



Judicial Council of California

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July 24, 2023

Hon. Anthony J. Portantino, Chair
Senate Appropriations Committee
1021 O Street, Suite 7630
Sacramento, California 95814

Subject: Assembly Bill 1758 (Committee on Judiciary), as amended July 13, 2023—Oppose, unless funded.
Hearing: Senate Appropriations Committee—August 14, 2023

Dear Senator Portantino:

The Judicial Council regrettably must oppose Assembly Bill 1758 unless funding is provided to backfill the fees that courts are currently collecting for providing remote access to court records. This bill, among other things, prohibits courts that make civil case records available in an electronic format on the court's website from charging a fee to search for, download, or copy public court records, and allows courts to charge fees for commercial users, as defined, for searching, duplicating, downloading, or printing public court records in an electronic format.

The Judicial Council worked with committee counsel in the Assembly and Senate on last year's AB 2962 (Committee on Judiciary) that was substantially similar to AB 1758. We were able to agree on a number of amendments last year and very much appreciate the hard work of everyone involved. We further appreciate the amendments taken this year to ensure that the commercial fee, which we believe would be unworkable in light of the definitions included in the bill, is discretionary only and that the council would be authorized but not required to adopt a rule of court providing for a commercial fee.

However, a number of courts are currently charging fees to recover their costs of making these records available electronically, and the revenues obtained from those fees are needed to ensure the continuation of these services. Costs to provide this level of access include implementing, maintaining, updating, monitoring, protecting and defending the court's remotely accessible case portal against security threats as well as necessary redundancies to prevent those who are trying to access case data on a large scale from slowing the system down with their queries thereby negatively impacting the court's ability to

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access its own case management system. These costs are significant and ongoing. In the three most recent years for which revenue figures are available, the seven (7) courts¹ that have implemented cost-recovery fees have collected an average of \$18.7 million per year.

AB 1758 attempts to address this cost issue by allowing the courts to recoup costs from “commercial” users, as defined. However, AB 1758 would permit many requesters to avoid the commercial user fee by simply attesting that they are employed by or represent certain organizations or individuals and would use the requested records for specified purposes (for example, to represent a client on a pro bono basis or as a representative of a qualifying news media organization). It may not be feasible, and would be cost prohibitive, to create court case management systems that can accurately distinguish between “commercial” and “non-commercial” users using a remote internet interface. It would be preferable, subject to an appropriation to backfill the lost cost-recovery revenue, to expand this to all users, without distinguishing between commercial and non-commercial users, thereby making access free for all users. In this case, future expansion of online access to civil case records in any additional courts would be subject to funding in the state budget. Not providing a cost-recovery backfill would make convenient and secure online access to civil case records infeasible or necessitate cuts to other local court services.

For these reasons, the Judicial Council opposes AB 1758 unless the courts are provided with the funding required to backfill their costs for maintaining online access to civil case records.

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/TK/lmm

cc: Members, Senate Appropriations Committee
Members, Assembly Judiciary Committee
Ms. Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

¹ Based on a staff review of court websites, sixteen (16) courts provide online access to civil case records and roughly half of these courts have implemented cost-recovery fees. Many of the remaining courts have case indexes and registers of actions online, but this does not include access to “court records” as defined in the bill.