



JUDICIAL COUNCIL
OF CALIFORNIA

JUDICIAL BRANCH BUDGET
COMMITTEE

JUDICIAL BRANCH BUDGET COMMITTEE

MATERIALS FOR NOVEMBER 12, 2020

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JUDICIAL BRANCH BUDGET COMMITTEE

NOTICE AND AGENDA OF OPEN MEETING WITH CLOSED SESSION

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.75(c), (d), and (e)(1))

THIS MEETING IS BEING CONDUCTED BY VIDEO CONFERENCE

OPEN PORTION OF THIS MEETING IS BEING RECORDED

Date: November 12, 2020
Time: 9:20 a.m. - 11:35 a.m.
Public Videocast: jcc.granicus.com/player/event/1095

Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the open meeting portion of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to JBBC@jud.ca.gov.

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

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

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the May 28, 2020, Judicial Branch Budget Committee meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to JBBC@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA, attention: Angela Cowan. Only written comments received by 9:20 am on Tuesday, November 10, 2020 will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-3)

Item 1

2021 Trial Court Budget Advisory Committee Annual Agenda (Action Required)

Review draft annual agenda of the Trial Court Budget Advisory Committee.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Brandy Olivera, Lead Staff, Trial Court Budget Advisory Committee

Item 2

COVID-19 Backlog Funding (No Action Required)

Review Trial Court Budget Advisory Committee recommendations as it relates to the \$50 million one-time COVID-19 backlog funding received in the 2020 Budget Act and alternative recommendations on \$50 million one-time COVID-19 backlog funding.

Presenter(s)/Facilitator(s): Various

IV. ADJOURNMENT

Adjourn to Closed Session

V. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(D))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the September 24, 2020 Judicial Branch Budget Committee meeting.

Item 1

Innovations Grant Program (California Rules of Court, Rule 10.75 (D)(9).

Evaluation of individual grant applications

Review and discussion of administrative matters and requests from grantees regarding Innovations Grant Program projects.

Presenter(s)/Facilitator(s): Ms. Marcela Eggleton, Supervising Analyst, Leadership Support Services

Adjourn Closed Session



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JUDICIAL BRANCH BUDGET COMMITTEE

MINUTES OF OPEN MEETING

May 28, 2020

9:00 a.m. to 1:10 p.m.

<http://jcc.granicus.com/player/event/919?>

Advisory Body Members Present: Hon. David. M. Rubin, Chair; Hon. Ann Moorman, Vice Chair; Hon. C. Todd Bottke; Hon. Carin T. Fujisaki; Hon. Brad R. Hill; Hon. Harold W. Hopp; Mr. Michael M. Roddy; Ms. Andrea K. Wallin-Rohmann

Advisory Body Members Absent: None.

Others Present: Ms. Angela Cowan; Mr. John Wordlaw; Mr. Zlatko Theodorovic; Ms. Fran Mueller; Ms. Laura Speed; Mr. Pell McCormick; Ms. Mimi Morris; Ms. Heather Petit; Ms. Shelley Curran; Ms. Charlene Depner; Mr. Don Will; Mr. Michael Hersek; Mr. Louis Stanford; Mr. Douglas Denton; Ms. Francine Byrne; Ms. Bonnie Hough; Ms. Brandy Sanborn; Ms. Shima Mirzaei

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 9:00 a.m. and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of November 15, 2019, Judicial Branch Budget Committee (JBBC) meeting, the December 19, 2019 Joint Court Facilities Advisory Committee (CFAC) and JBBC meeting (previously approved by the CFAC only), and the April 21, 2020 JBBC meeting.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1- 2021-22 Budget Update

Update on the status of the 2020-21 Judicial Branch budget

Presenter(s)/Facilitator(s): Mr. John Wordlaw, Chief Administrative Officer, Judicial Council
Mr. Zlatko Theodorovic, Deputy Director, Judicial Council Budget Services
Ms. Fran Mueller, Deputy Director, Judicial Council Budget Services

Action: No action taken.

DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-1)

Item 1 - 2021-22 Budget Change Concepts (Action Required)

Review of 2021-22 Budget Change Concepts for the Judicial Branch

Presenter(s)/Facilitator(s): Hon. David M. Rubin, Chair

Action: *The committee unanimously approved the following budget change proposal concepts to be developed into budget change proposals for consideration by the Judicial Council in July:*

A. The following concepts shall be combined into one funding request with only Proposition 66 costs from each concept and the addition of trial court Proposition 66 costs:

- a. 21-05 – Proposition 66 Costs in the Courts of Appeal
- b. 21-23 – HCRC Case Team Staffing and Establishment of Los Angeles Office

B. The following concepts are approved as stand-alone concepts with revisions as noted:

- a. 21-09 – Self-Help Centers in Trial Courts - Continuing Funding and Expanding Services: revise request down to \$19.1 million to continue the current level of funding
- b. 21-11 – Insolvency Resolution for State Court Facilities Construction Fund
- c. 21-12 – Trial Court and Court of Appeal Facility Operations and Maintenance, Leased Space, and Deferred Maintenance
- d. 21-13 – Inflationary Adjustment for Trial Courts
- e. 21-22 – Placeholder – Various Capital Outlay Projects

C. The following concepts are approved for submission, however, if the \$25 million for technology upgrades is included in the 2020-21 enacted budget, the Administrative Director has authority to withdraw these requests from submission.

- a. 21-18 – Judicial Branch Office of Information Technology
- b. 21-25 – Virtual Courthouse Critical Needs

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:48 a.m. to begin a closed session.

Approved by the advisory body on enter date.

Trial Court Budget Advisory Committee
Annual Agenda¹—2021
Approved by Executive and Planning Committee:

I. COMMITTEE INFORMATION

Chair:	Hon. Jonathan B. Conklin, Judge, Superior Court of Fresno County
Lead Staff:	Ms. Brandy Olivera, Manager, Judicial Council Budget Services
Committee's Charge/Membership: Rule 10.64(a) of the California Rules of Court states the charge of the Trial Court Budget Advisory Committee, which is to make recommendations to the council on the preparation, development, and implementation of the budget for trial courts and provides input to the council on policy issues affecting trial court funding. Rule 10.64(b) sets forth additional duties of the committee. The Trial Court Budget Advisory Committee currently has 24 members, and meets in-person four times a year, in addition to numerous teleconferences, utilizing dedicated funds from the State Trial Court Improvement and Modernization Fund. The current committee roster is available on the committee's web page. The Funding Methodology Subcommittee meets in-person twice annually, also using dedicated funds from the State Trial Court Improvement and Modernization Fund.	

¹ The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

Subcommittees/Working Groups²²:

1. Fiscal Planning Subcommittee (FPS) – Reviews recommendations regarding trial court requests to set aside funds on their behalf that have reverted to the Trial Court Trust Fund (TCTF) pursuant to Government Code section 77203. This group also reviews requests from trial courts that relate to Children’s Waiting Room funding.
2. Funding Methodology Subcommittee (FMS) – Ongoing review and refinement of the Workload Formula, develop a methodology for allocations from the TCTF Court Interpreter Program (CIP) (0150037) in the event of a funding shortfall, and consider funding allocation methodologies for other non-discretionary dollars as necessary.
3. Revenue and Expenditure (R&E) Subcommittee – Ongoing review of TCTF and State Trial Court Improvement and Modernization Fund (IMF) allocations supporting trial court projects and programs as well as any systematic cash flow issues affecting the trial courts.
4. Ad Hoc Interpreter Subcommittee – To develop a methodology for allocations from the TCTF CIP in the event of a funding shortfall and review existing methodologies.
5. Ad Hoc COVID-19 Backlog Subcommittee (New) – To develop more precise definitions and practices for documenting and reporting COVID-related backlog and workload to be funded by the \$50 million one-time augmentation in the 2020 Budget Act; determine information to be collected on how the first \$25 million allocation was spent; and develop recommendations for the remaining \$25 million based on data and need.

Meetings Planned for [YEAR(S)]³ (Advisory body and all subcommittees and working groups)

Date/Time/Location or Teleconference:

The Trial Court Budget Advisory Committee usually holds four in-person meetings annually and the Funding Methodology Subcommittee holds two in-person meetings. A budget allocation is provided to the committee to cover the costs of travel and per diem to allow these budget discussions to occur in-person. Due to the COVID-19 pandemic and ongoing public health protocols that restrict in-person gatherings, as well as the uncertainty of the state’s fiscal condition, the committee has not finalized its meeting schedule for 2021. Dates are estimated by month and the location is listed as “To Be Determined” where it would have been an in-person meeting. Additional meetings to address budget issues will be scheduled as needed.

Trial Court Budget Advisory Committee

January 2021/Videoconference; March 2021/TBD; April 2021/Videoconference; May 2021/TBD; July 2021/TBD; November 2021/TBD

Fiscal Planning Subcommittee

May 2021/Teleconference; September 2021/Teleconference; November 2021/TBD

² California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

³ Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

Revenue and Expenditure Subcommittee

March 2021/Teleconference

Ad Hoc Interpreter Subcommittee

January 2021/Teleconference; February 2021/Teleconference; March 2021/Teleconference

Ad Hoc COVID-19 Backlog Subcommittee

January 2021/Teleconference; February 2021/Teleconference; March 2021/Teleconference

Check here if exception to policy is granted by Executive Office or rule of court.

II. COMMITTEE PROJECTS

#	New or One-Time Projects ⁴	
1.	Project Title: One-Time \$50 Million COVID-19 Backlog Funding (New)	Priority 1⁵
		Strategic Plan Goal⁶ VII
	<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated with the inclusion of \$50 million one-time funding for COVID-19 backlog in the 2020 Budget Act. Allocation of the first \$25 million was approved by the Judicial Council at its July 24, 2020, business meeting, with a motion made by the council providing guidelines to the Trial Court Budget Advisory Committee for developing a recommendation for allocating the remaining \$25 million. The Ad Hoc COVID-19 Backlog Subcommittee will be developing a recommendation to the Trial Court Budget Advisory Committee, following the guidelines outlined by the council. The expected outcome is to allocate the remaining \$25 million to courts based on determined data elements and identified need.</p> <p>Status/Timeline: Targeted completion date is for the Trial Court Budget Advisory Committee to make a recommendation at the November 2020 Judicial Council business meeting on allocating the remaining \$25 million in COVID-19 backlog funding for the remainder of the 2020-21 fiscal year.</p> <p>Fiscal Impact/Resources: Budget Services and Business Management Services staff.</p> <p>Internal/External Stakeholders: External stakeholders include the trial courts.</p> <p>AC Collaboration: Judicial Branch Budget Committee.</p>	

⁴ All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

⁵ For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

⁶ Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

⁷ A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	New or One-Time Projects⁴	
2.	Project Title: Interpreter Funding Methodology	Priority 1⁵
		Strategic Plan Goal⁶ VII
<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated due to the declining fund balance in the TCTF CIP (0150037), and the Ad Hoc Interpreter Subcommittee was established to develop a methodology for allocations from the CIP in the event of a funding shortfall and to review existing methodologies. The Ad Hoc Interpreter Subcommittee made a recommendation to the Trial Court Budget Advisory Committee that was approved by the Judicial Council on July 24, 2020, to allocate the 2020 Budget Act appropriation to the trial courts, replacing the prior reimbursement process. The Ad Hoc Interpreter Subcommittee will continue its work to develop an ongoing allocation methodology for Trial Court Budget Advisory Committee and Judicial Council consideration for the 2021-22 fiscal year. The expected outcome is to appropriately allocate funds that do not exceed the CIP appropriation via a methodology that takes workload into consideration.</p> <p>Status/Timeline: Targeted completion date for an ongoing allocation methodology is fiscal year 2020–21 for a 2021-22 implementation.</p> <p>Fiscal Impact/Resources: Budget Services and Center for Children, Families & the Courts (CFCC) staff.</p> <p>Internal/External Stakeholders: External stakeholders include the trial courts.</p> <p>AC Collaboration: None.</p>		
3.	Project Title: State Trial Court Improvement and Modernization Fund (IMF) and Trial Court Trust Fund (TCTF) Review	Priority 1⁵
		Strategic Plan Goal⁶ VII
<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated from a Trial Court Budget Advisory Committee recommendation approved by the Judicial Council on July 24, 2020, on 2020-21 allocations from the IMF in the amount of \$54.5 million due to an ongoing \$7.9 million General Fund reduction to the IMF. The R&E Subcommittee will review 2020-21 allocations from the IMF and the TCTF to ensure consistency with the Judicial Council goals and objectives and propose solutions to address any structural shortfall in either fund. The expected outcome is to assist the council in ensuring solvency of the IMF and TCTF.</p> <p>Status/Timeline: One-time review in 2020-21 to determine if any current year allocation adjustments are needed. The allocations for 2021–22 will be approved by July 2021.</p> <p>Fiscal Impact/Resources: Budget Services staff as well as multiple other Judicial Council office staff that have programs funded from the IMF and/or TCTF.</p>		

#	New or One-Time Projects⁴	
	<p>Internal/External Stakeholders: Various Judicial Council offices with programs funded from the IMF and/or TCTF, and external stakeholders include trial courts and service providers.</p> <p>AC Collaboration: Various advisory bodies that have programs in these funds and provide recommendations regarding funding and program priorities.</p>	
4.	<p>Project Title: Court Cluster System and Floor Funding</p>	<p>Priority 2⁵</p> <p>Strategic Plan Goal⁶ VII</p>
	<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated from an FMS recommendation on February 20, 2020 to initiate an ad hoc subcommittee to reevaluate the cluster system and floor funding to identify any opportunities for refinement or change. The expected outcome could impact the statewide four-cluster system and/or its criteria as well as updates to the funding floor determination process.</p> <p>Status/Timeline: One-time.</p> <p>Fiscal Impact/Resources: Budget Services and Business Management Services staff.</p> <p>Internal/External Stakeholders: External stakeholders include the trial courts.</p> <p>AC Collaboration: Workload Assessment Advisory Committee.</p>	
5.	<p>Project Title: Trial Court Pension Trust Fund</p>	<p>Priority 2⁵</p> <p>Strategic Plan Goal⁶ VII</p>
	<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated from a January 2019 Senate Bill 1413 (Chapter 665, Statutes of 2018) creating Government Code 21711, which established the California Employers' Pension Prefunding Trust (CEPPT). The CEPPT is a trust fund dedicated to prefunding employer contributions to defined benefit pension systems and works similarly to the existing California Employer's Retiree Benefit Trust dedicated to prefunding other post-employment benefits. The Trial Court Budget Advisory Committee voted on July 16, 2020 to further research the cost benefit impact for developing a recommendation regarding potential trial court participation in the CEPPT for consideration by the Judicial Council at a future business meeting. The expected outcome will inform the recommendation to the council.</p>	

#	New or One-Time Projects⁴	
	<p><i>Status/Timeline:</i> One-time.</p> <p><i>Fiscal Impact/Resources:</i> Branch Accounting and Procurement and Budget Services staff.</p> <p><i>Internal/External Stakeholders:</i> External stakeholders include the trial courts.</p> <p><i>AC Collaboration:</i> None.</p>	
6.	Project Title: Judicial Council-Provided Services Review	Priority 2⁵
	<p>Strategic Plan Goal⁶ VII</p> <p><i>Project Summary⁷:</i> Part of the charge of the committee pursuant to rule 10.64. The project originated from the FMS work plan to identify and evaluate the impact of Judicial Council-provided services versus those that are funded by local trial court operations funds. The expected outcome is to determine if any services provided should be shifted or combined along with any associated funding.</p> <p><i>Status/Timeline:</i> One-time.</p> <p><i>Fiscal Impact/Resources:</i> Various Judicial Council offices that provides services to trial courts.</p> <p><i>Internal/External Stakeholders:</i> Workload Assessment Advisory Committee.</p> <p><i>AC Collaboration:</i> Various advisory bodies that have programs that provide various court services.</p>	

#	Ongoing Projects and Activities⁴	
1.	Project Title: Workload Formula Adjustment Request Process (ARP)	Priority 1⁵
		Strategic Plan Goal⁶ VII
<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. At its August 22, 2013 meeting, the Judicial Council approved a recommendation made by the Trial Court Budget Advisory Committee to approve the Workload Formula Adjustment Request Process to allow courts an annual opportunity to submit recommendations for changes to the Workload Formula. The expected outcome is to assist the courts and the council with ongoing review and refinements to the Workload Formula.</p> <p>Status/Timeline: Ongoing.</p> <p>Fiscal Impact/Resources: Budget Services and Business Management Services staff.</p> <p>Internal/External Stakeholders: External stakeholders include the trial courts.</p> <p>AC Collaboration: The Workload Assessment Advisory Committee oversees the Resources Assessment Study model, which feeds into the Workload Formula, and which is often the area for recommendation submissions by trial courts.</p>		
2.	Project Title: Child Support Commissioner and Family Law Facilitator (AB 1058) Funding	Priority 2⁵
		Strategic Plan Goal⁶ VII
<p>Project Summary⁷: Part of the charge of the committee pursuant to rule 10.64. The project originated from a Judicial Council meeting in April 2015 as a recommendation from the Family and Juvenile Law Advisory Committee, with an original targeted completion date of December 2017 for 2018–19 implementation (which has been delayed to 2021–22 implementation). The Family and Juvenile Law Advisory Committee will work on the development of a workload-based funding methodology for the facilitator portion of the program, which was originally developed in 1997 (the commissioner portion is completed, and a reallocation of funds will be considered every two years beginning with fiscal year 2021–22). The expected outcome is for the Trial Court Budget Advisory Committee to provide input on allocating funds based on workload per a Judicial Council December 2016 report. The AB 1058 program experienced a \$7 million reduction by the California Department of Child Support Services (DCSS) to the Judicial Council’s cooperative agreement for 2020-21, which was allocated via an approval by the Judicial Council on September 25, 2020.</p> <p>Status/Timeline: Targeted completion for the facilitator portion of the methodology is fiscal year 2020–21 for 2021–22 implementation.</p> <p>Fiscal Impact/Resources: Budget Services and CFCC staff.</p>		

Internal/External Stakeholders: Internal stakeholders include CFCC, and external stakeholders include trial courts and DCSS.

AC Collaboration: Family and Juvenile Law Advisory Committee.

III. LIST OF 2020 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<p>Workload Formula</p> <p>The Trial Court Budget Advisory Committee made recommendations to the Judicial Council that were approved on January 17, 2020 including redirecting the fee collected per Government Code section 68086(a)(2), court reporter services in civil proceedings lasting more than one hour, to be distributed back to trial courts on a dollar-for-dollar basis after deposit into the TCTF and that this revenue stream be excluded from the Workload Formula; and technical refinements to current Workload Formula policy parameters that provided clearer allocation methodologies to further the goal of funding equity, minimize adverse funding impacts to trial courts, and provide clear direction on applying policy parameters.</p> <p>The Trial Court Budget Advisory Committee made recommendations to the Judicial Council that were approved on July 24, 2020 that included allocation of \$2.201 billion to the trial courts from the TCTF, an ongoing reduction of \$167.831 million, and allocation of the first \$25 million in one-time funding for COVID-19 backlog.</p>
2.	<p>Operating Expenditures and Equipment (OE&E) Review</p> <p>The Trial Court Budget Advisory Committee made a recommendation to the Judicial Council that was approved on July 24, 2020 related to how Workload Formula-based allocations are calculated and increasing the accuracy and transparency of the Workload Formula by updating the calculation for OE&E, and making updates to general ledger accounts used in the Workload Formula effective with 2020-21 allocations.</p>
3.	<p>IMF and TCTF Allocations</p> <p>The Trial Court Budget Advisory Committee made 2020–21 IMF and TCTF recommendations to the Judicial Council that were approved on July 24, 2020.</p>
4.	<p>Interpreter Funding Methodology</p> <p>The Trial Court Budget Advisory Committee made a recommendation to the Judicial Council that was approved on September 25, 2020 to allocate CIP funds via a one-time allocation methodology not to exceed the 2020 Budget Act appropriation. The project continues into the 2021 agenda.</p>

#	Project Highlights and Achievements
5.	<p data-bbox="201 204 598 240">Consumer Price Index (CPI)</p> <p data-bbox="201 280 1881 423">The Ad Hoc CPI Subcommittee was disbanded as the charge to develop a methodology for CPI allocations to trial courts was no longer required as this funding request was not included in a 2020-21 budget change proposal (BCP) submission. The Ad Hoc CPI Subcommittee could be reestablished in the event this funding is included in the 2021-22 budget. A 2021-22 BCP for Inflationary Cost Adjustment for Trial Courts was submitted to the Department of Finance for consideration in the 2021-22 Governor’s Budget.</p>
6.	<p data-bbox="201 448 489 483">Joint Facilities Costs</p> <p data-bbox="201 521 1822 553">Costs of leases remaining with courts are pending the outcome of a funding request for these costs included in a 2021-22 BCP.</p>

JUDICIAL COUNCIL OF CALIFORNIA
TRIAL COURT BUDGET ADVISORY COMMITTEE
Report to the Judicial Branch Budget Committee

(Action Item)

Title: COVID-19 Backlog Funding

Date: 10/20/2020

Contact: Ms. Brandy Olivera, Manager, Judicial Council Budget Services
415-865-7195 | brandy.sanborn@jud.ca.gov
Ms. Leah Rose-Goodwin, Manager, Judicial Council Business Management
Services 415-865-7708 | leah.rose-goodwin@jud.ca.gov

Issue

Consider recommendations from the Trial Court Budget Advisory Committee (TCBAC) on a definition, reporting requirements, and methodology for allocating the \$50 million one-time COVID-19 backlog funding received in the Budget Act of 2020, and in response to the Judicial Council-motion from July 24, 2020.

Background

Judicial Council Internal Committee Oversight

Following the July 2020 council meeting, the TCBAC reporting structure changed from having the Executive and Planning Subcommittee as the internal committee with oversight to the Judicial Branch Budget Committee.

COVID-19 Funding for Trial Courts

As described in the enacted budget summary for 2020-21, the Judicial Branch has had to radically change its operations to protect the public from the spread of COVID-19 while also maintaining access to justice. Actions taken by the Judicial Council include extending court deadlines, suspending jury trials, using technology to conduct proceedings remotely, and suspending evictions and foreclosures. Trial courts have also taken actions to protect the public by closing courthouses and courtrooms, limiting operations to only essential court functions, and suspending collection activities, among others.

These actions have resulted in delays in court operations and a backlog of cases that will take time for the courts to process as they continue to practice physical distancing. In an effort to help the trial courts address the backlog and resume normal operations, the Budget Act of 2020 includes \$50 million one-time General Fund in 2020-21.

To ensure public health directives are followed to protect court staff and the public, the trial courts are using technology to allow employees to telework, using audio and video systems for

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remote courtroom proceedings and self-help/court support services, and modifying courthouse facilities with plexiglass and other safety precautions.

Initial \$25 Million Allocation and Judicial Council Motion

At its July 24, 2020 business meeting, the Judicial Council approved a four-part motion:

1. Of the \$50 million appropriated to the Judicial Branch for trial court COVID-19 related backlogs, the Judicial Council allocates \$25 million immediately using the pro rata method proposed by the Trial Court Budget Advisory Committee (TCBAC)¹.
2. TCBAC will develop more precise definitions and practices for documenting and reporting COVID-19 related backlogs and report its recommendations to the council prior to distribution of any of the second \$25 million.
3. TCBAC will gather from trial courts data regarding how trial courts spent the first \$25 million. Report that data back to the council prior to allocation of the second \$25 million.
4. Have TCBAC develop, in consultation with the Judicial Branch Budget Committee (Budget Committee), recommendations for allocating the remaining \$25 million on a data and needs basis. TCBAC will report the recommendations to the council.

Deliberative Process

Considerable work was done by TCBAC and its subcommittees over the past few months:

- On June 2, 2020, the Funding Methodology Subcommittee (FMS) considered options on methodologies to allocate the one-time \$50 million General Fund included in the 2020-21 May Revision to the trial courts for COVID-related case filing backlog for consideration by TCBAC at its June 11, 2020 meeting².
- On June 11, 2020, TCBAC considered an FMS recommendation to allocate the \$50 million via a methodology similar to the Workload Formula that was modified by

¹ Judicial Council report (July 24, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8651228&GUID=27A3B6D8-9783-4865-8C5A-F6697EB58734>; Judicial Council minutes (July 24, 2020), <https://jcc.legistar.com/View.ashx?M=M&ID=711582&GUID=90001AF2-7CEE-4F0F-906B-29A03ED9CB43>.

² FMS report (June 2, 2020), <https://www.courts.ca.gov/documents/tcbac-20200602-materials.pdf>.

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TCBAC to a pro rata allocation to be distributed immediately upon approval of the council³.

- On July 24, 2020, the Judicial Council considered the TCBAC recommendation and responded with the four-part motion above.
- On August 12, 2020, TCBAC met to discuss the motion and next steps, and established the Ad Hoc COVID-19 Backlog Subcommittee (subcommittee), consisting of nine TCBAC members, to develop a recommendation for the approval by the committee to move forward to the Budget Committee and then the council by its November 12-13, 2020 business meeting.⁴
- The subcommittee met three times (September 14, September 21, and September 28, 2020) and developed a five-part recommendation for TCBAC to consider at its October 5, 2020 meeting⁵. At that meeting, TCBAC approved the recommendation related to the first \$25 million, which has already been allocated, and recommended that the subcommittee revisit the various other recommendations.
- The subcommittee met for a fourth time on October 8, 2020 and refined some of the recommendations developed at the previous meeting and included additional considerations to develop an updated 11-part recommendation presented to TCBAC at its October 15, 2020 meeting⁶. This recommendation was unanimously approved for consideration by the Budget Committee and then for consideration by the council.

COVID-19 Backlog

Eligible Expenditures

Eligible expenditures for the first \$25 million include, but are not limited to, equipment, personal protective equipment, remote technologies, and personnel costs directly related to COVID-19, effective July 1, 2020.

³ TCBAC report (June 11, 2020), <https://www.courts.ca.gov/documents/tcbac-20200611-materials.pdf>; TCBAC minutes (June 11, 2020), <https://www.courts.ca.gov/documents/tcbac-20200611-minutes.pdf>.

⁴ TCBAC report (August 12, 2020), <https://www.courts.ca.gov/documents/tcbac-20200812-materials.pdf>; TCBAC minutes (August 12, 2020), <https://www.courts.ca.gov/documents/tcbac-20200812-minutes.pdf>.

⁵ TCBAC report (October 5, 2020), <https://www.courts.ca.gov/documents/tcbac-20201005-materials.pdf>; TCBAC minutes (October 5, 2020), <https://www.courts.ca.gov/documents/tcbac-20201005minutes.pdf>.

⁶ TCBAC report (October 15, 2020), <https://www.courts.ca.gov/documents/tcbac-20201015-materials.pdf>.

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Eligible expenditures for the second \$25 million are for expenses that endeavor to address and reduce the COVID-19 backlog as defined and calculated from a comparison of court-specific disposition information from the established pre and current pandemic periods.

COVID-19 Workload Backlog Definition

When cases are not disposed in a timely manner, a workload backlog develops. The COVID-19 related backlog consists of workload that was not disposed during the pandemic period (March 1, 2020 through August 31, 2020).

The Judicial Branch will measure the COVID-19 related backlog using the net change in average dispositions from the pre-pandemic period (March 1, 2019 to August 31, 2019) compared to the pandemic period (March 1, 2020 through August 31, 2020) using weighted disposition data reported by the courts in the Judicial Branch Statistical Information System (JBSIS)⁷.

Delayed COVID-19 Related Backlog

Given that a relatively short interval of time has elapsed since the courts have resumed operations, with many courts continuing to operate in only a limited capacity, some courts have identified large numbers of cases that have been submitted to courts but that have not been filed or processed. Other courts are now starting to see filings greatly increase due to phased reopening of courthouses and restored court services. It is recognized that there will be a workload delay for all new cases filed due to limitations imposed by physical distancing and other COVID-19 impacts. This “delay factor” will increase the amount of resources needed to process these new filings.

Court staffing resources have also declined due to budgetary constraints; Coronavirus Aid, Relief, and Economic Security (CARES) Act; and the Families First Coronavirus Response Act (FFCRA). Not only are staff out due to illness, but also due to other circumstances in having to care for their family members including children and dependent adults. These and other measures have prolonged and will prolong the work required to address the backlog for an extended period of time and will require continuous and periodic evaluation.

The subcommittee will continue its work to evaluate a potential statewide case-processing delay factor to determine the need for potential additional funding to address the continued impact of the pandemic on court operations and service to the public.

COVID-19 Proposed Methodology and Distribution of Funding

The recommendation proposes that the calculation of existing backlog shall be based on a snapshot from the period noted in the above definition using actual, weighted disposition data

⁷ Dispositions are defined as the termination of a proceeding whether before or after a trial or other non-trial dispositive event. Weighted dispositions are dispositions in which Resource Assessment Study caseweights are applied to the data.

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from each court, as reported to JBSIS. Only courts that have a calculated backlog consistent with the above definition are eligible for a funding allocation from the remaining \$25 million available for distribution.

Each court's COVID-related backlog is the net difference between the average March 1, 2019 to August 31, 2019 dispositions compared to average March 1, 2020 to August 31, 2020 dispositions. The second \$25 million would be allocated proportionally based on each court's share of the total statewide backlog.

COVID-19 Expenditure and Reporting Requirements

The first \$25 million in one-time COVID-19 funding, already distributed for the preparation and implementation of COVID-19 strategies, can be used for COVID-19-related costs (including but not limited to equipment, personal protective equipment, remote technologies, and personnel costs directly related to COVID-19).

The second \$25 million can be used for COVID-19 backlog as defined and calculated from a comparison of court-specific disposition information from the established pre and current pandemic time periods.

Trial courts shall report on the status of addressing progress in reducing the COVID-19 related backlog no less than quarterly. Courts shall maintain appropriate expenditure records and documentation for internal files and for audit purposes for both the initial and second allocation. This information will be collected by Judicial Council staff and shared with the Trial Court Budget Advisory Committee, the Judicial Branch Budget Committee, and the Judicial Council.

Reporting will be continuous with regular updates presented to the council to confirm funds are spent as authorized. Courts unable to spend any part of their second allocation of \$25 million, per the definition, shall return for redistribution to those courts that meet the COVID-19 backlog definition. This is to ensure funds are allocated and spent consistent with legislative intent and in support of addressing the backlog and resuming normal operations for court constituents. TCBAC proposed in March 2021, after the second \$25 million is allocated, and prior to the end of the fiscal year, there will be a reconciliation to determine if courts were unable to spend any part of their allocation per the backlog definition, with the possibility of redistribution as necessary.

COVID-19 Data Collection, Tracking, and Reporting

Not all courts have the disposition data in JBSIS for the time periods identified, and every effort will be made to assist courts in submitting their data. For the purpose of courts to track and report on COVID-19 expenditures and the impact of COVID-19 backlog, two Work Breakdown Structure (WBS) elements have been established in the Phoenix accounting system for tracking backlog expenditures to ensure information can be made available for reporting purposes.

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Guiding Principles

The following principles guided the subcommittee and informed the proposed recommendations:

- The allocation must be made on the basis of backlog as defined;
- There is recognition that all courts have been affected by the unprecedented occurrence of COVID-19. It is also recognized that the methodology for this funding is addressing the need for those courts most impacted by existing backlog at this point in time. The methodology must be transparent, simple to implement, and simple for reporting purposes;
- The methodology must be data-based, and the data reporting burden should be minimized. It is recognized that this initial approach to a methodology is singular in its usage of data due to the urgency of need to distribute this allocation of funds. This initial allocation methodology is a precursor to further analysis of future funding need as it relates to backlog, which is workload that has not impacted the court system yet but that is anticipated as courts continue to expand operations and capacity; and
- The recommendations forthcoming in this report are the beginning of the ongoing evaluation and reporting of the impact of COVID-19 to the branch and the legal system supporting the courts. The subcommittee, TCBAC, and others who have contributed to this effort believe that this impact will be felt and should be evaluated and measured for a significant time to come. The subcommittee will continue to review and refine approach and will continue to make recommendations as appropriate.

Alternatives Considered

Over the course of four subcommittee and two committee meetings, a number of options were considered to measure the backlog:

- i. Use filings data to create a pandemic weighted caseload model that adds an additional “COVID-19 delay factor to new filings.”
 - a. Filings data is reported in JBSIS by nearly all courts, making this model easy to implement. Also, the branch’s weighted Resource Assessment Study (RAS) model is a recognized methodology for allocations.
 - b. This option appeared too complicated for review at this time due to the need to conduct a time study to calculate the delay factor by RAS case category; also, filings during the pandemic period may not be a reliable indicator of workload.

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- ii. Use filings to dispositions ratio or gap to express backlog.
 - a. Filings to disposition, or caseload clearance, is a recognized metric for measuring backlog.
 - b. This option requires collecting two data elements, increasing the data reporting burden on courts, and there were viewpoints that the same result could be achieved only by collecting disposition data.

- iii. Develop a two-part measurement that includes a point-in-time “snapshot” of backlog plus a forward-facing measure of backlog that has yet to impact the court system which includes calculating a “delay factor” that accounts for expected slowing of court processes due to physical distancing requirements.
 - a. Adopting this recommendation would address court concerns that a point in time measurement of backlog was insufficient to capture the full impact of the pandemic court workload.
 - b. Similar to the first option, this option was determined to be difficult to implement in a short timeframe and would require a time study or similar effort to develop the delay factors.

- iv. Use the average change in dispositions as a measure for pending backlog.
 - a. This measure is simple but potentially oversimplifies COVID-19 impact and workload differences in the courts as it does not take the differences in workload associated with the various case types into consideration.
 - b. Disposition data is defined and collected in JBSIS, although not all courts are able to report disposition data through JBSIS at this time.

- v. Use the average change in dispositions, weighted by RAS caseweights, as a measure of pending backlog.
 - a. This measure is relatively simple to implement and does account for differences in workload associated with the various case types by applying the RAS caseweights.
 - b. Disposition data is defined and collected in JBSIS, although not all courts are able to report disposition data through JBSIS at this time.
 - c. This was the selected option, developed further as detailed in the recommendation of this report.

- vi. Distribute the remaining \$25 million via a pro rata allocation, mirroring the allocation of the first \$25 million.
 - a. This option did not support the data and needs-based approach to measuring backlog as directed by the Judicial Council.

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Data Reporting Considerations

Data elements were discussed that would be used to measure backlog and the courts' ability to report these data. To that end, the following was considered:

- vii. Proxy measures should be developed and employed for courts unable to report disposition data. The committee considered approaches that utilized clusters or county COVID-19 exposure rate percentages.
 - a. These options were not adopted in favor of using statewide averages, an approach that is used in other branch allocation methodologies.

- viii. Identify the data collection periods needed to measure change in backlog. Initially, the periods of March 2019 through September 2019, and March through September 2020, were to be used to calculate the backlog for the affected pandemic period for purposes of the second \$25 million allocation.
 - a. The date range was changed from September to August for both years to increase complete data reporting, as it gives more time for courts to complete reporting and then submit data. There is no added benefit to using September data since the proposed measurement computes the *change* in dispositions between two data periods and not total dispositions between two points in time. Dropping September from the data collection period increases the likelihood of complete data reporting.

Public Comment

Public comment was submitted for the October 5, 2020 TCBAC meeting. The comment, submitted by 26 courts, presented an alternative approach to the distribution of this funding using a threshold to determine the courts that would qualify for a pro rata share of funding. The subcommittee proposed incorporating this comment into its further review of all COVID-19 related backlog impacts. This subsequent work may help inform further refinements to the initial methodology to the extent additional funding is provided for COVID-19 related backlog or other operational impacts.

Recommendations

The TCBAC has identified dispositions as one point of data analysis for evaluation of the backlog for the branch, and with further analysis downstream, will include more points of data that will display additional impact to courts through the continued work of the Ad Hoc COVID-19 Backlog Subcommittee. The recommendations below are to address the one-time allocation of the remaining \$25 million this fiscal year and are intended to address the courts most impacted

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at this point in time. The subcommittee will continue to review and refine this methodology and make additional recommendations as necessary.

Based on efforts on initial approach to report COVID-19 disposition data for the purpose of allocating the remaining \$25 million, and in anticipation of additional work in this area, courts should be prepared to submit disposition data regularly to be eligible for potential future funding. Specifics on JBSIS data elements required and data collection requirements are underway, with expenditure tracking directions using established WBS elements to follow.

Further, the following recommendations are presented to the Judicial Branch Budget Committee for approval to be considered by the Judicial Council at its January 21-22, 2021 business meeting, following a short period for appeals to be considered:

- A. COVID-19 backlog is defined as workload that was not disposed of during the pandemic period, March 1, 2020 through August 31, 2020⁸.
- B. The methodology of establishing COVID-19 backlog is to determine the net difference between the average of each court's COVID-19 backlog from March 1, 2019 to August 31, 2019 weighted dispositions, compared to average March 1, 2020 to August 31, 2020 weighted dispositions, allocated proportionally based on each court's share of the backlog. The results for all courts will be applied to the available \$25 million in remaining funding and allocated proportionally.
- C. In the event there are courts that are unable to enter the disposition data by case type for the time periods noted in recommendation B, proxies based on statewide averages will be applied to those courts for each time period to establish those courts' COVID-19 backlog and proportional allocation of the remaining \$25 million.
- D. Reporting on progress in reducing the COVID-19 related backlog will occur no less than quarterly and will continue to be reevaluated. A redistribution of the second \$25 million to take place in March 2021 in the event courts are unable to project the expenditure of their full allocation.
- E. Request that Judicial Branch staff create and distribute a template to all 58 courts to report non-dispositional information on how courts have addressed COVID-19 related challenges.

⁸ Half of March 2020 was not under shelter-in-place orders, but the monthly approach is how reporting is done.

October 2, 2020

Hon. Jon Conklin, Chair
Trial Court Budget Advisory Committee
Transmitted to: tcbac@jud.ca.gov

RE: Allocation Methodology for COVID-19 Backlog Funding

Hon. Jon Conklin and Members of the Trial Court Budget Advisory Committee,

The undersigned courts offer the following comments regarding the proposed allocation methodology for the COVID-19 Backlog Funding, as proposed for the October 5, 2020 Trial Court Budget Advisory Committee (TCBAC) meeting.

We want to thank TCBAC and the Ad Hoc COVID-19 Subcommittee (Subcommittee) for their efforts in determining a new funding allocation methodology to address the allocation of these funds. The impact of COVID-19 on all courts and court users in their community has been profound and will result in long lasting delays in document processing, overall service to our community, and the disposition of court cases. It is unlikely that the \$50 million in one-time funding will be sufficient to address the backlog created, and perhaps yet to be created, by the pandemic. The Subcommittee's efforts to define the backlog as it exists today are appreciated and are an important step in the recovery process.

The Subcommittee's proposal has identified a necessary proxy for backlog through the use of disposition data. Further, the recommendation to use data from months that are already completed is sound and avoids creating incentives or disincentives for case processing. While the use of dispositions for allocation decisions should be taken with great care, given the role that external factors can play in a court's ability to resolve cases, the use of this measure in this context is reasonable and has our support.

That said, we ask that TCBAC consider revising the ultimate allocation methodology. The methodology as presented relies on the aggregate average raw change in dispositions as the primary driver. The use of that driver places greater emphasis on large courts and has the potential to dilute and minimize the impact COVID-19 is having on smaller courts and their communities.

We ask that TCBAC revise this approach and instead use the percentage decline in dispositions as the key metric in the allocation decision for the second \$25 million. We propose amendments to the proposed model. Specifically, we suggest a change to the model that:

1. Preserves the recommended determination of backlog as measured by the change in dispositions from March-September 2019 to March-September 2020.
2. Uses the individual court average percent decline during the stated period as a court's backlog measure.
3. Uses a threshold average percent decline to acknowledge COVID-19 impact requiring funding. This threshold could be a set percentage or could be based on a set percentile (for example: what the percent decline was at the 25th percentile of courts).
 - a. All courts with a backlog measure of greater than the threshold value would receive their pro-rata share (as defined for the first \$25 million) of the second \$25-million.

- b. All courts with a backlog measure less than the threshold would receive a proportion of their pro rata share of the second \$25 million. This would result in some funding remaining for allocation.
- c. Courts with the greatest decline, again set at some threshold of a set value or a percentile (for example above the 75th percentile) would then receive additional COVID-19 backlog funds from the remaining funds.

The methodology above ensures that the COVID-19 backlog funding is sent to all courts with a measurable backlog. It also ensures that communities of all sizes that have been impacted by COVID-19 benefit from this funding.

Further, we submit that the methodology outlined above will also result in a clearer picture of the degree of impact on each court and community as it measures degree of decline rather than a raw number with no or little context. Finally, we believe outlining the degree of impact via a percentage along with the level of funding provided will make communicating the need for additional funding to address the remaining backlog clearer to funding entities.

Thank you for your consideration and we appreciate the opportunity to comment on this important issue.

Superior Court of California, County of Amador
Superior Court of California, County of Butte
Superior Court of California, County of Calaveras
Superior Court of California, County of Del Norte
Superior Court of California, County of El Dorado
Superior Court of California, County of Glenn
Superior Court of California, County of Inyo
Superior Court of California, County of Kings
Superior Court of California, County of Lake
Superior Court of California, County of Madera
Superior Court of California, County of Marin
Superior Court of California, County of Merced
Superior Court of California, County of Modoc
Superior Court of California, County of Napa
Superior Court of California, County of Nevada
Superior Court of California, County of Placer
Superior Court of California, County of Plumas
Superior Court of California, County of San Luis Obispo
Superior Court of California, County of Santa Cruz
Superior Court of California, County of Shasta
Superior Court of California, County of Siskiyou
Superior Court of California, County of Stanislaus
Superior Court of California, County of Trinity
Superior Court of California, County of Tulare
Superior Court of California, County of Tuolumne
Superior Court of California, County of Yuba