

**Statement by the AOC's General Counsel  
Regarding Judicial Council Responsibility and Authority  
For Trial Court Budget and Fiscal Management  
(for Judicial Council Meeting on December 14, 2010, Agenda Item 15:  
Special Funds, Allocations for Fiscal Year 2010–2011)**

Introduction of Issue

A question has arisen regarding the scope of the Judicial Council's authority with respect to Item 15 on the council's Discussion Agenda for today. That item presents the recommendations of the Administrative Office of the Courts (AOC) regarding Special Funds Allocations for Fiscal Year 2010–2011. Among other things, those recommendations include proposed allocations to support statewide technology infrastructure programs and projects, particularly the California Court Case Management System (CCMS).

At this time I will provide a brief summary of the law that describes the Judicial Council's responsibility and authority to make such special fund allocations, and I will also offer some legal conclusions.

The Judicial Council's Constitutional Authority

The Judicial Council of California is created by article VI, section 6 of the state Constitution, which states, among other things, that

[t]o improve the administration of justice, the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice, and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

(Cal. Const., art. VI, § 6(d).)

The Judicial Council's Statutory Authority With Respect to Trial Court Funding

The statutes that describe the Judicial Council's responsibilities and authority with respect to the funding of trial courts do so in appropriately broad language. This

broad language confirms that the council’s responsibility and accompanying authority in this sphere are significant.

Statute expressly declares that the council “*shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts.*” (Gov. Code, § 68502.5(c), italics added.) The same statute also confirms that the council has the “ultimate responsibility” to create the *process* by which the annual trial court budget is developed. (*Ibid.*)

Essentially, the council prepares and submits to the Governor for inclusion in the Governor’s proposed state budget in January an overall trial court budget request—presented as budget change proposals—for that year. (Gov. Code, §§ 68502.5(a)(4), 77200(c)–(d), 77202(a)–(b).) After the Legislature appropriates and the Governor approves the annual trial court budget, the council decides the specific amounts that each trial court will receive. (*Id.*, §§ 77200(c)–(d), 77202(a)–(b).)

In making these allocations decisions, statute provides that the Judicial Council may rely upon (among other things) (1) performance criteria *that the council establishes* for measuring a court’s performance and efficiency, (2) a minimum standard *that the council establishes* for the operation and staffing of all trial court operations, and (3) “any other factors” *that the council determines*. (Gov. Code, § 68502.5(a)(2), (a)(4).) If the council elects to establish minimum standards for court operations, the law directs those standards “shall be modeled on court operations using all reasonable and available measures to increase court efficiency.” (*Id.*, § 68502.5(a)(4).)

This statutory focus on enhancing court efficiency is reflected in numerous statutory provisions that direct the manner in which the Judicial Council is to allocate state funding for trial courts. Government Code sections 68502.5(c) and 77202(b), for example, using almost identical language, direct that the council is to allocate trial court funding in a way that “best assure[s] [the courts’] ability to carry out their functions, promote[s] implementation of statewide policies, and promote[s] the immediate implementation of efficiencies and cost saving measures

in court operations, in order to guarantee equal access to the courts” statewide. (Gov. Code, § 68502.5(c).)

### The Question of Consent

With that statutory framework in mind, I turn now to the question of consent. Government Code section 68085 provides in relevant part as follows:

Notwithstanding any other provision of law, in order to promote statewide efficiency, the Judicial Council may authorize the direct payment or reimbursement or both of actual costs from the Trial Court Trust Fund or the Trial Court Improvement Fund to fund the costs of operating one or more trial courts upon the consent of participating courts.

(Gov. Code, § 68085(a)(2)(A).) Elsewhere the section defines the term “costs of operating one or more trial courts” as encompassing “expenses . . . including, but not limited to, statewide administrative and information technology infrastructure supporting the courts.” (*Id.*, § 68085(a)(2)(B).) “These paid or reimbursed costs may be for services provided to the court or courts by the [AOC] or payment for services or property of any kind contracted for by the court or courts or on behalf of the courts by the [AOC].” (*Id.*, § 68085(a)(2)(A).) The focus of the question about the council’s authority to allocate Trial Court Trust Fund and Trial Court Improvement Fund is on the consent language of the statute.

This language was added to Government Code section 68085 as part of a budget trailer bill in 2006. As a result, the legislative history of the bill that effected the amendment is sparse and none covers the intended meaning of the consent language. In interpreting statutory language such as the consent provision, however, we are guided by the rules of statutory interpretation, which instruct us to seek the most reasonable interpretation, an interpretation that is consistent both with the surrounding statutory framework and common sense, an interpretation that is workable. If the statutory language is not definite, the rules of statutory interpretation instruct that it is appropriate to consider the consequences that would flow from a particular interpretation. (See, e.g., *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 290.) Those rules

also instruct us to avoid an interpretation that would lead to absurd consequences. (See, e.g., *In re J.W.* (2002) 29 Cal.4th 200, 210.)

Some historical context here is helpful. At the time the state assumed primary responsibility for funding the trial courts, there were more than 70 case management systems in use throughout the state, many of which did not meet the courts' basic needs or those of their justice partners. The superior court in Los Angeles County alone had inherited 25 disparate case management systems, which until 2000 had been under 15 separate government structures. Meetings between the Administrative Director of the Courts, the Chief Justice, and the Governor at the time confirmed the need for the judicial branch to develop branch-wide solutions because the state could not, and would not, support a multitude of different solutions.

The CCMS statewide initiative grew out of this realization. And the Legislature has indicated in statutes such as Government Code section 68511.8, which requires annual reporting regarding the initiative, that it expects CCMS to be developed and deployed statewide. The likelihood of this occurring if each of the 58 trial courts has the ability to withhold consent for CCMS funding, or to give and later withdraw such consent, for example, as new presiding judges are selected, is low. Government Code section 68085 does not require repeated or periodic consent from each of the 58 courts to the proposed special fund allocations.

*Consent requirement does not apply to projects already underway when the requirement was adopted.*

The Legislature could not have intended the consent requirement to apply at all to decisions about already-existing programs such as CCMS that were initiated years before the consent language was added in 2006. Nor is there any evidence that this is the case. The Legislature appropriated \$21 million in state funding for development of a statewide court case management system as early as fiscal year 2000–2001. We do not think it could have intended in 2006 to give individual courts the power to withhold consent to complete the development of a large, statewide, multi-year project. Rather, we think the consent requirement was intended to apply only to funding of projects initiated after that provision was added to statute.

Consent was expressly given by participating courts.

Even if consent were needed, however, each of the initial participating courts in fact expressly consented—in writing—to participate in the development of the initiative that became CCMS.

All courts impliedly consented to CCMS funding.

Moreover, by 2006 all trial courts knew that the Judicial Council, at the recommendation of its Trial Court Budget Working Group—a working group that is comprised of a wide cross-section of trial court leaders—had adopted a process for funding statewide technology initiatives such as CCMS that relied on the use of the Trial Court Trust Fund and the Trial Court Improvement Fund. The report to the council regarding this recommendation was publicized and a series of regional meetings held to discuss it. Thus it may be argued that the courts, by not objecting to this funding structure, implicitly consented to it. This argument is supported by the fact that many courts sought supplemental funding related to statewide technology projects after having been informed that the funding would come from the two funds.

Consent may be required for future deployment of CCMS.

It is arguable whether the consent requirement will apply to funding for deployment of projects like CCMS that were initiated well before the language including the requirement was added to statute. But even assuming that the consent requirement will apply to CCMS deployment, again, it would apply only for those courts that participate in the deployment. The council therefore in the future may allocate funding to deploy CCMS to participating courts that consent to such a use of the funds to cover direct payment or reimbursement of related costs.

That concludes my brief statement.

Mary M. Roberts

General Counsel

Judicial Council of California—Administrative Office of the Courts

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