

Administrative Office of the Courts

Supreme Court of New Mexico

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MEMORANDUM

TO: Chief Justice Charles Daniels, Justice Petra Jimenez Maes,
Justice Edward Chávez, Justice Barbara Vigil, and Justice
Judith Nakamura
FROM: Artie Pepin
DATE: July 14, 2016
RE: PAY FOR JURORS DURING FISCAL YEAR 2017

As in the past, for FY 2017 in HB 2 the legislature provided; "Notwithstanding the provisions of Section 35-8-7 and 38-5-15 NMSA 1978 or other substantive law, the supreme court has the authority to reduce juror pay as needed to stay within the appropriation for the jury and witness fund." In FY 2014 the Court set juror pay at \$6.25 per hour. For FY 2015 and FY 2016 the Court set juror pay at \$6.75 per hour. Absent the direction provided in HB2, AOC is required to pay jurors the "highest prevailing state minimum wage rate," currently \$7.50 per hour. NMSA 1978, section 38-5-15 (1991). Appropriations to the Jury and Witness Fund are insufficient to pay this rate. **For FY 2017, I ask the court to reduce juror pay to \$5.00 per hour.**

FY 2016 Deficit

- Jury & Witness Fund appropriation FY 2016 \$6,927,000
(original app. \$7,145,000 but reduced for Revenue shortfall of -\$218,000)
- AOC payments from J&W Fund in FY 2016 \$8,291,725
- Supplemental and deficiency J&W funding \$ 965,100
from 2016 session
- FY 2016 deficit (\$399,625)

The AOC cannot make deficit payments. The stated amount (\$399,625) carries over to FY 2017 as prior year payments made out of FY 2017 appropriations, decreasing funds available in FY 2017. AOC carried over this deficit by stopping juror payments on May 12, 2016, holding back a reserve sufficient to make current payments to interpreters through the end of FY 2016. In addition to a supplemental appropriation for a projected FY 2017 deficit, in the 2017 legislative session AOC will ask for “deficiency” funding for this FY 2016 amount (\$399,625).

Projected FY 2017 Deficit

With the current appropriation for FY 2017, the expected deficit is \$963,424.95:

Payroll Jury & witness	\$177,450.00	
Payroll Interpreter Administration	\$710,361.00	
Total Payroll		\$887,811.00
Contractual	\$66,000.00	\$66,000.00
Interpreters	\$2,883,809.80	2,883,809.80
Witnesses	\$275,540.09	\$275,540
Other Costs	\$133,063.79	\$133,063.79
Jurors	\$3,754,522.62	
Parking (mostly 2JD/BCMC)	\$240,098.93	
Juror Summons	\$50,878.72	
Total Jurors		<u>\$4,045,500.27</u>
FY 2017 J&W Fund Expenditures		\$8,291,724.95
FY 2017 Appropriated Funds		<u>\$7,328,300.00</u>
Projected Deficit		(\$963,434.95)

Based on FY 2016, AOC expects to pay 398,958 hours of juror pay. At the FY 2016 rate of \$6.75 per hour, the total paid would be \$2,692,696.26. To eliminate the shortfall of (\$963,424.95) by reducing juror pay “to stay within the appropriation” as stated in HB2, juror pay would have to be limited to \$1,729,544.31. This would require paying jurors a rate of \$4.34 per hour.

If the Court sets the rate of juror pay lower than the \$6.75 paid in FY 2016, but above the rate of \$4.34 required to eliminate the projected deficit, the deficit will be reduced by \$199,479 for each \$.50 below \$6.75 per hour:

<u>Juror Hourly Rate</u>	<u>Projected Deficit</u>
\$6.25	\$763,943.19
\$5.75	\$564,464.19
\$5.25	\$364,985.19
\$4.75	\$165,506.19

If the Court sets juror pay at **\$5.00** per hour, total hourly pay to jurors would be projected to be \$1,994,790 with a projected deficit of **(\$265,245.75)**.

Paying Jurors \$5 Per Hour Is Consistent With High Juror Pay in Other States

Using data from the NCSC website on juror pay, a rate of \$5.00 per hour would equal the highest daily rate paid in any state. No state other than New Mexico pays an hourly rate. Many states pay nothing or a low rate for the first day up to three days, and then pay a daily rate. This chart shows the *highest* rate paid by the state:

<u>\$50/day*</u>	<u>\$45/day</u>	<u>\$35 - \$40/day</u>	<u>\$30 or less/day</u>
CO, CT, MA ND, SD	UT**	MS, NV, NJ, NY, NB, NC, OH, TX, WV***	AL, AK, AZ, AR, CA, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MO, MT, NH, OK, OR, PA, RI, SC, TN, VT, VA, WN, WI

*None of the states pays \$50 on the first day. Colorado pays \$0 for the first 3 days, Connecticut pays \$0 for the first 5 days, Massachusetts pays \$0 for the first 3 days, North Dakota pays \$25 for the first day, and South Dakota pays \$10 per day but increases to \$50 if selected to serve.

**Utah pays \$18.50 on the first day and \$45 per day thereafter.

***Mississippi, Nevada, New Jersey, North Carolina, North Dakota, and Ohio do not pay \$40 on the first day. New York, Texas and West Virginia do pay \$40 from the first day. Nebraska pays \$35 per day.

The data from other states shows that at \$5 per hour, paying jurors in New Mexico \$40 per day would match the highest rate paid on the first day of jury service for any state (equal to the first day ate paid in New York, Texas, and West Virginia). Paying \$5 per hour would reduce the projected deficit to \$265,245.75. Here are the supplemental and deficiency amounts appropriated in the most recent fiscal years:

FY14:

Supplemental - \$600,000

FY15:

Supplemental - \$550,800
Deficiency - \$596,100
Total - \$1,146,900

FY16:

Supplemental - \$574,100
Deficiency - \$391,000
Total - \$965,100

There are at least three reasons to set juror pay at \$5 per hour.

1. Setting juror pay at \$5 per hour projects to bring total costs as close as is reasonably possible to the statutory direction in HB2 to establish a pay rate that will keep costs within the appropriation.
2. At \$5 per hour New Mexico would match the highest daily compensation (\$40) paid to jurors on the first day of service in any state. New Mexico jurors would not be unfairly compensated.
3. Revenue projections forecast difficult fiscal circumstances during the 2017 legislative session. To the extent any supplemental funding is available the highest priority should be to supplement magistrate court operational funds. The projected deficit for magistrate courts is \$900,000. The only viable alternative to supplemental funding for magistrate courts is to furlough hourly employees. Reducing or eliminating a Jury & Witness deficit may help AOC obtain supplemental funding for magistrate courts.