

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS  
455 Golden Gate Avenue  
San Francisco, California 94102-3688**

**Report Summary**

TO: Members of the Judicial Council

FROM: Enhanced Civil Assessments Working Group  
Hon. Peter H. Norell, Co-Chair  
Christine M. Hansen, Co-Chair  
Ruben Gomez, Lead Staff, 415-865-7686

DATE: August 16, 2005

SUBJECT: Implementation of Assembly Bill 139 Provisions and Establishment of a Statewide Enhanced Civil Assessments Program (Action Required)

Issue Statement

Assembly Bill 139 (Stats. 2005, ch. 74), effective July 1, 2005, resolves longstanding differences relating to undesignated fees and redirects civil assessment revenue from the counties to the courts. This report presents recommendations for the implementation of AB 139 and the establishment of a statewide enhanced civil assessments program. This includes provisions relating to criteria for an effective civil assessment program and a methodology for the distribution of civil assessments and certain specified fees collected.

Summary of Recommendations

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

1. Encourage courts to consider the following criteria when establishing or enhancing a civil assessment program:
  - Judicial officers should impose civil assessment based on the merits of each case.
  - A \$300 civil assessment should be imposed on each appropriate case and waived or reduced only for good cause.

- An individual’s ability to pay should be referred to financial evaluation officers to determine and, with court authority, appropriately adjust the amount owed.
  - Courts should establish a policy to determine the criteria for “good cause” for reducing or waiving civil assessment.
  - A civil assessment should be imposed no later than 30 days after a failure to appear or failure to pay.
  - Courts should impose a civil assessment on all infraction failure to appear and failure to pay cases.
  - Courts should consider imposing civil assessment on all eligible cases as appropriate.
  - Civil assessment should be a consideration for failure to pay restitution fines as ordered.
  - Courts should consider trial by written declaration (vehicle code 40902) and trial in absentia (vehicle code 40903) in conjunction with the imposition of civil assessment as appropriate.
  - The judicial officer co-chair of the Enhanced Civil Assessment Working Group and the judicial officer co-chair of the Education and Training Subcommittee of the Collaborative Court-County Working Group on Enhanced Collections will be available for seminars, workshops and local meetings to discuss collections and related items with other judicial officers.
2. Direct trial courts, pursuant to statute, to submit the collections of all civil assessment monies for deposit in the TCTF after the costs of collections is deducted in accordance with PC 1463.007, contracts with private collections vendors, and agreements with the Franchise Tax Board or between counties and courts. (Note: For FY 2005–2006 only, all civil assessment money collected will go up to the AOC and the only reduction on the monthly distribution to be remitted back to the courts will be the agreed upon county MOE reduction. All counties and courts are required to report gross civil assessment collections.)
  3. Consider FY 2005–2006 as an implementation and transition year in which:
    - Better revenue data and collections cost information are obtained and analyzed;
    - Local obligations and agreements are evaluated;
    - Courts can implement and/or enhance their civil assessment programs. During this transition year, civil assessments will be forwarded to the

AOC and returned to the courts with only the MOE amounts held back;  
and

- To the extent that it is economically feasible, courts are encouraged to transition to the statewide contract for collections services and/or to renegotiate their existing contracts to ensure conformity with the appropriate guidelines.
4. Direct AOC staff to review all available information at the end of the fiscal year and present it to the Enhanced Civil Assessments Working Group for the development of future recommendations that will result in a fair and equitable formula for the sharing of civil assessment revenue between the courts and the AOC.
  5. Direct the Cost Recovery Subcommittee of the Collaborative Court-County Working Group on Enhanced Collections to work with staff to pursue through procedural and/or legislative changes necessary to achieve the goal of resolving any potential conflict between PC 1463.007 and AB 139.

Recommendations 6 and 7 are being submitted by the Trial Court Budget Working Group (refer to attachment). The Trial Court Budget Working Group recommends that the Judicial Council on a one-time basis:

6. Allocate the \$5.45 million reduction utilizing the proposed methodology based upon the Resource Allocation Study (RAS) funding model setting reduction levels as follows:
  - Courts under-funded by more than 10 percent receive no reduction;
  - Courts under-funded by less than 10 percent or over-funded by less than 10 percent receive a .27 percent reduction; and
  - Courts over-funded by more than 10 percent receive a .54 percent reduction.
7. Allocate the \$11 million reduction pro-rated to all courts based on the FY 2005–2006 base operating budget.
8. Direct AOC staff to contact the courts and verify which courts, if any, require advance funding to address cash flow needs created by the delay in receipt of these monies, and that these courts can request from the AOC an advance in its monthly allocations utilizing the current cash flow advance procedures.
9. Direct that all specified 68085.5(a) and (f) fees (except Probate Code section 1835) (GC section 68085(c)(2)) are to be deposited in the TCTF;

10. Direct that all specified 68085.5(a) and (f) fees (excluding civil assessments) retained by the courts in FY 2003–2004 will be returned to the trial courts in the form of a permanent baseline adjustment;
11. Direct that all specified 68085.5(a) and (f) fees (excluding civil assessments) exceeding the amount of the baseline adjustment will be used for the following purposes:
  - To reimburse the courts for the costs of forensic evaluations based on the FY 2003–2004 levels. To the extent that costs exceed FY 2003–2004 levels, any available revenues from the former 68085.5(a) and (f) fees will be used to cover the costs of forensic evaluations.
  - To provide seed money to those courts seeking to establish collection programs after July 1, 2005.
  - To supplement funding for statewide administrative infrastructure initiatives, such as technology.
12. Direct that the distribution of these fees will be re-evaluated no later than the end of FY 2005–2006, for FY 2006–2007 and future years.
13. Direct that the courts continue to handle the distribution of GC 68085.5(b) fees in the same manner they are currently distributing them for the six months ending December 31, 2005.
14. Direct that prior to January 1, 2006, as a result of AB 145 (Stats. 2005, ch. 75) - the Uniform Civil Fee legislation - and other considerations, the handling of GC 68085.5(b) fees be re-evaluated to determine the distribution of these fees starting January 1, 2006.
15. Direct that all revisions to local agreements related to civil filing fees, fees for services and civil assessments, be approved by the Administrative Director of the Courts prior to execution.
16. Direct AOC staff to pursue a resolution to the ongoing issue of the courts' authority to expend funds for certain expenditures, including facility related items that are not clearly county obligations, which may include legislative and/or rule changes.

Rationale for Recommendation

Please see each section of the report for the rationale.

Alternative Actions Considered

Please see each section of the report for the alternatives considered.

Comments from Interested Parties

The Trial Court Budget Working Group met on August 15, 2005 to consider these recommendations, which was then followed by presentations to the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee the week of August 22. Please refer to the full report for the working group's response to these recommendations.

Implementation Requirements and Costs

There are no additional funds needed to implement these recommendations.

Attachment

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FROM: Enhanced Civil Assessments Working Group  
Hon. Peter H. Norell, Co-Chair  
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DATE: August 16, 2005

SUBJECT: Implementation of Assembly Bill 139 Provisions and Establishment of a Statewide Enhanced Civil Assessments Program (Action Required)

Issue Statement

Assembly Bill 139 (Stats. 2005, ch. 74), effective July 1, 2005, resolves longstanding differences relating to undesignated fees and redirects civil assessment revenue from the counties to the courts. A collaborative working group consisting of judicial officers, court administrators, and AOC staff was formed to address the many issues pertaining to implementation of AB 139, including establishment of a statewide enhanced civil assessment program, distribution of fee revenue, cash flow issues, and items related to AB 145 (Stats. 2005, ch. 75)—the uniform civil fee legislation—impacted by the undesignated fees compromise.

This report presents recommendations from the working group for the implementation of AB 139 and the establishment of a statewide enhanced civil assessments program. This includes provisions relating to criteria for an effective civil assessment program and a methodology for the distribution of civil assessments and certain specified fees collected.

The attachment to this report displays the proposal for allocating certain reductions in fiscal year (FY) 2005–2006. This includes a display of the allocations, by court, that are being recommended to the Judicial Council for consideration.

## Background

AB 1759 (Stats. 2003, ch. 159) established Government Code (GC) section 68085.5 and mandated that the AOC and the California State Association of Counties (CSAC) develop by January 1, 2005, an equitable long-term distribution of specified filing and miscellaneous fees, sanctions and penalties heretofore known as undesignated fees and listed in GC 68085.5(a), (b) and (f) to take effect July 1, 2005. Included in these undesignated fees was the civil assessment imposed pursuant to PC 1214.1, which may be applied for failure to pay and failure to pay in traffic and non-traffic infractions and misdemeanors as well as felony cases.

AB 1759 provided an interim solution for the distribution of undesignated fees until July 1, 2005. In general, AB 1759 provided that local revenue sharing agreements between courts and counties that existed before enactment of the legislation were to remain in effect through June 30, 2005. It further required that if no revenue sharing agreement existed that any revenue collected that offsets the cost of providing a service should be distributed to the entity that incurs the cost of providing the service. The amount collected by the courts was to be deposited into the Trial Court Trust Fund (TCTF). All other fines/fees that are court-related but not the result of providing a service were also to transfer to the TCTF. In addition, AB 1759 required that all fines and fees not currently a part of local revenue sharing agreements were to be remitted by the counties to the TCTF in an amount not to exceed \$31 million. The General Fund appropriation for the trial courts was then reduced by \$31 million, with the intention that there would be no change in revenues to the courts statewide. Finally, AB 1759 required that each court and each county provide detailed quarterly reports which were to include the total amount collected and retained by court or county and the existing distribution of the revenues generated by the fees and fines. The purpose of the quarterly reports was to assist the AOC and CSAC to determine the long-term equitable distribution of these fees and fines.

The AOC and CSAC were unable to reach full resolution by January 1, 2005. The data reported indicated that the amount of revenue generated from the GC 68085.5(a) and (b) fees was minimal on a statewide basis and that the revenue generated from the imposition of civil assessments was far less than originally believed. In addition, some counties were unwilling or unable to fulfill their obligation toward the \$31 million backfill. AOC staff met with Department of Finance staff and advised them that a compromise could not be reached and recommended that the General Fund appropriation be restored. The Department of Finance rejected that recommendation and instead proposed to make permanent the counties' \$31 million obligation. This recommendation was then included in the Governor's Budget. CSAC opposed the Governor's proposal. In the course of state budget hearings and meetings, the AOC and CSAC were again requested to

propose a compromise solution. After lengthy negotiations, representatives of the AOC and CSAC jointly proposed a resolution of undesignated fees and forensic evaluations costs as part of the legislative budget conference committee process that contains several benefits:

- Resolves numerous outstanding fee issues that have been in controversy between courts and counties since 1997.
- Provides a clear definition of which fees go to courts and which go to counties.
- Freezes county civil assessment revenues at the FY 2003–2004 level, and provides that all civil assessment growth above FY 2003–2004 will belong to the trial courts.
- To the extent that revenue projections are met through enhanced civil assessment collections, the intent of the compromise was to prevent any unallocated reductions to the trial courts.
- Shifts fees for court-provided services and various contempt sanctions to the TCTF for allocation to the courts.
- Simplifies the distribution of fee revenues at the local level.

Specifically, the undesignated fees compromise includes the following provisions:

- Effective July 1, 2005, the civil assessment maximum is increased from \$250 to \$300. (See amended PC 1214.1 (a).) The counties will no longer receive civil assessments (PC 1214.1) and certain fees, sanctions and penalties identified in former GC 68085.5(a) and (f). (See amended GC 68085(c)(2) and new GC 68085.7.)
- Counties will be credited through a reduction to their Fine and Forfeiture Revenue Maintenance of Effort in an amount equal to the net civil assessments they received in FY 2003–2004. An adjustment may be provided for inequities. By this fall, a process for determining the net amounts and inequity resolution will be established. (See new GC 68085.7 and new GC 68085.8.) On or before December 31, 2005, the AOC and the CSAC shall complete an initial review of the impact of changes in revenue distributions upon individual counties and courts. (See new GC 68085.8.)
- Courts and counties are to report to the AOC and CSAC on or before August 31, 2005 the actual gross civil assessments collected, the costs deducted from these pursuant to PC 1463.007, and net civil assessments retained for FY 2003–2004. (See new GC 68085.7(c). A template is to be provided for this purpose.)



- If the court and the county do not agree on the civil assessment figures for FY 2003–2004, each shall report the amount each believes is correct to the AOC and CSAC on or before August 31, 2005. The AOC and CSAC shall agree on the amount of the MOE reduction for each county on or before October 31, 2005 (GC 68085.7(d).) If agreement cannot be reached the amount will be determined by third-party arbitration by December 31, 2005 (GC 68085.7(e)).
- The statute incrementally reduces and eventually eliminates over a 4-year period the counties’ obligation to pay \$31 million to the TCTF annually pursuant to former GC 68085.5. (See new GC 68085.6.)
  - Counties are obligated to pay \$20 million in FY 2005–2006 in two equal installments (see new GC 68085.6(c)); \$15 million in FY 2006–2007, \$10 million in FY 2007–2008, and \$5 million in FY 2008–2009 in four equal installments (see new GC 68085.6(c)); and nothing in subsequent years.
  - Counties not receiving an MOE reduction due to loss of civil assessment revenue will not be obligated to pay anything toward the counties’ transfer obligations to the state through 2008–2009 described above. (See new GC 68085.6(g)(1).) In addition, no county will pay in FY 2005–2006 more than 90 percent of its portion of the \$31 million obligation of the past two years. (See new GC 68085.6(g)(2).)
  - The last year of the counties transfer obligation to the state may be forgiven, in whole or in part, if revenues collected under new GC 68085.6 exceed estimates. (See new GC 68085.6(h).)
- Penalties will be imposed if the counties do not pay on time. (See new GC 68085.6(e) and (f).) This provision also applies to the counties that have not paid their share of the \$31 million in FY 2003–2004 and FY 2004–2005. Those counties will have until September 1, 2005 to pay without penalties. (See amended GC 68085.5(e)(6).)
- Revenue lost to the court by reduction and eventual elimination of the county payments of \$31 million under GC 68085.5 will be recovered by anticipated new revenue from civil assessment programs and the transfer of certain fees, sanctions and penalties identified in former GC 68085.5(a) and (f). (See new GC 68085.7.)
- Gross civil assessments (see PC 1214.1(f)) and former GC 68085.5(a) and (f) fees collected beginning July 1, 2005 will be deposited in the TCTF via the AOC Treasury. Bank accounts will be established as soon as

practicable for the deposit of these revenues by the court. The counties will remit any revenues they collect under new GC 68085(c)(2), including PC 1214.1, through the usual TC-31 process.

- Key elements to note regarding court and county civil assessment collection programs (PC 1214.1(e)) include:
  - Programs in place as of July 1, 2005 should continue to be maintained thereafter, unless otherwise mutually agreed to by the courts and the counties. (See new PC 1214.1(e).)
  - After implementation of this legislation, if a court and county do not agree on a program, arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and CSAC can be requested by either a court or county. (See new PC 1214.1(e).)
- Cost of collections under a comprehensive collection program must comply with the “pro rata” guidelines determined by the State Controller’s Office. (See PC 1463.007 and new GC 68085.7(f).) Since the gross civil assessments will be remitted to the TCTF, the court/county costs will be covered from the monthly distributions back to the courts of their share of the civil assessments.
- Until January 1, 2006, the effective date of AB 145, fees imposed pursuant to former GC 68085.5(b) are to be retained by the entity that performs the work, i.e., the court or the county. Courts are to report any revenue sharing agreements that include these fees to the AOC.

With the approval by the Budget Conference Committee of the agreement reached between the AOC and CSAC, and the pending passage and signing of AB 139, numerous implementation issues remained. The legislation did not address most of the issues that are important to the trial courts, such as:

- How will we make up for the loss of \$11 million in FY 2005–2006, \$16 million in FY 2006–2007, \$21 million in FY 2007–2008, \$26 million in FY 2008–2009, and \$31 million in FY 2009–2010?
- Will courts be kept whole with the revenue collected prior to this agreement?
- Will courts continue to receive an incentive for increasing civil assessment collections?
- If the money is going to the TCTF, how will the court have the flexibility to spend the money as they did in the past?

- What incentive will the county have to collect the civil assessments if they are no longer getting any of the revenues?
- How will the courts be reimbursed for their forensic evaluation costs?

The Enhanced Civil Assessments Working Group was established in June 2005 to identify all of the implementation issues and make recommendations to the Judicial Council on:

- 1) The development of an enhanced civil assessment program;
- 2) Formulas for the distribution of civil assessments to keep courts whole and provide incentives to increase collections; and
- 3) The resolution of all other issues.

The working group's membership consists of judicial officers and court executive officers, including representatives from the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Trial Court Presiding Judges Advisory Committee, as well as expert court staff. The working group is co-chaired by the Hon. Peter H. Norell, presiding judge of the Superior Court of San Bernardino County, and Ms. Tina Hansen, AOC Finance Director.

The working group initially met on June 30, 2005 to review provisions of the compromise and to begin identifying any potential policy, implementation, operational, and communication issues. As a result of these discussions, five subcommittees were formed to focus on specific issue areas. This included the following:

- Criteria for a Successful Civil Assessments Program Subcommittee;
- Distributions Subcommittee;
- Forensic Evaluations Subcommittee;
- Rule 810 Subcommittee; and
- Communications Subcommittee.

Each of these groups has met at least once over the past several weeks, with some meeting several times and making considerable progress. These efforts are detailed in this report and have been included among the recommendations. Please refer to the appropriate sections of this report for additional details and background information.

While the original intent of the compromise agreed to between the AOC and CSAC was to have gross civil assessments deposited into the TCTF, due to the timing of the legislation, and current contractual obligations and agreements, it is understood that some courts and counties may only be able to deposit net civil collections into the TCTF. Cost of collections under a comprehensive collection program must comply with the “pro rata” guidelines related to the distribution of revenues determined by the State Controller’s Office in its “Comprehensive Collection Program Accounting Guidelines: Penal Code section 1463.007” issued in 1997 and currently being updated. (See PC 1463.007 and new GC 68085.7(f).) If gross civil assessments are remitted to the TCTF, the court/county costs will be covered from the monthly distributions back to the courts of their share of the civil assessments. In those instances that net civil assessments are deposited into the TCTF, to the extent that all allowable collection costs from a comprehensive collection program are not deducted before deposit, remaining allowable collection costs will be covered from the courts’ share of civil assessments. All courts and counties are to report to the AOC gross civil assessment collections by all sources, including the Franchise Tax Board and private collection agencies.

The recommendations of the Enhanced Civil Assessments Working Group were ratified by the Trial Court Budget Working Group, as well as by the Court Executives Advisory Committee, and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, prior to the submission of this report to the Judicial Council for consideration and approval.

### **Criteria for a Successful Civil Assessments Program**

Civil assessment pursuant to Penal Code 1214.1 represents one component of a comprehensive collection program, as defined in Penal Code 1463.007.

The Criteria for a Successful Civil Assessments Program Subcommittee was charged with developing recommendations on criteria that constitute an effective civil assessment program. Those criteria are detailed below. In addition, the subcommittee agreed that the imposition of a civil assessment, in lieu of a warrant or bench warrant, is an effective component in the collection of fines, fees and assessments on delinquent accounts.

### **Recommendation**

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

1. Encourage courts to consider the following criteria when establishing or enhancing a civil assessment program:
  - Judicial officers should impose civil assessment based on the merits of each case.
  - A \$300 civil assessment should be imposed on each appropriate case and waived or reduced only for good cause.
  - An individual's ability to pay should be referred to financial evaluation officers to determine and, with court authority, appropriately adjust the amount owed.
  - Courts should establish a policy to determine the criteria for "good cause" for reducing or waiving civil assessment.
  - A civil assessment should be imposed no later than 30 days after a failure to appear or failure to pay.
  - Courts should impose a civil assessment on all infraction failure to appear and failure to pay cases.
  - Courts should consider imposing civil assessment on all eligible cases as appropriate.
  - Civil assessment should be a consideration for failure to pay restitution fines as ordered.
  - Courts should consider trial by written declaration (vehicle code 40902) and trial in absentia (vehicle code 40903) in conjunction with the imposition of civil assessment as appropriate.
  - The judicial officer co-chair of the Enhanced Civil Assessment Working Group and the judicial officer co-chair of the Education and Training Subcommittee of the Collaborative Court-County Working Group on Enhanced Collections will be available for seminars, workshops and local meetings to discuss collections and related items with other judicial officers.

#### Rationale for Recommendation

The criteria selected for recommendation was based upon a review of effective practices in several courts and counties that have proven successful civil assessment programs.

#### Alternative Actions Considered

Alternative criteria or actions were considered.

### **Distribution of Civil Assessment Collections**

As described in the background section of this report, under the undesignated fee legislation, effective July 1, 2005 all civil assessments will be remitted to the State Controller's Office for deposit into the TCTF.

Of particular concern to the subcommittee was the manner in which certain funding issues would be addressed. This included the \$31 million TCTF revenue shortfall and, in particular, the \$11 million shortfall to occur in FY 2005–2006. Also included was the \$5.45 million reduction associated with statewide initiatives (e.g., CARS, CCMS, CHRIS). Note: This represents a half-year reduction of the \$10.9 million annual technology reduction included in the Governor's vetoes. The AOC is submitting a technology budget change proposal for FY 2006–2007 that may address the \$10.9 million reduction and thereby alleviate the courts of further unallocated cuts related to this item. Lastly, there was concern related to other statewide funding needs, such as including facilities that would ultimately need to be addressed with these revenues.

The subcommittee also noted and agreed upon on a number of important items, including:

- The issue that some counties have a civil assessment program which was not properly established (i.e., approval of the judges.)
- That all courts should submit any written and verbal agreements that affect civil assessments as soon as possible to the AOC.
- That the Trial Court Budget Working Group will provide a recommendation to the Judicial Council on the definition and basis of prorating the \$11 million and \$5.45 million reductions in FY 2005–2006.
- For FY 2005–2006 only, all civil assessment money collected should go up to the AOC and the only reduction on the monthly distribution to be remitted back to the courts will be the agreed upon county MOE reduction.
- Courts without a civil assessment program should not be penalized beyond their share of the \$11 million and \$5.45 million reductions during the first year (FY 2005–2006). These courts should consider the following alternatives:
  - Seek assistance from other courts with effective programs.
  - Consult with the AOC and request assistance in collecting the outstanding monies.

- The \$50 increase in civil assessments, which is estimated to generate more than \$16 million in FY 2005–2006, has not been previously counted upon to cover programmatic or budget needs by the courts and, therefore, should be used for statewide issues, such as the \$11 million shortfall, the \$5.45 million reduction, and other items.

In addition, the issue of the Franchise Tax Board or external collections companies taking the collection costs out prior to submission of monies to the courts was discussed. It was agreed that a speedy resolution was necessary to realize the ultimate goal of depositing gross versus net collections by the end of this fiscal year, which may require certain legislative changes. The reporting of gross collections was highlighted as an important item to accurately gauge the level of collections for this fiscal year.

The subcommittee also agreed on the need to encourage courts to move to the statewide contract for collections services, if economically feasible, and/or to renegotiate their existing contracts to ensure that they conform to the appropriate guidelines.

On August 15, 2005, the Trial Court Budget Working Group (TCBWG) met to consider the recommendations of the Enhanced Civil Assessment Working Group and recommend the methodology for allocating the \$5.45 million and \$11 million reductions. Since the \$5.45 million reduction was to backfill the lost revenue from the technology funding in the Uniform Civil Filing Fee proposal, it was considered to be a direct reduction to each trial court's operating budget. It was the consensus of the Enhanced Civil Assessment Working Group and the TCBWG that under-resourced courts should not be required to absorb this reduction within their already limited resources. To meet this objective, the Resource Allocation Study (RAS) approved by the Judicial Council earlier this year was used to determine the relative level of resources between courts. No reduction would be taken if a court was under-funded by more than 10 percent. Medium funded courts—those whose funding falls within 10 percent below and 10 percent above the average—would be reduced .27 percent. Higher funded courts—those in excess of 10 percent above the average—would take a .54 percent reduction, twice that of the medium funded courts.

The \$11 million reduction was based on the anticipated increase in civil assessment revenue due to the \$50 fee increase and increased attention to implementing and/or enhancing the civil assessment program. Since all courts had the capacity to develop/enhance civil assessment revenues, an across the board reduction based on each court's base operating budget was considered to be the fairest approach.

## Recommendations

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

2. Direct trial courts, pursuant to statute, to submit the collections of all civil assessment monies for deposit in the TCTF after the costs of collections is deducted in accordance with PC 1463.007, contracts with private collections vendors, and agreements with the Franchise Tax Board or between counties and courts. (Note: For FY 2005–2006 only, all civil assessment money collected will go up to the AOC and the only reduction on the monthly distribution to be remitted back to the courts will be the agreed upon county MOE reduction. All counties and courts are required to report gross civil assessment collections.)
3. Consider FY 2005–2006 as an implementation and transition year in which:
  - a. Better revenue data and collections cost information are obtained and analyzed;
  - b. Local obligations and agreements are evaluated;
  - c. Courts can implement and/or enhance their civil assessment programs. During this transition year, civil assessments will be forwarded to the AOC and returned to the courts with only the MOE amounts held back; and
  - d. To the extent that it is economically feasible, courts are encouraged to transition to the statewide contract for collections services and/or to renegotiate their existing contracts to ensure conformity with the appropriate guidelines.
4. Direct AOC staff to review all available information at the end of the fiscal year and present it to the Enhanced Civil Assessments Working Group for the development of future recommendations that will result in a fair and equitable formula for the sharing of civil assessment revenue between the courts and the AOC.
5. Direct the Cost Recovery Subcommittee of the Collaborative Court-County Working Group on Enhanced Collections to work with staff to pursue through procedural and/or legislative changes necessary to achieve the goal of resolving any potential conflict between PC 1463.007 and AB 139.

Recommendations 6 and 7 are being submitted by the Trial Court Budget Working Group (refer to attachment). The Trial Court Budget Working Group recommends that the Judicial Council on a one-time basis:



6. Allocate the \$5.45 million reduction utilizing the proposed methodology based upon the RAS funding model setting reduction levels as follows:
  - Courts under-funded by more than 10 percent receive no reduction;
  - Courts under-funded by less than 10 percent or over-funded by less than 10 percent receive a .27 percent reduction; and
  - Courts over-funded by more than 10 percent receive a .54 percent reduction.
7. Allocate the \$11 million reduction pro-rated to all courts based on the FY 2005–2006 base operating budget.

#### Rationale for Recommendation

Members of the working group agreed that these recommendations represented the fairest resolution given the complexities involved relative to the implementation of AB 139 provisions.

In addition, these recommendations apply to FY 2005–2006 only and will be revisited by the end of the fiscal year.

#### Alternatives Considered

Various alternative options considered included the following:

- Implementing a pro-rata cut of \$16.45 million (\$11 million plus \$5.45 million) to all courts statewide.
- Using the greater of a) each court's prorated share of the \$11 million based on each court's base budget, or b) 20 percent of the gross civil assessments collected by each court to cover the \$11 million and other statewide projects.
- Using 10 percent of gross civil assessments collected by each court for statewide technology costs.
- Using the \$50 increase in civil assessments to cover the \$11 million (and future obligations of \$16, \$21, and \$31 million, respectively) with the difference or shortfall to be allocated on a prorated basis. In addition, the \$5.45 million in FY 2005–2006 would be allocated on a pro-rata basis.

Each of these options were carefully considered, but ultimately not recommended so as to not unfairly impact any one court during this year of transition.

#### Cash Flow Needs

As the draft legislation requires all collections of civil assessments, and specified former 68085.5(a) and (f) fees (see GC 68085(c)(2)), to be deposited into a bank account established by the AOC for this purpose, it is recognized that the initial

step of depositing the July collection receipts will be delayed. The process, as we understand it, will be as follows:

- July receipts sent to the State Controller's Office on or before September 15, 2005;
- These receipts will be posted by the State Controller's office by early October 2005; and
- Revenues will be returned to the courts in the October 15 allocation from the AOC.

The delay in receipt of these funds was discussed among the members of the subcommittee. Most felt that the delay in receipt of revenues would not impact them and that the availability of the current advance process was adequate to meet the needs of those that may have cash flow issues.

#### Recommendation

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

8. Direct AOC staff to contact the courts and verify which courts, if any, require advance funding to address cash flow needs created by the delay in receipt of these monies, and that these courts can request from the AOC an advance in its monthly allocations utilizing the current cash flow advance procedures.

#### Rationale for Recommendation

To ensure that courts aren't inadvertently disadvantaged as a result of cash flow issues created by the delay in receipt of these monies, the subcommittee felt that it was important for AOC staff to contact courts and provide a reminder of the existing cash advance process and procedures.

#### Alternatives Considered

AOC staff initially recommended that courts be provided with advanced funding to cover for the delay in receiving revenues collected in July, however, most courts felt that the delay in receipt of revenues would not adversely impact them and that the availability of the current advance process was sufficient to meet the needs of those courts that may experience cash flow issues.

**Distribution of Former 68085.5(a) and (f) Fees (GC 68085(c)(2)) other than Civil Assessments and Forensic Evaluations**

In FY 2003–2004, a total of \$2.24 million in 68085.5(a) fees and \$2.13 million in 68085.5(f) fees (other than civil assessments) were retained by the courts, while \$4.9 million in 68085.5 (a) fees and \$1.73 million in 68085.5(f) fees were retained by the counties. Under AB 139, the undesignated fees legislation, all of these fees will now go to the Trial Court Trust Fund. (There is one exception to this. The fee under Probate Code section 1835, which is listed in GC 68085.5(a) but not in GC 68085(c)(2), will be retained by the local court until the Uniform Civil Fee legislation goes into effect on January 1, 2006.)

AOC staff had recommended that the 68085.5(a) and (f) fees previously retained by the counties and now required to be deposited into the TCTF be designated to fund the forensic evaluation reimbursement program. In addition, AOC staff recommended that the portion of these fees previously retained by the courts should be returned to them. There was considerable discussion among the members of the Distribution Subcommittee of the Enhanced Civil Assessments Working Group as to whether the 68085.5(a) and (f) fees previously retained by the courts should be sent back to the courts monthly or as a base adjustment made based on the FY 2003–2004 level. (Note: In FY 2003–2004, the county share totaled \$6.63 million and the projected FY 2004–2005 county share is \$7.7 million.)

Staff suggested that the operational process involved in distributing these fees to reimburse the costs of forensic evaluations could mimic the current procedures used for reimbursing court-appointed counsel costs. The Forensic Evaluations Subcommittee is charged with determining the basis for reimbursing these costs, developing guidelines, criteria and parameters, and to determine if reimbursement forms are needed. Reimbursement of these costs would be retroactive to July 1, 2005. Recommendations from this subcommittee are expected at a later date.

The need for seed money for courts to establish civil assessment programs was also discussed.

**Recommendation**

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

9. Direct that all specified 68085.5(a) and (f) fees (except Probate Code section 1835) (GC section 68085(c)(2)) are to be deposited in the TCTF;

10. Direct that all specified 68085.5(a) and (f) fees (excluding civil assessments) retained by the courts in FY 2003–2004 will be returned to the trial courts in the form of a permanent baseline adjustment;
11. Direct that all specified 68085.5(a) and (f) fees (excluding civil assessments) exceeding the amount of the baseline adjustment will be used for the following purposes:
  - a. To reimburse the courts for the costs of forensic evaluations based on the FY 2003–2004 levels. To the extent that costs exceed FY 2003–2004 levels, any available revenues from the former 68085.5(a) and (f) fees will be used to cover the costs of forensic evaluations.
  - b. To provide seed money to those courts seeking to establish collection programs after July 1, 2005.
  - c. To supplement funding for statewide administrative infrastructure initiatives, such as technology.
12. Direct that the distribution of these fees will be re-evaluated no later than the end of FY 2005–2006, for FY 2006–2007 and future years.

#### Rationale for Recommendation

The working group agreed that these recommendations represented the most equitable compromise given the complexities involved relating to the implementation of AB 139 and so as to not adversely impact any one court.

In addition, these recommendations apply to FY 2005–2006 only and will be revisited by the end of the fiscal year.

#### Alternative Actions Considered

The working group first considered a recommendation calling for the deposit of these specified fees into a bank account for the benefit of all courts. From this, first, provide on a reimbursement basis for the costs of forensic evaluations; and second, to provide upon request and approval ‘seed money’ to courts which do not have comprehensive collection programs (Penal Code 1463.007) in place as of July 1, 2005. The distribution of these fees will be re-evaluated at the end of FY 2005–2006 based on the level of funds needed for forensic evaluations and the continued need for seed money.

This recommendation was not endorsed by the Distribution Subcommittee of the Enhanced Civil Assessments Working Group so that certain courts that previously retained these fees were not unfairly impacted by pooling specified fee revenue together.

In addition, these recommendations apply to FY 2005–2006 only and will be revisited by the end of the fiscal year.

**Collection of Other Undesignated Fees (former GC 68085(b) fees)**

AB 139 does not clearly address what courts and counties are to do regarding the collection and deposit of the former GC 68085.5(b) undesignated filing fees and fees for services provided. Prior to AB 139 courts were to deposit into the TCTF any GC 68085.5(b) fees that were collected for service by the court and not part of a revenue sharing agreement. Under AB 139 the intention was to have these fees go to whoever does the work, with the court's share being deposited into the TCTF as previously required. While clean-up legislation is being prepared to add the former (b) fees to GC 68085(c)(2), and to address other issues, in the interim the State Controller's Office has agreed to issue administrative guidelines to the counties advising them to comply with the intent of AB 139.

The undesignated fees under former GC section 68085.5(b) collected by the court for the services the court provides could either be retained by the courts until the Uniform Civil Filing Fee statute goes into effect on January 1, 2006, or remitted to the State Treasury. Beginning January 1, 2006, the funds will need to be remitted on the *Report to State Controller of Remittance to State Treasurer – TC-31* for deposit into the TCTF.

The distribution of the surcharge on petitions for dissolution of marriage under GC 26859 will remain as before until the UCF statute goes into effect, at which time it will be rolled into the filing fee and distributed by the AOC. The fees collected pursuant to sections 26840.1, 26847, 26855.1, 26855.2 of the Government Code, and sections 1203.4 and 1203.45 of the Penal Code are county fees, and should be retained by the county at the local level. [After the meeting a question came up about the PC 1203.4 and PC 1203.45 fees, which are charged for expunging records. Apparently, these are related to work that the courts actually do and are misclassified as county fees. This will need to be corrected in clean-up legislation.]

**Recommendation**

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

13. Direct that the courts continue to handle the distribution of GC 68085.5(b) fees in the same manner they are currently distributing them for the six months ending December 31, 2005.

14. Direct that prior to January 1, 2006, as a result of the UCF and other considerations, the handling of GC 68085.5(b) fees be re-evaluated to determine the distribution of these fees starting January 1, 2006.

Rationale for Recommendation

As a result of the pending implementation of AB 145, the working group felt that it was imperative to maintain the existing fee distribution and handling structure until the uniform civil fee legislation goes into effect on January 1, 2006.

Alternative Actions Considered

The working group considered implementing changes effective July 1, 2005, to be in line with AB 139, however, the group believed that it would negatively affect the efforts to inform and train court staff relative to the upcoming implementation of AB 145.

**Revisions to Local Agreements Relating to Civil Filing Fees, Fees for Services, and Civil Assessments**

Due to the wide range of written and verbal agreements between courts and counties, the working group felt that it was extremely important to ensure information was collected on each of the courts' agreements with their respective counties pertaining to civil filing fees, fees for services and civil assessments. As distribution methodologies are revisited later in the fiscal year, the working group agreed that it was essential to develop a summary of issues relating to local considerations, including facility issues related to civil assessments and the need for those to be identified, reported, and considered in any analysis or decision. Other issues, such as debt service needs, should be considered as well

Given the variance in agreements statewide, the working group also agreed that all revisions to local agreements related to civil filing fees, fees for services and civil assessments, be approved by the Administrative Director of the Courts prior to execution.

Recommendation

AOC staff and the Enhanced Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, recommend that the Judicial Council:

15. Direct that all revisions to local agreements related to civil filing fees, fees for services and civil assessments, be approved by the Administrative Director of the Courts prior to execution.

### Rationale for Recommendation

To maintain some consistency statewide and to ensure the details of all local agreements, whether written or verbal, are known, the working group felt that this recommendation represented the best option.

### Alternative Actions Considered

Not collecting information relating to local agreements or by requiring that revisions to local agreements as indicated above be approved by the Administrative Director of the Courts, there is a risk that certain local considerations not be taken into account when the various recommendations are re-evaluated during this fiscal year.

### **Expenditure of Funds for Essential Court Expenses**

Under the Lockyer-Eisenberg Trial Court Funding Act of 1997 (Stats. 1997, ch. 850, AB 233 (Escutia)), counties were relieved from responsibility for funding trial court operations as specified (GC 77201(a)). Specifically items that were declared court operations in either GC 77003 or California Rules of Court, rule 810, were declared to be a state responsibility. Thus, items that were declared court operations in rule 810 were court expenses (to be paid for by allocations from the Trial Court Trust Fund and other money available to the courts) and items that were declared to be excluded from court operations remained county expenses.

Specifically the Act provided that counties were not relieved of the responsibility to provide “necessary and suitable court facilities” (see GC 77201.1(c)) and “justice-related expenses not included in Section 77003 which are otherwise required of the county by law, including, but not limited to, indigent defense representation and investigation, and payment of youth authority charges.” (See GC 77201.1(d).) To further carryout this delineation between court operations and items that remained a county responsibility, GC 77009(b) prohibited the trial courts from using any money obtained by allocation from the TCTF on expenses other than court operations.

Over time, some courts used their local revenues from civil assessments to pay for a variety of items and services because the county was either unwilling or unable to do so. In many cases the purposes for which local revenues could be used were specified by the very agreements dividing those revenues between the court and the county. To gain a better understanding of these practices statewide, the subcommittee requested from all courts copies of their revenue sharing agreements and examples of how civil assessment revenues and other undesignated fees revenues are currently being used. In those cases where an agreement was not in writing, courts were asked to provide a written description of the agreements and their terms.

The effect of the new legislation is to clarify that money received by the courts from civil assessment collections can only be used on items classified as court operations.

As each court and county works together to certify FY 2003–2004 civil assessment revenue figures, it is particularly important that each also identify any services that may be affected as a result of changes to court/county revenue sharing memorandum of understanding (MOUs.) The identification of crucial services that may be impacted as a result of changes to court/county MOUs is important to assist the AOC and CSAC in determining how to address any inequities.

As a result of working group discussions and feedback received during subsequent regional meetings, it became evident that courts throughout the state have historically expended local funds for items that could be considered as a county responsibility pursuant to Rule 810 of the California Rules of Court. This includes costs such as probation officers and pre-trial services.

Another issue involves some court expenditures on facilities. Rule 810 prohibits all facility expenditures except records storage leases. However, there are facility items that are not clearly county obligations. Specific facilities expenditures that are not allowed under Rule 810, but still being incurred by some courts, included the following:

- Remodeling
- Leases
- New staff space
- Court's share of new facilities bond debt
- Land acquisition
- Juror parking

In order to expand the branch's authority in how they spend their allocated funds and local revenues, the working group agreed on the need to resolve this problem as quickly as possible.

#### Recommendation

16. Direct AOC staff to pursue a resolution to the ongoing issue of the courts' authority to expend funds for certain expenditures, including facility related



items that are not clearly county obligations, which may include legislative and/or rule changes.

#### Rationale for Recommendation

With the passage of AB 139, how courts were expending local revenues became more clearly known. However, courts have come to depend on local revenues to fund essential programs and to purchase a variety of items that are essential for the continuation of court operations. As a result, the courts require some flexibility that allows them to continue meeting their individual court needs while complying with the requirements of GC 77009(b) and Rule 810.

#### Alternative Actions Considered

The Enhanced Civil Assessments Working Group discussed the possibility of proposing legislation that would permit the courts to expend civil assessment revenue, even though it is now specifically designated as state funding subject to GC 77009(b) and Rule 810, for essential services that the counties are either unable or unwilling to provide. Because the majority of the items are either court operations or are facility related, this item should be more clearly targeted as a facilities issue.

The working group also discussed the possibility of amending Rule 810 to permit the use of civil assessment revenue for the purposes stated above. Because Rule 810 defines among other things what the counties' obligations are toward the funding of certain trial court related services and programs, this option was rejected.

#### Other Items of Interest

A memorandum was developed and jointly distributed by the CSAC and the AOC on August 15, 2005 with the goal of providing comprehensive and succinct information to courts and counties as they begin to address AB 139 implementation issues. This communication focused on the following:

- Key provisions of the legislation;
- Important deadlines relating to AB 139 and AB 145;
- Operational issues, such as:
  - Accounting of collections costs;
  - Certification of gross civil assessments, costs associated with civil assessments; and
  - Identification of those services potentially impacted by MOU changes.

This memorandum is the first in a series of communications to provide courts and counties with implementation assistance. In future transmissions, additional details will be provided and new information may be requested, particularly on specific effects the change in revenue distributions will have on local agreements.

One issue of particular importance is that courts and counties are to report to the AOC and CSAC on or before August 31, 2005 the actual gross civil assessments collected, the actual costs deducted from these, and net civil assessments retained by both the local county and court for FY 2003–2004. (See new GC 68085.7(c).) A template is being developed and will be provided to the courts and counties for this purpose.

Finally, of related significance is the implementation of AB 145, which impacts several of the miscellaneous civil fees addressed in AB 139. The complexity and lack of statewide consistency of filing fees led the Judicial Council's Court Fees Working Group to recommend a uniform civil fee structure. The new structure mandated in AB 145, to go into effect on January 1, 2006, will streamline and vastly simplify the civil fees by rolling the current varied surcharges and add-on fees into one filing fee. The same fees will be charged for all the same services across all 58 counties.

In order to properly address the issues and concerns related to the implementation of the Uniform Civil Fee legislation by January 1, 2006, the AOC is forming a working group that will begin meeting in the near future. Courts were asked to provide civil fee and operational experts to work with AOC staff. Twenty individuals from a wide range of courts throughout the state were nominated by their court management to participate on this working group.

#### Comments from Interested Parties

Input from Trial Court Budget Working is referenced on page 15 of this report. Due to the timing of presentations to the Court Executives Advisory Committee and the Executive Committee of the Trial Court Presiding Judges Advisory Committee, comments from these groups will be presented in conjunction with this item at the council's business meeting.

#### Implementation Requirements and Costs

There are no additional implementation requirements or costs anticipated other than what is indicated in this report.

Attachment

<b>Proration of Reductions Proposal</b>			
<b>FY 2005-06</b>			
<b>Prorated Share of \$11 Million Plus \$5.45 Million (based on RAS - 3 levels)</b>			
<b>Court</b>	<b>\$11 Million Pro-rated Share</b>	<b>\$5.45 Million Pro-rated Share</b>	<b>Total Pro-Rated Share</b>
		<b>RAS 3 Levels</b>	<b>Col.C+Col.D</b>
<b>Col. A</b>	<b>Col. C</b>	<b>Col. D</b>	<b>Col. E</b>
Alameda	548,355	437,630	985,986
Alpine	3,174	2,405	5,579
Amador	13,608	5,451	19,059
Butte	54,695	22,407	77,102
Calaveras	11,108	-	11,108
Colusa	8,099	-	8,099
Contra Costa	275,109	205,799	480,908
Del Norte	13,250	-	13,250
El Dorado	48,880	17,870	66,750
Fresno	233,169	90,232	323,401
Glenn	10,264	-	10,264
Humboldt	34,939	14,298	49,237
Imperial	41,821	-	41,821
Inyo	11,126	-	11,126
Kern	210,937	88,126	299,063
Kings	35,716	15,249	50,965
Lake	17,415	-	17,415
Lassen	10,155	-	10,155
Los Angeles	3,170,255	1,199,801	4,370,056
Madera	30,360	-	30,360
Marin	96,030	80,241	176,271
Mariposa	4,973	-	4,973
Mendocino	32,619	26,873	59,492
Merced	51,716	-	51,716
Modoc	4,089	-	4,089
Mono	7,681	3,245	10,926
Monterey	97,339	40,043	137,382
Napa	49,208	37,830	87,038
Nevada	28,390	11,206	39,597
Orange	934,176	725,552	1,659,728
Placer	79,131	-	79,131
Plumas	8,955	3,740	12,695
Riverside	429,410	-	429,410
Sacramento	454,832	177,089	631,921
San Benito	11,749	-	11,749
San Bernardino	469,506	-	469,506
San Diego	958,012	784,965	1,742,977
San Francisco	378,392	330,451	708,843
San Joaquin	148,158	-	148,158
San Luis Obispo	80,257	32,415	112,671
San Mateo	226,072	178,761	404,833
Santa Barbara	131,491	108,939	240,430
Santa Clara	581,098	443,953	1,025,051
Santa Cruz	77,286	61,869	139,155
Shasta	49,486	-	49,486
Sierra	3,004	2,284	5,288
Siskiyou	24,314	20,107	44,421
Solano	124,617	47,493	172,111
Sonoma	137,966	53,087	191,053
Stanislaus	97,936	-	97,936
Sutter	23,609	-	23,609
Tehama	19,438	8,340	27,778
Trinity	6,140	2,427	8,567
Tulare	93,699	-	93,699
Tuolumne	18,496	7,884	26,380
Ventura	205,232	153,185	358,417
Yolo	51,932	-	51,932
Yuba	21,127	8,753	29,879
<b>Total</b>	<b>\$ 11,000,000</b>	<b>\$ 5,450,000</b>	<b>\$ 16,450,000</b>