

Siskiyou County Superior Court

311 Fourth Street, Room 206, Yreka, CA 96097

October 23, 2017

To Honorable Members of the Funding Methodology Subcommittee:

At the outset, kindly excuse the format of these comments. The meetings of the Funding Methodology Subcommittee, in October with goal to make recommendations to the TCBAC for its November meeting and then to the Judicial Council for its January 2018 meeting seem to be moving at a pace that is difficult for any meaningful input or comment from the trial court judges or CEOs.

The BLS factor should be reviewed in WAFM, as it remains the factor, from inception, that has inequitably underestimated the funding need for small rural courts. The concerns of a collaboration of small courts were set forth in the March 22, 2017 letter to Chief Justice Cantil-Sakauye and Director Hoshino. This collaborative letter emphasized that the BLS factor, for small rural courts, should be re-examined. We note said letter has been provided to the committee in its materials for meeting on October 26, 2017, but without the attachments referenced in the foot notes of the collaborative letter.

As these materials were omitted, we are attaching copies to this comment letter. The exhibits attached to the letter of March 22, 2017, were summaries of Court Statistics from the 2015 Court Statistics Report and Trial Court Allocations for 2015-2016. They demonstrate that the Cluster 4 courts having 59% of the state's workload receive 64% of the funding allocation, and the <50FTE courts have 1.9% workload and 1.6% of funding allocation. This is a result of the BLS factor currently used in WAFM, which ties small rural courts to the poverty of their counties.

The discussions of the FMS at its meeting on October 2, 2017 also have to be addressed. Despite all concerns raised regarding the BLS, the BLS factor was described as the most understood factor in WAFM. There is also a lack of understanding on how that factor came to be in WAFM. That decision was made by an earlier funding methodology subcommittee after looking at other labor "indexes" and after it was decided on, it was described as a deal breaker. In other words, there was nothing else the committee was going to consider as a labor factor.

There was no consistency in the BLS when initially decided on as a factor, as data from counties was inconsistent. There was an effort from some of the trial courts to follow through with the BLS, and at some point it appeared the public administration was at least an index within the BLS that had more consistent data compilation. It became apparent that in the small rural courts, and the example was Del Norte, low local BLS would not even begin to represent local wages where the state workforce, as in Pelican Bay, drove the labor market. The discussions then turned to consider the state BLS to some degree, with the understanding that the state labor factor by itself would not

be considered. The 50-50 suggestion was eventually adopted and included. This was just a consensus by the subcommittee as to when the state BLS would be applied. The inclusion of the 50-50 (local and state) increased the funding allocation for 3 Cluster 1 courts, 2 Cluster 2 and 1 Cluster 4.

There was also a consensus by a small committee to develop a <50 FTE consideration, when the funding floor was also explored. The <50 FTE is what some members of the committee describe as a "BLS Flooring." The WAFM in its current formulation then has a funding floor and a BLS flooring. After these initial modifications, there were no further considerations by any committees regarding the "parking lot" issues raised primarily by small courts, particularly regarding their hybrid employees, an issue raised again in the March 22, 2017 letter.

The FMS is reviewing the funding floor for an inflationary increase. It could be stated that a court funding floor should have been the start of a funding allocation methodology then with a multiplier factor based on filings. Instead, given the pressure to come up with something, as described in the March 22, 2017 letter, this was a secondary consideration.

People talk about the BLS as if it was a gold standard, which it is not. It is data that is compiled from voluntary reporting and some data collection. Note that in the 2017-2018 BLS factors presently before the committee, Alameda, Alpine, Merced, San Benito and Sierra reported 0% state employees. This demonstrates that the same data is not being compiled for each county.

Now that the BLS (public administration index) is in the "formula" the argument becomes, if there is an "arbitrary" adjustment, does that invalidate the factor and undermine the credibility of the formula. It is not an arbitrary adjustment to make a decision that the "BLS Flooring" should be .9 for the trial courts <50 FTE. This would support a more transparent and less complicated methodology, in that the <50FTE factor could be deleted. It would directly impact the funding floor as well, and reduce the number of trial courts relying on the funding floor.

Comment on the "bands," to achieve a mean funding allocation: it may be more productive to look at "bands" by Clusters. The 58 trial courts include courts from 3 FTE up to 4,716, judges from 2 to 585, filings from 825 to 1,891,060, and populations between 1,110 and 10,170,292. Economies of scale are not considered at all in the band. Can it really be shown that all trial courts can stay open and operational with the band applied to reallocate funding?

Very truly yours,

Honorable William Davis, PG
Honorable Laura Masunaga, APG
Renee McCanna Crane, CEO

BLS by Clusters based on 2015 Court Statistics Report and Trial Ct Allocations 2015-2016									
		AJP'14(JE'13-14)(Assessed '14)*	BLS in '15-'16 WAFM	Total WAFM Funding Need	Number of Filings	Filings/APJ	RAS*-CEO	FTE	Metro (M)
Subcluster 1									
1	Alpine	2.3(2.3)(0.2)	0.83	378,883	1531	666	2		
1	Sierra	2.3(2.3)(0.2)	0.73	368,280	623	271	2		
1	Amador	2.3(2.9)(2.7)	1.00	2,773,992	7806	3394	25		
1	Calaveras	2.3(2.6)(2.8)	0.91	2,716,963	6442	2801	26		
1	Colusa	2.3(2.4)(1.6)	0.71	1,880,790	9017	3920	17		
1	Glenn	2.3(2.4)(2.0)	0.69	2,048,781	11089	4821	21		
1	Inyo	2.3(2.4)(1.6)	0.83	1,963,799	10787	4690	19		
1	Lassen	2.3(3.0)(3.2)	0.80	2,595,035	7669	3334	27		
1	Mariposa	2.3(2.5)(1.3)	0.78	1,282,132	3366	1463	12		
1	Modoc	2.3(2.3)(0.8)	0.60	917,190	2342	1018	9		
1	Mono	2.3(2.4)(1.1)	1.15	1,795,596	6184	2689	12		
1	Plumas	2.3(2.6)(1.4)	0.70	1,299,380	3656	1590	13		
1	San Benito	2.3(2.4)(2.8)	0.98	2,874,516	7702	3349	26		M
1	Trinity	2.3(1.9)(1.6)	0.65	1,290,907	2896	1259	12		
1	Del Norte	2.8(3.3)(3.7)	0.77	3,012,322	7513	2683	28		
Subcluster 2									
2	Tehama	4.3(4.6)(5.8)	0.80	5,026,551	20870	4820	53		
2	Lake	4.8(5.8)(5.2)	0.75	3,677,284	11919	2483	45		
2	Tuolumne	4.8(5.0)(4.3)	0.83	3,442,496	10300	2168	37		
2	Siskiyou	5.0(5.4)(3.4)	0.69	3,103,058	17130	3426	34		
2	Sutter	5.3(5.8)(6.7)	0.95	6,509,119	19430	3666	61		M
2	Yuba	5.3(5.7)(5.6)	0.93	4,961,988	16237	3046	53		M
2	Nevada	7.6(8.1)(5.4)	0.97	5,512,421	25156	3310	53		
2	Humboldt	8.0(8.7)(10.6)	0.77	7,863,801	29317	3665	90		
2	Napa	8.0(8.5)(8.2)	1.22	8,717,542	26069	3259	71		M
2	Mendocinc	8.4(8.5)(7.3)	0.83	6,450,265	22935	2730	65		
2	El Dorado	9.0(10.7)(9.9)	1.00	9,020,166	27775	3086	86		M
2	Kings	8.5(9.7)(11.4)	0.88	8,763,482	34473	4056	98		M
2	Madera	9.3(9.9)(10.9)	0.93	9,681,041	27795	2989	95		M
2	Imperial	11.4(11.6)(13.8)	0.78	11,522,757	71989	6326	137		M
2	Shasta	12.0(13.2)(16.4)	0.85	12,953,657	42140	3512	147		M
2	Yolo	12.4(12.9)(11.2)	1.03	11,394,431	36673	3046	102		M
2	Santa Cruz	13.5(13.8)(14.2)	1.15	15,417,797	57235	4240	131		M
2	Butte	13.0(14.1)(14.2)	0.91	12,827,059	38208	2939	133		M
2	Merced	12.0(12.4)	0.90	16,884,889	56380	4698	149		M
2	Marin	14.5(14.4)(11.8)	1.28	13,305,924	48648	3355	105		M
2	San Luis Obispc	15.0(15.5)(17.9)	1.07	17,894,938	51705	3447	153		M
2	Placer	14.5(16.1)(19.4)	1.17	20,924,301	50851	3507	167		M
Subcluster 3									
3	Monterey	21.2(21.4)(21.8)	1.19	22,176,616	67790	3198	192		M
3	Santa Barbara	24.0(24.3)(23.4)	1.17	25,514,338	96925	4039	214		M
3	Solano	23.0(25.0)(25.0)	1.20	27,158,939	68418	2975	221		M
3	Sonoma	23.0(25.2)(26.1)	1.17	30,874,621	77355	3363	230		M
3	Tulare	23.0(25.4)(25.9)	0.83	22,962,196	85284	3708	243		M
3	Stanislaus	24.0(24.5)(32.6)	1.02	31,536,429	77911	3246	286		M
3	San Mateo	33.0(32.7)(31.1)	1.44	42,969,454	160115	4852	279		M
3	Ventura	33.0(33.9)(40.4)	1.21	45,268,238	158987	4818	366		M
3	San Joaquir	33.5(34.8)(42.3)	1.10	44,735,436	121834	3637	368		M
3	Kern	43.0(41.7)(58.0)	1.05	68,715,131	211920	4928	534		M
3	Contra Costa	46.0(47.6)(42.5)	1.25	54,845,890	147606	3209	380		M
3	Fresno	49.0(50.2)(60.7)	0.99	65,077,123	171025	3490	532		M
Subcluster 4									
4	San Francisc	65.0(66.7)(53.8)	1.68	67,069,047	233399	3591	379		M
4	Sacramento	72.5(76.1)(81.8)	1.28	102,140,312	325138	4485	728		M
4	Riverside	76.0(84.3)(127.4)	1.08	121,029,006	423340	5570	1099		M
4	Alameda	85.0(84.1)(70.1)	1.42	85,724,209	320554	3771	600		M
4	Santa Clara	89.0(88.6)(69.6)	1.44	86,629,182	245244	2756	581		M
4	San Bernardino	86.0(89.3)(143.0)	1.06	132,144,453	411101	4780	1200		M
4	Orange	144.0(146.2)(155.6)	1.30	173,366,093	511134	3550	1310		M
4	San Diego	154.0(151.0)(153.3)	1.17	169,142,391	558351	3626	1276		M
4	Los Angeles	585.3(570.8)(629.5)	1.34	718,122,121	2183611	3731	5201		M
Total				2,380,254,758					
							*RAS Program 10 & 90		
							* excludes CEO,		
*AJP 2014				D-H from Trial Court Allocations 2015-2016			Enhanced Collection,		
Judicial Equivalent:				Judicial Council Report Dated 7-17-15			Interpreter, Security		
2013-2014				effective 7-28-15					
Assessed Judicial Need									
Dec. 2014									

Courts	Population	%of population	% of Filings 2016 Court Statistics	Share % total Wafm funding need FY 16-17	% of Historical Funding	Authorized Judicial positions as of 6/30/15 less 50 AB159	Judicial position equivalents FY 14-15	Assessed Judicial needs 2016 report JC 10/28/16
Los Angeles	10,170,292.00	0.2598	0.2768	0.2981	0.2725	585.3	572.9	573.3
San Diego	3,299,521.00	0.0843	0.0782	0.0691	0.0852	154	151.9	142.9
Orange	3,169,776.00	0.081	0.0712	0.0717	0.0854	144	147.4	144
Riverside	2,361,026.00	0.0603	0.0585	0.0503	0.0397	76	86.4	122.8
San Bernardino	2,128,133.00	0.0544	0.0531	0.0548	0.0426	86	89.7	134.1
Santa Clara	1,918,044.00	0.0491	0.0317	0.0379	0.0516	89	92	66.9
Alameda	1,638,215.00	0.0419	0.0414	0.0368	0.0483	85	83.9	67.7
Sacramento	1,501,335.00	0.0384	0.0406	0.042	0.0427	72.5	78.7	82.9
Contra Costa	1,126,745.00	0.0288	0.0222	0.0218	0.0228	46	48.3	40.9
Fresno	974,861.00	0.0249	0.0226	0.0291	0.0239	49	50.4	61.8
Kern	882,176.00	0.0225	0.029	0.0298	0.02	43	44.1	56.8
San Francisco	864,816.00	0.0221	0.033	0.0287	0.0368	55.9	59	48.4
Ventura	850,536.00	0.0217	0.0223	0.0194	0.0169	33	35.5	38
San Mateo	765,135.00	0.0195	0.0226	0.018	0.0207	33	33.3	29.1
San Joaquin	726,106.00	0.0185	0.0168	0.0198	0.0164	33.5	35.6	42.2
Stanislaus	538,388.00	0.0138	0.0098	0.0133	0.0108	24	24.6	31.5
Sonoma	502,146.00	0.0128	0.0108	0.0124	0.0131	23	24.9	23.8
Tulare	459,863.00	0.0117	0.0123	0.0104	0.0085	23	25.1	27.5
Santa Barbara	444,769.00	0.0114	0.014	0.0112	0.0127	24	26.1	22.4
Solano	436,092.00	0.0111	0.0088	0.0111	0.0109	23	24.7	22.6
Monterey	433,898.00	0.0111	0.01	0.0096	0.009	21.2	21.9	20.5
Placer	375,391.00	0.0096	0.0066	0.009	0.0077	14.5	16.3	19.2
San Luis Obispo	281,401.00	0.0072	0.0075	0.0073	0.0074	15	15.9	16.9
Santa Cruz	274,146.00	0.007	0.0071	0.0066	0.0069	13.5	14.2	13.6
Merced	268,455.00	0.0069	0.0073	0.007	0.0063	12	12.8	15
Marin	261,221.00	0.0067	0.0063	0.0056	0.0093	12.7	11.8	10.6
Butte	225,411.00	0.0058	0.0051	0.0056	0.0051	13	14	14.6
Yolo	213,016.00	0.0054	0.0052	0.005	0.0045	12.4	13	11
El Dorado	184,452.00	0.0047	0.0033	0.0037	0.0041	9	10.9	9.1
Imperial	180,191.00	0.0046	0.01	0.0049	0.0044	11.3	11.7	12.9
Shasta	179,533.00	0.0046	0.0064	0.0056	0.0051	12	13.4	16.7
Madera	154,998.00	0.004	0.0036	0.0042	0.0041	9.3	9.4	10.3
Kings	150,965.00	0.004	0.0052	0.0039	0.0033	8.6	9.4	11.7
Napa	142,456.00	0.0036	0.0032	0.0038	0.0042	8	8.5	8
Humboldt	135,727.00	0.0035	0.0039	0.0034	0.0035	8	8.7	10.4
Nevada	98,877.00	0.0025	0.0036	0.022	0.0026	7.6	8.1	4.9
Sutter	96,463.00	0.0025	0.0029	0.0029	0.0024	5.3	5.7	6.8
Mendocino	87,649.00	0.0022	0.0029	0.0028	0.003	8.4	8.7	7.5
Yuba	74,492.00	0.0019	0.0023	0.0026	0.0022	5.3	5.3	5.9
Lake	64,591.00	0.0017	0.0016	0.0017	0.002	4.7	5.8	5.5
Tehama	63,308.00	0.0016	0.0029	0.0022	0.002	4.3	4.6	5.8
San Benito	58,792.00	0.0015	0.0012	0.0012	0.0017	2.3	2.6	2.6
Tuolumne	53,709.00	0.0014	0.0016	0.0015	0.0018	4.8	4.9	4.5
Calaveras	44,828.00	0.0011	0.001	0.0012	0.0014	2.3	3	2.7
Siskiyou	43,554.00	0.0011	0.0024	0.0013	0.0023	5	5.3	3.2
Amador	37,001.00	0.0009	0.0012	0.0012	0.0014	2.3	2.8	2.8
Lassen	31,345.00	0.0008	0.0012	0.0011	0.0013	2.3	2.9	2.6
Glenn	28,017.00	0.0007	0.0015	0.0008	0.0013	2.3	2.4	1.6
Del Norte	27,254.00	0.0007	0.0013	0.0014	0.0015	2.8	3.3	3
Colusa	21,482.00	0.0005	0.0014	0.0008	0.0009	2.3	2.4	2.7
Plumas	18,409.00	0.0005	0.0005	0.0006	0.001	2.3	2.4	1.2
Inyo	18,260.00	0.0005	0.0015	0.0008	0.0012	2.3	2.8	1.5
Mariposa	17,531.00	0.0004	0.0005	0.0005	0.0006	2.3	2.4	1
Mono	13,909.00	0.0004	0.0012	0.0008	0.0009	2.3	2.5	1
Trinity	13,069.00	0.0003	0.0004	0.0006	0.0007	2.3	2.5	1.5
Modoc	8,965.00	0.0002	0.0003	0.0004	0.0006	2.3	2.3	0.9
Sierra	2,967.00	0.0001	0.0001	0.0001	0.0004	2.3	2.4	0.2
Alpine	1,110.00	0.000028	0.0002	0.0002	0.0004	2.3	2.3	0.2
Totals	39,144,818.00	1.000228	1.0001	1.0196	1	1963.1	2013.8	2049.7

From: [Finke, Chad](#)
To: [TCBAC](#); [Conklin, Hon. Jonathan](#); [Fleming, Rebecca](#); [Chatters, Jake](#); [Carter, Sherri R.](#); [Ugrin-Capobianco, Tania](#); [Roddy, Mike](#); [Planet, Michael](#); [Lewis, Jeff](#); [Cope, Mark A.](#); [Hinrichs, Joyce D.](#); [Marigonda, Paul M](#)
Cc: [Jacobson, Morris](#); [Carvill, Judge Wynne, Superior Court](#)
Subject: Written public comment by the Superior Court of Alameda County for October 26, 2017, FMS meeting
Date: Tuesday, October 24, 2017 11:32:22 AM
Attachments: [RE Urgent CEAC Meeting to Discuss WAFM - Rescheduled to October 3rd .msg](#)

Dear Members of the Funding Methodology Subcommittee of the Trial Court Budget Advisory Committee:

The email below is sent by the Superior Court of Alameda County on behalf of Presiding Judge Morris Jacobson, Assistant Presiding Judge and Presiding Judge-Elect Wynne Carvill, and Executive Officer Chad Finke. In recognition of the length of the October 26, 2017, meeting and the fullness of the FMS agenda, we are submitting this as written commentary in lieu of making oral public commentary at the meeting on October 26.

We have been discussing the options that seemed to emerge at the last FMS meeting and how the goals we believe should be pursued can best be achieved within the WAFM framework. As we have stated before, while we believe there are approaches that would be superior to WAFM, we withdrew our previous proposal because it was clear that there was too much momentum behind WAFM. That was only reinforced at the recent Executive Committee of TCPJAC where it was noted that a “needs-based” model based on filings is in many ways more in keeping with the submissions the Department of Finance is accustomed to seeing from the various executive departments. Recognizing that some WAFM-related approach is inevitable, we offer the following to achieve the stated goals.

The Stated Goals

As we understand it, two competing goals have emerged.

The first is equity among the various trial courts. This fundamental issue is what motivated the Branch to engage in the evaluation process that eventually led to WAFM. The problem with our historical funding model was it effectively “baked in” the inequitable funding that existed from county to county at that time and did not even allow for the differences in regional growth rates. The Executive Branch gave the courts an ultimatum to address the equity issue in order to obtain increased funding. WAFM was the Council’s attempt to respond to that ultimatum, and the historically underfunded courts have a keen interest in seeing the Branch continue down the path to achieving full equity.

The second competing goal is “stability/predictability” and reflects the volatility and lack of predictability introduced by the roll out of WAFM. These are two related but distinct issues. One has to do with the severity of the cuts that certain courts have suffered under the first 5 years of WAFM and the other relates to how late in the budget cycle the outcomes are

disclosed. “Donor” courts have been required to scramble to deal with unexpected cuts, while “recipient” courts may find themselves with funding beyond what they projected, and which they cannot, in a single fiscal year, use in a fiscally prudent way. The whole process has fostered conflict between the donor and recipient courts. The planning challenges have played out in multiple ways and made labor negotiations almost impossible.

Based on discussions to date, the FMS is clearly sensitive to the above two issues, but a third issue also needs to be considered – namely, equal access to justice. This was specifically identified in the April 2013 memorandum to the Council that led to the approval of WAFM as one of the anticipated outcomes of the WAFM phase-in. That is, it was assumed that using WAFM to address historical funding inequities would enhance equal access to justice across the state. We expect that the effect of WAFM on access will be an issue whenever the FMS recommendation reaches the Council and that any approach that cuts some courts so as to increase funding to others will be seen as deficient from this perspective as well.

Accordingly, we continue to advance the following proposal as the one best suited to using WAFM in a way that satisfies all three goals; however, we have made a few modifications to protect the most vulnerable courts.

Proposal

Our proposal is as follows:

- No cuts to any court except in a year when the overall branch budget for the trial courts is reduced, in which case the cuts are shared pro rata among all courts with a possible exception for the most severely underfunded. The latter might be spared by spreading the pro rata cuts among all other courts.
- Eliminate the .9 BLS adjustment, and use BLS only to recognize the higher costs of courts with a BLS over 1.0. This modification of the use of the BLS factor will provide modest assistance to the smaller, rural courts that currently are below 1.0.
- 50% of all new funding to courts more than 3% below the branch funding average as measured by WAFM. Thus, if any new money is allocated to the Branch, 50% is set aside exclusively for courts more than 3% below the average, and 50% distributed to all courts based on the WAFM formula. Given the likelihood of some new funding in more years than not, this is likely to bring up the more severely underfunded courts over time. Note that, while 50/50 was discussed at the last meeting, a more generous split in favor of the underfunded courts (e.g., 55/45 or 60/40) would be one way to recognize the severity of the underfunded courts’ needs while still ensuring that all courts benefit from new money.

Merits

We believe the above is within the spirit of the discussion at the last FMS meeting. It is an approach that can be permanent and would not require the TCBAC to revisit the issue on any regular basis. It accounts for up, down and flat budget years. It reduces volatility, increases predictability and reflects a commitment to bringing the underfunded courts up as rapidly as possible without damaging other courts. By endorsing this proposal, though, we do reserve our objection that WAFM is based on unaudited data and uses filing definitions as to which there does not seem to be a clear consensus. To achieve real “equity” the data and definition problems do need to be addressed. Until they are, no one can be assured that this or any other filing-based proposal will achieve equity.

For a more detailed defense of this approach and especially the no-cuts principle, we have attached a statement sent to the attendees at the most recent CEAC meeting.

Thank you for your consideration,

Hon. Morris Jacobson

Hon. Wynne Carvill

Mr. Chad Finke

From: Finke, Chad, Superior Court
To: [Conklin, Hon. Jonathan](#); [Fleming, Rebecca](#)
Cc: [Hoshino, Martin](#); [Theodorovic, Zlatko](#); [Jacobson, Morris](#); [Carvill, Judge Wynne, Superior Court](#)
Subject: Request by the Superior Court of Alameda County for Adjustments to WAFM
Attachments: [Request for adjustments to WAFM 9-21-17.pdf](#)

Please see the attached letter.

Thanks,
Chad

Chad Finke
Court Executive Officer, Jury Commissioner and Clerk of the Courts
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

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MORRIS D. JACOBSON
Presiding Judge

CHAD FINKE
Executive Officer

September 21, 2017

Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee, and Co-Chair, Funding Methodology Subcommittee

Ms. Rebecca Fleming, Co-Chair, Funding Methodology Subcommittee

VIA E-MAIL

Dear Judge Conklin and Ms. Fleming,

This letter is intended to be a formal request by the Superior Court of Alameda County for adjustments to WAFM. This request is made pursuant to the revised process adopted by the Judicial Council of California on July 28, 2017. While the revised process contemplates the request being made on an application form to be developed by Judicial Council staff, we are not aware that any such form yet exists. As such, we are presenting our request in letter format and we trust that that will be acceptable.

In making this request, we are addressing the eight informational points set forth in the revised process adopted by the Judicial Council of California on July 28, 2017. Because that process appears to contemplate that requests will be limited to the addition of new WAFM "factors," some of the informational points are not directly applicable to our request. Nonetheless, we have done our best to respond to each informational point. And we are happy to provide any additional information as may be requested by the Judicial Council, the Trial Court Budget Advisory Committee, the Funding Methodology Subcommittee, or any other body.

1. Description of how the factor is not currently accounted for in WAFM

Our request is that WAFM be amended as follows:

- Eliminate all reference to, or use of, the "historic share" in calculating annual allocations to the trial courts.
- Adopt the trial courts' FY 17-18 allocations as their new respective "base" funding levels.
- Modify the WAFM formula such that, where the overall allocation to the trial courts for a fiscal year (not including one-time or specially designated funds such as dependency funding or

innovation grant funding) is the same as the allocation for the prior fiscal year, then the courts' respective allocations likewise remain the same for the two years. In other words, make WAFM a "no cuts" model in flat budget years. To illustrate: If the FY 17-18 allocation to the trial courts is \$1.4B, and the allocation in FY 18-19 is also \$1.4B, then each court should, in FY 18-19, get the same allocation it received in FY 17-18.

- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year increases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be the same as in the prior fiscal year. Then, modify the formula such that a percentage of the increased overall allocation (which percentage shall be determined by FMS) is allocated only to the most severely underfunded courts. Lastly, modify the formula such that the remainder of the increased overall allocation is allocated to all courts, subject to criteria to be determined by FMS. To illustrate: If the trial courts overall receive \$100M more in FY 18-19 than in FY 17-18, then, e.g., \$50M of that new funding should go solely to the most underfunded courts, while the remaining \$50M should be distributed among all 58 courts.
- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year decreases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be reduced by a percentage equal to the value of the overall percentage reduction to the trial courts overall. To illustrate: If the trial courts overall receive 5% less funding via the State Budget in FY 18-19 than in FY 17-18, then each court's allocation in FY 18-19 should be reduced by 5%. Note that FMS would likely need to adopt a funding floor for the smallest courts in connection with this modification to ensure that they do not suffer reductions that effectively render them unable to function.

The "factors" embodied by the above-multi-part request are not currently accounted for in WAFM. That is, WAFM continues to rely on the "historic share" to some extent. Further, WAFM reallocates funding each year without regard to the overall level of funding to the trial courts respective to the prior fiscal year. And in years where funding to the trial courts overall is increased, it is still theoretically possible for a court not only to not share in the new funding, but to actually see a cut to its budget. Thus, our overall proposal represents an approach to funding allocation that is not currently accounted for under WAFM.

2. Identification and description of the basis for which the adjustment is requested

This informational point does not appear to be applicable to our request.

3. Detailed analysis of why the adjustment is necessary

While WAFM has resulted in a redistribution of currently available funding amongst the trial courts, it has done so at the cost of major disruptions to the operations of many of the "donor" courts, as well as a significant decrease in access to justice for the public served by those courts. The changes proposed in this request will make WAFM more transparent, stable, and predictable. This will, in turn, ensure that access to justice for the citizens of the "recipient" counties does not come at the cost of a reduction in

access by citizens in the “donor” counties. We discuss the access implications further in connection with informational point 6 below.

As to transparency, both FMS and TCBAC have acknowledged, in public meetings, that WAFM in its current incarnation is difficult both to explain and understand. In particular, the calculations involved in determining the phase-in of the “historic share” over time make the WAFM formula complex to the point of opacity. Eliminating the historic share as proposed will make the formula much easier to explain and thus significantly more transparent, particularly to those outside of the branch.

As to stability and predictability, WAFM as it stands is flawed in a number of regards. First, WAFM is overly sensitive to changes in filing trends. By recalculating each court’s share on an annual basis, with reference to the immediate past three years of filings data, WAFM leads to unpredictable, sometimes extreme swings in funding “need” from year-to-year. This is not speculative; historical WAFM data demonstrate that there are a number of courts that have oscillated between “donor” and “recipient” status since the model’s inception, sometimes seeing year-to-year swings in excess of \$1M.

Exacerbating the issue, courts do not receive their WAFM allocation information until mid-June, just weeks before those allocations go into effect. Moreover, because WAFM is reliant on data from all 58 courts, there is no way for any single court to predict accurately whether it will in fact be a donor or recipient, nor to what extent. Thus, a court may find itself approaching July 1 expecting to receive an increase in its allocation over the prior year, only to learn at the last minute that it will instead be facing a reduction, perhaps even at a catastrophic level. Conversely, a court may find itself an unexpected recipient, without any clear, fiscally prudent plan for how to spend its excess funding.

These sorts of last-minute, unpredictable, and often dramatic changes in funding make it nearly impossible for any court other than the most under-resourced (which can at least assume that they will be “recipients” to some extent, and thus plan accordingly) to engage in sound budget management, including entering into multi-year contracts (which often provide fiscal savings over contracts of shorter duration) or agreeing to multi-year COLAs for staff (which then causes the court and the JCC to expend resources annually on wage reopeners).

Our proposal cures these issues. As stated above, the fundamental principle underlying the proposal is stated simply as “no more cuts,” i.e., no court will suffer any cut in its allocation over the prior year unless the trial courts as a whole are cut. That fact—whether the trial courts overall are likely to see a budget reduction—is generally telegraphed by the Governor in January. Thus, under our proposal all courts would know approximately 6 months in advance if there was a need to prepare for a budget reduction. Otherwise, each court would know that its budget for the upcoming year would be at least the same as the current year, which would begin to restore our ability to engage in long-range planning and expenditure plans.

As an added benefit, adopting a “no cuts unless all are cut” model would eliminate the current unfortunate situation in which courts are divided by WAFM into two warring camps. Because WAFM is, in essence, a zero-sum game; some advance only at the expense of others. By adhering to a model that is, at its heart, divisive, the branch has weakened the ability of the trial courts to harmonize our message

to the other branches. If, however, our proposal is accepted, it will instantly align the trial courts around a single goal: vigorous advocacy for much-needed new funding, to be disproportionately allocated to those courts most in need.

4. Description of whether the unaccounted for factor is unique to the applicant court or has broader applications

This request has a statewide application, and would affect all 58 trial courts.

5. Detailed description of staffing needs and/or costs required to support the factor that is unaccounted for by WAFM

In our view, the elimination of the “historic share” and the calculations surrounding its application will greatly reduce the workload on Judicial Council staff tasked with implementing WAFM. That workload reduction should easily offset any one-time workload involved in creating the new calculations necessary to implement the recommendations above.

6. Description of the consequence to the public and access to justice without the funding

As noted above, one presumably unintended consequence of WAFM in its current form has been that it has significantly reduced access to justice for the citizens in some counties, particularly those in which the trial courts have been repeated “donors.” Among other things, the public in perennial “donor” counties have seen the following:

- Reductions in clerk’s office hours;
- Court closures on days that would otherwise be business days, to accommodate voluntary and mandatory furloughs;
- Longer lines and increases in various response times as a result of decreased staffing levels; and
- A loss of certain grant-funded programs due to unavailability of sufficient matching funds at the local level.

These access restrictions are particularly harmful to our most vulnerable populations, e.g., the indigent, the elderly, and others whose life situations already limit their options in terms of available time for traveling to, and interacting with, the court.

We understand and acknowledge that many of these outcomes may have been present in the most severely underfunded courts for years. And yet we cannot accept that it is now “the turn” of courts that were historically less underfunded to have to suffer those same access reductions. That position is, in our view, simply a restatement of the principal that somehow “two wrongs DO make a right.” In our view, the solution that is best for the public as a whole across the state is to adopt a “hold harmless” model like we have proposed, ensuring that those with the most dire need grow the fastest while at the same time not forcing some citizens to endure increased access restrictions to mitigate historical access restrictions faced by others.

To be clear, however, without the changes we have proposed—i.e., if WAFM continues as it has—there is no doubt that we will continue to see access eroding in the “donor” counties. Clerk’s hours will continue to be reduced, services will be curtailed, staff reductions will continue, and the public will suffer for it.

7. Description of the consequences to the requesting court of not receiving the funding

As a court that has been a major “donor” for most of the lifespan of WAFM, it is tempting to say that, if our request is not granted, Alameda will suffer the additional reductions in staff, services, and access described above. And yet, because of the unpredictability and volatility of WAFM, there is no way, in September 2017, to predict with any certainty what the specific fiscal consequences will be for our court if our proposal is rejected. It may be that the filings of the other 57 courts will decline more than ours, and we will reap a windfall as a “recipient” next year. Or the converse may happen and we may take a significant cut and have to revive the layoff plan that we had prepared to put into place in FY 17-18.

The fact is that we don’t know, and in fact no court other than the most underfunded can know either. Thus, if our proposal or some other “no more cuts” proposal is not approved, then we will all do our best to manage the money we received this year, without ability to plan confidently for next year. We will continue to pass up multi-year contracts that offer good rates, for fear of not being able to afford them in the out years. We will continue to try to get our labor unions to agree to meager COLAs with annual reopeners, in hopes of fending off strikes. We will continue to assure the public that we regret the loss of services, and that we would like to restore them if only we could predict accurately whether we can truly afford to hire more staff.

If, however, our proposal were adopted, we could in fact begin to address these issues. We would have assurances as to at least our minimum funding level for next year, which would allow for some planning to begin.

8. Any additional information requested by the JCC, et al., deemed necessary to fully evaluate the request

We are happy to provide any additional information that may be needed, and we thank FMS and TCBC in advance for their consideration of our request.

Yours Very Truly,



Hon. Morris Jacobson, Presiding Judge

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge Elect

Chad Finke, Executive Officer

cc: Martin Hoshino, Administrative Director of the Courts, Judicial Council of California
Zlatko Theodorovic, Director and Chief Financial Officer, Judicial Council of California

From: Finke, Chad, Superior Court
To: ["ExecutiveNetwork List"](#)
Subject: memo on WAFM discussion points for this week's PJ-CEO meetings

Dear Colleagues,

As you all know, the TCPJAC/CEAC meetings this week will feature a number of break-out sessions, including one on WAFM. This conversation is crucial because the 5-year WAFM phase-in that was approved back in 2013 has been completed. Given the chronic underfunding of the judicial branch by the Legislature and the Governor, we think that the issue of how trial courts will be funded going forward is perhaps the most important issue before us at the moment.

In terms of process, the Trial Court Budget Advisory Committee (TCBAC) and its Funding Methodology Subcommittee (FMS) have already begun work on what comes next as we complete the original 5-year WAFM implementation. The Judicial Council has approved a deadline for offering input from the interested stakeholders, including the Presiding Judges and their CEOs. That deadline is October 15, 2017, so the available time to be heard is very limited.

Earlier this year Alameda circulated a proposed alternative to WAFM, the Population to Judge Ratio. While that model serves as an example of a more transparent, stable, and predictable alternative to WAFM, we remain open to and supportive of any budget allocation methodology that provides these basic protections to all of the trial courts. Thus, this email is not intended to reiterate that model nor seek support for it. Rather, we hope to build consensus among the courts as to certain fundamental concepts that should underpin whatever comes next, whether WAFM or some other methodology. Those concepts are as follows.

1. ELIMINATE THE "HISTORICAL SHARE"

Under WAFM, a portion of each court's budget is based on its "historical share" of overall trial court funding. As has been noted many times, this factor—a product of political compromise in the 1990s—is largely responsible for the disparities and inequities in trial court funding that persist to this day. Whatever allocation model is used moving forward, it should in no way rely on the "historical share." That measure is anachronistic and has no relevance to the funding needs of the trial courts in 2017 and beyond. It is time to abandon the historical share as a part of the model and instead use FY 2017-18 as a new "base" from which to proceed.

2. NO MORE CUTS; STAGGER THE GROWTH; ALL SHARE EQUALLY IN OVERALL CUTS TO THE BRANCH

The allocation model for our branch should no longer rely on cutting some courts to benefit others. While some courts are still more underfunded than others, after five years of “robbing Peter to pay Paul,” we have largely succeeded only in changing the names in the “budget winners” and “budget losers” categories. The courts that were historically underfunded remain underfunded, while courts that were managing have now also been brought down to minimal levels of functionality. It does not appear that access to justice has improved overall for trial court users under the five years of WAFM.

As an apparent prerequisite to a return to full funding, the Judicial Branch attempted in good faith to address inequalities within our own ranks. That return to full funding never materialized and our Branch remains woefully underfunded. Now is the time to send a message to the other branches that we will no longer cut ourselves; the further elimination of funding disparities will only be achieved when the Legislature and Governor adequately fund the courts.

a. No more cuts in flat budget years

In a flat budget year, like the present year, every court should get the same allocation as in the previous year. Thus, while the rate of growth for the most underfunded courts would be slowed, no courts would suffer harsh cuts without the ameliorating offsets of lesser budget gains (as many courts suffered this year).

b. More underfunded courts receive a higher percentage of new funding in budget growth years

Because some courts remain more underfunded than others, any new money coming into the branch should be disproportionately allocated to the most underfunded courts to bring them up to the level of those that are less underfunded. However, in a budget growth year, all courts should get at least some money, including the “least underfunded” courts. When new money comes in, some portion of that money should be divided among all 58 courts so that we all benefit. Another portion of the new money should be earmarked specifically for those courts that are most in need so as to continue to eliminate the funding gap between us. Such a split at, e.g., a 50/50 level would ensure that in good years we all gain, but those who need the most will gain the fastest.

c. All courts share equally in budget reduction years

In the unfortunate event of a future funding cut to the entire branch, all courts should share equally in the cut. For example, if the overall trial court budget were reduced by 5%, all courts should take a 5% cut, perhaps subject only to some level of funding floor for the very small courts. Such a model would ensure a shared community of interests among the trial courts.

3. THE FUNDING STRUCTURE MUST PROMOTE UNITY IN OUR BUDGET ADVOCACY

Both agreeing to stop cutting courts in years with flat or improved budgets and agreeing to share overall branch cuts equally, have additional benefits. One consequence of WAFM has been that it has made it much more difficult for the courts to speak with a unified voice when it comes to budget advocacy. By pitting the courts against each other for a limited pool of resources, we have eroded our ability to come together and present a cohesive front to the Legislature and the Governor. If, however, we agree to treat FY 2017-18 as a new “base” year from which to build, it will be much easier to get all 58 courts to engage in vigorous advocacy around a single, unifying principle: full funding to the Judicial Branch so that all trial courts are both adequately and equally resourced.

CONCLUSION

We appreciate the opportunity that the Council, TCBAC, TCPJAC, and CEAC have provided to comment on these extremely important issues. Our time to make our voices as the leaders of the 58 trial courts heard is extremely short given the need for a Council to vote on a WAFM successor next spring. While we may not all agree completely on the specifics of any given model, we hope that each of you will give consideration to supporting us on the basic principles outlined above, and that you will communicate that support to TCBAC by no later than its October 15 deadline for doing so.

Thank you,

Hon. Morris Jacobson, Presiding Judge, Superior Court of Alameda County

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge-Elect, Superior Court of Alameda County

Chad Finke, Executive Officer, Superior Court of Alameda County



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October 24, 2017

Trial Court Budget Advisory Committee
Funding Methodology Subcommittee
October 26, 2017

Re: Future Distribution Formulas

Dear Members:

I address you on behalf of the Orange County Superior Court. As one of the participating members of TCBAC that helped develop WAFM, I continue to be supportive of WAFM and the work before this subcommittee. Clearly, recommending to TCBAC and the Judicial Council on how best to allocate funding in the future is extremely complex and will be long lasting. The long-lasting effect is why I feel compelled to provide these comments.

My thoughts are consistent with remarks I made during the full Budget Advisory Committee meeting in July, where I felt it was necessary to review the impact of WAFM on the trial courts during the previous five years. It is obvious that those courts that have been woefully underfunded have gained with this new methodology. Gains from modest increases in new funding, but also through the reallocation of historic funding to less underfunded courts.

Today, recipient courts are in a much better place as funds have allowed those who struggled financially to reopen courtrooms, hire much needed staff, and invest in their infrastructure. During that same period, the less under-resourced courts have seen their workforce decline by 20-35%, close courtrooms, reduce service hours to the public, and see their backlogs skyrocket. Despite such sacrifices, I continue to be a supporter of WAFM as we have established a model for allocating trial court funds on the basis of workload.

As we plan for our future, it is very clear that drawing upon historic funding to increase funding to receiving courts will result in even further reductions in staff, courtrooms, public service hours, and growing backlogs for contributing courts. The additional funds that have been appropriated in the past few years have provided needed resources for some trial courts, but those courts that have been contributing toward WAFM have experienced ten years of consecutive reductions. This has been a product of zero funding years and the redistribution of historic funding. This fact was expressed by one of the Funding Methodology Subcommittee members at your previous meeting.

During the construction of WAFM in 2012, members of the TCBAC remained optimistic that this new and equitable calculation to fund trial courts would be received positively by the Governor and Legislature such that they would adequately fund the trial courts. Hope and reality are concepts that have not paired

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in the funding of our Branch since the birth of WAFM. At this stage in its evolution, it is obvious that adopting any practice of allocating additional funding to trial courts by reducing funding to others outside of the WAFM model (the banding concept) would be counter-productive if it will require further reductions to any court.

As I've spoken with other colleagues who have contributed the most toward improving equity, I believe courts have reached a breaking point and cannot sustain further reductions in their allocations. With costs continuing to climb, these courts have been required to reduce staff, services and other expenses as operating costs continue to climb. For these stated reasons, we urge this body to adopt a formula for the future allocation of funds to trial courts that are not offset by further reductions to other courts.

I urge this body to rely upon funding increases to our base to help courts that have been woefully underfunded and allow the less underfunded courts to sustain services at the current and already diminished services levels by discontinuing any further baseline reductions.

Sincerely,



David Yamasaki
Court Executive Officer