Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 27, 2014

Title
Trial Court Budget: Encumbrances

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
None

Effective Date
June 27, 2014

Recommended by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Cochair
Mr. Zlatko Theodorovic, Cochair, and Director, Administrative Office of the Courts (AOC) Fiscal Services Office

Date of Report
June 16, 2014

Contact
Doug Kauffroath, 916-263-2872
doug.kauffroath@jud.ca.gov

Executive Summary

The Trial Court Budget Advisory Committee recommends approving new policies related to encumbrances of trial court funds. These new policies provide guidance to the trial courts in complying with Government Code section 77203.

Recommendation

The Trial Court Budget Advisory Committee unanimously recommends that the Judicial Council adopt the following policies, effective June 27, 2014:

1. To encumber current fiscal year money, courts have to have a valid contract or agreement by June 30 of the current year. Contracts may be encumbered as of the execution date, as long as the contract does not state or imply a delay in delivery to the next fiscal year.
2. Courts have the current fiscal year plus two subsequent fiscal years to liquidate the encumbrance.
3. If encumbered funds are not liquidated (unliquidated encumbrances) by the end of the third fiscal year (current year plus two subsequent years), then the portion of the unliquidated

funds that was above the cap in the year it was encumbered will revert to the originating state fund (i.e., state Trial Court Trust Fund, State Trial Court Improvement and Modernization Fund) through allocation reductions. Any amount of the encumbrance that was not expensed when liquidated, regardless of when the liquidation occurs, will be reverted to the originating fund.

4. If work changes, requiring an amendment, in subsequent years of the contract or agreement, any new funding must come from the current fiscal year and has two subsequent years from the current fiscal year to be liquidated.
5. The fund balance should not be used for ongoing expenses. Ongoing expenses should be part of a court's annual budget. However, if encumbering the current year's fund balance would allow the court time to make structural changes to its budget to include this expense or would provide the court greater budget flexibility in the following fiscal year, encumbering the current year's fund balance would be appropriate. All other rules, such as 1 and 6, must be complied with. Examples of ongoing expenses are rent or lease of space, maintenance charges for a case management system after implementation, printer/copier maintenance, janitorial contracts, and security screening services.
6. Courts cannot encumber for multiple years time-and-materials or not-to-exceed contracts or agreements that don't define deliverables. These include contracts or agreements for which specific goods or services are not assigned a value and that are not associated with specific delivery or start dates—for example, master agreements and Phoenix blanket purchase orders.
7. Encumbrances in a given fiscal year cannot be for more than three years regardless of the contractual terms. A contract or agreement, such as a facility lease, may be longer, but a fourth and fifth year would have its portion of the lease encumbered in subsequent years.

Previous Council Action

The Judicial Council's Executive & Planning Committee instructed the director of the AOC Fiscal Services Office to work with the Trial Court Budget Advisory Committee to develop a policy on encumbrances for the council's consideration.

Rationale for Recommendation

Effective June 30, 2014, Government Code section 77203 allows courts to carry over "unexpended funds in an amount not to exceed 1 percent of the court's operating budget from the prior fiscal year." In light of an AOC legal analysis that encumbered funds are not considered "unexpended" for state agencies, the Department of Finance (DOF) will allow courts to exclude encumbrances of funds from the 1 percent cap on the fund balance that can be carried forward to the subsequent fiscal year without being subject to an allocation reduction.

The director of the Fiscal Services Office worked with a subgroup of the members of the advisory committee to develop encumbrance policies that were consistent with the policies and practices of the executive branch. The DOF was consulted during the development of the policies and has indicated no concerns with the policies being recommended to the council.

Comments, Alternatives Considered, and Policy Implications

This item was not circulated for public comment. No comments concerning the advisory committee's recommendation were received.

Implementation Requirements, Costs, and Operational Impacts

There are no implementation requirements or operational impacts.

Attachments

1. Attachment A: Questions and Answers

Questions and Answers

(these answers assume a court has currently available resources)

1. Question:
   a. Can we encumber July 2014 payroll expenses in FY13/14?
   b. Can we encumber contingent liabilities, such as accrued vacation?
   c. Can we encumber one-time cash payments to employees negotiated as part of collective bargaining?

   Answer: No. Payroll liabilities, such as accrued leave balances, retirement liabilities, future employee benefits, etc., are not covered by the Judicial Branch Contracting Manual and are not subject to encumbrance. A payroll that has a week in the current fiscal year and the second in the next must be accrued not encumbered.

2. Question: Can we encumber court reporter and court interpreter contracts?

   Answer: If the contract is time and material, it cannot be encumbered. Any reimbursable contracts not completely paid at year end, should be accrued, not encumbered.

3. Question: Can we encumber for civil and family law mediators?

   Answer: If the contract is time and material, it cannot be encumbered. Any reimbursable contracts not completely paid at year end, should be accrued, not encumbered.

4. Question: Would expenses for delayed reimbursement for dependency counsel, 1058, interpreter reimbursement, etc., be subject to encumbrance?

   Answer: No. Delayed reimbursement for expenses must follow accrual rules and be recorded as accrued revenue at year-end, not encumbered.

5. Question:
   a. Can we encumber 5 years of a contract?
   b. Can we encumber a 2 year contract for 3 years?

   Answer: No. Only 3 fiscal years (current fiscal year, plus the two subsequent to liquidate) of a contract can be encumbered in a particular fiscal year. The encumbrance can only last for the life of the contract. i.e. a 2 year contact can only be encumbered for 2 years.

6. Question: Can we sign an agreement for work to begin in a future fiscal year and encumber the amount?

   Answer: Contracts may be encumbered as of the execution date, as long as; the contract does not state or imply a delay in delivery to the next fiscal year.

7. Question: Can we encumber a time and material contract?

   Answer: No. A court cannot establish an encumbrance if there is no upper limit to the agreement and specific goods or services with an assigned total value are not identified. Under the contract, if a work order is issued for a specific scope of work for a specific value with a start or delivery date, the value of that work order can be encumbered to be liquidated that fiscal year and up to the two subsequent fiscal years.

8. Question:
   a. Can we encumber a not-to-exceed contract?
   b. Do we have to encumber the full amount?

   Answer: Maybe. A court may encumber a not-to-exceed contract if there are defined deliverables identified as payment milestones throughout the life of the contract. This differs from a time and material contract in that the vendor has committed to complete the entire project without exceeding a certain amount. Straight time and material contracts have no fixed upper limit, and generally do not rely on deliverables.

   A court does not have to encumber the full amount. Subsequent year funds may be used for a portion of the contract.

9. Question: Can an encumbrance be established using FY13/14 budget if a contract for goods is:
   - fully executed in FY13/14;
   - the product is in the vendors' ordering or manufacturing pipeline by June 30, 2014; and
   - the court has not specified anything but deliver in accordance with your production process timeline; but
   - the product may not be received and installed until after July 1,?

   Answer: Yes, since the court has requested normal or ASAP delivery of vendor, and not purposely delayed.

10. Question: Can a court encumber on-going system maintenance fees, entrance security service costs, janitorial services, monthly leases, and other similar type contracts?

    Answer: Fund balance should not be used for on-going expenses. On-going expenses should be part of a court's annual budget. However, if encumbering current year fund balance would allow the court time to make structural changes to its budget to include this expense, or provide the court greater budget flexibility in the following fiscal year, encumbering current year fund balance would be appropriate. All other rules, such as number 1 and number 6, are applicable.

11. Question: Can prepaid amounts be considered to be the equivalent of encumbrances for the 1% exclusion?

    Answer: Yes. The rationale for this is that the prepaid is the equivalent of an encumbrance, as a contract has been entered into and the amount has been already paid committing the court and effectively releasing the funds. While the amount at year end is in fund balance and is part of the designation process, it is the equivalent of an encumbrance.

12. Question: Can costs associated with a contract to move into a new facility in the next fiscal year be encumbered this fiscal year?

    Answer:

    a. Move consultant contract. Yes. Costs for a contract where a consultant plans the move for the court can be encumbered this fiscal year if the work is to start as soon as possible, rather than a specific date in the new fiscal year.
    b. Moving company contract. No. This is a one-time event in a subsequent year and cannot be encumbered this fiscal year as the work will not start until the next fiscal year.
    c. CFARF utilization. The Court may request to transfer monies from the court's fund balance to the Court Facilities Architectural Revolving Fund (CFARF) for court responsible costs associated with an approved facilities project, such as an approved capital project, to include moving costs, furniture, IT equipment, etc. If the project will be substantially completed within the next two fiscal years, and a court plans to use current fiscal year funds for part or all of the costs related to the move, the court should submit a request to transfer those funds to the CFARF. The request will be reviewed by the state Department of Finance on a case-by-case basis. Placing the funds with the CFARF will require the AOC to become responsible for monitoring and expending the funds on behalf of the court, including entering into contracts. Use of the funds will be restricted to items requested in the CFARF transfer. At the end of the project, any unused court funds will be subject to the 1% fund balance calculation in the year the funds were deposited.

Attachment A

Requests to move money to the CFARF should be sent to Gisele.Corrie@jud.ca.gov. The request should include an itemized list of expenditures (service/product, cost) and a timeline for the expenditures. Requests for fiscal year 13/14 must be to Gisele by 8:00 a.m. on Monday, May 19. We apologize for the short timeline, but reviews and approvals must occur in time to reduce the courts allocation for June 2014.