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SUPREME JUDICIAL COURT SUBMITS COURT REFORM BILL TO LEGISLATURE

BOSTON, MA (December 4, 1990)-- The Chief Justice and Associate Justices of the Supreme Judicial Court today submitted a court reform bill to the Legislature which, if approved, will strengthen significantly the Judiciary's managerial authority and control of the judicial branch. This is the first time that all seven Justices of the Supreme Judicial Court have signed a bill submitted to the Legislature.

If enacted, the court reform legislation will enhance the administrative powers and responsibilities of the Chief Justice and Associate Justices of the Supreme Judicial Court. The bill gives the Supreme Judicial Court, or its designees in certain cases, authority over judicial personnel, finances, facilities, court administrators and judicial business.

Chief Justice Paul J. Liacos said, "If the Judiciary is to respond to the public's needs and operate efficiently, it must have basic management tools. This legislation provides for structural changes within the judicial branch that will improve the administration of justice."

The SJC bill authorizes the Supreme Judicial Court to close any court when it is no longer needed provided that a plan and justification for closing the

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court is submitted to the Governor and Legislature. The plan would be effective sixty days after its submission. Currently, legislation would have to be enacted to close a court. The SJC bill also authorizes the Court to suspend court sessions, transfer cases and consolidate cases, as it deems necessary.

Another important provision of the bill allows the SJC to transfer funds among all budgetary line item accounts in the judicial system. Currently, the Judiciary must request this authority from the Legislature for each fiscal year. This provision gives the judicial branch the flexibility to manage its funds more efficiently.

As for transfer of personnel, the SJC bill allows for the assignment of judges and court personnel to various places "within reasonable distance" without obtaining numerous approvals as is now the case. Elected Clerk Magistrates are exempt from this provision. This authority allows the Judiciary to transfer personnel to courts where they are most needed.

The SJC bill also provides that the Justices of the Supreme Judicial Court appoint the Chief Administrative Justice of the Trial Court and the Trial Court Administrative Justices to "serve at their pleasure." Currently, there are fixed terms for those positions. Additionally, it provides for the appointment of a non-judge "state court administrator" to serve in place of the Chief Administrative Justice, if the SJC wishes to do so.

Another provision of the SJC bill states that the Chief Justice of the Supreme Judicial Court, subject to the full Court's approval, establish procedures for the appointment of Clerk Magistrates (excluding the elected clerks and registers of probate). The appointments of the clerks would be made by the Administrative Justices of the Trial Court. Currently, the Governor appoints the Clerk Magistrates.

Further, the bill authorizes the Administrative Justices of the applicable Trial Court departments to appoint the First Justices of the various divisions. Currently, the First Justices are assigned according to seniority. This provision

applies to the District Court, Juvenile Court, Housing Court and the Probate and Family Court departments.

For purposes of accountability, the SJC bill also requires the Chief Justice of the Supreme Judicial Court to submit a written report on the state of the Judiciary to the Legislature each year.

The bill embodies the court reform recommendations submitted earlier by Chief Justice Liacos to Governor Dukakis. Although the SJC bill resembles the one filed by the Governor in his 1991 fiscal year appropriations package, there are key differences between the two bills.

The SJC legislation, if enacted, will be effective immediately upon its passage.

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(See attached, Summary of Court Reform Legislation)

November 30, 1990

Summary of Court Reform Legislation

The following is a section-by-section summary of the enclosed legislation:

SECTION 1 amends G. L. c. 7, § 41C (the responsibility of the Deputy Commissioner of Capital Planning and Operations with regard to court facilities) to insert a cross-reference to the powers of the Chief Justice of the Supreme Judicial Court appearing in G. L. c. 211, § 3.

SECTION 2 amends G. L. c. 29A, § 6 (Court Facilities Council) to require the Council to advise the Chief Justice of the Supreme Judicial Court as to the exercise of his powers and duties with respect to court facilities. The section currently requires the Council to advise the Deputy Commissioner of Capital Planning and Operations and the Chief Administrative Justice (CAJ); this current provision remains in effect under the draft legislation.

SECTION 3 amends G. L. c. 185, § 2 to state that the Administrative Justice of the Land Court is subject to the administrative authority of the Chief Justice of the Supreme Judicial Court. As is now the case, the Administrative Justice would continue to be subject to superintendence of the SJC and the administrative authority of the CAJ.

SECTION 4 would amend G. L. c. 185, § 6 to provide that the Administrative Justice of the Land Court, subject to the approval of the Chief Justice of the SJC and the selection procedure established pursuant to G. L. c. 211, § 3, would appoint the Recorder to serve at the pleasure of the Administrative Justice. At the present time, the Governor appoints the Recorder who holds office during good behavior.

SECTION 5 would amend G. L. c. 185, § 7 to place the Recorder of the Land Court under the direction of the Administrative Justice instead of the Land Court.

SECTION 6 would amend G. L. c. 185C, § 8 to have the Administrative Justice of the Housing Court Department, with the approval of the Chief Justice of the SJC, appoint a first justice

for each division who serves at the pleasure of the Administrative Justice.

At the present time, the senior justice (who is the administrative head of the division) serves as first justice.

SECTION 7 amends G. L. c. 185C, § 8A to make the Administrative Justice of the Housing Court Department subject to the administrative authority of the Chief Justice of the SJC. The Administrative Justice would continue to be subject to the authority of the SJC and the CAJ.

SECTION 8 amends G. L. c. 185C, § 9 to provide that the Administrative Justice of the Housing Court Department, subject to the approval of the Chief Justice of the SJC and the selection procedures established pursuant to G. L. c. 211, § 3, appoints the clerk for each division who serve at the pleasure of the Administrative Justice. At the present time, the clerks are appointed by the Governor; they hold office during good behavior.

SECTION 9 amends G. L. c. 211, § 3 to state the general powers of the Chief Justice of the SJC, which are subject to the general superintendence powers of the SJC.

The second paragraph is amended for the purpose of removing an outdated reference to G. L. c. 211, § 3C, which was repealed in 1978, and to delete the last sentence in the paragraph.

Significant changes from the Governor's version of § 3 of Chapter 211 include the following:

(a) The justices of the SJC appoint the CAJ and the Administrative Justices who serve at their pleasure. The SJC also may close any court when it is no longer needed provided that a plan and justification for closing the court is submitted to the Governor and both houses of the Legislature. The plan would go into effect sixty days after its submission. The SJC would determine venue and jurisdiction for matters formerly heard in the closed court.

(b) The enumerated powers of the Chief Justice of the Supreme Judicial Court are "subject to the general superintendence power of the supreme judicial court". The Chief Justice of the SJC is to have the authority necessary to carry out stated responsibilities "including, but not limited to," the enumerated powers.

(c) The assignment power states that "elected clerks and registers of probate in the trial court shall not be assigned

outside of the departments or divisions to which they are elected without their consent."

(d) The authority to transfer funds among line items refers to the judicial system instead of "the departments of the trial court". By this change, the budgets of the OCAJ, the Appeals Court, and SJC are covered by the provision.

(e) To the power to suspend sessions and transfer cases, there is added a power to "consolidate cases".

(f) Instead of appointing clerk-magistrates, as in the Governor's bill, the Chief Justice of the SJC establishes procedures, subject to the approval of the SJC, for the appointment of clerk-magistrates by the Administrative Justices. (Elected clerks continue to be excluded from this provision which also does not apply to clerks appointed prior to the effective date of the act.)

(g) Instead of a power to assign matters to non-judges, the bill provides that the Chief Justice of the SJC may establish procedures, subject to the "rule-making power" of the SJC, for the assignment of matters to "appropriate personnel". The language is intended to be broad enough to permit assignments to non-court persons or agencies, such as private mediators or arbitrators.

(h) For purposes of accountability, the Chief Justice of the SJC is required to make a written report on the state of the judiciary to both houses of the Legislature on or before October first of each year.

SECTION 10 revises G. L. c. 211, § 4 so that the SJC may remove from office an appellate court clerk or an elected clerk, register, or clerk appointed by the Governor, if in the Court's judgment the public good so requires. If sufficient cause is shown and the public good so requires, the SJC may, as is currently provided, remove a county commissioner, county treasurer, sheriff, or district attorney.

SECTION 11 substantially revises G. L. c. 211B, §§ 5, 6 and 7. Under the new section 5, the SJC appoints the administrative justices, who serve at the Court's pleasure. The administrative justices continue to be appointed from among the justices of a particular department and "may" continue to perform judicial duties.

Under the new section 6, the SJC appoints the CAJ who serves at the Court's pleasure. The CAJ may be an administrator who is not a judge. If the CAJ is not a judge, the office is titled

state court administrator which term shall be synonymous with the "CAJ" in the General and Special laws. The current provisions for nominating and selecting the CAJ are deleted. If a judge, the CAJ "may" continue to perform judicial duties.

Section 7 of Chapter 211B, which provides for a temporary CAJ and administrative justice, is revised to be consistent with sections 5 and 6. A temporary CAJ or Administrative Justice serves at the pleasure of the SJC.

SECTION 12 amends G. L. c. 211B, § 8 by excepting actions taken under G. L. c. 211, § 3 from the requirement that removals of court employees are subject to review by the Advisory Committee on Personnel Standards.

SECTION 13 amends the first seven paragraphs of G. L. c. 211B, § 9. In making assignments, the CAJ "may" (instead of "shall") consider the preferences of judges for certain departments. A judge aggrieved by an assignment of the CAJ may appeal the order to the Chief Justice of the SJC "who shall forthwith determine the matter". (The current section provides for a hearing by the SJC.) The CAJ may assign non-judicial personnel to various places without obtaining the approval of numerous interested parties, as is now the case. The requirement that an assignment be within a "reasonable distance," from the place where the employee works, is retained. Elected clerk-magistrates cannot be assigned away from the court to which they were elected without obtaining the elected clerk's consent.

The CAJ is to be provided with offices at the expense of the Commonwealth.

SECTION 14 amends G. L. c. 211B, § 10 to state that administrative justices are subject to the authority of the Chief Justice of the SJC. As is now the case, the administrative justices would continue to be subject to the SJC and CAJ.

SECTION 15 inserts in G. L. c. 211B, § 11 a provision that the CAJ may report a person for non-compliance with an order to the Chief Justice of the SJC. The section currently provides that the report is to the SJC.

SECTION 16 amends G. L. c. 211B, § 12 to provide that the CAJ's appointment of an "administrator of the courts", shall be subject to the approval of the Chief Justice of the SJC. The approval is now by the Full Court.

SECTION 17 amends G. L. c. 217, § 2 to provide that the Administrative Justice of the Probate and Family Court Department designates, subject to the approval of the Chief Justice of the SJC, the first judge in each county who shall serve at his pleasure. The first judges are currently serving in that position on the basis of seniority.

SECTION 18 amends G. L. c. 217, § 8 to state that the Administrative Justice of the probate courts is subject to the authority of the Chief Justice of the SJC. As is now the case, the Administrative Justice would continue to be subject to the SJC and CAJ.

Also, annual reports of registers would be sent to the Chief Justice of the SJC. These reports would continue to be sent to the CAJ and Administrative Justice.

SECTION 19 amends G. L. c. 218, § 6 to provide that the Administrative Justice of the District Court Department shall designate, subject to the approval of the Chief Justice of the SJC, the first justices in each division who serve at the pleasure of the Administrative Justice. Such first justices now serve on the basis of seniority.

SECTION 20 amends G. L. c. 218, § 8 to provide that clerks of the District Court and BMC departments shall be appointed by the administrative justices of the appropriate departments, subject to the approval of the Chief Justice of the SJC and in accordance with G. L. c. 211, § 3. Such clerks serve at the pleasure of the Administrative Justice.

These clerks are currently appointed by the Governor.

SECTIONS 21, 22, and 23 amend G. L. c. 218, § 42A, § 51A and § 57A to indicate that the administrative justices of the District Court, BMC, and Juvenile Court departments are subject to the authority of the Chief Justice of the SJC. The current provisions, whereby the administrative justices are subject to the SJC and CAJ, remain in place.

SECTION 24 amends G. L. c. 218, § 58 to provide that the Administrative Justice of the Juvenile Court Department designates, subject to the approval of the Chief Justice of the SJC, the first justice in each division who serves at the pleasure of the Administrative Justice. The first justices now serve in that position by reason of seniority.

SECTION 25 amends G. L. c. 218, § 58 to indicate that the clerk of each division of the Juvenile Court Department is appointed by the Administrative Justice, subject to the approval of the Chief Justice of the SJC and in accordance with G. L. c. 211, § 3. The clerks serve at the pleasure of the Administrative Justice.

Juvenile Court clerks are currently appointed by the Governor.

SECTION 26 amends G. L. c. 276, § 98 to require the approval of the Chief Justice of the SJC for the CAJ's appointment of the Commissioner of Probation. The Commissioner continues to have a six year term.

SECTION 27 is a grandfather provision as to the appointment of clerks by administrative justices.

SECTION 28 is a protective outside section which provides that notwithstanding any general or special law to the contrary, the Chief Justice of the SJC shall have the authority necessary to carry out the responsibilities stated in G. L. c. 211, § 3.

SECTION 29 is a severability provision.

SECTION 30 makes the act effective upon its passage.