

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
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ARIZONA JUDICIAL DEPARTMENT) Administrative Order
CONTINUING OPERATION) No. 2009 - 69
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_____)

Through the Constitution, the people of Arizona have established government in this state to protect and maintain their individual rights, Art. 2, Sec. 2, and have divided its powers into separate and distinct legislative, executive, and judicial departments. Art. 3, Sec. 1. The action or inaction of one department of government may not cause the cessation of another. The judicial power of the state is vested in the integrated judicial department, Art. 6, Sec. 1, which is required to administer justice openly and without unnecessary delay. Art. 2, Sec. 11. The Arizona Judicial Department is obligated by the Arizona Constitution and Arizona statutes to provide services that are reasonably necessary for the administration of justice.

Judges, their salaries, and their staffs are expressly mandated by the Constitution and statutes, including but not limited to Art. 6, Sec. 2 (Supreme Court), Art. 6, Secs. 1, 9 and A.R.S. §§ 12-120, 12-120.03, 12-120.08 (Court of Appeals), Art. 6, Sec.10 (superior court), Art. 6, Sec. 32 (justice courts), Art. 6, Sec. 7 (Supreme Court clerks, administrative director and staff), and Art. 6, Sec. 23 (superior court clerks).

The Chief Justice of the Arizona Supreme Court is constitutionally authorized and obligated to exercise administrative supervision over all the courts in the state, Art. 6, Sec. 3, which includes the authority to approve the state judicial department budget and the responsibility to work with the Legislature to secure adoption of a judicial department budget.

The Arizona Judicial Department has made reasonable, diligent efforts to work with the Arizona State Legislature and Governor to obtain FY 2010 funding through the established budgetary process, including presenting a proposed judicial department budget that is responsive to the state’s current fiscal situation and refraining from filling many vacant positions.

Notwithstanding reasonable, diligent efforts, no FY 2010 judicial department budget has yet been enacted by the Legislature and Governor.

Effective July 1, 2009, in the absence of a duly enacted FY 2010 judicial department budget, constitutionally and statutorily mandated and other necessary judicial services must continue. These include but are not limited to the judiciary’s ability to hear criminal cases, expedited election cases, and cases involving child protection and parental rights; its ability to provide critical probation services and juvenile treatment services; its ability to handle involuntary commitment and child custody matters; and the operation of the critical infrastructure that supports these activities.

The judicial department is obligated to avoid the incalculable due process and other individual rights violations that would result if the Arizona judiciary ceased to operate on even a short-term basis, including but not limited to individual constitutional rights in the context of criminal proceedings, such as victims' rights and the rights of the accused. *See* Art. 2, Sec. 2.1 (victims' rights); Art. 2, Sec. 4 (due process); Art. 2, Sec. 22 (bailable offenses); Art. 2, Sec. 24 (rights of accused in criminal prosecution), the right to the administration of justice, Art. 2, Sec. 11, the right to a speedy disposition in superior court cases, Art. 6, Sec. 21, and the right to habeas corpus. Art. 2, Sec. 14.

The judicial department does not have the authority to stop performing these and other judicial and administrative functions mandated by the Constitution and state statutes, necessitating a judicial order to ensure continuing appropriations for these necessary and mandated services.

The Director of the Arizona Department of Administration and the State Treasurer perform the ministerial duties of paying judicial department salaries submitted through the state payroll system and issuing warrants for expenses authorized by the judicial department.

Constitutional and statutory continuing appropriations and necessary expenses at current 2009 budget levels are presumptively reasonably necessary to the administration of justice and must by law be paid, not merely incurred for future payment once a budget is adopted.

Now therefore,

IT IS ORDERED that until a FY 2010 state budget is enacted by the Arizona State Legislature and Arizona Governor, the courts of this state shall continue to operate at current 2009 state budget levels, which are hereby determined to be presumptively reasonably necessary to the administration of justice, and to incur salary and other obligations under the express and implied authority contained in the Arizona Constitution and statutes and the inherent power of the judicial department.

IT IS FURTHER ORDERED that until a FY 2010 state budget is enacted, the Director of the Administrative Office of the Courts and the Chief Judges of the Arizona Court of Appeals, Divisions One and Two, shall administer judicial department salaries and expenses in accordance with the current FY 2009 judicial department budget, but with reduced expenditures to which the judicial department has committed for FY 2010.

IT IS FURTHER ORDERED that the Director of the Arizona Department of Administration and State Treasurer shall continue to pay judicial department salaries based upon hours submitted through the state payroll system and issue warrants for expenses and obligations authorized by the judicial department.

IT IS FURTHER ORDERED that the Director of the Arizona Department of Administration and State Treasurer shall continue to reimburse the counties for justice court salaries and expenses as required by law.

IT IS FURTHER ORDERED that the Director of the Department of Administration and the Treasurer's Office shall retain sufficient staffing at their respective offices to continue processing payments and issuing warrants for the judicial department salaries and other judicial department obligations as required by this Order.

IT IS FURTHER ORDERED that this Order shall be effective on July 1, 2009, and shall continue in effect until enactment of a judicial department budget for FY 2010 by the Legislature and Governor.

Dated this 30th day of June, 2009.

RUTH V. MCGREGOR
Chief Justice