



**Response to Questions on the FY 2010
County's Line of Business & Schools Program Review Processes
Fall 2008**

Request By: Supervisor Bulova

Question: What are the costs and potential benefits from hiring permanent law clerk-type positions in the Circuit Court?

Response: The following response to this question was prepared by Judge Dennis J. Smith, Chief Judge of the Fairfax County Circuit Court.



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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January 15, 2009

The Honorable Sharon Bulova
Vice Chairman, Fairfax County Board of Supervisors
9002 Burke Lake Road
Burke, Virginia 22015

Dear Vice Chairman Bulova:

I want to thank you for allowing me to appear before you last month to explain the method of operation used by the Fairfax County Circuit Court in administering the justice system in Fairfax County and why that system would no longer be viable if we did not have all of our current law clerk positions filled. As I am sure you could tell by my presentation, the Judges of our court are very proud of our ability to provide the public very rapid access to the court for resolution of civil disputes and criminal charges. I hope that during my appearance before you I satisfactorily answered the questions posed regarding our need for a law clerk for each judge.

Subsequent to the meeting I was asked to provide an additional response to your inquiry regarding permanent law clerks as opposed to temporary law clerks. For purposes of this communication I assume that you are referring to permanent non-lawyer paralegals as law clerks because attorneys hired for these positions would not only start at our current law clerk salary but also participate in Fairfax County retirement programs, which would make them more costly from the outset.

Non-lawyer paralegals would be very helpful with ministerial tasks, and could be of assistance with some basic legal research. On a weekly basis, however, we confront issues which are too complex or novel for non-lawyer paralegals. The quality of the work of our court would suffer greatly if we stopped hiring men and women who graduated in the top third of their classes at very highly rated law schools. I am also convinced that only a very rare paralegal could do the legal analysis we require under the time constraints our docket imposes upon them. You will recall that law clerks

receive legal briefs on Tuesday for motions' hearings on Friday. In some weeks a law clerk might have 20 such motions and he or she must read those briefs, analyze them, and provide an analysis to the judge by the ensuing Thursday evening. A daunting task even for law school graduates who have received three years of comprehensive legal research and writing training.

Additionally, the initial total cost differential between paralegals and law clerks totals \$65,000 to \$70,000 more for all 15 law clerks for the first year. This is only true, however, if we hire all paralegals at the minimum rate of the paralegal pay scale (S-21). You must also bear in mind that our law clerks are "professional employees" who routinely work 50+ hours per week without overtime and/or compensation time. If you considered the cost of overtime which would be due paralegals, paralegals will cost more in the first year. Furthermore, paralegals' salaries would increase each year based on their performance evaluations.

Attached is a chart detailing our analysis of the cost differential between our current law clerks and permanent lawyer and non-lawyer law clerks. We have assumed pay raises consistent with historical raises. We have not assumed pay increases within grade, which would of course apply to any permanent clerks. We have added in a cost for our one-week overlap and compensation time for Wendy Hahn for the training weeks when her work days are significantly extended We have also set out the pay ranges for the entire grades for permanent lawyer and non-lawyer law clerks as some may be hired at higher steps within the grade.

You must also consider that permanent non-lawyer law clerks will require much more extensive training as they do not come to the job with a three year education at an accredited law school. The judges currently train the law clerks over a four-week period. We do this with the assistance of Ms. Wendy Hahn, (an attorney, former law clerk, and our law clerk supervisor), and practicing attorneys. We are able to do this in such a short time because their law schools have trained them in legal reasoning. Paralegals would require significantly more training than law school graduates, not only in basic substantive law, but particularly in legal reasoning, analysis, and writing.

Finally, I must correct figures used in my presentation. I have since obtained information from the Virginia Supreme Court regarding our 2005 caseload which indicates the number of total cases commenced in our Circuit during that year was actually 17,674, not the internal 19,565 number I presented to you at the hearing. This decreased number for cases commenced in 2005 means that our cases commenced have actually increased from 2005 to the present not by the 20.8 percent I previously stated but by 34.5 percent. While we are striving to maintain the current level of access to a hearing before a judge and the speedy rate of conclusion of cases, it is not surprising that our pending caseload continues to grow. Any decrease in the number of clerks would only exacerbate this problem as we would need significantly more time off the bench to review and process agreed Orders and to conduct legal research.

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In closing, I thank you again for your support of our court through the years. I stand ready to meet with you individually or the Board as whole to answer any other questions you may have regarding the administration of the Circuit Court.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "Dennis J. Smith". The signature is written in a cursive, somewhat stylized font.

Dennis J Smith
DJS/cjf
Enclosure
cc: Mr. Tracy Hazlett, DMB

Costs & Benefits of Permanent, non-law school graduate Law Clerks

	Law school graduate limited term clerks	Permanent Attorney Clerks (Per Fairfax County pay scale L-1 ¹)	Non-Attorney Paralegals (Per Fairfax County pay scale S-21 ¹)
Year 1 Salary	\$50,654	\$50,654	\$44,327
Year 1 Salary + benefits	\$60,546 (19.35% for benefits—no retirement) \$908,190 + \$14,612 training week overlap + \$2,640 comp time for manager = total cost of \$925,442	\$65,263 (28.84% for benefits) = total cost of \$978,945	\$57,111 (28.84% for benefits) = total cost of \$856,665 (Without factoring in any training or comp time or OT)
Year 2 Salary	\$52,153 (Assuming 2.96% increase for Market Rate Adjustment)	\$53,288 (Assuming agency average of 5.2% merit increase)	\$46,632 (Assuming agency average of 5.2% merit increase)
Year 2 Salary + Benefits	\$62,245 (19.35% for benefits—no retirement) = total salary + benefits of \$910,738.50² + \$14,612 for training overlap week + \$2,777.28 cost of comp time = total cost of \$928, 127.78	\$68,656 (28.84% for benefits) = total cost of \$1,029,840	\$60,081 (28.84% for benefits) = total cost of \$901,215 (Without factoring in any training or comp time or OT)

Note: Estimate 19.35% for current clerk benefits—if add in retirement, estimate would add extra 9.49%.

1. Pay scale up to maximum base pay without benefits for L-1 of \$84,423.66 and \$73,879.69 per year for S scale. While permanent non-lawyer paralegals might start at the lowest point on the pay scale (\$44,327, or \$57,111 with benefits), they would then move up the pay scale as time passed.
2. On average 1.5 law clerks stay for a 2nd year (\$817,371 for 13.5 new and \$93,367.50 for 1.5 2nd yr clerks)