



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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CURTIS L. CHILD
Director, Office of Governmental Affairs

March 14, 2011

Hon. Leland Yee
Member of the Senate
State Capitol, Room 4074
Sacramento, California 95814

Subject: SB 326 (Yee), as introduced - Oppose

Dear Senator Yee:

I regret to inform you that the Judicial Council must oppose SB 326, which requires the Judicial Council to adopt a rule of court requiring courts to make newly filed or lodged court records (broadly defined) available for public inspection at the courthouse no later than the end of the same day on which those records are received by the court. The council believes that SB 326 would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records.

The sponsors of SB 326 allege that courts are increasingly failing to provide same-day access to "case-initiating documents" and that the failure to provide such access is "contrary to the fundamentally public nature of adjudicative court records." While the council strongly favors timely public access to court records that are subject to public disclosure, SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing to accomplish this objective.

Many courts make court records available within one court day of their filing, yet this turnaround time is deemed insufficient by the sponsors of SB 326. They assert that courts are performing "an ever-growing list of additional administrative tasks that they have interposed between the filing of a document and its being made available to the public and the press." Yet the courts

point to the fact that one of those tasks may be the scanning of the document so that it can be made available to the public electronically and remotely in those cases in which remote access is appropriate. Providing remote electronic access to all on a next-day basis may better promote the objective of public access and accountability than reallocating resources to prioritize same-day access to paper records at the courthouse to those few who can come to the courthouse on a daily basis.

In addition, SB 326 reaches a broad swath of court records, many of which are of little or no interest to the public, including the press. For example, courts process scores of traffic citations on a daily basis. Ensuring that those citations could be made available to the public on a same-day basis should not be made the primary priority as courts struggle to do more with less.

Sponsors have suggested that courts can simply collect newly filed records in a box while they await processing and provide access to those files on that basis. The courts, however, note that it is not appropriate to subject those records to unsupervised review before the court has entered sufficient information to protect the accuracy and integrity of the record. The only way for courts to comply with this standard would appear to be to require that all parties submit two copies of any document filed with the court. Yet, even this possible change, which would be unduly burdensome for litigants and thereby diminish access to justice, would impose significant workload burdens for courts to manage this flow of paper.

Finally, it is critical to note that many court filings are not readily available for public access on the same day they are filed because the court needs to act upon them in a timely manner. Requests for temporary restraining orders for domestic violence, elder abuse, and civil harassment must be acted upon by the court on the day that they are filed unless they are filed too late in the day for the court to act upon them. Taking action on these matters before they become publicly available is an appropriate course of action, and best serves the interest of the underlying statutes that seek to provide immediate protection to those who need it. Yet even these statutes, which are premised on the need for timely action to protect the safety of litigants, acknowledge that there are limits on the ability of the court to act on a same day basis. Requiring a court record filed minutes before the court closes to be available to the public that same day at the courthouse is simply a logistical impossibility.

The council is in the process of analyzing the costs to implement SB 326 on a statewide basis, but the preliminary analysis prepared by the courts indicates that it would add many millions of dollars of cost to court operations at a time when courts are facing significant budget reductions.

Hon. Leland Yee
March 14, 2011
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For these reasons, the Judicial Council opposes SB 326.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Kenney", written over the typed name and title.

Tracy Kenney
Attorney

TK/yt

cc: Mr. John O'Malley, Courthouse News Service
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research



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April 27, 2011

Hon. Noreen Evans, Chair
Senate Judiciary Committee
State Capitol, Room 4034
Sacramento, California 95814

Subject: SB 326 (Yee), as amended April 25, 2011 – Oppose
Hearing: Senate Judiciary Committee – May 3, 2011

Dear Senator Evans:

I regret to inform you that the Judicial Council continues to oppose SB 326 as amended April 25th, which would require the Judicial Council to adopt a rule of court requiring courts to make case initiating documents in civil and criminal matters available for public inspection at the courthouse no later than the end of the same day on which those records are received by the court. The council believes that SB 326 would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records.

The sponsors of SB 326 allege that courts are increasingly failing to provide same-day access to "case-initiating documents" and that the failure to provide such access is "contrary to the fundamentally public nature of adjudicative court records." While the council strongly favors timely public access to court records that are subject to public disclosure, SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing.

Many courts make court records available within one court day of their filing, yet this turnaround time is deemed insufficient by the sponsors of SB 326. They assert that courts are performing "an ever-growing list of additional administrative tasks that they have interposed between the

filing of a document and its being made available to the public and the press.” Yet the courts note that one of those tasks may be the optical scanning of the document so that it can be made available to the public electronically and remotely in those cases in which remote access is appropriate. Providing remote electronic access to all on a next-day basis may better promote the objective of public access and accountability than reallocating resources to prioritize same-day access to paper records at the courthouse to those few who can come to the courthouse on a daily basis. However, the findings in SB 326 specifically lament the delays that may result from the use of electronic technologies. The council believes that any minor time delays are more than outweighed by the substantial public benefit to the public of providing electronic access to court records.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g. it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 has been amended to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received.

Sponsors have suggested that courts can simply collect newly filed records in a box while they await processing and provide access to those files on that basis. The courts, however, note that it is not appropriate to subject those records to unsupervised review before the court has entered sufficient information to protect the accuracy and integrity of the record. The only way for courts to comply with this standard would appear to be to require that all parties submit two copies of any document filed with the court. Yet, even this mandate, which would be unduly burdensome for litigants and thereby diminish access to justice, would impose significant workload burdens for courts to manage this flow of paper and sort those filings that are confidential from those that are not.

It is also critical to note that many court filings are not readily available for public access on the same day they are filed because the court needs to act upon them in a timely manner. Requests for temporary restraining orders for domestic violence, elder abuse, and civil harassment must be acted upon by the court on the day that they are filed unless they are filed too late in the day for the court to act upon them. Taking action on these matters before they become publicly available is an appropriate course of action, and best serves the interest of the underlying statutes that seek to provide immediate protection to those who need it. Criminal filings for in-custody defendants

must lead to a timely arraignment of those defendants, and the court needs the filing in order to process the case and complete the arraignment. Courts need the flexibility to prioritize these critical functions and to provide access to the records within a reasonable time frame.

Finally, SB 326 provides no relief to courts for records that are filed late in the day. Requiring a court record filed minutes before the court closes to be available to the public that same day at the courthouse is simply a logistical impossibility. As amended, SB 326 continues to include these time sensitive filings, and fails to address how public access could be provided when the filing occurs late in the day. Would courts be forced to reduce the hours in which filings are accepted in order to create enough time to make new filings available before the courthouse closes? SB 326, with its singular emphasis on same day access would force courts to consider such illogical approaches.

The council is continuing to gather information on the costs to implement SB 326 on a statewide basis, but would note that even as amended, SB 326 would require approximately 2.5 million filings to be made available to the public on the day that they are filed. To complete the necessary processing of these filings would impose tremendous burdens on court operations at a time when courts are facing significant budget reductions. Many of our courts are seeing an increase in filings at the same time that they are laying off staff and/or leaving many positions vacant. Implementation of SB 326 in that context would have very negative impacts on the courts and require significant additional staff to accomplish its objectives without major disruptions and delays in all other areas of court operations.

For these reasons, the Judicial Council opposes SB 326.

Sincerely,



Tracy Kenny
Attorney

TK/yt

cc: Members, Senate Judiciary Committee

Hon. Leland Yee, Member of the Senate

Ms. Tara Welch, Counsel, Senate Judiciary Committee

Mr. John O'Malley, Courthouse News Service

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



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CURTIS L. CHILD
Director, Office of Governmental Affairs

June 9, 2011

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: SB 326 (Yee), as amended May 10, 2011 – Neutral

Dear Assembly Member Feuer:

The Judicial Council is pleased to inform you that it has removed its opposition to SB 326 and adopted a neutral position on the bill as it was amended on May 10th. SB 326 requires the Judicial Council, within 18 months of enactment of the legislation, to adopt a rule of court that would require courts that have fully implemented the California Case Management System (CCMS) to provide, to the extent possible and practicable, same day access to specified civil and criminal case initiating documents. The council was opposed to prior versions of SB 326 because they would have required all courts, regardless of their technology infrastructure, to make court filings available on the day that they were received by the court without exception. A number of concerns with this approach were raised which included: (1) the scope of records to be provided was overly broad and included high volume filings such as traffic tickets which are of little public interest, (2) courts cannot make records available before they have received preliminary processing and given resource constraints and current technology, that may take more than a day, (3) some filings need to be acted upon by the court immediately and cannot be made available until that action is complete, and (4) the introduced version of the bill made no exception for documents that are confidential as a matter of law.

The May 10th version of SB 326 addresses each of these concerns. The scope of the records to be made available has been limited and does not include limited civil or small claims filings or any infractions, and it only encompasses "case initiating documents", thus excluding the many other filings received by the court in these cases. The requirement that the mandate to make the records available would only apply in those courts that have fully implemented CCMS will address many of the case processing issues that were raised with the prior version. With electronic filing, and an electronic document management system, CCMS will significantly expedite the time it takes to make a record available to the public and reduce the workload burden on the courts to accomplish initial case processing. Yet even with CCMS, it is clear that there will be circumstances in which courts cannot meet a same day mandate, and the SB 326 amendments address this situation as well, by requiring such access only to the extent "possible and practicable." Thus courts who are unable to meet this requirement because the court had to act on the filing before it could be made public, or simply because the filing came too late in the day to be made available on that same day, will not run afoul of the requirements to be developed pursuant to this legislation.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its current form, SB 326 strikes a balance and will require timely public access without placing undue burdens on the courts that must provide this access. As a result, it is no longer necessary for the council to oppose SB 326, and we have adopted a neutral position on the May 10th amended version of the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Kenney", written in a cursive style.

Tracy Kenney
Attorney

cc: Members, Assembly Judiciary Committee

Hon. Leland Yee, Member of the Assembly

Ms. Leora Gershenson, Counsel, Assembly Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy



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August 8, 2011

Hon. Felipe Fuentes, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: SB 326 (Yee), as proposed to be amended – Oppose/Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – August 17, 2011

Dear Assembly Member Fuentes:

The Judicial Council regrets to inform you that it has renewed its opposition to SB 326 as it is proposed to be amended because the requirement that courts make initial case filings available on a same day basis would be completely unworkable for the courts. In order to secure passage of SB 326 from the Senate Judiciary Committee, the author accepted amendments to the bill that made the same day access rule contingent upon a court having fully implemented the California Court Case Management System (CCMS). The amendments also provided these courts with the flexibility to implement this requirement “to the extent possible and practicable.” In requesting those amendments, the Senate Judiciary Committee was clear that while timely public access is critical, it is unreasonable to mandate immediate access at the same time that the Legislature is imposing substantial cuts to the budgets of the trial courts. The current amendments to SB 326 would eliminate the provisions relating to CCMS, and only allow courts flexibility on the same day access requirement until the first hour of the next court day. Thus the amended version of SB 326 would require courts, regardless of their technology infrastructure, to process and make available to the public most new civil and criminal filings within the same day or the first hour of the next day without exception. Subsequent to the Senate Judiciary Committee hearing, the ongoing cuts to the judicial branch in the budget were increased by an additional \$150 million.

Most courts were not in a position to comply with the same day mandate in SB 326 before these additional cuts were enacted, but in the face of even deeper reductions, courts will not have sufficient staff available to fulfill the requirements of SB 326.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g., it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 is being proposed to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received. While the amendments would allow the court one additional hour to complete these tasks on the following day, that level of flexibility is not sufficient given the resource shortages that courts currently face. In order to comply, courts would need to hire significantly more staff at a substantial cost.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its prior form, SB 326 struck a reasonable balance that would have required timely public access without placing undue burdens on the courts that must provide this access. The proposed amendments eliminate that balance and make SB 326 unworkable and very costly for the courts.

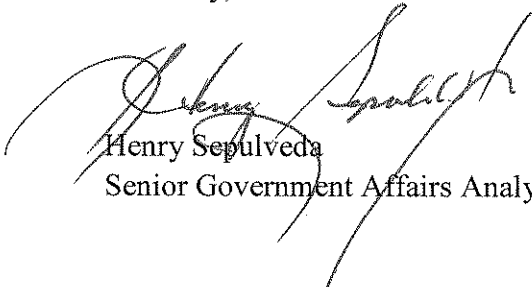
Fiscal Impact

In light of the \$350 million budget cut to the judicial branch for FY 2011-2012, and the corresponding reductions in court staff and operating hours necessitated by that budget cut as well as the budget reductions imposed in the last several years, the additional tasks imposed by this measure on the trial courts cannot realistically be accomplished without: (1) diverting existing court resources from other current constitutional and statutory responsibilities (resulting in burgeoning delays in processing of civil and criminal cases), or (2) additional court staff. While the number of additional court staff needed to comply with the requirements of SB 326 will vary from court to court, we estimate that the cost for additional court staff on a statewide basis would be between \$5 – 10 million, annually. The additional ongoing costs may be mitigated to the extent that an improved court case management system is implemented in certain trial courts in future years.

Hon. Felipe Fuentes
August 8, 2011
Page 3

Please contact Tracy Kenny or me at 916-323-3121, or at henry.sepulveda@jud.ca.gov, or tracy.kenny@jud.ca.gov if you would like further information or have any questions about the impact of this legislation on the judicial branch.

Sincerely,



Henry Sepulveda
Senior Government Affairs Analyst

cc: Members, Assembly Appropriations Committee
Hon. Leland Yee, Member of the Senate
Ms. Susan Chan, Office of Senator Leland Yee
Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Mr. Michael Miyao, Budget Analyst, Department of Finance