

## Memorandum

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To: Council Member Briere  
Council Member Kailasapathy

cc: Judge Hines; Judge Easthope; Judge Burke;  
Shryl Samborn; Council; Steve Powers;  
Agenda, Attorney; Agenda, Administrator;  
Tom Crawford; File

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Date: Mon 17 Jun 13

Subject: DS-3 – amending FY2013 budget (caucus question)

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Council Member Briere, Council Member Kailasapathy:

Thank you for the opportunity to respond to your inquiries.

I have included the following information in order to give context to the Court's responses:

- 15<sup>th</sup> Judicial District Court Budget History (please see Appendix A)
  - a) From FY02 through FY12, Councils budgeted a total of \$41,865,240 from the General Fund for Court operations.
  - b) For the same period the Court expended a total of \$40,435,613, resulting in a cumulative net General Fund Court budget surplus of \$1,429,627.
  - c) The Court underspent its annual budget for nine of eleven prior FYs.
    - i) FY02: the Court exceeded the FY02 budget by \$30,267, or 1.03%. The overexpenditure is attributable to unanticipated retirement costs arising from City early-retirement buyout offer.
    - ii) FY07: the Court exceeded the FY07 budget by \$46,662, or 1.21%. The overexpenditure is attributable to the unanticipated opportunity to install the State Court Administrative Office ("SCAO") case management justice information system ("JIS").

- (1) The JIS system enabled the Court to reduce the Court's FTE workforce by five positions by attrition since FY07.
- (2) The JIS system also enabled the Court to implement a SCAO-mandated collections program to collect outstanding fines and court costs.
  - (a) The Court's collections program has resulted in an estimated \$600,000 in enhanced fine and court costs revenue since FY07 and in an increase in the Court's collection rate to 97%.
- iii) The Court was able to underspend the FY10, 11 & 12 budgets despite the unanticipated expenditure of tens of thousands of dollars associated with relocation to the Justice Center and charged to the Court's budgets.
  - (1) E.g., windows shades for east-, west- and south-facing windows, installation of power/data receptacles, furnishings & workstations, Lobby Security hardware (inspection tubs, inspection tables, a PC workstation, PC, contraband lockers), Jury Assembly Room enhancements, courtroom audio/video recording system enhancements and other necessary items not part of the Justice Center project.
- d) Public Safety Fund
  - i) Since FY09 the Court has voluntarily contributed \$2,086,000 from the Court's Public Safety Fund to the City to defray the cost of the Justice Center Project.
    - (1) Rate: \$160,000-\$220,000 annually until debt is retired.
- 15<sup>th</sup> Judicial District Court Compensation
  - a) Compensation Adjustment History
    - i) Compensation Adjustment Freeze: 46 months from July 2008 to May 2012
      - (1) July 2010 – June 2011: voluntary workweek reduction resulting in a 3.75% average staff compensation reduction.
        - (a) Exception: magistrate and administrative staff compensation reduced by 1.5% with no task or workweek reduction.
        - (b) Only known General Fund compensation "giveback".
    - ii) May 2012: 2.13% average compensation adjustment increase for all staff, excluding judges.
    - iii) November 2012: targeted compensation adjustments:
      - (1) Based on HR & Court research of peer compensation (see Appendix B).

## (2) Goals:

- (i) Retention of skilled and experienced staff.
- (ii) Competitive compensation with like courts in like jurisdictions.
- (iii) Address significant compensation imbalances arising from 46-month compensation freeze + 12-month 3.75% “giveback”.

## (3) Targets:

- (a) Excluded: judges, magistrate and court administrator.
- (b) Majority of staff = 0% - 3%.
- (c) Administration: average 4.85%.
  - (i) Undercompensated compared to peers.
- (d) Case Management staff: average 4.22%.
  - (i) Increased supervisory responsibilities.
- (e) Judicial staff: average 4.76%.
  - (i) Increased specialty court responsibilities.
- (f) Probation officers: average 18.15%.
  - (i) Significantly undercompensated compared to peers.
  - (ii) Increased multi-jurisdiction, specialty court responsibilities.

## iv) Total Compensation Adjustment Budget Impact Percentage:

- (1) City Finance Department related an average compensation adjustment budget impact rate of 9.6%.
- (2) Using the City’s formula, the Court determined an average compensation adjustment budget impact rate of 10.1%.
- (3) However, the City Finance Department impact rate formula included the effect of overtime and apparently did not take into consideration various offsets, e.g., retirements, unpaid leaves, replacement hires and reclassifications at lower compensation rates.
  - (a) If those offsets are considered and if overtime is included, the average compensation adjustment budget impact rate drops to 6.14%.
  - (b) If those offsets are considered and if overtime is excluded, the average compensation adjustment budget impact rate drops to 4.99%.

Responses to Council Member Briere's Inquiries:

"2. Why were the bills for security for the courts/police building not paid for two years?"

Response:

Although \$187,000 was budgeted in each FY for FYs 11, 12 and 13, although the service was rendered by the Washtenaw County Sheriff's Office and although all documentation was in order, the County failed to invoice for services until the City's FY12 was closed, for reasons unknown to the Court.

Invoices from the County for security services were paid in FY13 to the limit of the FY13 budget allocation (\$187,000).

"Are these dollars included in the FY2014 budget?"

Response:

The FY14 Court budget includes \$160,000 for lobby security services. The Court has reduced the amount from \$187,000 allocated in prior FYs, based upon actual prior experience which indicates that fewer hours are needed to maintain an appropriate level of security during Court business hours.

"3. Are the salary increases given to the Courts employees - without discussion with or agreement by Council - included in the FY2014 budget as ongoing salary levels for Courts employees?"

Response:

The Court presumes that compensation adjustments are computed into the FY14 budget. However, personnel costs for FY budgets are determined by City HR and City Finance and are entered into the City's financial system, ostensibly based upon compensation rates established by the Court. The Court cannot amend or edit those entries. Consequently the Court defers to City HR or City Finance for an accurate response.

"Under what authority did the courts increase salaries, as this was not approved by Council. (The State sets judicial salaries; all other costs are in the City's purview.)"

Response:

Article IV, Section 1 of the Michigan Constitution establishes one court of justice in Michigan. The 15<sup>th</sup> Judicial District Court is a subdivision of the Supreme Court of Michigan, the judges and Court staff are state judicial employees, and the Court is responsible to the Supreme Court of Michigan for the effective and efficient administration of justice.

The Chief Judge of the District Court is the chief administrative officer for the Court and, among other powers, exercises control over the terms and conditions of employment for all judicial employees.

Although the Court is not a City entity and judicial employees are not City employees, the City of Ann Arbor is required by law to support the Court. City Council has the authority to establish a total annual budget for the Court that is consistent with budget proposals from the Court that the Court has determined to be reasonable and necessary for the effective and efficient administration of justice and which do not impair the core functions of local funding unit governance.

Although City Council has authority to establish a total annual budget for the Court, and with all respect due to Council, the Court declines to accept that City Council has authority to direct, control, approve or disapprove specific expenditures, including but not limited to compensation of judicial employees.

However, legalities aside, the Court has always sought a respectful and cordial relationship with Council and City Administration, and the Court's budget history demonstrates that the Court has been a prudent and careful custodian of public funds, at times even to the disadvantage of the Court's own interests.

"4. Why did the courts need to 'catch up' with the costs of indigent representation?"

Response:

The Court is required by Amendment VI to the U.S. Constitution to provide legal counsel to indigent persons who are charged with offenses that may result in incarceration.

The Court has assigned Model Cities Legal Services ("MCLS") to represent indigent defendants for approximately twenty years. MCLS attorneys have provided legal services to indigent defendants at capped hourly rates that are highly competitive with local costs for legal representation. MCLS's hourly costs are \$90 per hour, capped at \$500, \$750, \$1,000 or \$1,500 per case contingent upon type of case and whether the case goes to trial.

MCLS attorneys also often provide ad hoc, pro bono representation to unrepresented defendants who are not otherwise eligible for indigent representation in order to enhance the efficiency of the Court. MCLS attorneys also participate on Court specialty court teams to enhance the likelihood of successful defendant rehabilitation.

The procedure was for MCLS to submit invoices formatted as hourly timesheets, which were checked at Court by the Deputy Court Administrator, then by the Court's Account Clerk then, as needed, by the assigned judge or by the Chief Judge. Invoices were then forwarded to City Purchasing, where a final check was performed and payment was made.

However, unknown to the Court, MCLS did not submit timesheet invoices for all indigent defense costs incurred in any given FY. The reason is that some cases are not definitively “closed” and further representation may be required.

For example, some defendants fail to appear for trial or hearing and a bench warrant is issued for that defendant’s arrest. Bench warrants are served (and indigent defense counsel again becomes required) whenever the defendant is apprehended, which may be days, months or even years after the warrant is issued.

Similarly, most defendants appear and are sentenced if found guilty at trial or by plea. Sentences often include orders of probation or specific orders (e.g., “no consumption of drugs or alcohol”, “no assaultive behavior”, no-contact orders, etc.) that may continue in effect for months or years after the sentencing date. Should the defendant fail to obey those orders, the defendant is returned to Court for further hearings and indigent defense counsel again required for that case.

Consequently MCLS delayed submitting timesheet invoices for certain cases until there was a reasonable certainty that further Court involvement was unlikely. The unintended effect is that MCLS built up a reservoir of unbilled cases dating back several FYs.

Nonetheless, for over twenty years MCLS submitted timesheet invoices and were routinely paid for their services, even though some of those timesheet invoices contained entries for services rendered in prior FYs.

However, in October 2012, a routine submission of timesheet invoices was questioned by City Purchasing because entries in some timesheet invoices predated the current FY.

The Court contacted MCLS attorneys who confirmed the long-standing practice of holding back certain timesheet invoices.

The Court then consulted with City Finance. The result was a request to MCLS to submit all relevant timesheet invoices not later than 8 Feb 13. MCLS then began submitting an enhanced number of timesheet invoices which were checked, submitted and paid. By Jan 13, the FY13 annual indigent representation budget balance of \$180,000 was reduced to \$17,000.

Payments to MCLS were halted in Jan 13 although MCLS continued (and continues) to represent indigent defendants because the Court is obligated to provide indigent representation.

As of last week unpaid MCLS invoices totaled approximately \$180,000 over the original \$180,000 FY13 budget allocation. The Court estimates that an additional \$23,000 will be needed

to cover indigent representation costs to the end of FY13, for a total budget amendment amount of \$203,000.

“Are adequate dollars for indigent representation included in the FY2014 budget?”

Response:

The Court established the annual budget for indigent representation based upon total invoices for the prior FY which, in turn, were based upon hours expended per case.

The history of MCLS annual contract amounts and actual annual invoice amounts for FYs 06-12 follows:

FY	Contract Amount	Invoice Totals	% Over /Under Contract	Net
06	\$ 200,000	\$ 149,275	-25.36%	\$ 50,725
07	\$ 200,000	\$ 185,761	-7.12%	\$ 14,239
08	\$ 210,000	\$ 204,165	-2.78%	\$ 5,835
09	\$ 210,000	\$ 185,456	-11.69%	\$ 24,544
10	\$ 210,000	\$ 198,656	-5.40%	\$ 11,344
11	\$ 180,000	\$ 179,882	-0.07%	\$ 118
12	\$ 180,000	\$ 179,946	-0.03%	\$ 54
FY 06 - FY 12 Net				\$ 106,859

Following discussions with MCLS and City Finance, the Court budgeted \$240,000 for indigent representation in FY14 and has also proposed a flat-rate contract with MCLS for FY14.

Consequently the proposed amendment to the FY13 budget for \$203,000 will eliminate the reservoir of all unbilled cases and will compensate MCLS for all current cases to 30 Jun 13, and the proposed flat-rate contract for FY14, if approved by Council, will assure that this unhappy circumstance will not reoccur.

“PS - I do note the contracts for services for the courts included in this agenda. But I assume that these are not new services, and that the budgets for them would have been included in previous years' budgets. That's what prompted my concern about whether the FY2014 budget included a realistic estimate of costs.”

Response:

Re: CA-2, Sobriety Court Contract with Washtenaw County Health Organization. This is not a new service and is funded entirely by state grants. There is no General Fund budget allocation.

Re: CA-3, Sobriety Court Contract with Dawn, Inc. This is not a new service and is funded entirely by state grants. There is no General Fund budget allocation.

Re: DS-4, Contract with Washtenaw County for weapons screening at the Justice Center during Court business hours. This is not a new service and is funded by a \$160,000 General

Fund budget allocation. Now that the Court has experienced two years of security services, the Court has worked with the Washtenaw County Sheriff's Office to reduce the number of security officers and number of hours needed to provide appropriate weapons screening services. Now that the County is on a timely billing cycle, the Court believes that \$160,000 is adequate to cover these services.

DS-5, Contract for Indigent Representation for FY14. This is not a new service and is funded by a \$240,000 General Fund budget allocation. Please see the foregoing response to your Inquiry #4.

DS-6, Amendment to FY13 Indigent Representation Contract to permit payment of invoices up to \$203,000 that exceed the original contract amount of \$180,000, contingent upon Council approval of DS-3. Please see the foregoing response to your Inquiry #4.

Response to Council Member Kailasapathy's Inquiries:

"I would like to see the HR study that was undertaken to determine the pay raises.

Also the recommendations from the HR dept regarding pay raises."

Response:

The Court did not request that HR produce a formal study to determine compensation increases or make any formal compensation adjustment recommendations.

The Court requested that the Court's HR Liaison research comparable compensation rates for judicial and non-judicial public employees in similar job positions in tandem with and to corroborate the Court's own research. The Court referred the HR Liaison to State Court Administrative Office ("SCAO") compensation records as well as to surrounding district and circuit courts and their funding units for compensation data.

At the Court's request, other HR staff also provided City of Ann Arbor compensation data including compensation adjustment and benefit cost data for classes of City-compensated persons that occurred during the Court's compensation hiatus.

The Liaison reported that despite repeated requests, compensation data from other courts or their funding units were difficult to timely obtain. The Court then contacted other courts directly to obtain the relevant data and passed those data back to HR.

In subsequent conversations the HR Liaison concurred that Court employees were undercompensated – in some instances, significantly so – because of the lengthy compensation hiatus that did not affect comparable courts and other public employees and because compensation for some Court



employees was frozen at entry levels despite their increased level of job experience and skill.

However, the HR Liaison was not asked to make, and did not make, any specific compensation adjustment recommendations. No HR person was part of any Court discussion relating to potential compensation adjustment amounts.

Please see Appendix B for more detailed information.

Thank you again for the opportunity to address these important issues.

APPENDIX A

<b>FY</b>	<b>Budget</b>	<b>Actual</b>	<b>% Over /Under Budget</b>	<b>Net</b>
02	\$ 2,941,014	\$ 2,971,281	1.03%	\$ (30,267)
03	\$ 3,268,049	\$ 3,137,177	-4.00%	\$ 130,872
04	\$ 3,472,894	\$ 3,321,845	-4.35%	\$ 151,049
05	\$ 3,491,798	\$ 3,315,382	-5.05%	\$ 176,416
06	\$ 3,746,653	\$ 3,636,102	-2.95%	\$ 110,551
07	\$ 3,865,427	\$ 3,912,089	1.21%	\$ (46,662)
08	\$ 4,337,420	\$ 4,158,178	-4.13%	\$ 179,242
09	\$ 4,552,683	\$ 4,264,155	-6.34%	\$ 288,528
10	\$ 4,293,207	\$ 4,093,516	-4.65%	\$ 199,691
11	\$ 4,096,169	\$ 3,925,064	-4.18%	\$ 171,105
12	\$ 3,799,926	\$ 3,700,824	-2.61%	\$ 99,102
<b>Total:</b>	<b>\$ 41,865,240</b>	<b>\$ 40,435,613</b>		<b>\$ 1,429,627</b>
<b>Average Annual % &amp; Amount Over/Under Budget:</b>			<b>-3.28%</b>	<b>\$ 129,966</b>

APPENDIX B

The following information is dated and inaccurate now but was relevant and accurate when compensation adjustments were first contemplated by the Court in Oct-Dec, 2011.

The compensation imbalances related in the following were addressed by the Court’s compensation adjustments in May and November, 2012.

For equivalent or near-equivalent positions and except for Court Clerks II & III, the Court’s compensation rates compared unfavorably with local peer compensation rates taken from data supplied by local courts:

Averaged Annual Compensation Comparison, Equivalent Positions, County/15th			
Position	County District Court Average, 37.5 hrs per week	County District Court Average, adjusted to 40 hrs per week	15th District Court Average
Magistrate (base with no additional duties)	\$ 88,277	\$ 93,573	\$ 72,000
Court Administrator	\$ 102,517	\$ 108,668	\$ 98,386
Deputy Court Administrator	\$ 67,002	\$ 71,022	\$ 64,000
CER	\$ 43,417	\$ 46,022	\$ 44,000
Senior Secretary	\$ 52,397	\$ 55,540	\$ 49,070
Probation Officer	\$ 66,515	\$ 70,505	\$ 54,395
Court Clerk III	\$ 38,617	\$ 40,933	\$ 48,702
Court Clerk II	\$ 35,763	\$ 37,909	\$ 37,639

Some comments:

Regarding Probation Officer compensation:

The Court employs six Probation Officers, one of which serves as the Probation Department Supervisor and who is assigned to Street Outreach Court cases and general probation cases. Of the remaining five Probation Officers, two are assigned to general probation cases, one is assigned to Domestic Violence Court cases, one is assigned to Veterans’ Court cases and one is assigned to Sobriety Court cases.

Previously, Court Probation Officers were supported by three support staff (known as Probation Coordinators in other local district courts). Court Probation Officers are now supported by one Court Clerk II, whose tasks are covered by interns or, when absolutely necessary, by Probation Officers when the Court Clerk II is unable to report for work because of illness, vacations or other leave.

As the foregoing data reveals, 15<sup>th</sup> District Court Probation Officers were significantly undercompensated compared to their local peers, particularly when compensation rates are normalized to account for the 15<sup>th</sup>’s longer workweek.

Regarding magistrate compensation:

The 15<sup>th</sup> District Court magistrate serves a dual role as magistrate and Chief Deputy Court Clerk supervising all case management operations. Rather than employ a Chief Deputy Court Clerk when that position fell vacant, the Court opted to assign those extra duties to the magistrate.

As the following table relates, the magistrate's annual compensation rate compared unfavorably to local peers' rates and to almost all other peer rates for jurisdictions. The magistrate's compensation ranks third from the bottom if supplementary case management supervisory compensation of \$8,000 is included, and would have tied for last place based upon compensation for judicial duties only.

Note too that the magistrate's local peers work 37.5-hour workweeks, 6.25% shorter than the 15<sup>th</sup>'s magistrate's workweek. To be fairly comparable to local peers' current compensation rate, the magistrate's annual compensation rate would have been \$93,500 for judicial duties only.

Jurisdiction	PT/FT	Hourly	Annual FT Rate	Additional Duties	Comment
23 DC Taylor	PT	\$ 45.00	\$ 93,600	None	plus \$22.50 per search warrant
74 DC Bay County	FT	\$ 43.23	\$ 89,918	Probate/Juvenile Referee	
14A DC Washtenaw County	FT	\$ 42.30	\$ 88,000	None	
8 DC Kalamazoo	FT	\$ 40.15	\$ 83,512	None	
8 DC Kalamazoo	PT	\$ 40.14	\$ 83,491	None	
35 DC Plymouth	PT	\$ 40.00	\$ 83,200	None	
55 DC Ingham County	PT	\$ 39.43	\$ 82,014	None	
15DC Ann Arbor	FT	\$ 38.46	\$ 80,000	Chief Deputy Court Clerk	\$72,000 base, \$8,000 supplement
19 DC Dearborn	PT	\$ 38.00	\$ 79,040	None	
16 DC Livonia	FT	\$ 34.62	\$ 72,000	None	