

**Written Comments Received for  
April 25–26, 2013, Judicial Council Meeting**

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# CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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MARY LAVERY FLYNN  
*Director, Office of Legal Services  
State Bar of California*

March 21, 2013

**Hon. Harry E. Hull, Jr., Co-Chair**  
Member, Judicial Council of California  
Associate Justice of the Court of Appeal  
Third Appellate District

**Hon. Phillip Isenberg, Co-Chair**  
Delta Stewardship Council, Chair

Dear Justice Hull and Mr. Isenberg:

Please accept the attached modified ‘Minimum Standards for Access’ statement adopted by the California Commission on Access to Justice. Recognizing that appropriation and allocation of judicial resources is a complex matter, it was our intent to identify some basic needs that are faced by all courts and the litigants who use them, with the hope these goals will help to define necessary funding levels.

The Commission stands ready to assist in the development of a narrative that amplifies and explains these standards, as well as the identification of appropriate methods for measuring these standards wherever possible.

We will be happy to provide any further information or assistance that you would find beneficial.

Sincerely,



Hon. Ronald B. Robie – Chair  
Commission on Access to Justice

# CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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## Minimum Standards for Access

### **Introduction:**

To ensure equal access to justice in California, courts must be funded adequately throughout all parts of the state, and courts must design their own processes to provide effective and efficient court services for all who use the courts.

Using standards now in court rules, and to be developed, concerning case disposition by case type, minimum hours at clerks' offices, self-help centers, etc., funding should be allocated based on a court's need to add resources to achieve minimum standards, and after that to expand services beyond the minimum.

Recognizing that each litigant, advocate, and witness may have different individual needs, courts should adopt procedures and rules that meet the constitutional mandate of due process and that do not disadvantage any identifiable cohort of the population. To meet these goals, and to ensure the most efficient use of available resources to provide the same access to justice for all litigants in all jurisdictions, the following principles of access are defined:

- **All litigants shall receive due process of law**
- **Courts shall be accessible to all court users**
- **An official record shall be made to preserve court proceedings and to preserve the right to a meaningful appeal**
- **Access to the courts shall be affordable**
- **Jurisdictions shall have adequate numbers of judicial officers, staff, and other non-judicial resources to meet caseloads**
- **Courts shall provide services to meet community needs**
- **The identified components of these access standards shall be tracked on a regular basis**

\* \* \* \* \*

## **Minimum Standards for Access**

- **All litigants shall receive due process of law**
  - Hearings will be conducted by impartial, trained bench officers according to applicable laws, rules and procedures.
  - Hearings will be conducted on a timely basis and dispositions will be reached without undue delay.
  - Hearings will be timely provided in all case types, from traffic and small claims to family, complex civil, and long cause criminal matters.
  - Services will be provided to ensure participants understand and can participate in the proceedings.
    - Court users will have access to accurate and timely information through adequate counter hours at clerks' offices and telephonic access to a live court staff member.
    - Court users will have access to accurate and timely information both on-line and through staffed self help centers.
    - Interpreter services will be provided.
  - Orders after hearing and judgments will be timely prepared and made available to litigants.
  
- **Courts shall be accessible to all court users**
  - Courthouses will be located so that users are not forced to travel unreasonable times or distances, especially where public transportation is inadequate or unavailable.
  - Court facilities will be safe and adequate to conduct the business of the courts.
  - Courts will maintain reasonable hours of operations so that court users can file documents and conduct their court business without undue delays.
  - Technology will be developed and maintained to meet the needs of the court and court users.
  - State and federal access requirements, including the Americans with Disabilities Act, will be met for all court facilities and services.
  - Copies of court pleadings, orders and judgments will be accessible in a timely manner and at a reasonable cost.
  
- **An official record shall be made to preserve court proceedings and to preserve the right to a meaningful appeal**
  
- **Access to the courts shall be affordable**
  - Courts will be funded principally from public funds, not user fees.
  - User fees will not be set at levels that deny access to persons of moderate income, nor at levels that create the perception that process is based upon incentives other than the fair administration of justice.
  - Petitions for fee waivers will be addressed in full compliance with the law.
  - Where technology is utilized, it will be designed for all users to have impartial and effective access and will not be deployed in a manner that

- excludes access to court proceedings and services to those without access to technology or the internet.
- Courts will not order participation in services or programs a litigant cannot afford.
  - **Jurisdictions shall have adequate numbers of judicial officers, staff, and other non-judicial resources to meet caseloads**
    - Courts will appropriately assign judicial and non judicial resources by case type.
    - Courts will make resources available for alternative dispute resolution to assist litigants in resolving their civil cases at a cost which does not create a barrier to utilization.
    - Regular training will be provided to all judicial officers and staff.
  - **Courts shall provide services to meet community needs**
    - Specialty courts will be maintained or established whenever they are the most effective way to serve population needs, such as drug courts, homeless courts, and veterans' courts.
    - Other services identified as special needs in the community to obtain access to the courts will be provided.
  - **The identified components of these access standards shall be tracked on a regular basis**
    - The allocation of resources will be adjusted if these standards are not achieved in the period under review.

Adopted by the Executive Committee, California Commission on Access to Justice,  
March 21, 2013



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**

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**April 23, 2013**

***Re: Item P on the April 26<sup>th</sup> Judicial Council Meeting – Trial Court Funding:  
Recommendation of New Budget Development and Allocation Methodology***

**Dear Judicial Council Members:**

I am writing to register my support for the Workload-based Allocation and Funding Methodology (WAFM) being presented today by Judge Earl and her subcommittee.

As the Court Executive Officer for the San Mateo County Superior Court, I recognize the vital importance of the subcommittee's efforts to create an accurate, transparent, equitable and justifiable funding methodology based on real and measurable cost drivers - starting with workload - and including geography/cost of labor. A fully justifiable cost-of-labor factor is particularly important to high-cost areas like San Mateo and other Bay Area Counties. I have worked to support these efforts and am extremely proud of the process and methodology produced by Judge Earl's subcommittee.

As we are painfully aware, trial courts throughout California have suffered unprecedented State budget cuts of more than \$1 billion over the past five years. In San Mateo, we have already reduced our workforce by more than 30 percent, reduced clerk's office and phone hours, reduced certain calendars, fully utilized technology efficiencies and consolidated our traffic and small claims clerk's offices – all efforts to maintain the most essential court services, operate within our significantly-reduced means and protect the public we serve. Still, with the added State funding reductions in this fiscal year and next, we are facing further reductions in services, courtrooms/ calendars, commissioners and workforce if current State cuts to the trial courts are not eliminated.


We have heard from State leaders that we will not receive any significant restoration of court funding unless we come up with a fair, complete, equitable and justifiable model for funding the trial courts. I believe the Workload-based Allocation and

Funding Methodology fully meets this requirement and positions our branch to request essential restorative funding for the trial courts.

Trial courts have been cut disproportionately and these cuts do not serve Californians or our communities well. Trial courts protect the public – public rights, public freedom and public safety. We have seen many courts already forced to close courtrooms and branches and severely limit their services. In San Mateo, we have successfully delayed these severe actions as long as possible, sustaining important court services for our community - but we will not be able to avoid severe actions absent immediate restoration of essential court funding.

Every Court Executive Officer I know is wrestling with their own version of these dire issues. Further, the growth of population and workload in some Counties and the need to have a fair funding methodology that equitably serves all courts (small, mid-sized and large) make effective resolution of these issues both essential and urgent. For these reasons and the others stated above, I respectfully ask the Judicial Council to approve the work of Judge Earl's subcommittee and approve the WAFM, consistent with the implementation schedule described.

Sincerely,

A handwritten signature in black ink, appearing to read 'John C. Fitton', written in a cursive style.

John C. Fitton  
Court Executive Officer

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## **The Superior Court of California**

COUNTY OF SAN JOAQUIN

222 East Weber Avenue • Stockton, California 95202

Telephone 209-468-2827 • Fax 209-468-8373

[www.stocktoncourt.org](http://www.stocktoncourt.org)

DAVID P. WARNER  
*Presiding Judge*

April 24, 2013

Chief Justice Tani Cantil-Sakauye  
Members of the Judicial Council  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102

*VIA E-MAIL*

Re: Proposed Workload-based Allocation and Funding Methodology

Dear Chief Justice and Judicial Council Members,

This letter is written on behalf of the San Joaquin County Superior Court in reference to the Report to the Judicial Council from the Trial Court Budget Working Group, Trial Court Funding: Recommendation of New Budget Development and Allocation Methodology, to be considered at the April 26, 2013 meeting.

While the San Joaquin Superior Court is pleased with the new methodology being presented and thanks the committee for its hard work, we find the implementation schedule to be wholly inadequate. Under the proposal, it will take five years to move to a model that is half pro rata and half case-based funding. Unless the state pumps in hundreds of millions of dollars of additional funding, we will never get to a full workload-based methodology.

Since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997, the Judicial Council has failed to move away from pro rata allocations, even though the system has no rational basis. Consequently, those same funding inequities that existed prior to the legislation - and were the genesis for its drafting - have been perpetuated and even exacerbated by the continued use of the pro rata formula. Only intermittent adjustments alleviated the pain for the under-resourced courts. For the last 15 years, those trial courts that were well funded (as compared to the other trial courts) enjoyed the benefits of the pro rata historic funding model while the under-resourced courts were left to deal with the continued fallout of being poor.

San Joaquin Superior Court is one of those poor courts and the results of the inequitable funding system can be seen. We have argued continuously through the years for a fair funding methodology. It seemed apparent that those in control were not interested in bringing about a real



change in the system. As it became clearer to most that the pro rata distribution was unfair, pressure mounted to make a change.

This is not to suggest that the Judicial Council has taken no action to assist the poor courts. Those steps are outlined in the Report. However, those actions did not correct the inequitable funding model used. The pro rata historic system was retained.

Now, more than 15 years after the legislation's enactment, a new workload-based allocation methodology is being presented to the Judicial Council. It represents a great deal of time and effort and seems to be what Lockyer-Isenberg envisioned.

Were the state's fiscal situation better, we would request an adjustment or augmentation to ameliorate the impact of years of underfunding. Understanding that such a request would not be realistic now, we respectfully request the rapid implementation of the new model to stop the continued fallout which is the result of being one of the most under-resourced courts in this state.

The Report states that "...the state's current fiscal crisis and the branch's current allocation methodology threaten the basic delivery of justice. The barrier is our own and the proposed workload-based funding methodology is a significant step in eliminating it." We agree. We are an example of what pro rata funding produces. It will not change unless the new methodology is put in place – but not somewhere far down the road. It needs to happen now.

Alternative 2 listed in the Report provides for implementation of the Workload-based Allocation and Funding Methodology more aggressively. It is rejected because of the impact on the courts that will be taking cuts. It states that those courts need time to adjust. At whose expense? The answer is at the expense of the poor courts. The poor courts are told to wait. Keep in mind that the courts taking cuts will not be asked to come down to the level of revenue that we have endured for many years. They will not be dealing with the same magnitude of a budget shortfall as we have.

The second reason listed for rejecting Alternative 2 is that the courts that will receive an increase in funding need time to adjust as well. Since we weren't asked if there would be a problem, let us give you the answer: No, we do not need time to adjust to receiving an increase in funding. It's amazing to witness the difference of perspective between those courts on the top of the funding pile and those on the bottom. The poor courts are viewed as being unable to quickly put an increase in funding to proper use. Quite frankly, the argument is demeaning.

In addition to the two alternatives referred to in the Report, another option is possible. That is, full implementation of the new methodology now. Any court that finds the resulting cut too dramatic causing a negative fund balance can request supplemental funding from the Judicial Council. This has been used in the past for any court that considered their allocation insufficient. San Joaquin and others have been given that direction in the past. Why is that not an acceptable method for those who will face adjustments to their budget?

We simply seek that which fairness dictates we receive: current funding that allows San Joaquin residents and businesses reasonable and appropriate access to the court system their hard-earned

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taxes pay for equivalent to that available in comparatively well-funded counties. The new system becomes meaningless if we don't get the present benefit of it. An implementation process that runs years into the future is not acceptable and likely to be delayed or changed before it's fully implemented.

If our justice system is going to be fair, it must provide the same access for the citizens of San Joaquin County that other counties' citizens have enjoyed for years. Financial resources are at the very heart of that goal.

We appreciate the difficulty of the issue before you. We hope that you will carefully consider the importance of this new funding model as well as the critical and immediate need of a historically underfunded court.

Sincerely,

A handwritten signature in blue ink that reads "David P. Warner". The signature is written in a cursive style with a large initial 'D'.

David P. Warner  
Presiding Judge



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*Executive Director*

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April 24, 2013

Judicial Council of California  
Attention: Nancy Carlisle  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

*Governors*

Mary Aguirre

Michael Belden

Jenny Dennis

Lisa Blanco Jimenez

Kerry Krueger

Allison Lafferty

David Wellenbrock

Moses Zapien

Judicial Council Members:

We appreciate the opportunity to comment on the recommendation of new budget development and allocation methodology trial court funding report for the April 26, 2013 Judicial Council meeting and congratulate the committee on its hard work.

We request a faster implementation period than the one recommended in the report. The San Joaquin County Superior Court has waited 15 years for an equitable funding system. The recommendations in the report are acceptable. However, the implementation is far too slow.

It is well known that some counties have benefited from the current funding while others have not. San Joaquin County Superior Court has been under-funded by the Judicial Council for far too long. Now, at the recommendation of this report, our county is asked to wait five more years to get to 50% of the funding recommendation. This is not acceptable. Our county is not as large as many other counties, nor is our voice heard as loudly as others. But, our county is entitled to the same level of justice system as other counties and in a timely manner, regardless of size, location or political power.

Sincerely,

Allan F. Jose  
President