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Lippman Defends Courts' Budget Against Criticism by Governor

In a commentary on the \$134 billion budget proposal he submitted to the Legislature, Governor David A. Paterson suggested yesterday that the court system was guilty of conducting "business as usual" by advancing a 7.4 percent spending increase that ignores the "reality" of the state's rough fiscal circumstances. In an equally blunt public response, Chief Judge Lippman shot back that courts in New York are as overworked as they have ever been, and that virtually all of the \$183.5 million increase requested by the courts is needed to meet salary and benefit payments for which the system is contractually obligated.

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ALBANY - Governor David A. Paterson suggested yesterday that the court system was guilty of conducting "business as usual" by advancing a 7.4 percent spending increase that ignores the "reality" of the state's rough fiscal circumstances.

In addition to urging the court system and legislators to revisit the judiciary's \$2.7 billion spending plan, the governor called for increasing Civil Court filing fees—a measure Chief Judge Jonathan Lippman has opposed.

The governor's unusually critical observations were contained in a commentary on the \$134 billion budget proposal he submitted to the Legislature for the fiscal year beginning April 1. His proposal, which calls for an increase of only 0.6 percent in spending, is calculated to close a projected \$7.5 billion budget gap.

"Admittedly, the operation of the courts and their reform is no simple matter; but it must also be acknowledged that the \$2.7 billion Judiciary budget is a significant part of the overall State budget," the governor wrote. "The Judiciary must accept that each branch of government can no longer conduct 'business as usual,' and that all branches share an obligation to taxpayers to restructure government in light of the State's new fiscal reality."

Mr. Paterson, who nominated Judge Lippman as chief in late 2008, said the courts could have saved the state \$132 million had they adopted the governor's proposed cap on state spending instead of now asking the Legislature and the governor for \$183.5 million more in fiscal 2010-11.

In an equally blunt public response, Chief Judge Lippman shot back that with filings at an all-time high of 4.7 million in 2009, up 200,000 from 2008, courts in New York are as overworked as they have ever been.

Virtually all of the \$183.5 million increase requested by the courts is needed to meet salary and benefit payments for which the system is contractually obligated, Judge Lippman said.

"Unlike Executive Branch agencies... the Judiciary cannot simply eliminate costly programs or defer expensive capital projects," the chief judge argued. "The Judiciary does not operate 'programs'—it adjudicates cases. Indeed, the

overwhelming portion of the Judiciary's budget—nearly 90 percent—is personnel costs."

Judge Lippman estimated that if the courts followed the spending cap the governor has tried to impose on executive agencies, the judiciary would have had to cut about 2,000 of the 16,000 non-judicial positions, mainly through layoffs.

"This would have a devastating and irreparable impact on the courts' ability to perform their constitutional role, at a time when case loads are spiraling and the public's use of the courts have multiplied because of the economic downturn," Judge Lippman said.

He said the judiciary has been ahead of the executive in some ways in holding the line on spending through a hiring freeze and other measures that have been in effect for more than a year.

Court administrators say they will save about \$30 million in the next fiscal year by attrition, reduced overtime and carefully managing resources. No layoffs are contemplated in either Mr. Paterson's budget or in the judiciary's plan.

The governor is under the constitutional obligation to submit the judiciary's budget to the Legislature as it was presented to him. But he is also free to comment on court spending.

Typically, that analysis has not been confrontational.

Last year, when the courts proposed a budget that included virtually no spending increase for a second year in a row, the governor praised the judiciary for being "responsive" to the state's economic situation (NYLJ, Dec. 17, 2008).

The Legislature and the governor now are free to alter the courts' proposal when they adopt a final budget.

Mr. Paterson urged the Legislature to scrutinize the courts' budget request for fiscal 2010-11.

"Given the serious fiscal situation in which the State finds itself, I am transmitting the Judiciary's budget submission along with a strong charge to the Legislature to evaluate this request carefully," the governor wrote. "I also call upon the Chief Judge to revisit this request and offer suggestions for how it may be reduced."

Assemblyman William Parment, D-Chautauqua, a long-time critic of what he terms the free pass the Legislature has traditionally given to judicial budgets, said the governor was making an "extraordinary" directive to lawmakers to review the court system's spending.

"I can't recall anything like this," said Mr. Parment, a 26-year veteran of the Legislature and member of his chamber's Ways and Means Committee.

A spokesman for Assembly Speaker Sheldon Silver, D-Manhattan, who is close personally to Judge Lippman, did not immediately return a call for comment.

'The Very Least We Can Do'

Court administrators had described the spending plan that they submitted in December as a "zero-growth budget," with all of the projected increases going to mandated wage, pension and benefit payments (NYLJ, Dec. 3, 2009).

"There are no discretionary programs to cut and no nonessential initiatives to defer," judicial administrators said.

The judiciary's budget does include \$48 million for a pay raise for state judges retroactive to April 1, 2005, representing one-quarter of 1 percent of the court budget. Mr. Paterson yesterday called the lack of a pay raise for judges "regrettable," but he also termed the size of the requested retroactive raise "quite large given the current economic climate."

Mr. Paterson also noted that Judge Lippman is doubling to \$10,000 a year the size of grants from his "judicial supplemental support fund," which helps pay for judges' robes, life insurance and other job-related costs (NYLJ, Oct. 15, 2009). That expenditure would grow to \$10 million overall from \$5 million under the judiciary's proposed budget.

"There appears to be little restriction on how these funds are spent," Mr. Paterson observed.

Judge Lippman said he made "no excuses whatsoever" for including \$48 million to address the "painful and inconceivable" lack of a raise for judges. At any rate, he noted that the sum had been part of the judiciary's last several requests so it did not represent an increase.

As for the promised "supplemental" payments, Judge Lippman said that the "modest" increase is "wholly justified and, I must say, the very least we can do for a judiciary that meets its constitutional responsibilities each and every day under

the most difficult circumstances."

The governor said he also had warned court administrators that he opposed the judiciary including \$15 million in its proposed budget to help fund civil legal services in light of the drastic fall-off in resources for the Interest on Lawyer Accounts (IOLA) fund.

Judge Lippman said the proposal to offset the "precipitous" decline in IOLA collections "will help our most vulnerable citizens in their time of greatest need."

Such an inclusion would likely make civil legal services a recurring expense in the state's general fund, instead of an annual appropriation generated by non-taxpayer dollars through IOLA or other funds.

But Mr. Paterson said he felt the judiciary has "no direct responsibility" for funding IOLA or civil legal services and that its inclusion in the court's budget "runs contrary to the Executive Budget process as outlined in the State Constitution."

The governor said he favored instead hiking civil court filing fees to pay for the shortfall in IOLA funds created by the plunge in interest rates and the drop-off in real estate activity that had fed the IOLA coffers (NYLJ, Aug. 18, 2009).

He proposed increases in the Supreme Court filing fees to \$215 from \$165, in city/district court filing fees to \$60 from \$45 and in motion fees in Supreme and Appellate Division courts to \$120 from \$45.

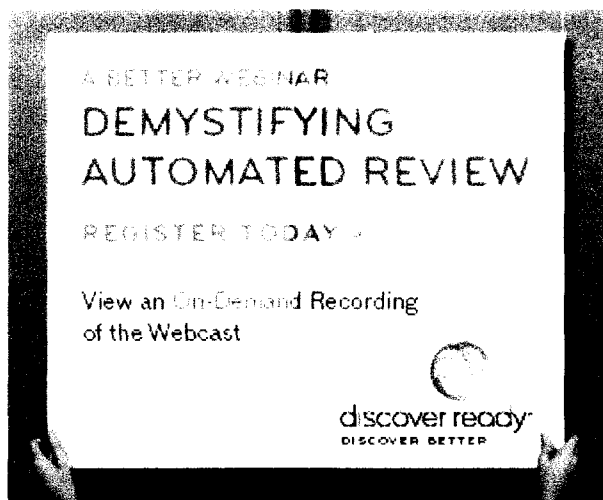
Mr. Paterson said such increases would not only cover the \$15 million shortfall anticipated in the IOLA system, but also generate \$10 million more for indigent defendants in New York courts.

The higher fees would also deter the "filing of frivolous cases and motions," he said.

The governor's budget also proposes closing several prisons and a continued downsizing of the state's residential and institutional system for housing juvenile delinquents with the closing of two more facilities and reductions in the residential populations of two state centers.

Mr. Paterson's budget proposal now goes to the Legislature for its dissection following public hearings. A final spending plan will be negotiated by Mr. Paterson and legislative leaders later in the year.

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