

Discussion Points

1. P.L.2007, c.350 increased judicial salaries effective January 1, 2008, and again on January 1, 2009. Justices and judges are required to retire upon attaining age 70. They are permitted to retire prior to attaining the age of 70 if they have served from 5 to 20 years on the bench and have reached a specified age ranging from 60 to 65 years old. Judicial pensions are based upon a percentage of the final salary of the retiring judge.

Question: What is the average number of judges who retire on an annual basis? What is the average retirement age of New Jersey's judges? Please provide a list of the number of judges who have retired or are anticipated to retire between July 1, 2007 and June 30, 2009 and their retirement dates. How many of these judges are retiring as a result of the mandatory retirement age? What is the overall status of judicial vacancies?

Answer: Between January 2002 and December 2007 the average number of judges who retired annually was 23. The total number of judges who retired during this period was 140. The average retirement age was 65 over the same period.

The Judiciary cannot predict with any certainty the number of judges who may decide to retire between the present and June 30, 2009. However, the Judiciary can determine how many judges must retire due to attainment of the mandatory retirement age (70) and account for the number of judges who have articulated their decision to retire. Between April 10, 2008 and June 30, 2008, four judges either have voiced their decision to retire or will reach age 70. Between July 1, 2008 and June 30, 2009, nine judges will attain age 70. An additional six will be at least 69. We include this number because judges often retire at the end of the court year or when it is convenient prior to actually attaining their 70th birthday.

Historical data indicate that approximately 38 percent of those judges who retire are below age 65, 26 percent are between ages 65 and 68, and 36 percent retire between ages 69 and 70.

Finally, there were 33 vacancies as of April 12, 2008 in the Superior Court. The number of vacancies generally fluctuates between 15 and 35.

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2. During recent years the Judiciary has made it a priority to reduce case backlogs. In an effort to maintain a lower backlog of court cases, the Judiciary has for many years used retired judges to serve on a recall basis in vicinages where there are judicial vacancies.

Question: Please provide a description of the Recall Judge program. Why is the recall judge program necessary? How many retired judges participate in the program? What types of cases do recall judges normally handle?

Answer: Recall judges provide stability and continuity for the work of the Judiciary by accepting assignments for special projects and programs, so that judges on permanent assignment are not diverted from their primary responsibilities. Recall judges also serve within the vicinage as needs arise. Recall service is governed by N.J.S.A. 43:6A-13. Although there are 42 judges currently serving on recall, the average number is approximately 40.

The need for a recall judge may occur in any trial division of the Superior Court. Service in all trial courts and on special assignments within the judicial system is generally available to recall judges. However, recall service in the Appellate Division is limited to retired judges who had appellate assignments while in active service. One consideration as to assignment is the particular expertise required for a special project or program taken on by the Supreme Court (e.g. the use of special masters as in the case of determining the scientific reliability of the Alcotest device) and the level of current judge vacancies. Recall judges provide experienced service in such areas as children in court, which address juvenile detention, abuse and neglect (DYFS) cases, and termination of parental rights; involuntary civil commitment, which are periodic court reviews to determine the competency of an individual committed to an institution; the Intensive Supervision Program Resentencing Panels; cases related to the New Jersey Sexually Violent Predator Act (N.J.S.A. 30:4-27.24) and the Civil Appeals Settlement Program.

Justices and judges recalled for temporary service are bound by the ethical restrictions on judges set forth in statute and case law. All retired judges recalled to service must terminate the practice of law and "of counsel" associations. Temporary "leaves of absence" from such associations for recall service within the judicial system are not permitted. For retired judges under the age of 70, no application for recall can be

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made or considered by the Supreme Court until one year after the effective date of the judge's retirement. The one exception permitting recall of judges prior to mandatory retirement age addresses the acute need for prompt disposition of children in court cases. No retired justice or judge is permitted to serve on recall beyond his or her 80th birthday.

Judges are assigned by order of the Chief Justice. The order covers a maximum period of two years; but the assignment may be renewed from time to time by further order of the Supreme Court for additional periods not exceeding two years each. Although the length of time that an individual judge will serve on a recall basis varies, the average amount of recall service is 70 days. The amount of service depends on the budget and on the constraints outlined in N.J.S.A. 43:6A-13, which states that recall judges may not receive salaries which, together with their pension or retirement allowance, exceed the current salary of a justice or judge of the court from which they retired.

Question: How has the Judiciary addressed court backlogs during the last court year? How do judicial vacancies play a role in the growth of court backlogs? How do judicial retirements impact court operations and court backlogs?

Answer: The primary mission of the Judiciary is the fair and effective resolution of disputes for the citizens of the state. A resolution that is delayed or prolonged may compromise the quality of justice received and undermine that mission. To help meet the objective of timely resolution of disputes, the Judiciary imposes upon itself demanding time goals for the disposition of every type of case. Court managers measure every case against those time goals, making every effort to ensure that as many cases as possible are resolved timely. Cases that do not meet expected time goals for resolution are considered to be in "backlog."

The Judiciary strives continuously to improve its performance in the resolution of cases and the reduction of backlog. Statistics are published each month and are regularly reviewed and analyzed in meetings of judges, managers, and staff. New strategies for backlog reduction are introduced and evaluated. The Judicial Council's Management and Operations Committee carries out an annual review and improvement process that focuses on backlog reduction and vicinage plans for improvement. Teams of judges

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and managers also visit vicinages to review their implementation of case processing standards and best practices.

Regardless of such efforts, backlog is also a function of judicial vacancies. While the full implementation of “best practices” has had a positive effect on case management and has led to significant backlog reduction in the past, it is the presence of a judge that ultimately leads to case dispositions. Current vacancies are at an historic high. Even with the tremendous efforts of judges and staff, backlog has increased in a number of case types for the first time in recent years. Until the vacancies are filled, assignments of trial judges continue to be evaluated to see where to place this limited resource to the best advantage.

3. The FY 2009 budget recommendation reduces the number of state employees through an early retirement initiative and layoffs. The Governor has further proposed that the ability to hire employees to fill these positions be limited to 10 percent of the positions vacated. The impact these personnel actions may have on the Judiciary’s programs and services is not clear.

Question: Do you anticipate that the Judiciary will participate in the early retirement proposal? How many of the Judiciary’s staff would be eligible for the early retirement initiative or may be laid off, by division? To the extent that new employees cannot be hired, what services or programs would be reduced or eliminated? How will this impact the Judiciary’s programs and services?

Answer: The Judiciary sees an early retirement initiative as the primary mechanism to achieve the \$27 million budget savings required in FY 2009. We have studied the demographics of our work force and determined that a significant number of employees would qualify for an ERI targeted to those who are older than 50 and who have at least 25 years of service. If a program that targets that demographic is offered, 857 staff would be eligible and we anticipate that as many as 365 would participate.

We plan to absorb a staff reduction of approximately 300 through modification of staffing targets and are currently reviewing cost-saving proposals. The Judiciary uses divisional staffing models to align staffing to caseload and other work-load factors. At

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this point we are unable to advise specifically regarding impact of an early retirement proposal on programs and services.

5. Under the Strategic Gun Initiative pilot program, Camden, Essex and Mercer vicinages have participated in a program designed to give priority to gun-related cases. Under the program, "gun courts" handle first- and second-degree offenses committed with a gun such as robbery, assault, kidnapping or weapon possession for an unlawful purpose. Homicides are excepted.

Question: How has the implementation of this pilot program affected the court's docket of gun cases? How has it affected the backlog of other cases? Does the Judiciary anticipate expansion of this program?

Answer: The pilot program is a law enforcement initiative established by the Attorney General. The Judiciary is cooperating with the program to the extent that we will expedite the resolution of gun cases, as we have done in the past with other such initiatives. We do not view this as a "gun court" and we avoid using this term, since the Judiciary must maintain a neutral posture as to cases before it and not appear to be aligned for or against either side.

As of April 14, 2008 there have been 215 defendants identified to the Judiciary as being part of the program. Of those, 142 defendants were pending pre-indictment; 22 were pending post-indictment; and 51 had been disposed as of April 14 (14 were disposed before indictment; 37 were disposed after indictment).

We are confident we will be able to lessen the time to disposition for the relatively small number of cases in the pilot program. Since the pilot program has been in existence for only a couple of months, it is too early to determine its impact on the criminal docket and too early to consider expansion of the program.

Our general experience is that specialized courts, beyond their potential impact on neutrality, tend to be a less efficient form of case processing and can significantly interfere with the flexibility needed to manage our diverse statewide calendar, which exceeds a million filings annually in the Superior Court. However, we try to accommodate the reasonable needs of the various participants in the administration of justice, and thus agreed to the pilot program.

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6. Assembly Committee Substitute for Assembly Bill No. 1770 would expand the current eligibility requirements for entry into the drug court program so that more offenders may participate in the program as an alternative to incarceration. As of April 8, 2008 the committee substitute had passed both houses and was awaiting enactment. Drug courts provide for intensive, court supervised substance abuse treatment for certain non-violent, addicted offenders.

Question: What impact will the population expansion have on the operation of the drug courts? What are the estimated costs of this program expansion? Does the FY 2009 budget recommendation make adequate provision for these costs?

Answer: The statutory amendments, P.L. 2008, c. 12, are projected to increase the number of offenders sentenced to drug court per year by one-third, or approximately 400 new cases. The estimated annualized additional cost to expand the drug courts by one-third is approximately \$9 million for court operations and substance abuse treatment services. The FY 2009 budget provides for a phase-in of approximately 215 additional admissions to drug court at a cost of \$5,083,814.

Question: How is success measured in a drug court program? What is the recidivism rate of drug court graduates as compared to the rate of recidivism of offenders housed in the general prison population?

Answer: Success in the drug court program is measured in several ways. The primary measurement of program operational success is the percentage of participants who successfully complete the program compared to the number admitted. The primary measurement of program outcome success is the percentage of graduates who re-offend compared to a similar group of offenders released from state prison. Other outcome measures are comparisons of participant employment, education and vocational improvements from intake to graduation; whether the graduate has a valid driver's license, medical benefits, and custody of minor children; and payments of court imposed fines, fees and penalties. The number of babies born drug-free from participant mothers is also tracked.

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Recidivism data are kept on all active drug court participants and program graduates from the time they graduate until three years post-graduation. Recidivism data include re-arrests for indictable offenses, re-conviction for any of these new charges and subsequent sentences to state prison. Since April 1, 2002, fewer than 10 percent of drug court participants were re-arrested while active in the program. Approximately half of these re-arrested participants eventually were terminated from the program and sentenced to a term in state prison, while the other half remain active pending further court action or through re-stabilization in recovery through enhanced drug court interventions.

The current rate of re-arrests for indictable offenses for all drug court graduates within three years from their date of graduation is 15 percent. Six percent of all drug court graduates are convicted of that new indictable offense and 3 percent have been sentenced to a subsequent term in a NJ state prison. By comparison, a Department of Corrections study has indicated that 54 percent of all drug offenders and 62 percent of all property offenders are re-arrested for indictable offenses within three years of their release from custody. Additionally, DOC data indicates that the conviction rates for these offenders are 43 percent and 52 percent, respectively.

- **Question:** How do you respond to criticism that says drug courts “cherry pick” the defendants who are unlikely to re-offend even if drug court did not exist?

The New Jersey adult drug courts, unlike many other programs across the country, have always focused on prison-bound non-violent offenders that are considered at high risk to re-offend. “Prison-bound” refers to the sentence that the offender would have received were it not for the drug court program. More than 92 percent of all drug court participants entered the program in lieu of a sentence in New Jersey state prison. The other 8 percent were facing a term in county jail. The Department of Corrections has provided statistical data on the re-offense rate of offenders released from state prison. Were it not for drug court, the majority of program participants would be part of this group of offenders eventually released from state prison, with a rate of re-arrest from 54 percent to 62 percent. Therefore, the argument that drug court defendants were “unlikely to re-offend even if drug court did not exist” is unsupported by current data.

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The term "high risk" is related to the nature of addiction and the drug use history of the offender. Recent research conducted on this topic from the Treatment Research Institute at the University of Pennsylvania concluded that high-risk clients who have more serious antisocial propensities or drug-use histories performed substantially better in drug court when they were required to attend frequent status hearings before the judge. Those clients comprise the target population of the New Jersey adult drug court program. Between two-thirds and three-quarters of all drug court participants meet diagnostic criteria for admission into a residential treatment program due, in part, to their extensive substance abuse history and prior failed attempts at treatment. Treatment has been shown to work if substance abusers remain in treatment; however, between 80 and 90 percent of conventional drug treatment clients drop out before 12 months. By providing close judicial and probation supervision, drug courts effectively coerce defendants to enter and remain in treatment long enough to realize benefits. According to the National Institute on Drug Abuse (NIDA), involuntary treatment can be effective and according to the National Institute of Justice most drug court participants would not have chosen to enter treatment on their own. This type of "coercive" treatment is often necessary with high risk offenders to induce these otherwise prison-bound offenders to take the steps necessary to change their lives and become productive citizens.

7. Recently, the Judiciary published for comment a report on Public Access to Court Information. The report included a proposed new court rule on public access to records, a history of public access to court records in New Jersey, a description of court structure and automated court records, and a review of current methods of public access to court records.

- *Question:* Please comment on the actions that the Judiciary is taking to improve public access to the courts and to make these improvements known to the public. Please comment on the issues that have arisen following the recommendation to provide Internet access to court records. How is the Judiciary balancing the concerns for privacy with the public's right to know? What is being done to protect litigants from identity theft in court records?

Answer: In January, the Supreme Court authorized the publication of the Report of the Supreme Court Special Committee on Public Access to Court Records, also known as the Albin Committee Report. The Report, which includes 35 distinct recommendations

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and proposes a completely revised Court Rule on public access, was widely distributed, accompanied by a press release and posted on the Judiciary's Website. Members of the public were invited to comment on the Report's recommendations and 38 individuals and organizations submitted comments. The Court has scheduled a public hearing for May 28, 2008. The Court will determine which of the Report's recommendations to adopt after full consideration of the report as well as the comments received from the public.

The Court has long had a policy that favors the openness of court records, and the Report recommends a continuation of that tradition. The recommendations, if adopted, would not make dramatic changes in the records that are available to the public, but would provide clarity and consistency to public access policy across the state.

The Report seeks to balance the public's right to know what the courts are doing against the legitimate privacy interests of the litigants. For example, while the docket entries (indices) of many types of cases would be posted on the Internet, others (such as Family Division cases) would not. In the interest of addressing public concerns about identity theft, the Report recommends that litigants submitting cases and documents to the court be required to remove all Social Security numbers, financial account numbers and similar personal identification numbers from all documents. In that way the court files will not contain the personal identification information that, if released to the public, could create a risk for the individuals involved.

Question: What impact would implementation of this rule as proposed have on Judicial costs? Does the FY 2009 budget recommendation make adequate provision for these costs?

Answer: The FY 2009 budget recommendation makes no changes based on the recommendations of the Report. Many of the Albin Committee Report's recommendations would be cost-neutral, as they are merely continuations of broadly existing policies. A possible source of future increased costs would be posting electronic records on the Internet, but the Report proposes doing that incrementally. The exact level of such costs has not yet been calculated, and would depend on the speed and extent to which such postings are implemented. Some of the most-

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requested information, such as the Civil docket, can probably be prepared for Internet posting at a rather moderate cost.

8. The Governor has stated that in order to save money and reduce the property tax burden on New Jersey taxpayers, municipalities should investigate the feasibility of entering into contracts with one another to share services, including court services.

- *Question:* How many of the State's municipalities participate in joint municipal courts?

Answer: As of February 25, 2008 there were 17 joint municipal courts.

- *Question:* How many courts share court services with other jurisdictions?

Answer: As of February 25, 2008 there were 50 municipal courts that shared court facilities or services, resulting in 24 shared courts.

- *Question:* What savings have been generated by such sharing? Please illustrate by specific examples the types of savings achieved.

Answer: The Judiciary does not maintain specific data on municipal budgets or economic savings they achieve by sharing facilities or services. However, it is surmised that savings will be realized in sharing facilities or services because of economies of scale. For instance, if two or more courts share facilities, there will be a concomitant savings in building maintenance and utility costs. If two or more courts share services, that will result in savings in salary and benefits for any staff that is shared and a savings for supplies purchased for the court.

- *Question:* What actions has the Judiciary taken in order to assist municipalities in sharing municipal courts and municipal court services?

Answer: The Judiciary does not actively engage in promoting shared municipal courts. The decision to share facilities or services rests with the municipalities. However, this office does supply technical support when requested, such as reviewing resolutions to create the shared courts and providing computer access.

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- *Question:* What are the potential difficulties to such sharing arrangements?

Answer: There may be a number of issues related to creating a shared court that municipalities would have to address. For example, a shared court facility would require police officers from one municipality to travel to another municipality to file complaints or to seek a warrant. If there is a considerable distance between locations, additional travel cost can be anticipated. There may be other problems related to personnel. For instance, who would be selected as the court administrator of the shared facility when both administrators of the joining municipalities have tenure? Similarly, who should be judge of a shared court when both joining municipalities desire to keep their own judge or where one or more judges of the joining municipalities still have effective contracts? In these instances, there may be no significant savings with regard to court staff.

- *Question:* Has the Administrative Office of the Courts been asked by the Department of Community Affairs to advise or assist in an effort to promote municipal court consolidation or other service sharing? If so please elaborate on the AOC's response and actions.

Answer: To date, the Administrative Office of the Courts has received no request from the Department of Community Affairs to advise or assist it in promoting consolidation of municipal court services. As indicated earlier, the decision to share facilities or services is purely a municipal (executive branch) function. The Judiciary has remained impartial with respect to encouraging or discouraging municipalities to share facilities or services. If a request is made, the Judiciary will provide technical assistance.

9. The New Jersey Supreme Court has just issued an opinion in State. v. Chun (March 17, 2008) dealing with the use of the "Alcotest" in drunk driving cases. The opinion holds that the "Alcotest" is scientifically reliable and that its results are admissible in drunk driving prosecutions. The Court also vacated its January 10, 2006, stay of drunk driving prosecutions, appeals, and sentencing, which had been implemented pending the issuance of this opinion. As a result the stay on the prosecution of these cases, municipal courts may be experiencing backlogs in drunk driving cases.

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Question: What is the status of drunk driving cases in the State's municipal courts?

Answer: Drunk driving cases make up less than one percent of the 6 million cases filed in municipal courts every year. During the last full court year, the courts received 36,760 new DWI cases. As of March 31, 2008, there were 9,118 DWI cases pending in the municipal courts.

On January 10, 2006, the Supreme Court issued an order staying the sentencing of most first-time drunk driving offenders whose blood alcohol concentration (BAC) was measured using the new Alcotest machine. Those sentences were stayed until the Court determined the reliability of the Alcotest for measuring BAC. Because those cases had been adjudicated, they are not considered part of the active pending caseload.

The number of stayed DWI sentences has been reduced from a high of 10,708 cases on March 17 to 9,810 cases on April 21, meaning that nearly 1,000 cases, or 8 percent of those stayed, were resolved in a little over a month.

Question: What actions can be taken to help reduce any backlogs in drunk driving cases?

Answer: On March 31, 2008, the municipal courts had a backlog of 4,692 active DWI cases. Those cases are not among those stayed by the Supreme Court's order but rather are new cases that have not yet been adjudicated.

With the Supreme Court decision in State v. Chun, 194 N.J. 54 (2008), holding that the Alcotest is scientifically reliable and vacating its January 10, 2006 stay, the municipal courts were free to move forward with the sentencing portion of the 10,708 previously adjudicated cases that were affected by the stay.

On March 31, 2008, a memorandum was sent to all the municipal courts setting out detailed procedures on how the courts should handle the stayed cases. The courts were directed to call back the defendants in the affected cases and to schedule hearings as promptly as possible. Because the courts had been tracking the stayed cases on the computer system according to procedures issued by the Administrative

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Office of the Courts (AOC), it is a fairly simple task for the courts to identify these cases and to schedule them. Municipal courts around the state have reported that they are starting to sentence defendants whose sentences were previously stayed by the Chun order.

In order to assist the municipal court judges in resolving these cases and thereby help to reduce backlog, the AOC has scheduled mandatory trainings for the municipal court judges on State v. Chun and the Alcotest for April 22, May 13, and June 27, 2008. The training will familiarize the judges with the Alcotest machine, the documents that the state must enter into evidence before an Alcotest reading may be admitted and a discussion of the Supreme Court's Chun decision. The trainings will give the municipal court judges the tools they need to move the stayed cases fairly and efficiently.