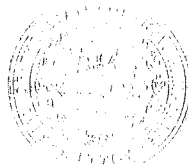


THE STATE OF NEW HAMPSHIRE
SUPREME COURT

JOHN T. BRODERICK, JR.
CHIEF JUSTICE



SUPREME COURT BUILDING
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November 18, 2008

His Excellency, John H. Lynch
Governor, State of New Hampshire
State House
Concord, New Hampshire 03301

Dear Governor Lynch:

Your counsel, Michael Delaney, recently called me to ask that the judicial branch submit to your office ideas for how we could reduce our already-reduced FY 2009 budget by an additional \$3 million. You will recall that Senate Bill 321, enacted last June, requires that the judicial branch reduce its FY 2009 appropriation by \$1.6 million in addition to our "average historical lapse amount of \$1.1 million per fiscal year." This total of \$2.7 million amounts to almost 4% of the original \$73.8 million appropriated by the legislature for the operation of the judicial branch in FY 2009. Budget cuts in the judicial branch, like many of the executive branch agencies, are particularly difficult because much of our budget is made up of the cost of the employees and facilities needed to accomplish our mission. Judicial branch personnel comprise 75% of our budget; facilities amount to 12%; reimbursing sheriffs for security in superior court facilities totals 2%; and jury fees are over 1%. This leaves less than 10% of our budget for all other expenses.

BUDGET REDUCTIONS ALREADY TAKEN IN FY09

To reduce our expenditures by the amount enacted by the legislature in Senate Bill 321, we have already taken the following steps, many of which impact our citizens and the operation of state and local government:

1. Today we hold vacant 36 of the 614 full-time permanent non-judicial positions (6% of our non-judicial workforce). Vacancies exist in all parts of the judicial branch and, except in extraordinary circumstances, we are holding vacant the positions of all employees who leave.

2. The Legislature has authorized 59 full-time judicial positions in New Hampshire trial courts. We currently operate with seven judicial vacancies (three in the superior court, three in the district courts, and one in the probate courts), a number that is almost 12% of our full-time judiciary. We have asked you not to fill these vacancies at this time and, with great reluctance, we now extend that request such that new judges to fill those vacancies are nominated and confirmed in a manner that the new judges would not begin until on or after June 5, 2009 (the first workday that will be paid in FY 2010). Later in this letter (item #1 on page 3), we also make the same request with respect to the recently-announced upcoming vacancy on the supreme court. While we use part-time and retired judges to make up some of the lost judge time, each trial court jurisdiction shares part of the burden caused by unfilled judicial positions. The remaining judges are struggling to make up the difference in judge time and recently all of my colleagues on the supreme court have agreed to each take a turn in the trial courts to try to lessen that burden. This action comes at some consequence to the operation of the supreme court.
3. With some trepidation, we directed our interim security manager to not spend funds appropriated for security screening equipment. While we are aware of the risks this creates, we recognize that these difficult economic times require that we eliminate even very important equipment and services.
4. We have reduced mileage reimbursement for non-judicial employees to 40 cents per mile and we have reduced mileage reimbursement for judges and masters to 25 cents per mile for this entire fiscal year.
5. We have reduced memberships in professional organizations.
6. We have significantly reduced our continuing education budget by eliminating out of state programs and overnight conferences, except those already under contract.
7. The bureau of court facilities in the department of administrative services agreed to reduce its FY 2009 expenditures by \$150,000 (almost 2% of the facilities budget).
8. We are reducing legal library expenditures by eliminating some services and by migrating to electronic legal subscriptions when those changes save money.
9. Superior Court Chief Justice Robert J. Lynn has directed that each superior court suspend jury trials for one month this fiscal year.

10. We have reduced per diem judge days in the district court and family division by 200 for FY 2009.

Even with all of the above actions, we cannot guarantee we will reach the full \$2.7 million dollars of reduced expenditures envisioned by Senate Bill 321.

FURTHER POSSIBLE BUDGET REDUCTIONS IN FY09

This brings me to the request for an additional \$3 million in reduced expenditures. As mentioned above, because so much of our budget is made up of personnel and facility expenses, we have limited flexibility in finding other budget reductions. Moreover, we have already exhausted many of the cost savings in the list above of actions taken to meet the budget reduction in Senate Bill 321. Finally constraining our ability to further reduce our budget is the fact that more than one-third of FY 2009 has already passed. Nevertheless, we could take the following actions now for a total estimated savings of an additional \$431,789:

1. Ask you in filling the vacancy created by the retirement of Supreme Court Justice Galway to fill it in a manner that the new justice would not begin until on or after June 5, 2009 (the first workday that will be paid in FY 2010) for a savings in FY 2009 of \$68,373.
2. Have all our employees shut off their computers on weekends, saving an estimated \$8,500 in utility costs. Shutdown is not possible every night due to downloads and virus scans which run at night.
3. Disconnect twenty-nine underutilized phone lines for a savings of \$10,150.
4. Make greater use of state supply and printing contracts, more carefully scrutinize all purchases, and postpone purchases where possible for an estimated savings of \$25,000.
5. Suspend payment of all remaining memberships in professional organizations for the remainder of FY 2009, in addition to the reduced memberships previously ordered, for a savings of \$66,000.
6. Further reduce subscriptions to local court law libraries for an estimated savings of \$21,406.
7. Reduce acquisitions in the New Hampshire Law Library for an estimated savings of \$15,000.
8. Further reduce our continuing education budget, such that the budget for FY 2009 would be reduced to \$90,000, for a savings of \$45,860. In the first round of budget cuts, mentioned above, this budget was

reduced by \$64,140 from the legislative appropriation of \$200,000 to \$135,860.

9. Have the superior court suspend jury trials for a second month in FY 2009, which would mean two months of no jury trials between January and June 2009, for an estimated savings of \$73,000.
10. Ask the county sheriffs to reduce security in superior court facilities, in part due to the suspension of jury trials and the existing judicial vacancies, for an estimated savings of \$50,000.
11. Reduce law clerk travel by pooling resources at one site and using electronic and telephonic meetings for an estimated savings of \$5,000.
12. Ask the judicial conduct committee to reduce its expenditures by \$5,000.
13. The bureau of court facilities in the department of administrative services informs us the two part-time positions which have become vacant will not be filled for a savings of \$38,500.

FURTHER POSSIBLE BUDGET REDUCTIONS IN FY09 REQUIRING LEGISLATION

In addition to the above, other potential savings exist which would require legislative action. Unless such action is taken soon, however, these items would be of little help in FY 2009. These items include the following:

1. Amend RSA 499:18-b to remove civil service of process by sheriffs for indigent plaintiffs as a charge against the state for a monthly average savings of \$1,333.
2. Eliminate all commuting mileage reimbursement for judges and masters, who currently receive taxable mileage reimbursement for the portion of their commute to their home court in excess of twenty-five miles for a monthly average savings of \$2,417.
3. Terminate the lease with Merrimack County of the Merrimack County Probate Court and move the probate court into the superior court building for a monthly savings of \$ 8,053.

POSSIBLE PERSONNEL INITIATIVES

We have also considered personnel initiatives to save some personnel expense. These include the following:

1. Offer our non-judicial and judicial staff the opportunity to take voluntary unpaid leave time for short durations for the rest of FY 2009. For non-judicial staff, this proposal raises issues of the payment of disability retirement or death benefits should an employee become disabled or die while on voluntary unpaid leave. We are exploring these issues with officials at the New Hampshire Retirement System. In addition, we will raise this matter with Commissioner Hodgdon of the department of administrative services to see if this proposal raises any concern with her. Based on a survey we did of our employees, we estimate that voluntary unpaid leaves could result in a savings of \$55,000 for the remainder of FY 2009.
2. Offer some non-judicial employees who are eligible to retire the opportunity to retire from judicial branch service with the understanding that we would hire them back on a temporary part-time basis not to exceed twenty-nine hours per week. If we offered this retirement incentive and fifteen employees took advantage of it, we estimate the savings to the judicial branch in FY 2009 to be \$68,188. It should be noted that some, but not all, of those savings would be offset by an increase in the expenses of the department of administrative services for retiree health insurance. For this reason, we will raise this matter with Commissioner Hodgdon of the department of administrative services.

POSSIBLE REVENUE RAISING IDEAS

We have also brainstormed about revenue-raising ideas. Some of the ideas we have developed require legislative action and are, therefore, subject to the same time constraints as discussed above. Others of the ideas listed below we could implement pursuant to the supreme court's rulemaking authority, but we are loathe to do so unless there is to be a general increase in fees across state government. Our revenue-raising ideas are as follows:

1. Amend RSA 188-F:31 to increase the penalty assessment on criminal fines and dedicate the increase to the general fund. Each one percent increase in the penalty assessment would generate an estimated additional revenue per month of \$19,750. It should be noted that there is a time lag before an increase in the penalty assessment produces additional revenue so this idea would generate some, but not much, additional revenue in FY 2009.
2. Double to \$10 the fee for divorce certificates and certified copies of divorces and double records research fees for an estimated additional revenue per month of \$25,000.
3. Charge \$10 for a writ of execution, for which no charge is currently imposed, for an estimated additional revenue per month of \$400.

4. Increase filing fees, except for small claims, in all courts for an estimated additional revenue per month of \$23,000 for each \$5 increase.

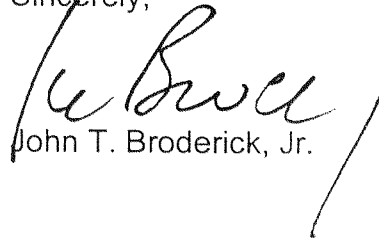
FURTHER POSSIBLE PERSONNEL CUTBACKS

Even if all of the above were implemented, we do not even come close to the requested additional budget reduction of \$3 million. That leaves as the only option a further reduction in personnel costs. Only two choices are available, neither of which we recommend or encourage because they impact critical services. One would be a reduction in per diem judge time, and the other would be layoffs of non-judicial personnel.

1. Regarding per diem judges, each day of per diem judge time, effective January 2, 2009, costs the judicial branch \$538.25. Because of hearings already scheduled, it would be difficult to eliminate any per diem judge days before January. From the beginning of January until June 4, 2009 (the last workday that will be paid in FY 2009), approximately 950 days of per diem judge time will be scheduled. Any elimination of these days impacts the family division most heavily. While some small further reduction in per diem judge time is possible beyond the 200 days already committed, we would not on our own order a wholesale reduction in this area. It would have too great an impact on the delivery of justice to New Hampshire's citizens.
2. Regarding possible layoffs of non-judicial personnel, the judicial branch is already holding vacant over 6% of its non-judicial positions. For many reasons, layoffs now at the level needed to reach a \$3 million budget reduction this year would devastate the judicial branch for years to come. Thus, my colleagues and I will not consider them without legislative action. Here is how we calculate the impact of each layoff. We assume an average annual salary, effective January 2, 2009, of \$42,160, plus the benefit percentage of 48.3%, for a total annual cost per employee of \$65,523. Dividing the annual cost by twelve yields a monthly savings per employee laid off of \$5,210. These savings are offset by a total average layoff cost of \$7,313 per employee, made up of an estimated average leave payout of \$3,156 per employee plus three months of full health benefits and three more months of 50% health benefits (see Laws of 2007, Chapter 263:74, IV) costing \$4,157. Since layoffs require notice, they could not occur until at least early 2009, making them impractical because of the limited savings they could engender.

We know this is a very difficult time for our state and nation. We have written this letter in the spirit of cooperation, trying to do what we reasonably can to help narrow the looming deficit. In fact, some of the items we have put on the table in this letter, we believe are not reasonable, but we have done so to squeeze every dollar we can from our FY 2009 budget. We stand ready to discuss these items with you.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Broderick, Jr.", written in a cursive style. The signature is positioned above the printed name.

John T. Broderick, Jr.