JUDICIAL COUNCIL OF CALIFORNIA

EXECUTIVE AND PLANNING COMMITTEE

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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING

Tuesday, April 7, 2015
12:15 to 1:10 p.m.
Teleconference

Advisory Body Members Present:	Justice Douglas P. Miller (Chair); Judge David M. Rubin (Vice Chair); Judges Marla O. Anderson, James R. Brandlin, Morris D. Jacobson, Marsha G. Slough, Dean T. Stout, Charles D. Wachob; Ms. Donna D. Melby and Ms. Mary Beth Todd
Advisory Body Members Absent:	Justice Judith Ashmann-Gerst
Invited Guests Present:	Judge Laurie M. Earl, Superior Court of California, County of Sacramento; Judge James E. Herman, Superior Court of California, County of Santa Barbara
Committee Staff Present:	Ms. Jody Patel and Ms. Nancy Carlisle
Staff Present:	Mr. Cliff Alumno, Ms. Deirdre Benedict, Ms. Deborah Brown, Ms. Eunice Calvert-Banks, Ms. Roma Cheadle, Ms. Linda Cox, Ms. Jessica Craven, Ms. Charlene Depner, Mr. Wes Downing, Ms. Audrey Fancy, Ms. Cristina Foti, Ms. Angela Guzman, Ms. Bonnie Hough, Ms. Anna Maves, Ms. Susan McMullan, Ms. Leslie Miessner Mr. Patrick O'Donnell, Ms. Anne Ronan, Ms. Gabrielle Selden, Mr. Curt Soderlund, Ms. Nancy Taylor, Mr. Zlatko Theodorovic, Ms. Adrienne Toomey, and Ms. Carrie Zoller

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m. and committee staff took roll call.

Approval of Minutes

The committee reviewed and approved the minutes of its February 9 and March 12–13, 2015, meetings and the e-mail actions on February 13, 17, 18, and 25, 2015.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Agenda Setting for the April 16–17, 2015, Judicial Council Meeting

The committee reviewed available draft reports and proposed items and set the agenda for the April Judicial Council meeting.

DRAFT

Action: ***The committee approved the following items for placement on the April Judicial Council business meeting agenda:***

- ***Rules and Forms: Confidential Information Form under Civil Code § 1708.85 (Action Required)***
- ***Rules and Forms: Notice of Application for Recognition and Entry of Tribal Court Money Judgment (Action Required)***
- ***Military Service: Notification of Military Status (Action Required)***
- ***Domestic Violence and Family Law: Technical Changes to Forms (Action Required)***
- ***Judicial Administration: Changes to Delegations in Rules of Court (Action Required)***
- ***Forms: Miscellaneous Technical Changes (Action Required)***
- ***Judicial Branch Education: Court Executive Officers Education (Action Required)***
- ***Trial Courts: Reporting of Reciprocal Assignment Orders (Action Required)***
- ***Child Support: Midyear Funding Reallocation for Fiscal Year 2014–2015 and Base Funding Allocation for Fiscal Year 2015–2016 for the Child Support Commissioner and Family Law Facilitator Program (Action Required)***
- ***Judicial Branch Report to the Legislature: Annual Report of Fiscal Year 2013–2014 Court Facilities Trust Fund Expenditures (Action Required)***
- ***Subordinate Judicial Officers: Complaints and Notice Requirements (Action Required)***
- ***Judicial Council Report to the Legislature and the Department of Finance: 2 Percent Set-Aside in the Trial Court Trust Fund for FY 2014–2015 (Action Required)***
- ***Judicial Council Report to the Legislature: Electronic Recording Equipment (Action Required)***
- ***Allocations from the State Trial Court Improvement and Modernization Fund and the Trial Court Trust Fund for 2015–2016 (Action Required)***
- ***Technology: V3 Interim Case Management System Funding (Action Required)***
- ***Trial Court Allocation: Restoration of Benefits Funding in 2015–2016 (Action Required)***
- ***Juvenile Dependency: Court-Appointed-Counsel Funding Reallocation (Action Required)***
- ***Judicial Council: Implementation of Judicial Council Directives on Judicial Council Staff Restructuring (Materials to be Distributed at Meeting; No Action Required)***
- ***Court Facilities: Declaration of San Pedro Courthouse as Surplus Property (Action Required)***
- ***Court Facilities: Request for Approval to Lease Plumas-Sierra Courthouse to Third Party (Action Required)***
- ***Judicial Branch Workers' Compensation Program (JBWCP): Origins and Update (No Action Required)***
- ***Trial Courts: Quarterly Investment Report for Fourth Quarter of 2014 (Information Only)***

DRAFT

- ***Court Facilities: Trial Court Facility Modification Quarterly Activity Report, Quarter 2 of Fiscal Year 2014–2015 (Information Only)***
- ***Judicial Council Restructuring: Policy 8.9, Working Remotely (Telecommuting) Program: Status Update (Information Only)***

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:00 p.m.

Approved by the advisory body on [insert date].

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

EXECUTIVE AND PLANNING COMMITTEE

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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

Thursday, April 16, 2015
9:00 a.m. to 2:15 p.m.
William C. Vickrey Judicial Council Conference Center

Committee Members Present: Justice Douglas P. Miller (Chair); Judge David M. Rubin (Vice Chair); Justice Judith Ashmann-Gerst; Judges Marla O. Anderson, James R. Brandlin, Morris D. Jacobson, Marsha G. Slough, Dean T. Stout, Charles D. Wachob; Ms. Donna D. Melby and Ms. Mary Beth Todd

Advisory Body Chairs and Vice Chairs Present:

Advisory Committee on Providing Access and Fairness
Hon. Laurie Zelon and Hon. Kathleen E. O'Leary, Co-chairs

Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Chair, and Hon. Rogelio R. Flores, Vice Chair

Court Facilities Advisory Committee
Hon. Brad R. Hill, Chair

Court Interpreters Advisory Panel
Hon. Steven K. Austin, Chair, and Ms. Christina M. Volkers, Vice Chair

Court-Ordered Debt Task Force
Hon. Mary Ann O'Malley, Chair

Court Security Advisory Committee
Hon. Thomas M. Maddock, Chair

Governing Committee of the Center for Judicial Education and Research
Hon. Ronald B. Robie, Chair, and Hon. Theodore M. Weathers, Vice Chair

Sargent Shriver Civil Counsel Act Implementation Committee
Hon. Earl Johnson, Jr. (Ret.), Chair

Trial Court Facility Modification Advisory Committee
Hon. David Edwin Power, Chair

Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Co-chair

Tribal Court-State Court Forum
Hon. Richard C. Blake and Hon. Dennis M. Perluss, Co-chairs

Workload Assessment Advisory Committee
Hon. Lorna A. Alksne, Chair

Committee Staff Present: Ms. Jody Patel and Ms. Nancy Carlisle

DRAFT

Staff Present: Ms. Roma Cheadle, Dr. Diane Cowdrey, Mr. Edward Ellestad, Ms. Deana Farole, Mr. Bob Fleshman, Ms. Donna Hershkowitz, Ms. Bonnie Rose Hough, Ms. Olivia Lawrence, Mr. Bob Lowney, Mr. Chris H. Magnusson, Mr. Patrick McGrath, Ms. Catherine Price, Ms. Kelly Quinn, Ms. Leah Rose-Goodwin, Mr. Curt Soderlund, Ms. Nancy Taylor, Mr. Zlatko Theodorovic, Ms. Jennifer Walter, Ms. Kyanna Williams, and Ms. Sonia Sierra-Wolf

CLOSED SESSION

Item 1

Pursuant to California Rules of Court, rule 10.75(d)(1)

Recommendations for Judicial Council and Advisory Body Appointments

The committee reviewed materials regarding vacancies on the Judicial Council and its advisory bodies.

Action: The committee developed its recommendations to be sent to the Chief Justice regarding appointments to the Judicial Council and its advisory bodies.

OPEN MEETING

Call to Order and Roll Call

The chair called the open meeting to order at 11:15 a.m. and committee staff took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 2 AND 3)

Item 2

Proposal for Invitation to Comment: Amending Rule 10.63 of the California Rules of Court

The committee reviewed a proposal to circulate for comment recommending that rule 10.63, which concerns the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch, be amended to modify the description of its duties, provide more specificity to the membership criteria, and make technical changes.

Action: The committee approved the proposal for circulation for comment.

Item 3

Review of 2015 Annual Agendas

The committee reviewed the draft annual agendas of the following advisory bodies for which it has oversight:

- Advisory Committee on Providing Access and Fairness
- Collaborative Justice Courts Advisory Committee
- Court Facilities Advisory Committee
- Court Interpreters Advisory Panel
- Court-Ordered Debt Task Force
- Court Security Advisory Committee
- Governing Committee of the Center for Judicial Education and Research
- Sargent Shriver Civil Counsel Act Implementation Committee
- Trial Court Budget Advisory Committee
- Trial Court Facility Modification Advisory Committee

DRAFT

- Tribal Court-State Court Forum
- Workload Assessment Advisory Committee

Action: 1. The committee approved the annual agendas of the following advisory bodies as submitted:

- ***Advisory Committee on Providing Access and Fairness***
- ***Collaborative Justice Courts Advisory Committee***
- ***Court Facilities Advisory Committee***
- ***Court-Ordered Debt Task Force***
- ***Court Security Advisory Committee***
- ***Governing Committee of the Center for Judicial Education and Research***
- ***Sargent Shriver Civil Counsel Act Implementation Committee***
- ***Trial Court Budget Advisory Committee***
- ***Trial Court Facility Modification Advisory Committee***
- ***Tribal Court-State Court Forum***
- ***Workload Assessment Advisory Committee***

2. The committee approved the annual agenda of the Trial Court Facility Modification Advisory Committee with the following amendment:

- ***Amend the second paragraph of the description of the Project 1 to read, "The advisory committee does not always agree with staff's application of the specific criteria resulting in the prioritization."***

3. The committee requested that the annual agenda of the Court Interpreters Advisory Panel be amended as follows and be resubmitted to the committee for approval at its next meeting:

- ***Add a project to develop a process for dedesignating a certified language.***

ADJOURNMENT

There being no further open meeting business, the meeting was adjourned at 2:20 p.m.

Approved by the advisory body on [insert date].

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA
EXECUTIVE AND PLANNING COMMITTEE

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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF ACTION BY E-MAIL

Thursday, April 30, 2015
Action by E-Mail

Advisory Body Members Who Participated:	Justice Douglas P. Miller (Chair); Judge David M. Rubin (Vice Chair); Justice Judith Ashmann-Gerst; Judges Marla O. Anderson, James R. Brandlin, Morris D. Jacobson, Marsha G. Slough, Dean T. Stout, and Charles D. Wachob; Ms. Donna D. Melby and Ms. Mary Beth Todd
Advisory Body Members Who Did Not Participate:	None
Committee Staff:	Ms. Jody Patel and Ms. Nancy Carlisle

DISCUSSION AND ACTION ITEM

Proposal for Review

The committee reviewed and considered a staff recommendation to approve a fractional increase in the workload of a subordinate judicial officer (SJO) position in the Superior Court of Lake County. Judicial Council staff recommended that E&P approve the time base associated with one commissioner position from 0.6 full-time equivalent (FTE) to 0.7 FTE, to be funded by the court, due to the court's need to address an increase in judicial workload associated with the creation of a veteran's court, which was made possible through a grant from the council's Recidivism Reduction Fund. The grant requires that a judicial officer lead the veteran's court project team.

Action: ***The committee approved increasing the time base associated with one commissioner position from 0.6 full-time equivalent (FTE) to 0.7 FTE. The committee chair concluded that prompt action by e-mail was necessary because, as the court executive officer noted, if the time base for the position was not increased, then, most likely, the start date of the program would have been delayed, and the grant funding jeopardized as a consequence.***

CLOSURE OF ACTION

The action by e-mail concluded on Tuesday, May 5, 2015.

Approved by the advisory body on [insert date].

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

EXECUTIVE AND PLANNING COMMITTEE

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EXECUTIVE AND PLANNING COMMITTEE (E&P)

MINUTES OF ACTION BY E-MAIL

Thursday, May 11, 2015
Action by E-Mail

Advisory Body Members Who Participated:	Justice Douglas P. Miller (Chair); Judge David M. Rubin (Vice Chair); Justice Judith Ashmann-Gerst; Judges Marla O. Anderson, James R. Brandlin, Morris D. Jacobson, Marsha G. Slough, Dean T. Stout, and Charles D. Wachob; Ms. Donna D. Melby and Ms. Mary Beth Todd
Advisory Body Members Who Did Not Participate:	None
Committee Staff:	Ms. Jody Patel and Ms. Nancy Carlisle

DISCUSSION AND ACTION ITEM

Proposal for Review

The committee reviewed and considered consider new revisions to a proposal for circulation for comment on rule 10.63 of the California Rules of Court, which concerns the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E). The revisions were for the purpose of modifying the duties and membership criteria, and they also included certain technical changes. The committee reviewed and approved for comment a previous version during its April 16 meeting. Subsequent to that approval, additional changes were raised with respect to the duties and the membership provisions for A&E.

Action: ***The committee approved the new revisions to the proposal for circulation for comment. The committee chair concluded that prompt action by e-mail was necessary in order to complete the public comment period in time for the council to consider the rule revisions during its June business meeting, for an effective date of July 1, 2015. This effective date allows E&P to solicit nominations beginning in July for all positions on A&E under the new membership criteria for terms effective September 15, 2015.***

CLOSURE OF ACTION

The action by e-mail concluded on Monday, May 11, 2015.

Approved by the advisory body on [insert date].

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
April 23, 2015

To
Members of the Executive and Planning Committee

From
Donna Hershkowitz, Director
Court Operations Services

David Smith, Senior Research Analyst
Office of Court Research
Court Operations Services

Subject
Conversion of One Vacant Subordinate Judicial Officer (SJO) Position in the Superior Court of Tulare County

Action Requested
Approve Staff Recommendation to Confirm the Conversion of a Vacant SJO Position

Deadline
June 15, 2015

Contact
David Smith
415-865-7696 phone
david.smith@jud.ca.gov

Executive Summary

Court Operation Services (COS) staff recommend that the Judicial Council's Executive and Planning Committee (E&P) confirm the conversion of one vacant subordinate judicial officer (SJO) position in the Superior Court of Tulare County. The court has notified COS of an impending vacancy and requested that this position be converted. Confirming the conversion is consistent with established council policies of improving access to justice by providing constitutionally empowered judges who are accountable to the electorate in matters that are appropriately handled by judges.

Recommendation

COS staff recommend that E&P confirm the conversion of one vacant SJO position in the Superior Court of Tulare County. The Superior Court of Tulare County has notified the Judicial Council that a commissioner will vacate this position on April 24, 2015 and has accepted an appointment by the Governor to a vacant judgeship in the court. On that basis the conversion of this SJO position to a judgeship will take effect on the date on which E&P approves the court's request or April 24, 2015, whichever date is later.

Upon conversion of the SJO position in question, the judicial officer appointed to the new judgeship will be assigned to the Juvenile Division to hear dependency and delinquency cases.

Previous Council Action

The 2002 report of the Subordinate Judicial Officer Working Group led the Judicial Council to sponsor legislation to restore an appropriate balance between judges and SJOs in the trial courts. The 2002 report found that many courts had created SJO positions out of necessity in response to the dearth in the creation of new judgeships during the 1980s and 1990s. As a result, many SJOs were working as temporary judges. This imbalance between judges and SJOs was especially critical in the area of family and juvenile law.[1]

In 2007, the Judicial Council approved a methodology for evaluating the amount of workload appropriate to SJOs relative to the number of SJOs working in the courts. In the same year, the Legislature passed Assembly Bill 159, which adopted the Judicial Council's methodology. This resulted in a list of 25 courts in which a total of 162 SJO positions would be converted. Government Code section 69615(c)(1)(A) allows for the annual conversion of up to 16 SJO vacancies upon authorization by the Legislature in courts identified by the Judicial Council as having SJOs in excess of the workload appropriate to SJOs.[2]

Subsequent council action established and refined guidelines for expediting the conversion of SJO vacancies. These guidelines included:

- The adoption of four trial court allocation groups and a schedule that distributes the 16 annual SJO conversions across these groups in numbers that are proportional to the total number of conversions for which the groups are eligible;
- The delegation of authority to E&P for confirming SJO conversions;

---

[1] See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Duties and Titles* (July 2002), www.courts.ca.gov/7476.htm.

[2] See Judicial Council of Cal., *Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships* (Feb. 23, 2007).

- The establishment of guidelines for courts to notify the council of SJO vacancies and timelines for the redistribution of SJO conversions across the allocation groups; and
- The establishment of criteria for E&P to use in evaluating and granting requests by courts to exempt SJO vacancies from conversion.[3]

Rationale for Recommendation

The Superior Court of Tulare County is eligible for a total of 2 of the 162 conversions authorized by the Legislature. The court has converted 1 position to date, with the initial conversion occurring in fiscal year (FY) 2009–2010. Conversion of the present position represents the final conversion for which the court is eligible. The Superior Court of Tulare County belongs to allocation group four, which is allotted 4 conversions each year. If this conversion is approved, 2 positions will remain for this allocation group in FY 2014–2015.

Comments, Alternatives Considered, and Policy Implications

This proposal, which complies with council policy on SJO conversions, was not circulated for comment. Confirming these conversions would be consistent with well-established council policy on SJO conversions.

Implementation Requirements, Costs, and Operational Impacts

To date, there have been minimal implementation costs for the trial courts. Upon appointment of a new judge to sit in a converted position, funding equal to the estimated judge's compensation—which includes salary and benefits but does not include retirement—is removed from the trial court's allocation where it previously funded the SJO position. This funding is then transferred to the statewide fund for judicial salaries and benefits, Program 45.25.

Attachment

1. Attachment A: April 1, 2015, Letter From Presiding Judge Gary L. Paden, Superior Court of Tulare County, to Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council of California; Subject: Request for Conversion of Vacant SJO Position.

[3] See Judicial Council of Cal., *Subordinate Judicial Officers: Allocation of Conversions* (Dec. 4, 2007); and Judicial Council of Cal., *Proposal to Modify Subordinate Judicial Officer Conversion Policy* (Apr. 24, 2009).

Superior Court
State of California
COUNTY OF TULARE

GARY L. PADEN
PRESIDING JUDGE

VISALIA DIVISION
221 SOUTH MOONEY BLVD.
VISALIA, CA 93291
(559) 730-5000
(559) 737-4290 FAX

RECEIVED
APR 10 2015
CHAMBERS OF THE
CHIEF JUSTICE

April 1, 2015

Honorable Tani G. Cantil-Sakauye
Chief Justice of California
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: Request for conversion of Subordinate Judicial Officer position

Dear Chief Justice Cantil-Sakauye:

Please be advised that Commissioner Hugo Loza was appointed Judge of the Superior Court by the Governor on March 27, 2015. Commissioner Loza will fill the vacancy created by the retirement of Judge Joseph A. Kalashian last year. Judge Kalashian has continued to sit on assignment since his retirement.

Commissioner Loza is assigned to the Juvenile Division of the Superior Court. Upon being sworn in, Commissioner Loza will be assigned to the criminal division. Upon conversion of the SJO position, the judicial officer appointed will be assigned to the Juvenile Division to hear Dependency and Delinquency cases previously assigned to the Commissioner.

I am formally requesting that the Judicial Council's Executive and Planning Committee convert our vacant Commissioner position to a Judge position pursuant to the Subordinate Judicial Officer Policy adopted by Judicial Council Policy.

Sincerely,

Gary L. Paden
Presiding Judge
Tulare County Superior Court

cc: Hon. Douglas P. Miller, Executive and Planning Committee, Chair
Hon. Martin Hoshino, Administrative Director of the Courts, JCC
Hon. Jody Patel, Chief of Staff, JCC
Ms. Donna Hershkowitz, Director, Appellate Court Services and Court Operations Special Services, JCC
LaRayne Cleek, Court Executive Officer, Superior Court of California, County of Tulare

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MEMORANDUM

Date
May 11, 2015

To
Members of the Executive and Planning Committee

From
Hon. Steven K. Austin
Chair, Court Interpreters Advisory Panel

Christina Volkers
Vice- Chair, Court Interpreters Advisory Panel

Subject
Court Interpreters Advisory Panel 2015 Annual Agenda: Request for Amendment

Action Requested
Please Review for Approval

Deadline
June 11, 2015

Contact
Sonia Sierra Wolf
Lead Staff, Court Interpreters Advisory Panel
415-865-4288 phone
sonia.sierrawolf@jud.ca.gov

The Court Interpreters Advisory Panel (CIAP) requests an amendment to their 2015 Annual Agenda to include, as a key objective, development of a policy on the de-designation of a certified language from the California Court Interpreter Certification Program. The need to establish a policy arose from the recommendation in the *2015 Language Need and Interpreter Use Study,* conducted by the National Center for State Courts (NCSC), to consider de-designation of Japanese and Portuguese.[1]

[1] On April 16, 2015, NCSC presented their findings and recommendations to CIAP. CIAP voted to recommend the Judicial Council submit the report to the Governor and Legislature. The report will be on the Judicial Council's consent meeting agenda on June 25, 2015.

On April 16, 2015, the Executive and Planning Committee approved CIAP's 2015 Annual Agenda as submitted, and requested CIAP amend their 2015 Annual Agenda to include the development of a de-designation policy.

The proposed amendment is identified as Project #4 on the amended 2015 Annual Agenda (attached), and reads as follows:

> Develop and recommend a policy on the de-designation of previously designated languages, whose use in the courts has declined, and consider the de-designation of Japanese and Portuguese as recommended in the *2015 Language Need and Interpreter Use Study.*

CIAP anticipates this project to be completed by December 2015.

Background and Rationale for Amendment

Every five years the Judicial Council is directed under Government Code § 68563 to conduct a study of language need and interpreter use in the trial courts and submit the report to the Governor and Legislature. The Court Interpreters Advisory Panel is charged, under Rule of Court 10.51, to review and make recommendations to the Judicial Council on the findings of the Language Need and Interpreter Use Study in the trial courts.

The NCSC conducted an analysis of data from the trial courts, JBSIS, Phoenix, the 2010 Census, and the American Community Surveys (ASC) and proposed a set of criteria that could be used to identify languages to be considered for designation and de-designation. The NCSC recommended that the Judicial Council consider de-designation of the Japanese language and the Portuguese language. Japanese and Portuguese have demonstrated a decline in court interpreter language use over the past ten years.

Attachments:

1. Proposed 2015 amended Annual Agenda
2. 2015 Language Need and Interpreter Use Study

Court Interpreters Advisory Panel
Annual Agenda—2015
Approved by E&P: April 16, 2015

I. ADVISORY BODY INFORMATION

Chair:	Hon. Steven K. Austin
Vice Chair:	Ms. Christina Volkers
Staff:	Ms. Sonia Sierra Wolf, Ms. Catharine Price

Advisory Body's Charge: Makes recommendations to the Judicial Council on:

- Interpreter use and need for interpreters in court proceedings; and
- Certification, registration, renewal of certification and registration, testing, recruiting, training, continuing education, and professional conduct of interpreters.
- Reviews and makes recommendations to the Judicial Council on the findings of the study of language and interpreter use and need for interpreters in court proceedings that are conducted by the Judicial Council staff, as required by statute, every 5 years.

(Sen. Bill 1304; Stats. 1992, ch.770, Rule 10.51and GC §68561-68565)

Advisory Body's Membership: 15 Member Panel – Rule of Court 10.51 provides that the Court Interpreters Advisory Panel will consist of 11 members, a majority of whom must be court interpreters. The panel must include representatives from the following categories:

- One appellate court justice;
- Two trial court judges;
- Two court administrators, including at least one trial court executive officer;
- Four certified or registered court interpreters working as employees in the trial courts, one from each of the four regions established by Government Code section 71807; and
- Two certified or registered court interpreters in a language other than Spanish, working in the trial courts as independent contractors or in an educational institution.

There are also four advisory non-voting positions, each offering a perspective not represented by the voting members. They currently are:

- A representative of the American Sign Language (ASL) community;
- A representative of court users of interpreter services, such as a public defender, legal aid attorney, or other public advocate;
- A representative familiar with the hands-on supervision of day-to-day court interpreter operations; and
- A representative with legal experience within the court (This position has also been held by a representative in the field of interpreter education)

Subgroups/Working Groups: *[List the names of each subgroup/working group, including groups made up exclusively of advisory body members and joint groups with other advisory bodies, and provide additional information about the subgroups/working groups in Section IV below. To request approval for the creation of a new subgroup/working group, include "new" before the name of the proposed subgroup/working group and describe its purpose and membership in section IV below.[1]]*

1. **Professional Standards and Ethics** (Established 1999 under name of *Interpreter Standards and Procedures*; suspended activities in 2013; members became part of the Joint Working Group for Language Access)
2. **Language Access Subcommittee** (approved 2013; suspended activities in 2013; members became part of the Joint Working Group for Language Access)

[1] California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

Advisory Body's Key Objectives for 2015: (May change due to possible directives/assignments from the Language Access Plan Implementation Task Force)

1. Maintain performance standards of current interpreters by developing a means of fairly and consistently assessing court interpreter knowledge, skills and abilities in the courtroom, per Rule of Court 2.891, and by developing procedures through which the quality and accuracy of an interpreter's skills and adherence to ethical requirements are fairly reviewed and assessed. (Upon completion of this objective, move to the next step, establishing grounds and procedures for revocation of certification or registration and removal of interpreter from the Master List.)
2. Conduct comprehensive evaluation of existing Rules of Court 2.893, and Judicial Council INT forms. Recommend appropriate revisions to the current rules and forms.
3. Complete review and submit proposed changes for Evidence Code 754 to PCLC.
4. **New as of April 16, 2015** Develop and recommend a policy on the de-designation of previously designated languages whose use in the courts has declined, and consider the de-designation of Japanese and Portuguese as recommended in the *2015 Language Need and Interpreter Use Study.*

In addition, the following projects have been identified by other advisory committees naming CIAP as resources. CIAP will provide consultation as required on the following.

5. Consult with the Court Technology Advisory Committee on Video Remote Technology.
6. Consult with Civil and Small Claims Committee on Request for Interpreter in Civil Action Forms.

Objectives 1-2 are anticipated to take two years to complete; as they may require revising existing rules of court and Judicial Council forms.

II. ADVISORY BODY PROJECTS

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	A) Research, develop and recommend method and means by which a biennial periodic review on court interpreter skills can be fairly and consistently assessed throughout the courts. (Rule of Court 2.891) May include but is not limited to: • Research professional associations, licensing entities, and other organizations that utilize interpreters to identify methods for assessing performance. • Work with the Court Executives Advisory Committee (CEAC) on the assessment of research findings and develop appropriate review processes, procedures and	1	**Judicial Council Direction:** GC §68562 (d) The Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. The Judicial Council shall adopt standards of professional conduct for court interpreters GC§68564 (f) A procedure for Judicial Council and local court review of each court interpreter's skills and for reporting to the certification entity the results of the review Judicial Branch Strategic Plan Goal IV – Quality of Justice and Service to the Public Operational Objective 1. Foster excellence in public service to ensure that all court users receive satisfactory	Ongoing, completion of Project 1A: anticipated late 2016.	Recommended processes, procedures and tools for courts to implement Rule of Court 2.891 consistently and fairly. ***Note**: This project will be fully informed by: GC§71811 Trial Court Interpreter Employment and Labor Relations Act, and regional Memoranda of Understanding.*

[2] All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

[3] For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	tools. **Subgroup: Professional Standards and Ethics** Upon completion of the above project, (late 2016) which the courts have communicated and identified as a priority, CIAP will undertake the next step as follows: B) Determine criteria and clear standards that establish grounds for permanent revocation of an interpreters' certified or registered status, warranting removal from the Master List; including a comprehensive review and appeal procedure. **Rationale**: There has been a standing need for the Judicial Council to adopt policies and criteria for permanent revocation of certified or registered status and removal of the interpreter from the Master List. Currently, interpreters are removed from		services and outcomes. **Origin of Project**: Language Access Plan (LAP)[4] recommendation 64: *Develop a procedure by which the quality and accuracy of an interpreter's skills and adherence to ethical requirements can be reviewed including a determination of whether California Rule of Court 2.891 should be amended, repealed, or remain in place.* Rule of Court 2.891 *Periodic Review of Court Interpreter Skills and Professional Conduct* calls for biennial review of court interpreters by courts. Courts have identified the need for recommendations to carry out rule 2.891 as a critical priority. **Resources:** CEAC, LERU/Legal Services, Court Human Resources, Language Access Plan Implementation Taskforce, and other stakeholders as needed for consultative purposes. **Key Objective Supported:** Maintain	Projected to commence early 2017 with a projected completion of December 2018	

[4] LAP refers to the *Strategic Plan for Language Access in the California Courts*

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	the Master List, but may re-qualify, only if they fail to complete annual compliance requirements.		performance standards of current interpreters by developing a means of fairly and consistently assessing court interpreter knowledge, skills and abilities in the courtroom, per Rule of Court 2.891, and by developing procedures through which the quality and accuracy of an interpreter's skills and adherence to ethical requirements are fairly reviewed and assessed.		
2	Undertake a comprehensive evaluation of existing Rule of Court (2.893) and Judicial Council INT forms and instructions, and recommend any appropriate revisions. Investigate whether Rule of Court 2.893 should be amended, consider the possible scope of amendments, and make recommendations accordingly. (As per Recommendation 70 in the LAP.) **Subgroup: Language Access**	1(b)	**Judicial Council Direction:** GC §68561 requires the use of certified and registered interpreters and outlines the process for provisional qualification of a non-certified /non-registered. Effective January 1, 2015, legislative changes expanded the information required on the record. (Relates to LAP Recommendation 19) Rule of Court 2.893 Appointment of noncertified interpreters in criminal cases and juvenile delinquency proceedings. Judicial Branch Strategic Plan Goal I Access, Fairness, and Diversity Operational Objective 5 Increase	January 2017	Provide recommendations on ways Rule of Court 2.893 and Judicial Council INT Forms and Instructions should be amended.

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; increase the availability of language-assistance services to all court users. **Origin of Project**: AB 2370 (Stats. 2014, ch. 424; effective January 1, 2015) expanded upon the previous GC 68561 by requiring that certain statements be made on the record whenever an interpreter interprets in a court proceeding, including statements that confirm that the court is following the procedures for provisional qualification. LAP Recommendation 9: Proposed amendments to this rule and the INT forms. **Resources:** TCPJAC, CEAC, Chairs of the Bargaining Regions, Court Subject Matter Experts, Legal Services, Human Resources Labor Relations Unit, Language Access Plan Implementation Task Force.		

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: Conduct comprehensive evaluation of existing Rule of Court 2.893, and Judicial Council INT forms. Recommend appropriate revisions to the current rules and forms.		
3	Develop Policy recommendation(s) to update Evidence Code 754. Update to include parallel provisional qualification language in addition to terminology updates and clarifications in the Code. Consider additional changes, formally respond to commentators and determine the need to go out for additional public comment. **Subgroup: Language Access**	1(f)	Strategic Plan Goal I Access, Fairness and Diversity Operational Plan Objective 2 Identify and Eliminate barriers to court access at all levels of service; insure interactions with the court are understandable, convenient and perceived as fair. **Origin of Project**: Continuation of work that commenced with the 2012 Annual Agenda arising from selected courts that expressed concern to leadership about ASL interpreter shortages and the need for provisional qualification. [Rules and Forms Proposals Priority Level:]1(f)	Proposed language has been developed and was posted for public comment. Extensive work with stakeholders ensued following review of public comment. Submit to Governmental Affairs in Fall 2015 for PCLC consideration.	Have a proposed amended version of Evidence Code 754, and affected INT forms and Rules, ready for submission to Judicial Council to consider for legislative sponsorship.

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
4	**New:** Develop and recommend a policy on the de-designation of previously designated languages whose use in the courts has declined and consider the de-designation of Japanese and Portuguese. CIAP to review the recommendation made in the 2015 Language Need and Interpreter Use Study to consider de-certification of Japanese and Portuguese. **Sub-group:** Ad-Hoc group to be assigned	2	**Judicial Council Direction:** Strategic Plan Goal: Goal I – Access , Fairness & Diversity Operational Plan Objective: Objective 2. Identify and eliminate barrier to court access at all levels of service; ensure interactions with the court are understandable, convenient and perceived as fair Origin of Project: A result of the 2015 Language Need and Interpreter Use Study.	October 2015	Recommend to the Judicial Council a comprehensive policy on criteria for determination of de-designation of languages.
5	**Consultative Only:** Consult with Court Technology Advisory Committee (name changing to ITAC in July) and Judicial Council Technology Committee in the execution of a Video Remote Interpreting pilot project for spoken languages. CIAP cannot serve as the lead, and cannot commit to committee or staff resources on an ongoing basis.	1	**Judicial Council Direction:** Component of the Chief Justice's "Access 3D" initiative that highlights physical, remote, and equal access to the justice system. The Information Technology Committee identified this project on their current Annual Agenda as follows: Tactical Plan for Technology: Courthouse Video Connectivity, p.22 (Tactical Plan; carryover from	December 2016 (per CTAC)	Provide consultation services. Outcomes as stated in CTAC's Annual Agenda are: Technical Standards Implementation of VRI Pilot Program Rule Proposal

#	Project[2]	Priority[3]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Annual Agenda 2014; notice from JC Legal Services regarding the pilot program; member recommendation) **Origin of Project**: LAP recommendation 16: *The Judicial Council should conduct a pilot project, in alignment with the Judicial Branch's Tactical Plan for Technology 2014-2016. This pilot should, to the extent possible, collect relevant data on: due process issues, participant satisfaction, whether remote interpreting increases the use of certified and registered interpreters as opposed to provisionally qualified interpreters, the effectiveness of a variety of available technologies (for both consecutive and simultaneous interpretation), and a cost-benefit analysis.*		
6	**Consultative Only:** Consult with the Civil and Small Claims Advisory Committee on the new form for requesting an interpreter. This would be consultative only and CIAP would not be the lead and cannot commit committee or staff resources on an ongoing basis.	2	**Origin of Project:** The Judicial Council directed the Civil and Small Claims Advisory Committee to create a new form for parties to use to request court interpreters in civil matters; *Reques*t *for Court Interpreter, Civil Actions,* the form will be consistent with the requirements of AB 1657. Initial Public comments were received (January 23, 2015)	December 2015	Finalized form for request for interpreter services for civil matters.

III. STATUS OF 2014 PROJECTS:

#	Project	Completion Date/Status
1	Continue to develop and complete the Comprehensive California Language Access Plan	Complete – Final plan was adopted by Judicial Council on January 22, 2015
2	Review and address public comment to proposed changes for Evidence Code 754.	Further review required; identified as Project # 4 on the 2014 Annual Agenda, and Project number #3 on this Annual Agenda.
3	Conduct Legislatively Mandated 2015 Interpreter Need and Language Use Study(GC §68563)	Complete by June 2015— The 2015 Language Need and Use Study will be finalized and reviewed by CIAP on April 16, 2015, and is scheduled for review and approval by the Judicial Council (June 2015) prior to submission to the Governor and Legislature.

IV. Subgroups/Working Groups – Detail (To be completed once determine subgroup structure and assignments)

Subgroups/Working Groups:

Subgroup or working group name: Professional Standards and Ethics

Purpose of subgroup or working group: Phase 1: Maintain performance standards of current interpreters by developing a means of fairly and consistently assessing court interpreter knowledge, skills and abilities in the courtroom, per Rule of Court 2.891, and by developing procedures through which the quality and accuracy of an interpreter's skills and adherence to ethical requirements are fairly reviewed and assessed. Upon completion, subgroup will undertake phase 2, establishing grounds and procedures for revocation of certification or registration and removal of interpreter from the Master List.

Number of advisory body members on the subgroup or working group:8 members (includes 1 advisory member)

Number and description of additional members (not on this advisory body):NA

Date formed: 1999

Number of meetings or how often the subgroup or working group meets: 4-6x per year (once in person with entire CIAP Body)

Ongoing or date work is expected to be completed: Phase 1, Late 2016 or early 2017

Subgroup or working group name: Language Access

Purpose of subgroup or working group: Conduct comprehensive evaluation of existing Rules of Court 2.893, and Judicial Council INT forms. Recommend appropriate revisions to the current rules and forms. Complete review and submit proposed changes for Evidence Code 754 to PCLC in Fall of 2015.

Number of advisory body members on the subgroup or working group:7 member (includes 3 advisory members)

Number and description of additional members (not on this advisory body):NA

Date formed: 2013

Number of meetings or how often the subgroup or working group meets: 4-6x per year (once in person with entire CIAP Body)

Ongoing or date work is expected to be completed: EC754 work December 2015; balance January 2017

Note: The following projects have been identified by other advisory committees naming CIAP as resources. CIAP will provide consultation as required on the following; CIAP cannot commit committee or staff resources on an ongoing basis.

- Consult with the Court Technology Advisory Committee on Video Remote Technology.
- Consult with Civil and Small Claims Committee on Request for Interpreter in Civil Action Forms.

As formed by the Chief on January 22, 2015: Language Access Plan Implementation Task Force

Members of the Court Interpreters Advisory Panel appointed to the Implementation Task Force on March 4, 2015,chaired by Associate Supreme Court Justice Mariano Fiorentino-Cuéllar

Hon. Steven K. Austin, Chair, Court Interpreters Advisory Panel

Hon. Miguel Márquez

Hon. Manuel Covarrubias (appointed vice-chair of the Implementation Task Force)

Ms. Ivette Peña (CIAP Advisory Member)

(In addition to judicial branch appointees, nominations are currently being solicited for interpreters and community stakeholders.)

2015

Language Need and Interpreter Use Study

National Center for State Courts

For more information on the California Language Access Support Program (CLASP), please contact:
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2015 Language Need and Interpreter Use Study

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Executive Summary

Purpose

As the policymaking body for the judiciary, the Judicial Council of California is responsible to provide direction for the fair and impartial administration of justice in the state courts of California. The provision of language access services is a fundamental right guaranteed by the California Constitution[1] that aims to ensure equal access to justice for litigants with limited English proficiency. Government Code § 68563 requires that the Judicial Council conduct a study of language and interpreter use in the trial courts every five years and report its findings to the Governor and the Legislature.[2]

The purpose of this report is to provide the Judicial Council with a comprehensive report on interpreter use in spoken languages for the period 2009-2013 and to provide the information on future language need required to consider changes to the designation of languages for certification.

Key Findings

Part One: Interpreter Use in Required Proceedings

- Over one million service days of interpretation were provided in the state courts during the study period.[3] The total number of interpreter service days declined about 6 percent over the study period, 2009-2013, although the pattern varied slightly by region. During the same time, filings of cases for which interpreters are required declined by 21 percent, suggesting that a high level of interpreter services was maintained during this period.

- Interpreter service days were concentrated in Region 1 (which includes Los Angeles), which provided about one-third of the total. The remaining two-thirds was divided almost evenly across the remaining three regions.

- Spanish accounted for 72 percent of all interpretation in the state courts during the study period. No other language accounted for more than 4 percent of the remaining service days.

- While some languages are interpreted in significant proportions in all regions (e.g., Spanish, Cantonese, Tagalog), others are concentrated in one or two regions (e.g., Arabic, Armenian [all types], Punjabi).

- Statewide, the vast majority of service day assignments are full day sessions (71 percent), although this pattern varies by region.

- The proportion of service days provided by interpreters who are court employees remained relatively constant at about two-thirds of the total.

[1] Cal. Const., Article I § 14.

[2] Cal. Gov. Code § 68563, accessed at http://codes.lp.findlaw.com/cacode/GOV/1/8/2/4/s68563

[3] A service day is an assignment to interpret one or more court proceedings completed by a staff (employee) or contract interpreter. A service day can be a full, half-day, or night session.

- About three-quarters of the contractor interpreters who provided service during the study period were certified or registered interpreters.

- Misdemeanor cases and Felony cases account for about half of all service days.

Part Two: Future Language Need

Modeling of future language need employs three primary factors: changes in the Limited English Proficient (LEP) populations, changes in filings of new cases, and changes in interpreter service days by language. Given that a primary purpose of the future need analysis is to classify languages for possible designation or de-designation, the analysis focuses on the 19 most frequently occurring languages. Of these 19 languages, 15 are currently designated.

Based on review of trends in caseload and LEP populations and patterns of use of court interpreter services during the study period, and using the benchmark of 2,000 annual service days of use in the courts for designation, the following recommendations are made for consideration by the Judicial Council:

- Recommendation 1: The Judicial Council should retain the classification of Arabic, Eastern Armenian, Western Armenian, Cantonese, Khmer, Korean, Mandarin, Punjabi, Russian, Spanish, Tagalog, and Vietnamese as designated languages with established certification programs.

- Recommendation 2: The Judicial Council should continue the classification of Farsi as a designated language and should establish a certification program for testing and certifying court interpreters in this language.

- Recommendation 3: The Judicial Council should consider the de-designation of the Japanese language.

- Recommendation 4: The Judicial Council should consider the de-designation of the Portuguese language.

- Recommendation 5: The Judicial Council should monitor the usage of the Hmong, Lao, and Romanian languages for possible future designation.

bienvenidos

Part One: Interpreter Use in Required Proceedings

I. Introduction

Statewide administrative oversight of the provision of court interpreters is the responsibility of the Court Language Access Support Program (CLASP), which is part of the Judicial Council's Court Operations Service, Operations and Programs Division. The CLASP is charged with managing the testing and certification of court interpreters, as well as their training and continuing education and professional development requirements.[4]

The CLASP staff works under the direction of the Judicial Council and its Court Interpreters Advisory Panel (CIAP), which "assists the Judicial Council with the advancement of language access to the courts. The panel makes recommendations to the council on policies and procedures including but not limited to, interpreter use and need, certification, registration, and professional conduct."[5] As part of that requirement, this report was reviewed by the CIAP as well as by staff of the CLASP prior to submission to the Judicial Council.

The current study evaluates the service days[6] utilized for the provision of court interpreter services for these required case types[7]:

- Traffic Infraction
- Non-traffic Infraction
- Misdemeanor (Traffic and Non-Traffic)
- Felony
- Delinquency
- Dependency
- Domestic Violence (including Elder Abuse)
- Paternity (where protection order is sought)
- Dissolution (where protection order is sought)
- Legal Separation (where protection order is sought)
- Nullity (where protection order is sought)

Data on interpreter use from FY 09-10 through FY 12-13 are analyzed along a number of dimensions, including:

- Region
- Language

[4] See http://www.courts.ca.gov/documents/Fact_Sheet-_Court_Interpreters.pdf for additional details.

[5] See http://www.courts.ca.gov/programs-interpreters.htm, accessed April 24, 2014 for additional background.

[6] A service day is an assignment to interpret one or more court proceedings completed by a staff (employee) or contract interpreter. A service day can be a full, half-day or night session.

[7] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014 for additional information.

- Session type
- Interpreter employment status
- Interpreter certification status
- Case type

A Brief Description of the Organization of Court Interpreter Services

Court interpreters are provided to litigants involved in any of the required case types; trial court expenditures for these interpreter services are reimbursed by the Trial Court Trust Fund Program 45.45 appropriation.[8]

Court interpreters work either as superior court employees or as independent contractors. Compensation for employees is set by local contracts and pay scales, while compensation rates for contract interpreters is set by the Judicial Council, which determines rates for full-day, half-day, and night sessions, while also allowing for local flexibility.

For collective bargaining and some administrative purposes, court interpreters working as employees in the superior courts of California are grouped into four regions. These regions correspond to appellate districts, although two of the four regions combine two appellate districts into one region. See the adjacent map of the four regions. Staff interpreters can be cross-assigned between courts within a region as well as between courts in different regions, according to the manner specified in each region's memorandum of understanding (MOU).[9]

Court interpreters of spoken languages interpret one or more of the more than 200 languages spoken in California. The languages most heavily used are "designated" and interpreters of those languages must pass both a written examination in English and a bilingual interpreting examination in their non-English spoken language to become certified court interpreters. The current designated languages for which interpreters may be certified are Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.[10]

For languages that are not "designated," interpreters are classified as registered court interpreters after passing a written examination and oral proficiency examination in English and an oral proficiency examination in their non-English language. Bilingual interpreting examinations are not developed for languages that are not "designated."

Interpreters who do not undertake and pass one of these examination routes are considered noncertified/nonregistered for the purposes of this report.

[8] At its January 23, 2014 business meeting, the Judicial Council amended the policy to allow unexpended funds to be used for additional court proceedings. See http://www.courts.ca.gov/documents/jc-20140123-itemD.pdf

[9] Note that the superior courts in the counties of Solano and Ventura do not belong to one of the regions. However, for purposes of analysis of interpreter use and need throughout this report, the Superior Court of California, County of Ventura, is considered part of Region 1, and the Superior Court of California, County of Solano, is considered part of Region 2.

[10] Farsi was designated effective January 1, 2011, thus a program for testing and certifying Farsi interpreters did not exist during the study period of this report. (See Judicial Council: Fact Sheet: Court Interpreters Program, p. 3 (March 2013)).

Court Interpreter Region Map

Data Sources for Court Interpreter Services

The primary sources of data for this study include fiscal data from the Program 45.45 expenditure records for court interpreter employees and contractors for FY 09-10 through FY 12-13 for all 58 superior courts as well as a variety of data sources recording the use of interpreters that are summarized in Table 1 below.

Because interpreter assignments are not fully reported by the Court Interpreter Data Collection System (CIDCS) and other information systems used in superior courts, expenditure data were used to weight the assignment data up to be fully representative of the interpreter services provided. A full description of the methodology employed in creating the master data set for this analysis is contained in Appendix A.

Table 1. Data Sources on Interpreter Use

Data Source	Region 1	Region 2		Region 3		Region 4
Court Interpreter Data Collection System (CIDCS)	Los Angeles[a] San Luis Obispo Santa Barbara Ventura[b]	Alameda Contra Costa Del Norte Humboldt Lake Marin Mendocino Monterey	San Benito San Francisco San Mateo Santa Clara Santa Cruz Solano[b] Sonoma	Amador Butte Calaveras Colusa El Dorado Fresno Glenn Kern Kings Lassen Madera Mariposa Merced	Placer Plumas Sacramento San Joaquin Shasta Siskiyou Stanislaus Sutter Tehama Tulare Tuolumne Yolo Yuba	Imperial Riverside San Bernardino San Diego
FTE Position Tallies	Los Angeles[a]					
Reporter Interpreter Tracking System (RITS)						Orange[c]
Vision						Orange[c]
Independent Data Systems[d]		San Francisco	Stanislaus	Amador Nevada	Sacramento	
No Data Source		Napa		Alpine Modoc Mono	Sierra Trinity	Inyo
Phoenix (Expenditure Data)	All	All		All		All

[a] Los Angeles' Superior Court entered a small number of grant-funded, non-Program 45.45 interpreter assignments into CIDCS and provided aggregate service positions staffed by language and location.

[b] For purposes of analysis of interpreter use and need throughout this report, the Superior Court of California, County of Ventura, is considered part of Region 1, and the Superior Court of California, County of Solano, is considered part of Region 2.

[c] The Superior Court in Orange County uses RITS for scheduled interpreter assignments and Vision to record certain completed interpreter assignments.

[d] Several courts provided interpretation data separately to supplement or substitute for CIDCS data.

II. Statewide and Regional Interpreter Use in Spoken Languages

Overview

California's superior courts provided over one million service days of interpretation services in the required proceedings during the study period, FY 09-10 through FY 12-13. California tracks interpreter use through the number of service days, based on expenditure data. For the purpose of this report, a service day is defined as a completed assignment in which interpretation has been conducted in one or more required court proceedings. A service day can consist of interpretation for one or more cases, and can be completed as either a full-day, half-day, or night session. By examining the specific profile of each court's staff and contract interpreter service days, and the specific rates of pay in use in each region during the study period, expenditure data and assignment data for each court was used to estimate the number of total service days completed in each court. It is important to understand that a service day does not measure the actual time spent in providing interpreter services or interpreter workload; rather, it is a measure of interpreter service as reflected in expenditures.[11]

The statewide and regional total service days by year are reported below in Table 2. Region 1, which includes Los Angeles, accounts for approximately one-third of these service days. Region 4, which includes Orange and San Diego, accounts for an additional one-quarter of the total. The balance of these service days is provided by Region 2 (22 percent) and Region 3 (19 percent). These proportions closely mirror those reported in the previous study period, 2004-2008. The total number of service days declined about 6 percent over this four-year period, with the largest decrease occurring in Region 1 (10 percent), followed by Region 3 (9 percent), and Region 4 (3 percent). In Region 2, on average there was no change in the number of service days during this period.

Table 2. Total Service Days, Required Proceedings, by Region[12]

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Region 1	95,672	88,972	88,645	86,115	359,404	34%
Region 2	59,828	57,418	60,527	59,681	237,455	22%
Region 3	50,553	53,366	50,893	45,838	200,650	19%
Region 4	64,079	65,492	66,070	62,366	258,008	24%
Statewide	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	**100%**

[11] See Appendix A for a more detailed discussion of the methodology used to combine expenditure data with data on assignments.

[12] Statistics reported in this and all subsequent tables in this report are estimated based on weighted counts as well as estimates for courts that did not report through the CIDCS information system. See Appendix A for a detailed explanation.

This modest decline is not surprising, since during this same time period the total number of cases filed statewide for the required case types declined by about 21 percent as shown in Table 3 below.[13] Assuming that the proportion of required case types requiring an interpreter remains constant as a share of the total caseload, the fact that the rate of decline of service days of interpretation provided in required case types was less than the rate of decline in total number of required case types suggests that provision of interpreter service has been maintained and even possibly improved during this time period. An analysis of the reasons for declining filings of required case types is beyond the scope of this report, but the decline may be linked to factors such as the decline in crime rates and the reduction in budgets and services provided by all justice system partners, including the courts.

Table 3. Total Filings, Required Case Types

	2009	2010	2011	2012
Total Filings, Required Case Types	8,525,306	8,136,946	7,385,198	6,716,548
4-year percent change				**-21%**

Service Days by Language

The statewide totals by language for the study period FY 09-10 through FY 12-13 are shown in Table 4 as well as the percentage of all service days each language makes up of the total. The overall ranking of the languages has remained largely the same as reported during the previous study period (2004-2008). Not surprisingly, Spanish remains the primary language in which interpretation was provided, representing about 72 percent of all interpreter service days. The remaining interpreter service days of spoken language interpretation are divided across a large number of languages, each of which accounts for less than 4 percent of the total service days.

[13] Caseload estimates provided by the Office of Court Research, Court Operations Services, Operations and Programs Division, Judicial Council of California. Case types in all information systems documenting interpreter use do not align completely, and for that reason these statistics should be considered estimates.

Table 4. Total Service Days, 30 Most-Interpreted Spoken Languages

Language	Total	Percent
Spanish	759,409	71.9%
Vietnamese	40,711	3.9%
Korean	25,568	2.4%
Mandarin	22,966	2.2%
Farsi	18,927	1.8%
Cantonese	17,605	1.7%
Russian	17,262	1.6%
Tagalog	14,606	1.4%
Arabic	14,558	1.4%
Punjabi	13,105	1.2%
Khmer	9,864	0.9%
Japanese	6,872	0.7%
Hmong	6,755	0.6%
Lao	5,990	0.6%
Romanian	4,591	0.4%
Hindi	4,080	0.4%
Armenian (unknown)	3,899	0.4%
Armenian, Eastern	3,742	0.4%
Tongan	3,351	0.3%
Portuguese	3,283	0.3%
Armenian, Western	3,019	0.3%
Pashto	2,457	0.2%
Samoan	2,292	0.2%
Thai	2,091	0.2%
Amharic	2,051	0.2%
Slovak	1,817	0.2%
French	1,741	0.2%
Mongolian	1,585	0.2%
Mien	1,572	0.1%
Mixteco	1,527	0.1%
Other/Unknown	38,222	3.6%
Total	**1,055,516**	**100.0%**

Table 5 reports the number of service days in required proceedings per year for the 30 most frequently interpreted spoken languages. The annual total number of service days shown at the bottom of each column reflects some year-to-year variation, with an overall slight decline of about 6 percent from FY 09-10 to FY 12-13, from 270,133 to 254,001 service days. As noted above, this is consistent with the overall decline in the caseload for required case types throughout the state.

Languages that appear to have experienced slight increases in service days include Korean, Mandarin, Cantonese, Farsi, and Arabic. On the other hand, Hmong, Lao, and Hindi appear to have experienced slight declines. However, caution must be exercised to avoid over-interpreting what may be the result of inconsistencies in reporting of these data within and among regions.

Table 5. Total Service Days, 30 Most-Interpreted Spoken Languages

	Service Days				
Language	**FY09-10**	**FY10-11**	**FY11-12**	**FY12-13**	**Total**
Spanish	196,981	192,549	191,196	178,683	759,409
Vietnamese	9,686	10,595	10,539	9,891	40,711
Korean	6,048	6,392	6,279	6,849	25,568
Mandarin	4,824	5,242	6,217	6,683	22,966
Farsi	4,745	4,343	4,550	5,289	18,927
Cantonese	4,020	4,313	4,640	4,633	17,606
Russian	4,086	4,065	4,610	4,500	17,262
Tagalog	4,170	3,502	3,583	3,351	14,606
Arabic	2,914	3,163	3,809	4,673	14,558
Punjabi	4,536	2,837	2,983	2,748	13,105
Khmer	2,786	2,425	2,473	2,179	9,864
Japanese	1,970	1,571	1,685	1,646	6,872
Hmong	1,907	1,737	1,527	1,585	6,755
Lao	1,705	1,636	1,269	1,379	5,990
Romanian	1,041	1,136	1,189	1,225	4,591
Hindi	1,509	964	972	635	4,080
Armenian (unknown)	839	646	818	1,597	3,899
Armenian, Eastern	1,036	897	905	904	3,742
Tongan	1,814	423	683	431	3,351
Portuguese	772	739	790	982	3,283
Armenian, Western	924	731	674	690	3,019
Pashto	752	695	516	494	2,457
Samoan	558	624	661	450	2,292
Thai	600	549	403	540	2,091
Amharic	352	456	472	771	2,051
Slovak	405	505	468	439	1,817
French	329	238	345	828	1,741
Mongolian	343	247	394	601	1,585
Mien	393	363	422	394	1,572
Mixteco	405	383	383	356	1,527
Other and Unknown	7,683	11,283	10,681	8,575	38,222
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**

The statewide trends observed in Table 5 can be further understood by examining important regional differences, which can be seen in Table 6 adjacent. Table 6 reports the percentage of the statewide total for each interpreted language that is provided in each region in required proceedings. Here it must be noted, as was the case in the previous study period, that the statistical method required to weight the assignment data may overstate the service days provided in languages (typically, languages other than Spanish) that most courts do not typically provide through interpreters who are court employees but rather through the use of contractors). This is because there is some evidence that the CIDCS data generally represent a larger proportion of reported service days for the expenditures for contractors than for employees, and contractors tend to be used for languages other than Spanish.[14] Nonetheless, several observations are worth noting.

Spanish language interpretation is provided in the highest volume in Region 1, which includes Los Angeles. In the other regions, the distribution of Spanish language interpretation is rather even. This table illustrates that while some language communities are somewhat dispersed among the regions (e.g., Spanish, Cantonese, Tagalog), others are concentrated in a specific region (e.g., Arabic in Region 4, Armenian (all types) in Region 1, Punjabi in Region 3).

[14] See Appendix A for a discussion of how assignment data were weighted using expenditure data.

Table 6. Proportion of Reported Language Use by Region, 30 Most-Interpreted Spoken Languages

Language	Region 1	Region 2	Region 3	Region 4	Total
Spanish	40.4%	20.5%	18.6%	20.4%	100%
Vietnamese	12.6%	40.1%	7.9%	39.4%	100%
Korean	34.9%	19.7%	1.5%	43.9%	100%
Mandarin	23.1%	29.0%	2.5%	45.3%	100%
Farsi	21.6%	52.1%	16.5%	9.8%	100%
Cantonese	22.8%	31.2%	10.1%	35.9%	100%
Russian	12.6%	42.7%	8.6%	36.1%	100%
Tagalog	18.6%	18.4%	44.6%	18.4%	100%
Arabic	9.8%	26.3%	6.2%	57.7%	100%
Punjabi	3.1%	29.6%	61.9%	5.4%	100%
Khmer	43.6%	9.1%	21.7%	25.6%	100%
Japanese	1.5%	4.8%	92.0%	1.6%	100%
Hmong	32.8%	20.8%	3.0%	43.4%	100%
Lao	2.7%	9.0%	58.4%	29.8%	100%
Romanian	.1%	4.6%	47.5%	47.8%	100%
Hindi	29.1%	29.3%	4.1%	37.5%	100%
Armenian (unknown)	44.9%	.3%	16.0%	38.7%	100%
Armenian, Eastern	86.4%	1.5%	6.4%	5.7%	100%
Tongan	.5%	65.6%	4.7%	29.3%	100%
Portuguese	7.2%	47.7%	18.5%	26.6%	100%
Armenian, Western	88.1%	.2%	10.6%	1.2%	100%
Pashto	.0%	9.4%	5.6%	85.0%	100%
Samoan	.0%	21.9%	5.0%	73.1%	100%
Thai	22.4%	20.2%	2.9%	54.4%	100%
Amharic	.1%	62.6%	5.3%	32.0%	100%
Slovak	.0%	.5%	98.6%	.8%	100%
French	2.2%	66.4%	.8%	30.6%	100%
Mongolian	.4%	91.8%	4.2%	3.6%	100%
Mien	.0%	20.0%	80.0%	.0%	100%
Mixteco	58.1%	14.4%	24.9%	2.6%	100%
Other/Unknown	1.9%	18.8%	30.9%	48.4%	100%
Total	**34.1%**	**22.5%**	**19.0%**	**24.4%**	**100%**

Service Days by Session Type

Table 7 reports on the number of service days in required proceedings by session type by region and statewide. Statewide, the number and proportion of full-day sessions remained relatively constant at about 71 percent. Half-day sessions account for almost all of the remaining service days, with night sessions making up less than half of one percent of the total. Night sessions are not as commonly conducted throughout the state. In Region 1 night sessions are rare, as was the case during the last reporting period 2004-2008. Regions 2, 3, and 4 make comparatively more use of night sessions, but they remain a very small percentage of the service days in required proceedings.

Table 7. Total Service Days, by Session Type

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Full-day	191,217	191,092	187,912	176,478	746,699	**71%**
Half-day	78,284	73,617	77,753	77,320	306,975	**29%**
Night	632	538	470	203	1,842	**<1%**
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Full-day	85,655	76,814	79,524	76,887	318,880	**89%**
Half-day	10,012	12,158	9,121	9,225	40,516	**11%**
Night	5	0	0	3	8	**<1%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Full-day	24,907	32,343	28,520	24,670	110,441	**47%**
Half-day	34,546	24,783	31,708	34,933	125,970	**53%**
Night	375	292	299	78	1,044	**<1%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Full-day	29,047	28,596	27,875	27,193	112,711	**56%**
Half-day	21,376	24,620	22,929	18,578	87,503	**44%**
Night	130	150	88	68	436	**<1%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Full-day	51,607	53,340	51,992	47,728	204,668	**79%**
Half-day	12,350	12,056	13,995	14,585	52,986	**21%**
Night	122	96	83	53	354	**<1%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

Given the volume of Spanish language interpretation, it is not surprising that Spanish interpretation is mostly conducted with full-day sessions. Table 8 below summarizes the breakdown of session types by Spanish compared to the remaining 30 most-interpreted spoken languages.

Table 8. Distribution of Session Types, by Language

	Full-Day	Half-Day	Night
Spanish	77.3%	22.5%	<1%
Remaining 30 Most Interpreted Spoken Lanugages	50.8%	49.1%	<1%
Other and Unknown	48.6%	51.3%	<1%

Service Days by Employment Status

The employment status of the interpreters statewide remained fairly constant during the reporting period, as measured by the service days provided for required proceedings, shown in Table 9 below. Statewide, employees accounted for about two-thirds (67 percent) of all service days in required proceedings, while contractors accounted for the remainder (33 percent). However, the relative proportion of service days performed by employees and contractors varies by region, and the pattern reported below is largely consistent with that reported in the previous study period. Within Region 1, the service days provided by employees represent about 93 percent of the total; in Region 2, employees provided 63 percent of the total; in Region 3, employees provided 53 percent of the total; finally, in Region 4, employees provided just under half (49 percent) of the total service days.

Within the regions and over the four-year time period, different patterns can be observed. The number of service days provided by employees declined in Region 1 from FY 09-10 to FY 10-11, and again from FY 11-12 to FY 12-13. In Region 2, the number of service days provided by employees rose and peaked in FY 11-12, then declined slightly in FY 12-13. In Region 3, the number of service days provided by employees rose gradually and then declined slightly in the last year, while in Region 4 the employee service days increased in each year, while service days provided by contractors declined.

Table 9. Total Service Days, by Employment Status

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Employees	178,540	176,570	180,958	176,164	712,232	**67%**
Contractors	91,593	88,677	85,177	77,836	343,284	**33%**
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Employees	89,044	82,007	82,129	79,443	332,623	**93%**
Contractors	6,628	6,965	6,516	6,672	26,781	**7%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Employees	36,098	36,266	38,432	37,747	148,544	**63%**
Contractors	23,730	21,151	22,095	21,934	88,910	**37%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Employees	24,879	27,441	27,725	25,652	105,697	**53%**
Contractors	25,674	25,925	23,168	20,186	94,953	**47%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Employees	28,518	30,856	32,672	33,322	125,369	**49%**
Contractors	35,561	34,636	33,398	29,044	132,639	**51%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

Service Days by Certification Status

Table 10 below reports the total service days in required proceedings by certification status of the interpreter providing the service. Statewide, certified or registered interpreters provided about 91 percent of the service days in required proceedings, on average, during the reporting period. Approximately 8 percent of the service days were provided by noncertified, nonregistered interpreters. (The certification status of the interpreter could not be established in the remaining service days, which represent about 1 percent of the total.) While Regions 1 and 4 maintained a relatively constant proportion of service days completed by certified or registered interpreters during the four years covered by this reporting period, in Regions 2 and 3 the proportion of service days completed by certified or registered interpreters increased, by 3 and 10 percent respectively, from FY 09-10 to FY 12-13.

Employment Status and Certification Status in Context

The data in Tables 9 (employee status) and 10 (certification status) can also be used together to examine the employment status of certified/registered interpreters. Table 11A shows the proportion of certified or registered interpreter service days completed by interpreter employees and interpreter contractors. Employees completed 74 percent (712,232 days) of those service days, while interpreter contractors completed 26 percent (252,316).

Table 10. Total Service Days, by Certification Status

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Certified/Registered	243,330	241,074	244,831	235,312	964,548	**91%**
Noncertified/Nonregistered	24,259	21,953	19,482	17,038	82,733	8%
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	1%
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Certified/Registered	95,166	88,486	88,082	85,498	357,232	**99%**
Noncertified/Nonregistered	506	486	563	617	2,171	**1%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Certified/Registered	50,328	47,780	52,968	51,754	202,830	**85%**
Noncertified/Nonregistered	9,500	9,638	7,559	7,927	34,625	**15%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Certified/Registered	38,517	43,740	42,025	39,674	163,956	**82%**
Noncertified/Nonregistered	9,493	7,406	7,046	4,515	28,459	**14%**
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	**4%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Certified/Registered	59,319	61,068	61,756	58,386	240,530	**93%**
Noncertified/Nonregistered	4,760	4,424	4,314	3,980	17,478	**7%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

Table 11B shows that the 252,316 service days completed by certified or registered contract interpreters represent 74 percent of the total service days completed by contractors, a similar proportion to that reported during the previous study period 2004-2008.

Table 11A. Statewide Total Service Days, Certification Status by Employment

	Service Days					
Certified/Registered	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Employees	178,540	176,570	180,958	176,164	712,232	74%
Contractors	64,791	64,504	63,873	59,148	252,316	26%
					964,548	

Table 11B. Statewide Total Service Days, Contractors by Certification Status

	Service Days					
Certification Status	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Certified/Registered	64,791	64,504	63,873	59,148	252,316	74%
Noncertified/Nonregistered	24,259	21,953	19,482	17,038	82,733	24%
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	2%
					343,284	

Service Days by Case Type

Interpreter services are required for a specific set of proceedings, which are reported in Table 12 below. About half of these interpreted proceedings are criminal cases: Misdemeanor cases make-up about 27 percent of all service days and Felony cases represent about 24 percent. Delinquency and Traffic cases comprise the next largest shares (approximately 9 percent each), followed by Paternity (approximately 5 percent) and Dependency (approximately 4 percent). These proportions are similar to those reported in the previous study period, and they remained relatively constant from year to year during this study period. A significant share of the records (19 percent) cannot be attributed to a specific case type due primarily to the overuse of the "Other" case type in CIDCS without the provision of any additional information. Another significant limitation of these data is that the use of interpreters in Dissolution cases for all languages is underreported, because the CIDCS user interface does not include Dissolution as a discrete choice of case type for data entry. Instead, courts must choose "Other" for case type and then manually enter additional text to specify Dissolution. As a result, very few cases appear to be reported, and no conclusions should be drawn about the true proportion of Dissolution cases among the case types in the following tables describing interpreter use by case type.[15]

[15] The term Paternity is used in listing required case types, while the CIDCS user interface list of required case types labels cases as Family (Child Support) and "Other" with a specification of "Family" or "Paternity."

Table 12. Total Service Days, by Case Type[16]

	Service Days					
Case Type	**FY09-10**	**FY10-11**	**FY11-12**	**FY12-13**	**Total**	**Percent**
Misdemeanor	76,881	71,369	67,259	63,922	279,431	26.5%
Felony	68,130	64,723	61,038	58,601	252,493	23.9%
Traffic	25,053	24,387	25,037	24,802	99,280	9.4%
Delinquency	22,630	24,338	23,009	20,531	90,508	8.6%
Paternity	11,944	11,838	13,118	13,074	49,975	4.7%
Dependency	9,584	9,826	9,432	8,614	37,456	3.5%
Infraction	6,421	6,794	7,737	7,328	28,281	2.7%
Domestic Violence	3,398	3,506	3,908	3,963	14,775	1.4%
Dissolution	586	493	438	402	1,919	.2%
Other and Unknown	45,505	47,973	55,158	52,763	201,398	19.1%
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	**100.0%**

Table 13 below shows regional variation in the provision of interpreter services in required proceedings. The proportion of service days used for each case type is relatively consistent across regions.

Table 13. Total Service Days, by Case Type by Region[17]

	Service Days			
Case Type	**Region 1**	**Region 2**	**Region 3**	**Region 4**
Misdemeanor	26%	27%	21%	30%
Felony	27%	24%	23%	21%
Traffic	10%	13%	8%	7%
Delinquency	10%	8%	8%	7%
Paternity	5%	5%	5%	3%
Dependency	4%	4%	2%	4%
Infraction	2%	1%	1%	7%
Domestic Violence	1%	3%	1%	1%
Dissolution	<1%	<1%	<1%	<1%
Other and Unknown	15%	15%	31%	19%
Total	**100%**	**100%**	**100%**	**100%**

[16, 17] Dissolution cases are underreported. See explanation on previous page.

Service Days by Language by Case Type

The provision of interpretation services by language by case type is displayed in Table 14. This table illustrates the proportion of each language's service days that were used by case type. For example, Amharic and Mongolian service days show a high proportion of interpreter service days consumed in Traffic cases. Japanese, Thai, and Tongan stand out for the high proportion of their use in Misdemeanor cases, while Afghani, Armenian, Samoan, and Tagalog do the same for Felony cases. Tongan and Khmer show relatively high shares of their service days in Delinquency cases. Due to problems with incomplete reporting by specific courts, several languages whose use is concentrated in a small number of courts (e.g., Hmong, Lao) have a high proportion of service days whose case type is unknown.

III. Conclusion

The general patterns of interpreter use in the study period FY 09-10 through FY 12-13 resemble those in the previous study period 2004-2008. Generally speaking, trends in populations tend to be gradual, and thus, absent a political or economic catastrophe or natural disaster that displaces large numbers of people geographically, language use and the need for interpreter services also tend to change gradually.

One difference between the previous study and the current one is that the employment status of interpreters appears to have stabilized. During the previous study period, employment of interpreters was evolving, and a shift from contract to employee interpreters was taking place. In this study period, employment appears rather constant, with the notable exception that the overall decline in filing of required case types throughout the state does appear to have resulted in a slight contraction of the number of service days performed by interpreter employees.

This highlights a feature of this study period: the decline in the filing of new cases over time, including cases requiring the use of an interpreter. As noted earlier, the reasons for this decline are beyond the scope of this report, but are most likely related to reduction in the resources and thus the work of law enforcement, prosecutors, social service and other state agencies, as well as the trial courts.

The incomplete and inconsistent nature of the interpreter use data in the various data systems in use throughout the state make it difficult to reliably describe all but the most general changes over time. Nevertheless, at the highest level, the analysis indicates that these data can provide a basic description of interpreter use and, when combined with additional data about population demographics, immigration, and caseload trends, can serve as the basis for estimating future language need on a statewide basis. In the next section, future language need is analyzed, taking into account both population demographics and caseload trends.

Table 14. Proportion of Reported Language Use by Case Type[18]

Language	Misdemeanor	Felony	Traffic	Delinquency	Paternity	Dependency	Infraction	Domestic Violence	Dissolution	Other and Unknown
Spanish	26%	25%	9%	10%	5%	4%	2%	1%	<1%	18%
Vietnamese	32%	26%	7%	5%	5%	3%	7%	1%	<1%	12%
Korean	30%	20%	10%	7%	3%	3%	11%	1%	1%	14%
Mandarin	32%	20%	14%	3%	4%	2%	11%	2%	1%	12%
Cantonese	19%	19%	14%	5%	4%	2%	2%	2%	<1%	34%
Farsi	28%	17%	12%	3%	5%	2%	8%	3%	2%	20%
Tagalog	32%	35%	3%	5%	3%	5%	1%	2%	1%	14%
Russian	20%	14%	9%	4%	3%	2%	2%	1%	<1%	44%
Arabic	26%	15%	9%	4%	4%	7%	9%	4%	2%	19%
Punjabi	25%	19%	8%	3%	3%	1%	1%	4%	<1%	37%
Khmer	25%	24%	6%	14%	4%	5%	2%	1%	<1%	18%
Hmong	8%	29%	4%	9%	5%	4%	1%	<1%	<1%	39%
Japanese	36%	17%	10%	5%	4%	2%	8%	2%	1%	13%
Lao	24%	32%	5%	9%	3%	3%	2%	<1%	<1%	21%
Romanian	24%	13%	2%	3%	2%	2%	4%	1%	<1%	48%
Hindi	33%	24%	7%	6%	4%	6%	4%	4%	<1%	13%
Armenian (unknown)	17%	38%	5%	5%	3%	2%	6%	1%	<1%	23%
Armenian, Eastern	23%	27%	13%	8%	4%	3%	2%	1%	<1%	19%
Tongan	38%	12%	7%	15%	1%	2%	5%	4%	3%	12%
Portuguese	22%	27%	15%	5%	6%	4%	3%	2%	<1%	14%
Armenian, Western	24%	29%	11%	9%	5%	3%	2%	1%	<1%	16%
Pashto	35%	33%	5%	6%	1%	6%	2%	1%	<1%	11%
Samoan	31%	33%	1%	10%	2%	7%	1%	<1%	<1%	16%
Thai	36%	15%	7%	5%	5%	11%	7%	2%	1%	12%
Amharic	22%	24%	22%	1%	9%	5%	2%	3%	<1%	11%
Slovak	1%	0%	1%	<1%	<1%	<1%	<1%	<1%	<1%	99%
French	25%	15%	8%	1%	11%	2%	5%	2%	<1%	30%
Mongolian	33%	12%	27%	<1%	<1%	2%	<1%	4%	<1%	21%
Mien	24%	29%	7%	9%	2%	1%	1%	2%	<1%	26%
Mixteco	51%	24%	3%	9%	1%	6%	2%	3%	<1%	2%
Other/Unknown	30%	17%	10%	9%	2%	5%	6%	1%	1%	18%
Average	**26%**	**24%**	**9%**	**9%**	**5%**	**4%**	**3%**	**1%**	**<1%**	**19%**

[18] Dissolution cases are underreported. See explanation on page 16.

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Part Two: Projecting Future Language Need

I. Introduction

Earlier sections of this report describe the use of interpreters during the period 2009-2013. The purpose of Part II is to produce an estimate of the future need for interpretation statewide in required case types by language drawing on population demographics and caseload filing trends. This analysis is designed to support efforts by the Judicial Council of California in determining whether to classify additional languages as "designated" for the purposes of court interpreter testing and certification as well as to identify languages for possible de-designation over the next five years.

The strength of the California economy provides important context for forecasting the future need for interpreters. In California, the profile of state court activity observed during the period of the current analysis (2009-2013) is likely anomalous because of the negative impact of the recent recession on filings. At the same time, it should be noted that the relationship between the economy and caseloads is not a simple linear one. Caseloads are not always directly correlated to the economy; as the Judicial Council noted in its press release[19] announcing the annual statistical report, some caseloads (e.g., misdemeanors, small claims, most types of unlimited civil) declined, while others (e.g., felony, dependency, and probate cases) increased. Some of the declines preceded the recession, while others appear to have coincided with it. Nevertheless, the purpose of this high-level environmental scan is to establish the context of any future forecast; the question is simply whether the economy (and with it, the state budget) is recovering and will continue to do so, and whether modest growth patterns observed over the last two decades in California's caseloads will again become the norm.

For reasons outlined below, the answer to those questions are most likely yes, and realistic estimates of future need should take into account recent caseload trends in the context of an improving economic picture. As noted in the first section of this report, aggregate state court filings and court interpreter service days both declined over the past four years. This trend is unlikely to continue. Although there is always an inherent risk in economic forecasting, an environmental scan of current thinking on the California economy shows evidence of improving economic performance. For example, the Public Policy Institute of California notes, "California's economy is making a strong recovery from the Great Recession" and advises that the state's "long-term economic prospects are fundamentally strong."[20] Also, the economic forecast to 2017 published by the state's Department of Finance indicates continuous and gradual improvement in major indicators.[21] Likewise, a six-year projection of "gross state product" by the Eberhardt School of Business at the University of the Pacific estimates average annual growth in California of about 3 percent per year, in line with what was observed in the years immediately preceding the recession. A JP Morgan Chase two-year forecast is even more optimistic. Therefore, the upcoming forecasts assume an economic situation characterized by stability and moderate growth.[22]

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[19] See Judicial Council, "Court Filings Decrease in Fiscal Year 2012–2013" press release dated August 12, 2014, at: http://www.courts.ca.gov/26853.htm#sthash.X5sZHKOd.dpuf

[20] Sarah Bohn, California's Future: Economy, published by the Public Policy Institute of California, accessed August 9, 2014 at http://www.ppic.org/content/pubs/report/R_114SBR.pdf

[21] California Department of Finance, California Economic Forecasts, accessed August 21, 2014, at http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Forecasts.htm

[22] See economic forecasts from University of the Pacific's Eberhardt School of Business at http://forecast.pacific.edu/cametroforecast/news%20release%20September%202014.pdf and JP Morgan Chase at https://www.chase.com/content/dam/chasecom/en/commercial-bank/documents/california-economy.pdf

With that in mind, the forecast proceeds in the context of modest recovery and growth in filings. The forecast does not make direct use of economic indicators in the model (e.g., unemployment rates, housing starts, rate of inflation, etc.). Modeling of future language need employs three primary factors: changes in the Limited English Proficient (LEP) populations, changes in filings of new cases, and changes in interpreter service days by language. While movement among these three factors is often associated, there is far from perfect correlation. Said differently, a given increase in LEP population does not always result in a similar increase in filings. And perhaps more importantly for this analysis, a proportional change in LEP population for a specific language does not necessarily translate into the same proportional change for interpreter service days for that language. The fundamental task for projecting future need is appropriately analyzing and integrating these three trends.

The remaining sections in Part II of this report describe the data sources and statistical techniques used to produce the following five-year projections of need. Projections are based on:

- LEP population trends by language
- Caseload trends
- Interpreter service day trends by language

Given that a primary purpose of the future need analysis is to classify languages for possible designation or de-designation, the analysis focuses on the 21 languages most frequently used in the courts (See Table 4 in Part I). These are all the languages where a total of at least 3,000 interpreter service days were recorded during the four-year study period.[23] Moreover, this set of languages includes all languages currently designated as well as those in the pool for potential designation.

II. LEP Population and Language Trends and Projections

Overview of the California Population

California is the most populous state, and has the highest share of foreign-born residents. An excellent source for comprehensive and up-to-date information on language usage is the annual American Community Survey (ACS) published by the U.S. Census Bureau. The ACS employs a monthly series of samples to produce its annual estimates. Given the sampling plan used, the most accurate estimates come from a combined 5-year estimate and these data are therefore used in this analysis. For additional detail on the characteristics of ACS language population data and its unique advantages for the purposes of this study, see Appendix C.

According to the 2008-2012 ACS 5-year estimates, the foreign-born population in California is estimated at 10,104,739 of the total estimated population of 37,325,068, or about 27 percent.[24] This percentage has not changed from that reported in the previous study period (2005-2008).[25] California's total population is projected to continue

[23] It should be noted that, just as during the previous study period, the data are not sufficient to understand the workload of West Armenian and East Armenian separately, and whether one or both languages should continue to be designated. Much of the data in CIDCS was simply labeled "Armenian" and for that reason, along with the fact that the ACS survey data uses a single "Armenian" category, all three categories were combined into a single "Armenian" category. This reduces the 21 top languages to 19 languages.

[24] Selected Characteristics of the Native and Foreign-born Populations, 2008-2012 American Community Survey 5-year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_S0501.

[25] See Table 6.1 on page 87 in 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010.

to grow at a slow but steady rate of 1 percent per year, as it did in the 1990s and 2000s. The pattern established at the end of the twentieth century is expected to persist: domestic migration out of California will largely offset population increase though international immigration to California.[26]

Among the total population age 5 years and older, about 44 percent report speaking a language other than English at home, and approximately 20 percent are estimated to speak English less than "very well." The percentage of households (not individuals) who are considered linguistically isolated is estimated at about 10 percent.[27] These proportions are very similar to those reported in the previous reporting period.[28]

The diversity of languages spoken in California is well documented in the ACS 5-year estimates. For the purposes of this report, three items, used in combination, provide the key information needed. Below are the three specific questions asked on the survey:[29]

- Does this person speak a language other than English at home?
  - Yes
  - No
- If yes, what is this language?
- How well does this person speak English?
  - Very well
  - Well
  - Not well
  - Not at all

Answers to these three survey items are combined in the analysis to derive a measure of the LEP population by language spoken at home (presumed to be the respondent's native language) for those whose self-rated proficiency in English is less than "very well."[30]

For the purposes of this report, the ACS survey items identifying the language spoken at home by those whose proficiency in English is less than "very well" are used to classify the language communities of interest for estimating future interpreter need by language. This decision allows the use of consistently gathered US Census Bureau data and provides comparability with the previous report to the Judicial Council on this topic.

[26] See Population discussion p 46ff in S. Bohn et al., California's Future, Public Policy Institute of California, http://www.ppic.org/content/pubs/report/R_114BKR.pdf, accessed August 4, 2014.

[27] Ibid.

[28] Judicial Council of California, Table 6.1, op. cit.

[29] See U.S. Census Bureau, 2011 American Community Survey facsimile at http://www.census.gov/prod/2013pubs/acs-22.pdf

[30] See definition used and variations described in Migration Policy Institute, LEP Data Brief, Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity, December 2011, accessed through http://www.lep.gov/demog_data/demog_data.html August 8, 2014.

The primary purpose of this analysis is to inform state-level policy on language designation based on projected statewide need in required cases.[31] In building the model of statewide need, this report explicitly documents and incorporates variation in language need at the regional level. ACS data and LEP populations are assembled at the county level and then combined into the four regions for which court interpreter services are organized. The regional analysis shows that, for example as indicated in Table 6 earlier in this report, the population speaking Tongan is concentrated in Region 2, while the Spanish-speaking population is more evenly distributed among all four regions. Regional-level data is then summed to the state level for the purpose of describing statewide language need.

Statewide and Regional Changes in Population and Language Use

The statewide LEP population of California has remained very stable over the period 2009-2012. Table 15 summarizes these data by language spoken at home of the LEP population in the columns under the heading "Statewide ACS." Statewide, the total LEP population speaking the 19 most frequently interpreted languages increased only 0.5 percent during this period. The percentage change is calculated using a weighted average that emphasizes the most recent years of the study period. A weighted average gives greater influence to more recent rates of change in LEP population, while also ensuring long-term trends within each language are incorporated into the model.[32]

Looking at individual languages, the Spanish-speaking population, by far the largest segment of this population, essentially remained stable. The largest statewide gains were registered by LEP speakers of Arabic, followed by LEP speakers of Tongan, Punjabi, and Mandarin. Declines were registered for speakers of Japanese and Portuguese, continuing a trend observed in the previous study period as well. Overall, the statewide pattern is one of relative stability and slow growth for most LEP language populations.

The weighted average percentage change from the study period is used to project the trend for each LEP population by language spoken at home, as shown in the "Statewide Projections" columns in Table 15. Over the next five years, five of the 19 LEP populations have projected growth rates greater than 5 percent; nine populations are projected to grow between 0.5 and 5 percent; three populations are estimated to stay relatively flat with growth rates between -0.5 and +0.5 percent; and two populations are projected to drop by more than -0.5 percent.

To more easily see the forecast for each individual language, the data from Table 15 are displayed in the following figures that show LEP populations by language, actual and projected for the 5 calendar years (CY) following the current study period. Figure 1 shows the statewide total LEP population, along with the LEP population that speaks Spanish at home. The remaining figures show the actual and projected LEP populations grouped by relative size of the LEP populations.

[31] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014 for additional information.

[32] Data beyond FY 12-13 and CY 2012 were not available for caseloads and population, respectively, when this report was prepared. Thus, projections for CY 2013 and FY 13-14 are estimated. For a detailed discussion of methodologies, see Appendix B.

Table 15: LEP Populations, ACS and Projected, by Language Spoken at Home

		Statewide ACS				
Rank	Language	FY09-10	FY10-11	FY11-12	FY12-13	Weighted Average
1	Spanish	4,574,993	4,607,654	4,612,672	4,567,197	-0.3%
2	Vietnamese	281,889	294,973	299,705	308,280	2.7%
3	Korean	211,331	223,352	224,136	224,964	1.2%
4	Mandarin	206,000	223,879	233,671	247,996	6.0%
5	Farsi	68,909	69,557	73,666	73,712	2.2%
6	Cantonese	299,034	306,849	305,999	307,130	0.5%
7	Russian	70,960	72,035	71,961	74,237	1.8%
8	Tagalog	230,062	238,747	243,523	251,001	2.8%
9	Arabic	42,802	45,914	49,355	54,675	9.1%
10	Armenian (all)	82,401	85,338	89,433	92,409	3.9%
11	Punjabi	45,599	46,905	51,172	54,516	6.8%
12	Khmer	36,938	39,263	40,464	40,870	2.6%
13	Japanese	72,047	71,760	68,964	65,847	-3.6%
14	Hmong	30,817	34,695	36,394	36,075	3.3%
15	Lao	18,268	18,328	18,884	18,934	1.2%
16	Romanian	9,008	9,070	8,520	8,897	0.3%
17	Hindi	25,139	27,081	28,047	29,873	5.7%
18	Tongan	3,202	3,486	3,791	4,046	7.8%
19	Portuguese	25,140	24,738	22,684	23,327	-1.6%
	Total	**6,334,539**	**6,443,624**	**6,483,041**	**6,483,986**	**0.5%**
	Other languages	295,759	305,639	313,808	319,827	2.4%

		Statewide Projections				
Rank	Language	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18
1	Spanish	4,551,776	4,536,407	4,521,090	4,505,824	4,490,610
2	Vietnamese	316,723	325,398	334,311	343,467	352,874
3	Korean	227,775	230,622	233,504	236,423	239,377
4	Mandarin	262,801	278,489	295,114	312,731	331,400
5	Farsi	75,302	76,926	78,586	80,281	82,013
6	Cantonese	308,752	310,382	312,021	313,668	315,325
7	Russian	75,573	76,933	78,318	79,727	81,162
8	Tagalog	258,108	265,416	272,931	280,658	288,605
9	Arabic	59,650	65,078	71,000	77,460	84,509
10	Armenian (all)	95,974	99,676	103,521	107,514	111,661
11	Punjabi	58,211	62,156	66,368	70,866	75,669
12	Khmer	41,921	42,998	44,103	45,237	46,400
13	Japanese	63,460	61,160	58,943	56,806	54,747
14	Hmong	37,262	38,489	39,756	41,064	42,416
15	Lao	19,161	19,391	19,623	19,858	20,096
16	Romanian	8,924	8,952	8,979	9,006	9,034
17	Hindi	31,585	33,396	35,310	37,334	39,474
18	Tongan	4,360	4,698	5,063	5,455	5,879
19	Portuguese	22,950	22,579	22,214	21,855	21,501
	Total	**6,520,267**	**6,559,143**	**6,600,751**	**6,645,234**	**6,692,749**
	Other languages	327,524	335,407	343,479	351,746	360,211

Figure 1. LEP Population Trend and Forecast: Total and Spanish

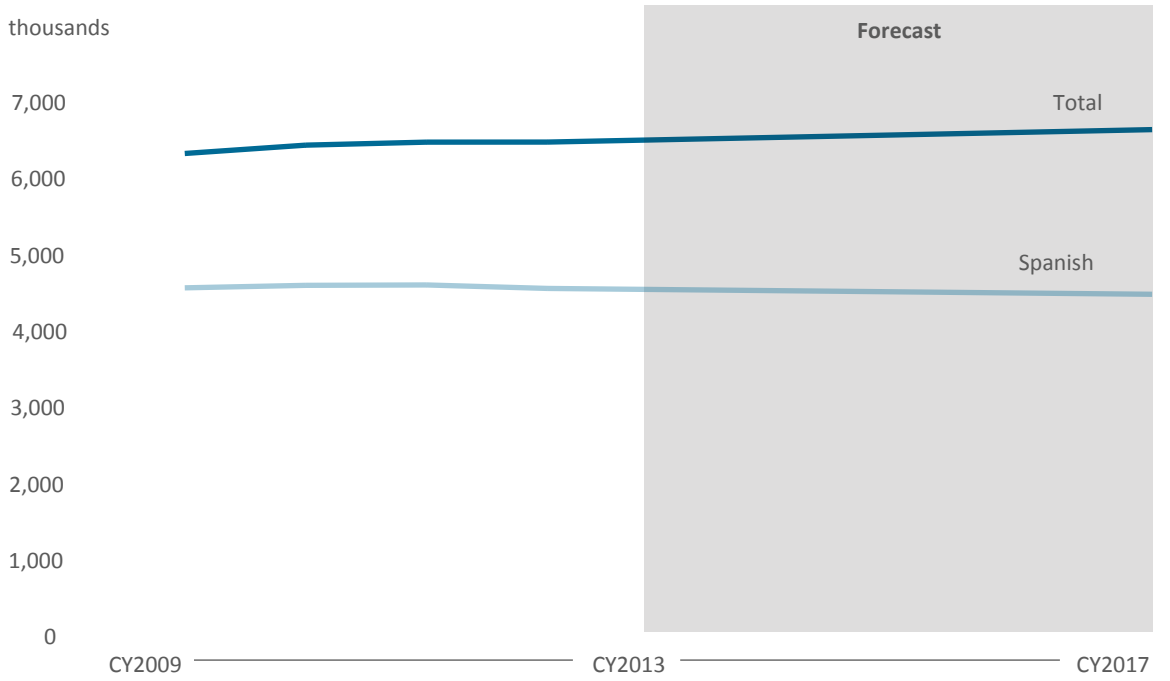


Figure 2. LEP Population Trend and Forecast: Vietnamese, Korean, Mandarin, Cantonese, and Tagalog

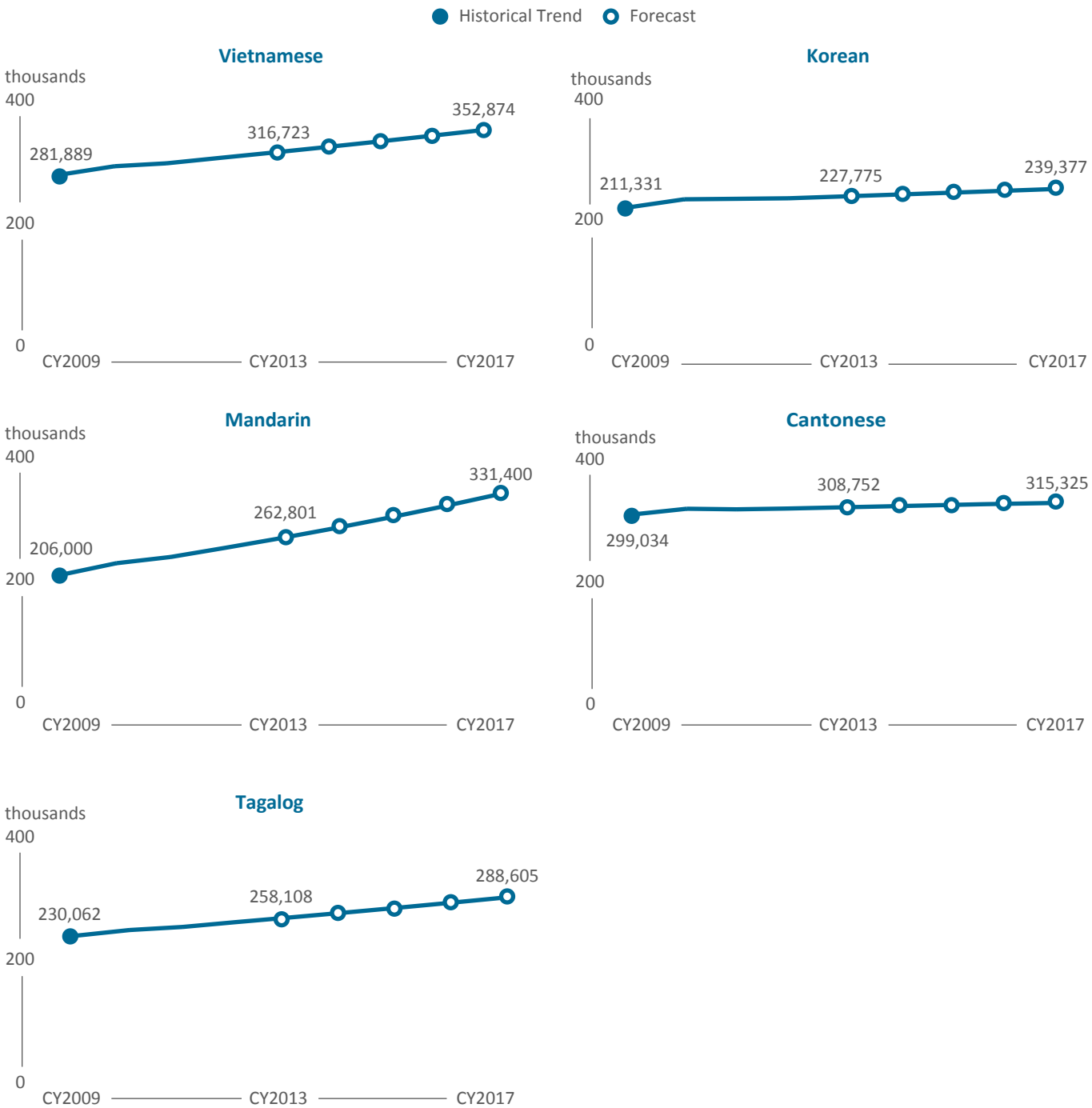


Figure 3. LEP Population Trend and Forecast: Farsi, Russian, Armenian, and Japanese

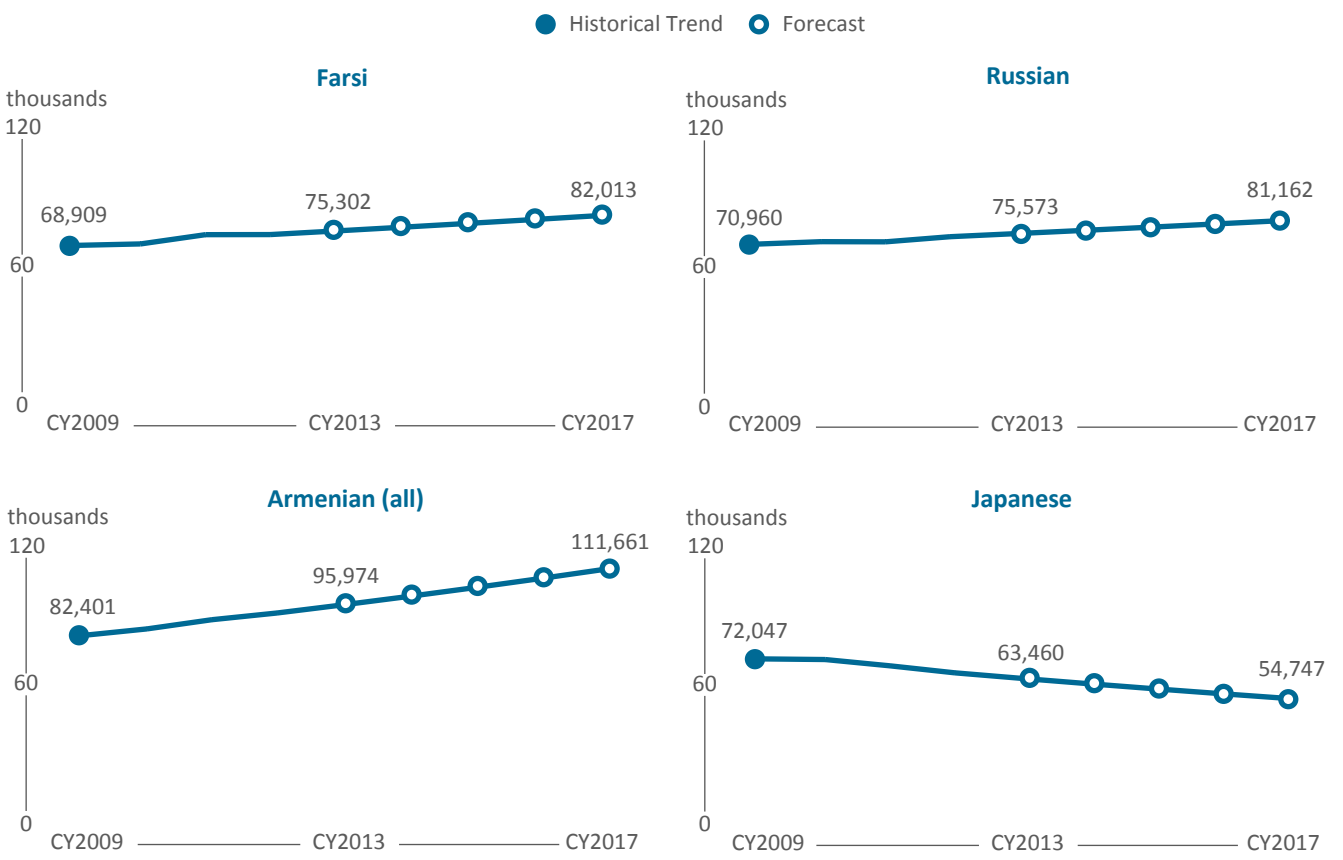


Figure 4. LEP Population Trend and Forecast: Arabic, Punjabi, Khmer, and Hmong

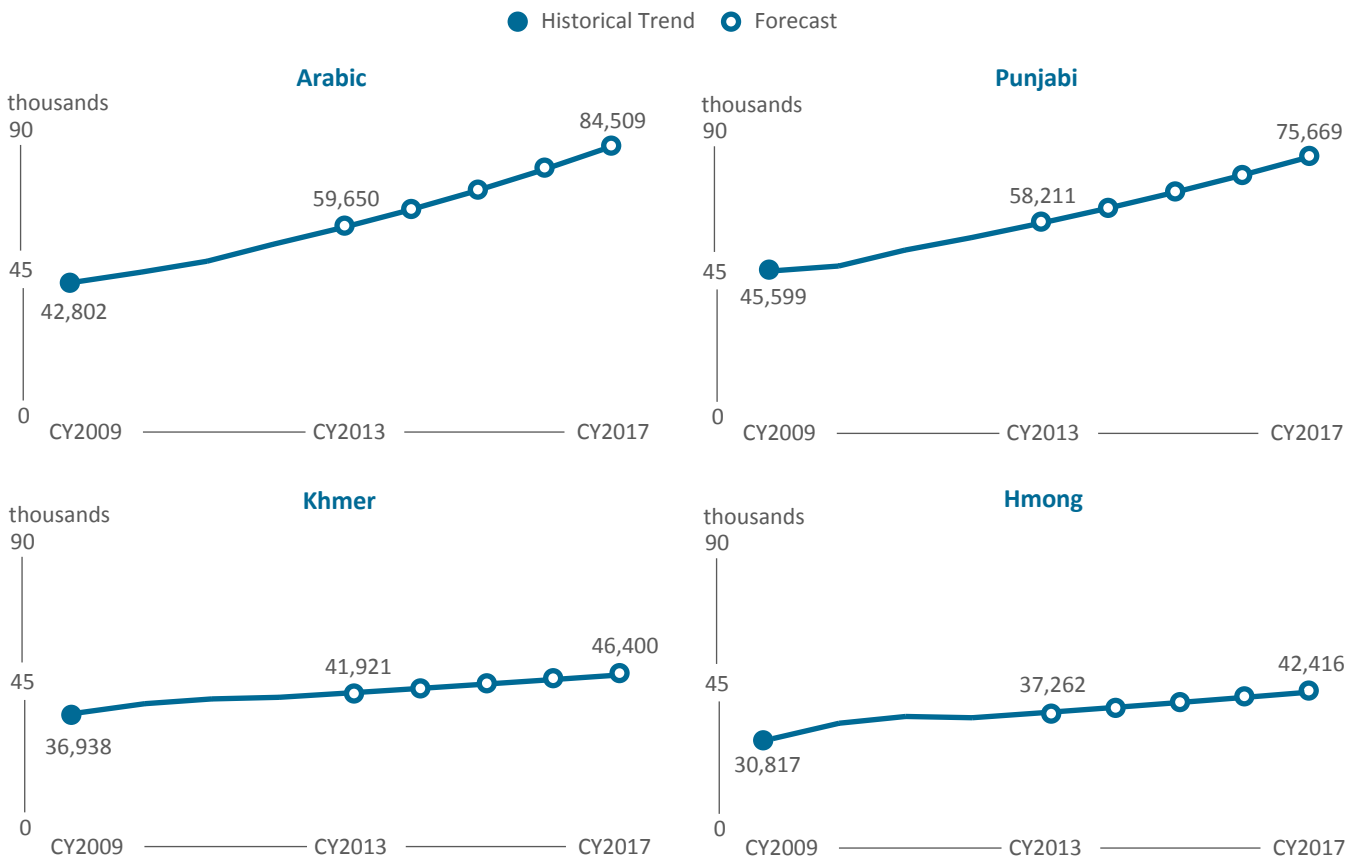


Figure 5. LEP Population Trend and Forecast: Lao, Hindi, and Portuguese

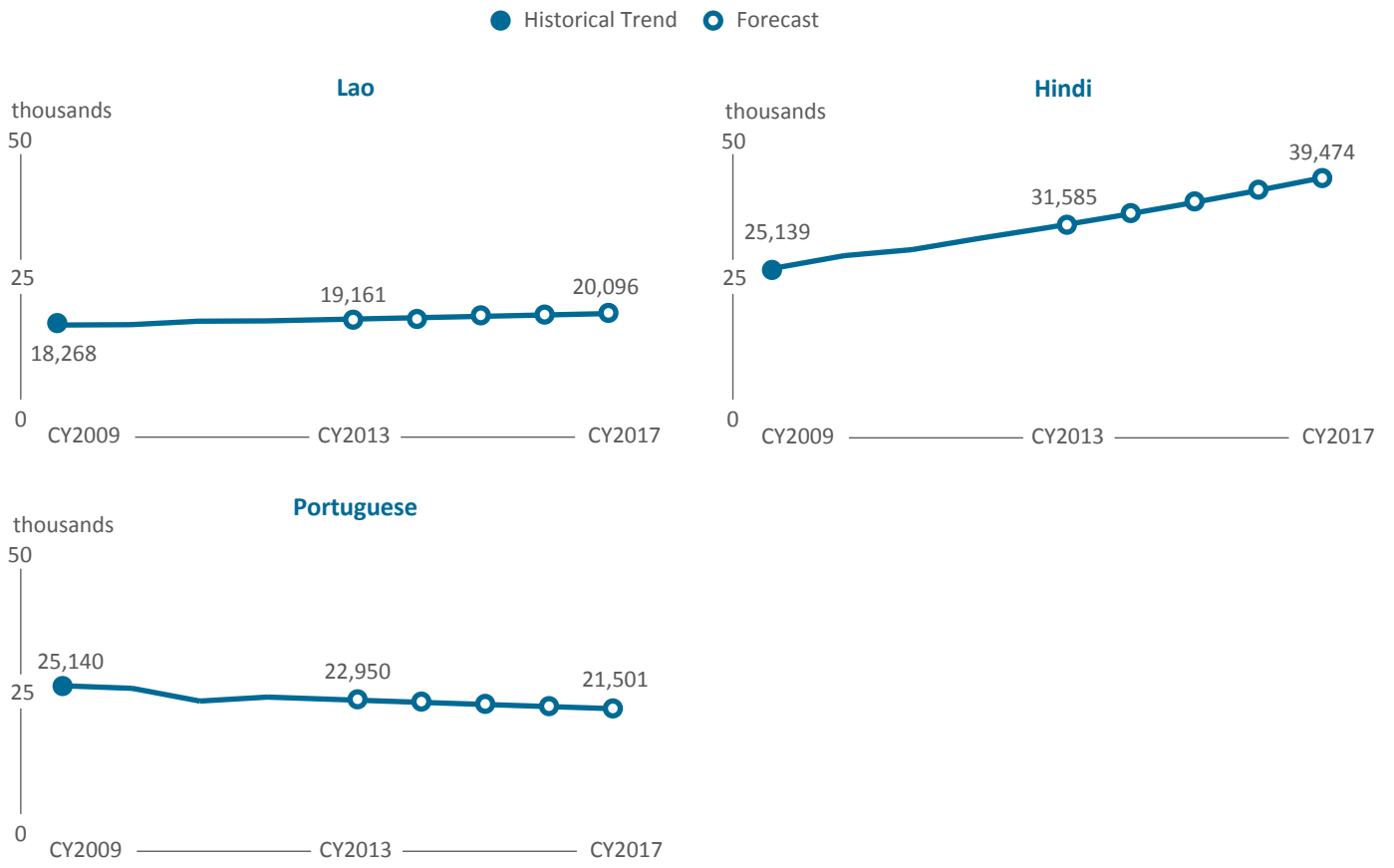
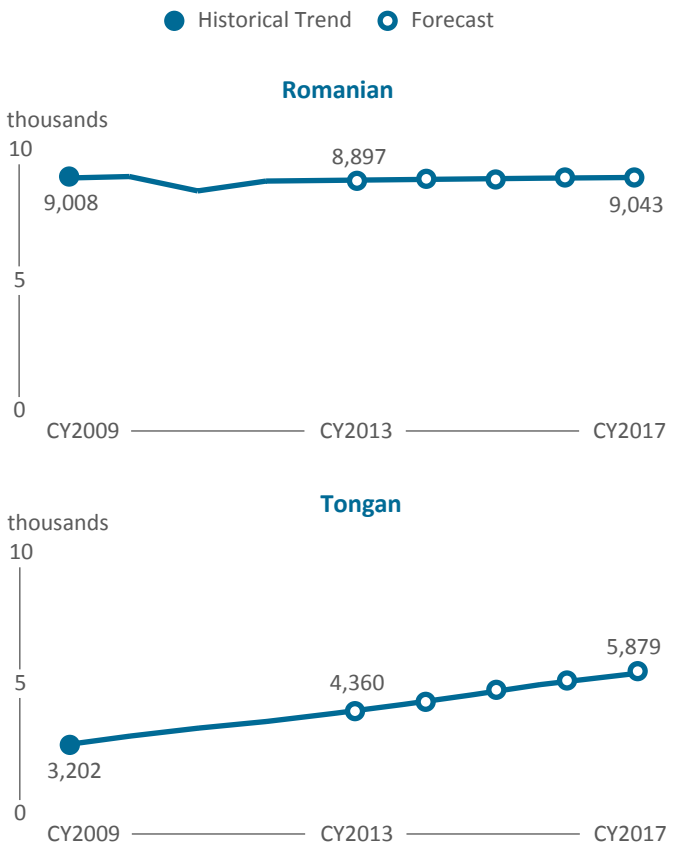


Figure 6. LEP Population Trend and Forecast: Romanian and Tongan



For most LEP populations, the projection estimates a gradual positive growth, based on recent historical trends. Spanish is projected to remain largely flat, although the Spanish language community is perhaps the one most sensitive to changes in national immigration policies, and thus most subject to change. The declining population trends for Japanese and Portuguese speakers are projected to continue.

III. Required Caseload Trends and Projections

Undoubtedly, the period of the current study (2009-2013) was a time of turmoil for the California economy that also affected the state's judicial branch. These years were marked by freezes, if not declines, to court budgets and staffing levels as well as a clear downturn in court case filing trends. With respect to caseloads, improving economic news means filing patterns observed during the study period are unlikely to persist into the future and will not serve as an appropriate basis for forecasting. As a consequence, to estimate future caseload trends in California, growth rates from the period prior to the recession were used.

The recession is generally dated to December 2007 to June 2009,[33] although the effects varied by state and persisted after the officially described end point. Caseload data for FY 02-03 to FY 12-13[34] suggest that the effects of the recession were reflected in a continuous decline in aggregate filings starting in FY 08-09. In the most recent year for which data were provided, the Judicial Council noted that this decline coincided with budget cuts, fee increases, and reduction of access through reduced hours and closure of courthouses.[35] In addition, some declines were likely due to the worsening economy and a lower volume of business transactions over the past few years. However, it now seems likely that a result of the recovering economy will be a return to a closer approximation of business as observed prior to the major recessionary disruption.

The five-year forecast of the required caseload shows resumption of a pattern similar to that observed prior to the onset of the recession, as shown in Figure 7. The forecasting model reflects the likelihood that caseloads have bottomed out and will resume a pattern of slow growth. This modeling strategy is grounded on the assumptions of a slow but steady increase in population and a return to economic growth.

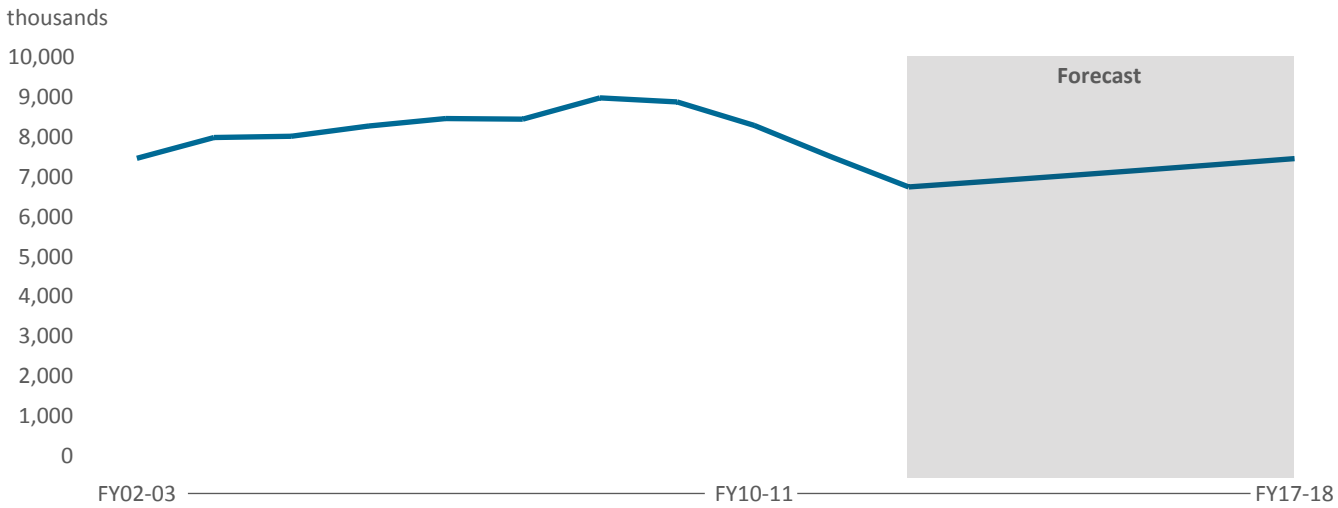
The weighted average growth rate for the pre-recession period FY 02-03 through FY 07-08 was used to project future caseload growth. The projection suggests that the required caseload will resume climbing back to pre-recession levels over the next five years; by FY 17-18, total required caseload statewide is estimated to return to just below the level in FY 01-02.

[33] See for example Bureau of Labor Statistics at http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf

[34] Data from the Resource Allocation Study provided by the Office of Court Research, Judicial Council of California. Although these data are not identical at the case type level with those case types defined as required for interpretation, they contain the most important case types and constitute the highest quality data set for the purpose of trend evaluation.

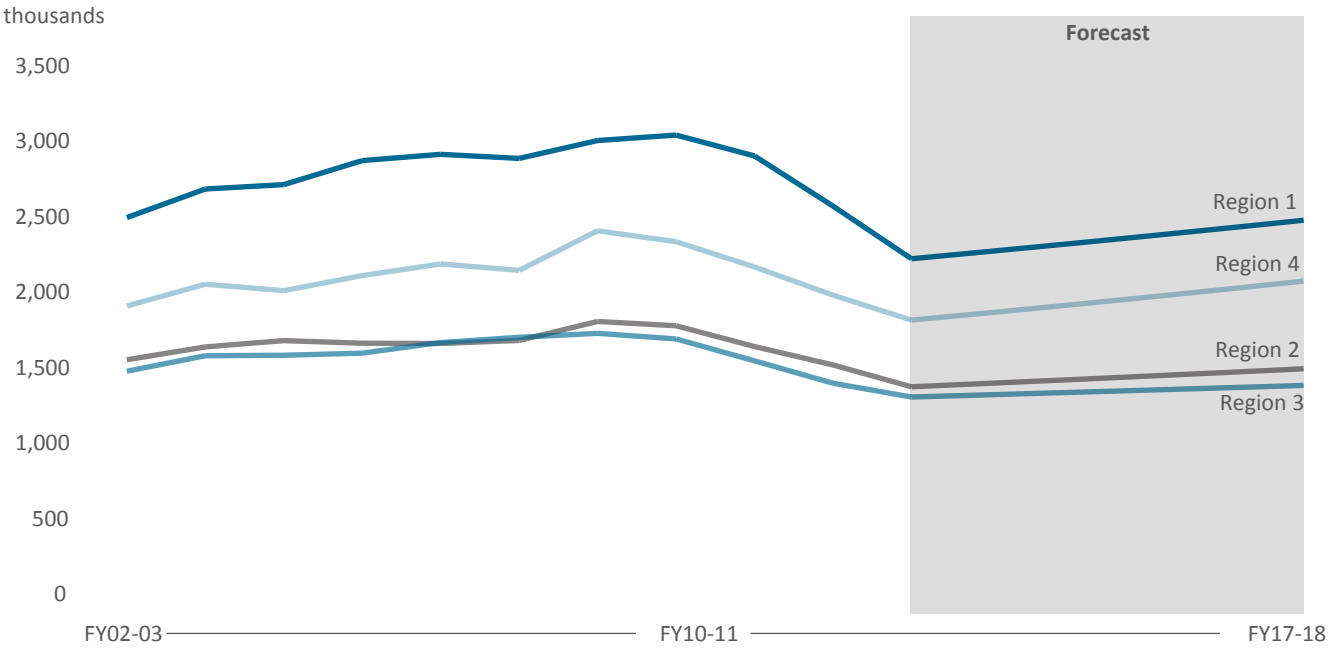
[35] See "Court Filings Decrease in Fiscal Year 2012-2013" at http://www.courts.ca.gov/26853.htm

Figure 7. Statewide Required Caseload



Recognizing that required caseload trends vary somewhat by region, the weighted average growth rates for each region for the pre-recession period FY 01-02 through FY 07-08 were calculated and used to project future growth (shown in Figure 8, Required Caseloads by Region by Year). The chart illustrates slight regional variation as caseloads begin climbing back to pre-recession levels over the next five years.

Figure 8: Required Caseloads by Region by Year



IV. Required Service Days by Language Trends and Projections

The LEP population projections and required caseload projections provide the context for the projection of future need for interpreter service days by language. Based on the future estimates for interpreter service days by language, evaluation of the issues related to the designation of the most frequently used languages for certification is now possible.[36] The projection of service days statewide for the top 19 languages is based on the measured relationship between caseloads and service days during the study period as well as the projected growth rates of required caseloads and the LEP population by language. The results of these projections for the top 19 languages are shown in Figures 9 (statewide) and 10 (by region).

[36] A language is designated by the Judicial Council for certification "depending on the results of studies of language use in the courts and other administrative factors." See FAQs at http://www.courts.ca.gov/2683.htm.

Figure 9: Required Service Days Statewide, Trend and Projection

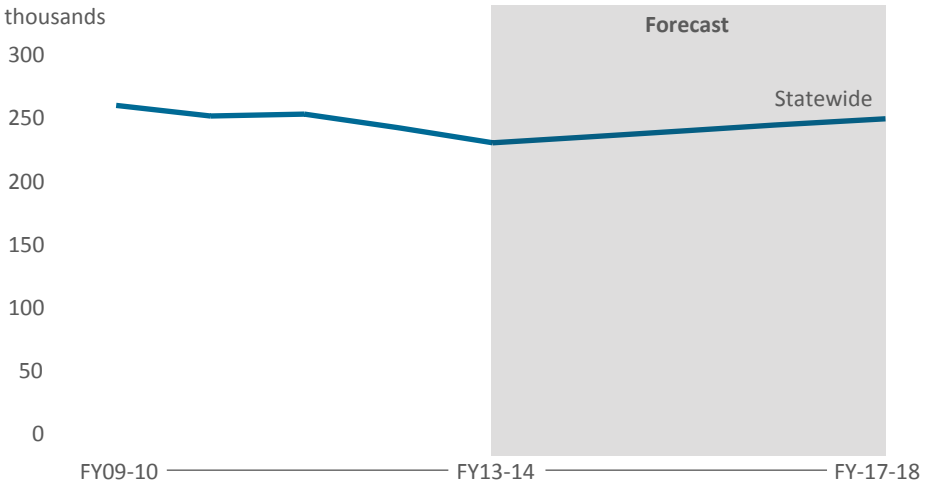
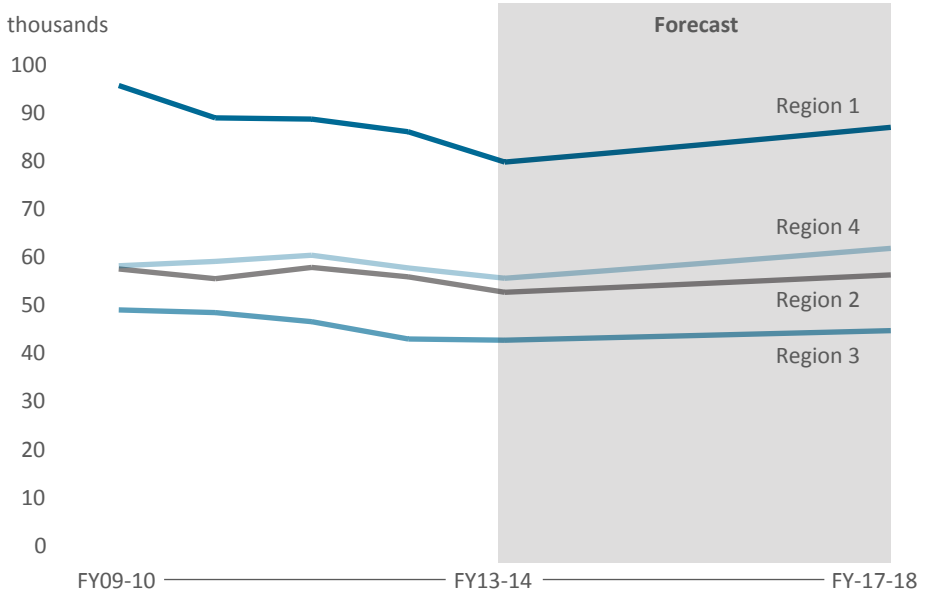


Figure 10: Required Service Days by Region, Trend and Projection



The projected future service days for the top 19 languages proceeds through a two-step process. The first step produces the five-year projection for aggregate service day, while the second step converts the forecast of aggregate service days into service day estimates for each of the 19 languages.[37]

[37] See Appendix B for a more complete explanation of the method used to forecast service days by language.

Step one begins by calculating the rates of required service days to caseload in each of the four regions during the study period so as to take into account each region's specific trends in interpreter use. An overall weighted average of these rates was calculated by region for the study period 2009-2013. These weighted average rates were then applied to the caseload forecasts by region (discussed in section 6.2) to produce five-year projections of service days. Regional projections were summed to obtain a statewide aggregate estimate of future service days.

In step two, the estimate of aggregate service days is differentiated by language drawing on the relationship between service days by language and LEP populations observed between 2009 and 2013. The annual weighted rates of change for both service days and LEP populations are combined to produce a single estimate of the projected growth of each of the 19 languages. The results of the five-year projections are shown by language, statewide, in Table 16 below. Currently designated languages are shown in italics.

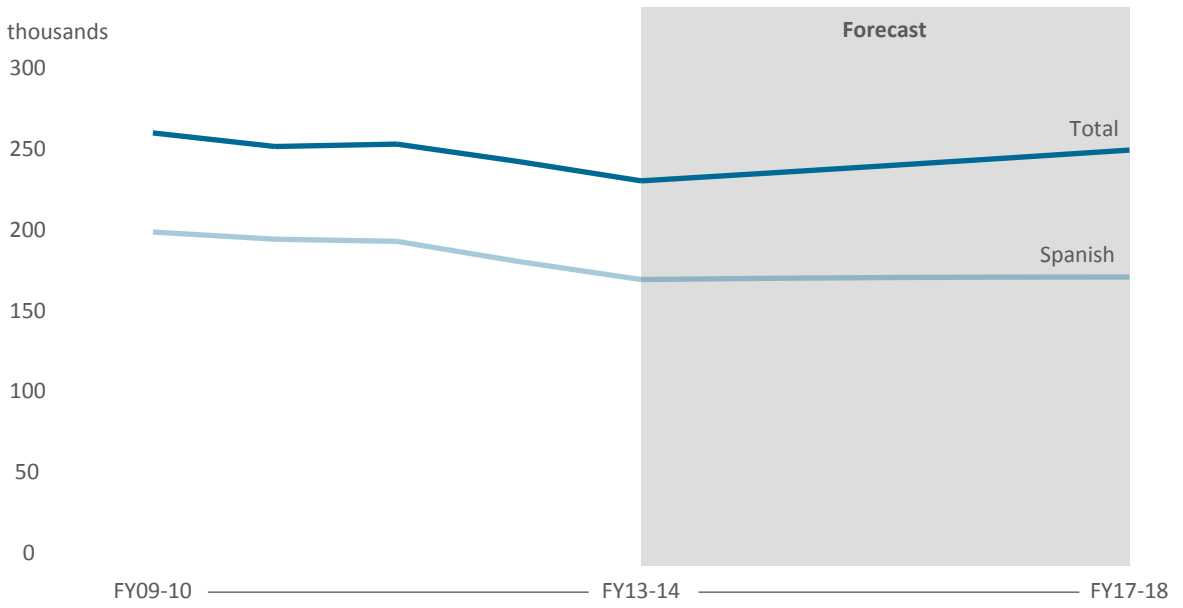
Table 16: Statewide Service Days, Trend and Projected

		Reported Trend				Projected				
Rank	Language	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18
1	*Spanish*	196,981	192,549	191,196	178,683	167,572	168,294	168,807	169,092	169,126
2	*Vietnamese*	9,686	10,595	10,539	9,891	9,526	9,824	10,120	10,410	10,692
3	*Korean*	6,048	6,392	6,279	6,849	6,763	7,151	7,553	7,966	8,389
4	*Mandarin*	4,824	5,242	6,217	6,683	6,959	7,759	8,641	9,610	10,671
5	*Farsi*	4,745	4,343	4,550	5,289	5,331	5,755	6,205	6,682	7,184
6	*Cantonese*	4,020	4,313	4,640	4,633	4,531	4,746	4,965	5,187	5,411
7	*Russian*	4,086	4,065	4,610	4,500	4,419	4,647	4,880	5,119	5,360
8	*Tagalog*	4,170	3,502	3,583	3,351	3,174	3,219	3,260	3,298	3,331
9	*Arabic*	2,914	3,163	3,809	4,673	5,119	6,004	7,035	8,231	9,616
10	*Armenian (all)*	2,799	2,274	2,396	3,191	3,349	3,764	4,225	4,737	5,302
11	*Punjabi*	4,536	2,837	2,983	2,748	2,611	2,656	2,698	2,738	2,774
12	*Khmer*	2,786	2,425	2,473	2,179	2,036	2,038	2,037	2,034	2,028
13	*Japanese*	1,970	1,571	1,685	1,646	1,532	1,527	1,519	1,510	1,499
14	Hmong	1,907	1,737	1,527	1,585	1,516	1,553	1,589	1,623	1,656
15	Lao	1,705	1,636	1,269	1,379	1,304	1,320	1,335	1,348	1,359
16	Romanian	1,041	1,136	1,189	1,225	1,203	1,264	1,327	1,391	1,456
17	Hindi	1,509	964	972	635	574	556	537	519	500
18	Tongan	1,814	423	683	431	433	466	500	537	575
19	*Portuguese*	772	739	790	982	698	716	734	750	767
	Total	**258,312**	**249,906**	**251,391**	**240,553**	**228,649**	**233,259**	**237,969**	**242,780**	**247,696**

The trend in total statewide interpreter service days is projected to reverse course and begin rising back toward levels observed in the early part of the study period. At the level of individual language, the general upward trend is tempered by the varying projected growth rates in LEP populations. Notably, Spanish remains essentially flat, while most other languages are expected to show slow to moderate growth. Some observed trends in individual languages during the study period are difficult to interpret and likely reflect inconsistent reporting in CIDCS. For example, Hindi, Punjabi, and Tongan service day counts show abrupt drops from FY 09-10 to FY 10-11 and relative stability in the years following. The extent of the initial drop in these instances and the observed stability at the new lower level suggests the need to discount the impact of the first year value to more accurately describe the trend.[38] Therefore, while it is likely that the FY 09-10 values overstate actual service days, the forecasting methodology used in this report serves to temper the extent of decline and provide a more realistic basis for projecting future need.

The following figures provide a means to more readily see the service day trends and projections by language. Languages are grouped together by relative size, and Spanish is shown along with the statewide total since it comprises the vast majority of interpreter use.

Figure 11: Statewide Service Days, Trend and Projection: Total and Spanish



[38] This view receives additional support when it is noted that in all three cases, high service day counts for these specific languages during FY 09-10 data come primarily from two superior courts, and thus may be the result of reporting anomalies.

Figure 12: Statewide Service Days, Trend and Projection: Vietnamese and Korean

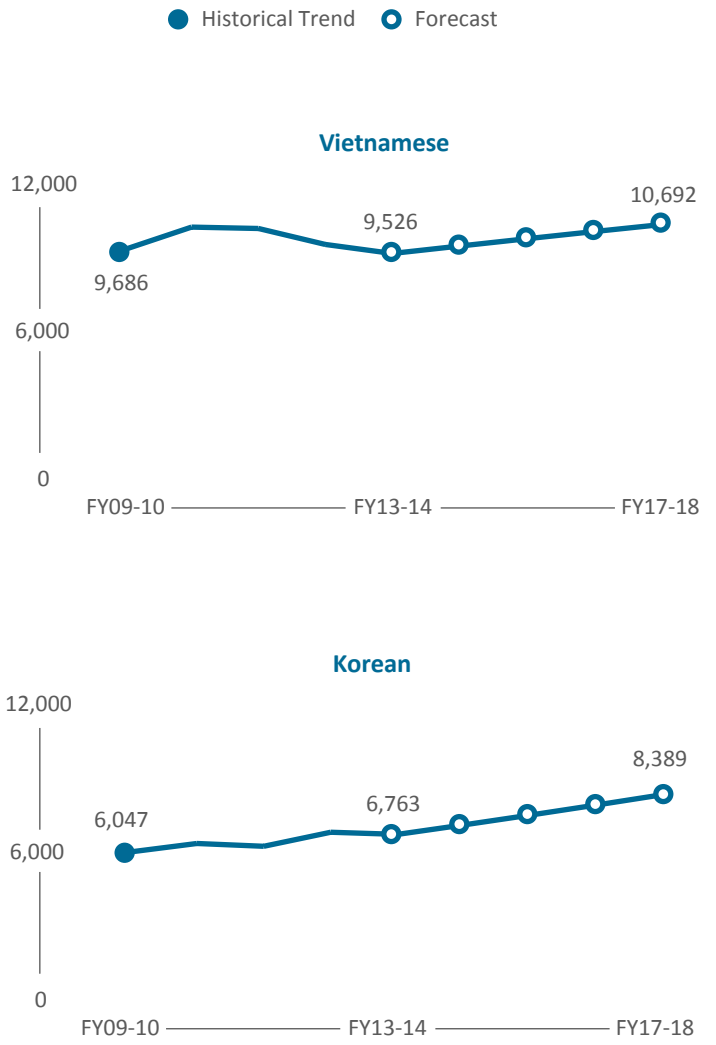


Figure 13: Statewide Service Days, Trend and Projection: Mandarin, Farsi, Cantonese, Russian, and Tagalog

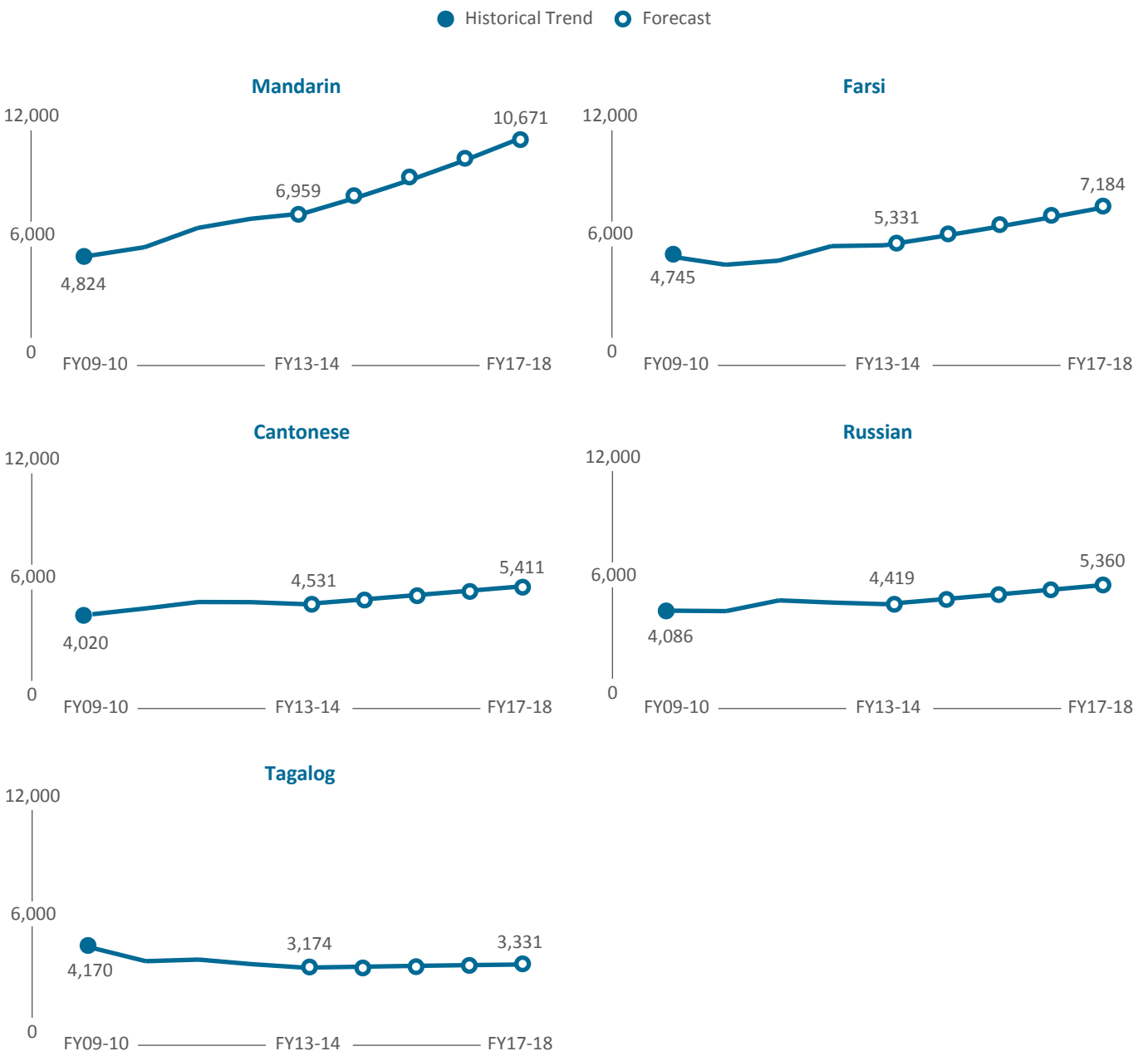


Figure 14: Statewide Service Days, Trend and Projection: Arabic, Armenian, Punjabi, and Khmer

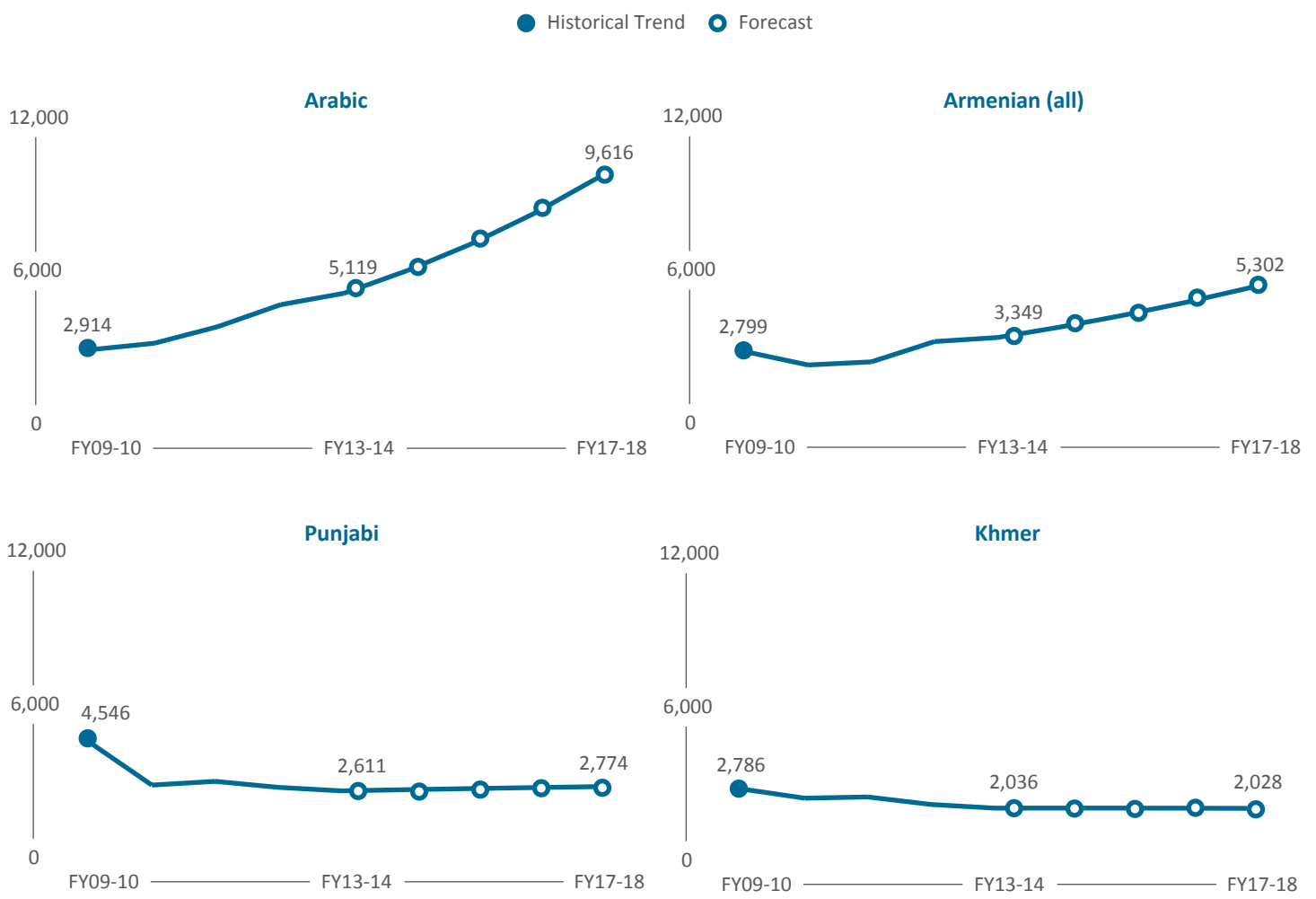


Figure 15: Statewide Service Days, Trend and Projection: Japanese, Hmong, and Lao

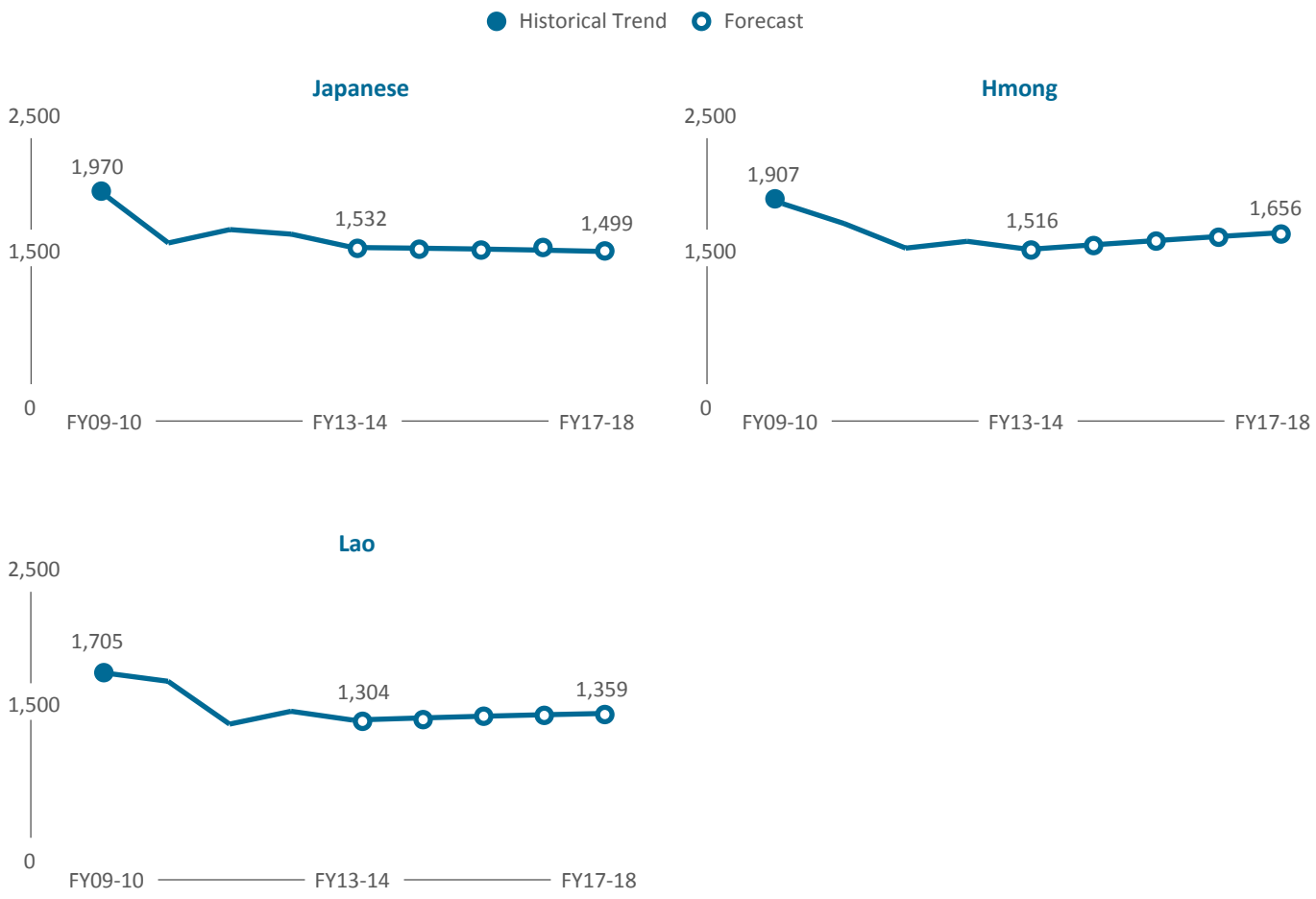
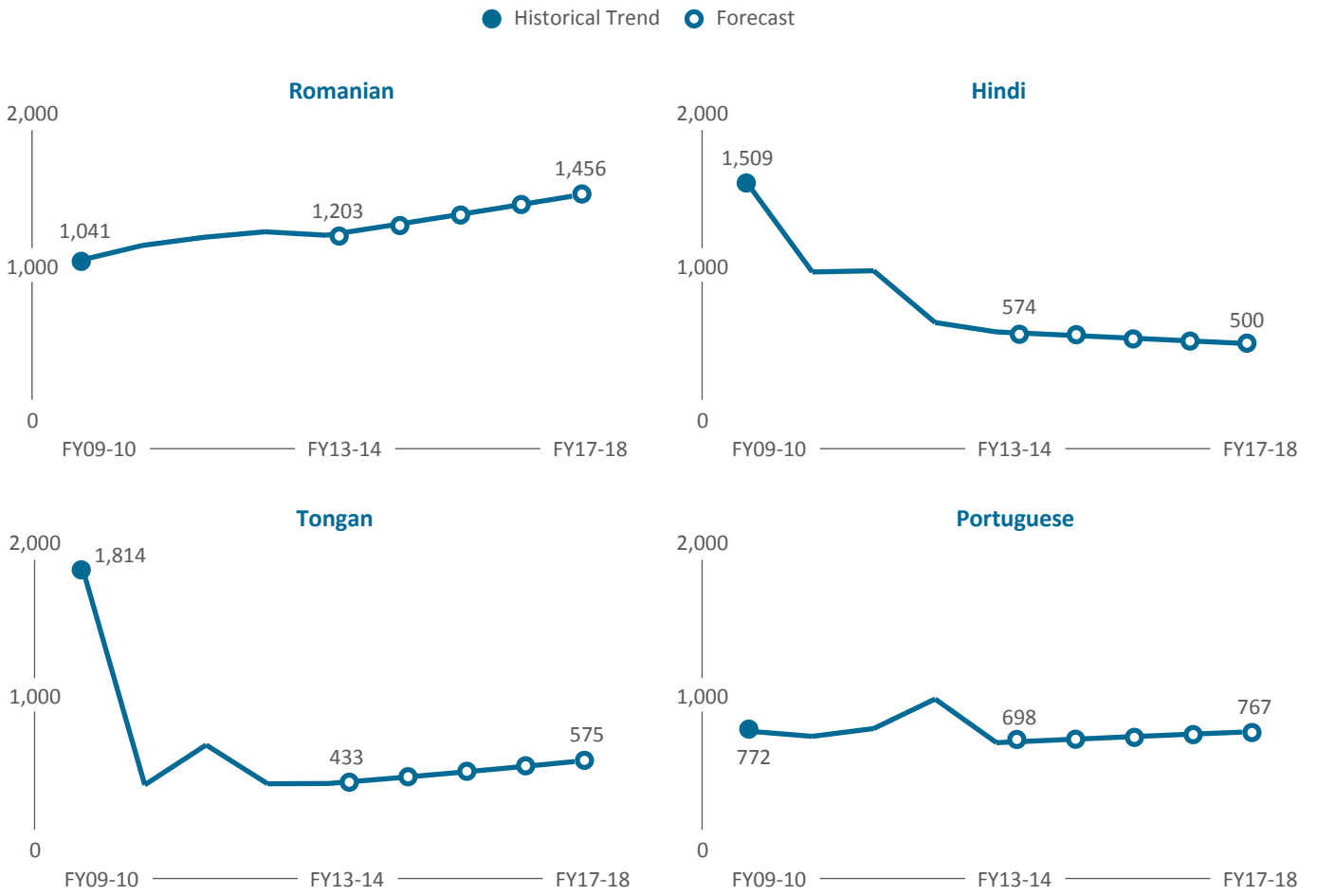


Figure 16: Statewide Service Days, Trend and Projection: Romanian, Hindi, Tongan, and Portuguese



V. Designation and De-Designation of Languages

The Judicial Council reviews the usage of interpreter services and may designate or de-designate a language "depending on the results of studies of language use in the courts and other administrative factors."[39] The designation of a language is a matter of statewide policy for the judicial branch and the threshold is based on a statewide perspective across all regions. Presumably, among the administrative factors considered are the costs associated with developing bilingual interpreting exams and other related costs. While some languages might be heavily used within a particular region and the need to provide interpretation in those languages an important concern for local court administrators, that does not necessarily mean that the statewide need rises to the level appropriate for certification. That said, the issue is not the geographic distribution of a language per se, but the extent to which it is used in the courts, and whether that satisfies the criteria established by the Judicial Council. A language that reaches the statewide threshold level of use to be set by the Judicial Council has achieved that level, regardless of whether it is concentrated in one region or distributed throughout all regions. The question of where to set the level of usage that qualifies a language for status as a designated language remains to be determined by the Judicial Council, on the basis of this study and other administrative considerations.

The preceding sections in this report describe the methods used to estimate statewide interpreter usage (service day) trends and projections drawing on both statewide LEP population trends and projections and statewide caseload trends and projections.[40] The result of this analysis is presented in Table 16 and serves as the primary source for the following recommendations. Currently designated languages are shown in italics.

A close look at Table 16 on page 36 shows a logical, statistical threshold distinguishing higher from lower interpreter usage among the top 19 languages to be at about 2,000 service days per year. In FY 12-13, this statistical cut-point occurs between Khmer (2,179 service days) and Japanese (1,646 service days), a difference of about 25 percent in statewide service days; this gap is projected to continue. As a consequence, this study suggests the following three tiers when evaluating languages for designation:

- Tier 1: A language should be designated when statewide annual interpreter usage exceeds 2,000 service days.
- Tier 2: A language should be monitored for possible designation or de-designation when statewide annual interpreter usage is between 1,500 and 2,000 service days.
- Tier 3: A language should be considered for de-designation when statewide annual interpreter usage is less than 1,500 days; in addition, no language should be considered for future designation when statewide usage is less than 1,500 days.

[39] See FAQs on the Court Interpreter section of the Judicial Council web site at http://www.courts.ca.gov/2683.htm.

[40] How these interpreter services are provided (e.g., staff interpreters, contract interpreters, video remote interpretation, cross-assignment, telephonic services) is not within the scope of this report and data does not exist to convert service days into other units such as assignments, cases, or FTE interpreters.

The three tiers offer a guideline for assessing the status of currently designated and undesignated languages as well as highlighting languages where service day trends support monitoring for a possible change in status.[41] Languages in Tier 1 and Tier 2 are examined below, while all languages outside the top 19 languages are automatically placed in Tier 3.

Tier 1: Designated Languages

Table 16 on page 36 shows that the highest volume of service days tends to be among the currently designated languages. In addition, languages in the top part of the table are projected to remain high and thus justify maintaining their status as designated languages.[42]

Tier 1 Recommendations

Recommendation 1: The Judicial Council should retain the classification of Arabic, Eastern Armenian, Western Armenian, Cantonese, Khmer, Korean, Mandarin, Punjabi, Russian, Spanish, Tagalog, and Vietnamese as designated languages with established certification programs.

The most recent addition to the set of designated languages is Farsi, which is the fifth most used language in court interpretation. Table 16 shows that the high level of Farsi interpretation is projected to continue to increase. This trend has been persistent and was also noted in the previous study.[43] Farsi was designated effective January 1, 2011, but the necessary examination is not yet available.[44]

Recommendation 2: The Judicial Council should retain the classification of Farsi as a designated language and should establish a certification program for testing and certifying court interpreters in this language.

Tier 2 and Tier 3: Future Designation or De-Designation

Seven languages in the top 19 have annual service counts of less than 2,000 days. This report recommends that languages posting annual service day counts generally in the range of 1,500 to 2,000 service days be monitored for possible designation or de-designation. De-designation may be considered for languages that show steady decline in service days as well as decreases in the LEP population. In contrast, consideration should be given to designating currently non-designated languages in the bottom half of Table 16 where evidence shows relatively high and rising demand for interpreters. Two descriptive factors are suggested to support this effort.

First, the monitoring process of languages for possible designation should begin as the trend in service day counts approach the 1,500 day mark. This volume of service days clearly suggests a strong demand for interpreter services. Currently, Hmong, Lao, and Romanian each comprise between 1,200 and 1,600 service days per year. Moreover, service day projections show continued growth for all three languages.

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[41] The previous study suggested the use of 2,000 service days as a possible bench mark for designation, although a break point at 1,500 service days was ultimately used for that study period. See 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010, p. 100.

[42] As noted earlier in this report, the data are not sufficient to understand the workload of West Armenian and East Armenian separately, and whether one or both languages should continue to be designated.

[43] See 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010, p. 101.

[44] See Judicial Council of California, Fact Sheet on Court Interpreters, March 2013, p. 3 fn. 3.

In contrast, the number and trend of service days for two currently designated languages raise the possibility of de-designation. Japanese is projected to continue to fall toward the 1,500 day threshold, while Portuguese is projected to remain near the level of 1,000 annual service days.

Second, consideration should be given to whether there is evidence that demand for interpreter services for a particular language is changing at a rate greater than or less than the corresponding rate of change in the overall LEP population. The number of LEP speakers of a given language is a useful indication of possible need for interpreter services, but is not a perfect measure of the frequency with which that language is interpreted in court. Said differently, all language populations do not use the courts equally or in direct proportion to the size of their population. Cantonese, for example, ranks sixth among spoken language service days from 2009 to 2013, but Cantonese speakers are estimated to be the second largest LEP group in California during the same period. The previous report made use of the concept of "court utilization rate" to capture these differences, but the data for this study period do not allow reliable computation of that indicator as originally designed.

For this reason, a measure of proportional usage by language was designed to assess the relative usage that different language communities make of interpretive services in the courts. Proportional usage is defined as the ratio of the proportion of a language's share of required interpreter service days in a given year relative to the proportion of the total LEP population speaking that language. A proportional usage value greater than 1 means that service days for a particular language make up a greater proportion of overall service days than the share of that language within the overall LEP population. In practice, it means that speakers of that specific language make above average use of court interpretation services relative to what is observed across the top 19 languages. A proportional usage value less than 1 indicates relatively below average use of court interpretation services.

Table 17 below brings together information on the trend in service days, projected LEP population growth, and proportional usage for the five non-designated languages in the top 19 as well as Japanese and Portuguese (which are currently designated, and indicated by italics).

Table 17: Statewide Service Days, LEP Population, and Proportional Usage

Language	Current Service Days FY12-13	Projected Service Days FY17-18	Projected LEP Population Growth	2009-2012 Proportional Usage
Japanese	1,646	1,497	▼	<1
Hmong	1,585	1,654	▲	>1
Lao	1,379	1,358	▲	>1
Romanian	1,225	1,455	none	>1
Portuguese	982	767	▼	<1
Hindi	635	499	▲	<1
Tongan	431	575	▲	>1

▼ = Decreasing

▲ = Increasing

For three languages (Japanese, Hindi, and Portuguese) service day projections are declining and the proportional usage value is less than 1. In the case of Japanese and Portuguese, a projected decline in LEP population coupled with a proportional usage value less than 1 explains why service day projections are falling for both languages. Additionally, even with moderate growth in LEP population, as is projected for Hindi, the low value of proportional usage explains why there is unlikely to be a corresponding rise in interpreter service days.

For Tongan, a slight rise in both LEP population and service days is projected. However, even though the proportional usage factor is greater than 1, the relatively low count of service days means that Tongan is not currently viewed as a candidate for designation.

The three remaining languages, Hmong, Lao and Romanian, should all be monitored for possible consideration for future designation. In all instances, current annual service day counts exceed 1,200. Moreover, the value for proportional usage exceeds 1 for all three languages. This means that while LEP population is not expected to rise dramatically for any of the three languages, the number of service days is expected to increase, nearing or exceeding the 1,500 service day threshold in all cases by FY 17-18.

Tier 2 and Tier 3 Recommendations

Recommendation 3: The Judicial Council should consider the de-designation of the Japanese language.
Adopting the value of 2,000 service days as the threshold for designation means Japanese no longer meets the criteria for designation. The use of Japanese interpretation has been in steady decline and the Japanese-speaking LEP population has been decreasing steadily throughout this study period as well as during the previous study period. There is no reason to think that these longstanding trends will change.

Recommendation 4: The Judicial Council should consider the de-designation of the Portuguese language.
It is immediately apparent that the currently designated language with the lowest usage in terms of service days is Portuguese. The analysis of current trends and projected need show that the level of Portuguese remains far below that of any other designated language; in fact, Portuguese ranks at the bottom of the top 19 languages examined in Table 16. The level of interpreter service days used for Portuguese is far less than the 2,000 service day threshold as well as the 1,500 day threshold used in the previous report. In addition, the LEP population speaking Portuguese at home is the only one besides the Japanese-speaking LEP population that is clearly and steadily declining.

Recommendation 5: The Judicial Council should monitor the usage of the Hmong, Lao, and Romanian languages over the next five-year period for possible future designation.
Of the three undesignated languages with service day counts above 1,200, Hmong has the largest LEP population and also the fastest projected growth rate over the next five years. However, speakers of Hmong tend to make use of interpreter services at a rate lower than speakers of Lao and Romanian, thus somewhat dampening their projected future need for interpreter service days. By contrast, the need for Romanian interpreter services is projected to grow much faster. Although the Romanian LEP population growth is projected to be flat, the proportional usage of Romanian is high, in fact the highest of all languages. Lao lies between these two languages in terms of LEP population growth and proportional usage.

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Appendix A Data Sources and Methodology

Process for Measuring Interpreter Use in California

The data infrastructure of the interpreter program at the state and local levels in California remains largely unchanged from that described in the 2010 report.[45] The main sources of data are summarized below, along with the transformations required to make maximum use of the reported interpreter use and expenditure data. If the data in CIDCS were complete and consistent, and if all courts reported through CIDCS, summarizing interpreter use would be a straightforward analytical exercise. However, because the data sources suffer from inconsistency and incompleteness, as well as non-participation by individual courts, a series of estimates and transformations must be applied to each data file to appropriately weight reported service day and assignment data to produce a master file for analysis.

A multi-step process was used to construct the master data file. These steps are:

- Step 1: Assemble all available *reported interpreter use data* from multiple data sources.
- Step 2: Clean the reported data, aggregate to the level of service day, and classify by case type.
- Step 2: Estimate the future Limited English Proficient (LEP) population of California, by language, using the U.S. Census Bureau's American Community Survey (ACS) data.
- Step 3: Review statewide interpreter expenditure data for comparison with reported interpreter use data.
- Step 4: Expand reported interpreter use data using an expansion factor derived from reported interpreter service days and actual interpreter expenditures.
- Step 5: Build the master set.

Together, these steps are used to assemble, clean and weight reported interpreter use data to produce the best approximation of total interpreter service days used in required case types in California. Each step is addressed subsequently.

Methodology Used to Calculate Total Interpreter Services in Required Case types

Step 1: Assemble reported interpreter use data

Five main sources and configurations of data, described below, were used to compile information on the reported use of spoken language interpreters in California.

A. Court Interpreter Data Collection System (CIDCS)

The primary source of data for tracking interpreter use is the statewide Court Interpreter Data Collection System (CIDCS) established by the Judicial Council and used by most superior courts to varying degrees. During the time period of this study, annual data exist in CIDCS for interpreter use in forty-eight of the fifty-eight superior courts in California.[46] A summary of the courts reporting in CIDCS follows.

[45] See Institute for Social Research, "2010 Language Need and Interpreter Use in California Superior Courts," pp. 5-9. May 2010 (San Francisco: Judicial Council of California).

[46] The Los Angeles Superior Court is not included in this table in this context, since it only reports a small number of what were formerly non-Program 45.45, grant-funded interpreter assignments in CIDCS, and its required interpreter use estimate types relies on other data, as explained in this appendix.

Table A1. Superior Courts Reporting Required Interpreter Use in CIDCS

Region 1	Region 2		Region 3		Region 4
San Luis Obsipo	Alameda	San Benito	Amador	Placer	Imperial
Santa Barbara	Contra Costa	San Francisco	Butte	Plumas	Riverside
Ventura	Del Norte	San Mateo	Calaveras	Sacramento	San Bernardino
	Humboldt	Santa Clara	Colusa	San Joaquin	San Diego
	Lake	Santa Cruz	El Dorado	Shasta	
	Marin	Solano	Fresno	Siskiyou	
	Mendocino	Sonoma	Glenn	Stanislaus	
	Monterey		Kern	Sutter	
			Kings	Tehama	
			Lassen	Tuolumne	
			Madera	Tulare	
			Mariposa	Yolo	
			Merced	Yuba	

CIDCS provides data that describes the number of service days,[47] half-day and full-day sessions, and type of interpreter (certified/registered, non-certified/non-registered, staff interpreter (employee), contractor) by language. These data allow for analysis of interpreter use in superior courts.

B. Partial CIDCS and Partial Independent Data Systems

Five California superior courts provided interpreter data largely through a blend of sources that drew on both CIDCS and alternative data sources. That is, CIDCS was used at the start of the study period, but data entry into CIDCS subsequently ceased as the courts migrated away from that reporting platform. In these courts, post-CIDCS data were obtained from different, court-specific independent data systems.

For these five courts, data were typically provided in spreadsheets containing data elements that allowed the data to be merged with the CIDCS data. In some instances the data elements are equivalent (e.g., language, case type), while in others the data elements reported provided a basis for creating equivalent variables (e.g., a start time and stop time reported for an assignment allowed the creation of a half-day or full-day session variable for that assignment that aligns with the CIDCS session type variable).

Table A2. Superior Courts Reporting Interpreter Use in Independent Data Systems

Region 1	Region 2	Region 3	Region 4
none	San Francisco	Amador	none
	Stanislaus	Nevada	
		Sacramento	

[47] A service day is an assignment to interpret one or more court proceedings completed by an employee or contract interpreter. A service day could be a full, half-day or night session.

The sole exception in Table A2 is the superior court in Nevada County, which did not report at all through CIDCS, but provided all its data for the study period through a series of independent data files. These files were merged into CIDCS data in the same manner as those from other independent data system.

C. Estimating Service Days for Non-reporting Courts

Interpreter use was not documented in CIDCS or other data sources in seven courts, shown below.

Table A3. Superior Courts Not Reporting Interpreter Use

Region 1	Region 2	Region 3	Region 4
none	Napa	Alpine	Inyo
		Modoc	
		Mono	
		Sierra	
		Trinity	

As discussed more fully below, Program 45.45 expenditure data for interpreter services provided by these courts (obtained from the Judicial Council) was used to create estimates of interpreter service days. Estimates of interpreter use for each of these seven courts were produced by matching the missing courts with comparable reporting courts.

Comparable or peer courts for the seven missing courts (Alpine, Inyo, Modoc, Mono, Napa, Sierra, and Trinity) were selected from the same interpreter region, according to geographic proximity and similarity in population and caseload. Respectively, the peer courts chosen for each were Colusa, Imperial, Plumas, Colusa, Mendocino, Lassen, and Shasta. Simulation of interpreter service days for each missing court was performed by modifying the number of service days in the corresponding peer court according to their differences in county population and caseload. The modifications adjust the estimates of interpreter activity to account for the fact that, for instance, the population of Shasta County is considerably larger than neighboring Trinity County, but Shasta typically has fewer case filings per person than Trinity.

The percentage of overall expenditures in Program 45.45 represented by these seven courts from FY 09-10 to FY 12-13 was approximately 0.16 percent, so the risk of distorting the statewide picture by using these estimated peer court values was minimal.

D. RITS and Vision data from the Superior Court of California, County of Orange

Of considerable significance to this study are two large superior courts in the County of Orange and the County of Los Angeles that use other information systems to manage their interpreter programs. The Superior Court of California, County of Orange, does not utilize the CIDCS system at all, while the Superior Court of California, County of Los Angeles, uses CIDCS for only a small number of grant-funded domestic violence and family assignments. The approach to the data for each of these courts is described separately.

The superior court in Orange County manages its interpreter program in two local information systems. Incorporating the data from this court into the analysis required several steps, which are described subsequently.

Data for court interpretation in Orange is compiled in two databases. The first database, called the Reporter Interpreter Tracking System (RITS), is used to track interpreter assignments at the inception of the assignment for all case types. This information is complemented by the data in the Vision system, the second database, which documents completed interpreter assignments in certain case types. Data from these two systems were combined into a single file by matching on date, case number, and language. RITS data also contain variables that align with CIDCS data: full and half-day session, language, case type, employment status, and certification status.

As noted in the 2010 report, the Vision system includes only partial information on required case types: criminal and infractions (felonies, misdemeanors, and infractions). Vision excludes the remaining required case types. Although case type alignment with CIDCS data is not complete, Vision data that are collected include variables that match CIDCS: language and case type.

The decision was made to merge data from RITS and Vision so as not to replicate the problem of the previous study, which excluded Orange from important parts of the analysis and thereby underrepresented the true spoken language caseload in Orange and in Region 4. For the purposes of this report, the non-criminal assignments documented in RITS are assumed to have been completed as described (language, case type, interpreter status), allowing this information to be used to create a full picture of interpreter work in Orange. While it may be that some small percentage of these assignments did not occur for various reasons, it is unlikely that these unfulfilled assignments represent a significant proportion of all interpreter activity. Ignoring these assignments would bias case type distribution, as the data from Orange would exclude non-criminal case types. Criminal assignments in RITS are included only when they match with completed assignments reported in Vision.

E. Interpreter Use in the Superior Court of California, County of Los Angeles

The Superior Court in Los Angeles does not use CIDCS to report completed interpretation assignments for all required case types. Only a small number of grant-funded domestic violence and family cases are captured in CIDCS for Los Angeles. The court manages its interpreter program through the use of paper forms known as Daily Activity Logs (DAL). However, the DALs are not consistently or uniformly completed, nor is DAL information entered in a database or spreadsheet or other electronic form.

The court does document the assignment of staff interpreters, all of whom are certified interpreters, by court location, FTE, and language. Consequently, it is possible to estimate the interpreter workload in Los Angeles by using interpreter staffing FTE data by court location, language and status (representing full-time, part-time, and as-needed positions). The number and type (e.g., full-time, half-time) of employee positions was used to calculate the total service days for each year. An estimate of contractor interpreter days was also developed. The methods used to estimate interpreter use in Los Angeles are described more fully in the upcoming sections.

Step 2: Clean the Data and Classify Service Days by Case Type

Once all the reported interpreter use data were assembled, NCSC staff undertook basic data cleaning and checked for completeness and consistency of reporting for key data elements: region, language, session type, interpreter employment status, interpreter certification status and case type. Four of six variables were submitted in unique data fields and, for available data, were found to be essentially complete and consistently reported by assignment across all courts. The language variable required some standardization where different terms are used in the various data sources to de-

scribe the same language (e.g., Binisaya, Visayan, and Cebuano were aggregated into Cebuano) or simple variations in spelling (e.g., Kanjobal and Qanjobal were aggregated into Kanjobal). In one instance, records did not distinguish between East Armenian and West Armenian, and referred only to Armenian. Since a significant number of those service days originated in Los Angeles (where the staff interpreters speak both East and West Armenian) and Orange (where the information system does not differentiate) and since there was no empirical basis for allocating these service days, they are reported as "Armenian (unknown)."

The one variable that required a more complex treatment is case type. A first task in addressing the case type variable was to ensure consistent classification. Case type identifying information potentially resides in multiple places in the data files, and each field (Case Type, Event Type, and text boxes for comments) was therefore examined for the existence of clear case type information and to determine the possibility of assigning a correct case type. Only when all reported data in the record were examined and found deficient was a case classified as belonging to an Unknown case type. Even with this level of scrutiny, however, a significant proportion (19 percent) of the cases could not be assigned to a required case type due to this missing information.

Once the examination of the case type variable was completed, NCSC staff turned to the task of aggregating reported assignment level data into service days. This task is necessary because the basic unit of analysis in this study is interpreter service day. Due to consistency in reporting, consolidating the data by service day was straightforward for all data elements except case type. Therefore, decision rules were developed to aggregate assignment level data into service days by case type.

In the course of a single service day, an interpreter may provide services for several court procedures within one or more than one case. Although some service days are spent working on one case or more than one case of the same type, many interpreters work on more than one type of case within the same service day. For instance, an interpreter may work on a series of traffic cases in the morning and a misdemeanor trial in the afternoon, or provide services for several legal separation and paternity hearings in the same day. An interpreter may also work on a series of non-traffic infractions as well as one or more non-required case types, such as unlawful detainer or small claims. In order to associate service days with case types, some rules must be developed to prioritize and link case categories with service days when work is performed on more than one type of case.

Service days devoted to handling a single required case type were categorized as that case type. When a service day contained interpretations for more than one required case type, it was assigned the type that was interpreted most frequently within that day, when a unique mode existed. For service days when more than one case type was interpreted with equal frequency, a hierarchy was used to assign a case type to the service day. The hierarchy is based on the California judicial needs assessment ranking, reflecting the average time required by judges in the processing of cases by type.

The ranking is as follows:

1. Dependency
2. Felony
3. Delinquency
4. Legal Separation/Dissolution/Nullity (where protection order is sought)

5. Domestic Violence (including Elder Abuse)
6. Paternity (where protection order is sought)
7. Misdemeanor (Traffic and Non-traffic)
8. Traffic Infraction
9. Non-traffic Infraction
10. Other

This hierarchy was used to categorize service days by case type when more than one type was recorded with the same frequency.[48]

With respect to Orange County, once the RITS and Vision data files were merged, the same methodology described above was used to classify the service days by case type.

The information available from Los Angeles does not include deployment of interpreter staff and contactors by case type. NCSC staff investigated the possibility of estimating interpreter service days by case type in Los Angeles by drawing on the observed experience of other superior courts. For this analysis, comparison courts were selected with the most complete data in CIDCS.[49] Then, the mix of case types in Los Angeles was compared to the mix of case types in the comparison courts and found to be very similar—the correlation coefficient of caseload mix between the two groups each year averages over 0.6. The relatively high correlation led NCSC staff to conclude that the risk of distortion is minimal and the caseload mix in the comparison courts was used to estimate the use of interpreters by case type in Los Angeles. Thus, if on average Spanish language interpreters in the most complete CIDCS courts spend 20 percent of their service days on felony cases, the same percentage of service days was allocated to felony cases for the interpreters in Los Angeles.

Step 3: Review Statewide Interpreter Expenditure Data

Fiscal data from the Program 45.45 expenditure records for court interpreter employees and contractors for FY 09-10 through FY 12-13 for all 58 superior courts provided by staff of the Judicial Council were reviewed.

Step 4: Expand Service Days to Align with Expenditures

As has been documented, to develop a profile of interpreter activity in required cases for many superior courts in California, it is necessary to augment data from CIDCS with data from other alternative sources. For purposes of this report, and to ease discussion in the remaining sections of this appendix, the number of reported interpreter service days will be referred to as CIDCS data regardless of source.

[48] A decision rule was also required regarding individual assignments that include both required and non-required case types. Since the primary goal for the current report is to document interpreter use in required case types, service days were defined as "required" if a required case type was among the types interpreted in the course of the day. A small portion (less than 1 percent) of service days overall were identified as containing only non-required, civil case types and those service days were excluded from all analyses in this report.

[49] The counties used to model case type distribution for Los Angeles were Butte, Contra Costa, El Dorado, Fresno, Kings, Lake, Madera, Mendocino, Merced, Monterey, Placer, Riverside, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Clara, Shasta, Sutter, Tulare, Ventura, Yolo, and Yuba.

The CIDCS data consists of records entered by courts after completion of assignments. Interpreter activity reported in CIDCS underreports the amount of interpreter work actually being done in two distinct ways. First, not all courts enter all of the interpreter assignments in CIDCS, so the number of service days worked is truncated. Second, the interpretation activity performed within each service day is not always entered completely, so the number of cases and events for which interpreter services are provided is censored.[50] Thus, entries in CIDCS understate the number of sessions interpreters complete and the amount of work completed within those sessions.

In order to make the fullest use of the available CIDCS data and to overcome the limitations imposed by the incompleteness of the records, several statistical methods were used and definitions adopted to develop a more complete picture of interpreter use in California using the reported interpreter activity.

Completeness Ratio and Expansion Factor

As in the previous study period, the CIDCS reported assignment data are incomplete for interpreter services both assigned and delivered. However, since superior courts operate their interpreter programs on a cost reimbursement basis, it is reasonable to assume that the expenditure data from Judicial Council represent a relatively complete accounting of the service provided, as measured in dollars.

The Program 45.45 expenditure data were used to weight the reported CIDCS assignments up to match the expenditure data, employing a similar methodology to that used in the previous study period. To provide for the tightest estimations using this method, the completeness ratios and expansion factors were calculated and applied only for those time periods in which fiscal data and CIDCS data could be tightly aligned. The fiscal year data were available for FY 09-10 through FY 12-13. CIDCS data were aligned with those fiscal year parameters using the date information in that database.

First, the number of service days per fiscal year for each court was calculated, distinguishing between full and half-day sessions completed by employees, certified or registered contractors, and noncertified/nonregistered contractors. In this way, each court's specific profile by employment status and session type provided the basis for individually weighting up its reported assignments to align with its expenditures. Compensation rate information for service days were obtained from the regional Memoranda of Understanding in effect during the study period (for interpreter employees) and the Payment Policies for Contract Court Interpreters adopted by the Judicial Council of California (for contract interpreters).

For the Orange superior court, the same process as described above was used to compute the expansion factor and weight the reported work up to expenditures. This was necessary because just as in the CIDCS courts, some assignments are not reported in the information systems and service days are underreported.

For the Los Angeles superior court, interpreter employee service days were estimated based on the reported number and type (e.g., full-time, half-time) of interpreter positions used by the court. Estimated service days were then converted to a calculated cost of recorded interpreter use by multiplying service days by appropriate interpreter compensa-

[50] In this context, censored means that interpreter services were provided on a given day, but the extent of interpreter activity within that day is not known.

tion rate information, as described above. Annual calculated cost was then compared to annual expenditure data to create an expansion factor for the use of interpreter employees in Los Angeles. During the study period, the work of interpreter employees represented about 90 percent of interpreter personnel expenditures, with contractors representing about 9 percent.

To account for interpreter contractors in Los Angeles, it was possible to create an estimate for contractor service days (both certified/registered and noncertified/nonregistered interpreter contractors) using Program 45.45 expenditure data because it is organized by employment and certification status. The allocation of contractor service days by language was estimated using historical data from the previous study period, patterns from other courts in the same geographic region, as well as the small number of service days reported for grant-funded domestic violence and family service days reported in CIDCS. While this results in an estimate, the fact that the overwhelming majority of interpreter work is conducted by staff interpreters whose language is known means that the contractor estimates do not significantly influence the bigger picture of interpreter work in Los Angeles.

Interpreting Expansion Factors

To help understand the concept of an expansion factor, an example of how this process works in combination with a completeness ratio is illustrated in Table A4 below. Simply put, if a court reports service days whose estimated expenditure is less than its actual expenditures as reported in the Phoenix financial information system at the Judicial Council, its reported service days are assumed to be incomplete. The completeness ratio expresses this as a percentage: in this example the court has a completeness ratio for interpreter employees of .83; it is estimated to be reporting only 83 percent of the work being performed by interpreter employees (95,496 divided by 114,700). To align the reported service days of work with the expenditures for this class of interpreters, the reported service days must be multiplied by the inverse of the completeness ratio (114,700 divided by 95,496, or 1.20). The number 1.20 is defined as the expansion factor. The same process is repeated for each class of interpreters based on employment status and certification status to arrive at a set of three expansion factors.

Table A4. Calculation of Completeness Ratio and Expansion Factor, Sample Court

	Employee Services			Certified/Registered Contractor Services			Noncertified/Nonregistered Contractor Services		
	Service Days Reported	Pay Rate	Cost of Reported Service	Service Days Reported	Pay Rate	Cost of Reported Service	Service Days Reported	Pay Rate	Cost of Reported Service
Full-day	260	$273	$ 70,970	544	$282	$153,533	52	$175	$ 9,100
Half-day	162	$151	$ 24,527	436	$157	$ 68,260	118	$ 92	$10,856
Nights	0	$151	$ 0	0	$157	$ 0	0	$ 92	$ 0
Totals	422		$ 95,496	980		$221,793	170		$19,956
	Employee Salaries Reported by Phoenix		$114,700	Contractor Expenditure Reported by Phoenix		$288,030	Contractor Expenditure Reported by Phoenix		$25,278
	Completeness		**0.83**	**Completeness**		**0.77**	**Completeness**		**0.79**
	Expansion Factor		**1.20**	**Expansion Factor**		**1.30**	**Expansion Factor**		**1.27**

These expansion factors are used to weight up the reported service days and create a more accurate estimate of the total number of service days completed. The calculation is illustrated in Table A5 below, showing the reported service days for each class of interpreters multiplied by its expansion factor. This process was repeated for each court for each fiscal year.

Table A5. Application of Expansion Factor to Reported Service Days, Sample Court

Employment/ Certification Status	Reported Service Days		Expansion Factor		Weighted Service Days
Employees	422	x	1.20	=	**506**
Certified/Registered Contractors	980	x	1.30	=	**1,273**
Noncertified/Nonregistered Contractors	170	x	1.27	=	**215**

Since the reported service days also contain other attributes (e.g., language, session type, case type), the data for those elements are also weighted up in the process of weighting up the service days.

Differentiating Expansion Factors by Employment Status

An unavoidable consequence of using the records of interpretations in CIDCS to represent the full quantity of reported and unreported interpreter services as measured by employee and contracted interpreter expenditures is that the characteristics of interpretation records that are reported are magnified. Interpreter activities that are reported more consistently will be overrepresented in the expanded counts relative to activities that are recorded with less fidelity. Thus, the work (i.e., languages, case types) of contractor interpreters, whose work is reported by courts more regularly in CIDCS than the work of employees, may be overrepresented in the expanded data. This means, for example, that the volume of languages other than Spanish may be somewhat magnified in the expanded data, since most Spanish language interpretation is done by interpreter employees and thus underreported.

Using the number and type of service days per court and fiscal year in combination with compensation rates, the cost of recorded interpreter use was calculated and an expansion factor was computed for each court, comparing the interpreter services documented in CIDCS for employee and contract interpreters by certification status annually to the expenditures for those same interpreter services in the same time period (calendar year assignment data were reorganized into fiscal years, to align with the expenditure data). Expansion factors were computed for both contractor and employee interpreters. In this way, the data were adjusted for the fact that underreporting of the work performed by interpreter employees usually takes place at a higher and different rate than underreporting by interpreter contractors. This can be seen from Table A6 which illustrates that interpreter contractor expansion factors generally reflect better reporting (i.e., are lower) than those for interpreter employees. The table also illustrates how these ratios varied over time within regions and among regions during the study period.

These expansion factors were calculated for each court, for both employee and contract interpreters, based on the reported data, maintaining each court's employee-to-contractor ratio. The reported work was then weighted using the expansion factor, so that the estimated total interpreter service days align with for the total reported expenditures for each court.

Table A6. Expansion Factors by Employment Status

	Expansion Factors							
	FY09-10		FY10-11		FY11-12		FY12-13	
	Employee	Contractor	Employee	Contractor	Employee	Contractor	Employee	Contractor
Region 1	1.39	2.61	1.43	1.49	1.41	1.42	1.48	1.85
Region 2	4.05	3.88	8.71	2.24	12.48	1.59	10.20	1.90
Region 3	11.25	1.72	6.35	1.42	16.05	1.25	5.26	1.40
Region 4	3.02	1.70	2.87	1.85	2.92	1.53	2.73	1.18
Statewide	**4.93**	**2.48**	**4.84**	**1.75**	**8.22**	**1.45**	**4.92**	**1.58**

Differentiating Expansion Factors by Court and Language

Additional perspective into the expansion factors can be gained by examining those factors by court and by language. Table A7 reports the expansion factors by court by fiscal year, and provides the total number of service days reported by each by each court.[51] High values indicate underreporting: the higher the expansion factor, the greater the problem with underreporting. Where N/A appears, no data were reported in CIDCS at all by that court for that fiscal year, and the year is not included in the calculation of averages. Expansion factors were calculated for each court on an annual basis, as described above. Looking at the expansion factor along with the Average Annual Reported Service Days allows contextualization of the underreporting in CIDCS; if a court's reported data were expanded by a factor of 1.43 in a particular fiscal year, for example, this column gives a sense of the average size of the number to which that factor was applied to arrive at the total estimated service days for that year.

[51] Expansion factors are not shown for the seven courts that did not report any interpreter use data at all.

Table A7. Expansion Factors by Court, by Fiscal Year

Court	Region	Expansion Factors				Average Annual Reported Service Days
		FY09-10	FY10-11	FY11-12	FY12-13	
Los Angeles	1	1.21	1.20	1.19	1.15	65,999
Ventura	1	1.61	1.67	1.62	1.68	4,075
Santa Barbara	1	1.22	1.31	1.34	1.65	2,624
San Luis Obispo	1	1.30	1.26	1.38	1.02	970
Santa Clara	2	1.43	1.46	1.45	1.63	7,009
San Francisco	2	1.67	2.55	1.70	.84	5,034
Contra Costa	2	1.23	1.12	1.08	1.12	3,756
Sonoma	2	2.08	2.00	2.76	2.40	2,418
Monterey	2	1.91	1.94	2.05	2.11	2,374
Alameda	2	10.60	5.23	3.56	8.10	2,340
San Mateo	2	106.66	7.11	2.53	1.89	1,618
Solano	2	2.17	2.24	1.83	1.54	1,066
Santa Cruz	2	2.58	3.81	1.94	5.90	676
Mendocino	2	1.30	1.22	1.22	1.21	419
Humboldt	2	1.12	1.38	1.82	.89	286
San Benito	2	2.85	1.53	1.53	.54	217
Lake	2	1.10	2.00	1.58	1.48	188
Marin	2	5.31	49.29	27.65	3.88	181
Del Norte	2	3.24	2.40	2.17	2.70	83
Sacramento	3	1.30	1.28	1.26	1.18	9,764
Fresno	3	1.39	1.32	1.26	1.35	4,647
Tulare	3	1.19	1.31	1.33	1.34	3,684
Kern	3	1.71	3.35	2.15	1.60	2,859
San Joaquin	3	1.43	1.42	1.38	1.46	2,814
Merced	3	1.55	1.42	1.69	1.65	2,655
Yolo	3	1.34	1.28	1.27	1.39	1,349
Madera	3	1.14	1.11	1.15	1.28	1,332
Placer	3	1.43	1.54	1.79	1.71	1,015
Kings	3	1.09	1.19	1.31	1.23	667
Sutter	3	1.48	1.51	1.47	1.75	536
El Dorado	3	1.37	1.74	1.63	2.01	373
Butte	3	1.39	1.38	1.50	1.40	324
Shasta	3	1.76	1.72	2.31	2.07	319
Tehama	3	1.82	2.05	2.15	2.38	257
Colusa	3	2.06	3.15	2.93	2.28	213
Glenn	3	1.24	1.29	1.26	1.20	209
Siskiyou	3	1.32	1.54	1.60	1.91	166
Nevada	3	1.48	1.61	2.22	3.31	137
Amador	3	.93	.63	.63	1.68	111
Yuba	3	1.75	1.59	1.67	1.61	97
Stanislaus	3	N/A	1,659.31	24.29	11.06	75
Lassen	3	3.69	3.01	3.15	5.75	45
Calaveras	3	2.04	2.03	3.24	7.54	44
Tuolumne	3	2.47	2.98	3.73	18.74	31
Mariposa	3	N/A	N/A	4.29	2.81	20
Plumas	3	3.44	2.57	4.92	6.52	17
San Diego	4	1.37	1.31	1.34	1.54	11,268
San Bernardino	4	1.14	1.13	1.12	1.14	11,030
Riverside	4	1.20	1.21	1.37	1.51	7,883
Orange	4	7.43	7.49	7.43	6.75	3,375
Imperial	4	1.47	1.12	1.17	1.18	1,240

Expansion factors can also be examined by language, as shown in Table A8 below. The higher the expansion factor, the more the service days for that language were expanded. The expansion factors shown are the *average* of the expansion factors for that language, for all courts. Since each court will have a different expansion factor and a different number of reported service days, its overall contribution to the total expanded service days will vary. For that reason, multiplying the *average* expansion factor times the Total Reported Service Days will not result in the exact number of expanded service days for that language shown in Table 5 in the report.

Table A8. Expansion Factors by Language

	Expansion Factors	
Language	Average Expansion Factor	Total Reported Service Days
Spanish	1.58	548,638
Vietnamese	2.43	18,865
Korean	3.57	9,307
Mandarin	2.58	8,837
Farsi	3.56	4,169
Cantonese	1.75	11,065
Russian	1.70	8,352
Tagalog	2.41	6,699
Arabic	2.91	4,971
Punjabi	1.76	7,259
Khmer	1.96	6,448
Japanese	3.63	2,279
Hmong	1.39	4,803
Lao	1.66	3,524
Romanian	2.07	2,220
Hindi	4.13	1,694
Armenian (unknown)	2.93	2,223
Armenian, Eastern	1.38	3,075
Tongan	3.54	947
Portuguese	2.10	1,468
Armenian, Western	1.31	2,510
Pashto	5.62	437
Samoan	2.84	806
Thai	2.93	935
Amharic	2.46	834
Slovak	1.27	1,431
French	3.11	560
Mongolian	2.60	610
Mien	1.48	1,062
Mixteco	1.51	1,011
Other/Unknown	3.06	12,477

Step 5: Build the Master Data Set

A master data set was created by combining CIDCS service days with the supplemental data provided by other counties, including the two data sources for the Superior Court of Orange County. Because the Los Angeles data were imputed at an aggregate level, as estimated service days rather than as counts of individual case-level interpretations or reported service days, incorporating Los Angeles completely into the master data file would have required producing marginal distributions for every variable across every other variable. Instead, the marginal distributions for the variables needed were calculated for a given comparison. For this reason, a separate file was maintained for Los Angeles data. The master data set and the Los Angeles data were then used to generate the summary statistics included in this report.

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Appendix B

Language Need: Data Sources and Methodology

Process for Estimating Future Language Need

Future language need is projected based on the historical patterns of court interpreter service days by language, combined with other factors described below. The guiding parameter for this section of the report remains the required case types for which the courts are obliged by law to provide interpreter services.[52] Thus, the estimation of future language need in the case types currently required takes the volume and proportions of past interpreter use as an unbiased indicator of interpreter need for those years. The purpose of the estimate of future language need in this report is to provide a foundation for determining what languages should be classified as designated languages by the Judicial Council. The time frame for the projections was five years, the time that will elapse before the next iteration of this report.

A multi-step process was used to develop the projections of language need. These steps are:

- Step 1: Conduct an environmental scan of California macroeconomic conditions that could influence caseload or population trends.
- Step 2: Estimate the future Limited English Proficient (LEP) population of California, by language, using the U.S. Census Bureau's American Community Survey (ACS) data.
- Step 3: Estimate the future caseload in required case types, using the Judicial Council's historical filings data from the Resource Allocation Study (RAS).
- Step 4: Estimate the future required service days for the top 19 languages using a two-step process. The first step produces the five-year projection for aggregate service days, while the second step converts the forecast of aggregate service days into service day estimates for each of the 19 languages.
- Step 5. Analyze resulting service day projections to determine the threshold values for designated languages as well as for possible de-designation of languages.

These steps result in a projection of future language need and recommendations regarding the classification of languages as designated languages. Each step is described in detail below.

[52] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014, for additional information.

Step 1: Conduct environmental scan

Key sources of near-term forecasts of the California economy were reviewed, principally forecasts by the Public Policy Institute of California, the California Department of Finance, and the Eberhardt School of Business, as documented in footnotes in the report. The purpose of this high-level scan was to evaluate the strength of the post-recession California economy as background to projecting caseload and population trends.

Step 2: Estimating the future LEP Population by Language

A. Selecting the Most-Interpreted Spoken Languages

To focus attention on the languages of greatest interest for designation, analysis was restricted to the 21 most-interpreted spoken languages, a group that includes all of the currently designated languages, as well as several languages that are not currently designated, but produce a substantial number of service days of interpretation. While many more languages are interpreted in the California courts, the frequency with which they are used is relatively low and far below the historical threshold for classification as designated.

Data limitations found in the sources of court data (CIDCS and others) for required service days and demographic data used for projection of future need led to the combination of Eastern Armenian and Western Armenian, together with the unspecified "Armenian" language category, into a single language group. More specific information permitting forecasts of the two languages based on population was unfortunately not available in the American Community Survey (ACS) data published by the U.S. Census, which is the source of LEP population estimates. As a result of collapsing these three languages into a single Armenian category, interpreter service days are forecast for a total of the 19 most prolific languages and language groups, rather than the 21 most-interpreted spoken languages referenced in the first paragraph of Step 2, above.

B. Aligning ACS data with interpreter data by language

Having selected the languages of interest, the next step in the process was to develop a methodology for estimating LEP population growth by language. The main source of data for this purpose was the American Community Survey (ACS). But before proceeding to forecasting, it was necessary to align the ACS language categories with those used in interpreter data.

In addition to the constitutionally required decennial census, the United States Census Bureau conducts the American Community Survey, an ongoing data collection effort continued throughout each calendar year, whose full implementation began in 2005.[53] The ACS collects data from approximately 1 percent of American households with the goal of providing reliable yearly statewide population estimates for a wide variety of demographic, social, and economic variables. Among the variables collected for the ACS are the language spoken at home for each household and the level of English proficiency for the survey respondent. Following the methodology in the previous report to the Judicial Council and common practice in the literature, a Limited English Proficient (LEP) person is defined as a person over the age of 5 who reported speaking English "less than very well" in the ACS survey.

[53] For a complete description, see the Census Bureau web site at http://www.census.gov/acs/www/

The ACS produces three separate products on a yearly basis: 1-year, 3-year, and 5-year estimates. Each is based on a set of data collected over the previous 1, 3, or 5 years, respectively. The 1- and 3-year estimates are both sufficient for reliable statewide estimates, but not for estimates of geographic subdivisions with sparser populations, including several California counties, which are not included in the 1- or 3-year products. The 5-year estimates, however, include every county in California, individually or combined with one or more neighboring counties. Due to greater completeness, the 5-year estimates were used for this report; the first 5-year estimates available are for 2009.

Using the detailed language identifiers in the ACS, equivalent responses for each language among the top 19 languages in required interpreter service days were identified. As noted above, the ACS specifies "Armenian" as a response to the language commonly spoken at home, but does not document a more specific designation into Eastern or Western Armenian. Due to this limitation, Eastern and Western Armenian service days estimated from the CIDCS and supplemental interpreter data were collapsed with the preexisting, unspecified "Armenian" category in CIDCS to create an "Armenian" language group.

The language designations in ACS and in interpreter service data failed to overlap perfectly in another regard as well. In addition to Cantonese and Mandarin, the ACS identified a large group of respondents as speaking "Chinese," a category not reported in CIDCS or other sources of interpreter data. Moreover, the proportion of individuals in California who were reported as speaking "Chinese" at home was substantially larger than those speaking Cantonese and Mandarin, according to the ACS.

Assuming that most, if not all, of those identified as "Chinese" speakers in the ACS spoke either Cantonese or Mandarin, two options were considered. The first option was to exclude "Chinese" speakers, which would result in a dramatic undercounting of the absolute number of Cantonese and Mandarin speakers, but maintain the reported proportion of Cantonese to Mandarin speakers in the ACS. Assuming that "Chinese" speakers were misidentified uniformly from both language populations across the state, this would capture their proportions relative to each other, but not their magnitude or proportion relative to other languages.

The second option was to divide the identified "Chinese" speakers between the two languages (Cantonese and Mandarin) according to their proportion at some geographic level of aggregation. Choosing the second approach, "Chinese" speakers in the LEP population in the ACS were apportioned by year to Cantonese and Mandarin in accordance with the relative sizes of the Cantonese and Mandarin populations in each interpreter region, permitting a better allocation of the "Chinese" group than a simple statewide apportionment, based on variations in population demographics by region.

C. Forecasting LEP population by language

The ACS 5-year datasets covering the period from 2009 to 2012 provides fairly precise estimates of the number of LEP individuals from households speaking a language other than English at home in California statewide and by county, allowing it to be organized into the four interpreter regions. These figures afford enough data points to establish trends in the change in LEP populations during this time. Changes in LEP populations can be due to patterns of migration, language proficiency, and birth and death rates unique to each language, but these simultaneous and cross-cutting influences can only be approximated without much precision. A direct extrapolation of changes in LEP population trends provides a much better alternative to any attempt to model detailed changes in the composition and English proficiency of language groups in California.

Trends over the four years of available data for the 19 top languages by service days are generally stable and modest. Consequently, projection of future LEP populations was done based on the weighted average change in the population of LEP individuals in each language group. The weighted average change in population is calculated by taking the difference from year-to-year for each group expressed in percent of the earlier year and summing the proportions, applying linearly increasing weight to changes from the earliest to most recent. The four years of ACS data produce three observations of change: from 2009 to 2010, 2010 to 2011, and 2011 to 2012. In the weighted average, the earliest change is unweighted, or weighted by 1, the second is weighted by 2, and the third and most recent observed change is weighted by 3. The sum of these weighted changes is then divided by the sum of the weights, which is 6.

A hypothetical example calculation of weighted average change in population is illustrated below:

2009 LEP Population for language A ($x1$) = 2,500
2010 LEP Population for language A ($x2$) = 2,625
2011 LEP Population for language A ($x3$) = 2,725
2012 LEP Population for language A ($x4$) = 2,800

$(x2 - x1)/x1 = (2{,}625 - 2{,}500)/2{,}500 = 0.05$
$(x3 - x2)/x2 = (2{,}725 - 2{,}625)/2{,}625 = 0.038$
$(x4 - x3)/x3 = (2{,}800 - 2{,}725)/2{,}725 = 0.027$
$(0.05 \times 1) + (0.038 \times 2) + (0.027 \times 3) = 0.209$

$$\frac{0.209}{6} = 0.035$$

Using the data above, the projected 2013 LEP population for this language is arrived at by multiplying the weighted average change of 3.5 percent (shown as 0.035 above) by the 2012 population (2,800 × .035 = 98). The estimated increase in population (98 people) is added to the observed 2012 population, resulting in an estimated population for 2013 of 2,898 (98 + 2,800).

The process illustrated above is repeated to create the estimate of 2014 based on the estimate for 2013, and so on, for each future year. In this way, the weighted average of each of the *observed* years 2009-2012 is applied to future years to produce estimates of the LEP population by language for the *estimated* years.

Since the purpose of estimating future language need is to take into account current trends in populations, the study period 2009-2012 was used as the basis for projections.[54] The purpose of using the weighted average methodology explained above is to give more emphasis to the most recent years. Having developed the LEP population by language estimates, the next step was to develop projections for caseload.

Step 3: Estimating the future caseload in required case types

Changes in California caseload, both overall and in the required case types, exhibited a downward trend similar to that observed in interpreter service days during the study period. In contrast, the years prior to the study period (and thus

[54] Coincidentally, the American Community Survey population data upon which the population estimates are based is also not available for years prior to the study period and thus prior to the recession. However, had it been available, the most current years would still have been used, for the reasons cited.

prior to the recession) manifest small but steady increases in caseloads that are more typical of California's caseload statistics, which generally have grown along with its population.

For reasons described in the report, data from the pre-recession period FY 02-03 through FY 07-08 were used to project future caseload growth from its current level. Essentially, these data provide a sounder basis for forecasting future caseload trends, based on the assumption that the recession has ended and slow growth has returned to California and its courts. The key source of the caseload projection is the annual caseload data produced from the Judicial Council's Resource Allocation Study (RAS) model. Caseload data from FY 02-03 to FY 07-08 were used as a basis for establishing trends in the activities producing interpreter service days at the statewide and regional levels.

The RAS caseload totals for each year are divided into either 15 or 18 case types.[55] Selecting only those case types that fall within the categories for which interpreter services are required by the state constitution or statute, a required caseload total for each year was computed. The required caseload total includes traffic and non-traffic infractions, traffic and non-traffic misdemeanors, felonies, family cases involving dissolution, nullity, legal separation, child support, or domestic violence, juvenile dependency and delinquency. Several of the family law categories in RAS are over-inclusive for the purpose of estimating required caseload, because interpreter services are only provided by the court when a protection order is sought. However, as long as the share of such cases does not change dramatically from year to year, the change in total caseload serves as an unbiased indicator of the proportional change in the number of required family cases from year to year. The RAS data has been closely scrutinized for completeness and quality by Judicial Council staff and represents the best data set available for this purpose.

The RAS data series from FY 02-03 to FY 07-08 was used to establish a weighted average change rate in caseload by interpreter region. Applying these weighted average rates of change to the existing caseload series results in a projection of modest increases in required caseload within each interpreter region and statewide. The weighted average growth rate was computed in a manner similar to that described for LEP population (Step 2C) by calculating the year-to-year rate of change in caseload, summing those rates and dividing by the sum of the weights.

The interaction between LEP population trends and caseload trends provides a basis for estimating future need. For example, if caseloads decline while an LEP population grows, the two trends may result in zero net growth. What is needed is a method for linking caseload to the need for interpreter services by language, taking into account LEP population growth by language. This step is described below.

Step 4: Estimating future required service days

Anticipated future need for interpreter services is characterized by a forecast of the number of service days for the following five fiscal years: FY 13-14 to FY 17-18. Service days continue to be the most easily understood unit in which to express interpreter use, and for interpretations related to currently required case types, future interpreter need is best expressed as a projection of the service days expected by language.

[55] The variation in number of case types results from the fact that from FY 10-11 onward misdemeanors are separated into traffic and non-traffic and probate is separated into Conservatorship/Guardianship and Estates/Trusts, and Family-Other is separated into Family-Parentage and Family-Other.

Projecting the anticipated aggregate interpreter service days for the next five years makes direct use of the caseload forecasts produced for the same time period and the relationship between caseload and service days. To allow for more variation in the relationship between caseload and interpreter work, aggregate caseloads are projected by interpreter region in four separate series. For the four fiscal years observed, the number of service days in each region was divided by the number of cases by region, and a weighted average service days per case rate was calculated. Multiplying the weighted average rate of service days per case by the forecast caseload for fiscal years 2013-14 to 2017-18 yields an estimate by region of aggregate service days, which can in turn be summed to produce the overall statewide interpreter service days.

To distribute the estimated aggregate statewide service days for the following five years among the top 19 languages, an iterative proportional adjustment was made on a year-by-year basis, informed by the observed changes in service days per language from FY 09-10 to FY 12-13 and changes in the LEP populations from 2009 to 2012. A "projected service day" rate of change was calculated for each language by producing the weighted average percent changes in LEP andin service days for 2009 to 2013, weighting recent years more heavily than earlier years, and averaging those two quantities.

For projection of the first year, FY 13-14, the caseload-based, aggregate statewide service day estimate is allocated among the top languages according to their proportion of the FY 12-13 service days. Then, a yearly change is estimated by multiplying that figure for each language by its individual "projected service day" rate of change, and the service day total is adjusted for each language by adding that quantity, producing a new service day count. A new proportion is calculated for each language by taking the share of the adjusted count for each from the sum of the adjusted counts. This adjusted proportion is then used to divide the caseload-based aggregate projected service days among the languages.

Step 5: Analyzing projections and determining language classification recommendations

The results of the preceding four steps were examined for their implications for determining language classifications: retained as designated, recommended for monitoring, and recommended for de-designation. A cut-off point was determined and all languages above and below that point were examined.

For languages below the cut-off point, a proportional usage measure was calculated to estimate the rate of change in service days that might be expected from a given change in LEP population. This measure provides a means to show how service days track LEP population for specific languages. The number of LEP speakers of a given language may be a useful indication of a need for interpreter services, but is not a perfect or even particularly reliable measure of the frequency with which that language is interpreted in court. Cantonese ranks sixth among spoken language service days from 2009 to 2013, but Cantonese speakers are estimated to be the second largest LEP group in California during the same period. In order to assess the relative usage that different language communities make of interpretive services in the courts, a measure of proportional usage by language was created.

Proportional usage is defined as the ratio of the proportion of a language's share of required interpreter service days in a given year to the proportion of the total LEP population speaking that language. A hypothetical example of the calculation of proportional usage follows:

FY 09-10 Service Days for Language A (x) = 5,000
FY 09-10 Service Days for top 19 languages (X) = 60,000
2009 LEP Population for Language A (y) = 300,000
2009 LEP Population total for top 19 languages (Y) = 6,000,000

Proportional Usage for Language A =
$(x/X)/(y/Y)$ = (5,000/60,000)/(300,000/6,000,000) = 0.083/0.05 = 1.67

A proportional usage value of 1 indicates that the language in question accounts for a share of interpreter service days in a given year equal to the share of the total LEP population speaking that language. A value of less than 1 means that the language in question accounts for a share of interpreter service days that is lower than the share of the LEP population speaking that language would suggest. A value greater than one indicates the opposite: a disproportionately higher rate of use of interpreter service days.

As with other analyses in the forecasting section of the report, the total service days and LEP population are the sums for the top 19 languages listed in the report. Service days and LEP speakers of other languages are excluded in the calculation of proportional usage.

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Appendix C

Utilization of the American Community Survey (ACS)

Population Data and the Purpose of this Report

The purpose of this report is to provide the Judicial Council with information on past use and projected future need for interpretation in languages other than English. The reason for this projection is to inform the Judicial Council's designation or de-designation of individual languages for the purpose of developing testing for the certification of court interpreters. Designated languages are by definition the most frequently used languages in the courts. Thus the focus of attention is on currently designated languages whose use may be declining as well as non-designated languages whose use approaches the level of the designated languages.

A language community may be concentrated in a single county or region and represent a large share of the interpreter need in those places, but if that language is not used in other parts of the state, it is likely that it will not reach a level requiring consideration for designation. The criterion is level of use, whether the population is dispersed across the state or concentrated in a county of region. If the level of use within a county or region rises to the threshold for language designation, then that criterion would be met and the language would be considered for designation. Anticipating the interpreter needs of a court serving a population that is comparatively small statewide, but highly concentrated within its jurisdiction, is beyond the scope of the present report.

For the analytical purposes of this report, population data is required to project future need based on past use (service days). The population data utilized is the American Community Survey (ACS).

The American Community Survey (ACS)

The American Community Survey (ACS) is produced by the U.S. Census Bureau annually and provides data on a wide range of subjects related to the population, including housing, occupation, languages spoken, and more. The ACS relies on a randomized sampling strategy of about three million households. The ACS is the largest data set of its kind, used by federal government and many state and local governments for allocation of billions of government funds for a variety of purposes.

For the purposes of this report—estimating the future need for interpreter services and the implications of future use for the designation of languages by the Judicial Council—the ACS provides the appropriate information about populations, languages, and English language proficiency that allows a projection of future language need in the courts to be made at a sufficient level of detail for planning purposes.[56]

During public hearings on the proposed Language Access Plan for California, some of the public comment contained criticism of the use of the ACS for that purpose. Those comments made reference to certain reports produced by the U.S. Census Bureau using these ACS data, noting that categories of languages were collapsed from 381 languages into 39 languages/language groups and then into four broad language categories, obscuring rather than illuminating the findings.[57] In the current report, use is being made of the underlying ACS data, not of reports or categories produced

[56] For a description, see the United States Census Bureau web site at http://www.census.gov/acs/www/about_the_survey/american_community_survey/

[57] Legal Services and Community Organizations, Comments to Draft Outline of December 11, 2013, (2014), p. 7 accessed at http://www.courts.ca.gov/LAP.htm

by the Census Bureau that are alleged to contain these defects. The underlying data, organized as Public Use Microdata Samples (PUMS), can be restricted to specific geographies at the state, county, or more local level (called Public Use Microdata Areas, or PUMAs) dependent on population size. The PUMS 5-year products for 2009 to 2012 used in this report identify 106 separate languages spoken in California among those identifying as LEP. Thus, the underlying data are in no way truncated or deficient for the purposes of this report.

While the provision of interpreter services for local populations speaking languages less frequently used are important for local court management (as well as educators, public health officials, and others), the infrequency of the use of these languages statewide means that they do not approach consideration for language designation. For example, the indigenous language most frequently used in the courts is Mixteco. Statewide use of Mixteco is far below the threshold for consideration of designation. Interpreter utilization data analyzed for Part 1 of this report indicates that Mixteco interpretation resulted in an average of 382 interpreter service days per year from FY 09-10 to FY 12-13, well below the 2,000 service days per year threshold to be considered for designation as a registered language. This statewide policy consideration in no way discounts the fact that local court managers must certainly be aware of all languages being used by populations in their jurisdiction and plan interpreter services accordingly. ACS data may indeed be insufficient for this purpose.

Additional Data Sources

One source often mentioned in discussions of interpreter need and language access is the English Learner (EL) data collected and published by the California Department of Education.[58] The previous report on interpreter use made reference to, although did not substantively incorporate, the English Learner data. These data were evaluated for possible use in this report and a determination was made that the data were not appropriate for this purpose. A brief summary of the findings of this evaluation follows.

The English Learner (EL) data is a census of children and their level of English proficiency in public schools throughout California.[59] For the purpose of language access and teaching English proficiency, no doubt these data are of great value. However, for the purpose of estimating future language need of LEP adults in state courts, these data are not appropriate for a number of reasons.

First, these data pertain to children rather than adults who appear in court. The EL data are not useful for estimating the adult population, since birth rates and family structures vary widely among different language populations. The wide variation in ratios of children to adults among different language populations makes it difficult to utilize these data to create reliable estimates about adults. If the English Learner data were used to project court interpreter need, one would fail to note that Farsi, Japanese, and Armenian are languages that rank high in court use, since they rank low among the English Learner student population.

[58] See California Department of Education web site, DataQuest section, for these data, at http://data1.cde.ca.gov/dataquest/

[59] For descriptions of the data see California Department of Education, English Learners in California Frequently Asked Questions, at http://www.cde.ca.gov/sp/el/er/

Despite these issues, the results of the ACS survey and the English Learner census for the most used languages other than English are largely the same. The top 10 languages in the 2014 English Learner data (who account for 95 percent of all English Learners in California schools[60]) are listed in the table below, with their rank. Alongside that ranking is the ranking of the most commonly used languages in the courts, ranked by population estimates from the ACS 2012-2013 data. The first and most obvious finding is that 7 of the top 10 languages are the same. Arabic, Punjabi, and Hmong are more highly ranked in the English Learner data than in the language by population ranking in the ACS. The simplest interpretation of this is that the proportion of children who are not proficient in English (relative to all English Learners) is greater than the proportion of adults appearing in court (relative to all LEP persons appearing in court). The three top languages in the ACS top ten that are missing from the EL top ten are Armenian, Farsi, and Japanese. The explanation is the inverse of that offered above: for speakers of those languages, adults appearing in court and using interpreters appear at a rate that is greater than that of children speaking those languages who attend public school and are identified as EL.

Table C1. Comparison of English Learner (EL) and American Community Survey (ACS) Language Rankings

Language	EL 2014 Ranking	ACS 2012-13 Ranking
Spanish	1	1
Vietnamese	2	2
Pilipino (Filipino or Tagalog)	3	4
Cantonese	4	3
Mandarin	5	5
Arabic	6	11
Hmong	7	14
Korean	8	6
Punjabi	9	12
Russian	10	8

Conclusion

For all of these reasons, the ACS remains the most appropriate data set to be used to project future language need in California, containing the relevant data on populations, languages, and English language proficiency required for projecting future language need in the courts at a sufficient level of detail for language designation planning purposes.

[60] California Department of Education, Facts about English Learners in California, accessed at http://www.cde.ca.gov/ds/sd/cb/cefelfacts.asp

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MEMORANDUM

Date
June 1, 2015

To
Judicial Council Executive and Planning Committee

From
Workload Assessment Advisory Committee
Hon. Lorna Alksne, Chair

Subject
Addition of Projects to Annual Agenda:

Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee

Creation of Interim Caseweight for Complex Civil Cases in Resource Assessment Study Model

Action Requested
Approve Additions to Annual Agenda

Deadline
June 17, 2015

Contact
Deana Farole
415-865-8997 phone
deana.farole@jud.ca.gov

Executive Summary

At the April 17, 2015, Judicial Council meeting the Council directed the Trial Court Budget Advisory Committee and the Family and Juvenile Law Advisory Committee[1] to form a joint subcommittee to include members of the Workload Assessment Advisory Committee and the

[1] The Trial Court Budget Advisory and the Family and Juvenile Law Advisory Committee will submit a separate memo regarding their annual agendas, including information related to this joint subcommittee, because their agendas require the addition of another joint subcommittee of which the Workload Assessment Advisory Committee is not a part.

Department of Child Support Services (DCSS), in order to reconsider the allocation methodology for the child support commissioner and family law facilitator program. At the same meeting, the council also directed the Workload Assessment Advisory Committee to include the paid complex case fee filings in the Resource Assessment Study computation of workload need and assign to them an interim caseweight, until such time as the advisory committee reviews the validity of the weighting. To begin working on these efforts, the Workload Assessment Advisory Committee requests that these projects be added to its annual agenda. Additionally, the Workload Assessment Advisory requests approval to extent the timeline for the Special Circumstances Subcommittee work, which has been delayed in part due to the new projects.

Action Requested

WAAC requests that the Judicial Council Executive and Planning Committee approve adding to the 2015 Annual Agenda of the Workload Assessment Advisory Committee:

(1) New item 4: **Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee:**

To enrich recommendations to the council and avoid duplication of effort, members of the Family and Juvenile Law Advisory Committee will collaborate with members of the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.

(2) New item 5: **Creation of Interim Caseweight for Complex Civil Cases in Resource Assessment Study Model**:

Develop an interim caseweight for complex civil cases, applying it to paid complex civil case fee filings, for the purposes of FY 2015-16 budget allocations. For future budget cycles, review the validity of the weighting and propose a long-term solution.

WAAC also requests that the Executive and Planning Committee approve extending the timeline for the Special Circumstances Subcommittee work, moving the anticipated completion date from May to July 2015.

Basis for Request

At the April 17, 2015 Judicial Council meeting, the council considered two separate items related to allocation of funding and the Resource Assessment Study model that resulted in direction to create a joint subgroup and develop a new component of the Resource Assessment Study model:

Item B: Child Support: Midyear Funding Reallocation for Fiscal Year 2014–2015 and Base Funding Allocation for Fiscal Year 2015–2016 for the Child Support Commissioner and Family Law Facilitator Program

> Direct the committee to pursue, with oversight provided by the Executive and Planning Committee, formation of a joint sub-committee that will include representatives from the Family and Juvenile Law Advisory Committee, including the cochairs or their designees, the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.

Item F: Trial Courts: Allocations from the State Trial Court Improvement and Modernization Fund and the Trial Court Trust Fund for 2015–2016

> Direct the Workload Assessment Advisory Committee to include the paid complex case fee filings in the Resource Assessment Study computation of workload need and assign to them an interim caseweight, until such time as the advisory committee reviews the validity of the weighting.

Additionally, due to the immediacy of the work on the complex civil caseweight and the need for WAAC to approve updated Resource Assessment Study model estimates for FY 2015-2016 budget allocations, the Special Circumstances Subcommittee's work had to be put on hold, so WAAC is requesting to extend the anticipated completion date for the subcommittee's work from May to July o2015.

Annual Agenda

The Workload Assessment Advisory Committee requests that the Judicial Council Executive and Planning Committee approve adding to the 2015 Annual Agenda of the Workload Assessment Advisory Committee:

New item 4 **Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee:**

To enrich recommendations to the council and avoid duplication of effort, members of the committee will collaborate with members of the Trial Court Budget Advisory Committee, the Family and Juvenile Law Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.

The Priority of the item is 1. The specifics for the item would be:

- Judicial Council Direction: At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Family and Juvenile Advisory Committee to form a joint subcommittee to study the AB 1058 funding methodology.
- Origin of Project: The AB 1058 funding methodology was first established in 1997 and has not since been updated. In reviewing the proposed midyear funding reallocations, the Family and Juvenile Law Advisory Committee acknowledge the need to reexamine the funding methodology to account for "the myriad of factors that must be considered when allocating funding to both optimize program success and provide for mechanisms for all funds to be spent by the end of each fiscal year."
- Resources: Office of Court Research, Finance, CFCC
- Key Objective Supported: N/A (The Workload Assessment Advisory Committee is acting in a consulting role and the key objective rests with the Family and Juvenile Law Advisory Committee.)

The proposed Completion Date would be December 31, 2015.

New item 5 **Creation of Interim Caseweight for Complex Civil Cases in Resource Assessment Study Model**:

Develop an interim caseweight for complex civil cases, applying it to paid complex civil case fee filings, for the purposes of FY 2015-16 budget allocations. For future budget cycles, review the validity of the weighting and propose a long-term solution.

The Priority of the item is 1. The specifics for the item would be:

- Judicial Council Direction: At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Trial Court Budget Advisory Committee to direct the Workload Assessment Advisory Committee to include the paid complex case fee filings in the Resource Assessment Study computation of workload need and assign

to them an interim caseweight, until such time as the advisory committee reviews the validity of the weighting

- Origin of Project: In March 2015, the Trial Court Budget Advisory Committee's Revenue and Expenditure Subcommittee met to review allocations from the State Trial Court Improvement and Modernization Fund (IMF). In order to address shortfalls in the fund, the subcommittee recommended, and the full committee approved, the elimination of funding for the complex civil litigation pilot programs. Assigning a separate caseweight that recognizes the additional workload involved in processing complex civil cases was seen as a way to continue to support enhanced case processing in complex civil in the absence of the IMF funding.
- Resources: Office of Court Research, Finance
- Key Objective Supported: #1 Finalize the project plan and methodology for conducting an update to the staff workload study.

The proposed completion date for the interim caseweight would be June 30, 2015, with a longer-term solution to be implemented in the fall 2015 update of the Resource Assessment Study.

Revised item 2 **Special Circumstances Subcommittee**

Convene Special Circumstances Subcommittee to study the impact of special circumstances cases on the felony caseweight and make recommendations to the full committee on how to handle such cases.

All details on this item would remain the same as when the Executive and Planning Committee initially approved the agenda, except for the anticipated completion date, which would be extended from May to July 2015.

Workload Assessment Advisory Committee
Annual Agenda—2015
Approved by E&P/RUPRO: _____

I. ADVISORY BODY INFORMATION

Chair:	Hon. Lorna Alksne
Staff:	Leah Rose-Goodwin and Deana Farole, Court Operations Services, Office of Court Research (OCR)

Advisory Body's Charge: The committee makes recommendations to the council on judicial administration standards and measures that provide for the equitable allocation of resources across courts to promote the fair and efficient administration of justice. The committee must recommend:

(1)Improvements to performance measures and implementation plans and any modifications to the Judicial Workload Assessment and the Resource Assessment Study Model;

(2)Processes, study design, and methodologies that should be used to measure and report on court administration; and

(3)Studies and analyses to update and amend case weights through time studies, focus groups, or other methods.

Advisory Body's Membership: 16 members: 8 judicial officers, 8 court executives

Subgroups/Working Groups: Special Circumstances Subcommittee; Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee

Advisory Body's Key Objectives for 2015:

- Finalize the project plan and methodology for conducting an update to the staff workload study.
- Conduct the staff workload study update and produce preliminary results.
- Improve data quality of filings data in the RAS categories.

II. ADVISORY BODY PROJECTS

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	Staff workload study update. The update will consist of a time study of a sample of trial courts and is intended to update the caseweights and other model parameters that are used to estimate workload need. The committee's work in 2015 will consist of discussing the study parameters and methodology, advising council staff on and assisting with recruitment of courts to participate in the study, and directing council staff in carrying out the study and conducting a preliminary analysis of the results.	1	**Judicial Council Direction:** In February 2013, the Judicial Council approved the updated RAS model parameters for use in estimating court staff workload need, with the understanding that ongoing technical adjustments will continue to be made by council staff as the data become available. The need for regular updates to the workload model has become more urgent now that RAS is used as the foundation piece of the model used to allocate trial court funding (WAFM). **Origin of Project:** The SB 56 Working Group was formed in 2009 at the direction of the Administrative Director to provide trial court input and oversight to the Office of Court Research in its ongoing work to revise and improve the workload estimates for judges and court staff. In October	Ongoing. A preliminary analysis will be completed by the end of 2015, with review of preliminary results, caseweight adjustments, and finalization of the caseweights to continue through 2016.	Updated caseweights to measure trial court staff workload. These caseweights are used to estimate trial court staff need, which is then used for the WAFM model.

[1] All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

[2] For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			2013, the advisory committee voted to update the studies every 5 years, as resources permit. In December 2013, the Judicial Council approved a recommendation to establish the Judicial Branch Resource Needs Assessment Advisory Committee to succeed the SB 56 Working Group and to continue its work. In April 2014, the committee was renamed to the Workload Assessment Advisory Committee (WAAC). **Resources:** 0.25 FTE Manager, 1.0 FTE Supervising Research Analyst, 2.5 FTE Senior Research Analyst, 0.5 FTE Staff Analyst II (2 FTE Senior Research Analysts are pending recruitment; all others are existing staff); ITSO support to create web-based data collection interface; subject matter expert consultants from the Center for Families, Children & the Courts and Criminal Justice Services. **Key Objective Supported:** #1 and #2		
2.	Convene Special Circumstances Subcommittee to study the impact of special circumstances cases on the felony caseweight and make recommendations to	1	**Judicial Council Direction:** In February 2013, the Judicial Council approved the updated RAS model parameters for use in estimating court staff workload need, with the	Anticipated completion date is July 2015.	The subcommittee will formulate recommendations for consideration by the full committee on how

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	the full committee on how to handle such cases.		understanding that ongoing technical adjustments will continue to be made by council staff as the data become available. **Origin of Project:** At its January 16, 2014 meeting, the Trial Court Budget Advisory Committee passed a motion to recommend to the Judicial Council that WAAC consider establishing a casetype for special circumstances cases. The motion was intended to highlight the extraordinary resource needs for those cases and also the criticality of the workload models to direct resources to courts based on workload. At the February 20, 2014 Judicial Council meeting, the Council refined the TCBAC's recommendation to recommend that WAAC specifically study homicide-death penalty cases. **Resources:** 0.1 FTE Supervising Research Analyst, 0.25 FTE Senior Research Analyst, nominal time from Manager (existing OCR staff). Subcommittee consists of representatives from the trial courts who are current WAAC members. Meeting expenses will be absorbed into existing IMF allocation for		to approach special circumstances cases in terms of data collection and the analysis of court resource needs in this area.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			WAAC. **Key Objective Supported:** #1		
3.	Improve data quality of filings data in the RAS categories, including: • Working with courts to ensure that data are reported in all of the RAS casetype categories • Evaluate court reporting practices for filings data to ensure they meet current JBSIS standards; update and clarify JBSIS standards as needed • Develop different possibilities for validating the filings data used in the RAS model, including establishing a data auditing process for filings data. This project is a partnership with the Court Executive Advisory Committee.	1	**Judicial Council Direction:** The Judicial Council approved the judicial workload study (December 2011) and the Resource Assessment Study (February 2013) as the methodologies used to estimate judge and staff workload need. Both studies use filings as the driver to estimate resource need. The accuracy of the estimates rely on the accurate and complete reporting of filings data by the trial courts. The Council's motions to approve the two studies also anticipated the need for ongoing technical adjustments to the models as better data became available. **Origin of Project**: The need for better data reporting and data auditing were discussed at the last SB 56 Working Group meeting (October 2013). The issue has also been raised at various forums, including CEAC; Trial Court Budget Advisory Committee meetings; and Funding Methodology Subcommittee meetings. **Resources:** COS-OCR staff (existing	Ongoing	The result of this work will be an improvement in the data presently collected from the courts for the RAS model.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			resources); ITSO staff (existing resources); a more extensive data validation project (3rd bullet) could require additional staff resources. **Key Objective Supported:** #3		
4.	To enrich recommendations to the council and avoid duplication of effort, members of the Family and Juvenile Law Advisory Committee will collaborate with members of the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.	1	**Judicial Council Direction:** At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Family and Juvenile Advisory Committee to form a joint subcommittee to study the AB 1058 funding methodology. **Origin of Project:** The AB 1058 funding methodology was first established in 1997 and has not since been updated. In reviewing the proposed midyear funding reallocations, the Family and Juvenile Law Advisory Committee acknowledge the need to reexamine the funding methodology to account for "the myriad of factors that must be considered when allocating funding to both optimize program success and provide for mechanisms for all funds to be spent by the end of each fiscal year." **Resources:** COS-OCR staff, existing	Work to be completed by December 31, 2015; report with recommendations due to the Judicial Council in February 2016.	The subcommittee will provide recommendations to the Judicial Council for updating the AB 1058 funding methodology.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			resources, but contingent on filling the two senior research analyst positions referenced above in #1; CFCC staff (existing resources); Finance staff (existing resources) **Key Objective Supported:** N/A (WAAC is acting in a consulting role and the key objective rests with the Family and Juvenile Law Advisory Committee.)		
5.	Develop an interim caseweight for complex civil cases, applying it to paid complex civil case fee filings, for the purposes of FY 2015-16 budget allocations. For future budget cycles, review the validity of the weighting and propose a long-term solution.	1	**Judicial Council Direction:** At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Trial Court Budget Advisory Committee to request that the Workload Assessment Advisory Committee include the paid complex case fee filings in the Resource Assessment Study computation of workload need and assign to them an interim caseweight, until such time as the advisory committee reviews the validity of the weighting. **Origin of Project:** In March 2015, the Trial Court Budget Advisory Committee's Revenue and Expenditure Subcommittee met to review allocations from the State Trial Court Improvement and	Interim caseweight will be developed by June 2015 for use in FY 2015-16 budget allocations. Long-term solution will be incorporated into the 2015 staff workload study update.	The committee will develop an interim caseweight for complex civil for FY 2015-16 budget allocations, as well as a longer-term solution to capturing the workload associated with complex civil cases.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Modernization Fund (IMF). In order to address shortfalls in the fund, the subcommittee recommended, and the full committee approved, the elimination of funding for the complex civil litigation pilot programs. Assigning a separate caseweight that recognizes the additional workload involved in processing complex civil cases was seen as a way to continue to support enhanced case processing in complex civil in the absence of the IMF funding. **Resources:** COS-OCR staff (existing resources); Finance staff (existing resources) **Key Objective Supported:** #1		

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III. STATUS OF 2014 PROJECTS:

[List each of the projects that were included in the 2014 Annual Agenda and provide the status for the project.]

#	Project	Completion Date/Status
1.	Staff and judge workload studies update: the workload studies update will consist of a time study of a sample of trial courts and is intended to update the caseweights and other model parameters that are used to estimate workload need. The committee's work in 2014 will consist of discussing the study parameters, methodology, and securing the resources to conduct the time study data collection.	**Ongoing.** The staff workload study parameters and methodology are under continued discussion and will be finalized in Summer 2015, with the study to be conducted in the Fall. The judge workload study will trail the staff workload study in order to minimize the burden on participating courts. JC staff have submitted one PAR to recruit a research position in OCR to support the project; a second PAR will be submitted for another position to start in July 2015. These positions are key to the ability of OCR staff to support the project, because of loss of several key staff who previously were assigned to the project and in light of the recommendation by OCR and agreement by the Executive Office that the entire study should be done in-house, rather than contracted out to the National Center for State Courts as was the case with the previous study.
2.	Update the Judicial Needs Assessment: this project involves using updated filings data to project the need for judicial officers. Biennial updates in even-numbered years are required by Government Code Section 61614(c)(1).	**Complete.** The Judicial Council approved the report for transmission to Legislature and Governor on December 12, 2014.
3.	Review the method for prioritizing judicial need and determine if changes should be made to the current method.	**Complete.** The committee's recommendation to lower the eligibility threshold to get on the list for a new judgeship from 1.0 to 0.8 FTE was approved by the council on December 12, 2014.
4.	Improve data quality of filings data in the RAS categories, including: • Working with courts to ensure that data are reported in all of the RAS casetype categories • Evaluate court reporting practices for filings data to ensure they meet current JBSIS standards; update and clarify JBSIS standards as needed • Develop different possibilities for validating the filings	**Ongoing.** Key milestones achieved in 2014 include modifying the JBSIS web portal to accept filings in the disaggregated family law-other category (DV, parentage, child support, and family law-other petitions). Portal modifications for probate and civil limited will be completed in early 2015. Additionally, a working group of CEAC has been convened to compile and prioritize a list of JBSIS reporting issues.

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	data used in the RAS model, including establishing a data auditing process for filings data.	
5.	Subordinate Judicial Officer Conversion Program: Provide to E&P updated information that would show how the remaining 54 subordinate judicial officer conversions authorized under Government Code section 61695 would be allocated if more current workload data were used.	**Ongoing.** This project was delayed because of the need to update the number of authorized subordinate judicial officer FTE in the courts. A census was conducted in September 2014, and E&P reviewed changes made in several courts at its October 9, 2014 meeting. An updated analysis will be reviewed by WAAC in January 2015 and, if approved, will be presented to E&P in early 2015.

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IV. Subgroups/Working Groups - Detail

Subgroups/Working Groups: *[For each group listed in Section I, including any proposed "new" subgroups/working groups, provide the below information. For working groups that include members who are not on this advisory body, provide information about the additional members (e.g., from which other advisory bodies), and include the number of representatives from this advisory body as well as additional members on the working group.]*

Subgroup or working group name: Special Circumstances Subcommittee

Purpose of subgroup or working group: To study the impact of special circumstances cases on the felony caseweight and make recommendations to the full committee on how to handle such cases.

Number of advisory body members on the subgroup or working group: 5

Number and description of additional members (not on this advisory body): N/A

*Date formed:*11/20/2014

Number of meetings or how often the subgroup or working group meets: Approximately 4 meetings are anticipated.

Ongoing or date work is expected to be completed: Work is expected to be completed by July 2015.

Subgroup or working group name: Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee

Purpose of subgroup or working group: To reconsider the AB 1058 allocation methodology developed in 1997, with an eye to the myriad of factors that must be considered when allocating funding to both optimize program success and provide for mechanisms for all funds to be spent by the end of each fiscal year.

Number of advisory body members on the subgroup or working group: 4

Number and description of additional members (not on this advisory body): 6 members of the Family and Juvenile Law Advisory Committee, 6 members of the Trial Court Budget Advisory Committee, 1 representative of the Department of Child Support Services

*Date formed:*4/17/2015

Number of meetings or how often the subgroup or working group meets: Monthly meetings by conference call are anticipated.

Ongoing or date work is expected to be completed: Work is expected to be completed by December 31, 2015, with a report with recommendations due to the Judicial Council in February 2016.

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JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
June 2, 2015

To
Members of the Executive and Planning Committee

From
Zlatko Theodorovic, Director and Chief Financial Officer

Subject
Trial Court Security Grants Program

Action Requested
Information Only

Deadline
N/A

Contact
Lucy Fogarty
Senior Manager
415-865-7587 phone
Lucy.Fogarty@jud.ca.gov

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Executive Summary

Upon recommendation of the Trial Court Budget Advisory Committee, at the April 17, 2015, Judicial Council meeting, the Council approved eliminating, reducing, and deferring expenditures for specified projects funded from the State Trial Court Improvement and Modernization Fund (IMF). This action eliminated $1.2 million for the Trial Court Security Grants Program effective July 1, 2015. The Council directed staff to explore utilizing alternative sources to fund Trial Court Security Grants. The purpose of this memorandum is to identify any financial or statutory constraints for using one or more of the construction funds to support the Trial Court Security Grants Program. To the extent a Budget Change Proposal (BCP) is required to provide the appropriate spending authority specifically for this workload, this memorandum describes the types of information that should be included in the request.

Trial Court Security Grants Program

The Judicial Council's Office of Security administers the Trial Court Security Grant Program for the installation and enhancement of security systems in trial court facilities. The program began

in fiscal year 2006-07 and has historically been funded from the State Trial Court Improvement and Modernization Fund (IMF). The initial program budget was $3 million annually, but has since been reduced to $1.2 million annually. To date, the program has installed a total of 80 cameras and 27 access and 116 duress alarm systems. Additionally, grant funding is used to support other security projects, such as a web-based continuity of operations planning tool, reconfiguration of clerk's counters, and installation of ballistic glass.

Systems installed using Trial Court Security Grant Program funds since 2006 have been maintained using those grants funds, through the purchase of maintenance service agreements; however the service agreements became cost prohibitive. Beginning in 2009-10, they were no longer purchased, and as such, maintenance expenses for cameras and access systems are handled as needed on a time and materials basis.

Alternative Funding Sources for the Trial Court Security Grants Program

The Finance Office (Finance) has reviewed the statutes that established the Court Facilities Trust Fund (CFTF), State Court Facilities Construction Fund (SCFCF), and State Court Facilities Construction Fund Immediate and Critical Needs Account (ICNA) to determine if there is any statutory impediment to utilizing these funds to support the Trial Court Security Grants Program. Attachment 1 summarizes the establishing legislation and types of expenditures for each fund source.

As indicated in the attachment nothing in statute specifically prohibits the use of the SCFCF and ICNA funds to purchase and maintain security equipment. While the SCFCF and ICNA provide funding for a variety of purposes, including Facility Modifications and general trial court operations, declining revenues have affected the long-term stability of both of the funds and impacted the level of services provided. Conservative estimates indicate that both funds are projecting negative fund balances in future years.

The CFTF was established to support ongoing operations, repair, and maintenance of court facilities. Rule of Court 10.810, Function 8: Court Security (see Attachment 2) indicates that the purchase of security equipment is a court allowable expense, therefore could be paid for from trial courts operating budget; but the maintenance of security equipment is an allowable use of resources from the county Maintenance of Effort payments deposited into the CFTF. However, current Maintenance of Effort payments are insufficient to meet the current and ongoing facility repair and maintenance needs. Moreover, previous BCP requests for additional General Fund resources to support facility repair and maintenance have been denied by the Department of Finance.

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Utilizing Funding from the Facility Modifications Program

The Trial Court Facility Modifications Policy (see Attachment 3) adopted by the Judicial Council on July 12, 2012, and revised on December 12, 2014, defines a Facility Modification and assigns each approved project one of the six priority categories. Approximately $65 million is provided annually for Facility Modification projects from the SCFCF ($40 million) and ICNA ($25 million). While the Trial Court Facility Modifications Policy does not explicitly exclude the use of these funds to replace or provide new security equipment, the guidelines (Guideline 5, see Attachment 4) for prioritizing and ranking facilities modifications adopted by the Trial Court Facility Modification Advisory Committee are less clear. Exterior security lighting, making accessible entry areas that can house security equipment, perimeter alarms, normal exterior locks and hardware, and holding cells are clearly part of the facility and determined to be a Judicial Council responsibility. However, responsibility for cameras, interior locks, and other security related, but attached equipment is not clearly defined. Guideline 5 does note that Facility Modification projects are limited in the replacement of failed equipment, but these projects can be considered and are automatically categorized as a Priority #3.

The Court Security Advisory Committee, established in October 2013, makes recommendations to the Judicial Council for improving court security, including personal security, emergency response planning, and oversight of the Trial Court Security Grants Program. Any determination or consideration by the Trial Court Facilities Modification Advisory Committee to allocate resources to support the Trial Court Security Grants Program should take into account any recommendations and/or policies adopted by the Court Security Advisory Committee.

Budget Change Proposals

The Judicial Council approved the submission of a BCP to the Department of Finance in September 2014, which requested $1.464 million General Fund for Trial Court Security System Maintenance and Replacement in 2015-16 and ongoing. This was in addition to the $1.2 million proposed for expenditure in 2015-16 from the IMF. The BCP indicated the funds would be used to replace aging camera, and duress alarm and intrusion alarm systems, as well as maintenance of current systems. The Department of Finance denied this request, stating that the Judicial Council should utilize existing Facility Modification funding to support this workload. We believe that a BCP requesting General Fund will likely be denied again; however, if the request proposes to utilize another fund source, it may be given further consideration.

Conclusion

If the Judicial Council determines the Trial Court Security Grant Program is a critical service, Finance has determined that utilization of one or more of the construction funds would be viable

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funding options. In the next section, several options are presented for the Judicial Council to consider, three of which require submission and approval of a Budget Change Proposal to the Department of Finance. Any BCP request should, at a minimum, include the following elements:

- Clear, concise description of the problem/issue and why funding is needed
- Address history, risks and uncertainties
- Why these program costs cannot be absorbed within existing resources
- A workload table identifying amount of resources needed and their intended use
- Identification of a viable fund source
- Identify benefits to be achieved
- Present and evaluate viable alternatives

Options to Consider

1. **Utilize the State Court Facilities Construction Fund**. Resources from the SCFCF could be used to support the purchase and maintenance of security equipment. At this time, the expected expenditures from this fund are essentially static and no new construction projects are proposed to be funded from the SCFCF, producing a stable funding source. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

2. **Utilize the Immediate and Critical Needs Account**. Resources from the ICNA could be used to support the purchase and maintenance of security equipment. While this option is viable, proposed expenditures in the ICNA are continuously shifting, based on the available resources to support approved court construction projects. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

3. **Utilize existing Facility Modification program resources.** While the current policies and guidelines of the Trial Court Facilities Modification Advisory Committee related to security are ambiguous, the Judicial Council can work with the Trial Court Facilities Modification Advisory Committee to further refine the security guidelines to identify eligible security projects that can be funded from the Facility Modification Program. The Facility Modifications Program currently has authority to expend up to $65 million annually. Should the requests for new or replacement security equipment be incorporated into the Facility Modification Program, per the Trial Court Facility Modifications Policy, these projects would be automatically ranked as a Priority #3 and subject to consideration and approval against other statewide facility needs within the same ranking and below Priorities #1 and #2. This option does not require a BCP.

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4. **Permanently redirect $1.2 million from the Facilities Modification Program to the Trial Court Security Grant Program.** This alternative provides a permanent funding source for the Trial Court Security Grant Program. Purchase of new and/or replacement of security equipment would not be prioritized against other higher priority facility modification projects. However, this alternative would permanently reduce the Facility Modifications budget by $1.2 million. This option requires various technical budgeting changes to implement the redirection of resources.

5. **Utilize construction funds (ICNA/SCFCF) and the Court Facilities Trust Fund.** This alternative provides that the maintenance of security equipment be supported from the CFTF and the purchase or replacement of security equipment be supported from either the SCFCF or ICNA. However, as indicated above, current Maintenance of Effort payments deposited into the CFTF are insufficient to meet the current and ongoing facility repair and maintenance needs. Consider delegating oversight responsibility to the Court Security Advisory Committee. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

Attachments

Attachment 1: Chart – Establishing legislation and types of expenditures
Attachment 2: Rule of Court 10.810
Attachment 3: Trial Court Facility Modifications Policy
Attachment 4: Trial Court Facility Modification Advisory Committee Guideline #5

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Fund	Statutory Authority	Allowable Use of Funds	Source of Revenue	Types of Expenditures
Court Facilities Trust Fund (3066)	Government Code Sections 70351-70370	Ongoing operations, repair, and maintenance of court facilities.	Requires each county to pay to the state an amount that county historically expended for operation and maintenance of court facilities.	Program operations costs, and court facilities operations and maintenance
State Court Facilities Construction Fund (3037)	Government Code Section 70371	Planning, design, construction, rehabilitation, renovation, replacement, leasing, or acquisition of court facilities.	State court construction penalty assessments (primarily vehicle code infractions). Surcharges on parking offenses and filing fees in civil actions.	Program operations costs, Facilities Modifications, Capital Outlay project costs, Lease-Revenue Debt Service Payments for court construction.
Immediate and Critical Needs Account (3138)	Government Code Sections 70371-70374	Planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities. Lease-revenue and Public-Private Partnership payments. Trial court operations.	State court construction penalty assessments (primarily vehicle code infractions). Assessment on criminal convictions.	Program operations costs, Trial Court operations costs, Facilities Modifications, Los Angeles Long Beach Courthouse Service Fee, Capital Outlay project costs, Lease Revenue Debt Service Payments for court construction.

California Rules of Court (Revised January 1, 2015)

Rule 10.810. Court operations

(a) Definition

Except as provided in subdivision (b) and subject to the requirements of subdivisions (c) and (d), "court operations" as defined in Government Code section 77003 includes the following costs:

(1) *(judicial salaries and benefits)* salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers;

(2) *(nonjudicial salaries and benefits)* salaries, benefits, and public agency retirement contributions for superior and municipal court staff whether permanent, temporary, full- or part-time, contract or per diem, including but not limited to all municipal court staff positions specifically prescribed by statute and county clerk positions directly supporting the superior courts;

(3) salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function;

(4) court-appointed counsel in juvenile dependency proceedings, and counsel appointed by the court to represent a minor as specified in Government Code section 77003;

(5) *(services and supplies)* operating expenses in support of judicial officers and court operations;

(6) *(collective bargaining)* collective bargaining with respect to court employees; and

(7) *(indirect costs)* a share of county general services as defined in subdivision (d), Function 11, and used by the superior and municipal courts.

(Subd (a) amended effective July 1, 1995; previously amended effective January 1, 1989, July 1, 1990, and July 1, 1991.)

(b) Exclusions

Excluded from the definition of "court operations" are the following:

(1) law library operations conducted by a trust pursuant to statute;

(2) courthouse construction and site acquisition, including space rental (for other than court records storage), alterations/remodeling, or relocating court facilities;

(3) district attorney services;

(4) probation services;

(5) indigent criminal and juvenile delinquency defense;

(6) civil and criminal grand jury expenses and operations (except for selection);

(7) pretrial release services;

(8) equipment and supplies for use by official reporters of the courts to prepare transcripts as specified by statute; and

(9) county costs as provided in subdivision (d) as unallowable.

(Subd (b) amended effective July 1, 1995; adopted effective July 1, 1988 as subd (c); previously amended effective January 1, 1989, and July 1, 1990.)

(c) Budget appropriations

Costs for court operations specified in subdivision (a) shall be appropriated in county budgets for superior and municipal courts, including contract services with county agencies or private providers except for the following:

(1) salaries, benefits, services, and supplies for sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts;

(2) salaries, benefits, services, and supplies for county clerk activities directly supporting the superior court; and

(3) costs for court-appointed counsel specified in Government Code section 77003.

Except as provided in this subdivision, costs not appropriated in the budgets of the courts are unallowable.

(Subd (c) amended effective July 1, 1995; adopted as subd (d) effective July 1, 1990.)

(d) Functional budget categories

Trial court budgets and financial reports shall identify all allowable court operations in the following eleven (11) functional budget categories. Costs for salary, wages, and benefits of court employees are to be shown in the appropriate functions provided the individual staff member works at least 25 percent time in that function. Individual staff members whose time spent in a function is less than 25 percent are reported in Function 10, All Other Court Operations. The functions and their respective costs are as follows:

Function 1. Judicial Officers

Costs reported in this function are
Salaries and state benefits of
Judges
Full- or part-time court commissioners
Full- or part-time court referees
Assigned judges' in-county travel expenses
Costs not reported in this function include
County benefits of judicial officers (Function 10)
Juvenile traffic hearing officers (Function 10)
Mental health hearing officers (Function 10)
Pro tem hearing officers (Function 10)
Commissioner and referee positions specifically excluded by statute from state trial court funding (unallowable)
Related data processing (Function 9)
Any other related services, supplies, and equipment (Function 10)

Function 2. Jury Services

Costs reported in this function are
Juror expenses of per diem fees and mileage
Meals and lodging for sequestered jurors
Salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)
Contractual jury services
Jury-related office expenses (other than information technology)
Jury-related communications, including "on call" services
Costs not reported in this function include
Juror parking (unallowable)
Civil and criminal grand jury costs (unallowable)
Jury-related information systems (Function 9)

Function 3. Verbatim Reporting

Costs reported in this function are
Salaries, wages, and benefits of court reporters who are court employees
Salaries, wages, and benefits of electronic monitors and support staff
Salaries, wages, and benefits of verbatim reporting coordinators and clerical support staff
Contractual court reporters and monitors

Transcripts for use by appellate or trial courts, or as otherwise required by law
Related office expenses and equipment (purchased, leased, or rented) used to record court proceedings, except as specified in Government Code § 68073, e.g., notepaper, pens, and pencils ER equipment and supplies
Costs not reported in this function include
Office expenses and equipment for use by reporters to prepare transcripts (unallowable)
Expenses specified in Government Code § 69073 (unallowable)
Space use charges for court reporters (unallowable)

Function 4. Court Interpreters

Costs reported in this function are
Salaries, wages, and benefits of courtroom interpreters and interpreter coordinators
Per diem and contractual courtroom interpreters, including contractual transportation and travel allowances
Costs not reported in this function include
Related data processing (Function 9)
Any other related services, supplies, and equipment (Function 10)

Function 5. Collections Enhancement

Collections performed in the enforcement of court orders for fees, fines, forfeitures, restitutions, penalties, and assessments (beginning with the establishment of the accounts receivable record)
Costs reported in this function are
Salaries, wages, and benefits of collection employees of the court, e.g., financial hearing officers evaluation officers collection staff
Contract collections costs
County charges for collection services provided to the court by county agencies
Related services, supplies, and equipment (except data processing, Function 9)
Costs not reported in this function include
Staff whose principal involvement is in collecting "forthwith" payments, e.g., counter clerks (Function 10) cashiers (Function 10)

Function 6. Dispute Resolution Programs

Costs reported in this function are
Arbitrators' fees in mandatory judicial arbitration programs
Salaries, wages, and benefits of court staff providing child custody and visitation mediation and related investigation services, e g., Director of Family Court Services mediators conciliators investigators clerical support staff
Contract mediators providing child custody and visitation mediation services
Salaries, wages, benefits, fees, and contract costs for other arbitration and mediation programs (programs not mandated by statute), e.g , arbitration administrators clerical support staff arbitrators' fees and expenses
Costs not reported in this function include
Related data processing (Function 9)
Any other related services, supplies, and equipment (Function 10)

Function 7. Court-Appointed Counsel (Noncriminal)

Costs reported in this function are
Expenses for court-appointed counsel as specified in Government Code § 77003

Function 8. Court Security

Court security services as deemed necessary by the court. Includes only the duties of (a) courtroom bailiff, (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities.
Costs reported in this function are
Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e., bailiffs weapons-screening personnel
Salary, wages, and benefits (including overtime) of court staff performing court security, e g., court attendants
Contractual security services
Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function
Sheriff, marshal, and constable employee training
Purchase of security equipment
Maintenance of security equipment
Costs not reported in this function include
Other sheriff, marshal, or constable employees (unallowable)
Court attendant training (Function 10)
Overhead costs attributable to the operation of the sheriff and marshal offices (unallowable)
Costs associated with the transportation and housing of detainees from the jail to the courthouse (unallowable)
Service of process in civil cases (unallowable)
Services and supplies, including data processing, not specified above as allowable
Supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties less than .25 FTE time (unallowable)

Function 9. Information Technology

Costs reported in this function are
Salaries, wages, and benefits of court employees who plan, implement, and maintain court data processing and information technologies, e.g., programmers analysts
Contract and consulting services associated with court information/data processing needs and systems
County Information Systems/Data Processing Department charges made to court for court systems, e.g., jury-related systems court and case management, including courts' share of a criminal justice information system accounts receivable/collections systems
Related services, supplies, and equipment, e.g., software purchases and leases maintenance of automation equipment
Training associated with data processing systems' development
Costs not reported in this function include
Information technology services not provided directly to the courts (i.e., services used by other budget units)
Data processing for county general services, e.g., payroll, accounts payable (Function 11)

Function 10. All Other Court Operations

Costs reported in this function are
Salaries, wages, and benefits (including any pay differentials and overtime) of court staff (a) not reported in Functions 2-9, or (b) whose time cannot be allocated to Functions 2-9 in increments of at least 25 percent time (.25 FTE);
Judicial benefits, county-paid
Allowable costs not reported in Functions 2-9.
(Nonjudicial staff) Cost items may include, for example, juvenile traffic hearing officer mental health hearing officer court-appointed hearing officer (pro tem) executive officer court administrator clerk of the court administrative assistant personnel staff legal research personnel; staff attorney; planning and research staff secretary

courtroom clerk clerical support staff calendar clerk deputy clerk accountant cashier counter clerk microfilming staff management analyst probate conservatorship and guardianship investigators probate examiner training staff employed by the court
Personnel costs not reported in this function:
Any of the above not employed by the court
(Services and supplies) Cost items may include, for example, office supplies printing postage communications publications and legal notices, by the court miscellaneous departmental expenses books, publications, training fees, and materials for court personnel (judicial and nonjudicial) travel and transportation (judicial and nonjudicial) professional dues memberships and subscriptions statutory multidistrict judges' association expenses research, planning, and program coordination expenses small claims advisor program costs court-appointed expert witness fees (for the court's needs) court-ordered forensic evaluations and other professional services (for the court's own use) pro tem judges' expenses micrographics expenses public information services vehicle use, including automobile insurance equipment (leased, rented, or purchased) and furnishings, including interior painting, replacement/maintenance of flooring, and furniture repair maintenance of office equipment janitorial services legal services for allowable court operations (County Counsel and contractual) fidelity and faithful performance insurance (bonding and personal liability insurance on judges and court employees) insurance on cash money and securities (hold-up and burglary) general liability/comprehensive insurance for other than faulty maintenance or design of facility (e.g., "slip and fall," other injury, theft and damage of court equipment, slander, discrimination) risk management services related to allowable insurance space rental for court records county records retention/destruction services county messenger/mail service court audits mandated under Government Code § 71383
Service and supply costs not reported in this function include Civic association dues (unallowable) Facility damages insurance (unallowable) County central service department charges not appropriated in the court budget (unallowable)

Function 11. County General Services ("Indirect Costs")

General county services are defined as all eligible accounting, payroll, budgeting, personnel, purchasing, and county administrator costs rendered in support of court operations. Costs for included services are allowable to the extent the service is provided to the court. The following costs, regardless of how characterized by the county or by which county department they are performed, are reported in this function only and are subject to the statutory maximum for indirect costs as specified in Government Code § 77003. To the extent costs are allowable under this rule, a county's approved Cost Plan may be used to determine the specific cost although the cost categories, or functions, may differ.
Cost items within the meaning of rule 10.810(a)(7) and the county departments often performing the service may include, for example, County Administrator budget development and administration interdepartmental budget unit administration and operations personnel (labor) relations and administration Auditor-Controller payroll financial audits warrant processing fixed asset accounting departmental accounting for courts, e.g., fines, fees, forfeitures, restitutions, penalties, and assessments; accounting for the Trial Court Special Revenue Fund accounts payable grant accounting management reporting banking Personnel recruitment and examination of applicants maintenance and certification of eligible lists position classification salary surveys leave accounting employment physicals handling of appeals Treasurer/Tax Collector warrant processing bank reconciliation retirement system administration receiving, safeguarding, investing, and disbursing

court funds Purchasing Agent process departmental requisitions issue and analyze bids make contracts and agreements for the purchase or rental of personal property store surplus property and facilitate public auctions
Unallowable costs Unallowable court-related costs are those (a) in support of county operations, (b) expressly prohibited by statute, (c) facility-related, or (d) exceptions of the nature referenced in Functions 1-11.
Unallowable cost items, including any related data processing costs, are not reported in Functions 1-11 and may include, for example, Communications central communication control and maintenance for county emergency and general government radio equipment Central Collections processing accounts receivable for county departments (not courts) County Administrator legislative analysis and activities preparation and operation of general directives and operating procedures responses to questions from the Board, outside agencies, and the public executive functions: Board of Supervisors county advisory councils Treasurer/Tax Collector property tax determination, collection, etc. General Services rental and utilities support coordinate county's emergency services Property Management negotiations for the acquisition, sale, or lease of property, except for space rented for storage of court records making appraisals negotiating utility relocations assisting County Counsel in condemnation actions preparing deeds, leases, licenses, easements collecting rents building lease management services (except for storage of court records) Facility-related construction services right-of-way and easement services purchase of land and buildings construction depreciation of buildings/use allowance space rental/building rent (except for storage of court records) building maintenance and repairs (except interior painting and to replace/repair flooring) purchase, installation, and maintenance of H/V/A/C equipment maintenance and repair of utilities utility use charges (e.g., heat, light, water) elevator purchase and maintenance alterations/remodeling landscaping and grounds maintenance services exterior lighting and security insurance on building damages (e.g., fire, earthquake, flood, boiler and machinery) grounds' liability insurance parking lot or facility maintenance juror parking

(Subd (d) amended effective January 1, 2007; previously amended and relettered effective July 1, 1995.)

Rule 10.810 amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995.

Advisory Committee Comment

Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule

Trial Court Facility Modifications Policy

ADOPTED AND EFFECTIVE
JULY 27, 2012
REVISED DECEMBER 12, 2014

JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

I. Purpose

Government Code section 70391(h) requires the Judicial Council to allocate appropriated funds for the maintenance and construction of court facilities. Government Code section 70374(c)(1) authorizes the use of funds in the State Court Facilities Construction Fund for projects involving, among other things, rehabilitation, renovation, or replacement of court facilities. This document presents the methodology and process for identifying and prioritizing facility modifications (Facility Modifications) to be made to trial court facilities, the responsibility or title for which rests with the state.

The *Trial Court Facility Modifications Policy*, initially approved and effective July 27, 2012, replaced and superseded the Judicial Council's *Prioritization Methodology for Modifications to Court Facilities;* last revised April 24, 2009. This revised *Trial Court Facility Modifications Policy*, if approved by the council, will become effective January 1, 2015.

II. Definitions

A. Facility Modification

A Facility Modification is a physical modification to a facility or its components that restores or improves the designed level of function of a facility or facility components. A Facility Modification may consist of:

- A modification that alters or increases the designed level of services of a building;
- A "special improvement" meaning a one-time modification to a facility that is not expected to be repeated during the lifetime of the facility;
- An alteration, addition to, or betterment of a facility that changes its function, layout, capacity, or quality;
- A rehabilitation, which restores a facility to its former state or capacity;
- A renovation, which restores a facility to a former or better state, including by repairing or reconstructing facility components;
- A replacement, which puts a new facility component of the same or better quality or function, in the place of an existing facility component;
- The addition of new systems, equipment, or components to a facility that would not otherwise exist;
- A modification to a facility that is required to bring the facility into compliance with law, including but not limited to the Americans with Disabilities Act, title 24 of the California Code of Regulations, and federal and state hazardous materials laws and regulations;
- Any of the foregoing where a facility or its components are damaged, seriously deteriorated, dysfunctional, subject to intermittent service outage, or otherwise in insufficient operating condition as a result of deferred

maintenance, emergency, acts of God, severe wind or weather conditions, vandalism, or criminal activity; and

- A correction of collateral damage arising from an emergency incident or unanticipated finding that is discovered during the performance of Facility Modification work.

A Facility Modification differs from routine maintenance and repair of a court facility, which is the routine, recurring, and generally anticipated work that must be performed periodically throughout the life of a facility to keep the building and its grounds, equipment, and utilities infrastructure in a condition adequate to support their designed level of service. Routine maintenance and repair includes annual or less frequent periodic repairs and replacements of building components and equipment consistent with manufacturers' recommendations or industry-recommended service cycles. While a Facility Modification may either restore or improve a facility's designed level of function, routine maintenance and repair always maintains, without materially improving, the facility and its components at their designed level of function. Routine maintenance and repair is the basic and ongoing work that is needed, as part of ordinary facility operation and management, to keep the facility and its components in a condition adequate to support existing facility operations and to prevent deterioration, break down, and service interruptions.

In some instances, it is difficult to distinguish between a Facility Modification and routine maintenance and repairs. Facility Modifications are distinguished from routine maintenance and repairs based on the scope and complexity of the work to be performed, and the anticipated impact of the work on the ongoing operation of the facility. Factors to be considered in evaluating the scope, complexity, and impact of a project include:

- The amount of time and materials needed to complete the work;
- The number of steps involved in completing the project;
- The type and number of tools required to perform the work;
- The extent to which facility structures or equipment must be altered or moved to complete the project;
- Whether the facility component involved is a substantial part of a major facility system;
- Whether one or more facility systems will be disrupted or taken out of service as a result of the project; and
- Whether the project involves critical facility systems such as life safety or security equipment, HVAC equipment, utilities infrastructure, roofs and other structural components, or accessibility features (i.e., elevators, escalators, doors, parking lots and structures).

Projects of greater scope and complexity or with a more critical impact on the ongoing safe and secure operation of the court facility are more likely to be Facility Modifications; however, for projects that are more difficult to distinguish, case-by-case evaluation is required.

A Facility Modification differs from a capital project, which significantly increases the facility's gross area; substantially renovates the majority (more than 50 percent) of the facility; involves the construction of a new facility or a facility acquisition; or changes the use of the facility, as in a conversion from another use to court use.

B. Judicial Branch Facilities' Customer Service Center (CSC)

The Judicial Branch Facilities' Customer Service Center (CSC) is a 24-hour service center established to receive, track, and control all work statewide related to court facilities. The center is managed by Real Estate and Facilities Management staff, within the Judicial Council's Administrative Division. The CSC is the primary contact point for all Facility Modification requests and all maintenance services. The e-mail address is csc@jud.ca.gov.

C. Facility Modification Budget Allocation Categories

1. **Statewide Facility Modifications Planning Allocation**
   The Statewide Facility Modifications Planning Allocation is the portion of the Facility Modifications budget set aside by the Judicial Council for planning, investigations, and other activities related to the identification, solution analysis or development of Facility Modification requirements, estimates, and plans. This includes studies of issues that may eventually require Facility Modifications as well as full facility assessments used for long-range planning of the Facility Modification program. This budget does not include detailed construction design work, which is incorporated into the cost of each specific Facility Modification.

2. **Priority 1 Facility Modifications Allocation**
   The Priority 1 Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for performance of emergency Facility Modifications. Due to the unpredictable nature of these Facility Modifications funding must be set aside to ensure an adequate reserve to address any emergencies that may arise over the course of the fiscal year.

3. **Planned Facility Modifications Allocation**
   The Planned Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for Facility Modifications that the Trial Court Facility Modification Advisory Committee (TCFMAC) has fully vetted and recommended for funding at the beginning of the fiscal year and that are approved by the Judicial Council. Typically these Facility Modifications are considered to be among the highest priority from those *not* funded in the

previous year due to budget constraints. Funds remaining in this allocation after all Planned Facility Modifications have been completed can be reallocated by the TCFMAC among the other Facilities Modification Budget Categories. The Judicial Council will be advised of any such reallocations in the annual information report submitted after the close of each fiscal year. The report also will indicate if any Planned Facility Modifications approved by the council are canceled.

4. **Priority 2-6 Facility Modifications Allocation**
The remainder of the Facility Modifications budget is set aside by the Judicial Council for Priority 2–6 Facility Modifications that were either not received prior to the beginning of the fiscal year or involved lower-priority work not yet fully vetted and estimated but eligible for funding during the current fiscal year depending on funds available and priority of the requested modification.

This budget allocation is spread over the course of the fiscal year by the TCFMAC to fund requests that are ad hoc or unplanned, but that rank among the highest priority Facility Modifications. The TCFMAC will determine at the beginning of the fiscal year the estimated amount to be used at each of its meetings as part of a plan to stage the work over the course of the year. This will allow for funding decisions at each meeting to ensure funds are spent appropriately and fully for the fiscal year. Based on this funding determination the Judicial Council staff will present a proposed list of Facility Modification at each meeting. The TCFMAC will then approve or disapprove funding for each of the proposed Facility Modifications.

III. Priority Categories

Priority Categories for Facility Modifications

Projects determined to be Facility Modifications will be assigned one of the six priority categories described below. These priority categories are based on methods commonly used by private sector facility management firms. Facility Modifications will be prioritized based on confirmation that the requested project qualifies as a Facility Modification under the criteria in section II(A) above, as well as by priority category, specific justifications, effect on court operations, public and employee safety, risk management and mitigation, funding availability, equity among the courts, implementation feasibility, cost/benefit analysis, planning and design status, contribution to ADA compliance, and status of major capital improvements.

Facility Modifications determined to be Priority 1 will be addressed immediately and regardless of whether the court occupies a shared-use facility. Planned Priority 2–6 Facility Modifications requested for shared-use facilities will be assigned an appropriate

priority category; their prioritization and implementation may be dependent, however, on financial participation by the county that shares the building.

Priority categories for Facility Modifications are as follows:

Priority 1—Immediately or Potentially Critical. A Priority 1 ranking is appropriate where a condition of the facility requires immediate action to return the facility to normal operations or where a condition exists that will become critical if not corrected expeditiously. Such conditions necessitate a Facility Modification to prevent accelerated deterioration, damage, or dysfunction; to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees; or to remedy intermittent function, service interruptions, or potential safety hazards. These conditions may include, but are not limited to, major flooding, substantial damage to roofs or other structural building components, or actual or imminent hazardous material release or exposure. Depending on scope, complexity, and impact, a severe deterioration in life safety or security components may also be considered a condition requiring a Priority 1 Facility Modification.

Owing to their critical nature, Priority 1 Facility Modification requests will be addressed immediately by Judicial Council staff using internal procedures—including a method and a process for setting aside funds to address Priority 1 requests — that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions.

Priority 2—Necessary, But Not Yet Critical. A Priority 2 ranking is appropriate where a facility requires a modification to preclude deterioration, potential loss of function or service, or associated damage or higher costs if correction of a condition is further deferred.

Priority 3—Needed. A Priority 3 ranking is appropriate where addressing a Facility Modification will reduce long-term maintenance or repair costs or improve the functionality, usability, and accessibility of a court facility. Such a condition is not hindering to the most basic functions of the facility, but its correction will improve court operations.

Priority 4—Does Not Meet Current Codes or Standards. A Priority 4 ranking is appropriate where a facility or one or more of its components does not conform to current code requirements, despite having complied with all codes in place at the time of initial construction. Such conditions are considered *legally nonconforming,* and their modification to meet current code requirements is generally not required.

Priority 5—Beyond Rated Life, But Serviceable. A Priority 5 ranking is appropriate where a facility is currently adequate to support court operations but, owing to some

condition, cannot be expected to fully and properly function as designed for more than one year without the requested Facility Modification.

Priority 6—Hazardous Materials, Managed But Not Abated. A Priority 6 ranking is appropriate for a Facility Modification where a facility contains hazardous materials, such as asbestos or lead-based paints, that are managed in place and not yet abated.

IV. Process for Requesting and Prioritizing Facility Modifications

A. Requesting Facility Modifications

Potential Facility Modifications will be identified by court and Judicial Council personnel through requests made to the CSC. The Judicial Council staff in collaboration with the local court staff will

- Confirm that each requested project is a Facility Modification under the criteria set forth above in section II;
- Assign a priority category to each request;
- Resolve any questions and develop a preliminary cost estimate; and
- Finalize the scope of the Facility Modification.

1. Priority 1 Requests. Owing to their critical nature, Priority 1 requests will be addressed immediately by Judicial Council staff using internal procedures that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions. Judicial Council staff will report to the TCFMAC on all Priority 1 requests as part of the next scheduled TCFMAC meeting.

2. Priority 2–6 Requests. Requests for Priority 2–6 Facility Modifications will be tracked by the Judicial Council staff and the courts using the Judicial Council's Computer Aided Facility Management (CAFM) database. Each request will outline the problem to be addressed and state the impact if the problem is not addressed. Requests will be processed by CSC staff and tracked in CAFM.

B. Prioritizing Requests for Priority 2–6 Facility Modifications

The following criteria will be used in ranking of all noncritical Facility Modifications:

- priority category
- specific justifications, effect on court operations
- public and employee safety and security, and risk management
- funding availability
- equity among the courts
- implementation feasibility
- cost/benefit analysis

- design and plan status,
- contribution to ADA compliance
- planned major capital improvements

C. Trial Court Facility Modifications Advisory Committee: Duties and Procedures

The TCFMAC will meet as needed to review the Judicial Council staff prepared reports, which will include a suggested ranked list of all proposed Facility Modifications with fully developed scopes of work and cost estimates as well as current funding availability. The total cost of all modifications on the draft ranked list may not exceed total available funding for the current fiscal year. Based on a review of the Judicial Council reports and any other available information, the TCFMAC will determine which modifications to recommend for funding in the current fiscal year and which should be deferred for future consideration based on funding availability. The TCFMAC may also determine that certain items do not qualify as Facility Modifications and remove them from the list of recommended projects.

D. Trial Court Facility Modifications Advisory Committee: Annual Recommendation to the Judicial Council

1. The Legislature appropriates funding to the annual Facility Modification budget (annual budget) out of the State Court Facilities Construction Fund and the Immediate and Critical Needs Account.

2. Based on the annual budget, the Judicial Council staff to the TCFMAC will develop a proposed allocation among the four Facility Modification Budget Allocation Categories and a list of potential Planned Facility Modifications.

3. The TCFMAC will consider the Judicial Council staff proposal and develop a recommended allocation among the four Facility Modification Budget Allocation Categories; Priority 1 Facility Modifications, Statewide Facility Modification Planning, Planned Facility Modifications, and Priority 2–6 Facility Modifications.

4. The TCFMAC will also use this Judicial Council staff proposal to determine if there are high priority Facility Modifications that should be funded with the Planned Facility Modification allocation. A list of proposed Planned Facility Modifications, if any, will be developed, and will include the location, a short description, and estimated cost of each Planned Facility Modification. Based on the Annual Budget, the TCFMAC may recommend all funding be preserved for use on the highest priority Facility Modifications throughout the year and not recommend any Planned Facility Modifications.

5. The TCFMAC's draft recommendations of the proposed funding allocation and

the list of Planned Facility Modifications will be made available to the trial courts for comment by posting them on Serranus and emailing them to the presiding judges and the court executive officers. The comments and the TCFMAC's responses will be included with the final recommendations in a report to the Judicial Council.

6. Based upon comments received, the TCFMAC will determine its final recommended funding allocation and list of Planned Facility Modifications, which will be presented to the council for review and approval.

7. This policy, the budget allocations, and list of Planned Facility Modifications approved by the Judicial Council will be the basis on which the TCFMAC and the Judicial Council staff, in collaboration with the local courts, will proceed to implement Facility Modifications.

8. During the fiscal year, justifiable reasons may arise for reallocating funds among the four Facility Modification budget allocations—Statewide Facility Modification Planning, Priority 1, Planned, and Priorities 2–6. Under this policy, the Judicial Council delegates to the TCFMAC the authority to redistribute funds among the four budget allocations as necessary to ensure that the funds are used in the fiscal year and are used for the highest priority Facility Modifications, consistent with this policy and the criteria outline in section IV(B) above. All reallocations will be reported to the council as part of the annual report on the activities of the TCFMAC.

9. The Judicial Council also delegates to the TCFMAC the authority to approved Priority 1 and 2 Facility Modifications between the beginning of the fiscal year and the Judicial Council's approval of the annual budget allocation and list of Planned Facility Modifications. This is necessary to ensure that emergency and necessary Facility Modifications that could impact court operations are not delayed. The TCFMAC will not expend more than 20% of the annual budget prior to the Judicial Council's approval.

E. Trial Court Facility Modifications Advisory Committee: Annual Informational Report

The TCFMAC will develop an informational annual report summarizing its activities during the preceding fiscal year. Like the annual budget allocation recommendation, this report will be provided to the courts for comment in the same manner as the recommendations to the Judicial Council outlined above.

This report will be developed in the second quarter of the new fiscal year after all data is available and analyzed for the preceding year. This report will include data on actual

expenditures, requests received, any backlog of work based on industry standard major facility systems, funding of modifications by priority, time required to complete each project, cancellation of any council-approved projects, redistribution of funding between categories, and other significant TCFMAC activities.

F. Trial Court Facility Modifications Advisory Committee: Quarterly Report

The TCFMAC will develop a quarterly report to provide to the council as an informational item. The report will include a list of all Facility Modifications funded during the quarter, as well as any reallocation of fund between the funding categories.

Guideline 5
Security Related Projects

The determination of what specialty security projects is part of the court's equipment and what is a part of the facility as a whole is often a very fine line. Metal detectors, scanning equipment, and other such stand alone plugged in equipment used by court employees, sheriff or contractors are clearly court equipment and the responsibility of the court. Exterior security lighting, making accessible entry areas that can house security equipment, perimeter alarms, normal exterior locks and hardware, and holding cells are all clearly part of the facility and thus an JCC responsibility. Responsibility for cameras, interior locks, and other security related but attached equipment is less clear.

To determine funding responsibility the following criteria should be considered:

The JCC funds:

- permanent changes to the facility and accessibility;
- permanent changes to fixed counters and access areas;
- exterior security to include lighting, and alarms;
- repair and maintenance of "transferred" holding cells ;
- installation and maintenance of JCC recommended camera systems;
- all locks and hardware permanently install as part of the building; or
- all attached security equipment found in a typical office building.

The Courts fund

- all security related personnel cost and portable equipment;
- all furniture and removable locks;
- the replacement of all keys/cards lost by court personnel ;
- panic, duress, or similar emergency notification systems; or
- all security related equipment not found in the typical office building unless identified as not court allowable per Rule 10.810 (See Attachment 2).

It is imperative on the courts that they consult with the JCC anytime they are planning to add, change, or remove security equipment, or change security procedures that could have a facilities impact. Adding new equipment, removal of equipment, and changing the entry locations for either court staff or the public could all have an impact on the facility. Failure to plan with the JCC facility staff could result in delays in changes necessary to support the new security requirements.

Facility modification projects are limited in the replacement of failed equipment. Prioritization of work related to failed equipment should follow the normal prioritization process and consideration. Work shall be limited to like-for-like replacement as much as is technically possible.

Projects enhancing facility security systems shall be prioritized as a Priority 3 project.

All security related project must be coordinated with Emergency Response and Security (ERS). All justification and related scoring for these projects should be confirmed by ERS as being valid requirements and not outside the scope of normal JCC standards.

JUDICIAL COUNCIL OF CALIFORNIA MEETINGS

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.6(a))
Ronald M. George State Office Complex
William C. Vickrey Judicial Council Conference Center
Malcolm M. Lucas Board Room
455 Golden Gate Avenue • San Francisco, California 94102-3688
Thursday, June 25, 2015 • 1:45 p.m.–4:15 p.m.
Friday, June 26, 2015 • 8:30 a.m.–1:40 p.m.

Meeting materials will be hyperlinked to agenda titles as soon as possible after receipt by Judicial Council Support. Please check the agenda at CHECK FOR UPDATED LINK for recent postings of hyperlinked reports.

THURSDAY, JUNE 25, 2015 AGENDA

CLOSED SESSION (RULE 10.6(b))—PERSONNEL AND OTHER CONFIDENTIAL MATTERS

Session **2:00–2:50 p.m.**

Break **2:50–3:00 p.m. (approx.)**

OPEN SESSION (RULE 10.6(a))—MEETING AGENDA (ITEMS 1–3)

3:00–3:05 p.m. **Approval of Minutes**
Approve minutes of the April 16–17, 2015, Judicial Council meeting.

3:05–3:15 p.m. **Chief Justice's Report**
Chief Justice Tani G. Cantil-Sakauye will report.

3:15–3:25 p.m. **Administrative Director's Report**
Mr. Martin Hoshino, Administrative Director, will report.

NOTE: Time is estimated. Actual start and end times may vary.

Item 1 3:25–3:35 p.m.

Judicial Branch Administration: Fiscal Year 2015–2016 Judicial Branch Budget (There are no materials for this item. No action required.)

The Administrative Director briefs the council on the fiscal year 2015–2016 judicial branch budget, as passed by the Legislature on June 15, 2015.

Speaker: Mr. Martin Hoshino, Administrative Director

Item 2 3:35–3:55 p.m.

Judicial Council: Implementation of Judicial Council Directives on Judicial Council Staff Restructuring (No Action Required)

This informational report provides the status of the Judicial Council's Executive and Planning Committee's (E&P) activities regarding oversight of the implementation of Judicial Council Restructuring Directives. Specifically, it presents information on E&P's response to the California State Auditor's recommendation that the council conduct a more thorough review of council staffs' implementation of the Strategic Evaluation Committee recommendations. This response includes information on the two-day E&P public meeting held on March 12 and 13, 2015, at which time E&P members conducted a thorough review of completed directives. The report also presents information on modifications suggested by E&P to the format for reporting directives implementation status and to the public Restructuring webpage with the goal of increasing transparency and accountability in implementation of the directives.

Speakers: Hon. Justice Douglas P. Miller, Chair, Executive and Planning Committee
Hon. David M. Rubin, Vice-Chair, Executive and Planning Committee

Item 3 3:55–4:10 p.m.

Judicial Branch Workers' Compensation Program (JBWCP): Allocation Methodology Recommendation (Action Required)

The Judicial Branch Workers' Compensation Program (JBWCP) Advisory Committee recommends adopting an allocation methodology that will increase allocations from the participants, with the goal of reducing the current gap between the programs' projected liabilities and assets.

Speaker: Ms. Tania Ugrin-Capobianco, Court Executive Officer, Superior Court of California, County of El Dorado, and Chair, JBWCP

Item 4 4:10–4:25 p.m.

Trial Courts: Resource Assessment Study Model Interim Complex Civil Caseweight (Action Required)

The Worker's Assessment Advisory Committee requests approving its recommendations to (1) establish an initial interim complex civil caseweight of 2,271 minutes for fiscal year (FY)

2015–2016 budget allocations, and (2) reassess the interim caseweight using preliminary data from the fall 2015 update of the staff workload study and make any needed adjustments for FY 2016–2017 budget allocations.

Speakers: Ms. Kim Turner, Workload Assessment Advisory Committee
Ms. Deana Farole, Office of Court Research

FRIDAY, JUNE 26, 2015 AGENDA

OPEN SESSION (RULE 10.6(a))—MEETING AGENDA

8:30–8:40 a.m. **Chief Justice's Opening Remarks**

8:40–9:10 a.m. **Judicial Council Committee Presentations**

Executive and Planning Committee
Hon. Douglas P. Miller, Chair

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

Rules and Projects Committee
Hon. Harry E. Hull, Jr., Chair

Technology Committee
Hon. James E. Herman, Chair

9:10–9:40 a.m. **Judicial Council Members' Liaison Reports**

Judicial Council members will report on their liaison work.

9:40–10:10 a.m. **Public Comment**

The Judicial Council welcomes public comment on general matters of judicial administration and on specific agenda items, as it can enhance the council's understanding of the issues coming before it.

Please see our public comment procedures.

1) Submit advance requests to speak by **4:00 p.m., Tuesday, June 23, 2015**.

2) Submit written comments for this meeting by **1:00 p.m. on Wednesday, June 24, 2015**.

Contact information for advance requests to speak, written comments, and questions:

E-mail: judicialcouncil@jud.ca.gov

Postal mail or delivery in person:

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
Attention: Cliff Alumno

Break **10:10–10:20 a.m. (approx.)**

CONSENT AGENDA (ITEMS A1–A5 THROUGH J)

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Nancy Carlisle at 415-865-7614 at least 48 hours before the meeting.

ITEMS A1–AX RULES AND FORMS

Civil Jury Instructions

Item A1 **Jury Instructions: New, Revised, Renumbered, and Revoked Civil Jury Instructions and Verdict Forms (Action Required)**

The Advisory Committee on Civil Jury Instructions recommends approving for publication the new, revised, revoked, and renumbered civil jury instructions prepared by the committee.

Civil and Small Claims

Item A2 **Small Claims: Technical Revisions to Forms to Conform to Statutory Change (Action Required)**

Three years ago, the jurisdictional limit of the small claims court for actions brought by a natural person increased, with some specified exceptions. One of those exceptions, for personal injury claims in certain automobile cases, included a sunset date of January 1, 2015. Because two small claims forms state the jurisdictional limits, including the now outdated exception, the Civil and Small Claims Advisory Committee recommends revising those forms as soon as possible to reflect that the exception is no longer applicable.

Criminal Procedure

Item A3 **Criminal Procedure: Update Judicial Council Misdemeanor Domestic Violence Plea Form Citations (Action Required)**

The Criminal Law Advisory Committee recommends revising an optional Judicial Council form used to facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases to update two citations to statutes that address prohibitions on owning, using, or possessing firearms and ammunition within 10 years of a misdemeanor domestic violence conviction.

Traffic

Item A4 **Traffic and Criminal Law: Traffic and Criminal Law: Installment Payment Plans for Traffic Infraction Cases (Action Required) REPORT BY JUNE 12 (COURTNEY TUCKER OR BARBARA WHITEOAK AS CONTACTS)**

The Traffic Advisory Committee recommends amendment of forms TR-300 and TR- 305 for installment payment plans processed for traffic infraction cases by a court clerk. Vehicle Code sections 40510.5 and 42007 authorize the Judicial Council to prescribe the form used by court clerks to process installment payment plans in traffic infraction cases. California Rules of Court, rule 4.105, requires that court forms regarding payment of bail include information on procedures for appearing at court without deposit of bail in traffic infraction cases. Revision of the forms is recommended to be effective June 26, 2015, with implementation by August 15, 2015, to provide courts with sufficient notice and time to implement the necessary changes to be consistent with the requirements of rule 4.105.

Item A5 **Traffic and Criminal Law: Notice to Appear Forms (Action Required) REPORT BY JUNE 12 (COURTNEY TUCKER OR BARBARA WHITEOAK AS CONTACTS)**

The Traffic Advisory Committee recommends amendment of rule 4.103; revision of forms TR-INST, TR-115, TR-120, and TR-130; and adoption of new forms TR-135 and TR-145. Penal Code section 853.9 and Vehicle Code section 40310 authorize the Judicial Council to prescribe the form of notice to appear citations for use in citing traffic and criminal offenses. Rule 4.103 of the California Rules of Court establishes the procedure for use of notice to appear citation forms by law enforcement agencies. Adoption of the rule and forms is recommended to be effective July 1, 2015, with implementation by January 1, 2016, to give law enforcement agencies sufficient notice and time to implement the necessary changes to coincide with implementation of an electronic citation project of the California Highway Patrol and allow other law enforcement agencies to issue and file electronic citations.

Item B **Court Facilities: Sale of Equity Interest in Chino Courthouse as Surplus Property (Action Required)**

In keeping with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Facilities Policies Working Group recommends that the Judicial Council (1) declare as surplus property the Judicial Council's 51.17% equity interest in the Chino Courthouse, and (2) authorize the sale of the Equity Interest to the County of San Bernardino.

Item C **Court Facilities: Transfer of Judicial Council's Equity Interest in Independence Courthouse (Action Required)**

The Facilities Policies Working Group recommends that the Judicial Council approve the proposed permanent transfer of the Judicial Council's 34% equity interest in the Independence Courthouse, located at 168 North Edwards Street, Independence, California (the Independence Courthouse) to the County of Inyo (County) in exchange for the County's (1) forgiveness over time of the Judicial Council's existing obligation under the Joint Occupancy Agreement with the County dated April 29, 2008, to pay its 34% share of the cost of operating and maintaining the Independence Courthouse; and (2) agreement to enter into a long-term lease with the Judicial Council for certain real property located immediately adjacent to the existing County jail (also located in Independence) at a nominal rent for the

purpose of installing and operating a modular courthouse for use by the Inyo County Superior Court.

Item D **Court Public Parking Management Policy (Action Required)**

The Council controls a number of parking spaces that were either acquired through SB 1732 or provided in conjunction with new courthouse construction. Before SB 1732, the counties managed parking spaces, making some available for free and others for a fee. On-site parking provides an expedient feature for the employees, jurors, and other users of courts. The intent of the document is to initiate a branch-wide policy to implement a methodical approach in developing paid parking at courthouses where feasible.

Item E **Judicial Branch Administration: Judicial Branch Administration: Audit Report for Judicial Council Acceptance (Action Required)**

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E) and Judicial Council staff recommend that the Judicial Council accept the audit report entitled Audit of the Superior Court of California, County of San Bernardino. This acceptance is consistent with the policy approved by the Judicial Council on August 27, 2010, which specifies Judicial Council acceptance of audit reports as the last step to finalization of the reports before their placement on the California Courts public website to facilitate public access. Acceptance and publication of these reports promote transparent accountability and provide the courts with information to minimize future financial, compliance, and operational risk.

Item F **Judicial Branch Administration: Judicial Branch Administration: Audit Report for Judicial Council Acceptance (Action Required)**

A&E and Judicial Council staff recommend that the Judicial Council accept the audit report entitled *Audit of the Superior Court of California, County of San Luis Obispo*. This acceptance is consistent with the policy approved by the Judicial Council on August 27, 2010, which specifies Judicial Council acceptance of audit reports as the last step to finalization of the reports before their placement on the California Courts public website to facilitate public access. Acceptance and publication of these reports promote transparent accountability and provide the courts with information to minimize future financial, compliance, and operational risk.

Item G **Judicial Branch Administration: Judicial Branch Contracting Manual (Action Required)**

A&E recommends that the Judicial Council adopt proposed revisions to the *Judicial Branch Contracting Manual* (manual). The California Judicial Branch Contract Law directs the Judicial Council to adopt and publish a manual incorporating procurement and contracting policies and procedures that must be followed by judicial branch entities. The council adopted the initial manual on August 26, 2011, and adopted revisions to the manual on four subsequent occasions. The revisions that are currently proposed relate to updated nomenclature and minor clarifications.

Item H **Judicial Council Report to the Governor and Legislature: 2015 Language Need and Interpreter Use Study (Action Required)**

The Court Interpreters Advisory Panel recommends that the Judicial Council approve the *2015 Language Need and Interpreter Use Study* for submission to the Governor and Legislature. The study, conducted by the National Center for State Courts, details interpreter use in the trial courts for the FY period FY 2009–FY 2013 and projects future language need.

Item I **Trial Courts: Children's Waiting Room Policy (Action Required)**

The Trial Court Budget Advisory Committee (TCBAC) recommends that the Judicial Council approve revisions to the council's children's waiting room policy, including placing a cap on the amount of children's waiting room fund balance that courts can accumulate and, in specific circumstances, requiring courts to return children's waiting room fund balance to the Trial Court Trust Fund and discontinuing court's children's waiting room distribution.

Item J **Trial Courts: Recidivism Reduction Fund Court Grant Program, Phase II Recommended Awards (Action Required)**

As part of the Budget Act of 2014, the Legislature directed the Judicial Council of California to develop and administer a competitive grant program for trial courts that incorporates practices known to reduce adult offender recidivism. Criminal Justice Services, staff to the Judicial Council, recommends approving the Recidivism Reduction Fund (RRF) Court Grant Program funding allocation and distribution. This recommendation encompasses the use of: 1) $658,000 remaining after an initial round of awards was approved by the Judicial Council on February 19, 2015, and 2) an additional $1.3 million RRF allocation that is included in the version of the budget adopted by both budget committees in the two houses of the legislature and awaits action by the Governor on or before June 30, 2015.

DISCUSSION AGENDA (ITEMS K–Q)

Item K **10:20–10:45 a.m.** **25 MINUTES**

Court Facilities: Courtroom Layouts (Action Required)

The Court Facilities Advisory Committee recommends that the Judicial Council adopt a catalog of courtroom layouts with associated holding areas for use in the design of new courthouses that are fully or partially funded by the state. Each courthouse project and the courthouse construction program as a whole will save time in the design process and therefore save project costs through the application of the layouts, compared to the individual design of each project's courtrooms and adjacent holding areas.

Speaker: Hon. Brad R. Hill, Chair, Court Facilities Advisory Committee

Item L **10:45–11:05 a.m.** **20 MINUTES**

Court Facilities: Water Conservation Policy (Action Required)

E&P recommends that the Judicial Council adopt a water conservation policy that sets forth water conservation "best practices" for both capital projects and existing courthouse facilities. For capital projects, the policy identifies immediate and ongoing practices and enhanced practices that require further analysis on a project-by-project basis. For existing courthouse facilities, the policy identifies immediate best practices and long-term goals. The intent of the document is to initiate a branchwide, collaborative effort to identify best practices that will reduce water use at California courthouses.

Speaker: Hon. Marla O. Anderson, Vice-chair, Facilities Policies Working Group

Item M 11:05–11:35 a.m. 30 MINUTES

Trial Courts: Impact to Trial Court Funding under the Workload-Based Allocation and Funding Methodology (No Action Required)

TCBAC is providing the Judicial Council a status report on the current and possible future impact to trial court funding under the Workload-Based Allocation and Funding Methodology.

Speaker: Mr. Jake Chatters, Executive Officer, Superior Court of California, County of Placer

Item N 11:35–11:55 a.m. 20 MINUTES

Trial Courts: 2015–2016 Allocation Using the Workload-Based Allocation and Funding Methodology (Action Required)

TCBAC recommends that any new funding for general court operations provided by the Budget Act of 2015 for 2015–2016 that will be allocated in accordance with the Workload-Based Allocation and Funding Methodology be reduced by the $22.7 million shortfall in Trial Court Trust Fund fine and fee revenue that has not been backfilled from the state General Fund.

Speaker: Mr. Jake Chatters, Executive Officer, Superior Court of California, County of Placer

Item O 11:55 a.m.–12:15 p.m. 20 MINUTES

Trial Court Allocations: Restoration of Benefits Funding in 2015–2016 (Action Required)

TCBAC recommends that the Judicial Council approve the allocation of $13.4 million included in the 2015 Governor's May Revise for trial courts that made progress towards meeting the Public Employees' Pension Reform Act of 2013 standard. The 2014 Budget Act included an augmentation of $42.8 million specifically for the benefit cost changes in 2012–2013 and 2013–2014, which took into account a reduction in the amount of $22 million, based on the Department of Finance estimate of what the trial courts were spending to cover the employee share of cost for retirement. The Governor's May Revise proposes restoring $13.4 million of this $22 million reduction in 2015–2016.

Speaker: Mr. Jake Chatters, Executive Officer, Superior Court of California, County of Placer

Break 12:15–12:45 p.m. (approx.)

Item P 12:45–1:10 p.m. 25 MINUTES

Budget: Fiscal Year 2016–2017 Budget Requests for Trial Courts (Action Required)

TCBAC recommends that the Judicial Council approve the proposed fiscal year 2016–2017 budget requests for the trial courts. Submittal of budget change proposals (BCPs) is the standard process for proposing funding adjustments in the state budget. This year, the BCPs are to be submitted to the state Department of Finance by September 2, 2015.

Speaker: Hon. Marsha Slough, Trial Court Budget Advisory Committee

Item Q 1:10–1:40 p.m. 30 MINUTES

Trial Courts: State Trial Court Improvement and Modernization Fund Allocations in Fiscal Year 2015–2016 for the V3 Case Management System and Intermediate Case Management Systems Programs (Action Required)

TCBAC recommends that the Judicial Council allocate a total of $6.9 million in 2015–2016 from the State Trial Court Improvement and Modernization Fund for the V3 Case Management System and Intermediate Case Management Systems programs.

Speakers: Hon. Marsha Slough, Trial Court Budget Advisory Committee
Mr. Zlatko Theodorovic, Finance
Mr. Steven Chang, Finance

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

INFO 1 Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 31)

Government Code section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' regular office hours, and (2) the council to post all such notices on its website and also relay them to the Legislature. This is the 31st report to date listing the latest court notices received by the council under this statutory requirement; since the previous report, three superior courts—those of Calaveras, Yolo and Santa Clara Counties—have issued new notices.

INFO 2 **Court Facilities: Trial Court Facility Modification Quarterly Activity Report for Quarter 3 of Fiscal Year 2014–2015**

The Trial Court Facility Modification Advisory Committee (TCFMAC) has completed its facility modification funding for the third quarter of FY 2014–2015. In compliance with the *Trial Court Facility Modifications Policy*, the advisory body is submitting its *Trial Court Facility Modification Quarterly Activity Report: Quarter 3, Fiscal Year 2014–2015* as information for the council. This report summarizes the activities of the Trial Court Facility Modification Advisory Committee from January 1, 2015, to March 31, 2015.

INFO 3 **Trial Courts: Quarterly Investment Report for First Quarter of 2015**

This *Trial Courts: Quarterly Investment Report for First Quarter of 2015* provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under agenda item 10, Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004, and the report covers the period of January 1, 2015, through March 31, 2015.

Circulating Orders since the last business meeting.

Appointment Orders since the last business meeting.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26-27, 2015

Title
Judicial Branch Workers' Compensation Program (JBWCP): allocation methodology recommendation

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Judicial Branch Workers' Compensation Program (JBWCP) Advisory Committee
Tania Ugrin-Capobianco, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 5, 2015

Contact
Michael Guevara, Senior Manager, Human Resources, Judicial Council, 415-865-7586, michael.guevara@jud.ca.gov

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Executive Summary

The Judicial Branch Workers' Compensation Program (JBWCP) Advisory Committee (the Committee) recommends adopting an allocation methodology that will increase allocations from the participants, with the goal of reducing the current gap between the programs' projected liabilities and assets.

Recommendations

1. The Committee recommends--beginning in fiscal year 2015-2016--adopting and implementing an allocation method that charges premiums on an "ultimate cost basis" as opposed to the current method that is based on a "cash flow basis;"

2. The Committee recommends that the JBWCP be allowed to renew its existing policy with Safety National for excess insurance ($2 million with a $50 million per occurrence limit) for the trial courts;

3. The Committee recommends that the JBWCP be allowed to purchase a separate excess insurance policy from ARCH for the state judiciary[1] for losses over $2 million, with a $50 million per occurrence limit.

   The combined cost for both policies would be $655,029. In the event of a catastrophic loss/occurrence that affects both the trial courts and the state judiciary, each policy would have a self-insured retention of $2 million and each would have a limit of $50 million.

4. The Committee recommends that, when surpluses or deficiencies develop on outstanding liabilities and funding adjustments are necessary, they should be identified so that the policy of funding each year's claims costs that year is maintained.

Previous Council Action

On October 29, 2010, the Judicial Council approved adjusting the cost allocation model so that administrative program fees, including costs for a third party claims administrator (TPA) and risk consultant, would be evenly distributed among all member participants.

Rationale for Recommendations

There are two basic methods for funding self-insurance programs such as the JBWCP:

1. Current JBWCP Funding Methodology – Cash Flow Funding
   In cash flow funding, premium charges cover the cost of claims paid in a given fiscal year. Annual program costs are broken down into two main components: 1) loss premium, and 2) expense premium. An actuarial study is performed each year for the JBWCP to determine the total loss premium for the upcoming fiscal year. Loss premium covers medical benefits, indemnity benefits, and other allocated program costs such as legal fees. Expense premium includes excess insurance costs, claims handling fees provided by the third party claims administrator (TPA), and brokerage/consulting fees.

2. Recommended Funding Methodology for Fiscal Year 2015-16 – Ultimate Cost Basis
   Under the Ultimate Cost Basis methodology, premium charges cover the ultimate cost of claims occurring in a given fiscal year. Because actuarial estimates of claims payments and ultimate costs are subject to uncertainty, the program's broker-consultant, Bickmore, typically recommends self-funded programs like the JBWCP to charge premiums on an "ultimate cost basis." This will provide for more accurate funding of the annual costs incurred during a given year and is less likely to result in program liabilities exceeding assets.

[1] For reference, the state judiciary includes the Supreme Court, the California Judicial Center Library, Courts of Appeal, Habeas Corpus Resource Center, Commission on Judicial Performance and judges of the Superior Courts of California.

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Current Cash Flow Funding Methodology Contributes to JBWCP Asset Erosion

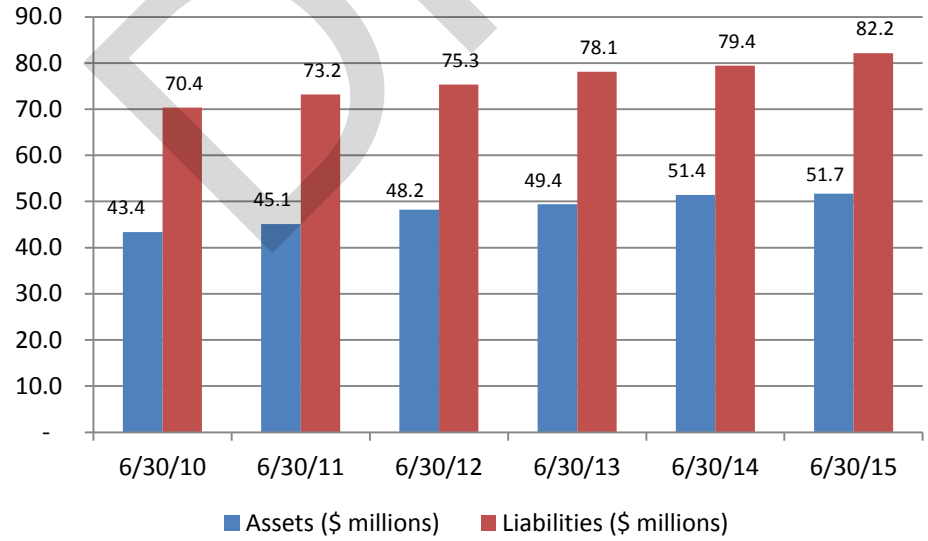
During the past five years, it appears that the cash flow funding method has not significantly reduced the asset base of the JBWCP. However, Bickmore's current actuarial projections indicate that the cash flow method will generate roughly $2 million less than the ultimate costs incurred annually, which, if continued, would eventually erode the JBWCP assets. The table below compares the two different methods of funding the JBWCP for the trial courts for fiscal year 2015-16.

Program Costs	Cash Flow Basis	Ultimate Basis	Difference
Loss and ALAE	$ 15,148,077	$ 17,282,639	$ 2,134,562
Claims Administration	2,250,000	2,250,000	-
Excess Insurance	655,029	655,029	-
Consulting and Brokerage	465,591	465,591	-
Total	**$ 18,518,697**	**$20,653,259**	**$2,134,562**

In general, when surpluses or deficiencies develop on outstanding liabilities and funding adjustments are necessary, they should be identified so that the policy of funding each year's claims costs that year is maintained. Since the goal is to work towards fully funding the program, the table above indicates that annual program funding should increase by at least $2,134,562.

Ultimate Cost Basis Prevents Growth of the 'Asset to Liability' Gap

The graph below shows a five-year history of assets and liabilities for the program, as well as a projection for June 30, 2015. As shown in the graph, as of June 30, 2015, assets for the program are projected to be approximately $51.7 million. The amount of these assets is approximately $30.5 million less than the expected liability for the program of $82.2 million so the program is not fully funded relative to the expected liability. It should be noted, however, that assets are sufficient to cover expected cash flow for the year by a substantial margin.



Note: Figures include Trial Courts and the Judiciary.

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Changing to an ultimate cost funding methodology this year will prevent the asset to liability gap from growing, but it does not close the gap entirely. The next step is to reduce the gap to zero and fully fund the program. This will take a multi-year approach to achieve the full funding goal, and the Committee intends to develop a plan to fully fund the program over time.

Ultimate Cost Basis is the First Step to Fully Funding the JBWCP

Over the course of the 2015-16 program year, the Committee will meet to develop a plan for fully funding the program over time. The plan will take into consideration several key factors including:

- **Discounting**
  A discount rate, sometimes used interchangeably with "interest rate," is used in the calculation of funding rates and unpaid claim liabilities. The expected investment income earned on the funds set aside to pay claims is taken as a credit to reduce the amount collected/retained. The higher the expected investment income, the less cash is necessary to fund the liabilities. If the expected investment income is lower, more cash will be necessary to fund the liabilities.

- **Increasing Premiums**
  Premiums may need to be increased above the level needed for new claims by an additional amount necessary to reduce the deficit on old claims. This may be done over a five- or ten- year period (or longer if necessary). Once the program is fully funded then premiums will be reduced to the level necessary for funding new claims only.

The principles that will guide the JBWCP in developing this plan include: 1) ensuring the financial integrity of the program, 2) providing annual budgetary stability for members and, 3) ensuring the cost allocation formulas reflect funding requirements in the long run.

Excess Insurance Mitigates the Costs of Large Catastrophic Losses

The JPWCP purchases commercial excess insurance for the trial courts in order to mitigate large catastrophic losses over $2 million. Historically the state judiciary has been fully self-insured and has not purchased excess insurance primarily because of the high cost resulting from the commercial carriers' concerns with the concentration of judicial council employees located in the bay area. However, for the fiscal year 2015-16 year, the state judiciary has received favorable pricing from the commercial insurance marketplace, which is comparable to the cost of insurance for the trial courts.

The recommended insurance carrier for the state judiciary, ARCH, has provided two very competitive proposals. The JBWCP recommends the proposal with the same terms as the trial court's policy at $174, 915. ARCH recently received a credit rating of "A+" from the insurance

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industry's credit rating agency, A.M. Best Company[2]. The "A+" rating is typically assigned to insurance companies that exemplify financial strength in meeting its ongoing insurance policy and contract obligations.

Comments, Alternatives Considered, and Policy Implications

External comments

At the Trial Court Budget Advisory Committee meeting on May 18, 2015, the public was invited to call in and listen to the meeting. David Yamasaki presented an update on the JBWCP and proposed cost allocations for 2015–2016 so that the JBWCP would become fully funded. No comments were received on this matter.

Internal comments

At the April 10, 2015 JBWCP Advisory Committee meeting, the funding methodology was discussed and whether or not the committee should look at more holistic ways to reduce the funding gap before the methodology is changed. It was agreed that the committee wants to immediately move away from the cash flow funding method and, in the following year, approach any deficits that may exist.

Alternatives

Utilize Cash Flow Funding Methodology

The current cash flow methodology could be maintained for the current year, while plans are developed to determine long-term goals to reduce the gap in liabilities versus assets. If this methodology is maintained, it could result in a $2 million reduction to the $51.7 million JBWCP fund.

Adopt Alternative Excess Insurance Pricing Options

The excess insurance premiums for the state judiciary have three main options available for consideration. The current recommendation is to accept the ARCH proposal for the same level of coverage as the trial courts with a cost of $174,915. However, other pricing options are available:

- Option 1 – Safety National, the current excess insurance provider for the trial courts, would also provide coverage for the state judiciary. This option includes the same level of coverage as the trial courts at a cost of $286,271. This would be a separate policy with Safety National, so the coverage limit of $50 million would still apply.

- Option 2 – ARCH would include coverage for the state judiciary that would not have the proposed $50 million dollar limit, but would instead have a statutory limit. This coverage would have an annual cost of $234,407.

[2] http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=1&refnum=20904

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Alternatives for Judiciary Excess Insurance

Current Recommendation - ARCH Proposal $50 M Limit for Judiciary; and Safety National for Trial Courts	**Trial Courts**	**State Judiciary *(Including Trial Court Judges)***	**Total**
Claims Costs (Ultimate)	16,433,000	808,000	17,241,000
Administrative Costs	2,434,141	281,450	2,715,591
Excess Insurance	480,114	174,915	655,029
Total	**19,347,255**	**1,264,365**	**20,611,620**

OPTION 1 - Allocation Safety National Proposal	**Trial Courts**	**State Judiciary (Including Trial Court Judges)**	**Total**
Claims Costs (Ultimate)	16,433,000	808,000	17,241,000
Administrative Costs	2,434,141	281,450	2,715,591
Excess Insurance	480,114	286,271	766,385
Total	**19,347,255**	**1,375,721**	**20,722,976**

OPTION 2 - Allocation ARCH Proposal Statutory Coverage for Judiciary; and Safety National for Trial Courts	**Trial Courts**	**State Judiciary *(Including Trial Court Judges)***	**Total**
Claims Costs (Ultimate)	16,433,000	808,000	17,241,000
Administrative Costs	2,434,141	281,450	2,715,591
Excess Insurance	480,114	234,407	714,521
Total	**19,347,255**	**1,323,857**	**20,671,112**

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Attachments and Links

1. Bickmore Actuarial Report

Bickmore

Actuarial Review of the Self-Insured Judicial Branch Workers' Compensation Program

Member Premium Allocation for Fiscal Year 2015-16

Presented to
Judicial Council of California

June 4, 2015 DRAFT

DRAFT

Bickmore

Thursday, June 4, 2015

Ms. Linda M. Cox
Senior Human Resources Manager
Human Resources Services Office
Judicial and Court Administrative Services Division
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Member Cost Allocation for Fiscal Year 2015-16

Dear Ms. Cox:

We have completed our review of the Judicial Council of California (the Judicial Council), Judicial Branch Workers' Compensation Program (JBWCP), and have updated the member cost allocation for fiscal year 2015-16 program premiums. The premiums include a provision for:

- Expected loss and ALAE payments
- Third-Party Claims Administration Fees
- Excess Insurance
- Consulting and Brokerage Expenses

The JBWCP is a self-insured program in which each entity pays a share of cost based on each member's workers' compensation claims experience and historical payroll. The total cost for this program is broken up into three groups: 1) Judicial, which includes member coverage for the Trial Court Justices, Judges, and Retired Judges in the Assigned Judges Program, 2) Trial Court employees and volunteers, which includes the membership of 57 out of the 58 California Trial Courts, and 3) State Judiciary, which includes the membership of the Supreme Court, Courts of Appeal, Habeas Corpus Resource Center, California Judicial Center Library, Commission on Judicial Performance, and the Judicial Council and provides coverage for all of their employees and volunteers.

Given the low volume of loss experience and exposure for the Trial Court Judges and the State Judiciary, and in order to provide a credible actuarial estimate, the Judicial and the State Judiciary groups are valued together for purposes of determining total program cost. Thus for the purpose of the analysis, the three groups are consolidated to two groups, Trial Courts and the State Judiciary.

JBWCP Methodology

The methodology used by the JBWCP utilizes a calculation derived from experience and exposure, along with program costs, such as excess insurance, third party administrator (TPA) claim handling, and brokerage fees. Given the relative sizes of the courts and judiciary entities participating in the JBWCP, the JBWCP's methodology has features which make it appropriate for entities of all sizes.

Each year JBWCP retains an actuary to undertake an actuarial analysis and estimate of loss costs. The actuarial projections are based on loss data from the inception of the JBWCP program (1/1/2001), provided by the Judicial Council and the third party claims administrators. Additionally, historical and projected payroll is provided. The actuary determines the estimated outstanding liabilities since program inception and the forecasted program costs for the upcoming policy term. They also provide an estimate of the loss payments that will be made during the upcoming fiscal year. It is the amount of loss payments expected to be made that is allocated among the participating courts.

For purposes of calculating the allocation, the actuarial data is combined with cost data, consisting of excess insurance premiums, TPA fees, and brokerage and consulting costs. The allocation formula uses a combination of a 3-year loss distribution and a 3-year payroll distribution for calculating the annual charge to each member using a weighting formula. For determining 2015-16 premiums, the experience period used includes the 2011-12, 2012-13, and 2013-14 program years.

The weighting formula was developed with the following goals in mind:

- To establish adequate funding to cover the annual expected loss payments, excess premiums, and expenses associated with the JBWCP.
- To provide incentives to control workers' compensation losses by making the allocation responsive to recent loss experience.
- To minimize year-to-year volatility for budgetary planning purposes.
- To recognize that thresholds of acceptable volatility will vary according to the size of the court.

The weight given to the loss component of the allocation for each individual court is calculated using the following formula:

$$\sqrt[3]{\frac{Individual\ Court\ Payroll\ for\ 3-Yr\ Period\ (\$000's)}{649{,}204}}$$

where 649,204 is a constant derived to set the weight given to the largest court at 80%.

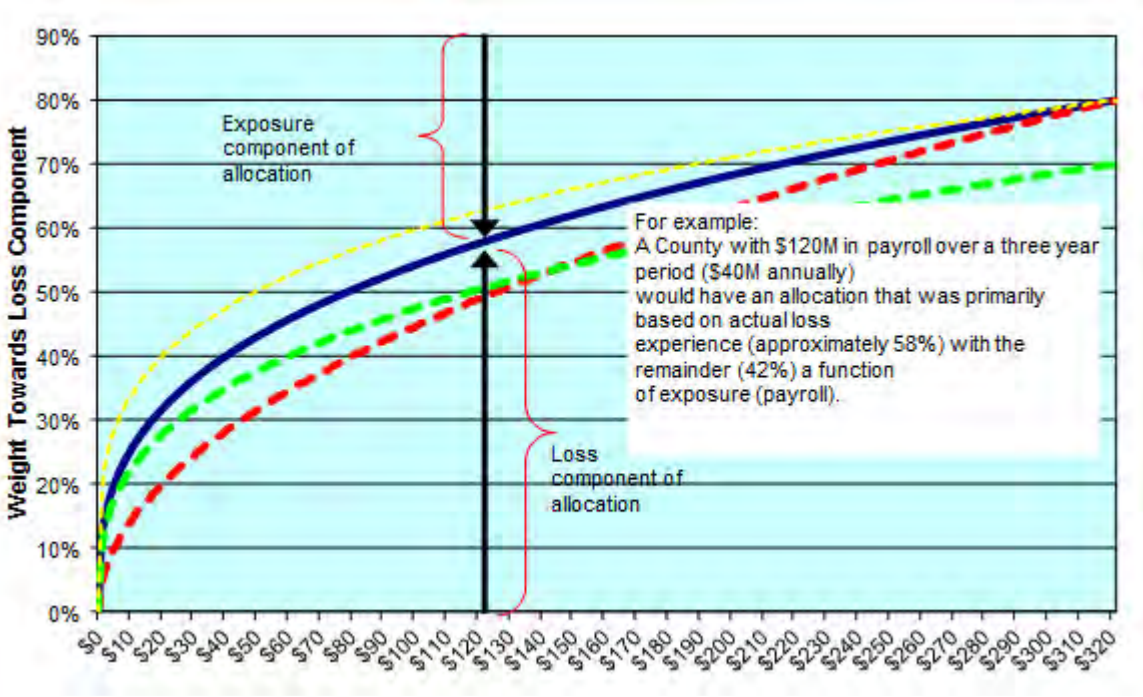
Inputs:

332,392	=	Largest Court Payroll for 3-Yr Period ($000's)
80%	=	Weight Given to Loss Component for Largest Court
3	=	Exponent

For purposes of determining loss distribution, a cap of $75,000 per occurrence is applied. This eliminates the volatility of large loss impact on distribution to individual courts. Ninety-five percent of all claims are within $75,000 per occurrence.

The largest court by 3-year payroll size has a weighting of 80% of loss experience and 20% payroll. The smallest court by payroll size has a weighting of at least 10% loss experience. All other courts are weighted by payroll and loss experience along that continuum. This ensures that the larger courts with more predictable losses are subject to an allocation that emphasizes losses, while the smaller courts' allocations are more reliant upon payroll to ensure more year-to-year budget stability.

Here is a graphic illustration of the continuum:



The selected parameters of 80% weight and power of 3 are shown as the solid line above. Other parameters are shown as dashed lines for comparison.

The expense component, including claim handling and brokerage fees, is allocated based on 80% losses and 20% payroll, on the theory that these expenses are incurred regardless of claims activity and therefore should have at least some component of

exposure used in the allocation. Excess insurance costs are allocated based upon the distribution of payroll by member and is only applied to the Trial Courts. The State Judiciary is currently fully self-insured (i.e. No excess insurance).

Funding Options

In addition to the standard premium allocation (Option 1), this report includes allocations for two alternative funding options:

2. Ultimate Cost Funding – For this option, rather than using projected loss and ALAE payments in the premium calculation, ultimate loss and ALAE is included. This option fully funds the current year exposure. Results shown on Exhibit TC-4 (Option 2) and Exhibit J-4 (Option 2).

3. Ultimate Cost Funding with Judiciary Excess Insurance – This option is the same as option 2, but also includes excess insurance premium for the Judiciary. Results shown on Exhibit J-4 (Option 3), Exhibit J-4 (Option 4) and Exhibit J-4 (Option 5).

We appreciate the opportunity to be of service the Judicial Council of California in preparing this report. Please feel free to call Mike Harrington at (916) 244-1162 or Becky Richard at (916) 244-1183 with any questions you may have concerning this report.

Sincerely,

Bickmore

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Mike Harrington, FCAS, MAAA
Director, Property and Casualty Actuarial Services, Bickmore
Fellow, Casualty Actuarial Society
Member, American Academy of Actuaries

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Becky Richard, ACAS, MAAA
Manager, Property and Casualty Actuarial Services, Bickmore
Associate, Casualty Actuarial Society
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Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Allocation of 2015-16 Costs

Court	2011-12 to 2013-14 Payroll ($000) (A)	Percent Payroll (B)	2015-16 Indicated Allocation Based on Payroll (C)	2011-12 to 2013-14 Incurred Limited to $75K (D)	Percent Limited Losses (E)	2015-16 Indicated Allocation Based on Losses (F)	Weighting (G)	2015-16 Weighted Allocation (H)	2015-16 Adjusted Allocation (I)	Allocation of Excess Premium (J)	Allocation of Claims Handling (TPA) Fees (K)	Allocation of Program Admin. (L)	Allocation Brokerage / Consulting (M)	2015-16 Total Allocation (N)	2015-16 Percent of Allocation (O)
Alameda	$153,990	6.14%	$881,802	$1,189,650	5.12%	$736,347	61.90%	$791,763	$814,618	$29,465	$107,440	$0	$22,232	$973,756	5.63%
Alpine	618	0.02%	3,539	0	0.00%	0	9.84%	3,191	3,283	118	99	0	21	3,521	0.02%
Amador	4,642	0.18%	26,580	64,668	0.28%	40,027	19.26%	29,171	30,013	888	5,241	0	1,084	37,226	0.22%
Butte	18,540	0.74%	106,166	180,936	0.78%	111,993	30.57%	107,947	111,063	3,547	15,556	0	3,219	133,386	0.77%
Calaveras	4,950	0.20%	28,345	11,303	0.05%	6,996	19.68%	24,143	24,840	947	1,581	0	327	27,696	0.16%
Colusa	2,602	0.10%	14,903	0	0.00%	0	15.89%	12,535	12,897	498	418	0	87	13,900	0.08%
Contra Costa	72,104	2.87%	412,896	1,161,056	5.00%	718,649	48.07%	559,867	576,028	13,797	92,289	0	19,097	701,211	4.06%
Del Norte	4,751	0.19%	27,207	23,646	0.10%	14,636	19.42%	24,766	25,481	909	2,407	0	498	29,296	0.17%
El Dorado	13,656	0.54%	78,201	89,210	0.38%	55,218	27.60%	71,856	73,931	2,613	8,396	0	1,737	86,677	0.50%
Fresno	75,391	3.00%	431,716	1,201,391	5.18%	743,614	48.79%	583,885	600,740	14,426	95,621	0	19,787	730,573	4.23%
Glenn	3,465	0.14%	19,840	63,157	0.27%	39,092	17.48%	23,204	23,874	663	4,947	0	1,024	30,507	0.18%
Humboldt	11,402	0.45%	65,289	269,990	1.16%	167,113	25.99%	91,757	94,405	2,182	20,598	0	4,262	121,448	0.70%
Imperial	18,455	0.74%	105,678	147,205	0.63%	91,114	30.52%	101,233	104,155	3,531	13,198	0	2,731	123,616	0.72%
Inyo	3,632	0.14%	20,800	35,774	0.15%	22,142	17.75%	21,038	21,645	695	3,070	0	635	26,046	0.15%
Kern	69,742	2.78%	399,368	721,388	3.11%	446,511	47.54%	421,779	433,954	13,345	61,351	0	12,695	521,345	3.02%
Kings	12,737	0.51%	72,939	228,144	0.98%	141,212	26.97%	91,353	93,990	2,437	17,904	0	3,705	118,037	0.68%
Lake	5,181	0.21%	29,669	81,066	0.35%	50,177	19.98%	33,767	34,742	991	6,467	0	1,338	43,539	0.25%
Lassen	4,872	0.19%	27,900	79	0.00%	49	19.58%	22,448	23,096	932	789	0	163	24,980	0.14%
Madera	15,357	0.61%	87,941	255,231	1.10%	157,978	28.71%	108,046	111,165	2,939	20,208	0	4,182	138,493	0.80%
Marin	26,206	1.04%	150,067	153,401	0.66%	94,950	34.30%	131,160	134,946	5,014	14,875	0	3,078	157,913	0.91%
Mariposa	1,892	0.08%	10,837	0	0.00%	0	14.28%	9,289	9,557	362	304	0	63	10,286	0.06%
Mendocino	9,402	0.37%	53,840	250,223	1.08%	154,878	24.38%	78,468	80,733	1,799	18,903	0	3,912	105,346	0.61%
Merced	17,385	0.69%	99,550	196,956	0.85%	121,908	29.92%	106,239	109,306	3,326	16,484	0	3,411	132,527	0.77%
Modoc	1,677	0.07%	9,602	0	0.00%	0	13.72%	8,285	8,524	321	270	0	56	9,170	0.05%
Mono	2,488	0.10%	14,247	101,505	0.44%	62,828	15.65%	21,849	22,480	476	7,455	0	1,543	31,953	0.18%
Monterey	35,409	1.41%	202,768	310,753	1.34%	192,344	37.92%	198,815	204,554	6,775	27,291	0	5,647	244,267	1.41%
Napa	15,707	0.63%	89,947	110,418	0.48%	68,344	28.92%	83,699	86,115	3,006	10,200	0	2,111	101,430	0.59%
Nevada	9,878	0.39%	56,568	56,584	0.24%	35,023	24.78%	51,229	52,708	1,890	5,521	0	1,142	61,261	0.35%
Orange	332,392	13.25%	1,903,404	1,592,287	6.86%	985,564	80.00%	1,169,132	1,202,881	63,601	164,104	0	33,958	1,464,545	8.47%
Placer	25,360	1.01%	145,221	49,437	0.21%	30,599	33.93%	106,329	109,399	4,852	7,513	0	1,555	123,319	0.71%
Plumas	2,415	0.10%	13,827	0	0.00%	0	15.49%	11,685	12,022	462	388	0	80	12,953	0.07%
Riverside	185,162	7.38%	1,060,308	1,628,016	7.01%	1,007,679	65.82%	1,025,665	1,055,273	35,430	142,919	0	29,574	1,263,196	7.31%
Sacramento	139,150	5.55%	796,823	774,052	3.33%	479,108	59.85%	606,684	624,197	26,626	76,169	0	15,762	742,753	4.30%
San Benito	5,409	0.22%	30,975	21,282	0.09%	13,173	20.27%	27,366	28,156	1,035	2,349	0	486	32,026	0.19%
San Bernardino	159,754	6.37%	914,810	1,440,485	6.21%	891,605	62.66%	900,268	926,256	30,568	125,801	0	26,032	1,108,657	6.41%
San Diego	262,259	10.45%	1,501,795	2,541,962	10.95%	1,573,376	73.92%	1,554,711	1,599,590	50,182	218,836	0	45,284	1,913,892	11.07%
San Francisco	115,576	4.61%	661,832	1,308,293	5.64%	809,783	56.26%	745,062	766,569	22,115	109,511	0	22,661	920,856	5.33%
San Joaquin	49,069	1.96%	280,990	682,235	2.94%	422,277	42.28%	340,727	350,563	9,389	55,306	0	11,444	426,702	2.47%
San Luis Obispo	26,128	1.04%	149,621	177,934	0.77%	110,134	34.27%	136,089	140,018	5,000	16,567	0	3,428	165,013	0.95%
San Mateo	61,118	2.44%	349,982	1,021,701	4.40%	632,393	45.49%	478,455	492,266	11,695	80,837	0	16,728	601,526	3.48%
Santa Barbara	47,572	1.90%	272,414	407,899	1.76%	252,474	41.85%	264,070	271,693	9,103	35,998	0	7,449	324,243	1.88%
Santa Clara	158,588	6.32%	908,136	1,456,291	6.27%	901,388	62.51%	903,917	930,010	30,345	126,712	0	26,220	1,113,288	6.44%
Santa Cruz	24,440	0.97%	139,955	208,193	0.90%	128,864	33.52%	136,237	140,170	4,677	18,399	0	3,807	167,053	0.97%
Shasta	27,019	1.08%	154,719	375,307	1.62%	232,301	34.65%	181,605	186,847	5,170	30,429	0	6,297	228,742	1.32%
Sierra	651	0.03%	3,725	0	0.00%	0	10.01%	3,352	3,449	124	105	0	22	3,700	0.02%
Siskiyou	7,703	0.31%	44,111	49,899	0.21%	30,886	22.81%	41,094	42,281	1,474	4,707	0	974	49,435	0.29%

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Allocation of 2015-16 Costs

Court	2011-12 to 2013-14 Payroll ($000) (A)	Percent Payroll (B)	2015-16 Indicated Allocation Based on Payroll (C)	2011-12 to 2013-14 Incurred Limited to $75K (D)	Percent Limited Losses (E)	2015-16 Indicated Allocation Based on Losses (F)	Weighting (G)	2015-16 Weighted Allocation (H)	2015-16 Adjusted Allocation (I)	Allocation of Excess Premium (J)	Allocation of Claims Handling (TPA) Fees (K)	Allocation of Program Admin. (L)	Allocation Brokerage / Consulting (M)	2015-16 Total Allocation (N)	2015-16 Percent of Allocation (O)
Solano	38,490	1.53%	220,406	896,342	3.86%	554,801	38.99%	350,797	360,923	7,365	68,487	0	14,172	450,946	2.61%
Sonoma	38,084	1.52%	218,086	163,460	0.70%	101,175	38.86%	172,659	177,644	7,287	17,483	0	3,618	206,032	1.19%
Stanislaus	36,304	1.45%	207,891	338,122	1.46%	209,284	38.24%	208,424	214,440	6,947	29,337	0	6,071	256,794	1.49%
Sutter	8,802	0.35%	50,406	30,226	0.13%	18,709	23.85%	42,848	44,084	1,684	3,516	0	728	50,012	0.29%
Tehama	6,627	0.26%	37,948	43,355	0.19%	26,835	21.69%	35,538	36,563	1,268	4,079	0	844	42,754	0.25%
Trinity	2,428	0.10%	13,904	76,876	0.33%	47,583	15.52%	19,132	19,684	465	5,734	0	1,186	27,069	0.16%
Tulare	33,123	1.32%	189,676	251,589	1.08%	155,724	37.09%	177,083	182,195	6,338	22,811	0	4,720	216,065	1.25%
Tuolumne	6,418	0.26%	36,750	140,707	0.61%	87,092	21.46%	47,554	48,927	1,228	10,811	0	2,237	63,204	0.37%
Ventura	68,381	2.73%	391,575	411,206	1.77%	254,520	47.23%	326,849	336,284	13,084	39,573	0	8,189	397,130	2.30%
Yolo	15,750	0.63%	90,190	112,491	0.48%	69,628	28.95%	84,238	86,669	3,014	10,350	0	2,142	102,175	0.59%
Yuba	8,854	0.35%	50,700	110,323	0.48%	68,286	23.89%	54,902	56,486	1,694	9,091	0	1,881	69,153	0.40%
All Courts	$2,509,158	100.00%	$14,368,384	$23,213,702	100.00%	$14,368,384		$13,965,252	$14,368,384	$480,114	$2,016,805	$0	$417,336	$17,282,639	100.00%

Notes:

(A): From Exhibit TC-2.
(B): (A)/[Total (A)]
(C): (B) x [Total (C)]. Total (C) was provided by Judicial Branch Workers' Compensation Program.
(D): From Exhibit TC-3.
(E): (D)/[Total (D)]
(F): (E) x [Total (F)]. Total (F) was provided by Judicial Branch Workers' Compensation Program.
(G): Based on relative size (according the (A)) of each court. The largest is subjectively set to an 80.00% weight. The weight of all other courts are based on that standard.
(H): (H) x (F) + [1-(H)] x (G)
(I): (H) subject to an adjustment of 1.029.
(J): (B) x [Total (J)]. Total (J) was provided by Judicial Branch Workers' Compensation Program.
(K): [(B) x 0.20 + (E) x 0.80] x Total (K). Total (K) was provided by Judicial Branch Workers' Compensation Program.
(L): (B) x [Total (L)]. Total (L) was provided by Judicial Branch Workers' Compensation Program.
(M): [(B) x 0.20 + (E) x 0.80] x Total (M). Total (M) was provided by Judicial Branch Workers' Compensation Program.
(N): Sum[(I)..(M)]
(O): (N)/[Total (N)]

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Summary of Payroll

Court	Payroll 2011-12	Payroll 2012-13	Payroll 2013-14
Alameda	$52,941,334	$49,655,539	$51,392,643
Alpine	248,333	193,967	175,765
Amador	1,620,086	1,549,721	1,471,884
Butte	6,317,202	6,860,643	5,361,954
Calaveras	1,676,368	1,628,174	1,645,407
Colusa	883,800	841,818	876,863
Contra Costa	24,833,848	24,443,199	22,827,248
Del Norte	1,536,762	1,543,344	1,671,038
El Dorado	4,968,583	4,601,205	4,086,446
Fresno	27,449,870	23,220,885	24,720,023
Glenn	1,080,958	1,179,293	1,204,445
Humboldt	3,626,881	3,700,308	4,074,323
Imperial	6,335,229	5,995,723	6,123,601
Inyo	1,219,647	1,134,299	1,278,293
Kern	25,060,148	21,817,926	22,863,775
Kings	4,400,121	4,111,328	4,225,888
Lake	2,029,880	1,533,921	1,617,288
Lassen	1,824,791	1,713,189	1,334,297
Madera	5,341,744	5,047,741	4,967,640
Marin	9,059,145	8,686,260	8,460,909
Mariposa	617,822	617,737	656,857
Mendocino	3,212,415	2,999,889	3,189,732
Merced	5,962,267	5,799,760	5,622,523
Modoc	575,379	546,417	555,061
Mono	837,361	827,414	823,132
Monterey	12,293,541	11,068,298	12,047,639
Napa	5,600,789	4,980,101	5,126,534
Nevada	3,413,323	3,258,549	3,206,545
Orange	115,117,566	108,702,345	108,572,489
Placer	9,287,884	8,385,338	7,686,753
Plumas	792,290	723,835	898,577
Riverside	64,019,578	60,698,399	60,444,097
Sacramento	49,746,329	44,153,791	45,249,453
San Benito	1,741,721	1,763,213	1,904,229
San Bernardino	56,019,666	52,089,616	51,644,432
San Diego	95,624,137	85,925,807	80,709,371
San Francisco	38,755,030	37,490,945	39,330,020
San Joaquin	17,550,740	15,678,398	15,840,228
San Luis Obispo	8,834,564	8,238,022	9,055,874
San Mateo	22,023,835	20,045,369	19,048,416
Santa Barbara	16,620,004	16,359,422	14,592,446
Santa Clara	54,735,641	52,732,588	51,119,967
Santa Cruz	8,182,488	7,607,928	8,649,932
Shasta	8,860,263	8,803,769	9,354,640
Sierra	218,724	208,768	223,042
Siskiyou	2,759,245	2,499,489	2,444,339

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Summary of Payroll

Court	Payroll 2011-12	Payroll 2012-13	Payroll 2013-14
Solano	13,962,463	11,653,483	12,873,645
Sonoma	13,445,565	12,394,983	12,243,891
Stanislaus	13,142,867	12,049,239	11,111,956
Sutter	3,334,647	2,784,136	2,683,627
Tehama	2,203,720	2,252,405	2,170,782
Trinity	749,583	816,855	861,615
Tulare	11,607,049	10,439,525	11,076,669
Tuolumne	2,185,317	2,193,229	2,039,140
Ventura	24,151,663	21,682,357	22,546,961
Yolo	5,544,346	5,109,655	5,096,011
Yuba	3,139,661	2,942,396	2,771,729
All Courts	$879,324,211	$815,981,951	$813,852,084

Notes:

Provided by Judicial Branch Workers' Compensation Program.

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Summary of Loss Data

	Incurred Losses			Incurred Losses Capped at $75K		
Court	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
Alameda	$216,885	$775,205	$455,766	$216,885	$608,593	$364,171
Alpine	0	0	0	0	0	0
Amador	396	0	64,271	396	0	64,271
Butte	2,814	213,749	375	2,814	177,748	375
Calaveras	815	0	10,488	815	0	10,488
Colusa	0	0	0	0	0	0
Contra Costa	659,096	386,571	398,053	494,074	294,332	372,649
Del Norte	23,646	0	0	23,646	0	0
El Dorado	33,511	55,699	0	33,511	55,699	0
Fresno	614,799	490,509	389,156	399,575	463,071	338,745
Glenn	41,940	21,217	0	41,940	21,217	0
Humboldt	111,081	151,492	31,883	86,614	151,492	31,883
Imperial	118,164	4,227	24,813	118,164	4,227	24,813
Inyo	0	35,774	0	0	35,774	0
Kern	483,999	296,392	65,673	359,322	296,392	65,673
Kings	186,762	6,141	43,931	178,072	6,141	43,931
Lake	4,571	47,895	28,601	4,571	47,895	28,601
Lassen	79	0	0	79	0	0
Madera	283,933	5,567	80,231	171,758	5,567	77,906
Marin	132,601	7,295	29,900	116,207	7,295	29,900
Mariposa	0	0	0	0	0	0
Mendocino	366,975	25,436	18,943	205,843	25,436	18,943
Merced	162,219	17,693	17,044	162,219	17,693	17,044
Modoc	0	0	0	0	0	0
Mono	75,903	25,602	0	75,903	25,602	0
Monterey	20,818	231,188	68,563	20,818	221,371	68,563
Napa	13,058	4,591	92,769	13,058	4,591	92,769
Nevada	1,019	55,565	0	1,019	55,565	0
Orange	885,308	658,249	625,083	659,577	487,048	445,662
Placer	8,514	40,647	276	8,514	40,647	276
Plumas	0	0	0	0	0	0
Riverside	798,693	630,298	490,899	566,526	570,592	490,899
Sacramento	225,300	373,507	201,048	210,216	362,788	201,048
San Benito	2,253	19,029	0	2,253	19,029	0
San Bernardino	707,456	775,124	351,726	513,614	575,144	351,726
San Diego	1,054,082	1,266,490	537,141	953,049	1,051,773	537,141
San Francisco	863,845	457,296	333,174	685,780	392,333	230,180
San Joaquin	280,667	388,170	130,021	256,307	295,907	130,021
San Luis Obispo	157,025	17,300	27,112	133,523	17,300	27,112
San Mateo	550,125	137,207	556,936	415,554	137,207	468,940
Santa Barbara	256,809	195,386	36,099	230,201	141,599	36,099
Santa Clara	608,454	749,061	355,794	516,889	628,770	310,632
Santa Cruz	26,361	72,020	109,812	26,361	72,020	109,812
Shasta	350,985	55,970	39,467	279,871	55,970	39,467
Sierra	0	0	0	0	0	0
Siskiyou	586	26,608	22,706	586	26,608	22,706

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Summary of Loss Data

	Incurred Losses			Incurred Losses Capped at $75K		
Court	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
Solano	135,895	604,475	277,524	135,895	482,923	277,524
Sonoma	3,464	153,509	76,270	3,464	83,727	76,270
Stanislaus	156,402	155,677	26,042	156,402	155,677	26,042
Sutter	5,603	162	24,461	5,603	162	24,461
Tehama	0	38,561	4,794	0	38,561	4,794
Trinity	0	252,431	386	0	76,490	386
Tulare	33,616	87,972	176,770	33,616	87,972	130,001
Tuolumne	82,784	34,139	23,783	82,784	34,139	23,783
Ventura	114,392	172,340	297,274	86,787	171,889	152,530
Yolo	123,296	9,075	23,886	79,530	9,075	23,886
Yuba	2,690	922	106,711	2,690	922	106,711
All Courts	10,989,692	10,229,431	6,675,657	8,772,897	8,541,970	5,898,834

Notes:

Provided by Judicial Branch Workers' Compensation Program.

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Alameda	$1,063,406	$973,756	-$89,650	-8.43%
Alpine	3,897	3,521	-376	-9.64%
Amador	37,669	37,226	-443	-1.18%
Butte	116,447	133,386	16,939	14.55%
Calaveras	23,955	27,696	3,741	15.62%
Colusa	12,911	13,900	990	7.67%
Contra Costa	648,300	701,211	52,911	8.16%
Del Norte	30,468	29,296	-1,172	-3.85%
El Dorado	87,536	86,677	-859	-0.98%
Fresno	657,745	730,573	72,828	11.07%
Glenn	23,901	30,507	6,606	27.64%
Humboldt	94,866	121,448	26,582	28.02%
Imperial	128,149	123,616	-4,534	-3.54%
Inyo	24,586	26,046	1,460	5.94%
Kern	642,799	521,345	-121,454	-18.89%
Kings	111,997	118,037	6,040	5.39%
Lake	38,192	43,539	5,347	14.00%
Lassen	26,297	24,980	-1,317	-5.01%
Madera	109,842	138,493	28,651	26.08%
Marin	145,382	157,913	12,531	8.62%
Mariposa	9,165	10,286	1,121	12.23%
Mendocino	106,294	105,346	-948	-0.89%
Merced	122,928	132,527	9,599	7.81%
Modoc	8,985	9,170	185	2.06%
Mono	41,833	31,953	-9,880	-23.62%
Monterey	211,439	244,267	32,829	15.53%
Napa	79,844	101,430	21,587	27.04%
Nevada	64,787	61,261	-3,526	-5.44%
Orange	1,185,950	1,464,545	278,594	23.49%
Placer	156,099	123,319	-32,780	-21.00%
Plumas	11,998	12,953	955	7.96%
Riverside	1,008,959	1,263,196	254,237	25.20%
Sacramento	753,144	742,753	-10,392	-1.38%
San Benito	29,315	32,026	2,710	9.25%
San Bernardino	1,012,334	1,108,657	96,322	9.51%
San Diego	1,825,315	1,913,892	88,577	4.85%
San Francisco	1,256,600	920,856	-335,744	-26.72%
San Joaquin	397,229	426,702	29,473	7.42%
San Luis Obispo	182,220	165,013	-17,207	-9.44%
San Mateo	490,254	601,526	111,271	22.70%
Santa Barbara	258,450	324,243	65,792	25.46%
Santa Clara	1,125,772	1,113,288	-12,484	-1.11%
Santa Cruz	141,190	167,053	25,864	18.32%
Shasta	249,252	228,742	-20,510	-8.23%
Sierra	3,891	3,700	-191	-4.91%
Siskiyou	75,392	49,435	-25,957	-34.43%

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Solano	365,577	450,946	85,370	23.35%
Sonoma	206,763	206,032	-731	-0.35%
Stanislaus	247,147	256,794	9,647	3.90%
Sutter	73,709	50,012	-23,697	-32.15%
Tehama	48,787	42,754	-6,033	-12.37%
Trinity	24,264	27,069	2,805	11.56%
Tulare	194,874	216,065	21,190	10.87%
Tuolumne	60,167	63,204	3,037	5.05%
Ventura	333,915	397,130	63,216	18.93%
Yolo	101,192	102,175	983	0.97%
Yuba	42,636	69,153	26,517	62.19%
All Courts	$16,536,018	$17,282,639	$746,621	4.52%

Notes:
(A): From Prior Allocation.
(B): From Exhibit TC-1.
(C): (B) - (A)
(D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Alameda	$1,063,406	$1,090,810	$27,404	2.58%
Alpine	3,897	3,993	96	2.47%
Amador	37,669	41,539	3,870	10.27%
Butte	116,447	149,344	32,897	28.25%
Calaveras	23,955	31,265	7,310	30.52%
Colusa	12,911	15,753	2,843	22.02%
Contra Costa	648,300	783,982	135,682	20.93%
Del Norte	30,468	32,957	2,489	8.17%
El Dorado	87,536	97,300	9,764	11.15%
Fresno	657,745	816,894	159,149	24.20%
Glenn	23,901	33,938	10,037	41.99%
Humboldt	94,866	135,013	40,147	42.32%
Imperial	128,149	138,582	10,433	8.14%
Inyo	24,586	29,156	4,571	18.59%
Kern	642,799	583,700	-59,098	-9.19%
Kings	111,997	131,542	19,546	17.45%
Lake	38,192	48,531	10,339	27.07%
Lassen	26,297	28,298	2,002	7.61%
Madera	109,842	154,467	44,625	40.63%
Marin	145,382	177,304	31,922	21.96%
Mariposa	9,165	11,659	2,494	27.21%
Mendocino	106,294	116,947	10,653	10.02%
Merced	122,928	148,234	25,305	20.59%
Modoc	8,985	10,395	1,410	15.69%
Mono	41,833	35,184	-6,650	-15.90%
Monterey	211,439	273,660	62,221	29.43%
Napa	79,844	113,804	33,961	42.53%
Nevada	64,787	68,835	4,047	6.25%
Orange	1,185,950	1,637,389	451,438	38.07%
Placer	156,099	139,038	-17,061	-10.93%
Plumas	11,998	14,680	2,682	22.35%
Riverside	1,008,959	1,414,830	405,870	40.23%
Sacramento	753,144	832,445	79,300	10.53%
San Benito	29,315	36,071	6,756	23.05%
San Bernardino	1,012,334	1,241,752	229,418	22.66%
San Diego	1,825,315	2,143,739	318,424	17.44%
San Francisco	1,256,600	1,031,006	-225,595	-17.95%
San Joaquin	397,229	477,075	79,846	20.10%
San Luis Obispo	182,220	185,132	2,912	1.60%
San Mateo	490,254	672,260	182,006	37.12%
Santa Barbara	258,450	363,282	104,832	40.56%
Santa Clara	1,125,772	1,246,922	121,150	10.76%
Santa Cruz	141,190	187,194	46,005	32.58%
Shasta	249,252	255,590	6,338	2.54%
Sierra	3,891	4,196	305	7.83%
Siskiyou	75,392	55,510	-19,882	-26.37%

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
Trial Courts

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Solano	365,577	502,808	137,231	37.54%
Sonoma	206,763	231,558	24,795	11.99%
Stanislaus	247,147	287,607	40,460	16.37%
Sutter	73,709	56,347	-17,363	-23.56%
Tehama	48,787	48,008	-779	-1.60%
Trinity	24,264	29,897	5,633	23.22%
Tulare	194,874	242,245	47,370	24.31%
Tuolumne	60,167	70,234	10,068	16.73%
Ventura	333,915	445,452	111,537	33.40%
Yolo	101,192	114,629	13,437	13.28%
Yuba	42,636	77,270	34,634	81.23%
All Courts	$16,536,018	$19,347,255	$2,811,237	17.00%

Notes:
(A): From Prior Allocation.
(B): From Exhibit TC-1.
(C): (B) - (A)
(D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Allocation of 2015-16 Costs

Court	2011-12 to 2013-14 Payroll ($000) (A)	Percent Payroll (B)	2015-16 Indicated Allocation Based on Payroll (C)	2011-12 to 2013-14 Incurred Limited to $75K (D)	Percent Limited Losses (E)	2015-16 Indicated Allocation Based on Losses (F)	Weighting (G)	2015-16 Weighted Allocation (H)	2015-16 Adjusted Allocation (I)	Allocation of Excess Premium (J)	Allocation of Claims Handling (TPA) Fees (K)	Allocation of Program Admin. (L)	Allocation Brokerage / Consulting (M)	2015-16 Total Allocation (N)	2015-16 Percent of Allocation (O)
Supreme Court	$49,536	3.56%	$27,793	$92,949	9.50%	$74,066	31.00%	$42,139	$45,737	$0	$14,829	$0	$3,068	$63,634	6.00%
1st District Court	41,194	2.96%	23,113	6,361	0.65%	5,069	29.15%	17,852	19,377	0	2,550	0	528	22,455	2.12%
2nd District Court	83,751	6.03%	46,991	11,041	1.13%	8,798	36.93%	32,885	35,692	0	4,924	0	1,019	41,636	3.92%
3rd District Court	27,017	1.94%	15,159	1,592	0.16%	1,268	25.33%	11,640	12,634	0	1,317	0	272	14,223	1.34%
4th District Court	65,666	4.73%	36,843	427	0.04%	340	34.06%	24,411	26,496	0	2,726	0	564	29,786	2.81%
5th District Court	24,256	1.75%	13,609	54,369	5.56%	43,324	24.44%	20,870	22,652	0	8,482	0	1,755	32,890	3.10%
6th District Court	17,350	1.25%	9,734	22,400	2.29%	17,849	21.85%	11,508	12,490	0	3,793	0	785	17,069	1.61%
AOC	203,551	14.65%	114,207	430,635	44.01%	343,149	49.66%	227,895	247,354	0	67,647	0	13,998	328,999	31.00%
CJCL	1,793	0.13%	1,006	0	0.00%	0	10.25%	903	980	0	73	0	15	1,068	0.10%
CJP	5,883	0.42%	3,301	0	0.00%	0	15.24%	2,798	3,037	0	239	0	49	3,325	0.31%
HCRC	18,563	1.34%	10,415	14,804	1.51%	11,797	22.35%	10,724	11,639	0	2,795	0	578	15,013	1.41%
Trial Court Judges	851,081	61.24%	477,521	343,899	35.15%	274,034	80.00%	314,731	341,604	0	123,820	0	25,622	491,046	46.28%
All Courts	$1,389,640	100.00%	$779,693	$978,477	100.00%	$779,693		$718,357	$779,693	$0	$233,195	$0	$48,255	$1,061,143	100.00%

Notes:

(A): From Exhibit J-2.
(B): (A)/[Total (A)]
(C): (B) x [Total (C)]. Total (C) was provided by Judicial Branch Workers' Compensation Program.
(D): From Exhibit J-3.
(E): (D)/[Total (D)]
(F): (E) x [Total (F)]. Total (F) was provided by Judicial Branch Workers' Compensation Program.
(G): Based on relative size (according the (A)) of each court. The largest is subjectively set to an 80.00% weight. The weight of all other courts are based on that standard.
(H): (H) x (F) + [1-(H)] x (G)
(I): (H) subject to an adjustment of 1.085.
(J): (B) x [Total (J)]. Total (J) was provided by Judicial Branch Workers' Compensation Program.
(K): [(B) x 0.20 + (E) x 0.80] x Total (K). Total (K) was provided by Judicial Branch Workers' Compensation Program.
(L): (B) x [Total (L)]. Total (L) was provided by Judicial Branch Workers' Compensation Program.
(M): [(B) x 0.20 + (E) x 0.80] x Total (M). Total (M) was provided by Judicial Branch Workers' Compensation Program.
(N): Sum[(I)..(M)]
(O): (N)/[Total (N)]

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Summary of Payroll

	Payroll		
Court	2011-12	2012-13	2013-14
Supreme Court	$16,553,702	$16,847,795	$16,134,138
1st District Court	14,306,263	13,969,192	12,918,969
2nd District Court	28,202,512	28,367,200	27,181,425
3rd District Court	8,976,838	8,940,133	9,100,274
4th District Court	21,504,654	22,137,823	22,023,226
5th District Court	8,220,039	8,001,512	8,034,066
6th District Court	5,629,524	5,843,524	5,876,586
AOC	74,385,708	64,337,995	64,827,084
CJCL	624,723	576,806	590,975
CJP	1,968,550	1,903,435	2,011,012
HCRC	6,241,346	6,303,418	6,017,821
Trial Court Judges	283,818,591	280,795,205	286,467,580
All Courts	$470,432,450	$458,024,038	$461,183,156

Notes:

Provided by Judicial Branch Workers' Compensation Program.

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Summary of Loss Data

	Incurred Losses			Incurred Losses Capped at $75K		
Court	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
Supreme Court	$92,949	$0	$0	$92,949	$0	$0
1st District Court	6,361	0	0	6,361	0	0
2nd District Court	1,917	0	9,124	1,917	0	9,124
3rd District Court	930	662	0	930	662	0
4th District Court	427	0	0	427	0	0
5th District Court	0	54,369	0	0	54,369	0
6th District Court	0	0	22,400	0	0	22,400
AOC	480,766	19,164	49,453	362,018	19,164	49,453
CJCL	0	0	0	0	0	0
CJP	0	0	0	0	0	0
HCRC	14,804	0	0	14,804	0	0
Trial Court Judges	68,803	461,237	0	68,803	275,096	0
All Courts	666,957	535,432	80,977	548,208	349,291	80,977

Notes:

Provided by Judicial Branch Workers' Compensation Program.

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Supreme Court	$44,525	$63,634	$19,109	42.92%
1st District Court	22,975	22,455	-521	-2.27%
2nd District Court	61,888	41,636	-20,252	-32.72%
3rd District Court	14,214	14,223	9	0.07%
4th District Court	29,591	29,786	194	0.66%
5th District Court	13,924	32,890	18,966	136.21%
6th District Court	14,367	17,069	2,702	18.81%
AOC	321,267	328,999	7,732	2.41%
CJCL	970	1,068	98	10.05%
CJP	3,748	3,325	-423	-11.29%
HCRC	16,899	15,013	-1,885	-11.16%
Trial Court Judges	562,692	491,046	-71,646	-12.73%
All Courts	$1,107,061	$1,061,143	-$45,917	-4.15%

Notes:

(A): From Prior Allocation.
(B): From Exhibit J-1.
(C): (B) - (A)
(D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Supreme Court	$44,525	$66,234	$21,708	48.76%
1st District Court	22,975	23,556	580	2.53%
2nd District Court	61,888	43,664	-18,224	-29.45%
3rd District Court	14,214	14,941	727	5.12%
4th District Court	29,591	31,291	1,700	5.75%
5th District Court	13,924	34,177	20,253	145.45%
6th District Court	14,367	17,779	3,412	23.75%
AOC	321,267	343,056	21,788	6.78%
CJCL	970	1,123	153	15.79%
CJP	3,748	3,498	-250	-6.68%
HCRC	16,899	15,675	-1,224	-7.24%
Trial Court Judges	562,692	510,458	-52,234	-9.28%
All Courts	$1,107,061	$1,105,450	-$1,610	-0.15%

Notes:
- (A): From Prior Allocation.
- (B): From Exhibit J-1.
- (C): (B) - (A)
- (D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Supreme Court	$44,525	$75,500	$30,974	69.57%
1st District Court	22,975	31,644	8,669	37.73%
2nd District Court	61,888	60,185	-1,703	-2.75%
3rd District Court	14,214	20,248	6,034	42.45%
4th District Court	29,591	44,275	14,684	49.62%
5th District Court	13,924	38,709	24,785	178.00%
6th District Court	14,367	21,096	6,730	46.84%
AOC	321,267	379,912	58,645	18.25%
CJCL	970	1,472	502	51.79%
CJP	3,748	4,647	899	23.99%
HCRC	16,899	19,260	2,361	13.97%
Trial Court Judges	562,692	678,774	116,082	20.63%
All Courts	$1,107,061	$1,375,722	$268,661	24.27%

Notes:
- (A): From Prior Allocation.
- (B): From Exhibit J-1.
- (C): (B) - (A)
- (D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Supreme Court	$44,525	$73,651	$29,125	65.41%
1st District Court	22,975	30,107	7,132	31.04%
2nd District Court	61,888	57,059	-4,829	-7.80%
3rd District Court	14,214	19,239	5,025	35.35%
4th District Court	29,591	41,824	12,233	41.34%
5th District Court	13,924	37,803	23,880	171.50%
6th District Court	14,367	20,449	6,082	42.33%
AOC	321,267	372,315	51,048	15.89%
CJCL	970	1,405	435	44.89%
CJP	3,748	4,428	680	18.13%
HCRC	16,899	18,567	1,668	9.87%
Trial Court Judges	562,692	647,010	84,317	14.98%
All Courts	$1,107,061	$1,323,857	$216,796	19.58%

Notes:
(A): From Prior Allocation.
(B): From Exhibit J-1.
(C): (B) - (A)
(D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Comparison to Prior Allocation

Court	2014-15 Total Allocation (A)	2015-16 Total Allocation (B)	Difference (C)	Percent Change (D)
Supreme Court	$44,525	$71,530	$27,005	60.65%
1st District Court	22,975	28,343	5,368	23.36%
2nd District Court	61,888	53,473	-8,414	-13.60%
3rd District Court	14,214	18,083	3,869	27.22%
4th District Court	29,591	39,013	9,422	31.84%
5th District Court	13,924	36,765	22,841	164.04%
6th District Court	14,367	19,706	5,339	37.16%
AOC	321,267	363,601	42,333	13.18%
CJCL	970	1,329	359	36.98%
CJP	3,748	4,176	428	11.41%
HCRC	16,899	17,772	874	5.17%
Trial Court Judges	562,692	610,574	47,882	8.51%
All Courts	$1,107,061	$1,264,366	$157,305	14.21%

Notes:

(A): From Prior Allocation.
(B): From Exhibit J-1.
(C): (B) - (A)
(D): (C) / (A)

Judicial Branch Workers' Compensation Program
Workers' Compensation Cost Allocation for Fiscal Year 2015-16
State Judiciary

Summary of Payroll, Losses and Expenses

Division	2011-12 to 2013-14 Payroll ($000) (A)	Percent Payroll (B)	2011-12 to 2013-14 Incurred Limited to $75K (C)	Percent Limited Losses (D)	2015-16 Claims Handling (E)	2015-16 Program Admin. (F)	2015-16 Brokerage / Consulting (G)
Trial Courts	$2,509,158	64.36%	$23,213,702	95.96%	$2,016,805	$0	$417,336
Judiciary	538,558	13.81%	634,578	2.62%	109,376	0	22,633
Trial Court Judges	851,081	21.83%	343,899	1.42%	123,820	0	25,622
Total	$3,898,798	100.00%	$24,192,178	100.00%	$2,250,000	$0	$465,591

Notes:

Provided by Judicial Branch Workers' Compensation Program.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 25–26, 2015

Title
Trial Courts: Resource Assessment Study Model Interim Complex Civil Caseweight

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Workload Assessment Advisory Committee
Hon. Lorna A. Alksne, Chair

Agenda Item Type
Action Required

Effective Date
June 25–26, 2015

Date of Report
June 3, 2015

Contact
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Executive Summary

The Workload Assessment Advisory Committee requests approving its recommendations to (1) establish an initial interim complex civil caseweight of 2,271 minutes for fiscal year (FY) 2015–2016 budget allocations, and (2) reassess the interim caseweight using preliminary data from the fall 2015 update of the staff workload study and make any needed adjustments for FY 2016–2017 budget allocations.

Recommendation

The Workload Assessment Advisory Committee (WAAC) requests that the Judicial Council:

1. Approve the interim complex civil caseweight of 2,271 minutes per filing for use in the Resource Assessment Study model for purposes of FY 2015–2016 budget allocations, applying the caseweight to a proxy for filings using the paid complex civil fee data; and

2. Direct WAAC to reassess the interim caseweight using preliminary data from the fall 2015 update of the staff workload study and make any needed adjustments for purposes of FY 2016–2017 budget allocations.

These interim adjustments would remain in effect until the staff workload study results are finalized.

Previous Council Action

At its July 25, 2005, meeting, the Judicial Council approved the Resource Assessment Study (RAS) model methodology to allocate resources on the basis of workload need, with the understanding that ongoing technical adjustments would continue to be made by Judicial Council staff as the data became available.

The council, at its February 26, 2013, meeting, approved the updated parameters of the RAS model—consisting of new caseweights and new formulas that produce more precise workload estimates—with the understanding that ongoing technical adjustments would continue to be made by council staff as the data became available.

Later that year, at its April 26 meeting, the council approved the Workload-Based Allocation and Funding Methodology (WAFM) for use in allocating the annual state trial court operations funds. WAFM uses the RAS model as the basis for the trial court budget development process.

Rationale for Recommendation

In March 2015, the Revenue and Expenditure Subcommittee of the Trial Court Budget Advisory Committee (TCBAC) met to review allocations from the State Trial Court Improvement and Modernization Fund (IMF). To address shortfalls in the fund, TCBAC made a recommendation to eliminate funding for the complex civil litigation pilot programs, along with a companion recommendation to request that WAAC include the complex case fee filings in the RAS computation of workload need and assign to them an interim caseweight, until the advisory committee has the data and opportunity to review the validity of the weighting. TCBAC viewed assigning a separate caseweight that recognizes the additional workload involved in processing complex civil cases as a way to continue to support enhanced case processing in complex civil cases in the absence of the IMF funding. The Judicial Council approved both recommendations at its April 17, 2015, meeting.

In the RAS model, caseweights—the number of minutes per filing for a given case type—are multiplied by the number of case filings to estimate full-time equivalent staff need. However, the Judicial Branch Statistical Information System (JBSIS) does not capture complex civil case filings separately from other unlimited civil case filings. Therefore, TCBAC recommended using complex case fee data as a proxy for complex civil filings, dividing the total fees remitted by the fee per filing (e.g., $30,000 remitted / $1,000 per filing = 30 filings). This calculation uses the fees remitted on the plaintiff side because only one fee is collected, regardless of the number of plaintiffs, whereas each individual defendant must pay the filing fee, which would result in an overcount of the number of cases. (See Attachment A for more details on the filings data.)

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To establish the new complex civil caseweight, WAAC convened a conference call with staff from the 10 courts that handle the highest volume of complex civil cases to identify areas in which complex civil staff workload differs from workload for noncomplex unlimited civil cases. The feedback provided during this call and other data sources, such as the National Center for State Courts' (NCSC's) evaluation of the complex civil litigation pilot programs and the complex civil fee data, were used to adjust the unlimited civil caseweight of 797 minutes per filing upward to 2,271 minutes per filing for complex civil.

The unlimited civil caseweight, broken down into its component tasks by frequency and time per filing, was used as the baseline for developing the complex civil caseweight. If the conference call or other data sources revealed that a given task was more time-consuming or occurred at a different rate for complex civil cases versus unlimited civil cases, corresponding adjustments were made. No adjustments were made to tasks for which workload differences were not explicitly mentioned. Following is a summary of the adjustments (see Attachment B for more details):

- Conference call participants said that substantial workload impacts result from the large number of parties in complex civil cases, particularly the upfront data entry, processing of filings, noticing, and service of orders. Calendar management is labor-intensive because of the need to coordinate multiple schedules. Accordingly, the time required for processing new filings was multiplied by the median number of plaintiffs per case (per the NCSC evaluation); the time required for processing subsequent filings was multiplied by the median number of parties per case (per the NCSC evaluation and the complex civil fee data); the time required to set hearing dates was nearly tripled; and order processing time was doubled. The frequency with which hearings are scheduled was increased from 95 to 100 percent of cases because the NCSC evaluation report noted a high level of activity in complex civil cases (e.g., case management conferences, status conferences, settlement conferences, pretrial conferences) due to intensive judicial management.

- Conference call participants reported that research attorney time for complex civil cases is double that of regular unlimited civil cases because of the complex legal issues and the need to manage the cases. Therefore, the time required for case preparation was doubled and the frequency with which case preparation is performed was increased from 50 to 100 percent of cases.

- Conference call participants relayed that complex civil cases carry a heavy workload in terms of exhibits management, general records management, and scanning. The time required for each of these tasks was doubled.

- Conference call participants said that complex civil cases involve more staff time in the courtroom and the jury services office because the jury selection process can be complicated. The time required for courtroom support activities and for jury management was doubled.

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- Conference call participants noted that although fee waivers are possible in complex civil cases, they are relatively rare, so the frequency for "other document processing," of which fee waivers are a major component, was reduced from 20 to 10 percent of cases, with no adjustment to the time per filing.

- The frequency of status conferences was increased from 45 to 98 percent of cases based on findings from the NCSC evaluation. No adjustments were made to the time per filing.

- The frequency of fee- and payment-related work was increased from 80 to 95 percent because the vast majority of cases will have the complex civil filing fee. The time required for this work was multiplied by the median number of parties per case (per the NCSC evaluation and the complex civil fee data).

- The frequency of self-help services was reduced from 10 to 5 percent of cases because the heavy attorney presence on complex civil cases and the intensive judicial management suggests less of a need for self-help services.

- The frequency of mediation was reduced from 40 to 30 percent of cases based on the frequency of alternative dispute resolution orders in the NCSC evaluation.

The original unlimited civil caseweight of 797 minutes necessarily included some case processing time for complex civil cases. However, because complex civil was not examined as a separate case type in the staff workload study, it was not possible to assess how many minutes the complex civil work contributed to the unlimited civil caseweight. Therefore, WAAC decided to maintain the current unlimited civil caseweight at 797 minutes for this interim period.

Although the final results from the staff workload study update slated for fall 2015 will not be available in time for FY 2016–2017 budget allocations, WAAC elected to recommend revisiting the interim caseweight because preliminary data will be available from the staff study update that could potentially be used to refine the initial interim caseweight.

Comments, Alternatives Considered, and Policy Implications

WAAC voted unanimously to approve the interim complex civil caseweight of 2,271 minutes, maintaining the unlimited civil caseweight at its current value of 797 minutes, and to revisit the interim weighting for FY 2016–2017 based on preliminary data from the staff workload study update.

External comments

WAAC received one public comment from a committee on complex court funding of the Board of the Northern California Chapter of the Association of Business Trial Lawyers during the open meetings related to the development of the complex civil caseweight. Much of the commentary highlighted factors to consider in establishing the caseweight and posed questions related to

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complex civil filing fees and revenue. The comments related to fees and revenues were referred to the Trial Court Budget Advisory Committee.

Internal comments

Internal comments were also fairly limited. The most substantive discussion centered around whether to maintain the current unlimited civil caseweight of 797 minutes or to reduce it due to some complex civil workload having been captured in the unlimited civil caseweight. Concern was expressed that if complex civil work was not adequately captured in the staff workload study, too much time might be removed from the unlimited civil caseweight, which could work to the disadvantage of smaller courts in particular. WAAC opted to maintain the current unlimited civil caseweight at 797 minutes as a result of this discussion.

Alternatives

In its initial recommendation to the Judicial Council, TCBAC proposed applying the same caseweight to complex civil as is used for asbestos cases. The recommendation was amended to request that WAAC come up with an interim caseweight, rather than merely adopting the asbestos caseweight, because assessing whether the asbestos and complex civil workloads were similar without further study was not possible. WAAC's research revealed that the workload for complex civil cases is distributed differently than for asbestos cases. For example, the courts that participated in the conference call reported that asbestos cases disproportionately go to trial, whereas complex civil cases will most often settle.

Because the fee data are not a direct measure of filings, but only a proxy, the possibility of using JBSIS data to establish the number of complex civil filings was explored. JBSIS captures the provisionally complex case filings, which are cases presumed to be complex that involve one or more of the following types of claims: antitrust or trade regulation claims, construction defect claims involving many parties or structures, securities claims or investment losses involving many parties, environmental or toxic tort claims involving many parties, claims involving mass torts, claims involving class actions, or insurance coverage claims arising out of any of the claims listed above. However, these provisionally complex cases represent only a small subset of all complex civil cases, and the data are not reported by all courts, so using the JBSIS data was not feasible.

Policy implications

Applying the recommended complex civil caseweight to the paid complex case fee filings in the RAS model results in a net increase in statewide full-time equivalent (FTE) need of 43 positions, with 12 courts showing increased need (see Attachment C). Because additional funding to support the full FTE need is unavailable, allocations would shift proportionally toward those courts with a higher volume of complex civil filings.

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Implementation Requirements, Costs, and Operational Impacts

If approved, the new caseweight will be incorporated into the RAS model update for FY 2015–2016, which will subsequently be used for budget allocations. There is no associated cost for implementation.

Attachments and Links

1. Attachment A: Three-year filings data for complex civil to be used in the RAS model
2. Attachment B: Caseweight adjustments from unlimited civil to complex civil
3. Attachment C: Updated RAS FTE need using proposed complex civil caseweight

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County	Fiscal Year	Unlimited Civil Filings	Asbestos Filings	Paid Complex Plaintiff Filings (Total Fees Remitted/ Fee per Filing)	Non-Asbestos Paid Complex Plaintiff Filings (D-C)	Non-Complex Unlimited Civil Filings (B-E)
	A	B	C	D	E	F
Alameda	2012	8,940	116	310	194	8,746
Alameda	2013	8,428	111	300	189	8,239
Alameda	2014	8,441	117	341	224	8,217
Alpine	2012	72		0	0	72
Alpine	2013	14		0	0	14
Alpine	2014	37		0	0	37
Amador	2012	207		1	1	206
Amador	2013	217		1	1	216
Amador	2014	207		0	0	207
Butte	2012	752		0	0	752
Butte	2013	476		0	0	476
Butte	2014	534		2	2	532
Calaveras	2012	287		0	0	287
Calaveras	2013	269		0	0	269
Calaveras	2014	250		1	1	249
Colusa	2012	53		10	10	43
Colusa	2013	62		0	0	62
Colusa	2014	57		3	3	54
Contra Costa	2012	4,646		79	79	4,567
Contra Costa	2013	4,332		46	46	4,286
Contra Costa	2014	4,360		52	52	4,308
Del Norte	2012	320		0	0	320
Del Norte	2013	334		0	0	334
Del Norte	2014	225		0	0	225
El Dorado	2012	1,005		5	5	1,000
El Dorado	2013	887		10	10	877
El Dorado	2014	852		11	11	841
Fresno	2012	4,312		38	38	4,274
Fresno	2013	4,160		4	4	4,156
Fresno	2014	3,823		0	0	3,823
Glenn	2012	40		0	0	40
Glenn	2013	32		0	0	32
Glenn	2014	47		0	0	47
Humboldt	2012	753		0	0	753
Humboldt	2013	682		1	1	681
Humboldt	2014	715		0	0	715
Imperial	2012	719		24	24	695
Imperial	2013	589		10	10	579
Imperial	2014	555		19	19	536
Inyo	2012	87		0	0	87
Inyo	2013	75		0	0	75
Inyo	2014	105		0	0	105
Kern	2012	1,901		47	47	1,854
Kern	2013	1,744		31	31	1,713
Kern	2014	1,722		54	54	1,668
Kings	2012	264		7	7	257
Kings	2013	243		13	13	230
Kings	2014	271		23	23	248

County	Fiscal Year	Unlimited Civil Filings	Asbestos Filings	Paid Complex Plaintiff Filings (Total Fees Remitted/ Fee per Filing)	Non-Asbestos Paid Complex Plaintiff Filings (D-C)	Non-Complex Unlimited Civil Filings (B-E)
	A	B	C	D	E	F
Lake	2012	474		0	0	474
Lake	2013	393		0	0	393
Lake	2014	423		0	0	423
Lassen	2012	419		0	0	419
Lassen	2013	332		0	0	332
Lassen	2014	128		0	0	128
Los Angeles	2012	69,087	254	993	739	68,348
Los Angeles	2013	64,819	279	1,517	1,238	63,581
Los Angeles	2014	64,483	246	1,552	1,306	63,177
Madera	2012	1,069		2	2	1,067
Madera	2013	516		9	9	507
Madera	2014	510		8	8	502
Marin	2012	1,686		2	2	1,684
Marin	2013	1,558		3	3	1,555
Marin	2014	1,448		3	3	1,445
Mariposa	2012	52		0	0	52
Mariposa	2013	51		1	1	50
Mariposa	2014	34		0	0	34
Mendocino	2012	654		1	1	653
Mendocino	2013	644		1	1	643
Mendocino	2014	664		0	0	664
Merced	2012	812		9	9	803
Merced	2013	756		8	8	748
Merced	2014	741		17	17	724
Modoc	2012	49		0	0	49
Modoc	2013	57		0	0	57
Modoc	2014	50		0	0	50
Mono	2012	109		20	20	89
Mono	2013	93		2	2	91
Mono	2014	69		2	2	67
Monterey	2012	1,564		0	0	1,564
Monterey	2013	1,401		23	23	1,378
Monterey	2014	1,427		20	20	1,407
Napa	2012	821		3	3	818
Napa	2013	707		2	2	705
Napa	2014	695		1	1	694
Nevada	2012	541		0	0	541
Nevada	2013	450		1	1	449
Nevada	2014	478		0	0	478
Orange	2012	19,004	3	580	577	18,427
Orange	2013	17,392	3	650	647	16,745
Orange	2014	16,564	4	568	564	16,000
Placer	2012	2,229		34	34	2,195
Placer	2013	2,209		28	28	2,181
Placer	2014	1,909		30	30	1,879
Plumas	2012	144		0	0	144
Plumas	2013	91		10	10	81
Plumas	2014	78		16	16	62

County	Fiscal Year	Unlimited Civil Filings	Asbestos Filings	Paid Complex Plaintiff Filings (Total Fees Remitted/ Fee per Filing)	Non-Asbestos Paid Complex Plaintiff Filings (D-C)	Non-Complex Unlimited Civil Filings (B-E)
	A	B	C	D	E	F
Riverside	2012	12,203	2	178	176	12,027
Riverside	2013	10,357	2	162	160	10,197
Riverside	2014	9,759	1	203	202	9,557
Sacramento	2012	7,639	3	168	165	7,474
Sacramento	2013	8,297	3	139	136	8,161
Sacramento	2014	8,024	1	152	151	7,873
San Benito	2012	165		0	0	165
San Benito	2013	167		2	2	165
San Benito	2014	159		1	1	158
San Bernardino	2012	9,464		135	135	9,329
San Bernardino	2013	9,390		4	4	9,386
San Bernardino	2014	9,204		0	0	9,204
San Diego	2012	18,618	13	372	359	18,259
San Diego	2013	17,559	3	329	326	17,233
San Diego	2014	17,041	2	394	392	16,649
San Francisco	2012	7,695	233	856	623	7,072
San Francisco	2013	8,651	86	2,074	1,988	6,663
San Francisco	2014	6,460	115	338	223	6,237
San Joaquin	2012	2,912		63	63	2,849
San Joaquin	2013	2,709		51	51	2,658
San Joaquin	2014	2,771		59	59	2,712
San Luis Obispo	2012	1,255		0	0	1,255
San Luis Obispo	2013	1,153		15	15	1,138
San Luis Obispo	2014	1,068		11	11	1,057
San Mateo	2012	2,382		79	79	2,303
San Mateo	2013	2,092		46	46	2,046
San Mateo	2014	2,098		49	49	2,049
Santa Barbara	2012	1,919		24	24	1,895
Santa Barbara	2013	1,931		8	8	1,923
Santa Barbara	2014	1,783		14	14	1,769
Santa Clara	2012	7,887		374	374	7,513
Santa Clara	2013	7,353		272	272	7,081
Santa Clara	2014	7,023		316	316	6,707
Santa Cruz	2012	1,200		1	1	1,199
Santa Cruz	2013	1,044		6	6	1,038
Santa Cruz	2014	989		7	7	982
Shasta	2012	931	2	15	13	918
Shasta	2013	884	3	7	4	880
Shasta	2014	856	0	4	4	852
Sierra	2012	12		0	0	12
Sierra	2013	23		0	0	23
Sierra	2014	11		0	0	11
Siskiyou	2012	188		0	0	188
Siskiyou	2013	181		0	0	181
Siskiyou	2014	200		0	0	200
Solano	2012	1,948	0	9	9	1,939
Solano	2013	1,872	9	21	12	1,860
Solano	2014	1,854	13	25	12	1,842

County	Fiscal Year	Unlimited Civil Filings	Asbestos Filings	Paid Complex Plaintiff Filings (Total Fees Remitted/ Fee per Filing)	Non-Asbestos Paid Complex Plaintiff Filings (D-C)	Non-Complex Unlimited Civil Filings (B-E)
	A	B	C	D	E	F
Sonoma	2012	2,347		3	3	2,344
Sonoma	2013	2,339		4	4	2,335
Sonoma	2014	2,192		2	2	2,190
Stanislaus	2012	1,842		26	26	1,816
Stanislaus	2013	1,633		31	31	1,602
Stanislaus	2014	1,717		37	37	1,680
Sutter	2012	440		6	6	434
Sutter	2013	433		1	1	432
Sutter	2014	516		6	6	510
Tehama	2012	239		1	1	238
Tehama	2013	291		0	0	291
Tehama	2014	268		1	1	267
Trinity	2012	113		0	0	113
Trinity	2013	102		0	0	102
Trinity	2014	81		0	0	81
Tulare	2012	1,454		6	6	1,448
Tulare	2013	1,493		0	0	1,493
Tulare	2014	1,403		4	4	1,399
Tuolumne	2012	277		0	0	277
Tuolumne	2013	252		0	0	252
Tuolumne	2014	249		0	0	249
Ventura	2012	4,077	1	27	26	4,051
Ventura	2013	3,800	2	41	39	3,761
Ventura	2014	3,494	1	17	16	3,478
Yolo	2012	758		-1	-1	759
Yolo	2013	706		24	24	682
Yolo	2014	680		-3	-3	683
Yuba	2012	360		13	13	347
Yuba	2013	320		2	2	318
Yuba	2014	323		6	6	317

	Unlimited Civil Time per Filing (mins)	Rate of Occurrence	Implied Time (mins)	Complex Civil Adjusted Time per Filing	Rationale
Document Processing					
• New filing	34	100%	296	**296**	NCSC report showed median of 8.7 plaintiffs, so multiplied by 8.7
• Subsequent filing or petition	100	100%	670	**670**	NCSC report & fee data showed 6.7 times the parties of a typical case, so multiplied by 6.7
• Other document processing	12	10%	60	**6**	processing fee waivers is a major task under "other" and fee waivers are rare, so cut the rate of occurrence in half
	146			**972**	
Calendar Scheduling, Hearing Prep, and Readiness Mngment					
• File preparation	30	100%	30	30	
• Set hearing date	21	100%	61	**61**	increased occurrence to 100%, a lot of interim activity due to heavier judicial management; nearly tripled time--conference call participants noted difficulty of coordinating schedules with mutliple parties, also consistent with random moment data that reflects more calendaring
• Case preparation	117	100%	468	**468**	increased occurrence to 100% due to need for legal research and case management; doubled time--conference call participants said research attorney time is double
• Tentative ruling	6	20%	30	6	
• Status conference	5	98%	11	**11**	increased occurrence to 98% based on frequency of status conferences in NCSC evaluation
• Other calendaring	8	60%	13	8	
	187			**584**	
Courtroom Support and Administrative Support for Judges					
• Minutes	90	100%	90	90	
• Exhibits and subpoenaed docs	12	40%	60	**24**	doubled time--conference call participants said there is heavy exhibits management
• Order/motion/judgment	15	75%	40	**30**	doubled time--conference call participants said there is a lot of in-courtroom work due to number of parties
• Other courtroom	28	100%	56	**56**	doubled time--conference call participants said there is a lot of in-courtroom work and more order processing work due to number of parties
	145			**200**	

	Unlimited Civil Time per Filing (mins)	Rate of Occurrence	Implied Time (mins)	Complex Civil Adjusted Time per Filing	Rationale
Judgment/Post-Judgment Activities					
• Appeal of case	14	8%	180	14	
• Orders/judgment	20	100%	40	**40**	doubled time--conference call participants said there is more order processing work due to number of parties
	34			**54**	
Jury Management					
• Voir dire	8	2%	800	**16**	doubled time--conference call participants said jury selection process is complicated
	8			**16**	
Fees and Payments					
• Payments/fees	16	95%	134	**127**	increased occurrence to 95% because vast majority of cases will have complex civil filing fee; multiplied by 6.7 because NCSC report & fee data showed 6.7 times the parties of a typical case
	16			**127**	
Records Management					
• Records request	9	20%	45	9	
• Records management	40	100%	80	**80**	doubled time--conference call participants said there is more records management
• Imaging	23	50%	90	**45**	doubled time--conference call participants said the scanning work is heavier
	72			**134**	
General Assistance/Self Help					
• General Assistance	27	60%	45	27	
• Self-help	10	5%	100	**5**	decreased occurrence due to heavy judicial and attorney presence on cases suggesting less of a need for self-help
	37			**32**	
Mediation/Arbitration/ADR					
• Mediation	44	30%	147	44	decreased occurrence to 30% based on frequency of ADR orders in NCSC report
	44			**44**	
Case Weight	**689**			**2163** **2271**	case processing time only adjusted to add back in non-case processing time

Attachment C: Updated RAS FTE need using proposed complex civil caseweight

	Program 10 (Operations) Staff Need										Program 90 (Administration) Staff						
Court	Infractions A	Criminal B	Civil C	Family Law D	Pr/MH E	Juvenile F	Total Program 10 Need (A thru F) G	Manager/ Supervisor Ratio (by cluster) H	Manager/ Supervisor Need (G/H) I	Total Program 10 Need, Rounded up (G+I) program10	Non-RAS FTE (for Program 90 Need Calculation)* K	Program 90 ratio (by cluster) L	Program 90 Need, Rounded up ((J+K)/L) M	Total RAS Need (J+M) N	Total RAS Need (Approved by WAAC 5-12-15)	% change from 5-12-15 FTE Need to 5-21-15 FTE Need	FY 14-15 RAS FTE Need	% change from FY 14-15 to FY 15-16
Alameda	76.3	121.2	122.7	103.4	31.9	18.0	473.5	11.1	42.6	517	85.6	7.2	84.0	**601**	**596**	1%	626	-5%
Alpine	0.5	0.2	0.4	0.1	0.0	0.0	1.4	6.9	0.2	2	0.4	5.7	1.0	**3**	**3**	0%	3	0%
Amador	2.1	7.0	2.6	3.9	1.2	0.8	17.6	6.9	2.5	21	2.3	5.7	5.0	**26**	**26**	0%	25	4%
Butte	10.1	34.4	12.1	24.8	12.4	7.3	101.0	8.6	11.7	113	16.5	6.4	21.0	**134**	**134**	0%	139	-4%
Calaveras	1.5	5.3	3.4	4.8	1.9	1.9	18.7	6.9	2.7	22	2.5	5.7	5.0	**27**	**27**	0%	27	0%
Colusa	3.7	4.8	0.9	1.5	0.5	1.0	12.4	6.9	1.8	15	1.5	5.7	3.0	**18**	**18**	0%	18	0%
Contra Costa	30.3	64.4	71.4	81.9	25.6	20.5	294.1	8.6	34.1	329	18.9	6.8	52.0	**381**	**380**	0%	395	-4%
Del Norte	2.1	6.0	3.2	4.8	2.6	1.9	20.7	6.9	3.0	24	3.0	5.7	5.0	**29**	**29**	0%	33	-12%
El Dorado	7.9	17.5	12.7	15.7	4.7	7.0	65.5	8.6	7.6	74	4.9	6.4	13.0	**87**	**86**	1%	89	-3%
Fresno	29.3	169.0	67.4	93.4	23.5	30.3	412.9	8.6	47.9	461	27.4	6.8	72.0	**533**	**533**	0%	535	0%
Glenn	4.0	4.0	1.1	3.6	1.4	1.2	15.3	6.9	2.2	18	4.5	5.7	4.0	**22**	**22**	0%	25	-12%
Humboldt	7.5	28.6	9.3	13.4	7.2	3.1	69.2	8.6	8.0	78	2.0	6.4	13.0	**91**	**91**	0%	91	0%
Imperial	22.6	33.1	10.5	27.6	5.0	5.5	104.4	8.6	12.1	117	15.3	6.4	21.0	**138**	**138**	0%	142	-3%
Inyo	4.3	3.9	1.1	2.4	0.8	0.8	13.3	6.9	1.9	16	3.2	5.7	4.0	**20**	**20**	0%	20	0%
Kern	42.6	170.8	45.0	99.1	28.6	25.1	411.1	8.6	47.7	459	51.0	6.8	76.0	**535**	**535**	0%	543	-1%
Kings	10.1	34.1	6.6	16.3	4.0	4.3	75.4	8.6	8.7	85	4.6	6.4	14.0	**99**	**98**	1%	102	-4%
Lake	2.2	13.9	5.9	7.7	3.2	1.7	34.5	8.6	4.0	39	1.6	6.4	7.0	**46**	**46**	0%	46	0%
Lassen	2.8	6.1	3.6	4.5	1.4	1.2	19.5	6.9	2.8	23	2.3	5.7	5.0	**28**	**28**	0%	31	-10%
Los Angeles	436.6	1,210.6	1,029.2	826.2	248.8	388.1	4,139.5	11.1	372.3	4,512	471.0	7.2	690.0	**5,202**	**5,181**	0%	5,490	-6%
Madera	5.7	26.6	11.7	18.9	4.2	5.7	72.9	8.6	8.5	82	6.1	6.4	14.0	**96**	**96**	0%	99	-3%
Marin	17.2	17.8	18.7	16.3	7.0	2.8	79.8	8.6	9.3	90	6.7	6.4	16.0	**106**	**104**	2%	109	-5%
Mariposa	0.8	3.6	0.8	1.5	0.7	0.6	8.1	6.9	1.2	10	3.4	5.7	3.0	**13**	**13**	0%	13	0%
Mendocino	5.5	18.1	7.7	10.1	3.7	4.9	49.9	8.6	5.8	56	3.7	6.4	10.0	**66**	**66**	0%	66	0%
Merced	17.3	37.1	14.9	27.6	7.8	9.5	114.3	8.6	13.3	128	11.7	6.4	22.0	**150**	**150**	0%	159	-6%
Modoc	0.6	2.3	0.6	1.7	0.6	0.4	6.2	6.9	0.9	8	2.0	5.7	2.0	**10**	**10**	0%	9	11%
Mono	2.6	3.5	1.2	0.9	0.2	0.3	8.7	6.9	1.3	10	1.8	5.7	3.0	**13**	**13**	0%	14	-7%
Monterey	20.2	58.3	22.2	31.0	8.0	8.9	148.6	8.6	17.2	166	13.4	6.8	27.0	**193**	**193**	0%	202	-4%
Napa	6.2	17.9	9.5	12.6	4.9	3.4	54.5	8.6	6.3	61	7.3	6.4	11.0	**72**	**72**	0%	73	-1%
Nevada	6.6	13.3	6.8	8.1	3.3	1.9	40.0	8.6	4.6	45	6.9	6.4	9.0	**54**	**54**	0%	55	-2%
Orange	106.9	328.3	267.0	228.5	59.1	46.9	1,036.7	11.1	93.2	1,130	178.0	7.2	181.0	**1,311**	**1,300**	1%	1,350	-4%
Placer	13.5	36.1	27.6	30.9	8.5	11.5	128.2	8.6	14.9	144	7.0	6.4	24.0	**168**	**167**	1%	169	-1%
Plumas	1.0	2.9	1.5	2.3	0.9	0.6	9.4	6.9	1.4	11	1.1	5.7	3.0	**14**	**14**	0%	15	-7%
Riverside	84.0	254.0	189.3	232.2	45.4	67.8	872.6	11.1	78.5	952	117.7	7.2	148.0	**1,100**	**1,097**	0%	1,125	-2%
Sacramento	54.0	166.0	136.8	151.6	44.2	27.9	580.6	11.1	52.2	633	59.1	7.2	96.0	**729**	**727**	0%	739	-2%
San Benito	1.9	6.9	3.3	4.8	1.1	1.3	19.2	6.9	2.8	22	1.3	5.7	5.0	**27**	**27**	0%	29	-7%
San Bernardino	70.2	351.4	182.9	238.6	55.9	59.9	958.9	11.1	86.2	1,046	73.3	7.2	155.0	**1,201**	**1,200**	0%	1,267	-5%
San Diego	123.6	278.3	257.7	257.5	55.3	43.5	1,015.9	11.1	91.4	1,108	110.1	7.2	169.0	**1,277**	**1,270**	1%	1,298	-2%
San Francisco	51.5	52.7	107.6	49.0	31.8	17.8	310.4	11.1	27.9	339	25.8	7.2	51.0	**390**	**372**	5%	395	-6%
San Joaquin	25.7	112.5	48.9	61.2	22.4	15.4	286.0	8.6	33.2	320	12.2	6.8	49.0	**369**	**368**	0%	375	-2%
San Luis Obispo	14.7	51.0	16.0	18.7	10.9	6.5	117.9	8.6	13.7	132	7.5	6.4	22.0	**154**	**154**	0%	160	-4%
San Mateo	37.3	59.3	35.7	47.1	13.3	22.4	215.2	8.6	25.0	241	17.8	6.8	39.0	**280**	**278**	1%	294	-5%
Santa Barbara	28.8	59.7	26.5	28.7	10.3	10.0	164.0	8.6	19.0	183	28.3	6.8	32.0	**215**	**215**	0%	222	-3%
Santa Clara	55.6	144.6	107.9	101.7	36.0	17.0	462.8	11.1	41.6	505	45.7	7.2	77.0	**582**	**576**	1%	603	-4%
Santa Cruz	17.5	34.6	15.3	20.0	4.7	7.1	99.3	8.6	11.5	111	19.7	6.4	21.0	**132**	**132**	0%	134	-1%
Shasta	10.7	46.3	13.4	21.4	7.6	7.6	107.0	8.6	12.4	120	55.4	6.4	28.0	**148**	**148**	0%	149	-1%
Sierra	0.2	0.5	0.2	0.3	0.2	0.1	1.5	6.9	0.2	2	1.1	5.7	1.0	**3**	**3**	0%	4	-25%
Siskiyou	5.9	8.1	2.8	5.3	1.9	1.6	25.6	8.6	3.0	29	4.6	6.4	6.0	**35**	**35**	0%	36	-3%
Solano	18.5	52.6	32.3	46.4	14.6	7.2	171.6	8.6	19.9	192	6.0	6.8	30.0	**222**	**222**	0%	233	-5%
Sonoma	26.5	58.3	30.2	37.1	16.5	7.9	176.5	8.6	20.5	198	21.5	6.8	33.0	**231**	**230**	0%	245	-6%
Stanislaus	18.7	86.6	32.4	57.2	18.6	9.2	222.7	8.6	25.8	249	7.6	6.8	38.0	**287**	**287**	0%	293	-2%
Sutter	5.1	16.7	6.8	10.9	4.6	2.2	46.3	8.6	5.4	52	9.7	6.4	10.0	**62**	**62**	0%	63	-2%
Tehama	5.3	16.4	4.7	8.8	2.6	2.7	40.5	8.6	4.7	46	3.3	6.4	8.0	**54**	**54**	0%	54	0%
Trinity	0.7	3.6	1.0	1.9	0.7	0.9	8.7	6.9	1.3	10	4.0	5.7	3.0	**13**	**13**	0%	15	-13%
Tulare	24.1	70.6	26.3	40.3	11.2	14.2	186.6	8.6	21.7	209	21.9	6.8	35.0	**244**	**244**	0%	239	2%
Tuolumne	2.5	10.7	3.5	5.9	2.3	2.9	27.9	8.6	3.2	32	2.0	6.4	6.0	**38**	**38**	0%	38	0%
Ventura	35.3	72.4	57.7	64.5	24.4	23.5	277.8	8.6	32.2	310	74.5	6.8	57.0	**367**	**367**	0%	380	-3%
Yolo	10.4	29.9	10.5	16.5	5.1	5.2	77.6	8.6	9.0	87	13.0	6.4	16	**103**	**103**	0%	105	-2%
Yuba	5.0	14.3	5.2	9.9	3.1	3.2	40.7	8.6	4.7	46.0	2.0	6.4	8.0	54	**54**	0%	53	2%
Statewide	**1,634.4**	**4,558.7**	**3,154.5**	**3,262.8**	**958.4**	**1,002.1**	**14,570.9**		**1,438.6**	**16,040.0**	**1,711.9**		**2,563.0**	**18,603**	**18,519**	0.5%	**19,261**	-4%

*Reported on FY 14-15 Schedule 7A; non-RAS staff include categories such as SJOs, Enhanced Collections Staff, and Interpreters

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Jury Instructions: New, Revised, Renumbered, and Revoked Civil Jury Instructions and Verdict Forms

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Civil Jury Instructions (*CACI*)

Recommended by
Advisory Committee on Civil Jury Instructions
Hon. Martin J. Tangeman, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
May 12, 2015

Contact
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Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approving for publication the new, revised, revoked, and renumbered civil jury instructions prepared by the committee.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective June 26, 2015, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court the civil jury instructions prepared by the committee. On Judicial Council approval, the instructions will be published in the midyear supplement to the official 2015 edition of the *Judicial Council of California Civil Jury Instructions*.

A table of contents and the proposed new, revised, renumbered, and revoked civil jury instructions and verdict forms are attached at pages 32–154.

Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.58 of the California Rules of Court, which established the advisory committee and its charge.[1] At this meeting, the council voted to approve the *CACI* instructions under what is now rule 2.1050 of the California Rules of Court. Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CACI.*

This is the 26th release of *CACI*. The council approved *CACI* release 25 at its December 2014 meeting.

Rationale for Recommendation

The committee recommends proposed additions and revisions to, and revocation of, the following 37 instructions and verdict forms: 201, 303, 328, VF-300, VF-303, VF-304, 456, 550, VF-501, 601, 1230, 1500, 1504, 1731, 1806, 1808, 2308, 2432, 2508, 2512, 2702, VF-2702, 3020, 3040, 3041, 3043, 3071, VF-3021, VF-3022, 3700, 3704, 4110, and 4600-4604. Of these, 27 are proposed to be revised, 4 are newly drafted, 1 is proposed to be revoked (CACI No. 1808), and 5 are proposed to be renumbered by moving them to a new series on Whistleblower Actions (CACI Nos. 4600−4604, discussed below).

The Judicial Council's Rules and Projects Committee (RUPRO) has also approved changes to 56 additional instructions under a delegation of authority from the council to RUPRO.[2]

The instructions were revised or added based on comments or suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law. Below is a summary of the more significant changes recommended to the council.

New instructions

A recent case, *Holguin v. Dish Network LLC.,* suggested a new instruction in the Contracts series.[3] In this case, the satellite TV company did major damage to a home in the course of performing a contract for installation of a dish. The court held that there is implied in every

[1] Rule 10.58(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's civil jury instructions."

[2] At its October 20, 2006, meeting, the Judicial Council delegated to RUPRO the final authority to approve nonsubstantive technical changes and corrections and minor substantive changes to jury instructions unlikely to create controversy. The council also gave RUPRO the authority to delegate to the jury instructions advisory committees the authority to review and approve nonsubstantive grammatical and typographical corrections and other similar changes to the jury instructions, which RUPRO has done.

Under the implementing guidelines that RUPRO approved on December 14, 2006, which were submitted to the council on February 15, 2007, RUPRO has the final authority to approve (among other things) additional cases and statutes cited in the Sources and Authority and additions or changes to the Directions for Use.

[3] *Holguin v. Dish Network LLC* (2014) 229 Cal.App.4th 1310.

contract a duty to perform the contract with due care. Not only was the company negligent, but the negligent performance was also a breach of contract. In response, the committee proposes new instruction CACI No. 328, *Breach of Implied Duty to Perform With Reasonable Care—Essential Factual Elements*.

A judicial officer member of the committee noted that in the Malicious Prosecution series, CACI No. 1500, *Former Criminal Proceeding,* element 1 requires that the defendant have been "actively involved" in causing the prosecution. She suggested that it would be helpful to the courts and counsel to instruct on the substantial body of law as to what constitutes active involvement. The committee now proposes new CACI No. 1504, *Former Criminal Proceeding—"Actively Involved" Explained*.

In the last release, the committee revised CACI 1803, *Appropriation of Name or Likeness—Essential Factual Elements,* to remove a balancing of privacy rights and public interest as an optional element. The Directions for Use were revised to note that even if the elements are established, the First Amendment may require that the right to be protected from unauthorized publicity be balanced against the public interest in the dissemination of news and information.[4] But it was further noted that if there is an issue of fact regarding a First Amendment balancing test, it most probably should be considered to be an affirmative defense.[5]

In commenting on this change, the State Bar of California Litigation Section Jury Instructions Committee suggested that a new instruction be created on the affirmative defense that requires balancing the plaintiff's right of privacy against the public interest in the dissemination of news and information. In considering the suggestion, the committee decided that the First Amendment balancing test applies as an affirmative defense not only to misappropriation of name and likeness, but also to the other common law torts for invasion of privacy (false light, intrusion into private affairs, and public disclosure of private facts).[6] The committee now proposes new CACI No. 1806, *Affirmative Defense to Invasion of Privacy—First Amendment Balancing Test—Public Interest*.

A recent case, *Kao v. University of San Francisco*, included a cause of action under Civil Code section 56.20(b) for retaliation against an employee for refusing to disclose medical information requested by the employer without good cause.[7] The committee proposes new instruction CACI No. 3071, *Retaliation for Refusing to Authorize Disclosure of Medical Information—Essential Factual Elements,* for use in claims under this statute.

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[4] See *Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 409.

[5] Cf. *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 407; CACI No. 1805, *Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III)*.

[6] See *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 214−242; *Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 278−279.

[7] *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437.

CACI currently includes three instructions on Eighth Amendment violations of prisoners' federal civil rights under title 42 United States Code section 1983. Until the last release, CACI No. 3040 addressed "general conditions of confinement."[8]

In reviewing the substantial case law coming from the federal courts in prisoner rights cases, the committee concluded that the "general conditions of confinement" cases really fell into two separate categories: those involving a substantial risk of serious harm to the prisoner (*risk* cases) and those involving depriving the prisoner of necessities of life (*deprivation* cases). And while there is considerable overlap in the elements of the two kinds of claims, there are also some differences.

Therefore, in the last release, the committee narrowed and renamed CACI No. 3040 to apply only to risk cases.[9] In this release, the committee now proposes new CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities,* for use in deprivation cases.

Revoked instruction (CACI No. 1808)

CACI No. 1808, *Stalking,* is for use in a statutory tort claim for stalking made under Civil Code section 1708.7. In 2014, the Legislature amended this statute substantially so that the current instruction no longer completely and accurately expresses the statutory elements.[10] The legislative amendments made the statute considerably more complex. For example, emotional distress is now presented not as the harm resulting from the stalking, but as an alternative to the element requiring reasonable fear for safety (current element 2 of 1808). Then both an objective "reasonable person" and a subjective standard are now required to constitute sufficient distress.[11]

Staff drafted a revision of CACI No. 1808 that addressed the statutory changes. The committee agreed that the draft accurately reflected the statute as amended but found the resulting instruction to be exceedingly complex and confusing. Efforts to make the draft more user-friendly in plain language proved unsuccessful.

Committee members noted that there are no annotations for this statute on Lexis.com. Further, no judicial officers on the committee had ever presided over or heard of an action brought under the statute. Stalking cases are commonly addressed under the various protective order statutes. Given the lack of any indication that the statute is ever used and the struggle to draft a comprehensible revision, the committee decided to present the possible revocation of the instruction for public comment.

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[8] The other two are CACI No. 3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care,* and CACI No. 3042, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Excessive Force.*

[9] CACI No. 3040 is now titled *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm.*

[10] See Assem. Bill 1356 (Stats 2014, ch 853).

[11] Civ. Code, § 1708.7(a)(2)(B).

No comments were received objecting to the revocation of the instruction. Therefore, the committee proposes revocation of CACI No. 1808, either permanently or provisionally. Some members have not given up on drafting a usable replacement instruction, so it is possible that a proposal to revise and restore the instruction in the next release could be presented. However, such a course is in no way assured, and the assumption at this time is that revocation will most likely be permanent.

New series on Whistleblower Actions (CACI Nos. 4600–4604)

CACI currently has five instructions under three whistleblower statutes. CACI No. 2440, *False Claims Act: Whistleblower Protection—Essential Factual Elements,* is based on Government Code section 12653 in the False Claims Act. It is currently located in the Wrongful Termination Series. CACI No. 2442, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements,* is based on Government Code section 8547.8(c); it is also in the Wrongful Termination Series.[12] CACI No. 2730, *Whistleblower Protection—Disclosure of Legal Violation—Essential Factual Elements,* is based on Labor Code section 1102.5; it is located in the Labor Code Actions series.[13]

The committee has struggled with the limitation imposed by the title Wrongful *Termination* for the 2400 series. Statutes protecting employees from wrongful termination, including these whistleblower statutes, also protect employees from other adverse employment actions other than termination. The committee's current approach is to limit the text of the instructions in the 2400 series to termination and then to mention in the Directions for Use that other adverse actions are within the statute.

Several members felt that the whistleblower statutes were not good fits in the Wrongful Termination series. Claims for whistleblower protection are becoming increasingly common, and there are other statutes that are candidates for instructions in the future.[14] Therefore, the committee proposes moving the current whistleblower instructions to their own series, CACI No. 4600 et seq.

Breach of contract—plaintiff's performance and conditions precedent

CACI No. 303, *Breach of Contract—Essential Factual Elements,* includes two optional elements. Optional element 2 requires that the plaintiff either have performed all of the significant things that the contract required him or her to do to trigger the defendant's duty to perform, or that the plaintiff was excused from having to do those things. Optional element 3 requires that all conditions precedent either have occurred or were excused. These same optional

[12] See also CACI No. 2443, *Affirmative Defense—Same Decision,* under Gov. Code, § 8547.8(e).

[13] See also CACI No. 2731, *Affirmative Defense—Same Decision,* under Lab. Code, § 1102.6.

[14] See, e.g., Health & Saf. Code, § 1278.5 (complaints about hospital patient care), Lab. Code, § 6310 (complaints about workplace health and safety conditions).

elements are presented as optional questions in CACI Nos. VF-300, *Breach of Contract*, and VF-303, *Breach of Contract—Contract Formation at Issue*.

In two recent unpublished cases, the jury struggled with these questions on the verdict form.[15] The jury appeared to confuse the occurrence or waiver of conditions precedent with waiver of the defendant's performance. In neither case was the court or counsel able to give proper guidance to the jury as to how to work through these questions on the verdict form.[16] From the facts presented, whether any conditions precedent actually were at issue in either case was unclear.

The committee was concerned that these cases indicated that there may be a lack of clarity as to how to address plaintiff's performance, conditions precedent, and defendant's performance, all of which present a possibility of excuse or waiver. It was noted that CACI No. 303 and verdict forms VF-300 and VF-303 were inconsistent in the way that these elements and questions are presented.

The committee concluded that part of the problem might be because the same verdict form question asked about both performance/occurrence and excuse/waiver as alternatives. It decided to divide the questions so as to first ask whether plaintiff performed the contractual requirements. If the jury answers no, it is then asked (if waiver is alleged) whether the plaintiff's performance was excused or waived. Similarly, the jury is first asked whether all of the conditions precedent required to trigger the defendant's obligation to perform occurred. If the jury answers no, it is then asked whether occurrence was waived or excused (if at issue). CACI No. 303 was conformed to present the elements in the same way as done in the verdict form questions.[17]

Finally, the committee decided that if the occurrence of conditions precedent is an issue in the case, it is important to let the jury know just exactly what those conditions precedent are. CACI No. 300 has been revised to require the drafter to specify the conditions precedent that must occur before the defendant's duty to perform the contract is triggered. The committee hopes that this revision will alert bench and bar not to include the conditions precedent element and question if no conditions precedent are at issue in the case.

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[15] See *Wang v. TDS Group* (2014) Cal.App.Unpub. Lexis 8109, and *Hines v. Premier Power Renewable Energy* (2014) Cal.App.Unpub. Lexis 8489. While the committee never cites unpublished cases in CACI, it does look to them for information about how CACI is being implemented in the courts.

[16] In *Wang,* the judge told the jury to continue to answer questions even if it found that conditions precedent neither occurred nor were waived, contrary to the transitional language in the verdict form, which tells the jury to stop if there is neither occurrence nor waiver (excuse). The appellate court found this to be reversible error.

[17] CACI No. VF-304, *Breach of Implied Covenant of Good Faith and Fair Dealing,* has also been conformed.

Comments, Alternatives Considered, and Policy Implications

The proposed additions and revisions to *CACI* circulated for comment from January 19 to February 27, 2015. Comments were received from 10 different commentators. No proposal generated a particularly large number of comments. The committee evaluated all comments and revised some of the instructions as a result. A chart with summaries of all comments received and the committee's responses is attached at pages 8–31.

Rule 2.1050 of the California Rules of Court requires the committee to update, amend, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. The proposed new, revised, revoked, and renumbered instructions are presented to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee did not consider any alternative actions.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will publish a midyear supplement to the 2015 edition and pay royalties to the Judicial Council. Other licensing agreements with other publishers provide additional royalties.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the Judicial Council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the Judicial Council provides a broad public license for their noncommercial use and reproduction.

Attachments

1. Charts of comments, at pages 8–31
2. Full text of *CACI* instructions, at pages 32–154

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Instruction	Commentator	Comment	Committee Response
201, *Highly Probable—Clear and Convincing Proof*	Kenneth N. Greenfield Attorney at Law, San Diego	Rather than simply have the term "highly probable," I believe the term should be "very highly probable." This is because the "clear and convincing" burden of proof generally applies to a finding of punitive damages. Punitive damages are a penalty and should be as close to the "beyond a reasonable doubt" standard.	*Nevarrez v. San Marino Skilled Nursing & Wellness Center* (2013) 221 Cal.App.4th 102, 114 endorses the instruction as written. The court says it does not need to be augmented with stronger language.
	Stephanie D. Rice, Attorney at Law, Spinelli Donald Nott, Sacramento	I like the change in the title of CACI 201. Definitely clearer explanation of standard.	No response is necessary.
303, *Breach of Contract—Essential Factual Elements*	Kenneth N. Greenfield Attorney at Law, San Diego	Element 5: Rather than say just "that [*plaintiff*] was harmed," since causation is an important element in breach of contract cases, the element could read "that [*plaintiff*] was harmed by the defendant's breach of the contract."	The committee agreed with the comment and has made the proposed change.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	The committee agrees with the revisions to element 2.	No response is necessary.
		We disagree with the revisions to the first option in element 3. We believe that listing all conditions precedent in element 3 would be onerous and unnecessary. Counsel can specify the conditions at issue in their argument.	The committee was concerned that in two unpublished cases, *Wang v. TDS Group,* 2014 Cal. App. Unpub. LEXIS 8109 and *Hines v. Premier Power Renewable Energy,* 2014 Cal. App. Unpub. LEXIS 8489, the jury was unable to properly answer the verdict form question on conditions precedent and their waiver. In *Wang*, the court gave the jury incorrect information as to how to address this question, which was held to be reversible error. The committee's hope is that by requiring that the conditions actually be identified, this confusion will be eliminated.

Instruction	Commentator	Comment	Committee Response
		We agree with the proposed revisions to the second option in element 3, but we suggest that language be added to the Directions for Use stating to include an instruction defining the term "waiver" if "waiver" rather than "excuse" is selected.	There already is a cross reference to CACI No. 323, *Waiver of Condition Precedent*.
328, *Breach of Implied Duty to Perform With Reasonable Care—Essential Factual Elements*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that listing all conditions precedent in the first option in element 3 would be onerous and unnecessary. Counsel can specify the conditions at issue in their argument.	See response above to similar comment on CACI No. 303.
		We suggest that language be added to the Directions for Use stating to include an instruction defining the term "waiver" if "waiver" rather than "excuse" is selected in the second option in element 3.	The committee does not believe that the discussion in the Directions for Use to CACI No. 303 on the elements of a breach of contract needs to be repeated in other instructions. However, a cross reference to No. 303 for this discussion is appropriate and has been added.
		The first two sentences in the Directions for Use may be misconstrued to mean that this proposed new instruction should be given in every breach of contract case. We suggest adding an initial sentence to dispel that impression, stating, "Give this instruction if the plaintiff alleges a failure to perform a contractual obligation with reasonable care."	The committee agreed with the comment and has added a slightly modified version of the suggested opening sentence.
VF-300, VF-303: Breach of Contract Verdict Forms	Kenneth N. Greenfield Attorney at Law, San Diego	Question 7 (of VF-300) should follow the same language as CACI No. 303 in that there should be a finding that plaintiff was "harmed by defendant's breach of the contract."	The committee agreed with the comment and has made the change. The same change has also been made to CACI No. VF-303.
VF-300, VF-303, VF-304: Breach of Contract Verdict Forms	Orange County Bar Association, by Ashleigh E. Aitken, President	The proposed changes are acceptable, except for the "alternative" provisions dealing with performance/excused performance (VF 300 question 2, VF 303 question 4, VF 304 question 2), and satisfaction/excused conditions (VF 300 question 7, VF 303 question 7, VF 304 question 4). The existing language for these questions in verdict forms 300, 303 and 304 is somewhat confusing, but the	The committee appreciates that this comment shows clear understanding of the reasons for the proposed changes. But the only change proposed is to the transitional language between questions 2 and 3. The commentator's

Instruction	Commentator	Comment	Committee Response
		proposed changes do not really improve the verdict forms, and may confuse things even more. Specifically, the verdict forms attempt to address the fact that, in a contract case, a plaintiff must either have performed all, or substantially all, of the things required of him/her/it under the contract, OR must have been excused from performance in some way. Likewise, any conditions precedent for performance must have occurred OR have been excused. Using the question of "performance" as an example (the same analysis applies to the wording for the "conditions" question), the proposed new wording attempts to give the jury the ability to either find the plaintiff has performed, and thereby move on to other questions, or to find that the plaintiff has not performed, but then decide whether plaintiff's performance was excused before moving on to the next questions. However, the proposed wording and parenthetical alternatives are confusing, and although they may be no more confusing than the existing language, if the verdict forms are going to be revised, the revisions should accomplish the task. The recommended language for Paragraph 2 of VF-300 and VF-304, and Paragraph 4 of VF-303, would be as follows: 2. Did (plaintiff) do all, or substantially all, of the significant things that the contract required (him/her/it) to do? ____Yes ____No If your answer to question 2 is yes, skip question 3 and answer question 4. [(If excuse is at issue) (If you answered no, then answer question 3] [If excuse is not at issue) (If you	questions themselves are the same, and the transitional language between questions 3 and 4 is the same. The committee does not find that the commentator's proposed language is an improvement. And it is not completely correct because it does not bracket "skip question 3." If excuse is not at issue, there will be no question 3.

Instruction	Commentator	Comment	Committee Response
		answered no, then answer no further questions, and have the presiding juror sign and date this form.] The same type of clarification would be in order for the questions on conditions precedent met or excused.	
VF-303, VF-303. *Breach of Contract—Contract Formation at Issue*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We suggest adding the words "waiver or" before "excuse" in the transitional language following question 6 because question 7 concerns not only excuse but also waiver.	The committee agreed and has added "waiver or."
		We agree with the other revisions to this verdict form and the Directions for Use.	No response is necessary.
456, *Defendant Estopped From Asserting Statute of Limitations Defense*	Arthur Curley, Attorney at Law, Bradley, Curley, Larkspur	CACI 456 element 5 is worse when substituting "facts". Better to simply say: "discovered #4 above."	The committee does not see any concerns with the requirement that the plaintiff have acted once the "need to proceed" was discovered.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that element 4 does not accurately state the law and that making it optional as proposed fails to solve this basic problem. Element 4 makes no allowance for the situation in which the defendant induces the plaintiff to refrain from filing a lawsuit, and the plaintiff discovers the falsity before the statute has run and proceeds diligently after discovering the facts, but files suit after the statute has run. *Lantzy v. Centex Homes* (2003) 31 Cal.4th 836 did not discuss this possibility. It seems unlikely that *Lantzy* at page 384 ("(3) the representation proves false after the limitations period has expired"), without even discussing this possibility, intended to preclude equitable estoppel in those circumstances. Other language in *Lantzy* suggests to the contrary that equitable estoppel may arise if the defendant induced the plaintiff to refrain from filing suit and the plaintiff acted diligently after he or she learned the true facts. (*Id.* at pp. 384-385.) *Superior Disptach, Inc. v. Insurance Corp. of New York* (2010) 181	The commentator's concern appears to be that that discovery might come so late that a complaint cannot be drafted before the statute runs. But to address what would seem to be a rare occurrence, the committee would need some direct authority. *Superior Dispatch* does not provide that authority. It does not involve "too late to respond" facts. Further, the language quoted is that "the defendant's act or omission caused the plaintiff to refrain from filing a *timely* suit." If the deadline is missed, the suit is not "timely."

Instruction	Commentator	Comment	Committee Response
		Cal.App.4th 175, 186 (citing *Lantzy* and other cases), stated the rule in language that does not require the plaintiff to discover the falsity after the limitations period has expired: "A defendant may be equitably estopped from asserting a statutory or contractual limitations period as a defense if the defendant's act or omission caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable." We believe that this is correct and that *Lantzy* did not hold otherwise	
		We also believe that element 4 should be mandatory and should state the basic requirement that the defendant's representations by words or conduct were false. Accordingly, we would modify element 4 as follows: "~~[~~That ~~after the limitations period had expired,~~ [*name of defendant*]'s representations by words or conduct ~~proved to not be true~~ were false; and~~]~~"	The court in *J. P. v. Carlsbad Unified Sch. Dist.* (2014) 232 Cal.App.4th 323, 335 clearly pointed out that falsity is not required in all cases.
		We would prefer greater specificity in element 5 and consistent use of the term "lawsuit" rather than "suit." We would modify element 5 as follows: "That [*name of plaintiff*] proceeded to diligently file a lawsuit once [he/she/it] discovered that [*name of defendant*]'s representations were false ~~the need to proceed~~."	The committee does not believe that there is any need to avoid "file suit" in this element.
		We would delete the new language added at the end of the Sources and Authority for the reasons stated above.	The committee does not know what language the commentator is referring to. The only additions to the Sources and Authority are two excerpts from *JP,* one of which explains why element 4 is not mandatory.
		We note that a petition for review was filed in *J. P. v. Carlsbad Unified Sch. Dist.* (2014) 232 Cal.App.4th 323 and suggest keeping an eye on that.	Review was denied on February 25

Instruction	Commentator	Comment	Committee Response
601, *Negligent Handling of Legal Matter*	Hon. Harold W. Hopp, Judge of the Superior Court, Riverside County	The last sentence of instruction 601 is awkward. Either "[*Name of plaintiff*] was not harmed by [*name of defendant*]'s conduct if the same harm would have occurred anyway" OR "[*Name of plaintiff*] was not harmed by [*name of defendant*]'s conduct if the same harm would have occurred without that conduct" but not "if the same harm would have occurred anyway without that conduct." Including "anyway" and "without that conduct" seems unnecessary and to read poorly.	The committee believes that both "anyway" and "without that conduct" aid comprehension.
	Orange County Bar Association, by Ashleigh E. Aitken, President	Under "Sources and Authority", the second bullet point citing *Namikas v. Miller*, add ", citing *Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court* (2006) 137 Cal.App.4th 579, 591 [40 Cal.Rptr.3d 446].)	CACI format is to generally not to note that a case excerpt is citing another case. That is a very common situation, which would complicate citation format. The notation "internal citations omitted" sufficiently advises the user that the case is relying on prior authority.
1230, *Express Warranty—Essential Factual Elements*	Orange County Bar Association, by Ashleigh E. Aitken, President	New last case excerpt under Sources and Authority: should read: "Neither Magnuson–Moss nor the ~~California Uniform~~ Commercial Code requires proof that a defect substantially impairs the use, value, or safety of a vehicle in order to establish a breach of an express or written warranty, as required under Song–Beverly." (*Orichian, supra,* 226 Cal.App.4th at 1331, **fn. 9**; see CACI No. 3204, "Substantially Impaired" Explained.)	The commentator is correct about adding fn. 9, but the words "California Uniform" are in the opinion.
1504, *Former Criminal Proceeding—"Actively Involved" Explained*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that this proposed new instruction does not clearly express the two requirements for "actively involved" as articulated in the case law: (1) seeking out the police or prosecuting authorities and (2) reporting false information to them. (*Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 720; *Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1481-1482.) We would prefer an	The committee agreed with the comment and has revised the instruction accordingly.

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		instruction clearly enumerating these two requirements using similar language.	
		We also believe that the final sentence in the instruction could be misconstrued to mean that giving false testimony or providing false information to law enforcement cannot support active involvement. If the point is that giving false testimony or providing false information alone is insufficient if the person did not seek out the police or prosecuting authority, that should be stated more clearly.	This sentence is not about *false* testimony; just testimony in general. The word "merely" leaves open the possibility that giving false testimony could be "active involvement."
1731, *Trade Libel—Essential Factual Elements*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that this revised instruction does not clearly express the essential elements. The current instruction does not state that the disparagement must be either express or by clear implication. The proposed revision adds the optional language "[would be clearly or necessarily understood to have]" describing the disparaging statement. This covers by clear implication, but does not cover expressly. We suggest replacing element 1 with two elements stating: 1. That [*name of defendant*] made a statement that [expressly] [or] [by clear implication] specifically referred to [*name of plaintiff*]'s [product/service]. 2. That [*name of defendant*]'s statement [expressly] [or] [by clear implication] disparaged the quality of [*name of plaintiff*]'s [product/service]."	The committee believes that its proposed language is sufficiently clear and that two separate elements are unnecessary. If the statement "disparaged" the product, it implicitly "referred to" the product.
		We would modify the Directions for Use to state that one of the two alternatives in elements 1 and 2 should be selected, or select both in the disjunctive if the evidence could support either alternative.	As the committee disagrees with the above comment, this comment is moot.
		We suggest adding to the Sources and Authority the following language from *Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277 stated: "We hold that a claim of disparagement	*Hartford* is cited in the Directions for Use, and there are four excerpts in the Sources and Authority. The committee believes that the case is sufficiently

Instruction	Commentator	Comment	Committee Response
		requires a plaintiff to show a false or misleading statement that (1) specifically refers to the plaintiff's product or business and (2) clearly derogates that product or business. Each requirement must be satisfied by express mention or by clear implication." (59 Cal.4th at p. 284.) ". . . The related requirements of derogation and specific reference may be satisfied by implication where the suit alleges that the . . . false and misleading statement necessarily refers to and derogates a competitor's product." (Id. at p. 294.) "A 'reasonable implication' in this context means a clear or necessary inference."	addressed.
2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions That Violate Public Policy*	David diRobertis, on behalf of the California Employment Lawyers Association	CELA commends and agrees with the concepts sought to be covered by the proposed revision to the last paragraph of CACI No. 2432. Consistent with *Turner v. Anheuser Busch, Inc.* (1994) 7 Ca1.4th 1238, the instruction should make clear that a constructive discharge can occur based on *either* an unusually aggravated situation *or* a continuous pattern of employer-created intolerable working conditions, as we believe the proposed change seeks to do.	No response is necessary.
		Nonetheless, CELA submits that the addition of the phrase "employer misconduct" results in a misstatement of law because it instructs the jury that the "continuous pattern" must be a "continuous pattern *of employer misconduct*." The fact that the court in *Turner* recognized that an employer can be held to have constructively terminated an employee by merely *knowingly permitting intolerable working conditions to exist* reinforces the point that the employer itself need not actually commit any "misconduct" for a constructive discharge to be proven. (*Turner, supra,* 7 Cal.4th at p. 1250 [constructive termination can be established by proof that employer "created or knowingly permitted working conditions to remain intolerable"].)	The committee agreed with the comment and has replaced "employer misconduct" with "mistreatment." The "intentionally created or knowingly permitted" requirement is contained in element 3. That encompasses the level of involvement required to establish employer liability. *Turner* does not otherwise tie the continuous pattern to employer misconduct.
	Joseph M. Earley	I strongly oppose the addition of the	To the extent that the

Instruction	Commentator	Comment	Committee Response
	III, Attorney at Law, Paradise	"continuous pattern of employer misconduct" language to the instruction. It is not only effectively a bar to most valid constructive discharge claims, but it is also inconsistent with very case from which the language arises. If anything, the instruction should clarify that "in some cases a single intolerable event ... may constitute a constructive discharge." That is also in the *Turner* case. Clearly someone is proposing that unreasonably difficult standard to prevent valid cases from going forward. It should not be considered.	commentator is making the same point that CELA made above about "employer misconduct," the committee agreed.
	Stephanie D. Rice, Attorney at Law, Spinelli Donald Nott, Sacramento	I think the revision to CACI 2432 is an improvement that will make the instruction easier for jurors to understand.	No response is necessary.
2508, *Failure to File Timely Administrative Complaint—Plaintiff Alleges Continuing Violation*	Stephanie D. Rice, Attorney at Law, Spinelli Donald Nott, Sacramento	I think the revision to CACI 2508 is an improvement that will make the instruction easier for jurors to understand	No response is necessary.
2512, *Limitation on Remedies—Same Decision*	David diRobertis, on behalf of the California Employment Lawyers Association	CELA commends and agrees with the change to include the requirement that the employer would have made the same decision at the same time as consistent with *Harris v. City of Santa Monica* (2013) 56 Ca1.4th 203. This requirement is expressly stated in *Harris*, and it is key limitation on the defense, which must be incorporated into the instruction to ensure it accurately states the law. (*Harris, supra,* 56 Ca1.4th at 224 ["To be clear, when we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision *at the time it made its actual decision*."], italics added.)	No response is necessary.
2702, *Nonpayment of Overtime Compensatio*	Joseph M. Earley III, Attorney at Law, Paradise	I strongly oppose the addition of the nearly impossible to prove standard for unpaid overtime that the employer must have "known or should have known" its	This revision is compelled by a recent appellate opinion.. (See *Jong v. Kaiser*

Instruction	Commentator	Comment	Committee Response
n—Essential Factual Elements		employee was not receiving legal compensation. The public policy is that employees are to be compensated fully and that should not depend on the employer's negligence. Whoever is suggesting this revision wants to prevent valid cases from going forward - and to prevent employees from getting paid for their work.	*Foundation Health Plan, Inc.* (2014) 226 Cal.App.4th 391, 395 [“[W]here an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours is not a violation”].)
3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*	California Department of Justice, by Misha D. Igra, Supervising Deputy Attorney General, Correctional Law Section; John P. Devine, Supervising Deputy Attorney General; Richard F. Wolfe, Supervising Deputy Attorney General; and Micah C.E. Osgood, Deputy Attorney General, Tort and Condemnation Section	The proposed instruction incorrectly implies that the jury is to make a retrospective determination about what would have been the most appropriate use of force. This would be legal error as courts are instructed not to view events with new information or hindsight.	This comment is beyond the scope of the Invitation to Comment; and the committee has not yet expressly considered it. The committee may consider it in the next release cycle. However, the committee notes that what the United States Supreme Court has said about hindsight is: “The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Graham v. Connor* (1989) 490 U.S. 386, 396.) So application of the objective “reasonable officer” standard is not a retrospective determination.

Instruction	Commentator	Comment	Committee Response
		The proposed revisions to the instruction assume incorrectly that the existence of one reasonable use of force in response to a situation precludes the possibility that other responses might also have been in the range of reasonable responses.	This comment is also beyond the scope of the Invitation to Comment; and the committee has not yet expressly considered it. The committee may consider it in the next release cycle.
		The proposed new paragraph for the Directions for Use incorrectly instruct juries not to consider the third element (whether force was used in the performance of official duties) in the context of a common-law negligent-use-of-force claim. While the elements of a general negligence claim do not include an "official duty," negligent use of force in the context of an arrest or other seizure is necessarily a function of law enforcement. For peace officers, the "duty" element of negligent use of force derives from their performance of "official" duties; hence, the third element should not be omitted.	The committee agreed with the comment and has removed the reference to deleting the third element in a negligence case.
		Revise paragraph between elements and factors as follows: Force is not excessive if it is reasonably necessary under the circumstances. In deciding whether force is reasonably necessary or excessive, you should determine <u>whether a reasonable law enforcement officer could have used the same force</u> under the same or similar circumstances. <u>As long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the 'most reasonable' action or the conduct that is the least likely to cause harm. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.</u> You should consider, among other factors, the following:	This comment is also beyond the scope of the Invitation to Comment; and the committee has not yet expressly considered it. The committee may consider it in the next release cycle. The committee did make several minor clarifying revisions to this paragraph.
		Add to the *Graham* factors:	The committee agreed

Instruction	Commentator	Comment	Committee Response
		(d). The amount of time during which the officer had to determine the type and amount of force that appeared to be necessary and any changing circumstances; (e). The type and amount of force used; [(f). The availability of alternative methods [to take the plaintiff into custody] [to subdue the plaintiff;] [(g). Other factors particular to the case.]	to add an "other" option per the comment's suggested optional factor (g). With regard to suggested additional factors (d), (e), and (f), the Directions for Use say: "The *Graham* factors are not exclusive. (See *Glenn v. Wash. County* (9th Cir. 2011) 661 F.3d 460, 467–468.) Additional factors may be added if appropriate to the facts of the case." The committee believes that specific additional factors are not appropriate as they would be seen as equal to the *Graham* factors.
		In Sources and Authority, delete excerpts from *Torres v. City of Madera* and *Sandoval v. Las Vegas Metro. Police Dep't*. These are jury instructions; for brevity, statements regarding whether summary judgment is appropriate should be omitted.	The committee is more concerned with providing guidance to CACI users rather than in brevity. The *Torres* excerpt is particularly appropriate because it states that the question of excessive force is one of fact, not of law. This is an important point for every jury instruction and a CACI standard for inclusion. The *Sandoval* excerpt also addresses the court's intrusion into the role of the factfinder.
	Orange County Bar Association, by Ashleigh E. Aitken, President	Statement of law and citation to *Sandoval v. Las Vegas Metro. Police Dep't* (9th Cir. 2014) 756 F. 3d 1154, 1167 may need to be withdrawn as a Petition for Certiorari is pending (Nov. 6, 2014) and statement of law and citation to Sheehan v. City & County of San Francisco (9th Cir. 2014) 743 F.3d 1211 should be withdrawn as a Petition for Certiorari has been granted in *City & County of San*	The excerpt from *Sheehan* has been removed. The committee is not inclined to remove an excerpt solely on the filing of a petition for certiorari given the small number of

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		Francisco v. Sheehan (135 S. Ct. 702, 190 L. Ed. 2d 434, 2014 U.S. LEXIS 7830, 83 U.S.L.W. 3326).	certiorari grants.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	The two cases cited in the new third paragraph both recognize a negligence claim based on a peace officer's unreasonable use of deadly force. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 628-639 [referred repeatedly to a duty relating to the use of deadly force]; *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 505-506, 512-514 [plaintiffs alleged unreasonable use of deadly force].) These cases support potential negligence liability in cases involving use of deadly force, but they do not necessarily support negligence liability in other excessive force cases. We would describe the potential negligence claim more specifically as a claim based on the use of deadly force, rather than "a negligence claim under California common law based on the same events and facts." The "same events and facts" as a section 1983 case may or may not involve the use of deadly force. Accordingly, we would modify this paragraph as follows: "This instruction may be used without element 3 in a negligence claim under California common law based on the ~~same event and facts~~ use of deadly force. The *Graham* factors apply under California negligence law in those circumstances. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514 [94 Cal. Rptr. 3d 1, 207 P.3d 506].) Liability under California negligence law can arise if ~~earlier~~ tactical conduct and decisions preceding the use of deadly force show, as part of the totality of circumstances, that the ~~make the~~ ultimate use of deadly force was unreasonable."	*Hayes* and *Hernandez* are both deadly force cases, so the courts repeatedly refer to a duty relating to the use of deadly force. But nowhere do they expressly limit their scope to wrongful death cases. The committee believes that their holdings apply to other excessive force cases also. The result should not be different with an injured plaintiff rather than a decedent.
		We would note the potential need to modify this instruction in light of the differing state and federal standard. "Federal law under the Fourth Amendment, in contrast, "tends to focus	The committee agreed with the comment. The committee has revised the last paragraph along the lines of the suggested additional last

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		more narrowly on the moment when deadly force is used [citation]." (*Hayes v. County of San Diego* (2014) 57 Cal. 4th 622, 639 [160 Cal. Rptr. 3d 684, 305 P.3d 252].) In light of this difference, this instruction may be modified if the negligence claim is based in part on tactical conduct and decisions preceding the use of deadly force."	sentence, but with some specific directions on how to modify the instruction.
		We believe that the proposed new eighth bullet point in the Sources and Authority adds nothing of value to the other cases cited, so we would delete it.	The committee disagrees. As noted above, the committee believes that the excerpt from *Sandoval* appropriately notes the intrusion of the court into the proper role of the jury.
3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We suggest that the first sentence in the second paragraph of the Directions for Use be modified in the same manner as in the Directions for Use for CACI No. 3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*: "duties created ~~pursuant to~~ by any state county, or municipal law . . ."	The committee agreed and has made this change.
		The Directions for Use for CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eight Amendment—Deprivation of Necessities,* include an introductory paragraph stating when to give the instruction and cross-references to this instruction and CACI No. 3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care*. We find this helpful and believe that a similar paragraph should appear in the Directions for Use for this instruction. with an appropriate citation.	The committee agreed and has added this introductory paragraph.
3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care*	California Department of Justice, by Misha D. Igra, Supervising Deputy Attorney General, Correctional Law Section; John P.	The proposed revision breaks up the "deliberate indifference" inquiry into two elements, which is appropriate. But the text of the elements as proposed misstates the law. The proposed version does not make clear the true nature of the claim, i.e., that a prison official's deliberate indifference to a prisoner's serious medical need is a form of cruel and	The committee's view is that the term "deliberate indifference" should be avoided. All that the committee is proposing is to convert the explanation of "deliberate indifference" from an

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	Devine, Supervising Deputy Attorney General; Richard F. Wolfe, Supervising Deputy Attorney General; and Micah C.E. Osgood, Deputy Attorney General, Tort and Condemnation Section	unusual punishment within the meaning of the Eighth Amendment. This is mitigated somewhat by the current specific references to deliberate indifference, most significantly in the third full paragraph ("To establish 'deliberate indifference'. . ."). However, deletion of these specific references to deliberate indifference would further widen the gap between the true nature of the claim and the description in CACI 3041. In fact, the proposed instruction would describe a claim closer to negligence than a federal constitutional violation. It could also confuse juries since the natural alternative claim is medical negligence. The revision focuses upon "treating" a condition, i.e., whether the need "went untreated" and whether the defendant failed to take "reasonable steps to treat" that need. But the concept of deliberate indifference in violation of the Constitution's Eighth Amendment is both broader and narrower than the revision reflects. Thus, the focus upon "reasonable steps to treat" a condition or whether such condition went untreated is both too narrow and too broad. It excludes defendants who may delay or interfere with medical treatment, and may encompass unreasonable, negligent conduct. Three alternative approaches are proposed. The first is to make no changes; the second is to adopt the 9th Circuit instruction. The third is to revise elements 2 and 3 as follows: ~~2. That [name of defendant] knew that [name of plaintiff] faced a substantial risk of serious harm if [his/her] medical need went untreated;~~ 2. The [*name of defendant*] knew of [*name of plaintiff*]'s serious medical need;	explanatory paragraph into elements so as to avoid use of the term. The commentator's preferred option is for no change to the instruction. This would seem to indicate acceptance of the current paragraph on deliberate indifference. The committed does not understand why the same language is unacceptable as converted into elements. The committee does not believe that CACI should adopt 9th Circuit instructions. Nor does the committee find the commentator's proposed language for deliberateindifference in elements 2 and 3, for the most part, to be an improvement. First, "substantial risk of serious harm" is omitted, which is the most important language for medical care cases. "Conscious disregard of an excessive risk" is proposed, and this language comes directly from the new case *Colwell v. Bannister* (9th Cir. 2014) 763 F.3d 1060, 1066, which is now included in the Sources and Authority. Because "excessive" is not the same as "substantial," the committee does not

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		~~3. That [name of defendant] disregarded that risk by failing to take reasonable steps to treat [name of plaintiff]'s medical need;~~ 3. That, with conscious disregard for an excessive risk to [*name of plaintiff*]'s health or wellbeing, [*name of defendant*] failed to take reasonable measures to address that need;	agree that this language should be used. The committee does agree that perhaps its proposed language "[defendant] disregarded the risk by failing to take" sounds too much like negligence. Element 3 has been revised by adding "conscious" to "disregard" and replacing "failing to take" with "not taking." The committee believes that these changes move the language away from suggesting that nothing more than negligence is required.
		The proposed instruction also eliminates the passage "[n]egligence is not enough to establish deliberate indifference" under the Eighth Amendment. But this is an accurate statement of the law and so should remain. (See *Farmer v. Brennan* (1994) 511 U.S. 825, 835; *Estelle, supra,* 429 U.S. at 106; accord *Ochoa, supra,* 39 Cal.3d at 175 ["a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."].)	The committee agreed and has restored this sentence, omitting use of "deliberate indifference."
		The instruction should include an explanation that a difference of opinion between medical providers, or between a physician and patient, regarding the appropriate course of treatment does not establish a claim for violation of the Eighth Amendment. (See *Sanchez v. Vild* (9th Cir. 1989) 891 F.2d 240, 242; *Franklin v. State of Oregon* (9th Cir. 1981) 662 F.2d 1337, 1344; see also *Estelle, supra,* 429 U.S. at 107 [whether additional tests were indicated is "a classic example of a matter for medical judgment" and not an Eighth Amendment	The committee has added reference to differences of opinion as not being sufficient.

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		violation].)	
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	The Directions for Use for CACI No. 3043, Violation of Prisoner's Federal Civil Rights—Eight Amendment—Deprivation of Necessities, include an introductory paragraph stating when to give the instruction and cross-references to this instruction and CACI No. 3040, Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Harm. We find this helpful and believe that a similar paragraph should appear in the Directions for Use for this instruction.	The committee agreed and has added this introductory paragraph.
3071, *Retaliation for Refusing to Authorize Disclosure of Medical Information—Essential Factual Elements*	Orange County Bar Association, by Ashleigh E. Aitken, President and State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	Reference to Civil Code § 52.20(b) in title should be Civil Code § 56.20(b)	This error has been fixed.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We suggest adding the word "Even" at the beginning of the last paragraph in the instruction.	The committee agreed and added "Even."
		Although the trial court in *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 253, instructed that the refusal to release medical information must be "the motivating reason" for the retaliation and that necessity is a defense, and the Court of Appeal stated that the instruction was consistent with the statute and case authority, the issue in *Kao* was not the causation standard but the necessity defense. *Kao* held that the evidence supported the finding that the defendant's business necessity justified the plaintiff's discharge for refusing to release medical information. *Kao* did not hold that "the motivating reason" was the proper causation standard, and we believe that the opinion should not be cited on that point. Accordingly, we would modify the third paragraph of the	The committee does not see any reason to make this change. The fact that causation was not the issue in *Kao* does not mean that it is wrong or misleading to note that the instruction given in the case used "motivating reason."

Instruction	Commentator	Comment	Committee Response
		Directions for use as follows: "The statute requires that the employer's retaliatory act be 'due to' the employee's refusal to release the medical information. (Civ. Code, § 56.20(b).) ~~One court has instructed the jury that the refusal to release must be 'a motivating reason' for the retaliation. (See *Kao, supra*, 229 Cal.App.4th at p. 452.) With regard to the causation standard under the Fair Employment an dHousing Act, t~~The California Supreme Court has held that the protected activity must have been a *substantial* motivating reason to establish causation under the Fair Employment and Housing Act. (~~See~~ *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49] see also CACI No. 2507, *'Substantial Motivating Reason' Explained*.)"	
VF-3022, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care*	California Department of Justice, by Misha D. Igra, Supervising Deputy Attorney General, Correctional Law Section; John P. Devine, Supervising Deputy Attorney General; Richard F. Wolfe, Supervising Deputy Attorney General; and Micah C.E. Osgood, Deputy Attorney General, Tort and Condemnation Section	Same issues as with CACI No. 3041	The committee has made the same minor changes to question 3 that it made to the corresponding element in 3041.
3700, *Introduction to Vicarious Responsibility* 56	Stephanie D. Rice, Attorney at Law, Spinelli Donald Nott, Sacramento	I think the revision to CACI 3700 is an improvement that will make the instruction easier for jurors to understand	No response is necessary.

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3704, *Existence of "Employee" Status Disputed*	Joseph M. Earley III, Attorney at Law, Paradise	I strongly oppose the suggested alteration of factor (i) from "acted as if" to "believed that". This creates a virtual impossibility to utilize this factor to prove a valid employment relationship if one must prove that both parties "believed" anything. Adding a requirement of that level of mental state will make that factor ALWAYS argue against an employer-employee relationship. The original standard of "acting as if" there was such a relationship makes infinite better sense – unless someone is trying to unfairly tilt the scales against a finding of an employer-employee relationship. Unfortunately, that seems to be the case here.	Both the Restatement and the California Supreme Court have phrased this factor in terms of beliefs, not acts. (See *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 532 [factor (h) "whether or not the parties *believe* they are creating the relationship of employer-employee"]; Restatement 2d of Agency, § 220, factor (i).)
	Horvitz & Levy, by Robert H. Wright	The right to discharge does not tend to show an employment relationship because, both under the ordinary understanding of that term and under the case law addressing the right to discharge, employees and independent contractors are equally subject to discharge. A right of "discharge" is distinct from the "unlimited" right of discharge. The CACI instructions already provide that one factor tending to show an employer-employee relationship is the employer's "*unlimited* right to end the relationship." (CACI No. 3704, emphasis added.) Similar language can be found in case law. (*Burlingham v. Gray* (1943) 22 Cal.2d 87, 100 [" 'Perhaps no single circumstance is more conclusive to show the relationship of an employee than the right of the employer to end the service whenever he sees fit to do so' " (emphasis added)]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 875 ["the *unlimited right* to discharge at will and without cause has been stressed by a number of cases as a strong factor demonstrating employment" (emphasis added)].) The courts have reasoned that an unlimited right to end the relationship shows the element of control that is the hallmark of an	The committee share's the commentator's concern that the statement from the California Supreme Court in *Ayala*: "Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause," raises concerns. The committee agrees that the hirer of an independent contract can also terminate the relationship with or without cause. But the committee does not accept the comment's attempts to rationalize the statement on the basis of whether the right to terminate is "unlimited." Either relationship may include a contractual provision limiting this right of termination. So

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		employer-employee relationship. (*Press Pub. Co. v. Industrial Acc. Com.* (1922) 190 Cal. 114, 119-120.) Indeed, cases recognize that independent contractors, just like employees, are subject to discharge. Thus, an at-will clause in an independent contractor agreement "does not, in and of itself, change the independent contractor relationship into an employee-employer relationship. If it did, independent contractor arrangements could only be established through agreements which limited the right of a party, or perhaps both parties, to terminate the agreement. *This would be absurd, and it is not the law."* (*Varisco v. Gateway Science & Engineering, Inc.* (2008) 166 Cal.App.4th 1099, 1107, emphasis added.) Whether an individual is subject to discharge has no significance in differentiating between his or her status as either an employee or an independent contractor. (*Varisco, supra,* 166 Cal.App.4th at p. 1107; *Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 589 ["a termination at-will clause for both parties may properly be included in an independent contractor agreement, and is not by itself a basis for changing that relationship to one of an employee"];)	the committee finds no significant distinction between the commentator's "unlimited" right to discharge (which means employment) and a "limited" right to discharge (which does not). For either employee or contractor, the right can be either unlimited, or limited by contract. Therefore, the committee has concluded that the best course is to closely track the *Ayala* language.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	In *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 531, the court stated, "Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause." We believe that the words "without cause" are essential in this statement. Discharging a worker for cause does not demonstrate the right to control supporting an employment relationship because any worker, employee or independent contractor, can be discharged for cause. Rather than make the words "without cause" optional, we believe that the entire sentence should be made optional: "[One indication of the right to	The committee does not agree that the whole sentence should be optional. There must be some language in the instruction about the right to end the relationship. The committee does agree, however, that bracketing "without cause" is not appropriate. The safest course is to closely track language from *Ayala*.

Instruction	Commentator	Comment	Committee Response
		control is that the hirer can discharge the worker without cause.]"	
		We would delete the second paragraph in the Directions for Use and replace it with a statement that the optional sentence discussed above should be included unless a contract provides that the relationship may only be terminated for cause.	Because the committee has removed the brackets from "without cause," this paragraph is no longer needed and has been deleted.
4110, *Breach of Duty by Real Estate Seller's Agent—Inaccurate Information in Multiple Listing Service—Essential Factual Elements* 34	Orange County Bar Association, by Ashleigh E. Aitken, President	In *Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1077, after discussing negligent misrepresentation as a form actual fraud, the court noted that, "[a] real estate agent, <u>also</u> has a statutory liability for negligence … ." (emphasis added) In *Saffie v. Schmeling* (2014) 224 Cal.App.4th 563, 568 a claim under Section 1088 was said to be for statutory negligence. While the proposed Instruction is titled, "Breach of Duty …," the second sentence of the paragraph states that the statutory remedy is, "… for a species of misrepresentation …." It seems that viewing this as a type of misrepresentation has resulted in drafting problems as to the element or elements regarding "reliance" by the plaintiff. Though Section 1088 deals with falsehoods or inaccuracies, it basically sets up a standard of conduct or a duty in the agent which, if violated, would be negligence – statutory negligence as the *Furla* and *Saffie* courts noted. This would seem to trigger the application of Evidence Code Section 669(a), which creates a presumption of negligence arising from a statutory violation. To raise this presumption, there is no requirement of "reliance," actual or reasonable, on the part of a plaintiff; he or she must only be a member of the class to be protected by the statute.	The committee does not believe Evidence Code section 669(a) is applicable.The rest of the *Furla* quote, represented by the elipsis in the comment, is "[i]f an agent . . . places a listing or other information in the multiple listing service, that agent . . . shall be responsible for the truth of all representations . . . of which that agent . . . had knowledge or reasonably should have had knowledge to anyone injured by their falseness or inaccuracy." Similarly the reference to "statutory negligence" in *Saffie* is followed by "for 'anyone injured' by the 'falseness or inaccuracy' of such representations and statements." Therefore, the "statutory negligence" is actually for negligent misrepresentation. And "injured by" requires actual reliance.
		The real concern with an Instruction based on Section 1088 is that the statute's language or requirement for MLS accuracy cannot be viewed in a vacuum. It would only apply in connection with	The committee believes that the instruction adequately and accurately conveys the requirement that there

Instruction	Commentator	Comment	Committee Response
		the purchase of real property. Before the adoption of an instruction on the cause of action under Section 1088, the exact nature of that action or theory of recovery should be determined, and necessary elements clearly set forth so that the instruction is an accurate and effective aid to users. Consideration should be given to the context of such actions and other applicable statutes as may impact elements and burdens of proof.	must be misinformation on the MLS listing, and that the plaintiff must have read it and done something that s/he otherwise would not have done.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that it is unnecessary to describe the alleged misstatement in the instruction (element 2). The MLS listing presumably will be in evidence, so there is no need to describe what it stated. We would combine elements 2 and 3 into a single element referring to the alleged misstatement generically, as in CACI No. 1903, *Negligent Misrepresentation,* and other instructions in the fraud series.	The committee agreed and has removed this requirement.
		We believe that actionable reliance under Civil Code section 1088 is not limited a buyer's decision whether to purchase, as suggested by element 5. A buyer could rely on a misstatement by paying more than he or she otherwise would have paid, and perhaps in other ways (e.g., incurring investigation costs or permit fees based on a misrepresentation that the property was suitable for a particular use). Perhaps other persons also could act in reliance on a misstatement and be entitled to damages under the statute. We would revise element 5 to make the required reliance less restrictive.	The committee agreed and has revised element 5 along the lines suggested.
		The proposed new instruction does not state that the plaintiff's reliance must be reasonable. Reasonable reliance is an essential element of negligent misrepresentation. (See CACI No. 1903, *Negligent Misrepresentation,* element 5.) *Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1077-1079, held that triable issues of fact on justifiable or reasonable reliance precluded summary judgment on the plaintiff's claims for negligence and negligent misrepresentation, which were based in	The committee agrees that *Furla* does require that the buyer reasonably and justifiably have relied on the MLS information. The instruction has been revised to remove discussion of this point as being unsettled.

Instruction	Commentator	Comment	Committee Response
		part on Civil Code section 1088. We believe that reasonable reliance is an element of a claim under Civil Code section 1088.	
		We believe that the substantial factor element (element 7) is more precisely and better stated in CACI No. 1903, Negligent Misrepresentation, element 7 ("That [*name of plaintiff*]'s reliance on [*name of defendant*]'s representation was a substantial factor in causing [his/her/its] harm"). We would use similar language here	The committee did not agree with this comment. It is the totality of the defendant's conduct as expressed in all the elements that caused the harm, not just reliance.
4600 New Whistleblower Protection Series	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We believe that it would be helpful to group together instructions on whistleblower protection that are currently included in other series, and agree with the creation of a new series on whistleblower protection.	No response is necessary.
4600, *False Claims Act: Whistleblower Protection—Essential Factual Elements*	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We suggest either adding optional language after the word "discharged" in the first and last sentences in the introductory paragraph in the instruction to allow for other adverse action, or adding language to the Directions for Use stating that the word "discharged" in the introductory paragraph should be replaced by other words specifying the adverse action if some other adverse action is involved.	The committee agreed with the comment. In the first sentence, optional "other" language has been added. In last sentence, "[his/her] unlawful discharge claim" has been changed to "this claim."
4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements* 12	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We suggest either adding optional language after the word "discharged" in the introductory paragraph in the instruction to allow for other adverse action, or adding language to the Directions for Use stating that the word "discharged" in the introductory paragraph should be replaced by other words specifying the adverse action if some other adverse action is involved.	The committee agreed with the comment. In the introductory paragraph, optional "other" language has been added.
		We find the statement in the Directions for Use "These elements may be modified to allege constructive discharge" somewhat awkward because jury instructions do not "allege." We would modify this as follows:	The committee agreed and has adopted the commentator's suggested rewrite.

Instruction	Commentator	Comment	Committee Response
		"These elements may be modified ~~to allege~~ if constructive discharge is alleged."	
4604, *Affirmative Defense—Same Decision* 12	David deRobertis, on behalf of the California Employment Lawyers Association	For the same reasons set forth above in connection with the proposed change to CACI No. 2512, CELA commends and agrees with the proposed change in the proposed CACI No. 4604.	No response is necessary.
	Orange County Bar Association, by Ashleigh E. Aitken, President	The proposed revision adds the words "at that time" but those words do not appear in the language of Labor Code Section 1102.6 providing for this affirmative defense.	While it is true that the words do not appear in the statute, they do appear in *Harris v. City of Santa Monica* (2013) 56 Cal. 4th 203, 239. And while *Harris* is not a Labor Code 1102.6 case, the reasonable implication is that its standard applies whenever a same-decision defense is raised.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	We agree with the revision to the instruction. We suggest that a citation to *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 224, be added to the Sources and Authority with the following quotation: "To be clear, when we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision at the time it made its actual decision."	The committee agreed and has added the excerpt.
	Orange County Bar Association, by Ashleigh E. Aitken, President	Approve of all except as noted above	No response is necessary.
	State Bar of California, Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair	Approve of all except as noted above	No response is necessary.

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4603. Whistleblower Protection—Essential Factual Elements (*Renumbered from CACI No. 2730 and Revised)* p.148

4604. Affirmative Defense─Same Decision (Lab. Code) (*Renumbered from CACI No. 2731 and Revised)* p.153

201. ~~More Likely True~~Highly Probable—Clear and Convincing Proof

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

New September 2003; Revised October 2004, June 2015

Directions for Use

Evidence Code section 502 requires the court to instruct the jury regarding which party bears the burden of proof on each issue and the requisite degree of proof.

This instruction should be read immediately after CACI No. 200, *Obligation to Prove—More Likely True Than Not True*, if the jury will have to decide an issue by means of the clear-and-convincing evidence standard.

Sources and Authority

- Burden of Proof. Evidence Code section 115.
- Party With Burden of Proof. Evidence Code section 500.
- "Proof by clear and convincing evidence is required 'where particularly important individual interests or rights are at stake,' such as the termination of parental rights, involuntary commitment, and deportation. However, 'imposition of even severe civil sanctions that do not implicate such interests has been permitted after proof by a preponderance of the evidence.' " (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487 [286 Cal.Rptr. 40, 816 P.2d 892] (quoting *Herman & MacLean v. Huddleston* (1983) 459 U.S. 375, 389-390).)
- " 'Clear and convincing' evidence requires a finding of high probability." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919 [171 Cal.Rptr. 637, 623 P.2d 198].)
- "We decline to hold that CACI No. 201 should be augmented to require that 'the evidence must be "so clear as to leave no substantial doubt" and "sufficiently strong as to command the unhesitating assent of every reasonable mind." ' Neither *In re Angelia P., supra,* 28 Cal.3d 908, nor any more recent authority mandates that augmentation, and the proposed additional language is dangerously similar to that describing the burden of proof in criminal cases." (*Nevarrez v. San Marino Skilled Nursing & Wellness Center* (2013) 221 Cal.App.4th 102, 114 [163 Cal.Rptr.3d 874].)

Secondary Sources

1 Witkin, California Evidence (5th ed. 2012) Burden of Proof and Presumptions, §§ 39, 40

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Jefferson, California Evidence Benchbook (3d ed. 1997) §§ 45.4, 45.21

4 California Trial Guide, Unit 91, *Jury Deliberations and Rendition of Verdict*, § 91.20 (Matthew Bender)

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, §§ 551.90, 551.92 (Matthew Bender)

1 Cathcart et al., Matthew Bender Practice Guide: California Debt Collection and Enforcement of Judgments, Ch. 9, *Burdens of Proof and Persuasion*, 9.16

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303. Breach of Contract—Essential Factual Elements

To recover damages from [*name of defendant***] for breach of contract, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] and [***name of defendant***] entered into a contract;**

[2. That [*name of plaintiff***] did all, or substantially all, of the significant things that the contract required [him/her/it] to do;]**

[or]

[2. That [*name of plaintiff***] was excused from having to [***specify things that plaintiff did not do, e.g., obtain a guarantor on the contract***];]**

[3. That [*specify occurrence of all conditions required by the contract for [name of defendant]'s performance, e.g., the property was rezoned for residential use***] had occurred;]**

[or]

[3. That [*specify condition(s) that did not occur***] [was/were] [waived/excused];]**

[4. That [*name of defendant***] failed to do something that the contract required [him/her/it] to do; and]**

[*or***]**

[4. That [*name of defendant***] did something that the contract prohibited [him/her/it] from doing; and]**

5. That [*name of plaintiff***] was harmed by that failure[***name of defendant***]'s breach of contract.**

New September 2003; Revised April 2004, June 2006, December 2010, June 2011, June 2013; June 2015

Directions for Use

Read this instruction in conjunction with CACI No. 300, *Breach of Contract—Introduction*.

Optional elements 2 and 3 both involve conditions precedent. A "condition precedent" is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises. (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal. App. 4th 1131, 1147 (Cal. App. 1st Dist. 2014) Element 2 involves the first kind of condition precedent; an act that must be performed by one party before the other is required to perform may be needed if there is an issue of performance of the plaintiff's obligations under the contract. Include the second option if

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the plaintiff alleges that he or she was excused from having to perform some or all of the contractual conditions ~~acts referenced in question 2~~.

Not every breach of contract by the plaintiff will relieve the defendant of the obligation to perform. The breach must be *material;* element 2 captures materiality by requiring that the plaintiff have done the significant things that the contract required. Also, the two obligations must be *dependent,* meaning that the parties specifically bargained that the failure to perform the one relieves the obligation to perform the other. While materiality is generally a question of fact, whether covenants are dependent or independent is a matter of construing the agreement. (*Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) If there is no extrinsic evidence in aid of construction, the question is one of law for the court. (*Verdier v. Verdier* (1955) 133 Cal.App.2d 325, 333 [284 P.2d 94].) Therefore, element 2 should not be given unless the court has determined that dependent obligations are involved. If parol evidence is required and a dispute of facts is presented, additional instructions on the disputed facts will be necessary. (See *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395 [75 Cal.Rptr.3d 333, 181 P.3d 142].)

Element 3 involves the second kind of condition precedent; an uncertain event that must happen before contractual duties are triggered~~is needed if conditions for performance are at issue~~. Include the second option if the plaintiff alleges that the defendant agreed to perform even though a condition did not occur. For reasons that the occurrence of a condition may have been excused, see the Restatement Second of Contracts, section 225, Comment b. See also CACI No. 321, *Existence of Condition Precedent Disputed,* CACI No. 322, *Occurrence of Agreed Condition Precedent,* and CACI No. 323, *Waiver of Condition Precedent*.

Equitable remedies are also available for breach. "As a general proposition, '[t]he jury trial is a matter of right in a civil action at law, but not in equity. [Citations.]' " (*C & K Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 8 [151 Cal.Rptr. 323, 587 P.2d 1136]; *Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 524 [154 Cal.Rptr. 164].) However, juries may render advisory verdicts on these issues. (*Raedeke v. Gibraltar Savings & Loan Assn.* (1974) 10 Cal.3d 665, 670–671 [111 Cal.Rptr. 693, 517 P.2d 1157].)

Sources and Authority

- Contract Defined. Civil Code section 1549.
- "A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing." (*Robinson v. Magee* (1858) 9 Cal. 81, 83.)
- "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [169 Cal.Rptr.3d 475].)
- "Implicit in the element of damage is that the defendant's breach *caused* the plaintiff's damage." (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352 [90 Cal.Rptr.3d 589], original italics.)

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- "It is elementary a plaintiff suing for breach of contract must prove it has performed all conditions on its part or that it was excused from performance. Similarly, where defendant's duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired." (*Consolidated World Investments, Inc., v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 [11 Cal.Rptr.2d 524], internal citation omitted.)

- "When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract. Normally the question of whether a breach of an obligation is a material breach, so as to excuse performance by the other party, is a question of fact. Whether a partial breach of a contract is material depends on 'the importance or seriousness thereof and the probability of the injured party getting substantial performance.' 'A material breach of one aspect of a contract generally constitutes a material breach of the whole contract.' " (*Brown, supra,* 192 Cal.App.4th at pp. 277–278, internal citations omitted.)

- "Whether breach of the agreement not to molest bars [plaintiff]'s recovery of agreed support payments raises the question whether the two covenants are dependent or independent. If the covenants are independent, breach of one does not excuse performance of the other. (*Verdier, supra,* 133 Cal.App.2d at p. 334.)

- "The determination of whether a promise is an independent covenant, so that breach of that promise by one party does not excuse performance by the other party, is based on the intention of the parties as deduced from the agreement. The trial court relied upon parol evidence to determine the content and interpretation of the fee-sharing agreement between the parties. Accordingly, that determination is a question of fact that must be upheld if based on substantial evidence." (*Brown, supra,* 192 Cal.App.4th at p. 279, internal citation omitted.)

- "The wrongful, i.e., the unjustified or unexcused, failure to perform a contract is a *breach*. Where the nonperformance is legally justified, or excused, there may be a failure of consideration, but not a breach." (1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847, original italics, internal citations omitted.) "Ordinarily, a breach is the result of an intentional act, but *negligent performance* may also constitute a breach, giving rise to alternative contract and tort actions." (*Ibid.*, original italics.)

- "b. *Excuse*. The non-occurrence of a condition of a duty is said to be 'excused' when the condition need no longer occur in order for performance of the duty to become due. The non-occurrence of a condition may be excused on a variety of grounds. It may be excused by a subsequent promise, even without consideration, to perform the duty in spite of the non-occurrence of the condition. See the treatment of ,'waiver' in § 84, and the treatment of discharge in §§ 273-85. It may be excused by acceptance of performance in spite of the non-occurrence of the condition, or by rejection following its non-occurrence accompanied by an inadequate statement of reasons. See §§ 246-48. It may be excused by a repudiation of the conditional duty or by a manifestation of an inability to perform it. See § 255; §§ 250-51. It may be excused by prevention or hindrance of its occurrence through a breach of the duty of good faith and fair dealing (§ 205). See § 239. And it may be excused by impracticability. See § 271. These and other grounds for excuse are dealt with in other chapters of this

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Restatement. This Chapter deals only with one general ground, excuse to avoid forfeiture. See § 229." (Rest.2d of Contracts, § 225.)

- " ' "Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused." [Citation.]' " ((*Stephens & Stephens XII, LLC, supra,* 231 Cal. App. 4th at p. 1144.)
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Secondary Sources

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847

13 California Forms of Pleading and Practice, Ch. 140, *Contracts,* § 140.50 (Matthew Bender)

5 California Points and Authorities, Ch. 50*, Contracts,* § 50.10 et seq. (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 22, *Suing or Defending Action for Breach of Contract*, 22.03–22.50

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328. Breach of Implied Duty to Perform With Reasonable Care—Essential Factual Elements

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The parties' contract requires that [*name of defendant***] [***specify performance alleged to have been done negligently, e.g., install cable television service***]. It is implied in the contract that this performance will be done competently and with reasonable care. [***Name of plaintiff***] claims that [***name of defendant***] breached this implied condition. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. That [*name of plaintiff***] and [***name of defendant***] entered into a contract;**

[2. That [*name of plaintiff***] did all, or substantially all of the significant things that the contract required [him/her/it] to do;]**

[or]

[2. That [*name of plaintiff***] was excused from having to [***specify things that plaintiff did not do, e.g., obtain a guarantor on the contract***];]**

[3. That [*specify occurrence of all conditions required by the contract for [name of defendant]'s performance, e.g., the property was rezoned for residential use***];]**

[or]

[3. That [*specify condition(s) that did not occur***] [was/were] [waived/excused];]**

4. That [*name of defendant***] failed to use reasonable care in [***specify performance***]; and**

5. That [*name of plaintiff***] was harmed by [***name of defendant***]'s conduct.**

New June 2015

Directions for Use

Give this instruction if the plaintiff alleges harm from the defendant's failure to perform a contractual obligation with reasonable care. Every contract includes an implied duty to perform required acts competently. (*Holguin v. Dish Network LLC* (2014) 229 Cal.App.4th 1310, 1324 [178 Cal.Rptr.3d 100].) If negligent performance is alleged, the jury should be instructed that the contract contains this implied duty. The jury must then decide whether the duty has been breached. It must also find all of the other elements required for breach of contract. (See CACI No. 303, *Breach of Contract─Essential Factual Elements*.)

This instruction may be adapted for use as an affirmative defense if the defendant asserts that the plaintiff

is not entitled to recover on the contract because of the plaintiff's failure to perform its duties competently. (See *Roscoe Moss Co. v. Jenkins* (1942) 55 Cal.App.2d 369, 376−378 [130 P.2d 477].)

For discussion of issues with the options for elements 2 and 3, see the Directions for Use to CACI No. 303, *Breach of Contract, Essential Factual Elements*.

Sources and Authority

- "[E]xpress contractual terms give rise to implied duties, violations of which may themselves constitute breaches of contract. ' "Accompanying every contract is a common-law duty to perform with care, skill, reasonable expedience, and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract." The rule which imposes this duty is of universal application as to all persons who by contract undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement [citation].' " (*Holguin, supra,* 229 Cal.App.4th at p. 1324.)

- "A contract to perform services gives rise to a duty of care which requires that such services be performed in a competent and reasonable manner." (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 774 [69 Cal.Rptr.2d 466].)

- "[T]he statement in the written contract that it contains the entire agreement of the parties cannot furnish the appellants an avenue of escape from the entirely reasonable obligation implied in all contracts to the effect that the work performed 'shall be fit and proper for its said intended use,' as stated by the trial court." (*Kuitems v. Covell* (1951) 104 Cal.App.2d 482, 485 [231 P.2d 552].)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2010) Contracts, §§ 798, 800

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, § 140.12 (Matthew Bender)

27 California Legal Forms, Ch. 75, *Formation of Contracts and Standard Contractual Provisions*, § 75.230 (Matthew Bender)

2 Crompton et al., Matthew Bender Practice Guide: California Contract Litigation, Ch. 21, *Asserting a Particle Construction of Contract*, 21.79

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into a contract?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

[2. ~~[~~Did [*name of plaintiff*] do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No~~]~~

If your answer to question 2 is yes, [skip question 3 and] answer question 4. If you answered no, [answer question 3 *if excuse is at issue*/**stop here, answer no further questions, and have the presiding juror sign and date this form].]**

[3. ~~[or]~~

~~[~~Was [*name of plaintiff*] excused from having to do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No~~]~~

If your answer to ~~[either option for]~~ question ~~2~~ 3 is yes, then answer question ~~3~~4. If you answered no ~~[to both options]~~, stop here, answer no further questions, and have the presiding juror sign and date this form.]

[~~3~~4. Did all the conditions that were required for [*name of defendant*]'s performance occur ~~or were they excused~~?
____ Yes ____ No

If your answer to question 4 is yes, [skip question 5 and] answer question 6. If you answered no, [answer question 5 *if waiver or excuse is at issue*/**stop here, answer no further questions, and have the presiding juror sign and date this form].]**

[5. Were the required conditions that did not occur [excused/waived]?
Yes No

If your answer to question ~~3~~ 5 is yes, then answer question ~~4~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

~~4~~6. [Did [*name of defendant*] fail to do something that the contract required [him/her/it]

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to do?
____ Yes ____ No]

[or]

[Did [*name of defendant*] do something that the contract prohibited [him/her/it] from doing?
____ Yes ____ No]

If your answer to [either option for] question ~~4~~ 6 is yes, then answer question ~~5~~7. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~7. Was [*name of plaintiff*] harmed by [*name of defendant*]'s breach of contract~~that failure~~?
____ Yes ____ No

If your answer to question ~~5~~ 7 is yes, then answer question ~~6~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~6~~8. What are [*name of plaintiff*]'s damages?

[a. Past [economic] loss [including [*insert descriptions of claimed damages*]]:

$ _____]

[b. Future [economic] loss [including [*insert descriptions of claimed damages*]]:

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New April 2004; Revised December 2010, June 2011, June 2013, June 2015

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Directions for Use

This verdict form is based on CACI No. 303, *Breach of Contract—Essential Factual Elements*. This form is intended for use in most contract disputes. If more specificity is desired, see verdict forms that follow.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 2 and 3 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 2 if the court has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.App.3d 893].) Include question 3 if the plaintiff claims that he or she was excused from having to perform an otherwise required obligation.

Optional questions 4 and 5 address conditions precedent to the defendant's performance. Include question ~~3~~ 4 if the occurrence of conditions for performance ~~are~~ is at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 5 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant's waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515.)

Note that questions 4 and 5 address conditions precedent, not the defendant's nonperformance after the conditions have all occurred or been excused. The defendant's nonperformance is the first option for question 6. If the defendant alleges that its nonperformance was excused or waived by the plaintiff, an additional question on excuse or waiver should be included after question 6.

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use "economic" in question ~~6~~8.

If specificity is not required, users do not have to itemize the damages listed in question ~~6~~8. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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VF-303. Breach of Contract—Contract Formation at Issue

We answer the questions submitted to us as follows:

1. Were the contract terms clear enough so that the parties could understand what each was required to do?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the parties agree to give each other something of value?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the parties agree to the terms of the contract?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

[4. Did [*name of plaintiff*] do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No

If your answer to question 4 is yes, [~~then~~ skip question 5 and] answer question 6. If you answered no, [answer question 5 *if excuse is at issue*/stop here, answer no further questions, and have the presiding juror sign and date the form].]

[5. Was [*name of plaintiff*] excused from having to do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did all the conditions ~~occur~~ that were required for [*name of defendant*]'s performance occur?
____ Yes ____ No

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If your answer to question 6 is yes, [skip question 7 and] ~~then~~ answer question ~~7~~8. If you answered no, [answer question 7 *if excuse or waiver is at issue*/stop here, answer no further questions, and have the presiding juror sign and date this form].

[7. Were the required conditions that did not occur [excused/waived]?
Yes No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

~~7~~8. **[Did [*name of defendant*] fail to do something that the contract required [him/her/it] to do?**
____ Yes ____ No]

[or]

[Did [*name of defendant*] do something that the contract prohibited [him/her/it] from doing?
Yes No]

If your answer to [either option for] question ~~7~~ 8 is yes, then answer question ~~8~~9. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~9. **Was [*name of plaintiff*] harmed by [*name of defendant*]'s breach of contract~~that failure~~?**
____ Yes ____ No

If your answer to question ~~8~~ 9 is yes, then answer question ~~9~~10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~9~~10. **What are [*name of plaintiff*]'s damages?**

[a. Past [economic] loss [including] [*insert descriptions of claimed damages*]:

$ _____]

[b. Future [economic] loss [including] [*insert descriptions of claimed damages*]:
$ _____]

TOTAL $ _____

Signed: _____

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Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New October 2004; Revised December 2010,, June 2015

Directions for Use

~~The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.~~

This verdict form is based on CACI No. 302, *Contract Formation—Essential Factual Elements*, and CACI No. 303, *Breach of Contract—Essential Factual Elements*. The elements concerning the parties' legal capacity and legal purpose will likely not be issues for the jury. If the jury is needed to make a factual determination regarding these issues, appropriate questions may be added to this verdict form.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 4 and 5 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 4 if the court has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.App.3d 893].) Include question 5 if the plaintiff claims that he or she was excused from having to perform an otherwise required obligation.

Optional questions 6 and 7 address conditions precedent to the defendant's performance. Include question 6 if the occurrence of conditions for performance are at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 7 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant's waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515.)

Note that questions 6 and 7 address conditions precedent, not the defendant's nonperformance after the conditions have all occurred or been excused. The defendant's nonperformance is the first option for question 8. If the defendant alleges that its nonperformance was excused or waived by the plaintiff, an additional question on excuse on waiver should be included after question 8.

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use "economic" in question 10.

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If specificity is not required, users do not have to itemize all the damages listed in question ~~9~~10. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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VF-304. Breach of Implied Covenant of Good Faith and Fair Dealing

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into a contract?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

[2. [Did [*name of plaintiff*] do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No]

If your answer to question 2 is yes, [skip question 3 and] answer question 4. If you answered no, [answer question 3 *if excuse is at issue*/stop here, answer no further questions, and have the presiding juror sign and date this form].]
~~[or]~~

[3. Was [*name of plaintiff*] excused from having to do all, or substantially all, of the significant things that the contract required [him/her/it] to do?
____ Yes ____ No~~]~~

If your answer to ~~[either option for]~~ question ~~2~~ 3 is yes, then answer question ~~3~~4. If you answered no ~~[to both options]~~, stop here, answer no further questions, and have the presiding juror sign and date this form.]

[~~3~~4. Did all the conditions that were required for [*name of defendant*]'s performance occur ~~or were they excused~~?
____ Yes ____ No

If your answer to question 4 is yes, [skip question 5 and] answer question 6. If you answered no, [answer question 5 *if waiver or excuse is at issue*/stop here, answer no further questions, and have the presiding juror sign and date this form].]

[5. Were the required conditions that did not occur [excused/waived]?
Yes No

If your answer to question ~~3~~ 5 is yes, then answer question ~~4~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

~~4~~6. Did [*name of defendant*] unfairly interfere with [*name of plaintiff*]'s right to receive the benefits of the contract?

____ Yes ____ No

If your answer to question ~~4~~ 6 is yes, then answer question ~~5~~7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~7. Was [*name of plaintiff*] harmed by [*name of defendant*]'s interference?
____ Yes ____ No

If your answer to question ~~5~~ 7 is yes, then answer question ~~6~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~6~~8. What are [*name of plaintiff*]'s damages?

[a. Past [economic] loss [including [*insert descriptions of claimed damages*]]:

$ _____]

[b. Future [economic] loss [including [*insert descriptions of claimed damages*]]:

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New June 2014; Revised June 2015

Directions for Use

This verdict form is based on CACI No. 325, *Breach of Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*.

The special verdict forms in this series are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 2 and 3 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 2 if the court has determined that the contract included

dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.App.3d 893].) Include question 3 if the plaintiff claims that he or she was excused from having to perform an otherwise required obligation.

Optional questions 4 and 5 address conditions precedent to the defendant's performance. Include question 4 if the occurrence of conditions for performance are at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 5 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant's waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515.) Note that questions 4 and 5 address conditions precedent, not the defendant's nonperformance after the conditions have all occurred or been excused.

~~Include question 2 if the court has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) However, do not include question 2 if the plaintiff alleges that the reason for his or her nonperformance was because of the defendant's bad-faith interference (question 4).~~

~~Include question 3 if conditions for performance are at issue.~~

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use "economic" in question ~~6~~8.

If specificity is not required, users do not have to itemize the damages listed in question ~~6~~8. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*. If counts for both breach of express contractual terms and breach of the implied covenant are alleged, this verdict form may be combined with CACI No. VF-300, *Breach of Contract*. Use VF-3920 to direct the jury to separately address the damages awarded on each count and to avoid the jury's awarding the same damages on both counts. (See *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 [272 Cal.Rptr. 387].)

456. Defendant Estopped From Asserting Statute of Limitations Defense

[*Name of plaintiff*] claims that even if [his/her/its] lawsuit was not filed on time, [he/she/it] may still proceed because [*name of defendant*] did or said something that caused [*name of plaintiff*] to delay filing the lawsuit. In order to establish the right to proceed, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] said or did something that caused [*name of plaintiff*] to believe that it would not be necessary to file a lawsuit;**

2. **That [*name of plaintiff*] relied on [*name of defendant*]'s conduct and therefore did not file the lawsuit within the time otherwise required;**

3. **That a reasonable person in [*name of plaintiff*]'s position would have relied on [*name of defendant*]'s conduct; [and]**

4. **[That after the limitation period had expired, [*name of defendant*]'s representations by words or conduct proved to not be true; and]**

5. **That [*name of plaintiff*] proceeded diligently to file suit once [he/she/it] discovered the ~~actual facts~~need to proceed.**

It is not necessary that [*name of defendant*] have acted in bad faith or intended to mislead [*name of plaintiff*].

New October 2008; Revised December 2014, June 2015

Directions for Use

Equitable estoppel, including any disputed issue of fact, is to be decided by the court, even if there are disputed issues of fact. (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 745 [170 Cal.Rptr.3d 551].) This instruction is for use if the court submits the issue to the jury for advisory findings.

There is perhaps a question as to whether all the elements of equitable estoppel must be proved in order to establish an estoppel to rely on a statute of limitations. These elements are (1) the party to be estopped must know the facts; (2) the party must intend that his or her conduct will be acted on, or must act in such a way that the party asserting the estoppel had the right to believe that the conduct was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) that party must rely upon the conduct to his or her detriment. (See *Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748, 766–767 [41 Cal.Rptr.3d 819]; see also *Olofsson v. Mission Linen Supply* (2012) 211 Cal.App.4th 1236, 1246 [150 Cal.Rptr.3d 446] [equitable estoppel to deny family leave under California Family Rights Act].)

Most cases do not frame the issue as one of equitable estoppel and its four elements. All that is required is that the defendant's conduct actually have misled the plaintiff, and that plaintiff reasonably have relied

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on that conduct. Bad faith or an intent to mislead is not required. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384 [2 Cal.Rptr.3d 655, 73 P.3d 517]; *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43 [21 Cal.Rptr.2d 110].) Nor does it appear that there is a requirement that the defendant specifically intended to induce the plaintiff to defer filing suit. Therefore, no specific intent element has been included. However, the California Supreme Court has stated that element 4 is to be given in a construction defect case in which the defendant has assured the plaintiff that all defects will be repaired. (See *Lantzy, supra,* 31 Cal.4th at p. 384.)

Sources and Authority

- "As the name suggests, equitable estoppel is an equitable issue for court resolution." (*Hopkins, supra,* 225 Cal.App.4th at p. 745.)

- "While the judge determines equitable causes of action, the judge may (in rare instances) empanel an advisory jury to make preliminary factual findings. The factual findings are purely advisory because, on equitable causes of action, the judge is the proper fact finder. '[W]hile a jury may be used for advisory verdicts as to questions of fact [in equitable actions], it is the duty of the trial court to make its own independent findings and to adopt or reject the findings of the jury as it deems proper.' " (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156 [85 Cal.Rptr.3d 337], internal citations omitted.)

- "[CACI No. 456 is] appropriate for use when a trial court 'empanel[s] an advisory jury to make preliminary factual findings,' with respect to equitable estoppel … ." (*Hopkins, supra,* 225 Cal.App.4th at p. 745.)

- "Equitable tolling and equitable estoppel are distinct doctrines. ' "Tolling, strictly speaking, is concerned with the point at which the limitations period begins to run and with the circumstances in which the running of the limitations period may be suspended. … Equitable estoppel, however, … comes into play only after the limitations period has run and addresses … the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. [Equitable estoppel] is wholly independent of the limitations period itself and takes its life … from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice." ' Thus, equitable estoppel is available even where the limitations statute at issue expressly precludes equitable tolling." (*Lantzy, supra,* 31 Cal.4th at pp. 383–384, internal citations omitted.)

- "Accordingly, (1) if one potentially liable for a construction defect represents, while the limitations period is still running, that all actionable damage has been or will be repaired, thus making it unnecessary to sue, (2) the plaintiff reasonably relies on this representation to refrain from bringing a timely action, (3) the representation proves false after the limitations period has expired, and (4) the plaintiff proceeds diligently once the truth is discovered, the defendant may be equitably estopped to assert the statute of limitations as a defense to the action." (*Lantzy, supra,* 31 Cal.4th at p. 384, internal citations omitted.)

- "Equitable estoppel does not require factually misleading statements in all cases." (*J. P. v.*

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Carlsbad Unified Sch. Dist. (2014) 232 Cal.App.4th 323, 335 [181 Cal.Rptr.3d 286].)

- " 'An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. … To create an equitable estoppel, "it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss. … Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense." ' " (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152–1153 [113 Cal.Rptr.2d 70, 33 P.3d 487].)

- " 'A defendant will be estopped to invoke the statute of limitations where there has been "some conduct by the defendant, relied on by the plaintiff, which induces the belated filing of the action." It is not necessary that the defendant acted in bad faith or intended to mislead the plaintiff. [Citations.] It is sufficient that the defendant's conduct in fact induced the plaintiff to refrain from instituting legal proceedings. [Citation.] "[W]hether an estoppel exists—whether the acts, representations or conduct lulled a party into a sense of security preventing him from instituting proceedings before the running of the statute, and whether the party relied thereon to his prejudice—is a question of fact and not of law." [Citations.]' " (*Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 925–926 [73 Cal.Rptr.3d 216], internal citations omitted.)

- "It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act. Estoppel most commonly results from misleading statements about the need for or advisability of a claim; actual fraud or the intent to mislead is not essential. A fortiori, estoppel may certainly be invoked when there are acts of violence or intimidation that are intended to prevent the filing of a claim." (*John R. v. Oakland Unified Sch. Dist.* (1989) 48 Cal.3d 438, 445 [256 Cal.Rptr. 766, 769 P.2d 948], internal citations omitted.)

- " 'Estoppel as a bar to a public entity's assertion of the defense of noncompliance arises when the plaintiff establishes by a preponderance of the evidence: (1) the public entity was apprised of the facts, (2) it intended its conduct to be acted upon, (3) plaintiff was ignorant of the true state of facts, and (4) relied upon the conduct to his detriment.' " (*J.P. supra,* 232 Cal.App.4th at p. 333.)

- "It is well settled that the doctrine of estoppel *in pais* is applicable in a proper case to prevent a fraudulent or inequitable resort to the statute of limitations. Apropos to this rule are the following established principles: A person, by his conduct, may be estopped to rely on the statute; where the delay in commencing an action is induced by the conduct of the defendant, it cannot be availed of by him as a defense; one cannot justly or equitably lull his adversary into a false sense of security and thereby cause him to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his conduct as a defense to the action when brought; actual fraud in the technical sense, bad faith or intent to mislead are not essential to the creation of an estoppel, but it is sufficient that the defendant made misrepresentations or so conducted himself that he misled a party, who acted thereon in good faith, to the extent that such party failed to commence the action within the statutory period; a party has a reasonable time in which to bring his action after the estoppel has expired, not exceeding the period of limitation imposed by the statute for commencing the action; and that whether an estoppel exists—whether the acts,

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representations or conduct lulled a party into a sense of security preventing him from instituting proceedings before the running of the statute, and whether the party relied thereon to his prejudice—is a question of fact and not of law. It is also an established principle that in cases of estoppel to plead the statute of limitations, the same rules are applicable, as in cases falling within subdivision 4 of section 338, in determining when the plaintiff discovered or should have discovered the facts giving rise to his cause of action." (*Estate of Pieper* (1964) 224 Cal.App.2d 670, 690–691 [37 Cal.Rptr. 46], internal citations omitted.)

- "Although 'ignorance of the identity of the defendant … will not *toll* the statute', 'a defendant may be *equitably estopped* from asserting the statute of limitations when, as the result of intentional concealment, the plaintiff is unable to discover the defendant's actual identity'." (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 745 [129 Cal.Rptr.3d 354], original italics, internal citation omitted.)

- "Settlement negotiations are relevant and admissible to prove an estoppel to assert the statute of limitations." (*Holdgrafer, supra,* 160 Cal.App.4th at p. 927.)

- "The estoppel issue in this case arises in a unique context. Defendants' wrongful conduct has given rise to separate causes of action for property damage and personal injury with separate statutes of limitation. Where the plaintiffs reasonably rely on defendants' promise to repair the property damage without a lawsuit, is a jury permitted to find that plaintiffs' decision to delay filing a personal injury lawsuit was also reasonable? We conclude such a finding is permissible on the facts of this case." (*Shaffer, supra,* 17 Cal.App.4th at p. 43, internal citation omitted.)

- "At the very least, [plaintiff] cannot establish the second element necessary for equitable estoppel. [Plaintiff] argues that [defendant] was estopped to rely on the time bar of section 340.9 by its continued reconsideration of her claim after December 31, 2001, had passed. But she cannot prove [defendant] intended its reconsideration of the claim to be relied upon, or acted in such a way that [plaintiff] had a right to believe it so intended." (*Ashou, supra,* 138 Cal.App.4th at p. 767.)

- " 'It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act.' Estoppel as a bar to a public entity's assertion of the defense of noncompliance arises when a plaintiff establishes by a preponderance of the evidence (1) the public entity was apprised of the facts, (2) it intended its conduct to be acted upon, (3) the plaintiff was ignorant of the true state of facts, and (4) relied upon the conduct to his detriment." (*K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1239–1240 [92 Cal.Rptr.3d 1], internal citation omitted.)

- "A nondisclosure is a cause of injury if the plaintiff would have acted so as to avoid injury had the plaintiff known the concealed fact. The plaintiff's reliance on a nondisclosure was reasonable if the plaintiff's failure to discover the concealed fact was reasonable in light of the plaintiff's knowledge and experience. Whether the plaintiff's reliance was reasonable is a question of fact for the trier of fact unless reasonable minds could reach only one conclusion based on the evidence. The fact that a plaintiff was represented by counsel and the scope and timing of the representation

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are relevant to the question of the reasonableness of the plaintiff's reliance." (*Superior Dispatch, Inc. v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 187–188 [104 Cal.Rptr.3d 508], internal citations omitted.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 566–581

Haning et al., California Practice Guide: Personal Injury, Ch. 5-B, *When To Sue—Statute Of Limitations,* ¶ 5:111.6 (The Rutter Group)

5 Levy et al., California Torts, Ch. 71, *Commencement, Prosecution, and Dismissal of Action,* § 71.06 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 345, *Limitation of Actions,* § 345.81 (Matthew Bender)

14 California Points and Authorities, Ch. 143, *Limitation of Actions,* § 143.50 (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions,* 4.42

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550. Affirmative Defense—Plaintiff Would Have Consented

[*Name of defendant***] claims that [he/she] is not responsible for [***name of plaintiff***]'s harm because [***name of plaintiff***] would have consented to the procedure, even if [he/she] had been informed of the risks. To establish this defense, [***name of defendant***] must prove that had ~~even if a reasonable person in [***name of plaintiff***]'s position might not have consented to the [***insert medical procedure***] if he or she had been given enough information about its risks,~~ [***name of plaintiff***] been adequately informed about the risks of the [***insert medical procedure***], [he/she] ~~still~~ would have consented, even if a reasonable person in [***name of plaintiff***]'s position might not have consented.~~to the procedure.~~**

~~If you decide [*name of defendant*] has proved that [*name of plaintiff*] would have consented, you must conclude that [his/her] failure to inform [*name of plaintiff*] of the risks was not a substantial factor in causing [*name of plaintiff*]'s harm.~~

New September 2003; Revised June 2015

Directions for Use

~~"Whenever appropriate, the court should instruct the jury on the defenses available to a doctor who has failed to make the disclosure required by law." (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 245 [104 Cal.Rptr. 505, 502 P.2d 1].)~~

Give this instruction if the defendant asserts as an affirmative defense that the plaintiff would have consented (and thereby have suffered the same harm) had he or she been informed of the risks. This instruction ~~could~~ can be modified to cover "informed refusal" cases by redrafting it to state, in substance, that even if the plaintiff had known of the risks of refusal, he or she still would have refused the test.

Sources and Authority

- "Whenever appropriate, the court should instruct the jury on the defenses available to a doctor who has failed to make the disclosure required by law." (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 245 [104 Cal.Rptr. 505, 502 P.2d 1].)

- "The patient-plaintiff may testify on this subject but the issue extends beyond his credibility. Since at the time of trial the uncommunicated hazard has materialized, it would be surprising if the patient-plaintiff did not claim that had he been informed of the dangers he would have declined treatment. Subjectively he may believe so, with the 20/20 vision of hindsight, but we doubt that justice will be served by placing the physician in jeopardy of the patient's bitterness and disillusionment. Thus an objective test is preferable: i.e., what would a prudent person in the patient's position have decided if adequately informed of all significant perils." ~~The objective test is whether a reasonable person in plaintiff's position would have refused consent if he or she had been fully informed.~~ (*Cobbs, supra,* 8 Cal.3d at p. 245.)

- "The prudent person test for causation was established to protect defendant physicians from the

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unfairness of having a jury consider the issue of proximate cause with the benefit of the '20/20 vision of hindsight . . .' This standard should not be employed to prevent a physician from raising the defense that even given adequate disclosure the injured patient would have made the same decision, regardless of whether a reasonably prudent person would have decided differently if adequately informed." (*Truman v. Thomas* (1980) 27 Cal.3d 285, 294 fn. 5 [165 Cal. Rptr. 308, 611 P.2d 902 ~~However, the defendant can seek to prove that this particular plaintiff still would have consented even if properly informed (as an affirmative defense). (*Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1206 [67 Cal.Rptr.2d 573~~].)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 395, 398

California Tort Guide (Cont.Ed.Bar 3d ed.) § 9.11

3 Levy et al., California Torts, Ch. 31, *Liability of Physicians and Other Medical Practitioners*, § 31.14 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 415, *Physicians: Medical Malpractice*, § 415.13 (Matthew Bender)

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VF-501. Medical Negligence—Informed Consent—Affirmative Defense—Plaintiff Would Have Consented Even If Informed

We answer the questions submitted to us as follows:

1. **Did [***name of defendant***] perform a [***insert medical procedure***] on [***name of plaintiff***]?**
   ____ Yes ____ No

   If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [***name of plaintiff***] give [his/her] informed consent for the [***insert medical procedure***]?**
   ____ Yes ____ No

   If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Would a reasonable person in [***name of plaintiff***]'s position have refused the [***insert medical procedure***] if he or she had been ~~fully~~adequately informed of the possible results and risks of [and alternatives to] the [***insert medical procedure***]?**
   ____ Yes ____ No

   If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Would [***name of plaintiff***] have consented to the [***insert medical procedure***] even if [he/she] had been given ~~enough~~ adequate information about the risks of the [***insert medical procedure***]?**
   ____ Yes ____ No

   If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Was [***name of plaintiff***] harmed as a consequence of a result or risk that [***name of defendant***] should have explained before the [***insert medical procedure***] was performed?**
   ____ Yes ____ No

   If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other past economic loss $ _____]
Total Past Economic Damages: $ _____]

[b. Future economic loss

[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other future economic loss $ _____]
Total Future Economic Damages: $ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2015

Directions for Use

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual*

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Elements, and CACI No. 550, *Affirmative Defense—Plaintiff Would Have Consented.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements,* and CACI No. 550, *Affirmative Defense—Plaintiff Would Have Consented.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

If the affirmative defense, which is contained in question 4, is not an issue in the case, question 4 should be omitted and the remaining questions renumbered accordingly.

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601. ~~Damages for~~ Negligent Handling of Legal Matter

To recover damages from [*name of defendant*], [*name of plaintiff*] must prove that [he/she/it] would have obtained a better result if [*name of defendant*] had acted as a reasonably careful attorney. [*Name of plaintiff*] was not harmed by [*name of defendant*]'s conduct if the same harm would have occurred anyway without that conduct.

New September 2003; Revised June 2015

Directions for Use

In ~~*Matteo Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820 [60 Cal.Rptr.2d 780], the trial-within-a-trial method was applied to accountants.~~ In cases involving professionals other than attorneys, this instruction would need to be modified by inserting the type of the professional in place of "attorney." (See, e.g., *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 829−830 [60 Cal.Rptr.2d 780] [trial-within-a-trial method was applied to accountants].)~~,~~

The plaintiff must prove that *but for* the attorney's negligent acts or omissions, he or she would have obtained a more favorable judgment or settlement in the underlying action. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241 [135 Cal. Rptr. 2d 629, 70 P.3d 1046].) The second sentence expresses this "but for" standard.~~The issue of collectibility does not apply to every legal malpractice action: "It is only where the alleged malpractice consists of mishandling a client's claim that the plaintiff must show proper prosecution of the matter would have resulted in a favorable judgment and collection thereof." (*DiPalma v. Seldman* (1994) 27 Cal.App.4th 1499, 1506 [33 Cal.Rptr.2d 219].)~~

Sources and Authority

- "If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 749−750 [76 Cal.Rptr.2d 749, 958 P.2d 1062].)

- "In the legal malpractice context, the elements of causation and damage are particularly closely linked." (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1582 [171 Cal.Rptr.3d 23].)

- "In a client's action against an attorney for legal malpractice, the client must prove, among other things, that the attorney's negligent acts or omissions caused the client to suffer some financial harm or loss. When the alleged malpractice occurred in the performance of transactional work (giving advice or preparing documents for a business transaction), must the client prove this causation element according to the 'but for' test, meaning that the harm or loss would not have occurred without the attorney's malpractice? The answer is yes." (*Viner, supra,* 30 Cal.4th at p. 1235.)

- "[The trial-within-a-trial method] is the most effective safeguard yet devised against speculative and

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conjectural claims in this era of ever expanding litigation. It is a standard of proof designed to limit damages to those actually *caused* by a professional's malfeasance." (*Mattco Forge Inc., supra,* 52 Cal.App.4th at p. 834.)

- " 'Damage to be subject to a proper award must be such as follows the act complained of *as a legal certainty* … .' Conversely, ' " '[t]he mere probability that a certain event would have happened, upon which a claim for damages is predicated, will not support the claim or furnish the foundation of an action for such damages.' " ' " (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 165−166 [149 Cal.Rptr.3d 422], original italics, footnote and internal citations omitted.)

- ~~"For the reasons given above, we conclude that, just as in litigation malpractice actions, a plaintiff in a transactional malpractice action must show that *but for* the alleged malpractice, it is more likely than not that the plaintiff would have obtained a more favorable result." (*Viner v. Sweet* (2003) 30 Cal.4th 1232 [135 Cal.Rptr.2d 629, 70 P.3d 1046], original italics.)~~

- "One who establishes malpractice on the part of his or her attorney *in prosecuting a lawsuit* must also prove that careful management of it would have resulted in a favorable judgment and collection thereof, as there is no damage in the absence of these latter elements." (*DiPalma v. Seldman* (1994) 27 Cal.App.4th 1499, 1506−1507 [33 Cal.Rptr.2d 219]~~*DiPalma, supra,* 27 Cal.App.4th at pp. 1506-1507~~, original italics.)

- " 'The element of collectibility requires a showing of the debtor's solvency. " ['W]here a claim is alleged to have been lost by an attorney's negligence, … to recover more than nominal damages it must be shown that it was a valid subsisting debt, *and that the debtor was solvent*.' [Citation.]" The loss of a collectible judgment "by definition means the lost opportunity to collect a money judgment from a solvent [defendant] and is certainly legally sufficient evidence of actual damage." ' " (*Wise v. DLA Piper LLP (US)* (2013) 220 Cal.App.4th 1180, 1190 [164 Cal.Rptr.3d 54], original italics, internal citations omitted.)

- "Collectibility is part of the plaintiff's case, and a component of the causation and damages showing, rather than an affirmative defense which the Attorney Defendants must demonstrate." (*Wise, supra,* 220 Cal.App.4th at p. 1191.)

- "Because of the legal malpractice, the original target is out of range; thus, the misperforming attorney must stand in and submit to being the target instead of the former target which the attorney negligently permitted to escape. This is the essence of the case-within-a-case doctrine." (*Arciniega v. Bank of San Bernardino* (1997) 52 Cal.App.4th 213, 231 [60 Cal.Rptr.2d 495].)

- "Where the attorney's negligence does not result in a total loss of the client's claim, the measure of damages is the difference between what was recovered and what would have been recovered but for the attorney's wrongful act or omission. [¶] Thus, in a legal malpractice action, if a reasonably competent attorney would have obtained a $3 million recovery for the client but the negligent attorney obtained only a $2 million recovery, the client's damage due to the attorney's negligence would be $1 million-the difference between what a competent attorney would have obtained and what the negligent attorney obtained." (*Norton v. Superior Court* (1994) 24 Cal.App.4th 1750, 1758 [30 Cal.Rptr.2d 217].)

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- "[A] plaintiff who alleges an inadequate settlement in the underlying action must prove that, if not for the malpractice, she would *certainly* have received more money in settlement or at trial. [¶] The requirement that a plaintiff need prove damages to 'a legal certainty' is difficult to meet in any case. It is particularly so in 'settle and sue' cases … ." (*Filbin, supra,* 211 Cal.App.4th at p. 166, original italics, internal citation omitted.)

- "In a legal malpractice action, causation is an issue of fact for the jury to decide except in those cases where reasonable minds cannot differ; in those cases, the trial court may decide the issue itself as a matter of law." (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187 [164 Cal.Rptr.3d 309].)

- " 'The trial-within-a-trial method does not "recreate what a particular judge or fact finder would have done. Rather, the jury's task is to determine what a reasonable judge or fact finder would have done … ." … Even though "should" and "would" are used interchangeably by the courts, the standard remains an *objective* one. The trier of fact determines what *should* have been, not what the result *would* have been, or could have been, or might have been, had the matter been before a *particular judge* or jury. …' " (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 357 [89 Cal.Rptr.3d 710], original italics.)

- "If the underlying issue originally was a factual question that would have gone to a tribunal rather than a judge, it is the jury who must decide what a reasonable tribunal would have done. The identity or expertise of the original trier of fact (i.e., a judge or an arbitrator or another type of adjudicator) does not alter the jury's responsibility in the legal malpractice trial-within-a-trial." (*Blanks, supra,* 171 Cal.App.4th at pp. 357–358.)

Secondary Sources

1 Witkin, California Procedure (5th ed. 2008) Attorneys, §§ 319−322

Vapnek et al., California Practice Guide: Professional Responsibility, Ch. 6-D, *Professional Liability*, ¶ 6:322 (The Rutter Group)

3 Levy et al., California Torts, Ch. 32, *Liability of Attorneys*, § 32.10 et seq. (Matthew Bender)

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, § 76.50 et seq. (Matthew Bender)

2A California Points and Authorities, Ch. 24A, *Attorneys at Law: Malpractice*, § 24A.20 et seq. (Matthew Bender)

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1230. Express Warranty—Essential Factual Elements

[*Name of plaintiff***] claims that [he/she/it] was harmed by the [***product***] because [***name of defendant***] represented, either by words or actions, that the [***product***] [***insert description of alleged express warranty, e.g., "was safe"***], but the [***product***] was not as represented. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] [***insert one or more of the following:***]**

[gave [*name of plaintiff***] a written warranty that the [***product***] [***insert description of written warranty***];] [or]**

[made a [statement of fact/promise] [to/received by] [*name of plaintiff***] that the [***product***] [***insert description of alleged express warranty***];] [or]**

[gave [*name of plaintiff***] a description of the [***product***];] [or]**

[gave [*name of plaintiff***] a sample or model of the [***product***];]**

2. **That the [***product***] [***insert one or more of the following:***]**

[did not perform as [stated/promised];] [or]

[did not meet the quality of the [description/sample/model];]

[3. **[That [***name of plaintiff***] took reasonable steps to notify [***name of defendant***] within a reasonable time that the [***product***] was not as represented, whether or not [***name of defendant***] received such notice;]**

4. **That [***name of defendant***] failed to [repair/***specify other remedy provided by warranty***] the [***product***] as required by the warranty;**

45. **That [***name of plaintiff***] was harmed; and**

56. **That the failure of the [***product***] to be as represented was a substantial factor in causing [***name of plaintiff***]'s harm.**

[Formal words such as "warranty" or "guarantee" are not required to create a warranty. It is also not necessary for [*name of defendant***] to have specifically intended to create a warranty. But a warranty is not created if [***name of defendant***] simply stated the value of the goods or only gave [his/her] opinion of or recommendation regarding the goods.]**

New September 2003; Revised February 2005, June 2015

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Directions for Use

This instruction is for use if breach of an express warranty is alleged under the California Commercial Code. (See *Orichian v. BMW of North America, LLC* (2014) 226 Cal.App.4th 1322, 1333−1334 [172 Cal.Rptr.3d 876]; Comm. Code, § 2313.) If a breach of written warranty under the federal Magnuson-Moss Warranty Act (see 15 U.S. Code, § 2301 et seq.) is alleged, give the first option for element 1. (See 15 U.S.C. §§ 2310(d)(1), 2301(6).)

The giving of notice to the seller is not required in personal injury or property damage lawsuits against a manufacturer or another supplier with whom the plaintiff has not directly dealt. (*Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 61 [27 Cal.Rptr. 697, 377 P.2d 897]; *Gherna v. Ford Motor Co.* (1966) 246 Cal.App.2d 639, 652-653 [55 Cal.Rptr. 94].)

If an instruction on the giving of notice to the seller is needed, see CACI No. 1243, *Notification/Reasonable Time*.

Sources and Authority

- Express Warranties. Commercial Code section 2313.
- Applicable to "Transactions in Goods." Commercial Code section 2102.
- "Goods" Defined. Commercial Code section 2105.
- Damages Under Commercial Code. Commercial Code section 2714.
- "A warranty relates to the title, character, quality, identity, or condition of the goods. The purpose of the law of warranty is to determine what it is that the seller has in essence agreed to sell." (*Keith v. Buchanan* (1985) 173 Cal.App.3d 13, 20 [220 Cal.Rptr. 392], internal citation omitted.)
- "The essential elements of a cause of action under the California Uniform Commercial Code for breach of an express warranty to repair defects are (1) an express warranty to repair defects given in connection with the sale of goods; (2) the existence of a defect covered by the warranty; (3) the buyer's notice to the seller of such a defect within a reasonable time after its discovery; (4) the seller's failure to repair the defect in compliance with the warranty; and (5) resulting damages." (*Orichian, supra,* 226 Cal.App.4th at pp. 1333−1334, internal citations omitted.)
- ~~"A warranty is a contractual term concerning some aspect of the sale, such as title to the goods, or their quality or quantity." (4 Witkin, Summary of California Law (10th ed. 2005) Sales, § 51.)~~
- "Privity is not required for an action based upon an express warranty." (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 115, fn. 8 [120 Cal.Rptr. 681, 534 P.2d 377].)
- " 'The determination as to whether a particular statement is an expression of opinion or an affirmation of a fact is often difficult, and frequently is dependent upon the facts and circumstances existing at the time the statement is made.' " (*Keith, supra,* 173 Cal.App.3d at p. 21, internal citation omitted.)

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- "Statements made by a seller during the course of negotiation over a contract are presumptively affirmations of fact unless it can be demonstrated that the buyer could only have reasonably considered the statement as a statement of the seller's opinion. Commentators have noted several factors which tend to indicate an opinion statement. These are (1) a lack of specificity in the statement made, (2) a statement that is made in an equivocal manner, or (3) a statement which reveals that the goods are experimental in nature." (*Keith, supra,* 173 Cal.App.3d at p. 21.)

- "It is important to note ... that even statements of opinion can become warranties under the code if they become part of the basis of the bargain." (*Hauter, supra,* 14 Cal.3d at p. 115, fn. 10.)

- ~~The California Supreme Court has stated that~~ "~~[t]~~The basis of the bargain requirement represents a significant change in the law of warranties. Whereas plaintiffs in the past have had to prove their reliance upon specific promises made by the seller, the Uniform Commercial Code requires no such proof." (*Hauter, supra,* 14 Cal.3d at p. 115, internal citations omitted.) ~~However, the Court also noted that there is some controversy as to the role, if any, of reliance in this area.~~

- ~~The court in *Keith, supra,* 173 Cal.App.3d at p. 23, held that the seller has the burden of proving that the bargain did not rest at all on the representation, for example, by showing that the buyer inspected and discovered the defect before the contract was made.~~

- "It is immaterial whether defendant had actual knowledge of the contraindications. 'The obligation of a warranty is absolute, and is imposed as a matter of law irrespective of whether the seller knew or should have known of the falsity of his representations.' " (*Grinnell v. Charles Pfizer & Co.* (1969) 274 Cal.App.2d 424, 442 [79 Cal.Rptr. 369], internal citations omitted.)

- "[A] sale is ordinarily an essential element of any warranty, express or implied ... ." (*Fogo v. Cutter Laboratories, Inc.* (1977) 68 Cal.App.3d 744, 759 [137 Cal.Rptr. 417], internal citations omitted.)

- "Neither Magnuson-Moss nor the California Uniform Commercial Code requires proof that a defect substantially impairs the use, value, or safety of a vehicle in order to establish a breach of an express or written warranty, as required under Song-Beverly." (*Orichian, supra,* 226 Cal.App.4th at p. 1331; fn. 9, see CACI No. 3204, *"Substantially Impaired" Explained.*)

Secondary Sources

4 Witkin, Summary of California Law (10th ed. 2005) Sales, §§ 56–66

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, §§ 2.31-2.33, Ch. 7, *Proof*, § 7.03 (Matthew Bender)

44 California Forms of Pleading and Practice, Ch. 502, *Sales: Warranties*, §§ 502.23, 502.42-502.50, 502.140-502.150 (Matthew Bender)

20 California Points and Authorities, Ch. 206, *Sales*, § 206.60 et seq. (Matthew Bender)

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1500. Former Criminal Proceeding—Essential Factual Elements

[*Name of plaintiff***] claims that [***name of defendant***] wrongfully caused a criminal proceeding to be brought against [him/her/it]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] was actively involved in causing [***name of plaintiff***] to be prosecuted [or in causing the continuation of the prosecution];**

[2. That the criminal proceeding ended in [*name of plaintiff***]'s favor;]**

[3. That no reasonable person in [*name of defendant***]'s circumstances would have believed that there were grounds for causing [***name of plaintiff***] to be arrested or prosecuted;]**

4. **That [***name of defendant***] acted primarily for a purpose other than to bring [***name of plaintiff***] to justice;**

5. **That [***name of plaintiff***] was harmed; and**

6. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

[The law requires that the trial judge, rather than the jury, decide if [*name of plaintiff***] has proven element 2 above, whether the criminal proceeding ended in [his/her/its] favor. But before I can do so, you must decide whether [***name of plaintiff***] has proven the following:**

[*List all factual disputes that must be resolved by the jury.***]**

The special [verdict/interrogatory] form will ask for your finding on [this/these] issue[s].]

[The law [also] requires that the trial judge, rather than the jury, decide if [*name of plaintiff***] has proven element 3 above, whether a reasonable person in [***name of defendant***]'s circumstances would have believed that there were grounds for causing [***name of plaintiff***] to be arrested or prosecuted. But before I can do so, you must decide whether [***name of plaintiff***] has proven the following:**

[*List all factual disputes that must be resolved by the jury.***]**

The special [verdict/interrogatory] form will ask for your finding on [this/these] issue[s].]

New September 2003; Revised April 2008, October 2008, June 2015

Directions for Use

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Give this instruction in a malicious prosecution case based on an underlying criminal prosecution. If there is an issue as to what it means to be "actively involved" in element 1, also give CACI No. 1504, *Former Criminal Proceeding—"Actively Involved" Explained*.

Malicious prosecution requires that the criminal proceeding have ended in the plaintiff's favor (element 2) and that the defendant did not reasonably believe that there were any grounds (probable cause) to initiate the proceeding (element 3). Probable cause is to be decided by the court as a matter of law. However, it may require the jury to find some preliminary facts before the court can make its legal determination, including facts regarding what the defendant knew or did not know at the time. (See *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 881 [254 Cal.Rptr. 336, 765 P.2d 498].) If so, include element 3 and also the bracketed part of the instruction that refers to element 3.

Favorable termination is handled in much the same way. If a proceeding is terminated other than on the merits, there may be disputed facts that the jury must find in order to determine whether there has been a favorable termination. (See *Fuentes v. Berry* (1995) 38 Cal.App.4th 1800, 1808 [45 Cal.Rptr.2d 848].) If so, include element 2 and also the bracketed part of the instruction that refers to element 2. Once these facts are determined, the jury does not then make a second determination as to whether there has been a favorable termination. The matter is determined by the court based on the resolution of the disputed facts. (See *Sierra Club Found. v. Graham* (1999) 72 Cal.App.4th 1135, 1159 [85 Cal.Rptr.2d 726] [element of favorable termination is for court to decide].)

Either or both of the elements of probable cause and favorable termination should be omitted if there are no disputed facts regarding that element for the jury.

Element 4 expresses the malice requirement.

Sources and Authority

- Public Employee Immunity. Government Code section 821.6.

- "Malicious prosecution consists of initiating or procuring the arrest and prosecution of another under lawful process, but from malicious motives and without probable cause." (*Cedars-Sinai Medical Center v. Superior Court* (1988) 206 Cal.App.3d 414, 417 [253 Cal.Rptr. 561], internal citation omitted.)

- "The remedy of a malicious prosecution action lies to recompense the defendant who has suffered out of pocket loss in the form of attorney fees and costs, as well as emotional distress and injury to reputation because of groundless allegations made in pleadings which are public records." (*Sagonowsky v. More* (1998) 64 Cal.App.4th 122, 132 [75 Cal.Rptr.2d 118], internal citations omitted.)

- "Cases dealing with actions for malicious prosecution against private persons require that the defendant has at least sought out the police or prosecutorial authorities and falsely reported facts to them indicating that plaintiff has committed a crime." (*Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 720 [117 Cal.Rptr. 241, 527 P.2d 865], internal citations omitted.)

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- ~~" 'One may be civilly liable for malicious prosecution without personally signing the complaint initiating the criminal proceeding.' ' "The test is whether the defendant was actively instrumental in causing the prosecution." ' " (*Greene v. Bank of America* (2013) 216 Cal.App.4th 454, 463-464 [156 Cal.Rptr.3d 901], internal citation omitted.)~~

- "[T]he effect of the approved instruction [in *Dreux v. Domec* (1861) 18 Cal. 83] was to impose liability upon one who had not taken part until after the commencement of the prosecution." (*Lujan v. Gordon* (1977) 70 Cal.App.3d 260, 263 [138 Cal.Rptr. 654].)

- "When, as here, the claim of malicious prosecution is based upon initiation of a criminal prosecution, the question of probable cause is whether it was objectively reasonable for the defendant … to suspect the plaintiff … had committed a crime." (*Greene v. Bank of America* (2013) 216 Cal.App.4th 454, 465 [156 Cal.Rptr.3d 901]~~*Greene, supra,* 216 Cal.App.4th at p. 465~~.)

- "When there is a dispute as to the state of the defendant's knowledge and the existence of probable cause turns on resolution of that dispute, … the jury must resolve the threshold question of the defendant's factual knowledge or belief. Thus, when … there is evidence that the defendant may have known that the factual allegations on which his action depended were untrue, the jury must determine what facts the defendant knew before the trial court can determine the legal question whether such facts constituted probable cause to institute the challenged proceeding." (*Sheldon Appel Co., supra,* 47 Cal.3d at p. 881, internal citations omitted.)

- "Admittedly, the fact of the grand jury indictment gives rise to a prima facie case of probable cause, which the malicious prosecution plaintiff must rebut. However, as respondents' own authorities admit, that rebuttal may be by proof that the indictment was based on false or fraudulent testimony." (*Williams v. Hartford Ins. Co.* (1983) 147 Cal.App.3d 893, 900 [195 Cal.Rptr. 448].)

- "Acquittal of the criminal charge, in the criminal action, did not create a conflict of evidence on the issue of probable cause. [Citations.]" (*Verdier v. Verdier* (1957) 152 Cal.App.2d 348, 352, fn. 3 [313 P.2d 123].)

- " '[T]he plaintiff in a malicious prosecution action must plead and prove that the prior judicial proceeding of which he complains terminated in his favor.' Termination of the prior proceeding is not necessarily favorable simply because the party prevailed in the prior proceeding; the termination must relate to the merits of the action by reflecting either on the innocence of or lack of responsibility for the misconduct alleged against him." (*Sagonowsky, supra,* 64 Cal.App.4th at p. 128, internal citations omitted.)

- " 'The theory underlying the requirement of favorable termination is that it tends to indicate the innocence of the accused, and coupled with the other elements of lack of probable cause and malice, establishes the tort, that is, the malicious and unfounded charge of crime against an innocent person.' " (*Cote v. Henderson* (1990) 218 Cal.App.3d 796, 804 [267 Cal.Rptr. 274], quoting *Jaffe v. Stone* (1941) 18 Cal.2d 146, 150 [114 P.2d 335].)

- "Where a proceeding is terminated other than on the merits, the reasons underlying the termination must be examined to see if it reflects the opinion of the court or the prosecuting party that the action

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would not succeed. If a conflict arises as to the circumstances explaining a failure to prosecute an action further, the determination of the reasons underlying the dismissal is a question of fact." (*Fuentes, supra,* 38 Cal.App.4th at p. 1808, internal citations omitted.)

- "The plea of nolo contendere is considered the same as a plea of guilty. Upon a plea of nolo contendere the court shall find the defendant guilty, and its legal effect is the same as a plea of guilty for all purposes. It negates the element of a favorable termination, which is a prerequisite to stating a cause of action for malicious prosecution." (*Cote, supra,* 218 Cal.App.3d at p. 803, internal citation omitted.)

- " '*Should a conflict arise as to the circumstances explaining the failure to prosecute, the trier of fact must exercise its traditional role in deciding the conflict.*' " (*Weaver v. Superior Court* (1979) 95 Cal.App.3d 166, 185 [156 Cal.Rptr. 745]~~, original italics, internal citations omitted~~, disapproved on other grounds in *Sheldon Appel Co., supra,* 47 Cal.3d at p. 882, original italics, internal citations omitted.)

- " 'For purposes of a malicious prosecution claim, malice "is not limited to actual hostility or ill will toward the plaintiff. …" [Citation.]' '[I]f the defendant had no substantial grounds for believing in the plaintiff's guilt, but, nevertheless, instigated proceedings against the plaintiff, it is logical to infer that the defendant's motive was improper.' " (*Greene, supra,* 216 Cal.App.4th at pp. 464-465, internal citation omitted.)

- "Malice may be inferred from want of probable cause, but want of probable cause cannot be inferred from malice, but must be affirmatively shown by the plaintiff." (*Verdier, supra,* 152 Cal.App.2d at p. 354.)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 469–485, 511

4 Levy et al., California Torts, Ch. 43, *Malicious Prosecution and Abuse of Process,* §§ 43.01–43.06 (Matthew Bender)

31 California Forms of Pleading and Practice, Ch. 357, *Malicious Prosecution and Abuse of Process*, §§ 357.10–357.32 (Matthew Bender)

14 California Points and Authorities, Ch. 147, *Malicious Prosecution and Abuse of Process*, §§ 147.20–147.53 (Matthew Bender)

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1504. Former Criminal Proceeding—"Actively Involved" Explained

[*Name of defendant*] was "actively involved" in causing [*name of plaintiff*] to be prosecuted [or in causing the continuation of the prosecution] if after learning that there was no probable cause that [*name of plaintiff*] had committed a crime, [he/she] sought out the police or prosecutorial authorities and falsely reported facts to them indicating that [*name of plaintiff*] had committed a crime. Merely giving testimony or responding to law enforcement inquiries is not active involvement.

New June 2015

Directions for Use

Give this instruction in a malicious prosecution case arising from an earlier criminal proceeding. This instruction explains what is meant by "active involvement" in a criminal prosecution, as used in element 1 of CACI No. 1500, *Former Criminal Proceeding—Essential Factual Elements*.

Sources and Authority

- "Although a criminal prosecution normally is commenced through the action of government authorities, a private person may be liable for malicious prosecution under certain circumstances based on his or her role in the criminal proceeding. 'The relevant law is clear: "One may be civilly liable for malicious prosecution without personally signing the complaint initiating the criminal proceeding." "' " (*Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1481 [178 Cal.Rptr.3d 363, internal citation omitted.)

- "Malicious prosecution consists of initiating or procuring the arrest and prosecution of another under *lawful* process, but from *malicious* motives and without probable cause. . . . . [Italics in original.] The test is whether the defendant was actively instrumental in causing the prosecution.' " (*Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 720 [117 Cal. Rptr. 241, 527 P.2d 865].)

- "Cases dealing with actions for malicious prosecution against private persons require that the defendant has at least sought out the police or prosecutorial authorities and falsely reported facts to them indicating that plaintiff has committed a crime." (*Greene v. Bank of America* (2013) 216 Cal.App.4th 454, 464 [156 Cal.Rptr.3d 901].)

- "Public policy requires that 'private persons who aid in the enforcement of the law should be given an effective protection against the prejudice which is likely to arise from the termination of the prosecution in favor of the accused.' " (*Cedars-Sinai Medical Ctr. v. Superior Court* (1988) 206 Cal.App.3d 414, 418 [253 Cal.Rptr. 561].)

- "[M]erely giving testimony and responding to law enforcement inquiries in an active criminal proceeding does not constitute malicious prosecution." (*Zucchet, supra,* 229 Cal.App.4th at p. 1482.)

- "[T]o create liability for malicious prosecution … [t]he person must 'take[some affirmative action to encourage the prosecution by way of advice or pressure, as opposed to merely providing information.' " (*Zucchet, supra,* 229 Cal.App.4th at p. 1485.)

- "According to section 655 of the Restatement, '[a] private person who takes an active part in continuing or procuring the continuation of criminal proceedings initiated by himself or by another is subject to the same liability for malicious prosecution as if he had then initiated the proceedings.' " (*Zucchet, supra,* 229 Cal.App.4th at p. 1483.)

1731. Trade Libel—Essential Factual Elements

[*Name of plaintiff***] claims that [***name of defendant***] harmed [him/her] by making a statement that disparaged [***name of plaintiff***]'s [***specify product***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] made a statement that [would be clearly or necessarily understood to have] disparaged the quality of [***name of plaintiff***]'s [***product/service***];**

2. **That the statement was made to a person other than [***name of plaintiff***];**

3. **That the statement was untrue;**

4. **That [***name of defendant***] [knew that the statement was untrue/acted with reckless disregard of the truth or falsity of the statement];**

5. **That [***name of defendant***] knew or should have recognized that someone else might act in reliance on the statement, causing [***name of plaintiff***] financial loss;**

6. **That [***name of plaintiff***] suffered direct financial harm because someone else acted in reliance on the statement;**

7. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2013; Revised June 2015

Directions for Use

The tort of trade libel is a form of injurious falsehood similar to slander of title. (See *Polygram Records, Inc. v. Superior Court* (1985) 170 Cal.App.3d 543, 548 [216 Cal.Rptr. 252]; *Erlich v. Etner* (1964) 224 Cal.App.2d 69, 74 [36 Cal.Rptr. 256].) The tort has not often reached the attention of California's appellate courts (see *Polygram Records, Inc.*, *supra*, 170 Cal.App.3d at p. 548.), perhaps because of the difficulty in proving damages. (See *Erlich*, *supra*, 224 Cal.App.2d at pp. 73−74.)

Include the optional language in element 1 if the plaintiff alleges that disparagement may be reasonably implied from the defendant's words. Disparagement by reasonable implication requires more than a statement that may conceivably or plausibly be construed as derogatory. A "reasonable implication" means a clear or necessary inference. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 295 [172 Cal.Rptr.3d 653, 326 P.3d 253].)

Elements 4 and 5 are supported by section 623A of the Restatement 2d of Torts, which has been accepted in California. (See *Melaleuca, Inc. v. Clark* (1998) 66 Cal.App.4th 1344, 1360−1361 [78 Cal.Rptr.2d 627].) There is some authority, however, for the proposition that no intent or reckless disregard is

required (element 4) if the statement was understood in its disparaging sense and if the understanding is a reasonable construction of the language used or the acts done by the publisher. (See *Nichols v. Great Am. Ins. Cos.* (1985) 169 Cal.App.3d 766, 773 [215 Cal.Rptr. 416].)

The privileges of Civil Code section 47 almost certainly apply to actions for trade libel. (See *Albertson v. Raboff* (1956) 46 Cal.2d 375, 378–379 [295 P.2d 405] [slander-of-title case]; *117 Sales Corp. v. Olsen* (1978) 80 Cal.App.3d 645, 651 [145 Cal.Rptr. 778] [publication by filing small claims suit is absolutely privileged].) The defendant has the burden of proving privilege as an affirmative defense. (See *Smith v. Commonwealth Land Title Ins. Co.* (1986) 177 Cal.App.3d 625, 630–631 [223 Cal.Rptr. 339].) If privilege is claimed, additional instructions will be necessary to state the affirmative defense and frame the privilege. For further discussion, see the Directions for Use to CACI No. 1730, *Slander of Title—Essential Factual Elements*. See also CACI No. 1723, ~~*Qualified Privilege*~~*Common Interest Privilege—Malice*.

Limitations on liability arising from the First Amendment apply. (*Hofmann Co. v. E. I. du Pont de Nemours & Co.* (1988) 202 Cal.App.3d 390, 397 [248 Cal.Rptr. 384]; see CACI Nos. 1700−1703, instructions on public figures and matters of public concern.) See also CACI No. 1707, *Fact Versus Opinion*.

Sources and Authority

- "Trade libel is the publication of matter disparaging the quality of another's property, which the publisher should recognize is likely to cause pecuniary loss to the owner. [Citation.] The tort encompasses 'all false statements concerning the quality of services or product of a business which are intended to cause that business financial harm and in fact do so.' [Citation.] [¶] To constitute trade libel, a statement must be false." (*City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 376 [154 Cal.Rptr.3d 698].)

- "The distinction between libel and trade libel is that the former concerns the person or reputation of plaintiff and the latter relates to his goods." (*Shores v. Chip Steak Co.* (1955) 130 Cal.App.2d 627, 630 [279 P.2d 595].)

- "[A]n action for 'slander of title' … is a form of action somewhat related to trade libel … ." (*Erlich, supra,* 224 Cal.App.2d at p. 74.)

- "Confusion surrounds the tort of 'commercial disparagement' because not only is its content blurred and uncertain, so also is its very name. The tort has received various labels, such as 'commercial disparagement,' 'injurious falsehood,' 'product disparagement,' 'trade libel,' 'disparagement of property,' and 'slander of goods.' These shifting names have led counsel and the courts into confusion, thinking that they were dealing with different bodies of law. In fact, all these labels denominate the same basic legal claim." (*Hartford Casualty Ins. Co.*, *supra,* ~~*v. Swift Distribution, Inc.* (2014)~~ 59 Cal.4th at p.~~277,~~ 289 ~~[172 Cal. Rptr. 3d 653, 326 P.3d 253]~~.)

- "The protection the common law provides statements which disparage products as opposed to reputations is set forth in the Restatement Second of Torts sections 623A and 626. Section 623A provides: 'One who publishes a false statement harmful to the interests of another is subject to

liability for pecuniary loss resulting to the other if [P] (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and [P]*(b) he knows that the statement is false or acts in reckless disregard of its truth or falsity*.' [¶] Section 626 of Restatement Second of Torts in turn states: 'The rules on liability for the publication of an injurious falsehood stated in § 623A apply to the publication of matter disparaging the quality of another's land, chattels or intangible things, that the publisher should recognize as likely to result in pecuniary loss to the other through the conduct of a third person in respect to the other's interests in the property.' " (*Melaleuca, Inc., supra,* 66 Cal.App.4th at pp. 1360−1361, original italics.)

- "According to section 629 of the Restatement Second of Torts (1977), '[a] statement is disparaging if it is understood to cast doubt upon the quality of another's land, chattels or intangible things, or upon the existence or extent of his property in them, and [¶] (a) the publisher intends the statement to cast the doubt, or [¶] (b) the recipient's understanding of it as casting the doubt was reasonable.' " (*Hartford Casualty Ins. Co., supra,* 59 Cal.4th at p. 288.)

- "What distinguishes a claim of disparagement is that an injurious falsehood has been directed *specifically* at the plaintiff's business or product, derogating that business or product and thereby causing that plaintiff special damages." (*Hartford Casualty Ins. Co., supra,* 59 Cal.4th at p. 294, original italics.)

- "The Restatement [2d Torts] view is that, like slander of title, what is commonly called 'trade libel' is a particular form of the tort of injurious falsehood and need not be in writing." (*Polygram Records, Inc., supra,* 170 Cal.App.3d at p. 548.)

- "While … general damages are presumed in a libel of a businessman, this is not so in action for trade libel. Dean Prosser has discussed the problems in such actions as follows: 'Injurious falsehood, or disparagement, then, may consist of the publication of matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general, . . . The cause of action founded upon it resembles that for defamation, but differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases. . . . [The] plaintiff must prove in all cases that the publication has played a material and substantial part in inducing others not to deal with him, and that as a result he has suffered special damages. . . . Usually, . . . the damages claimed have consisted of loss of prospective contracts with the plaintiff's customers. Here the remedy has been so hedged about with limitations that its usefulness to the plaintiff has been seriously impaired. It is nearly always held that it is not enough to show a general decline in his business resulting from the falsehood, even where no other cause for it is apparent, and that it is only the loss of specific sales that can be recovered. This means, in the usual case, that the plaintiff must identify the particular purchasers who have refrained from dealing with him, and specify the transactions of which he claims to have been deprived.' " (*Erlich, supra,* 224 Cal.App. 2d at pp. 73−74.)

- "Because the gravamen of the complaint is the allegation that respondents made false statements of fact that injured appellant's business, the 'limitations that define the First Amendment's zone of protection' are applicable. '[It] is immaterial for First Amendment purposes whether the statement in question relates to the plaintiff himself or merely to his property . . . .' " (*Hofmann Co., supra,*

202 Cal.App.3d at p. 397, internal citation omitted.)

- "If respondents' statements about appellant are opinions, the cause of action for trade libel must of course fail. 'Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.' Statements of fact can be true or false, but an opinion—'a view, judgment, or appraisal formed in the mind . . . [a] belief stronger than impression and less strong than positive knowledge'—is the result of a mental process and not capable of proof in terms of truth or falsity." (*Hofmann Co., supra,* 202 Cal.App.3d at p. 397, footnote and internal citation omitted.)

- "[I]t is not absolutely necessary that the disparaging publication be intentionally designed to injure. If the statement was understood in its disparaging sense and if the understanding is a reasonable construction of the language used or the acts done by the publisher, it is not material that the publisher did not intend the disparaging statement to be so understood." (*Nichols, supra,* 169 Cal.App.3d at p. 773.)

- "Disparagement by 'reasonable implication' requires more than a statement that may conceivably or plausibly be construed as derogatory to a specific product or business. A 'reasonable implication' in this context means a clear or necessary inference." (*Hartford Casualty Ins. Co., supra,* 59 Cal.4th at p. 295, internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2005), Torts, §§ 642-645

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts,* § 40.70 et seq. (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, § 340.103 (Matthew Bender)

1 Matthew Bender Practice Guide: California Unfair Competition and Business Torts, Ch. 9, *Commercial Defamation*, 9.04

1806. Affirmative Defense to Invasion of Privacy—First Amendment Balancing Test—Public Interest

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[*Name of defendant***] claims that [he/she] has not violated [***name of plaintiff***]'s right of privacy because the public interest served by [***name of defendant***]'s [***specify privacy violation, e.g., use of [name of plaintiff's name, likeness, or identity***] outweighs [***name of plaintiff***]'s privacy interests. In deciding whether the public interest outweighs [***name of plaintiff***]'s privacy interest, you should consider all of the following:**

a. Where the information was used;

b. The extent of the use;

c. The public interest served by the use;

d. The seriousness of the interference with [*name of plaintiff***]'s privacy; and**

e. [*specify other factors***].**

New June 2015

Directions for Use

This instruction sets forth a balancing test for a claim for invasion of privacy. A defendant's First Amendment right to freedom of expression and freedom of the press can, in some cases, outweigh the plaintiff's right of privacy (See *Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 409-410 [114 Cal.Rptr.2d 307]; see also *Gill v. Hearst Publishing Co. Inc.* (1953) 40 Cal.2d 224, 228−231 [253 P.2d 441].) This balancing test is an affirmative defense. (See *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 407 [106 Cal.Rptr.2d 126, 21 P.3d 797]; see CACI No. 1805, *Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III)*.)

A First-Amendment defense based on newsworthiness has been allowed for the defendant's use of the plaintiff's name or likeness. (See *Gionfriddo, supra,* 94 Cal.App.4th at pp. 409-411; see CACI No. 1804A.) It has also been allowed for privacy claims based on intrusion into private affairs (see CACI No. 1800) and public disclosure of private facts (see CACI No. 1802) (See *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 214−242 [74 Cal.Rptr.2d 843, 955 P.2d 469].) It has also been allowed for a claim that the plaintiff had been presented in a false light (see CACI No. 1802). (See *Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 278−279 [239 P.2d 630] [magazine's use of plaintiffs' picture in connection with article on divorce suggested that they were not happily married].)

Sources and Authority

- "[N]o cause of action will lie for the '[p]ublication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.' " (*Montana v. San Jose Mercury*

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News, Inc. (1995) 34 Cal.App.4th 790, 793 [40 Cal.Rptr.2d 639], internal citation omitted.)

- "The sense of an ever-increasing pressure on personal privacy notwithstanding, it has long been apparent that the desire for privacy must at many points give way before our right to know, and the news media's right to investigate and relate, facts about the events and individuals of our time." (*Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 208 [74 Cal. Rptr. 2d 843, 955 P.2d 469].)

- "The difficulty in defining the boundaries of the right, as applied in the publication field, is inherent in the necessity of balancing the public interest in the dissemination of news, information and education against the individuals' interest in peace of mind and freedom from emotional disturbances. When words relating to or actual pictures of a person or his name are published, the circumstances may indicate that public interest is predominant. Factors deserving consideration may include the medium of publication, the extent of the use, the public interest served by the publication, and the seriousness of the interference with the person's privacy." (*Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 278-279 [239 P.2d 630].)

- "[T]he common law right does not provide relief for every publication of a person's name or likeness. The First Amendment requires that the right to be protected from unauthorized publicity 'be balanced against the public interest in the dissemination of news and information consistent with the democratic processes under the constitutional guaranties of freedom of speech and of the press.' " (*Gionfriddo, supra,* 94 Cal.App.4th at pp. 409-410, internal citations and footnote omitted.)

- "Public interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities." (*Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 542 [18 Cal.Rptr.2d 790], internal citation omitted.)

- "In sum, when an artist is faced with a right of publicity challenge to his or her work, he or she may raise as affirmative defense that the work is protected by the First Amendment inasmuch as it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame." (*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 407 [106 Cal.Rptr.2d 126, 21 P.3d 797].)

- "We have explained that '[o]nly if [a defendant] is entitled to the [transformative] defense *as a matter of law* can it prevail on its motion to strike,' because the California Supreme Court 'envisioned the application of the defense as a question of fact.' As a result, [defendant] 'is only entitled to the defense as a matter of law if no trier of fact could reasonably conclude that the [game] [i]s not transformative.' " (*Keller v. Elec. Arts Inc. (In re NCAA Student-Athlete Name & Likeness Licensing Litig.)* (9th Cir. 2013) 724 F.3d 1268, 1274, original italics.)

- "Although surprisingly few courts have considered in any depth the means of reconciling the right of publicity and the First Amendment, we follow those that have in concluding that depictions of celebrities amounting to little more than the appropriation of the celebrity's economic value are not protected expression under the First Amendment." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 400.)

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- "The First Amendment defense does not apply only to visual expressions, however. 'The protections may extend to all forms of expression, including written and spoken words (fact or fiction), music, films, paintings, and entertainment, whether or not sold for a profit.' " (*Ross v. Roberts* (2013) 222 Cal.App.4th 677, 687 [166 Cal.Rptr.3d 359].)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2010) Torts, § 681 et seq.

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.35 (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.27 (Matthew Bender)

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1808. Stalking (Civ. Code, § 1708.7)

Revoked June 2015. See Stats 2014, Ch. 853 (AB 1356), substantially amending Civ. Code, § 1708.7. The committee may consider revising this instruction in the next release.

[*Name of plaintiff*] claims that [*name of defendant*] violated [his/her] right to privacy. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. That [*name of defendant*] engaged in a pattern of conduct with the intent to [follow/alarm/harass] [*name of plaintiff*]. The pattern of conduct must be supported by evidence in addition to [*name of plaintiff*]'s testimony;

2. That as a result of this conduct [*name of plaintiff*] reasonably feared for [his/her] own safety [or for the safety of an immediate family member]; and

3. (a) That, as part of the pattern of conduct, [*name of defendant*] made a believable threat with the intent to place [*name of plaintiff*] in reasonable fear for [his/her] safety [or the safety of an immediate family member]; and

   (b) That [*name of plaintiff*] clearly demanded at least once that [*name of defendant*] stop; and

   (c) That [*name of defendant*] persisted in [his/her] pattern of conduct;

   [or]

   That [*name of defendant*] violated a restraining order prohibiting the pattern of conduct;

4. That [*name of plaintiff*] was harmed; and

5. That [*name of defendant*]'s conduct was a substantial factor in causing [*name of plaintiff*]'s harm.

["Harass" means a knowing and willful course of conduct directed at [*name of plaintiff*] that seriously alarms, annoys, torments, or terrorizes [him/her], and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to [*name of plaintiff*]].

A "pattern of conduct" means a series of words or actions over a period of time, however short, that reflects an ongoing purpose.

New September 2003

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~~Sources and Authority~~

- ~~Stalking. Civil Code section 1708.7.~~

~~Secondary Sources~~

~~5 Witkin, Summary of California Law (10th edition 2005) Torts, §662~~

~~6 California Forms of Pleading and Practice, Ch. *Assault and Battery*, Ch. 58, § 58.28 (Matthew Bender)~~

~~2 California Points and Authorities, Ch. 21, *Assault and Battery*, § 21.28 (Matthew Bender)~~

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2308. Affirmative Defense—~~Rescission for~~ Misrepresentation or Concealment in Insurance Application~~—Essential Factual Elements~~

[*Name of insurer***] claims that no insurance contract was created because [***name of insured***] [concealed an important fact/made a false representation] in [his/her/its] application for insurance. To establish this ~~claim~~defense, [***name of insurer***] must prove all of the following:**

1. **That [***name of insured***] submitted an application for insurance with [***name of insurer***];**

2. **That in the application for insurance [***name of insured***], whether intentionally or unintentionally, ~~[intentionally]~~ [failed to state/represented] that [***insert omission or alleged misrepresentation***];**

3. **[That the application asked for that information;]**

4. **That [***name of insured***] knew that [***specify facts that were misrepresented or omitted***]; and~~[***select one of the following:***]~~**

   ~~**[knew that [*insert omission*];]**~~

   ~~**[knew that this representation was not true;]**~~

5. **That [***name of insurer***] would not have issued the insurance policy if [***name of insured***] had stated the true facts in the application~~;~~.**

~~6. That [*name of insurer*] gave [*name of insured*] notice that it was rescinding the insurance policy; and~~

~~7. That [*name of insurer*] [returned/offered to return] the insurance premiums paid by [*name of insured*].~~

New September 2003; Revised April 2004, October 2004, June 2015

Directions for Use

This instruction presents an insurer's affirmative defense to a claim for coverage. The defense is based on a misrepresentation or omission made by the insured in the application for the insurance. (See *Douglas v. Fid. Nat'l Ins. Co.* (2014) 229 Cal.App.4th 392, 408 [177 Cal.Rptr.3d 271].) If the policy at issue is a standard fire insurance policy, replace "intentionally or unintentionally" in element 2 with "willfully." (See Ins. Code, § 2071.) Otherwise, the insurer is not required to prove an intent to deceive; negligence or inadvertence is enough if the misrepresentation or omission is material. (*Douglas, supra,* 229 Cal.App.4th at p. 408.) Element 5 expresses materiality.~~Use the bracketed word "intentionally" for cases involving Insurance Code section 2071.~~

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Element 3 applies only if plaintiff omitted information, not if he or she misrepresented information. ~~Elements 5 and 6 may be resolved by the language of the complaint, in which case these could be decided as a matter of law. (Civ. Code, § 1691.)~~

While no intent to mislead is required, the insured must know the facts that constitute the omission or misrepresentation (see element 4). For example, if the application does not disclose that property on which insurance is sought is being used commercially, the applicant must have known that the property is being used commercially. (See Ins. Code, § 332.) It is not a defense, however, if the insured gave incorrect or incomplete responses on the application because he or she failed to appreciate the significance of some information known to him or her. (See *Thompson v. Occidental Life Insurance Co. of California* (1973) 9 Cal.3d 904, 916 [109 Cal.Rptr. 473, 513 P.2d 353].)~~If the insured's misrepresentation or concealment in the insurance application is raised as an affirmative defense by the insurer, this instruction may be modified for use. The elements of the defense would be the same as stated above.~~

If it is alleged that omission occurred in circumstances other than a written application, this instruction should be modified accordingly.

Sources and Authority

- Rescission of Contract. Civil Code section 1689(b)(1).
- Time of Insurer's Rescission of Policy. Insurance Code section 650.
- Concealment by Failure to Communicate. Insurance Code section 330.
- Concealment Entitles Insurer to Rescind. Insurance Code section 331.
- Duty to Communicate in Good Faith. Insurance Code section 332.
- Materiality. Insurance Code section 334.
- Intentional Omission of Information Tending to Prove Falsity. Insurance Code section 338.
- False Represe~~i~~ntation: Time for Rescission. Insurance Code section 359.
- "It is well established that material misrepresentations or concealment of material facts in an application for insurance entitle an insurer to rescind an insurance policy, even if the misrepresentations are not intentionally made. Additionally, '[a] misrepresentation or concealment of a material fact in an insurance application also establishes a complete defense in an action on the policy. [Citations.] As with rescission, an insurer seeking to invalidate a policy based on a material misrepresentation or concealment as a defense need not show an intent to deceive. [Citations.]' " (*Douglas, supra,* 229 Cal.App.4th at p. 408, internal citations omitted.)
- "When the [automobile] insurer fails ... to conduct ... a reasonable investigation [of insurability] it cannot assert ... a right of rescission" under section 650 of the Insurance Code as an affirmative

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defense to an action by an injured third party. (*Barrera v. State Farm Mutual Automobile Insurance Co.* (1969) 71 Cal.2d 659, 678 [79 Cal.Rptr. 106, 456 P.2d 674].)

- "[A]n insurer has a right to know all that the applicant for insurance knows regarding the state of his health and medical history. Material misrepresentation or concealment of such facts [is] grounds for rescission of the policy, and an actual intent to deceive need not be shown. Materiality is determined solely by the probable and reasonable effect [that] truthful answers would have had upon the insurer. The fact that the insurer has demanded answers to specific questions in an application for insurance is in itself usually sufficient to establish materiality as a matter of law." (*Thompson, supra, ~~v. Occidental Life Insurance Co. of California~~* ~~(1973)~~ 9 Cal.3d at pp.~~904,~~ 915-916 ~~[109 Cal.Rptr. 473, 513 P.2d 353]~~, internal citations omitted.)

- "[I]f the applicant for insurance had no present knowledge of the facts sought, or failed to appreciate the significance of information related to him, his incorrect or incomplete responses would not constitute grounds for rescission. Moreover, '[questions] concerning illness or disease do not relate to minor indispositions but are to be construed as referring to serious ailments which undermine the general health.' Finally, as the misrepresentation must be a material one, 'incorrect answer on an insurance application does not give rise to the defense of fraud where the true facts, if known, would not have made the contract less desirable to the insurer.' And the trier of fact is not required to believe the 'post mortem' testimony of an insurer's agents that insurance would have been refused had the true facts been disclosed." (*Thompson, supra,* 9 Cal.3d at p. 916, internal citations omitted.)

- "[T]he burden of proving misrepresentation [for purposes of rescission] rests upon the insurer." (*Thompson, supra,* 9 Cal.3d at p. 919.)

- "To prevail, the insurer must prove that the insured made a material 'false representation' in an insurance application. 'A representation is false when the facts fail to correspond with its assertions or stipulations.' The test for materiality of the misrepresentation or concealment is the same as it is for rescission, 'a misrepresentation or concealment is material if a truthful statement would have affected the insurer's underwriting decision.' " (*Douglas, supra,* 229 Cal.App.4th at p. 408, internal citations omitted.)

- "The materiality of a representation made in an application for a contract of insurance is determined by a *subjective* standard (i.e., its effect on the *particular* insurer to whom it was made) and rescission will be allowed even though the misrepresentation was the result of negligence or the product of innocence. On the other hand, in order to void a policy based upon the insured's violation of the standard fraud and concealment clause ... , the false statement must have been knowingly and wilfully made with the intent (express or implied) of deceiving the insurer. The materiality of the statement will be determined by the *objective* standard of its effect upon a *reasonable* insurer." (*Cummings v. Fire Insurance Exchange* (1988) 202 Cal.App.3d 1407, 1415, fn.7 [249 Cal.Rptr. 568], original italics, internal citation omitted.)

- "Cancellation and rescission are not synonymous. One is prospective, while the other is retroactive." (*Fireman's Fund American Insurance Co. v. Escobedo* (1978) 80 Cal.App.3d 610, 619 [145 Cal.Rptr. 785].)

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- "[U]pon a rescission of a policy of insurance, based upon a material concealment or misrepresentation, all rights of the insured thereunder (except the right to recover any consideration paid in the purchase of the policy) are extinguished ... ." (*Imperial Casualty & Indemnity Co. v. Sogomonian* (1988) 198 Cal.App.3d 169, 184 [243 Cal.Rptr. 639].)

- "The consequence of rescission is not only the termination of further liability, but also the restoration of the parties to their former positions by requiring each to return whatever consideration has been received. ... [T]his would require the refund by [the insurer] of any premiums and the repayment by the defendants of any proceed advance which they may have received." (*Imperial Casualty & Indemnity Co., supra,* 198 Cal.App.3d at p. 184, internal citation omitted.)

Secondary Sources

Croskey et al., California Practice Guide: Insurance Litigation ~~(The Rutter Group)~~ ¶¶ 5:143–5:146, 5:153–5:159.1, 5:160–5:287, 15:241–15:256 (The Rutter Group)

2 California Liability Insurance Practice: Claims & Litigation (Cont.Ed.Bar) Rescission and Reformation, §§ 21.2–21.12, 21.35–21.37

2 California Insurance Law & Practice, Ch. 8, *The Insurance Contract,* § 8.10[1] (Matthew Bender)

2 California Uninsured Motorist Law, Ch. 24, *Bad Faith in Uninsured Motorist Law*, § 24.40 (Matthew Bender)

26 California Forms of Pleading and Practice, Ch. 308, *Insurance*, § 308.18 (Matthew Bender)

12 California Points and Authorities, Ch. 120, *Insurance*, §§ 120.250–120.251, 120.260 (Matthew Bender)

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2432. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions That Violate Public Policy

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[*Name of plaintiff***] claims that [***name of defendant***] forced [him/her] to resign for reasons that violate public policy. It is a violation of public policy [***specify claim in case, e.g., for an employer to require an employee to work more than forty hours a week for less than minimum wage***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] was employed by [***name of defendant***];**

2. **That [***name of plaintiff***] was subjected to working conditions that violated public policy, in that [***describe conditions imposed on the employee that constitute the violation, e.g., "[name of plaintiff] was treated required to work more than forty hours a week for less than minimum wage"***];**

3. **That [***name of defendant***] intentionally created or knowingly permitted these working conditions;**

4. **That these working conditions were so intolerable that a reasonable person in [***name of plaintiff***]'s position would have had no reasonable alternative except to resign;**

5. **That [***name of plaintiff***] resigned because of these working conditions;**

6. **That [***name of plaintiff***] was harmed; and**

7. **That the working conditions were a substantial factor in causing [***name of plaintiff***]'s harm.**

To be intolerable, the adverse working conditions must be unusually aggravated or involve a continuous pattern of mistreatment. Trivial acts are insufficient ~~or repeatedly offensive to a reasonable person in [*name of plaintiff*]'s position~~.

New September 2003; Revised December 2014, June 2015

Directions for Use

This instruction should be given if plaintiff claims that his or her constructive termination was wrongful because defendant subjected plaintiff to intolerable working conditions in violation of public policy. The instruction must be supplemented with CACI No. 2433, *Wrongful Discharge in Violation of Public Policy—Damages.* See also CACI No. 2510, *"Constructive Discharge" Explained.*

The judge should determine whether the purported reason for plaintiff's resignation would amount to a violation of public policy. (See *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1092 [4 Cal. Rptr. 2d 874, 824 P.2d 680; overruled on other grounds in *Green v. Ralee Engineering Co.* (1998) 19 Cal. 4th 66,

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80 fn. 6 [78 Cal. Rptr. 2d 16, 960 P.2d 1046].) The jury should then be instructed that the alleged conduct would constitute a public-policy violation if proved.

Whether conditions are so intolerable as to justify the employee's decision to quit rather than endure them is to be judged by an objective reasonable-employee standard. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1247 [32 Cal.Rptr.2d 223, 876 P.2d 1022].) This standard is captured in element 4. The paragraph at the end of the instruction gives the jury additional guidance as to what makes conditions intolerable. (See *id.* at p. 1247.) Note that in some circumstances, a single intolerable incident, such as a crime of violence against an employee by an employer, or an employer's ultimatum that an employee commit a crime, may constitute a constructive discharge. (*Id.* at p. 1247, fn.3.)

Sources and Authority

- "[W]hen an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)

- "[T]his court established a set of requirements that a policy must satisfy to support a tortious discharge claim. First, the policy must be supported by either constitutional or statutory provisions. Second, the policy must be 'public' in the sense that it 'inures to the benefit of the public' rather than serving merely the interests of the individual. Third, the policy must have been articulated at the time of the discharge. Fourth, the policy must be 'fundamental' and 'substantial.' " (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890 [66 Cal.Rptr.2d 888, 941 P.2d 1157], fn. omitted.)

- "In addition to statutes and constitutional provisions, valid administrative regulations may also serve as a source of fundamental public policy that impacts on an employer's right to discharge employees when such regulations implement fundamental public policy found in their enabling statutes." (*D'sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, 933 [102 Cal.Rptr.2d 495], internal citation omitted.)

- "Plaintiffs assert, in essence, that they were terminated for refusing to engage in conduct that violated fundamental public policy, to wit, nonconsensual sexual acts. They also assert, in effect, that they were discharged in retaliation for attempting to exercise a fundamental right -- the right to be free from sexual assault and harassment. Under either theory, plaintiffs, in short, should have been granted leave to amend to plead a cause of action for wrongful discharge in violation of public policy." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 91 [276 Cal.Rptr. 130, 801 P.2d 373].)

- "Constructive discharge occurs when the employer's conduct effectively forces an employee to resign. Although the employee may say, 'I quit,' the employment relationship is actually severed involuntarily by the employer's acts, against the employee's will. As a result, a constructive discharge is legally regarded as a firing rather than a resignation." (*Turner, supra, ~~v. Anheuser-Busch, Inc. (1994)~~* 7 Cal.4th at pp.~~1238,~~ 1244-1245 ~~[32 Cal.Rptr.2d 223, 876 P.2d 1022]~~, internal citation omitted.)

- "Although situations may exist where the employee's decision to resign is unreasonable as a matter of law, '[w]hether conditions were so intolerable as to justify a reasonable employee's decision to resign

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is normally a question of fact. [Citation.]' " (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 827 [166 Cal.Rptr.3d 242].)

- "In order to establish a constructive discharge, an employee must plead and prove ... that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." (*Turner, supra,* 7 Cal.4th at p. 1251.)

- "The conditions giving rise to the resignation must be sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the job to earn a livelihood and to serve his or her employer. The proper focus is on whether the resignation was coerced, not whether it was simply one rational option for the employee." (*Turner, supra,* 7 Cal.4th at p. 1246.)

- "In order to amount to a constructive discharge, adverse working conditions must be unusually 'aggravated' or amount to a 'continuous pattern' before the situation will be deemed intolerable. In general, '[s]ingle, trivial, or isolated acts of [misconduct] are insufficient' to support a constructive discharge claim. Moreover, a poor performance rating or a demotion, even when accompanied by reduction in pay, does not by itself trigger a constructive discharge~~In some circumstances, a single intolerable incident, such as a crime of violence against an employee by an employer, or an employer's ultimatum that an employee commit a crime, may constitute a constructive discharge. Such misconduct potentially could be found 'aggravated.' ~~" (*Turner, supra,* 7 Cal.4th at p. 1247, footnote and internal citation omitted~~fn. 3~~.)

- "The mere existence of illegal conduct in a workplace does not, without more, render employment conditions intolerable to a reasonable employee." (*Turner, supra,* 7 Cal.4th at p. 1254.)

- "[T]he standard by which a constructive discharge is determined is an objective one-the question is 'whether a reasonable person faced with the allegedly intolerable employer actions or conditions of employment would have no reasonable alternative except to quit.' " (*Turner, supra,* 7 Cal.4th at p. 1248, internal citations omitted.)

- "The length of time the plaintiff remained on the job may be one relevant factor in determining the intolerability of employment conditions from the standpoint of a reasonable person." (*Turner, supra,* 7 Cal.4th at p. 1254.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 222

Chin et al., California Practice Guide: Employment Litigation, Ch. 4-G, Constructive Discharge, ¶¶ 4:405–4:406, 4:409–4:411, 4:421–4:422 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-A, Wrongful Discharge In Violation Of Public Policy (Tameny Claims), ¶¶ 5:2, 5:45–5:47, 5:50, 5:70, 5:105, 5:115, 5:150, 5:151, 5:170,

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5:195, 5:220 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Public Policy Violations, §§ 5.45–5.46

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.04 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, §§ 249.15, 249.50 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, §§ 100.31, 100.32, 100.36–100.38 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 6:23–6:25 (Thomson Reuters)

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2508. Failure to File Timely Administrative Complaint (Gov. Code, § 12960(d))—Plaintiff Alleges Continuing Violation

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[*Name of defendant***] contends that [***name of plaintiff***]'s lawsuit may not proceed because [***name of plaintiff***] did not timely file a complaint with the Department of Fair Employment and Housing (DFEH). A complaint is timely if it was filed within one year of the date on which [***name of defendant***]'s alleged unlawful practice occurred.**

[*Name of plaintiff***] filed a complaint with the DFEH on [***date***]. [***Name of defendant***] claims that its alleged unlawful practice that triggered the requirement to file a complaint occurred no later than [***date more than one year before DFEH complaint was filed***]. [***Name of plaintiff***] claims that [***name of defendant***]'s unlawful practice was a continuing violation so that the requirement to file a complaint was triggered no earlier than [***date less than one year before DFEH complaint was filed***].**

[*Name of defendant***]'s alleged unlawful practice is considered as continuing to occur as long as [***name of plaintiff***] proves that all of the following three conditions continue to exist:**

1. **Conduct occurring within a year of the date on which [***name of plaintiff***] filed [his/her] complaint with the DFEH was similar or related to the conduct that occurred earlier;**

2. **The conduct was reasonably frequent; and**

3. **The conduct had not yet become permanent.**

"Permanent" in this context means that the conduct has stopped, [*name of plaintiff***] has resigned, or [***name of defendant***]'s statements and actions would make it clear to a reasonable employee that any further efforts to resolve the issue internally would be futile.**

~~**The burden is on [***name of plaintiff/name of defendant***] to prove that the complaint [was/was not] filed on time with the department.**~~

New June 2010; Revised December 2011, June 2015

Directions for Use

Give this instruction if the plaintiff relies on the continuing-violation doctrine in order to avoid the bar of the limitation period of one year within which to file an administrative complaint. (See Gov. Code, § 12960(d).) Although the continuing-violation doctrine is labeled an equitable exception to the one-year deadline, it may involve triable issues of fact. (See *Dominguez v. Washington Mutual Bank* (2008) 168 Cal.App.4th 714, 723-724 [85 Cal.Rptr.3d 705].)

If the case involves multiple claims of FEHA violations, replace "lawsuit" in the opening sentence with reference to the particular claim or claims to which the continuing-violation rule may apply.

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In the second paragraph, insert the date on which the administrative complaint was filed and the dates on which both sides allege that the complaint requirement was triggered. The verdict form should ask the jury to specify the date that it finds that the requirement accrued. If there are multiple claims with different continuing-violation dates, repeat this paragraph for each claim.

The plaintiff has the burden to plead and prove timely exhaustion of administrative remedies, such as filing a sufficient complaint with the DFEH. (*Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1345 [172 Cal.Rptr.3d 686].) This burden of proof would appear to extend to any excuse or justification for the failure to timely file, such as the continuing violation exception. (See *Holland v. Union Pacific Railroad Co.* (2007) 154 Cal.App.4th 940, 945 [65 Cal.Rptr.3d 145] [plaintiff's burden to establish an exception that would deem the administrative complaint to be timely].)~~No case directly addresses which party has the burden of proof regarding the continuing-violation doctrine. One view is that because the statute of limitations is an affirmative defense, the defendant bears the burden of proving every aspect of the defense including disproving a continuing violation. Another view is that the continuing-violation doctrine is similar to the delayed-discovery rule, on which the plaintiff bears the burden of proof under most circumstances. (See CACI No. 455, *Statute of Limitations—Delayed Discovery*.) Give the last sentence according to how the court determines that the burden of proof should be allocated.~~

Sources and Authority

- Administrative Complaint for FEHA Violation. Government Code section 12960.

- "Under the FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the Department of Fair Employment and Housing (Department) and must obtain from the Department a notice of right to sue in order to be entitled to file a civil action in court based on violations of the FEHA. The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA. As for the applicable limitation period, the FEHA provides that no complaint for any violation of its provisions may be filed with the Department 'after the expiration of one year from the date upon which the alleged *unlawful practice* or refusal to cooperate *occurred*,' with an exception for delayed discovery not relevant here." (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 63 [105 Cal.Rptr.2d 652], original italics, internal citations omitted.)

- "[I]t is 'plaintiff's burden to plead and prove timely exhaustion of administrative remedies, such as filing a sufficient complaint with [DFEH] and obtaining a right-to-sue letter.' " (*Kim, supra,* ~~*v. Konad USA* Distribution, Inc. (2014)~~ 226 Cal.App.4th at p.~~1336,~~ 1345 ~~[172 Cal.Rptr.3d 686]~~.)

- "Before maintaining a legal action, a plaintiff must exhaust the administrative remedy of filing a timely complaint with the DFEH and obtaining permission to pursue legal remedies. The one-year period specified in the statute begins to run when the administrative remedy accrues, which is the occurrence of the unlawful practice. In the present case, the allegedly unlawful suspension occurred on July 2, 2002, and therefore the one-year period began to run on that date. As a result, plaintiff's July 2003 administrative complaint was not timely on its face, his allegations to the contrary notwithstanding. This made it his burden to establish an exception that would deem the administrative complaint to be timely." (*Holland, supra,* 154 Cal.App.4th at p. 945, internal citations omitted.)

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- "[Plaintiff] argued below, as she does on appeal, that her DFEH complaint was timely under an equitable exception to the one-year deadline known as the continuing violation doctrine. Under this doctrine, a FEHA complaint is timely if discriminatory practices occurring outside the limitations period continued into that period. A continuing violation exists if (1) the conduct occurring within the limitations period is similar in kind to the conduct that falls outside the period; (2) the conduct was reasonably frequent; and (3) it had not yet acquired a degree of permanence." (*Dominguez, supra,* 168 Cal.App.4th at pp. 720–721, internal citations omitted.)

- " '[P]ermanence' in the context of an ongoing process of accommodation of disability, or ongoing disability harassment, should properly be understood to mean the following: that an employer's statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile. [¶] Thus, when an employer engages in a continuing course of unlawful conduct under the FEHA by refusing reasonable accommodation of a disabled employee or engaging in disability harassment, and this course of conduct does not constitute a constructive discharge, the statute of limitations begins to run, not necessarily when the employee first believes that his or her rights may have been violated, but rather, either when the course of conduct is brought to an end, as by the employer's cessation of such conduct or by the employee's resignation, or when the employee is on notice that further efforts to end the unlawful conduct will be in vain. Accordingly, an employer who is confronted with an employee seeking accommodation of disability or relief from disability harassment may assert control over its legal relationship with the employee either by accommodating the employee's requests, or by making clear to the employee in a definitive manner that it will not be granting any such requests, thereby commencing the running of the statute of limitations." (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823–824 [111 Cal.Rptr.2d 87, 29 P.3d 175], internal citations omitted.)

- "[T]he *Richards* court interpreted section 12960 to mean that when a continuing pattern of wrongful conduct occurs partly in the statutory period and partly outside the statutory period, the limitations period begins to accrue once an employee is on notice of the violation of his or her rights and on notice that 'litigation, not informal conciliation, is the only alternative for the vindication of his or her rights.' " (*Acuna v. San Diego Gas & Electric Co.* (2013) 217 Cal.App.4th 1402, 1412 [159 Cal.Rptr.3d 749].)

- "A continuing violation may be established by demonstrating 'a company wide policy or practice' or 'a series of related acts against a single individual.' 'The continuing violation theory generally has been applied in the context of a continuing policy and practice of discrimination on a company-wide basis; a plaintiff who shows that a policy and practice operated at least in part within the limitation period satisfies the filing requirements. "[A] systematic policy of discrimination is actionable even if some or all of the events evidencing its inception occurred prior to the limitations period. The reason is that the continuing system of discrimination operates against the employee and violates his or her rights up to a point in time that falls within the applicable limitations period. Such continuing violations are most likely to occur in the matter of placements or promotions." ' The plaintiff must demonstrate that at least one act occurred within the filing period and that 'the harassment is "more than the occurrence of isolated or sporadic acts of intentional discrimination." … The relevant distinction is between the occurrence of isolated, intermittent acts of discrimination and a persistent, on-going pattern.' " (*Morgan, supra,* 88 Cal.App.4th at p. 64, internal citations omitted.)

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- "[A] continuing violation claim will likely fail if the plaintiff knew, or through the exercise of reasonable diligence would have known, [he] was being discriminated against at the time the earlier events occurred." (*Morgan, supra,* 88 Cal.App.4th at p. 65.)

- "The Supreme Court has extended the continuing violation doctrine to retaliation claims. And the doctrine also applies to racial harassment claims. Indeed, as we observed in *Morgan v. Regents of University of California, supra,* 88 Cal.App.4th 52, 65: 'Cases alleging a hostile work environment due to racial or sexual harassment are often found to come within the continuing violations framework.' " (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 270 [100 Cal.Rptr.3d 296], internal citations omitted.)

Secondary Sources

7 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 948

3 Witkin, California Procedure (5th ed. 2008) Actions, § 564

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act,* ¶¶ 7:561.1, 7:975 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 16-A, *Failure To Exhaust Administrative Remedies,* ¶ 16:85 (The Rutter Group)

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01[4] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.51[1] (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, § 100.59 (Matthew Bender)

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2512. Limitation on Remedies—Same Decision

[*Name of plaintiff***] claims that [he/she] was [discharged/[***other adverse employment action***]] because of [his/her] [***protected status or action, e.g., race, gender, or age***], which is an unlawful [discriminatory/retaliatory] reason. [***Name of defendant***] claims that [***name of plaintiff***] [was discharged/[***other adverse employment action***]] because of [***specify reason, e.g., plaintiff's poor job performance***], which is a lawful reason.**

If you find that [discrimination/retaliation] was a substantial motivating reason for [*name of plaintiff***]'s [discharge/[***other adverse employment action***]], you must then consider [***name of defendant***]'s stated reason for the [discharge/[***other adverse employment action***]].**

If you find that [*e.g., plaintiff's poor job performance***] was also a substantial motivating reason, then you must determine whether the defendant has proven that [he/she/it] would have [discharged/[***other adverse employment action***]] [***name of plaintiff***] anyway at that time based on [***e.g., plaintiff's poor job performance***] even if [he/she/it] had not also been substantially motivated by [discrimination/retaliation].**

In determining whether [*e.g., plaintiff's poor job performance***] was a substantial motivating reason, determine what actually motivated [***name of defendant***], not what [he/she/it] might have been justified in doing.**

If you find that [*name of defendant***] [discharged/[***other adverse employment action***]] [***name of plaintiff***] only for a [discriminatory/retaliatory] reason, you will be asked to determine the amount of damages that [he/she] is entitled to recover. If, however, you find that [***name of defendant***] would have [discharged/[***other adverse employment action***]] [***name of plaintiff***] anyway at that time for [***specify defendant's nondiscriminatory/nonretaliatory reason***], then [***name of plaintiff***] will not be entitled to reinstatement, back pay, or damages.**

New December 2013; Revised June 2015

Directions for Use

Give this instruction along with CACI No. 2507, *"Substantial Motivating Reason" Explained*, if the employee has presented sufficient evidence for the jury to find that the employer took adverse action against him or her for a prohibited reason, but the employer has presented sufficient evidence for the jury to find that it had a legitimate reason for the action. In such a "mixed-motive" case, the employer is relieved from an award of damages, but may still be liable for attorney fees and costs and injunctive relief. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 211 [152 Cal.Rptr.3d 392, 294 P.3d 49].)

Mixed-motive must be distinguished from pretext though both require evaluation of the same evidence, i.e., the employer's purported legitimate reason for the adverse action. In a pretext case, the only actual motive is the discriminatory one and the purported legitimate reasons are fabricated in order to disguise

the true motive. (See *City and County of San Francisco v. Fair Employment and Housing Com.* (1987) 191 Cal.App.3d 976, 985 [236 Cal.Rptr. 716].) The employee has the burden of proving pretext. (*Harris, supra,* 56 Cal.4th at pp. 214−215.) If the employee proves discrimination or retaliation and also pretext, the employer is liable for all potential remedies including damages. But if the employee proves discrimination or retaliation but fails to prove pretext, then a mixed-motive case is presented. To avoid an award of damages, the employer then has the burden of proving that it would have made the same decision anyway solely for the legitimate reason, even though it may have also discriminated or retaliated.

Sources and Authority

- "[U]nder the FEHA, when a jury finds that unlawful discrimination was a substantial factor motivating a termination of employment, and when the employer proves it would have made the same decision absent such discrimination, a court may not award damages, backpay, or an order of reinstatement. But the employer does not escape liability. In light of the FEHA's express purpose of not only redressing but also preventing and deterring unlawful discrimination in the workplace, the plaintiff in this circumstance could still be awarded, where appropriate, declaratory relief or injunctive relief to stop discriminatory practices. In addition, the plaintiff may be eligible for reasonable attorney's fees and costs." (*Harris, supra,* 56 Cal.4th at p. 211.)

- "Because employment discrimination litigation does not resemble the kind of cases in which we have applied the clear and convincing standard, we hold that preponderance of the evidence is the standard of proof applicable to an employer's same-decision showing" (*Harris, supra,* 53 Cal.4th at p. 239.)

- "[W]hen we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision *at the time it made its actual decision*." (*Harris, supra,* 56 Cal.4th at p. 224, original italics.)

- "In light of today's decision, a jury in a mixed-motive case alleging unlawful termination should be instructed that it must find the employer's action was substantially motivated by discrimination before the burden shifts to the employer to make a same-decision showing, and that a same-decision showing precludes an award of reinstatement, backpay, or damages." (*Harris, supra,* 56 Cal.4th at p. 241.)

- "We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a 'but for' cause." (*Harris, supra,* 56 Cal.4th at p. 229.)

- "[A] plaintiff has the initial burden to make a prima facie case of discrimination by showing that it is more likely than not that the employer has taken an adverse employment action based on a prohibited criterion. A prima facie case establishes a presumption of discrimination. The employer may rebut the presumption by producing evidence that its action was taken for a legitimate, nondiscriminatory reason. If the employer discharges this burden, the presumption of

discrimination disappears. The plaintiff must then show that the employer's proffered nondiscriminatory reason was actually a pretext for discrimination, and the plaintiff may offer any other evidence of discriminatory motive. The ultimate burden of persuasion on the issue of discrimination remains with the plaintiff." (*Harris, supra,* 56 Cal.4th at pp. 214−215.)

- " '[Plaintiff] further argues that for equitable reasons, an employer that wishes to make a same-decision showing must concede that it had mixed motives for taking the adverse employment action instead of denying a discriminatory motive altogether. But there is no inconsistency when an employer argues that its motive for discharging an employee was legitimate, while also arguing, contingently, that if the trier of fact finds a mixture of lawful and unlawful motives, then its lawful motive alone would have led to the discharge.' " (*Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 199 [167 Cal.Rptr.3d 24] [quoting *Harris, supra,* 56 Cal.App.4th at p. 240].)

- "As a preliminary matter, we reject [defendant]'s claim that the jury could have found no liability on the part of [defendant] had it been properly instructed on the mixed-motive defense at trial. As discussed, the Supreme Court in *Harris* held that the mixed-motive defense is available under the FEHA, but only as a limitation on remedies and not as a complete defense to liability. Consequently, when the plaintiff proves by a preponderance of the evidence that discrimination was a substantial motivating factor in the adverse employment decision, the employer is liable under the FEHA. When the employer proves by a preponderance of the evidence that it would have made the same decision even in the absence of such discrimination, the employer is still liable under the FEHA, but the plaintiff's remedies are then limited to declaratory or injunctive relief, and where appropriate, attorney's fees and costs. As presently drafted, BAJI No. 12.26 does not accurately set forth the parameters of the defense as articulated by the Supreme Court, but rather states that, in a mixed-motive case, 'the employer is not liable if it can establish by a preponderance of the evidence that its legitimate reason, standing alone, would have induced it to make the same decision.' By providing that the mixed-motive defense, if proven, is a complete defense to liability, [defendant]'s requested instruction directly conflicts with the holding in *Harris*. (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 481 [161 Cal.Rptr.3d 758], internal citations omitted.)

- "Pretext may … be inferred from the timing of the company's termination decision, by the identity of the person making the decision, and by the terminated employee's job performance before termination." (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 272 [100 Cal.Rptr.3d 296].)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005)~~,~~ Constitutional Law, §§ 928, 950

7 Witkin, California Procedure (5th ed. 2008), Judgment § 217

3 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws,* § 41.11 (Matthew Bender)

Draft−Not Approved by Judicial Council

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23 (Matthew Bender)

2702. Nonpayment of Overtime Compensation—Essential Factual Elements (Lab. Code, § 1194)

[*Name of plaintiff***] claims that [***name of defendant***] owes [him/her] overtime pay as required by state law. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] performed work for [***name of defendant***];**

2. **That [***name of plaintiff***] worked overtime hours;**

3. **That [***name of defendant***] knew or should have known that [***name of plaintiff***] had worked overtime hours;**

4. **That [***name of plaintiff***] was [not paid/paid less than the overtime rate] for some or all of the overtime hours worked; and**

5. **The amount of overtime pay owed.**

Overtime hours are the hours worked longer than [*insert applicable definition(s) of overtime hours***].**

Overtime pay is [*insert applicable formula***].**

An employee is entitled to be paid the legal overtime pay rate even if he or she agrees to work for a lower rate.

New September 2003; Revised June 2005, June 2014, June 2015

Directions for Use

The court must determine the overtime compensation rate under applicable state or federal law. (See, e.g., Lab. Code, §§ 1173, 1182; Cal. Code Regs., tit. 8, § 11000, subd. 2, § 11010, subd. 4(A), and § 11150, subd. 4(A).) The jury must be instructed accordingly. It is possible that the overtime rate will be different over different periods of time.

Wage and hour claims are governed by two sources of authority: the provisions of the Labor Code and a series of 18 wage orders, adopted by the Industrial Welfare Commission. (See *Mendiola v. CPS Security Solutions, Inc.* (2014) 60 Cal.4th 833, 838 [182 Cal.Rptr.3d 124, 340 P.3d 355].) Both the Labor Code and the IWC wage orders provide for certain exemptions from overtime laws. (See e.g., Lab. Code, § 1171 [outside salespersons are exempt from overtime requirements]~~For example, outside salespersons are exempt from overtime requirements (see Lab. Code, § 1171~~).The assertion of an employee's exemption ~~from overtime laws~~ is an affirmative defense, which presents a mixed question of law and fact. (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794 [85 Cal.Rptr.2d 844, 978 P.2d 2].)~~ An employee's exemption from overtime laws presents a mixed question of law and fact. (*Id.*)~~ For instructions on exemptions, see CACI No. 2720, *Affirmative Defense—Nonpayment of Overtime—Executive Exemption,* and CACI No. 2721, *Affirmative Defense—Nonpayment of Overtime—Administrative Exemption*,

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Sources and Authority

- Employee Right to Recover Minimum Wage or Overtime Compensation. Labor Code section 1194(a).
- Recovery of Liquidated Damages. Labor Code section 1194.2.
- "Wages" Defined. Labor Code section 200.
- Payment of Uncontested Wages Required. Labor Code section 206(a).
- Rate of Compensation. Labor Code section 515(d).
- Action by Department to Recover Unpaid Minimum Wage or Overtime Compensation. Labor Code section 1193.6(a).
- "[T]he assertion of an exemption from the overtime laws is considered to be an affirmative defense, and therefore the employer bears the burden of proving the employee's exemption." (*Ramirez, supra,* 20 Cal.4th at pp. 794–795.)
- "[W]here an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours is not a violation … ." (*Jong v. Kaiser Foundation Health Plan, Inc.* (2014) 226 Cal.App.4th 391, 395 [171 Cal.Rptr.3d 874] [applying rule under federal Fair Labor Standards Act to claims under California Labor Code].)
- "[A]n employer's actual or constructive knowledge of the hours its employees work is an issue of fact … ." (*Jong, supra,* 226 Cal.App.4th at p. 399.)
- "The question whether [plaintiff] was an outside salesperson within the meaning of applicable statutes and regulations is … a mixed question of law and fact." (*Ramirez, supra,* 20 Cal.4th at p. 794.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 382–384, 398, 399

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-D, *Payment Of Wages*, ¶¶ 11:456, 11:470.1, 11:499 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-F, *Payment Of Overtime Compensation*, ¶¶ 11:730, 11:955.2 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-J, *Enforcing California Laws*

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Regulating Employee Compensation, ¶¶ 11:1342, 11:1478.5 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 3, *Overtime Compensation and Regulation of Hours Worked*, §§ 3.03[1], 3.04[1], 3.07[1], 3.08[1], 3.09[1]; Ch. 5, *Administrative and Judicial Remedies Under Wage and Hour Laws*, § 5.72 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes* (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 4:67, 4:76 (Thomson Reuters)

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VF-2702. Nonpayment of Overtime Compensation (Lab. Code, § 1194)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] perform work for [*name of defendant*]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] work overtime hours?
Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know, or should [*name of defendant*] have known, that [*name of plaintiff*] had worked overtime hours?
Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~2~~4. Was [*name of plaintiff*] paid at a rate lower than the legal overtime compensation rate for any overtime hours that [he/she] worked for [*name of defendant*]?
____ Yes ____ No

If your answer to question ~~2~~ 4 is yes, then answer question ~~3~~5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~3~~5. What is the amount of wages owed? $_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, June 2015

Directions for Use

This verdict form is based on CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

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3020. Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements (42 U.S.C. § 1983)

[*Name of plaintiff*] claims that [*name of defendant*] used excessive force in [arresting/detaining] [him/her]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] used force in [arresting/detaining] [*name of plaintiff*];**

2. **That the force used by [*name of defendant*] was excessive;**

3. **That [*name of defendant*] was acting or purporting to act in the performance of [his/her] official duties;**

4. **That [*name of plaintiff*] was harmed; and**

5. **That [*name of defendant*]'s use of excessive force was a substantial factor in causing [*name of plaintiff*]'s harm.**

Force is not excessive if it is reasonably necessary under the circumstances. In deciding whether force is reasonably necessary or excessive, you should determine, based on all of the facts and circumstances, what force a reasonable law enforcement officer on the scene would have used under the same or similar circumstances. You should consider~~, among other factors,~~ the following:

(a) Whether [*name of plaintiff*] reasonably appeared to pose an immediate threat to the safety of [*name of defendant*] or others;

(b) The seriousness of the crime at issue; [and]

(c) Whether [*name of plaintiff*] was actively [resisting [arrest/detention]/ [or] attempting to avoid [arrest/detention] by flight][;/.] [and]

(d) (*specify other factors particular to the case*).

New September 2003; Revised June 2012; Renumbered from CACI No. 3001 December 2012; Revised June 2015

Directions for Use

The "official duties" referred to in element 3 must be duties created ~~pursuant to~~by a~~ny~~ state, county, or municipal law, ordinance, or regulation. This aspect of color of law most likely will not be an issue for the jury, so it has been omitted to shorten the wording of element 3.

The three factors listed are often referred to as the "*Graham* factors." (See *Graham v. Connor* (1989) 490

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U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) The *Graham* factors are not exclusive. (See *Glenn v. Wash. County* (9th Cir. 2011) 661 F.3d 460, 467–468.) Additional factors may be added if appropriate to the facts of the case.

This instruction may be modified for use in a negligence claim under California common law based on the same event and facts. The *Graham* factors apply under California negligence law. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514 [94 Cal. Rptr. 3d 1, 207 P.3d 506].) Liability under California negligence law can arise if tactical conduct and decisions preceding the use of force, as part of the totality of circumstances, make the ultimate use of force unreasonable. In this respect, California negligence law differs from the federal standard under the Fourth Amendment, which focuses more narrowly on the moment when force is used. (*Hayes v. County of San Diego* (2014) 57 Cal.4th 622, 639 [160 Cal.Rptr.-3d 684, 305 P.3d 252].) If the negligence claim is based in part on tactical conduct and decisions made before the use of force, this instruction may be modified to specifically instruct the jury to consider the officers' pre-force decisions and conduct.

Sources and Authority

- "In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. In most instances, that will be either the Fourth Amendment's prohibition against unreasonable seizures of the person, or the Eighth Amendment's ban on cruel and unusual punishments, which are the two primary sources of constitutional protection against physically abusive governmental conduct." (*Graham, supra,* 490 U.S. at p. 395, internal citations and footnote omitted.)

- "Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right 'to be secure in their persons ... against unreasonable ... seizures' of the person." (*Graham, supra,* 490 U.S. at p. 394.)

- "[A]ll claims that law enforcement officers have used excessive force-deadly or not-in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." (*Graham, supra,* 490 U.S. at p. 395.)

- "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (*Graham, supra,* 490 U.S. at p. 396.)

- "Because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,' ... its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Graham, supra,* 490 U.S. at p. 396, internal citation omitted.)

- "The most important of these [factors from *Graham,* above] is whether the suspect posed an

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immediate threat to the officers or others, as measured objectively under the circumstances." (*Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 712 [141 Cal.Rptr.3d 553] .)

- "[The *Graham*] factors, however, are not exclusive. We 'examine the totality of the circumstances and consider "whatever specific factors may be appropriate in a particular case, whether or not listed in *Graham*." ' Other relevant factors include the availability of less intrusive alternatives to the force employed, whether proper warnings were given and whether it should have been apparent to officers that the person they used force against was emotionally disturbed." (*Glenn, supra,* 661 F.3d at p. 467, internal citations omitted.)

- "Because the reasonableness standard 'nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly.' " (*Torres v. City of Madera* (9th Cir. 2011) 648 F.3d 1119, 1125.)

- "To be sure, the reasonableness inquiry in the context of excessive force balances 'intrusion[s] on the individual's Fourth Amendment interests' against the government's interests. But in weighing the evidence in favor of the officers, rather than the [plaintiffs], the district court unfairly tipped the reasonableness inquiry in the officers' favor." (*Sandoval v. Las Vegas Metro. Police Dep't* (9th Cir. 2014) 756 F.3d 1154, 1167, internal citation omitted.)

- "The Fourth Amendment's 'reasonableness' standard is not the same as the standard of 'reasonable care' under tort law, and negligent acts do not incur constitutional liability." (*Hayes, supra, ~~v. County of San Diego~~* ~~(2013)~~ 57 Cal.4th at p.~~622,~~ 639 ~~[160 Cal.Rptr.3d 684, 305 P.3d 252]~~.)

- "[S]tate negligence law, which considers the totality of the circumstances surrounding any use of deadly force, is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used." (*Hayes, supra,* 57 Cal.4th at p. 639, internal citations omitted.)

- "We are cognizant of the Supreme Court's command to evaluate an officer's actions 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.' We also recognize the reality that 'police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation.' This does not mean, however, that a Fourth Amendment violation will be found only in those rare instances where an officer and his attorney are unable to find a sufficient number of compelling adjectives to describe the victim's conduct. Nor does it mean that we can base our analysis on what officers actually felt or believed during an incident. Rather, we must ask if the officers' conduct is ' "objectively reasonable" in light of the facts and circumstances confronting them' without regard for an officer's subjective intentions." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 831, internal citations omitted.)

- "[A]n officer may not use deadly force to apprehend a suspect where the suspect poses no immediate threat to the officer or others. On the other hand, it is not constitutionally unreasonable to prevent escape using deadly force '[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.' " (*Wilkinson v. Torres* (9th Cir.

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2010) 610 F.3d 546, 550, internal citations omitted.)

- ~~"[O]fficers may be held liable for an otherwise lawful defensive use of deadly force when they intentionally or recklessly provoke a violent confrontation by actions that rise to the level of an independent Fourth Amendment violation." (*Sheehan v. City & County of San Francisco* (9th Cir. 2014) 743 F.3d 1211, 1216.)~~

- "Resistance, or the reasonable perception of resistance, does not entitle police officers to use any amount of force to restrain a suspect. Rather, police officers who confront actual (or perceived) resistance are only permitted to use an amount of force that is reasonable to overcome that resistance." (*Barnard v. Theobald* (9th Cir. 2013) 721 F.3d 1069, 1076, internal citations omitted.)

- "[T]he fact that the 'suspect was armed with a deadly weapon' does *not* render the officers' response per se reasonable under the Fourth Amendment. [¶] This is not to say that the Fourth Amendment always requires officers to delay their fire until a suspect turns his weapon on them. If the person is armed—or reasonably suspected of being armed—a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat." (*George v. Morris* (9th Cir. 2013) 724 F.3d 1191, 1200, original italics, internal citations omitted.)

- " '[A] simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.' Here, whether objective factors supported [defendant]'s supposed subjective fear is not a question that can be answered as a matter of law based upon the limited evidence in the record, especially given that on summary judgment that evidence must be construed in the light most favorable to [plaintiff], the non-moving party. Rather, whether [defendant]'s claim that he feared a broccoli-based assault is credible and reasonable presents a genuine question of material fact that must be resolved not by a court ruling on a motion for summary judgment but by a jury in its capacity as the trier of fact." (*Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1163–1164.)

- "Although *Graham* does not specifically identify as a relevant factor whether the suspect poses a threat to *himself,* we assume that the officers could have used some reasonable level of force to try to prevent [decedent] from taking a suicidal act. But we are aware of no published cases holding it reasonable to use a *significant* amount of force to try to stop someone from attempting suicide. Indeed, it would be odd to permit officers to use force capable of causing serious injury or death in an effort to prevent the possibility that an individual might attempt to harm only himself. We do not rule out that in some circumstances some force might be warranted to prevent suicide, but in cases like this one the 'solution' could be worse than the problem." (*Glenn, supra,* 661 F.3d at p. 468.)

- "[W]e have stated that if the police were summoned to the scene to protect a mentally ill offender from himself, the government has less interest in using force. By contrast, if the officer warned the offender that he would employ force, but the suspect refused to comply, the government has an increased interest in the use of force." (*Marquez v. City of Phoenix* (9th Cir. 2012) 693 F.3d 1167, 1175, internal citation omitted.)

- "[P]reshooting conduct is included in the totality of circumstances surrounding an officer's use of deadly force, and therefore the officer's duty to act reasonably when using deadly force extends to

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preshooting conduct. But in a case like this one, where the preshooting conduct did not cause the plaintiff any injury independent of the injury resulting from the shooting, the reasonableness of the officers' preshooting conduct should not be considered in isolation. Rather, it should be considered in relation to the question whether the officers' ultimate use of deadly force was reasonable." (*Hayes, supra,* 57 Cal.4th at p. 632, internal citation omitted.)

- "A person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer by means of physical force or show of authority terminates or restrains his freedom of movement through means intentionally applied." (*Nelson v. City of Davis* (9th Cir. 2012) 685 F.3d 867, 875.)

- "The Supreme Court has interpreted the phrase 'under "color" of law' to mean 'under "pretense" of law.' A police officer's actions are under pretense of law only if they are 'in some way "related to the performance of his official duties." ' By contrast, an officer who is ' "pursuing his own goals and is not in any way subject to control by [his public employer]," ' does not act under color of law, unless he 'purports or pretends' to do so. Officers who engage in confrontations for personal reasons unrelated to law enforcement, and do not 'purport[] or pretend[]' to be officers, do not act under color of law." (*Huffman v. County of Los Angeles* (9th Cir. 1998) 147 F.3d 1054, 1058, internal citations omitted.)

- "We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." (*Heck v. Humphrey* (1994) 512 U.S. 477, 486–487 [114 S.Ct. 2364, 129 L.Ed.2d 383], footnotes and internal citation omitted.)

- "[Plaintiff]'s section 1983 claim *is* barred to the extent it alleges that [the arresting officer] lacked justification to arrest him or to respond with reasonable force to his resistance. The use of deadly force in this situation, though, requires a separate analysis. 'For example, a defendant might resist a lawful arrest, to which the arresting officers might respond with excessive force to subdue him. The subsequent use of excessive force would not negate the lawfulness of the initial arrest attempt, or negate the unlawfulness of the criminal defendant's attempt to resist it. Though occurring in one continuous chain of events, two isolated factual contexts would exist, the first giving rise to criminal liability on the part of the criminal defendant, and the second giving rise to civil liability on the part of the arresting officer.' " (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 899 [76 Cal.Rptr.3d 787, 183 P.3d 471], original italics.)

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- "[P]rivate parties ordinarily are not subject to suit under section 1983, unless, sifting the circumstances of the particular case, the state has so significantly involved itself in the private conduct that the private parties may fairly be termed state actors. Among the factors considered are whether the state subsidized or heavily regulated the conduct, or compelled or encouraged the particular conduct, whether the private actor was performing a function which normally is performed exclusively by the state, and whether there was a symbiotic relationship rendering the conduct joint state action." (*Robbins v. Hamburger Home for Girls* (1995) 32 Cal.App.4th 671, 683 [38 Cal.Rptr.2d 534], internal citations omitted.)

- "Private parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights. Private parties involved in such a conspiracy may be liable under section 1983." (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir.1989) 865 F.2d 1539, 1540, internal citations omitted.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 816, 819 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch.7-G, *Unruh Civil Rights Act*, ¶ 7:1526 et seq. (The Rutter Group)

3 Civil Rights Actions, Ch. 10, *Deprivation of Rights Under Color of State Law—Law Enforcement and Prosecution*, ¶¶ 10.00–10.03 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes*, § 113.14 (Matthew Bender)

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3040. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm (42 U.S.C. § 1983)

[*Name of plaintiff***] claims that [***name of defendant***] subjected [him/her] to prison conditions that violated [his/her] constitutional rights. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That while imprisoned, ~~[*name of plaintiff*] was~~ [***describe violation that created risk, e.g., [name of plaintiff] was placed in a cell block with rival gang members***];**

2. **That [***name of defendant***]'s conduct created a substantial risk of serious harm to [***name of plaintiff***]'s health or safety;**

3. **That [***name of defendant***] knew that [his/her] conduct created a substantial risk of serious harm to [***name of plaintiff***]'s health or safety;**

4. **That there was no reasonable justification for the conduct;**

5. **That [***name of defendant***] was acting or purporting to act in the performance of [his/her] official duties;**

6. **That [***name of plaintiff***] was harmed; and**

7. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Whether the risk was obvious is a factor that you may consider in determining whether [*name of defendant***] knew of the risk.**

New September 2003; Revised December 2010, June 2011; Renumbered from CACI No. 3011 December 2012~~,~~; Revised December 2014, June 2015

Directions for Use

Give this instruction in a case involving conduct that allegedly created a substantial risk of serious harm to an inmate. (See *Farmer v. Brennan* (1994) 511 U.S. 825 [114 S.Ct. 1970, 128 L.Ed.2d 811].) For an instruction on deprivation of medical care, see CACI No. 3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care*. For an instruction involving the deprivation of necessities, see CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eight Amendment—Deprivation of Necessities*.

In prison-conditions cases, the inmate must show that the defendant was deliberately indifferent to his or her health or safety. (*Farmer, supra, ~~v. Brennan (1994)~~* 511 U.S. at p.~~825,~~ 834 ~~[114 S.Ct. 1970, 128 L.Ed.2d 811]~~.) "Deliberate indifference" involves a two part inquiry. First, the inmate must show that the

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prison officials were aware of a "substantial risk of serious harm" to the inmate's health or safety. Second, the inmate must show that the prison officials had no "reasonable" justification for the ~~deprivation~~conduct, in spite of that risk. (*Thomas v. Ponder* (9th Cir. 2010) 611 F.3d 1144, 1150.) Elements 3 and 4 express the deliberate-indifference components.

The "official duties" referred to in element 5 must be duties created ~~pursuant to~~by any state, county, or municipal law, ordinance, or regulation. This aspect of color of law most likely will not be an issue for the jury, so it has been omitted to shorten the wording of element 5.

Sources and Authority

- Civil Action for Deprivation of Rights. Title 42 United States Code section 1983.

- "It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." (*Helling v. McKinney* (1993) 509 U.S. 25, 31 [113 S.Ct. 2475, 125 L.Ed.2d 22].)

- "Our cases have held that a prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, 'sufficiently serious.' For a claim ... based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. The second requirement follows from the principle that 'only the unnecessary and wanton infliction of pain implicates the Eighth Amendment.' To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.' In prison-conditions cases that state of mind is one of 'deliberate indifference' to inmate health or safety ... ." (*Farmer, supra,* 511 U.S. at p. 834, internal citations omitted.)

- ~~"A deprivation is sufficiently serious when the prison official's act or omission results 'in the denial of the minimal civilized measure of life's necessities.' " (*Lemire v. Cal. Dep't of Corr. & Rehab.* (9th Cir. 2013) 726 F.3d 1062, 1074.)~~

- ~~"The objective question of whether a prison officer's actions have exposed an inmate to a substantial risk of serious harm is a question of fact, and as such must be decided by a jury if there is any room for doubt." (*Lemire, supra,* 726 F.3d at pp. 1075−1076.)~~

- "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." (*Farmer, supra,* 511 U.S. at p. 842, internal citation omitted.)

- "When instructing juries in deliberate indifference cases with such issues of proof, courts should be careful to ensure that the requirement of subjective culpability is not lost. It is not enough merely to find that a reasonable person would have known, or that the defendant should have known, and juries should be instructed accordingly." (*Farmer, supra,* 511 U.S. at p. 843 fn. 8.)

- ~~"The second step, showing 'deliberate indifference,' involves a two part inquiry. First, the inmate must show that the prison officials were aware of a 'substantial risk of serious harm' to an inmate's~~

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~~health or safety. This part of our inquiry may be satisfied if the inmate shows that the risk posed by the deprivation is obvious. Second, the inmate must show that the prison officials had no 'reasonable' justification for the deprivation, in spite of that risk." (*Thomas, supra,* 611 F.3d at p. 1150, footnotes and internal citations omitted.)~~

- "We hold ... that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." (*Farmer, supra,* 511 U.S. at p. 837.)

- ~~"[E]xtreme deprivations are required to make out a conditions-of-confinement claim. Because routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society,' 'only those deprivations denying "the minimal civilized measure of life's necessities" are sufficiently grave to form the basis of an Eighth Amendment violation.' " (*Hudson v. McMillian* (1992) 503 U.S. 1, 9 [112 S.Ct. 995, 117 L.Ed.2d 156], internal citations omitted.)~~

- ~~"Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety." (*Johnson v. Lewis* (9th Cir. 2000) 217 F.3d 726, 731, internal citations omitted.)~~

- "The precise role of legitimate penological interests is not entirely clear in the context of an Eighth Amendment challenge to conditions of confinement. The Supreme Court has written that the test of *Turner v. Safley,* 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987), which requires only a reasonable relationship to a legitimate penological interest to justify prison regulations, does not apply to Eighth Amendment claims. … The existence of a legitimate penological justification has, however, been used in considering whether adverse treatment is sufficiently gratuitous to constitute punishment for Eighth Amendment purposes." (*Grenning v. Miller-Stout* (9th Cir. 2014) 739 F.3d 1235, 1240.)

- "The Supreme Court has interpreted the phrase 'under "color" of law' to mean 'under "pretense" of law.' A police officer's actions are under pretense of law only if they are 'in some way "related to the performance of his official duties." ' By contrast, an officer who is ' "pursuing his own goals and is not in any way subject to control by [his public employer]," ' does not act under color of law, unless he 'purports or pretends' to do so. Officers who engage in confrontations for personal reasons unrelated to law enforcement, and do not 'purport[] or pretend[]' to be officers, do not act under color of law." (*Huffman v. County of Los Angeles* (9th Cir. 1998) 147 F.3d 1054, 1058, internal citations omitted.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 826

3 Civil Rights Actions, Ch. 11, *Deprivation of Rights Under Color of State Law—Prisons*, ¶¶ 11.02–11.03 (Matthew Bender)

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11 California Forms of Pleading and Practice, Ch. 114, *Civil Rights: Prisoners' Rights*, § 114.28 (Matthew Bender)

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3041. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care (42 U.S.C. § 1983)

[*Name of plaintiff*] claims that [*name of defendant*] provided [him/her] with inadequate medical care in violation of [his/her] constitutional rights. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] had a serious medical need;**

2. **That [*name of defendant*] knew that [*name of plaintiff*] faced a substantial risk of serious harm if [his/her] medical need went untreated~~acted with deliberate indifference to this need~~;**

3. **That [*name of defendant*] consciously disregarded that risk by not taking reasonable steps to treat [*name of plaintiff*]'s medical need;**

4~~3~~. **That [*name of defendant*] was acting or purporting to act in the performance of [his/her] official duties;**

5~~4~~. **That [*name of plaintiff*] was harmed; and**

6~~5~~. **That [*name of defendant*]'s ~~deliberate indifference~~conduct was a substantial factor in causing [*name of plaintiff*]'s harm.**

A serious medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and pointless infliction of pain.

Neither medical negligence alone, nor a difference of opinion between medical personnel or between doctor and patient, is enough to establish a violation of [*name of plaintiff*]'s constitutional rights.~~To establish "deliberate indifference," [*name of plaintiff*] must prove (1) that [*name of defendant*] knew [*name of plaintiff*] faced a substantial risk of serious harm and (2) that [he/she] disregarded that risk by failing to take reasonable measures to correct it. Negligence is not enough to establish deliberate indifference.~~

[In determining whether [*name of defendant*] consciously disregarded a substantial risk~~was deliberately indifferent~~, you should consider the personnel, financial, and other resources available to [him/her] or those that [he/she] could reasonably have obtained. [*Name of defendant*] is not responsible for services that [he/she] could not provide or cause to be provided because the necessary personnel, financial, and other resources were not available or could not be reasonably obtained.]

New September 2003; Revised December 2010; Renumbered from CACI No. 3012 December 2012; Revised June 2014, December 2014, June 2015

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Directions for Use

Give this instruction in a case involving the deprivation of medical care to a prisoner. For an instruction on the creation of a substantial risk of serious harm, see CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*. For an instruction involving the deprivation of necessities, see CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eight Amendment—Deprivation of Necessities*."

In prison-conditions cases, the inmate must show that the defendant was deliberately indifferent to his or her health or safety. In a medical-needs case, deliberate indifference requires that the prison officials have known of and disregarded an excessive risk to the inmate's health or safety. Negligence is not enough. (*Farmer v. Brennan* (1994) 511 U.S. 825, 834−837 [114 S.Ct. 1970, 128 L.Ed.2d 811].) Elements 2 and 3 express deliberate indifference.

The "official duties" referred to in element 3 must be duties created by a state, county, or municipal law, ordinance, or regulation. This aspect of color of law most likely will not be an issue for the jury, so it has been omitted to shorten the wording of element 3.

The Ninth Circuit has held that in considering whether an individual prison medical provider was deliberately indifferent, the jury should be instructed to consider the economic resources made available to the prison health care system. (See *Peralta v. Dillard* (9th Cir. 2014) 744 F.3d 1076, 1084 [*en banc*].) Although this holding is not binding on California courts, the last optional paragraph may be given if the defendant has presented evidence of lack of economic resources and the court decides that this defense should be presented to the jury.

Sources and Authority

- Deprivation of Civil Rights: Title 42 United States Code section 1983.

- "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under section 1983." (*Estelle v. Gamble* (1976) 429 U.S. 97, 104-105 [97 S.Ct. 285, 50 L.Ed.2d 251], internal citation and footnotes omitted.)

- "Our cases have held that a prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, 'sufficiently serious.' For a claim ... based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. The second requirement follows from the principle that 'only the unnecessary and wanton infliction of pain implicates the Eighth Amendment.' To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.' In prison-conditions cases that state of mind is one of 'deliberate indifference' to inmate health or safety ... ." (*Farmer, supra, ~~v. Brennan~~ (1994)* 511 U.S. at p.~~825,~~ 834 ~~[114 S.Ct. 1970, 128 L.Ed.2d 811]~~, internal citations omitted.)

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- " 'To set forth a constitutional claim under the Eighth Amendment predicated upon the failure to provide medical treatment, first the plaintiff must show a serious medical need by demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain. Second, a plaintiff must show the defendant's response to the need was deliberately indifferent.' The 'deliberate indifference' prong requires '(a) a purposeful act or failure to respond to a prisoner's pain or possible medical need, and (b) harm caused by the indifference.' 'Indifference may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown in the way in which prison [officials] provide medical care.' '[T]he indifference to [a prisoner's] medical needs must be substantial. Mere "indifference," "negligence," or "medical malpractice" will not support this [claim].' Even gross negligence is insufficient to establish deliberate indifference to serious medical needs." (*Lemire v. Cal. Dep't of Corr. & Rehab.* (9th Cir. 2013) 726 F.3d 1062, 1081−1082, internal citations omitted.)

- "Indications that a plaintiff has a serious medical need include '[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.' " (*Colwell v. Bannister* (9th Cir. 2014) 763 F.3d 1060, 1066.)

- "We hold ... that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." (*Farmer, supra,* 511 U.S. at p. 837.)

- "The subjective standard of deliberate indifference requires 'more than ordinary lack of due care for the prisoner's interests or safety.' The state of mind for deliberate indifference is subjective recklessness. But the standard is 'less stringent in cases involving a prisoner's medical needs . . . because "the State's responsibility to provide inmates with medical care ordinarily does not conflict with competing administrative concerns." ' " (*Snow v. McDaniel* (9th Cir. 2012) 681 F.3d 978, 985, internal citations omitted.)

- "[D]eliberate indifference 'may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care.'. … '[A] prisoner need not show his harm was substantial.' " (*Wilhelm v. Rotman* (9th Cir. 2012) 680 F.3d 1113, 1122, internal citation omitted.)

- "[A]llegations that a prison official has ignored the instructions of a prisoner's treating physician are sufficient to state a claim for deliberate indifference." (*Wakefield v. Thompson* (9th Cir. 1999) 177 F.3d 1160, 1165.)

- "[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." (*Estelle, supra,* 429 U.S. at p. 106.)

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- " 'A difference of opinion between a physician and the prisoner—or between medical professionals—concerning what medical care is appropriate does not amount to deliberate indifference.' Rather, '[t]o show deliberate indifference, the plaintiff "must show that the course of treatment the doctors chose was medically unacceptable under the circumstances" and that the defendants "chose this course in conscious disregard of an excessive risk to plaintiff's health." ' " (*Colwell, supra,* 763 F.3d at p. 1068.)

- "It has been recognized ... that inadequate medical treatment may, in some instances, constitute a violation of 42 United States Code section 1983. In *Sturts v. City of Philadelphia,* for example, the plaintiff alleged that defendants acted 'carelessly, recklessly and negligently' when they failed to remove sutures from his eye, neck and face. The court concluded that although plaintiff was alleging inadequate medical treatment, he had stated a cause of action under section 1983: '... where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments. In some cases, however, the medical attention rendered may be so woefully inadequate as to amount to no treatment at all, thereby rising to the level of a § 1983 claim. ...'" (*Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 176-177 [216 Cal.Rptr. 661, 703 P.2d 1], internal citations omitted.)

- "Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are 'serious.' " (*Hudson v. McMillian* (1992) 503 U.S. 1, 9 [112 S.Ct. 995, 117 L.Ed.2d 156], internal citation omitted.)

- "[T]here is a two-pronged test for evaluating a claim for deliberate indifference to a serious medical need: First, the plaintiff must show a serious medical need by demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must show the defendant's response to the need was deliberately indifferent. This second prong . . . is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." (*Akhtar v. Mesa* (9th Cir. 2012) 698 F.3d 1202, 1213.)

- "A prison medical official who fails to provide needed treatment because he lacks the necessary resources can hardly be said to have intended to punish the inmate. The challenged instruction properly advised the jury to consider the resources [defendant] had available in determining whether he was deliberately indifferent." (*Peralta, supra,* 744 F.3d at p. 1084.)

- "We now turn to the second prong of the inquiry, whether the defendants were deliberately indifferent. This is not a case in which there is a difference of medical opinion about which treatment is best for a particular patient. Nor is this a case of ordinary medical mistake or negligence. Rather, the evidence is undisputed that [plaintiff] was denied treatment for his monocular blindness solely because of an administrative policy, even in the face of medical recommendations to the contrary. A reasonable jury could find that [plaintiff] was denied surgery, not because it wasn't medically indicated, not because his condition was misdiagnosed, not because the surgery wouldn't have helped him, but because the policy of the [defendant] is to require an inmate to endure reversible blindness in one eye if he can still see out of the other. This is the very definition of deliberate indifference." (*Colwell, supra,* 763 F.3d at p. 1068.)

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- "A 'serious' medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.' The 'routine discomfort' that results from incarceration and which is 'part of the penalty that criminal offenders pay for their offenses against society' does not constitute a 'serious' medical need." (*Doty v. County of Lassen* (9th Cir. 1994) 37 F.3d 540, 546, internal citations and footnote omitted.)

- "The Supreme Court has interpreted the phrase 'under "color" of law' to mean 'under "pretense" of law.' A police officer's actions are under pretense of law only if they are 'in some way "related to the performance of his official duties." ' By contrast, an officer who is "'pursuing his own goals and is not in any way subject to control by [his public employer]," ' does not act under color of law, unless he 'purports or pretends' to do so. Officers who engage in confrontations for personal reasons unrelated to law enforcement, and do not 'purport[] or pretend[]' to be officers, do not act under color of law." (*Huffman v. County of Los Angeles* (9th Cir. 1998) 147 F.3d 1054, 1058, internal citations omitted.)

Secondary Sources

3 Witkin, Cal. Criminal Law (4th ed. 2012) Punishment, § 244

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 826

Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial, Ch. 2E-10, *Special Jurisdictional Limitations--Eleventh Amendment As Limitation On Actions Against States,* ¶ 2:4923 (The Rutter Group)

3 Civil Rights Actions, Ch. 11, *Deprivation of Rights Under Color of State Law-Prisons*, ¶ 11.09 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 114, *Civil Rights: Prisoners' Rights*, § 114.15 (Matthew Bender)

19A California Points and Authorities, Ch. 196, *Public Entities,* § 196.183 (Matthew Bender)

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3043. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities (42 U.S.C. § 1983)

[*Name of plaintiff***] claims that [***name of defendant***] subjected [him/her] to prison conditions that deprived [him/her] of basic rights. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] was imprisoned under conditions that deprived [him/her] of [***describe deprivation, e.g., clothing***];**

2. **That this deprivation was sufficiently serious in that it denied [***name of plaintiff***] a minimal necessity of life;**

3. **That [***name of defendant***]'s conduct created a substantial risk of serious harm to [***name of plaintiff***]'s health or safety;**

4. **That [***name of defendant***] knew that [his/her] conduct created a substantial risk of serious harm to [***name of plaintiff***]'s health or safety;**

5. **That there was no reasonable justification for the deprivation;**

6. **That [***name of defendant***] was acting or purporting to act in the performance of [his/her] official duties;**

7. **That [***name of plaintiff***] was harmed; and**

8. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Whether the risk was obvious is a factor that you may consider in determining whether [*name of defendant***] knew of the risk.**

New June 2015

Directions for Use

Give this instruction in a prisoner case involving deprivation of something serious. (See *Thomas v. Ponder* (9th Cir. 2010) 611 F.3d 1144, 1150-1151.) For an instruction involving the creation of a risk, see CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*. For an instruction on deprivation of medical care, see CACI no. 3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care.*

In prison-conditions cases, the inmate must show that the defendant was deliberately indifferent to his or her health or safety. (*Farmer v. Brennan* (1994) 511 U.S. 825, 834 [114 S.Ct. 1970, 128 L.Ed.2d 811].) "Deliberate indifference" involves a two part inquiry. First, the inmate must show that the prison officials

were aware of a substantial risk of serious harm to the inmate's health or safety. Second, the inmate must show that the prison officials had no reasonable justification for the conduct, in spite of that risk. (*Thomas, supra,* 611 F.3d at p. 1150.) Elements 4 and 5 express the deliberate-indifference components.

The "official duties" referred to in element 6 must be duties created by any state, county, or municipal law, ordinance, or regulation. This aspect of color of law most likely will not be an issue for the jury, so it has been omitted to shorten the wording of element 6.

Sources and Authority

- Civil Action for Deprivation of Rights. Title 42 United States Code section 1983.
- "It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." (*Helling v. McKinney* (1993) 509 U.S. 25, 31 [113 S.Ct. 2475, 125 L.Ed.2d 22].)
- "Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety." (*Johnson v. Lewis* (9th Cir. 2000) 217 F.3d 726, 731, internal citations omitted.)
- "[E]xtreme deprivations are required to make out a conditions-of-confinement claim. Because routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society,' 'only those deprivations denying "the minimal civilized measure of life's necessities" are sufficiently grave to form the basis of an Eighth Amendment violation.' " (*Hudson v. McMillian* (1992) 503 U.S. 1, 9 [112 S.Ct. 995, 117 L.Ed.2d 156], internal citations omitted.)
- "[A] prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, 'sufficiently serious,' a prison official's act or omission must result in the denial of 'the minimal civilized measure of life's necessities,'… ." (*Farmer, supra,* 511 U.S. at p. 834, internal citations omitted.)
- "'[O]nly the unnecessary and wanton infliction of pain implicates the Eighth Amendment.' To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.' In prison-conditions cases that state of mind is one of 'deliberate indifference' to inmate health or safety ... ." (*Farmer, supra,* 511 U.S. at p. 834, internal citations omitted.)
- "[A]n inmate seeking to prove an Eighth Amendment violation must 'objectively show that he was deprived of something "sufficiently serious," ' and 'make a subjective showing that the deprivation occurred with deliberate indifference to the inmate's health or safety.' The second step, showing 'deliberate indifference,' involves a two part inquiry. First, the inmate must show that the prison officials were aware of a 'substantial risk of serious harm' to an inmate's health or safety. This part of our inquiry may be satisfied if the inmate shows that the risk posed by the deprivation is obvious. Second, the inmate must show that the prison officials had no 'reasonable' justification for the deprivation, in spite of that risk." (*Thomas, supra,* 611 F.3d at p. 1150, footnote and internal citations omitted.)

- "Next, the inmate must 'make a subjective showing that the deprivation occurred with deliberate indifference to the inmate's health or safety.' To satisfy this subjective component of deliberate indifference, the inmate must show that prison officials 'kn[e]w[] of and disregard[ed]' the substantial risk of harm, but the officials need not have intended any harm to befall the inmate; 'it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.' " (*Lemire v. Cal. Dep't of Corr. & Rehab.* (9th Cir. 2013) 726 F.3d 1062, 1074, internal citations omitted.)

- "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." (*Farmer, supra,* 511 U.S. at p. 842, internal citation omitted.)

- "When instructing juries in deliberate indifference cases with such issues of proof, courts should be careful to ensure that the requirement of subjective culpability is not lost. It is not enough merely to find that a reasonable person would have known, or that the defendant should have known, and juries should be instructed accordingly." (*Farmer, supra,* 511 U.S. at p. 843 fn. 8.)

- "The precise role of legitimate penological interests is not entirely clear in the context of an Eighth Amendment challenge to conditions of confinement. The Supreme Court has written that the test of *Turner v. Safley,* 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), which requires only a reasonable relationship to a legitimate penological interest to justify prison regulations, does not apply to Eighth Amendment claims. The existence of a legitimate penological justification has, however, been used in considering whether adverse treatment is sufficiently gratuitous to constitute punishment for Eighth Amendment purposes." (*Grenning v. Miller-Stout* (9th Cir. 2014) 739 F.3d 1235, 1240.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2010) Constitutional Law, § 816

3 Civil Rights Actions, Ch. 11, *Deprivation of Rights Under Color of State Law—Prisons*, ¶ 11.02 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes*, § 113.14 (Matthew Bender)

18 California Points and Authorities, Ch. 196, *Public Entities*, § 196.183 (Matthew Bender)

3071. Retaliation for Refusing to Authorize Disclosure of Medical Information−Essential Factual Elements (Civ. Code, § 56.20(b))

[*Name of plaintiff***] claims that [***name of defendant***] discriminated against [him/her] because [he/she] refused to authorize disclosure of [his/her] medical information to [***name of defendant***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] asked [***name of plaintiff***] to sign an authorization so that [***name of defendant***] could obtain medical information about [***name of plaintiff***] from [his/her] health care providers;**

2. **That [***name of plaintiff***] refused to sign the authorization;**

3. **That [***name of defendant***] [***specify retaliatory acts, e.g., terminated plaintiff's employment***];**

4. **That [***name of plaintiff***]'s refusal to sign the authorization was a substantial motivating reason for [***name of defendant***]'s decision to [***e.g., terminate plaintiff's employment***];**

5. **That [***name of plaintiff***] was harmed; and**

6. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Even if [*name of plaintiff***] proves all of the above, [***name of defendant***]'s conduct was not unlawful if [***name of defendant***] proves that the lack of the medical information made it necessary to [***e.g., terminate plaintiff's employment***].**

New June 2015

Directions for Use

An employer may not discriminate against an employee in terms or conditions of employment due to the employee's refusal to sign an authorization to release his or her medical information to the employer. (Civ. Code, § 56.20(b).). However, an employer may take any action that is necessary in the absence of the medical information due to the employee's refusal to sign an authorization. (*Ibid*.)

Give this instruction if an employee claims that his or her employer retaliated against him or her for refusing to authorize release of medical information. The employee has the burden of proving a causal link between the refusal to authorize and the employer's retaliatory actions. The employer then has the burden of proving necessity. (See *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 453 [177 Cal.Rptr.3d 145].) If necessary, the instruction may be expanded to define "medical information." (See Civ. Code, § 56.05(j) ["medical information" defined].)

The statute requires that the employer's retaliatory act be "due to" the employee's refusal to release the medical information. (Civ. Code, § 56.20(b).) One court has instructed the jury that the refusal to release

must be a "motivating reason" for the retaliation. (See *Kao, supra,* 229 Cal.App.4th at p. 453.) With regard to the causation standard under the Fair Employment and Housing Act, the California Supreme Court has held that the protected activity must have been a *substantial* motivating reason. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, *"Substantial Motivating Reason" Explained*.)

Sources and Authority

- Confidentiality of Medical Information Act. Civil Code section 56 et seq.

- Employee's Refusal to Authorize Release of Medical Records to Employer. Civil Code section 56.20(b).

- "An employer 'discriminates' against an employee in violation of section 56.20, subdivision (b), if it improperly retaliates against or penalizes an employee for refusing to authorize the employee's *health care provider* to disclose confidential medical information *to the employer or others* (see Civ. Code, § 56.11), or for refusing to authorize *the employer* to disclose confidential medical information relating to the employee *to a third party* (see Civ. Code, § 56.21)." (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 861 [59 Cal. Rptr. 2d 696, 927 P.2d 1200], original italics.)

- "[T]he jury was instructed that if [plaintiff] proved his refusal to authorize release of confidential medical information for the FFD [fitness for duty examination] was 'the motivating reason for [his] discharge,' [defendant] 'nevertheless avoids liability by showing that … its decision to discharge [plaintiff] was necessary because [plaintiff] refused to take the FFD examination.' " (*Kao, supra,* 229 Cal.App.4th at p. 453.)

Secondary Sources

Witkin, California Evidence (4th ed. 2012) Witnesses § 681

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.202 (Matthew Bender)

VF-3021. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—~~General Conditions of Confinement Claim~~Substantial Risk of Serious Harm (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. ~~Was [*name of plaintiff*]~~While imprisoned~~,~~ ~~under conditions that~~ [*describe violation* *that created risk of serious harm*, *e.g.*, *was [name of plaintiff] placed in a cell block with rival gang members*~~*deprived [him/her] of out-of-cell exercise*~~]?
   ____ Yes ____ No

   If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*]'s conduct create a substantial risk of serious harm to [*name of plaintiff*]'s health or safety?
   ____ Yes ____ No

   If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know ~~or was it obvious~~ that [his/her~~/its~~] conduct created a substantial risk of serious harm to [*name of plaintiff*]'s health or safety?
   ____ Yes ____ No

   If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was there a reasonable justification for the conduct?
   ____ Yes ____ No

   If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*] acting or purporting to act in the performance of [his/her] official duties?
   ____ Yes ____ No

   If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of*

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plaintiff]?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [*name of plaintiff*]'s damages?

[a. Past economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other past economic loss $ _____]
Total Past Economic Damages: $ _____]

[b. Future economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other future economic loss $ _____]
Total Future Economic Damages: $ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3008 December 2012; Revised June 2015

Directions for Use

This verdict form is based on CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—~~General Conditions of Confinement Claim~~Substantial Risk of Serious Harm*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories.*

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VF-3022. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a serious medical need?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know that [*name of plaintiff*] faced a substantial risk of serious harm if [his/her] medical need went untreated~~act with deliberate indifference to that medical need~~?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] consciously disregard the risk by not taking reasonable steps to treat [*name of plaintiff*]'s medical need?
Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~3~~4. Was [*name of defendant*] acting or purporting to act in the performance of [his/her] official duties?
____ Yes ____ No

If your answer to question ~~3~~ 4 is yes, then answer question ~~4~~5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~4~~5. Was [*name of defendant*]'s deliberate indifference a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

If your answer to question ~~4~~ 5 is yes, then answer question ~~5~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~6. What are [*name of plaintiff*]'s damages?

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[a. Past economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other past economic loss $ _____]
Total Past Economic Damages: $ _____]

[b. Future economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other future economic loss $ _____]
Total Future Economic Damages: $ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3009 December 2012; Revised June 2014, June 2015

Directions for Use

This verdict form is based on CACI No. 3041, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care.*

The special verdict forms in this section are intended only as models. They may need to be modified

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depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question ~~5~~ 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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3700. Introduction to Vicarious Responsibility

[One may authorize another to act on his or her behalf in transactions with third persons. This relationship is called "agency." The person giving the authority is called the "principal"; the person to whom authority is given is called the "agent."]

~~A [person/partnership/corporation]~~[An employer/A principal] is responsible for harm caused by the wrongful conduct of [his/her/its] [employees/agents~~/[*insert other relationship, e.g., "partners"*]~~] while acting within the scope of their [employment/authority].

[An [employee/agent] is always responsible for harm caused by [his/her/its] own wrongful conduct, whether or not the [employer/principal] is also liable.]

New September 2003; Revised June 2015

Directions for Use

This instruction provides the jury with some basic background information about the doctrine of respondeat superior. Include the first paragraph if the relationship at issue is one of principal-agent. If the employee or agent is also a defendant, give the third paragraph.

This instruction should be followed by either CACI No. 3703, *Legal Relationship Not Disputed,* CACI No. 3704, *Existence of "Employee" Status Disputed,* or CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

Sources and Authority

- "Agency" Defined. Civil Code section 2295.
- Principal's Responsibility for Acts of Agent. Civil Code section 2338.
- "Agency is the relation that results from the act of one person, called the principal, who authorizes another, called the agent, to conduct one or more transactions with one or more third persons and to exercise a degree of discretion in effecting the purpose of the principal." (*L. Byron Culver & Associates v. Jaoudi Industrial & Trading Corp.* (1991) 1 Cal.App.4th 300, 304 [1 Cal.Rptr.2d 680].)
- "Under the doctrine of respondeat superior, an employer is vicariously liable for his employee's torts committed within the scope of the employment. This doctrine is based on " 'a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business.' " (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106, 719 P.2d 676].)
- ~~Under the theory of respondeat superior, a principal/employer is vicariously liable for an agent/employee's torts committed within the scope of agency/employment. (*Perez v. Van Groningen*~~

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~~*& Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106, 719 P.2d 676].)~~

- "[U]nder the Tort Claims Act, public employees are liable for injuries caused by their acts and omissions to the same extent as private persons. Vicarious liability is a primary basis for liability on the part of a public entity, and flows from the responsibility of such an entity for the acts of its employees under the principle of respondeat superior. As the Act provides, '[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would … have given rise to a cause of action against that employee,' unless 'the employee is immune from liability.' (Gov. Code, § 815.2, subds. (a), (b).)" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1128 [119 Cal.Rptr.2d 709, 45 P.3d 1171], internal citations omitted.)

- "[W]here the liability of an employer in tort rests solely on the doctrine of respondeat superior, a judgment on the merits in favor of the employee is a bar to an action against the employer … ." (*Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 176 [71 Cal.Rptr. 275]~~If a principal's potential liability is based solely on the acts of his or her agent, then the principal cannot be held liable if the agent is exonerated. (3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 167~~.)

- "An agent or employee is always liable for his own torts, whether his employer is liable or not." (*Fleet v. Bank of America N.A.* (2014) 229 Cal.App.4th 1403, 1411 [178 Cal.Rptr.3d 18].)

- ~~Liability may result from a principal's authorization or direction to perform a tortious act, resulting in direct liability of the principal for his or her wrongful conduct. (3 Witkin, *supra*, § 167.) Such authorization may be found in ratification of the agent's conduct and in delegation of a nondelegable duty.~~

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 163–168

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, §§ 8.03-8.04 (Matthew Bender)

2 California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.11 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.14 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.24A (Matthew Bender)

1 California Civil Practice: Torts, §§ 3:1–3:4 (Thomson Reuters~~ West~~)

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3704. Existence of "Employee" Status Disputed

[*Name of plaintiff***] ~~claims~~ must prove that [***name of agent***] was [***name of defendant***]'s employee.**

In deciding whether [*name of agent***] was [***name of defendant***]'s employee, the most important factor is whether [***name of defendant***] had the right to control how [***name of agent***] performed the work, rather than just the right to specify the result. One indication of the right to control is that the hirer can discharge the worker without cause. It does not matter whether [***name of defendant***] exercised the right to control.**

In deciding whether [*name of defendant***] was [***name of agent***]'s employer, in addition to the right of control, you must consider the full nature of their relationship. You should take into account the following additional factors, which, if true, may show that [***name of defendant***] was the employer of [***name of agent***]. No one factor is decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.**

~~**In addition to the right of control, you must also consider all of the circumstances in deciding whether [***name of agent***] was [***name of defendant***]'s employee. The following factors, if true, may show that [***name of agent***] was the employee of [***name of defendant***]:**~~

(a) **[***Name of defendant***] supplied the equipment, tools, and place of work;**

(b) **[***Name of agent***] was paid by the hour rather than by the job;**

(c) **[***Name of defendant***] was in business;**

(d~~e~~) **The work being done by [***name of agent***] was part of the regular business of [***name of defendant***];**

~~**(d)** **[***Name of defendant***] had an unlimited right to end the relationship with [***name of agent***];**~~

(e) ~~**The work being done by**~~ **[***~~name~~ Name of agent***] was ~~[his/her] only~~ not engaged in a distinct occupation or business;**

(f) **The kind of work performed by [***name of agent***] is usually done under the direction of a supervisor rather than by a specialist working without supervision;**

(g) **The kind of work performed by [***name of agent***] does not require specialized or professional skill;**

(h) **The services performed by [***name of agent***] were to be performed over a long period of time; [and]**

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(i) [*Name of defendant*] and [*name of agent*] ~~acted as if~~believed that they had an employer-employee relationship[./; and]

(j) [*Specify other factor*].

New September 2003; Revised December 2010, June 2015

Directions for Use

This instruction is primarily intended for employer-employee relationships. Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

Secondary factors (a)–(i) come from the Restatement Second of Agency, section 220. (See also *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 532 [173 Cal.Rptr.3d 332, 327 P.3d 165]; Rest.3d Agency, § 7.07, com. f,)- They have been phrased ~~in a way~~ so that a yes answer~~o suggest whether or not they~~ points toward an employment relationship. Omit any that are not relevant~~supported by the evidence~~. Additional factors have been endorsed by the California Supreme Court and may be included if applicable. (See *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399].) Therefore, an "other" option (j) has been included.

Sources and Authority

- Principal-Agent Relationship. Civil Code section 2295.
- "Whether a common law employer-employee relationship exists turns foremost on the degree of a hirer's right to control how the end result is achieved." (*Ayala, supra, ~~v. Antelope Valley Newspapers, Inc.~~* ~~(2014)~~ 59 Cal.4th ~~522,~~at p. 528 ~~[173 Cal.Rptr.3d 332, 327 P.3d 165]~~.)
- "However, the courts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 350, internal citations omitted.)
- "While the extent of the hirer's right to control the work is the foremost consideration in assessing whether a common law employer-employee relationship exists, our precedents also recognize a range of secondary indicia drawn from the Second and Third Restatements of Agency that may in a given case evince an employment relationship. Courts may consider '(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by

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the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.' " (*Ayala, supra,* 59 Cal.4th at p. 532.)

- " 'Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.' " (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 351, internal citations omitted.)

- "[T]he Restatement guidelines heretofore approved in our state remain a useful reference." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 354.)

- "We also note the six-factor test developed by other jurisdictions which determine independent contractorship in light of the remedial purposes of the legislation. Besides the 'right to control the work,' the factors include (1) the alleged employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business. [¶] As can be seen, there are many points of individual similarity between these guidelines and our own traditional Restatement tests. We find that all are logically pertinent to the inherently difficult determination whether a provider of service is an employee or an excluded independent contractor for purposes of workers' compensation law." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at pp. 354–355, internal cross-reference omitted.)

- "Whether a person is an independent contractor or an employee is a question of fact if dependent upon the resolution of disputed evidence or inferences." (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 297, fn. 4 [111 Cal.Rptr.3d 787].)

- The burden of proving the existence of an agency rests on the one affirming its existence. (*Burbank v. National Casualty Co.* (1941) 43 Cal.App.2d 773, 781 [111 P.2d 740].)

- "The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 342.)

- "It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship." (*Malloy v. Fong* (1951) 37 Cal.2d 356, 370 [232 P.2d 241], internal citations omitted.)

- "Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because '[t]he power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities.' " (*Ayala, supra,* 59 Cal.4th at p. 531.)

- "The worker's corresponding right to leave is similarly relevant: ' "An employee may quit, but an independent contractor is legally obligated to complete his contract." ' " (*Ayala, supra,* 59 Cal.4th at p. 531 fn. 2.)

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- "In cases where there is a written contract, to answer that question [the right of control] without full examination of the contract will be virtually impossible. … [¶] … [T]he rights spelled out in a contract may not be conclusive if other evidence demonstrates a practical allocation of rights at odds with the written terms." (*Ayala, supra,* 59 Cal.4th at p. 535.)

- When the principal controls only the results of the work and not the means by which it is accomplished, an independent contractor relationship is established. (*White v. Uniroyal, Inc.* (1984) 155 Cal.App.3d 1, 25 [202 Cal.Rptr. 141], overruled on other grounds in *Soule v. GM Corp.* (1994) 8 Cal.4th 548 [34 Cal.Rptr.2d 607, 882 P.2d 298].)

- " '[T]he owner may retain a broad general power of supervision and control as to the results of the work so as to insure satisfactory performance of the independent contract—including the right to inspect [citation], … the right to make suggestions or recommendations as to details of the work [citation], the right to prescribe alterations or deviations in the work [citation]—without changing the relationship from that of owner and independent contractor … .' " (*Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143 [159 Cal.Rptr.3d 102], quoting *McDonald v. Shell Oil Co.* (1955) 44 Cal.2d 785, 790 [285 P.2d 902].)

- "Agency and independent contractorship are not necessarily mutually exclusive legal categories as independent contractor and servant or employee are. ... One who contracts to act on behalf of another and subject to the other's control, except with respect to his physical conduct, is both an agent and an independent contractor." (*City of Los Angeles v. Meyers Brothers Parking System* (1975) 54 Cal.App.3d 135, 138 [126 Cal.Rptr. 545], internal citations omitted; accord *Mottola v. R. L. Kautz & Co.* (1988) 199 Cal.App.3d 98, 108 [244 Cal.Rptr. 737].)

- "[W]hen a statute refers to an 'employee' without defining the term, courts have generally applied the common law test of employment to that statute." (*Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 586 [135 Cal.Rptr.3d 213].)

- "[A] termination at-will clause for both parties may properly be included in an independent contractor agreement, and is not by itself a basis for changing that relationship to one of an employee." (*Arnold, supra,* 202 Cal.App.4th at p. 589.)

- Restatement Second of Agency, section 220, provides:

  (1) A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.

  (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

  (a) the extent of control which, by the agreement, the master may exercise over the details of the work;

  (b) whether or not the one employed is engaged in a distinct occupation or business;

  (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without

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supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 2–42

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.03[2] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.04 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, §§ 248.15, 248.22, 248.51 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent,* § 427.13 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior,* § 100A.41 et seq. (Matthew Bender)

1 California Civil Practice: Torts §§ 3:5–3:6 (Thomson Reuters)

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4110. Breach of Duty by Real Estate Seller's Agent─Inaccurate Information in Multiple Listing Service─Essential Factual Elements (Civ. Code, § 1088)

[*Name of defendant***], as the real estate [broker/salesperson/appraiser] for [***name of seller***], listed the property for sale in a multiple listing service (MLS). [***Name of plaintiff***] claims that [he/she] was harmed because information in the MLS was false or inaccurate. [***Name of defendant***] is responsible for this harm if [***name of plaintiff***] proves all of the following:**

1. **That [***name of defendant***] listed the property for sale in a MLS;**

2. **That information posted on the MLS was false or inaccurate;**

3. **That [***name of defendant***] knew, or reasonably should have known, that the information was false or inaccurate;**

4. **That [***name of plaintiff***] reasonably relied on the false or inaccurate information in the MLS;**

5. **That [***name of plaintiff***] was harmed; and**

6. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New June 2015

Directions for Use

A real estate agent or appraiser has a duty to a buyer of real estate to post only accurate information on a multiple listing service (MLS). The buyer has a right of action against an agent or appraiser for harm caused by inaccurate information on an MLS if the agent or broker knew or should have known that the information was false or inaccurate. (Civ. Code, § 1088; see *Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1077 [76 Cal.Rptr.2d 911].)

The statute provides a remedy for anyone "injured by" the false or inaccurate information. (Civ. Code, § 1088.) As a statutory remedy for a species of misrepresentation, the plaintiff must show causation in the form of both actual and justifiable reliance on the inaccurate information on the MLS (element 4). (See *Furla, supra,* 65 Cal.App.4th at p. 1078; CACI No. 1907, *Reliance;* CACI No. 1908, *Reasonable Reliance*.)

Sources and Authority

- False or Inaccurate Information in Multiple Listing Service. Civil Code section 1088.

- A real estate agent also has a statutory liability for negligence: '[i]f an agent . . . places a listing or

other information in the multiple listing service, that agent . . . shall be responsible for the truth of all representations . . . of which that agent . . . had knowledge or reasonably should have had knowledge to anyone injured by their falseness or inaccuracy.' " (*Furla, supra,* 65 Cal.App.4th at p. 1077.

- "A broker's duties with respect to any listing or other information posted to an MLS are specified in section 1088. Section 1088 states in relevant part that the broker 'shall be responsible for the truth of all representations and statements made by the agent [in an MLS] … of which that agent … had knowledge or reasonably should have had knowledge,' and provides a statutory negligence claim for 'anyone injured' by the 'falseness or inaccuracy' of such representations and statements." (*Saffie v. Schmeling* (2014) 224 Cal.App.4th 563, 568 [168 Cal.Rptr.3d 766].)

- "There is nothing in section 1088, or any other source of law, imposing responsibility on a seller's broker to ensure that true statements in an MLS are not misconstrued, or to make certain that the buyer and the buyer's broker perform the appropriate due diligence to evaluate the significance of such true statements for the buyer's particular purposes." (*Saffie, supra,* 224 Cal.App.4th at p. 570.)

- "Defendants contend there is no triable issue of fact and as a matter of law plaintiff did not reasonably rely upon the misrepresentations, and plaintiff unreasonably failed to exercise due care for his own interest as buyer. They contend plaintiff was repeatedly warned by language in the Multiple Listing Service and the sales agreement that statements concerning square footage were approximations only, and that plaintiff could obtain accurate determinations of square footage by a professional pursuant to the buyer's right to inspect the property. But whether a plaintiff reasonably relied on a defendant's misrepresentations or failed to exercise reasonable diligence is also ordinarily a question of fact for the trier of fact." (*Furla, supra,* 65 Cal.App.4th at p. 1078.)

- "To be sure, an omission of information may sometimes render an otherwise true statement false or inaccurate, in the meaning of section 1088." (*Saffie, supra,* 224 Cal.App.4th at p. 570.)

- "Absent anything untrue or inaccurate about the statement seller's broker actually made in the MLS, and absent damage to buyer from such falsity or inaccuracy, seller's broker is not liable under section 1088." (*Saffie, supra,* 224 Cal.App.4th at pp. 571−572.)

Secondary Sources

12 Witkin, Summary of California Law (10th ed. 2010) Real Property, § 473.

3 California Real Estate Law and Practice, Ch. 61, *Employment and Authority of Brokers*, § 61.76 (Matthew Bender)

10 California Forms of Pleading and Practice, Ch. 103, *Brokers*, § 103.31 (Matthew Bender)

2A California Points and Authorities, Ch. 31, *Brokers and Salespersons*, § 31.147 (Matthew Bender)

~~2440~~4600. False Claims Act: Whistleblower Protection—Essential Factual Elements (Gov. Code, § 12653)

[*Name of plaintiff***] claims that [***name of defendant***] [discharged/***specify other adverse action***] [him/her] because [he/she] acted [in furtherance of a false claims action/~~ ~~to stop a false claim by [***name of false claimant***]]. A false claims action is a lawsuit against a person or entity that is alleged to have submitted a false claim to a government agency for payment or approval. A false claim is a claim for payment with the intent to defraud the government. In order to establish ~~[his/her] unlawful discharge~~this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] was an employee of [***name of defendant***];**
2. **That [***name of false claimant***] was alleged to have defrauded the government of money, property, or services by submitting a false or fraudulent claim to the government for payment or approval;**
3. **That [***name of plaintiff***] [***specify acts done in furthering the false claims action or to stop a false claim***];**
4. **That [***name of plaintiff***] acted [in furtherance of a false claims action/to stop a false claim];**
5. **That [***name of defendant***] [discharged/***specify other adverse action***] [***name of plaintiff***];**
6. **That [***name of plaintiff***]'s acts [in furtherance of a false claims action/to stop a false claim] were a substantial motivating reason for [***name of defendant***]'s decision to [discharge/***other adverse action***] [him/her];**
7. **That [***name of plaintiff***] was harmed; and**
8. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

[An act is "in furtherance of" a false claims action if

[[*name of plaintiff***] actually filed a false claims action [himself/herself].]**

[*or***]**

[someone else filed a false claims action but [*name of plaintiff***] [***specify acts in support of action, e.g., gave a deposition in the action***], which resulted in the retaliatory acts.]**

[*or***]**

[no false claims action was ever actually filed, but [*name of plaintiff***] had reasonable suspicions of a false claim, and it was reasonably possible for [***name of plaintiff***]'s conduct to lead to a false claims action.]**

The potential false claims action need not have turned out to be meritorious. [*Name of plaintiff***] need only show a genuine and reasonable concern that the government was being defrauded.]**

New December 2012; Revoked June 2013; Restored and Revised December 2013; Renumbered from CACI No. 2440 and Revised June 2015

Directions for Use

The whistle-blower protection statute of the False Claims Act (Gov. Code, § 12653) prohibits adverse employment actions against an employee who either (1) takes steps in furtherance of a false claims action or (2) makes efforts to stop a false claim violation. (See Gov. Code, § 12653(a).)

The second sentence of the opening paragraph defines a false claims action in its most common form: a lawsuit against someone who has submitted a false claim for payment. (See Gov. Code, § 12651(a)(1).) This sentence and element 2 may be modified if a different prohibited act is involved. (See Gov. Code, § 12651(a)(2)–(8).)

In element 3, specify the steps that the plaintiff took that are alleged to have led to the adverse action.

The statute reaches a broad range of adverse employment actions short of actual discharge. (See Gov. Code, § 12653(a).) If the case involves an adverse employment action other than termination, specify the action in eElements 5 and 6. These elements may also be modified to allege constructive discharge. ~~or adverse acts other than actual discharge.~~ See CACI No. 2509, *"Adverse Employment Action" Explained,* and CACI No. 2510, *"Constructive Discharge" Explained,* for instructions under the Fair Employment and Housing Act that may be adapted for use with this instruction.

Element 6 uses the term "substantial motivating reason" to express both intent and causation between the employee's actions and the discharge. "Substantial motivating reason" has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, *"Substantial Motivating Reason" Explained*.) Whether the FEHA standard applies to cases under the False Claims Act has not been addressed by the courts.

Give the last part of the instruction if the claim is that the plaintiff was discharged for acting in furtherance of a false claims action.

Sources and Authority

- False Claims Act: Whistleblower Protection. Government Code section 12653.
- "The False Claims Act prohibits a 'person' from defrauding the government of money, property, or services by submitting to the government a 'false or fraudulent claim' for payment." (*Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1273 [134

Cal.Rptr.3d 883].)

- "To establish a prima facie case, a plaintiff alleging retaliation under the CFCA must show: '(1) that he or she engaged in activity protected under the statute; (2) that the employer knew the plaintiff engaged in protected activity; and (3) that the employer discriminated against the plaintiff because he or she engaged in protected activity.' " (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 455 [152 Cal.Rptr.3d 595].)

- " 'As a statute obviously designed to prevent fraud on the public treasury, [Government Code] section 12653 plainly should be given the broadest possible construction consistent with that purpose.' " (*McVeigh, supra,* 213 Cal.App.4th at p. 456.)

- "The False Claims Act bans retaliatory discharge in section 12653, which speaks not of a 'person' being liable for defrauding the government, but of an 'employer' who retaliates against an employee who assists in the investigation or pursuit of a false claim. Section 12653 has been 'characterized as the whistleblower protection provision of the [False Claims Act and] is construed broadly.' " (*Cordero-Sacks, supra,* 200 Cal.App.4th at p. 1274.)

- "[T]he act's retaliation provision applies not only to qui tam actions but to false claims in general. Section 12653 makes it unlawful for an employer to retaliate against an employee who is engaged 'in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under Section 12652.' " (*Cordero-Sacks, supra,* 200 Cal.App.4th at p. 1276.)

- "Generally, to constitute protected activity under the CFCA, the employee's conduct must be in furtherance of a false claims action. The employee does not have to file a false claims action or show a false claim was actually made; however, the employee must have reasonably based suspicions of a false claim and it must be reasonably possible for the employee's conduct to lead to a false claims action." (*Kaye v. Board of Trustees of San Diego County Public Law Library* (2009) 179 Cal.App.4th 48, 60 [101 Cal.Rptr.3d 456], internal citation omitted.)

- "We do not construe *Kaye's* requirement that it be 'reasonably possible for [the employee's conduct] to lead to a false claims action' to mean that a plaintiff is not protected under the CFCA unless he or she has discovered grounds for a *meritorious* false claim action. … [T]he plaintiff need only show a genuine and reasonable concern that the government was possibly being defrauded in order to establish that he or she engaged in protected conduct. Any more limiting construction or significant burden would deny whistleblowers the broad protection the CFCA was intended to provide." (*McVeigh, supra,* 213 Cal.App.4th at pp. 457−458, original italics.)

- "There is a dearth of California authority discussing what constitutes protected activity under the CFCA. However, because the CFCA is patterned on a similar federal statute (31 U.S.C. § 3729 et seq.), we may rely on cases interpreting the federal statute for guidance in interpreting the CFCA. (*Kaye, supra,* 179 Cal.App.4th at pp. 59–60.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 288

5 Witkin, Summary of California Law (10th ed. 2005) Torts, § 767

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 468, *Public Entities and Officers: False Claims Actions*, § 468.25 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, § 100.61 (Matthew Bender)

~~2442~~4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 8547.8(c))

[*Name of plaintiff***] claims that [he/she] made a protected disclosure in good faith and that [***name of defendant***] [discharged/***specify other adverse action***] [him/her] as a result. In order to establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [***specify protected disclosure, e.g., reported waste, fraud, abuse of authority, violation of law, threats to public health, bribery, misuse of government property***];**
2. **That [***name of plaintiff***]'s communication [disclosed/ [or] demonstrated an intention to disclose] evidence of [an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public];**
3. **That [***name of plaintiff***] made this communication in good faith [for the purpose of remediating the health or safety condition];**
4. **That [***name of defendant***] [discharged/***specify other adverse action***] [***name of plaintiff***];**
5. **That [***name of plaintiff***]'s communication was a contributing factor in [***name of defendant***]'s decision to [discharge/***other adverse action***] [***name of plaintiff***];**
6. **That [***name of plaintiff***] was harmed; and**
7. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2014; Renumbered from CACI No. 2442 and Revised June 2015

Directions for Use

Under the California Whistleblower Protection Act (Gov. Code, § 8547 et seq.) (the Act), a state employee or applicant for state employment has a right of action against any person who retaliates against him or her for having made a "protected disclosure." The statute prohibits a "person" from intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against the employee or applicant. (Gov. Code, § 8547.8(c).) A "person" includes the state and its agencies. (Gov. Code, § 8547.2(d).)

The statute prohibits acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment. (See Gov. Code, § 8547.8(b).) If the case involves an adverse employment action other than termination, specify the action in elements 4 and 5. These elements may also be modified if constructive discharge is alleged.~~While retaliatory discharge is clearly within the statute, adverse employment actions short of discharge are also prohibited. For adverse actions other than termination, replace "discharged" in the opening paragraph and in element 4, and "discharge" in element~~

~~5, with the applicable action.~~ See CACI No. 2509, *"Adverse Employment Action" Explained,* and CACI No. 2510, *"Constructive Discharge" Explained,* for instructions under the Fair Employment and Housing Act that may be adapted for use with this instruction.

Element 2 alleges a protected disclosure. (See Gov. Code, § 8547.2(e) ["protected disclosure" defined].)

If an "improper governmental activity" is alleged in element 2, it may be necessary to expand the instruction with language from Government Code section 8547.2(c) to define the term. If the court has found that an improper governmental activity is involved as a matter of law, the jury should be instructed that the issue has been resolved.

If a health or safety violation is alleged in element 2, include the bracketed language at the end of element 3.

The statute addresses the possibility of a mixed-motive adverse action. If the plaintiff can establish that a protected disclosure was a "contributing factor" to the adverse action (see element 5), the employer may offer evidence to attempt to prove by clear and convincing evidence that it would have taken the same action for other permitted reasons. (Gov. Code, § 8547.8(e); see CACI No. ~~2443~~4602, *Affirmative Defense—Same Decision*.)

The affirmative defense includes refusing an illegal order as a second protected matter (along with engaging in protected disclosures). (See Gov. Code, § 8547.8(e); see also Gov. Code, § 8547.2(b) [defining "illegal order"].), However, Government Code section 8547.8(c), which creates the plaintiff's cause of action under the Act, mentions only making a protected disclosure; it does not expressly reference refusing an illegal order. But arguably, there would be no need for an affirmative defense to refusing an illegal order if the refusal itself is not protected. Therefore, whether a plaintiff may state a claim based on refusing an illegal order may be unclear; thus the committee has not included refusing an illegal order as within the elements of this instruction.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- Civil Action Under California Whistleblower Protection Act. Government Code section 8547.8(c).
- "Improper Governmental Activity" Defined. Government Code section 8547.2(c).
- "Person" Defined. Government Code section 8547.2(d).
- "Protected Disclosure" Defined. Government Code section 8547.2(e).
- Governmental Claims Act Not Applicable. Government Code section 905.2(h).
- "The [Whistleblower Protection Act] prohibits improper governmental activities, which include interference with or retaliation for reporting such activities." (*Cornejo v. Lightbourne* (2013) 220

Cal.App.4th 932, 939 [163 Cal.Rptr.3d 530].)

- "[Government Code] Section 8547.8 requires a state employee who is a victim of conduct prohibited by the [Whistleblower Protection] Act to file a written complaint with the Personnel Board within 12 months of the events at issue and instructs, 'any action for damages shall not be available to the injured party …' unless he or she has filed such a complaint. The Legislature could hardly have used stronger language to indicate its intent that compliance with the administrative procedure of sections 8547.8 and 19683 is to be regarded as a mandatory prerequisite to a suit for damages under the Act than to say a civil action is 'not … available' to persons who have not complied with the procedure." (*Bjorndal v. Superior Court* (2012) 211 Cal.App.4th 1100, 1112−1113 [150 Cal.Rptr.3d 405], internal citations omitted.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005)~~,~~ Agency~~,~~ ~~§~~§ 284 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, Employment Torts And Related Claims: Other Statutory Claims (WPA), ¶¶ 5:894 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

~~2443~~4602. Affirmative Defense—Same Decision (Gov. Code, § 8547.8(e))

If [*name of plaintiff*] proves that [his/her] [making a protected disclosure/refusing an illegal order] was a contributing factor to [his/her] [discharge/*specify other adverse action*], [*name of defendant*] is not liable if [he/she/it] proves by clear and convincing evidence that [he/she/it] would have discharged [*name of plaintiff*] anyway at that time, for legitimate, independent reasons.

New December 2014; Renumbered from CACI No. 2443 and Revised June 2015

Directions for Use

Give this instruction in a so-called same-decision or mixed-motive case under the California Whistleblower Protection Act. (See Gov. Code, § 8547 et seq.; CACI No. ~~2442~~4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*.) A mixed-motive case is one in which there is evidence of both a retaliatory and a legitimate reason for the adverse action. Even if the jury finds that the retaliatory reason was a contributing factor, the employer may avoid liability if it can prove by clear and convincing evidence that it would have made the same decision anyway for a legitimate reason. (Gov. Code, § 8547.8(e).)

Select "refusing an illegal order" if the court has allowed the case to proceed based on that basis. The affirmative defense statute includes refusing an illegal order as protected activity along with making a protected disclosure. The statute that creates the plaintiff's cause of action does not expressly mention refusing an illegal order. (Compare Gov. Code, § 8547.8(e) with Gov. Code, § 8547.2(c).) See the Directions for Use to CACI No. ~~2442~~4601.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- Same-Decision Affirmative Defense. Government Code section 8547.8(e).

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005)~~,~~ Agency, §~~§~~ 284 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, Employment Torts And Related Claims: Other Statutory Claims (WPA), ¶¶ 5:894 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

~~2730~~4603. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5)

[*Name of plaintiff*] claims that [*name of defendant*] [discharged/[*other adverse employment action*]] [him/her] in retaliation for [his/her] [disclosure of information of/refusal to participate in] an unlawful act. In order to establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] was [*name of plaintiff*]'s employer;**

2. **[That [*name of defendant*] believed that [*name of plaintiff*] [had disclosed/might disclose] to a [government agency/law enforcement agency/person with authority over [*name of plaintiff*]/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that [*specify information disclosed*];]**

   [*or*]

   [That [*name of plaintiff*] [provided information to/testified before] a public body that was conducting an investigation, hearing, or inquiry;]

   [*or*]

   [That [*name of plaintiff*] refused to [*specify activity in which plaintiff refused to participate*];]

3. **[That [*name of plaintiff*] had reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

   [*or*]

   [That [*name of plaintiff*] had reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]

   [*or*]

   [That [*name of plaintiff*]'s participation in [*specify activity*] would result in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]

4. **That [*name of defendant*] [discharged/[*other adverse employment action*]] [*name of plaintiff*];**

5. **That [*name of plaintiff*]'s [disclosure of information/refusal to [*specify*]] was a contributing factor in [*name of defendant*]'s decision to [discharge/[*other adverse employment action*]] [*name of plaintiff*];**

6. **That [*name of plaintiff*] was harmed; and**

7. **That [*name of defendant*]'s conduct was a substantial factor in causing [*name of plaintiff*]'s harm.**

[The disclosure of policies that an employee believes to be merely unwise, wasteful, gross misconduct, or the like, is not protected. Instead, [*name of plaintiff*] must have reasonably believed that [*name of defendant*]'s policies violated federal, state, or local statutes, rules, or regulations.]

[It is not [*name of plaintiff*]'s motivation for [his/her] disclosure, but only the content of that disclosure, that determines whether the disclosure is protected.]

[A disclosure is protected even though disclosing the information may be part of [*name of plaintiff*]'s job duties.]

New December 2012; Revised June 2013, December 2013, Revoked June 2014; Restored and Revised December 2014; Renumbered from CACI No.2730 and Revised June 2015

Directions for Use

The whistle-blower protection statute of the Labor Code prohibits retaliation against an employee who discloses information about, or refuses to participate in, an illegal activity. (Lab. Code, § 1102.5(b), (c).) Liabil~~i~~ity may be predicated on retaliation by "any person acting on behalf of the employer." (Lab. Code, § 1102.5(a)−(d).) Modifications to the instruction may be required if liability is predicated on an agency theory and the agent is also a defendant.

Select the first option for elements 2 and 3 for disclosure of information; select the second options for providing information to or testifying before a public body conducting an investigation, hearing, or inquiry. Select the third options for refusal to participate in an unlawful activity. In the first option for element 2, choose "might disclose" if the allegation is that the employer believed that the employee might disclose the information in the future. (Cf. *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 648−649 [163 Cal.Rptr.3d 392] [under prior version of statute, no liability for anticipatory or preemptive retaliation based on fear that plaintiff might file a complaint in the future].)

Select any of the optional paragraphs explaining what disclosures are and are not protected as appropriate to the facts of the case. It has been held that a report of publicly known facts is not a protected disclosure. (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 858 [136 Cal.Rptr.3d 259].) Another court, however, has cast doubt on this limitation and held that protection is not limited to the first public employee to report unlawful acts to the employer. (*Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1548−1553 [176 Cal.Rptr.3d 268]; see Lab. Code, § 1102.5(e).)

"Adverse employment action" is viewed the same as it is under the Fair Employment and Housing Act. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387 [37 Cal.Rptr.3d 113]; see CACI No. 2505, *Retaliation—Essential Factual Elements.*) Element 4 may be modified to allege constructive discharge or adverse acts that might not be obviously prejudicial. See CACI No. 2509, *"Adverse Employment Action" Explained,* and CACI No. 2510, *"Constructive Discharge" Explained,* for instructions that may be adapted for use with this instruction.

The employee must demonstrate by a preponderance of evidence that a protected activity was a contributing factor in the adverse action against the employee. The employer may then attempt to prove by clear and convincing evidence that the action would have been taken anyway for legitimate, independent reasons even if the employee had not engaged in the protected activities. (See Lab. Code, § 1102.6; CACI No. ~~2731~~4604, *Affirmative Defense—Same Decision*.)

Sources and Authority

- Retaliation Against Whistleblower Prohibited. Labor Code section 1102.5.
- Affirmative Defense: Same Decision. Labor Code section 1102.6.
- "The elements of a section 1102.5(b) retaliation cause of action require that (1) the plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate, nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a pretext for the retaliation. [¶] We are concerned here with the first element of a section 1102.5(b) retaliation claim, establishing a prima facie case of retaliation. To do that, a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two." (*Patten, supra,* 134 Cal.App.4th at p. 1384, internal citations omitted.)
- "In 1984, our Legislature provided 'whistle-blower' protection in section 1102.5, subdivision (b), stating that an employer may not retaliate against an employee for disclosing a violation of state or federal regulation to a governmental or law enforcement agency. This provision reflects the broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation. Section 1102.5, subdivision (b), concerns employees who report to public agencies. It does not protect plaintiff, who reported his suspicions directly to his employer. Nonetheless, it does show the Legislature's interest in encouraging employees to report workplace activity that may violate important public policies that the Legislature has stated. The state's whistle-blower statute includes administrative regulations as a policy source for reporting an employer's wrongful acts and grants employees protection against retaliatory termination. Thus, our Legislature believes that fundamental public policies embodied in regulations are sufficiently important to justify encouraging employees to challenge employers who ignore those policies." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 76–77 [78 Cal.Rptr.2d 16, 960 P.2d 1046].)
- "[T]he purpose of … section 1102.5(b) 'is to 'encourag[e] workplace whistle-blowers to report unlawful acts without fearing retaliation.' " (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 923 [180 Cal.Rptr.3d 359].)
- "As a general proposition, we conclude the court could properly craft instructions in conformity with law developed in federal cases interpreting the federal whistleblower statute. As the court acknowledged, it was not bound by such federal interpretations. Nevertheless, the court could properly conclude that the jury required guidance as to what did and did not constitute 'disclosing information' or a 'protected disclosure' under the California statutes." (*Mize-Kurzman, supra,* 202

Cal.App.4th at p. 847.)

- "The court erred in failing to distinguish between the disclosure of policies that plaintiff believed to be unwise, wasteful, gross misconduct or the like, which are subject to the [debatable differences of opinion concerning policy matters] limitation, and the disclosure of policies that plaintiff reasonably believed violated federal or state statutes, rules, or regulations, which are not subject to this limitation, even if these policies were also claimed to be unwise, wasteful or to constitute gross misconduct." (*Mize-Kurzman, supra,* 202 Cal.App.4th at pp. 852–853.)

- "[I]t is not the *motive* of the asserted whistleblower, but the nature of the communication that determines whether it is covered." (*Mize-Kurzman, supra,* 202 Cal.App.4th at p. 852, original italics.)

- "[I]f we interpret section 1102.5 to require an employee to go to a different public agency or directly to a law enforcement agency before he or she can be assured of protection from retaliation, we would be encouraging public employees who suspected wrongdoing to do nothing at all. Under the scenario envisioned by the [defendant], if the employee reports his or her suspicions to the agency, … , he or she will *have to suffer any retaliatory* conduct with no legal recourse. If the employee reports suspicions to an outside agency or law enforcement personnel, he or she risks subjecting the agency to negative publicity and loss of public support which could ensue without regard to whether the charges prove to be true. At the same time, a serious rift in the employment relationship will have occurred because the employee did not go through official channels within the agency which was prepared to investigate the charges. We see no reason to interpret the statute to create such anomalous results." (*Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 243 [101 Cal.Rptr.2d 893].)

- "Labor Code section 1102.5, subdivision (b) protects employee reports of unlawful activity by third parties such as contractors and employees, as well unlawful activity by an employer. In support of our conclusion, we note that an employer may have a financial motive to suppress reports of illegal conduct by employees and contractors that reflect poorly on that employer." (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 471 [152 Cal.Rptr.3d 595], internal citation omitted.)

- "We are persuaded that [instructing the jury that reporting publicly known facts is not a protected disclosure] was a proper limitation on what constitutes disclosure protected by California law." (*Mize-Kurzman, supra,* 202 Cal.App.4th at p. 858.)

- "The report of 'publicly known' information or 'already known' information is distinct from a rule in which only the first employee to report or disclose unlawful conduct is entitled to protection from whistleblower retaliation." (*Hager, supra,* 228 Cal.App.4th at p. 1552.)

- "Protection only to the first employee to disclose unlawful acts would defeat the legislative purpose of protecting workplace whistleblowers, as employees would not come forward to report unlawful conduct for fear that someone else already had done so. The 'first report' rule would discourage whistleblowing. Thus, the [defendant]'s interpretation is a disincentive to report unlawful conduct. We see no such reason to interpret the statute in a manner that would contradict

the purpose of the statute." (*Hager, supra,* 228 Cal.App.4th at p. 1550.)

- "Matters such as transferring employees, writing up employees, and counseling employees are personnel matters. 'To exalt these exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief. Most damagingly, it would thrust the judiciary into micromanaging employment practices and create a legion of undeserving protected 'whistleblowers' arising from the routine workings and communications of the job site. … ' " (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 822 [98 Cal.Rptr.3d 281].)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 349

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, *Employment Torts And Related Claims: Other Statutory Claims*, ¶ 5:894 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, §§ 250.12, 249.15 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, § 100.42 et seq. (Matthew Bender)

~~2731~~4604. Affirmative Defense—Same Decision (Lab. Code, § 1102.6)

If [*name of plaintiff*] proves that [his/her] [disclosure of information of/refusal to participate in] an unlawful act was a contributing factor to [his/her] [discharge/[*other adverse employment action*]], [*name of defendant*] is not liable if [he/she/it] proves by clear and convincing evidence that [he/she/it] would have [discharged/[*other adverse employment action*]] [*name of plaintiff*] anyway at that time for legitimate, independent reasons.

New December 2013; Renumbered from CACI No. 2731 and Revised June 2015

Directions for Use

Give this instruction in a so-called mixed-motive case under the whistleblower protection statute of the Labor Code. (See Lab. Code, § 1102.5; CACI No. ~~2730~~4603, *Whistleblower Protection—Essential Factual Elements*.) A mixed-motive case is one in which there is evidence of both a retaliatory and a legitimate reason for the adverse action. Even if the jury finds that the retaliatory reason was a contributing factor, the employer may avoid liability if it can prove by clear and convincing evidence that it would have made the same decision anyway for a legitimate reason. (Lab. Code, § 1102.6.)

Sources and Authority

- Same-Decision Affirmative Defense. Labor Code section 1102.6.

- "[Plaintiff] points to Labor Code section 1102.6, which requires the employer to prove a same-decision defense by clear and convincing evidence when a plaintiff has proven by a preponderance of the evidence that the employer's violation of the whistleblower statute was a 'contributing factor' to the contested employment decision. Yet the inclusion of the clear and convincing evidence language in one statute does not suggest that the Legislature intended the same standard to apply to other statutes implicating the same-decision defense." (*Harris v. City of Santa Monica* (2013) 56 Cal. 4th 203, 239 [152 Cal.Rptr.3d 392, 294 P.3d 49]; internal citation omitted.)

- "[W]hen we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision *at the time it made its actual decision*." (*Harris, supra,* 56 Cal.4th at p. 224, original italics.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 349

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, *Employment Torts And Related Claims: Other Statutory Claims*, ¶ 5:894 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline,* § 60.03 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, § 249.12 (Matthew Bender)

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For business meeting on June 26, 2015

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Small Claims: Technical Revisions to Forms to Conform to Statutory Change

Rules, Forms, Standards, or Statutes Affected
Revise forms SC-100 and SC-100 INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair
Judicial Council staff
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Legal Services

Agenda Item Type
Action Required

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July 1, 2015

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Executive Summary

Three years ago, the jurisdictional limit of the small claims court for actions brought by a natural person increased, with some specified exceptions. One of those exceptions, for personal injury claims in certain automobile cases, included a sunset date of January 1, 2015. Because two small claims forms state the jurisdictional limits, including the now outdated exception, the Civil and Small Claims Advisory Committee recommends revising those forms as soon as possible to reflect that the exception is no longer applicable.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Plaintiff's Claim and Order to Go to Small Claims Court* (form SC-100) and *Information for the Small Claims Plaintiff* (form SC-100-INFO), effective July 1, 2015, to accurately reflect the termination of the exception to the jurisdictional limit of the small claims court in actions brought by a natural person for personal injury claims in certain automobile cases.

The text of the revised forms is attached at pages 3–9.

Previous Council Action

The Judicial Council initially approved form SC-100 and the predecessor to form SC-100-INFO in 1977. The council has subsequently revised both forms many times to reflect statutory changes, to add and revise pertinent information, and to make the forms easier for small claims litigants to understand and use. Both forms were most recently revised in 2012 to state that a natural person may claim up to $10,000 in small claims court, with two exceptions to that general rule listed in footnotes on the forms.

Rationale for Recommendation

Code of Civil Procedure section 116.221 provides that the jurisdictional limit in small claims actions brought by a natural person is $10,000, except as specified. Effective January 1, 2015, one of the exceptions specified in that general statute was repealed as a matter of law. Code of Civil Procedure section 116.224—which provided that the jurisdictional limit would remain $7,500 in actions brought by a natural person for damages for bodily injuries resulting from an automobile accident if a defendant were covered by an automobile insurance policy that included a duty to defend—is no longer in effect. Forms SC-100 and SC-100-INFO require revision to eliminate the references to the exception in section 116.224 so as to accurately reflect that this exception to the jurisdictional limits of the small claims court no longer applies.[1]

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for public comment because it involves only minor, noncontroversial revisions to the forms to make them consistent with the new law. For the Judicial Council to revise the forms without circulation is appropriate. (See Cal. Rules of Court, rule 10.22(d)(2).)

No alternatives have been considered because the forms need to be amended immediately to correctly reflect the current law.

Implementation Requirements, Costs, and Operational Impacts

The proposed revisions will entail no significant implementation requirements, costs, or operational impacts for most courts. Publishers of forms and document completion software will need to take minor implementation actions.

Attachments and Links

1. Forms SC-100 and SC-100-INFO, at pages 3–9

[1] The references to the exception are currently contained in the footnotes describing the exceptions to the general jurisdictional limit, at pages 4 and 5 of form SC-100 and page 1 of form SC-100-INFO.

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SC-100 Plaintiff's Claim and ORDER to Go to Small Claims Court

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

Notice to the person being sued:

- You are the Defendant if your name is listed in (2) on page 2 of this form. The person suing you is the Plaintiff, listed in (1) on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en (2) de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en (1) de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in (1) and (2) must go to court: *(Clerk fills out section below.)*

Trial Date →

Date	Time	Department	Name and address of court if different from above
1.			
2.			
3.			

Date: _____ Clerk, by _____, Deputy

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- *Before* you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff,* to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to *www.courts.ca.gov/smallclaims/forms.*
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.

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Plaintiff *(list names):*

Case Number:

1 The Plaintiff (the person, business, or public entity that is suing) is:

Name: _____ Phone: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

If more than one Plaintiff, list next Plaintiff here:

Name: _____ Phone: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

☐ *Check here if more than two Plaintiffs and attach Form SC-100A.*

☐ *Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.*

2 The Defendant (the person, business, or public entity being sued) is:

Name: _____ Phone: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

If more than one Defendant, list next Defendant here:

Name: _____ Phone: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

☐ *Check here if more than two Defendants and attach Form SC-100A.*

☐ *Check here if any Defendant is on active military duty, and write his or her name here:* _____

3 The Plaintiff claims the Defendant owes $ _____ *. (Explain below):*

a. Why does the Defendant owe the Plaintiff money?

_____

_____

When did this happen? *(Date):* _____

b. If no specific date, give the time period: *Date started:* _____ *Through:* _____

c. How did you calculate the money owed to you? *(Do not include court costs or fees for service.)*

_____

_____

☐ *Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.*

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Plaintiff *(list names):*

Case Number:

4 **You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this?** ☐ Yes ☐ No

If no, explain why not:

5 **Why are you filing your claim at this courthouse?**

This courthouse covers the area *(check the one that applies):*

a. ☐ (1) Where the Defendant lives or does business.
(2) Where the Plaintiff's property was damaged.
(3) Where the Plaintiff was injured.
(4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant *or* where the Defendant lived or did business when the Defendant made the contract.

b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. *(Code Civ. Proc., § 395(b).)*

c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). *(Civ Code, § 1812.10.)*

d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. *(Civ Code, § 2984.4.)*

e. ☐ Other *(specify)*: _____

6 **List the zip code of the place checked in (5) above** *(if you know):* _____

7 **Is your claim about an attorney-client fee dispute?** ☐ Yes ☐ No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here: ☐

8 **Are you suing a public entity?** ☐ Yes ☐ No

If yes, you must file a written claim with the entity first. ☐ A claim was filed on *(date):* _____

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 **Have you filed more than 12 other small claims within the last 12 months in California?**

☐ Yes ☐ No *If yes, the filing fee for this case will be higher.*

10 **I understand that by filing a claim in small claims court, I have no right to appeal this claim.**

11 I have not filed, and understand that I cannot file, more than two small claims cases for more than $2,500 in California during this calendar year.

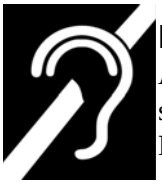
I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: _____ _____ ▶ _____

Plaintiff types or prints name here *Plaintiff signs here*

Date: _____ _____ ▶ _____

Second Plaintiff types or prints name here *Second Plaintiff signs here*



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for Form MC-410, *Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)*

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SC-100 Information for the Defendant (the person being sued)

"Small claims court" is a special court where claims for $5,000 or less are decided. A "natural person" (not a business or public entity) may generally claim up to $10,000, including a sole proprietor. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the *Defendant*—the person being sued. The person who is suing you is the *Plaintiff*.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at *www.courts.ca.gov/smallclaims/prepare.*

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Request to Waive Court Fees* (form FW-001).

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at *www.courts.ca.gov/smallclaims/forms.*

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration,* to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see *www.courts.ca.gov/smallclaims/appeals.*

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

Need help?

Your county's Small Claims Advisor can help for free.

Or go to *www.courts.ca.gov/smallclaims/advisor.*

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).)

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SC-100 Información para el demandado (la persona demandada)

La **"Corte de reclamos menores"** es una corte especial donde se deciden casos por $5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública) puede reclamar hasta $10,000. Una **"**persona natural**"** (que no sea un negocio ni una entidad pública), que incluye un dueño único, generalmente puede reclamar hasta $10,000.
(Vea abajo para las excepciones.*) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?
Puede hablar con un abogado antes o después del caso. Pero *no puede* tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte?
No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en *www.courts.ca.gov/reclamosmenores/preparese.*

¿Qué hago si necesito una adaptación?
Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accomodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo inglés bien?
Traiga a un adulto que no sea testigo para que le sirva de intérprete. O pida al secretario de la corte que le asigne uno. Si quiere que la corte le asigne un intérprete, lo tiene que pedir como minimo menos cinco dias antes de la fecha en que tenga que ir a la corte. Es posible que no haya disponible un intérprete proporcionado por la corte o que tenga que pagar una cuota por emplear un intérprete de la corte, a menos que tenga una exención de cuotas. Puede pedir a la corte una lista de intérpretes y la Solicitud de exención de cuotas de la corte (formulario FW-001S).

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en *www.courts.ca.gov/smallclaims/forms* (página está en inglés).

¿Qué pasa en el juicio?
El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?
Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días depués de la decisión del juez.
- Si *no* estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea *www.courts.ca.gov/reclamosmenores/apelaciones.*

¿Tengo otras opciones? Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo.Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- **Demandar a la persona que lo demandó.** Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), *o*
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), *o*
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte *y* a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.

¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O vea Información por condado en *www.courts.ca.gov/reclamosmenores/asesores.*

*** Excepciones:** Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

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INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

SC-100-INFO

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff.** The person who is sued is the **defendant.** In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than $5,000 if you are a business or public entity or for more than $10,000 if you are a natural person (including a sole proprietor). *(See below for reference to exceptions.*)* If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than $2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem.** This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court. **You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear,* form SC-109.)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue.** Check the court's local rules if there is more than one court location in the county handling small claims cases. If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard. The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken; or
5. For a retail installment account or sales contract or a motor vehicle finance sale:
   a. Where the buyer lives;
   b. Where the buyer lived when the contract was entered into;
   c. Where the buyer signed the contract; or
   d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name.* If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit at *www.ss.ca.gov/business*. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process.** This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF.** Here are four ways to serve the defendant:

1. **Service by a law officer**—You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server**—You may ask anyone who is *not a party* in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.
3. **Certified mail**—You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service**—This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

Form Adopted for Mandatory Use
Judicial Council of California
SC-100-INFO [Revised July 1, 2015]

Code of Civil Procedure,
§§ 116.110 et seq.,116.220(c), 116.340(g)
www.courts.ca.gov

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4. **Substituted service** *(continued)* A copy of your claim must be left at the defendant's business with the person in charge; **OR** at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.

No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.

The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service (*form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant)** will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim.* The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than $5,000 or $10,000 if the defendant is a natural person *(see exceptions on page 1*).* If the value of the claim is more than this amount, the defendant may either give up the amount over $5,000 or $10,000 and sue in the small claims court or file a motion to transfer the case to the appropriate court for the full value of the claim.

The defendant's claim must be served on the plaintiff at least *five days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *one day* before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily. You may also ask the clerk to issue a **subpoena.** A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order before the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and collects the money is called the **judgment creditor.** The party who loses the case and owes the money is called the **judgment debtor.** Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment*. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

1. **Lawyers**—Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
2. **Interpreters**—If you do not speak English well, bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Request to Waive Court Fees* (form FW-001).
3. **Waiver of fees**—The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court**—If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays.**
5. **Parties who are in jail**—If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations**—If you have a disability and need assistance, immediately ask the court to help accommodate your needs. If you are hearing impaired and need assistance, notify the court immediately.
7. **Forms**—You can get small claims forms and more information at the California Courts Self-Help Center website *(www.courts.ca.gov/smallclaims),* your county law library, or the courthouse nearest you.
8. **Small claims advisors**—The law requires each county to provide assistance in small claims cases free of charge. *(Small claims advisor information):*

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 25-27, 2015

Title
Criminal Procedure: Update Judicial Council Misdemeanor Domestic Violence Plea Form Citations

Rules, Forms, Standards, or Statutes Affected
Revise form CR-102

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2015

Date of Report
May 6, 2015

Contact
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Executive Summary

The Criminal Law Advisory Committee recommends revising an optional Judicial Council form used to facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases to update two citations to statutes that address prohibitions on owning, using, or possessing firearms and ammunition within 10 years of a misdemeanor domestic violence conviction.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2015, revise the *Domestic Violence Plea Form with Waiver of Rights (Misdemeanor)* (form CR-102) to:

1. Replace the citation to Penal Code section 12021 in provision 7f with a citation to Penal Code section 29805, to reflect the current statute that addresses prohibitions on owning, using, or possessing firearms within 10 years of a misdemeanor domestic violence conviction; and
2. Replace the citation to Penal Code section 12316 in provision 7f with a citation to Penal Code section 30305, to reflect the current statute that addresses prohibitions on owning,

using, or possessing ammunition within 10 years of a misdemeanor domestic violence conviction.

The revised form is attached at pages 3–5.

Previous Council Action

The *Domestic Violence Plea Form with Waiver of Rights (Misdemeanor)* (form CR-102) was adopted on April 29, 2011, with a July 1, 2011, effective date.

Rationale for Recommendation

The form CR-102 is an optional form designed to promote standardized pleas in misdemeanor domestic violence cases statewide by including all necessary and common advisements, waivers, and consequences of the plea.

Penal Code section 29805, added by Senate Bill 1080 (Committee on Public Safety; Stats. 2010, ch. 711), § 6.76, operative January 1, 2012, continues former section 12021(c)(1) without substantive change.

Penal Code section 30305, added by SB 1080, § 6, operative January 1, 2012, continues former section 12316 without substantive change: Subdivision (a) of section 30305 continues former section 12316(b)(1) & (3) without substantive change; subdivision (b) continues former section 12316(b)(4)–(5) without substantive change; subdivision (c) continues former section 12316(d)(1) without substantive change; subdivision (d) continues former section 12316(d)(2)–(3) without substantive change.

To reduce confusion and enhance the information on the forms, the committee recommends revising the form to update these two citations to reflect the current statutes.

Comments, Alternatives Considered, and Policy Implications

The committee considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the updated citations to current law. The revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve procedures for misdemeanor domestic violence plea agreements by ensuring that provisions setting forth the consequences of the plea reflect current law.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are limited to the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Form CR-102, at pages 3–5

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS **(Misdemeanor)**	CASE NUMBER:

Instructions:

- *Fill out this form only if you want to plead guilty or no contest.*
- *Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.*
- *Sign and date the form under "DEFENDANT'S STATEMENT" on page 3.*
- *Keep in mind that the court cannot give legal advice. If you have an attorney and have questions about anything in this form, ask your attorney.*

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below. ☐

COUNT	CHARGES (SECTION & DESCRIPTION)		MAXIMUM PENALTY (FINE & JAIL)	

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s): _____ ☐

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s): _____ ☐

4. **Right to an Attorney** *(Leave this box blank if you have an attorney)***.** I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. **I hereby give up my right to be represented by an attorney.** ☐

5. **Other Constitutional Rights.** I understand that I am entitled to each of the following rights concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

   a. **Right to a jury trial.** I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty. ☐

   b. **Right to confront and cross-examine witnesses.** I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court to testify under oath in my presence and I or my attorney may question them. ☐

   c. **Right to remain silent and not incriminate myself.** I understand that I have the right to remain silent and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself and I cannot be forced to testify. ☐

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

INITIALS

6. **Rights for Probation Violations** *(Leave this box blank if you are not charged with a probation violation).* I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge. ☐

7. **Consequences of My Plea**
   a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony. ☐
   b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment. ☐
   c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097): ☐
      (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
      (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
      (3) Booking within one week of sentencing if I have not already been booked;
      (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
      (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
      (6) Community service;
      (7) Restitution to the victim (if applicable);
      (8) An order to not own, possess, purchase, or receive any firearms;
      (9) An order to relinquish any firearms in my possession or control; and
      (10) Other: _____
   d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1. ☐
   e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from admission and reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. ☐
   f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections 29805 and 30305. ☐
   g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044. ☐
   h. **Other consequences** *(specify):* _____ ☐

8. **Before the Plea**
   a. **Discussion with my attorney** *(Leave this box blank if you are not represented by an attorney).* Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case. ☐
   b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form. ☐

9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea. ☐

10. **The Plea** *(check one).* I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

INITIALS

11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me. ☐

12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3. ☐

13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time. ☐

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

_____ _____
Defendant's Signature **Date**

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea.

_____ _____
Attorney's Signature **Date**

INTERPRETER'S STATEMENT

I, _____, having been duly sworn or having a written oath on file, certify that I truly interpreted this form to the defendant in the language noted below. The defendant stated that he or she understood the contents on the form and then initialed and signed the form.

Language: ☐ Spanish ☐ Other *(specify):* _____

_____ _____
Interpreter's Signature **Date**

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

_____ _____
Signature of the Court **Date**

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title
Court Facilities: Sale of Equity Interest in Chino Courthouse as Surplus Property

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Facilities Policies Working Group
Hon. Douglas P. Miller, Chair
Hon. Marla O. Anderson, Vice-chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 2, 2015

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Executive Summary

In keeping with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Facilities Policies Working Group recommends that the Judicial Council (1) declare as surplus property the Judicial Council's 51.17% equity interest in the Chino Courthouse, and (2) authorize the sale of the Equity Interest to the County of San Bernardino.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective June 26, 2015:

1. Declare the Judicial Council's equity interest in the Chino Courthouse to be surplus property;

2. Authorize the sale of the equity interest to the County of San Bernardino;

3. Direct staff to negotiate an Equity Rights Purchase Agreement and any other documents necessary to complete this transaction; and

4. Delegate to the Administrative Director the authority to sign such documents.

Previous Council Action

The Judicial Council has disposed of equity interests in court facilities in other contexts. In a few instances in the Judicial Council's capital program, Judicial Council equity in a court facility has been the consideration given to a county in exchange for land or site improvements for a new courthouse.

In November 2012 and again in September 2013, the Judicial Council executive office approved dispositions of equity interests in two closed court facilities in county-owned buildings.[1] In each of these cases, the counties had also ceased operations in the buildings that housed the court facilities and are now selling the buildings as surplus county property with the Judicial Council entitled to its share of the proceeds.[2]

Rationale for Recommendation

In 2008, as part of the Senate Bill 1732 (Stats. 2002, ch. 1082) transfer process, the Judicial Council entered into (1) a Transfer Agreement for the Transfer of Responsibility for Court Facility (Transfer Agreement), and (2) a Joint Occupancy Agreement (JOA) with the county. Under the Transfer Agreement, the Judicial Council accepted responsibility for the court facility which represented a 51.17% equity interest in the Chino Courthouse, while the County of San Bernardino retained title to the land and building.[3] The Superior Court of San Bernardino County closed the facility to the public as of December 2012, and the courthouse has since been vacated by the court. The court has notified the FPWG that it has no future plans to reopen the facility, is supportive of staff efforts to dispose of the Judicial Council's equity interest in it, and would like staff to move forward as quickly as possible with a sale of the equity interest to the county.

Although the facility has been closed for more than 29 months, the council continues to remain responsible for the costs of operations and maintenance under the provisions of section 70343(a)(2).[4] Once the facility is disposed of, the judicial branch will realize financial savings on maintenance costs (utilities, landscaping, vandalism prevention/cleanup, etc.).

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[1] Memorandum re: Disposition of Portola Courthouse (Plumas County), dated November 6, 2012, and signed by Curtis L. Child on November 13, 2012; and Memorandum re: Disposition of Willits Court Facility (Mendocino County), dated September 16, 2013, and signed by Curt Soderlund on September 20, 2013.

[2] These transactions are of the same kind as the proposed Chino Courthouse disposition. The proceeds will be deposited into the State Court Facilities Construction Fund. (See footnote 11 below, and accompanying text.)

[3] Under authority of Gov. Code § 70323(b)(1). All future statutory references are to the Government Code unless otherwise indicated.

[4] Section 70343(a)(2) provides as follows:

The Facilities Policies Working Group (FPWG)[5] reviewed the status of the courthouse and determined that this facility was not being used by the court and would not for the foreseeable future be used for court operations. The court is in favor of having the council declare the council's equity interest in the facility as surplus and sell the equity interest back to the county at fair market value in accordance with statute. The FPWG voted to recommend that the council declare the equity interest in the Chino Courthouse as surplus and authorize the sale of the equity interest to the County of San Bernardino.

Equity in the Trial Court Facilities Act

"Equity" is an important concept in the Trial Court Facilities Act of 2002, SB 1732 (Escutia), codified in Government Code sections 70301 through 70404, as amended (the Act), though it is nowhere defined and is specifically mentioned in only four places:

- The uncodified Legislative Findings and Declarations of the Act include a list of "guiding principles" for carrying out the transfer of responsibility of court facilities from the counties to the states, one of which is "the preservation of the respective equity interests of the county and the state in a joint-use or historic facility."[6]

- Another guiding principle for the transfers in section (d)(6) of the Legislative Findings and Declarations is that "[c]ounties shall not be entitled to compensation for any equity value of court facilities transferred to the state."

- In section 70325, which addresses transfers of buildings subject to bonded indebtedness, the Act provides that "during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or ownership rights, in, to, or with respect to, the court facility."[7]

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(2) Unless otherwise specifically provided by agreement between the Judicial Council and the county, the Judicial Council and the county shall share operation and maintenance costs in a shared use building as follows:

(A) Each entity is responsible for the operation and normal day-to-day maintenance costs of that space in the building exclusively used by the entity.

(B) Each entity shall share the operating and normal day-to-day maintenance costs for the common space in the building based on the proportionate amount of space exclusively used by each entity.

(C) Each entity shall share the major building repairs and maintenance affecting the entire building, including, but not limited to, common areas, based on the proportionate amount of space exclusively used by each entity.

[5] The FPWG supports the Judicial Council's Executive and Planning Committee in its role of overseeing the council's policies and procedures regarding court facilities under rule 10.11(c) of the California Rules of Court.

[6] Ch. 1082, Stats. 2002, § 1(d)(4).

[7] Section 70325(c).

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- Section 70344 addresses the narrow situation of a shared use building where either the court or the county occupies 80% or more of the building. In that case, the majority occupant can require the other party to vacate the building upon reasonable notice and compensation "for its equity in the facility and for relocation costs at the fair market value."[8]

The provisions of the Act addressing administration of shared use buildings (§§ 70341–70342) rely on the concept of equity without actually using that word. Read together, these sections of the Act make clear that an equity interest in a shared use building is an ownership interest that is exclusive, permanent and without payment of rent or other occupancy charges to the other party, regardless of how title is held. If the court/Judicial Council or county vacates or otherwise fails to use its exclusive use area, the rights and obligations of the parties under the JOA continue in full force and effect unless they agree to another arrangement memorialized in a subsequent agreement that supersedes the JOA. Any such arrangement, whether voluntary or, in the case of a 20% or less equity interest, involuntary, must involve compensation for the vacated exclusive use area and corresponding equity interest at its fair market value.

Disposition of a closed court facility in which the Judicial Council holds only an equity interest in county-owned building

Although the Judicial Council has previously declared surplus a court facility in a state-owned building as a step towards its disposition,[9] it has not yet been asked to consider declaring surplus an equity interest in a shared-use court facility where title is held by a county.

Authority. Government Code section 70391 vests in the Judicial Council the authority to dispose of surplus court facilities acquired through the transfer process under the Act, in compliance with section 11011.

Section 70391 states, in pertinent part:

> The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law: [¶] . . . [¶]
>
> (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

[8] Section 70344(b).

[9] The Judicial Council declared as surplus property the San Pedro Courthouse in Los Angeles County at its April 17, 2015 meeting.

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> (1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011 . . . .

Because section 70391(c) applies to court facilities following a "transfer of responsibility," it applies to (A) those court facilities in which the Judicial Council has taken both (i) transfer of responsibility and (ii) title to the land and building, as well as to (B) those court facilities in which the Judicial Council has taken a (i) transfer of responsibility but only (ii) an equity interest in the land and building (while the county continues to retain title under section 70323(b)(1)). The court facility in the Chino Courthouse is an example of the latter.

The court facility as "surplus" under section 70391(c). By generally requiring compliance with section 11011, section 70391(c) imposes on the Judicial Council the obligation to determine whether a given closed court facility is "surplus" and thus eligible for disposal under its authority. This lack of a specific definition of "surplus" is mitigated by reference to the three nonexclusive examples listed in sections 11011(a)(1)–(3) of lands that would be "in excess of" an agency's foreseeable needs:

> (1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.
>
> (2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.
>
> (3) Land not identified by the state agency within its master plans for facility development.

Since section 11011 provides the general statutory framework and process for disposition of excess *state-owned* property[10] by the Department of General Services (DGS), the requirements set forth in section 11011 (such as reporting to the Legislature as surplus and subsequent legislative authorization to dispose of the property) are not directly applicable here. However, the examples listed in sections 11011(a)(1)–(3) are useful here for guidance on whether the Chino Courthouse should be declared surplus. Under this standard, the Judicial Council must declare as surplus property any court facility that is not being utilized, is underutilized, or is not identified within the judicial branch's master plans for facility development.

In this case, the Superior Court of San Bernardino County reported that the Chino Courthouse is not now being utilized and that the superior court has no foreseeable plans to use this facility for court operations. The Chino Courthouse is not identified within the judicial branch's facility master plans for future facility development. Accordingly, the Judicial Council must declare the courthouse to be surplus property.

[10] Section 11011 addresses "proprietary state lands." (See § 11011(a).)

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Deposit of Proceeds into State Court Facilities Construction Fund. Section 70391(c) identifies the State Court Facilities Construction Fund, subject to limited exceptions not relevant here, as the fund in which to deposit any money received for surplus court facilities.[11]

County's right of first refusal

Under section 70391(c)(2), the Judicial Council is required to consult with the county concerning the disposition of the Chino Courthouse, and the county has the right to request that the facility be offered to the county at fair market value before being offered to another government agency. Section 70391(c)(2) provides:

> The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to another state agency or local government agency.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of San Bernardino County in which the court (1) confirmed it has no plans to reoccupy the Chino Courthouse, (2) indicated it fully supports the permanent disposition of the council's equity interest in the facility, and (3) expressed its agreement with the County of San Bernardino's plan to sell the facility to the City of Chino.[12]

Alternative Actions Considered

One alternative action would be for the Judicial Council to retain its interest in the Chino Courthouse in its vacant state, and continue to be responsible for its share of ongoing operation and maintenance costs. Although the Chino Courthouse is not occupied, the Judicial Council continues to be responsible for its share of expenses such as utilities, landscaping, and trash removal. This alternative is not recommended.

Another alternative action would be for the Judicial Council staff to try to lease or license the court space in the Chino Courthouse to another user. There is not a high demand for commercial space in the City of Chino, especially space that is built out for court use and shared with the County of San Bernardino. In addition, the Chino Courthouse is bounded on either side by a library and a senior center, making the space most suitable for civic use. The Judicial Council

[11] Although article III, section 9, of the California Constitution also addresses where to deposit the proceeds of surplus property, and would trump any irreconcilable statute, there is no conflict as the constitutional provision does not apply here. (Cf. *People v. Navarro* (1972) 7 Cal.3d 248, 260 [where a statute and constitutional provision conflict, the constitutional provision controls].) Article III, section 9, requires that "the proceeds from the sale of surplus *state property*" must be used to pay the principal and interest on bonds issued under the 2004 Economic Recovery Bond Act. (Cal. Const., art. III, § 9, italics added.) Accordingly, the constitutional provision does not apply where, as here, the court facilities are located in county-owned shared use buildings.

[12] The City of Chino plans to renovate the building for future use as part of the city's civic center.

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would continue to incur ongoing operations and maintenance costs while this former court facility stands empty during the marketing of the space to potential lessees or licensees. This alternative is not recommended.

Implementation Requirements, Costs, and Operational Impacts

In moving forward with the disposition of a surplus court facility, staff will, in compliance with section 70391(c)(2), consult with the County of San Bernardino concerning the disposition. If requested by the county, the equity interest in the facility shall be offered to the county at fair market value before being offered to any other state or local government agency. In informal discussions with the county, staff has been informed that the county is very interested in reacquiring the equity interest in the facility so that the county can sell the entire building to the City of Chino. If for some reason the county changes its position and is no longer interested in reacquiring the equity interest in the facility, the equity interest will then be offered to other state and local government agencies before staff considers other methods of disposition.

Implementation Costs

The costs relating to the disposition of the equity in the building would be shared with the County of San Bernardino on a pro rata basis.

Attachments and Links

1. Cal. Rules of Court, rule 10.183: *http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183.*
2. Government Code section 70391: *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70391.*
3. Government Code section 11011: *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=11011.*
4. Attachment A: Correspondence from the Superior Court of San Bernardino County
5. Attachment B: Correspondence from County of San Bernardino

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JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title
Court Facilities: Transfer of Judicial Council's Equity Interest in Independence Courthouse

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Facilities Policies Working Group
Hon. Douglas P. Miller, Chair
Hon. Marla O. Anderson, Vice-chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 2, 2015

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Executive Summary

The Facilities Policies Working Group recommends that the Judicial Council approve the proposed permanent transfer of the Judicial Council's 34% equity interest (the Equity Interest) in the Independence Courthouse, located at 168 North Edwards Street, Independence, California (the Independence Courthouse) to the County of Inyo (the County) in exchange for the County's (1) forgiveness over time of the Judicial Council's existing obligation under the Joint Occupancy Agreement with the County dated April 29, 2008, to pay its 34% share of the cost of operating and maintaining the Independence Courthouse (the Shared Costs); and (2) agreement to enter into a long-term lease (the Lease) with the Judicial Council for certain real property located immediately adjacent to the existing County jail—also located in Independence—at a nominal rent for the purpose of installing and operating a modular courthouse (the Modular) for use by the Inyo County Superior Court (the Court). The cost of acquisition, installation, and construction of improvements in the Modular will be covered entirely by existing Courthouse Construction Funds collected by the County and currently in the possession of the Court pursuant

to a series of agreements between and among the County, Court, and Judicial Council leadership from the period 2008 through 2014.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective June 26, 2015:

1. Authorize transfer of the Equity Interest to the County over time in exchange for (a) the County's forgiveness of the Judicial Council's obligation to pay Shared Costs with respect to the Independence Courthouse until such time as the total amount of such forgiven Shared Costs equals the fair market value of the Equity Interest, and (b) the County's agreement to enter into the Lease with the Judicial Council on mutually agreeable terms and conditions;

2. Direct Judicial Council staff to continue negotiating the agreements and other documents necessary to complete this transaction; and

3. Authorize the Administrative Director or his designee to execute such agreements and other documents.

Previous Council Action

The Judicial Council has not been asked to consider an equity disposition transaction in the form proposed in this case.

The Judicial Council has, however, disposed of equity interests in court facilities in a few instances in the Judicial Council's Capital Program, where Judicial Council equity in a court facility has been the consideration given to a county in exchange for land or site improvements for a new courthouse.

In addition, in November 2012 and again in September 2013, the Judicial Council executive office approved dispositions of equity interests in two closed court facilities in county-owned buildings.[1] In each of these cases, the counties had also ceased operations in the buildings that housed the court facilities and are now selling the buildings as surplus county property with the Judicial Council entitled to its share of the proceeds.

Rationale for Recommendation

The goal of this transaction is to replace the court facility in the Independence Courthouse, which (1) will be increasingly expensive to operate and maintain because of deferred maintenance projects, (2) has many security deficiencies, and (3) is not fully accessible, with a more modern,

[1] Memorandum re: Disposition of Portola Courthouse dated November 6, 2012, and signed by Curtis L. Child on November 13, 2012; and Memorandum re: Disposition of Willits Court Facility (Mendocino County) dated September 16, 2013, and signed by Curt Soderlund on September 20, 2013.

secure, and accessible court facility in the form of the Modular. Because the proposed location is adjacent to the County jail, shifting operations to that location will also allow for greater efficiencies for both the Court and County. The Court strongly supports this transaction and urges its approval.

Approval of this transaction is needed as soon as possible because the Modular to be used in Independence is currently being used by the Superior Court of Madera County (Madera Court) while the new Madera Courthouse is being completed. The Madera court's use of the Modular will cease by the end of August 2015, after which time they will move out their belongings, and the Modular will be ready for disassembly and transport to Independence. To minimize the risk of damage or loss that the Modular would be subject to while in storage after disassembly in Madera, site preparation in Independence must commence as soon as possible. Site preparation cannot commence in earnest until the transaction with the County for disposition of the Equity Interest, including the Lease, is complete.

The County of Inyo is the record title holder of the Independence Courthouse. The Independence Courthouse was constructed in 1921 and was last renovated in 1958. The Court currently occupies and uses approximately 5,615 square feet of space in the Independence Courthouse, representing a 34% share, consisting of two courtrooms and accompanying judges' chambers and other administrative space, with the County holding the remaining 66% share. The building has numerous security deficiencies and is not fully accessible. It also has a number of deferred maintenance projects in the near term including interior and exterior painting (estimated cost of approximately $140,000), window replacement (estimated cost of $104,000), and replacement of lines for waste and potable water (estimated cost of $164,000)[2]. Under the terms of the Joint Occupancy Agreement with the County dated April 29, 2008 (the JOA), the Judicial Council is obligated to pay its 34% share of the cost of these projects in addition to regular ongoing operations and maintenance.

The Modular, by comparison, which is about seven years old, is 8,000 square feet and would provide the Court with a much newer and more modern facility without the costly deferred maintenance projects on the horizon. Security and accessibility issues would also be remedied. By virtue of its proximity to the County jail, use of the Modular by the Court would also yield a real increase in efficiency in operations for both the Court and County with respect to the Court's criminal caseload. Reuse of the Modular for this project after the Madera Court's need for it is eliminated this summer would represent an economic efficiency that would allow the project to be completed under the Inyo court's very limited and fixed budget.

[2] This list of projects and their costs is taken from a schedule of expected deferred maintenance projects for the Independence Courthouse provided by Inyo County during the course of negotiations for the transaction that is the subject of this report.

According to a recent appraisal commissioned by Judicial Council staff, the current fair market value of the 34% equity interest in the Independence Courthouse is $360,000.[3] Based on historical averages for Shared Costs at the Independence Courthouse and taking into account certain needed deferred maintenance projects, an Equity Interest valued at $360,000 could be reduced to zero after approximately five years of forgiveness of those Shared Costs by the County.

The Court strongly supports this transaction and has been advocating since at least 2008 to add a modular court facility in Independence. The County is very interested in using the space in the Independence Courthouse that the Court would vacate in a move to the Modular, and would clearly benefit from having the Modular immediately adjacent to the jail.

The County has also made clear that as much as it wants to assist the Court in completing the overall project, it is not able to pay in cash an amount equal to the fair market value of the Equity Interest, but it is, however, interested in structuring a buyout through forgiveness over time of the Judicial Council's share of the cost of operating and maintaining the Independence Courthouse. As a result, the County and Judicial Council staff have been negotiating an agreement for disposition of the Judicial Council's Equity Interest that would include the following points:

- The fair market value of the Judicial Council's 34% equity interest in the Independence Courthouse would be determined by an appraisal (or, as noted above, two appraisals and negotiation).

- Upon completion of the construction and installation of the Modular, the Court would move out of the Independence Courthouse, and the County would then move into the vacated space.

- Starting as of the commencement date of the Lease, the Judicial Council's obligation to pay its 34% share of the cost of operations and maintenance of the Independence Courthouse (including the cost of deferred maintenance projects) would be forgiven, and the County would assume full responsibility for all operations and maintenance costs of that courthouse.

- The County would provide an annual accounting to the Judicial Council of the sums expended by the County to operate and maintain the Independence Courthouse.

- When the total amount of the Judicial Council's forgiven Shared Costs obligations equals the fair market value of the Equity Interest, the Judicial Council will record a Memorandum of Termination of Joint Occupancy Agreement, thereby extinguishing the

[3] This valuation is based on an appraisal dated as of February 25, 2015, obtained by Judicial Council staff. The County has indicated that it will obtain its own appraisal, and so the final fair market valuation of the equity interest will likely be a negotiated amount reflecting the two appraisals.

Judicial Council's obligation to pay Shared Costs and terminating its Equity Interest in the Independence Courthouse.

The chairs of the Judicial Council's internal committees asked for assistance from a small group of Judicial Council members to support the Executive and Planning Committee in its role of overseeing the Judicial Council's policies and procedures regarding court facilities under rule 10.11(c) of the California Rules of Court. The resulting FPWG is currently reviewing practices and considering policies in various areas related to facilities management. Pending the development and implementation of new facilities-related policies, at its May 19, 2015, meeting, the FPWG reviewed the status of the courthouse, the proposed Modular project, and the proposed disposition of the Judicial Council's Equity Interest, and determined that the Modular project and the disposition of the Judicial Council's Equity Interest should proceed.

Legal Authority

"Equity" is an important concept in the Trial Court Facilities Act of 2002, Senate Bill 1732 (Escutia), codified in Government Code sections 70301 through 70404,[4] as amended (the Act), though it is nowhere defined and is specifically mentioned in only four places:[5]

- The uncodified Legislative Findings and Declarations of the Act include a list of "guiding principles" for carrying out the transfer of responsibility of court facilities from the counties to the states, one of which is "the preservation of the respective equity interests of the county and the state in a joint-use or historic facility."[6]

- Another guiding principle for the transfers in section (d)(6) of the Legislative Findings and Declarations is that "[c]ounties shall not be entitled to compensation for any equity value of court facilities transferred to the state."

- In section 70325, which addresses transfers of buildings subject to bonded indebtedness, the Act provides that "during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or ownership rights, in, to, or with respect to, the court facility."[7]

- Section 70344 addresses the narrow situation of a shared use building where either the court or the county occupies 80% or more of the building. In that case, the majority occupant can require the other party to vacate the building upon reasonable notice and

[4] All statutory references are to the Government Code unless otherwise indicated.

[5] The term "equity" is also used in two sections of the Government Code generally addressing state-owned real property. These sections each authorize nonsurplus dispositions of specific parcels of state-owned real property and related acquisitions of replacement property. In each case, if the director of the Department of General Services acquires such replacement properties through a lease, the Legislature expresses its intent that the state should "obtain an equity interest" in any such replacement land or facility (§§ 14673.10(g)(1) and 14673.11(g)(1)).

[6] Ch. 1082, Stats. 2002, § 1(d)(4).

[7] Subsection 70325(c).

compensation "for its equity in the facility and for relocation costs at the fair market value."[8]

The provisions of the Act addressing administration of shared use buildings (§§ 70341–70342) rely on the concept of equity without actually using that word:

- Subsection 70341(a) specifies that the user rights of the court and county in a shared use building "are based on the proportional allocation of exclusive use facilities within the building for the court and the county" as specified in the transfer agreement and in the agreement required under section 70343 (i.e. the JOA), regardless of which entity holds title to the building.

- Subsection 70341(b) makes clear that the court and county each have the exclusive use of its respective facilities in the building, together with the shared use of the common areas, indefinitely and at no cost (other than its proportionate share of the operations and maintenance).

- Under subsections 70342(a)–(c), if either the Judicial Council or county wishes to have additional space in a shared use building, then other party may charge reasonable rent for that use of additional space.

- Under subsection 70342(e), unless the Judicial Council or county otherwise agree, if either party desires to decrease the amount of space it occupies in a shared use building, it may do so only after offering the other party the space on the same terms and conditions as to which it has proposed to transfer the space to a third party (i.e., a market rate transaction). Notwithstanding any transfer of space pursuant to this subsection or the failure to use the space, subsection 70342(e) provides that the Judicial Council and the county are not relieved of their respective rights and responsibilities under the JOA to share ongoing operations and maintenance costs, *unless* the JOA is superseded by a subsequent agreement.

Read together, these sections of the Act make clear that an equity interest in a shared use building is an ownership interest that is exclusive, permanent, and without payment of rent or other occupancy charges to the other party, regardless of how title is held. If the Court/Judicial Council or County vacates or otherwise fails to use its exclusive use area, the rights and obligations of the parties under the JOA continue in full force and effect unless they agree to another arrangement memorialized in a subsequent agreement that supersedes the JOA. Any such arrangement, whether voluntary or, in the case of a 20% or less equity interest, involuntary, must involve compensation for the vacated exclusive use area and corresponding equity interest at its fair market value.

This understanding of equity was embedded in the language of JOAs adopted throughout the state during the court facility transfer process under the Act, including the JOA used for the

[8] Subsection 70344(b).

Independence Courthouse. In particular, section 5.1 of the JOA addresses changes in use of the parties' respective exclusive use areas. Under authority of section 70342, section 5.1.3 of the JOA expressly confirms that "[t]he Parties' Shares will only be adjusted if one Party at any time buys the other Party's rights to occupancy and use of the Real Property for fair market value under section 5.3 of this JOA, or otherwise." In this case, the County is willing to buy, and the Judicial Council—with the full support and urging of the Court—is willing to sell, the Judicial Council's Equity Interest in the Independence Courthouse for an amount equal to the fair market value of the Equity Interest as determined by one or more real estate appraisals and negotiation with the County. Rather than payment in cash, the County would pay for the Equity Interest over time by forgiving the Judicial Council of its obligation to pay Shared Costs under the JOA, and by its agreement to enter into the Lease. As required by subsection 70342(e), this buy-out arrangement would be documented by a new "subsequent agreement" by and between the Judicial Council and County that will supersede the JOA, including in particular its cost-sharing provisions. In this case, the form of that "subsequent agreement" has not been finally established, but it would include specific reference to section 5.1.3 of the JOA and subsection 70342(e).

Because the agreement with the County regarding the Equity Interest at the Independence Courthouse will be an agreement under authority of 70342(e), the Judicial Council has the requisite authority it needs to negotiate and execute that agreement. Because this transaction with the County involving the Independence Courthouse and the Modular involves the management and operation of active trial court facilities, and insofar as the agreement(s) with the County documenting the transaction will be drafted, negotiated, and executed while the court facility at the Independence Courthouse is still in operation, under subsection 70392(a),[9] the Judicial Council may delegate to Judicial Council staff its responsibility and authority to complete the transaction under authority of 70342(e).

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Inyo County stating that the court supports the disposition of the facility through a sale of the Judicial Council's Equity Interest to Inyo County, so that the Modular project can proceed.

An alternative action would be for the Judicial Council and County to exchange the Judicial Council's equity interest in the Independence Courthouse for title to the land on which the Modular would be placed rather than lease the land from the County. This alternative is beneficial in that it would secure the right to use the land forever but is problematic because it would then be subject to the Property Acquisition Law (§ 15850 et seq.) which requires, among other things, that all such acquisitions be done through the normal capital budgeting process. That process, in the normal course, extends over more than one fiscal year which in this case would extend into the 2016–2017 fiscal year at a minimum with no guarantee of success.

[9] Subsection 70392(a) gives the Administrative Office of the Courts—now Judicial Council staff—authority to "provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts."

Acquisition of the land through the capital budgeting process would therefore add additional delay to a project highly desired by the Court and that has been already approved in large part by the Judicial Council executive office and the County. Such delay would likely render as impractical the reuse of the Madera modular and thereby create the need for a reconceptualizing of the project. For these reasons, the FPWG, Court, and Judicial Council staff have not recommended this alternative.

Another alternative is to do nothing and have the Court continue its occupancy and use of the Independence Courthouse. This alternative would require some formal action, probably by the Judicial Council, to undo the approvals previously given by Judicial Council executives with respect to funding of acquisition and installation of the Modular, and construction of improvements within the Modular, and to dispose of the Courthouse Construction Funds (CCFs) currently and specifically encumbered for those purposes.[10] Because of time and effort that the Court has invested in the project already, and the benefits that would be realized by the Court upon its completion (increased security, accessibility, and efficiency), the FPWG, Court, and Judicial Council staff have not recommended this alternative.

Implementation Requirements, Costs, and Operational Impacts

Out-of-pocket costs will be incurred in the Equity transfer process for an appraisal. Judicial Council staff time will be required to complete negotiations with the County and prepare necessary agreements and other documents. The out-of-pocket costs will, however, be offset by the elimination of the ongoing obligation to pay the Shared Costs. The Court will benefit from the proposed transaction when its operations are moved from the Independence Courthouse to the Modular.

Attachments and Links

1. Trial Court Facilities Act of 2002, SB 1732 (Escutia): *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1732&search_keywords=.*
2. Government Code section 70325: *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70325*.
3. Government Code sections 70341–70344: *http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=&title=8.&part=&chapter=5.7.&article=4*.

[10] See § 76100 regarding CCFs generally and former § 70404 (repealed as of January 1, 2010) regarding the process for encumbering those funds.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 25-26, 2015

Title
Court Public Parking Management Policy

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
None

Effective Date
July 1, 2015

Recommended by
Facilities Policy Working Group
Hon. Douglas P. Miller, Chair

Date of Report
May 26, 2015

Contact
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Executive Summary

The Council controls a number of parking spaces that were either acquired through SB 1732 or provided in conjunction with new courthouse construction. Before SB 1732, the counties managed parking spaces, making some available for free and others for a fee. On-site parking provides an expedient feature for the employees, jurors, and other users of courts. The intent of the document is to initiate a branch-wide policy to implement a methodical approach in developing paid parking at courthouses where feasible.

Recommendation

Adopt *Court Public Parking Management Policy* in order to institute a statewide approach to paid public parking at courthouses, effective July 1, 2015. The program will be managed by the Facilities Management Unit of Real Estate and Facilities Management. The courts may review and comment on plans or proposals to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces.

Please see the attached policy for full scope and implications.

Previous Council Action

The Council controls a number of parking spaces that were either acquired through SB 1732 or provided in conjunction with new courthouse construction. Lot size and access vary based on original construction requirements and historical availability of parking within the local environs surrounding the court. Before SB 1732, the counties constructed and managed parking spaces, making some available for free and others for a fee.

Currently the JCC manages 8,356 paid parking slots at 17 courthouses in three counties; Los Angeles, Santa Barbara, and Sacramento. Fourteen of the lots were transferred to the state as paid lots; three have been converted with the support of the local court since that time. The majority charge a flat daily rate of between $5 and $10 a day. Several offer monthly parking rates.

This is the first statewide public parking policy to be considered for implementation.

Rationale for Recommendation

The policy will set forth a reasonable, consistent methodology for the management of branch owned and/or managed parking spaces. The branch benefits by generating revenue via paid public parking where feasible. The following codes provide authority for the policy.

Government Code § 70391 provides that the Judicial Council shall "exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities whose the title of which is held by the state." Court Facilities definition includes "parking spaces historically made available to one or more users of court facilities." Absent legal authority to the contrary, the owner of real property has the ability to license and lease property that it owns. In this case, charging for parking would be considered a license to use the property. We have found no authority that limits the Judicial Council's authority as an owner to license court facilities.

The most appropriate fund for any revenue received from paid parking would be the Court Facilities Trust Fund as that fund is for purpose of operation, repair, and maintenance of court facilities. The agreements which generate this revenue are with parking management organizations which assist in the operation and management of the parking facilities on behalf of the Judicial Council.

In addition, this fund is most closely analogous to the Property Acquisition Law Money Account which is where Department of General Services deposits its parking revenue money. Further, as noted above, some parking revenue was in lieu of a Court Facilities Payment that would have been deposited in the Court Facilities Trust Fund. Because the revenue is in lieu of a portion of the Court Facilities Payment in some counties and is collected in conjunction with the management and operations of court facilities, it should probably be deposited into the Court Facilities Trust Fund.

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Comments, Alternatives Considered, and Policy Implications

The Facilities Policies Working Group (FPWG) discussed the policy at two of its meetings and recommended the policy to move forward for adoption by the Judicial Council at its meeting on May 19, 2015. During FPWG discussion, two alternatives for the approval and oversight of changes were presented.

1) As proposed in the recommended policy, the Judicial Council would consider all actions related to parking based on recommendations of the Real Estate and Facility Management staff.
2) The Judicial Council would delegate to the TCFMAC the authority to consider and determine all actions related to parking based on recommendations of the Real Estate and Facility Management staff. This option was determined by Legal Service to not be an appropriate item to delegate to the TCFMAC.

Annual revenues after expenses of operating the lots are about $2.5 million. Revenues generated from parking spaces are deposited in the Court Facilities Trust Fund to be used for the operation, maintenance, utility service, insurance, rent and non-capital repairs to court facilities throughout the state. The majority of this comes from lots transferred as paid lots. The anticipated revenue from these lots was a deduction from the County Facility Payments. Failure to continue operating the lots as paid lots would have a significant impact on the JCC's ability to maintain the existing court facilities. No other options were considered.

Implementation Requirements, Costs, and Operational Impacts

There will be very minimal cost to implement this policy. With the exception of the approval authority being moved from Real Estate and Facility Management to the Judicial Council, the policy reflects current operational procedures. The only cost incurred will be staff cost to prepare recommendations to the council for any future changes. Other options considered would have the same impact.

Attachments and Links

1. Court Public Parking Management Policy

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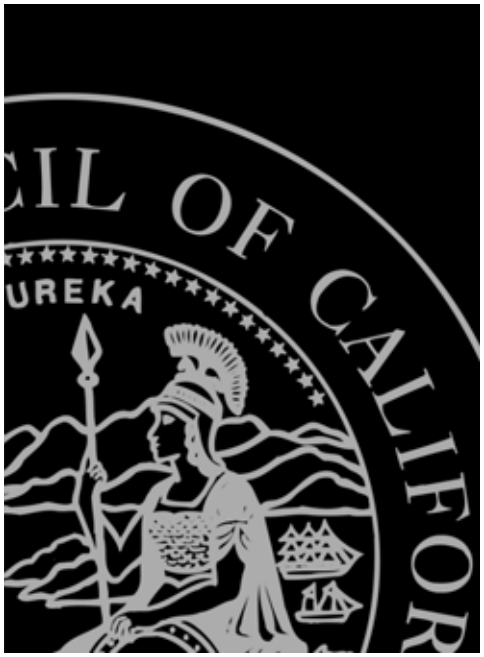

Court Public Parking Management Policy

RECOMMENDED BY: FACILITIES POLICY WORKING GROUP

JUNE 26, 2015

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1. Scope

With the exceptions indicated below, this policy applies to parking lots and garages open to the public (collectively "parking spaces") located within the boundaries of court properties owned or managed by the Judicial Council (Council).

2. Exceptions

The policy is not applicable to:

a. those public parking lots and garages located near court facilities that are managed by various county agencies on behalf of the Council and courts;

b. parking lots or garages or portions thereof located at court facilities that are owned or managed by the Council but that are not open to the public (e.g. reserved and secured parking for judicial officers);

c. Council-owned or managed parking lots or garages on the property of closed court facilities which may or may not be accessible by the general public;

d. Council-owned land which may be safely and securely utilized for parking until such time as required for use during a capital construction project or the commencement of court operations;

e. parking for court-approved third-party uses or off-site events or activities occurring during non-business hours; and

f. the Long Beach parking structure located at 101 Magnolia Avenue, Long Beach, CA during the term of the existing agreement between the Judicial Council and Long Beach Judicial Partners, LLC. Said agreement defines binding terms of service to be provided to the public during the term.

3. Background

The Council controls a number of parking spaces that were either acquired through SB 1732 or provided in conjunction with new courthouse construction. Lot size and access vary based on original construction requirements and historical availability of parking within the local environs surrounding the court. Before SB 1732, the counties constructed and managed parking spaces, making some available for free and others for a fee.

Revenues generated from parking spaces are deposited in the Court Facilities Trust Fund to be used for the operation, maintenance, utility service, insurance, rent and non-capital repairs to court facilities throughout the state.

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On-site parking provides an expedient feature for the employees, jurors, and other users of courts.

4. Authority for Policy

Under Government Code section 70391(a), the Judicial Council exercises "full responsibility, jurisdiction, control, and authority as an owner would have over court facilities the title of which is held by the state . . . ." The definition of "court facilities" in Government Code section 70301(d) includes "[p]arking spaces historically made available to one or more users of court facilities."

Under Government Code section 70391(g), the Judicial Council is responsible for managing court facilities in consultation with the courts. Under Rule 10.182(b)(1)(A) of the California Rules of Court, Judicial Council staff is required to take action on the operation of court facilities, including the day-to-day operation of a building and maintenance of a facility.

Under Government Code section 70392, Judicial Council staff has the responsibility to, among other things, "provide the ongoing oversight, management, operation, and maintenance of facilities used by the courts. . ." and to "[c]arry out the Judicial Council's policies with regard to court facilities. . .".

The Judicial Council may both license and charge for the use of parking spaces under the broad language in Government section 70391(a), which provides that the Council shall exercise "full responsibility, jurisdiction, control, and authority as an owner would have over court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities."

5. Purpose

a. To set forth a reasonable, consistent methodology for the management of branch owned and/or managed parking spaces.

b. To provide guidance as to when parking spaces may be provided for free and when they may be provided for a fee, including the establishment of a process and methodology for determining: (i) whether to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces, and (ii) the amount to be charged for any paid parking spaces.

c. To define the respective roles of courts, Council staff, various facilities-related committees, and the Council relative to parking operations.

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6. Management Practices

a. Available parking spaces and structures (as appropriate)shall be maintained in a condition that provides for a reasonable level of safe and secure access and operation including regular maintenance and renovation of facility parking equipment and infrastructure systems.

b. Available parking spaces and structures (as appropriate) shall be operated to allow for access to the court and public, as needed and based on both local operational requirements and to support special community based events.

c. Where applicable, parking spaces and associated parking space allocations shall be maintained in accordance with requirements set forth in transfer-related Joint Occupancy Agreements or Memoranda of Understanding.

d. Where applicable, parking rates for parking spaces shall be determined on the basis of commercial parking rates charged by comparable lots or structures.

e. The Council may contract with one or more vendors to manage court parking operations (parking vendors). Solicitations for parking vendors will be conducted in accordance with Council contracting policies and practices.

7. Role of the Council

a. The Council will review and update this policy as needed.

b. The Council will consider and act on any parking related issues based on recommendations made by Council staff.

8. Role of Council Staff

a. Council staff is responsible for managing both paid and unpaid parking spaces.

b. Council staff is responsible for providing active management and oversight of parking vendors. Management and oversight includes solicitation and award of contracts to parking vendors; ensuring accurate revenue collection; providing oversight of parking vendors to ensure that the parking vendors comply with the terms of the contract; and conducting performance management reviews of parking vendors.

c. Council staff will coordinate parking hours of operation with the courts. Usage for special events will be discussed and coordinated with the courts prior to approval being given for special events.

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d. Council staff will coordinate changes to parking services with court leadership prior to submission to the Council for consideration.

e. Council staff will review and act on recommendations of courts regarding parking issues not requiring further review and consideration.

f. Council staff will prepare reports or proposals for consideration by one or more of the following, as appropriate: court staff, Council senior management, various facilities-related committees, the Executive and Planning Committee, and the Judicial Council. Proposals may include facility modification projects, such as restriping to reconfigure parking lots to add or delete spaces; changes in paid parking rates in one or multiple parking facilities, converting unpaid parking to paid parking, and amendments to this policy.

9. Role of Courts

a. Courts may provide input on the performance of parking vendor services.

b. Where applicable, the courts will coordinate with parking vendors and their staff regarding providing free jury parking within any paid parking spaces (e.g. coordination with respect to providing permits to be used by jurors in paid parking areas, etc.).

c. The courts may review and comment on plans or proposals to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces.

10. Determination of Parking Rates

a. Council staff shall periodically initiate an evaluation of parking charges based on local market factors for the potential to (i) convert existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces and (ii) make adjustments to parking rates.

b. The evaluation will consist of the following components:

i) Parking studies based on local market conditions and practices, a survey of parking facilities, including identification of paid and free parking facilities, data on comparable parking rates, supply and demand characteristics, other industry and customary practices.

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ii) Analysis of local economic and business conditions, including potential impacts to public customers, the adjacent businesses and the local economy.

iii) Recommendations with regard to charges, facility modification, etc., depending on comparable charges and usage statistics for the area.

c. Proposals for changes in parking operations shall be shared and reviewed with courts with a view to evaluation of potential local and branch impacts.

i) If both the court and Council staff concur that a proposal to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces, is in the best interest of the branch, Council staff shall prepare a recommendation to the Executive and Planning Committee.

ii) In the event a court and Council staff do not agree on the nature of the lot or the rate to be paid, the court or staff may elect to bring the issue to the attention of the Executive and Planning Committee for a determination.

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Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25–26, 2015

Title
Judicial Branch Administration: *Judicial Branch Contracting Manual*

Rules, Forms, Standards, or Statutes Affected
Revise *Judicial Branch Contracting Manual*

Recommended by
Hon. Richard D. Huffman, Chair
Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch

Agenda Item Type
Action Required

Effective Date
July 1, 2015

Date of Report
June 2, 2015

Contact
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Executive Summary

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch recommends adopting proposed revisions to the *Judicial Branch Contracting Manual*. The California Judicial Branch Contract Law directs the Judicial Council to adopt and publish a manual incorporating procurement and contracting policies and procedures that must be followed by judicial branch entities. The council adopted the initial manual on August 26, 2011, and revisions to the manual on four subsequent occasions. The revisions that are currently proposed relate to updated nomenclature and minor clarifications.

Recommendation

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch recommends that the Judicial Council, effective July 1, 2015, adopt revisions to the *Judicial Branch Contracting Manual*. The proposed changes are shown in detail in the revised manual (see Attachment A).

Previous Council Action

At the Judicial Council's regular business meeting on August 26, 2011, the council adopted the initial version of the manual, effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law (JBCL).[1] In December 2011, April and August 2012, and December 2013, the council adopted revisions to the manual. The version of the manual adopted by the council in December 2013, effective January 1, 2014, remains in effect as of the date of this report.[2]

Rationale for Recommendation

Statutory requirement and development of the manual

The JBCL was enacted on March 24, 2011, and became effective on that date. With certain exceptions,[3] the JBCL requires that superior and appellate courts, the council, and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities, or JBEs) comply with provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services.[4] The JBCL applies to all covered contracts initially entered into or amended by JBEs on or after October 1, 2011.[5] As noted above, the JBCL also requires the council to adopt a manual containing procurement and contracting policies and procedures that must be followed by all JBEs.[6] The policies and procedures in the manual must be "consistent with [the Public Contract Code] and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*."[7] Of note, the requirement that JBEs comply with applicable provisions of the Public Contract Code is independent of the requirement that JBEs follow the policies and procedures in the manual.

Since adoption of the initial *Judicial Branch Contracting Manual*, Judicial Council staff has worked with the *Judicial Branch Contracting Manual* Working Group to revise the manual, and the council has adopted four sets of revisions.[8] The version of the manual that is currently in effect was adopted

[1] Pub. Contract Code, §§ 19201–19210.

[2] At its August 23, 2013, meeting, the council approved a recommendation that the A&E Committee be responsible for review of periodic updates and revisions to the manual that are proposed for the council's approval. The revised manual adopted by the council in December 2013 was adopted under the recommendations of the A&E Committee.

[3] Pub. Contract Code, §§ 19204(c), 19207, and 19208.

[4] *Id.*, § 19204(a).

[5] *Id.*, § 19203.

[6] *Id.*, § 19206.

[7] *Ibid*.

[8] The *Judicial Branch Contracting Manual* Working Group currently comprises the following judicial branch personnel: Ms. Charlene Ynson, Clerk/Administrator, Court of Appeal, Fifth Appellate District; Ms. Kimberly Flener, Court Executive Officer, and Mr. Richard Holst, Assistant Court Executive Officer, Superior Court of Butte County; Ms. Tammy L. Grimm, Court Executive Officer, Superior Court of Imperial County; Mr. Christopher Anderson, Chief Procurement Officer, and Mr. D. Brett Bianco, Court Counsel, Superior Court of Los Angeles County; Ms. Shunna Austin, Contracts Officer, Superior Court of Orange County; Mr. Patrick Barney, Contracts Attorney, and Mr. Luke McDannel, Assistant Deputy Executive Officer, Procurement, Superior Court of Riverside

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by the council in December 2013. The need to revise the manual is ongoing as applicable laws evolve and JBE personnel suggest corrections and improvements based on practical experience.[9]

Proposed revisions to the manual

Rule 10.63 of the California Rules of Court was adopted by the council, effective February 20, 2014, to establish by rule the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E Committee). Under section (b)(4) of this rule, one of the duties of the A&E Committee is to review proposed updates and revisions to the *Judicial Branch Contracting Manual*.

In consultation with the *Judicial Branch Contracting Manual* Working Group, staff has made proposed revisions to the manual. The A&E Committee recommends that the council adopt the proposed revisions, effective July 1, 2015, as specified in Attachment A. The proposed revisions relate to updated nomenclature and minor clarifications, for example:

- Edits throughout the manual to reflect the retirement of the names "Administrative Office of the Courts" and "AOC," including new references to revised rule 10.81 of the California Rules of Court regarding the retirement of the names.
- Removal of the reference to rule 10.503 (regarding the use of recycled paper), which has been repealed (chapter 3, section 3.3.A).
- Addition of a footnote to the Small Business Preference section in chapter 3, section 3.4, to cross-reference additional information on the small business preference in chapter 4C.
- Updated section references to the Public Contract Code to reflect revisions to Public Contract Code section 12102 and the addition of a new Public Contract Code section 12102.2 (chapter 4C, introduction and step 6B).
- Updated provisions to reflect changes to Business & Professions Code section 6072 (chapter 8, appendix C, section 10).
- Edits to reflect that the California Technology Agency is now referred to as the California Department of Technology.

Please see Attachment B for a chapter-by-chapter summary of the proposed revisions to the manual.

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County; Ms. Karen Brewer, Senior Contract Officer, and Mr. Fred Cabrera, Contract Services Manager, Superior Court of Sacramento County; Ms. Sharon Sundy, Contract Administrator, Superior Court of San Bernardino County; Mr. James Flohrschutz, Business Services Manager, Superior Court of San Joaquin County; and Ms. Rhonda Mobley, Procurement Specialist, Superior Court of Sonoma County.

[9] As stated in the introduction to the manual, "It is anticipated that this Manual will be reviewed periodically and updated as necessary to ensure effective and efficient contracting and procurement policies across the judicial branch."

Comments, Alternatives Considered, and Policy Implications

Proposed revisions to the manual were submitted for public comment for two weeks, from March 9 through March 24, 2015. The invitation to comment specifically sought input on whether the revisions were clear and understandable, appeared to work from a court operations perspective, and were user-friendly. Two comments were received in response to the invitation to comment. A chart providing the full text of the comments and the A&E Committee's responses is attached at pages 5–6.

Implementation Requirements, Costs, and Operational Impacts

No costs or operational impacts result from implementing the recommendations in this report.

Attachments

1. Comments chart, at pages 5–6
2. Attachment A: *Judicial Branch Contracting Manual,* with proposed revisions in tracked changes
3. Attachment B: Summary of Proposed Revisions to *Judicial Branch Contracting Manual*

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ITC Number SP15-01
Judicial Administration: *Judicial Branch Contracting Manual*
All comments are verbatim.

COMMENTS CHART

General		
Commentator	**Comment**	**Committee Response**
Service Employees International Union (California State Council) By: Ms. Kimberly Rosenberger, Esq.	Subject: Judicial Admin: JBCM - Comment on Repealing Language of Rule 10.620 By repealing subdivision (d)(3) and (f)(5) we have concerns that the public will not have the opportunity to participate in important trial and administrative decisions. By removing language from Rule 10, it can be interpreted that notice must be given only after the decision has been made. If so, we fear that public comments will not receive the gravity they deserve. Rule 10.620 states that public notice is given at least fifteen court days BEFORE A DECISION is made, whereas Section 68106 of the Government Code requires sixty days for public comment BEFORE CLOSING or REDUCING HOURS. Although the Government Code does state that comments should be reviewed and considered, public comment made before a decision is entered, as is required with Rule 10.620, carries greater weight. We feel that the Rule 10.620 and Government Code 68106 are not inconsistent, but rather give the public two opportunities to speak out on a decision that will have a very large impact on the community. By giving the public an opportunity to speak sixty days before a decision is entered, and again fifteen days before a decision is enacted public participation is encouraged rather than stifled. We urge you to reconsider repealing language from Rule 10.620.	It is unclear why this comment was made because it does not relate to the proposed revisions to the manual. The comment relates to concerns about repealing certain provisions in rule 10.620 of the California Rules of Court. However, the proposed revisions to the manual do not alter or repeal any provision in this rule. Therefore, no substantive response to this comment is required.

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Step-by-Step Guide for the Procurement of Non-IT Services—Chapter 4B		
Commentator	**Comment**	**Committee Response**
Service Employees International Union (California State Council) By: Ms. Kimberly Rosenberger, Esq.	Subject: Judicial Admin: JBCM - Comment on Changes to Chapter 4B Proposed language to the Judicial Branch Contracting Manual, Chapter 4B regarding the procurement of Non-IT Contracts has questionable repercussions. The language proposed asks "Do the services involve legal defense or legal advice?". A series of questions, including the above proposed question, are asked in order to determine whether a contract is for legal services. If the contract is for legal services it is not required to go through a competitive bidding process. A Non-IT contract for the courts will have a very high likelihood of having some legal ramifications. As such, we feel that liberties may be taken in determining how to identify a contract and as such create a loophole that will intentionally circumvent good government practices, such as competitive bidding. For the above reasons, we urge that this language is not added to the Judicial Branch Contracting Manual.	Public Contract Code (PCC) section 10335.5(c)(4) currently exempts "contracts for legal defense, legal advice, or legal services" from competitive bidding. Adding the question "Do the services involve legal defense or legal advice?" provides clarification and does not create a loophole. Including the proposed question in the *Judicial Branch Contracting Manual* is not intended to, and does not in any way alter the requirement that judicial branch entities comply with applicable provisions of the PCC.

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Attachment A

Judicial Branch Contracting Manual

EFFECTIVE OCTOBER 1, 2011

REVISED EFFECTIVE: ~~JANUARY~~ JULY 1, 2015~~4~~

JUDICIAL COUNCIL OF CALIFORNIA

Judicial Council of California
~~Administrative Office of the Courts~~
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San Francisco, California 94102-3688
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Adopted by the Judicial Council on August 26, 2011
Revised by the Judicial Council on December 13, 2011
Revised by the Judicial Council on April 24, 2012
Revised by the Judicial Council on August 31, 2012
Revised by the Judicial Council on December 13, 2013
Revised by the Judicial Council on June 26, 2015

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Abbreviations and Acronyms

Glossary

Judicial Council of California

INTRODUCTION

Original Release Date:	Revised Effective:
October 1, 2011	~~January 1, 2014~~July 1, 2015

1. STATUTORY BASIS FOR THIS JUDICIAL BRANCH CONTRACTING MANUAL

On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law (JBCL).[1] With certain exceptions,[2] the JBCL requires that superior and appellate courts, the Judicial Council of California (Judicial Council), ~~the Administrative Office of the Courts (AOC),~~ and the Habeas Corpus Resource Center (HCRC) (referred to collectively as judicial branch entities or JBEs) comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.

Judicial Branch Contracting Manual

PCC 19206 of the JBCL requires the Judicial Council to adopt and publish a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that JBEs must follow. The policies and procedures in the Judicial Branch Contracting Manual must be "consistent with" the PCC and "substantially similar" to the provisions contained in the *State Administrative Manual* (SAM) and the *State Contracting Manual* (SCM).

Applicable Dates of JBCL Requirements

The JBCL became effective March 24, 2011, and applies to all contracts initially entered into or amended on or after October 1, 2011. PCC 19206 requires the council to adopt and publish a Judicial Branch Contracting Manual no later than January 1, 2012, but PCC 19204(d) provides that until the council adopts and publishes the required manual, JBEs "shall instead be governed by applicable policies and procedures in the State Administrative Manual and the State Contracting Manual, or policies and procedures as otherwise required by law to be adopted by the Department of General Services applicable to state agencies."

On August 26, 2011, the Judicial Council adopted this *Judicial Branch Contracting Manual* (Manual) in compliance with PCC 19206. The original effective date of this Manual is October 1, 2011, and the effective date of the last revision to each chapter of the Manual is reflected on the first page of each chapter.

[1] SB 78 (Comm. on Budget and Fiscal Review, Stats. 2011, ch.10). The California Judicial Branch Contract Law is at PCC 19201–19210. The law was amended by SB 92 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 36), effective June 30, 2011.
[2] See PCC 19204(c), 19207, and 19208.

2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

Development of this Manual was guided by the principles reflected in the findings and declarations of the Legislature in enacting the PCC, which express the legislative intent to achieve the following objectives as set forth in PCC 100:

- To clarify the law with respect to competitive bidding requirements;
- To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds;
- To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and
- To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

In addition, the Legislature has declared that California public contract law "should be efficient and the product of the best of modern practice and research" (PCC 101) and that, "to encourage competition and to aid in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform." (PCC 102)

Development of this Manual was complicated by the inapplicability of the SAM and SCM to the organization and operations of JBEs. The SAM and SCM were written for use by executive branch agencies, with the Department of General Services (DGS) as the entity charged with administering those agencies' procurement and contracting activities. In contrast, management in the judicial branch is decentralized; for the superior courts, by way of example, the presiding judge of each court is responsible for approving procurements and contracts and the court executive officer is responsible for contract negotiations.[3] In addition, PCC 19207 acknowledges that neither DGS nor any other state entity is involved in approval or review of judicial branch procurement, except as specifically required by law. As a result, much of the material in the SAM and SCM either does not apply to JBEs or is incompatible with judicial branch organization and operations. Additionally, even when applied to the executive branch, SAM and SCM

[3]CRC 10.603(c)(6)(D) and 10.610(c)(3); GC 77009(e). Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., SCM, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). In light of the decentralized structure of the judicial branch, and the fact that each JBE possesses its own purchasing authority, certain PCC provisions granting authority to DGS or the Director of DGS have been interpreted as granting equivalent authority to each JBE, or the Approving Authority of each JBE.

procurement and contracting policies and procedures have been found by government studies to be out-dated, ineffective, and ultimately costly.[4]

Because of the fundamental differences between the underlying and often out-dated assumptions of the SAM and SCM and the organization and operations of JBEs, the drafters of this Manual balanced the conflicting requirements of incorporating "substantially similar" policies and procedures from SAM and SCM and accomplishing the legislative objectives of PCC 100–102. As a result, when the SAM or SCM did not implement a specific PCC requirement, but rather a DGS concept or process, the drafters interpreted the provision in light of PCC 100–102 and the business operations and organizational structure of the judicial branch. If a SAM or SCM provision was not compatible for literal adoption in the context of judicial branch operations, the drafters distilled that provision to its essential objective and then developed processes and procedures that achieve the same objective in a manner compatible with judicial branch organization and operations. Thus, the processes and procedures reflected in this Manual are intended to implement the objectives of both the underlying SAM or SCM provision and, most importantly, PCC 100–102.

3. INTERPRETATION AND APPLICATION OF THIS MANUAL

In interpreting the requirements of this Manual and applying those requirements in the context of their own local operations and specific procurements, JBEs should seek to achieve the objectives of PCC 100, including ensuring full compliance with competitive bidding statutes; providing all qualified bidders with a fair opportunity to enter the bidding process; and eliminating favoritism, fraud, and corruption in the awarding of public contracts. Under the decentralized management system of the judicial branch, each Judicial Branch Entity is vested with individual purchasing authority.[5] In the case of a superior court, the purchasing authority is vested in the presiding judge.[6] To meet the unique needs of the court and ultimately achieve the goals set forth in PCC 100–102, each presiding judge has the authority to vary the court's application of any nonmandatory business or accounting practice set forth in this Manual. Any variances should be documented in the court's Local Contracting Manual.

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[4]See California Performance Review, *The Report of the California Performance Review,* Vol. 4, Chapter 7, Statewide Operations-Procurement (2007).
[5]See section 1.1.A of chapter 1 of this Manual for the source and designation for each JBE's purchasing authority.
[6]CRC 10.603(c)(6)(D).

In this Manual, when the verb "include" is used to preface a list, the list is not exhaustive. The ~~AOC~~ Judicial Council's Legal Services ~~O~~office~~(AOC/LSO)~~ is available to assist JBEs in answering questions or providing clarification regarding this Manual.

4. LOCAL CONTRACTING MANUAL

PCC 19206 requires the Judicial Council to include in this Manual a requirement that each JBE shall adopt a Local Contracting Manual for procurement and contracting for goods and services by that JBE. The content of each Local Contracting Manual must be "consistent with" the PCC and "substantially similar" to the provisions contained in the SAM and the SCM.

- Each JBE must adopt a manual consistent with the requirements of PCC 19206.
- Each JBE must identify individual(s) with responsibility and authority for procurement and contracting activities as required by this Manual.
- Each JBE may include in its Local Contracting Manual policies and procedures governing its procurement and contracting activities, and those policies and procedures must not be inconsistent with this Manual or with applicable law.

5. CONTENT AND EXCLUSIONS

The Manual addresses Judicial Branch Entities' procurement of goods and services, including information technology goods and services, contracting, and contract management. The Manual does *not* address:

- Procurement and contracting for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities, as those activities are expressly excluded from coverage under Part 2.5 by PCC 19204(c);
- Procurement and contracting specific to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of facilities *other than* trial court facilities and maintenance of facilities, as those activities are the responsibility of the Judicial Council~~AOC~~; and
- Any provision of the PCC that does not apply to contracting or procurement by state agencies and departments as such provision is inapplicable to Judicial Branch Entities. (PCC 19208)

The Manual does *not* address procurement and contracting for the following contracts that are unique to the judicial branch and are not subject to the JBCL or this Manual:

- Contracts (often referred to as MOUs) between a superior court and the sheriff for court security services;
- Contracts between a court and a court reporter when the court reporter provides services as an independent contractor; and
- Contracts between a court and a court interpreter when the court interpreter provides services as an independent contractor.

The Manual is drafted also to comply with PCC 19207, which states:

> Except as provided in subdivision (a) of Section 19204 or as otherwise specifically required by law applicable to any judicial branch entity, nothing in this part is intended, nor shall it be construed, to require the approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services or the Secretary of California Technology, in the procurement of any judicial branch goods or services, including information technology goods and services.

The above-referenced exception provided in subdivision (a) of PCC 19204 applies to all contracts with total cost estimated at more than $1 million (unless exempted from the requirements of the JBCL or this Manual) and to contracts for administrative or infrastructure information technology (IT) projects of the council or the courts with total costs estimated at more than $5 million. (GC 68511.9) These types of contracts are subject to the following requirements:

- Contracts estimated to cost more than $1 million, *except* contracts for administrative or infrastructure IT projects estimated to cost more than $5 million, are subject to "review and recommendations" by the State Auditor to ensure compliance with PCC Part 2.5. JBEs that enter into any such contract must notify the State Auditor, in writing, within 10 Court Days of entering the contract.
- Contracts for administrative or infrastructure IT projects of the council or the courts with total costs estimated at more than $5 million are subject to "review and recommendations" of the California Department of Technology ~~Agency~~.[7] That agency must consult with and provide recommendations to the council or the court, and must submit a copy of its review and recommendations to the Joint Legislative Budget Committee. (GC 68511.9)

[7] GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

6. EFFECT OF THE MANUAL ON PREEXISTING JUDICIAL BRANCH POLICIES AND PROCEDURES

This Manual supersedes the following chapters of the *Trial Court Financial Policies and Procedures Manual* (TCFPPM) that would otherwise apply to the superior courts:

- FIN 6.01, Procurement;
- FIN 7.01, Contracts;[8]
- FIN 7.02, Memorandums of Understanding (MOUs), Interagency Agreements (IAs) and Intra-branch Agreements (IBAs); and
- FIN 7.03, Contract Administration.

The other requirements of the TCFPPM, however, including, but not limited to, those relating to invoice processing and expense reimbursement, are not superseded by this Manual. JBEs will continue to be responsible for maintaining fiscal and operational accountability by following established procedures and policies, including, for superior courts, those set out in the TCFPPM.

In addition, this Manual supersedes (a) the ~~AOC~~ Judicial Council "Policy Regarding Legal Review of Procurement Matters," and (b) the "AOC policy "7.2.1, Procurement of Goods and Services,"[9] for all procurement and contracting purposes *except* as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

Finally, this Manual supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council on December 7, 2007, for all facilities-related procurement and contracting purposes *except* for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

[8] Chapters FIN 6.01 and FIN 7.01 of the TCFPPM are not superseded for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

[9] Under CRC 10.81, references to the "Administrative Office of the Courts" or "AOC" in any policy, procedure, manual, guideline, publication, or other material issued by the Judicial Council or its staff are deemed to refer to the Judicial Council, the Administrative Director, or the Judicial Council staff, as appropriate.

County and other Local Agency Procurement Policies

PCC 19204 requires JBEs to comply with the provisions of the JBCL. This requirement supersedes any county or other local agency policies and procedures that a JBE may have followed prior to October 1, 2011.

7. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at *www.courts.ca.gov/finance.htm*.

8. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

Words used in this Manual to signify requirements or discretion have the meaning and intent specified in the table below.

Use of Words Signifying Requirements or Discretion			
Words→	Words signifying a mandatory duty or prohibition are: "must," "shall," "mandatory," "required," "must not," and "may not"	Words signifying reasonable discretion: "should" and "should not"	Words signifying full discretion: "may" and "encouraged"
When used→	To reflect obligations or prohibitions under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of favored but not mandated business or accounting practices	To provide guidance

Use of Words Signifying Requirements or Discretion			
Compliance→	Mandatory unless there is an applicable exemption	Not mandatory, but favored unless there is a good business reason for variance	Optional
Documentation	Documentation of noncompliance required	Documentation of variance recommended for the appropriate file[10]	None required

9. UPDATES TO THIS MANUAL

This Manual is not meant to be static and should change as processes and procedures better tailored for judicial branch operations are developed or recognized. It is anticipated that this Manual will be reviewed periodically and updated as necessary to ensure effective and efficient contracting and procurement policies across the judicial branch.

[10] If specific to a particular procurement, the procurement file is the appropriate file. If the variation affects many procurements, the JBE may note the variation and include reasons in its Local Contracting Manual.

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Judicial Council of California

PURCHASING AUTHORITY

CHAPTER 1

Original Release Date:	Revised Effective:
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INTRODUCTION

This chapter identifies the sources of purchasing authority of Judicial Branch Entities (JBEs). This chapter also describes the roles of JBE personnel involved in the purchasing process, discusses ethical considerations, and provides guidance for developing a Local Contracting Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

1.1 PURCHASING AUTHORITY OF JUDICIAL BRANCH ENTITIES

A. Purchasing Authority Basics

Each JBE possesses its own authority to purchase goods and services (both IT and non-IT). The source of authority is reflected in the table below:

JBE	Legal Basis
Supreme Court	Established by article VI, section 2 of the California Constitution. See also Government Code (GC) sections 68803 and 68807.
Courts of Appeal	Established by article VI, section 3 of the California Constitution. See also GC 69141. Pursuant to CRC 10.1004(c)(6), authority is vested in the Administrative Presiding Justice, who may in turn delegate this authority to the clerk/administrator pursuant to CRC 10.1020(c).
Superior Courts	Established by article VI, section 4 of the California Constitution. Pursuant to CRC 10.603(c)(6)(D), authority is vested in the Presiding Judge, who may in turn delegate this authority to the Court Executive Officer.

JBE	Legal Basis
Habeas Corpus Resource Center (HCRC)	Established by GC 68661. Pursuant to GC 68664(a), responsibility for the HCRC's "day-to-day operations" is assigned to the Executive Director.
Judicial Council	Established by article VI, section 6 of the California Constitution. See also GC 68506 and CRC 10.80.
~~AOC~~	~~Established pursuant to Judicial Council resolution. See also CRC 10.81. Pursuant to CRC 10.80(d), the Administrative Director of the Courts is responsible for allocating the financial and other resources of the AOC.~~

JBEs must ensure that any delegation of purchasing authority is properly documented.

B. Scope of Authority

1. Limitations on Purchasing Authority

Most facilities-related expenditures are outside the scope of purchasing authority for appellate and superior courts.

The Judicial Council is responsible for the construction, acquisition, and operation of appellate court facilities (GC 69204(b)) and superior court facilities (GC 70391(b)). In addition to any responsibilities delegated by the Judicial Council, GC 69206 and 70392 assign certain court facilities-related responsibilities to the AOC.[1]

Under GC 70392(e), however, the AOC[1] is authorized to delegate its responsibilities for ongoing operation and management to a court for some or all of the existing court facilities used by that court.

[1] Under CRC 10.81(b)(2) and (3), the references to the AOC in GC 69206 and 70392 are now deemed to refer to the Judicial Council staff.

2. Authority to Enter into Intergovernmental Contracts (IGCs)

JBEs may enter into Intra-branch Agreements (IBAs) with other JBEs for goods or services, including IT goods and services. JBEs may enter into Memoranda of Understanding (MOUs) with other governmental entities for goods or services, including IT goods and services.

Note: The terms "IBA" and "MOU" are used to refer to types of Intergovernmental Contracts (IGCs), not to limit a JBE's ability to enter into IGCs. JBEs may enter into IGCs even if the agreements are labeled or named something other than IBA or MOU (see chapter 8 of this Manual for additional information regarding IGCs).

IGCs do not need to be competitively bid (but the JBE may opt to do so in its sole discretion). Other types of procurements are also exempt from certain competitive bidding requirements. These include emergency purchases, purchases under $5,000, and purchases made under certain Leveraged Procurement Agreements (for additional information regarding noncompetitively bid procurements, see chapter 5 of this Manual).

C. Purchasing Roles and Responsibilities

1. Roles and Responsibilities

The following table defines the roles and responsibilities of individuals involved in a JBE's procurement activities. In some JBEs, especially smaller superior courts, one individual may perform several of these roles. The same employee may initiate the requisition and receive the goods or services, although receipt by a second person strengthens internal controls. Different employees must be responsible for procurement activities and payment approval.

Assignment	Roles and Responsibilities
Procurement and Contracting Officer (PCO)	• Is responsible for all procurement and contracting within the JBE • Ensures that all procurement and contracting activities within the JBE comply with applicable procurement laws

Assignment	Roles and Responsibilities
	• Provides the necessary resources to ensure that all staff are properly qualified and trained in all aspects of the procurement process • Oversees development of the Local Contracting Manual
Buyer **Note:** A JBE may elect not to designate a Buyer. If the JBE does not do so, then the Buyer role reverts to the PCO.	• Performs day-to-day purchasing and contracting activities • Is knowledgeable about applicable procurement laws and best practices • Ensures that the needs of the JBE are met within applicable procurement laws • Maintains the procurement file and related documentation
ADA Coordinator **Note:** A JBE may elect not to designate an ADA Coordinator. If the JBE does not do so, then the ADA Coordinator role reverts to the PCO.	• Assists and responds to questions or concerns regarding procurement-related reasonable accommodation needs
DVBE Advocate **Note:** If no DVBE Advocate is designated, the DVBE Advocate role reverts to the PCO.	• Identifies potential DVBE prime contractors or subcontractors and potential contracting opportunities • Makes information regarding pending solicitations available to certified DVBE firms capable of meeting the JBE's

Assignment	Roles and Responsibilities
	business needs (MVC 999.12)
Procurement-Card Coordinator **Note:** A JBE may elect not to designate a Procurement-Card Coordinator. If the JBE does not do so, then the Procurement-Card Coordinator role reverts to the PCO.	• Ensures compliance with relevant procurement card procedures and contract terms • Adds, deletes, and alters card restrictions/limits • Reviews billing reports to monitor payments and disputes
Protest Hearing Officer **Note:** If a protest hearing officer is not designated by a JBE, the Buyer's supervisor will act as the protest hearing officer.	• Evaluates protests • Issues written determinations regarding protests
Protest Appeals Officer **Note:** If a protest appeals officer is not designated by a JBE, the protest hearing officer's supervisor will act as the protest appeals officer.	• Evaluates protest-related appeals • Issues written determinations regarding appeals of protests
Payment Officer	• Ensures timely payment of invoices • Ensures that proper internal approvals have been secured before processing payment

2. Ethics

a. Ethics training

JBEs should ensure that personnel involved in procurement activities receive ethics training, and they should regularly remind personnel of the importance of maintaining professional and ethical standards when conducting procurements.

b. Ethics and Conflicts

All personnel involved in the procurement process must adhere to and conduct business by maintaining high ethical standards.

All personnel involved in the procurement process must:

- Conduct themselves in a professional manner, refrain from mixing outside relationships with business, and not engage in incompatible activities, conflicts of interest, or unethical behavior;
- Avoid wasteful and impractical purchasing practices;
- Not make any commitment or promise regarding the selection of a Bidder or award of a contract;
- Be aware that perceptions can override reality; and
- Involve the JBE's procurement and legal staff or, alternatively, the ~~AOC Legal Services Office (AOC/LSO)~~Judicial Council's Legal Services office, when questions arise regarding acceptable or unacceptable behavior when dealing with Bidders or Vendors.

Other ethical issues include the following:

- Personnel involved in the procurement process must not make purchases of materials or services from any business entity in which they have a financial interest (see GC 1090 et seq.);
- Personnel involved in the procurement process are prohibited from using their position in state government to bestow any preferential benefit on anyone connected to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the personnel involved and the judicial branch.

Note: For restrictions on contracting with current and former JBE employees, see CRC 10.103 and 10.104.

c. Gifts and Gratuities

This section discusses certain restrictions regarding the acceptance of gifts and gratuities. These restrictions are minimum requirements. JBEs may adopt more stringent restrictions in their Local Contracting Manuals.

Accepting gifts and gratuities: No person involved in the procurement process of a JBE may accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with that JBE. Doing so could be construed as intent to influence JBE personnel in their official duties or as a reward for an official action performed by the JBE personnel. Favors must be declined.

Financial Interest in Contract: GC 1090 is applicable to members of Evaluation Teams, as they are responsible for evaluating Bids. GC 1090 requires that state officers and others not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Any person who is found to have willfully violated GC 1090 may be punished by a fine of not more than $1,000 or by imprisonment in state prison, and will be forever disqualified from holding any office in this state.

Avoid making a gift of public funds: Article 16, section 6 of the California Constitution strictly prohibits any gift of public funds. To not be considered a gift of public funds, an expenditure must support the JBE's mission (function and purpose) and benefit the judicial branch.

Accepting free or loaner equipment from suppliers: JBEs should not accept an offer of goods or services without cost or obligation to the JBE that is made by a Prospective Bidder, Bidder, or Vendor. If a Buyer's decision is contrary to this best practice, the JBE should execute a contract to memorialize the agreement.

Before accepting any goods and services offered at no cost or obligation to the JBE, the JBE should consider the perception of the acceptance to other suppliers. How does the JBE remain fair and impartial if a decision is eventually made to solicit the goods or services?

1.2 LOCAL CONTRACTING MANUAL

This section provides broad guidance to JBE staff involved in developing their Local Contracting Manuals. This section is not intended to dictate the techniques that should be used, because the details of the process should suit the individual JBE, the stakeholders affected, and the JBE's business needs.

Statutory requirement: Please see the Introduction to this Manual for a discussion of the statutory requirement for Local Contracting Manuals.

Purpose: The purpose of a Local Contracting Manual is to familiarize JBE employees with the JBE's specific purchasing and contracting practices. The Local Contracting Manual expands on and supplements this Manual.

Contents: The Local Contracting Manual must include the JBE's organizational structure; for example, who fills the roles identified in section 1.1.C.1 of this chapter.

The remaining contents of the Local Contracting Manual are determined by the individual JBE as necessary to describe its particular processes and personnel. The Local Contracting Manual must be consistent with all applicable law, as well as with this Manual. Each JBE may address topics such as:

- Normal lead times for different types of purchases;
- Required approvals, both internal and external;
- Certification of availability of funds;
- Setting up and maintaining official procurement files; and
- Signature authorization (who can sign what).

The JBE may include in its Local Contracting Manual a signature authorization listing chart, such as the one below:

Value of Contract	Person(s) or Position(s) Authorized to Sign
Up to $5,000	*[name or position]*
Up to $100,000	*[name or position]*

Value of Contract	Person(s) or Position(s) Authorized to Sign
Above $100,000	*[name or position]*

Other topics that may be addressed in the Local Contracting Manual are referenced in the following chapters of this Manual.

Judicial Council of California

PROCUREMENT PLANNING

CHAPTER 2

Original Release Date:	Revised Effective:
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INTRODUCTION

This chapter describes the preliminary considerations and activities that help ensure the success of any procurement effort. These include determining the type of procurement (non-IT goods, non-IT services, or IT goods and services) and considering numerous other issues that arise in procurement planning.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

2.1 FORMULATING THE PROCUREMENT APPROACH

There are several preliminary steps required to determine the approach to be taken in a particular procurement.

A. Competitive or Non-Competitive Procurement

Most Judicial Branch Entity (JBE) procurements are competitive, and require the use of Solicitation Documents, advertising, and Bids. In certain circumstances, however, JBEs can procure non-IT goods, non-IT services, and IT goods and services without a competitive process. These types of procurements are:

- Purchases under $5,000;
- Emergency purchases;
- Purchases from governmental entities;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP);
- Licensing or proficiency testing examinations;
- Subvention and local assistance contracts; and
- Sole source.

For more information on these types of procurements, see chapter 5 of this Manual. For more information about determining the value of the procurement, see step 1 of chapter 4A, 4B, or 4C of this Manual. For more information on determining whether a purchase qualifies as an emergency purchase, see section F below.

B. Classifying the Purchase

1. Benefits: Properly classifying a purchase enables the Buyer to conduct the procurement by correctly:

- Applying the appropriate laws, regulations, policies, and procedures to the specific purchase; and
- Completing external notices and reviews as applicable.

Improperly classifying a purchase may result in:

- Delaying a JBE's program or project;
- Waste of time and effort, ultimately wasting taxpayer money;
- Loss of funding; and
- Disputes, protests, or lawsuits.

2. Purchase classification: The first step in classifying a purchase is determining whether:

- The purchase involves goods or services; and
- The purchase is for IT or non-IT goods or services.

In most cases, a Buyer will be able to classify a purchase quite simply. If the purchase involves only the purchase of ladders, furniture, or office supplies, the purchase is a non-IT goods purchase. If the purchase involves only the purchase of legal services, the purchase is a non-IT services purchase. If the purchase involves only computer equipment and software, the purchase is an IT goods purchase. In other cases, a single purchase may involve the purchase of both goods and services, or both IT and non-IT goods and services. The sections below provide guidance to Buyers in classifying mixed purchases.

3. Classifying mixed purchases: Classifying a mixed purchase begins by determining the main value or the major objective of the entire purchase. The dollar value associated with the services provided and the dollar value of the goods being supplied are factors that should be considered.

What is the main value of the contract—the goods or the services?

- If the main value is the **goods**, the transaction should be treated as a goods purchase. In procurements of non-IT goods, however, if the value of

incidental non-IT services is $5,000 or higher, the non-IT services must be procured separately unless an exemption is obtained. For more information on this topic, see chapter 4A of this Manual.

- If the main value is the **services**, the transaction should be treated as a services purchase.

Example: A manager requests new furniture for an office. The Buyer needs to purchase the new furniture and acquire services necessary to position that furniture in the office. The main value is the furniture. The request should be treated as a goods purchase.

4. Non-IT vs. IT: Section 4819.2 of the *State Administrative Manual* (SAM) defines IT as "all computerized and auxiliary automated information handling, including systems design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, data communications, requisite systems controls, and simulation."

IT goods. The following are examples of IT goods:

- Computers (desktop, notebook, tablet, workstation);
- Data storage (interfaces/controllers, drive arrays, hard drives [desktop, internal, portable, removable], tape backup, tape cartridges, CD/DVD, storage area network [SAN], network attached storage [NAS], media and accessories);
- Memory products (RAM, flash, USB);
- Monitors and projectors (displays, touchscreens);
- Networking products (cables, adapters, switches, routers, hubs, modems, gateways, VoIP, standalone appliances);
- Power, cooling and racks (batteries, uninterruptable power supplies, surge protectors, HVAC equipment (when related to IT equipment spaces));
- Printing devices (laser, ink jet, all-in-one multi-function devices, plotters);
- Scanners (barcode, document, graphics);
- Servers (standalone, rack-mount, blades, associated controllers and interfaces);
- Software (including antivirus, security, backup, business, productivity tools, database, development, education, reference, operating system and management, networking, virtual computing, and web-publishing);
- Special electronics (including automation and control systems, cellular/smartphones and accessories, eReaders, handheld devices and accessories);

- Computer accessories (including video cards, imaging, keyboards and keypads, mice and trackballs);
- Audio equipment.

The following consumable items are considered IT goods, but may also be acquired as non-IT goods:

- Documents (e.g., standards and procedures manuals, Vendor-supplied systems documentation and educational or training manuals);
- Equipment supplies (e.g., printer forms, disk packs, magnetic tape and printer ribbons or cartridges);
- Furniture (IT-related, such as desktop station tables and printer stands).

The following consumable items are IT goods:

- PC keyboards;
- Mice;
- Zip drives;
- Memory cards;
- Personal digital assistants (PDA);
- Software;
- Scanners.

IT services. IT services are those services where information technology knowledge or skills are of primary importance, such as:

- Hardware, software, or system maintenance services;
- IT consulting services (services of an advisory nature that provide a recommended course of action or personal expertise).

Independent verification and validation (IVV) consulting services or independent project oversight (IPO) consulting services are considered IT services because they provide oversight and validation on large IT integration projects.

Example: A JBE buys 10 personal computer keyboards for replacement stock to issue when existing keyboards fail. A personal computer processes data electronically and the keyboard is a critical component to the operation of the computer. The keyboards are considered IT goods and the purchase is an IT-goods procurement.

Example: A JBE purchases a vehicle for business use. The vehicle has been fitted with an electronic mapping system, which is an IT good. The features of the mapping system are secondary to the purpose of the vehicle, which is a means of transportation and a non-IT good. Consequently, the purchase is a non-IT goods procurement.

5. Need help in classifying purchases? Courts needing assistance in determining the classification of a purchase after reviewing the available resources (i.e., this Manual, the Local Contracting Manual) should contact the ~~AOC~~ Judicial Council's Business Services ~~U~~unit or ~~the~~ its Trial Court Administrative Services ~~O~~office~~, Judicial and Court Administrative Services Division~~ (TCAS).

C. Initial Review

Planning the purchase should begin at the earliest practicable time. The amount of time necessary for the planning process is dependent on the dollar value, risk, complexity, and criticality of the proposed purchase.

The Buyer's first step in the planning and scheduling of a procurement effort is the initial review of a purchase request. Reviewing the request in terms of the following information will assist the Buyer in determining any impact to the procurement planning and scheduling activities.

1. Internal review and approvals: Consider the following:

- Have the proper approval signatures been obtained to conduct the procurement in conformance with the JBE's Local Contracting Manual?
- Is the request in compliance with applicable equipment standards?
- Is there documentation in sufficient detail to support and justify conducting the procurement?
- Are there any program schedule requirements, special delivery instructions, time constraints, etc.?

2. Funding authority: Is the procurement scheduling and planning effort limited by:

- Federal funding limitations and/or restrictions?
- Availability of current and future year funding?
- Timing constraints impacted by availability of fiscal year funding?

3. External notices and reviews: Are any external notices or reviews required (refer to section 2.2 of this chapter for additional details)?

4. Seeking legal participation: Buyers should seek JBE legal participation as necessary to manage risk. See chapter 8, section 8.4.B of this Manual for more information on legal review.

5. Narrowing procurement alternatives: To assist in determining the procurement approach that best meets the JBE's needs, Buyers should ask the following questions:

- Can other requests for similar goods or services be consolidated into a single purchase to maximize purchasing power?
- What available purchasing approach can effectively meet the JBE's needs at the least cost in terms of time and resources?
- Can the functional requirements of the request be met through an LPA?
- For IT goods and services, can the JBE's needs be met by conducting a procurement using the SB/DVBE option? (See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.)
- Is there a known supplier market and can the acquisition best be met through open competition?
- What risk factors are inherent to the purchase and what steps can be taken in advance to mitigate them?

D. Other Considerations Affecting the Planning Process

1. Requests for reasonable accommodation purchases: A purchase made in response to a request for reasonable accommodation of a disability is not exempt from applicable procurement laws. However, when conducting a procurement to fulfill a reasonable accommodation request, Buyers should be mindful of the need to expedite the purchase. All reasonable accommodation requests should be coordinated with the JBE's human resources department or other department with responsibility for addressing disability accommodation requests.

2. Leasing equipment: Prior to initiating an equipment lease, a JBE should consider whether leasing or purchasing equipment is the more economical option. JBEs may consult SAM section 3700 et seq. for more information on comparison methods and other issues to be considered.

3. Shipping charges: JBEs conducting competitive solicitations should determine shipping terms during the procurement-planning phase. Shipping costs should be addressed in the Solicitation Document. The preferred shipping method is "Free on Board" (FOB) Destination Freight Prepaid (FRT.PPD) where the Vendor is responsible for freight charges and costs and owns the goods while in transit.[1]

4. Term purchases: A term purchase establishes a purchasing mechanism for:

- A specified period of time;
- A specified list of products and quantities; and
- Items a JBE acquires on a routine basis, such as office supplies.

When conducting a competitive solicitation for a term purchase:

- A competitive procurement should be conducted whenever the dollar amount of the term purchase is $5,000 or greater;
- The solicitation should identify contract start and end dates;
- The solicitation should state the aggregate amount of the contract; and
- The solicitation should state a maximum number of units that may be purchased.

Example: 10 units will be purchased on award, and the JBE reserves the right to purchase up to 10 more units during the contract term.

Note: Evaluation and award are based on the total quantities per line item to be purchased during the contract term. Using the above example, the Bid would be evaluated and the contract awarded on the assumption that all 20 units will be purchased.

- The solicitation should clearly define whether pricing is firm over the course of the contract or if allowances will be made for price increases or decreases; and
- The JBE should keep a running total of orders placed against each term purchase contract in the procurement file.

[1] An important reason for the preferred shipping method is to avoid the risk of loss in transit.

5. Purchases from Community Rehabilitation Programs (CRPs): JBEs may consider purchasing products and services from rehabilitative or sheltered workshops pursuant to Welfare and Institutions Code section 19403. JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from a business entity operating a CRP without conducting a competitive procurement, provided that the goods or services meet the specifications and needs of the JBE and are purchased at a fair market price as determined by the JBE.

Note: The JBE should document in its procurement file that the price offered by a CRP is fair and reasonable.

The California Alliance of Rehabilitation Industries (CARI) provides a statewide network of community rehabilitation programs to assist state entities in meeting their needs. Contact CARI at 916-441-5844 for additional information.

6. Socioeconomic Programs: JBEs should consider the socioeconomic and environmental program requirements set forth in chapter 3 of this Manual when planning procurements.

E. Statement of Work (SOW)

1. Determining the need for an SOW: A JBE should include an SOW for all services transactions and all goods transactions that involve a services component. An SOW protects the JBE and the Vendor by identifying and documenting the details of the work to be performed.

2. What to include in an SOW: For information on what to include in an SOW, see chapter 8, section 8.3.A.1 of this Manual.

F. Emergency Purchases

Emergency purchases are exempt from certain competitive bidding requirements. This section will help Buyers identify valid emergency purchases. If the Buyer determines that a purchase should be an emergency purchase, refer to chapter 5 of this Manual.

An emergency purchase is appropriate when immediate acquisition is necessary for the protection of the public health, welfare, or safety.

Example of emergency: A courthouse is flooded and staff must make an immediate purchase of supplies to clean up the water.

Example of a nonemergency: A JBE wants to purchase used copy machines for office use at a total cost of $12,000. The purchase saves the JBE an estimated $6,000 when prices are compared to new copy machine prices. Although it may be in the JBE's best interest to purchase the used equipment, the opportunity to get a good deal does not constitute an emergency.

G. Negotiations

A JBE may negotiate with Bidders either before or after award of a contract to ensure that the JBE receives the most favorable terms possible. Generally, a JBE will have more negotiating leverage prior to the award of a contract.

Example: A JBE wishes to avoid awarding a contract to a Bidder that transfers substantial risk to the JBE through the contract. Therefore, the JBE wishes to finalize the contract with the Bidder before award while the JBE has both (i) negotiating leverage with the leading Bidder and (ii) an opportunity to negotiate exceptions taken by lower-ranked bidders before the final score and ranking are determined. The JBE states in the RFP that the JBE may clarify or negotiate contract terms and conditions with one or more of the Bidders based on the Bidders' preliminary rankings following initial scoring of their Bids. When Bids are scored, the Evaluation Team notes that the Bid with the highest score includes exceptions to the JBE's contract terms and conditions. The Evaluation Team wishes, therefore, (i) to seek clarification from or negotiate with the leading Bidder on contract terms and conditions before making the award, or (ii) if scores are close enough that changes to exceptions to contract terms and conditions may affect ranking, to seek clarification from or negotiate with the leading Bidder and one or more of the other Bidders with the highest preliminary scores. Final scores and ranking will reflect the negotiated terms and conditions, and, if the final rankings change which Bidder is highest-ranked, the formerly leading Bidder will not be awarded the contract.

H. PCC 6611 Special Negotiation Process

1. When Allowed: Consistent with PCC 6611, JBEs may use special negotiation processes,[2] including a process whereby the JBE receives supplemental

[2] PCC 6611 allows the Department of General Services (DGS) to use special negotiation processes on behalf of executive branch entities. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the ability to use special negotiation processes resides in each individual JBE. The JBE must

bids after the initial bids are opened (i.e., a “best and final offer” process). These special negotiation processes may be used only in procurements involving the following circumstances:

- The business need or purpose of a procurement or contract can be further defined as a result of a special negotiation process.
- The business need or purpose of a procurement or contract is known by the JBE, but a special negotiation process may identify different types of solutions to fulfill this business need or purpose.
- The complexity of the purpose or need suggests a Bidder's costs to prepare and develop a solicitation response are extremely high.
- The business need or purpose of a procurement or contract is known by the JBE, but the negotiation process is necessary to ensure that the JBE is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

2. Procedures and Guidelines: If the JBE uses a special negotiation process, the JBE must include procedures and guidelines regarding the process in its Local Contracting Manual. These procedures and guidelines must include the methodology that will be used by the JBE to evaluate affected Bids. If the process allows for the use of supplemental bids, the procedures and guidelines must specify the conditions under which supplemental bids may be received by the JBE.

2.2 EXTERNAL NOTICES AND REVIEWS

Depending on the type and size of a procurement, the JBE may be required to provide notice or allow review of a transaction. Details of the different notices and reviews are set forth below.

A. CRC 10.620

CRC 10.620 requires a trial court to provide public notice of:

- Any solicitation of non-IT goods, non-IT services, or IT goods and services that exceeds the greater of $400,000 or 10 percent of the total trial court budget; and
- The execution of a contract that exceeds the greater of $400,000 or 10 percent of the total trial court budget.

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ensure that (i) any special negotiation process it adopts is reasonable and appropriate, and (ii) the JBE provides adequate oversight for procurements conducted using a special negotiation process.

For detailed requirements regarding this notice, see CRC 10.620.

B. Information Technology (IT) Procurements over $5 Million

All administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than $5 million are subject to the review and recommendations of the California ~~Technology Agency~~Department of Technology, as specified in GC 68511.9.[3]

C. Other Procurements over $1 Million

The JBE must notify the State Auditor of certain contracts for purchases estimated to be more than $1 million. See chapter 12, section 12.2 of this Manual for additional details.

2.3 CREATING THE PROCUREMENT FILE

The Buyer should create a procurement file for each transaction. This section provides guidance on what should be included in the procurement file. Please note that the following list is not exhaustive. A JBE may adopt policies respecting the creation and contents of procurement files in its Local Contracting Manual.

Document decisions: Buyers should develop a strategy of how the procurement activity will be accomplished, and document the rationale for developing that strategy. In simple terms, Buyers should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process.

Provide the basis of the decisions: Buyers should also describe how competition will be sought, promoted, and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, document the basis of the decision.

Degree of detail: The degree of documentation detail is determined by the cost, risk, complexity, and criticality of the purchasing activity.

Take notes: Buyers should make notations of meetings held and decisions made, and create a phone log to record phone conversations impacting the procurement effort.

[3] Note that GC 68511.9 refers to the Office of the Chief Information Officer (OCIO). However, the OCIO ~~has been~~was renamed the California Technology Agency in accordance with Chapter 404, Statutes of 2010 (AB 2408), and then became the California Department of Technology.

Consistent, high quality file documentation helps the transaction be easily understood by a reader who is unfamiliar with it and makes documents easy to locate. It will also assist the JBE during audits by the State Auditor.

Public record: Buyers should create and maintain their procurement files keeping in mind that most procurement records are subject to disclosure under CRC 10.500.

Judicial Council of California

SOCIOECONOMIC AND ENVIRONMENTAL PROGRAMS

CHAPTER 3

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INTRODUCTION

This chapter describes socioeconomic and environmental programs and considerations that affect procurement activities of Judicial Branch Entities (JBEs). The first and most extensively discussed is the California Disabled Veteran Business Enterprise (DVBE) program that is intended to increase business opportunities for disabled veteran businesses. Next, is a brief discussion of pertinent requirements of the Americans with Disabilities Act (ADA) to familiarize JBEs with the importance of making all procurement activities available to all persons, including persons with disabilities. Next, this chapter discusses the requirements of California's State Agency Buy Recycled Campaign (SABRC) program that promotes the purchase of products that are energy efficient and have other preferable environmental attributes. Finally, this chapter discusses the small business preference applicable to procurements of IT goods and services.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

3.1 CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PROGRAM

A. Purpose

The Legislature established the DVBE program to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. In doing so, the Legislature stated its intent "that every state procurement authority honor California's disabled veterans by taking all practical actions necessary to meet or exceed the Disabled Veteran Business Enterprise participation goals of a minimum of 3 percent of total contract value" (MVC 999(a)).

These goals apply to the total contract value expended each year by each JBE.[1]

Example: A JBE annually expends $10 million in contracts to purchase goods and services. Its DVBE participation goal would be not less than $300,000—3 percent of $10 million—that would go to certified DVBEs that are contractors, subcontractors, or

[1] Total contract value should not include the value of contracts with state entities (such as counties) that are mandated by law.

suppliers to perform a "commercially useful function" (see section 3.1.G.2) in specific procurements.

DVBE incentive: To implement the DVBE program JBEs must grant Bidders that provide DVBE participation a DVBE incentive (MVC 999.5(a)). A DVBE incentive is a prescribed percentage reduction in the DVBE Bidder's Bid price where the JBE is selecting a Bidder using the "lowest responsible Bidder" methodology or the addition of a prescribed number of points to the DVBE Bidder's Bid score where the JBE is using the "highest scoring Bidder" approach.

B. Administration

The MVC and PCC establish DGS as the administering agency for this program. In that role, DGS manages certification and decertification of companies as DVBEs. JBEs must use DGS-certified entities or entities that have DGS-approved business utilization plans to meet their DVBE goals.

C. Outline of Principal Requirements for JBE Implementation of the DVBE Program

The PCC and MVC have procedural and management requirements JBEs must fulfill. These include:

1. Adopting rules and procedures to implement the requirements of MVC 999 and the following and PCC 10115 et seq.;
2. Appointing a DVBE advocate;
3. Determining which contracts are subject to a DVBE incentive;
4. Utilizing available resources for implementation of the program; and
5. For those procurements that provide for a DVBE incentive:

    - Verifying Bidder status as a DVBE;
    - Verifying whether the certified DVBE is providing a "commercially useful function" as that term is defined below;
    - Not awarding any contract to a Bidder suspended for violating PCC 10115.10 for the period of the applicable suspension;
    - Not permitting a Vendor to utilize a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension;
    - Notifying the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) of alleged Vendor violations of PCC 10115.10; and

- Upon completion of the contract term, requiring each prime contractor with DVBE subcontractors to submit to the JBE certain certifications under MVC 999.5(d).

D. Adoption of Rules and Procedures for a DVBE Program

Each JBE must develop or adopt a set of rules and procedures for the implementation of a DVBE program. DGS has established a system of rules and regulations for managing the DVBE program that includes forms that may be adopted and modified by JBEs that wish to establish their own program. The ~~AOC~~ Judicial Council's Business Services ~~U~~unit and the ~~AOC~~ Legal Services ~~O~~office ~~(AOC/LSO)~~ are available to assist courts in establishing a program.

Rules and procedures for the following must be established:

- A method for monitoring adherence to DVBE goals;
- Use of existing state government resources to assist in implementing the DVBE program; and
- Incentive amounts and a formula for incentive calculation for procurements that are subject to DVBE incentives.

Solicitation Documents should be drafted to include reference to DVBE procedures and contracts must include appropriate DVBE provisions.

E. Appointing a DVBE Advocate

Each JBE must designate a DVBE advocate whose duties include, but are not limited to:

- Identifying potential DVBE prime contractors or subcontractors and potential contracting opportunities; and
- Making information regarding pending solicitations available to and considering offers from certified DVBE firms capable of meeting the JBE's business needs. (MVC 999.12)

F. Waiver of a DVBE Incentive

Although all competitive procurements are subject to the DVBE incentive, a JBE, through its Procurement and Contracting Officer (PCO) or designee, has the discretion to waive inclusion of the DVBE incentive in an individual solicitation or a number of

solicitations.[2] Note, however, that the overall DVBE participation goal of 3 percent of annual total contract value still applies. The JBE's PCO or designee must document the procurement file whenever the DVBE requirement has been waived.

G. General Requirements for DVBE Procurements

1. Verifying Bidder Status as a DVBE

Verifying certification status: For competitive solicitations that include the DVBE incentive, JBEs must verify California DVBE certification status before a contract award regardless of the procurement approach. Status can be verified by accessing the DVBE services certified firm inquiry database, currently available at *www.bidsync.com/DPXBisCASB*. If this database is used in support of DVBE certification, a printout can simply be placed in the procurement file.

Business utilization plan alternative: There is an additional method for a Bidder to qualify as a DVBE for contracts for non-IT goods and for IT goods and services. For those procurements, a JBE must accept from a Bidder a DVBE business utilization plan (plan) in lieu of DGS certification (PCC 10115.15(a)). The use of a plan does not extend to non-IT service contracts.

A plan is a Bidder's written commitment to contract with certified DVBEs for at least 3 percent of its business's total contract dollars expended in California during the next year (i.e., the year after the year in which the contract is awarded). This 3-percent commitment applies to all business done by the Bidder in California, not just contracts with the State of California. The DGS procurement division provides plan approval. A plan is considered approved by the DGS on the date of submission provided the plan meets requirements set forth in PCC 10115.15. However, the DGS may audit the plan and later disapprove it. To qualify as a DVBE by use of a plan, a Bidder must provide a written certification that it has submitted its plan to DGS when it submits its Bid to the JBE.

Broker/agent status: The benefits of DVBE status are intended to apply to DVBEs that are not "brokers" or "agents." MVC 999.2(b) defines those terms as follows:

[2] A JBE may determine that a fiscal emergency exists necessitating the temporary suspension of the JBE's DVBE program. If a JBE suspends its program due to a fiscal emergency, the JBE should have the Approving Authority, or his/her appointee, document the extent of and reasons for the suspension.

- "Broker" or "agent" means any individual or entity, or combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding JBE, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- "Equipment broker" means any broker or agent who rents equipment, directly or indirectly, to an awarding JBE.

A DVBE that is a "broker" or "agent" must inform the JBE of its status at the time of submission of its Bid.

If a JBE contracts with a DVBE that is determined to be a broker or agent,[3] then:

- The DVBE broker or agent will not receive the benefit of its DVBE certification for the transaction, which means no DVBE incentive may be applied; and
- The JBE may not count the DVBE broker's or agent's participation in the contract towards the JBE's annual DVBE participation goal.

2. Determining if a DVBE Performs a Commercially Useful Function

Certified DVBE contractors, subcontractors, and suppliers that Bid on or seek to participate in a JBE contract must perform a commercially useful function to be eligible to participate as a DVBE in a specific procurement. The JBE is responsible for determining whether the contractor, subcontractor, or supplier will perform a commercially useful function before making a contract award to the DVBE.

A certified DVBE is deemed to perform a commercially useful function if the business does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract;
- Carries out its obligation by actually performing, managing, or supervising the work involved;
- Performs work that is normal for its business services and functions;
- Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and

[3] The determination is made from the Bidder information supplied with its Bid (see preceding paragraph).

- Is not subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a contract through which funds are passed to obtain the appearance of a DVBE participation.

3. Other Requirements

Utilizing available resources in managing the DVBE program: JBEs must utilize existing resources such as the Department of Veterans Affairs and OSDS in implementing the DVBE program. (PCC 10115.4 and MVC 999.6)

Suspended Bidders and subcontractors: A JBE may not award any contract to a Bidder suspended for violating PCC 10115.10 for the period of the applicable suspension. (See PCC 10115.10(6)(c).) A JBE may not permit a Vendor to utilize a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension. To access a DGS list of suspended Bidders, search on *www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx*.

Contractor violations of PCC 10115.10: If a JBE suspects that a Vendor is in violation of PCC 10115.10, the JBE must notify OSDS. Violations include:

- Fraudulently obtaining or retaining certification as a DVBE, or aiding another to do so;
- Making a false statement to defraud a state official or employee to influence certification as a DVBE;
- Obstructing or impeding the investigation of qualifications of a business entity as a DVBE;
- Fraudulently obtaining, attempting to obtain, or helping another to obtain public monies to which there is no entitlement under the laws establishing the DVBE program; and
- Establishing or exercising control over a firm that has engaged in such activities. (See PCC 10115.10 for a complete list of violations and associated penalties.)

Contractor postcontract certification: Upon completion of an awarded contract that contains a commitment to achieve a DVBE goal, the JBE must require the prime contractor that entered into a subcontract with a DVBE to certify to the JBE:

- The total amount of money the prime contractor received under the contract;
- The name and address of the DVBE subcontractor that participated in the performance of the contract;
- The amount of money each DVBE subcontractor received from the prime contractor; and
- That all payments under the contract have been made to the DVBE subcontractor.

The JBE must keep this certification on file.

4. Other Considerations

Effect on Contracts of Failure to Meet DVBE Goals: Failure of a JBE to meet the goals established under MVC 999 et seq. and PCC 10115 et seq. does not affect the validity or enforceability of any contract (PCC 10115.6, MVC 999.8).

No Goals Reporting Requirement: There are no DVBE goals-reporting requirements in either the PCC or MVC applicable to JBEs.[4]

LPAs: If a JBE procures goods or services using an LPA that includes DVBE participation, some or all of the purchase may count toward the JBE's DVBE goal. See chapter 6 of this Manual for additional information regarding DVBE considerations when using LPAs.

SB/DVBE Option: The DVBE incentive is not applicable when a JBE conducts a procurement using the SB/DVBE option. See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.

3.2 AMERICANS WITH DISABILITIES ACT CONSIDERATIONS

In compliance with the Americans with Disabilities Act (ADA) and similar California statutes, JBEs must make reasonable efforts to ensure that their programs, activities,

[4] MVC 999.7 and PCC 10115.5, which required state agencies to provide annual reports to the Governor and DGS with respect to meeting DVBE goals, were repealed effective January 1, 2007.

and services are accessible to persons with disabilities. Contracting and procurement are activities covered by these laws.

JBEs must provide reasonable accommodation to persons with disabilities that enable them to participate in the procurement process. JBEs must also be prepared to respond to questions about reasonable accommodation by persons with disabilities. The term "reasonable accommodation" does not include actions that would fundamentally alter the nature of the procurement process or that would impose an undue financial or administrative burden upon a JBE.

JBEs should designate an individual (ADA Coordinator) who is available to respond to questions or concerns regarding reasonable accommodation of disabilities in the procurement process. Solicitation Documents should advise Prospective Bidders that the JBE complies with the ADA and similar California statutes and that requests for accommodation of disabilities should be directed to the ADA Coordinator.

3.3 STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC) PROGRAM

The SABRC is a joint effort between the California Department of Resources Recycling and Recovery (CalRecycle) and DGS to implement state law requiring state agencies and the Legislature to purchase recycled-content products (RCPs). It complements the efforts of the Integrated Waste Management Act (Pub. Resources Code, § 4000 et seq.), which was enacted to reduce the amount of waste going to California's landfills.

A. Utilizing Recycled Content Products

PCC 12203 requires JBEs to ensure that at least 50 percent of reportable purchases are recycled products. This requirement applies to purchases in each of the targeted categories identified in PCC 12207, which includes categories covering paper products, office supplies, office products, and a wide range of other products. The required postconsumer recycled content varies by category (e.g., recycled paper products must consist of at least 30 percent postconsumer fiber).

Example: A JBE is purchasing $20,000 worth of paper for its copy machines. At least $10,000 of the paper must have 30 percent recycled content by weight. The other $10,000 may be any mix of recycled or nonrecycled products. For additional information, search on CalRecycle or *www.calrecycle.ca.gov.*

~~**Note:** CRC 10.503, adopted by the Judicial Council effective January 1, 1994, states: "All courts must use recycled paper for all purposes except for uses for which recycled paper is not practically available."~~

B. Recycled Preference and Competitive Solicitations

To the maximum extent economically feasible in performance of the contract work, each JBE must require Vendors to use recycled content products (PCC 12203(d)). Contact the SABRC ~~Resources Recycling and Recovery (CalRecycle)~~ at 916-341-6199 ~~or 916-341-6524~~ or *SABRC@CalRecycle.ca.gov* for information on qualifying SABRC reusable and recycled content products.

C. Supplier Certification

Unless otherwise waived as noted below, JBEs must require all Vendors to certify in writing, under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the JBE (PCC 12205). This requirement applies even if the product contains no recycled material. To access the Postconsumer-Content Certification form ~~(CIWMB 74)~~, search on CalRecycle or www.calrecycle.ca.gov/buyrecycled/stateagency/Forms/CalRecycle074.pdf~~*www.calrecycle.ca.gov/buyrecycled/stateagency/Forms/CIWMB074.doc*~~.

This certification can be waived if the postconsumer recycled content can be verified by other written means such as product label, packaging, catalog, manufacturer/Vendor website, product advertisement. For additional information regarding the SABRC program, search on CalRecycle or *www.calrecycle.ca.gov/BuyRecycled/StateAgency/*.

D. Printer Cartridges

No JBE may purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person (PCC 12156). Each JBE must print a statement on the cover of its Solicitation Document for printer or duplicator cartridges, or in some other noticeable place in the Solicitation Document, notifying Prospective Bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in PCC 12156(b).

3.4 SMALL BUSINESS PREFERENCE

State law requires JBEs to provide a small business preference in the award of **IT goods or services** contracts.[5] In competitive procurements of IT goods and services, JBEs must provide a five percent preference to entities that have been certified as a "small business" or "microbusiness" by DGS. The small business preference is not applicable to procurements of non-IT goods or non-IT services.

The small business preference is not applicable when a JBE conducts a procurement using the SB/DVBE option. See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.

Each JBE must adopt small business preference procedures applicable to the competitive procurement of IT goods and services. These procedures must implement the requirements of applicable provisions of article 1 of the Small Business Procurement and Contract Act (GC 14835–14843). ~~AOC/LSO~~The Judicial Council's Legal Services office has developed a sample set of procedures, and other related materials, to assist JBEs in meeting these obligations.

There are no small business preference reporting requirements applicable to JBEs.

JBEs may procure IT goods or services using LPAs that include Small Business participation. See chapter 6 of this Manual for additional information regarding Small Business considerations when using LPAs.

[5] PCC 12102.2(c). See also chapter 4C, step 6 of this Manual for further information.

Judicial Council of California

COMPETITIVE SOLICITATION OVERVIEW

CHAPTER 4

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INTRODUCTION

This chapter discusses topics that arise in multiple types of competitive solicitations. Chapters 4A, 4B, and 4C of this Manual provide specific guidance for procurements of non-IT goods, non-IT services, and IT goods and services, respectively. To reduce repetition of similar information, each of those chapters refers to sections contained in this chapter.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

4.1 THE BASICS OF COMPETITION

Competition is one of the basic tenets of procurement under the California Judicial Branch Contract Law. The type of competition will vary depending on the type of goods or services to be procured, as well as the value of the procurement.

A. General Requirements

Judicial Branch Entities (JBEs) must conduct competitive procurements in a manner that promotes open, fair, and equal competition among Prospective Bidders. Generally speaking, a procurement must be competitive unless it falls into one of the categories covered in chapter 5 of this Manual.

Buyers conducting competitive procurements must provide qualified Prospective Bidders with a fair opportunity to participate in the competitive solicitation process, stimulating competition in a manner conducive to sound fiscal practices without favoritism, fraud, or corruption.

B. Developing Prospective Bidder Resources

1. Contact lists: JBEs should establish contact lists using a variety of means to identify Prospective Bidders. Resources available to JBEs to identify and/or establish contact lists include:

- Recommendations from customers;
- Local trade unions;
- Chambers of commerce;
- Industry listings;

- Leveraged Procurement Agreement (LPA) databases;
- Certified Disabled Veteran Business Enterprise (DVBE) databases;
- Internet searches; and
- Telephone directories.

2. Request for Interest: JBEs may use a Request for Interest (RFI) to separate those Prospective Bidders that intend to participate in an upcoming solicitation from those that have no interest in participating. RFIs are typically used when there is an excessively large pool of Prospective Bidders.

The RFI establishes or supplements the contact list for Buyers to use when distributing a Solicitation Document. A copy of the Solicitation Document will be provided to all responding Prospective Bidders. The Buyer should retain the RFI and the contact list in the procurement file.

An RFI should:

- Be short, concise, and to the point;
- Include the solicitation number and title;
- Include a general description of the goods or services to be solicited;
- Include estimated quantities, features, general time frames, any pertinent geographic information, Buyer's name and telephone number, etc.;
- Not provide or ask for any cost information, as such information could create an unfair bidding environment;
- Provide space for Prospective Bidders to supply contact name, address, telephone number, and submittal date; and
- Include where and how to submit the response to the RFI.

Note: Nothing in this section limits a JBE's ability to use a "request for information." A request for information is used to gather information about goods or services available in the marketplace, what goods or services generally cost, or similar topics. A request for information is not used to separate those Prospective Bidders that intend to participate in an upcoming solicitation from those that have no interest in participating.

C. Confidentiality

1. Period of confidentiality: During the solicitation development, information regarding the solicitation is confidential. This is to prevent any Prospective Bidder from obtaining an unfair advantage. See chapter 4A, 4B, or 4C (as applicable) of this Manual regarding the confidentiality of Bids.

Although a Bid may have pages marked “confidential” or “proprietary,” the Bid may be subject to release in response to a CRC 10.500 request. See chapter 11 of this Manual for further discussion.

2. Confidentiality/conflict statements: In addition to the Buyer, other personnel may be involved in the solicitation development, evaluation, and selection process. The JBE may adopt a requirement in its Local Contracting Manual that these personnel sign confidentiality/conflict statements.

A confidentiality/conflict statement typically requires that the person signing:

- Certify that all information concerning the procurement will be kept confidential and secure;
- Certify that no information will be disclosed to any party who has not signed a confidentiality/conflict statement;
- Acknowledge that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, terms and conditions, and includes concepts and discussions as well as written or electronic materials;
- Acknowledge that if the person leaves the procurement project before it ends, all procurement information must still be kept confidential;
- Agree that any instructions relating to the confidentiality of procurement information will be followed;
- Acknowledge that any unauthorized disclosure may be a basis for civil or criminal penalties and/or disciplinary action;
- Agree to advise the Buyer immediately in the event the person either learns or has reason to believe that someone who has access to confidential procurement information has disclosed or intends to disclose that information in violation of a confidentiality/conflict statement;
- Certify that the person has no personal or financial interest and no present or past employment or activity that would be incompatible with participation in the procurement; and
- Agree that no gift, benefit, gratuity, or consideration will be accepted from any Prospective Bidder.

D. Advertising

1. When advertising is required: JBEs are sometimes required to advertise solicitations. Even when a JBE is not required to advertise a solicitation the JBE may wish to do so to increase competition.

Note: A JBE does not need to advertise any non-competitively bid procurement. See chapter 5 of this Manual for more information regarding non-competitively bid procurements.

The requirements for advertising depend on the type of procurement: non-IT goods, non-IT services, or IT goods and services. See the applicable section in chapters 4A, 4B, and 4C of this Manual.

2. Types of advertising: A JBE may advertise a solicitation by:

- posting a notice on its own website;
- placing an advertisement in print media;
- submitting the procurement to the California State Contracts Register (CSCR), which may be accessed via DGS's eProcurement system;[1]
- posting a notice to another electronic bidding system; or
- other methods the Buyer determines are reasonably likely to reach Prospective Bidders.

3. Timing of advertising: Solicitation Documents should be released after or simultaneously with any required advertisement to ensure that Prospective Bidders learn about solicitations in a timely manner.

Solicitations should be advertised for at least 10 working days before the Bid Closing Time to ensure Prospective Bidders have enough time to generate Bids. For small value solicitations, however, the JBE may wish to consider a shorter advertising period. If a JBE adopts a shorter advertising period for small value solicitations, it should include details in its Local Contracting Manual.

Note: DGS's eProcurement system may require that an advertisement remain in the CSCR longer than 10 days. Other electronic bidding systems may have similar requirements. Buyers should confirm the advertisement end date if using these systems.

[1] DGS's eProcurement system currently uses BidSync technology. JBEs may be required to register with BidSync to use certain features of DGS's eProcurement system.

4. Record of advertisement: A copy of the published advertisement should be included in the procurement file.

5. Resolicitations: A JBE conducting a resolicitation does not need to readvertise the solicitation if:

- The resolicitation occurs within three months of the publication of the original advertisement;
- Notice of resolicitation is provided to Prospective Bidders that requested and/or were sent the original Solicitation Document; and
- There is no material change to the solicitation.

6. Contract advertising exemption: JBEs can be granted an exemption from advertising by the Approving Authority or delegee when there is a compelling reason to do so. An exemption may be warranted if, for example, only one Prospective Bidder can supply the required goods or services and advertising would not produce more Prospective Bidders.

7. Advertising in the CSCR: The CSCR is a centralized listing of state procurements that DGS is required to publish by Government Code (GC) section 14825. The CSCR currently takes the form of an online database, accessed through DGS's eProcurement systems. Prospective Bidders are likely to see advertisements in the CSCR.

A JBE may submit an advertisement to the CSCR by using DGS Procurement Division's Internet web page (*www.pd.dgs.ca.gov*), or by submitting Form STD 815 to DGS/Business Development Unit. DGS charges a fee for each advertisement that appears in the CSCR. There is an additional fee for advertisements that are not submitted electronically.

E. Samples

The practice of obtaining samples from Prospective Bidders before contract award is not recommended. If sample goods are needed for review before award for demonstration or prepurchase testing, the Solicitation Document should:

- Explain that sample goods are required for demonstration or prepurchase testing;

- State that the JBE is not obligated for the cost of the sample goods or for their return; and
- Specify the quantities of the sample goods required.

Caution should be taken to ensure that a Bid does not contain terms or conditions that would result in the automatic purchase of the goods being tested.

4.2 SOLICITATION DOCUMENTS GENERALLY

The Solicitation Document sets forth the procurement process and includes the solicitation and contract requirements. It is the guiding document that ensures that Bidders are able to submit Responsive Bids and that the procurement is successful.

A. Developing the Solicitation Document

Each Solicitation Document, regardless of format (Request for Quote (RFQ), Invitation for Bid (IFB), Request for Proposal (RFP)), should clearly state the needs or business requirements of the JBE in order for a Prospective Bidder to weigh associated risks and price the purchase.

1. Avoid writing restrictive requirements: JBEs should not include requirements in Solicitation Documents that restrict the bidding to a single Prospective Bidder. Buyers can avoid restrictive requirements by:

- Including only essential requirements;
- Avoiding restrictive, impractical, or nonessential requirements;
- Carefully checking delivery requirements to ensure that the turnaround time from a Bidder's receipt of order to delivery is not too restrictive or limiting;
- Defining requirements to promote and encourage Bidders to bid standard items or standard services where possible;
- Not specifying a particular brand name, product, or product feature that is peculiar to one manufacturer, except for reference purposes;
- Not dictating detailed design solutions prematurely; and
- Allowing sufficient time from the posting of the solicitation to the Bid Closing Time or first key action date to provide Prospective Bidders time to review and consider the requirements, prepare a Bid, and submit the Bid.

2. PCC 6611 Special Negotiation Process: If the procurement will include a special negotiation process (e.g., the use of supplemental bids), the Solicitation Document must provide appropriate details.

B. Required Provisions

1. Bidder instructions: Each Solicitation Document should include instructions to Prospective Bidders detailing how to submit a Responsive Bid. A JBE may adopt a standard set of bidder instructions for use in its solicitations. If adopted, the standard set of bidder instructions should be included in the JBE's Local Contracting Manual.

2. General provisions: Each Solicitation Document should include the JBE's standard terms and conditions for the applicable type of purchase (non-IT goods, non-IT services, or IT goods and services). To the extent practicable, the JBE should include terms and conditions specific to that procurement, or simply attach the entire proposed contract including available appendices.

3. Protest information: Each Solicitation Document must include information regarding protest procedures, including relevant protest deadlines and where protests must be sent. If the JBE estimates that the procurement will be below the applicable protest threshold adopted by the JBE, the Solicitation Document must state that protests will not be accepted. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

4. Common elements of RFPs and IFBs: All RFPs and IFBs must contain the following elements:

- A schedule of key dates, including the Bid Closing Time;
- Information on how Bids are to be submitted (e.g., sealed envelope with the solicitation number on the outside of the sealed package);
- Where Bids must be sent or delivered;
- Any attachments that are required to be returned by Bidders, such as administrative or technical requirements; and
- Evaluation information.

All RFPs and IFBs must also contain provisions addressing the following:

- Bidder conflict of interest (see PCC 10410–10411); and
- Antitrust claims (see GC 4552–4554).

5. Bidder signatures: For any written solicitation, regardless of dollar value, solicitation format, or delivery method (i.e., faxed, mailed, or delivered in person), Bids should include the signature of an authorized representative of the Bidder. Faxed or

electronic signatures are acceptable if allowed by the Solicitation Document. Of course, a faxed or electronic signature could not be used in any solicitation requiring a sealed bid as such bids must be delivered to the JBE in a sealed envelope.

Note: Bidder signatures are not required if the solicitation is conducted via e-mail or telephone, although the Buyer should document the name of the Bidder representative who provides the Bid.

6. Faxed bid responses: The following paragraph (or equivalent) must be included in all written solicitations when a JBE accepts faxed Bids:

> Bids submitted by facsimile machine (fax) will be considered only if they are sent to [office fax number]. Bids sent to any other fax number will not be considered. The pages of the faxed bid received before the bid due date and time specified in the solicitation document will be considered "the complete bid." Please be advised that there is a heavy demand placed on the fax machine receiving bids and the JBE assumes no responsibility if a bidder cannot transmit its bid via fax, or if the entire bid is not received before the bid due date and time.

Note: JBEs should consider adopting a solicitation value (e.g., $10,000) above which faxed bids will not be accepted. JBEs may also consider limiting the acceptance of faxed Bids to solicitations conducted via telephone or e-mail. Any limit on faxed bids should be included in the JBE's Local Contracting Manual.

7. Loss leader prohibition: Except as noted below, a JBE must include the following statement in every (i) non-IT goods Solicitation Document, (ii) non-IT services IFB or RFP that involves the furnishing of equipment, materials, or supplies, and (iii) IT goods or services RFP:

> It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.

Exceptions: The following acquisitions do not require loss leader language:

- Request for Offers (RFOs) for acquisitions from LPAs;
- Procurements using the SB/DVBE option; and
- Procurements under $5,000.

8. Socioeconomic and environmental program language: JBEs are reminded to include socioeconomic and environmental program language in their solicitations, as applicable. If the DVBE incentive is waived, the Solicitation Document should state that the DVBE incentive is being waived. Refer to chapter 3 of this Manual for further information regarding socioeconomic and environmental programs, including circumstances in which JBEs may waive the DVBE incentive from individual competitive solicitations.

9. Tie bids: It is possible that two Bids will have the same cost (when a lowest responsible bidder approach is used) or receive the same score (when a highest scored bid approach is used). JBEs should include a tiebreaker provision in the Solicitation Document to address how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are a coin toss or other similar objective method. The event must be observed by witnesses, and the affected Bidders should be invited to observe.

10. Warranty requirements: The Solicitation Document should specify any warranty requirements.

11. Shipping costs: For any procurement including goods (non-IT or IT), shipping costs must be addressed in the Solicitation Document.

12. Conflict Minerals: PCC 10490 places restrictions on procurements that include goods or services that involve certain “conflict minerals.” These minerals include cassiterite, columbite-tantalite, gold, and wolframite—minerals found in many technological products such as mobile telephones, laptop computers, and digital video recorders.

Scrutinized companies, as defined in PCC 10490(b), are ineligible to submit Bids to JBEs for procurements involving conflict minerals. Accordingly, if a JBE is conducting a procurement for goods or services that involves these minerals, the JBE should require each Bidder to certify either (i) it is not a “scrutinized company” as defined in PCC 10490(b), or (ii) the goods or services the Bidder would provide to the JBE are not related to products or services that are the reason the Bidder must comply with Section 13(p) of the Securities Exchange Act of 1934.[2]

[2] PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not

C. Amending a Solicitation Document

1. Clarifications or changes to a Solicitation Document: Clarifications or changes to a Solicitation Document are made by an addendum. An addendum should include at a minimum the following information:

- Addendum number;
- Solicitation title and number;
- Indication of where the clarification or change is made in the Solicitation Document (e.g., deleting and inserting pages); and
- Revised Bid Closing Time, or statement that the Bid Closing Time is unchanged.

A Solicitation Document may be modified before the Bid Closing Time. In the case of a modification resulting from a solicitation specifications protest, a Solicitation Document may be modified after the Bid Closing Time.

If the original solicitation was in written format, any addendum to the solicitation must be in writing. If the original solicitation was conducted by telephone, then the addendum may be communicated by telephone or in writing, at the Buyer's discretion. If the addendum is communicated by telephone, the addendum must be documented as part of the RFQ. All addenda become part of the procurement file.

Note: An addendum should be issued a reasonable time before the Bid Closing Time to allow Prospective Bidders sufficient time to prepare their Bids. If, in the Buyer's judgment, Prospective Bidders will need more time to submit a responsive Bid, then the Bid Closing Time should be extended in the addendum.

2. Evaluation criteria revisions: Evaluation criteria may not be changed after the Bid Closing Time.

D. Multiple Awards for Services

JBEs may award multiple contracts for services through a single solicitation. This is useful, for example, when there are a variety of services or locations involved.

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remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement." Section 13(p) of the Securities Exchange Act of 1934 requires certain entities to make disclosures concerning conflict minerals.

The single solicitation must (i) have clear, concise descriptions of the work to be performed or goals and objectives to be achieved, (ii) state the intended number of awards,[3] and (iii) provide a clear objective standard on how awards will be made. The single solicitation should give Bidders sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

4.3 BID HANDLING

1. Bid submissions: Generally, Bids are handled as follows:

- When sealed Bids are required, each Bid must be separately sealed inside an envelope, signed (if required by the Solicitation Document), and received by the Bid Closing Time to be considered for award.
- Bids must be kept in a secured area and remain confidential until bid opening.
- Bids received after the Bid Closing Time are considered nonresponsive and must not be considered for award.[4]

2. Submission of bids by fax: Faxed bids should only be accepted when:

- The Solicitation Document specifically states they will be allowed; and
- They are received on the fax machine at the telephone number specified in the Solicitation Document.

The internal clock of the receiving fax machine is the clock by which the official time of receipt will be determined.

Any solicitation that requires a sealed Bid cannot be faxed.

4.4 VENDOR SELECTION

A. Vendor Selection Basics

The Evaluation Team should be composed of personnel familiar with the subject matter of the procurement, as well as applicable legal requirements. Each Evaluation Team member must:

[3] The intended number of awards may be a range; for example, 2–4.
[4] A JBE may adopt, in its Local Contracting Manual, a requirement that late Bids be returned unopened to the applicable Bidder.

- Be unbiased and able to evaluate all Bids fairly; and
- Withdraw from participating in an evaluation if he or she has or acquires a disqualifying interest.

An example of a disqualifying interest is where the Evaluation Team member's spouse is an employee of a Bidder.

Private consultants may not be voting members of the Evaluation Team. Private consultants may be used only to provide clarification or subject matter expertise to the Evaluation Team.

B. No Bids

If no Responsive Bid is received from a Responsible Bidder, the Buyer has two options:

Option 1: The Buyer may cancel and reissue the solicitation, modifying any possible restrictive requirements. The Buyer should also consider methods to broaden the number of Bidders.

Option 2: If, in the opinion of the Buyer, a second solicitation would not result in a different outcome, the Buyer may cancel the solicitation and proceed with a sole source purchase following the requirements in chapter 5, section 5.9~~.A~~ of this Manual. If possible, the JBE should select as the sole source a responsible Bidder whose Bid was substantially technically compliant/responsive with the specifications.

Note: A JBE's ability to cancel a solicitation is not limited to situations where too few Bids were received. Before the Bid Closing Time, a JBE may cancel a solicitation for any or no reason. After the Bid Closing Time, all Bids may be rejected if the JBE determines that:

- The Bids received do not reflect effective competition;
- The cost is not reasonable;
- The cost exceeds the amount expected; or
- Awarding the contract is not in the best interest of the JBE.

C. Required Certifications or Permits

The PCC requires JBEs to obtain certifications or permits in connection with certain purchases.

1. Darfur Contracting Act: Procurements for **non-IT goods or services** must address the requirements of the Darfur Contracting Act. The act is intended to preclude JBEs generally from contracting with "scrutinized companies" that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons stated in PCC 10475.

For acquisitions of non-IT goods or services, JBEs must require certain vendors to certify whether they are a "scrutinized company." This applies regardless of the procurement approach used including, but not limited to: RFQs, RFPs, IFBs, and non-competitively bid procurements (except as specified below). The JBE may use the certification form contained in appendix A of this chapter, or develop its own form.

The only exception to JBEs obtaining this information is for contracts awarded using (i) an LPA, if the entity creating the LPA obtained a Darfur certification, or (ii) Intergovernmental Contracts (IGCs).

A scrutinized company is ineligible to submit a Bid for a contract with a JBE for non-IT goods or services. PCC 10478(a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a scrutinized company in order to submit a Bid to a JBE. A scrutinized company may, however, submit a Bid to a JBE if the company first obtains permission from the JBE.

2. Iran Contracting Act: Procurements of non-IT goods, non-IT services, or IT goods and services of **one million dollars ($1,000,000) or more** must address the requirements of the Iran Contracting Act. Generally speaking, the act is intended to place limits on transaction with entities that engage in certain investment activities in Iran, for the reasons stated in PCC 2201.

An entity is ineligible to bid on, submit a proposal for, enter into, or renew any contract with a JBE for goods or services of one million dollars ($1,000,000) or more if the entity engages in investment activities in Iran, as defined in the act.

In addition, a financial institution is ineligible to bid on, submit a proposal for, enter into, or renew any contract with a JBE for goods or services of one million dollars ($1,000,000) or more if the financial institution extends credit, as defined in the act, to a business identified on a list of ineligible vendors maintained by DGS (Iran List).

Prior to submitting a bid or proposal and prior to executing any JBE contract or renewal for goods or services of one million dollars ($1,000,000) or more, an entity must certify that it is not on the Iran List. Also, financial institutions must certify that they are not extending credit to an ineligible vendor as described in the act. This certification requirement applies regardless of the procurement approach, method, or solicitation format used, including RFPs, IFBs, RFQs, and non-competitively bid procurements. The act provides exceptions to the certification requirement; see PCC 2203(c) and (d) for additional information regarding the exceptions.

This sample certification in Attachment B may be used to satisfy the act's certification requirements.

3. Purchases of Tangible Personal Property: If a purchase includes tangible personal property, the Vendor must submit to the JBE, for itself and each of its affiliates that make sales for delivery into California, a copy of either:

- A California seller's permit issued under Revenue and Taxation Code section 6066 and following; or
- A certificate of registration issued under Revenue and Taxation Code section 6226.

The Vendor must submit this documentation before a contract is executed.

There are two exemptions to this requirement:

- Purchases of $2,500 or less if the JBE is using a credit card to pay for the purchase (**note:** the total amount allowed under this exception for each Vendor per year is $7,500 per JBE); and
- Purchases where the Approving Authority, or his or her delegee, makes a written finding that the contract is necessary to meet a "compelling state interest." "Compelling state interests" include ensuring the provision of essential services, ensuring the public health, safety, and welfare, and responding to an emergency, as that term is defined in PCC 1102.

The JBE should inform Bidders of this requirement in applicable Solicitation Documents. Alternately, the JBE may require all Bidders to submit this documentation with their Bids in applicable solicitations.

Note: Depending on the specific situation, computer software may constitute "tangible personal property" for purposes of this section. Software is considered tangible personal property if (i) the software is transmitted to the JBE on a CD-ROM or other tangible medium, or (ii) the software includes a printed user's manual or other physical accessory. Software is not considered tangible personal property if (i) the software is transmitted to the JBE via the Internet, and (i) no tangible medium, printed manual, or other physical accessory is included with the software.

4. Document the file: If a Bidder or Bid is rejected due to ineligibility, the procurement file should be documented identifying the reason, with a printout of the supporting documentation.

D. Deviations

The JBE may reject any or all Bids, or parts thereof, and may waive any immaterial deviation or defect in a Bid. The JBE's waiver of any immaterial deviation or defect in no way modifies the Solicitation Documents or excuses the Bidder from full compliance with the solicitation specifications if awarded the contract.

1. Waiving mandatory requirements is prohibited: Mandatory requirements include those required by applicable law. Material deviations of mandatory requirements cannot be waived, and any Bid containing such deviations must be rejected. All such deviations must be documented in the procurement file to support the rejection.

2. Determining whether a deviation is material: JBEs should evaluate Bids by first determining that each Bid is responsive to the solicitation requirements. A deviation from a requirement or a defect is material if, in the opinion of the JBE, the affected Bid:

- Is not in substantial accord with the solicitation requirements;
- Provides an advantage to one Bidder over other Bidders in any way (such as reducing the cost of providing the goods or services); or
- Has a potentially significant effect on the delivery, quantity, or quality of items bid, amount paid to the Vendor, or the cost to the JBE.

3. Immaterial deviation: A Bid that substantially conforms to the requirements set forth in a Solicitation Document, but is not strictly responsive, may be accepted if the variance cannot have affected the amount of the Bid or given the Bidder an advantage or benefit not allowed other Bidders. In other words, if the variance is inconsequential, the Bid may still be accepted.

Example: A Bidder referenced the wrong page in its supporting technical literature. The Bidder directed the Evaluation Team to page 4 and the correct page was page 5.

4. Material deviation: A material deviation affects the amount of the Bid or provides an advantage or benefit not allowed other Bidders. A material deviation typically affects the cost, quantity, or quality of the product or services to be provided to the JBE.

Example: The solicitation required a telephone system that would serve 500 users and the Bidder offered a system that would serve 250 users.

5. JBE discretion: The JBE, in its sole discretion, will determine what constitutes a material deviation from a mandatory requirement.

E. Tax Delinquents

Pursuant to PCC 10295.4, a JBE shall not enter into any contract for the acquisition of **non-IT goods or services** with a person or entity indentified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one of the 500 largest tax delinquents. Any contract entered into in violation of PCC 10295.4 is void and unenforceable.

Before executing any contract or renewal for non-IT goods or services, the JBE should verify that the contractor is not on either of the following lists:

FTB list: *www.ftb.ca.gov/aboutFTB/Delinquent_Taxpayers.shtml*

BOE list: *www.boe.ca.gov/cgi-bin/deliq.cgi*

This requirement applies regardless of the procurement approach, method, or solicitation format used, including: RFPs, IFBs, RFQs, and non- competitively bid procurements.

4.5 REVERSE AUCTIONS

JBEs may use a “reverse auction” for the acquisition of non-IT goods, non-IT services, or IT goods and services. A reverse auction is a competitive online solicitation process for fungible goods or services in which Bidders compete against each other online in real time in an open and interactive environment.

Any reverse auction process used by a JBE must comply with the following:

- The reverse auction documentation must specify (i) the date and time when the JBE will start accepting online Bids, and (ii) the date and time when the JBE will stop accepting online Bids;
- Prospective Bidders must register before the reverse auction opening date and time;
- Prospective Bidders must agree to any terms and conditions and other requirements of the solicitation;
- All Bids must be posted online and be updated on a real-time basis;
- Bidders must be allowed to lower their Bids below the lowest currently-posted bid; and
- Bids must be accepted until the specified closing date and time.

A JBE may require Prospective Bidders to be prequalified prior to placing Bids in a reverse auction. A JBE may adopt other policies respecting reverse auctions in its Local Contracting Manual.

4.6 FOLLOW-ON CONTRACTING

A Vendor may, as part of the consulting services provided to a JBE, recommend or suggest the purchase of certain goods or services. This is common when, for example, the JBE contracts with a Vendor to create a feasibility study. No Vendor (or subsidiary thereof) that makes such a recommendation may submit a Bid or be awarded a contract to provide those goods or services to the JBE. In addition, no Vendor may be paid out of JBE funds for developing recommendations on the acquisition of IT goods or services or assisting in the preparation of a feasibility study, if that Vendor is to be a source of such acquisition or would otherwise directly and/or materially benefit from the JBE's adoption of such recommendations or the course of action recommended in the feasibility study.

This "follow-on" prohibition does not extend to Vendors that were awarded a subcontract of the original consulting services contract that amounted to no more than 10 percent of the total monetary value of the consulting services contract. To determine whether a follow-on situation exists, the JBE should examine the initial and subsequent contracts.

Analysis of the initial contract: The first step is determining whether the initial contract is for consulting services. If it is not, the prohibitions above do not apply. The essential

issue is what the Vendor delivers, not how it is labeled. The following questions may prove helpful:

- Are consulting services present?
- Does the contract call for services that are advisory in nature, providing a recommended course of action or personal expertise and having an end product that transmits information or analysis related to the governmental functions of a JBE?

Determining whether certain IT-related contracts constitute consulting services contracts can be difficult. For reference, the following are examples of what are typically or not typically considered consulting services in the IT area:

1. IT contracts typically considered as consulting services contracts:
   - Feasibility study;
   - Strategic planning and business process reengineering/improvement (not included in the lifecycle of an IT project); and
   - Maintenance and operations.

2. IT contracts typically not considered as consulting services contracts:
   - Design development and implementation;
   - Project management;
   - Independent validation and verification; and
   - Independent project oversight consultant.

3. IT contracts that require analysis of the specific details of the contract to determine whether or not it is a consulting services contract:
   - Acquisition specialist.

Analysis of the subsequent contract: If the initial contract is determined to be a consulting services contract, determine the causal relationship, if any, between the initial contract and the subsequent contract. The purpose of the causal inquiry is to determine whether there is a sufficient link between the end product(s) of the first contract and the deliverable(s) to be procured by the second contract to warrant preclusion of the Vendor that performed the first contract. In general, if there is a causal relationship, the JBE must reject the Prospective Bidder or withhold the award of a contract. Consultation with legal counsel is recommended before the JBE decides either to reject a Prospective Bidder or to withhold an award of a contract.

4.7 SUMMARY DOCUMENT

The evaluation and selection process for every procurement effort should be documented and referenced in a procurement summary. The purpose of the procurement summary is to create a single document that provides the history of a particular procurement transaction and explains the significant facts, events, and decisions leading up to the contract execution. The procurement summary should be included in the procurement file.

Procurement summaries should be written clearly and concisely to support the soundness of the purchasing decision.

Procurement summary information includes but is not limited to:

- Documenting the prices offered by the Bidders;
- Documenting that the selection process occurred in accordance with the Solicitation Document;
- Determining that the selected Bidder is responsible and the Bid is responsive; and
- Attaching the scoring sheets, if applicable.

APPENDIX A

DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a "scrutinized company" as defined in PCC 10476, or (ii) receive written permission from the [~~Court/HCRC/AOC~~JBE] to submit a bid or proposal.

To submit a bid or proposal to the [~~Court/HCRC/AOC~~JBE], ~~you~~ the proposer/bidder must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

Company Name (Printed)	*Federal ID Number*
Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)	

☐ 1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

OR

☐ 2. We are a "scrutinized company" as defined in PCC 10476, but we have received written permission from the [~~Court/HCRC/AOC~~JBE] to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the [~~Court/HCRC/AOC~~JBE] is included with our bid or proposal.*

OR

☐ 3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a "scrutinized company" as defined in PCC 10476.

CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer/bidder to the clause in paragraph 3. This certification is made under the laws of the State of California.

Company Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of _____ in the State of _____*

APPENDIX B

IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2204, you must complete this Iran Contracting Act certification when (i) submitting a bid or proposal to the [~~Court/HCRC/AOC~~JBE] for a solicitation of goods or services of $1,000,000 or more, or (ii) entering into or renewing a contract with the [~~Court/HCRC/AOC~~JBE] for the purchase of goods or services of $1,000,000 or more.

To submit a bid or proposal to, or enter into or renew a contract with, the [~~Court/HCRC/AOC~~JBE], you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, simply check the corresponding box.

☐ 1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC 2203(b), and we are not a financial institution extending $20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

☐ 2. We have received written permission from the [~~Court/HCRC/AOC~~JBE] to submit a bid or proposal, or enter into or renew a contract, pursuant to 2203(c) or (d). *A copy of the written permission from the [~~Court/HCRC/AOC~~JBE] is included herewith.*

CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, certify that I am duly authorized to legally bind the proposer/bidder/vendor to the clause in paragraph 1. This certification is made under the laws of the State of California.

Company Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of _____ in the State of _____*

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT GOODS

CHAPTER 4A

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INTRODUCTION

The most significant change to Judicial Branch Entity (JBE) procurement required by the California Judicial Branch Contract Law is that JBEs must procure non-IT goods above a threshold amount ($25,000, unless a higher amount is established by the JBE's Approving Authority) using a "lowest responsible bidder" methodology rather than a "best value" or "highest scoring bidder" approach. JBEs can no longer use these other approaches to procure non-IT goods valued above the threshold amount.

This chapter sets forth a step-by-step guide that Buyers can use when competitively soliciting non-IT goods.[1] For noncompetitive solicitation of non-IT goods, see chapter 5 of this Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—DETERMINE THE PROCUREMENT VALUE

The value of the procurement directly affects the processes to be used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the non-IT goods to be procured;
- Value of any associated incidental services (such as installation);
- Delivery costs;
- Taxes (if applicable); and
- Other associated costs, as applicable.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for additional information on incidental services acquired in connection with the procurement of non-IT goods.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

STEP 2—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 3—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. This may include:

- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on legal review of contracts.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 4—SELECT SOLICITATION DOCUMENT TYPE

Two types of Solicitation Documents are used in the procurement of non-IT goods:

- Requests for Quote (RFQs); and
- Invitations for Bid (IFBs).

See the table below for information about when each type of Solicitation Document should be used.

Solicitation Document	Procurement Size	Description
RFQ	Up to $50,000[2]	Used for straightforward, uncomplicated, and low-risk procurements.

[2] A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

Solicitation Document	Procurement Size	Description
		Note: Cannot be used if incidental services included in the purchase (e.g., set-up, installation) exceed $4,999.99, unless an exemption is granted. See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for additional information.
IFB	Any size	Used for more complicated, higher risk, and higher value procurements.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as "RFQs" or "IFBs."

STEP 5—DRAFT SOLICITATION DOCUMENT

The Buyer should draft the final Solicitation Document. For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

In addition to the required provisions identified in chapter 4 of this Manual, a Solicitation Document for non-IT goods must comply with the following requirement:

- Product specifications must not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California (see PCC 10302.6).

The following subsections provide additional information useful in drafting the two types of Solicitation Documents.

A. RFQs

An RFQ is used for straightforward procurements where Bids may be solicited by telephone or another method of electronic communication. If the Buyer solicits Bids by telephone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or another written

manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a general description of the non-IT goods to be solicited;
- Include quantities of the non-IT goods to be solicited;
- Include any required features of the non-IT goods to be solicited;
- Specify when the non-IT goods must be delivered;
- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

B. IFBs

The IFB must include the JBE's standard terms and conditions for the acquisition of non-IT goods. The JBE should also distribute with the IFB the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices. The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The IFB must state the time and place Bids will be publicly opened. This place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities.

STEP 6—PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT goods **in excess of $50,000.**[3] See chapter 4, section 4.1.D of this Manual for advertising methods.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

[3] All solicitations of non-IT goods in excess of $50,000 must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than $50,000.

Note: If incidental services included in the purchase (e.g., set-up, installation) exceed $4,999.99, the solicitation must be advertised even if the total estimated value of the solicitation is under $50,000. See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for information regarding exemptions to this requirement.

STEP 7—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. Some aspects of receiving Bids depend on the type of Solicitation Document used.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer should document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs

Bids must be submitted in sealed envelopes. A JBE should time/date stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened.

STEP 8—OPEN BIDS

All Bids in response to IFBs must be publicly opened at the time and place specified in the IFB. If any person present at the opening requests that the Bids be read, the Buyer (or designee) must read the Bids aloud. Once opened, the Bids must be made available for public inspection.

Note: Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

STEP 9—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs.

A. RFQs

If a Buyer obtains a single Bid, and the Buyer determines that the Bid is fair and reasonable, the Buyer does not need to obtain additional Bids. If a Buyer obtains a single Bid, and the Buyer determines that the Bid is not fair and reasonable, the Buyer should obtain at least one additional Bid.

B. IFBs

The Buyer should make reasonable efforts to obtain at least two Responsive Bids from Responsible Bidders. Advertising the solicitation constitutes a reasonable effort.

STEP 10—BID CLARIFICATION

If the JBE requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 11—EVALUATE BIDS

The Evaluation Team must evaluate the Bids using the criteria specified in the Solicitation Document. The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual.

A Bidder's exception to the JBE's terms or conditions (addition, deletion, or other modification) may constitute a material deviation. A Bid with a material deviation is nonresponsive. JBEs have discretion to determine materiality.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: For purposes of determining the lowest Bid, the amount of sales tax must be excluded from the total amount of the Bid (PCC 10301). See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

A. RFQs

Under PCC 10301, JBEs must award contracts for non-IT goods above a threshold amount to the lowest responsible bidder. The default threshold amount is $25,000, but the Approving Authority may establish a higher threshold amount for his or her JBE.[4] If the Approving Authority establishes a higher threshold amount, the JBE should document this higher threshold amount in its Local Contracting Manual.

RFQs less than the threshold amount: JBEs are not statutorily required to award the contract to the lowest responsible bidder if the JBE has a valid business reason to do otherwise.

RFQs equal to or above the threshold amount: The JBE must award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

B. IFBs

The JBE must award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

[4] PCC 10301 allows the director of the Department of General Services (DGS) to establish a higher threshold amount applicable to procurements of non-IT goods by state agencies. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the authority to establish a higher threshold amount for a JBE resides in the Approving Authority of that JBE. If the Approving Authority establishes a higher threshold amount, the Approving Authority must ensure that (i) the higher threshold amount is reasonable and appropriate, and (ii) the JBE provides adequate oversight for procurements conducted pursuant to the higher threshold amount.

STEP 12—NOTICE OF INTENT TO AWARD

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs

There are both posting and notification requirements when using an IFB.

1. Posting

The JBE must post a "notice of intent to award" on its website or in a public place in the offices of the JBE at least 24 hours before the contract is awarded. Once the notice has been posted, the time for submitting a protest begins to count down.

Exception: The JBE does not need to post a notice of intent to award if (i) the JBE has adopted a protest threshold applicable to non-IT goods, and (ii) the procurement is below that protest threshold. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

2. Notification

If the contract will be awarded to a Bidder that did not submit the lowest Bid (because, e.g., the lowest Bid was not a Responsive Bid, or the Bidder that submitted the lowest Bid was not a Responsible Bidder), the JBE must notify the lowest Bidder at least 24 hours before awarding the contract. The 24-hour period excludes Saturdays, Sundays, and legal holidays. If the lowest Bidder submits a valid protest, the JBE must not make an award until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding protest procedures, see chapter 7 of this Manual.

STEP 13—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, the contract must be signed by an authorized representative of the Bidder who can bind the Bidder contractually.

STEP 14—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual.

STEP 15—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

SELECTED TOPICS RELEVANT TO SOLICITATIONS OF GOODS

A. Incidental Services

Unless an exemption is granted, incidental services included with the purchase of non-IT goods:

- May not exceed $4,999.99, and
- Should be directly related to the purchase of non-IT goods, such as setup or installation.

Unless an exemption is granted, the solicitation must be advertised if the value of incidental services included in the purchase exceeds $4,999.99, even if the total estimated value of the solicitation is under $50,000.

The Approving Authority, or his or her delegee, may grant an exemption to these requirements if he or she determines, in his or her sole discretion, that the cost of complying with the requirement will likely exceed the savings generated by complying with the requirement.

B. Motor Vehicles

In establishing specifications for the purchase of a motor vehicle, and in determining the lowest responsible bidder, a JBE may consider the probable resale value of the vehicle as determined by:

- Recognized published used car marketing guides;
- Other established historical evidence of future used motor vehicle value; or

- Contractual guarantee of the apparent low Bidder that the resale value of the vehicle will be no less in proportion to Bid price than any other comparable vehicle complying with specifications for which a Bid was received.

C. Solicitations of Printer or Copier Cartridges

If a JBE procures printer or copier cartridges, it must include a statement on the cover of the Solicitation Document (or in some other prominent place in the Solicitation Document) informing Bidders that it is unlawful to prohibit a printer or copier cartridge that is sold to a JBE from being recycled or remanufactured, except as noted below.

Exception: This requirement does not apply where the Bidder enters into signed agreements with its customers consenting to the return of the used cartridge to the Bidder for (a) recycling and remanufacturing, or (b) recycling.

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT SERVICES

CHAPTER 4B

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INTRODUCTION

The Public Contract Code (PCC) is more flexible in the procurement of non-IT services than in the procurement of non-IT goods. When procuring non-IT services, Judicial Branch Entities (JBEs) have the ability to use a "lowest responsible bidder" approach or a "highest scored bid" approach.

This chapter sets forth a step-by-step guide that Buyers can use when competitively soliciting non-IT services.[1] For noncompetitive solicitation of non-IT services, see chapter 5 of this Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—DETERMINE THE PROCUREMENT VALUE

The value of the procurement directly affects the processes used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the non-IT services to be procured;
- Taxes (if applicable); and
- Other associated costs, as applicable.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

STEP 2—DETERMINE THE TYPE OF SERVICE

The Buyer should determine the type of non-IT services being procured. Certain types of non-IT services have special or different procurement and contract requirements, so it is important to make this determination early in the procurement process.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

Are the non-IT services being procured **consulting services**? Consider these factors:

- Is the primary purpose of the procurement some type of recommendation, or product of the mind?
- Is the unique knowledge or intellectual abilities of an individual of critical importance to the success of the non-IT services?

Are the non-IT services being procured **legal services**? Consider these factors:

- Must the services be performed by a licensed attorney?
- Do the services involve legal defense or legal advice?
- Are the services directed by an attorney or necessary for the performance of attorney services? Examples include services performed by jury consultants and expert witnesses.

Note: Contracts for legal services may be competitively bid, but there is no requirement to do so (for more information on non-competitively bid procurements, see chapter 5 of this Manual).

STEP 3—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 4—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. These may include:

- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on ~~seeking~~ legal review of contracts~~participation~~.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 5—SELECT SOLICITATION DOCUMENT TYPE

Three types of Solicitation Documents are used in the procurement of non-IT services:

- Requests for Quote (RFQs);
- Invitations for Bid (IFBs); and
- Requests for Proposal (RFPs).

The table below provides guidance on when the various types of Solicitation Documents are typically used.

Solicitation Document	Procurement Size	Description	Awarded to:
RFQ	Less than $5,000[2]	Used for very small purchases.	Lowest Responsible Bidder or Highest Scored Bid, at the JBE's discretion
IFB	Any size	Used for simple, common, or routine services that may require personal or mechanical skills.	Lowest Responsible Bidder
RFP	Any size	Used for complex or unique non-IT services in which professional expertise and methods may vary greatly, and creative or innovative approaches are needed.	Highest Scored Bid

[2] A JBE may adopt a higher threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5 section 5.1 of this Manual.

An IFB is often used when the non-IT services are routine, or common, or when there is a standard associated with the service. For example, the hiring of a pest-control firm to do routine exterminations would typically be solicited using an IFB, not an RFP. However, in any solicitation, the JBE may choose to use either an IFB or an RFP in its sole discretion.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as "RFQs," "IFBs," or "RFPs."

STEP 6—DRAFT SOLICITATION DOCUMENT

For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

The more thorough a JBE is in communicating its specific needs, requirements, goals, and objectives in the Solicitation Document, the more complete, responsive, and acceptable the Bids received will be.

The following subsections provide additional information on drafting the three types of Solicitation Documents.

A. RFQs

An RFQ is used for straightforward procurements where Bids may be solicited by telephone or another method of electronic communication. If the Buyer solicits Bids by telephone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or another written manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a general description of the non-IT services to be solicited;
- Include any deliverable resulting from the non-IT services (such as a report);
- Specify when the non-IT services must be completed and any deliverable must be delivered;

- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

Before soliciting Bids in response to an RFQ, the JBE should determine whether the contract resulting from the RFQ will be awarded on a "lowest responsible bidder" basis or on a "highest scored bid" basis. The determination is solely within the JBE's discretion.

B. IFBs and RFPs

IFBs and RFPs share many characteristics and requirements. These shared aspects are addressed in this section B. Section C contains additional information applicable only to IFBs, and section D contains additional information applicable only to RFPs.

Information about the Procurement Process: IFBs and RFPs must include:

1. The standards the JBE will use in evaluating Bids.
2. Time schedules relating to the procurement, including:
   - Date to submit questions or seek clarification (if applicable);
   - Date of Bidders' conference (if applicable);
   - Bid Closing Time;
   - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
   - Anticipated contract term, including start and end dates.
3. The JBE's standard terms and conditions for the acquisition of non-IT services. To the extent practicable, the JBE should also distribute with the IFB or RFP the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices.
4. Where the intent to award notice will be posted. If the JBE will post the intent to award notice on its website, the JBE should specify the applicable URL.

Description of Services: The IFB or RFP must contain a description of the desired non-IT services. The description should include:

- A clear, precise description of the work to be performed, services to be provided, problem to be solved, questions to be answered, issues to be addressed, or the goals and objectives to be met;
- An explanation of the desired approach to the problem, if any;
- Any requirements as to where the work must be performed (e.g., at the JBE's site);
- A description of any specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence, if applicable;
- Performance timelines or completion dates;
- Required quality control standards to be met, if applicable;
- A description of any required deliverables (such as progress reports or a final report summarizing a consultant's findings);
- A description of the assistance to be provided by the JBE, if applicable;
- Acceptance criteria; and
- Practical and policy information, technological requirements or specifications, and legal limitations, if applicable.

Payment Information: The IFB or RFP should contain some basic payment information, including (as applicable):

- Whether and to what extent Progress Payments will be allowed;
- Whether payments are subject to payment withholding;
- Penalties for late or inadequate performance;
- Known or estimated budgetary limitations on the contract price; and
- Travel expenses (what will and will not be paid by the JBE).

Note: See chapter 9 of this Manual for more information regarding Progress Payments.

Required Elements of Bids: IFBs and RFPs specify what Bidders must address or include in their Bids, such as:

1. Required certifications (e.g., Darfur Contracting Act certification).
2. A description of the Bidder's qualifications, which may include at the JBE's discretion:
   - Copies of current business licenses, professional certifications, or other credentials;

- Proof of financial solvency or stability (e.g., balance sheets and income statements);
- Proof that the Bidder, if a corporation, is in good standing and qualified to conduct business in California; and
- For Bidders that are nonprofit organizations, proof of nonprofit status.

3. A list of references for whom the Bidder has performed similar work.
4. A list of similar services successfully completed by the Bidder, with samples, if applicable.
5. Identification of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work.
6. Identification of a project coordinator.
7. Resumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out non-IT services.
8. An overall description of the techniques, approaches, and methods to be used in performing non-IT services.
9. If subcontractors are contemplated:
   - identification of those persons or firms;
   - the portions and monetary percentages of the work to be done by subcontractors;
   - how and why subcontractors were selected;
   - resumés of each major subcontractor participant; and
   - description of how subcontracted work will be controlled, monitored, and evaluated.
10. The total cost of the non-IT services, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:
    - Identification of position/classification titles funded;
    - Salary rates or ranges;
    - Percentage of time devoted to the work;
    - Fringe benefits;
    - Operating expenses;
    - Travel and per diem expenses;
    - Overhead or indirect costs;
    - Subcontractors with the same type of cost details; and
    - Other costs.

C. IFBs Specifically

Contracts resulting from IFBs are awarded to the lowest Responsible Bidder. Accordingly, IFBs must be drafted in a manner to allow the JBE to determine which Bidders meet the minimum requirements specified in the IFB. For each specific requirement, a yes or no answer is required. There is no "fully," "barely," "almost," or "exceeded" level of evaluation.

The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The IFB must state the time and place Bids will be publicly opened. This place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities.

Bid Requirements: The IFB must include a requirement that the cost portion of a Bid be submitted in a sealed envelope separate from the remainder of the Bid.

D. RFPs Specifically

RFP Content Requirements: The RFP should identify any "minimum terms" in the JBE's terms and conditions. "Minimum terms" are the terms so important that a proposed exception (addition, deletion, or other modification) will render a Bid nonresponsive. The RFP should require that Bidders identify all proposed exceptions (if any) to the JBE's terms and conditions. The RFP should state that (i) a Bid that takes a material exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive, and (ii) the JBE, in its sole discretion, will determine what constitutes a material exception.

The RFP must specify how the cost portion of the Bid will be submitted. The cost portion of the Bid may be submitted in a sealed envelope separate from the remainder of the Bid, or it may be included with the remainder of the Bid.

Evaluation Plan: Although not part of the RFP itself, the Buyer should develop an evaluation plan along with the RFP. By developing the evaluation plan with the RFP, the Buyer will ensure that the JBE receives all information necessary to properly evaluate the Bids.

The evaluation plan must provide for a fair and equitable evaluation of all Bids. The evaluation plan must include:

- Rating and scoring factors that will be considered; and
- Criteria for assigning cost points (see step 13 regarding assignment of cost points).

The evaluation plan should include the following:

- Price is given substantial weight in relationship to all other criteria used. JBEs should seek legal counsel before issuing an RFP where cost points are less than 30 percent of the total points.
- Exceptions (additions, deletions, or other modifications) to the JBE's terms and conditions may be considered as part of the evaluation process.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

JBEs should disclose in the RFP the evaluation criteria or categories and the percentage weight for each criterion or category. Examples of criteria include price and prior experience.

Other Procurement-Related Information: The RFP should state the date of oral interviews, if any. The date for oral interviews may be tentative.

STEP 7—PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT services **of $5,000 or more.**[3] See chapter 4, section 4.1.D of this Manual for advertising methods.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

[3] All solicitations of non-IT services of $5,000 or more must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than $5,000.

STEP 8—OPTIONAL: HOLD BIDDERS' CONFERENCE

Bidders' conferences provide Prospective Bidders an opportunity to understand better the non-IT services being procured by a JBE. Holding a Bidder's conference is always optional, at the JBE's discretion. Bidders' conferences are more common in solicitations for complex non-IT services. Accordingly, they are rarely held in solicitations using IFBs, but are held more often in solicitations using RFPs.

Note: Bidders' conferences are not held for RFQ solicitations.

STEP 9—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of non-IT services using different Solicitation Documents.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer should document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs and RFPs

Bids must be submitted as specified in the IFB or RFP. A JBE should date/time stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened. Bids received pursuant to an RFP solicitation remain confidential until the scoring process is completed.

STEP 10—OPEN BIDS

The way in which Bids are opened differs for IFBs and RFPs. Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

A. IFBs

The Buyer must publicly open the sealed Bids. The Buyer (or designee) must read the cost information for each Bid.

B. RFPs

The Bids do not need to be publicly opened and read unless the specific RFP requires otherwise.

STEP 11—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs and RFPs.

A. RFQs

If a Buyer obtains a single Bid, and the Buyer determines that the Bid is fair and reasonable, the Buyer does not need to obtain additional Bids. If a Buyer obtains a single Bid, and the Buyer determines that the Bid is not fair and reasonable, the Buyer should obtain at least one additional Bid.

B. IFBs and RFPs

The JBE must receive at least three Bids in response to an IFB or RFP, unless one of the following exceptions applies:

- The JBE advertised the solicitation in the California State Contracts Register (CSCR) (which may be accessed via DGS's eProcurement system[4]) and has solicited all known Prospective Bidders, but still received fewer than three Bids;
- The contract will be awarded to a Community Rehabilitation Program (CRP) entity (see Welfare and Institutions Code section 19404); or
- The JBE could have completed the transaction without a competitive solicitation (e.g., procurements of legal services or licensing or proficiency testing examinations).

[4] DGS's eProcurement system currently uses BidSync technology. JBEs may be required to register with BidSync to use certain features of DGS's eProcurement system.

If the JBE does not receive at least three Bids, and none of the exceptions above applies, then the JBE may consider canceling and reissuing the solicitation. If the JBE takes this course, the JBE should consider modifying any possible restrictive requirements in the IFB or RFP. If the JBE awards the contract, the Buyer should document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

STEP 12—OPTIONAL: HOLD ORAL INTERVIEWS/CLARIFICATIONS

Oral interviews provide the JBE an opportunity to understand better or clarify the Bids submitted by Bidders. Holding oral interviews is always optional, at the JBE's discretion. The JBE is not obligated to hold an oral interview with every Bidder; it may limit interviews to only those Bidders whose Bids need clarification. Oral interviews are more common in solicitations for especially complex non-IT services.

Note: Oral interviews are not held for RFQ or IFB solicitations.

If the JBE otherwise requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 13—EVALUATE BIDS

The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual. The JBE will award the contract as described in this step, if at all. There is no requirement to award a contract; see chapter 4, section 4.4.B of this Manual for additional details.

A. RFQs

The JBE may award the contract on a "lowest responsible bidder" basis or on a "highest scored bid" basis, depending on which methodology was selected in step 6 above.

For more information about the "lowest responsible bidder" basis, see section B below. For more information about the "highest scored bid" basis, see section C below.

B. IFBs

The JBE must evaluate the Bids and award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

C. RFPs

The Buyer must review all Bids to determine which Bids meet the format requirements specified in the RFP.[5]

All Bids meeting the format requirements must then be submitted to the Evaluation Team that will evaluate and score the Bids using the methods specified in the RFP. The JBE must make all Bids and all evaluation and scoring summary sheets available for public inspection at the conclusion of the scoring process.

The JBE must award the contract, if at all, to the Bidder whose Bid is given the highest score by the Evaluation Team.

[5] For example, the RFP may require that the cost portion of the Bid be submitted on a specified worksheet.

Suggested Noncost Evaluation Criteria: The JBE may consider using the following criteria when evaluating and scoring Bids:

- Does the Bidder understand the JBE's problem or needs?
- Has the Bidder taken any exceptions (addition, deletion, or other modification) to the terms and conditions that are detrimental to the JBE?
- Can the Bidder fit this work into its existing obligations?
- Are the Bidder's proposed approaches, methods, and procedures reasonable and feasible?
- Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
- Does the Bidder have the organization, management capability, management competency, fiscal and personnel resources, and experience to perform the non-IT services being sought?
- Does the Bidder have experience performing work of a similar nature, size, and scope?
- Does the Bidder's past experience qualify the Bidder to perform these non-IT services?
- What are the professional qualifications of the personnel who the Bidder will commit to the project?
- Did the Bidder allocate sufficient staff resources?
- Has the Bidder addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
- Does the Bidder appear to be able to handle and resolve unanticipated complications and delays without interrupting the delivery of non-IT services?
- Are any proposed timelines for performance presented by the Bidder feasible?
- Did the Bidder include plans that will show how performance will be monitored and measured to ensure that all non-IT services are successfully performed and that the objectives, goals, and requirements are met?
- Does the Bidder appear to have the capacity to manage fiscal resources responsibly?
- Does the Bidder have sound fiscal, accounting, cost-monitoring or budget-monitoring procedures in place?

Suggested Cost Evaluation Criteria: JBEs may use the process for assigning cost points set forth in chapter 4C, appendix A of this Manual. Alternately, JBEs may adopt their own processes for assigning cost points.

STEP 14—NOTICE OF INTENT TO AWARD

In certain circumstances, JBEs must issue or post a notice of intent to award a contract. The requirements differ for solicitations using IFBs and RFPs.

Note: The requirements in this step relating to IFBs and RFPs apply even if the IFB or RFP is used in a procurement valued less than the JBE's protest threshold for non-IT services.

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs

Posting: The JBE must post a "notice of intent to award" on its website or in a public place in the offices of the JBE at least five Court Days before the contract is awarded.

Notification: If the contract will be awarded to a Bidder that did not submit the lowest Bid (because, e.g., the lowest Bid was not a Responsive Bid, or the Bidder that submitted the lowest Bid was not a Responsible Bidder), the JBE must notify the lowest cost Bidder at least five Court Days before awarding the contract.

The JBE may, as a courtesy to Bidders, send a copy of the notice of intent to award to each Bidder by e-mail or fax.

If any Bidder submits a valid protest before award of the contract on the grounds that the protesting Bidder was the lowest Responsible Bidder, the JBE must not award the contract until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of the Manual.

C. RFPs

Posting: When using an RFP, the JBE must post a notice of intent to award the contract in a place accessible by the general public (including any Internet site identified in the RFP) for at least five Court Days before awarding the contract.

If any Bidder submits a valid protest before award of the contract, the JBE will not award the contract until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of this Manual.

STEP 15—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, the contract must be signed by an authorized representative of the Bidder ~~that~~ who can bind the Bidder contractually.

STEP 16—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual.

STEP 17—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF IT GOODS AND SERVICES

CHAPTER 4C

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INTRODUCTION

In light of the unique aspects of information technology (IT) and its importance to Judicial Branch Entity (JBE) programs, the Public Contract Code (PCC) allows for a flexible and expeditious approach to IT procurements. The most significant difference between IT and non-IT procurements is that IT procurements may be awarded on the basis of "value effectiveness" within a competitive framework. When procuring IT goods and services, JBEs must consider factors other than price, except when acquiring hardware independently of a system integration project. (See PCC 12102.2(b).) In addition, JBEs may use a phased approach of Bid development.

This chapter sets forth a step-by-step guide for the procurement of IT goods and services.[1]

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—PERFORM PRELIMINARY ANALYSIS

The Buyer should perform two analyses, discussed below, at the beginning of any IT procurement.

Procurement Value

The value of the procurement directly affects the processes that are used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the IT goods to be procured;
- Value of the IT services to be procured;
- Taxes (if applicable); and
- Other associated costs, as applicable.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

IT-Specific Issues

The Buyer may consider the following issues, which are drawn from PCC 12103.5, to help plan and execute the IT procurement:

- The judicial branch policy, legislative mandate, or operational reason for the IT procurement;
- The existing business processes currently used to implement the judicial branch policy, legislative mandate, or operational reason;
- The most important priorities for the IT project to accomplish;
- What current technology is being used and how it is being used;
- If the data used in a proposed IT system comes from multiple sources, the existing business processes or technical systems that produce and maintain the source data to ensure interoperability;
- How the new IT project leverages existing technology investments while accomplishing its business objectives; and
- How to meet the JBE's anticipated IT life cycle requirements.

STEP 2—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 3—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. These may include:

- Technical experts;
- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on ~~seeking~~ legal review of contracts~~participation~~.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 4—SELECT SOLICITATION DOCUMENT TYPE

Three types of Solicitation Documents are used in the procurement of IT goods and services:

- Request for Quotes (RFQs)
- Invitations for Bid (IFBs)
- Requests for Proposal (RFPs)

The table below provides guidance on when to use the three types of Solicitation Documents.

Solicitation Document	Procurement Size	Type of Procurement
RFQ	Up to $100,000[2]	IT goods, IT services, and any combination of IT goods and services
IFB	Any size	Acquisition of hardware independently of a system integration project
RFP	Any size	IT goods, IT services, and any combination of IT goods and services

[2] A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as "RFQs," "IFBs," or "RFPs."

STEP 5—CONSIDER PHASED APPROACH

Note: This step is applicable to procurements using IFBs and RFPs, but is inapplicable to RFQ procurements.

The JBE may consider a phased approach when using an IFB or RFP to solicit IT goods and services. A phased approach may be particularly useful in especially complex procurements. A phased approach allows for an interactive, conversational mode of Bid and contract development. If a phased approach is used, the JBE will work together in confidence with each Bidder to assess and discuss the viability and effectiveness of the Bidder's proposed methods of meeting the JBE's needs. This is accomplished through the submission of a conceptual proposal, a detailed technical proposal, or a draft Bid prior to the submission of a final Bid. This approach is a departure from the rigid "accept or reject" philosophy of traditional competitive bidding, yet it is highly competitive in nature. It provides the flexibility needed for the Bidder to test a solution before formal submittal of a final Bid, and it facilitates the correction of defects before they become fatal to a Bid.

A phased approach includes one or more of the following:

- Submission of a conceptual proposal by the Bidder;
- Submission of a detailed technical proposal by the Bidder; and
- Submission of a draft Bid by the Bidder.

Conceptual proposal: A conceptual proposal may be included to allow each Bidder to provide a general concept of a Bid with just enough detail to enable the Evaluation Team to determine if the Bidder is on the right track toward meeting the functional requirements as stated in the IFB or RFP and, if not, where the Bidder must change a concept. This step invites the Bidder to be as innovative as the IFB or RFP requirements allow in eliminating unnecessary constraints.

Detailed technical proposal: The detailed technical proposal may be included to allow each Bidder to provide a detailed technical description of its Bid to determine at an early stage whether the Bid is totally responsive to all the requirements of the IFB or RFP, and if not, which elements are not responsive and what changes would be necessary and acceptable.

Draft Bid: A draft Bid may be included to allow each Bidder to submit an "almost final" Bid in order to identify any faulty administrative aspect of the Bid that, if not corrected, could cause the final Bid to be rejected for ministerial reasons.

The IFB or RFP must be drafted to implement the phased approach, if applicable.

STEP 6—DRAFT SOLICITATION DOCUMENT

The Buyer should draft the final Solicitation Document. For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

The more thorough a JBE is in communicating its specific needs, requirements, goals, and objectives in the Solicitation Document, the more complete, responsive, and acceptable the Bids received will be.

Bidders may claim a small business preference in any competitive solicitation of IT goods and services of $5,000 or more.[3] Applicable Solicitation Documents must contain language regarding the small business preference. For additional information regarding the small business preference, see chapter 3, section 3.4.

The following subsections provide additional information useful in drafting the three types of Solicitation Documents.

A. RFQs

An RFQ is used for procurements where Bids may be solicited by phone or another method of electronic communication.

If the Buyer solicits Bids by phone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or

[3] Government Code section 14838.5(c) allows the director of the Department of General Services (DGS) to establish a higher threshold above which state agencies must offer the small business preference. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the authority to establish a higher threshold amount for a JBE resides in the Approving Authority of that JBE. If the Approving Authority establishes a higher threshold amount, the Approving Authority must ensure that the higher threshold is reasonable and appropriate.

another written manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a description of the IT goods or services to be solicited;
- Include any required technical specifications;
- Include any deliverable resulting from the IT services;
- Specify when the IT services must be completed and any deliverable must be delivered;
- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

Before soliciting Bids in response to an RFQ, the JBE should determine whether the contract resulting from the RFQ will be awarded on a "lowest responsible bidder" basis or on a "highest scored bid" basis. If the RFQ is being used to procure hardware independently of a system integration project, the JBE may award the contract on a "lowest responsible bidder" basis or on a "highest scored bid" basis. Otherwise, the JBE must award the contract on a "highest scored bid" basis.

B. IFBs

IFBs may be used to procure hardware independently of a system integration project.[4] Contracts resulting from IFBs are awarded to the lowest Responsible Bidder. Accordingly, IFBs must be drafted in a manner to allow the JBE to determine which Bidders meet the minimum requirements specified in the IFB. For each specific requirement, a yes or no answer is required. There is no "fully," "barely," "almost," or "exceeded" level of evaluation.

[4] See PCC 12102.2(~~c~~b): "The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications."

IFBs must include:

1. Time schedules relating to the procurement, including:
   - Date to submit questions or seek clarification (as applicable);
   - Date of Bidders' conference (as applicable);
   - Due date for the conceptual proposal (as applicable);
   - Due date for the technical proposal (as applicable);
   - Due date for the draft Bid (as applicable);
   - Bid Closing Time;
   - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
   - Anticipated contract term, including start and end dates.
2. Time and place where the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
3. Where the intent to award notice will be posted (e.g., website address);
4. The JBE's contact person for administration of the solicitation; and
5. The JBE's standard terms and conditions for the acquisition of IT goods and services.

To the extent practicable, the JBE should also distribute with the IFB the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices. The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

Description of IT Goods: The IFB must contain a description of the desired IT goods. The description should include:

- Product specifications;
- Description of when and where the IT goods are to be delivered; and
- Support and maintenance requirements.

Acquisition of additional items: It is sometimes difficult at the IFB stage to know with certainty the exact quantities of IT goods that will be required. To the extent practical, the IFB should provide for a contract to be written so as to enable acquisition of additional items. This will avoid redundant acquisition processes if the JBE determines it needs more of the IT goods of the type already procured.

Required Elements of Bids: IFBs must specify what Bidders must address or include in their Bids. This includes certifications (e.g., Iran Contracting Act certification) or other required document or information.

Bid Sealing Requirements: The IFB must include a requirement that the cost portion of a Bid be submitted in a sealed envelope separate from the remainder of the Bid.

Phased Approach—Notice to Bidders: If the IFB is to include a conceptual proposal and/or a detailed technical proposal step, the JBE should include the following (or substantially similar) language in the IFB:

> This procurement will follow a phased approach designed to increase the likelihood that Bids will be received without disqualifying defects. The additional step(s) will (1) ensure that the Bidders clearly understand the JBE's requirements before attempting to develop their final Bids; (2) ensure that the JBE clearly understands what each Bidder intends to offer before those Bids are finalized; and (3) give the JBE and each Bidder the opportunity to discuss weaknesses or potentially unacceptable elements of a Bid and give the Bidder the opportunity to modify its Bid to correct such problems.
>
> As part of the phased approach, the JBE may review a Bidder's submissions for errors, defects, or other problems. **The JBE makes no warranty that all errors, defects, or other problems will be identified. The Bidder is solely responsible for submitting a Bid that is free of errors and defects, and complies with all IFB requirements.**

If a draft Bid is included in the procurement, the IFB should specify that the draft Bid must contain all the material required in the final Bid, except that no cost information may be included.

C. RFPs

RFPs are used to procure a wide variety of IT goods and services. Depending on the type and value of the procurement, the RFP content requirements will vary.

Information about the Procurement Process:

RFPs must include:

1. The standards the JBE will use in evaluating Bids;
2. Time schedules relating to the procurement, including:
   - Date to submit questions or seek clarification (as applicable);
   - Date of Bidders' conference (as applicable);
   - Due date for the conceptual proposal (as applicable);
   - Due date for the technical proposal (as applicable);
   - Due date for the draft Bid (as applicable);
   - Bid Closing Time;
   - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
   - Anticipated contract term, including start and end dates.
3. Time and place where the sealed cost portions of the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
4. Where the intent to award notice will be posted (e.g., website address);
5. The JBE's contact person for administration of the solicitation; and
6. The JBE's standard terms and conditions for the acquisition of IT goods and services.

To the extent practicable, the JBE should also distribute with the RFP the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices.

Description of IT Goods: The RFP must contain a description of the desired IT goods (if any). The description should include:

- Product specifications;
- Description of when and where the IT goods are to be delivered; and
- Support and maintenance requirements.

Description of IT Service: The RFP must contain a description of the desired IT services (if any). The description should include:

- A clear, precise description of the work to be performed, services to be provided, problem to be solved, questions to be answered, issues to be addressed, or the goals and objectives to be met;
- An explanation of the desired approach to the problem, if any;
- Any requirements as to where the work must be performed (e.g., at the JBE's site);
- A description of any specific functions, tasks, or activities that must be performed, in the order of importance and probable sequence, if applicable;
- Performance timelines or completion dates;
- Required quality control standards to be met, if applicable;
- A description of any required deliverables (such as progress reports or a final report summarizing a consultant's findings);
- A description of the assistance to be provided by the JBE, if applicable; and
- Practical and policy information, technological requirements or specifications, and legal limitations, if applicable.

Terms and Conditions: The RFP should identify any "minimum terms" in the JBE's terms and conditions. "Minimum terms" are the terms so important that a proposed exception (addition, deletion, or other modification) will render a Bid nonresponsive. The RFP should require that Bidders identify all proposed exceptions (if any) to the JBE's terms and conditions. The RFP should state that (i) a Bid that takes a material exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive, and (ii) the JBE, in its sole discretion, will determine what constitutes a material exception.

Acquisition of additional items: It is sometimes difficult at the RFP stage to know with certainty the exact quantities of IT goods that will be required. To the extent practical, the RFP should provide for a contract to be written so as to enable acquisition of additional items. This will avoid redundant acquisition processes if the JBE determines it needs more of the IT goods of the type already procured.

Payment Information: The RFP should contain some basic payment information, including (as applicable):

- Whether and to what extent Progress Payments will be allowed;
- Penalties for late or inadequate performance;

- Known or estimated budgetary limitations on the contract price; and
- Travel expenses (what will and will not be paid by the JBE).

Note: See chapter 9 of this Manual for more information regarding Progress Payments.

Required Elements of Bids: RFPs must specify what Bidders must address or include in their Bids, such as:

1. A description of the Bidder's qualifications, which may include at the JBE's discretion:
   - Copies of current business licenses, professional certifications, or other credentials;
   - Proof of financial solvency or stability (e.g., balance sheets and income statements);
   - Proof that the Bidder, if a corporation, is in good standing and qualified to conduct business in California; and
   - For Bidders that are nonprofit organizations, proof of nonprofit status.
2. A list of references for whom the Bidder has provided similar goods or performed similar work; and
3. If subcontractors are contemplated:
   - Identification of those persons or firms;
   - The portions and monetary percentages of the work to be done by the subcontractors;
   - How and why these subcontractors were selected;
   - Resumés of each major subcontract participant; and
   - Description of how subcontracted work will be controlled, monitored, and evaluated.

If the RFP is soliciting IT services, the JBE may also require Bids to include:

- A list of similar services successfully completed by the Bidder, with samples if applicable;
- A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work;
- Identification of a project coordinator;
- Resumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services;

- An overall description of the techniques, approaches, and methods to be used in performing the services; and
- The total cost of the services, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:
    - Identification of position/classification titles funded;
    - Salary rates or ranges;
    - Percentage of time devoted to the work;
    - Fringe benefits;
    - Operating expenses;
    - Travel and per diem expenses;
    - Overhead or indirect costs;
    - Subcontractors with the same type of cost details; and
    - Other costs.

Evaluation Plan: Although not part of the RFP itself, the Buyer should develop an evaluation plan along with the RFP. By developing the evaluation plan with the RFP, the Buyer may ensure that the JBE receives all information necessary to properly evaluate the Bids.

The evaluation plan must provide for a fair and equitable evaluation of all Bids. The evaluation plan should ensure the following:

- Cost is appropriately considered (see the section below regarding the assignment of cost points).
- Exceptions to the JBE's terms and conditions (additions, deletions, or other modifications) may be considered as part of the evaluation process.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The JBE may consider the following criteria when developing the evaluation plan.

- Quality of the IT goods or services.
- Technical competency of Bidder's personnel.
- Reliability of delivery and implementation schedules.
- The maximum facilitation of data exchange and systems integration.
- Warranties, guarantees, support, and return policy.
- Bidder's understanding of the JBE's problem or needs.

- Ability to deliver IT goods and services on time.
- Reasonability and feasibility of the Bidder's proposed approaches, methods, procedures, and timelines.
- Organizational and management capability, management competency, fiscal and personnel resources.
- Exceptions (additions, deletions, or other modifications) to the terms and conditions that may be detrimental to the JBE.
- Professional qualifications of the personnel who the Bidder will commit to the project.
- Sufficiency of allocated staff resources.
- Performance monitoring plans and procedures.
- Adequate fiscal, accounting, cost-monitoring or budget-monitoring procedures.

Cost Points: The evaluation criteria must be based on value-effective factors that include cost. These factors are weighted; generally, the administrative and technical requirements should equal 50 percent and cost should equal 50 percent.

The evaluation criteria for the acquisition of IT goods and services must not be limited to cost alone. The JBE may not assign 100 percent of the total points to cost; other factors must be considered.

JBEs should disclose in the RFP the evaluation criteria or categories and the percentage weight for each criterion or category. Examples of criteria include price and prior experience.

Bid Sealing Requirements: The RFP must require the Bidder to submit the cost portion of its Bid in a sealed envelope separate from the remainder of the Bid.

Phased Approach—Notice to Bidders: If the RFP is to include a conceptual proposal and/or a detailed technical proposal step, the JBE should include the following (or substantially similar) language in the RFP:

> This procurement will follow a phased approach designed to increase the likelihood that Bids will be received without disqualifying defects. The additional step(s) will (1) ensure that the Bidders clearly understand the JBE's requirements before attempting to develop their final solutions; (2) ensure that the JBE clearly understands what each Bidder intends to propose before those Bids are finalized; and (3) give the JBE and each

Bidder the opportunity to discuss weaknesses or potentially unacceptable elements of a Bid and give the Bidder the opportunity to modify its Bid to correct such problems.

As part of the phased approach, the JBE may review a Bidder's submissions for errors, defects, or other problems. **The JBE makes no warranty that all errors, defects, or other problems will be identified. The Bidder is solely responsible for submitting a Bid that is free of errors and defects, and complies with all RFP requirements.**

If a draft Bid is included in the procurement, the RFP should specify that the draft Bid must contain all the material required in the final Bid, except that no cost information may be included.

Consulting Services—Follow-On Contracting Language: All RFPs that include a consulting services component should include the language below (or substantially similar language).

Bids in response to JBE procurements for assistance in the preparation of feasibility studies or the development of recommendations for the acquisition of IT goods and services must disclose any financial interests (e.g., service contracts, original equipment manufacturer (OEM) agreements, remarketing agreements) that may foreseeably allow the Bidder to benefit materially from the JBE's adoption of a course of action recommended in the feasibility study or of the acquisition recommendations.

STEP 7—PREPARE ADVERTISING

A JBE must advertise solicitations as shown in the following table:[5]

Procurement for	Advertising required
IT Goods	If total procurement value is $100,000 or more

[5] All IT solicitations must be advertised as set forth in this table, even if the JBE adopts a threshold for use of RFQs that is higher than $100,000.

Procurement for	Advertising required
IT Services	If total procurement value is $5,000 or more
IT Goods and Services	If the total procurement value is $100,000 or more ***or*** the services portion of the procurement is $5,000 or more

Although not required, a JBE may advertise a solicitation that has a total procurement value less than the applicable amount shown in the table above. Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document. See chapter 4, section 4.1.D of this Manual for advertising methods.

Note: If the JBE is using an RFP, the JBE must post the RFP in a public location such as the JBE's website. All changes to the RFP must also be posted in the same public location in which the RFP was originally posted.

STEP 8—OPTIONAL: HOLD BIDDERS' CONFERENCE

Bidders' conferences provide Prospective Bidders an opportunity to understand better the IT goods or services being procured by a JBE. Holding a Bidder's conference is always optional, at the JBE's discretion. Bidders' conferences are more common in solicitations for complex procurements.

Note: Bidders' conferences are not held for RFQ solicitations.

STEP 9—OPTIONAL: COMPLETE PHASED APPROACH STEPS

If included in the IFB or RFP, the JBE should complete the various steps of the phased approach, as described below.

Note: A phased approach is not used in RFQ solicitations.

Review Conceptual Proposal and Detailed Technical Proposal

The Evaluation Team will receive and review the conceptual proposal and/or the detailed technical proposal to determine if either proposal (or portion thereof):

- Is nonresponsive to a requirement;
- Is otherwise defective; or
- Requires clarification so that the JBE may fully understand the proposed solution.

The Evaluation Team must review each proposal in accordance with any evaluation methodology outlined in the IFB or RFP.

Confidential Discussions with Bidder

Based on its review of the proposal(s), the Evaluation Team will prepare an agenda of items to be discussed separately with the Bidder and transmit the agenda to the Bidder. The agenda will include the identification of discovered defects, but may also include a discussion of the Bidder's proposed support, implementation plans, validation plans, demonstration plans, and proposed contracts, as appropriate. The Evaluation Team should meet with the Bidder to discuss the items on the agenda. These discussions are confidential.

The primary purpose of the discussion is to ensure that the Bidder's final Bid will be responsive. The Evaluation Team should identify its concerns, ask for clarification, and express its reservations if a particular requirement of the IFB or RFP is not appropriately satisfied, in the opinion of the Evaluation Team.

At the conclusion of the meeting, the JBE should prepare a memorandum documenting the clarified items and how the Bidder proposes to correct the noted defects. The JBE may schedule additional meetings with a Bidder at the JBE’s discretion. If additional meetings are scheduled, the process set forth in this sub-step (“Confidential Discussions with Bidder”) will be repeated. The JBE may require the resubmission of selected materials as part of this process.

If, after discussion with a Bidder, the JBE is of the opinion that the Bidder’s conceptual proposal or detailed technical proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the JBE, and that further discussion would not likely result in an acceptable Bid in a reasonable time, the Evaluation Team should give

the Bidder written notice that the conceptual proposal or detailed technical proposal has been rejected and that a final Bid submitted along such lines would be nonresponsive.

Evaluate Draft Bids

The Evaluation Team should review draft Bids for administrative or clerical errors and inconsistencies that, if contained in the final Bid, may cause the Bid to be rejected. If the Evaluation Team discovers errors that can be corrected without overhauling the Bid, the Evaluation Team should communicate this information to the Bidder and give the Bidder an opportunity to correct the identified errors before the Bid Closing Time. The Evaluation Team may communicate this information through a confidential memo, or through a confidential meeting.

Note: The draft Bid review is not intended to check for responsiveness to IFB or RFP requirements, but only for administrative or clerical errors and inconsistencies that could cause the Bid to be deemed nonresponsive on a technicality.

STEP 10—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of IT goods and services using different Solicitation Documents.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer must document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs and RFPs

Bids must be submitted as specified in the IFB or RFP. A JBE should time/date stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened. Bids received pursuant to an RFP solicitation remain confidential until an intent to award notice is posted.

STEP 11—OPEN BIDS

The way in which Bids are opened differs for IFBs and RFPs. Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

A. IFBs

The Buyer must publicly open the sealed Bids.

B. RFPs

The opening and evaluation of Bids in response to IT RFPs is a multistep process. See step 14 for information for additional details.

The JBE must first open the noncost portion of all Bids received. This does not need to be done publicly. The sealed cost portions of the Bids must not be opened until the Evaluation Team has completed evaluating the noncost portion of all Bids.

The sealed cost portion of a Bid will not be opened if the noncost portion of the Bid contains one or more material deviations. See section 4.4.D for more information regarding material deviations.

STEP 12—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs and RFPs.

A. RFQs

A Buyer should use his or her procurement expertise and experience to determine whether the Bid to be selected is fair and reasonable. Buyers should obtain at least two Bids from Bidders whenever there is reason to believe a response from a single Bidder is not a fair and reasonable price.

B. IFBs or RFPs

If the JBE does not receive at least two Bids then:

- The JBE may consider cancelling and reissuing the solicitation. If the JBE takes this course, the JBE should consider modifying any possible restrictive requirements in the IFB or RFP.
- If JBE awards the contract, the Buyer should document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

STEP 13—OPTIONAL: HOLD ORAL INTERVIEWS/CLARIFICATION

Oral interviews provide the JBE an opportunity to understand better or clarify the Bids submitted by Bidders. Holding oral interviews is always optional, at the JBE's discretion. The JBE is not obligated to hold an oral interview with every Bidder; it may limit interviews to only those Bidders whose Bids need clarification. Oral interviews are more common in complex procurements. If the JBE opts for a phased approach, the Evaluation Team will usually meet with Bidders as part of that process. In such procurements, a separate oral interview may not be necessary.

Note: Oral interviews are not held for RFQ solicitations.

If the JBE otherwise requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 14—EVALUATE BIDS

The process of evaluating Bids differs significantly for RFQs, IFBs, and RFPs. The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual, and any requirements listed in the the Solicitation Document. There is no requirement to award a contract; see chapter 4, section 4.4.B of this Manual for additional details.

A. RFQs

The JBE must award the contract (if at all) on a "lowest responsible bidder" basis or on a "highest scored bid" basis, depending on which methodology was selected in step 6 above. For more information about the "lowest responsible bidder" basis, see section B below. For more information about the "highest scored bid" basis, see section C below.

B. IFBs

The JBE must evaluate the Bids and award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

C. RFPs

The evaluation of Bids received in response to RFPs involves a five-step process.

1. The Evaluation Team must review the noncost portion of each Bid to confirm that it meets the format requirements specified in the RFP.
2. The Evaluation Team must complete its evaluation of noncost criteria for all Bids using the methods specified in the RFP.[6]
3. The JBE must publish the results of the completed noncost evaluation, excluding the small business preference and DVBE incentive. Unless specified otherwise in the Local Contracting Manual, this publication must occur on the JBE's website.

[6] Evaluation of the noncost criteria includes determining if a Bidder has met the applicable requirements for the small business preference and the DVBE incentive, if applicable. However, because the small business preference and DVBE incentive cannot properly be applied until both the noncost and cost portions of the Bids have been scored, these factors should be excluded when publishing the results of the completed noncost evaluation.

4. The Evaluation Team must publicly open the cost portion of the Bids as specified in the RFP (except Bids determined to have a material deviation in the noncost portion).
5. The Evaluation Team must evaluate the cost portion of the Bids opened in item 4 above.

The Evaluation Team must not use any requirements other than those provided by law or specified in the RFP (or addenda thereto) to score Bids. The JBE must award the contract (if at all) to the Bidder whose Bid is given the highest score by the Evaluation Team, after applying any preference, incentives, or discounts. See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts.

Suggested Cost Evaluation Criteria: JBEs may use the process for assigning cost points set forth in appendix A of this chapter. Alternately, JBEs may adopt their own processes for assigning cost points.

Note: There is an additional cost evaluation requirement for IT goods solicitations that are required to be advertised (see the table in step 7 for which solicitations must be advertised). For those solicitations, the JBE must consider a Bidder's "best financing alternative" (including lease or purchase alternatives) if any Bidder timely requests such consideration. If the solicitation is posted more than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE at least 30 days before the Bid Closing Time. If the solicitation is posted less than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE by the day that is halfway between the posting date and the Bid Closing Time. However, the JBE does not need to consider a particular financing alternative if, in the judgment of the Approving Authority, that financing alternative should not be considered. (See PCC 12102(e).)

Demonstration: The evaluation process may also include a demonstration, at the JBE's discretion. The demonstration may be used to verify the claims made in the Bid, corroborate the evaluation of the Bid, or confirm that the hardware and software are actually in operation. If a demonstration is required, the JBE will give notice to the Bidder. The Bidder must make all arrangements for demonstration facilities at no cost to the JBE. The location of the demonstration may be determined by the JBE. The Evaluation Team, in its good faith judgment, will determine whether or not a demonstration has been successfully executed.

Certification: The JBE's contact person for administration of the solicitation (who should have been identified in the RFP) must execute a certificate under penalty of perjury that

the cost portions of all Bids received by the JBE were maintained sealed and secured until the time all cost portions of Bids were opened. The signed certificate should be included in the procurement file.

A sample certificate that JBEs may use is included as appendix B of this chapter.

STEP 15—NOTICE OF INTENT TO AWARD

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs and RFPs

When using an IFB or RFP, the JBE must post a notice of intent to award on its website or in a public place in the offices of the JBE at least five Court Days before the contract is awarded.

Exception: The JBE does not need to post a notice of intent to award if (i) the JBE has adopted a protest threshold applicable to IT goods and services, and (ii) the procurement is below that protest threshold. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

The JBE may, as a courtesy to Bidders, send a copy of the notice of intent to award to each Bidder by e-mail or fax.

If a Bidder submits a valid protest within five Court Days of the posting of the intent to award, the JBE must not award the contract until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of this Manual.

STEP 16—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, the contract must be signed by an authorized representative of the Bidder that can bind the Bidder contractually.

STEP 17—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual.

STEP 18—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

SELECTED TOPICS RELEVANT TO THE SOLICITATION OF IT GOODS AND SERVICES

A. New IT Equipment

To avoid the purchase of unreliable or outdated equipment, JBEs should procure new IT equipment unless budget priorities dictate otherwise. All equipment should be the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not recommended.

B. Performance-Based or Share-In Savings Contracts

For contracts related to IT integration or development projects that generate revenues or achieve savings over a quantifiable baseline of existing costs, JBEs must consider and may incorporate performance-based or share-in-savings contract terms to manage risks and create incentives for successful contract performance.

Performance-based or share-in-savings contracts may have the following characteristics, among others:

- Contract terms that specify business outcomes to be achieved, not the solution to be provided;
- Contract terms that structure the contract to maintain maximum Vendor commitment to project success and minimize risk to the JBE by sharing risk with the private sector;
- Utilization of “best value” evaluation methods, which means to select the solution that will achieve the best result based on business performance measures, not necessarily the lowest price; and

- Contract terms that base payments to the Vendor primarily on achieving predefined performance measures.

C. Solicitations of Printer or Copier Cartridges

If a JBE procures printer or copier cartridges, it must include a statement on the cover of the Solicitation Document (or in some other prominent place in the Solicitation Document) informing Bidders that it is unlawful to prohibit a printer or copier cartridge that is sold to a JBE from being recycled or remanufactured, except as noted below.

Exception: This requirement does not apply where the Bidder enters into signed agreements with its customers consenting to the return of the used cartridge to the Bidder for (a) recycling and remanufacturing, or (b) recycling.

D. SB/DVBE Option

For procurements of IT goods and services greater than $5,000 but less than $250,000, a JBE may use a streamlined competitive solicitation that targets only Small Businesses or DVBEs. This streamlined competitive solicitation is known as the SB/DVBE option.

When using the SB/DVBE option, the JBE must target either Small Businesses or DVBEs. The JBE must receive Responsive Bids from at least two Small Businesses or two DVBEs. Each Prospective Bidder must itself be a Small Business or a DVBE; entities subcontracting to Small Businesses or DVBEs may not be targeted when using the SB/DVBE option.

To solicit IT goods or services using the SB/DVBE option, follow the steps set forth in this chapter 4C, with the following modifications:

Step 2

- The list of Prospective Bidders must consist of Small Businesses or DVBEs. The JBE may locate eligible entities using the DGS database located at *www.bidsync.com/DPXBisCASB*.

Step 6

- Because protests are not allowed in connection with the SB/DVBE option, the Solicitation Document should (i) state that no protest is allowed, and (ii) indicate that no intent to award notice will be posted.

- Because Bids in connection with the SB/DVBE option do not need to be opened publicly, the Solicitation Document should not include (i) the time and place where Bids will be opened, or (ii) a requirement that the Bids, or any portion thereof, be sealed.
- The "loss leader" language may be omitted from the Solicitation Document.
- The Solicitation Document should indicate that no small business preference or DVBE incentive will be offered.
- Instead of using a fixed Bid Closing Time, the JBE may award the contract upon receipt of the second Responsive Bid. If this approach is used, details must be provided in the Solicitation Document. Once the second Responsive Bid is received, the JBE should notify any known Prospective Bidders that have not yet submitted a Bid that the JBE is no longer accepting Bids.

Step 7

- There is no advertising requirement for solicitations using the SB/DVBE option. Instead, the JBE provides the Solicitation Document to the selected Small Businesses or DVBEs directly. The JBE may wish to provide the Solicitation Document to more than two Small Businesses or DVBEs, to increase the chances it will receive at least two Responsive Bids.
- The JBE is not required to post the Solicitation Document on its website or in any other public location.

Step 10

- Bids received pursuant to an SB/DVBE option solicitation remain confidential until a contract is executed.

Step 11

- Bids in connection with the SB/DVBE option do not need to be opened publicly. The multistep process for opening Bids in response to RFPs is not applicable.

Step 12

- Competition has been achieved if the JBE receives Responsive Bids from at least two Small Businesses or two DVBEs.
- If the JBE does not receive Responsive Bids from at least two Small Businesses or two DVBEs, the JBE may not award a contract using the SB/DVBE option.

Step 14

- The multistep process for opening Bids in response to RFPs is not applicable.
- The certification in connection with Bids received in response to RFPs is not applicable.

Step 15

- The JBE is not required to post an intent to award.

Note: The JBE should ensure that the bidder instructions and other documents related to the solicitation correctly reflect the process to be used by the JBE.

APPENDIX A
SAMPLE METHOD FOR ASSIGNING COST POINTS WHEN EVALUATING RFPs

STEP ONE:

The Bid with the lowest cost is assigned the maximum number of cost points.

STEP TWO:

Use the worksheet below to calculate the number of cost points to be assigned to each of the remaining Bids. The number of cost points to be assigned to the Bid being evaluated is the number in line 6.

Line 1	Enter the maximum number of cost points……	_____
Line 2	Enter the dollar amount of the lowest bid……..……	$_____
Line 3	Enter the dollar amount of the bid you are evaluating.	$_____
Line 4	Divide the number in line 2 by the number in line 3, and enter the resulting number ……..……	_____
Line 5	Multiply the number in line 1 by the number in line 4, and enter the resulting number…….……	_____
Line 6	Round the number in line 5 to the nearest whole number and enter that number……..……	_____

Example:

A ~~superior court~~JBE issues an RFP where the maximum number of cost points is 60. The ~~court~~JBE receives three bids:

Bidder	Bid Amount
A	$90,000
B	$98,000
C	$80,000

In this scenario, Bidder C submitted the lowest Bid and is assigned the maximum 60 cost points.

Bidder A is assigned 53 cost points, as shown below:

Line 1	60
Line 2	$80,000
Line 3	$90,000
Line 4	.8888
Line 5	53.3333
Line 6	53

Bidder B is assigned 49 cost points, as shown below:

Line 1	60
Line 2	$80,000
Line 3	$98,000
Line 4	.8163
Line 5	48.9795
Line 6	49

APPENDIX B
SAMPLE COST PROPOSAL CERTIFICATION

Cost Proposal Certification
For
RFP #_____

I certify under penalty of perjury under the laws of the State of California that I have kept the cost portion of each Bid received for the RFP identified above sealed and secured from its receipt until the Bid opening on [***date***].

_____ _____

[***Buyer's name***] [***date***]

Executed in _____ [city], _____[state]

Judicial Council of California

NON-COMPETITIVELY BID (NCB) PROCUREMENTS

CHAPTER 5

Original Release Date:	Revised Effective:
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INTRODUCTION

In certain circumstances, Judicial Branch Entities (JBEs) may procure non-IT goods, non-IT services, and IT goods and services without going through a competitive process (advertising, receiving Bids, etc). In these non-competitively bid (NCB) procurements, a single entity is afforded the opportunity to provide the specified non-IT goods, non-IT services, or IT goods and services.

The following are the categories of allowed NCB procurements:

- Purchases under $5,000;
- Emergency purchases;
- Purchases from governmental entities;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP);
- Licensing or proficiency testing examinations;
- Subvention and local assistance contracts; and
- Sole source.

This chapter explains when NCB procurements are allowed and the processes required in conducting an NCB procurement.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

5.1 PURCHASES UNDER $5,000

For very small purchases, NCB procurements are permitted because the cost of conducting a competitive procurement may exceed the savings expected from the competitive process.

JBEs may purchase non-IT goods, non-IT services, or IT goods and services that cost less than $5,000 without conducting a competitive procurement so long as the Buyer determines that the pricing is fair and reasonable.

The Buyer should include documentation on fair and reasonable pricing in the procurement file. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

Note: JBEs may not split a single transaction into a series of transactions for the purpose of evading competitive solicitation requirements.

Note: Although not required to do so, JBEs may competitively solicit Bids for purchases under $5,000. An RFQ is usually used for such procurements.

5.2 EMERGENCY PURCHASES

In the event of an emergency, JBEs may purchase non-IT goods, non-IT services, or IT goods and services of any value without conducting a competitive procurement.

An emergency procurement must be approved in writing by the Approving Authority or his or her delegee. The Approving Authority (or delegee) may approve an emergency procurement only if he or she determines that immediate acquisition is necessary for the protection of the public health, welfare, or safety.[1]

When completing an emergency purchase, the Buyer should include in the procurement file the following information:

- A description of the emergency;
- A description of the non-IT goods, non-IT services, or IT goods and services to be purchased, and their prices;
- The names and quotations of suppliers contacted; and
- A copy of the written approval.

5.3 PURCHASES FROM GOVERNMENTAL ENTITIES

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from other governmental entities without conducting a competitive procurement.

Note: The procurements covered by this section are those in which the governmental entity directly sells the non-IT goods, non-IT services, or IT goods or services to the

[1] For purchases of non-IT services, the Approving Authority (or delegee) may also approve an emergency procurement if he or she determines that immediate acquisition is necessary for the protection of state property.

JBE. This situation is distinct from when a governmental entity has signed an LPA with a Vendor and allows the JBE to purchase from that Vendor using the LPA. For more information on LPAs, see section 5.5 below.

The Buyer should note in the procurement file that the purchase is being made from a governmental entity. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

Note: Contracts with governmental entities cannot be used to circumvent bidding requirements (see, e.g., PCC 10340(b)(3)).

Note: For purposes of this chapter, a "governmental entity" includes, without limitation, (i) a governmental agency from California or any state, (ii) a state college or state university from California or any state, (iii) a local governmental entity or agency, including those created as a joint powers authority, (iv) an auxiliary organization of the California State University, or a California community college, (v) the federal government, (vi) a foundation organized to support the Board of Governors of the California Community Colleges, or (vii) an auxiliary organization of the Student Aid Commission established under Education Code section 69522.

5.4 LEGAL SERVICES

JBEs may purchase legal services of any value without conducting a competitive procurement. Legal services include:

- Services performed by an attorney or an attorney's staff; and
- Services performed by consultants and expert witnesses in connection with pending or anticipated legal proceedings.

The Buyer should note in the procurement file that the purchase is for legal services. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.5 CERTAIN LPAs

If a JBE procures non-IT goods, non-IT services, or IT goods and services in accordance with chapter 6 of this Manual through an LPA established by such JBE or another entity, the JBE may procure such goods or services without having to conduct its own competitive bidding.

5.6 COMMUNITY REHABILITATION PROGRAMS (CRPs)

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from a business entity operating a CRP without conducting a competitive procurement, provided that the goods or services meet the specifications and needs of the JBE and are purchased at a fair market price as determined by the JBE.

Note: The CRP must meet the criteria established by Welfare and Institutions Code section 19404 in order for the JBE to purchase from the CRP. To confirm compliance, the JBE should request a copy of the CRP's approval certificate, issued by the Department of Rehabilitation.

The Buyer should note in the procurement file the purchase is being made from a CRP. The JBE should document its procurement file to support that the price offered by a CRP is fair and reasonable.

5.7 LICENSING OR PROFICIENCY TESTING EXAMINATIONS

JBEs may purchase non-IT services of any value related to the development, maintenance, administration, or use of licensing or proficiency testing examinations, without conducting a competitive procurement.

The Buyer should note in the procurement file that the purchase is for licensing or proficiency testing examinations. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.8 SUBVENTION AND LOCAL ASSISTANCE CONTRACTS

These are contracts providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose. JBEs may enter into subvention and local assistance contracts without conducting a competitive procurement.

The Buyer should note in the procurement file that the contract is a subvention or local assistance contract. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.9 SOLE SOURCE

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value without conducting a competitive procurement if (i) the goods, services, or goods

and services are the only non-IT goods, non-IT services, or IT goods and services that meet the JBE's need, or (ii) a grant application submittal deadline does not permit the time needed for a competitive procurement of services.

Example: A JBE needs to purchase a replacement fuse. The JBE's electrical systems are quite old, and only one entity currently manufactures the type of fuse that is needed. The JBE may purchase the fuse from that entity as a sole source.

Example: A JBE needs a piece of software customized. Only one entity has the intellectual property rights necessary to alter the software and license the resulting modifications to the JBE. The JBE may contract with that entity as a sole source.

A sole source request must be provided to the sole source approver.

The sole source request should include the following information:

- Description of the non-IT goods, non-IT services, or IT goods and services to be procured;
- Explanation of why the non-IT goods, non-IT services, or IT goods and services cannot be procured competitively;
- The effort made to solicit competitive Bids, if any;
- Documentation that the pricing offered is fair and reasonable; and
- Special factors affecting the cost or other aspect of the procurement, if any.

The sole source approver is:

- The Approving Authority;
- The delegee of the Approving Authority; or
- Another person identified as the sole source approver in the JBE's Local Contracting Manual.

The sole source approver approves or denies the sole source request. If the sole source approver approves the sole source request, the Buyer should conduct the procurement as proposed. If the sole source approver denies the sole source request, the Buyer will either cancel the procurement or conduct a competitive solicitation to acquire the same or equivalent non-IT goods, non-IT services, or IT goods and services.

The JBE may, in its Local Contracting Manual, place restrictions on the use of sole source procurements or specify a form for sole source requests. If no form is specified

in the Local Contracting Manual, the sole source request may take the form of a memorandum.

5.10 SPECIAL CATEGORY NCB CONTRACT REQUEST

The JBE may, under certain circumstances, establish a special category non-competitively bid contract request (SCR) when it determines that a significant number of repeat NCB procurements of non-IT goods, non-IT services, or IT goods and services will occur. The SCR is limited to a specific type of non-IT goods, non-IT services, or IT goods and services for which:

- There is no viable competition; or
- Competitive bidding cannot be completed using reasonable efforts before the time such non-IT goods, non-IT services, or IT goods and services are required.

The JBE may, in its Local Contracting Manual, place restrictions on the use of SCRs or specify a form for use in SCRs. If no form is specified in the Local Contracting Manual, the SCR may take the form of a memorandum.

The SCR must be signed by the sole source approver. The Buyer should place a copy of the SCR in the procurement file for any procurement of the affected non-IT goods, non-IT services, or IT goods and services.

5.11 AMENDMENTS

The JBE should submit certain amendments to the NCB process outlined below. The NCB process ensures that the amendment is in the best interest of the JBE.

A. Amendments Covered

The types of amendments covered are those that affect the competitive basis on which the contract was awarded, including amendments that increase or decrease quantity, dollar amounts, or time. Specifically:

- Amendments to a competitively-solicited contract where the type of change contemplated in the amendment was not evaluated in the selection process;
- Amendments to an LPA purchasing document where the type of change contemplated in the amendment was not evaluated during the LPA review process; and

- Amendments to a small purchase (originally under $5,000) which increase the value of the purchase to $5,000 or more, if the original purchase was completed pursuant to section 5.1 above.

Example: The JBE has a services contract that is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, but renewal terms were not addressed in the Solicitation Document and were not considered by the Evaluation Team. Before extending the term of this contract using an amendment, the JBE should submit the amendment to an NCB process.

Example: The JBE has a contract that grants the JBE the option to extend the term of the contract for one year. The contract is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, and the extension term was evaluated during the solicitation process. There is no need to submit the amendment to an NCB process.

Example: The JBE purchases 40 chairs, each costing $100. The value of the purchase ($4,000) is below $5,000, and the purchase was completed as an NCB procurement pursuant to section 5.1 above. The JBE wishes to purchase an additional 20 chairs, each costing $100, through use of an amendment. Because the new value of the contract ($6,000) will be over $5,000, the JBE should submit the amendment to an NCB process.

Note: Amendments correcting incidental omissions or mistakes (not affecting quantity, dollar amounts, or time) do not require an NCB process. For example, an amendment correcting or updating contact information would not require an NCB process.

B. NCB Process for Amendments

The Buyer submits an NCB amendment request to the sole source approver.

The NCB amendment request should include the following information:

- Description of the contract terms to be changed;
- Documentation that the pricing of the amended contract is fair and reasonable; and
- Why the Buyer has determined that the amendment is in the JBE's best interest.

5.12 TRIAL COURTS: PUBLIC INPUT REQUIREMENT

A trial court must seek input from the public at least 15 Court Days before execution of an NCB contract in an amount that exceeds the greater of $400,000 or 10 percent of the total trial court budget.

This requirement does not apply to a contract between a trial court and a county that is provided for by statute (e.g., court-county MOUs under GC 77212).

For detailed requirements regarding this public-input process, see CRC 10.620.

5.13 CERTIFICATION AND OTHER REQUIREMENTS IN NCB PROCUREMENTS

JBEs are required to comply with certain certification and other requirements in NCB procurements. These include:[2]

- Iran Contracting Act certification for purchases of goods or services of $1,000,000 or more (see chapter 4, section 4.4.C.2 of this Manual);
- Darfur Contracting Act certification for purchases of non-IT goods or services (see chapter 4, section 4.4.C.1 of this Manual); and
- seller's permit requirement for purchases of tangible personal property (see see chapter 4, section 4.4.C.3 of this Manual).

In addition, any contract for the purchase of non-IT goods or services with a contractor indentified by the Franchise Tax Board or the Board of Equalization as one of the 500 largest tax delinquents is void and unenforceable (see chapter 4, section 4.4.E of this Manual).

[2] Contracts resulting from NCB procurements must comply with applicable requirements in chapter 8 of this Manual.

Judicial Council of California

LEVERAGED PROCUREMENT

CHAPTER 6

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INTRODUCTION

This chapter discusses the procurement of goods and services by Judicial Branch Entities (JBEs) through Leveraged Procurement Agreements (LPAs) that have been established by other entities. This chapter also discusses how a JBE may establish an LPA, and allow other entities to use the LPA to procure goods and services.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

6.1 BASICS OF LEVERAGED PROCUREMENT

Leveraged procurement typically involves consolidating the procurement needs of multiple entities, and leveraging the entities' combined buying power to reduce prices, improve terms and conditions, or improve procurement efficiency.

In this Manual, a leveraged procurement generally refers to either:

- A JBE's procurement of goods/services through the use of an agreement (the LPA) that is established by a third party entity with a Vendor, and which enables the JBE to procure goods/services from the Vendor (without competitive bidding) on the same or substantially similar terms as in the LPA; or
- The establishment of an LPA by a JBE, on behalf of or in collaboration with other entities, that permits the JBE and other entities to procure goods or services from the Vendor that is contracted under the LPA.

As of January 1, 2014, information about LPAs established by the ~~AOC~~ Judicial Council is posted at: *www.courts.ca.gov/procurementservices.htm*.

6.2 STEP-BY-STEP GUIDE TO USING AN LPA

The following are recommended steps for a JBE that intends to procure goods/services using an LPA that has been established by another entity:

STEP 1—Business Requirements
Define the JBE's business requirements. Estimate in good faith the total cost of what will be procured.

STEP 2—Identify an LPA
Identify an LPA for the desired goods/services and determine whether pricing is fair and reasonable.

Note: Use of an LPA may not necessarily promote the efficient use of public funds. For example, in some LPAs, the published pricing and other contract terms may represent only a starting point, and do not necessarily reflect volume discounts that Vendors may be willing to provide to JBEs. Any cost savings associated with the LPA could be undercut by paying the published price or accepting unfavorable LPA terms. Therefore, JBEs should consider whether they can obtain better pricing or other terms through Vendor negotiations or conducting competitive bidding.

STEP 3—Identify Multiple LPAs
If the identified LPA in Step 2 was established by a California governmental entity[1] and competitively bid, skip to Step 4.

If a JBE wants to use an LPA that is either (i) not established by a California governmental entity, or (ii) established by a California governmental entity but not competitively bid by such entity, then the JBE should identify at least *three* LPAs for the desired goods/services whenever multiple suppliers are known to exist, and compare the LPAs on a "best value" (also known as "value effectiveness") basis.[2]

The LPAs that the JBE identifies should be similar enough that work, pricing, and terms and conditions are subject to reasonable comparison. If multiple LPAs cannot be identified, and the JBE is procuring goods or services estimated to cost $5,000 or more, then: (i) the JBE should consider conducting a competitive solicitation if it knows there are Vendors of the desired goods/services other than the Vendor that is party to the LPA; or (ii) if the JBE does not know of any other Vendor of the desired goods or

[1] For the purposes of this chapter, a "California governmental entity" includes, for example: (i) a California state or local governmental agency or entity; or (ii) a public college or state university established by California.
[2] If using an LPA established (and competitively bid) through the Western States Contracting Alliance (WSCA)/National Association of State Procurement Officials (NASPO) (or similar multi-state, established LPA programs), or if using a DGS LPA and its instructions state that comparison of multiple LPAs (or obtaining multiple offers from Vendors) is not required, then the JBE may consider not identifying/comparing multiple LPAs.

services other than the Vendor that is party to the LPA, the JBE should consider following the sole source procedures in chapter 5 of this Manual before proceeding with the LPA, or consider conducting an independent sole source procurement.

Note: If comparing multiple LPAs, determine the criteria, including pricing, the JBE will use to determine "best value."[3]

STEP 4—LPA Review

- Review the LPA documentation[4] and confirm that: (i) the LPA documentation provides the JBE with sufficient rights to procure goods/services; and (ii) the terms and conditions in the LPA documentation are acceptable to the JBE, and consistent with this Manual.[5]
- Determine any maximum dollar limits (or other restrictions) that the LPA documentation places on the JBE's procurement. **Note:** In addition to any dollar limits imposed by the LPA, JBEs should consider setting their own dollar limits in their Local Contracting Manuals as a safeguard, since the JBE's use of another entity's LPA typically does not involve any further competitive bidding by the JBE.
- If required by the LPA instructions or as otherwise necessary (e.g., to reconfirm the current document version or communication protocols with the Vendor), contact the entity that established the LPA with the Vendor.
- DGS, other entities that establish LPAs, or Vendors may impose LPA-related administrative fees. These fees may outweigh the benefits of the LPA. JBEs should determine whether an LPA imposes administrative fees and how the fees will be collected from the JBE.
- If a JBE procures goods or services using an LPA that meets the requirements of certain socioeconomic or environmental programs (e.g., DVBE), some or all of the procurement could count towards the JBE's applicable goals. Review the LPA documentation for specific provisions regarding socioeconomic or environmental programs.

[3] Other best value criteria can include, for example: (i) the quality of the goods/services; (ii) the Vendor's warranties/guarantees, reliability of delivery/implementation, and contract terms and conditions; (iii) the Vendor's financial stability, technical competence, and prior record of performance; and (iv) DVBE or Small Business participation.

[4] LPA documentation includes the LPA's user instructions, contract terms and conditions, ordering documents, etc. LPA user instructions can include, for example, the LPA's "user guides," "ordering instructions," or similar documents that may contain additional requirements for use of the LPA.

[5] See, for example, chapters 5 and 8 of this Manual.

STEP 5—Request for Offer

- If there is uncertainty about an LPA's terms and conditions or a potential LPA Vendor's willingness to accept an order from the JBE, the JBE should issue a Request for Offer (RFO). An RFO is a request made by the JBE to the potential LPA Vendor for a specific response or offer from the Vendor to clarify or confirm the terms of the JBE's procurement under the LPA.
- An RFO may be conducted by mail, fax, email, phone, or by other means as long as it complies with the LPA documentation. The RFO should describe the JBE's business requirements (e.g., through an SOW for services). To avoid lengthy, later-stage negotiations, a JBE may want to include the JBE's general terms and conditions (consistent with the LPA documentation).
- Because a JBE's procurement via another entity's LPA does not typically involve competitive bidding, do **not** include in the RFO language regarding bid protests, intent to award notices, or, for example, references to "bid," or "solicitation."

STEP 6—Best Value Comparison

If comparing potential LPAs (in connection with Step 3 above), compare LPAs (and RFO replies) to select the LPA that provides the "best value."

STEP 7—Finalize the Contract for Purchasing through the LPA

- Determine what form of contract the JBE will use to execute its purchase under the LPA.[6] The contract should contain sufficient references to the LPA.
- Prepare the contract, considering the LPA documentation, and any RFO (or Vendor's reply to an RFO).
- Discuss the contract with the Vendor (and, if necessary, the entity that established the LPA), and make any mutually acceptable, final revisions to the contract. Proceed with contract signature.[7]

STEP 8—Procurement Summary

Create a procurement summary for the procurement file. Confirm that the file includes the LPA documentation or a reference to its location, and, as applicable, a list of all

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[6] The LPA documentation may specify the form of contract for executing a purchase under the LPA. Modifications to such forms (and other LPA documentation) may need to be discussed and negotiated with the entity that established the LPA and/or the Vendor.
In certain cases, a JBE's procurement under another entity's LPA may occur through an alternative arrangement. For example, in some cases, the entity that established the LPA may assign purchase rights under the LPA (e.g., rights under an option to purchase a specified quantity of goods) to the JBE by executing a contract with the JBE.

[7] If the JBE's purchasing contract under the LPA is for a total estimated cost of more than $1 million, see chapter 12, section 12.2 of this Manual. Following the execution of the purchasing contract, certain amendments to the purchasing contract may require an NCB process (see chapter 5 of this Manual).

potential LPA Vendors contacted and a recap of their offers, as well as a description of how the LPA was selected (including "best value" criteria).

6.3 STEP-BY-STEP GUIDE TO ESTABLISHING AN LPA

If the Approving Authority (or delegee) has authorized the JBE to establish an LPA,[8] the recommended steps for doing so are as follows:

STEP 1—Business Requirements

Define the business requirements of the entities that will be procuring goods/services under the LPA.

STEP 2—LPA Planning

Determine the structure of the LPA, including, for example, the following:

- Is the JBE establishing the LPA on its own or with the participation of other entities (i.e., will the JBE be the sole contractual party with the Vendor)? Consider the benefits and risks of entering into the LPA with the Vendor along with other entities.
- Which entities will have the right to procure under the LPA? What are the rights and obligations of the JBE and the other entities?
- Whether the LPA will contain any limits on the quantity or dollar amount (or other restrictions) regarding goods/services that entities procure under the LPA.
- If the LPA involves DVBE or Small Business participation, include provisions (for example, in the LPA user instructions) regarding to what extent entities procuring under the LPA may be able to claim DVBE or Small Business participation.

STEP 3—Vendor Selection / LPA Formation

Select a Vendor in accordance with the procurement requirements in this Manual.[9] Inform Bidders and Prospective Bidders about the entities that will have the right to procure under the LPA. To ensure that dollar thresholds for certain procurement methods are not exceeded, JBEs should consider using the most rigorous procurement methods available (e.g., using an RFP instead of an RFQ). Confirm that the LPA terms are consistent with this Manual[10] and address issues such as:

- Which entities can procure goods/services from the Vendor under the LPA (and the rights/obligations of those entities);[11]

[8] Consistent with the Director of DGS being authorized to establish LPAs for executive branch entities, the Approving Authority (or delegee) may authorize the JBE to establish LPAs.
[9] See, for example, chapters 4, 4A, 4B, and 4C of this Manual.
[10] See, for example, chapter 8 of this Manual.
[11] The JBE should consider stating in the LPA that the entity placing orders for goods/services is solely

- The Vendor's obligations to the entities procuring under the LPA; and
- Procedures/requirements for procuring under the LPA, documents for ordering goods/services, and any limits on quantity or dollar amount of goods/services.

STEP 4—LPA Execution

Finalize and execute the LPA.[12] If necessary, prepare user instructions for the LPA, based on the LPA's requirements. Distribute user instructions as necessary.

liable for its breach (i.e., the JBE will have no liability for breaches by other entities procuring under the LPA). Consistent with PCC 10298(b), JBEs must not incur financial responsibilities in connection with establishing LPAs for local agencies (e.g., a city or a county).

[12] If the JBE's own procurement under the LPA is for an estimated total cost of more than $1 million, see chapter 12, section 12.2 of this Manual.

Judicial Council of California

PROTESTS

CHAPTER 7

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INTRODUCTION

There are two types of protests in Judicial Branch Entity (JBE) procurement: solicitation specifications protests and award protests. This chapter provides information on these types of protest and how they are handled by JBEs.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

7.1 DESIGNATION OF JBE PROTEST PERSONNEL

Each JBE should designate a protest hearing officer to evaluate and issue written determinations regarding protests. To ensure proper segregation of duties, the protest hearing officer should be someone other than the Buyer. Each JBE should also designate a protest appeals officer to evaluate and issue written determinations regarding appeals of the protest hearing officer's written determinations. These designations should be documented in the JBE's Local Contracting Manual.

If a JBE does not designate a protest hearing officer, the Buyer's manager will act as the protest hearing officer. If a JBE does not designate a protest appeals officer, the protest hearing officer's manager will act as the protest appeals officer.

7.2 PROTEST THRESHOLDS

A JBE may adopt in its Local Contracting Manual thresholds for the acceptance of protests. The thresholds adopted by the JBE may not be higher than the dollar amounts in the following chart for the applicable type of procurement.

Type of Procurement	Threshold
Non-IT goods	$50,000
Non-IT services	$5,000
IT goods and services	$100,000

If a JBE adopts protest thresholds, the JBE must (i) state in any Solicitation Document associated with a procurement estimated to be below the applicable threshold that protests will not be accepted, and (ii) reject any protest received for a procurement if the procurement is below the applicable threshold.

The remainder of this chapter is applicable only to procurements above the applicable protest thresholds.

7.3 SOLICITATION SPECIFICATIONS PROTESTS

A solicitation specifications protest is a protest alleging that a Solicitation Document contains a technical, administrative, or cost specification or requirement that is defective. The specification or requirement may be defective because it is:

- Onerous, unfair, or illegal; or
- Imposes unnecessary constraints in proposing less costly or alternate solutions.

Example: A JBE inappropriately requires that goods be of a specific brand, when goods of another brand meet the JBE's requirements equally well at a lower cost. The requirement could result in a solicitation specifications protest.

Failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of a solicitation specifications protest.

A. Who May Submit a Solicitation Specifications Protest

Any Prospective Bidder may submit a solicitation specifications protest.

B. Deadline for Receipt of Protest

The deadline for the JBE to receive a solicitation specifications protest is the applicable date specified in the Solicitation Document. If no date is specified in the Solicitation Document, the deadline for the JBE to receive a solicitation specifications protest is the deadline specified in the JBE's Local Contracting Manual. If no deadline is specified in the JBE's Local Contracting Manual, the deadline for the JBE to receive a solicitation specifications protest is the Bid Closing Time.

The Prospective Bidder is solely responsible for ensuring that a solicitation specifications protest is received by the JBE by the deadline. The failure of a Prospective Bidder to submit a timely solicitation specifications protest constitutes a

waiver of the Prospective Bidder's right to protest the solicitation's specifications or requirements.

C. Required Information

A solicitation specifications protest must include the following information:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);
- The title of the Solicitation Document to which the protest is related;
- The specific alleged deficiency in the solicitation's technical, administrative, or cost specifications or requirements;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

A solicitation specifications protest lacking any of this information may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the solicitation specifications protest without requesting further information from the Protester. Therefore, the solicitation specifications protest must include all grounds for the protest and all evidence available at the time the protest is submitted. If the Protester later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider the new grounds or new evidence.

D. Submission of the Protest

The Protester must send the solicitation specifications protest to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the Protester must send the solicitation specifications protest by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the Protester may also deliver the solicitation specifications protest personally as specified in the Solicitation Document. If the solicitation specifications protest is personally delivered, a receipt must be provided to the Protester if requested.

E. Evaluation

When evaluating the solicitation specifications protest, the protest hearing officer should consider:

- The validity and defensibility of the allegedly defective technical, administrative, or cost specification or requirement;
- Whether the Protester has raised a valid issue; and
- Whether competition would be advanced by revising the allegedly defective technical, administrative, or cost specification or requirement.

The protest hearing officer should seek legal advice as needed.

Note: The Protester bears the burden of proof to show that the Solicitation Document contains a defective technical, administrative, or cost specification or requirement.

F. Written Determination

The protest hearing officer must issue a written determination before the JBE opens the Bids (or evaluates the Bids, if the Bids are not sealed). If required, the JBE may extend the Bid Closing Time to allow for time to review the solicitation specifications protest.

If the protest hearing officer determines that the solicitation specifications protest has merit, the protest hearing officer should take appropriate remedial action. Such action may include:

- Changing or clarifying the defective technical, administrative, or cost specification or requirement through an addendum to the Solicitation Document; or
- Canceling the solicitation.

If an addendum to the Solicitation Document is issued and the addendum may require additional time for Prospective Bidders to respond, the addendum should extend the Bid Closing Time by an appropriate amount of time (as determined by the protest hearing officer).

G. Appeal

The protest hearing officer's written determination is the final action by the JBE unless the Protester submits an appeal to the protest appeals officer within two Court Days of the issuance of the protest hearing officer's written determination.

Note: The JBE may adopt in its Local Contracting Manual a different deadline for the filing of an appeal, provided it is not fewer than two Court Days.

See section 7.5 for the handling of appeals.

7.4 AWARD PROTESTS

An award protest is a protest alleging that:

- The JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award; or
- The JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Example: The Solicitation Document stated that 50 percent of a Bid's total score would be cost points, but the JBE instead made cost points only 30 percent of the Bid's total score. This error could result in an award protest.

Failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of an award protest.

A. Who May Submit an Award Protest

A Bidder may submit an award protest if the Bidder meets the following requirements:

- The Bidder submitted a Bid that the Bidder believes to be responsive to the Solicitation Document; and
- The Bidder believes that the JBE has incorrectly selected another Bidder for an award.

A person or entity who did not submit a Bid may not submit an award protest.

In no event will a JBE consider a protest if the JBE rejected all Bids or the solicitation was canceled for any reason.

B. Deadline for Receipt of Protest

For solicitations using an RFQ, the deadline for the JBE to receive an award protest should be specified in the RFQ. If no deadline is specified in the RFQ, the award protest must be received by the JBE before the contract is executed. In no event will a JBE consider a protest for a solicitation using an RFQ after the contract has been executed.

For solicitations using an IFB or RFP, the deadline for the JBE to receive an award protest is specified in the table below.[1]

The Bidder is solely responsible for ensuring that an award protest is received by the JBE by the applicable due date. The failure of a Bidder to submit a timely award protest constitutes a waiver of the Bidder's right to protest the award.

Non-IT goods	Non-IT services	IT goods and services
The JBE must receive the award protest within **24 hours** after the JBE posts the intent to award. The Protester will have **10 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.	The JBE must receive the award protest within **5 Court Days** after the JBE posts the intent to award. The Protester will have **5 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.[2]	The JBE must receive the award protest within **5 Court Days** after the JBE posts the intent to award. The Protester will have **10 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.

C. Required Information

An award protest must include the following information:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);

[1] On a case-by-case basis, a JBE may in its sole discretion extend any deadline in the table below for the receipt of the required information in section C.
[2] A JBE may extend this deadline to 10 calendar days in its Local Contracting Manual if the JBE prefers to have a uniform deadline for all three types of procurements.

- The title of the Solicitation Document to which the protest is related;
- The specific alleged error or irrational decision made by the JBE;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

If an award protest is missing any of this information (by the date the Protester is required to have all such information to the JBE), the award protest may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the award protest without requesting further information from the Protester. Therefore, the award protest must include all grounds and all evidence available at the time the award protest is submitted. If the Protester later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider such new grounds or new evidence.

Note: For protests of non-IT goods solicitations, the Protester must assert that it is the lowest responsible bidder meeting specifications unless the JBE waives this requirement. A JBE may include a general waiver of this requirement in its Local Contracting Manual.

D. Submission of the Protest

The Protester must send the award protest (and any supporting documentation) to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the Protester must send these materials by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the Protester may also deliver these materials personally to the JBE as specified in the Solicitation Document. If the materials are personally delivered, a receipt must be provided to the Protester if requested.

E. Evaluation

When evaluating the award protest, the protest hearing officer should consider:

- Whether the JBE committed an error in the award process;
- Whether an allegedly defective decision lacks a rational basis; and

- If the JBE committed an error in the award process or made a decision that lacks a rational basis, the materiality of the error or decision.

The protest hearing officer should seek legal advice as needed.

The Protester bears the burden of proof to show that (i) the JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award, or (ii) the JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Note: The following do **not** constitute the absence of a rational basis:

- The Protester disagrees with the scores assigned by the Evaluation Team; or
- The Evaluation Team could have assigned different scores based on the same information.

F. Written Determination

The protest hearing officer must respond to an award protest with a written determination before the contract is awarded. The protest hearing officer should issue the written determination within 10 Court Days of the complete submission of the award protest, or notify the Protester that additional time will be required. The JBE may extend the award date to allow for time to review the award protest.

If the protest hearing officer determines that the award protest has merit, the protest hearing officer should take appropriate remedial action. In determining the appropriate remedial action, the protest hearing officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;
- The good faith of the parties;
- The cost to the JBE;
- The urgency of the procurement; and
- The impact on the JBE.

Remedial actions may include:

- Issuing a new solicitation; and
- Awarding the contract consistent with law.

G. Appeal

The protest hearing officer's written determination is considered the final action by the JBE unless the Protester submits an appeal to the protest appeals officer within five calendar days of the issuance of the protest hearing officer's written determination.

The JBE may, at its sole discretion, delay the contract award until the appeal is resolved or proceed with the award and execution of the contract. See section 7.5 for the handling of appeals.

7.5 APPEALS

Unless personal delivery is permitted as noted below, the Protester must send the appeal to the protest appeals officer by certified mail, registered mail, or overnight courier. If allowed by the Solicitation Document, the Protester may also deliver the appeal personally to the JBE as specified in the Solicitation Document. If the appeal is personally delivered, a receipt must be provided to the Protester if requested.

Any appeal not received by the protest appeals officer by the applicable deadline for submission will be rejected by the protest appeals officer. The Protester is solely responsible for ensuring that an appeal is received by the protest appeals officer by the applicable due date.

The appeal must include:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);
- The title of the Solicitation Document to which the protest is related;
- A copy of the protest hearing officer's written determination;
- A detailed description of the specific legal and factual grounds for the appeal and any supporting documentation; and
- The specific ruling or relief requested.

An appeal lacking any of this information may be rejected by the protest appeals officer. The appeal must include all information that the Protester wants the protest appeals officer to consider.

The Protester bears the burden of proof to show that the protest hearing officer's written determination is incorrect:

- In light of new information related to the protest that was not available at the time the protest was originally submitted; or
- Because it is in error of law or regulation.

The protest appeals officer reviews the appeal and issues a written determination. Issues that could have been raised earlier are not to be considered on appeal. The written determination of the protest appeals officer constitutes the final determination of the JBE regarding the protest.

If the protest appeals officer determines that the appeal has merit, the protest appeal officer will direct the protest hearing officer to take appropriate remedial action. In determining the appropriate remedial action, the protest appeals officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;
- The good faith of the parties;
- The cost to the JBE;
- The urgency of the procurement; and
- The impact on the JBE.

Remedial actions may include:

- Issuing a new solicitation;
- Recompeting the contract;
- Terminating the contract (e.g., if a contract was executed despite a pending appeal);
- Refraining from the exercise of options under the awarded contract; and
- Awarding the contract consistent with law.

7.6 SB/DVBE OPTION

Protests are not allowed in solicitations using the SB/DVBE option.[3]

[3] See Government Code section 14838.5(a).

Judicial Council of California

CONTRACTS

CHAPTER 8

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INTRODUCTION

This chapter provides information on preparing, approving, and executing JBE contracts.[1] The main body of this chapter discusses the basic construction of contracts and the mandatory and permissive subject matters for inclusion in JBE contracts. The appendices to this chapter identify mandatory and permissive contract terms for JBE contracts.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

Under California law a "contract" is "an agreement to do or not to do a certain thing."[2] This chapter refers specifically to agreements for goods and services. Unless expressly excluded from the JBCM or JBCL, or the context dictates otherwise, the term "contract" as used in this chapter includes all agreements for goods or services, including purchase orders (POs), intergovernmental contracts (IGCs), and other documents for goods and services, regardless of the document's form or title.

8.1 BASIC PRINCIPLES

A. Writing Requirement

All contracts entered into by JBEs must be in writing.

B. Roles and Responsibilities

Each JBE is responsible for the commercial risks that flow from contracts it enters into and should undertake risks only in proportion to the benefits expected from a contract. Contracts should be prepared, negotiated, and executed in the best interests of the JBE. Contracts should be prepared and negotiated only by persons with appropriate skill and experience who are free from conflicts of interest. Contracts must be executed only by persons with legal authority to do so.

It is the JBE's responsibility to ensure that the contract meets applicable legal requirements and that the contract terms are appropriate to the type of contract.

[1] This chapter does not address contracts for public works. ~~Contracts for public works will be addressed in the AOC's Local Contracting Manual.~~

[2] Civil Code section 1549.

8.2 CATEGORIES OF CONTRACTS

This subsection describes the basic categories of contracts used by JBEs and when those contracts are used. The category names are used for reference, as an individual contract may have a different name or title. For example, certain MOUs with executive branch agencies may be called "Interagency Agreements" or "IAs." Requirements in this Manual apply to all contracts in the following categories of contract, unless expressly excluded from the JBCL or JBCM, regardless of the name or title of the contract.

A. Purchase Orders (POs)

These contracts may be used for purchase of goods from nongovernmental entities[3] regardless of the purchase amount. POs are also often used for purchase of goods and for services that are ancillary to the purchase of the goods. In addition, POs are typically used for "off the shelf" goods and software or for routine, low cost, or low risk services.[4]

- Goods that must be customized or specially manufactured and services of a complex, high risk, or specialized nature should be purchased using a standard agreement.
- Unless the PO is signed by both parties, the proposed Vendor has no duty of performance unless and until the Vendor commences performance of its duties under the PO. If the PO is not to be countersigned and returned to the JBE, the PO should contain a clause that states that Vendor's commencement of performance under the PO constitutes acceptance and binds the Vendor to all contract terms.

B. Standard Agreements

These contracts may be used for the purchase of goods or services from nongovernmental entities regardless of the contract amount.

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[3] For purposes of this chapter, a "governmental entity" includes, without limitation, (i) a California department or agency, or a department or agency of any other state, (ii) a public college or state university established by California or any other state, (iii) a local governmental entity or agency in the United States or its territories, including those created as a joint powers authority (iv) an auxiliary organization of the California State University, or a California community college, (v) the federal government, (vi) a foundation organized to support the Board of Governors of the California Community Colleges, (vii) an auxiliary organization of the Student Aid Commission established under Education Code section 69522, or (viii) a public benefit organization. A public benefit organization is an organization chartered by a governmental entity and designed to perform some public benefit such as building or maintaining public infrastructure, or raising bond money for those purposes.

[4] A JBE may wish to adopt in its Local Contracting Manual limitations on the use of POs to purchase services. For example, the JBE may limit the use of POs to services incidental to a purchase of goods, or for services valued at less than a certain dollar amount.

C. Short Form Agreements

These contracts include fewer terms and conditions than a Standard Agreement, and are typically used for the purchase of goods or services not to exceed $50,000 from nongovernmental entities.[5] The agreement is intended to be used for routine purchases and in situations where not all of the provisions found in a Standard Agreement would be appropriate. As noted in the appendices to this chapter, fewer terms are required to be included in these agreements than are required in Standard Agreements.

D. Intergovernmental Contracts (IGCs)

These contracts may be used for any purchase of goods and services between a JBE and another governmental entity. If the other governmental entity is not within the judicial branch, the agreement is often called a Memorandum of Understanding (MOU). If the other governmental entity is another JBE, the agreement is often called an Intra-branch Agreement (IBA). IGCs[6] are simpler and have fewer provisions than POs or Standard Agreements. A JBE, however, always has the option of using a PO or Standard Agreement when contracting with a governmental entity.

8.3 PREPARATION OF CONTRACTS

This subsection describes the elements of a contract and typical contract provisions and, where applicable, describes the specific subject matters JBEs should address in particular contract provisions.

Appendices A, B, and C supplement this subsection. These appendices identify the substance of the certifications and provisions that are required to be included in specified categories of JBE contracts. These appendices also indicate which terms are recommended to be included in JBE contracts but are not legally required.[7]

[5] A JBE may adopt a higher or lower threshold for the use of short form agreements in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value short form agreements. In addition, the JBE must ensure that larger-value short form agreements include all clauses required to be in contracts of the applicable value.
[6] IBAs and MOUs are collectively referred to as IGCs in this Manual.
[7] A JBE is not required to include in the procurement file an explanation for why a recommended CCC or other provision was included in or omitted from a contract.

A. Content of Contracts

JBEs must include legally required terms in their contracts and should include other terms that the JBE determines are necessary to protect the JBE and mitigate the risks associated with the contract.

Sample language for terms and certifications required to be included in JBE contracts is available from the ~~AOC~~Judicial Council, together with templates for complete contracts.

Use of these sample provisions and templates is optional. Each JBE may modify the provisions or templates or use its own forms. JBEs may also use a Vendor-provided form contract provided the final contract includes appropriate terms and meets applicable legal requirements.

- Contract elements

  Each contract must identify the contracting parties. Contracts typically consist of three major elements:

  - Statement of Work (SOW), including the schedule of performance;
  - Pricing and payment; and
  - Other terms and conditions.

  Each of these elements must be clearly defined so that the JBE's needs are met, and the contractor and the JBE understand their performance obligations.

- Each major element is described below, including typical subject matters that are frequently grouped together in contract sections regarding the specific element. However, contract provisions are not required to be in any specific location in the contract. For example, a topic listed below as part of a typical SOW may be placed under a different heading in a particular contract.

1. Statement of Work (SOW)

The SOW describes the goods to be purchased and/or the services to be performed. The JBE must include a detailed description of the goods to be delivered or the services to be performed, together with any deliverables required and conditions of performance, if applicable. The contract must specify (as applicable): (i) when goods are to be delivered,[8] (ii) when services are to be

[8] The JBE may, but is not required to, specify a delivery date for goods. If no delivery date is specified, the time for shipment shall be a reasonable time in accordance with Commercial Code section 2309.

performed (start date and end date), (iii) when deliverables must be provided to the JBE, and (iv) when other contract milestones must be completed.

- The following are matters that are typically included in the SOW as part of the detailed description of the goods, services, deliverables, and required conditions of performance:
  - Quantities, specifications, and specific requirements;
  - Quality standards and warranties;
  - Delivery instructions;
  - Acceptance criteria including inspections;
  - Results and required deliverables (e.g., reports, data, or other documentation);
  - Location of performance of services, and contractor's work hours;
  - Performance timelines (schedule) or completion dates;
  - Standards of performance and skill level required and, if applicable, specific personnel and staffing requirements and identification of contractor's key personnel;
  - Details regarding equipment, labor, or materials to be provided by the parties, and coordination of effort, if applicable;
  - Optional goods or services, and provisions for requesting these items; and
  - Possible conditions that may arise during performance of the contract that would trigger modifications to the SOW, cost, or schedule.

2. Pricing and payment

The price the JBE will pay for goods and services under a contract must be clearly stated. The contract should clearly specify the basis for compensation and the terms of payment, such as: lump sum (one-time payment), firm fixed price, unit price, labor rate, or other specific basis.

- Required terms:
  - A provision that makes payment subject to appropriation of funds is required in all contracts requiring the payment of JBE funds unless the JBE has the right to terminate for convenience;[9] and
  - If a JBE is contracting for labor, a schedule listing the hourly, daily, weekly, or monthly cost for each person or job classification must be incorporated into the contract.

[9] See chapter 11, section 11.10 of this Manual for addition information regarding termination and termination clauses.

- Contracts typically include provisions covering the following subjects, as applicable in the particular circumstances, to specify the basis for compensation and set out the terms of payment:
  - Firm price or not to exceed amount of all compensation;
  - Basis of pricing such as (i) hours times hourly rate (e.g., rates contained in a fee schedule), (ii) costs incurred plus any agreed markup, or (iii) a firm fixed price;
  - For lump sum or firm fixed price contracts, a schedule of billing rates if the schedule was used to establish the lump sum or fixed price of authorized work. The schedule may also be used as the basis for establishing the cost of additional work authorized under the contract;
  - Any cost substantiation requirements and processes;
  - Any allowances that are a part of established prices;
  - Allowable and unallowable pass-through expenses (e.g., travel expenses at state rates);
  - Expense reimbursement substantiation requirements and processes;
  - Payment frequency, and schedule for Progress Payments;
  - Retention or withholding amounts:
    - Each contract should provide for payment, or a reasonable portion thereof, to be withheld pending resolution of any material dispute;
  - Conditions of payment;
  - Pricing of any modifications that may be effected by change order or through exercise of an option;
  - Respecting IGCs only:
    - A JBE should ensure that any overhead or administrative costs are reasonable considering the services being performed and conform to any applicable requirements imposed under the JBE's A-87 Cost Recovery Plan;[10] and
    - A JBE should not pay overhead charges (mark-ups) on more than the first $25,000 of a subcontract.

3. Terms and Conditions

The contract must include specified rights and obligations of either party that are not included in the SOW or the pricing and payment section, including additional provisions that apply to performance under the contract, as applicable.

[10] For superior courts, see TCFPPM, FIN 15.02 (Indirect Cost Rate Proposal) for details about cost recovery plans and Office of Management and Budget guidelines.

- Standard Terms and Conditions. Contracts typically include the following "standard" or "general" terms and conditions:
  - Terms of shipping or packaging requirements;
  - Contract term, including any options to extend the term;
  - Where contract notices must be directed;
  - Identification of the parties' representatives;
  - Dispute resolution; and
  - Indemnification.

- Deal Terms and Conditions. The contract may also include "deal-specific" terms applicable to the particular goods or services being procured or the circumstances of a particular purchase, such as:
  - If establishing an LPA, LPA options, terms, and conditions;
  - Any performance bond requirement;
  - Permits or licenses required of the Contractor and standards of performance required by particular personnel performing the services; and
  - Product warranties, detailed service level agreements, or performance criteria.

- Modification Provisions. Generally, provisions for modifying contract terms, including provisions for formal amendments, change orders, and exercises of options, if applicable, are required to be in a contract. These terms establish the procedure to be used for each type of modification. If a JBE wants to be able to modify a contract without a formal amendment (i.e., modifying a contract by change order or exercise of an option), the contract must include a change order provision or an option provision. See chapter 11 of this Manual for more information on contract modifications.

- Contractor Certification Clauses (CCCs). CCCs include certifications from a contractor regarding particular laws. CCCs may include a contractor's representation or warranty that certain conditions have been met or certain circumstances are true. CCCs may be included in the terms and conditions (often in the representations and warranties section) or may be placed in a separate document that is incorporated by reference into the contract. Appendix A to this chapter contains a chart of typical CCCs, and indicates which categories of contract must include the listed CCCs. If the CCC is not required, it may be listed as recommended for a particular category of contract. Whether or not to include CCCs listed as recommended, and whether or not to include CCCs in contracts when the CCC is not listed as

mandatory or recommended, is in the discretion of the JBE, based on JBE policy and the particular circumstances.

- Insurance. When contracting with a nongovernmental entity, the JBE should determine whether to require the contractor to maintain insurance in connection with the performance of the contract. If so, the JBE must determine what types of insurance to require and the minimum dollar levels of each required policy. At a minimum, the JBE should require insurance in contracts involving the performance of high-risk activities described in section 8.4.B.1 of this chapter.

  The most common types of insurance include:

  - Commercial General Liability. This is a basic insurance policy the JBE should consider requiring. This policy covers bodily injury and property damage liability, including coverage for products, operations, hazard, personal and advertising injury liability, and contractual liability.
  - Workers' Compensation and Employer's Liability. This policy should be required if the Vendor has employees.
  - Professional Liability. This policy should be required if the Vendor performs consulting or professional services.
  - Commercial Automobile Liability. This policy should be required if the Vendor uses an automobile or other vehicle in the performance of the contract.
  - Commercial Crime Insurance. If the Vendor handles or has access to the JBE's funds or property of significant value to the JBE, the JBE should consider requiring this coverage.

  Notes for contracts requiring insurance:

  - If required, the commercial general liability and automobile insurance policies should be endorsed to include the JBE and its officers, agents, and employees as additional insureds with respect to the work performed for or items purchased by the JBE under the contract.
  - The contract should state that no payments will be made to the contractor until all required current and complete Certificates of Insurance are properly endorsed and on file with the JBE. Agreements that include commercial crime insurance should state that the work will not begin until

all required current and complete Certificates of Insurance are properly endorsed and on file with the JBE.
- The JBE should require that Certificates of Insurance include a provision that requires at least 15 days' written notice to the JBE in the event that insurance coverage is cancelled or materially changed.
- The contract should state that insurance will be issued by an insurance company that is acceptable to the JBE.
- If a Solicitation Document is used, the JBE should ensure that the required types and levels of insurance are specified in the Solicitation Document.

B. Special Provisions for IGCs

Because of the inter-governmental nature of IGCs, not all of the subject matters discussed above are necessary in IGCs. In preparing an IGC a JBE should review the information above regarding each element to determine which of the topics are appropriate for inclusion in the particular contract and whether any of the specific requirements noted above apply to the contract. See the appendices for required and recommended certifications and contract provisions for MOUs and IBAs.

C. Additional Provisions Required in Certain Types of Contracts

Certain clauses are required or recommended for certain types of contracts. Appendix C to this chapter addresses these contracts, listed below:

1. Consulting Services Contracts;
2. Credit Card Issuer Contracts;
3. Equipment Purchase Contracts;
4. Federally Funded Contracts;
5. IGCs (MOUs) with Counties for County Services;
6. IGCs with California Governmental Entities;
7. IGCs with Local Governmental Entities;
8. Information Technology Contracts;
9. Janitorial/Building Maintenance Contracts;
10. Legal Services Contracts;
11. Printing Contracts; and
12. Equipment Rental Contracts.

In some instances a single contract may fit into more than one of these types of contracts. For example, an MOU between a court and a county fits types 5, 6, and 7

(and possibly others, depending on the content of the contract). A JBE should ensure that it has consulted all relevant information in appendix C before finalizing a contract.

8.4 APPROVAL OF CONTRACTS

A. Review and Approval of Commercial Terms

Each JBE should establish processes and levels of approval authority for entering into contracts that are consistent with applicable law (including rules of court), and that promote responsible stewardship of public funds and help avoid prohibited conflicts of interest. Consideration should be given to applicable financial and accounting standards and best practices associated with contracting and procurement responsibility. Each JBE should also consider its size and resources when establishing processes and levels of approval authority.

B. Legal Review

JBEs may arrange for legal review of their contracts by their in-house legal staff or retained counsel, or through the ~~AOC~~ Judicial Council's Legal Services ~~O~~office ~~(AOC/LSO)~~. The JBE should adopt a policy in its Local Contracting Manual describing the circumstances where legal review is required.

The following are circumstances where legal review should be required.

1. High Risk Activities

The JBE should provide for legal review if the contract provides for the performance of high risk activities. Each JBE should define "high risk activities" in its Local Contracting Manual. High risk activities may include, for example:

- Operating heavy equipment;
- Transporting, holding, or incarcerating a person;
- Applying, treating, removing, storing, or any other handling of hazardous chemicals or other hazardous substances;
- Carrying a firearm, explosive, or other weapon; or
- Transporting outside of secure premises cash, cash equivalents, securities, and other financial instruments with an aggregate value on any occurrence in excess of a certain dollar amount as specified in the Local Contracting Manual.

2. Contract template

The JBE should provide for legal review where the JBE plans to adopt a contract template.

3. Contract Modifications

The JBE should provide for legal review where one or more contract terms are to be modified, and:

- The contract is being modified to resolve a contract dispute; or
- The modification itself triggers a requirement for legal review under the JBE's Local Contracting Manual.

4. Certain Substantive Provisions Affecting Legal Risk

The JBE should provide for legal review if the proposed terms and conditions involve, for example:

- Assuming a risk or contingent liability not under the direct control of the JBE;
- Indemnifying any contractor or third party;
- Substantially narrowing any limitation of liability that favors the JBE as set forth in the JBE's standard terms and conditions;
- Substantially limiting the liability of a contractor or other third party;
- Agreeing to liquidated damages; or
- Releasing any claim or potential claim, or otherwise settling any dispute.

The following are sample circumstances where the JBE may also wish to require legal review.

1. Dollar Value of Contract

The dollar value of the contract is above a certain dollar threshold.

2. Revenue Agreements; Financing Agreements

The contract is a revenue agreement or financing agreement. Revenue agreements include reimbursement, income, receivable, and cost recovery contracts. They typically fall into one of two categories:

- Contracts between a JBE and a private entity, under which the private entity provides services and pays the JBE; or
- Contracts between a JBE and a governmental or private entity, under which the JBE provides services and receives payment for the services.

Financing agreements include equipment lease/finance agreements, installment sales contracts, and other contracts under which compensation for purchased goods or services comes due over time instead of on receipt.

C. Review of Certain IT Contracts

All administrative and infrastructure information technology (IT) projects of the Judicial Council or the courts with total costs estimated at more than $5 million are subject to review and recommendations of the California Department of Technology ~~Agency~~, as specified in GC 68511.9[11] (PCC 19204(a)).

8.5 EXECUTION OF CONTRACTS

A. Authority

Contracts may not be executed by persons without authority to do so according to established levels of authority.

B. Process

- Contracts may be either manually signed or digitally signed:
  - If the contract is signed manually, the JBE should create at least two originally signed counterparts of each contract—one for the JBE and one for each contractor. Other than purchase orders, contracts should first be provided to the contractor for signature and then delivered back to the JBE, who will countersign the document and return an original to the contractor. Contracts may be executed in multiple counterparts if the contract so provides. If a manually signed document is delivered to the other party electronically (e.g., by fax or a PDF file attached to an e-mail), receipt should be confirmed and the originally executed counterparts exchanged promptly.
  - If the contract is signed digitally, the JBE must ensure compliance with California Code of Regulations, title 2, sections 22000–22005 (Digital Signatures), promulgated under GC 16.5.

- Contracts (other than POs) should be mutually executed and delivered before work under the contract begins. Any work performed under a contract before

[11] GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

it is fully executed and delivered is at the contractor's own risk. If a contract is not mutually executed and delivered before work begins, the contractor may not be paid for that work unless the effective date of the contract is no later than the date work begins.

C. Payee Data Record

For information regarding Payee Data Records, see chapter 9, section 9.1.E of this Manual.

APPENDIX A

CONTRACTOR CERTIFICATION CLAUSES

The following table lists Contractor Certification Clauses (CCCs) that are ***mandatory*** in specific categories of contracts; these are marked with an "M." A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other CCCs are ***recommended*** in specific categories of contracts; these are marked with an "R" in the table below. If a CCC is neither mandatory nor recommended, the table shows no mark.

Some CCCs are listed as recommended but not mandatory because there is no specific requirement that the contractor provide a certification or representation to that effect; the contract and contractor must still comply with the law.

Whether or not to include CCCs listed as recommended, and CCCs that are not listed as mandatory or recommended, is in the discretion of the JBE based on JBE policy and the particular circumstances. JBEs are not required to include in the procurement file an explanation for including or omitting a recommended CCC.

	CCC	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
1.	Authority		R	R	R (see note 1)	
2.	Qualification in California	M (see note 2)	M (see note 2)	M (see note 2)		
3.	No gratuities		R			
4.	No conflict of interest		R			
5.	No interference with other contracts		R			
6.	No litigation		R			

	CCC	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
7.	Compliance with laws	R	R	R	R	
8.	Drug-free workplace		R			
9.	No harassment		R	R		
10.	Nondiscrimination	M	M	M		
11.	Domestic partners, spouses, gender	M (see note 3)	M (see note 3)			
12.	National Labor Relations Board	M (see note 4)	M (see note 4)	M (see note 4)		
13.	Expatriate Corporations	M (see note 5)	M (see note 5)	M (see note 5)		
14.	Sweatshop Labor	M (see note 6)	M (see note 6)	M (see note 6)		
15.	Child Support Compliance Act	M (see note 7)	M (see note 7)			
16.	Iran Contracting Act	M (see note 8)	M (see note 8)			

Note 1: It is recommended that all contracts include a general representation as to the Vendor's authority. In MOUs with government agencies, the JBE should obtain a copy of the resolution or other document authorizing the local governing body to enter into the proposed contract, unless performance by the local governmental entity will be completed before any payment by the JBE will be made.

Note 2: Mandatory if (i) Vendor is a corporation, limited liability company, or limited partnership, and (ii) the contract will be performed in California.

Note 3: Applies only to contracts for $100,000 or more. This CCC may be omitted if, after the JBE has taken all reasonable measures to find a contractor that complies with this CCC, the JBE determines that: (i) there is only one prospective contractor willing to enter into a specific contract with the JBE; (ii) the contract is necessary to respond to an emergency, as determined by the JBE, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this CCC capable of responding to the emergency is immediately available; or (iii) the requirements of this CCC violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good

faith attempt has been made by the JBE to change the terms or conditions of any grant, subvention, or agreement to authorize application of this CCC.

Note 4: Not applicable to purchases of goods by credit card for an amount less than $2,500 from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor.

Note 5: Not applicable to purchases of goods by credit card for an amount of $2,500 or less from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor. In addition, the Approving Authority, or his or her designee, may waive this requirement upon a written finding that the contract is necessary to meet a compelling public interest. "Compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in PCC 1102.

Note 6: Mandatory only if the contract provides (i) for furnishing equipment, materials, or supplies (except related to the provision of public works), or (ii) for the laundering of apparel, garments, or corresponding accessories. Not applicable to purchases by credit card for an amount less than $2,500 from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor.

Note 7: Mandatory only if the contract is in excess of $100,000.

Note 8: Mandatory only if (i) the JBE is entering into a contract for $1,000,000 or more and the JBE did not receive an Iran Contracting Act certification as part of the solicitation process, or (ii) the JBE is renewing a contract for $1,000,000 or more. For additional information, including a sample certification form, see chapter 4, section 4.4.C.2 of this Manual.

APPENDIX B

MANDATORY AND RECOMMENDED CONTRACT PROVISIONS

Some of the sample contract provisions below are ***mandatory*** in specific categories of contracts; these are marked with an "M" in the table below. A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other sample contract provisions below are ***recommended*** in specific categories of contracts; these are marked with an "R" in the table below. If a provision is neither mandatory nor recommended, the table shows no mark. JBEs are not required to include in the procurement file an explanation for including or omitting a recommended CCC.

Note: The list in the chart below is not exhaustive. Other provisions may be appropriate depending on the subject matter of the contract and desired allocation of commercial and legal risks between the parties.

For low value, low risk, and short form agreements, JBEs may consider drafting provisions with less detail than in their standard agreements and POs, to the extent the particular language or detail is not expressly required by law.

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
1.	Termination due to nonavailability of funds	M (see note 1)	M (see note 1)	M (see note 1)	M (see note 1)	
2.	Loss leader	M (see note 2)	M (see note 2)	M (see note 2)		
3.	Antitrust claims	M (see note 3)	M (see note 3)	M (see note 3)		

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
4.	Recycled products/post-consumer material	M (see note 4)	M (see note 4)	M (see note 4)		
5.	Priority hiring	M (see note 5)	M (see note 5)			
6.	DVBE commitment	M (see note 6)	M (see note 6)	M (see note 6)		
7.	Small business preference commitment	M (see note 7)	M (see note 7)	M (see note 7)		
8.	Union activities	M (see note 8)	M (see note 8)			
9.	Insurance	R	R	R		
10.	State Auditor audit provision	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)
11.	General audit and records provision	R	R	R	R	R
12.	Indemnification by contractor	R	R	R		
13.	Independent contractor provision	R	R	R		
14.	Termination for cause	R	R	R	R	R
15.	Termination by JBE for convenience	R	R	R	R	R
16.	Effect of expiration or termination; survival provisions		R		R	R

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
17.	Prohibition on assignment and subcontracting	R	R	R	R	R
18.	Binding on successors		R			
19.	Personnel and background checks		R			
20.	GAAP compliance		R			
21.	Ownership of results, rights in work product	R (see note 9)	R (see note 9)	R (see note 9)	R (see note 9)	R
22.	Confidentiality		R	R	R	R
23.	Publicity		R			
24.	Choice of law (California)	R	R	R	R	
25.	Amendment	R	R		R	R
26.	Waiver		R		R	R
27.	Severability		R		R	
28.	Time of the essence	R	R	R	R	
29.	Negotiated agreement		R			
30.	Headings		R			
31.	Counterparts		R		R	R
32.	Entire agreement	R	R	R	R	R
33.	Informal dispute resolution	R	R	R	R	R

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
34.	Suspension of work		R (see note 10)			

Note 1: Mandatory unless the JBE has the right to terminate the contract for convenience.

Note 2: Mandatory in any contract under which goods are provided to a JBE.

Note 3: Mandatory only if a contract was obtained by means of a competitive bid.

Note 4: Mandatory if the contract provides for the purchase of goods specified in PCC 12207 (paper products; printing and wrapping papers; mulch, compost, and cocompost products; glass products; lubricating oils; plastic products; paint; antifreeze; tires and tire-derived products; and metal). Also mandatory in janitorial/building maintenance contracts, and printing contracts, as described in appendix C of this chapter.

Note 5: With certain exceptions, mandatory if a contract includes services in excess of $200,000. Exceptions: this provision should not be included in (i) consulting services contracts, or (ii) contracts for services related to public works, if the contract value exceeds the amount set from time to time, pursuant to PCC 10105. For information regarding consulting services contracts, see appendix C, section 1 of this chapter.

Note 6: Mandatory only if a Vendor received a DVBE incentive in connection with the agreement.

Note 7: Mandatory only if a Vendor received a small business preference in connection with the agreement; applicable only to procurements of IT goods and services.

Note 8: Certain language is mandatory in any contract that allows for reimbursement of Vendor expenses. Other language is mandatory in contracts if the amount is above $50,000.

Note 9: Strongly recommended for IT agreements or other agreements where there is valuable work product.

Note 10: Recommended if temporary delay is a possibility, particularly in large-scale or complex services agreements.

APPENDIX C

ADDITIONAL INFORMATION FOR CERTAIN TYPES OF CONTRACTS

This appendix contains additional information for the following types of contracts:

1. Consulting Services Contracts;
2. Credit Card Issuer Contracts;
3. Equipment Purchase Contracts;
4. Federally Funded Contracts;
5. IGCs (MOUs) with Counties for County Services;
6. IGCs with California Governmental Entities;
7. IGCs with Local Governmental Entities;
8. Information Technology Contracts;
9. Janitorial/Building Maintenance Contracts;
10. Legal Services Contracts;
11. Printing Contracts; and
12. Equipment Rental Contracts.

In some instances a single contract may fit into more than one of these types of contracts. For example, a court-county MOU fits within categories 6, 7, and 8 (and possibly others, depending on the content of the MOU). A JBE should ensure that it has consulted all relevant information in this appendix before finalizing a contract.

1. CONSULTING SERVICES CONTRACTS

a. Definition. A consulting services contract (or "consultant services contract") is a services contract in which the service to be provided is advice or recommendations rather than the use of mechanical or physical skills. The product may include anything from answers to specific questions to the design of a system or development of a plan. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services. Consulting services contracts typically do not include:

- Contracts between JBEs and the federal government;
- Contracts with any city, county, JBE, special district, authority or other political subdivision of the state, to subvene federal funds for which no matching state funds are required; and

- Contracts for architectural and engineering services (GC 4525 et seq.).

b. Contents. A consulting services contract may include:

- A provision for settlement of contract disputes.
- If the contract is for $5,000 or more:
  - Detailed performance criteria and a schedule for performance;
  - A requirement that the contractor provide a detailed analysis of the costs of performing the contract;
  - A resumé for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor; and
  - A statement that the JBE will evaluate the contractor's performance.

2. CREDIT CARD ISSUER CONTRACTS

GC 6159(d) establishes the minimum requirements that must be met when a JBE enters into a contract with a credit card issuer allowing the JBE to accept payments by credit card. These contracts must define:

- The respective rights and duties of the JBE and credit card issuer regarding the presentation, acceptability, and payment of credit card drafts;
- A reasonable method to facilitate payment settlements;
- A reasonable fee or discount to be paid to the credit card issuer; and
- Other matters that may be agreed upon by the parties.

For superior courts: additional information regarding credit card payments is set forth in the TCFPPM, FIN 10.01 (Revenue Collection and Distribution) and FIN 10.02 (Cash Handling).

3. EQUIPMENT PURCHASE CONTRACTS

Contracts providing for the purchase of equipment using JBE funds should include a provision in substance as follows:

- Title to equipment purchased or built with JBE funds vests in the JBE upon payment of the purchase price; and
- The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from contractor's invoice to the JBE, or require contractor to repair or replace any damaged, lost, or stolen equipment

to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, contractor must file a police report immediately.

4. FEDERALLY FUNDED CONTRACTS

All contracts subject to this Manual that are funded in whole or in part by the federal government should contain a 30-day cancellation provision and the following provisions:

- It is understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made. This contract is valid and enforceable only if sufficient funds are made available to the JBE by the U.S. Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- The parties agree that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- The parties may invalidate this Agreement under any termination for convenience or cancellation provision or amend the contract to reflect any reduction in funds.

JBEs using federal assistance for procurement should be aware of any applicable third party contracting requirements that may be a condition of a specific grant. JBEs should consult with legal counsel as appropriate to ensure compliance with all grant conditions.

5. IGCs (MOUs) WITH COUNTIES FOR COUNTY SERVICES[1]

If a superior court and its county agree that the county will provide or continue to provide services to the court that were provided in 1997, GC 77212 requires the superior courts and county to enter into a contract regarding the services. The parties must cooperate in developing and implementing the contract. The contract is typically in the form of an MOU.

- Services provided to the court may be discontinued by either party giving written notice to the other no later than 90 days before the end of the fiscal

[1] This section does not apply to security MOUs between a superior court and a county.

year (i.e., prior to April 1); some MOUs may require earlier notice. Service discontinuation only becomes effective at the beginning of the new fiscal year (July 1), per GC 77212(b) and (c).

- Under CRC 10.805, if the superior court receives or issues a notice regarding the discontinuation of county-provided services under GC 77212, a copy of the notice must be provided to the ~~AOC~~ Judicial Council Director of Finance within 10 days of the notice issue or receipt date.
- GC 77212(d) specifically requires that a court-county agreement identify the scope of services, the method of service delivery, the term of the agreement, the anticipated services outcomes, and the cost of the services. A court-county agreement for services should also contain appropriate provisions applicable to IGCs generally under this chapter.
- GC 77212(a) states that services provided to a court shall be provided at a rate that shall not exceed the costs of providing similar services to county departments or special districts. A court may include this clause in its court-county MOU:

  Costs. Costs charged to the court may not exceed the costs of providing similar services to county departments or special districts (GC 77212(a)).

- Counties periodically approve "cost allocation plans" detailing the actual expenditures by departments that provide indirect services to county departments and identifying the specific cost allocation methods that are used to distribute those costs. For purposes of determining the costs associated with its contract with the county, the contract should allow the superior court to review the specific charges in the cost allocation plan that were used to complete the plan, including the data elements provided by each county department.
- The amount of any indirect or overhead costs must be individually stated, together with the method of calculation of the indirect or overhead costs.[2]
- The Judicial Council or its delegee may audit the county figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the superior court.
- CRC 10.810 defines the division of responsibility between the state and county for funding the superior court. Costs payable by a superior court under any IGC, including agreements covered by GC 77212, may not contain items that are not otherwise allowable court operations.

[2] This requirement is limited to contracts entered into after January 1, 2002. See GC 77212(d).

6. IGCs WITH CALIFORNIA GOVERNMENTAL ENTITIES

Except for IBAs, JBEs should include the following waiver provision, or a similar provision modified as appropriate to address any indemnity provision in the contract:

> **Waiver of Per Capita Risk Allocation.** The parties waive the per capita risk allocation set forth in Government Code section 895.6. Instead, they agree if one of them is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, the parties' respective pro-rata shares in satisfaction of the judgment will be determined by applying principles of comparative fault.

7. IGCs WITH LOCAL GOVERNMENTAL ENTITIES

When a JBE contracts with a county, city, district, or other local governmental entity, the JBE should require, together with the signed contract, a copy of the resolution or other document authorizing the local governing body to enter into the proposed contract. When performance by the local governmental entity will be completed before any payment by the JBE, however, such as a room rental or a one-time event, the JBE does not need to obtain this documentation. The JBE may wish to include the following provision in the contract (e.g., in the CCCs):

> **Authority.** Attached is a true copy of the code, rule, resolution, order, motion, or ordinance authorizing Contractor to enter into or execute this Agreement.

8. INFORMATION TECHNOLOGY CONTRACTS

When contracting for the performance of IT services, the contract should specify who will own the work product. If the JBE will own the work product, the contract must assign ownership to the JBE. If the contractor or some other party will own the work product, the contract should provide the JBE a worldwide license to the work product at no additional cost. The license should be broad enough to allow the JBE to use the work product for any reasonable purpose. The JBE may also want to consider whether the contract should provide the JBE a right to sublicense the work product at no additional cost.

If the contract is for the purchase of systems, software, or instrumentation with imbedded chips, JBEs should include a provision substantially similar to the following in the contract:

> **Four-Digit Date Compliance.** Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to

[JBE]. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. The contractor's warranty and representation are subject to the warranty terms and conditions of this Agreement and do not limit the generality of warranty obligations set forth elsewhere in this Agreement.

9. JANITORIAL/BUILDING MAINTENANCE CONTRACTS

The contract should provide that the contractor must retain for 60 days any employees employed at each site by the contractor/subcontractor who previously provided those services.[3]

End of Contract. The contract should require the contractor upon termination of the contract to provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.

To the extent economically feasible, the contract should also require the use of supplies containing recycled products only, and must contain a recycled products/post-consumer material clause. (See chapter 3, section 3.3 of this Manual for additional information on recycling requirements.)

10. LEGAL SERVICES CONTRACTS

Legal services contracts with nongovernmental entities must contain, in substance, the following provisions. However, these provisions are not required in contracts with governmental entities, such as court-county MOUs.

The contractor shall:

a. Adhere to legal cost and billing guidelines designated by the JBE.
b. Adhere to litigation plans designated by the JBE, if applicable.
c. Adhere to case phasing of activities designated by the JBE, if applicable.
d. Submit and adhere to legal budgets as designated by the JBE.
e. Maintain legal malpractice insurance in an amount not less than the amount designated by the JBE.

[3] This does not apply to court/county MOUs for janitorial and maintenance service. See GC 71626.1 for applicable law regarding transfer of janitorial and maintenance services between court and county.

f. Submit to legal bill audits and law firm audits if so requested by the JBE. The audits may be conducted by employees or designees of the JBE or by any legal cost-control provider retained by the agency for that purpose.

If (a) the contract amount is greater than $50,000, (b) the services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the services are to be performed within the state of California, then the following language (or equivalent) must be added to the legal services contract:

> Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of this Agreement equal to the lesser of either (i) 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (ii) the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with [JBE] for legal services.

11. PRINTING CONTRACTS

To the extent economically feasible, the contract should require the use of recycled paper only. The contract must contain a recycled products/post-consumer material clause. (See chapter 3, section 3.3 of this Manual for additional information on recycling requirements.)

12. EQUIPMENT RENTAL CONTRACTS

A JBE should not agree to:

- Indemnify a contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the JBE; or
- Agree to obtain insurance to protect the contractor.

The contract should provide that the JBE does not have responsibility for loss or damage to the rented equipment arising from causes beyond the control of the JBE. Any provision obligating the JBE to return the equipment in good condition, subject to reasonable wear and tear, also should except or exclude loss or damage arising from causes beyond the control of the JBE. The contract should expressly limit the JBE's responsibility for repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the JBE or its officers, employees, or agents.

If the JBE does not elect to maintain the equipment, the contract should:

- Place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification; and
- Include a clear right in the JBE to terminate or cease paying rent should the contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment. If the contractor does not bargain for the JBE to pay the taxes, the contract should state the JBE will not do so.

Judicial Council of California

DISBURSEMENTS AND PAYMENT PROGRAMS

CHAPTER 9

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INTRODUCTION

This chapter describes payment practices, including when payments should be released, what is required before making invoice payments, and what are acceptable and unacceptable payment practices. Also included in this chapter is information about the use of purchase cards.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

9.1 DISBURSEMENTS

A. Payment Fundamentals

Payments should not be processed or released by a Judicial Branch Entity (JBE) to a Vendor for any goods or services unless the JBE possesses all of the following:

- A properly authorized contract;
- Documentation verifying the goods/services were satisfactorily received and/or performed; and
- An accurate, properly submitted Vendor invoice.

B. Advance Payments

Advance payments are payments made to a Vendor before the Vendor performs its obligations under the contract. Advance payments may only be made under the following:

- Contracts for basic support/maintenance services (such as uncustomized software upgrades, a pre-established set of maintenance services, or access to a customer technical support telephone line to resolve software issues, but does not include, for example, services to develop or assist in correcting customized software programs);
- Subscriptions that are typically required to be paid in advance;
- Contracts for services provided by community-based private nonprofit agencies where advance payment is essential for implementation of a

particular program, provided the contract amount does not exceed $400,000,[1] and provided that the advance payment does not exceed 25 percent[2] of the annual allocation to be made under the contract;

- Memoranda of Understanding (MOUs) with counties with a population of 150,000 or less as of January 1, 1983,[3] if requested by the Board of Supervisors, where advance payment is essential for implementation of a particular program and where payment is not more frequent than once a month and does not exceed one-twelfth of the annual allocations required for the delivery of services by the county; and
- Contracts with state agencies or federal government entities for the provision of services, materials, or equipment to the JBE.

Note:

- For superior courts, in addition to the foregoing, advance payments may also be made as authorized by FIN 8.01 (Vendor Invoice Processing), Section 6.5(1)(e) of the *Trial Court Financial Policies and Procedures Manual.*

- The following are not advance payments under this Manual: license payments, lease payments, and insurance premiums that are typically required to be paid in advance.

- In addition to the foregoing, if the JBE has conducted a reasonable risk assessment, and if the JBE's Approving Authority (or delegee) has authorized the advance payment, a JBE may also make an advance payment under a contract in the following situations: (i) in exchange for a contractual benefit from such advance payment (e.g., price discount from a Vendor); or (ii) where it is industry standard to pay in advance for goods/services.

[1] This amount may be increased by the California Department of Finance; any future increases will be posted on Serranus.
[2] Advance payments in excess of 25 percent may be made on such contracts financed by a federal program when the advances are not prohibited by federal guidelines.
[3] This includes the following counties: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Placer, Plumas, San Benito, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba (based on estimated populations from California Statistical Abstract).

C. Progress Payments

A Progress Payment is a partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

General recommendations regarding Progress Payments:

- Discourage Progress Payments;
- During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm that the JBE's project manager has the expertise to properly monitor the Vendor's performance of its obligations;
- Do not allow Progress Payments on agreements with a term of fewer than three months;
- If Progress Payments are to be made, they should be described in the agreement with the Vendor and made at clearly identifiable stages of progress or not more frequently than monthly in arrears, based upon written progress reports submitted with the Vendor's invoices;
- It is important that Progress Payments not be made before goods or services are provided;
- Contracts should require a withholding of at least 10 percent of each Progress Payment pending satisfactory completion of the transaction or a separate and distinct task (unless otherwise authorized by statute as further described below, PCC 12112(a) permits lower withholding percentages in certain cases for Progress Payments involving IT goods/services);
- Establish contractual procedures/criteria for release of the amount withheld; and
- A written Statement of Work should be developed to clearly define the tasks that, when completed, would permit a Progress Payment to be made.

Progress Payment Requirements for Non-IT Services:

For a Progress Payment under a contract for non-IT services:[4]

- At least 10 percent of the contract amount must be withheld pending final completion of the contract;

[4] These requirements are based on PCC 10346.

- If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task; and
- A Progress Payment must not be made unless the JBE has established procedures to ensure that the work or services are being delivered in accordance with the contract.

Note: The foregoing Progress Payment requirements do not apply to contracts: (i) for the construction, alteration, improvement, repair, or maintenance of real or personal property; (ii) less than $5,000 in amount (including contracts less than $5,000 where only travel expenses are to be paid); or (iii) between a JBE and state agency, or between a JBE and a local agency or federal agency.

Progress Payment Requirements for Non-IT Custom Goods Involving Work at Vendor's Facility:

Contracts for non-IT goods to be specially manufactured for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant, provided that:[5]

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods; and
- The Vendor provides a faithful performance bond, acceptable to the JBE, of at least one-half of the total amount payable under the contract.

Progress Payment Requirements for Custom IT Goods and Services Involving Work at Vendor's Facility:

Contracts for IT goods or services to be specially manufactured or performed for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant if:[6]

[5] These requirements are based on PCC 10314.
[6] These requirements are based on PCC 12112(a).

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods or services; provided, however, that if the JBE determines that lower withholding levels are appropriate based upon its own risk analysis, which may include consideration of financial protection items (e.g., performance bond, surety, letter of credit, additional contract terms, other forms of security or guaranty to protect against Vendor's breach), then: (i) if the contract price is $10 million or more, the JBE must withhold at least 5 percent of the contract price until final delivery and acceptance of the goods or services; and (ii) if the contract price is less than $10 million, the JBE must withhold at least 3 percent of the contract price until final delivery and acceptance of the goods or services.

D. Periodic Payments

Periodic payments are payments made on a regular, recurring basis under installment purchase or lease-purchase agreements. Installment purchase and lease-purchase agreements may present complex legal issues, so JBEs are encouraged to consult with the ~~AOC~~ Judicial Council's Legal Services ~~O~~office. JBEs are also encouraged to consult with the ~~AOC~~ Judicial Council's Business Services ~~U~~unit on nonlegal, business-related issues.

E. Payee Data Record

Note: Superior courts should refer to FIN 8.01 (Vendor Invoice Processing) of the *Trial Court Financial Policies and Procedures Manual* regarding Payee Data Records in lieu of the information below.

Before executing any contract (if the Vendor is not a government entity) and before any payment is released, a JBE should confirm that a completed Payee Data Record has been obtained from the Vendor. The Payee Data Record provides, among other data, a Vendor's taxpayer identification number and is needed in order to process payments of invoices.

The Payee Data Record should be retained in the JBE's business services or accounting office, as determined by each JBE's policy, and in the procurement file. Because each Vendor's Payee Data Record is maintained at the JBE's business services or accounting office, a Vendor only needs to submit one Payee Data Record to the JBE. If any information changes, the Payee Data Record should be updated.

F. Payment of Invoices

Note: Superior courts should refer to the *Trial Court Financial Policies and Procedures Manual,* FIN 8.01 (Vendor Invoice Processing) regarding payment of invoices and to FIN 8.03 (Travel Expense Reimbursement for Trial Court Judges and Employees) regarding travel expenses in lieu of the information below.

Accurate, properly submitted invoices: JBEs should instruct Vendors to submit accurate and correct invoices to ensure timely payment for goods or services received. JBEs should not pay for anything that is not set forth in the contract (pallets, shipping, travel costs, etc.).

An accurate, properly submitted invoice includes the following:

- Detailed identification of the goods/services provided, quantities, unit price, extension, description, etc.;
- Applicable sales tax and/or use tax as a separate line item from goods;
- Service period (e.g., monthly, quarterly, yearly) and quantity applicable to the service;
- Accurate billing address as stated in the contract;
- Invoice number;
- Invoice date;
- Vendor name and remittance address; and
- Submission of the invoice to the JBE address as identified in the contract as “billed to” or “invoice submitted to” for payment.

Invoice tracking: To accurately track invoices so they are paid in a timely manner, all invoices:

- Should be promptly made available to accounts payable (or other appropriate department or personnel); and
- Should be date stamped or have the receipt date noted when first received by accounts payable (or other appropriate department or personnel).

Invoice dispute notification: If there is a dispute about a submitted invoice, the JBE should promptly notify the Vendor. Buyers and project managers should consult with their JBE’s accounting office (or other unit as determined by JBE policy and procedures) to develop a plan of action for resolving the dispute in a timely manner. See chapter 10 of this Manual for information on acceptance/rejection of goods and services. See chapter 11 of this Manual for information on resolving contract disputes.

Prompt payment discounts: Some Vendors may offer discounts for prompt payment. A JBE may elect to accept these payment terms when it is in the best interests of the JBE, after considering all financial and Vendor performance factors.

Separation of duties: JBEs should have policies and procedures in place to ensure a clear separation of duties in order to reduce the risk of error or fraud in the JBE's contracting and procurement programs. See chapter 1 of this Manual on purchasing roles and responsibilities for more information.

Travel provisions: All travel expenses should be related to official JBE business. Reimbursement for such expenses should only be permitted if provided for in the contract. If the JBE will be reimbursing the Vendor for travel expenses, the contract should include appropriate travel-related provisions, including travel expense reimbursement limits that are in accordance with the judicial branch travel guidelines.

9.2 PURCHASE CARD PROGRAMS

A. Use of Purchase Cards Generally

Purchase cards are a method of payment that works similar to personal credit cards. JBEs should establish internal controls to monitor their use of purchase cards.

Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card should be initiated by an approved purchase requisition. Purchase cards may be used only for official JBE business; personal use is prohibited.

B. Use of Purchase Cards by the Superior Courts

1. The state-administered procurement card program, CAL-Card, is available to all superior courts, and has usage limitations defined by the program. The ~~AOC~~ Judicial Council's Business Services ~~U~~unit is available to assist with answering questions about this program.

2. Purchase cards typically are used only for the procurement of goods. Examples of items that may be purchased using purchase cards include library purchases, subscriptions, office supplies, and minor equipment. Although purchase cards should not be used to procure services, if a superior court purchases goods that have ancillary services associated with them, the entire transaction may be

charged to a purchase card. For example, a court vehicle gets a flat while on a business trip and a full-size replacement tire is required to complete the trip. The tire and the associated ancillary services (i.e., mounting, balancing) may be charged to a purchase card.

3. Purchase cards may only be used for purchases with a maximum of $1,500 per transaction. A suggested daily limit of $5,000 should also be set for purchase card use. Alternative procedures should be documented, incorporated into the court's Local Contracting Manual, and distributed to court personnel.

4. Purchase cardholders are responsible for providing documentation in the form of requisitions and receipts for purchases made using the purchase card (this includes providing such documentation upon receiving a monthly statement of card activity). The receipts and the statement should be forwarded to accounts payable for verification and payment.

5. If the superior court receives a monthly master statement of purchase card activity, either accounts payable or the cardholder(s) is responsible for assembling the documentation (requisitions, receipts) necessary to verify purchases before issuing payment to the purchase card company.

6. If there is no receipt issued for a purchase card charge, the employee making the purchase should provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase should be provided.

7. Travel expenses may be paid by a court credit card that is used only for travel expenses, or centrally purchased using a court travel account.

C. Use of Purchase Cards by Other JBEs

Currently, the only purchase cards authorized for use by JBEs other than the superior courts are the CAL-Cards. It is important that CAL-Cards be used by these JBEs in accordance with the ~~AOC's~~ Judicial Council's CAL-Card, State of California VISA Purchasing Card procedures.

Judicial Council of California

RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES

CHAPTER 10

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INTRODUCTION

This chapter discusses the process for Judicial Branch Entities (JBEs) to receive, inspect, and accept or reject goods and services that they have purchased. It also includes information about asset management.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

10.1 GENERAL PROCESS FOR RECEIVING GOODS AND SERVICES

A. Receiving Process

Each JBE determines whether or not the goods and/or services received are acceptable and conform to all of the terms and conditions of the contract. The receiving process is set forth in the table below, along with definitions, in the context of this chapter, for certain related terms. JBEs should have a current and complete contract (including technical specifications, as applicable) to compare goods/services received to what was ordered.

Documentation on receiving, inspection, and acceptance of goods/services may be maintained in electronic form and accessible through an online purchasing system. Accounts payable staff may utilize online information to process invoices. For superior courts: retain original documents in accordance with FIN 8.01 (Vendor Invoice Processing) and FIN 12.01 (Record Retention) in the *Trial Court Financial Policies and Procedures Manual*.

Term	Definition	Example
Receiving	The act of taking possession of goods or receiving services. **Caution**: Placing goods into inventory without inspection may waive inspection rights and remedies.	A JBE signs for goods, acknowledging that the goods were delivered, not that they were accepted.

Term	Definition	Example
Inspection	The act of examining goods/services to determine conformance to the contract.	A JBE inspects a delivery of office supplies and confirms that the delivery conforms to what was ordered in the contract.
Acceptance Testing	The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria, specifications). After inspection, Acceptance Testing may be required for certain goods and services.	A JBE purchases a network printer. The contract provides for a 30-day Acceptance Testing period, during which the printer must run error-free and meet other acceptance criteria.
Acceptance	The legal act of indicating to the Vendor the acceptance of goods and/or services. **Note:** goods/services could also be deemed accepted if the JBE fails to make an effective rejection of the goods/services.	After completing an acceptance test, a JBE notifies the Vendor in writing, confirming that the equipment passed the test and the JBE accepts the product.

B. Packaging and Shipping

JBEs should include packaging and shipping requirements/instructions (if applicable) in the contract.

A Vendor that ships multiple containers to a JBE should be instructed to number the containers with shipping labels and identify the total number of containers in the shipment, as well as identify the container in which the packing slip is enclosed.

JBEs should also instruct Vendors to include packing slips in all shipments. The Vendor should provide at least the following information on the packing slip:

- Contract number as issued by the JBE;
- Description of the goods;
- Quantity and unit of measure; and
- Item/part number.

C. Follow-up on Open Orders

Each JBE should develop policies and procedures to follow up on goods and services ordered but not yet received.

10.2 RECEIVING GOODS

A. Questions to Consider When Receiving Goods

A JBE should consider the following before taking receipt of any shipment:

- Is the shipment for this JBE?
- Is it damaged?
- Does it include a packing slip containing correct information and identifying a contract?

In addition, the following should also be considered:

- Is the delivery late, unsatisfactory, or incomplete?
- Do the goods comply with the specifications and packaging requirements in the contract?
- Are specialized skills or expertise required for inspecting the goods?
- Have all the terms listed in the contract been met and properly documented?

A JBE should promptly contact the Buyer with any questions or issues regarding the delivery, receipt, inspection, or acceptance of goods. If there is a partial delivery of goods, the staff receiving the goods should notify the Buyer if the contract did not state whether or not partial deliveries are acceptable. Staff receiving the goods should make available partial delivery documentation to the Buyer on a timely basis to facilitate any necessary communications with the Vendor.

B. Receiving Goods at Other Locations

JBEs that allow goods to be delivered at JBE locations other than main JBE sites should develop policies and procedures to inform staff receiving goods at such locations of their responsibilities, which should be consistent with the policies and procedures in this chapter.

10.3 INSPECTION OF GOODS

Inspections should be completed within a reasonable amount of time or as specified in the contract. The JBE should confirm the following:

- What was delivered conforms to the contract (e.g., Statement of Work, specifications, attachments, etc.), including the product description, model, brand, and product numbers;
- The quantity ordered matches the quantity delivered;
- The goods are not damaged (and if the packaging cannot be opened immediately, it should be inspected; if a box, crate or other packaging looks damaged, it should be noted on the bill of lading);
- To the extent applicable, operability/functionality of the goods;
- Instructions regarding special handling or packaging were followed; and
- The delivery documentation (e.g., packing slip) is acceptable.

JBEs should document inspection results. At a minimum, the documentation should identify the scope of the inspection, name/title of JBE and Vendor personnel in attendance, when and where the inspection occurred, and the inspection results. The documentation should be retained in the procurement file.

After determining that goods received and inspected are either in conformance with the terms of the contract or are to be rejected, the JBE should document the delivery and inspection.

Failure to make documentation available and follow related policies and procedures could delay payments to the Vendor. JBEs should keep contracts on file at least until Vendors have met all obligations.[1] This is particularly important when accepting any partial deliveries or staggered deliveries over a period of time.

10.4 ACCEPTANCE TESTING

Where appropriate, contracts should contain provisions on Acceptance Testing and acceptance criteria (including description of the Acceptance Testing period, and how acceptance of the goods or services will be defined).

JBEs are encouraged to consult with the ~~AOC~~ Judicial Council's Legal Services ~~Office~~ office ~~(AOC/LSO)~~ regarding appropriate contract terms for Acceptance Testing,

[1] JBEs may also need to retain contracts on file until record retention requirements have been met.

acceptance criteria, and related matters. JBEs are also encouraged to consult with the ~~AOC~~ Judicial Council's Business Services ~~U~~unit on nonlegal, business-related issues.

10.5 REJECTING NONCONFORMING GOODS

If the goods do not conform to the requirements of the contract (including technical specifications) and the JBE decides to reject the goods, then the JBE should notify the Vendor in writing as specified in the contract or, if not specified, in a timely manner. The notice should describe the nonconformity to the contract (including any applicable acceptance criteria).

To preserve its legal rights, the JBE is responsible for making arrangements to hold the rejected goods, protect them from damage, and take reasonable care of rejected goods until the Vendor can take possession of the goods.

Note: Acceptance/rejection of goods can involve complex legal requirements and considerations. JBEs are encouraged to consult with ~~AOC/LSO~~the Judicial Council's Legal Services office as needed (as well as with the ~~AOC~~ Judicial Council's Business Services ~~U~~unit, as needed, on nonlegal, business-related issues).

10.6 ASSET MANAGEMENT

Note: Superior courts should refer to FIN 9.01 (Fixed Asset Management) of the *Trial Court Financial Policies and Procedures Manual* regarding asset management in lieu of the information below.

A. Controls Over Assets

JBEs are responsible for safeguarding their assets, and should implement sufficient security controls for goods considered vulnerable to loss or unauthorized use. Inventory should be periodically taken and compared to control records.

The following items purchased by JBEs should be tagged:

- An item with a value of more than $1,000 and an anticipated useful life of more than one year; or
- An item with a value less than $1,000 but which is particularly subject to loss or theft, such as small office equipment, cellular phones, printers, monitors, etc.

JBEs should record the following information on an item transferred from the county or purchased directly by the JBE with a value of $5,000 or more and with an anticipated useful life of more than one year:

- Description of the item;
- Date of acquisition;
- Value of the item (based on acquisition cost or appraisal value at time of transfer);
- Estimated useful life;
- Salvage value (if applicable); and
- Remaining balance (net book value), if applicable.

B. Lost, Stolen, or Destroyed Equipment

Whenever equipment is lost, missing, stolen, or destroyed, a JBE should update its equipment records, prepare a report describing the event, and take precautions to prevent repeat situations.

JBEs should ensure that the appropriate documentation is provided to the Buyer to support the purchase of replacement equipment as a result of being lost, stolen, or destroyed.

10.7 RECEIVING SERVICES

A. Accepting or Rejecting Services

Appropriate JBE personnel should be assigned to monitor Vendor performance of service contracts. Please refer to chapter 11 of this Manual for information on monitoring of Vendor performance. Any nonconforming or unacceptable performance levels should be documented to assist in problem resolution.

B. Maintenance Services

JBEs receiving equipment repair/maintenance services should develop a uniform process for collecting essential data on repair/maintenance incidents. JBEs should keep track of the following:

- When the JBE requested the services;
- When the contractor's personnel arrived to provide the service;
- When the equipment was returned to service; and
- A description of the equipment malfunction or incident.

Judicial Council of California

CONTRACT ADMINISTRATION

CHAPTER 11

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INTRODUCTION

This chapter describes the requirements and recommended practices associated with contract administration. It also addresses contract provisons and actions required to protect each Judicial Branch Entity's (JBE's) interests and ensure Vendor performance.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

11.1 PRINCIPLES

Contract administration focuses on the relationship between the JBE and the Vendor from contract award to closeout to ensure the Vendor delivers the goods and/or services in conformance with contract requirements.

Contract administration includes communication between the JBE and its Vendors that conveys the JBE's expectations specified in a contract, protects its contractual interests, and documents the activities associated with the contract, including payment, contract compliance, disputes, etc.

11.2 CONTRACT ADMINISTRATION PLAN

JBEs should establish a contract administration plan and include the plan in their Local Contracting Manual. This plan, detailing the conduct of contract administration within the JBE, should reflect or reference the principles, rules, and requirements affecting contract administration contained within this Manual.

Depending on the staffing capabilites of the particular JBE, with respect to the management of contract administration activities, this plan should provide for:

- The appointment of a senior Contract Administrator ultimately responsible for the performance of all contract administration functions;
- A grant of authority to the senior Contact Administrator to delegate to other JBE employees the authority and responsibility to perform contract administration functions that makes them Contract Administrators;
- The establishment of clear lines of authority for the management and conduct of contract administration functions; and
- A description of each Contract Administrator's function within the JBE.

11.3 ROLE OF CONTRACT ADMINISTRATORS

Contract Administrators are those JBE staff who perform contract administration functions. Each Contract Administrator must understand all aspects of the contract.

Contract Administrators must ensure that:

- The procurement of goods and services is appropriately documented;
- Vendors comply with the terms of their contracts as well as applicable laws, rules, and regulations;
- Contract performance progresses satisfactorily;
- Problems that may threaten performance are promptly identified; and
- Contractual disputes are addressed and resolved appropriately, applying sound administrative practice and business judgment.

Contract Administrators are responsible for the following:

- Acting only within the limits of their authority;
- Authorizing contractual actions that are within authorized budgets or available funding;
- Ensuring Vendor and JBE compliance with the terms of the contract;
- Safeguarding the JBE's interests in its contractual relationships; and
- Ensuring that Vendors receive impartial, fair, and equitable treatment.

11.4 ETHICAL DECISIONMAKING AND CONTRACT ADMINISTRATION

Contract Administrators must adhere to and conduct business by maintaining high ethical standards.

Contract Administrators must:

- Conduct themselves in a professional manner, refrain from mixing outside relationships with business, and not engage in incompatible activities, conflicts of interest, or unethical behavior;
- Accurately account for expenditures and goods and services received;
- Be aware that perceptions can override reality; and
- Involve the JBE's procurement and legal staff or, alternatively, the ~~AOC~~ Judicial Council's Legal Services ~~O~~office ~~(AOC/LSO)~~, when questions arise regarding acceptable or unacceptable behavior when dealing with Vendors.

No Contract Administrator may accept, directly or indirectly, any gift, money, loan of money or equipment, meal, lodging, transportation, gratuity, favor, entertainment, service, or any other item of value from any person who is doing or seeking to do business of any kind with the Contract Administrator's JBE. Such circumstances could be construed as intent to influence the Contract Administrator in his or her official duties or as a reward for official action performed by the Contract Administrator and such items must be declined.

Other ethical issues include the following:

- Contract Administrators must not purchase goods or services from any business entity in which they have a financial interest;
- Contract Administrators are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the Contract Administrator and the judicial branch.

11.5 RECORD KEEPING AND FILES

A. Vendor Lists

The JBE should develop and maintain a list of Vendors[1]. The JBE may use an electronic procurement system for this purpose. For each Vendor, the following information should be included:

- Vendor name;
- Tax identification number;
- Vendor address;
- Point of contact information including telephone and fax numbers, e-mail addresses, etc.;
- Vendor's valid seller's permit number, if applicable;
- Licenses required for the Vendor to perform the contracted services;
- Type of business (corporation, partnership, sole proprietorship, joint venture, parent company or subsidiary, etc.);
- Types of goods or services offered;

[1] The list may be maintained in multiple record-keeping systems.

- Vendor's status as a Disabled Veteran Business Enterprise or a Small Business (see chapter 3 of this Manual); and
- Year the Vendor was established.

Files should contain each Vendor's data and any other information submitted by the Vendor.

B. File Integrity

Files must be established and maintained for every procurement action.[2] This requirement applies to the Vendor selection process (preaward) and to postaward contract administration, maintenance, and contract closeout.

The requirement to maintain contract files is based on three standards of sound contract administration:

- **One:** A contract administration system ensures that Vendors perform according to the terms, conditions, and specifications of their contracts;
- **Two:** Sound business judgment is exercised in settling all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation and the administration of protests, change orders, amendments, disputes, and claims; and
- **Three:** Documentation of a fair and competitive procurement is maintained.

Contract files should be readily available to protect and support the principles of providing transparency and accountability to the procurement process and to protect the JBE's best interests in the event of future claims, litigation, audits, reviews, or investigations.

11.6 VENDOR LICENSES, INSURANCE, AND PERFORMANCE/PAYMENT BONDS

The Contract Administrator must ensure that all required Vendor Certificates of Insurance, licenses, permits, and performance or payment bonds are current by establishing and enforcing a compliance plan and affirmatively acting to ensure contract compliance.

[2] An electronic file system may be used for this purpose (as part of a procurement and contract management system) so long as file integrity and security are adequately maintained.

Vendors that provide services must furnish the JBE Certificates of Insurance or, where permitted, evidence of self insurance to evidence compliance with the contract insurance requirements before commencing work.

- Certificates of Insurance must be of a form and content that meet the requirements of the contract; and
- Vendors that have current contracts with the JBE should provide a new Certificate of Insurance on or before the expiration date of any required certificate.

Where the contract calls for performance or payment bonds, Vendors must furnish the JBE evidence of compliance with contract bonding requirements before commencing work.

Any Vendor license or permit required for the Vendor to perform the contracted service must be in place before commencing the service that requires the license and, unless otherwise provided for in the contract, must be maintained continuously for the duration of the contract.

11.7 VENDOR PERFORMANCE AND PAYMENT

A. Performance and Delivery Control

The JBE must monitor Vendor performance to ensure that the value of the goods or services it receives is in compliance with the contract price and meets prescribed acceptance criteria and contract milestone dates. The Contract Administrator or other authorized JBE member, with feedback from the employee who receives the goods or evaluates the services, must ensure that the Vendor's delivery or performance meets the JBE's contract requirements. See section 11.9 and section 11.10 for procedures related to unacceptable Vendor performance.

The Contract Administrator or other authorized JBE member must ensure that the goods and services procured under each contract conform to quality, safety, quantity, and any other measures associated with quality assurance (e.g., warranties) specified in the contract as follows:

- Monitoring Vendor performance, quality, and warranty obligations when appropriate and necessary to protect the JBE's interests; and
- Ensuring that nonconforming goods or services are rejected.

Monitoring Vendor performance can be facilitated by the following best practices:

- Conducting status reviews of Vendor compliance at regularly scheduled project meetings;
- Requiring written monthly or quarterly reviews of the Vendor's performance in meeting goals;
- Requiring the Vendor to propose and implement plans to cure unsatisfactory performance when contract goals are not met; and
- Performing a Vendor evaluation at the conclusion of the contract and retaining the evaluation for future reference.

B. Vendor Payment Issues

Every effort should be made to pay Vendors in a timely manner according to the terms of the contract for goods provided and services rendered. Unresolved payment problems can put the JBE in breach of contract, or may damage Vendor relationships and lead to unnecessary administrative costs. Payment issues that cannot be resolved quickly and informally should be elevated to an appropriate level of JBE management before they lead to disputed claims or litigation. Vendors should be kept aware of the effort to remedy the payment issue until a final resolution is reached.

If a portion of an invoice is in dispute, only the disputed portion of the invoice may be withheld from payment. All correspondence related to a payment dispute must be kept in the procurement file, including a description of the problem and efforts made toward resolution.

11.8 OPTIONS, CHANGE ORDERS, AND AMENDMENTS

A. Options

1. An option is a party's unilateral right, agreed to by the parties and specified in the contract, to elect to exercise a privilege specified in the contract.[3]

[3] The exercise of an option included in a contract is not an amendment of the contract but should be in writing. (If, however, a contract specifies an option must be exercised, if at all, by "amending" the contract, a party exercising the option must adhere to contractually required procedures for amending the contract.)

2. A contract may be drafted to include an option that is exercised upon the inaction of a party. The contract may call for the extension for an additional term or multiple additional terms if a party does not issue a notice of termination of the contract by a certain time prior to the end of the then-existing term. This is known as an "evergreen clause."[4] Because a JBE could become unintentionally bound to perform for an extended term due to inaction, the use of an evergreen clause should be carefully considered and contracts containing this clause will need to be carefully managed. An alternative practice would be to use an option to extend the term of the contract requiring written election to exercise an option.

3. ~~The AOC, the HCRC, and the appellate courts should notify t~~The appropriate person in the ~~AOC~~ Judicial Council's Business Services ~~U~~unit should be notified upon the exercise of a contract option by the Judicial Council, the HCRC, or an appellate court,[5] including an extension of time or an increase or decrease in the contract value. In the event of an option exercised by a notice of exercise of option or other form of communication, the ~~AOC, the HCRC, and an appellate court's notice to the AOC~~ Judicial Council's Business Services ~~U~~unit should ~~contain~~ receive a copy of the notice of exercise of option or other form of communication.

B. Change Orders

1. A change order is a modification to the terms of the original contract that is permitted by the original contract. Change orders may affect any term of the original contract such as the Statement of Work (SOW), delivery point, date of delivery, contract period, price, or quantity as long as the change is anticipated and permitted by the original contract. The resulting modified contract has the full force and effect of the original contract. Change orders do not prejudice or limit any of the Vendor's rights to make claims or appeal disputes under other provisions of the contract.

2. Provisions for change orders are usually found in construction and large scale software development agreements where the SOW may be defined but the specifics as to how that scope will be fulfilled may not be known until the project is underway. A change order may take the form of a unilateral written order by the JBE directing the Vendor to change the contract's service and/or materials

[4] Contracts containing evergreen clauses are often referred to as "evergreen contracts."
[5] This applies regardless of whether the option is exercised by action or inaction.

requirements that may affect contract price and time of contract completion. Such changes must be within the scope of the contract and in accordance with a contract "changes" clause that permits unilateral change by the JBE to be legally implemented without the consent of the Vendor.

C. Amendments

1. An amendment is a contract modification authorized by the parties (not including options or change orders). For example, an amendment can be used when change orders are not permitted by the original contract or when the modification **exceeds the scope of changes that may be made by change order.** E-mails, letter correspondence, and oral notification between parties are insufficient to amend a contract. Amendments must be mutually agreed to and executed by authorized representatives of both parties. Amendments most frequently deal with changes to the work to be performed, time extensions, compensation for delays, and changes in the contract price due to any or all of the above. A request for an amendment may be initiated by the JBE or the Vendor.

2. Superior courts are solely responsible for inputting contract information into the Phoenix Statewide Financial System (Phoenix) and updating Phoenix so that it accurately reflects subsequent contract amendments. Superior courts should coordinate with the Judicial Council's Trial Court Administrative Services ~~O~~office, ~~Judicial and Court Administrative Services Division~~ as appropriate.

D. Change Administration

1. Vendor Requested Changes

If the Vendor requests a change, the Vendor must do so in writing on a timely basis according to the terms of the contract. The Vendor must be required to support its requested change through the submittal of a timely proposal as follows:

- The proposal should incorporate the appropriate billing rates and factors outlined in the contract for changes, extras, or delays (if applicable);
- Amendments for consulting services are sometimes based on the Vendor's fee schedule that is included in the contract. On unit price or fixed price line item contracts, the consideration for reductions in quantity must be at the stated contract price. Proposed increases in fixed contract prices or labor rates must be supported to the satisfaction of the JBE; and

- In some cases (e.g., the addition of hours to a time and materials contract or a simple time extension), it may be appropriate for the JBE to prepare the contract change without a proposal from the Vendor. It is within the JBE's discretion to determine whether and when a proposal from the Vendor is needed.

2. Negotiation of Changes

Some of the following steps may be applicable to the negotiation of changes to contract terms:

a. Written Prenegotiation Objectives: The JBE should develop written prenegotiation objectives for amendments and change orders, **for internal JBE use only**. This useful step establishes the JBE's goals and assures that negotiations are conducted along lines more likely to achieve the JBE's objectives.

b. Written Memorandum of Negotiations: A written memorandum should be prepared by the Contract Administrator to record the results of negotiations. The memorandum is a summary of negotiations that sets forth the agreement between the parties on major issues (e.g., price, delivery, performance time, payment terms and any special provisions to be included in the contract).

The memorandum should explain the differences, if any, between the negotiated price adjustment and the prenegotiation position. When there are numerous differences involving significant sums, a tabular format is useful to show the price differences. Price differences should be explained in a narrative accompanying the tabulation. For small purchases, this can be handwritten on the requisition or other suitable file document.

c. Lock in the resolution or change: To avoid subsequent controversies that may result from a contract modification, JBEs should:

- Ensure that all elements of the amendment or change order have been presented and resolved; and
- Consult with legal counsel as to whether to include a release statement in the amendment or change order, by which the Vendor releases the JBE from any liability attributable to the facts giving rise to the Vendor's proposal for adjustment, unless specific exceptions are expressly set forth in the release statement.

E. Communication

All correspondence regarding amendments, change orders and the exercise of options, as well as disputes and terminations, should be directed to the person or persons designated in the contract. Failure to provide notice to the appropriate person in a timely fashion may result in the loss of rights under the contract.

11.9 CONTRACT DISPUTES, VENDOR DEMANDS, AND JBE COMPLAINTS

A. Contract Disputes

Contract disputes generally arise when the JBE and the Vendor disagree about the interpretation of contract language, SOW, specifications, schedule, price, or other issues that impact performance, completion, payment, amendments, or other contract terms.

Minimizing and settling disputes before they become claims is one goal of contract administration. Contract Administrators should anticipate and minimize potential unresolved disputes that can disrupt operations and overrun budgets. The JBE should work with its Vendors and communicate effectively to develop a clear understanding of the contract's performance requirements.

The best forum for dispute resolution is often an informal meeting, conducted between the parties who are most knowledgeable of the facts and who have the authority to make decisions. These meetings should be conducted whenever the JBE denies a Vendor request for a significant modification of the terms of the contract or the parties express a contrary view of the contract requirements. Resolving contractual issues by mutual agreement at the lowest appropriate level of authority is a worthwhile goal.

Although two-way communication is essential to developing a mutual understanding of the issues, all Vendor-requested modifications to the terms of a contract or expressed differences in the interpretation of contract terms and requirements should be submitted in writing. The JBE must not compromise on issues of integrity or clear JBE entitlement under the contract. However, there is often a middle ground that is fair and equitable to both parties.

B. Vendor Demands

1. If a dispute cannot be resolved to the satisfaction of the parties informally as discussed above, the Vendor can submit a formal written demand. The demand may result from the JBE's denial of the Vendor's request for a change to the terms of the contract or invoice, JBE's notice of a unilateral amendment, rejection of work, or the failure of the parties' good faith efforts to resolve disputed issues through informal communication or meetings. Demands seek the payment of money, a time extension, adjustment or interpretation of contract terms, or other relief. A demand may or may not be allowed or timely depending on the provisions of the contract (e.g., if the dispute resolution provision directs that disputes be submitted to mediation as a next step).

2. Vendor demands should be submitted to the JBE on or before the date of final payment. All demands must follow contract requirements, be submitted in writing, follow the format established by the contract, and include a narrative description and documents necessary to substantiate the Vendor's position.

3. Responsibility for the processing, review, and research of Vendor demands, along with participation in the dispute resolution process, should be assigned to a Contract Administrator.

4. The JBE must respond in writing to all properly submitted Vendor demands within the time limits established by contract or as mutually agreed by the JBE and Vendor.

5. Unless otherwise noted in the contract, if the Vendor disputes the JBE's written response, the JBE (with guidance from legal counsel) must inform the Vendor that it may petition the JBE.

6. The JBE must seek to resolve all demands in a fair and equitable manner by the most expeditious and cost-effective means possible. The JBE must first seek resolution by reviewing the contract and all applicable documents to find an equitable solution within the scope of the contract. If the demand has merit, the assigned Contract Administrator should prepare a negotiation settlement memorandum. If a written response meant to bind the JBE is made offering the Vendor a monetary settlement or other remedy, such offer must be executed by an individual with authority to bind the JBE to a settlement agreement as set forth in its Local Contracting Manual.

7. Any resolution of a demand must include a release statement in that the Vendor releases the JBE from any liability with respect to the demand unless specific exceptions are identified in the release statement.

C. JBE Complaints Regarding Vendor Performance

Contracts typically require the JBE to attempt to settle informally all complaints against the Vendor. If informal efforts are unsuccessful, the JBE should give the Vendor written notice of its complaint and an opportunity to take corrective action, as follows (unless otherwise directed in the contract):

1. Give notice: The written notice to the Vendor detailing the complaint and asking the Vendor to comply with the terms of the contract is called a cure notice.[6] The cure notice informs the Vendor that it is deficient with respect to one or more contractual obligations. The Vendor is further advised that if the deficiency is not cured within the prescribed time frame, the JBE may initiate specific remedies up to and including issuing a notice of termination for cause.

2. Inform the ~~AOC/LSO~~Judicial Council's Legal Services office: JBEs, other than the HCRC, must inform the Judicial Council's Legal Services office ~~AOC/LSO~~ in a timely manner when they have issued a cure notice and provide counsel with requested information and documents including the cure notice. (See CRC 10.202.)

3. Take Corrective Action: If the Vendor fails to meet the demands of the cure notice within a reasonable time, the JBE must take appropriate action.

4. Reclaim Expenses of Corrective Action: If the JBE takes action to correct the failures of the Vendor, appropriate back-charges should be assessed against the Vendor. If available and allowed by the contract, offsets against amounts owed to the Vendor should be taken from pending payments.

5. Assessment by Judicial Council's Legal Services office~~AOC/LSO~~: For JBEs other than the HCRC, the Judicial Council's Legal Services office ~~AOC/LSO~~ will evaluate the complaint~~.~~ and ~~A~~after consultation with the JBE, if appropriate, ~~AOC/LSO~~it may provide an additional level of negotiation, identify possible

[6] Depending upon the circumstances and the terms of the contract, failure to provide a cure notice where informal settlement efforts have been unsuccessful may have a negative impact on the JBE's position. It is recommended that JBEs consult with legal counsel regarding whether or not to issue a cure notice.

remedies (including possible contract termination), and determine whether to recommend initiating legal action.

11.10 CONTRACT TERMINATION

Each contract must contain provisions that address the potential for termination, how terminations are accomplished, and the basis for termination. JBEs should seek legal counsel when terminating any contract.

A. Termination for Convenience

All contracts should contain provisions that allow the JBE to terminate the contract for the convenience of the JBE. A "termination for convenience" clause allows the JBE, at its sole option and discretion, to terminate the contract, in whole or in part, without any liability other than payment for work already performed, up to the date of termination.

Contracts should set forth the method for compensating the Vendor for work already performed upon termination for convenience.

Written notice to the Vendor is necessary to terminate all or part of a contract for convenience. Notice must state that the contract is being terminated under the termination for convenience provision, the effective date of the termination, the extent of termination, and instructions to the Vendor to stop performance under the contract. A Vendor termination for convenience clause may be warranted where the benefit to the JBE in permitting termination for convenience clearly outweighs the risks of permitting a Vendor to terminate at will.

B. Termination Due to Nonavailability of Funds

The JBE must be allowed to terminate the contract if expected or actual funding is withdrawn, reduced, or limited in any way before the expiration of the contract. If the contract does not contain a termination for convenience clause providing for termination in time to avoid a period where there are insufficient funds available for payment then the contract must contain a clause allowing termination in the case of nonavailability of funds. The JBE must provide the Vendor with written notice of such a termination.

In the event of a termination, in whole or in part, due to the nonavailability of funds, the Vendor will be paid for goods or services satisfactorily rendered up to the effective date of termination.

Contracts whose terms extend beyond the end of the current fiscal year should specify that the contract extension is conditioned upon the appropriation of sufficient funds by the applicable legislative authority. If sufficient funds are not appropriated, this type of contract is subject to termination at the conclusion of the fiscal year through which funds are available.

C. Termination for Cause

JBE contracts should contain a termination for cause clause to protect the JBE in the event of a Vendor default, especially when the contract does not contain a termination for convenience clause.

Vendors must be provided with a reasonable written notice of any termination for cause. The Vendor must also be provided an opportunity to be heard.

If required by the contract, or allowed by the contract and deemed reasonable by the JBE, the Vendor must be notified by a written cure notice of the default and advised that if the default is not “cured” within the time prescribed in the cure notice, the JBE may immediately initiate the contract termination process and hold the Vendor and its sureties liable for associated costs and damages (if applicable).

The JBE must issue a notice of default to the Vendor, if the Vendor fails to:

- Respond in a timely manner; or
- Satisfactorily cure the default.

If included as a provision to the contract, and a Vendor's right to proceed in performing the contract is terminated for cause, the JBE may take over and complete the work or cause it to be completed by other appropriate means to protect the JBE’s interests. The contract should specify that the Vendor is liable to the JBE for any increased costs incurred by the JBE associated with completing the work. In addition, the Vendor may be liable for damages, depending on the terms of the contract.

D. Contract Work Suspensions

If a temporary delay is a possibility, a “suspension of work” provision should be included in the contract. In accordance with the contract terms, and as the need arises, the JBE

may issue a written order to the Vendor to suspend, delay, or interrupt all or any part of the work for the period of time that the JBE determines appropriate.[7]

If the performance of all or any part of the contract work is delayed or interrupted (i) by an act of the JBE in the administration of the contract that is not implied or expressly authorized by the contract, (ii) by a failure of the JBE to act within the time specified in the contract (outside of a force majeure and subject to any contractually permitted or agreed-to extension of the time specified), or (iii) within a reasonable time if not specified, an adjustment should be made for an increase in the cost and time of performance of the contract caused by the delay or interruption, and the contract should be modified accordingly.

The suspension of work provision should state that the JBE is not liable for the Vendor's loss of anticipated profits in the event of a suspension of work.

11.11 FILING PRACTICES

The initial file setup is the responsibility of the JBE employee assigned to conduct the procurement. A JBE employee should be assigned to manage file maintenance.

The following practices will ensure the integrity of JBE contract files:

- Maintain files in a safe and secure area;
- Provide access to files on a "need-to-know" basis only, to minimize the potential for documents to be lost or misplaced;
- Do not permit original files to leave the building where they are filed until the contract work is completed. After completion and a holding period of six months, files may be sent to off-site storage;[8]
- Establish and follow a procedure for making copies and releasing files to the public to avoid losing files and records;
- Establish and follow a system such as the use of "out cards" to control accountability and mark the locations of files removed from the filing area. Depending upon the JBE's staffing capability, the assignment of a file administrator who has sole responsibility to pull files and file out cards is recommended;

[7] Suspensions should include a time limit, after which the provisions of the suspension of work clause should be clear that the work will either resume or one of the termination clauses will go into effect.
[8] FIN 12.01 (Record Retention) of the *Trial Court Financial Policies and Procedures Manual* addresses the period of time that superior court contract records are retained.

- Return original file folders to their designated file locations at the end of the workday. An assigned file administrator should be responsible for assuring that files that leave the designated area are retrieved within a reasonable time; and
- Discard duplicate files and working papers.

The JBE should develop a filing method using a consistent file format. One method of organizing contract files into distinct sections is presented below. Documents should be filed in reverse chronological order within each of the following file sections:

- Correspondence (with subsections for Vendor [incoming], and JBE [outgoing]);
- Preaward/Solicitation (includes Solicitation Document, an abstract of all Bids, etc.);
- Selection and Award (includes all management input and approvals, notice of award, etc.);
- Contract (with subsections for amendments, change orders, and notices, as appropriate);
- Reports, progress reviews, schedules and payment requests/invoices and Vendor evaluation;
- Internal documents (memos, e-mails, records of meetings and telephone conversations, etc.); and
- Miscellaneous (price lists, resumes, brochures, etc.).

The JBE should conduct annual reviews to assure its compliance with established file integrity requirements.

11.12 CONTRACT CLOSEOUT

The JBE must properly close out all contract files.

Closing out routine contracts for goods and other commercial products should be straightforward. The Contract Administrator must ensure that goods and services have been accepted and conform to the contract's specifications. Delivery and acceptance should be documented in the file that should also include any descriptive literature or warranty documentation. There should also be documentation confirming final payment by the accounts payable department.

Upon the authorization of final payment, the procurement file may be closed out. Closing out procurement files may consist of, but is not limited to, assuring that all pertinent documentation is included in the file, disencumbering any remaining funds (if appropriate), completing any required Vendor performance evaluation, and sending the file for appropriate storage and retention. Files should be maintained on site for six months after closeout; after that, they may be sent for off-site storage and retention.

11.13 DISCLOSURE OF CONTRACT DOCUMENTATION

Records created for the purpose of procuring goods and services are generally "judicial administrative records" subject to CRC 10.500, and are therefore available to the public absent an exemption. These records include, but are not limited to, contracts executed by the courts~~,~~ and the Judicial Council~~, and the AOC~~, as well as invoices and records maintained by these JBEs and fiscal information related to contract administration.

Specific provisions of this Manual also require disclosure of certain documents at stated intervals in the solicitation process. These requirements vary depending on the category of purchase involved and on the type of solicitation used. These specific requirements are discussed in chapters 4, 4A, 4B, and 4C, respectively, of this Manual.

Legal counsel should be consulted regarding questions about disclosure requirements under CRC 10.500 or this Manual.

Judicial Council of California

REPORTING REQUIREMENTS

CHAPTER 12

Original Release Date:	Revised Effective:
October 1, 2011	~~January 1, 2014~~July 1, 2015

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INTRODUCTION

This chapter describes the Judicial Council's obligations under PCC 19209 to provide reports to the Joint Legislative Budget Committee and the State Auditor relating to the "procurement of contracts" by any Judicial Branch Entity (JBE). In connection with these reports, this chapter describes the role of each JBE in providing information related to the JBE's contracts with Vendors to be included in the reports.

This chapter also describes the obligations under PCC 19204(a) of all JBEs to notify the State Auditor of certain contracts with total costs estimated at more than $1 million.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

12.1 JUDICIAL COUNCIL REPORTS UNDER PCC 19209

A. Reporting Periods

The Judicial Council will provide two semiannual reports each year to the Joint Legislative Budget Committee and the State Auditor as required by PCC 19209. One report will cover the period from January 1 through June 30, and will be provided by August 1. The other report will cover the period from July 1 through December 31, and will be provided by February 1 of the following year.

B. Content of Reports

The Judicial Council report will include a list of all Vendors that receive a payment from a JBE during the reporting period. PCC 19209 also requires the Judicial Council to submit additional information on each distinct contract between a Vendor and a JBE, but only if more than one payment was made under the distinct contract during the reporting period. For each distinct contract, the report will include the following information by Vendor:

- The JBE that contracted for the good or service;
- The amount of payment; and
- The type of service or good provided.

The report will also include a list of all JBE contracts that were amended during the reporting period. The report will contain the following information by Vendor for each distinct contract that was amended:

- The name of the Vendor;
- The type of service or good provided;
- The nature of the amendment;
- The duration of the amendment; and
- The cost of the amendment.

C. Responsibility of JBEs to Provide Information for Reports

Supreme Court: The ~~AOC~~ Judicial Council's ~~Fiscal Services Office~~ Finance office maintains information relating to payments to and contracts with the Supreme Court's Vendors. The Supreme Court is responsible for coordinating with the ~~AOC Fiscal Services Office~~ Judicial Council's Finance office, as appropriate, to ensure the information relating to payments to, and contracts with, the Supreme Court's Vendors is accurate, consistent, and complete.

Courts of Appeal: The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office maintains information relating to payments to and contracts with Vendors of each Court of Appeal. Each Court of Appeal is responsible for coordinating with the ~~AOC Fiscal Services Office~~ Judicial Council's Finance office, as appropriate, to ensure the information relating to payments to, and contracts with, Vendors is accurate, consistent, and complete.

Superior Courts: The Phoenix Statewide Financial System (Phoenix) is the source of information for compiling reports relating to payments during a reporting period by each superior court to Vendors and relating to contracts between Vendors and each superior court. Each superior court is responsible for ensuring that the information in Phoenix relating to payments to, and contracts with, that superior court's Vendors is accurate, consistent, and complete.

Habeas Corpus Resource Center (HCRC): The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office maintains information relating to payments to and contracts with Vendors of the HCRC. The HCRC is responsible for coordinating with the ~~AOC Fiscal Services Office~~ Judicial Council's Finance office, as appropriate, to ensure the information relating to payments to, and contracts with, the HCRC's Vendors is accurate, consistent, and complete.

Judicial Council~~/AOC~~: The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office is responsible for maintaining and providing accurate, consistent, and complete information relating to payments to, and contracts with, Vendors of the Judicial Council~~/AOC~~.

All JBE personnel involved in maintaining and providing the necessary information for reports should have the appropriate training, experience, level of responsibility, and accountability as is necessary to ensure the accuracy, completeness, and consistency of the information in the reports provided by the Judicial Council.

D. Responsibility to Prepare Reports for Judicial Council

The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office is responsible for preparing the portion of the Judicial Council reports that relates to the Supreme Court, Courts of Appeal, Judicial Council, ~~AOC,~~ and HCRC.

The Judicial Council's Trial Court Administrative Services ~~O~~office~~, Judicial and Court Administrative Services Division~~ (TCAS) is responsible for preparing the portion of the Judicial Council reports that relates to the superior courts.

The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office and TCAS are responsible for coordinating with each other to ensure that all information to be included in the Judicial Council reports is reported timely, accurately, and in a consistent form and format.

The ~~AOC Fiscal Services Office~~ Judicial Council's Finance office has lead responsibility for presenting the reports to the Judicial Council for approval for submission to the Joint Legislative Budget Committee and the State Auditor.

12.2 NOTIFICATIONS BY JBEs TO THE STATE AUDITOR UNDER PCC 19204

Under PCC 19204(a), any JBE contract with a total cost estimated at more than $1 million is subject to the review and recommendations of the State Auditor[1] to ensure compliance with the California Judicial Branch Contract Law. Each JBE must notify the State Auditor, in writing, of the existence of any such contract within 10 Court Days of entering into the contract. The date of "entering into the contract" is the date on which the contract is fully executed by all parties.

[1] PCC 19204(a) refers to the Bureau of State Audits; the Bureau of State Audits, however, now refers to itself as the California State Auditor's Office. This Manual uses the term State Auditor.

Note: Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than $5 million. (Under GC 68511.9, these contracts are subject to the review and recommendations of the California Department of Technology ~~Agency~~.[2])

[2] GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms are used in this Manual:

ADA	Americans with Disabilities Act
AOC	Administrative Office of the Courts[1]
~~**AOC/LSO**~~	~~Administrative Office of the Courts/Legal Services Office~~
CARI	California Alliance of Rehabilitation Industries
CCC	Contractor Certification Clauses
CRC	California Rules of Court
CRP	Community Rehabilitation Program
CSCR	California State Contracts Register
DGS	Department of General Services
DVBE	Disabled Veteran Business Enterprise
GC	Government Code
HCRC	Habeas Corpus Resource Center
IA	Interagency Agreement
IBA	Intra-branch Agreement
IFB	Invitation for Bids
IGC	Intergovernmental Contract
IT	Information Technology
JBCL	California Judicial Branch Contract Law
JBE	Judicial Branch Entity
LPA	Leveraged Procurement Agreement
MB	Microbusiness
MOU	Memorandum(a) of Understanding
MVC	Military and Veterans Code
NASPO	National Association of State Procurement Officials
NCB	Non-Competitively Bid
OSDS	Office of Small Business and Disabled Veteran Business Enterprise Services
PCC	Public Contract Code
PCO	Procurement and Contracting Officer
PO	Purchase Order

[1] The names “Administrative Office of the Courts” and “AOC” have been retired. Please refer to CRC 10.81(b) for further information.

RFI	Request for Interest
RFO	Request for Offer
RFP	Request for Proposals
RFQ	Request for Quote
SABRC	State Agency Buy Recycled Campaign
SAM	State Administrative Manual
SB	Small Business
SCM	State Contracting Manual
SCR	Special category non-competitively bid contract request
SOW	Statement of Work
TCAS	Trial Court Administrative Services ~~O~~office~~, Judicial and Court Administrative Services Division~~
TCFPPM	Trial Court Financial Policies and Procedures Manual
U.S.	United States or federal
WSCA	Western States Contracting Alliance

GLOSSARY

This glossary provides definitions of key terms used throughout the Manual.

Acceptance Testing – The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria and specifications).

ADA Coordinator – The JBE officer or employee who is available to respond to questions or concerns during the procurement process regarding reasonable accommodation for disability.

Approving Authority – For each type of JBE, the person identified in the following table:

JBE	Approving Authority
Supreme Court	Clerk of the Supreme Court
Courts of Appeal	Administrative Presiding Justice
Superior Courts	Presiding Judge
HCRC	Executive Director
Judicial Council ~~/ AOC~~	Administrative Director ~~of the Courts~~

Bid – A response to a competitive solicitation issued by a JBE. (The term "Bid" is used in this manual regardless of the Solicitation Document used by the JBE. Thus, a response to an RFQ, IFB, or RFP is referred to as a "Bid" even though industry practice may involve use of different terms such as "quote" or "proposal.")

Bid Closing Time – The date and time at which Bids are due for a particular solicitation.

Bidder – Any person or entity that submits a response to a competitive solicitation issued by a JBE, regardless of the Solicitation Document used by the JBE (e.g., RFQ, IFB, or RFP).

Buyer – The JBE officer or employee who performs day-to-day purchasing and contracting activities.

Certificate of Insurance – A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage; see chapter 8, section 8.2.D.

Contract Administrator – See definition in chapter 11, section 11.3 of this Manual.

Court Day – A business day of the applicable JBE.

DVBE – A business certified by the California Department of General Services as a "disabled veteran business enterprise," as that term is defined in MVC 999.

Evaluation Team – A group responsible for evaluating Bids. See chapter 4, section 4.4.A of this Manual for additional information.

Intra-branch Agreement (IBA) – A type of contract between judicial branch entities; see chapter 8, section 8.2.D of this Manual.

Invitation for Bid (IFB) – An invitation for bid; a type of Solicitation Document used in the procurement of non-IT goods and non-IT services.

Joint Legislative Budget Committee (JLBC) – A committee of the California State Senate with membership from both houses created to make recommendations to the Legislature and its houses on various matters including the California state budget, revenues and expenditures, and organization and functions of the State of California.

Judicial Branch Contract Law (JBCL) – Part 2.5 of the PCC; PCC 19201–19210.

Judicial Branch Entity (JBE) – A superior court, appellate court, the Judicial Council, ~~the Administrative Office of the Courts (AOC),~~ or the Habeas Corpus Resource Center (HCRC).

Leveraged Procurement – A type of procurement described in chapter 6, section 6.1 of this Manual.

Leveraged Procurement Agreement (LPA) – See definition in chapter 6, section 6.1 of this Manual.

Local Contracting Manual – A manual adopted by a JBE governing its procurement and contracting activities, as required by PCC 19206.

Memorandum of Understanding (MOU) – A type of intergovernmental agreement; see chapter 8, section 8.2.D of this Manual.

Microbusiness – A type of Small Business.

Payee Data Record – A form of document used primarily in connection with tax withholding.

Phoenix Statewide Financial System – The financial system maintained by the Judicial Council~~AOC~~ for recording and processing various financial activities of the

58 superior courts, including recording transactions in the general ledger, recording purchasing activities, and processing payments for goods and services.

Progress Payment – A partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

Prospective Bidder – A person or entity who supplies non-IT goods, non-IT services, or IT goods and services relevant to a competitive solicitation conducted by a JBE, but who has not yet submitted a Bid.

Protester – A person or entity who has submitted a protest in connection with a competitive solicitation conducted by a JBE.

Purchase Order (PO) – A typical purchase document, as described in chapter 8 of this Manual.

Request for Interest (RFI) – A document issued by a JBE to separate those Prospective Bidders who intend to participate in an upcoming solicitation from those who have no interest in participating.

Request for Offer (RFO) – A request made by a JBE to a potential LPA Vendor for a specific response or offer from the Vendor to clarify or confirm the terms of the JBE's procurement under the LPA.

Request for Proposal (RFP) – A type of Solicitation Document used in the procurement of non-IT services and IT goods and services.

Request for Quote (RFQ) – A type of Solicitation Document used in certain low-value or low-risk procurements.

Responsible Bidder – A Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.

Responsive Bid – A Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Small Business – A business certified by the California Department of General Services as a "small business" or a "microbusiness," as those terms are defined in GC 14837.

Solicitation Document – A document created by a JBE for seeking Bids from persons or entities interested in providing the non-IT goods, non-IT services, or IT goods and services being procured by the JBE. The term Solicitation Document includes RFQs, IFBs, and RFPs.

State Auditor – The State of California's independent external auditor that provides independent and nonpartisan assessments of California government's financial and operational activities in compliance with generally accepted government auditing standards.

Statement of Work (SOW) – A detailed description or reference to the object of a contract (e.g., goods, services, information technology).

Vendor – A person or entity with whom a JBE has entered into a contract for the provision of non-IT goods, non-IT services, or IT goods and services.

SUMMARY OF PROPOSED REVISIONS TO *JUDICIAL BRANCH CONTRACTING MANUAL*

Below is a chapter-by-chapter summary of the proposed revisions to the *Judicial Branch Contracting Manual* (manual). Certain minor, non-substantive changes are not included in this summary. For further details on the proposed revisions, please refer directly to the revisions shown in redlined format in the proposed draft of the revised manual.

INTRODUCTION

- Edits to reflect the AOC name retirement (e.g., on pages 5 and 7, references to the AOC have been replaced by references to the Judicial Council).
- Edits to reflect that the California Technology Agency is now referred to as the California Department of Technology (page 6).

CHAPTER 1 — PURCHASING AUTHORITY

- Edits in connection with the AOC name retirement – for example, on page 4:
  - Section 1.1.A: The reference to AOC procurement authority has been deleted from the chart.
  - Section 1.1.A: A reference to rule 10.80 of the California Rules of Court (CRC) has been added to the chart.

    Reason: Under CRC 10.80, the Administrative Director, appointed by the Judicial Council under article VI, section 6 of the Constitution, is responsible for allocating the financial and other resources relating to the Judicial Council staff to achieve the branch goals and policies adopted by the Judicial Council. The reference to CRC 10.80 provides further information regarding the Judicial Council's procurement authority.
  - Section 1.1.B: In connection with the AOC name retirement and CRC 10.81(b)(2) and (3), a footnote has been added to clarify that references to the AOC in Government Code sections 69206 and 70392 are now deemed to refer to Judicial Council staff.

CHAPTER 2 — PROCUREMENT PLANNING

- Edits to reflect the AOC name retirement (for example, on page 7 the reference to the AOC has been replaced by a reference to the Judicial Council), and updated nomenclature regarding Judicial Council staff (page 7).
- Edits to reflect that the California Technology Agency is now referred to as the California Department of Technology (page 13).

CHAPTER 3 — SOCIOECONOMIC AND ENVIRONMENTAL PROGRAMS

- Section 3.3.A (page 11): Removal of the reference to CRC 10.503 (regarding the use of recycled paper), which has been repealed.
- Sections 3.3.A. (page 11) and 3.3.B (page 11): Updates have been made to the contact information and web link regarding the SABRC (State Agency Buy Recycled Campaign) and CalRecycle.
- Section 3.4 (page 12): A footnote was added to the small business preference section to cross-

reference additional information on the small business preference in chapter 4C.

- Edits to reflect the AOC name retirement (for example, on pages 5 and 12, references to the AOC have been replaced by references to the Judicial Council).

CHAPTER 4 — COMPETITIVE SOLICITATION OVERVIEW

- Section 4.4.B. (page 14): The cross-reference has been changed to "chapter 5, section 5.9" because the cross-reference incorrectly referred to "chapter 5, section 5.9.A." (chapter 5 does not have a section 5.9.A.)
- In Appendix A (page 22), improvements have been made to the Darfur Contracting Act Certification form so that the form is easier to use and helps JBEs to maintain vendor information relating to Darfur Contracting Act certifications.

CHAPTER 4A — STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT GOODS

- No significant changes were made.

CHAPTER 4B — STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT SERVICES

- In step 2 (page 4), the following text has been added: "Do the services involve legal defense or legal advice?"

  Reason: The foregoing language was added to provide further clarification regarding factors to consider when determining whether non-IT services being procured are legal services, which do not need to be competitively bid under Public Contract Code section 10335.5(c)(4). The new language is consistent with PCC 10335.5(c)(4), which exempts contracts for "legal defense, legal advice, or legal services" from competitive bidding.

CHAPTER 4C — STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF IT GOODS AND SERVICES

- In the introduction (page 3) and step 6B (page 8), updated section references to the Public Contract Code have been added to reflect revisions to Public Contract Code section 12102 and the addition of a new Public Contract Code section 12102.2.

CHAPTER 5 — NON-COMPETITIVELY BID (NCB) PROCUREMENTS

- No significant changes were made.

CHAPTER 6 — LEVERAGED PROCUREMENT

- Edits to reflect the AOC name retirement (e.g., page 3).

CHAPTER 7 — PROTESTS

- No significant changes were made.

CHAPTER 8 — CONTRACTS

- In section 8.1 (page 3), the following text was deleted from footnote 1: "Contracts for public works will be addressed in the AOC's Local Contracting Manual." This deletion was made as a conforming change to a similar deletion in section 5 of the manual's Introduction during the last

revision of the manual in December 2013. The reference to the AOC's Local Contracting Manual is unnecessary.

- In Appendix C, section 10 (page 29), additional terms have been added to reflect changes to Business & Professions Code section 6072.
- Edits to reflect the AOC name retirement (e.g., page 12).
- Edits to reflect that the California Technology Agency is now referred to as the California Department of Technology (page 14).

CHAPTER 9 — DISBURSEMENT AND PAYMENT PROGRAMS

- Edits to reflect the AOC name retirement (e.g., page 7).

CHAPTER 10 — RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES

- Edits to reflect the AOC name retirement (e.g., page 6).

CHAPTER 11 — CONTRACT ADMINISTRATION

- Edits to reflect the AOC name retirement (e.g., page 5) and updated nomenclature regarding Judicial Council staff (page 11).

CHAPTER 12 — REPORTING REQUIREMENTS

- Edits to reflect the AOC name retirement (e.g., page 4).
- Edits to reflect that the California Technology Agency is now referred to as the California Department of Technology (page 6).

ABBREVIATIONS AND ACRONYMS

- Edits to reflect the AOC name retirement (e.g., page 1) and updated nomenclature regarding Judicial Council staff (e.g., page 2).

GLOSSARY

- Edits to reflect the AOC name retirement (e.g., page 1).

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25, 2015

Title
Judicial Council Report to the Governor and Legislature: 2015 Language Need and Interpreter Use Study

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Court Interpreters Advisory Panel
Hon. Steven K. Austin, Chair
Christina Volkers, Vice-Chair

Agenda Item Type
Action Required

Effective Date
June 25, 2015

Date of Report
January 2015

Contact
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Executive Summary

The Court Interpreters Advisory Panel recommends that the Judicial Council approve the *2015 Language Need and Interpreter Use Study* for submission to the Governor and Legislature. The study, conducted by the National Center for State Courts, details interpreter use in the trial courts for the fiscal year (FY) period FY 2009–FY 2013 and projects future language need.

Recommendation

Under Government Code section 68563, every five years the Judicial Council of California is required to submit to the Governor and the Legislature a study of spoken language need and interpreter use in the trial courts.

The National Center for State Courts (NCSC) was contracted to conduct the *2015 Language Need and Interpreter Use Study* under the direction of the Judicial Council's Court Language Access Support Program. On April 16, 2015, NCSC presented its findings and recommendations to the Court Interpreters Advisory Panel (CIAP). CIAP unanimously approved that the report be

submitted to the Judicial Council for approval and subsequent submission to the Governor and Legislature as required.

Previous Council Action

On October 11, 2000, the Judicial Council approved the *2000 Language Need and Interpreter Use Study* for submission to the Governor and Legislature and approved CIAP's recommendation to designate Armenian, Cambodian (Khmer), Mandarin, Russian, and Punjabi for inclusion in the Court Interpreter Certification Program.

On April 21, 2006, the Judicial Council approved the *2005 Language Need and Interpreter Use Study* for submission to the Governor and the Legislature and adopted CIAP's recommendation that no additional languages be designated for inclusion in the Court Interpreter Certification Program.

On August 27, 2010, the Judicial Council approved the *2010 Language Need and Interpreter Use Study in California Superior Courts* for submission to the Legislature and the Governor in accordance with Government Code section 68563. Subsequently, the Administrative Director, per the authority delegated by the Judicial Council, approved CIAP's recommendation to designate Farsi for inclusion in the Court Interpreter Certification Program.

Rationale for Recommendation

Government Code section 68563 requires the Judicial Council to submit a report on language and interpreter use and need in court proceedings to the Legislature and the Governor every five years. Therefore, CIAP recommends that the Judicial Council approve the *2015 Language Need and Interpreter Use Study* (see Attachment A) for submission to be in compliance with Government Code section 68563.

Comments, Alternatives Considered, and Policy Implications

Study Overview

The purpose of this report is to provide the Judicial Council with (1) a comprehensive study on interpreter use in spoken languages for the period FY 2009–2013 and (2) information on future language need for consideration of changes to the designation of languages for certification in required proceedings. Required proceedings cited in the report include criminal and juvenile proceedings, domestic violence proceedings (including elder abuse), and family law matters in which protective orders are sought. The express authorization to provide interpreters in other civil matters was not effective until January 1, 2015, and thus was not included in the analysis in this report.

The NCSC conducted an analysis of data from the trial courts, JBSIS (Judicial Branch Statistical Information System), Phoenix, the 2010 Census, and the American Community Survey.

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Key Findings

Following are key findings regarding interpreter use in required proceedings:

- Over 1 million service days of interpretation were provided in the state courts during the four-year study period.

- The total number of interpreter service days declined about six percent from year one to year four of the study period (FY 2009–2010 to FY 2012–2013), although the pattern varied slightly by region. During the same time, filings of cases for which interpreters were required declined by 21 percent, suggesting that a high level of interpreter services was maintained during this period.

- Interpreter service days were concentrated in Region 1 (which includes the Superior Court of Los Angeles County), which provided about one-third of the total service days. The remaining two-thirds were divided almost evenly across the remaining three regions.[1]

- Spanish accounted for 72 percent of all interpretation in the state courts during the study period. No other language accounted for more than 4 percent of the remaining service days.

- Whereas some languages are interpreted in significant proportions in all regions (e.g., Spanish, Cantonese, and Tagalog), others are concentrated in one or two regions (e.g., Arabic and Punjabi).

- Statewide, the vast majority of service-day assignments are full-day sessions (71 percent), although this pattern varies by region.

- The proportion of service days provided by interpreters who are court employees remained relatively constant, at about two-thirds of the total.

Recommendations based on future language needs

NCSC proposed a set of criteria that could be used to identify languages to be considered for designation and de-designation. Based on the benchmark of 2,000 annual service days of use, the NCSC made the following recommendations to the Judicial Council:

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[1] The four regions are established by Government Code section 71807 as follows: Region 1—Los Angeles, Santa Barbara, and San Luis Obispo Counties; Region 2—counties of the First and Sixth Appellate Districts, except Solano County; Region 3—counties of the Third and Fifth Appellate Districts; and Region 4—counties of the Fourth Appellate District.

1. Retain the classification of Arabic, Eastern and Western Armenian, Cantonese, Farsi, Khmer, Korean, Mandarin, Punjabi, Russian, Spanish, Tagalog, and Vietnamese as designated languages.

2. Consider establishing a certification program for testing and certifying court interpreters in Farsi.

3. Consider de-designation of the Japanese language.

4. Consider de-designation of the Portuguese language.

5. Monitor the usage of the Hmong, Lao, and Romanian languages for possible future designation.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements, costs, or operational impacts are associated with submitting this report to the Governor and Legislature.

Relevant Strategic Plan Goals and Operational Plan Objectives

Adoption of this report is consistent with two judicial branch strategic goals. The first is Goal I, Access, Fairness, and Diversity, specifically objective 5 of the related operational plan, which calls for increasing the availability of language-assistance services to all court users, increasing qualified interpreter services in mandated court proceedings, and seeking to expand services to additional court venues. The second is strategic Goal IV: Quality of Justice and Service to the Public.

The Court Interpreters Advisory Panel has amended its 2015 Annual Agenda to include the objective of formulating a policy for de-designation of languages, consistent with recommendations 3 and 4 cited above. After a policy is developed later this year, CIAP will bring its recommendation to the Judicial Council for approval.

Attachments

1. Attachment A: *2015 Language Need and Interpreter Use Study*

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ATTACHMENT A

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Report Summary

Report title: *2015 Language Need and Interpreter Use Study*

Statutory citation: Government Code section 68563

Date of report: January 2015

The Judicial Council has submitted a report to the Governor and Legislature in accordance with the requirements of Government Code section 68563.

The following summary of the report is provided under the requirements of Government Code section 9795.

The study was conducted by the National Center for State Courts (NCSC) and covers a period of four fiscal years (FYs), FY 2009–2010 through FY 2012–2013.

The report is divided into two key parts: Interpreter Use in Required Proceedings and Projecting Future Language Need. Required proceedings cited in the report include criminal and juvenile proceedings, domestic violence proceedings (including elder abuse), and family law matters in which protective orders are sought.

After reviewing all available data, the NCSC report authors recommend that the Judicial Council (1) consider the de-designation of the languages Japanese and Portuguese, and (2) continue the classification of Farsi as a designated language and establish a certification program for testing and certifying court interpreters in Farsi.

The Court Interpreters Advisory Panel, on behalf of the Judicial Council, is currently addressing the above recommendations and will present its findings and recommended actions to the Judicial Council.

The full *2015 Language Need and Interpreter Use Study* is available at www.courts.ca.gov/7466.htm. A printed copy of the report may be obtained by calling 415-865-4288.

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Language Need and Interpreter Use Study

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2015 Language Need and Interpreter Use Study

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January 2015

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The NCSC research team cannot adequately thank all of those whose work is reflected in this study, but would like to recognize the following for their generous assistance.

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Executive Summary

Purpose

As the policymaking body for the judiciary, the Judicial Council of California is responsible to provide direction for the fair and impartial administration of justice in the state courts of California. The provision of language access services is a fundamental right guaranteed by the California Constitution[1] that aims to ensure equal access to justice for litigants with limited English proficiency. Government Code § 68563 requires that the Judicial Council conduct a study of language and interpreter use in the trial courts every five years and report its findings to the Governor and the Legislature.[2]

The purpose of this report is to provide the Judicial Council with a comprehensive report on interpreter use in spoken languages for the period 2009-2013 and to provide the information on future language need required to consider changes to the designation of languages for certification.

Key Findings

Part One: Interpreter Use in Required Proceedings

- Over one million service days of interpretation were provided in the state courts during the study period.[3] The total number of interpreter service days declined about 6 percent over the study period, 2009-2013, although the pattern varied slightly by region. During the same time, filings of cases for which interpreters are required declined by 21 percent, suggesting that a high level of interpreter services was maintained during this period.

- Interpreter service days were concentrated in Region 1 (which includes Los Angeles), which provided about one-third of the total. The remaining two-thirds was divided almost evenly across the remaining three regions.

- Spanish accounted for 72 percent of all interpretation in the state courts during the study period. No other language accounted for more than 4 percent of the remaining service days.

- While some languages are interpreted in significant proportions in all regions (e.g., Spanish, Cantonese, Tagalog), others are concentrated in one or two regions (e.g., Arabic, Armenian [all types], Punjabi).

- Statewide, the vast majority of service day assignments are full day sessions (71 percent), although this pattern varies by region.

- The proportion of service days provided by interpreters who are court employees remained relatively constant at about two-thirds of the total.

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[1] Cal. Const., Article I § 14.

[2] Cal. Gov. Code § 68563, accessed at http://codes.lp.findlaw.com/cacode/GOV/1/8/2/4/s68563

[3] A service day is an assignment to interpret one or more court proceedings completed by a staff (employee) or contract interpreter. A service day can be a full, half-day, or night session.

- About three-quarters of the contractor interpreters who provided service during the study period were certified or registered interpreters.

- Misdemeanor cases and Felony cases account for about half of all service days.

Part Two: Future Language Need

Modeling of future language need employs three primary factors: changes in the Limited English Proficient (LEP) populations, changes in filings of new cases, and changes in interpreter service days by language. Given that a primary purpose of the future need analysis is to classify languages for possible designation or de-designation, the analysis focuses on the 19 most frequently occurring languages. Of these 19 languages, 15 are currently designated.

Based on review of trends in caseload and LEP populations and patterns of use of court interpreter services during the study period, and using the benchmark of 2,000 annual service days of use in the courts for designation, the following recommendations are made for consideration by the Judicial Council:

- Recommendation 1: The Judicial Council should retain the classification of Arabic, Eastern Armenian, Western Armenian, Cantonese, Khmer, Korean, Mandarin, Punjabi, Russian, Spanish, Tagalog, and Vietnamese as designated languages with established certification programs.

- Recommendation 2: The Judicial Council should continue the classification of Farsi as a designated language and should establish a certification program for testing and certifying court interpreters in this language.

- Recommendation 3: The Judicial Council should consider the de-designation of the Japanese language.

- Recommendation 4: The Judicial Council should consider the de-designation of the Portuguese language.

- Recommendation 5: The Judicial Council should monitor the usage of the Hmong, Lao, and Romanian languages for possible future designation.

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Part One: Interpreter Use in Required Proceedings

I. Introduction

Statewide administrative oversight of the provision of court interpreters is the responsibility of the Court Language Access Support Program (CLASP), which is part of the Judicial Council's Court Operations Service, Operations and Programs Division. The CLASP is charged with managing the testing and certification of court interpreters, as well as their training and continuing education and professional development requirements.[4]

The CLASP staff works under the direction of the Judicial Council and its Court Interpreters Advisory Panel (CIAP), which "assists the Judicial Council with the advancement of language access to the courts. The panel makes recommendations to the council on policies and procedures including but not limited to, interpreter use and need, certification, registration, and professional conduct."[5] As part of that requirement, this report was reviewed by the CIAP as well as by staff of the CLASP prior to submission to the Judicial Council.

The current study evaluates the service days[6] utilized for the provision of court interpreter services for these required case types[7]:

- Traffic Infraction
- Non-traffic Infraction
- Misdemeanor (Traffic and Non-Traffic)
- Felony
- Delinquency
- Dependency
- Domestic Violence (including Elder Abuse)
- Paternity (where protection order is sought)
- Dissolution (where protection order is sought)
- Legal Separation (where protection order is sought)
- Nullity (where protection order is sought)

Data on interpreter use from FY 09-10 through FY 12-13 are analyzed along a number of dimensions, including:

- Region
- Language

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[4] See http://www.courts.ca.gov/documents/Fact_Sheet-_Court_Interpreters.pdf for additional details.

[5] See http://www.courts.ca.gov/programs-interpreters.htm, accessed April 24, 2014 for additional background.

[6] A service day is an assignment to interpret one or more court proceedings completed by a staff (employee) or contract interpreter. A service day can be a full, half-day or night session.

[7] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014 for additional information.

- Session type
- Interpreter employment status
- Interpreter certification status
- Case type

A Brief Description of the Organization of Court Interpreter Services

Court interpreters are provided to litigants involved in any of the required case types; trial court expenditures for these interpreter services are reimbursed by the Trial Court Trust Fund Program 45.45 appropriation.[8]

Court interpreters work either as superior court employees or as independent contractors. Compensation for employees is set by local contracts and pay scales, while compensation rates for contract interpreters is set by the Judicial Council, which determines rates for full-day, half-day, and night sessions, while also allowing for local flexibility.

For collective bargaining and some administrative purposes, court interpreters working as employees in the superior courts of California are grouped into four regions. These regions correspond to appellate districts, although two of the four regions combine two appellate districts into one region. See the adjacent map of the four regions. Staff interpreters can be cross-assigned between courts within a region as well as between courts in different regions, according to the manner specified in each region's memorandum of understanding (MOU).[9]

Court interpreters of spoken languages interpret one or more of the more than 200 languages spoken in California. The languages most heavily used are "designated" and interpreters of those languages must pass both a written examination in English and a bilingual interpreting examination in their non-English spoken language to become certified court interpreters. The current designated languages for which interpreters may be certified are Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.[10]

For languages that are not "designated," interpreters are classified as registered court interpreters after passing a written examination and oral proficiency examination in English and an oral proficiency examination in their non-English language. Bilingual interpreting examinations are not developed for languages that are not "designated."

Interpreters who do not undertake and pass one of these examination routes are considered noncertified/nonregistered for the purposes of this report.

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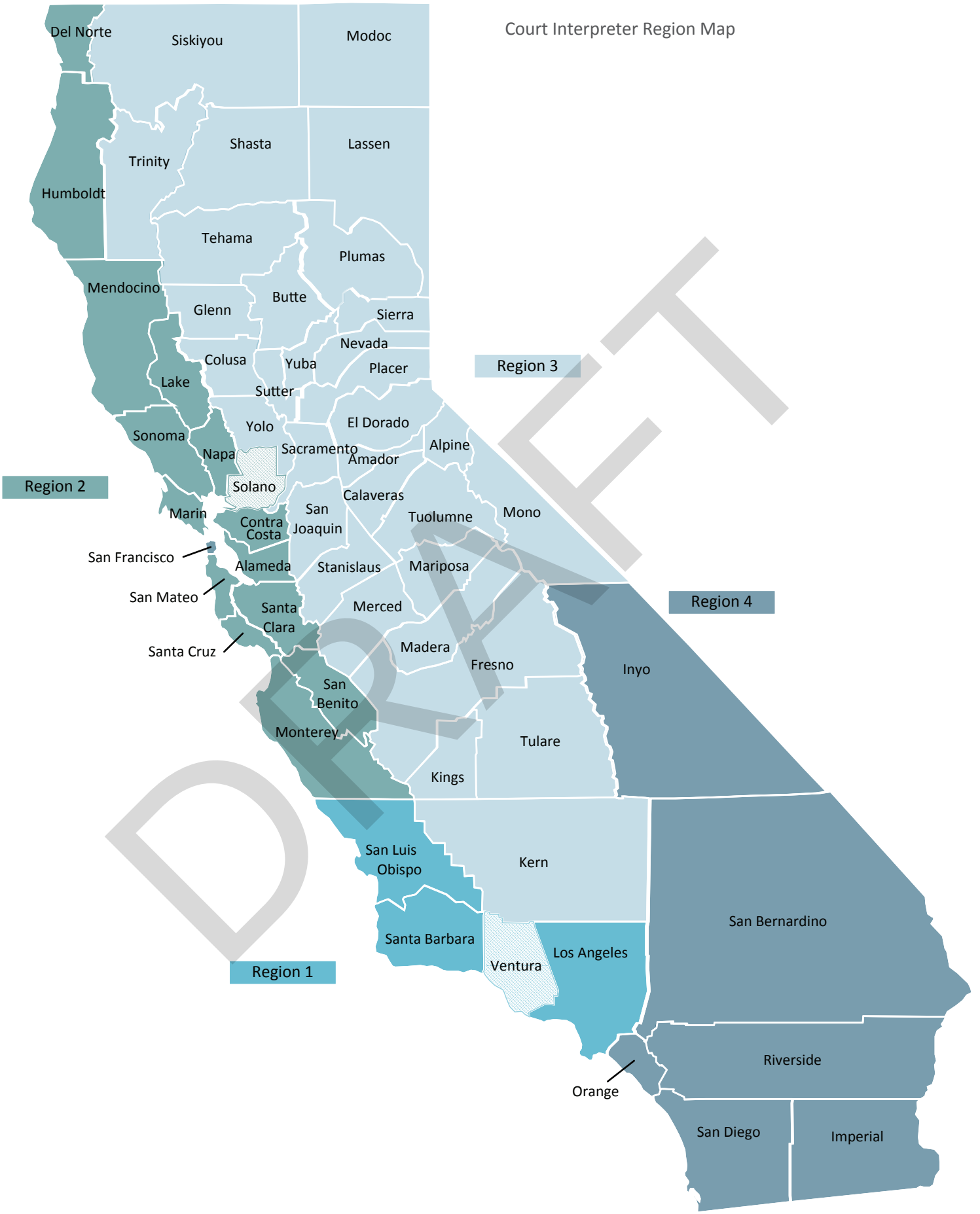
[8] At its January 23, 2014 business meeting, the Judicial Council amended the policy to allow unexpended funds to be used for additional court proceedings. See http://www.courts.ca.gov/documents/jc-20140123-itemD.pdf

[9] Note that the superior courts in the counties of Solano and Ventura do not belong to one of the regions. However, for purposes of analysis of interpreter use and need throughout this report, the Superior Court of California, County of Ventura, is considered part of Region 1, and the Superior Court of California, County of Solano, is considered part of Region 2.

[10] Farsi was designated effective January 1, 2011, thus a program for testing and certifying Farsi interpreters did not exist during the study period of this report. (See Judicial Council: Fact Sheet: Court Interpreters Program, p. 3 (March 2013)).

Court Interpreter Region Map



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Data Sources for Court Interpreter Services

The primary sources of data for this study include fiscal data from the Program 45.45 expenditure records for court interpreter employees and contractors for FY 09-10 through FY 12-13 for all 58 superior courts as well as a variety of data sources recording the use of interpreters that are summarized in Table 1 below.

Because interpreter assignments are not fully reported by the Court Interpreter Data Collection System (CIDCS) and other information systems used in superior courts, expenditure data were used to weight the assignment data up to be fully representative of the interpreter services provided. A full description of the methodology employed in creating the master data set for this analysis is contained in Appendix A.

Table 1. Data Sources on Interpreter Use

Data Source	Region 1	Region 2		Region 3		Region 4
Court Interpreter Data Collection System (CIDCS)	Los Angeles[a] San Luis Obispo Santa Barbara Ventura[b]	Alameda Contra Costa Del Norte Humboldt Lake Marin Mendocino Monterey	San Benito San Francisco San Mateo Santa Clara Santa Cruz Solano[b] Sonoma	Amador Butte Calaveras Colusa El Dorado Fresno Glenn Kern Kings Lassen Madera Mariposa Merced	Placer Plumas Sacramento San Joaquin Shasta Siskiyou Stanislaus Sutter Tehama Tulare Tuolumne Yolo Yuba	Imperial Riverside San Bernardino San Diego
FTE Position Tallies	Los Angeles[a]					
Reporter Interpreter Tracking System (RITS)						Orange[c]
Vision						Orange[c]
Independent Data Systems[d]		San Francisco	Stanislaus	Amador Nevada	Sacramento	
No Data Source		Napa		Alpine Modoc Mono	Sierra Trinity	Inyo
Phoenix (Expenditure Data)	All	All		All		All

[a] Los Angeles' Superior Court entered a small number of grant-funded, non-Program 45.45 interpreter assignments into CIDCS and provided aggregate service positions staffed by language and location.

[b] For purposes of analysis of interpreter use and need throughout this report, the Superior Court of California, County of Ventura, is considered part of Region 1, and the Superior Court of California, County of Solano, is considered part of Region 2.

[c] The Superior Court in Orange County uses RITS for scheduled interpreter assignments and Vision to record certain completed interpreter assignments.

[d] Several courts provided interpretation data separately to supplement or substitute for CIDCS data.

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II. Statewide and Regional Interpreter Use in Spoken Languages

Overview

California's superior courts provided over one million service days of interpretation services in the required proceedings during the study period, FY 09-10 through FY 12-13. California tracks interpreter use through the number of service days, based on expenditure data. For the purpose of this report, a service day is defined as a completed assignment in which interpretation has been conducted in one or more required court proceedings. A service day can consist of interpretation for one or more cases, and can be completed as either a full-day, half-day, or night session. By examining the specific profile of each court's staff and contract interpreter service days, and the specific rates of pay in use in each region during the study period, expenditure data and assignment data for each court was used to estimate the number of total service days completed in each court. It is important to understand that a service day does not measure the actual time spent in providing interpreter services or interpreter workload; rather, it is a measure of interpreter service as reflected in expenditures.[11]

The statewide and regional total service days by year are reported below in Table 2. Region 1, which includes Los Angeles, accounts for approximately one-third of these service days. Region 4, which includes Orange and San Diego, accounts for an additional one-quarter of the total. The balance of these service days is provided by Region 2 (22 percent) and Region 3 (19 percent). These proportions closely mirror those reported in the previous study period, 2004-2008. The total number of service days declined about 6 percent over this four-year period, with the largest decrease occurring in Region 1 (10 percent), followed by Region 3 (9 percent), and Region 4 (3 percent). In Region 2, on average there was no change in the number of service days during this period.

Table 2. Total Service Days, Required Proceedings, by Region[12]

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Region 1	95,672	88,972	88,645	86,115	359,404	34%
Region 2	59,828	57,418	60,527	59,681	237,455	22%
Region 3	50,553	53,366	50,893	45,838	200,650	19%
Region 4	64,079	65,492	66,070	62,366	258,008	24%
Statewide	270,133	265,247	266,135	254,001	1,055,516	100%

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[11] See Appendix A for a more detailed discussion of the methodology used to combine expenditure data with data on assignments.

[12] Statistics reported in this and all subsequent tables in this report are estimated based on weighted counts as well as estimates for courts that did not report through the CIDCS information system. See Appendix A for a detailed explanation.

This modest decline is not surprising, since during this same time period the total number of cases filed statewide for the required case types declined by about 21 percent as shown in Table 3 below.[13] Assuming that the proportion of required case types requiring an interpreter remains constant as a share of the total caseload, the fact that the rate of decline of service days of interpretation provided in required case types was less than the rate of decline in total number of required case types suggests that provision of interpreter service has been maintained and even possibly improved during this time period. An analysis of the reasons for declining filings of required case types is beyond the scope of this report, but the decline may be linked to factors such as the decline in crime rates and the reduction in budgets and services provided by all justice system partners, including the courts.

Table 3. Total Filings, Required Case Types

	2009	2010	2011	2012
Total Filings, Required Case Types	8,525,306	8,136,946	7,385,198	6,716,548
4-year percent change				**-21%**

Service Days by Language

The statewide totals by language for the study period FY 09-10 through FY 12-13 are shown in Table 4 as well as the percentage of all service days each language makes up of the total. The overall ranking of the languages has remained largely the same as reported during the previous study period (2004-2008). Not surprisingly, Spanish remains the primary language in which interpretation was provided, representing about 72 percent of all interpreter service days. The remaining interpreter service days of spoken language interpretation are divided across a large number of languages, each of which accounts for less than 4 percent of the total service days.

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[13] Caseload estimates provided by the Office of Court Research, Court Operations Services, Operations and Programs Division, Judicial Council of California. Case types in all information systems documenting interpreter use do not align completely, and for that reason these statistics should be considered estimates.

Table 4. Total Service Days, 30 Most-Interpreted Spoken Languages

Language	Total	Percent
Spanish	759,409	71.9%
Vietnamese	40,711	3.9%
Korean	25,568	2.4%
Mandarin	22,966	2.2%
Farsi	18,927	1.8%
Cantonese	17,605	1.7%
Russian	17,262	1.6%
Tagalog	14,606	1.4%
Arabic	14,558	1.4%
Punjabi	13,105	1.2%
Khmer	9,864	0.9%
Japanese	6,872	0.7%
Hmong	6,755	0.6%
Lao	5,990	0.6%
Romanian	4,591	0.4%
Hindi	4,080	0.4%
Armenian (unknown)	3,899	0.4%
Armenian, Eastern	3,742	0.4%
Tongan	3,351	0.3%
Portuguese	3,283	0.3%
Armenian, Western	3,019	0.3%
Pashto	2,457	0.2%
Samoan	2,292	0.2%
Thai	2,091	0.2%
Amharic	2,051	0.2%
Slovak	1,817	0.2%
French	1,741	0.2%
Mongolian	1,585	0.2%
Mien	1,572	0.1%
Mixteco	1,527	0.1%
Other/Unknown	38,222	3.6%
Total	**1,055,516**	**100.0%**

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Table 5 reports the number of service days in required proceedings per year for the 30 most frequently interpreted spoken languages. The annual total number of service days shown at the bottom of each column reflects some year-to-year variation, with an overall slight decline of about 6 percent from FY 09-10 to FY 12-13, from 270,133 to 254,001 service days. As noted above, this is consistent with the overall decline in the caseload for required case types throughout the state.

Languages that appear to have experienced slight increases in service days include Korean, Mandarin, Cantonese, Farsi, and Arabic. On the other hand, Hmong, Lao, and Hindi appear to have experienced slight declines. However, caution must be exercised to avoid over-interpreting what may be the result of inconsistencies in reporting of these data within and among regions.

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Table 5. Total Service Days, 30 Most-Interpreted Spoken Languages

	Service Days				
Language	**FY09-10**	**FY10-11**	**FY11-12**	**FY12-13**	**Total**
Spanish	196,981	192,549	191,196	178,683	759,409
Vietnamese	9,686	10,595	10,539	9,891	40,711
Korean	6,048	6,392	6,279	6,849	25,568
Mandarin	4,824	5,242	6,217	6,683	22,966
Farsi	4,745	4,343	4,550	5,289	18,927
Cantonese	4,020	4,313	4,640	4,633	17,606
Russian	4,086	4,065	4,610	4,500	17,262
Tagalog	4,170	3,502	3,583	3,351	14,606
Arabic	2,914	3,163	3,809	4,673	14,558
Punjabi	4,536	2,837	2,983	2,748	13,105
Khmer	2,786	2,425	2,473	2,179	9,864
Japanese	1,970	1,571	1,685	1,646	6,872
Hmong	1,907	1,737	1,527	1,585	6,755
Lao	1,705	1,636	1,269	1,379	5,990
Romanian	1,041	1,136	1,189	1,225	4,591
Hindi	1,509	964	972	635	4,080
Armenian (unknown)	839	646	818	1,597	3,899
Armenian, Eastern	1,036	897	905	904	3,742
Tongan	1,814	423	683	431	3,351
Portuguese	772	739	790	982	3,283
Armenian, Western	924	731	674	690	3,019
Pashto	752	695	516	494	2,457
Samoan	558	624	661	450	2,292
Thai	600	549	403	540	2,091
Amharic	352	456	472	771	2,051
Slovak	405	505	468	439	1,817
French	329	238	345	828	1,741
Mongolian	343	247	394	601	1,585
Mien	393	363	422	394	1,572
Mixteco	405	383	383	356	1,527
Other and Unknown	7,683	11,283	10,681	8,575	38,222
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**

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The statewide trends observed in Table 5 can be further understood by examining important regional differences, which can be seen in Table 6 adjacent. Table 6 reports the percentage of the statewide total for each interpreted language that is provided in each region in required proceedings. Here it must be noted, as was the case in the previous study period, that the statistical method required to weight the assignment data may overstate the service days provided in languages (typically, languages other than Spanish) that most courts do not typically provide through interpreters who are court employees but rather through the use of contractors). This is because there is some evidence that the CIDCS data generally represent a larger proportion of reported service days for the expenditures for contractors than for employees, and contractors tend to be used for languages other than Spanish.[14] Nonetheless, several observations are worth noting.

Spanish language interpretation is provided in the highest volume in Region 1, which includes Los Angeles. In the other regions, the distribution of Spanish language interpretation is rather even. This table illustrates that while some language communities are somewhat dispersed among the regions (e.g., Spanish, Cantonese, Tagalog), others are concentrated in a specific region (e.g., Arabic in Region 4, Armenian (all types) in Region 1, Punjabi in Region 3).

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[14] See Appendix A for a discussion of how assignment data were weighted using expenditure data.

Table 6. Proportion of Reported Language Use by Region, 30 Most-Interpreted Spoken Languages

Language	Region 1	Region 2	Region 3	Region 4	Total
Spanish	40.4%	20.5%	18.6%	20.4%	100%
Vietnamese	12.6%	40.1%	7.9%	39.4%	100%
Korean	34.9%	19.7%	1.5%	43.9%	100%
Mandarin	23.1%	29.0%	2.5%	45.3%	100%
Farsi	21.6%	52.1%	16.5%	9.8%	100%
Cantonese	22.8%	31.2%	10.1%	35.9%	100%
Russian	12.6%	42.7%	8.6%	36.1%	100%
Tagalog	18.6%	18.4%	44.6%	18.4%	100%
Arabic	9.8%	26.3%	6.2%	57.7%	100%
Punjabi	3.1%	29.6%	61.9%	5.4%	100%
Khmer	43.6%	9.1%	21.7%	25.6%	100%
Japanese	1.5%	4.8%	92.0%	1.6%	100%
Hmong	32.8%	20.8%	3.0%	43.4%	100%
Lao	2.7%	9.0%	58.4%	29.8%	100%
Romanian	.1%	4.6%	47.5%	47.8%	100%
Hindi	29.1%	29.3%	4.1%	37.5%	100%
Armenian (unknown)	44.9%	.3%	16.0%	38.7%	100%
Armenian, Eastern	86.4%	1.5%	6.4%	5.7%	100%
Tongan	.5%	65.6%	4.7%	29.3%	100%
Portuguese	7.2%	47.7%	18.5%	26.6%	100%
Armenian, Western	88.1%	.2%	10.6%	1.2%	100%
Pashto	.0%	9.4%	5.6%	85.0%	100%
Samoan	.0%	21.9%	5.0%	73.1%	100%
Thai	22.4%	20.2%	2.9%	54.4%	100%
Amharic	.1%	62.6%	5.3%	32.0%	100%
Slovak	.0%	.5%	98.6%	.8%	100%
French	2.2%	66.4%	.8%	30.6%	100%
Mongolian	.4%	91.8%	4.2%	3.6%	100%
Mien	.0%	20.0%	80.0%	.0%	100%
Mixteco	58.1%	14.4%	24.9%	2.6%	100%
Other/Unknown	1.9%	18.8%	30.9%	48.4%	100%
Total	**34.1%**	**22.5%**	**19.0%**	**24.4%**	**100%**

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Service Days by Session Type

Table 7 reports on the number of service days in required proceedings by session type by region and statewide. Statewide, the number and proportion of full-day sessions remained relatively constant at about 71 percent. Half-day sessions account for almost all of the remaining service days, with night sessions making up less than half of one percent of the total. Night sessions are not as commonly conducted throughout the state. In Region 1 night sessions are rare, as was the case during the last reporting period 2004-2008. Regions 2, 3, and 4 make comparatively more use of night sessions, but they remain a very small percentage of the service days in required proceedings.

Table 7. Total Service Days, by Session Type

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Full-day	191,217	191,092	187,912	176,478	746,699	**71%**
Half-day	78,284	73,617	77,753	77,320	306,975	**29%**
Night	632	538	470	203	1,842	**<1%**
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Full-day	85,655	76,814	79,524	76,887	318,880	**89%**
Half-day	10,012	12,158	9,121	9,225	40,516	**11%**
Night	5	0	0	3	8	**<1%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Full-day	24,907	32,343	28,520	24,670	110,441	**47%**
Half-day	34,546	24,783	31,708	34,933	125,970	**53%**
Night	375	292	299	78	1,044	**<1%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Full-day	29,047	28,596	27,875	27,193	112,711	**56%**
Half-day	21,376	24,620	22,929	18,578	87,503	**44%**
Night	130	150	88	68	436	**<1%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Full-day	51,607	53,340	51,992	47,728	204,668	**79%**
Half-day	12,350	12,056	13,995	14,585	52,986	**21%**
Night	122	96	83	53	354	**<1%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

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Given the volume of Spanish language interpretation, it is not surprising that Spanish interpretation is mostly conducted with full-day sessions. Table 8 below summarizes the breakdown of session types by Spanish compared to the remaining 30 most-interpreted spoken languages.

Table 8. Distribution of Session Types, by Language

	Full-Day	Half-Day	Night
Spanish	77.3%	22.5%	<1%
Remaining 30 Most Interpreted Spoken Lanugages	50.8%	49.1%	<1%
Other and Unknown	48.6%	51.3%	<1%

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Service Days by Employment Status

The employment status of the interpreters statewide remained fairly constant during the reporting period, as measured by the service days provided for required proceedings, shown in Table 9 below. Statewide, employees accounted for about two-thirds (67 percent) of all service days in required proceedings, while contractors accounted for the remainder (33 percent). However, the relative proportion of service days performed by employees and contractors varies by region, and the pattern reported below is largely consistent with that reported in the previous study period. Within Region 1, the service days provided by employees represent about 93 percent of the total; in Region 2, employees provided 63 percent of the total; in Region 3, employees provided 53 percent of the total; finally, in Region 4, employees provided just under half (49 percent) of the total service days.

Within the regions and over the four-year time period, different patterns can be observed. The number of service days provided by employees declined in Region 1 from FY 09-10 to FY 10-11, and again from FY 11-12 to FY 12-13. In Region 2, the number of service days provided by employees rose and peaked in FY 11-12, then declined slightly in FY 12-13. In Region 3, the number of service days provided by employees rose gradually and then declined slightly in the last year, while in Region 4 the employee service days increased in each year, while service days provided by contractors declined.

Table 9. Total Service Days, by Employment Status

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Employees	178,540	176,570	180,958	176,164	712,232	**67%**
Contractors	91,593	88,677	85,177	77,836	343,284	**33%**
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Employees	89,044	82,007	82,129	79,443	332,623	**93%**
Contractors	6,628	6,965	6,516	6,672	26,781	**7%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Employees	36,098	36,266	38,432	37,747	148,544	**63%**
Contractors	23,730	21,151	22,095	21,934	88,910	**37%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Employees	24,879	27,441	27,725	25,652	105,697	**53%**
Contractors	25,674	25,925	23,168	20,186	94,953	**47%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Employees	28,518	30,856	32,672	33,322	125,369	**49%**
Contractors	35,561	34,636	33,398	29,044	132,639	**51%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

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Service Days by Certification Status

Table 10 below reports the total service days in required proceedings by certification status of the interpreter providing the service. Statewide, certified or registered interpreters provided about 91 percent of the service days in required proceedings, on average, during the reporting period. Approximately 8 percent of the service days were provided by noncertified, nonregistered interpreters. (The certification status of the interpreter could not be established in the remaining service days, which represent about 1 percent of the total.) While Regions 1 and 4 maintained a relatively constant proportion of service days completed by certified or registered interpreters during the four years covered by this reporting period, in Regions 2 and 3 the proportion of service days completed by certified or registered interpreters increased, by 3 and 10 percent respectively, from FY 09-10 to FY 12-13.

Employment Status and Certification Status in Context

The data in Tables 9 (employee status) and 10 (certification status) can also be used together to examine the employment status of certified/registered interpreters. Table 11A shows the proportion of certified or registered interpreter service days completed by interpreter employees and interpreter contractors. Employees completed 74 percent (712,232 days) of those service days, while interpreter contractors completed 26 percent (252,316).

Table 10. Total Service Days, by Certification Status

	Service Days					
	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Statewide						
Certified/Registered	243,330	241,074	244,831	235,312	964,548	**91%**
Noncertified/Nonregistered	24,259	21,953	19,482	17,038	82,733	8%
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	1%
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	
Region 1						
Certified/Registered	95,166	88,486	88,082	85,498	357,232	**99%**
Noncertified/Nonregistered	506	486	563	617	2,171	**1%**
Total	**95,672**	**88,972**	**88,645**	**86,115**	**359,404**	
Region 2						
Certified/Registered	50,328	47,780	52,968	51,754	202,830	**85%**
Noncertified/Nonregistered	9,500	9,638	7,559	7,927	34,625	**15%**
Total	**59,828**	**57,418**	**60,527**	**59,681**	**237,455**	
Region 3						
Certified/Registered	38,517	43,740	42,025	39,674	163,956	**82%**
Noncertified/Nonregistered	9,493	7,406	7,046	4,515	28,459	**14%**
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	**4%**
Total	**50,553**	**53,366**	**50,893**	**45,838**	**200,650**	
Region 4						
Certified/Registered	59,319	61,068	61,756	58,386	240,530	**93%**
Noncertified/Nonregistered	4,760	4,424	4,314	3,980	17,478	**7%**
Total	**64,079**	**65,492**	**66,070**	**62,366**	**258,008**	

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Table 11B shows that the 252,316 service days completed by certified or registered contract interpreters represent 74 percent of the total service days completed by contractors, a similar proportion to that reported during the previous study period 2004-2008.

Table 11A. Statewide Total Service Days, Certification Status by Employment

	Service Days					
Certified/Registered	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Employees	178,540	176,570	180,958	176,164	712,232	74%
Contractors	64,791	64,504	63,873	59,148	252,316	26%
					964,548	

Table 11B. Statewide Total Service Days, Contractors by Certification Status

	Service Days					
Certification Status	FY09-10	FY10-11	FY11-12	FY12-13	Total	Percent
Certified/Registered	64,791	64,504	63,873	59,148	252,316	74%
Noncertified/Nonregistered	24,259	21,953	19,482	17,038	82,733	24%
Contractor (Unspecified)	2,543	2,220	1,822	1,650	8,235	2%
					343,284	

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Service Days by Case Type

Interpreter services are required for a specific set of proceedings, which are reported in Table 12 below. About half of these interpreted proceedings are criminal cases: Misdemeanor cases make-up about 27 percent of all service days and Felony cases represent about 24 percent. Delinquency and Traffic cases comprise the next largest shares (approximately 9 percent each), followed by Paternity (approximately 5 percent) and Dependency (approximately 4 percent). These proportions are similar to those reported in the previous study period, and they remained relatively constant from year to year during this study period. A significant share of the records (19 percent) cannot be attributed to a specific case type due primarily to the overuse of the "Other" case type in CIDCS without the provision of any additional information. Another significant limitation of these data is that the use of interpreters in Dissolution cases for all languages is underreported, because the CIDCS user interface does not include Dissolution as a discrete choice of case type for data entry. Instead, courts must choose "Other" for case type and then manually enter additional text to specify Dissolution. As a result, very few cases appear to be reported, and no conclusions should be drawn about the true proportion of Dissolution cases among the case types in the following tables describing interpreter use by case type.[15]

[15] The term Paternity is used in listing required case types, while the CIDCS user interface list of required case types labels cases as Family (Child Support) and "Other" with a specification of "Family" or "Paternity."

Table 12. Total Service Days, by Case Type[16]

	Service Days					
Case Type	**FY09-10**	**FY10-11**	**FY11-12**	**FY12-13**	**Total**	**Percent**
Misdemeanor	76,881	71,369	67,259	63,922	279,431	26.5%
Felony	68,130	64,723	61,038	58,601	252,493	23.9%
Traffic	25,053	24,387	25,037	24,802	99,280	9.4%
Delinquency	22,630	24,338	23,009	20,531	90,508	8.6%
Paternity	11,944	11,838	13,118	13,074	49,975	4.7%
Dependency	9,584	9,826	9,432	8,614	37,456	3.5%
Infraction	6,421	6,794	7,737	7,328	28,281	2.7%
Domestic Violence	3,398	3,506	3,908	3,963	14,775	1.4%
Dissolution	586	493	438	402	1,919	.2%
Other and Unknown	45,505	47,973	55,158	52,763	201,398	19.1%
Total	**270,133**	**265,247**	**266,135**	**254,001**	**1,055,516**	**100.0%**

Table 13 below shows regional variation in the provision of interpreter services in required proceedings. The proportion of service days used for each case type is relatively consistent across regions.

Table 13. Total Service Days, by Case Type by Region[17]

	Service Days			
Case Type	**Region 1**	**Region 2**	**Region 3**	**Region 4**
Misdemeanor	26%	27%	21%	30%
Felony	27%	24%	23%	21%
Traffic	10%	13%	8%	7%
Delinquency	10%	8%	8%	7%
Paternity	5%	5%	5%	3%
Dependency	4%	4%	2%	4%
Infraction	2%	1%	1%	7%
Domestic Violence	1%	3%	1%	1%
Dissolution	<1%	<1%	<1%	<1%
Other and Unknown	15%	15%	31%	19%
Total	**100%**	**100%**	**100%**	**100%**

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[16, 17] Dissolution cases are underreported. See explanation on previous page.

Service Days by Language by Case Type

The provision of interpretation services by language by case type is displayed in Table 14. This table illustrates the proportion of each language's service days that were used by case type. For example, Amharic and Mongolian service days show a high proportion of interpreter service days consumed in Traffic cases. Japanese, Thai, and Tongan stand out for the high proportion of their use in Misdemeanor cases, while Afghani, Armenian, Samoan, and Tagalog do the same for Felony cases. Tongan and Khmer show relatively high shares of their service days in Delinquency cases. Due to problems with incomplete reporting by specific courts, several languages whose use is concentrated in a small number of courts (e.g., Hmong, Lao) have a high proportion of service days whose case type is unknown.

III. Conclusion

The general patterns of interpreter use in the study period FY 09-10 through FY 12-13 resemble those in the previous study period 2004-2008. Generally speaking, trends in populations tend to be gradual, and thus, absent a political or economic catastrophe or natural disaster that displaces large numbers of people geographically, language use and the need for interpreter services also tend to change gradually.

One difference between the previous study and the current one is that the employment status of interpreters appears to have stabilized. During the previous study period, employment of interpreters was evolving, and a shift from contract to employee interpreters was taking place. In this study period, employment appears rather constant, with the notable exception that the overall decline in filing of required case types throughout the state does appear to have resulted in a slight contraction of the number of service days performed by interpreter employees.

This highlights a feature of this study period: the decline in the filing of new cases over time, including cases requiring the use of an interpreter. As noted earlier, the reasons for this decline are beyond the scope of this report, but are most likely related to reduction in the resources and thus the work of law enforcement, prosecutors, social service and other state agencies, as well as the trial courts.

The incomplete and inconsistent nature of the interpreter use data in the various data systems in use throughout the state make it difficult to reliably describe all but the most general changes over time. Nevertheless, at the highest level, the analysis indicates that these data can provide a basic description of interpreter use and, when combined with additional data about population demographics, immigration, and caseload trends, can serve as the basis for estimating future language need on a statewide basis. In the next section, future language need is analyzed, taking into account both population demographics and caseload trends.

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Table 14. Proportion of Reported Language Use by Case Type[18]

Language	Misdemeanor	Felony	Traffic	Delinquency	Paternity	Dependency	Infraction	Domestic Violence	Dissolution	Other and Unknown
Spanish	26%	25%	9%	10%	5%	4%	2%	1%	<1%	18%
Vietnamese	32%	26%	7%	5%	5%	3%	7%	1%	<1%	12%
Korean	30%	20%	10%	7%	3%	3%	11%	1%	1%	14%
Mandarin	32%	20%	14%	3%	4%	2%	11%	2%	1%	12%
Cantonese	19%	19%	14%	5%	4%	2%	2%	2%	<1%	34%
Farsi	28%	17%	12%	3%	5%	2%	8%	3%	2%	20%
Tagalog	32%	35%	3%	5%	3%	5%	1%	2%	1%	14%
Russian	20%	14%	9%	4%	3%	2%	2%	1%	<1%	44%
Arabic	26%	15%	9%	4%	4%	7%	9%	4%	2%	19%
Punjabi	25%	19%	8%	3%	3%	1%	1%	4%	<1%	37%
Khmer	25%	24%	6%	14%	4%	5%	2%	1%	<1%	18%
Hmong	8%	29%	4%	9%	5%	4%	1%	<1%	<1%	39%
Japanese	36%	17%	10%	5%	4%	2%	8%	2%	1%	13%
Lao	24%	32%	5%	9%	3%	3%	2%	<1%	<1%	21%
Romanian	24%	13%	2%	3%	2%	2%	4%	1%	<1%	48%
Hindi	33%	24%	7%	6%	4%	6%	4%	4%	<1%	13%
Armenian (unknown)	17%	38%	5%	5%	3%	2%	6%	1%	<1%	23%
Armenian, Eastern	23%	27%	13%	8%	4%	3%	2%	1%	<1%	19%
Tongan	38%	12%	7%	15%	1%	2%	5%	4%	3%	12%
Portuguese	22%	27%	15%	5%	6%	4%	3%	2%	<1%	14%
Armenian, Western	24%	29%	11%	9%	5%	3%	2%	1%	<1%	16%
Pashto	35%	33%	5%	6%	1%	6%	2%	1%	<1%	11%
Samoan	31%	33%	1%	10%	2%	7%	1%	<1%	<1%	16%
Thai	36%	15%	7%	5%	5%	11%	7%	2%	1%	12%
Amharic	22%	24%	22%	1%	9%	5%	2%	3%	<1%	11%
Slovak	1%	0%	1%	<1%	<1%	<1%	<1%	<1%	<1%	99%
French	25%	15%	8%	1%	11%	2%	5%	2%	<1%	30%
Mongolian	33%	12%	27%	<1%	<1%	2%	<1%	4%	<1%	21%
Mien	24%	29%	7%	9%	2%	1%	1%	2%	<1%	26%
Mixteco	51%	24%	3%	9%	1%	6%	2%	3%	<1%	2%
Other/Unknown	30%	17%	10%	9%	2%	5%	6%	1%	1%	18%
Average	**26%**	**24%**	**9%**	**9%**	**5%**	**4%**	**3%**	**1%**	**<1%**	**19%**

[18] Dissolution cases are underreported. See explanation on page 16.

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Part Two: Projecting Future Language Need

I. Introduction

Earlier sections of this report describe the use of interpreters during the period 2009-2013. The purpose of Part II is to produce an estimate of the future need for interpretation statewide in required case types by language drawing on population demographics and caseload filing trends. This analysis is designed to support efforts by the Judicial Council of California in determining whether to classify additional languages as "designated" for the purposes of court interpreter testing and certification as well as to identify languages for possible de-designation over the next five years.

The strength of the California economy provides important context for forecasting the future need for interpreters. In California, the profile of state court activity observed during the period of the current analysis (2009-2013) is likely anomalous because of the negative impact of the recent recession on filings. At the same time, it should be noted that the relationship between the economy and caseloads is not a simple linear one. Caseloads are not always directly correlated to the economy; as the Judicial Council noted in its press release[19] announcing the annual statistical report, some caseloads (e.g., misdemeanors, small claims, most types of unlimited civil) declined, while others (e.g., felony, dependency, and probate cases) increased. Some of the declines preceded the recession, while others appear to have coincided with it. Nevertheless, the purpose of this high-level environmental scan is to establish the context of any future forecast; the question is simply whether the economy (and with it, the state budget) is recovering and will continue to do so, and whether modest growth patterns observed over the last two decades in California's caseloads will again become the norm.

For reasons outlined below, the answer to those questions are most likely yes, and realistic estimates of future need should take into account recent caseload trends in the context of an improving economic picture. As noted in the first section of this report, aggregate state court filings and court interpreter service days both declined over the past four years. This trend is unlikely to continue. Although there is always an inherent risk in economic forecasting, an environmental scan of current thinking on the California economy shows evidence of improving economic performance. For example, the Public Policy Institute of California notes, "California's economy is making a strong recovery from the Great Recession" and advises that the state's "long-term economic prospects are fundamentally strong."[20] Also, the economic forecast to 2017 published by the state's Department of Finance indicates continuous and gradual improvement in major indicators.[21] Likewise, a six-year projection of "gross state product" by the Eberhardt School of Business at the University of the Pacific estimates average annual growth in California of about 3 percent per year, in line with what was observed in the years immediately preceding the recession. A JP Morgan Chase two-year forecast is even more optimistic. Therefore, the upcoming forecasts assume an economic situation characterized by stability and moderate growth.[22]

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[19] See Judicial Council, "Court Filings Decrease in Fiscal Year 2012–2013" press release dated August 12, 2014, at: http://www.courts.ca.gov/26853.htm#sthash.X5sZHKOd.dpuf

[20] Sarah Bohn, California's Future: Economy, published by the Public Policy Institute of California, accessed August 9, 2014 at http://www.ppic.org/content/pubs/report/R_114SBR.pdf

[21] California Department of Finance, California Economic Forecasts, accessed August 21, 2014, at http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Forecasts.htm

[22] See economic forecasts from University of the Pacific's Eberhardt School of Business at http://forecast.pacific.edu/cametroforecast/news%20release%20September%202014.pdf and JP Morgan Chase at https://www.chase.com/content/dam/chasecom/en/commercial-bank/documents/california-economy.pdf

With that in mind, the forecast proceeds in the context of modest recovery and growth in filings. The forecast does not make direct use of economic indicators in the model (e.g., unemployment rates, housing starts, rate of inflation, etc.). Modeling of future language need employs three primary factors: changes in the Limited English Proficient (LEP) populations, changes in filings of new cases, and changes in interpreter service days by language. While movement among these three factors is often associated, there is far from perfect correlation. Said differently, a given increase in LEP population does not always result in a similar increase in filings. And perhaps more importantly for this analysis, a proportional change in LEP population for a specific language does not necessarily translate into the same proportional change for interpreter service days for that language. The fundamental task for projecting future need is appropriately analyzing and integrating these three trends.

The remaining sections in Part II of this report describe the data sources and statistical techniques used to produce the following five-year projections of need. Projections are based on:

- LEP population trends by language
- Caseload trends
- Interpreter service day trends by language

Given that a primary purpose of the future need analysis is to classify languages for possible designation or de-designation, the analysis focuses on the 21 languages most frequently used in the courts (See Table 4 in Part I). These are all the languages where a total of at least 3,000 interpreter service days were recorded during the four-year study period.[23] Moreover, this set of languages includes all languages currently designated as well as those in the pool for potential designation.

II. LEP Population and Language Trends and Projections

Overview of the California Population

California is the most populous state, and has the highest share of foreign-born residents. An excellent source for comprehensive and up-to-date information on language usage is the annual American Community Survey (ACS) published by the U.S. Census Bureau. The ACS employs a monthly series of samples to produce its annual estimates. Given the sampling plan used, the most accurate estimates come from a combined 5-year estimate and these data are therefore used in this analysis. For additional detail on the characteristics of ACS language population data and its unique advantages for the purposes of this study, see Appendix C.

According to the 2008-2012 ACS 5-year estimates, the foreign-born population in California is estimated at 10,104,739 of the total estimated population of 37,325,068, or about 27 percent.[24] This percentage has not changed from that reported in the previous study period (2005-2008).[25] California's total population is projected to continue

[23] It should be noted that, just as during the previous study period, the data are not sufficient to understand the workload of West Armenian and East Armenian separately, and whether one or both languages should continue to be designated. Much of the data in CIDCS was simply labeled "Armenian" and for that reason, along with the fact that the ACS survey data uses a single "Armenian" category, all three categories were combined into a single "Armenian" category. This reduces the 21 top languages to 19 languages.

[24] Selected Characteristics of the Native and Foreign-born Populations, 2008-2012 American Community Survey 5-year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_S0501.

[25] See Table 6.1 on page 87 in 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010.

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to grow at a slow but steady rate of 1 percent per year, as it did in the 1990s and 2000s. The pattern established at the end of the twentieth century is expected to persist: domestic migration out of California will largely offset population increase though international immigration to California.[26]

Among the total population age 5 years and older, about 44 percent report speaking a language other than English at home, and approximately 20 percent are estimated to speak English less than "very well." The percentage of households (not individuals) who are considered linguistically isolated is estimated at about 10 percent.[27] These proportions are very similar to those reported in the previous reporting period.[28]

The diversity of languages spoken in California is well documented in the ACS 5-year estimates. For the purposes of this report, three items, used in combination, provide the key information needed. Below are the three specific questions asked on the survey:[29]

- Does this person speak a language other than English at home?
  - Yes
  - No
- If yes, what is this language?
- How well does this person speak English?
  - Very well
  - Well
  - Not well
  - Not at all

Answers to these three survey items are combined in the analysis to derive a measure of the LEP population by language spoken at home (presumed to be the respondent's native language) for those whose self-rated proficiency in English is less than "very well."[30]

For the purposes of this report, the ACS survey items identifying the language spoken at home by those whose proficiency in English is less than "very well" are used to classify the language communities of interest for estimating future interpreter need by language. This decision allows the use of consistently gathered US Census Bureau data and provides comparability with the previous report to the Judicial Council on this topic.

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[26] See Population discussion p 46ff in S. Bohn et al., California's Future, Public Policy Institute of California, http://www.ppic.org/content/pubs/report/R_114BKR.pdf, accessed August 4, 2014.

[27] Ibid.

[28] Judicial Council of California, Table 6.1, op. cit.

[29] See U.S. Census Bureau, 2011 American Community Survey facsimile at http://www.census.gov/prod/2013pubs/acs-22.pdf

[30] See definition used and variations described in Migration Policy Institute, LEP Data Brief, Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity, December 2011, accessed through http://www.lep.gov/demog_data/demog_data.html August 8, 2014.

The primary purpose of this analysis is to inform state-level policy on language designation based on projected statewide need in required cases.[31] In building the model of statewide need, this report explicitly documents and incorporates variation in language need at the regional level. ACS data and LEP populations are assembled at the county level and then combined into the four regions for which court interpreter services are organized. The regional analysis shows that, for example as indicated in Table 6 earlier in this report, the population speaking Tongan is concentrated in Region 2, while the Spanish-speaking population is more evenly distributed among all four regions. Regional-level data is then summed to the state level for the purpose of describing statewide language need.

Statewide and Regional Changes in Population and Language Use

The statewide LEP population of California has remained very stable over the period 2009-2012. Table 15 summarizes these data by language spoken at home of the LEP population in the columns under the heading "Statewide ACS." Statewide, the total LEP population speaking the 19 most frequently interpreted languages increased only 0.5 percent during this period. The percentage change is calculated using a weighted average that emphasizes the most recent years of the study period. A weighted average gives greater influence to more recent rates of change in LEP population, while also ensuring long-term trends within each language are incorporated into the model.[32]

Looking at individual languages, the Spanish-speaking population, by far the largest segment of this population, essentially remained stable. The largest statewide gains were registered by LEP speakers of Arabic, followed by LEP speakers of Tongan, Punjabi, and Mandarin. Declines were registered for speakers of Japanese and Portuguese, continuing a trend observed in the previous study period as well. Overall, the statewide pattern is one of relative stability and slow growth for most LEP language populations.

The weighted average percentage change from the study period is used to project the trend for each LEP population by language spoken at home, as shown in the "Statewide Projections" columns in Table 15. Over the next five years, five of the 19 LEP populations have projected growth rates greater than 5 percent; nine populations are projected to grow between 0.5 and 5 percent; three populations are estimated to stay relatively flat with growth rates between -0.5 and +0.5 percent; and two populations are projected to drop by more than -0.5 percent.

To more easily see the forecast for each individual language, the data from Table 15 are displayed in the following figures that show LEP populations by language, actual and projected for the 5 calendar years (CY) following the current study period. Figure 1 shows the statewide total LEP population, along with the LEP population that speaks Spanish at home. The remaining figures show the actual and projected LEP populations grouped by relative size of the LEP populations.

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[31] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014 for additional information.

[32] Data beyond FY 12-13 and CY 2012 were not available for caseloads and population, respectively, when this report was prepared. Thus, projections for CY 2013 and FY 13-14 are estimated. For a detailed discussion of methodologies, see Appendix B.

Table 15: LEP Populations, ACS and Projected, by Language Spoken at Home

Rank	Language	Statewide ACS FY09-10	FY10-11	FY11-12	FY12-13	Weighted Average
1	Spanish	4,574,993	4,607,654	4,612,672	4,567,197	-0.3%
2	Vietnamese	281,889	294,973	299,705	308,280	2.7%
3	Korean	211,331	223,352	224,136	224,964	1.2%
4	Mandarin	206,000	223,879	233,671	247,996	6.0%
5	Farsi	68,909	69,557	73,666	73,712	2.2%
6	Cantonese	299,034	306,849	305,999	307,130	0.5%
7	Russian	70,960	72,035	71,961	74,237	1.8%
8	Tagalog	230,062	238,747	243,523	251,001	2.8%
9	Arabic	42,802	45,914	49,355	54,675	9.1%
10	Armenian (all)	82,401	85,338	89,433	92,409	3.9%
11	Punjabi	45,599	46,905	51,172	54,516	6.8%
12	Khmer	36,938	39,263	40,464	40,870	2.6%
13	Japanese	72,047	71,760	68,964	65,847	-3.6%
14	Hmong	30,817	34,695	36,394	36,075	3.3%
15	Lao	18,268	18,328	18,884	18,934	1.2%
16	Romanian	9,008	9,070	8,520	8,897	0.3%
17	Hindi	25,139	27,081	28,047	29,873	5.7%
18	Tongan	3,202	3,486	3,791	4,046	7.8%
19	Portuguese	25,140	24,738	22,684	23,327	-1.6%
	Total	**6,334,539**	**6,443,624**	**6,483,041**	**6,483,986**	**0.5%**
	Other languages	295,759	305,639	313,808	319,827	2.4%

Rank	Language	Statewide Projections FY13-14	FY14-15	FY15-16	FY16-17	FY17-18
1	Spanish	4,551,776	4,536,407	4,521,090	4,505,824	4,490,610
2	Vietnamese	316,723	325,398	334,311	343,467	352,874
3	Korean	227,775	230,622	233,504	236,423	239,377
4	Mandarin	262,801	278,489	295,114	312,731	331,400
5	Farsi	75,302	76,926	78,586	80,281	82,013
6	Cantonese	308,752	310,382	312,021	313,668	315,325
7	Russian	75,573	76,933	78,318	79,727	81,162
8	Tagalog	258,108	265,416	272,931	280,658	288,605
9	Arabic	59,650	65,078	71,000	77,460	84,509
10	Armenian (all)	95,974	99,676	103,521	107,514	111,661
11	Punjabi	58,211	62,156	66,368	70,866	75,669
12	Khmer	41,921	42,998	44,103	45,237	46,400
13	Japanese	63,460	61,160	58,943	56,806	54,747
14	Hmong	37,262	38,489	39,756	41,064	42,416
15	Lao	19,161	19,391	19,623	19,858	20,096
16	Romanian	8,924	8,952	8,979	9,006	9,034
17	Hindi	31,585	33,396	35,310	37,334	39,474
18	Tongan	4,360	4,698	5,063	5,455	5,879
19	Portuguese	22,950	22,579	22,214	21,855	21,501
	Total	**6,520,267**	**6,559,143**	**6,600,751**	**6,645,234**	**6,692,749**
	Other languages	327,524	335,407	343,479	351,746	360,211

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Figure 1. LEP Population Trend and Forecast: Total and Spanish

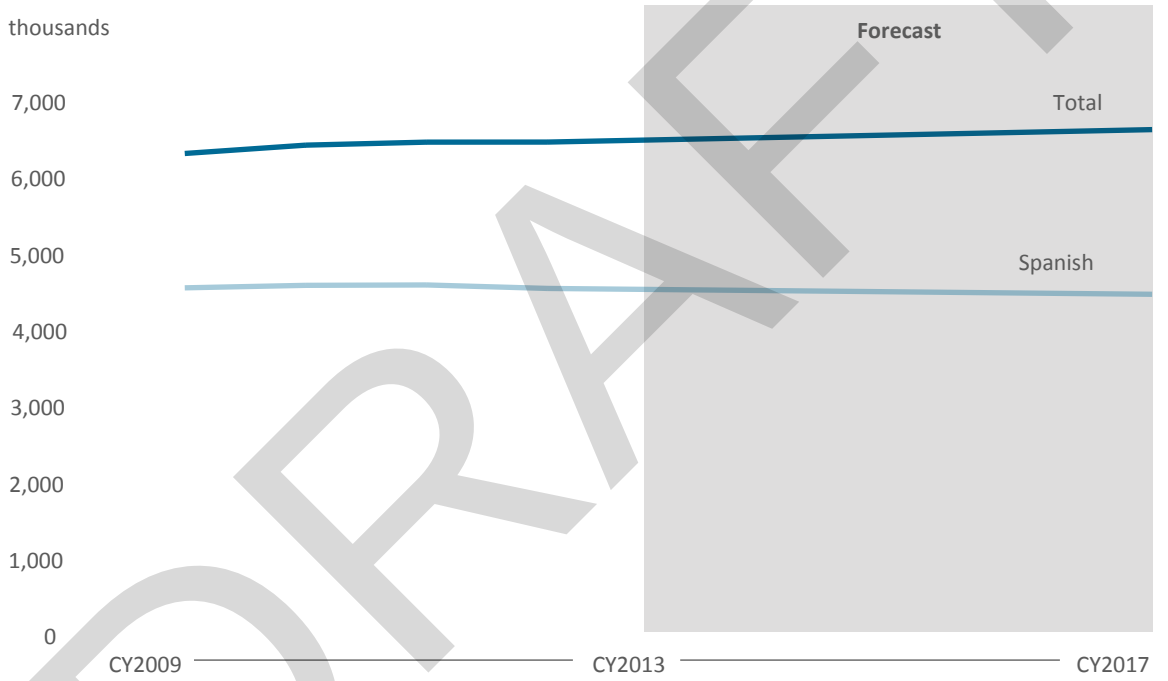

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Figure 2. LEP Population Trend and Forecast: Vietnamese, Korean, Mandarin, Cantonese, and Tagalog

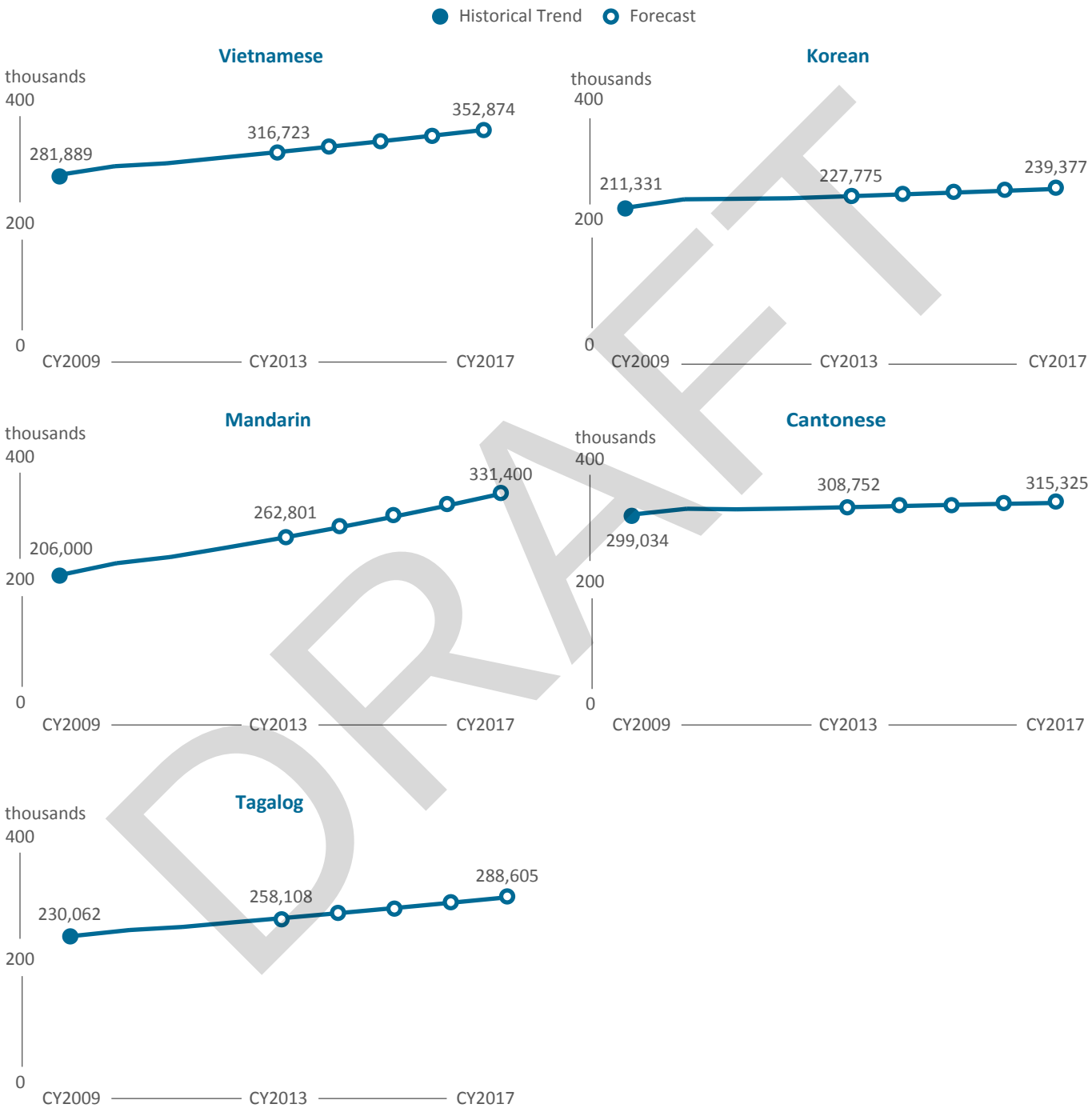

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Figure 3. LEP Population Trend and Forecast: Farsi, Russian, Armenian, and Japanese

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Figure 4. LEP Population Trend and Forecast: Arabic, Punjabi, Khmer, and Hmong

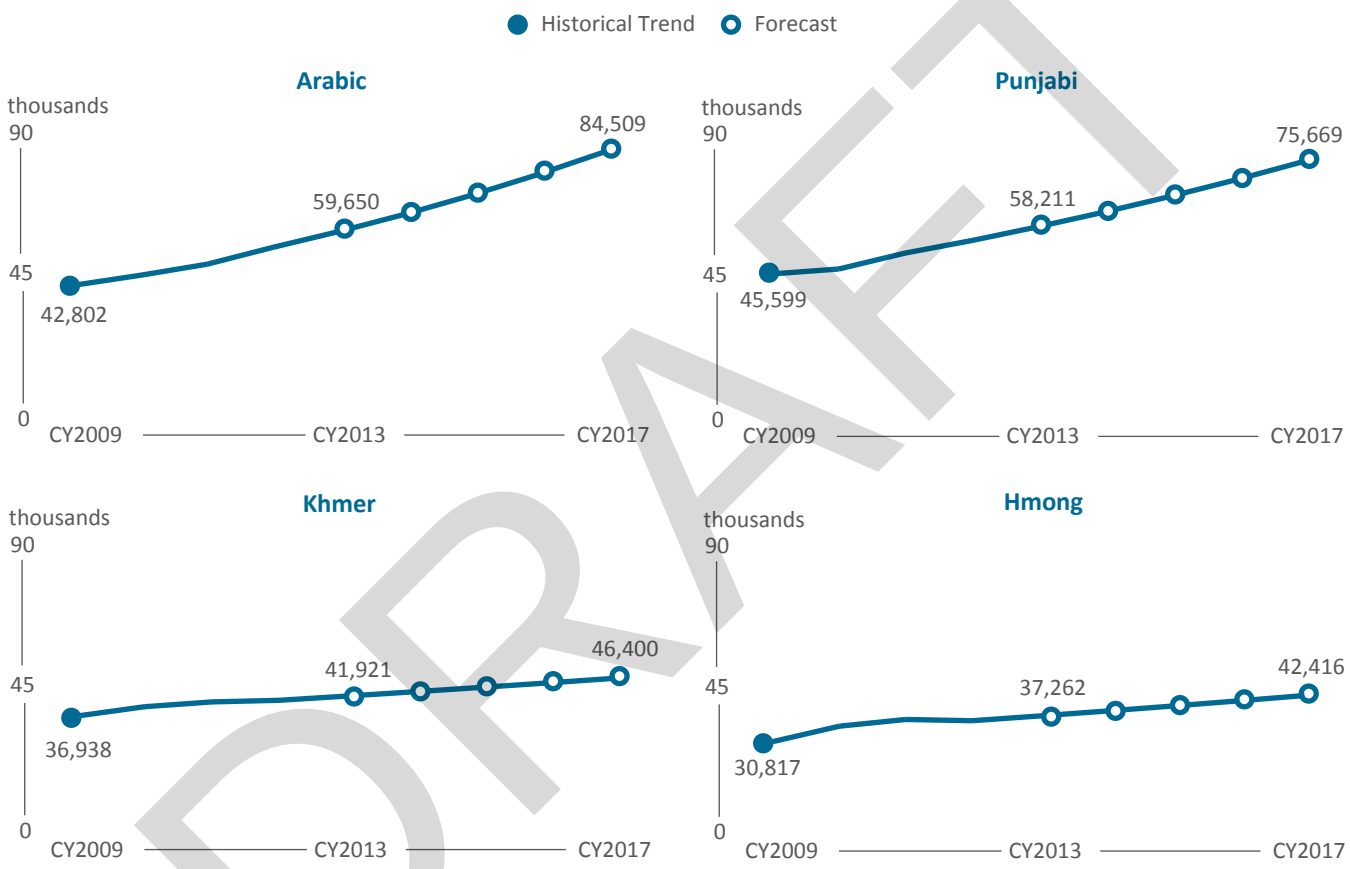

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Figure 5. LEP Population Trend and Forecast: Lao, Hindi, and Portuguese

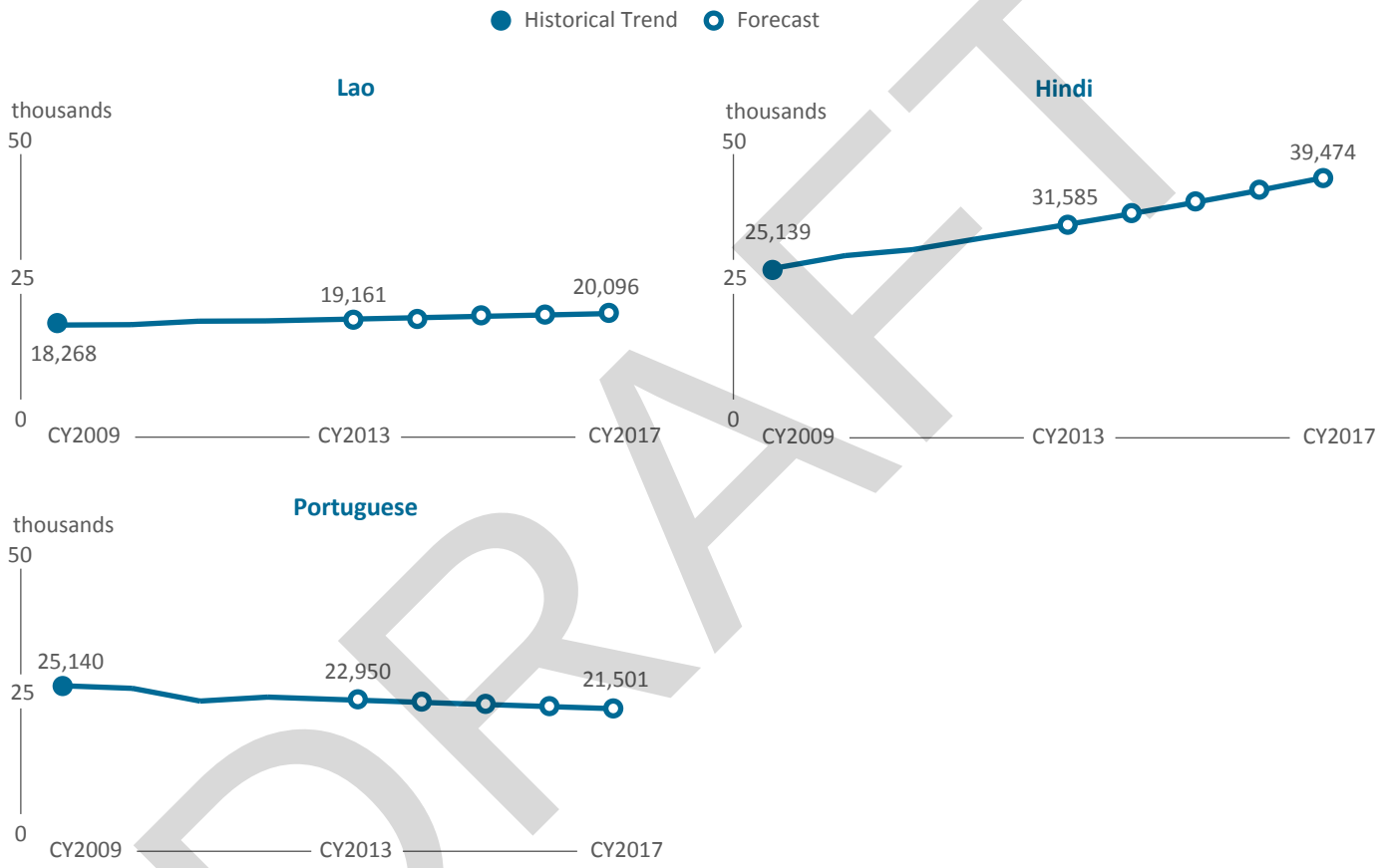

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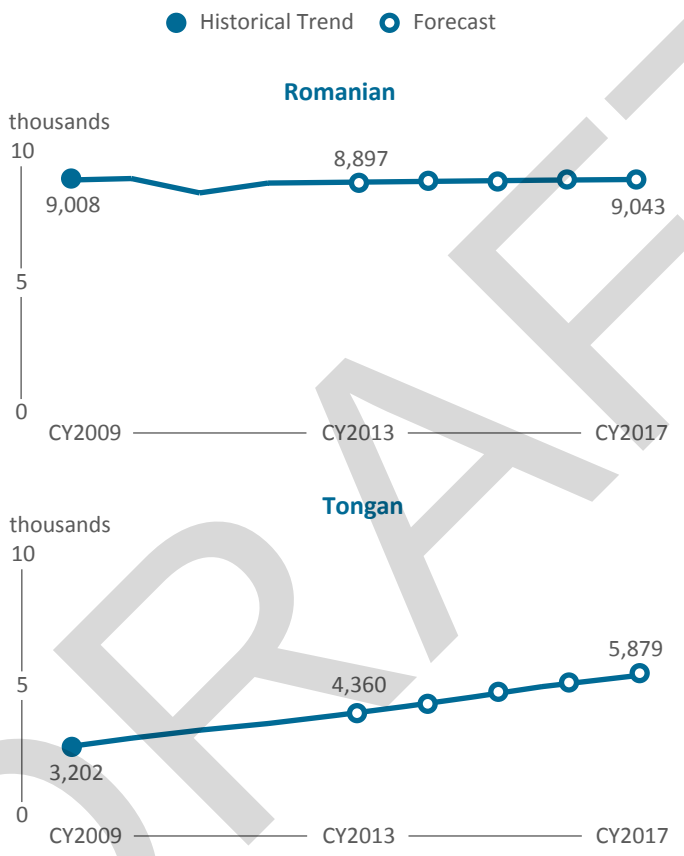
Figure 6. LEP Population Trend and Forecast: Romanian and Tongan



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For most LEP populations, the projection estimates a gradual positive growth, based on recent historical trends. Spanish is projected to remain largely flat, although the Spanish language community is perhaps the one most sensitive to changes in national immigration policies, and thus most subject to change. The declining population trends for Japanese and Portuguese speakers are projected to continue.

III. Required Caseload Trends and Projections

Undoubtedly, the period of the current study (2009-2013) was a time of turmoil for the California economy that also affected the state's judicial branch. These years were marked by freezes, if not declines, to court budgets and staffing levels as well as a clear downturn in court case filing trends. With respect to caseloads, improving economic news means filing patterns observed during the study period are unlikely to persist into the future and will not serve as an appropriate basis for forecasting. As a consequence, to estimate future caseload trends in California, growth rates from the period prior to the recession were used.

The recession is generally dated to December 2007 to June 2009,[33] although the effects varied by state and persisted after the officially described end point. Caseload data for FY 02-03 to FY 12-13[34] suggest that the effects of the recession were reflected in a continuous decline in aggregate filings starting in FY 08-09. In the most recent year for which data were provided, the Judicial Council noted that this decline coincided with budget cuts, fee increases, and reduction of access through reduced hours and closure of courthouses.[35] In addition, some declines were likely due to the worsening economy and a lower volume of business transactions over the past few years. However, it now seems likely that a result of the recovering economy will be a return to a closer approximation of business as observed prior to the major recessionary disruption.

The five-year forecast of the required caseload shows resumption of a pattern similar to that observed prior to the onset of the recession, as shown in Figure 7. The forecasting model reflects the likelihood that caseloads have bottomed out and will resume a pattern of slow growth. This modeling strategy is grounded on the assumptions of a slow but steady increase in population and a return to economic growth.

The weighted average growth rate for the pre-recession period FY 02-03 through FY 07-08 was used to project future caseload growth. The projection suggests that the required caseload will resume climbing back to pre-recession levels over the next five years; by FY 17-18, total required caseload statewide is estimated to return to just below the level in FY 01-02.

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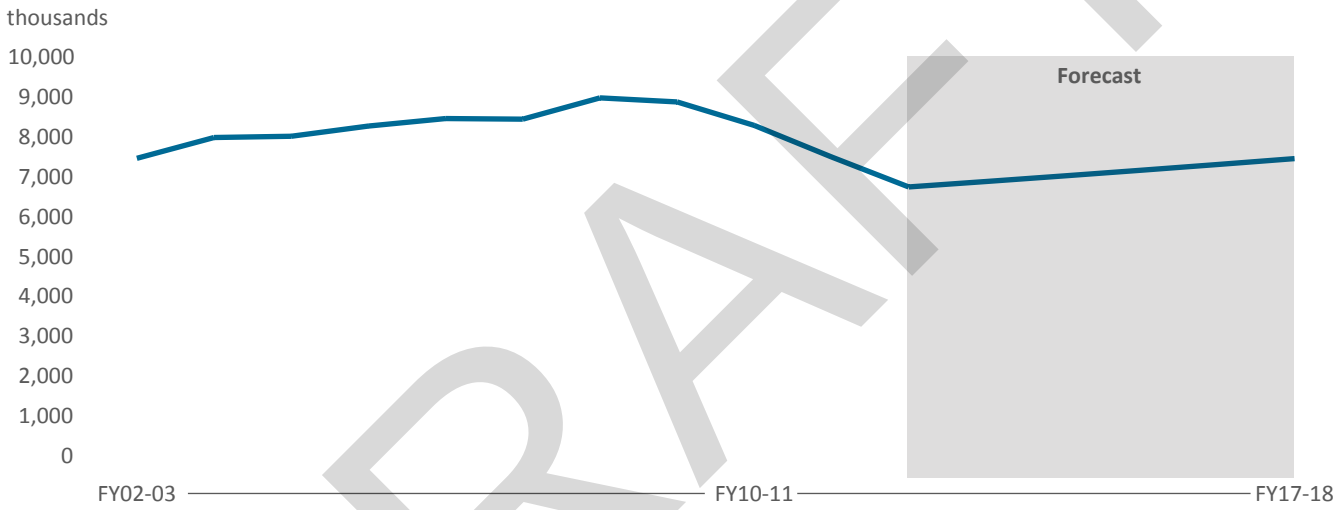
[33] See for example Bureau of Labor Statistics at http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf

[34] Data from the Resource Allocation Study provided by the Office of Court Research, Judicial Council of California. Although these data are not identical at the case type level with those case types defined as required for interpretation, they contain the most important case types and constitute the highest quality data set for the purpose of trend evaluation.

[35] See "Court Filings Decrease in Fiscal Year 2012-2013" at http://www.courts.ca.gov/26853.htm

Figure 7. Statewide Required Caseload



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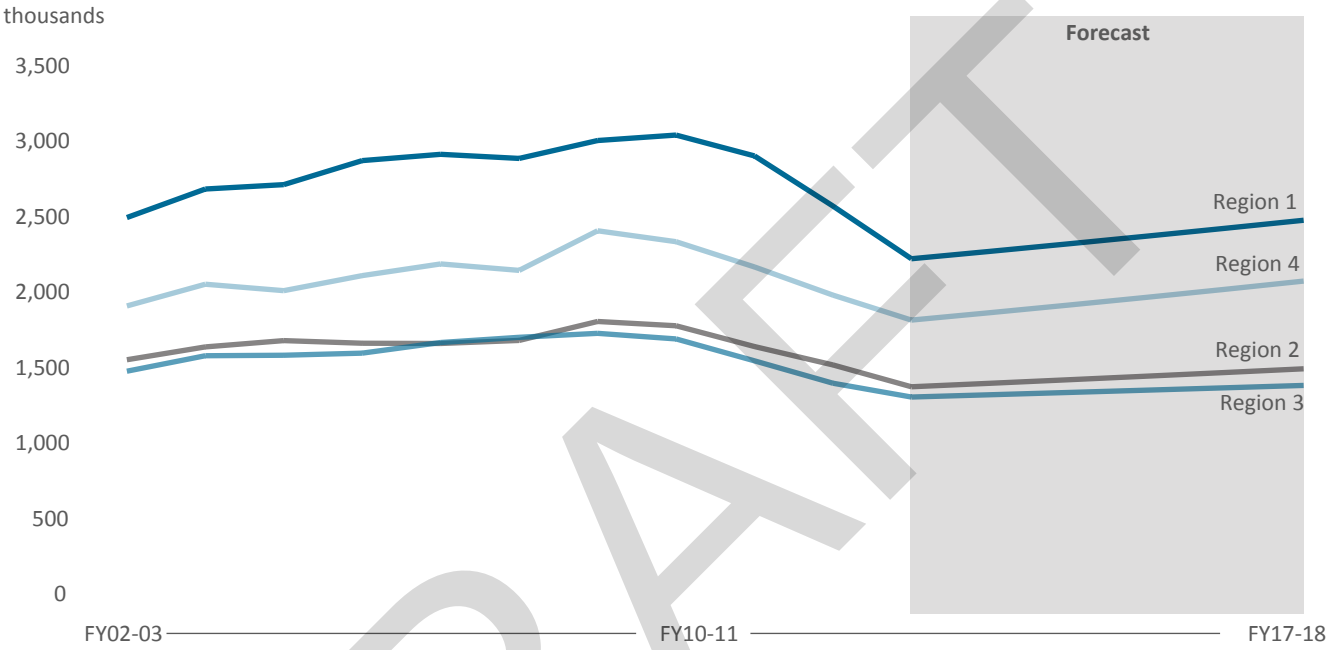
Recognizing that required caseload trends vary somewhat by region, the weighted average growth rates for each region for the pre-recession period FY 01-02 through FY 07-08 were calculated and used to project future growth (shown in Figure 8, Required Caseloads by Region by Year). The chart illustrates slight regional variation as caseloads begin climbing back to pre-recession levels over the next five years.

Figure 8: Required Caseloads by Region by Year



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IV. Required Service Days by Language Trends and Projections

The LEP population projections and required caseload projections provide the context for the projection of future need for interpreter service days by language. Based on the future estimates for interpreter service days by language, evaluation of the issues related to the designation of the most frequently used languages for certification is now possible.[36] The projection of service days statewide for the top 19 languages is based on the measured relationship between caseloads and service days during the study period as well as the projected growth rates of required caseloads and the LEP population by language. The results of these projections for the top 19 languages are shown in Figures 9 (statewide) and 10 (by region).

[36] A language is designated by the Judicial Council for certification "depending on the results of studies of language use in the courts and other administrative factors." See FAQs at http://www.courts.ca.gov/2683.htm.

Figure 9: Required Service Days Statewide, Trend and Projection

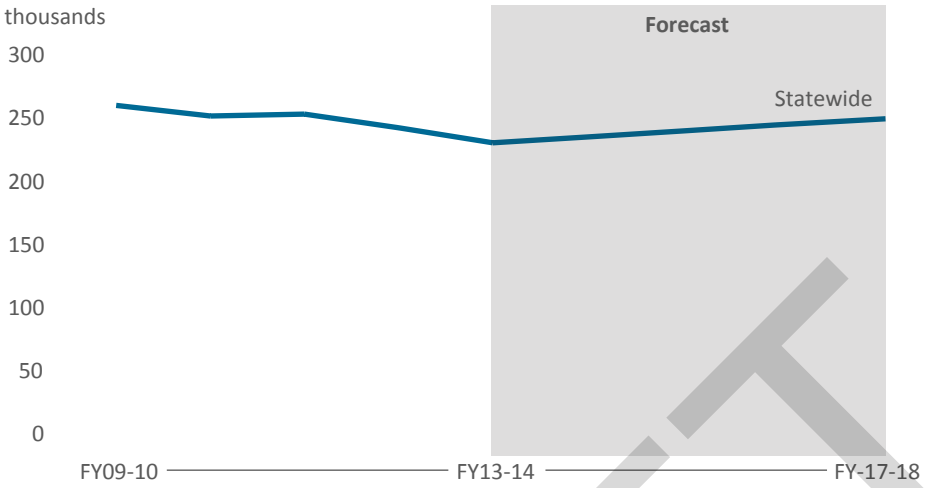
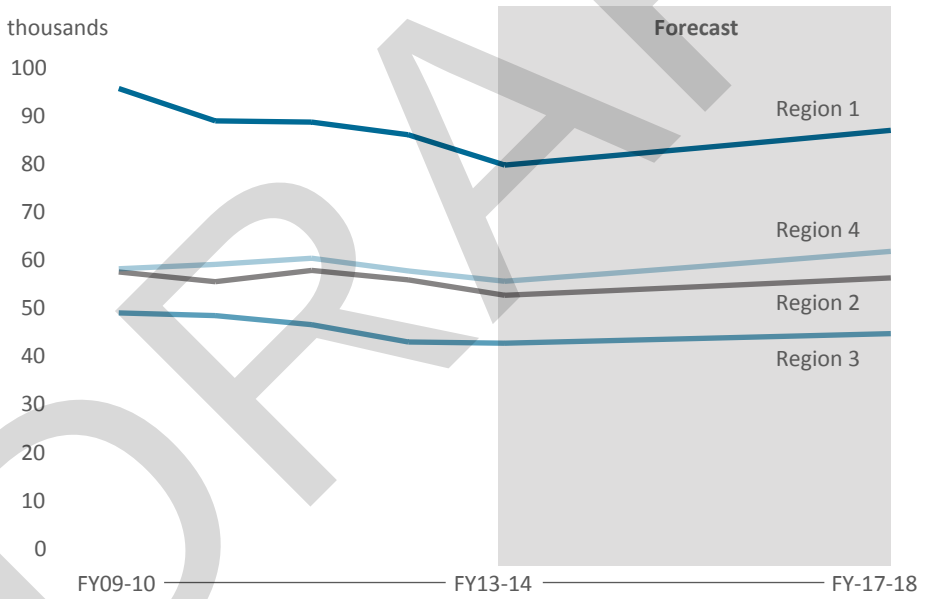


Figure 10: Required Service Days by Region, Trend and Projection



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The projected future service days for the top 19 languages proceeds through a two-step process. The first step produces the five-year projection for aggregate service day, while the second step converts the forecast of aggregate service days into service day estimates for each of the 19 languages.[37]

[37] See Appendix B for a more complete explanation of the method used to forecast service days by language.

Step one begins by calculating the rates of required service days to caseload in each of the four regions during the study period so as to take into account each region's specific trends in interpreter use. An overall weighted average of these rates was calculated by region for the study period 2009-2013. These weighted average rates were then applied to the caseload forecasts by region (discussed in section 6.2) to produce five-year projections of service days. Regional projections were summed to obtain a statewide aggregate estimate of future service days.

In step two, the estimate of aggregate service days is differentiated by language drawing on the relationship between service days by language and LEP populations observed between 2009 and 2013. The annual weighted rates of change for both service days and LEP populations are combined to produce a single estimate of the projected growth of each of the 19 languages. The results of the five-year projections are shown by language, statewide, in Table 16 below. Currently designated languages are shown in italics.

Table 16: Statewide Service Days, Trend and Projected

		Reported Trend				Projected				
Rank	Language	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18
1	*Spanish*	196,981	192,549	191,196	178,683	167,572	168,294	168,807	169,092	169,126
2	*Vietnamese*	9,686	10,595	10,539	9,891	9,526	9,824	10,120	10,410	10,692
3	*Korean*	6,048	6,392	6,279	6,849	6,763	7,151	7,553	7,966	8,389
4	*Mandarin*	4,824	5,242	6,217	6,683	6,959	7,759	8,641	9,610	10,671
5	*Farsi*	4,745	4,343	4,550	5,289	5,331	5,755	6,205	6,682	7,184
6	*Cantonese*	4,020	4,313	4,640	4,633	4,531	4,746	4,965	5,187	5,411
7	*Russian*	4,086	4,065	4,610	4,500	4,419	4,647	4,880	5,119	5,360
8	*Tagalog*	4,170	3,502	3,583	3,351	3,174	3,219	3,260	3,298	3,331
9	*Arabic*	2,914	3,163	3,809	4,673	5,119	6,004	7,035	8,231	9,616
10	*Armenian (all)*	2,799	2,274	2,396	3,191	3,349	3,764	4,225	4,737	5,302
11	*Punjabi*	4,536	2,837	2,983	2,748	2,611	2,656	2,698	2,738	2,774
12	*Khmer*	2,786	2,425	2,473	2,179	2,036	2,038	2,037	2,034	2,028
13	*Japanese*	1,970	1,571	1,685	1,646	1,532	1,527	1,519	1,510	1,499
14	Hmong	1,907	1,737	1,527	1,585	1,516	1,553	1,589	1,623	1,656
15	Lao	1,705	1,636	1,269	1,379	1,304	1,320	1,335	1,348	1,359
16	Romanian	1,041	1,136	1,189	1,225	1,203	1,264	1,327	1,391	1,456
17	Hindi	1,509	964	972	635	574	556	537	519	500
18	Tongan	1,814	423	683	431	433	466	500	537	575
19	*Portuguese*	772	739	790	982	698	716	734	750	767
	Total	**258,312**	**249,906**	**251,391**	**240,553**	**228,649**	**233,259**	**237,969**	**242,780**	**247,696**

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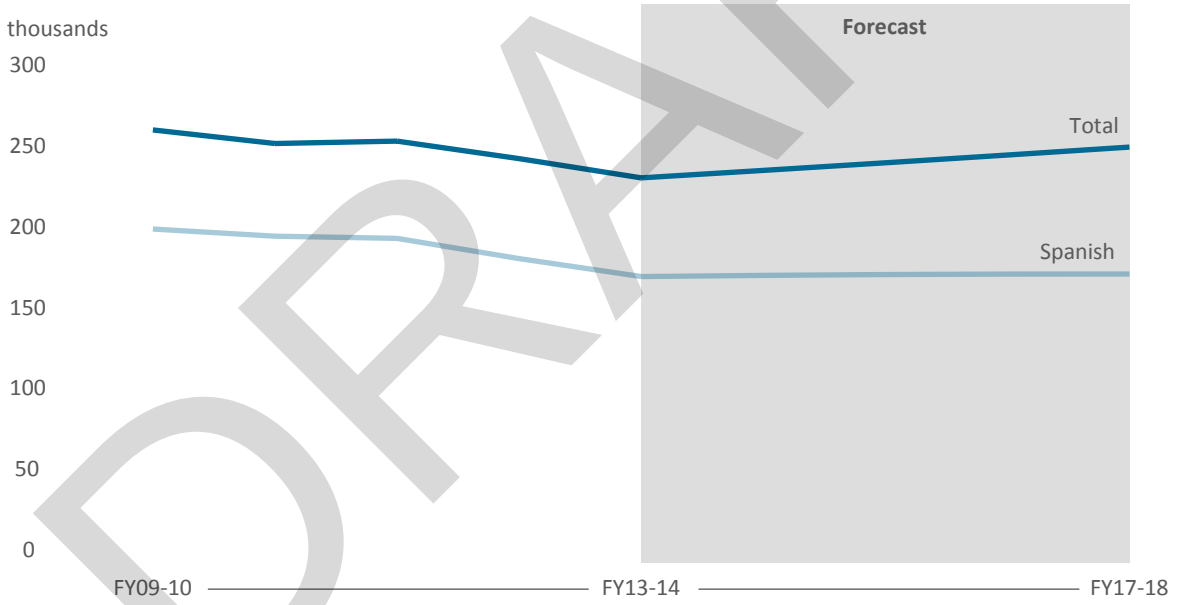
The trend in total statewide interpreter service days is projected to reverse course and begin rising back toward levels observed in the early part of the study period. At the level of individual language, the general upward trend is tempered by the varying projected growth rates in LEP populations. Notably, Spanish remains essentially flat, while most other languages are expected to show slow to moderate growth. Some observed trends in individual languages during the study period are difficult to interpret and likely reflect inconsistent reporting in CIDCS. For example, Hindi, Punjabi, and Tongan service day counts show abrupt drops from FY 09-10 to FY 10-11 and relative stability in the years following. The extent of the initial drop in these instances and the observed stability at the new lower level suggests the need to discount the impact of the first year value to more accurately describe the trend.[38] Therefore, while it is likely that the FY 09-10 values overstate actual service days, the forecasting methodology used in this report serves to temper the extent of decline and provide a more realistic basis for projecting future need.

The following figures provide a means to more readily see the service day trends and projections by language. Languages are grouped together by relative size, and Spanish is shown along with the statewide total since it comprises the vast majority of interpreter use.

Figure 11: Statewide Service Days, Trend and Projection: Total and Spanish



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[38] This view receives additional support when it is noted that in all three cases, high service day counts for these specific languages during FY 09-10 data come primarily from two superior courts, and thus may be the result of reporting anomalies.

Figure 12: Statewide Service Days, Trend and Projection: Vietnamese and Korean

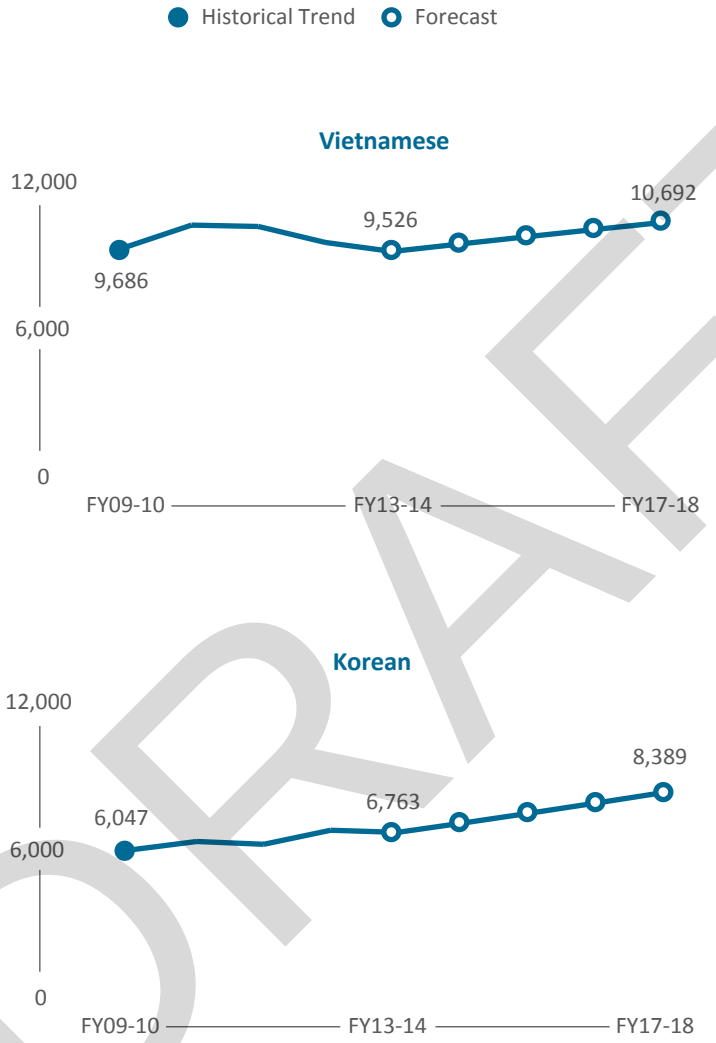

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Figure 13: Statewide Service Days, Trend and Projection: Mandarin, Farsi, Cantonese, Russian, and Tagalog

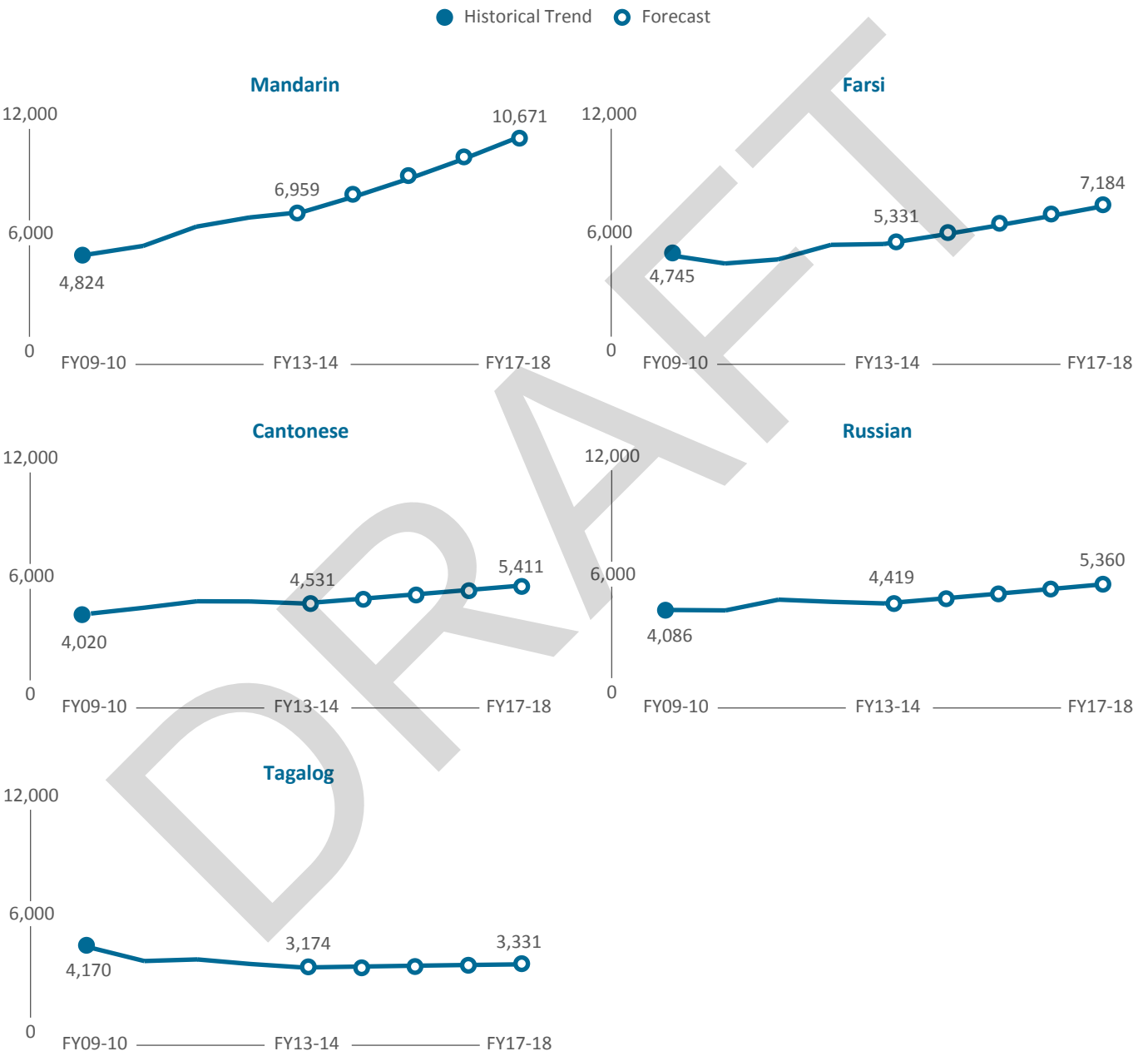

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Figure 14: Statewide Service Days, Trend and Projection: Arabic, Armenian, Punjabi, and Khmer

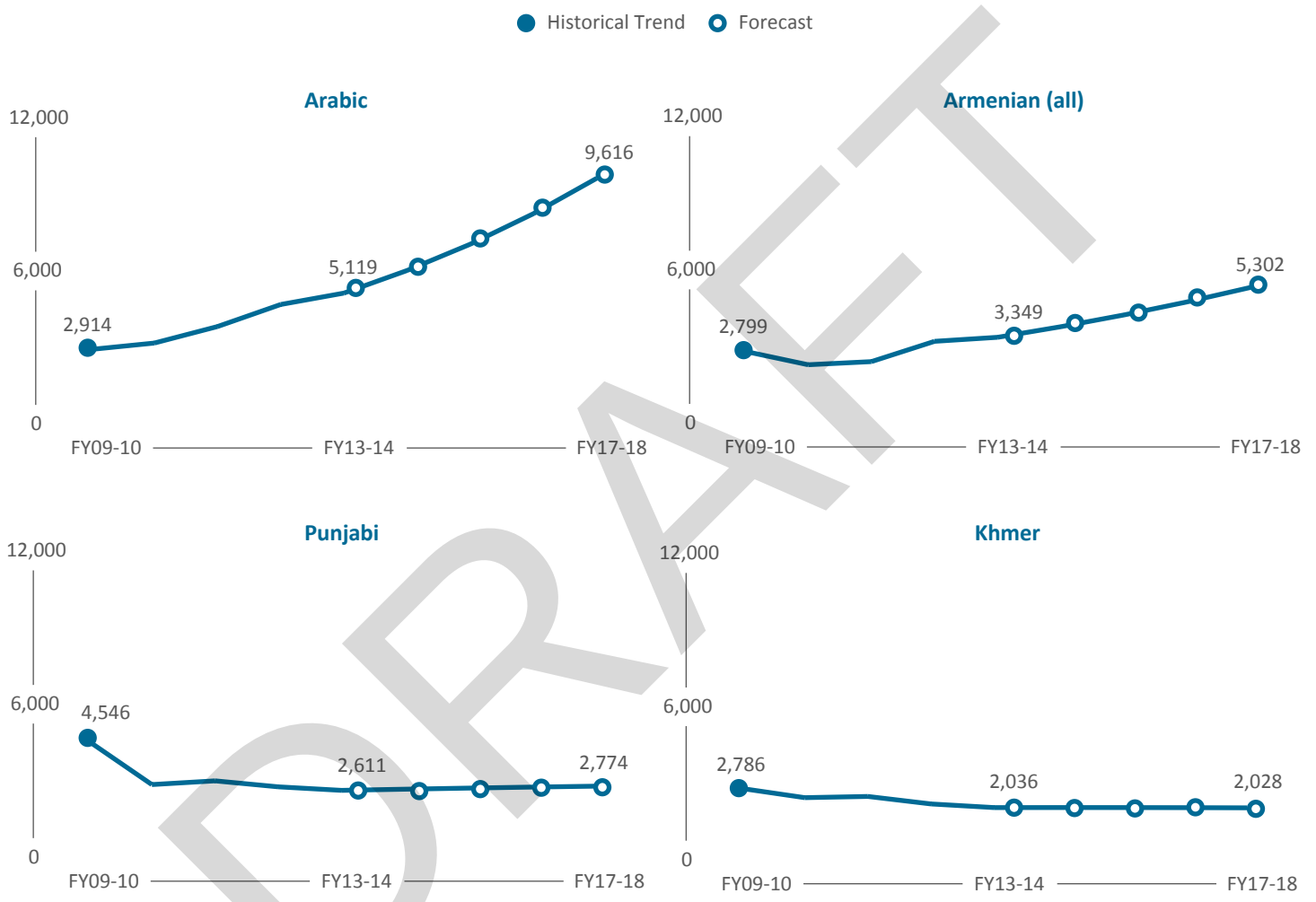

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Figure 15: Statewide Service Days, Trend and Projection: Japanese, Hmong, and Lao

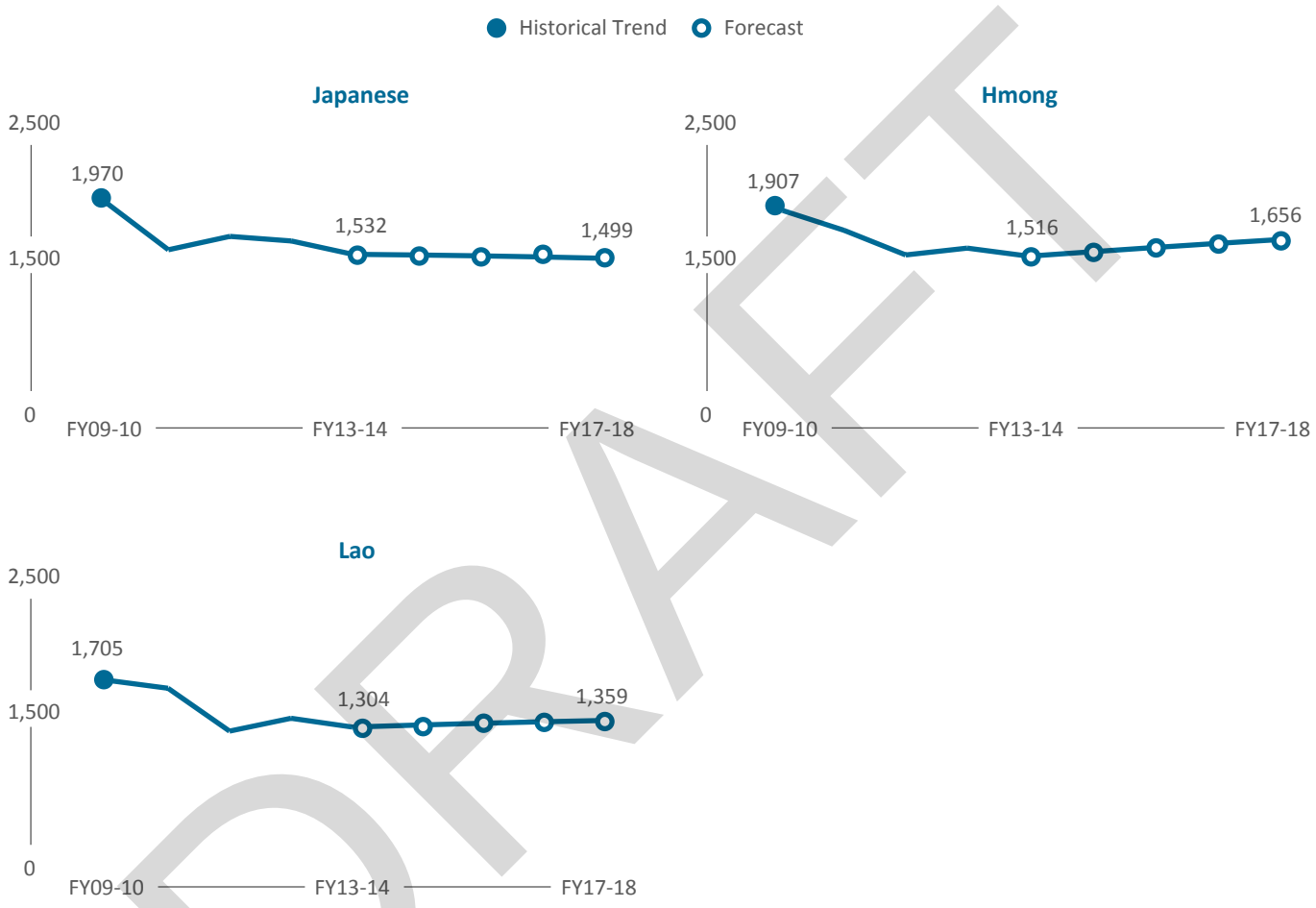

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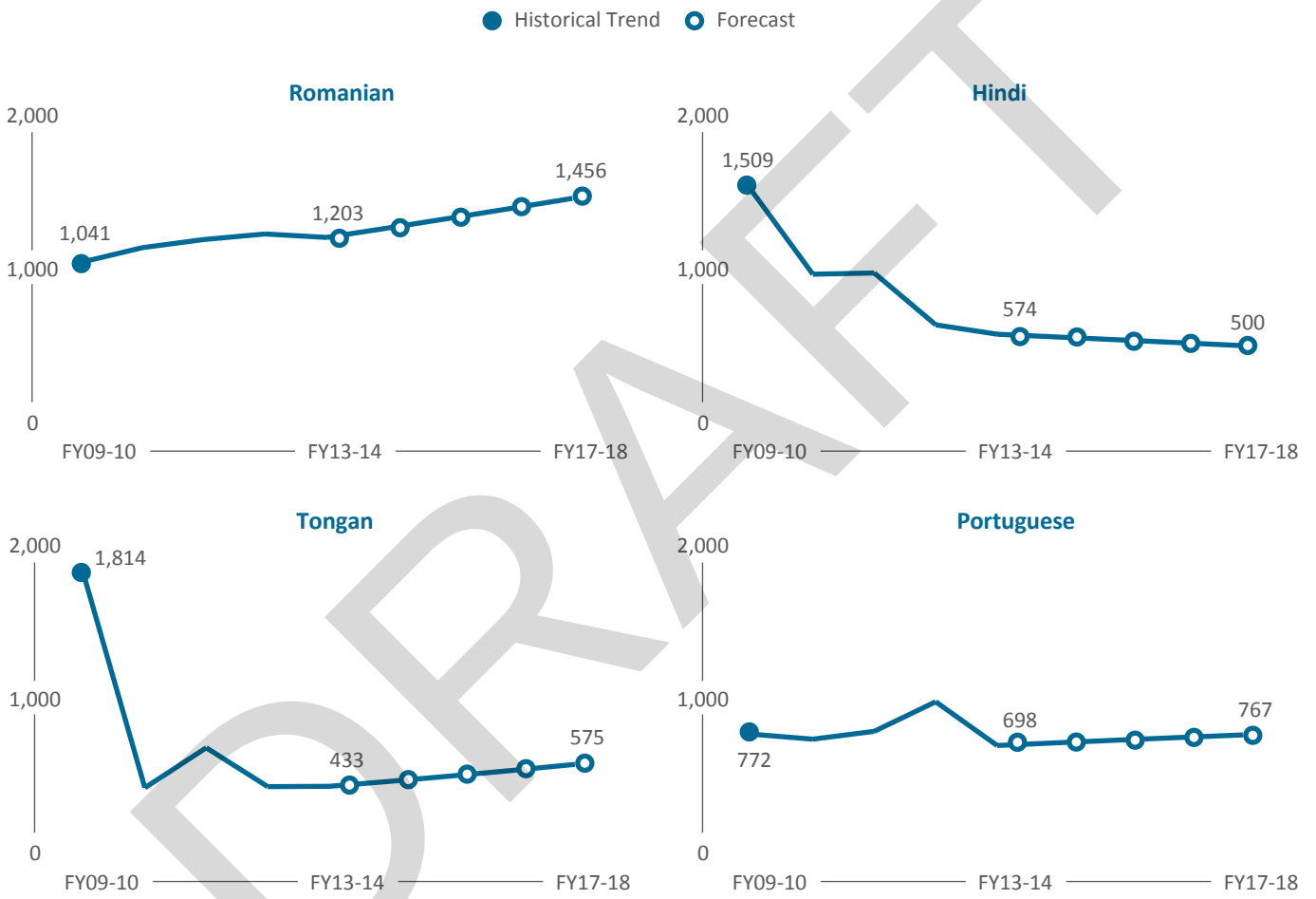
Figure 16: Statewide Service Days, Trend and Projection: Romanian, Hindi, Tongan, and Portuguese



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V. Designation and De-Designation of Languages

The Judicial Council reviews the usage of interpreter services and may designate or de-designate a language "depending on the results of studies of language use in the courts and other administrative factors."[39] The designation of a language is a matter of statewide policy for the judicial branch and the threshold is based on a statewide perspective across all regions. Presumably, among the administrative factors considered are the costs associated with developing bilingual interpreting exams and other related costs. While some languages might be heavily used within a particular region and the need to provide interpretation in those languages an important concern for local court administrators, that does not necessarily mean that the statewide need rises to the level appropriate for certification. That said, the issue is not the geographic distribution of a language per se, but the extent to which it is used in the courts, and whether that satisfies the criteria established by the Judicial Council. A language that reaches the statewide threshold level of use to be set by the Judicial Council has achieved that level, regardless of whether it is concentrated in one region or distributed throughout all regions. The question of where to set the level of usage that qualifies a language for status as a designated language remains to be determined by the Judicial Council, on the basis of this study and other administrative considerations.

The preceding sections in this report describe the methods used to estimate statewide interpreter usage (service day) trends and projections drawing on both statewide LEP population trends and projections and statewide caseload trends and projections.[40] The result of this analysis is presented in Table 16 and serves as the primary source for the following recommendations. Currently designated languages are shown in italics.

A close look at Table 16 on page 36 shows a logical, statistical threshold distinguishing higher from lower interpreter usage among the top 19 languages to be at about 2,000 service days per year. In FY 12-13, this statistical cut-point occurs between Khmer (2,179 service days) and Japanese (1,646 service days), a difference of about 25 percent in statewide service days; this gap is projected to continue. As a consequence, this study suggests the following three tiers when evaluating languages for designation:

- Tier 1: A language should be designated when statewide annual interpreter usage exceeds 2,000 service days.
- Tier 2: A language should be monitored for possible designation or de-designation when statewide annual interpreter usage is between 1,500 and 2,000 service days.
- Tier 3: A language should be considered for de-designation when statewide annual interpreter usage is less than 1,500 days; in addition, no language should be considered for future designation when statewide usage is less than 1,500 days.

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[39] See FAQs on the Court Interpreter section of the Judicial Council web site at http://www.courts.ca.gov/2683.htm.

[40] How these interpreter services are provided (e.g., staff interpreters, contract interpreters, video remote interpretation, cross-assignment, telephonic services) is not within the scope of this report and data does not exist to convert service days into other units such as assignments, cases, or FTE interpreters.

The three tiers offer a guideline for assessing the status of currently designated and undesignated languages as well as highlighting languages where service day trends support monitoring for a possible change in status.[41] Languages in Tier 1 and Tier 2 are examined below, while all languages outside the top 19 languages are automatically placed in Tier 3.

Tier 1: Designated Languages

Table 16 on page 36 shows that the highest volume of service days tends to be among the currently designated languages. In addition, languages in the top part of the table are projected to remain high and thus justify maintaining their status as designated languages.[42]

Tier 1 Recommendations

Recommendation 1: The Judicial Council should retain the classification of Arabic, Eastern Armenian, Western Armenian, Cantonese, Khmer, Korean, Mandarin, Punjabi, Russian, Spanish, Tagalog, and Vietnamese as designated languages with established certification programs.

The most recent addition to the set of designated languages is Farsi, which is the fifth most used language in court interpretation. Table 16 shows that the high level of Farsi interpretation is projected to continue to increase. This trend has been persistent and was also noted in the previous study.[43] Farsi was designated effective January 1, 2011, but the necessary examination is not yet available.[44]

Recommendation 2: The Judicial Council should retain the classification of Farsi as a designated language and should establish a certification program for testing and certifying court interpreters in this language.

Tier 2 and Tier 3: Future Designation or De-Designation

Seven languages in the top 19 have annual service counts of less than 2,000 days. This report recommends that languages posting annual service day counts generally in the range of 1,500 to 2,000 service days be monitored for possible designation or de-designation. De-designation may be considered for languages that show steady decline in service days as well as decreases in the LEP population. In contrast, consideration should be given to designating currently non-designated languages in the bottom half of Table 16 where evidence shows relatively high and rising demand for interpreters. Two descriptive factors are suggested to support this effort.

First, the monitoring process of languages for possible designation should begin as the trend in service day counts approach the 1,500 day mark. This volume of service days clearly suggests a strong demand for interpreter services. Currently, Hmong, Lao, and Romanian each comprise between 1,200 and 1,600 service days per year. Moreover, service day projections show continued growth for all three languages.

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[41] The previous study suggested the use of 2,000 service days as a possible bench mark for designation, although a break point at 1,500 service days was ultimately used for that study period. See 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010, p. 100.

[42] As noted earlier in this report, the data are not sufficient to understand the workload of West Armenian and East Armenian separately, and whether one or both languages should continue to be designated.

[43] See 2010 Language Need and Interpreter Use in California Superior Courts, San Francisco: Judicial Council of California, 2010, p. 101.

[44] See Judicial Council of California, Fact Sheet on Court Interpreters, March 2013, p. 3 fn. 3.

In contrast, the number and trend of service days for two currently designated languages raise the possibility of de-designation. Japanese is projected to continue to fall toward the 1,500 day threshold, while Portuguese is projected to remain near the level of 1,000 annual service days.

Second, consideration should be given to whether there is evidence that demand for interpreter services for a particular language is changing at a rate greater than or less than the corresponding rate of change in the overall LEP population. The number of LEP speakers of a given language is a useful indication of possible need for interpreter services, but is not a perfect measure of the frequency with which that language is interpreted in court. Said differently, all language populations do not use the courts equally or in direct proportion to the size of their population. Cantonese, for example, ranks sixth among spoken language service days from 2009 to 2013, but Cantonese speakers are estimated to be the second largest LEP group in California during the same period. The previous report made use of the concept of "court utilization rate" to capture these differences, but the data for this study period do not allow reliable computation of that indicator as originally designed.

For this reason, a measure of proportional usage by language was designed to assess the relative usage that different language communities make of interpretive services in the courts. Proportional usage is defined as the ratio of the proportion of a language's share of required interpreter service days in a given year relative to the proportion of the total LEP population speaking that language. A proportional usage value greater than 1 means that service days for a particular language make up a greater proportion of overall service days than the share of that language within the overall LEP population. In practice, it means that speakers of that specific language make above average use of court interpretation services relative to what is observed across the top 19 languages. A proportional usage value less than 1 indicates relatively below average use of court interpretation services.

Table 17 below brings together information on the trend in service days, projected LEP population growth, and proportional usage for the five non-designated languages in the top 19 as well as Japanese and Portuguese (which are currently designated, and indicated by italics).

Table 17: Statewide Service Days, LEP Population, and Proportional Usage

Language	Current Service Days FY12-13	Projected Service Days FY17-18	Projected LEP Population Growth	2009-2012 Proportional Usage
Japanese	1,646	1,497	▼	<1
Hmong	1,585	1,654	▲	>1
Lao	1,379	1,358	▲	>1
Romanian	1,225	1,455	none	>1
Portuguese	982	767	▼	<1
Hindi	635	499	▲	<1
Tongan	431	575	▲	>1

▼ = Decreasing

▲ = Increasing

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For three languages (Japanese, Hindi, and Portuguese) service day projections are declining and the proportional usage value is less than 1. In the case of Japanese and Portuguese, a projected decline in LEP population coupled with a proportional usage value less than 1 explains why service day projections are falling for both languages. Additionally, even with moderate growth in LEP population, as is projected for Hindi, the low value of proportional usage explains why there is unlikely to be a corresponding rise in interpreter service days.

For Tongan, a slight rise in both LEP population and service days is projected. However, even though the proportional usage factor is greater than 1, the relatively low count of service days means that Tongan is not currently viewed as a candidate for designation.

The three remaining languages, Hmong, Lao and Romanian, should all be monitored for possible consideration for future designation. In all instances, current annual service day counts exceed 1,200. Moreover, the value for proportional usage exceeds 1 for all three languages. This means that while LEP population is not expected to rise dramatically for any of the three languages, the number of service days is expected to increase, nearing or exceeding the 1,500 service day threshold in all cases by FY 17-18.

Tier 2 and Tier 3 Recommendations

Recommendation 3: The Judicial Council should consider the de-designation of the Japanese language.
Adopting the value of 2,000 service days as the threshold for designation means Japanese no longer meets the criteria for designation. The use of Japanese interpretation has been in steady decline and the Japanese-speaking LEP population has been decreasing steadily throughout this study period as well as during the previous study period. There is no reason to think that these longstanding trends will change.

Recommendation 4: The Judicial Council should consider the de-designation of the Portuguese language.
It is immediately apparent that the currently designated language with the lowest usage in terms of service days is Portuguese. The analysis of current trends and projected need show that the level of Portuguese remains far below that of any other designated language; in fact, Portuguese ranks at the bottom of the top 19 languages examined in Table 16. The level of interpreter service days used for Portuguese is far less than the 2,000 service day threshold as well as the 1,500 day threshold used in the previous report. In addition, the LEP population speaking Portuguese at home is the only one besides the Japanese-speaking LEP population that is clearly and steadily declining.

Recommendation 5: The Judicial Council should monitor the usage of the Hmong, Lao, and Romanian languages over the next five-year period for possible future designation.
Of the three undesignated languages with service day counts above 1,200, Hmong has the largest LEP population and also the fastest projected growth rate over the next five years. However, speakers of Hmong tend to make use of interpreter services at a rate lower than speakers of Lao and Romanian, thus somewhat dampening their projected future need for interpreter service days. By contrast, the need for Romanian interpreter services is projected to grow much faster. Although the Romanian LEP population growth is projected to be flat, the proportional usage of Romanian is high, in fact the highest of all languages. Lao lies between these two languages in terms of LEP population growth and proportional usage.

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Appendix A Data Sources and Methodology

Process for Measuring Interpreter Use in California

The data infrastructure of the interpreter program at the state and local levels in California remains largely unchanged from that described in the 2010 report.[45] The main sources of data are summarized below, along with the transformations required to make maximum use of the reported interpreter use and expenditure data. If the data in CIDCS were complete and consistent, and if all courts reported through CIDCS, summarizing interpreter use would be a straightforward analytical exercise. However, because the data sources suffer from inconsistency and incompleteness, as well as non-participation by individual courts, a series of estimates and transformations must be applied to each data file to appropriately weight reported service day and assignment data to produce a master file for analysis.

A multi-step process was used to construct the master data file. These steps are:

- Step 1: Assemble all available *reported interpreter use data* from multiple data sources.
- Step 2: Clean the reported data, aggregate to the level of service day, and classify by case type.
- Step 2: Estimate the future Limited English Proficient (LEP) population of California, by language, using the U.S. Census Bureau's American Community Survey (ACS) data.
- Step 3: Review statewide interpreter expenditure data for comparison with reported interpreter use data.
- Step 4: Expand reported interpreter use data using an expansion factor derived from reported interpreter service days and actual interpreter expenditures.
- Step 5: Build the master set.

Together, these steps are used to assemble, clean and weight reported interpreter use data to produce the best approximation of total interpreter service days used in required case types in California. Each step is addressed subsequently.

Methodology Used to Calculate Total Interpreter Services in Required Case types

Step 1: Assemble reported interpreter use data

Five main sources and configurations of data, described below, were used to compile information on the reported use of spoken language interpreters in California.

A. Court Interpreter Data Collection System (CIDCS)

The primary source of data for tracking interpreter use is the statewide Court Interpreter Data Collection System (CIDCS) established by the Judicial Council and used by most superior courts to varying degrees. During the time period of this study, annual data exist in CIDCS for interpreter use in forty-eight of the fifty-eight superior courts in California.[46] A summary of the courts reporting in CIDCS follows.

[45] See Institute for Social Research, "2010 Language Need and Interpreter Use in California Superior Courts," pp. 5-9. May 2010 (San Francisco: Judicial Council of California).

[46] The Los Angeles Superior Court is not included in this table in this context, since it only reports a small number of what were formerly non-Program 45.45, grant-funded interpreter assignments in CIDCS, and its required interpreter use estimate types relies on other data, as explained in this appendix.

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Table A1. Superior Courts Reporting Required Interpreter Use in CIDCS

Region 1	Region 2		Region 3		Region 4
San Luis Obsipo	Alameda	San Benito	Amador	Placer	Imperial
Santa Barbara	Contra Costa	San Francisco	Butte	Plumas	Riverside
Ventura	Del Norte	San Mateo	Calaveras	Sacramento	San Bernardino
	Humboldt	Santa Clara	Colusa	San Joaquin	San Diego
	Lake	Santa Cruz	El Dorado	Shasta	
	Marin	Solano	Fresno	Siskiyou	
	Mendocino	Sonoma	Glenn	Stanislaus	
	Monterey		Kern	Sutter	
			Kings	Tehama	
			Lassen	Tuolumne	
			Madera	Tulare	
			Mariposa	Yolo	
			Merced	Yuba	

CIDCS provides data that describes the number of service days,[47] half-day and full-day sessions, and type of interpreter (certified/registered, non-certified/non-registered, staff interpreter (employee), contractor) by language. These data allow for analysis of interpreter use in superior courts.

B. Partial CIDCS and Partial Independent Data Systems

Five California superior courts provided interpreter data largely through a blend of sources that drew on both CIDCS and alternative data sources. That is, CIDCS was used at the start of the study period, but data entry into CIDCS subsequently ceased as the courts migrated away from that reporting platform. In these courts, post-CIDCS data were obtained from different, court-specific independent data systems.

For these five courts, data were typically provided in spreadsheets containing data elements that allowed the data to be merged with the CIDCS data. In some instances the data elements are equivalent (e.g., language, case type), while in others the data elements reported provided a basis for creating equivalent variables (e.g., a start time and stop time reported for an assignment allowed the creation of a half-day or full-day session variable for that assignment that aligns with the CIDCS session type variable).

Table A2. Superior Courts Reporting Interpreter Use in Independent Data Systems

Region 1	Region 2	Region 3	Region 4
none	San Francisco	Amador	none
	Stanislaus	Nevada	
		Sacramento	

[47] A service day is an assignment to interpret one or more court proceedings completed by an employee or contract interpreter. A service day could be a full, half-day or night session.

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The sole exception in Table A2 is the superior court in Nevada County, which did not report at all through CIDCS, but provided all its data for the study period through a series of independent data files. These files were merged into CIDCS data in the same manner as those from other independent data system.

C. Estimating Service Days for Non-reporting Courts

Interpreter use was not documented in CIDCS or other data sources in seven courts, shown below.

Table A3. Superior Courts Not Reporting Interpreter Use

Region 1	Region 2	Region 3	Region 4
none	Napa	Alpine	Inyo
		Modoc	
		Mono	
		Sierra	
		Trinity	

As discussed more fully below, Program 45.45 expenditure data for interpreter services provided by these courts (obtained from the Judicial Council) was used to create estimates of interpreter service days. Estimates of interpreter use for each of these seven courts were produced by matching the missing courts with comparable reporting courts.

Comparable or peer courts for the seven missing courts (Alpine, Inyo, Modoc, Mono, Napa, Sierra, and Trinity) were selected from the same interpreter region, according to geographic proximity and similarity in population and caseload. Respectively, the peer courts chosen for each were Colusa, Imperial, Plumas, Colusa, Mendocino, Lassen, and Shasta. Simulation of interpreter service days for each missing court was performed by modifying the number of service days in the corresponding peer court according to their differences in county population and caseload. The modifications adjust the estimates of interpreter activity to account for the fact that, for instance, the population of Shasta County is considerably larger than neighboring Trinity County, but Shasta typically has fewer case filings per person than Trinity.

The percentage of overall expenditures in Program 45.45 represented by these seven courts from FY 09-10 to FY 12-13 was approximately 0.16 percent, so the risk of distorting the statewide picture by using these estimated peer court values was minimal.

D. RITS and Vision data from the Superior Court of California, County of Orange

Of considerable significance to this study are two large superior courts in the County of Orange and the County of Los Angeles that use other information systems to manage their interpreter programs. The Superior Court of California, County of Orange, does not utilize the CIDCS system at all, while the Superior Court of California, County of Los Angeles, uses CIDCS for only a small number of grant-funded domestic violence and family assignments. The approach to the data for each of these courts is described separately.

The superior court in Orange County manages its interpreter program in two local information systems. Incorporating the data from this court into the analysis required several steps, which are described subsequently.

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Data for court interpretation in Orange is compiled in two databases. The first database, called the Reporter Interpreter Tracking System (RITS), is used to track interpreter assignments at the inception of the assignment for all case types. This information is complemented by the data in the Vision system, the second database, which documents completed interpreter assignments in certain case types. Data from these two systems were combined into a single file by matching on date, case number, and language. RITS data also contain variables that align with CIDCS data: full and half-day session, language, case type, employment status, and certification status.

As noted in the 2010 report, the Vision system includes only partial information on required case types: criminal and infractions (felonies, misdemeanors, and infractions). Vision excludes the remaining required case types. Although case type alignment with CIDCS data is not complete, Vision data that are collected include variables that match CIDCS: language and case type.

The decision was made to merge data from RITS and Vision so as not to replicate the problem of the previous study, which excluded Orange from important parts of the analysis and thereby underrepresented the true spoken language caseload in Orange and in Region 4. For the purposes of this report, the non-criminal assignments documented in RITS are assumed to have been completed as described (language, case type, interpreter status), allowing this information to be used to create a full picture of interpreter work in Orange. While it may be that some small percentage of these assignments did not occur for various reasons, it is unlikely that these unfulfilled assignments represent a significant proportion of all interpreter activity. Ignoring these assignments would bias case type distribution, as the data from Orange would exclude non-criminal case types. Criminal assignments in RITS are included only when they match with completed assignments reported in Vision.

E. Interpreter Use in the Superior Court of California, County of Los Angeles

The Superior Court in Los Angeles does not use CIDCS to report completed interpretation assignments for all required case types. Only a small number of grant-funded domestic violence and family cases are captured in CIDCS for Los Angeles. The court manages its interpreter program through the use of paper forms known as Daily Activity Logs (DAL). However, the DALs are not consistently or uniformly completed, nor is DAL information entered in a database or spreadsheet or other electronic form.

The court does document the assignment of staff interpreters, all of whom are certified interpreters, by court location, FTE, and language. Consequently, it is possible to estimate the interpreter workload in Los Angeles by using interpreter staffing FTE data by court location, language and status (representing full-time, part-time, and as-needed positions). The number and type (e.g., full-time, half-time) of employee positions was used to calculate the total service days for each year. An estimate of contractor interpreter days was also developed. The methods used to estimate interpreter use in Los Angeles are described more fully in the upcoming sections.

Step 2: Clean the Data and Classify Service Days by Case Type

Once all the reported interpreter use data were assembled, NCSC staff undertook basic data cleaning and checked for completeness and consistency of reporting for key data elements: region, language, session type, interpreter employment status, interpreter certification status and case type. Four of six variables were submitted in unique data fields and, for available data, were found to be essentially complete and consistently reported by assignment across all courts. The language variable required some standardization where different terms are used in the various data sources to de-

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scribe the same language (e.g., Binisaya, Visayan, and Cebuano were aggregated into Cebuano) or simple variations in spelling (e.g., Kanjobal and Qanjobal were aggregated into Kanjobal). In one instance, records did not distinguish between East Armenian and West Armenian, and referred only to Armenian. Since a significant number of those service days originated in Los Angeles (where the staff interpreters speak both East and West Armenian) and Orange (where the information system does not differentiate) and since there was no empirical basis for allocating these service days, they are reported as "Armenian (unknown)."

The one variable that required a more complex treatment is case type. A first task in addressing the case type variable was to ensure consistent classification. Case type identifying information potentially resides in multiple places in the data files, and each field (Case Type, Event Type, and text boxes for comments) was therefore examined for the existence of clear case type information and to determine the possibility of assigning a correct case type. Only when all reported data in the record were examined and found deficient was a case classified as belonging to an Unknown case type. Even with this level of scrutiny, however, a significant proportion (19 percent) of the cases could not be assigned to a required case type due to this missing information.

Once the examination of the case type variable was completed, NCSC staff turned to the task of aggregating reported assignment level data into service days. This task is necessary because the basic unit of analysis in this study is interpreter service day. Due to consistency in reporting, consolidating the data by service day was straightforward for all data elements except case type. Therefore, decision rules were developed to aggregate assignment level data into service days by case type.

In the course of a single service day, an interpreter may provide services for several court procedures within one or more than one case. Although some service days are spent working on one case or more than one case of the same type, many interpreters work on more than one type of case within the same service day. For instance, an interpreter may work on a series of traffic cases in the morning and a misdemeanor trial in the afternoon, or provide services for several legal separation and paternity hearings in the same day. An interpreter may also work on a series of non-traffic infractions as well as one or more non-required case types, such as unlawful detainer or small claims. In order to associate service days with case types, some rules must be developed to prioritize and link case categories with service days when work is performed on more than one type of case.

Service days devoted to handling a single required case type were categorized as that case type. When a service day contained interpretations for more than one required case type, it was assigned the type that was interpreted most frequently within that day, when a unique mode existed. For service days when more than one case type was interpreted with equal frequency, a hierarchy was used to assign a case type to the service day. The hierarchy is based on the California judicial needs assessment ranking, reflecting the average time required by judges in the processing of cases by type.

The ranking is as follows:

1. Dependency
2. Felony
3. Delinquency
4. Legal Separation/Dissolution/Nullity (where protection order is sought)

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5. Domestic Violence (including Elder Abuse)
6. Paternity (where protection order is sought)
7. Misdemeanor (Traffic and Non-traffic)
8. Traffic Infraction
9. Non-traffic Infraction
10. Other

This hierarchy was used to categorize service days by case type when more than one type was recorded with the same frequency.[48]

With respect to Orange County, once the RITS and Vision data files were merged, the same methodology described above was used to classify the service days by case type.

The information available from Los Angeles does not include deployment of interpreter staff and contactors by case type. NCSC staff investigated the possibility of estimating interpreter service days by case type in Los Angeles by drawing on the observed experience of other superior courts. For this analysis, comparison courts were selected with the most complete data in CIDCS.[49] Then, the mix of case types in Los Angeles was compared to the mix of case types in the comparison courts and found to be very similar—the correlation coefficient of caseload mix between the two groups each year averages over 0.6. The relatively high correlation led NCSC staff to conclude that the risk of distortion is minimal and the caseload mix in the comparison courts was used to estimate the use of interpreters by case type in Los Angeles. Thus, if on average Spanish language interpreters in the most complete CIDCS courts spend 20 percent of their service days on felony cases, the same percentage of service days was allocated to felony cases for the interpreters in Los Angeles.

Step 3: Review Statewide Interpreter Expenditure Data

Fiscal data from the Program 45.45 expenditure records for court interpreter employees and contractors for FY 09-10 through FY 12-13 for all 58 superior courts provided by staff of the Judicial Council were reviewed.

Step 4: Expand Service Days to Align with Expenditures

As has been documented, to develop a profile of interpreter activity in required cases for many superior courts in California, it is necessary to augment data from CIDCS with data from other alternative sources. For purposes of this report, and to ease discussion in the remaining sections of this appendix, the number of reported interpreter service days will be referred to as CIDCS data regardless of source.

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[48] A decision rule was also required regarding individual assignments that include both required and non-required case types. Since the primary goal for the current report is to document interpreter use in required case types, service days were defined as "required" if a required case type was among the types interpreted in the course of the day. A small portion (less than 1 percent) of service days overall were identified as containing only non-required, civil case types and those service days were excluded from all analyses in this report.

[49] The counties used to model case type distribution for Los Angeles were Butte, Contra Costa, El Dorado, Fresno, Kings, Lake, Madera, Mendocino, Merced, Monterey, Placer, Riverside, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Clara, Shasta, Sutter, Tulare, Ventura, Yolo, and Yuba.

The CIDCS data consists of records entered by courts after completion of assignments. Interpreter activity reported in CIDCS underreports the amount of interpreter work actually being done in two distinct ways. First, not all courts enter all of the interpreter assignments in CIDCS, so the number of service days worked is truncated. Second, the interpretation activity performed within each service day is not always entered completely, so the number of cases and events for which interpreter services are provided is censored.[50] Thus, entries in CIDCS understate the number of sessions interpreters complete and the amount of work completed within those sessions.

In order to make the fullest use of the available CIDCS data and to overcome the limitations imposed by the incompleteness of the records, several statistical methods were used and definitions adopted to develop a more complete picture of interpreter use in California using the reported interpreter activity.

Completeness Ratio and Expansion Factor

As in the previous study period, the CIDCS reported assignment data are incomplete for interpreter services both assigned and delivered. However, since superior courts operate their interpreter programs on a cost reimbursement basis, it is reasonable to assume that the expenditure data from Judicial Council represent a relatively complete accounting of the service provided, as measured in dollars.

The Program 45.45 expenditure data were used to weight the reported CIDCS assignments up to match the expenditure data, employing a similar methodology to that used in the previous study period. To provide for the tightest estimations using this method, the completeness ratios and expansion factors were calculated and applied only for those time periods in which fiscal data and CIDCS data could be tightly aligned. The fiscal year data were available for FY 09-10 through FY 12-13. CIDCS data were aligned with those fiscal year parameters using the date information in that database.

First, the number of service days per fiscal year for each court was calculated, distinguishing between full and half-day sessions completed by employees, certified or registered contractors, and noncertified/nonregistered contractors. In this way, each court's specific profile by employment status and session type provided the basis for individually weighting up its reported assignments to align with its expenditures. Compensation rate information for service days were obtained from the regional Memoranda of Understanding in effect during the study period (for interpreter employees) and the Payment Policies for Contract Court Interpreters adopted by the Judicial Council of California (for contract interpreters).

For the Orange superior court, the same process as described above was used to compute the expansion factor and weight the reported work up to expenditures. This was necessary because just as in the CIDCS courts, some assignments are not reported in the information systems and service days are underreported.

For the Los Angeles superior court, interpreter employee service days were estimated based on the reported number and type (e.g., full-time, half-time) of interpreter positions used by the court. Estimated service days were then converted to a calculated cost of recorded interpreter use by multiplying service days by appropriate interpreter compensa-

[50] In this context, censored means that interpreter services were provided on a given day, but the extent of interpreter activity within that day is not known.

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tion rate information, as described above. Annual calculated cost was then compared to annual expenditure data to create an expansion factor for the use of interpreter employees in Los Angeles. During the study period, the work of interpreter employees represented about 90 percent of interpreter personnel expenditures, with contractors representing about 9 percent.

To account for interpreter contractors in Los Angeles, it was possible to create an estimate for contractor service days (both certified/registered and noncertified/nonregistered interpreter contractors) using Program 45.45 expenditure data because it is organized by employment and certification status. The allocation of contractor service days by language was estimated using historical data from the previous study period, patterns from other courts in the same geographic region, as well as the small number of service days reported for grant-funded domestic violence and family service days reported in CIDCS. While this results in an estimate, the fact that the overwhelming majority of interpreter work is conducted by staff interpreters whose language is known means that the contractor estimates do not significantly influence the bigger picture of interpreter work in Los Angeles.

Interpreting Expansion Factors

To help understand the concept of an expansion factor, an example of how this process works in combination with a completeness ratio is illustrated in Table A4 below. Simply put, if a court reports service days whose estimated expenditure is less than its actual expenditures as reported in the Phoenix financial information system at the Judicial Council, its reported service days are assumed to be incomplete. The completeness ratio expresses this as a percentage: in this example the court has a completeness ratio for interpreter employees of .83; it is estimated to be reporting only 83 percent of the work being performed by interpreter employees (95,496 divided by 114,700). To align the reported service days of work with the expenditures for this class of interpreters, the reported service days must be multiplied by the inverse of the completeness ratio (114,700 divided by 95,496, or 1.20). The number 1.20 is defined as the expansion factor. The same process is repeated for each class of interpreters based on employment status and certification status to arrive at a set of three expansion factors.

Table A4. Calculation of Completeness Ratio and Expansion Factor, Sample Court

	Employee Services			Certified/Registered Contractor Services			Noncertified/Nonregistered Contractor Services		
	Service Days Reported	Pay Rate	Cost of Reported Service	Service Days Reported	Pay Rate	Cost of Reported Service	Service Days Reported	Pay Rate	Cost of Reported Service
Full-day	260	$273	$ 70,970	544	$282	$153,533	52	$175	$ 9,100
Half-day	162	$151	$ 24,527	436	$157	$ 68,260	118	$ 92	$10,856
Nights	0	$151	$ 0	0	$157	$ 0	0	$ 92	$ 0
Totals	422		$ 95,496	980		$221,793	170		$19,956
	Employee Salaries Reported by Phoenix		$114,700	Contractor Expenditure Reported by Phoenix		$288,030	Contractor Expenditure Reported by Phoenix		$25,278
	Completeness		0.83	Completeness		0.77	Completeness		0.79
	Expansion Factor		1.20	Expansion Factor		1.30	Expansion Factor		1.27

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These expansion factors are used to weight up the reported service days and create a more accurate estimate of the total number of service days completed. The calculation is illustrated in Table A5 below, showing the reported service days for each class of interpreters multiplied by its expansion factor. This process was repeated for each court for each fiscal year.

Table A5. Application of Expansion Factor to Reported Service Days, Sample Court

Employment/ Certification Status	Reported Service Days		Expansion Factor		Weighted Service Days
Employees	422	x	1.20	=	**506**
Certified/Registered Contractors	980	x	1.30	=	**1,273**
Noncertified/Nonregistered Contractors	170	x	1.27	=	**215**

Since the reported service days also contain other attributes (e.g., language, session type, case type), the data for those elements are also weighted up in the process of weighting up the service days.

Differentiating Expansion Factors by Employment Status

An unavoidable consequence of using the records of interpretations in CIDCS to represent the full quantity of reported and unreported interpreter services as measured by employee and contracted interpreter expenditures is that the characteristics of interpretation records that are reported are magnified. Interpreter activities that are reported more consistently will be overrepresented in the expanded counts relative to activities that are recorded with less fidelity. Thus, the work (i.e., languages, case types) of contractor interpreters, whose work is reported by courts more regularly in CIDCS than the work of employees, may be overrepresented in the expanded data. This means, for example, that the volume of languages other than Spanish may be somewhat magnified in the expanded data, since most Spanish language interpretation is done by interpreter employees and thus underreported.

Using the number and type of service days per court and fiscal year in combination with compensation rates, the cost of recorded interpreter use was calculated and an expansion factor was computed for each court, comparing the interpreter services documented in CIDCS for employee and contract interpreters by certification status annually to the expenditures for those same interpreter services in the same time period (calendar year assignment data were reorganized into fiscal years, to align with the expenditure data). Expansion factors were computed for both contractor and employee interpreters. In this way, the data were adjusted for the fact that underreporting of the work performed by interpreter employees usually takes place at a higher and different rate than underreporting by interpreter contractors. This can be seen from Table A6 which illustrates that interpreter contractor expansion factors generally reflect better reporting (i.e., are lower) than those for interpreter employees. The table also illustrates how these ratios varied over time within regions and among regions during the study period.

These expansion factors were calculated for each court, for both employee and contract interpreters, based on the reported data, maintaining each court's employee-to-contractor ratio. The reported work was then weighted using the expansion factor, so that the estimated total interpreter service days align with for the total reported expenditures for each court.

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Table A6. Expansion Factors by Employment Status

	Expansion Factors							
	FY09-10		FY10-11		FY11-12		FY12-13	
	Employee	Contractor	Employee	Contractor	Employee	Contractor	Employee	Contractor
Region 1	1.39	2.61	1.43	1.49	1.41	1.42	1.48	1.85
Region 2	4.05	3.88	8.71	2.24	12.48	1.59	10.20	1.90
Region 3	11.25	1.72	6.35	1.42	16.05	1.25	5.26	1.40
Region 4	3.02	1.70	2.87	1.85	2.92	1.53	2.73	1.18
Statewide	**4.93**	**2.48**	**4.84**	**1.75**	**8.22**	**1.45**	**4.92**	**1.58**

Differentiating Expansion Factors by Court and Language

Additional perspective into the expansion factors can be gained by examining those factors by court and by language. Table A7 reports the expansion factors by court by fiscal year, and provides the total number of service days reported by each by each court.[51] High values indicate underreporting: the higher the expansion factor, the greater the problem with underreporting. Where N/A appears, no data were reported in CIDCS at all by that court for that fiscal year, and the year is not included in the calculation of averages. Expansion factors were calculated for each court on an annual basis, as described above. Looking at the expansion factor along with the Average Annual Reported Service Days allows contextualization of the underreporting in CIDCS; if a court's reported data were expanded by a factor of 1.43 in a particular fiscal year, for example, this column gives a sense of the average size of the number to which that factor was applied to arrive at the total estimated service days for that year.

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[51] Expansion factors are not shown for the seven courts that did not report any interpreter use data at all.

Table A7. Expansion Factors by Court, by Fiscal Year

Court	Region	Expansion Factors				Average Annual Reported Service Days
		FY09-10	FY10-11	FY11-12	FY12-13	
Los Angeles	1	1.21	1.20	1.19	1.15	65,999
Ventura	1	1.61	1.67	1.62	1.68	4,075
Santa Barbara	1	1.22	1.31	1.34	1.65	2,624
San Luis Obispo	1	1.30	1.26	1.38	1.02	970
Santa Clara	2	1.43	1.46	1.45	1.63	7,009
San Francisco	2	1.67	2.55	1.70	.84	5,034
Contra Costa	2	1.23	1.12	1.08	1.12	3,756
Sonoma	2	2.08	2.00	2.76	2.40	2,418
Monterey	2	1.91	1.94	2.05	2.11	2,374
Alameda	2	10.60	5.23	3.56	8.10	2,340
San Mateo	2	106.66	7.11	2.53	1.89	1,618
Solano	2	2.17	2.24	1.83	1.54	1,066
Santa Cruz	2	2.58	3.81	1.94	5.90	676
Mendocino	2	1.30	1.22	1.22	1.21	419
Humboldt	2	1.12	1.38	1.82	.89	286
San Benito	2	2.85	1.53	1.53	.54	217
Lake	2	1.10	2.00	1.58	1.48	188
Marin	2	5.31	49.29	27.65	3.88	181
Del Norte	2	3.24	2.40	2.17	2.70	83
Sacramento	3	1.30	1.28	1.26	1.18	9,764
Fresno	3	1.39	1.32	1.26	1.35	4,647
Tulare	3	1.19	1.31	1.33	1.34	3,684
Kern	3	1.71	3.35	2.15	1.60	2,859
San Joaquin	3	1.43	1.42	1.38	1.46	2,814
Merced	3	1.55	1.42	1.69	1.65	2,655
Yolo	3	1.34	1.28	1.27	1.39	1,349
Madera	3	1.14	1.11	1.15	1.28	1,332
Placer	3	1.43	1.54	1.79	1.71	1,015
Kings	3	1.09	1.19	1.31	1.23	667
Sutter	3	1.48	1.51	1.47	1.75	536
El Dorado	3	1.37	1.74	1.63	2.01	373
Butte	3	1.39	1.38	1.50	1.40	324
Shasta	3	1.76	1.72	2.31	2.07	319
Tehama	3	1.82	2.05	2.15	2.38	257
Colusa	3	2.06	3.15	2.93	2.28	213
Glenn	3	1.24	1.29	1.26	1.20	209
Siskiyou	3	1.32	1.54	1.60	1.91	166
Nevada	3	1.48	1.61	2.22	3.31	137
Amador	3	.93	.63	.63	1.68	111
Yuba	3	1.75	1.59	1.67	1.61	97
Stanislaus	3	N/A	1,659.31	24.29	11.06	75
Lassen	3	3.69	3.01	3.15	5.75	45
Calaveras	3	2.04	2.03	3.24	7.54	44
Tuolumne	3	2.47	2.98	3.73	18.74	31
Mariposa	3	N/A	N/A	4.29	2.81	20
Plumas	3	3.44	2.57	4.92	6.52	17
San Diego	4	1.37	1.31	1.34	1.54	11,268
San Bernardino	4	1.14	1.13	1.12	1.14	11,030
Riverside	4	1.20	1.21	1.37	1.51	7,883
Orange	4	7.43	7.49	7.43	6.75	3,375
Imperial	4	1.47	1.12	1.17	1.18	1,240

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Expansion factors can also be examined by language, as shown in Table A8 below. The higher the expansion factor, the more the service days for that language were expanded. The expansion factors shown are the *average* of the expansion factors for that language, for all courts. Since each court will have a different expansion factor and a different number of reported service days, its overall contribution to the total expanded service days will vary. For that reason, multiplying the *average* expansion factor times the Total Reported Service Days will not result in the exact number of expanded service days for that language shown in Table 5 in the report.

Table A8. Expansion Factors by Language

	Expansion Factors	
Language	Average Expansion Factor	Total Reported Service Days
Spanish	1.58	548,638
Vietnamese	2.43	18,865
Korean	3.57	9,307
Mandarin	2.58	8,837
Farsi	3.56	4,169
Cantonese	1.75	11,065
Russian	1.70	8,352
Tagalog	2.41	6,699
Arabic	2.91	4,971
Punjabi	1.76	7,259
Khmer	1.96	6,448
Japanese	3.63	2,279
Hmong	1.39	4,803
Lao	1.66	3,524
Romanian	2.07	2,220
Hindi	4.13	1,694
Armenian (unknown)	2.93	2,223
Armenian, Eastern	1.38	3,075
Tongan	3.54	947
Portuguese	2.10	1,468
Armenian, Western	1.31	2,510
Pashto	5.62	437
Samoan	2.84	806
Thai	2.93	935
Amharic	2.46	834
Slovak	1.27	1,431
French	3.11	560
Mongolian	2.60	610
Mien	1.48	1,062
Mixteco	1.51	1,011
Other/Unknown	3.06	12,477

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Step 5: Build the Master Data Set

A master data set was created by combining CIDCS service days with the supplemental data provided by other counties, including the two data sources for the Superior Court of Orange County. Because the Los Angeles data were imputed at an aggregate level, as estimated service days rather than as counts of individual case-level interpretations or reported service days, incorporating Los Angeles completely into the master data file would have required producing marginal distributions for every variable across every other variable. Instead, the marginal distributions for the variables needed were calculated for a given comparison. For this reason, a separate file was maintained for Los Angeles data. The master data set and the Los Angeles data were then used to generate the summary statistics included in this report.

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Appendix B

Language Need: Data Sources and Methodology

Process for Estimating Future Language Need

Future language need is projected based on the historical patterns of court interpreter service days by language, combined with other factors described below. The guiding parameter for this section of the report remains the required case types for which the courts are obliged by law to provide interpreter services.[52] Thus, the estimation of future language need in the case types currently required takes the volume and proportions of past interpreter use as an unbiased indicator of interpreter need for those years. The purpose of the estimate of future language need in this report is to provide a foundation for determining what languages should be classified as designated languages by the Judicial Council. The time frame for the projections was five years, the time that will elapse before the next iteration of this report.

A multi-step process was used to develop the projections of language need. These steps are:

- Step 1: Conduct an environmental scan of California macroeconomic conditions that could influence caseload or population trends.
- Step 2: Estimate the future Limited English Proficient (LEP) population of California, by language, using the U.S. Census Bureau's American Community Survey (ACS) data.
- Step 3: Estimate the future caseload in required case types, using the Judicial Council's historical filings data from the Resource Allocation Study (RAS).
- Step 4: Estimate the future required service days for the top 19 languages using a two-step process. The first step produces the five-year projection for aggregate service days, while the second step converts the forecast of aggregate service days into service day estimates for each of the 19 languages.
- Step 5. Analyze resulting service day projections to determine the threshold values for designated languages as well as for possible de-designation of languages.

These steps result in a projection of future language need and recommendations regarding the classification of languages as designated languages. Each step is described in detail below.

[52] The term "required" applied to interpreted case types shall, in this report, refer to case types, caseloads, service days, and proceedings for which California law provides that interpreter services be paid for by the court in all or many circumstances. This is true for all criminal cases and juvenile proceedings (see CA Evid. Code § 752) and for domestic violence, paternity, dissolution, legal separation, and nullity actions in which a protective order has been granted or sought "to the extent that any of these funds are made available" (see CA Evid. Code § 755[e]). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=750-757, accessed December 2, 2014, for additional information.

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Step 1: Conduct environmental scan

Key sources of near-term forecasts of the California economy were reviewed, principally forecasts by the Public Policy Institute of California, the California Department of Finance, and the Eberhardt School of Business, as documented in footnotes in the report. The purpose of this high-level scan was to evaluate the strength of the post-recession California economy as background to projecting caseload and population trends.

Step 2: Estimating the future LEP Population by Language

A. Selecting the Most-Interpreted Spoken Languages

To focus attention on the languages of greatest interest for designation, analysis was restricted to the 21 most-interpreted spoken languages, a group that includes all of the currently designated languages, as well as several languages that are not currently designated, but produce a substantial number of service days of interpretation. While many more languages are interpreted in the California courts, the frequency with which they are used is relatively low and far below the historical threshold for classification as designated.

Data limitations found in the sources of court data (CIDCS and others) for required service days and demographic data used for projection of future need led to the combination of Eastern Armenian and Western Armenian, together with the unspecified "Armenian" language category, into a single language group. More specific information permitting forecasts of the two languages based on population was unfortunately not available in the American Community Survey (ACS) data published by the U.S. Census, which is the source of LEP population estimates. As a result of collapsing these three languages into a single Armenian category, interpreter service days are forecast for a total of the 19 most prolific languages and language groups, rather than the 21 most-interpreted spoken languages referenced in the first paragraph of Step 2, above.

B. Aligning ACS data with interpreter data by language

Having selected the languages of interest, the next step in the process was to develop a methodology for estimating LEP population growth by language. The main source of data for this purpose was the American Community Survey (ACS). But before proceeding to forecasting, it was necessary to align the ACS language categories with those used in interpreter data.

In addition to the constitutionally required decennial census, the United States Census Bureau conducts the American Community Survey, an ongoing data collection effort continued throughout each calendar year, whose full implementation began in 2005.[53] The ACS collects data from approximately 1 percent of American households with the goal of providing reliable yearly statewide population estimates for a wide variety of demographic, social, and economic variables. Among the variables collected for the ACS are the language spoken at home for each household and the level of English proficiency for the survey respondent. Following the methodology in the previous report to the Judicial Council and common practice in the literature, a Limited English Proficient (LEP) person is defined as a person over the age of 5 who reported speaking English "less than very well" in the ACS survey.

[53] For a complete description, see the Census Bureau web site at http://www.census.gov/acs/www/

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The ACS produces three separate products on a yearly basis: 1-year, 3-year, and 5-year estimates. Each is based on a set of data collected over the previous 1, 3, or 5 years, respectively. The 1- and 3-year estimates are both sufficient for reliable statewide estimates, but not for estimates of geographic subdivisions with sparser populations, including several California counties, which are not included in the 1- or 3-year products. The 5-year estimates, however, include every county in California, individually or combined with one or more neighboring counties. Due to greater completeness, the 5-year estimates were used for this report; the first 5-year estimates available are for 2009.

Using the detailed language identifiers in the ACS, equivalent responses for each language among the top 19 languages in required interpreter service days were identified. As noted above, the ACS specifies "Armenian" as a response to the language commonly spoken at home, but does not document a more specific designation into Eastern or Western Armenian. Due to this limitation, Eastern and Western Armenian service days estimated from the CIDCS and supplemental interpreter data were collapsed with the preexisting, unspecified "Armenian" category in CIDCS to create an "Armenian" language group.

The language designations in ACS and in interpreter service data failed to overlap perfectly in another regard as well. In addition to Cantonese and Mandarin, the ACS identified a large group of respondents as speaking "Chinese," a category not reported in CIDCS or other sources of interpreter data. Moreover, the proportion of individuals in California who were reported as speaking "Chinese" at home was substantially larger than those speaking Cantonese and Mandarin, according to the ACS.

Assuming that most, if not all, of those identified as "Chinese" speakers in the ACS spoke either Cantonese or Mandarin, two options were considered. The first option was to exclude "Chinese" speakers, which would result in a dramatic undercounting of the absolute number of Cantonese and Mandarin speakers, but maintain the reported proportion of Cantonese to Mandarin speakers in the ACS. Assuming that "Chinese" speakers were misidentified uniformly from both language populations across the state, this would capture their proportions relative to each other, but not their magnitude or proportion relative to other languages.

The second option was to divide the identified "Chinese" speakers between the two languages (Cantonese and Mandarin) according to their proportion at some geographic level of aggregation. Choosing the second approach, "Chinese" speakers in the LEP population in the ACS were apportioned by year to Cantonese and Mandarin in accordance with the relative sizes of the Cantonese and Mandarin populations in each interpreter region, permitting a better allocation of the "Chinese" group than a simple statewide apportionment, based on variations in population demographics by region.

C. Forecasting LEP population by language

The ACS 5-year datasets covering the period from 2009 to 2012 provides fairly precise estimates of the number of LEP individuals from households speaking a language other than English at home in California statewide and by county, allowing it to be organized into the four interpreter regions. These figures afford enough data points to establish trends in the change in LEP populations during this time. Changes in LEP populations can be due to patterns of migration, language proficiency, and birth and death rates unique to each language, but these simultaneous and cross-cutting influences can only be approximated without much precision. A direct extrapolation of changes in LEP population trends provides a much better alternative to any attempt to model detailed changes in the composition and English proficiency of language groups in California.

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Trends over the four years of available data for the 19 top languages by service days are generally stable and modest. Consequently, projection of future LEP populations was done based on the weighted average change in the population of LEP individuals in each language group. The weighted average change in population is calculated by taking the difference from year-to-year for each group expressed in percent of the earlier year and summing the proportions, applying linearly increasing weight to changes from the earliest to most recent. The four years of ACS data produce three observations of change: from 2009 to 2010, 2010 to 2011, and 2011 to 2012. In the weighted average, the earliest change is unweighted, or weighted by 1, the second is weighted by 2, and the third and most recent observed change is weighted by 3. The sum of these weighted changes is then divided by the sum of the weights, which is 6.

A hypothetical example calculation of weighted average change in population is illustrated below:

2009 LEP Population for language A ($x1$) = 2,500
2010 LEP Population for language A ($x2$) = 2,625
2011 LEP Population for language A ($x3$) = 2,725
2012 LEP Population for language A ($x4$) = 2,800

$(x2 - x1)/x1 = (2,625 - 2,500)/2,500 = 0.05$
$(x3 - x2)/x2 = (2,725 - 2,625)/2,625 = 0.038$
$(x4 - x3)/x3 = (2,800 - 2,725)/2,725 = 0.027$
$(0.05 \times 1) + (0.038 \times 2) + (0.027 \times 3) = 0.209$

$$\frac{0.209}{6} = 0.035$$

Using the data above, the projected 2013 LEP population for this language is arrived at by multiplying the weighted average change of 3.5 percent (shown as 0.035 above) by the 2012 population (2,800 × .035 = 98). The estimated increase in population (98 people) is added to the observed 2012 population, resulting in an estimated population for 2013 of 2,898 (98 + 2,800).

The process illustrated above is repeated to create the estimate of 2014 based on the estimate for 2013, and so on, for each future year. In this way, the weighted average of each of the *observed* years 2009-2012 is applied to future years to produce estimates of the LEP population by language for the *estimated* years.

Since the purpose of estimating future language need is to take into account current trends in populations, the study period 2009-2012 was used as the basis for projections.[54] The purpose of using the weighted average methodology explained above is to give more emphasis to the most recent years. Having developed the LEP population by language estimates, the next step was to develop projections for caseload.

Step 3: Estimating the future caseload in required case types

Changes in California caseload, both overall and in the required case types, exhibited a downward trend similar to that observed in interpreter service days during the study period. In contrast, the years prior to the study period (and thus

[54] Coincidentally, the American Community Survey population data upon which the population estimates are based is also not available for years prior to the study period and thus prior to the recession. However, had it been available, the most current years would still have been used, for the reasons cited.

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prior to the recession) manifest small but steady increases in caseloads that are more typical of California's caseload statistics, which generally have grown along with its population.

For reasons described in the report, data from the pre-recession period FY 02-03 through FY 07-08 were used to project future caseload growth from its current level. Essentially, these data provide a sounder basis for forecasting future caseload trends, based on the assumption that the recession has ended and slow growth has returned to California and its courts. The key source of the caseload projection is the annual caseload data produced from the Judicial Council's Resource Allocation Study (RAS) model. Caseload data from FY 02-03 to FY 07-08 were used as a basis for establishing trends in the activities producing interpreter service days at the statewide and regional levels.

The RAS caseload totals for each year are divided into either 15 or 18 case types.[55] Selecting only those case types that fall within the categories for which interpreter services are required by the state constitution or statute, a required caseload total for each year was computed. The required caseload total includes traffic and non-traffic infractions, traffic and non-traffic misdemeanors, felonies, family cases involving dissolution, nullity, legal separation, child support, or domestic violence, juvenile dependency and delinquency. Several of the family law categories in RAS are over-inclusive for the purpose of estimating required caseload, because interpreter services are only provided by the court when a protection order is sought. However, as long as the share of such cases does not change dramatically from year to year, the change in total caseload serves as an unbiased indicator of the proportional change in the number of required family cases from year to year. The RAS data has been closely scrutinized for completeness and quality by Judicial Council staff and represents the best data set available for this purpose.

The RAS data series from FY 02-03 to FY 07-08 was used to establish a weighted average change rate in caseload by interpreter region. Applying these weighted average rates of change to the existing caseload series results in a projection of modest increases in required caseload within each interpreter region and statewide. The weighted average growth rate was computed in a manner similar to that described for LEP population (Step 2C) by calculating the year-to-year rate of change in caseload, summing those rates and dividing by the sum of the weights.

The interaction between LEP population trends and caseload trends provides a basis for estimating future need. For example, if caseloads decline while an LEP population grows, the two trends may result in zero net growth. What is needed is a method for linking caseload to the need for interpreter services by language, taking into account LEP population growth by language. This step is described below.

Step 4: Estimating future required service days

Anticipated future need for interpreter services is characterized by a forecast of the number of service days for the following five fiscal years: FY 13-14 to FY 17-18. Service days continue to be the most easily understood unit in which to express interpreter use, and for interpretations related to currently required case types, future interpreter need is best expressed as a projection of the service days expected by language.

[55] The variation in number of case types results from the fact that from FY 10-11 onward misdemeanors are separated into traffic and non-traffic and probate is separated into Conservatorship/Guardianship and Estates/Trusts, and Family-Other is separated into Family-Parentage and Family-Other.

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Projecting the anticipated aggregate interpreter service days for the next five years makes direct use of the caseload forecasts produced for the same time period and the relationship between caseload and service days. To allow for more variation in the relationship between caseload and interpreter work, aggregate caseloads are projected by interpreter region in four separate series. For the four fiscal years observed, the number of service days in each region was divided by the number of cases by region, and a weighted average service days per case rate was calculated. Multiplying the weighted average rate of service days per case by the forecast caseload for fiscal years 2013-14 to 2017-18 yields an estimate by region of aggregate service days, which can in turn be summed to produce the overall statewide interpreter service days.

To distribute the estimated aggregate statewide service days for the following five years among the top 19 languages, an iterative proportional adjustment was made on a year-by-year basis, informed by the observed changes in service days per language from FY 09-10 to FY 12-13 and changes in the LEP populations from 2009 to 2012. A "projected service day" rate of change was calculated for each language by producing the weighted average percent changes in LEP andin service days for 2009 to 2013, weighting recent years more heavily than earlier years, and averaging those two quantities.

For projection of the first year, FY 13-14, the caseload-based, aggregate statewide service day estimate is allocated among the top languages according to their proportion of the FY 12-13 service days. Then, a yearly change is estimated by multiplying that figure for each language by its individual "projected service day" rate of change, and the service day total is adjusted for each language by adding that quantity, producing a new service day count. A new proportion is calculated for each language by taking the share of the adjusted count for each from the sum of the adjusted counts. This adjusted proportion is then used to divide the caseload-based aggregate projected service days among the languages.

Step 5: Analyzing projections and determining language classification recommendations

The results of the preceding four steps were examined for their implications for determining language classifications: retained as designated, recommended for monitoring, and recommended for de-designation. A cut-off point was determined and all languages above and below that point were examined.

For languages below the cut-off point, a proportional usage measure was calculated to estimate the rate of change in service days that might be expected from a given change in LEP population. This measure provides a means to show how service days track LEP population for specific languages. The number of LEP speakers of a given language may be a useful indication of a need for interpreter services, but is not a perfect or even particularly reliable measure of the frequency with which that language is interpreted in court. Cantonese ranks sixth among spoken language service days from 2009 to 2013, but Cantonese speakers are estimated to be the second largest LEP group in California during the same period. In order to assess the relative usage that different language communities make of interpretive services in the courts, a measure of proportional usage by language was created.

Proportional usage is defined as the ratio of the proportion of a language's share of required interpreter service days in a given year to the proportion of the total LEP population speaking that language. A hypothetical example of the calculation of proportional usage follows:

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FY 09-10 Service Days for Language A (x) = 5,000
FY 09-10 Service Days for top 19 languages (X) = 60,000
2009 LEP Population for Language A (y) = 300,000
2009 LEP Population total for top 19 languages (Y) = 6,000,000

Proportional Usage for Language A =
$(x/X)/(y/Y)$ = (5,000/60,000)/(300,000/6,000,000) = 0.083/0.05 = 1.67

A proportional usage value of 1 indicates that the language in question accounts for a share of interpreter service days in a given year equal to the share of the total LEP population speaking that language. A value of less than 1 means that the language in question accounts for a share of interpreter service days that is lower than the share of the LEP population speaking that language would suggest. A value greater than one indicates the opposite: a disproportionately higher rate of use of interpreter service days.

As with other analyses in the forecasting section of the report, the total service days and LEP population are the sums for the top 19 languages listed in the report. Service days and LEP speakers of other languages are excluded in the calculation of proportional usage.

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Appendix C

Utilization of the American Community Survey (ACS)

Population Data and the Purpose of this Report

The purpose of this report is to provide the Judicial Council with information on past use and projected future need for interpretation in languages other than English. The reason for this projection is to inform the Judicial Council's designation or de-designation of individual languages for the purpose of developing testing for the certification of court interpreters. Designated languages are by definition the most frequently used languages in the courts. Thus the focus of attention is on currently designated languages whose use may be declining as well as non-designated languages whose use approaches the level of the designated languages.

A language community may be concentrated in a single county or region and represent a large share of the interpreter need in those places, but if that language is not used in other parts of the state, it is likely that it will not reach a level requiring consideration for designation. The criterion is level of use, whether the population is dispersed across the state or concentrated in a county of region. If the level of use within a county or region rises to the threshold for language designation, then that criterion would be met and the language would be considered for designation. Anticipating the interpreter needs of a court serving a population that is comparatively small statewide, but highly concentrated within its jurisdiction, is beyond the scope of the present report.

For the analytical purposes of this report, population data is required to project future need based on past use (service days). The population data utilized is the American Community Survey (ACS).

The American Community Survey (ACS)

The American Community Survey (ACS) is produced by the U.S. Census Bureau annually and provides data on a wide range of subjects related to the population, including housing, occupation, languages spoken, and more. The ACS relies on a randomized sampling strategy of about three million households. The ACS is the largest data set of its kind, used by federal government and many state and local governments for allocation of billions of government funds for a variety of purposes.

For the purposes of this report—estimating the future need for interpreter services and the implications of future use for the designation of languages by the Judicial Council—the ACS provides the appropriate information about populations, languages, and English language proficiency that allows a projection of future language need in the courts to be made at a sufficient level of detail for planning purposes.[56]

During public hearings on the proposed Language Access Plan for California, some of the public comment contained criticism of the use of the ACS for that purpose. Those comments made reference to certain reports produced by the U.S. Census Bureau using these ACS data, noting that categories of languages were collapsed from 381 languages into 39 languages/language groups and then into four broad language categories, obscuring rather than illuminating the findings.[57] In the current report, use is being made of the underlying ACS data, not of reports or categories produced

[56] For a description, see the United States Census Bureau web site at http://www.census.gov/acs/www/about_the_survey/american_community_survey/

[57] Legal Services and Community Organizations, Comments to Draft Outline of December 11, 2013, (2014), p. 7 accessed at http://www.courts.ca.gov/LAP.htm

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by the Census Bureau that are alleged to contain these defects. The underlying data, organized as Public Use Microdata Samples (PUMS), can be restricted to specific geographies at the state, county, or more local level (called Public Use Microdata Areas, or PUMAs) dependent on population size. The PUMS 5-year products for 2009 to 2012 used in this report identify 106 separate languages spoken in California among those identifying as LEP. Thus, the underlying data are in no way truncated or deficient for the purposes of this report.

While the provision of interpreter services for local populations speaking languages less frequently used are important for local court management (as well as educators, public health officials, and others), the infrequency of the use of these languages statewide means that they do not approach consideration for language designation. For example, the indigenous language most frequently used in the courts is Mixteco. Statewide use of Mixteco is far below the threshold for consideration of designation. Interpreter utilization data analyzed for Part 1 of this report indicates that Mixteco interpretation resulted in an average of 382 interpreter service days per year from FY 09-10 to FY 12-13, well below the 2,000 service days per year threshold to be considered for designation as a registered language. This statewide policy consideration in no way discounts the fact that local court managers must certainly be aware of all languages being used by populations in their jurisdiction and plan interpreter services accordingly. ACS data may indeed be insufficient for this purpose.

Additional Data Sources

One source often mentioned in discussions of interpreter need and language access is the English Learner (EL) data collected and published by the California Department of Education.[58] The previous report on interpreter use made reference to, although did not substantively incorporate, the English Learner data. These data were evaluated for possible use in this report and a determination was made that the data were not appropriate for this purpose. A brief summary of the findings of this evaluation follows.

The English Learner (EL) data is a census of children and their level of English proficiency in public schools throughout California.[59] For the purpose of language access and teaching English proficiency, no doubt these data are of great value. However, for the purpose of estimating future language need of LEP adults in state courts, these data are not appropriate for a number of reasons.

First, these data pertain to children rather than adults who appear in court. The EL data are not useful for estimating the adult population, since birth rates and family structures vary widely among different language populations. The wide variation in ratios of children to adults among different language populations makes it difficult to utilize these data to create reliable estimates about adults. If the English Learner data were used to project court interpreter need, one would fail to note that Farsi, Japanese, and Armenian are languages that rank high in court use, since they rank low among the English Learner student population.

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[58] See California Department of Education web site, DataQuest section, for these data, at http://data1.cde.ca.gov/dataquest/

[59] For descriptions of the data see California Department of Education, English Learners in California Frequently Asked Questions, at http://www.cde.ca.gov/sp/el/er/

Despite these issues, the results of the ACS survey and the English Learner census for the most used languages other than English are largely the same. The top 10 languages in the 2014 English Learner data (who account for 95 percent of all English Learners in California schools[60]) are listed in the table below, with their rank. Alongside that ranking is the ranking of the most commonly used languages in the courts, ranked by population estimates from the ACS 2012-2013 data. The first and most obvious finding is that 7 of the top 10 languages are the same. Arabic, Punjabi, and Hmong are more highly ranked in the English Learner data than in the language by population ranking in the ACS. The simplest interpretation of this is that the proportion of children who are not proficient in English (relative to all English Learners) is greater than the proportion of adults appearing in court (relative to all LEP persons appearing in court). The three top languages in the ACS top ten that are missing from the EL top ten are Armenian, Farsi, and Japanese. The explanation is the inverse of that offered above: for speakers of those languages, adults appearing in court and using interpreters appear at a rate that is greater than that of children speaking those languages who attend public school and are identified as EL.

Table C1. Comparison of English Learner (EL) and American Community Survey (ACS) Language Rankings

Language	EL 2014 Ranking	ACS 2012-13 Ranking
Spanish	1	1
Vietnamese	2	2
Pilipino (Filipino or Tagalog)	3	4
Cantonese	4	3
Mandarin	5	5
Arabic	6	11
Hmong	7	14
Korean	8	6
Punjabi	9	12
Russian	10	8

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Conclusion

For all of these reasons, the ACS remains the most appropriate data set to be used to project future language need in California, containing the relevant data on populations, languages, and English language proficiency required for projecting future language need in the courts at a sufficient level of detail for language designation planning purposes.

[60] California Department of Education, Facts about English Learners in California, accessed at http://www.cde.ca.gov/ds/sd/cb/cefelfacts.asp

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Trial Courts: Children's Waiting Room Policy

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
N/A

Effective Date
June 26, 2015

Recommended by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Chair

Date of Report
May 20, 2015

Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that the Judicial Council approve revisions to the council's children's waiting room policy, including placing a cap on the amount of children's waiting room fund balance that courts can accumulate and, in specific circumstances, requiring courts to return children's waiting room fund balance to the Trial Court Trust Fund and discontinuing court's children's waiting room distribution.

Recommendation

On May 18, 2015, the Trial Court Budget Advisory Committee (TCBAC) unanimously adopted the following recommendation:

1. The Judicial Council should approve the proposed revisions, as provided in Attachment 1, to the council's children's waiting room (CWR) distribution policy, which would place a cap on the amount of CWR fund balance that courts can accumulate and, in specific circumstances, require courts that temporarily or permanently cease operating any CWRs to return CWR fund balance to the Trial Court Trust Fund and discontinue those courts' CWR distributions.

Previous Council Action

The council first adopted a policy and procedure on court requests for CWR distributions on June 27, 2014. On December 12, 2014, the council amended the process for courts to request CWR distributions to specify that courts applying for new CWR distributions can request that distributions begin no more than one year in advance of the planned opening date of the CWR, unless there are extenuating circumstances. In addition, it amended the process for courts to request CWR distributions to specify that once any court's request to decrease its existing CWR distribution is approved by the Judicial Council, the request can be implemented by Judicial Council staff, effective either January 1 or July 1.

Rationale for Recommendation

CWR distributions to trial courts from first paper filing fee revenues deposited into the Trial Court Trust Fund (TCTF) can be spent only on costs associated with operating a CWR. CWR distributions that are not needed by a court would otherwise be retained in the TCTF and used to support trial court operation allocations and/or become unrestricted fund balance that could be allocated by the council for other purposes. New section D requires courts to monitor their CWR distribution amount per filing to ensure it is adequate to meet the CWR needs of the courts without accumulating an amount in excess of a cap that is equal to the highest annual CWR distribution within the three most recent fiscal years (see rows 72-74 of Attachment 1). As proposed, effective July 1, 2015, courts whose CWR fund balance exceeds the cap by the end of a given fiscal year would be required to return the amount above the cap to the TCTF, unless the council approves a court's cap adjustment request. If there is a dispute between a court and JC staff over the amount of CWR fund balance that should be returned to the TCTF, the dispute will be brought before the TCBAC and the Judicial Council if the two parties cannot come to a resolution within 90 days of the end of the applicable fiscal year.[1]

The TCBAC is recommending that the current section C, which requires courts that are not operating any CWRs to apply for a continued distribution in certain situations, be replaced with a revised section C and a new section E for the following reasons. First, the current section C is silent on whether courts that received a CWR distribution prior to June 27, 2014 but have not operated a CWR since June 27, 2014 should be required to return CWR fund balance to the TCTF if they do not apply for a continued CWR distribution but instead only request that their CWR distribution be discontinued. Section E requires those courts to either apply for a continued distribution by September 25, 2015 or have their distributions discontinued and return any CWR fund balance by October 2015. Second, since the policy is meant to address a historical situation, to avoid confusion it should be separated from policy that is meant to address future situations; therefore, the revised policy places the language in a new stand-alone section, section E. Third, the current section C does not address the general situation in which a court ceases operating any CWRs. The current section C applies only to courts that (1) received a

[1] The version reviewed by the TCBAC at its May 18, 2015 meeting contained an error regarding the start of the 90 day resolution period. It used the language for section C, in which the start of the 90 day resolution period for disputes between JC staff and a court is the CWR cessation date.

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CWR distribution prior to June 27, 2014 but have not operated a CWR since June 27, 2014 or (2) had a distribution approved on or after July 1, 2014 and did not operate a CWR six months after the planned opening date (see rows 34-37 of Attachment 1). The proposed revised section C would (1) discontinue the CWR distribution for any court that permanently cease operating any CWRs and would require them to return any CWR fund balance to the TCTF and (2) require courts that temporarily cease operating any CWRs to either apply for a continued distribution within 60 days of ceasing operating any CWRs or return any CWR fund balance to the TCTF and have their CWR distribution discontinued. Courts that cease operating any CWRs would be required to notify the director of the Judicial Council Finance office within 60 days of the cessation date. If there is a dispute between a court and JC staff over the amount of CWR fund balance that should be returned to the TCTF, the dispute will be brought before the TCBAC and the Judicial Council if the two parties cannot come to a resolution within 90 days of the cessation date.

Based on an opinion from Judicial Council legal staff, the TCBAC believes there is no prohibition on courts returning CWR fund balance to the TCTF and that returned CWR fund balance becomes unrestricted revenue when deposited into the TCTF. The return of CWR fund balance would be accomplished through the TCTF distribution process.

Comments, Alternatives Considered, and Policy Implications

No comments were received when the recommendations of the Children's Waiting Room Working Group were considered by the TCBAC at its May 18, 2015 meeting.

Attachments

1. Attachment 1: Proposed Children's Waiting Room Distribution and Fund Balance Policy

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Proposed Revised Children's Waiting Room (CWR) Distribution and Fund Balance Policy

A. Applying for a New CWR Distribution

- A court's presiding judge or executive officer must submit a request to the director of the Judicial Council Finance Office 45 days prior to the date of the council meeting at which the court is requesting consideration.
- The request must include the following information:
  - Date of the council meeting at which the court is requesting consideration.
  - Requested effective date of the distribution (July 1 or January 1). If a court wants to begin receiving distributions more than one year in advance of the planned opening date of a CWR, the request should include an explanation of the extenuating circumstance(s).
  - The scheduled opening date of the CWR(s).
  - Description of the CWR(s).
  - The date when the court intends to make expenditures related to operating its CWR(s).
  - The requested distribution amount between $2 and $5. Courts can request the Judicial Council Finance Office to provide an estimate of annual distributions.
- The Trial Court Budget Advisory Committee (TCBAC) will make a recommendation to the council on each court's request.
- If the council approves that distributions begin prior to the operating of a CWR but the court does not operate a CWR six months after their planned opening date, the court must apply for a continued distribution.

B. Requesting a Decreased CWR Distribution Amount

- Any court's request to decrease its existing CWR distribution is approved by the Judicial Council and the request can be implemented by Judicial Council staff, effective either January 1 or July 1.

~~C. Applying to Continue Receiving a CWR Distribution While Not Operating a CWR~~

- ~~Courts must apply to continue receiving a CWR distribution if they:~~
  - ~~are currently receiving a distribution but have not operated a CWR since June 27, 2014.~~
  - ~~received a distribution effective July 1, 2014 or after but have not operated a CWR six months after their planned opening date of the CWR.~~
- ~~The request must follow the process for requesting a new distribution (see A above). In addition, a court must include in its request the amount of any unspent distributions.~~
- ~~The TCBAC will make a recommendation to the council on each court's request.~~
- ~~For courts that apply and whose application is denied by the council, the council reserves the option of directing courts to return any unspent CWR distributions to the Trial Court Trust Fund (TCTF).~~

C. Temporarily or Permanently Ceasing CWR Operations

- Courts that cease operating all CWRs must notify the director of the JC Finance Office within 60 days of the cessation date. Unless a court provides notification and submits an application to continue receiving distributions while not operating a CWR within 60 days of the cessation date, the court's CWR distributions will be stopped either January 1 or July 1, whichever is earlier, and the court will be required to return any CWR fund balance to the TCTF.
- For courts that are required to return all of their remaining CWR fund balance to the TCTF, the return of the CWR fund balance will occur on the February trial court distribution for those courts that the CWR distribution stopped on January 1, and on the August distribution for those courts that the CWR distributions stopped on July 1.
- If there is a dispute between a court and JC staff over the amount of CWR fund balance that should be returned to the TCTF, the dispute will be brought before the TCBAC and the Judicial Council if the two parties cannot come to a resolution within 90 days of the cessation date.
- An application for a continued distribution must include all the information required of courts applying for a new distribution (see section A above) as well as the amount of any CWR fund balance.
- The TCBAC will make a recommendation to the Judicial Council on each court's application.
- For courts that apply and whose application is denied by the Judicial Council, any CWR fund balance shall be returned to the TCTF.

D. Cap on CWR Fund Balance

- Courts shall monitor the CWR distribution amount per filing to ensure it is adequate to meet the CWR needs of the court without accumulating an amount in excess of the cap described below.
- Effective July 1, 2015, there shall be a cap on the amount of CWR fund balance that courts can carry forward from one fiscal year to the next. The cap shall be the amount of the highest annual distribution within the three most recent fiscal years.
- Courts that have a CWR fund balance greater than the cap (as described above) at the end of the fiscal year will be required to return to the TCTF the amount above the cap in the subsequent fiscal year.
- For courts that are required to return the portion of their CWR fund balance above the cap to the TCTF, the return of the CWR fund balance will occur on the August trial court distribution.
- If there is a dispute between a court and JC staff over the amount of CWR fund balance that should be returned to the TCTF, the dispute will be brought before the TCBAC and the Judicial Council if the two parties cannot come to a resolution within 90 days of the end of the applicable fiscal year.
- The cap applies only to courts that have received at least 12 months of distributions in a fiscal year while operating a CWR.
- If a court wants a cap adjustment, it must submit a request explaining the extenuating circumstance and including its CWR expenditure plan to the director of the JC Finance Office for consideration by the TCBAC and the Judicial Council. The request must be received by the Finance Director within 60 days of the end of the fiscal year for which the adjustment is being requested.

- JC staff will report any return of CWR fund balance through the trial court distribution process to the TCBAC and the Judicial Council.

E. Courts that have Received a Distribution but Never Operated a CWR

- Courts that received distributions between January 1, 2006 and June 30, 2014 but did not operate a CWR during that time period must either apply for a continued distribution by September 26, 2015 or have their distributions stopped and return to the TCTF any CWR fund balance.
- For courts that are required to return all of their remaining CWR fund balance to the TCTF, the return will occur on the October 2015 trial court distribution.
- If there is a dispute between a court and JC staff over the amount of CWR fund balance that should be returned to the TCTF, the dispute will be brought before the TCBAC and the Judicial Council if the two parties cannot come to a resolution within 90 days of the cessation date.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25–26, 2015

Title
Trial Courts: Recidivism Reduction Fund Court Grant Program, Phase II Recommended Awards

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Shelley Curran, Senior Manager
Criminal Justice Services

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 15 , 2015

Contact
Martha Wright, 415-865-7649
martha.wright@jud.ca.gov

DRAFT

Executive Summary

As part of the Budget Act of 2014, the Legislature directed the Judicial Council of California to develop and administer a competitive grant program for trial courts that incorporates practices known to reduce adult offender recidivism. Criminal Justice Services, staff to the Judicial Council, recommends approving the Recidivism Reduction Fund (RRF) Court Grant Program funding allocation and distribution.

This recommendation encompasses the use of: 1) $658,000 remaining after an initial round of awards was approved by the Judicial Council on February 19, 2015, and 2) an additional $1.3 million RRF allocation that is included in the version of the budget adopted by both budget committees in the two houses of the legislature and awaits action by the Governor on or before June 30, 2015.

Recommendation

In the event the final budget act of 2015/16 includes an additional $1.3 million, Criminal Justice Services (CJS), staff to the Judicial Council, recommends that the Council, effective June 25, 2015:

1. Approve awards of approximately $1.73 to five superior courts for the period of July 1, 2015, to April 30, 2017, from the Recidivism Reduction Fund Court Grant Program, as stated in Attachment A.
2. Authorize CJS staff to work with the grantee courts to enable them to shift budgeted amounts from one fiscal year to another, modify budgets if necessary, or roll over unspent funds at fiscal year-end, provided these funds are within the courts' original award amounts.
3. Authorize staff to make small technical assistance grants for courts that seek to establish programs or practices known to reduce offender recidivism.

In the event that the final budget does not include the additional $1.3 million from the RRF, as approved by both houses of the Legislature, staff requests time to revise this set of recommendations and present an alternate approach utilizing a lesser allocation for the Council's July 23, 2015 meeting.

Previous Council Action

The Budget Act of 2014 (Sen. Bill 852; Stats. 2014, ch. 25) appropriated $15 million from the RRF for a competitive grant program to be developed and administered by the Judicial Council with the intent to support the administration and operation of trial court programs and practices known to reduce adult offender recidivism and enhance public safety. Five percent of the funds were directed to the Judicial Council for the administration and evaluation of this program. The remaining $14.250 million was to be distributed to the trial courts for the operation of collaborative courts for adult offenders, pretrial programs, and court use of risk and needs assessments.

At its August 19, 2014, meeting, the Judicial Council's Executive and Planning Committee (E&P) approved the RRF Court Grant Program timeline and procedures for CJS staff to administer the program while avoiding any potential conflicts of interest. In its report *Recidivism Reduction Grant Administration Procedure,* presented at the aforementioned meeting, CJS was to "be responsible for all aspects of administering the grant program, including developing the request for proposals (RFP), developing a review methodology and process for scoring [proposals], evaluating [proposals]; . . . [and] making funding allocation recommendations to the Judicial Council." CJS would "score the proposals based upon specific criteria that will be included in the RFP" and make an effort to "adequately fund as many grants as possible, emphasizing a diversity of program types throughout the state." CJS was also to submit final funding recommendations to E&P and the Judicial Council for consideration and approval.

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At the Judicial Council meeting on October 27, 2014, CJS staff presented an update to the Judicial Council on the feedback provided by external experts and stakeholders during the development of the RFP, the release of the RFP on September 15, 2014, the general funding methodology, and the proposal review process in anticipation of receiving proposal submissions by December 15, 2014.

On February 19, 2015, the Judicial Council approved the allocation of approximately $13.65 million to 27 superior courts from the RRF and voted to allow the six courts that were not awarded funding through that allocation to submit revised proposals for review. On May 19, 2015, the Senate Budget Committee allocated an additional $1.3 million of RRF money to this program. On May 21, the Assembly conformed with the Senate action. As with the first allocation, five percent will remain with the Judicial Council to cover administrative costs. With the amount remaining in the initial allocation, approximately $658,000, and an additional $1.23 million, staff estimates a total of just over $1.89 million will be available for these activities.

Rationale for Recommendation

The Judicial Council directed CJS to submit grant funding recommendations based on the methodology developed in the initial allocation to make additional awards to courts not awarded in the first round of funding. CJS communicated with each of the eligible courts and alerted them to the new funding opportunity, provided them with reviewer comments on their initial proposals and provided a revised RFP for the unallocated balance of the fund on March 2, 2015 date.

Scoring methodology and peer review process

Five courts submitted proposals totaling just over $1.8 million in requested funding. A panel of five Judicial Council staff reviewed the applications, following a scoring process and methodology similar to the initial process. Proposals were scored based on their responsiveness to the RFP criteria, the quality of responses to each section, and the level of detail provided.

After the proposals were scored by the reviewers individually, a reviewer panel meeting was held on May 4, 2015 that included a discussion of the strengths and weaknesses of each proposal to enable the panel to resolve any areas lacking consensus regarding proposal evaluation and funding recommendations.

On May 6, 2015, staff met with the CJS office head to review and evaluate the group scores and comments for each proposal, confirm final scores, clarify initial budgeting discrepancies and draft proposed grant allocation recommendations for consideration and approval by the Judicial Council at the June 25, 2015 meeting.

DRAFT

Implementation Requirements, Costs, and Operational Impacts

Once the courts receive their award notifications, CJS staff will work with the Judicial Council's Accounting and Business Services Unit to finalize contracts with each funded court. The Judicial Council will reimburse the courts monthly for their qualified expenses based on submission of invoices and financial documentation and contingent on the timely submission of all quarterly reports. Quarterly financial and program progress reports must be submitted, along with quarterly data submissions. CJS will compile information annually and report aggregate-level data generated by the awarded programs to the Department of Finance and the Joint Legislative Budget Committee as required in the Budget Act of 2014.

Attachments and Links

1. Attachment A: Summary of Recidivism Reduction Fund Proposed Grant Funding

DRAFT

Judicial Council of California
Criminal Justice Services
Summary of Phase II Recidivism Reduction Fund
Proposed Grant Funding

CATEGORY: PRETRIAL			
No.	**Applicant Court**	**Budget Amount Requested**	**Approximate Proposed Grant Funding Allocation**
1	Lassen	$318,509	$318,509
2	San Luis Obispo	$339,276	$259,402
			$577,911
CATEGORY: COLLABORATIVE COURTS			
3	Los Angeles	$426,403	$417,969
4	Placer	$218,880	$211,097
5	Stanislaus	$527,999	$527,999
		$	$1,157,065
TOTAL Proposed Grant Awards			**$ 1,734,976**

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25 or 26, 2015

Title
Court Facilities: Courtroom Layouts

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
None

Effective Date
June 25 or 26, 2015

Recommended by
Court Facilities Advisory Committee
Hon. Brad R. Hill, Chair
Hon. Patricia M. Lucas, Vice-chair
Hon. Jeffrey W. Johnson, Chair of the Courthouse Cost Reduction Subcommittee

Date of Report
May 22, 2015

Contact
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Executive Summary

The Court Facilities Advisory Committee recommends that the Judicial Council adopt a catalog of courtroom layouts with associated holding areas for use in the design of new courthouses that are fully or partially funded by the state. Each courthouse project and the courthouse construction program as a whole will save time in the design process and therefore save project costs through the application of the layouts, compared to the individual design of each project's courtrooms and adjacent holding areas.

Recommendation

The Court Facilities Advisory Committee recommends that the Judicial Council, effective June 25 or 26, 2015, take the following action:

1. Adopt the *Catalog of Courtroom Layouts for California Trial Courts* (*Catalog)* for application in the design of all fully or partially state-funded new courthouses to be used by the trial courts.

Previous Council Action

The council has taken no previous action on the attached *Catalog*. In May 2013, the council's Executive and Planning Committee approved formation of the Courtroom Standards Workgroup (CSW), a workgroup of the advisory committee's Courthouse Cost Reduction Subcommittee (CCRS). This approval was made at the request of the CCRS chair so that this workgroup could focus specifically on development of the courtroom layouts with a goal to explore how project costs could be saved by minimizing the design time required to layout courtrooms and adjacent holding areas.

Rationale for Recommendation

The advisory committee and its CSW has been studying how to best lay out typical trial courtrooms and adjacent holding cell areas with a goal to simplify and shorten the design process by cataloging and developing courtroom layouts and associated holding cell areas that can be provided to design teams, rather than having them develop their own for each new courthouse project. This streamlining process will save time and therefore project costs.

The process for developing the *Catalog* has unfolded in two phases. The initial phase involved developing "typical" layouts, and the second phase focused on cataloging judge-approved courtroom layouts that are in existing buildings or those in construction. The initial phase began in January 2014, when the CSW and Judicial Council staff began studying the features of a "typical" trial courtroom. The results of their work proposed two alternatives: a center-bench and a corner-bench layout of approximately 1,700 square feet (SF) each. Members of the council's Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) reviewed this layout using their knowledge of trial court operations and provided very useful feedback in late summer 2014. The second phase involved incorporating this feedback into the typical trial courtroom layouts as well as gathering, reviewing, and selecting courtroom and holding cell layouts that represent a range of courtroom calendars and local judicial practice. The results of this second phase were reviewed by members of the TCPJAC and the CEAC in December 2014. Their input was then incorporated into a draft *Catalog* that was distributed for comments by the courts. The attached *Catalog* incorporates the one comment received by including the courtroom layout of the newly-opened Banning Courthouse in Riverside.

Any one of the *Catalog's* courtroom layouts could be used for a future new courthouse project, depending on the unique nature of each court, the particular calendar types to be heard in the new courthouse, and the anticipated need for spectator and voir dire seating. The layouts can be modified in minor ways to reflect particular local judicial practice, with the overall goal of expediting the design process while delivering courtrooms and holding cells that function well for the court for years to come.

Summary of Catalog

The *Catalog* consists of a total of 38 possible courtroom layouts: 10 typical courtroom layouts and 28 courtroom layouts approved by judges in existing buildings and some now under construction. The *Catalog* also includes three examples of courtroom-adjacent holding areas. Each of these is described below.

Summary of 28 Judge-Approved Courtroom Layouts in Catalog

The *Catalog* includes layouts for standard and large size trial courtrooms and specialized courtrooms for double juries, arraignments, traffic, and family. Both center and corner bench layouts are included for all except the family court layouts due to lack of recent corner bench layouts for family court calendars in California. Sizes of the standard trial courtrooms range from 1,600 to 2,056 SF. Sizes of the large trial courtrooms range from 2,100 to 2,500 SF.

Description of 10 Typical Layouts

The typical layouts include four standard trial courtrooms and six large trial courtrooms. Each of the proposed typical layouts is an improvement over the original proposed layout in several areas. Each has an expanded judge's bench and overall work surface area, and an expanded clerk's work surface. Each of the typical layouts can accommodate up to four counsel tables by virtue of providing moveable lectern, evidence table, and court reporters station. Each typical courtroom also has the option of alternate locations for the Court Security Officer and a gate in the rail separating the well from spectator seating. Each typical layout expands the number of seats for voir dire through one or more enhancements: expanding the courtroom size, using moveable chairs in the well along the rail and next to the jury box, and trading attorney client conference rooms for additional spectator seating. Each layout has tested sight lines to confirm relative locations of judge, witness, counsel, and jurors are functional, with multiple locations identified for side bar conferences. Each layout also includes adjustable height work surfaces for the judge and clerks.

In each of the courtroom layouts there are three features that are standardized to minimize size, and therefore, cost. First, the judge's bench is elevated 16 inches to minimize the length of ramps that serve the bench, witness, and clerks' areas. Second, the first row of jurors is level with the courtroom well to eliminate a ramp to the jury box. Third, all spectator seating is provided in benches, rather than in individual auditorium seats for cost savings in both construction costs and long-term operations and maintenance costs.

Summary of Courtroom Holding Areas

The *Catalog* also includes three examples of courtroom-adjacent holding cores that synthesize various features of built examples with best practices in detention planning. These three layouts provide capacity for four to seven in-custodies in 496 to 605 SF.

Estimated Cost Savings

Tools that expedite the design process save time. There are hundreds of interrelated decisions to be made in laying out courtrooms and adjacent holding areas. Application of the courtroom and holding area layouts in the *Catalog* will save approximately one to two months of time from a

decision making process that often involves all members of the bench of a particular court. This time savings may reduce the project escalation costs by as much as $1.5 million for all combined active and indefinitely delayed projects. Application of the *Catalog* will also eliminate the necessity to construct individual project courtroom mockups and employ more cost effective designs, which is estimated to save an additional $7 million for all the funded projects now that have not yet begun design or are just starting design, and those that are indefinitely delayed.

Comments, Alternatives Considered, and Policy Implications

Comments on the *Catalog* were solicited from the superior courts, as briefly described above. The very first materials developed for the *Catalog* was sent by the advisory committee chair to all presiding judges and court executive officers for a three-week comment period from April 23, 2014, through May 14, 2014. After Judicial Council staff incorporated comments from this process into a revised set of materials, including a draft *Catalog,* the advisory committee's chair met with some of the members of the joint TCPJAC/CEAC courtroom templates working group on December 2, 2014 to discuss their comments. The draft *Catalog* was also posted for public comment on November 26, 2014, for discussion at the advisory committee's meeting on December 3, 2014. No public comments were received in relation to that public meeting, however, Hon. Robert C. Hight, Presiding Judge of the Superior Court of Sacramento County, made comments including that the existing trial courtroom layout in the Gordon D. Schaber Courthouse located in downtown Sacramento be incorporated into the *Catalog.* That layout was thereafter incorporated.

Factoring in all comments until that point in time, an updated version of the draft *Catalog* was sent by the advisory committee's chair to all presiding judges and court executives for a three-week comment period from March 16, 2015, through April 6, 2015. In addition, the advisory committee's chair met with and reviewed the draft *Catalog* at meetings of the council's TCPJAC on March 19, 2015, and CEAC on March 25, 2015. At the conclusion of the three-week comment period, one comment was received from the Superior Court of the County of Riverside in support of the application of the *Catalog,* indicating preference for one layout that nearly matched the court's preferred layout at the newly-opened Banning Courthouse. This layout was added to the final draft *Catalog* posted for public comment on May 12, 2015, for discussion at the advisory committee's meeting on May 15, 2015. No public comments were received in relation to that public meeting.

Implementation Requirements, Costs, and Operational Impacts

Application of the *Catalog* is a way to save additional project costs by saving time in the design process, eliminating the individual project courtroom mockups, and employing more cost efficient designs. As described above, it is estimated in the long-term that $8.5 million will be saved through the application of the layouts to all courthouse capital projects to be designed.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachment

1. *Catalog of Courtroom Layouts for California Trial Courts,* dated June 2015

CATALOG OF COURTROOM LAYOUTS FOR CALIFORNIA TRIAL COURTS

June 2015

TABLE OF CONTENTS

TRIAL COURTROOM EXAMPLES

COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Calaveras	San Andreas	Superior Court of California, Calaveras County Courthouse	1600	43	6
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	1950	44	8
Riverside	Banning	Banning Justice Center	1900	74	10
Sacramento	Sacramento	Gordon D. Schaber Sacramento County Courthouse	1850	48	12
San Diego	San Diego	San Diego Central Courthouse	1700	46	14
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	1700	60	16
Sutter	Yuba City	Superior Court of California, County of Sutter	1800	64	18
Yolo	Woodland	Yolo Superior Court, State of California	1980	46	20
Typical Trial Courtroom–Center Bench A			1850	48	22
Typical Trial Courtroom–Center Bench B			1950	51	24
CORNER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	1750	50	26
Mono	Mammoth Lakes	Mammoth Lakes Courthouse	1800	46	28
San Bernardino	San Bernardino	San Bernardino Justice Center	1700	50	30
Typical Trial Courtroom - Corner Bench A			1796	46	32
Typical Trial Courtroom - Corner Bench B			2056	52	34

LARGE TRIAL COURTROOM EXAMPLES

COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2200	80	38
San Diego	San Diego	San Diego Central Courthouse	2100	98	40
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	2470	142	42
Sutter	Yuba City	Superior Court of California, County of Sutter	2100	94	44
Yolo	Woodland	Yolo Superior Court, State of California	2500	94	46
Typical Large Trial Courtroom - Center Bench A			2050	71	48
Typical Large Trial Courtroom - Center Bench B			2250	74	50
Typical Large Trial Courtroom - Center Bench C			2200	52	52
Typical Large Trial Courtroom - Center Bench D			2445	84	54
CORNER BENCH					
Typical Large Trial Courtroom - Corner Bench A			2008	65	56
Typical Large Trial Courtroom - Corner Bench B			2285	73	58

DOUBLE JURY COURTROOM EXAMPLES

COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2150	52	62
San Diego	San Diego	San Diego Central Courthouse	2100	64	64
CORNER BENCH					
San Bernardino	San Bernardino	San Bernardino Justice Center	2400	92	66

ARRAIGNMENT COURTROOM EXAMPLES

COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2300	92	70
San Diego	San Diego	San Diego Central Courthouse	1800	98	72
CORNER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	2000	92	74

TRAFFIC COURTROOM EXAMPLES

COUNTY	CITY		TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	2100	92	78
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2250	124	80
CORNER BENCH					
San Bernardino	San Bernardino	San Bernardino Justice Center	2250	104	82

FAMILY COURTROOM EXAMPLES

COUNTY	CITY		TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
San Diego	San Diego	San Diego Central Courthouse	1700	46	86
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	1700	74	88
Santa Clara	Santa Clara	Santa Clara Family Justice Center	1700	52	90

HOLDING CORE EXAMPLES

	TOTAL SQUARE FEET	TOTAL RATED CAPACITY	PAGE
Typical Holding A	572	4	95
Typical Holding B	605	7	96
Typical Holding C	496	4	97

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

TRIAL COURTROOM EXAMPLES

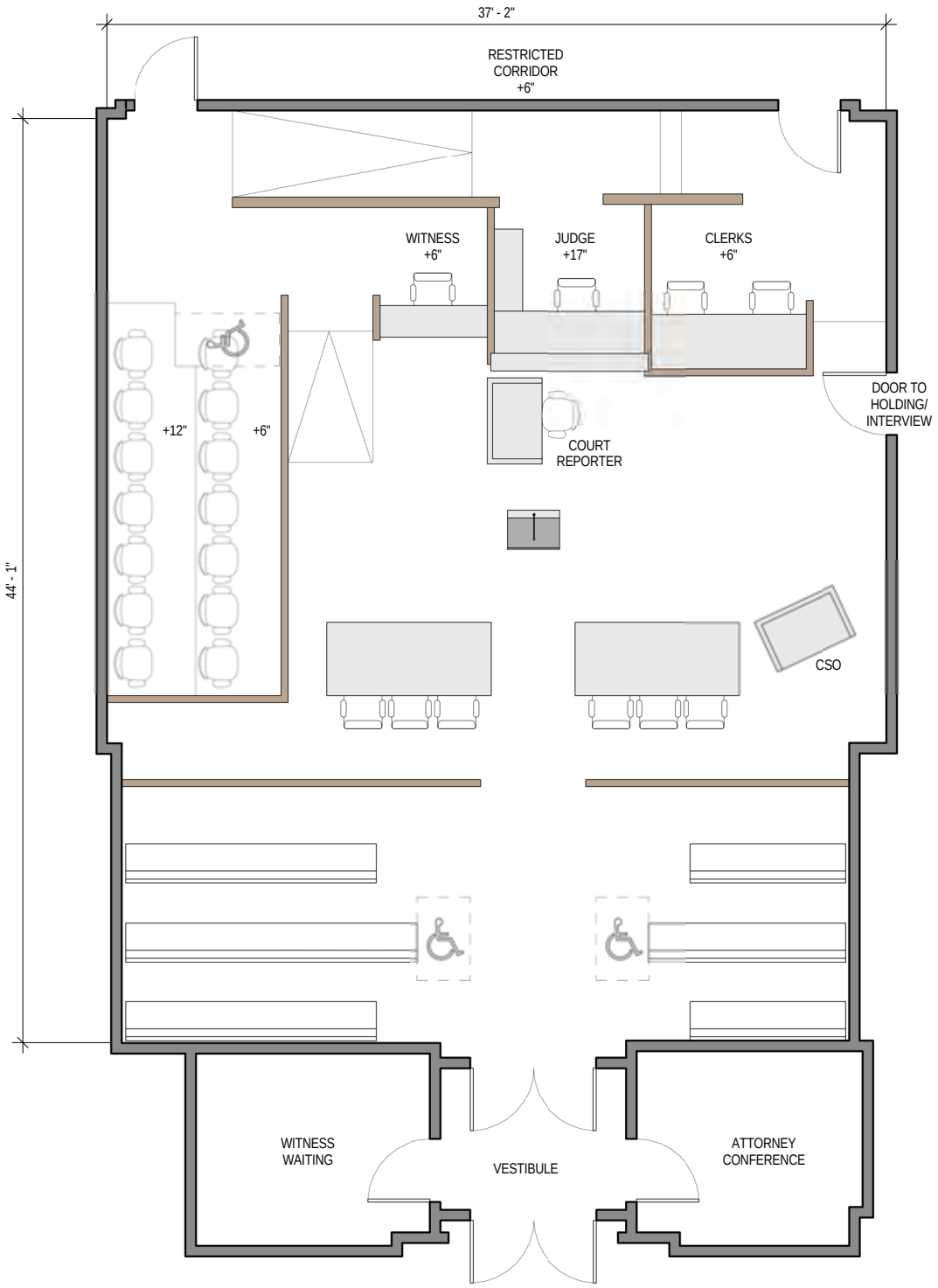
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Calaveras	San Andreas	Superior Court of California, Calaveras County Courthouse	1600	43	6
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	1950	44	8
Riverside	Banning	Banning Justice Center	1900	74	10
Sacramento	Sacramento	Gordon D. Schaber Sacramento County Courthouse	1850	48	12
San Diego	San Diego	San Diego Central Courthouse	1700	46	14
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	1700	60	16
Sutter	Yuba City	Superior Court of California, County of Sutter	1800	64	18
Yolo	Woodland	Yolo Superior Court, State of California	1980	46	20
Typical Trial Courtroom - Center Bench A			1850	48	22
Typical Trial Courtroom - Center Bench B			1950	51	24
CORNER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	1750	50	26
Mono	Mammoth Lakes	Mammoth Lakes Courthouse	1800	46	28
San Bernardino	San Bernardino	San Bernardino Justice Center	1700	50	30
Typical Trial Courtroom - Corner Bench A			1796	46	32
Typical Trial Courtroom - Corner Bench B			2056	52	34

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

SUPERIOR COURT OF CALIFORNIA, CALAVERAS COUNTY COURTHOUSE
CALAVERAS COUNTY, SAN ANDREAS
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1,600	41 + 2 W.C.	

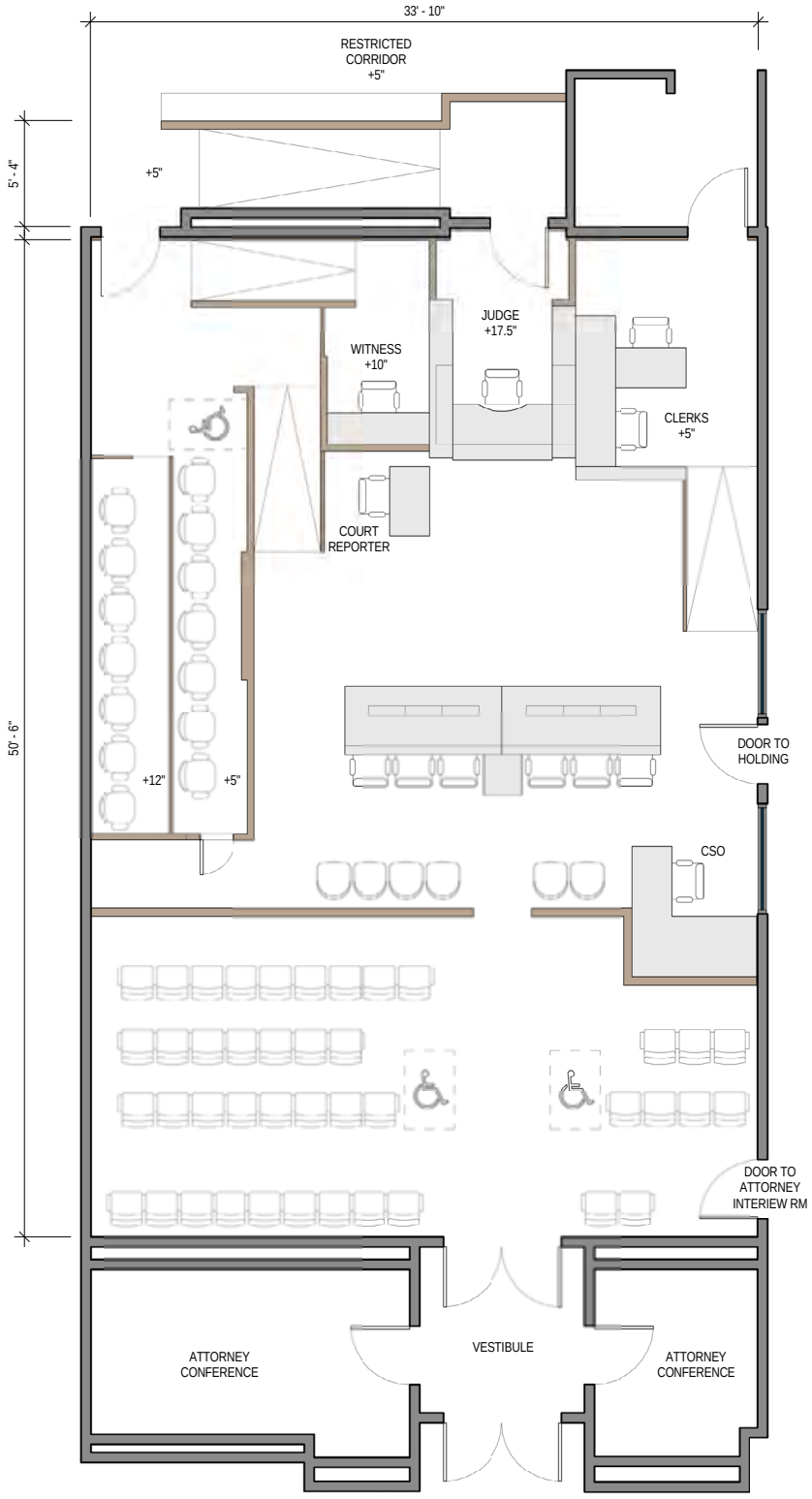
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	FURNITURE / CASEWORK DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-2”/3’-11”	2’-0”/1’-6”	+17”	1
Courtroom Clerk	7'-4”	2’-7”	+6"	2
Court Security Officer (CSO)	4’-2”	2’-7”	-	1
Court Reporter	4’-2”	2’-7”	-	1
Witness Stand	5'-2”	1’-6”	+6"	2
Jury Box	N/A	N/A	(1st row) +6" (2nd row) +12"	14
Counsel Tables	7'–10”	3’-6”	-	3 ea.
Lectern	2’-6”	2’-0”	-	-


37' - 2"
RESTRICTED
CORRIDOR
+6"
WITNESS
+6"
JUDGE
+17"
CLERKS
+6"
+12"
+6"
DOOR TO
HOLDING/
INTERVIEW
COURT
REPORTER
CSO
44' - 1"
WITNESS
WAITING
VESTIBULE
ATTORNEY
CONFERENCE

GOVERNOR GEORGE DEUKMEJIAN COURTHOUSE
LOS ANGELES COUNTY, LONG BEACH
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1950	42+2 W.C.	

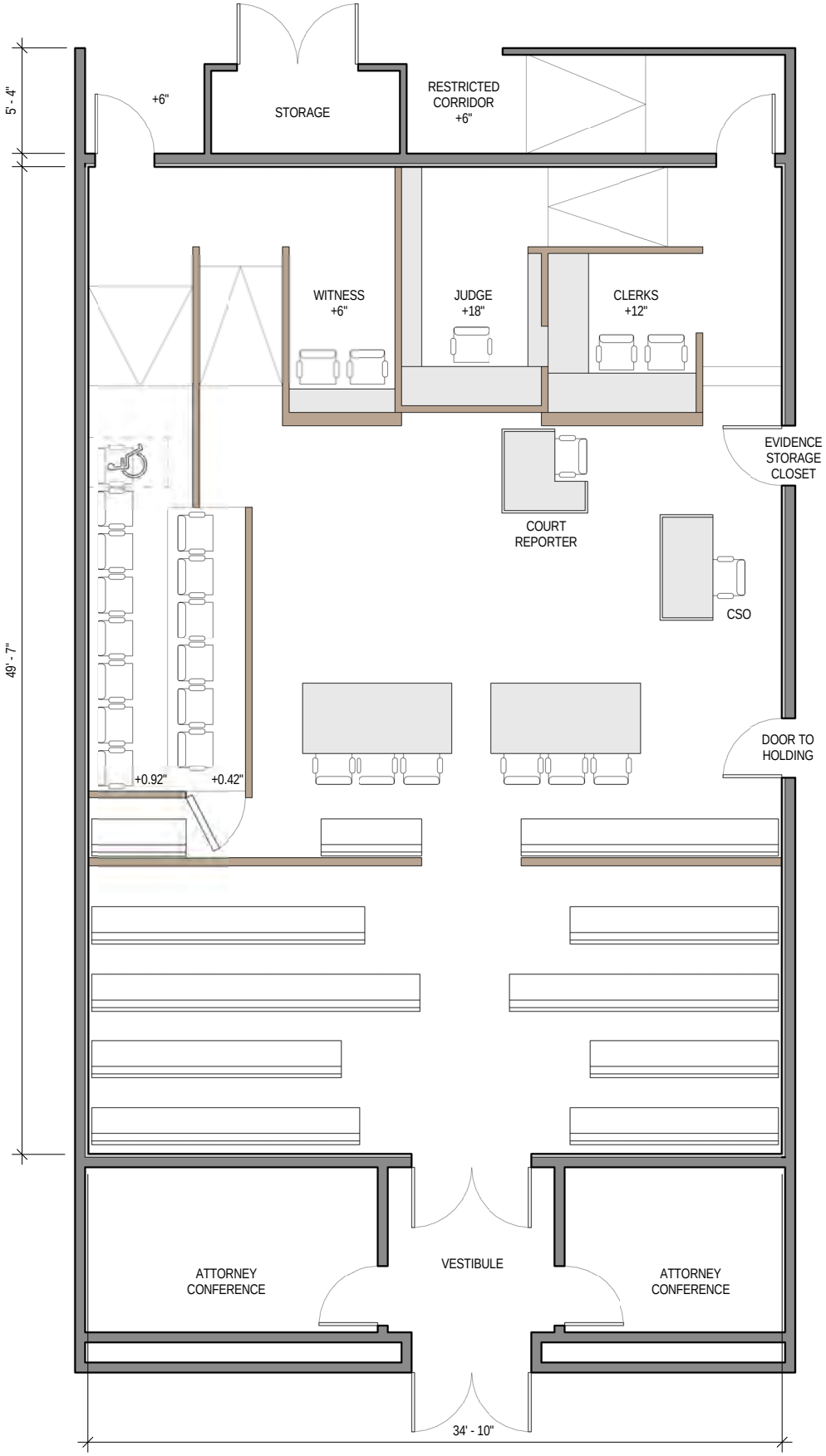
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-0”/5’-0”	2’-0”/1’-2”	+17.5”	1
Courtroom Clerk	7'-8”	2’-1”	+5"	2
Court Security Officer (CSO)	6’-7”	2’-0”	-	1
Court Reporter	3’-6”	2’-0”	-	1
Witness Stand	5'-2”	1’-7”	+10"	2
Jury Box	N/A	N/A	(1st row) +5"	14
			(2nd row) +12"	
Counsel Tables	8’-0”	3’-6”	-	3 ea.
Lectern	2’-0”	2’-0”	-	-


33' - 10"
RESTRICTED
CORRIDOR
+5"
5' - 4"
+5"
JUDGE
+17.5"
WITNESS
+10"
CLERKS
+5"
COURT
REPORTER
50' - 6"
+12"
+5"
DOOR TO
HOLDING
CSO
DOOR TO
ATTORNEY
INTERIEW RM
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE

BANNING JUSTICE CENTER
RIVERSIDE COUNTY, BANNING
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1,900	70 + 4 W.C.	

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-0”/10’-0”	2’-0”/1’-0”	+18”	1
Courtroom Clerk	7'-5”/6’-0”	2’-0”	+12"	2
Court Security Officer (CSO)	5’-0”	2’-6”	-	1
Court Reporter	4’-0”	2’-6”	-	1
Witness Stand	5'-4”	1’-2”	+6"	2
Jury Box	N/A	N/A	(1st row) +0.42"	14
			(2nd row) +0.92"	
Counsel Tables	7'–6”	3'-6”	-	3 ea.

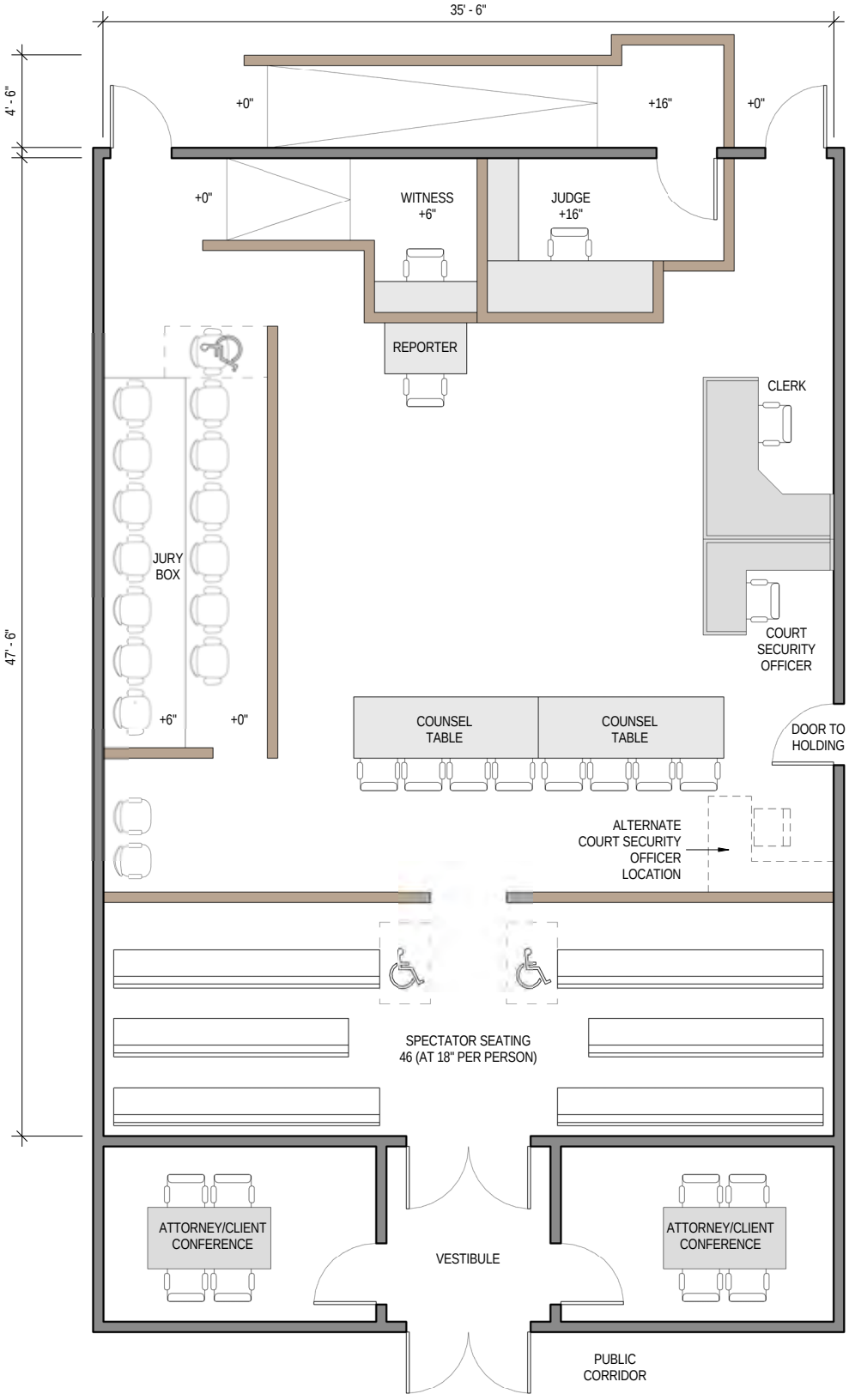

5' - 4"
49' - 7"
+6"
STORAGE
RESTRICTED
CORRIDOR
+6"
WITNESS
+6"
JUDGE
+18"
CLERKS
+12"
EVIDENCE
STORAGE
CLOSET
COURT
REPORTER
CSO
DOOR TO
HOLDING
+0.92"
+0.42"
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE
34' - 10"

COURTROOM BASED ON GORDON D. SCHABER SACRAMENTO COUNTY COURTHOUSE SACRAMENTO COUNTY, SACRAMENTO

Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	
Typical Trial	1,850	46+2 W.C.	

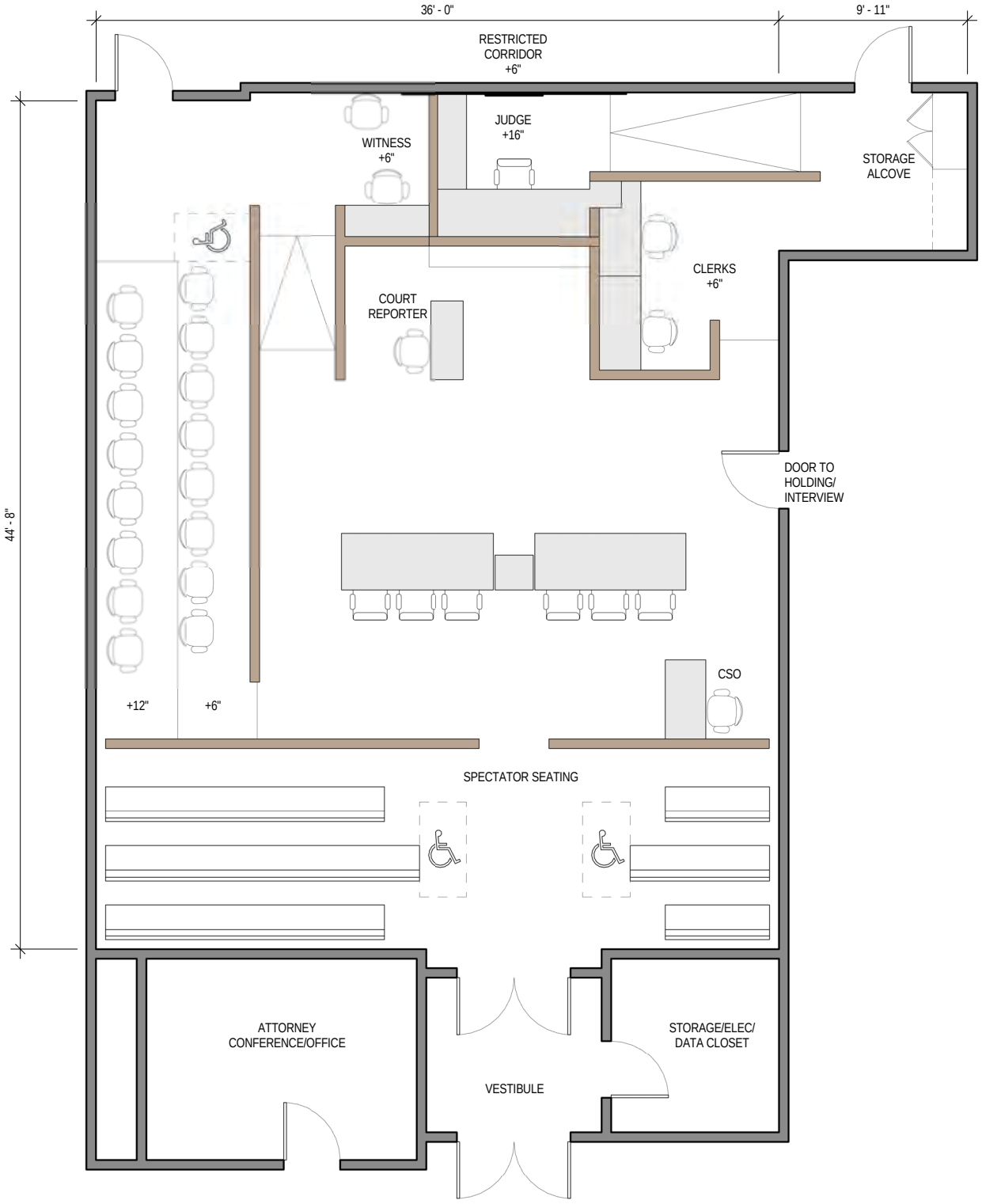
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8'-0"/5'-0"	2'-6"/1'-6"	+16"	1
Courtroom Clerk	10'-0"	2'-6"	-	1
Court Security Officer (CSO)	4'-6"	2'-0"	-	1
Court Reporter	4'-0"	2'-6"	-	1
Witness Stand	5'-0"	1'-6"	+6"	1
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	9'-0"	3'-0"	-	3 ea.


35' - 6"
4' - 6"
47' - 6"
+0"
+16"
+0"
+0"
WITNESS
+6"
JUDGE
+16"
REPORTER
CLERK
JURY
BOX
+6"
+0"
COUNSEL
TABLE
COUNSEL
TABLE
COURT
SECURITY
OFFICER
DOOR TO
HOLDING
ALTERNATE
COURT SECURITY
OFFICER
LOCATION
SPECTATOR SEATING
46 (AT 18" PER PERSON)
ATTORNEY/CLIENT
CONFERENCE
VESTIBULE
ATTORNEY/CLIENT
CONFERENCE
PUBLIC
CORRIDOR

SAN DIEGO CENTRAL COURTHOUSE
SAN DIEGO COUNTY, SAN DIEGO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”
Typical Trial	1700	44+2 W.C.

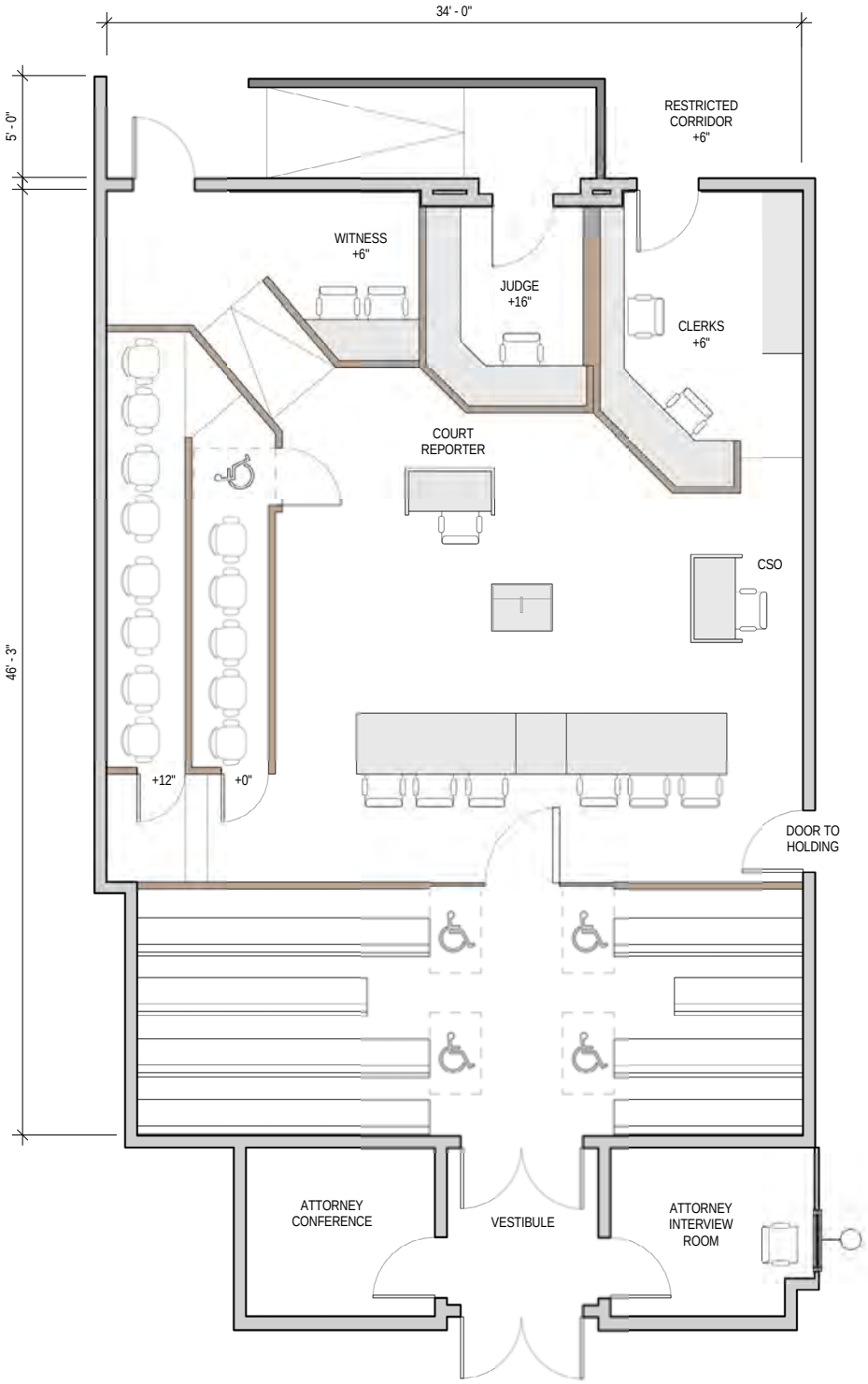
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-0”/5’-0”	2’-6”/1’-6”	+16”	1
Courtroom Clerk	10'-0”	2’-2”	+6"	2
Court Security Officer (CSO)	4’-2”	2’-2”	-	1
Court Reporter	4’-2”	1’-9”	-	1
Witness Stand	4'-6”	1’-8”	+6"	2
Jury Box	N/A	N/A	(1st row) +6"	16
			(2nd row) +12"	
Counsel Tables	8’-0”	3’-6”	-	3 ea.
Lectern	2’-0”	2’-0”	-	-


36' - 0"
9' - 11"
RESTRICTED CORRIDOR +6"
WITNESS +6"
JUDGE +16"
STORAGE ALCOVE
CLERKS +6"
COURT REPORTER
DOOR TO HOLDING/ INTERVIEW
44' - 8"
CSO
+12"
+6"
SPECTATOR SEATING
ATTORNEY CONFERENCE/OFFICE
VESTIBULE
STORAGE/ELEC/ DATA CLOSET

SUPERIOR COURT OF SAN JOAQUIN COUNTY STOCKTON COURTHOUSE
SAN JOAQUIN COUNTY, STOCKTON
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	
Typical Trial	1,700	56+4 W.C.	

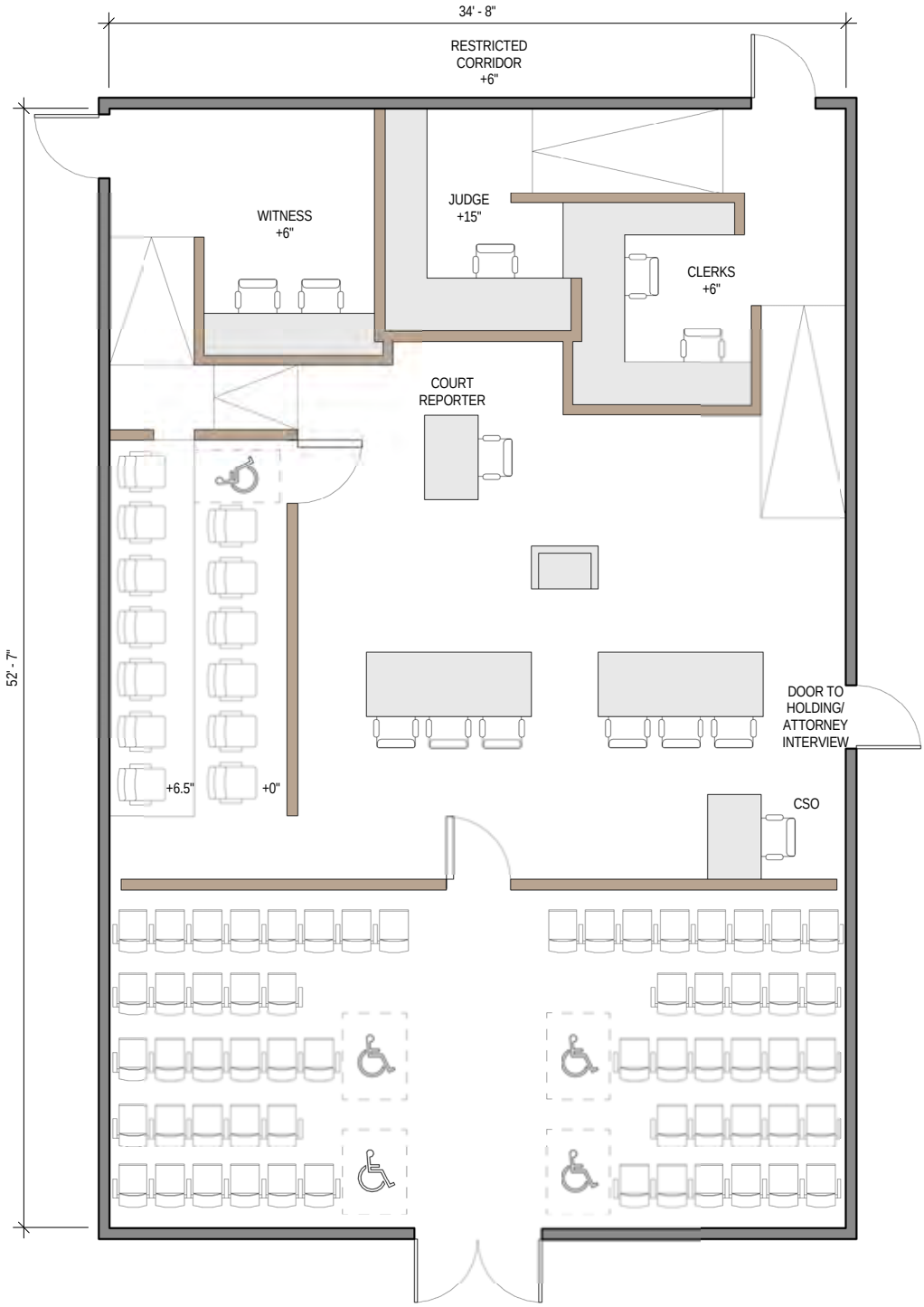
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7'-10"/6'-6"	2'-0"/1'-8"	+16"	1
Courtroom Clerk	13'-8"	2'-3"	+6"	2
Court Security Officer (CSO)	4'-0"	2'-0"	-	1
Court Reporter	4'-0"	2'-0"	-	1
Witness Stand	5'-8"	2'-0"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +12"	14
Counsel Tables	7'–10"	3'-0"	-	3 ea.
Lectern	2'-5"	3'-0"	-	-


34' - 0"
5' - 0"
46' - 3"
RESTRICTED
CORRIDOR
+6"
WITNESS
+6"
JUDGE
+16"
CLERKS
+6"
COURT
REPORTER
CSO
+12"
+0"
DOOR TO
HOLDING
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
INTERVIEW
ROOM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SUTTER
SUTTER COUNTY, YUBA CITY
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1800	60+4 W.C.	

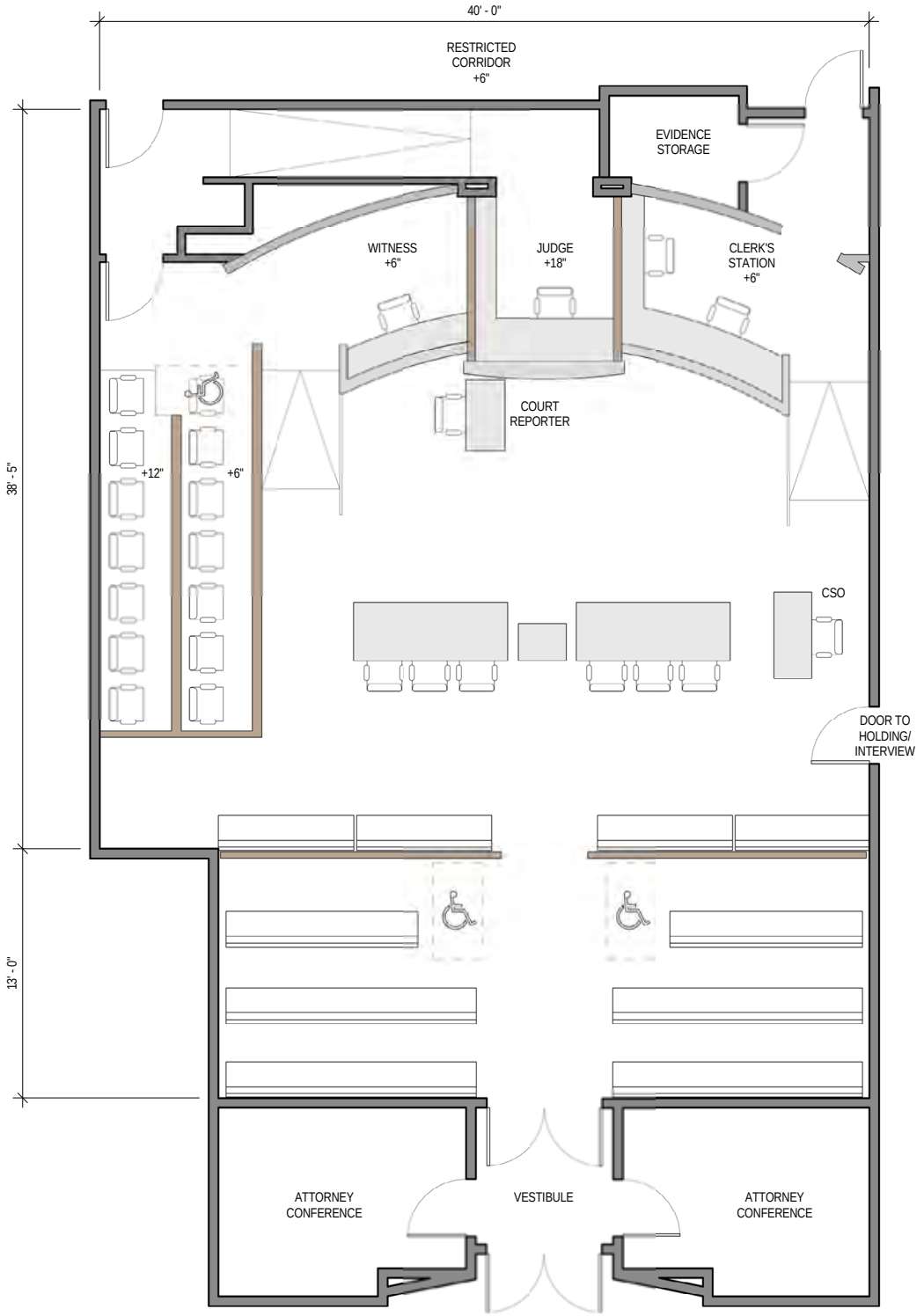
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	FURNITURE / CASEWORK DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-9”/7’-11”	2’-6”/2’-0”	+15”	1
Courtroom Clerk	8'-5”	2’-0”	+6"	2
Court Security Officer (CSO)	-	-	-	1
Court Reporter	-	-	-	1
Witness Stand	8'-0”	2’-0”	+6"	2
Jury Box	N/A	N/A	(1st row) +0"	14
			(2nd row) +6.5"	
Counsel Tables	-	-	-	-
Lectern	-	-	-	-


34' - 8"
RESTRICTED
CORRIDOR
+6"
WITNESS
+6"
JUDGE
+15"
CLERKS
+6"
COURT
REPORTER
DOOR TO
HOLDING/
ATTORNEY
INTERVIEW
CSO
+6.5"
+0"
52' - 7"

YOLO SUPERIOR COURT, STATE OF CALIFORNIA
YOLO COUNTY, WOODLAND
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1,980	44+2 W.C.	

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-2”/6’-3”	2’-3”/1’0”	+18”	1
Courtroom Clerk	13'-6”	2’-0”	+6"	2
Court Security Officer (CSO)	4’-6”	2’-0”	-	1
Court Reporter	3’-8”	2’-0”	-	1
Witness Stand	6'-6”	1’-6”	+6"	2
Jury Box	N/A	N/A	(1st row) +6"	14
			(2nd row) +12"	
Counsel Tables	8’-0”	3’-0”	-	3 ea.
Lectern	2’-0”	2’-6”	-	-


40' - 0"
RESTRICTED CORRIDOR +6"
EVIDENCE STORAGE
WITNESS +6"
JUDGE +18"
CLERK'S STATION +6"
COURT REPORTER
+12"
+6"
38' - 5"
CSO
DOOR TO HOLDING/ INTERVIEW
13' - 0"
ATTORNEY CONFERENCE
VESTIBULE
ATTORNEY CONFERENCE

TYPICAL TRIAL COURTROOM - CENTER BENCH A
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING AT 18"	VOIR DIRE
Multipurpose Trial		1,850	46 + 2 W.C.	74
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	6'-6"/6'-4"	2' -0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-0"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'–6"	3'-0"	+0"	3 ea.
Lectern	2'-6"	2'-0"	N/A	0

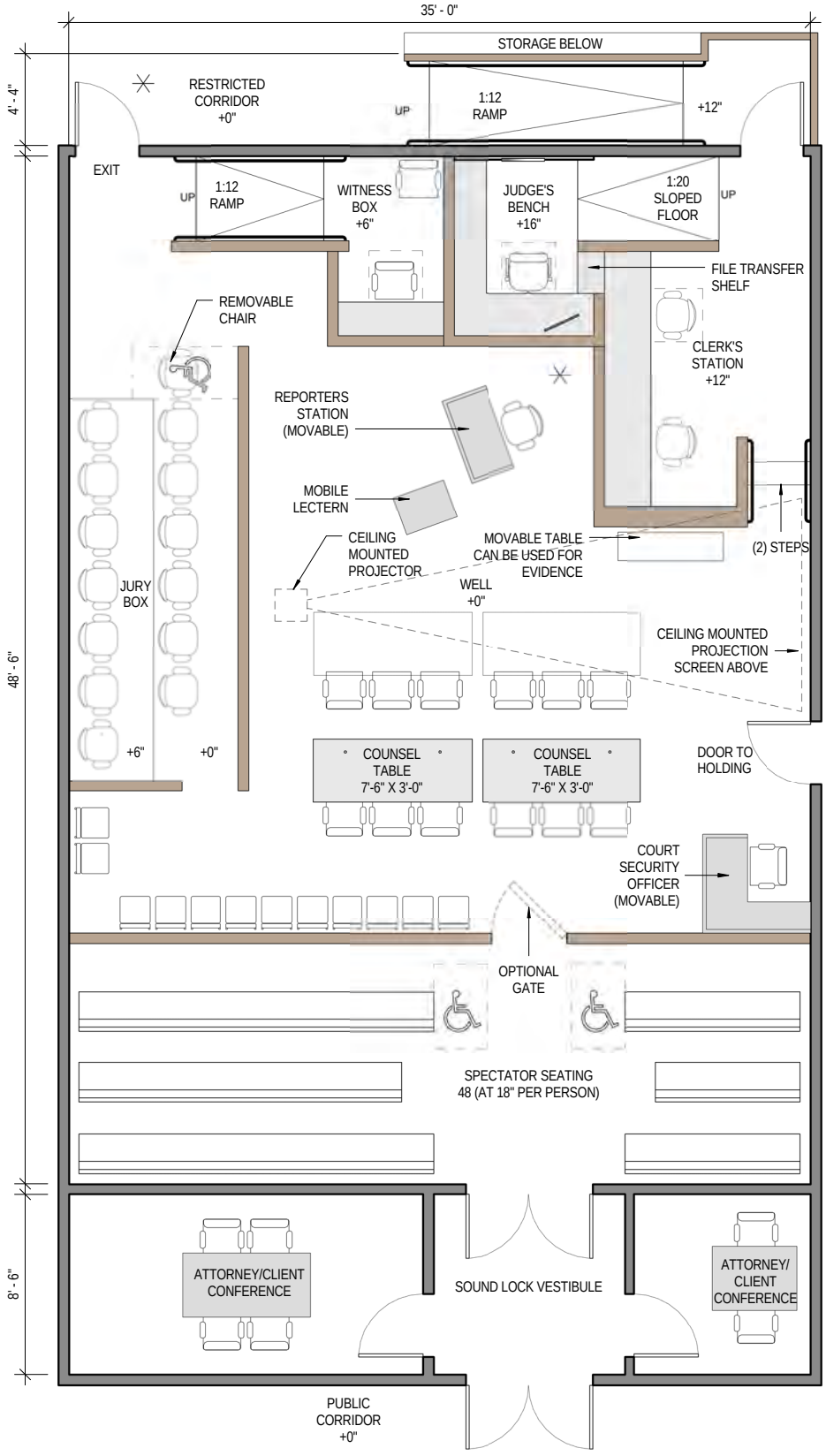
Key Attributes of Courtroom Layout

- 74 seats for voir dire provide maximum flexibility for trial use.
- Judge's bench work surface increased from 6' to 12'-10" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Access ramps outside courtroom.
- Judge's bench elevated 16" to minimize need for ramping.
- Optimal sight lines for all participants.
- Multi-defendant capable due to movable well components.
- Multiple locations for side-bar conferences (shown with *).
- Exhibit storage table adjacent to clerk's workstation.
- Stairs to clerk's workstation area reduce width of courtroom.
- Jury box dimensions are efficient and controls courtroom width.
- Adjustable height work surfaces for judge and clerk.

Options provided:

- Alternate Court Security Officer desk and evidence table locations
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area

TYPICAL TRIAL COURTROOM - CENTER BENCH A



TYPICAL TRIAL COURTROOM - CENTER BENCH B
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Trial		1,950	49 + 2 W.C.	77
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	7'-9"/6'-4"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	8'–6"	3'-0"	+0"	4 ea.
Lectern	2'-6"	2'-0"	N/A	0

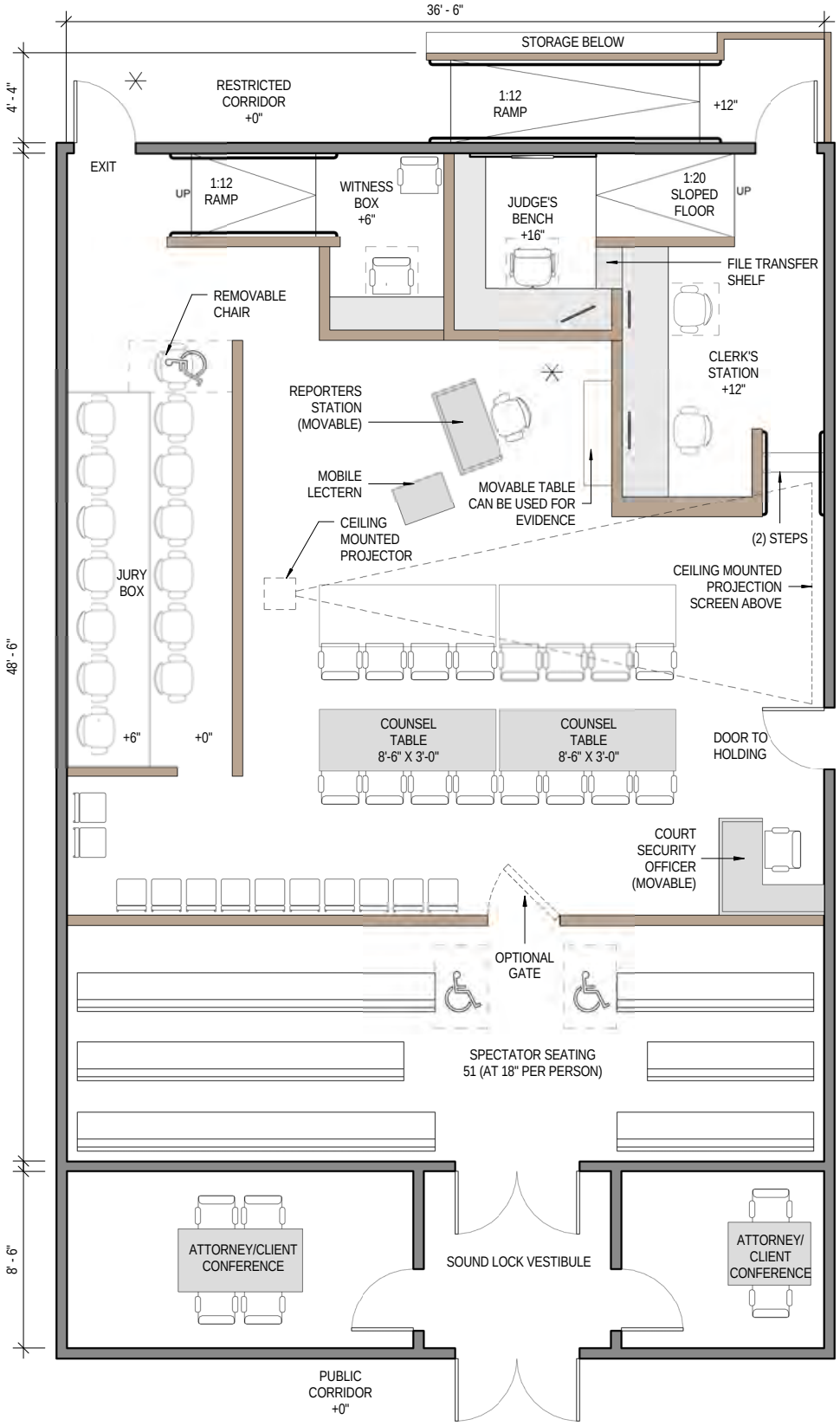
Key Attributes of Courtroom Layout

- 77 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable due to movable well components and increased courtroom width.
- Judge's bench work surface increased from 6' to 14'-1" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable due to moveable well components.
- Exhibit storage table adjacent to clerk's workstation.
- Clerks work surface increased from 10' to 12' long (2 clerks).
- Stairs to clerk's workstation area reduce width of courtroom.
- Adjustable height work surfaces for judge and clerk.
- Counsel tables provide for 4 seats at each table.
- Jury box dimensions are efficient and controls courtroom width.

Options provided:

- Alternate Court Security Officer desk and evidence table locations.
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area.

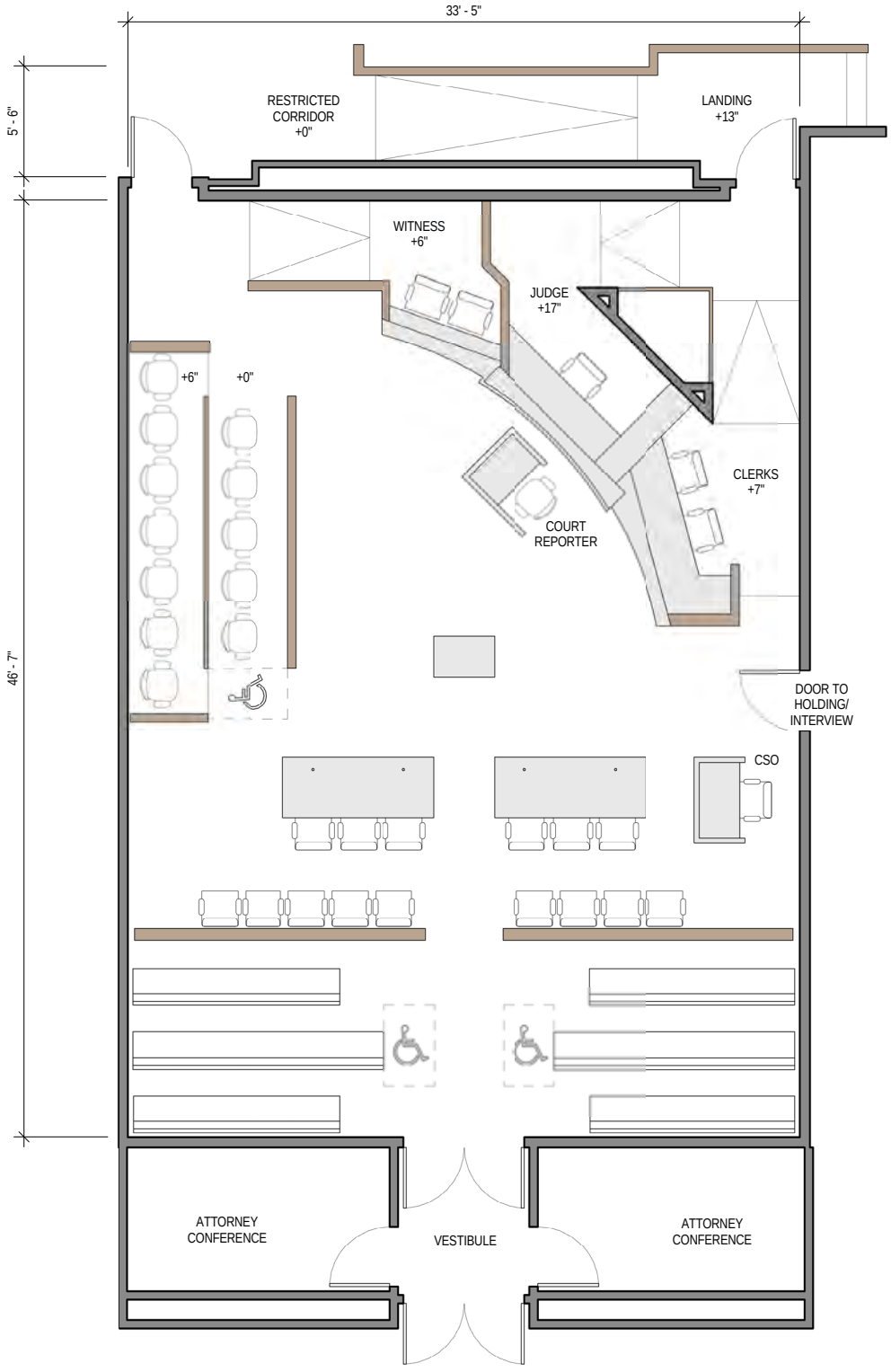
TYPICAL TRIAL COURTROOM - CENTER BENCH B



RICHARD E. ARNASON JUSTICE CENTER
CONTRA COSTA COUNTY, PITTSBURG
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1750	48+2 W.C.	

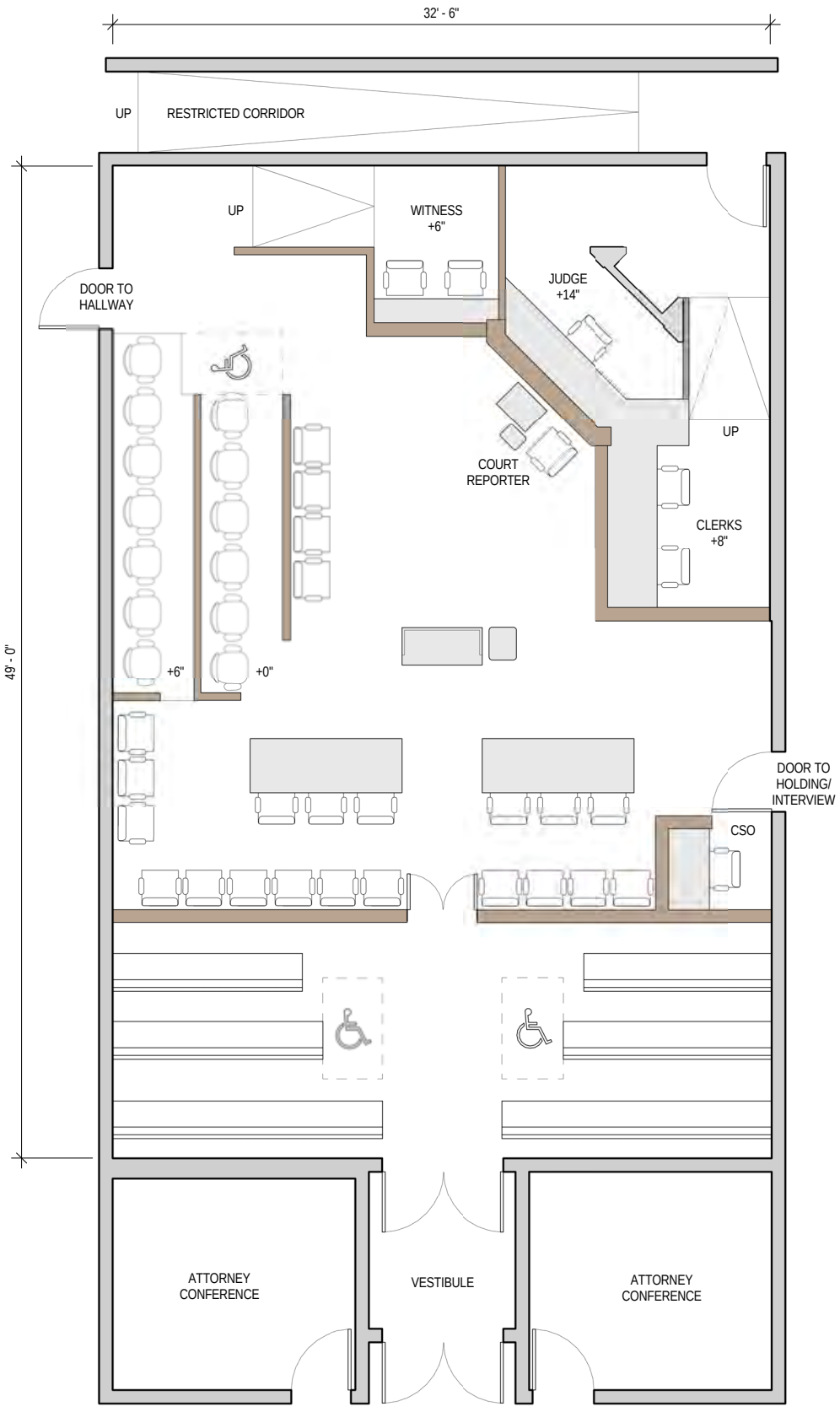
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-10”/3’-8”	1’-10”/1’-6”	+17”	1
Courtroom Clerk	9’-0”	2’-0”	+7"	2
Court Security Officer (CSO)	3’-9”	2’-0”	-	1
Court Reporter	3’-0”	2’-0”	-	1
Witness Stand	5'-10”	0’-9”	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	12
Counsel Tables	7’-6”	3’-0”	-	3 ea.
Lectern	3’-0”	2’-0”	-	-


33' - 5"
5' - 6"
46' - 7"
RESTRICTED CORRIDOR +0"
LANDING +13"
WITNESS +6"
JUDGE +17"
+6"
+0"
CLERKS +7"
COURT REPORTER
DOOR TO HOLDING/ INTERVIEW
CSO
ATTORNEY CONFERENCE
VESTIBULE
ATTORNEY CONFERENCE

MAMMOTH LAKES COURTHOUSE
MONO, MAMMOTH LAKES
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Typical Trial	1800	44+2 W.C.	

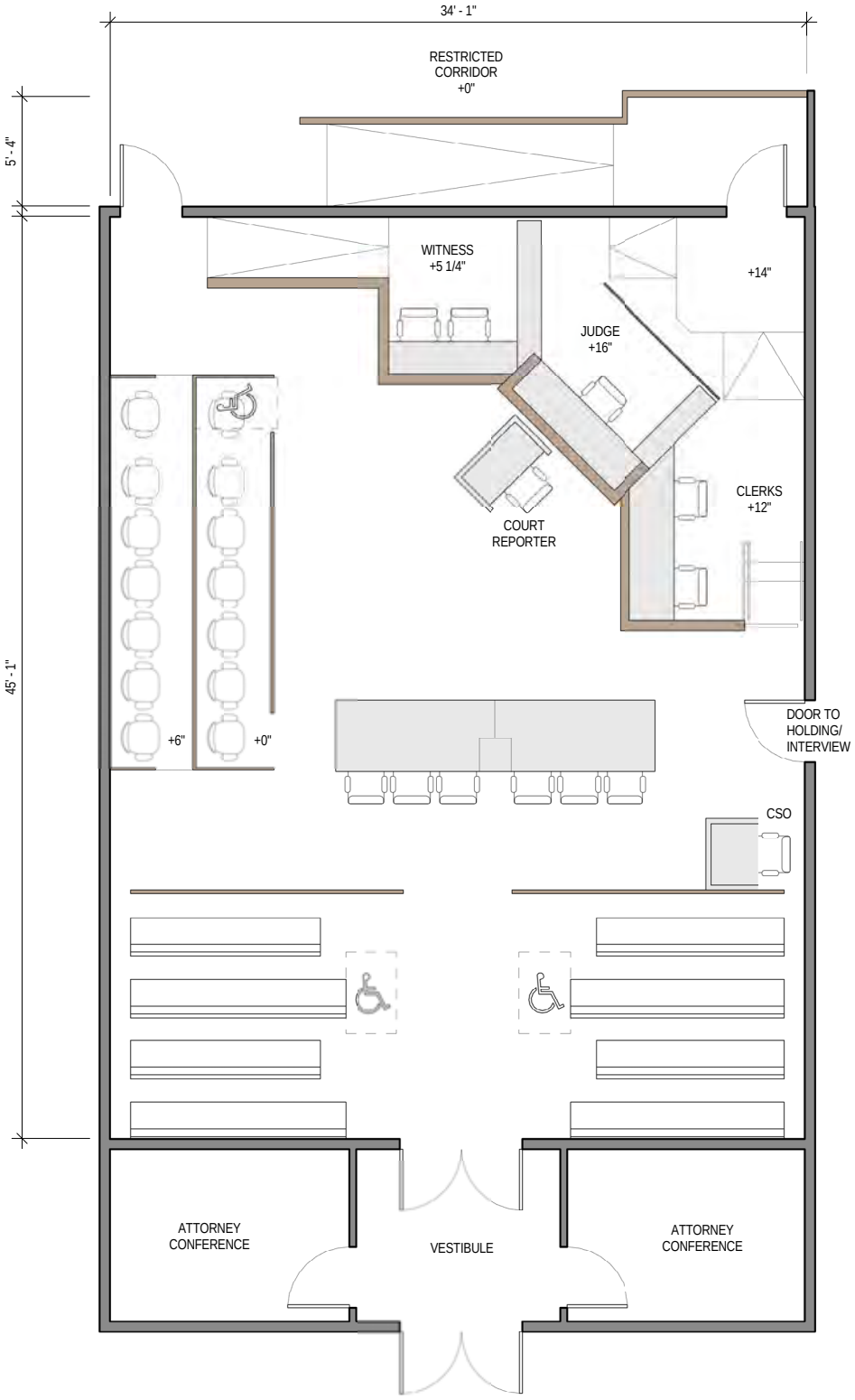
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-6”/2’-9”	2’-0”/2’-4”	+14”	1
Courtroom Clerk	8'-0”	2’-5”	+8"	2
Court Security Officer (CSO)	4’-0”	2’-0”	-	1
Court Reporter	2’-0”	1’-6”	-	1
Witness Stand	6’-2”	1’-2”	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	13
Counsel Tables	7’-6”	2’-8”	-	3 ea.
Lectern	4’-0”	1’-10”	-	-


32' - 6"
UP
RESTRICTED CORRIDOR
UP
WITNESS
+6"
JUDGE
+14"
DOOR TO
HALLWAY
UP
COURT
REPORTER
CLERKS
+8"
49' - 0"
+6"
+0"
DOOR TO
HOLDING/
INTERVIEW
CSO
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE

SAN BERNARDINO JUSTICE CENTER
SAN BERNARDINO COUNTY, SAN BERNARDINO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	
Typical Trial	1700	48+2 W.C.	

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7'-0"/4'-9"	2'-0"/1'-2"	+16"	1
Courtroom Clerk	9'-0"	2'-2"	+12"	2
Court Security Officer (CSO)	3'-0"	2'-4"	-	1
Court Reporter	3'-9"	2'-0"	-	1
Witness Stand	6'-4"	1'-7"	+5 1/4"	2
Jury Box	N/A	N/A	(1st row) +0"	14
			(2nd row) +6"	
Counsel Tables	7'-10"	3'-6"	-	3 ea.


34' - 1"
RESTRICTED
CORRIDOR
+0"
5' - 4"
WITNESS
+5 1/4"
+14"
JUDGE
+16"
CLERKS
+12"
COURT
REPORTER
45' - 1"
+6"
+0"
DOOR TO
HOLDING/
INTERVIEW
CSO
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE

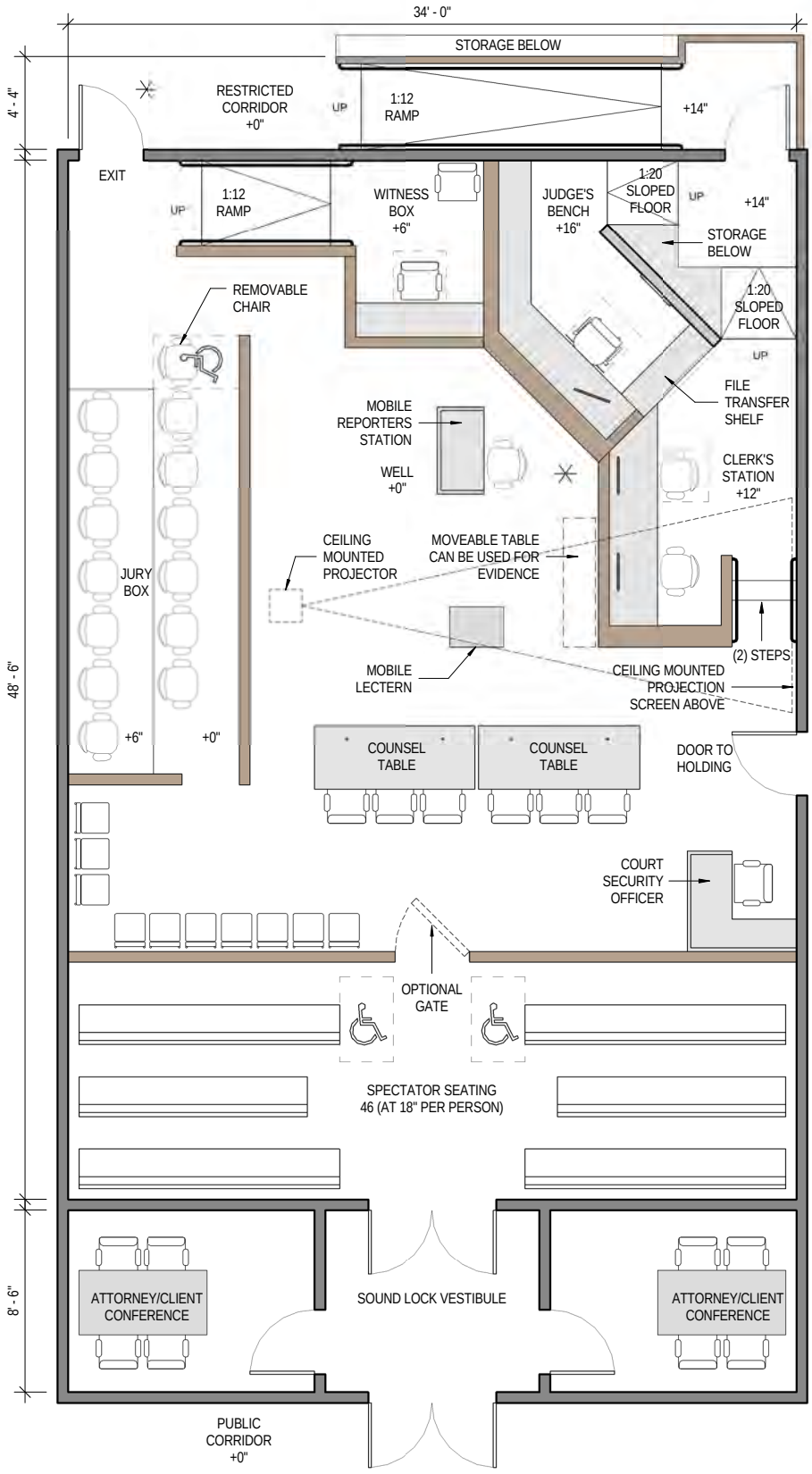
TYPICAL TRIAL COURTROOM - CORNER BENCH A
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	VOIR DIRE
Typical Trial	1,796	44+2 W.C.	70

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	6'-6"/6'-9"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	9'-3"	2'-3"	+12"	2
Court Security Officer (CSO)	4'-6"	2'-0"	-	1
Court Reporter	4'-0"	2'-0"	-	1
Witness Stand	6'-0"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'-6"	3'-0"	-	-
Lectern	2'-6"	2'-0"	-	-

Key Attributes of Courtroom Layout

- 70 seats for voir dire provide maximum flexibility for trial use.
- Judge's bench work surface increased from 6' to 13'-3" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Exhibit storage table adjacent to clerk's workstation.
- Stairs to clerk's workstation area reduce width of courtroom.
- Adjustable height work surfaces for judge and clerk.
- Jury box dimensions are efficient and controls courtroom width.


34' - 0"
STORAGE BELOW
RESTRICTED CORRIDOR +0"
UP
1:12 RAMP
+14"
4' - 4"
EXIT
1:12 RAMP
UP
WITNESS BOX +6"
JUDGE'S BENCH +16"
1:20 SLOPED FLOOR
UP
+14"
STORAGE BELOW
1:20 SLOPED FLOOR
UP
REMOVABLE CHAIR
FILE TRANSFER SHELF
MOBILE REPORTERS STATION
WELL +0"
CLERK'S STATION +12"
CEILING MOUNTED PROJECTOR
MOVEABLE TABLE CAN BE USED FOR EVIDENCE
JURY BOX
(2) STEPS
MOBILE LECTERN
CEILING MOUNTED PROJECTION SCREEN ABOVE
48' - 6"
+6"
+0"
COUNSEL TABLE
COUNSEL TABLE
DOOR TO HOLDING
COURT SECURITY OFFICER
OPTIONAL GATE
SPECTATOR SEATING 46 (AT 18" PER PERSON)
8' - 6"
ATTORNEY/CLIENT CONFERENCE
SOUND LOCK VESTIBULE
ATTORNEY/CLIENT CONFERENCE
PUBLIC CORRIDOR +0"

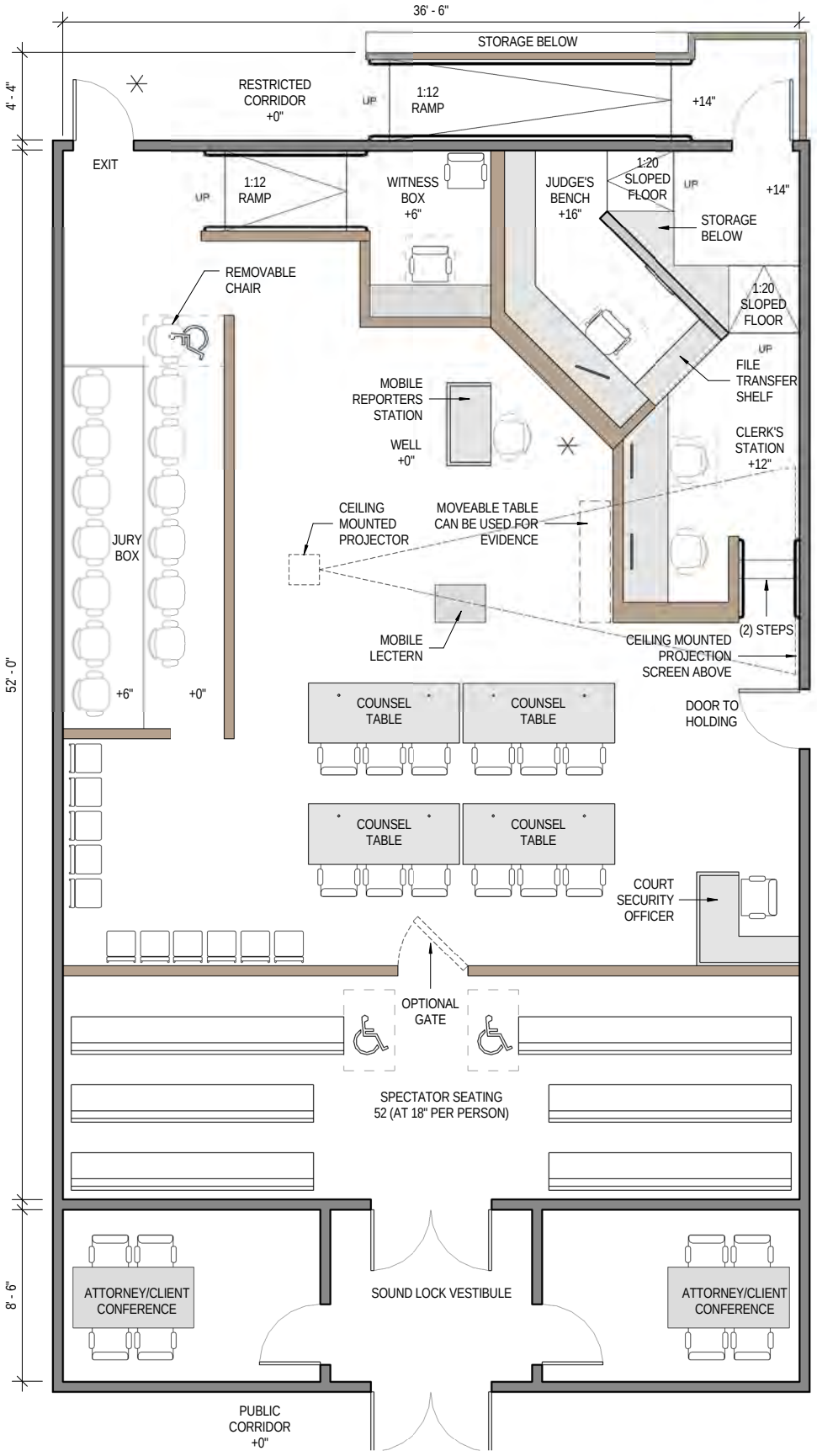
TYPICAL TRIAL COURTROOM - CORNER BENCH B
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	VOIR DIRE
Typical Trial	2,056	50 + 2 W.C.	77

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8'-0"/6'-9"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	9'-3"	2'-3"	+12"	2
Court Security Officer (CSO)	4'-6"	2'-0"	-	1
Court Reporter	4'-0"	2'-0"	-	1
Witness Stand	6'-0"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'-6"	3'-0"	-	-
Lectern	2'-6"	2'-0"	-	-

Key Attributes of Courtroom Layout

- 77 seats for voir dire provide maximum flexibility for trial use.
- Judge's bench work surface increased from 6' to 14'-9" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable due to movable well components.
- Exhibit storage table adjacent to clerk's workstation.
- Stairs to clerk's workstation area reduce width of courtroom.
- Adjustable height work surfaces for judge and clerk.
- Jury box dimensions are efficient and controls courtroom width.


36' - 6"
STORAGE BELOW
4' - 4"
RESTRICTED CORRIDOR +0"
UP
1:12 RAMP
+14"
EXIT
1:12 RAMP
WITNESS BOX +6"
JUDGE'S BENCH +16"
1:20 SLOPED FLOOR
STORAGE BELOW
REMOVABLE CHAIR
1:20 SLOPED FLOOR
FILE TRANSFER SHELF
MOBILE REPORTERS STATION
WELL +0"
CLERK'S STATION +12"
CEILING MOUNTED PROJECTOR
MOVEABLE TABLE CAN BE USED FOR EVIDENCE
JURY BOX
(2) STEPS
MOBILE LECTERN
CEILING MOUNTED PROJECTION SCREEN ABOVE
52' - 0"
+6"
+0"
COUNSEL TABLE
COUNSEL TABLE
DOOR TO HOLDING
COUNSEL TABLE
COUNSEL TABLE
COURT SECURITY OFFICER
OPTIONAL GATE
SPECTATOR SEATING 52 (AT 18" PER PERSON)
8' - 6"
ATTORNEY/CLIENT CONFERENCE
SOUND LOCK VESTIBULE
ATTORNEY/CLIENT CONFERENCE
PUBLIC CORRIDOR +0"

LARGE TRIAL COURTROOM EXAMPLES

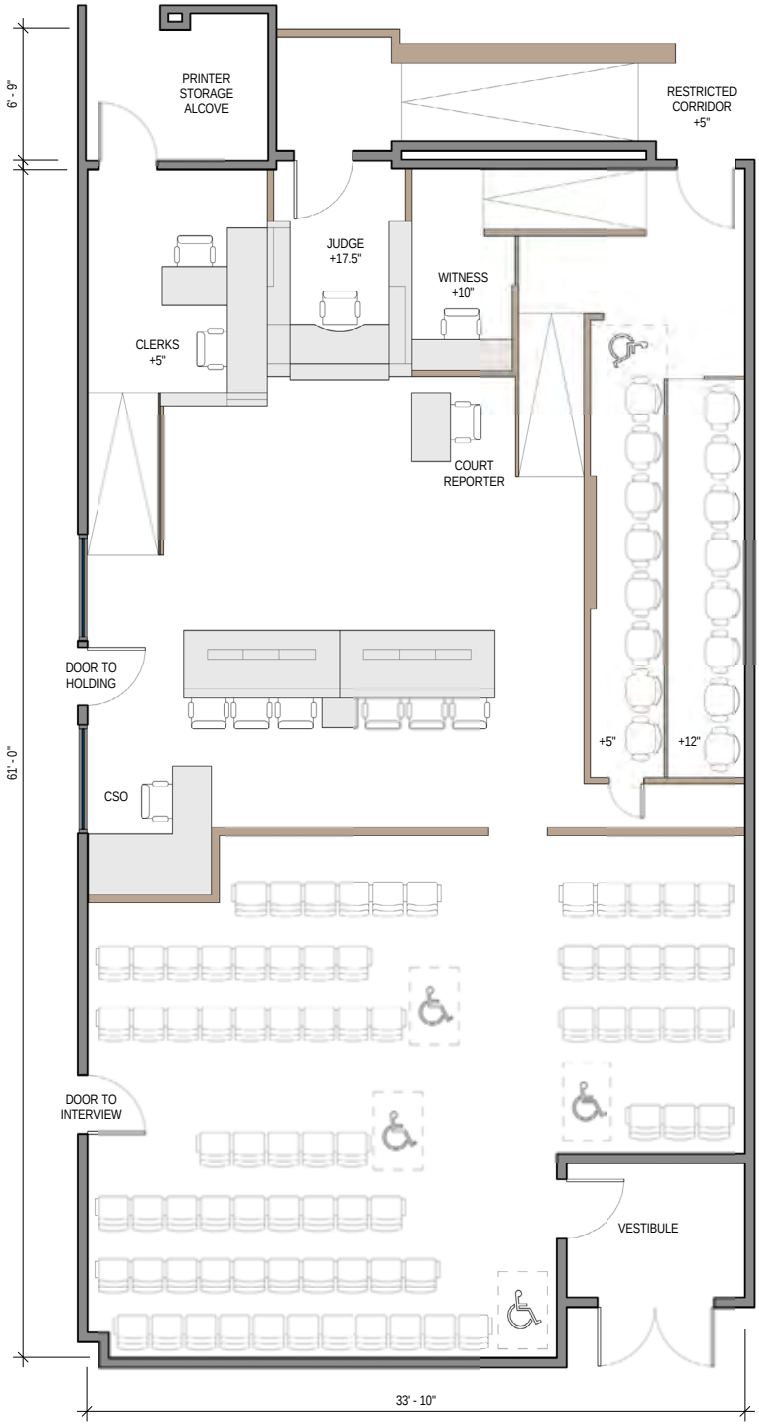
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2200	80	38
San Diego	San Diego	San Diego Central Courthouse	2100	98	40
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	2470	142	42
Sutter	Yuba City	Superior Court of California, County of Sutter	2100	94	44
Yolo	Woodland	Yolo Superior Court, State of California	2500	94	46
Typical Large Trial Courtroom - Center Bench A			2050	71	48
Typical Large Trial Courtroom - Center Bench B			2250	74	50
Typical Large Trial Courtroom - Center Bench C			2200	52	52
Typical Large Trial Courtroom - Center Bench D			2445	84	54
CORNER BENCH					
Typical Large Trial Courtroom - Corner Bench A			2008	65	56
Typical Large Trial Courtroom - Corner Bench B			2285	73	58

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

GOVERNOR GEORGE DEUKMEJIAN COURTHOUSE
LOS ANGELES COUNTY, LONG BEACH
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”
Large Trial	2,200	76+4 W.C.

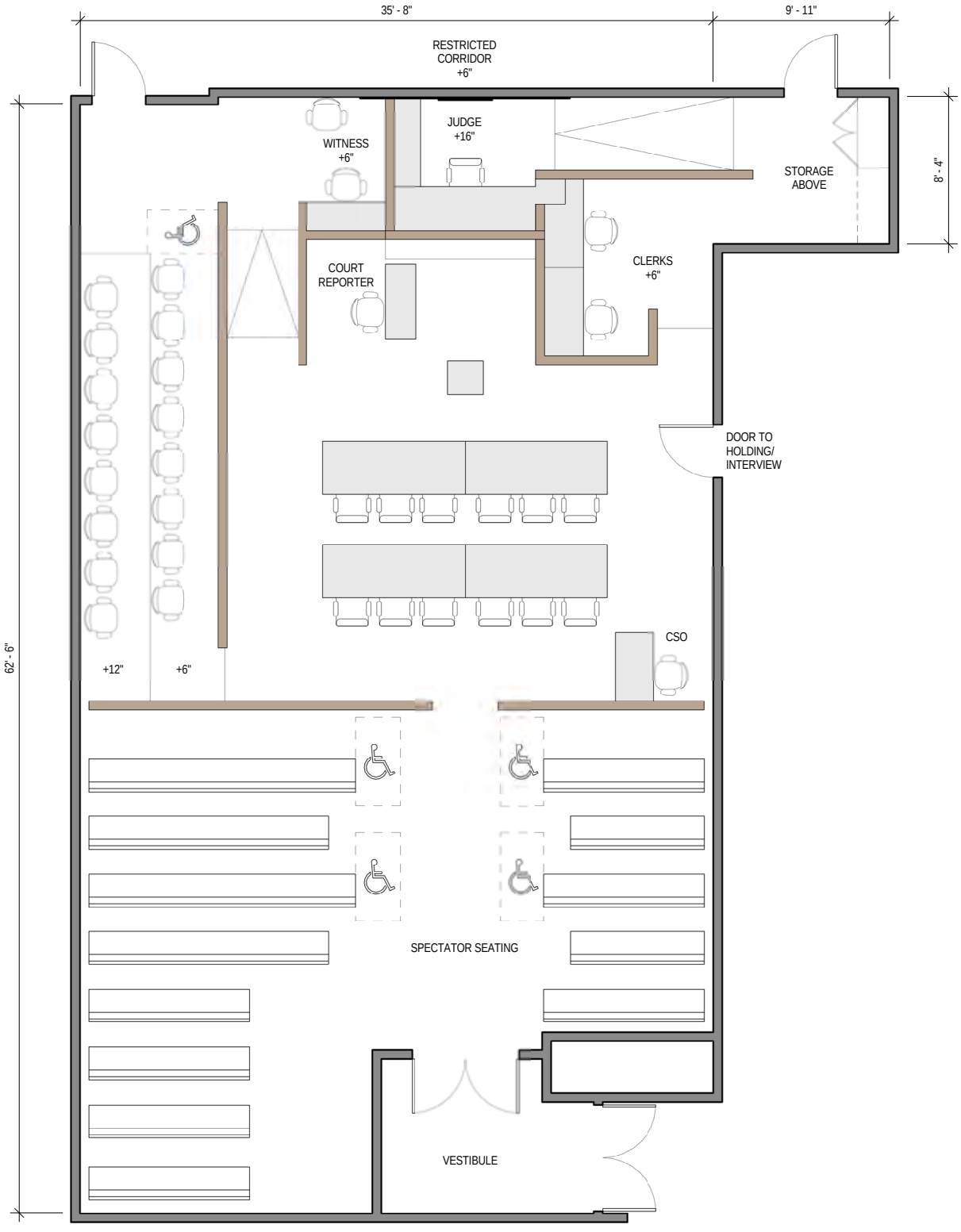
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-5”/5’-0”	2’-0”/1’-2”	+17.5”	1
Courtroom Clerk	8'-6”	2’-0”	+5"	2
Court Security Officer (CSO)	6’-7”	2’-0”	-	1
Court Reporter	3’-6”	2’-0”	-	1
Witness Stand	5'-2”	1’-7”	+10"	2
Jury Box	N/A	N/A	(1st row) +5"	16
			(2nd row) +12"	
Counsel Tables	8’-0”	4’-0”	-	3 ea.
Lectern	2’-6”	4’-0”	-	-


PRINTER
STORAGE
ALCOVE
RESTRICTED
CORRIDOR
+5"
JUDGE
+17.5"
WITNESS
+10"
CLERKS
+5"
COURT
REPORTER
DOOR TO
HOLDING
CSO
+5"
+12"
DOOR TO
INTERVIEW
VESTIBULE
6' - 9"
61' - 0"
33' - 10"

SAN DIEGO CENTRAL COURTHOUSE
SAN DIEGO COUNTY, SAN DIEGO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Large Trial	2,100	94+4 W.C.	

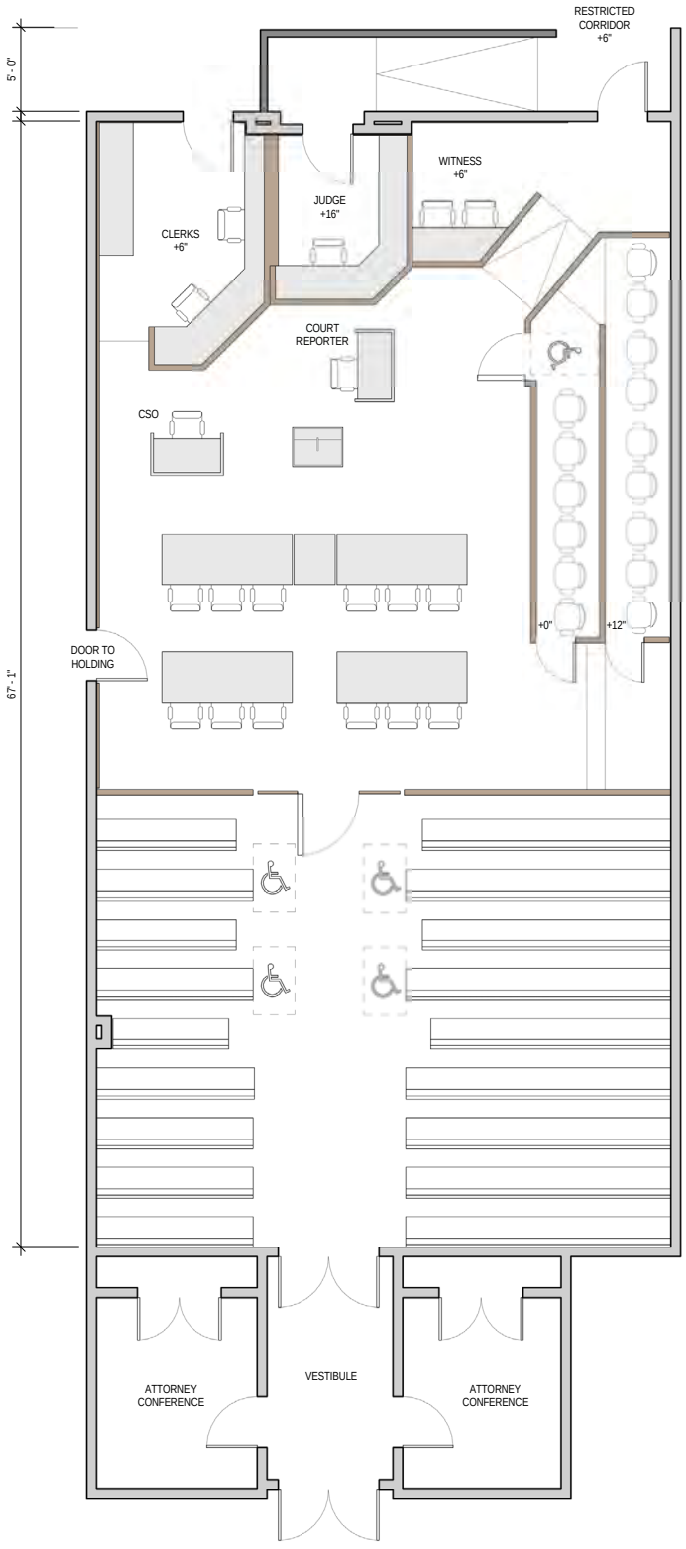
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-0”/5’-0”	2’-6”/1’-6”	+16”	1
Courtroom Clerk	10'-0”	2’-2”	+6"	2
Court Security Officer (CSO)	3’-10”	2’-2”	-	1
Court Reporter	4’-2”	1’-9”	-	1
Witness Stand	4'-6”	1’-8”	+6"	2
Jury Box	N/A	N/A	(1st row) +6"	16
			(2nd row) +12"	
Counsel Tables	8’-0”	3’-6”	-	3 ea.
Lectern	2’-0”	2’-0”	-	-


35' - 8"
9' - 11"
RESTRICTED
CORRIDOR
+6"
WITNESS
+6"
JUDGE
+16"
STORAGE
ABOVE
8' - 4"
COURT
REPORTER
CLERKS
+6"
DOOR TO
HOLDING/
INTERVIEW
CSO
62' - 6"
+12"
+6"
SPECTATOR SEATING
VESTIBULE

SUPERIOR COURT OF SAN JOAQUIN COUNTY STOCKTON COURTHOUSE
SAN JOAQUIN COUNTY, STOCKTON
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Large Trial	2,470	138+4 W.C.	

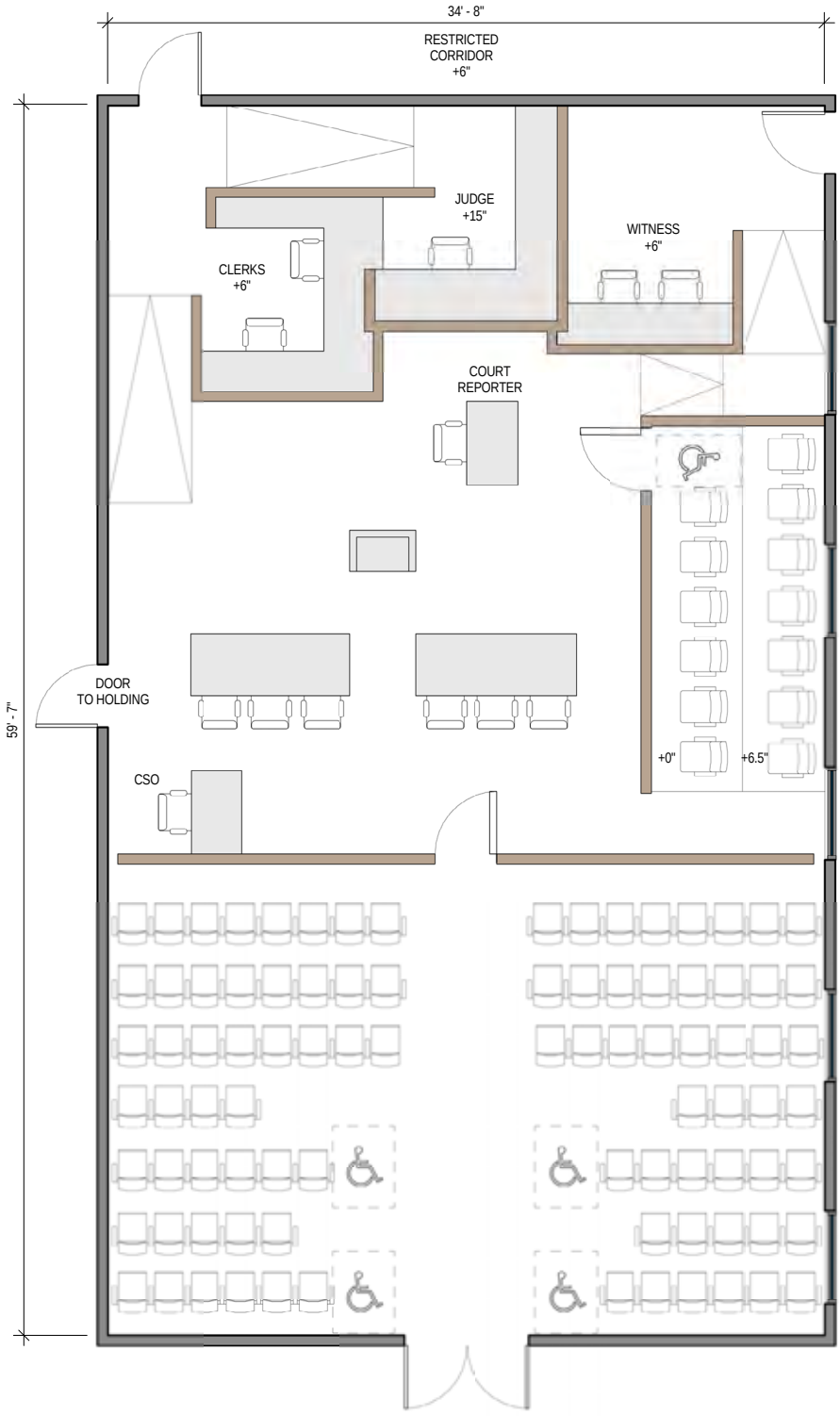
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-10”/6’-6”	2’-0”/1’-8”	+16”	1
Courtroom Clerk	13'-8”	2’-3”	+6"	2
Court Security Officer (CSO)	4’-0”	2’-0”	-	1
Court Reporter	4’-0”	2’-0”	-	1
Witness Stand	5'-6”	2’-0”	+6"	2
Jury Box	N/A	N/A	(1st row) +0"	15
			(2nd row) +12"	
Counsel Tables	7'–9”	3'-0”	-	3 ea.
Lectern	2’-5”	3’-0”	-	-


RESTRICTED
CORRIDOR
+6"
5' - 0"
WITNESS
+6"
JUDGE
+16"
CLERKS
+6"
COURT
REPORTER
CSO
+0"
+12"
DOOR TO
HOLDING
67' - 1"
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SUTTER
SUTTER COUNTY, YUBA CITY
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Large Trial	2,100	90+4 W.C.	

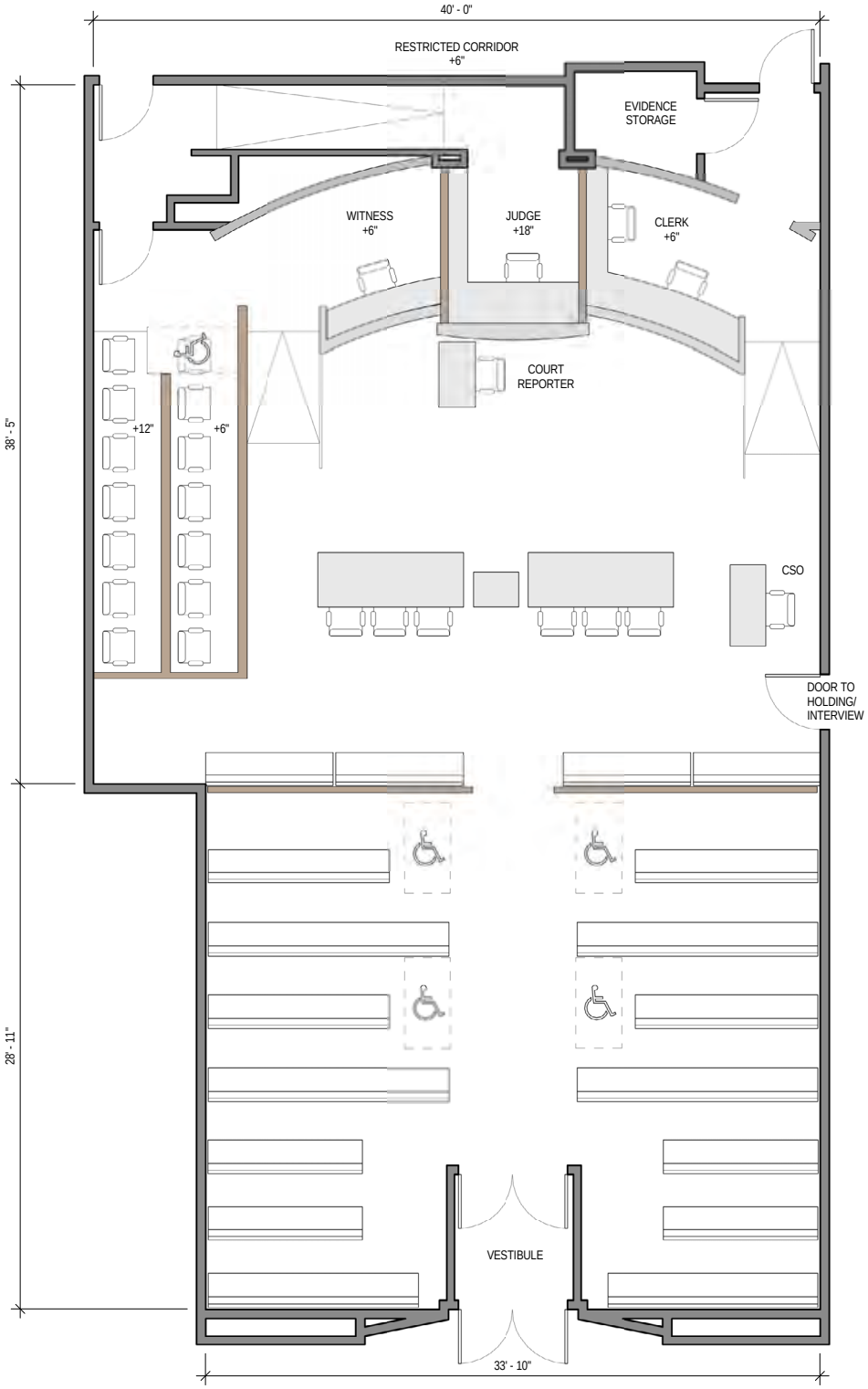
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-9”/7’-11”	2’-6”/2’-0”	+15”	1
Courtroom Clerk	8'-5”	2’-0”	+6"	2
Court Security Officer (CSO)	-	-	-	1
Court Reporter	-	-	-	1
Witness Stand	8'-0”	2’-0”	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6.5"	14
Counsel Tables	-	-	-	-
Lectern	-	-	-	-


34' - 8"
RESTRICTED
CORRIDOR
+6"
JUDGE
+15"
WITNESS
+6"
CLERKS
+6"
COURT
REPORTER
DOOR
TO HOLDING
CSO
+0"
+6.5"
59' - 7"

YOLO SUPERIOR COURT, STATE OF CALIFORNIA
YOLO COUNTY, WOODLAND
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Large Trial	2,500	90+4 W.C.	

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-2”/6’-4”	2’-3”/1’-0”	+18”	1
Courtroom Clerk	13'-6”	2’-0”	+6"	2
Court Security Officer (CSO)	4’-6”	2’-0”	-	1
Court Reporter	3’-8”	2’-0”	-	1
Witness Stand	6'-6”	1’-8”	+6"	2
Jury Box	N/A	N/A	(1st row) +6"	14
			(2nd row) +12"	
Counsel Tables	8’-0”	3’-0”	-	3 ea.
Lectern	-	-	-	-


40' - 0"
RESTRICTED CORRIDOR
+6"
EVIDENCE
STORAGE
WITNESS
+6"
JUDGE
+18"
CLERK
+6"
COURT
REPORTER
+12"
+6"
CSO
DOOR TO
HOLDING/
INTERVIEW
38' - 5"
28' - 11"
VESTIBULE
33' - 10"

TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH A

Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,050	67 + 4 W.C.	97
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	6'-6"/6'-4"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-0"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'–6"	3'-0"	+0"	3 ea.
Lectern	2'-6"	2'-0"	N/A	0

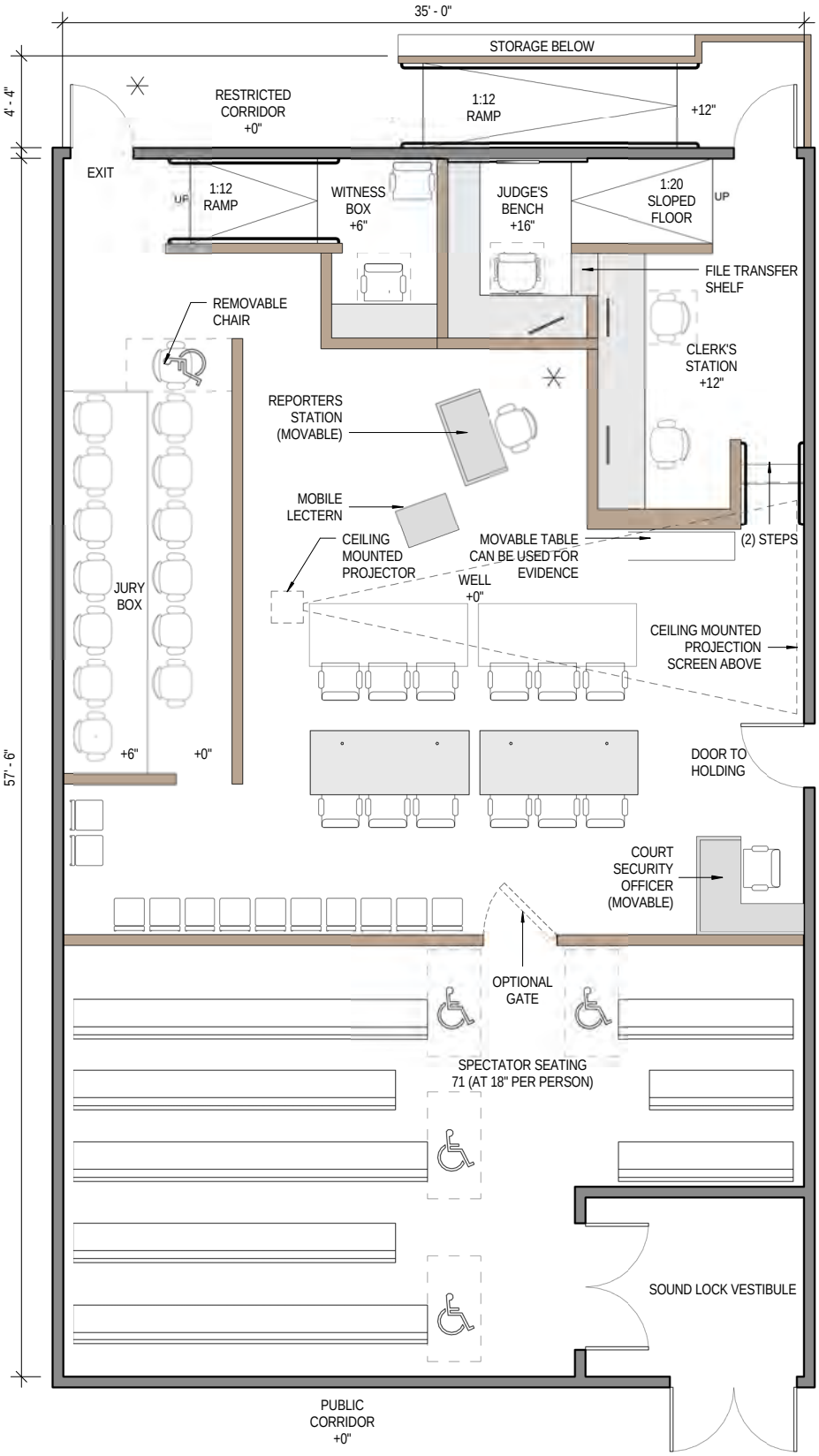
Key Attributes of Courtroom Layout

- 97 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable.
- Judge's bench work surface increased from 6' to 12'-10" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Clerks work surface increased from 10' to 12' long (2 clerks).
- Jury box dimensions are efficient and control courtroom width.
- Spectator seating increased by eliminating Attorney/Client Conference Rooms.

Options provided:

- Alternate Court Security Officer desk and evidence table locations.
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area.

TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH A



TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH B

Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,250	70 + 4 W.C.	100
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	7'-9"/6'-4"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	8'–6"	3'-0"	+0"	4 ea.
Lectern	2'-6"	2'-0"	N/A	0

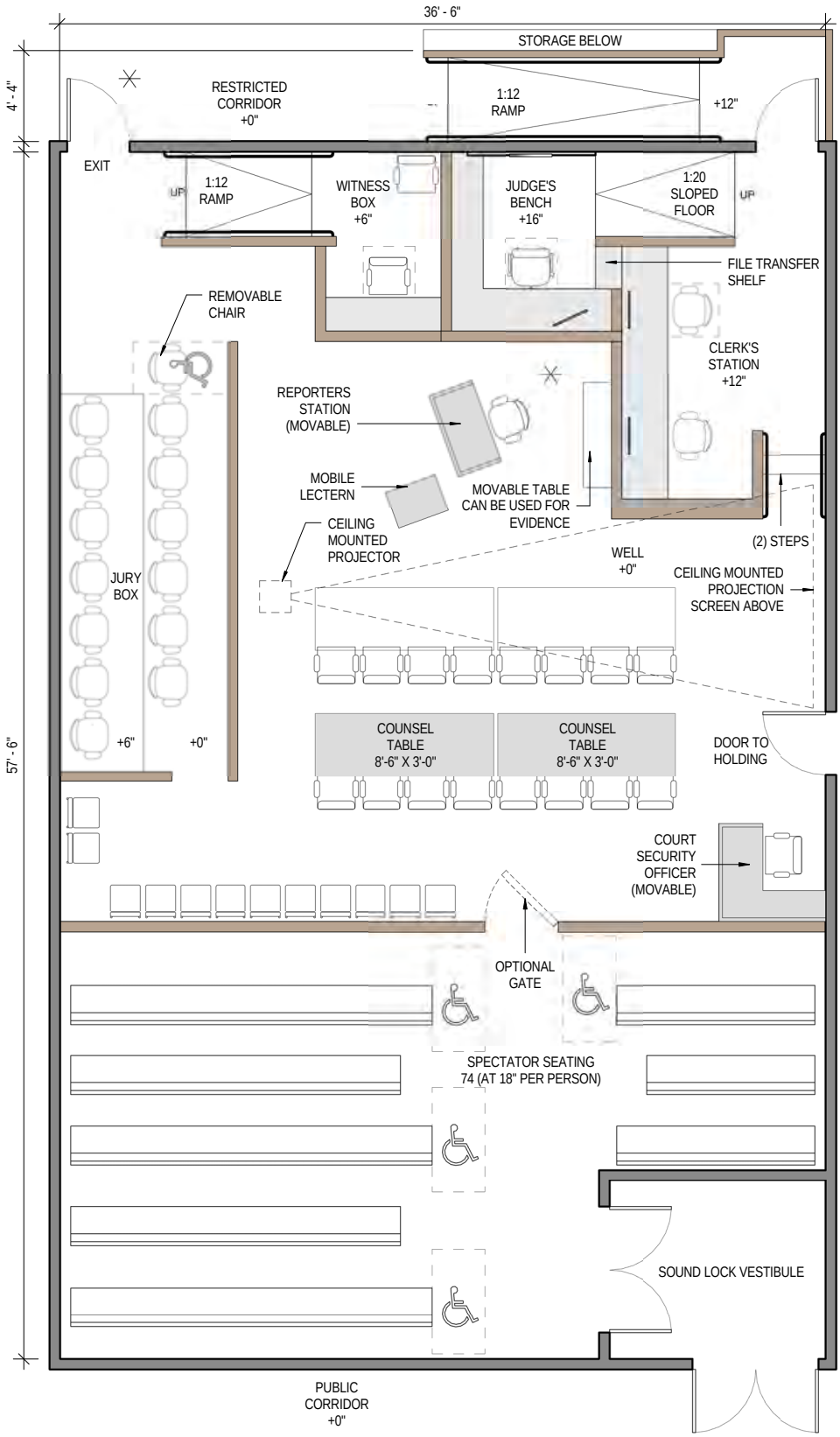
Key Attributes of Courtroom Layout

- 100 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable due to moveable well components and increased courtroom width.
- Judge's bench work surface increased from 6' to 14'-1" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable due to increased well area and moveable well components.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Clerks work surface increased from 10' to 12' long (2 clerks).
- Clerk's storage in workstation area.
- Ramp provided to clerk's workstation area.
- Counsel tables provide for 4 seats at each table.
- Jury box dimensions are efficient and control courtroom width.
- Spectator seating increased by eliminating Attorney/Client Conference Rooms.

Options provided:

- Alternate Court Security Officer desk and evidence table locations.
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area.

TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH B



TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH C
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,200	50 + 2 W.C.	78
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	7'-9"/6'-10"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+10"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	8'–6"	3'-0"	+0"	4 ea.
Lectern	2'-6"	2'-0"	N/A	0

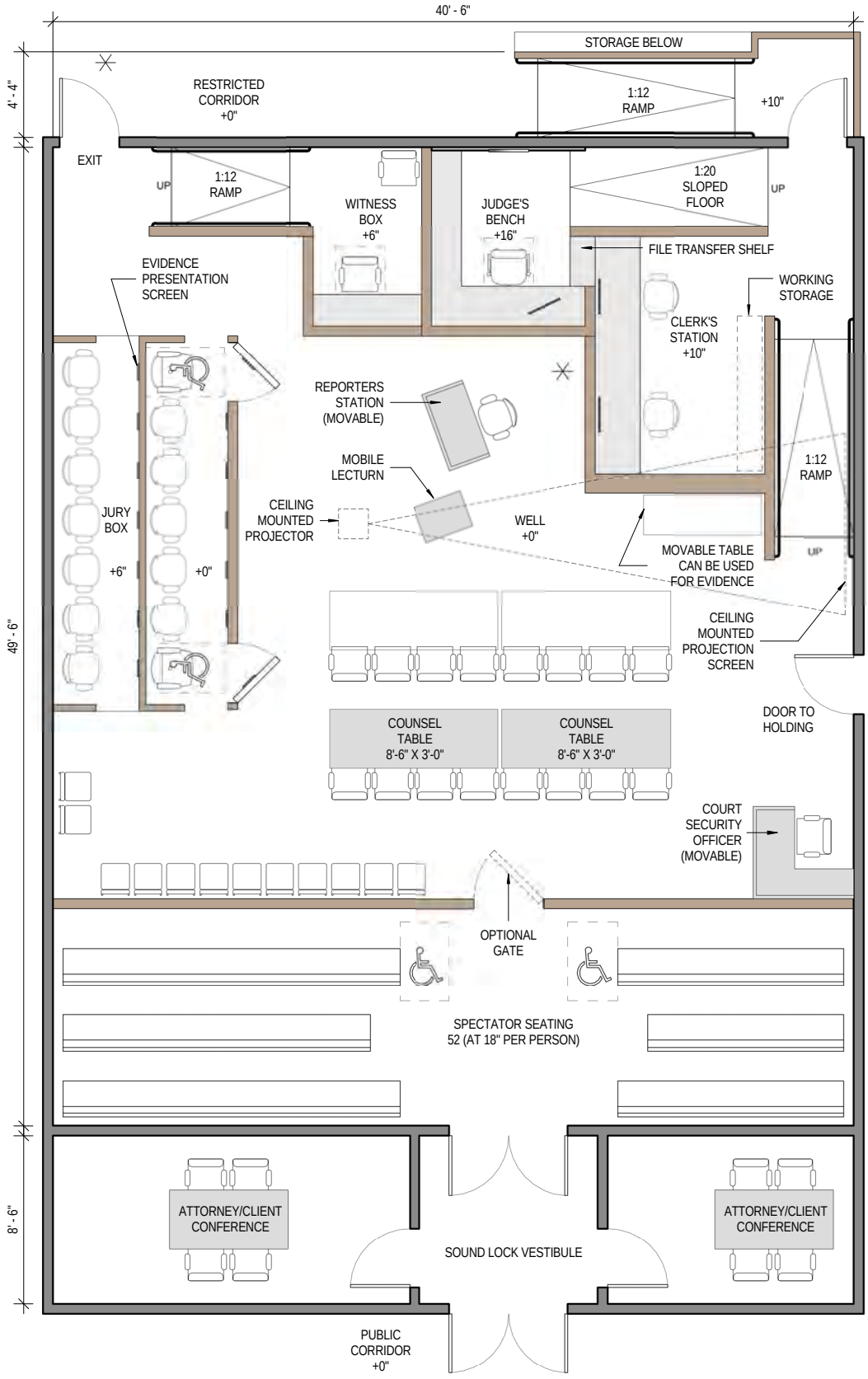
Key Attributes of Courtroom Layout

- 78 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable due to moveable well components and increased courtroom width.
- Judge's bench work surface increased from 6' to 14'-7" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable due to increased well area and moveable well components.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Clerks work surface increased from 10' to 12' long (2 clerks).
- Clerk's storage in workstation area.
- Ramp provided to clerk's workstation area.
- Counsel tables provide for 4 seats at each table.
- Jury box provides increased room to accommodate individual flat screen displays, room for jurors when exiting, and two alternate locations for wheel chair locations.

Options provided:

- Alternate Court Security Officer desk and evidence table locations.
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area.

TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH C



TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH D
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,445	80 + 4 W.C.	110
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	7'-9"/6'10"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	12'-0"	2'-3"	+10"	2
Court Security Officer	4'-0"	2'-6"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0"	14
			(2nd row) +6"	
Counsel Tables	8'–6"	3'-0"	+0"	4 ea.
Lectern	2'-6"	2'-0"	N/A	0

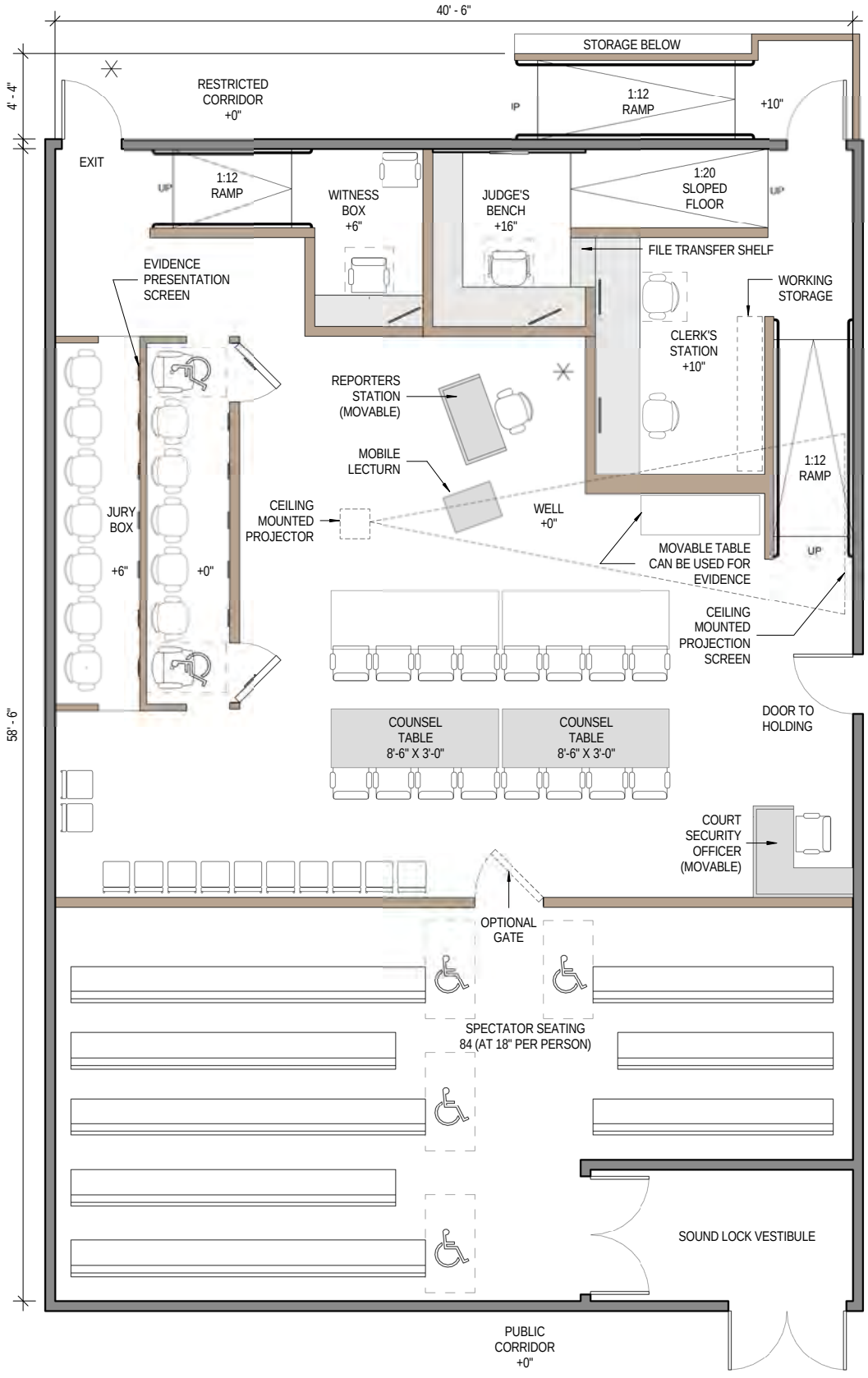
Key Attributes of Courtroom Layout

- 110 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable due to moveable well components and increased courtroom width.
- Judge's bench work surface increased from 6' to 14'-7" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable due to increased well area and moveable well components.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Clerks work surface increased from 10' to 12' long (2 clerks).
- Clerk's storage in workstation area.
- Ramp provided to clerk's workstation area.
- Counsel tables provide for 4 seats at each table.
- Jury box provides increased room to accommodate individual flat screen panels, room for jurors when exiting, and two alternate locations for wheel chair locations.
- Spectator seating increased by eliminating Attorney/Client Conference Rooms.

Options provided:

- Alternate Court Security Officer desk and evidence table locations.
- Movable lectern and court reporters station facilitate options for adding counsel tables.
- Gate to well area.

TYPICAL LARGE TRIAL COURTROOM - CENTER BENCH D



TYPICAL LARGE TRIAL COURTROOM - CORNER BENCH A

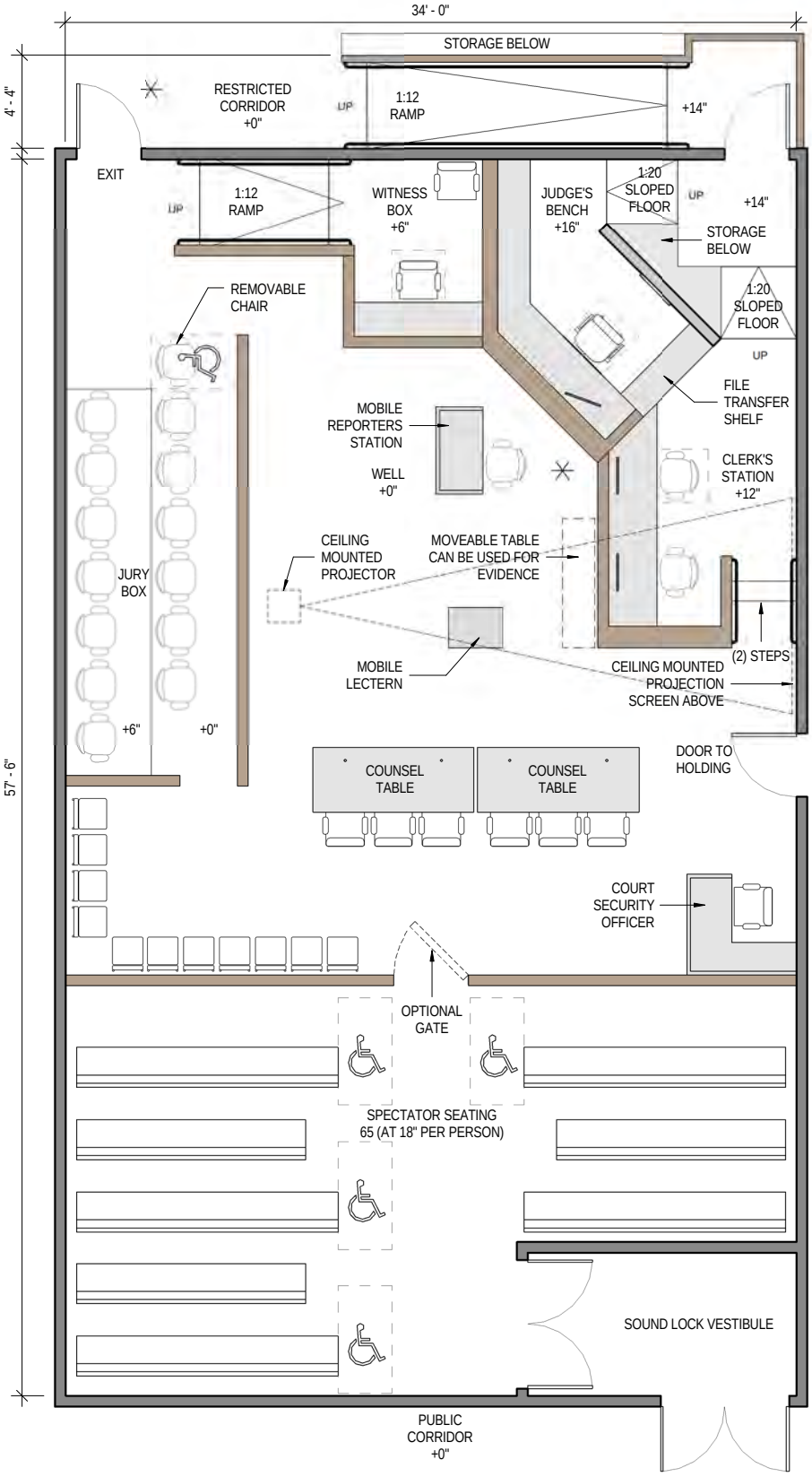
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,008	61 + 4 W.C.	90
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	6'-6"/6'-9"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	9'-3"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-0"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'–6"	3'-0"	+0"	3 ea.
Lectern	2'-6"	2'-0"	N/A	0

Key Attributes of Courtroom Layout

- 90 seats for voir dire provide maximum flexibility for trial use.
- Judge's bench work surface increased from 6' to 13'-3" long.
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Jury box dimensions are efficient and control courtroom width.
- Spectator seating increased by eliminating Attorney/Client Conference Rooms.

TYPICAL LARGE TRIAL COURTROOM - CORNER BENCH A



TYPICAL LARGE TRIAL COURTROOM - CORNER BENCH B

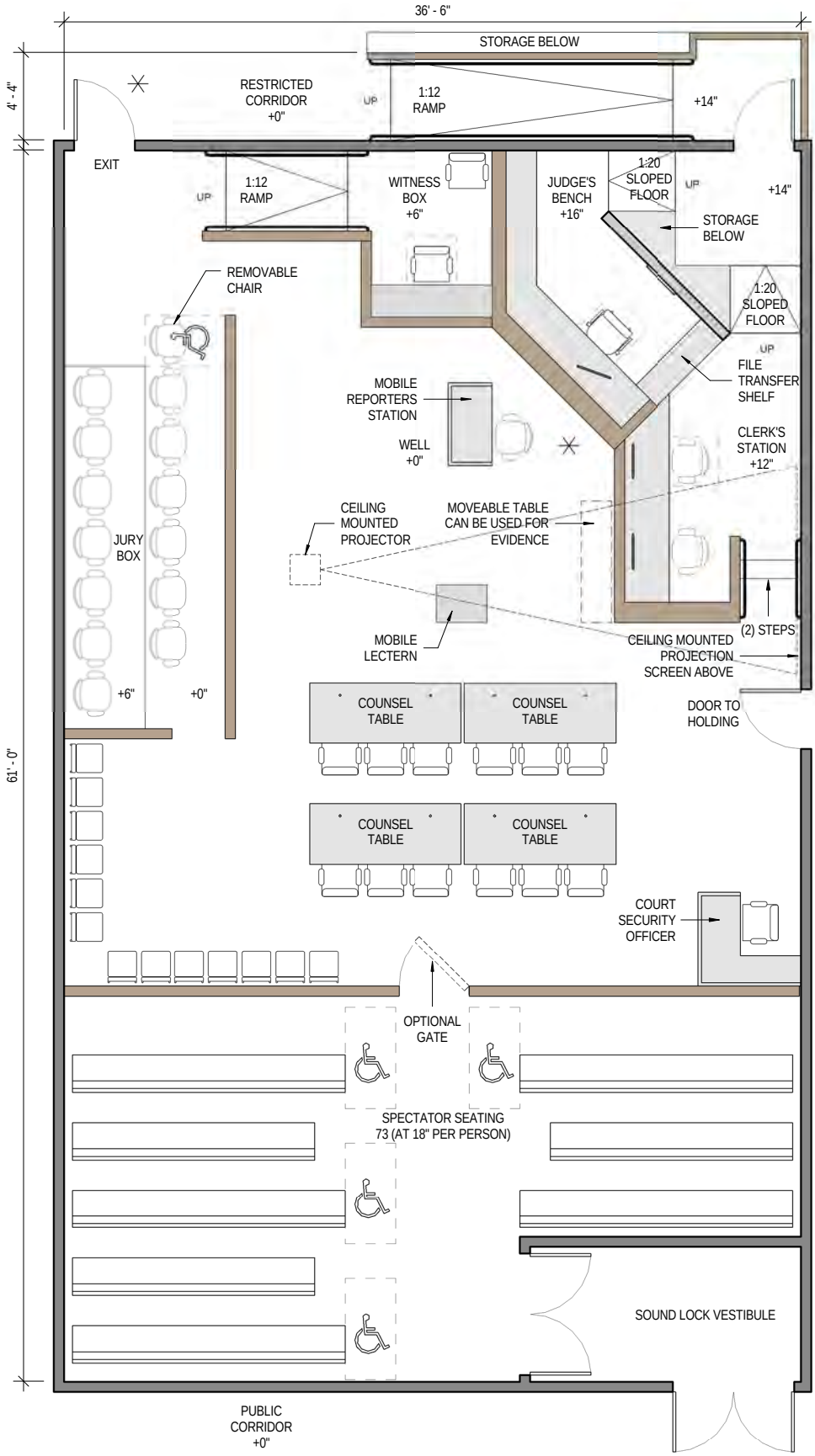
Courtroom Component Information

COURTROOM TYPE		SQUARE FEET	SPECTATOR SEATING (18")	VOIR DIRE
Multipurpose Large Trial		2,285	69 + 4 W.C.	100
ELEMENT OR WORKSTATION	**FURNITURE / CASEWORK WIDTH**	**DEPTH**	**HEIGHT ABOVE FLOOR**	**NO. OF OCCUPANTS**
Judge	8'-0"/6'-9"	2'-0"/1'-6"	+16"	1
Courtroom Clerk	9'-3"	2'-3"	+12"	2
Court Security Officer	4'-0"	2'-0"	+0"	1
Court Reporter	4'-0"	2'-0"	+0"	1
Witness Stand	5'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6"	14
Counsel Tables	7'–6"	3'-0"	+0"	3 ea.
Lectern	2'-6"	2'-0"	N/A	0

Key Attributes of Courtroom Layout

- 100 seats for voir dire provide maximum flexibility for trial use.
- Multi-defendant capable.
- Judge's bench work surface increased from 6' to 14'-9".
- Work surface return at judge's bench increased from 10" to 18" deep.
- Judge's bench elevated 16" to minimize need for ramping.
- Multiple locations for side-bar conferences (shown with *).
- Optimal sight lines for all participants.
- Multi-defendant capable.
- Exhibit storage table adjacent to clerk's workstation.
- Adjustable height work surfaces for judge and clerk.
- Jury box dimensions are efficient and control courtroom width.
- Additional counsel tables accommodated by eliminating Attorney/Client Conference Rooms.

TYPICAL LARGE TRIAL COURTROOM - CORNER BENCH B



DOUBLE JURY COURTROOM EXAMPLES

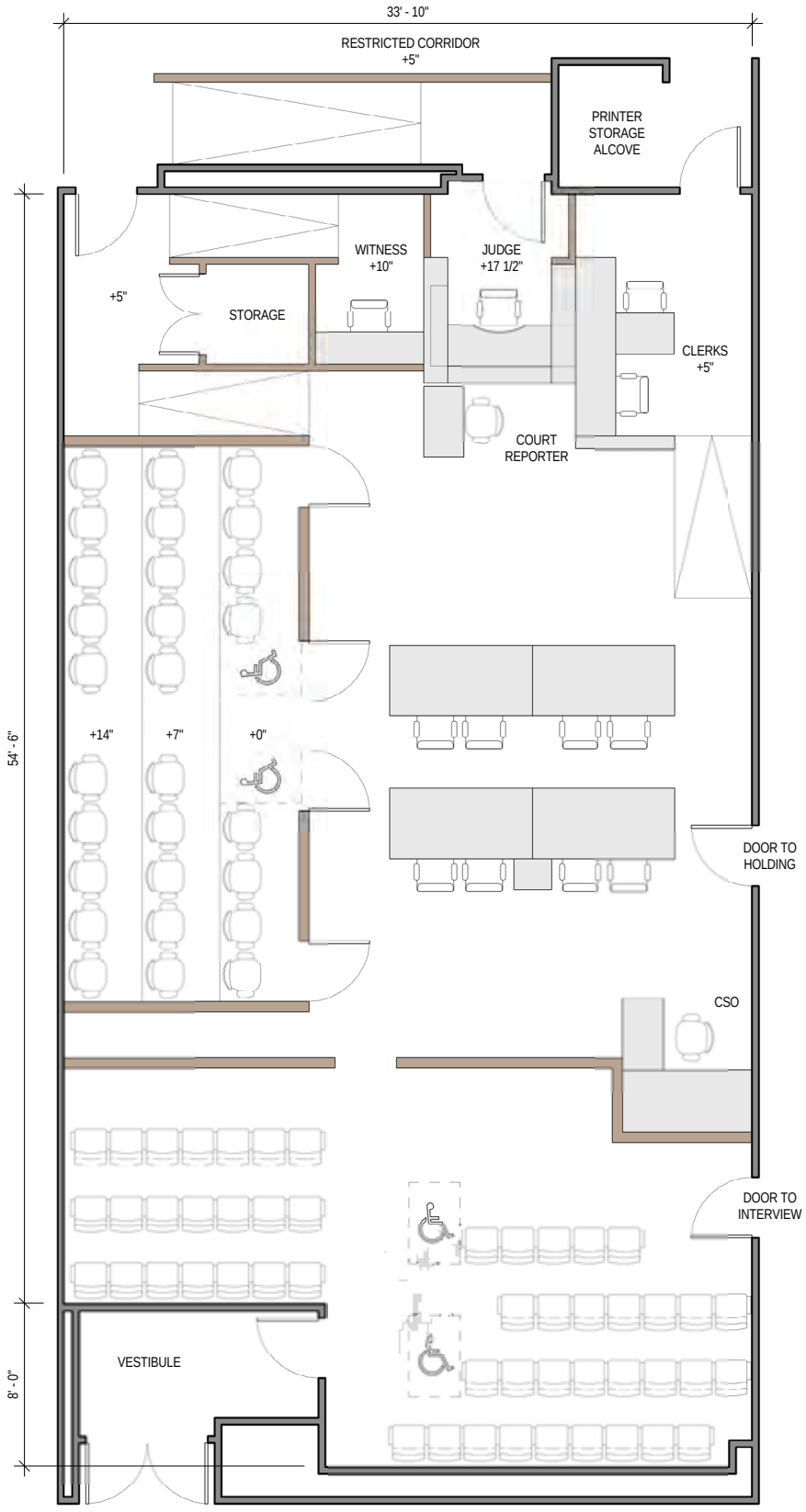
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2150	52	62
San Diego	San Diego	San Diego Central Courthouse	2100	64	64
CORNER BENCH					
San Bernardino	San Bernardino	San Bernardino Justice Center	2400	92	66

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

GOVERNOR GEORGE DEUKMEJIAN COURTHOUSE
LOS ANGELES COUNTY, LONG BEACH
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	
Double Jury	2,150	50+2 W.C.	

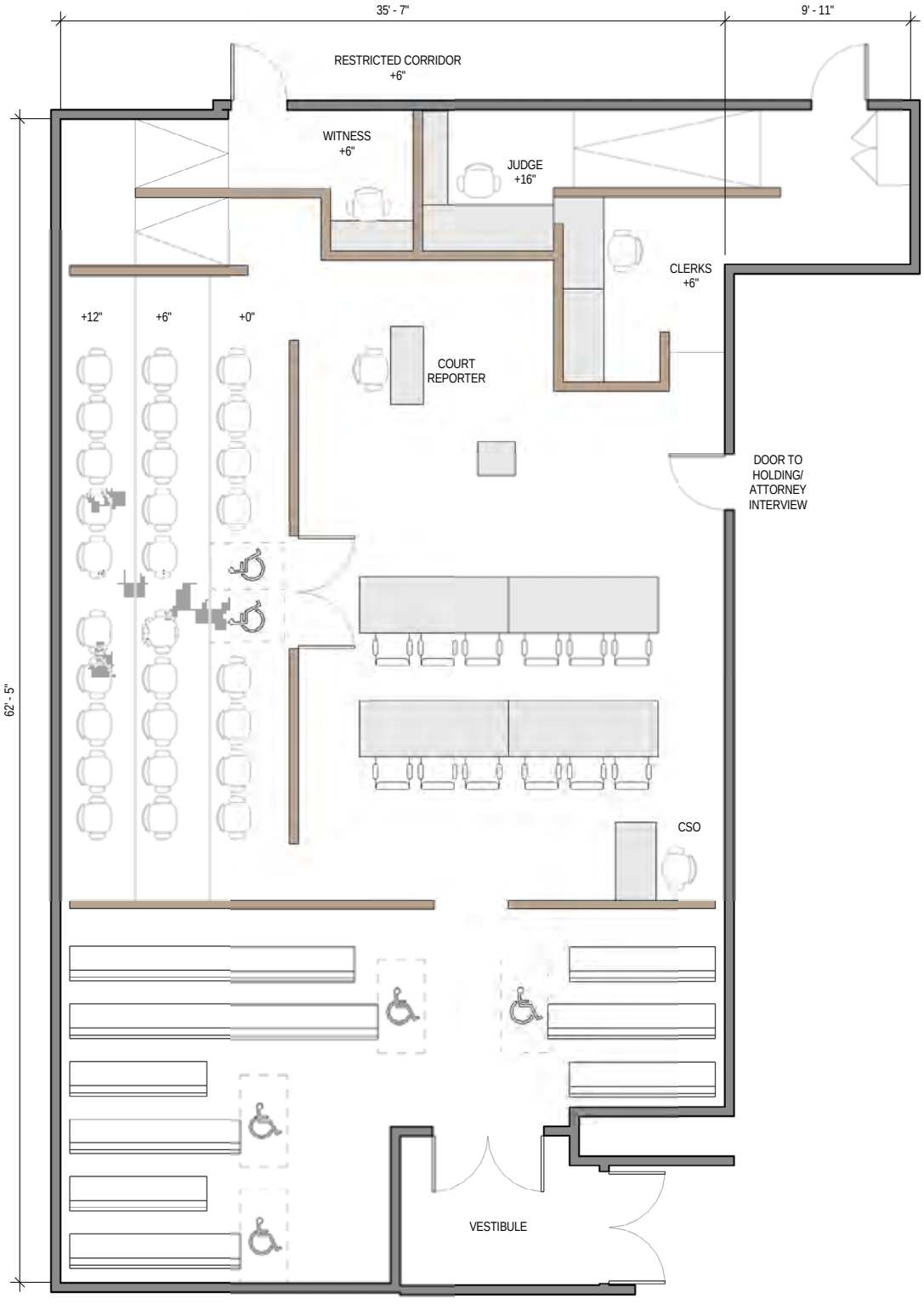
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	FURNITURE / CASEWORK DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	6'-9"	2'-2"	+17 1/2"	1
Courtroom Clerk	9'-0"	2'-1"	+5"	2
Court Security Officer (CSO)	6'-7"	2'-0"	-	1
Court Reporter	3'-6"	2'-0"	-	1
Witness Stand	5'-4"	1'-7"	+10"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +7" (3rd row) +14"	28
Counsel Tables	7'-0"	3'-0"	-	2 ea.
Lectern	-	-	-	-


33' - 10"
RESTRICTED CORRIDOR
+5"
PRINTER
STORAGE
ALCOVE
WITNESS
+10"
JUDGE
+17 1/2"
+5"
STORAGE
CLERKS
+5"
COURT
REPORTER
+14"
+7"
+0"
54' - 6"
DOOR TO
HOLDING
CSO
DOOR TO
INTERVIEW
VESTIBULE
8' - 0"

SAN DIEGO CENTRAL COURTHOUSE
SAN DIEGO COUNTY, SAN DIEGO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Double Jury	2,100	60+4 W.C.	

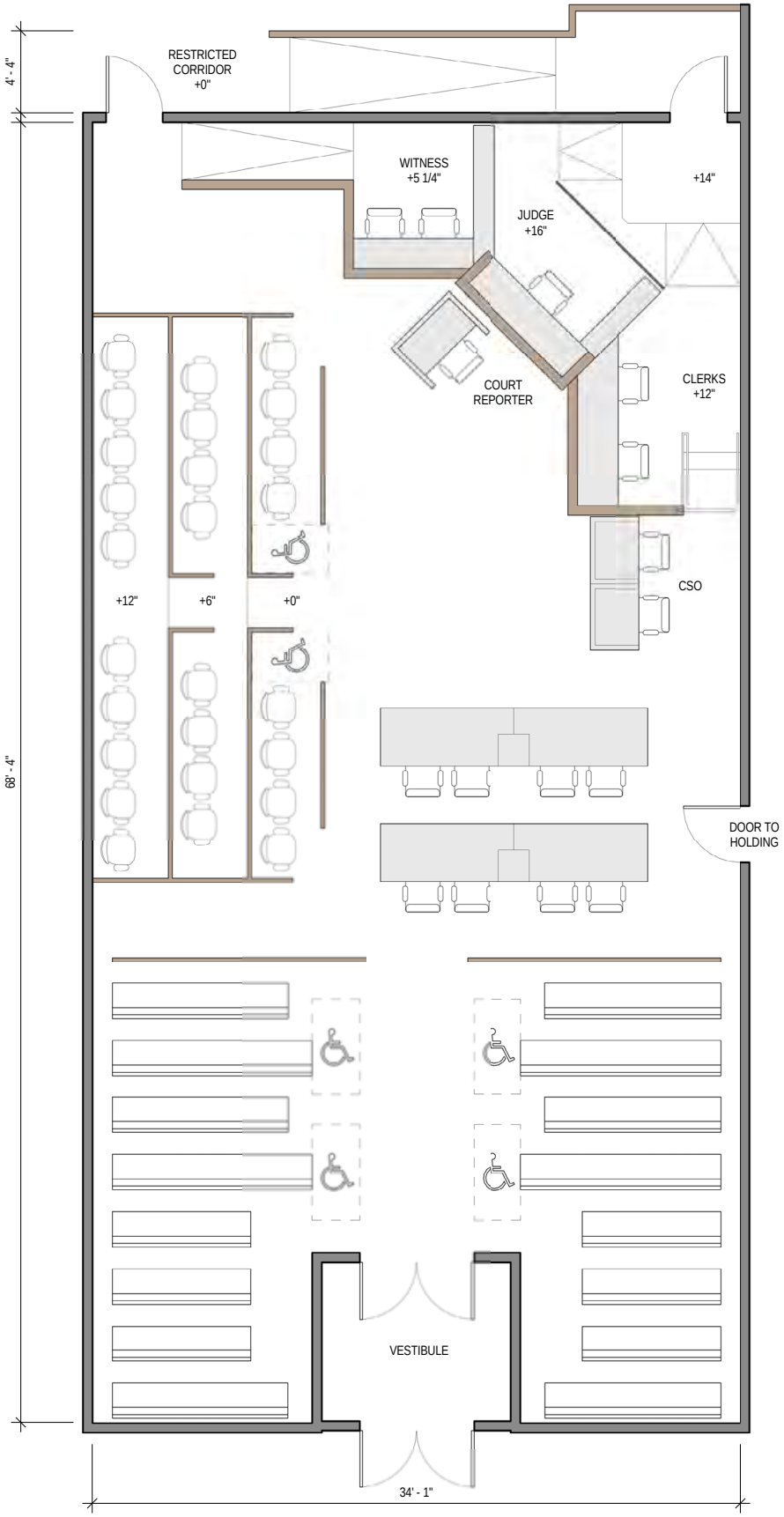
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-0”/5’-0”	2’-6”/1’-4”	+16”	1
Courtroom Clerk	9'-0”	2’-2”	+6"	2
Court Security Officer (CSO)	4’-2”	2’-2”	-	1
Court Reporter	4’-2”	1’-9”	-	1
Witness Stand	6'-4”	1’-8”	+6"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6" (3rd row) +12”	28
Counsel Tables	7’-0”	3’-0”	-	3 ea.
Lectern	-	-	-	-


35' - 7"
9' - 11"
RESTRICTED CORRIDOR
+6"
WITNESS
+6"
JUDGE
+16"
CLERKS
+6"
+12"
+6"
+0"
COURT
REPORTER
DOOR TO
HOLDING/
ATTORNEY
INTERVIEW
CSO
VESTIBULE
62' - 5"

SAN BERNARDINO JUSTICE CENTER
SAN BERNARDINO COUNTY
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Double Jury	2,400	88+4 W.C.	

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-0”/4’-9”	2’-0”/1’-2”	+16”	1
Courtroom Clerk	9'-0”	2’-2”	+12"	2
Court Security Officer (CSO)	7’-0”	2’-4”	-	2
Court Reporter	4’-3”	2’0”	-	1
Witness Stand	6'-4”	1’-7”	+5 1/4"	2
Jury Box	N/A	N/A	(1st row) +0" (2nd row) +6" (3rd row) +12”	26
Counsel Tables	7’-0”	3’-0”	-	2 ea.
Lectern	-	-	-	-


4' - 4"
RESTRICTED
CORRIDOR
+0"
WITNESS
+5 1/4"
JUDGE
+16"
+14"
COURT
REPORTER
CLERKS
+12"
CSO
+12"
+6"
+0"
68' - 4"
DOOR TO
HOLDING
VESTIBULE
34' - 1"

ARRAIGNMENT COURTROOM EXAMPLES

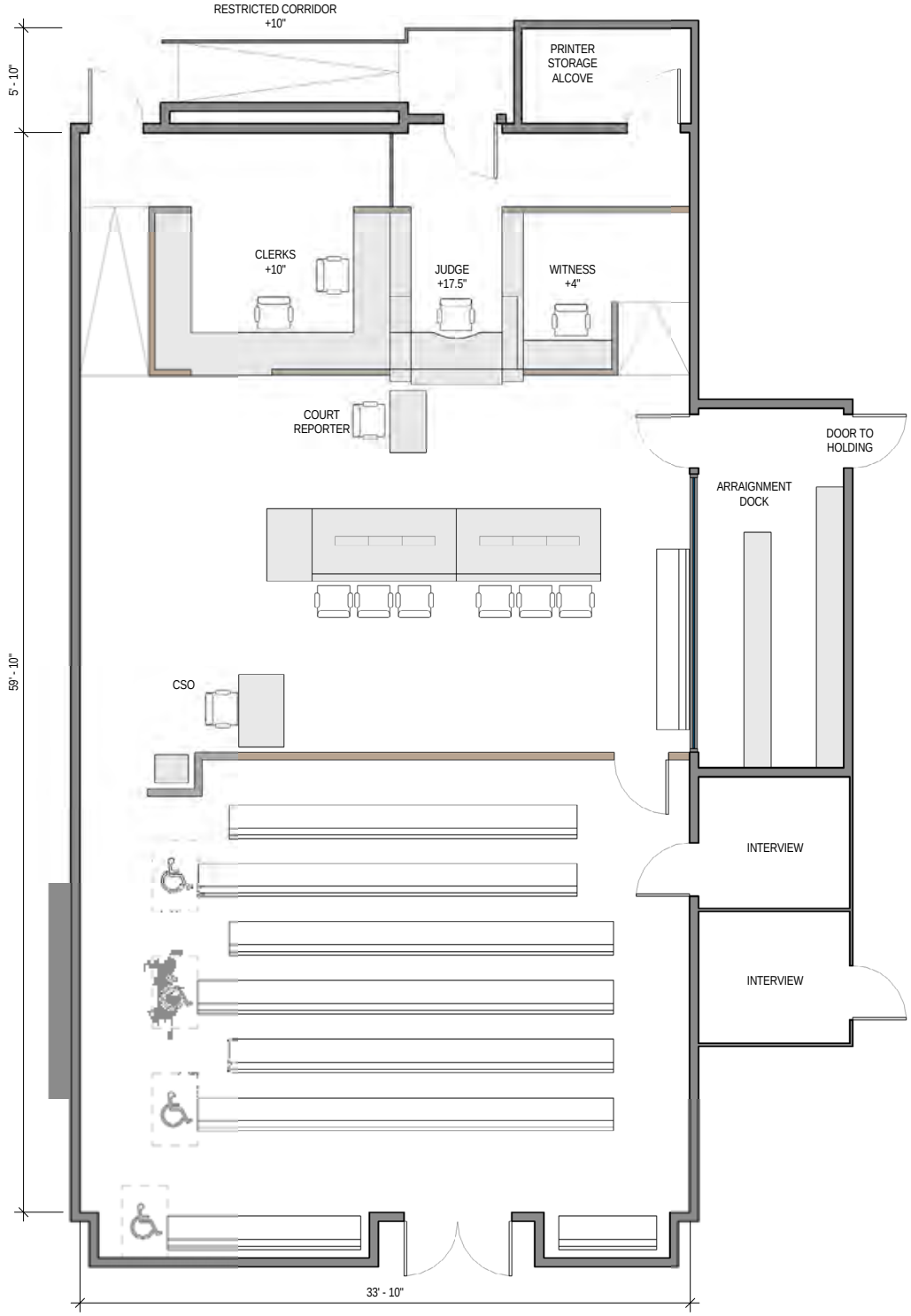
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2300	92	70
San Diego	San Diego	San Diego Central Courthouse	1800	98	72
CORNER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	2000	92	74

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

GOVERNOR GEORGE DEUKMEJIAN COURTHOUSE
LOS ANGELES COUNTY, LONG BEACH
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Arraignment Courtroom	2,300	94+4 W.C.	

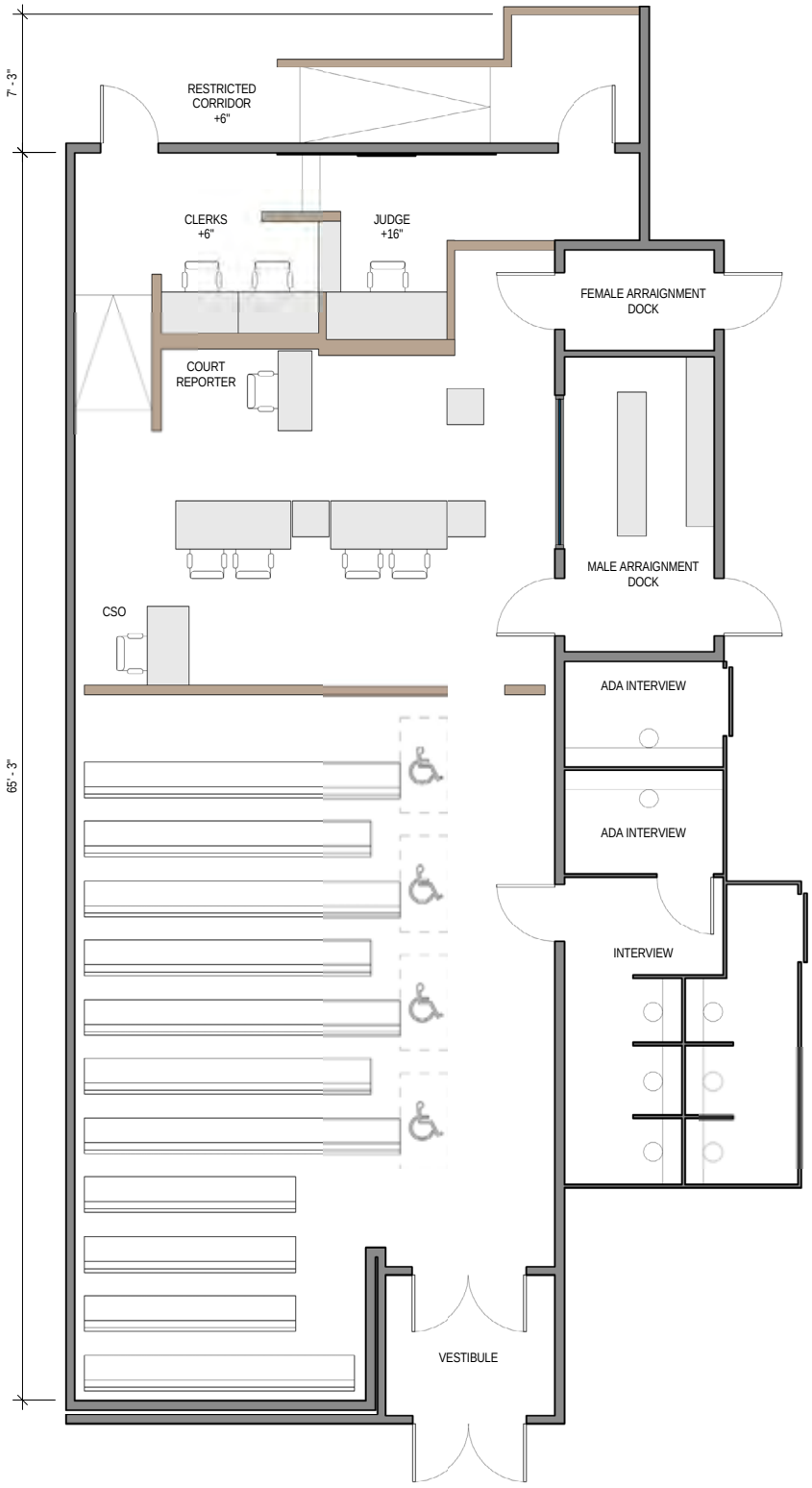
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-5”/6’-8”	2’-0”/1’-2”	+17.5”	1
Courtroom Clerk	13'-0”	2’-0”	+10"	2
Court Security Officer (CSO)	4’-6”	2’-6”	-	1
Court Reporter	3’-6”	2’-0”	-	1
Witness Stand	5'-0”	1’-7”	+4"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	8’-0”	4’-0”	-	3 ea.
Lectern	2’-6”	4’-0”	-	-


RESTRICTED CORRIDOR
+10"
5' - 10"
PRINTER
STORAGE
ALCOVE
CLERKS
+10"
JUDGE
+17.5"
WITNESS
+4"
COURT
REPORTER
DOOR TO
HOLDING
ARRAIGNMENT
DOCK
59' - 10"
CSO
INTERVIEW
INTERVIEW
33' - 10"

SAN DIEGO CENTRAL COURTHOUSE
SAN DIEGO COUNTY, SAN DIEGO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"	
Arraignment Courtroom	1,800	94+4 W.C.	

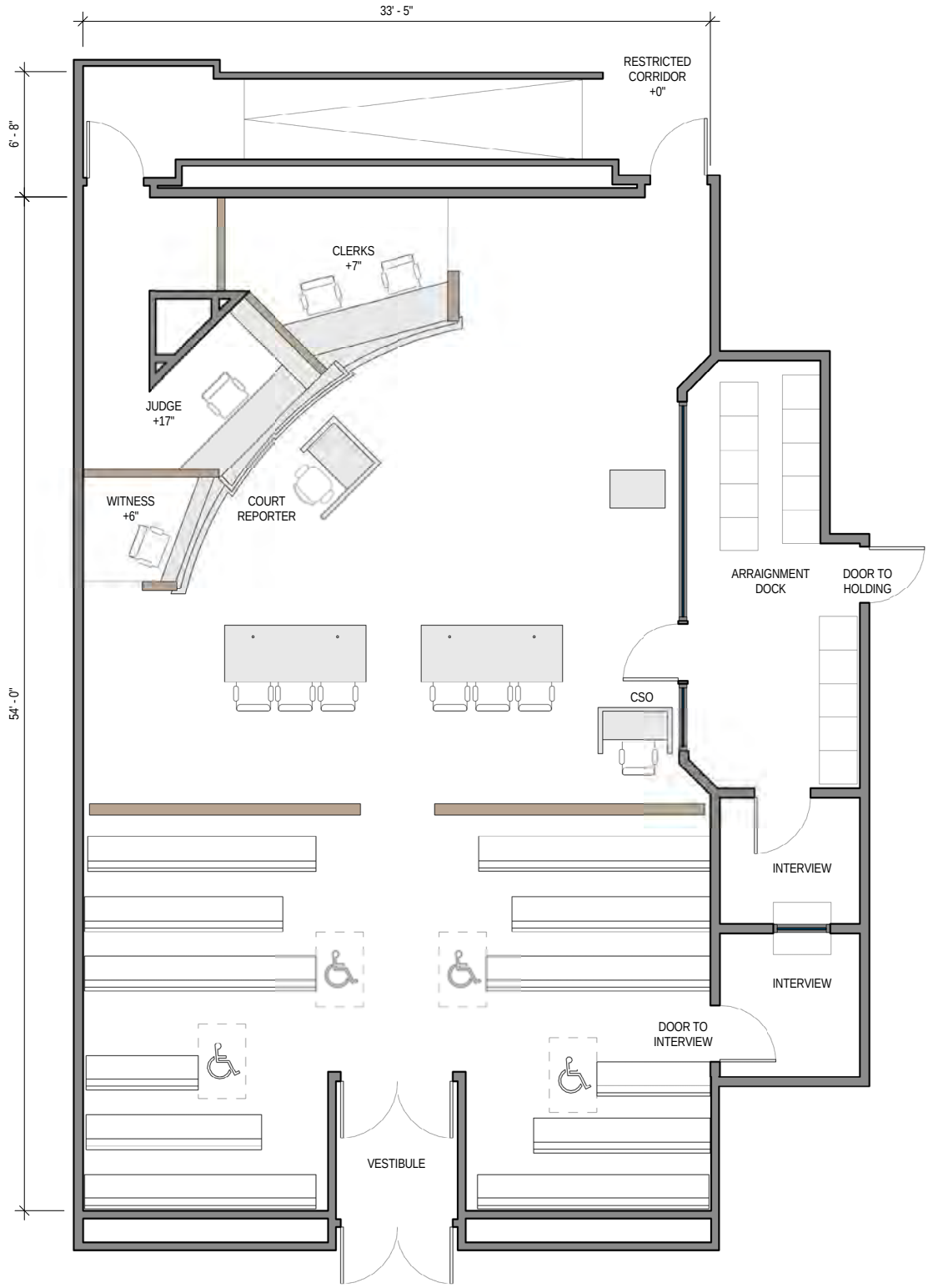
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	6'-0"/3'-8"	2'-6"/1'-3"	+16"	1
Courtroom Clerk	8'-2"	2'-6"	+6"	2
Court Security Officer (CSO)	4'-2"	2'-2"	-	1
Court Reporter	4'-2"	1'-9"	-	1
Witness Stand	N/A		N/A	
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	6'-0"	3'-0"	-	2 ea.
Lectern	2'-6"	2'-0"	-	-


7' - 3"
65' - 3"
RESTRICTED
CORRIDOR
+6"
CLERKS
+6"
JUDGE
+16"
COURT
REPORTER
CSO
FEMALE ARRAIGNMENT
DOCK
MALE ARRAIGNMENT
DOCK
ADA INTERVIEW
ADA INTERVIEW
INTERVIEW
VESTIBULE

RICHARD E. ARNASON JUSTICE CENTER
CONTRA COSTA COUNTY, PITTSBURG
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"
Arraignment	2,000	88+4 W.C.

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8'-11"/4'-0"	1'-10"/1'-1"	+17"	1
Courtroom Clerk	9'-0"	2'-0"	+7"	2
Court Security Officer (CSO)	4'-0"	2'-0"	-	1
Court Reporter	3'-0"	2'-0"	-	1
Witness Stand	6'-0"	0'-9"	+6"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	7'-6"	3'-0"	-	3 ea.
Lectern	3'-0"	2'-0"	-	-


33' - 5"
6' - 8"
54' - 0"
RESTRICTED CORRIDOR +0"
CLERKS +7"
JUDGE +17"
WITNESS +6"
COURT REPORTER
ARRAIGNMENT DOCK
DOOR TO HOLDING
CSO
INTERVIEW
INTERVIEW
DOOR TO INTERVIEW
VESTIBULE

TRAFFIC COURTROOM EXAMPLES

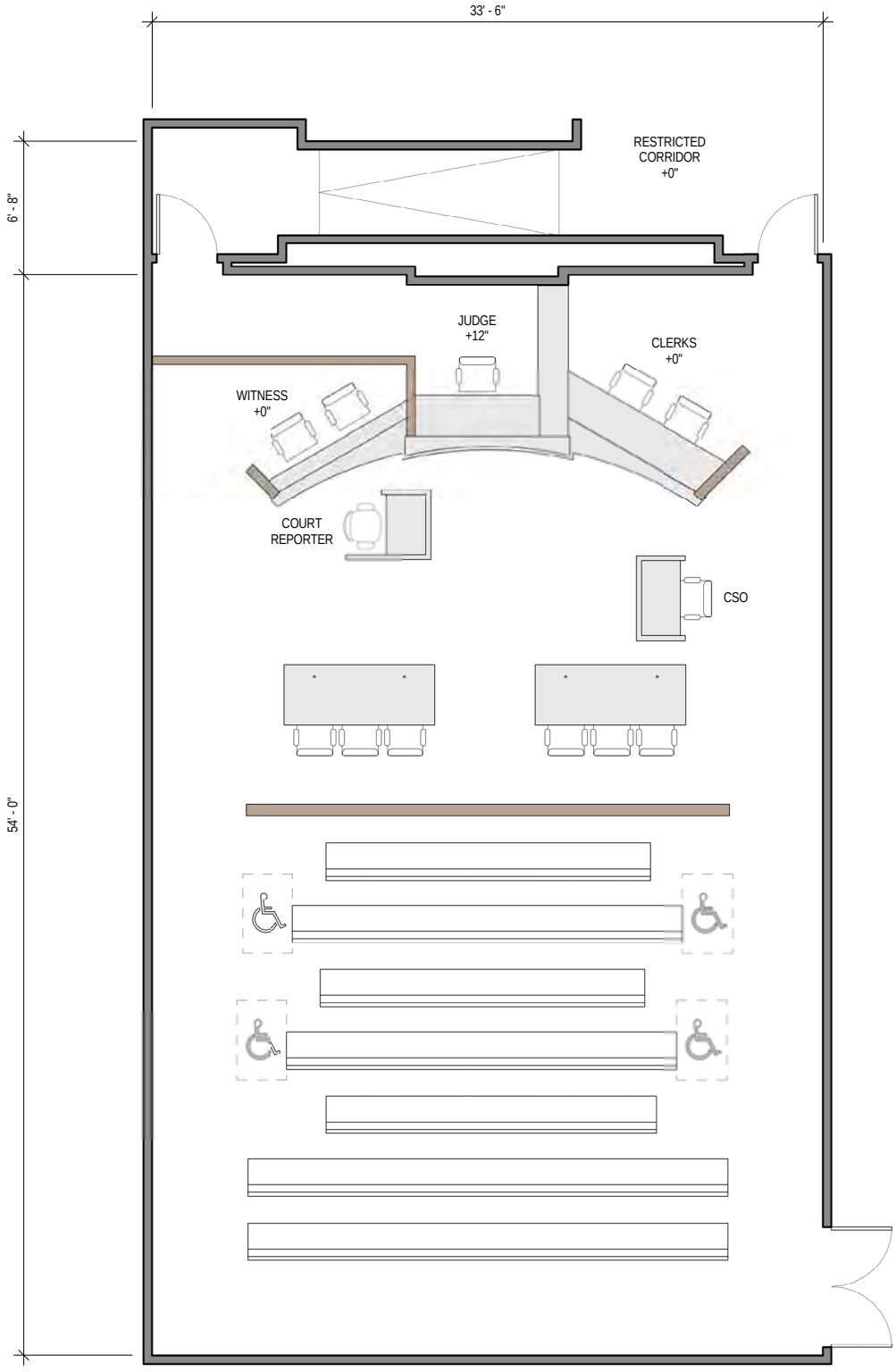
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
Contra Costa	Pittsburg	Richard E. Arnason Justice Center	2100	92	78
Los Angeles	Long Beach	Governor George Deukmejian Courthouse	2250	124	80
CORNER BENCH					
San Bernardino	San Bernardino	San Bernardino Justice Center	2250	104	82

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

RICHARD E. ARNASON JUSTICE CENTER
CONTRA COSTA COUNTY, PITTSBURG
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Traffic	2,100	88+4 W.C.	

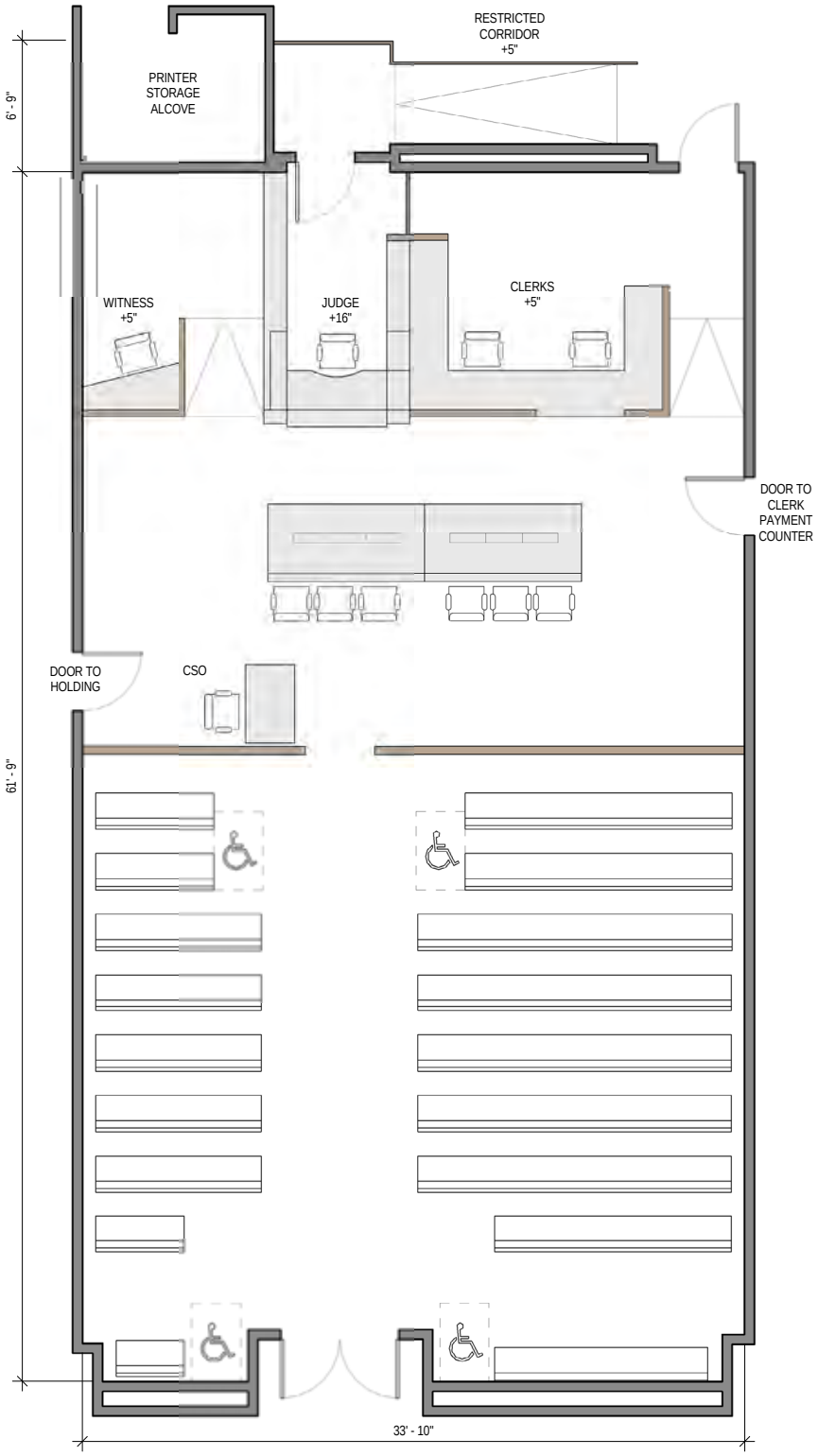
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-8”/5’-5”	2’-0”/1’-6”	+12”	1
Courtroom Clerk	9'-0”	2’-0”	+0"	2
Court Security Officer (CSO)	4’-0”	2’-0”	-	1
Court Reporter	3’-0”	2’-0”	-	1
Witness Stand	8'-0”	0’-9”	+0"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	7’-6”	3’-0”	-	3 ea.
Lectern	-	-	-	-


33' - 6"
6' - 8"
54' - 0"
RESTRICTED
CORRIDOR
+0"
JUDGE
+12"
CLERKS
+0"
WITNESS
+0"
COURT
REPORTER
CSO

GOVERNOR GEORGE DEUKMEJIAN COURTHOUSE
LOS ANGELES COUNTY, LONG BEACH
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”	
Traffic	2,250	120+4 W.C.	

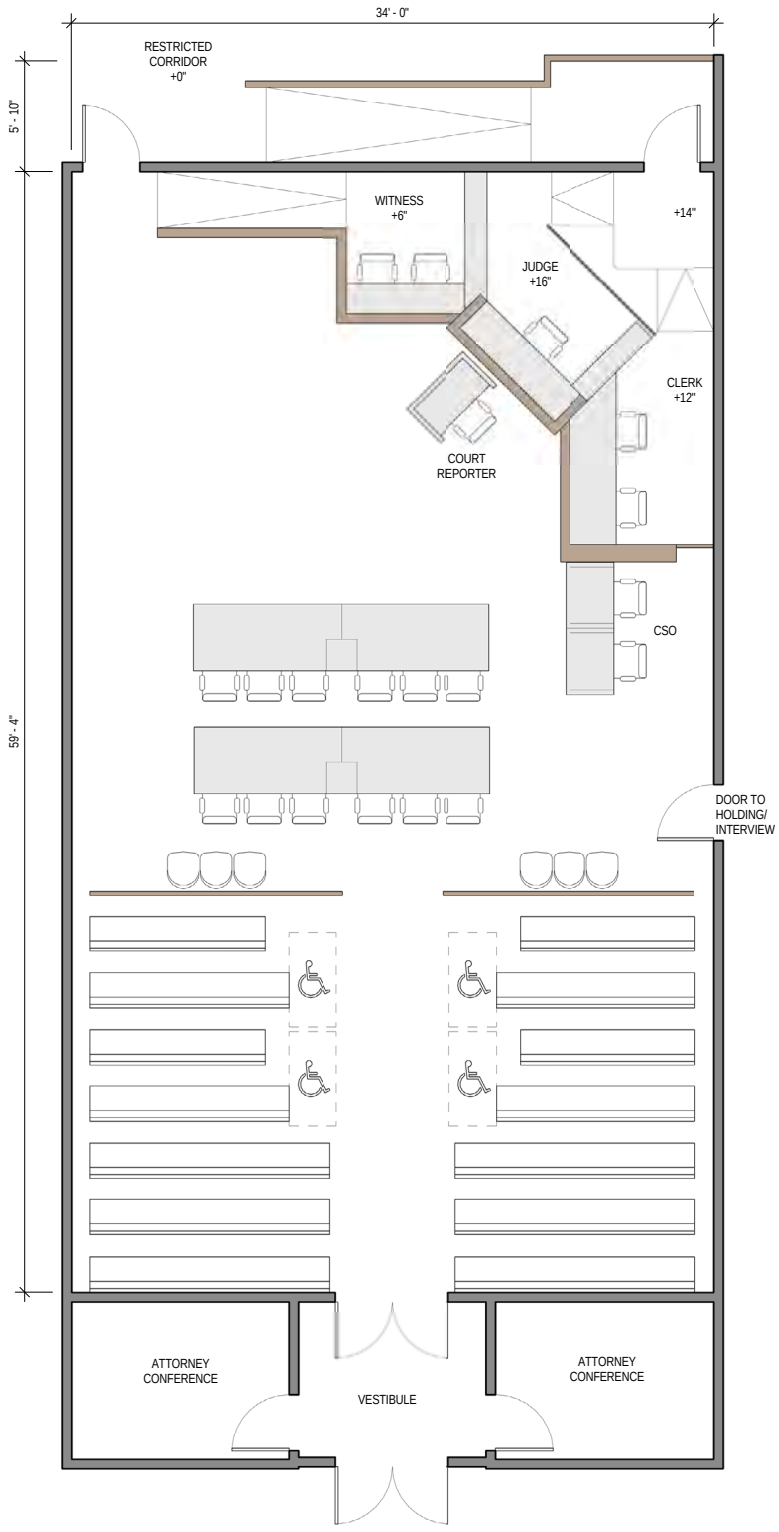
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7’-3”/6’-8”	2’-0”/1’-2”	+16”	1
Courtroom Clerk	13'-0”	2’-4”	+5"	2
Court Security Officer (CSO)	4’-0”	2’-6”	-	1
Court Reporter	-	-	-	-
Witness Stand	5'-0”	2’-5” at widest point	+5”	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	8’-0”	4’-0”	-	3 ea.
Lectern	-	-	-	-


RESTRICTED
CORRIDOR
+5"
PRINTER
STORAGE
ALCOVE
6' - 9"
WITNESS
+5"
JUDGE
+16"
CLERKS
+5"
DOOR TO
CLERK
PAYMENT
COUNTER
DOOR TO
HOLDING
CSO
61' - 9"
33' - 10"

SAN BERNARDINO JUSTICE CENTER
SAN BERNARDINO COUNTY, SAN BERNARDINO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18"
Traffic	2,250	100+4 W.C.

ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	7'-0"/4'-9"	2'-0"/1'-2"	+16"	1
Courtroom Clerk	9'-0"	2'-6"	+12"	2
Court Security Officer (CSO)	7'-0"	2'-4"	-	2
Court Reporter	4'-3"	2'-0"	-	1
Witness Stand	7'-6"	1'-7"	+6"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	7'-10"	3'-6"	-	3 ea.
Lectern	-	-	-	-


34' - 0"
RESTRICTED
CORRIDOR
+0"
5' - 10"
59' - 4"
WITNESS
+6"
+14"
JUDGE
+16"
CLERK
+12"
COURT
REPORTER
CSO
DOOR TO
HOLDING/
INTERVIEW
ATTORNEY
CONFERENCE
VESTIBULE
ATTORNEY
CONFERENCE

FAMILY COURTROOM EXAMPLES

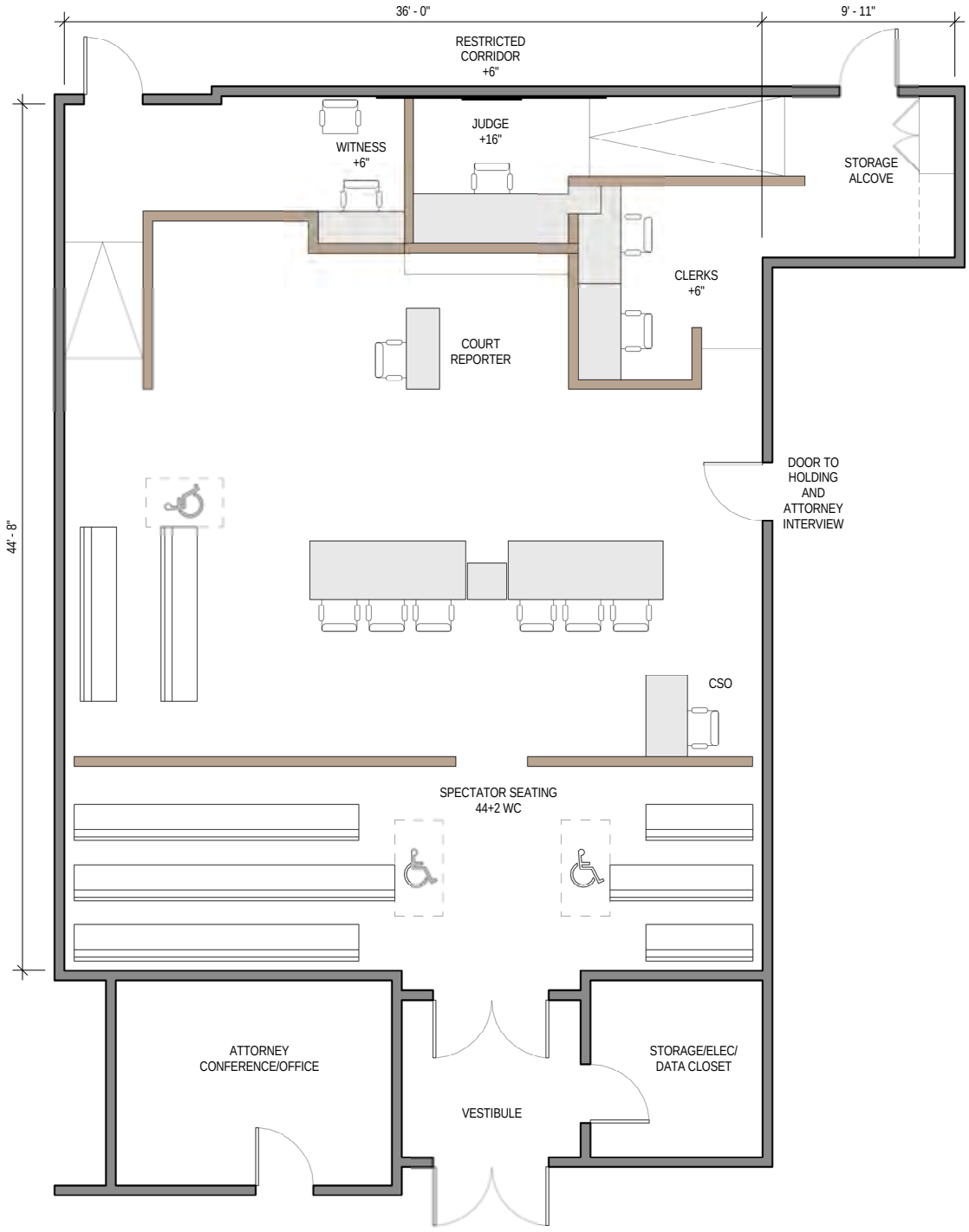
COUNTY	CITY	COURTHOUSE NAME	TOTAL SQUARE FEET *	SPECTATOR SEATING CAPACITY**	PAGE
CENTER BENCH					
San Diego	San Diego	San Diego Central Courthouse	1700	46	86
San Joaquin	Stockton	Superior Court of San Joaquin County Stockton Courthouse	1700	74	88
Santa Clara	Santa Clara	Santa Clara Family Justice Center	1700	52	90

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity

SAN DIEGO CENTRAL COURTHOUSE
SAN DIEGO COUNTY, SAN DIEGO
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”
Family	1,700	44+2 W.C.

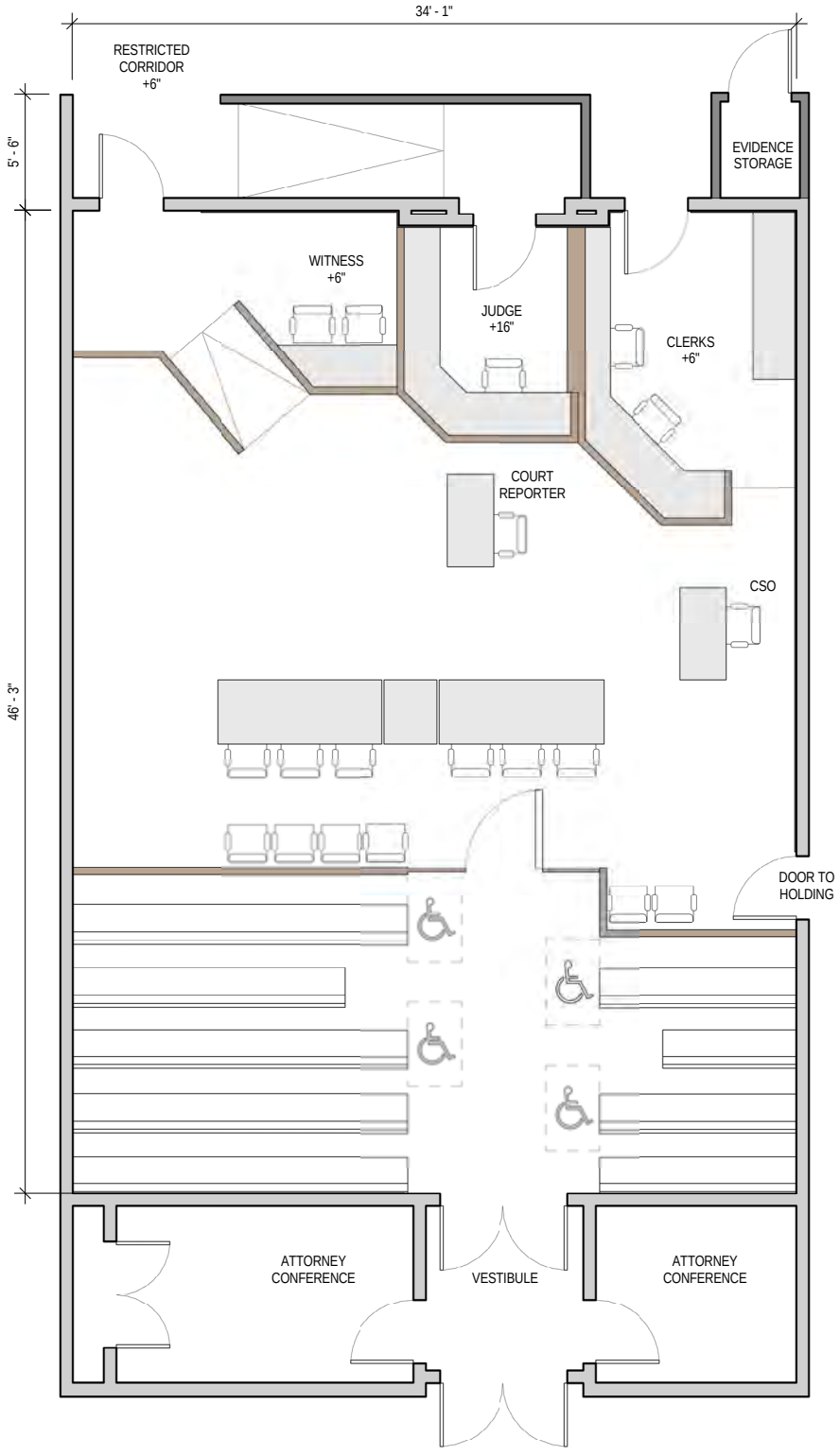
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-0”	2’-6”	+16”	1
Courtroom Clerk	10'-0”	2’-2”	+6"	2
Court Security Officer (CSO)	4’-2”	2’-2”	-	1
Court Reporter	4’-2”	1’-9”	-	1
Witness Stand	4'-6”	1’-8”	+6"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	8’-0”	3’-0”	-	3 ea.
Lectern	2’-0”	2’-0”	-	-


36' - 0"
9' - 11"
RESTRICTED CORRIDOR +6"
WITNESS +6"
JUDGE +16"
STORAGE ALCOVE
CLERKS +6"
COURT REPORTER
DOOR TO HOLDING AND ATTORNEY INTERVIEW
44' - 8"
CSO
SPECTATOR SEATING 44+2 WC
ATTORNEY CONFERENCE/OFFICE
VESTIBULE
STORAGE/ELEC/ DATA CLOSET

SUPERIOR COURT OF SAN JOAQUIN COUNTY STOCKTON COURTHOUSE
SAN JOAQUIN COUNTY, STOCKTON
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”
Family	1,700	72+2 W.C.

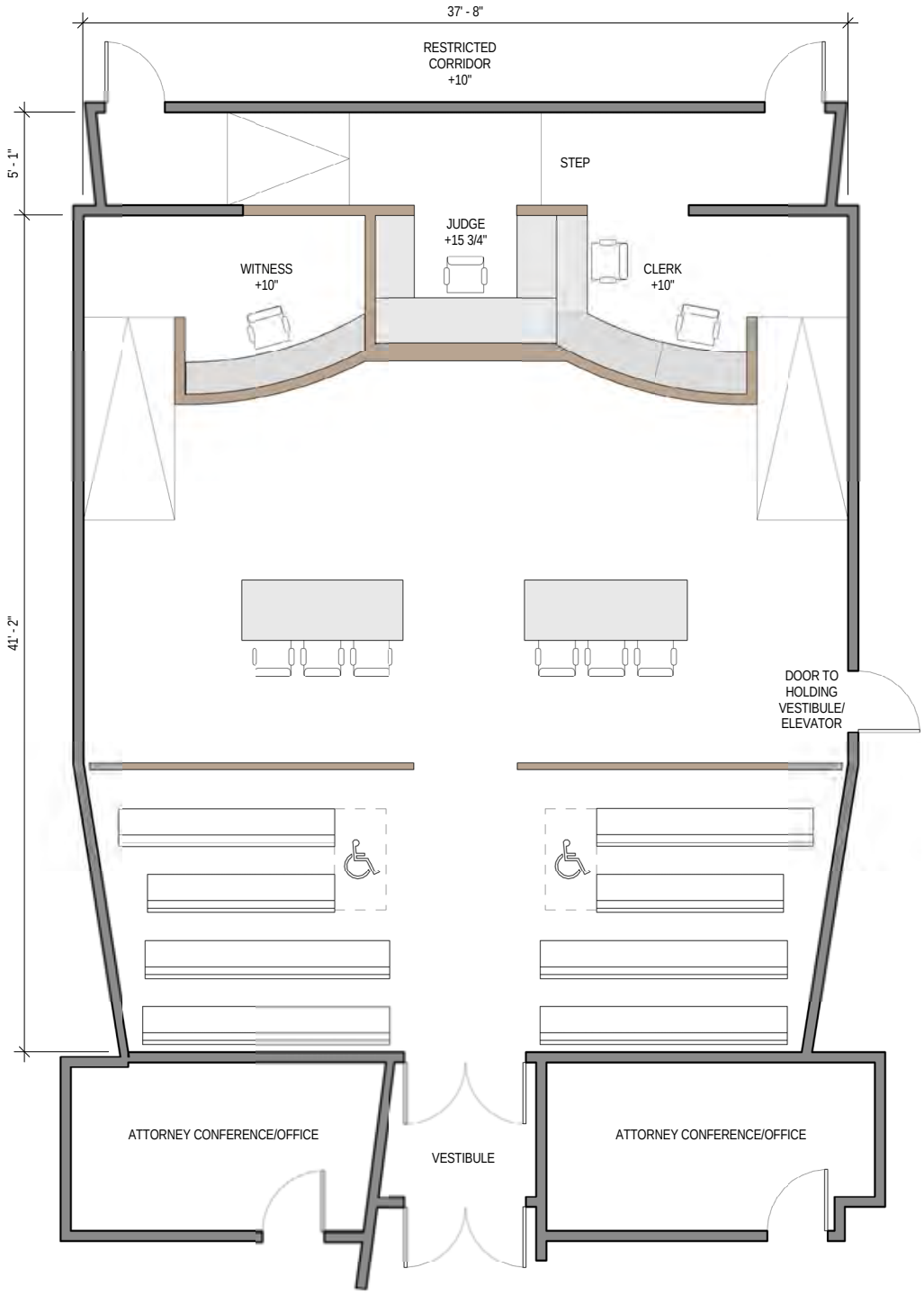
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	8’-0”/6’-6”	2’-0”/1’-8”	+16”	1
Courtroom Clerk	10'-0”	2’-3”	+6"	2
Court Security Officer (CSO)	4’-4”	2’-2”	-	1
Court Reporter	4’-4”	2’-2”	-	1
Witness Stand	4'-6”	2’-0”	+6"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	8’-0”	3’-0”	-	3 ea.
Lectern	-	-	-	-


34' - 1"
RESTRICTED CORRIDOR +6"
5' - 6"
EVIDENCE STORAGE
WITNESS +6"
JUDGE +16"
CLERKS +6"
COURT REPORTER
CSO
46' - 3"
DOOR TO HOLDING
ATTORNEY CONFERENCE
VESTIBULE
ATTORNEY CONFERENCE

SANTA CLARA FAMILY JUSTICE CENTER
SANTA CLARA COUNTY, SANTA CLARA
Courtroom Component Information

COURTROOM TYPE	TOTAL SQUARE FEET (INCLUDES RAMP IN CORRIDOR)	SPECTATOR SEATING AT 18”
Family	1,700	50+2 W.C.

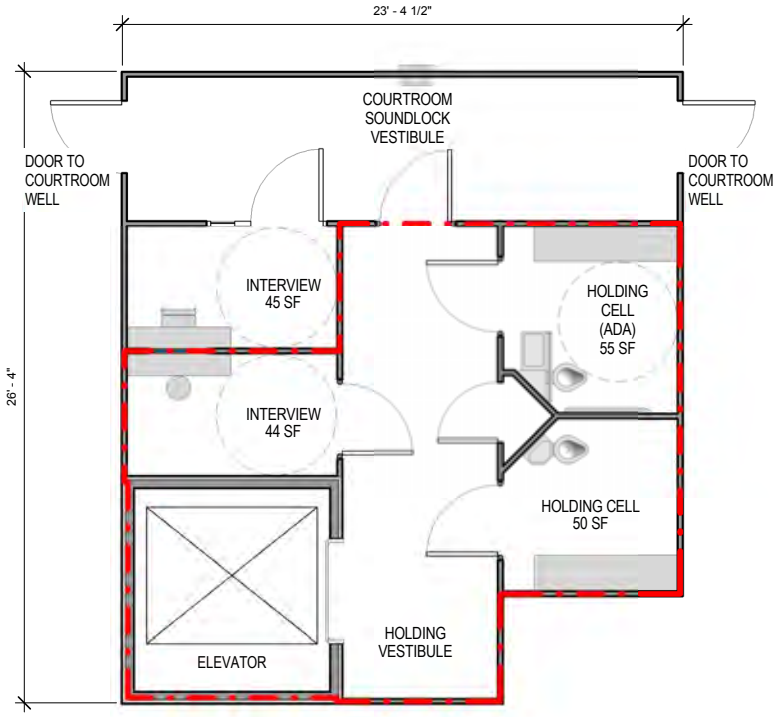
ELEMENT OR WORKSTATION	FURNITURE / CASEWORK WIDTH	DEPTH	HEIGHT ABOVE FLOOR	NO. OF OCCUPANTS
Judge	9’-0”/4’-1”/4’-1”	2’-2”/2’-0”	+15 3/4”	1
Courtroom Clerk	9'-4”	2’-0”	+10"	2
Court Security Officer (CSO)	-	-	-	-
Court Reporter	-	-	-	-
Witness Stand	8'-0”	1’-7”	+10"	2
Jury Box	N/A	N/A	N/A	N/A
Counsel Tables	8’-0”	3’-0”	-	3 ea.
Lectern	-	-	-	-


37' - 8"
RESTRICTED
CORRIDOR
+10"
5' - 1"
STEP
JUDGE
+15 3/4"
WITNESS
+10"
CLERK
+10"
41' - 2"
DOOR TO
HOLDING
VESTIBULE/
ELEVATOR
ATTORNEY CONFERENCE/OFFICE
VESTIBULE
ATTORNEY CONFERENCE/OFFICE

HOLDING CORE EXAMPLES

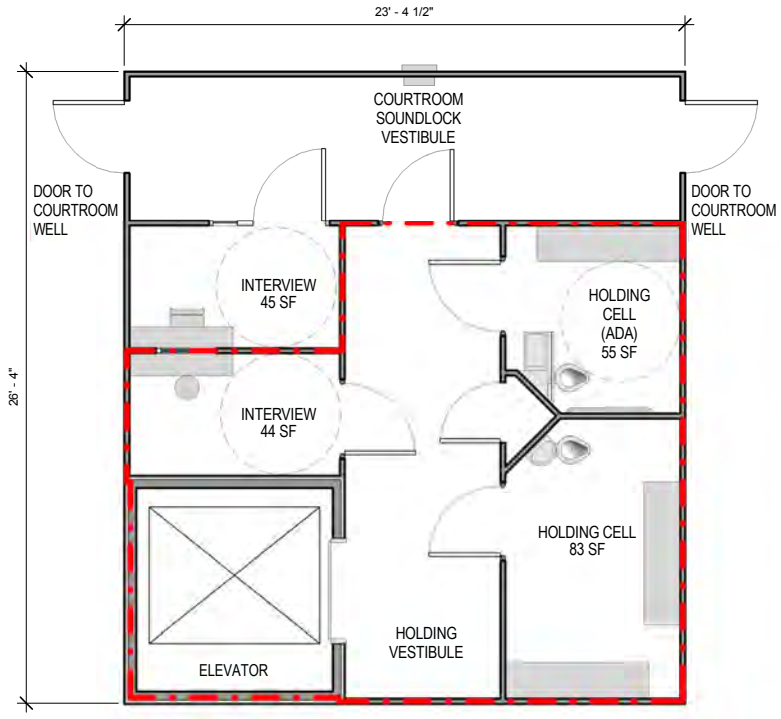
	TOTAL SQUARE FEET	TOTAL RATED CAPACITY	PAGE
Typical Holding A	572	4	95
Typical Holding B	605	7	96
Typical Holding C	496	4	97

*Includes ramp in corridor where applicable
**Wheelchair Spaces added to total spectator seating capacity



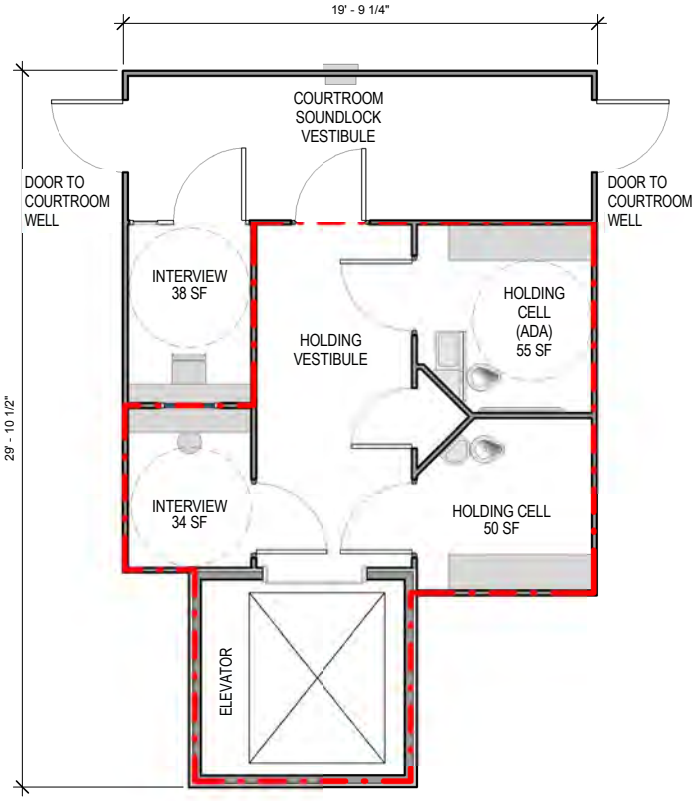
TYPICAL HOLDING CORE A
Holding Information

TOTAL SQUARE FOOTAGE	TOTAL RATED CAPACITY	TOTAL CELL COUNT
572	4	2



TYPICAL HOLDING CORE B
Holding Information

TOTAL SQUARE FOOTAGE	TOTAL RATED CAPACITY	TOTAL CELL COUNT
605	7	2



TYPICAL HOLDING CORE C
Holding Information

TOTAL SQUARE FOOTAGE	TOTAL RATED CAPACITY	TOTAL CELL COUNT
496	4	2

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25 or 26, 2015

Title
Court Facilities: Water Conservation Policy

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Facilities Policies Working Group
Hon. Douglas P. Miller, Chair
Hon. Marla O. Anderson, Vice-Chair

Agenda Item Type
Action Required

Effective Date
June 25 or 26, 2015

Date of Report
June 10, 2015

Contact
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DRAFT

Executive Summary

The Facilities Policies Working Group recommends that the Judicial Council adopt a water conservation policy that provides water conservation best practices for both capital projects and existing courthouse facilities. For capital projects, the policy identifies immediate and ongoing practices, as well as enhanced practices that require further analysis on a project-by-project basis. For existing courthouse facilities, the policy identifies immediate best practices and long-term goals. The intent of the document is to initiate a branch-wide, collaborative effort to identify best practices that will reduce water usage at California courthouses.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective June 25 or 26, 2015, adopt the attached *Water Conservation Policy* (see Attachment A).

Previous Council Action

The council has taken no previous action on a water policy for the courts. The recommended *Water Conservation Policy* is a new document.

Rationale for Recommendation

Historically, water usage at California courthouses has not been managed under a global water conservation policy. However, water is becoming an increasingly scarce resource in California resulting from population growth and drought. California is now entering a fourth year of drought conditions. Recent research suggests that the last century was one of the wettest on record and the new normal will likely be continued dry and potentially drought-like conditions. In response, the Governor's Office has taken a leadership role in measuring water usage and establishing conservation policies applicable to state facilities.

In 2012, Governor Edmund G. Brown, Jr., issued Executive Order B-18-12, which addresses water usage at state facilities. The Executive Order requires state agencies to reduce water usage by 10 percent by 2015 and 20 percent by 2020, as measured against a 2010 baseline. State agencies have been reporting water (and electricity) usage to the Governor's Office in an effort to measure compliance with the Executive Order.

On April 1, 2015, the snow and water content in the Sierra Nevada mountains was measured at five percent of normal capacity. In response, Governor Brown issued Executive Order B-29-15, which further restricts water usage. Executive Order B-29-15 includes the following four major provisions:

1. State agencies must reduce water usage by 25 percent by 2016 compared to a 2013 baseline year.
2. The California Department of Water Resources is leading an effort at state facilities to replace 50 million square feet of turf with drought-tolerant landscape.
3. Potable water is not allowed for irrigation outside new state buildings, unless by drip or microsprayer.
4. Potable water is not allowed for irrigation on ornamental turf on public street medians.

The attached *Water Conservation Policy* was developed as a means to begin a collaborative process of managing water usage at state courthouse facilities and to complement the efforts of the executive branch.

Comments, Alternatives Considered, and Policy Implications

The section of the attached *Water Conservation Policy* that applies to capital projects was reviewed and approved by the Judicial Council's Court Facilities Advisory Committee at its meeting on May 15, 2015. On May 19, 2015, the council's Facilities Policies Working Group reviewed and approved the full policy. On May 22, 2015, the Trial Court Facility Modification

Advisory Committee reviewed and approved the policy. On June 3, 2015, the Trial Court Presiding Judges Advisory Committee reviewed and approved the policy, whose comments have been incorporated into the policy's language. On June 11, 2015, the Court Executives Advisory Committee reviewed and approved the policy. (Note: statement to be revised based on meeting outcome).

Not implementing the *Water Conservation Policy* may result in additional costs and penalties on the judicial branch because of increases in water rates and penalties imposed by local water agencies.

Implementation Requirements, Costs, and Operational Impacts

The *Water Conservation Policy* identifies best practices that may be funded either through the judicial branch courthouse capital program or through the review and approval process for Trial Court Facility Modification projects. Courthouse capital project water conservation practices will be implemented on funded projects; and staff will be guided on implementing enhanced practices on a project-by-project basis by presenting cost-benefit analyses to the council's Court Facilities Advisory Committee. Implementing this policy for existing buildings will likely affect facility modification funding.

Council staff suggests that the policy be reviewed annually and updated as necessary based on climate conditions.

Costs related to leak detection and repairs, proactive meter reading, and review of utility bills can be absorbed in current facility maintenance and administrative practices.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachment

1. Attachment A: *Water Conservation Policy,* June 2015

Water Conservation Policy

JUNE 2015

JUDICIAL COUNCIL
OF CALIFORNIA

I. PURPOSE OF THE POLICY

The purpose of this policy is to initiate a branch-wide, collaborative effort of water conservation at California's courthouses. Ideally, the best practices identified in this policy will encourage judicial branch entities to implement water saving practices.

The policy identifies water conservation practices that may be applied to both capital projects and existing courthouse facilities. For capital projects, the policy identifies immediate and ongoing practices, as well as enhanced practices that require further analysis on a project-by-project basis. For existing courthouse facilities, the policy identifies immediate best practices and long-term goals.

This policy is consistent with the design principles and other requirements of the *California Trial Court Facilities Standards*. Specific water conservation measures of this policy will be incorporated into a future edition of those standards.

II. APPLICATION OF THE WATER CONSERVATION POLICY

This policy is applicable to the following courthouses:

- All capital outlay projects
- All courthouses managed by the Judicial Council of California

This policy does not apply to county-managed court facilities or leased court facilities. However, Judicial Council staff will share this policy with county-managed facilities and advocate for the implementation of the policy in an effort to promote consistent water conservation practices at all California courthouses. In addition, Judicial Council staff will share this policy with landlords of courthouse facilities in an effort to encourage water conservation practices at those facilities as well.

III. DEFINITIONS

- ***Capital project*** refers to new construction, major renovations, and expansion capital outlay projects.
- ***Existing facility*** refers to any existing building, managed by the Judicial Council, that the local court occupies to provide its main services, its branch services, or other services and operations. In this policy, the word ***courthouse*** is considered interchangeable with this term.
- ***Gray water*** refers to any wastewater, generated at a courthouse facility, that can be recycled onsite and used for toilet and urinal flushing, landscape irrigation, and constructed wetlands.
- ***Nonessential landscaping project*** refers to a funded but not initiated landscaping project that increases water usage at a courthouse and is not necessary for safety purposes.

- ***Non-potable water*** refers to water that comes from a variety of sources, including recycled water, rainwater, and gray water. It can be used for flushing toilets and irrigation.
- ***Smart controller*** refers to a controller that reduces outdoor water usage by monitoring and using information about site conditions—such as soil moisture, rain, wind, slope, soil type, and plant type—and applying the right amount of water based on those factors.

IV. WATER CONSERVATION FOR CAPITAL PROJECTS

Capital projects may include practices that conserve water during the construction process and on an ongoing operational basis. These practices fall into two categories:

- Practices for capital projects
- Enhanced practices requiring further analysis

A. Practices for Capital Projects

The water conservation practices listed below may be implemented immediately on all capital projects in the preliminary plans phase or earlier. For projects in later stages, project teams will review these practices and implement them where feasible.

1. Water Conservation During Construction.

    a. Capital projects required to remove groundwater (dewater) during construction excavation should make best efforts to recycle or reuse the groundwater collected, if feasible.

    b. Non-potable water should be used for dust control activities, if feasible.

2. Plumbing Fixtures.

    a. Capital projects should install plumbing fixtures that meet or, if possible, exceed the April 2014 California Energy Commission (CEC) or California Green Code standards, whichever are most stringent, if feasible.

3. Landscaping.

    a. Landscaping design that does not include turf/grass should be considered, if feasible.

    b. Landscaped areas should include indigenous and climate-appropriate, drought-tolerant plants and trees, if feasible.

c. Site design should encourage permeability on the portions of the site not covered by buildings or vehicle-bearing pavement, if feasible.

4. Irrigation Systems.

a. Irrigation systems should target systems using drip and microsprayers only if feasible.

b. Irrigation systems should include an automated "smart" controller, if feasible.

c. Irrigation systems should include a water meter, or submeter, separate from building supply, if feasible.

5. Onsite Water Management.

a. Onsite storm water management practices, where feasible given site limitations, should include water retention basins or other practices to recharge groundwater through natural percolation.

B. Enhanced Practices Requiring Further Analysis

These practices could apply to all capital projects but will be studied individually by project to determine cost and feasibility on a life-cycle basis.[1]

1. Onsite Water Management.

a. Capital projects should evaluate onsite systems that reuse 100 percent of all gray water generated by a courthouse facility, if feasible.

b. Capital projects should evaluate the use of nonpotable water for irrigation, toilet and urinal flushing, and heating, ventilation, and air-conditioning (HVAC) systems (if applicable to selected HVAC systems), if feasible. Sources may include onsite sources—such as gray water, rain water retention, and displacement from mechanical cooling systems—or off-site sources, such as recycled water provided by the local water agency.

2. Paving and Hardscape.

a. Permeable paving and permeable hardscape materials should be considered for pedestrian and vehicle areas, if feasible.

[1] Refer to *California Trial Court Facilities Standards*: 2011, section 1.C, for life cycle cost analysis methodology.

3. HVAC.

a. Design teams should consider mechanical cooling systems that are air chilled versus water chilled, if feasible.

b. Design teams should consider system features that reduce or collect evaporation, if feasible.

V. WATER CONSERVATION FOR EXISTING FACILITIES

These best practices are identified as a means to work collaboratively on water conservation efforts at existing facilities. The practices for consideration fall into two categories:

- Immediate best practices for consideration
- Long-term goals

A. Immediate Best Practices for Consideration

1. Immediate best practices refer to practices that could be applied immediately to all existing facilities.

a. Consider limiting the watering of all turf. Turf watered once a week may turn brown, but it will not die completely. Alternatively, all courthouses should be following local water guidelines, which will ensure that they avoid financial penalties issued by local water agencies.

b. Consider decommissioning all water features, i.e., fountains, pools, and misters.

c. Consider putting all nonessential landscaping projects on hold.

d. Consider limiting sidewalk and hardscape water wash-off, except for biohazard removal.

e. Consider placing informational signage reminding facility users of drought conditions at the entrances to all existing courthouse facilities.

2. The Judicial Council, in its role as facility manager, will complete as many of the practices listed below as financially feasible. Implementation will be evaluated based on practices that ensure the highest water savings for the investment required.

a. Equip all onsite hoses with shut-off nozzles, if feasible.

b. Equip all irrigation systems with “smart” controllers, if feasible.

c. Address all identified water leaks within two business days, if feasible.

d. Post informational signage and include a toll-free telephone number for the public to call should a water leak or water waste be observed, if feasible.

e. Have onsite service providers include proactive monthly leak-detection investigations during standard rounds and readings activities, if feasible.

f. Annually observe water meters at facilities that have installed water meters for leak-detection purposes, if feasible.

g. Ensure that plumbing fixture replacements use new fixtures that meet CEC or California Green Code standards, whichever are most stringent, if feasible.

h. Ensure that any funded landscaping- or plumbing-related renovation projects comply with water conservation standards herein, if feasible.

i. Identify the top 25 water-using Judicial Council–managed facilities annually by July 1. Schedule a water audit of those identified facilities by the end of the fiscal year, if feasible.

j. Develop guidelines by December 31, 2015, as to when and how to consider onsite water recycling at existing facilities, particularly for irrigation and toilet and urinal flushing, if feasible.

B. Long-Term Goals

1. Big water users in Judicial Council–managed facilities should be evaluated for potential plumbing fixture replacement to low-flow fixtures, if feasible.

2. Big water users in Judicial Council–managed facilities should be evaluated for potential turf replacement, if feasible.

3. Water features— i.e., fountains, pools, and misters—should be evaluated for permanent conversion to planters or other non-water-using landscape features, if feasible.

4. Cooling towers or other evaporative systems scheduled for replacement should be evaluated to determine if a higher priority status is justified by potential water savings, if feasible.[2]

[2] Refer to the *Trial Court Facility Modifications Policy* (rev. Dec. 12, 2014), section III, Priority Categories, for definitions of the priority levels.

5. Ten percent of all Judicial Council–managed facilities should use recycled water for all landscaping needs, if feasible.

VI. TRACKING WATER CONSERVATION PRACTICES

A. Judicial Council staff should track water usage by analyzing the water bills it receives, if feasible. Any facility indicating unusual fluctuations in usage from the previous reporting period should be reviewed by Facilities Management staff in collaboration with appropriate court staff, if feasible.

B. Judicial Council staff should work with county staff to collect utility usage data for facilities for which the Judicial Council is not the customer of record and may not have access to the data, if feasible. When these data are collected, the Judicial Council should review the information and work with county/court staff as appropriate, if feasible.

C. Judicial Council staff should send letters annually to each presiding judge and court executive officer informing the court leadership of electricity and water cost and/or usage at each of the court's facilities, if feasible. The letter should include baseline information for both electricity and water consumption to allow for the comparison of usage against a baseline standard as well as other court facilities, if feasible.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Trial Courts: Impact to Trial Court Funding under the Workload-Based Allocation and Funding Methodology

Rules, Forms, Standards, or Statutes Affected
N/A

Submitted by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Chair

Agenda Item Type
Information Only

Date of Report
May 22, 2015

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Executive Summary

The Trial Court Budget Advisory Committee is providing the Judicial Council a status report on the current and possible future impact to trial court funding under the Workload-Based Allocation and Funding Methodology.

Previous Council Action

In April 2013, the Judicial Council approved the Workload-Based Allocation and Funding Methodology (WAFM) for reallocating, by the end of fiscal year 2017–2018, 50 percent of courts' base funding at the end of fiscal year 2012–2013 and allocating new funding for general court operations. In addition, over and above the scheduled reallocation of historical funding (10 percent in 2013–2014, 15 percent in 2014–2015, 30 percent in 2015–2016, 40 percent in 2016–2017, and 50 percent in 2017–2018), additional historical funding would be reallocated up to the amount of any new funding for general court operations received after 2012–2013 up until 100 percent of the historical funding is reallocated.

Trial Court Funding Under WAFM

Based on the 2014–2015 WAFM, 35 courts are subject to an allocation reduction and 23 courts are subject to an allocation increase when their historical base allocation is reallocated under the

WAFM (see column E2 of Attachment 1). However, because the allocation of new funding can totally offset the reallocation of historical funding, only 9 courts are projected to have a cumulative reduction through 2015–2016 when excluding funding floor allocations and benefit cost funding. When including estimated funding floor allocations and benefit cost funding, only 4 courts are projected to have a cumulative reduction through 2015–2016. Assuming $50 million in additional new funding in 2016–2017 and 2017–2018, 11 courts are projected to have a cumulative reduction through 2017–2018 when excluding funding floor allocations and benefit cost funding. Of the 11, the number of courts that will have a cumulative reduction in 2017–2018 when factoring in benefits funding will depend on the level of benefits funding received by those courts.

The magnitude of reduction or increase from reallocation depends on each court's reallocation ratio, which ranges from 37 percent to 142 percent (see column E of Attachment 1). The ratio represents the amount of funding returned for each dollar of historical funding that is reallocated. A ratio that is less than 100 percent indicates a court is subject to a reduction when funding is reallocated. For example, a ratio of 50 percent means a court is to receive 50 cents for every dollar of the court's historical funding that is subject to reallocation, and this is implemented by reducing the court's allocation by 50 cents. A ratio that is greater than 1 indicates a court is subject to an augmentation when funding is reallocated. For example, a ratio of 150 percent means a court is to receive one dollar and 50 cents for every dollar of the court's historical funding that is subject to reallocation, and this is implemented by increasing the court's allocation by 50 cents.

As displayed in Attachment 2A, currently as of fiscal year 2014–2015, 55 courts' WAFM-related allocation (i.e., courts' allocation related to workload measured by the Resource Assessment Study) is less than their funding need computed by the 2014–2015 WAFM, ranging from 51 percent to 82 percent of those courts' WAFM funding need. Three courts' WAFM-related allocation is greater than their funding need computed by the 2014–2015 WAFM. Two of those courts receive the absolute funding floor of $750,000 and the third court is eligible for funding up to the graduated floor of $875,000. The other 6 courts that are eligible for a funding floor adjustment are currently funded between 71 percent and 93 percent of their total WAFM need. By 2017–2018, 55 courts' WAFM-related allocation will still be less than their funding need computed by the 2014–2015 WAFM; however, their funding levels will range from 68 percent to just under 100 percent of those courts' WAFM funding need. Nevertheless, six courts' funding levels will have declined, due the phase in of the WAFM reallocation at 50 percent and insufficient cumulative new funding to offset the reallocation. The estimate for 2017–2018 assumes that the WAFM funding need in 2017–2018 will be the same as the need in 2014–2015, as well as the following:

- For 2015–2016
  - Reallocation of 30% of historical WAFM-related funding
  - $90.6 million in ongoing new funding for general court operations
  - $22.7 million reduction due to revenue shortfall
  - $24 million in benefits funding for 2014–2015 cost changes
  - $13 million in restoration of benefits funding reduction in 2014–2015
- For 2016–2017

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- Reallocation of 40% of historical WAFM-related funding
- $50 million in ongoing new funding for general court operations

- For 2017–2018
  - Reallocation of 50% of historical WAFM-related funding
  - $50 million in ongoing new funding for general court operations

Because they assume zero funding for benefit cost increases, the estimates for 2016–2017 and 2017–2018 likely understate the level of funding that will be allocated in those years.

Attachment 2B provides a graphic display of the data provided in Attachment 2A.

Attachments

1. Attachment 1: Estimated Cumulative WAFM Adjustments at 30%, 40%, and 50% (excluding funding floor adjustment)
2. Attachment 2A: WAFM-Related Base Allocation as % of 2014–2015 WAFM Need: Actual 2014–2015 and Estimated 2015–2016 through 2017–2018
3. Attachment 2B: Chart 1 -- Court WAFM-Related Allocation as a % of Court WAFM Total Funding Need
4. Attachment 2C: WAFM-Related Base Allocation: 2014–2015
5. Attachment 2D: WAFM-Related Base Allocation: Estimated 2015–2016, 2016–2017, and 2017–2018

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Attachment 1: Estimated Cumulative WAFM Adjustments at 30%, 40%, and 50% (excluding funding floor adjustment and benefits funding)

sorted by Column E (lowest to highest)

	Historical WAFM Base (Beginning 2013-14)	2014-15 WAFM Need	% of Statewide Historical	% of Statewide WAFM	Re-allocation Ratio	Subject to Reduction from Re-allocation (Y if E<100%)	Estimated Cumulative Adjustment		
							Reallocation of 30% and $90.6M New Funding in 15-16	Reallocation of 40% and $50M New Funding in 16-17	Reallocation of 50% and $50M New Funding in 17-18
Court	A	B	C	D	E (D/E)	E2	F	G	H
Alpine	552,142	343,929	0.04%	0.01%	37%	Y	(127,934)	(167,693)	(207,453)
Sierra	542,215	339,119	0.04%	0.01%	37%	Y	(125,121)	(164,027)	(202,934)
Modoc	890,668	818,258	0.06%	0.03%	55%	Y	(107,926)	(145,544)	(183,161)
Siskiyou	3,254,627	3,026,276	0.23%	0.12%	55%	Y	(380,836)	(514,647)	(648,457)
Plumas	1,441,037	1,432,034	0.10%	0.06%	59%	Y	(134,205)	(184,181)	(234,157)
Marin	13,338,797	13,804,014	0.93%	0.57%	61%	Y	(1,037,288)	(1,444,666)	(1,852,044)
Inyo	1,722,461	2,005,742	0.12%	0.08%	69%	Y	(50,543)	(80,681)	(110,818)
San Francisco	52,988,157	64,153,264	3.68%	2.65%	72%	Y	(639,190)	(1,319,651)	(2,000,111)
San Benito	2,496,024	3,042,492	0.17%	0.13%	72%	Y	(22,437)	(52,424)	(82,410)
Santa Clara	74,267,457	93,240,124	5.16%	3.85%	75%	Y	346,099	(273,054)	(892,207)
Alameda	69,586,867	88,359,612	4.83%	3.64%	75%	Y	696,379	216,483	(263,412)
Glenn	1,811,707	2,350,509	0.13%	0.10%	77%	Y	36,832	29,376	21,920
Amador	2,080,491	2,738,605	0.14%	0.11%	78%	Y	57,010	52,411	47,812
Lake	2,903,720	3,848,078	0.20%	0.16%	79%	Y	89,221	85,403	81,585
Napa	6,088,978	8,229,667	0.42%	0.34%	80%	Y	247,033	255,173	263,314
Tuolumne	2,589,803	3,561,890	0.18%	0.15%	82%	Y	128,085	137,748	147,410
San Diego	122,736,644	169,121,455	8.52%	6.98%	82%	Y	6,188,106	6,677,780	7,167,453
Mariposa	920,593	1,268,860	0.06%	0.05%	82%	Y	46,547	50,256	53,964
Colusa	1,368,302	1,900,461	0.09%	0.08%	83%	Y	74,610	81,583	88,557
Calaveras	1,950,892	2,726,378	0.14%	0.11%	83%	Y	112,634	124,263	135,892
Orange	122,983,490	172,104,479	8.54%	7.10%	83%	Y	7,188,097	7,944,786	8,701,475
Santa Barbara	18,365,326	25,711,043	1.27%	1.06%	83%	Y	1,077,296	1,191,341	1,305,385
Mendocino	4,379,075	6,396,356	0.30%	0.26%	87%	Y	356,173	410,116	464,060
San Mateo	29,770,060	43,796,548	2.07%	1.81%	87%	Y	2,538,127	2,936,302	3,334,477
Lassen	1,890,662	2,785,749	0.13%	0.11%	88%	Y	162,793	188,511	214,230
Trinity	990,359	1,461,014	0.07%	0.06%	88%	Y	85,944	99,597	113,249
Yuba	3,225,076	4,887,940	0.22%	0.20%	90%	Y	328,521	386,084	443,648
Humboldt	5,005,941	7,587,268	0.35%	0.31%	90%	Y	510,018	599,392	688,765
Nevada	3,817,225	5,948,648	0.26%	0.25%	93%	Y	449,838	534,403	618,967
Santa Cruz	9,910,386	15,485,876	0.69%	0.64%	93%	Y	1,183,513	1,407,272	1,631,031
El Dorado	5,880,901	9,349,259	0.41%	0.39%	94%	Y	762,024	910,891	1,059,759
Mono	1,232,348	1,977,044	0.09%	0.08%	95%	Y	166,371	199,368	232,365
Del Norte	2,202,321	3,562,408	0.15%	0.15%	96%	Y	308,248	370,161	432,073
Sacramento	61,567,979	100,721,502	4.27%	4.15%	97%	Y	9,039,976	10,884,644	12,729,311
Madera	5,953,244	9,811,615	0.41%	0.40%	98%	Y	901,188	1,086,851	1,272,513
Contra Costa	32,906,460	55,680,843	2.28%	2.30%	101%	N	5,522,102	6,694,031	7,865,961
Tehama	2,907,298	4,925,688	0.20%	0.20%	101%	N	490,221	594,392	698,563
Sonoma	18,845,883	32,588,957	1.31%	1.34%	103%	N	3,424,108	4,165,740	4,907,372

Attachment 1: Estimated Cumulative WAFM Adjustments at 30%, 40%, and 50% (excluding funding floor adjustment and benefits funding)

sorted by Column E (lowest to highest)

	Historical WAFM Base (Beginning 2013-14)	2014-15 WAFM Need	% of Statewide Historical	% of Statewide WAFM	Re-allocation Ratio	Subject to Reduction from Re-allocation (Y if E<100%)	Estimated Cumulative Adjustment		
							Reallocation of 30% and $90.6M New Funding in 15-16	Reallocation of 40% and $50M New Funding in 16-17	Reallocation of 50% and $50M New Funding in 17-18
Court	A	B	C	D	E (D/E)	E2	F	G	H
Shasta	7,409,092	12,820,506	0.51%	0.53%	103%	N	1,349,314	1,641,730	1,934,146
San Luis Obispo	10,604,942	18,501,624	0.74%	0.76%	104%	N	1,987,789	2,421,546	2,855,303
Yolo	6,504,149	11,431,084	0.45%	0.47%	104%	N	1,250,449	1,524,912	1,799,376
Monterey	13,009,124	22,985,951	0.90%	0.95%	105%	N	2,546,766	3,108,042	3,669,318
Solano	15,704,185	28,468,850	1.09%	1.17%	108%	N	3,343,770	4,093,896	4,844,022
Butte	7,287,810	13,261,312	0.51%	0.55%	108%	N	1,570,356	1,923,481	2,276,606
Fresno	34,456,224	63,521,412	2.39%	2.62%	110%	N	7,732,019	9,484,402	11,236,785
Tulare	12,293,011	22,711,203	0.85%	0.94%	110%	N	2,776,708	3,406,796	4,036,884
Imperial	6,294,286	11,681,402	0.44%	0.48%	110%	N	1,441,455	1,769,387	2,097,318
San Joaquin	23,639,320	44,271,294	1.64%	1.83%	111%	N	5,562,994	6,834,831	8,106,668
Placer	11,114,142	20,967,595	0.77%	0.86%	112%	N	2,672,725	3,286,109	3,899,493
Los Angeles	392,482,162	740,843,971	27.25%	30.56%	112%	N	94,533,173	116,234,278	137,935,382
Kings	4,765,510	9,041,542	0.33%	0.37%	113%	N	1,165,094	1,433,242	1,701,390
Ventura	24,366,827	46,915,300	1.69%	1.94%	114%	N	6,213,060	7,653,038	9,093,015
Sutter	3,403,045	6,575,894	0.24%	0.27%	115%	N	876,585	1,080,082	1,283,578
Merced	9,033,368	17,792,806	0.63%	0.73%	117%	N	2,452,861	3,026,977	3,601,092
Stanislaus	15,497,803	32,800,366	1.08%	1.35%	126%	N	5,058,146	6,272,079	7,486,013
Riverside	57,140,417	122,184,895	3.97%	5.04%	127%	N	19,116,433	23,718,021	28,319,610
San Bernardino	61,335,147	137,869,624	4.26%	5.69%	134%	N	23,028,933	28,644,255	34,259,577
Kern	28,781,786	68,772,633	2.00%	2.84%	142%	N	12,329,736	15,375,107	18,420,479
Statewide	**1,440,487,965**	**2,424,512,269**	**100%**	**100%**			**236,900,000**	**286,900,000**	**336,900,000**
Total Reallocation							669,046,390	863,095,186	1,057,143,983
as % of Historical Base							46%	60%	73%

Attachment 2A: WAFM-Related Base Allocation as % of 2014-2015 WAFM Need: Actual 2014-15 and Estimated 2015-16 through 2017-18*

Sorted using co Sorted using column I (lowest to highest)

		2014-15			Estimated 2015-16		Estimated 2016-17		Estimated 2017-18	
	Funding Floor	WAFM Funding Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need
Court	A	A	B	C (B/A)	D	E (D/A)	F	G (F/A)	H	I (H/A)
Kern	N/A	68,772,633	35,343,529	51.39%	40,392,032	58.73%	43,423,869	63.14%	46,460,353	67.56%
Stanislaus	N/A	32,800,366	18,021,862	54.94%	20,006,988	61.00%	21,214,294	64.68%	22,423,913	68.36%
Riverside	N/A	122,184,895	67,920,171	55.59%	75,513,568	61.80%	80,090,155	65.55%	84,675,462	69.30%
San Bernardino	N/A	137,869,624	74,013,657	53.68%	85,374,607	61.92%	90,962,202	65.98%	96,559,400	70.04%
Kings	N/A	9,041,542	5,395,989	59.68%	5,895,748	65.21%	6,161,988	68.15%	6,428,905	71.10%
Ventura	N/A	46,915,300	27,781,980	59.22%	30,696,387	65.43%	32,126,495	68.48%	33,560,096	71.53%
Placer	N/A	20,967,595	12,563,076	59.92%	13,784,031	65.74%	14,392,980	68.64%	15,003,503	71.56%
Merced	N/A	17,792,806	10,376,582	58.32%	11,605,147	65.22%	12,175,547	68.43%	12,747,258	71.64%
Sutter	N/A	6,575,894	3,916,247	59.55%	4,314,434	65.61%	4,516,539	68.68%	4,719,137	71.76%
Solano	N/A	28,468,850	17,537,817	61.60%	19,074,165	67.00%	19,818,188	69.61%	20,564,389	72.23%
Imperial	N/A	11,681,402	7,030,126	60.18%	7,786,396	66.66%	8,111,859	69.44%	8,438,201	72.24%
San Luis Obispo	N/A	18,501,624	11,721,801	63.36%	12,523,000	67.69%	12,952,731	70.01%	13,383,908	72.34%
Los Angeles	N/A	740,843,971	444,420,112	59.99%	493,036,601	66.55%	514,580,560	69.46%	536,180,298	72.37%
San Joaquin	N/A	44,271,294	26,358,070	59.54%	29,522,887	66.69%	30,785,436	69.54%	32,051,284	72.40%
Butte	N/A	13,261,312	8,174,196	61.64%	8,901,446	67.12%	9,251,724	69.76%	9,603,018	72.41%
Tulare	N/A	22,711,203	13,730,713	60.46%	15,209,607	66.97%	15,834,881	69.72%	16,461,870	72.48%
Santa Cruz	N/A	15,485,876	10,294,444	66.48%	10,843,777	70.02%	11,064,127	71.45%	11,285,722	72.88%
Monterey	N/A	22,985,951	14,378,373	62.55%	15,642,079	68.05%	16,198,396	70.47%	16,756,489	72.90%
Yolo	N/A	11,431,084	7,115,493	62.25%	7,791,476	68.16%	8,063,487	70.54%	8,336,377	72.93%
Fresno	N/A	63,521,412	38,379,162	60.42%	43,251,627	68.09%	44,990,504	70.83%	46,734,192	73.57%
Contra Costa	N/A	55,680,843	35,880,382	64.44%	38,833,502	69.74%	39,993,235	71.83%	41,157,366	73.92%
Tehama	N/A	4,925,688	3,170,180	64.36%	3,436,395	69.76%	3,539,488	71.86%	3,642,970	73.96%
Madera	N/A	9,811,615	6,328,412	64.50%	6,900,779	70.33%	7,084,308	72.20%	7,268,609	74.08%
El Dorado	N/A	9,349,259	6,267,128	67.03%	6,639,901	71.02%	6,786,684	72.59%	6,934,225	74.17%
Sacramento	N/A	100,721,502	66,814,374	66.34%	71,098,809	70.59%	72,921,042	72.40%	74,751,405	74.22%
Yuba	N/A	4,887,940	3,389,145	69.34%	3,528,706	72.19%	3,585,161	73.35%	3,642,022	74.51%
Lassen	N/A	2,785,749	1,969,483	70.70%	2,030,907	72.90%	2,055,987	73.80%	2,081,303	74.71%
Del Norte	N/A	3,562,408	2,342,115	65.75%	2,540,710	71.32%	2,601,838	73.04%	2,663,251	74.76%
Shasta	N/A	12,820,506	8,330,271	64.98%	9,031,967	70.45%	9,321,535	72.71%	9,612,128	74.97%
Sonoma	N/A	32,588,957	20,663,669	63.41%	22,965,120	70.47%	23,699,676	72.72%	24,436,776	74.98%
Nevada	N/A	5,948,648	4,060,228	68.25%	4,331,163	72.81%	4,414,386	74.21%	4,498,098	75.62%
Humboldt	N/A	7,587,268	5,311,860	70.01%	5,568,956	73.40%	5,656,593	74.55%	5,744,866	75.72%
Mendocino	N/A	6,396,356	4,547,361	71.09%	4,777,149	74.69%	4,829,623	75.51%	4,882,639	76.33%
Calaveras	N/A	2,726,378	1,989,114	72.96%	2,061,494	75.61%	2,072,490	76.02%	2,083,721	76.43%
San Mateo	N/A	43,796,548	31,378,672	71.65%	32,721,433	74.71%	33,109,446	75.60%	33,501,200	76.49%

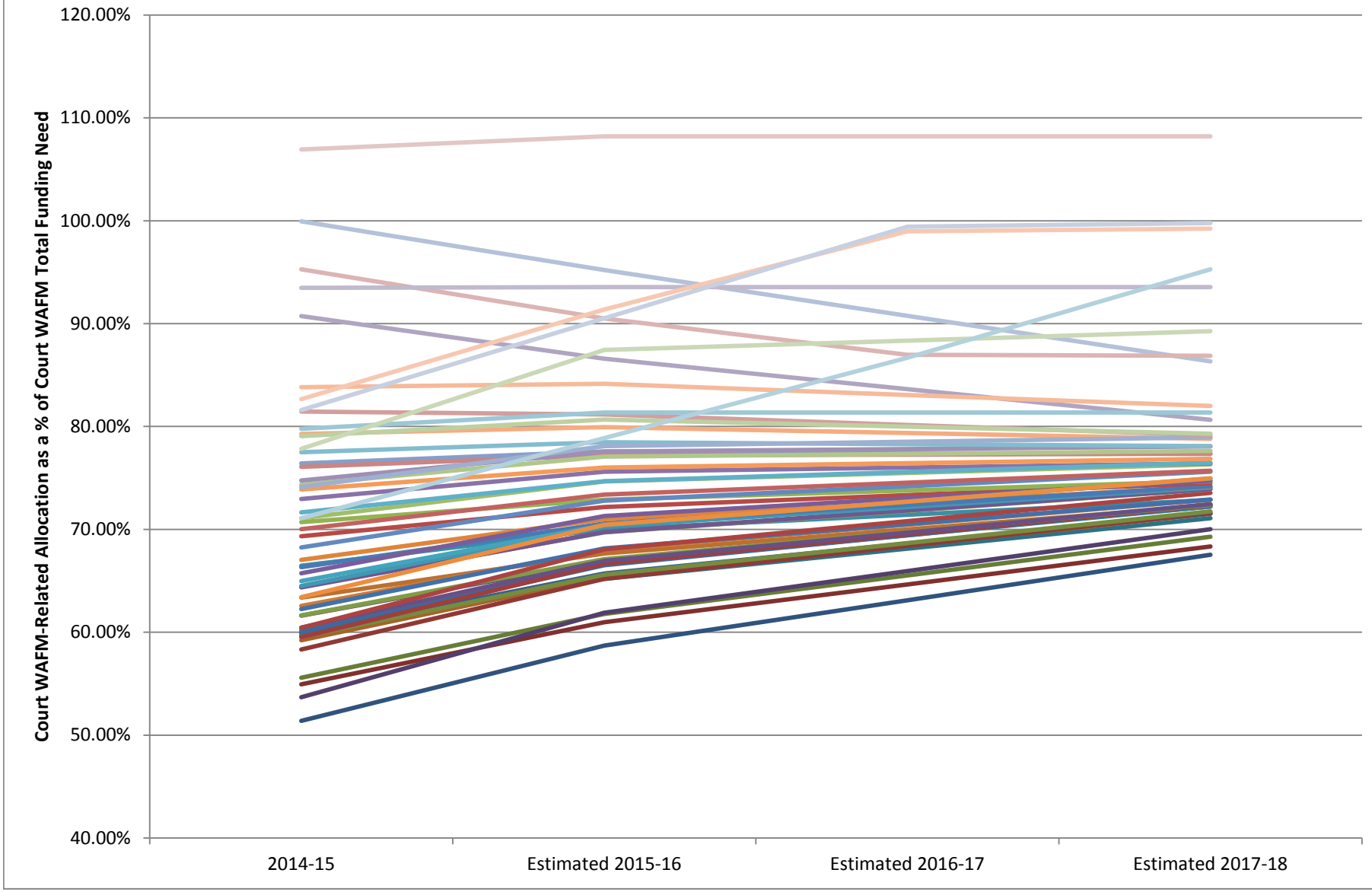
Attachment 2A: WAFM-Related Base Allocation as % of 2014-2015 WAFM Need: Actual 2014-15 and Estimated 2015-16 through 2017-18*

Sorted using co Sorted using column I (lowest to highest)

		2014-15			Estimated 2015-16		Estimated 2016-17		Estimated 2017-18	
	Funding Floor	WAFM Funding Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need	WAFM-Related Allocation	as % of WAFM Need
Court	A	A	B	C (B/A)	D	E (D/A)	F	G (F/A)	H	I (H/A)
Santa Barbara	N/A	25,711,043	18,995,679	73.88%	19,549,928	76.04%	19,657,924	76.46%	19,768,164	76.89%
Lake	N/A	3,848,078	2,940,035	76.40%	2,985,308	77.58%	2,980,571	77.46%	2,976,178	77.34%
Napa	N/A	8,229,667	6,261,124	76.08%	6,353,738	77.21%	6,359,907	77.28%	6,366,812	77.36%
San Diego	N/A	169,121,455	125,725,224	74.34%	130,364,395	77.08%	130,814,211	77.35%	131,278,849	77.62%
Tuolumne	N/A	3,561,890	2,662,418	74.75%	2,763,593	77.59%	2,772,413	77.84%	2,781,546	78.09%
Amador	N/A	2,738,605	2,122,503	77.50%	2,149,258	78.48%	2,143,997	78.29%	2,138,984	78.10%
Alameda	N/A	88,359,612	70,039,389	79.27%	70,646,647	79.95%	70,145,174	79.39%	69,651,824	78.83%
Orange	N/A	172,104,479	127,545,367	74.11%	134,429,518	78.11%	135,145,547	78.53%	135,876,658	78.95%
San Benito	N/A	3,042,492	2,477,959	81.45%	2,470,021	81.18%	2,439,282	80.17%	2,408,828	79.17%
Santa Clara	N/A	93,240,124	73,728,403	79.07%	75,228,563	80.68%	74,586,786	79.99%	73,953,545	79.32%
Marin	N/A	13,804,014	12,525,915	90.74%	11,955,488	86.61%	11,544,508	83.63%	11,134,930	80.66%
Glenn	1,874,999	2,350,509	1,874,999	79.77%	1,912,399	81.36%	1,912,399	81.36%	1,912,399	81.36%
San Francisco	N/A	64,153,264	53,778,469	83.83%	53,999,890	84.17%	53,303,109	83.09%	52,612,510	82.01%
Siskiyou	N/A	3,026,276	3,024,297	99.93%	2,881,540	95.22%	2,746,888	90.77%	2,612,568	86.33%
Plumas	N/A	1,432,034	1,364,542	95.29%	1,295,922	90.50%	1,245,559	86.98%	1,244,072	86.87%
Trinity	1,250,000	1,461,014	1,137,087	77.83%	1,277,537	87.44%	1,290,801	88.35%	1,304,205	89.27%
Inyo	1,874,999	2,005,742	1,874,999	93.48%	1,876,163	93.54%	1,876,163	93.54%	1,876,163	93.54%
Mono	1,545,794	1,977,044	1,405,267	71.08%	1,559,228	78.87%	1,713,807	86.69%	1,883,845	95.29%
Mariposa	1,153,706	1,268,860	1,048,824	82.66%	1,159,376	91.37%	1,255,670	98.96%	1,259,132	99.23%
Colusa	1,705,664	1,900,461	1,550,604	81.59%	1,720,318	90.52%	1,889,654	99.43%	1,896,257	99.78%
Modoc	875,000	818,258	875,000	106.93%	885,388	108.20%	885,388	108.20%	885,388	108.20%
Alpine	750,000	343,929	750,000	218.07%	756,869	220.07%	756,869	220.07%	756,869	220.07%
Sierra	750,000	339,119	750,000	221.16%	756,044	222.94%	756,044	222.94%	756,044	222.94%
Statewide	**11,780,162**	**2,424,512,269**	**1,571,373,898**	**64.81%**	**1,696,610,123**	**69.98%**	**1,746,610,123**	**72.04%**	**1,796,610,123**	**74.10%**

*Includes funding floor.

Attachment 2B: Chart 1 -- Court WAFM-Related Allocation as a % of Court WAFM Total Funding Need (excluding Alpine and Sierra)



Attachment 2C: WAFM-Related Base Allocation: 2014-15

Court	Current 2014-15 TCTF and GF Base* A	Security Base (FY 10-11) Adjustment B	SJO Adjustment[1] C	Automated Recordkeeping and Micrographics Distribution (12-13) D	Self-Help E	Replacement of 2% Automation F	Revenue Shortfall Reduction (assumes will be ongoing) G	2014-15 WAFM-Related Base Allocation H Sum of A-G)
Alameda	75,540,885	(3,177,924)	(1,958,825)	115,195	101,575	424,792	(1,006,310)	**70,039,389**
Alpine	747,833	-	-	49	83	2,034	-	**750,000**
Amador	2,137,937	-	-	733	2,565	11,006	(29,737)	**2,122,503**
Butte	8,961,947	(467,145)	(291,613)	15,194	14,608	59,332	(118,127)	**8,174,196**
Calaveras	1,994,159	-	-	967	3,074	18,652	(27,738)	**1,989,114**
Colusa	1,535,071	-	-	378	1,447	13,708	-	**1,550,604**
Contra Costa	37,747,349	-	(1,705,774)	76,248	69,231	218,186	(524,858)	**35,880,382**
Del Norte	2,489,969	-	(126,942)	535	1,964	11,208	(34,619)	**2,342,115**
El Dorado	6,342,136	-	(57,081)	4,059	11,851	54,374	(88,211)	**6,267,128**
Fresno	39,657,551	-	(1,032,025)	66,289	60,497	181,080	(554,229)	**38,379,162**
Glenn	1,863,014	(9,779)	-	573	1,927	19,264	-	**1,874,999**
Humboldt	5,640,662	(167,800)	(150,006)	8,040	8,913	48,160	(76,110)	**5,311,860**
Imperial	7,642,037	(420,479)	(180,405)	10,523	11,204	67,678	(100,431)	**7,030,126**
Inyo	2,072,062	(186,658)	(42,314)	262	1,245	30,402	-	**1,874,999**
Kern	37,287,444	(65,567)	(1,750,452)	59,874	52,450	277,328	(517,548)	**35,343,529**
Kings	6,001,692	(421,918)	(181,060)	7,908	9,935	57,026	(77,594)	**5,395,989**
Lake	3,209,021	(196,493)	(56,758)	1,522	4,311	20,328	(41,896)	**2,940,035**
Lassen	2,267,714	(293,836)	-	522	2,384	20,156	(27,456)	**1,969,483**
Los Angeles	487,249,816	(14,294,467)	(26,758,268)	977,472	689,065	3,144,530	(6,588,036)	**444,420,112**
Madera	6,733,060	(381,406)	-	2,893	9,711	52,502	(88,349)	**6,328,412**
Marin	12,957,597	(9,625)	(391,957)	18,155	17,038	114,766	(180,059)	**12,525,915**
Mariposa	1,071,772	-	(28,406)	329	1,225	3,904	-	**1,048,824**
Mendocino	4,868,909	(299,349)	-	5,209	6,083	30,068	(63,560)	**4,547,361**
Merced	10,689,301	-	(250,840)	14,527	16,595	55,652	(148,653)	**10,376,582**
Modoc	932,090	(789)	(63,471)	375	662	6,134	-	**875,000**
Mono	1,423,941	(24,156)	(8,201)	323	914	12,446	-	**1,405,267**
Monterey	15,549,243	(870,000)	(333,656)	24,904	28,573	183,464	(204,155)	**14,378,373**
Napa	6,892,819	(295,552)	(287,148)	3,144	9,042	30,550	(91,731)	**6,261,124**
Nevada	4,782,934	(433,431)	(292,045)	6,564	6,730	49,946	(60,469)	**4,060,228**
Orange	134,038,401	(2,733,776)	(3,329,845)	268,656	206,630	923,882	(1,828,581)	**127,545,367**
Placer	13,559,968	-	(933,901)	26,853	21,287	77,378	(188,509)	**12,563,076**
Plumas	1,372,630	-	-	356	1,442	9,206	(19,092)	**1,364,542**

Court	Current 2014-15 TCTF and GF Base* A	Security Base (FY 10-11) Adjustment B	SJO Adjustment[1] C	Automated Recordkeeping and Micrographics Distribution (12-13) D	Self-Help E	Replacement of 2% Automation F	Revenue Shortfall Reduction (assumes will be ongoing) G	2014-15 WAFM-Related Base Allocation H Sum of A-G)
Riverside	72,996,304	(1,931,520)	(2,882,751)	62,703	131,371	532,226	(988,161)	**67,920,171**
Sacramento	70,854,133	(1,864,424)	(1,824,452)	175,080	93,189	340,254	(959,404)	**66,814,374**
San Benito	2,492,824	-	-	1,233	3,876	14,700	(34,673)	**2,477,959**
San Bernardino	80,594,456	(3,269,446)	(2,986,710)	181,146	133,960	435,474	(1,075,223)	**74,013,657**
San Diego	131,793,072	(657,192)	(4,757,300)	246,860	206,259	718,422	(1,824,897)	**125,725,224**
San Francisco	56,737,883	-	(2,582,976)	86,214	53,715	272,528	(788,895)	**53,778,469**
San Joaquin	27,507,407	(287,747)	(779,859)	50,156	44,944	201,698	(378,529)	**26,358,070**
San Luis Obispo	12,644,124	(241,676)	(673,831)	17,902	17,704	130,020	(172,442)	**11,721,801**
San Mateo	33,365,516	(443,042)	(1,479,478)	15,239	48,700	329,518	(457,780)	**31,378,672**
Santa Barbara	20,560,721	(1,055,112)	(457,408)	27,529	28,356	162,858	(271,266)	**18,995,679**
Santa Clara	75,935,828	-	(1,833,360)	109,914	119,260	452,782	(1,056,021)	**73,728,403**
Santa Cruz	10,722,708	-	(424,668)	14,656	17,644	113,210	(149,105)	**10,294,444**
Shasta	11,106,240	(2,389,668)	(326,131)	4,435	12,206	44,394	(121,205)	**8,330,271**
Sierra	747,859	-	-	76	235	1,830	-	**750,000**
Siskiyou	3,130,686	-	(103,923)	966	3,104	37,000	(43,536)	**3,024,297**
Solano	18,578,317	(435,400)	(535,433)	34,831	28,439	119,364	(252,301)	**17,537,817**
Sonoma	21,690,624	(440,000)	(479,410)	36,705	32,278	119,004	(295,531)	**20,663,669**
Stanislaus	18,557,159	(9,326)	(427,578)	36,236	34,594	88,718	(257,942)	**18,021,862**
Sutter	4,172,307	(247,071)	-	2,077	6,150	37,382	(54,599)	**3,916,247**
Tehama	3,186,372	-	(5,472)	1,362	4,138	28,100	(44,321)	**3,170,180**
Trinity	1,578,531	(450,608)	-	573	943	7,648	-	**1,137,087**
Tulare	14,364,451	(15,576)	(679,043)	27,184	28,289	204,932	(199,524)	**13,730,713**
Tuolumne	2,930,002	(220,516)	(30,986)	1,043	3,916	16,642	(37,684)	**2,662,418**
Ventura	30,149,914	(1,559,157)	(731,699)	60,255	54,971	205,304	(397,607)	**27,781,980**
Yolo	8,193,175	(582,889)	(461,445)	11,098	12,802	48,556	(105,804)	**7,115,493**
Yuba	3,547,052	(132,569)	-	1,670	4,696	15,788	(47,493)	**3,389,145**
Total	**1,683,398,629**	**(40,983,089)**	**(64,674,907)**	**2,925,771**	**2,500,000**	**10,907,494**	**(22,700,000)**	**1,571,373,898**

1. Does not include compensation for AB 1058 commissioners.

Attachment 2D: WAFM-Related Base Allocation: Estimated 2015-16, 2016-17, and 2017-18

	Estimated 2015-2016						Estimated 2016-2017				Estimated 2017-2018			
	WAFM (@30%) Adjustment	Allocation and Reallocation of $90.6M	2015-16 Funding Floor Adjustment	2014-15 Benefits Funding (Full-Year)	Restoration of 2013-14 Retirement Benefits Subsidy Reduction	Total	WAFM (@40%) Adjustment	Funding Floor	Allocation and Reallocation of $50M	Total	WAFM (@50%) Adjustment	Funding Floor	Allocation and Reallocation of $50M	Total
Court	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**	**M**	**N**
Alameda	(2,563,397)	2,227,014	(25,602)	562,020	407,224	**70,646,647**	(1,708,932)	(21,579)	1,229,036	**70,145,174**	(1,708,932)	(13,455)	1,229,036	**69,651,824**
Alpine	(52,170)	(9,023)	61,193	5,289	1,581	**756,869**	(34,780)	39,760	(4,980)	**756,869**	(34,780)	39,760	(4,980)	**756,869**
Amador	(68,008)	73,821	(781)	15,693	6,030	**2,149,258**	(45,339)	(662)	40,740	**2,143,997**	(45,339)	(414)	40,740	**2,138,984**
Butte	88,680	532,737	(3,227)	68,952	40,109	**8,901,446**	59,120	(2,847)	294,005	**9,251,724**	59,120	(1,831)	294,005	**9,603,018**
Calaveras	(49,658)	81,058	(742)	30,138	11,583	**2,061,494**	(33,105)	(633)	44,734	**2,072,490**	(33,105)	(398)	44,734	**2,083,721**
Colusa	(35,876)	55,974	134,962	10,604	4,050	**1,720,318**	(23,917)	162,361	30,891	**1,889,654**	(23,917)	(370)	30,891	**1,896,257**
Contra Costa	26,323	2,091,738	(13,948)	590,873	258,135	**38,833,502**	17,549	(12,197)	1,154,381	**39,993,235**	17,549	(7,798)	1,154,381	**41,157,366**
Del Norte	(12,865)	127,727	(902)	73,071	11,565	**2,540,710**	(8,577)	(785)	70,489	**2,601,838**	(8,577)	(500)	70,489	**2,663,251**
El Dorado	(48,927)	328,851	(2,402)	90,455	4,796	**6,639,901**	(32,618)	(2,085)	181,485	**6,786,684**	(32,618)	(1,326)	181,485	**6,934,225**
Fresno	492,612	2,580,243	(15,280)	1,581,245	233,646	**43,251,627**	328,408	(13,506)	1,423,975	**44,990,504**	328,408	(8,696)	1,423,975	**46,734,192**
Glenn	(62,278)	61,721	557	31,311	6,089	**1,912,399**	(41,519)	7,456	34,063	**1,912,399**	(41,519)	7,456	34,063	**1,912,399**
Humboldt	(74,712)	252,197	(2,015)	46,895	34,732	**5,568,956**	(49,808)	(1,738)	139,181	**5,656,593**	(49,808)	(1,101)	139,181	**5,744,866**
Imperial	96,907	477,148	(2,790)	133,229	51,776	**7,786,396**	64,605	(2,468)	263,327	**8,111,859**	64,605	(1,590)	263,327	**8,438,201**
Inyo	(79,617)	41,568	38,049	(7,122)	8,286	**1,876,163**	(53,078)	30,138	22,940	**1,876,163**	(53,078)	30,138	22,940	**1,876,163**
Kern	1,811,768	3,329,598	(14,846)	(217,620)	139,603	**40,392,032**	1,207,845	(13,534)	1,837,526	**43,423,869**	1,207,845	(8,887)	1,837,526	**46,460,353**
Kings	90,958	376,006	(2,151)	29,342	5,603	**5,895,748**	60,639	(1,908)	207,509	**6,161,988**	60,639	(1,231)	207,509	**6,428,905**
Lake	(92,616)	104,962	(1,084)	33,201	809	**2,985,308**	(61,744)	(919)	57,926	**2,980,571**	(61,744)	(575)	57,926	**2,976,178**
Lassen	(35,333)	89,284	(743)	6,803	1,412	**2,030,907**	(23,555)	(638)	49,274	**2,055,987**	(23,555)	(403)	49,274	**2,081,303**
Los Angeles	7,151,892	30,682,915	(177,319)	7,896,395	3,062,605	**493,036,601**	4,767,928	(157,146)	16,933,176	**514,580,560**	4,767,928	(101,367)	16,933,176	**536,180,298**
Madera	(18,573)	358,856	(2,447)	223,020	11,509	**6,900,779**	(12,382)	(2,133)	198,044	**7,084,308**	(12,382)	(1,361)	198,044	**7,268,609**
Marin	(770,602)	192,718	(4,391)	(78,894)	90,742	**11,955,488**	(513,735)	(3,601)	106,356	**11,544,508**	(513,735)	(2,201)	106,356	**11,134,930**
Mariposa	(25,008)	36,929	92,961	4,769	901	**1,159,376**	(16,672)	92,585	20,380	**1,255,670**	(16,672)	(246)	20,380	**1,259,132**
Mendocino	(86,816)	202,619	(1,711)	56,174	59,523	**4,777,149**	(57,878)	(1,469)	111,821	**4,829,623**	(57,878)	(927)	111,821	**4,882,639**
Merced	230,694	761,618	(4,170)	161,921	78,502	**11,605,147**	153,796	(3,715)	420,319	**12,175,547**	153,796	(2,405)	420,319	**12,747,258**
Modoc	(60,677)	5,135	55,542	9,491	897	**885,388**	(40,451)	37,617	2,834	**885,388**	(40,451)	37,617	2,834	**885,388**
Mono	(8,657)	70,249	78,935	10,568	2,865	**1,559,228**	(5,772)	121,582	38,769	**1,713,807**	(5,772)	137,040	38,769	**1,883,845**
Monterey	97,146	899,680	(5,641)	205,587	66,935	**15,642,079**	64,764	(4,959)	496,512	**16,198,396**	64,764	(3,182)	496,512	**16,756,489**
Napa	(179,916)	232,090	(2,319)	(3,237)	45,996	**6,353,738**	(119,944)	(1,971)	128,085	**6,359,907**	(119,944)	(1,236)	128,085	**6,366,812**
Nevada	(42,439)	204,496	(1,551)	79,983	30,444	**4,331,163**	(28,292)	(1,342)	112,857	**4,414,386**	(28,292)	(852)	112,857	**4,498,098**
Orange	(3,109,525)	5,127,427	(47,640)	3,449,769	1,464,120	**134,429,518**	(2,073,017)	(40,660)	2,829,706	**135,145,547**	(2,073,017)	(25,578)	2,829,706	**135,876,658**
Placer	201,516	868,021	(5,004)	84,431	71,991	**13,784,031**	134,344	(4,435)	479,040	**14,392,980**	134,344	(2,861)	479,040	**15,003,503**
Plumas	(88,532)	16,391	(475)	2,474	1,522	**1,295,922**	(59,021)	(388)	9,046	**1,245,559**	(59,021)	48,489	9,046	**1,244,072**
Riverside	2,318,089	5,537,827	(27,794)	(650,572)	415,848	**75,513,568**	1,545,392	(25,001)	3,056,196	**80,090,155**	1,545,392	(16,281)	3,056,196	**84,675,462**
Sacramento	(258,869)	3,655,251	(25,769)	332,406	581,416	**71,098,809**	(172,579)	(22,435)	2,017,247	**72,921,042**	(172,579)	(14,304)	2,017,247	**74,751,405**
San Benito	(103,256)	70,397	(898)	21,556	4,263	**2,470,021**	(68,837)	(753)	38,851	**2,439,282**	(68,837)	(468)	38,851	**2,408,828**
San Bernardino	3,086,707	6,446,222	(30,639)	1,521,168	337,491	**85,374,607**	2,057,804	(27,727)	3,557,518	**90,962,202**	2,057,804	(18,124)	3,557,518	**96,559,400**
San Diego	(3,338,346)	4,920,012	(46,791)	2,061,274	1,043,024	**130,364,395**	(2,225,564)	(39,858)	2,715,238	**130,814,211**	(2,225,564)	(25,035)	2,715,238	**131,278,849**
San Francisco	(2,230,867)	1,461,893	(19,479)	631,291	378,584	**53,999,890**	(1,487,245)	(16,321)	806,784	**53,303,109**	(1,487,245)	(10,138)	806,784	**52,612,510**
San Joaquin	399,572	1,821,886	(10,485)	818,234	135,610	**29,522,887**	266,381	(9,289)	1,005,456	**30,785,436**	266,381	(5,989)	1,005,456	**32,051,284**
San Luis Obispo	58,129	715,748	(4,587)	972	30,937	**12,523,000**	38,752	(4,026)	395,005	**12,952,731**	38,752	(2,580)	395,005	**13,383,908**
San Mateo	(562,349)	1,400,810	(11,831)	363,484	152,646	**32,721,433**	(374,899)	(10,162)	773,074	**33,109,446**	(374,899)	(6,421)	773,074	**33,501,200**
Santa Barbara	(463,424)	766,464	(7,086)	227,423	30,871	**19,549,928**	(308,949)	(6,048)	422,994	**19,657,924**	(308,949)	(3,805)	422,994	**19,768,164**
Santa Clara	(2,830,533)	2,297,379	(26,884)	1,851,301	208,898	**75,228,563**	(1,887,022)	(22,624)	1,267,869	**74,586,786**	(1,887,022)	(14,088)	1,267,869	**73,953,545**

	Estimated 2015-2016						Estimated 2016-2017				Estimated 2017-2018			
	WAFM (@30%) Adjustment	Allocation and Reallocation of $90.6M	2015-16 Funding Floor Adjustment	2014-15 Benefits Funding (Full-Year)	Restoration of 2013-14 Retirement Benefits Subsidy Reduction	Total	WAFM (@40%) Adjustment	Funding Floor	Allocation and Reallocation of $50M	Total	WAFM (@50%) Adjustment	Funding Floor	Allocation and Reallocation of $50M	Total
Court	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**	**M**	**N**
Santa Cruz	(106,452)	534,046	(3,936)	86,623	39,053	**10,843,777**	(70,968)	(3,409)	294,727	**11,064,127**	(70,968)	(2,165)	294,727	**11,285,722**
Shasta	31,203	492,165	(3,250)	135,012	46,566	**9,031,967**	20,802	(2,847)	271,614	**9,321,535**	20,802	(1,824)	271,614	**9,612,128**
Sierra	(51,110)	(8,758)	59,868	3,781	2,263	**756,044**	(34,073)	38,907	(4,833)	**756,044**	(34,073)	38,907	(4,833)	**756,044**
Siskiyou	(218,492)	21,473	(1,039)	40,262	15,039	**2,881,540**	(145,661)	(841)	11,850	**2,746,888**	(145,661)	(509)	11,850	**2,612,568**
Solano	181,524	1,139,947	(6,920)	95,975	125,821	**19,074,165**	121,016	(6,103)	629,110	**19,818,188**	121,016	(3,924)	629,110	**20,564,389**
Sonoma	77,454	1,250,272	(8,069)	825,673	156,122	**22,965,120**	51,636	(7,076)	689,996	**23,699,676**	51,636	(4,532)	689,996	**24,436,776**
Stanislaus	598,507	1,476,651	(7,370)	(289,912)	207,250	**20,006,988**	399,005	(6,627)	814,929	**21,214,294**	399,005	(4,314)	814,929	**22,423,913**
Sutter	75,589	277,425	(1,566)	28,465	18,275	**4,314,434**	50,392	(1,391)	153,104	**4,516,539**	50,392	(899)	153,104	**4,719,137**
Tehama	2,884	185,274	(1,232)	72,996	6,293	**3,436,395**	1,923	(1,078)	102,248	**3,539,488**	1,923	(689)	102,248	**3,642,970**
Trinity	(18,348)	46,902	84,358	22,482	5,056	**1,277,537**	(12,232)	(388)	25,884	**1,290,801**	(12,232)	(248)	25,884	**1,304,205**
Tulare	180,077	924,187	(5,444)	353,922	26,152	**15,209,607**	120,051	(4,813)	510,037	**15,834,881**	120,051	(3,100)	510,037	**16,461,870**
Tuolumne	(71,034)	103,317	(989)	65,010	4,871	**2,763,593**	(47,356)	(843)	57,018	**2,772,413**	(47,356)	(529)	57,018	**2,781,546**
Ventura	526,080	1,973,734	(11,108)	288,505	137,196	**30,696,387**	350,720	(9,869)	1,089,257	**32,126,495**	350,720	(6,376)	1,089,257	**33,560,096**
Yolo	43,119	445,241	(2,791)	147,776	42,639	**7,791,476**	28,746	(2,453)	245,718	**8,063,487**	28,746	(1,573)	245,718	**8,336,377**
Yuba	(48,147)	162,466	(1,286)	9,769	16,758	**3,528,706**	(32,098)	(1,109)	89,661	**3,585,161**	(32,098)	(702)	89,661	**3,642,022**
Total	**0**	**90,600,000**	**(0)**	**24,251,701**	**10,384,524**	**1,696,610,123**	**0**	**0**	**50,000,000**	**1,746,610,123**	**0**	**0**	**50,000,000**	**1,796,610,123**

1. Does not include compensation for AB 1058 commissioners.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Trial Courts: 2015–2016 Allocation Using the Workload-Based Allocation and Funding Methodology

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
May 20, 2015

Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that any new funding for general court operations provided by the Budget Act of 2015 for 2015–2016 that will be allocated in accordance with the Workload-Based Allocation and Funding Methodology be reduced by the $22.7 million shortfall in Trial Court Trust Fund fine and fee revenue that has not been backfilled from the state General Fund.

Recommendation

On May 18, 2015, the Trial Court Budget Advisory Committee (TCBAC) unanimously adopted the following recommendation:

1. The amount of any new funding for general court operations provided in the Budget Act of 2015 that will be allocated in 2015–2016 using the Workload-Based Allocation and Funding Methodology should be reduced by the $22.7 million shortfall in Trial Court Trust Fund fine

and fee revenue that supports trial courts' base allocation and that has not been backfilled from the state General Fund.

Previous Council Action

On July 29, 2014, due to a projected shortfall of $22.7 million in revenue fine and fee revenue that supports trial courts' base allocation the council allocated a $22.7 million reduction on an one-time basis and directed Judicial Council staff to submit a deficiency request to backfill the shortfall with an augmentation of General Fund monies to the Trial Court Trust Fund (TCTF). The deficiency request was not approved by the Department of Finance. The council allocated the $22.7 million reduction using the same method for computing courts' contribution towards the statutorily required 2-percent reserve that is held in the TCTF.

Rationale for Recommendation

Of the projected $88.9 million shortfall in revenue of fine and fee revenue that supports trial courts' base allocations from 2012–2013 to the end of 2015–2016, the Governor's May Revise budget proposal includes a General Fund backfill of only $66.2 million or $22.7 million less than the total shortfall. To bring into balance the projected revenues that support courts' base allocations and courts' base allocations, the council will need to allocate a $22.7 million reduction in 2015–2016. The council's policy is to use the Workload-Based Allocation and Funding Methodology (WAFM) to allocate any new funding for general court operations. The TCBAC's recommendation to allocate the net of any new funding and a $22.7 million reduction using WAFM recognizes that in reality the real amount of new funding in 2015–2016 is reduced by $22.7 million. The Governor's May Revise budget proposal is to provide $90.6 million in new funding for general court operations. If the Budget Act of 2015 provides $90.6 million in new funding, under this proposal $67.9 million ($90.6 million less $22.7 million) would be allocated using the WAFM on an ongoing basis (see Attachment 1, scenario A).

Comments, Alternatives Considered, and Policy Implications

No public comments for this issue were received when considered by the TCBAC at its May 18, 2015 public meeting.

As displayed in scenario B of Attachment 1, the TCBAC considered a scenario whereby each court's 2014–2015 share of the $22.7 million reduction would be made permanent and the WAFM would be used to allocate the entire amount of any new funding (e.g. $90.6 million).

Attachments

1. Attachment 1: Preliminary 2015–16 WAFM at $67.9M vs. Preliminary 2015–16 WAFM at $90.6M with $22.7M Reduction

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Attachment 1 -- Preliminary 2015-16 WAFM at $67.9M vs. Preliminary 2015-16 WAFM at $90.6M with $22.7M Reduction

	Scenario A -- Preliminary 2015-16 WAFM at $67.9M					Scenario B -- Preliminary 2015-16 WAFM at $90.6M and $22.7M Reduction						Total A Minus Total B
	WAFM (@30%) Adjustment in 2015-16	Allocation and Reallocation of $143.6M	Allocation and Reallocation of $67.9M	Funding Floor Adjustment	Total	WAFM (@30%) Adjustment in 2015-16	Allocation and Reallocation of $143.6M	Allocation and Reallocation of $90.6M	Funding Floor Adjustment	$22.7 Million Reduction	Total	
Court	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**F**
Alameda	(2,788,945)	(152,715)	1,598,154	(28,714)	**(1,372,221)**	(2,788,945)	(152,715)	2,132,441	(25,956)	(1,006,310)	**(1,841,485)**	469,264
Alpine	(51,447)	490	(6,535)	52,233	**(5,260)**	(51,447)	490	(8,720)	54,417	-	**(5,260)**	(0)
Amador	(52,617)	10,421	60,162	(893)	**17,073**	(52,617)	10,421	80,275	(809)	(29,737)	**7,533**	9,539
Butte	66,174	(15,239)	392,186	(3,590)	**439,532**	66,174	(15,239)	523,300	(3,269)	(118,127)	**452,839**	(13,308)
Calaveras	(32,628)	11,531	66,101	(855)	**44,149**	(32,628)	11,531	88,199	(775)	(27,738)	**38,589**	5,560
Colusa	(33,006)	1,943	42,852	132,705	**144,494**	(33,006)	1,943	57,178	118,379	-	**144,494**	-
Contra Costa	44,376	12,224	1,573,322	(15,790)	**1,614,132**	44,376	12,224	2,099,308	(14,359)	(524,858)	**1,616,691**	(2,558)
Del Norte	(97,817)	(57,520)	69,029	(973)	**(87,281)**	(97,817)	(57,520)	92,106	(881)	(34,619)	**(98,731)**	11,450
El Dorado	(46,156)	1,876	247,328	(2,678)	**200,370**	(46,156)	1,876	330,013	(2,433)	(88,211)	**195,089**	5,280
Fresno	976,401	327,567	2,085,787	(17,982)	**3,371,773**	976,401	327,567	2,783,097	(16,389)	(554,229)	**3,516,446**	(144,674)
Glenn	(117,928)	(37,680)	28,769	95,517	**(31,322)**	(117,928)	(37,680)	38,387	85,899	-	**(31,322)**	0
Humboldt	(7,367)	45,598	210,171	(2,322)	**246,080**	(7,367)	45,598	280,435	(2,109)	(76,110)	**240,447**	5,633
Imperial	113,810	11,445	362,909	(3,169)	**484,995**	113,810	11,445	484,235	(2,887)	(100,431)	**506,172**	(21,177)
Inyo	(80,967)	(914)	30,729	15,960	**(35,192)**	(80,967)	(914)	41,002	5,686	-	**(35,192)**	-
Kern	2,073,306	177,084	2,577,548	(16,685)	**4,811,252**	2,073,306	177,084	3,439,261	(15,287)	(517,548)	**5,156,816**	(345,564)
Kings	56,356	(23,429)	270,924	(2,345)	**301,505**	56,356	(23,429)	361,497	(2,137)	(77,594)	**314,693**	(13,188)
Lake	(105,034)	(8,408)	74,761	(1,223)	**(39,904)**	(105,034)	(8,408)	99,755	(1,106)	(41,896)	**(56,690)**	16,786
Lassen	(79,561)	(29,946)	53,015	(795)	**(57,288)**	(79,561)	(29,946)	70,739	(720)	(27,456)	**(66,945)**	9,657
Los Angeles	5,519,399	(1,105,338)	22,482,250	(199,830)	**26,696,480**	5,519,399	(1,105,338)	29,998,407	(182,043)	(6,588,036)	**27,642,388**	(945,908)
Madera	1,501	13,592	275,252	(2,834)	**287,511**	1,501	13,592	367,273	(2,576)	(88,349)	**291,441**	(3,930)
Marin	(848,279)	(52,594)	120,022	(4,969)	**(785,819)**	(848,279)	(52,594)	160,148	(4,472)	(180,059)	**(925,256)**	139,437
Mariposa	(17,954)	4,776	29,893	55,041	**71,757**	(17,954)	4,776	39,887	45,048	-	**71,757**	-
Mendocino	(57,934)	19,556	160,929	(1,951)	**120,600**	(57,934)	19,556	214,729	(1,770)	(63,560)	**111,022**	9,578
Merced	148,395	(55,724)	544,931	(4,570)	**633,032**	148,395	(55,724)	727,110	(4,167)	(148,653)	**666,960**	(33,928)
Modoc	(39,151)	14,575	10,613	(387)	**(14,350)**	(39,151)	14,575	14,161	(348)	-	**(10,764)**	(3,587)
Mono	(31,408)	(15,404)	45,498	123,196	**121,882**	(31,408)	(15,404)	60,709	107,985	-	**121,882**	-
Monterey	44,083	(35,928)	657,589	(6,310)	**659,434**	44,083	(35,928)	877,431	(5,742)	(204,155)	**675,689**	(16,256)
Napa	(139,576)	27,314	186,616	(2,595)	**71,758**	(139,576)	27,314	249,004	(2,351)	(91,731)	**42,660**	29,098
Nevada	(9,385)	22,380	163,647	(1,780)	**174,863**	(9,385)	22,380	218,356	(1,617)	(60,469)	**169,266**	5,597
Orange	(2,482,537)	424,525	4,039,769	(54,659)	**1,927,099**	(2,482,537)	424,525	5,390,325	(49,531)	(1,828,581)	**1,454,201**	472,897
Placer	483,678	191,047	739,204	(5,830)	**1,408,099**	483,678	191,047	986,331	(5,321)	(188,509)	**1,467,226**	(59,127)
Plumas	(100,599)	(8,170)	8,492	(525)	**(100,802)**	(100,599)	(8,170)	11,331	(472)	(19,092)	**(117,002)**	16,200
Riverside	2,587,136	182,168	4,234,861	(30,988)	**6,973,178**	2,587,136	182,168	5,650,639	(28,323)	(988,161)	**7,403,460**	(430,282)
Sacramento	344,983	408,860	2,929,179	(29,279)	**3,653,742**	344,983	408,860	3,908,448	(26,628)	(959,404)	**3,676,258**	(22,516)
San Benito	(130,480)	(18,433)	44,204	(992)	**(105,701)**	(130,480)	(18,433)	58,982	(895)	(34,673)	**(125,500)**	19,799
San Bernardino	2,665,195	(285,400)	4,698,651	(34,206)	**7,044,240**	2,665,195	(285,400)	6,269,481	(31,267)	(1,075,223)	**7,542,787**	(498,547)

	Scenario A -- Preliminary 2015-16 WAFM at $67.9M					Scenario B -- Preliminary 2015-16 WAFM at $90.6M and $22.7M Reduction						Total A Minus Total B
	WAFM (@30%) Adjustment in 2015-16	Allocation and Reallocation of $143.6M	Allocation and Reallocation of $67.9M	Funding Floor Adjustment	Total	WAFM (@30%) Adjustment in 2015-16	Allocation and Reallocation of $143.6M	Allocation and Reallocation of $90.6M	Funding Floor Adjustment	$22.7 Million Reduction	Total	
Court	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**F**
San Diego	(2,795,695)	367,422	3,857,819	(53,435)	**1,376,111**	(2,795,695)	367,422	5,147,547	(48,411)	(1,824,897)	**845,966**	530,146
San Francisco	(2,028,681)	136,897	1,159,149	(23,096)	**(755,730)**	(2,028,681)	136,897	1,546,670	(20,861)	(788,895)	**(1,154,869)**	399,139
San Joaquin	642,911	164,761	1,441,877	(12,177)	**2,237,373**	642,911	164,761	1,923,919	(11,102)	(378,529)	**2,341,960**	(104,587)
San Luis Obispo	19,760	(25,979)	524,359	(5,069)	**513,071**	19,760	(25,979)	699,660	(4,612)	(172,442)	**516,387**	(3,316)
San Mateo	(607,952)	(30,878)	1,035,504	(13,259)	**383,415**	(607,952)	(30,878)	1,381,688	(12,022)	(457,780)	**273,057**	110,358
Santa Barbara	(400,912)	42,326	594,069	(8,034)	**227,450**	(400,912)	42,326	792,676	(7,281)	(271,266)	**155,544**	71,906
Santa Clara	(3,782,591)	(644,624)	1,422,587	(30,024)	**(3,034,652)**	(3,782,591)	(644,624)	1,898,179	(27,108)	(1,056,021)	**(3,612,165)**	577,513
Santa Cruz	(54,567)	35,131	416,544	(4,439)	**392,670**	(54,567)	35,131	555,801	(4,033)	(149,105)	**383,227**	9,443
Shasta	166,967	91,924	411,515	(3,804)	**666,601**	166,967	91,924	549,091	(3,464)	(121,205)	**683,313**	(16,712)
Sierra	(66,562)	(10,463)	(11,420)	84,705	**(3,740)**	(66,562)	(10,463)	(15,237)	88,522	-	**(3,740)**	(0)
Siskiyou	(194,420)	16,299	23,657	(1,186)	**(155,650)**	(194,420)	16,299	31,566	(1,067)	(43,536)	**(191,158)**	35,508
Solano	52,138	(87,605)	813,672	(7,610)	**770,595**	52,138	(87,605)	1,085,695	(6,927)	(252,301)	**791,000**	(20,405)
Sonoma	(121,175)	(134,489)	874,596	(9,126)	**609,806**	(121,175)	(134,489)	1,166,986	(8,295)	(295,531)	**607,497**	2,309
Stanislaus	538,911	(40,351)	1,087,945	(7,994)	**1,578,511**	538,911	(40,351)	1,451,662	(7,306)	(257,942)	**1,684,974**	(106,463)
Sutter	86,279	7,238	211,275	(1,760)	**303,031**	86,279	7,238	281,907	(1,605)	(54,599)	**319,219**	(16,188)
Tehama	44,225	27,992	151,845	(1,436)	**222,625**	44,225	27,992	202,609	(1,307)	(44,321)	**229,198**	(6,572)
Trinity	(45,403)	(18,319)	26,649	127,524	**90,451**	(45,403)	(18,319)	35,558	118,615	-	**90,451**	(0)
Tulare	349,371	114,627	745,830	(6,339)	**1,203,488**	349,371	114,627	995,172	(5,779)	(199,524)	**1,253,867**	(50,378)
Tuolumne	(82,789)	(7,959)	73,737	(1,100)	**(18,111)**	(82,789)	(7,959)	98,388	(996)	(37,684)	**(31,039)**	12,928
Ventura	435,756	(61,157)	1,450,827	(12,429)	**1,812,997**	435,756	(61,157)	1,935,861	(11,329)	(397,607)	**1,901,523**	(88,526)
Yolo	85,529	28,715	347,012	(3,380)	**457,876**	85,529	28,715	463,023	(3,075)	(105,804)	**468,388**	(10,512)
Yuba	(15,117)	22,364	132,139	(1,466)	**137,921**	(15,117)	22,364	176,316	(1,331)	(47,493)	**134,739**	3,182
Total	**0**	**0**	**67,900,000**	**(0)**	**67,900,000**	**0**	**0**	**90,600,000**	**0**	**(22,700,000)**	**67,900,000**	-

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title
Trial Court Allocations: Restoration of Benefits Funding in 2015–2016

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Trial Court Budget Advisory Committee,
Hon. Laurie Earl, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 4, 2015

Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that the Judicial Council approve the allocation of $13.4 million included in the 2015 Governor's May Revise for trial courts that made progress towards meeting the Public Employees' Pension Reform Act of 2013 standard (PEPRA). The 2014 Budget Act included an augmentation of $42.8 million specifically for the benefit cost changes in 2012–2013 and 2013–2014, which took into account a reduction in the amount of $22 million, based on the Department of Finance estimate of what the trial courts were spending to cover the employee share of cost for retirement. The Governor's May Revise proposes restoring $13.4 million of this $22 million reduction in 2015-2016.

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Recommendation

Allocate the $13.3million[1] restoration of benefits funding to all the trial courts based on the following allocation methodology.

- Allocate by prorating 50 percent in restored benefits funding to all the trial courts ($6.637 million).
- The additional 50 percent of ($6.637 million) would be prorated (1) to courts that do not pay towards the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) to courts in which the employer paid portion of the employee share of costs for retirement has been reduced in FY 2014-2015, by at least 30 percent.
- Courts will be included in the–additional 50 percent proration–if they meet the defined criteria as of May 14, 2015.
- Courts that do not pay towards the employee share of costs for retirement or courts with employer paid share (EPS) amounts of 10 percent or less than cost increases, and courts that have reduced the employee share of costs for retirement by 30 percent would receive 90 percent of their 2012–2013 and 2013–2014 benefits cost increases. Courts that do pay towards the employee share of costs for retirement and do not fall into the other categories would receive 78 percent of their 2012–2013 and 2013–2014 benefits cost increases. (See Attachment A)
- This 50/50 allocation methodology would be done on a one-time basis for 2015–2016.
- Beginning in 2016–2017, courts that continue to provide EPS of the employee retirement contribution would be reduced by the actual outstanding funding not restored by the DOF that is attributed to their court. This funding will then be distributed to those courts that do not make EPS of employee retirement payments in order to make their benefit cost funding whole.

Previous Council Action

The Judicial Council, at its July 29, 2014, meeting, approved allocating the new benefits funding by prorating $41.0 million (non-interpreters) to the trial courts based on each court's percentage of the total 2012–2013 and 2013–2014 benefits cost change of $61.3 million (non-interpreters). Staff was directed to coordinate with the Department of Finance (DOF) to augment the TCTF Program 45.45 (Court Interpreters) appropriation with the remaining $1.8 million in new benefits funding for court interpreter benefits.

[1] The remaining $100,000 in restored benefits funding is for court interpreter benefits, and would be appropriated to Trial Court Trust Fund (TCTF) (Court Interpreter) Program 45.45.

Rationale for Recommendation

Background. In the fall of 2013, a budget change proposal (BCP) in the amount of $64.8 million was submitted to the DOF to address the ongoing cost to the trial courts in 2014–2015 of the retirement, employee health, and retiree health cost changes that occurred in 2012–2013 and were anticipated to occur in 2013–2014. After the release of the 2014 Governor's January budget proposal, the DOF performed an analysis of court retirement costs and determined that $22 million was the amount trial courts could save by not covering the current employee share of costs for retirement. The 2014 Budget Act included an augmentation of $42.8 million specifically for the benefit cost changes in 2012–2013 and 2013–2014, which took into account a reduction in the amount of $22 million, based on the DOF estimate of what the trial courts were currently spending to cover the employee share of costs for retirement.

The Trial Court Budget Advisory Committee (TCBAC) recommended prorating the $42.8 million in new funding to the courts based on each court's percentage of the total funding need of $63.9 million. At its July 29, 2014, meeting, the council approved allocating the new benefits funding by prorating $41.0 million (non-interpreters) to the trial courts based on each court's percentage of the total 2012–2013 and 2013–2014 benefits cost change of $61.3 million (non-interpreters).

At the September 9, 2014, TCBAC meeting, Judge Earl, chair of TCBAC, announced that she had appointed a working group to look at addressing retirement cost issues and whether the employer-paid portion of employee retirement costs should be addressed in the Workload Allocation Funding Model (WAFM). The Benefits Working Group met twice to consider options to address whether the employer-paid portion of employee retirement costs should be addressed in WAFM. At the working group's first meeting, it was decided that no options would be considered until the 2015 Governor's Budget was released in January 2015 to see if there was to be any return of the $22 million for courts that had negotiated a change in the portion paid of the employee retirement share.

At the group's January meeting, the members considered options for the allocation of the $10.4 million for non-interpreters augmentation to the TCTF Program 45.10 Court Operations appropriation included in the 2015 Governor's Budget. The remaining $400,000 would augment the TCTF Court Interpreter Program 45.45 appropriation, which is allocated by region and not by individual trial court. The working group decided that since there appeared to be a significant number of courts negotiating reductions to the employer-paid retirement subsidy, there was no reason at this time for employee retirement cost issues to be addressed in WAFM. In addition, since an updated benefits request was to be submitted in mid-February 2015 that would reflect final confirmed benefits costs, it was decided by the working group that if there were changes to the subsidy amounts the approved option could be updated after the release of the May Revise.

Allocation options considered at the March 23, 2015, TCBAC meeting.
At the March 23, 2015, TCBAC meeting the Benefits Working Group members presented six options for allocating the restored benefits augmentation among the courts for consideration by

the TCBAC. Two options –3a and 4a– were added during the meeting to address concerns expressed by some members that their original recommended option 3 would unfairly penalize courts that had only a minute portion of the employee share of costs for retirement remaining and leave out courts that had made progress on reducing the EPS. The TCBAC reviewed the options presented by the benefits working group and voted unanimously to recommend the approval of Option 3a to the Judicial Council at their next business meeting on April 17, 2015. The following six options for allocating the restored benefits augmentation among the courts were considered by the TCBAC. The total amount to be allocated for non-interpreters at the time was $10.4 million which reflected the 2015 Governor's Budget.

1. Allocate 100 percent pro rata to all courts.

2. Allocate 100 percent pro rata to courts that provide no employee retirement EPS.

3. Allocate 50 percent to all courts and an additional 50 percent to courts that provide no EPS of the employee retirement contribution in 2015–2016. This 50/50 methodology would be done on a one-time basis for 2015–2016. Beginning in 2016–2017, courts that continue to provide EPS of the employee retirement contribution would not share in an allocation for any funding provided from trial courts that made progress towards meeting the PEPRA standard.

3a. Allocate by prorating 50 percent of the $10.4 million in restored benefits funding to all the trial courts. The additional 50 percent would be prorated (1) to courts that do not pay toward the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) for courts in which the EPS portion of the employee share of costs for retirement has been reduced in FY 2014–2015 by at least 30 percent, they would receive half of the additional 50 percent allocation. Any court that does not fall into one of the above categories would not share in the additional 50 percent allocation. This 50/50 methodology would be done on a one-time basis for 2015–2016. Beginning in 2016–2017, courts that continue to provide employee retirement EPS would not share in an allocation for any funding provided from trial courts that made progress towards meeting the PEPRA standard.

4. In 2015–2016, allocate 75 percent to all courts and an additional 25 percent to courts that provide no employee retirement EPS. In 2016–2017, any funding for trial courts that made progress toward meeting the PEPRA standard would be allocated 50 percent to all courts and 50 percent to those courts that do not provide an EPS. Beginning in 2017–2018, courts that continue to provide employee retirement EPS would not share in an allocation for any funding for trial courts that made progress toward meeting the PEPRA standard.

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4a. Allocate by prorating 75 percent of the $10.4 million in restored benefits funding to all the trial courts. The additional 25 percent would be prorated (1) to courts that do not pay toward the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) for courts in which the EPS portion of the employee share of costs for retirement has been reduced in FY 2014–2015 by at least 30 percent, they would receive half of the additional 50 percent allocation. Any court that does not fall into one of the above categories would not share in the additional 25 percent allocation. In 2016–2017, any funding for trial courts that made progress towards meeting the PEPRA standard would be allocated 50 percent to all courts and 50 percent—using the same methodology as in prior years—to those courts that do not provide an EPS; or to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases; or to courts in which the EPS portion of the employee share of costs for retirement has been reduced by at least 30 percent.

Prior to the April 17, 2015 Judicial Council meeting. The co-chairs of the Benefits Working Group did not believe that the presentation made on Option 3a at the March 23 TCBAC meeting accurately described the allocation methodology and more clarification would be needed from the members to confirm if they had voted for Option 3a based on the discussion or on the materials passed out during the meeting. Judge Earl sent out an email on April 10, 2015 to confirm all members vote. There were 14 responses received and the results were split on what members believed they had voted for. Judge Earl decided that it was best to pull the item off the Judicial Council's April 17 meeting agenda based on the responses and have this go back to the TCBAC for reconsideration.

Reconsideration of allocation options at the May 18, 2015, TCBAC meeting.
At the May 18, 2015, TCBAC meeting the Benefits Working Group members presented three options for allocating the restored benefits augmentation among the courts for consideration by the TCBAC. The TCBAC reviewed the options presented by the benefits working group and voted to recommend the approval of Option 3c to the Judicial Council at their next business meeting on June 26, 2015. This methodology would be applied to the restored funding provided in the final 2015 Budget Act. The members reviewed Option 3a below which was based on the materials passed out during the March 23, 2015, TCBAC meeting and Option 3b which was based on the discussion at that meeting. Option 3c was added by the Benefits Working Group, (1) to clarify language regarding 2016–2017 to ensure courts are fully aware of out-year funding considerations, and (2) to include courts that negotiated a 30 percent or more employee retirement EPS reduction in the months after the DOF cutoff date (February 18, 2015) that were not included in the $13.3 million funding restoration. Option–3c–was added to reflect these nuanced differences with Option 3b.

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The following options for allocating the restored benefits augmentation among the courts were considered by the TCBAC.

3a. Allocate 50 percent to all courts; allocate an additional 50 percent to courts with no retirement EPS and courts with 10 percent EPS of cost increases; and half of the additional 50 percent for courts with EPS reduction of 30 percent or more.

- Allocate by prorating 50 percent in restored benefits funding to all the trial courts ($6.637 million).
- The additional 50 percent ($6.637 million) would be prorated (1) to courts that do not pay towards the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) for courts in which the EPS portion of the employee share of costs for retirement has been reduced in FY 2014–2015 by at least 30 percent, they would *receive half* of the additional 50 percent allocation. (See Attachment 1)
- Any court that does not fall into one of the above categories would not share in the additional 50 percent allocation.
- This 50/50 methodology would be done on a one-time basis for 2015–2016.
- Beginning in 2016–2017, courts that continue to provide employee retirement EPS would not share in an allocation for any funding provided from trial courts that made progress towards meeting the PEPRA standard.
- Courts that do not pay towards the employee share of costs for retirement or courts with EPS amounts of 10 percent or less than cost increases would receive 91 percent of their 2012–2013 and 2013–2014 benefits cost increases. Courts that have reduced the employee share of costs for retirement by 30 percent would receive 84 percent of their 2012–2013 and 2013–2014 benefits cost increases. Courts that do pay towards the employee share of costs for retirement and do not fall into the other categories would receive 78 percent of their 2012–2013 and 2013–2014 benefits cost increases.

3b. Allocate 50 percent to all courts; allocate an additional 50 percent to courts with no retirement EPS and courts with 10 percent EPS of cost increases; and to courts with EPS reduction of 30 percent or more.

- Allocate by prorating 50 percent in restored benefits funding to all the trial courts ($6.637 million).
- The additional 50 percent ($6.637 million) would be prorated (1) to courts that do not subsidize the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) to courts in which the EPS portion of the employee share of costs for retirement has been reduced in FY 2014–2015, by at least 30 percent. (See Attachment 2)
- Courts that do not subsidize the employee share of costs for retirement or courts with EPS amounts of 10 percent or less than cost increases and courts that have reduced the employee share of costs for retirement by 30 percent would receive 90 percent of their 2012–2013 and 2013–2014 benefits cost increases. Courts that do pay towards the

employee share of costs for retirement and do not fall into the other categories would receive 78 percent of their 2012–2013 and 2013–2014 benefits cost increases.
- This 50/50 methodology would be done on a one-time basis for 2015–2016.
- Beginning in 2016–2017, courts that continue to provide EPS of the employee retirement contribution would not share in an allocation for any funding provided from trial courts that made progress towards meeting the PEPRA standard.

3c. Allocate 50 percent to all courts, allocate an additional 50 percent to courts with no retirement EPS and courts with 10 percent EPS of cost increases and to courts with EPS reduction of 30 percent or more.

- Allocate by prorating 50 percent in restored benefits funding to all the trial courts ($6.637 million).
- The additional 50 percent of ($6.637 million) would be prorated (1) to courts that do not pay towards the employee share of costs for retirement in 2015–2016, (2) to courts where only 10 percent or less is paid towards the employee share of retirement of total costs increases, and (3) to courts in which the employer paid portion of the employee share of costs for retirement has been reduced in FY 2014-2015, by at least 30 percent.
- Courts will be included in the–additional 50 percent proration–if they meet the defined criteria as of May 14, 2015.
- Courts that do not pay towards the employee share of costs for retirement or courts with employer paid share (EPS) amounts of 10 percent or less than cost increases, and courts that have reduced the employee share of costs for retirement by 30 percent would receive 90 percent of their 2012–2013 and 2013–2014 benefits cost increases. Courts that do pay towards the employee share of costs for retirement and do not fall into the other categories would receive 78 percent of their 2012–2013 and 2013–2014 benefits cost increases.
- This 50/50 allocation methodology would be done on a one-time basis for 2015–2016.
- Beginning in 2016–2017, courts that continue to provide EPS of the employee retirement contribution would be reduced by the actual outstanding funding not restored by the DOF that is attributed to their court. This funding will then be distributed to those courts that do not make EPS of employee retirement payments in order to make their benefit cost funding whole.

Discussion. There was a brief discussion by the benefits working group members to make sure that committee members understood the 2016-2017 implications in Option 3c for court's still contributing towards the employee contribution. Additionally, working group members indicated that only one court met the option 3 criteria by having negotiated a 30 percent reduction by May 14. Therefore, the change to allocations for the courts receiving the additional 50 percent impact would be minute and not change the percentage funded of their 2012–2013 and 2013–2014 benefits cost increases.

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Court Interpreter Funding. The allocation of the $100,000 in restored benefits augmentation for 2012–2013 and 2013–2014 benefits cost increases would be appropriated to TCTF (Court Interpreter) Program 45.45 in the 2015 Budget Act. The interpreter benefits funding will augment the $94.5 million Program 45.45 appropriation, which will increase to $94.9 million. However, per Judicial Council policy as approved at the council's February 26, 2013, meeting, this additional benefits funding would be allocated to courts only if the $94.5 million annual appropriation, which reimburses courts for eligible interpreter costs including staff interpreter retirement and health costs, is insufficient to reimburse courts for all their eligible court interpreter costs. For the past six years (from 2009–2010 to 2013–2014), after all eligible court interpreter costs were reimbursed, there have been savings from the Program 45.45 appropriation. However, with the passage of Assembly Bill 1657 in 2014–2015 that expanded the case types for which interpretive services can now be reimbursed, savings from the Program 45.45 appropriation may no longer occur. As of the date of this council report, the final, eligible reimbursable costs for 2014–2015 are not known.

Implementation Requirements, Costs, and Operational Impacts

The restored benefits funding provided in the final 2015 Budget Act will be included in the 2015-2016 allocations to trial courts.

Attachments

1. Attachment A: Option 3c–50/50 Allocation of $13.3 Million in Restored Benefits Funding in 2015 May Revise

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Option 3c–50/50 Allocation of $13.3 Million in Restored Benefits Funding Included in 2015 May Revise

Court	2012-2013 and 2013-2014 Benefit Cost Increases A	DOF 2013-2014 Estimate of EPS of Employee Retirement Contribution C	May Revise Request Million - Return Employee EPS D	$8.15 DOF Remaining Estimate of EPS of Employee Retirement Contribution E	Allocate 50% All Courts Pro-Rata F	Allocate Additional 50% Pro-Rata to Courts (10% EPS of Increases or 30% EPS Reduction or No EPS) G	Allocation Approved by Judicial Council July 29, 2014 H	Total Allocation with $13.3 Million I	Percentage Funded of 2012-13 and 2013-14 Benefit Cost Increases J
Alameda	2,404,882			-	260,283	297,886	**1,609,137**	**2,167,305**	90%
Alpine	9,334			-	1,010	1,156	**6,245**	**8,412**	90%
Amador	35,611	112,195	112,195	-	3,854	4,411	**23,828**	**32,093**	90%
Butte	236,868	159,578	708	158,870	25,636	-	**158,491**	**184,128**	78%
Calaveras	68,405	115,529	61,698	53,831	7,404	8,473	**45,771**	**61,647**	90%
Colusa	23,919	51,247	46,009	5,238	2,589	2,963	**16,004**	**21,556**	90%
Contra Costa	1,524,425	605,358	415,479	189,880	164,990	188,826	**1,020,012**	**1,373,828**	90%
Del Norte	68,299	114,094	114,094	-	7,392	8,460	**45,700**	**61,552**	90%
El Dorado	28,321			-	3,065	3,508	**18,950**	**25,523**	90%
Fresno	1,379,806			-	149,338	170,913	**923,246**	**1,243,496**	90%
Glenn	35,960	74,491	43,198	31,293	3,892	4,454	**24,061**	**32,408**	90%
Humboldt	205,112			-	22,199	25,407	**137,243**	**184,849**	90%
Imperial	305,765			-	33,093	37,874	**204,591**	**275,559**	90%
Inyo	48,932	69,346	29,720	39,626	5,296	6,061	**32,741**	**44,098**	90%
Kern	824,430	579,495	463,449	116,046	89,229	102,120	**551,636**	**742,985**	90%
Kings	33,089	-	-	-	3,581	4,099	**22,140**	**29,820**	90%
Lake	4,780	102,976	102,976	-	517	592	**3,199**	**4,308**	90%
Lassen	8,339	51,826	51,826	-	903	1,033	**5,580**	**7,515**	90%
Los Angeles	18,086,349			-	1,957,503	2,240,305	**12,101,803**	**16,299,610**	90%
Madera	67,969			-	7,356	8,419	**45,479**	**61,254**	90%
Marin	535,883	314,528	113,299	201,229	57,999	66,378	**358,566**	**482,944**	90%
Mariposa[1]	5,321	39,738	(398)	40,136	576	659	**3,560**	**4,795**	90%
Mendocino	351,518	-	-	-	38,045	43,542	**235,205**	**316,792**	90%
Merced	463,597			-	50,176	57,424	**310,199**	**417,799**	90%
Modoc	5,296	38,111	38,111	-	573	656	**3,544**	**4,773**	90%
Mono	16,922			-	1,831	2,096	**11,323**	**15,250**	90%
Monterey	395,286	-	-	-	42,782	48,963	**264,491**	**356,236**	90%
Napa	271,633	8,425	-	8,425	29,399	33,646	**181,753**	**244,798**	90%
Nevada	179,790	210,404	194,617	15,787	19,459	22,270	**120,300**	**162,029**	90%
Orange	8,646,423	-	(37,077)	37,077	935,811	1,071,008	**5,785,430**	**7,792,248**	90%
Placer	425,144			-	46,014	52,661	**284,469**	**383,144**	90%
Plumas	8,989	-	(8,664)	8,664	973	-	**6,015**	**6,988**	78%
Riverside	2,455,806	3,598,767	3,431,222	167,545	265,794	304,194	**1,643,210**	**2,213,198**	90%
Sacramento	3,433,576			-	371,619	425,307	**2,297,449**	**3,094,376**	90%
San Benito	25,173	44,351	44,351	-	2,725	3,118	**16,844**	**22,687**	90%
San Bernardino	1,993,070	3,412,861	3,243,661	169,200	215,712	246,876	**1,333,588**	**1,796,176**	90%
San Diego [2]	6,159,623	6,898,465	2,317,736	4,580,729	666,662	-	**4,121,481**	**4,788,143**	78%
San Francisco	2,235,743			-	241,977	276,935	**1,495,964**	**2,014,875**	90%
San Joaquin	800,849			-	86,677	99,199	**535,858**	**721,734**	90%
San Luis Obispo	182,698	776,915	(93,422)	870,337	19,774	-	**122,246**	**142,019**	78%
San Mateo	901,455	409,182	-	409,182	97,565	-	**603,175**	**700,740**	78%
Santa Barbara	182,310			-	19,732	22,582	**121,986**	**164,300**	90%
Santa Clara	1,233,654	2,746,214	1,962,799	783,415	133,520	152,809	**825,453**	**1,111,782**	90%
Santa Cruz	230,629	10,638	-	10,638	24,961	28,567	**154,317**	**207,845**	90%
Shasta	274,996	32,504	6,174	26,330	29,763	34,063	**184,003**	**247,829**	90%
Sierra	13,363	17,744	8,872	8,872	1,446	1,655	**8,941**	**12,043**	90%
Siskiyou	88,816	2,660	2,660	-	9,613	11,001	**59,428**	**80,042**	90%
Solano	743,044	508,096	508,096	-	80,420	92,039	**497,180**	**669,639**	90%
Sonoma	921,983			-	99,787	114,203	**616,911**	**830,901**	90%
Stanislaus	1,223,925			-	132,467	151,604	**818,944**	**1,103,015**	90%
Sutter	107,922	135,520	80,739	54,781	11,681	13,368	**72,212**	**97,261**	90%
Tehama	37,162			-	4,022	4,603	**24,866**	**33,491**	90%
Trinity	29,858			-	3,232	3,698	**19,978**	**26,908**	90%
Tulare	154,445			-	16,716	19,131	**103,341**	**139,187**	90%
Tuolumne	28,768			-	3,114	3,563	**19,249**	**25,926**	90%
Ventura	810,216			-	87,690	100,359	**542,126**	**730,175**	90%
Yolo	251,806	184,712	20,671	164,041	27,253	-	**168,486**	**195,739**	78%
Yuba	98,968				10,711	12,259	**66,221**	**89,191**	90%
Total	**61,326,254**	**21,425,970**	**13,274,798**	**8,151,173**	**6,637,399**	**6,637,399**	**41,034,166**	**54,308,964**	**89%**

1) Superior Court of Mariposa County completed negotiations on May 14, 2015.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title
Budget: Fiscal Year 2016–2017 Budget Requests for Trial Courts

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Trial Court Budget Advisory Committee,
Hon. Laurie Earl, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
June 4, 2015

Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that the Judicial Council approve the proposed fiscal year 2016–2017 budget requests for the trial courts. Submittal of budget change proposals (BCPs) is the standard process for proposing funding adjustments in the state budget. This year, the BCPs are to be submitted to the state Department of Finance by September 2, 2015.

Recommendation

The Trial Court Budget Advisory Committee recommends that the Judicial Council, effective June 26, 2015, approve the preparation and submission of fiscal year (FY) 2016–2017 budget change proposals to the state Department of Finance for the trial courts for the following programs and needs, which appear in no particular priority. The order of priority will be presented to the council at its August 21, 2015 meeting:

- Funding that funds trial courts at 80 percent of their Workload-Based Allocation and Methodology Funding need;

- Cost-of-living adjustment for trial court employees consistent with increases to be provided to Executive Branch employees;
- Technology (the individual items to be included in the request will be determined by the Court Technology Advisory Committee and the Judicial Council Technology Committee;
- Court-appointed dependency counsel;
- New judgeships (AB 159);
- Increased costs for new facilities; and
- Implementation of Language Access Plan.

Previous Council Action

The Judicial Council has the statutory authority to approve budget requests on behalf of the trial courts. The recommendation in this report is consistent with the council's past practice under this authority.

Rationale for Recommendation

From FY 2005–2006 through FY 2007–2008, the trial courts received new funding from the state General Fund based on the percentage change in the state appropriations limit (SAL). As a result, few trial court BCPs were submitted to the state Department of Finance (DOF) during that time. With the worsening of the fiscal situation in FY 2008–2009, the SAL was suspended for the trial courts and, instead, new court funding was approved based on the lower Consumer Price Index. Beginning in FY 2009–2010, the Legislature suspended formula-based funding increases for all state-funded entities. While SAL has not been reinstated, the May Revision to the 2015 Governor's Budget includes a 5 percent increase in the trial court support appropriation (Program 45.10) in 2015–2016, the second year of a two-year funding approach approved by the Legislature in FY 2014–2015. At the time of this report there is no indication by the DOF that a 5 percent increase in the trial court support appropriation will continue into 2016–2017

Statewide BCP priority development

In order to generate a discussion of potential FY 2016–2017 statewide BCP priorities, the chair of the Trial Court Budget Advisory Committee (TCBAC) sent a survey to the TCBAC members requesting that they provide input regarding statewide budget needs of the trial courts for FY 2016–2017. Members were asked to rank the following seven proposed BCP priorities and then to provide and rank any three additional priorities they may have.

1. Modernization of case management systems including a solution for the V3/Sustain courts
2. E-filing implementations
3. Document management systems
4. Increased costs for new facilities (custodial/IT infrastructure/security)
5. New judgeships (AB 159)

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6. Implementation of Language Access Plan
7. Dependency counsel

Responses were received from a majority of the TCBAC members. Judicial Council staff reviewed the responses and provided the results to the TCBAC. The TCBAC met on May 18, 2015, and discussed the results of the survey and other priorities suggested by their members. The results of these discussions are described below.

BCPs recommended for Judicial Council approval

The seven programs listed below are recommended for consideration by the Judicial Council for submission of BCPs. They are not listed in order of priority. The TCBAC will meet again, subsequent to this Judicial Council meeting, to discuss and recommend a priority for the programs that are approved for BCPs, to be presented to the council at its August 21, 2015 meeting. The seven programs were approved unanimously by the TCBAC.

- ***Funding that funds trial courts at 80 percent of their Workload-Based Allocation and Funding Methodology (WAFM) funding need ($TBD).*** The WAFM provides a budget development and allocation process for annual state trial court operations funds. It's based on a three-year rolling average of filings, and takes into consideration variations in case types and court resources needed for those various case types. The annual estimates produced by the Resource Assessment Study model identify different funding needs across courts based on workload composition (e.g., workload-intensive felony cases are weighted more heavily than infractions cases) and filing patterns over time. It provides an equitable basis for determining funding levels to support trial court functions and help the state's most under-resourced courts. The proposal would request 80 percent of the difference between the amount of funding needed by the courts based on the WAFM and the trial court base funding.

- ***Cost-of-living adjustment for trial court employees consistent with increases to be provided to Executive Branch employees ($TBD).*** Executive branch agencies have received funding to provide for a 2 percent salary increase to their employees in the current fiscal year and are slated to receive an additional 2.5 percent in 2015-2016. This proposal would request a similar increase for trial court employees.

- ***Technology ($TBD).*** This proposal will be coordinated in consultation with the Judicial Council Technology Committee and the Court Technology Advisory Committee to address the technology needs of the trial courts for FY 2016–2017.

- ***Court-appointed dependency counsel ($TBD).*** In FY 2014–2015, the base budget for court-appointed dependency counsel is $103.7 million. The need based on the current

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workload model is $137.1 million – an ongoing need of $33.1 million in new funding to address the costs for court-appointed counsel for parents and children. The new funding would enable the reduction of caseloads from the current rate of 250 clients per attorney to 188. The American Bar Association recommends 100 clients per attorney. If new funding is provided through the 2016 Budget Act, it would be allocated as approved by the Judicial Council at its April 17, 2015 meeting, to courts with a ratio of historical base funding to workload-based funding that is below the statewide ratio of total base funding required to meet the workload standard.

    - Adequately funding effective counsel for parents and children has resulted in numerous benefits both for the courts and for children in foster care. Effective counsel can ensure that the complex requirements in juvenile law for case planning, notice, and timeliness are adhered to, thereby reducing case delays and improving court case processing and the quality of information provided to the judge. Unnecessary delays also result in children spending long periods of time in foster care, a situation that has improved greatly in the past few years through the courts' focus on effective representation and adherence to statutory timelines.

- ***New Judgeships (AB 159) ($TBD).*** While the second of three sets of 50 judgeships were authorized by the Legislature in Assembly Bill 159 (Stats. 2007, ch. 722), the funding was not appropriated and the judges were never appointed. At the time of this report the Senate Budget Subcommittee has approved $10 million in funding for a smaller number of additional judgeships in the Budget Act of 2015. This proposal would take the results of the final Budget Act into consideration. It will request additional new judges and funding for much needed court support staff, both inside and outside the courtroom. The most current judicial needs assessment, which was presented to the Judicial Council in December 2014, showed a need for 270 new judges. That assessment was based on filings data for the period FY 2010–2011 through FY 2012–2013. While statewide filings have been declining, the decline (5% since the 2012 Judicial Needs Assessment) has tended to be in the types of cases that take less judicial time to adjudicate. Having sufficient judgeships is an important part in ensuring access to justice for the citizens of the state.

- ***Increased costs for new facilities ($TBD).*** This proposal would be to address increased facility operating costs (operations and maintenance, utilities, and insurance) and would be coordinated in consultation with the Trial Court Facility Modification Advisory Committee.

- ***Implementation of Language Access Plan ($TBD).*** At its January 22, 2015 meeting, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts* (Language Access Plan) as presented by the Joint Working Group for California's Language Access Plan. The proposed BCP as approved by the Language Access Plan Implementation Task Force at its April 29, 2015 meeting, would request funding to

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implement provisions of the Language Access Plan including (a) expanding interpreter services into all civil proceedings, (b) providing training for interpreters on civil cases and remote interpreting and for signage in the courthouse regarding availability of the services, (c) providing on-site trial court support for language access, and (d) implementing a pilot program for video remote interpreting.

Comments, Alternatives Considered, and Policy Implications

While this item was not circulated to the public for comment, prior to submitting this report to the Judicial Council the TCBAC members were surveyed as to what they believed the statewide trial court budget priorities were for FY 2016–2017. As part of that survey process, TCBAC members suggested funding for a number of alternative priorities, such as psychiatric evaluations and transcriptions, unfunded security costs and increases for locally retained security services, self-help centers, locally funded court facility leases, the third set of new judgeships, and backfill of unfunded employee benefits. A few of the alternatives were folded into the recommended priorities – statewide COLAs for court staff, technology (the BCP, if approved, may incorporate a number of initiatives), court facilities, and court reinvestment (providing funding to bring courts to a certain percentage of the WAFM funding need). Discussion at the meeting focused primarily on those programs that received the highest ranking over all, which did not include the items identified as alternatives.

Implementation Requirements, Costs, and Operational Impacts

Not applicable. This item requests the funding to address any increased costs that would be incurred to implement the proposals.

Relevant Strategic Plan Goals and Operational Plan Objectives

The funding proposals requested for the trial courts will address the strategic plan goals of Access, Fairness, and Diversity (Goal I), Independence and Accountability (Goal II); Modernization of Management and Administration (Goal III), and Branchwide Infrastructure for Service Excellence (Goal VI).

Attachments and Links

1. None.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Trial Courts: State Trial Court Improvement and Modernization Fund Allocations in Fiscal Year 2015–2016 for the V3 Case Management System and Intermediate Case Management Systems Programs

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Chair

Agenda Item Type
Action Required

Effective Date
June 26, 2015

Date of Report
May 22, 2015

Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that the Judicial Council allocate a total of $6.9 million in 2015–2016 from the State Trial Court Improvement and Modernization Fund for the V3 Case Management System and Intermediate Case Management Systems programs.

Recommendation

On May 18, 2015, the Trial Court Budget Advisory Committee (TCBAC) adopted with two "no" votes the following recommendation:

1. The Judicial Council should allocate $5,658,100 for the V3 Case Management System and $1,246,800 for the Intermediate Case Management Systems programs in 2015–2016 from the State Trial Court Improvement and Modernization Fund (IMF).

2. If the 2015–2016 IMF ending fund balance is projected to be below $300,000, the allocations for both programs are to be reduced by 10 percent, a total of $690,500, and the costs associated with the reduction are to be with the reduction are to be backfilled from the Judicial Council Information Technology office's budget or such other non-Trial Court Trust Fund funding source as the Judicial Council deems appropriate.

Previous Council Action

On April 17, 2015, the Judicial Council adopted the following recommendation of the Judicial Council Technology Committee regarding funding for the V3 program:

1. Will cease branch funding for the V3 case management system after a period of four years starting on July 1, 2015, and ending June 30, 2019;
2. Will fund the V3 case management system for the first fiscal year (July 1, 2015, to June 30, 2016); and
3. Directed a working group comprised of members of the Judicial Council Technology Committee (JCTC) and Trial Court Budget Advisory Committee (TCBAC) to work together on the source of funding for the remaining three fiscal years (July 1, 2016, to June 30, 2019).

On April 17, 2015, the Judicial Council approved $59.372 million in 2015–2016 IMF allocations for various programs. The $59.372 million did not include funding for the V3 and Intermediate Case Management Systems programs because the council was advised by the TCBAC that the advisory committee would provide its recommendation regarding those two programs at the subsequent council meeting in June 2015.

Rationale for Recommendation

Including the $6.9 million for the V3 and ICMS programs, the TCBAC recommends a total 2015–2016 allocation of $66.277 million from the IMF, a net reduction of $10.848 million from the 2014–2015 allocation level. Given the current Judicial Council staff estimate of the ending 2014–2015 fund balance and 2015–2016 revenue, the recommended total allocation of $66.277 million is currently estimated to result in a fund balance of $476,324 by the end of fiscal year 2015–2016.

As part of the initial $59.372 million allocation, the TCBAC recommended increasing allocations for four programs by a total of $625,300, eliminating or reducing allocations for 26 programs by a total of $11.473 million, and maintaining the allocation for 14 programs at their 2014–2015 levels. The TCBAC recommends that the V3 and ICMS programs be funded at their 2014–2015 levels: $5,685,100 for V3 program and $1,246,800 for ICMS. In addition, to maintain an ending fund balance in 2015–2016 of at least $300,000, if a change in the 2014–2015 ending fund balance and/or 2015–2016 revenue estimates causes the projected 2015–2016 ending fund balance to fall below $300,000 from the current projection of $476,324 the TCBAC recommends that the IMF allocations for both programs be reduced by 10 percent ($690,500)

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and the costs associated with the reduction are to be backfilled from the Judicial Council Information Technology office's budget or such other non-Trial Court Trust Fund funding source as the Judicial Council deems appropriate.

Comments, Alternatives Considered, and Policy Implications

At the meeting, Judicial Council staff stated that V3 has successfully reduced its 2015-2016 budget estimates compared to estimates projected last year, without any impact to the V3 courts. However, keeping the allocation for the V3 program at the 2014–2015 level could require a delay in already overdue hardware replacements at the California Courts Technology Center (CCTC). This would increase the risk of hardware failure, which would primarily affect the Superior Courts of Sacramento and Ventura, as V3 is hosted at the CCTC for these courts. He also indicated that keeping the allocation for the Sustain Justice Edition (SJE) also known as the Interim Case Management System (ICMS) program at the 2014–2015 level would result in significant impact to the Sustain Justice Edition courts hosted at the California Courts Technology Center (CCTC). This would eliminate the disaster recovery environment and reduced funding for SJE application support. In addition, projects planned and underway would be cancelled or suspended due to a lack of resources. Courts which have already begun SJE initiatives would potentially jeopardize their funding and lose the opportunity to improve court operations and efficiencies.

No public comments were received when the recommendations of the TCBAC's Revenue and Expenditure Subcommittee were considered by the TCBAC at its May 18, 2015 meeting.

Attachments

1. Attachment 1: IMF – Fund Condition Statement (as of May 8, 2015)

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Attachment 1: IMF -- Fund Condition Statement

(revised May 8, 2015)

#	Description	2012-2013 (Year-end Financial Statement)	2013-2014 (Year-end Financial Statement)	Estimated 2014-15 (May Revision Revenue Estimates)	Estimated 2015-16	
					Based on JC Action on 4/17/15 and May Revision Revenue Estimates*	JC Action and TCBAC Recommendation and May Revision Revenue Estimates
		A	B	C	D	E
1	Beginning Balance	48,128,575	44,827,741	26,207,006	6,548,505	6,548,505
2	Prior-Year Adjustments	11,547,967	4,410,172	3,632,666		-
3	**Adjusted Beginning Balance**	**59,676,542**	**49,237,913**	**29,839,672**	**6,548,505**	**6,548,505**
4	***Revenues***					
5	50/50 Excess Fines Split Revenue	31,920,133	26,873,351	23,202,658	21,526,146	21,526,146
6	2% Automation Fund Revenue	15,753,200	15,242,700	14,730,023	14,143,701	14,143,701
7	Jury Instructions Royalties	518,617	445,365	484,063	484,063	484,063
8	Interest from SMIF	201,201	124,878	115,000	100,000	100,000
9	Other Revenues/SCO Adjustments	2,875	24,476	24,221	-	-
10	***Transfers***					
11	From State General Fund	38,709,000	38,709,000	38,709,000	38,709,000	38,709,000
12	To Trial Court Trust Fund (Budget Act)	(23,594,000)	(20,594,000)	(20,594,000)	(594,000)	(594,000)
13	To TCTF (GC 77209(k))	(13,397,000)	(13,397,000)	(13,397,000)	(13,397,000)	(13,397,000)
14	**Net Revenues and Transfers**	**50,114,026**	**47,428,770**	**43,273,965**	**60,971,910**	**60,971,910**
15	**Total Resources**	**109,790,568**	**96,666,683**	**73,113,637**	**67,520,415**	**67,520,415**
16	***Expenditures***					
17	Allocation	71,923,000	73,961,680	71,466,600	59,372,100	59,372,100
18	R/E Subcommittee Recommended Allocation for V3 and ICMS Programs					6,904,900
19	Less: Unused Allocation	(7,123,067)	(4,082,985)	(5,199,049)	-	
20	Pro Rata and Other Adjustments	162,894	580,982	297,581	297,581	767,091
21	**Total Expenditures**	**64,962,827**	**70,459,677**	**66,565,132**	**59,669,681**	**67,044,091**
22	**Fund Balance**	**44,827,741**	**26,207,006**	**6,548,505**	**7,850,734**	**476,324**
23	Revenue/Transfers Over/(Under) Exp	(14,848,801)	(23,030,907)	(23,291,167)	1,302,229	(6,072,181)

*Council did not take any action on 2015-16 allocations for V3 CMS and Interim Case Management Systems programs, so assumes a zero allocation for both programs.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

Title
Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 31)

Agenda Item Type
Information Only

Date of Report
June 4, 2015

Submitted by
Jody Patel, Chief of Staff
Pam Reynolds, Manager
Leadership Services Division

Contact
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Executive Summary

Government Code section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' regular office hours, and (2) the council to post all such notices on its website and also relay them to the Legislature. This is the 31st report to date listing the latest court notices received by the council under this statutory requirement; since the previous report, three superior courts—those of Calaveras, Yolo and Santa Clara Counties—have issued new notices.

Previous Council Action

In 2010, the Legislature enacted a Judiciary Budget Trailer Bill with fee increases and fund transfers for the courts that also added section 68106 to the Government Code.[1] Section 68106 requires trial courts to notify the public and the Judicial Council in advance of any closures or reductions in service, and the council in turn to post all such notices on its website and report them to the Legislature. Since the enactment of section 68106, a total of 48 courts have issued

[1] Sen. Bill 857; Stats. 2010, ch. 720, § 13. Attachment A contains the full text of Government Code section 68106, as amended effective January 1, 2011, and June 27, 2012.

notice under its requirements.[2] The Judicial Council has received 30 prior informational reports listing such notices as they have been received.

Notice Received From Three Courts Since Last Report

This is the 31st report provided to date on trial court notices submitted under Government Code section 68106. Since the previous report, the Judicial Council has received new notices of closures or reduced hours from three trial courts:

1. The Superior Court of **Calaveras** County will be reducing its hours of operations effective June 1, 2015, by closing the Clerk's Office including telephone hours 3 hours earlier. Effective June 1, 2015, through June 30, 2015, the Clerk's Office will be open Monday through Friday from 8:15 a.m. to 1:00 p.m. Effective July 1, 2015, the hours of operation in the Clerk's Office will be Monday through Friday 8:15 a.m. to 3:00 p.m. Courtrooms will remain open Monday through Friday and are unaffected by this change. The public will remain able to pay certain traffic fines and fees and to access court calendar information on the court's website. A drop box also is available to receive document for same day filing Monday through Friday when the Clerk's Office is closed. *(Attachment B)*

2. Beginning August 17, 2015, the Superior Court of **Yolo** County will be moving to its new location at 1000 Main Street in Woodland. During this event, there will be a temporary reduction in calendaring and court closures as follows:

    - Reduced Calendars: Monday, August 17 through Friday, August 28, 2015
    - Full Court Closure: Thursday, August 20 and Friday, August 21, 2015, with the exception of in-custody arraignments.

    Clerk windows will be open from 9:00 am to 3:00 pm, August 17 through August 19, 2015, and August 24 through August 28, 2015. (Attachment C)

3. Effective August 3, 2015, the Superior Court of **Santa Clara** County will reduce traffic night court calendars from four times each month to twice a month, eliminating the two calendars heard each month in Department 55. Traffic night court calendars will be heard on the 2nd and 4th Tuesdays of each month at the Santa Clara Courthouse in Department 56, located at 1095 Homestead Road, Santa Clara. *(Attachment D)*

[2] All courts' notices are listed and posted at *www.courts.ca.gov/12973.htm*. Some courts have given more than one notice.

Mandate in Government Code Section 68106

In providing fee increases and fund transfers for the courts in the Judiciary Budget Trailer Bill in 2010, the Legislature expressly declared its intention that trial courts remain open to the public on all days that are not judicial holidays and that access to court services for civil litigants be preserved to the extent practicable. Statements in Government Code section 68106 affirmed this intent, and the recent amendment of the statute strengthened it.

Section 68106 imposes the following requirements on trial courts and the Judicial Council:

- Trial courts must provide written notice to the public at least 60 days before closing any courtroom or closing or reducing the hours of clerks' offices, although "[n]othing in this section is intended to affect, limit, or otherwise interfere with regular court management decisionmaking, including calendar management and scheduling decisions."[3] The trial court is to provide this notice "by conspicuous posting within or about its facilities, on its public Internet Web site, by electronic distribution to individuals who have subscribed to the court's electronic distribution service, and to the Judicial Council . . . ."[4] The notice must describe the scope of the closure or reduction in hours, state the financial constraints or other reasons that make the closure or reduction necessary, and invite public comment.[5] Courts expressly are *not* obligated to respond to comments received.[6] If a court changes its plan "as a result of the comments received or for any other reason" during the 60-day notice period, it must "immediately provide notice to the public" by posting and distributing "a revised notice" using the procedure previously described, including distribution to the council.[7] The change in plan does not require notification, however, beyond the original 60-day period.[8]
- The Judicial Council must, within 15 days of receiving a notice from a trial court, "conspicuously" post the notice "on its Internet Web site" and forward a copy to the chairs and vice-chairs of both houses' Committees on the Judiciary, the chair of the Assembly Committee on Budget, and the chair of the Senate Committee on Budget and Fiscal Review.[9]

Implementation Efforts

Judicial Council staff notified all trial court presiding judges and court executive officers of the enactment of this statutory mandate, and the Judicial Council Legal Services (LS) staff provided legal guidance to help courts comply with the requirements of the statute. Trial courts have been requested to e-mail such notices to Debora Morrison, LS Senior Attorney, who has provided

[3] Gov. Code, § 68106(c).
[4] *Id.*, § 68106(b)(1).
[5] *Id.,* § 68106(b)(1), (2)(A).
[6] *Id.,* § 68106(b)(2)(B).
[7] *Id.,* § 68106(b)(3).
[8] *Id.,* § 68106(b)(2)(A).
[9] *Id.,* § 68106(b)(3).

legal review of the courts' notices since Government Code section 68106 first took effect in 2010.

To fulfill the Judicial Council's obligations under section 68106, the Judicial Council staff has placed on the home page of the California Courts website a prominent link to the Reduced Court Services page (*www.courts.ca.gov/12973.htm*), which contains a summary of Government Code section 68106 and all notices received from trial courts about closures of courtrooms or clerks' offices or reductions in clerks' office hours. Since the previous report to the council, the notices from the courts detailed above have been added to the web page. The Judicial Council staff has also forwarded the notices from these courts to the designated legislative leaders.

Attachments

Attachment A: Government Code section 68106
Attachment B: Notice from the Superior Court of Calaveras, April 1, 2015
Attachment C: Notice from the Superior Court of Yolo, April 14, 2015
Attachment D: Notice from the Superior Court of Santa Clara, June 3, 2015

Government Code section 68106:

(a) (1) In making appropriations for the support of the trial courts, the Legislature recognizes the importance of increased revenues from litigants and lawyers, including increased revenues from civil filing fees. It is therefore the intent of the Legislature that courts give the highest priority to keeping courtrooms open for civil and criminal proceedings. It is also the intent of the Legislature that, to the extent practicable, in the allocation of resources by and for trial courts, access to court services for civil litigants be preserved, budget cuts not fall disproportionately on civil cases, and the right to trial by jury be preserved.

(2) Furthermore, it is the intent of the Legislature in enacting the Budget Act of 2010, which includes increases in civil and criminal court fees and penalties, that trial courts remain open to the public on all days except judicial holidays, Saturdays, and Sundays, and except as authorized pursuant to Section 68115.

(b)(1) A trial court shall provide written notification to the public by conspicuous posting within or about its facilities, on its public Internet Web site, and by electronic distribution to individuals who have subscribed to the court's electronic distribution service, and to the Judicial Council, not less than 60 days prior to closing any courtroom, or closing or reducing the hours of clerks' offices during regular business hours on any day except judicial holidays, Saturdays, and Sundays, and except as authorized pursuant to Section 68115. The notification shall include the scope of the closure or reduction in hours, and the financial constraints or other reasons that make the closure or reduction necessary.

(2)(A) The notification required pursuant to paragraph (1) shall include information on how the public may provide written comments during the 60-day period on the court's plan for closing a courtroom, or closing or reducing the hours of clerks' offices. The court shall review and consider all public comments received. If the court plan for closing a courtroom, or closing or reducing the hours of clerks' offices, changes as a result of the comments received or for any other reason, the court shall immediately provide notice to the public by posting a revised notice within or about its facilities, on its public Internet Web site, and by electronic distribution to individuals who have subscribed to the court's electronic distribution service, and to the Judicial Council. Any change in the court's plan pursuant to this paragraph shall not require notification beyond the initial 60-day period.

(B) This paragraph shall not be construed to obligate courts to provide responses to the comments received.

(3) Within 15 days of receipt of a notice from a trial court, the Judicial Council shall conspicuously post on its Internet Web site and provide the chairs and vice chairs of the Committees on Judiciary, the Chair of the Assembly Committee on Budget, and the Chair of the Senate Committee on Budget and Fiscal Review a copy of any notice received pursuant to this subdivision. The Legislature intends to review the information obtained pursuant to this section to ensure that California trial courts remain open and accessible to the public.

(c) Nothing in this section is intended to affect, limit, or otherwise interfere with regular court management decisionmaking, including calendar management and scheduling decisions.

PUBLIC NOTICE

**Government Code section 68106 requires trial courts to provide notice to the public at least 60 days before closing any courtroom or closing or reducing the hours of clerks' offices by conspicuous posting within its facilities and on its public website.*

NOTICE OF REDUCTION IN CLERK'S OFFICE HOURS

Posted April 1, 2015

Pursuant to *Government Code* §68106, the Superior Court of California, County of Calaveras will be reducing its hours of operations, during the period of June 1, 2015 through June 30, 2015 by closing the Clerk's Office including telephone hours, 3 hours earlier to mitigate the impact of staff furloughs. Courtrooms will remain open Monday through Friday and are unaffected by this change. Beginning July 1, 2015 the Clerk's Office will close at 3pm.

Currently, the Clerk's Office filing windows and telephones are open to the public from 8:15 a.m. - 4:00 p.m., Monday through Friday, excluding court holidays and weekends.

Effective June 1, 2015 through June 30, 2015, the Calaveras Superior Court **"hours"** of operation in the Clerk's Office will be as follows:

Monday through Friday
8:15 a.m. – 1:00 p.m.

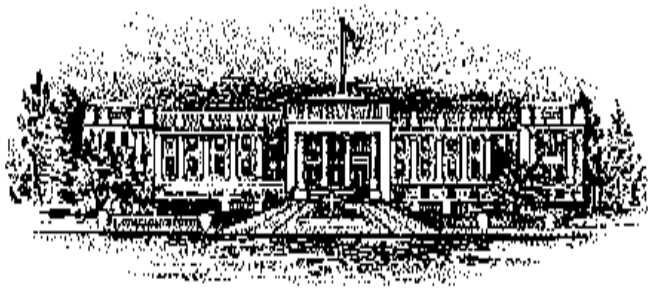
Effective July 1, 2015, the Calaveras Superior Court **"hours"** of operation in the Clerk's Office will be as follows:

Monday through Friday
8:15 a.m. – 3:00 p.m.

The public will remain able to pay certain traffic fines and fees and to access court calendar information on the court's website at **www.calaveras.courts.ca.gov**.
A drop box also is available to receive documents for same day filing Monday through Friday when the Clerk's Office is closed. Filing deadlines will not be extended due to the limited service days. Pursuant to California Rules of Court, rule 2.210(b) any document deposited in a court's drop box by or before **4:00 p.m.** on a court day is deemed to have been deposited for filing on that day. All documents will be removed from the drop box at 4:30 p.m., daily. Any document dropped after 4:30 p.m. will be received and filed the following court business day.

This action is necessary due to the ongoing reductions to the Calaveras Superior Court budget for Fiscal Year 2014-2015. This current fiscal year the Court has instituted several cost saving measures. It has implemented a 3.8% reduction in pay for court staff by requiring all to take ten unpaid furlough days. The court will be continually faced with reducing services, not only for Fiscal Year 2014-2015, but also going into Fiscal Year 2015-2016, if there is no restoration of funds.

Anyone wishing to comment on the announced reduction in the Clerk's Office hours, please submit your comments by regular mail no later than May 22, 2015. Direct your response to Calaveras Superior Court, Dan Vrtis, 400 Government Center Drive, San Andreas, CA, 95249. You may also send your comments via email to **public@calaveras.courts.ca.gov.** All public input will be considered.



PUBLIC NOTICE

Pursuant to Government Code Section 68106

April 14, 2015

Notice of Temporary Reduction in Calendaring System and Court Closure

Beginning August 17, 2015, Yolo Superior Court will be moving to its new location at 1000 Main Street. During this monumental event the court will have a modified calendar and limited access to filing windows.

	Monday	Tuesday	Wednesday	Thursday	Friday
	8/17/2015	**8/18/2015**	**8/19/2015**	**8/20/2015**	**8/21/2015**
Clerk Windows*	9:00 to 3:00	9:00 to 3:00	9:00 to 3:00	Closed drop box available	Closed drop box available
	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal Matters	8:30 No-time Waiver Criminal Matters
Dpt 9 213 Third St				9:30 Confirmed Preliminary Hrgs	9:30 Confirmed Preliminary Hrgs
	11:00 In-custody Arraignments	11:00 In-custody Arraignments	11:00 In-custody Arraignments	11:00 In-custody Arraignments	11:00 In-custody Arraignments
	1:30 Confirmed Preliminary Hrgs	1:30 Confirmed Preliminary Hrgs	1:30 Confirmed Preliminary Hrgs		
Dpt 8 725 Court St	8:30 Juvenile Matters	8:30 Juvenile Matters	8:30 Juvenile Matters	No Court	No Court
	9:30 Back-up	9:30 Back-up	9:30 Back-up		

*The traffic windows will be consolidated into the criminal division located 725 Court Street.

	Monday	Tuesday	Wednesday	Thursday	Friday
	8/24/2015	**8/25/2015**	**8/26/2015**	**8/27/2015**	**8/28/2015**
Clerk Windows	9:00 to 3:00	9:00 to 3:00	9:00 to 3:00	9:00 to 3:00	9:00 to 3:00
	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters	8:30 No-time Waiver Criminal and Emergency Civil/Family Matters
Dpt 1 1000 Main St.					
	1:30 In-custody Arraignments Confirmed Preliminary Hrgs	1:30 In-custody Arraignments Confirmed Preliminary Hrgs	1:30 In-custody Arraignments Confirmed Preliminary Hrgs	1:30 In-custody Arraignments Confirmed Preliminary Hrgs	1:30 In-custody Arraignments Confirmed Preliminary Hrgs
Dpt 2 1000 Main St.	8:30 Juvenile Matters	8:30 Juvenile Matters	8:30 Juvenile Matters	8:30 Juvenile Matters	8:30 Juvenile Matters
	9:30 Back-up	9:30 Back-up	9:30 Back-up	9:30 Back-up	9:30 Back-up

Please direct any questions to the Executive Office (530)406-6838. This information is also posted on the Court's website.

Superior Court of California
County of Santa Clara

191 North First Street
San José, California 95113
(408) 882-2700

DAVID H. YAMASAKI
Chief Executive Officer

ATTACHMENT D

FOR IMMEDIATE RELEASE – JUNE 3, 2015

Contact: Joe Macaluso, Public Information Officer - (408) 882-2715

IMPORTANT PUBLIC NOTICE

The Superior Court of California, County of Santa Clara operates a Traffic Courthouse in Santa Clara. Currently, the traffic night court calendars are heard four times each month in Departments 55 and 56. Effective August 3, 2015, these calendars will be reduced to twice a month, eliminating the two calendars heard each month in Department 55.

Traffic night court calendars will be heard on the 2nd and 4th Tuesdays of each month at the Santa Clara Courthouse in Department 56. The Santa Clara Courthouse is located at 1095 Homestead Road, Santa Clara, California.

The Court finds the above actions are necessary due to the significant and continuing cuts to the State Judicial Branch Budget. Since 2009, state funding for the judicial branch has been significantly reduced, with those reductions impacting the budgets of individual superior courts. The funding for FY 2015-16 does not make it fiscally feasible to keep these courts open.

We apologize for the inconvenience this may cause. If you would like to submit comments about the proposed reductions, please send them to David H. Yamasaki, Court Executive Officer, 191 North First Street, San Jose, California 95113 by August 3, 2015.

For further information, please check the Superior Court website at www.scscourt.org

Judicial Council of California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 25-26, 2015

Title
Court Facilities: Trial Court Facility Modification Quarterly Activity Report for Quarter 3 of Fiscal Year 2014–2015

Submitted by
Trial Court Facility Modification Advisory Committee
Hon. David Edwin Power, Chair

Agenda Item Type
Information Only

Date of Report
April 1, 2015

Contact
Patrick McGrath, 916-643-8051
patrick.mcgrath@jud.ca.gov

DRAFT

Executive Summary

The Trial Court Facility Modification Advisory Committee (TCFMAC) has completed its facility modification funding for the third quarter of fiscal year 2014–2015. In compliance with the *Trial Court Facility Modifications Policy*, the advisory body is submitting its *Trial Court Facility Modification Quarterly Activity Report: Quarter 3, Fiscal Year 2014–2015* as information for the council. This report summarizes the activities of the Trial Court Facility Modification Advisory Committee from January 1, 2015 to March 31, 2015.

Previous Council Action

The Trial Court Facility Modification Working Group was established by Judicial Council policy in 2005. The working group first met in April 2006 and operated under the *Trial Court Facility Modifications Policy,*[1] adopted by the Judicial Council in 2005 and revised on December 12, 2014. The working group's primary oversight responsibilities included reviewing statewide facility modification requests and approving facility modification funding.

The working group's charge was formalized by the Judicial Council on December 14, 2012, and the working group was assigned additional oversight responsibility for the operations and maintenance of existing facilities, noncapital-related real estate transactions, energy

[1] As adopted in 2005, the policy was known as the *Prioritization Methodology for Modifications to Court Facilities.* When it was revised in 2012, the name also changed. See *www.courts.ca.gov/documents/jc-20120727-itemG.pdf*.

management, and environmental management and sustainability. On April 25, 2013, the working group's status was elevated to that of advisory committee.

An updated Court-Funded Facilities Request approval process was submitted and approved by the Judicial Council on August 23, 2013, requiring all Court-Funded Facilities Requests to be reviewed and approved by the TCFMAC. These submittals may include lease-related costs (e.g., lease payments and operating costs, repairs, or modifications required by a lease); allowable court operations expenditures under rule 10.810 of the California Rules of Court (e.g., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage); and other facility improvements that are not allowable court operations expenditures under rule 10.810 (e.g., facilities operations, maintenance, repairs, and modifications, but not capital projects), if they would improve a court's functioning or reduce ongoing court operating costs.

Reports previously approved by the Judicial Council are available at *www.courts.ca.gov/2567.htm* under Research and Reports: Conditions in Our Courts.

Methodology and Process

Funding decisions were based on the prioritization and ranking methodologies in accordance with the *Trial Court Facility Modifications Policy*. Facility modifications are assigned one of six priority categories: Priority 1–Immediate or Potentially Critical; Priority 2–Necessary, But Not Yet Critical; Priority 3–Needed; Priority 4–Does Not Meet Current Codes or Standards; Priority 5–Beyond Rated Life, But Serviceable; and Priority 6–Hazardous Materials, Managed But Not Abated. These categories are based on methods commonly used by private-sector facility management firms. Facility modifications that are determined to be Priority 1 are to be addressed immediately and regardless of whether the court occupies a shared-use facility. With current budget constraints, the TCFMAC predominantly approves facility modification projects at the Priority 1 and Priority 2 levels. Delaying TCFMAC approval of these projects would cause continued court closures, operational failures, and undue risk to continued court operations.

Policy and Cost Implications

During the third quarter of fiscal year 2014–2015, the TCFMAC reviewed and approved a total of 293 facility modifications for a total projected cost of $12,537,758. The Facility Modification Program's share of these projects totals $9,973,267. These approved projects include Priority 1 emergency projects and Priority 2 critical needs projects, as well as highly beneficial Priority 3 projects, such as energy efficiency projects. Please see Attachment A for a detailed list of all approved projects during the third quarter of fiscal year 2014–2015.

During this quarter, four projects required additional funds in excess of $50,000 over their original estimates. The Facility Modification Program's share of these cost increases totals $544,099. Projects that require excess costs of this magnitude are typically projects where either project managers encountered unforeseen site conditions or there existed excessive deferred maintenance.

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During this quarter, 33 Court-Funded Facilities Requests (CFRs) valued at $12,166,522 were reviewed and approved by the TCFMAC. As stated above, CFR submittals may include lease-related costs, allowable court operations expenditures under rule 10.810 of the California Rules of Court, and other facility improvement costs that are not allowable under rule 10.810. Twelve of the CFR approvals were for facility leases and lease related tenant improvements valued at $2,536,355. The remaining 21 projects were needed court renovation work with a total value of $ $9,630,167. See Attachment B for a detailed list of CFRs approved by the TCFMAC during the third quarter of fiscal year 2014–2015.

Implementation Efforts

The TCFMAC conducted an in-person meeting on January 16, 2015 at the Sacramento office, a teleconference on March 6, 2015, and an out-of-cycle teleconference on March 30, 2015 to review facility modification funding requests and to discuss the following topics:

- Regular review of facility modification projects lists: A (Emergency and Priority 1), B (FMs Under $50K), C (Cost Increases Over $50K), D (FMs Over $50K Eligible for Funding), and F (Court-Funded Facilities Requests);
- Discussion and review of facility modification requests for Priority 3 projects received from the Superior Courts of Placer, Merced, Nevada, Riverside, Santa Barbara, Solano, and Tulare Counties;
- Informational presentation from Judicial Council staff to review current staffing status and constraints;
- Informational presentation from Judicial Council staff to review service delivery methods (Service Provider contracts, Job Order Contracting, and Delegation);
- Review and approval of the *Trial Court Facility Modification Quarterly Activity Report for* both *Quarters 1 and 2 of Fiscal Year 2014-2015;*
- Review and approval of the *Trial Court Facility Modification Advisory Committee Annual Agenda for 2015;*
- Reallocation of $986,000 from projects on hold pending shared cost approval by several counties to support the Priority 1 (Emergency) projects budget; and
- Discussed and reviewed updates to the Prioritization Methodology for Facility Modifications.

Next Steps

The *Trial Court Facility Modification Quarterly Activity Report: Quarter 4, Fiscal Year 2014–2015* will be submitted to the Judicial Council in August 2015.

Attachments

1. Attachment A: *TCFMAC Funded Project List: Quarter 3, Fiscal Year 2014–2015*
2. Attachment B: *Court-Funded Facilities Requests (CFRs): Quarter 3, Fiscal Year 2014–2015*

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JUDICIAL COUNCIL OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 3, Fiscal Year 2014-2015

ITEM #	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
1	FM-0054311	Los Angeles	Pomona Courthouse South	19-W1	2	HVAC - Replace (1) hot water coil and (2) chilled water coils, Drain Pan and install new Spring Isolators. ACM testing and remediation. AHU leaking water onto 4th floor Mechanical Room.	$ 110,893	$ 101,068	91.14
2	FM-0054219	San Bernardino	Rancho Cucamonga Courthouse	36-F1	2	COUNTY MANAGED - Parking Lot- Demo approx. 225,000 SF, 3 inch depth of asphalt and resurface with approximately 225,000 SF 3 inch thick asphalt & re-stripe. Pour new concrete ADA parking approx. 600 SF and bring up to code. Demo & replace approximately 280 LF broken curbs. Remove & replace thirty (30) trees impacting asphalt & curbs; Slurry seal new asphalt. Currently parking is not up to ADA code in some areas and the asphalt in the parking lot has numerous cracks, pot holes, and uneven areas that pose a tripping hazard.	$ 510,883	$ 510,883	100.00
3	FM-0054250	San Diego	North County Regional Center - South	37-F1	2	COUNTY MANAGED - Shared Cost - HVAC - Demo existing 575-ton York centrifugal water-cooled chiller and install a new replacement chiller to match existing capacities. Chiller #3 has suffered a catastrophic failure, is beyond repair, and needs to be replaced to restore full cooling capacity to the central chiller plant service the NCRC Campus.	$ 60,480	$ 60,480	100.00
4	FM-0052986	Los Angeles	Compton Courthouse	19-AG1	2	Exterior Shell - Remove failing glaze, re-adjust window glass, and apply new wet seal to exterior of 442 windows. Glazing on the windows is failing.	$ 58,905	$ 38,954	66.13
5	FM-0051741	Los Angeles	Long Beach Courthouse	19-Y1	2	Grounds & Parking Lot - Remove, demolish modular office trailer/structure in accord with all safety, health and local and governing regulations; remove all utilities lines such as electrical, drain and water lines and include restoration of the area to be free of all health and safety hazards to the satisfaction of all applicable government regulations and JCC requirements.	$ 61,908	$ 61,908	100.00
6	FM-0054052	Kern	Bakersfield Juvenile Center	15-C1	3	Energy Efficiencies: HVAC - Update VAV Controls to include: 41 WPT-800-T2DP-DB wireless pneumatic thermostats, 1 GBC-810-com WPT green box controller, 1 WPT-800-HUSB Wireless USB hub, 5WPT-800-RWAL wall powered repeaters, 1 LP-FXBAC1P-0 Bacnet IP import driver, wireless thermostat hub repeaters, Bacnet IP integration, Custom programming optimal start/stop etc. - The operating schedule is excessive, controls are limited and antiquated.	$ 48,500	$ 32,379	66.76
7	FM-0054108	Kern	Bakersfield Juvenile Center	15-C1	3	Energy Efficiencies: HVAC - Reactivate and tune up Air Side Economizers for AHU's 1,2,3,4 - Outside sensors need recalibration, providing false readings locking system out at 68 degrees, dampers and economizers not operating properly as a result. Findings stem from PECI review. File completion date of 05/15/15 necessary to capture rebate incentive.	$ 17,512	$ 11,691	66.76
8	FM-0052243	Los Angeles	Alhambra Courthouse	19-I1	3	Energy Efficiency Project -19I1_02282013LV1 - Lighting and controls upgrade - Retrofit (1,533) F32T8 fluorescent fixtures with new 28-watt lamps and new ballast, (249) 3-lamp and 4-lamp fluorescent fixtures with new reflector, 28-watt lamps and new ballast, and (1) 2x2 fluorescent fixtures with new reflector, 17-watt lamps and new ballast. Install (2) Vending Miser sensors to control vending machines. Replace (32) Exterior HID fixtures on the with new lower wattage LED fixtures.	$ 222,058	$ 190,970	86.00
9	FM-0054062	San Bernardino	Rancho Cucamonga	36-F1	3	Energy Efficiency - COUNTY MANAGED - Energy Conservation 36F1_10202014HV1 & 36F1_10202014LV1- Implement energy measures to reduce future consumption and realize energy efficiency that could result in annual utility bill savings of $151,226.00. Project includes installation of exhaust fan controls, replace air volume terminals, install a new lighting control system, install occupancy sensors & upgrade parking lot lights as per SOW that resulted from a recent audit conducted by AESC, a consultant for SCE & SC Gas Co.	$ 698,481	$ 698,481	100.00
10	FM-0050633	Santa Clara	Downtown Superior Court	43-B1	3	Energy Efficiency Retrofit Project - Implement operating schedule on fan coil units (FC1 - FC32) - Energy Efficiency Measure 2	$ 11,083	$ 11,083	100.00
11	FM-0054110	Kern	Arvin/ Lamont Branch	15-H1	3	Energy Efficiencies: HVAC - Restore and reactivate Air Side Economizers - Dampers are staying in closed position, economizers are disabled (PKU 04,06,07,08,09,11,13,14,15,16). Findings stem from PECI review. Work must be complete by 05/15/15 to capture incentive rebates.	$ 6,095	$ 3,712	60.91

ITEM #	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
12	FM-0052151	Orange	Betty Lou Lamoreaux Justice Center	30-B1	3	Energy Efficiency - FM related to Energy Conservation Project 30B1_01242014HV1- HVAC - Chiller #2 - Replace existing Chiller # 2 with energy efficient Multistack chiller. Replacing the existing chiller with an energy efficient chiller will result in a cost savings and payback within 5 years. The project includes Engineering, Demolition/Installation, piping, electrical, controls, startup and commissioning, refrigerant monitoring system.	$ 595,242	$ 475,896	79.95
13	FM-0044228	Placer	South Placer Justice Center	31-H1	3	Interior Finishes - The Placer Superior Court requests facility modification take place to complete the interior of the South Placer Jail Arraignment Courtroom - The shell of the courtroom was completed at County of Placer expense.	$ 2,900,000	$ 2,030,000	70.00
14	FM-0054507	Alameda	Wiley W. Manuel Courthouse	01-B3	2	HVAC - Replace six failed, corroded and severely leaking cooling coil condensate drain pans in air handlers one and two located in the rooftop mechanical penthouses.	$ 123,669	$ 103,635	83.80
15	FM-0054617	Kern	Bakersfield Superior Court	15-A1	2	Elevators, Escalators, & Hoists - Rebuild Elevator #1 & #2 Generator, Sheave Deflector and Bearing Replacement. Elevator #1 & #2 Generators failed having reached the end of their useful life and need to be dismantled and rebuilt. Deflector Sheaves having reached the end of their useful life and need to be replaced.	$ 257,000	$ 160,985	62.64
16	FM-0054043	Solano	Hall of Justice	48-A1	2	HVAC - Replace three (3) failing chilled water coils and three (3) failing heating hot water coils located in AHU S1.	$ 107,865	$ 78,547	72.82
17	FM-0053008	Los Angeles	Compton Courthouse	19-AG1	2	Roof - Remove and replace the upper roof, main roof deck and stand alone restroom roofs (approximately 34,000 SF) with a 3 ply roofing system, roofing system is failing. Work includes new flashings, and reglet metal where needed.	$ 747,216	$ 494,134	66.13
18	FM-0052982	Los Angeles	Metropolitan Courthouse	19-T1	2	Roof - Remove and replace existing main deck, penthouse & stairwell deck roofs (27,000 SF) with new 3 ply roof systems. Roofing system is failing. Work includes new flashings and reglet metal where needed, metal etching and repainting of the deteriorating standing seam metal roof (2,535 SF) and cleaning and resetting roof drains and caps.	$ 634,160	$ 599,535	94.54
19	FM-0052980	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	2	Roof - Remove and replace existing roof (62,550 SF) with new PVC roof system at the Main Deck, Penthouse decks (4) and lower eyebrow deck. Roofing system condition reports recommends replacement to mitigate leaks and imminent failure in a large percentage of the overall roofing system. New roof drains required for change in roofing systems.	$ 1,503,360	$ 1,034,161	68.79
20	FM-0054200	Los Angeles	Norwalk Courthouse	19-AK1	1	HVAC - VFD's for Air Handler #2 - Removed and replaced. Currently the supply motor to the AHU stopped causing no supply air to the building.	$ 4,588	$ 3,901	85.03
21	FM-0054201	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Set-up containment - Electrical room fully contained, plastic sheeting placed on entrance door 5ft x 8ft x 8ft; environmental testing, Remove and replace a section of cracked drain pipe, drying equipment set up and build back. Water dripping from ceiling into electrical room of the 3rd floor kitchen.	$ 10,000	$ 6,935	69.35
22	FM-0054212	Alameda	Gale - Schenone Hall of Justice	01-E1	1	Electrical - Lockdown System for Court 705 - trace the existing circuit and isolate damaged wiring, pull new wire to courtroom, remove and replace one (1) damaged electric deadbolt and one (1) relay to the logic controls. It was found that there was an open ground circuit in the Dept 705 duress system.	$ 13,175	$ 13,175	100.00
23	FM-0054214	Los Angeles	Burbank Courthouse	19-G1	1	HVAC - IT Cooling - Remove and replace the failed split system that supplies the telecomm Room, without this cooling unit the IT room could overheat causing the computer systems to fail, interrupting court business.	$ 10,750	$ 9,757	90.76
24	FM-0054215	Los Angeles	Torrance Courthouse	19-C1	1	Interior Finishes - Set-up containment, conduct environmental testing, and replace twenty (20) 1'x1' fallen ceiling tiles. The ceiling tiles were found on the desk in room 325 and remediation is in progress for safety.	$ 6,482	$ 5,519	85.14
25	FM-0054216	Los Angeles	Norwalk Courthouse	19-AK1	1	Plumbing - Replace domestic hot water pump and valves. Currently water is leaking from the pump and if it fails there will be no water to the building.	$ 4,351	$ 3,700	85.03

ITEM #	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
26	FM-0054224	Los Angeles	Torrance Courthouse	19-C1	1	Roof - Water remediation - Isolate the source of the leak, re-seal area of wall to roof flashing that had failed, contain leaking, and dry leak affected areas. Rain Water penetrating at the wall to roof flashing and leaking into 5th Floor, Dept. J. No Court Impact.	$ 10,035	$ 8,544	85.14
27	FM-0054225	Los Angeles	El Monte Courthouse	19-O1	1	Interior Finishes - Water remediation, Set up 7ft x 9ft x 9ft containment in Pre Trial Office, renovate leak damaged areas, ACM testing. Rain Water Leaked into 1st Floor Pre-Trial Office and 3rd Floor County Offices.	$ 10,111	$ 5,877	58.12
28	FM-0054226	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Water remediation, Containments set up: Courtroom G 6ftx10ftx15ft, 3rd flr restroom 4ftx8ftx15ft, 2nd flr restroom 6ftx9ftx 9ft, and 2nd flr hallway 3 containments 6ftx9ftx20ft, 8ftx9ftx12ft, and 4ftx8ftx16ft. Dry leak affected areas, ACM testing and clearance, water pumped off roof, and build back. Roof Rain Water Leaks: 6th Flr Dept. G, 3rd Flr Men's RR, 2nd Flr Men's Public RR and Public Hallway.	$ 13,961	$ 9,682	69.35
29	FM-0054227	Los Angeles	Pomona Courthouse South	19-W1	1	Interior Finishes - Water remediation, set up containments: Sheriff's Office - containment 6ftx10ftx 10ft, Kitchen - containment 6ftx6ftx10ft, 4th thru 6th Public Lobbies 8 containments 4ftx 4ftx10ft, dry leak affected areas, ACM testing, water pumped off roof, cracks on roof were sealed over the Sheriff's office, section of drain pipe replaced in kitchen, Build-back. Rain Water Leaks 4th - 6th Flr Public Lobbies, 7th Flr Sheriff Depart. and 7th Flr Kitchen/Cafeteria.	$ 13,843	$ 12,617	91.14
30	FM-0054228	Los Angeles	Burbank Courthouse	19-G1	1	Interior Finishes - Remediation of rain water intrusion to employee lunch room, setup double wall 6mil poly plastic containment with decontamination entrance, setup dehumidifying and air drying equipment within the containment to remove/extract water and moisture from the walls and carpet, complete initial and clearance ACM testing, demo old epoxy joint sealant compound from the seam along the exterior wall and sally-port driveway approximately 100', re-seal the seam/joint along the exterior wall and driveway with new sealant compound.	$ 12,875	$ 12,875	100.00
31	FM-0054230	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	HVAC – Air Handling Unit #12-4 Breaker, Contacts and Motor Burnt out. AHU supplies the 11th and 12th floor. Replaced 15hp motor, pulleys and belts. Replaced 480 volt 3 pole 40 amp breaker.	$ 4,250	$ 2,924	68.79
32	FM-0054231	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Interior Finishes - Water remediation due to exterior water intrusion patch repairs have been completed on roof along the area. Environmental testing conducted (1) dehumidifier has been setup within each containment. Containment in office 19-101, approximately 2' x 3' x 9' 6mil double walled poly plastic with decontamination area. Containment in office 19-104, approximately 7' x 9' x 9' 6mil double walled poly plastic with a decontamination area. Replacement of acoustic ceiling tiles.	$ 8,250	$ 8,250	100.00
33	FM-0054232	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Interior Finishes – Water remediation due to exterior water intrusion. Replacement of several damaged acoustic tiles. Patch repairs to the roof along the area. plastic diversion installed to catch residual water. (1) Dehumidifier has been setup within each containment. Containment in office 19-301, approximately 2' x 3' x 9' 6mil double walled poly plastic with decontamination area. Containment in office 19-902, approximately 7' x 9' x 9' 6mil double walled poly plastic with a decontamination area.	$ 8,250	$ 8,250	100.00
34	FM-0054233	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Interior Finishes - Water remediation, cracked wye pipe fitting in drain pipe, Replacement of the 6" x 8" x 8" wye pipe fitting. 5' x 6' x 9' 6mil double walled poly plastic containment with a decontamination area.	$ 9,750	$ 6,707	68.79
35	FM-0054237	Los Angeles	Airport Courthouse	19-AU1	1	Interior Finishes - Water Remediation, containment and dry leak affected area. Replaced defective interior window seal. 7th Floor Lobby window is leaking due to rain.	$ 11,056	$ 8,532	77.17
36	FM-0054240	Los Angeles	Norwalk Courthouse	19-AK1	1	Roof - Roof Leaking into 7th Floor Jury Assembly Room Staff Office. Set up containment and dry leak affected area. Set up containments for the Jury Assembly (3ft x 10ft x 14f) and room 101 (3ft x 6ft x 10ft) and room 104E fully contained. Plastic sheeting placed on entrance doors. 12ft x 24ft x 10ft, dry leak affect areas, ACM testing, build back. Roof Leaking into Jury Assembly, Room 101 Clerk Filing & 104E Family Law workshop.	$ 36,013	$ 30,622	85.03
37	FM-0054241	Mendocino	County Courthouse	23-A1	1	Roof - Roof project materials are dissolving in rain water, going down the down spouts into the storm drains. City Hazmat and County Hazmat is on site. JOC Contractor reimbursement will be processed.	$ 5,000	$ 3,381	67.62

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38	FM-0054249	Los Angeles	Torrance Courthouse	19-C1	1	Electrical - Replace gaskets for head gasket cover, oil pan gasket, and side block gasket cover. Generator is leaking oil.	$ 3,381	$ 2,879	85.14
39	FM-0054251	Los Angeles	Van Nuys Courthouse East	19-AX1	1	Elevators, Escalators, & Hoists - Refurbish Judges' elevator #6, work to include the removal and replacement of the arm contacts, cast iron arms, arm rollers and switch, floor bar, brush contact, cams and clamp for switches, pawl lug contacts, roller arm housing, switch brushes complete, stop contacts and leveling switch ring components.	$ 49,200	$ 49,200	100.00
40	FM-0054252	Los Angeles	Airport Courthouse	19-AU1	1	HVAC-Install a new dedicated A/C Unit (4-Ton Ducted Split for Cooling only), fire/life system monitor, T-Bar ceiling install for a drop ceiling. Court has converted the telephone room into a server room and there is no cooling in the server room. The room temperature reached critical temperature, which could cause the servers to fail for the courthouse.	$ 75,400	$ 58,186	77.17
41	FM-0054254	Alameda	Wiley W. Manuel Courthouse	01-B3	1	HVAC - Replace failed fan wheels, fan shaft, bearings, sheaves and belts on "AC-1"	$ 19,789	$ 16,583	83.80
42	FM-0054256	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Interior Finishes - Failed Domestic Line Coupling - Remove and replace a 2' section of 1" domestic waterline and two couplings. Water remediation, set up containment, dry leak affected area, testing and build-back. 8ft x 5ft portion of wall is wet.	$ 10,595	$ 8,527	80.48
43	FM-0054257	San Diego	East County Regional Center	37-I1	1	HVAC - Replace Failed VFD and Hardware - Place system in service, complete the drives setup and warranty start-up documentation. VFD is completely inoperable due to age and normal wear over time. Depart. 3, 4 and Public Lobby are without air, do to outage.	$ 5,090	$ 3,446	67.71
44	FM-0054258	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Hot water pump #2, pump impeller seized inside housing causing motor to over amp and repeatedly tripping breaker. Pump housing was removed, new electrical conductors installed & pump housing rebuilt. Hot water pump #1 leaks. Unit was disassembled and taken off-site to rebuild mechanical seal.	$ 13,675	$ 12,928	94.54
45	FM-0054260	Los Angeles	Whittier Courthouse	19-AO1	1	Roof - Water remediation - Clear back approximately 150sf of roof ballast and seal leaking area, replace ballast over fresh sealer, set up containment 12ftx12ftx8ft, office fully contained. Plastic sheeting was placed on the both entrance doors. Contain leaking, dry leak affected areas, ACM testing, and replace approximately 10 ceiling tiles. Rain Water leaking through roof into 3rd Flr Jury Assembly Manager's office.	$ 8,989	$ 7,769	86.43
46	FM-0054261	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Plumbing – Replace (1) 2 1/2” Cooper tee, (4) 2 1/2” Copper elbow, (2) Copper couplings, and (4) pipe hangers with all thread on the 1st floor. Replace (2) 3/4” Copper couplings, (2) 3/4” ball valves, and (2) 3/4” x 4” of pipe on the 4th floors. Containment (Approx. 4’ x 7’) was set up in the 4th women’s restroom with drying equipment in place. Air testing was executed with negative results	$ 10,270	$ 8,265	80.48
47	FM-0054272	Los Angeles	Pasadena Courthouse	19-J1	1	HVAC – Cooling Tower leaked into building, through roof via footings, causing a flood on three (3) Floors (4, 5, & 6). Large chunks of concrete fell through ceiling damaging state assets. Remediation testing/clearance were conducted in affected areas. Containment was set up on floors and walls totaling 61,216 sf with 18 decontaminating chambers. Carpets were cleaned and sanitized totaling 15,576 sf. Eighty-five (85) ft of cove base reset and holes drilled for injection system. Flood caused an impact to Court operations prompting emergency P1 response.	$ 173,281	$ 120,170	69.35
48	FM-0054275	Los Angeles	Torrance Courthouse	19-C1	1	Exterior Shell- Water remediation, set up containment 5'x7'x10', ACM testing, replace 4 ceiling tiles and restored three sections of roof to stop leaking. Several roof leaks, rain water penetrating from the roof into the foyer of Depart. L on 5th floor.	$ 6,607	$ 6,607	100.00
49	FM-0054278	Los Angeles	Downey Courthouse	19-AM1	1	HVAC - Replace fan blade and motor assembly for Cooling Tower #1. Fan blade assembly needs to be replaced.	$ 26,800	$ 22,432	83.70
50	FM-0054279	Los Angeles	Pasadena Courthouse	19-J1	1	HVAC - Replace the frozen Isolation Valves, control items and the Isolation Valves on the Condenser Water System. Chiller #2 not cooling properly, not producing chilled water.	$ 83,903	$ 58,187	69.35

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51	FM-0054281	Los Angeles	Compton Courthouse	19-AG1	1	Plumbing - Remove & replace 70ft of 6" Cast Iron Pipe, 24ft of 10" Cast Iron Pipe & 20ft of 4" Cast Iron Pipe due to leaks throughout storm drain lines in Employee & Judges' parking structure.	$ 38,971	$ 25,772	66.13
52	FM-0054283	Los Angeles	Monrovia Training Center	19-N1	1	Roof - Water remediation, contain leaking, and dry leak affected areas, ACM Testing. Technician patched cracks on the roof. Roof Leak, water leaking through ceiling.	$ 8,997	$ 6,324	70.29
53	FM-0054284	Los Angeles	Pasadena Courthouse	19-J1	1	Roof - Water containment remediation effort including carpet cleaning and ACM testing covered a total of 37 square feet. A quantity of 6 - 2'x2' tiles were replaced, 2- dehumidifiers, and 2 – Axial air fans.	$ 9,267	$ 6,427	69.35
54	FM-0054285	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Exterior Shell - Water remediation, contain leaking, and dry leak affected area. Remove and install 6x9 of carpet and 6x4 of dry wall. Replace defective gasket on the door frame. Rain water penetrating through exterior corner door jam.	$ 13,746	$ 9,621	69.99
55	FM-0054286	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Exterior Shell - Water remediation, contain leaking, and dry leak affected areas. Rain Water intrusion through expansion joints on employee bridge walkway into the Basement. Remove and replace defective expansion joints (250 linear feet). Remove and replaced 3 ceiling tiles.	$ 13,978	$ 9,783	69.99
56	FM-0054287	Los Angeles	Inglewood Juvenile Court	19-E1	1	Roof - Water remediation, contain leaking, and dry leak affected areas, ACM testing. Remove and install 4'x4' 5/8 drywall and painted. Applied roof patch material to the roof area. Rain Water leaking from roof into the 2nd floor Men's Public Restroom.	$ 11,359	$ 9,176	80.78
57	FM-0054288	Los Angeles	Torrance Courthouse	19-C1	1	Exterior Shell - Water remediation, containment (10'x10'x6'), ACM testing and dry leak affected areas. Replace defective window seal (10'x10') - Rain water penetrating window seal.	$ 10,238	$ 8,717	85.14
58	FM-0054289	Los Angeles	Inglewood Juvenile Court	19-E1	1	Roof - Water remediation, contain leaking, and dry leak affected areas, ACM testing. Remove and replaced 1'x1' section of drywall ceiling. Painted the affected area and patched a 5'x5' of roof. Rain water leaking into Judge's Chambers.	$ 12,560	$ 10,146	80.78
59	FM-0054290	Los Angeles	Torrance Courthouse	19-C1	1	Plumbing- Water remediation, contain leaking, set up containment (4x4x10), dry leak affected areas, ACM testing. Replaced 20' of cracked 6 cast iron storm drain line inside the ceiling of Lockup on the 5th floor.	$ 12,240	$ 10,421	85.14
60	FM-0054291	Los Angeles	Torrance Courthouse	19-C1	1	Exterior Shell - Water remediation, contain leaking, containment (4'x10'x7). Water intrusion from outside planters into the Basement Hallway right outside of Lock-up. Service Provider will be submitting a FM P2 to make repairs.	$ 11,374	$ 9,684	85.14
61	FM-0054292	Los Angeles	Van Nuys Courthouse East	19-AX1	1	Roof - Replace broken roof vent pipe and remediate rain water damage inside the public hallway, adjacent to the restrooms causing slip hazard.	$ 7,490	$ 6,722	89.74
62	FM-0054294	Los Angeles	San Fernando Courthouse	19-AC1	1	Roof - Set-up containment and conduct environmental testing. Currently water is dripping from the ceiling into the secure hallway causing a hazard to court employees. Repair leak in roofing material and replace damaged ceiling tiles.	$ 8,750	$ 7,298	83.41
63	FM-0054296	Los Angeles	Compton Courthouse	19-AG1	1	Plumbing - Water remediation, set up containments, environmental testing, clean up and disinfect, replace 10 ft of 2" cracked cast iron pipe and plumbing, remove and replace 20 sq ft of ceiling tiles. Holding cell drain pipe is cracked and leaking waste water through to ceiling below.	$ 13,983	$ 9,247	66.13
64	FM-0054297	Los Angeles	Compton Courthouse	19-AG1	1	Fire Sprinkler - Fire Pump water leak from 13th flr pump room onto 12th flr rm 260. Water remediation performed, 7'x11'x7'x11' containment with Decontamination Chamber. Replaced 20ft of ceiling tiles. Water sealed concrete floor in Fire pump room, approx 500sf.	$ 13,365	$ 8,838	66.13
65	FM-0054299	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Remove defective generator, transport to shop, rebuild the generator and replace 2 large bearings; return rebuilt generator to site and re-install. Elevator generator failed due to faulty bearings and windings, needs to be rebuilt.	$ 37,473	$ 36,446	97.26
66	FM-0054301	Los Angeles	Compton Courthouse	19-AG1	1	Grounds and Parking - Replaced bent and damaged rods/linkage, removed and straightened additional bent and damaged rods/linkage in roll up gate. Tested operation and returned to service. Skateboarders ran into and body slammed roll up gate, causing damage to gate.	$ 10,789	$ 7,135	66.13

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67	FM-0054312	Los Angeles	Van Nuys Courthouse East	19-AX1	1	Plumbing - Water remediation, set up containments, emergency clean- up, ACM Testing. Plumbing work performed in basement area: Drain domestic water supply, demo old piping and install new copper piping (6", 2", and 1-1/2"). Install ball valve, fittings, butterfly valve w/ handle, flanges, grooved rigid coupling, brass reducer and grooved brass tee. Work performed on the 7th flr - Remove 2" drain line and install new drain line piping, couplings and hangers for support. Remove and replace 200 SF of ceiling tiles.	$ 53,485	$ 47,997	89.74
68	FM-0054316	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Set-up containment, perform environmental testing, and replace 10 feet of 2.5" copper domestic cold water supply line. Currently water is dripping into the secured hallway on the 6th floor creating a slip hazard.	$ 13,653	$ 12,908	94.54
69	FM-0054317	Riverside	Hall of Justice	33-A3	1	HVAC - Replace failed main server room HVAC components to sustain court operations. The project will include replacement of Liebert compressor and components, ductless split system, programming and balance.	$ 41,800	$ 41,800	100.00
70	FM-0054322	Los Angeles	Torrance Courthouse	19-C1	1	Electrical - Replace failed engine starter on emergency generator. Temporary generator brought to facility and connected for back up, due to emergency generator out of service.	$ 12,367	$ 10,529	85.14
71	FM-0054324	Los Angeles	Van Nuys Courthouse East	19-AX1	1	Fire Protection - Replace coupling connector/flange on Standpipe supply line, restore supply line. Standpipe supply line has leak at coupling connector.	$ 6,650	$ 5,968	89.74
72	FM-0054325	Mono	New Mammoth Lakes Courthouse	26-B2	1	HVAC - Electronic replacement parts need to be ordered to exchange failed boards for the Building Automation System (BAS). Boards failed due to water infiltration from a broken supply line and are required to properly control the air handling system and boiler. Air handler is currently not operational and is impacting courthouse temperature. Replacement parts need to be ordered from Sweden ASAP.	$ 24,000	$ 24,000	100.00
73	FM-0054330	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Roof - Water remediation, set up containment (468 sq ft), dried leak affected areas, and extracted water from 120 sq ft of carpet; disinfected and HEPA vacuumed. ACM and LBP testing. Replaced deteriorating expansion joints with new Latex materials, removal of old materials and cleanup of 400 linear ft of debris. Replaced 40 sq ft. of ceiling tiles. Rain water leak from 2nd flr Terrace into 1st flr Shelter Center, cause is determined to deteriorating expansion joints on the perimeter.	$ 40,824	$ 28,573	69.99
74	FM-0054332	Los Angeles	Monrovia Training Center	19-N1	1	HVAC - Replace mag starter contactor on refrigeration compressor. This work was completed as a P1 emergency due to the compressor not allowing A/C to flow through the courthouse after a power outage.	$ 3,007	$ 2,114	70.29
75	FM-0054398	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Replace cracked 2" cast iron p-trap, contain leaking, set-up containment 7' x7' x 15', environmental testing, and replace damaged ceiling tiles 20 sq ft. 2' cast iron P-trap in ceiling of 1st flr is cracked and leaking.	$ 10,500	$ 10,500	100.00
76	FM-0054399	Orange	West Justice Center	30-D1	1	Plumbing - Collapsed Cast Iron Pipe - Replace 4' section of cast iron pipe. Pipe has collapsed and there is a large piece of the pipe blocking the flow of sewage and causing multiple black water floods. Will require jackhammer to get through concrete floor and slab and replacement of removed flooring.	$ 11,668	$ 10,581	90.68
77	FM-0054412	Los Angeles	Pasadena Courthouse	19-J1	1	Interior Finishes - Encapsulate friable ACM fireproofing in 3rd flr Mechanical room (Rm 309) 120'X30'X16' and (Rm 304) 40'X20'X16'. Set up containment 4th flr Mechanical room (Rm 404) 16'X13'X16'. Remediate 9,680 sq. ft of material, remediate 1550 sq. ft. of contaminated equipment surfaces.	$ 251,777	$ 174,607	69.35
78	FM-0054416	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing – Remediate internal water intrusion due to leaking water hammer device. Remediation includes demo the west side wall in the Judges' Conference room 6-801, included: 4’ x 4’ area was build back with drywall. 2’ x 2’ access hatch was installed on the wall. 3’ x 9’ wooden panels reinstalled. Plumbing work includes replacement of ¾” and 1” water supply piping was reinsulated, approximately 12’ of ¾” and 13’ of 1”. (3) ¾” 90 Elbows and (1) ¾” Tee was reinsulated. Replacement of numerous acoustic ceiling tiles Full containment on 5th and 6th floor and environmental testing conducted.	$ 52,855	$ 36,359	68.79
79	FM-0054417	Los Angeles	Airport Courthouse	19-AU1	1	Exterior Shell - Replaced defective barrier arm units motor and operator entrance to the underground parking structure - not operating and will not close or open.	$ 10,302	$ 7,950	77.17

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80	FM-0054425	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Water remediation, disinfect and dried leak affected areas. Environmental testing. Work performed: 4th flr Holding Cell Court B & C Containment 8ftx15ftx9ft, extract gray water 120 sqft; 4th flr Vestibule Holding Area Containment 5ftx28ftx9ft extract gray water 140 sqft; 4th flr Secured Hallway Containment 5ftx69ftx9ft, extract gray water 325 sqft; 4th flr Judge's Chambers 401C Containment 2ftx10ftx9ft extract gray water 20 sqft; 4th flr Court C Containment 15ftx24ftx12ft extract gray.	$ 47,766	$ 47,766	100.00
81	FM-0054426	San Diego	County Courthouse	37-A1	1	Roof - Water remediation, set up 2 ACM containments 8 x 8, contain leaking, dry leak affected areas, removed & replace water damaged ceiling tiles. ACM testing and renovated leaking portions of roof. Rain water leaking through South Tower roof into offices.	$ 8,782	$ 8,782	100.00
82	FM-0054427	Los Angeles	Metropolitan Courthouse	19-T1	1	HVAC - Water remediation, contain leaking in affected area - 6' x 6' (32 sq ft), replace 32 - 1'x1' ceiling tiles. ACM testing. Water leak is coming from 9th Flr Chiller Room, down onto 8th Flr . Drain line for Chiller Room is leaking.	$ 8,387	$ 7,929	94.54
83	FM-0054429	Los Angeles	Mental Health Court	19-P1	1	Plumbing - Dig-up approximately 3 x 3 x 3 hole, Replaced cracked 3" copper pipe and 3 galvanized flange connection - water was leaking from the main supply line.	$ 4,695	$ 3,348	71.31
84	FM-0054436	Kern	Bakersfield Superior Court	15-A1	1	Elevators, Escalators, & Hoists - Circuit and selector brushes replaced after hours and generator adjusted. Elevator car (s) 001 and 002 inoperable, P1 condition required circuit and selector brush replacement.	$ 8,469	$ 8,469	100.00
85	FM-0054439	Los Angeles	Sylmar Juvenile Court	19-AF1	1	County Managed - HVAC - Replace (6) failed mixer boxes. Dismantle various areas of ceiling and metal hatches to access mixer boxes. Re-install ceiling and metal hatches to normal operation. P1 Condition	$ 11,323	$ 3,885	34.31
86	FM-0054440	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Plumbing - Weld temporary patch on corroded and leaking Domestic Hot Water. Domestic Hot Water Storage Tank sprung a leak.	$ 4,050	$ 3,259	80.48
87	FM-0054445	San Diego	Juvenile Court	37-E1	1	Roof - Replace affected ceiling tiles, drywall, and a thermostat that were damaged due to roof leaks from recent rains. Set up containment 8x10 feet. Remediate mold that was identified within a section of wall and install new wall board. Seal deficient sections of roof to prevent future leaks.	$ 13,766	$ 13,766	100.00
88	FM-0054446	Los Angeles	West Covina Courthouse	19-X1	1	COUNTY MANAGED- HVAC - Replacement of controls such as valve actuators, sensors, and pumps associated to two heating boilers and two cooling towers. The proposed work will also include an updated BAS server.	$ 72,000	$ 72,000	100.00
89	FM-0054447	Los Angeles	San Fernando Courthouse	19-AC1	1	Elevators, Escalators, & Hoists - Replace failed generator motor and motor controls for elevator. Custody Elevator #1 had smoke within the machine room, generator motor and motor controls panel has black soot.	$ 37,790	$ 37,790	100.00
90	FM-0054452	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Plumbing - Water remediation, set up containment, and dried leak affected rooms. Ceiling leak in Sheriff's office storage room coming from 4th flr employee shower.	$ 7,250	$ 5,835	80.48
91	FM-0054457	Los Angeles	Pomona Courthouse South	19-W1	1	Electrical - Main Electrical Breaker Replacement; Electrical utility (Southern California Edison) to shutdown electrical service to the building and will re-energize the building after work is complete. One of two main building circuit breakers malfunctioned, faulty circuit breaker must be replaced.	$ 76,389	$ 69,621	91.14
92	FM-0054459	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing - Water remediation, set up containment 4' x 10' x 10', dried leak affected areas, and environmental testing. Replace trolling valve, check valve, section of pipe, and pipe fittings. Ceiling leak on the 18th floor, source of leak is a domestic 3/4" copper hot water return pipe.	$ 9,870	$ 6,790	68.79
93	FM-0054465	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Replace rectifiers and brake coils n Escalator 1 to 2. Escalator 1 to 2 is not working properly, has burnt out rectifier and brake coil.	$ 11,870	$ 11,545	97.26
94	FM-0054467	Kern	Delano/North Kern Court	15-D1	1	Plumbing - Replace faulty flush valve for wall urinal for men's restroom and water intrusion cleanup. Water leaking from wall from broken valve.	$ 6,314	$ 6,314	100.00
95	FM-0054470	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Elevators, Escalators, & Hoists - Replace elevator encoder. Elevator is not running properly, causing entrapments.	$ 5,998	$ 4,827	80.48

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96	FM-0054472	Los Angeles	Torrance Courthouse	19-C1	1	Interior Finishes - Replaced 200sf. of 1x1 ceiling tiles, ACM testing, and areas was cleaned to mitigate ACM contamination including carpet and restored back to normal operations. Ceiling tile adhesive failed causing tile to collapse overnight inside chambers.	$ 3,414	$ 2,907	85.14
97	FM-0054477	Los Angeles	Parking Structure Lot 94 Airport Courthouse	19-AU2	1	Elevator - Replace auto dialer and restore phone line inside Elevator #11. Emergency Phone inside elevator not working, phone is code required.	$ 2,231	$ 1,722	77.17
98	FM-0054478	Los Angeles	Airport Courthouse	19-AU1	1	Exterior Shell - Window Leak - Set-up 221 sf of containment double layer, install silicone around window seal, and set up air mover and dehumidifiers. Remove and replace approximately 4 sf of drywall, texture and paint. This work was completed as a P1 emergency due to rain water coming through window onto the 7th floor public hallway creating a slip hazard.	$ 6,736	$ 5,198	77.17
99	FM-0054479	Los Angeles	Van Nuys Courthouse East	19-AX1	1	HVAC - Failed Exhaust Fan - Remove and replace motor controls contactor and exhaust fan motor that have failed. Currently the exhaust fan is not functioning which has stopped production in the kitchen.	$ 4,956	$ 4,448	89.74
100	FM-0054480	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Pipe Leak - Remove and replace 30 lf of 3/4" copper line, two each 3/4" ball valves and one 1 1/4" ball valve. The copper pipe leaked onto the hard lid ceiling in room #803 and the old kitchen. This work required environmental testing, a 20x15x9.5 containment size and 32sq. ft. of drywall, patch and paint.	$ 12,763	$ 12,066	94.54
101	FM-0054481	Los Angeles	Santa Monica Courthouse	19-AP1	1	HVAC - Failing Fan Motor - VFD to supply fan motor on Air Handler #3 keeps tripping affecting cooling/heating to the 1st & 2nd flr W Wing. Removed and replaced burned out 15hp supply fan motor to Air Handler #3. Wired new supply fan motor and checked motor for proper rotation. Replaced belts, pulleys, (3)30amp fuses and collaborated VFD.	$ 10,613	$ 8,330	78.49
102	FM-0054488	Los Angeles	Pasadena Courthouse	19-J1	1	HVAC - Contaminated Duct Work - Abate ACM from return air plenum, set up containment in the basement and mechanical room, environmental testing, air monitoring for clearance. Loose fire proofing inside return plenum.	$ 43,479	$ 30,153	69.35
103	FM-0054491	Los Angeles	Michael D. Antonovich Antelope Valley Courthouse	19-AZ1	1	Plumbing - Water remediation - extract water from 1st Flr Chiller Room (2,250 Sq. Ft.), 1st Flr Fan Room (600 Sq. Ft.) 1st Flr Judges' Dining Rm (600 Sq. Ft.) remove water from loading dock area (900 Sq. Ft.) Replace condenser pump, diffuser, 6 isolation valves and check valve. Condenser Water Pump #2 leaking in chiller room defective pump and valves.	$ 76,484	$ 56,223	73.51
104	FM-0054494	Los Angeles	Parking Structure-Lot 53 Pasadena Court-	19-J3	1	Elevators, Escalators, & Hoists - Install a hydraulic valve assembly. Elevator is not responding and has a faulty hydraulic valve that needs to be replaced.	$ 8,040	$ 8,040	100.00
105	FM-0054495	Los Angeles	East Los Angeles Courthouse	19-V1	1	Electrical - Replace failed Battery Charger - Emergency Generator Battery Charger not functioning and must be replaced.	$ 7,297	$ 5,671	77.72
106	FM-0054497	Los Angeles	Downey Courthouse	19-AM1	1	Elevators, Escalators, & Hoists - Replace the catch release switch - Catch release switch broke causing the elevator to stop.	$ 8,988	$ 7,523	83.70
107	FM-0054499	Fresno	Reedley Court	10-F1	1	Grounds - Water is leaking from under the walkway in front of the courthouse. Locate water leak. Replace cracked galvanized irrigation pipe with 20' of 1" PVC in front of the building and 30' under concrete walkway. Remove 10 sf of concrete and install new concrete patch. Install one ball valve. - Water is leaking onto grounds and front walkway and sidewalk creating safety hazard.	$ 5,281	$ 4,126	78.13
108	FM-0054501	Los Angeles	Norwalk Courthouse	19-AK1	1	HVAC - Replace domestic water booster pump #1 and motor contactor. Domestic Water Booster Pump #1 tripped off of overload causing the building to have no domestic water pressure.	$ 10,461	$ 8,895	85.03
109	FM-0054504	Los Angeles	Airport Courthouse	19-AU1	1	Elevators, Escalators, & Hoists - Replaced defective output board, latch board, and two logic relays. Freight elevator #7 on basement level not responding, multiple boards were found to be defective.	$ 7,763	$ 5,991	77.17
110	FM-0054509	Los Angeles	Norwalk Courthouse	19-AK1	1	Plumbing - Set up containment, environmental testing, and restore pipe to stop leak. Domestic water leak in a 6th flr pipe chase, water seeped through floor of the pipe chase and leaked into the 5th flr office #507. Court employee in office #507 relocated until drying process is completed.	$ 10,176	$ 8,653	85.03

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111	FM-0054510	Los Angeles	Pasadena Courthouse	19-J1	1	Interior Finishes - A section of the ceiling (30 sq. ft.) collapsed in a storage room on the 1st floor of the west wing. The damage was caused from a water leak that occurred at an unknown date. There was no moisture present only plaster and ceiling tile debris. Remediation technicians contained the entire storage room (15ft x 15ft x 8ft). They also abated ACM containing debris, HEPA vacuumed and wiped (700 sq. ft.) of wall and floor surfaces, installed (30 sq. ft.) of drywall, and placed (qty. 30) ceiling tiles.	$ 15,565	$ 10,794	69.35
112	FM-0054511	Los Angeles	Van Nuys Courthouse West	19-AX2	1	HVAC - Replace failed fan motor. Cooling Tower #2 is non-operational; chillers are not keeping chilled water temperature and have to be reset every 15 mins. Building is warming up.	$ 8,650	$ 6,962	80.48
113	FM-0054513	Los Angeles	Van Nuys Courthouse East	19-AX1	1	HVAC - Failed Pressure Relief Valve - Water remediation, environmental testing, removed pipe insulation, replaced Pressure Relief Valve, 6" Flanged Gate Valve and 2" Ball Valve. Boilers (for comfort heating) supply piping was hammering vigorously and pressure relief valve to the boilers continuously relieving causing the area around the boiler to flood, the pressure relief valve failed.	$ 9,975	$ 8,952	89.74
114	FM-0054515	Los Angeles	Compton Courthouse	19-AG1	1	Electrical - Replace Failed Electrical Circuits - Electrical circuits (2ea.) have a direct short affecting approximately ten exterior 400 Watt Metal Halide light fixtures. Tall ceilings will require Ariel Lift. Removed and replaced three out of ten shorted out ballasts. Replaced time clocks and ballasts. When the ballast shorted out it also shorted out the time clocks that were controlling the lights.	$ 7,503	$ 7,503	100.00
115	FM-0054516	Los Angeles	Airport Courthouse	19-AU1	1	HVAC - Failed C.O. Sensors - Removed and replaced twelve defective C.O. sensors. All new C.O. sensors have been calibrated to manufactures specifications and lower level parking structure exhaust fans have properly turn off. The lower level basement parking structures C.O. sensors are currently in alarm and have activated the exhaust fans.	$ 11,975	$ 9,241	77.17
116	FM-0054517	Los Angeles	Norwalk Courthouse	19-AK1	1	HVAC - Replace the VFD for AHU #4. The supply motor variable frequency drive (VFD) for AHU #4 is nonoperational. At this time the supply motor is operating only at full speed. In this condition the air ducts can over pressurize and burst apart.	$ 7,565	$ 6,433	85.03
117	FM-0054518	Los Angeles	Chatsworth Courthouse	19-AY1	1	Fire Protection - Replace Alarm Switch device. Alarm flow switch device has failed on the pre-action system on the 1st floor Northside; and a communication trouble signal on the 2nd floor enunciator panel.	$ 4,142	$ 4,142	100.00
118	FM-0054519	Los Angeles	Burbank Courthouse	19-G1	1	HVAC - Pipe Leak - Set-up Containment, conduct Environmental Testing, and replace copper piping to the chilled water supply line. Currently water is dripping from the ceiling into the Judge's chamber.	$ 12,445	$ 11,295	90.76
119	FM-0054525	Los Angeles	Airport Courthouse	19-AU1	1	Plumbing - Replace defective floats (2) to the sewage ejector pump. Sewage ejector does not operate properly.	$ 13,320	$ 10,279	77.17
120	FM-0054526	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Drain Leak - Containment set-up, environmental testing, clean up, restore lighting circuit breaker panel and replace drain pipe. Water leaked into the 3rd floor electrical room and affected a lighting circuit breaker panel. The source of the leak was a cracked drain pipe in the 4th floor. The electrical room and adjacent room #308 are under containment to expedite the drying process of the plaster ceilings.	$ 16,158	$ 11,206	69.35
121	FM-0054527	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Failed Flush Valve - Containment set up, clean up, environmental testing, and build back. Water leaked into the 2nd flr office #222 and adjacent office. The source of the leak was a faulty urinal in the 3th floor Public Defenders. Containment will stay up until the drying and build back processes are completed.	$ 15,223	$ 15,223	100.00
122	FM-0054530	Los Angeles	Torrance Courthouse	19-C1	1	HVAC - Failing Chiller - Rebuild Chiller #1, work to include compressor rebuild, chemical etch tubes and PRV actuator replacement. Chiller not working due low oil pressure.	$ 110,646	$ 94,204	85.14
123	FM-0054531	San Diego	Kearny Mesa Traffic Court	37-C1	1	HVAC - Gas Leaks - Replace induced draft assembly in AHU-4, evaporator motor in AHU-6, faulty igniter in AHU-11 and return units to proper operation. Perform a leak check with the assistance of SDGE throughout the building and at each HVAC unit. Lock out gas supply to AHU's 4, 12, 13, and 14 as they were determined to have leaks in the induced draft assemblies.	$ 6,536	$ 6,536	100.00
124	FM-0054539	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Rebuild and reinstall Elevator #6 generator. Generator failed and caused the car to not level properly to the floors.	$ 58,668	$ 57,060	97.26

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125	FM-0054540	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Plumbing - Failed Water Pump - Remove and replace Domestic Skid Mounted Water Booster System, Controls and Control Panel. One of three water pumps has failed, controls and control panel not working.	$ 81,356	$ 56,941	69.99
126	FM-0054544	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Water remediation, set up containments, dried leak affected areas, and environmental testing. 2nd floor Probation Men's Staff Restroom flooded. Water leaked into the 1st Floor Lobby adjacent to the District Attorney's Office.	$ 14,963	$ 10,377	69.35
127	FM-0054545	Los Angeles	Downey Courthouse	19-AM1	1	Plumbing - Pump water out of sewage pit and rebuild sewage pump #2. Sewage pump #2 is not currently operating and water needs to be removed from the sewage pit.	$ 5,273	$ 4,414	83.70
128	FM-0054546	Los Angeles	Alhambra Courthouse	19-I1	1	Plumbing - Water remediation, set up containments, clean up, dried leak affected rooms and environmental testing. An in-custody clogged a toilet in 2nd Flr Holding Cell and flooded holding cell A. Water leaked into the 1st floor Courtroom 2, Chambers 2, and the public lobby.	$ 12,273	$ 10,555	86.00
129	FM-0054547	Los Angeles	Monrovia Training Center	19-N1	1	HVAC - Replace the compressor for A/C buildup split system in the basement. The compressor for the A/C buildup split system has failed internally. The system supplies cooling to the 1st floor classroom 100, administration offices, and the rear nurses' offices.	$ 14,273	$ 10,032	70.29
130	FM-0054548	Los Angeles	Van Nuys Courthouse East	19-AX1	1	Exterior Shell - Broken 4th Floor Window - Remove and replace one double paned window at the 4th floor Judge's Chambers, boom lift required for window replacement. Window cracked due to expanding and contracting glass due to temperature changes.	$ 8,575	$ 8,575	100.00
131	FM-0054549	Los Angeles	Michael D. Antonovich Antelope Valley Courthouse	19-AZ1	1	Electrical - Replace battery charger. Emergency Generator not working; battery not charging need to replace battery charger.	$ 6,298	$ 4,630	73.51
132	FM-0054553	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Replaced Rectifier and Brake Coil. Grand side Escalator 1 - 2 non-operational and needs rectifier and brake coil replaced.	$ 10,410	$ 10,125	97.26
133	FM-0054560	Lake	South Civic Center	17-B1	1	Plumbing - Dig up sewer line at (2) locations, sally port and planter area and replace failed pipe (separation) - black water is currently leaking. Use camera footage to determine exact location approx 26ft from clean out and 189 ft from clean out. Depth of 5'6" to 6' deep. when complete backfill holes with compacted soil/fill, at Sally port cap hole with 3" layer of concrete with a height 2' below the asphalt finish height.	$ 22,000	$ 22,000	100.00
134	FM-0054562	Los Angeles	Airport Courthouse	19-AU1	1	Security - Restore operation to the sally port gate operator. There is currently a short in an electrical component of the East sally port gate operator which is not operating properly, causing a security issue.	$ 8,768	$ 8,768	100.00
135	FM-0054564	Plumas	Chester Civic Complex	32-C1	1	COUNTY MANAGED - Roof Damage - Remove and replace approximately 1,600 sf of torch down roof, high winds have blown off a signification portion of the roof ad it will need to be replaced.	$ 17,200	$ 17,200	100.00
136	FM-0054565	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Water remediation, set up containment, contain leaking, and dry leak affected areas. A floor drain overflowed in the 3rd AHU #3 mechanical room. Water leaked into the 2nd floor Probation Dept. The affected area in the Probation Dept is cubicle D inside of room #214.	$ 13,735	$ 13,735	100.00
137	FM-0054577	Merced	New Downtown Merced Courthouse	24-A8	1	HVAC - Failed Pump Bearings - Remove and replace bearings, the boiler Hot water circulating pump bearings have failed.	$ 5,897	$ 5,897	100.00
138	FM-0054554	Los Angeles	Torrance Courthouse	19-C1	1	Elevators, Escalators, & Hoists - Install newly fabricated Selector Tape Deflector Sheaves. Elevator #5 Selector Tape Bearing worn out and requires replacement.	$ 22,653	$ 19,287	85.14
139	FM-0053010	Los Angeles	Beverly Hills Courthouse	19-AQ1	2	Plumbing - Refurbish and install fuel monitoring system to bring above ground storage tank into compliance with code. The external surface is corroded, has defects on its anchors and supports. Tank has no monitoring system to properly monitor the fuel level, overfill alarm or other parameters.	$ 31,592	$ 25,122	79.52
140	FM-0053041	Modoc	Barclay Justice Center	25-A1	2	Fire Protection - State Fire Marshal - Fire Safety Correction Notice: Replace the existing FACP with a Game well-FCI S3 panel, smoke detectors, pull boxes, and strobes in the Courtroom addition. Install new smoke detectors, pull boxes, strobes, and enunciator in the Administration area	$ 35,000	$ 35,000	100.00

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141	FM-0053395	Riverside	Hall of Justice	33-A3	2	HVAC - Pony Chiller - Remove and replace one York ZB41-B4675S compressor of two compressors of the buildings pony chiller with new York Compressor ZB41-B4675S and also replacing the filter drier, refrigerant and contactor. The compressor has grounded out on circuit #1 with contactor points fused together and bad points. The pony chiller has been utilized more often to assist in bringing the chilled water temperature down due to the main chillers dropping out on high condenser water.	$ 21,316	$ 21,316	100.00
142	FM-0053397	San Bernardino	Needles Courthouse/Clerk's Office	36-K1	2	COUNTY MANAGED - Exterior Shell- Reseal the concrete exterior of the building approx- 34,950SF. Existing sealant and lower paint layers are cracking and exposing the block. Work is necessary to prevent water intrusion in the rainy season. Scope includes clean & pressure wash walls, seal & repair cracks.	$ 17,000	$ 17,000	100.00
143	FM-0054036	Los Angeles	Metropolitan Courthouse	19-T1	2	HVAC - Water remediation, set up containments, disinfect area, dehumidifiers and fans were placed to remove moisture in the leak affected area, and containment is HEPA vacuumed. Build Back of interior, replace 27 sq Ft of ceiling tiles. Replace one 2" P-Trap and eight 2" No Hub Couplings. Replace drain pans on all 8 AHUs. 1st Floor conference room leak from 2nd floor drain.	$ 30,392	$ 28,733	94.54
144	FM-0054195	Santa Clara	Hall of Justice (East)	43-A1	2	Fire Protection - Fire Main Leaking - Remove and replace approximately 14' of 6" failed steel fire water main piping - Install two new pipe hangers in ceiling - Located in the ceiling of Work Station #3 holding - existing piping has failed	$ 6,970	$ 6,970	100.00
145	FM-0054196	Solano	Old Solano Courthouse	48-A3	2	Electrical - Install new access card reader head end software that had been corrupted during electrical power outage and configure - Perform point to point verification at all field controllers and card readers	$ 4,321	$ 4,321	100.00
146	FM-0054197	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Roof - Replace failed flashing at cooling tower support sleeper, support beam brackets, and replace approximately 44 square feet of failed roof membrane layers to eliminate storm water intrusion.	$ 9,751	$ 8,171	83.80
147	FM-0054199	San Diego	County Courthouse	37-A1	2	Electrical - Replace all burned out T-12 light bulbs, if ballast is burnt replace with T-8 lights, clean all lense covers. Insufficient lighting in Department-22, Safety and trip hazard, less than 50 % of lights are lit.	$ 7,987	$ 7,987	100.00
148	FM-0054202	Kern	Bakersfield Superior Court Modular	15-A2	2	HVAC - Remove and replace HVAC BARD unit PKU07. HVAC Bard unit inoperable, non salvageable and must be replaced to provide cooling to South East workshop area.	$ 5,940	$ 5,940	100.00
149	FM-0054203	Santa Barbara	Santa Barbara Figueroa Division	42-B1	2	Electrical - Egress Lighting - Remove and replace twenty (20) stairwell lights that have failed or are failing from weather exposure and age. New energy efficient LED lights will be used in this replacement.	$ 3,430	$ 3,430	100.00
150	FM-0054204	Humboldt	Humboldt County Courthouse (Eureka)	12-A1	2	Electrical - Auxiliary Power - Install five (5) 120volt outlets. One at each AHU unit for condensate pump power.	$ 2,526	$ 2,526	100.00
151	FM-0054205	Humboldt	Humboldt County Courthouse (Eureka)	12-A1	2	Interior - remediate sound issue - noise transfer issues in HR create employee confidentiality issues. Remediation will cover a total 700sq ft. Add 12 emitters with 3 volume controls to existing system and all required setup and training.	$ 4,367	$ 4,367	100.00
152	FM-0054206	Kern	Arvin/ Lamont Branch	15-H1	2	HVAC - Replace Failed Compressor - PKU 15 compressor failed and burned out, must be replaced to return unit to full operation.	$ 3,107	$ 1,892	60.91
153	FM-0054207	San Joaquin	Lodi Branch - Dept. 2	39-D2	2	Plumbing - Clogged P-Trap in holding Cell - Saw cut and remove concrete slab to access P-Trap, remove and replace the existing P-Trap which was found to be clogged with concrete.	$ 5,934	$ 5,934	100.00
154	FM-0054208	San Diego	County Courthouse	37-A1	2	Interior Finishes - Install new fire rated Panic Door Locking Mechanism, with vertical bars. Install 20 new Door Sequencers to current Fire Code Requirements. Install 24 Fusible Links to existing door closures. Remove door stop. Work required by State Fire Marshal correction notice.	$ 3,462	$ 2,680	77.42
155	FM-0054209	El Dorado	Johnson Bldg.	09-E1	2	Elevators, Escalator & Hoists - Failed Control Boards - Restore control boards to put elevators back into service. Power outage caused the rack of control boards to fail.	$ 4,030	$ 4,030	100.00
156	FM-0054210	Los Angeles	Inglewood Courthouse	19-F1	2	HVAC - Replace defective compressor#2, install new 1-1/2 HP compressor. Compressor #2 non-operational and compressor is needed for the operation of the HVAC pneumatics. Replacement parts are not available; this model is no longer supported by the manufacturer.	$ 14,179	$ 10,572	74.56

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157	FM-0054213	Santa Clara	Terraine Courthouse	43-C1	2	Fire Life Safety - Fire Marshall Correction Notice - Install (2) 48 X 48 sheet rock sections with fire caulking to bring room up to fire code standards, test all self closing fire doors on the 2nd floor qty(5) (If doors and detectors are found to be non-operational, they will be disabled per Fire Marshall request. If they are found to be functional, they will remain in place and noted on the 5 year inspection.	$ 2,812	$ 2,812	100.00
158	FM-0054217	Orange	North Justice Center	30-C1	2	HVAC - Renovate Cooling tower by welding two 6" flanges, installing a 6" wye strainer, installing 1.5 inch drain with valve and plug. The Cooling Tower does not have any screens in the plumbing to protect the elements of the system from trash (plastic bags, paper, etc.) getting into the tower and causing clogging or damage to the elements such as the pump and coils.	$ 4,600	$ 4,154	90.31
159	FM-0054218	Los Angeles	Parking Structure Lot 94 Airport Courthouse	19-AU2	2	Fire Protection - Failing Fire Pump - Remove and replace casing relief valve, reconfigure copper drain line, adjust over pressurization of overhead system, replace inoperative light bulbs, and install signage stating "Fire Pump Test Header". Currently the fire pump has leaks and is regulating over 120 PSI which could cause the pump to not shut off automatically in an emergency situation.	$ 4,906	$ 3,786	77.17
160	FM-0054229	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Plumbing - Replace a failed two and a half (2.5) inch fire sprinkler check valve and two Victaulic couplings to eliminate leaks	$ 7,379	$ 6,184	83.80
161	FM-0054239	Alameda	Fremont Hall of Justice	01-H1	2	Plumbing - Replace (4) failed worn out water faucets in the secure holding cells - One in the ladies first floor, Two on the second floor men's holding and One in the men's third floor holding cell	$ 7,536	$ 7,536	100.00
162	FM-0054242	Santa Barbara	Santa Barbara Figueroa Division	42-B1	2	HVAC - Failed Compressor - Remove and replace condenser #1 to return HVAC unit to full functionality, faulty compressor prevented unit from cooling the IT mechanical room and IT server equipment.	$ 3,200	$ 3,200	100.00
163	FM-0054243	Lassen	New Susanville Courthouse	18-C1	2	Interior Finishes - Repair and fill granite countertop hole in the women's administration restroom and men's 1st floor public restroom. Prep and seal bathroom counters to avoid further degradation and costly repair, or replacement efforts in the near future. The existing countertop filler is deteriorating when the counters get wet and needs to be corrected.	$ 10,500	$ 10,500	100.00
164	FM-0054244	Orange	Central Justice Center	30-A1	2	Plumbing - Replace two 3", and two 5" non-functioning gate valves on domestic roof mounted water storage tank. Work to include installing a new nut, bolt and gasket kits, all work to coincide with heat exchanger bundle installation and strainer installation.	$ 6,357	$ 5,796	91.17
165	FM-0054245	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	Fire Protection - Failing Sprinkler Control Valves - Remove and replace the sprinkler control valves on floors 4, 6 and 7, they do not fully close and need to be replaced. The valves isolate the water supply to each floor for preventive maintenance and repairs and possible flooding without impact to the other floors.	$ 5,522	$ 4,415	79.95
166	FM-0054246	Orange	West Justice Center	30-D1	2	Plumbing - Holding Cell - Replace a water seal around the detention control room to contain grey water intrusion. Reference P1 SWO 1364123	$ 5,512	$ 5,512	100.00
167	FM-0054247	Riverside	Banning	33-G1	2	Plumbing - Replace failed backflow device as a result of test by the City of Banning.	$ 6,111	$ 3,689	60.37
168	FM-0054255	Santa Clara	Hall of Justice (West)	43-A2	2	Plumbing - Leaking water Line - Remove and replace a 15' section of leaking 1 1/4" copper water piping serving the holding area at Work Station #1. Due to the location of the existing piping, additional fittings as well as a new shut off valve will be required to navigate new infrastructure that does not allow for an "as was" replacement.	$ 6,094	$ 6,094	100.00
169	FM-0054259	Contra Costa	Wakefield Taylor Courthouse	07-A2	2	HVAC - Remove and replace return fan VFD; Reconnect electrical power and control wiring; Program the new VFD and verify operation; Work to be done off hours. Existing VFD has failed and cannot be repaired. This is affecting building pressure, making doors difficult to close.	$ 8,668	$ 8,668	100.00
170	FM-0054262	Orange	Harbor Justice Center-Newport Beach Facility	30-E1	2	HVAC - Replace the rusted motor and rusted pulleys for the cooling tower, and align the new pulleys correctly. There is no backup if the cooling tower fails.	$ 9,288	$ 7,832	84.32
171	FM-0054263	San Mateo	Municipal Court Building - Northern Branch	41-C1	2	HVAC - Replace bent Return Air Fan shaft and bearings - Fan is non-operational due to bent fan shaft, causing temperature and static pressure issues (doors not closing)	$ 12,198	$ 10,150	83.21

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172	FM-0054264	Los Angeles	Parking Structure Lot 59-Whittier Admin CTR	19-AO2	2	Electrical - Replace seven - 8ft. light fixtures, replace ten - 4ft. light fixtures, and refurbish 240 - 8ft. light fixtures. Lighting fixtures are damaged beyond repair. Currently the lighting fixtures are inoperable due to vandalism and damage, several light fixtures were hit and have missing panels and wiring.	$ 9,775	$ 8,449	86.43
173	FM-0054267	Kings	Corcoran Court	16-D1	2	Interior Finishes - Remove approximately 20 linear feet of water damaged 4"x4" tile cove base and 2 rows of 20 lf of 4"x4" ceramic wall tile. Treat walls for any water damage and replace backer board. Install new replacement 4"x4" tile cove base and new 4"x4" wall tile and grout to match existing tile - Slow leaking relief valve located inside wall caused moisture damage. Valve was fixed on a separate SWO.	$ 2,511	$ 2,200	87.60
174	FM-0054268	Los Angeles	Compton Courthouse	19-AG1	2	Electrical - Replace 25 fixtures and retrofit 22 fixtures of the exit signs and emergency lighting. The annual emergency lighting inspection failed (PM - 2335037). All emergency lighting must be functional throughout the courthouse for public and personnel safety.	$ 6,970	$ 4,609	66.13
175	FM-0054269	Los Angeles	Airport Courthouse	19-AU1	2	Elevators, Escalators, & Hoists - Adjust door lock, return cable and returned elevator to service. Elevator not responding to any calls and doors open.	$ 2,562	$ 1,977	77.17
176	FM-0054273	Orange	Harbor Justice Center-Newport Beach Facility	30-E1	2	Fire Protection - Replace original 1973 Simplex fire alarm control panel. Boards in existing panel are obsolete.	$ 31,329	$ 26,417	84.32
177	FM-0054274	Sonoma	Hall of Justice	49-A1	2	Interior Finishes - Abatement - Install critical barriers and engineering controls to isolate work areas. Install decontamination facility as needed. Install negative air. Supply asbestos trained and certified personnel. Remove and dispose of approximately 360sf of carpet. Carpet to be disposed of as asbestos containing waste. Remove and dispose of approximately 360sf of asbestos containing floor tile existing under carpet. Removal via hand methods.	$ 9,855	$ 9,855	100.00
178	FM-0054276	Orange	Harbor Justice Center-Newport Beach Facility	30-E1	2	Exterior Shell - Gate Operator - Remove and replace failing pressure sensor bottom guide rail of sally port rollup gate. Gate won't auto reverse and could close on a vehicle or a person. Identified during PM 2421234.	$ 3,100	$ 3,100	100.00
179	FM-0054277	Kern	Bakersfield Juvenile Center	15-C1	2	Interior Finishes - Install new surface mounted door closer and adjust closers and latch speeds. Main entrance doors not locking securely.	$ 2,574	$ 1,718	66.76
180	FM-0054300	San Diego	County Courthouse	37-A1	2	Plumbing - Set up containment, environmental testing, replace 20' of sewer piping with 4" cast iron piping and replace 2 condensate pumps from HVAC units. Install new tubing from each pump to copper main 10' away, above ceiling. All piping to be connected to main with mechanical fittings. Replace ceiling tiles. Ceiling tiles are wet from AC units; 4" storm drain has various holes in manager's office.	$ 13,353	$ 10,338	77.42
181	FM-0054302	Fresno	B.F. Sisk Federal Courthouse	10-O1	2	Electrical - Replace microprocessor on automatic transfer switch - Existing microprocessor has failed and Automatic Transfer Switch is not functioning properly.	$ 6,548	$ 6,548	100.00
182	FM-0054303	Orange	Central Justice Center	30-A1	2	Plumbing -There is a leak above chambers restroom on the 2nd floor West wing C-47chambers, leak is located in heat line for HVAC system. We have contacted ATI for remediation of saturated ceiling and to have them set up for drying purposes. Photo's and quotes and cost sheet will be uploaded as soon as they are available.	$ 6,602	$ 6,019	91.17
183	FM-0054304	Fresno	B.F. Sisk Federal Courthouse	10-O1	2	Grounds and Parking - Remove and replace the existing failed rollup door curtain at Judges' secured parking, new curtain will be Industrial Duty steel. The existing motor operator to be reused.	$ 6,758	$ 6,758	100.00
184	FM-0054305	Los Angeles	Alhambra Courthouse	19-I1	2	HVAC - Chiller #2 - Install new infrared water flow switches and add pressure gauges to the condenser and evaporator. New switches will require running new electrical. Head pressure tripped and chill water flow switch failed causing chiller #2 to stop operating.	$ 3,289	$ 2,829	86.00
185	FM-0054306	Los Angeles	Michael D. Antonovich Antelope Valley Courthouse	19-AZ1	2	Holding Cell - Concrete will be prepared to insure bonding, degrease area, acid wash, apply 1/8 thick coat of Petra polymers, and a final matching final coat. (Cell 4N4 - 145 SF & Cell 41 - 80 SF) Epoxy floor is coming up in sharp pieces on Cell 4N4, Cell 41, and Sheriff are worried that inmates may use as a weapon. This is in a high security felony lock up are that has high traffic.	$ 10,643	$ 10,643	100.00

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186	FM-0054307	Los Angeles	Chatsworth Courthouse	19-AY1	2	Plumbing - Remove and replace new booster pump motor, replace gauges, and install new contactor. The booster pump motor is non-functioning which will effect the water to the cooling towers and HVAC system.	$ 9,470	$ 7,936	83.80
187	FM-0054308	Los Angeles	Pasadena Courthouse	19-J1	2	Fire Protection - Fire Alarm - Remove and replace one failed mini module broad and pull station. Reset system and check operations. During earthquake drill, pull station was activated in lobby to set off fire alarm and will not reset at panel.	$ 2,638	$ 1,829	69.35
188	FM-0054310	Los Angeles	Inglewood Courthouse	19-F1	2	Elevators, Escalators, & Hoists - Remove defective door linkage, rebuild linkage and reinstall. Elevator #2 broken door linkage causing elevator door malfunction.	$ 6,067	$ 4,524	74.56
189	FM-0054315	Los Angeles	Pomona Courthouse South	19-W1	2	Fire Protection - Replace Main Fire Alarm Panel CPU, reprogram of CPU panel, and test panel. Fire Alarm Panel malfunctioning due to faulty corrupted main panel board. Causing strobes to activate by itself, activating fire Alarm Panel and sending trouble alarm signal to monitoring company.	$ 6,136	$ 5,592	91.14
190	FM-0054318	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	HVAC - Replace failed 30 HP motor for chilled water pump #4. The facility is running on one pump only; loss of the 2nd pump would result in complete loss of cooling.	$ 6,146	$ 4,914	79.95
191	FM-0054319	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	HVAC - Control Valve Activator - Remove and replace Chiller #2 Slide Control Valve Actuator. Currently, when the slide control actuator cover is on, the chiller trips off and will not operate.	$ 6,113	$ 4,887	79.95
192	FM-0054320	San Diego	County Courthouse	37-A1	2	Electrical - Build/Set up 30x30 full containment in Dept. 57 - 12 ft ceiling height, replace burned out T-8 and T-12 light bulbs, remove debris and wipe diffusers, ACM testing and final clearance, dispose of hazardous waste. 35% of the lights are out in Dept. 57 including burned out lights over defense counsel table and need to be replaced. Too dark in Dept. 57.	$ 4,403	$ 4,403	100.00
193	FM-0054327	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	2	Grounds and Parking - Damaged Sallyport Roll-Up - Replace aluminum bottom rail and install new safety edge. Straighten rods, reinstall curtain back onto guides and set limits/test for proper operation. Bus hit bay #2 when coming down causing damage to bottom rail and safety edge.	$ 3,415	$ 2,349	68.79
194	FM-0054328	Santa Clara	Morgan Hill Courthouse	43-N1	2	Electrical - Replace 3 failed non-keyed switches to ATS system. Generator does not switch for back-up power.	$ 4,351	$ 4,351	100.00
195	FM-0054331	San Diego	East County Regional Center	37-I1	2	Security - Replace failing motor and controller on oversize Sheriff's Vehicle Bus Gate - install one new 1 horse power, 230 volt Gear Head Motor Operator with heavy duty brackets, wire and electrical connection. Sheriff's large bus gate equipment motor and control panel is starting to fail, causing a safety issue with unloading and loading of inmates.	$ 4,768	$ 4,768	100.00
196	FM-0054333	Los Angeles	Metropolitan Courthouse	19-T1	2	Plumbing - Replace leaking gate valve and spool on the domestic water booster system pump. Currently the gate valve and spool is leaking and can go off-line causing the building to not have any water.	$ 3,663	$ 3,463	94.54
197	FM-0054334	Los Angeles	Metropolitan Courthouse	19-T1	2	HVAC - Rebuild circuit pump #1 on boiler #1. Currently the circuit pump #1 failed to operate properly during the level III PM (PM 2491405). The portable analyzer test (SCAQMD) will not be able to be performed until this replacement is completed.	$ 3,684	$ 3,483	94.54
198	FM-0054335	Contra Costa	Bray Courts	07-A3	2	Plumbing - Replace 22 bathroom sinks that are severely chipped and rusted; Risk Management recognizes this as a hazard. The uneven surfaces are hard to clean and harbor infectious bacteria, fecal bacteria, and tetanus. The edges are cut hazards and could aid in infection spread.	$ 14,534	$ 12,429	85.52
199	FM-0054338	Los Angeles	Mental Health Court	19-P1	2	Roof - Install guardian roof railing system including (4) ground plates, (1) 10 safety rails, (2) 6 safety rails & painted safety striping to comply with Cal-OSHA fall protection / Current roof is missing guard rails for fall protection.	$ 7,179	$ 5,119	71.31
200	FM-0054393	San Diego	East County Regional Center	37-I1	2	Fire Protection - Replace the clogged cooling lines on diesel fire pump - Install new pressure switch, strainers, pressure regulator, gate valves & 20-feet galvanized pipe, union elbows and tee's. Replace leaking 4-bolt flange on other side of fire pump. Diesel fire pump has a bad gasket around flange and is leaking water. Needs new piping, gate valves, a pressure switch and a pressure regulator due to they have out lived their life span and failure is imminent.	$ 4,908	$ 3,323	67.71

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201	FM-0054395	Alameda	George E. McDonald Hall of Justice	01-F1	2	HVAC - Replace failed rooftop exhaust fan whose worn-out drive components are creating excessive and unacceptable noise and vibration.	$ 12,231	$ 12,231	100.00
202	FM-0054396	Solano	Hall of Justice	48-A1	2	HVAC - Replace failed and worn-out supply fan shaft bearings and sheaves on air handler AHU-S2 to eliminate excessive vibration.	$ 12,911	$ 9,402	72.82
203	FM-0054397	Santa Clara	Old Courthouse	43-B2	2	Grounds and Parking Lot - No power to 12 exterior light posts - Replace 300 feet of failed #12 wire - Safety and Security Risk.	$ 5,569	$ 5,569	100.00
204	FM-0054400	Santa Clara	Palo Alto Courthouse	43-D1	2	Fire Protection - Per Fire Marshall Notice -Install metal signage for (4) FDC's and (1) PIV - Install (3) missing exit signs - Install (25) triangular fire extinguisher wall mount signs - Remove and dispose of abandoned (1) Ansul system in holding cell kitchen.	$ 5,982	$ 3,951	66.04
205	FM-0054402	Orange	North Justice Center	30-C1	2	HVAC - Burners, igniters, and flame sensor electrodes in the two RayPak boilers are defective and need to be replaced. Existing defective burners, hot surface igniters and flame sensors to be removed and 14 new burners, 1 new hot surface igniter and 1 new flames sensor to be installed in each RayPak Boiler. Work to include start up and testing.	$ 2,832	$ 2,558	90.31
206	FM-0054404	Orange	Central Justice Center	30-A1	2	HVAC - Failing VFD - Remove and replace the top portion of the VFD due to the present VFD shorting out. System is on bypass and if the bypass were to fail there would be no air flow to the 5th floor.	$ 4,517	$ 4,118	91.17
207	FM-0054405	Orange	Central Justice Center	30-A1	2	HVAC - Air Handler Bearings - Remove and replace the worn bearings on Air Handler 15, the bearings are worn which is causing the air handler to work harder with the possibility of bending the shaft.	$ 9,500	$ 8,661	91.17
208	FM-0054406	Orange	Central Justice Center	30-A1	2	Grounds and Parking - Automatic controls on Dock roll up doors have failed. Doors do not shut when using remote or automatic closer on the dock. Staff have to manually engage door before they can work properly. If doors cannot be closed by remote then this creates a safety issue due to staff having to leave the door open until someone can manually close it.	$ 6,735	$ 6,140	91.17
209	FM-0054407	Orange	West Justice Center	30-D1	2	FM - Flooring - Replace 24 square yards of high endurance carpet tile and 92 LF of black 4" cove base to match what was abated. Flooring was abated due to a black water flood on 12/19/14 and was severely contaminated requiring removal.	$ 7,945	$ 7,945	100.00
210	FM-0054408	Los Angeles	Inglewood Courthouse	19-F1	2	Elevator - Replace 2-defective selector switches on Elevator #1 - Elevator is stuck on the 4th floor, doors open not responding.	$ 4,629	$ 3,451	74.56
211	FM-0054409	San Bernardino	New San Bernardino Courthouse	36-R1	2	Grounds and Parking Lot - Replace approx. 30 SF of damaged concrete. Sand, repaint, and reutilize two existing bollards near a light pole in the secure bus area. Existing concrete was destroyed by Sheriff's bus impact to one of the two bollards.	$ 4,607	$ 4,607	100.00
212	FM-0054413	Monterey	Salinas Courthouse- North Wing	27-A1	2	HVAC - Cooling Tower - Replace failed (2) Fan Shaft Bearings, PVC Drift Eliminators and spray nozzle. Found during level 8 PM.	$ 13,316	$ 13,316	100.00
213	FM-0054414	Santa Clara	Downtown Superior Court	43-B1	2	Plumbing - Replace Approx 10 feet of failed 4 inch sewer pipe, add a dual cleanout in the planter area, hydro jet to remove tree roots. Camera scope included. Tree roots have created breaks in the pipe causing sewage leaks into the building.	$ 10,060	$ 10,060	100.00
214	FM-0054415	Alameda	Gale - Schenone Hall of Justice	01-E1	2	Security - Door Locking Hardware - Replace three failed solenoid door locking devices and one door control switch.	$ 2,244	$ 2,244	100.00
215	FM-0054419	Los Angeles	Metropolitan Courthouse	19-T1	2	Interior Finishes - Setup full containment with negative air machine, HEPA vacuum and wipe down the complete work area in the basement 2nd floor Air Handler rooms. Loose particles have been found on the floor and must be removed for safety.	$ 10,679	$ 10,096	94.54
216	FM-0054420	Los Angeles	Van Nuys Courthouse West	19-AX2	2	Elevators, Escalators, & Hoists - Replace Timed Relay Contact, Reset door lock faults, tested and return elevator to service. Elevator #2 not responding to calls, tripped loop overload due to timed relay contact failure.	$ 2,535	$ 2,040	80.48

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217	FM-0054421	Los Angeles	Stanley Mosk Courthouse	19-K1	2	HVAC - Install new tube bundle in heat exchanger #3 - Refurbish end cap before installing along with installing new gaskets, piping material, bolt kits and hardware. If the online heat exchanger goes down for any reason there will be no heating in the court.	$ 14,562	$ 14,163	97.26
218	FM-0054422	Los Angeles	Stanley Mosk Courthouse	19-K1	2	HVAC - Rebuild seals and bearings for Chill Water Pump #21. Currently the seals are blown and water is leaking onto the electrical equipment creating a safety situation.	$ 11,200	$ 10,893	97.26
219	FM-0054423	Orange	Central Justice Center	30-A1	2	Plumbing - Replace failed heat exchanger with leaking internal tubes. The exchanger provides heat to all public hallways.	$ 24,255	$ 22,113	91.17
220	FM-0054428	Monterey	Salinas Courthouse- North Wing	27-A1	2	HVAC - Replace failed 12x10 hot water reheat coil, (1) VAV box Coil Kit, (2) FDI flexible hoses for coil connection, Re-pipe utilizing flex connectors to protect from vibration, Replace water damaged baseboard for effected area.	$ 14,137	$ 14,137	100.00
221	FM-0054431	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	2	Exterior Shell - Restore 2 ea Metal "A" Frame structures, sand all steel, application of 1 coat primer and 2 oil base. Metal frames are deteriorating and losing its structural integrity.	$ 4,832	$ 3,382	69.99
222	FM-0054434	Los Angeles	Parking Structure Lot 59-Whittier Admin CTR	19-AO2	2	Grounds and Parking Lot - Vandalism - Replace 20 each 10" x 24" "Gate Drain Covers". The drain covers at the Upper Levels of the parking area are missing and believed to have been stolen for scrap recyclables. Failure to replace these covers leaves a 10" by 24" opening to step into.	$ 4,745	$ 4,101	86.43
223	FM-0054435	Los Angeles	Chatsworth Courthouse	19-AY1	2	Plumbing - Install new booster pump and re-pipe connections. Currently the booster pump motor is not functioning and must be replace or it will start to effect the water supply to the building.	$ 7,825	$ 6,557	83.80
224	FM-0054437	El Dorado	Main St. Courthouse	09-A1	2	HVAC - Replace 5 Window AC units, Install 1 Window unit and 1 Split System and install a sub panel with 2 circuits - AC units are old and failing. Some zones need AC units added with necessary electrical circuits.	$ 20,733	$ 20,733	100.00
225	FM-0054438	San Diego	Juvenile Court	37-E1	2	Interior Finishes - Unsafe Carpet - Remove and replace 78 square yards of the existing damaged carpet on the 2nd floor public corridor due to a trip hazard. Scope also includes prepping floor after the removal and disposal of the existing damaged carpet. All attempts to stretch, repair and patch the existing carpet have been exhausted.	$ 4,660	$ 4,660	100.00
226	FM-0054443	Contra Costa	Arnason Justice Center	07-E3	2	Interior Finish - Replace failed in-floor door closer with a surface mounted door closer. The surface mounted unit is 1/3 the cost of installing another in-floor unit - Existing closer does not properly close the exit door.	$ 15,605	$ 15,605	100.00
227	FM-0054448	Alameda	Wiley W. Manuel Courthouse	01-B3	2	HVAC - Replace failed and leaking supply fan 01 cooling coil piping, ACM present in the facility so testing and abatement if confirmed within piping insulation.	$ 1,175	$ 985	83.80
228	FM-0054449	Santa Clara	Downtown Superior Court	43-B1	2	Exterior Shell - Replace failed main door operator (motor) and closure, (2) exit devices (panic bar) and continuous door hinges to doors, threshold plate 6 inches X 72. Door is not latching shut and is a safety security risk.	$ 14,763	$ 14,763	100.00
229	FM-0054451	San Diego	Juvenile Court	37-E1	2	HVAC - Remove, replace, and dispose of damaged 30' section of 2" cast iron pipe and fittings. Waste lines are corroded and at risk of leaking, needs to be replaced due to deterioration and age.	$ 3,586	$ 2,676	74.62
230	FM-0054453	Riverside	Larson Justice Center	33-C1	2	Plumbing - Failed Backflow Device (Vault Location) - The Fire System backflow device has been tested and failed, the new backflow device will be replaced above ground to meet the current California plumbing code.	$ 13,850	$ 11,192	80.81
231	FM-0054454	Tulare	Tulare Division	54-B1	2	Plumbing - Remove and replace defective sewage sump pump that has failed - Sewage pump trips on voltage overload and is inoperable.	$ 2,709	$ 1,896	70.00
232	FM-0054455	Santa Clara	Morgan Hill Courthouse	43-N1	2	Fire Protection - Replace (1) smoke head and correct ground fault. Ground fault trouble caused smoke head to fail. Fire Watch will be conducted while fire panel is offline. Work to be performed off hours.	$ 4,445	$ 4,445	100.00
233	FM-0054458	Los Angeles	Van Nuys Courthouse East	19-AX1	2	Fire Protection - Failed Booster Pump Valve - Remove and replace a broken valve on fire booster pump for roof hoses, and add 3 code required signs. The valve is broken and stuck in the open position.	$ 5,227	$ 4,691	89.74

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234	FM-0054463	Sacramento	Gordon Schaber Sacramento Superior Court	34-A1	2	Roof - Repair leaks at the 3rd, 4th, & 5th floor roofs - Remove roof ballast to expose the areas of the leaking roof, prep the roof areas where the single ply roof has separated and apply new roofing to these areas (Approximately 150 LF), Continued leaking will cause damage to building structure.	$ 8,562	$ 8,562	100.00
235	FM-0054464	Los Angeles	El Monte Courthouse	19-O1	2	Vandalism - Buff out 70 windows and replace 4 windows and 1 door of the courthouse. Graffiti has been etched into the windows on the 1st, 2nd, and 3rd floors, along with the guard shack and juror room windows.	$ 15,000	$ 8,718	58.12
236	FM-0054468	Los Angeles	Metropolitan Courthouse	19-T1	2	Plumbing - Install wye strainer to reduce the debris in the backflow, currently there is debris from the domestic water supply becoming lodged between the check valve seat and the sealing disc, preventing the check valve from closing all the way.	$ 9,221	$ 8,718	94.54
237	FM-0054469	Los Angeles	Metropolitan Courthouse	19-T1	2	Electrical - Replace gaskets and valve cover gaskets to the emergency generator. The emergency generator is leaking oil which could cause the generator to fail during an emergency creating a safety situation.	$ 7,775	$ 7,350	94.54
238	FM-0054471	Los Angeles	Compton Courthouse	19-AG1	2	Plumbing - Failed Backflow Device - Remove and replace one failed 6" backflow assembly for the domestic water to the courthouse. The backflow was tested and failed, this assembly was beyond repair and had to be replaced.	$ 10,459	$ 6,917	66.13
239	FM-0054473	San Diego	South County Regional Center	37-H1	2	Holding Cell - Replace failed components on 21 doors on the 2nd floor and 12 doors on the 3rd floor of holding block. Effort is required to maintain integrity of the holding cell block, work to be completed after hours.	$ 24,295	$ 24,295	100.00
240	FM-0054474	Los Angeles	Airport Courthouse	19-AU1	2	Elevators, Escalators, & Hoists - Replace boards, power supply, speed sensor & door detector. Drive erased all parameters on boards, Elevator will not move with no memory / parameters.	$ 2,158	$ 1,665	77.17
241	FM-0054475	Santa Barbara	Santa Maria Courts Building G	42-F5	2	Plumbing - Non Functioning Combination Toilet/Sink Unit - Remove and replace inoperable combination toilet and sink in Holding Cell 11, combo unit no longer functions rendering the cell offline. Replace with similar unit as existing model is no longer available.	$ 5,367	$ 5,367	100.00
242	FM-0054476	Alameda	Juvenile Justice Center	01-C3	2	Interior Door Hardware - Replace failed non-mullioned double door ADA compliant panic hardware complete with top and bottom latches and linkage bars for courtroom side of entry vestibule - Work to be performed after hours.	$ 13,540	$ 13,540	100.00
243	FM-0054482	Santa Clara	Sunnyvale Courthouse	43-F1	2	HVAC - Failed Chiller 2 - Remove and replace two each failed chilled water pump motor bearings, one seal and two failed pressure gauges on Chiller Circuit 2.	$ 2,177	$ 2,177	100.00
244	FM-0054483	San Bernardino	New San Bernardino Courthouse	36-R1	2	Grounds and Parking Lot - Install rigging points onto 6 existing bollards located in front of Edison equipment cabinets. Utilize a forklift to remove the bollards and later reinstall them. This work is necessary for code required clearance for the equipment cabinets.	$ 4,141	$ 4,141	100.00
245	FM-0054484	Riverside	Larson Justice Center	33-C1	2	HVAC - Replace failed 15HP cooling tower fan motor. Currently only one chiller can operate, presenting court operational disruption threat.	$ 8,627	$ 6,971	80.81
246	FM-0054485	Orange	West Justice Center	30-D1	2	Exterior Shell - Large cracks have been identified on and around expansion joints in detention tunnels. Inject Sonnaborn MPII Poly Urethane sealant and carry out other related labor to prevent structural damage. Work must be completed during non-working hours.	$ 5,500	$ 5,500	100.00
247	FM-0054486	Los Angeles	Metropolitan Courthouse	19-T1	2	HVAC - Rebuild the condenser water pump #2. The pump is currently leaking water and if it fails, it will affect the chiller to the building.	$ 6,723	$ 6,356	94.54
248	FM-0054489	San Diego	County Courthouse	37-A1	2	Electrical - Replace 30 failed lamps and 8 failed ballasts (30%) in Depart 19. Build a full containment 30x30 in order to access the ballasts which are located on the back of the light fixtures. Depart 19 was recently reutilized and current lighting levels are insufficient.	$ 6,426	$ 6,426	100.00
249	FM-0054492	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	HVAC - Replace failed 30 HP motor for chilled water pump #5. The facility is running on one pump only; loss of the 2nd pump would result in complete loss of cooling.	$ 6,643	$ 5,311	79.95

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250	FM-0054493	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Fire Suppression System - Correct deficiencies discovered during quarterly inspection to include replacing one missing sprinkler escutcheon, one missing 2.5 inch standpipe cap, five painted sprinkler heads, and one corroded sprinkler head.	$ 2,502	$ 2,097	83.80
251	FM-0054496	Los Angeles	Pasadena Courthouse	19-J1	2	Electrical - Underground Storage Tank - Replace non operational annular veeder root sensor in compliance with fire code and EPA regulations.	$ 3,887	$ 2,696	69.35
252	FM-0054500	Los Angeles	Norwalk Courthouse	19-AK1	2	Elevators, Escalators, & Hoists - Enlarged the hole in the wall to prevent wires from chaffing and prevent short. Restored elevators 1-4 back to normal working conditions. Wires chaffing on call station housing which caused a short.	$ 2,239	$ 1,904	85.03
253	FM-0054502	Los Angeles	Metropolitan Courthouse	19-T1	2	Plumbing - Set-up containment, perform environmental testing, replace 10 feet of 8 inch pipe and fittings that are leaking. Currently water is leaking from the drain into the parking garage mechanical room. A heavy duty man lift will be utilized during this replacement.	$ 13,581	$ 12,839	94.54
254	FM-0054503	San Diego	North County Regional Center - Vista Center	37-F2	2	Fire/Life/Safety - Replace 40 failed strobes and horns. Fire alarm strobes and horns are not operating when an alarm is in progress.	$ 4,705	$ 3,164	67.24
255	FM-0054505	Los Angeles	Metropolitan Courthouse	19-T1	2	Electrical - Install dedicated circuits for appliances to prevent over loading of circuit breakers. Currently the circuits are over loaded with the break room appliances, which is creating a safety hazard due to the circuits could catch on fire.	$ 13,040	$ 12,328	94.54
256	FM-0054508	Santa Clara	Santa Clara Courthouse	43-G1	2	Exterior Light Poles - Replace 12 failed parking lot lamps. Will require a lift truck for to access lights.	$ 9,545	$ 9,545	100.00
257	FM-0054512	San Bernardino	Rancho Cucamonga Courthouse	36-F1	2	HVAC - Replace chiller condenser fan motor. Motor is making excessive noise at low speed and the bearings are showing signs of wear. Chiller provides cooling to critical Court IT equipment.	$ 2,659	$ 2,659	100.00
258	FM-0054520	Modoc	Barclay Justice Center	25-A1	2	Interior Finishes- Remove and replace small area of carpet to correct a reported and noted safety hazard in the primary cross office thoroughfare and break area.	$ 2,000	$ 2,000	100.00
259	FM-0054521	Los Angeles	Mental Health Court	19-P1	2	Parking Lot - Demo existing 18 ft. x 5 ft. x 6 in. failing CMU block wall and replace with new 18 ft. x 5 ft. x 6 in. galvanized chain link fence. Currently CMU Block wall is cracked and ready to fall creating and safety hazard for public or pedestrians.	$ 4,944	$ 3,526	71.31
260	FM-0054522	Los Angeles	Compton Courthouse	19-AG1	2	HVAC - Failing VFD Motor - Remove and replace one (1) 15 HP VFD, motor, pulleys and belts. Return Fan unit has defective VFD motor. Currently the VFD is in bypass causing the motor to run full speed wasting energy, adding stress on ducting, and shortening life expectancy on equipment.	$ 5,796	$ 3,833	66.13
261	FM-0054523	Los Angeles	Airport Courthouse	19-AU1	2	Electrical - Replace 10 defective lights and 10 ballasts in the basement parking - Poor lighting conditions have created an egress issue in the parking structure.	$ 4,038	$ 3,116	77.17
262	FM-0054524	Los Angeles	Santa Monica Courthouse	19-AP1	2	Elevators, Escalators, & Hoists - Install new closed-loop door operator - Remove and replace the failed closed-loop door operator, the elevator is unable to maintain proper operation as the hoist way door operator is malfunctioning.	$ 19,720	$ 15,478	78.49
263	FM-0054528	Tehama	Superior Court at Corning	52-B1	2	Roof - The metal roof is leaking is several areas around vent base flashings - Apply Garland CPR seam sealer and GarMesh product to cover 2 penetrations at each wall brace, vent pipes and vent base flashings, ridge cap laps seams and exposed screws, flashings at perimeter roof edging. Fabricate and install 18 gauge sheet metal cap and cricket at AC unit 1, and install and seal sleeper flashings on the 2 remaining AC units.	$ 11,200	$ 11,200	100.00
264	FM-0054529	Placer	South Placer Justice Center	31-H1	2	Doors and Hardware - Replace electric lock parts no longer available after hardware company consolidation. Install monitor, card reader and expansion panel for card reader system. Include 4 card reader panels for possible use by court if additional expansion is required in future.	$ 9,900	$ 9,900	100.00
265	FM-0054532	Los Angeles	Metropolitan Courthouse	19-T1	2	Vandalism - Paint and remediate graffiti around the public sidewalk, planters, fixtures and sidewalk right outside courthouse. Graffiti must be removed for the safety of the courthouse visitors and employees.	$ 4,122	$ 3,897	94.54
266	FM-0054533	Shasta	Justice Center	45-A2	2	COUNTY - INTERIOR FINISHES - Remove and replace minor carpet areas in Court Rooms 1 and 2 that total 600 sq. ft. Carpet can no longer be repaired.	$ 3,466	$ 3,466	100.00

ITEM #	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
267	FM-0054534	Fresno	Fresno County Courthouse.	10-A1	2	HVAC - Replace faulty condenser flow proving switch on chiller #2 with IMF type flow switch - Existing flow switch is not working properly which locks out the chiller when start is requested.	$ 2,536	$ 2,432	95.91
268	FM-0054535	San Bernardino	San Bernardino Courthouse	36-A1	2	Plumbing - Replace chilled water pump's failed bearings and seals. Install insulation on chilled water pump number 1 and 2. Chilled water pump is frozen in place and currently inoperable. Chilled water pump is critical in ensuring adequate chilled water flow to the air handlers to provide necessary cooling for the building.	$ 9,430	$ 9,019	95.64
269	FM-0054536	Los Angeles	Pasadena Courthouse	19-J1	2	Interior Finishes - Removal and replacement of 4x4 ceiling tiles with 2x4 ceiling tiles. Due to the change of tiles, need to install new T-bars - total of 30 pcs. Ceiling tiles need to be replaced in the 2nd floor West Wing Div. 7. They are very old, worn and severely damaged due to water damage.	$ 5,794	$ 4,018	69.35
270	FM-0054537	Fresno	Fresno County Courthouse.	10-A1	2	HVAC - Remove leaking chilled water valve on AHU #6 and replace with new 3" pneumatic 3-way mixing valve with new actuator and pilot positioner. Re-insulate new valve - The existing valve is leaking treated system water from the closed loop.	$ 5,462	$ 5,239	95.91
271	FM-0054538	Los Angeles	Airport Courthouse	19-AU1	2	Security - Replace existing roof top PTZ camera with a new IP PTZ camera and tie it into the new upgraded NVR CCTV system MCM. Exterior color camera has fuzzy unclear feed on monitor; plaza control camera is not showing color on the monitor. Images cannot be seen clearly when reviewed and camera needs to be replaced.	$ 3,808	$ 2,939	77.17
272	FM-0054541	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Plumbing - Replace leaking reheat coil and provide new reconnection of piping, new dielectric unions, two isolation ball valves and new pneumatic control valve located in the 1st floor Clerk's Office.	$ 9,625	$ 9,625	100.00
273	FM-0054543	Kern	Shafter/Wasco Courts Bldg.	15-E1	2	Fire Protection - Replace Failing Fire Roll- up Door and Auto Crank. Roll-up door is extremely hard to open and close, court staff are manually lifting and closing.	$ 3,923	$ 3,529	89.95
274	FM-0054550	Orange	Central Justice Center	30-A1	2	Plumbing - Replace 15' of failed sewer line in the basement parking garage. Project will include fittings, hangers, and scoping of the line, removal of 12'X16' area of ACM fire proofing with containment, and active monitoring of the ACM containment area.	$ 5,139	$ 4,685	91.17
275	FM-0054551	Orange	West Justice Center	30-D1	2	Grounds - Large cracks on the main walkway to the Courthouse are creating a trip hazard - Remove and replace approximately 738 SF of concrete sidewalk. Complaints of people tripping and women's heels getting caught on these cracks have been communicated to Facilities.	$ 6,283	$ 5,697	90.68
276	FM-0054552	Fresno	JJC Delinquency Court	10-P1	2	Security - Replaced failed power supply, motherboard and three 1 TB hard drives in Multiplexer #4 - Multiplexer has failed and the sixteen connected cameras are not viewable.	$ 6,150	$ 6,150	100.00
277	FM-0054557	San Bernardino	San Bernardino Courthouse	36-A1	2	Grounds - Remove and replace approximately 2,300SF of concrete sidewalks in front of the Courthouse. Concrete is cracked, chipped, and uneven in many areas, creating a trip hazard for court staff and the public. Court has reported public and staff tripping.	$ 21,909	$ 20,954	95.64
278	FM-0054558	Orange	Central Justice Center	30-A1	2	Plumbing - Plumbing - Replace failed water treatment system components of a heat exchanger supplying upper floor courtrooms, chambers,, and public restrooms currently without hot water. Project will include installation of a 3" backflow and piping with 4 new flanged strainers to prevent sediment build up.	$ 25,055	$ 22,843	91.17
279	FM-0054559	Alameda	Hayward Hall of Justice	01-D1	2	Exterior Shell - Waterproof Membrane - Remove and replace approximately 750 square feet of aged and failed deck membrane to eliminate storm water intrusion into the building.	$ 13,300	$ 11,744	88.30
280	FM-0054561	Napa	Criminal Court Building	28-A1	2	Security - Modify and adjust Filing Counter Lobby entrance doors (2 ea) - Double glass doors are not closing causing a security issue (doors are rubbing at header).	$ 6,738	$ 6,738	100.00
281	FM-0054563	San Diego	Kearny Mesa Traffic Court	37-C1	2	HVAC - Replace failed heat exchanger, induced blower assembly, wiring harness, and igniter on AHU-14.	$ 8,754	$ 8,754	100.00
282	FM-0054566	Santa Clara	Hall of Justice (East)	43-A1	2	Grounds and Parking Lot - Judges' Parking Lot Gate - Remove and replace (1) failed vehicle exit gate operator module required for proper operation to maintain security in the area.	$ 5,036	$ 5,036	100.00
283	FM-0054567	Fresno	B.F. Sisk Federal Courthouse	10-O1	2	Elevators - Worn Elevator Sheave and Suspension Ropes - Remove and replace damaged drive sheave and suspension ropes on Elevator #1. Work is needed to comply with code.	$ 25,000	$ 25,000	100.00

ITEM #	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
284	FM-0054568	Los Angeles	Parking Structure Lot 59-Whittier Admin CTR	19-AO2	2	Electrical - Replace 7 poles with (2) 175watt metal halide lamps per pole. There is a total of (14) light fixtures s, boom lift required. Exterior light poles on the top level are nonoperational due to blown lamps and ballasts.	$ 3,112	$ 2,690	86.43
285	FM-0054569	Los Angeles	Airport Courthouse	19-AU1	2	Electrical - Replace emergency lighting battery packs. Stairway 4 and 5 have a total of 36 T-8 lighting fixtures with battery packs, these serve as emergency lighting. The battery packs have a date code of 9802 and are 16 years old. Battery packs are showing signs of damage and are beyond their life expectancy and require replacement. This is a fire/life safety issue.	$ 4,156	$ 3,207	77.17
286	FM-0054570	Orange	West Justice Center	30-D1	2	Grounds - Remove Planter - Remove all plants and excess dirt, cap sprinkler lines and make all necessary preparations for the installation of gravel to this planter. The existing planter is an incline planter in the Secure Judges' Parking lot which is creating constant problems and expenses. Located next to the bus bay and air Conditioning equipment, debris from dead plants flies into the a/c equipment. Irrigation and rain causes dirt to erode onto the Judges' parking lot creating a slip hazard.	$ 4,700	$ 4,700	100.00
287	FM-0054571	Orange	Central Justice Center	30-A1	2	Exterior Shell - Replace failed inner spring of dock bay door to accommodate motor replacement. Project will include a 16X11 Cookson rolling steel service door with surface mount, heavy duty guides, slide locks on each side, 22 gauge slats (flat#5) and gray final coat paint.	$ 6,243	$ 5,692	91.17
288	FM-0054573	Los Angeles	Michael D. Antonovich Antelope Valley Courthouse	19-AZ1	2	Fire Protection - Replace the pressure switch for the compressor on the Pre-Action system. The Pre-Action system is losing air and the compressor is not starting.	$ 2,948	$ 2,167	73.51
289	FM-0054326	Los Angeles	Pasadena Courthouse	19-J1	2	Vandalism - Remove and replace existing window tint form all exterior windows located on Walnut street and side elevation of building. Currently window tint is damaged due to the age, weather, and the public scraping off the original tinting.	$ 7,400	$ 5,132	69.35
290	FM-0054340	Orange	Central Justice Center	30-A1	2	Elevators - Install over speed rupture valves to all 9 hydraulic elevators. The elevators currently do not have these valves and run the risk of dropping with no safety mechanism and consequently will not pass the 5 year inspection. The new over speed rupture valve comply with ASME A17.1-2007 safety code.	$ 35,559	$ 32,419	91.17
291	FM-0054248	Butte	Butte County Courthouse	04-A1	2	Security - Replace Parking Lights in back and front of building. Replace 4 Wall Pack Lights in back parking area. Install 2 new poles in front Lower parking area at end of the sidewalk stairs. Install lights on the sign on the highway side of the building. Replace lights on the roof of Rotunda. (All new lighting to be LED Lighting) - Many of the lights in the parking area are failing. The Lenses for the lights are all yellowed from the sun. Most of the parking is dimly lit and is causing security concerns.	$ 26,133	$ 26,133	100.00
292	FM-0054265	Santa Clara	Morgan Hill Courthouse	43-N1	2	Grounds and Parking Lot - Parking Lot Lighting - Remove and replace eighteen (18) Parking lot pole lights that have failed, five (5) failed ballast and five (5) failed photo cells. - This is a safety and security issue	$ 8,731	$ 8,731	100.00
293	FM-0054282	Santa Barbara	Santa Maria Juvenile Court (New)	42-H1	2	Security - Install Temporary Secure Fencing for Juror entrance - High Security Concern during cap trial, Install security fencing to stretch from Court building to Judges secure parking area. Man gate into Judges' parking will have to remain unlocked once the fencing is installed to maintain emergency exit path of travel requirements.	$ 3,000	$ 3,000	100.00
							$ 12,537,758	**$ 9,973,267**	

JUDICIAL COUNCIL OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION ADVISORY COMMITTEE

Attachment B

Court-Funded Facilities Requests (CFR)
Quarter 3, Fiscal Year 2014-2015

ITEM #	CFR NUMBER	COUNTY	BUILDING ID	FACILITY NAME	LEASE, LICENSE, OR FM	REQUEST TYPE	CFR DESCRIPTION	CFR TERM	FUND SOURCE	ESTIMATED CURRENT YEAR COSTS (Includes existing costs prior to CFR term)	ESTIMATED BUDGET YEAR COSTS	TOTAL ESTIMATED CFR COMMITMENT (CFR Term)	REVIEW NOTES - OREFM, JBCPO, & FSO
1	01-CFR006	Alameda	Multiple	Multiple	Facility Modification	One-Time	The Superior Court of California, County of Alameda is in the process of upgrading the evidence presentation system in 31 courtrooms. This process will involve installing 73 new electrical outlets throughout the court system. The Superior Court of California, County of Alameda has already begun to acquire the hardware needed to complete this project. It is the goal of the court to use their current vendor to perform the work needed. This request is deemed urgent because the Evidence Presentation funding requires that the installation be completed by June 2015.	NA	Operating Budget	$ 150,000	$ -	$ 150,000	Finance Review Pending
2	09-CFR003	El Dorado	09-C1	Cameron Park	Facility Modification	One-Time	**$2,300 cost increase to original $58,332 cost estimate.** Project Description: Provide modification to clerk's public counter, public restrooms and entrance doors to meet ADA requirements. The project is fully funded by Courthouse Construction Funds, approved by the AOC February 2009. CFR originally approved by TCFMAC 1/17/14.	NA	CCF	$ 2,300	0	$ 2,300	Finance Review Pending
3	10-CFR010	Fresno	10-A1	Fresno County Courthouse	Facility Modification	One-Time	Electrical work and data cable installation throughout courthouse, to accommodate increased staff and workstations needed to support increased workload from passage of AB-109 and Prop. 47.	One-Time	TCTF	$ 50,000	$ -00	$ 50,000	Pending
4	10-CFR011	Fresno	10-A1	Fresno County Courthouse	Facility Modification	One-Time	Modify Jury Clerks Office public counter to enhance security at this location and provide for an additional workstation that is ADA accessible.	One-Time	TCTF	$ 19,394	$ -00	$ 19,394	Pending
5	17-CFR002	Lake	17-E1	Gateway Business Park	Lease Extension	Ongoing	The Court is requesting the JCC to exercise the second two year option on the lease agreement to extend the time period from December 1, 2015 through November 30, 2017. A lease termination would require relocation to a different facility and increased costs.	Two Years	TCTF	$ 30,347	$ 31,219	$ 61,508	No Concerns
6	19-CFR025	Los Angeles	Multiple	Multiple	Facility Modification	One Time	Install digital sign boards to communicate up-to-the-minute information to the public. This project allows cost savings by eliminating recurring costs associated with printing, installation and disposal of currently used notification means. Work includes electrical, abatement and containment. 24 buildings.	NA	TCTF	$ 548,968	$ 548,968	$ 548,968	Pending
7	19-CFR026	Los Angeles	19-AZ1	Michael D. Antonovich Antelope Valley Courthouse	Facility Modification	One-Time	Build out two new courtrooms and adjacent holding areas. Existing shelled space has been built with all the infrastructure needed for the proposed use. The caseload at Antonovich has increased and existing courtrooms cannot support this caseload. The build out will greatly improve the processing of cases.	One time	TCTF	$ 2,179,219	$ -00	$ 2,179,219	No Concerns
8	19-CFR027	Los Angeles	19-C1	Torrance Courthouse	Facility Modification	One-Time	Install exterior fencing around Jury waiting area for security measures. This would separate exterior Jury waiting area from public and prevent passing of contraband from outside into the Jury waiting area.	One-Time	TCTF	$ 42,775	$ -00	$ 42,775	Pending
9	19-CFR028	Los Angeles	19-T1	Metropolitan Courthouse	Facility Modification	One-Time	Upgrades and renovations to rooms 801A, 808-2, and 808-5 to accommodate relocation of employees from different courtroom locations to a centralized location.	One-Time	TCTF	$ 363,474	$ -00	$ 363,474	Pending
10	19-CFR029	Los Angeles	19-L1	Clara Shortridge Foltz Criminal Justice Center	Facility Modification	One-Time	Convert existing District Attorney's Offices to a consolidated Jury Assembly Room. This would allow for a one-stop comprehensive orientation and assembly room for potential jurors.	One-Time	TCTF	$ 3,114,224	$ -00	$ 3,114,224	Pending
11	19-CFR030	Los Angeles	19-K1	Stanley Mosk Courthouse	Facility Modification	One-Time	Convert existing offices/areas (rooms 206, 208, 227, 233, 235, 241, 243, and 245D) back to Courtrooms/Chambers, and renovate/improve existing Training Room 545. These conversions will help facilitate and improve the processing of the existing caseload in a timely manner and better address the Court's needs for this facility.	One-Time	TCTF	$ 1,695,332	$ -00	$ 1,695,332	Pending

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12	24-CFR012	Merced	24-A2	Adobe	Lease (New or Possible Renewal)	Ongoing	New lease of MID Building (720 W. 20th Street, Merced, CA) for Traffic and Collections OR renewal of existing space at 670 W. 22nd Street. In order to lease the new space, the interior must be remodeled (the goal is to have this completed before the expiration of the current lease on June 30, 2015). There are three options associated with this new lease: Option #1: If the remodeling is not complete by June 30, 2015, then the old lease will get a six-month extension as a holdover period ($23,186); AND/OR Option #2: If remodeling is completed by June 30, 2015, then the court will move into the MID Building and start the new five-year lease ($546,067 total). Costs from Option #1 will not be incurred once the court moves into the new building, which will also trigger the start of costs for Option #2; OR Option #3: If negotiations for the lease at the MID Building are unsuccessful, the court will renew its lease for the current Adobe West Wing space ($262,686 - five-year total). If this is the scenario that occurs, neither Option #1 nor Option #2 will occur.	Five Years	TCTF and possible Special Revenue Non-Grant	$ 44,904	$ 101,333	$ 546,067	Pending
13	27-CFR003	Monterey	27-B1	Marina Courthouse	Facility Modification	One-Time	Upgrade the power infrastructure for the data center - Main Data Facility (MDF) - to support existing and future information technology and operational needs.	One-Time	TCTF	$ 150,000	$ -00	$ 150,000	Pending
14	30-CFR021	Orange	30-E3	HJC Newport Beach Parking License	Lease Extension	Ongoing	June 1, 2015 - May 31, 2016 lease extension for 50 parking spaces for employee parking and overflow court parking. This request is deemed urgent because the current parking at the Newport Beach Facility is inadequate. This supplementary parking allows for overflow parking for court staff also.	1 Year	Operating Budget	$ -00	$ 36,060	$ 36,060	Pending
15	30-CFR022	Orange	30-C1	1275 N. Berkeley Ave.	Lease Extension	Ongoing	July 1, 2015 - June 30, 2016 lease extension. The original lease was from July 1, 2011 to June 30, 2012 with the option to extend for five additional successive optional renewal terms of one year. This is a lease of 1,294 square feet of space held by the County as exclusive use space under the Court transfer agreements on the third floor of the North Justice Center. The space is used for Self Help Services. This request is deemed urgent because non-renewal of the space would eliminate the self help services.	1 Year	Operating Budget	$ -00	$ 46,180	$ 46,180	Pending
16	31-CFR003	Placer	31-K1	4075 Cincinnati Avenue	Lease Extension	Ongoing	Extend lease for three more years (8/1/2015-7/31/2018) to continue storage of archived records.	Three Years	TCTF	$ -00	$ 82,465	$ 253,632	No Concerns
17	31-CFR004	Placer	31-K1	4075 Cincinnati Avenue	Facility Modification	One-Time	Install additional lighting within the off-site storage facility to provide a minimum of 5 foot candles in all areas. Current lighting is inadequate, and many court employees regularly use flashlights to locate files. The increase in overall lighting will result in an OSHA compliant storage facility and improve safety and efficiency.	One-Time	TCTF	$ 35,000	$ -00	$ 35,000	Pending
18	31-CFR005	Placer	31-H1	Bill Santucci Justice Center	Facility Modification	One-Time	Installation of additional electronic entry systems for several interior doors (including several that are adjacent to the public areas of the courthouse and the IT server rooms). The electronic locks will improve security to and within the "Red Zone."	One-Time	TCTF	$ 25,000	$ -00	$ 25,000	Pending
19	33-CFR018	Riverside	33-TBD	Riverside Center Annex	New Lease and Tenant Improvements	Ongoing	New office space to be 100% occupied by the Court Information Technology Division. Cost includes rent amount for 5 years + 2 year options (including annual escalation). New carpet and paint throughout the space will be provided at no cost by the landlord. One large conference room will be removed to provide a more open office space at a cost of $5,000.	Five Years	TCTF	$ 55,811	$ 153,704	$ 805,237	No Concerns

ITEM #	CFR NUMBER	COUNTY	BUILDING ID	FACILITY NAME	LEASE, LICENSE, OR FM	REQUEST TYPE	CFR DESCRIPTION	CFR TERM	FUND SOURCE	ESTIMATED CURRENT YEAR COSTS (Includes existing costs prior to CFR term)	ESTIMATED BUDGET YEAR COSTS	TOTAL ESTIMATED CFR COMMITMENT (CFR Term)	REVIEW NOTES - OREFM, JBCPO, & FSO
20	34-CFR005	Sacramento	34-A1	Gordon Schaber Sacramento Superior Court	Facility Modification	One-Time	Facility Modifications to include first floor interior painting, flooring replacement, abatement of asbestos tiles, electrical work related to modular furniture installation, and relocation of copy machines. The affected areas have not been updated in 20-40 years and have caused safety hazards and impeded operational functions from heavy use.	One-Time	TCTF	$ 358,599	$ -00	$ 358,599	Pending
21	36-CFR028	San Bernardino	36-F1	Rancho Cucamonga Courthouse	Facility Modification	One-Time	Install two new teller window workstations into the exterior block wall to increase efficiency of court operations and enhance services to the public. This work will relieve congestion at the interior teller windows caused by the closing of area courts and also gives the public access to the clerk without having to enter the building.	One-Time	Non-TCTF	$ 243,000	$ -00	$ 243,000	Pending
22	36-CFR029	San Bernardino	36-J1	Barstow Courthouse	Facility Modification	One-Time	Install two new teller window workstations into the exterior block wall to increase efficiency of court operations and enhance services to the public. This work will relieve congestion at the interior teller windows caused by the closing of area courts and also gives the public access to the clerk without having to enter the building.	One-Time	Non-TCTF	$ 205,000	$ -00	$ 205,000	Pending
23	36-CFR030	San Bernardino	36-R1	San Bernardino Justice Center	Facility Modification	One-Time	Install three door mags and fire detection apparatus on the two fire-rated entrance doors to the Human Resources and Court Investigator areas. This will allow easier access to these two areas and still provide smoke and fire detection protection.	One-Time	Non-TCTF	$ 18,843	$ -00	$ 18,843	Pending
24	37-CFR018	San Diego	37-F1	North County Regional Center - South	Facility Modification	One-Time	Surveillance camera system upgrade. Certain areas of the facilities are not currently covered by surveillance cameras and it poses a security issue. An expanded and upgraded system will allow staff to work more effectively, efficiently and safely. This request is deemed urgent due to security risks.	NA	Operating Budget	$ 157,073	$ -	$ 157,073	No concerns
25	37-CFR019	San Diego	37-I1	East County Regional Center	Facility Modification	One-Time	Surveillance camera system upgrade. Certain areas of the facilities are not currently covered by surveillance cameras and it poses a security issue. An expanded and upgraded system will allow staff to work more effectively, efficiently and safely. This request is deemed urgent due to security risks.	NA	Operating Budget	$ 67,849	$ -	$ 67,849	No concerns
26	37-CFR020	San Diego	37-A2	Hall of Justice	Facility Modification	One-Time	Reconfigure second floor of the Hall of Justice to accommodate the transition of the Small Claims Business office to this facility. The HOJ location cannot currently handle a large number of customers at one time and would require customers either conduct business in the hallway or be brought into the secured area. A reconfiguration would provide separate transaction stations to serve more customers, including persons with disabilities.	One-Time	TCTF	$ 25,000	$ -00	$ 25,000	Pending
27	38-CFR004	San Francisco	38-B1	Hall of Justice	Facility Modification	One Time	Reconfigure and expand the Jury Assembly Room to accommodate the growing number of double jury panels. The room has not been updated since the 1980s. The large crowds in close quarters have become a security and staff safety issue, therefore this request is deemed urgent.	NA	TCTF	$ 179,117	$ 179,117	$ 179,117	Pending
28	43-CFR007	Santa Clara	43-B4	Superior Court Administration	Lease Extension	Ongoing	Extend lease for Finance & Facilities Divisions (Suites 102 and 900) for three 3-month extensions (July 2015-March 2016).	Nine Months	TCTF	$ 199,305	$ -00	$ 199,305	Pending
29	50-CFR016	Stanislaus	50-I1	1130 12th Street	Lease Extension	One-Time	Lease extension (April 1, 2015 - June 30, 2015). This space is being used to try multi-defendant high risk cases in Stanislaus County. The court cannot safely try these cases in the current downtown courthouse safely. This request is deemed urgent since no other space is available.	3 Months	Operating Budget	$ 42,661	$ -	$ 42,661	No concerns
30	50-CFR017	Stanislaus	50-I1	1130 12th Street	Lease Extension	One-Time	Extend Bankruptcy Court lease and utilities for one year. The building will be used to try multi-defendant high risk cases in Stanislaus County. These cases cannot be safely tried in the current Downtown courthouse.	One Year	TCTF	$ -00	$ 141,044	$ 141,044	No Concerns
31	54-CFR008	Tulare	54-TBD	City Council Chambers	Lease Extension	Ongoing	Continue use of space for Traffic Court at the Visalia City Hall on a weekly basis on Thursdays. The Court has been using this space for awhile, free of charge, but now the City wants to charge for continued use at $100/per use.	Two Years	TCTF	$ 1,700	$ 5,200	$ 10,500	No Concerns

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32	57-CFR005	Yolo	57-A9	1100 Main Street	Lease Extension	One-Time	Extend lease for two months (through August 2015) due to unexpected delay in the completion of the Yolo Superior Court's new courthouse. This space currently houses two Family Law Departments; there is no other location these departments could be moved to for the months of July and August.	Two Months	Non-TCTF	$ 41,246	$ -00	$ 41,246	Pending
33	58-CFR002	Yuba	58-A2	Richard A. Schoenig Annex	Lease Extension	Ongoing	7/1/2015-6/30/2017 Lease Extension with the option to extend the term for an additional year on the same terms. This is an ongoing lease assignment that the court has had since September 2000. The court does not have ample space to accommodate Self-Help Center, the Family Law Facilitator, the Child Support Commissioner, the child recommending counselors and support staff, therefore this request is deemed urgent.	2 Years	Operating Budget/ Grant Funded	$ 87,750	$ 88,065	$ 352,915	No concerns

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title
Trial Courts: Quarterly Investment Report for First Quarter of 2015

Agenda Item Type
Information Only

Date of Report
May 11, 2015

Submitted by
Judicial Council
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Executive Summary

This *Trial Courts: Quarterly Investment Report for First Quarter of 2015* provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under agenda item 10, Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004, and the report covers the period of January 1, 2015, through March 31, 2015.

Previous Council Action

On February 27, 2004, the Judicial Council approved several resolutions on investment activities for the trial courts. The resolutions direct that the Judicial Council develop an investment program for the trial courts, name the director of the Judicial Council's Finance Division[1] as the treasurer of invested trial court funds, and authorize the investment of trial court funds into (1) the State of California's Local Agency Investment Fund (LAIF), (2) Bank of America, N.A., investment funds, (3) or other investments as approved by the Judicial Council Administrative Director. They also provide for quarterly reporting of investment results by the director of the

[1] Effective October 1, 2012, the Judicial Council's Finance Division was renamed the Fiscal Services Office and was part of the Judicial and Court Administrative Services Division. The office has since been renamed Finance and remains in the (renamed) Administrative Division.

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Judicial Council's Finance office to the Judicial Council, the Administrative Director, and the senior manager of the Judicial Council's Audit Services.[2]

On June 1, 2009, the Judicial Council's Executive and Planning Committee, acting on behalf of the council, approved the investment of trial court monies in any share class of the two previously approved money market funds—the Bank of America Cash Reserves Fund (CRF; formerly Columbia Cash Reserves Fund) and the Bank of America Treasury Reserves Fund (TRF; formerly Columbia Treasury Reserves Fund)—and the addition of another money market fund, the Bank of America Government Reserves Fund (GRF; formerly Columbia Government Reserves Fund).

Summary of Findings

In table 1, CRF is the capital share class of the Bank of America Cash Reserves money market fund, TRF is the capital share class of the Bank of America Treasury Reserves money market fund, and LAIF is the Local Agency Investment Fund.

Funds held in the judicial branch treasury: total investment portfolio

As of the close of business on March 31, 2015, total investment balances held by the trial courts purchased from bank accounts—directly managed by the Judicial Council's Trust and Treasury Unit of Finance—were as specified in table 1.

Table 1. Trial Court Investment Balances Managed by the Finance Office

Investment Description	CRF	TRF	LAIF	Total
Section A, Book Values				
Beginning Balance–01/01/15	$166,394	$137,688	$372,537	$676,619
Net Purchases/(Sales)[3]	(24,048)	15,388	(165,210)	(173,870)
Interest Paid[4]	16	4	272	292
Total Change	(24,032)	15,392	(164,938)	(173,578)
Ending Balance–03/31/15	$142,362	$153,080	$207,599	$503,041

[2] As of February 2013, the Judicial Council's Audit Services is no longer part of Finance and is now a separate office in the Leadership Services Division.

[3] "Net Purchases/(Sales)" is the net amount of court investment principal purchases and sales completed during the quarterly period.

[4] "Interest Paid" is the total amount of interest paid to the investment account during the quarterly period and is included in the Ending Balance.

Investment Description (cont.)	CRF	TRF	LAIF	Total
Section B, Fair Values– 03/31/15				
Ending Balance	$142,363	$153,080	$207,678	$503,121
Net Unrealized Gain/(Loss) in Fair Value[5]	0	0	80	80
Ending Balance Plus Unpaid Interest Earned[6]	$142,363	$153,080	$207,887	$503,330
Section C, Earnings and Statistics				
Interest Earned[7]	$16	$4	$209	$229
Unpaid Interest Earned[8]	$0	$0	$209	$209
Average Yield[9]	0.04%	0.01%	0.26%	0.12%
Dollar-Weighted Maturity (Days)	37	29	191	98
Credit Quality	First Tier[10]	First Tier[10]	GC 16430[11]	
Percentage of Investment Portfolio[12]	28.30%	30.43%	41.27%	100.00%

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[5] "Net Unrealized Gain/(Loss)" is the difference between the investment balance's book value and its fair value at the end of the period. The net gain or loss is "unrealized" because the valuation at fair value is only for assets held by the fund at the end of the period. This Net Unrealized Gain/(Loss) would be "realized" or become an actual gain or loss only in the event that all participants' holdings in each portfolio were liquidated by the end of the period. *Realized* gains and losses are included in the Average Yield of the investment for the period.

[6] "Ending Balance Plus Unpaid Interest Earned" is the ending balance at fair value plus interest earned that is unpaid as of the end of the period. This figure represents the liquidation value including unpaid interest earned only in the event all participants' holdings in each portfolio were liquidated at the end of the period.

[7] "Interest Earned" is the total amount of interest earned during the quarterly reporting period.

[8] "Unpaid Interest Earned" is the amount of interest earned during the period that is unpaid as of the end of the quarterly reporting period.

[9] "Average Yield" is the simple average of the 30-day yields for each calendar month during the period, including any realized gains and losses, net of the investment's operating expenses. The total Average Yield is a dollar-weighted average of the investment components.

[10] "First Tier" money market debt securities receive a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations.

[11] LAIF may invest the fund money only in debt obligations as prescribed in Government Code (GC) section 16430.

[12] The portfolio balance percentages are calculated using the book values at the end of the quarterly period.

The ratio of each investment's fair value to its book value (Fair Value Factor) as of March 31, 2015, was as follows:

CRF	1.000000000
TRF	1.000000000
LAIF	1.000383728

The Fair Value Factor is 1.000 for CRF and TRF because all holdings in CRF and TRF are valued at fair value daily, and fair value is the price for all daily redemptions and reinvestment transactions. Because LAIF's operating rules permit the redemption, at any time, of all or a portion of any participating court's LAIF balance at its original purchase price, the court's redemption price is not affected by unrealized gains or losses.

Section A of table 1 provides the investment balances and activity for the period at book value or at original cost, plus or minus the straight-line amortization of any applicable discount or premium.

Section B provides the investment balances at their fair value at the end of the period. *Fair Value* is defined as the value at which an asset could be bought or sold in a current transaction between willing parties, other than in a liquidation.

Section C provides the investment earnings, the dollar-weighted average maturity, the credit quality, and each investment's percentage of the total investment portfolio.

The investment balances presented in the table include the combined balances of both trial court operating funds and agency funds.[13]

Investment portfolio components

CRF. The CRF is an overnight money market mutual fund registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 and operated in accordance with Commodity and Securities Exchanges, 17 Code of Federal Regulations part 270.2a-7. Investment purchases and redemptions of capital shares are transacted when Bank of America's system reviews the account balance daily at 1:30 p.m. PST and invests or returns funds as appropriate to maintain the bank account's established target balance. A purchase transaction takes place if the cash balance in the account exceeds the target balance, and a redemption transaction takes place when the cash balance is less than the target balance.

In accordance with the aforementioned Code of Federal Regulations, the CRF must maintain a dollar-weighted average maturity consistent with its objective of maintaining a stable net asset

[13] "Agency funds" are balances held in trust pending resolution of civil or criminal court proceedings, as well as funds held on behalf of state and local agencies before their statutory distribution. Agency funds include the following categories: civil trust, criminal bail trust, Uniform Civil Fees, and criminal fines, fees, and penalties.

value per share, not to exceed 60 days, and must contain only "First Tier" money market debt obligations receiving a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations.

The CRF invests only in high-quality money market instruments, which include bank obligations (including certificates of deposit and time deposits issued by domestic and foreign banks or their subsidiaries or branches), commercial paper, corporate bonds, extendible commercial notes, asset-backed securities, funding agreements, municipal securities, repurchase agreements, and other high-quality, short-term obligations. As of March 31, 2015, the CRF portfolio composition was as shown in table 2.

Table 2. CRF Portfolio Composition as of March 31, 2015

High-Quality Instruments	Percentage of Portfolio
Certificate of deposit	24.92
Financial company commercial paper	17.05
Other repurchase agreement	14.11
Asset-backed commercial paper	13.89
Other note	13.53
Other commercial paper	6.98
U.S. treasury repurchase agreement	5.30
Variable-rate demand note	1.93
U.S. government agency repurchase agreement	1.65
U.S. government agency debt	0.55
Other municipal debt	0.08

Bank of America has determined that iMoneyNet's Prime Category Average money market mutual fund is a good proxy of the CRF portfolio composition and performance. Included as Attachment A is the monthly fact sheet for the Bank of America Cash Reserves capital class shares reported as of March 31, 2015.

TRF. Like the CRF, the TRF is an overnight money market mutual fund registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 and operated in accordance with Commodity and Securities Exchanges, 17 Code of Federal Regulations part 270.2a-7. Investment purchases and redemptions of capital shares are transacted when Bank of America's system reviews the account balance daily at 1:30 p.m. PST and invests or returns funds as appropriate to maintain the bank account's established target balance. A purchase transaction takes place if the cash balance in the account exceeds the target balance, and a redemption transaction takes place when the cash balance is less than the target balance.

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In accordance with the aforementioned Code of Federal Regulations, the TRF must maintain a dollar-weighted average maturity consistent with its objective of maintaining a stable net asset value per share, not to exceed 60 days, and must contain only "First Tier" money market debt obligations receiving a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations. The TRF is in the highest fund rating category of Moody's at Aaa-mf, S&P at AAAm, and Fitch at AAAmmf.

The TRF invests only in high-quality money market instruments and invests at least 80 percent of its net assets in U.S. Treasury obligations and repurchase agreements secured by U.S. Treasury obligations. As of March 31, 2015, the TRF portfolio composition was as shown in table 3.

Table 3. TRF Portfolio Composition as of March 31, 2015

High-Quality Instruments	Percentage of Portfolio
U.S. treasury repurchase agreement	59.46
U.S. treasury debt	35.81
U.S. government agency repurchase agreement	4.73

Bank of America has determined that iMoneyNet's Government Category Average money market mutual fund is a good proxy of the TRF portfolio composition and performance. Included as Attachment B is the monthly fact sheet for the Bank of America Treasury Reserves capital class shares reported as of March 31, 2015.

***LAIF*.** LAIF is a money market fund held and managed by the State Treasurer's Office and is part of the Pooled Money Investment Account (PMIA). The PMIA is the short-term investment pool for the state General Fund; special funds held by state agencies; and monies deposited by cities, counties, and other entities into the LAIF. LAIF is a voluntary program created by statute; it began in 1977 as an investment alternative for California's local governments and special districts. The enabling statute for the LAIF is section 16429.1 et seq. of the Government Code.

By law, PMIA moneys can be invested only in the following categories: U.S. government securities; securities of federally sponsored agencies; domestic corporate bonds; interest-bearing time deposits in California banks, savings and loan associations, and credit unions; prime-rated commercial paper; repurchase and reverse repurchase agreements; security loans; bankers' acceptances; negotiable certificates of deposit; and loans to various bond funds.

LAIF's primary objectives are to maintain the safety of principal and provide daily liquidity. These objectives are met by investing in high-credit-quality debt instruments, maintaining an average maturity between 120 days and 18 months, and providing daily availability of the entire invested balance. LAIF's investment yield is consistent with these very conservative objectives.

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The *LAIF Performance Report*—including the portfolio's composition as of March 31, 2015, as reported by the State Treasurer's Office—is included as Attachment C. The State Treasurer's Office has not identified a money market fund suitable for benchmark comparison to LAIF.

Attachments

1. Attachment A: *BofA Cash Reserves: Capital Class Shares as of March 31, 2015*
2. Attachment B: *BofA Treasury Reserves: Capital Class Shares as of March 31, 2015*
3. Attachment C: *PMIA and LAIF Performance Reports* as of March 31, 2015

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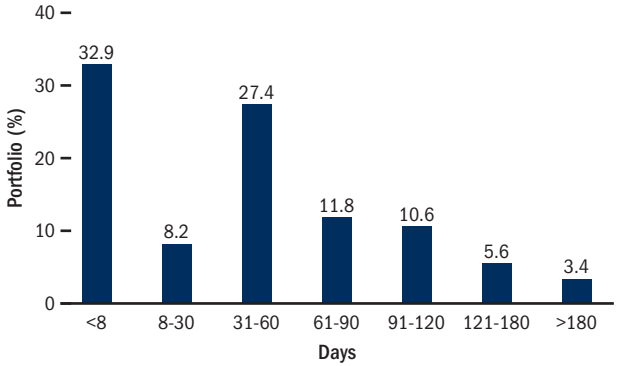
BofA Cash Reserves

Capital class shares as of March 31, 2015

ATTACHMENT A

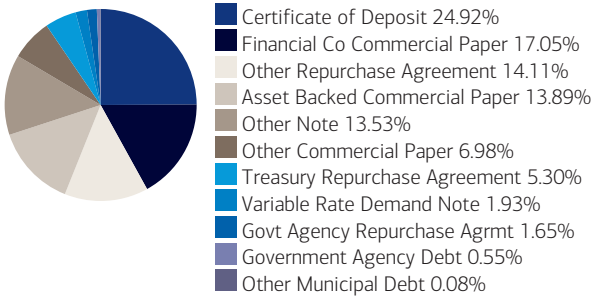
BofA® Global Capital Management

Maturity Distribution



Due to rounding, totals may not equal 100.

Portfolio Composition



Fund Objective:

The fund seeks current income, consistent with capital preservation and maintenance of a high degree of liquidity.

Investment Strategy:

The fund invests in high-quality money market instruments, including primarily short-term debt securities of U.S. and foreign issuers. The fund purchases only first-tier securities, which include bank obligations (including certificates of deposit and time deposits issued by domestic or foreign banks or their subsidiaries or branches), commercial paper, corporate bonds, extendible commercial notes, asset-backed securities, funding agreements, municipal securities, repurchase agreements and other high-quality, short-term obligations. These securities may have fixed, floating or variable rates of interest.

Fund Performance versus Index

	7-Day Yield	30-Day Yields											
	03/31/15	Mar-15	Feb-15	Jan-15	Dec-14	Nov-14	Oct-14	Sep-14	Aug-14	Jul-14	Jun-14	May-14	Apr-14
Current	0.05	0.05	0.04	0.04	0.03	0.03	0.02	0.02	0.02	0.02	0.02	0.03	0.05
Unsubsidized	-0.03	-0.03	-0.04	-0.05	-0.05	-0.06	-0.06	-0.06	-0.06	-0.06	-0.06	-0.06	-0.04
Benchmark†	—	0.02	0.02	0.02	0.02	0.02	0.02	0.01	0.02	0.02	0.01	0.02	0.01

Fund Facts:

Inception date	10/10/90
CUSIP number	097100853
Ticker symbol	CPMXX
Fund number	4576
Weighted average maturity (days)	37
Weighted average life (days)	49
Total assets (all shares)	$9,200m

Portfolio holdings and characteristics are subject to change periodically and may not be representative of current holdings and characteristics. Current and future holdings are subject to risk, including, but not limited to, market and credit risk.

†iMoneyNet Prime Category Average

The 7-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last seven days of investment as of the date listed.

The 30-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last 30 days of investment as of the dates listed.

The current yield reflects any voluntary waivers or reimbursement of fund expenses by the advisor or its affiliates. Absent of these waivers or reimbursement arrangements, performance would have been lower.

The unsubsidized yield is the gross yield that does not reflect any waivers or reimbursement arrangements.

Performance data quoted represents past performance and current performance may be lower or higher. Past performance is no guarantee of future results. The investment return and principal value will fluctuate so that shares, when redeemed, may be worth more or less than the original cost. Please visit www.bofacapital.com for daily and most recent month-end performance updates.

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MMF-0415 14/ARLS7QSN

BofA Cash Reserves

Capital class shares as of March 31, 2015

ATTACHMENT A

BofA® Global Capital Management

An investment in money market mutual funds is not a bank deposit and is not insured or guaranteed by Bank of America, N.A. or any of its affiliates or by the Federal Deposit Insurance Corporation or any other government agency. Although money market mutual funds seek to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in money market mutual funds.

Please see the prospectuses for a complete discussion of the risks of investing in money market mutual funds.

Source: iMoneyNet, Inc. is an independent mutual fund performance monitor. The iMoneyNet, Inc. averages are not intended to represent the past performance of the funds, but do represent the past performance of funds managed in a similar manner and having similar investment objectives and policies. The iMoneyNet Prime Category Average includes all Prime Retail and Prime Institutional funds.

BofA® Global Capital Management is an asset management division of Bank of America Corporation. BofA Global Capital Management entities furnish investment management services and products for institutional and individual investors. BofA Funds are distributed by **BofA Distributors, Inc.**, member FINRA and SIPC. BofA Distributors, Inc. is part of BofA Global Capital Management and an affiliate of Bank of America Corporation. Merrill Lynch, Pierce, Fenner & Smith Incorporated, a subsidiary of Bank of America Corporation, makes available investment products managed, distributed, or provided by BofA Global Capital Management.

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Bank of America

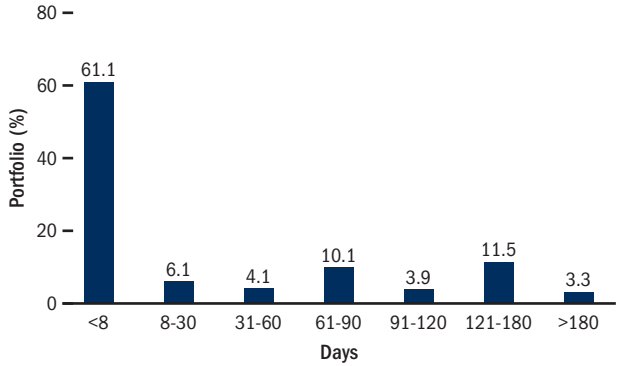
BofA Treasury Reserves

Capital class shares as of March 31, 2015

ATTACHMENT B

BofA® Global Capital Management

Maturity Distribution



Due to rounding, totals may not equal 100.

Portfolio Composition

Fund Objective:

The fund seeks current income, consistent with capital preservation and maintenance of a high degree of liquidity.

Investment Strategy:

The fund invests in high-quality money market instruments. The fund invests at least 80% of its net assets in U.S. Treasury obligations and repurchase agreements secured by U.S. Treasury obligations.

Fund Facts: NAIC-Listed [1]

Inception date	01/11/91
CUSIP number	097101307
Ticker symbol	CPLXX
Fund number	4232
Weighted average maturity (days)	29
Weighted average life (days)	44
Total assets (all shares)	$9,014m
Moody's Investors Service*	Aaa-mf
Standard & Poor's*	AAAm
Fitch*	AAAmmf

Portfolio holdings and characteristics are subject to change periodically and may not be representative of current holdings and characteristics. Current and future holdings are subject to risk, including, but not limited to, market and credit risk.

Fund Performance versus Index

	7-Day Yield	30-Day Yields											
	03/31/15	Mar-15	Feb-15	Jan-15	Dec-14	Nov-14	Oct-14	Sep-14	Aug-14	Jul-14	Jun-14	May-14	Apr-14
Current	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Unsubsidized	-0.17	-0.18	-0.20	-0.20	-0.19	-0.20	-0.20	-0.20	-0.19	-0.19	-0.18	-0.20	-0.20
Benchmark†	—	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

†iMoneyNet Government Category Average

The 7-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last seven days of investment as of the date listed.

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BofA Treasury Reserves

Capital class shares as of March 31, 2015

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Please see the prospectuses for a complete discussion of the risks of investing in money market mutual funds.

[1] The National Association of Insurance Commissioners (NAIC) is the organization of insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate. A fund listed on the NAIC List of Approved Mutual Funds meets conditions in the Purposes and Procedures Manual of the NAIC Securities Valuation Office, qualifying them for more favorable reserve treatment.

* The credit quality ratings represent those of Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P") or Fitch, Inc. ("Fitch") credit ratings. The ratings represent their opinions as to the quality of the securities they rate. Ratings are relative, subjective and are not absolute standards of quality. The security's credit quality does not eliminate risk. According to Moody's, Aaa money market ratings are judged to be of the best quality. AAAm is the highest principal stability fund rating assigned by S&P. AAAmmf ratings denote extremely strong capacity to achieve a money market fund's investment objective of preserving principal and providing shareholder liquidity through limiting credit, market, and liquidity risk by Fitch. For information regarding the methodology used to calculate the ratings, please visit Moody's at www.moodys.com, S&P at www.standardandpoors.com or Fitch at www.fitchratings.com.

Source: iMoneyNet, Inc. is an independent mutual fund performance monitor. The iMoneyNet, Inc. averages are not intended to represent the past performance of the funds, but do represent the past performance of funds managed in a similar manner and having similar investment objectives and policies. The iMoneyNet Government Category Average includes all retail and institutional funds: Treasury, Treasury and Repo, Government and Government Agencies.

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ATTACHMENT C

JOHN CHIANG
TREASURER
STATE OF CALIFORNIA

PMIA Performance Report

Date	Daily Yield*	Quarter to Date Yield	Average Maturity (in days)
04/02/15	0.28	0.31	199
04/03/15	0.28	0.30	200
04/04/15	0.28	0.30	200
04/05/15	0.28	0.29	200
04/06/15	0.28	0.29	199
04/07/15	0.29	0.29	203
04/08/15	0.29	0.29	206
04/09/15	0.28	0.29	203
04/10/15	0.28	0.29	202
04/11/15	0.28	0.29	202
04/12/15	0.28	0.29	202
04/13/15	0.28	0.29	199
04/14/15	0.28	0.29	200
04/15/15	0.28	0.29	201

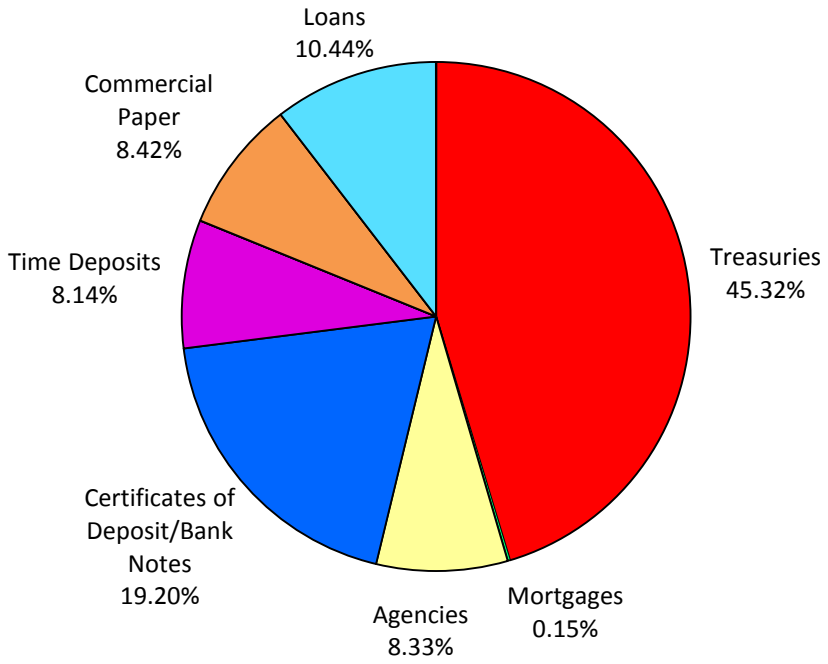
*Daily yield does not reflect capital gains or losses

LAIF Performance Report

Quarter Ending 03/31/15

Apportionment Rate:	0.26%
Earnings Ratio:	0.00000712637778462
Fair Value Factor:	1.000383728
Daily:	0.27%
Quarter to Date:	0.27%
Average Life:	191

PMIA Average Monthly Effective Yields

MAR 2015	**0.278%**
FEB 2015	0.266%
JAN 2015	0.262%

Pooled Money Investment Account
Portfolio Composition
$63.5 billion
3/31/15