

**Written Comments Received for
March 27, 2012, Judicial Council Business Meeting**

Name and Title	Affiliation	Topic	Date of Receipt	Page Nos.
1. Hon. Katherine A. Feinstein, Hon. Lee Smalley Edmon, Hon. Laurie M. Earl, Hon. Mark Cope, Hon. Thomas James Borris, Hon. Michael G. Bush, Hon. F. Dana Walton, Hon. Beth Labson Freeman, and Hon. Anthony C. Edwards and the Court Executive Officers of seven of the corresponding courts	Superior Court of California, Counties of: San Francisco, Los Angeles, Sacramento, Riverside, Orange, Kern, Mariposa, Trinity, and San Mateo	Letter of concern on CCMS V4 deployment	3/13/12	2-4
2. Hon. Laura J. Masunaga and Mr. Larry Gobelman, Court Executive Officer	Superior Court of California, County of Siskiyou	Position on CCMS Deployment	3/21/12	5-7
3. Hon. W. Kent Hamlin	Superior Court of California, County of Fresno	Letter submitted on behalf of the Directors of the Alliance of California Judges making observations, posing questions, and proposing a motion to terminate CCMS	3/26/12	8-15



Superior Court of California

March 13, 2012

Ms. Jody Patel
Interim Administrative Director of the Courts
and Secretary of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Dear Ms. Patel:

As Presiding Judges, Assistant Presiding Judges and Court Executive Officers, we write to you to express our grave concern about the state of the Judicial Branch budget now and in the foreseeable future. Since 2008 trial courts have been cut by \$605 million. In all of our communities across California these cuts have had crippling effects on the courts' ability to protect public safety, address immediate needs of families and children in crisis and timely resolve business disputes that allow our economy to recover and thrive.

As trial court leaders, we bear daily witness of the impact of recent budget decisions. Most acutely, those decisions have caused trial courts to close courtrooms, dramatically reduce our workforce, significantly restrict justice for individuals, families and businesses, and eliminate many services designed to assist members of our communities least able to access the judicial system on their own.

Simply put, these cuts are not sustainable. Nor is it reasonable to conclude as does the Judicial Council's recent six-point budget plan, that the trial courts can absorb \$352 million in cuts and adequately fulfill our legal mandate and ethical obligation to the people of the State of California. Justice cannot survive at such a level.

We believe that there is an urgent need to re-prioritize all Judicial Branch expenditures. First among those issues involves the Judicial Council's consideration of the future funding for CCMS V4 that will be addressed at your March 27, 2012 meeting. It is our firm position that we can no longer support further development or deployment of CCMS V4. According to a recent report to the Judicial Council by the AOC on February 28, 2012 the branch has spent \$521.5 million dollars on CCMS through FY 10-11. This amount does not include necessary future costs associated with deployment of CCMS V4.

Ms. Jody Patel
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If state-wide deployment of CCMS V4 was ever an attainable goal, that time has passed as the State's budget crisis has grown and endured. We urge you to vote to immediately cease funding CCMS V4. We recommend that AOC staff be directed to immediately work with trial courts to identify other case management systems that would meet local courts' needs at a far more reasonable cost. Lastly, we request that you further determine that the significant monetary savings attained as a result of no longer funding CCMS V4, be directed to the trial courts so that essential court services can be protected.

CCMS V4 represents only one of several significant areas where a re-prioritization of expenditures and programs is critical to the Judicial Branch's ability to fulfill our primary mission. Now is the time to honestly identify those programs that are truly essential to our justice system, to abandon outmoded priorities, and to move forward with a realistic vision of the Judicial Branch in these difficult economic times. Now is the time to stop CCMS V4 and to redirect all funding to the trial courts.

Thank you for your careful attention to this important decision.

Very truly yours,

Hon. Katherine A. Feinstein
Presiding Judge of the
Superior Court of California
County of San Francisco

Mr. T. Michael Yuen
Executive Officer
Superior Court of California
County of San Francisco

Hon. Lee Smalley Edmon
Presiding Judge of the
Superior Court of California
County of Los Angeles

Mr. John A. Clarke
Executive Officer
Superior Court of California
County of Los Angeles

Hon. Laurie M. Earl
Presiding Judge of the
Superior Court of California
County of Sacramento

Mr. Edward G. Pollard
Interim Executive Officer
Superior Court of California
County of Sacramento

Hon. Mark Cope
Assistant Presiding Judge of the
Superior Court of California
County of Riverside

Ms. Sherri R. Carter
Executive Officer
Superior Court of California
County of Riverside

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Hon. Thomas James Borris
Presiding Judge of the
Superior Court of California
County of Orange

Hon. Michael G. Bush
Presiding Judge of the
Superior Court of California
County of Kern

Hon. F. Dana Walton
Presiding Judge of the
Superior Court of California
County of Mariposa

Hon. Beth Labson Freeman
Presiding Judge of the
Superior Court of California
County of San Mateo

Mr. Alan Carlson
Executive Officer
Superior Court of California
County of Orange

Mr. Terry A. McNally
Executive Officer
Superior Court of California
County of Kern

Hon. Anthony C. Edwards
Presiding Judge of the
Superior Court of California
County of Trinity

Mr. John C. Fitton
Executive Officer
Superior Court of California
County of San Mateo



Superior Court of California County of Siskiyou

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March 21, 2012

The Honorable Tani G. Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
350 McAllister Street
San Francisco, CA 94102-4797

Dear Chief Justice Cantil-Sakauye:

We are writing to encourage the Judicial Council to re-examine its position on CCMS deployment. In view of the suspension of further implementation by a Legislative sub-committee and continuing discord within the branch relative to CCMS, now is an appropriate time to review and revise trial court case management technology goals, timetables, and decision processes collaboratively with the intended beneficiaries—the trial courts. We are all painfully aware of the problems noted in the Bureau of State Audit Report on CCMS even while we acknowledge the substantial efforts by trial court staff and AOC staff to unveil CCMS.

Thus finding ourselves on the precipice with a mounting number of skeptics that question whether the Judicial Branch is capable of managing the development of case management technology, we have the opportunity and obligation to re-examine this project and provide value to the taxpayers and court users. In order to do this, in our opinion, we should develop a set of decision criteria to set a new course. Some of the decision considerations might be:

1. Either/Or Fallacy—If our decision is framed strictly on jettisoning or continuing CCMS, we may overlook nuanced options that would be less costly, easier to achieve, and likely to build a consensus. For example, the work completed on CCMS V4 could serve as the basis for a data dictionary that future software systems selected by individual trial courts would conform, but the user interface would vary from court to court based on the needs of each individual court. In addition, a framework of flexible languages could further guide the system. In fact, this was the initial strategy of the Judicial Branch with the Judicial Branch Statistical Information System (JBSIS). Trial court case management vendors were required to use the JBSIS data dictionary and framework. The suggestion here is not that this is the answer, but that there are flexible, eclectic options that promote and utilize the competencies and synergy of the trial courts and the AOC.

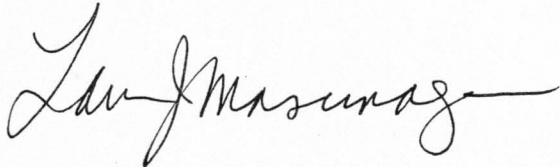
2. **Retrievable Cost Fallacy**—Our decision to continue CCMS should not be guided by the \$500+ million we have expended on CCMS to date. Those costs cannot be retrieved, but future costs can be mitigated and optimized through a thorough vetting of options.
3. **Addicted Gambler's Fallacy**—The notion that the next deal will provide a winning hand usually ends in disappointment. While CCMS appears to have achieved some milestones in terms of testing, the risk and burgeoning costs of implementation still leave the Judicial Branch in a risky, tenuous position. If the total costs of continuing CCMS development were accurately calculated, including additional trial court staff time for deployment and future loss of Trial Court Trust Funds, few, if any, trial courts would likely want to take this wager or have the Judicial Council take it on their behalf. Any option selected should have full support of trial courts, and have a low degree of risk and high probability of success.
4. **Judicial Branch Incompetence Fallacy**—There are myriad examples of competency within the Judicial Branch. The Phoenix systems for Finance and Human Resources work well. The Finance system has been deployed successfully in all 58 trial courts, while the Human Resources system has only been deployed in a handful of courts. One reason that these systems have been generally successful is because they are flexible, making it possible for each trial court to develop reports tailored to unique needs. Perhaps the most important reasons for success of these systems are that they were developed with close collaboration of the trial courts, and a proven software used by government and industry was selected. Hence, there was far less risk and a much higher probability for success with these projects.
5. **The Counterintuitive Fallacy**—While it may appear counterintuitive that trial courts are capable of collaborating with each other and making optimally beneficial decisions for the trial courts and Judicial Branch without the close supervision of the Judicial Council and its agent, the Administrative Office of the Courts, trial courts have a tradition and natural inclination of working collaboratively. For over a decade a group of over twenty small trial courts known as the California Trial Court Consortium has met quarterly to discuss opportunities to improve the operations of their trial courts through collaboration. If given the chance with reasonable Judicial Council guidelines, trial courts could usher in a new era of case management innovation and cooperation that would mitigate many of the issues presently haunting the Judicial Branch. After all, it is in our collective interest to do so.

Creating A Healing Story


There are few courts in the state that have not been complicit at some level in the development of CCMS. Our court, for example, offered to be an early adopter of CCMS before we lost confidence in the ability of the Branch to deliver a cost effective system that would work in a small court environment without dramatically increasing our staff costs and technology costs. There are other courts that have spent millions of local court dollars attempting to implement V2, V3, or V4. The larger point is that we all own a piece of CCMS whether we want to admit it or not. Similarly, we all share in the many successes such as the improvements in accessibility with new or remodeled courthouses and impressive self-help clinics, the expansion of helping courts such as drug and mental health courts, and the recognition of the Judicial Branch as a separate, equal branch of government. During this developmental era, in order to marshal support within the branch to mount an effective, consolidated base of authority to gain the confidence and funding support for court initiatives, internal court politics were intense as pressure was exerted on the trial courts to fall in line. These tactics were largely successful until a few years ago when it became apparent to some internal and external court observers that a more participatory, less controlling approach would be more effective in the future for

the maturing Judicial Branch—one that would provide more democratic representation on the Judicial Council and more authority to the trial courts to operate within more flexible policies and guidelines. I believe we are inching our way in this direction. However, a major test of just how much progress we have made will be on center stage when the Judicial Council discusses CCMS alternatives on March 27th. Let the healing story begin.

Sincerely,

A handwritten signature in cursive script, reading "Laura J. Masunaga". The signature is fluid and extends to the right with a long horizontal stroke.

Laura J. Masunaga
Presiding Judge

A handwritten signature in cursive script, reading "Larry Gobelman". The signature is fluid and extends to the right with a long horizontal stroke.

Larry Gobelman
Court Executive Officer

CC: Jody Patel



Alliance of California Judges

March 26, 2012

Re: Judicial Council Agenda March 27, 2012

Dear Members of the Judicial Council,

We have received permission to address the Council during the public comments portion of the meeting on March 27. These are some of our preliminary observations regarding the Grant Thornton (GT) report. Following the observations we have set out questions we would like the Judicial Council to address in its meeting on March 27, as well as a motion we are requesting the Council consider and approve at the meeting.

Observation: Based on AOC estimates, it would cost over \$102 million to deploy CCMS V4 to San Luis Obispo (SLO) if a statewide infrastructure is put in place to facilitate deployment to additional courts (page 27). By subtracting out the costs for maintenance and operation of the system, GT cuts that figure to a little over \$56.4 million (page 38).

Question: The costs of maintaining and operating the system are real costs that the courts would have to expend if CCMS is deployed, so we question the methodology that discounts those. The idea that these costs are not fairly considered costs of deploying CCMS or that maintenance and operation of existing or

alternative systems would be expended in any event assumes that those costs would be comparable to the costs of maintaining and operating CCMS, an assumption not supported by the report or by the experiences of the various courts where earlier iterations of CCMS have been deployed previously.

Observation: GT concedes that, given the large cost involved in deploying to SLO, CCMS V4 can only be justified if the judicial branch also intends to deploy the system to multiple additional courts on the statewide CCMS V4 infrastructure (page 40). The cost of creating the foundation for future court deployments is nearly \$47 million (*id.*). The AOC and Judicial Council have spent more than a half billion dollars and they have not identified any source for another \$47 million for this project, either from existing trial court funds or from separate funding allocated by the Legislature.

Question: Given that past studies -- including that completed by the Office of the Chief Information Officer (OCIO) that the AOC has touted previously as providing support for the statewide deployment of CCMS -- conclude that the value of CCMS depends upon it being deployed statewide, how can any expenditure for statewide IT infrastructure be justified today, when there is no longer any likelihood of statewide deployment?

Observation: Just deploying the system to SLO, without the statewide infrastructure that would permit deployment to other courts, will cost over \$11 million, including costs to integrate with justice partners (page 55). That is nearly a million dollars per judge in the county.

Questions: Does the SLO court have \$11 million laying around to install and operate CCMS V4? Why would SLO want to deploy

this system at its own expense, when there are other case management systems that can be purchased off the shelf that will do the job in SLO for far less? Will the \$11 million come from the AOC and essentially be paid for by all of the courts?

Observation: Local court costs for Fresno to install and operate V4 approach \$18 million (*id.*). Fresno doesn't have an extra \$18 million, nor is the court likely to lay off employees to get it.

Question: Will the AOC (i.e. the other 57 county courts) be expected to foot the bill for Fresno to move forward with CCMS V4?

Observation: The total cost to the ten proposed "Phase 2" courts - and these are in some cases only partial deployments of V4 -- is a little over \$211 million (*id.*). The Judicial Council has spent down the Trial Court Trust Fund and Trial Court Improvement Fund to create CCMS as it currently exists, already having paid hundreds of millions of dollars to Deloitte and countless court programmers and independent contractors.

Question: Where will another \$211 million come from? Certainly not from the already devastated budgets of those trial courts.

Observation: The \$211 million, however, is just the cost to the local courts. Deployment to those ten courts would require one time statewide costs in excess of \$25 million, and another \$475 million statewide through FY 2020-2021 in ongoing costs (page 60). This means more than \$710 million would be required over the next eight years to get the system operating, and keep it operating, less than all of the calendars in ten additional courts. That's on top of the \$550 million already spent.

Questions: The latest estimate from the state auditor in her report of February 2011 was that it will cost approximately \$1.9 billion to complete CCMS statewide. Don't these figures suggest that even that revised estimate is now unreasonably low? Given these figures, can anyone fairly estimate what statewide deployment of CCMS would cost?

Observation: Even the most ardent supporters of CCMS will now have to concede that statewide deployment of CCMS will never occur, at a cost of \$1.9 billion or at any other price.

Question: If the value of the system depends upon its statewide deployment, why should the courts spend any more funds to deploy CCMS to any courts not already using it?

Observation: The plan is for the AOC to provide about \$190 million in supplemental funding to the ten Phase 2 courts (page 83). There is, of course, no source identified for any of this additional funding.

Question: Is that \$190 million expected to come from funds separately appropriated by the Legislature, or from monies that would otherwise be available to operate the trial courts? Does any Council member really believe those funds, if they could be identified, would best be spent trying to save CCMS?

Observation: Total "new funding" to support deployment of V4 to SLO and the other "Phase 2" courts is a little over \$342 million through FY 2020-2021 (page 86). The source of these new funds is not clear.

Question: When the branch has been hit with \$650 million in reductions, does any Council member really believe these “new funds” will ever exist?

Observation: Even if the system "works" and does everything its proponents claim it does, and even if there are no cost overruns or unexpected problems with V4 -- an unrealistic expectation in light of past performance -- the total return on investment through FY2020-2021 is a negative \$67 million (*id.*). That accepts as an underlying premise that under the "no CCMS" option, each of those ten courts would have to replace their current case management systems in the next eight years with some other product (*id.*). Even under the rosier of assumptions, CCMS is not cost effective in any form.

Question: The stated purpose in creating CCMS was to link all 58 county courts and their “justice partners” together in one system that would arguably provide better communication between the courts and would facilitate reporting case dispositions and compiling case statistics. How can this Council justify spending even one more taxpayer dollar to expand this failed case management system beyond those courts where it is currently in use if statewide deployment of CCMS will never occur?

Conclusion

The official death of CCMS can be delayed no longer. If all 58 courts and their many "justice partners" will ever be linked by one case management system, it will not be *this* case management system.

In 2010, ironically on a mandatory court closure day, the Joint Legislative Audit Committee met to discuss an audit of CCMS. At

that hearing, Justice Terrence Bruiniers and AOC staff argued against the audit. The AOC believed that former Chief Justice Ron George's personal meetings with legislators would ensure the audit's demise, but over their objections the audit was approved.

The release of the auditor's report in February of 2011 revealed the truth of what many had been saying for years -- CCMS is a failure. The response of the AOC and the Judicial Council was to create additional committees, hire more consultants, and continue to spend precious court resources in an attempt to justify money already wasted on this ill-conceived project, even as it became abundantly clear that the courts had paid far too much for far too little, and there was no money left for the CCMS project.

Some observers think that CCMS will die a quiet death at the March 27 Council meeting. Given the audacity with which branch leaders have pushed this project forward over the protests of judges and others, you will understand our skepticism. We not only plan to attend the meeting and address the Council, but we have drafted a motion for the Council's consideration so we don't have another "pause" in CCMS that isn't really a pause, or a vote that leaves the judiciary subject to more costly outbreaks of CCMS.

Our request is that the Council move, second, and pass a motion that provides the following written order to the Administrative Office of the Courts:

The AOC is directed to terminate forthwith any further development, deployment, or maintenance of the CCMS product known as V4. The AOC must identify all internal and external expenditures related to the development and deployment of CCMS, and all internal functions related to CCMS, and end them immediately. No further funds are to be spent on the CCMS

project, other than what is required for the continued use of versions already fully operating in courts. Under no circumstances shall V4 be deployed in any court in this state, unless that court purchases V4 as it now exists, using its own funds for purchase and deployment. Further, no court is obliged to maintain CCMS in any form, and no court shall be prejudiced in any manner nor shall funds be withheld from any court that chooses to discontinue the use of any version of CCMS now in operation. Further, the AOC shall report to the council on which courts, if any, have emergency needs relative to new IT systems. In addition, the AOC shall present to the council a plan for each court wishing to maintain their current version of CCMS for that court to sustain that system within their own budget allocation on a local server and supported by their own IT support staff, and for the termination of statewide support on or before January 1, 2013. Further, the AOC shall deliver to each court wishing to keep CCMS all source codes and software owned by or deliverable to the AOC from Deloitte or any other contractor. The AOC shall plan for the termination of the maintenance of all CCMS versions on the CCTC. No court choosing to maintain any version of CCMS shall be required to use any particular server. The AOC and all CCMS oversight committees, including the internal CCMS committee, are to verify to the Council at the next public business meeting that each of the above orders and directives have been fully complied with.

The Judicial Council needs to move beyond the denial stage and embrace the fact that CCMS must be permanently shelved. After spending over a half billion dollars of trial court funds, subjecting the branch to public ridicule and creating dissent amongst judges, the time has come to end this debacle.

We expect a thorough investigation to determine if the taxpayers can be reimbursed for some of the losses incurred. We also expect that those responsible will be held to account for their lack

of judgment. Finally, we insist that this Judicial Council not further compound its previous poor judgment by spending more of our precious court funds on this failed project.

Respectfully Submitted,

Hon. W. Kent Hamlin, Superior Court for the County of Fresno,
On Behalf of the Directors of the Alliance of California Judges