

JOINT LEGISLATIVE HEARING ON THE 2016-2017 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS

FEBRUARY 4, 2016

Good morning, Chairpersons Young, Farrell, Bonacic and Weinstein, committee members, staff, ladies and gentlemen. It is a pleasure and an honor for me to be here before you to discuss the fiscal needs of the State's Judiciary.

First, a few words about our new Chief Judge, Janet DiFiore, who was confirmed by the Senate just two weeks ago. We in the court system are very excited about serving under her leadership. On behalf of our new Chief Judge, and the entire court system, I promise that we will continue to work closely and cooperatively with you to serve the people of New York.

The Judiciary's formal budget request seeks increased funding of \$44.4 million, or 2.4 percent, for the General Fund Operating Budget. We are now also seeking additional funding to cover the cost of the judicial salary adjustments that were recommended by the Commission on Legislative, Judicial and Executive Compensation in late December, several weeks after our budget request was submitted, as mandated by the State Constitution, on December 1st.

This request is somewhat unusual and calls for a bit of context. For years -- beginning in 2010 -- the Judiciary faced significant, non-discretionary cost escalation without corresponding increases in funding. In Fiscal Year 2009-2010, the General Fund State Operating portion of the Judiciary budget, which supports court operations, was \$1.78 billion. Six years later, that amount is \$1.85 billion, an increase of only \$64

million, or 3.5 percent – about 0.6 percent annually, far less than the rate of inflation. In the face of that modest growth in funding, the Judiciary absorbed hundreds of millions of dollars in higher costs, including mandated employee salary increases, increased contractual expenses, funding for indigent criminal defense to meet statutory caseload standards, and funding for civil legal services.

In an effort to live within our means, the Judiciary made great strides in improving efficiencies and reducing costs, rethinking every aspect of court operations from top-to-bottom and critically scrutinizing every expenditure. However, these steps were simply not sufficient to offset the significant increased costs that we faced. For that reason, a decrease in our employment levels (personnel costs, including fringe benefits, account for about 90 percent of our budget) was necessary.

Indeed, the number of non-judicial employees in the court system has decreased by about 2,000 since 2009. Today the court system has fewer court officers, court clerks, court reporters, court interpreters, court attorneys, and back office staff than it did in 2009. And although we have worked tirelessly to try to minimize the impact of this through innovation and streamlining (we highlight some of the steps we have taken in that regard in our budget submission), it cannot be contested that the public has felt the consequences of our reduced staffing levels. These consequences include delays on some days in opening courtroom parts, delays in entering judgments, lines to get into courthouses, and lines in the clerk's offices, to name a few.

We are very grateful that in the current fiscal year, as well as in Fiscal Year 2014-2015, the Legislature increased funding for the Judiciary. We believe that we have used those funds as we committed to you that we would. The increased funding meant

that we no longer had to rely on attrition to live within our means, and, as promised, the courts have been able to maintain their staffing levels. In addition, as also promised, the funding was used to keep the courts open to 5:00 p.m.

It should be noted that maintaining our staffing has not been an easy task because of the large number of court employees who have left state service over the past two years. The demographics of our workforce are such that many of our employees are now, or will soon be, eligible for retirement. Keeping up with this attrition has been a challenge. It has also been an opportunity to rethink our workforce and, in close consultation with local court administrators, make hiring decisions that will position us to best meet the needs of the people of New York. Our priority has been on filling such positions as clerks, officers, reporters and interpreters, to ensure that our judges have the courtroom teams they need and that the back offices are able to process cases quickly and efficiently. During this fiscal year, we have hired more than 650 new employees, including court officers, clerks, court interpreters and reporters.

The budget increases that we received for the current fiscal year and the prior fiscal year have allowed us to address the worst of the impacts caused by the years of no-growth budgets. It is essential that we continue to move forward and not lose any of the ground that we have achieved.

In the coming year, we again face increased costs. We are seeking an increase in our budget so we can meet these new costs without having to reduce our workforce to make ends meet.

But this year, our situation is more complicated as a result of the recommendations of the Salary Commission. Under the State Constitution, the

Judiciary is required to submit its proposed budget to the Governor and legislative leaders on December 1st preceding the upcoming fiscal year. This year, as we were preparing our budget request, and when we submitted it on December 1st, the Commission on Legislative, Judicial and Executive Compensation had not yet issued its findings and determinations with regard to judicial salary increases. Under the statute creating the Salary Commission, the Commission's findings and determinations as to judges' salaries were not due until the end of December. So at the time we were required by law to submit our proposed budget to the Governor, we did not know what the Commission would do with regard to judges' salaries. We were certainly hopeful that the Commission would vote for a judicial salary increase, but we did not know what the salary levels would be and how much they would cost. Consequently, what we did was note in our budget request that we were awaiting the Commission's determinations and might well be seeking additional funding to pay for judicial salary increases depending on what the Commission recommended.

In late December, after the Judiciary had submitted its budget request, the Commission issued its report, which called for phased-in salary increases for New York judges, using the Federal District Court judge salary as a benchmark, and providing for the largest portion of the phase-in to take effect this April 1st. By using the Federal salary as the benchmark, the Commission followed the precedent set by the last Commission in 2011, which, in turn, was the precedent the Legislature had used throughout much of the history of judicial salaries before the Commission process was enacted. Indeed, this Commission has essentially, and finally, resolved what has been a decades-long haphazard, inadequate and unfair process for setting judicial salaries.

While we are grateful for the Commission's findings, and for the support of the Legislature's representatives on the Commission, and, by extension, for your support for those findings, the cost of the first year of the phase-in of the judicial salary increase, beginning on April 1st of this year, is 27 million dollars. That is a cost we were not able to budget for when we submitted our proposed budget on December 1st. Our budget request submitted on December 1st sought a 2.4 percent increase in our General Funds Operating Budget, which is an increase of 44.4 million dollars. An increase is necessary because we are again facing significant cost increases, which include mandatory salary increases for court employees, increases in contractual obligations, such as our contracts with local governments to provide courthouse security in certain portions of the state, annualization of the cost of the five Family Court judgeships that the Legislature created effective January 1, 2016, and additional funding for civil legal services.

But because of the additional cost of judicial salary increases, a cost we could not estimate when we submitted our budget request on December 1st, we are now seeking additional funding to meet that cost. What we are proposing to you, and what we are respectfully urging you to support, is an additional \$19.6 million to help pay for this increased cost. We are proposing that we apply the four-tenths of one percent part of the 2.4 percent increase we requested in our December 1st submission (or \$7.4 million) toward a portion of the cost of the judicial salary increase, and we also are asking that the Legislature add to our budget funding for the remaining \$19.6 million of the full cost. That would pay for the cost of judicial salary increases in the upcoming fiscal year, and it would leave the courts with an increase of 2 percent, or \$37 million, in

our operating budget, to cover our increased mandated salary increases, increased contractual expenses and additional funding for civil legal services. This 2 percent increase would be entirely in line with the Governor's vision for the growth in state spending.

What we are seeking is fair and reasonable. The newly arising cost of the judicial salary increase has resulted from a statutory process that was designed to inject fairness, objectivity and transparency into the method for determining judicial salaries. That statutory process worked, and the Salary Commission's determinations were fully supported by the Legislature's two representatives on the Commission. The Commission, in making its determinations, was charged with taking account of the State's ability to pay for the recommended increases. We respectfully submit that the fair thing to do now is to provide the funding to implement those results. Without that funding, it will be increasingly difficult to replace employees when they leave the court system, further decreasing our employment level and resulting in the consequences that entails. With that funding, the Judiciary will be able to furnish the quality of service that we need to provide to the people of this state, a quality of service that we all agree the public fully deserves.

On behalf of the Judiciary, and our new Chief Judge, I pledge that we will continue to work closely with you and will do our best to serve the people of our great state. Thank you for inviting me to address you today.