

# VIEW FROM THE CHAIR

## Fair Funding for Courts

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The role of the lawyer and the organized bar is to protect and promote the rule of law. Goal IV of the ABA is to “Advance the Rule of Law,” which includes, among other things, working to “assure meaningful access to justice for all persons,” and to “preserve the independence of the legal profession and the judiciary.” In this issue of *The Brief*, Peter Bennett, a past chair of TIPS, notes that “[w]

TIPS website at <http://ambar.org/TIPScourt funding>. The toolkit we have assembled borrows from the work of a number of organizations, including the ABA Standing Committee on the American Judicial System, the National Center for State Courts, and the Defense Research Institute. It also includes a video that we put together to highlight the many problems created when courts are underfunded.



in California that reflect how the worst of the funding cuts hit the courts in that state.

Imagine you have been preparing a case for trial for a year or more. It is a relatively complex matter with a plaintiff and several defendants, plus at least a dozen experts, half-a-dozen fact witnesses, several damages witnesses, and a healthy pile of documents. Assuming you can get pretrial motions heard in advance and get jury instructions and exhibit lists exchanged and more or less agreed to in advance, you figure the trial will run maybe 12 to 15 full trial days from openings through closings, not including voir dire and jury selection.

Now imagine that because of competing criminal and civil dockets and funding issues, the trial court only has the means to let you present maybe four or five hours of evidence a day, and can only do that three days a week because the court's budget mandates no court on Wednesdays and allows for no trials on Fridays. Cases that should last a week or two would last for more than a month, and cases that should last a few weeks end up lasting months and months. This is not only cumbersome and expensive for your clients; it is also fundamentally unfair to those asked to serve as jurors for the trial. If you practice in a state like California,



## FAIR COURT FUNDING

ABA TORT TRIAL & INSURANCE PRACTICE SECTION

have little reason to exist as an association of lawyers and judges unless we dedicate ourselves to the rule of law and to upholding the principle that our courts be free to apply it fairly and impartially.” I agree. Our system of justice is worth little if our courts do not have the basic means to apply the law equitably and efficiently. This is a problem for our most vulnerable citizens, who look to the courts for protection, and for our economy, which requires a functioning judiciary in order to grow.

The court funding crisis, particularly in the state court system, is acute and has not abated even with the gradually improving economy. TIPS is the home for lawyers who try cases in state courts, so this year TIPS is launching a fair funding for courts initiative. The details and materials are available on the

I hope that you will take a few minutes to watch the video and review the materials.

For the video, we interviewed practicing lawyers, retired judges, and court administrators in an effort to vividly illustrate the scope of the funding crisis. We intend to introduce the video at the beginning of each TIPS meeting this year and at meetings of other bar associations that are interested in using it. The idea is to put a human face on the issue and to encourage lawyers to initiate grassroots lobbying efforts within their own jurisdictions. Among the stories included in the video is one about a client who could not get a child custody agreement amended for more than three months and lost an out-of-state job opportunity as a result. Other stories include descriptions of trials

you don't have to imagine any of this. In states like California, this is reality.

The costs to individuals and businesses trying to get disputes resolved in an underfunded court system are substantial, whereas in comparison, the costs to adequately fund court operations are far less. In August 2013, the ABA House of Delegates adopted Resolution 10C urging "all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding." Resolution 10C incorporates the National Center for State Courts' *Principles for Judicial Administration*, which provides a roadmap to restructure court services to make them more efficient. Still, the courts in most states operate on a fraction of the overall government budget. Typically, the court system consumes

only 1–3 percent of a state's overall budget. Yes, there continue to be many demands made on government budgets, but unlike the functions of other agencies, the core functions of our courts are constitutionally or statutorily mandated. The work of the courts cannot simply be eliminated or postponed like road repairs.

The ABA has a unique ability and unique responsibility to speak up on behalf of the judges and courts to make sure that one-third of our coequal branch system of government is funded at a level where it can function properly for everyone. Fair court funding is a core issue for all TIPS members and for the ABA as a whole. If businesses cannot get disputes promptly resolved, or if ordinary citizens with catastrophic injuries, domestic relations, or child custody issues cannot get

the assistance they need in a timely manner, the perception of our justice system will erode, the perception of the legal profession will be dragged down with it, and businesses and individuals will be left with little choice but to find what alternate means of resolving disputes they can. This will affect us all as the need for lawyers will drop when people, businesses, and organizations abandon the civil justice system for some other method of dispute resolution.

I hope you will join us in working for fair funding of our court system. The courts are where TIPS members ply our trade. We are courts' principal constituents. If the lawyers and the bar associations do not speak up on behalf of the courts and become the custodians of this issue, no one else will. ■