

The Supreme Court
State of Washington

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The Honorable Christine Gregoire
Washington State Governor
P. O. Box 40002
Olympia, Washington 98504-0002

Re: 2012 Judicial Branch Budget Reduction

Dear Governor Gregoire:

During this time of unprecedented economic challenges, it is the intention of the judicial branch to continue to collaborate with the legislature and the executive to address the state's fiscal crisis and to preserve the branch's ability to meet its constitutional responsibilities.

Under the Washington Constitution the state must maintain a justice system in which "all cases [are] administered openly, and without unnecessary delay." Keeping in mind the core constitutional role of the justice system, the judicial branch has continued to assess its essential roles, functions and services, and make the difficult distinctions between those services that we *should* provide in meeting our constitutional mandate and those that we *must* provide to discharge the same.

In response to the continuing fiscal crisis, I again have asked each judicial branch entity to examine its budget, identify those portions that are dedicated to the performance of constitutionally mandated functions and are therefore exempt from a reduction exercise. For the remaining amounts, I asked these entities to identify the impacts that would result from a further 5 percent and a 10 percent reduction in appropriations for the balance of the 2011-2013 biennium. This is the same as the approach taken in 2010 and mirrors the methodology being applied by the executive branch. The results of this analysis are outlined below.

Washington Supreme Court and Court of Appeals

Based on our core mandates, policy goals and objectives, and the constitutional framework in which we operate, both the Supreme Court and the Court of Appeals believe that further budget reductions will compromise the courts' ability to hear and decide cases in a constitutionally timely manner. Both courts have already absorbed significant reductions through the loss of staff and the implementation of efficiencies. Further reductions of any magnitude will result in the elimination of essential staff and basic operational resources necessary for the timely administration of justice. Cases regarding local taxing authority, bonding issues, and land use are just a few of the case types that will be seriously delayed. Resources that might be invested in economic growth areas and jobs will be held to cover the cost of potentially adverse decisions. Unacceptable delays will occur across all case types, undermining confidence in the courts as forums to resolve disputes.

The budgets for the Supreme Court and the Court of Appeals have been reduced by more than 16 percent from the 2009 base, after adjusting for the judges' salaries and benefits. Further reductions cannot be sustained without derogating the courts' constitutional duty to timely decide cases.

Office of Public Defense

The core mission of the Office of Public Defense (OPD) is to implement the state's constitutional and statutory guarantee of counsel. The state's constitutional duties are to provide effective attorney representation for indigent defendants at the appellate and trial levels and for indigent parents in child abuse and neglect cases. OPD carries out these constitutional obligations by providing services and funding for appellate indigent defense, contracted representation services for indigent parents in dependency and termination cases and through a trial public defense improvement program. These constitutional programs account for over 85 percent of the OPD general fund budget for the period ending June 30, 2013. The remaining funds, \$7.6 million, provide for agency operations and non-constitutional pass-through allocations.

As with previous reductions to the OPD budget, future budget reductions would be taken from agency operations and pass-through support programs, which provide unique and important resources for public defenders throughout the state. In addition, further reductions to OPD's operations would result in more layoffs of basic staff, cutting deeply into the agency's quality control activities. Poor quality representation would go undetected

and could result in ineffective assistance to indigent parents and defendants. As a result, parents and children may suffer unwarranted separation and defendants may be erroneously jailed.

While the 5 percent and 10 percent reduction amounts, \$382,000 and \$764,000 respectively, may appear small, eliminating this level of quality control and enhancement activities would eventually lead to cases being reversed at a cost substantially greater than the amount saved.

Office of Civil Legal Aid

Funding for the Office of Civil Legal Aid (OCLA) underwrites a comprehensive civil legal aid delivery system that provides a full continuum of civil legal aid including intake, legal problem diagnosis, advice and referral, self-help assistance and community based legal education, limited representation in individual matters, representation in administrative proceedings, and, of particular relevance to this discussion, representation of indigent persons in civil proceedings pending in state trial and appellate courts.

Ninety-eight percent of OCLA's appropriation is contracted for the direct support and delivery of civil legal aid services in every corner of the state. Of this amount, approximately \$9 million is necessary to support essential infrastructure needed to provide support for local courts to fairly adjudicate family law and landlord-tenant cases which, by statute, must be resolved in the superior courts of the state. This capacity is a necessary component of the infrastructure required by the courts to ensure the fair and effective administration of justice in these cases.

The remaining general fund monies, \$13 million, represent civil legal aid delivery services not directly tied to family law or landlord-tenant cases and are therefore subject to the reduction analysis.

Reductions of 5 percent and 10 percent of the non-constitutionally protected portion of OCLA's 2011-2013 general fund appropriation amount to \$652,000 and \$1,304,000, respectively. Cuts of this magnitude would severely degrade the system's infrastructure and capacity to meet critical legal needs including, among other potential consequences:

- The closure of rural legal aid offices, leaving low income families in large geographic areas without access to assistance when faced with problems affecting

family safety and denial of essential private and governmental services that affect basic human needs

- Reduction and/or elimination of support for volunteer legal aid programs that collectively leverage more than 50,000 hours of volunteer services valued in excess of \$9.5 million per year
- No legal help for up to 1,500 families facing domestic violence and threats to safety of children
- No legal help for up to 750 families facing eviction or foreclosure

This Great Recession has resulted in unprecedented demand for civil legal assistance from families facing the most grave life crises. Additional reductions will render the justice system inaccessible for thousands of individuals and families facing evictions, domestic violence, and threats of foreclosure or eviction.

Administrative Office of the Courts

The Administrative Office of the Courts (AOC) provides direct services to the appellate and trial courts, provides pass-through funding for local court programs and provides information technology services and systems for the state's courts.

Included in the AOC budget are allocations for constitutionally mandated expenditures for superior court judges' salaries, superior court judges pro tempore, reimbursement of certain criminal costs and the interpreter certification program. Because these costs are required by the state constitution they are being excluded from the reduction analysis.

Approximately \$58 million remains after excluding the costs of the constitutionally mandated services from the biennial general fund appropriation. A 5 percent reduction could result in:

- Eliminating the entire Office of Public Guardianship
- Elimination of the Certified Professional Guardianship program
- Fifty percent reduction in staff that are solely dedicated to responding to the needs of appellate and trial courts in operating the statewide court case management systems
- Reduction in the Court Appointed Special Advocates (CASA) pass-through program

A 10 percent reduction, at \$5.8 million, could result in the elimination of the entire CASA program.

If the AOC implements the reductions identified, the impacts would include:

- Substantially increased costs in other areas of state government and the private health care sector as persons with diminished capacity reenter the social and health services arena
- Increased vulnerability among persons with diminished capacity for financial loss due to fraudulent actions by others
- Elimination of guardianship standards and enforcement, leaving incapacitated persons vulnerable to unscrupulous practices
- Reduction in revenue collected at the trial court level due to insufficient expertise and knowledge about operating the Judicial Information System
- Increase in the number of children over the age of 12 who will not be appointed a guardian ad litem
- Elimination of as many as seven CASA volunteer coordinator positions, leaving more than 600 children without guardian ad litem support
- Complete elimination of the CASA program, removing guardian ad litem support for over 7,000 children in dependency cases

State Law Library

The State Law Library provides direct research and technical support to the Supreme Court, Court of Appeals, numerous state agencies, the public, and national and regional libraries. During this time the legislature has reduced the State Law Library budget by over 36 percent resulting in a 39 percent reduction in staff, making it extremely difficult to strategically downsize. For the last several years the State Law Library has been moving to electronic publications, however these publications are not free and there is not a one-to-one reduction in costs as publications are migrated from paper to electronic media. In addition, the overall publication inventory is being reduced during the renewal process or after usage analysis reveals low volume usage.

The State Law Library will analyze its operations, services, and funding mechanism in comparison to other state law libraries and will be making a

recommendation to the Supreme Court and the legislature regarding its future operational structure.

The State Law Library biennial budget is \$2,938,000. All remaining staff and approximately 45 percent of its publication costs are solely dedicated to providing research assistance to the Supreme Court and the Court of Appeals. Applying a 5 percent and a 10 percent reduction to the remaining budget results in a potential budget reduction of \$20,000 and \$40,000, respectively.

While we understand the need for reducing state expenditures, the reductions noted for the State Law Library would be better spent on studying future operating structures.

In closing, I would like to reiterate that the Washington Supreme Court and the independent judicial branch entities remain committed to identifying reductions that can be accomplished without compromising our ability to meet our core constitutional responsibilities.

Sincerely,



Barbara A. Madsen
Chief Justice

c: Justices, Washington Supreme Court
Mr. Marty Brown, Office of Financial Management
Hon. Ann Schindler, Court of Appeals
Mr. Jeff Hall, Administrative Office of the Courts
Ms. Joanne Moore, Office of Public Defense
Mr. Jim Bamberger, Office of Civil Legal Aid
Ms. Kay Newman, State Law Library
Ms. Reiko Callner, Commission of Judicial Conduct
Mr. Ramsey Radwan, Administrative Office of the Courts