



## Judicial Council of California . Administrative Office of the Courts

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## REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 27, 2010

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Title

Budget: Fiscal Year 2011–2012 Requests for the Supreme Court, Courts of Appeal, Judicial Council/Administrative Office of the Courts, and the Trial Courts

Agenda Item Type

Action Required

Effective Date

August 27, 2010

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

August 23, 2010

Recommended by

Administrative Office of the Courts

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### Executive Summary

The Administrative Office of the Courts (AOC) recommends that the Judicial Council (1) approve the proposed fiscal year (FY) 2011–2012 budget requests for the Supreme Court, Courts of Appeal, trial courts, and Judicial Council/Administrative Office of the Courts (AOC) and (2) delegate authority to the Administrative Director of the Courts to make technical changes to budget proposals, as necessary. Development and transmittal of budget change proposals (BCPs) is the standard process for proposing funding adjustments in the state budget. This year, BCPs are to be submitted to the state Department of Finance by September 13, 2010.

### Recommendation

The Administrative Office of the Courts recommends that the Judicial Council, effective August 27, 2010, approve:

1. Submission of budget change proposals (BCPs) to the state Department of Finance for FY 2011–2012, which would communicate funding needs for the Supreme Court, Courts of

Appeal, trial courts, and Judicial Council/Administrative Office of the Courts, as identified in this report. These proposals will identify baseline resource needs associated with increased costs and workload related to the provision of services to the courts and the public for FY 2011–2012. One proposal also has a current year funding component.

2. Delegation of authority to the Administrative Director of the Courts to make technical changes to these budget proposals as necessary to address updated information, including the ability to develop additional proposals to meet any critical needs that are identified during the development of the FY 2011–2012 State Budget. AOC staff will report to the Judicial Council in the Fall if there are technical changes to the proposals submitted to the Department of Finance.

## **Previous Council Action**

The Judicial Council has statutory authority to approve budget requests on behalf of the Supreme Court, Courts of Appeal, trial courts, and the Judicial Council/AOC. The recommendations in this report are consistent with the council's past practice under this authority.

## **Rationale for Recommendation**

Each year, the AOC presents budget concepts for review by the council. Budget concepts approved by the council will be developed into full BCPs. Current estimated need is indicated in parentheses after the program title.

### **Supreme Court and Courts of Appeal**

The Judicial Council's approval is requested to proceed with the development of BCPs for FY 2011–2012 for the Supreme Court and Courts of Appeal to address baseline resource needs associated with increased costs and workload related to the provision of services to the courts and the public. The specific requests are discussed below.

***Court-appointed indigent counsel (\$5.4 million).*** The cost of court-appointed counsel in the Courts of Appeal exceeded its funding in FY 2009–2010 by approximately \$5 million. This shortfall was addressed through a \$1.507 million deficiency appropriation by the Legislature, as well as savings resulting from court closures and staff attrition. It is currently projected that costs in the program will exceed funding by approximately \$5.4 million in both FY 2010–2011 and FY 2011–2012. There are several factors that have contributed to growth in program expenditures currently being experienced, including:

- A continuing growth in criminal and juvenile caseloads, which lead to an increase in appointments of counsel and a concurrent increase in the number of compensation claims filed and payable;
- An increase in the number of attorney hours spent on each case, reflecting increased complexities in the area of criminal law; and
- Increases in the hourly rates paid to appointed counsel over the last few years and the resulting increase in the average cost of each case.

Current year deficiency funding is needed to address the projected shortfall in program funding in FY 2010–2011. In addition, provisional language is proposed to allow the Judicial Branch to submit a deficiency request in FY 2011–2012, to the extent necessary.

***Law library print and online legal resources (\$558,000).*** Additional costs are being experienced for law library subscriptions, books, and online resources for the Supreme Court and the Courts of Appeal. In the past 10 fiscal years, law libraries have pursued cost-containment measures in order to offset the effect of price increases for library books and collections. Despite these efforts, the California Judicial Center Library (CJCL) and the libraries of the Courts of Appeal estimate an increase in costs of 9.2 percent for FY 2009–2010. An average annual increase of 19.0 percent is also projected for the online legal research services contract. The limit on the libraries’ ability to absorb cost increases within their annual operating budgets and negotiate favorable discount rates for subscriptions has been reached. Without additional funding, sufficient resources required for research support of Supreme Court and Courts of Appeal decisionmaking will not be available to justices and researchers. This will ultimately impact efficiency and result in delays in the resolution of cases.

***Court research services (\$198,000).*** The demand for legal research and reference services has been growing substantially, requiring additional staff. CJCL established the Research and Reference Services unit in June 2000 to address the demand for research support for judicial decisionmaking in the Supreme Court and Courts of Appeal. Since its establishment, the unit has provided 45 hours of research services each week. Staffing resources were requested through FY 2002–2003, FY 2007–2008, and FY 2008–2009 budget concept proposals, but given limited state General Fund resources, an augmentation for this purpose was not provided in the State Budget. In order to meet the steadily increasing demand for service, CJCL has used state and agency temporary positions to staff the unit. The latter costs are absorbed within its existing budget, effectively reducing amounts available for other essential services such as library books and subscriptions. Without the requested augmentation, the current level of support for appellate decisionmaking cannot be maintained.

### **Trial Courts**

From FY 2005–2006 through FY 2007–2008, the trial courts received new funding from the General Fund based on the percentage change in the State Appropriations Limit (SAL) and few trial court BCPs were submitted to the DOF. With the worsening of the fiscal situation in FY 2008–2009, SAL was suspended for the trial courts and, instead, funding based on the lower Consumer Price Index was approved for the courts. Beginning in FY 2009–2010, the Legislature provided no formula-based funding increase to address court cost growth. With the continuance of the fiscal issues facing the state, suspension of these indexed increases may continue in FY 2011–2012.

Historically, we would propose the submission of BCPs to address cost growth in certain non-discretionary areas. However, consistent with proposed provisional language that has been approved by the Legislature to be included in the pending State Budget for FY 2010–2011, staff will be working with the DOF to pursue baseline adjustments to address increased costs in the areas of court employee retirement, retiree health, and health benefits. This process will

eliminate the need for BCPs in these areas. There are, however, other trial court cost areas in which the preparation and submission of BCPs is recommended. These include: court security, court-appointed dependency counsel, court interpreters, and assigned judges. These items are discussed in more detail below.

***Court security (\$18 million to \$21 million).*** There is a need for increased General Fund resources to address a projected shortfall in court security funding. Trailer bill language associated with the pending budget bill would include an increase in the court security fee that would help to fill a chronic shortfall in security funding. However, cost increases for existing levels of staff continue. Based on the responses to surveys for cost increases for FY 2010–2011, we are anticipating that additional funding in the range of \$18 million to \$21 million will be needed to meet increased costs for salaries, retirement, and benefits for all existing security positions. At this time, we assume that increases for FY 2011–2012 will be similar to those of the current year. In some counties, the retirement rates for sheriff positions are projected to increase substantially later this year as contribution rates adjust in response to significant pension fund valuation declines.

***Court-appointed dependency counsel (\$9.275 million).*** Increased General Fund resources are proposed to address a projected funding shortfall for court-appointed dependency counsel in FY 2011–2012. The court-appointed counsel program is operating with a structural deficit. Program costs have exceeded statewide funding allocated for this purpose for the last six fiscal years; large program reductions have been avoided and mitigated through one-time redirections of savings from other program areas during the last five fiscal years. In September 2009, a FY 2010–2011 BCP was submitted to the DOF in an effort to acquire additional funding to address the structural deficit in the court-appointed counsel program. Given the overall growing state deficit, though, the DOF indicated that they were not able to support the proposed adjustment, and the BCP was not approved. A proposed augmentation of \$9.275 million would provide a stable, ongoing budget to avoid reductions in this program, though this level of resources would be insufficient to achieve recommended caseload levels.

***Court interpreters (\$912,000).*** Staff projects that increased General Fund resources will be needed to address eligible reimbursable court interpreter costs in FY 2011–2012. In FY 2008–2009, costs exceeded the appropriation for this program by approximately \$912,000. This overage was addressed by redirection of available one-time funding from statewide special funds. While FY 2009–2010 reimbursable court interpreter costs have not yet been finalized, it is anticipated that there will be savings in the fund. Any savings, though, will largely result from the one-day-per-month court closures that were implemented statewide in FY 2009–2010, which resulted in a reduced need for interpreter services.

There are currently no statewide plans for additional court closures. While it is possible that some courts may institute unpaid furloughs, or close courtrooms, it is anticipated that court interpreter usage overall will increase in FY 2010–2011, as compared to FY 2009–2010. However, in the absence of court closures in FY 2011–2012, and assuming the continuing

suspension of SAL funding, staff believes that there is a likelihood of a shortfall in funding for this program next year, and there will be limited funding available to meet such a deficit.

***Ensuring meaningful language access for court users who are limited English proficient (LEP) (\$3.7 million).*** The federal Department of Justice (DOJ) has recently issued a letter clarifying the requirement that courts receiving federal financial assistance must provide meaningful access to 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. DOJ has provided guidance documents that emphasize 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. They further explain 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 of the courtroom; and should include language services for communication between LEP individuals and court appointed or court managed service providers.

In order to address these requirements, AOC staff proposes to include the following services in an LEP-related BCP:

- \$450,000 to establish a position of statewide coordinator for language access, as called for by DOJ, to oversee a statewide planning effort, advised by a working group of branch and justice partner stakeholders, and to support necessary planning activities, including research, budget and policy analysis, resulting in a multi-year statewide implementation plan called for by DOJ that will assist the court system “to move promptly towards full compliance”, and to oversee implementation of the plan.
- \$3.25 million to fully fund the provision of interpreters in the Domestic Violence–Family Law Interpreter Program. This amount is what is needed to supplement the current funding level of \$1.75 million for this program.

It is anticipated that this and future BCPs resulting from the multi-year plan will address the funding needs required to implement the statewide plan in incremental stages. Aspects will include:

- Extension of court-provided interpreter services throughout civil matters in a phased-in approach, prioritizing the highest-stakes civil proceedings for earliest phase-in.
- Development of multiple classifications/levels of language services professionals in the courts, including interpreters, to most efficiently provide the level of language skills needed and appropriate for the variety of language service needs of LEP court users, and to create a progressive career path for language professionals in the courts.
- Identification of efficiencies that can be achieved through interpreter assignment and calendaring practices and remote technology programs and equipment, among other possibilities.

- Provision of bilingual and interpretive services in ancillary court programs, public counters, and points of public contact, as well as the translation of forms, documents, brochures, and website content.
- Development of one or more sustainable funding mechanisms, such as the collection of fees for telephonic appearances in civil cases, to support the cost of expanding language services to comply with the federal requirements.

**Assigned judges program (\$3.9 million).** Increased General Fund resources are proposed to fill an ongoing shortfall in resources for the Assigned Judges Program. In FY 2009–2010, the program’s appropriation was exceeded by approximately \$1.4 million. The shortfall was addressed primarily through two means: (1) reimbursement for program coverage to backfill for subordinate judicial officer vacancies, and (2) transfer of funds to the program from judicial salary savings. In the current year, expenditures are projected to exceed funding by approximately \$3.9 million. There are several reasons why expenditures are expected to increase: there will be no statewide court closures resulting in savings in assigned judicial use as there was in FY 2009–2010; the Chief Justice’s voluntary pro bono services program for assigned judges has been eliminated; and reimbursement from courts to cover subordinate judicial officers is anticipated to be reduced by half. On top of this, use of assigned judges is expected to increase based on trend analysis. Projected expenditures for FY 2011–2012 are expected to be in the same range as those for the current year, again resulting in a \$3.9 million shortfall.

**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 Court Case Management System (CCMS) to three early adopter courts.

#### **Judicial Council/Administrative Office of the Courts**

The AOC is currently reviewing workload and cost information related to the provision of services to the courts and the public, as well as for internal infrastructure needed to support judicial branch operations. The review process includes determining whether the costs associated with workload growth and cost increases are justifiable, whether or not the judiciary has sufficient resources to redirect to address these workload growth and cost increases, and, finally, developing BCPs that specify resource requirements. This review has resulted in the need identified below.

#### ***Interim Case Management System Support and Transitional Case Management Funding (5 year request; FY 2011–2012 need: \$28.759 million, including \$12.174 million one-time).***

There are many courts that either have failing case management systems or have constraints on their current systems that compromise their usefulness. For example, one court’s civil case management system vendor is unwilling to supply more than four hours of support annually. Another court uses a traffic application that is supported solely by a county employee who will

soon retire. Without assistance, courts could find themselves without a functioning case management system or, to a lesser extent, be unable to support further legislative changes (e.g., fee/fine enhancements). In addition, due to the current state budget shortfall, the date to migrate the 15 courts utilizing the Sustain Justice Edition (SJE) case management system has changed from FY 2011–2012 to FY 2014–2015. In order to support these courts and their existing systems over the extended migration period additional funding is needed.

In order to address the needs identified for particular courts, AOC staff proposes providing extended support to the SJE courts, moving six courts to CCMS on an accelerated basis, and allocating funds to these six courts to provide various solutions to stabilize their existing situations while activities are underway to move them to CCMS.

***Proposed adjustments to special funds and federal funds, and other technical proposals.*** AOC staff are preparing proposals to address the following needs of the trial courts and of the court facility program:

- Increased appropriation authority from the State Court Facilities Construction Fund for court facility modifications (\$30,359,000) and outside counsel fees for construction and facility modification projects (\$2,000,000);
- Increased appropriation authority from the Court Facilities Trust Fund for county facility payment inflationary cost adjustments (\$2,282,000);
- Increased appropriation authority from the Court Facilities Trust Fund for increased operation costs for new and renovated courthouses for Contra Costa, Fresno, Lassen, Mono, and Plumas Counties (\$2,260,000);
- Increased appropriation authority from the Court Facilities Trust Fund for increased court and county reimbursements related to court facility operations, maintenance and lease costs;
- Increased appropriation authority from the General Fund for increased Judicial Branch rent costs;
- Budget Act provisional authority for the Trial Court Trust Fund is proposed to implement and administer a civil representation pilot program (AOC's Center for Families, Children & the Courts is to oversee the pilot program). Assembly Bill 590 (Stats. 2009, ch. 457) provides that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected by the Judicial Council. The program will be funded from July 1, 2011 to June 30, 2017, through an increase of \$10 in each fee collected pursuant to its provisions. The council is required to conduct a study and to report findings and recommendations to the Governor and the Legislature on or before January 31, 2016;
- Technical adjustment to provide support resources needed to maintain the Court Interpreter Data Collection System (CIDCS) for use by the trial courts (\$87,000); and
- Increased Federal Trust Fund expenditure authority.

AOC staff will be discussing these proposals in greater detail with the new Judicial Council Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch at its first business meeting on August 31, 2010. The advisory committee's review and recommendations will provide additional branch input and communication regarding overall funding changes and resource needs and prioritization. If staff determine, as a result of this

meeting or other discussions with the DOF prior to submission of the BCPs, there is a need to revise these proposals in a material or substantive way, staff will return to the Judicial Council with additional or revised recommendations, prior to submission of final BCPs to the DOF.

### **Delegation of authority to make technical adjustments**

To the extent that additional information is received that requires technical changes to the funding requests identified in this report, there may be a need to modify the BCPs being submitted to the DOF. For some of the proposals included in this report, the actual amounts may change as updated information is received. Rather than returning to the council to seek authority to make minor adjustments to these proposals, having authority delegated to the Administrative Director to do so in advance will facilitate proceeding successfully through the dynamic budget process. In addition, each year during the course of developing the State Budget, issues arise that may need to be addressed on short notice. This possibility makes it advisable for the Administrative Director to have the ability to update and add funding proposals in an efficient and flexible manner. If the BCPs that are submitted to the DOF contain changes from the proposals contained in this report, AOC staff will report to the Judicial Council on these revisions.

### **Comments, Alternatives Considered, and Policy Implications**

In developing recommendation 1, staff considered not proceeding with additional requests given the fiscal climate of the state; however, based on the demonstrated need for additional funding, this alternative is not recommended at this time.

An alternative to recommendation 2 is for the AOC to return to the Judicial Council prior to submission of the BCPs, any time technical adjustments need to be made or if unanticipated issues arise. This approach could cause delays in getting proposals updated and submitted in a timely manner and, for this reason, this alternative is not recommended. AOC staff will report to the Judicial Council on changes made to the proposals in this report.

### **Implementation Requirements, Costs, and Operational Impacts**

Not applicable.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The funding proposals requested for the Supreme Court, Courts of Appeal, trial courts, and Judicial Council/Administrative Office of the Courts will address the strategic plan goals of Access, Fairness, and Diversity; Modernization of Management and Administration; Quality of Justice and Service to the Public; and Branchwide Infrastructure for Service Excellence.