

**Budget Hearing, Senate Appropriations Subcommittee
March 5, 2009
Remarks of Chief Justice Marilyn Kelly**

Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to speak with you about the judicial branch budget request for FY 2010.

With us today are Chief Judge Henry Saad of the Michigan Court of Appeals; James Neuhard, the director of the State Appellate Defenders Office; and Tom Harp, the director of Michigan Appellate Assigned Counsel System, who will each present to you their respective budget proposals. I believe you know our staff, so I will dispense with introductions. They are here to help answer any questions you may have following my remarks.

As you know, although the judiciary represents but a very small percentage of the state budget, our responsibilities are many and great. I would point out, just for clarification, that about two-thirds of our general fund appropriation goes to two items over which the judicial branch has no control: judicial salaries and payments to local governments by statutory formula. The remaining one-third supports judicial branch operations: the Supreme Court, Court of Appeals, State Court Administrative Office, and the other judicial branch agencies. Over the years, we have worked very hard – not only to cut costs as to that one-third that we do control, but also to see where we, the judicial branch, might help the state identify sources of revenue, hence our collections effort, which I will address in a moment.

The materials you have before you are self-explanatory, but I would like to emphasize some of the highlights, including four items for which we are requesting federal stimulus funds.

In general, we support the Governor's recommendation. Obviously, we wish that we were not facing a 2 percent reduction in general fund and the \$550,000 cut in funding for the mental health court pilot program. But we are keenly aware, as is everyone in state government, of our economic realities. Indeed, since FY 2000, the number of judicial branch employees covered by our budget has decreased by almost 13 percent. Over the last five years, judicial branch employees have received 8 percent in cost-of-living adjustments, less than half of the 17 percent received by executive branch workers. So our branch has shared the state's financial challenges over the years, while continuing to expand and add value to state services.

Take, for example, the great advances in court-related technology in recent years, many of those efforts being led by the Judicial Information Systems division of the State Court Administrative Office. Thanks to the Judicial Network Project, which is described in your materials, over 95 percent of all felony and misdemeanor dispositions are now reported electronically – on a daily basis and often immediately -- from the court to the Michigan State Police and Secretary of State. To understand what a boon this is to law enforcement, you have to appreciate that in the past such updates were often done manually and could take a week or more to be entered into the system. Another project, the Judicial Data Warehouse,

is well on its way to becoming a statewide repository of court data for both pending and closed cases. As of the end of 2008, the warehouse contained over 34 million documents and was implemented in 219 courts. We're excited about this project because the warehouse has so many potential applications, ranging from law enforcement to child welfare. Other projects include online payment of traffic tickets, a statewide system for trial court case management, video conferencing for prisoners, and electronic filing of court documents. These projects hold great promise for improving public services, including ease of access to the justice system.

I mentioned earlier the issue of court collections. Clearly, this is a practical matter for the courts, but enforcing a financial sanction also sends the message that the court's orders are to be respected and followed. As you know, court fines, fees and costs support law enforcement, libraries, the Crime Victims Rights Fund, and state and local governments. By the end of this year, all state trial courts will have a collections program in place, the product of many hours of work by a blue-ribbon committee. This is not to say that we're going to return to the era of debtors' prisons – far from it. Some litigants will simply not have the ability to pay, and we realize that. But for those who do, it's important that the court uphold its credibility by enforcing its orders, and that includes being able to work out payment plans with litigants.

Over the years, our drug court funding has been very stable, and I thank the Governor and the legislature for their consistent support for drug courts and indeed the therapeutic justice approach. This is a very promising movement; the statistics we're seeing indicate that these programs reduce recidivism and incarceration, and that, even taking into account the cost of treatment, they are less expensive than traditional sanctions. Last year, we expanded the drug court concept in a new and exciting way, to a pilot project for mental health courts, and indeed most of the nine courts involved have already enrolled participants. Although the availability of federal funding for the drug courts has been an issue in recent years, we're optimistic that the recent federal stimulus package will allow us to maintain, and perhaps even increase, federal funding for drug courts. Without federal funding, we would be hard put to continue these programs; federal funding represents \$2.3 million of the \$4 million in grants that state drug courts receive. Unfortunately, the executive recommendation for FY 2010 does not include funding for the mental health courts. As I mentioned earlier, many of the mental health courts have already enrolled participants; if the project is halted now, all the time and resources expended so far would be for naught, as it takes at least two years to collect useful data that would help us evaluate and perhaps expand mental health courts. It would be extremely unfortunate for the pilot project, which holds so much promise for public and participants both, to be shut down, particularly when Michigan and other states are seeking viable alternatives to incarceration. The Pew Center on the States released a report earlier this week that not only points out the vast sums spent on prisons and jails, but also suggests that that money could be better spent on law enforcement and increased supervision of convicted criminals who are not incarcerated. Therapeutic courts provide another option and, I believe, a very effective one.

So I come to two of our four requests for stimulus funding. As to the drug courts, we are requesting \$2.7 million. We also request stimulus funding to allow the mental health courts to continue in FY 2010.

We also ask for \$1,360,000 in stimulus funding to allow the Judicial Data Warehouse to be implemented in the 25 courts remaining, which are in Berrien, Delta, Kent, Macomb, Oakland and Wayne counties. Stimulus money would enable us to complete the project more quickly and would free up money for other initiatives to benefit the public, such as online ticket payment.

Our fourth stimulus request addresses the very real possibility that there may be innocent people serving prison terms as a result of faulty evidence. As you know, the Detroit Police Crime Lab was closed in September 2008 following an audit by the Michigan State Police Forensic Science Division; the audit showed an error rate of 10 percent in firearms evidence going back at least five years. Obviously this finding calls into question the results of many Wayne County criminal prosecutions and raises the possibility that defendants may have been wrongfully convicted. Wayne County Prosecutor Kym Worthy has estimated that it will cost her office up to \$800,000 a year to perform appellate review of all cases during the last five years in which firearms evidence was processed by the lab. The State Appellate Defender Office has reviewed its client records for the last six years and determined that 1,167 cases need to be reviewed to determine whether there was tainted evidence that was outcome-determinative and whether there should be an appeal. We are therefore requesting \$318,000 in stimulus funding to create a crime lab unit consisting of two attorneys, a paralegal investigator, and an administrative support person. This request also includes \$33,000 for expert witness fees on a contract basis.

Finally, I would like to raise one additional item. You may have heard that this morning, at our public administrative conference, the Court voted to retain its longtime offices in the state-owned building in Detroit and in Traverse City. On its face, the decision to close two offices would seem to be an easy and straightforward one, but it is not. The Cadillac Place offices in Detroit are occupied by me and Justices Corrigan, Young, and Hathaway. I have been informed that, if we vacate those offices and there is no replacement tenant, our rent would merely be reallocated among existing state building tenants, particularly as Cadillac Place is not fully occupied. Currently there is no tenant who could move into the Detroit space without the state incurring significant renovation costs, and DMB has indicated that it does not have the budget to support that project. As I have studied this issue, it has become clear to me that there are duplicative expenses that we can and will eliminate. We Justices who have offices outside Lansing have agreed to eliminate all duplicative books from our libraries.

But there are other issues at stake that cannot be measured in dollars and cents, and that, I believe, were not considered when the Court voted to close the Detroit and Traverse City offices last year. If we eliminate these offices, we are potentially discouraging future candidates from southeastern and northern Michigan. The result could be a less diverse Court. The Court should have, as with the other branches of state government, a presence outside the state capital. Communities benefit from having a Justice in the area to participate in educational and civic works. Speaking for myself, it is clear to me that the Chief Justice should be available when community leaders and groups ask me to meet with or address them – but there are only so many hours in the day, and if I am based in Lansing, I am less likely to travel far from there.

Too, I have to weigh the practical downside of leaving these satellite offices – and, in the case of the Detroit office, almost certainly leaving that space vacant. That is an expensive symbolic gesture – because it would cost us, in court staff who cannot move their families, in the time and expense lost in moving, the training of new staff. When I assess the costs against the benefits, there simply is too much downside to the symbolic gesture, popular though it would be.

I have no illusions that keeping the offices will be a popular decision. I do hope that you will see that it is a logical and informed one. It is also a practical decision for the upcoming fiscal year, given that a replacement tenant is unavailable to move into the Detroit space as is. Hence, the Court is asking that you restore the funding for the Detroit and Traverse City offices.

Thank you. I would be happy to take any questions you may have.
