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Josefa Velasquez

Administrative Judge Questions Cuomo's Proposal for an 8-Hour Day From State Judges



Lawrence K. Marks.

ALBANY — Gov. Andrew Cuomo’s proposal to require judges to be at work at least eight hours a day is an “unusual proposal” and one that is “unnecessary,” Chief Administrative Judge Lawrence Marks said Tuesday.

At a joint legislative budget hearing on public protection, Marks was asked by state Sen. John Bonacic, an Orange County Republican who heads the judiciary committee, if the judiciary had any “qualms” about [Cuomo’s proposal](#), under which state-paid judges or justices assigned to trial courts of the state’s unified court systems would have to certify each month, in a statement, that he or she “performed judicial duties at an assigned court location for the full daily period of at least eight hours.”

The state comptroller would also conduct periodic reviews and audit the certifications to “ensure that the state is responsibly authorizing state dollars for judicial salaries and the operation of state trial courts,” according to legislation put forward by the governor’s office. Comptroller Tom DiNapoli’s

office would then “evaluate the accuracy of the judicial certification and the effectiveness of the certification system as a whole,” Cuomo’s legislation says.

The judiciary would have to certify judges’ hours in exchange for a 2.5 percent budget increase for the upcoming fiscal year, which goes beyond Cuomo’s 2 percent spending cap in a year when the state is expected to face a \$4.4 billion deficit, Cuomo said earlier this month during his budgetary address.

“It’s an unusual proposal, certainly,” Marks responded. “Judges in the state court system have a very difficult job; far more difficult job than people realize.”

Marks added that Cuomo’s proposal, [unveiled during his \\$168.2 billion budget address](#) to the Legislature in mid-January, is already being addressed by Chief Judge Janet DiFiore’s Excellence Initiative, which seeks to reduce chronic backlogs in the state’s court system and reduce the time it takes to dispose of cases.

“The Excellence Initiative, really at its core, is all about getting the lawyers to work harder, court employees to work harder and, in particular, getting judges to work harder. To the extent that this is a problem in any part of the state and any court of the state, it’s a problem that we have been addressing over the last few years and we were on top of this problem. So our position on this bill is that it’s unnecessary. That we are dealing with this problem,” Marks added.

Marks also disputed that the roughly \$44 million budgetary increase the judiciary is seeking is 2.5 percent. He said it is only 2 percent, meaning that the judiciary is staying within the governor’s spending cap.

As part of their budgetary request to the governor and Legislature, the judiciary budget proposal includes a capital appropriation request of \$18 million to update the court system’s technology and public safety infrastructure, Marks told lawmakers.

The judiciary’s budget request does not include funding for three collective bargaining agreements, which would push the proposed increase to roughly 3 percent. Instead of seeking funding through the budgetary process, the judiciary will submit legislation this year seeking a supplemental appropriation to pay for the retroactive salary increases for the three unions, which include two court officers unions and one court clerk union in New York

City, Marks said. The price tags to cover the retroactive raises would be \$65 million.

The judiciary didn't set up a reserve fund to pay for the retroactive pay because it doesn't "have the legal authority to squirrel away" funding, because any unused funds would have to be refunded into the state's general fund, Marks said.

Also during the budget hearing, Robert Tembeckjian, the administrator and counsel on the Commission of Judicial Conduct, asked the Legislature for a budget increase of \$312,000. The budget for the commission has been largely flat for the last eight years at just under \$5.4 million, Tembeckjian said, meanwhile the workload has increased and staffing levels have decreased 19 percent. The commission had initially requested a \$541,000 increase, but the governor proposed increasing the commission's budget by \$112,000.

The 2 percent budgetary increase for the commission is less than the 4 percent the commission needs to make mandatory increases for things like salary and rent.

"We have been forced to make other significant economies that have impeded our operations. Consequently, it takes longer for us to complete investigations, which is not fair to the innocent judge waiting exoneration, or to the public which rightfully expects the guilty to be disciplined expeditiously," Tembeckjian said on Tuesday.

ICE Arrests in Courthouses

In other matters, Assemblyman Joe Lentol, a Queens Democrat who chairs the codes committee, asked Marks how the state's courts are dealing with U.S. Immigration and Customs Enforcement officers arresting people while they are in court.

"This is a complicated situation," Marks said. For years, the state's court system has allowed law enforcement, including NYPD and state police, to enter courtrooms and take people into custody, Marks added.

Advocacy groups have asked that the state's unified court system [limit their cooperation and assistance with ICE](#), something that puts the judiciary in a precarious position, according to Marks.

“The problem is we’ve been asked to prevent ICE from that. Either bar them from coming into the courthouses or if they have to come into the courthouses, prevent them from making arrests. It puts the court system in a very awkward and difficult position because, of course, we are neutral. We have to be as the judiciary. We can’t take a position about the immigration policies in Washington,” he said.

Arrests by ICE officers hasn’t been “through the roof,” Marks said, noting that the court system is closely monitoring when ICE enforcement enters the court. Last year, ICE enforcement agents had arrested more than 50 people while they were in court. New York’s courts have asked that courthouses be designated as sensitive locations, similar to schools or hospitals.

ICE officials have “agreed, unofficially on a regional level” not to go into non-criminal courtrooms, Marks said.

Correction: *The article initially published online on Jan. 30 incorrectly stated that the Commission on Judicial Conduct asked the Legislature for a budget increase of \$112,000. The commission actually asked the Legislature for a budget increase of \$312,000 for the upcoming fiscal year. The commission had initially requested a \$541,000 increase, but the governor proposed increasing the commission’s budget by \$112,000. This article has been updated with the correct information.*

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