



JUDICIAL COUNCIL OF CALIFORNIA

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ADMINISTRATIVE PRESIDING
JUSTICES ADVISORY COMMITTEE

ADMINISTRATIVE PRESIDING JUSTICES ADVISORY COMMITTEE OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date: July 28, 2016
Time: 3:00 pm - 4:00 pm
Public Call-in Number: 1-877-820-7831
Listen only passcode: 1259001

Meeting materials will be posted on the advisory committee web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment

In accordance with the California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to apjac@jud.ca.gov or mailed or delivered to 455 Golden Gate Ave., 5th Floor, San Francisco, CA 94102, attention: Latrice Brown. Only written comments received by July 27th, 2016 will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-4)

Item 1

Consideration of Budget Change Proposal for FY 2017-2018 Budget – Supreme Court, Appellate Project (CAP-SF) resubmission of BCP approved by the Judicial Council for 2016-2017 (Action Required)

California Appellate Project—San Francisco (CAP-SF) requests the Administrative Presiding Justices Advisory Committee to recommend that the Judicial Council submit a Budget Change Proposal for an \$849,000 (\$799,000 (14%) ongoing and \$50,000 one-time funding) increase in funding for its project. (Materials provided.)

Facilitators: (Bob Lowney and Deborah Collier-Tucker)

Item 2

Consideration of Budget Change Proposal for FY 2017-2018 Budget – Courts of Appeal, Appellate Projects Resubmission of BCP approved by the Judicial Council for 2016-2017 funding (Action Required)

The Appellate Projects collectively request the Administrative Presiding Justices Advisory Committee to recommend that the Judicial Council submit a Budget Change Proposal for a 15% (\$2.6 m) (previous years' request was 12% (\$2.1 m) and \$879,409 (5%)) increase in the funding for the Appellate Projects for fiscal year 2017-2018. (Materials provided.)

Facilitators: (Bob Lowney and Deborah Collier-Tucker)

Item 3

Consideration of Budget Change Proposals for FY 2017-2018 Budget – Resubmission of BCP approved by the Judicial Council for FY's 2015-2016 and 2016-2017 Funding (Action Required)

New Justices: At the recommendation of this committee, for fiscal year 2017-2018 funding, the Judicial Council pursued a Budget Change Proposal for 2 appellate court justices and their necessary chambers staff for Division Two of the Fourth Appellate District to meet substantial and growing workload demands. Funding for 2 justices was requested as that would reduce the weighted workload to the optimal number of 89 cases per justice and would prevent cases from being transferred from one district to another, which poses a hardship for litigants who bear the expense and burden of traveling to a distant district. It would also allow local issues to be decided in the geographic area in which the dispute arose. The committee may wish to consider recommending that the Judicial Council resubmit this request for fiscal year 2017-2018.

Facilitators: (Bob Lowney and Deborah Collier-Tucker)

Item 4

Consideration of Budget Change Proposal for FY 2017-2018 Budget – Funding for Preventive and On-demand Maintenance (Action Required)

A one-time General Fund augmentation (amount TBD) to perform an assessment of the two state-owned, court managed appellate court facilities and \$226,000 ongoing General Fund augmentation for preventative and on-demand (unforeseen repairs/replacement) maintenance in these facilities. Preventative maintenance provides that equipment is regularly inspected and maintained before a break down occurs. On-demand maintenance addresses unique, unforeseen events. The appellate courts occupy a total of just over 500,000 square feet of space in 9 facilities. Of the 9 locations, 4 are state owned facilities managed by the Department of General Services (DGS), 2 are state-owned, court managed facilities, and 3 are in leased space.

Facilitators: (Bob Lowney and Deborah Collier-Tucker)

Item 5

Consideration of Budget Change Proposal for FY 2017-2018 Budget – Funding for Statewide Appellate (Supreme Court and Courts of Appeal) Courts Document Management System (DMS) (Action Required)

This funding request is needed to complete the statewide initiative of moving all of the Appellate Courts to an E-Filing system that meets the modernization and public access goals of the Judicial Branch. This project is in alignment with the *Court Technology Governance and Strategic Plan*, and it supports the strategic plan's goals for promoting the digital court and the tactical plan's initiative for document management system expansion.

To date, this project has been deployed at no cost to the Judicial Branch. Now that the E-Filing project is near completion and has been a no-cost project, it is imperative that funding be secured for a DMS. Statewide projects of this magnitude require funding in an on-going manner or they will not be successful in meeting the goals and objectives of the Judicial Branch as mentioned above.

Facilitators: (Bob Lowney and Deborah Collier-Tucker)

Item 6

Consideration of other Budget Change Proposals for FY 2017-2018 Budget (Action Required)

Committee members may wish to raise other funding requests for the committee's consideration.

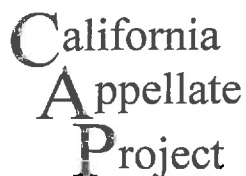
Presenters: All

IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

No informational items for discussion.

V. ADJOURNMENT

Adjourn



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a non-profit corporation established by the State Bar of California

CALIFORNIA APPELLATE PROJECT – SAN FRANCISCO

Budget Change Request July 18, 2016

EXECUTIVE SUMMARY

The Board of Directors of the California Appellate Project has regularly reviewed and approved the annual contracts with the Court for its San Francisco office (“CAP-SF”) since its inception. Last year’s Budget Change Request, which was approved by the Judicial Council, failed at the Department of Finance level, and for the last nine years there have been no increases in contract revenue. The request contained herein is similar to last year’s request in many regards.

As we stated last year, a number of cost factors over which the Board has no control cause great concern to the Board and compel this appeal for additional funding. We now face considerable risk of having to diminish services to the Court and inability to meet obligations.

Due to budgetary constraints, CAP-SF has maintained unfilled vacancies in its attorney and support staff positions alike. At the same time, changes in governing law and the dynamics of the appointment process have led to increases in the extent and complexity of the required assistance services and training. The inability to increase salaries has made it difficult to remain competitive with other agencies and has impeded CAP-SF’s ability to replace senior attorney staff members.

We also face sharply rising costs for healthcare, occupancy rate increases, and case-related supportive services.

The current contract amount for CAP-SF is \$5,585,218. Our best estimate of the actual annual increase necessary to fully realize the Court’s expectations of the level professionalism, expertise, and effectiveness that CAP-SF has historically provided is \$1,750,000. In light of our understanding of financial constraints and the practical realities of the budgeting process, CAP-SF is requesting a 14% increase in its annual budget, or \$799,000, which does not reflect the actual needs of CAP-SF to perform the services expected under its contract. In addition, as described below, we are seeking a one-time allotment of \$50,000 for the purpose of migrating the seriously-outdated CAPSF.org website to a modern, well-functioning platform.

CAP-SF's Vital Role

Representation in California capital postconviction proceedings is provided by private attorneys and public agencies. Appointments to automatic appeals to the California Supreme Court are made to the Office of the State Public Defender (“OSPD”), created in 1976, or to members of a panel of private attorneys. Appointments to habeas corpus proceedings, which in most instances are made after the conclusion of the automatic appeal, are made to the California Habeas Corpus Resource Center (“HCRC”), created in 1998, or to the private attorney panel.

CAP-SF was established in 1983 by the State Bar of California at the request of the California Supreme Court to provide assistance to the members of the private attorney panel and to the Supreme Court. With a current staff of 36, including 17 attorneys, CAP-SF serves as a legal resource center for private counsel appointed in capital appeals, and habeas corpus and clemency proceedings. CAP-SF plays a vital role in implementing the constitutional right to counsel for indigent defendants in capital post-conviction proceedings, by:

- developing a staff with unique expertise and training, and the skill to share that expertise with court appointed counsel;
- producing training programs that impart the specialized knowledge and skills required for capital postconviction representation;
- creating, accumulating and sharing with appointed counsel both case-specific and general resources—electronic and hard copy—designed to enhance counsel’s ability to perform competently in the complex arena of capital litigation;
- providing private counsel with assistance and consultations on case-specific issues and procedures;
- serving as a liaison between appointed counsel and the courts;
- communicating with and responding to defendants on death row for whom counsel has not yet been appointed;
- engaging in an ongoing dialogue with the Supreme Court to help formulate rules and policies, including standards of representation, that apply to these cases; and
- evaluating for the Court, upon request, potential attorneys for appointment in these cases, and informing the Court about the progress of those attorneys already appointed.

Thus, CAP-SF assists attorneys by providing individual case services, training, and litigation resource materials. CAP-SF assists unrepresented death row inmates by collecting and preserving records and evidence for later post-conviction use, and by providing advocacy needed before counsel is appointed.

CAP-SF coordinates with OSPD and HCRC with respect to resource materials and training. CAP-SF presents a number of training programs, including its Capital Appellate Conference, which is presented annually and is the only conference in California devoted exclusively to California capital direct appeal work. The conference draws dozens of counsel from the private bar, from the HCRC and OSPD, and CAP-SF’s entire legal staff. Other programs added recently include the Oral Argument Skills Workshop and an annual Habeas Skills Workshop.

CAP-SF presents individualized case trainings and moot courts, customizing the trainings to the needs of each particular counsel and case team. Individual case workshops attended are among the most

successful and popular forms of individualized trainings. CAP-SF conducts numerous moot court sessions annual to prepare appointed counsel for argument before the California Supreme Court for both automatic appeal cases and habeas cases in which argument is held.

CAP-SF maintains an extensive collection of litigation resources made available to appointed counsel. These materials include an exhaustive 2,000-page appellate and habeas corpus practice manual; a 5,000-page legal research capital case digest; a newsletter summarizing monthly developments in capital litigation; investigative guides; sample pleadings; and a prison resource handbook. Many of these are housed on the CAPSF.org website, which as described below is based on obsolete technology that needs to be modernized and revamped.

CAP-SF is currently providing assistance to 149 private panel attorneys, including 10 associate counsel. The panel attorneys being assisted by CAP-SF are appointed in approximately 304 active capital postconviction case components, including more than 180 appeals, 110 habeas corpus matters, including 30 that have returned from federal court for exhaustion of additional state remedies, as well as a number of cases in which clemency petitions may become necessary.

As between the HCRC and OSPD, only CAP-SF provides services to the inmates who are awaiting the appointment of counsel. Because the influx of new death sentences handed down each year outpaces the rate at which attorneys appointed to represent inmates already on death row, CAP-SF's unrepresented inmate caseload increases annually. 270 condemned defendants are represented by appellate counsel, but not by habeas corpus counsel, for whom CAP-SF is responsible for record collection. CAP-SF provides assistance to 48 condemned defendants who are not represented by either appellate or habeas corpus counsel.

Workload Increases

Staff Reductions: Due to funding constraints CAP-SF has suffered significant personnel losses during the past decade. CAP-SF today has 1.7 fewer FTE attorney positions than December 2009, amounting to nearly a 10% reduction in attorney staff. During the same time CAP-SF has lost ten support staff members, including our IT supervisor, due to retirement, resignation, and other reasons. Currently, CAP-SF has only one general legal assistant who serves all 17 of CAP-SF's attorneys.

Appointment Dynamics: In years past, many of the Court's habeas appointments were concurrent with the appeal appointments, which allowed for an important measure of flexibility in the planning and timing of the habeas investigation. Currently, the majority of habeas appointments are three-year appointments, and those appointments serve to place much more rigorous and less flexible demands on counsel tasked with performing increasingly difficult and complex work. Moreover, a number of the recent appointments have been made –notwithstanding negative CAP-SF evaluations -- to attorneys unable to provide adequate representation absent an inordinate expenditure of CAP-SF resources. As a result of the ongoing delay in the appointment of habeas counsel CAP-SF's caseload of unrepresented inmates is steadily increasing.

Executive Clemency: A single-drug lethal injection protocol has been submitted for public comment and the *de facto* moratorium on executions and clemency proceedings appears to be nearing the end. CAP-SF must therefore begin the process of equipping its attorneys to assist counsel in clemency proceedings. It is likely that CAP-SF will play a substantial role in many of the 20 individuals for whom clemency is the last remaining option. Neither CAP-SF nor any of the other agencies have ever

faced this magnitude of clemency cases, and CAP-SF is inadequately resourced to address this challenge of unprecedented scope and complexity.

New training programs: As indicated above, CAP-SF recently added several new training programs to its regular lineup: (1) a full-day Oral Argument Skills Workshop to improve appointed counsel's oral advocacy skills; (2) a one-day New Capital Appellate Lawyer Training session for attorneys, new to capital appellate practice, a program created at the Court's request; and (3) a Habeas Skills Workshop. The habeas skills workshop has been designed to train appointed counsel to conduct comprehensive and thorough investigations, to prepare adequate and timely petitions, and to manage resources effectively. These training sessions are invaluable and are well worth the time and effort they require. The investment of time and resources is substantial, however, and it has had significant impact on the resources available for individual case assistance.

Cost Increases

Since 2008 CAP-SF has experienced a 26% increase in rent and lease operating costs amounting to an increase of more than \$156,000 per year.

CAP-SF has experienced a significant increase in other costs of providing services, including the cost of materials and services used to manage office operations, case assistance, record collection, and interpreter fees.

The costs of employee benefits have increased dramatically. Last year, for the first time in many years, CAP-SF increased attorney salary ranges by three percent. Personnel costs, like all other costs increases, have been absorbed by reducing our operating reserves. We anticipate net operating loss of more than \$175,000 for fiscal year 2016-2017.

Ongoing Budget Increase Requests

1. Attorney staff: To maintain the requisite level of habeas and appellate assistance services in light of the workload factors described above, CAP-SF is requesting one additional attorney to provide habeas and appellate assistance. As a result of the loss through attrition of 1.7 FTE attorney positions, many of our attorneys have been working considerable amounts of overtime in order to maintain the level of services required by CAP-SF's contract with the Judicial Council. Six members of the attorney staff routinely bill approximately 20 percent to 50 percent over their pro rata share of CAP-SF's contract hours. Virtually all of the attorneys assigned to habeas assistance are consistently above their number of allotted contract hours. That model of assistance is clearly unsustainable in the long haul.

In addition, if executions resume within the next contract period CAP-SF will likely need to seek a contract supplement to hire an additional attorney with clemency expertise or assign one or more of its habeas or appellate assistance attorneys to clemency assistance. To meet contract requirements at the customary level of professionalism, expertise and effectiveness, CAP-SF estimates that a total of three attorneys would be necessary. Based on our understanding of budgetary constraints and the practical realities of the process, CAP-SF is limiting its current request to one attorney.

Estimated costs of one attorney (including benefits): \$130,000

2. Support staff: In order to meet current and projected demands, CAP-SF's best estimate is that we require (1) one investigator to the unrepresented project; (2) one investigator to the habeas team; (3) one legal secretary and one paralegal to replace staff lost through attrition; and (4) two case managers to work on digitizing documents and to focus on improving the management of CAP-SF's online and hard copy resources, which are utilized by the panel, or six support staff, total. Based on our understanding of budgetary constraints, we are limiting our current request to 2.5 paralegal staff positions.

Estimated cost of two and one-half staff positions (including benefits): \$200,000

3. Raises: In early 2014, CAP-SF undertook a comparative study of salaries paid at sister agencies (HCRC and OSPD) and at comparably sized Bay Area non-profit corporations. That research enabled CAP-SF to clearly understand pay discrepancies. Even in the absence of an increase in contract revenues, we determined last year that an increase was essential, and we increased attorney salary ranges by three percent. Additional funding is necessary sustain the increase and to bring some level of parity to CAP-SF salaries.

Without such increases, CAP-SF would risk losing some of its most experienced and skilled attorneys due to its prolonged inability to offer raises or even cost of living increases. As to entry-level positions CAP-SF is similarly at a competitive disadvantage for attracting qualified and skilled attorney or support staff. We note that although last year's HCRC budget change proposal was rejected at the Department of Finance level (like CAP-SF's), HCRC is a state agency, not a nonprofit like CAP-SF, so it still obtained a funding increase to cover the cost of across the board salary increases.

Estimated cost: \$110,000

4. Training: A corollary to the impact of legal developments on CAP-SF's practice is the need for ongoing training of both current and newly-hired staff across the organization. CAP-SF's role as an assisting entity and resource center for appointed counsel requires that CAP-SF staff be at the forefront of understanding and shaping legal developments. In order to fulfill that role, ongoing substantive and skills training of staff is essential. This is particularly true because CAP-SF in recent years experienced an unprecedented turnover of its legal staff. Many of the most intensive and useful training sessions for CAP-SF staff are multiday and held out-of-state.

Requested increase: \$ 20,000

5. Record Collection and Preservation: The cost of collecting records continues to increase as caseloads grow and changes in the law emphasize the need to gather all relevant documents during the state proceedings. As a result of budget changes, various California courts have substantially increased the fees for collecting and/or copying documents; some courts charge as much as fifty cents per page. CAP-SF has had few successes in negotiating lower fees. Instead, CAP-SF has absorbed the new fees charged by Courts, increased fees charged by state agencies, and fees charged by private copy agencies who are the only providers of certain types of records (e.g. medical). In 2007, for one example, the California Department of Public Health charged \$13 per birth certificate, \$12 death certificate, and a marriage certificate could be obtained for as little as \$7. In 2016, those figures are \$25, \$21, and \$15, respectively. In other states, the cost of necessary vital records is similar or even higher.

To offset fees charged by courts, CAP-SF was paying a paralegal approximately \$1,000 a month to gather records in person in Los Angeles and Riverside Counties. This solution is not available everywhere. CAP-SF anticipates the money paid to that paralegal will increase two-fold over the next year, and also anticipates CAP-SF will incur fees in the other counties that do not allow for in-person collection. For out-of-state court records CAP-SF is almost always required to pay fees.

Requested increase: \$38,000

6. Rental Costs: CAP-SF's rent, which includes base rent and operating expenses under the terms of its lease, have increased substantially. For example, for 2007 to 2008 CAP-SF's annual rent was \$597,712 compared to the 2016 rent of \$754,000 and 2017 estimated rent of \$775,473. Thus, CAP-SF's annual rent has increased \$156,000 (26%) since 2007. CAP-SF's base rent will continue to increase \$18,261 each year, and operating expenses that are passed through, e.g., taxes, insurance, etc., will also continue to increase.

Estimated cost increase: \$156,000

7. Benefits: CAP-SF's benefits offered to employees including, Medical, Dental, Vision, Life and Long Term Disability have increased significantly. At the time of CAP-SF's last contractual revenue increase in 2007, these benefits cost CAP-SF \$457,303. In 2014-2015, the cost of these same benefits was \$632,030, a difference of \$174,727. Because of changes brought about by the Affordable Care Act, which required CAP-SF to increase out of pocket expenses charged to employees, CAP-SF's costs of providing health insurance decreased somewhat in 2015-2016. At the same time Life and Long Term Disability insurance costs continued to rise.

The total costs of employee benefits (other than pension plan contributions) in 2015-2016 was \$599,991, an increase of \$143,688. We estimate that the cost for 2016-2017 will increase by \$2000.

Estimated cost increase: \$145,000

One Time Budget Increase Request

1. Website Modernization: Pursuant to its contract with the Judicial Council, CAP-SF is to maintain a website for the dissemination of resource and training materials, publication of training announcements, information from the Court and other news items, such as the monthly case update bulletin, ReCAP. The current website is based on obsolete technologies and the code is difficult – and in some instances impossible -- to maintain. Security holes have developed, and we were required to devise awkward workarounds that have necessitated multiple, repetitive logins even by internal users.

More generally, CAP-SF's current website is visually and, more importantly, functionally outdated. It is difficult for users to know what resources are even available, let alone to locate specific documents. Updating content on the site and uploading new resources is a labor-intensive process, whereas modern sites allow for simple, semi-automated or fully automated updates.

Thousands of briefs are available through the site, but they are poorly indexed and word searching is rudimentary. Some searches are nonfunctional or may lead to inconsistent or misleading results.

Manual searches by support staff or inefficient and time consuming emailed queries among the legal staff are often necessary.

Migration to a modern content management system by a mid- to top-tier web development firm can range from \$35,000 to \$100,000 or more. We have yet to solicit bids, but believe that a working budget of \$50,000 should be adequate for our needs.

Requested increase (one time): \$50,000

SUMMARY OF REQUESTED ON-GOING INCREASES

ITEM	AMOUNT
Rent increases	\$156,000
Employee benefit cost increases	\$145,000
Increased costs of record collection and preservation	\$38,000
Additional staff training costs	\$20,000
Salary increases	\$110,000
Two and one-half additional paralegal positions including benefits	\$200,000
One additional attorney position including benefits	\$130,000
TOTAL	\$799,000

REQUESTED ONE TIME INCREASE

ITEM	AMOUNT
Modernization and migration of CAPSF.org website	\$50,000

Our best estimate of the actual ongoing increase necessary to fully realize the Court's expectations of the level professionalism, expertise, and effectiveness that CAP-SF has historically provided is \$1,750,000. In light of our understanding of financial constraints and the practical realities of the budgeting process, CAP-SF is limiting the current request to the amount indicated.

Funding of the Appellate Projects In a Nutshell

TO: Member of the Administrative Presiding Justices Advisory Committee

FROM: Appellate Project Executive Directors

DATE: June 30, 2016

The Courts of Appeal have enlisted and relied on the services of the appellate projects (“projects”) since the mid-1980s, over 30 years, to manage and oversee a critical component of California’s justice system. The court-appointed counsel structure for indigent persons—in criminal, dependency, delinquency, and mental health cases—is composed of the projects plus a panel of around 900 private attorneys of varying skill and experience. The projects, with supervisor-level staff, oversee and work on about 15,000 cases at any point in time, including handling about 10% of the caseload in-house without appointment of attorneys from the panel.

The present funding is inadequate for the projects to maintain their offices and their experienced staff. Below are the factors underlying their request for a 15% increase to be included in the Judiciary’s FY 2017-2018 BCP. If their request is successful and they become part of the Governor’s next budget, the increase they receive would begin in January 2018.

1. Fiscal Responsibility

The projects are non-profit corporations and rely on a *balance* between income and overhead for their fiscal health. This balance is mandated by their boards of directors to enable the projects to continue providing the services required by their contracts and courts, and to ensure the corporations are properly capitalized. The appellate projects were basically in balance in 2007. But costs have steadily risen. Eventually, austerity measures, such as asking staff to endure increasingly serious hardships, reach an outer limit and threaten the viability of the program.

2. BCP Support

This is the third year the projects have come to the APJs with a request for support.

- In 2014, they asked for a 5% increase, which was less than the projects actually needed to balance income and expenses but reflected their sensitivity to the furloughs and salary freezes still experienced by the Court’s own staff. Unfortunately, the projects were ultimately not included in the BCP at all that year.
- In 2015, the projects requested an augmentation of 12%, which would have provided temporary stability for the projects. The APJs supported 8% for inclusion in the BCP that year. The Department of Finance and Governor approved a \$10/hour rate increase for panel attorneys (\$4.3 M) but, based on “priorities,” initially rejected any increase for the projects. Thereafter, both the Senate and Assembly budget committees made funding of the projects a legislative priority, and the Chief Justice made it a judicial priority, but the Governor ultimately decided to include augmentations only for items requiring one-time funding and to reject augmentations for “ongoing” activities in favor of increasing the state’s “rainy day” fund.

- In 2016, the projects remain funded at their 2007 levels. They now request support for an augmentation of 15% in the FY 2017-2018 budget. The costs of goods, services, equipment, and supplies, have all grown while the project budgets have not. The largest ticket items are discussed generally below.

3. Personnel

- **Salaries:** According to the U.S. Department of Labor, Bureau of Labor Statistics CPI Inflation Calculator, as of April 2016 the costs of goods and services in California have risen almost 17%, and in the San Francisco area, 22.5%, since 2007. The rise will undoubtedly continue between now and January 2018, which is when the projects would first realize the result of a successful BCP. Meanwhile, the salaries of those whose income has remained static have lost considerable value, creating a personnel problem of three dimensions: retention, morale, and replacement (as experienced people retire or leave). In addition, many of those same employees have had reduced pensions and benefits during those 10 years, which allowed their offices to pay non-discretionary costs such as rent. With part of the requested augmentation, salary increases for employees would be appropriate.

- **Insurance:** Health care costs have skyrocketed, escalating by double digits every year. The projects have steadfastly provided health care insurance but could do so only by decreasing benefits and increasing deductibles and co-pays, and, in some cases, raising staff premium contributions, all additional costs to employees. The projects reasonably expect premiums will continue to rise. Meanwhile, the projects also continue to pay for professional liability insurance on appointed cases for the *entire* panel.

4. Rent

As the cost of leases has grown beyond the abilities of the projects to pay, three of the projects have had to move their offices. Even after the moves, costs continue to grow beyond what the projects can afford. Four years ago, one project was able to lower its rent by renegotiating the lease on its existing space, but only with an escalation clause of over 5% per year; by 2017 the rent will be more than 41% higher than it was in 2007 and will continue to grow each year. One of the projects that moved to a new location computes its 2017-18 office rent expense will be 47.6% higher than it was in 2007.

5. Technology

The projects do not have budgets that cover the costs of replacing computers, monitors, servers, operating systems, software, and case management programs; or managing ever-growing security requirements; or implementing document management systems that accommodate True Filing. The projects also lack sufficient staff to accommodate all the changes that have come and are continuing to arrive by reason of the move to electronic documents. Technology needs today are markedly greater than they were in 2007.

The appellate project staff members are dedicated to their work for the benefit of the clients, the panel attorneys, the courts, and the State of California. While underfunded for several years now, they have not diminished the quantity or quality of their work. Just as the Judiciary relies on them to help give meaning to the promise of a fair justice system, the projects rely on the Judiciary to provide the basic funding necessary to keep their offices functioning.

APPENDIX A – CURRENT SALARIES: SNAPSHOT OF STATE PROJECT SYSTEM (2016)

POSITIONS	FTE Annual Salary Range	
	Highest	Lowest
Attorneys		
0 to 4 years	\$102,500	\$52,800
4 to 8 years	\$133,000	\$63,000
8 or more years	\$133,080	\$58,800
Assistant executive director	\$151,693	\$130,733
Executive director	\$159,132	\$149,500
Support Staff	Highest	Lowest
Managerial non-attorney staff	\$94,504	\$68,453
General administrative and technical staff - paralegals, case and claim processors, clerical and secretarial personnel, bookkeeper, IT, etc.	\$64,857	\$27,300
Law clerks, law graduates	\$65,772	\$50,600

APPENDIX B – HEALTH BENEFITS AND COSTS

COST TO PROJECTS OF HEALTH-RELATED BENEFITS					
	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	\$ 306,594	\$ 580,651	\$ 351,989	\$ 299,561	\$ 172,376
2013-2014	\$ 475,243	\$ 606,663	\$ 492,928	\$ 346,930	\$ 235,922
2014-2015	\$ 497,404	\$ 635,137	\$ 546,558	\$ 311,657	\$ 231,467
2015 – 2016 (projected)	\$504,000	\$625,407	\$500,552	\$294,316	\$235,117
COST TO EMPLOYEES OF HEALTH-RELATED BENEFITS					
% contribution paid by employee	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	0.0%	0.0%	0.0%	5% to 15%, depending on coverage	0.0%
2013-2014	0.0%	Attorneys 10% for PPO, support 5%	0.0%	10% to 20% of least expensive plan	0.0%
2014-2015	0.0%	Attorneys 10% for PPO, support 5%	0.0%	15% to 35% of least expensive plan for fulltime. 25% to 45% for part time.	0.0%
2015 – 2016 (projected)	0.0%	Attorneys 10% for PPO, support 5%	0.0%	15% to 35% of least expensive plan for fulltime. 25% to 45% for part time.	0%
REDUCTIONS IN BENEFITS, to accommodate increased premiums					
FDAP	n/a				
CAP-LA	Increased deductibles and copays every year for last few years. Increased employee payments for out-of-network providers.				
CCAP	CCAP has moved from PPO to HMO coverage.				
ADI	Increased at least twofold the co-pays, deductibles, and out-of-pocket maximum amounts payable by the policy holder.				
SDAP	Increased deductibles and co-pays in recent years.				
INCENTIVES, if any to waive coverage or choose less costly plan					
FDAP	FDAP is still considering whether to modify its cafeteria plan to create an incentive for employees to opt out of FDAP health coverage.				
CAP-LA	Office encourages HMO use by paying for it in full, but requiring employee contribution for PPO plans. Each year under this arrangement, more employees have switched to the HMO.				
CCAP	In 2008 CCAP began providing incentives for employees with dual coverage (e.g., through a spouse) to waive coverage through CCAP.				
ADI	ADI has moved to a system in which it pays a given % of the <i>least expensive</i> option available to the employee. The employee pays the balance for a richer plan. The employees' % has increased over recent years.				
SDAP	n/a				

NOTES

GENERAL

Some projects have plan years not corresponding with the state fiscal year. Health-related costs include health, dental, long-term disability, etc., insurance

CAP-LA

Premium costs increased between 8 and 10 percent beginning July 1, 2014. Again, CAP-LA has been informed that premium costs will increase up to 40% for Blue Cross and 6% for Kaiser beginning July 1, 2015. Please note correction (previously sent) highlighted. Reduction of health-related expenses in 2014-2015 reflect our move from Blue Cross to a lower coverage plan with Blue Shield. However, having made that move, we are projected to experience double-digit increases the following year and beyond.

CCAP

ADI

In 2011-12 and 2012-13, employees were required to make a 3% contribution. As of 4/20/2014, CCAP had 17 employees over age 60.

SDAP

Employee contributions toward health insurance more than tripled between 2008 and 2014 (from \$27,912 to \$84,875), as a result of higher premiums and ADI's system of requiring employees to pay an increasing % for their costs and to bear the burden of choosing more expensive plans.

As a matter of policy, the SDAP board has determined that employees should not be required to contribute for their health insurance. Because the staff has had only a minimal increase in salary in the past eight years, the board is of the view that a required payment for health insurance would adversely affect staff morale. SDAP has had little turnover in attorney staff: since 1999, the only two lawyers who left did so in order to retire. In the past eleven years, there has been no turnover in the support staff. The health benefit has played a key role in this retention level and in the morale and devotion of the staff.

APPENDIX C – RENT

ANNUAL RENT (including pass-through share of utilities, taxes)					
	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	\$ 160,484	\$ 261,141	\$ 209,017	\$ 321,060	\$ 96,549
2013-2014	\$ 151,600	\$ 318,682	\$ 206,749	\$ 337,296	\$ 100,661
2014-2015	\$ 155,243	\$ 334,911	\$ 217,707	\$ 352,691	\$ 86,665
2015-2016	\$149,305**	\$ 381,389	\$ 231,517	\$ 354,161	\$112,656
2016-2017	\$229,917	\$ 400,459	\$242,626	\$ 370,326	\$113,348

NOTES:

FDAP

**For the fiscal year 2015-2016, our rent was only \$149,305. That was primarily because the new lease included three months of free rent. The purpose of this standard lease term is to make the lease affordable in the short term because of the tenant's one-time costs of moving. For FDAP, those one-time costs were approximately \$47,000. Accordingly, in 2015-2016, FDAP paid a combined total of approximately \$196,000 for rent and move-related costs.

FDAP's old landlord in San Francisco offered us a **three-year lease at \$319,404.25 per year, with 3% annual increases**. The rent we settled on in Oakland was much lower and it was a seven-year lease. They SF landlord also offered an alternative of a *one-year* lease at \$183,390, but with rates soaring we needed to lock in a lease for longer than one year and if we waited a year to do that we would have entered the Oakland market at an even higher rate than we did.

CAP-LA

In order to stay in its present location, CAP negotiated a new lease in 2012, prior to the completion of its old one. The new lease expires in 2020 and includes an escalation clause amounting to a 5% increase per year. Added to the rent are the ever-increasing building pass-through expenses. The reason rent in 2013-15 and 2014-15 are slightly different from what was in a previous chart is some building pass-through expenses were reconciled late by our building and some were paid in the subsequent fiscal year. The differences were not material.

CCAP

CCAP moved on Jan. 23, 2015. We estimate that the cost of that move will total about \$100,000.

ADI

ADI has a 10-year lease starting in Nov. 2010. Specified step increases to 2020.

SDAP

SDAP's prior lease terminated July 31, 2014. SDAP held a three year option to extend the lease. However, the landlord announced his plan to sell the building for conversion to residential housing. SDAP and the landlord contractually agreed that SDAP would forego its three year option and vacate the premises by October 31, 2015. As partial consideration for buyout of the three year option, the landlord agreed to reduce SDAP's rent for the period between August 1, 2014 and October 31, 2015. As of November 1, 2015, SDAP must lease new office space. At present, the cost of a new lease is unknown since an agreement has not been reached with a new landlord.

APPENDIX D – PROJECT-FINANCED RETIREMENT CONTRIBUTIONS

% OF SALARY contributed to each employee's retirement fund					
	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	10.0%	10.0%	15.0%	11.0%	10.0%
2011-2012	10.0%	8.0%	20.0%	8.0%	8.0%
2012-2013	10.0%	8.0%	15.0%	7.5%	8.0%
2013-2014	10.0%	8.0%	15.0%	0.0%	8.0%
2014-2015	10.0%	8.0%	16.0%	0.0%	10%
2015 – 2016 (est)	10.0% (est)	8.0%	unknown/ see below	0.0%	10%

Notes:

All projects have defined-contribution plans, not defined-benefit.

FDAP

FDAP's contribution was reduced to 9% for fiscal year 2008-2009.

CAP-LA

CAPLA's contribution was reduced to 8% in FY 2008-2009 and has remained there since.

CCAP

The pension contributions above were able to be made because, when it became clear that project funding would be flat or reduced, CCAP began an intense examination of all revenue streams and all cost and then made a number of substantial cost reductions.

As indicated in Appendix A, CCAP has reduced staffing levels for both the attorney and support staffs and reduced salary across the board by 2%.

CCAP's Board of Directors will not make a decision regarding the FYE 2015 retirement contribution until October 2015. Typically, CCAP has provided an annual retirement contribution of 15%. The pension contributions above were able to be made because when it became clear that project funding would be flat or reduced several years ago, CCAP began an intense examination of all revenue streams and all cost and then made a number of substantial cost reductions.

As indicated in Appendix A, CCAP has reduced staffing levels for both the attorney and support staffs and continues to maintain a salary reduction of 2% across the board. CCAP's Board of Directors will not make a decision regarding the FYE 2016 retirement contribution until October 2016. Typically, CCAP has provided an annual retirement contribution of 15%.

ADI

Employees are eligible after two years with ADI. The contributions vest 100% immediately. % contribution decided by board annually, based on project's finances.

The present plan is to eliminate the 2014 retirement contribution entirely. The same decision is likely for 2015. The majority of the savings will go to employees as a cash sum, to help alleviate hardships caused by increasingly inadequate compensation. Another part will be used to bolster reserves. Our hope is some day to make up for the 2014 and 2015 failure to contribute to retirement accounts, when ADI's contract becomes sufficient to cover the costs of doing business.

SDAP

The SDAP Board will not vote on the 2014-2015 contribution until November 2015 or February 2016.

Update: Appellate Project Budget Request

June 3, 2015

To: Members of the Administrative Presiding Justices Advisory Committee

One year ago, the appellate projects, whose contracts have not increased since 2007, requested support from this Advisory Committee for a 5% increase in funding as a first step towards restoring the funding of their programs to adequate levels. Here, the projects renew and update that request, now seeking an increase of 12%, which would be the minimum needed to adequately fund their work in this era of skyrocketing rent, health care, and other costs. The projects also provide some clarification about the functions of the appellate projects and the need for additional funding.

Supplemental Request for Funding Support

The appellate projects have now gone eight years with no increase in their contracts. If the 2016-2017 fiscal year is the first opportunity for any increase, the project contracts that take effect January 1, 2017 (since those contracts correspond to the calendar, not fiscal, year), will be the first time the projects will have seen an increase in 10 years. Meanwhile, rent, personnel costs, technology expenses, and other costs of maintaining an office and providing services to the Court, to the panel, and to indigent clients in California have continued to climb. The projects are functioning law offices with income earned through billable hours (specified in their contracts) and with overhead, much of which is rising. The projects' income has not been sufficient to cover the overhead for several years now, and the disparity between the two keeps growing.

Like the courts, the appellate projects have worked to economize in every way they could, including reducing staff where possible. However, the needs explained in the appellate projects' previous request for support are, one year later, now even more critical.

The present contracts simply do not contemplate the large ongoing increases in rent since 2007 as the real estate market has roared back, or, in some cases, the moving expenses where some of the projects have been priced out of their locations. CCAP has already relocated its offices this year and is estimating the move to have cost in excess of \$100,000. For FDAP, rent in 2007 was \$160,484. That office now has to move, and the new rent for a smaller office more distant from the court, is estimated to be in excess of \$230,000, with 3% annual increases for the seven years of the lease. The present contracts do not support these increased costs. CAP/LA's rent in 2007 was \$261,141, while its rent this year is \$352,113, with a 5% escalation every year to 2020. SDAP will have to vacate its premises by October 31 of this year and has not yet found new space in the highly elevated Santa Clara/San Jose market. Again, the 2007 contract funding still found in the 2015 contracts no longer covers the cost of doing business.

Those contracts also do not envision and provide no budget to respond to the technological developments that have materialized over the past few years, requiring new equipment, new operating systems and software, new office management programs that respond to new and more complex JCC reporting standards, and a heightened level of very costly security protection. Electronic filing, in particular, requires increased staffing to manage the exploding number of electronic documents. FDAP, for instance, had obtained some cost-savings through a leaner

support staff but has now had to return back to the higher staffing levels particularly to respond to processing needs for electronic documents.

Each of the appellate projects has responded to the fiscal challenges in its own way, but uniformly the result has been to the detriment of the staff, whether lowering pensions and some benefits (ADI plans on eliminating pension contributions for 2014 and 2015 in order to provide staff with a cash sum for each of those years; CAP/LA and SDAP reduced pension contributions to 8%) or reducing salaries (CCAP reduced salaries in 2010 by 2%, and that change remains in place) or operating with leaner support staffs as CAP/LA and FDAP did or eliminating some tools that the staff previously found indispensable. As an example, CAP/LA's 21 attorneys (including directors) now share only six Daily Journals and must use a diminished in-house library of books, and FDAP has reduced its law library spending by 40%. While reductions in pension contributions have been a way to economize without staff feeling immediate financial consequences, as staff members reach retirement age, these actions ensure that the effects of the inadequate budgets will be felt long term. Reducing staff has sometimes helped but has placed a heavier work burden on those remaining.

The contracts have also not kept pace with the double-digit increases in medical insurance premiums year after year which, when passed on in part to staff members, have had the net effect of further decreasing compensation, notwithstanding the higher costs of goods and services for individuals during that period. CAP/LA has been told by Blue Cross to expect an increase close to 40% in July of this year. Kaiser's increase will be about 6%. The other appellate projects are similarly having to deal with these types of increases. Many staff members, both attorneys and support staff, are reaching an age at which the importance of a decent medical insurance package is elevated and often critical, making reduction of coverage benefits an unacceptable choice.

Salary increases are also important, not just because of the needs and the morale of staff, but this issue is especially highlighted when experienced staff members who retire must be replaced, and the projects find that they are no longer competitive in the workforce market. In the past eight years, the salaries of project personnel have largely remained stagnant. Notably CCAP has reduced its salaries by two percent, and SDAP's Executive Director has recently taken a voluntary ten percent pay cut. But this does not tell the whole story. In varying degrees at the various projects, significant portions of the double digit health insurance premium increases have been passed on to the staff, deductibles and co-pays have increased, parking and other costs employees must bear have gone up, and employer pension contributions have been lowered. Thus, the value of employee take-home has been deflated since 2007 and will continue to decrease until budget increases at the projects can be realized. Meanwhile, the number of hours worked and the quality expected have remained constant.

Other office expenses have also increased. The point is that even with the economizing efforts of the offices, they cannot continue to function in 2016-2017 on a 2007 budget. Last year's request for support of a BCP asked for a 5% increase, which would have taken effect in the January 2016 contracts. The amount was considerably less than what was needed but was suggested by the projects because of their sensitivity to the fact that the Court's own staff was still subject to austerity measures. The present request for a BCP, we are told, if granted, will not take effect until January 2017. That would mean 10 years of trying to function on a 2007 budget. In that light, a more realistic assessment of need across the projects, for all the reasons mentioned above and in the previous memo, would be 12 percent.

In 2007, the funding of all five appellate project offices was a total of \$17,468,187. In 2015, the funding was the same. With a 12% increase prospectively beginning with their January 2017 contracts (without compensating retroactively for 10 years of flat budgets), the total cost of the projects would be \$19,564,369, a growth of \$2,096,182 overall for the five appellate projects. This amount is below the 13.5% increase in the California Consumer Price Index from the time of the last contract increase through February of 2015.¹

Funding the Appellate Projects Is Necessary to Maintain Quality Appellate Court Representation

There is little question about the job the appellate projects do and the needs they fill. As described below, the work of the projects cannot be done without staff attorneys of the highest caliber, who bring a set of skills not easy to find in a single individual: the deepest knowledge of substantive law and appellate procedure, exceptional writing skills, and the ability to mentor and teach the panel attorneys in the contexts of individual cases and training sessions. The ability of the projects to staff their offices with such attorneys is in jeopardy without adequate funding.

The appellate projects are the Court of Appeal's quality-control mechanism for California's court-appointed counsel system. The high quality of appointed counsel representation, particularly the briefing, some sitting justices might remember, did not exist with any consistency prior to the advent of the appellate projects in the mid 1980s.

Before the creation of the appellate projects, as noted in the Judicial Council's 1970 annual report, a newly admitted lawyer could be appointed to represent a client convicted of murder simply by applying to the clerk's office, with little focus on or knowledge about that lawyer's qualifications and with no "matching" of attorney skills and experience to the complexity of the case. Payments were made at \$20 per hour without standards or guidelines as to the number of appropriate hours and as to expectations of the specific tasks that needed to be completed. The report cited testimony that 30 to 40 percent of the appointed counsel work fell "below an acceptable level of quality."

Also in 1970, the California Supreme Court decided *In re Smith* (1970) 3 Cal.3d 192, highlighting the infirmity of the pre-projects appointed-counsel system. Smith had been convicted of kidnapping and rape. The case was, in the Supreme Court's words, "bristling with arguable [appellate] issues." Appointed counsel in the Court of Appeal filed a 21-page opening brief, of which the first 20 pages were a recitation of the facts. Counsel's legal argument consisted of one page urging the "ludicrous proposition" (court's words, again) that a reversal was required because the prosecution failed to expressly prove that Smith was not married to the woman he had raped. The Supreme Court held, in this case of first impression, that counsel's representation was ineffective. Until 1985, the Courts of Appeal frequently relied on *Smith* to address piecemeal this systemic problem.

In 1984, the Judicial Council reported to the Legislature that for indigent clients, California still had an unacceptable "non-system," noting that the most significant improvements were generated by the California Appellate Project (CAP-SF), created to handle death penalty cases in

¹ <https://www.dir.ca.gov/OPRI/CPI/EntireCCPI.PDF>

the California Supreme Court, and Appellate Defenders, Inc. (ADI), operating in the Fourth Appellate District. Then, in 1985, the U.S. Supreme Court explicitly expanded the right to counsel in indigent criminal appeals, requiring *competent* representation. (*Evitts v. Lucey* (1985) 469 U.S. 387.)

During the mid to late 1980s, appellate projects were created in each of the five other appellate districts.

Since that time, the appellate projects, pursuant to California Rules of Court, rule 76.5 (and later rule 8.300), have administered the court-appointed counsel programs in each district, overseeing and maintaining the panels of attorneys accepting such appointments. The projects have admitted and removed panel members based on the quality of their work, matched the attorney's skills to the needs of each case when making appointment recommendations to the Court, worked with counsel one-on-one in both "assisted" and "independent" cases, presented training sessions in both substantive and procedural areas, and developed materials for the education, development, and use of the panel. This work cannot be done without the projects being funded at a level that allows them to hire and retain exceptionally highly-qualified staff.

The appellate projects have also evaluated all claims for compensation and have recommended payment on a case-by-case basis pursuant to standards and guidelines adopted originally by Chief Justice Lucas and the administrative presiding justices in the early 1990s. These peer evaluations of appointed counsel's claims as well as the quality of their work product are a critical aspect of the projects' mandate. The evaluation process provides key information necessary for matching counsel to future cases (or not).

The appellate projects have been audited, evaluated, and analyzed by a Judicial Council task force, the justices in the districts, efficiency experts, and cost accountants provided by the State. A Judicial Council task force, the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC), has oversight responsibility for the court-appointed counsel system.

The appellate projects have passed every test, and in the process, have developed the skills and professionalism of court-appointed counsel, improving the quality of appellate work performed in the Courts of Appeal and aiding the appellate courts through administration of the court-appointed counsel system for almost 30 years. During that time, the mandate of the appellate projects has remained consistent: to ensure that indigent clients receive competent representation and that the court receive appropriate and useful briefing

The pool of about 62 appellate project staff attorneys statewide (not including executive and assistant directors) – highly experienced and skilled in substantive and procedural law as well as in mentoring, which are necessary attributes for maintaining credibility with the panel of about 900 private-sector attorneys – oversees and provides services on around 10,000 open cases at any one time. The level of expertise of the staff attorneys is reflected in their long history of work in criminal and dependency law. As an example, the average CAP/LA staff attorney has worked in the field for 33 years.

As further indication of the successful work of the appellate projects and of the significance of that work to the operations of the Court of Appeal, the Hon. Joan Dempsey Klein, Presiding Justice, Second Appellate District, Division Three, whose tenure on the appellate bench ranged

from 1978 until her retirement in 2015, wrote a letter to the Administrative Presiding Justice of the Second Appellate District and to Anthony Murray, President of the California Appellate Project Board of Directors, presenting her views regarding the importance of the appellate project in that district. Her observations would have similar application in the other districts. That letter is attached hereto.

Conclusion

The appellate projects hereby request the support of the Administrative Presiding Justices for the above-described increase in the funding of the projects.

Most sincerely,

Elaine Alexander, ADI
George Bond, CCAP
Dallas Sacher, SDAP
Jonathan Soglin, FDAP
Jonathan Steiner, CAP-LA

Attachments: (1) Letter from Presiding Justice Joan Dempsey Klein (ret.); (2) Original request, dated April 17, 2014, for support of a BCP for the appellate projects; and (3) New appendices updating those previously attached to the April 17, 2004, request.

APPENDIX A -- CURRENT SALARIES: SNAPSHOT OF STATE PROJECT SYSTEM (2015)

POSITIONS	FTE Annual Salary Range	
	Highest	Lowest
Attorneys		
0 to 4 years	\$103,797	\$48,000
4 to 8 years	\$133,000	\$60,000
8 or more years	\$133,080	\$58,000
Assistant executive director	\$151,693	\$130,733
Executive director	\$169,132	\$149,500
Support Staff	Highest	Lowest
Managerial non-attorney staff	\$94,504	\$68,453
General administrative and technical staff - paralegals, case and claim processors, clerical and secretarial personnel, bookkeeper, IT, etc.	\$64,857	\$21,977
Law clerks, law graduates	\$65,772	\$50,600

APPENDIX B – HEALTH BENEFITS AND COSTS

COST TO PROJECTS OF HEALTH-RELATED BENEFITS					
	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	\$ 308,594	\$ 580,651	\$ 351,989	\$ 298,861	\$ 172,378
2013-2014	\$ 475,243	\$ 808,663	\$ 492,928	\$ 346,930	\$ 235,922
2014-2015 (projected)	\$ 499,068	\$ 613,433	\$ 545,000	\$ 353,860	\$ 247,100
COST TO EMPLOYEES OF HEALTH-RELATED BENEFITS					
% contribution paid by employee	FDAP	CAP-LA	CCAP	ADI	SDAP
2007-2008	0.0%	0.0%	0.0%	5% to 15%, depending on coverage	0.0%
2013-2014	0.0%	Attorneys 10% for PPO, support 5%	0.0%	10% to 20% of least expensive plan	0.0%
2014-2015 (projected)	0.0%	Attorneys 10% for PPO, support 5%	0.0%	15% to 40% of least expensive plan (varies by age and type)	0.0%
REDUCTIONS IN BENEFITS, to accommodate increased premiums:					
FDAP	n/a				
CAP-LA	Increased deductibles and copays every year for last few years. Increased employee payments for out-of-network providers.				
CCAP	CCAP has moved from PPO to HMO coverage.				
ADI	Increased at least twofold the co-pays, deductibles, and out-of-pocket maximum amounts payable by the policy holder.				
SDAP	Increased deductibles and co-pays in recent years.				
INCENTIVES, if any to waive coverage or choose less costly plan					
FDAP	FDAP is still considering whether to modify its cafeteria plan to create an incentive for employees to opt out of FDAP health coverage.				
CAP-LA	Office encourages HMO use by paying for it in full, but requiring employee contribution for PPO plans. Each year under this arrangement, more employees have switched to the HMO.				
CCAP	In 2008 CCAP began providing incentives for employees with dual coverage (e.g., through a spouse) to waive coverage through CCAP.				
ADI	ADI has moved to a system in which it pays a given % of the least expensive option available to the employee. The employee pays the balance for a richer plan. The employees' % has increased over recent years.				
SDAP	n/a				

NOTES

GENERAL

Some projects have plan years not corresponding with the state fiscal year. Health-related costs include health, dental, long-term disability, etc., insurance

CAP-LA

Premium costs increased between 8 and 10 percent beginning July 1, 2014. Again, CAP-LA has been informed that premium costs will increase up to 40% for Blue Cross and 6% for Kaiser beginning July 1, 2015.

CCAP

In 2011-12 and 2012-13, employees were required to make a 3% contribution. As of 4/20/2014, CCAP had 17 employees over age 60.

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Employee contributions toward health insurance more than tripled between 2008 and 2014 (from \$27,912 to \$84,876), as a result of higher premiums and ADI's system of requiring employees to pay an increasing % for their costs and to bear the burden of choosing more expensive plans.

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As a matter of policy, the SDAP board has determined that employees should not be required to contribute for their health insurance. Because the staff has had only a minimal increase in salary in the past eight years, the board is of the view that a required payment for health insurance would adversely affect staff morale. SDAP has had little turnover in attorney staff: since 1998, the only two lawyers who left did so in order to retire. In the past eleven years, there has been no turnover in the support staff. The health benefit has played a key role in this retention level and in the morale and devotion of the staff.

APPENDIX C – RENT

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2014-2015	\$ 155,243	\$ 334,911	\$ 217,707	\$ 352,691	\$ 86,865
2015-2016	Est. \$152,000 - \$185,300	\$ 352,113	\$ 231,617	\$ 354,161	Unknown
2016-2017	Est. \$230,000 - \$297,000	\$ 369,718	\$ 234,626	\$ 370,326	Unknown

NOTES:

- FDAP** FDAP's current lease expires June 30, 2016, \$23.18 per square foot per year. The rent projected for 2015-2016 and 2016-2017 is estimated based on on-going lease negotiations. The 2015-2016 rate will be lower than future years for two reasons (1) June-September 2015 we will still be at our San Francisco location, paying \$33.00 per square foot per year (higher than our current rate, but below what we will pay in Oakland under the new lease) and (2) the proposed leases we are considering will include 2-4 free months of rent in the first year.
- CAP-LA** In order to stay in its present location, CAP negotiated a new lease in 2012, prior to the completion of its old one. The new lease expires in 2020 and includes an escalation clause amounting to a 5% increase per year. Added to the rent are the ever-increasing building pass-through expenses.
- CCAP** CCAP moved on Jan. 23, 2015. We estimate that the cost of that move will total about \$100,000.
- ADI** ADI has a 10-year lease starting in Nov. 2010. Specified step increases to 2020.
- SDAP** SDAP's prior lease terminated July 31, 2014. SDAP held a three year option to extend the lease. However, the landlord announced his plan to sell the building for conversion to residential housing. SDAP and the landlord contractually agreed that SDAP would forego its three year option and vacate the premises by October 31, 2015. As partial consideration for buyout of the three year option, the landlord agreed to reduce SDAP's rent for the period between August 1, 2014 and October 31, 2015. As of November 1, 2015, SDAP must lease new office space. At present, the cost of a new lease is unknown since an agreement has not been reached with a new landlord.

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2011-2012	10.0%	8.0%	20.0%	8.0%	8.0%
2012-2013	10.0%	8.0%	15.0%	7.5%	8.0%
2013-2014	10.0%	8.0%	15.0%	0.0%	8.0%
2014-2015	10.0%	8.0%	unknown/ see below	0.0%	unknown/ see below

- Notes:** All projects have defined-contribution plans, not defined-benefit.
- FDAP** FDAP's contribution was reduced to 9% for fiscal year 2008-2009.
- CAP-LA**
- CCAP** The pension contributions above were able to be made because, when it became clear that project funding would be flat or reduced, CCAP began an intense examination of all revenue streams and all cost and then made a number of substantial cost reductions.
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The present plan is to eliminate the 2014 retirement contribution entirely. The same decision is likely for 2015. The majority of the savings will go to employees as a cash sum, to help alleviate hardships caused by increasingly inadequate compensation. Another part will be used to bolster reserves. Our hope is some day to make up for the 2014 and 2015 failure to contribute to retirement accounts, when ADI's contract becomes sufficient to cover the costs of doing business.
- SDAP** The SDAP Board will not vote on the 2014-2015 contribution until November 2015 or February 2016.

Appellate Project Budget Request for FY 2015-16
April 17, 2014

To: Members of the Administrative Presiding Justices Advisory Committee

The appellate projects are writing in the hope that a Budget Change Proposal (BCP) for the projects might result in an increase for the projects in the Judiciary's FY 2015-16 budget. We believe a contract funding increase of approximately 5% is both reasonable and necessary. An even greater increase is supportable based on our needs described below, but we save for next year—when the state's recovery is hopefully more fully realized—a discussion of additional funding. The reasons for this request, which amounts to a cumulative total of approximately \$873,000 annually for all five appellate projects, are straightforward.

If no BCP is prepared this year to effectuate a change in FY 2015-16, the projects will experience their eighth consecutive year without any increase in funding. In the years of the fiscal crisis, the projects' contracts were frozen at the 2007-2008 level. At the same time, the projects continued to meet all of their contractual obligations, including the number of billable hours worked, with no reduction in services.

Unfortunately, the cost of doing business increased significantly over that period. With no increase in funding, maintaining their quality control function became increasingly difficult for the projects. Now, if they do not receive the requested funding change, the projects will be facing a significant crisis that will affect their ability to maintain their staffing. For example, recently, after the retirement of some staff attorneys, panel attorneys rejected offers to work as project staff attorneys because project compensation, including benefits, was less than what the attorneys could make on the panel, even considering overhead.

Before analyzing the needs of the appellate projects, a word about their differences is appropriate. The appellate projects are very much like the DCAs in that each has its own personality and approach to internal administration. Each project is a non-profit, public interest legal corporation with its own board of directors, and each has shaped itself over the past 27 to 30 years to be responsive to the particular needs and circumstances of cases, justices, staff, and clerks in the DCA to which it was assigned. The differences among the projects run the gamut, from their technological needs to the ways they provide assistance to panel attorneys and the clients. For that reason, comparing fiscal and administrative decisions among the projects as if they were a single unified agency, would lead to anomalous results.

Regional difference, along with the characteristics of each particular project's staff, both attorneys and support personnel, have played a key role in molding how each project

does its work. Thus, while all have substantial fiscal needs, those needs differ in the details. The differences among the projects over the years have been a source of strength to the overall court-appointed counsel system, creating a flexible organism in which the projects share what they learn with one another, i.e., a fertile and productive laboratory.

The Increased Cost of Doing Business

From June 2007 (the end of the fiscal year before the last contract increase), through February 2014, the Consumer Price Index rose approximately 12.2% in California.¹ But the inflation experienced by consumers does not tell the entire story of increased expenses for the projects' small businesses. While costs have increased across all areas of the projects' budgets, several areas--health care, rent, administrative burdens, and technology--require special mention.

Health Care

Between 2007 and 2013, the average annual health care premium for family coverage for small businesses rose 31.6%.² For the projects, health care costs have been particularly painful. The projects face not only overall rate increases but growing costs from the "graying" of the employees. Facing significant double-digit increases in health-related costs during the last six and a half years, the projects have employed various strategies, such as changing carriers, increasing employee contributions to premiums, reducing benefits through less robust plans, and offering incentives to waive coverage or choose less expensive plans.³

Rent

The cost of renting office space has become a substantial issue. While present improvements in the State's economic condition may make this an opportune time for a BCP, the economy has also engendered less favorable office rental conditions. The projects face different circumstances depending upon the terms of their current leases as well as regional differences in the office leasing market. Some examples demonstrate the impact of economic conditions on office space for the projects.

Two years ago, CAP-LA was able to stay in its location only by negotiating a slightly lower initial rent but agreeing to an escalation clause increasing rent 5% per year until 2020. FDAP was able to negotiate a favorable fixed-rate lease extension in 2010, but that extension expires on June 30, 2015. A very hot rental market in the Bay Area has led FDAP's broker to estimate that FDAP is facing as much as a 100% increase (i.e. *an*

¹ <http://www.dir.ca.gov/OPRL/CPI/EntreCCPI.PDF>

² Kaiser Family Foundation, 2013 Employer Health Benefits Survey, Exs. 1.12 and 1.13. (<http://kff.org/private-insurance/report/2013-employer-health-benefits/?special-exhibits>)

³ Appendix C shows the increased costs as well as the specific cost-savings changes to health plans made by the projects.

additional \$140,000 annually) if FDAP remains at its current location in San Francisco. If FDAP were to relocate to Oakland, it would face at least a 30% rent increase, plus moving costs. CCAP's current lease also ends in 2015. The building owners have proposed, effective February 1, 2015, an 11.2% increase. CCAP is actively looking for new space. ADI's total rent under its lease starting in 2010 is 19% higher than the previous lease. SDAP's building is being sold, and that project expects to be evicted by October 31, 2015. The prospects for a favorable lease rate in the fall of 2015 are very uncertain.⁴

Administrative Burdens

In the past decade, new administrative burdens have increased costs. Compliance work related to pension plans, labor laws, and IRS filings, as well as local government requirements, has become more complex and time consuming, burdening the projects with increased non-billable hours of work. The greater complexity of the regulations and compliance requirements, has led to the need for expensive outside professional consultations.

Technology

Aging equipment, new AOC data-transfer protocols, and electronic filing programs instituted by the courts, have driven up project technology costs.

The technology infrastructure—computers, printers, servers, software, etc.—are the basic tools needed by attorneys and support staff. Without these, the number of staff needed to perform the various tasks would be exponentially larger. The hardware at some of the projects is now very old and often fails, leading to frustration and work product delays. In addition, Microsoft has ended support and security updates for Windows XP, thus putting most existing desktop computers at risk, further necessitating immediate replacement.

All DCAs are requiring more electronic documents. That movement has been slow but is now accelerating, requiring faster servers and computers at the projects, with larger memory and space capabilities. The sea change in the way documents are communicated and maintained has had a huge impact on project staff; the time needed to control and manage documents has greatly expanded, especially during these transition years in which both electronic and paper versions of documents are often required.

The AOC's development and implementation of new data transfer protocols—including for appointments, panel compensation claims, and monthly invoices—have required that the projects develop new and upgraded database systems and devote many hundreds of hours of staff time to adapting to new data requirements. In fiscal year

⁴ Appendix D shows each project's rent in the year of the last contract increase, the current year, and two years going forward.

2009-2010, the AOC provided \$20K to each project for developing and testing the first version of one of several protocols for transferring statistical data from the projects into the AOC's new database structure. All other database development for the projects, which includes design, analysis, coding, user interface implementation, testing, and data conversion, as well as creation and testing of the final AOC transfer engines that will actually be used, have taxed resources to date at the various projects to the extent of over \$750,000.

In the past, the AOC has recognized that the projects' contracts do not contemplate major capital investments, such as replacing old hardware (including photocopiers and telephone systems) and software. For that reason, the AOC has occasionally provided technology grants customized to the specific needs of each individual project, independent of the contracts. The last such equipment grant was in June 2007, but now the projects have been told such funds are unavailable. Without these grants, the projects have found it difficult or impossible to buy the needed equipment.

One example demonstrates the critical financial nature of the problem of aging technology infrastructures: CAP/LA could no longer put off updating its computer infrastructure. Without funds for computers, monitors, servers, related electronics, and associated software, CAP/LA had to negotiate an agreement with a vendor that will spread the expense over 4 years, thus incurring additional interest and finance charges. The annual cost under this plan is about \$40,788, an amount beyond CAP/LA's present budget, but significantly less than the full cost of an upfront purchase.

These examples--salaries (discussed more below), health care, rent, administrative burdens, and technology--illustrate the need for and purpose of the BCP.

Compensation Reductions

Since 2007, with few exceptions, project salaries have been totally static. At the same time, compensation has been reduced through increased employee contributions to health care insurance premiums, and decreases in salaries and/or pension.⁵ As small non-profit organizations, the projects can provide only defined-contribution retirement plans, not defined-benefit plans like CalPERS. The decreased contributions to pension thus dramatically impact the funds employees will have available in retirement. Thus, project employees have received a triple hit: salaries that have not increased, pensions and/or salaries that have been reduced, and increased payment for medical coverage. At the same time, staff attorneys have experienced no decrease in the number of billable hours they must complete, and support staff members have had only increased duties to perform, especially at projects that have reduced the number of support staff.

⁵ For a more detailed description of salaries at the projects and how each project reduced compensation, see Appendices A (Salaries and FTEs by Project), B (Current Salaries - Snapshot of all Projects), and E (pension history).

Needless to say, the immediate and long-term effect on employee morale is of great concern.

As mentioned above and discussed further below, the decreased value of the compensation the projects can offer is a tremendous impediment to retaining and hiring quality staff.

Cost Savings in Other Areas Cannot Make Up for the Increased Costs of Doing Business.

In addition to the compensation and staff reductions mentioned above, all the projects have scoured their budgets for ways to save money.

For the most part, reducing attorney staff to save costs has not been a practical solution for the appellate projects. The primary constraint on attorney staff reduction is the contractual obligation to produce a fixed number of billable hours each year. In contrast, in these years of static funding levels, several projects have reduced support staff positions.

Further contraction of staff is not feasible; the present staff sizes provide no buffer for illness or other real life exigencies. For instance, long stretches of medical leave for two attorneys during 2013 made it difficult for FDAP to meet the contractual billable hours requirement. As a result, FDAP is now contemplating filling its vacant attorney position. In addition, electronic filing has complicated the processing of documents and created more work for support staff, especially in those projects still handling both electronic and paper versions. At this point, both CAP-LA and FDAP are considering adding a support staff person. Their personnel are the projects' most important assets, accounting for around 80% of their budgets. With aging employees and with salary resources becoming less adequate even for existing staff, the projects are at a point at which their viability depends on their being able to invest *more* in the people who do the work in their offices.

The projects have cut cost in every way they could, including eliminating large portions of their libraries, arranging for less expensive supplies, minimizing use of the fastest methods for delivery of transcripts to the panel, relying more on electronic documents whenever possible to reduce copying, shipping and storage costs, and other such measures. But the major issues remain: non-competitive salaries, declining employee morale, escalating costs of rent and health care, and inadequate technological infrastructures.

Ability to Retain Staff and Maintain Quality

As mentioned above, a critical trend that demonstrates the effects of being underfunded is that multiple projects have had great difficulty filling staff attorney positions after an attorney has retired; prospective attorneys have declined project offers because

remaining on the panel can provide better financial security even when benefits are considered. This problem is not limited to attorney staff. One project lost an essential support staff member who was offered a better salary and benefits package by the Court of Appeal.

Background

The appellate projects, as initially conceptualized by the Judiciary during the term of Governor Deukmejian in the mid-1980's, were designed to deal with the critical problem of insufficiently talented and inadequately trained attorneys being assigned to handle appeals in which the appellant's liberty or family interest was at stake. As early as 1970, a Judicial Council report had noted that legislative testimony indicated a third or more of criminal appeals "fell below an acceptable level of quality." By 1984, the Judicial Council's "Proposal for Appointed Counsel Administrator Services" (11/9/1984) observed that "appointed counsel have, on occasion, been inexperienced, overmatched by the appeal, or incompetent to render adequate services."

In 1983 the Legislature enacted Government Code section 68511.5, resulting in the establishment of the appellate projects as non-profit, public interest law firms whose job it was to administer and oversee the appointed counsel system for the courts. The work of the projects was to provide critical expertise in the form of training, resource materials, advice and assistance to the attorneys handling the criminal, juvenile delinquency, juvenile dependency, and any other appeals in cases in which the client has the right to appointed counsel. Those cases now number about 9000 annually. The mandate of the projects remains to help ensure that indigent appellants receive the benefit of competent representation and that the courts of appeal receive useful and timely briefing, i.e., providing a constitutionally mandated quality-control safety net.

The critical functions of the appellate projects on which the Court and the court-appointed counsel system rely include:

- (1) Helping the court ensure that both the case and the client qualify for an appointment;
- (2) Maintaining a panel of attorneys sufficiently skilled to handle the caseload;
- (3) Screening cases and matching their complexity with a panel attorney with the appropriate skill set and knowledgebase;
- (4) Providing general training and development for the panel;
- (5) Providing resources for the panel, by way of documents and materials designed to help on substantive and procedural law;
- (6) Working with panel attorneys one-on-one to provide quality control in individual cases, including review and evaluation of work product;
- (7) Reviewing, evaluating, and making recommendations on panel compensation claims using the Guidelines established by the Chief Justice and APJs;

- (8) Interacting with AIDOAC and the AOC, delivering the statistical data necessary for ongoing regular audits of the entire court-appointed counsel system, helping to maintain transparency, and providing the information necessary for budget development.

In addition, each of the projects assists its assigned court in a myriad of everyday ways, troubleshooting problems before they blow up, and following through on many requests for information and action initiated by the justices and clerks of the Court.

Analysis

The nature of the work of the projects requires that the staff attorneys have a supervisory level of experience, expertise, and skill, along with the ability to teach, train, and coach panel attorneys in a collegial and encouraging manner. Hiring and retaining such experts is a critical duty of the projects' administration. The projects cannot rely on turnover and replacement of experienced attorneys with lower-paid inexperienced attorneys to save costs. Attorneys with these skills are not fungible.

As mentioned above, the projects cannot use unfilled positions or furloughs to offset inflationary costs or to provide salary increases. The projects' attorney workforce is small relative to the caseload. In addition, under their contracts with the state, the projects' income depends on billable attorney hours. Thus, a vacancy is detrimental, not beneficial. In order to meet contractual obligations, the projects have had to stretch what they could get out of their current employees and, on occasion, bring in temporary assistance to fulfill the contract hours when necessary.

With many project attorneys reaching retirement age, the projects must be prepared for retirements in the next few years, and that means being able to keep salaries competitive to attract those with the requisite experience and knowledge, and to discourage the younger attorneys on staff from leaving for more lucrative options.

Conclusion

For all the foregoing reasons, the appellate projects ask that the judiciary support their request for an increase in their contract amounts for FY 2015-16.

Sincerely,

Elaine Alexander, ADI
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