

UNIFIED COURT SYSTEM

2013-14

JOINT LEGISLATIVE HEARING

WRITTEN STATEMENT

of

HON. A. GAIL PRUDENTI

Chief Administrative Judge

Wednesday, February 6, 2013

Legislative Office Building

Hearing Room B

10:00 A.M.

JOINT LEGISLATIVE HEARING ON THE 2013-2014 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE A. GAIL PRUDENTI

FEBRUARY 6, 2013

Good morning Chairpersons DeFrancisco, Farrell, Bonacic and Weinstein, committee members, staff, ladies and gentlemen. I am delighted to be here again, my second appearance before you, to discuss the Judiciary's budget request for the coming fiscal year.

My first full year as Chief Administrative Judge has been the most challenging experience of my twenty-plus year career in the courts, but also in many ways the most rewarding. It has been a pleasure, and a great honor, to work in this capacity with our dedicated, hard-working judges and non-judicial staff.

I also very much appreciate the opportunity that I have had to meet with so many of you over the past year and to learn about the issues that matter so much to you. I look forward to continuing that conversation here today.

The request that you have before you – in terms of our General Fund operating budget – is flat, seeking no increase over the current year. A few months ago, we had hoped to present a somewhat different budget, requesting a modest increase, to allow us to continue to mitigate some of the negative impacts of the budget cuts of two years ago. However, less than a month before we formally submitted this budget request, Hurricane Sandy hit, and everything changed. Three days after the hurricane, I met here in Albany with the State Budget Director, and learned a great deal about the expected fiscal impact of this massive and unprecedented storm.

While the Judiciary is an independent branch of state government, we are, in a fundamental way, interdependent, and we recognize our responsibility to work with you and with the Executive Branch in addressing the serious issues that face our State. We therefore are again, as we did last year, presenting a zero-growth budget.

I must confess this was not easy. We face significant cost increases in the coming year, including the cost of the judicial salary adjustments recommended by the Judicial Salary Commission, statutorily-mandated salary increments for our represented non-judicial employees, statutorily-mandated increases for indigent legal defense, and a vital increase in funding for civil legal services. Absorbing these increases within a zero-growth budget will require that we continue, and redouble, our efforts to find savings and efficiencies wherever possible. We have eliminated all but essential purchases. We closely monitor overtime. We are cancelling subscriptions to print legal materials that are available at a reduced cost on-line. We are looking to automation, such as online attorney registration, and a variety of projects with government agencies to improve inter-agency transmission of data, in order to reduce costs, increase efficiencies and improve service to the public. We are also closely monitoring juror utilization, not just to reduce expenditures for jury fees but to ensure that our citizens are not called to jury service when it is not likely that they will be needed.

Moreover, we have continued to reduce our expenses in a variety of other non-personal service areas, such as travel, printing, telecommunications, as well as curtailing our use of judicial hearing officers.

But we know that these efficiencies and savings will not be enough. The vast majority of the Judiciary budget is for salaries and other expenses directly related to

personnel. Controlling personnel expenses is therefore critical to our efforts to control costs. Since 2009, the court system's non-judicial workforce has been reduced by more than 1,500 employees.

We understand that to operate within the proposed budget, this trend will have to continue. Although, this budget will allow us to fill critical operational positions in the courts as vacancies occur, there will have to be a further net reduction in our workforce through attrition.

Our goal is to live within this budget and still fulfill our constitutional responsibility to the people of New York. To accomplish that goal, it cannot just be that we have to do more with less, and that everyone has to work harder. We must – and, in fact, have already started – to rethink the way we do business. We must also focus, more than ever before, on the core mission of the Judiciary – ensuring fair, timely, and equal justice to every one of the millions of New Yorkers who come to our courts each year.

In that regard, I am pleased to advise you that this past year we have made significant progress in disposing of cases, and in reducing the number of cases beyond Standards and Goals, our measure for the timely disposition of cases. For example, in New York City, there was a 9 percent increase in the number of dispositions in civil cases in Supreme Court in 2012, and there was a 12 percent reduction of felony cases outside of New York City that were beyond our Standards and Goals criteria. We achieved these results, despite an austere budget and a reduced workforce, by concentrating our efforts on the oldest cases, redeploying court personnel where they are most needed and working collaboratively with all of our partners in the justice system, including the Bar and the entire law enforcement community.

As part of this intensified focus on our core mission, I have undertaken a thorough review of the Office of Court Administration. We are looking at every office, every function, every employee. We are looking to see what can be done better and more efficiently and what offices and functions can be combined to achieve savings. We are looking to eliminate what does not directly support the courts and their primary mission. An important goal of this exercise is to identify OCA staff members who can be redeployed, and in the coming weeks we will be sending attorneys, court officers, and other employees from OCA to fill critically needed positions in the courts.

As I said earlier, none of this is easy. Difficult decisions must be made. We have tried to avoid any adverse impact on the public, but that has not always been possible, and there is pain to be shared.

In this regard, I want to address a few areas that I know, from last year's hearing and from our more recent conversations, are of particular concern to you.

First, the 4:30 closing time. We instituted this policy in the immediate aftermath of the budget cuts of two years ago in order to limit overtime expenses. We listened to what the Bar said about the impact of this policy on jury trials, especially where witnesses were on the stand, nearing the end of their testimony. We agreed that under such circumstances the rigid application of the 4:30 closing time would be penny-wise, but pound foolish, and we therefore have modified the policy to ensure that local courts through their Administrative Judges have discretion to extend hours when necessary and appropriate. It is important to note that our courthouse doors are always open until 5:00 p.m.

The second issue concerns our children's centers. As a former trial court judge, I can tell you just how disruptive it can be to have young children in the courtroom. Furthermore, when a litigant has to care for an unruly child while simultaneously representing herself before the court, as many Family Court litigants do, it is incredibly difficult and often frustrates the pursuit of justice. In a busy Family Court, children's centers are not a luxury. They are a necessity for the parties and the court. Nonetheless, two years ago we had no choice but to reduce the hours in children's centers. We had hoped that during the current fiscal year, we would have been able to extend some of the hours. Unfortunately, that was not possible. Changes in arraignment part schedules in New York City, undertaken as part of our effort to control overtime costs, had led to non-compliance with the 24-hour arrest to arraignment requirement. We therefore had to take resources, which otherwise might have been available to extend hours in children's centers, to ensure compliance with the arrest-to-arraignment time mandate.

Similarly, we had hoped to permanently restore some of the evening hours in small claims court that had been eliminated as part of the same overtime reduction program. While we did restore some additional nights this fiscal year, it now appears unlikely that our proposed budget will be able support these advances. Again, the need to devote limited available resources to address the arrest-to-arraignment issue precludes us from increasing the hours for night small claims.

The next issue, about which some of you have called me, concerns a proposed reduction in funding for the Court Appointed Special Advocates, or CASA, program. This program, which operates in our Family Courts, provides volunteers who assist the court and counsel by serving as advocates for the child. There is nothing more important than

our children and ensuring that vulnerable children involved in Family Court proceedings receive every assistance and every protection possible. Indeed, it is for that reason that the Judiciary's budget provides \$124 million in funding to support what is the most robust Attorney for the Child program in the nation. We recognize that despite the strength of our Attorney for the Child program, the CASA volunteers provide a very valuable additional service to the Family Court and to the children with whom they work. While our budget did propose a cut to this program, we are committed to finding funds to maintain this program, and I personally will be meeting next week with representatives of the CASA program to discuss this important matter.

But, of course, this is not just about dollars and cents, and living within our means. Each year there are more than four million new cases filed in the New York courts. Our job is to decide each of these cases fairly and promptly. I want to briefly address several aspects of our massive workload that I know are of special interest to you.

First, foreclosures. Residential foreclosure cases now comprise 27 percent of the civil docket of the Supreme Court. Since 2009, when you enacted legislation requiring settlement conferences in residential foreclosure cases, we have conducted nearly 350,000 conferences, 75,000 in 2012 alone. These conferences are very demanding and time-consuming, but they have also been effective. In 2012, 42 percent of the cases that conducted a conference were disposed, 25 percent by settlement, mostly with loan modifications, and 17 percent by dismissal or discontinuance of the case.

We also made significant progress in one of the Chief Judge's greatest areas of concern: homeowners appearing in foreclosure cases without counsel. In 2011, only 33

percent of homeowners were represented by counsel. In 2012, that number rose to 51 percent.

While we continue our efforts to close the justice gap in foreclosure cases, new challenges continue to arise. For example, in many cases lenders are unable to comply with the court system's affirmation requirement, which was adopted in response to the robo-signing scandal. Normally, the banks would have to submit the affirmation when they file a Request for Judicial Intervention. Some lenders, however, have discovered a way to exploit a loophole in the law, which allows lenders to commence a foreclosure action without triggering the mandatory settlement conference. As a result, thousands of New York homeowners are denied their day in court. Their cases remain in a legal limbo as the homeowners fall deeper and deeper into debt. Recognizing this, the Chief Judge and the Administrative Board of the Courts have taken the unprecedented step of adopting a rule that allows us to calendar foreclosure cases even though no Request for Judicial Intervention has been filed. To permanently close the loophole, we are proposing legislation, which will require attorneys to submit a Certificate of Merit upon the filing of a summons and complaint, similar to the affirmation requirement now required upon the filing of a Request for Judicial Information. While this rule and the requirement of a new Certificate of Merit will remedy the problems created by this so-called "Shadow Inventory" and protect the right of homeowners to a settlement conference, it will also add tens of thousands of cases to an inventory that already exceeds 75,000 cases. Nonetheless, we will continue to do our part to help the people of New York State get beyond the foreclosure crisis.

Family violence cases are another area that is of particular concern. There have been almost 42,000 petitions filed under the Intimate Relationship legislation enacted in 2008, which authorized the Family Court to issue orders of protection to persons in non-traditional family relationships. Over that time period the total number of orders of protection issued by Family Courts increased almost 15 percent.

Finally, I want to say a few words about one of our highest priorities – ensuring equal access to justice, especially for the millions of New Yorkers who appear in our courts without counsel in matters involving housing or other essentials of life. The Judiciary has responded to this challenge by providing a range of services to unrepresented litigants, including Help Centers, staffed by court employees who provide free legal and procedural information with instructional packets, court forms, and access to online self-help tools. Chief Judge Lippman has also led the effort to encourage attorneys to provide free legal services to low and moderate income citizens, including the creation of a pro bono attorney emeritus initiative under which retired lawyers provide free legal assistance in civil and family matters. In addition, this past year, New York became the first state in the nation to require that new attorneys perform 50 hours of pro bono legal work to gain admission to the Bar – a requirement that will not just help address the critical need for legal representation, but that will also instill in the newest members of the Bar our profession's proud tradition of service.

Over the past two years, we have, with your support, also provided funding to non-profit organizations in every corner of the State to provide direct legal services in foreclosure, eviction and other cases involving basic human needs. In 2012, 60 grants were awarded, and, in the first six months of this fiscal year alone, 120,000 clients were

served, and almost 800,000 people, including family members of clients, directly benefitted from these services.

At a time of economic downturn, and especially in the aftermath of Hurricane Sandy, legal representation is critical to ensuring fair and equal access to justice to the most vulnerable New Yorkers. But Civil Legal Services funds do more than that. The court system itself functions more efficiently when litigants are represented by experienced advocates rather than attempting to navigate our complex system on their own. In addition, any attorney will tell you that it is much more productive to litigate against another attorney than against a self-represented litigant. The State also sees a return on monies spent on civil legal services, in the form of increased federal benefits and decreased social services and homelessness. In fact, an independent evaluation by nationally recognized experts, commissioned by the Chief Judge's Task Force to Expand Access to Civil Legal Services reports that there is a return of approximately six dollars for every one dollar of funding for civil legal services in New York State. It's good for the clients served, it's good for the courts, it's good for opposing parties, it's good for the State – and it's the right thing to do. As the Chief Judge has said, if we do not provide equal justice in our courthouses, we might as well close the courthouse doors. For these reasons, within our zero-growth budget we are providing for an increase of \$15 million in funding for civil legal services.

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Last year, at my first appearance before you, I said that this is a time of unprecedented challenge for the Judiciary. But I also said that I view this challenge as an opportunity to transform our court system for the better. That is not a job for the faint-

hearted or for the impatient. It is a difficult undertaking, and will take time. But, with your support, we are making real progress and we look forward to continuing our partnership with you in this historic endeavor.

The Reverend Dr. Martin Luther King Jr. once said, "the ultimate measure of a man (and I will add or woman) is not where he (or she) stands in moments of comfort and convenience, but where he (or she) stands at times of challenge and controversy." On behalf of the Judiciary, I pledge that we will continue to stand strong as we adapt to these changing times and we will do our best to serve the people of our great State.

Thank you for inviting me to address you today. I would now be happy to answer any questions you may have on the Judiciary Budget.