JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Enhanced Civil Assessments Working Group
Hon. Sharon J. Waters, Co-Chair
Christine M. Hansen, Co-Chair
Ruben Gomez, Lead Staff, 415-865-7686

DATE: October 12, 2006

SUBJECT: Statewide Enhanced Civil Assessments Program and Polices (Action Required)

Issue Statement
Late in fiscal year (FY) 2004–2005, the Enhanced Civil Assessments Working Group was tasked with dealing with the implementation of Assembly Bill 139 (Stats. 2005, ch. 74). AB 139 applied to "undesignated" fees collected beginning July 1, 2005 and resolved longstanding differences relating to those fees. It also redirected civil assessment revenue from distributions under local agreements to the Trial Court Trust Fund. While most of the recommendations approved by the council were implemented over the course of FY 2005–2006, based on the revenue, cost recovery and implementation information available to date, the Enhanced Civil Assessments Working Group chose to consider FY 2006–2007 as an additional implementation and transition year.

Summary of Recommendations
AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, recommend that the Judicial Council:

1. Encourage courts to report accurately and consistently the collection of gross civil assessments. Direct AOC staff to review and amend forms for reporting gross and net civil assessments, and to work with courts and counties to increase the accuracy and consistency of reporting of gross civil assessments by both courts and counties.

2. Continue the implementation and transition process in FY 2006–2007 in which:

- Revenue data and collections cost information will continue to be improved;
- Continue collecting information on local obligations and agreements as appropriate for evaluation and/or revision;
- Courts will continue to implement and/or enhance their civil assessments programs. Civil assessments will be forwarded to the AOC and returned to the courts with only the buyout amounts held back; and
- To the extent that it is economically feasible, courts are encouraged to transition to the statewide contract for collections services and/or to renegotiate their existing contracts to ensure conformity with the appropriate guidelines.

3. Direct AOC staff to review all available information at the end of the fiscal year and present it to the Enhanced Civil Assessments Working Group for the development of future recommendations that will result in a fair and equitable formula for the sharing of civil assessment revenue between the courts and the AOC.

4. Allocate the $16 million reduction pro-rated to all courts based on the FY 2006–2007 base operating budget. A court that is more than 10 percent underfunded and that has a civil assessments program can appeal for an adjustment of the amount of the reduction.

Recommendation number 5 is being submitted by AOC staff in order to execute recommendation number 4 put forth by the Enhanced Civil Assessments Working Group:

5. Direct that courts that appeal for an adjustment of the reduction should use the process described in Finance Memo TC 2003-005 dated November 10, 2003, in applying for one-time emergency funding to mitigate the impact of the $16 million reduction in FY 2006–2007.

Recommendation number 6 is being submitted by AOC staff in recognition of the complexity and importance of these issues, especially the distribution of civil assessment revenues and the ultimate $31 million ongoing shortfall starting in FY 2009–2010 that still need to be addressed and resolved:

6. Direct that unresolved or ongoing prior year recommendations continue to be reviewed and implemented as appropriate.

<u>Rationale for Recommendation</u>
Please see each section of the report for the rationale.

Alternative Actions Considered
Please see each section of the report for the alternatives considered.

Comments from Interested Parties
The Trial Court Budget Working Group met on September 27, 2006 to consider these recommendations. Please refer to the full report for the working group's response to these recommendations.

Implementation Requirements and Costs
There are no additional funds needed to implement these recommendations.

Attachments

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Report

TO: Members of the Judicial Council

FROM: Enhanced Civil Assessments Working Group
Hon. Sharon J. Waters, Co-Chair
Christine M. Hansen, Co-Chair
Ruben Gomez, Lead Staff, 415-865-7686

DATE: October 4, 2005

SUBJECT: Statewide Enhanced Civil Assessments Program and Policies (Action Required)

Issue Statement

Late in fiscal year (FY) 2004–2005, the Enhanced Civil Assessments Working Group was tasked with dealing with the implementation of Assembly Bill 139 (Stats. 2005, ch. 74). AB 139 applied to "undesignated" fees collected beginning July 1, 2005 and resolved longstanding differences relating to those fees. It also redirected civil assessment revenue from distributions under local agreements to the Trial Court Trust Fund. While most of the recommendations approved by the council were implemented over the course of FY 2005–2006, based on the revenue, cost recovery and implementation information available to date, the Enhanced Civil Assessments Working Group chose to consider FY 2006–2007 as an additional implementation and transition year.

A collaborative working group consisting of judicial officers, court administrators, and AOC staff was formed to address the many issues pertaining to implementation of AB 139, including establishment of a statewide enhanced civil assessment program, distribution of fee revenue, cash flow issues, and items related to AB 145 (Stats. 2005, ch. 75)—the uniform civil fee legislation—impacted by the undesignated fees compromise.

This report presents recommendations from the working group regarding statewide enhanced civil assessments program and policies for the current fiscal year. The attachment to this report displays the proposal for allocating certain reductions in fiscal year (FY) 2006–2007. This includes a display of the

allocations, by court, that are being recommended to the Judicial Council for consideration.

Background

AB 1759 (Stats. 2003, ch. 159) established Government Code section (GC) 68085.5 and mandated that the AOC and the California State Association of Counties (CSAC) develop by January 1, 2005, an equitable long-term distribution of specified filing and miscellaneous fees, sanctions and penalties heretofore known as undesignated fees and listed in GC 68085.5(a), (b), and (f), to take effect July 1, 2005. Included in these undesignated fees was the civil assessment imposed pursuant to Penal Code section (PC) 1214.1, which may be applied for failure to pay and failure to appear in traffic and non-traffic infractions and misdemeanors as well as felony cases.

AB 1759 provided an interim solution for the distribution of undesignated fees until July 1, 2005. In general, AB 1759 provided that local revenue sharing agreements between courts and counties that existed before enactment of the legislation were to remain in effect through June 30, 2005. It further required that if no revenue sharing agreement existed that any revenue collected that offsets the cost of providing a service should be distributed to the entity that incurs the cost of providing the service. Such amounts distributed to the courts were to be deposited into the Trial Court Trust Fund (TCTF). In addition, AB 1759 required that all fines and fees not currently a part of local revenue sharing agreements were to be remitted by the counties to the TCTF in an amount not to exceed $31 million. The General Fund appropriation for the trial courts was then reduced by $31 million, with the intention that there would be no change in revenues to the courts statewide. Finally, AB 1759 required that each court and each county provide detailed quarterly reports which were to include the total amount collected and retained by court or county and the existing distribution of the revenues generated by the fees and fines. The purpose of the quarterly reports was to assist the AOC and CSAC to determine the long-term equitable distribution of these fees and fines.

The AOC and CSAC were unable to reach full resolution by January 1, 2005. The data reported indicated that the amount of revenue generated from the GC 68085.5(a) and (b) fees was minimal on a statewide basis and that the revenue generated from the imposition of civil assessments was far less than originally believed. In addition, some counties were unwilling or unable to fulfill their obligation toward the $31 million backfill. AOC staff met with Department of Finance staff and advised them that a compromise could not be reached and recommended that the General Fund appropriation be restored. The Department of Finance rejected that recommendation and instead proposed to make permanent the counties' $31 million obligation. This recommendation was then included in

the Governor's Budget. CSAC opposed the Governor's proposal. In the course of state budget hearings and meetings, the AOC and CSAC were again requested to propose a compromise solution. After lengthy negotiations, representatives of the AOC and CSAC jointly proposed a resolution of undesignated fees and forensic evaluations costs as part of the legislative budget conference committee process that contained several benefits:

- Resolved numerous outstanding fee issues that have been in controversy between courts and counties since 1997.
- Provided a clear definition of which fees go to courts and which go to counties.
- Froze county civil assessment revenues at the FY 2003–2004 level, and provided that all civil assessment growth above FY 2003–2004 belong to the trial courts.
- To the extent that revenue projections are met through enhanced civil assessment collections, the intent of the compromise was to prevent any unallocated reductions to the trial courts.
- Shifted fees for court-provided services and various contempt sanctions to the TCTF for allocation to the courts.
- Simplified the distribution of fee revenues at the local level.

The resolution of these issues was included in the provisions of AB 139 (Stats. 2005, ch. 74). Specifically, GC 68085.5 provided for the distribution of certain "undesignated fees" listed in that section until July 1, 2005. Until that date, the distribution of many of the "undesignated fees" was subject to local revenue sharing agreements, and the counties were responsible for remitting $31 million per fiscal year to the TCTF. AB 139 specified the distribution of the "undesignated fees" effective as of July 1, 2005, and provided for the gradual elimination of the $31 million obligation over a period of four years. Revenue that the counties formerly received under revenue sharing agreements was replaced by a permanent reduction in the counties' Fine and Forfeiture Revenue Maintenance of Effort payments under GC 77201.1(b).

AB 139 did not change the amounts of any of the affected fees, except that it raised the maximum amount of a civil assessment under PC 1214.1 from $250 to $300. AB 139 also did not change the code section numbers designating the fees. (Some of the fee amounts and code section numbers were changed effective January 1, 2006 under AB 145.) However, AB 139 changed the distribution of fees listed in GC 68085.5. As a result of AB 139:

- Counties were credited through a reduction to their Fine and Forfeiture Revenue Maintenance of Effort (GC 77201.1(b)(2)), in an amount equal to

the net civil assessments they received in FY 2003–2004, totaling approximately $45.7 million.

- A process for determining the net amounts and resolving the inequities in special situations was established. (See GC 68085.7 and GC 68085.8.) Some adjustments were made.
    - Under GC 68085.8(a)(3), the County of Mendocino requested an adjustment to the buyout amount of their civil assessments and has been in negotiations with the court, CSAC, and the AOC. In the meantime, the buyout amount that has been applied to the County of Mendocino is the amount jointly certified by the court and county in September 2005.

- The statute incrementally reduces and eventually eliminates over a 4-year period the counties' obligation to pay $31 million to the TCTF annually pursuant to former GC 68085.5. (See GC 68085.6.)
    - Counties are obligated to pay $20 million in FY 2005–2006 in two equal installments (see GC 68085.6(c)); $15 million in FY 2006–2007, $10 million in FY 2007–2008, and $5 million in FY 2008–2009 in four equal installments; and nothing in subsequent years. (GC 68085.6(a).)
    - Counties not receiving an MOE reduction because they did not receive civil assessment revenue will not be obligated to pay anything toward the counties' transfer obligations to the state through 2008–2009 described above. (See GC 68085.6(g)(1).) In addition, no county paid in FY 2005–2006 more than 90 percent of its portion of the $31 million obligation of the past two years. (See GC 68085.6(g)(2).)
    - The last year of the counties' transfer obligation to the state may be forgiven, in whole or in part, if revenues collected under new GC 68085.6 exceed estimates. (See GC 68085.6(h).)

- Penalties were to be imposed if the counties do not pay on time. (See GC 68085.6(e) and (f).) This provision also applied to the counties that had not paid their share of the $31 million in FY 2003–2004 and FY 2004–2005. Those counties were given until September 1, 2005 to pay without penalties. (See GC 68085.5(e)(6).)

- Revenue lost to the courts by reduction and eventual elimination of the county payments of $31 million under GC 68085.5 were to be recovered by anticipated new revenue from civil assessment programs and the transfer of

certain fees, sanctions and penalties identified in former GC 68085.5(a) and (f). (See GC 68085.7.)

- Gross civil assessments and former GC 68085.5(a) and (f) fees collected beginning July 1, 2005 are to be deposited in the TCTF via the AOC Treasury. (See GC 68085(c)(2) and GC 68085.7(a)(1) and (2).) Bank accounts were established as soon as practicable for the deposit of these revenues by the court. The counties were to remit any revenues they collected under GC 68085(c)(2), including civil assessments under PC 1214.1, through the usual TC-31 process until January 1, 2006.

- Key elements to note regarding court and county civil assessment collection programs (PC 1214.1(e)) include:
    - Programs in place as of July 1, 2005 were to be maintained thereafter, unless otherwise mutually agreed to by the courts and the counties. (See PC 1214.1(e).)
    - After implementation of this legislation, if a court and county did not agree on a program, arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and CSAC could be requested by either a court or county. (See PC 1214.1(e).)

- Cost of collections under a comprehensive collection program must comply with the "pro rata" guidelines determined by the State Controller's Office. (See PC 1463.007 and GC 68085.7(f).) If gross civil assessments are remitted to the TCTF, the court/county costs will be covered from the monthly distributions back to the courts of their share of the civil assessments.

- Until January 1, 2006, the effective date of AB 145, fees imposed pursuant to former GC 68085.5(b) were to be retained by the entity that performs the work, i.e., the court or the county.

- Courts were to report any revenue sharing agreements that include the undesignated fees to the AOC.

With the approval by the Budget Conference Committee of the agreement reached between the AOC and CSAC, and the pending passage and signing of AB 139, numerous implementation issues remained. The legislation did not address most of the issues that are important to the trial courts, such as:

- How will we make up for the loss of $11 million in FY 2005–2006, $16 million in FY 2006–2007, $21 million in FY 2007–2008, $26 million in FY 2008–2009, and $31 million in FY 2009–2010?

- Will courts be kept whole with the revenue collected prior to this agreement?
- Will courts continue to receive an incentive for increasing civil assessment collections?
- If the money is going to the TCTF, how will the court have the flexibility to spend the money as they did in the past?
- What incentive will the county have to collect the civil assessments if they are no longer getting any of the revenues?
- How will the courts be reimbursed for their forensic evaluation costs?

The Enhanced Civil Assessments Working Group was established in June 2005 and met several times to identify all of the implementation issues and make recommendations to the Judicial Council on:

- The development of an enhanced civil assessment program;
- Formulas for the distribution of civil assessments to keep courts whole and provide incentives to increase collections; and
- The resolution of all other issues.

The working group's membership consists of judicial officers and court executive officers, including representatives from the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Trial Court Presiding Judges Advisory Committee, as well as expert court staff. The working group is now co-chaired by the Hon. Sharon J. Waters, presiding judge of the Superior Court of Riverside County, and Ms. Tina Hansen, AOC Finance Director.

The working group met on August 17, 2006 to review the provisions of the compromise found in AB 139; the results of the policy, implementation, operational, and communication issues that had been discussed the previous year; and revenue and cost recovery information gathered by staff.

While the original intent of the compromise agreed to between the AOC and CSAC was to have gross civil assessments deposited into the TCTF, due to the timing of the legislation, and contractual obligations and agreements, it was understood that some courts and counties could only deposit net civil collections into the TCTF. Nevertheless, the cost of collections under a comprehensive collection program had to comply with the "pro rata" guidelines in the State Controller's Office's "Comprehensive Collection Program Accounting Guidelines: Penal Code section 1463.007" issued in 1997. These guidelines were updated in

the course of the work in the last year of the Collaborative Court-County Working Group on Enhanced Collections. (See PC 1463.007 and GC 68085.7(f).)

As previously noted, if gross civil assessments are remitted to the TCTF, the court/county costs will be recovered from the monthly distributions back to the courts of their share of the civil assessments. In those instances that net civil assessments are deposited into the TCTF, to the extent that all allowable collection costs from a comprehensive collection program are not deducted before deposit, remaining allowable collection costs will be recovered from the courts' share of civil assessments. All courts and counties are required to report to the AOC gross civil assessment collections by all sources, including the Franchise Tax Board and private collection agencies.

At the end of FY 2005–2006 staff analyzed the civil assessment revenue reported to the State Controller's Office to date via the state TC-31 and the AOC's TC-145 remittance reports, and the costs of collections reported by the courts on the quarterly Report of Revenues (ROR) and Schedule D of the TC-145. It was clear from the information being reported that civil assessment revenues were lower than expected and in some cases misreported, costs of collections were not fully being reported, and that the amounts appearing on the various reports did not seem to correlate. In addition, it appeared that several courts were not going to be able to cover the buyout of the civil assessments in their specific counties.

Therefore, in preparation for the August 17, 2006 working group meeting, AOC staff with the assistance of court representatives developed a short one-page questionnaire. The 27 courts represented on the working group were asked to participate in the pilot survey for the purpose of acquiring a better understanding of the data collected to date for FY 2006–2007 on civil assessments and cost recovery. The questionnaire included multiple tabs containing data specific to each court based on the TC-31, the TC-145, and the ROR.

One of the purposes of the pilot survey was to help determine if any modifications would have to be made to the questionnaire before it is distributed statewide. The goal was to devise an effective plan for dividing the $16 million reduction for FY 2006–2007 among the trial courts and, ultimately, to develop recommendations to take before the Judicial Council. The information collected from this pilot group was used in discussion of this issue at the working group meeting on August 17th in Burbank.

The new recommendations of the Enhanced Civil Assessments Working Group were ratified by the Trial Court Budget Working Group at its meeting on September 27, 2006. They are included in this report to the Judicial Council for consideration and approval.

Distribution of Civil Assessment Collections and allocation of $16 million reduction

As described in the background section of this report, under AB 139, beginning July 1, 2005 all civil assessments are to be remitted to the State Controller's Office for deposit into the TCTF.

Of ongoing concern to the Enhanced Civil Assessments Working Group is the manner in which certain funding issues will be addressed in the current fiscal year and those to come. This includes, in particular, the $16 million shortfall in FY 2006–2007, but also the ultimate $31 million TCTF revenue shortfall starting in FY 2009–2010. The working group reviewed the data and the information compiled by AOC staff from the pilot survey, including the dates when courts established civil assessment programs and implemented the $300 increase, the types of cases that civil assessments are applied to, and the revenues generated by the courts both individually and on a statewide basis.

It is important to note that the buyout of the counties of the civil assessment revenue they benefited from in FY 2003–2004 totaled approximately $45.7 million and applied to 37 of the 58 counties. At the end of FY 2005–2006, all but six of the courts in those 37 counties were able to fully cover the buyout amount in their particular county. At this point in time it appears that at least one of those courts will have an ongoing problem.

Statewide the amount of civil assessments remitted to the TCTF equaled approximately $88.1 million. Applying a 15 percent cost of collections average, the gross civil assessments collected in FY 2005–2006 are estimated to be approximately $101.3 million, which is less than expected. Based on information provided by various courts, the lower than expected revenues is due to various factors such as the following:

- The establishment and implementation of civil assessment programs occurred at various times throughout the year. Some courts are still implementing civil assessment programs.
- Civil assessments are not applied to all eligible categories for a variety of reasons, including local philosophical and practical reasons. Behavior may change; there may be less opportunity to impose civil assessments in the future.
- Change in law enforcement priorities may affect civil assessment revenue (e.g., traffic made lower priority as law enforcement agencies focus on other activities.)
- There may be a delay of at least two to three months, even four to six months, between an increase in the maximum civil assessment that a court

imposes and an increase in revenue. The reasons include the fact that some people pay civil assessments in installments.
- With respect to installment payments of fines and penalties pursuant to PC 1203.1d, as a result of the State Controller's Office updated cost recovery guidelines, civil assessments now fall under the fourth priority instead of the third as previously thought.

The lack of correlation of the amounts reported on the various reports may be due to the following factors, among others:

- The ROR and the amounts remitted to the TCTF may not agree because county collected civil assessments are not posted immediately by the State Controller's Office.
- Some staff may not know new procedures and/or errors are corrected on later reports. Ultimately, court data will be obtainable from CARS, but not county data.
- Courts may need an incentive for providing accurate information such as what will the data be used for that will benefit the courts.
- Field tests for the data collecting instruments are needed in order to clarify the meaning of terminology such as gross, costs and net; and to ensure accurate reporting.

The working group also noted and agreed upon on a number of important items, including:

- For FY 2006–2007 as in FY 2005–2006, all civil assessment money collected initially should go up to the AOC and the only reduction on the monthly distribution to be remitted back to the courts will be the agreed upon county MOE reduction. In FY 2005–2006 this amounted to $42.4 million returned to the courts.

- Consider FY 2006–2007 as an additional implementation and transition year in which:

    - Better revenue data and collections cost information are obtained and analyzed;

    - Local obligations and agreements are evaluated;

    - Courts can implement and/or enhance their civil assessment programs; and

    - To the extent that it is economically feasible, courts are encouraged to transition to the statewide contract for collections services and/or

to renegotiate their existing contracts to ensure conformity with the appropriate guidelines.

Recommendations

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, recommend that the Judicial Council:

1. Encourage courts to report accurately and consistently the collection of gross civil assessments. Direct AOC staff to review and amend forms for reporting gross and net civil assessments, and to work with courts and counties to increase the accuracy and consistency of reporting of gross civil assessments by both courts and counties.

2. Continue the implementation and transition process in FY 2006–2007 in which:
   - Revenue data and collections cost information will continue to be improved;
   - Continue collecting information on local obligations and agreements as appropriate for evaluation and/or revision;
   - Courts will continue to implement and/or enhance their civil assessments programs. Civil assessments will be forwarded to the AOC and returned to the courts with only the buyout amounts held back; and
   - To the extent that it is economically feasible, courts are encouraged to transition to the statewide contract for collections services and/or to renegotiate their existing contracts to ensure conformity with the appropriate guidelines.

3. Direct AOC staff to review all available information at the end of the fiscal year and present it to the Enhanced Civil Assessments Working Group for the development of future recommendations that will result in a fair and equitable formula for the sharing of civil assessment revenue between the courts and the AOC.

4. Allocate the $16 million reduction pro-rated to all courts based on the FY 2006–2007 base operating budget. A court that is more than 10 percent underfunded and that has a civil assessments program can appeal for an adjustment of the amount of the reduction. (See attachment 1.)

Recommendation number 5 is being submitted by AOC staff in order to execute recommendation number 4 put forth by the Enhanced Civil Assessments Working Group:

5. Direct that courts that appeal for an adjustment of the reduction should use the process described in Finance Memo TC 2003-005 dated November 10, 2003, in applying for one-time emergency funding to mitigate the impact of the $16 million reduction in FY 2006–2007. (See attachment 2.)

Rationale for Recommendation

After consideration of the information available and a discussion of the issues, the working group agreed to the following plan for FY 2006–2007:

- Pro-rate the $16 million reduction among trial courts (as was done with the $11 million reduction last year.)
  - Develop an appeal/relief process for courts adversely affected by this which would be available only to courts that are more than 10% underfunded and that have a civil assessment program. The working group determined that a "civil assessment program" is one in which a civil assessment is imposed on at least one of the eligible case types and does not have to be the full $300 amount.
  - In order to address undue hardships (i.e., court closures or layoffs) faced by those courts that have taken all reasonable steps to prepare and manage unallocated budget reductions, establish an appeal process.
- Consider proposing legislation
  - Clarify whether more than one civil assessment (failure to pay (FTP) and failure to appear (FTA)) can be imposed in the same case (some courts think it is possible, some do not).
  - When a civil assessment is imposed, the court cannot also impose a bench warrant on the related offenses; need to be able to treat an FTP itself as a separate offense. For instance, a mandatory appearance on speeding greater than 100 miles per hour never gets a civil assessment.
- Move civil assessments to higher priority (from #4 to #3 – see PC1203.1d) if that is feasible.
  - Apply civil assessments to traffic misdemeanors
  - Uniformity in whether civil assessments are imposed on certain types of misdemeanors. Not all courts impose these or impose only on FTAs.

Members of the working group agreed that these recommendations represented the fairest resolution given the complexities involved relative to the implementation of AB 139 provisions. In addition, these recommendations apply to FY 2006–2007 and will be revisited at the end of the fiscal year. Staff will monitor the impact of

the $16 million reduction and requests for relief and make additional recommendations as appropriate.

Alternatives Considered
Because it was clear from the available information that several obstacles still exist to the full implementation of civil assessments by all courts, the working group only discussed the following option:

- Implementing a pro-rata cut of $16 million to all courts statewide without possibility of relief for underfunded courts.

This option was carefully considered, but ultimately not recommended so as not to unfairly impact any one court during this second year of transition.

Prior year recommendations and ongoing issues
At the August 17, 2006 meeting of the Enhanced Civil Assessments Working Group, brief reports on the work of its subcommittees that were formed in the previous year were provided:

- Criteria for a Successful Civil Assessments Program Subcommittee;
- Distributions Subcommittee;
- Forensic Evaluations Subcommittee;
- Rule 810 Subcommittee; and
- Communications Subcommittee.

A summary of the previous year's discussion and action as well as an additional staff recommendation follows.

Criteria for a Successful Civil Assessments Program
Civil assessment pursuant to PC 1214.1 represents one component of a comprehensive collection program, as defined in PC 1463.007.

The Criteria for a Successful Civil Assessments Program Subcommittee was charged with developing recommendations on criteria that constitute an effective civil assessment program. The criteria are detailed in the report to the council dated August 16, 2005.

Courts that do not already have a civil assessments program are encouraged to establish one and those courts that do are encouraged to expand their civil assessments program if they have not already done so. A civil assessments

program is currently defined as the imposition of civil assessments on at least one of the eligible case types, i.e., traffic infractions – failure to appear or failure to pay, non-traffic infractions – failure to appear or failure to pay, traffic misdemeanors – failure to appear or failure to pay, non-traffic misdemeanors – failure to appear or failure to pay, and felonies.

At the current time, in large part due to the efforts of AOC staff from the Southern Regional Office and others, most courts have implemented or improved civil assessments programs. Most courts raised their civil assessments to the new maximum of $300. Many courts established criteria for "good cause" for granting a waiver of civil assessments. AOC staff is working with the three to six remaining courts that are in the process of establishing or have not yet established a civil assessments program.

Cash Flow Needs

As AB 139, which was signed and chaptered in July 2005 after the start of the fiscal year, required all collections of civil assessments, and specified former 68085.5(a) and (f) fees (see GC 68085(c)(2)), to be deposited into a bank account established by the AOC for this purpose, it was recognized that the initial step of depositing the July collection receipts would be delayed. The process, as we understand it, will be as follows:

- July receipts sent to the State Controller's Office on or before September 15, 2005;
- These receipts will be posted by the State Controller's office by early October 2005; and
- Revenues will be returned to the courts in the October 15 allocation from the AOC.

Last fiscal year, the delay in receipt of these funds was discussed among the members of the working group. Most felt that the delay in receipt of revenues would not impact them and that the availability of the current advance process was adequate to meet the needs of those that may have cash flow issues. In the end, no courts requested funding for this purpose.

Distribution of Former 68085.5(a) and (f) Fees (GC 68085(c)(2)) other than Civil Assessments and Forensic Evaluations

In FY 2003–2004, a total of $2.24 million in 68085.5(a) fees and $2.13 million in 68085.5(f) fees (other than civil assessments) were retained by the courts, while $4.9 million in 68085.5 (a) fees and $1.73 million in 68085.5(f) fees were retained by the counties. Under AB 139, the undesignated fees legislation, all of these fees will now go to the TCTF. (There is one exception to this. The fee under Probate Code section 1835, which is listed in GC 68085.5(a) but not in GC 68085(c)(2),

were retained by the local court until the Uniform Civil Fee legislation went into effect on January 1, 2006.)

AOC staff had recommended that the 68085.5(a) and (f) fees previously retained by the counties and now required to be deposited into the TCTF be designated to fund the forensic evaluation reimbursement program. In addition, AOC staff recommended that the portion of these fees previously retained by the courts should be returned to them. There was considerable discussion among the members of the Distribution Subcommittee of the Enhanced Civil Assessments Working Group as to whether the 68085.5(a) and (f) fees previously retained by the courts should be sent back to the courts monthly or as a base adjustment made based on the FY 2003–2004 level. (Note: In FY 2003–2004, the county share totaled $6.63 million and the projected FY 2004–2005 county share is $7.7 million.)

Staff suggested that the operational process involved in distributing these fees to reimburse the costs of forensic evaluations could mimic the current procedures used for reimbursing court-appointed counsel costs. The Forensic Evaluations Subcommittee was charged with determining the basis for reimbursing these costs, developing guidelines, criteria and parameters, and to determine if reimbursement forms are needed. Reimbursement of these costs would be retroactive to July 1, 2005. The subcommittee developed the following methodology:

<u>Baseline Determination Methodology for Forensic Evaluation Costs</u>

- Identify new court costs for forensic evaluations. New costs are defined as costs previously paid by a respective county for code sections identified as a trial court responsibility in the Attorney General's (AG's) opinion.
- Determine the net impact of new costs. The new costs as determined in item #1 above would be offset by cost reductions resulting from costs historically paid by the court for code sections identified as a county responsibility in the Attorney General's opinion. The net of the new costs would serve as the basis for an ongoing baseline adjustment.
- Any growth in costs for code sections that courts previously paid, and for which courts are responsible per the AG's opinion, would be funded from the court's annual State Appropriations Limit (SAL) allocation.
- For FY 2005–2006, courts that have incurred expenses for new forensic evaluation costs (per the AG's opinion) would receive funding up to the actual costs for the fiscal year.
- If total actual new costs exceed the total funds available (GC 68085.5 (a) and (f)) excluding civil assessments courts would be provided a prorated share of the available funds.

- A final baseline adjustment process will be established, which would be based on the highest year of at least three years of actual court expenditures for forensic evaluation costs for non-SAL courts, beginning with FY 2005–2006 expenditures.

Based on the revenues collected that correspond to the fees listed in GC 68085.5(a) and (f) excluding civil assessments, courts in FY 2005–2006 were reimbursed a total of approximately $8.864 million. The process for FY 2006–2007 is yet to be determined as is the amount that will be reimbursed.

Collection of Other Undesignated Fees (former GC 68085(b) fees)

AB 139 did not clearly address what courts and counties were to do regarding the collection and deposit of the undesignated filing fees and fees for services provided that were listed in GC 68085.5(b). Prior to AB 139 courts were to deposit into the TCTF any GC 68085.5(b) fees that were collected for service by the court and not part of a revenue sharing agreement. Under AB 139 the intention was to have these fees go to whoever does the work, with the court's share being deposited into the TCTF as previously required. Ultimately, however, AB 145 (Stats. 2005, ch. 75) resolved this by separating almost all court fees from county fees, renumbering the code sections that authorize them, resetting them to reasonable amounts, specifying which fees are returned to the court dollar-for-dollar, and adding language that ensured that certain fees that may be collected by either the court or another local entity are distributed to whoever does the work.

Revisions to Local Agreements Relating to Civil Filing Fees, Fees for Services, and Civil Assessments

Last fiscal year, due to the wide range of written and verbal agreements between courts and counties, the working group felt that it was extremely important to ensure information was collected on each of the courts' agreements with their respective counties pertaining to civil filing fees, fees for services and civil assessments. As distribution methodologies were revisited, the working group agreed that it was essential to develop a summary of issues relating to local considerations, including facility issues related to civil assessments and the need for those to be identified, reported, and considered in any analysis or decision. Other issues, such as debt service needs, should be considered as well.

Given the variance in agreements statewide, the working group also agreed that all revisions to local agreements related to civil filing fees, fees for services and civil assessments, be approved by the Administrative Director of the Courts prior to execution. In the end, although distributions of revenues were changed in compliance with statute, few agreements were specifically revised due to a variety factors mainly related to provisions in the agreements regarding other items and considerations as well as ongoing negotiations that will ultimately result in new

agreements. As a result, as found in recommendation number 2 above, staff will continue to collect information on local obligations and agreements as appropriate for evaluation and/or revision.

Expenditure of Funds for Essential Court Expenses

Under the Lockyer-Eisenberg Trial Court Funding Act of 1997 (Stats. 1997, ch. 850, AB 233 (Escutia)), counties were relieved from responsibility for funding trial court operations as specified (GC 77201(a)). Specifically items that were declared court operations in either GC 77003 or California Rules of Court, rule 810, were declared to be a state responsibility. Thus, items that were declared court operations in rule 810 were court expenses (to be paid for by allocations from the Trial Court Trust Fund and other money available to the courts) and items that were declared to be excluded from court operations remained county expenses.

Specifically the Act provided that counties were not relieved of the responsibility to provide "necessary and suitable court facilities" (see GC 77201.1(c)) and "justice-related expenses not included in Section 77003 which are otherwise required of the county by law, including, but not limited to, indigent defense representation and investigation, and payment of youth authority charges." (See GC 77201.1(d).) To further carryout this delineation between court operations and items that remained a county responsibility, GC 77009(b) prohibited the trial courts from using any money obtained by allocation from the TCTF on expenses other than court operations.

Over time, some courts used their local revenues from civil assessments to pay for a variety of items and services because the county was either unwilling or unable to do so. In many cases the purposes for which local revenues could be used were specified by the very agreements dividing those revenues between the court and the county. To gain a better understanding of these practices statewide, the subcommittee requested from all courts copies of their revenue sharing agreements and examples of how civil assessment revenues and other undesignated fees revenues are currently being used. In those cases where an agreement was not in writing, courts were asked to provide a written description of the agreements and their terms.

The effect of the new legislation is to clarify that money received by the courts from civil assessment collections can only be used on items classified as court operations.

As each court and county worked together to certify FY 2003–2004 civil assessment revenue figures, it was particularly important that each also identify any services that would be affected as a result of changes to court/county revenue

sharing memorandum of understanding (MOUs.) The identification of crucial services that might be impacted as a result of changes to court/county MOUs was important to assist the AOC and CSAC in determining how to address any inequities.

As a result of working group discussions and feedback received during subsequent regional meetings, it became evident that courts throughout the state have historically expended local funds for items that could be considered as a county responsibility pursuant to Rule 810 of the California Rules of Court. This includes costs such as probation officers and pre-trial services.

Another issue involved some court expenditures on facilities. Rule 810 prohibits all facility expenditures except records storage leases. However, there are facility items that are not clearly county obligations. Specific facilities expenditures that are not allowed under Rule 810, but still being incurred by some courts, included the following:

- Remodeling
- Leases
- New staff space
- Court's share of new facilities bond debt
- Land acquisition
- Juror parking

In order to expand the branch's authority in how they spend their allocated funds and local revenues, the working group agreed on the need to resolve this problem as quickly as possible. The resolution came in the form of AB 1806 (Stats. 2006, ch. 69) which amended GC 68085. As a result, the AOC now has authority to make direct payments as specified in GC 68085 on behalf of the courts.

<u>Recommendation</u>
Recommendation number 6 is being submitted by AOC staff in recognition of the complexity and importance of these issues, especially the distribution of civil assessment revenues and the ultimate $31 million ongoing shortfall starting in FY 2009–2010, that still need to be addressed and resolved:

6. Direct that unresolved or ongoing prior year recommendations continue to be reviewed and implemented as appropriate.

Rationale for Recommendation

The report to the council dated August 16, 2005 included recommendations related to the items discussed above. At the time, members of the working group agreed that the recommendations represented the fairest resolution given the complexities involved relative to the implementation of AB 139 provisions. While several of the recommendations were limited to the previous fiscal year, and the need for some of them was eliminated with the implementation of AB 145, some of the recommendations still have implications for FY 2006–2007 and future years.

Initially, no recommendations other than the first five were specified. However, after the Trial Court Budget Working Group meeting on September 27, 2006, it became clear that staff needed to include a general recommendation since FY 2006–2007 remains a transitional year and certain issues, especially any baseline budget adjustments that may be required, the future distribution of civil assessment revenues, and the ultimate $31 million ongoing shortfall starting in FY 2009–2010 remain to be addressed and resolved. As a result, staff, with the assistance of the Enhanced Civil Assessments Working Group, will revisit these after the end of the current fiscal year and submit other recommendations as appropriate.

Alternatives Considered

Not applicable.

Attachments

Prorations Based on Initial Base Budget

Court	FY 2006-07 Initial Base Budget	Percent	$16 million Pro-rated Share FY 2006-07
	Col. A	Col. B	Col. C Estimated
Alameda	100,328,563	4.97%	794,913
Alpine	580,075	0.03%	4,596
Amador	2,488,054	0.12%	19,713
Butte	9,987,643	0.49%	79,133
Calaveras	2,024,777	0.10%	16,043
Colusa	1,478,561	0.07%	11,715
Contra Costa	48,977,410	2.43%	388,053
Del Norte	2,414,392	0.12%	19,129
El Dorado	8,961,048	0.44%	70,999
Fresno	42,904,416	2.12%	339,936
Glenn	1,876,086	0.09%	14,864
Humboldt	6,388,565	0.32%	50,617
Imperial	7,754,907	0.38%	61,443
Inyo	2,033,618	0.10%	16,113
Kern	38,541,929	1.91%	305,371
Kings	6,533,130	0.32%	51,763
Lake	3,181,793	0.16%	25,210
Lassen	1,854,584	0.09%	14,694
Los Angeles	583,992,196	28.92%	4,627,027
Madera	5,554,612	0.28%	44,010
Marin	17,585,034	0.87%	139,328
Mariposa	909,003	0.05%	7,202
Mendocino	5,955,564	0.29%	47,187
Merced	9,637,552	0.48%	76,359
Modoc	747,347	0.04%	5,921
Mono	1,405,409	0.07%	11,135
Monterey	17,907,976	0.89%	141,887
Napa	8,965,334	0.44%	71,033
Nevada	5,327,580	0.26%	42,211
Orange	170,650,173	8.45%	1,352,078
Placer	13,011,628	0.64%	103,092
Plumas	1,665,326	0.08%	13,195
Riverside	77,543,890	3.84%	614,388
Sacramento	84,125,066	4.17%	666,531
San Benito	2,101,387	0.10%	16,649
San Bernardino	87,588,084	4.34%	693,969
San Diego	176,101,521	8.72%	1,395,269
San Francisco	69,201,482	3.43%	548,290
San Joaquin	27,037,948	1.34%	214,224
San Luis Obispo	14,699,140	0.73%	116,463
San Mateo	41,518,849	2.06%	328,958
Santa Barbara	24,394,358	1.21%	193,279
Santa Clara	107,650,076	5.33%	852,922
Santa Cruz	14,113,973	0.70%	111,826
Shasta	9,038,479	0.45%	71,613
Sierra	548,157	0.03%	4,343
Siskiyou	4,397,813	0.22%	34,844
Solano	22,725,731	1.13%	180,058
Sonoma	25,688,366	1.27%	203,531
Stanislaus	17,990,801	0.89%	142,543
Sutter	4,387,936	0.22%	34,766
Tehama	3,548,824	0.18%	28,118
Trinity	1,124,513	0.06%	8,910
Tulare	17,491,750	0.87%	138,589
Tuolumne	3,379,366	0.17%	26,775
Ventura	37,863,228	1.87%	299,994
Yolo	9,532,223	0.47%	75,525
Yuba	3,995,236	0.20%	31,655
Total	**$2,019,412,478**	**100%**	**$16,000,000**

Attachment 2A

Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688

Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
November 10, 2003

To
Presiding Judges of the Superior Courts
Executive Officers of the Superior Courts
Fiscal Contacts of the Superior Courts

From
Tina Hansen, Director
Finance Division
Administrative Office of the Courts

Subject
Emergency Funding Requests - TCIF
Finance Memo TC 2003-005

Action Requested
Review and disseminate to staff as appropriate; replicate and place in all *Trial Court Financial Policies and Procedures Manuals*

Deadline
N/A

Contact
Denise Friday
Trial Court Regional Budget Support Unit
415-865-7536 phone
415-865-4325 fax
denise.friday@jud.ca.gov

Finance Memo TC 2002-003, *Request for Cash Advance, One-Time Deficiency Funding, or Homicide Case Extraordinary Cost Reimbursement*, dated May 8, 2002 provided notification of the process for trial courts to request one-time deficiency funding from the Administrative Office of the Courts (AOC) to address urgent needs as a result of the timing of reimbursement receipts, unanticipated expenditures, or homicide case extraordinary cost reimbursement. Please continue to request deficiency funding for these purposes through the process as stated in Finance Memo TC 2002-003. Emergency funding requests due to the impact of unallocated budget reductions will be addressed in this memorandum.

During meetings with the trial courts and at meetings of the Judicial Branch Budget Advisory Committee, there was considerable discussion as to how the unallocated budget reductions should be applied to trial courts given the varying capacity within the courts to absorb the reduction. It was ultimately recommended that the unallocated reductions should continue to be applied at the same percentage for all courts, but that an emergency fund should be established to address undue hardships (i.e., court closures or layoffs) faced by those courts that have taken all reasonable steps to prepare and manage unallocated budget reductions.

At their February 2003 meeting, the Judicial Council approved the following staff recommendations:

1. *"Approve setting aside, uncommitted funds on a one-time basis in both FY 2002–2003 and FY 2003–2004 from the one-half of the one percent reserve in the Trial Court Improvement Fund to make additional funding available for courts that took all reasonable steps to prepare and manage the anticipated budget reductions yet still face undue hardships as a result of the unallocated reductions and to meet cash flow issues. Uncommitted funds from FY 2002–2003 would be carried over to FY 2003–2004 and remain available for these purposes."*
2. *"Direct staff to establish strict guidelines, including an approval and appeals process, for utilization of these funds."*

The purpose of this memorandum is to provide direction to the trial courts on the criteria and procedure for requesting a portion of these funds from the AOC.

Emergency Funding Criteria

Total emergency funding from the Trial Court Improvement Fund (TCIF) is limited to resource availability. Only one-time funding can be provided to courts through this process. Courts must have exhausted all available reserves not otherwise dedicated to critical needs. Courts must indicate the steps taken to address the unallocated reduction that is causing the hardship, why resources aren't available, what will occur if funding is not approved, public service impacts, and other relevant information. In addition, to be eligible for funding, requests must specifically address the avoidance of one of the following:

- Lay-offs
- Mandatory furloughs
- Reduced hours (less than the minimum standard operating requirements established by the Judicial Council)
- Court closures

Note: Courts that have been granted an exemption for reduced hours or court closures are not eligible for funding to address that specific issue.

Request for Emergency Funding

To request emergency funding courts must complete the attached *Request for TCIF Emergency Funding* form and submit it to the AOC Finance Division Director. Fully completed forms will reduce the number of follow-up questions and shorten the review process. To expedite the request, courts may e-mail or fax the form and any supporting documentation to the AOC. A signed original request, however, must also be received by the AOC prior to the issuance of any funds.

Note: The *Request for TCIF Emergency Funding* form is in *Word* format, so the text areas will expand automatically to accommodate the amount of narrative provided.

Approval and Appeals Process

The attached list of *Criteria for Emergency Funding Requests* will be used by AOC Budget Analysts to evaluate the requests. Within 10 working days of receiving the request, the AOC Finance Division will notify the court in writing of its decision. If a request is denied, the court may submit an appeal to the AOC Finance Division Director. The AOC Finance Division Director, Chief Deputy Director, and appropriate Regional Director will consider the appeal jointly and notify the court of its final decision within 10 working days.

If you have any questions on this matter, please do not hesitate to contact your regional budget analyst.

CMH/DG/ob
Attachments
1) Request for TCIF Emergency Funding Form
2) Criteria for Emergency Funding Requests

cc: AOC Executive Management Team
AOC Finance Division Management Team
Regional Budget Analysts

REQUEST FOR TCIF EMERGENCY FUNDING Funding will address the avoidance of (check all that apply): ___ Lay-offs ___ Mandatory furloughs ____Reduced hours (less than minimum standard operating requirements) ___ Court closures	Administrative Office of the Courts 455 Golden Gate Ave Finance Division San Francisco, CA 94102-3660

ALLOCATION TO BE ADJUSTED

SUPERIOR COURT:	AMOUNT REQUESTED:

SUMMARY OF REQUEST (Attach backup data)

Please fully explain how the requested funding will be used in avoidance of at least one of the above issues.

III. ACTIONS TAKEN AND IMPACTS

A. What steps have been or are being taken to address the unallocated reduction issue that is causing the hardship? (Include an explanation of whether the steps are consistent with the court's budget reduction plan, as submitted.)

B. What additional steps or actions will be taken if this funding request is not approved?

C. What specific program and public service impacts will occur if this funding request is not approved?

IV. STATUS OF COURT'S TCTF/Non-TCTF Reserves

A. Explain the status of the court's reserves, including the available amounts, and how they will be used.

B. Explain the timeline for when the court will need the funds and whether the allocation can be received over time or must be received lump-sum by critical dates. Explain the nature of all critical dates.

V. REQUEST HISTORY

A. Has a request on this issue been previously submitted to the AOC for consideration? __YES __NO

B. If yes, explain the history of the request, including the date submitted, the division which reviewed it, and the outcome. If the request was denied, explain why.

VI. MONTH AND YEAR WHEN THE HARDSHIP WAS FIRST IDENTIFIED

Month:_____ Year:_____

VII. REQUESTING SUPERIOR COURT'S AUTHORIZED REQUESTER

Requested by:_____ Title:_____ Date:_____

VIII. TRIAL COURT BUDGET SUPPORT ANALYST

Recommend for Approval: __YES __NO Approved By: _____ Date: _____

IX. REGIONAL DIRECTOR

Recommend for Approval: __YES __NO Approved By: _____ Date: _____

X. DIRECTOR, FINANCE DIVISION ___APPROVED ___DENIED

Approved by: _____ Date: _____

Criteria for Emergency Funding Requests
Trial Court Improvement Fund

AOC Budget Analyst criteria reference for court requests to be used in tandem with the Request for Emergency Funding form

1. Requests must specifically address the avoidance of one of the following:
    a) Lay-offs
    b) Mandatory furloughs
    c) Reduced hours (less than the minimum standard operating requirements established by the Judicial Council)
    d) Court closures

2. Court must fully explain how the requested funding will be used in avoidance of at least one of the above issues.

3. Court must have exhausted *available* reserves not otherwise restricted or dedicated to a mandatory need. Dedicated reserves should be itemized and reflect timelines for estimated dates of usage.

4. The court must itemize and fully explain all funding redirections that have been taken to address the problem.

5. The court must explain why other reasonable program cost shifts or reductions in expenditures cannot be made.

6. The court must explain actions that will occur if funding is not approved.

7. The court must indicate specific program and public service impacts.

8. The court must identify if and how this problem was cited in the recent budget reduction drills. If it was identified as an item for reduction, then the court must fully explain why funding is now being requested.