

**ANALYSIS OF THE JUDICIARY'S TWO-PART PROPOSED BUDGET
& "SINGLE BUDGET BILL" FOR FISCAL YEAR 2014-2015**

The Judiciary's Two-Part Proposed Budget: The Judiciary's proposed budget is in two parts: one for operating needs and one for "General State Charges". The explanation for this two-part presentation is in Chief Administrative Judge Prudenti's November 29, 2013 memorandum transmitting the "General State Charges" request:

"For the 2014-2015 Fiscal Year, the Judiciary is again submitting itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary. This presentation follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2014-2015 Fiscal Year." (underlining added).

From the word "will", it would appear that the Judiciary's "single budget bill" was furnished subsequently, not simultaneously. In any event, the "single budget Bill" included more than "requests for funding of fringe benefit costs and requests for operating funds". It also included \$41,525,000 in "Reappropriations" (Bill Copy, pp. 1, 14-16) nowhere identified in the two-part budget presentation, as well as an additional \$51,000,000 in "Capital Projects-Reappropriations" (Bill Copy, p. 17), set forth in untallied components of \$33,700,000 and \$17,300,000.

Memoranda: Prefacing each part of the Judiciary's two-part budget presentation was a transmitting memorandum from Chief Administrative Judge Prudenti, dated November 29, 2013. Addressed to the Governor, Legislative Leadership, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee and the Chairs of the Senate and Assembly Judiciary Committees, each identified the transmitted estimates as required by Article VII, Section 1 of the Constitution. The memorandum for the Judiciary's operating expenses identified a "General Fund State Operations budget request" of \$1.81 billion" representing "a cash increase of \$44.2 million, or 2.5 percent, over available current year funds" – and, additionally, a "\$5 million supplemental appropriation for 20 new Family Court Judgeships to be established effective January 1, 2015". The memorandum for the Judiciary's "General State Charges" furnished neither its dollar amount, nor its dollar or percentage increase.

Certifications & Approvals: Immediately following each memorandum was a "Chief Judge's Certification", signed by Chief Judge Lippman, and a separate "Court of Appeals Approval", signed by its seven judges – Judges Lippman, Graffeo, Read, Smith, Pigott, Rivera, Abdus-Salaam. Both the certifications and approvals begin with the words "Pursuant to Article VII, Section 1 of the Constitution of the State of New York", bear a seal of the Court of Appeals, and are attested to by the signature of its Chief Clerk, followed by the date November 26, 2013. The Chief Judge's two

certifications certify:

“that the attached schedules are the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2014 and that they have been approved by the Court of Appeals”; and

“that the attached schedules are the itemized estimates of the financial needs of the Judiciary for General State Charges for the fiscal year beginning April 1, 2014 and that they have been approved by the Court of Appeals.”

It is not entirely clear which are the “attached schedules” referred to in the Chief Judge’s certification of the Judiciary’s financial needs, most importantly, whether it included the “schedules” in the Judiciary’s “single budget bill”, which it could only do if “attached”.

The Court of Appeals’ two approvals make no mention of “schedules” in approving the “attached itemized estimates”.

Executive Summary: Only a single Executive Summary is furnished – contained in the budget presentation for operating needs.¹ The four-page Executive Summary repeats the figures from Chief Administrative Judge Prudenti’s transmitting memorandum – but not until the end of its third page (p. iii): “\$1.81 billion for General State Fund Operations, to support court operations”, representing “an increase of \$44.2 million, or 2.5 percent”. This, however, is qualified by the following footnote:

“The appropriation request associated with the requested increase in cash is \$1.82 billion, which represents at \$63 million, or 3.6 percent increase. The increase in the appropriation request is slightly higher than the increase in the cash request because of technical reasons that relate to the use of reappropriations to pay for the first two years of the judicial salary increase. The cash increase, rather than the appropriation request, is the true measure of the year-to-year increase sought by the Judiciary.” (fn. 2, at p. iii).

The Executive Summary additionally states (p. iv): “This budget also provides \$15 million in additional funding for civil legal services”. It further states (p. iv) “this budget provides funding for 20 Family Court judgeships, to be established effective January 1, 2015”, but without repeating the \$5 million cost featured in the transmitting memorandum to the operating budget.

¹ The Executive Summary is presented in a Section 1 entitled “Executive Summary”. The “Table of Contents” to this Section 1 lists the Executive Summary (pp. i-v), followed by what is identified as “Judiciary Budget Request”, which seem to be “All Funds Summary Tables” (pp. vi-x), as these are indented beneath. Not indented is the “Judiciary Appropriation Bill...Bill Copy 1-17” – its “single budget bill”

Five pages of tables follow – and continue the numbering of the Executive Summary. The first three are headed:

“Unified Court System
2014-15 Budget Request”

The first table additionally reads: “All Funds Disbursement Requirements” (p. vi). It lists a “General Fund Total” of “1,811.2” million dollars, representing a change of “44.2” million dollars. The very next line lists an “All Funds Total” of “2,039.0” million dollars, representing a change of “44.0” million dollars.

The second table additionally reads: “All Funds Appropriation Requirements-Major Purpose by Fund Summary” (p. vii). It lists a “Grand Total General Fund” of \$1,819,326,742, representing a change of \$62,965,790. The very next line lists a “Grand Total All Funds” of \$2,037,008,293, representing a change of \$63,772,424.

The third table additionally reads “All Funds Appropriation Requirements-Major Purpose Summary by Fund Category” (p. viii). It repeats the prior “Total General Fund” figure of \$1,819,326,742, representing a change of \$62,965,790 and, in the next line, the “Grand Total All Funds” figure of \$2,037,008,293, representing a change of \$63,772,424.

A fourth table is simply titled “Fiscal Year 2014-15 IOLA Support” (p. ix). It identifies appropriation/disbursement requirements of \$15 million.

A fifth table is also simply titled “Fiscal Year 2014-15 New Family Court Judgeships” (p. x). It identifies appropriation/disbursement requirements of \$5 million.

The Judiciary’s “2014-15 Budget” – a mixture of narrative and tables – is presented in 152 pages, of limited usefulness in enabling intelligent review of the Judiciary’s budget of operating needs, and whose only mention of reappropriations is of “capital funds originally appropriated in fiscal 2007-08 for the development of a Court Officer Training Academy in Kings County” (p. 152), with an indicated estimate of needed funds being \$51 million. Among noteworthy expenditures: Office of Inspector General: \$1,286,199 (p. 64) and attorney discipline: \$14,461,352 (pp. 127-128).

The Judiciary’s separately presented Budget of “General State Charges”: This consists of “All Funds Summary Tables” – one for “All Funds Appropriation Requirements” and one for “All Funds Disbursement Requirements”, the first giving specific numbers: \$669,133,791, representing a change of \$8,473,184; the second giving rounded numbers: \$669.1 million, representing a change of 8.4 million. This is followed by a two-page “Budget Narrative”, for which a “Summary” is purported to be provided by 7 pages of tables. The description in the narrative of the “General State Charges” is “fringe benefits provided to state-paid judges and nonjudicial employees.”, these being “pension contributions, Social Security and Medicare, health insurance premiums, dental, vision, and

life insurance for judges and management/confidential employees, and employee benefit funds.”

The Judiciary’s “Single Budget Bill” is 17 pages and furnishes no cumulative tally of its total amount – nor even a section containing the disparate figures which, when added, would give the total.

Page 1 begins with the title “The Judiciary”, beneath which is a paragraph marked “§2”, reading:

“§2. The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2014.”

Immediately beneath it, a sentence reads:

“For services and expenses including travel outside the state and the payment of liabilities incurred prior to April 1, 2014 in accordance with the following schedule:”

This is then followed by a table entitled “State Operations and Aid to Localities”, furnishing an “All Funds” “Appropriations” request of \$2,037,008,293 and, beside it, an “All Funds” “Reappropriations” request of \$41,525,000. Beneath that a further table entitled “Judiciary Operating Budget Summary of New Appropriations” furnishes, again, an “All Funds” total of \$2,037,008,293. This is then followed by a titled “Schedule”, whose itemizations are qualified by the following prefatory paragraph:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.”

Page 10 presents a “Judiciary Budget Summary of New Appropriations (Supplemental)” of \$15 million for IOLA (interest on lawyer accounts), with a titled “Schedule”.

Page 11 presents a “Judiciary Budget Summary of New Appropriations (Supplemental)” of \$5 million for new Family Court judgeships, with a titled “Schedule”.

Pages 12-13 presents “General State Charges” beneath a sentence reading:

“For services and expenses including travel outside the state and the payment of liabilities incurred prior to April 1, 2014 in accordance with the following schedule:”

This is followed by a table of “Appropriations” whose “All Funds” total is \$669,133,791. This is then followed by a table entitled “Judiciary General State Charges Summary of New

Appropriations”, which gives the same “All Funds” total of \$669,133,791. Beneath it is a “Schedule”, again repeating that total.

Page 14 is titled “Reappropriations” and begins with a paragraph marked §3, reading:

§3. The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year’s appropriation, are hereby reappropriated from the same funds and made available for the same purposes as the prior year’s appropriation, unless amended herein, for the state fiscal year beginning April 1, 2014.”

Beneath this, under the title “The Judiciary / State Operations and Aid to Localities – Reappropriations 2014-2015”, is a “Schedule”, whose total is not furnished until page 16: \$41,525,000 – the same as appeared on page 1 of the Judiciary’s bill.

Page 17 presents a further title “Capital Projects-Reappropriations 2014-2015”, whose two reappropriations for the “training academy in Kings County for the training of court security personnel” are not tallied, these being \$33,700,000 and \$17,300,000.

*The Governor's Assessment and that of his Division of the Budget,
in Face of Notice by the Center for Judicial Accountability on the Subject.*

Governor Cuomo:

The Governor's Budget Bill #S.6351/A.8551 (January 21, 2014) "submitted by the Governor pursuant to article seven of the Constitution...AN ACT making appropriations for the support of government (LEGISLATURE & JUDICIARY BUDGET)", states, in its preface:

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:"

The Judiciary portion of the bill is 16 pages, spanning pages 10-26. This Judiciary portion is §§2 and 3 of the bill and replicates, exactly, the Judiciary's bill, including the text of §§2 and 3 of the Judiciary's bill. Like it, the Governor's bill does not give a cumulative tally of the dollar amount of monies being allocated to the Judiciary. Nor does it include any section containing the disparate figures of the bill which, when added, would give that dollar total.

The "Commentary of the Governor on the Judiciary" – a mere seven sentences – gives the following figures for the Judiciary's proposed budget being transmitted by the Governor to the Legislature "as it has been submitted by the Chief Judge":

"The Judiciary has requested appropriations of \$2.1 billion for court operations, exclusive of the cost of employee benefits. Disbursements for court operations from State Operating Funds are projected to grow by \$53 million or 2.7 percent."

The Commentary then asserts:

"For the past three years my Administration and the Legislature have kept spending increases below 2 percent. By requesting an increase in excess of that amount, the Judiciary is out of step with our fiscally responsible goal for all of New York State government. I strongly believe that an efficient and effective Judiciary can robustly fulfill its constitutional duties with a spending increase at or below 2 percent, and I urge the Legislature and the Judiciary to reduce the Judiciary budget so that it is in line with the rest of State spending."

Governor Cuomo's Division of the Budget:

The Governor's Division of the Budget has a webpage for the Judiciary's proposed budget, <http://publications.budget.ny.gov/eBudget1415/agencyPresentations/appropData/Judiciary.html>. Its text, if not furnished by the Judiciary, uncritically repeats its claims. The figures it gives materially differ from that in the Governor's Commentary:

“The Judiciary's General Fund Operating Budget requests \$1.81 billion, excluding fringe benefits, for Fiscal Year 2014-2015. This represents a cash increase of \$44.2 million, or 2.5%. The associated appropriation request is \$1.82 billion, which represents a \$63 million, or 3.6% increase. The slightly higher appropriation increase is because of the technical reasons that relate to the use of reappropriation authority to fund the first two years of the judicial pay raise.

...

The Judiciary's All Funds budget request for Fiscal Year 2014-2015, excluding fringe benefits, totals \$2.04 billion, an appropriation increase of \$63.8 million, or 3.2% over the 2013-2014 All Funds budget...”