

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**



Gordon J. MacDonald
Chief Justice

March 10, 2021

Representative Lynne Ober
Chair, House Finance, Division I
Legislative Office Building, Room 212
107 North Main Street
Concord NH 03301

Dear Representative Ober:

Thank you for your March 1, 2021 letter to me regarding the proposed budget for the Judicial Branch for Fiscal Years 2022-2023. In response to your request, I am providing written responses to the questions in your letter.

1. What new full-time staff has been added to your budget?

The answer to this question is in two parts: first, to discuss adjustments in the number of both full-time and part-time employees from the Fiscal Year 2020-2021 budget as enacted; and, second, to discuss new positions included in the Fiscal Year 2022-2023 budget submission.

A. Adjustments From FY20-21 As Enacted

Across the Judicial Branch, 19 part-time positions have been eliminated and 13 full-time positions were created since the enactment of the budget for the current biennium. A summary appears in the chart at Exhibit A.

Most of those adjustments took place in the Circuit Court, where 16 part-time positions were eliminated and nine full-time positions were created. As of December 1, 2020, 63 of the 364 employees (17%) in the Circuit Court were part-time, the highest in the Judicial Branch. This part-time workforce began several years ago when, in order to help address overall budget constraints, the Circuit Court committed to converting a large number of full-time positions to part-time positions to capture the savings in benefit costs. At the time of those conversions, it was not difficult to attract part-time employees. However, over the past few years, the turnover of part-time employees has been dramatic and the cost to recruit, train and try to retain part-time employees has been substantial.

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Former Chief Justice Lynn recognized this difficulty and authorized the Circuit Court to gradually convert part-time positions back to full-time, using a formula that would be essentially budget neutral. While this has resulted in having less hours available from staff, the reduced turnover has increased productivity and made conversions worthwhile.

Exhibit B reflects a complete reconciliation of the position adjustments across the Judicial Branch since the enactment of the current budget. As you will see, for the Circuit Court, the position conversions involved clerical positions (Court Assistant II, Call Center Representative I and II, and Secretary II, Electronic Registries Assistant I and Special Project Administrator). The cost for these changes is approximately \$309,525 over the biennium.

In the Superior Court, one part-time position was eliminated and three full-time positions (one of which had been budgeted as full-time in the FY16-17 budget and reduced to part-time in the FY18-19 and FY20-21 budgets and is now being restored to full-time in the FY22-23 budget request) were created. Upon the implementation of electronic filing in the Superior Court, it created an electronic filing center and added four employees to handle the bulk of case initiation processing for all the courts. This move allowed the Court to free up staff time for scheduling, processing orders and assisting in the courtrooms. As a result, the Superior Court eliminated two positions from the staff in other counties. Shortly thereafter, the Superior Court took on the processing of felony arrest and search warrants, which had historically been handled in Circuit Court in order to help address that Court's workload demands. To help accommodate this new work, the Superior Court did not eliminate positions to offset the two remaining e-filing positions. As a result, the Superior Court has two additional positions. The cost for these changes is approximately \$568,111 over the biennium.

B. New Positions in the FY22-23 Submission

The budget submission includes five new positions. An explanation follows.

i. Additional Circuit Court Judges

The submission requests funding for two additional Circuit Court judges. The Circuit Court currently has 30 full-time judges and two full-time marital masters on the bench. At present, there are five funded vacancies.¹ A comparison of the number of judicial officers at the time of the Circuit Court's creation versus the present appears below:

¹ On February 17, 2021, Governor Sununu nominated two individuals to serve on the Circuit Court. Those nominations are pending before the Executive Council.

	Judicial Positions Transferred to Circuit Court on July 1, 2011	Judicial Officers as of March 10, 2021
Full Time Judges	27	30
Full Time Judicial Vacancies	5	5 (under recruitment, 2 nominations pending)
Marital Masters	13	2
Part Time Judges	29	6

Circuit Court judicial scheduling is based on “weighted caseload” (WCL). *See* RSA 490-F:11. Each of the 125,000 +/- cases in the Circuit Court has a “weight” assigned to it, which translates to a number of minutes based on the anticipated time needed to process the case from filing to disposition. The current WCL² demonstrates the need for 44.9 full-time judicial officers. This is consistent with the 45 authorized by the legislature. *See* RSA 490-F:7. Translated to actual judicial scheduling, this equates to the need for 11,182 days of judicial coverage.

If all funded positions were filled, these 37 full-time judicial officers (judges and marital masters) would be available to cover approximately 8,288 days, leaving a shortfall of nearly 3,000 days. To backfill, the court regularly uses part-time and retired judges to fill the gap, as well as non-judge referees. Currently the Circuit Court has nine retired judges over the age of 70 serving as judicial referees. For the first time, due to the retirement of several part-time judges (down to six from 29 in 2011) the Circuit Court does not have enough judges and referees to meet the WCL need. This has put a tremendous strain on judges, who work nights and weekends to write orders, while also being on call 24-7 for emergencies arising from domestic violence matters, emergency placement of juveniles, and off-hours search and arrest warrant calls.

Therefore, increasing the number of full-time Circuit Court judges from 35 to 37 will help to better achieve the timely resolution of legal issues brought before the Circuit Court. I became Chief Justice on March 4, 2021 and, therefore, did not participate in the preparation of the Judicial Branch budget submission. Had I done so, I would have advocated increasing the number of full-time Circuit Court judges from 35 to 39. The need for such an increase is amply supported by the data. It would not only add much needed capacity to address on a timely basis the very important cases that come before it, but it would also give the Circuit Court some cushion to absorb expected retirements among the part-time judges who are currently serving.

² For calendar year 2021, the Supreme Court and Administrative Council agreed that using the 2020 WCL would not be reasonable. Reduced case filings due to COVID-19 would have artificially reduced the Circuit Court’s schedule at a time when it was handling not only the new 2021 filings, but also attempting to dig out from the 2020 backlog.

The salaries and benefits of the two requested positions are summarized here:

Position: Circuit Court Judge		
	<u>FY2022</u>	<u>FY2023</u>
Salary and Benefits	\$327,239	\$340,391
Totals	\$327,239	\$340,391

Position: Circuit Court Judge		
	<u>FY2022</u>	<u>FY2023</u>
Salary and Benefits	\$327,239	\$340,391
Totals	\$327,239	\$340,391

No additional equipment, furniture or office space would be necessary for these judges, as they will essentially be using equipment and space already available due to our reduced judicial ranks.

ii. Court Navigators

The budget submission includes funding for two new Court “navigators” to assist with the Circuit Court’s large landlord-tenant docket. The request for these positions follows a recommendation by the Supreme Court’s Access to Justice Commission. The overwhelming majority of Circuit Court litigants are not represented by a lawyer. According to a 2015 count of cases, 59 percent of plaintiffs and 97 percent of defendants in landlord-tenant cases were self-represented.

The number of self-represented litigants further strains an already very strained system. Self-represented landlords and tenants need assistance with basic issues relating to their case or circumstance, including how to conduct basic research, the negotiation of a settlement, the proper response to court pleadings and keeping track of critical deadlines. Often valuable judge or court staff time is devoted to addressing these issues. The two positions will establish a pilot program to better prepare self-represented parties with the preparation and understanding of the court system. The funds will be used to leverage a federal grant of \$107,000 to retain a program manager and a staff attorney who will, in turn, recruit, train, and work with volunteer non-attorney navigators to provide direct assistance to the self-represented litigants.

The salaries, benefits, and expenses associated with these positions are summarized here:

Position: Court Services Attorney		
	<u>FY2022</u>	<u>FY2023</u>
Salary and Benefits	\$123,546	\$133,686
Current Expense	\$1,250	\$1,250
Equipment	\$5,275	\$0
Telecommunications	\$1,050	\$1,050
In-State Travel	\$4,313	\$4,313
Totals	\$135,434	\$140,298

Position: Court Services Program Manager		
	<u>FY2022</u>	<u>FY2023</u>
Salary and Benefits	\$95,695	\$103,235
Current Expense	\$1,250	\$1,250
Equipment	\$5,275	\$0
Telecommunications	\$1,050	\$1,050
In-State Travel	\$4,313	\$4,313
Totals	\$107,582	\$109,848

iii. IT Support Desk/LAN Specialist I

The budget submission includes funding for one new LAN Specialist. As the Judicial Branch relies more heavily upon technology to facilitate its operations, the demand for technical support to address branch-wide issues or to provide one-on-one assistance to staff has grown. The ability of the Judicial Branch to transition to a more remote environment in order to provide continuity of operations has proved invaluable during the pandemic, but has also increased the need for timely support services. The addition of a full-time IT Support Desk Position (LAN Specialist I) would help alleviate the workload for existing support desk staff (there are currently three FT LAN Specialist I positions), who serve a Judicial Branch population of over 675 full- and part-time employees.

The salary and benefits associated with this position are summarized here:

Position: LAN Specialist I		
	<u>FY2022</u>	<u>FY2023</u>
Salary and Benefits	\$79,038	\$85,000
Totals	\$79,038	\$85,000

No additional equipment, furniture or office space would be necessary for this position, as we are able to absorb any ancillary costs from existing IT equipment, furnishings, and office space that had been utilized for prior staff.

2. What new part-time staff has been added to your budget?

No new part-time staff has been added to the budget.

3. What positions had to be eliminated in order to meet the governor's budget requirements?

No positions were eliminated to meet the Governor's budget requirements in the FY 22-23 submission.

4. Is your agency adequately staffed to complete all work assigned to your agency in state law?

New Hampshire judges will meet their constitutional obligation to decide all cases brought before them fairly and impartially. However, the current number of judicial officers and support staff puts significant strains on the ability of trial court judges, particularly in the Circuit Court, to resolve the important cases before them in a timely manner.

5. If the answer to Q. 4 is no, please describe.

I have described above the challenges facing the Circuit Court with respect to its judicial shortage and part-time staffing turnover. In addition to these concerns, the Circuit Court has struggled with a loss of several positions as a result of e-filing. Since 2012, the Judicial Branch has been implementing its e-Court Program. The Circuit Court led the way with the electronic filing process, beginning with small claims cases in 2014. At the time of implementation, the Court received advice that it would be able to decrease staffing by 20% as a result of anticipated efficiencies. As a result, the Circuit Court then eliminated 17.49 FTE positions with the first three case types: small claims, guardianships, and estates. The Court has since learned that e-filing changes the type of work to be performed, but does not equate to a need for less staff. This

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is particularly evident in the Circuit Court where the vast majority of filers are self-represented and need help navigating both the e-filing process, as well as the substantive part of the process. The cuts to Circuit Court staff have proved to be detrimental to its ability to timely process cases, which may be rectified by restoration of the eliminated staff.

With respect to the Superior Court, the caseload per judge in two counties far exceeds that recommended by the National Center for State Courts. The Superior Court is currently capped at 22 full time judges. The addition of a 23rd judge and accompanying Court Monitor in Superior Court would allow for better distribution of the caseload for those judges disproportionately impacted.

6. What things are you doing (found in state law) that could be eliminated and why?

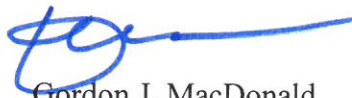
The Judicial Branch's mission is to provide access to justice; there are no laws that exist that could be suspended without having a significant deleterious impact on that mission.

7. What priorities did you have that were not funded? Cost? Description? Impact of not funding?

Please see the responses to Questions 1 and 5 above.

Thank you for the opportunity to respond to these questions. My colleagues and I look forward to appearing before you tomorrow. In the meantime, if you have any additional questions, please let me know.

Sincerely,



Gordon J. MacDonald
Chief Justice

Cc: Superior Court Chief Justice Tina L. Nadeau
Circuit Court Administrative Judge David D. King
Christopher Keating, AOC Director
Donna Raymond, Fiscal Manager

Exhibit A

Court Level	FY20/21 Budget as Passed		Changes to FY20/21 Bgt thru FY22/23 Bgt		New Positions Included in FY22/23 Bgt Submission		Total Positions Included in FY22/23 Bgt Submission	
	FT	PT	FT	PT	FT	PT	FT	PT
Supreme	31	4	0	-1	0	0	31	3
AOC	51	4	1	-1	1	0	53	3
Superior	124	8	3	-1	0	0	127	7
Circuit	288	86	9	-16	2	0	299	70
Grant	0	2	0	0	0	0	0	2
Total Court	494	104	13	-19	3	0	510	85
Security								
CSO I	1	1	-1	1	0	0	0	2
CSO II	4	6	1	-1	0	0	5	5
Training Officer	0	1	0	0	0	0	0	1
Total Security	5	8	0	0	0	0	5	8
Judicial								
Supreme	5		0	0	0	0	5	0
Superior	22		0	0	0	0	22	0
Circuit	35		0	0	2	0	37	0
Marital Master	2		0	0	0	0	2	0
Total Judicial	64	0	0	0	2	0	66	0

Exhibit B

Position Title	ASAP Pos	Location	FT or PT	Abolished/ Created/Net	Adjustment to FY2021 Budget Totals		
					FT	PT	PT FTE
Superior Ct. e-Filing Center Manager	3521	Superior	FT	Created	1		
Superior Ct. e-Filing Center Coordinator	3523	Superior	FT	Created	1		
Court Assistant II	845	Superior	FT	Abolished	-1		
Superior Court e-Filing Center - CA III	3533	Superior	FT	Created	1		
Court Assistant II	849	Superior	FT	Abolished	-1		
Superior Ct. e-Filing Center Asst. Mgr	3522	Superior	FT	Created	1		
Facilities Assistant	269	AOC	29	Abolished		-1	-0.77
Facilities Assistant	269	AOC	FT	Created	1		
Ct. Monitor/Assistant	674	Superior	29	Abolished		-1	-0.77
Ct. Monitor/Assistant	674	Superior	FT	Created	1		
Electronic Registries Asst I	2523	Circuit	29	Abolished		-1	-0.77
Electronic Registries Asst I	3573	Circuit	FT	Created	1		
Call Center Representative I	2541	Circuit	29	Abolished		-1	-0.77
Call Center Representative I	2568	Circuit	29	Abolished		-1	-0.77
Call Center Representative II	3586	Circuit	FT	Created	1		
Court Assistant III	2677	Circuit	22.5	Abolished		-1	-0.60
Court Assistant II	3130	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3585	Circuit	FT	Created	1		
Court Assistant II	2708	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3171	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3566	Circuit	FT	Created	1		
Court Assistant II	2774	Circuit	29	Abolished		-1	-0.77
Court Assistant II	2824	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3568	Circuit	FT	Created	1		
Court Assistant II	2606	Circuit	29	Abolished		-1	-0.77
Court Assistant II	2817	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3591	Circuit	FT	Created	1		
Call Center Representative I	2543	Circuit	29	Abolished		-1	-0.77
Call Center Representative I	2567	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3592	Circuit	FT	Created	1		
Secretary II	3535	Circuit	20	Abolished		-1	-0.53
Court Assistant II	2595	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3593	Circuit	FT	Created	1		
Court Assistant II	3131	Circuit	29	Abolished		-1	-0.77
Court Assistant II	2997	Circuit	29	Abolished		-1	-0.77
Court Assistant II	3590	Circuit	FT	Created	1		
General Counsel	95	AOC	32	Abolished		-1	-0.85
Government Affairs Coordinator	3603	AOC	FT	Created	1		
Court Security Officer I	3102	Security	FT	Abolished	-1		
Court Security Officer I	3102	Security	35	Created		1	0.93
Court Security Officer II	3108	Security	35	Abolished		-1	-0.93
Court Security Officer II	3108	Security	FT	Created	1		
Special Project Administrator	3600	Circuit	15	Created		1	0.40
Senior Law Clerk II	47	Supreme	10	Abolished		-1	-0.27
HR Associate I	142	AOC	FT	Abolished	-1		
HR Associate I	142	AOC	29	Created		1	0.77
Total - Clerical					13	-19	-14.23