



Why We Do the Things We Do

Court Funding and Law Practice

By Steven D. Capps

The state pays judicial salaries while local funding units, such as county or municipal governments, pay for judicial benefits, staff, and facilities. These local funding units pay for courts through tax revenue. Courts may also collect fines, fees, costs, and other assessments, some of which remain local and can be used to fund the courts, but many of which go to other state or local agencies.

In addition, courts receive a significant amount of funding from state and federal programs. Unlike assessments imposed by the courts as part of a judicial proceeding, state and federal funding is often tied to court administrative or support functions. While state and federal funding do not impact a court's deliberative

functions, they do affect court procedures and frequently determine which services are available to implement court orders.

As local funding units are challenged to find adequate resources to support their mandated functions and as courts attempt to maximize funds, attorneys will see subtle changes in their law practices. The following is a discussion of the major funding sources and their impact on court administration and law practices.

Title IV

Title IV of the Social Security Act is one of the primary sources of federal funding.¹ Title IV-D² is the federal child-support program.

FAST FACTS:

- Local funding units are being challenged to find resources to support mandated functions. As courts attempt to maximize funds, attorneys will see subtle changes in their law practices.
- Title IV of the Social Security Act is one of the primary sources of federal funding.
- Many courts are creating specialized dockets to address problems in their communities. State and federal grants fund these dockets.

Title IV-E³ is the federal foster-care program. Each of these programs significantly influences court procedures.

Title IV-D

Title IV-D reimburses 66 percent of the amount a county spends for its prosecuting attorney to establish child support and for the friend of the court (FOC) office to enforce child support and review support orders.⁴ Thus, a county that funds a local FOC office will be reimbursed \$2 of every \$3 it spends to make child-support recommendations and enforce the court's child-support orders.

But this reimbursement has strings attached. The federal government will reimburse child-support-related expenses only when the court's practices meet federal requirements. Most of these federal requirements are codified in state statutes that regulate the FOC's child-support activities. Some requirements even regulate what judges must do. For instance, because of federal requirements, Michigan adopted a child-support formula and made it presumptive of the correct support amount. A judge who rules in a child-support matter is required to order support pursuant to the formula or else explain on the record or in the order why the formula amount is unjust or inappropriate. Thus, even when the parties agree to a different amount, their attorneys have to present additional information to justify the reason for deviating from the formula.

Other federal requirements mandate that child-support orders have specific clauses, even though many attorneys would not typically choose to include those clauses in their orders. Effective January 1, 2006, the Michigan Supreme Court amended MCR 3.211 to require that all judgments involving child support be entered on a uniform support order approved by the State Court Administrative Office.⁵ The purpose of this rule is to ensure that the language required by state and federal laws appears in all child-support orders.

Title IV-D funding may also determine whether a hearing is initially held before a judge or a domestic relations referee. Many lawyers practice in circuit courts that have domestic relations referees who hear matters involving children. Some of those circuits have referees solely because Title IV-D money is available to fund them. In certain circuits, referees hear most matters in-

volving children, including custody and parenting time, while in other circuits the referee is limited to hearing only child-support issues for which federal funding is available.

Title IV-E

Title IV-E of the Social Security Act governs abuse, neglect, and some delinquency cases. Title IV-E funds most of a child's out-of-home placement in many abuse and neglect cases and in certain delinquency matters.⁶ The state picks up the balance of the costs in IV-E cases. In the absence of federal funding, the county and state each pay one-half the cost of care for a child placed outside the home.

To qualify for Title IV-E federal funding for a child's placement, the court must make specific findings at the time it authorizes the child's removal. For example, the court must find that it is contrary to the welfare of the child to remain in the home and that the Department of Human Services (DHS) has made reasonable efforts to prevent removing the child. Further, no federal funding is available unless the court orders that DHS is responsible for the child's care and custody. While such findings are important to a child-welfare case notwithstanding the funding implications, they significantly affect a county's ability to pay for services for those children who are under the court's jurisdiction. When federal funding is available for placing the child, the federal government will also reimburse other services, such as counseling for the child. To ensure that courts make the required findings to qualify the case for federal funding, the State Court Administrative Office has developed standard forms to prompt courts and attorneys to address the facts inherent to those findings.

Attorneys often find that judges insist on very specific language in their orders to avoid any uncertainty about whether they have made the required findings. Further, attorneys may wonder why some judges insist that orders in delinquency matters use language indicating that reasonable efforts have been made to prevent the child's removal and that it is contrary to the welfare of the child to remain in the home. These findings anticipate the possibility that the child's family may change after the child is removed from the home and in a way that prevents the child from returning home at the end of the detention. If the court did

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not make the proper findings at the first detention removal, federal funding might never be available to help offset the future costs of the child's care outside the home.

Specialized Dockets

An increasing number of courts are creating specialized dockets to address problems in their communities. State and federal grants are used to fund the specialized dockets. These grants have requirements that determine how courts' dockets operate and which services are available to address community problems.

For instance, the United States Department of Justice provides grants to plan and implement a variety of drug treatment courts.⁷ These grants limit eligibility—for example, to only nonviolent offenders—and influence some of the court's procedures in the case.

The Veterans Administration also provides services to veterans suffering from drug or mental health problems. Because services are available, some courts have established separate criminal dockets for veterans that allow the courts to require treatment as part of a sentence.⁸ These "veterans' treatment courts" monitor veterans' treatment and recovery. The courts make appropriate adjustments in their orders based on the individual's progress. Similarly, the state and federal governments have offered grant funding to establish mental health courts.⁹ These courts provide mental health services to individuals who have been charged with criminal offenses and would be at risk to recidivate without them.

Attorneys practicing in jurisdictions that have taken advantage of these treatment opportunities will have different plea and sentencing options for their clients than those practicing in courts without special dockets.

Other Programs

Periodically, courts will pilot new programs using grant funding from various sources.¹⁰

In recent years, Genesee, Grand Traverse, and Kent counties used Interest on Lawyer Trust Account (IOLTA) funding to estab-

lish pilot programs for child-support specialty courts. These courts created special dockets to test whether offering job and other skills-based training combined with intensive judicial oversight would improve child-support collections. In Genesee County, the court used federal grant funding to enhance its IOLTA-funded docket to provide a range of services to increase fathers' involvement with their children in paternity and family-support cases. The grant will test whether increasing the fathers' involvement (including creating a greater degree of cooperation between a mother and father) improves child-support collections and reduces conflict later in the case.

Kent County also created another specialized docket using federal grant funds that tests whether a family's overall health and well-being can be enhanced through money-management education, jobs training, and asset-building skills. As with other specialty courts, this project involves intensive judicial supervision in child-support cases.

Maximizing Funds

As local funding units are increasingly challenged to find adequate resources to pay for court functions, courts will continue to experiment with new programs and leverage state and federal funding for existing programs to deliver effective and efficient judicial services. While these efforts will affect how attorneys practice law, they will also afford vigilant attorneys with alternative solutions to their clients' problems and open up new opportunities to reinvent the way we do the things we do. ■



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FOOTNOTES

1. See 42 USC 601 *et seq.*
2. 42 USC 651 through 42 USC 669b.
3. 42 USC 670 through 42 USC 679c.
4. See 42 USC 655(a)(1).
5. MCR 3.211(D).
6. 42 USC 674.
7. Press Release, US Department of Justice, *Bureau of Justice Assistance Provides \$27 million to Drug Courts and Mental Health Programs* (October 4, 2012), available at <https://www.bja.gov/Funding/DrugCt_JMHCP_Release.pdf>.
8. Michigan Courts Trial Court Administration, *Problem-Solving Courts: Veterans Treatment Court* <<http://courts.michigan.gov/Administration/admin/op/problem-solving-courts/Pages/Veterans-Treatment-Court.aspx>>.
9. Michigan Courts Trial Court Administration, *Problem-Solving Courts: Mental Health Court* <<http://courts.michigan.gov/administration/admin/op/problem-solving-courts/pages/mental-health-court.aspx>>.
10. See Michigan Courts Trial Court Administration, *Problem-Solving Courts: Other Problem-Solving Courts* <<http://courts.michigan.gov/administration/admin/op/problem-solving-courts/pages/other-problem-solving-courts.aspx>>.

