

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

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DATE: July 29, 2009

SUBJECT: Proposal to Close the Superior Courts, Courts of Appeal, and Supreme Court One Day Per Month as Authorized by Government Code Section 68106 (Action Required)

Issue Statement

In response to direction from the Judicial Council to develop a plan for the statewide closure of California courts as a means to respond to the unprecedented fiscal crisis affecting all areas of state government, including the courts, staff of the Administrative Office of the Courts (AOC) sought and obtained legislative approval for court closure legislation. The resulting Senate Bill X4 13 (2009–2010 4th Ex. Sess.)¹ includes new Government Code section 68106, which, among other things,² authorizes the Judicial Council to close the courts for the transaction of judicial business for one day per month during the current fiscal year, which ends on June 30, 2010. The grant of authority to the council to close the courts is permissive rather than mandatory, i.e., the council may or may not choose to close the courts one day a month. If the council designates a court closure day, the closures are subject to the following conditions and requirements:

- The court closure day designated by the council must be treated as a holiday for purposes of performing any act requiring the transaction of judicial business,

¹ Stats. 2009, ch. 22, enacted as urgency legislation effective July 28, 2009.

² The legislation also authorizes a judge or justice to voluntarily agree to irrevocably waive, in advance, on a monthly basis, an amount equal to 4.62 percent of the monthly salary otherwise payable, without any negative impact on the judge's or justice's retirement benefits or other job-related benefits. (Gov. Code, § 68106(b)(4).)

including, but not limited to, holding court hearings or computing the time to file court documents.

- If a court receives papers for filing on the closure day, the time of filing will be the next court day on which the court is open for the transaction of judicial business.
- The superior courts must meet and confer with recognized employee organizations under the Trial Court Employment Protection and Governance Act³ concerning the impact of the court closures.
- A judicial officer must be available at each court for the signing of any necessary documents on an emergency basis on the closure day as is now the case on Saturdays, Sundays, judicial holidays, and any other time a court is closed.
- Court security shall not be required on the court closure day and compensation payable to the sheriff must be negotiated (where there is a court security memorandum of understanding (MOU) in place) and reduced by at least 4.62 percent to reflect the reduced amount of security on the closure day.
- The impact of the court closure on the availability of courtrooms and court services must, to the extent practicable, be spread proportionally in a manner that reflects the caseload of the court.

Beyond these requirements, the legislation leaves the task of implementing the court closures—including designating the closure day—to the council, which may adopt rules of court for that purpose.

The text of Government Code⁴ section 68106 is attached at pages 8–10.

Recommendation

The Executive and Planning Committee and AOC staff recommend that the Judicial Council take the following action:

1. Designate the third Wednesday of each of the remaining 10 months of this fiscal year as the court closure day for all superior courts, Courts of Appeal, and the Supreme Court, beginning in September 2009 and continuing through June 2010.
2. Direct the AOC to obtain from the courts information about the actual monetary savings that are obtained as a result of the court closures; the extent of disruption to court users, county justice partners, and court operations resulting from the one-day-per-month court closures; and the courts' assessment of their ability to realize sufficient savings throughout the remainder of the fiscal year; and to report that information to the council in January 2010, along with information concerning the then-current fiscal condition of the judicial branch and any available projections for

³ Gov. Code, § 71600 et seq.

⁴ All code references are to the Government Code unless otherwise specified.

fiscal year 2010–2011, so that the council may reconsider whether to continue or reduce the number of monthly closures for the remainder of the fiscal year.

Rationale for Recommendation

The court closure legislation was proposed and enacted in response to the current fiscal crisis and resulting judicial branch budget reductions. Those unique circumstances are reflected in the findings and declarations that are set forth in Section 68106(a):

The Legislature finds and declares that the current fiscal crisis, one of the most serious and dire ever to affect the state, threatens the continued operations of the judicial branch. This situation requires a unique response to effectively use judicial branch resources while protecting the public by ensuring that courts remain open and accessible and that the core functions of the judicial branch are maintained to the greatest extent possible.

Discussions with legislators and their staff regarding the court closure legislation and judicial branch budget reductions have stressed the need to minimize disruption to the public and the bar that would be caused by variable court closures and other budget-reducing actions of the 58 superior courts, while ensuring equal availability to court services statewide. If begun in September, closure of all of the superior courts on the same day each month is anticipated to result in savings of approximately \$85,368,000⁵ on a statewide basis, and will greatly assist the judicial branch to absorb the \$190,000,000 current year budget reductions (exclusive of other cost increases in security, employee compensation, dependency counsel, and other areas) in a uniform and orderly manner with consistency among all state courts and a higher level of predictability for the benefit of court users.

Although no particular weekday will work best as a court closure day for *all* superior courts, the third Wednesday of each month is proposed as the statewide court closure day for a number of reasons. In many counties, a Monday or Friday (or any day connected to a holiday) court closure day would have a severe negative financial and operational impact on local jails because of the increased costs resulting from longer prearrestment jail detentions over the weekend/court closure day period. While counties throughout California are engaged in a variety of cost-savings measures at the local level including furloughing county workers, there is no uniformity among counties statewide in terms of a particular day on which all county workers are furloughed. Several courts have already initiated court closure days or reduction in services on the third Wednesday of each month thus far this fiscal year and have altered court practices to accommodate a closure or reduction in services on that day (e.g., the Superior Courts of Los Angeles, Mendocino, Orange, and Ventura Counties). Other courts, however, have commented

⁵ This figure includes anticipated savings in judicial compensation through voluntary participation of judges and justices in the partial salary reduction program that is part of the new legislation (Gov. Code, § 68106(b)(4); see footnote 2) and in making direct monetary contributions to courts.

that a Wednesday closure would be disruptive for them for a variety of reasons, including the negative impact on their local jails, the inconvenience to jurors whose jury service would be interrupted by a midweek closure, or because courts hold specialty court hearings on that day (e.g., drug court). These courts have suggested that a day other than Wednesday be selected as the statewide court closure day or that courts close for a half-day on two Fridays each month, which would allow arraignments to be conducted on Friday mornings (thereby reducing jail detention times for arrestees awaiting arraignment).

Additional alternatives to the proposed court closure day on the third Wednesday of each month have been raised and considered. For example:

- A suggestion was made at a recent regional court meeting that courts in Southern California close on Wednesdays, while those in Northern California close on Fridays.
- A number of individuals and courts have proposed allowing local options, with each court having the discretion to decide whether to close at all one day a month and, if so, to select the day that works best for the local court as the closure day.
- A few courts have stated that they have sufficient reserves or other cost-savings approaches that would enable them to remain open throughout the fiscal year, and that requiring their closure would unnecessarily restrict access to those courts.

These proposals if adopted, however, could result in a myriad of different closure options across the state—leading to confusion and uncertainty among court users—and might place a burden on litigants and attorneys, particularly those who practice in multiple counties, to become familiar with various local court closure requirements to ensure that deadlines and hearings are not inadvertently missed. These alternatives also are predicated on the assumption that the legislation authorizes the council to close some but not all courts one day per month or to close some courts on one day and other courts on a different day during a month.

We think the legislation does not permit such variations but instead authorizes only a statewide closure of all courts on one day each month. Section 68106 does not expressly provide that all courts be closed on the same day nor does it expressly prohibit closures on varying days. The legislation, however, was negotiated with the expectation and intent that a single uniform closure day be designated for all courts: superior courts, Courts of Appeal, and the Supreme Court. The Administrative Director of the Courts consistently has described the proposed court closures as statewide and systemwide in budget hearings. Further, the language of Section 68106 reflects an implicit legislative intent that court closures would be implemented on a uniform statewide basis to ensure equal access and availability of court services. For example, the legislation provides that the “Judicial Council may provide that *the courts* be closed” for one day per month and “*the day* so

designated shall be treated as *a holiday*.”⁶ (Italics added.) If the meaning of the statute is considered ambiguous, the assembly bill analysis reflects the intent that court closures be done on a uniform statewide basis by stating that the bill “[p]rovides that the Judicial Council may effectuate the closure of courts by designating one day a month a judicial holiday.”⁷ Judicial holidays are statewide holidays for all courts,⁸ so reference to such in the analysis supports the conclusion that the Legislature intended that any court closures under the statute be done on a uniform statewide basis. Additionally, the legislation states that the Judicial Council may provide that the courts be closed and does not contain any delegation language that would permit individual courts to set their own closure days under Section 68106.⁹

Alternative Actions Considered

Close courts one day per month for fewer than the remaining 10 months this fiscal year. One alternative to the above recommendation is to close all courts on one day per month for the next seven months or some other period shorter than the remaining 10 months of this fiscal year and then reassess whether the closures should remain in force through the end of the fiscal year. However, the anticipated cost savings of approximately \$85,368,000, were based on the court closures being in effect for the longest time period possible, which is 10 months; closing for fewer than 10 months would mean lower than anticipated cost savings. In addition, the recommendation includes that the council direct staff to monitor savings (and other effects of the closures) that are obtained from the first four months of the one-day-per-month court closures, in addition to then-available information about the judicial branch budget for the current and next fiscal years, and to bring the matter back to the council in January 2010 for reconsideration about whether to end or reduce the closures for the remainder of the fiscal year. Therefore, the council would have the option to do so if warranted.¹⁰

⁶ The legislation provides that the closure day shall be treated as a holiday for, among other things, the transaction of judicial business under Code of Civil Procedure section 134, which, in turn, provides that “*the courts shall be closed for the transaction of judicial business on judicial holidays.*” (Italics added.)

⁷ Assem. Floor, 3d reading analysis of Assem. Bill X3 37 (2009–2010 3d Ex. Sess.) as amended June 28, 2009. The judicial branch budget trailer bill language adding section 68106 was originally part of AB X3 37 and subsequently included in SB X4 13.

⁸ As noted, Code of Civil Procedure section 134(a) provides that “the courts shall be closed for the transaction of judicial business on judicial holidays.”

⁹ Existing law—Section 68108—authorizes court closures where a local court’s labor memorandum of understanding (MOU) designates certain days as unpaid furlough days for regular employees; where that occurs, the court “shall not be in session on those days except as ordered by the presiding judge” and with certain requirements regarding availability of an appropriate judicial officer for arraignments and other matters and drop box availability for filing. (Gov. Code, § 68108(a), (b).) Such days are not court holidays, however.

¹⁰ Reconsideration in January 2010 would permit the council to evaluate the benefits and costs of the systemwide court closure not only as they impact court operations and court users, but also with respect to the impact on justice partners such as the sheriff departments that provide court security and county District Attorney and Public Defender offices and on the private bar.

Do not close courts at all.

Another alternative is not to exercise the authority that Section 68106 confers on the council and not close the courts at all, as the legislation vests the council with the authority to close the courts one day per month but does not mandate any court closure. This option does not seem feasible because savings from court closures are factored into the plan for addressing the judicial branch budget reductions and various unfunded costs.

Do not close courts but direct superior courts to provide reduced services.

A third alternative is for all courts to remain open, but for superior courts to provide reduced services. Superior courts would be required to comply with applicable court rules and the Judicial Council's *Operating Guidelines and Directives for Budget Management in the Judicial Branch*. For example, the *Guidelines and Directives* provide the minimum hours during which a superior court clerk's office must remain open to the public, and council approval is required for any deviation from those hours.¹¹ Rule 10.620(d)(3) of the California Rules of Court further requires a superior court to seek public input before making a decision about a "planned, permanent closure of any court location for an entire day or for more than one-third of the hours the court location was previously open for either court sessions or filing of papers." Although some courts are reducing services and all courts are undertaking actions to reduce costs in light of the severe budget situation, a statewide approach would provide statewide savings that might then avoid or limit the need for local courts to reduce services or take more severe actions to save costs.

Implementation Requirements and Costs

Under the legislation, a superior court that has an existing MOU with a sheriff or county must negotiate a reduction of at least 4.62 percent in the compensation due to the sheriff because of the reduced security services resulting from the court closures. If the court and the sheriff are unable to reach agreement within 30 days of the first court closure after good faith negotiations, the amount of compensation payable to the sheriff under the MOU must be reduced by 4.62 percent and, if an agreement is later reached, prior payments would be reconciled. If a superior court and a sheriff or county have not executed an MOU regarding court security services, the compensation payable to the sheriff will be no more than the rate of the average monthly amount paid by the court to the sheriff in the 2008–2009 fiscal year, reduced by 4.62 percent to reflect the reduced level of security on the court closure days.

The superior courts must also meet and confer with recognized employee organizations regarding the impact of the court closures and must, to the extent practicable, spread the impact of such closures on the availability of courtrooms and court services in a

¹¹ Judicial Council of Cal., *Operating Guidelines and Directives for Budget Management in the Judicial Branch* (Revised Jan. 2009) § II, "Guidelines and Directives," p. 1.

proportional manner that reflects a court's caseload (i.e., the impact should not fall disproportionately on civil or criminal cases).

Attachment

ATTACHMENT

Government Code section 68106

(a) The Legislature finds and declares that the current fiscal crisis, one of the most serious and dire ever to affect the state, threatens the continued operations of the judicial branch. This situation requires a unique response to effectively use judicial branch resources while protecting the public by ensuring that courts remain open and accessible and that the core functions of the judicial branch are maintained to the greatest extent possible.

(b) Notwithstanding any other law, the Judicial Council may provide that the courts be closed for the transaction of judicial business for one day per month and may adopt rules of court to implement this section, subject to the following conditions:

(1) If the Judicial Council has provided for the closure of courts pursuant to this section, the day so designated shall be treated as a holiday for purposes of performing any act requiring the transaction of judicial business, including, but not limited to, all of the following:

(A) The transaction of judicial business under Section 134 of the Code of Civil Procedure.

(B) The sitting or holding of a court under Section 136 of the Code of Civil Procedure.

(C) The computation of time under Sections 12 and 12a of the Code of Civil Procedure.

(D) The computation of time under all time-dependent provisions, including, but not limited to, Sections 825, 859b, 1050, 1191, 1382, and 1449 of the Penal Code, and Sections 313, 315, 631, 632, 637, 657, 702, 704, 708, and 777 of the Welfare and Institutions Code.

(2) A court may still receive papers for filing on a day designated for closure, but the time of filing of the papers shall be the next court day on which the court is open for the transaction of judicial business. The receipt of papers pursuant to this subdivision shall not constitute opening of the court for any purpose. A day designated for closure under this section is not governed by Section 68108.

(3) The impact of the court closure shall be subject to subdivision (c) of Section 71634 and subdivision (c) of Section 71816. Notwithstanding any other law, any court closure or reduction in earnings as a result of this section shall not constitute a reduction in salary or service for the purpose of calculation of retirement benefits or other employment-related benefits for court employees otherwise eligible for those benefits. Nothing in this section shall relieve a trial court of its obligation to meet and confer concerning the impact of a court closure pursuant to Chapter 7 (commencing with Section 71600) and Chapter 7.5 (commencing with Section 71800) of Title 8 of the Government Code, and the trial courts, rather than the Judicial Council or Administrative Office of the Courts, shall remain responsible for meeting and conferring concerning that impact.

(4) A judge or justice may sign a form, to be prepared by the Administrative Office of the Courts, which shall provide that the judge or justice voluntarily agrees to irrevocably waive, in advance, on a monthly basis, an amount equal to 4.62 percent of the monthly salary otherwise payable to the judge or justice in the absence of a waiver. The Administrative Office of the Courts shall transmit the form to the Controller, county, or other entity paying the salary of the judge or justice, except that the form shall only be transmitted to the entity that pays the greatest portion of the salary if the judge or justice is paid by more than one entity. The entity receiving the form shall reduce the payment otherwise due to the judge or justice from that entity by an amount that takes into account the full effect of the 4.62 percent reduction of the total monthly salary of the judge or justice received from all entities. Notwithstanding any other law, a judge or justice who elects to sign the form under this section shall not be deemed by that act to be holding office for other than full-time service during the time covered by the voluntary waiver of salary, and that waiver shall not be deemed a reduction in salary or service for purposes of the calculation of any retirement benefits, supplemental judicial benefits provided pursuant to Section 68220, or other job-related benefits. Except as necessary for purposes of paragraph (5), a judge or justice who makes a waiver is not obligated to appear for work at the courthouse on any day that a court is closed under this section.

(5) A judicial officer shall be available for the signing of any necessary documents on an emergency basis during the time a court is closed under this section on the same basis as a judicial officer is available on Saturdays, Sundays, and judicial holidays, and any other time a court is closed.

(6) As a result of the closures authorized by this subdivision, court security shall not be required on any day in which courts are closed pursuant to this section.

(A) If a superior court has executed a memorandum of understanding as required by Section 69926 with a sheriff, county, or sheriff and county, the court and the sheriff, county, or sheriff and county shall negotiate in good faith a reduction of 4.62 percent in the compensation due to the sheriff because of the reduced amount of security resulting from the closure of the courts under this section. Nothing in this section shall prohibit a superior court and sheriff, county, or sheriff and county from negotiating additional savings due to voluntary court closures or other cost savings programs. If necessary, the court and sheriff, county, or sheriff and county shall amend the memorandum of understanding required under Section 69926 to reflect that reduction. Notwithstanding any other law or memorandum of understanding, if the court and sheriff are unable to reach an agreement within 30 days of the first court closure after good faith negotiations, the amount of compensation payable to the sheriff under the memorandum of understanding shall be reduced by an amount equal to 4.62 percent of those allowable costs authorized to be paid under paragraph (6) of subdivision (a) of Section 69927. The sheriff shall not reduce the level of service previously required under its memorandum of understanding on the days the court remains open due to this 4.62 percent reduction. Upon reaching an agreement, the court and sheriff may reconcile any prior payments based on the terms subsequently agreed upon by the court and sheriff.

(B) If a superior court and a sheriff, county, or sheriff and county, have not executed a memorandum of understanding as required by Section 69926, the sheriff shall continue to provide security services as required by the court, but the compensation payable to the sheriff shall be no more than the rate of the average monthly amount paid by the court to the sheriff in the 2008-09 fiscal year, reduced by 4.62 percent, to reflect the reduced level of security required as a result of the closure of the courts under this section.

(c) To the extent practicable, the impact of the court closure on the availability of courtrooms and court services shall be spread in a proportional manner that reflects the caseload of the court.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.