



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 12, 2014

Title

Judicial Council: 2015 Legislative Priorities

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

None

Effective Date

December 12, 2014

Recommended by

Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair

Date of Report

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Executive Summary

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and establishes priorities for the upcoming legislative year. For the 2015 legislative year, the Policy Coordination and Liaison Committee recommends an approach similar to that of 2014, following the Chief Justice's Access 3D framework: (1) advocate for reinvestment in our justice system and avoid further reductions to preserve access to justice for all Californians, including a method to provide stable and reliable funding; (2) advocate to secure new judgeships for communities most in need and ratify the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts; and (3) advocate for legislation to expand access to interpreters.

Recommendation

PCLC recommends that the Judicial Council consider the following as legislative priorities for the council in 2015:

1. Advocate budget stability for the judicial branch to include: (a) sufficient fund balances to allow courts to manage cash flow challenges; (b) a method for stable and reliable funding for courts to address annual cost increases in baseline operations; and (c) sufficient additional resources to allow courts to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, and to restore programs and services that were reduced or eliminated in the past few years. This advocacy includes sponsorship or support of proposals that provide operational efficiencies, cost recovery, or new revenue, including seeking the extension of sunset dates on increased fees implemented in the fiscal year (FY) 2012–2013 budget (the sunset date is July 1, 2015, unless noted otherwise):

- \$40 increase to first paper filing fees for unlimited civil cases, where the amount in dispute is more than \$25,000 (Gov. Code, § 70602.6)
- \$40 increase to various probate and family law fees (Gov. Code, § 70602.6)
- \$20 increase to various motion fees (Gov. Code, §§ 70617, 70657, 70677)
- \$450 increase to the complex case fee (Gov. Code, § 70616)
- \$15 or \$20 fee for various services, to be distributed to the Trial Court Trust Fund (Sargent Shriver project), with sunset expiring on July 1, 2017 (Gov. Code, § 68085.1)
- \$40 probate fee enacted in 2013, sunset on January 1, 2019 (Gov. Code, § 70662)

(See the “Rationale for Recommendation” section for details regarding revenues from the listed fees.)

2. Seek additional judgeships and subordinate judicial officer conversions.

- Secure funding for critically needed judgeships. Seek funding for 10 of the remaining 50 unfunded judgeships, assigned to the courts with the greatest need based on the most recently approved Judicial Needs Assessment. (See alternatives in the Comments section, below.)
- Secure funding for two additional justices in Division Two of the Fourth Appellate District (Riverside/San Bernardino). Seek funding for one additional justice in FY 2015–2016 and the second additional justice in FY 2016–2017.
- Advocate, as is done each year, 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 for legislative ratification of the council’s authority to convert up to 10 additional SJO positions to judgeships if the conversion will result in an additional judge sitting in a family or juvenile law assignment that was previously presided over by an SJO.

3. Support legislation to increase access, fairness, and diversity, as well as the quality of justice and service to the public, by allowing courts to provide services for litigants who face challenges accessing the courts due to language barriers and the lack of interpreter services.

Support or sponsor legislation to implement the recommendations of the statewide Language Access Plan.

Previous Council Action

The council has taken a variety of actions over the past years related to the above recommendations. Recent key actions in these areas follow:

Budget: In 2009 and 2010, the council adopted as a key legislative priority for the following year advocating to secure sufficient funding for the judicial branch to allow the courts to meet their constitutional and statutory obligations and provide appropriate and necessary services to the public. In December 2011, the council adopted as a key legislative priority for 2012 advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courts and restore critical staff, programs, and services that were reduced or eliminated in the past several years. A key legislative priority adopted for 2012 also included advocating for a combination of solutions to provide funding restorations for a portion of the funding eliminated from the branch budget since 2008. The combination of solutions included restoring the general fund, implement cost savings and efficiencies through legislation, identifying new revenues, and using existing revenues to restore services to the public and keep courts open.

Additionally, in 2012, the council approved sponsorship of 17 proposals for trial court operational efficiencies, cost savings, and new revenue measures. An additional 6 efficiency proposals were approved for sponsorship in the first quarter of 2013.

In 2013, the council adopted a key legislative priority of advocating to achieve budget stability for the judicial branch, including advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courthouses; restore court facility construction and maintenance projects; and restore critical staff, programs, and services that were reduced or eliminated in the past four years. Again, in 2014, the council had a similar priority to advocate budget stability for the judicial branch, including advocating for (1) sufficient fund balances allowing courts to manage cash flow challenges; (2) a method for stable and reliable funding for courts to address annual cost increases in baseline operations; and (3) sufficient additional resources to allow courts to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, and to restore programs and services that were reduced or eliminated in the past few years. This advocacy also included continued sponsorship of the remaining proposals—for operational efficiencies, cost savings, and new revenue—that were approved for sponsorship in 2012 and 2013.

Judgeships and SJO conversions: The council has consistently sponsored legislation in recent years to secure the 150 most critically needed judgeships. In December 2011, the council authorized continued sponsorship of Assembly Bill 1405 (Committee on Judiciary), to establish the third set of 50 new judgeships. In 2013, however, the council chose not to sponsor legislation

seeking the additional judgeships and instead chose to focus on other more urgent budgetary concerns. In 2014, the Judicial Council again sponsored legislation (Sen. Bill 1190 [Jackson]) to secure funding for the second set of 50 new judgeships, which was approved in 2007 (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722) but has yet to be funded, and to authorize a third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment.

The council also has annually directed staff to take action to secure legislative ratification of 16 SJO conversions to judgeships, as authorized by Government Code section 69615. In December 2013, the council additionally directed staff to pursue legislation to secure ratification of the authority to convert 10 additional vacant SJO positions to judgeships. Such legislation, similar to the efforts for the 16 conversions, must be pursued annually.

Access, fairness, and diversity: The council's strategic plan Goal I provides:

California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. (*Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2012*)

In 2014, the council adopted a legislative priority to sponsor legislation to increase access, fairness, and diversity, as well as the quality of justice and service to the public, by allowing courts to provide interpreters in civil cases for litigants who face challenges accessing the courts due to language barriers and the lack of interpreter services. (Assem. Bill 1657; Stats. 2014, ch. 721.)

Rationale for Recommendation

The mission of the Judicial Council includes providing leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this mission is a commitment to meet the needs of the public, which includes reinvestment in our justice system to avoid further reductions and to preserve access to justice, which Californians expect and deserve.

Further, the Chief Justice has proposed a framework to increase public access to the courts. Her vision, entitled Access 3D, combines strategies from the courts—actions that will ensure greater public access—with a reasonable reliance on reinvested funds to the judicial branch. Access 3D is a multidimensional approach to ensuring that Californians have access to the justice system they demand and deserve. The three dimensions of access are:

- Improved physical access, by keeping courts open and operating during hours that benefit the public.

- Increased remote access, by increasing the ability of court users to conduct branch business online.
- Enhanced equal access, by serving people of all languages, abilities, and needs, reflecting California's diversity.

The key to the success of Access 3D as well as the Blueprint for a Fully Functioning Judicial Branch outlined by the Chief Justice last year is a new investment in the courts. The proposed 2015 legislative priorities support the goals of Access 3D and the Blueprint.

The Blueprint outlines a plan to improve access to justice in California by focusing on four core elements:

1. Implementing Access 3D
2. Closing the trial court funding gap
3. Providing critically needed judgeships
4. Modernizing court technology

Budget

State General Fund support for the judicial branch has been reduced significantly, from a high of 56 percent of the total branch budget in FY 2008–2009, to just 36 percent in the current year (FY 2014–2015). Over this same period, to prevent debilitating impacts on public access to justice, user fees and fines were increased; local court fund balances were swept; and statewide project funds, as well as \$1.7 billion in courthouse construction funds, were diverted to court operations or to the General Fund. The council has spent considerable time over the past several years addressing the impacts of budget cuts on the branch, redirecting resources to provide much needed support to trial court operations, advocating for new revenues and other permanent solutions, and looking inward at cost savings and efficiencies that could be implemented to allow the courts to serve the public effectively with fewer resources.

The \$63 million reinvestment in the judicial branch in FY 2013–14 and the \$136 million baseline adjustment in current fiscal year 2014–15 are important steps that enable the courts to begin to address service impacts resulting from past budget cuts. Nevertheless, in its budget analysis, the Legislative Analyst indicated that budget reductions will increase by more than \$200 million in the current year, given fewer resources available to the courts (such as trial court reserves) to offset the cuts. As a result, courts are being closed, services curtailed, and staff levels reduced.

To address the budget crisis faced by the branch, in April 2012, the Judicial Council approved for sponsorship 17 legislative proposals for trial court operational efficiencies, cost recovery, and new revenue. An additional 6 efficiency proposals were approved for sponsorship in April 2013. Several noncontroversial and relatively minor measures were successful as the following efficiency measures were enacted into law.

Senate Bill 1021 (Stats. 2012, ch. 41)—Public safety. In FY 2012–2013 temporary fee increases were approved by the Legislature to help address some of the fiscal issues faced by the courts. Given that the courts are not fully funded, it is necessary to seek an extension on the temporary fee increases. See table 1 below for actual and projected revenues from the Senate Bill 1021 fees.

Table 1. Sen. Bill 1021 Fee Increases

Description	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 (10R for Gov's Jan. Budget) Projected
\$40 increase to first paper filing fees for unlimited civil cases where the amount in dispute is more than \$25K (GC 70602.6)	\$12,185,260	\$12,655,226	\$11,728,163
\$40 increase to various probate and family law fees (GC 70602.6)	\$7,629,479	\$7,718,618	\$7,569,769
\$20 increase to various motion fees (GC 70617, GC 70657, GC 70677)	\$ 7,641,569	\$ 7,332,651	\$ 7,154,327
\$450 increase to the complex case fee (GC 70616)	\$11,253,455	\$ 11,830,217	\$11,000,949
Total	\$38,709,763	\$ 39,536,712	\$37,453,208
Other Fees that will Sunset on 7/1/17 or 1/1/19			
Description	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 (10R for Gov's Jan. Budget) Projected
July 1, 2017 sunset – Sargent Shriver Project			
\$10 increase to GC 70626(a) - miscellaneous post-judgment fee	\$ 8,655,059	\$ 8,692,493	\$ 8,391,323
\$10 increase to GC 70626(b) - miscellaneous post-judgment fee	\$ 253,422	\$ 315,743	\$ 304,803
January 1, 2019 sunset			
New \$40 probate fee (GC 70662) -- effective 1/1/14	n/a	\$ 57,740	\$ 190,000
Total	\$ 8,908,480	\$ 9,065,976	\$ 8,886,126

Senate Bill 75 (Stats. 2013, ch. 31). This Courts Trailer Bill of the Budget Act of 2013 approved the following efficiency proposals:

- Increases the statutory fee from \$10 to \$15 for a clerk mailing service of a claim and order on a defendant in small claims actions.
- Prohibits the Franchise Tax Board (FTB) and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court or county providing the defendant’s social security number, while still allowing the social security number to be released if FTB believes it would be necessary to provide accurate information.
- Increases the fee from \$20 to \$50 for exemplification of a record or other paper on file with the court.

- Modifies the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters.

Assembly Bill 619 (Stats. 2013, ch. 452). This court facilities bill revises the formula for assessing interest and penalties for delinquent payments to the State Court Facilities Construction Fund to conform to the existing statute governing interest and penalties for late payments to the Trial Court Trust Fund by using the Local Agency Investment Fund rate.

Assembly Bill 648 (Stats. 2013, ch. 454). This bill on court reporter fee cleanup clarifies language from the prior year that created a new \$30 fee for court reporters in civil proceedings lasting one hour or less.

Assembly Bill 1004 (Stats. 2013, ch. 460). This bill on electronic signatures on arrest warrants allows magistrates' signatures on arrest warrants to be in the form of digital signatures.

Assembly Bill 1293 (Stats. 2013, ch. 382). This bill establishes a new \$40 probate fee for filing a request for special notice in certain proceedings.

Assembly Bill 1352 (Stats. 2013, ch. 274). This court records retention bill streamlines court records retention provisions.

Senate Bill 378 (Stats. 2013, ch. 150). This bill (Official record of conviction: admissibility of electronically digitized copy) provides that an electronically digitized copy of an official record of conviction is admissible to prove a prior criminal act.

The remaining efficiency proposals, which are more substantial and, consequently, more controversial, were rejected by the Legislature in both 2013 and 2014 (see Attachment A).

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 150 critically needed judgeships. Full funding was provided in the 2007 Budget Act, and judges were appointed to each of the 50 judgeships created by SB 56.

In 2007, the council secured the second set of 50 new judgeships of the 150 critically needed judgeships. (AB 159 [Jones]; Stats 2007, ch. 722.) Initially, funding for the second set of new judgeships would have allowed appointments to begin in June 2008. However, because of budget constraints, the funding was delayed until July 2009. The 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 what has been called the “federal stimulus trigger.” This trigger was “pulled,” and the funding for the new judgeships and the various other items made contingent on the trigger was not provided.

In 2008, the council sponsored Senate Bill 1150 (Corbett) to authorize 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 also 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.

In both 2011 and 2012, the council sponsored AB 1405 to establish the third set of 50 judgeships. Even though the legislation did not provide funding for those positions, the state's continuing fiscal crisis and the fact that the second set of 50 judgeships had yet to be appointed because of lack of funding resulted in the legislation's not moving forward. The Judicial Council chose not to sponsor similar legislation in 2013 and, instead, chose to focus on other critical budgetary concerns.

In 2014, the council sponsored SB 1190 (Jackson), which sought to secure funding for the second set of 50 new judgeships approved in 2007 but not yet funded and to authorize a third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment. This bill also would have authorized the two additional justices in Division Two of the Fourth Appellate District. The bill was held in the Senate Appropriations Committee.

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

The council converted the maximum 16 positions in fiscal years 2007–2008, 2008–2009, 2009–2010, 2010–2011, and 2011–2012; 13 in 2012–13; and 11 in 2013–2014. For FY 2014–2015, as of October 2, 2014, 7 SJO positions have been converted.

Additionally, legislation enacted in 2010 (AB 2763; Stats. 2010, ch. 690) expedites conversions by authorizing 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 separate from the budget. In 2011, the council sponsored Senate Bill 405 (Stats. 2011, ch. 705) to secure legislative ratification of these additional SJO conversions, and 4 additional SJO positions were converted. In 2013, Assembly Bill 1403 (Stats. 2013, ch. 510) included the ratification of the council's authority to convert 10 subordinate judicial officer positions to

judgeships in the 2013–2014 fiscal year. In 2014, the council sponsored Assembly Bill 2745 (Stats. 2014, ch. 311), which again provided the ratification for the conversion of an additional 10 SJOs.

In total, 115 SJO positions have been converted, leaving only 47 of the total 162 positions still needing to be converted.

Expanding language access

In accordance with Access 3D, expanding access to interpreter services will increase access, fairness, and diversity in the California courts. This action will also improve the quality of justice and service to the public by aiding all Californians, regardless of language barriers, to interact directly with the courts.

In 2014, the council sponsored AB 1657 (Stats. 2014, ch. 721), which clarifies the ability of courts to provide foreign language interpreters in all cases, regardless of the income of the parties involved.

Comments, Alternatives Considered, and Policy Implications

The council has consistently sponsored legislation in recent years to secure the most critically needed judgeships. In December 2011, the council authorized continued sponsorship of AB 1405 (Committee on Judiciary) to establish the third set of 50 new judgeships. In 2012, however, the council chose not to sponsor legislation seeking the additional judgeships and instead chose to focus on other more urgent budgetary concerns for 2013.

For 2015, there are multiple options in pursuing funding for the second set of 50 judgeships:

- Consider not pursuing funding for this year. 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' access to justice.
- Continue recent requests and pursue funding for the 50 judgeships already authorized. This is the highest-cost option and has not been successful with the Legislature or the Governor.
- Request funding over multiple years. The costs for each alternative are outlined in Table 2 below.
 - Request the funding of new judgeships over two years, with 25 judgeships being funded each year.
 - Request the funding over three years, with 10 the first year, 15 the second year, and 25 the third year. This is the recommended option.
 - Request the funding over five years, with 10 judgeships funded each year.

Table 2. Cost of New Judgeships

	Year 1	Year 2	Year 3	Year 4	Year 5	Ongoing
	(in thousands)					
50 Judgeships	\$ 111,774	\$ 75,421	\$ 75,421	\$ 75,421	\$ 75,421	\$ 75,421
2-Year Phase-In 25/25	55,887	111,774	75,421	75,421	75,421	75,421
3-Year Phase-In 10/15/25	14,813	37,303	74,742	75,421	75,421	75,421
5-Year Phase-In 10/10/10/10/10	14,813	29,897	44,981	66,065	75,421	75,421
	50 Judges	Per Judge				
One-Time Costs (estimate)*	\$ 36,353	\$ 727				
Ongoing Costs	\$ 75,421	\$ 1,508				

Initial costs in year one may vary depending on the amount of time it takes to fill each new judgeship position. Additionally, one-time costs are an estimate and may vary from court to court.

Implementation Requirements, Costs, and Operational Impacts

The public expects and deserves access to the California courts. Providing timely access to high-quality justice is the cornerstone of Access 3D and the Blueprint. The key to the success of Access 3D is a robust reinvestment in the courts. Adoption of the proposed legislative priorities will allow Judicial Council staff to support the goals of Access 3D and the Blueprint for reinvesting in our justice system.

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 access to the courts for all Californians; 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 to meet the needs of court users.

Attachment

1. Attachment A: Efficiency and Cost-Recovery Proposals Rejected by the Legislature in 2013 and 2014, at page 11

Efficiency and Cost-Recovery Proposals Rejected by the Legislature in 2013 and 2014

- **Administrative assessment for maintaining records of convictions under the Vehicle Code:** Clarifies that courts are required to impose the \$10 administrative assessment for each conviction of a violation of the Vehicle Code, not just upon a “subsequent” violation
- **Audits:** Defers 2011 required audit until trial courts and the Judicial Council receive specified funding to cover the cost of the audit
- **Bail bond reinstatement:** Authorizes courts to charge a \$65 administrative fee to reinstate a bail bond after it has been revoked
- **Collections:** Allows courts to retain and distribute collections rather than transferring collected funds to county treasuries with distribution instructions
- **Court costs for deferred entry of judgment:** Clarifies that the court can recoup its costs in processing a request or application for diversion or deferred entry of judgement
- **Court reporter requirement in nonmandated case types:** Repeals Government Code sections 70045.1, 70045.2, 70045.4, 70045.6, 70045.75, 70045.77, 70045.8, 70045.10, 70046.4, 70050.6, 70056.7, 70059.8, 70059.9, and 70063 to eliminate the unfunded mandate that the enumerated courts (Trinity, Modoc, Merced, Kern, Nevada, El Dorado, Butte, Tehama, Lake, Tuolumne, Monterey, Solano, San Luis Obispo, and Mendocino) use court reporters in specified nonmandated case types
- **Destruction of records relating to possession or transportation of marijuana:** Eliminates the requirement that courts destroy infraction records relating to possession or transport of marijuana
- **File search fee for commercial purposes:** Allows courts to charge a \$10 fee to commercial enterprises, except media outlets that use the information for media purposes, for any file, name, or information search request
- **Marijuana possession infractions:** Amends Penal Code section 1000(a) to exclude marijuana possession, per Health and Safety Code section 11357(b), from eligibility for deferred entry of judgment
- **Notice of mediation:** Amends Family Code section 3176 to eliminate the requirement for service by certified, return-receipt-requested, postage-prepaid mail for notice of mediation, and clarifies that the court is responsible for sending the notice
- **Notice of subsequent DUI:** Repeals Vehicle Code section 23622(c) to eliminate the court’s responsibility to provide notification of a subsequent DUI to courts that previously convicted the defendant of a DUI
- **Penalty Assessments:** Revises and redirects the \$7 penalty assessment from court construction funds to State Court Facilities Trust Fund
- **Preliminary hearing transcripts:** Clarifies that preliminary hearing transcripts must be produced only when a defendant is held to answer the charge of homicide
- **Trial by written declaration:** Eliminates the trial de novo option when the defendant in a Vehicle Code violation has not prevailed on his or her trial by written declaration