



Preliminary Report on the Effect of Judicial Budget Cuts On New York State Courts

**Prepared by the
Task Force on Judicial Budget Cuts
New York County Lawyers' Association**

This report was approved by the Executive Committee of the New York County Lawyers' Association on August 11, 2011.

EXECUTIVE SUMMARY

Reflecting the historic commitment of the New York County Lawyers' Association (NYCLA) to access to justice for all New Yorkers and to the effective administration of justice by the court system, the NYCLA Board, on the recommendation of newly elected President Stewart D. Aaron, established a Task Force on Judicial Budget Cuts on June 13, 2011. Its mandate was to prepare a preliminary report within 60 days, assessing the impact of the current fiscal year's \$170 million in judicial budgets cuts — cuts exacerbated by an early-retirement program and a job freeze. Task Force subcommittees promptly met with court administrators, judges, supervisory and clerical staff and lawyers; reviewed and evaluated available data about staff reductions and decreased funding for security and other critical services; and gathered anecdotal information from practicing lawyers.

The Preliminary Report presents the Task Force's initial findings and observations for the following courts: Appellate Division, 1st Department, and Appellate Term; Civil Court of the City of New York; Criminal Courts, both Supreme Court, Criminal Term, New York County, and New York City Criminal Court, New York County; Family Court; Supreme Court, Civil Term, New York County; and Surrogate's Court, New York County. (A preliminary report on the U.S. District Court for the Southern District of New York will be issued shortly.)

Many of the issues arising from the budget cuts are common to all the courts, while some reflect the experience of particular courts. The report emphasizes that the budget cuts were imposed only several months ago and the effects will accrue over time. The Task Force plans to continue to assess the cuts by holding hearings in the fall and issuing additional reports.

Highlights of the Preliminary Report

Staffing

- Compared to August 2010, the court system has 1,151 fewer employees as a result of layoffs, early-retirement programs and hiring freezes.
- In the layoffs, non-judicial staff with greater seniority bumped those with lesser seniority, creating situations where the more senior people may be unfamiliar with the policies and procedures of their new jobs.
- Many senior clerks took advantage of the early-retirement programs, leaving the courts with less experienced staff in key positions.
- The hiring freeze creates even greater burdens for judges and staff as caseloads and backlogs continue to increase.
- Reductions in the numbers of court officers assigned affect security for judges, staff, lawyers and the public.

Jurors

- Twenty percent fewer jurors will be called, potentially leading to delays, especially in civil trials.

Overtime

- Overtime, used in the past to keep courts open longer hours and to handle backlogs, is now severely restricted, requiring prior approval of the Administrative Judge.

Judicial Hearing Officers

- The use of Judicial Hearing Officers, retired and experienced judges who performed key functions in many courts, was eliminated except in some Criminal Court parts and in Family Court. Judicial caseloads will be affected and litigation will be more prolonged and expensive.

Access to Court Buildings

- Hours of operation were reduced with most courtrooms now open only from 9:00 a.m. to 4:30 p.m. so that staff may complete any necessary paperwork. Trials will take longer, inconveniencing lawyers, witnesses and litigants and making trials more expensive.
- Small Claims Court now operates only one night per week, rather than four nights per week, creating significant backlogs of cases.

Court Programs in Family Court

- After 15 years, child care facilities were reduced in Family Courts (and eliminated in all other courts), making it more difficult for parents to participate in often emotional proceedings.
- Mediation programs in Family Court were significantly reduced, increasing the burden on the rest of the court.

INTRODUCTION

Recognizing the seriousness of the announced cuts to the budget of the New York State Courts totaling \$170 million, on June 13, 2011, NYCLA established a Task Force on Judicial Budget Cuts (the “Task Force”). Former Appellate Division Justice Stephen G. Crane and former NYCLA President Michael Miller were asked to serve as co-chairs of the Task Force, on which a distinguished group of bar leaders and jurists was recruited to serve. We note that on August 8, 2011, the House of Delegates of the American Bar Association adopted a resolution calling on “bar associations to document the impact of funding cutbacks” on the

judiciary and urging state and other governmental entities “to recognize their constitutional responsibilities to fund their justice systems adequately.”¹

The Task Force, comprising dedicated past and present NYCLA leaders, including chairs and/or former chairs of every court committee or section, was asked to conduct a preliminary investigation and issue a preliminary report within 60 days of its establishment.² Subcommittees were formed to focus on each court, and the members have worked very hard over the past eight weeks in conducting preliminary investigations.

Members of the Task Force interviewed court administrators, supervisory and clerical personnel, uniformed court officers, court staff, judges, attorneys and members of the public; reviewed data; and collected information about the conduct of the business of the courts in light of the budget cuts. Court administrators were very forthcoming and provided significant assistance.

Those interviewed include:

- Chief Administrative Judge Ann Pfau;
- Deputy Chief Administrative Judge for NYC Courts Fern Fisher;
- Administrative Director of the Office of Court Administration Judge Lawrence K. Marks;
- Presiding Justice Luis A. Gonzalez, Appellate Division, 1st Department;
- Administrative Judge of the Supreme Court, NY County, Civil Branch, Sherry Klein Heitler;
- Administrative Judge of the Supreme Court, NY County, Criminal Branch, Michael Obus;
- Supervising Judge of the Criminal Court, NY County, Melissa Jackson;
- Administrative Judge of the NYC Family Court Edwina Richardson-Mendelson;
- Surrogates Kristin Booth Glen and Nora Anderson;
- New York County Clerk Norman Goodman; and
- Chief Judge of the United States District Court for the Southern District of NY Loretta A. Preska.³

¹ The entire resolution may be found at: http://www.abanow.org/wordpress/wp-content/files_flutter/1312836469302.pdf

² The Task Force membership roster is on the last page of this report.

³ Although the Task Force was established in response to the budget cuts to the New York State Court system, it was felt that the Federal courts were not immune to budget pressures and that the Task Force’s investigation should

These administrators were forthcoming and candid in discussions with Task Force members. They were deeply concerned about the cuts they were required to make, but determined to operate the courts as effectively as possible.

Because of the short timeframe of the initial investigation, the recent implementation of layoffs, and the summer, which is generally a slower time of the year for the courts, it is difficult to definitively assess the impact of the budget cuts on the administration of justice. What was very apparent to the Task Force was that the New York State Court system has very dedicated and gifted administrators. However, they are grappling with what has been described as a “perfect storm” of budget cuts of \$170 million imposed upon the court system by the legislature and governor, an early-retirement program and a hiring freeze. Though our investigation has just begun, it is quite clear to the Task Force that a court budget, 92% of which represents personnel costs, will be seriously affected by the substantial reduction of the workforce as required by the budget cuts.⁴

It is also clear that the elimination of overtime, one of the principal additional tools employed by OCA to reduce the budget and avoid additional layoffs, has significantly reduced the time available for the courts to perform their functions. Discretionary overtime requests must now be approved by the Administrative Judge on a case-by-case basis, and all courtrooms are required to close at 4:30 p.m. and courtroom staff must complete all paperwork and close the parts (courtrooms) by 5 p.m. Without the flexibility to finish later in the day, the Court must either interrupt witness testimony or plan to hear fewer witnesses per day. Further, juries are no longer permitted to deliberate during lunch, unless the Administrative Judge grants permission for the staff overtime. In addition, jury pools will be reduced by 20% in September to limit costs attendant thereto. Unfortunately, this will result in further trial delays, due to the unavailability of jurors. Trials will take longer and the cost of litigation will increase as a result.

Inscribed above the entrance to the Supreme Court building at 60 Centre Street are George Washington’s immortal words: “The true administration of justice is the firmest pillar of good government.” A fundamental question for this

include the Federal court as well. A report on the U.S. District Court for the Southern District of New York will be issued separately.

⁴ It has been reported that in total, the court system has 1,151 fewer staffers than in August 2010. *See, As More Than 300 Staffers Clear Out their Desks, What Happens Now in NY Courts?*, NYLJ, Jeff Storey, 5/31/11. *See also, Hundreds of “Terrific” Workers Laid Off as Personnel Cuts End*, NYLJ, Joel Stashenko, 6/2/11.

Task Force is whether, as a result of the budget cuts imposed upon the judiciary, that pillar is eroding, and if so, to what extent. It is too early to make any definitive judgment but it is clear from our initial investigation that the effects of the cuts are serious and widespread, and administrators are greatly challenged.⁵

The judiciary has profound constitutional duties. Budget cuts on the judiciary may have a detrimental impact on the courts' ability to meet their constitutional duties. The Task Force will undertake to study this issue more fully and report any findings or further recommendations.

The Task Force intends to conduct a more in-depth and comprehensive investigation over the next several months, which will include a public hearing at NYCLA in the fall, so the long-term impact of budget cuts can be more fully assessed. The Task Force then will prepare a more comprehensive and detailed report on the impact of the budget cuts on the administration of justice. What follows are the preliminary reports of the subcommittees pertaining to the respective courts.

MEETING WITH JUDGES PFAU AND MARKS

On July 26, 2011, an executive committee of the Task Force met with Chief Administrative Judge Ann Pfau and Judge Lawrence Marks, Administrative Director of the Office of Court Administration (OCA). Judge Pfau reviewed the challenges resulting from the requirement that the courts cut an additional \$70 million from the budget originally submitted by OCA, which already contained \$100 million in budget cuts. Judge Pfau noted that if the additional \$70 million in cuts had not been required, a substantial number of layoffs could have been avoided. On numerous occasions, Judge Pfau stated that "there are real consequences to budget cuts" but noted several times that OCA was seeking to maximize flexibility in implementing budget cuts.

Judge Pfau provided an in-depth overview of the balancing act between managing funding and meeting the constitutional obligation to keep the courts operating. As she stated, "We've had to figure out the best use of reduced resources." She noted several times during our meeting that with every decision there are consequences, and that "there are real consequences to budget cuts."

⁵ See, *After Budget Cuts, Defendants' Wait to See a Judge Often Exceeds 24 Hours*, NYT, 7/20/11 p. 22, Joseph Goldstein.

As more fully described below, as an initial matter, OCA cut non-personnel services (NPS), including a drastic reduction of childcare facilities, elimination or reduction of mediation programs and a substantial reduction in the resources dedicated to Small Claims Court. NPS reductions also include substantial cutbacks to library-subscription services in favor of lower-cost on-line services, the elimination or reduction of alternative dispute resolution programs, the suspension of Judicial Hearing Officer (JHO) programs in all civil parts (but not in criminal summons parts or Family Court) to achieve a savings of \$5 to \$7 million, and a reduction of Small Claims Courts to one night per week, in order to achieve a savings of \$2 to \$2.5 million. Additionally, in an effort to reduce the \$23 million paid each year in juror fees, the number of jurors called for service will be reduced by 20%, and the implementation of juror call-in programs and other innovations will be eliminated.

Judge Pfau explained that the largest area of NPS expense is employee overtime, noting that OCA spent \$37 million on overtime during the last fiscal year. Accordingly, overtime has been strictly reduced and any requests for overtime must be approved by the relevant Administrative Judge. Thus, all courtrooms are now required to close at 4:30 p.m.⁶

Additionally, Judge Pfau stated that she regretted that the budget challenges have required that OCA drastically reduce the valuable employment, on a per diem basis, of some of the most experienced and talented people in the court system, retired judges, serving as JHOs, creating additional duties for trial judges and their staffs.⁷

Judge Pfau noted that the courts were quickly confronted with a serious problem when Brooklyn arraignments were taking more than 24 hours, in violation of the law.⁸ Re-deploying personnel and moving to round-the-clock arraignments have eased the situation. Judge Pfau acknowledged that the loss of clerks can frustrate the timely processing of orders and judgments in Civil, Supreme and Surrogate's Courts, that trials are taking longer because of the mandated 4:30 p.m. court closings, and that the tremendous reduction in hours for Small Claims Court

⁶ The issue of overtime and the impact of closing the courtrooms at 4:30 p.m. is discussed throughout this report.

⁷ See discussions concerning the use of JHOs in the sections of this report devoted to the Supreme Court, Civil Term, the Supreme Court, Criminal Term, and the Family Court.

⁸ *People ex rel. Maxian v. Brown*, 77 N.Y.2d 422, violation of CPL 140.20.

(open only one evening per week instead of four evenings per week) has an impact on the ability of the public to access the “People’s Court.”

Judge Pfau expressed a concern that any further cuts to the judiciary’s budget could have a detrimental impact on the judiciary’s ability to meet its constitutional duties. She stated, “The constitutional right to come to court has to be given meaning.” However, she very firmly and passionately expressed her commitment to maintaining the court system as an open and functioning institution serving the citizens of New York State.

APPELLATE DIVISION, 1ST DEPARTMENT, AND APPELLATE TERM

The Appellate Division, 1st Department, oversees the court itself, the Departmental Disciplinary Committee (DDC), the Committee on Character and Fitness, the Office of Mental Hygiene, and the Appellate Term. The Appellate Division’s reduced budget allocation resulted in the elimination of ten positions. Three support staff members from the DDC, two support staff members from Mental Hygiene, a court analyst from Character and Fitness, and four court staff, including a front-office clerk, an order-room clerk and two attorneys, one from the Appellate Term and one from the Appellate Division, were laid off. The court itself selected the titles.

This was the first time the Appellate Divisions were affected by budget cuts. During the last judicial budget crisis in 1991, the Appellate Divisions were spared. So far, Presiding Justice Gonzalez of the 1st Department reported that the remaining staff members have “stepped up to the plate” and performed the tasks previously done by the laid-off employees. However, that has meant staff working late without overtime pay in some instances and has created anxiety among staff members.

Non-personnel cuts have also been made. The Appellate Division is no longer able to host bar association events that require court officer overtime, nor is it able to furnish a venue for 18B counsel CLE training. Also, the library budget has been halved.

CIVIL COURT OF THE CITY OF NEW YORK

The subcommittee on the Civil Court is continuing to monitor the effects of the budget cuts on the Civil Court. The subcommittee has requested data, which are being compiled and provided by the Civil Court administration. The issue is whether access to justice will be reduced as a result of the budget cuts. Will the business of the people be affected? There is a consensus that the impact will accrue and become more evident over time. Because the summer months are generally the slowest time of the year, the subcommittee believes it will be able to observe the impact of the budget cuts more fully in the fall.

Court Facilities and Hours

Court facilities have been affected by the budget cutbacks as the hours of the court were reduced. Overtime has been significantly cut. Early court hours have been eliminated; court hours are now 9 a.m. to 5 p.m. The public is not given access to the public offices after 4:00 p.m. as the offices must close by 5 p.m. Therefore, if someone tries to enter the courthouse at 4:45 p.m., he or she will not be allowed to enter as processing cannot continue after 5:00 p.m. Courtrooms are open only until 4:30 p.m. Emergency applications are being entertained, so that if someone is served with a notice of eviction, he or she will be allowed to enter. The court receives a daily list from the marshals of scheduled evictions; if the person is on the list, that person may enter the courthouse.

No training or after-hours meetings are permitted at the Civil courthouse, which now closes its doors at 5:00 p.m., except on Thursdays when the court is open until midnight to accommodate Small Claims Court. Voluntary lawyer training for Small Claims Court and other meetings can no longer be held there.

Judges are no longer sworn in at the courthouse, unless the respective judges pay for resultant overtime and security costs. The library in the Civil Court is being phased out and once current book contracts terminate, judges will be required to do all research online.

Security is an issue. Recently the fire alarm went off after hours. As the court no longer has 24-hour security on site, the Fire Department was forced to break into the courthouse. Some years ago, the court implemented 24-hour security because the boiler man at the courthouse was discovered to be one of the organizers of the first (1993) World Trade Center bombing.

Childcare facilities in the Civil Court have been closed, depriving the public of their use.

Delays and Backlogs

The budget cuts in the clerk's office have caused a delay in processing cases, with backlogs increasing since March 2011. Judgments are entered but less expeditiously. There are also significant backlogs in filing papers in the court. File storage and record retrieval are problematic, as there has been a loss of archives personnel. If someone needs a document from archives, there is a delay as there are fewer people to do the work. Because there are not enough record-storage units, files are boxed and transported from one place to another. If an answer is filed, there is often a delay in obtaining the file.

There is another growing backlog in data entry of warrants and judgments. The backlog on judgments is approximately six to seven days citywide. On average, the backlog on warrants is currently eight days; in March 2011, the backlog was one to five days. The backlog was five days in Kings County and now is eight to ten days from the time the marshal files the warrant until the file reaches the judge.

In the past, such backlogs were addressed by overtime. There was more overtime in 1991 during the last budget crisis. Now, there is little overtime and court personnel are working much harder. Previously, Queens County was allotted 180 hours of overtime per month; now it is allotted 27.5 hours of overtime per month. Moreover, the amount of overtime was previously allotted by category but now is lumped together and can be used up very quickly. A protracted session in court might completely eliminate overtime for the back offices. Shifts cannot be modified to accommodate summer and vacation schedules.

Adjourned dates are extended further because reduced hours mean that court personnel can handle fewer cases each day. Longer adjournments are necessary to accommodate the caseload.

Trial and Resolution Parts

The Housing Court is composed of resolution parts and trial parts. The resolution parts are courtrooms where the cases are initially assigned. Cases are conferenced for the purpose of settlement, and motion practice occurs there. The resolution parts have been largely unaffected by the budget cuts as the staffing has remained relatively constant, except for the transfer of some administrative staff to the operating parts. This, however, affects administrative efficiency and back-office operations.

When a case is trial ready, it is sent from the resolution part to Part X, a central holding part for trial-ready cases. It is, in fact, a clerk's office where an expeditor takes in the trial-ready cases coming from the resolution parts. The expeditor lists the cases in the order that they reach Part X on any given day. As backup trial judges become available on that day, the cases are then assigned to the available trial judges in the order in which the cases reached Part X. If a case is not reached, it is adjourned and the parties pick an adjourned date. On each adjourned date there is a disclosed list of cases already on the list for that day. The parties return on that adjourned date and sit and wait for a trial judge to become available. If a case is not reached, it is again adjourned and the same process repeats. Once a trial judge is reached, the case can continue on that judge's schedule, so waiting all day to get into the trial courtroom is the goal.⁹

While the budget cuts have not been directed to the trial parts, there are nevertheless reported effects. Trial judges are routinely rotated into the resolution parts should a resolution judge be absent, as there are numerous cases assigned to the resolution part on any given day. This results in further delays to the trials.

While there may be some budgetary savings resulting from the cutbacks, the financial cost to the public of having attorneys sitting all day waiting for a judge offsets some or all of the benefits of the cutbacks.

⁹ It was reported during the summer that many attorneys sat in the hallway for hours awaiting a trial judge to become available. One attorney reported as to a case, with an over 90-year-old client sent to Part X from the resolution part in late May. Because no judges became available, after sitting in the hallway all day, the matter was adjourned to July so as to be number one on the Part X list for trial on that day. As there were no judges available on that July date, after sitting all day in the hallway, the matter was adjourned to August so as to again be number one for trial on that adjourned date. Again the case was not reached and the matter was then adjourned to October so as to again be number one for trial, with no assurance that the matter will be reached.

Staffing and Morale

Based upon interviews with staff, attorneys and members of the public, it appears that morale at the courthouse is deteriorating as staffing cuts and the hiring freeze begin to take a toll. It has been reported that as a result of the early-retirement program, the hiring freeze and layoffs, there is a serious shortage of skilled and experienced personnel. There has been a one-third reduction in social workers. There is no longer a mediation coordinator or a mediation clerk. Small Claims and the consumer credit parts have been dramatically affected. There are fewer data-entry clerks and the court has four fewer court attorneys. Most of the Civil Court chief clerks have departed.

In describing court staff, words like “demoralized” and “shell shocked” are frequently heard. There was always huge volume in the Civil Court. As the “People’s Court,” the Civil Court is an extremely high-volume court, an overloaded court. It is now more overloaded than ever. For instance, it has been reported that in Queens there are large numbers of file boxes piling up and fewer clerks to file the papers. The full ramifications of the budget cuts and their impact on the administration of justice, judges’ and staff morale, productivity and quality of work will become clearer beginning in the fall.

As the People’s Court, children are a daily part of it. However, there are no longer facilities to place children while their parents engage in litigation. Childcare centers have been closed after 15 years.

The court is losing its most diverse attorneys as these were “last in and first out.” As court personnel disappear, those remaining become anxious. It has been reported that in the administrative offices, there are few people to take care of human resource needs, statistics, leave requests and the like. Many experienced clerks have been lost as result of the early-retirement program and many of those remaining have a learning curve, which results in delays. An impact of fewer court officers is that court inspections are increasingly difficult to obtain, since you need two court officers to accompany the judge.

Accruing Effects

The effects of the budget cuts will accrue over time. Historically, the summer is the slowest time of the year. The expectation is that by the fall, we will be able to observe the impact of budget cuts more fully.

Small Claims

Small Claims Court has often been referred to as “the crown jewel of the court system.” Perhaps this is because much of the public never enters a court except to serve on jury duty or to avail themselves of the Small Claims Court. There are approximately 35,000 small claims cases filed annually. Prior to the budget cuts, small claims at the Civil courthouse were heard four evenings per week and during the day. The vast majority of cases were heard in the evening. Because evening hours resulted in a great deal of overtime, nighttime small claims has been eliminated, except for Thursday nights. In Harlem, it has been reduced to two times per month at night, and once a month in Richmond County. The savings, by reducing nighttime Small Claims, are approximately \$2.5 million in overtime.

The drastic reductions in the operations of the Small Claims Court caused an immediate backlog of cases. On Thursday evening, August 4, 2011, it was reported that a matter commenced in March 2011, in which the defendant demanded a trial by a Civil Court judge (rather than submit to arbitration), was on the calendar for the third time and was adjourned by the court until November due to the backlog.

Overtime

NYC Civil Court's total overtime allocations have been reduced by 74%, or over \$3,500,000, with clerical overtime reduced by 82% and public safety overtime by 71%.

Public Access to the Clerks' Offices

General Clerks (Civil) and Small Claims Offices are accessible to the public beginning at 9:00 a.m. Generally, Landlord and Tenant Offices are accessible beginning at 8:30 a.m., except in Richmond County where its office is accessible weekdays at 9:00 a.m. and at 8:00 a.m. on Thursdays during extended hours of operations when evening Small Claims is scheduled. Harlem Community Court's office is accessible beginning at 9:00 a.m. Generally, clerk's offices are accessible until 4:00 p.m.,¹⁰ except on Thursdays when evening Small Claims is in session. Then Landlord and Tenant Offices are accessible until 7:00 p.m. (cashiers until 6:30 p.m.) and Small Claims Offices are accessible until 8:00 p.m. (cashiers until 7:30 p.m.).

¹⁰ Anyone with an emergency application may access the courthouse and clerk's offices until 5:00 p.m.

CRIMINAL COURTS: SUPREME COURT, CRIMINAL TERM, NEW YORK COUNTY AND NEW YORK CITY CRIMINAL COURT, NEW YORK COUNTY

Introduction

The New York State Supreme Court, Criminal Term, New York County and the New York City Criminal Court, New York County (“Criminal Courts”) have been subjected to less severe judicial budget cuts, in some respects, than their Civil Court counterparts because of the recognition that the Criminal Courts are constitutionally and statutorily mandated to ensure the rights of the accused and at the same time provide the public with the protections of the criminal justice system. Thus far, approximately two months since the major reductions in court personnel, the court staff, prosecutor’s office and defense bar have attempted to keep the courts functioning at acceptable levels. However, all parties believe that the reduced personnel will inevitably cause increasing delays, and in the event of a surge in arrest numbers or some other emergency circumstance, the Criminal Courts will not have the resources to adequately react and administer justice.

Reduced Staffing

Non-judicial personnel positions in the Criminal Courts have been reduced by approximately 7%, affecting every area of staffing, including court clerks, court aides, interpreters and treatment-court staff. This reduction resulted from layoffs due to the budgetary cuts and from not filling vacancies after the 60 Supreme Court clerks opted to take an early retirement at the end of 2010.

The reduction of the total staff does not adequately reflect the impact of the reduced number of personnel. Due to seniority rules from union-governed jobs, some clerks in other courts (Surrogate’s, Civil, etc.), whose positions were eliminated for budgetary reasons, were transferred to unfamiliar positions in Criminal Court, replacing clerks who had less seniority but more relevant experience. Replacement of the clerks and the early retirement of senior clerks has resulted in the loss of significant experience and expertise, giving rise to unquantifiable delays and inefficiencies in the short term.

The Criminal Courts are also suffering from the near elimination of Judicial Hearing Officers (JHOs). JHOs are retired judges with enormous experience who are compensated on a per diem basis. Historically, JHOs provided much-needed

relief to Criminal Court calendars by, among other services, conducting suppression hearings and then making recommended findings of fact to the referring judges, overseeing long-term interim probation matters, and on consent, conducting misdemeanor bench trials. With the loss of the JHOs (except for a small number who volunteer and those sitting in summons parts and in specialized misdemeanor court parts and/or handling building and fire code violations), there has been an increase in the calendars and duties of sitting judges.

Both judicial staff and attorneys have remarked on a reduction in the availability of court interpreters. One attorney reported that there is no longer a permanent Mandarin Chinese interpreter on staff in Supreme Court, requiring an interpreter to be notified and booked in advance for each court appearance. Similarly, there have been complaints regarding the availability of interpreters for court-ordered psychiatric examinations conducted to determine the fitness of the accused to proceed. The resulting delays are particularly troublesome since a criminal matter cannot proceed until the psychiatric examination is completed.

Overtime Elimination

Overtime has traditionally been used to permit Criminal Courts flexibility in conducting trials, maintaining calendars and completing daily administrative business. One of the major tools of budget reductions has been eliminating overtime, which has significantly reduced the time available for the courts to perform their functions. Discretionary overtime requests must now be approved by the Administrative Judge on a case-by-case basis.

As a result, trials are taking longer. All courts are required to finish their business by 4:30 p.m. Without the flexibility to finish later in the day, the court must either interrupt witness testimony or plan to hear fewer witnesses per day. Further, juries no longer deliberate during lunch, unless the Administrative Judge grants permission. In addition, jury pools will be reduced by 20% in September to limit costs. Unfortunately, this will result in further trial delays, due to the unavailability of jurors.

The 4:30 p.m. end of business has also affected pretrial matters. In the parts where the court has discretion in setting its calendar, fewer cases can be heard. However, the calendars of some parts depend on external circumstances, such as number of arrests and/or bail conditions of recent arrestees. For instance, Part F, which handles matters awaiting grand jury action, has traditionally been open later

than other parts to accommodate delays in waiting for grand jury votes, a critical stage that determines whether a defendant held in lieu of bail continues being detained or is released. Now, after 4:30 p.m., the remaining cases on the calendar in Part F are transferred to the night arraignment part to await the grand jury's decision. Attorneys have complained that although the cases are transferred, defendants are not being produced in the arraignment part for their appearances on those Part F matters. Accordingly, attorneys are unable to immediately communicate with their clients regarding the action of the grand jury and its implications.

The arraignment process itself, which on the weekends was staffed in part by employees receiving overtime (approximately 50%), has been significantly affected by the elimination of overtime and budgetary constraints. Beginning on June 11, 2011, the court reduced the weekend day arraignment hours from 7 to 4.5 hours per day. The weekend night court hours, which had also been 7 hours each evening, have now been shortened to 4 hours. It has been estimated that this loss of arraignment hours will result in New York County losing 10,000-15,000 arraignments capacity per year. To compensate, an additional daytime arraignment part has been opened on Mondays and possibly Fridays. However, this means that defendants awaiting arraignment on weekends may be held in custody longer because of the reduction in hours.

One of the earliest signs of the impact of the budgetary cuts on the court system is found in the arrest-to-arraignment-time statistics. The courts have mandated that an arrestee must be brought before an arraignment judge within 24 hours of arrest. However, according to the New York Police Department statistics depicted below, the average time from arrest to arraignment in June and early July 2011 is higher than a comparable period in 2010, and is averaging greater than 24 hours.

Wednesday, June 2, 2010	21.08 hours	Wednesday, June 1, 2011	21.41 hours
Sunday, June 6, 2010	25.49 hours	Sunday, June 5, 2011	30.19 hours
Wednesday, June 9, 2010	19.98 hours	Wednesday, June 8, 2011	26.59 hours
Sunday, June 13, 2010	22.91 hours	Sunday, June 12, 2011	27.72 hours
Wednesday, June 16, 2010	21.69 hours	Wednesday, June 15, 2011	20.86 hours
Sunday, June 20, 2010	19.74 hours	Sunday, June 19, 2011	31.34 hours
Wednesday, June 23, 2010	19.66 hours	Wednesday, June 22, 2011	25.06 hours
Sunday, July 4, 2010	18.76 hours	Sunday, June 26, 2011	28.08 hours
Wednesday, July 7, 2010	21.18 hours	Wednesday, June 29, 2011	23.47 hours
Sunday, July 11, 2010	19.34 hours	Sunday, July 3, 2011	35.21 hours

A *New York Law Journal* article, dated July 8, 2011, noted that the reductions in weekend arraignment hours in Manhattan has significantly reduced the average number of arraignments on Sundays and increased the number of defendants held overnight to await Monday-morning arraignment, adding at least ten hours to their arrest-to-arraignment time period.

By mid July, the increased time between arrest and arraignment gained the attention of the general media, and a number of news articles appeared, detailing instances of people detained, awaiting arraignment, for two to three days on very minor charges. Reflecting OCA’s recognition of the weekend arraignment problems, on July 21, the *New York Law Journal* reported that additional eight-hour weekend day shifts on Saturday and Sunday were being added to the arraignment schedule in order to address the climbing arrest-to-arraignment times in Brooklyn. Judge Lawrence Marks, the court system’s administrative director, explained, “It was apparent from the data that we had too few weekend hours in Brooklyn, and the only way to remedy that was to resort to overtime.”

Assuming the court system has been stretched to its limit by the budgetary cuts, the money spent to cure the arrest-to-arraignment issue is only going to deprive and strain other areas of the system.

In addition to arraigning adult arrestees, because Family Court is closed on weekends, for some time Criminal Court judges in weekend arraignments have been conducting hearings in juvenile delinquency matters to determine whether a child who has been arrested should be detained while the case is pending. Previously, a Family Court clerk and a court attorney were available to assist the court, but due to the cutbacks, those positions have been eliminated. As a result, the Criminal Term judges now hear these cases without guidance from a court attorney,

and a Criminal Court clerk has to do the unfamiliar Family Court Orders and data entry.

Reduced Security

The reduction in staff has affected the number of officers providing security to the buildings and to the judges. Previously, jurors were asked to report at 8:30 a.m., while defendants are asked to be at court at 9:30 a.m. Now, jurors are being asked to report after 9:00 a.m. to cut security time by 30 minutes. This will ultimately result in delays and lines of people waiting outside the Court because more people will be trying to get into the building at the same time.

Judges have also had their security details cut and security is no longer available to them either earlier or later in the day. Reductions have also meant that there is no security on weekends at the court at 111 Centre Street, which houses Supreme Court criminal parts, Civil Court parts and judicial chambers. Judges whose chambers are in that building are not able to enter their offices or the building on weekends.

Community Service Office

The Community Service Office, where defendants must report to begin their compliance with a sentence that includes community service, is now open only in the morning. Defendants sentenced to community service during afternoon court hours are required to return a second day, which substantially inconveniences the accused. The requirement to return invariably leads to the issuance of warrants, which in turn must be executed and/or vacated, further congesting the court calendars and taxing court resources.

Midtown Community Court

The Midtown Community Court, located on West 54th Street, works with local residents, businesses and social service agencies to address quality-of-life offenses that occur in the community. The penalties imposed on offenders are aimed to pay back the community through community service, and at the same time, the court offers defendants help through group and individual counseling sessions with problems that might underlie their criminal behavior. These services are usually scheduled for after-school hours, and now must end at 4:30 p.m., decreasing their availability.

The increased use of Desk Appearance Tickets, coupled with shorter clerk hours, has caused delays and has resulted in more defendants sitting for longer periods of time in the courtroom and longer lines outside the court building waiting for space to open up in the courtroom.

Finally, security has been affected because fewer officers are available to monitor the entryway and the offenders completing their community and/or social service mandates on the 6th floor of the building.

Concurrent Budget Cuts

The Criminal Courts also rely on other New York City agencies for daily functioning. These agencies are facing their own budget crises. The New York City Department of Corrections is responsible for bringing incarcerated defendants to court. Their reduced capacity has resulted in delays for defendants arriving at the building for court appearances.

FAMILY COURT

On July 22, 2011, the Family Court subcommittee traveled to the Bronx and met with Administrative Judge of the Family Court Edwina Richardson-Mendelson. She stated that while no court has been spared from the impact of the budget cuts, the Family Court and the Criminal Courts have been given extra consideration in light of the substantial constitutional issues involved in matters adjudicated in those courts.

After a general discussion about the impact of the budget cuts, Judge Richardson-Mendelson suggested that the subcommittee submit specific questions to her in writing. The subcommittee then did so, however, due to vacation schedules, it has not completed its initial work.

Based on the preliminary meeting with Judge Richardson-Mendelson, it is apparent that the budget cuts have dramatically affected Family Court functioning. For example, the budget cuts led to a cascade effect in courtroom personnel, where

more layoffs led to more senior clerks “bumping” those with less seniority. As a result, the Family Court system is now dealing with a “changing of the guard” *en masse*, where numerous courtrooms and other court offices are dealing with staff who must learn new roles and procedures in the midst of busy Family Court proceedings. These staff members perform some of the most important tasks to ensure that matters are handled expeditiously and efficiently; while they will certainly work hard to get up to speed, Family Court functioning will be affected. Additionally, the Family Court is now under a hiring freeze, meaning that crucial and sensitive positions that become open must remain vacant, which can only hamper the smooth operation of the courtrooms.

Budgets cuts have led to another loss in terms of personnel — the reduction in JHOs, retired judges who adjudicate certain types of cases and serve an invaluable role in resolving cases in a timely manner. While further evaluation is needed to determine the impact of the reduction in JHOs, it is almost certain that this will lead to an increased burden on the remaining judges and court attorney referees.

In addition, supplemental services provided by the Family Court have also been affected. The day care centers within the courthouses, crucial in allowing litigants to participate fully in court appearances while ensuring that their children were safely cared for, have now been scaled back. This is certain to provide an unnecessary stumbling block to parties in highly emotional matters who are already struggling to navigate the Family Court system.

Another significant loss is the dramatic reduction in the Family Court’s mediation program. This program was previously utilized in a number of different types of proceedings, for example, in matters involving the termination of parental rights, the mediation program could facilitate a parent surrendering his or her parental rights after sensitive issues of visitation had been resolved. As a result of the budget cuts, the mediation program has been dramatically scaled back and will no longer facilitate these fruitful discussions. While the full impact of this substantial loss remains to be seen for families and children, it puts greater burdens on the courts and increases expenses for all.

SUPREME COURT, CIVIL TERM, NEW YORK COUNTY

Introduction

Early retirements, a hiring freeze, layoffs and other cost-saving measures imposed in response to the draconian budget cuts for Fiscal Year 2012 have created a dynamic that severely affects the New York County division of the Supreme Court civil term. The effects are in their early days and are partially offset by the efforts of the dedicated justices and non-judicial personnel who assist them. Although it is too early to develop meaningful statistical evidence, the impact is already evident. Obtaining justice has become more inconvenient and expensive for lawyers and litigants. The real prejudice is to these individual members of the public. They rely on the judiciary as the branch of government that directly addresses their rights, and they will suffer if the courts do not have the resources to address those rights.

The Matrimonial Office

The Matrimonial Office processes between 13,000-14,000 uncontested divorce cases each year. Among the most frequent filers are certain firms that specialize in low-cost, uncontested divorces because of their high volume of cases. It is not unusual for such firms to file 150 uncontested divorces at a time. Even so, the Matrimonial Office took pride in its ability to process uncontested divorces, from filing to judgment, within six weeks.

Uncontested divorces are first reviewed by the clerks before being sent to the judges for further review and disposition. The files are then returned to the Matrimonial Office for processing before being sent on to the County Clerk's offices for entry. The Matrimonial Office was previously staffed by ten people. Now there are only seven. But the reduction in efficiency is the product of more than the reduction of employees.

When a position is eliminated, the incumbent has the right to assume a similar civil service position in another office, or if none is available, a position one grade lower. If the lower-grade position is occupied, its incumbent is "bumped." And the process begins anew.

Accordingly, an office may be staffed, but the individuals who staff it may not be as familiar with or experienced in handling the papers and processes. Given

the volume of filings, it is difficult to imagine how the office will be able to continue to process uncontested divorces within six weeks. The subcommittee will continue to monitor the handling of uncontested divorces to ascertain how significantly the time to process them increases.

Judicial Hearing Officers

The civil term has lost all of its JHOs. JHOs previously had ruled on all jury-selection issues and discovery disputes in courthouse-based depositions. As a result, sitting justices could proceed with the other matters before them, trials, hearings, conferences or opinion writing, without interruption. Those duties have now been assumed by judges on a rotating basis, thereby cutting into the time that these jurists can devote to their own inventory. The subcommittee will continue to monitor jury selection to see whether the absence of JHOs appreciably lengthens the time consumed in the process.

JHOs also handled a large number of trials and hearings on the consent of the parties. Although many JHOs have offered to volunteer their services, court administrators cannot accept these offers as there are not enough reporters or court officers to staff the additional court parts. The JHO caseloads have been returned to the active justices. Since those justices already have plates that are more than full, cases will proceed more slowly and dispositions are likely to decrease.

Overtime

In order to live within the budget cuts, no overtime will be authorized except in cases of emergency. As described above, in order to reduce overtime expense, courtrooms are closed at 4:30 p.m. and staff must complete paperwork by 5 p.m. Thus, every day the courtroom must be cleared and locked at 4:30 p.m. This means that the testimony of expert and other time-sensitive witnesses may take an extra day (with an extra fee in the case of experts), or get postponed in order to avoid bringing the witness back for a second day. Likewise, summations are also often postponed overnight to avoid interrupting them. It is anticipated that the inability to pay overtime will result in trials taking longer, expert witnesses being paid more, and lawyers who bill by the hour or trial day charging a higher fee for their services. Thus, while there may be some budgetary savings, the public will pay higher costs for access to the courts. The subcommittee will continue to monitor this issue and try to develop meaningful statistics.

If a judge wants to keep the courtroom open late to allow the completion of testimony or a summation, permission must be obtained from the Administrative Judge, as the courtroom must be staffed by a court clerk, court officer and a court stenographer, all of whom would be entitled to overtime.

Secretarial Support

Some justices have hired personal secretaries to handle their correspondence and type decisions. The law assistant pool that drafts decisions for judges – particularly decisions on motions – does not have that luxury. Unless they type their own decisions, they must rely on a pool of typists. That pool has shrunk. There is no ability to bring in temporary help to cover vacations, illness or maternity/paternity leave. Anecdotally, lawyers are reporting increasing delays in having their motions decided promptly. This is another area to be monitored.

Building Hours

Prior to the cuts, the buildings opened at 8:30 a.m. Those without secure passes could clear security early and arrive at the court or jury room by 9:30 a.m. As a result of the cuts, the buildings do not open until 9 a.m. There are long lines, particularly at 60 Centre Street, waiting to clear security. Jurors, parties and witnesses are now often late, further shortening the trial day. The buildings close at 5:30 p.m., with no building services available and no EMTs on site in the event of a medical emergency.

Jurors

The County Clerk of New York County, Norman Goodman, serves as the County's Commissioner of Jurors. His office summons prospective jurors to serve in the civil term of the Supreme Court (60 Centre Street, 80 Centre Street and 71 Thomas Street), the Criminal Term of the Supreme Court (100 Centre Street and 111 Centre Street) and the Civil Court (111 Centre Street). In order to save money, the number of those who are called to serve as potential jurors has been reduced by 20%. In the event of a high-profile criminal trial, it is possible that the presiding justice might require a venire of up to 750 individuals. That justice would have "first call" on the entire jury pool. This could potentially lead to the postponement of other civil trials.

Passport Office

The passport office, which used to process up to 60 applications per day and up to 200 applications per week, now limits to 25 the number of applications it will process each day. Moreover, it is closed on Thursdays. As a result, it will only process 100 applications per week.

Clerks' Offices

Because employees who are new to their duties must become familiar with the paperwork they handle and the procedures they must follow, they cannot work as rapidly as those whom they have replaced. In addition, there has been a reduction in force. Chambers are required to review and process orders. There is presently a two-month backlog on the entry of judgments through the e-file system and increasing delays in the entry of judgments by hand.

The guardianship and fiduciary accounting service office has been overwhelmed. It already takes up to a year for the clerks to review a full final accounting, which guardians of an incapacitated person are required to file. The clerk's office is required to monitor compliance. Agency guardians are generally familiar with this obligation and file their accountings. However, when an incapacitated person's lay relative has been appointed as guardian, compliance can be spotty.

When a late filing (often covering several years) comes in, records are sometimes not as complete as they should be. In such cases, an evidentiary hearing is required. JHOs used to conduct these hearings. Now they are gone.

Conclusion

As stated at the outset, it is too early for statistics establishing the severity of the impacts caused by the budget cuts. However, the areas of concern are already apparent. The public is going to pay more for justice, whether by virtue of the cost of delay or the prejudice to its personal and economic rights. The severity of those costs can only be assessed over time. The subcommittee, which will continue its work, is deeply concerned that the court system not become an underfunded entitlement.

SURROGATE’S COURT, NEW YORK COUNTY

Introduction

The Surrogate's Court is housed in a landmark building at 31 Chambers Street, long been considered an architectural gem. Unfortunately, behind the magnificent façade, the court is struggling under the challenges imposed by the combined pressures resulting from the early retirement program, hiring freeze and required layoffs.

Over the years, this court has enjoyed the reputation of a court with exceptional expertise in very complex matters.¹¹ By all accounts, that expertise has been diminished as a result of the budget cuts. It has been reported that both productivity and morale have been damaged. Though the court is not as severely affected in terms of the number of staff members as some other courts, numbers alone do not tell the story for a court that handles such a complexity of matters and that requires a high and narrowly focused level of expertise.

Operating Budget Cuts

The Surrogate’s Court, New York County, was required to cut \$77,000 from its personnel budget, which number was dictated after previous reductions in staff due to a statewide retirement package and a hiring freeze. The subcommittee found that, as a result of the judicial budget cuts, many positions in the court are unfilled or filled with less experienced staff. The remaining staff of the court is working very hard to keep up with the workload. Interviews with judges and staff of the court produced the following examples:

- The Chief Clerk position remained unfilled for months.
- The head of the Miscellaneous Department,¹² described as “one of the most

¹¹ This expertise has been universally recognized by the State legislature, OCA and the public when, in the face of economic and other pressures, the Surrogate’s Court was not merged into the statewide court of general jurisdiction, the Supreme Court. When the legislature passed the court reorganization act, it left the Surrogate’s Court alone to continue its unique mandate, i.e., the oversight of the administration of decedents’ estates and so frequently espoused, “the protection of widows and orphans.”

¹² The Miscellaneous Department handles matters such as proceedings for a Declaration of Death, bonds, compulsory accountings, powers of attorney and appointments of trustees.

critical positions,” was discharged and has not been replaced due to the hiring freeze.

- The court is operating without a supervisor in the Accounting Department. Court attorneys from the Law Department must fill in as acting head of the Accounting Department, meaning that court attorneys are less available for conferences and other duties.
- Court attorneys and each of the Surrogate's principal law clerks are devoting substantial time to reviewing the work and correcting mistakes made by less experienced staff who are filling higher-level positions. Court attorneys are now required to perform more clerical-level tasks, including reviewing each matter to ensure that all of the correct people have been cited in a proceeding. It has been reported that there have been increasing errors in this seemingly simple ministerial duty, and senior staff are thus required to spend “more time reviewing and correcting mistakes than ever before,” as a veteran Surrogate’s Court staff member put it.
- The court has less time to conference cases and the number of conferences given to any proceeding is being restricted. As conferences provide the advantage of settling cases early or otherwise narrowing issues and focusing discovery, fewer conferences result in fewer settlements, an inexpedient discovery process and more protracted proceedings. This necessarily results in more work for the court and greater expense to parties, in the form of motion practice and hearings.
- With court attorneys’ time devoted to clerical matters and their assignment in other departments, time to do legal research and work on decisions is reduced and the issuance of decisions is delayed.
- The non-personnel budget has also been cut. Once current law book contracts expire, there will be only on-line resources. In addition, the experienced librarian in the Court was discharged and replaced by a less experienced librarian who, while professional and well meaning, has limited knowledge of Surrogate’s Court procedures and the research tools needed by the law assistants.
- There is a growing backlog in uncontested probate proceedings, which is now two months or more.
- The backlog for the issuance of successor letters of trusteeship is approximately four months.
- There is a delay of several months in obtaining a judicial accounting. There are reports of “growing piles of folders” accumulating in the Accounting Department, which was particularly hard hit by the budget cuts and now has

less experienced personnel trying to meet the challenges.

- Although the staff is reduced, the time demanded for maintaining the new database system in the court has increased. All filed papers now must be taken apart, scanned and rebound -- all of which takes considerable clerical time and offers further opportunities for errors to occur. Any failure to maintain the database will have long-term consequences.

There is a significant concern that problems will surface in the future as a result of overlooked procedural errors and inadequate recordkeeping during this period of severe budget restriction.

Elimination of Overtime

To reduce the budget, as in other courts, the use of overtime is prohibited in the Surrogate's Court, unless a judge is granted discretionary overtime approved by the Administrative Judge on a case-by-case basis. Courts are required to conclude their business by 4:30 p.m. This greatly limits the flexibility that judges have traditionally exercised in conducting trials, maintaining calendars, accommodating litigants and counsel with court conferences and administering the daily business of the court. Without the use of overtime, trials will take longer.

It is expected that the reduction in staff support will also delay the rendering of decisions.

Reduced Security

Traditionally, each of the two courtrooms in the court has had at least one uniformed court officer, permitting the court to function with the safety required for the confident administration of justice. In this last budgetary reduction, one court officer was eliminated from the Surrogate's Court. The result is that only one court officer remains to protect both courtrooms and the chambers of each of the two Surrogates. The problem is exacerbated if that court officer becomes ill for any reason. It is impossible to overstate the effect this lack of security has made in the court and upon the morale of the court personnel.

Conclusion

This subcommittee's work continues, with further findings and recommendations reported at the conclusion of its investigation. At present writing,

it appears that the judicial budget cuts have compelled OCA to require the Surrogate's Court to reduce its staff, increasing the time required to resolve disputes and thus diminishing the public's access to justice, decreasing the quality of judicial services, and increasing the cost to litigants.

CONCLUSION

The members of the Task Force have worked diligently over the past two months to produce this preliminary report. The Task Force concluded that the administration of justice has already been detrimentally affected by the budget cuts, despite the best efforts of able and dedicated court administrators and staff. While there are savings from the cuts, they clearly carry increased financial and other costs to the public. The price for access to justice has increased.

Potential constitutional issues will require a more comprehensive analysis, as will other aspects of the budget cuts. The Task Force will conduct a more in-depth and comprehensive investigation over the next several months, which will include a public hearing at NYCLA in the fall, and the preparation of a more comprehensive report on the impact of the budget cuts on the administration of justice after more time has passed and the longer-term impact can be more fully assessed.

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