

**Court of Appeals of Maryland**  
**Robert C. Murphy Courts of Appeal Building**  
**361 Rowe Boulevard**  
**Annapolis, Maryland 21401-1699**



MARY ELLEN BARBERA  
Chief Judge

**BUDGET ALLOWANCE**

**FISCAL YEAR 2017**

**JUDICIAL BUDGET OVERVIEW AND INTRODUCTION**

The Judiciary's Fiscal Year 2017 budget submission is \$548 million, which represents 1.3 percent of the State's operating budget. The major components of the budget are as follows: salaries and benefits at 69 percent, contractual services at 13 percent, aid to courts/grants at 9 percent, and fixed costs at 3 percent. The general fund submission of \$484 million represents a 6.8 percent increase or \$31.1 million over the Fiscal Year 2016 appropriation. This submission includes funding for personnel related items such as fringe benefits, new judgeships and employee increments, as well as operational increases.

**BUDGET ISSUES**

**Issue 1 – Judgeship Plan Falls Two Years Behind Schedule:**

In calendar 2012, at the direction of the General Assembly, the Judiciary developed a multi-year plan for the creation of the new District and circuit judgeships. The Judiciary has updated the plan for the 2016 session to include the addition of 29 judgeships from fiscal 2014 through 2019. Nine of these judgeships were created at the 2013 session, but no additional judgeships have been added in the last two years. For the 2016 legislative session, the Judiciary has sought the creation of 2 District and 10 circuit judgeships. HB 74 and SB 117 would create a total 13 judgeships, including a circuit court judge in Baltimore City not included in the Judiciary request.

**The Department of Legislative Services (DLS) recommends that the Judiciary discuss the relationship between the need for additional judges and the impact on workloads and the ability of the Judiciary to meet workload standards.**

**JUDICIARY RESPONSE:**

As noted in the Department's analysis, the Judiciary was requested, through the 2012 *Joint Chairmen's Report*, to develop a multi-year plan to add the new trial court judges that for a number of years had been certified through the Judiciary's judgeship certification methodology. The multi-year plan would enable the General Assembly to

address the ongoing need for judgeships in a manner that would have the least amount of budgetary impact. The six-year plan was developed and the General Assembly established judgeships for the first year of the plan; however, during the two subsequent years, the requested judgeships were not created.

The lack of adequate judicial resources has continued to burden the trial courts and threatens to affect adversely the timely resolution of cases; however, the judges, magistrates, and support staff continue to explore innovative means by which to address issues and provide court users the level of service they deserve.

The courts' workloads have been affected by sustained high volumes in case categories that are among the most resource-intensive and complex in nature, such as contracts and torts. Additionally, the courts have noted a continued rise in the number of self-represented litigants, often resulting in proceedings lasting longer than those in which the parties are represented by counsel. Other factors that continue to affect workload include the high demand for interpreter services, as well as the increase in the District Court's jurisdiction over civil matters. The lack of adequate judicial resources has had the effect of limiting the ability for courts to begin or to expand problem-solving courts because of the high level of judicial attention required to operate those programs effectively and the resultant increase in workload.

To address the shortfall in judicial resources, courts have utilized the services of retired and recalled judges to assist with their workload demands and to help quell what potentially could become an ever-increasing backlog. The courts have implemented innovative case management techniques and initiatives to manage cases more effectively and efficiently that include regular meetings with stakeholders to discuss issues of mutual concern. Additionally, the Judiciary has made available or facilitated the availability of a number of resources to assist self-represented litigants to navigate the judicial process more easily, both within the courthouse and remotely via phone and chat.

Notwithstanding the aforementioned efforts, if the courts are not sufficiently resourced with the necessary number of judges, the Judiciary cannot carry out its mandate to provide fair, efficient, and effective justice.

## **Issue 2 – Payments from the Land Records Improvement Fund to the Maryland State Archives**

In calendar 2003, the Judiciary and the Maryland State Archives entered a Memorandum of Understanding (MOU), for the Maryland State Archives to retain State land records and make those records available to the public online via mdlandrec. The Maryland State Archives has received at least \$5 million from the Judiciary each year since 2003. The Judiciary has concluded, however, that the Maryland State Archives is using a large portion of these funds for operating expenses unrelated to mdlandrec and is reconsidering

its relationship with the Maryland State Archives. Additionally, an unrelated dispute regarding the transfer of land records has led the Judiciary to withhold fiscal 2016 payments.

**DLS recommends that the Judiciary and the Maryland State Archives update the committees on the current status of their negotiations and whether payments from the Land Records Improvement Fund (LRIF) to the Maryland State Archives will be made in fiscal 2016. DLS also recommends that the agencies comment on the future of their relationship and whether they intend to enter into a new MOU for fiscal 2017.**

#### **JUDICIARY RESPONSE:**

The negotiations between the Judiciary and the Maryland State Archives (Archives) are currently at an impasse with regard to the Memorandum of Understanding (MOU) for Fiscal Year 2016. The MOU obligated the Archives to provide to the Judiciary, as joint custodian of the land records, index and land record images for the past sixty years. To date, the transfer has not occurred. While the parties have met, discussed and corresponded on the matter subsequent to the execution of the MOU, the Archives still has not agreed to a technical meeting for joint collaboration to begin discussion regarding the transfer. As recently as February 3, the archivist indicated that he is philosophically opposed and refuses to transfer the land records to the Judiciary in accordance with the MOU.

The MOU also calls for the Archives to work collaboratively with the Judiciary to address concerns on whether funds appropriated from the *Circuit Court Real Property Records Improvement Fund* are exclusively being used for the maintenance and support of mdlandrec. Again, as recently as February 3, the State Archivist stated his opposition to having a neutral third party conduct an assessment of the technology and support of the system, which the Judiciary believes is needed to make that determination.

Given the totality of the circumstances, the Judiciary cannot in good faith forward payments at this time. Whether any payments will be forthcoming in Fiscal Year 2016 will be determined by compliance with the Fiscal Year 2016 MOU. In the meantime, it is the intention of the Judiciary to work with the Archives, the General Assembly, and the Executive branch to identify a reasonable timeline in which the Archives can be fully supported by the general fund.

#### **Issue 3 – State Enters Second Year of *Richmond* Implementation**

The Court of Appeal's ruling in *DeWolfe v. Richmond*, went into effect on July 1, 2014, establishing a right to counsel for indigent defendants at initial appearances before District Court commissioners. For the last two years, the General Assembly has restricted \$10.0 million within the Judiciary's budget to provide counsel at initial appearances through the Appointed Attorney Program. In fiscal 2015, the program cost a total of \$8.1 million, \$1.9 million less than was restricted for this purpose. The General Assembly also included language in the Budget Reconciliation and Financing Acts of 2014 and 2015

authorizing the State to charge counties for any program costs in excess of \$10.0 million; to continue that aspect of the program for fiscal 2017, substantive legislation is required.

**DLS recommends that if the General Assembly wishes to continue to obligate counties for any costs of the Appointed Attorney Program in excess of \$10.0 million, substantive legislation should be introduced to achieve that purpose. DLS further recommends that the Judiciary comment on the status of the Appointed Attorney Program as it moves beyond the implementation phase and the effectiveness of the program. Committee narrative is recommended to direct the Judiciary to provide a report on program expenditures and utilization statistics for fiscal 2016.**

**JUDICIARY RESPONSE:**

The Appointed Attorney Program (Program) has been in operation since July 1, 2014. In Fiscal Year 2015, more than 47,000 indigent defendants were represented at initial appearances by appointed attorneys. The scheduling of the appointed attorneys is operated by the Executive Department of Commissioners. The schedules are reviewed quarterly and staffing is set monthly. Staffing is based on exact historical case volume and consideration of local conditions including justice partner considerations. There are considerable differences in schedules from the summer months to the winter months. Invoices are handled by the District Court Headquarters Finance Department.

Although it is anticipated that the Program will continue to operate under the \$10 million budget, doing so is contingent upon cooperation from justice partners that are largely controlled by the counties. The continued obligation of the counties for Program expenditures that exceed \$10 million provides incentive for justice partners to collaborate with the Judiciary to ensure that the Program remains under budget.

**Issue 4 – Maryland Electronic Courts Initiative**

Statewide implementation of the Maryland Electronic Courts (MDEC) Initiative began in October 2014 with a rollout for civil cases in Anne Arundel County and was expanded to criminal cases in August 2015. However, thus far, the Judiciary has been unable to quantify the likely savings associated with moving court documents to a digital format.

**DLS recommends that there should be savings associated with MDEC for personnel, postage, and supplies, including printing and paper. DLS further recommends that the Judiciary should comment on when it will be able to quantify and begin to realize these savings.**

**JUDICIARY RESPONSE:**

Consistent with the Joint Chairmen’s Report submissions of November 1, 2014 and November 1, 2015, it is not possible to accurately quantify the cost savings that may result from the MDEC system until it is fully implemented. Savings are likely to be realized in postage, printing and paper, but reductions in these costs will not accrue until

electronic document services replace the printing and mailing of notices to parties. Personnel savings have never been anticipated because current employees are being retrained on the MDEC system and may perform different roles, but the same number of employees are required for the new system. MDEC has been fully implemented in only one county (Anne Arundel), and will be introduced in five other counties (Caroline, Cecil, Kent, Queen Anne's, and Talbot) in July 2016. Until the MDEC system is fully implemented in the remaining 18 jurisdictions, the Judiciary will have insufficient data to project accurately the savings achieved.

## RECOMMENDED ACTIONS

### **Recommendation 1**

**Add the following language:**

**Provided that \$5,632,929 in general funds is eliminated and that turnover for employees is increased to 6%.**

#### **JUDICIARY RESPONSE:**

The Judiciary strongly disagrees with the Department's recommendation.

The Department's recommendation to increase the turnover rate from 4 percent to 6 percent represents a dramatic increase of 50 percent over the prior year. The Department's analysis was based on a December 31, 2015 vacancy report. The data contained within that report, and upon which the analysis was conducted, represents a one-day snapshot in time. The turnover rate fluctuates throughout the year and can be affected by a number of factors, such as the recruitment process, judicial appointments, and the time of the year at which the calculation is made. The Judiciary seeks to retain the Judiciary's current historical turnover rate at 4 percent, which is the same rate that the Department recommends to be used in fiscal notes.

### **Recommendation 2**

**Add the following language:**

**Further provided that 34 positions and \$3,786,876 in general funds are contingent upon the enactment of HB 74 or SB 117.**

#### **JUDICIARY RESPONSE:**

The Judiciary concurs with the Department's recommendation. However, enabling legislation (HB 74/SB 117) authorizes 13 judgeships, while only 12 judgeships are accounted for in the budget request. Therefore three additional PINs and funding of \$322,848 (judge salary/benefits: \$196,422; law clerk salary/benefits: \$58,426; courtroom

clerk salary/benefits: \$46,600; ancillary costs: \$21,400) is necessary to fund the additional judgeship request fully upon successful passage of the enabling legislation.

**Recommendation 3**

Add the following language to the general fund appropriation:

**Provided that \$10,000,000 of the general fund appropriation may only be expended for the purpose of providing attorneys for required representation at initial appearances before District Court Commissioners consistent with the holding of the Court of Appeals in *DeWolfe v. Richmond*. Any funds not expended for this purpose shall revert to the General Fund. Further provided that the Chief Judge is authorized to process a budget amendment to transfer up to \$10,000,000 in general funds to the appropriate unit of State government upon the enactment of legislation designating that unit of government to assume responsibility for providing attorneys for required representation at initial appearances before District Court Commissioners.**

**JUDICIARY RESPONSE:**

The Judiciary concurs with the Department’s recommendation with the addition of language that permits the Chief Judge to use some of the restricted monies for costs associated with administering the Appointed Attorney Program (*i.e.*, performance evaluations and training of appointed attorneys by outside sources). Further, the Judiciary supports the Department’s observation that additional legislation would be needed to obligate the counties for any program expenses in excess of \$10 million.

**Recommendation 4**

Add the following language to the general fund appropriation:

**Further provided that a \$1,040,000 general fund reduction is made for operating expenditures. This reduction shall be allocated among the subdivisions according to the following Comptroller objects:**

<b><u>0301 – Postage</u></b>	<b><u>\$150,000</u></b>
<b><u>0302 – Telephone</u></b>	<b><u>25,000</u></b>
<b><u>0804 – Printing and Reproduction</u></b>	<b><u>25,000</u></b>
<b><u>0809 – Equipment Repair and Maintenance</u></b>	<b><u>40,000</u></b>
<b><u>0812 – Building/Road Repairs and Maintenance</u></b>	<b><u>575,000</u></b>
<b><u>0902 – Office Supplies</u></b>	<b><u>165,000</u></b>
<b><u>1115 – Office Equipment</u></b>	<b><u>60,000</u></b>

## **JUDICIARY RESPONSE:**

The Judiciary concurs, in part, with the Department's recommendation, but strongly disagrees with specific reductions to the District Court's operating budget, and urges that \$700,000 be restored.

The aforementioned amount includes the restoration of \$575,000 in Building Repairs and Maintenance (0812) and \$60,000 for the replacement of Office Equipment (1115), both of which are important to the Judiciary's ongoing operations. It is important to note that the District Court did not use an 8 percent inflation rate across the board, but rather only for certain sub-objects.

The approach used by the Department to calculate the reductions does not accurately reflect the reasons for the increases in the two sub-objects cited above. These sub-objects are not inflation based categories, but rather are based upon the actual needs of the District Court. As such, the request at a sub-object level will vary from year to year. The Department's methodology provides only for a 2 percent per year increase over the Fiscal Year 2015 expenditures, which is not representative of what the future funding needs will be in the Fiscal Year 2017 budget.

If this funding is not restored, the District Court will not be able to implement necessary building repair and maintenance projects in courthouses across the state. These include necessary safety-related improvements such as installation of security cameras and ongoing facility maintenance. The District Court has over 4 million visitors to its courthouses annually and its facilities are subjected to tremendous wear and tear. Keeping up with maintenance projects ensures that courthouses do not fall into disrepair and reduces future expenses.

In addition to the restoration of the funds for building repairs and office equipment, the Judiciary requests a restoration of part of the Office Supplies (0902) sub-object reduction. In that sub-object, the recommended cut would reduce the Fiscal Year 2017 allowance to less than the Fiscal Year 2015 actual expenditures. If the 2 percent increase were applied in this sub-object to the Fiscal Year 2015 actual expenditures, the reduction should only be \$100,000. The Judiciary would concur with this amount of reduction.

Although the Judiciary believes the funds requested are reflective of its operational needs, the Judiciary is cognizant of the fiscal challenges confronting the State. As such, the Judiciary would concur with a reduction of \$340,000.

As provided for in prior years, the Judiciary requests the flexibility to allocate the reductions.

### **Recommendation 5**

**Eliminate funding for overtime for contractual bailiffs to provide for paid leave time. Other contractual workers employed by the State do not receive paid leave.**

**JUDICIARY RESPONSE:**

The Judiciary disagrees with the Department’s recommended reduction of \$200,000 for increased leave for court bailiffs. In response to concerns raised by the legislature with respect to inequities in the bailiffs’ compensation structure, the Chief Judge of the District Court held a meeting of all the supervisory bailiffs. At that meeting, the bailiffs indicated that they wanted to remain contractual employees, as the overwhelming majority already have retirement benefits and health insurance through their former employers.

Bailiffs cannot be compared to other contractual employees, as their employment is typically long-term, rather than temporary, and they are essential to the safety of all those who utilize or work in the 34 District Court locations. As a requirement of employment, all bailiffs must be former police officers, and they bring their specialized training and years of experience to the Judiciary at no additional cost.

By maintaining their status as contractual employees and not requesting full time PINs, a substantial savings inures to the benefit of the state of Maryland but continues to leave an inequity with respect to the bailiffs’ compensation structure. The leave funded by the \$200,000 in this category helps to mitigate this inequity.

**Recommendation 6**

**Adopt the following narrative:**

**Appointed Attorney Program Costs and Expenditures: The committees remain concerned about the operations of the Appointed Attorney Program and the State’s efforts to comply with the Richmond decision. The committees request a report detailing the fiscal 2016 costs of the Appointed Attorney Program, including reimbursement for tolls and mileage, as well as program utilization statistics.**

**JUDICIARY RESPONSE:**

The Judiciary concurs with the Department’s recommendation.

**Recommendation 7**

**Add the following language to the general fund appropriation:**

**Provided that a \$2,822,480 general fund reduction is made for operating expenditures. This reduction shall be allocated among the subdivisions according to the following Comptroller objects.**

<b><u>0301 – Postage</u></b>	<b><u>\$65,000</u></b>
<b><u>0302 – Telephone</u></b>	<b><u>40,000</u></b>

<b><u>0401 – In State/Routine Operations</u></b>	<b><u>160,000</u></b>
<b><u>0801 – Advertising and Legal Publication</u></b>	<b><u>23,000</u></b>
<b><u>0804 – Printing and Reproduction</u></b>	<b><u>98,000</u></b>
<b><u>0805 – Bookbinding</u></b>	<b><u>30,000</u></b>
<b><u>0808 – Equipment Rental</u></b>	<b><u>17,000</u></b>
<b><u>0812 – Building Repair and Maintenance</u></b>	<b><u>400,000</u></b>
<b><u>0817 – Janitorial Service</u></b>	<b><u>20,000</u></b>
<b><u>0819 – Education/Training Contracts</u></b>	<b><u>32,000</u></b>
<b><u>0821 – Management Studies/Consultants</u></b>	<b><u>52,980</u></b>
<b><u>0826 – Freight and Delivery</u></b>	<b><u>85,000</u></b>
<b><u>0827 – Trash and Garbage Removal</u></b>	<b><u>18,000</u></b>
<b><u>0828 – Office Assistance</u></b>	<b><u>125,000</u></b>
<b><u>0854 – Computer Maintenance Contracts</u></b>	<b><u>115,000</u></b>
<b><u>0858 – Software Licenses</u></b>	<b><u>50,000</u></b>
<b><u>0873 – Outside Services – Other</u></b>	<b><u>60,000</u></b>
<b><u>0902 – Office Supplies</u></b>	<b><u>150,000</u></b>
<b><u>0915 – Library Supplies</u></b>	<b><u>8,500</u></b>
<b><u>1006 – Duplicating Equipment</u></b>	<b><u>375,000</u></b>
<b><u>1015 – Office Equipment</u></b>	<b><u>550,000</u></b>
<b><u>1106 – Duplicating Equipment</u></b>	<b><u>335,000</u></b>
<b><u>1304 – Subscriptions</u></b>	<b><u>13,000</u></b>

**JUDICIARY RESPONSE:**

The Judiciary concurs, in part, with the Department’s recommendation but strongly disagrees with specific reductions to the Clerks of the Circuit Courts’ operating budget and requests that \$2,534,672 be restored.

The aforementioned amount includes the restoration of \$1,660,000 for building repair/maintenance (0812), replacement of equipment (1006 and 1015) and new equipment (1106), which are important to the Judiciary’s ongoing operations. The approach used by the Department to calculate the reductions does not accurately reflect the reasons for the increases in the four sub-objects cited above. These sub-objects are not inflation-based categories, but rather are based upon the individual needs of a particular Clerk of the Circuit Court, and as such, the request at a sub-object level will vary from year to year. The Department’s methodology only provides for a 2 percent per year increase over the Fiscal Year 2015 expenditures, which is not representative of what the future funding needs will be in the Fiscal Year 2017 budget.

Contrary to the Department’s analysis, the Clerks of the Circuit Courts did not use an 8 percent inflation rate across the board. The result of the Department’s recommended cuts is that in all but one of the 23 sub-objects cited by the Department, these cuts would result in the Fiscal Year 2017 appropriation being lower than the Fiscal Year 2016 base appropriation. In addition to the restoration of the four previously noted sub-objects, the Judiciary requests a restoration of \$874,672, to level fund the Fiscal Year 2017 request at the Fiscal Year 2016 base.

Although the Judiciary believes the funds requested are reflective of its operational needs, the Judiciary is cognizant of the fiscal challenges confronting the State. As such, the Judiciary would concur with a reduction of \$287,808.

As provided for in prior years, the Judiciary requests the flexibility to allocate the reductions.