

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
IMPLEMENTATION OF SENATE BILL  
433 AND THE DETERMINATION OF  
POSITIONS WITHIN THE JUDICIAL  
BRANCH THAT WILL BE SUBJECT TO  
FURLOUGH LEAVE.

ADKT No. 437

**FILED**

JUL 16 2009

TRACIE KLINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER PURSUANT TO SENATE BILL 433

During fiscal year 2008, Nevada began experiencing a decline in its economy that continues to threaten the general health, safety, and welfare of the citizens of this State. Throughout this economic downturn, the Judicial Branch has consistently worked in harmony with the Governor and the Legislature to address shortfalls in the State's budget.<sup>1</sup> In fiscal year 2008, the Governor requested that all state government entities revert 4.5% of previously appropriated funds to the State General Fund. In response, this court reverted \$1,993,514, a sum well in excess of that requested, representing approximately 27% of its targeted State General Fund appropriation. And in fiscal year 2009, the Governor asked for reversions of 7.9%; this court will revert \$2,336,759, which represents almost 28% of the court's targeted State General Fund appropriation.

In this order, we address the application of Senate Bill 433 to the Judicial Branch. Section 5(1) of S.B. 433 permits a state employer to exempt employees from the furlough requirement found in Section 3 of the Act. Because the savings sought through furloughs were already achieved

---

<sup>1</sup>Notably, funding for the Judicial Branch of State Government represents less than .74% of the State General Fund for the 2007-2009 biennium.

during the budget process, we conclude that a furlough of court employees would result in a duplication of the reduction made to the court's budget during the session. Therefore, the court declines to impose furloughs during the first quarter of fiscal year 2010, but in a spirit of cooperation and comity, we will reexamine the court's spending, on a quarterly basis, to determine whether furloughs may be needed to conform to the court's appropriation. Further, because of the manner in which the court's budget was already reduced, it is not necessary for the court to seek supplemental budget support from the contingency fund created by the Act.

History of the 2009-2011 Judicial Branch biennial budget and its passage by the 2009 Legislature

When drafting the 2009-2011 Judicial Branch biennial budget, this court was mindful of the worsening economic situation facing the State. Substantial cuts were made to the proposed budget prior to its submission to the Governor on October 1, 2008. While the court's budget did not provide for salary reductions, the court agreed with the Governor to exclude from the budget merit pay increases, longevity pay, and cost-of-living raises for the next biennium. Satisfied that the Judicial Branch budget met or exceeded the reductions he had requested from all state government entities, the Governor transmitted the court's budget to the Legislature.

As the Legislature considered the budget proposed by this court, it was also considering the possibility of reducing pay for state employees through unpaid furlough days. The Legislature requested that this court reduce its proposed budget by an amount equivalent to the contemplated pay reductions produced through furloughs, which was calculated to be 4.6% of the total amount budgeted for salaries for Judicial Branch employees. The court and Legislature jointly calculated a

reduction to the Judicial Branch budget and the sum of \$1,139,015 was taken “off the top” of the court’s budget for the 2009-2011 biennium.

The revised budget proposed by this court, after applying the reduction requested by the Legislature, was thereafter approved by the Legislature. In late May 2009, following the Governor’s veto of the bills comprising the State budget, the Legislature overrode the vetoes and the bills were enrolled.

#### History of Senate Bill 433

After this court’s budget was approved, the Legislature proposed and passed S.B. 433. Section 3 of S.B. 433 provides for unpaid furlough days for virtually all State employees, including those employed by this court, despite the fact that, as to the court, the savings to be realized through unpaid furlough days had already been accomplished through the reduction to this court’s budget.

Section 5(1) of S.B. 433 permits a State employer, after a public hearing and upon making specified findings, to determine that certain employees should not be subject to the furloughs “because of the need to provide appropriate services that are necessary to the protection of public health, safety and welfare.” If any positions are thus excepted from furloughs, the State employer must, under Section 5(1)(d), identify and implement “other methods to reduce overall costs equal to the savings produced by furlough leave under the program.” Further, the State employer, under Section 5(3), must thereafter provide quarterly reports to the Interim Finance Committee concerning the positions excepted from furloughs and the reasons for the determination. Section 5(2)(d) of S.B. 433 empowers this court to invoke the provisions of Section 5(1) on behalf of the Judicial Branch.

Accordingly, Supreme Court Chief Justice James Hardesty filed the instant petition on this court's administrative docket, pursuant to Section 5 of S.B. 433. To assure transparency for the court's budget process, this court conducted a public hearing on July 7, 2009, addressing the petition, the work of the court, and the impact of furloughs on the court's decisional and administrative functions.

### FACTS

Under the Nevada Constitution, this court's duties encompass two principal components: a decisional component—deciding the cases before it—and an administrative component, that is, administering Nevada's judicial system. Testimony adduced at the July 7 hearing described the impact that furloughs would have on this court's ability to perform both constitutional functions.<sup>2</sup>

#### Caseload of the Nevada Supreme Court and impact of furloughs on its constitutional and statutory duties to decide cases

This court's primary constitutional function is to decide the cases before it, fairly and expeditiously. In fulfilling this duty, the court is assisted by the Clerk of the Court, Central Legal Staff's Criminal and Civil Divisions, and the Judicial Executive Assistants and law clerks assigned each chambers. Under the constitution, the court has mandatory appellate jurisdiction over final civil and criminal judgments by the state district courts, as well as powers of writ review. Last year, over 2,212 proceedings were filed and 2,058 dispositions were filed, making this court one of the busiest supreme courts in the United States.

---

<sup>2</sup>The witnesses who testified at the hearing were Supreme Court Clerk Tracie Lindeman; Director of the Administrative Office of the Courts, Ronald Titus; and Administrative Office of the Courts' Manager of Budgets, Deanna Bjork.

### Clerk's Office

The office of the clerk administers every matter filed with the Supreme Court, from beginning to end. Each document submitted by the parties or issued by this court is processed through the Clerk's Office. Last year, the Clerk's Office handled approximately 35,000 documents. The front office staff assists the public, provides access to current and historical court documents, files documents, and routes all papers submitted by litigants and their counsel to the assigned department or chambers.

The front office staff comprises 13 positions that are critical to these functions, including administrative assistants, program officers, and deputy clerks. To furlough these employees would cut the hours for those positions by 1,248 per year. Further, by court rule, the Clerk's Office is required to be open during business hours every day except weekends and holidays. As the Clerk's Office cannot close one day per month to accommodate the furloughs, the court would be forced to function without adequate front office staff for more than two weeks each month. In addition, furlough days require special work scheduling accommodations beyond the scheduling changes needed for employee vacations and sick days, and furloughs are therefore more difficult to administer.

Additionally, the Clerk's Office has a team of three attorneys and a paralegal, who are responsible for proofreading the opinions and orders issued by the court to ensure their accuracy. To furlough these employees would necessarily delay the issuance of the final dispositions of the appeals, as the court would be without at least one of these crucial staff members each week. As part of the process of issuing the opinions and orders, the court also employs an editor and a composition specialist. There is no backup for these positions, so to furlough them would create a

backlog of the work that they do and delay the dispositions of these matters.

Finally, the clerk of the court is responsible for administering the operational activities of the Clerk's Office, managing the court's entire caseload and docket in order to minimize delays in the appellate process and original proceedings, ensuring an even distribution of the workload throughout the court, administering of the court's administrative docket, and overseeing publication of the decisions of the court. The Clerk and Chief Assistant Clerk routinely work in excess of 40 hours per week, without additional compensation, because the work cannot be completed in a normal full-time work week. Imposing furloughs would result in these employees continuing to work their current hours with a 4.6% reduction in pay for the same work.

#### Central Legal Staff

The Central Legal Staff's Criminal Division is led by the Criminal Legal Counsel, assisted by three supervisory staff attorneys and ten staff attorneys. The Division also has two administrative assistants and one paralegal. The Criminal Division is responsible for assisting this court with its criminal caseload, including death penalty appeals, direct appeals in other criminal cases, appeals in post-conviction relief matters, appeals in juvenile certification and juvenile delinquency matters, and original writ petitions arising from all such proceedings.

Similarly, the Civil Legal Counsel leads the Central Legal Staff's Civil Division, consisting of three supervisory staff attorneys, nine staff attorneys, one paralegal, and two administrative assistants. The Civil Division is responsible for assisting the court with its civil caseload, including direct appeals and original writ petitions in a variety of substantive areas, including family court cases, contract disputes, actions

based on tort or professional malpractice, constructional defect actions, and matters involving ballot questions or elections.

As with the clerk and chief assistant clerk, the central staff's two Legal Counsel and its supervisory staff attorneys routinely work in excess of 40 hours per week because that is the time needed to perform the work. In addition, these supervisory positions must be available to their team members, who would not all be furloughed on the same day. Therefore, requiring furloughs would result in these employees receiving reduced pay for the same work.

Clerk's testimony

Filings at the Supreme Court have been on a gradual upward trend of about 4% per year, and the number of pending cases has risen at approximately twice that rate. In the last two years, the number of cases pending before the Supreme Court has risen from 1,375 to 1,668. The discrepancy between the rate of increase of filings and the rate of increase in pending cases is attributable, simply, to the fact that more complex cases are being filed at the court.

For example, the number of criminal death penalty cases has nearly doubled since 2007. Death penalty cases require greater time and effort to resolve. When the State seeks to exact the ultimate penalty from the defendant, this court has a heightened responsibility to ensure that the procedures involved are fair and correctly followed. But this court also owes a duty to the victims of the crimes, in death penalty cases particularly, but in all criminal cases generally, to resolve the appeals as expeditiously as possible so that there is finality and, to the extent possible, closure.

As to civil matters, each election season sees an increase in complex filings, as this court is required to resolve cases regarding ballot

issues. For example, in the last election year, 2008, between April and July, fifteen matters involving ballot measures were filed in this court. Because of the time constraints inherent in these cases, court staff is required to stop work on nearly all other civil cases in order to assist in resolving the ballot matters in a timely fashion.

Two other issues on the near horizon will impact the processing of civil cases in this court, specifically the endoscopy litigation in southern Nevada and increased foreclosures statewide. The court has already received several petitions challenging pretrial rulings in the endoscopy cases, and as the cases move through the litigation process, it may be expected that the parties will continue to file such challenges until the time when the final judgments are entered in the district court and then appealed to this court.

The newly created foreclosure mediation program has impacted and will continue to impact the court's operations. In compliance with the 2009 Legislature's statutory mandate, the court has drafted, held hearings on and adopted rules to govern proceedings under this new statutory scheme. The court has also worked with the Administrative Office of the Courts to establish the program, with mediations set to begin in August 2009. Although the program is not directly administered by this court, court personnel have been and will continue to be involved in the implementation of the program. Finally, the court is already dealing with emergency writ proceedings involving properties the program does not cover, either because the foreclosure began before the July 1 effective program date or involves commercial or non-owner-occupied properties.

Implicit in the constitutional requirement that this court exercise its judicial power by resolving legal questions is the requirement

that the resolution be timely. Justice delayed is truly justice denied in many settings. The time it takes this court to resolve appeals is therefore a critical factor to consider in determining whether the court is successfully performing its judicial duties under Article 6, Section 1 of the Nevada Constitution. In 1996, in response to growing concerns about the time to decide appeals, this court implemented the criminal fast track and civil settlement conference programs. Both programs succeeded and led to a drop in the number of pending cases from a historic high of 2,521 at the beginning of 1998, down to 2,165 a year later. In 1999, the court saw the expansion of its members to seven justices, and the ability to decide cases by panels of three justices. Between the panel system and the fast track and settlement programs, the number of pending unresolved cases "bottomed out" at 1,363 in January 2003, but then began to climb steadily again.

These numbers demonstrate that the court has resorted to creative solutions to increase its efficiency in resolving cases, but the court is now at a point where the pending caseload will continue to grow without the addition of more legal staff. This court did not ask for, nor was it given, any additional positions in the last legislative session that would directly address the caseload issues. To place staff on furlough would seriously impair this court's ability to perform its constitutionally mandated judicial function of deciding appeals in a timely fashion.

Of the cases decided on the merits in 2008, 38% were resolved in less than six months, and 28% were resolved between six months and one year. In the first six months of 2009, however, those numbers have nearly flipped, with only 28% of the cases being resolved in less than six months, while 32% took between six months and one year to resolve. Additionally, the percentage of cases that took between 12 and 18 months

to resolve jumped from 15% to 23%. Furloughs would hasten this trend, and in a very short time this court could easily return to the situation prevalent in the 1990s, when cases remained on appeal for years before a decision could be rendered.

The Central Legal Staff employs a total of 27 attorneys. To furlough those attorneys would cut the number of hours that legal staff can work on substantive legal issues by 216 hours per month, or 2,592 hours per year, with an immediate negative impact on the court's ability to process its ever-growing caseload. Furloughs of the support staff members would deprive the legal staff of clerical assistance vital to the final disposition of pending matters.

To require furloughs by the employees in the departments devoted to this court's decision-making function would impair the public health, safety, and welfare by limiting this court's ability to rule in matters that directly affect the citizens of this State. Public safety is at issue in some sense in every criminal case that comes before the court. Family law matters, particularly those involving child custody, must be resolved as expeditiously as possible consistent with the issues in the case. Businesses and consumers rely on the court system to timely resolve disputes over contracts, torts, and other civil claims.

Most importantly, the court system is the mechanism whereby all rights guaranteed under the federal and state constitutions are safeguarded. As aptly stated by the clerk at the July 7 hearing,

Certainly the public has a high level of awareness of cases involving public figures and expects the court to deal with them quickly. No less important, however, are the thousands of cases filed in this court every year involving everyday Nevadans who deserve a timely hearing on their issues, whether they involve, for example, child custody, personal injury, construction defects, or

indeed, their very lives and liberty. To force those individuals to wait years for resolution of their appeals, as was the norm in the past, is unacceptable. The citizens of Nevada are entitled to a Supreme Court that is able to function adequately, and to place employees on furlough would prevent the Supreme Court from fulfilling that mandate.

This court's decision making cannot be further delayed absent clear evidence that furloughs are necessary to avoid exceeding the appropriation to this court.

Workload of the Administrative Office of the Courts and impact of furloughs on the performance of its constitutional and statutory duties

Under the Nevada Constitution, the Chief Justice is the administrative head of the statewide court system. Nev. Const. art. 6, § 19. In this role, the Chief Justice is assisted by the Director of the Administrative Office of the Courts (AOC). NRS 1.360. The AOC comprises four divisions: Administration, Judicial Programs and Services, Information Technology, and Legal. The divisions assist not only this court but district courts, justice courts, and municipal courts across the State. There are currently 66 positions within the AOC. This number does not include the six to nine new positions that will be required to carry out the Foreclosure Mediation Program adopted during the 2009 session, discussed below. The salaries for 52 of the AOC positions are not supplied by the State General Fund but rather by administrative assessments,<sup>3</sup> and the equivalent of 1.5 positions is funded by a federal grant. Accordingly,

---

<sup>3</sup>Administrative assessments are fines for misdemeanors that are assessed in amounts ranging from \$25 to \$115. NRS 176.059. The court's budget for the next biennium relies on administrative assessments to a greater extent than at any time in recent history.

furloughs of these positions would result in no savings to the State General Fund.

#### Administration Division

The Administration Division is overseen by the Deputy Director and one administrative support position. There are 13 positions assigned to three major areas of responsibility: Finance, Human Resources, and Facilities.

#### Finance

The Finance unit has a manager and four staff members. The lead is the Manager of Budgets, along with an auditor, and three positions that process accounts receivable and payable. The three positions that process accounts receivable and accounts payable processed over 15,000 transactions of all types over the last fiscal year. The auditor is responsible for the minimum accounting standards and oversees 77 courts to ensure compliance. Additional auditing work is needed, especially for Specialty Courts to whom the AOC disburses almost \$6 million each year for operating expenses.

The Finance unit has been approved for an additional auditor position to assist with Specialty Courts and in collecting administrative assessments. Incrementally, one day a month furlough per employee would equal more than 12 weeks of lost work, and 7 of those 12 weeks would be in delays of processing billings and accounts payable. The budget manager and the auditor are the only individuals with the necessary knowledge, skills, and ability to fulfill their respective responsibilities; there is limited backup for these positions.

#### Human Resources

The Human Resources Unit has three positions: an HR manager, an assistant who handles recruiting and personnel matters, and

a payroll clerk. With three individuals, furloughs would result in a loss of more than seven weeks of work. HR handles payroll and personnel matters for over 150 employees and 60 district court judges.

The 2009 Legislature approved new positions for both the Finance unit and the Human Resources unit to help handle their increased workload. The Finance unit received an auditor position and HR received a personnel analyst position. Furloughs for these needed positions would result in more than four weeks of lost work.

#### Facilities

Facilities are overseen by a single position with no backup. This position takes care of building issues in two locations, one in Carson City and one at the Regional Justice Center in Las Vegas. This position is on call 24 hours a day and has responded to various emergencies and alarms at all hours of the day and weekends, including holidays.

Furloughs of current staff for the Administrative Division would amount to a loss of 31 weeks of work, almost eight months.

#### Judicial Programs and Services

The Judicial Programs and Services (JPS) Division has 20 positions and is accountable for judicial and court staff education, staffing of court committees and commissions, certified court interpreters, juvenile dependency, specialty courts, and judicial branch statistics. The JPS Division is managed by a deputy director, and one administrative assistant is assigned to the Division. Several areas in this division are handled by only one individual and backup falls to the deputy director. Accumulated furloughs in the JPS division would amount to a loss of 48 weeks of work, almost one year.

### Judicial Education

The Judicial Education unit conducts educational programs for judges and court staff. It conducted 26 programs last year for about 900 individuals. It has five positions with one additional position added this legislative session. Furloughs would result in a loss of 72 days, which would impair its ability to conduct continuing education programs already scheduled for this fiscal year, including initial foreclosure mediation training, the district judges' colleges, a specialty court program, a training session on older juveniles, the biennial court staff program, and regularly scheduled judges' continuing education, to name a few.

### Research and Statistics

The Research and Statistics unit consists of three positions with two of them currently vacant. This unit is directly responsible for several statutory duties for the AOC set forth in NRS 1.360. This important unit has suffered personnel losses at a time when the court is trying to increase the statistical data collected on caseloads, including increased information on dispositions and time to disposition. In addition, new statutes were passed that require additional efforts in this area. Others in the AOC look to this unit for assistance with their statistical and research needs as well.

Two positions, a coordinator and an assistant, support the Court Improvement Program, a program funded mostly by federal grants that stresses the improvement of time to permanency for dependent children in the court system. The program requires significant statewide coordination with all the various state and local agencies throughout Nevada involved in improving the lives of dependent children.

### Specialty Courts and Certified Court Interpreters

The Specialty Courts and Certified Court Interpreters programs each have only one position assigned with little backup should they be on furlough. Both of these positions support very important court programs, including courts where the employees or litigants will not be taking furloughs. The Rural Court Coordination position is a broad-based position assisting the rural courts with any and all requests. This is the only position assigned specifically to assist the rural courts.

Three positions in JPS provide subject matter expertise and research in support of the various commissions and committees of the courts. These include the indigent defense commission supported by one position; the Preservation, Access, and Sealing of Records Commission, one position; the Judicial Selection Commission out of the Directors office; and the Article 6 commission among others. The Secretariat, two positions, provides various levels of logistical support for these commissions and their numerous subcommittees.

An important element of the oversight of the Judicial Branch by the court involves the effort of all the JPS Division staff in relation to their activities with the trial courts. Furlough of these staff has the potential to impact the access to justice throughout Nevada. The impact is not quantifiable as much as it is a quality-related impact.

### Information Technology

The Information Technology Division (IT) consists of the following functional areas: IT Service Desk, Web Services, Infrastructure Support, Supreme Court Application Management, Data Management (Nevada Courts System), and Data Integration. There are 28 positions within IT, including three new positions approved during the 2009

legislative session. The IT Division is managed by the Chief Information Officer (CIO) and one administrative assistant is assigned to the Division.

#### IT Service Desk

The IT Service Desk consists of three positions. The IT Service Desk is the single point of contact for all IT services within the Supreme Court of Nevada, as well as for many local courts which rely on IT for services. The IT Service Desk responds to approximately 550 calls and emails per month. The mean time to respond to work requests and resolve trouble tickets will be greatly impacted by furloughs.

#### Web Services

The Web Services group develops, maintains, and supports all web services. This includes the court's website and related activities such as Supreme Court webcasts and podcasts, posting of opinions and orders, and posting of public announcements. This group will also maintain the court's video conferencing network, which is expanding to multiple urban and rural courts. One position was approved to handle the myriad audio and video responsibilities being assigned to this unit. The webcasting of Supreme Court hearings as well as the court's initiative to implement video conferencing capabilities throughout the state would be jeopardized by furloughs which would total 36 days for this unit.

#### Infrastructure Support

Infrastructure Support has five staff members, which support and provide IT services for 50 plus servers, 150 workstations, 25 databases, and the local and wide area networks. Infrastructure Support also provides IT services to rural courts and senior judges as required. One staff member is assigned to the Regional Justice Center (RJC) in Las Vegas. During absences, there is no on-site IT support for court staff located at the RJC.

### Applications Management

The Supreme Court Application Management unit provides mission critical systems support for the Court's case management system. Three fulltime staff members are assigned to this unit, and one temporary fulltime position is currently being recruited. The Supreme Court Application Management unit is involved in the deployment of a new case management system, C-Track. Currently this project is on-time and under budget. Furloughs for this unit would amount to a total of 48 lost days, and this does not include the impact of furloughs on the many other court employees in the Clerk's Office, Central Legal Staff, and Chambers who are also working on this project. Furloughs would definitely place this project behind schedule and would likely result in cost overruns.

### Data Management

The Data Management unit supports many local courts through the Nevada Court System application. This unit currently consists of four staff members. This unit supports 28 courts and has scheduled implementation in seven additional courts. Furloughs would result in more than 12 weeks of lost work hours, and local courts are not taking furloughs. Two new positions were approved in the last legislative session for fiscal year 2011.

### Data Integration

The Data Integration unit consists of three staff members responsible for designing the electronic transmission of criminal justice information between state and local justice entities. These exchanges include the exchange of warrant information, reporting of dispositions, electronic citations, and temporary protection orders (domestic violence and stalking orders). Also, Assembly Bill 46 now requires the reporting of

mental health adjunctions to the Criminal History Repository, which will eventually require additional data exchanges.

Should furloughs be enacted, a loss of 84 weeks of work, more than one and a half years, would be realized. This is a significant loss to the court as service levels will be degraded and many of the current, proposed, and mandated projects would be delayed or placed on hold indefinitely.

#### Legal Division

The Legal Division of the AOC consists of two attorneys, AOC's legal counsel and a staff attorney. Most of the staff attorney's time is spent managing the senior justice/judge program. Legal counsel is responsible for all of AOC's contracts, policies, HR issues, and other miscellaneous legal issues that need to be researched and addressed.

#### Foreclosure Mediation Program

A major responsibility requested of the court by the 2009 Legislature is the Foreclosure Mediation Program, adopted in Assembly Bill 149. The program went into effect July 1 and the AOC expects to process thousands of Notices of Default and schedule hundreds of mediations each month. More than 15 individuals already working on other full-time AOC responsibilities are participating in the implementation of this program. Since the Governor signed the Foreclosure Mediation legislation, a significant amount of work has been completed but much more remains.

To date, the Judicial Programs and Services Division has been managing the Mediation Foreclosure hotline handling hundreds of calls and emails. AOC's facility manager has spent hours locating a suitable site for the mediations, and has located one available immediately across from the Las Vegas RJC. Its budget manager has spent countless hours

getting estimates for facilities, office equipment, furniture, IT equipment, travel estimates, publications, and myriad other costs to formulate the budget. Information Technology has developed a system to handle the thousands of documents that are expected. Work is ongoing with the website providing the public information about this program. Program forms have been created involving many hours of donated time from attorneys, in coordination with members of the court. Human Resources has developed job descriptions and recruited and filled necessary positions. The mediation educational curriculum has been assembled.

While much has been completed, much more remains to be done, such as completing the facilities lease, installing IT equipment and network capabilities, filling out the website with necessary information and forms, implementing document and case management systems, purchasing and renting other office furniture and equipment, reviewing and evaluating over 400 mediator applications, and finalizing the training curriculum and scheduling training.

AOC has added two staff persons to this program this month and will be required to add up to six more over the next two months. Even with this additional staff, AOC expects several members of its normal staff, not usually assigned to the program, to be actively engaged in administering this program over at least the second quarter of fiscal year 2010. Any lost work due to furloughs would cripple this program and its ability to provide timely mediation services to assist homeowners and lenders.

#### Law Library

The Supreme Court Law Library employs six full-time positions. The library staff assists the court and the public with research inquiries and maintains the library's physical collection as well as

administering the court's electronic database subscriptions. Because of its small staff, the salary reduction from any furloughs would result in a relatively de minimis decrease of approximately \$21,000 in the court's budget, a cut that has already been recognized in the legislatively approved budget for the Judicial Branch.

#### Chambers Staff

Each of the seven justices maintains chambers staff consisting of one judicial executive assistant and two law clerks. These staff devote themselves to the decision-making function of the court, described above; they are essential to the production of the orders and opinions that form the core of the court's constitutionally mandated work. The assistants also coordinate with the AOC and the Clerk's Office on the court's administrative work, from the day-to-day word processing functions to coordinating with various commissions.

#### LEGAL DISCUSSION

The Nevada Constitution provides that the three branches of State government are to be separate but co-equal. Nev. Const. art. 3, § 1. Each branch has its own function and its own constitutional power. The Legislature controls the "power of the purse," that is, it bears the responsibility for funding government operations. S.N.E.A. v. Daines, 108 Nev. 15, 21, 824 P.2d 276, 279 (1992). The Executive Branch controls the numerous agencies responsible for executing the laws passed by the Legislature, and the Governor has the authority to call upon the Nevada National Guard when he deems it necessary. Nev. Const. art. 5, §§ 1, 5, and 7; see generally NRS Chapter 412. The Constitution vests the State's judicial power in this court, as well as the district and justice courts. Nev. Const. art. 6, § 1.

The Judicial Branch hears and determines questions in controversy. Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). That is, the courts take the policies and language of a statute, passed by the Legislature and enforced by the Executive, and determine whether it applies to a given fact situation, and if so, how it applies and what result is thereby achieved. While the Legislature's power is derived from its control over the State's finances, and the Executive's authority arises from its police power, "[t]he judicial branch has neither purse, nor sword, nor ministers to execute its will. Its decrees take their force alone from the purity and the justness of its judgments." Constantin v. Smith, 57 F.2d 227, 234 (E.D. Tex. 1932).

In any discussion of this court's authority, two points are key. First, by virtue of its existence as an independent, co-equal branch of government, this court has inherent authority over its basic constitutional functions. Halverson v. Hardcastle, 123 Nev. 245, 163 P.3d 428 (2007); Harvey v. Dist. Ct., 117 Nev. 754, 768, 32 P.3d 1263, 1273 (2001). More specifically, this court has the authority to compel the funding reasonably necessary to accomplish those functions. Azbarea v. City of North Las Vegas, 95 Nev. 109, 590 P.2d 161 (1979); Young v. Board of County Comm'rs, 91 Nev. 52, 530 P.2d 1203 (1975); State v. Davis, 26 Nev. 373, 68 P. 689 (1902). And once the Legislature has appropriated this court's budget, this court has the inherent authority to control how that budget is allocated. Ottawa County Cont. v. Ottawa Prob. Judge, 401 N.W.2d 869, 874-75 (Mich. Ct. App. 1986); see also NRS 2.300 ("The Supreme Court, or a majority thereof, is authorized to employ stenographic clerks, law clerks, legal assistances, legal secretaries and other necessary employees within the limits of the appropriation made for the support of the Supreme

Court.”); Employees and Judge v. Hillsdale County, 378 N.W.2d 744, 746-47 (Mich. 1985).

Second, inherent authority must be invoked sparingly and only in limited circumstances, when the judiciary’s core constitutional functions are at stake and established methods fail. O’Coins, Inc. v. Treasurer of County of Worcester, 287 N.E.2d 608, 615 (Mass. 1972); Matter of Salary of Juvenile Director, 552 P.2d 163, 173 (Wash. 1976). Moreover, it should be relied upon only to the least extent necessary, with a goal of avoiding any usurpation of the other branches’ authority, and thus, ensuring interbranch harmony. O’Coins, 287 N.E.2d at 615 (“A spirit of mutual cooperation among the legislative, executive, and judicial departments is unquestionably the people’s best guaranty of constitutional government.”); Juvenile Director, 552 P.2d at 172-73 (discussing the need for respect by the courts of the other branches and cautioning against any bias in favor of court funding). At the same time, however, this court’s acquiescence in another branch’s actions, due to considerations of courtesy and comity, should not be confused with an acknowledgement of that branch’s power to take actions that impinge on the judiciary’s authority to dictate how it accomplishes its core functions. Flynn v. Department of Admin., 576 N.W.2d 245, 255 (Wis. 1998); see also, Judicial Attorneys Ass’n v. State, 586 N.W.2d 894, 899 (Mich. 1998) (recognizing need for judiciary to acknowledge legislature’s constitutional responsibility over appropriations, but declaring void as an unconstitutional encroachment on the judicial branch’s authority a statutory attempt to subject court employees to county executive branch supervision); Mowrer v. Rusk, 618 P.2d 886, 893-94 (N.M. 1980) (holding that municipal court employees could not constitutionally be subject to a court administrator hired and supervised by an executive branch officer). And “when courts decide to act

on their own behalf, the citizenry is the final arbiter of interbranch disputes,” and it is therefore “incumbent upon courts, when they must use their inherent power to compel funding, to do so in a manner which clearly communicates and demonstrates to the public the grounds for the court’s action.” Juvenile Director, 552 P.2d at 174.

The intent of S.B. 433, Section 3, is to reduce General Fund appropriations by approximately 4.6% of State employees’ salaries. Subject to the court’s revenue and expense projections, that goal was met for this court’s budget by the Legislature’s reduction to the budget in the same amount contemplated by Section 3’s furloughs.

Based on the testimony provided during the July 7 public hearing, implementation of furloughs for court employees would have a disastrous effect on this court’s core constitutional functions—to decide cases that come before it in a timely manner and to administer Nevada’s court system. The Nevada public’s health, safety, and welfare would be harmed by an understaffed court system, unable to keep pace with its caseload and administrative functions. By implementing innovative programs during the last several years, this court delayed the inexorable effect of a continually rising and increasingly complex caseload. But these efforts could not completely turn the tide, and the inventory of cases awaiting decision continues to rise. The departments responsible for assisting the court with its decision-making function lack sufficient staff to keep pace with this court’s caseload without sacrificing thorough review and accurate research. Also, the AOC is similarly understaffed, with several functions handled by only one person. Moreover, several of these positions are funded by administrative assessments, not by General Fund monies, and thus any furloughs of these positions would result in no savings to the General Fund.

Section 5(1) of S.B. 433 specifies findings that a State employer must make before exempting any employee from the furlough requirement. Here, however, this court's performance of its core constitutional functions is threatened, and the savings sought through the bill's furlough requirement have already been achieved by reducing this court's overall budget before the budget's approval. Under these circumstances, we conclude that we may permissibly invoke our authority to prevent a duplication of the reduction to this court's budget.

We take this step for four reasons: first, the benefit to the State's General Fund sought by the furloughs has already been accomplished by the reduction to this court's budget, which was approved by the Legislature only after this court's initial request had been revised to reduce the total amount appropriated by the amount anticipated to be saved by the furloughs. No advantage would inure to the State for court employees to take furloughs at this time, when the General Fund either will receive no benefit or has already received the benefit sought to be achieved by furloughs by the reduction already made to the court's appropriative share. Second, since the court's budget has already been reduced by the amount furloughs would achieve, it is not necessary for the court to seek supplemental budget support from the contingency fund created in Section 8 of S.B. 433. Third, the funding for all or part of several AOC employees' salaries is derived from administrative assessments, a source independent from the State General Fund; savings for these employees' salaries would result in no benefit to the General Fund. Fourth, as detailed above, the necessary curtailing of this court's constitutional functions would harm the public health, safety, and welfare of Nevada's citizens.

Nevertheless, in a spirit of cooperation and comity, and to balance this court's functions with the undoubted need for caution in these economic times, we adhere in this order and shall adhere in the future with most of the requirements set forth in Section 5 of S.B. 433. Specifically, our decision not to impose furloughs was reached only after we determined that furloughs are not necessary to permit this court to conform its spending to the amount appropriated by the Legislature. And this court shall reconvene quarterly, as required by Section 5, to evaluate whether furloughs may be necessary in the future, based on the information available at that time, to abide by the amount appropriated by the Legislature for this court.

If this court's revenue and expense projections prove accurate, then the reduction contemplated by employee furloughs has already been achieved by the reduction to this court's budget. We are confident that, for the first quarter of fiscal year 2009, this court can meet its projected revenues, and that furloughs are therefore unnecessary for this court to stay within its budget. Accordingly, no court employee will be subject to furloughs in the first quarter. In compliance with Section 5(3), we shall convene each quarter to review the status of our revenue and expenditures, our caseload demands, and our administrative responsibilities, and then to determine whether there has been a material change from this court's projections. If so, then we shall consider how to reduce our expenses to conform to our budget. Possible measures shall include, but not be limited to, furloughs of this court's employees.

#### CONCLUSION

Nothing in our order today requires the expenditure of so much as one penny more than was already appropriated to this court by the Legislature. Our good faith in helping to mitigate the effects of the

economic downturn on Nevada's budget cannot be questioned in light of our substantial reversions to the State General Fund, in amounts far greater than were requested of the Judicial Branch. Rather, we exercise our authority to direct how to spend the money that we have been appropriated, in the way that best accomplishes our constitutional functions. In so doing, we adhere to the procedures laid out in S.B. 433, Section 5, out of respect for a co-equal branch of Nevada's government. We shall review this matter again in the next quarter.

It is so ORDERED.

1 Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

cc: Hon. Jim Gibbons, Governor  
Lorne Malkiewich, Director, Legislative Counsel Bureau  
Interim Finance Committee  
Board of Examiners  
Administrative Office of the Courts