Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2013

**Title**
Judicial Council: 2014 Legislative Priorities

**Agenda Item Type**
Action Required

**Rules, Forms, Standards, or Statutes Affected**
None

**Effective Date**
December 13, 2013

**Recommended by**
Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair

**Date of Report**
December 13, 2013

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## Executive Summary

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and sets its legislative priorities for the upcoming legislative year. For 2014, the Policy Coordination and Liaison Committee recommends for consideration the following as Judicial Council legislative priorities: (1) advocate for a robust reinvestment in our justice system to avoid further reductions and to preserve access to justice for all Californians, including a method to provide stable and reliable funding, including growth funding; (2) advocate to secure new judgeships and ratify the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts; and (3) advocate for legislation that will expand access to interpreters in civil cases. These legislative priorities embody the Chief Justice's Access 3D framework for increased access to the courts.

## Recommendation

The Policy Coordination and Liaison Committee (PCLC) recommends consideration of the following as legislative priorities for the Judicial Council for 2014:

1. Advocate budget stability for the judicial branch, including advocating for sufficient fund balances allowing courts to manage cash flow challenges, a method for stable and reliable growth funding for courts to address annual cost increases in baseline operations, and sufficient additional resources to allow courts to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, and to restore programs and services that were reduced or eliminated in the past few years. This advocacy includes continued sponsorship of the remaining proposals for trial court operational efficiencies, cost savings, and new revenue measures approved for sponsorship in 2012 and 2013 (and described in the attachment to this report).

2. Advocate in the following areas related to judgeships and subordinate judicial officers (SJOs):
   a. Secure funding for the second set of 50 new judgeships, which was approved in 2007 but has yet to be funded (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722);
   b. Sponsor legislation to create a third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment; and
   c. Advocate, as is done each year, for legislative ratification of the Judicial Council's authority to convert 16 subordinate judicial officer (SJO) positions in eligible courts to judgeships, and sponsor legislation for legislative ratification of the council's authority to convert up to 10 additional SJO positions to judgeships.

3. Sponsor legislation to increase access, fairness, and diversity, as well as the quality of justice and service to the public, by allowing courts to provide interpreters in civil cases for litigants who face challenges accessing the courts due to language barriers and the lack of interpreter services.

## Previous Council Action

The council has taken a variety of actions over the past years related to the above recommendations. Recent key actions in these areas include:

- ***Budget:*** In 2009 and 2010, the council adopted, as a key legislative priority for the following year, advocating to secure sufficient funding for the judicial branch to allow the courts to meet their constitutional and statutory obligations and provide appropriate and necessary services to the public. In December 2011, the council adopted as a key legislative priority for 2012, advocating against further budget reductions and seeking sufficient resources to allow courts to be in a position to re-open closed courts and restore critical staff, programs, and services that were reduced or eliminated in the past several years. A key legislative priority adopted for 2012 also included advocating for a combination of solutions to provide funding restorations for a portion of the funding eliminated from the branch budget since 2008. The combination of solutions included General Fund restoration, legislation to implement cost savings and efficiencies, new revenues, and the use of existing revenues to be able to restore services to the public and keep courts open. The council continued to make restoration of the budget a key legislative priority for 2013.

Additionally, in 2012, the council approved sponsorship of 17 proposals for trial court operational efficiencies, cost savings, and new revenue measures. An additional 6 efficiency proposals were approved for sponsorship in the first quarter of 2013.

- ***Judgeships and SJO conversions:*** The council has consistently sponsored legislation in recent years to secure the 150 most critically needed judgeships. In December 2011, the council authorized continued sponsorship of AB 1405 (Assembly Judiciary Comm.), to establish the third set of 50 new judgeships. In 2012, however, the council chose not to sponsor legislation seeking the additional judgeships, and instead chose to focus on other more urgent budgetary concerns for 2013.

  The council also has annually directed staff to take action to secure legislative ratification of 16 SJO conversions to judgeships, as authorized by Government Code section 69615. In December 2012, the council additionally directed staff to pursue legislation to secure ratification of the authority to convert 10 additional vacant SJO positions to judgeships. Such legislation, similar to the efforts for the 16 conversions, must be pursued annually.

## Rationale for Recommendation

The mission of the Judicial Council includes providing the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this mission is a commitment to meet the needs of the public, which includes the reinvestment in our justice system to avoid further reductions and to preserve access to justice that Californians expect and deserve.

Further, the Chief Justice has proposed a framework to increase public access to the courts. Her vision, entitled Access 3D, combines strategies from the courts—actions that will ensure greater public access—with a reasonable reliance on funds reinvested in the judicial branch. Access 3D is a multidimensional approach to ensuring Californians have access to the justice system they demand and deserve. The three dimensions of access are:

- Improved physical access by keeping courts open and operating during hours that benefit the public;
- Increased remote access by increasing the ability of court users to conduct branch business online; and
- Enhanced equal access by serving people of all languages, abilities, and needs, reflecting California's diversity.

The key to the success of Access 3D is a robust reinvestment in the courts. The proposed legislative priorities support the goals of Access 3D and the following blueprint for reinvesting in our justice system.

**Budget**

State General Fund support for the judicial branch has been reduced significantly, from a high of 56 percent of the total branch budget in fiscal year 2008–2009, to just 25 percent in the current year (2013–2014). Over this same six-year period, to prevent debilitating impacts on public access to justice, user fees and fines were increased, local court fund balances were swept, and statewide project funds, as well as $1.7 billion in courthouse construction funds, were diverted to court operations or to the General Fund. The council has spent considerable time over the past several years addressing the impacts of budget cuts on the branch, redirecting resources to provide much needed support to trial court operations, advocating for new revenues and other permanent solutions, and looking inward at cost savings and efficiencies that could be implemented to allow the courts to serve the public effectively with fewer resources.

The reinvestment of $63 million in the judicial branch for fiscal year (FY) 20013–2014 was an important first step that enabled the trial courts, Courts of Appeal, the Supreme Court, and the Habeas Corpus Resource Center to begin to address service impacts. Achieving significant restoration of services and access to justice will require the mitigation of the remaining $472 million in permanent ongoing reductions ($415 million from local trial courts, $57 million from the Supreme Court, Courts of Appeal, Judicial Council/Administrative Office of the Courts, Judicial Branch Facility Program, Habeas Corpus Resource Center) to the judicial branch since 2008–2009.

As highlighted by the Legislative Analyst in this year's analysis of the budget, the total amount of ongoing reductions that requires solutions will increase by more than $200 million dollars in 2014–2015 from the current year: "The increase in 2014–15 reflects the fact that there will be less resources available to the courts (such as trial court reserves) to offset ongoing reductions." Given the magnitude of additional reductions that must be addressed in 2014–2015, and absent additional funding, courts anticipate additional service reductions. As of October 16, 2013, 44 of California's 58 counties had notified the Judicial Council, pursuant to Government Code section 68106, of a reduction in court clerk hours, and/or the closure of clerks' offices, courtrooms, and courthouses. These reductions affect 76 percent of the counties in California and 93 percent of the state's population. (See www.courts.ca .gov/12973.htm for specific notifications.) These reductions in hours and services are a direct result of fiscal constraints courts are facing. These notifications represent only a small sampling of reductions in services courts have had to implement; other reductions include staff reductions and reductions in self-help services, alternative dispute resolution, phone answering hours, or other vital services for ensuring access to justice.

In an effort to address the budget crisis faced by the branch, in April 2012, the Judicial Council approved for sponsorship 17 legislative proposals for trial court operational efficiencies, cost savings, and new revenue. An additional 6 efficiency proposals were approved for sponsorship in April 2013. Several of the measures were successful. The following efficiency measures were enacted into law. A document describing the remaining efficiency proposals and their status is attached.

***Senate Bill 75 (Stats. 2013, ch. 31)***, the Courts Trailer Bill of the Budget Act of 2013, contained the following efficiency proposals:

- *Fee for clerk mailing service of a claim and order on defendant in small claims actions.* Increases the statutory fee from $10 to $15 for a clerk mailing service of a claim and order on a defendant in small claims actions.
- *Improved tools for collection of court-ordered debt.* Prohibits the Franchise Tax Board (FTB) and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court or county providing the defendant's social security number, while still allowing the social security number if FTB believes it would be necessary to provide accurate information.
- *Increased fee for exemplification of a record.* Increases the fee from $20 to $50 for exemplification of a record or other paper on file with the court.
- *Refining procedure for pursuing reimbursement for court-appointed dependency counsel.* Modifies the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters.

***AB 619 (Garcia; Stats. 2013, ch. 452)—Court facilities.*** Revises the formula for assessing interest and penalties for delinquent payments to the State Court Facilities Construction Fund to conform to existing statute governing interest and penalties for late payments to the Trial Court Trust Fund by utilizing the Local Agency Investment Fund (LAIF) rate.

***AB 648 (Jones-Sawyer; Stats. 2013, ch. 454)—Court reporter fee clean-up.*** Clarifies language from last year that created a new $30 fee for court reporters in civil proceedings lasting one hour or less.

***AB 1004 (Gray; Stats. 2013, ch. 460)—Electronic signatures on arrest warrants.*** Allows magistrates' signatures on arrest warrants to be in digital form.

***AB 1293 (Bloom; Stats. 2013, ch. 382)—Special notice fee in probate.*** Adds a new $40 probate fee for filing a request for special notice in certain proceedings.

***AB 1352 (Levine; Stats. 2013, ch. 274)—Court records retention.*** Updates and streamlines court record retention provisions.

***SB 378 (Block; Stats. 2013, ch. 150)—Official record of conviction: admissibility of electronically digitized copy.*** Makes an electronically digitized copy of an official record of conviction admissible to prove a prior criminal act.

**Judgeships and SJO conversions**

In 2005, the Judicial Council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of the 150 critically needed judgeships. Full funding was provided in the 2007 Budget Act, and judges were appointed to each of the 50 judgeships created by SB 56.

In 2007, the council secured the second set of 50 new judgeships of these critically needed judgeships. (AB 159 [Jones]; Stats. 2007, ch. 722.) Initially, funding for the second set of new judgeships would have allowed appointments to begin in June 2008. However, budget constraints delayed the funding until July 2009. The delay allowed the state to move the fiscal impact from FY 2007–2008 to FY 2009–2010. The Governor included funding for the second set of judgeships in the proposed 2009 Budget Act, but the funding ultimately was made subject to what has been called the "federal stimulus trigger." This trigger was "pulled" and the funding for the new judgeships and the various other items made contingent on the trigger was not provided. To address this issue, the Judicial Council submitted a budget change proposal in 2013 to fund the judgeships that were authorized by the Legislature in 2007 by AB 159, but remain unfunded.

In 2008, the council sponsored SB 1150 (Corbett) to secure the third set of new judgeships. With the delay of the funding for the second set of judgeships and the state's worsening fiscal condition, SB 1150 was held in the Senate Appropriations Committee. At its October 25, 2008, meeting, the council approved the 2008 update of the Judicial Needs Assessment. At the same time, the council confirmed the need for the Legislature to create the third set of 50 judgeships, completing the initial request for 150 new judgeships, based on the allocation list approved by the Judicial Council in 2007. The council also sponsored SB 377 (Corbett) in 2009 to authorize the third set of judgeships to become effective when funding was provided for that purpose. That legislation was also held in the Senate Appropriations Committee.

On October 29, 2010, the council received the 2010 update of the Judicial Needs Assessment, which concluded that, counting the 50 judgeships authorized but not yet funded, California had a shortage of 330 judgeships—a 14 percent shortfall. Without including these authorized but unfunded positions, the net need for new judgeships would increase to 380, a 16.2 percent shortfall in total judicial positions as compared against need. As a result, in 2011 and 2012, the council sponsored AB 1405 to establish the third set of 50 judgeships. Even though the legislation did not include funding for those positions, the state's continuing fiscal crisis, and the fact that the second set of 50 judgeships had yet to be appointed due to lack of funding, resulted in the legislation not moving forward. The Judicial Council chose not to sponsor similar legislation in 2012 and, instead, chose to focus on other critical budgetary concerns.

With regard to subordinate judicial officer conversions, existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer positions, upon vacancy, to judgeships. The statute caps the number that may be converted each year at 16 and requires the council to seek legislative ratification to exercise its authority to convert positions in any given year. For the past five years, that legislative ratification took the form of language included in the annual Budget Act.

The council converted the maximum 16 positions in 2007–2008, 2008–2009, 2009–2010, 2010–2011, and 2011–2012, and converted 13 in 2012–2013. For the FY 2013–2014, as of October 11, 2013, nine SJO positions have been converted. Additionally, legislation enacted in 2010 (AB 2763; Stats. 2010, ch. 690) expedites conversions by authorizing up to 10 additional conversions per year, if the conversion results in a judge being assigned to a family or juvenile law assignment previously presided over by an SJO. This legislation requires that the ratification for these additional 10 positions be secured through legislation that is separate from the budget. In 2011, the council sponsored SB 405 (Stats. 2011, ch. 705) to secure legislative ratification of these additional SJO conversions, and 4 additional SJO positions were converted. In 2013, AB 1403 (Judiciary Committee, Stats. 2013, ch. 510) included ratification of the council's authority to convert 10 SJO positions to judgeships in the 2013–2014 fiscal year.

In total, 106 SJO positions have been converted, leaving only 56 of the total 162 positions still needing to be converted. The PCLC is now recommending that the council approve seeking legislative ratification for conversion of 16 subordinate judicial officer positions, upon vacancy, in 2014–2015 as part of the Budget Act and, further, that the council once again sponsor legislation to ratify the council's authority to convert up to 10 additional SJO positions, if the conversion results in a judge being assigned to a family or juvenile law assignment previously presided over by an SJO.

### Civil interpreting

In accordance with Access 3D, expanding access to interpreter services will increase access, fairness, and diversity in the California courts. This will also improve the quality of justice and service to the public by aiding all Californians, regardless of language barriers, to interact directly with the courts.

## Comments, Alternatives Considered, and Policy Implications

In 2012, the Judicial Council chose not to sponsor legislation seeking the third set of 50 judgeships. The lack of judicial resources, however, is continuing to significantly impair the ability to deliver justice, and failure to move forward will only further deny Californians access to justice.

## Implementation Requirements, Costs, and Operational Impacts

The public expects and deserves access to the California courts. Providing high quality and timely access to justice is the cornerstone of the judicial branch blueprint and Access 3D. The key to the success of Access 3D is a robust reinvestment in the courts. Adoption of the proposed legislative priorities will allow Judicial Council staff to support the goals of Access 3D and the blueprint for reinvesting in our justice system.

## Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations support many of the council's strategic plan goals, including Goal I, Access, Fairness, and Diversity, by seeking to secure funding to provide access to the courts for all Californians; Goal II, Independence and Accountability, by seeking to secure sufficient judicial branch resources to ensure accessible, safe, efficient, and effective services to the public; and Goal IV, Quality of Justice and Service to the Public, by seeking funding to continue critical programs to meet the needs of court users.

## Attachments

1. Remaining Efficiency Proposals Approved for Judicial Council Sponsorship in 2012–2013

**Remaining Efficiencies Approved for Judicial Council–Sponsorship in 2012–2013**

The following proposals were approved by Judicial Council as legislative priorities for 2013 but were not advanced to or heard by a legislative committee:

- ***Audits*.** Defers a 2011 audit requirement of the trial courts and the Judicial Council until funding is provided to cover the cost of the audits.

- ***Collections*.** Allows courts to retain and distribute collections rather than transferring collected funds to county treasuries with distribution instructions.

- ***Penalty assessments*.** Revises and redirects the $7 penalty assessment from court construction funds to the State Court Facilities Trust Fund.

- ***Bail bond reinstatement*.** Authorizes courts to charge a $65 administrative fee to reinstate a bail bond after it has been revoked.

- ***Marijuana possession infractions*.** Amends Penal Code section 1000(a) to exclude marijuana possession, per Health and Safety Code section 11357(b), from eligibility for deferred entry of judgment.

- ***Notice of subsequent DUI*.** Repeals Vehicle Code section 23622(c) to eliminate the court's responsibility to provide notification of a subsequent DUI to courts that previously convicted the defendant of a DUI.

- ***Court reporter requirement in non-mandated case types*.** Repeals Government Code sections 70045.1, 70045.2, 70045.4, 70045.6, 70045.75, 70045.77, 70045.8, 70045.9, 70045.10, 70046.4, 70050.6, 70056.7, 70059.8, 70059.9, and 70063 to eliminate the requirement that the enumerated courts (Trinity, Modoc, Merced, Kern, Nevada, El Dorado, Butte, Shasta, Tehama, Lake, Tuolumne, Monterey, Solano, San Luis Obispo, and Mendocino) use court reporters in specified case types.

- ***Notice of mediation*.** Amends Family Code section 3176 to eliminate the requirement for service by certified, return receipt requested, postage prepaid mail for notice of mediation and clarifies that the court is responsible for sending the notice.

The following efficiency proposals were heard in committee but not approved by the Legislature:

- ***Search fees*.** Allows courts to charge a $10 fee for any file, name, or information search request. *Rejected during the legislative budget process.*

- ***Destruction of records relating to possession or transportation of marijuana.*** Eliminates the requirement that courts destroy infraction records relating to possession or transport of marijuana. *Rejected during the legislative budget process.*

- ***Preliminary hearing transcripts.*** Clarifies that preliminary hearing transcripts must be produced only when a defendant is held to answer the charge of homicide. *Rejected during the legislative budget process.*

- ***Court costs for deferred entry of judgment.*** Clarifies that the court can recoup its costs in processing a request or application for diversion or delayed entry of judgment. *Rejected during the legislative budget process.*

- ***Administrative assessment for maintaining records of convictions under the Vehicle Code.*** Clarifies that courts are required to impose the $10 administrative assessment for each conviction of a violation of the Vehicle Code, not just upon a "subsequent" violation. *Rejected during the legislative budget process.*

- ***Trial by written declaration.*** Eliminates the trial de novo option when the defendant in a Vehicle Code violation has not prevailed in a trial by written declaration. *Rejected during the legislative budget process.*