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## Yakima County judges unhappy with budget cuts

Posted on January 20, 2013

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Yakima County Court Commissioner Gayle Harthcock listens to Miguel Cortez and Elizabeth Luna as she presides over family court Jan. 18, 2013 in Yakima, Wash. . Harthcock's job will be cut at the end of January forcing her workload to be shared by Yakima County judges. County judges say such budget cuts reduce their ability to meet what the state constitution lays out as their duties to people using the court. Cortez and Luna were in court for a child custody issue. (GORDON KING/Yakima Herald-Republic)



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David Lester  
YAKIMA HERALD-REPUBLIC

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YAKIMA, Wash. — When Yakima County court commissioner Gayle Harthcock is laid off next month, her job of handling the family court docket — parental custody and divorce cases — will fall to the eight judges and two remaining court commissioners.

The loss of Harthcock's position, part of a 2013 county budget cut, is one more example of a series of cuts in the last few years that judges say is taking them down a dangerous road: the inability to meet constitutional and statutory mandates for assuring justice, namely fair and speedy trials for defendants. For example, some 22 murder trials have to be scheduled to start between now and April.

What's more, cuts in the courts have resulted in fewer than a dozen employees at the end of 2011. In contrast, Thurston County has a court staff of 26 and Kitsap County has 21, both comparably sized counties.

In Yakima County, judges do their own copying. There are no clerks or secretaries to research and help prepare opinions. Two interpreters cover the entire court calendar, half of what was available just a few years ago. Meanwhile, the heavy workload continues.

As a result, judges from Superior and District courts have asked Yakima County commissioners for a meeting to discuss the separation of powers doctrine, which recognizes two principles: that the judicial and legislative branches of government are equal and that the courts are responsible for determining what is needed to operate the courts.

The situation is increasingly untenable, judges say.

"It's like a house of cards," presiding Judge Ruth Reukauf said. "You do the best you can as long as you can. But you pull one piece out and it comes down."

Yakima County judges are not alone in their concern about adequately funding justice. Judges in Grays Harbor County, west of Tacoma, have sued their commissioners over inadequate funding, and a potential lawsuit looms in Cowlitz County in southwest Washington.

Yakima judges say they don't want litigation and are not asking for more money to operate the courts. What they want is enough to do their jobs.

“The judges are concerned that funding levels for the courts are becoming dangerously low to meet the rights of defendants,” said Harold Delia, administrative consultant to the Superior, District and Juvenile courts.

“The judges want to meet with the commissioners on ways we can ensure continued funding so we don’t get jammed up with the Constitution.”

In the extreme, it is possible that lacking funding, the courts could order expenditures to administer justice — convening juries, for example — and send the bill to county commissioners.

Yakima County Superior Court has the equivalent of about 11 staff members to do court reporting, scheduling, interpretation, staff family court, coordinate drug court and other administration duties — less than half that of other counties of similar size, according to a study by the Association of Washington Superior Court Administrators.

Friction over what constitutes adequate funding is an outgrowth of the way courts are funded, said Hugh Spitzer, a visiting professor of state constitutional law at the University of Washington.

The state and each county split the cost of a Superior Court judge’s salary. The Legislature also passes laws that impose new mandates on the courts but doesn’t often provide money.

“It’s a problem that is built in by virtue of this split system where the state causes the costs but doesn’t pay for them and burdens the counties,” Spitzer said. “Some have advocated to get the counties out of it and let the state run the whole system as in California.”

To address the issue, Yakima judges hired a Seattle attorney to lay out the court’s obligations under the state Constitution and state statutes. The description of those duties, included in a Jan. 8 letter to county commissioners, seeks a meeting to discuss court funding needs for the future.

Attorney Scott Missall wrote that there is a history in Yakima County of commissioners attempting to encroach into judicial branch matters and exhibiting “a continuing pattern of treating the judicial branch of government as a ‘department’ of the legislative branch.”

Examples of commissioners exceeding their power include unsuccessful attempts by commissioners to assume authority for juvenile detention — which would be unlawful; questioning how the court spends money in its own budget; and suggesting that the courthouse, and with it the courts, be closed on Fridays to save money, which would violate the state Constitution.

County commissioners said the letter appears to draw a line in the sand but that they are open to discussions.

Chairman Mike Leita said he is disappointed by the approach and that the commissioners are well aware of the separate powers and authority of the courts.

“We are mystified by this rather sudden formal approach and I think we are disappointed in some of the assertions in the letter,” Leita said. “We will welcome the direct dialogue with the judges to address their concerns within the letter.”

Commissioner Kevin Bouchey, who is meeting directly with the courts, prosecutor, sheriff, clerk, public defenders and jail on a separate effort to reduce court costs, said he is withholding judgment until the two sides can meet.

“At this point, I’m trying not to overreact to the letter,” Bouchey said. “The best thing to do is sit and talk about the situation. Clearly, the board recognizes they are a separate branch of government. If there are issues, let’s sit and talk about them.”

Separately, Bouchey and other representatives of the criminal justice system are addressing a report last year by

a blue ribbon panel formed to recommend ways to streamline justice in Yakima County.

Time is of the essence, said Delia. It won't be long before preparation for the 2014 budget begins in July and early August. Trying to deal with cuts at that time would put the parties in a crisis mode, he said.

County commissioners cut the Superior Court budget by more than \$100,000 this year to nearly \$2.5 million. In 2007, the Superior Court budget was \$3.2 million, just before the recession hit and county revenues took a nosedive. The 2013 cut was imposed on the courts, the prosecutor, sheriff, clerk and public defenders to offset revenues shortfalls in the county jail operation.

Delia said the courts have worked to overcome the previous cuts by asking private attorneys to serve as unpaid pro tem judges, the only county in the state to do so. Allocating some of the three-tenths sales tax revenue to reduce the backlog of criminal cases has relieved pressure that saw civil cases routinely delayed for three years or more. Criminal cases always take precedence because of the requirement for speedy trials.

The sales tax money renewed by voters in 2009 for another six years is providing \$275,846 to Superior Court this year, an amount that is in addition to its general fund allocation. Delia said the fund pays for all three case schedulers and one of the two interpreters. The court also has sought grants to sustain its operation.

But Delia said the court can't continue to operate on the potentially volatile sales tax, which voters could refuse to renew a third time, and grants. What's needed, he said is stable funding from the general fund.

"We have reached the ceiling. We have to figure a better way to fund the courts other than with three-tenths and grants," he said. "We have to figure a way for the commissioners to understand it is their duty to fund the courts."

Reukauf said she views the request for a meeting with commissioners as a positive step. She said the judges want an open dialogue with commissioners to better understand each other's duties and responsibilities.

"We can be a leader in the state if we can bring this together with commissioners and encourage other counties to do the same so we don't end up in Grays Harbor or Cowlitz situation," she said.

Litigation is an expensive attempt at a resolution.

The Grays Harbor lawsuit, filed in late 2011, has cost more than \$400,000. Judges filed the suit to force the county to build a third courtroom, increase staff, provide courthouse security and require commissioners to provide "an annual budget as determined by plaintiffs to be reasonably necessary for the proper administration" of the Grays Harbor court, according to the lawsuit filed in Thurston County Superior Court.

Security is now in place in the aftermath of a judge being stabbed in the Grays Harbor County courthouse in Montesano early last year.

Cowlitz County judges have until March 1 to decide whether to sue the county commissioners there over a 2013 budget cut.

Missall, appointed special assistant attorney general by the state Attorney General, is representing judges in both counties. He said in a telephone interview that Yakima County judges are seeking open communication about what the court needs to meet its obligations.

"It is entirely appropriate for the commissioners to inquire about that. The courts have to recognize there are not unlimited funds. They do," Missall said. "There's no one with mink-covered judicial chairs and solid granite counter tops. They are trying to do their job like everyone else and they don't feel they get the respect they deserve as a coequal branch of government."

Tom Fitzpatrick, a private attorney from Tukwila appointed as a special deputy prosecutor representing Grays

Harbor County, said the Grays Harbor judges appear to want unfettered authority to determine how much money they need. He said seeking such authority represents a different kind of separation of powers issue that restricts the authority of county commissioners who must impose the taxes to support county services.

Fitzpatrick said counties are under stress from a variety of factors, including Washington providing the least amount of funding to local courts of any state in the nation.

“Local governments have, across the board, faced diminishing revenue because of the economic situation. Some are better off than others. Grays Harbor County is distressed and was severely hit by the recession,” he said. “This is a state that runs its courts on the backs of local government. The judges are now saying we don’t have adequate resources. Local government doesn’t have adequate resources. There’s the rub.”

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*This report has been updated to correct the number of court commissioners who will remain after Gayle Harthcock is laid off.*

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