

2010 Legislative outlook: Budget battle imperils Clerks offices statewide

A state court system "under duress" from last year's reduced budget, diminished staffing and rising caseloads driven by a record number of mortgage foreclosures. A group of 67 Clerks statewide forced by legislative decision to lay off up to 1300 employees, close branch offices, cancel customer services and force thousands of remaining employees to take unpaid furlough days, while facing an unprecedented workload, fed by the staggering number of foreclosure cases pouring into their offices. As if the results of the 2009 budget reductions were not dramatic enough, Clerks face additional challenges as lawmakers try to bridge the gap between available funds and funding needs, bearing in mind that their decisions must not violate citizens' constitutional right of access to the courts.

Last year, the Legislature raised the filing fee on a graduated scale for mortgage foreclosures—from \$400 to over \$1900 for a foreclosure filing on a property with a value of over \$250,000—creating a new funding stream for the Courts. There is currently a surplus in the state courts' trust fund, since the money in that fund is as a result of the increased filing fees from mortgage foreclosures. Those funds have not been designated, and banking institutions are lobbying the legislature to allow it to be used to assist them in moving foreclosures through the system quicker.

As of this moment, there is no guarantee from the State Legislature that the surplus derived from filing fees will be available to the court or the Clerk, to offset the volume caused by mortgage foreclosures. That being the case, the Clerk will continue to struggle with extraordinary volume and less financial resources to address the needs of the people.

Last year's legislation not only had negative fiscal impact on available revenues for Clerks, but it also brought administrative issues that actually caused unnecessary expenses. Clerks statewide are requesting the Legislature agree to four "fixes" to last year's legislation:

1. Exempt Clerks from paying 8 % service charge to the Department of Revenue for the collection of fines and fees. The Clerk actually collects the fees and fines, and should not be required to pay a service fee to another state agency. This amounts to about 35 million dollars per year.
2. Return the Clerks to the county fiscal year, rather than the bifurcated fiscal year system that was created and implemented during the 2009 Legislative Session.
3. Change the efficiency measurement to a work load based measure rather than a unit cost measure.
4. Eliminate clerk budgets from being adjusted quarterly based upon previous quarter fluctuation in workload.

Both the Clerks of Court and the Judiciary are in support of these four changes, and have approached the Legislature jointly in an effort to result in this year's legislation being an improvement over 2009. We will know more in months to come. As always, the Clerk appreciates the support of the Bar Association, and will continue to work with the legal community as a partner, as we navigate through these tough times. ###