

***Judicial Council of California
California State Association of Counties
State of California Department of Finance***

TO: County Boards of Supervisors Presiding Judges of the Trial Courts
County Administrative/Executive Officers Trial Court Clerks/Executive
County Auditor-Controllers Officers

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DATE: December 19, 1997

SUBJECT: *Questions and Answers Concerning Implementation of AB 233 (Stats. 1997, ch. 850)*

The attached *Questions and Answers Concerning Implementation of AB 233* (the Lockyer-Isenberg Trial Court Funding Act of 1997) is intended to answer significant questions raised by counties and courts about implementation of AB 233 (Stats. 1997, ch. 850). The document was compiled jointly by the Judicial Council/Administrative Office of the Courts (AOC), the California State Association of Counties (CSAC), and the California State Department of Finance (DOF). The questions contained in the document primarily grew out of five workshops conducted in November and December, with participation from more than 800 court and county representatives, as well as direct contacts by courts and counties with our respective offices since AB 233 was enacted in September 1997.

The answers provided represent our joint understanding of the requirements and intent of AB 233. We thank you for your continued cooperation in implementing this important legislation, and we encourage you to contact the AOC or CSAC should you need more information.

Note: The answers are for informational purposes only and do not constitute and should not be relied upon as legal advice. The information in this document is believed to be accurate at this time. Most of the answers contain references to relevant statutory sections of AB 233. You should use these references as a guide to the applicable law. The document is the work of AOC, CSAC, and DOF staff, but it does not represent any official position of the Judicial Council, the CSAC Board of Directors, or the Governor or his administration.

QUESTIONS AND ANSWERS
CONCERNING IMPLEMENTATION
OF THE LOCKYER-ISENBERG
TRIAL COURT FUNDING ACT OF 1997
(AB 233, ESCUTIA AND PRINGLE)

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**QUESTIONS AND ANSWERS
CONCERNING IMPLEMENTATION OF AB 233**

TABLE OF CONTENTS

I.	Budgeting and Funding Responsibilities— <i>Who Pays for What?</i>	1
	A. Calculation of County Base Obligation/Adjustments to the Base	1
	B. Trial Court Budgeting and Allocation	6
	C. Two Percent Court Automation Funds	15
II.	Local Budget and Fiscal Administration— <i>Who's Responsible for Paying the Bills and Keeping Track of What Is Spent?</i>	17
III.	Administrative/General Services Support— <i>Who Provides These Services, Short and Long Term?</i>	23
	A. County-Provided Services—Generally	23
IV.	Human Resources Issues— <i>How Are Personnel Issues Addressed Prior to a Determination of the New Structure?</i>	32
V.	Miscellaneous Issues	38

**QUESTIONS AND ANSWERS
CONCERNING IMPLEMENTATION OF AB 233**

I. BUDGETING AND FUNDING RESPONSIBILITIES—*WHO PAYS FOR WHAT?*

A. Calculation of County Base Obligation/Adjustments to the Base

1. (a) How is the county general fund base obligation amount calculated? (b) How is the county revenue base obligation amount calculated? Are both city and county fines included?

(a) The county obligation is derived by: (1) taking the total actual expenditures for fiscal year 1994–95 as reported in the Quarterly Report of Revenues and Expenditures submitted by each county on behalf of the trial courts within its jurisdiction; (2) subtracting judicial officer costs reported by the courts (i.e., Function 1); (3) adding in full fiscal year 1995–96 judicial officer costs (i.e., municipal and superior court judicial officer salaries and state-provided benefits), adjusting for a 2 percent vacancy rate; (4) subtracting reported expenditures for Collections Enhancements costs for fiscal year 1994–95 (i.e., Function 5), and subtracting the actual allocation of state funding to each county in fiscal year 1994–95, including salaries and state-provided benefits for superior court judges.

(b) The fine and penalty revenues reported for fiscal year 1994–95 remitted to the state on a cash basis for deposit in the state General Fund were used to determine each county's obligation. Trial court revenues remitted to the state that are included in the base year calculation include those collected and deposited in the state General Fund pursuant to Pen. Code, §§ 1463.001 (excluding maintenance of effort (MOE) payments), 1462.3, and 1464; Veh. Code, §§ 42007 and 42008; and Gov. Code, §§ 29550, 27361, and 76000. These amounts do not include penalty assessments deposited in the State Penalty Fund, amounts distributed to cities, or amounts retained by counties prior to AB 233. Since there are differences between county accounting practices and those used by the state in accounting for receipt of fines and forfeitures, additional, detailed questions should be forwarded to the Finance Bureau of the Administrative Office of the Courts (AOC) for further clarification.

See Gov. Code, §§ 77201 and 77201.1.¹

¹ All section references are to those as amended in Assembly Bill 233 (Escutia and Pringle), Statutes 1997, chapter 850 (AB 233). If a referenced section is not amended in AB 233, the reference is to that section as it reads in existing law.

2. The county spent more on allowable court operations² in fiscal year 1996–97 than in fiscal year 1994–95. Does that mean the court’s budget will be reduced?

The amount each county is required to send to the state has no impact on the amount of Trial Court Funding each court system will receive. In allocating the available funding to the trial courts, the Judicial Council will consider, among other factors, prior fiscal year actual expenditures.

See Gov. Code, § 77202.

3. If there is an adjustment that reduces the county’s contribution, will the court in that county be directly impacted?

The budget of a court is not directly related to the amount the county is required to remit to the state. County contributions are aggregated in the Trial Court Trust Fund and provide a source of revenue which supports the courts overall. The court’s budget is the amount the Judicial Council allocates based on the annual State Budget appropriation. Any reduction in the total contribution from counties is not required to be made up by the state. The council has not yet developed a policy regarding how funding shortfalls will be addressed. However, if a county’s contribution is reduced, an analysis must be conducted to determine whether the amount reduced is for costs that also should not remain part of the court’s budget (for example, non-Rule 810 allowable expenditures reported in fiscal year 1994–95 and included in the fiscal year 1997–98 or 1998–99 budget). In this instance, the court budget would be reduced since those costs are not allowable and should be paid directly by the county.

See Gov. Code, §§ 77003, 77202, 77206, and California Rules of Court, rule 810 (CRC rule 810).

4. When will the procedures for appealing the 1994–95 base be available from the Department of Finance (DOF)?

The Department of Finance, in consultation with the AOC and California State Association of Counties (CSAC), developed guidelines for 1994–95 base adjustments, and current year adjustments. The guidelines were released on December 1, 1997.

5. How will questions dealing with what is or is not an allowable court operations cost be handled?

² “Allowable court operations” and “rule 810 costs” as used throughout this document refer to those costs as defined in Gov. Code sections 77003 and 77006.5, and California Rules of Court, rule 810.

AB 233 made no change in what is an allowable court operations cost, except to eliminate collections enhancement and local judicial benefit costs. Courts or counties with questions about allowable costs should contact the Trial Court Services Division of the AOC. In reviewing requests for adjustments, the DOF will consult with the AOC and CSAC on the inclusion or exclusion of costs, when necessary.

See Gov. Code, § 77003 and CRC rule 810.

6. Why was fiscal year 1994–95 selected as the base year?

At the time the legislation was first drafted (AB 2553– Isenberg), the fiscal year 1994–95 figures were the most recent actual expenditures available.

7. Please provide clarification as to the types of one-time costs the county can claim against the fiscal year 1994–95 court expenditure level.

Gov. Code, § 77201(c)(1) authorizes the Department of Finance to adjust the amount a county must remit to the state to reflect amounts that were specifically appropriated, funded, and expended by a county in 1994–95 to fund extraordinary one-time court expenditures. However, § 77201 does not specify what “one-time” costs are. The Department of Finance was provided the authority to review “extraordinary one-time” claims on a case-by-case basis. Extraordinary one-time costs are generally the nonrecurring expenses, services, or equipment that are not part of an ongoing budget.

See Gov. Code, §§ 77201(c) and 77201.1(b)(4).

8. What is the definition of “subventions” which should be excluded from the fiscal year 1994–95 MOE?

Subventions are typically revenues that are received as local assistance based on a formula as opposed to grants that are provided selectively, often on a competitive basis.

9. How will the Department of Finance handle requests for adjustments to the county general fund base amount based on grants received in fiscal year 1994–95?

If the grant funded a reported and allowable court operations cost under Rule 810 that could not have been funded without those grants being available, the county may seek an adjustment for these costs.

10. If a credit was received and applied against the 1994–95 expenditures as a result of retirement credits, indirect cost rollovers, etc., and a resulting lower number was reported, will base year adjustments be considered to increase a county’s obligation?

The Department of Finance will consider declarations for adjustments related to credits.

11. If fiscal year 1994–95 base year increases are approved pursuant to decisions made by the Department of Finance in the adjustment process, how will corresponding adjustments be made to actual trial court funding? How will the actual funding provided to a court for fiscal year 1997–98 and 1998–99 be adjusted to reflect those adjustments, since both 1997–98 appropriations and 1998–99 budgets have already been approved? If counties are required to remit more money to the state each year, will local courts receive the additional funds needed to cover these costs?

Again, the amount each county is required to send to the state, with any adjustments, has no direct impact on the amount of trial court funding each court system will receive. All allocation decisions to each court will be made by the Judicial Council after consideration of input from local courts and from the council’s advisory committees. If an increase adjustment is made to reflect costs not included in the 1994–95 base year expenditures, and those costs have not been included in the court’s approved allocation budget, the Judicial Council will consider allocating additional available funding to cover those costs.

See Gov. Code, §§ 77003, 77202, 77206, and CRC rule 810.

12. The legislation includes language indicating that “. . . the obligation of counties to contribute to trial court costs shall not be increased in any fashion by state budget action relating to the trial courts.” What does this mean?

The intent of the referenced provision is to protect counties from subsequent state budget action that proposes to increase the counties’ contribution to the state without a change in statute. The counties must pay the statutorily required amount, and non–Rule 810 court-related costs otherwise required by law.

See AB 233, § 3(a), non-codified, and Gov. Code, §§ 77201(b)(3), 77201(b)(4), and 77201.1(b)(5).

13. When are payments of county funds to the state due? The bill indicates that there are to be four equal installments made, but only three dates are provided. How is this to be resolved? What is the process for counties to receive a credit against their maintenance of effort obligation for fine and forfeiture revenue remitted to the state prior to January 1, 1998?

For fiscal year 1997–98, the first county payment to the state is due on January 1, 1998, for one quarter of the amount required to be paid under Gov. Code, §§ 77201(b)(1) and 77201(b)(2). Payments due on April 1 and June 30 will be prorated to reflect any adjustments resulting from the procedures established in Gov. Code, § 77201(c) and (g). A county is not required to pay more than the amounts specified, or as adjusted.

The process for counties to receive a credit against their base revenue obligation to the state under Gov. Code, § 77201(b)(2) (also known as “maintenance of effort” or “MOE”) is detailed in the Department of Finance adjustment guidelines issued to courts and counties on December 1, 1997.

See Gov. Code, § 77201.

14. When and how will donor counties receive the excess dollars they currently remit to the state over and above the amount that is allocated to the trial courts in the county? Has the amount been calculated?

The total amount available for relief to “donor counties” is \$4.3 million. Under Gov. Code, § 77201.1, counties that have been determined to be “donor counties” will remit a lesser amount to the state beginning in 1998–99. The amounts of the permanent reductions are as follows:

Placer	\$ 310,923
Riverside	3,346,334
San Joaquin	131,975
San Mateo	473,498
Ventura	61,945

See Gov. Code, § 77201.1(e) and (f).

B. Trial Court Budgeting and Allocation

15. Has a new allocation formula been established by the Judicial Council to determine the amounts to be allocated to trial courts for fiscal year 1997–98? If so, (a) What is its effective date? (b) What criteria are used in determining this formula? (c) What effect will trial court coordination have in determining the allocation formula?

Because of the transitional nature of fiscal year 1997–98, a limited amount of funding is available. On November 14, 1997, the Judicial Council adopted an allocation and distribution schedule reflecting the total amount of funding available as of that date. This schedule includes amounts already allocated in the first half of the fiscal year. The allocation schedule adopted by the council for fiscal year 1997–98 was based on 1996–97 expenditures.

With respect to trial court coordination, Gov. Code, § 77212 provides that one-fourth of 1 percent of the total State Budget appropriation for trial court funding be set aside in the Trial Court Improvement Fund to be allocated by the Judicial Council to reward court coordination efficiencies. For fiscal year 1997–98, this amount is approximately \$2 million, due to the delayed implementation of AB 233.

See Gov. Code, §§ 77202, 77206, and 77209.

16. Why is the Judicial Council using \$1.596 billion as the baseline budget for fiscal year 1997–98 instead of the \$1.71 billion baseline provided by the Judicial Council Trial Court Budget Commission (TCBC)?

The final legislatively approved base budget of the trial courts for fiscal year 1997–98 is \$1.596 billion, not including funding for the Assigned Judges Program. The \$1.71 billion refers to the budget proposed by the TCBC and approved by the Judicial Council for submission to the Governor and the Legislature. The requested amount was reduced by the Legislature to the approved budget level.

17. How will elimination of top-step budgeting impact fiscal year 1997–98 or fiscal year 1998–99 allocations to the courts?

The 1997–98 Budget Act did not include the estimated amount of funding for top-step budgeting. The Judicial Council has elected to eliminate this budgeting practice in all future years.

18. Once the final allocations are made to each court system, is it possible to know what part of each court's allocation is derived from General Fund dollars and what part from trust fund dollars?

State General Fund appropriations will be placed in the Trust Fund and commingled with other revenue sources. The amount made available to each court system will not be delineated by original source funding, as this type of breakdown has no bearing on the use of those funds.

See Gov. Code, §§ 68085, 77202, and 77204.

19. What is the process for submitting a deficiency appropriation to the Legislature?

Under current law, no agency may expend at a rate that would result in a deficiency until approval is granted by the Department of Finance and the Legislature. Section 32.00 of the Budget Act, Board of Control rule 614, and Gov. Code, § 16324 provide that state officers are expressly forbidden from making any expenditure which is not authorized without approval of the DOF. If a state agency or branch of government determines that it has extraordinary and unanticipated costs that require additional resources, it must submit a Budget Act § 27.00 request to the Department of Finance. The Judicial Council will review court needs on a statewide basis and, as determined, seek a deficiency on behalf of all trial courts.

Gov. Code, § 11006 and Budget Act § 27.00 provide a process for addressing deficiencies. The Department of Finance is required to notify the Legislature of receipt of the deficiency notice within 10 days of receipt. The Department of Finance will then analyze the deficiency request and make an independent determination of whether the request is justified. If the DOF concurs with the deficiency request, the DOF is required to send a letter to the Legislature transmitting its position, including the recommended level of funding, to the Legislature. The Legislature must respond within 30 days. If the Legislature agrees with (some level of) the request, the state agency may expend at the approved rate. The funds will not be appropriated until the annual deficiency bill is approved, which is usually in June.

See Budget Act of 1997, §27 and §32; Board of Control rule 614; Gov. Code, § 16324.

20. Are counties obligated to continue funding beyond fiscal year 1994–95 levels if they made a commitment to provide increased funding prior to enactment of trial court funding?

No. The county's obligation is limited to the amounts the county is required to pay in Gov. Code, § 77201 for fiscal year 1997–98 and Gov.

Code, § 77201.1 for fiscal year 1998–99 and thereafter, as adjusted under those sections.

See Gov. Code, §§ 77201 and 77201.1.

21. How does a court obtain mid-year funding for unexpected court costs related to new programs? What if the level of funding for fiscal year 1997–98 is not sufficient to cover all legitimate costs under Rule 810?

Courts must manage their budgets within existing resources and, if necessary, delay implementation of new programs or defer expenses for which funding is not available.

Courts would have to apply to the Judicial Council for emergency funding and, under extraordinary circumstances, the Judicial Council may explore reallocating other resources, to the extent those funds are available.

See Item 0450 of the Budget Act; Gov. Code, § 68502.5 (authority to allocate and reallocate); Gov. Code, §§ 77202 and 77206.

22. Does the AOC anticipate any additional funding to courts that have documented increases in their fiscal year 1997–98 budgets that did not appear as fiscal year 1996–97 actual expenses? These include additional staffing of cost of living adjustments approved by counties in the fiscal year 1997–98 budget.

Courts are required to operate within the budget allocated by the Judicial Council for all services, supplies, and personnel costs. The courts must manage resources in a manner that meets necessary operating expenses and, if necessary, delay filling vacant positions or undertaking or expanding programs for which funding is not available. In areas for which there are statewide implications and no other funding is available to the courts or the Judicial Council, the council and AOC are in the process of identifying anticipated growth in expenditures from fiscal year 1996–97 for which it may seek supplemental or deficiency funding. These areas include verbatim reporting, language interpreters, and personnel costs.

See Gov. Code, § 77202.

23. Can sources of revenue other than trial court funding be used for allowable court operations costs?

AB 233 does not prohibit otherwise lawful funding from other sources, including grants, from being spent on court operations costs. However,

it should be noted that the use of outside funding sources will not obligate the Judicial Council to replace these funds if they become unavailable.

Under procedures the AOC must develop, courts will be required to request approval for non-state funding revenues that are intended to support California Rule of Court, Rule 810—allowable costs. These revenues will be reviewed to ensure that court budgets approved by the Judicial Council take those funding sources into account.

See Gov. Code, §§ 77001, 77009, 77202, 77206, and CRC rule 810.

24. Who should set fees for, and receive the revenues from, fees that are now set at the option of the county that may be used to support various court and court-related programs, such as civil assessments, dependency mediation fees collected from birth certificates, micrographics fund fees, automated warrant trust fund revenues, copying and records search fees, and dispute resolution fund fees?

If AB 233 made no change to a statute affecting who should set a given fee or how the revenues from that fee are distributed, then the authority to set and distribute the fees will continue in the same manner as before AB 233. If a county used these court-related fee revenues to pay its share of allowable court operations costs in the 1994–95 fiscal year and these costs were included in the reported expenditures, then the county should continue to retain these revenues in order to offset the county’s general funding base obligation to the state under Gov. Code, §§ 77201(b)(1) and 77201.1(b)(1).

See Gov. Code, §§ 68073, 77003, 77200, 77201, 77201.1, and CRC rule 810.

25. What happens to revenues from reimbursements that have been traditionally used for court costs and court-related costs including, but not limited to, family court services reimbursements for custody investigations or visitations, probate conservatorship assessments, etc.

If a county used these reimbursement revenues to pay its share of allowable court operations costs in fiscal year 1994–95 and these costs were included in the reported expenditures, then the county should continue to retain these revenues up to the level reimbursed in the 1994–95 fiscal year in order to offset the county’s general funding base obligation to the state under Gov. Code, §§ 77201(b)(1) and 77201.1(b)(1). Courts must ensure that the cost of the services is reflected in the base year.

Revenues from reimbursements in excess of the 1994–95 fiscal year should go to the entity that pays the up-front cost of providing the service.

If the cost of the service is not an allowable court operations cost, then the county receives the reimbursement revenues to offset the cost of providing this service.

26. Gov. Code, §§ 27361 and 68085 require that \$1 of the recording and indexing fee be remitted to the Trial Court Trust Fund. However, this revenue is also part of the county's base fine and penalty revenue obligation to the state. Will this be corrected?

AB 233 did not intend to “sweep” any revenues to the Trial Court Trust Fund that are included in the county's base obligation. The Judicial Council and CSAC will seek clean-up legislation to correct this discrepancy.

See Gov. Code, §§ 27361 and 68085.

27. Is there a change in how bail and trust fund interest is distributed? Does it go into the local court operations fund?

As under current law prior to AB 233, interest earned in trust or bail accounts is returned to the litigants and/or defendant at the conclusion of the case or controversy.

28. Will there continue to be reimbursements for the cost of coordinated cases and homicide trials? If so, will the court or the county receive the reimbursement?

There was no change made in Code of Civil Procedure §§ 404–404.8 in AB 233, or in California Rules of Court, rule 1501, relating to coordinated case reimbursements, or in Penal Code, § 4750 relating to reimbursement for homicide trials. There will be no change in which entity will receive these reimbursements, the courts or the county.

See Code Civ. Proc., §§ 404–404.8; CRC rule 1501 et. seq.; Pen. Code, § 4750.

29. What happens to interest earned in the local trial court operations fund?

Interest earned in the local court operations fund is required to be deposited in the local court operations fund. This interest revenue may only be used for court operations expenditures as directed by the presiding judges or judges of the court(s).

See Gov. Code, § 77009.

30. What will be the process to transfer funds in a court's budget from one function to another during the year? Will the AOC have to approve such transfers? Does the county have a role?

The current policy of the Judicial Council is to allow local trial courts the discretion to transfer funds from one function to another during the fiscal year, providing flexibility at the local level to meet the changing needs of the court. This policy, along with other previously approved budget and funding policies, will be reviewed further by Judicial Council given the enactment of single-source funding by the state. It should be noted that the court's authorized budget will not be increased solely as a result of these transfers. The county has no responsibility or authority for approval of the transfer of funds.

See Gov. Code, §§ 77001, 77009, 77200, 77202, and 77206.

31. Will individual courts have an opportunity to meet with the state Department of Finance to discuss expenditures and revenues and/or the status of coordination and to appeal procedures prior to the first submission of the new budget?

No. The policy and practice of the Department of Finance is to meet with the agency responsible for the overall system, in this case the Judicial Council and AOC. Budget requests from each court system will continue to be submitted to the Judicial Council for consideration and possible inclusion in the judicial branch's budget request to the Governor and Legislature. Final allocations to each court system will also be determined by the Judicial Council.

32. Does the county have any input into the budget that is submitted by the courts located in its jurisdiction?

Gov. Code, § 68502.5 still requires a court to transmit to the county a copy of its budget request submitted to the Judicial Council.

See Gov. Code, § 68502.5.

33. In the event a county gives the court a 90-day notice that it will no longer provide a particular service that had been provided at no or reduced cost to the court, and the cost of such service from any other source is significantly higher, what provisions, if any, are there for the court to request a budget augmentation for this unanticipated increase?

The 90-day notice requirement in Gov. Code, § 77212 was intended to give the counties, the courts, and the Judicial Council time to respond to the change in the provision and use of county services, and to plan accordingly, both operationally and fiscally. It is in the best interest of courts and counties to plan and provide notice, as far in advance as possible, so that these fiscal and operational issues may be sufficiently addressed. It is also in the best interest of all parties to get an accurate assessment of the cost of services provided by the county in fiscal year 1994–95 within the time frames of the appeal process established in Gov. Code, § 77201 so that the base year county obligation accurately reflects these costs. If there are increased costs not reflected in the court budget, the Judicial Council will determine whether a budget adjustment is necessary, and whether additional funding will be allocated.

See Gov. Code, §§ 77201 and 77212.

34. Actual costs in “uncontrollable” areas, such as those included in Function 11–Indirect Costs, will likely exceed the budget. Does the AOC have any suggestions for controlling costs outside the court’s purview?

Under Gov. Code, § 77212, such administrative costs must be billed to the court directly and not exceed the costs of providing actual or similar services to county agencies and departments. Courts should plan and manage their budgets in consideration of the nature of these costs. Beginning in fiscal year 1999–2000, trial courts will not be required to continue such services with the county, and counties will not be required to continue to provide such services to the trial courts.

See Gov. Code, § 77212.

35. On October 15, 1997, the Judicial Council directed the AOC to prepare a budget request for the Judicial Administration Efficiency and Modernization Fund of not greater than \$50 million. Is this amount included in, or in addition to, the recommended amount for trial court baseline budgets and incremental requests?

Subject to appropriation, the funding to be allocated to the Judicial Administration Efficiency and Modernization Fund is separate from and over and above the level of funding requested by the Judicial Council to the Governor and Legislature for individual courts’ baseline and incremental requests for fiscal year 1998–99.

See Gov. Code, § 77213.

36. What is envisioned for the use of the Modernization Fund?

Under Gov. Code, § 77213, the Judicial Council is given the authority to administer the Judicial Administration Efficiency and Modernization Fund in a manner that promotes improved access, efficiency, and effectiveness in the trial courts. The legislative intent in establishing the fund is to reward trial courts that unify to the maximum extent permitted by law. For example, should Senate Constitutional Amendment 4 (SCA 4), the trial court unification measure which will appear on the June 1998 ballot, become law, the legislative intent is that only those courts that vote to unify under SCA 4 will be eligible for funding to support the program areas delineated in the legislation. These program areas include in-state education programs, improved technology, incentives to retain experienced jurists, and improved legal research, as specified.

See Gov. Code, § 77213.

37. Gov. Code, § 77205 provides that revenues collected over the 1994–95 base amount be split between the county and the State Trial Court Improvement Fund. How is the split to be paid by the county? Will courts that improve collections be given credit in the allocation of Trial Court Improvement Fund moneys?

Under Gov. Code, § 77205, at the end of each fiscal year, the county is required to pay to the state Controller, for deposit in the Trial Court Improvement Fund, the state's 50 percent share of the growth in revenues collected, as calculated by the county. The payment is due within 45 days of the close of the fiscal year in which the revenues are collected. The Controller may verify the amounts to be remitted as part of ongoing fiscal compliance audits. Any growth in revenues will be split between the county and the Trial Court Improvement Fund. The Judicial Council will determine how these funds will be allocated to individual courts.

See Gov. Code, § 77205.

38. What is the purpose of the Family Law Trust Fund? Will funds be allocated to trial courts based on an allocation formula or set aside to support statewide family law programs?

This fund is managed by the Judicial Council. The fund is intended to support family law programs in the AOC's Family Court Services Unit or grants to the trial courts, as approved by the Judicial Council. The only changes in the legislation that affect the fund are the increase in the fees that support the fund and the direct deposit of a share of the revenues into the Family Law Trust Fund as opposed to the state General Fund.

See Fam. Code, § 1852.

39. What funds will be available to cover the cost of court reporters to replace electronic reporting as a result of the court order prohibiting the use of state funding to pay for creating the official record in superior courts by non-stenographic means including electronic recording? Will the court be able to request budget augmentations to cover this increase? If the Judicial Council is planning to seek a deficiency appropriation to cover the cost of additional reporters, what are trial courts to do with regard to hiring and paying additional reporters between January 1, 1998, and the time the deficiency appropriation is approved?

The Judicial Council is considering several alternatives for addressing this issue. The council may consider seeking a deficiency appropriation. However, because state funding cannot be spent on creating the official record in superior courts by non-stenographic means including electronic recording and the courts will be fully state funded beginning January 1, 1998, courts should now plan a way to fund court reporter costs in the event that additional funding cannot be secured.

See Gov. Code, §§ 77003, 77202, and 77206.

40. Will funding for court interpreters be placed into a central trust fund for the court interpreters program? If not, on what basis will funds be allocated to the courts?

No, the funding will not be placed in a central fund. Funding will be allocated directly to the trial courts specifically for the interpreter services and for interpreter coordinator positions. The funding allocated for interpreter services may not be transferred to fund other Rule 810–allowable costs. The basis for allocation, which will consider prior year actual expenditures among other factors, has not yet been

finalized. It is anticipated that a proposal for allocating this funding will be presented to the Judicial Council at its February 1998 meeting.

See Gov. Code, §§ 77202 and 77206, and Provision 8 of Item 0450 of the Budget Act of 1997.

41. Who has responsibility for funding new court construction during the period the committee on court facilities is considering its recommendations?

Under Gov. Code, § 68073 as amended by AB 233, counties are required to provide necessary and suitable facilities for all judicial officers and support positions created prior to July 1, 1996. The state is not required to provide such facilities. For positions created after July 1, 1996, Gov. Code, § 77653(i) provides: "Unless a court and a county otherwise mutually agree, the state shall assume responsibility for suitable and necessary facilities for judicial officers and support staff for any judgeships authorized during the period from January 1, 1998, to June 30, 2001." The long-term approach to funding court facilities will be addressed by the Task Force on Court Facilities.

See Gov. Code, §§ 68073 and 77650–77655.

42. Are there any steps courts can take to provide input to the Legislature on issues that may adversely affect them financially?

AB 233 requires the Judicial Council to provide information to the Legislature regarding the fiscal impact of pending legislation on the courts. The AOC is developing procedures to implement this section by January 1, 1998.

See § 61 of AB 233.

C. Two Percent Court Automation Funds

(Note: For questions 43 through 48, see Gov. Code, §§ 68090.8 and 77209.)

43. Will 2 percent automation fund dollars collected prior to January 1, 1998, be swept to the state? After January 1, 1998, what portion, if any, will be retained by counties? What happens to existing balances in the local 2 percent automation fund?

Two percent automation fund dollars collected prior to January 1, 1998, will not be swept to the state. Existing balances will remain in the local fund established by the county. Beginning January 1, 1998, counties will be required to send all new 2 percent funds to the state for deposit

in the Trial Court Improvement Fund. Revenues collected in fiscal year 1997-98 and subsequent years up to the amount collected in fiscal year 1994-95 will be returned to the trial courts. The Judicial Council is required to allocate the increase over the 1994-95 levels to local court operations funds.

44. Dollars are automatically allocated to the courts from the 2 percent automation fund based on 1994-95 receipts to the fund. Will these funds now be made available to both the municipal and superior courts despite the fact that during the base year they were usable only by the municipal court?

Yes. Gov. Code, § 68090.8 was amended so that both municipal and superior court automation projects are eligible to receive the 2 percent automation funds.

45. Will the Judicial Council specify how the courts must spend the fiscal year 1994-95 level of 2 percent automation funds?

These funds are required to be used to support programs consistent with the requirements set forth in Gov. Code, § 68090.8, including the requirement that the projects meet standards approved by the Judicial Council. In addition, the council may require that new projects be approved as part of the annual budget process.

See also Gov. Code, § 77206.

46. How will the state transmit the fiscal year 1994-95 level of 2 percent automation funds to the courts? Will this be part of the quarterly distributions?

Counties will remit all revenues from the 2 percent automation fund to the State Trial Court Improvement Fund. The Judicial Council will return to the courts the amount representing the fiscal year 1994-95 level of receipts in the 2 percent automation fund in four quarterly distributions to the local trial court operations fund.

47. At least one county has paid for automation equipment with the agreement that the court would repay the county out of 2 percent automation funds. Now that increases in the 2 percent fund over the 1994-95 level are remitted to the state, how will the court repay the county?

Courts are required to continue to honor obligations they have with the county. To receive 2 percent automation funding in excess of the amount collected in their county in fiscal year 1994-95, courts would submit requests to the Judicial Council that must be fully justified and must meet criteria to be established by the council.

48. By what means can the courts apply for automation funds that have been transmitted to the state that exceed the fiscal year 1994–95 level?

The AOC is currently developing procedures for courts to apply for automation funding from the growth in 2 percent automation fund revenues, from the reserve portion of the Trial Court Improvement Fund, and from the Judicial Administration Efficiency and Modernization Fund.

II. LOCAL BUDGET AND FISCAL ADMINISTRATION—*WHO'S RESPONSIBLE FOR PAYING THE BILLS AND KEEPING TRACK OF WHAT IS SPENT?*

49. The bill speaks to funding provided to a county court system being allocated by *the* presiding judge. How will the allocation be made if a county court system does not have a single presiding judge?

Gov. Code, § 77009(b) reads “The presiding judge of each court in the county, or his or her designee, shall authorize and direct expenditures from the fund. . . .” However, since the Judicial Council allocation will be to all courts in the county in the aggregate, presiding judges of the courts must agree on the amounts allocated specifically to each court. The Judicial Council may, in adopting budget management procedures and guidelines, provide more direction as to how such funding will be allocated to each court.

See Gov. Code, §§ 77001, 77009, 77202, and 77206.

50. Gov. Code, § 77009(a), which established the Trial Court Operations Fund in the county treasury, indicates that an account for each centralized county service, including one for court security, shall be established. Will appropriations for functions administered on a countywide basis be deposited directly into the account established for that purpose when received from the state or will they be included in the aggregate funding to be distributed at the discretion of the courts?

The funds allocated by the Judicial Council to the local trial court operations fund will be in an aggregate amount. These funds will be distributed at the discretion of the presiding judge or judges of the courts, consistent with budget management rules adopted by the Judicial Council.

See Gov. Code, §§ 77009, 77202, and 77206.

51. Should counties establish separate funds for each court, or is one local trial court operations fund sufficient?

Gov. Code, § 77009 requires that only one trial court operations fund be established in each county with separate accounts for each court, except that one account may be established for courts that operate with a unified or regional budget.

52. How are funds to be deposited with the court, and is the county expected to “float” court expenses until the first quarterly payment is made?

Under Gov. Code, § 77207, the Judicial Council will allocate trial court funding payments on July 15, October 15, January 15, and April 15 for each fiscal year. Until July 15 (or until the State Budget is enacted), counties are not required to provide funding for court expenses. However, if the county continues to provide services to the court or provide funding to meet the payroll of court employees, these amounts can be reimbursed upon allocation of the first quarterly payment.

53. Will the county be allowed or required to lend money to the courts if there are other cash-flow shortages? If so, can the county charge interest and fees for such loans?

AB 233 does not require the county to lend money to the courts in a cash flow emergency. Gov. Code, § 77009 forbids charging interest to the local trial court operations fund. AB 233 does require the Judicial Council to develop procedures to ensure the payment of court operations costs and management of the local court operations fund. These procedures should assist the trial courts in addressing cash flow issues.

54. Who is responsible for advancing funds for the AB 1058 Child Support Enforcement Program until the county is reimbursed by the AOC? Who is responsible for providing court facilities for the new child support enforcement commissioner positions established under AB 1058?

Since AB 1058 expenditures are not an allowable court operations expense, the county is responsible for providing funding to operate the program until reimbursed, and is responsible for providing facilities for these positions, as necessary. Facilities funding may be available from the AB 1058 grants. State funds allocated for trial court funding are prohibited from being used for these costs.

See AB 1058; Gov. Code, §§ 77003 and 77009, and CRC rule 810.

55. What will the procedures be for carrying over any unexpended appropriations from fiscal year 1997–98 to fiscal year 1998–99? Is it automatic for fully coordinated courts? Are there any limits or exceptions?

Under Gov. Code, § 77203 the Judicial Council may authorize a court to carry over unexpended funds from one year to the next only if that court has fully implemented trial court coordination as provided in Rule 991 of the California Rules of Court. The Judicial Council will adopt rules and/or procedures to implement this section. For courts that are not so coordinated, any unexpended funds must be reverted to the Trial Court Trust Fund (TCTF).

See Gov. Code, §§ 77203, 77202, and 77206.

56. Will the courts be required to file the Quarterly Report of Expenditures and Revenue instead of the county auditor-controller?

As of January 1, 1998, courts will be required to submit the Quarterly Reports. However, counties will still be required to assist in the completion of the report as a support function at least until July 1, 1999, even though their certification is no longer required. Counties will be required to certify expenditure reports for the period from July 1 to December 31, 1997, to support their application for a credit under Gov. Code, § 77201(g).

See Gov. Code, §§ 68113, 77009, and 77201(g).

57. Will court transactions be included in the annual county report of financial transactions to the state Controller?

Because the local trial court operations fund is an operating fund of the court and not the county, these transactions are not required to be included in the transaction report. However, the courts will be required to report to the Judicial Council on revenues and expenditures as provided in Gov. Code, § 68113.

See Gov. Code, § 68113.

58. Are there advantages if the Trial Court Operations Fund is handled as an “agency fund” rather than a special revenue fund as required in AB 233. If so, can this be addressed in clean-up legislation?

Under the classic definition of a special revenue fund, the county boards of supervisors would be required to make appropriations from this fund and to report on the revenues and expenditures from the fund. However, AB 233 specifically provides that the presiding judge(s), not the boards of supervisors, have sole authority to control court operations expenditures. Gov. Code, § 77009 requires the Judicial Council to study alternative methods for the establishment and

management of the local trial court operations fund. These issues will be addressed as part of this study.

59. Will counties be allowed to continue to charge unallowable costs and deposit county revenues in the Trial Court Operation Fund?

The intent is to use the local trial court operations fund only for deposits and allocations from the state for trial court funding and to pay for court operations costs, as defined in Gov. Code, § 77003 and Rule 810 of the California Rules of Court.

See Gov. Code, §§ 77003 and 77009, and CRC rule 810.

60. As of January 1, 1998, will fiscal year 1996–97 encumbrances which have not yet become expenditures be returned to the county?

As of January 1, 1998, encumbrances for allowable court operations expenditures are court obligations and should be paid out of the local trial court operations fund; encumbrances that will be expended for nonallowable court operations costs will remain a county obligation.

61. Will counties be refunded the cash they have advanced for court imprest cash accounts using state funding?

Cash advanced by the county to the court between July 1 and December 31, 1997, for allowable court operations costs can be counted as expenditures for which the county may seek a current year adjustment credit from the Department of Finance under the Gov. Code, § 77201 procedures.

62. Will the AOC send out a summary of new or adjusted civil fees and changes in fine and forfeiture distributions? Are boards of supervisors required to authorize the adjusted civil fees?

Yes, a summary will be available by December 1997. The fee amounts that have been set or adjusted in AB 233 do not require boards of supervisors' approval.

63. Subsequent to fiscal year 1994–95, items included in the maintenance of effort calculation of fines and forfeitures (county base year requirement) have changed; for example, the change in the speed law results in a reduction in gross collections. Can the MOE amount be adjusted for these inequities without counties' having to make formal appeals to the Finance Department?

AB 233 does not provide for adjustments to be made to the county base year fine, forfeiture, and penalty revenue requirement resulting from changes in the law that occurred prior to January 1, 1998. The legislation does provide for the amounts to be adjusted if there is a change in statute or rule of court after January 1, 1998, that reduces the bail schedule or redirects or reduces the county's fee, fine, and forfeiture revenue.

See Gov. Code, §§ 77201 and 77201.1.

64. Under Gov. Code, § 27081.5, may we assume that a settlement is the same as a dismissal for the intended purpose of not returning posted jury fees? When will the sweep by the state of unused jury fees take place?

Yes, a settlement is the same as a dismissal. The sweep of the unused jury fees will occur when the case is dismissed. Procedures will be developed by the AOC to accomplish the sweep.

See Gov. Code, § 27801.5.

65. Pursuant to Gov. Code, § 26862 may we charge the parties a separate fee to cover the cost of family law mediation sessions which result from the filing of an order to show cause (OSC) or change of circumstance modification?

Under *Hogoboom v. Superior Court of Los Angeles County*, courts are not allowed to charge for mediation services.

See Hogoboom v. Superior Court of Los Angeles County (1997) 51 Cal.App.4th 653.

66. The filing fee for initial complaints is increasing but not that for answers. Will additional legislation be sought to increase the fee for answers?

There are no proposals for additional fee adjustments.

67. If a court receives payment after January 1, 1998, for a collection account created prior to January 1, 1998, would the distribution methodology used be that in existence prior to enactment of AB 233 or that contained in AB 233?

Payments received after January 1, 1998, even for collections accounts created prior to that date, should be distributed according to AB 233.

68. Can courts continue to impose civil assessments on criminal and traffic fines?

AB 233 made no change in Penal Code, § 1214.1, which authorizes these civil assessments.

See Pen. Code, § 1214.1.

69. AB 233 establishes several new civil fees that appear to duplicate existing fees. For example, Gov. Code, § 26832 sets the fee for certified copies of marriage dissolution records at \$3 for public agencies and \$6 for other applicants. AB 233 did not repeal or amend this section. Instead, Gov. Code, § 26832.1 was added to set these fees at \$5 and \$10. Should the court charge the fee under both codes? If so, are moneys distributed under the original code section in the same manner as in the past?

AB 233 intended to separate the fees that would be charged by the clerk of the court from those fees a county clerk or agency is authorized to charge. Clerks of the court are only authorized to charge the fees listed in Gov. Code, § 72054. These fees are required to be distributed as provided in the individual fee sections and as provided in § 68085.

See Gov. Code, §§ 68085 and 72054.

70. After January 1, 1998, does the court need county/board approval to spend Criminal Justice Facility Construction Fund moneys?

AB 233 made no change in the law relating to board of supervisors' approval for expenditures from the Criminal Justice Facility Construction fund and the Courthouse Construction fund

See Gov. Code, §§ 76100 and 76101.

71. The legislation precludes courts from charging local or federal agencies for services rendered by the courts. Can courts charge for services rendered to the state?

Gov. Code, § 26857 does not limit the authority of the courts to charge state agencies for services rendered. This will be corrected in clean-up legislation.

See Gov. Code, § 26857.

III. ADMINISTRATIVE/GENERAL SERVICES SUPPORT—*WHO PROVIDES THESE SERVICES, SHORT AND LONG TERM?*

A. County-Provided Services—Generally

72. Are courts required to continue to use county financial systems for day-to-day purchasing, accounting, disbursements, etc.? If not, are they allowed to do so? Are counties required to continue to provide such services?

Under Gov. Code, § 77212, the county must continue to provide and courts must continue to use county services provided to the courts as of July 1, 1997. This includes county fiscal services, such as audit and accounting, telephone services, procurement, human resources, treasurer/tax collector, county counsel including legal representation, and other such services. Beginning in July 1, 1998, the county may give notice, at least 90 days prior to the beginning of the next fiscal year (i.e., fiscal year 1999–2000), that it no longer intends to provide such services to the courts. Likewise, the court may give notice to the county, with the same noticing requirements, that it no longer intends to use services formerly provided by the county. AB 233 allows counties and courts to continue to provide and receive services if they agree to do so. The county may charge courts reasonable costs, not to exceed the equivalent charges to other county departments for the same or similar services.

See Gov. Code, § 77212.

73. Will the Judicial Council promulgate a statewide rate for county administrative costs?

No. The Judicial Council will not be involved in setting the rates for county administrative services. These rates should be subject to local negotiations.

See Gov. Code, §§ 77206 and 77212

74. Is the presiding judge authorized to sign contracts? How should courts treat contracts already approved by the board of supervisors on behalf of the courts? Should they be revised to transfer responsibility to the court?

AB 233 provides sufficient authority for the court to enter into contracts without the approval of the county, although the county auditor-controller is required to process the payments for the contracts from the local trial court operations fund. No provision of AB 233 requires existing contracts to be revised to transfer responsibility to the courts. However, courts and counties should determine locally whether and/or when these contracts should be revised so that services are not disrupted and neither the courts nor the counties are financially or legally disadvantaged.

See Gov. Code, § 77009.

75. Can the presiding judge delegate contracting authority to the court executive officer? To the county executive/administrative officer?

The presiding judge may delegate contracting authority to the court executive officer. The presiding judge may *not* delegate this authority to the county administrator/executive officer. However, the county can continue to assist the court in preparing and reviewing contracts.

See Gov. Code, § 77009.

76. There are many areas in which the Judicial Council and the Controller are required to establish procedures. These include budget preparation, management, and reporting; contracting, purchasing, and lease awards; and accounting and recordkeeping regulations. When can courts and counties expect these guidelines and regulations? Will there be provided a period for trial courts to comment?

Distribution guidelines for fines, fees, forfeitures, and penalties are scheduled to be released by the Controller in December 1997. Until other procedures are adopted by the Judicial Council and the Controller, courts and counties should continue to operate under the existing Judicial Council/TCBC or county guidelines in these areas. The Judicial Council rule-making process includes a comment period.

77. What is the auditor-controller's responsibility for the courts under AB 233? Is the auditor-controller required to perform a review of claims to be paid as requested by the courts, or simply rely on the authorization of the presiding judges?

The presiding judge or judges of the court(s) have sole discretion for expenditures made from the local court operations fund. The Judicial Council is responsible for promulgating financial guidelines for the courts. In the interim, the courts and the auditor-controllers should continue to operate under the financial guidelines utilized in the past.

78. Will counties be required to modify their accounting system to adapt to any unique requirements which the courts or the state require under the new funding structure?

AB 233 requires the county to continue to provide, and the courts to continue to use, county services such as audit and accounting services at least until fiscal year 1999–2000. It is anticipated that the Judicial Council will be promulgating rules in the near future concerning expenditure reporting that may require adjustments in the types of reports provided by the counties on behalf of the courts. Counties and courts must develop reasonable mechanisms to comply with Judicial Council requirements that will not unduly burden the county.

See Gov. Code, §§ 77009, 77202, and 77206.

79. Can a court open its own banking account?

No. Gov. Code, § 77009 requires that funds allocated by the Judicial Council for trial court funding be deposited and expended from the local trial court operations fund.

See Gov. Code, § 77009.

80. Are custody mediation services provided by county probation departments an allowable cost?

Child custody mediation and visitation services costs are allowable under Function 6—Alternative Dispute Resolution—only if the staff providing these services are court employees, or if the services are provided under the direct supervision of the court by mediators that are either private entities or county departments. If these services are provided by other than court employees, courts should develop written agreements specifying the level of services to be provided by and the amount to be paid to the private entity or county department. If these allowable costs were not included in the 1994–95 base year expenditures

reported by the court and county, courts should request a base year adjustment.

See Gov. Code, §§ 77003, 77201(b)(3) and (b)(4), 77201.1(b)(5), and CRC rule 810.

81. Who has final authority over spending on court security? If the sheriff overspends the amount allocated in the court budget for security, where does the excess money come from?

Courts will be required to operate within the budget allocated by the Judicial Council for all services, supplies, and personnel costs, including costs for county-provided services such as court security. Courts will have the final authority to determine the amount spent on each part of their operations.

See Gov. Code, §§ 77009, 77202, and 77206.

82. Does the sheriff have to provide augmented services requested by the court?

In the event that the court requests additional security services from the county sheriff, and the sheriff agrees to provide these services, the court will be required to pay the associated costs as agreed. It is imperative that sheriffs and courts discuss the appropriate level of service and how those services will be provided.

83. How do courts respond to mid-year costs related to unanticipated security needs, e.g. in death penalty cases?

Courts are required to operate within the budget allocated and should consider that there may be such costs. Under extraordinary emergency circumstances, the Judicial Council may allocate or reallocate funds if they are available.

See Gov. Code, §§ 68502.5 and 77206.

84. How can a court resolve issues regarding facility modifications, e.g., video monitoring, witness boxes, security screens required for court security, when the county has the responsibility for funding court facilities?

AB 233 did not change the way counties and courts currently resolve issues regarding facility modifications or alterations.

85. Who will be the responsible party if the State Board of Corrections orders facility repairs in a court holding cell?

AB 233 did not change the county's responsibility for ensuring that facilities meet required codes.

86. Who will provide legal services for the court? Who is responsible for liability for actions of judges and court employees?

(a) Under Gov. Code, § 77212, counties are required to continue to provide legal services to courts at least until July 1, 1999.

(b) AB 233 was not intended to change responsibility for liability for the actions of judges and court employees.

87. Can counties begin to charge the court for county-provided services if they have not done so in the past? How should the counties bill for these costs?

Yes. However, if the county provided these services in fiscal year 1994–95 and the cost of providing them was not reflected in the expenditure reports for that year, the court should request an adjustment to the county's general fund base obligation amount to reflect these costs.

Counties should seek a current year credit adjustment for the cost of providing these services from July 1 to December 31, 1997. As of January 1, 1998, the counties should bill the courts directly for these costs for the balance of the year.

88. Who (the county or the state) is obligated to provide non-Rule 810 court-related services (e.g., indigent defense, probation services, pretrial release programs) and under what mandate?

To the extent provided under existing case and statutory law, the county is required to continue to provide funding for indigent defense, probation, and other "court related" services which fall outside of "court operations" as defined in Gov. Code, § 77003 and Rule 810 of the California Rules of Court. Courts should give timely notice to counties for projected costs for the next fiscal year.

See Gov. Code, §§ 77003, 77201(e), and 77201.1(d), and CRC rule 810.

89. Is there any provision limiting counties from subcontracting with courts to continue providing non-Rule 810 programs? Can courts bill counties for providing these programs?

There is no provision limiting counties from subcontracting with courts to provide non-Rule 810 programs. Courts can bill counties for providing these programs at a rate and level of service agreed to by the court and the county.

See Gov. Code, §§ 77003 and 77009, and CRC rule 810.

90. Should there be an agreement between the courts and counties concerning collection enhancement programs? How will existing agreements be affected by enactment of AB 233? Can a collection program be discontinued by the county before the end of the transition period?

Pen. Code, § 1463.010 as amended by AB 233 provides that courts and counties shall maintain the collection program which was in place on January 1, 1996, unless otherwise agreed to by the court and the county. While not required, an agreement would assist in clarifying (a) the respective roles and responsibilities of the county and the court, and (b) the revenue-sharing arrangements, if any, to be used by the parties to the extent not specified in statute.

See Pen. Code, § 1463.010.

91. SB 162 eliminated the 60-day waiting period before a collection effort can be funded out of receipts from a comprehensive collections program. AB 233 reinstates the 60-day waiting period. How will this discrepancy be resolved?

Clean-up legislation that will eliminate conflicts between SB 162 and AB 233, including elimination of the 60-day waiting period, is being considered by the CSAC and the Judicial Council.

See Pen. Code, § 1463.007.

92. Deductions for the cost of comprehensive collections were made between the sunset date of prior legislation (June 30, 1997) and passage of SB 162 (October 1, 1997). Will courts be required to refund those deductions to the state?

No.

93. Some courts' collections costs are billed to them after the funds have been received and distributed. Can a court maintain the necessary revenue generated by the collection agency to pay their costs and then remit the remainder to the state?

Pen. Code, § 1463.007 provides that the cost of court- or county-operated comprehensive court collections programs, as defined, may be offset by revenue collections prior to any distribution of the funds collected. If the court and the county agree that the court will provide these services on behalf of the county as provided in Pen. Code, § 1463.010, the agreement should include the manner in which the services would be funded by the county, as offset by revenues retained pursuant to Pen. Code, § 1463.007.

See Gov. Code, § 77003, and Pen. Code, §§ 1463.007 and 1463.010.

94. The bill indicates that equipment used solely by the court on June 30, 1997, becomes the court's property. What happens to equipment purchased between July 1, 1997, and December 31, 1997?

It is anticipated that transfer problems regarding equipment purchased during this period can and will be worked out at the local level. If significant problems arise relating to equipment purchased since July 1, 1997, because the legislation did not take affect prior to July 1, clean-up legislation may be sought to clarify ownership.

See Gov. Code, § 68073.1.

95. Once lease/purchase payments for equipment are completed, will ownership of the equipment be transferred to the courts?

Yes, if the equipment is under the sole use of the court on June 30, 1997, unless the county is prohibited by the lease-purchase contract or other provision of law from transferring title. However, AB 233 requires the court to continue financial obligations dictated under the lease.

See Gov. Code, § 68073.1.

96. If a lease agreement for equipment or systems that the court shares with other agencies extends beyond the time when courts are required to participate in county services, can the court discontinue participation? Is there some mechanism to legally transfer the liability for making the debt service payments to the courts along with the underlying assets?

AB 233 requires counties to continue to provide, and courts to continue to use, county services such as telephone, data processing, and information technology unless a 90-day notice is given as specified in Gov. Code, § 77212. However, a court may not terminate a service that involved acquisition of equipment, including computer and data processing systems, financed by long-term financing plans where the county is dependent upon court financial support until January 1, 2001. It is anticipated that issues regarding transfer of equipment and current systems used by courts can and should be resolved through discussions between courts and counties at the local level. Counties and courts are advised to consult with legal counsel regarding the legality and process for transferring these obligations and assets.

See Gov. Code, § 77212.

97. Where do we file our court inventory now that it is no longer a county function and all inventory belongs to the court? What happens to surplus equipment? Can surplus equipment be given to other courts?

Courts will be required to maintain an inventory of their equipment, with the assistance of the county if that has been a traditional county service. The AOC is in the process of developing a judicial branch surplus equipment program.

See Gov. Code, § 77206.

98. What is the operative definition of the phrase “necessary and suitable facilities” as referenced in AB 233?

The definition of “necessary and suitable facilities” is not specifically defined in statute beyond what is provided in Gov. Code, § 68073 which states: “In determining whether facilities are necessary and suitable, the reasonable needs of the court and the fiscal condition of the county or city and county shall be taken into consideration.”

99. If a county acquires a new facility for the courts, do the old facilities belong to the court as well?

AB 233 did not change title to any real property in use or formerly in use as a court facility.

100. What agency will be responsible for attorney fees in an action pursuant to Gov. Code, § 68073 regarding facilities issues?

Attorney fees to represent the court in a Gov. Code, § 68073 action or any other action may be an allowable court operations cost. These fees may be paid by the court if required to do so as a result of the outcome of the underlying case.

101. Will courts provide their own insurance?

The definition of court operations includes costs for general liability and fidelity and faithful performance insurance as allowable court operations expenses.

See Gov. Code, § 77003 and CRC rule 810.

102. Where is authority for extending building leases? Who will be responsible in the future?

AB 233 does not change the authority or process for extending building leases, which remains a responsibility of the county. Issues dealing with future responsibility for court facilities is the subject of study for the Task Force on Court Facilities.

See Gov. Code, §§ 77650–77655.

103. Do state laws including the Public Records Act and the Open Meeting Law now apply to the courts?

AB 233 did not amend the current application of the Public Records Act or Open Meeting Law of the state.

IV. **HUMAN RESOURCES ISSUES—HOW ARE PERSONNEL ISSUES ADDRESSED PRIOR TO A DETERMINATION OF THE NEW STRUCTURE?**

104. What is the composition of the Task Force on Trial Court Employees, and how will appointments to that task force be made? What is the timeline for completion of its work?

The Task Force is composed of 18 members: 4 representatives of the trial courts; 4 representatives of the counties; 3 representatives appointed by the Senate Rules Committee; 3 representatives appointed by the Speaker of the Assembly; 1 representative of the state Department of Personnel Administration; 1 representative of the state Department of Finance; and 1 representative of the Public Employees Retirement System. A justice of the Court of Appeal shall serve as the nonvoting chairperson. The task force is to submit an initial report concerning the employment status of court staff by January 30, 1999, with a final report to be issued by June 1, 1999. The legislation indicates that it is the intent of the Legislature that a personnel system for court employees be in effect on or before January 1, 2001.

See Gov. Code, §§ 77600–77606.

105. Will marshals or sheriffs' staff that provide allowable Rule 810 services be included for study by the Task Force on Trial Court Employees as outlined in Gov. Code, § 77603(f)?

Included in the Task Force duties is to specifically identify functions related to trial courts that are provided by county employees; this may include court security services.

See Gov. Code, § 77603(f).

106. In the interim, who will determine salaries and benefits of court employees?

Salaries and benefits of court employees will continue to be set in the same manner, subject to the meet and confer requirements of newly adopted California Rules of Court, rules 2201–2210. These rules govern trial court employee labor relations and procedures, and go into effect January 1, 1998. The court is responsible for meeting these costs within its authorized budget.

107. What will happen to court employees' retirement funds and other vested benefits?

One of the responsibilities of the Task Force on Court Employees is to document the retirement systems in which court employees are now enrolled and determine the costs associated with making any change in the retirement benefits for court employees. In the interim, retirement and other vested benefits will not be affected by AB 233. The legislative intent is clear that no provision of the bill is intended to reduce the salary or benefits of court employees.

108. After January 1, 1998, will the court be required to adhere to the counties' personnel policies?

Courts should continue to operate under whatever personnel policies were in use prior to AB 233, subject to the requirements of rules 2201–2210 of the California Rules of Court and AB 1438, unless otherwise mutually agreed to by the court and the county, until the task force on court employees completes its work and legislation is enacted to establish an appropriate system of court employment.

See Gov. Code, §§ 77601–77606; AB 1438; CRC rules 2201–2210.

109. How will courts seek approval for changes in personnel classifications? Will courts continue to use the process in place now? What happens if the county is currently considering a reclassification? Will coordinated courts, with sufficient budgeted funds, be permitted to reclassify positions in accordance with the model trial court system and improve salaries in accord with TCBC ranges?

AB 233 did not change the existing systems or processes for approval of classification or reclassification of court employees. Therefore, all courts will continue to operate under existing practices and procedures, unless otherwise mutually agreed upon by the court and the county.

110. Who is responsible for deciding when authorized vacant positions in the court's budget are to be filled?

The court is responsible for deciding when to fill these positions in consideration of its authorized budget.

111. If sufficient funds are available within its approved budget allocation, may a court grant equity adjustments to court employees, court executive officers, or other staff without county approval?

AB 233 did not change existing methods for approval of salary adjustments for trial court employees. However, courts are required to operate within the salary and classification levels set in state statutes, or local memoranda of understanding (MOUs) or ordinances.

112. What impact will county-approved cost of living increases (COLAs) have on court budgets? Will there be a cap on increases by the state?

Courts are required to operate within the budget that is approved by the Legislature. There is no specific state policy on the issue of COLAs and their impact on court budgets. This issue is currently under policy review by the Judicial Council.

See Gov. Code, §§ 77202 and 77206.

113. What impact will the Legislation have on existing MOUs?

With passage of AB 233 and AB 1438 (Escutia), rules 2201–2210 of the California Rules of Court went into effect. These rules expand the scope of issues that courts are required to bargain. Rule 2206(a) provides that existing MOUs remain in effect for the stated duration of the MOU unless a modification is negotiated by courts and employee organizations.

See Gov. Code, §§ 68650–68655, 77605(d) and (e), and CRC rule 2206(a).

114. Who is responsible for liability arising from court employment, labor relations, and workers' compensation issues?

Until the Task Force on Trial Court Employees completes its work in June 1999 and legislation is enacted, court employment, labor relations, and worker's compensation issues will continue to be handled as in the past consistent with statute and new rules 2201–2210 of the California Rules of Court. These rules govern labor relations policies and procedures in the trial courts.

115. What conflict of interest provisions will apply to trial court employees?

AB 233 made no change in the applicable state or county conflict of interest provisions.

116. What is status of courts' staffing bills? Will these still be required? Is a board of supervisors' resolution still required?

Municipal court staffing legislation will continue to be required unless SCA 4 is approved by the voters and a court system elects to unify. Clarification is being sought concerning the requirement for a board of supervisors' resolution since trial court costs are now entirely the fiscal responsibility of the state.

See AB 2207 (Isenberg), § 101. Stats. 1993, ch. 1091.

117. What will be the role of the AOC in reviewing court staffing bills?

The AOC will continue to review requests for consistency with the approved budget allocation of the Trial Court Budget Commission as approved by the Judicial Council.

See AB 2207 (Isenberg), § 101. Stats. 1993, ch. 1091.

118. How will the concerns of non-unionized employees be heard if court employees become employees of the state?

Nothing in AB 233 is intended to prejudice or compel a finding by the task force that court or county or state employment is preferred. The Task Force on Court Employees will make recommendations to the Judicial Council on the appropriate status of trial court employees. AB 233, AB 1438, and the new labor relations rules of court did not change the avenues available to non-union employees to have their issues addressed. In fact, Rule 2203(a) protects the right of a court employee to appear on his or her behalf regarding employment relations with a court.

See Gov. Code, § 77605(c) and CRC rules 2201–2210.

119. If staff perform both functions that are allowable under Rule 810 and those that are not allowable, should they be funded from the Trial Court Operations Fund?

Only the portion of their time that involves an allowable cost operations function should be funded from the local Trial Court Operations Fund.

See Gov. Code, §§ 77003 and 77009, and CRC rule 810.

120. Are court employees who provide collections or other non-810 allowable services (e.g., pretrial services) required to be transitioned to county employment status?

No, the fact that court employees provide non-810 allowable services does not mean that their employment status has changed.

See Gov. Code, § 77003, and CRC rule 810.

121. If a court system has an approved coordination plan and has been found to be fully coordinated, will municipal court judges still need to file a form to achieve superior court assignment pay parity?

No, a new process will be adopted to verify compliance with the provisions in statute relating to this topic that will replace the individual forms now in use.

See Gov. Code, § 68547.

122. Do pay parity amounts received by municipal court judges impact their retirement benefits?

No, they do not. This pay is for sitting on judicial assignment and is not considered part of a judge's base salary for the purposes of retirement benefits.

123. Will pay parity payments become part of a municipal court judge's regular paycheck, or they will be paid separately, as are differential pay amounts?

Judicial assignment pay is paid separately.

124. Will the pay levels of municipal court commissioners whose salaries are set by formula be increased if municipal court judges receive pay parity under Gov. Code, § 68547?

No, because the base pay of municipal court judges remains the same.

125. When would the additional parity for municipal court judges begin? Would it be retroactive if the court began the practice some time before the Judicial Council recognized it?

The standards for receiving pay parity across the board will be addressed by the Judicial Council at its February 4, 1998, meeting, with the intention that pay parity will be retroactive to January 1, 1998, for those courts that meet the certification requirements.

126. If a court system is not fully coordinated, can individual municipal court judges still receive superior court pay if they are individually cross-assigned?

Gov. Code, § 68547 provides that a judge may be compensated at the monthly, as opposed to the daily, rate of pay for the court to which the judge is assigned, if for 30 days or more the judge is (1) assigned to a court every day, or (2) traveling because of the assignment, or (3) absent from his or her residence because of the assignment. This section requires that a municipal court judge serve “in a substantial way” in a superior court before that day would count as an assignment day.

See Gov. Code, § 68547.

127. Will judges still receive paychecks through the county payroll system, or will all judges now receive paychecks only through the state?

The current payment arrangement for superior and municipal court judges will continue until the AOC can conduct a comprehensive review to determine if alternative arrangements should be made.

128. What is the definition of local judicial benefits? Is the county obligated to continue to provide such benefits?

Local judicial benefits include those benefits provided by the county to municipal and superior court judges, in addition to the benefits eligible to be paid by the state. Because quasi-judicial officers such as commissioners, referees, and hearing officers are not eligible for state-paid benefits, the cost of their benefits continues to be an allowable court operations cost.

Counties must advise DOF of the dollar amount of the cost of local judicial benefits, if any, that are contained in their fiscal year 1994–95 base funding. Once verified by procedures established by the DOF, the DOF is required to reduce the county’s base funding obligation by an amount equal to the 1994–95 cost of those judicial benefits, and “the county shall continue to be responsible for the cost of those judicial benefits” to the extent those benefits continue to be provided. Decisions to continue to provide local judicial benefits should be addressed at the local level.

See Gov. Code, § 77201(c)(3).

V. MISCELLANEOUS ISSUES

129. What is the Judicial Council standard for a court to meet the requirements of Gov. Code, § 68547(b)(2) regarding assignment of cases and maximum utilization of judges in order to be considered fully coordinated? When is the Judicial Council going to determine whether courts in a county are complying with the requirement? Is the decision subject to review if the Judicial Council first says no and the courts change their practices?

The Judicial Council standard for meeting the standard of maximum coordination allowable under the law is currently under review. A policy recommendation will be presented to the Judicial Council at its February 1998 meeting.

See Gov. Code, § 68547(b)(2).

130. The phrase "Rule 991 as it read on July 1, 1996" is repeated several times in AB 233. What is the significance of that particular date compared with how Rule 991 reads today?

Rule 991 of the California Rules of Court has not been revised since July 1, 1996. The selection of the July 1, 1996, date was intended to prohibit binding the Legislature to any future action of the Judicial Council.

131. Will the appointment authority of the presiding judge over the chief probation officer be maintained?

AB 233 makes no change in the appointment authority of the presiding judge in this area.

132. Will the Judicial Council continue to use the list formerly developed for new judgeships?

AB 420 (Baca), which created forty new judgeships, requires the determination of the placement of these judgeships to be based on an updated study by the Judicial Council. That study must be completed on or before May 1, 1998.