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March 21, 2013

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Member, Judicial Council of California
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Hon. Phillip Isenberg, Co-Chair
Trial Court Funding Working Group
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Justice Hull and Mr. Isenberg,

Please find attached for your consideration, a report on behalf of the Funding Methodology Subcommittee of the Judicial Council's Trial Court Budget Working Group. The report sets forth a proposed recommendation to adopt a budget process based on workload measurements for the trial courts. The Funding Methodology Subcommittee is in the process of presenting the recommendation to presiding judges and court executive officers throughout the state. The proposal is a draft while we seek input from these groups. Our final recommendation will be presented to the Trial Court Budget Working group at its April 9, 2013 meeting and if approved, to the Judicial Council on April 26, 2013.

Sincerely,

Hon. Laurie M. Earl, Co-Chair
Trial Court Budget Working Group
Presiding Judge
Sacramento Superior Court

**REPORT OF THE FUNDING METHODOLOGY SUBCOMMITTEE
OF THE TRIAL COURT BUDGET WORKING GROUP**

Title

Proposed Workload Based Funding Methodology

Date of Report

March 21, 2013

Recommended by

Hon. Laurie M. Earl, Chair
Presiding Judge, Sacramento Superior Court

Executive Summary

Under California's trial court funding methodology in place since 1997 when the State assumed primary funding responsibility for the judiciary, the Judicial Council has allocated baseline funding to the trial courts based upon historical allocations. With little exception these historical based funding levels have not been adjusted to reflect increased costs due to changes in population, inflation or workload. At a time when resources are scarce it has become evident that the disparity of funding that existed under the county funding model has not been corrected with the current state funded system and historical differences in resources have once again amounted to disparities in outcome for court users.

The charge of the Funding Methodology Subcommittee of the Trial Court Budget Working Group (Subcommittee) was to develop a trial court funding model that would result in a more transparent and equitable distribution of trial court funding among each of the 58 trial courts. What has emerged from these efforts is a recognition that whatever models are used to categorize or assess needs, a more comprehensive *budget process* is required to make reasoned and deliberate funding decisions.

The Subcommittee has developed a proposed workload based funding model that involves a step by step budget development and allocation process which allows each of the 58 trial courts to determine their baseline funding needs. The budget process defines a formula for estimating realistic trial court expenditure requirements and consistent allocation principles. Such a process would enhance transparency and accountability, and would mitigate unequal financial barriers to equal access to trial courts from one jurisdiction to another.

Current Trial Court State Funding Model – Historical Based

Until 1997 the primary responsibility for funding California’s trial courts fell upon the state’s 58 counties. Individual trial court budgets were dependent upon the financial health and decision-making of their county governments. As a result, court services varied from county to county leading to disparities in the administration of justice. In his 2001 State of the Judiciary Address, Chief Justice Ronald M. George described the inequity of the county funding structure:

“Disparities in the quality of justice dispensed across the state were common and erratic. Local courts were on the verge of closing, with staff cutbacks and unfunded payrolls, facilities in a state of dangerous disrepair, services to the public drastically curtailed, and, ultimately, the entire administration of justice at risk.”

In the early 1990’s in an effort to provide more stable funding to the trial courts, the judicial branch began to advocate for a system of state funding. In October 1997 the Lockyer-Isenberg Trial Court Funding Act (Act) (Chapter 850, Statutes of 1997 - AB 233, Escutia and Pringle) was enacted. The Act shifted the primary responsibility for trial court funding from the counties to the state. In its September 2011 report entitled “Completing the Goals of Trial Court Realignment”, the California Legislative Analyst’s Office stated that “*Chapter 850 was intended mainly to provide a mechanism that would ensure adequate funding levels for trial courts and thereby ensure equal access to justice across the state*”.

The level of funding that each trial court received when the state assumed funding responsibilities was based upon the amount of funding courts had received from their counties in fiscal year 1994-95. Under the funding methodology in place since that time, the Judicial Council has allocated baseline funding to the trial courts based upon historical allocations, making specific funding adjustments, such as for actual or projected costs (e.g. health benefits or retirement) or unspecified augmentations or reductions based upon each court’s historic share of funding. During this period, despite divergent rates of population, caseload and local cost growth, historical-based funding levels have not been adjusted to reflect these specific changes on a court by court basis.

In 2013, a little more than ten years since enactment of the Act, the State of California is in the throes of a sustained period of economic crisis. As a result, trial courts are once again curtailing services to the public. The timing and consistency in which trial courts have reduced services or access has been difficult to predict. While the fiscal crisis has affected all 58 trial courts, the impact has been erratic; affecting different courts in different ways, at different times and some more deeply than others. While most of the 58 trial courts have implemented employee layoffs, others have had to go further by closing courtrooms and in some cases, full courthouses.

At a time when resources are scarce it has become evident that the disparity of funding that existed under the county funding model has not been corrected with the current state funded system and historical differences in resources have once again amounted to disparities in outcome for court users.

Budget Process - The Move to More Equitable Funding

Recognizing the need to remedy funding inequities, the Subcommittee was formed last November to address this issue. The Subcommittee consists of 16 members; 7 Presiding Judges and 9 Court Executive Officers from counties of variable size, geographic location and funding need. The charge of the Subcommittee was to develop a trial court funding model that would result in a more equitable distribution of trial court funding among each of the 58 trial courts. What has emerged from these efforts is a recognition that whatever models are used to categorize or assess needs, a more comprehensive *budget process* is required to make reasoned and deliberate funding decisions.

In order to facilitate trial court financial planning and management, a comprehensible and predictable budget process is needed. The budget process should define a formula for estimating realistic trial court expenditure requirements and consistent allocation principles. Such a process would enhance transparency and accountability, and would mitigate unequal financial barriers to equal access to trial courts from one jurisdiction to another.

The budget process should involve two steps; 1) budget development procedures that would demonstrate a calculable formula and protocol for achieving relative parity and 2) allocation procedures that follow specific approaches and that would make allowances for recognized adjustments.

The *budget development process* should be designed to create a baseline funding formula for each court using identifiable, relevant and reliable data consistently applied to all courts. The formula should differ from court to court only in the inclusion of approved unique, ongoing factors experienced by an individual court.

The *allocation process* should result in allocations made based upon specific approaches (such as based upon actual or projected costs, similar to benefits and retirement funding). The process should be designed to create a procedure and standard for modifying the annual baseline funding formula recognizing one-time, unique factors warranting equitable adjustment. The criterion should consist of certain limited acceptable adjusters.

Proposal for a Workload Based Funding Model

The subcommittee has developed a proposed workload based funding model that involves a step by step budget development and allocation process which allows each of the 58 trial courts to determine their baseline funding needs. Such a process would afford trial courts the ability to maintain independent authority to allocate resources while providing sufficient transparency so funders and the public can see the impacts of appropriations and assure equitable access to justice in each of California's 58 trial courts.

The proposed budget development process is rooted in workload assessment and other identifiable cost drivers and estimates the funding need for each Superior Court based upon the following components:

- a) An estimation of workload – the number of full-time-equivalent (FTE) staff based on the number and complexity of filings that each court receives;
- b) An estimation of personnel costs consistent with the number of FTE staff needed in each court;
- c) An adjustment to the personnel costs to take into account cost-of-labor differentials across counties. The adjustment uses the US Bureau of Labor Statistics data on wages of local government employees in each county;
- d) An estimation of non-personnel costs (OE&E) based on a ratio of the average OE&E costs per FTE staff;
- e) The addition of costs that were not captured in the workload estimates. These include costs associated with programs or salaries funded through local revenues, dedicated State funding sources, grant funding and/or federal funding.
- f) Potential additional adjustments based on defined unique factors that are not captured in other components. Unique factors may include a high proportion of complex cases or courthouses in remote locations.

Implementation of Workload Based Funding Model

For over 15 years trial courts have been funded based upon a model that has incorporated the differential funding levels of the prior county funded system, perpetuating funding inequities in place since 1994-95. Since that time, funding adjustments have not addressed relative changes in population and caseload that have occurred at different degrees in each county, thus exacerbating resource disparities among courts, year by year.

With the development of a new funding model that will be based upon workload rather than historical allocations, the Subcommittee believes that transition to the new model should not be done abruptly, all in one year. Such a transition would be counter-productive in terms of the provision of trial court services to the public. Consequently, the Subcommittee recommends that implementation of the approved model be phased-in over a period of time.

The Subcommittee intends to recommend to the TCBWG that an approved workload based funding model be implemented as follows:

1. Currently estimated \$261 million in unallocated reductions shall be allocated to each court in FY 2013-2014 based upon each court's current pro rata share (each court's percentage share of current allocated funding).
2. For future fiscal years, base funds, defined as a court's funding following the adjustment identified in Item 1 above and prior to any new money applied, will be allocated pursuant to the new workload based funding model as follows:

FY 13-14:

- 10% allocated pursuant to the new workload based funding model
- 90% allocated pursuant to the current historical based funding model
- Courts identified in the Cluster 1 category (the state's smallest courts) of the existing workload assessment model, the Resource Assessment Study (RAS II) model, would be excluded from any allocation based upon the workload based funding model in FY 13-14. Base allocations to these courts would be based on the current historical based funding model for FY 13-14 only, while the impact of the model upon these smallest courts is reviewed and adjusted.

FY 14-15:

- 15% allocated pursuant to the new workload based funding model
- 85% allocated pursuant to the current historical based funding model

FY 15-16:

- 30% allocated pursuant to the new workload based funding model
- 70% allocated pursuant to the current historical based funding model

FY 16-17:

- 40% allocated pursuant to the new workload based funding model
- 60% allocated pursuant to the current historical based funding model

FY 17-18:

- 50% allocated pursuant to the new workload based funding model
- 50% allocated pursuant to the current historical based funding model

3a. All new money appropriated for general court operations will be allocated entirely pursuant to the new workload based funding model, and

3b. For any new money appropriated for general court operations, an equal amount of current funding will be reallocated under the new model.

The Subcommittee considered a more aggressive implementation of the new model in FY 2013-14, but found that the impact upon courts that would receive a reduction in their anticipated allocation would be too great given the timing of the implementation. While the Subcommittee recognizes the exigency in moving to a more equitable funding model, it does not intend doing so in a manner that results in further erosion of trial court services to the public.

Necessary Refinements to the Proposed Model

The proposed workload based funding model is far from complete. Given the timing of the proposal and the recommendation to begin implementation in FY 2013-14, the development of a process for funding adjustment based upon a "unique factor" will not be finalized in time for the allocation of FY 2013-14 funding. The Subcommittee will continue to work to develop recommended criteria and procedures for FY 14-15 and beyond, relative to this significant step in the budget process.

Additionally the Subcommittee has identified other issues that do not lend to easy resolution and Subcommittee members are committed to working through these issues in order to refine the proposed model. Included among these unresolved issues are the following:

- a) Evaluate self-help funding,
- b) Further define the process for estimating employee benefits,
- c) Evaluate impacts of the new model on California's smallest courts (Cluster 1) and make adjustments as necessary,
- d) Evaluate the impact of AOC provided services,
- e) Include best practices standards,
- f) Evaluate what to do with local fees and financial obligations,
- g) Evaluate how to allocate funding for technology,
- h) Validate the data used in the new model including the accuracy of the data.

Conclusion

Access to Justice is a concept that resists simple definition. Even if difficult to define or measure, the effort to achieve access to justice necessarily includes an effort to eliminate identifiable *barriers* to its achievement. California's baseline achievement in equal access to justice is highlighted by contrasting it with the court reform agenda that dominates discussion in other parts of the country. Several states continue to pursue unification and jurisdictional simplification; California completed this reform a decade ago. However the State's current fiscal crisis and the branch's current allocation methodology threaten the basic delivery of justice. The absence of a trial court budget process for the past 15 years has resulted in a crippling lack of transparency about the fiscal situations of the trial courts and significant disparities in court services for California's court users. The barrier is our own and the proposed workload based funding model is a significant step in eliminating it.