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Funds on the Chopping **BLOCK**



Top left to right: 1st Court Chief Justice Sherry Radack, 3rd Court Chief Justice J. Woodfin Jones and 5th Court Chief Justice Carolyn Wright. Bottom left to right: 8th Court Chief Justice David Chew, 13th Court Chief Justice Rogelio Valdez and 14th Court Chief Justice Adele Hedges.

Appropriations for Texas' 16 Appellate Courts In Jeopardy

by MARY ALICE ROBBINS

What the Texas Legislature gives, it can take away. That's the concern for the state's 16 appellate courts, which have spent the past month looking for ways to reduce their spending.

In a Jan. 15 letter, Gov. Rick Perry, Lt. Gov. David Dewhurst and House Speaker Joe Straus requested that each state agency and appellate court submit a plan identifying 5 percent that can be saved in their 2010-2011 appropriations.

"Due to the uncertainty of the state's short-term economic future, as well as potentially substantial long-term costs associated with the passage of federal legislation currently being debated in Washington, D.C., we are asking each state agency to thoroughly review all planned expenditures for the remainder of the biennium," the leaders wrote.

The letter directed the agencies and courts to submit their plans for trimming their current appropriations by 5

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THE CHOPPING BLOCK: APPROPRIATED FUNDING FOR APPELLATE COURTS AT RISK

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percent to the Legislative Budget Board and the Office of the Governor's Budget, Planning and Policy Services Commission by Feb. 15.

The courts have gone through budget cuts in the past. Glenna Bowman, chief financial officer for the State Office of Court Administration, says that in 2003, the Legislature approved a 7 percent across-the-board reduction in funding for all state agencies, including the appellate courts. To stay within the budget lawmakers set in 2003, the courts cut spending on their libraries, travel costs and, in some cases, operational costs, but for the most part, they didn't cut personnel, Bowman says.

What makes the state leaders' request this year unusual, says Terrie Livingston, a justice on Fort Worth's 2nd Court of Appeals, is it involves a potential cut in funds already appropriated, not a reduction in the amount the courts will receive for the 2012-2013 budget cycle.

Livingston says her court is optimistic that the state's leadership will find more effective ways of making budget cuts than to require appellate courts to give up funds that the Legislature has appropriated to them. What lawyers and the public want from the courts are faster decisions, Livingston says. "This has the opposite effect."

Chief justices at several Texas intermediate appellate courts say a 5 percent cut in their appropriated funds could translate into staff cuts or a delay in hiring additional personnel, either of which could slow down their courts' disposition of cases.

"When they're talking about a number as big as 5 percent, they're talking about people," says Houston's 1st Court of Appeals Chief Justice Sherry Radack, chairwoman of a subcommittee appointed by the Council of Chiefs of the Intermediate Appellate Courts to study the state leadership's request.

Chief Justice Steve McKeithen of Beaumont's 9th Court of Appeals says the 14 intermediate appellate courts spend between 92 percent and 97 percent of their appropriations on salaries. "I'm going to have to let somebody go if they take the full 5 percent," McKeithen says. "It almost certainly would be an attorney."

Carol Anne Flores, the 9th Court's clerk, says the Beaumont court would lose \$158,231 if state leaders implement a 5 percent reduction in the current appropriations.

Chief Justice Carolyn Wright of the 5th Court of Appeals in Dallas says her court spends 93 percent of its budget on salaries. "We don't have fat," she says.

Wright says the 5th Court will ask the state's leadership not to subject the courts to a cut in their current appropriations. The judiciary should not be treated the same as state agencies, because the budget for the courts is such a small percentage of the state's budget, she says.

Radack says appropriations for the judiciary constitute only .36 percent of the state's budget, which totals \$182.3 billion for the 2010-2011 biennium.

Wright says her court would lose about \$485,000 if a 5 percent cut is implemented. A reduction in appropriations of that size would mean the loss of some of the 5th Court's attorneys, Wright says. "Any decrease in staff is going to reduce the disposition of cases," she says.

In 1999, the Legislature allocated \$990,000 to provide 16 visiting justices and six additional staff attorneys to work on cases backlogged at the 1st, 5th and 14th Courts of Appeals. [See "Visiting Justices: A Cure for the Backlog Blues," *Texas Lawyer*, Sept. 6, 1999, page 23.]

Wright says the extra justices and staff attorneys helped clean up the backlog at the three courts, but a reduction in the courts' current appropriations will create a new backlog the Legislature eventually would have to address. "It's really going to be 'pay me now or pay me later,'" she says.

Jim Worthen, chief justice of Tyler's 12th Court of Appeals, says a 5 percent cut would result in a loss of \$131,720 for his court. "Obviously, we would have to lose someone," Worthen says. "We would have to cut one of our employees, probably an attorney."

At the 1st Court, a 5 percent reduction would mean a \$353,000 loss, Radack says. The impact of such a loss would depend in part on whether the leadership implements cuts in the current fiscal year or waits until Sept. 1, when a new year begins and the intermediate appellate courts are scheduled to receive an increase in funding, Radack says. The funding increase would partly offset a reduction in appropriations, she says.

Bowman says that in the 2009 session, the Legislature allocated an additional \$3.8 million for the 14 intermediate courts of appeals but delayed that appropriation until fiscal year 2011. That increase in funding is part of the similar-funding-for-same-size-courts approach that the intermediate appellate courts asked the Legislature to take, beginning in the 2005 session. The additional dollars appropriated for 2011 are meant to bring salaries for courts of appeals staff attorneys in line with the pay for attorneys employed by local units of government, Bowman says. The increase also is meant to enable the courts to hire additional staff attorneys, Bowman says.

But if state leaders cut appropriations by 5 percent, the expected increase in funding would not materialize. That would be a big disappointment to 13th Court of Appeals Chief Justice Rogelio Valdez, who had hoped his court could begin in the current biennium putting in place a more permanent legal staff.

Valdez says the 13th Court, which sits in Corpus Christi and Edinburg, previously employed briefing attorneys, who worked one or two years at the court. Beginning in this biennium, the court replaced the briefing attorneys with junior staff attorneys, who must work for a year before they become senior staff attorneys and qualify for about a \$10,000 raise, Valdez says. A 5 percent cut in appropriations would cost the 13th Court \$233,735, which would prevent the court from paying its junior staff attorneys higher salaries, Valdez says. Some of them probably would leave if they don't receive the pay increase, he adds.

"The whole idea was to get more experienced attorneys and to keep them," Valdez says. "When there is turnover, we lose efficiency in the equation."

Austin's 3rd Court of Appeals Chief Justice J. Woodfin Jones says his court had planned to use the additional funds to give raises to its staff attorneys. "We probably would have to eliminate those raises," he says.

Jones says the 3rd Court also had planned to use the increase in funding to hire an additional staff attorney. "We are hopeful that we would not have to let anybody go who is already here," Jones says.

Jeff Kyle, clerk of the 3rd Court, says a 5 percent reduction would result in the loss of \$232,620 for the Austin court.

Chief Justice Adele Hedges of Houston's 14th Court of Appeals says a 5 percent cut would cost her court \$355,203. The loss of those funds would prevent the 14th Court from filling a staff attorney position that has been vacant for five months and would force the court to postpone converting its five briefing attorney positions to staff attorneys, Hedges says.

Amarillo's 7th Court of Appeals Chief Justice Brian Quinn says a 5 percent cut in appropriations would result in a \$158,718 loss for his court. A loss of that size would cancel the 7th Court's plans to hire a backup auditor and a staff attorney to work on habeas corpus writs and mandamus petitions, Quinn says. The court also would have to cancel plans to give bonuses to staff in its clerk's office, he says.

David Chew, chief justice of the 8th Court of Appeals in Amarillo, says the implementation of a 5 percent reduction would take \$129,380 out of his court's budget, forcing the court to postpone hiring an additional staff attorney and bringing existing staff attorneys' salaries

up to the level other courts of appeals pay.

"In the short run, it probably would not have much effect," Chew says. "In the long run, it's dispiriting." He says the additional attorney would have helped the court become more efficient.

Tom Gray, chief justice of the 10th Court of Appeals in Waco, says a 5 percent reduction would result in a loss of \$127,516 for his court, which would have to postpone hiring another staff attorney and cut back on court security.

Off the Top

The state Supreme Court and the Court of Criminal Appeals also have been examining their budgets for ways to cut expenses.

Osler McCarthy, the Supreme Court's staff attorney for communications, notes in an e-mail that a 5 percent cut in general revenue would decrease the court's appropriations by almost \$1.7 million, with \$1.15 million of that amount coming out of funding for basic civil legal services and \$525,979 out of court operations.

Texas Supreme Court Chief Justice Wallace Jefferson says the high court may have to address any reduction in the appropriations for operations by not filling staff vacancies as they arise and not hiring temporary employees to fill those vacancies. Jefferson says the Supreme Court also will have to consider cutting back on travel reimbursement for members of commissions appointed by the court — a move that he says would make it more difficult for the court to have diverse representation from across the state on the commissions.

But Jefferson views those cuts as more palatable than any reduction in staff. In his view, Jefferson says, cutting staff should be the "very last resort" for the Supreme Court if state leaders cut the appropriations.

A reduction in the appropriation for basic civil legal services could impact access to justice. Betty Balli Torres, executive director of the Texas Access to Justice Foundation, which administers the basic civil legal services funding for the Supreme Court, says the anticipated \$1.15 million cut in those funds would result in the loss of about 25 jobs or positions in legal aid programs across the state. The loss of those jobs would mean that between 1,000 and 1,700 individuals or families would not receive legal services they need, Torres says.

Jefferson says he understands Texas has economic problems that could make such cuts necessary. But he adds, "Just when courts are most valuable to our society, the means by which they deliver services is reduced."

To save money, CCA Presiding Judge Sharon Keller says her court is considering making a recommendation that Perry delay making an appointment to fill an upcoming vacancy on the court. Keller says CCA Judge Charles Holcomb, who will retire on Dec. 31, suggested that the governor wait to appoint Holcomb's replacement until Aug. 31, 2011, when a new biennium begins.

Under that proposal, the CCA would have to postpone decisions on cases if there was a tie vote, Keller says. Leaving Holcomb's seat vacant also would mean the other CCA judges would have to carry a heavier load. "We'd just split the work eight ways instead of nine," Keller says.

But the CCA also would have to find other ways to reduce spending. Keller says the CCA would lose \$487,376 if appropriations are trimmed by 5 percent. She says the court is considering cutting costs for the Criminal Justice Integrity Unit, including eliminating the position of a part-time attorney who works for the unit and on other court projects and not filling a central staff attorney position that has been open since January. ■■■

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