



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 14, 2010

Title	Agenda Item Type
Judicial Council Legislative Priorities: 2011	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	December 14, 2010
Recommended by	Date of Report
Policy Coordination and Liaison Committee	November 11, 2010
Hon. Marvin R. Baxter, Chair	
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Executive Summary

Each year, the Judicial Council sponsors legislation to further key council objectives. Due to the continuing budget constraints facing the state, the Policy Coordination and Liaison Committee (PCLC) recommends that the Judicial Council adopt mostly budget and budget-related legislative priorities for 2011, i.e. advocating for sufficient overall funding, funding related to court security, dependency counsel, probate conservatorship, and interpreters, along with the continuing priority of securing new judgeships and expediting the conversion of subordinate judicial officer positions to judgeships on vacancy.

These legislative priorities will help ensure that Californians continue to have access to courts and critical court services, and that the judicial branch can continue to maintain access to justice.

Recommendation

The PCLC recommends the Judicial Council adopt the following legislative priorities for 2011. Because of the overwhelming effect of budget reductions in recent years—and actions trial

courts have needed to take in order to be open to the public, continue to provide adequate services to the public, and maintain court staff—most of the recommendations are budgetary.

1. While the judicial branch continues efforts to improve efficiency, redirect resources where possible, and eliminate waste, advocate to secure sufficient funding to avoid court closures, reduced hours, and staff layoffs without affecting long-term branch infrastructure projects.
2. Advocate to extend the July 1, 2011, sunset date on the \$10 court security fee increase imposed on all criminal convictions enacted as part of the 2010 judiciary budget trailer bill; to permanently extend the July 1, 2013, sunset on the \$10 court security fee increase enacted as part of the 2009 judiciary trailer bill; and to seek additional security funding. Also, provide the Judicial Council with a greater ability to manage, control growth in, and reduce, if possible, trial court security costs by establishing uniform staffing standards, refining definitions of allowable expenses, and limiting growth in costs that would be the responsibility of the judiciary to fund.
3. Advocate to secure additional funding to fill the ongoing shortfall in the allocation for dependency counsel.
4. Advocate to secure funding for implementation of the Omnibus Conservatorship and Guardianship Reform Act of 2006 or, if no funding is provided, to suspend the requirements that require court resources until such time as funding is provided.
5. Advocate to secure additional funding to begin to expand the availability of court interpreters beyond the criminal and juvenile courtrooms, consistent with the requirements of federal law.
6. Advocate to secure funding to support the fiscal compliance audits of the trial courts and the Administrative Office of the Courts mandated pursuant to the 2010 Judiciary Budget Trailer Bill (Sen. Bill 857, Stats. 2010, ch. 720, amending Gov. Code, § 77206).
7. Sponsor legislation to create the third set of 50 new judgeships to be allocated, consistent with the council's 2008 Judicial Needs Assessment, and advocate to secure funding for the 50 judgeships authorized pursuant to Assembly Bill 159 (Jones; Stats. 2007, ch. 722) but not yet funded.
8. Continue the annual efforts for legislative ratification of the Judicial Council's authority to convert 16 subordinate judicial officer (SJO) positions in eligible courts to judgeships, and sponsor legislation consistent with Assembly Bill 2763 (Committee on Judiciary; Stats. 2010, ch. 690) for legislative ratification of the council's authority to convert up to 10 additional SJO positions to judgeships, if the conversion will result in a family or juvenile law assignment being assigned to a judge. Additionally, direct AOC staff to propose to the Executive and Planning Committee and the Judicial Council criteria for determining whether

a position converted as one of the additional 10 will result in a judge being assigned to a family or juvenile law assignment previously presided over by a commissioner.

Previous Council Action

The council has taken a variety of actions over the past several years related to all of the above items. Recent key actions are described below.

Budget

In December 2009, the council adopted, as its key legislative priority for 2010, advocating to secure sufficient funding to keep the courts open.

Trial court security

As part of the 2008 Judicial Council Legislative Priorities, adopted in December 2007, the Judicial Council assumed as a key priority securing funding to ensure appropriate court security for all individuals who enter the trial courts and to enact a structure for appropriate security cost containment and accountability. To that end, the council sponsored Assembly Bill 1876 (De León) that year to improve the accountability of court security services in trial courts. Additionally, at the August 2010 meeting, the council approved submission of a Budget Change Proposal (BCP) to the Department of Finance requesting an augmentation of funding for the increasing costs of trial court security.

Dependency counsel

At the October 29, 2010, meeting, in its consideration of the allocation of trial court funding for fiscal year (FY) 2010–2011, the council approved a one-time transfer to the court-appointed dependency counsel program of \$7 million in FY 2010–2011 and a one-time transfer of \$3.5 million in FY 2011–2012. As that report to the council indicated, the council has acted to approve one-time funding allocations to address ongoing shortfalls in this program from 2005–2006 to the present.

Probate conservatorships

In 2006, the Judicial Council supported, if funded, AB 1363 (Jones), the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Stats. 2006, ch. 493). Funding was contained in the 2007 Budget Act proposed by the Governor and was approved by the Legislature. The funding was unexpectedly vetoed when the budget was enacted. Every year since, the council has pursued restoring the funding or suspending the obligations that require funding until the funding is provided.

Audits

In 2010, the Judicial Council reviewed legislation similar to the language that was enacted in the budget trailer bill that provided for audits of the trial courts and the Administrative Office of the Courts. The council opposed the bill unless funded, and noted concerns about the frequency of the audits then set forth in that bill (to be performed annually) and the lack of specificity about

the type of audit to be conducted, and whether the frequency was necessary in light of the scope of the audits.

Court interpreters

At its August 27, 2010, meeting, the Judicial Council approved the submission of several BCPs to the Department of Finance to communicate the funding needs for the Supreme Court, Courts of Appeal, trial courts, and Judicial Council/Administrative Office of the Courts. Among those submissions was a BCP for additional funding to support the current work of trial court interpreters and funding to expand the services currently funded with court interpreter funds.

Additionally, the Judicial Council adopted as one of its 2007 legislative priorities to identify necessary statutory changes and funding to provide appropriate access to interpreters in civil cases. The Judicial Council subsequently supported or sponsored several measures on this issue. (See, e.g., Assem. Bill 663 (Jones; 2009, died); Assem. Bill 3050 (Jones; 2008, vetoed); Assem. Bill 1726 (Committee on Judiciary; 2007, died); Assem. Bill 2302 (Committee on Judiciary; 2006, vetoed).)

Judgeships and SJO conversions

The council has acted repeatedly in recent years to authorize the sponsorship of the 150 most critically needed judgeships. The most recent action was taken by the council in December 2009. The council also annually recommends taking action to secure legislative ratification of the 16 SJO conversions to judgeships, as authorized by Government Code section 69615. (See also, 2007 Judicial Council Legislative Priorities, adopted December 2006; 2008 Judicial Council Legislative Priorities, adopted December 2007; and 2009 Judicial Council Legislative Priorities, adopted December 2008.)

Rationale for Recommendation

The mission of the Judicial Council includes providing the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this goal is a commitment to meet the needs of the public, which includes ensuring equal and timely justice, advocating for sufficient and stable resources necessary for the branch to fulfill its mission, expecting high quality throughout the branch, and maintaining accountability to the public.

Budget

As discussed in detail at the October 29, 2010, Judicial Council meeting, although the judicial branch was able to secure additional revenue for the 2010–2011 budget year, much of that revenue was made up of one-time and short-term solutions. In summary, that report to the council described \$315 million in trial court reductions imposed on the branch for FY 2010–2011 (some of that ongoing from FY 2009–2010). As a result of fund transfers and new fee revenue that the branch was able to secure in the 2010 Budget Act, as well as other adjustments, the result is a \$75.8 million reduction to trial court operations for 2010–2011. Even though this amount is \$114 million more to support trial court operations than in 2009–2010, it is

considerably less than the trial court operations funding available in 2008–2009, and nearly \$100 million of that \$114 million is one-time funding.

The report to the council further provided that absent additional funding, the reduction to trial court operations in FY 2011–2012 could reach \$172 million. As a result, in addition to continuing our efforts to uncover more efficient ways to serve the public, to redirect available funds, and to eliminate waste, the Judicial Council needs to take appropriate action to secure additional funding for the 2011–2012 fiscal year in order to keep the courts open to the public, preserve necessary and appropriate services, and avoid layoffs, furloughs, and other such actions to the greatest extent practicable.

Trial court security

Trial court security costs constitute roughly 20 percent of the trial court operations budget. Security is the single largest and fastest growing component of the trial court budget. Court security has long been underfunded, and seeking funding as well as legislation that will enable the courts to control and contain costs better has been a frequent topic of discussion before the Judicial Council. In 2008, budget trailer bill language was discussed that would have provided the Judicial Council and the trial courts with greater ability to manage, control growth in, and reduce, if possible, trial court security costs by establishing uniform staffing standards, refining definitions of allowable expenses, and limiting growth in costs that the judiciary would be responsible to fund. Unfortunately, these provisions were packaged in the same bill with corrections reforms that proved to be very controversial. As a result, the trailer bill did not pass.

As part of the 2009 Budget Act, two provisions of the court security language were enacted in an attempt by the Legislature to contain court security costs: (1) limiting salaries funded by the judicial branch to the average salary for the classifications posted at the court instead of the actual salaries for the individual posted; and (2) expressly clarifying that retiree health is not an allowable cost. The County of Los Angeles filed a test claim with the Commission on State Mandates, contesting the retiree health provision as a new, unfunded mandate on the county. That claim is still pending.

At the October 2010 Judicial Council meeting, the report on trial court allocations included considerable information about costs of trial court security. Briefly stated, the projected security costs for FY 2010–2011 is \$530 million. Since FY 2004–2005, annual court security expenditures have grown from \$352 million to as much as \$521 million. In FY 2009–2010, court security took its proportionate share of the budget reductions imposed on the trial courts, and as a result, allowable expenditures were limited to \$498 million. Projected expenditures for 2010–2011 exceed the available funding.

The council approved a one-time allocation of Trial Court Trust Fund monies and other adjustments, which—with the revenue from the increased court security fee (set to sunset July 1, 2011)—results in a projected net shortfall for the trial courts of nearly \$13 million in 2010–2011 for court security. Fewer resources exist from which the council can identify one-time transfers

to support court security. Trial Court Trust Fund reserves are projected to be virtually nonexistent for 2011–2012.

Additionally, funding needs for and delivery of court security in California's courthouses must be more consistent. Uniform staffing and classification standards are a critical first step to achieving that consistency. The variances between the levels of security provided from county to county are remarkable. For example, in one county, perimeter security is staffed by multiple higher level sworn officers, and in another county, it is staffed by a small number of private unarmed guards. Staffing and classification standards would help ensure that limited court security dollars are being used most efficiently and effectively and that all of California's court users are protected equally.

Dependency counsel

The need for additional ongoing funding to support dependency counsel was also discussed in detail at the October 29, 2010, council meeting. In summary, the report noted that court-appointed dependency counsel program costs have exceeded the program budget for the past six years. The council has provided full funding for the program each year by making one-time transfers from the Trial Court Trust Fund. On October 29, the council approved a one-time transfer of \$7 million for FY 2010–2011 and \$3.5 million for FY 2011–2012 to cover program costs.

Attaining adequate funding for dependency counsel has been a council priority for several years. As a result, when new funding was available in prior years, dependency counsel received greater increases than other programs, or received no reductions when other programs were cut to address the lack of funding.

Several reasons explain why the council should make securing funding for dependency counsel a priority this year. First, as noted above, providing adequate and appropriate counsel in dependency matters has been a longstanding council priority, and the council has adopted aspirational caseload standards for dependency counsel, standards that cannot be achieved without additional funding. Second, with the budget reductions the branch has sustained in the past several years, and the various fund transfers and adjustments that have been made to provide funding for court operations, fewer resources are available for one-time transfers to support the shortfalls in this program. Finally, it is important to note that the need for resources in the area of dependency counsel has been the focus of recent litigation against the branch.

Probate conservatorships

In 2006, the Judicial Council supported the Omnibus Conservatorship and Guardianship Reform Act, contingent on funding being provided. The AOC Office of Governmental Affairs provided the Legislature and Governor with a fiscal impact analysis that concluded that full implementation of the act would require \$17.3 million. Staff sought to have language added to those statutory changes specifying that the changes would be contingent on funding. Those

attempts were unsuccessful. Although funding for the act was included in the Governor's proposed 2007 Budget Act and was included in the version passed by the Legislature and sent to the Governor for signature, the Governor ultimately vetoed the funding.

The author of the bill—understanding that some courts could implement some of the act in advance of the funding, some could not, and no court could implement all of the requirements without funding—suggested that the branch simply “do its best” to implement the act while the funding was pending.

The branch has sought language in subsequent budgets to suspend provisions of the act that require funding until funding is provided. The author of the act has resisted those efforts, and although the Senate has approved suspending the provisions pending funding in past years, the Assembly has not. The branch's interest is of course in obtaining the necessary funding to be able to implement the act fully; therefore, the Judicial Council should advocate to secure that funding but, in the absence of such funding, must advocate to suspend the requirements of the act for which the \$17.3 million requested is necessary. It is inappropriate to continue to let the public believe that the court is engaging in the extra activities mandated by the act to better protect conservatees when the court is unable to take such action.

Court interpreters

Another ongoing priority of the council has been to secure additional funding for court interpreters. The council has supported and sponsored legislation in the past several years to create a pilot project and secure funding for providing interpreters in civil matters. Because of funding constraints, that legislation has not been enacted. This summer, the U.S. Department of Justice (DOJ) issued a letter in an attempt to clarify the requirement that courts receiving federal financial assistance must provide meaningful access to limited-English-proficiency (LEP) persons in order to comply with Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968. The DOJ guidance emphasizes that applicable civil rights laws require courts receiving federal financial assistance to provide meaningful access to all civil, criminal, or administrative hearings, at no charge to LEP individuals. It further explains that such access should be extended to LEP parties and other LEP individuals whose presence or participation is appropriate to the court proceedings; should be provided in court programs or activities outside the courtroom; and should include language services for communication between LEP individuals and court-appointed or court-managed service providers.

The guidance recognized that funding has been, and may continue to be, an impediment to expanding interpreter services in all these ways. To begin to address these requirements, the council approved a Budget Change Proposal at its August 2010 meeting for \$450,000 to establish a position of statewide coordinator for language access, as called for by DOJ, to oversee a statewide planning effort to move toward full compliance with the DOJ guidance. In addition, the BCP called for \$3.25 million to fully fund the provision of interpreters in the Domestic Violence–Family Law Interpreter Program. (This amount is needed to supplement the current funding level of \$1.75 million for this program.) Although the budget change proposal

was initially rejected by the Department of Finance, the issue remains of importance to the council and the court users who rely on interpreter services to provide them meaningful access to the system and to justice. The council should continue to advocate for the necessary interpreter funding.

Audits

Included in this year's judiciary budget trailer bill is a requirement that the trial courts and the AOC undergo periodic fiscal compliance audits to be conducted by the State Controller—or by the Department of Finance or Bureau of State Audits, if either can perform the audit for less expense than the State Controller can. (See SB 857, Stats. 2010, ch.720.) The bill provides that the courts and the AOC are responsible for the reasonable and necessary costs of their respective audits. The trailer bill was supposed to include language specifying the intent of the Legislature to seek to identify funding for the branch to fund these audits beginning in the 2011 Budget Act. According to legislative staff, along with other inaccuracies in the trailer bill, the omission of this language was an unintentional oversight. The President pro Tem of the Senate has committed to seeking to identify such funding. The costs of these required audits is unknown, but with the significant budget reductions the branch has faced in recent years, additional budget resources will be necessary to fund these activities.

Judgeships and SJO conversions

In 2005, the Judicial Council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of the most critically needed 150 judgeships. One month of funding was provided in the 2006 Budget Act, and full funding was provided in the 2007 Budget Act. The Governor has appointed judges to all of the 50 judgeships created by SB 56.

In 2007, the council sought and secured the second set of 50 new judgeships. (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722.) Initially, funding for these judgeships would have allowed appointments to begin in June 2008. Because of budget constraints, the funding was delayed until July 2009. This delay allowed the state to move the fiscal impact from FY 2007–2008 to FY 2009–2010. The Governor included funding for the second set of judgeships in the proposed 2009 Budget Act, but the funding ultimately was made subject to the *federal stimulus trigger*. This trigger was “pulled,” and the funding for the new judgeships and various other items made contingent on the trigger was not provided. Funding was also not provided in the 2010 Budget Act.

In 2008, the council sponsored Senate Bill 1150 (Corbett) to secure the third set of new judgeships. With the delay of the funding for the second set of judgeships and the state's worsening fiscal condition, SB 1150 was held in the Senate Appropriations Committee. At its October 25, 2008, meeting, the council approved the 2008 update of the Judicial Needs Assessment. At the same time, the council confirmed the need for the Legislature to create the third set of 50 judgeships, completing the initial request for 150 new judgeships, based on the allocation list approved by the Judicial Council in 2007. The council therefore sponsored Senate Bill 377 (Corbett) in 2009 to authorize the third set of judgeships to become effective when

funding was provided for that purpose. That legislation was also held in the Senate Appropriations Committee.

On October 29, 2010, the council received the 2010 Update of the Judicial Needs Assessment, which concluded that, counting the 50 judgeships authorized but not yet funded, California has a shortage of 330 judgeships, a 14 percent shortfall. Without including these unfunded positions, the net need for new judgeships would increase to 380, a 16.2 percent shortfall in total judicial need. Although the state's fiscal condition remains dire and funding has not yet been provided for the second set of judgeships, staff recommends that the council continue to pursue authorization for the third set of 50 judgeships and to seek funding for the second set of 50 judgeships already authorized.

Existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer positions, on vacancy, to judgeships. The statute caps at 16 the number that may be converted each year and requires the council to seek legislative ratification to exercise its authority to convert positions in any given year. For the past three years, that legislative ratification took the form of language included in the annual budget act.

The council converted the maximum 16 positions in 2007–2008, 2008–2009, and 2009–2010, and has already converted all 16 positions authorized for 2010–2011. Staff recommends that the council approve seeking legislative ratification for conversion of 16 subordinate judicial officer positions, on vacancy, in FY 2012–2013.

Additionally, legislation enacted this year (Assem. Bill 2763, Stats. 2010, ch. 690), effective January 1, 2010, authorizes up to 10 additional conversions per year, if the conversion results in a judge's being assigned to a family or juvenile law assignment previously presided over by an SJO. This legislation requires that the ratification for these additional 10 positions be secured through legislation that is separate from the budget.

Comments, Alternatives Considered, and Policy Implications

In light of the continuing fiscal climate facing the state, the AOC considered not recommending seeking the additional funding for the second set of 50 judgeships or the creation of the third set of judgeships. The lack of judicial resources, however, is continuing to significantly impair the ability to deliver justice, and failure to move forward will only further deny Californians their access to justice. Although the impact has not yet been quantified, the lack of judicial resources and reduced access to the civil justice system is hurting California's economy, causing businesses to leave the state to find a place where their civil disputes can be addressed in a reasonable time.

Implementation Requirements, Costs, and Operational Impacts

Adoption of these legislative priorities will allow AOC staff to advocate for increased funding and to revise existing workload requirements for which no funding is currently available.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations support many of the council's strategic plan goals, including Goal I, Access, Fairness and Diversity, by seeking to secure funding to provide interpreters to remove barriers to access to litigants with limited English proficiency; Goal II, Independence and Accountability, by seeking to secure sufficient judicial branch resources to ensure accessible, safe, efficient, and effective services to the public; and Goal IV, Quality of Justice and Service to the Public, by seeking funding to continue critical programs necessary to meet the needs of court users and providing necessary resources to all courts.

Attachments

None.