

From: Alliance of California Judges
To: Members of the Judicial Council
Re: Agenda Item #5, 8/27/10 Judicial Council Meeting

Dear Judicial Council Members:

On May 21, and again on June 21, 2010, we wrote you letters regarding the issue of whether CCMS expenditures have exceeded statutory funding authorization. We cited Government Code Section 68085 which limits the apportionment of proceeds from the Trial Court Trust Fund (TCTF) to "trial court operations" as defined by Section 77003. We pointed out in some detail that expenditures on technology are not included, and that any payments or reimbursement from the TCTF not limited to "court operations" under Section 77003 may only be made "upon the consent of the participating courts." (See Section 68085(a)(2)(A).) Unless such funding is consistent with the language set forth in Section 68085 it seems the Judicial Council would be expressly prohibited from allocating funds appropriated by the Legislature. (See Section 68507(a)(7).)

We have now reviewed the materials prepared in advance of this Friday's (8/27) scheduled Judicial Council meeting relating to Agenda Item #5. Of particular concern, given our well documented objections to CCMS expenditures generally as well as our specific objection relative to the above referenced law, is the following language:

"...Administrative infrastructure: Technical adjustments to increase expenditure authority from special funds (Trial Court Improvement Fund, Judicial Administration Efficiency and Modernization Fund, and Trial Court Trust Fund) are needed to accommodate planned technology expenditures in FY 2010-2011

(\$19.9 million) and FY 2011-2012 (\$19.7 million). Projects supported by these adjustments include deploying the California Case Management System (CCMS) to three early adopter courts.” (Agenda supporting materials, page 5.)

When we inquired of the AOC what “Technical adjustments to increase expenditure authority from special funds” actually means, we received the following response from Mr. Stephen Nash:

“This would be an adjustment to appropriation authority from the special funds consistent with our planned expenditures for ongoing statewide projects and programs.”

We believe this means that the AOC is asking the Judicial Council for more money from the Trial Court Trust Fund and Trial Court Improvement Fund for CCMS. The statute, as cited above, mandates consent of the trial courts, in advance, of ANY expenditure from the TCTF or TCIF for spending on statewide court technology projects such as CCMS. Absent such consent we believe that the Judicial Council would be prohibited from taking the action that the AOC proposes. Contrary to the position articulated by the AOC that consent is obtained via Judicial Council Advisory Committees and “the collaborative process” (testimony of Mr. Ron Overholt at August 11, 2010 Assembly Oversight Committee hearings), we believe that the statute mandates individual trial court deliberation and explicit agreement for the use of these funds.

We reiterate our request of June 21, 2010 that the Judicial Council suspend further payments and funding of CCMS until (1) the pending State Audit is complete, (2) a specific funding source other than the TCTF or TCIF can be identified, and (3) the AOC presents a detailed plan and actual budget for the deployment of CCMS. We further request that, in the future, before TCTF is considered as a source of funding for CCMS or similar technology-

based projects, this Council abide by the requirement that consent is obtained from each trial court individually and not by way of Committees.

We have made every effort to raise both technological concerns as well as fiscal concerns relative to development and deployment of CCMS in these extremely difficult economic times. At a time when the state's budget is in crisis and the general public is understandably concerned about governmental spending, it seems wise for the Judicial Council to obtain all of the information statutorily required before it makes any decision to authorize the use of funds for a project that is not permitted without each trial court's consent. As members of the Judicial Council we urge you to exercise the vigilant oversight that the judiciary of this state and the public expect before many millions of dollars more are spent from the Trial Court Trust Fund without the appropriate consent of the courts.

Thank you.

Alliance of California Judges



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

STEVE WHITE
PRESIDING JUDGE

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SACRAMENTO, CALIFORNIA 95814
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August 26, 2010

Hon. Ronald M. George
Chief Justice of California
Chair of the Judicial Council
455 Golden Gate Avenue
Sac Francisco, California 94102-3688

Re: Judicial Council Meeting Agenda Item No. Five (5)

Dear Chief Justice George:

I write to request the Judicial Council defer action on Item Five on this Friday's agenda.

Item Five would authorize the transfer up to \$70 million from the Trial Court Trust Fund and the Trial Court Improvement Fund over the next two fiscal years to finance various technology projects under the Administrative Office of the Courts (AOC). These funds are intended for the day-to-day operation of trial courts around the state. We are requesting that action on Item Five be deferred to permit the trial courts affected by the proposed transfer to fully assess the impact such a further loss in funding would have on their court operations. The members of the Judicial Council should be fully informed before voting on such an important and contested decision. Our request is based upon the following initial objections.

First, we were given no notice of this proposal to reduce funding for our court. Instead, we learned of it for the first time upon reading the Council's agenda released to the public August 20, 2010, just seven days before the Council is to vote on this item.

Second, our court has not consented to the proposed transfer of these funds. The Trial Court Trust Fund and Trial Court Improvement Fund were created to fund "trial court operations." (Gov. Code § 68085(a).) While the Judicial Council may authorize the transfer of funds from these accounts to reimburse the AOC for services provided to trial courts, section 68085(a) expressly states that any such transfer shall be "*upon consent of the participating courts.*" Not only has the Sacramento Superior Court not consented to the

transfer of funds proposed in Item Five, we were not even informed that such a transfer was being considered.

Third, these funds are badly needed to maintain our court's daily operations. Over the last two fiscal years, our court's operating budget has been reduced by \$7.1 million or 7%. This has resulted in our eliminating or freezing 150 of the 900 positions we had two years ago. We have seen no assessment of what impact the proposed transfer would have upon our court's budget. How can the Judicial Council entertain a proposal to reduce funding for the trial courts of this state by \$70 million without informed input from the courts directly affected or an assessment of the impact?

Finally, the proposed reduction in funding for trial courts would perpetuate the current disparity in court resources from community to community. The primary reason the state took over responsibility for funding trial courts in 1997 was to correct the historic imbalances when trial courts were funded at the county level. By providing state funding, the Governor and Legislature recognized that California's trial courts are constitutional entities and part of a co-equal branch of government.

Unfortunately, the goal of uniform statewide funding of trial courts has yet to be implemented. For example, in 2005 the AOC found the Sacramento Superior Court "underfunded" by 4.9 percent. As of the last report (7/27/09) underfunding had grown to 28.87 percent, making the Sacramento Superior Court the fifth most underfunded court in the state. Many other trial courts suffer similar disparity in funding. Those joining Sacramento County as the 10 most underfunded trial courts are San Bernardino, San Joaquin, Glenn, Tulare, Placer, Fresno, Tehama, Yuba, and Kern County. If the AOC proposes to cut all trial courts equally in order to finance AOC technology projects, this would increase the current disparity in funding. Sacramento and other counties which are historically underfunded can least afford further reductions. Here, treating all courts equally would have an inequitable result.

The Trial Court Trust Fund was intended to be just what the name implies - a *trust* fund. The Legislature imposed numerous fees and assessments upon fines, with the monies collected to be held in trust to finance the operation of California's trial courts. The Judicial Council should safeguard these funds, exercising stewardship to assure they are expended to provide adequate and equal access to justice for Californians as the Legislature intended. To this end, the Council should obtain the informed consent of the affected trial courts, as required by law. At a minimum, the Council should afford trial courts a meaningful opportunity to be heard before the Council addresses the proposed transfer.

We therefore request the Judicial Council defer hearing on Item Five at Friday's meeting. In the alternative, we request that if any funds are to be taken from these trust funds for AOC technology programs, that the AOC be directed to obtain the written consent of the affected trial courts pursuant to Government Code section 68085.

Hon. Ronald M. George
Chief Justice of California
Chair of the Judicial Council
August 26, 2010
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Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Steve White", with a long horizontal flourish extending to the left.

Steve White
Presiding Judge
Sacramento Superior Court

cc: Judicial Council Members
William C. Vickrey