

The Supreme Court of Ohio

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MAUREEN O'CONNOR

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Dear Judges:

I am aware that the U.S. Department of Justice recently rescinded its March 14, 2016, guidance to state court leaders concerning fine, fee, and bail practices. That guidance reminded state court leaders of our obligation to follow the constitutional standards articulated in *Beardon v. Georgia*, 461 U.S. 660 (1983). Notwithstanding the rescission of the guidance by the Department, the constitutional requirements of *Beardon* remain unaltered. As state court leaders, our independent obligation to ensure that our practices fully comport with both state and federal constitutional standards remains. The U.S. Supreme Court observed over 100 years ago, "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States." *Robb v. Connolly*, 111 U.S. 624, 637 (1884). That obligation is as relevant and binding today as it was in 1884.

As many of you know, for the past two years I have co-chaired a national task force examining fine, fee, and bail practices to make recommendations for how state courts can bring such practices into greater alignment with constitutional standards. The need for the task force was the result of unfortunate practices in some state and local courts where fine, fee, and bail systems essentially operated on "automatic pilot" with little, if any, regard for fundamental constitutional rights. Oftentimes these practices emerged within courts as a result of funding pressures by government authorities. Providing adequately funded and effective justice system is a fundamental obligation of government, as fundamental as providing schools, roads, fire protection, and law enforcement.

Here in Ohio I have spoken out unequivocally that courts are centers of justice, *not* automatic teller machines whose purpose is to generate revenue for governments, including themselves. This is such an important issue affecting our judicial system that I requested our staff to prepare and disseminate to you bench cards ([adult](#) and [juvenile](#)) containing the legal guidelines for appropriate fine and cost collection methods. Moreover, our Judicial College prepared an online course on this topic. The course is *The Cost of Justice: Fines and Fees* and it provides 1.50 hours of continuing judicial education credit. You may register and take the course at the [Judicial College online registration site](#). I urge you to take this course and use the bench cards to guide your practice.

I know the pressure that many of you face to generate revenue, to increase collection rates, to "self-fund" as if the courts are a business trading in a commodity. But court cases are not business transactions. We do not buy and sell a commodity; we perform a public service. Nevertheless, focus on the "business" of the courts appears at times to be overtaking interest in our fundamental responsibility to do justice. For example, after reviewing an audit report last year concerning a municipal court in this state, I became so concerned about the emphasis on the

“business of the court” that I wrote directly to the State Auditor David Yost expressing my deep distress. I stated the following in my letter:

Finally, the overall tone of the audit report is troublesome because of the underlying assumption that court fines and fees are merely opportunities for revenue enhancement. . . . Pressure that courts self-fund can create a system of justice that is premised on a “pay-as-you-go” model, not the principle that courts and the administration of justice are a fundamental and general obligation of government. If the existence of a court is dependent upon self-funding, we run the danger of creating a system of built-in incentives for courts to use judicial power for self-preservation not the promotion of justice for all. . . . Judges and court staff cannot be seen as collection agents. Whether courts contribute to a city’s bottom line or generate sufficient cash flow for its own operations should not be even a secondary thought considering the role of the judiciary in our system of government.

Shortly after receiving my letter, Auditor Yost contacted me emphasizing his support for the principle that the courts’ fundamental and unquestionable responsibility is to ensure that justice is done. We should not be expected to engage in practices designed to maximize revenue by taking advantage of our citizens or ignoring basic constitutional standards. He committed to me that he would begin a program of educating his auditor staff and contract auditors to consider the appropriate role of the judiciary in any review.

Notwithstanding the rescission of the Department of Justice’s guidance letter of March 14, 2016, our role as state judges *does not change*. We are as responsible for both abiding by and protecting constitutional rights as are our federal counterparts. Indeed, because of the sheer volume of cases and constant contact with our fellow citizens, we have a special responsibility to act in a manner that bolsters public trust and confidence in the fair administration of justice for everyone. Practices that penalize the poor simply because of their economic state; that impose unreasonable fines, fees, or bail requirements upon our citizens to raise money or cave to local funding pressure; or that create barriers to access to justice are simply wrong. No rescission of guidance by the Department changes that.

I urge you to remain committed to ensuring that our courts’ practices remain fully compliant with constitutional standards and that we continue to act in a manner that increases confidence in the fairness of our justice system. “Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States.”

Thank you for your service to the citizens of Ohio and your continued commitment to the fair and constitutionally appropriate administration of justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen O'Connor". The signature is fluid and cursive, written in a professional style.

Maureen O’Connor
Chief Justice