


David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner
Janese Chapman
Deputy Director

John Alexander
LaKisha Barclift, Esq.
Nur Barre
M. Rory Bolger, Ph.D.,
FAICP
Elizabeth Cabot, Esq.
Tasha Cowan
George Etheridge

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Christopher Gulock,
AICP
Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Anne Marie Langan
Jamie Murphy
Kim Newby
Analine Powers, Ph.D.
Jennifer Reinhardt
Rebecca Savage
Sabrina Shockley
Thomas Stephens, Esq.
David Teeter
Theresa Thomas
Kathryn L. Underwood,

TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: January 24, 2022

RE: **36th DISTRICT COURT RELATIONSHIP**

The Legislative Policy Division (LPD) and the Office of the Chief Financial Officer (OCFO) have been requested by Council Member Scott Benson to provide a report regarding the current legal and financial relationship between the 36th District Court and the City of Detroit. LPD has provided to the best of its ability information it is able to ascertain to address the questions presented by Councilman Benson. We hope that the OCFO will be able to provide additional information to address any remaining concerns.

1. What are our responsibilities, both financially and administratively, as set out by ordinance, state law, federal law and any written agreements between the entities?

In general, the judiciary of the State of Michigan is governed by the Michigan Constitution and the relative statutes thereunder. Article VI § 1 Judicial power in court of justice; divisions, provides

Sec. 1.

Except to the extent limited or abrogated by article IV, section 6, or article V, section 2, the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

The 36th District Court is a court of limited jurisdiction established by the legislature. The obligation of the City of Detroit to provide funding to the 36th District Court is set forth in the Revised Judicature Act, MCL 600.8104(1)

The term "district funding unit" or "district control unit" means:

- (a) The county in districts of the first and second class.
- (b) The city or the township in districts of the third class except as provided in subdivision (c).
- (c) The city or the incorporated village in districts of the third class in which portions of 2 townships comprise an incorporated village.

MCL 600.8104(2)

Except as otherwise provided in this act, a district funding unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision.

These two statutory provisions provide that the City of Detroit is a third-class district funding unit responsible for maintaining, financing, and operating the only district court within its political subdivision, the 36th District Court¹. Having the aforementioned responsibility, the City of Detroit is subject to MCL 600.8271 which provides:

Sec. 8271.

- (1) The governing body of each district funding unit shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in that district. However, before a governing body of a district funding unit may appropriate a lump-sum budget, the chief judge of the judicial district shall submit to the governing body of the district funding unit a budget request in line-item form with appropriate detail. A court that receives a line-item budget shall not exceed a line-item appropriation or transfer funds between line items without the prior approval of the governing body. A court that receives a lump-sum budget shall not exceed that budget without the prior approval of the governing body.

As set forth under the statute, the City shall provide a line-item or lump sum budget appropriation to finance, manage and operate the 36th District Court. This budget appropriation is

¹ LPD notes that prior to the Passage of Public Act 374 of 1996 which reorganized the Detroit's Recorders Court and established the 36th District Court was challenged by the City of Detroit in *Judicial Attorney's Association v State of Michigan*, 460 Mich 590, 597 N.W.2d 113 (1999) arguing the state law created an unfunded mandate violating the Michigan Constitution's Headlee Amendment. The Court held that the Act did not violate the Constitutional Headlee provision prohibiting the State from enacting a new unfunded mandate upon a local unit because prior to the Headlee Amendment passage the Revised Judicature Act required district court funding to be provided by the local unit in the district. Therefore, the establishment of the local unit funding (City of Detroit) of the 36th District was not a new mandate, but one established prior to Headlee for all district courts.

determined after the Chief Judge of the Court's submission of a budget request. The amount appropriated by the City shall not be exceeded by the District Court.²

With regard to any contractual obligations between the City and 36th District Court, no contract can be entered into that would alter the City's duty to provide appropriate funding. In *46th Circuit Trial Court v Crawford County*, 476 Mich 131 719 N.W. 2d 553 (2006) the Court indicated that a local unit's duty to cannot be altered by contract stating:

In summary, a county board's duty to appropriate funds to the judiciary arises from the Constitution. Because a county has a preexisting duty to fund its trial courts, a county cannot enter into a contract with the Trial Court to fund the enhanced benefits plan at a specific level. Id at 159.

The City may have contracts with third party entities to provide services to the 36th District Court, to meet its preexisting obligations. However, the City cannot contract with the Court to provide what is required due to the preexisting duty the City has to fund the court. The contract with Jones Lang LaSalle Americas, Inc. (JLL) to provide day-to-day operation, maintenance and management of 36th District Court is a contract between the City and JLL. The City as part of its statutory obligation of maintaining, financing, and operating the Court is seeking to obtain the services of JLL to fulfill part of that obligation.³

2. Are we complying with state law or providing services beyond that requirement?

Having the statutory responsibility of maintaining, financing, and operating the 36th District Court, the underlying question then becomes, what amount of appropriation is necessary to be provided to the district court. In addressing a similar issue with regard to funding the 3rd Circuit Court, in *Calahan v Wayne County Board of Commissioners*, 93 Mich. App 114, 286 N.W. 2d 62 (1979), the court held:

² LPD notes that the judges salaries are paid by the State pursuant to MCL 600.8202(3) which provides: (3) Each district judge shall receive an annual salary calculated as follows: (a) A minimum annual salary payable by the state that is equal to the difference between 84% of the salary of a justice of the supreme court as of December 31, 2015 and \$45,724.00. (b) In addition to the amount calculated under subdivision (a), a salary of \$45,724.00 from the district funding unit or units as provided in subsection (2). If a district judge receives a total additional salary of \$45,724.00 from the district funding unit or units and receives neither less than nor more than \$45,724.00, including any cost-of-living allowance, the state shall reimburse the district funding unit or units the amount that the unit or units have paid to the judge. Additionally, pursuant to MCL 600.8271(2): The district funding unit is the employer of the locally-funded employees of the district court in that district, except as provided in subsections (3) and (4). Also, MCL 600.8271(5) provides: The employer of locally-funded employees of the district court, in concurrence with the chief judge of the district court, has the following authority: (a) To establish personnel policies and procedures, including, but not limited to, policies and procedures relating to compensation, fringe benefits, pensions, holidays, leave, work schedules, discipline, grievances, personnel records, probation, and hiring and termination practices. (b) To make and enter into collective bargaining agreements with representatives of the locally-funded employees of the district court.

³ LPD has reached out to the Law Department to ascertain whether there are any written agreements between the City and 36th District Court and is awaiting their reply.

A serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute. Id at 124

The “serviceable” amount of funding standard was further acknowledged by the Michigan Supreme Court in, which held:

An appropriation is “necessary” when it is sought by the court to address a “critical judicial need[]” that affects that court's ability to function “serviceably” in carrying out its constitutional responsibilities. *Wayne Co. I, supra at 33–34, 172 N.W.2d 436*. A “serviceable” level of funding is “the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled.” *Wayne Co. Prosecutor, supra at 124, 286 N.W.2d 62*. “A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out.” Id at 149 -150.

The Courts have determined the district unit (City) is constitutionally and statutorily required to provide what is “necessary” to allow the district court the ability to function “serviceably” in carrying out its constitutional responsibilities. The method used to obtain that level of funding was outlined in *Crawford County (supra)*. The Court expressed the method in which the trial court is to submit its request for appropriations as outlined in the Michigan Supreme Court’s Administrative Order.

Administrative Order No.1998–5, 459 Mich. clxxvi-clxxvii, provides in pertinent part:

A court must submit its proposed and appropriated annual budget and subsequent modifications to the State Court Administrator at the time of submission to or receipt from the local funding unit or units. The budget submitted must be in conformity with a uniform chart of accounts. If the local funding unit requests that a proposed budget be submitted in line-item detail, the chief judge must comply with the request.... A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees....

* * *

If, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed. Id at 156.

If the 36th District Court believes the amount of funding is insufficient to meet the necessary and serviceable level to perform its constitutional obligations, it may seek additional funds from the City or take legal action for additional funds if necessary.

The OCFO may be able to provide additional information regarding the amount of funding being provided by the City and whether it is beyond what is required.

3. What is the annual revenue generated by the 36th District Court and do those revenues go to the general fund?

According to the City of Detroit's Fiscal Year 2022-2025 Four -Year Financial Plan, Budget Summary, the budget numbers for 36th District Court showed the actual revenue generated for the 2020 fiscal year the amount of revenue generated was \$17,091,857.

The adopted projected revenue generated for 2021 was \$23,060,000.

The adopted projected revenue generated for 2022 is \$18,287,000.

4. What are the annual expenses of the court and are expenses paid out of the general fund?

According to the City of Detroit's Fiscal Year 2022-2025 Four -Year Financial Plan, Budget Summary, the budget numbers for 36th District Court showed the actual expenditures for the 2020 fiscal year the amount of revenue generated was \$28,099,686.

The adopted projected expenditure for 2021 was \$30,418,984.

The adopted projected revenue generated for 2022 is \$31,061,795.

According to the City of Detroit's Fiscal Year 2022-2025 Four -Year Financial Plan, Budget Summary, the cost to the City's general fund in appropriating funding for the 36th District Court for 2020 was \$11,007,830.

The cost to the City's general fund for the 36th District Court for 2021 was projected to be \$7,358,984.

The projected cost to the City's general fund for 2022 is projected to be \$12,774,795.

5. Does Detroit receive any state, federal or grant funding to support the operations and management of the 36th District Court?

LPD is not aware of any grants received by the City to support operations and management of the 36th District Court. The OCFO may have information related to this question. LPD has identified a number of grants that are available to the court that may already be currently utilized. These include but are not limited to:

State Court Administrative Office (SCAO) Grants

- Office of Highway Safety Planning: Funding assistance for planning and implementation grants for new or expanding driving while intoxicated treatment courts.

- Federal Office of Highway Safety Planning and Regional DWI Regional Court Grant Program: Provides assistance for planning and implementation grants for new or expanding Regional Driving while Intoxicated courts.
- Michigan Drug Treatment Court Program: SCAO provides funding assistance for drug courts through its Michigan Drug Court Program.
- Michigan Mental Health Court Grant Program Planning Grant: Assistance for planning and operation of mental health courts.
- Michigan Veterans Treatment Court Program: Provides funding assistance for veteran treatment courts.

6. What is the City’s role in approving/managing the budget set by the 36th District Court Chief Judge?

The City Council like 36th District Court has constitutional authority and obligations as the legislative body of the City in determining the operating budget and appropriations that are “necessary” and “serviceable” for the 36th District Court to carry out its constitutional duties as part of the judiciary. Under the Administrative Order No.1998–5 (see above), the 36th District Court Chief Judge is to submit to the City its proposed budget as set forth under the Order. It is then the City Council’s authority to determine what that budget appropriation shall be. The Michigan Supreme Court in *Crawford County* stated:

[e]ach branch of government is empowered to carry out the entirety of its constitutional powers, and only these powers, it is also implicit that each branch must be allowed adequate resources to carry out its powers. Although the allocation of resources through the appropriations and taxing authorities lies at the heart of the *legislative* power, and thus belongs to the legislative branch, in those rare instances in which the legislature's allocation of resources impacts the ability of the judicial branch to carry out its constitutional responsibilities, what is otherwise exclusively a part of the legislative power becomes, to that extent, a part of the judicial power. *Id* at 142.

The Michigan Legislature created the Trial Court Funding Commission (TCFC), through Act 65 of 2017, to review Michigan’s trial court funding system and make recommendations⁴. The TCFC indicates that the current manner of the trial court Chief Judge making budget decisions as follows:

Discretion over the administration of the court will remain with the chief judge in conjunction with the normal budgetary appropriation process that occurs with the local funding unit. These officials are best positioned to respond to their community’s needs.

The funding of the trial courts go beyond the financial and operational aspects of the court. It also has a direct impact on the delivery and administration of justice. The issue is how the City and the 36th District Court strike the right balance of funding that allows the court to properly function and administer equal justice under law.

⁴ The Trial Court Funding Commission’s report can be found at [Trial Court Funding Commission Final Report \(michigan.gov\)](https://www.michigan.gov/tcfc).

7. Is there a best practice model for the financial operation of a local district court?

As previously indicated above, the managing, financing and operational funding of districts courts in Michigan are required by statute under the Revised Judicature Act. That being the case the practice of funding the judicial system is a matter of the State. The State of Michigan established the Trial Court Funding Commission (TCFC) to examine the methodology of funding trial courts and provide recommendations to the State. In their examination it was determined the best practices for funding trial courts were identified. According to the TCFC:

Minnesota was identified as a best practice based on its effective transition into a unified court funding system. Minnesota's judicial branch went through a decade-long transition process to a unified state system and has been state funded for 13 years. Minnesota's counties typically are responsible for building and security costs. Other incurred expenses are negotiated with the state.

Arizona was also identified as a best practice even though their court system is not as centralized as Minnesota's. Arizona's trial court system has a hybrid funding system, where its strengths are court order enforcement and a centralized collections program. In addition, the roles and responsibilities of municipal court governance are clearly communicated within that model.

Based upon the information obtain during their examination, TCFC made the following recommendations for the Governor, Michigan Legislature, and the Michigan Supreme Court to consider.

Recommendation One: Establish a Stable Court Funding System

A balanced state and local partnership is necessary to ensure that Michigan's residents have equal access to justice. To fulfill this responsibility, the state must create the Trial Court Fund for receipt of all trial court assessments and state general fund payments. The Trial Court Fund must then distribute appropriate monies to fund trial courts based on operational requirements. Decisions about local trial court operations must remain local.

Recommendation Two: Provide All Court Technology Needs

The State of Michigan must make available and fund all of the technology needs of the courts, including case and document management services, and also supply and manage technology products and services for all courts, including hardware, software, infrastructure, training, and ongoing technology support. The State will bear the cost of all technology it provides and create a uniform system throughout Michigan.

Recommendation Three: Establish Uniform Assessments and Centralized Collections

The State Court Administrative Office (SCAO) must establish a system of uniform assessments and centralized collections to be implemented for all trial courts. This system will maintain judicial discretion for ordering fines within the

limits set by law and determination of ability to pay. Centralization of some court business functions will reduce cost overall, promote efficiency, and eliminate the ethical dilemma of trial court judges being incentivized to maximize revenue from court users for budget support. Centralizing court collections will achieve greater efficiency and achieve a higher level of uniform customer service.

Recommendation Four: Move Toward a Uniform Employment System

There are inefficiencies and inequality in the current payment system for trial court judges' salaries and benefits. The State pays these judicial salaries in part directly and in part by reimbursement to local government. Benefits are paid through local government and vary widely. Making the trial court judges direct employees of the state eliminates issues of dual employment and allows all trial court judges to be treated equally in salaries and fringe and retirement benefits, while removing a considerable cost burden from local governments' budgets. Referees and magistrates should also become state employees to allow for common training, easier coordination, and for potential synergies. Over time, state and local governments should consider working together to transition other court personnel into state employment while being respectful of existing bargaining units and labor agreements.

Recommendation Five: Establish a Transition Plan for the New Court Funding Model

In order to implement a new court funding model, there must be a plan for the systematic transition of finances and the promotion of funding sustainability. Success will depend on thoughtful planning and a phased implementation over a period of years. A task force, led by the SCAO, must be created to develop a plan for transition to the new trial court funding model, which must include a timeline for short-term, intermediate, and long-term objectives and milestones to be achieved. The transition plan must also include technical assistance and funding for local units of government for any shortfall in operating funds Trial Court Funding Commission Final Report 6 due to implementation. Once the model is implemented, a Michigan Judicial Council must be established to exercise administrative policymaking authority to ensure continued progress toward a unified Michigan court system. With the implementation of these recommendations, we will lead Michigan's court system well into the future. This new trial court system will eliminate real or perceived conflict of interests, ensure adequate funding and guarantees access to justice.

If we can be of further assistance, please feel free to call upon us.