

Civil Court Costs

in the

District Courts

by:

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COMMENTS AND RECOMMENDATIONS

Each district court, parish clerk of court and sheriff operates independently of its peers, as well as from the local parish government although the parish government is often a major funding source. Each is basically answerable only to themselves. There is no general oversight agency to monitor their management, the level and types of fees charged and the way finances are budgeted. Moreover, there is no one agency or statewide organization that looks at the entire financial picture on a systematic basis, or identifies problem areas and solutions. For example, no other governmental entity has approval or veto power over the budgets of the clerk of court, judicial expense fund, and sheriff. The only significant influence exercised is through the Legislature's power to enact laws affecting these offices. Some clerks have maintained that the Legislative Auditor acts as an oversight agency but this is not the case. Most, if not all, audits of the clerk of court offices are done by a private firm and simply filed with the Legislative Auditor's office. The sparsity of statewide information, and difficulties involved in obtaining any information, on the courts and court-related agencies further points out their independence.

Uncertainty over court costs is causing problems for attorneys in client relations. The attorney cannot give a definitive answer to how much an action will cost and often has to request more money from the client because court costs increased or the advance deposit was too low an amount to cover the actual costs. (It should be noted that this could also occur in cases where the attorney could not estimate the actions that will be required in the case.)

The imposition of seemingly endless fees at every step of the judicial process is overwhelming and appears out of control.

The lack of uniformity in court costs makes it difficult to address

problem areas on a statewide, systematic basis. It also leads to confusion in out-of-parish filings. From a financial viewpoint, equal access to the courts may not occur as it costs more to file certain actions in one parish than in another. As an example, in 1991 one attorney had a choice of filing a lawsuit in the parish where the accident occurred or the parish where the insurance corporation was domiciled. He had to have two long-arm statute services made, along with other services. He and his client chose the latter parish "even though this was a little less convenient" as the clerk in the latter parish "wanted approximately \$200.00" while the other clerk of court "wanted \$385.00" for the same suit. Any logical need to vary court costs from parish to parish is not readily apparent.

The costs associated with jury trials vary considerably from parish to parish. Considerable variation particularly appears to exist in the advance deposit amount required, bond for a jury trial, level of the actual court costs cast, and the costs arising from selection and service of jurors.

Civil court costs are limiting access to the courts and use of judicial remedies by business. It is not cost effective for a business to pursue collection of a debt through the judicial system when the court costs substantially reduce the net amount to be gained, or exceed it. Because only an individual can qualify for pauper status, and thus avoid court costs at least in advance, businesses may be increasingly forced to bear a greater burden of civil court charges as pauper cases grow.

Court access may also be developing into a problem for middle income individuals who may not have large amounts of cash reserves available.

Since government litigants do not really have to concern themselves with court costs, there is little incentive for them to consider how cost effective pursuing an action through the judicial system really is.

Civil court fees have been imposed by statute to fund certain specific expenditures, to offset the shortfall created by litigation filed by the state and local governments in which court costs are not paid, to supplement the financing in some parishes of clerk of court and judicial activities related to criminal cases, and to subsidize pauper suits.

Numerous state and local agencies are receiving funding through application of court costs, i.e., Secretary of State, the state insurance department and two parish governments. Sheriffs benefit considerably from their share of civil court charges. The clerk of court often bears the brunt of disgruntlement over increases related to these officials' fees because he collects the fees for them.

It should be noted that according to the Louisiana Clerks of Court Association, some clerks are trying to standardize and make more uniform the court costs imposed and the actions subject to those costs, particularly on a regional or multi-parish basis.

The following recommendations could be implemented independently of each other. The focus of these recommendations is on the financing of the courts and related agencies and not court operations, in particular not caseload management. They are based on the finding of this study, national standards and trends, and various other studies of the Louisiana judicial system.

Recommendations

1. The state should develop a plan to phase in total state funding of the district courts. This plan should include attention to financial management, staffing levels, the appropriate level of spending, and workload levels of district judges.
2. A statewide standard should be set, either by law or supreme court rule, that determines pauper status.
3. A system should be developed and followed for collecting court costs owed by indigent litigants in later years as their financial situation changes.
4. Alternatives to personal service by a sheriff, such as by certified mail and private servers, should be utilized where possible. Charges by sheriffs should be standardized statewide and double-dipping through double charging of mileage should be banned. Any charges by the sheriff should not exceed the actual cost of providing a given service in the most economical manner.
5. Governmental entities should be required to pay an advance deposit when filing a civil suit and to pay any court costs cast against them.
6. Louisiana's step fee schedule should be replaced with standard one-time flat or fixed fees for categories of suits and uniform statewide court costs and advance deposits adopted at a level recommended by the Louisiana Supreme Court (or a group designated by it) and based primarily on principles of justice. These should be annually reviewed and any necessary changes recommended to the Legislature.
7. No advance deposit or fee should be charged to a plaintiff to answer a suit filed against him.
8. All surcharges on civil suits should be eliminated and prohibited, including such surcharges as those levied by St. Tammany and St. Landry parishes.

9. Charges by court personnel, such as court reporters, should be standardized.

10. Attorneys should make clear to their clients that if they file as a pauper they are still responsible for payment of costs if they are cast with costs.

11. Clerks of Court and district courts should be required to utilize a uniform system of financial record keeping or accounting such that records are maintained and readily accessible on all monies collected and disbursed. Additionally, each district court should be required to have a budget reflecting total income and expenditures of the court. The long range goal should be established of a fully integrated accounting system for the judicial branch.

12. Additional study is needed regarding jury trials, with particular emphasis on costs related to jury commissions, selection and empaneling.

13. The state should eventually assume its constitutional responsibility for the funding of the entire judicial system. Further study of the entire state court system and related officials and agencies will be needed to determine the best structure and financing methods that will make the most effective and efficient use of the limited financial resources available to the state and local governments. As the state assumes more financial responsibility for the judicial system, some local government general funds previously used to finance the judicial system will be freed up. Where possible, these funds now available for other purposes should be used to finance local responsibilities now financed by the state, such as supplemental pay programs for local officials and employees. State financing of district court operations is a logical (and perhaps the least difficult financially) first step in this process.

CONCLUSION

Under Louisiana's constitution, state government is composed of three branches: executive, legislative and judicial. While it finances the first two, Louisiana has delegated to local governments and private litigants a substantial portion of the responsibility to fund the judicial branch. Civil fees are carrying clerk of courts' work for the district courts as well as costs associated with civil pauper and government suits. In the absence of this funding, local governments must make up the difference.

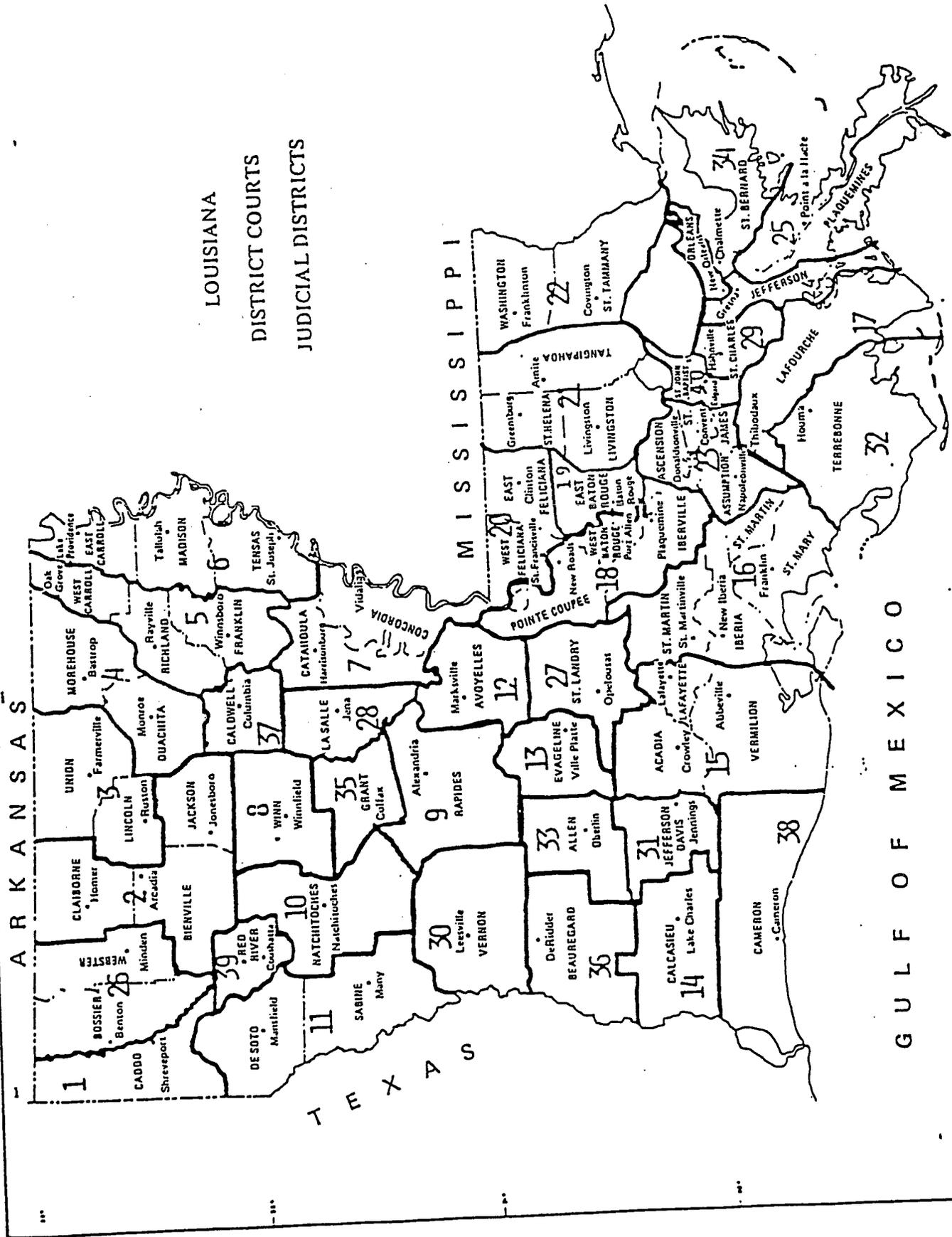
While it is recognized that the state's financial resources are limited and under stress, the judicial system is not a function of local government and should not be controlled by local government. Neither should its funding be dependent on a local government jurisdiction's "ability to pay" and judicial officers' ability to

generate revenues. Justice should be uniform throughout the state and not dependent on the relative "wealth" of either the court, locality or individual involved. Fees should be charged but should not be a primary source of funding.

Past and present studies of Louisiana's judicial system and related agencies (i.e., the courts, clerks of court, sheriffs, district attorneys, coroners, and indigent defense function) have reiterated many of the same issues and conclusions, but no concerted effort towards judicial reform has yet occurred in this state. It is considerably past due. While this study's primary focus was on the financing of the district court system and particularly civil court costs, it became obvious that the state's judicial system is operating under considerable financial restraints forcing it to pass on much of the financing burden to paying civil litigants and local governments, and largely represents a piece-meal approach to dispensing justice.

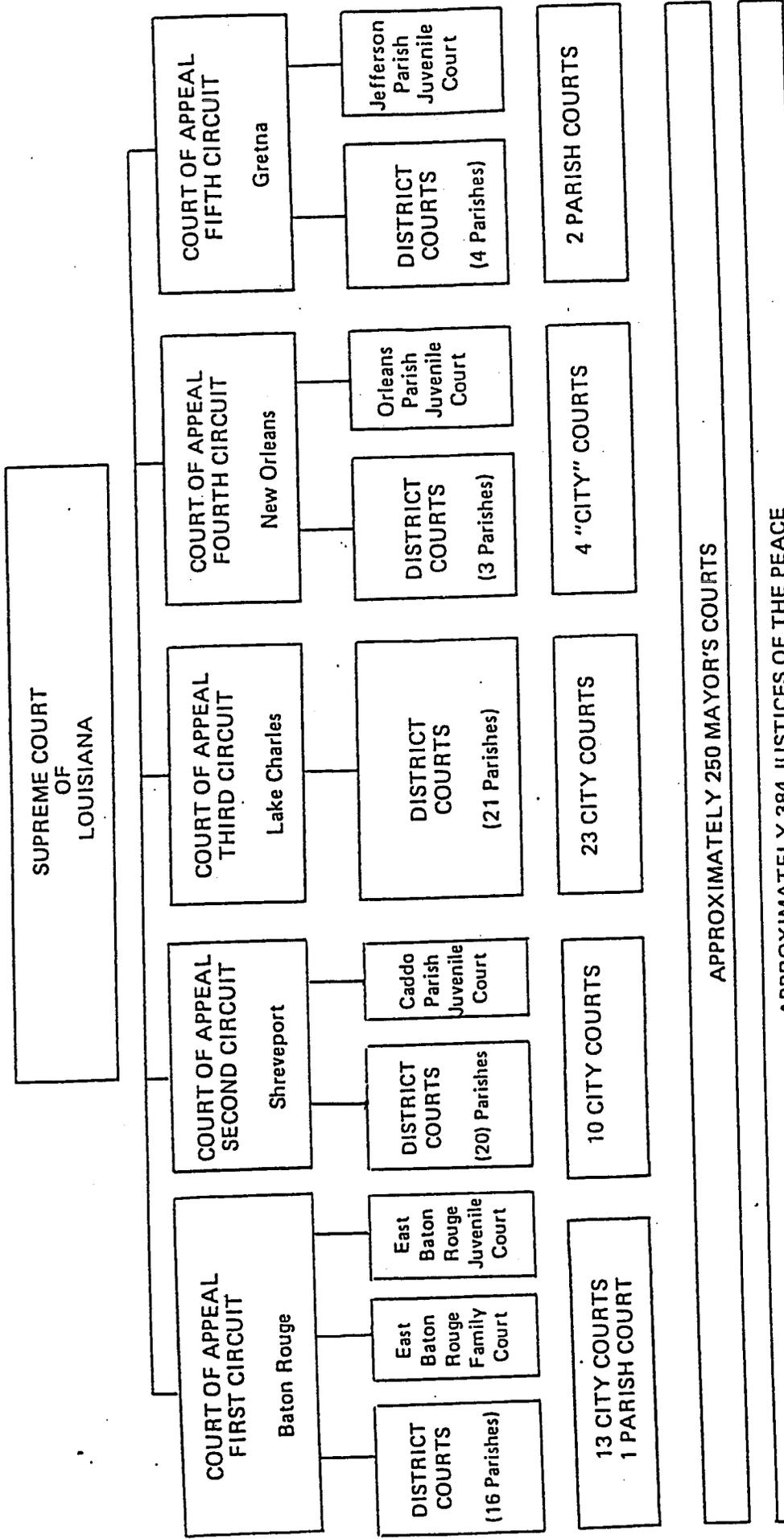
It is also obvious that the lack of action must be at least partly due to the parochialism and defensiveness of many of the parties involved. Most of the factions involved consistently blame the other officials, the Legislature or attorneys for problems raised. For meaningful reform to occur expeditiously and effectively, the various parties involved will need to cooperate and offer their expertise and experience in helping to address the many issues facing the state in this area. However, the overriding factor in any judicial reform should be the basic principles of justice and the provision of a fair, equitable and accessible system of justice for the state.

LOUISIANA
DISTRICT COURTS
JUDICIAL DISTRICTS



LOUISIANA COURT STRUCTURE

January 1, 1992



Number of Justices and Judges:

7 Supreme Court	
53 Courts of Appeal	
202 District, Family and Juvenile	
73 City and Parish Courts	
335	Total

IN CAPITAL CASES — WHERE THE DEATH PENALTY HAS BEEN
IMPOSED — APPEAL IS DIRECTLY TO THE SUPREME COURT
FROM THE DISTRICT COURT.