ex rel Lorig v. Board of Commissioners of Clark County, 52 Ohio St.2d 70 \(1977\)](#); [State ex rel Mahoning County Commissioners v. Maloney 100 Ohio St.3d 248, 2003-Ohio-5770 \(2003\)](#); [State ex rel Gains, Pros. Atty. v. Maloney, Judge, 102 Ohio St. 3<sup>rd</sup> 254, 2004-Ohio-2658 \(2004\)](#)

- The Ohio General Assembly may not expand the discretion that local funding authorities (like the boards of county commissioners) have over court funding. It is unconstitutional for the legislature to encroach on the judicial authority to determine the court's funding needs and to impede the judiciary in the administration of justice. [ORC §2151.10](#), by granting to the county commissioners the "power of the purse" over judicial administration, "unconstitutionally restricts and impedes the judiciary in complete contradiction of rudimentary democratic principles." [State ex rel Johnston v. Taulbee, 66 Ohio St. 2d 417 \(1981\)](#)
- Former ORC §2101.11 was an unconstitutional restriction of the courts discretion to fix its operating budget and to require probate courts to limit their budgets to the amount of fees collected. [State ex rel Slaby v. Summit County Council, 7 Ohio App.3d 199 \(Ohio App. 9 Dist. 1983\)](#)
- A court of common pleas has the inherent authority to require funds reasonable and necessary to the administration of judicial process. [State ex rel Avellone v. Board of County Commissioners of Lake County, 45 Ohio St.3d 58 \(1989\)](#)
- A board of county commissioners or coordinate branch of government must provide the funds requested by a common pleas court unless they can establish that the court abused its discretion by submitting a budget request that is unreasonable and unnecessary. [State ex rel Avellone v. Board of County Commissioners of Lake County, 45 Ohio St.3d 58 \(1989\)](#)
- A board of county commissioners has a mandatory duty to comply with the court's reasonable request, even if to do so would constitute an undue hardship and burden on other offices or agencies. [State ex rel Weaver v. Lake County Board of Commissioners, 62 Ohio St.3d 204 \(1991\)](#); [State ex rel Pike v. Hoppel, Board of Commissioners of Columbiana County, 2000-Ohio-2608 \(Ohio App. 7 Dist. 2000\)](#); [State ex rel Maloney et al. v. Sherlock et al., 100 Ohio St. 3d 77 \(2003\), 2003-Ohio-5058](#)
- A failure to provide the reasonable and necessary funds constitute an unconstitutional (violation of separation of powers, inherent powers, etc.) action to impede a court's business. [State ex rel Donaldson v. Alfred, 66 Ohio St.3d 327 \(1993\)](#)
- The burden of proving that budget requests are unreasonable and unnecessary rest upon the party who opposes the allocation of the funds. The court funding orders enjoy a presumption of reasonableness. [State ex rel Avellone v. Board of County Commissioners of Lake County, 45 Ohio St.3d 58 \(1989\)](#); [State ex rel Donaldson v. Alfred, 66 Ohio St.3d 327 \(1993\)](#)
- A court's ability to compel funding from a coordinate branch is unfettered. [State ex rel Donaldson v. Alfred, 66 Ohio St.3d 327 \(1993\)](#)
- The reasonableness of a court's request is based solely on the factual needs of the court for the proper administration of its business. [State ex rel Weaver v. Lake County Board of Commissioners, 62 Ohio St.3d 204 \(1991\)](#); [State ex rel Pike v. Hoppel, Board of Commissioners of Columbiana County, 2000-Ohio-2608 \(Ohio App. 7 Dist. 2000\)](#); [State ex rel Maloney et al. v. Sherlock et al., 100 Ohio St. 3d 77 \(2003\), 2003-Ohio-5058](#)
- The financial condition of the funding authority and the need to preserve the proper balance of power among the three branches of government are factors to be considered in determining reasonableness. [State ex rel Donaldson v. Alfred, 66 Ohio St.3d 327 \(1993\)](#)

- The determination of necessary administrative expenses rests solely with the court. No other branch can substitute its judgment for the court's judgment. Upon judicial review it may be determined that the court's funding request was unreasonable and unnecessary if it was the result of an abuse of judicial discretion. [State ex rel Donaldson v. Alfred, 66 Ohio St.3d 327 \(1993\); State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)
- The Board of County Commissioners must provide suitable court facilities. [State ex rel Hillyer, Judge v. Tuscarawas Cty. Bd. of Commrs. et al, 70 Ohio St.3d 637\(1994\), 1994-Ohio-13](#)
- A judge may file a mandamus action directly with the Supreme Court [ORC §2101.11\(B\)\(2\)](#) is not an adequate legal remedy and violates Article IV, §§2(B)(1)(b) and 2(B)(3) of the Ohio Constitution because [ORC 2101.11\(B\)\(2\)](#) requires judges to file with the court of appeals and prevents them from filing a mandamus action directly with the Supreme Court of Ohio. [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)
- The public interest is served when courts co-operate with executive and legislative bodies in the complicated budgetary processes of government. [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)
- A judge has the inherent authority to order the board or legislative body to appropriate money to provide funding for private counsel to represent the court in a budget dispute with the board or legislative body. [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)
- A judge may order the imprisonment of any commissioner for contempt (consistent with [ORC §2705.02 to 2705.06](#)). [In re Furnishings and Equipment for the Judge, Courtroom and Personnel for Courtroom Two, 66 Ohio St.2d 427 \(1981\)](#)
- A judge's inherent authority does not permit a court to conduct a budget hearing or otherwise infringe on the legislative budget process. [State ex rel Mahoning County Commissioners v. Maloney 100 Ohio St.3d 248, 2003-Ohio-5770 \(2003\); State ex rel Gains, Pros. Atty. v. Maloney, Judge, 102 Ohio St. 3<sup>rd</sup> 254, 2004-Ohio-2658 \(2004\)](#)
- A judge is not required to adhere to statutory budgetary procedures in requesting county funds for the operation of his court but the public interest is served when judges cooperate with those budget processes. [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)

- In an action for a writ of mandamus by a judge, the board of commissioners must rebut the presumed reasonableness of the funding order. Absent an abuse of discretion by the judge, the commissioners are obligated to appropriate the sum deemed necessary by the judge. The reasonableness of the order is determined by the courts' administrative needs and the commissioners may not substitute their judgment for that of the judge. A judge's salary increase order was unreasonable where it was based on inaccurate information in part and on the county's declining financial situation. The county's financial situation is not determinative but is a factor to consider. "Reasonableness" of a funding order is not determined by the failure of other county agencies to complain about reduced funding. [\*State ex rel Lohn v. Medina Cty. Bd. Of Commrs.\*, 124 Ohio St.3d 241 \(2009\), 2009-Ohio-6851.](#)
- Judge entitled to a writ of mandamus to compel funding where 1) to increase court costs as an alternative would increase unpaid costs due to indigency of population served; 2) further reduction in court staff would result in additional delays; 3) expenses of educational conferences were paid from the special project fund and not the general fund; 4) the judge cooperated with the county budget process; 5) other agencies did not complain about reduced funding as that is irrelevant to a determination of the reasonableness of the funding order; 6) insufficient funds were left in the budget to continue the operation of both the clerk's office and the detention center; and 7) despite the county's financial hardship, it sufficient funds in its unencumbered cash balance to provide for the funding order. [\*State ex rel Hague v. Ashtabula Cty. Bd. Of Commrs.\*, 123 Ohio St.3d 489 \(2009\), 2009-Ohio-6140.](#)
- City was required to provide the number and type of security officers determined necessary by municipal court for court security services, pursuant to statute requiring legislative authorities to provide necessary employees for municipal courts; municipal court judges were in the best position to know how many officers were needed to effectively secure courtrooms and the courthouse, whether such officers should be full-time or part-time employees, and which agency would best be able to provide qualified officers. [\*State ex rel Judges of Toledo Mun Court v. Mayor of Toledo\*, 179 Ohio App. 3<sup>rd</sup> 270, 2008-Ohio-5914.](#)
- Presumption of reasonableness of salary requests by clerk of court emanates from the separation-of-powers doctrine; the power to control what a court spends, or to totally regulate the process of obtaining funds, ultimately becomes the power to control what the court does, and such a principle is an anathema to an independent judiciary. [\*State ex rel. Smith v. Culliver\*, 186 Ohio App.3d 534, 2010-Ohio-339.](#)
- If city opposing municipal court clerk's budget request does not submit credible evidence that funding the budget order would render other government offices unable to perform their statutory duties, city is required to fund the courts' operations, even if it requires the return of previously appropriated or encumbered funds or the shutting down of other un-mandated offices or services. [\*State ex rel. Smith v. Culliver\*, 186 Ohio App.3d 534, 2010-Ohio- 339.](#)
- Writ of prohibition, seeking to prevent the court of common pleas and administrative judge from enforcing orders mandating that county commissioners appropriate an amount of money to the county sheriff to add security measures at the court's adult-probation and presentence-investigation facilities was granted where judge lacked the authority to enter the order. [\*State ex rel. Lorain County Board of Commissioners v. Lorain County Court of Common Pleas et al.\*, 143 Ohio St.3d 522 \(2015\).](#)
- A Writ of Mandamus to enforce judge's order requiring the Board of Commissioners to pay his legal fees and expenses was denied where the judge failed to comply with R.C. 309.09(A), 305.14(A), and 305.17

which set forth the process through which county officials, including judges, may procure outside legal counsel. [State ex rel. O'Diam v. Greene Cty. Bd. of Commrs.](#), Slip Opinion No. 2020-Ohio-3503.

## EVOLVING STANDARDS—THE BALANCING ACT CONTINUES

The Ohio Constitution, the Ohio Revised Code, and case precedent provide a framework or structure for answering most of the controversies that have arisen regarding how courts are funded. Despite the relative clarity of this area of the law, disputed areas remain. These include the relative power of common pleas and municipal courts, as well as the need to amend statutes to conform to case law.

### INHERENT POWERS

[Article IV, Section 4 of the Ohio Constitution](#) sets forth the structure and jurisdiction of common pleas courts and is strong evidence that common pleas courts have all the inherent powers that the Ohio Constitution can bestow on a court, including the power of the judge to determine what he or she needs to operate the court and make decisions regarding hiring, setting salaries, and termination of court staff.

Unlike common pleas courts, municipal courts are not explicitly referenced in the Ohio Constitution. Instead, [Article IV, Section 1 of the Ohio Constitution](#) provides "judicial power of the state is vested in...such other courts inferior to the Supreme Court as may from time to time be established by law." Despite their creation by statute as opposed to the Ohio Constitution, the municipal courts, as long as they remain creatures of statute, have all of the inherent powers of the common pleas courts. That means that the municipal courts and their judges have the inherent power to determine what is needed to operate a court and all the powers to hire, fire, and set the salaries of court employees.

Despite the fact that the common pleas and municipal courts have the same inherent powers, the Ohio Revised Code gives the power to set the salary of some municipal court employees to the legislative authority, not to the judge. Just because the Ohio Revised Code has done this, does not mean that it is correct. Nonetheless, it is confusing that the statute conflicts with the theory of inherent powers and this confusion can be used by municipal funding authorities to have the false impression that they are able to set the salaries of municipal court personnel, while the county commissioners cannot similarly set the salaries of the personnel of common pleas courts.

The case law regarding the inherent power of the courts is equally applicable to municipal courts as it is to common pleas courts. [State ex rel Musser v. City of Massillon, 12 Ohio St. 3d 42 \(1984\)](#); [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13](#)

### UNCONSTITUTIONAL STATUTES

From the time of [Marbury v. Madison, 5 US 137 \(1803\)](#), the courts have been viewed as having the power to declare an act of a legislature unconstitutional. This declaration makes the statute null and void, although the statutes remain part of the Ohio Revised Code until removed by legislative enactment. These statutes must be read carefully because in many instances only parts of the statutes have been declared unconstitutional.



This observation is particularly relevant to the funding controversies between the courts and their local funding authorities. In 1979 the Ohio General Assembly enacted Senate Bill 63 to increase the discretion of county commissioners over court funding decisions. Subsequently in [State v. Taulbee \(1981\)](#) and [Slaby v. Summit County Council \(1983\)](#), Senate Bill 63 was struck down as unconstitutional because the legislature had granted the county commissioners “the ‘power of the purse’ over judicial administration [and had] unconstitutionally restrict[ed] and impede[d] the judiciary in complete contradiction of rudimentary democratic principles.” In many of these cases the factual background to the controversy is important to understand the court decisions.

Senate Bill 63 made sweeping changes that increased the power of the county commissioners. Even though this expansion of the power of county commissioners vis-à-vis the courts was declared unconstitutional, the changes brought about by Senate Bill 63 remain in the text of [ORC Sections 307.01](#) , [2101.11](#), and [2151.10](#). The preservation of the unconstitutional provisions within statutory text creates confusion over the extent to which provisions are valid.

## PERSPECTIVES ON THE BUDGET PROCESS

The object of this chapter is to describe the budget process for the various courts of Ohio, as well as to provide tips and best practices for each part of that process. This chapter also includes advice on how to avoid conflict and when to seek dispute resolution services for unresolved conflicts.

County and municipal budgets are formulated annually and involve preparing and adopting a budget. Chapter 5705 of the Ohio Revised Code provides the legal requirements and a time line for completion of the local budget process. These provisions are followed by all local funding authorities, including county commissioners, chief executive officers, councils, and fiscal officers.

## CONTRASTING PERSPECTIVES ON LOCAL COURT FUNDING

When funding authorities and judges come together to resolve budgetary challenges, they come with differing sets of principles and perspectives. Both will benefit if they understand the nature and source of all of these differing principles and perspectives.

---

## THE CASE FOR EMPATHY

BY JUDGE NORMAN EDWARD LANE

RETIRED JUDGE NORMAN EDWARD LANE WAS THE JUDGE OF THE GENERAL DIVISION OF THE COURT OF COMMON PLEAS FOR WASHINGTON COUNTY OHIO. HE EARNED HIS B.A. AND J.D. FROM THE CAPITAL UNIVERSITY. REFERENCES AND RESEARCH WERE PROVIDED BY MRS. MEGAN BAUMGARTEL, B.A. OHIO UNIVERSITY, M.S., SOCIAL WORK, THE OHIO STATE UNIVERSITY

An absence of empathy is a recognized cause of antisocial behavior.<sup>1</sup> No office holder, in a democracy, whether a judge, council member, commissioner, mayor or other elected official wants to be cast as antisocial. Persons with antisocial disorder are characterized as being persistent liars, thieves, impulsive, reckless, as having superficial charm, a sense of extreme entitlement, inadequate control of anger and temper and numerous other undesirable attributes.<sup>2</sup>

One might assume that our electoral process keeps those with undesirable personality traits out of public office. I know that if you have read this far, you may have already identified in your mind, by name, an office holder who has some of these traits. After 23 years in public office too many names come into my head. Budget disputes can bring out the worst in each of us.

Each generation of Americans face unique challenges. However, it is my belief, as an office holder, that as elected officials we have a solemn duty to use our best efforts to make our democracy work efficiently and effectively every day. As elected officials, we serve various and diverse constituents. Our goal must be to maintain the confidence of every American in our system of government. Elected officials may be viewed as role models in their communities. Local officials are often seen as those most responsive to individual and societal needs. To achieve this, we must have empathy. This can be difficult in budget negotiations. The greater the dispute-- the greater the need for empathy. Empathy is a concept with many different definitions that cover a broad spectrum. Empathy involves understanding the emotional states of other people. Empathy is distinct from sympathy, pity, and emotional contagion. An empathic response requires that one have the capacity to put him or herself in another person's place to such a degree that he/she is able to experience the meaning of that person's feelings, wishes and thoughts.<sup>3</sup> One of the more interesting factors in empathy is that it seems grounded in the innate capacity to associate with the bodily movements and facial expressions one sees in another. Research demonstrates that by the age of two, children normally begin to display the fundamental behavior of empathy by having an emotional response that corresponds with another person.

Empathic behavior signifies that:

- The person is interested in making himself or herself understood; and there is an equivalent motivation to understand the language of the other person. In doing so, people interacting empathically engage in a reciprocal process of synchronous giving and receiving through verbal and non-verbal communication. This involves several different interpersonal roles: as equals who understand each other, as comrades who share with each other, and simply as colleagues.<sup>4</sup>

---

<sup>1</sup> "Anti-Social Personality Disorder," (2009) Wikipedia, The Free Encyclopedia, Google Search Engine

<sup>2</sup> "Anti-Social Personality Disorder," (2009) Wikipedia, The Free Encyclopedia, Google Search Engine

<sup>3</sup> Kaplan H.I. Sadock, B.D. (1988). Synopsis of Psychiatry Williams & Wilkins:

<sup>4</sup> Baltimore: Hong Kong; London; Sydney. McCallough J.P., Jr. (2000). Treatment for Chronic Depression. The Guilford Press: New York; London at p. 29

- To operate successfully in budget negotiation, we must have empathy, display it and we must garner it. This, like all of our other skills, must be honed over time. We have all been honored by our fellow citizens with election to office. They expect us to make their government work and work well. They rightfully demand excellence. Empathy creates a level of understanding that is necessary in successful negotiations.

## FUNDING AUTHORITIES' PERSPECTIVE

- **LOCAL GOVERNMENTS OFTEN HAVE A LIMITED ABILITY TO INCREASE REVENUES TO SATISFY DEMAND.** In many instances the funding authorities have maximized their discretionary taxing authority and must go to voters to get additional authority to raise funds. Many expenses that are mandated are not particularly popular with voters and a plea to voters would not be successful. Some revenue sources are earmarked for specific costs and are not available for discretionary spending. Funding for courts is for the most part a general fund issue.
- **ACCOUNTABILITY FOR EFFICIENT AND EFFECTIVE ALLOCATION OF RESOURCES IS A PRIMARY RESPONSIBILITY OF FUNDING AUTHORITIES.** The legislative authority often has limited discretion or ability to manage the use of allocated resources. Efficient use of resources is the responsibility of each elected official and their department. Funding relationships for courts vary greatly under the dictates of the Ohio Revised Code and the Ohio Constitution. However, the need for accountability and effective allocation of resources is the same.
- **FUNDING AUTHORITIES SHOULD BE SENSITIVE TO TREATING ALL AGENCIES AND ENTITIES THAT DEPEND ON THEM FOR FUNDS IN A FAIR AND EQUITABLE WAY.** Salaries and pay increases should be consistent. Budget reductions present special challenges and should generally be negotiated with empathy. Some jurisdictions tend to be more organized at personnel and budget management. Some are more likely to consider selective and evidence based budget and personnel practices. Other jurisdictions tend to be less organized and more likely to apply a general across the board policy. Most counties also have the added dimension of individually elected managing officials.
- **FUNDING AUTHORITIES SHOULD ESTABLISH A BUDGET PROCESS THAT BALANCES ACCOUNTABILITY AND FAIRNESS.** The purpose is to lead the authorities through a credible exercise that results in an informed discretionary decision on allocation of funding.

---

## OTHER RESOURCES

County Commissioners Association of Ohio's [Handbook 98.01- The Judicial System 2011](#)

## COURTS' PERSPECTIVE

- ***FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE IS THE PRIMARY DUTY OF THE COURTS.*** This requires every Ohio judge to support the Constitutions of the United States and Ohio, to administer justice without favor or prejudice to persons, and to faithfully and impartially discharge and perform the duties incumbent upon that judge according to the best of his or her ability and understanding. These Constitutions repeatedly provide that certain rights of the people be preserved, equally protected, and redressed by due process of law.
- ***OUR CONSTITUTIONS REQUIRE SEPARATE AND INDEPENDENT BRANCHES OF GOVERNMENT.*** The three branches perform their duties separately and independently and serve to check and balance the authority of each. The legislative branch has the responsibility to collect revenue and appropriate funds in such a manner so as not to deprive the courts of their ability to administer justice. To do otherwise would render the courts powerless as against the other branches. It is a well-established principle that the administration of justice cannot be impeded by the other branches of government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it is the duty of such other branches of government to facilitate the administration of justice.
- ***COURTS POSSESS INHERENT AUTHORITY TO ORDER FUNDING THAT IS REASONABLE AND NECESSARY.*** It is the responsibility of the funding authority to appropriate the requested funds, unless it can establish that the court abused its discretion by requesting unreasonable and unnecessary funding. A court's funding orders are presumed reasonable, and the funding authority bears the burden to rebut the presumption. The reasonableness of a court's request is determined only from a consideration of the request in relation to the factual needs of the court for the proper administration of its business. The Ohio Supreme Court has held that the public interest is served when courts co-operate with their funding authorities. However, such voluntary cooperation should not be mistaken for a surrender or diminution of the plenary power of the courts.
- ***USER FEES SHOULD NOT BE THE PRIMARY SOURCE OF COURT FUNDING.*** Courts serve an entire community by providing a forum for the fair and just resolution of disputes. Every person is entitled to the fair and impartial administration of justice. Access to justice cannot be dependent upon a person's ability to pay. Neither should the operations of a court be dependent on the amount of money it collects.

**CONTRASTING PERSPECTIVES ON STANDARD TERMS OF THE BUDGET PROCESS**

STANDARD TERM	JUDICIAL PERSPECTIVE	FUNDING PERSPECTIVE	RECOMMENDATION
Journal Entry by court	This is the way a judge speaks in an official capacity.	This is often perceived as a declaration of war. It communicates that the time for negotiation and discussion is over and the time for battle has arrived.	<p>Judge should not first use a letter to communicate a budget request without first negotiating.</p> <p>Commissioners should not be quick to overreact.</p>
Court Costs	<p>Many costs established by Ohio law do not relate to the operating costs of the court. Court costs are often uncollectable due to the indigence of the parties or other factors.</p> <p>Adding additional costs limits accessibility, makes costs less collectable, and requires additional personnel for collection efforts.</p>	Court costs are viewed as additional revenue that can be used as funds to support general county operations.	<p>All concerned need to educate themselves on where existing court costs are going and the collection rate.</p> <p>Be aware that court costs are largely a hidden tax that fund state programs. A small portion of court costs go to local funding authorities.</p> <p>It is unrealistic to believe that court costs can sustain Ohio courts.</p>
Local Permissive Filing Fees Special Projects Funds Clerk computerization Fund Court Legal Research Fund	<p>A fund for specific court needs and special projects. These projects must be clearly defined and the resources are for limited purposes.</p> <p>These funds reduce the courts reliance on local funding.</p>	<p>The courts have a lot of flexibility as to how to spend these funds, with little oversight from the funding authority.</p> <p>The court has lots of money at their disposal for special projects.</p>	There should be mutual discussion regarding the most effective and efficient use of these funds.
General Fund	<p>The court should be funded from the general funds at a reasonable and appropriate level.</p> <p>Courts are a separate branch of government. Reasonable and necessary funding is determined by the judge</p>	General funds that must be stretched to fund all agencies equally, with no special status for the courts.	<p>All concerned must be aware of the pressures and demands for general funds, and work cooperatively.</p> <p>Obtain dispute resolution services</p>

## BEST PRACTICES

The general principles and standards described in this Handbook do not require that each county or municipality in Ohio follow the same process. Indeed, the effect is to provide counties and cities with a great deal of flexibility and permit them to establish their own practices. Even within a single county or city, the practices may change from year to year. This flexibility is necessary but may lead to a relatively unstable and unpredictable situation, which is a major factor in creating misunderstanding and confusion about the budgeting process.

There are several things that judges and the local funding authority can do to improve the atmosphere within which the budget process takes place.

## RELATIONSHIP BUILDING

### *BUILD AN ATMOSPHERE OF TRUST THAT IS FOUNDED ON MUTUAL UNDERSTANDING AND COOPERATION.*

Perhaps the most important action that both judges and other elected officials can do to advance the budget process is building an atmosphere of trust. Increased understanding and cooperation between the courts and the local funding authorities is a major step toward building the trust necessary to have a successful budget process.

To that end, when elected officials take office they should make every attempt to get to know the other local elected officials. This should be an on-going process and one that is never too late to begin. Ask questions about the work of the other officials and find out how they see your work. The better you are understood and that you understand, the less opportunity there will be for confusion about your respective roles, and the less opportunity for conflict during times (like the budget) when your respective roles overlap or intersect.

Judges and their local funding authorities often interpret the budget process very differently and it is important to understand how foreign a “journal entry” may be to a county commissioner, mayor, or council member or how unfamiliar a “tax budget” may be to a judge. The chart below defines several standard terms associated with the budget process and indicates when the term may have unintended meaning.

One interesting example is the term “journalize,” which is perceived quite differently depending on whether you are a judge or a county commissioner. For judges, a journal entry has no emotional meaning. It is simply the way a judge is most comfortable communicating his or her views. Where someone else might write a letter, a judge will make a journal entry. But when a judge “journalizes” a budget, the county commissioner who receives the journal entry may interpret it as a declaration of war or as if an atomic bomb has been dropped on him/her. It communicates to the county commissioner that the time for negotiation and discussion is over and the time for battle has arrived. The emotional response of the county commissioner is similar to the “fight or flight” reaction that humans have to any threatening situation. The result may be that the commissioner with a “flight” reaction might give the judge whatever budget has been requested despite the consequences unintended by the judge. In contrast, the commissioner with the “fight” instinct may respond aggressively and the situation might easily escalate into conflict.

Thus, a judge who wants to initiate a conversation about the budget should not begin the process with a journal entry unless all parties clearly understand that it is the beginning of rather than the end of the process. A simple a letter or phone call may be more advisable.

Carryover funds are another matter that can cause resentment and mistrust if judges and funding authorities fail to understand each other's perspective. At the municipal court level surplus court costs at year-end deserve special attention. Court costs are for the operation of the court and the revenues are cyclical. Of necessity the discussion should begin with a shared or agreed upon definition of carryover funds and an understanding of how they are a problem. There are two types of carryovers. One is unexpended balances or year-end carryovers of the courts. These are unexpected carryovers. The other is the fund balance held by the funding authority at the end of the year in the entire General Fund to ensure the continued operation of county government or to allow courts to be prepared for unexpected and complex litigation.

Each carryover should be discussed separately and the discussion should focus on the reason or reasons why a specific carryover is needed. The budget process needs to be transparent to maintain public confidence. Courts should not feel compelled to spend money merely because they are afraid that their budget next year will be cut. Similarly, the local funding authority should find a way to avoid penalizing courts that have money left over at the end of a fiscal year, and still provide them with access to the money the following year should they not be able to generate the same level of savings again. Resolution of this issue in advance would build trust between courts and the local funding authority. Courts and funding authorities should work together to keep discussions about carryover funds open and honest, as well as to develop some methodology to use when calculating carryover funds.

This point is intended to illustrate that elected officials should take steps initially and often to get to know each other and develop an understanding of your shared role with regard to the budget. Try to recognize when you have different perspectives and identify ways to discuss these matters in ways that are emotionally neutral. Both sides need to ensure that the other side has all the relevant information.

## MEET REGULARLY AND SHARE INFORMATION

***JUDGES AND LOCAL FUNDING AUTHORITIES SHOULD MEET REGULARLY TO ENSURE GOOD RELATIONSHIPS, AND ALSO TO MAKE SURE EACH IS SHARING INFORMATION THAT WILL BE IMPORTANT TO THE BUDGETING PROCESS.***

Remember that relationships take work and that you cannot build a strong working relationship unless you are in regular communication. Elected officials should meet routinely with each other. This gives you a predictable time and place to mention things that are on your mind. It will enhance communication if you have a routine opportunity to find out what's going on in terms of revenue forecasting or to inform each other about long term programs for which the county or city should begin to plan. The more opportunities there are for regular and informal sharing, the less likelihood that there will be surprise budget requests or other budget "bombshells." Some local funding authorities currently hold regular, monthly meetings that involve all county or city elected officials. If regular meetings are not possible in your county or city, then perhaps someone could organize a monthly newsletter or email where each elected official contributes his/her perspective in a news article.

Judges and their court administrators should meet regularly with local funding authorities. Judges should be among the first to share information about problems that a court is having, new regulations or procedural safeguards that a court must implement and the cost of implementing these changes. Similarly, all other relevant information that will promote understanding between courts and local funding authorities should be shared.

The local funding authority should meet regularly with the judge that is in charge of the court's budget. This is typically the administrative judge, which is a special designation for an experienced judge who handles various reporting and other administrative matters of the court. For small counties there may only be one judge in each division. In those instances, that judge is by definition the administrative judge.

## PROFESSIONAL BUDGET STAFF

### ***BOTH PARTIES SHOULD HIRE PROFESSIONAL BUDGET STAFF.***

Another best practice in the budget process is to ensure that the court and the funding authority each have staff with the appropriate level of training and experience in the budgeting process. If you have a professional staff, then the elected officials will be able to communicate through the professional staff that is more likely to speak the same language. Similarly, communications between the elected officials should be more positive and productive. Seek out job descriptions and other resources that will help you to hire and train the right budget professionals.

Judges recognize that courts need personnel that are very experienced, highly trained, and able to assume high levels of responsibility. Due to their experience, knowledge, training, and level of responsibility, these personnel may demand higher wages than other employees. The local courts need to be able to explain why the court needs these employees and to provide justification for the additional expenses in the personnel budget compared to other agencies. The court needs to be aware and sensitive to the pressures that local funding authorities are under from other agencies that also believe they need specialized personnel. For example, the Sheriff's Department will explain their need for personnel with security training and compensation for the dangers associated with police work. Some agencies will have need for higher salaries for employees with technical/computer training. Social service agencies will have high turnover related to stress and they too will be pressuring the funding authority for more money for personnel.

Ideally, judges should hire a court administrator with the appropriate education and experience to help with budgeting responsibilities for the court. If that is not possible, the judge should assign budget responsibilities to someone on their staff who can be trained in budgeting.

County Commissioners should hire a professional county administrator or assign budget responsibilities to a well-trained and experienced clerk or finance manager. In smaller counties this may mean that several counties share the administrator. Similarly, the cities should have a finance director or other competent staff to work with departments on funding.

Professional budget staff should possess technical competence in budgeting along with excellent interpersonal and negotiation skills.



## THE DUTIES OF THE PARTICIPANTS

### *BOTH PARTIES SHOULD UNDERSTAND THEIR DUTIES AND THE DUTIES OF THE OTHER.*

The budget year goes from January 1 through December 31<sup>st</sup> of each year. There are several major steps in this process. Some are defined by the Ohio Revised Code ([ORC 5705.28, through 5705.38](#)). Some are designed by the budget personnel. Others have evolved over time out of the practice of budgeting and negotiating between the local funding authority and the courts.

---

### DUTIES OF LOCAL FUNDING AUTHORITIES

County and municipal budgets are formulated annually and involve preparing and adopting a budget. Chapter 5705 of the Ohio Revised Code provides the legal requirements and a time line for completion of the local budget process. These provisions must be followed by all local funding authorities, including county commissioners, chief executive officers, councils, and fiscal officers.

---

### DUTIES OF COURTS

The Supreme Court of Ohio has held that the courts are not bound by the statutory provisions governing the budget process, but strongly encourages local courts to cooperate with the process. [State ex rel Johnston v. Taulbee, 66 Ohio St. 2d 417 \(1981\)](#)

[Ohio Revised Code §§ 307.01, 2101.11](#) and [2151.10](#) purport to regulate the conduct of common pleas courts in the budget process, but in fact, the Courts are not bound to comply therewith.

- “Common pleas courts shall annually submit a written request for an appropriation to the board of county commissioners that shall set forth estimated administrative expenses of the court that the court considers reasonably necessary for its operation.” The Board of county commissioners “shall conduct a public hearing with respect to the written request submitted by the court.” This provision has been held unconstitutional.
- The Board of County Commissioners “shall appropriate the amount of money each year that it determines, after conducting the public hearing and considering the written request of the court, is reasonably necessary to meet all administrative expenses of the court.” The Supreme Court has repeatedly held that all reasonable and necessary requests to fund local courts must be met by the local funding authority. The burden is on the funding authority to establish that the court abused its discretion in submitting a budget which is unreasonable and unnecessary. Government hardship is insufficient by itself to establish an abuse of discretion in determining the required amount of court funding. It is not a defense, it is a factor.

“If the court considers the appropriation made by the board ... insufficient to meet all the administrative expenses of the court, it shall commence an action under Chapter 2731.” The Supreme Court of Ohio has held that the filing of a mandamus action may be initiated in the court of appeals or Supreme Court of Ohio and that the courts are not bound by Chapter 2731 regarding venue of a mandamus action. [State ex rel Wilke, Judge v. Hamilton County Board of Commissioners, 90 Ohio St.3d 55 \(2000\), 2000-Ohio-13.](#)

---

## RULES OF COURT AND THE BUDGET PROCESS

Currently none of the rules of court which govern Ohio courts apply to the budget process but to the extent that applicable rules may be adopted in the future, an understanding of the rules of court is important.

The Ohio Constitution authorizes the Supreme Court of Ohio and local courts to establish rules governing many areas. Currently there are rules of superintendence, rules of practice and procedure, local rules, and other rules governing the admission to the practice of law and governing the professional conduct of lawyers and judges.

---

## RULES OF SUPERINTENDENCE

Pursuant to [Article IV, Section 5\(A\) of the Ohio Constitution](#), the Supreme Court has general powers of superintendence over the courts of Ohio. In exercising this responsibility, the Supreme Court of Ohio promulgates rules of superintendence for the courts of Ohio. The Supreme Court has not yet promulgated rules concerning the budget process.

---

## RULES OF PRACTICE AND PROCEDURE

Pursuant to [Article IV, Section 5\(B\) of the Ohio Constitution](#) and ORC [§2937.46](#), the Supreme Court prescribes rules governing the practices and procedures in the courts of Ohio, including civil procedures, criminal procedures, appellate procedures, juvenile procedures, rules of evidence, and rules governing traffic. New rules or changes to existing rules are filed with the Ohio General Assembly each year by January 15 and go into effect on July 1 of the same year, unless the Ohio General Assembly adopts a concurrent resolution of disapproval. Once a rule takes effect, it prevails over any existing statute.

---

## LOCAL RULES

Pursuant to [Article IV, Section 5\(B\)](#) the local courts may adopt additional rules concerning local practices and procedures as long as these local rules are not inconsistent with the rules promulgated by the Supreme Court of Ohio.

## CONFLICT RESOLUTION

Funding disputes can have serious political consequences for both judges and local funding authorities, especially if the funding dispute becomes the subject of litigation or becomes the object of public attention. Be cognizant of the reality that even if you have the facts and the law on your side you can still lose in the court of public opinion. Voters in Ohio have numerous times removed from office one or both sides to a public dispute over funding and have even done so without regard to the law or the facts of the particular dispute.

Underlying this chapter is the message that everyone involved with funding needs to have rapport with each other. Understanding and mutual respect should be established long before funding becomes an issue. Frequent informal as well as formal meetings are recommended. These opportunities help to build understanding, promote collaboration and partnership, and can help you design solutions that will help your local community move forward together despite economic challenges.

### DISPUTE RESOLUTION SERVICES FOR PUBLIC OFFICIALS

As a local public official, you work in an environment where conflict is inevitable. Handled well, conflict can be a powerful vehicle to clarify communications, to build stronger working relationships and to reach consensus. The Supreme Court's Commission on Dispute Resolution has the task of advising the Supreme Court on the development and delivery of dispute resolution services for disputes arising among state, county, and local public officials throughout Ohio. Public officials have found that the use of an impartial third party often helps to successfully overcome differences, to reach agreements and to prevent disputes from escalating into an impasse. Examples of disputes regularly encountered by local public officials include disputes about budgets, personnel issues, and/or other organizational matters.

When either party contacts the [Dispute Resolution Section of the Supreme Court of Ohio](#), the Manager will help identify the appropriate dispute resolution mechanism, such as but not limited to, mediation and assist the parties throughout the process to reach a resolution.

---

#### RESOURCES

Ohio Supreme Court  
Dispute Resolution Section, 6th Floor  
65 S. Front Street  
Columbus, Ohio 43215-3431  
**Phone:** 614.387.9420  
**Fax:** 614.387.9409  
**E-mail:** [DisputeResolution@sc.ohio.gov](mailto:DisputeResolution@sc.ohio.gov)

## BUDGET CRISIS

Conflicts over the budget are common during normal times but can be crippling for courts and funding authorities during a budget crisis if not managed well. A budget crisis may evolve over time or arise suddenly. Incorporating the recommendations herein into the budget process will benefit all participants no matter the source of the crisis, i.e. building strong relationships, meeting regularly, and sharing information.

A budget crisis may arise from a worldwide pandemic, an economic recession, a natural disaster such as a flood, reduction of court caseload due to modified police protocols or an increase in bankruptcy filings, loss of a major employer in the court area, reduced tax revenues and a myriad of other causes based on local or regional conditions.

## COURT'S ACTION PLAN IN A BUDGET CRISIS

The court's first step in being prepared for a budget crisis is to know its patterns of caseloads, revenues and expenses on a monthly basis. Change can come quickly and the court's response will be shaped by how quickly it becomes aware of the changing landscape.

The second step is to immediately notify the funding authority of the change, the possible impact on the court's operations, and the possible consequences for the funding authority.

The third step is to consider the changes the court is able to make to address the crisis yet continue to perform the essential functions of the court, i.e. reduction in workforce; furloughs; suspension of special programs; modification of court hours; etc. Determine the minimum budget requirements to continue appropriate court operations for the duration of the crisis.

The fourth step is to meet with the funding authority to hear its position and explain the court's position. Remember that the funding authority is experiencing the same crisis and is trying to sustain its essential functions as well. Attempt an accommodation so that both parties can survive the crisis with all essential functions fulfilled.

The fifth step is to seek outside assistance if an agreement cannot be reached by contacting the [Ohio Supreme Court's Dispute Resolution Section](#).

The sixth and final step is the Writ of Mandamus

## FUNDING AUTHORITIES ACTION PLAN IN A BUDGET CRISIS

The first step for the funding authority is to already have a sound understanding of the functions performed by the Court and its basic requirements to continue functioning competently. Learning about the Court in a crisis will delay important decisions and cause unnecessary stress for all involved. Likewise, the funding authority should have been educating the Court about its basic requirements and priorities so the Court has a good understanding of where it fits in the economic plan of the funding authority.

The second step is to immediately notify the Court of any changes in criminal justice policies or economic conditions that may affect the Court. Beware of how changes may affect a court.

The third step is to consider the changes the funding authority can make in concert with the Court so both may continue appropriate operations.

The fourth step is to meet with the Court to hear its position and explain the funding authority's position. Remember that in a crisis, the Court may have even more obligations in regard to civil order and increase in crime. Attempt an accommodation so that both parties can survive the crisis with all essential functions fulfilled.

The fifth step is to seek outside assistance if an agreement cannot be reached. The funding authority may ask for assistance from the [Ohio Supreme Court's Dispute Resolution Section](#) without action by the Court first.

The sixth step depends on Court action. If an accommodation is not reached, the Court may issue an order requiring funding at a certain level and seek a Writ of Mandamus from a higher court. The funding authority can avoid that order only by seeking a Writ of Prohibition from a higher court or waiting for enforcement action by the court.

## LOCAL GOVERNMENT FISCAL DISTRESS

An obvious budget crisis arises when the Auditor of the State of Ohio declares a local government in fiscal caution, watch or emergency. Although the Auditor has no direct jurisdiction over the courts, all courts are encouraged to participate in the process so as to assist other branches of government in restoring sound fiscal practices while maintaining judicial independence. The Auditor's process is explained at [Local Governments & Fiscal Distress](#). Courts should be aware that the Auditor will attempt to conduct a performance audit of the Court. During the audit, the Court should be proactive in helping to define the perimeters of the audit. For example, the Auditor will choose four or five other courts to compare with the court in issue. It is important that the sample courts be consistent in size and caseload to the court under examination. It is recommended that any court being examined contact the [Ohio Supreme Court's Office of Judicial Services](#) for assistance from court staff and volunteer judges who have been through this process.

## SPECIAL PROJECT FUNDS

During periods of budget distress, there may be a view that special project funds are a source of revenue which may be used in lieu of general fund revenues to operate the Court. [ORC §1901.26\(B\)\(1\)](#) enables courts only to assess and determine the use of special project funds. ORC §1901.26(B)(1)(d) provides that monies in the special project fund "shall be disbursed upon an order of the court..." No current case law exists which would suggest that special project funds may be diverted from use for its original purpose and be applied to the general operation of the court.

Several Ohio Attorney General Opinions exist that address the purpose and use of special project funds but none imply that these monies may be diverted for general court operations or disbursed without a court order.

[2016 Op Att'y Gen No. 2016-10](#): Special project fund moneys of court of common pleas may be used to purchase incentives for drug court program participants.

[2015 Op Att'y Gen No. 2015-015](#): Court of common pleas' expenditure of special projects fund moneys for additional court house security is permitted.

[2012 Op Att'y Gen No. 2015-039](#): County court's use of special projects fund moneys in connection with a community service program is permitted provided program contributes to the efficient operation of the court.

[2011 Op Att'y Gen No. 2011-047](#): A common pleas court may not use special project funds for a municipal court's veterans treatment court.

[2009 Op Att'y Gen No. 2009-01](#): A municipal court may not donate special project funds to private or county programs established by another court. Courts do not need permission from county commissioners to spend special project funds monies.

[2001 Op Att'y Gen No. 2001-006](#): Common pleas court may not use special project fund monies to pay the county sheriff for services that the sheriff is required to provide by law.

## THE BUDGET PROCESS AND TIMETABLE

The following time table governs the funding authorities' budget planning process. Judges should understand the process and, in the spirit of cooperation, attempt to time its budget planning accordingly.

### STATUTORILY MANDATED BUDGET DEADLINES

1. March or early April. The taxing authority or chief executive (Mayor) should instruct the head of each department, board, or commission to prepare an estimate of contemplated revenue and expenditures for the ensuing fiscal year and file the same with the chief executive before June 1. ([ORC §5705.28](#))
2. June 1<sup>st</sup>. Courts, along with other county or municipal entities, are required to file with the taxing authority or executive officer their respective estimates of contemplated revenue and expenditures for the ensuing fiscal year. ([ORC §5705.28](#))
3. June 15<sup>th</sup>. The fiscal officer or executive officer should present the budget in its tentative form to the taxing authority for its consideration and study.
4. Ten days before its adoption. The taxing authority shall file two copies of the proposed budget in the office of the fiscal officer for public inspection and provide for at least one public hearing thereon. ([ORC §5705.30](#))
5. Ten days prior to the date of the public hearing. The taxing authority shall cause public notice to be given of such hearing by at least one publication or in a newspaper of general circulation in the taxing district. ([ORC §5705.30](#))
6. July 15<sup>th</sup>. The taxing authority shall adopt a tax budget for the next succeeding fiscal year, which shall be submitted to the county auditor. ([ORC §§5705.28, 5705.30](#))
7. December 31<sup>st</sup>. The taxing authority shall revise its tax budget to conform with the official certificate of estimated resources by the budget commission. ([ORC §§5705.34, 5705.35](#))
8. January 1<sup>st</sup> each year. The fiscal officer after closing the books for the preceding year shall certify to the county auditor the actual unencumbered balances that existed at the end of the preceding year. ([ORC §5705.36](#))
9. January 1<sup>st</sup> of the current year. The taxing authority shall pass the annual appropriation measure for the current fiscal year or a temporary appropriation measure may be passed effective until April 1. ([ORC §5705.38](#))
10. **NOTE:** Budget Process for County Prosecutor: Common Pleas Courts may set the salary for various employees of the county prosecutor, including assistants, clerks, stenographers, and secret service officers. This must be done upon motion of the prosecutor by the first Monday in January. This is paid for out of the general fund of the county treasury. ([ORC §§309.06, 309.07](#)).

## STEP ONE: TAX BUDGET (JANUARY 1 THROUGH AUGUST 15)

### *PAY CLOSE ATTENTION TO THE TAX BUDGET. ENSURE THAT THE BUDGET ACCURATELY REFLECTS AVAILABLE REVENUE AS THE COURT PREPARES ITS BUDGET.*

The tax budget is the revenue part of the budget. It is the amount of money that the county or city is projected to have available to spend during the year for which the budget is being prepared. The first major step in any official budget process is for the local funding authority to present the tax budget. In counties, this process is usually initiated by the county administrator or the county auditor. In municipalities, this process is typically initiated by the finance director

Under Ohio law, a Tax Budget must be adopted by the taxing authority (Board of County Commissioners, Mayor, or City Council) on or before July 15th of each year and submitted to the county auditor shortly thereafter ([ORC §5705.28](#)). The Tax Budget document generally includes historical data regarding actual receipts, expenditures, and carryover balances per fund for the previous two calendar years, plus estimated receipts and expenditures for the current year, and anticipated carryover balances, receipts and expenditures for the following year ([ORC §5705.29](#)). As part of this process, a Tax Budget hearing must be held at a meeting open to the public; notice of this meeting must be published in a local newspaper of general circulation not less than 10 days prior to the Tax Budget hearing ([ORC §5705.30](#)). Note: it is the practice in some communities for the budget commission to waive the requirement that the funding authority adopt a tax budget. An affirmative vote of a majority of the budget commission, including an affirmative vote by the county auditor, is required to waive the filing of a tax budget ([ORC §5705.281](#)).

The budget commission is comprised of the county auditor, county treasurer, and the county prosecutor. The purpose of the budget commission is to verify the continuing need to levy property taxes applicable to each political subdivision or taxing entity. Following the auditor's receipt of the Tax Budget, the Budget Commission meets to review the budget, along with the tax budgets of all other entities in the county or city which levy property taxes, including townships, schools, libraries, and health districts. Generally, a short meeting is scheduled each year between the budget commission and each taxing entity in August to review the submitted Tax Budget for the coming calendar year and identify any areas where a change or correction may be required. ([ORC §5705.32](#))

Around the middle of August, the budget commission will create a "certificate of estimated resources," which identifies the expected beginning balance for each fund at the beginning of the upcoming calendar year, as well as estimated receipts for each fund. The beginning balance (not including any expected encumbrances against that balance), plus the estimated revenues for the coming year equals the resources that will be available for expenditures in each fund. Once the taxing entity receives this certificate, an appropriation resolution can be adopted. ([ORC §5705.35](#))

Judges should read the tax budget and be aware of the provisions for the amount of tax revenue that will be available. Consider whether the revenue is more or less than previous years. Think about the impact this increase or decrease may have on funding for the court. The Administrative Judges should share this information with the other judges and consult with the other judges about what is going on in the court that may require new resources.

The local funding authority should provide revenue forecasts and finalize the Tax Budget. This information/report should be distributed to all agencies funded by the local funding authority. This information should be an accurate and an honest reflection of revenue. Agencies should never fear that the funding authority is secretly hiding or holding back money. Local funding authorities (through a county administrator or city finance director, if possible) should initiate the budget process with all agencies at around the same time every year. For most localities this notification comes in the form of a letter and includes an honest description of the revenue situation. Some county auditors provide a spreadsheet of budget data from the last 4 years and a breakdown of the appropriations and expenditures of all entities receiving funding from the funding authority.

## STEP TWO: COURT BUDGET (JULY 15)

The court budget is the written document that a court is required to prepare annually and submit to the local funding authority requesting funding for the operation of the court. The local funding authority or their administrator or budget staff should prepare instructions for elected officials, courts, and agencies to follow when submitting their budget requests for the upcoming year. The written budget request should be presented to the local funding authority by July 15. You may always provide additional information and supporting documentation for your requests, and it is recommended best practice to prepare a narrative description and/or defense of your budget request.

Judges should keep in mind that Ohio law requires that the courts submit a budget that is “reasonably necessary for its operation.” Courts should take time and care to prepare a budget request, with a narrative explanation for each line item. The narrative should explain why the budget amounts are necessary and reasonable, and particularly explain in detail any requested increase or decrease. To show their sensitivity, the court should reference any revenue constraints that the county or city is facing, and indicate what the court has done to control its expenses. Line items should be broken down into high, medium, and low priority items. For example, courts should list as a top priority any increases that are required by statute or result from complying with a pre-existing contract or maintenance agreements. The court should prioritize discretionary increases as well, and include any long term projects that may be broken into phases and where payments can be made on a multi-year schedule.

Local funding authorities should read a court’s budget and narrative. They should give the court feedback that will reassure the court that the funding authority has read the narrative and appreciates the effort that went into the budget document.

## STEP THREE: BUDGET HEARINGS (AUGUST 15-OCTOBER 30)

***TAKE BUDGET HEARINGS SERIOUSLY. JUDGES NEED TO ATTEND THE BUDGET HEARING ALONG WITH THEIR COURT ADMINISTRATOR.***

Budget hearings come in all kinds of shapes and sizes. They can be formal and public meetings between judges and the local funding authority (county commissioners, mayors, city council) or they may be meetings between budget staff and court budget personnel, or they may be meetings between budget staff and administrators or between budget staff and court administrators.



No matter what other purpose they serve, budget hearings are meetings about the budget the court has submitted. Budget hearings are typically held to provide agencies with an opportunity to present and defend their budget requests. The funding authority will schedule the hearings and invite the court to attend. Judges should attend the hearings along with the court administrator or other staff member assigned budget responsibilities. Depending (usually upon the size) on the county or city involved, this will be a hearing with the administrator, budget staff, and/or with the funding authority. Funding authorities decide who in the county or city is responsible for presenting the budget to them. Some funding authorities have the auditor present, others have an administrator present, and still others have the courts do it themselves.

Regardless of who presents the budget, the judge and his/her staff should be present in the event that there are questions or in case there is an opportunity for the judge to say something in defense of the court's budget. The physical presence of a judge should make a positive contribution to the budget hearings and promote trust between the courts and the local funding authority.

In anticipation of a budget hearing, judges should review court expenditures to identify any wasteful or underutilized areas, and should prepare for the inevitable probing by the funding authority on individual areas where the funding authority thinks the courts could conserve on expenditures. There are several areas that courts should review in advance of being asked, including jury costs, use of special project funds, use of indigent drives alcohol treatment funds, and any other funds, created by statute or court generated.

#### STEP FOUR: APPROPRIATION BUDGET (NOVEMBER 15)

***WORK OUT ANY DIFFERENCES BEFORE THE APPROPRIATION BUDGET IS ADOPTED. CONSIDER DISPUTE RESOLUTION SERVICES FOR RESOLVING ANY CONFLICTS.***

The appropriation budget is the amount of funds that the funding authority provides the court through its legislation. Soon after the budget hearings, the funding authority will hold meetings with their administrators and budget staff. The funding authority and/or the administrator will send each entity a proposed appropriation budget. This is when the courts learn whether their proposed budget will be adopted.

If a court does not receive the amount of funds it has requested, then judges and local funding authorities should think about mediating any funding disagreements. The first step should be for the judge to review the appropriation with the court's budget staff to determine whether the amount appropriated is sufficient for court operations. As soon as possible, the court should respond to the funding authority with regard to the whether the appropriation budget will meet the court's needs.

## STEP FIVE: BUDGET WORK SESSION (NOVEMBER 15-30)

Work sessions are designed to be more private and informal than a budget hearing. They are meetings to discuss the appropriation budget and to work out any differences of opinion between the courts and the funding authority with regard to what it will take to operate the court. Funding authorities typically provide an opportunity for the courts to schedule a work session on their budget if it is dissatisfied with the budget appropriation. When dissatisfied, judges should contact the funding authority and ask to meet with them for a work session. At the work session, the judge should explain the court's needs and ask that certain aspects of the budget be reconsidered and revised. In advance, judges may need to go through the court's budget to see if there is a way to lower the amount of the court's request. This will illustrate the court's willingness to cooperate. But ultimately the judge has the responsibility of operating a court and must request the funding that is needed.

It is best if these discussions are in person and under circumstances where the judge and funding authority can discuss issues openly and honestly. Judges should make sure that funding authorities are aware that judges must follow very strict, ethical guidelines (the Code of Judicial Conduct) that restrict judges in making policy decisions or setting fiscal priorities.

Funding authorities should recognize that judges have a constitutional responsibility to operate the court, and should make every reasonable effort to meet the funding demands of the court. Perhaps judges and their local funding authorities could discuss the feasibility of developing a long term funding strategy for projects where it is possible to be implemented in phases. Be creative. Funding authorities need to be sensitive to the fact that judges have to follow an ethical code of conduct. The funding authorities should not ask a judge to make policy recommendations. Discussion of any such matters should be open and candid, but so should discussions of what the ethical implications are for the judge and where the line is between what can and cannot be discussed.

## STEP SIX: DISPUTE RESOLUTION SERVICES

Dispute resolution services are available to both judges and funding authorities when one or both parties believe that there is a breakdown in communication or when disagreements over the budget are not easily resolvable. Depending on the outcome of the work session, you may want to consider contacting the Supreme Court of Ohio's [Dispute Resolution Section](#) to obtain help through a dispute resolution process. Judges have the authority to issue a writ of mandamus forcing the funding authority to fund a court at a "reasonable and necessary" level. But judges should realize that this step is a last resort. Try to reach an agreement with the funding authority through dispute resolution services.

It is in the interest of all parties to participate in a dispute resolution process when suggested by either. There are no winners in a legal battle that costs the funding authority legal fees and ends with citizens being irritated that the public officials were unable to resolve the conflict over the budget. Citizens expect government to operate smoothly and government officials to cooperate to insure the continued operation of their government.

## STEP SEVEN: APPROPRIATION RESOLUTION (DECEMBER 1-30)

An appropriation resolution is the budget that is officially adopted by the funding authority. The funding authority authorizes expenditures by line item. The appropriation resolution is the proper term for the “budget” that is established by the local funding authority. It provides the funding structure for all entities under the legislative authority's budget. If the resources contained in the certificate of estimated resources are sufficient to fund normal operations, many counties or cities will adopt a “permanent” appropriation for the next year as early as the beginning of December of the current year.

If circumstances exist that do not allow for adoption of a permanent appropriation sufficient to cover operations for the entire new year, such as expected revenues that cannot be guaranteed in time for inclusion in the certificate of estimated resources, a temporary appropriation resolution may be adopted. This allows the business of government to continue prior to the adoption of the permanent appropriation resolution and may cover any period of time beginning with January 1 of the new year through March 31.

A permanent appropriation resolution for the calendar year must be adopted by April 1. In some instances the budget staff will determine immediately after year's end what the beginning fund balance is for the new year. The fund balance will include any unencumbered amounts or amounts that were not committed to a previous obligation. Under these circumstances, the budget commission will issue an amended certificate of estimated resources early in January to reflect the revised totals available for appropriation. This new certificate is then used to support the adoption of a permanent appropriation resolution to replace the temporary appropriation resolution previously adopted or to adopt a supplemental appropriation resolution to fund requested expenditures not previously approved due to uncertainty regarding total funds available. ([ORC §5705.38](#))

## STEP EIGHT: WRIT OF MANDAMUS/CONTEMPT

***JUDGES SHOULD RESERVE THE WRIT OF MANDAMUS AND CONTEMPT ACTION FOR SITUATIONS WHERE THE REQUEST IS EXCEEDINGLY REASONABLE AND OVERWHELMINGLY NECESSARY AND ALL OTHER OPTIONS ARE EXHAUSTED.***

When all else fails and even an alternative dispute resolution method has not resolved budgetary conflicts, courts can journalize an amount that they believe is necessary and reasonable to operate the court. Typically this comes in the form of a journal entry from the court ordering the funding authority to pay the amount the court has budgeted as “reasonable and necessary” for the court’s operation. This is an inherent right that is derived from the separation of powers of the Ohio Constitution.

If the funding authority fails to honor the order, a local court may seek to enforce its budgetary order by either mandamus or contempt.

A petition for a writ of mandamus is an action in a higher court seeking an order that commands the performance of a particular act. If issued, the writ of mandamus would command the funding authority to fund the court’s budget request

An order of contempt is signed by the court requesting funds. It compels the funding agency to appear before the court to show cause why they should not be penalized for failing to provide the requested funds.

The remedies of mandamus or contempt are drastic ones, to be invoked only in extraordinary situations. These are steps of last resort, especially because they may leave an enduring and negative impact on the relationship between the court and the funding authority. Ultimately this could also impact public confidence in government.

If all else fails, the following is the framework for the litigation. Remember that the parties may agree to participate in dispute resolution services at any stage before, during or after litigation.

- Court submits a monetary request.
- Funding authority denies request.
- Court files a journal entry or an order requiring funding authority to comply with court's budget request.
- Funding authority fails to comply with the order.
- Court may file either a contempt action or a petition for a writ of mandamus.
  - Contempt. Funding authority will receive a court order to appear in the court to show cause why the funding authority should not be found in contempt. The funding authority must be given a hearing and has the burden of proving the court ordered funding is unreasonable and unnecessary. The funding authority has the right to appeal this decision to the court of appeals.
  - Writ of Mandamus. The court files a petition for a writ of mandamus in either the court of appeals or the Supreme Court. A municipal court may also file a petition in the common pleas court. An evidentiary hearing is held in the higher court. The funding authority must be given a hearing and must prove the court abused its discretion by ordering unreasonable and unnecessary funding.
- The funding authority may file a petition for a writ of prohibition in the appropriate higher court against the court's ordered budget. The funding authority has the burden of proving the order is for unreasonable and unnecessary funds.

## STEP NINE: EVALUATION OF EXPENDITURES AND PLANNING FOR THE NEXT YEAR

***THE BUDGET CYCLE IS LIKE A CIRCLE THAT HAS NO TRUE BEGINNING OR END. EACH BUDGET CYCLE IS THE FOUNDATION FOR THE NEXT.***

In January of the next year, courts will begin expending the funds that were appropriated in the last budget cycle. These actual expenditures will be matched against the planned expenditures and become part of the current year's tax budget. There really is no true beginning or end to the budget process. What is unexpended in one budget year becomes part of the revenue the county or city will use to support the budget needs during the next budget cycle. And on it goes.

## CHART OF THE BUDGET PROCESS

Practice	Role of Judge	Role of Funding Authority
Hire Budget Administrators	Ideally judges should hire a court administrator with the appropriate education and experience to help with budgeting responsibilities for the court. If this is not possible, the judge should assign budget responsibilities to someone on their staff who can be trained in budgeting.	Even if it means that several counties share the administrator, each county should have a county administrator, clerk, or a finance director who is responsible for budgeting.
Meet Regularly	Judges should meet regularly with their funding authorities. Judges and/or their court administrator should attend all events jointly. They should encourage the funding authority to plan such an event if the funding authority is not scheduling something regular, and judges should be among the first to share information about the court (problems that the court is having, new regulations or procedural safeguards that the court must implement and that may cost money).	The funding authority should meet regularly with the administrative judge. Funding authorities should develop a process that will work in their county to facilitate communication between the county commissioners and all the entities that are funded by the cc. Some counties hold a monthly meeting of elected officials, some distribute a monthly letter/memo/ or newsletter, some hold a monthly luncheon of elected officials.
Tax Budget	Judges should read the tax budget and be aware of the amount of tax revenue that will be available. Consider whether the revenue is more or less than previous years. Think about what impact this increase or decrease may have on funding for the court.	The funding authority should provide revenue forecasts and finalize the Tax Budget. This information/report should be distributed to all agencies funded by the county. This information should be accurate and an honest reflection of county revenue. The agencies should never fear that the county is secretly hiding or holding back money.
Initiate Budget Planning.	Administrative Judges should share this information with the other judges and consult with the other judges about what is going on in the court that may require new resources.	Funding authorities should initiate the budget process with all county or municipal agencies at around the same time every year. This should come in the form of a letter to all entities. The letter should include an honest description of the revenue situation.

Practice	Role of Judge	Role of Funding Authority
<p>Prepare and Review the Budget.</p>	<p>Court should take time to prepare a budget and a narrative that explains each line item; the narrative should explain why the budget amounts are necessary and reasonable, and particularly explain in detail any requested increase or decrease. This would include personnel expenses when an employee changes their health insurance coverage.</p> <p>The court should indicate that they are sensitive to any revenue constraints that the funding authorities have mentioned, and show how the courts are trying to cooperate.</p> <p>Line items should be dealt with in a priority way. For example, courts should list as a top priority any increases that are required by statute, or because of some arrangement (maintenance agreements). Then the court should list the discretionary increases, again in the form of higher priorities listed first and followed by lower priority items.</p> <p>The court may list long term projects and ask the funding authority to consider a down payment on these projects.</p> <p>Courts should pay particular attention to any unspent monies from the prior year and explain to the funding authority any why this money was unspent and any reasons why the courts may not be able to generate the same level of savings again. Explain why it would be unfair or counterproductive to penalize the courts for saving money in a given fiscal year.</p>	<p>Funding authorities should read the courts budget and narrative. They should give the court some feedback that will reassure the court that the funding authorities have read the narrative and appreciate the effort that went into creating the budget document.</p> <p>Funding authorities should find a way to reward carryovers and to protect the next budget from being automatically cut by the amount of the carryover. Also, the funding authority should be explicit as to its willingness to provide courts with full funding should they not be able to generate the same level of savings again.</p>

Practice	Role of Judge	Role of Funding Authority
Present a written budget.	Judges should find out who is responsible for presenting the court’s budget to the funding authority. The judge needs to see that the auditor, county administrator, mayor, or council member has the appropriate budget information.	Funding authorities should decide who in the county or city is responsible for presenting the budget to the funding authority (commissioners or city council members). Some funding authorities have the auditor present, others have a county administrator, clerk or finance director present, and still others have the agencies do it themselves.
Hold/Attend budget hearings.	<p>Judges need to attend the budget hearing along with their court administrator or finance director. The judge needs to be prepared to explain why any increase is needed, and any steps the judge has taken to keep the budget in line with available revenue.</p> <p>Judges should be prepared to answer questions about wasteful or underutilized areas like jury costs, use of special project funds, use of indigent drivers alcohol treatment funds, and any other funds created by statute or generated by the courts. A good outcome at a hearing would be for courts to show the funding authority that the courts are making efforts to conserve on expenditures.</p>	The funding authority should schedule and hold budget hearings.
Announcement of the appropriation budget.	Courts should find out when and how the appropriation budget will be announced by the funding authority.	The funding authority should announce the appropriation budget.
Prepare a response to the appropriation budget.	The courts should respond to any appropriation budget immediately, explaining the courts needs. You may need to go through your budget again and see if there is a way to lower the amount of your request to show you are trying to cooperate. But ultimately as judge you have the responsibility to operate your court. You must request what you believe is realistic to keep your court open and operating effectively.	Understand that the court has a constitutional responsibility and see if there is any way you can meet the funding demands of the court. Communicate with the court about whether you can accomplish some of the things needed over a longer period of time, or whether you can break some projects into phases and deal with an initial phase during this budget, with a promise to deal with phase two if there are additional tax revenues. Be creative.

Practice	Role of Judge	Role of Funding Authority
Discuss Conflicts.	Judges should express their concerns openly and meet face-to-face with the funding authorities. Judges should make sure that the funding authorities are aware that judges have very strict, ethical guidelines (the Code of Judicial Conduct) regarding judicial involvement in the policy process or in setting fiscal priorities.	Funding authorities need to be sensitive to the fact that judges have to follow an ethical code of conduct. The funding authorities should not ask a judge to make policy recommendations. Discussion of any such matters should be open and candid, but so should discussions of what the ethical implications are for the judge and where the line is between what can and cannot be discussed.
Mediate conflict.	Contact the Supreme Court of Ohio's Dispute Resolution Section to obtain dispute resolution services	Same.
Adopt appropriation Legislation		The funding authority should adopt appropriation legislation that authorizes expenditures by line item.
Respond to appropriation legislation.	Judges should discuss with their funding authority how they would like to receive the response to the appropriation legislation. Most funding authorities would prefer a letter indicating that the court and commissioners/mayors/city council members have talked and negotiated and reached agreement to XX budget amount. Some funding authorities would prefer that the final agreement be stated as a journal entry.	
Journalize	If disagreement remains, then court should journalize an amount that they believe is necessary and reasonable to operate the court.	The funding authority must decide whether to fund the court or to go to court.
Submit and evaluate expenditures.	Submit expenditure documents and evaluate for following year	Pay expenditures and evaluate for following year