



Supreme Court of Kentucky

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Opening Statement

Chief Justice John D. Minton Jr.
Testimony Before the
House Appropriations and Revenue
Budget Review Subcommittee on Justice and Judiciary

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Room 169, Capitol Annex, Frankfort, Ky.

Chairman Crenshaw, Members of the House Budget Review Subcommittee on Justice and the Judiciary and Guests:

Thank you for inviting me here today to discuss the Judicial Branch Budget Bill, HB 293, which I submitted to the House on January 20. I understand that you have already heard from representatives of the Executive Branch: the prosecutors and the public defenders and the representatives of law enforcement and Corrections. I am here today to discharge my constitutional duty to present a budget on behalf of the third branch of government.

Justice is not an optional government program.¹ Alexander Hamilton, one of our founders who emphasized the role of state courts in maintaining a stable republic in the United States, wrote in *The Federalist* that: "Justice is the end of government" and it is "the first duty of society." To that end, our Kentucky Constitution makes justice the common obligation of all three branches of state government. Our Constitution recognizes that justice is the primary obligation of all of state government, and in Section 120 further guarantees that concept by making the adequate funding of the courts a constitutional command.

So I come here to plead our case for the funding the Judicial Branch needs to fulfill the Constitutional obligation our branches share as partners in guaranteeing that the courts of the Commonwealth remain open so that justice is administered without delay.

From all that has been said and written since the General Assembly convened in early January, who could fail to be aware of the grave economic downturn facing state government and of the tremendous challenge you as legislators face to produce a balanced budget that accommodates the needs of the people of Kentucky? We understand that being an equal and independent branch of government does not exempt the courts from budgetary realities. And as a responsible partner in government, we accept our obligation to share in the reductions that must be made to balance the state budget.

¹ Chief Justice Marsha Ternus, Supreme Court of Iowa, State of Judiciary Address to the Iowa Legislature (January 13, 2010).

Perhaps it is fitting for the Judicial Branch to make the closing arguments, as it were, because the court system is critical to the work of the Executive Branch agencies who testified ahead of me. Prosecutors, public defenders, the Kentucky State Police, Corrections – all depend on the courts as they fulfill their constitutional and statutory obligations.

Our court system handles 1.2 million cases each year, directly touching the lives of millions of Kentuckians. To borrow the thoughts of Oregon’s Chief Justice Paul De Muiz:² Our courts are the legal equivalent of the emergency room for state government. We do not control what comes through our doors. We rely on highly-skilled professionals and modern technology to accomplish our work, and we need safe and adequate facilities in which to work.

People come to us when they are in distress or have urgent problems that need to be resolved quickly and fairly, so time is of the essence. If courts do not or cannot do their jobs in a timely manner, then many costs are transferred to others.

When the economy declines, the demand for court services goes up. If people without jobs turn to crime, they end up in our courts. If they steal, physically assault or sexually abuse others – whether it’s their children, their spouses, or strangers – they come to our courts. If they abuse drugs or alcohol, they come to our courts. If they seek to establish or modify child support orders, they come to our courts. If their homes are foreclosed, if they are evicted from their apartments, if they are sued for failing to pay their bills, they come to our courts.

We cannot ignore these problems when they come to the courthouse – our Constitution, our statutes and our consciences all require that our courts have the ability to resolve these issues in a fair and timely manner.

If budget cuts severely restrict court operations, the ripple effect will be quickly and deeply felt in every corner of the Commonwealth and the impact on the everyday life of its citizens, its schools and the business community will be huge.

I want to explore those ramifications further, but first I’d like to introduce those here with me today:

- A number of elected Court of Justice officials
- Laurie Dudgeon, director of the Administrative Office of the Courts
- Carole Henderson, budget director for the AOC
- Katie Shepherd, chief of staff and counsel for the Supreme Court
- Executive officers and managers from the Administrative Office of the Courts

Actions Already Taken to Reduce Budget

I’d like to begin by telling you what the Judicial Branch has already done to prepare for Kentucky’s fiscal crisis. We saw this day coming as early as 2008. In February 2008, the AOC carried out its first major organizational restructure in nearly 30 years. Our goal was to streamline operations, reduce staff at the AOC campus in Frankfort and refocus on court

² Chief Justice Paul J. De Muniz, Oregon Supreme Court, State of the Judiciary Address to the Oregon Legislature (January 9, 2009).

operations throughout the state. The majority of Court of Justice employees – 93 percent – work outside of Frankfort.

In the summer of 2008, the AOC implemented a hiring freeze and began eliminating positions through attrition. As the economy worsened in 2009, we determined which functions the AOC is constitutionally and statutorily mandated to perform and made the difficult decision to cut in areas that, however valuable, fall outside of our core functions. In September 2009, the AOC abolished 47 positions at the Frankfort campus.

To date, we have trimmed 119 positions through attrition and abolished 47 others for a total reduction of 166 positions and a savings of \$7 million. Of the 166 positions eliminated, 99 of those were located at the AOC campus in Frankfort.

At the same time we cut personnel costs, the AOC reduced its operating expenses to realize another \$2.4 million in savings. For example, we:

- Placed a moratorium on expanding current programs and implementing new programs.
- Reduced the office supply list and furniture and equipment replacements.
- Eliminated all AOC-issued Blackberries, cell phones and pagers except for employees with response time requirements who are making less than \$50,000 a year.
- Eliminated all business cards.
- Eliminated all educational conferences except for those for judges and circuit court clerks and reduced conference costs, to be effective in Fiscal Year 11.

The combined annualized cost savings from personnel cuts and operating efficiencies is approximately \$9.4 million. You'll find a list of these reductions in your packet.

As you may know, the Judicial Branch was the first branch in state government to aggressively abolish positions. In the last year, we remitted \$31.9 million – or 5.7 percent – of our total biennial appropriation back to the state. We continually look for ways to become a leaner, more efficient court system. So I want to assure you that the Judicial Branch is committed to being part of the solution to our state's fiscal problems.

Ramifications if Funding Not Restored

Other state court systems have already taken drastic measures, such as furloughing employees, cutting courthouse hours, and closing public counters. I consider these options to be the worst-case scenarios for Kentucky. Closing courts would delay justice for victims and defendants in criminal cases, leave businesses and individuals in uncertainty pending the outcome of civil cases, and reduce legal fees to law firms, which would decrease income and tax revenue.

To avoid these worse-case scenarios, the Judicial Branch will need \$41.8 million in Fiscal Year 11 and \$69.8 million in Fiscal Year 12 in addition to our base budget, currently \$273.3 million, to ensure that the court system continues to function as it does today. As I noted earlier, the Judicial Branch will be seriously compromised in its ability to carry out its constitutionally and statutorily mandated functions unless funded appropriately in the coming biennium.

Three main areas comprise the Judicial Branch budget, two of which leave little room for negotiation. We are contractually obligated to make bond payments on the new judicial centers, and we must fund the judicial retirement system. That leaves the third area – operations – as the target for further reductions.

The Judicial Branch will make every effort to avoid layoffs by trimming costs wherever possible. But with 86 percent of our budget dedicated to personnel, there is little we can do before people are affected. More layoffs will be required if funding is not restored.

During this subcommittee's interim joint meeting last fall, Laurie Dudgeon and Carole Henderson explained that a significant number of furlough days would be required to make a dent in the Judicial Branch budget. We estimate that a 15-day furlough of non-elected employees would save our branch approximately \$7 million. Unfortunately, it would also result in a 5.8 percent reduction in pay for employees and would require us to shut courthouse doors across the state for 15 days during the next fiscal year.

I cannot quantify for you the magnitude of the impact closing courthouse doors will have on our dockets, our county jails and our economy.

Other cuts being considered include:

- Eliminating all non-constitutionally mandated trial commissioners.
- Eliminating all court reporters.
- Eliminating the deputy circuit court clerk overtime program and career ladder.
- Eliminating all continuing education programs for judges and circuit court clerks.
- Eliminating all Teen Court and Mock Trial programs.
- Abolishing Family and Juvenile Drug Court programs.
- Reducing Drug Court testing supplies and treatment.
- Furloughing non-elected employees.
- Further restructuring of the AOC.

If further layoffs become necessary, we will be facing significant reductions to some of our most beneficial programs. Here are some examples of what these cuts could mean in concrete terms:

There are currently 2,852 participants in Drug Court who might otherwise be incarcerated in Kentucky prisons. Drug Court has saved \$26 million in prison costs since 1996. The state saves \$4.14 for every dollar spent on Drug Court. Participants are treated for \$5,179 per year versus the \$18,613 it costs to house an inmate for a year. A reduction in Drug Court funding will shift the responsibility for non-violent drug offenders to the Department of Corrections and dramatically increase incarceration costs and recidivism.

Pretrial release alternatives save time and money by allowing defendants to maintain employment and comply with pretrial release conditions. Pretrial officers serve all 120 counties and interview defendants within 12 hours of incarceration. Judges use this assessment to determine if a defendant can be released pending trial.

The Monitored Conditional Release program further relieves jail overcrowding. Pretrial officers monitor defendants to ensure they comply with the conditions of their release. The MCR Program has saved Kentucky jails \$30.8 million since it began in 2005. It saved 540,709 jail beds in 2007 alone.

Reducing pretrial officers would compromise the 12-hour deadline for interviewing defendants by forcing the Supreme Court to increase the interview deadline to 36, 48 or even 72 hours. This change would strain county budgets by increasing pretrial incarceration.

Court Designated Workers serve 120 counties 24/7 and help troubled youth avoid formal court appearances through diversion programs and discourage further trouble with the law. CDWs are also instrumental in our successful Truancy Diversion Program, which operates in 144 schools statewide. The program saves state funds by keeping students in school.

Technology Key to Future of Court of Justice

Despite all of our budget woes, we must think ahead to the future of the court system. My main focus as Chief Justice – other than keeping the courthouse doors open during this financial crisis – is to increase our use of technology to reduce costs and increase efficiencies. One of the primary responsibilities of the AOC is to support judges, circuit court clerks, the legislature, the Executive Branch and our criminal justice partners with accurate, easily accessible court data and statistics.

Many states are turning to technology by using integrated case management systems that include electronic filing, electronic records, video arraignment and video conferencing. These efforts allow courts to function more effectively and efficiently.

Kentucky is no exception. The development of one Electronic Courthouse for Kentucky has become our top priority. Although it will require an initial investment in equipment and human resources, technology will allow a leaner Judicial Branch to maintain a high level of service to the Commonwealth. To that end, the only capital requests we will be making in the foreseeable future will be for technology projects.

One of our main goals in the coming months is to develop a new case management system. Other court systems are ahead of us in making court documents and statistics available online. We hope to be able to join them in the near future.

In addition, as some members of this subcommittee have previously noted, our accounts receivable system needs an overhaul so that we can track funds owed the court system in unpaid court costs, fines and fees. Although we have made strides in this area, we are still far from implementing a statewide electronic system to manage these debts owed to the state.

As a result of turning our attention to technology, we have begun the process of restructuring the AOC Department of Technology Services. We will be hiring a new chief information officer who will bring the leadership and expertise we need to identify and manage strategically our technology needs. We have reclassified the vacant AOC deputy director position into that of a high-level CIO who will report to the AOC director. We are also creating a new Governance Board that will develop a three-year strategic technology plan

for the Court of Justice, prioritize technology projects and lead the way to bringing e-filing to Kentucky.

The National Conference of Appellate Court Clerks recently released a white paper on e-filing and a section can be applied to Kentucky courts:

"... the cost of obsolescence is inefficiency, which translates into an inability to keep pace with increasing case loads and personnel costs. It also places the courts outside the mainstream of the legal profession; if lawyers are using technology in sophisticated ways in the practice of law – employing electronic communications, hyperlinked documents, electronic records, electronic service, etc. – the courts will be perceived to be (and may actually be) out of touch with the way people live and work today."

I want to ensure that Kentucky courts do not fall behind in the innovative use of technology to provide timely, efficient justice.

Conclusion

All Kentuckians depend on our courts to uphold the rule of law, which guarantees an open, accountable and stable legal process that supports a civil, stable society. We depend upon your wisdom to appropriate adequate funding to keep the courts open.

We must not be forced to ration access to justice in Kentucky.

Thank you again for your time today. I will now be happy to answer any questions.

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