



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 15, 2019

Title

Court Facilities: Revised *Trial Court Facility Modifications Policy*

Rules, Forms, Standards, or Statutes Affected

None

Recommended by

Trial Court Facility Modification Advisory Committee
Hon. Donald Cole Byrd, Chair
Hon. William F. Highberger, Vice-chair

Agenda Item Type

Action Required

Effective Date

March 15, 2019

Date of Report

March 1, 2019

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Executive Summary

The Judicial Council's policy on trial court facility modifications presents the methodology and processes for identifying and prioritizing facility modifications that improve trial court facilities statewide. More than six years of implementation since the July 2012 update has necessitated updating the current policy. This update improves the policy's overall clarity and readability for application to current business practices, particularly in defining, scoring, and prioritizing facility modifications. The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends the Judicial Council adopt the revised *Trial Court Facility Modifications Policy*.

Recommendation

The Trial Court Facility Modification Advisory Committee recommends that the Judicial Council, effective March 15, 2019, adopt the revised *Trial Court Facility Modifications Policy* (see Attachment A).

Relevant Previous Council Action

On July 27, 2012, following more than three years of implementation of its previous policy (i.e., *Prioritization Methodology for Modifications to Court Facilities*) as well as the need to better clarify the definition of a facility modification, the council adopted the *Trial Court Facility Modifications Policy* (see Attachment B). The minutes of the July 27, 2012, council meeting are available (see Link A).

Analysis/Rationale

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. The policy on trial court facility modifications presents the methodology and processes for identifying and prioritizing facility modifications that improve trial court facilities statewide.

The revisions to the current policy focus on removing all content not pertinent to policy-level information on facility modifications and adding language for clarity and transparency:

1. Section II was edited to incorporate energy efficiency and conservation of water usage in the definition of a facility modification and to remove references to routine maintenance, the Customer Service Center, and budget allocation, which have since become outdated or out of context.
2. Section III was edited (1) under Subsection A to include an explanation of how potential facility modifications are identified; (2) under Subsection B to classify all energy-efficiency projects as Priority 3 (unless a component of the overall project) and reference the new Attachment A that provides examples of priority levels for specific types of projects (e.g., Paint/Wall Covering and Window Covering); and (3) under Subsection C to include language to explain the scoring and prioritizing of Priorities 2–6 facility modifications for improved processes transparency, remove the reference to “working group” since the TCFMAC was elevated to an advisory committee in 2013, remove outdated language on an annual recommendation to the council, and clarify language on the role of the TCFMAC in making funding recommendations/requests for reconsiderations.
3. Section IV was edited to clarify the council’s receipt of quarterly reports on facility modifications.

The revised *Trial Court Facility Modifications Policy* would replace and supersede the version approved by the Judicial Council on July 27, 2012.

Policy implications

Not updating the policy at this time would maintain existing content that lacks improved clarity, readability, and alignment with current business practices.

Comments

On September 24, 2018, the revised policy was presented to the leadership of the Court Executives Advisory Committee (CEAC) and Trial Court Presiding Judges Advisory Committee (TCPJAC) for comment as well as direction on how it should be shared with all CEAC and TCPJAC members. On September 26, 2018, the revised policy was distributed to all CEAC and TCPJAC members for comment. By October 4, 2018, a total of five trial courts had submitted comments, which have been addressed as shown in the attached chart of comments at pages 4–5.

Also, the TCFMAC had discussed the revised policy at its public meetings on July 20, 2018, and January 28, 2019. No public comments were received.

Alternatives considered

No alternatives to the recommended council action were considered.

Fiscal and Operational Impacts

No new costs will be incurred by implementing the recommended council action, as it is performed on behalf of the council by its Facilities Services staff. Funding decisions for trial court facility modifications will continue through the oversight of the TCFMAC. The current level of funding allows the TCFMAC to address only the most critically needed Priorities 1 and 2, and some Priority 3 facility modifications statewide. Also, and for shared-use facilities, facility modification implementation is dependent on financial participation by the county that shares the building.

Attachments and Links

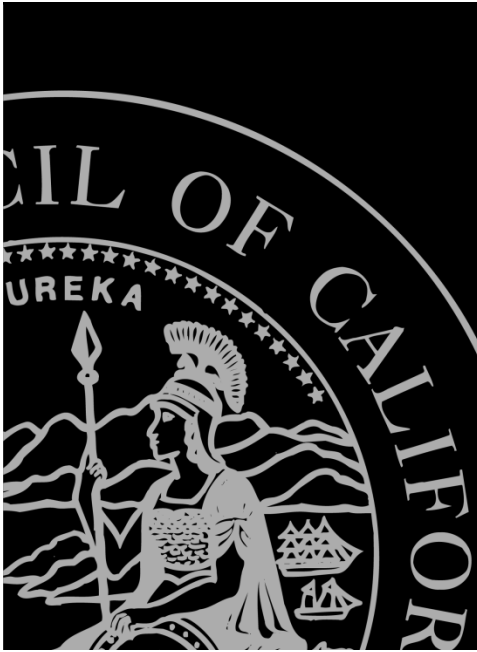
1. Chart of Comments: Summary: Superior Court Comments on the 2019 Revisions to the *Trial Court Facility Modifications Policy*, January 28, 2019, at pages 4–5
2. Attachment A: *Trial Court Facility Modifications Policy*, revised March 15, 2019
3. Attachment B: *Trial Court Facility Modifications Policy*, July 27, 2012
4. Link A: Judicial Council meeting minutes (July 27, 2012), www.courts.ca.gov/documents/jc-20120727-minutes.pdf

Comments Summary: Superior Court Comments on the 2019 Revisions to the *Trial Court Facility Modifications Policy*

	Commentator	Comments	Judicial Council Staff Responses
1.	Ms. Kimberly Flener Court Executive Officer	<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF BUTTE</p> <ol style="list-style-type: none"> 1. Attachment A – American with Disabilities Act - Priority 4 states that most work falls under this priority. It then goes on to mention examples of the type of issues that are “not compliant”. We would suggest adding additional context to this priority that these examples aren’t compliant under existing law but have been “grandfathered in” under older standards. In other words, these are not code violations in their current state. 2. Attachment A – Vandalism and Graffiti Mitigation – Vandalism and Graffiti are special cases and we’re questioning whether they really fall into priority levels where some could be funded and some not due to budget constraints (e.g. if all priority 1 and 2 assigned occurrences are funded but lower assigned occurrences are not funded due to budget constraints). It seems that any vandalism and graffiti should be viewed at the same priority level (high) and that it should be dealt with as soon as possible. If it goes unaddressed, it could proliferate. 	<ol style="list-style-type: none"> 1. In Attachment A – ADA, Priority 4’s language was revised to clarify the examples of existing conditions. 2. The Trial Court Facility Modification Advisory Committee (TCFMAC) agrees with the policy language under Attachment A, page 11.
2.	Mr. Sherri R. Carter Court Executive Officer	<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</p> <ol style="list-style-type: none"> 1. Despite the obvious budget uncertainties experienced in this area, the previous policy's clarity about funding categories provided a valuable benchmark. It is important for this policy to describe how modifications are to be funded (especially, for instance, should funding be available for Priority 2 and lower projects). 2. The results of the process for Scoring and Prioritizing must be made available to all courts. The proposed process could provide valuable transparency about FM decisions, but only if the detailed scoring is widely available. 3. Re: Prioritization scheme: Criterion 3, Feasibility, and Criterion 5, Design Status, both reflect whether the FM is design-ready. There should not be such redundancy among the criteria. In this instance, a project that has a high need, but is not design-ready, will get marked down twice. 4. Re: Attachment A: Generally, the policy should make clear it pertains to courthouse lockups. 5. Re: Attachment A: Paint/Wall Covering: <ol style="list-style-type: none"> a. Priority 3 seems to assume that "excessive wear" is a factor in Priority 2. Priority 2 should say so. b. Managed, but not-abated, hazardous materials should be a higher priority. 	<ol style="list-style-type: none"> 1. Statement on funding was added under Section II, B. 2. Because Priority 1 and 2 facility modifications (FMs) are funded outright, no scores are generated. For FMs over \$100,000, which includes Priority 3 FMs, scores are shown in List D – <i>Facility Modifications Greater Than \$100K</i>. 3. Criterion 3: Feasibility was revised. 4. Courthouse lockups are included in the discussion of the space and do not need to be called out separately. 5. The TCFMAC agrees with the policy language under Attachment A, page 8.

Comments Summary: Superior Court Comments on the 2019 Revisions to the *Trial Court Facility Modifications Policy*

	Commentator	Comments	Judicial Council Staff Responses
		<p>6. Re: Attachment A: Flooring:</p> <ul style="list-style-type: none"> a. Priority 1 should be expanded. The complete collapse of a sub-floor is a rare event. Priority 1 should include the more common cause of immediate flooring replacement need: flooding with or without asbestos contamination. Also, the example given is not illustrative of Priority 1 issues. b. "Significant safety hazards" should be Priority 1, not Priority 2. c. Managed, but not-abated, hazardous materials should be a higher priority. <p>7. Re: Attachment A: ADA: Priority 2, written claims: should be rewritten to clarify that claims should be submitted by the CEO.</p> <p>8. Re: Attachment A: Vandalism and Graffiti Mitigation:</p> <ul style="list-style-type: none"> a. In Priority 1, reference to "structural building components" is out of place. Roof membranes may be affected by vandalism and should be Priority 1. b. The language of Priority 2 seems to imply that vandalism only takes place in designated public spaces. But the policy should cover courtrooms and other Court-exclusive spaces. 	<p>6. (a) In Attachment A - Flooring, Priority 1 Flooring's language has been revised.</p> <p>(b) Current practice is safety hazards are brought to the TCFMAC as Priority 2 FMs.</p> <p>(c) The TCFMAC agrees with the policy language under Attachment A, page 9.</p> <p>7. In Attachment A – ADA, Priority 2's language was revised.</p> <p>8. (a) The TCFMAC agrees with the policy language under Attachment A, page 11.</p> <p>(b) In Attachment A – Vandalism/Graffiti Mitigation, Priority 2's language was revised, and the comment was passed to the TCFMAC for discussion.</p>
3.	<p>Hon. Lydia M. Villareal Presiding Judge</p> <p>Mr. Chris Ruhl Court Executive Officer</p>	<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY</p> <p>1. No comments or concerns about the revised language.</p>	<p>No response required.</p>
4.	<p>Mr. David H. Yamasaki Court Executive Officer</p>	<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</p> <p>1. No comments or concerns about the revised language.</p>	<p>No response required.</p>
5.	<p>Hon. John P. Vandeer Feer Presiding Judge</p>	<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO</p> <p>1. No comments or concerns about the revised language.</p>	<p>No response required.</p>



Trial Court Facility Modifications Policy

ADOPTED: JULY 27, 2012

REVISED: MARCH 15, 2019



JUDICIAL COUNCIL
OF CALIFORNIA

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.

This *Trial Court Facility Modifications Policy* replaces and supersedes the version approved by the Judicial Council on July 27, 2012.

II. Facility Modifications

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;
- An alteration, addition to, or betterment of a facility that makes the facility more energy efficient and/or conserves water usage;
- 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, emergencies, 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 maintain, 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, breakdown, and service interruptions.

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.

III. Prioritizing Facility Modification Projects

A. Identification of Potential Facility Modifications

Judicial Council staff will work with trial court executive officers and their staff to document the court's operational needs. Facility conditions will be assessed by Judicial Council staff and contractors periodically to assess Facility Modification requests and requirements.

As set forth below, Judicial Council staff will assign a priority category to each modification requested or indicated, develop a preliminary cost estimate, and determine a high-level scope of work for the Facility Modification.

B. Priority Categories for Facility Modifications

Projects determined to be Facility Modifications will be assigned one of the six priority categories described below. However, the amount of the funding available annually determines which priorities can be funded.

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 the 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.

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 the most basic functions of the facility, but its correction will improve court operations. All energy efficiency projects will be classified as Priority 3, unless energy efficiency is a component of the overall project.

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.

Facility Modifications determined to be Priority 1 will be addressed immediately regardless of whether the facility is subject to a joint occupancy agreement with a county. Planned Priorities 2–6 Facility Modifications—located in a common area in a facility that is subject to a joint occupancy agreement with a county—will be assigned an appropriate priority category. However, the

implementation of that Facility Modification may be dependent on financial participation by the county that shares the facility.

Attachment A sets forth examples of priority levels for specific types of projects: Paint/Wall Covering and Window Covering, Flooring, Americans with Disabilities Act (ADA) Projects, and Vandalism and Graffiti Mitigation.

C. Scoring and Prioritizing Priorities 2–6 Facility Modifications

Within each priority category, each proposed Facility Modification will be scored and prioritized by Judicial Council staff utilizing the first five criteria listed below. The Facility Modifications will be ranked within each priority with the lowest cumulative scores within a priority signifying the highest ranking and the highest scores within a priority signifying the lowest ranking.

1. Justification and Effect on the Court: This will be a score between 5 and 50, with 5 indicating the court is closed or court operations are significantly impacted (negatively) due to the need for the Facility Modification and 50 indicating the court is operating at standard productivity, **and** court appearance and dignity are not diminished by the condition. However, it would be desirable to complete the Facility Modification, but it is not essential for court operations. *Please note that any number between 5 and 50 can be used to quantify the justification and the effect this requirement has on the court.* The information below will assist in determining the correct number. Equity among courts can be taken into consideration when assigning appropriate values below.

- 5–15 Court operations are *significantly* impacted (negatively).
- 16–20 Court is operating, but at less than standard productivity.
- 21–35 Court appearance and dignity are diminished by the condition of the facility.
- 36–50 The court is operating at standard productivity, **and** court appearance and dignity are not diminished by the condition. However, it would be desirable to complete the Facility Modification.

2. Safety, Security, Risk Management: This will be a score between 5 and 25 (with 5 indicating there is a potential for serious risk and 25 indicating there is no risk). The focus here is on safety, security, and risk management/mitigation by taking into consideration public and employee safety. *Please note that any number between 5 and 25 can be used to quantify the effect this requirement has on the court.* The information below will assist in determining the correct number.

- 5–15 Potential serious risk
- 16–20 No significant risk
- 21–25 No risk

3. Feasibility: This will be a score of 10, 15, 20, or 25, with 10 indicating the project is easy to perform and 25 indicating the project requires major design efforts and may not be practical to perform. Factors to consider when assigning a score are (a) whether the modification is a shared responsibility with a county that would require an independent agreement to share costs of that modification, (b) permitting issues, (c) funding availability, (d) planning and assessments, (f) court approvals, and (g) fire plans.

- 10 Easy to perform with little or no planning or assessments
- 15 Requires some planning and assessments
- 20 Requires major planning and assessments effort or shared cost difficult to receive
- 25 Requires major planning and assessments effort, may not be practical, shared cost highly unlikely

4. Cost/Benefit: This will be a score based on the Simple Return on Investment (ROI)¹ value associated with the project. Deduction will be 3 points for each year of ROI less than seven creating a potential score of between -21 and -3. This criterion allows for Facility Modifications that will pay back the cost of the effort over shorter time frames to move up the list by using a negative score. An energy-saving improvement yielding reduced utility bills or an automation project resulting in a demonstrable reduction in labor expenses are good examples. Project documentation must be validated by Judicial Council staff.

- 0 ROI in excess of 7 years
- -3 ROI of 7 years
- -6 to -21 ROI of 6 to 1 years

For Facility Modifications, where energy efficiency is the primary component of the project, the project's ROI will be compared to the Maximum Investment Threshold (MIT)² of the measure being installed. For projects where ROI is less than MIT, the project will be awarded -3 points, plus a -3 point for every year the ROI is less than MIT, with a maximum score of -21.

- 0 ROI is greater than MIT
- -3 ROI is equal to MIT
- -6 to -21 ROI is less than MIT

5. Design Status: This will be a score of 5, 15, or 25, with 5 indicating the project is designed and ready to perform today, and 25 indicating the designs will take more than 90 days to

¹ Simple Return on Investment (ROI) is the gross project cost divided by the dollars saved annually.

² Maximum Investment Threshold is 50% of the maximum of either (a) the Effective Useful Life as defined by the California Public Utilities Commission (derived from Database of Energy Efficiency Resources) for the measure, or (b) Guaranteed Life (manufacturer's guarantee or warranty exceeding stated Effective Useful Life) of the measure.

complete. Facility Modifications that require no design effort, or are already in design, will receive higher scores than those still requiring design effort.

- 5 Designed, ready to perform immediately
- 15 Designed, will be ready to perform within 90 days
- 25 Designs will take more than 90 days to complete

6. Planned Major Capital Improvements: Judicial Council staff can take into consideration whether there is a planned major capital project that would address the Facility Modification need in a reasonable period of time. If there is a planned major capital project that will address the Facility Modification need in a reasonable period of time, the Judicial Council may determine that it is not an efficient use of resources to implement the Facility Modification, notwithstanding the final scoring of the five criteria listed above.

D. TCFMAC Review of Court Requests for Reconsideration

The Trial Court Facility Modification Advisory Committee (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.

Courts and Judicial Council staff may request that a decision made by the TCFMAC be reconsidered. Such requests could address funding, prioritization, or scoring decisions. All such requests must be in writing and signed by the presiding judge or court executive officer, or, if from the Judicial Council, the director of Facilities Services. Requests for reconsideration should be submitted to the chair of TCFMAC. The TCFMAC will then review all the information and make a final determination.

IV. Quarterly Reports to the Judicial Council

Judicial Council staff will develop a quarterly report for each quarter of the fiscal year, to be approved by TCFMAC and provided 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 funds between the funding categories. The final quarter report for each fiscal year will also include the annual summary of Facility Modifications for the prior fiscal year.

Paint/Wall Covering and Window Covering

The following priorities are applicable for Facility Modifications involving paint/wall covering and window coverings when paid for by the Judicial Council. However, rule 10.810 of the California Rules of Court authorizes courts to use their operating funds for interior painting. If a local court elects to utilize its own operating funds for interior painting, then these priorities are not applicable since the costs are being paid for by the local court and will not be funded as a Facility Modification project pursuant to this policy.

Priority 1: Only when done as part of a larger Priority 1 Facility Modification that would require painting to complete the repair. For example, if a water leak resulted in replacement of sheetrock, painting to match the preexisting color would be included in the renovation effort.

Priority 2: Only used for significant safety hazards (e.g., peeling lead-based paint). Priority 2 Facility Modifications should be limited to the minimum effort needed to address the immediate concern (corner-to-corner painting versus whole room).

Priority 3: Use when excessive wear does not justify a Priority 2 Facility Modification but impacts the dignity of the court to a level that its correction will improve court operations and provide minimal maintenance standards; for example, repainting and wall covering repairs in public common areas and courtrooms where the wear/damage indicates a total lack of concern for basic maintenance standards. Priority 3 projects should be limited to the minimum effort needed to address the immediate concern (corner-to-corner painting versus whole room). Priority 3 Facility Modifications should limit planned work in alignment with this requirement during project scope development.

Priority 4: Only used where painting is required for code compliance.

Priority 5: Most painting and wall/window covering replacement will fall into this priority. Due to the limited funding for this priority, courts should be encouraged to budget for recurring painting and wall covering replacement.

Priority 6: Only used to provide repairs/covering after the removal of managed but not abated hazardous materials.

Flooring

The following priorities are applicable for Facility Modifications involving flooring when paid for by the Judicial Council. Notwithstanding the preceding, rule 10.810 of the California Rules of Court authorizes local courts to use their own operating funds for flooring projects. If a local court elects to utilize its own operating funds for flooring projects, then these priorities are not applicable since the costs are being paid for by the local court and will not be funded as a Facility Modification project pursuant to this policy.

Priority 1: Floor finishing done as part of a larger Priority 1 Facility Modification that would require flooring repairs/replacement to complete the repair with or without hazardous material. For example, if a water leak resulted in moldy carpeting, replacing the carpet to match the preexisting carpet would be included in the repair effort.

Priority 2: Only used for significant safety hazards, such as tripping hazards. Before flooring replacement is approved, repairs of the existing flooring should be attempted. Only when repairs are not practical or cost-efficient should total area flooring be replaced. Even then it should normally be limited to the room/area and not extended to the entire floor or department.

Priority 3: Use when excessive wear does not justify a Priority 2 Facility Modification but impacts the dignity of the court to a level that its correction will improve court operations and provide minimal maintenance standards; for example, repairs in public common areas and courtrooms where the wear/damage indicates a total lack of concern for basic maintenance standards. Priority 3 work should be limited to the minimum effort needed to address the immediate concern (single room versus whole floor).

Priority 4: Only used where flooring repairs/replacement is required for code compliance.

Priority 5: Most flooring replacement will fall into this priority. Due to the limited funding for this priority, courts should be encouraged to budget for normal life cycle flooring replacement.

Priority 6: Only used to provide repairs/replacement after the removal of managed but not abated hazardous materials.

Americans with Disabilities Act Projects

The Judicial Council has the responsibility to make certain that all court buildings comply with the Americans with Disabilities Act (ADA). The priorities for ADA projects will be as follows:

Priority 1: ADA projects will not normally fall under this priority as this priority is generally intended to repair an existing condition that has become immediately or potentially critical in nature due to it being broken or damaged. (This priority is not intended to be an upgrade to an existing condition.)

Priority 2: Only used to mitigate a legal action or written claim, and only for the items noted in the written claim or legal action. Written claims should be submitted by the CEO. For example, if the written claim or legal action identifies no ADA-accessible bathrooms on the first floor, the focus will be on providing an accessible bathroom on the first floor and not throughout the building. If ADA compliance is part of the overall repair, then compliance must be followed for that specific repair. For example, if the Priority 2 Facility Modification is to replace a washroom lavatory and fixtures, that particular lavatory and associated fixtures, and its components, must be ADA compliant.

Priority 3: Use when there is an impact to the dignity of the court to a level that its correction will improve functionality, usability, and accessibility of court operations. Priority 3 work should be limited to the minimum effort needed to address the immediate concern. If ADA compliance is part of the overall repair, then compliance must be followed for that specific repair. For example, if the Priority 3 Facility Modification is to replace or add a break room cabinet, sink, or fixtures, that particular cabinet and associated fixtures, and its components, must be ADA compliant.

Priority 4: Most ADA work will fall under this priority. The following are examples: doors do not have closers or improperly pull weight, bathrooms are not compliant, ramps are needed, service counter heights are too high, and elevator operating panels are not compliant. These examples in existing buildings are not code violations in their current state; however, all of these conditions might have to be corrected if the building is modified.

Priority 5: ADA projects will not fall under this priority.

Priority 6: ADA projects will not fall under this priority.

Vandalism and Graffiti Mitigation

The Judicial Council has the responsibility for damage that occurs to court facilities as a result of vandalism. Vandalism includes graffiti-related damage. The priority for Vandalism and Graffiti Mitigation will be established as follows:

Priority 1: These projects have immediate impact and are potentially critical in nature. Such conditions may include, but are not limited to, the following: major flooding, substantial damage to roofs or other structural building components, or hazardous material exposure.

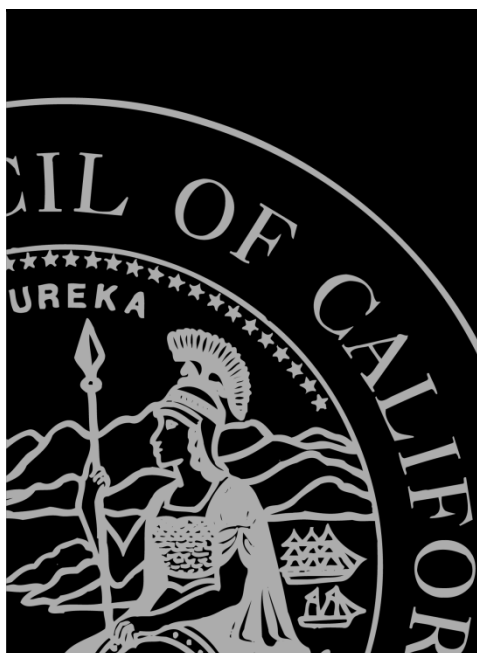
Priority 2: Vandalism and Graffiti Mitigation can only be justified as a Priority 2 Facility Modification if it is described as vandalism in a public area that must be repaired immediately to prevent further deterioration of the building infrastructure. Public areas are generally described as building lobby areas, restrooms within free access areas, courtrooms, and corridors outside of courtrooms where the public congregates. Priority 2 Facility Modifications should be limited to the minimum effort needed to address the immediate concern.

Priority 3: Use when there is an impact to the dignity of the court to a level that its correction will improve functionality, usability, and accessibility of court operations. Priority 3 work should be limited to the minimum effort needed to address the immediate concern.

Priority 4: Only used where Vandalism and Graffiti Mitigation is required for code compliance.

Priority 5: Vandalism and Graffiti Mitigation projects will not fall under this priority.

Priority 6: Vandalism and Graffiti Mitigation projects will not fall under this priority.



Trial Court Facility Modifications Policy

ADOPTED AND EFFECTIVE
JULY 27, 2012



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

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.

This document replaces and supersedes the Judicial Council's *Prioritization Methodology for Modifications to Court Facilities*; last revised April 24, 2009 and, if approved, would become effective on July 27, 2012.

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, on the one hand, and routine maintenance and repair, on the other hand. Facility Modifications are distinguished from routine maintenance and repair 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, or 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 the Office of Court Construction and Management (OCCM), a division of the Administrative Office of the Courts (AOC), through its Real Estate and Asset Management Services' Facilities Management Unit. 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 TCFMWG 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 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 cancelled.

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 TCFMWG to fund requests that are ad hoc or unplanned, but that rank among the highest priority Facility Modifications. The TCFMWG will determine at the beginning of the fiscal year the 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 decision at each meeting to ensure funds are spent appropriately and fully for the fiscal year. Based on this funding determination the AOC staff will present a proposed list of Facility Modification at each meeting. The TCFMWG 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 IIA 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 AOC 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 AOC personnel through requests made to the CSC. The AOC 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 AOC 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. AOC staff will report to the TCFMWG on all Priority 1 request as part of the next scheduled TCFMWG meeting.

2. Priority 2–6 Requests. Requests for Priority 2–6 Facility Modifications will be tracked by the AOC and the courts using the AOC’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

V. Trial Court Facility Modifications Working Group

A. Trial Court Facility Modifications Working Group: Membership and Terms

The Trial Court Facility Modifications Working Group (TCFMWG) has been established by the Judicial Council to review Facility Modification needs across the state. Judges or court executive officers from any California court who have knowledge of or interest in facilities management or construction are eligible to apply for membership. The TCFMWG consists of five judges selected by the Trial Court Presiding Judges Advisory Committee and three Court Executive Officers selected by the Court Executive Officers Advisory Committee. Members serve a three-year term, though terms may be extended at the discretion of the chair of the Court Facilities Working Group (CFWG). The chair and vice-chair of the TCFMWG are appointed from among the TCFMWG membership by the Chief Justice, with recommendations from the chair of the CFWG. AOC staff is responsible for notifying the pertinent selection committee when new members need to be appointed.

B. Trial Court Facility Modifications Working Group: Duties and Procedures

The TCFMWG will meet as needed to review the AOC 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 AOC reports and any other available information, the TCFMWG 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 group may also determine that certain items do not qualify as Facility Modifications and remove them from the list of recommended projects.

C. Trial Court Facility Modifications Working Group: 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 AOC staff to the TCFMWG will develop a proposed allocation among the four Facility Modification Budget Allocation Categories and a list of potential Planned Facility Modifications.

3. The TCFMWG will consider the AOC 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 TCFMWG will also use this AOC 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 TCFMWG 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 TCFMWG’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 TCFMWG’s responses will be included with the final recommendations in a report to the CFWG.
6. Based upon comments received, the TCFMWG will determine its final recommended funding allocation and list of Planned Facility Modifications, which will be presented to the CFWG for review and approval. The CFWG may approve the TCFMWG recommendations in whole or it may revise the recommendations.

The CFWG will forward its recommended funding allocation and list of Planned Facility Modifications to E&P for placing on a Judicial Council business meeting agenda for the council’s consideration and approval or revision.

7. This policy, and the budget allocations and list of Planned Facility Modifications approved by the Judicial Council will be the basis on which the TCFMWG and the AOC 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 TCFMWG 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 TCFMWG.

9. The Judicial Council also delegates to the TCFMWG 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 TCFMWG will not expend more than 20% of the annual budget prior to the Judicial Council's approval.

D. Trial Court Facility Modifications Working Group: Annual Informational Report

The TCFMWG 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 TCFMWG activities.

The CFWG will review this report and forward it to E&P for placing on a Judicial Council business meeting agenda as an informational item.

E. Trial Court Facility Modifications Working Group: Quarterly Report to E&P

The TCFMWG will develop a quarterly report to provide to E&P, which will also be provided to the Judicial Council at the next council meeting. 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. The first of these reports will be presented to E&P in October 2012 covering the first quarter of FY 2012-13.



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 March 15, 2019

Title

Rules and Forms: Civil Practice and
Procedure: Adjustments to Dollar Amounts
of Exemptions and Civil Penalty

Rules, Forms, Standards, or Statutes Affected
Adopt Appendix H of Cal. Rules of Court;
revise form EJ-156

Recommended by
Judicial Council staff
Susan McMullan, Supervising Attorney
Legal Services

Agenda Item Type

Action Required

Effective Date

April 1, 2019

Date of Report

February 26, 2019

Contact

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Executive Summary

Judicial Council staff recommend that the Judicial Council take three actions required by statute to reflect changes in the California Consumer Price Index: (1) adopt Appendix H of the California Rules of Court, which sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6, as required by Health and Safety Code section 25249.7(k)(2)(B)(ii); (2) revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which includes the three-year adjustments to the dollar amounts of certain exemptions from judgments required by Code of Civil Procedure sections 703.150(a), (b), (d) and (e); and (3) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

Recommendations

Judicial Council staff recommend that the Judicial Council take the following actions:

1. Adopt Appendix H of the California Rules of Court, effective April 1, 2019, which contains the revised amount of a civil penalty described in Health and Safety Code section 25249.7(k) adjusted to reflect changes in the Consumer Price Index;
2. Revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), effective April 1, 2019, which contains revised figures adjusted to reflect changes in the Consumer Price Index;
3. Approve, effective March 30, 2019, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and
4. Direct Judicial Council staff to submit the report to the Legislature.

Appendix H is at page 5, the revised form is at page 6, and the report is at page 9.

Relevant Previous Council Action

In 2004, the Judicial Council authorized the Administrative Office of the Courts¹ to prepare a list of the amounts of certain exemptions from enforcement of judgments and to periodically update the list as required by Code of Civil Procedure² section 703.150(d) and (e) to reflect changes in the California Consumer Price Index for All Urban Consumers (CCPI). Pursuant to this authorization, a list entitled *Current Dollar Amounts of Exemptions From Enforcement of Judgments* was prepared and posted on the California Courts website in April 2004. The list contained the dollar amounts of exemptions effective as of April 1, 2004, and indicated that further adjustments would be made every three years. As statutorily mandated, the exemption amounts on the list were adjusted in 2007, 2010, 2013, and 2016. The council, rather than the Administrative Director, began approving the revisions to the form in 2013.

The requirement that the council report on potential adjustments to the homestead exemption based on changes in the CCPI (see § 703.150(c)) is a more recent addition to that statute. This is the third report to the Legislature prepared under that provision.

The requirement that the council adjust the amount of the civil penalty under Health and Safety Code section 25249.7 every five years to reflect changes in the CCPI was enacted as part of Proposition 65 in 2012. This is the first time that adjustment has been made.

Analysis/Rationale

Civil penalty under Proposition 65

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any

¹ See Judicial Council of Cal., Advisory Com. Rep., *Exemptions From the Enforcement of Judgments* (April 12, 2004) and minutes of the April 23, 2004, Judicial Council meeting, item 1, www.courts.ca.gov/documents/age0404.pdf.

² Unless otherwise noted, all statutory references hereafter are to the Code of Civil Procedure.

individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from knowingly discharging or releasing such a chemical into water or any source of drinking water, except as specified. A person may bring an action in the public interest for violation of the act, but only after certain notices have been provided to the alleged violator and to the Attorney General. In 2013, the Legislature amended the statute to require that, when the alleged violations were based on failure to provide certain warnings, a private exemption action is prohibited if the alleged violator, within 14 days after receiving the required notice, corrects the alleged violation and pays a civil penalty in the amount of \$500 per facility or premises. (See Health & Saf. Code, § 25249.7(k).) At the same time, the Legislature mandated that the Judicial Council adjust the amount of that civil penalty every five years, beginning April 1, 2019, based on changes to the CCPI over the prior five years. (Health & Saf. Code, § 25249.7(k)(2)(B)(ii).)

Based on the recently published 2018 CCPI figure,³ as set out in the formula in proposed Appendix H to the California Rules of Court attached to this report, the adjusted dollar amount of the exemptions that will be effective on April 1, 2019, is \$565. Including this calculation and figure in an appendix to the rules of court will make it easily available to members of the public.⁴

Exemptions to enforcement of judgments

Section 703.150(e) requires the Judicial Council to adjust the dollar amounts of several exemptions from the enforcement of judgment provided in sections 703.140(b) (for cases under title 11 of the United States Code) and 704.010 et seq. (for other cases) every three years based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(a), (b).) The list of the dollar amounts of exemptions needs to be adjusted again at this time.

Based on the recently published 2018 figures and using the formula attached to this report, staff have calculated the adjusted dollar amounts of the exemptions effective April 1, 2016, and revised the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156) to show the adjusted amounts.

In 2010, the Legislature amended the provisions on exemptions to address potential adjustments to the dollar amount of homestead exemptions provided in section 704.730(a). (See § 703.150(c).) The council is not to make these adjustments, but only to calculate what they would be under the same formula used for adjusting the other exemptions (i.e., based on the change in the CCPI over the past three years) and to provide that information to the Legislature,

³ The California Department of Labor has published the figures on its website, at www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF.

⁴ The text of proposed Appendix H parallels Appendix B to the rules of court. Appendix B reflects similar adjustments based on changes in the CCPI that the council is required to make every two years to the amount of civil liability a parent or guardian may have for the torts of a minor. Because Appendix B must be revised every other July 1, while Appendix H must be revised every fifth April 1, it did not make sense to include both in a single appendix.

beginning on April 1, 2013, and at three-year intervals thereafter. (*Ibid.*) The attached recommended report to the Legislature provides this information, along with a copy of the formula used to generate it.

Policy implications

There are no policy implications to these recommendations; they are simply actions required by statute.

Comments

This proposal was not circulated for comment because the changes to the civil penalty and the exemption amounts are technical, required by statute, and not subject to discretion.

Alternatives considered

No alternatives to the new Appendix H or the revised form EJ-156 were considered in light of the statutory mandate that the council adjust the figures contained in them on a regular basis.

Fiscal and Operational Impacts

The implications for this proposal for the trial courts should be minimal. The figure in Appendix H is information for the use of potential litigants, before any case has been filed, and should not impact court processes. The form is informational only and is not filed with or completed by the courts. No costs or operational impacts are associated with the approval of the report to the Legislature.

Attachments and Links

1. Appendix H (adjusted civil penalty), at page 5
2. Form EJ-156, at pages 6–7
3. Formula for adjusting exemption amounts on form EJ-156, at page 8
4. *Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions*, at page 9
5. 2018 California Consumer Price Index for All Urban Consumers, Department of Industrial Relations, www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF

Appendix H

Amount of Civil Penalty to Cure Alleged Violation of Proposition 65 for Failure to Provide Certain Warnings (Health & Saf. Code, § 26249.7(k))

Formula

Under Health and Safety Code section 26249.7(k), the amount of civil penalty per facility or premises that an alleged violator may agree to pay within 14 days of service of a notice of violation under that section will be computed and adjusted as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers, as established by the California Department of Industrial Relations.

Calculation and adjustment

Effective April 1, 2019, the amount of civil penalty that an alleged violator may agree to pay within 14 days of service of a notice of violation under Health and Safety Code section 26249.7(k)(2)(B)(ii) is **\$565** per facility or premises where the alleged violation occurred.

The calculation is as follows:

$$\$563.92 = \left[\frac{272.51 - 241.623}{241.623} + 1 \right] \times \$500$$

Under Health and Safety Code section 26249.7(k)(2)(B)(ii), the adjusted penalty amount is rounded to the nearest \$5, so the dollar amount of the adjusted limit is rounded to \$565.

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 703.140(b)

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b).

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)

<u>Code Civ. Proc., § 703.140(b)</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
(1)	The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence,	\$ 29,275
(2)	The debtor's interest in one or more motor vehicles	\$ 5,850
(3)	The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item)	\$ 725
(4)	The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	\$ 1,750
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	\$ 1,550
(6)	The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	\$ 8,725
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	\$ 15,650
(11)(D)	The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	\$ 29,275

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 704.010 et seq.

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)

<u>Code Civ. Proc. Section</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
704.010	Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction)	\$ 3,325
704.030	Material to be applied to repair or maintenance of residence	\$ 3,500
704.040	Jewelry, heirlooms, art	\$ 8,725
704.060	Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$4,850)	\$ 8,725
704.060	Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$9,700)	\$ 17,450
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) ¹	
	• Public benefits, one depositor is designated payee	\$ 1,750
	• Social security benefits, one depositor is designated payee	\$ 3,500
	• Public benefits, two or more depositors are designated payees ²	\$ 2,600
	• Social security benefits, two or more depositors are designated payees ²	\$ 5,250
704.090	Inmate trust account	\$ 1,750
	Inmate trust account (restitution fine or order)	\$ 325 ³
704.100	Aggregate loan value of unmaturred life insurance policies	\$ 13,975

¹ The amount of a deposit account that exceeds exemption amounts is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

² If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

³ This amount is not subject to adjustments under Code Civ. Proc., § 703.150.

**Calculation of Dollar Amounts of Exemptions
Under Code of Civil Procedure Sections 703.140(b) and 704.010 et seq.
(Adjusted April 1, 2019)**

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), are calculated as follows:

Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2019)

The calculation for the adjusted dollar amounts of the exemptions in Code of Civil Procedure sections 703.140(b) and 704.010 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{272.51 - 249.666}{249.666} + 1 \right] \times \text{Previous dollar amount} = 1.092 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue
San Francisco, CA 94102-3688
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Chief Justice of California
Chair of the Judicial Council

HON. DOUGLAS P. MILLER
Chair, Executive and Planning Committee

HON. DAVID M. RUBIN
Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee

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MR. MARTIN HOSHINO
Administrative Director,
Judicial Council

March __, 2019

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, California 95814

Ms. Erika Contreras
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions, as required under Code of Civil Procedure section 703.150(c)

Dear Ms. Boyer-Vine, Ms. Contreras, and Mr. Wilson:

The Judicial Council respectfully submits this report on potential adjustments to the dollar amounts of certain exemptions from enforcement of judgments, as required by Code of Civil Procedure section 703.150(c). That statute provides that at three-year intervals beginning on April 1, 2013, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of the homestead exemptions in effect immediately before that date as provided in section 704.730(a) may be increased under the formula set forth in section 703.150(d), should the Legislature approve such an adjustment.

Section 703.150(d) provides that the Judicial Council is to determine the amount of the potential adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers (CCPI), published by the Department of Industrial Relations, for the most recent three-year period ending on December 31 preceding the adjustment date, with each adjusted amount rounded to the nearest \$25. The council has calculated that the adjusted amounts based on the formula attached to this report would be as follows:

Ms. Diane F. Boyer-Vine

Ms. Erika Contreras

Mr. E. Dotson Wilson

March ____, 2019

Page 2

- The exemption amount in section 704.730(a)(1) (currently \$75,000) would be increased to \$81,900.
- The exemption amount in section 704.730(a)(2) (currently \$100,000) would be increased to \$109,200.
- The exemption amount in section 704.730(a)(3) (currently \$175,000) would be increased to \$191,100.

As a point of information: while this letter reports the potential adjustment based on the change in CCPI over the past three years as mandated by statute, the homestead exemption amounts were last revised in 2010, nine years ago. The CCPI increased by 9.2 percent over the past three years, as is reflected in the figures above. It has increased 21.6 percent in the period since 2010.

If you have any questions related to this report, please contact Deborah Brown, Chief Counsel, at 415-865-7667, deborah.brown@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council of California

MH/AMR
Attachment

cc: Members of the Judicial Council
Eric Dang, Policy Consultant, Office of Senate President pro Tempore Toni G. Atkins
Amy Alley, Policy Advisor, Office of Senate President pro Tempore Toni G. Atkins
Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon
Gabrielle Zeps, Policy Consultant, Office of Assembly Speaker Anthony Rendon
Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Margie Estrada, Chief Counsel, Senate Judiciary Committee
Scott Seekatz, Consultant, Senate Republican Policy Office
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Paul Dress, Consultant, Assembly Republican Office of Policy & Budget
Amy Leach, Minute Clerk, Office of Assembly Chief Clerk
Cory T. Jaspersen, Director, Governmental Affairs, Judicial Council
Peter Allen, Director, Public Affairs, Judicial Council
Deborah Brown, Chief Counsel, Judicial Council Legal Services
Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs, Judicial Council

ATTACHMENT

**Calculation of Dollar Amounts of Exemptions
Under Code of Civil Procedure Sections 703.140(b) and 704.010 et seq.
(Adjusted April 1, 2019)**

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in the *Current Dollar Amounts of Exemptions From Enforcement of Judgments*, are calculated as follows:

Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2019)

The calculation for the adjusted dollar amounts of the exemptions in Code of Civil Procedure sections 703.140(b) and 704.010 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{272.51 - 249.666}{249.666} + 1 \right] \times \text{Previous dollar amount} = 1.092 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 15, 2019:

Title

Rules and Forms: Technical Form Changes to Correct Inadvertent Errors

Agenda Item Type

Action Required

Effective Date

April 25, 2019

Rules, Forms, Standards, or Statutes Affected

Revise forms CR-600; CR-601, CR-602, CR-603, CR-604, and CR-605

Date of Report

March 4, 2019

Recommended by

Judicial Council staff
Michael I. Giden, Principal Managing
Attorney
Legal Services

Contact

Michael I. Giden, 415-865-7977
michael.giden@jud.ca.gov

Executive Summary

Judicial Council staff have identified errors that are technical in nature in six Judicial Council forms related to preparation of the record for automatic appeals in capital cases. Specifically, the six forms that are to be signed and submitted by the primary counsel for each defendant and the prosecution include signature lines that require identification of the defendant represented. This creates an ambiguity about whether the prosecution is required to sign and submit the forms. Staff recommend the signature blocks be revised to require the attorney to instead identify the party represented.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective April 25, 2019,

1. Revise the following six forms by removing from the text of the signature line the phrase “NAME OF DEFENDANT” and replacing it with the word “PARTY” in order to clarify that primary counsel for each defendant and the prosecution in a capital trial must sign and submit each of the forms:

- *Capital Case Attorney Pretrial Checklist* (form CR-600)
- *Capital Case Attorney List of Appearances* (form CR-601)
- *Capital Case Attorney List of Exhibits* (form CR-602)
- *Capital Case Attorney List of Motions* (form CR-603)
- *Capital Case Attorney List of Jury Instructions* (form CR-604)
- *Capital Case Attorney Trial Checklist* (form CR-605)

2. Revise forms CR-602 and CR-603 to remove the words “on behalf of your client” in the instructions section of the two forms.

The revised forms are attached at pages 4–17.

Relevant Previous Council Action

At its meeting on September 21, 2018, the Judicial Council adopted rules 4.119, 4.230, 8.613, 8.616, and 8.619,¹ which require the primary counsel for each defendant and the prosecution in capital trials to sign and submit certain forms in connection with the trial. The purpose of the rules and forms is to remind counsel of their many obligations related to the appellate record and provide helpful checklists. The council at that time also adopted the six mandatory forms described in these rules, which are the subject of this report.

Analysis/Rationale

The rules adopted in September make clear that these forms are to be signed and submitted by “the primary counsel for each defendant and the prosecution.” The intent was that each primary counsel would sign and submit a form; it was not anticipated that the forms would be prepared or signed jointly. However, the forms as adopted in September each contain a signature line for the attorney signing the form that requires the attorney to indicate the name of the defendant represented:

Date:

_____, attorney for _____
(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▲

(SIGNATURE OF ATTORNEY)

¹ These rules do not become effective until April 25, 2019, but may be found in the report to the Judicial Council recommending the rules: Judicial Council of Cal., Proposition 66 Rules Working Group, *Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases* (Sept. 7, 2018), <https://jcc.legistar.com/View.ashx?M=F&ID=6613532&GUID=4A5A5D1E-8061-4339-AD6A-461BC0F34938>

This creates an ambiguity as to whether attorneys for the prosecution are even required to fill out the form. To remove that ambiguity, staff recommend that the line on the forms reading “NAME OF DEFENDANT” be revised to state instead “PARTY,” so that it does not exclude the prosecution:

Date:

_____, attorney for _____
(TYPE OR PRINT NAME) (PARTY)

(SIGNATURE OF ATTORNEY)

In addition, there is text in the instructions section of two forms that makes reference to exhibits offered (in form CR-602) and motions made (in form CR-603) “on behalf of your client.” This language is not normally used by the prosecuting attorneys and to avoid any ambiguity, staff propose this language be deleted from the two forms.

Policy implications

The proposed revisions will clarify that the primary attorney for the prosecution, as well as the primary attorney for each defendant, must sign and submit the six forms as required by the rules previously adopted by the Judicial Council.

Comments

These proposed revisions were not circulated for public comment because they are noncontroversial technical revisions and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The alternative to revising these forms would be *not* to update them or to delay updating them. Staff concluded it would create less confusion for attorneys if these six forms were corrected before they become effective on April 25, 2019.

Fiscal and Operational Impacts

Although the initial adoption of these forms may have imposed new requirements on some trial counsel in the short term, it was anticipated that the forms will reduce court and counsel costs in the long term by making the record preparation process in capital cases more efficient. The revision of the forms recommended in this report will impose no additional fiscal or operational impacts.

Attachments and Links

1. Proposed forms CR-600–CR-605 as revised at pages 4–17.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 03-04-2019
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
CAPITAL CASE ATTORNEY PRETRIAL CHECKLIST	CASE NUMBER:

Instructions: This checklist is designed to be a tool for counsel to use throughout the pretrial proceedings in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the pretrial proceedings in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the pretrial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution in the pretrial proceedings must sign and submit this checklist. Counsel may, but is not required to, use the right-hand column on the checklist to subsequently monitor their compliance with record preparation requirements.

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING PRETRIAL PROCEEDINGS	
1. Review, sign, and submit checklist. Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.119(b).)	
2. Ensure all exhibits are marked. Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
3. Comply with rule 2.1040. If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording, which, under rule 8.610, must be included in the record on appeal.	
4. Prepare a list of appearances, exhibits, and motions. Prepare the lists specified in a, b, and c below.	
a. A list of all appearances by the party you represent during pretrial proceedings, including ex-parte appearances <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Appearances</i> (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant. 	
b. A list of all exhibits offered by the party you represent during pretrial proceedings <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Exhibits</i> (form CR-602) must be used for this purpose. The list must include all exhibits offered at any pretrial proceedings and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.119(c)(1)(B).) • Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification. 	
c. A list of all motions made by the party you represent during the pretrial proceedings, including ex-parte motions. <i>Capital Case Attorney List of Motions</i> (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution. (Cal. Rules of Court, rule 4.119(c)(1)(C).)	

<p>PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:</p>	<p>CASE NUMBER:</p>
<p>ATTORNEY TASK</p>	<p>FOR OPTIONAL USE BY ATTORNEY</p>
<p>4. d. Providing lists to substituting counsel. In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.119(c).)</p>	
<p>AFTER COMPLETION OF PRETRIAL PROCEEDINGS</p>	
<p>5. Prosecution notify court of intent to seek death penalty.</p> <ul style="list-style-type: none"> • Primary counsel for the prosecution should notify the judge assigned to try the case or, if none is yet assigned, the presiding superior court judge or designee of the presiding judge, about whether the prosecution intends to seek the death penalty. • After the presiding judge has ordered preparation of the pretrial record, primary counsel for the prosecution should notify the judge assigned to try the case if the death penalty is no longer being sought. 	
<p>6. Submit and serve completed lists of appearances, exhibits, and motions.</p> <ul style="list-style-type: none"> • No later than 21 days after the clerk notifies you to do so, submit the completed lists to the court. Serve a copy of all the completed lists, except the list of Penal Code section 987.9 appearances, on all parties. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.119(c).) 	
<p>a. The completed list of all appearances by the party you represented during pretrial proceedings</p>	
<p>b. The completed list of all exhibits offered by the party you represented during pretrial proceedings</p>	
<p>c. The completed list of all motions filed by the party you represented during the pretrial proceedings</p>	
<p>7. Review reporter's transcript, court file, and lists. When the clerk delivers the reporter's transcript of the pretrial proceedings and the lists to you, you must:</p> <ul style="list-style-type: none"> • Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any errors or omissions in the transcripts; • Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and • Review the court file to determine whether it is complete. (Cal. Rules of Court, rule 8.613(f)(2).) 	
<p>8. Confer. You must confer with opposing counsel within 21 days after the clerk delivers the reporter's transcripts and lists to you to discuss any errors or omissions in the reporter's transcript or court file identified during the review and determine whether any other proceedings or discussions should have been transcribed. (Cal. Rules of Court, rule 8.613(f)(3).)</p>	
<p>9. Serve and file declaration and request for corrections or additions/statement. Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file both of the following:</p>	
<p>a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel if ordered by the court. (Cal. Rules of Court, rule 8.613(g)(1)(A).)</p>	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
9. b. ONE of the following: <ul style="list-style-type: none"> • A request for corrections or additions to the reporter's transcript or court file. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them, OR • A statement that counsel does not request any corrections or additions. Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.613(g)(1)(B) and (C).)	

I acknowledge that I have reviewed this checklist.

Date:

_____, attorney for
(TYPE OR PRINT NAME)

(PARTY)


(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council 03-04-2019
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
CAPITAL CASE ATTORNEY LIST OF EXHIBITS <input type="checkbox"/> Pretrial <input type="checkbox"/> Trial	CASE NUMBER:

Instructions: For each exhibit you offer in a case in which the death penalty may be imposed, provide the exhibit number and a brief description of the exhibit and indicate whether the exhibit was admitted in evidence, lodged, refused, or withdrawn.

Exhibit No.	Description	Outcome
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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Exhibit No.	Description	Outcome
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Check here if you need more space. Attach a sheet of paper and write "CR-602, List of Exhibits" for a title.

Date:

_____, attorney for _____
 (TYPE OR PRINT NAME) (PARTY)

 (SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council 03-04-2019
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
CAPITAL CASE ATTORNEY LIST OF JURY INSTRUCTIONS	CASE NUMBER:

Instructions: For each jury instruction you submit in writing in a case in which the death penalty may be imposed, provide the instruction number and a brief description of the instruction and indicate whether the instruction was given, given as modified, refused, or withdrawn.

Instruction No.	Description	Outcome
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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(continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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Instruction No.	Description	Outcome
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		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

Check here if you need more space. Attach a sheet of paper and write "CR-604, List of Jury Instructions" for a title.

Date:

_____, attorney for _____
 (TYPE OR PRINT NAME) (PARTY)


 (SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council 03-04-2019
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
CAPITAL CASE ATTORNEY TRIAL CHECKLIST	CASE NUMBER:
<p>Note: Under Penal Code section 1240.1(e)(1), in capital cases, the obligations of defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor include taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.</p> <p>Instructions: This checklist is designed to be a tool for counsel to use throughout the trial in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the trial in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the trial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution must sign and submit this checklist. Counsel may, but is not required to, use the right-hand column on the checklist to monitor their compliance with record preparation requirements.</p>	

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING TRIAL	
1. Review, sign, and submit checklist. Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.230(b).)	
2. Review daily transcripts and identify errors or omissions. During trial, you are required to call the court's attention to any errors or omissions you find in the daily reporter's transcripts. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. (Cal. Rules of Court, rule 4.230(c).)	
3. Ensure all exhibits are marked. Make sure that all exhibits that you offer during the trial are properly marked for identification.	
4. Comply with rule 2.1040. If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording, which, under rule 8.610, must be included in the record on appeal.	
5. Provide copies of audio or visual aids to the court. If you use any audio or visual aids in presentations to the jury that are not subject to rule 2.1040, including digital or electronic presentations, provide a copy of the audio or visual aid to the court. If a visual aid is oversized, provide a photograph of that visual aid in place of the original. For digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides or images. Photographs and printouts must be on 8 1/2 x 11 inch paper. (Cal. Rules of Court, rule 4.230(f).)	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY

6. Prepare lists of appearances, exhibits, motions, and jury instructions. Prepare the lists specified in a, b, c, and d below.	
a. A list of all appearances by the party you represent during the trial, including ex-parte appearances <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Appearances</i> (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant. 	
b. A list of all exhibits offered by the party you represent during the trial <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Exhibits</i> (form CR-602) must be used for this purpose. The list must include all exhibits offered during the trial and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(B).) • Make sure that all exhibits that you offer during the trial are properly marked for identification. 	
c. A list of all motions made by the party you represent during the trial, including ex-parte motions. <i>Capital Case Attorney List of Motions</i> (form CR-603) must be used for this purpose. (Cal. Rules of Court, rule 4.230(d)(1)(C).)	
d. A list of all jury instructions submitted in writing by the party you represent during the trial. <i>Capital Case Attorney List of Jury Instructions</i> (form CR-604) must be used for this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(D).)	
e. Providing lists to substituting counsel. In the event of any substitution of attorney during the trial, the relieved attorney must provide the lists of all appearances, exhibits, motions, and jury instructions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.230(d)(1)(A).)	
AFTER COMPLETION OF TRIAL IF DEATH PENALTY IS IMPOSED Note that under Penal Code section 1240.1(e)(1), to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor must continue to represent the respective parties until the record is certified.	
7. Submit and serve completed lists of appearances, exhibits, and motions. <ul style="list-style-type: none"> • No later than 21 days after the imposition of a sentence of death, you must submit the lists to the court and serve a copy of all the lists, except the list of Penal Code § 987.9 appearances, on all parties. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcripts over 10,000 pages. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.230(d)(2)) 	
a. The completed list of all appearances by the party you represent during the trial	
b. The completed list of all exhibits offered by the party you represent during the trial	
c. The completed list of all motions made by the party you represent during the trial	
d. The completed list of all jury instructions submitted in writing by the party you represent during the trial	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
<p>8. Review reporter's transcript, clerk's transcript, and lists. When the clerk delivers the clerk's and reporter's transcript and the lists to you, you must:</p> <ul style="list-style-type: none"> Review the docket sheets, minute orders, and lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and Review the court file to determine whether the clerk's transcript is complete. (Cal. Rules of Court, rule 8.619(a)(1).) 	
<p>9. Confer. Within 21 days after the clerk delivers the transcripts and lists, you must confer with opposing counsel to discuss any errors or omissions in the reporter's or clerk's transcript identified during your review. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages. (Cal. Rules of Court, rule 8.619(a)(2).)</p>	
<p>10. Serve and file declaration and request for corrections or additions/statement. Within 30 days after the clerk delivers the transcripts and lists to you, each trial counsel must serve and file both of the following (if the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages):</p>	
<p>a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel. (Cal. Rules of Court, rule 8.619(b)(1)(A).)</p>	
<p>b. ONE of the following:</p> <ul style="list-style-type: none"> A request to include additional materials in the record or to correct errors that have come to counsel's attention. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them; OR A statement that counsel does not request any corrections or additions. <p>Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.619(b)(1).)</p>	
<p>11. Participate in hearing to certify the record for completeness. If any party files a request for corrections or additions to the record, the trial court will set a hearing to consider the request. (Cal. Rules of Court, rule 8.619(c).)</p>	
<p>12. Participate, as necessary, in certification of the record for accuracy.</p> <ul style="list-style-type: none"> When appellate counsel for the defendant is retained or appointed, the trial court will send that counsel a copy of the record that has been certified for completeness. Within 90 days after that, appellate counsel or any other party may serve and file a request for corrections or additions to the record. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 15 days for each 1,000 pages of combined transcripts over 10,000 pages. If a request for corrections or additions to the record is filed, unless otherwise ordered by the trial court, within 10 days after that request is filed, defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person or by telephone, to discuss the request and any application to unseal records served on the prosecutor's office. 	

I acknowledge that I have reviewed this checklist.

Date:

 (TYPE OR PRINT NAME)

, attorney for

 (PARTY)



 (SIGNATURE OF ATTORNEY)



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 March 15, 2019

Title

Report to the Legislature: *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018*

Agenda Item Type

Information Only

Date of Report

February 1, 2019

Submitted by

Branch Accounting and Procurement
Doug Kauffroath, Director

Contact

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

Executive Summary

Public Contract Code section 19209 and the *Judicial Branch Contracting Manual* require that the Judicial Council submit a report semiannually to the Joint Legislative Budget Committee and the State Auditor listing (1) all vendors or contractors receiving payments from any judicial branch entity and their associated distinct contracts; and (2) for every vendor or contractor receiving more than one payment, the amount of the payment, type of goods or services provided, and (3) judicial branch entity receiving the goods or services. Therefore, the Judicial Council staff submitted this report on February 1, 2019, which listed all judicial branch entity contracts that were amended during the reporting period covering July 1 through December 31, 2018.

Relevant Previous Council Action

At its August 26, 2011, business meeting, the Judicial Council approved the *Judicial Branch Contracting Manual*, which included the requirement for the preparation of the two semiannual reports and their submission to the Joint Legislative Budget Committee (JLBC) and the State Auditor. All previous reports were submitted and approved at Judicial Council meetings or through circulating orders.

Analysis/Rationale

Statutory requirement

The Judicial Branch Contract Law (JBCL), enacted March 24, 2011, requires judicial branch entities to comply with the provisions of Public Contract Code section 19206, applicable to state agencies and departments related to the procurement of goods and services. The JBCL applies to all contracts initially entered into or amended by judicial branch entities on or after October 1, 2011. The JBCL also requires the council to adopt a judicial branch contracting manual containing policies and procedures applicable to judicial branch entities related to the procurement of goods and services. The Judicial Council, on August 26, 2011, adopted the manual, which incorporates policies and procedures consistent with the Public Contract Code and, as the code requires, is “substantially similar to the provisions contained in the State Administrative Manual and the State Contracting Manual.”

Reporting requirement

The JBCL requires the Judicial Council, beginning in 2012, to provide reports to the Joint Legislative Budget Committee and the State Auditor twice each year on contracting activities by judicial branch entities under Public Contract Code section 19209. The semiannual reports must contain specific information, including (1) details about contracts and amendments to contracts entered into by judicial branch entities with vendors or contractors, (2) payments received by vendors and contractors, and (3) the nature of the services or goods provided under the contracts and amendments. By statute, each fiscal year, the first report covers the period from July 1 through December 31 and must be submitted by February 1 of the following calendar year. The second report covers the period from January 1 through June 30 and must be submitted by August 1.

As required by the *Judicial Branch Contracting Manual*, revised August 1, 2018, the Judicial Council’s Branch Accounting and Procurement (BAP) office has lead responsibility for providing the reports to the council for approval and submission to the JLBC and the State Auditor. Additionally, the council’s BAP office and its Trial Court Administrative Services office are responsible for coordinating with each other to ensure that all information in the reports is timely, accurate, and consistent in form and format.

The responsibilities for each judicial branch entity are specified in the manual generally as follows:

- **Supreme Court:** The Supreme Court is responsible for providing to the council’s BAP office the information relating to payments to, and contracts with, the Supreme Court’s vendors in the form and format required for Judicial Council reporting purposes.
- **Courts of Appeal:** Each Court of Appeal is responsible for providing to the council’s BAP office the information relating to payments to, and contracts with, vendors in the form and format required for Judicial Council reporting purposes.
- **Superior courts:** The Phoenix Financial System 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 inputting into Phoenix the information relating to payments to, and contracts with, that superior court's vendors as required for Judicial Council reporting purposes.

- **Habeas Corpus Resource Center (HCRC):** The HCRC is responsible for providing to the council's BAP office the information relating to payments to, and contracts with, the HCRC's vendors in the form and format required for Judicial Council reporting purposes.
- **Judicial Council:** The council's BAP office is responsible for maintaining and providing the information relating to payments to, and contracts with, vendors of the Judicial Council.

Contents of the reports

The reports from the Judicial Council will include a list of all vendors that receive a payment from a judicial branch entity during the reporting period. Public Contract Code section 19209 also requires the Judicial Council to submit additional information on each distinct contract between a vendor and a judicial branch entity, but only if more than one payment was made under the distinct contract during the reporting period. For each distinct contract, the report includes the following information by vendor:

- The judicial branch entity that contracted for the goods or service;
- The amount of payment; and
- The type of service or goods provided.

The reports also include a list of all judicial branch entity contracts that were amended during the reporting period. The reports contain the following information by vendor for each distinct contract that was amended:

- The name of the vendor;
- The type of service or goods provided;
- The nature of the amendment;
- The duration of the amendment; and
- The cost of the amendment.

The reports are reviewed to determine if there are any statutory or other restrictions on information disclosure to third parties specifically related to HCRC and lawsuits in process. Such information may be redacted.

In July 2018, the judicial branch implemented the Financial Information Systems for California (FI\$Cal), which is the financial and procurement system for all entities other than the superior courts. The entities using FI\$Cal include the Supreme Court, the Courts of Appeal, the HCRC, and the Judicial Council. The superior courts' data is on the Phoenix System.

The FI\$Cal Department maintains transparency websites, eProcure and Open FI\$Cal, for all state agencies. As of January 2019, the judicial branch information has been available for viewing on the FI\$Cal websites. Users can see all procurement transactions and historical payment data on

FISCAL older than 60 days. In an effort to create efficiencies by eliminating unique reporting, we refer you to the eProcure and Open FISCAL websites for this accessible information.

Procurement transactions for the Supreme Court, Courts of Appeal, Habeas Corpus Resource Center, Center on Judicial Performance, and Judicial Council of California can be found on the California eProcure website with other state departments' data. Summary or detailed data can be downloaded into Excel format. The judicial branch's department number is 0250. Date ranges can be used on the site to limit the volume of information returned. The link is:

https://suppliers.fiscal.ca.gov/psc/psfpd1/SUPPLIER/ERP/c/ZZ_PO.ZZ_SCPRS1_CMP.GBL?FolderPath=PORTAL_ROOT_OBJECT.ZZ_FISCAL_SCPRS.ZZ_SCPRS1_CMP_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%2cIsFolder.

Payment transactions for the Supreme Court, Courts of Appeal, Habeas Corpus Resource Center, Center on Judicial Performance, and Judicial Council of California can be found on the State of California transparency website with other state departments' data. Summary or detailed data can be downloaded into Excel format. The link is <https://fiscalca.opengov.com>. All the entities listed above are included under the judicial branch portion of data. Date ranges can be entered at the top of the page to limit the volume of information returned.

Fiscal Impact and Policy Implications

It is important that each judicial branch entity maintain and provide accurate and consistent information so that the reports provided by the Judicial Council contain accurate and complete information. All judicial branch personnel involved in maintaining and providing the necessary information must have the training, experience, level of responsibility, and accountability necessary to ensure the accuracy, completeness, and consistency of the information maintained and provided. No adverse policy implications will result from acceptance or approval of these reports.

The reports impose no specific implementation requirements or costs, other than the requirement to disclose the attached audit reports through online publication.

Attachments and Links

1. Attachment A: *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018*
2. Link A: Because of their size, the following reports are posted separately for access and review at <http://www.courts.ca.gov/7466.htm> rather than as attachments.
 - Superior court reports:
 - *Trial Court Contract Report*, July 1 through December 31, 2018
 - *Trial Court Payment Report*, July 1 through December 31, 2018
3. Link B: The judicial branch information in FISCAL is on the Open FISCAL website at <http://open.fiscal.ca.gov/>.

4. Link C: The judicial branch procurement transactions information in FI\$Cal is on the eProcure website at:

https://suppliers.fiscal.ca.gov/psc/psfpd1/SUPPLIER/ERP/c/ZZ_PO.ZZ_SCPRS1_CMP.GBL?FolderPath=PORTAL_ROOT_OBJECT.ZZ_FISCAL_SCPRS.ZZ_SCPRS1_CMP_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%2cIsFolder



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HON. TANI G. CANTIL-SAKAUYE
*Chief Justice of California
Chair of the Judicial Council*

HON. DOUGLAS P. MILLER
Chair, Executive and Planning Committee

HON. DAVID M. RUBIN
*Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee*

HON. KENNETH K. SO
*Chair, Policy Coordination and
Liaison Committee*

HON. HARRY E. HULL, JR.
Chair, Rules and Projects Committee

HON. MARSHA G. SLOUGH
Chair, Technology Committee

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Hon. Richard Bloom
Hon. C. Todd Botzke
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Hon. Kyle S. Brodie
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Hon. Rebecca Wightman

MR. MARTIN HOSHINO
*Administrative Director,
Judicial Council*

February 1, 2019

Hon. Holly J. Mitchell
Chair, Joint Legislative Budget Committee
1020 N Street, Room 553
Sacramento, California 95814

Ms. Elaine M. Howle
California State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Re: *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018*, as required under Public Contract Code section 19209

Dear Senator Mitchell and Ms. Howle:

The Judicial Council submits the following report required under Public Contract Code section 19209 on new contracts, contract payments to vendors from judicial branch entities, and amendments to those contracts during the reporting period July 1 through December 31, 2018. Judicial branch entities are the Supreme Court, Courts of Appeal, superior courts, Habeas Corpus Resource Center, and Judicial Council.

If you have any questions related to this report, please contact Mr. Doug Kauffroath, Director, Branch Accounting and Procurement, at doug.kauffroath@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

Hon. Holly J. Mitchell
Ms. Elaine M. Howle
February 1, 2019
Page 2

MH/ML/es

Attachment

cc: Diane F. Boyer-Vine, Legislative Counsel
Erika Contreras, Secretary of the Senate
E. Dotson Wilson, Chief Clerk of the Assembly
Eric Dang, Policy Consultant, Office of Senate President pro Tempore Toni Atkins
Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon
Jason Sisney, Special Assistant, Office of Assembly Speaker Anthony Rendon
Anita Lee, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Emma Jungwirth, Program Budget Analyst, Department of Finance
Margie Estrada, Chief Counsel, Senate Judiciary Committee
Christopher Francis, Consultant, Senate Budget and Fiscal Review Committee
Shaun Naidu, Consultant, Senate Appropriations Committee
Matt Osterli, Consultant, Senate Republican Fiscal Office
Mike Petersen, Consultant, Senate Republican Policy Office
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Jennifer Kim, Consultant, Assembly Budget Committee
Jay Dickenson, Chief Consultant, Assembly Appropriations Committee
Kimberly Horiuchi, Principal Consultant, Assembly Appropriations Committee
Daryl Thomas, Consultant, Assembly Republican Office of Policy & Budget
Paul Dress, Consultant, Assembly Republican Office of Policy & Budget
Amy Leach, Minute Clerk, Office of Assembly Chief Clerk
Jennifer Troia, Principal Consultant, Joint Legislative Budget Committee
Cory T. Jaspersen, Director, Governmental Affairs, Judicial Council
Peter Allen, Director, Public Affairs, Judicial Council
Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs,
Judicial Council



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MR. MARTIN HOSHINO
Administrative Director,
Judicial Council

Report Title: *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018*

Summary Citation: Public Contract Code section 19209

Date of Report: February 1, 2019

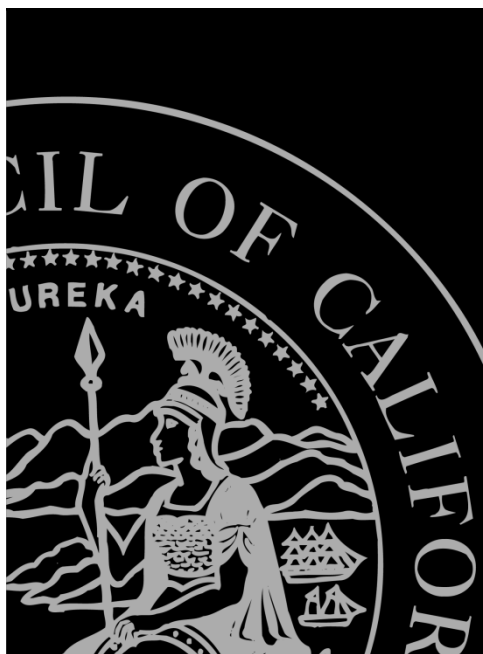
The Judicial Council has submitted a report to the Legislature in accordance with Public Contract Code section 19209. The following summary of the report is provided under the requirements of Government Code section 9795.

The Judicial Branch Contract Law (JBCL), enacted March 24, 2011, requires judicial branch entities to comply with the provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services. The JBCL applies to all contracts entered into or amended by judicial branch entities on or after October 1, 2011.

The JBCL also requires the Judicial Council, beginning in 2012, to report to the Joint Legislative Budget Committee and the State Auditor semiannually on contracting activities by judicial branch entities. The report contains specific information, including details about payments received by vendors and contractors and their associated contracts, contract amendments entered into by judicial branch entities with vendors or contractors, and the nature of the services or goods provided under the reported contracts and amendments. The reports exclude payments and contract amendment information that are statutorily restricted or excluded from reporting, information subject to any statutory restrictions on disclosure to third parties, and information on capital cases in active litigation.

This report covers the period of July 1 through December 31, 2018. The report lists contracts associated with these payments, as well as contracts with amendments.

The full report can be accessed at www.courts.ca.gov/7466.htm. A printed copy of the report may be obtained by contacting Mr. Doug Kauffroath, Director, Branch Accounting and Procurement, Judicial Council, at doug.kauffroath@jud.ca.gov.



Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018

REPORT TO THE JOINT LEGISLATIVE
BUDGET COMMITTEE AND THE STATE
AUDITOR AS REQUIRED BY PUBLIC
CONTRACT CODE SECTION 19209

February 1, 2019



JUDICIAL COUNCIL
OF CALIFORNIA

JUDICIAL COUNCIL OF CALIFORNIA

Hon. Tani G. Cantil-Sakauye

*Chief Justice of California and
Chair of the Judicial Council*

Martin Hoshino

*Administrative Director
Judicial Council*

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Director

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Doug Kauffroath

Director

Mona Lawson

*Supervisor and
Primary Author of Report*

**Semiannual Report on Contracts for the Judicial Branch
for the Reporting Period of July 1 through December 31, 2018:
Report to the Joint Legislative Budget Committee and
the State Auditor as Required by
Public Contract Code Section 19209**

February 1, 2019

Introduction

The Judicial Council submits this report to the Joint Legislative Budget Committee and the California State Auditor under Public Contract Code section 19209 to provide information related to procurement of contracts for the judicial branch. The report includes a list of vendors and contractors as required by Public Contract Code section 19209(b). The report further identifies the amounts of payments to the contractors and vendors, the types of services and goods provided, and the judicial branch entity or entities with which the contractors and vendors contracted to provide those goods and services. The report summary also includes a list of all amended contracts as required by Public Contract Code section 19209(c), identifying the vendors, contractors, and types of services and goods provided under the contract, including any changes to the contract value, type of services or goods, or contract. Judicial branch entities include the Supreme Court, the Courts of Appeal, the superior courts, the Habeas Corpus Resource Center (HCRC), and the Judicial Council.

The operative date of the Judicial Branch Contract Law (JBCL) was October 1, 2011, and only contracts entered into or amended after that date are included in this report. The report is developed on a semiannual basis, covering the six-month periods from January 1 through June 30, and July 1 through December 31. This report covers the period from July 1 through December 31, 2018.

Contracts excluded from the report

Public Contract Code section 19204(c) provides that the JBCL “does not apply to procurement and contracting by judicial branch entities that are related to trial court construction, including, but not limited to, the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.” This section also states that the JBCL “shall apply to contracts for maintenance of all judicial branch facilities that are not under the operation and management of the Department of General Services.” Appropriate exclusions and inclusions based on the above subsections have been made in this report.

Also excluded from the report are the following contracts that are unique to the superior courts and are not subject to the JBCL:

- Contracts (often referred to as memoranda of understanding, or 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.

Non-Superior Court Data

In July 2018, the judicial branch implemented the Financial Information System for California (FI\$Cal) for all entities other than the superior courts. The entities on FI\$Cal include the Supreme Court, the Courts of Appeal, the Habeas Corpus Resource Center (HCRC), and the Judicial Council. The superior courts' data is on the Phoenix System.

The FI\$Cal Department maintains transparency websites, eProcure and Open FI\$Cal, for all state agencies. As of January 2019, the judicial branch information has been available for viewing on the FI\$Cal websites. Users can see all procurement transactions and historical payment data on FI\$Cal older than 60 days.

Procurement transactions for the Supreme Court, Courts of Appeal, Habeas Corpus Resource Center, Center on Judicial Performance, and Judicial Council of California can be found on the California eProcure website with other state departments' data. Summary or detailed data can be downloaded into Excel format. The link is:

https://suppliers.fiscal.ca.gov/psc/psfpd1/SUPPLIER/ERP/c/ZZ_PO.ZZ_SCPRS1_CMP.GBL?FolderPath=PORTAL_ROOT_OBJECT.ZZ_FISCAL_SCPRS.ZZ_SCPRS1_CMP_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%2cIsFolder.

The judicial branch's department number is 0250. Date ranges can be used on the site to limit the volume of information returned.

Payment transactions for the Supreme Court, Courts of Appeal, Habeas Corpus Resource Center, Center on Judicial Performance, and Judicial Council of California can be found on the State of California transparency website with other state departments' data. Summary or detailed data can be downloaded into Excel format. The link is <https://fiscalca.opengov.com>. All of the entities listed above are included under the judicial branch portion of data. Date ranges can be entered at the top of the page to limit the volume of information returned.

Superior Court Data

The Judicial Council's Branch Accounting and Procurement (BAP) office is responsible for preparing this report. The information that relates to the superior courts is extracted from the Phoenix System. This report includes the:

- *Trial Court Contract Report*; and
- *Trial Court Payment Report*.

Table 1 explains the format of the reports and describes the data elements.

Table 1. Judicial Branch Contract Reports: Comparison of Required Data Elements with Actual Reports to Report Under Public Contract Code Section 19209

		Data Element Column Heading
Report	Required to Be Reported by Statute	Superior Court Reports
Payment Report	<ul style="list-style-type: none"> • Vendors and contractors receiving any payment. • Report each distinct contract between the vendor or contractor and a judicial branch entity. Identify the: <ol style="list-style-type: none"> 1. Amount of payment to the contractor or vendor; 2. Type of service or goods provided; and 3. Judicial branch entity or entities with which the vendor or contractor was contracted to provide that service or good. 	<ul style="list-style-type: none"> • Vendor Name/Vendor ID • Contract Number • Total Payments Goods/Services • JBE
Contract Report	For all contract amendments made, identify: <ol style="list-style-type: none"> 1. Vendor or contractor; 2. Type of service or goods provided under the contract; 3. Nature of the amendment; 4. Duration of the amendment; and 5. Cost of the amendment. 	<ul style="list-style-type: none"> • Court Contract Vendor ID/Vendor Name • Last Reported Contract Value • Contract Value (New) Contract Value (Changed) • Goods/Services (New) Goods/Services (Changed) • Contract Duration (New) Contract Duration (Changed) • Total Contract Duration

This semiannual report includes all the information required by statute, as well as contracts and contract amendments that were executed during the reporting period, even if no payments were made. The report consolidates all payments to a vendor or contractor under one contract as one payment for the reporting period.

Statistics

On the following pages, a series of tables provide statistical information for the July 1 through December 31, 2018, reporting period. Note that some tables may include totals that may not equal 100 percent, due to rounding.

- **Table 2.** Overall Contract and Payment Statistics
- **Table 3.** Trial Court Payment Statistics, Goods, and Services Detail Summary

Because of their size, the detailed reports, including any explanatory footnotes, are posted online separately for access and review. They are:

- Superior court reports, from July 1 through December 31, 2018;
- *Trial Court Contract Report*; and
- *Trial Court Payment Report*.

Table 2 provides an overall summary of contracts and payments for the reporting period.

Table 2. Overall Contract and Payment Statistics, July 1 through December 31, 2018

		Superior Courts
Payments:		
Number		16,894
Dollar amount		\$ 207,929,771
Number of associated contracts		7,988
Contracts:		
Original contracts		4,972*
Value of original contracts		\$156,633,465*
Contracts with amendments		1,098
Cost of amendments		\$43,665,368**
* Includes only contracts with amendments as required by statute.		
** Includes increases and decreases in contract value, such as changes in contract scope.		
		Non-Superior Courts
Payments:		
Number		10,992*
Dollar amount		\$248.5m
Contracts:		
Contracts		3,812**
Value of original contracts		\$723m*
* Includes all payment activity, including contract payments		
** Includes period activity plus data converted from legacy system to FI\$Cal.		

Table 3, below, provides a summary of all payments for goods and services by the trial courts during this reporting period. The table shows 16,894 payments representing nearly \$208 million associated with 7,988 contracts.

Table 3. Trial Court Payment Statistics, Goods, and Services Detail Summary, July 1 through December 31, 2018

Goods / Services	Payments	Value	Contracts
ADVERTISING	110	\$199,099.11	36
BANKING AND INVESTMENT SERV	16	33,099.35	4
COLLECTION SERVICES	91	7,531,411.48	45
CONSULTING SERVICES-TEMP	96	938,590.47	83
CONSULTING/PROFESSIONAL SVCS	1	10,605.45	
CONTRACTED SERVICES	100	2,176,362.34	79
COUNTY-PROVIDED SERVICES	156	12,856,292.36	122
COURT APPOINTED COUNSEL CHA	420	25,941,570.26	144
COURT INTERPRETER SERVICES	2,786	14,427,205.54	348
COURT ORDERED PROFESSIONAL	998	6,834,264.02	572
COURT REPORTER SERVICES	292	2,792,353.11	11
COURT TRANSCRIPTS	1,867	8,574,375.33	15
DUES AND MEMBERSHIPS	115	206,644.57	20
EQUIPMENT MAINTENANCE	224	1,252,511.57	181
EQUIPMENT RENTAL/LEASE	188	2,226,323.61	132
EQUIPMENT REPAIRS	123	362,268.69	101
FEES/PERMITS	130	2,498,094.98	52
FREIGHT AND DRAYAGE	16	3,897.49	5
GENERAL CONSULTANT AND PROF	762	13,091,292.11	401
GENERAL EXPENSE	13	84,646.81	6
GENERAL EXPENSE-SERVICE	357	4,140,762.01	244

Goods / Services	Payments	Value	Contracts
GROUNDS	25	99,960.03	16
INFORMATION TECHNOLOGY	3	353,489.70	2
INSURANCE	105	1,273,584.95	38
INVESTIGATIVE SERVICES	152	413,349.74	62
IT COMMERCIAL CONTRACT	162	9,770,919.78	143
IT INTER-JURISDICTIONAL CON	16	461,085.06	11
IT MAINTENANCE	437	12,294,834.69	371
IT OTHER	48	1,049,742.41	33
IT REPAIRS/SUPPLIES/LICENSE	452	9,624,599.46	364
JANITORIAL	167	6,742,570.46	113
JUROR COSTS	19	20,287.01	3
LABORATORY EXPENSE	25	42,151.78	9
LEGAL	133	1,858,079.47	88
LIBRARY PURCHASES AND SUBSC	394	4,062,322.96	226
MAINTENANCE AND SUPPLIES	225	2,650,340.18	185
MAJOR EQUIPMENT	105	6,131,408.31	98
MEDIATORS/ARBITRATORS	227	1,277,014.94	45
MEETINGS, CONFERENCES, EXHI	136	286,360.34	34
MINOR EQUIPMENT-UNDER \$5K	983	12,679,609.47	878
OFFICE EXPENSE	1,688	4,454,308.75	1,379
OTHER CONTRACT SERVICES	49	889,717.07	33
OTHER FACILITY COSTS-GOODS	104	205,594.53	82
OTHER FACILITY COSTS-SERV	67	410,889.09	49
OTHER ITEMS OF EXPENSE	26	9,846.92	22
OTHER TRAVEL EXPENSE	8	1,894.00	1

Goods / Services	Payments	Value	Contracts
OTHER-SPECIAL ITEMS OF EXPENSE	1	1,800.00	
PHOTOGRAPHY	20	56,059.65	14
POSTAGE	24	750,295.39	10
POSTAGE METER	47	751,450.34	21
PRINTING	469	2,216,664.77	378
RENT/LEASE	86	2,142,742.59	54
SECURITY	122	6,608,550.66	79
SHERIFF	412	1,009,164.09	15
STAMPS, STAMPED ENVELOPES	210	3,554,895.17	106
TELECOMMUNICATIONS	494	6,536,684.55	298
TRAINING	256	635,895.01	71
UNIFORM ALLOWANCE	5	1,690.37	5
VEHICLE OPERATIONS	131	418,246.26	51
Grand Total	16,894	\$207,929,770.61	7,988

Report Information

Trial Court Contract Report

The Phoenix Financial System is not configured to collect information about contracts in a manner that precisely matches the statutory reporting requirements. Below are some key factors to consider when reviewing the contract data related to the superior courts.

- The *Trial Court Contract Report* includes all contracts and amendments completed within the reporting period because including all contracts is more cost-effective than developing a report that includes distinct contracts for only the vendors who received more than one payment in the reporting period. “Vendor” is used synonymously with “contractor” in the report.
- Goods/Services descriptions are determined by the general ledger account(s) entered in the system.
- The only amendment descriptions that can be reported are changes in the overall value or duration of an agreement, or changes in the goods/services provided.
- The Phoenix Financial System cannot distinguish between a true amendment and an error correction. Screens were built to allow superior courts to review transactions included in

the report and exclude changes that were error corrections. This design feature affects the accuracy of the data based on a court's ability/availability to review its transactions.

Table 4 contains a list of the report fields and their descriptions.

Table 4. Trial Court Contract Report Field Names and Descriptions

Field Name	Field Description
Court	Judicial Branch Entity (JBE), specifically the name of the superior court with the associated contract.
Contract	Unique identifier for the contract; can be system generated or a court-specific number.
Vendor ID	Unique identifier for the vendor; can be system generated or a court-specific vendor identifier.
Vendor Name	Name of the vendor.
Last Reported Contract Value	The most recently reported contract value, when the transaction record is for a contract that has been previously reported. Only contracts created or amended after January 1, 2012, have been reported.
Contract Value (New)	Known or estimated original contract value, when the transaction record is for a new contract.
Contract Value (Changed)	The increase or decrease to the contract value, if the contract value changed within the reporting period, which may occur in the same reporting period as a new contract.
Goods/Services (New)	A description of the goods/services based on the general ledger accounts associated with the contract, when the transaction record is for an original contract. The goods/services are rolled up from subaccounts, so descriptions may appear to be duplicates but are actually separate subaccounts in the rolled-up category.
Goods/Services (Changed)	A description of the changed goods/services based on the general ledger accounts associated with the contract, when the transaction record refers to an amendment to the goods/services. The goods/services are rolled up from subaccounts, so descriptions may appear to be duplicates but are actually separate subaccounts in the rolled-up category.
Contract Duration (New)	When the transaction record is for an original contract, the original contract duration, represented in months or a fraction thereof.
Contract Duration (Changed)	When the transaction record refers to an amendment to the current contract duration, the increase or decrease to the contract duration, represented in months or a fraction thereof.
Total Contract Duration	The total contract duration, including cumulative changes to the original contract duration, represented in months or a fraction thereof.

Trial Court Payment Report

Below are some key factors to consider when reviewing the payment data.

- Goods/Services descriptions are determined by the general ledger account(s) entered in the system.
- A single payment may have multiple lines of data in the file if the payment is for multiple goods/services. Simple sorting by contract number keeps these records together. They can also be sorted by court/JBE or by vendor.

Table 5 contains a list of the report fields and their descriptions.

Table 5. Trial Court Payment Report Field Names and Descriptions

Field Name	Field Description
JBE	Name of the superior court making the payment.
Contract Number	Unique identifier for the contract under which the payment was made. If the payment was not associated with a contract, this field will be blank.
Goods/Services	Description of the goods/services based on the general ledger account associated with the payment. The goods/services are rolled up from subaccounts, so descriptions may appear to be duplicates but are actually separate subaccounts in the rolled-up category.
Vendor ID	Unique identifier for the vendor.
Vendor Name	Name of the vendor.
Total Payments	Total payments to a vendor, reported by court, contract, and goods/services under the contract. Data can be sorted in various ways to obtain totals by court, vendor, contract, goods/services, etc.

Attachments and Links

1. Link A: Because of their size, the following reports are posted separately for access and review at <http://www.courts.ca.gov/7466.htm> rather than as attachments.
 - Superior court reports, from July 1 through December 31, 2018:
 - *Trial Court Contract Report*
 - *Trial Court Payment Report*
2. Link B: The judicial branch payment transactions information in FISCAL is on the Open FISCAL website at <http://open.fiscal.ca.gov/>.
3. Link C: The judicial branch procurement transactions information in FISCAL is on the eProcure website at:
https://suppliers.fiscal.ca.gov/psc/psfpd1/SUPPLIER/ERP/c/ZZ_PO.ZZ_SCPRS1_CMP.GBL?FolderPath=PORTAL_ROOT_OBJECT.ZZ_FISCAL_SCPRS.ZZ_SCPRS1_CMP_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%2cIsFolder.