

Our View: Courts and Clerks
Twelfth Circuit Chief Judge Lee E. Haworth
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Two bills introduced in this year's legislative session propose major changes in the relationship of the courts and clerks. HB 1121 sponsored by Representative Ellyn Bogdanoff (R) of Ft. Lauderdale and its companion in the Senate, SB 2108, filed by Senator Ken Pruitt (R), Port St. Lucie, have similar goals. Both change the way clerks account for their revenue and both seek to transfer court operations from clerks' offices to the state court system.

Whether this initiative proves successful or quixotic, it is important to understand why the attempt is being made. It is not because all clerks in the state are inefficient or doing a poor job. It is not because the Supreme Court is on a power grab. It is being driven by the stark reality that the state is suffering from a depressed economy, a time where every penny spent by state government has to be justified. This has inspired lawmakers to closely scrutinize how the judicial branch is being funded. In this effort no stone was left unturned. In the process, the sponsors of the legislation concluded the time has come for a seminal change in clerk-court operations and funding.

The Call for Legislative Oversight of Clerks' Budgets

Unlike state attorneys, public defenders, and the court, clerks' budgets are not appropriated by the legislature. The clerks will say they already have oversight. However, they report through the Department of Financial Services - not to the two chambers of the legislature, and their budgets are certified by a corporation made up of eight elected clerks and a staff of five - the Clerks of Court Operations Corporation. In other words, a nominally independent entity, but one affiliated with their clients, has the final say over their budgets. Certain legislators did not find this to be the best model for fiscal oversight. Transparency and consistency are the rationale for the legislative effort to bring all recipients of state funding under uniform legislative scrutiny, and there appears to be little justification for exempting the Clerks from this process.

Clerks Are Uniquely Exempt from Legislative Control of Their Budgets

Significantly, unlike the state attorneys, public defender, the judiciary, and every other state agency receiving state funds, clerks are free to establish the number of positions they have, set salaries, make salary adjustments, and grant bonuses to employees. They can also increase their budgets without legislative authorization within the bounds of their projected revenues. Contrast this with the rest of us who work in the judicial system, where every line item in our budget is reviewed annually and strictly controlled by the legislature. The legislature tells us how many judges, judicial assistants, magistrates, case managers, and court support staff each circuit can have. Although we often chafe under these limitations, during these difficult economic times it allows the legislature to effectively allocate limited resources.

According to Supreme Court figures, since Article V of the Florida Constitution was amended in 2004 to allow clerks to be self-funded, the existing statutory scheme has allowed the clerks' budgets to expand statewide by 33%, while state funding of the judiciary was limited to 13%. One consequence is that today Florida courts have contracted to the staffing level they had in **2004**.

Moreover, in fiscal year 2007 – 2008, at a time when all levels of state government were firing key employees and being forced to accept massive cutbacks, clerks around the state were adding staff, awarding pay increases and paying additional employee bonuses. The current model of funding allows them to be exempt from the painful cuts the legislature is required to make each year to balance the budget. At a time when every penny counts, the Supreme Court and the legislative sponsors contend everyone involved with the judicial system should be treated the same, and be subject to similar rules and fiscal restraints. Simply put, the clerks should be treated like anyone else who gets a state dollar.

Rationale for Consolidation of Court Services Under the Court

In the Twelfth Circuit there are three counties. Each county has an elected clerk. Each of the two larger clerks' offices (Manatee and Sarasota) have a department or staff allocated for human resources, accounting, legal services, jury summons and coordination, website development and maintenance, and information technology. They have upper and middle managers, counter personnel, and staff dedicated to case maintenance and support of judges in the courtroom.

There are obvious redundancies built into a multi-county circuit when it comes to supporting court operations. For the same reason a county might consider the financial advantages of consolidating municipal and county services, the sponsors of this new legislation see an opportunity for the state to make substantial savings by consolidating court-related services under one government entity. Conservative estimates based on the data available today indicate a savings of at least \$50 million.

It is not that clerks in our three counties are inefficient. They are not. We are blessed with exceptionally competent and innovative clerks in the Twelfth Circuit, although that is not necessarily the case throughout our state. The point is that if one were to combine the money the three are spending to achieve their efficiencies and run their court support services in the several counties, judicial operations circuit-wide could be operated much less expensively. This is the model of the federal courts and about 15 other states, and it has considerable appeal, particularly at a time when the state is in revenue freefall and can least afford duplication of services on such a massive statewide scale.

There are historical and political reasons, but no logical or legal reasons why court-related functions should not be under the supervision of the branch they serve, subject to such reporting and oversight requirements as may be established by general law. The legislature currently provides a check and balance on the court's use of state funds and it should continue to do so in the future. For their part, clerks perform other functions besides court-related services and these would continue under their direction with the new law.

The courts are cash cows. To illustrate, a couple of statistics need to be stated, using round numbers. The judicial system generates \$981 million for the state. This is comprised of filing fees, fines, court costs, and related user fees. Out of the \$981 million produced by the courts, less than 2.5% (\$24.2 million) is dedicated to the courts. The balance of the trial court's \$335 million budget is provided by the legislature from general revenue. Under the current model, the clerks keep about \$550 million of court generated funds.

As things now stand, the cash cow is being starved. The legislators sponsoring the new laws see the need to make a fundamental change to insure a reliable funding stream for the judicial branch and to stop the annual piling on of increased fines, court costs and user fees which have reached an oppressive level. This is consistent with Chief Justice Peggy Quince's call for reform of the funding streams to insure the continued viability of this vital branch of government. The judicial branch of government should have the authority to manage its internal operations, including those now provided by the clerks of court, so that a seamless, efficient system is developed to ensure the quality of court services throughout the state. We submit that an impartial assessment of the bills will lead to the conclusion that this is an initiative that should be supported.