



Judicial Council of California. Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For Business Meeting on: April 23, 2010

Title	Agenda Item Type
Trial Court Funding: Analysis of the Request from the Superior Court of Los Angeles County for Judicial Council Support Regarding Redirection of Construction Program Funds	Action Required
	Effective Date
	April 23, 2010
	Date of Report
Rules, Forms, Standards, or Statutes Affected	April 13 ¹ , 2010
None	Contact
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Executive Summary

The Executive and Planning Committee of the Judicial Council directed the Administrative Director of the Courts to review issues raised in a letter from the presiding judge of the Superior Court of Los Angeles County related to the fiscal situation facing the court and the court's perceived need to immediately begin reducing staff, with layoffs to continue in successive waves through fiscal year 2011–2012. While the letter does not specifically request funding in the

¹ This date reflects copyediting and annotation of new attachments. No further substantive changes have been made since the previous release of the report to the Executive and Planning Committee on March 29, 2010.

current year to avoid layoffs planned for this fiscal year, the court does request that the council seek authority from the Legislature and Governor to transfer to the court \$47 million of annual funding intended to support the construction of courthouses, in order to defer a planned layoff of 500 employees in FY 2010–2011.

In response to the directive of the Executive and Planning Committee, Administrative Office of the Courts (AOC) staff has reviewed court-reported financial and position data, assumptions, and computations used in the court’s cost-reduction plan and also reviewed information submitted by other courts throughout the state as part of a recent survey of anticipated multiyear court impacts resulting from funding reductions currently under review by the Legislature. In this effort, Los Angeles court staff has been cooperative in assisting us to understand the court’s perspective and assumptions with regard to the court’s determination of the need to begin implementing reductions. The court has consistently indicated that it used broad and general assumptions in determination of its need to implement these cuts.

Based on our review of relevant information, staff has arrived at two principal conclusions:

1. The level of reductions and unfunded costs facing all 58 of California’s trial courts is far too large and is not sustainable—courts will require additional funding to be able to avoid significant reductions in operations, including potentially substantial staff reductions and furloughs over the next three years; and
2. The scale of staff reductions planned by the Los Angeles court is larger than necessary, due to underestimated savings resulting from staff attrition and layoffs, additional funding not reflected in the court’s plan, and other issues.

Even after adjusting for this overstatement, though, the level of reductions facing Los Angeles court, like all other courts in the state, is staggering.

This report details (A) the court’s reduction plan, (B) staff’s analysis of that plan, and (C) summarized information and findings relating to a survey of trial courts regarding the impact of pending budget reductions and the suspension of State Appropriations Limit (SAL) funding.

Recommendation

The Administrative Office of the Courts recommends that the Judicial Council:

1. Direct staff to continue to pursue, on an urgent basis, a broad and flexible approach to working with the Legislature and Governor to meet the council’s objectives regarding ensuring sufficient funding necessary to support courts being open and accessible every business day of the year. This approach should consider all viable ongoing, limited-term, and one-time funding solutions (including transfers of funding from construction fund monies where such transfers would not impact the timing and scale of planned facility projects) as a means to achieve financial stability for all 58 of the state’s superior courts, especially during the next three fiscal years; and
2. Not proceed at this time to advocate for the redirection of substantial ongoing funding from the Immediate and Critical Needs Account within the State Court Facilities

Construction Fund to offset reductions to trial court operations, as proposed by the Superior Court of Los Angeles County. This approach would too narrowly focus on one solution, an option that could significantly impair the ability of the branch to address critical facility needs in courts throughout the state for years to come.

Previous Council Action

The receipt of the letter from the Superior Court of Los Angeles County was reported at the Judicial Council business meeting on February 26, 2010. The council's Executive and Planning Committee directed the Administrative Director of the Courts to report back to the council with additional information, analysis, options, and recommendations regarding issues raised in the letter, as well as the situation facing other courts. This information was to be reported as part of the council's budget process for FY 2010–2011.

Rationale for Recommendation

On February 22, 2010, Presiding Judge Charles W. McCoy, Jr., of the Superior Court of Los Angeles County, submitted a letter to the Judicial Council advising the council of the court's intention to implement substantial staff reductions beginning this fiscal year, with additional staff reductions to occur in FY 2010–2011 and FY 2011–2012. In total, the court is planning for a reduction of 1,827 court employees by June 30, 2012. As part of this plan, the court intends to lay off 329 employees by the end of March 2010, with additional waves of layoffs that will affect: 500 employees by the end of September 2010 and 530 more employees by the end of August 2011. The court indicates that the rest of the staffing reductions would be accomplished through attrition.

The letter states that the 500 staff layoffs planned for next September could be postponed if the court is able to secure \$47 million in additional ongoing funding. The court suggests that this be accomplished by redirecting monies from funding intended to support the statewide court facility construction program, with possible consideration also given to redirecting monies from the Trial Court Improvement Fund, the Judicial Administration Efficiency and Modernization Fund, or other court construction program funds from the State Court Facilities Construction Fund. Presiding Judge McCoy requests that the council advocate for action by the Legislature and Governor to provide authorization to implement this redirection. The request indicates that this change should be done not only for the benefit of the Los Angeles court, but also to address undetermined funding needs of other courts in the state.

In response to the direction of the Executive and Planning Committee, AOC staff initiated a review of the cost reduction plan received from the Los Angeles court, which, we understand, was an underlying source of the information conveyed in Presiding Judge McCoy's letter. Staff discussed the plan with court management in detail, and the court provided additional supporting information. Staff also reviewed 51 court responses to a statewide survey regarding multiyear impacts and planned mitigation measures that courts are considering in response to funding reductions and unfunded costs. The purpose of these reviews was to better understand and assess the assumptions underlying the Los Angeles court's cost-reduction plan as well as to understand how similar issues are being addressed in other courts throughout the state.

A. Cost-Reduction Plan of the Superior Court of Los Angeles County

Presiding Judge McCoy's letter identifies various financial and cost savings amounts. Staff of the Los Angeles court staff provided the underlying multiyear (FY 2009–2010 through FY 2012–2013) reduction plan that is the source of this information. Court staff was very cooperative in assisting AOC staff to understand the assumptions and computations used to develop the plan.

Assumptions incorporated in the plan of the Los Angeles court include:

- All reductions to trial court funding implemented in the 2009 Budget Act will be ongoing.
- The Legislature will not further reduce trial court funding through FY 2012–2013.
- The Legislature will provide no SAL funding and only minimal additional one-time or ongoing funds to offset reductions and address unfunded cost increases through FY 2012–2013.
- The statutory sunset of the security fee increase approved last year by the Legislature will be extended or eliminated.

In addition to these high-level funding assumptions, the court's cost-reduction plan rests on various specific cost assumptions, including:

- The savings from employees who leave the court through attrition (retirement, transfer, termination, etc.) or layoffs is \$60,000 per employee per year (or less where specifically identified), including salary and benefits (only for benefit costs that are tied to the number of employees).
- Court employees have historically left at an approximate rate of 13 per month, for an annual total of 156. The court indicates that this level of staff separations has continued through the first half of FY 2009–2010, and it is assumed that the rate will continue through FY 2012–2013.
- Only a small percentage of the savings from employee attrition would be available to offset shortfalls in the court in the first year. The court has indicated that the minor first-year savings assumption is based on the fact that lump sum separation payments would need to be made to personnel leaving court employment and that the specific timing of staff separations is not known.
- The court projects cost increases for employee retirement and health benefits and assumes that most of these costs will not be funded.
- The court will maintain the minimum Operating and Emergency fund balance as identified in the council's approved Trial Court Fund Balance Policy. The court will not use these funds as it addresses the projected funding shortfalls.
- No funds from either the local judicial donation program or from the statewide judicial voluntary salary waiver program have been assumed to be available to offset projected shortfalls that will be experienced by the court.

Given these assumptions, the court has projected large ongoing multiyear funding shortfalls. The court has laid out a plan to address these shortfalls, which includes the following planned cost-reduction measures:

1. Furloughs of court staff will continue through the end of FY 2011–2012. This program would be implemented whether or not a statewide court closure is implemented in FY 2010–2011 and FY 2011–2012.
2. Employees who leave court service through the end of FY 2011–2012 will not be replaced, resulting in employee salary and benefits savings due to attrition.
3. The court plans to implement three waves of employee layoffs. The first increment would be 329 employees at the end of March 2010 (primarily student workers, retirees, part-time workers, and recent hires assumed to be still at the lowest pay steps). The court would then lay off 500 more employees as of September 30, 2010, and a final wave of 530 employees would be laid off as of August 31, 2011. The last wave of layoffs would be accomplished as part of a courtroom and courthouse closure approach that would also generate security and other savings. Under this plan, the court will have laid off a total of 1,359 employees by the end of FY 2011–2012. In total, when projected attrition is included, the court’s planned staff reduction would be an estimated 1,827 employees.²

B. Analysis of Los Angeles Court’s Financial Assumptions and Cost-Reduction Plan

Making one-year predictions regarding the outlook for court funding amidst the state financial crisis is speculative, at best. The court, in an attempt to rationally plan its operations over the course of the next several years, has developed multiyear funding assumptions that entail, consequently, even more uncertainty. Based on our review, though, it is our assessment that the court’s assumptions appear overly pessimistic. Although the State Budget continues to be substantially out of balance, judicial branch leadership is committed to working with the Governor and Legislature to identify opportunities, both one-time and ongoing, for revenue and other funding enhancements, as well as reduction of proposed funding cuts or the conversion of some level of these cuts to one-time or limited-term rather than ongoing. Any one-time funding increases or solutions that are approved by the Legislature would delay the need to implement some of the measures proposed by Los Angeles court. Deferring the implementation of actions that would severely impair public access to the court, when such deferral can be achieved in a responsible and prudent manner, would be important as the state’s economy and finances are not expected to remain as challenged as they are in the current year. Ongoing funding solutions would permanently reduce the need to implement staff layoffs and facility closures as currently proposed by the court. Given that substantial funding relief, both one-time and ongoing, was identified to offset reductions that were allocated to the courts in FY 2009–2010, we believe that it is premature and overly conservative to assume that the leadership of the branch will be unable to achieve any progress in securing some level of additional funding relief from the Legislature

² We note that the court has indicated that there is risk that planned security savings from facility closures included in the plan may not be achieved, to the extent that there is a need to add staff for holding cells. Court staff indicates that this could create the need for additional reductions in future years to achieve the planned savings.

to address court funding shortfalls that would otherwise occur in fiscal years 2010–2011 through 2012–2013.³

Beyond these overall funding assumptions, the AOC has identified various concerns regarding the specific methodology used by the court in estimating its overall shortfall and the savings that would be achieved by its planned cost-savings measures. These issues are:

- The court has estimated the cost savings associated with employee attrition and layoffs at \$60,000 per employee per year (except for planned layoffs in FY 2009–2010, for which the assumption is a lower average). The AOC believes that this amount substantially understates the salary and benefit savings that is currently accruing through attrition and would be achieved by the court as a result of its planned staff reductions. Expenditure and budget information reported by the court reflects the following:
 - Based on FY 2008–2009 personal services expenditure information in the court’s year-end Quarterly Financial Statement, the average actual cost of compensation for filled positions in the court was approximately \$90,945. This amount reflects the total cost of salaries and all employee benefits.
 - Based on the FY 2009–2010 personal services budget by position in the court’s Schedule 7A, offset by the court’s salary savings rate of 6.75 percent and not including workers compensation, retiree health contributions, and pension obligation bond costs that are not impacted by the number of court staff, the average annual compensation is:
 - \$78,125 for all nonjudicial employees;
 - \$75,246 for all nonjudicial employees excluding managers; and
 - \$74,657 for all nonjudicial employees excluding managers and supervisors.

When this information was discussed with court management, they indicated that it is planned, at least initially, that layoffs will focus on the lowest ranking staff, and thus a lower average should be used in computing any potential staff savings. On additional review of reported court position information, though, we note that the court has reported that the cost of compensation for over 60 percent of court staff exceeds \$60,000 per year.

While the court’s initial staff layoff appears focused on lower compensated staff, the total scale of potential layoffs in the court’s plan, and the need to maintain an appropriate ratio of managers and supervisors to staff, would support the assumption of salary savings closer to the computed averages identified above.

- The court appears to understate first-year savings that would result from its attrition plan. For example, while the court estimates annual savings from the expected attrition of 156

³ As noted above, there is tremendous uncertainty related to state funding. While staff believe that there are legitimate reasons to be less pessimistic than the Los Angeles court regarding the outlook for court funding, we understand that it is entirely possible that reductions to the court system could turn out to be even worse than anticipated by that court, to the extent that the Legislature or the Governor act to increase the cuts already proposed for the judicial branch.

employees at approximately \$9.4 million per year, the court assumes only \$1.7 million in the first year. In general, unless an organization is able to specifically identify the employees who will leave court service and the specific savings that will result, the best means of estimating first-year savings is to multiply full-year savings by 50 percent, based on an assumption that, on average, employees will end their employment evenly throughout the fiscal year. This change would increase the estimated savings in the court plan by several million dollars per year.

Because court staff has indicated that Los Angeles court's reduction plan would eliminate funding that would otherwise be available to pay lump sum payments resulting from employee separations, we are reducing the estimated first-year savings by \$2.6 million, which is the court's projection of annual lump sum amounts.

- The court's plan indicates that it is intended to reflect the outlook for trial court funding as proposed in the 2010–2011 Governor's Budget. The Governor has included a proposed augmentation of \$17.862 million to address unfunded court employee retirement, retiree health contributions, and health benefit costs, which is not included in the court's assumptions. Beyond the specific dollars proposed, more important is the proposal to fund these baseline costs going forward, similar to how these costs are funded for executive branch employees. The court's plan, while ostensibly reflecting the Governor's Budget, ignores this funding proposal and instead assumes that cost increases in these areas would be only minimally funded through FY 2012–2013.
- As part of the one-day-per-month court closures implemented in FY 2009–2010, judges were able to voluntarily participate in a statewide pay reduction program, the voluntary salary waiver program, as a way to voluntarily contribute to offsetting overall court reductions, commensurate with the level of pay reductions being experienced by court employees. Various courts, including the Los Angeles court, also separately established local judicial donation programs as an alternative option for judges to participate in supporting their courts. In this court, the vast majority of judges elected to participate in the local donation program.

The Los Angeles court has assumed that it will receive no funds from these programs to assist it in partially offsetting the funding shortfall. The court's judges have committed projected proceeds from the local judicial donation program to provide employees with an offset for pay reductions relating to one-day-per-month furloughs. This action means that the funds are not available to partially offset the court's shortfall. The court will, however, receive a share of the proceeds from the statewide voluntary salary waiver program, based on the salary reductions made by judges from that court who chose to participate in the statewide program. While the total number of Los Angeles court judges who participated in that program is relatively small and thus the court's share of the program proceeds will not be large, the court will benefit from those proceeds. These funds should be identified as being available to the court to offset the overall shortfall.

Reflecting the court's reduction plan and the factors and issues raised in the preceding discussion, we have prepared a cost analysis (see Attachment 1). The analysis includes three

sections. Section I displays a summary of position and funding changes included in the court's reduction plan. As reflected in that section, the court intends to implement a total staffing reduction of 1,827 employees through FY 2011–2012. The court also indicates a need to implement courthouse and courtroom closures in FY 2011–2012 that will produce additional savings. As part of this plan, the court projects that its operating reserves (not including funds that are statutorily restricted) will have decreased from \$109.6 million at the end of FY 2008–2009 to \$24.2 million at both the end of FY 2011–2012 and FY 2012–2013.

Section II of Attachment 1 displays a re-estimation of the court's plan, assuming different assumptions and computations:

1. The estimated average savings of employee salaries and benefits is increased from \$60,000 to \$78,125 per employee. This reflects the average budgeted compensation costs for nonjudicial employees, as discussed above. Because employers have limited or no control of what positions will become vacant due to retirements, transfers, and other personnel actions, and given that such attrition includes retirees who are typically at the top of the salary ranges and higher classifications, we believe this adjustment to be conservative.
2. The assumed average cost of savings associated with laid-off staff is increased from \$60,000 to \$75,246 per year, which reflects the average reported cost of court non-judicial employees, excluding managers and above. This lower level of savings compared to the average used for attrition savings seems appropriate as the court has indicated that layoffs will likely focus, at least initially, on lower-level staff, and thus it would make sense that the actual savings may be less than the average cost of court employees overall.
3. The reduced costs that will result from the 329 layoffs effective April 1 of this year, from the initial estimate of \$13.7 million per year have been re-estimated to the current estimate of \$15.2 million per year.
4. First-year attrition savings is assumed to result in 50 percent of the projected annual savings, rather than the smaller amounts estimated by the court. However, based on the court's assertion that its flexibility to deal with lump sum payouts has already been effectively reduced from its budget, the first-year expected savings reflects a reduction of \$2.6 million, the level of annual employee lump sum payments projected by the court.
5. Funding is reflected as an offset to court projected cost increases for retirement, retiree health contributions, and health benefits, consistent with the proposal in the 2010–2011 Governor's Budget.
6. Additional ongoing funding of approximately \$13.3 million has been included; this funding will be available to the court beginning in FY 2011–2012 related to retired pension obligation bond costs, net of funding increases provided to the court since FY 2005–2006 related to this item. Because this item had not been reviewed before the development of the court's reduction plan, this represents new monies not included in its assessment.

With these modified assumptions, the impact of the court's planned cost-reduction measures and the resulting financial position of the court would be substantially different than assumed in the

court's plan. As displayed in Section II of the analysis, the additional savings generated by the staffing reductions and other measures planned by the court could leave the court with increased operating reserves in excess of \$128.6 million at the end of FY 2012–2013, rather than the \$24.2 million stated in the court's plan. Based on this analysis, it appears that the court is planning a level of cost reductions that exceeds what would be necessary to operationalize the assumed funding shortfalls and cost increases.

Section III of Attachment 1 displays an alternative analysis that reflects an option of scaled-down court staffing reductions. This approach, like the display in Section II, assumes the modified cost components identified above. It appears that the court could reduce the planned layoffs by at least 500 employees (or by about 37 percent) and still effectively operationalize the identified funding shortfalls. While the Los Angeles court has already implemented the first wave of reductions to occur April 1 of this year, the court could cancel the 500 layoffs planned to occur by October 2010 and still end with a fund balance level slightly higher than targeted by the court in its plan. (We note, though, that many courts throughout the state are considering drawing down fund balances, potentially below the Operating and Emergency fund balance requirement. Staff will review the council guideline to determine whether recommendations should be made to the council to provide courts additional flexibility in this area to address operating needs, where appropriate and prudent, during the current period of financial difficulties.)

An implication of this analysis is that while the court under this scenario would still face significant fiscal challenges that will require reductions and reorganizations in services and operations, the level of reductions that would need to be implemented, and the urgency with which these changes must be effected, are substantially less than the court has assumed. Staff notes that the court's leadership has consistently indicated that they used general and broad assumptions in developing the court's multiyear plan. At a time when employees are being laid off from the court, though, it is critical that these broad estimates are more closely examined and better refined.

Section III is not an endorsement of the remainder of the court's reduction plan, but instead displays the remaining level of operational impacts identified by the court that may not be avoidable, *to the extent that additional funding relief for trial courts is not approved by the Legislature*, based on the modified assumptions discussed above. If, however, additional substantive ongoing and one-time financial relief is identified for allocation to the trial courts, this would defer, mitigate, or completely forestall the need to undertake an equivalent level of reduction actions that have been identified by the Los Angeles court.

(C) Analysis of Statewide Survey Regarding Court Plans for Addressing Reductions and Unfunded Costs

In November 2009, a survey ("*Court Plan for Addressing Reductions and Unfunded Costs*") was submitted to the superior courts on behalf of the Trial Court Presiding Judges Advisory Committee. A total of 52 courts, including the Superior Court of Los Angeles County, responded to the survey, although one of those did not provide the requested financial information. The survey requested courts to identify possible expenditure reduction measures and other actions the courts plan to implement, or are considering, to address known funding reductions and estimated unfunded cost increases through FY 2012–2013. The survey used

funding reduction assumptions that were largely consistent with those used by Los Angeles court in its plan. However, whereas the survey assumed that the \$10 security fee increase approved by the Legislature in 2009 would sunset after FY 2010–2011, consistent with statute, the Los Angeles court’s plan assumes the fee increase will continue.

Excluding the Los Angeles court, the other 50 courts that responded to the financial portion of the survey face a shortfall projected at approximately \$1.247 billion in reductions and unfunded costs through FY 2012–2013. In the survey, courts identified various cost-reduction measures under consideration to address this funding situation. Those potential measures and the number of courts indicating consideration of each action are summarized in Attachment 2 of this report. Even with these measures, all courts were not able to identify sufficient solutions to address the entire funding need. Consequently, as displayed in the table below, two courts projected a negative fund balance by the end of FY 2009–2010. The number of courts that project depleted fund balances by FY 2012–2013 grows to 22, with a combined estimated negative fund balance projected at \$270.9 million (see Table 1).

Table 1. Results of Statewide Survey (50 courts, excluding the Los Angeles Court)

	FY 2009–2010	FY 2010–2011	FY 2011–2012	FY 2012–2013
Number of courts with negative fund balances	2	8	18	22
Gross negative fund balances	(\$781,998)	(\$17,905,190)	(\$114,607,980)	(\$270,931,856)

In total, the 50 courts identified \$588.5 million in cumulative expenditure reductions, of which 34 percent is related to imposing a hiring freeze, 18 percent to laying off staff, 16 percent to furloughing staff, and 24 percent to other various and unspecified actions (see Attachment 2).

Both the survey and Los Angeles court’s reduction plan assume employee retirement, health benefit contributions, and retiree health cost increases remain unfunded from FY 2010–2011 through FY 2012–2013. However, the Governor’s 2010 Budget proposes to fund baseline adjustments of these trial courts costs similar to executive branch agencies. Specifically, the Governor’s Budget includes \$17.89 million for trial courts’ estimated cost increases related to mandatory employer retirement contributions, health benefits, and retiree health contributions. In addition, while both the survey and the Los Angeles court’s cost-reduction plan assume the continuation of the \$100 million reduction, the latter assumes that the \$10 security fee increase will not expire at the end of FY 2010–2011. Assuming that (1) all estimated cost increases for retirement, health benefits, and retiree health contributions in FY 2010–2011 through FY 2012–2013 are, in fact, offset by new funding and (2) the estimated \$40 million from the \$10 security fee increase will be available after FY 2010–2011, based on the survey, the number of courts that will have negative fund balances decreases by one, to 21 from 22, at the end of FY 2012–2013 (see Table 2).

Table 2. Results of Statewide Survey with Revised Assumptions (50 courts, excluding the Los Angeles Court)

	FY 2009–2010	FY 2010–2011	FY 2011–2012	FY 2012–2013
Number of courts with negative fund balances	2	8	16	21
Gross negative fund balances	(\$781,998)	(\$16,480,054)	(\$82,974,336)	(\$201,235,734)

The projected cumulative fund balance shortfall, as displayed above, would decrease to \$201.2 million from \$270.9 million. While significant cost savings would still be required by 21 courts to achieve financial solvency, under this scenario the magnitude of the needed adjustments would be reduced. It is important to note that even if courts were able to estimate balanced budgets as part of this exercise, that result would be accomplished at the cost of significant reductions of staff, services, and other operational impacts that would seriously degrade the ability of courts to process cases without building large backlogs and access to justice.

Conclusions From Analysis of the Proposal of the Superior Court of Los Angeles County and Information Gathered From a Statewide Court Survey

Courts throughout the state are considering various severe measures in order to absorb and operationalize pending reductions to trial court funding. All courts will be significantly impacted by the reductions that are currently proposed. (For the Los Angeles court, the projected level of staffing reductions that the court may need to implement in the next three fiscal years to address pending reductions, even as adjusted by assumptions in this analysis, would be a staggering 23.7 percent of existing employees.) This situation only exacerbates operational challenges for a court system that is already strained by an insufficient number of judges, growing caseloads, antiquated technology, and inadequate facilities. There is, consequently, a critical need for structural relief for courts from the intermediate and long-term impacts of the budget as currently proposed.

The necessity and urgency for the council to specifically seek authority to transfer construction program funding from the Immediate and Critical Needs Account, as requested in Presiding Judge McCoy’s letter, though, has not been established. Based on our review of the court’s plan, it does not appear that the court will need to lay off 500 staff next fiscal year as planned, even without the proposed transfer of \$47 million in annual construction program monies. Instead, it appears that the court will have sufficient resources to avoid all of the planned staff layoffs in the next fiscal year (see Attachment I, Section III).

Rather than partially or completely depleting funds planned for critically needed facility projects, we recommend, instead, that the council continue to pursue a broader and more flexible approach, hopefully with the support of all of our courts, that is focused on addressing the need for resources but allows branch leadership to continue to work with the Legislature, the Governor, the courts, and stakeholders in the court system to identify and craft solutions that may include some or all of the following components:

- Increased or new fee, fine, or other revenue options where feasible and appropriate;
- Reduction of current funding cuts;

- Conversion of some level of existing ongoing reductions to one-time or limited-term in order to meet the needs of the state to reduce expenditures in these difficult times, yet address court funding needs on an ongoing basis;
- Approval of the baseline operating funding proposed for employee health benefits, retirement, and retiree health contributions;
- Repeal or extension of the existing statutory sunset on the security fee increase approved last year; and
- Allocation of state-level fund balances, where appropriate.

Approval of these and other options will assist courts, including Los Angeles court, in mitigating many of the most onerous impacts of the financial challenges facing the court system during this time of economic crisis.

Comments

The proposal from the Los Angeles court was received on February 22, 2010, and the council’s Executive and Planning Committee requested an analysis of issues identified in the letter and recommendations. Neither public comment nor consideration by the Trial Court Budget Working Group has been solicited due to time constraints.

Following the initial distribution of this report, Presiding Judge Charles W. McCoy, Jr. submitted a follow up letter on March 31, 2010 (see attached).

Relevant Strategic Plan Goals and Operational Plan Objectives

Recommendations in this report would further two strategic goals set by the Judicial Council in *Justice in Focus: The Strategic Plan for California’s Judicial Branch. 2006–2012*: Goal II, Independence and Accountability, Policy B2: “Secure and account for sufficient judicial branch resources—including additional judges—to ensure accessible, safe, efficient, and effective services to the public”; and Goal VI, Branchwide Infrastructure for Service Excellence, Policies A1 and 2: “Provide and maintain safe, dignified, and fully functional facilities for conducting court business” and “Provide judicial branch facilities that accommodate the needs of all court users, as well as those of justice system partners.”

Attachments

1. Analysis of Cost-Reduction Plan of the Superior Court of Los Angeles County
2. Summary of Court Budget Impact Survey—Reduction Measures Under Consideration
3. February 22, 2010 Letter from Presiding Judge Charles W. McCoy, Jr.
4. March 31, 2010 Letter from Presiding Judge Charles W. McCoy, Jr.

Analysis of Cost-Reduction Plan of the Superior Court of Los Angeles County

Prepared by AOC Staff
March 28, 2010

Attachment 1

I. Los Angeles Court Reduction Plan

(\$ in millions)

	2009-10		2010-11		2011-12		2012-13	
	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)
<i>Beginning Operating Reserves</i>		\$109.6		\$72.8		\$31.4		\$24.2
Contractual Salary Increases		-12.5		-12.5		-12.5		-12.5
Planned Furlough Savings (court plans 3 years of closures)		17.8		11.0		9.7		
Judicial Voluntary Salary Waiver Program *		0.0						
Supplemental Funding – Retirement		1.2		1.2		1.2		1.2
Assumed Additional State Funding								11.8
Attrition Savings @ \$60,000 per Employee	-156.0	1.7	-312.0	11.1	-468.0	20.5	-468.0	28.1
Announced Staff Layoffs @ estim. budget \$ / employee (4-1-10)	-329.0	3.4	-329.0	13.7	-329.0	13.7	-329.0	13.7
Planned Staff Layoffs @ \$60,000 / employee (10-1-10)			-500.0	22.5	-500.0	30.0	-500.0	30.0
Planned Court Closures @ \$60,000 / employee					-530.0	39.0	-530.0	46.8
Other Funding Changes – Net Reductions, Use of Reserves		-48.4		-88.4		-108.8		-119.1
<i>Employee Changes and Projected Ending Operating Reserves</i>	-485.0	\$72.8	-1,141.0	\$31.4	-1,827.0	\$24.2	-1,827.0	\$24.2

II. Los Angeles Court Plan Adjusted by Revised Assumptions and Computations

(\$ in millions)

	2009-10		2010-11		2011-12		2012-13	
	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)
<i>Beginning Operating Reserves</i>		\$109.6		\$75.1		\$51.1		\$88.8
Contractual Salary Increases		-12.5		-12.5		-12.5		-12.5
Planned Furlough Savings (court plans 3 years of closures)		17.8		11.0		9.7		
Judicial Voluntary Salary Waiver Program *		0.1						
Proposed Baseline Funding – Retirement		1.2		2.4		3.6		4.8
Proposed State Baseline Funding (health benefits, retiree health)				4.5		6.0		9.0
Attrition Savings @ \$78,125 per Employee	-156.0	3.5	-312.0	15.7	-468.0	27.9	-468.0	36.6
Announced Layoffs @ actual cost / employee (4-1-10)	-329.0	3.8	-329.0	15.2	-329.0	15.2	-329.0	15.2
Planned Staff Layoffs @ \$75,246 / employee (10-1-10)			-500.0	28.2	-500.0	37.6	-500.0	37.6
Planned Court Closures @ \$75,246 / employee					-530.0	45.7	-530.0	54.9
Retirement of POB						13.3		13.3
Other Funding Changes – Net Reductions, Use of Reserves		-48.4		-88.4		-108.8		-119.1
<i>Employee Changes and Projected Ending Operating Reserves</i>	-485.0	\$75.1	-1,141.0	\$51.1	-1,827.0	\$88.8	-1,827.0	\$128.6

III. Staffing Reduction Option If No Budget Relief Provided by the Legislature

(\$ in millions)

	2009-10		2010-11		2011-12		2012-13	
	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)	Employees	\$ (millions)
<i>Beginning Operating Reserves</i>		\$109.6		\$75.1		\$22.9		\$23.0
Contractual Salary Increases		-12.5		-12.5		-12.5		-12.5
Planned Furlough Savings (court plans 3 years of closures)		17.8		11.0		9.7		
Judicial Voluntary Salary Waiver Program *		0.1						
Proposed Baseline Funding - Retirement		1.2		2.4		3.6		4.8
Proposed State Baseline Funding (health benefits, retiree health)				4.5		6.0		9.0
Attrition Savings @ \$78,125 per employee	-156.0	3.5	-312.0	15.7	-468.0	27.9	-468.0	36.6
Announced Staff Layoffs @ actual cost / employee	-329.0	3.8	-329.0	15.2	-329.0	15.2	-329.0	15.2
Required Staff Layoffs (10-1-10)	0.0		0.0		0.0		0.0	
Planned Court Closures @ \$75,246 / employee					-530.0	45.7	-530.0	54.9
Retirement of POB						13.3		13.3
Other Funding Changes - Net Reductions, Use of Reserves		-48.4		-88.4		-108.8		-119.1
<i>Employee Changes and Projected Ending Operating Reserves</i>	-485.0	\$75.1	-641.0	\$22.9	-1,327.0	\$23.0	-1,327.0	\$25.1
<i>Additional Employees Potentially Retained Compared to LA Superior Court's Current Staff Reduction Plan</i>	0.0		500.0		500.0		500.0	

* Judicial Voluntary Salary Waiver amounts projected based upon judicial salary waivers to statewide program through February 2010. Court also maintains a locally administered judicial contribution program that the court plans assume will not be used to offset court reductions.

Summary of Court Budget Impact Survey
Reduction Measures Under Consideration
 (reflects responses from 50 courts)

Attachment 2

Prepared by AOC Staff
 March 28, 2010

Reduction Measure	FY 2009–2010		FY 2010–2011		FY 2011–2012		FY 2012–2013		Cumulative		
	# of Courts	Savings	# of Courts	Savings	# of Courts	Savings	# of Courts	Savings	# of Courts	Savings	% of Total
Impose hiring freeze	30	38,170,715	33	51,674,955	32	54,290,990	32	55,810,062	35	199,946,722	34%
Eliminate/postpone salary step increases	7	643,509	13	1,155,570	13	1,219,059	11	1,104,788	13	4,122,926	1%
Eliminate/postpone cost of living adjustments	10	5,084,540	11	4,425,111	9	4,190,323	9	4,173,137	12	17,873,111	3%
Reduce employee hours	-	-	2	294,412	2	294,412	2	294,412	2	883,236	0%
Furlough staff	41	31,795,544	28	23,515,177	25	19,583,380	24	19,984,383	43	94,878,484	16%
Lay off staff	13	23,159,321	16	23,587,053	18	28,147,443	17	30,589,547	22	105,483,364	18%
Reduce counter hours	1	66,040	1	66,040	1	66,040	1	66,040	1	264,160	0%
Discontinue/reduce services	7	2,160,342	7	2,727,806	7	2,731,705	7	2,736,073	8	10,355,926	2%
Discontinue court calendars	-	-	2	522,280	2	590,832	2	634,450	2	1,747,562	0%
Close courtrooms	1	72,160	2	526,765	2	543,795	1	140,000	3	1,282,720	0%
Close courthouses	3	225,642	7	3,828,516	7	3,865,263	7	4,721,756	9	12,641,177	2%
Other	26	30,771,375	23	30,324,769	22	29,726,333	21	48,181,722	30	139,004,199	24%
Total		132,149,188		142,648,454		145,249,575		168,436,370		588,483,587	100%



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF

CHARLES W. MCCOY, JR.

PRESIDING JUDGE

TELEPHONE
(213) 974-5600

February 22, 2010

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102

Re: Request for Supplemental Funding

Dear Judicial Council:

On January 14, 2010, I wrote the Judicial Council urging that it take priority action to counter the accelerating deterioration in trial court operations occurring in Los Angeles and in other counties as a result of budget reductions imposed on trial courts in the current fiscal year and likely to carry forward into future fiscal years.

We ask that the Judicial Council now obtain all necessary authority from the legislature and Governor to redirect ongoing funds to court operations from the Immediate and Critical Needs Account (ICNA) commencing at the beginning of FY 2010-11, not only to meet a \$47 million ongoing need of our court, but additionally to meet equivalent ongoing needs we believe exist in other trial courts statewide. Once the required authority is obtained, we ask that the funds be immediately allocated to the trial courts.

In June, 2009, and again in January, 2010, we briefed the Administrative Director on the fiscal crisis now confronting the Los Angeles Superior Court. We have shared our budget assumptions, our spending plans, and the operational consequences ahead, including current and future layoffs, with the Administrative Director and his staff. Additionally, both we and most other trial courts have recently provided the Administrative Office of the Courts similar budget data in the form of a standardized template.

In executing our spending and operational plans, we have, among other things:

1. Achieved ongoing reductions of \$8 million per year from salary savings.
2. Achieved ongoing reductions of \$8 million per year from cuts in our services and supplies budget.
3. Achieved savings to date of \$12 million by furloughing/closing the court one day a month beginning July, 2009. We anticipate that existing budget constraints will require us to continue these furloughs/closures through the end of FY 2011-12.

4. Reduced staff by more than 150 employees so far through attrition, generating ongoing savings of an initial \$9.4 million per year.
5. Cancelled programmed raises for all non-represented employees.
6. Not offered raises, and have requested substantial salary reductions, in negotiations with represented employees.
7. Restructured operations to cope, as best as possible, with ongoing workforce reductions.

We began FY 2009-10 with a discretionary fund balance of \$109 million available for mitigating budget cuts. The \$109 million includes the 3% emergency reserve of \$25 million (one month's payroll) established by Judicial Council policy guidelines. By the end of FY 2009-10 we will have utilized \$37.2 million of the original discretionary fund balance. This is one-time money that needs to be deployed over time to facilitate a gradual, prudent, manageable contraction of the organization. Cuts already imposed, combined with no realistic prospect of substantial future general fund allocation growth, leave us with a year-over-year, embedded structural deficit of \$133 million, which is projected to grow even larger. Our operating plan downsizes the organization over a period of time so we can end up with an entity that can carry on effectively with a budget reduced by our now embedded structural deficit and with only a minimum reserve of one month's payroll for future fiscal emergencies that will inevitably occur.

Having now exhausted all cost-reducing methodologies capable of generating large-scale savings, and having used our discretionary fund balance to postpone layoffs for as many months as prudence permits, we have initiated the current layoff of 829 court employees. By the end of FY 2009-10 we will have eliminated staffing through attrition by 156 and laid off 329 employees, for a total reduction of 485. The ongoing layoff will continue into early FY 2010-11, with an additional 500 employee loss in September (totaling 829 in a short 7 months from now). By the end of FY 2010-11, our workforce will have been cut by 1141 employees.

To achieve reduced staffing levels forced by budget cuts *already* imposed on our court, a second round of layoffs involving 530 employees will be implemented in August, 2011, a year and a half from now. This layoff, coupled with the current layoff and ongoing attrition, will leave the court with 1827 fewer employees than it had in FY 2008-09 and effectively force the closure of approximately 180 courtrooms and 9 courthouses – a more than 30% workforce reduction, decimating trial court operations in Los Angeles.

The current layoff is divided into two departure groups (329 in March, followed by 500 in September). While the alternative of laying off 829 employees now, all at once, would generate

larger future budget savings, a layoff this large is not operationally feasible. The organizational dislocation, and sudden drop in service levels, produced by a single 829-person layoff would exceed the coping capacity of our organization and its customers.

An injection of one-time money that merely postpones for a few months the 329 component of the ongoing layoff is neither prudent nor feasible. A one-time postponement now, in the face of inevitable future cuts, would lead to a crushing, large-scale, unmanageable layoff near the beginning of the next fiscal year. It would increase, rather than decrease, the operational risks ahead, because state and Judicial Branch resources are on a continuing, rapid downward slide that has not yet bottomed out. No one knows when the bottom will be reached or what the size of the ultimate deficit will be. A one-time postponement that delays one piece of our sequential layoffs, without also giving us the capacity to delay the other pieces, compresses the layoff sequence, making the resulting accumulated layoffs not only larger in size, but essentially unmanageable. We cannot and will not let this happen.

The 500-person element of our ongoing 829-person layoff can be appropriately postponed only if new, ongoing, bridge funding of about \$47 million per year is obtained commencing from the beginning of FY 2010-11, while we continue all our other savings strategies as now planned, including spending down our local discretionary fund balance to the guideline 3% emergency minimum (one-month's payroll) by the end of FY 2011-12.

Such a postponement can be achieved by temporarily redirecting a relatively small portion of the SB 1407 income stream as bridge financing until equivalent permanent funding can be restored through the general fund. As the Legislative Analyst observed in his November 2009 report on *California's Fiscal Outlook*, responsible budgeting in this situation requires that we now focus on "long-lasting" solutions, not quick fixes, and that means we must now make hard choices among competing priorities. We, of course, firmly believe that preserving ongoing court operations – keeping courts uniformly open and fully functional statewide – must be the first and top priority of the Judicial Branch. Thus, even with redirected funds sufficient to postpone the 500-person element of our ongoing layoff, we shall, as part of the current budget process, urge additional solutions that will, among other things, permit our court to remain open without furloughs or closures in future years.

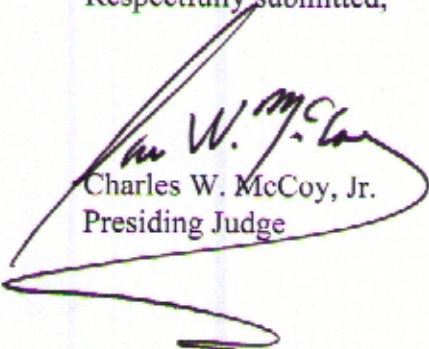
We must emphasize that redirecting \$47 million annually will not prevent future layoffs and significant service interruptions in Los Angeles, because the sum only mitigates part of our existing, embedded \$133 million structural deficit, which is growing. While a portion of the ongoing workforce reduction will be postponed, layoffs will still need to be implemented in June, 2012. If the \$47 million bridge extends to a future date where permanent equivalent funding is restored from the general fund, we will be positioned to avoid the courthouse closures that will otherwise occur, thus preserving the backbone of the community courthouse system now serving the people of Los Angeles. That is because the second 530-person layoff wave presently

scheduled for August 2011 may be avoided entirely by the \$47 million bridge, if that bridge is built now. This, of course, presupposes that no additional large-scale cuts are, in the future, imposed on the Judicial Branch and thereafter allocated to the trial courts.

Other bridging solutions may be found by redirecting funds held within the Branch, such as the Trial Court Improvement Fund, the Trial Court Modernization Fund and the State Court Construction Fund. *But, we firmly believe that none of the fund balances presently held by individual trial courts, and much needed for their operational survival in the coming months, should be redirected.* Local courts know best how to deploy these funds locally. The SB 1407 solution is the best option because it provides an opportunity for ongoing, albeit temporary, funding, whereas other solutions will likely need to rely primarily on one-time money.

We therefore ask that the Judicial Council now obtain all necessary authority from the legislature and Governor to redirect ongoing funds to court operations from the ICNA commencing at the beginning of FY 2010-11, not only to meet the \$47 million ongoing need of our court, but additionally to meet equivalent ongoing needs we believe exist in other courts and to preserve vital trial court operations statewide. Once the required authority is obtained, we ask that the funds be immediately allocated to the trial courts.

Respectfully submitted,



Charles W. McCoy, Jr.
Presiding Judge

cc: Mr. William C. Vickrey



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF

CHARLES W. MCCOY, JR.

PRESIDING JUDGE

TELEPHONE
(213) 974-5600

March 31, 2010

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102

Re: Response to AOC Report to the Judicial Council dated March 29, 2010

Dear Judicial Council:

On February 22, 2010, this court sincerely requested Council action to mitigate devastating impacts flowing from the structural deficit now facing trial courts throughout California, including Los Angeles. We requested \$47 million of ongoing solutions to preserve our community court system in Los Angeles. Rather than responding constructively by drawing on the Council's existing, and potential, capacity to financially support trial courts, the AOC responds with unfounded optimism and an overestimation of the savings due to staff reduction. The AOC counsels inaction, when action is clearly required.

The AOC acknowledges that the cuts to Los Angeles and other courts will be "staggering" and will ultimately reduce our workforce by 23.7% – a level that the AOC correctly states is "far too large and . . . not sustainable." The AOC also acknowledges that construction funds are properly part of the solution.

Nonetheless, the AOC attempts to minimize the significance of these staggering cuts through an erroneous analysis of cost savings from attrition and layoffs, and through a proposed change in Judicial Council policy that would lead to a surprise injection of new money never before offered. The savings per position of \$75,246 proposed by the AOC contrasts significantly with: the \$46,119 savings per position we actually achieved in our first increment of layoffs; the \$64,900 we expect to achieve in our second round; and the fact that our median salary is only \$64,761.¹ While some of the layoffs and attrition will come among employees above the median salary, the vast majority will be employees at salaries below the median. *The AOC's error produces a gross overstatement of the savings we will achieve from layoffs and attrition, and thus produces a gross understatement of the layoffs we must make to keep our budget balanced.* The AOC's methodology is so distant from the realities of trial court operations that its results bear little resemblance to actually achievable labor savings.

¹ This figure excludes salaries of subordinate judicial officers and revenue-offset employee positions.

In place of timely action, the AOC offers a recitation of hope – the fiscal crisis in Sacramento will soon improve, they suggest – we should count on that, they argue, and not make hard choices and take action now because optimism is somehow a better decision-making principle than risk-centered realism in the present fiscal climate.

By every measure, by every standard, and by all reason, the layoffs now underway in Los Angeles and planned for later in this year are necessary and appropriately sized and timed. Every indication points to the need to redirect SB 1407 funds as soon as possible.

The AOC's Erroneous Criticisms of Our Sound Deficit Management Plan.

After the Los Angeles Superior Court has laid off and sent home 329 employees, the AOC, for the first time, comes forward with a hollow critique of our business judgment based on:

- a gross miscalculation by the AOC of savings achievable from our staff reductions;
- an AOC-proposed change of existing Judicial Council policy that would create a surprise injection of new money never before offered by the AOC and not known to us when we developed our deficit management plan;
- unfounded AOC optimism; and
- an unwise AOC desire to postpone necessary difficult actions and decisions.

(1) The AOC's gross miscalculation of savings achievable from staff reductions.

Creating achievable budget savings targets is a crucial element of sound deficit management. If our court overestimates savings from staffing reductions, and those projections are not realized, we are left to make up the difference with additional cuts. Even worse, we are forced into deeper cuts in mid-stream, with less time and fewer resources, to make up the difference.

The AOC claims we have underestimated our deficit management savings. Our experience data proves otherwise.

In short, the AOC has grossly overstated savings achievable in Los Angeles from our ongoing staff reductions.

The AOC uses an arithmetic average salary to project staff reduction savings. The AOC estimates this average variously at \$78,125, \$75,246 and \$74,657. These numbers assume, incorrectly, that our attrition and layoffs, ultimately representing approximately 34% of our workforce, will be distributed proportionately across the workforce. Our experience-based budget savings projections, on the other hand, correctly assume savings of \$60,000 per reduced position. As we shall show, realistic layoff scenarios – as well as our actual experience with attrition and our first round of layoffs – fully support our \$60,000 estimate.

First, as the AOC recognizes, the actual average cost for the first increment of employees actually laid off in Los Angeles is \$46,119 per employee annualized – more than 30% less than the \$75,246 theoretically assumed by the AOC. The first layoff increment was not limited to the lowest-earning employees. It included managers, judicial assistants, court reporters, family court services specialists, child advocacy specialists and IT professionals. Even so, the average savings was \$46,119 per employee.

Second, the next layoff increment suggests that budget savings from the 500 positions involved will be \$64,900 per position – again, well short of the \$75,246 estimated by the AOC. These layoffs, as well, are not focused on those who earn the least. The list of likely impacted positions includes managers, referees, law clerks, judicial assistants, court reporters, and family court services specialists.

Third, the AOC mistakenly assumes that we determine our management ranks on the basis of a management/staff ratio. Instead, we use a management/courtroom ratio to determine the management complements of our 50 courthouses. Moreover, each of our 50 locations requires a minimum management staff. Similarly, unless we make radical policy changes to the courtroom support provided to family law and probate, we cannot reduce the ranks of professional staff in those areas significantly. Even courtroom closures (reflected in the reduction of judicial assistants and court reporters) are not enough to significantly change our management complement, as the closures will likely be distributed across many courthouses. Our operational bottom line: Until we have closed large numbers of courtrooms, and several courthouses, we cannot achieve large numbers of reductions of higher-paid management and professional staff.

Fourth, these errors on the AOC's part are even greater in the area of attrition. Despite the fact that one might expect attrition to happen across the salary spectrum, and perhaps even be weighted toward the top end (as one hypothesizes that retirements tend to happen to higher-salaried employees), the reality is different. As of January, 2010, while we exceeded our attrition target in terms of numbers of employees, the average budget savings per person was only \$62,758 – again, far from the \$78,125 the AOC estimates.

The AOC's estimating errors, coupled with a failure to acknowledge actual layoff sequencing, go a long way toward explaining how the AOC came to the wrong conclusion that our court's layoffs are "larger than necessary".

Our layoffs are properly calculated, necessary, and appropriately sized and timed.

- (2) **The AOC's proposed change of existing Judicial Council policy, which would create a surprise injection of new money never before offered by the AOC, and which was understandably not known to us when we developed our deficit management plan.**

The AOC, for the first time, reverses a long-standing Judicial Council policy which, if done, will allow trial courts to retain anticipated savings from the retirement of pension obligation bonds. This would add \$13 million annually beginning in fiscal year 2011-12.²

We first learned of this new AOC proposal during an AOC phone call on March 16, the day of our layoffs, despite the fact that we informed the AOC in December, 2009, of the potential availability of this money. Thus, it is not surprising that we did not include this new money in our deficit management plan, since the AOC made no mention of a potential change in policy until March, 2010. While we welcome any injection of new money into our budget, and we have been advocating for new money for at least a year, we could not build our deficit management plan assuming new funds from speculative, unidentified sources such as this.

Back in June 2009, when we fully briefed AOC Administrative Director William C. Vickrey on the details of our deficit management plan and the operational consequences ahead, including the current and future layoffs, the response we received from him was: "We have nothing for you." That statement elevated the risks and uncertainties facing our court to the highest possible levels. We had to plan accordingly.

Now, for the first time, the AOC injects a new-money item when needed to support its argument that our long-planned layoffs are larger than necessary. Not surprisingly, the AOC's result-oriented analysis produces different outcomes when it injects funds never before offered to us (or anyone else). Worse, this element of the AOC analysis may never actually become available to trial courts because approvals for the change in handling retired pension obligation bond costs may not ultimately be obtainable as scheduled.

² Included in the AOC's Staffing Reductions Option III chart.

We, of course, would welcome these funds and, if they prove sufficiently secure and definite, we would incorporate them into our deficit management plan. However, the timing of the AOC's announcement – in an "analysis" received after our first round of layoffs – raises questions about whether we can prudently rely on it before a formal announcement governing the whole branch is promulgated. We are frankly surprised that, if these funds were in fact available, the AOC would not have disclosed them to us in the many months leading up to our layoffs.

Our layoffs remain necessary, and appropriately sized and timed.

(3) The AOC's unfounded optimism.

The AOC relies on general funding solutions which it suggests render our deficit management plan unreasonably pessimistic. These include a series of claimed new revenues that are likely unobtainable and, in any event, insufficient, such as:

- Reductions of current funding cuts.
- Backfilling previous cuts.
- Increased or new fees and fines.

We have, unfortunately, learned from past experiences that AOC funding predictions have time and again proved overly optimistic. The AOC optimistically predicted, for example, that SAL would be restored – not so. The AOC predicted that both the first and second \$100 million trigger cuts would be avoided – not so as to the first, and apparently not so as to the second. The AOC predicted the \$92 million cut imposed last year would be a one-time cut – not so. That is why the Los Angeles Superior Court does not base its business plan on every AOC prediction.

Given the unprecedented fiscal challenges now confronting the legislature and Governor, we do not believe the judiciary, or any other state-funded enterprise, can realistically expect to be sheltered from new cuts or relieved from ongoing cuts already imposed. The more than \$20 billion year-over-year deficit ahead³ must now be filled with new cuts across state government, including the judiciary to some extent. Here's why.

If the judiciary is given privilege to avoid new cuts, then on whom must legislators place the judiciary's share of the coming large new cuts that must inevitably occur? Public schools?

³ Legislative Analyst, *California's Fiscal Outlook*, November 2009.

While the judiciary appropriately argues that cuts already imposed in the current fiscal year have rendered court operations unsustainable, if past cuts are to be restored, then on whom will the heavy burden of the existing cuts fall? Aid to low income Californians and the disabled?

One possible solution could be to raise taxes, fines and fees to bring more money into the judiciary. But, we do not see much room for that approach given existing political realities and the fact that large increases in fines and fees were recently enacted to finance new courthouse construction under SB 1407. Would a public, now feeling the burden of those new levies, support further increases sufficiently large to serve as a major contributor easing the judiciary's fiscal difficulties? Perhaps, but highly unlikely.

These realities lead inescapably to our strongly held conviction that SB1407 and CCMS funds must again be temporarily redirected to support trial operations as a bridge across the chasm of the current state funding crisis. That bridge has special merit because it can be built without resort to money from the state's general fund. Thus, we requested on February 22, among other things, that the Judicial Council act to obtain all necessary authority from the legislature and Governor to redirect funds to court operations from the Immediate and Critical Needs Account (ICNA), not only to meet the ongoing critical funding need of our court, but additionally to meet equivalent ongoing needs we believe exist in other trial courts statewide.

Cuts allocated to trial courts by the Judicial Council have saddled our court with an ongoing, year-over-year, built-in \$133 million shortfall. The AOC analysis accepts our major assumption that the Los Angeles Superior Court faces a \$133 million year-over-year structural deficit. With this structural deficit in mind, we have developed a comprehensive deficit management plan (a business plan) that works toward a permanently smaller court – one that fits within the new realities of trial court funding, but preserves the functionality of what remains.

We fully agree with the AOC that present levels of trial court funding leave courts in an *unsustainable* position. Indeed, the AOC's summary description of deficits facing 50 other California courts identifies a statewide trial courts deficit of more than \$200 million, with no dependable, sustained, year-over-year solutions.⁴

While we have long had a multi-year business plan for our individual court, we have yet to see an equivalent, detailed, multi-year plan for operating the Branch from the AOC. How can the AOC legitimately criticize our deficit management plan without an equivalent existing and detailed, multi-year deficit management plan of its own which the AOC is willing to share with us and every other trial court?

⁴ See, AOC Report, Table 2.

While we fully join in the hope that additional, sustainable, long-term funding can be found in time to avoid further cuts in access to justice statewide, we see no realistic basis for such hope. We must, therefore, plan and act on the hard facts that reality provides.

Again, our layoffs are necessary and appropriately sized and timed.

(4) **The AOC's unwise desire to postpone necessary difficult actions and decisions.**

The most significant, and frankly surprising, difference between our business plan and the AOC's critique arises from our differing views on the strategic use of time to manage our way through an unprecedented, deep and long-lasting state funding crisis.

The AOC suggests that we not reduce costs with layoffs in the coming fiscal year. Instead, the AOC would have us spend down our reserves to the bare minimum required by Judicial Council policy.⁵ We have fully considered and rejected, on sound business management grounds, the AOC approach of over-relying on one-time money to address our long-term structural deficit.

The AOC's ill-conceived recommendation to delay important FY 2010-11 cost reductions would recklessly compress layoffs, courtroom closures and courthouse closures into an unmanageable one-year time frame beginning in FY 2011-12. The AOC's approach demonstrates a surprising lack of understanding when it comes to the myriad operational complexities and risks associated with such a massive, highly compressed dismantling of a trial court. While the AOC concedes the necessity of staggering layoffs and courtroom and courthouse closures in FY 2011-12, the AOC recommends now delaying effective, substantial cost reductions, and vastly magnifying future court operational risk, while the AOC proceeds headlong with very expensive courthouse construction projects.

California's Legislative Analyst in his November, 2009, *California's Fiscal Outlook* advises California leaders that we must now:

- Take early action; and
- Make hard decisions on priorities.

⁵ See, AOC Report, Staffing Reductions Option III chart.

This sage advice requires difficult decisions – decisions so difficult that postponing them in the face of extreme fiscal risk might appear prudent to some. Nevertheless, we must act, and act now.

The earlier we make hard decisions about our priorities and take effective action, the better for all concerned. Time is here on the side of those who act early, not with those who procrastinate. In these circumstances, not acting early can possibly compound risks to a point where the range of available options narrows, and our risks increase dramatically. We do not intend to incur unnecessary risk.

A telling point in the AOC “analysis” occurs at page 6 where, dropped in a footnote, the AOC admits: “we understand that it is entirely possible that reductions to the court system could turn out to be even worse than anticipated by LA Superior Court . . .” This scant, isolated mention of downside risk, dropped in a footnote, many pages into the AOC analysis, reveals the AOC’s orientation here.⁶

Incredibly, the AOC now suggests we put off making hard choices because, in the AOC’s view: “the state’s economy and finances are not expected to remain as challenged as they are in the current year.” Reality paints a far different picture. Highly reliable data demonstrate the state’s budget, on which our financing depends, will continue to deteriorate through at least FY 2012-13, when the budget deficit will likely peak at \$23 billion, a level *higher* than the current deficit.⁷

The very real probability that future cuts will grow worse is a major factor in the timing and magnitude of our layoff and other cost-saving decisions. By not fully factoring this obvious risk into its analysis, the AOC’s attempted criticisms of our business judgments crumble at their very foundation.

The ongoing financial risks facing us are both real and grave. Rather than second-guessing our judgment in matters appropriately entrusted to competent local trial courts, the AOC should be responding to our request with a fully developed business plan showing how the Branch can deploy all available resources to: (1) meet the fiscal risks ahead, and (2) ensure that all courts, including Los Angeles, remain uniformly open and fully functional, five days a week, without closures or furloughs in the next fiscal year and beyond.

⁶ The AOC’s Report, while ostensibly titled an “analysis,” is instead an advocacy piece calculated to reach a preconceived result (no resort to ICNA funds) without fully discussing all other very real policy options, risks and probabilities.

⁷ Legislative Analyst, *California’s Fiscal Outlook*, November 2009.

By every measure, by every standard, and by all reason, our layoffs are necessary and appropriately sized and timed.

Our Sound Deficit Management Plan.

Our court's deficit management plan, developed over the past two years, and repeatedly shared in full detail with the AOC beginning many months ago, embodies a comprehensive and long-term approach to a budget crisis that all agree is unprecedented in both depth and duration. With this squarely in mind, our efforts have centered on the principle that short-run fixes, which only postpone hard choices, will, in the long run, make future matters far worse, given the depth and duration of the ongoing fiscal crisis. In the present fiscal crisis, one must not put off until tomorrow what is best done today.

The following key assumptions about the court's present and future fiscal circumstances are relevant for the discussion here:

1. The \$133 million structural deficit we now face⁸ will last at least through fiscal year 2012-13. Filling this ongoing deficit would require ongoing and time-limited solutions totaling \$479 million by FY 2012-13. We trust the Legislative Analyst's predictions that, regardless of increasing revenues in coming years, the state will continue to face a \$20 billion deficit through 2015, leaving the legislature and Governor no significant extra money to mitigate the judiciary's fiscal problems.
2. Because labor costs constitute the vast bulk of our costs available for reduction and saving, staff reductions must form the core strategy of our business plan. Given the relatively large staff reductions required to meet a \$133 million deficit, we must draw down the organization in increments, using the time between increments to readjust operations.
3. Absent fiscal relief at and above the levels requested in our February 22 letter, the courts have entered an era where access to justice as presently provided will no longer remain sustainable, both in Los Angeles and statewide. Efficiencies, reengineering, case management, and technological innovations will prove inadequate to allow courts to continue to do more with so much less. Without substantial, ongoing, long-lasting relief, as requested in our February 22 letter, no

⁸ This deficit has, fortunately, been mitigated in the current fiscal year to \$79 million with a combination of largely one-time, potentially unsustainable measures. The FY 2009-10 mitigation included substantial redirection of CCMS and SB 1407 funds to preserve trial court operations. That strategy should be repeated in FY 2010-11.

management plan can preserve the access to justice which the public expects and deserves.

The risks associated with California's unstable economy are currently more downside than upside. We therefore strongly believe that any sound court business plan must *fully* account for downside risks. In times of crisis, one may hope for the best. But one must (absolutely must) carefully identify and fully plan for downside risks. The AOC has not, to our knowledge, done that. At least, not in the AOC response to our February 22 request for Council action. Any critique of our approach, without reference to a contrasting, viable, statewide AOC business plan that fully accounts for downside risk, is questionable from the outset.

Mindful of these risks, we have crafted a deficit management strategy that, while unable to sustain previously attained levels of justice access, at least avoids catastrophe. At its core, the strategy distributes a hard-earned fund balance of \$109 million, accumulated as of FY 2008-09, across a multi-year plan mitigating the adverse consequences of a highly uncertain fiscal future. This fund balance, available only one time, is all that stands between the relative stability of systematic downsizing and chaotic free-fall.⁹

By FY 2012-13, we will have practically exhausted our fund balance, leaving us with the bare minimum wisely required by Judicial Council policy for trial courts. By then we will be a smaller court – but what remains of our court will then, and for the future, remain functional for the tasks it must accomplish, albeit with fewer resources.

Conclusion.

On January 14, 2010, I wrote the Judicial Council urging it to take immediate action to counter the accelerating deterioration in trial court operations occurring in Los Angeles and in other counties caused by budget reductions imposed in the current fiscal year, and likely to carry forward into future fiscal years. On February 22, 2010, I again wrote the Judicial Council, this time specifically requesting that the Judicial Council immediately obtain all necessary authority from the legislature and Governor to redirect funds to court operations from the Immediate and Critical Needs Account (ICNA), not only to meet a \$47 million ongoing need of our court, but additionally to meet equivalent ongoing needs we believe exist in other trial courts statewide. Once the required authority is obtained, we asked that the funds be immediately allocated to the trial courts.

⁹ The most current report of trial court fund balances available to us puts our discretionary reserve in the *bottom* one-third of California's trial courts when reserves are measured as a percentage of operating budget – the most valid measure of relative fiscal resources.

The AOC recommends that the Council not advocate “at this time” for redirection of substantial ongoing funding from the ICNA on grounds this would “too narrowly focus on one solution . . .” By this reasoning, the AOC seeks to narrow the scope of its advocacy by claiming that including the ICNA possibility would unnecessarily narrow the discussion. We simply do not understand this circuitous logic. Real policy analysis only occurs when all viable options are fully discussed and balanced to reach an optimal result. Narrowing the discussion through circular reasoning is not, in our view, in the best interest of achieving an optimal policy result here.

The AOC Report asks the Judicial Council to: “Direct staff to continue to pursue . . . sufficient funding necessary to support courts being open and accessible every business day of the year.” Its recommendations further include considering “transfers of funding from construction fund monies” but only “where such transfers would not impact the timing and scale of planned facility projects . . .” Thus, clearly in the AOC’s mind, constructing new courthouses on time and as scaled takes top priority over keeping courts open every business day. In the end, the AOC’s recommendation sacrifices court operations, if necessary, to build new courthouses. We firmly disagree.

The AOC offers no realistic multi-year business plan demonstrating how trial courts individually, or as a whole, can navigate the current long and deep budget crisis. Instead, the AOC suggests that the Los Angeles Superior Court should proceed under unrealistic, overly optimistic assumptions, to incur unacceptable risks that could lead to an abrupt, potentially catastrophic, disruption in access to justice. The Los Angeles Superior Court cannot and, of course, should not proceed as proposed by the AOC.

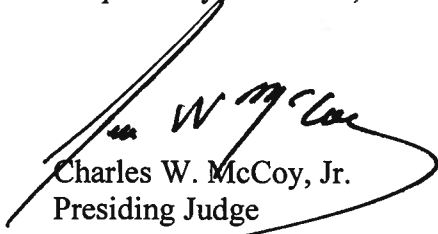
The time has come for the Judicial Council to acknowledge the obvious. Our legislature and Governor cannot reasonably be expected to completely insulate the courts from existing or new cuts in the face of an ongoing, year-over-year, \$20 billion state deficit. The time has come for the Judicial Council to look inwardly for accessible resources, such as the Trial Court Trust Fund, Modernization Fund, CCMS-related funds, and the ongoing and very substantial SB 1407 income stream.

We reiterate our firm belief that none of the fund balances presently held by individual trial courts, and much needed for their operational survival in coming months, should be redirected. Trial court operational plans now implemented, and planned for future contingencies, have assumed continued local control of these fund balances. Local courts know best how to deploy these funds.

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We hereby renew our funding request of February 22, 2010.

Respectfully submitted,



Charles W. McCoy, Jr.
Presiding Judge