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Joint Committee on Finance, June 18, 1996

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XVII. Supreme Court -- J. Denis Moran, Director of State Courts

The Director of State Courts, on behalf of the Supreme Court, requests a supplement of \$27,000 GPR in fiscal year 1995-96 and \$17,700 GPR in fiscal year 1996-97 from the Committee's supplemental appropriation under s. 20.865(4)(a) to the s. 20.625(1)(c) court interpreter fees appropriation to fund reimbursement to counties for court interpreters for indigent persons.

Governor's Recommendation

Approve the request for a supplement of \$27,000 GPR in FY96 for the Court interpreter fees annual appropriation under s. 20.625(1)(c). Deny the request for supplemental funding in FY97.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 27, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Supreme Court--Section 13.10 Request for 1.0 Full-Time Position--Agenda Item XVIII

The Director of State Courts, on behalf of the Supreme Court, requests 1.0 GPR position beginning in 1996-97 to perform administrative functions for the Chief Justice of the Supreme Court. The position would be funded from the Supreme Court's sum sufficient GPR appropriation.

BACKGROUND

As provided in Article VII of the Wisconsin Constitution, the Supreme Court consists of seven justices elected to ten-year terms. The justice with the longest seniority serves as Chief Justice, unless he or she chooses otherwise. The Chief Justice of the Supreme Court is the administrative head of the Wisconsin judicial branch. The Constitution provides that the Chief Justice shall exercise administrative authority pursuant to procedures adopted by the Supreme Court. Chief Justice Roland Day is retiring on July 30, 1996, and Justice Shirley Abrahamson will become Chief Justice on August 1, 1996.

Under s. 751.02, each justice has the authority to appoint and prescribe the duties of a secretary and a law clerk to assist the justice in performing his or her duties. In addition, the Supreme Court has authority to allocate court employees as it considers necessary for the execution of functions of the Supreme Court as well as the state court system as a whole.

ANALYSIS

While there is no formal job description for the new position, Court officials indicate that the person would be directly assigned to, hired by and serve at the pleasure of the Chief Justice to assist in the additional administrative duties associated with the office. The position would

perform duties as prescribed by the Chief Justice which may include: (a) staffing special committees, commissions, task forces and programs the new Chief Justice is developing including one that involves bringing community volunteers into the courts; (b) coordinating special events such as conferences and symposia; (c) representing the Chief Justice at meetings and other public events; and (d) drafting and editing speeches and other correspondence. No salary level has been set, however court officials currently anticipate approximately \$60,000 annually (\$87,200 including fringe benefits, supplies and one-time costs of \$5,700).

Court officials indicate that the new position is needed because the Chief Justice, unlike the heads of other agencies, does not employ any personal staff whose primary responsibility is to assist him or her with the duties associated with being the administrator of the judicial branch of government. The Supreme Court's sum sufficient appropriation funds the seven justices, their law clerks and secretaries, in addition to three court commissioners and two legal secretaries assigned to them, two marshals and the office of the clerk of the Supreme Court. However, also funded from that appropriation is a position referred to as an administrative assistant to the Chief Justice and an executive secretary for the administrative assistant.

The Wisconsin Supreme Court Internal Operating Procedures describes the administrative assistant to the Chief Justice position as an attorney licensed to practice law in Wisconsin who is hired by and serves at the pleasure of the Chief Justice and who, under the direction of the Chief Justice: (a) serves as a liaison between the Chief Justice and the court offices and staff, court boards, committees, State Bar and governmental agencies; (b) is a legal advisor to the office of the clerk and Director of State Courts; (c) performs research, analyzes information and makes recommendations to the Chief Justice regarding court operations and procedures; (d) performs court commissioner duties; (e) assists the Chief Justice in the exercise of the court's administrative authority; and (f) assists the court and individual justices as directed by the Chief Justice.

While previous Chief Justices have not had any additional staff to assist in administrative duties associated with that position, Court officials indicate that past justices were able to use the existing administrative assistant position to assist with such duties on a one-quarter time to one-third time basis. However, over the past ten years the number of cases filed in the Supreme Court has increased 32% (1,124 cases filed in 1995 compared to 852 cases filed in 1985). Further, case filings are expected to rise to 1,300 cases this year. As a result, a majority of the administrative position's time (approximately 95%) is required to attend to legal duties related to the increased number of cases presented to the Court.

It should be noted that the Supreme Court also funds, under separate sum certain appropriations, the Director of State Courts' Office which, by Supreme Court Rule, is charged with the responsibility of the overall management of the judicial system. The Director is referred to as the chief nonjudicial officer of the state court system and is responsible for development of the budget, hiring and salary establishment of court personnel (except for the personal staffs of the justices and judges), acting as a legislative liaison, providing public information, providing a court information system, coordinating judicial education, providing planning and research for

the court system and staffing various judicial committees. The Office of the Director of State Courts employs 62.5 GPR positions to assist in the administration of the state courts. The Director serves at the pleasure of the Supreme Court, under the direction of the Chief Justice.

While the Director of State Courts is responsible for day-to-day administration of the state court system, Court officials indicate that due to the often confidential matters of the Court, the Director cannot act as a personal assistant to the Chief Justice. Therefore, the request for such a position was advanced.

On the other hand, according to the Court's preliminary position description, a predominant number of the responsibilities that would be associated with the new position are already either assigned to the Director of State Courts by Supreme Court Rule (such as staffing committees), performed by the administrative assistant (on a part-time basis) or could be assigned to other justices (such as representing the Chief Justice at various events). However, Court officials indicate that the new Chief Justice requires assistance to pursue a variety of new initiatives that will improve the relationship between courts and communities and the quality of justice in Wisconsin.

It could be argued that the request for additional position authority would be more appropriately addressed in 1997-99 budget deliberations. If a personal assistant is an overriding priority at this time the Court could (a) assign these duties to the current administrative assistant position; and/or (b) use existing staff within the Director of State Courts' Office to perform research and staff committees as provided under Supreme Court Rule. However, Court officials argue that existing staff cannot be diverted for this purpose due to increasing workload demands in the Director of State Courts' Office over recent biennia. Further, since the new Chief Justice will begin her term on August 1, 1996, with new programs that may be ready to be implemented (such as "Volunteers in the Courts" and a number of other community outreach initiatives being developed), it is argued that the request should be approved at this time in order to allow her to adequately discharge the duties of Chief Justice.

Since the requested position would be funded from a sum sufficient appropriation, no funds were requested. However, there would be a cost to the state for the position of approximately \$81,500 annually in addition to one-time costs of \$5,700.

ALTERNATIVES

1. Approve the Director of State Courts' request for \$87,200 GPR (including one-time funding of \$5,700) and 1.0 GPR position beginning in 1996-97 to assist the Chief Justice in performing the administrative duties of the office.
2. Deny the request.

Prepared by: Carri Jakel

MO# Alt. 1

BURKE	(Y)	N	A
ANDREA	(Y)	N	A
GEORGE	Y	N	A
DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
WEEDEN	(Y)	N	A
COWLES	Y	(N)	A

BRANCEL	Y	(N)	A
FOTT	(Y)	N	A
SCHNEIDERS	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
PORTER	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

AYE 13 NO 2 ABS 1

CORRESPONDENCE/MEMORANDUM

Date: June 28, 1996

To: The Honorable Brian Burke, Co-chair ✓
Joint Committee on Finance

The Honorable Ben Brancel, Co-chair
Joint Committee on Finance

From: Shirley S. Abrahamson
Supreme Court of Wisconsin

Subject: Request under s. 13.10, Wis. Stats. for 1.00 FTE
additional position authority, beginning in 1996-97,
for the Supreme Court (680 [1] [a])

I enjoyed meeting with both of you to discuss my need for an additional staff person to assist me with the administrative responsibilities associated with my becoming Chief Justice on August 1, 1996. Unlike Legislators or Executive Branch agency heads, I will not gain any additional staff when I assume my new duties as Chief Justice and administrator of the Judicial Branch. Many of the Court's initiatives and responsibilities cannot be deferred for a year until the next biennial budget is approved.

I have made travel plans for July which cannot be altered. This unfortunately means that I will be unable to attend the July 10 meeting of the Joint Committee on Finance when the 13.10 request will be discussed. J. Denis Moran, the Director of State Courts, will attend in my place and will be available to answer questions on that day.

If in the interim you or any other members of the Committee have any questions or need additional information, please contact Sue Fieber in my office at 266-1885. She will forward your concerns to me for response.

The Court and I look forward to a long cooperative relationship between the Judicial and Legislative Branches of government.

cc: Members of Joint Committee on Finance
J. Denis Moran



XVIII

Supreme Court of Wisconsin
Director of State Courts
P.O. Box 1688
Madison, Wisconsin 53701-1688

Roland B. Day
Chief Justice

213 N.E. State Capitol
Telephone (608) 266-6828
Fax (608) 267-0980

J. Denis Moran
Director of State Courts

DATE: May 23, 1996

TO: The Honorable Tim Weeden, Co-chair
Joint Committee on Finance

The Honorable Ben Brancel, Co-chair
Joint Committee on Finance

FROM: J. Denis Moran, Director of State Courts
Supreme Court of Wisconsin

SUBJECT: Request under s. 13.10, Wis. Stats. for 1.00 FTE
additional position authority, beginning in 1996-97, for
the Supreme Court (680 [1][a])

REQUEST

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts (DSC), on behalf of the Supreme Court, requests an increase of 1.0 FTE position beginning in 1996-97 for the Supreme Court. Funds to support this position would come from the Supreme Court's appropriation, 680 (1)(a).

STATUTORY CRITERIA FOR S. 13.10, WIS. STATS., REQUEST

This request is submitted under s. 13.101 (2), under which the Joint Finance Committee may create a full-time equivalent position. On August 1, 1996, Justice Shirley Abrahamson will become the Chief Justice of the Wisconsin Supreme Court, upon the retirement of Chief Justice Roland Day. The increase in position authority is associated with the beginning of Justice Abrahamson's tenure as Chief Justice; therefore, it cannot wait until the 1997-99 biennial budget for consideration.

BACKGROUND

The Supreme Court consists of seven justices elected to ten-year terms. The justice with the longest seniority on the Court serves as Chief Justice unless he or she declines the position.

Pursuant to s. 751.01, each justice employs a secretary and a law clerk.

According to Article VII, Section 4 (3) of the Wisconsin Constitution, "The Chief Justice of the Supreme Court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the Supreme Court." Despite these additional constitutional duties, the Chief Justice, unlike the heads of the other branches of Wisconsin government, does not currently employ any personal staff whose primary responsibility is to assist him/her with the additional administrative duties associated with the office.

For example, in the Legislature, although the clerks offices handle the routine administrative business of the Legislature, members in positions of leadership or committee chairs employ additional staff to assist them with the administrative matters associated with their added responsibilities.

The administrative responsibilities of the Chief Justice, exercised pursuant to procedures adopted by the Supreme Court, include providing general direction of the staff of administrative personnel by and through whom the direct activity of administration is carried out; serving as chief spokesperson for the Judicial Branch; providing general direction and leadership of people; serving as chair of the Court's long-range planning committee which formulates proposals for the future direction of the court system; and overseeing the general management of the court system's resources. These administrative responsibilities are in addition to the judicial responsibilities of a Supreme Court Justice. No staff directly support the administrative functions of the Chief Justice.

Justice Shirley Abrahamson, who has been a Supreme Court Justice since 1976, will become Chief Justice upon the retirement of Chief Justice Roland Day on August 1, 1996. Chief Justice Day replaced former Chief Justice Heffernan, who served in that capacity from 1983 through 1995.

ANALYSIS

The position requested will be assigned directly to the Chief Justice and will be hired by, and serve at the pleasure of, the Chief Justice. This position will be assisting the incoming Chief Justice with the additional administrative duties associated with the office.

It is anticipated that the incumbent will staff special committees, commissions and task forces established by the Chief Justice; coordinate special events such as conferences and symposia

that would not normally be part of the Court's judicial education responsibilities; represent the Chief Justice at meetings and other public events; monitor external committees and task forces; and assist in drafting and editing speeches and non-routine correspondence.

The addition of a staff person assigned to the Chief Justice has been unanimously approved by the Court.

SUMMARY

The Director of State Courts, on behalf of the Supreme Court, requests 1.0 FTE position for the Supreme Court. This position will be employed by the incoming Chief Justice, and will assist her in the administrative duties associated with the office.

The Supreme Court will be represented by Justice Shirley Abrahamson and J. Denis Moran, the Director of State Courts.

CORRESPONDENCE MEMORANDUM

Date:

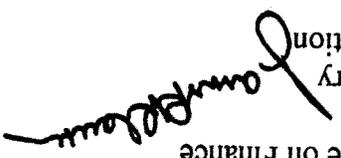
June 11, 1996

To:

Members, Joint Committee on Finance

From:

James R. Klausner, Secretary
Department of Administration



Subject:

Section 13.10 Request from the Director of State Courts for an Administrative Position for the Supreme Court.

Request

Justice Shirley Abrahamson and the Director of State Courts, on behalf of the Supreme Court, request position authority for 1.0 FTE position beginning in FY97 for the Supreme Court. Funds to support this position would come from the Supreme Court Proceedings, General program operations, GPR sum-sufficient appropriation under s. 20.680(1)(a).

Background

The Supreme Court consists of seven justices elected to ten-year terms. The justice with the longest seniority on the Court serves as Chief Justice unless he or she declines the position. The Wisconsin Constitution under Article VII, Section 4(3), specifies that "The Chief Justice of the Supreme Court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the Supreme Court. Furthermore, s. 751.02 Wis. Stats. specifies that "The Supreme Court may authorize the employes it considers necessary for the execution of the functions of the Supreme Court and the Court of Appeals and the court reporting functions of the circuit courts and may designate titles, prescribe duties and fix compensation." A person appointed by the Supreme Court serves at the pleasure of the Court.

Currently, there are a total of 36.0 FTE positions that are employed by the Supreme Court. There are 7 chief justices who each employ a secretary and a law clerk, as authorized in the statutes. The remaining 15 FTE positions are employed with the Clerk's Office, the Court Commissioners and the Marshall's Office. Since 1989, the number of staff employed by the Supreme Court has remained the same.

Analysis

This request is for an additional 1.0 FTE administrative position for the Supreme Court beginning in FY97. This position will be assigned directly to the Chief Justice and will be appointed by and serve at the pleasure of the Chief Justice. Due to the retirement of Chief Justice Roland Day, Justice Shirley Abrahamson will become the Chief Justice of

the Supreme Court, effective August 1, 1996. As prescribed in the Wisconsin Statutes, the Chief Justice has both judicial and administrative responsibilities of the court system. The administrative responsibilities of the Chief Justice include overseeing the Office of the Director of State Courts, serving as the chief spokesperson for the judicial branch, serving as chair of the Court's long-range planning committee that is responsible for formulating proposals for the future direction of the court system, and providing general direction and leadership to the court system.

This new position will assist the incoming Chief Justice in carrying out the administrative responsibilities associated with the Office. According to the Director of State Courts, the position will be responsible for staffing special committees, commissions and task forces established by the Chief Justice; coordinate special events such as conferences and symposiums that would not normally be part of the Court's judicial education responsibilities; represent the Chief Justice at meetings and other public events; monitor external committees and task forces; and assist in drafting and editing speeches and non-routine correspondence.

This position will be involved in new initiatives that Justice Abrahamson has already begun such as exploring the possibility of expanding the use of volunteers in Wisconsin's circuit courts which could promote greater collaboration between the courts and the communities they serve. Another initiative that Justice Abrahamson has already begun, in conjunction with Senator Joanne Huelsman, is to convene an ongoing discussion group whose members consist of high level administrators from the executive, legislative and judicial branches who meet to discuss ways to improve the law, the legal system, and/or the administration of justice. These initiatives have the potential to make the court system more effective and efficient as well as improve interbranch relations. The new position was unanimously moved by the Court.

The Director of State Courts did not request additional expenditure authority for this position since the Supreme Court plans to fund the new position from its General program operations GPR sum-sufficient appropriation. While the request did not include what the actual salary, fringe benefits and associated costs of the position will be, the Director of State Courts did indicate that it anticipates that the annual salary costs for the new position will be in the \$50,000 range. Thus, with fringe benefits included, the total annualized cost of the position will be approximately \$66,500 GPR. This does not include extra costs for supplies or permanent property, if needed. The current expenditure authority in the Supreme Court's General program operations appropriation is \$3,037,200 for FY96 and FY97. The current expenditure authority would need to be adjusted through a sum-sufficient reestimate to reflect the additional costs associated with this position beginning in FY97.

Members, Joint Committee on Finance
June 11, 1996
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The request for an additional 1.0 FTE administrative position to assist the Chief Justice in carrying out the administrative functions of the Supreme Court is consistent with the authority provided in the Wisconsin Constitution and current statutes. Since the request for an increase in position authority for the Supreme Court is associated with the beginning of Justice Abrahamson's tenure as Chief Justice as of August 1, 1996, DOA recommends that the Joint Committee on Finance approve the request for an additional position and authorize an increase in position authority for the Supreme Court rather than delay the request for consideration in the 1997-99 biennial budget.

Recommendation

Approve the request for 1.0 FTE increase in position authority for the Supreme Court beginning in FY97.

Prepared by: Gina Frank-Reece
266-8270



Supreme Court of Wisconsin
Director of State Courts
P.O. Box 1688
Madison, Wisconsin 53701-1688

Roland B. Day
Chief Justice

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J. Denis Moran
Director of State Courts

DATE: May 23, 1996
TO: The Honorable Tim Weeden, Co-chair
Joint Committee on Finance

The Honorable Ben Brancel, Co-chair
Joint Committee on Finance
FROM: J. Denis Moran, Director of State Courts
Supreme Court of Wisconsin
SUBJECT: Request under s. 13.10, Wis. Stats. for 1.00 FTE
additional position authority, beginning in 1996-97, for
the Supreme Court (680 [1][a])

REQUEST

Under the provisions of s. 13.10, Wis. Stats., the Director of State Courts (DSC), on behalf of the Supreme Court, requests an increase of 1.0 FTE position beginning in 1996-97 for the Supreme Court. Funds to support this position would come from the Supreme Court's appropriation, 680 (1)(a).

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BACKGROUND

The Supreme Court consists of seven justices elected to ten-year terms. The justice with the longest seniority on the Court serves as Chief Justice unless he or she declines the position.

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According to Article VII, Section 4 (3) of the Wisconsin Constitution, "The Chief Justice of the Supreme Court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the Supreme Court." Despite these additional constitutional duties, the Chief Justice, unlike the heads of the other branches of Wisconsin government, does not currently employ any personal staff whose primary responsibility is to assist him/her with the additional administrative duties associated with the office.

For example, in the Legislature, although the clerks offices handle the routine administrative business of the Legislature, members in positions of leadership or committee chairs employ additional staff to assist them with the administrative matters associated with their added responsibilities.

The administrative responsibilities of the Chief Justice, exercised pursuant to procedures adopted by the Supreme Court, include providing general direction of the staff of administrative personnel by and through whom the direct activity of administration is carried out; serving as chief spokesperson for the Judicial Branch; providing general direction and leadership of people; serving as chair of the Court's long-range planning committee which formulates proposals for the future direction of the court system; and overseeing the general management of the court system's resources. These administrative responsibilities are in addition to the judicial responsibilities of a Supreme Court Justice. No staff directly support the administrative functions of the Chief Justice.

Justice Shirley Abrahamson, who has been a Supreme Court Justice since 1976, will become Chief Justice upon the retirement of Chief Justice Roland Day on August 1, 1996. Chief Justice Day replaced former Chief Justice Heffernan, who served in that capacity from 1983 through 1995.

ANALYSIS

The position requested will be assigned directly to the Chief Justice and will be hired by, and serve at the pleasure of, the Chief Justice. This position will be assisting the incoming Chief Justice with the additional administrative duties associated with the office.

It is anticipated that the incumbent will staff special committees, commissions and task forces established by the Chief Justice; coordinate special events such as conferences and symposia

that would not normally be part of the Court's judicial education responsibilities; represent the Chief Justice at meetings and other public events; monitor external committees and task forces; and assist in drafting and editing speeches and non-routine correspondence.

The addition of a staff person assigned to the Chief Justice has been unanimously approved by the Court.

SUMMARY

The Director of State Courts, on behalf of the Supreme Court, requests 1.0 FTE position for the Supreme Court. This position will be employed by the incoming Chief Justice, and will assist her in the administrative duties associated with the office.

The Supreme Court will be represented by Justice Shirley Abrahamson and J. Denis Moran, the Director of State Courts.

XVIII. Supreme Court -- Justice Shirley Abrahamson and J. Denis Moran, Director of State Courts

Justice Shirley Abrahamson and the Director of State Courts, on behalf of the Supreme Court, request position authority for 1.0 FTE GPR position beginning in 1996-97 for the Supreme Court. Funds to support this position would come from the Supreme Court Proceedings, General program operations, sum-sufficient appropriation under s. 20.680(1)(a).

Governor's Recommendation

Approve the request for 1.0 FTE increase in position authority for the Supreme Court beginning in FY97.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 27, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Public Defender--Section 13.10 Request for Transfer of \$860,500 GPR Between Appropriations in 1995-96--Agenda Item XIX

The Public Defender requests the transfer of \$812,700 from salaries and fringe benefits and \$47,800 from supplies and services to the private bar appropriation to offset a projected 1995-97 deficit of \$3,155,100 in that appropriation.

BACKGROUND

The Public Defender has staff attorneys to provide defense to eligible, indigent persons charged with crimes. Staff attorneys handle a statutorily set number of cases each year. Because the total number of cases that require Public Defender representation exceeds the amount that staff attorneys are able to handle, the Public Defender must appoint private counsel to represent the additional defendants. Private attorneys are either paid at an hourly rate (\$40 per hour except \$25 per hour for travel time) or under contract at a flat per case amount.

From fiscal year 1990-91 to 1994-95, the number of cases assigned to private attorneys increased almost 40%. In an effort to reduce the associated cost increases, a number of initiatives were included in the 1995-97 budget bill including: (a) increasing staff attorneys' statutory caseload levels; (b) collecting payments from clients for their representation; (c) eliminating statutory representation in certain types of cases; (d) creating a flat, \$40 per hour payment rate for private counsel; (e) requiring flat rate contracts with private attorneys to handle a portion of cases; (f) verifying eligibility of clients; and (g) providing paralegals and regional administrators to relieve staff attorneys of nonattorney workload. As a result of these initiatives, private bar funding was reduced from \$52,484,700 in the 1993-95 biennium to \$46,862,700 in 1995-97 of which \$7,503,300 is estimated program revenues from client collections (the 1995-97

funding level includes \$2,230,500 provided under budget adjustment legislation to fund the Governor's veto of two 1995-97 budget bill initiatives). This level of funding represents an almost 11% reduction in overall funding for private attorneys from the 1993-95 biennium and a 25% reduction in GPR.

ANALYSIS

To keep the SPD Board, agency staff, members of the Legislature and the public informed as to how budget initiatives are being implemented throughout the state, the Public Defender has been releasing budget forecasting reports. The reports contain estimates of how much of the budgeted savings SPD officials believe they can achieve, and therefore, how much of a private bar deficit they anticipate. In their May report, the Public Defender projects a deficit in the private bar appropriation of \$4.2 million at the end of the biennium (this compares to the \$3.2 million estimated in their request). Private attorney bills are currently paid at a rate of \$1.6 to \$1.7 million a month. The Public Defender is required to pay bills submitted by private attorneys within four months of the date that the office receives them. Bills not paid within four months are subject to interest of 12% per year compounded monthly. The private bar appropriation is budgeted through March 31 of the second year of the biennium. Therefore, a \$4.2 million deficit would result in the Public Defender ceasing to pay private bar bills in January of 1997 (rather than April).

The May deficit estimate is considerably lower than the \$10.8 million deficit projected in November (\$2.2 million of the reduction is due to funds provided under budget adjustment legislation). The table below indicates how the projections have changed over recent months.

State Public Defender 1995-97 Deficit Projections

	October/ November <u>Report</u>	January/ February <u>Report</u>	<u>May Report</u>
Collections	\$5,328,000	\$5,199,000	\$5,022,700
Contracts	1,500,000	879,300	1,657,100
Staff Not Meeting Caseload	448,400	1,212,300	1,007,200
1993-95 Caseload Growth	410,000	410,800	410,800
1995-97 Caseload	1,500,000	-3,593,300	-3,520,100
Savings from Jurisdiction	-540,000	-546,100	-336,100
Governor's Vetoes	<u>2,230,500</u>	<u>2,230,500</u>	<u>0</u>
Cumulative Deficit	\$10,786,900	\$5,792,500	\$4,241,600

As demonstrated above, over the past months deficit estimates have been declining, however the current estimate based on more recent May data is \$1.0 million higher than the Public Defender had estimated in its s. 13.10 request. The increased estimate results mainly from staff meeting only 94.8% of statutory caseload and additional contracts that the Public Defender has entered into.

The Public Defender indicates that staff are having difficulty meeting caseloads because of additional cases that were required as a result of providing paralegals. Under the biennial budget act, 12 paralegal positions were provided to perform nonattorney work so that staff attorneys would be able to handle more than their statutory caseload levels. However, the Public Defender indicates that since paralegals cannot appear in court it has been difficult to use paralegal services to allow attorneys to handle more cases. Nevertheless, costs should be reduced as full caseloads are assigned to staff attorneys.

In addition, since the submission of their request, the Public Defender has entered into additional contracts with private attorneys to handle cases at a flat rate per case. Attorneys under contract are paid every two months based on the number of cases opened. This compares to noncontracted private attorneys who are paid at hourly rates at the close of the case (typically four to six months after the case is opened). As a result, while contracted cases ultimately result in lower costs to the office, the payment of those cases is shifted three to five months ahead of when they would have been due without the contracts. This adds to the anticipated deficit this biennium, but will result in cost savings in the next biennium.

Despite the recent increase in the estimated deficit, the actual amount of the deficit that will occur in this biennium is speculative because there is insufficient information on the effectiveness of the newly implemented cost saving initiatives. For instance, typically the Public Defender experiences an annual increase in caseload of four to six percent, however this fiscal year caseload openings are almost 14% lower than they were for the same period last fiscal year. Whether this decline will continue throughout the remainder of this biennium is not known.

In addition, the agency is budgeted to collect \$7.5 million from clients for the cost of their representation in this biennium. In its deficit projections, the Public Defender estimates only \$2.5 million in collections based on initial collection rates. Although collections should improve as clients become aware that some payment toward the cost of their representation is expected and will be sought upon any future ability to pay, given the magnitude of the discrepancy between the budgeted amount and the current collection rates, it is likely that a significant deficit will occur in this area. Further, it is unlikely that sufficient additional savings will occur from other cost saving measures to offset the collections deficiency.

The Public Defender requests a transfer of surplus funds from salaries, fringe benefits, supplies and services to offset a portion of the expected deficit. The surplus funds are related to staff attorney vacancies which have not been filled as quickly as in the past. Typically the Public Defender has a low vacancy rate for its staff attorneys. Generally, positions are filled as

quickly as possible because hiring staff attorneys is less expensive than appointing private attorneys at hourly rates.

As of June 3, 1996, there were 14.25 vacant staff attorney positions. The Public Defender indicates in some offices throughout the state such as Fond Du Lac, Sheboygan, Beloit, Rice Lake, Jefferson, Rhineland and Hudson, sufficient caseload has not been available to warrant filling the positions. In addition, in Milwaukee County where additional cases are available, waiting time from court delays make it difficult for attorneys to fulfill a statutory caseload. As a result, staff positions in Milwaukee County are not as efficient as in other areas of the state and therefore, the Office does not believe that it is prudent to move additional positions to that office.

Public Defender officials indicate that cases are rising in most of the areas where there are vacancies and they expect to fill the staff attorney vacancies in the near future. Therefore, it is unclear whether salary savings will be realized in 1996-97.

The surplus funds include \$665,100 in salaries, \$147,600 in fringe benefits and \$47,800 in supplies and services for a total of \$860,500. The projected surplus represents about two weeks of private attorney payments. If the funds are not transferred they will lapse to the general fund on June 30, 1996. Transfer of the funds would appear justified in order to limit the magnitude of a potential private bar deficit for the biennium.

CONCLUSION

Based on the likelihood of a deficit in the private bar appropriation, the Public Defender's request to transfer available funds appears reasonable and, therefore, the Committee may wish to approve it.

Prepared by: Carri Jakel

MC# Conclusion

BURKE	Y	N	A
ANDREA	Y	N	A
GEORGE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
WEEDEN	Y	N	A
COWLES	Y	N	A
BRANCEL	Y	N	A
FOTI	Y	N	A
SCHNEIDERS	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
PORTER	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

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**WISCONSIN
PUBLIC
DEFENDER**

Nicholas L. Chiarkas
STATE PUBLIC DEFENDER

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TRIAL

May 23, 1996

The Hon. Timothy Weeden, Co-Chair
Joint Committee on Finance
Room LL1
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53709

The Hon. Ben Brancel, Co-Chair
Joint Committee on Finance
Room LL2
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53709

RE: June Meeting of the Joint Committee on Finance under s. 13.10

DEAR SENATOR WEEDEN and REPRESENTATIVE BRANCEL:

Brief Summary of Request

The Office of the State Public Defender (OSPD) requests the transfer of \$812,700 salary and fringe benefit dollars and the transfer of \$47,800 from the supplies-and-services line to the private bar appropriation to help offset its remaining projected \$3,155,100 deficit.

Background of Request

The OSPD implemented many legislative changes this biennium: higher attorney caseloads, stricter eligibility verification, changes in OSPD jurisdiction, and the development and initiation of an attorney fees collection program. One of the results of these changes has been the reduction in the number of available cases. This reduction has made it important for the agency to closely evaluate each staff attorney vacancy to determine whether it was fiscally prudent to immediately fill a vacancy. Consequently, the agency has not filled attorney vacancies as quickly as in the past, thereby generating savings in the salary and fringe benefit lines. In addition, there has been a savings of supplies-and-services dollars as a result of these unfilled attorney positions. In order to offset the remaining projected deficit in the the private bar appropriation, the agency requests the transfer of the savings associated with the unfilled attorney positions to the private bar appropriation.

The Request Meets Statutory Criteria

The Joint Committee on Finance has the authority to transfer funds between appropriations (s. 13.101(4)) if the transfer will result in more efficient and effective methods for performing programs or if legislative intent will be more effectively carried out as a result of the transfer. The agency believes that the transfer of funds to the private bar appropriation is the fiscally appropriate management of these funds for the agency as it seeks, in this and other well-documented ways, to eliminate its projected deficit.

I will represent the agency at the June meeting.

Sincerely,

NICHOLAS L. CHIARKAS
State Public Defender

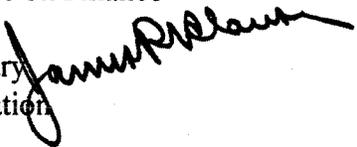
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CORRESPONDENCE MEMORANDUM

STATE OF WISCONSIN
Department of Administration

Date: June 11, 1996

To: Members, Joint Committee on Finance

From: James R. Klauser, Secretary
Department of Administration 

Subject: Section 13.10 Request from the Office of the State Public Defender to Transfer GPR Savings to the Private Bar Appropriation.

Request

The Office of the State Public Defender (SPD) requests approval to transfer \$64,900 GPR from the Legal Assistance Program administration annual appropriation under s. 20.550(1)(a); \$40,600 GPR from the Appellate representation annual appropriation under s. 20.550(1)(b); and \$755,000 GPR from the Trial representation annual appropriation under s. 20.550(1)(c) for a total of \$860,500 in GPR savings to the Private bar and investigator reimbursement biennial appropriation under s. 20.550(1)(d) in fiscal year 1995-96 in order to offset a projected deficit in this appropriation.

Background

1995 Wisconsin Act 27 included a number of budget efficiency measures to contain costs in the private bar appropriation. These measures included: limiting and/or eliminating SPD representation in certain types of cases; increasing attorney statutory caseloads; eliminating the \$50 per hour in-court rate for private attorneys; implementing a collections initiative; implementing flat-rate contracting; assigning private bar cases based on attorney efficiency; and providing paralegals and regional office administrators to assist attorneys with non-attorney work. As a result of these changes, the private bar appropriation was reduced by \$18.4 million GPR during the 1995-97 biennium. In April, 1996, the Governor also signed Senate Bill 562 (SPD Appropriations Bill) which provided an additional \$2, 230,500 GPR in the Private bar and investigator reimbursement biennial appropriation to restore the funding associated with two provisions in Act 27 that were vetoed by the Governor, thus making the SPD whole with respect to the provisions in Act 27.

Despite efforts to effectively manage its existing resources, the SPD continues to project a deficit in the private bar appropriation by the end of the current biennium of approximately \$3.2 million. The key factors that appear to be contributing to the deficit include: 1) the upfront costs associated with flat-rate contracting; 2) substantially less revenues collected from clients that are determined by the SPD to have an ability to pay for their legal representation; and 3) the fact that there are some regions that have been unable to meet caseloads standards. Specifically, in its Budget Forecasting Report for April, 1996, the SPD estimates a deficit of \$876,600 at the end of the current biennium due to front end payment requirements (equal to the first two months of assigned cases)

for fixed-fee contracts. However, it should be noted that these contracts will generate at least \$1.8 million in savings in the next biennium. The SPD also estimates that it will collect approximately \$2,491,500 in revenues during the current biennium from SPD clients who have some ability to pay for their legal representation. While this amount is substantially higher than collections of approximately \$200,000 in previous years, it still remains significantly below the \$7.5 million estimate that was assumed in the 1995-97 biennial budget. Finally, the SPD estimates that staff will reach only 95% of budgeted caseloads by the end of the biennium, resulting in a deficit of \$589,500. The SPD has indicated that this situation is due, in part, to the mix of cases assigned to staff attorneys this fiscal year. For example, staff was budgeted to handle 35.4 felonies per attorney, but instead it is projected that staff will open 44.8 felonies per attorney. Because felony cases are more complex and often take substantially longer to complete than other cases, some of the savings to the private bar will not be realized until the next biennium.

Given the many changes in Act 27 that have been implemented or have yet to be fully implemented it is difficult to estimate what the deficit, if any, will be in the private bar appropriation by the end of the current biennium. Since the private bar appropriation is a biennial appropriation, the SPD will continue to manage its existing resources between now and the end of the current biennium in an effort to minimize any projected deficit.

Analysis

The SPD requests approval to transfer a total of \$860,500 in FY96 GPR savings generated from delaying the filling of vacant staff attorney and non-attorney positions. As part of its strategy to effectively manage its existing resources, SPD management closely evaluated each attorney and non-attorney position when it became vacant to determine whether it was necessary to immediately fill the position. As a result of not filling these positions, in particular attorneys, as quickly as in the past, the SPD has generated savings from the salaries, fringe benefits and supplies and services associated with these positions. The following table reflects the SPD's estimated GPR savings from the Program administration, Appellate representation and Trial representation annual appropriations in FY96:

Program Adm. [s. 20.550(1)(a)]	<u>FY96</u>
Salaries	\$ 53,100
Fringe Benefits	<u>\$ 11,800</u>
Total Savings	\$ 64,900

Appellate Representation [s. 20.550(1)(b)]

Salaries	\$ 33,200
Fringe Benefits	<u>\$ 7,400</u>
Total Savings	\$ 40,600

Trial Representation [s. 20.550(1)(c)]

Salaries	\$578,700
Fringe Benefits	\$128,500
Supplies and Services	<u>\$ 47,800</u>
Total Savings	\$755,000

Grand Total GPR Savings **\$860,500**

The SPD estimates that it has delayed filling a total of 10.46 equivalent FTE attorney positions throughout the State based on the actual number of days that these positions have remained vacant. The decision to delay filling an attorney position was based, for the most part, on an actual decrease in the number of available cases. The overall decrease in caseloads appears to be a result of jurisdictional changes (i.e. eliminating SPD representation) and SPD implementation of more stringent indigency verification procedures. This trend has been well documented by the SPD in its monthly budget forecasting reports. In its April report, the SPD continues to project an overall decrease of 11.7% in caseloads for FY96. The SPD also estimates that it delayed filling a total of 1.55 equivalent FTE paralegal and regional office administrator positions throughout the State based on the actual number of days that these positions remained vacant. Act 27 provided 12.0 paralegal project positions and 6.0 regional office administrator positions to assist attorneys with non-attorney work.

The estimated total salary savings generated from the vacant attorney, paralegal and administrative regional officer positions is \$665,000 GPR in FY96. This estimate takes into account the following items through the end of the current fiscal year: projected payroll needs through payroll period ending 6/22/96 (including maximum pay plan supplement amounts); cost of filling several vacant attorney positions; anticipated overtime costs for investigator and legal secretary positions to complete year-end work; reclassification increases for investigator positions; and the cost of Employee Performance Awards (EPA's). In addition, the estimated total fringe benefits savings is \$147,700 GPR, based on a 22.2% fringe rate.

The request also includes GPR savings of \$47,800 in FY96 generated from supplies and services associated with the above positions. This estimate is based on an annual supplies and services budget of \$7,400 for each attorney position and \$4,100 for each non-attorney/non investigator position, consistent with past budgeting practices. However, the SPD appropriately adjusted these budgeted amounts to \$4,405 and \$1,105

respectively, in order to reflect fixed costs such as rent and telephone lines, that must be paid regardless of whether or not a position is filled. The total savings from supplies and services would be transferred from the Trial representation appropriation under s. 20.550(1)(c).

Historically, the costs associated with staff attorney, paralegal and regional administrative officer positions have been budgeted with a corresponding savings in the private bar appropriation. Therefore, DOA believes it is appropriate to transfer the GPR savings associated with these vacant positions to the private bar to offset costs in this biennial appropriation. If the savings identified by the SPD is not transferred to the private bar appropriation, the money would lapse to the general fund at the end of this fiscal year. Therefore, even though the SPD will not actually incur a deficit prior to FY97, it is appropriate to reserve known FY96 savings to meet an expected FY97 deficit.

Based on a review and analysis of the SPD's request, DOA recommends transferring the following GPR savings to the Private bar and investigator reimbursement biennial appropriation under s. 20.550(1)(d):

<u>Appropriation</u>	<u>Chapter 20</u>	<u>Savings</u>
Program Administration	s. 20.550(1)(a)	(\$ 64,900)
Appellate Representation	s. 20.550(1)(b)	(\$ 40,600)
Trial Representation	s. 20.550(1)(c)	<u>(\$755,000)</u>
Total Savings To Be Transferred		(\$860,500)
Private Bar and Invest. Reimb.	s. 20.550(1)(d)	\$860,500

Recommendation

Approve the request to transfer \$64,900 GPR from the Legal Assistance Program administration annual appropriation under s. 20.550(1)(a); \$40,600 GPR from the Appellate representation annual appropriation under s. 20.550(1)(b); and \$755,000 GPR from the Trial representation annual appropriation under s. 20.550(1)(c) for a total GPR savings of \$860,500 to the Private bar and investigator reimbursement biennial appropriation under s. 20.550(1)(d) in fiscal year 1995-96 in order to offset a projected deficit in this appropriation. DOA recommends placing the \$860,500 in GPR savings into unallotted reserve pending an actual need for additional funds in the private bar and appropriation in FY97.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 21, 1996

TO: Senator Brian Burke, Senate Chair
Representative Ben Brancel, Assembly Chair
Joint Committee on Finance

FROM: Carri Jakel, Fiscal Analyst

SUBJECT: Public Defender Representation of Parents in Children in Need of Protection or Services (CHIPS) Cases

This memorandum is to inform you of the State Supreme Court's June 13, 1996, ruling (Malmstadt v. Wisconsin) that the 1995 Act 27 provision that categorically eliminates representation for parents of children involved in CHIPS cases violates both the Wisconsin doctrine of separation of powers and the due process clause of the United States Constitution. The Court found that a case-by-case review by the Circuit Court is required to determine whether representation is a matter of constitutional right.

Under Act 27, public defender representation was eliminated in a number of different types of cases in which there was no clear constitutional right to representation (no threat to a person's liberty). This included representation to parents in CHIPS cases. In 1993-94, the Public Defender represented 9,858 CHIPS cases, of which 55% involved representation for the parent. The private bar appropriation was reduced by \$2.3 million over the biennium to reflect the elimination of representation in these cases.

In its opinion, the Court finds that the Legislature's complete prohibition of counsel places an unreasonable burden on and interferes with, the judiciary branch's inherent power to appoint counsel for the efficient administration of justice, and as such violates the separation of powers doctrine. Further, prohibiting appointment of counsel to parents who may require assistance to understand and participate in the judicial process could place the judge in the untenable position of having to serve as counsel for that parent.

In addition, the Court finds that, in certain cases, the provision could jeopardize the fairness of the proceedings and thereby violates the Due Process Clause of the Fourteenth Amendment. The Court states that in order to comply with due process one must balance the private interests

at stake, the government's interest and the risk of erroneous decisions. Further, the opinion states that the net weight of these factors then must be balanced against "the presumption that a right to counsel exists only when personal freedom is jeopardized." In some cases, the state's pecuniary interest in controlling state costs may not outweigh the interest of the state and the parent in achieving just and accurate results. Therefore, due process requires that the judge be given discretion to appoint counsel on a case-by-case basis. However, the Court states that when a judge grants or denies a request for counsel he or she state the rationale and findings on the record.

At this time, the effect of this ruling is unclear. Prior to the statutory elimination of representation in these cases, the Public Defender was routinely appointed to represent indigent parents. Under the Supreme Court ruling, trial judges will need to make findings of whether an attorney is constitutionally required on a case-by-case basis. While the number of cases requiring representation is expected to be lower than prior to Act 27 when representation was statutorily provided to all indigent parents in CHIPS cases, it is not known at this time how often judges will find that representation is required. Therefore, the overall level of cost savings is not known. Further, the ruling did not address who is responsible for providing the representation. It appears that since there is no statutory authority for the Public Defender to represent in these cases, that the cost of such representation would be the responsibility of counties.

I hope this information is helpful. Please call if you have any further questions.

CJ/sas

cc: Members, Joint Committee on Finance



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