

SUPREME COURT OF VERMONT  
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March 19, 2015

Mitzi Johnson, Chair, House Appropriations  
Maxine Jo Grad, Chair, House Judiciary  
Statehouse, 115 State Street  
Montpelier, VT 05633

Attached please find the Judicial Branch's responses to various items and issues raised in the House Judiciary Committee (HJC)'s memorandum to Rep. Mitzi Johnson, Chair of House Appropriations Committee, dated March 13, 2015. You will recall that for ease of communication, the Judiciary has identified the budget pressures on the Judiciary in four categories:

- A. Underfunding the Pay Act: \$600,000+?
- B. Justice System Restructuring Target of \$500,000
- C. Gap between Judiciary costs for current operations and Governor's general funds recommend: between \$700K and \$900K
- D. Technology funding and immediate investment in next generation electronic case management system

The following responses are numbered in accord with the letter of March 13:

1. **"Lightening the Load Proposed Legislation":** This proposal addresses pressures B and C above. Category B is addressed through postage and service savings in the approximate sum of \$87,000. The HJC's assessment of the rest of the Supreme Court's proposal is correct; the intention is to move 150 cases currently heard in the Superior Court to the Supreme Court, to assist with caseload and backlog issues in the Superior Court, as well as to allow the combination of regional venue in certain dockets with the use of video. While HJC is correct that these changes would not reduce the appropriation need directly, the changes would address the workload and backlog issues that have arisen due to underfunding that drives extraordinary vacancy savings. They reflect the Judiciary's effort to more efficiently and effectively utilize its resources, thereby reducing budget pressures, including the \$700K-\$900K of existing pressures that we are covering via extraordinary vacancy savings in both judge and staff positions.

2. **“Environmental on the record appeals proposal”:** This did not originate as a proposal of the Supreme Court. Under separate cover, I will forward caseload statistics that will provide information on the impact on the Judiciary of this proposal. Given that the Environmental Division is supported by its two environmental special funds for only 32% of its costs – with the remainder covered by General Fund – it is important that there be no reduction in the current dedication of these special funds, or it will create yet another unfunded pressure on the branch.
3. **Prisoner transport spending in the sheriffs’ appropriation – e.g., fleet vehicles or centralized transport:** This was not a proposal of the Supreme Court. The Judiciary does not manage prisoner transport, and we do not have sufficient information to comment on this proposal. (The Judiciary has initiated a policy discussion regarding video arraignment and associated opportunities for savings from reduced transport and other areas, as well as other policy benefits. See discussion below. Any such savings, however, will depend on the timing and success of this initiative.)
4. **Court security – hourly rate disparities and single contract with targeted savings:** Again, this was not a proposal of the Supreme Court. The memo is correct that there are significant disparities in hourly rates among the sheriffs; however, the most recent set of negotiations particularly targeted the lowest-compensated sheriffs, so the range is now between \$21 per hour and \$28 per hour, for a disparity of \$7 per hour. This disparity in general is the product of sheriffs’ individual negotiations with the branch, including reflection of differences in costs among geographic regions. Whether any savings would materialize from a single rate across the state would depend on the level of that single rate. It should be noted that many sheriffs – including those at the higher end of the hourly range – indicate that court security is a net loss for them (i.e., the cost of providing a law enforcement officer exceeds the hourly rate paid by the Judiciary). Given that the Judiciary’s budget line already includes a shortfall of approximately \$250K for security costs, any “booked” savings that is not realistically achievable would only exacerbate the Judiciary’s budget problems.
5. **Sheriffs – statutory salaries and rate for transport deputies:** This is not a proposal of the Supreme Court. The Judiciary has no responsibility or authority in this area, and hence no position on this issue.
6. **“Lightening the Load” – Family Division service of process:** The branch’s proposed policy change makes certain cases in the Family Division consistent with all other court cases in placing the burden of service on the parties rather than the court. The HJC memo indicates that the proposed \$87K savings from postage and service of process is a cost-shift to another unit of state government. While in some cases that may be true if general funds are being used to effect notice and service, in other instances, where the case relates to two private parties, it will be a true cost savings.

7. **Improved collections of fines and penalties:** This is not a proposal of the Judicial Branch. The Judiciary has testified before many committees this year regarding our collections process. As noted in the memo provided to the committees, an outside expert estimates that the branch collects 90% of civil violations over a five-year period, and over 75% of criminal violations over the same period. The branch utilizes a variety of tools including driver's license suspension (for civil violations); tax offsets; and collection agency activity. The branch is open to discussions of any additional tools or approaches to improve collections. The branch, however, would offer a warning of caution against being unrealistically optimistic about collection opportunities given the nature of these debts.
8. **Impose *In Forma Pauperis* filing fee:** The Judiciary is willing to consider a small filing fee for IFPs. Internally, the branch has discussed the issue because IFP does result in lost revenue and, in some cases, unusually high filing volume. Offsetting these issues are, of course, concerns about access to justice. The branch estimates that there are approximately 1,100 filings annually that rely on IFP.
9. **Statutory and Exempt Salaries possible decrease:** The Judicial Branch interprets the memo's language as being directed at the branch; it is not a proposal of the Supreme Court. The Judiciary notes that the \$1.044M appropriated to the branch in Act 160 of 2014 (the FY15-16 Pay Act) funds specifically mandated items, reflecting four groups of branch employees, as follows:
  - Judicial Officers (60 count; \$281K total): salaries set by statute (3.3% increase);
  - Fully Exempt (4 count; \$17K total): high level managerial/confidential employees, similar to Exec Branch exempt (3.3% increase);
  - Exempt Supervisory/Managerial (77 count; \$267K total): by Pay Act language and precedent, this group follows the classifieds relative to annual salary increases (4.2% increase);
  - Classifieds (220 count; \$479K total): Subject to collective bargaining (4.2% increase, reflects 2.5% ABI and 1.7% average step value);
  - Total: 361 employees - \$1,044,179 Pay Act appropriation.

Simply underfunding the branch's Pay Act would force the branch deeper into the financial difficulties from which it is trying to emerge. The Judiciary has its own collective bargaining agreement with Judiciary employees and is obligated by law to comply with that Agreement.

10. **Increasing Court filing fees:** The Judicial Branch has proposed increasing filing fees to cover any underfunding of the Pay Act. [Thus, there would be full funding of the Pay Act because additional fees would cover the equivalent amount in the increases in the General Fund.] Judiciary has requested full funding of the Pay Act in light of the lack of flexibility caused by the combination of our source of funds being overwhelmingly general funds, our use of funds being overwhelmingly statutory salaries and salaries set by collective bargaining agreements, and the fact that we are under-resourced in judge time and staff

time, resulting in growing caseloads. We have not been advised of any specific pay act reduction, but there has been discussion of a reduction of \$619K. To provide context to the legislature, an increase of 20% to filing fees would raise additional revenue of \$630K to the general fund. The intent would be to eliminate or mitigate the need to reduce the General Fund appropriation for the Judiciary's Pay Act described above. The Judiciary has also proposed a special fund filing fee surcharge of, on average, 25% to support the branch's acquisition and development of a Case Management System (CMS).

**11. Regional venue:** Regional venue is a component of the Lightening the Load legislation proposed by the Judiciary. Regional venue would allow certain cases and/or processes to be handled on a regional rather than county basis, thereby gaining efficiencies. The branch is aware of the access to justice issues, as well as the operational needs and concerns of all its justice partners. The branch has not proposed specific savings from regional venue because there are a variety of legal and operational issues among the justice partners before any identifiable savings would be realized.

**12. Video arraignments:** As noted above, video arraignment is a policy initiative recommended by the Judicial Branch (see the summary documents that have already been submitted to various legislative committees). On February 9, 2015, the branch convened a "mini-summit" of justice partners to discuss a variety of ideas that would provide long-term structural savings in the administration of justice. The informal consensus of the group was that video arraignments provided the greatest opportunity for realizable long-term savings by reducing transports, while also enhancing security and scheduling efficiency.

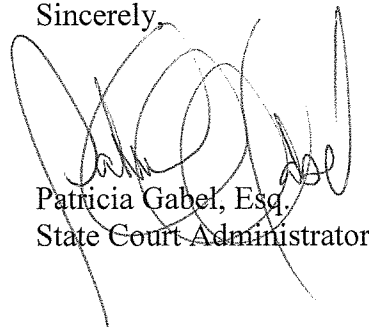
On March 11, 2015, the branch convened a meeting moderated by the Commissioner of Finance and Management among the justice partners that would be affected by video arraignments. While there are differences of opinion among the partners, the participants agreed to participate in a planning and pilot initiative to determine whether there is an opportunity for video arraignment on a state-wide basis. Any long-term savings from reduced detainee transports would depend on the timing and effectiveness of the initiative. There are initial costs associated with the acquisition of the video equipment and other start-up and ongoing costs (e.g., at Department of Corrections). See separate sheet re: investment and savings issues. Most savings would not hit until the FY17 budget.

**13. Study of administrative law and changes to APA:** The Judiciary supports improved administrative quasi-judicial decision-making that would provide procedural justice at the administrative level and a quality record to be sent up on appeal.

**14. "Stake holders getting together":** While this is not a specific proposal of the Judicial Branch, it is one that the branch fully supports. Any effort to change the state's justice process requires the participation of all the justice partners. Two recent examples of the branch's commitment to this process are: (1) the February 9 "mini-summit" described above; and (2) the March 11 meeting regarding video arraignments.

- 15. Alternative types of bonding for the case management system:** Alternative capital financing of the CMS is not a specific proposal of the Judicial Branch; however, the branch requested \$5M of funding for the CMS in the traditional FY16-FY17 Capital Bill, but it was not included in the Governor's recommendation. The CMS is the highest priority for the branch as a means to increase efficiency and effectiveness in the administration of justice. The branch defers to those units in state government who are more expert regarding capital finance, but would look forward to discuss with the units any options for capital funding for the CMS. Many states have used capital funding for Judiciary electronic case management systems, and we do not know of a reason why Vermont should not take advantage of this financing option.
- 16. Mileage for Judges:** This is not a proposal of the Judicial Branch. The branch is already actively managing its fleet, and other policies, to reduce mileage costs. In FY 2015, the branch expanded its fleet by 33% and imposed a mileage reimbursement limit for judicial officers. As a result, the branch expects to save \$7K in FY 2015, and \$14K in FY 2016. Based on a variety of factors, including: the branch's estimate of "break-even" for fleet versus mileage; the effect of next year's judicial assignment rotation; changes in lease costs; and changes in mileage reimbursement policies; it is possible that the branch could save approximately \$10K additionally.
- 17. Long-term structural changes to sentencing and probation practices for non-violent offenders:** This is not a proposal of the Judicial Branch.
- 18. HJC final comment regarding CMS:** The HJC memo concludes by expressing its strong support of the Judicial Branch's request for an electronic CMS, noting that a CMS "would provide support for restructuring of Judicial Branch's processes in a way that would yield long term savings among other important benefits." The branch appreciates the HJC's support of the case management system, which as noted above, is the branch's highest priority. The CMS will provide a variety of benefits in effective and efficient administration of justice. For example, while it may not cause operational costs to decline, it would be expected to slow the rate of cost increases via increased efficiency, and provide better service to the public and the other justice partners.

Sincerely,



Patricia Gabel, Esq.  
State Court Administrator

cc: Matt Riven, Chief of Finance & Administration