

Budget Cutbacks in the Courts

The Supreme Court continues to take extraordinary steps to reduce its budget in light of declining state revenues. The Court is committed to working with Governor Otter, the legislature, and the citizens of this state to the maximum extent possible, without jeopardizing its constitutional and statutory responsibilities.

The Idaho Courts fully participated in Governor Otter's recent Executive Order 2009-16, contributing a 2.5% holdback, or \$745,600. This holdback is in addition to the FY2009 reductions of nearly \$2-million. Idaho judges voluntarily agreed to a two-day salary reduction earlier this year. Nowhere else in state government did state personnel volunteer for salary reductions, while continuing to provide services to Idahoans. To meet the budget shortfalls, the Court is continuing its hiring freeze for all general and dedicated fund positions and the stringent holdback policies in place since December 2008, impacting all court services to the public. The Court will also necessarily exhaust all dedicated fund balances this year through shifts of personnel costs from the general fund to dedicated funds, supporting technology and problem-solving courts.

During tough economic times, there is still crime; there is still abuse and neglect of children; and there are still families in crisis. Civil and business disputes are being filed in greater numbers than ever before. Particularly in bad economic times, courts are absolutely necessary to ensure civil and business disputes are heard timely.

There have been significant increases in the number of district court civil cases filed in FY2009 (over FY2008) in our largest counties:

Kootenai County: an increase of 15%
Ada County: an increase of 21%
Canyon County: an increase of 31%
Statewide: an increase of 14%

Criminal defendants have a constitutional and statutory right to a speedy trial, requiring judges to give them a priority setting. But it would be extraordinarily traumatic to delay divorce and child custody cases, child protection cases, or civil disputes.

Although the Supreme Court has taken extraordinary steps to reduce its budget,

- Judges cannot slow down justice.
- Judges cannot stop hearing certain types of cases.
- Judges cannot stop traveling to our rural communities or to the urban centers.
- Judges cannot say to any Idahoan, *"We cannot provide the justice you are entitled to under the Constitution."*

Idaho judges are working harder than ever to complete cases within acceptable time standards, continuing innovative efforts such as drug courts and family courts, as well as looking to new ways to hear increasing caseloads more efficiently. The State of Idaho is very fortunate to have a streamlined and efficient court system with outstanding judges and court personnel to meet the challenges during these turbulent times.

The need to address court cases fairly and timely is critical to the citizens of this state and to Idaho's economic recovery. Due to the state budget constraints, however, the Supreme Court is not requesting any new judgeships this year. But an emergency surcharge is proposed to support the continued operations and services of the Idaho Courts.

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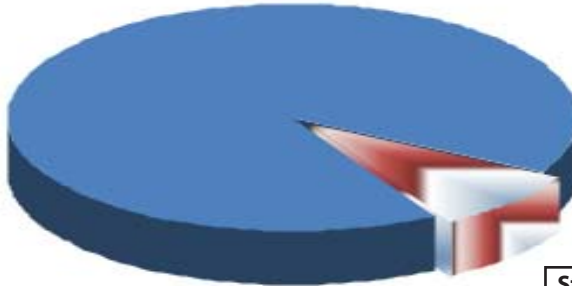
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CASE PROCESSING VS. STATEWIDE OPERATIONS

General Fund Budget Breakout

Case Processing = 91%

includes
Supreme Court
Court of Appeals
District Court
Magistrate Division



Statewide Operations = 9%

includes
Administration
Law Library
Building Maintenance

- The Idaho Courts – as a separate branch of government – are appropriated a \$30.2-million General Fund budget, which represents only 1.2% of the overall Idaho General Fund budget.
- When considering all funds (dedicated, federal, and general), the Idaho Courts represent less than 1% of the State of Idaho's overall budget.
- 91% of the Court's General Fund budget is directly tied to case processing at the Supreme Court, Court of Appeals, District Court, and the Magistrate Division of the District Court.

PERSONNEL COSTS VS. OPERATING EXPENSES

General Fund Budget Breakout

Operating Expenses
6%



Personnel Costs
94%

- Over 94% of the Court's General Fund budget is devoted to judicial and court personnel salaries. Only 6% of the General Fund budget is for operating expenses, leases, and travel to hear court cases.

Legislative Priorities of the Courts

ADD EMERGENCY SURCHARGE, WITH SUNSET CLAUSE

The financial crisis will jeopardize the continued operation of the Idaho Courts. The Court's ability to address the growing caseload, and to operate services that help to reduce the burden on the state budget, such as drug courts and mental health courts, will be crippled without adequate funding. The Court proposes a temporary, emergency surcharge of no more than \$15, to be paid by those found to have committed crimes or infractions. This surcharge would help address these issues and help the courts to ease the burden on the state general fund. The surcharge would carry a sunset date and would be in effect for up to five years to ensure full recovery from the current economic downturn. It would be used solely to fund needed court services and programs: (1) drug courts and mental health courts, whose success has helped to ease the burden on other parts of the state budget, including that of the Department of Correction and the Department of Juvenile Corrections; (2) senior judges, whose services allow for the dynamic use of judicial resources that permit the judiciary to hear the burgeoning caseload while limiting the need for new judge positions; (3) Family Court Services, whose assistance in dealing effectively with cases involving families and children is essential during these times; (4) replacement of obsolete computers and servers, whose failure jeopardizes the ability of trial court personnel, clerks of the district court, and deputy clerks to conduct the business of the court; (5) strengthen collection efforts of millions of dollars of court-ordered obligations; and (6) expand the use of video conferencing to save travel dollars for the state and its citizens.

STABILIZE THE JUDGES' RETIREMENT FUND

The Legislature created the Judges' Retirement Fund in 1947, 16 years before the adoption of the Public Employees Retirement System (PERSI). The fund continues to play a critical role in the effort to recruit and retain highly qualified judges and to provide adequate resources to deal with Idaho's growing caseload. As a relatively small fund, it is particularly vulnerable to fluctuations in the economy and the securities market. Further, the fees supporting the fund have not been adjusted since 1990, thereby weakening the fund. Stabilizing the fund through an adjustment of fees, so that there is no negative impact on the general fund, is a paramount concern.

Representative Jim Clark, Chair of the House Judiciary, Rules and Administration Committee, convened a study team over the summer and fall of 2009 to develop legislation to stabilize the Judges' Retirement Fund. Representatives from the Judiciary, Rules, and Administration Committee, along with justices and judges, contributed to the study. Special guidance was provided by Alan Winkle, who retired as the long-time Director of PERSI.

The study team considered numerous studies, reports and materials compiled by Mr. Winkle to acquaint the team with the need of the Fund to amortize the unfunded liability and to cover normal costs. Various approaches to addressing these problems were presented to the team in detail. In addition, the team examined benefit levels of judicial retirement systems in the western states.

Following their deliberations, the study team concluded that the revision of the funding of the retirement system should include the following elements: (1) no negative impact on the general fund; (2) an increase in the employee contribution; and (3) an increase in civil filing fees used to support the fund. These elements would provide the funds needed to amortize the unfunded liability over 25 years and to cover normal costs. The study team supported transfer of the administration of the fund to the PERSI Board. The study team also favored an additional increase in civil filing fees in those cases where higher amounts of damages are sought, with the funds from this additional fee going to the general fund.

Legislation will be submitted consistent with the study team's recommendations to ensure the long-term stability of the fund without any negative impact on the general fund.

STRENGTHEN DUTIES OF GUARDIAN AD LITEM VOLUNTEERS IN CHILD PROTECTION CASES

The Supreme Court's Child Protection Committee has proposed amendments to Idaho Code §16-1633, which address the duties of a guardian ad litem (GAL) in Child Protection Act (CPA) cases. The amendments would: (1) explicitly state that the GAL has the duty to advocate for the best interests of the child; (2) provide that the GAL will provide a report to the court prior to any adjudicatory, review or permanency hearing; (3) require the GAL, where possible, to obtain the wishes of the child regarding permanent placement and communicate those wishes to the court; and (4) provide authority

Legislative Priorities of the Courts

for the GAL to confer with any person or entity having information relevant to the CPA case. These amendments will clarify the role of the GAL, protect the interests of children who are at risk, and ensure that courts receive the necessary information so that they can make the appropriate decisions in these sensitive and important cases. The amendments are supported by the members of the multi-disciplinary Child Protection Committee, which includes judges and a broad range of professionals with substantial experience in the area of child abuse and neglect, including representatives of prosecuting attorneys, the Attorney General's Office, public defenders, guardians ad litem, tribal officials, the Department of Health and Welfare, CASA program directors, and private child-welfare agencies.

COMPLIANCE WITH PROBATION — RELIEF FROM CONVICTION

Idaho Code §19-2604 currently provides that a court may terminate a period of probation and set aside a conviction where a defendant in a criminal case has “at all times complied with the terms and conditions” of probation, and where the court is convinced that there is no longer cause for continuing probation and that it would be compatible with the public interest. Judges encounter cases in which a defendant has performed well and appears to deserve having a conviction set aside, but is not eligible for such consideration because of a minor violation at some point of one of the terms of probation. These defendants could be considered for relief under this statute if they were required to have substantially, rather than “at all times,” complied with the conditions of probation. A judge would still have to be convinced that such action is compatible with the public interest.

LAW LEARNING CENTER PROPOSED FOR THE CAPITOL ANNEX

The Court also wishes to note that the Department of Administration has submitted a recommendation to the Permanent Building Fund Advisory Council for the remodeling of the Capitol Annex building to make it suitable for housing new tenants following the return of the Idaho Legislature to the Statehouse. The Idaho Supreme Court and the University of Idaho College of Law have indicated their desire to utilize this space for the Law Learning Center as soon as practical. The Law Learning Center would include the State Law Library shared by the faculty and students of the College of Law, the Supreme Court and its law clerks and court staff, legislators, members of the State Bar, students from Boise State University, and the general public. It would also contain classrooms for shared use by the College of Law, the courts, libraries, and other groups, and would incorporate state-of-the-art distance learning and on-line learning. The Center would also include faculty and staff offices and work centers. The Law Learning Center will provide a highly advantageous location for public legal education in the state capitol, as well as much-needed space for judicial education and administration, for activities involving other branches of state government, and for law-related education outreach to the general public. It will also enable the courts to enhance their outreach activities in cooperation with all of Idaho's public colleges and universities. The Capitol Annex has a prominent place in Idaho legal and judicial history. The Law Learning Center will give it a vitally important mission in the 21st Century.

DEFECTS IN THE LAW TRANSMITTED TO THE GOVERNOR, PURSUANT TO THE CONSTITUTION

Under Article I, Section 25 of the Idaho Constitution, the Supreme Court submits the following defects and other omissions in the laws:

- Amend the statutes pertaining to appeals in adoption, parental termination, and Child Protective Act cases to make them consistent with current Supreme Court rules, which state that appeals in adoption and parental termination cases must be taken directly from the magistrate division to the Supreme Court, and that a party appealing a decision in a CPA case may seek an appeal by permission directly to the Supreme Court.
- Remove obsolete references to probate, justice and police courts, which were abolished in 1971.
- Clarify that the judges of the Court of Appeals are, like other judges, members of the Idaho State Bar.
- Clarify the provisions of Idaho Code that state that defendants who are released on bail with a provision that requires GPS tracking of their location, and who leave the area of restriction set forth by the court, have committed the crime of escape.
- Remove references in Idaho Code to statutes that address stays of execution of judgment, which were repealed in 1975.