Written Comments Received for
July 27, 2012, Judicial Council Business Meeting

Name and Title	Affiliation	Topic	Date of Receipt	Page Nos.
1. Mr. Mark R. Jensen	Jensen & Jensen Attorneys	Opposition to a reduction of the court fund balance and emergency reserves for the Superior Court of California, County of Stanislaus.	6/25/12	4-5
2. Ms. Lynn L. Telford-Sahl	Balanced Living Counseling	Opposition to a reduction of the court fund balance and emergency reserves for the Superior Court of California, County of Stanislaus.	6/26/12	6
3. Lloyd W. Pellman, attorney	Nossaman LLP	Proposed pilot project on uncollected debt in follow-up to public comment at May 17 council meeting.	7/13/12	7-12
4. Ms Robyn A. Lewis, President	Riverside County Bar Association	State budget impacts on the courts of the Inland Empire and proposal to fund judgeships.	7/16/12	13-17
5. Ms. Teri Cannon, Chair	State Bar of California, Council on Access and Fairness	Strategic Evaluation Committee Report	7/19/12	18-24
6. Hon. Brenda F. Harbin-Forte, Judge	Superior Court of California, County of Alameda	Strategic Evaluation Committee Report	7/20/12	25-29

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7. Mr. Mark Natoli, Vice President of Local 575	American Federation of State, County and Municipal Employees	The impacts of state budget cuts on court staffing and operations.	7/24/12	30
8. Ms. Pamela J. Walls, County Counsel	Office of County Counsel, County of Riverside	Allocation of Trial Court Trust Funding for assigned judges and necessary support staff for courts in greatest need.	7/24/12	31-32
9. Mr. Michael Ferreria, President	California Federation of Court Interpreters	Documentation of Department of Justice directives and findings regarding access to court interpreting services in Colorado and North Carolina: 1) Supreme Court of Colorado, "Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency" 2)United States Department of Justice, "Investigation of the North Carolina Administrative Office of the Courts Complaint No. 171-54M-8"	7/24/12	33-61
10. Ms. Lisa M. Fugazi, Esq., Research Attorney	Superior Court of California, County of San Joaquin	Trial court allocation funding	7/25/12	62-63
11. Ms. Tammy L. Grimm, Court Executive Officer	Superior Court of California, County of Inyo	Request for an exemption from the Inyo Court final fund balance calculation due to unique and special circumstances	7/25/12	64-85

Name and Title	Affiliation	Topic	Date of Receipt	Page Nos.
12. Ms. Bridget Childs, Ms. Sonya Farnsworth, Ms. Monica Jones, Mr. Grant Preeo, Ms. Teresa Trigg, Mr. Dani Jeitz, Ms. Jennifer Whitlock, and Mr. Steve Bristow, bargaining team members	Service Employees International Union 1021 for Superior Court of California, County of San Joaquin	Historical allocation to San Joaquin court	7/25/12	86-89
13. Ms. Carrie Dall, employee	Superior Court of California, County of San Joaquin	Historical allocation to San Joaquin court	7/26/12	90
14. Hon. Anthony Edwards, Presiding Judge	Superior Court of California, County of Trinity	FY 2012/2013 $150 million reduction plan	7/26/12	91-92
15. Ms. Jennifer D. McMahan, Research Attorney	Superior Court of California, County of San Joaquin	Trial court allocations and managing the fiscal needs of the Superior Court of California, County of San Joaquin	7/26/12	93-95
16. Mr. David Farrar, member	State Bar of California	Agenda Item F: Trial Court Budget: Fiscal Year 2012-2013 Allocations and a proposal om debt collection	7/26/12	96-97
17. Ms. Ana J. Matosantos, Director	California Department of Finance	July 27, 2012 meeting and recommendations 6 and 7 of item Fon the agenda	7/26/12	98
18. Ms. Laurel A. Hoehn, President	Western San Berardino County Bar Association	Support for proposal submitted by the San Bernardino County Bar Association	7/26/12	99

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June 22, 2012

Chief Justice Cantil-Sakauye
and Members of the Judicial Council
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Chief Justice and Members of the Judicial Council:

As a business owner in Stanislaus County, I adamantly oppose Governor Brown's proposal to appropriate the fund balance and emergency reserves from the Stanislaus County Superior Court budget.

The Stanislaus County Superior Court is one of the original 17 courts designated as "historically underfunded." As early as 2008, the Court began making on-going reductions to its budget to proactively prepare for the decrease in funding from the California Judiciary Branch. Part of their planning included creating a reserve to help Stanislaus County Courts weather any future budget crisis.

The on-going reductions made by Stanislaus County Superior Court included: (1) consolidating functions, (2) increasing their employee vacancy rate, (3) reducing vendor contracts, (4) re-engineering processes, (5) reducing public access hours, including phone access, (6) automating more clerical processes, (7) implementing a Volunteer Retirement Incentive Program, (8) implementing an enhance collections program, (9) reducing expenditures, including, but not limited to, reducing employee benefits, (10) negotiating no COLA's since 2008, (11) closing branch court operations in Turlock and Ceres, and (12) laying off 12 valuable employees, effective in March of 2012.

While all of these fiscally responsible actions should earn Stanislaus County Superior Court the praise of our State's leadership, it seems that they are instead being punished. The reserve (or fund balance) generated by Stanislaus County Superior Court, which was created to be used to meet the known and on-going budget reductions scheduled for FY 2012-2013, is threatened to be stolen from them by a less-responsible government.

1031 FRESNO STREET NEWMAN, CA 95360 TELEPHONE 209-862-2846
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Was sent copy to Nancy Spero

Appropriating the reserve would make it nearly impossible for the civil judicial system to bear the additional proposed budget cuts and continue to function. Civil suits are already backlogged and these cuts would force the courts to do away with critical functions, including family law matters and services our area desperately needs.

I respectfully request that you protect the reserve funds and emergency funds for the County Superior Court.

Very truly yours,

JENSEN & JENSEN

Mark R. Jensen

MRJ:ct

BALANCED LIVING
COUNSELING
Healing Mind, Body and Spirit

June 11, 2012

Chief Justice Cantil-Sakauye
and Members of the Judicial Council
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

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Appropriating the reserve would make it nearly impossible for the civil judicial system to bear the additional proposed budget cuts and continue to function. Civil suits are already backlogged and these cuts would force the courts to do away with critical functions including family law matters and services our area desperately needs.

I respectfully request that you protect the reserve funds and emergency funds for the County Superior Court.

Sincerely,

(Signature here)

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Refer To File #: 400958-0001

July 10, 2012

Honorable Tani G. Cantil-Sakauye
Chief Justice
California Supreme Court
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

ATTENTION: Nancy Carlisle

Re: Judicial Branch Budget

Dear Honorable Chief Justice and Honorable Members of the Judicial Council:

This is to follow up on my previous correspondence and to suggest a modification to my May 16, 2012 proposal to partially address the budget for the Judicial Branch. For your ease of reference, a copy of that letter is attached.

I had urged you in that correspondence to consider taking such action as may be necessary to implement Government Code section 77205 to allocate to the trial court which collects currently uncollected debt owed to the courts the full statutorily permitted 40% of the fund in excess of the maintenance of effort allocation.

I had urged you to establish a pilot project to forego for a period of time (such as five years) the redistribution of the funds to other trial courts or for retention in the Trial Court Improvement Fund. In the last annual report on uncollected debt owed to the various Superior Courts, the sum exceeds $7.5 billion and has continued to grow every year since the annual reports were first required by statute. The report can be found at this link:

http://www.courts.ca.gov/documents/Collections-Report-to-Legislature-FY2010-2011.pdf

That suggestion had been submitted to you based upon my reading of the referenced report and the statute cited above and the fact that you were to be

conducting an emergency meeting to discuss the budget following the release of the Governor's revised budget proposal.

Since that emergency meeting, I have had the opportunity to discuss with various court officials the proposed pilot project and the past and current reliance that some courts have on the funds collected by the local courts and forwarded to the State for reallocation.

Accordingly, I suggest that, as a modified pilot project, that you exercise your discretion under Government Code section 77205 to allocate to the trial court which collects currently uncollected debt owed to the courts 40% of the funds received by the State in excess of the maintenance of effort allocation and in excess of the amount collected by the court for reallocation to other courts during the 2011-2012 fiscal year.

By establishing a benchmark for continued reallocation to trial courts, but permitting the local court to retain for its operations sums over its previous, historic contributions to the State, an incentive would exist for enhanced collections of the outstanding debt.

There are additional developments to support the notion that increased focused efforts on collecting the debt will produce results.

First, although the official state-wide results of the six month limited amnesty program are not yet available, public media reports illustrate that increased focused efforts had some measure of success. Butte County (population 221,768) through May had collected $74,481 on 140 cases. By the end of March, Fresno County (population 953,761) had collected $92,000, Tulare County (population 447,814) had collected $266,000, Kings County (population 156,289) had collected $64,000, Madera County (population 153,655) had collected $17,000, and Stanislaus County (population 530,584) had collected $194,000. These collections under the amnesty program for tickets over three years old were likely to be in addition to its normal rate of collection for more current debt and illustrates that focused, enhanced collection efforts do have some measure of success.

That increased attention brings results was also demonstrated lasted year in Orange County, where the Superior Court increased the amount collected in FY 2010-2011 over FY 2009-2010 by a reported 26% which that court attributed to improvements in notices, increases in dialer campaigns and contacting debtors in a more timely manner. In fact, I found Presiding Judge Tom Borris to be quite extraordinary in his knowledge of, and attention to, the Superior Court collection program when I followed up with him after reviewing his court's report.

Further, in an on-line poll by a Southern California radio station, listeners who had outstanding tickets were given the choices of the following three responses: (1)

"Yes, and I plan to pay them.", (2) "Yes, and I can't afford to pay them.", and (3) "Yes, but I don't plan on paying them." One third of those responding chose each of those answers. In other words, an equal number of responders indicated them simply had no intention of paying as those who indicated they would not be paying because they could not afford to make the payment. [1]

This is a sad commentary when our populace chooses not to pay their court-ordered debt while the courts are closing courtrooms, terminating programs, laying off employees and raising and imposing new fees on the civil operations of the courts. This is an affront to our system of justice which should not be tolerated.

Accordingly, I urge you and the Judicial Council to take such steps as necessary to permit the courts of each County to receive the allocation as currently permitted by statute and as detailed above. I believe the current fiscal crisis in the courts should be addressed not just by additional expenses on civil litigants but by increased efforts to collect the $7.5 billion in uncollected debt owed to the courts. Your policy decision could provide local courts an incentive for that to occur.

Very truly yours,

Lloyd W. Pellman
of Nossaman LLP

LWP/
Enclosure

1 Patt Morrison June 11, 2012 broadcast on KPCC National Public Radio found at this link: http://www.scpr.org/programs/patt-morrison/2012/06/11/26901/california-closes-down-courtrooms-despite-75-bill/

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Refer To File #: 111111-2222

May 16, 2012

Honorable Tani G. Cantil-Sakauye
Chief Justice
California Supreme Court
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

ATTENTION: Nancy Carlisle

Re: Judicial Branch Budget

Dear Honorable Chief Justice and Honorable Members of the Judicial Council:

As the former Los Angeles County Counsel (1998-2004) and still a practicing attorney, I maintain contacts with the County Counsels throughout the State as well as various judges and bar groups. Collectively, I see a continuing and growing concern regarding the ability of the court system in general and the trial courts in particular to provide access to justice throughout our State.

If the current trend continues, this State is headed for a two tier system of justice. Only those whose attorneys can afford to underwrite the costs of court reporters and increased filing fees or who can afford to pay such expenses themselves will be able to proceed with litigation with a record for appeal. I don't want to see that happen in my personal or professional lifetime.

I believe that current statutes provide at least a partial solution on at least a temporary basis if you, the Judicial Council, are willing to exercise your discretion in a manner that will implement it.

I urge you to consider taking such action as may be necessary to implement Government Code section 77205 to allocate to the trial court which collects currently uncollected debt owed to the courts the full statutorily permitted 40% of the fund in excess of the maintenance of effort allocation.

I urge you to establish a pilot project to forego for a period of time (such as five years) the redistribution of the funds to other trial courts or for retention in the Trial Court Improvement Fund. In the last annual report on uncollected debt owed to the various Superior Courts, the sum exceeds $7.5 billion and has continued to grow every year since the annual reports were first required by statute. The report can be found at this link:

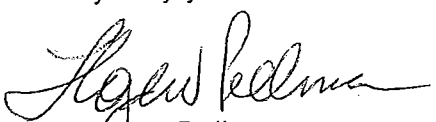
http://www.courts.ca.gov/documents/Collections-Report-to-Legislature-FY2010-2011.pdf

I am working with another attorney, David Farrar, in his quest to turn around this annually escalating unpaid debt. Unfortunately, I have a conflict in my schedule which prevents me from attending your meeting, but I have asked Mr. Farrar to provide copies of this letter for your consideration.

I have found that there is generally a fairly low level of interest in utilizing enhanced means to pursue these debts despite the availability of resources which are available on strictly a contingent basis. The apparent reason for this widely encountered view is that the funds are being allocated to the Trial Court Improvement Fund, thereby not providing a return to the local court in recognition of its efforts. It appears that this may be addressed by the Judicial Council exercising its discretion in directing the funds to the local trial court

Accordingly, I urge you to take such steps as necessary to commit to permit the courts of each County to receive the allocation as currently permitted by statute.

Very truly yours,



Lloyd W. Pellman
of Nossaman LLP

LWP/

77205. (a) Notwithstanding any other provision of law, in any year in which a county collects fee, fine, and forfeiture revenue for deposit into the county general fund pursuant to Sections 1463.001 and 1464 of the Penal Code, Sections 42007, 42007.1, and 42008 of the Vehicle Code, and Sections 27361 and 76000 of, and subdivision (f) of Section 29550 of, the Government Code that would have been deposited into the General Fund pursuant to these sections as they read on December 31, 1997, and pursuant to Section 1463.07 of the Penal Code, and that exceeds the amount specified in paragraph (2) of subdivision (b) of Section 77201 for the 1997-98 fiscal year, and paragraph (2) of subdivision (b) of Section 77201.1 for the 1998-99 fiscal year, and thereafter, the excess amount shall be divided between the county or city and county and the state, with 50 percent of the excess transferred to the state for deposit in the Trial Court Improvement Fund and 50 percent of the excess deposited into the county general fund. The Judicial Council shall allocate 80 percent of the amount deposited in the Trial Court Improvement Fund pursuant to this subdivision each fiscal year that exceeds the amount deposited in the 2002-03 fiscal year among:

(1) The trial court in the county from which the revenue was deposited.

(2) Other trial courts, as provided in paragraph (1) of subdivision (a) of Section 68085.

(3) For retention in the Trial Court Improvement Fund.

For the purpose of this subdivision, fee, fine, and forfeiture revenue shall only include revenue that would otherwise have been deposited in the General Fund prior to January 1, 1998.

(b) Any amounts required to be distributed to the state pursuant to subdivision (a) shall be remitted to the Controller no later than 45 days after the end of the fiscal year in which those fees, fines, and forfeitures were collected. This remittance shall be accompanied by a remittance advice identifying the quarter of collection and stating that the amount should be deposited in the Trial Court Improvement Fund.

(c) Notwithstanding subdivision (a), the following counties whose base-year remittance requirement was reduced pursuant to subdivision (c) of Section 77201.1 shall not be required to split their annual fee, fine, and forfeiture revenues as provided in this section until such revenues exceed the following amounts:

County	Amount
Placer	$ 1,554,677
Riverside	11,028,078
San Joaquin	3,694,810
San Mateo	5,304,995
Ventura	4,637,294

Riverside County Bar Association

Riverside County Bar Association Building • 4129 Main Street, Suite 100 • Riverside, CA 92501
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Via Overnight and Email (judicialcouncil@jud.ca.gov)

July 16, 2012

Judicial Council of California
455 Golden Gate Ave
San Francisco, CA 94102-3688

Re: Public Comments by Riverside County Bar Association for July 27th Judicial Council Meeting

To the Judicial Council of California:

I write this letter on behalf of the Riverside County Bar Association, its members, and the many individuals, families, and businesses that interact with our local courts each year. Riverside County is one of the largest counties in California, with a population of over 2.2 million people. Our sister county, San Bernardino County, is home to over 2 million people. Together, our two counties comprise the Inland Empire, which is one of the fastest growing regions in California; since 2000, the Inland Empire has accounted for 29 percent of California's population growth. In spite of our tremendous growth and growing demand for legal services, the Inland Empire's courts have been consistently under-funded to the detriment of our litigants, lawyers, judges, and court staff. Understandably, many of our courts are seeking additional resources in a time when resources are scarce, but the situation in our community is particularly serious, and publicly available data reflects that we are under-funded relative to other counties with less demonstrated need, smaller populations, and equal or lighter workload. I write to you to bring this disparity to your attention and to suggest to you one possible solution to reduce the impact of budget cuts on Riverside and other severely impacted counties.

The Inland Empire Is Not Receiving A Fair Share Of Judicial Branch Resources

Publicly available statistics reveal that the Inland Empire has consistently been allocated fewer judicial branch resources than other counties with less demonstrated need, smaller populations, and equal or lighter workload:

- Riverside's ratio of trial court judicial positions per 100,000 of population is 3.4. San Bernardino's ratio of trial court judicial positions per 100,000 of population is 4.2. The statewide average is 5.2 per 100,000 of population.

- Riverside County has seen a 44 percent increase in population since 2000 and a 95 percent increase since 1990. San Bernardino County has experienced a 19 percent increase in population since 2000 and a 43 percent increase since 1990. The number of judicial positions in both counties has not kept pace with the increase in population. For example, in Riverside County the number of judicial positions only increased by 31 percent since 1990.

- While Riverside (4.1 percent) and San Bernardino Superior Courts (4.4 percent) receive a combined 8.5 percent of the judiciary's statewide Trial Court Trust Fund (TCTF) allocation, the two counties account for 11 percent of the state's population.

- Riverside has seen a 40 percent increase in total Superior Court case filings between fiscal years 2000-01 and 2009-10. San Bernardino's Superior Court case filings have increased by 39 percent in that time period. By comparison, Superior Court filings statewide increased 24 percent during that period.

- According to the Judicial Council of California 2011 Court Statistics Report ("2011 Report"), Riverside County Superior Court had 6,446 filings per authorized judicial position, the fourth highest amongst the state's 58 counties and San Bernardino County Superior Court had 6,533 filings per authorized judicial position, the third highest in the state.

- According to the California Judicial Workload Assessment published by the National Center for State Courts (NCSC) in November 2011, Riverside County Superior Court has a need for 150.8 judges. With only 76 judicial officers, the court faces a shortage of 74.8 judges, or a 49.6 percent deficit. The same report showed San Bernardino Superior Court with a need for 150 judges. With only 84 judicial officers, that court faced a shortage of 66 judges, or a 44 percent deficit. Statewide, there is workload to support 2,376 judges. With 2,022 authorized judicial positions, the state as a whole faces a shortage of 354 judges, or a 14.9 percent deficit.

- The 2011 Report also shows that, in fiscal year 2009-10, Riverside County Superior Court conducted 32,998 court trials, 41 of which were felony trials and 3,714 of which were unlimited civil trials. Only Los Angeles County had more unlimited civil bench trials, with a total of 4,018, and that was from a total of 97,030 total bench trials. San Bernardino conducted 34,004 bench trials during the same period, 16 of which were felony trials and 627 of which were unlimited civil trials

- Per the 2011 Report, Riverside County conducted 1,087 jury trials during fiscal year 2009-10, 683 of which were felony trials, and 51 of which were unlimited civil trials. The only county to surpass the total number of jury trials conducted was Los Angeles County with a total of 3,572 jury trials. Based on Riverside County's relative dearth of judicial position equivalents, the County ranked second on the state-wide list of jury trials per judicial position. Based on the performance indicator data by County for fiscal year 2009-10, Riverside judges hear approximately 11.1 jury trials per bench officer, in comparison to the state-wide average of 5.2 jury trials per bench officer. The number of judicial position equivalents for that year is also over-estimated because it includes Assigned Judges sent to the County, based on a yearly average of their attendance, and it factors in the 7 judicial positions allocated to Riverside under AB 159, which were never funded. Using more accurate data, the number of jury trials per judicial position would actually be closer to 14.3 trials per bench officer.

- According to the Judicial Council's own statistics, in fiscal year 2009-10, the Fourth District, Division Two, disposed of 10.3 percent of the appeals and writs disposed of by the courts of appeal statewide, while having just 6.7 percent of the 105 appellate court justices statewide. In contrast, the entire First District Court of Appeal disposed of only 14.1 percent of the appeals and writs in the state while having 19% of the 105 appellate court justices statewide. The disparity does not disappear when applying the "workload-adjusted" formula developed in 1995 by the Appellate Court Resources Analysis Working Group chaired by Justice Norman L. Epstein. In fiscal year 2010-11, the Fourth District, Division Two filed 137 opinions per justice, the equivalent of 95 opinions per justice on a "workload-adjusted" basis, which is higher than any other District Court of Appeal in California. The First District Court of Appeal, in contrast, filed 75 opinions per justice on a "workload-adjusted" basis, and the Second District Court of Appeal filed only 84 opinions per justice on a "workload-adjusted" basis.[1]

- Based on California Department of Finance information, in 2010 the Fourth Appellate District, Division Two (which serves, Riverside, San Bernardino, and Inyo Counties) was estimated to have 615,708 residents per appellate justice, the highest number in the state. The next closest district is Second District, Division Six with 382,930 residents per justice.

These statistics reveal the gross disparity between the resources being allocated to the Inland Empire and its demonstrated need. Our trial and appellate courts are overburdened relative to other courts across the state, and the RCBA formally requests that the Judicial Council and this Committee take immediate action to address ongoing resource disparities.

[1] Recognizing that appeals are generated from trial courts, and that Riverside County conducts more jury trials than any County besides Los Angeles, it is likely that the workload in the Fourth District, Division Two, will increase. As a comparison, the other two counties that comprise the Fourth District Court of Appeal, Orange County and San Diego County, conducted only 1,094 jury trials combined during fiscal year 2009-10, in comparison with Riverside's 1,087.

To Begin Correcting The Disparity In Funding, The Judicial Council Should Fund AB 159 Judgeships And Support Staff Using Monies From The Assigned Judges Program

The RCBA recognizes that correcting the historical under-funding of courts in the Inland Empire will take time, and would like to work cooperatively with the Judicial Council to provide support or information about the problems facing our judicial system. In the mean time, however, the RCBA requests that the Judicial Council take immediate action to fund much needed judgeships and support staff that were contemplated by Assembly Bill 159, which passed in 2008.

AB 159 authorized 50 new judgeships, which were vetted and approved by the Judicial Council and the Legislature, but which were never funded. Under AB 159, new judgeships were allocated based on demonstrated judicial need in each county, which was assessed based on court filings and workload standards. Positions were allocated to counties that were determined to have the greatest relative need for the addition of judicial officers. Using that rubric, San Bernardino and Riverside Counties were determined to be the two counties in California most in need of additional judicial resources. Each county was allocated 7 new judgeships. Other rural counties, including Sacramento, Fresno, San Joaquin, were also intended to benefit significantly from AB 159. Sacramento was to get 6 new judgeships, Fresno 4, and San Joaquin and Kern 3 apiece. No other counties were allocated more than 2 judgeships. Those additional judgeships, if funded, would significantly reduce the burden on Inland Empire and other rural counties that are impacted, overworked, and under-funded. Given current budgetary constraints that might limit mutli-year funding of those allocated judicial positions, the RCBA requests that the Judicial Council consider using money available for the Assigned Judges Program to provide a temporary stopgap to Superior Courts that were the intended beneficiaries of AB 159.

Specifically, we suggest the Judicial Council consider using a portion of its $26 million budget for the AJP (FY 2012-13) to fund AB 159 judgeships. Currently AJP funding provides benefits to compensate retired judges who give up their time to serve impacted courts or fill judicial vacancies. AJP funds have not been used in the past to pay for the necessary support staff and other ancillary costs associated with operating a functioning courtroom, meaning that courts, like those in Riverside, that have relied heavily on AJP judges are saddled with a financial hardship every time they use an AJP judge. That is, historically under-resourced courts that were in such dire need of judgeships that they were the beneficiaries of AB 159 are not even able to cover the cost associated with using AJP judges. For that reason, Riverside County has had to close 5 courtrooms this year alone. It has also: stopped work in four open courtrooms that it can no longer afford to fill with AJP judges; consolidated four juvenile departments into two; consolidated two misdemeanor arraignment courts; and closed the temporary courts that once hosted assigned judges hearing civil matters.

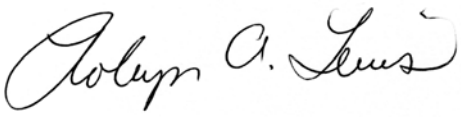
By using AJP money to pay retired judges in addition to paying the costs associated with using those judges (approximately $200,000 for support staff associated with each judge), the Judicial Council could provide assistance to the courts most in need of support. The cost of this proposal would be approximately $18.2 million, or $8.2 million to fund AJP judges and $10 million to pay for the staff to support them. That would leave over $8 million in AJP funds for the Judicial

Council to continue providing emergency assistance to courts not identified in AB 159 as those most critically in need of additional judicial resources.

Request For Time To Speak During Public Comment Period At July 27, 2012 Meeting

Several years ago, long-before the budget crisis began seriously impacting the judicial branch, Riverside County Superior Court was forced to impose a moratorium on civil trials because of the criminal case backlog. The Judicial Council assisted Riverside Council by assembling a "Strike Team" to work through the backlog and allow civil litigants to once again have their day in court. We do not want to return to the days when civil, family law, and other litigants with serious and pressing issues were unable to have their cases heard in a timely fashion; nor do we want criminal cases to be dismissed because there are no open courtrooms to hear them in. We strongly urge you to consider the impact this year's budget, in particular, will have on the courts in the Inland Empire, and ask that you provide the resources our trial and appellate courts need to serve our community. To that end, and in addition to these written comments, which the RCBA requests be circulated to the Judicial Council in relation to the budget it is considering at the July 27, 2012 meeting, the RCBA requests 5 minutes time to address the Council at the July 27, 2012 meeting.

Sincerely,



Robyn A. Lewis
President, Riverside County Bar Association

cc: Trial Court Budget Working Group
(Nancy.Carlisle@jud.ca.gov)

THE STATE BAR
OF CALIFORNIA

Council on Access & Fairness

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July 17, 2012

The Honorable Tani Cantil-Sakauye
Chief Justice, California Supreme Court and
Chair, Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Attn: Invitations to Comment
Administrative Office of the Courts

RE: **Item SP 12-05**
Strategic Evaluation Committee Report
From the State Bar of California, Council on Access & Fairness
General Comments and Specific Comments on Recommendations
7-4 (Committees and Task Forces)
7-12 (Procedural Fairness and Public Trust and Confidence Programs)
7-20 (reduction in educational division)

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

The State Bar of California Council on Access & Fairness (COAF) is submitting these comments in response to the Strategic Evaluation Committee (SEC) Report on the Administrative Office of the Courts (AOC) issued May 25, 2012 and presented to the Judicial Council of California on June 21, 2012.

COAF was created in 2006 to serve as the State Bar's diversity "think tank". The COAF is the only entity in the State Bar that assists in the implementation of the Bar's access, fairness, diversity, and elimination of bias strategies and goals. The State Bar's commitment to and support for diversity appears in its Strategic Plan, Goal 2 (Administration of Justice): *Undertake activities to enhance the diversity of the legal profession and to eliminate bias in the practice of law*. In this capacity, COAF focuses on issues and initiatives along the full diversity pipeline: Early Pipeline (preschool to high school), College and University (undergraduate, law school, and bar exam), Legal Profession (recruitment, employment, retention and advancement in the legal profession); and the Judiciary (diversity of the judicial applicant pool and appointments).

One of the major COAF goals is to achieve diversity in the legal profession and judiciary that reflects the statewide diversity. For the State Bar, diversity encompasses racial and ethnic groups, women, LGBT, persons with disabilities and older attorneys. The 2010 U.S. Census figures show that California is close to 60 percent people of color and close to 51 percent women. However State Bar data show that the legal profession is only 20 percent racial-ethnic minorities and only 39 percent women. The California judiciary is only slightly over 27 percent minority and 31 percent women. These statistics show how far the legal profession has to go before it reflects the diversity of the population.

Another of our goals is to ensure access and fairness and impartial treatment for court users. As you know, Judicial Council surveys of court users show that the failure to have a diverse legal profession and judiciary severely impacts the public's confidence and trust in the legal system. The public's perception of fairness in the court process is directly related to the level of diversity at all levels of the judicial system.

We acknowledge the importance of the SEC's charge to conduct a "thorough and objective examination of the role, functions, organizational structure and staffing of the AOC" and the extensive work that went into its deliberations and preparation of its report and recommendations to address areas of concern. We note that the SEC did not make specific references to diversity-related issues and functions in its report, which raises concerns about whether the SEC considered the impact of its recommendations on diversity. It is clear that, if adopted, many recommendations contained in the report would have a negative effect on achieving the critical goals of improving the diversity of the bench and ensuring the fair treatment of people from underrepresented groups who interact with the court system.

We strongly support the Judicial Council's Access and Fairness Advisory Committee for its ongoing efforts to assist the Council in implementing and supporting Goal 1 of your Strategic Plan focusing on diversity, access and fairness in the courts and justice system. We also support the ongoing fairness education and training by CJER for judges, attorneys and the State Bar Commission on Judicial Nominees Evaluation (JNE) and note that JNE bias training is now mandated by legislation [Govt. Code 12011.5(b)]. We ask for the Council's continued support for this critical work.

Goal 1 of the Judicial Council's Strategic Plan focuses on access, fairness and diversity and states that

> "***California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents."***

COAF supports the initiatives listed under Goal 1, including the elimination of all barriers to access; facilitating access to and trust and confidence in the courts; preventing bias and the appearance of bias in the judicial branch; achieving procedural fairness in all cases; increasing access to legal assistance; collaborating with justice system partners to identify, recruit and retain diverse judges, commissioners and referees and a judicial branch work force that reflects the state's diversity; collaborating with the State Bar and other entities to achieve diversity in the legal profession; achieving diversity on the Judicial Council; implementing and expanding multilingual and culturally responsive programs; ensuring access to court facilities for all court users and accommodations for persons with disabilities; and increasing access to court information and services.

Ongoing support through the AOC entities is critical for the continuation of our collective efforts. Some of the diversity, access and fairness accomplishments of the Judicial Council, AOC and Access and Fairness Advisory Committee include the following:

1987 Judicial Council through the AOC established the Advisory Committee on Gender Bias in the Courts and later adopted all 68 recommendations of that committee to redress gender bias.

1991 Judicial Council through the AOC established the Advisory Committee on Racial and Ethnic Bias in the Courts.

1994 Judicial Council through the AOC established the Access and Fairness Advisory Committee charged with making recommendations for continued improvements in access and fairness in the courts in relation to race, ethnicity, gender persons with disabilities and sexual orientation.

1996 Access and Fairness Advisory Committee created guidelines for judicial officers to avoid the appearance of bias in the courts.

1997 Access and Fairness Advisory Committee conducted a survey of court users, attorneys and court personnel on public trust and confidence in the judicial system and access to the California State Courts.

2000 Access and Fairness Advisory Committee created guidelines for lawyers on eliminating gender bias in the legal profession.

2001 Access and Fairness Advisory Committee, Sexual Orientation Fairness Advisory Committee conducted a study and released a report on Sexual Orientation Fairness in the California Courts.

2001 Access and Fairness Advisory Committee created guidelines for judicial officers on disability fairness and avoiding the appearance of bias against persons with disabilities.

2002 Judicial Council through the AOC convened the First Statewide Conference on Race and Ethnic Bias in the Courts.

2002 Access and Fairness Advisory Committee coordinated bias training for the State Bar Commission on Judicial Nominees Evaluation (JNE) through the AOC's Center for Judicial Education and Research (CJER). (Note: Bias training for JNE commissioners is now mandated by Govt. Code section 12011.5(b)).

2006 Judicial Council adopted its Branch Strategic and Operational Plan with Six Strategic Goals, including Goal #1 (Access, Fairness and Diversity).

2006 Judicial Council through the AOC and in partnership with the State Bar of California held the First Summit on Increasing Diversity on the Bench.

2010 Access and Fairness Advisory Committee developed a resource guide and model prospective civil grand juror questionnaire with accompanying tip sheet for jury managers and commissioners to assist in recruiting representative grand juries.

2010 Access and Fairness Advisory Committee developed a guide for judicial officers to assist in addressing issues related to LGBT youth in the court system.

2010 Judicial Council, at the recommendation of the Access and Fairness Advisory Committee, promulgated Rule 1.100 (former Rule 989.3 effective January 1, 1986) providing a mechanism for persons with disabilities to request reasonable accommodations to participate in court activities, programs or services.

2011 Judicial Council through the AOC and in partnership with the State Bar of California Council on Access and Fairness convened a five year follow-up Summit on Diversity on the Bench.

As a critical public policy matter, we urge the Judicial Council to:

- Continue to support Goal 1 of its strategic plan
- Extend Goal 1 into the Council's new strategic plan
- Support the allocation of ongoing resources and qualified AOC staff to ensure the effective implementation of access, fairness and diversity programs and initiatives
- Maintain the full functions, appointed positions and activities of the Council's standing Advisory Committee on Access and Fairness.

General Comments:

If the bench and bar are to maintain the public's trust and confidence in the judicial system, we must devote resources to ensure that judges, attorneys, members of the public and court staff address the needs and concerns of our state's diverse population and continue to build the pipeline for diverse persons to enter the legal profession and judiciary. In this context, COAF offers the following general comments related to the SEC report:

We have serious concerns that the lengthy, detailed SEC report did not address the needs of court users, nor did it refer to maintaining ongoing efforts to meet Goal 1 of the Council's Strategic Plan, or any of the Judicial Council's and AOC's valuable work being done regarding diversity and fairness in the courts. In fact, the report recommended the elimination of key programs and reduction of staff and other resources without consideration of the implications for continued, effective implementation of Judicial Council priorities addressing one of its primary stated goals-- diversity, access and fairness in the judicial branch.

We agree with concerns made in person during the Judicial Council meeting emphasizing the need to consider the input from court users, in keeping with prior Judicial Council and AOC surveys of court users that addressed public trust and confidence in the judicial system and the perception of fairness in court proceedings.

Further, the report does not make a distinction between "equal access to justice" and "access and fairness" and their respective issues, initiatives and needs. Testimony from Justice Zelon supporting the access to justice agenda was critically important; however the access, fairness and diversity initiatives are different and also critical to the effectiveness of the court system.

Among the SEC recommendations was the elimination of programming focusing on Procedural Fairness and Public Trust and Confidence in the Courts, which would have the effect of reducing staff expertise and other resources for ongoing diversity, access and fairness programs and initiatives. The report did not acknowledge that the continued existence of the Access and Fairness Advisory Committee would be jeopardized if these recommendations are implemented. We note that COAF maintains a regular partnership and undertakes joint activities with the Access and Fairness Advisory Committee to further our mutually shared diversity goals.

Finally, we have concerns that while the Judicial Council decided to post the SEC Report for a 30-day comment period and to consider comments prior to creating a timeline for implementation of any of its recommendations, the AOC management has apparently already initiated implementation of its own internal reorganization. See the AOC status report at http://www.courts.ca.gov/documents/SEC_aocstatusreport.pdf

Specific Comments:

We offer comments on specific recommendations as follows:

Recommendation 7-4: This recommendation would reduce the Center for Families, Children and the Courts staff including the elimination of attorney positions and/or reallocating positions to non-attorney classifications. COAF is concerned that the SEC recommendation will encompass attorneys who staff committees and task forces, such as the Access and Fairness Advisory Committee. Given the priority status of Goal 1 (access, fairness and diversity) and the scope and nature of the diversity initiatives, it is critical that the staff leader be an attorney who has the stature, time and expertise required to function effectively as liaison to the Access and Fairness Advisory Committee and related entities outside the bar. It is also important that diversity functions not be merged with the work of other CFCC staff who focus on equal access, legal services and other support functions, as the diversity area warrants dedicated staff, given its high priority with the bench, bar and public.

Recommendation 7-12: **This recommendation would reduce Promising and Effective Programs Unit Functions in the Courts Programs and Services, in particular the Procedural Fairness/Public Trust and Confidence Program.** The rationale stated for elimination of this program was the lack of budget allocation for the program. Programs that clearly promote efficient and effective methods of serving court users should be funded and retained.

Recommendation 7-20: **This recommendation would reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney positions and/or staffing of positions with non-attorney classifications, with specific reference to education specialist positions that are currently staffed by attorneys.** The stated concern by the SEC that an attorney was in a Senior Education Specialist classification was misplaced given the minimal possible cost savings. Training of judicial officers should be of the highest quality and provided by trainers who are familiar with the courts and judicial system. Attorneys are in the best position to meet these standards

We commend the Judicial Council and the AOC for the positive work it has done to promote and ensure support for and implementation of Goal 1 (Access, Fairness and Diversity) and other important goals for the judicial branch. We look forward to our continued partnership with the Council's Access and Fairness Advisory Committee to address our shared diversity goals and to our collaboration with Center for Judicial Education and Research (CJER) staff with ongoing fairness education and training. We offer our assistance to help build a diverse organization that will foster public trust and confidence and the perception of fairness in our judicial system.

In the words of former Chief Justice Ronald George at the first Judicial Diversity Summit co-sponsored by the Judicial Council and the State Bar of California in 2006:

> *"In my view, a diverse bench not only will maintain and enhance our state's tradition of having an excellent judiciary, but will also serve to reinforce our guiding principle – that we are committed to making our justice system fair and accessible to all."*

Thank you for this opportunity to comment in response to the SEC report. If you have any questions or need additional information, please feel free to contact me at TCannon@wascsenior.org or at (510) 219-1977 or contact Patricia Lee, Special Assistant for Diversity & Bar Relations at patricia.lee@calbar.ca.gov or 415-538-2240.

Sincerely,

Teri Cannon (RLee)

Teri Cannon, Chair
State Bar of California, Council on Access & Fairness

cc: *Justice Douglas Miller, Chair, Judicial Council Executive & Planning Committee*
Members, Judicial Council
Jody Patel, Interim Administrative Director, Administrative Office of the Courts
Jon Streeter, President, The State Bar of California
Sen. Joe Dunn, Executive Director and CEO, The State Bar of California
Patricia Lee, Special Assistant for Diversity & Bar Relations, The State Bar of California

Name: Hon. Brenda F. Harbin-Forte **Title:** Judge
Organization: Alameda County Superior Court
Commenting on behalf of an organization
General Comment: RE: Item SP 12-05
Strategic Evaluation Committee Report
Comments from Hon. Brenda F. Harbin-Forte, Alameda County Superior Court

My name is Brenda F. Harbin-Forte, and I am a judge of the Alameda County Superior Court. I write with both a sense of urgency and despair, and I ask the Judicial Council to put a halt to what appears to be a rush to bow to political pressure to implement all of the recommendations of the Strategic Evaluation Committee ("SEC").

As an African American judge, I am very concerned that blind adoption of the recommendations will negatively impact efforts to improve diversity on the bench and ensure fairness in our court system. Some of the recommendations could have serious implications for the ongoing diversity and access and fairness work occurring in the California courts and on behalf of court users from diverse communities. Among the recommendations are items that would eliminate programs focusing on procedural fairness and public trust and confidence in the courts and that could have the effect of reducing staff expertise and other resources for ongoing access, fairness and diversity programs.

The consequence of implementation of such recommendations will be a denial of access to the courts and fair outcomes for African American litigants and other litigants of color. In a state that is almost 60% people of color, and more than 50% women, the fairness and wisdom of any overhaul of the Administrative Office of the Courts will be called into question if it fails to take into account the issues and concerns of these demographic groups. As the Judicial Council weighs my request to slow its pace and take a different approach to this hot-button task, I hope you will pause to reflect on the words of Dr. Martin Luther King, Jr.:
"On some positions cowardice asks the question "is it safe?" Expediency asks the question "is it political?" And vanity comes along and asks the question "is it popular?" But conscience asks the question "is it right?" And there comes a time when one must take a position that is neither safe, nor political, nor popular, but he must do it because conscience tells him it is right. "

A rushed, wholesale adoption of the recommendations may well be safe, politic, and even popular if one were to judge popularity by the number of people urging immediate adoption of all of the recommendations, but such a move would not be in good conscience because it simply would not be the right thing to do.

The first step in the process of deciding which recommendations to implement should be the appointment of a more ethnically diverse evaluation committee. Although there are approximately 130 sitting African American justices and judges, approximately 160 Latino justices and judges, and more than 100 Asian/Pacific Islander justices and judges, there is no African American judge or Latino judge to be found among the published names of judges who have been tapped to assist the Council's Executive and Planning Committee in prioritizing and implementing the recommendations. Moreover, there is only token representation of Asian/Pacific Islander justices and judges, the ex-officio participation of Chief Justice Cantil-Sakauye notwithstanding. Nor is there an African American or Latino judge on the Executive and Planning Committee.

The omission of sufficient numbers of ethnic judges from the process is troubling, especially as to the absence of African Americans. A 2005 report on public trust and confidence in our courts revealed that all ethnic groups – Caucasians, Latinos, Asian/Pacific Islanders and African Americans – perceive that African Americans have worse outcomes in court than any other ethnic group. The omission of Latinos should cause every fair-minded person concern, because Latinos comprise the largest ethnic group in our state, and it thus stands to reason that members of that community are more likely than other ethnic groups to be in the majority of court users.

Before any further steps are taken to implement any of the recommendations, Chief Justice Cantil-Sakauye should add four Latino judges, three African American judges, and two Asian/Pacific Islander judges to the group appointed to assist the Executive and Planning Committee in its task of prioritizing and implementing the SEC recommendations. The ethnic minority judges appointed should be ones who have demonstrated leadership and commitment to access to and fairness in our courts, who can withstand both subtle and overt pressure to shy away from asking the hard questions and raising the uncomfortable issues, and who can stand up to the political pressure to adopt the agendas of insular and short-sighted groups. The need to ensure fairness and justice in our court system demands no less.

I also note that there was no Latino judge on the Strategic Evaluation Committee, and there was only one African American and one Asian/Pacific Islander judge. Perhaps had a more diverse committee been appointed at the outset, recommendations preserving the Judicial Council's commitment to access and fairness would have emerged. Perhaps, too, the recommendations would have demonstrated an understanding of the distinction between "equal access to justice" and "access and fairness" issues, initiatives and needs. The oversight in appointing an inadequately diverse strategic evaluation committee can now be ameliorated by the appointment of an expanded and more ethnically diverse review committee to assist the Judicial Council in prioritizing, rejecting, and implementing the recommendations.

I make the request to appoint a more diverse committee based not on the assumption that the current group cannot be fair, but on the same rationale that former Chief Justice George stated in explaining the need for a more diverse judiciary:
"I strongly believe that any judge should be able to fairly hear and decide any case, no matter who the parties and regardless of the racial, ethnic, religious, economic or other minority group to which they belong. Nevertheless, it cannot be questioned that a bench that includes members of the various communities served by the courts will help instill confidence in every segment of the public that the courts are indeed open to all persons and will fairly consider everyone's claims." Chief Justice Ronald M. George (Ret.), 2007 remarks at Senate Judiciary Committee's Public Hearing on the Judicial Selection Process

A more diverse evaluation and implementation committee will likewise instill confidence that the reform process considered everyone's claims and concerns, and will ensure that the needs of a diverse group of court users -- such as, for example, the need for interpreters -- are addressed.

My despair stems from the observation that the SEC report failed to make specific references to ensuring commitment to Goal 1 of the Judicial Council's strategic plan. Goal 1 focuses on Access, Fairness and Diversity and states that
"California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents."

The SEC recommendations, and the initial steps the AOC took to implement them, make it appear that the Judicial Council and the AOC have lost sight of this important goal. In its haste to begin preliminary housecleaning, it appears that the AOC has swept out employees who are overwhelmingly ethnic and overwhelmingly female. These voluntary and involuntary separations should not be further exacerbated. One position targeted in the SEC report and thereafter eliminated by the AOC was held by an African American female attorney who was an expert in the field of implicit bias, who had trained numerous judges on issues related to implicit bias, and who had provided mandatory training to members of the State Bar's Commission on Judicial Nominees Evaluation "(JNE Commission") on ways to identify and reduce implicit bias in the evaluation of candidates for judicial appointment. The AOC already had an appallingly low number of African American attorneys and other attorneys and employees of color. Now the agency has even fewer members of these communities. These first steps suggest that the Judicial Council has abandoned its commitment to diversity.

The following three specific recommendations further illustrate the foundation for my concern that access, fairness and diversity may be casualties of the Judicial Council's rush to judgment in implementing the proposed reforms:
Recommendation 7-4: Recommendation to reduce the Center for Families, Children and the Courts ("CFCC") staff including the reduction of attorney positions and/or reallocating them to nonattorney classifications. One of these attorney positions serves as staff liaison to the Access and Fairness Advisory Committee. Given the priority status of this area (Goal 1 access, fairness and diversity) and given the scope and nature of the diversity initiatives (issues impacting race and ethnicity, women and women of color, LGBT and disabilities) it is incumbent that the liaison for this area be an attorney who has the time and expertise to devote to the critical work of this advisory committee. It is also important that diversity functions not be merged with the work of other CFCC staff who focus on equal access, legal services and other support functions, as the diversity area is discrete and independently important to the bench, bar and public.

In addition, the CFCC assesses and implements initiatives designed to improve outcomes in our juvenile courts. Issues such as disproportionate minority representation in our delinquency and dependency courts, and innovative programs to address the school to prison pipeline via our juvenile delinquency courts, are issues that are important to the African American community and other communities of color. The treatment of women of color in the court system and in the legal profession is another issue of access and fairness in our courts. Tampering with the CFCC, without a full and fair consideration of the unintended consequences of adoption of this recommendation, would be both unjust and unwise.

Finally, it has only been through the hard work of the Judicial Council's Access and Fairness Advisory Committee that has led to improved judicial education and training in addressing issues of bias and fairness in judicial decisionmaking. Implementation of any recommendation that would eliminate the Access and Fairness Advisory Committee, or that would dilute the important work of that committee by folding it into a committee with a historically different focus would not be the right thing to do.

Recommendation 7-12: Recommendations to reduce Promising and Effective Programs Unit Functions in the Courts Programs and Services, in particular the Procedural Fairness/Public Trust and Confidence Program. The rationale stated for elimination of this program was the lack of budget allocation for the program. This should not be sufficient rationale for deleting a program that clearly responds to and focuses on a primary area of concern for court users, in particular court users from diverse backgrounds. The failure of the AOC to provide sufficient and robust support for this program should be questioned and remedied; the program should not simply be eliminated.

Recommendation 7-20: As a former dean of our judicial college, I am particularly concerned about the recommendations to reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney position allocations and/or staffing of positions by reallocating them to nonattorney classifications, with specific reference to education specialist positions that are staffed by attorneys. Training of judicial officers should be of the highest quality and provided by trainers who are familiar with the courts and judicial system. Attorneys are in the best position to meet these standards. Further, the level of expertise of individuals in the education specialist positions should not be an issue, as these positions are not at the attorney classification. The mere fact that an attorney performs the education specialist function and is classified as an education specialist should not be a concern. Given California's increasingly diverse population, efforts should be made to increase staffing devoted to CJER, so even more training can be given to judicial officers in the areas of access and fairness, and the expert in implicit bias should be rehired.

There are other recommendations that cause concern, and each should be looked at carefully before they are implemented.

I applaud Chief Justice Cantil-Sakauye for her leadership and courage in accepting the SEC report. The judicial branch must now implement reforms in a fair and thoughtful manner, with the assistance of an expanded and diverse implementation committee.

Thank you.

Dear Madam Chief Justice and Council members:

I am Mark Natoli, a court clerk in the Los Angeles Superior Court and vice-president of AFSCME LOCAL 575, representing Superior Court Clerks and Paralegals in Los Angeles County. I appreciate the opportunity to address you today.

On June 15 of this year, the court in Los Angeles laid off 157 employees. Nearly 200 more workers were reduced to lower-paying positions they had previously held with the court; many of these are now working part-time, suffering a 40% reduction in pay. Given the most recent budget cuts enacted by the Legislature, we are almost certainly facing reductions on a similar, or perhaps even greater scale in the near future.

The devastating impact of these reductions on our members cannot be overstated. However, it is the people of Los Angeles County who are going to begin feeling the impact of these measures most dramatically. A year ago when addressing this council, I stated that we were meeting our obligation to serve the public and provide our citizens full access to justice, with difficulty; today, I must report to you that we are on the brink of not being able to fulfill this mandate. Backlogs of orders, judgments, and other important documents awaiting processing are mounting. People coming to our courthouses to inspect files or obtain documents, or to have their cases heard, face long waits—sometimes, they are not served or heard at all and asked to come back another day. 56 courtrooms—nearly 10 percent of our court's capacity—have been closed this year, including 24 criminal courtrooms. We are fast approaching the point where public safety will be adversely impacted by these ongoing reductions—if indeed we have not reached that point already. Further reductions to our court will take us to a place that I don't think any of us wants to contemplate.

We have several requests of the council today. First, we would ask that the council not divert any money from the Trial Court Trust Fund to other areas of the branch for the remainder of this calendar year. Second, we would ask the council to fully adopt the recommendations contained in the recent report of the Strategic Evaluation Committee and order a complete restructuring and reorganization of the AOC, with the resulting savings being directed to the trial courts. Third, we request that the council enact a two-year freeze on all new courthouse construction, and allow the money collected from each trial court throughout the state for construction projects to remain with the collecting trial court during this two-year period. Finally, we ask that any monies available from the Trial Court Improvement Fund, the Judicial Modernization Fund, or other sources available to the council be provided to the trial courts statewide to help alleviate the current crisis in funding.

We realize, Madam Chief Justice and council members, that we are asking the council to make difficult choices. We believe that if the trial courts in this state suffer further budget cuts, we will soon be living in a different society—one in which citizens cannot be confident that they can take their disputes to court and have them resolved in a fair and prompt manner. Without this confidence, people will begin attempting to take justice into their own hands—with predictably disastrous results.

Thank you, Madam Chief and members of the council, for hearing us today. We look forward to working with you in the future to secure full funding for the judicial branch and to rebuild our courts into the best in the world. Mark Natoli AFSCME 575

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July 23, 2012

Sent via Overnight Mail and E-mail (judicialcouncil@jud.ca.gov)

Honorable Tani G. Cantil-Sakauye, Chief Justice
California Supreme Court
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: July 27, 2012 Meeting Public Comments
Trial Court Budget: Fiscal Year 2012-2013 Allocations (Item F)

Dear Honorable Chief Justice and Honorable Members of the Judicial Council:

On behalf of Riverside County, we are asking the Judicial Council to exercise its discretion in allocating the Trial Court Trust Funds for Assigned Judges and necessary support staff, appropriated by the legislature in AB 1464, to those courts determined through the implementation of AB 159 to have the greatest judicial need.

Riverside County Courts have been historically underfunded and yet have had the greatest need with a disproportionate allocation of funding for its population of over 2.2 million people. Riverside County has been one of the hardest hit with declining real estate values, foreclosures and unemployment at rates much higher than the rest of the State. For several years, the Riverside County Civil Courts were virtually shut down, with only criminal cases, family law, probate and dependency cases being addressed. Fortunately, Riverside County Courts were able to use Assigned Judges to help fill the gap to allow some civil cases to be heard. Without the use of assigned judges, and court staff to support those judges, access, fairness and equal justice for Riverside County residents cannot be assured.

The impending fiscal crisis threatens a return to the days when only criminal cases were heard. Now even the dependency courts are closing and further closures are anticipated. The dependency courts protect the most vulnerable: children who are physically abused, sexually molested or severely neglected. We have lost one full time dependency courtroom to budget cuts, at a time when the volume of dependency filings and hearings are up over twenty-percent. Warrants for removal of children suffering from physical or sexual abuse or severe neglect also need to be processed through the dependency courts. The absence of courts to detain and provide timely hearings endangers children, increases liability to the County if action is taken without court review and approval, and jeopardizes the constitutional rights of the parents.

We therefore urge the Judicial Council to use the $26 million appropriated by the legislature in AB 1464 to provide Riverside County and other Counties determined to have the greatest need with Assigned Judges and support staff. AB 159, enacted in 2008, authorized (but did not fund) the creation of fifty new judicial positions. The Judicial Council, in accordance with Government Code section 69614(b), determined the allocation of judges based on judicial need as follows: seven each for Riverside and San Bernardino Counties, six for Sacramento County, four for Fresno County, three each for San Joaquin and Kern Counties, two each for Stanislaus, Placer, Merced and Tulare Counties, and one each for Los Angeles, Orange, Solano, Sonoma, Madera, Monterey, Shasta, Butte, Contra Costa, Kings, Del Norte and Yolo Counties. AB 1464 included funding for both Assigned Judges and the staff necessary to support them.

Currently, we understand that funding has been used solely to compensate the retired judges serving in the program, with local courts having to pay for the necessary support staff and other ancillary costs for operating courtrooms. This places an undue hardship on courts, such as Riverside County, that have been historically under-resourced, and is the reason why nine courts in Riverside County have recently been closed.

If the legislative appropriation for Assigned Judges and their support staff is allocated according to the judges authorized by AB 159 (assuming $200,000 in support staff costs for each judge), the costs would be $8.2 million for judges and $10 million in support staff. This would leave over $8 million in funds for the Judicial Council to continue to provide assistance to those courts not identified as most critically in need of additional judicial resources.

The legislature appropriated funds for both Assigned Judges and necessary staff to support those judges. In implementing AB 159, the Judicial Council determined those counties where judges should be allocated. The allocation of judges was based on judicial need with goal of improving access and fairness and equal justice for all. The allocation of funding for Assigned Judges and their necessary support staff consistent with AB 159 furthers these goals. Accordingly, we urge the Judicial Council to allocate the Assigned Judges Funding for the purpose it was appropriated, to provide Assigned Judges where there is the greatest judicial need consistent with AB 159, and to provide the staff necessary to support these judges.

Sincerely,

PAMELA J. WALLS
County Counsel

PJW:lmh

Cc: Trial Court Budget Working Group
(Nancy.Carlisle@jud.ca.gov)

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

COLORADO JUDICIAL DEPARTMENT
Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency

This directive was created to establish policies regarding the utilization and payment of language interpreters provided and arranged for by the Colorado state courts and to govern access to court proceedings and court operations by persons with limited English proficiency.

I. DEFINITIONS

I. A. Authorized Interpreter – A certified, professionally qualified or registered language interpreter who is approved by the CIP to work as an independent contractor or as a classified employee, and is listed on an active roster maintained by the CIP and made available according to CIP guidelines.

I. B. Bilingual Staff – An employee of the Colorado Judicial Department other than a classified staff language interpreter who has demonstrated proficiency in English and a second language in accordance with standards set by the CIP and is authorized by the CIP to conduct court operations business directly with limited English proficient persons in a language other than English.

I. C. Classified Staff Language Interpreter – An employee whose employment is governed by the Colorado Judicial System Personnel Rules and whose job classification falls within the Department's classification and compensation plan.

I. D. Court Operations – Offices of the courts, services, and programs managed or conducted by the courts and probation, not including court proceedings, which involve contact with the public or parties in interest.

I. E. Court Proceeding – Any hearing, trial or other appearance before any Colorado state court in an action, appeal, or other proceeding, including any matter conducted by a judicial officer.

I. F. Independent Contract Language Interpreter – An authorized language interpreter who is an independent contractor pursuant to contract or as defined by IRS Revenue ruling 87-41.

I. G. Interpretation – The accurate and complete transfer of an oral message from one language to another in real time.

I. H. Judicial Officer – A justice, judge, magistrate, or water referee authorized to preside over a court proceeding.

I. I. Language Services – The facilitation of access to court services through the assistance of an interpreter, bilingual staff, or by means of translation.

I. J. **Limited English Proficient ("LEP")** – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

I. K. **Party in Interest** – A party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party; and the legal guardian or custodian of an adult party.

I. L. **Professionally Certified Interpreter** – A language interpreter who meets minimum professional competency standards, has achieved a passing score on an oral certification exam for interpreters recognized by the Colorado Judicial Department, and is listed on the active professionally certified interpreter roster maintained by the CIP and posted on the Colorado Judicial website.

I. M. **Professionally Qualified Interpreter** – A language interpreter who has not achieved certification but has met training and minimum oral certification exam score requirements to be considered for court interpreting assignments when a professionally certified interpreter is not available. Professionally qualified interpreters are listed on the active professionally qualified interpreter roster maintained by the CIP.

I. N. **Registered Interpreter –** An authorized language interpreter who is neither professionally certified nor professionally qualified. Certification may or may not be available in this interpreter's language combination(s).

I. O. **Remote Interpreting** – A process in which an interpreter assists in a court proceeding or court operation without being physically present through the use of audiovisual hardware and/or software.

I. P. **Translation** – The accurate and complete transfer of a written message from one language to another that may take place over time.

I. Q. **Victim –** Any person who is a victim of an alleged criminal act; such person's designee, legal guardian, caretaker, or surviving immediate family member if such person is deceased; and the parent, legal guardian, or caretaker if such person is a minor or incapacitated.

II. APPOINTMENT OF LANGUAGE INTERPRETERS

II. A. **Court Proceedings** – Consistent with Title VI of the Civil Rights Act of 1964 ("Title VI"), the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act"), Executive Order 13166, 65 Fed. Reg. 50121 (August 16, 2000), the courts shall assign and pay for language interpretation for all parties in interest during or ancillary to a court proceeding, including:

1. Facilitation of communication outside of the judicial officer's presence in order to allow a court proceeding to continue as scheduled, including pre-trial conferences between defendants and district attorneys in order to relay a plea offer immediately prior to a court appearance or to discuss a continuance;
2. Facilitation of communication between client and state funded counsel appointed pursuant to Chief Justice Directives 04-04 and 04-05;
3. Facilitation of communication with parties in interest in court mandated programs including without limitation family court facilitations and mediations; and

4. Completion of evaluations and investigations ordered by and performed for the purpose of aiding the court in making a determination.

II. B. Non-Parties in Interest - The court may, at its discretion, provide and pay for language interpretation for limited English proficient persons other than parties in interest directly impacted by a court proceeding.

II. C. Court Operations – Court personnel shall provide access to language services for persons with limited English proficiency who seek access to court operations as defined in this directive, through the use of bilingual staff or authorized language interpreters appearing either in person or by way of remote interpreting. Language services shall be consistent with CIP standards that account for the nature, means, importance, and duration of the communication.

II. D. Communications beyond the Scope of Section II.A and II.B. of this Directive – Except as provided in Section II.A, the court shall not arrange, provide or pay for language interpretation during or ancillary to a court proceeding to facilitate communication with attorneys, prosecutors, or other parties related to a case involving LEP individuals for the purpose of gathering background information, investigation, trial preparation, witness interviews, or client representation at a future proceeding; for communications relating to probation treatment services; or for any other communication which is not part of a court proceeding or ancillary thereto as delineated in Section II.A. Prosecutors and parties' attorneys are expected to arrange for language interpretation for case preparation and general communication with parties outside of court proceedings at their own expense, except as provided in CJD 04-04 and 04-05.

II. E. Authorized Interpreters – The court shall only pay for the services of authorized language interpreters that have been assigned by the CIP or designees.

III. ALLOCATION OF STAFF INTERPRETERS

The State Court Administrator's Office shall be responsible for the allocation of classified staff language interpreters to judicial districts in accordance with the CIP's *FTE Allocation Plan Corresponding to Language Interpreters*. Unless approved in advance by the State Court Administrator, effective 7/1/11 all newly hired interpreters in classified positions shall be professionally certified. Additional non-judicial employee contract interpreters may be hired as needed on an independent contract basis utilizing the contract form *Agreement for Independent Contractor - Language Interpreter*.

IV. QUALIFICATIONS OF LANGUAGE INTERPRETERS

IV. A. The court shall not permit any person other than an authorized language interpreter to function as a language interpreter in any court proceeding or operation, regardless of the source by which the interpreter is compensated or the manner by which the interpreter appears.

IV. B. The CIP shall determine which interpreters are professionally certified, professionally qualified, or registered. The CIP shall maintain current rosters of all authorized interpreters including their level of qualification and availability. The CIP shall ensure that current rosters

are readily available to the court and the public. Interpreters shall sign an acknowledgment regarding their obligations under CJD 05-05, the Continuing Education and Professional Practice Policy for Interpreters as a condition of approval.

IV. C. The court shall use its allocated professionally certified classified staff language interpreters when available in the required language for all court proceedings. When certified classified staff is not available, the CIP shall assign authorized independent contract language interpreters either in person or by remote interpreting as follows:

1. Courts where 5 or more professionally certified interpreters in the required language reside within a 25 mile radius of the courthouse shall use professionally certified language interpreters in all proceedings requiring interpretation in that language.
2. All other courts shall use professionally certified interpreters during all class 1 felony proceedings, provided that a professionally certified interpreter in the required language resides or does business in Colorado.
3. In all other proceedings, the court shall use a professionally certified interpreter if one is available, authorized to work in the local jurisdiction, and has not been disqualified according to Section IX of this directive.
4. When a professionally certified interpreter is not available, the court may use an interpreter listed on the roster of active professionally qualified interpreters maintained by the CIP.
5. If no professionally certified or professionally qualified language interpreter is available, the court may use a registered interpreter.

V. ASSIGNMENT OF MORE THAN ONE LANGUAGE INTEPRETER

V. A. Absent exigent circumstances, the court shall assign and pay for two or more interpreters during the following types of proceedings to prevent interpreter fatigue and the concomitant loss of accuracy in interpretation:

1. Proceedings scheduled to last 2 hours or longer.
2. Proceedings with multiple LEP parties in interest requiring interpretation when attorney-client consultation during a hearing is paramount (e.g., witness testimony, motions).
3. Proceedings in which multiple languages are involved.

V. B. The following guidelines and limitations apply to the utilization of more than one interpreter:

1. The use of electronic simultaneous interpreting equipment is encouraged as best practice in all cases, particularly in proceedings exceeding two hours in length with multiple LEP parties in interest. Its use is also encouraged to allow victims and parents or guardians to be present at interpreted proceedings without the need for an additional interpreter.
2. In proceedings with multiple LEP parties in interest requiring interpretation in one language, the interpreter not actively involved in providing simultaneous interpretation may be used to facilitate attorney-client communication when needed.
3. If language interpretation is required for witness testimony in a proceeding with multiple LEP parties in interest, a third interpreter may be provided by the court for that purpose.

4. Interpreters are bound by an oath of confidentiality and impartiality, and serve as officers of the court; therefore, the use of one interpreter by more than one party in interest in a case is permitted.
5. The court is not obligated to appoint a different language interpreter when an interpreter has previously interpreted during a court proceeding for another party in a case.
6. Any party in interest may provide and arrange for interpretation services to facilitate attorney-client communication or otherwise assist the party in interest if interpretation services exceeding those provided by the court are desired.

VI. REMOTE INTERPRETING

VI. A. Remote interpreting, including telephonic and audiovisual interpretation, may be utilized to facilitate access to the courts by persons with limited English proficiency subject to the conditions stated herein.

VI. B. A language interpreter that appears remotely must be authorized and subject to all other standards set forth in this Directive and shall be assigned in accordance with Section IV.C. In the event that an authorized interpreter is not available for a time sensitive, non-evidentiary proceeding expected to last no more than thirty minutes, approved remote interpreter providers may be used to supply an interpreter in accordance with CIP standards.

VI. C. The court may utilize remote interpreting only as authorized by the judicial officer for those categories of proceedings as specified by the CIP.

VI. D. The court shall ensure that the remote interpreting complies with CIP standards, including standards for confidential communication, allows the official, parties, attorneys and witnesses to hear each other and the interpreter clearly, and is able to be clearly recorded.

VII. TRANSLATIONS

The translations of forms commonly used in court proceedings, non-English written statements provided to the court, signage required in courthouses, and any other written communication required in the courts will be completed in accordance with the CIP's Translation Policy.

VIII. PAYMENT OF COURT INTERPRETERS AND TRANSLATORS

The payment of independent contract language interpreters and translators will be in accordance with the Court Interpreter Program Fiscal Policy. No judicial officer or court personnel shall assess costs for services rendered pursuant to this directive to a party in interest nor require reimbursement to the court or the state for such costs from a party in interest.

IX. DISQUALIFICATION OF A LANGUAGE INTERPRETER

IX. A. A judicial official shall disqualify a language interpreter from a proceeding and CIP shall disqualify a language interpreter from interpreting in a court operations assignment whenever the interpreter:

1. Is unable effectively to communicate with court personnel, parties in interest, or other participants, including cases in which the interpreter self-reports such inability;
2. Has a conflict of interest due to a relationship with a person involved in the matter or an interest in the outcome;
3. Is acting in violation of the Code of Professional Responsibility for Court Interpreters; or
4. Is no longer qualified to interpret in the assigned proceeding or court operation as a result of a change in certification, status or qualifications or of action taken pursuant to the Court Interpreter Disciplinary Policy.

IX. B. The judicial official shall promptly notify the CIP whenever a language interpreter is disqualified from a proceeding and explain the reason for the disqualification.

IX. C. Whenever a judicial official or the CIP disqualifies an interpreter, the court shall provide a replacement language interpreter.

X. COMPLAINT PROCESS

Any person aggrieved by an alleged violation of this directive may file a complaint with the local court administrative office who shall forward the complaint to the Court Interpreter Program Administrator (CIPA) for investigation. The CIPA shall inform the corresponding District Administrator and Managing Interpreter of the complaint. The CIPA shall conclude the investigation and render a decision within 30 days of the filing of the complaint. Nothing herein shall be construed to bar a judicial officer from enforcing the directive during a proceeding or in any subsequent review of the proceeding in which a violation has occurred. The local Managing Interpreter shall make complaint forms available in all courthouses.

XI. ROLES AND RESPONSIBILITIES FOR ENSURING ACCESS

XI. A. All Judicial Officers shall ensure that the requirements of this Directive are enforced in any proceeding.

XI. B. The State Court Administrator or designee shall, consistent with state rules and the further direction of the Chief Justice, establish and manage uniform state requirements as to language data that court personnel should gather from parties in interest and court staff when cases are filed, and as to affording notice to all parties in interest as to the availability of language services.

XI. C. The District Administrator or designee shall, consistent with state requirements, manage the provision of language access to the courts by LEP individuals in a district, gather language needs information from parties in interest and court personnel according

to CIP standards, schedule and coordinate language interpreter services for all court proceedings, and facilitate language access to all other court operations.

XI. D. **The Chief Probation Officer** or designee shall manage the provision of language access to probation services by LEP individuals in each judicial district.

XI. E. **The CIPA** shall make available to the court, court staff, interpreters and the public the policies and procedures related to the provision of language access in the Colorado state courts. These policies and procedures include, but are not limited to, those related to language access plans, translations, remote interpreting, and the interpretation of sound files in a court proceeding.

XI. F. **To facilitate the use of the most qualified language interpreter** available, the CIPA shall oversee the training and testing of language interpreters and post rosters on the Colorado CIP website of active status authorized interpreters.

XI. G. **To assist all judicial districts** in their task of providing access to the courts and probation services by LEP individuals, the CIPA shall post on the Colorado Judicial Department's official website professional translations of forms frequently used by the courts and probation as they become available.

XI. H. **To facilitate access to the courts and probation services** by LEP individuals, the local managing interpreter shall, consistent with state policy, ensure that signs are posted regarding availability of interpreter services in English and those languages most commonly requiring interpretation and that all LEP individuals are afforded notice of the availability of interpreter services when a case is commenced, or otherwise reasonably in advance of any appearance or pleading deadline.

Amended effective July 1, 2011, and signed this 28th day of June, 2011.

/s/
Michael L. Bender, Chief Justice

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MAR 0 8 2012

BY EMAIL AND CERTIFIED MAIL

Honorable John W. Smith
Director
North Carolina Administrative Office of the Courts
P.O. Box 2448
Raleigh, NC 27602

Re: Investigation of the North Carolina Administrative Office of the Courts
Complaint No. 171-54M-8

Dear Judge Smith:

We write to report the findings of the Civil Rights Division's investigation of the North Carolina Administrative Office of the Courts (AOC), an office within the North Carolina Judicial Department. As the enclosed findings report explains, we have determined after a comprehensive investigation that the AOC's policies and practices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations.

The AOC's policies and practices have significant consequences for LEP individuals who are parties or witnesses to North Carolina state court proceedings. Among the harms we identified in the course of our investigation are longer incarceration as a result of continuances caused by the failure to locate an interpreter; serious conflicts of interest caused by allowing state prosecutors to interpret for defendants in criminal proceedings; requiring pro se and indigent litigants to proceed with domestic violence, child custody, housing eviction, wage dispute, and other important proceedings without an interpreter; and other barriers to accessing court proceedings and other court operations. These harms are the function of not only a state interpreter policy that is unduly restrictive, but also of the failure to implement even this limited policy according to its terms. We further found that the AOC is aware of the harm caused by its court policies and practices on LEP individuals.

The Civil Rights Division conducted this investigation after receiving complaints alleging national origin discrimination in the North Carolina state courts. We investigated those complaints pursuant to our authority under Title VI of the Civil Rights Act of 1964 (Title VI), 42

U.S.C. §§ 2000d to 2000d-7, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 42 U.S.C. § 3789d(c), and their implementing regulations at 28 C.F.R. Part 42, Subparts C & D. Together, these statutes and regulations prohibit discrimination on the basis of race, color, national origin, sex, and religion by recipients of federal financial assistance. Such recipients must take reasonable steps to provide LEP individuals with meaningful access to their programs and activities. We notified the AOC of this investigation through several notice letters; requested and reviewed documentation regarding the AOC's practices and policies; and met with AOC staff and leadership on several occasions to discuss your policies and the requirements of federal law. We appreciate your cooperation with this investigation.

The AOC is subject to Title VI and the Safe Streets Act because it has accepted millions of dollars from the United States Department of Justice (DOJ) for its programs and activities, both as a direct recipient of DOJ grants, and as a recipient of subgrants made using DOJ funds provided to other North Carolina state recipients. The AOC also signed a contract for each grant of federal funds from DOJ, expressly agreeing that it would comply with Title VI, the Safe Streets Act, and their regulatory requirements.

The attached findings report explains in detail the nature of our investigation and the basis for our conclusion that the AOC has failed and refused to provide meaningful access for LEP individuals to the North Carolina state court system, and that this failure violates Title VI, its implementing regulations, and the related contractual agreements. The United States is deferring a formal determination of noncompliance with the Safe Streets Act and its regulations at this time to provide you an opportunity to voluntarily cooperate in resolving this matter so that your federal funding from DOJ is not immediately at risk. A formal determination of a Safe Streets Act violation initiates immediate administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ.

We would like to begin immediate negotiations to remedy the AOC's violations of federal law. We recognize that full compliance may take time, and for this reason a critical starting point for coming into compliance will be the AOC's commitment to a reasonable process for ensuring meaningful access to the court system for LEP individuals, through a comprehensive and enforceable agreement that involves the creation of a language access policy, implementation of that policy through a written plan, and effective oversight.

Adequate funding is a vital aspect of compliance, and we recognize that many state and local court systems around the country are struggling with budgetary constraints. The costs of services and the resources available to the court system are part of the determination of what language assistance is reasonably required in order to provide meaningful access. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,460 (June 18, 2002). However, fiscal pressures are not a blanket exemption from civil rights requirements, and our investigation has determined that financial constraints do not preclude the AOC from taking further reasonable steps to comply with its federal non-discrimination obligations, for several reasons.

First, according to the AOC's Senior Deputy Director, the AOC has estimated the cost of expanding interpreter services to be approximately $1.4 million per year. A review of certified

budgets revealed that $1.4 million would have been 0.3% of the AOC's fiscal year 2011 certified budget of $463.8 million. *See* State of N.C., Office of State Budget and Mgmt., Post-Legis. Budget Summary 2009-2011, at 200 (2010). Second, as described in the attached findings report, our investigation found that the AOC has refused to provide interpreter services even when doing so would not involve *any* additional financial expenditure. Finally, any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of *non*-compliance with the AOC's obligation to take reasonable steps to ensure access to court operations for LEP individuals. It costs money and time to handle appeals and reversals based on the failure to ensure proper interpretation and effective communication. Similarly, delays in providing interpreters often result in multiple continuances, which needlessly waste the time and resources of court staff. And ineffective communication deprives judges and juries of the ability to make reliable decisions; renders victims, witnesses, and defendants effectively absent from proceedings that affect their rights; and causes other significant costs in terms of public safety, child welfare, and confidence in the judicial system.

Moreover, as we have discussed in the past, there are resources available to the AOC to improve access to court proceedings for LEP individuals. The Civil Rights Division has prepared and shared with you a table of federal funding resources that may be available to state court systems to provide language services to LEP individuals. The Division also provides technical assistance on the development of effective language access policies and the use of cost-saving practices, such as remote interpretation, and we have worked cooperatively with many other states to help implement these best practices. The AOC could also make more efficient use of infrastructures already in place in the North Carolina state court system, including broader use of staff interpreters and an already existing telephonic interpreter contract. Court systems in other states – including Colorado, Georgia, Maine, New York, and Pennsylvania – have taken advantage of these and other resources to provide greater access to their court operations for LEP individuals, despite facing similar financial constraints. Communication lies at the heart of the justice system, and language services must be considered part of the cost of doing business; a cost that can pale in comparison to the costs associated with appeals, reversals, delays, deprivations of liberty, and hazards to public safety, all of which are caused by the failure to ensure accurate and timely communication.

I am in receipt of your March 6 letter, in which you acknowledged your sensitivity to the need for interpreters in providing access to North Carolina courts. I also appreciate your willingness to work in good faith to resolve these issues. I respectfully disagree with your observation that "there appears to be a misunderstanding or failure of communication between the Judicial Branch of North Carolina and [our] office." In responding to our concerns regarding compliance with federal civil rights law, you have been consistent in asserting that state-law barriers and financial constraints prevent you from expanding interpreter services. We respectfully disagree with your assessment that a state law supersedes and eliminates your civil rights obligations under federal law as a recipient of federal financial assistance. We are quite willing to explain further our legal position that federal law preempts the state-law provisions that you have cited as a barrier to compliance.

Time is of the essence, and we would like to initiate a process at the earliest opportunity to determine whether a voluntary comprehensive resolution is feasible. As a result, we would appreciate if you would notify us by March 29, 2012, if you are interested in voluntarily

remedying the violations of federal law that our investigation identified. If the AOC is not interested in voluntary compliance, or if we determine that efforts to achieve compliance by voluntary means are unsuccessful, the United States will take appropriate enforcement action as authorized by Title VI and the Safe Streets Act. The United States may initiate civil litigation pursuant to Title VI, the related contractual agreements, and the pattern-or-practice provisions of the Safe Streets Act, which authorize both injunctive relief and the termination of federal financial assistance. In addition, the United States may initiate administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ by making a formal determination of a Safe Streets Act violation or by making a determination, under Title VI, that compliance cannot be secured by voluntary means. As we have noted, we would prefer to avoid both litigation and the termination of federal financial assistance, and therefore continue to prefer that we enter into a settlement agreement that will voluntarily secure the AOC's compliance with federal law. We have worked successfully and collaboratively with other state court systems to address these issues, and hope to do so here as well.

In addition, we are aware that the AOC receives federal financial assistance from federal agencies other than DOJ, including the United States Department of Health and Human Services. Each federal agency is responsible for enforcing Title VI as to the financial assistance it distributes. We are accordingly providing a copy of this notice letter and findings report to the HHS Office of Civil Rights for any further action that office may consider appropriate. *See* 28 C.F.R. §§ 42.412, 50.3; Executive Order 12250, § 1-201, 45 Fed. Reg. 72,995 (Nov. 4, 1980).

Please note that this letter is a public document and will be posted on the Civil Rights Division's website. We look forward to working with you to resolve this matter. If you have any questions, please contact Deeana Jang, Chief of the Federal Coordination and Compliance Section, at (202) 307-2222.

Sincerely,

Thomas E. Perez
Assistant Attorney General

cc: Honorable Sarah Parker
Chief Justice
North Carolina Supreme Court
Pamela Weaver Best
Deputy Legal Counsel
Administrative Office of the Courts

Enclosure

REPORT OF FINDINGS

Complaint No. 171-54M-8

The Civil Rights Division of the U.S. Department of Justice (DOJ) has conducted an investigation of allegations of national origin discrimination by the North Carolina Administrative Office of the Courts (AOC), an office within the North Carolina Judicial Department. Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, the Omnibus Crime Control and Safe Streets Act (Safe Streets Act), 42 U.S.C. § 3789d(c), and their implementing regulations, 28 C.F.R. Part 42, Subparts C & D, together provide that programs or activities receiving federal financial assistance may not discriminate on the basis of race, color, national origin, religion, or sex. In order to comply with Title VI, the Safe Streets Act, and their implementing regulations, recipients of federal financial assistance must provide meaningful access to limited English proficient (LEP) individuals. The AOC is a recipient of federal financial assistance from DOJ.

This report describes our investigation of the AOC's language services policies, procedures, and practices; summarizes relevant federal law; and outlines our factual findings in order to provide notice of the categories of violations. As described more fully below, our investigation establishes that the AOC discriminates against national origin minorities by failing to provide meaningful access for LEP individuals to the North Carolina state court system. More specifically, we found that the AOC's policies, practices, and procedures fail to provide Latino and other national origin minority LEP individuals with meaningful access to court proceedings and operations. We have concluded that these practices violate Title VI, its implementing regulations, and related contractual agreements. The United States will defer a formal determination of noncompliance with the Safe Streets Act and its implementing regulations at this time, to provide the AOC with an opportunity to cooperate in resolving this matter so that federal funding from DOJ is not immediately at risk.[1]

I. Summary of Findings

The AOC's language access policies, procedures, and practices affect a large segment of the population of North Carolina. Approximately 10% of North Carolina's residents speak a language other than English.[2] Over six hundred thousand people five years old and older in North Carolina speak Spanish, and more than half of these Spanish-speakers (308,429) speak English less than very well and are considered LEP.[3] Among other national origin minority groups in North Carolina with high incidence of limited English proficiency, 61% of the 19,945

[1] Unlike Title VI, the Safe Streets Act's processes for suspending, terminating, and seeking repayment of federal funds are automatically triggered once a formal determination of noncompliance is made. *See* 42 U.S.C. § 3789d(c)(2); 28 C.F.R. §§ 42.208, 42.210, 42.212, 42.213. In the interest of giving the AOC an opportunity to comply with its nondiscrimination obligations voluntarily before the process of fund termination begins, we are deferring this final determination.

[2] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Table S1601; using American Factfinder, http://factfinder.census.gov.

[3] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Table B16001; using American Factfinder, http://factfinder.census.gov.

Vietnamese speakers, 46% of the 25,412 speakers of Chinese languages (such as Mandarin and Cantonese), and 33% of the 15,061 Arabic speakers report speaking English less than very well.[4]

The AOC's policies and practices violate the nondiscrimination provisions of Title VI and its implementing regulations, as well as the contractual obligations that the AOC agreed to as a condition of receiving grant awards from DOJ. National origin minority LEP individuals have difficulty participating in proceedings, face barriers to court services and programs, and incur delays, costs, and other disadvantages because of their language ability. We found:

A. The AOC impermissibly restricts the types of proceedings in which the AOC will provide interpreters.[5] For instance, AOC policy does not provide interpreters in child custody hearings; child support hearings, civil no-contact order 50C proceedings, foreclosures, and divorce proceedings; in all small claims court matters, which can include wage disputes and eviction proceedings; to non-indigent defendants[6] for criminal and traffic matters, non-indigent respondents in domestic violence 50B proceedings and involuntary commitment proceedings, and non-indigent parents in juvenile proceedings; and in post-judgment services centers where a defendant's sentence is coordinated and monitored.

B. The AOC does not ensure that even the limited requirements of current AOC policy are met across the state.

C. AOC policy and practices result in numerous types of court proceedings moving forward without any language assistance for LEP individuals who therefore are unable to meaningfully participate in their case, causing harmful delays and outcomes.

D. The AOC does not adequately notify LEP individuals of their right to an interpreter, ensure effective scheduling of interpreters, or translate all vital documents.

E. Budget constraints do not excuse the AOC's failure to provide LEP individuals with meaningful access to court operations in this case.

F. Despite knowledge of the adverse impact of its policy on LEP individuals, the AOC has not remedied these harms.

The evidence uncovered during our investigation supports the legal finding that the AOC's denial of meaningful access to LEP individuals constitutes discrimination on the basis of national origin in violation of Title VI and the Title VI implementing regulations, and is also a breach of the AOC's contractual agreement to comply with these obligations.

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[4] *Id.*

[5] For purposes of this letter, "provide" or "providing" an interpreter means appointing an interpreter free of charge to an LEP individual.

[6] North Carolina defines an indigent person as someone "who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding[.]" N.C. Gen. Stat. § 7A-450(a). Judges have wide discretion in determining indigency. Factors for such a determination can include the severity of the crime, the cost of retainer for representation, the moving party's assets and liabilities, among others. We received reports in the course of our investigation that this standard is inconsistently applied.

II. Legal Discussion

A. Title VI, Safe Streets Act, and their Implementing Regulations

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The Safe Streets Act similarly prohibits discrimination on the basis of race, color, and national origin, as well as sex and religion, by recipients of federal financial assistance. 42 U.S.C. § 3789d(c). As implemented by DOJ regulations, these prohibitions include intentional discrimination as well as practices that have a discriminatory effect on the basis of protected grounds. *See* 28 C.F.R. §§ 42.104, 42.203.

The Supreme Court decided nearly four decades ago that the prohibition on national origin discrimination in Title VI and its implementing regulations can be violated by the denial of federally-funded program benefits on the basis of English proficiency. *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) ("It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" Title VI regulations.). Other courts have likewise held that the failure by a recipient to provide meaningful access to LEP persons can violate Title VI's prohibition of national origin discrimination. *See, e.g., Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), *rev'd on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI); *Nat'l Multi Hous. Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008) ("Longstanding Justice Department regulations also expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance." (citing 28 C.F.R. § 42.405(d)); *cf. Ling v. State*, 702 S.E. 2d 881,884 (Ga. 2010) ("[A]s a recipient of federal funding, the court system in this State is obligated to provide persons who are 'limited English proficient' with meaningful access to the courts in order to comply with Title VI . . . [and the] Safe Streets Act . . . .").

DOJ guidance documents have also made clear that Title VI and the Safe Streets Act require meaningful access by LEP persons in all programs and activities that receive federal financial assistance from DOJ, including state court operations. Executive Order 13166 required each federal agency that extends financial assistance to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to federally assisted programs and activities. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). The DOJ guidance issued pursuant to this requirement states that recipients of financial assistance from DOJ should undertake "every effort . . . to ensure competent interpretation for LEP individuals during all hearings, trials, and motions." *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,471 (June 18, 2002) (DOJ Guidance). And, the Assistant Attorney General for the Civil Rights Division issued a guidance letter in August 2010 to all Chief Justices and State Court Administrators describing the obligation of state courts under Title VI to provide LEP

individuals with meaningful access to court proceedings, notwithstanding any conflicting state or local laws or court rules. *See* Letter from Assistant Attorney General Thomas Perez to Chief Justices and State Court Administrators 2 (Aug. 16, 2010).

DOJ is authorized to investigate complaints to determine a recipient's compliance with Title VI, the Safe Streets Act, and their implementing regulations; to issue findings; and where appropriate, to negotiate and secure voluntary compliance. *See* 28 C.F.R. Part 42, Subparts C & D. When DOJ is unable to secure voluntary compliance by a recipient, DOJ has the authority to suspend or terminate financial assistance or to bring a civil suit to enforce the rights of the United States. *See* 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108. A formal determination of a Safe Streets Act violation automatically initiates administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ, and the United States may file a pattern or practice suit under the Safe Streets Act at any time. *See* 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.208, 42.210, 42.212, 42.213, 42.215.

B. Contractual Obligations

Federal grant recipients are bound to comply with the nondiscrimination requirements of Title VI and the Safe Streets Act not only by statute, but also by contract. The Title VI regulations require that every application for federal financial assistance "shall, as a condition to its approval . . . , contain or be accompanied by an assurance that the program will be conducted . . . in compliance with all requirements imposed by or pursuant to this subpart." 28 C.F.R. § 42.105(a)(1); *see also* 28 C.F.R. 42.204(a) (Safe Streets Act) ("Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements . . . ."). DOJ has the authority to enforce the contractual obligations attendant to receipt of its federal financial assistance. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 603 n.24 (1983) (noting that "the Federal Government can always sue any recipient who fails to comply with the terms of the grant agreement" under Title VI) (opinion of White, J.).

Since 2000, the AOC has received at least $19 million dollars in awards from DOJ alone.[7] Each application for federal financial assistance was accompanied by a contractual assurance that the program would be conducted in compliance with all of the requirements set forth in Title VI, the Safe Streets Act, and their implementing regulations. For example, as a recipient of several grants from the Office of Justice Programs and Office on Violence Against Women, the AOC assured DOJ that it will comply with Title VI and the Safe Streets Act. In connection with several current grant awards, the AOC was further notified of its obligation to

[7] This number is a low estimate of funding that the North Carolina Judicial Department has received from DOJ, in that this figure does not include all awards in which the AOC was a subgrantee; all awards in which the AOC Director signed the award assurance but another entity, such as a specific judicial district, actually applied for the award; or awards provided to other entities within the Judicial Department. Including these awards would increase the total amount of federal financial assistance the AOC receives. The AOC also receives funding from other federal agencies, including from the United States Department of Health and Human Services. In 2008, the AOC received $68 million in American Recovery and Reinvestment Act (ARRA) funds from various federal sources.

comply with civil rights requirements as set forth in a letter from the Office for Civil Rights in DOJ's Office of Justice Programs, which specifically identifies the Title VI obligation to provide meaningful access to LEP individuals. In addition, a recent grant from DOJ's Bureau of Justice Assistance to the AOC was approved subject to the AOC's certification that "Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary."

In addition, we have identified funds awarded to the North Carolina Department of Crime Control and Public Safety (NCDCCPS), such as STOP formula grants from DOJ's Office on Violence Against Women, that require NCDCCPS to provide at least five percent to the courts. Other awards, such as a Victim Assistance Formula Grant, were also awarded to NCDCCPS and sub-awarded to programs or activities of the North Carolina Judicial Department. As a sub-recipient of awards to NCDCCPS, the AOC is bound by the non-discrimination assurance agreements that the NCDCCPS signed as a condition of receiving its grants. 28 C.F.R. §§ 42.102(f), 42.105(b), 42.202(n), 42.204(a).

III. Investigative Background

The AOC is the state's administrative agency for the Judicial Department. The AOC assists courts statewide by providing personnel, financial, and information services. In 2006, the General Assembly authorized the AOC to prescribe mandatory policies to be uniformly implemented for appointing and paying for foreign language interpreters. In February 2007, the AOC published a guidance document to comply with the legislature's authorization. *See Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System* (February 2007).[8]

In April 2007, the Civil Rights Division initiated a Title VI investigation of the AOC based on a complaint alleging the AOC failed to provide LEP individuals with meaningful access to their programs and activities and treated Hispanics unequally as a result of the AOC's mandatory policies. The complainant specifically alleged that the AOC utilized an interpreter who provided incomplete and unprofessional interpretations, and who referred to Hispanic individuals in a derogatory manner on a white supremacist website. The interpreter resigned. The complainant also alleged that the AOC does not provide interpreters for LEP Spanish speakers facing eviction. The AOC provided a response to our request for data in September 2007 and we conducted an onsite visit in February 2008. This onsite visit included meetings with AOC officials, Alamance and Wake County judges, court staff, interpreters, advocates, and practitioners. We also observed proceedings in Alamance and Wake County courts.

During our meeting with AOC officials, and in a series of follow-up telephonic and e-mail communications, we explained that the AOC's denial of language access in many court

[8] This document is available online at www.nccourts.org/citizens/cprograms/foreign/documents/guidelines.pdf.

proceedings and operations raised significant Title VI compliance concerns. Since the 2007 complaint, the AOC has made some advancements in ensuring certification of more Spanish language contract interpreters and setting deadlines for non-certified Spanish interpreters to become certified or risk being unable to interpret in the courts.[9] As described further in this findings report, these efforts alone are not sufficient for the AOC to meet its non-discrimination obligations; but the Division undertook to secure the AOC's voluntary compliance by providing guidance and offering technical assistance.

A second complaint was filed with the Division on May 16, 2011, alleging that the North Carolina Judicial Branch, through the AOC, fails to provide LEP individuals with meaningful access to the courts, including intentional refusal to provide free interpreters to LEP individuals litigating or attempting to litigate civil claims. On June 22, 2011, we notified the AOC that we would expand our investigation to include this complaint and to review the AOC's compliance with Title VI and the Safe Streets Act. This letter also included a request for documents and responses to a number of questions.[10] Since that time, our investigation has included three onsite visits and more than 80 interviews. During these visits, we have spoken with the AOC Director, senior AOC staff, judges, court staff, contract and staff interpreters, complainants, practitioners, advocates, and litigants. AOC counsel was present for the majority of interviews conducted with court officials and staff. We also visited courthouses and observed proceedings in central, eastern, and western North Carolina.

IV. Factual Findings

As described in more detail below, the AOC's language access policy establishes that the AOC will only provide an LEP individual with a free interpreter in a limited subset of court proceedings. The AOC admits that it does not authorize courts to provide interpreters free of charge in many types of proceedings in the North Carolina state courts. We also found that the AOC routinely fails to meet its own standards even in the limited circumstances where free interpreters are authorized.

Our investigation has concluded that because of these policies and practices, the AOC – through the AOC staff, local court staff, contract interpreters, and judges[11] – is conducting court

[9] Our understanding is that there are no North Carolina state certified interpreters in any other language.

[10] The AOC sent us a response to our request for information; however, we found several of the responses to be incomplete. In particular, the AOC did not respond to our questions regarding policy, procedure, or practice differences among the various local courts. The AOC provided the number of non-Spanish interpreter assignments as requested but did not provide similar data regarding the number of Spanish-speaking individuals who requested language services, although we understand that staff and contract interpreters report this information to the AOC.

[11] The AOC has asserted that it has limited influence over judges because judges are independently elected constitutional officers. However, AOC has stated that per the General Assembly, the AOC's policies are mandatory and are to be applied uniformly throughout the state: "During the 2006 legislative session, the General Assembly authorized the Administrative Office of the Courts (AOC) to adopt mandatory policies and procedures for the appointment and payment of foreign language interpreters (G.S. 7A-314(f) and G.S. 7A-343(9c)). These policies and procedures are to be applied uniformly throughout the General Court of Justice." *Policies and Best Practices* 3. In addition, several judges told us in the course of our investigation that they consider AOC policies to be mandatory. For example, a Superior Court Judge stated that he considers the AOC "to be one of his bosses," and a District Court Judge told us that she and other judges follow the AOC language access policy and other policies and

proceedings and other court operations in a manner that results in an impermissible discriminatory impact on national origin minorities, and that fails to provide LEP individuals meaningful access to the courts. This failure to ensure meaningful access has resulted in severe consequences, including needlessly prolonging the amount of time one is incarcerated, and loss of custody rights, wages, and access to one's home. The AOC is aware that the limitations it places on language assistance services cause harm to national origin minorities and are inconsistent with DOJ's interpretation and guidance regarding Title VI and the implementing regulations.

A. The AOC impermissibly restricts the types of proceedings in which the AOC will provide an interpreter to an LEP individual.

We found that AOC policy and practice limits the types of proceedings in which it provides interpreters. The AOC's policy only provides interpreters in the following, limited circumstances:

- for state witnesses, victims, indigent defendants, or indigent defendants' witnesses for criminal and traffic matters;
- for all petitioners and indigent respondents in domestic violence 50B proceedings;[12]
- for parents ordered to child custody mediation; indigent respondents in involuntary commitment proceedings; and juveniles and indigent parents for juvenile proceedings.[13]

Although North Carolina law and the AOC guidance state that the AOC will provide interpreters in all instances where the state bears the cost of representation, *see* N.C. Gen. Stat. § 7A-314(f) (2011); *Policies and Best Practices* § 7.2, there are a number of instances in which the state bears the cost of representation but the AOC does not affirmatively state that it will provide an interpreter.[14] In addition, there are many types of cases in which it is the AOC's policy *not* to provide an interpreter, including:

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consequently spend a great deal of time trying to understand them. *See also Lopez-Solano v. Taylor*, No. 09-CVS-6903, Order Denying Plaintiffs' Motion to Appoint Translator (Superior Court for Gaston County, Jan. 21, 2011) (in denying plaintiffs' motion to appoint an interpreter, the court found that "Plaintiffs are indigent and Spanish is their native language," but held that the AOC's guidelines "prohibit the Court from providing foreign language interpreters at state expense in civil cases where the parties are required to bear their own costs of representation").

[12] A "50B proceeding" refers to a proceeding under Chapter 50B of the North Carolina General Statutes, which provides for civil remedies, including protective orders, in domestic violence matters. In a 50B proceeding, the court determines if a domestic violence protective order should be granted when there is a special relationship between the parties.

[13] The AOC policy also states that courts have the power to recoup interpreter fees from indigent defendants. *See Policies and Best Practices* § 7.4 (Assigning the Interpreter's Fee as Costs).

[14] These cases include certain proceedings to terminate parental rights pursuant to N.C. Gen. Stat. §§ 7B-1100 to 7B-1114 (2011), abuse cases involving incompetent indigent adults, and proceedings involving consent for an abortion on an unemancipated minor pursuant to N.C. Gen. Stat. §§ 90-21.6 to 21.10.

- Child custody hearings that are not mediations;[15]
- Child support hearings;
- Civil no-contact order 50C proceedings;[16]
- Non-indigent defendants for criminal and traffic matters;
- Non-indigent respondents in domestic violence 50B proceedings;
- Foreclosure proceedings;
- Divorce proceedings;
- All small claims court matters, which include wage disputes, eviction proceedings, and other proceedings where the claim is $5,000 or less;
- Non-indigent respondents in involuntary commitment proceedings;
- Non-indigent parents in juvenile proceedings; and
- Post-judgment services centers where a defendant's sentence is coordinated and monitored.[17]

In its September 2011 data response to DOJ, the AOC stated that it "acknowledges that interpreters are not provided at state expense in certain case types including civil cases and where the party is represented by private counsel."[18]

In the course of our investigation, the AOC frequently stated its position that North Carolina state law directs interpreter coverage and limits its ability to expand its policy. The AOC interprets North Carolina General Statutes § 7A-314(f) to prohibit the provision of interpreters for any proceeding unless explicitly authorized. However, on its face, § 7A-314(f) does not expressly prohibit the appointment and payment of interpreters for all civil and criminal proceedings; the statute simply authorizes the AOC to provide interpreters for certain types of proceedings and is silent on whether other proceedings can be covered.[19]

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[15] As noted above, it is the AOC's policy to provide an interpreter in child custody mediation. But if mediation fails and the parties must pursue the matter before a judge, the parties must do so *without* an AOC provided interpreter. We pointed out this inconsistency during our meeting with AOC staff on September 21, 2011, and the AOC's Senior Deputy Director agreed that this particular policy was inconsistent.

[16] In a proceeding under Chapter 50C of the North Carolina General Statutes, the court determines if a no-contact order should be granted. For a no-contact order to be granted, the individual must show that there is non-consensual sexual conduct or stalking from someone with whom they do not have an intimate or familial relationship.

[17] Some post-judgment programs and activities are coordinated by other North Carolina state agencies and are not subject to this investigation. However, if those programs receive federal financial assistance, they are subject to the same Title VI obligations.

[18] This statement reflects the AOC's inconsistent interpretation of its own policy regarding the provision of interpreters to indigent defendants represented by private counsel. AOC policy provides that a defendant who is represented by private counsel but can demonstrate indigency is entitled to an interpreter. *See Policies and Best Practices* § 7.2, at 22 (citing *State v. Boyd*, 332 N.C. 101, 107-09 (1992)). However, as discussed below, court staff and judges do not consistently allow criminal defendants represented by private counsel to obtain an interpreter by demonstrating indigency.

[19] *See* N.C. Gen. Stat. § 7A-314(f) ("In any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable from funds appropriated to the Administrative Office of the Courts. In order to

More importantly, and as the AOC has acknowledged in a similar context, it is a well-established doctrine that regulations under federal laws such as Title VI preempt any inconsistent state law obligations. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 295-96 (1979) (agency regulations implementing federal statutes preempt state law under the Supremacy Clause); *Paul v. United States*, 371 U.S. 245, 253-55 (1963) (state must adhere to federal regulation when there is a conflict); *Free v. Bland*, 369 U.S. 663, 666 (1962) ("[A]ny state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law, must yield.").

Indeed, the AOC has followed precisely this principle in reconciling the application of state law regarding sign language interpretation with the federal requirements under Title II of the Americans with Disabilities Act. In the "Legal Requirements" section of the AOC's interpreter use manuals for public defenders and assistant district attorneys, the AOC specifically notes that, although North Carolina state law regarding sign language interpreters provides for less coverage than Title II of the Americans with Disabilities Act, the ADA's greater obligations must be met. *See, e.g., District Attorneys' Use of Court Interpreters in the N.C. Court System*, North Carolina Admin. Office of the Courts, at 8-9 (April 2011). The manuals emphasize that "[t]he Judicial Branch bears the cost for the accommodation for the deaf or hard of hearing person **regardless** of whether the proceeding is civil or criminal, and **regardless** of whether the person is indigent." *Id*. at 9. Though the AOC claims that it cannot provide LEP individuals with interpreters for matters beyond those specifically identified in § 7A-314(f), the AOC does not hold such a limited interpretation when it comes to providing sign language interpreters for individuals who are deaf or hard of hearing.

B. The AOC does not ensure that even the limited requirements of current AOC policy are met across the state.

Even in circumstances clearly covered by the AOC's limited language access policy, North Carolina state courts are not consistently providing language services. Although the AOC's interpreter policy is mandatory, we found many inconsistencies among the judicial districts. We found instances of interpreters not being appointed in a timely manner; use of friends, family members, advocates, and other individuals to interpret even though their competency is not assessed;[20] and indigent defendants denied the opportunity to demonstrate

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facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c).").

[20] It is critically important to ensure that interpreters are competent and not merely bilingual. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The DOJ Guidance emphasizes the importance of interpreter competency and states: "Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English." DOJ Guidance, 67 Fed. Reg. at 41,461. The AOC guidance acknowledges that interpreter competency is vital and that "simply being bilingual is not enough." The North Carolina Court System, http://www.nccourts.org/Citizens/CPrograms/Foreign/Interpreters/Certification/Default.asp (Nov. 8, 2011). In fact, the AOC's district attorney guidance states: "Using a properly trained court interpreter

their indigency so that an interpreter could be provided by the court. Specific examples of these problems include:

1. We have spoken with a defense attorney whose indigent client remained in jail for several weeks as a result of continuances caused by failure to locate a Spanish-speaking interpreter. Court documents show that some of these continuances were granted because an interpreter could not be located. According to defense counsel and the victim's counsel, the judge in this consolidated domestic violence and criminal matter asked the victim's advocate to interpret, but defense counsel and the victim's advocate objected because of the conflict of interest. We informed AOC counsel about the defendant's prolonged period of confinement due to the lack of an interpreter. Our office received a response from AOC counsel on this time sensitive matter approximately a week after our initial contact, and an interpreter was eventually appointed.[21]

2. Several criminal defense attorneys reported that assistant district attorneys have interpreted for LEP defendants, which raises serious conflict of interest concerns. One attorney stated that she has seen an assistant district attorney in eastern North Carolina approach multiple LEP defendants and, in seeking to ascertain a plea, ask "leave, yes?"[22] Based on the response to this question, the assistant district attorney has interpreted for defendants in court and has advised judges that the defendants were pleading guilty. A Wake County court staff member also stated that he has seen assistant district attorneys in Wake County interpret for defendants; a practitioner in Durham County stated that it happens there as well.

3. AOC staff, court officials, a judge, defense attorneys, and others reported that many magistrates throughout the state are not providing interpreters for LEP defendants although the AOC has indicated that a telephonic interpretation service is made available to the magistrates.[23] Failure to provide interpretation to LEP defendants can cause significant harm given the wide range of proceedings over which a magistrate presides. In North Carolina, magistrates in criminal cases issue warrants, set bail, and accept guilty pleas for minor misdemeanors and traffic violations. In some counties, they preside over worthless-check proceedings. Judicial districts appear not to have consistent practices for providing language services in matters overseen by a magistrate, although we have found that family and friends are often used to

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ensures full and fair participation and improves access to justice for linguistic minorities in our courts. The court interpreter's purpose is to place the LEP party in a situation equivalent to that of an English-speaking party. Accordingly, the interpreter should interpret for the LEP party everything the party would hear if he or she was an English speaker." *District Attorneys' Use of Court Interpreters*, at 1.

[21] *See also* Bertrand M. Gutierrez, *Complaint says N.C. Courts Run Afoul of Civil-Rights Laws*, Winston-Salem J. (May 25, 2011), available at http://www2.journalnow.com/news/2011/may/25/wsmain01-complaint-says-nc-courts-run-afoul-of-civ-ar-1062273/.

[22] It is our understanding that in asking "leave, yes?," the assistant district attorney is seeking a guilty plea so that deportation proceedings can begin for a defendant not legally present in the United States.

[23] We acknowledge the AOC's efforts in providing language access through telephonic interpreting. In its September 2011 data response, the AOC states that "Magistrates' offices utilize a telephone interpreting service, which provides 24 hour access to interpreters for more than 150 languages."

interpret. The elected clerk in Duplin County informed us that magistrates may allow minors or jail inmates to interpret for LEP litigants in Duplin County.

4. According to criminal defense attorneys practicing in Wake County, indigent LEP defendants are routinely denied interpreters. For example, a practitioner who regularly appears in Wake County indicated that his clients have been denied AOC interpreters because the court refuses to allow requests for an indigency determination, although AOC policy provides for interpreters for indigent defendants with retained counsel. Other practitioners have indicated that certain Wake County courtrooms regularly impose such barriers to seeking an indigency determination.

5. It appears to be regular practice in Beaufort County court to proceed with domestic violence 50B hearings without an AOC certified or registered interpreter for either party. A Deputy Clerk in Beaufort County stated that she works with the local Legal Aid office to provide domestic violence petitioners with bilingual advocates in lieu of AOC certified or registered interpreters. The elected clerk in Duplin County, who the AOC lists as the Duplin County interpreter coordinator, stated that domestic violence petitioners are not provided with interpreters in Duplin because that would violate AOC policy. In addition, a victim's advocate reports that LEP litigants in Lenoir County court are not always provided with an AOC interpreter during domestic violence 50B proceedings. These litigants used friends, family members, advocates, and other individuals to interpret during court proceedings.

These examples demonstrate major gaps in access to competent interpreters, even when AOC policy provides for them.

C. AOC policy and practices result in numerous types of court proceedings moving forward without any language assistance for LEP individuals who therefore are unable to meaningfully participate in their case, causing harmful delays and outcomes.

Judicial officials sometimes proceed with a hearing without an interpreter present. This leaves an LEP individual without any means to meaningfully participate in the court proceeding. Among the harmful consequences of this practice that we identified in the course of our investigation are the following:

1. AA lost permanent legal custody of her two children as a result of a hearing in which she was denied an interpreter despite being LEP. Prior to this October 2010 Wake County hearing, AA had custody of her two children. When she attended her trial without an attorney or interpreter, AA indicated that she is LEP. The court transcript shows that AA had great difficulty communicating with the court and understanding the judge, opposing counsel, and witnesses. According to the transcript, AA had difficulty understanding why she was not granted a continuance to secure an attorney and an interpreter, and clearly struggled to communicate basic facts because of her limited English proficiency. AA also had difficulty following testimony and evidence introduced by opposing counsel, including testimony that others sexually abused AA's child while under her supervision. At the end of the permanent custody hearing, AA lost custody of her children, though AA did not understand the result until after the hearing when she spoke with a child services employee.

2. BB, an LEP Arabic speaker appearing without counsel, was twice denied an interpreter in domestic violence proceedings. Court documents show she filed a domestic violence protective order against her ex-husband in Wake County in April 2009. The court did not provide BB with an interpreter although she was entitled to one under AOC policy. According to witnesses, BB had difficulty communicating with the court, and the judge did not grant BB's request for a protective order in part because the judge could not understand her. In June 2009, BB's ex-husband, an English speaker represented by counsel, filed for a restraining order against BB in Guilford County. The court eventually dismissed the action but only after conducting a hearing without an interpreter present. According to BB, and as a recording of the proceeding makes clear, BB had difficulty understanding the court. When the judge asked BB if she needed an interpreter, BB responded "What is an interpreter?" The hearing proceeded without a court-provided interpreter and BB put forward her defense, including testifying and cross-examining her ex-husband, without the assistance of an interpreter.

3. According to a court recording, when CC attempted to fight an annulment in Chatham County court, the judge used her husband, an adverse party, as the interpreter and translator. In July 2011, shortly after CC's counsel explained to the judge that CC is LEP, the judge allowed CC's husband to question CC in English. When CC had difficulty communicating in English, the judge allowed CC's husband to question CC in English, interpret those questions into Spanish for CC, and then roughly interpret her answers for the court. In addition, the judge allowed CC's husband to translate key evidence that CC submitted to the court, including documentary evidence that the court relied on in holding that CC's husband had met his burden to show grounds for an annulment.

4. DD had no attorney or interpreter for a child custody hearing in July 2011 in Chatham County. A court recording shows that the judge asked DD if he needed an interpreter and DD said yes. Despite this answer, the judge proceeded without an interpreter. During the proceeding, opposing counsel asked to speak with DD outside the courtroom. The judge agreed when opposing counsel indicated she spoke a little Spanish. After meeting with DD, opposing counsel presented the court with a consent decree. The judge asked both parties in English if they understood the decree, but did not ask for an interpreter or translator to assist DD. The judge signed the consent decree.

5. An interview with EE and her attorney revealed that EE was evicted without being able to communicate with the court. During her small claims court eviction hearing in November 2010, the Wake County court refused to provide EE with an interpreter. As a result, EE had great difficulty understanding the court. EE was evicted during the proceeding but did not know this until it was explained to her after the hearing.

6. An advocate informed us that failure to provide interpretation for FF may have resulted in denial of a domestic violence protective order and an unfavorable verdict in a missed rental payments case. After her husband allegedly attacked her, FF sought a domestic violence protective order at the Gaston County court in 2010. According to witnesses, the judge did not provide FF with an interpreter and dismissed her case because she was unable to communicate to the court the allegations against her husband. In a separate matter, after FF was unable to pay her rent and vacated her home, she became a defendant to a Mecklenburg County small claims court case because she allegedly owed outstanding rent payments for the apartment she and her

children vacated. Knowing that she could not afford an interpreter for the hearing, FF prepared a translated written statement of facts with assistance from a local advocacy organization, but the magistrate refused to read her statement. She lost her case.

7. According to GG, he did not have an interpreter during a February 2011 small claims court hearing for unpaid wages. At the hearing, GG asked the magistrate in Spanish for a continuance to get an interpreter. GG thought that the magistrate agreed to his request but the magistrate did not grant a continuance and went on with the proceeding. GG did not understand what occurred and had difficulty communicating with the court. GG lost the case. At the time of the hearing, GG's income was below the federal poverty level.

These examples are illustrative, but not exhaustive, of the consequences we identified in the course of our investigation of the AOC's failure to provide interpreters in court proceedings.

D. The AOC does not adequately notify LEP individuals of their right to an interpreter, ensure effective scheduling of interpreters, or translate all vital documents.

The manner in which the AOC operates its language services program leads to additional denials of meaningful access to court proceedings. Our investigation identified systemic failures to provide notice to LEP individuals of their right to language services; inefficient scheduling policies that result in ineffective and inconsistent interpreter coverage; and an absence of translated forms that are necessary for many court proceedings.

1. Notice

We found few formal efforts to provide LEP individuals with notice of their right to language services or their obligation, per AOC policy, to pay for their own interpreter.[24] In response to our June 22, 2011 request for information regarding how the AOC provides notice of language services to LEP individuals, the AOC's only response was to provide an excerpt of the instructions provided to a court official if he or she uses the telephonic interpreting service during a first appearance. It is not clear how these instructions provide notice to anyone other than court officials utilizing the telephonic interpretation system for first appearances.

We further found that because of the absence of regular notice procedures, LEP individuals incur delays and greater costs even beyond those associated with paying for an interpreter. For example, according to an interview with HH and a review of court documents, HH sought $2,000 in unpaid wages due to an allegedly bad check he received from his employer. HH did not know he had to bring a Spanish interpreter to his court hearing. HH had to pay a $98 fee to file the claim in Mecklenburg County small claims court. The presiding magistrate told HH that he needed an interpreter and dismissed his case, but HH did not understand that his case

[24] In Mecklenburg County, we obtained a notice given to LEP litigants at foreclosure hearings. The notice states that an interpreter will not be provided by the court, but a litigant can independently arrange for an interpreter to provide assistance at the next hearing. This informal notice is written in English and Spanish. In addition, as of May 2011, there was a sign outside a small claims courthouse in Wake County that reads in Spanish and English that if a litigant needs an interpreter, the litigant will need to bring one.

was dismissed. Subsequently, HH went to court again and paid another $98 filing fee, and an additional $160 for an interpreter. The magistrate at this hearing told him to go to arbitration. After this instance, HH went to an arbitrator, and paid an additional $50 in fees as well as the cost of an interpreter. The arbitrator ruled in favor of HH and awarded him court fees, but not interpreter fees.

2. Inefficient practices in assignment of interpreters

We also found that county courthouses follow a wide range of practices, that are largely ad hoc, for identifying LEP Spanish speakers. The Buncombe County staff interpreter, for example, attempts to identify interpreter need based on the last names of defendants listed on the criminal docket. A contract interpreter in Henderson County stated that she also reviews the last names of parties on the criminal docket, and spends a fair amount of time trying to determine interpreter needs through other inefficient processes, with little support from the AOC. That interpreter has made several attempts to create a system in which jail staff identifies whether any LEP individuals need interpreting assistance for first appearances, but these efforts have been met with resistance. In Duplin County, a contract interpreter stated that if she is in a courtroom and a person answers in Spanish, she will interpret; or an assistant district attorney or court staff member will notify her when she is needed. Our investigation has determined that these ad hoc practices, and the failure to implement systemic methods for identifying the need for interpreter services, have caused both case delays and the failure to provide necessary language services.

3. Forms

Furthermore, the AOC denies LEP individuals access to many basic court forms. The vast majority of the AOC's forms are only in English, including the affidavit of indigency, which a criminal LEP defendant represented by counsel or appearing pro se would need to provide in order to get an interpreter.[25] The AOC has translated a limited number of court forms into Spanish, and none have been translated into any other language. The AOC told us in the course of our investigation that it will translate forms by request, but it is not clear how an LEP individual would know about this service because neither the AOC Web site nor AOC policy discusses it. Also, while those AOC forms that have been translated into Spanish are available on the AOC website, accessing these translated forms online presents further difficulties for LEP individuals, because the instructions on how to search for court forms are provided only in English.

These practices further demonstrate the barriers that LEP individuals face when attempting to access court services in North Carolina.

[25] According to the AOC website as of March 2012, the Spanish translation of the indigency affidavit is "Unavailable – but under review." *See* North Carolina Court System, http://www.nccourts.org/Forms/FormSearchResults.asp.

E. Budget constraints do not excuse the AOC's failure to provide LEP individuals with meaningful access to court operations in this case.

As noted, throughout our investigation, the AOC has identified fiscal constraints as one reason for its failure to expand interpreter services to provide greater access to court proceedings for LEP individuals. Although fiscal circumstances can, in some instances, be one consideration in determining whether a recipient of federal funds has fulfilled its obligation to provide meaningful access to all of its programs and activities, our investigation concluded that financial constraints do not preclude the AOC from taking further reasonable steps to comply with its federal non-discrimination obligations.

We are aware of the budget strain many state court systems are under. The Division has accordingly provided, as guidance, a non-exhaustive list of factors DOJ considers in determining when a state court system is making a reasonable effort to provide meaningful access to court operations, in light of fiscal realities. *See* Letter from Assistant Attorney General Thomas Perez to Chief Justices and State Court Administrators (Aug. 16, 2010). Those factors include:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

We recognize that the AOC has faced significant fiscal pressures, recently made large cuts to staff, and some local court positions have remained unfilled during this time. However, even in years when the AOC budget was growing, only minimal increases in language services occurred[26] and, as discussed below, the AOC even restricted services and declined to take steps that would improve coverage at no or minimal cost.

The AOC informed the Division of a fee increase, most of which went to the general fund and none of which increased language access services in courts. Further, although the AOC has contracted with a telephonic interpreter service for use by magistrates to increase efficiency and

[26] In 2007, the legislature added this language to § 7A-314(f): "In order to facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business." Previously, that statutory provision, which did not provide for domestic violence 50B litigants, read: "In a criminal case when a person who does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the state and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's service, as set by the court are payable from funds appropriated to the Administrative Office of the Courts."

improve service, the AOC's Program Manager for Interpreting Services told us that many judicial districts have not even requested the pass code to access the service. As stated above, we found that magistrates are moving forward with criminal proceedings with no interpreter present and without using the telephonic interpreter line. We would expect the AOC would make greater efforts to ensure usage of the telephonic interpreter service, including actively providing the access code to all districts. We also found that the AOC has not pursued other possible means to increase efficiency through collaboration, technology, or other means.

In response to our June 2011 letter, the AOC stated that it is considering whether there is need for one or more staff interpreters,[27] and is exploring using existing interpreters to cover more proceedings than currently allowed under AOC policy. While this is welcome news, the AOC Director separately told us that the AOC has no specific plans to provide interpreters in more types of proceedings or expand other language services.[28] The AOC is responsible for preparing budget estimates, including such items as are deemed necessary for the proper functioning of the Judicial Department. N.C. Gen. Stat. § 7A-300 (2011).

Further, the AOC has not taken proactive steps to identify language needs among its population or fully assess its current usage. For example, the AOC explained that it does not analyze demographics or other relevant data to anticipate language access needs. The AOC's current practice is to respond to interpreter service requests rather than identify foreign language needs in a more proactive manner. Additionally, in the September 2011 data response, the AOC stated that it does not maintain information on the number of individuals requesting or needing Spanish-speaking interpreters,[29] and yet noted its view that districts without staff interpreters "appear to have less than full time interpreting needs." It is unclear from the information the AOC provided to the Division, including the lack of data collection on interpreter requests, how this determination could be reached. Our investigation therefore concluded that the use of straightforward analysis and data collection regarding interpreter needs, as other states have implemented, would allow the AOC to reduce costs by improving planning for language assistance needs.

In addition, we found evidence that the AOC prevents courts from providing interpreters even when there would be no financial cost to do so. Specifically, the AOC has directed staff and contract interpreters not to interpret for LEP individuals in cases not covered by the AOC's

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[27] Court staff and AOC officials uniformly praised the efficiency and cost savings of staff interpreters. Since the AOC is authorized to "convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so," N.C. Gen. Stat. § 7A-343(9)(c) (2011), it is unclear why the AOC has not taken these steps.

[28] The AOC's Senior Deputy Director informed us that the AOC drafted language in a General Assembly bill proposing to expand interpreter services to cover civil cases and included appropriations for approximately $1.4 million a year to cover the cost. *See* HB 1477, 2009-2010 Leg., 2009 Sess. (NC 2009). That bill has not passed and the AOC Deputy Director stated the AOC has not supported subsequent bills proposing expanded language services because no appropriations were included in those bills.

[29] In response to the same inquiry, the AOC did provide documentation for interpreter assignments for languages other than Spanish.

policy, even during an interpreter's working hours when he or she is not otherwise occupied.[30] The AOC Program Manager for Interpreting Services explained that the rationale for this denial of service is that if the AOC starts providing interpreter assistance beyond that required by the AOC policy, such assistance will become "expected rather than a favor." We find this approach to be inconsistent with the AOC's obligations under Title VI and the Safe Streets Act, and particularly troubling given that the AOC pays staff interpreters a fixed salary and assistance beyond what is in the limited AOC policy should not cost the AOC any additional funds.

The AOC's actions to limit language services prevent court personnel and officials from providing LEP individuals with meaningful access to court proceedings and operations. For example, we found that at least one judicial district, Judicial District 26 located in Mecklenburg County, previously provided language services for proceedings and court operations not approved in the AOC's policy. Recently, however, the AOC took specific steps to ensure that all judicial districts, including Mecklenburg, do not provide language services outside what is provided for in AOC policy.[31] Court staff in Mecklenburg County stated to us that the AOC's policy denies access to the court for LEP individuals.

Because the amount of funding that the AOC itself has estimated would be necessary to provide fuller interpreter coverage is relatively small; because the AOC has failed to take reasonable steps to ensure meaningful access to court operations and programs even where budget impact is nonexistent or limited; and because other states with similar fiscal challenges continue to take steps to provide LEP individuals with greater access to court operations,[32] we have concluded that the AOC's fiscal circumstances do not in this case justify its failure to take further reasonable steps to improve access to court proceedings for LEP individuals.

F. Despite knowledge of the adverse impact of its policy on LEP individuals, the AOC has not remedied these harms.

As set forth above, the AOC is aware of the requirements under federal law to ensure nondiscrimination against national origin minorities by providing meaningful language access. The AOC is equally aware that its policies and practices limit the types of proceedings and court operations in which interpretation and translation are provided for Latino and other national origin minority LEP individuals. The AOC has continued to pursue these policies and practices despite knowledge of the discriminatory effect on LEP individuals based on national origin.

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[30] We recognize that breaks are critical for interpreters and our focus is on those times when an interpreter is neither on a break nor otherwise occupied.

[31] The AOC alleges in its September 2011 data response that Mecklenburg County court staff did not appropriately manage interpreters, resulting in unnecessary overcharges. We take no position on whether that allegation is true. Regardless of the accuracy of the allegation, until the AOC took over oversight of the staff interpreters in Mecklenburg on February 15, 2010, we understand that interpreters were provided free of charge in a broader number of situations.

[32] DOJ has reached agreements with the Colorado Judicial Department and Maine Judicial Branch that identify specific steps those court systems agreed to take to ensure LEP individuals have meaningful access to their courts. Other state court systems, such as in New York and Georgia, and some county courts in Washington State, have recently taken independent steps to increase their provision of language services.

V. Conclusion

As a recipient of federal funds from DOJ, the AOC is required to comply with civil rights obligations under Title VI, the Safe Streets Act, and their implementing regulations, and has signed contractual assurances specifically agreeing to comply with those obligations. Yet, as set forth in this report, the AOC has implemented policies and practices that discriminate against national origin minorities in violation of these laws and agreements.

Based on our investigation, we have determined that the AOC has violated the nondiscrimination prohibitions of Title VI and its implementing regulations. In addition, although the findings we have identified would support a Safe Streets Act violation, DOJ is deferring a formal finding under the Safe Streets Act in order to allow the AOC to voluntarily comply and avert litigation or immediate risk to federal funding. DOJ finds that the AOC's policies and practices violate the nondiscrimination provisions of Title VI and its implementing regulations, and are in breach of the contractual obligations contained in its grant awards from DOJ.

LISA M. FUGAZI
1132 Brighton Way
Lodi, California 95242

July 25, 2012

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

Via Electronic Mail Only
judicialcouncil@jud.ca.gov

Re: Trial Court Allocation Funding

Dear Chief Justice and Judicial Council Members:

I am currently employed by the San Joaquin County Superior Court as a Research Attorney and have been so employed since 2008. During my employment I have witnessed firsthand how efficiently our Court operates on its shoestring budget. Having worked in private practice for over 13 years prior, I was accustomed to working on computers that were never more than a few years old and having access to the latest software updates for all programs utilized in my firms. When I started working at San Joaquin County Superior Court I just assumed that the employees would have access to computers that were functioning properly and the latest versions of software; however, that is far from the truth. In fact, to my knowledge our Court has not been able to purchase new computers during the time of my employment, but instead, recycles them and re-circulates them to those in need.

San Joaquin County Superior Court does not have enough money in its budget to allocate for the purchase of new computers and has not for several years. Recently, our IT employees were excited earlier this year when there were discussions of our Court possibly being the recipient of formerly used computers.

San Joaquin County has historically been underfunded and continues to be underfunded. Each year our CEO is forced to apply for emergency funding because the allocation for our Court is based on historical information which indicates we only need 1.58% of the Trial Courts' budget to operate. This is ludicrous!!! If our Court was able to properly operate on the 1.58% allocation, then why is it that we have no reserves (exclusive of the $990,000 currently contained therein as a result of a loan from the Judicial Council)? The answer is simple, we are not properly funded to operate and function appropriately. Our Court's allocation needs to be adjusted and increased so that there is no need for our CEO to be forced to apply each and every year for emergency funding.

I am aware that there are some people who believe that our Court's predicament is a result of mismanagement. I invite those people to come visit San Joaquin County

Re: Trial Court Allocation Funding

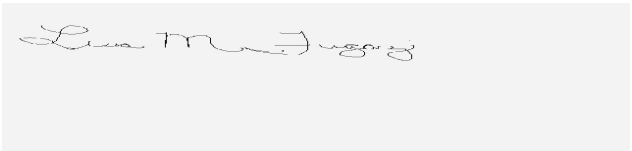
Superior Court so that they can witness first hand how our Court is able to function on what little resources are allocated to it. Last year we laid off 45 people in order to continue operations, this year we will lay off an additional 13 employees; we have not replaced the several people who have retired, died, or resigned. It is my understanding that we should be staffed with at least 350 employees (450 if using the Resource Allocation Study), however, currently we are down to 217 employees. We have reduced our staff by 34.29%, even though our population has grown by more than 20% and our crime rate is ranked number two, second only to Oakland. Our civil Judges' case loads are overwhelming, however, we do not have the funds to alleviate this problem.

If the SEC recommendations are implemented, the money saved from rent for the AOC's San Francisco office alone, could help to increase the allocation amount San Joaquin County receives. This would allow our Court to function properly and provide the needed services to the public.

If our Court is forced to make further cuts without an allocation adjustment made, there will be no San Joaquin County Superior Court in the future. I strongly urge you to approve an allocation adjustment for San Joaquin County.

Thank you for your time and consideration.

Very truly yours,



LISA M. FUGAZI, Esq.

/lmf

Dean T. Stout
Presiding Judge

Brian J. Lamb
Judge

Tammy L. Grimm
Court Executive Officer

Virginia Bird
Assistant Executive Officer

Superior Court of California
County of Inyo

July 24, 2012

Chief Justice Tani Cantil-Sakauye
and Members of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: **Inyo County Superior Court's objection to Agenda Item F, related to Trial Court Budget 2012-2013 allocations, and request that the Judicial Council approve $1.5 million be deemed exempt from the Inyo Court final fund balance due to unique and special circumstances as described in this letter and in-person at the Judicial Council Meeting of Friday, July 27, 2012 by Inyo County Superior Court Judge Brian J. Lamb.**

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

The Judicial Council's adoption of the Trial Court Budget Working Group's recommendation (listed Agenda Item F on the July 27, 2012 meeting agenda) will have a severe, adverse and probably irrecoverable impact on the plans of the Inyo County Superior Court to construct a non-SB 1407 funded court facility to replace its obsolete historic courthouse in the county seat of Independence, California. We understand the fiscal emergency and other legal constraints that have precipitated the recommended action. At the same time, the effect of the indiscriminate sweeping of trial court fund balances, without regard to the legitimate, long-term commitment of certain funds to critical courthouse construction projects, must be addressed, either by reallocating the trial court reductions to exclude the funds committed to court construction from the sweep of fund balances, or by advocacy within the judicial branch, and with the Legislature and the Governor.

Inyo County Superior Court committed trial court reserves in the amount of $1.5 million, to supplement Courthouse Construction Funds (CCF) in a lesser amount held by the County of Inyo, to construct a small court facility adjacent to the County Jail to replace the court's use of the outdated historic courthouse in Independence, the county seat. (This project is distinct from the SB 1407 courthouse construction project previously approved by the Judicial Council in the county's population center at Bishop. Work on that project has been stayed and is pending funding priority review at the September 2012 meeting of the Trial Court Facility Working Group.) We ask that the Judicial Council, given our unique historical situation, outlined below, accept and recognize the signed and attached "*Court Facilities Architectural Revolving Fund Transfer Request*" in possession of Inyo County Superior Court, signed by the Department of Finance on June 26, 2012 after the California Judicial Branch Budget was determined, and thereby direct the AOC to (a) accept the original $1.5 million of committed construction capital funds originally tendered by the Inyo County Superior Court in June 2012; (b) deposit Inyo Court's $1.5 million into the Architectural Revolving Fund Account for the exclusive use to build the Independence, CA jail-adjacent facility; and (c) reduce the Inyo County Superior Court final fund balance "available" to resolve the budget deficit by $1.5 million, the amount of the transferred, approved, and committed construction capital funds.

We understand that the fiscal shortfall statewide and within the judicial branch is drastic. We acknowledge the legislative imperative necessity to sweep trial court reserves has been placed upon you and our courts by the Governor's Budget Act of 2012. We are aware that the Judicial Council has very limited options and cannot help every court that has a special story or situation. However, Inyo Court should indeed be treated different by the fact that we had special written permission by the Department of Finance for this project to treat the funds not as part of our reserve, and therefore ask you to conserve these $1.5 million dollars for its intended purpose.

The new court facility will replace the court's use of the historic courthouse built in the 1920's, which has unresolved security issues, lack of air/circulation, deteriorating structural deficiencies, and non-ADA compliant courtrooms and clerk's offices.

By no means are we trying to get out of our fair share of the trial court's contribution of reserves to fix the situation. Even if the $1.5 million was removed from our current reserves, our account will still have approximately $2 million that would be considered "available" to offset the branch's reduction, and- when compared to other small court fund balances- this is much more in alignment and equitable to their overall contribution.

Because of the unique history and funding sources for this capital project, the sweep of Inyo County's court fund reserves as recommended will result in the court's being unable to build the Independence Court facility. The Court had saved for years to fund this with CCF funding- with no SB 1407 money- and had written permission from then AOC Administrator Bill Vickrey to continue with the project. Please see attached documentation.

Further, the court had a written approval to transfer the funding to an architectural account signed off by Jody Patel, Zlatko Theodorovic, and the State Department of Finance at the end of June 2012. However, at the critical moment, when the court was proceeding to fulfill the ministerial step of cutting the check to complete the approved transfer, the AOC refused to accept the funds transfer.

With the budget crisis, we have our SB 1407 "controversial" Bishop facility on permanent hold and now face the possibility of losing this money for the Independence Modular. While this amount is not a huge amount in relation to the state budget, the impact to our Court is monumental. The current facility in Independence has been documented by the AOC to be "in dire enough condition to warrant them being designated as a 'Critical Needs' facility" need due to safety, ADA, and security deficiencies. The total cost is $1.5 million- this small amount would provide a facility for Inyo that would be operational for decades to come. If the $1.5 million is included in the reserves and swept, the project will be lost, and we will be forced to continue in a non-ADA compliant, structurally non-sufficient building that will need replacing or work soon.

Below lists our brief relevant historical background pertinent to this discussion and why we are asking for some assistance in protecting the Court's $1.5 million devoted to this project:

- In August 2008, the Inyo County Board of Supervisors issued a resolution authorizing CCF fund expenditures/encumbrances for a new Inyo County Courthouse facility (non SB 1407; completely funded by County CCF funds and Court reserves). The County Administrative Officer and Presiding Judge submitted a request to the AOC for review and approval. In September 2008, then-AOC director Bill Vickery issued conditional approval for this project as long as a plan was developed and submitted within three years.

- In March 2010, Inyo County Superior Court, the AOC, and Inyo County entered into an MOU approving collaboration and development of a conceptual plan.

- December 13, 2010: The AOC declares the location of the SB 1407 bond-funded courthouse to be "controversial" due to the many concerns and differences of opinion voiced by the public. At the April 29, 2011 Judicial Council Meeting, the Judicial Council decided to site the SB 1407 project in Bishop. In making this pronouncement, the Court's express commitment to continue providing full services in Independence and to utilize CCF and court reserve funding to modernize the facility was explicitly articulated. The Judicial Council made it clear that, in their final decision to place the SB 1407 project ultimately in the population center of Bishop, one factor heavily contemplated in the final decision was the fact that a secure and accessible

non-SB 1407 facility of appropriate cost and scope was being contemplated adjacent to the county jail in Independence.

- In June 2011, the County Administrative Officer encourages the AOC to endorse the Conceptual plan, and commits to make "County-owned land…available at no or nominal cost for a new court facility in Independence." On June 30, 2011, the AOC approved the Court's request to use up to $1.5 million in court funds to partially fund construction of a one courtroom, and a hearing room, total 10,000 Building Gross Square Foot secure and accessible modular building on county-owned land adjacent to the Inyo County jail.

- July 1, 2011 (for Fiscal Year 2011-2012): $1.5 million in fund balance moved from "assigned" to "committed- Capital Funds."

- August 16, 2011: AOC conducts a thorough check of Inyo reserves and then-Director of Southern Regional Operations- Sheila Calabro- gives final fiscal authorization of this project. The Board of Supervisors again conveys to Mr. Vickery that "the County is prepared to work with the AOC and Court to formally commence the process for conveying the land for the modular Court Facility in a manner preferred by the AOC and the Court."

- August 18, 2011: The Court receives a final approval of the project by Bill Vickery.

- 2012: MOUs were in the process of being signed by the County of Inyo, Superior Court, and AOC. County began talks with AOC on $1 lease for 40 years of the land; Architect hired and development plans rendered.

- June 26, 2012: The Superior Court and AOC received a signed "Court Facilities Architectural Revolving Fund Transfer Request," signed by Jody Patel, Zlatko Theodorovic, and the Department of Finance approving "deposit of funds in the amount of $3.806 million for the development and construction of a secure and accessible modular court facility, of approximately 10,000 building gross square feet. The facility will be located on county-owned property immediately adjacent to the Inyo County Jail, in the Independence area of Inyo County. The project will be funded by the use of local Courthouse Construction Funds in the amount of $2,308,000 pursuant to the Memorandum of Understanding between the Judicial Council of California, Administrative Office of the Courts, the County of Inyo, and the Inyo Superior Court, fully executed on March 30, 2010 and funds from the Superior Court of Inyo County court reserves pursuant to a subsequent Memorandum of

Understanding between the Judicial Council of California, Administrative Office of the Courts, and the Superior Court of California, County of Inyo, entered into as of March 27, 2012, in the amount of $1,500,000."

- The Inyo Superior Court was notified by the AOC on June 26, 2012 of this DOF approval and told to issue a check for $3,806,000 for deposit into the Court Facilities Architectural Revolving Fund. Four hours later, the AOC called the Court and stated that they would not accept the check because they feel that the decision needs to come from another body (TCBWG or Judicial Council) as to whether or not the $1.5 million in court reserves should be considered a part of the Superior Court's fund balance, despite the written DOF approval. It is our understanding that we were the only trial court with the Department of Finance written transfer approval request for non-SB1407 funds.

- CEO Tammy L. Grimm and Judge Brian J. Lamb spoke to Jody Patel and Curt Soderland on July 11, 2012 at 4 pm via conference call. Grimm and Lamb of Inyo were told that it would be the TCBWG or Judicial Council making the final decision; Soderland and Patel stated that Inyo Court representatives would be welcome to present their case to the Judicial Council before a formal decision on if the $1.5 million dollars could be exempt.

- On Tuesday, July 17, 2012, CEO Tammy L. Grimm and Judge Brian J. Lamb attended the Trial Court Budget Working Group (TCBWG) in Sacramento, CA. All members received a written copy of the Court's concerns prior to the meeting. A discussion arose about Inyo's situation. One of the members of the TCBWG specifically asked Mr. Theodorovic "but isn't Inyo different because they have a written document from the Department of Finance?" Mr. Theodorovic responded "No. It is improper to use operational funds for courthouse construction. That [the Inyo Court DOF document] was determined not to be a legal transfer of funds." This was the FIRST our Court had heard of this and this reasoning doesn't make sense in light of the historical background of this situation, the written permission received from prior Administrative Directors, and the fact that it was the AOC who suggested going through the DOF to protect these funds.

Therefore, Inyo County Superior Court respectfully requests that the Judicial Council permit the AOC to accept the transfer of $1.5 million in court "committed" reserves to the Architectural Revolving Fund, as approved by the DOF, and

thereby give AOC authority to reduce the Inyo County Superior Court fund balance total by this $1.5 million because:

- On June 26, 2012, the Court obtained written approval to transfer these funds and continue the project by the Department of Finance. This document was signed off by the Department of Finance, Finance Division Director, and AOC Director. The Transfer Request was received after the Judicial Branch budget was determined by the State/DOF.

- The Court's approved CCF plan calls for a combination of both the $2.306 million from the County Court Construction Funds as well as the Court's $1.500 million in court reserves to create a $3.806 million 10,000 square foot jail adjacent facility. If the $1.5 million are not permitted to be used on this project, the CCF funds- which already have been permitted special extension by the AOC Director of the Courts- are in jeopardy of being lost, and the project possibly abandoned. It is not feasible to do a construction project of this scope and magnitude without the Court's $1.5 million. It is highly unlikely that Inyo's special circumstances in keeping the CCF funding would be permitted again; these funds would possibly be swept and returned to the State.

- The County is offering jail-adjacent land at no or minimal cost, with the most recent discussions being $1 for a 40 year lease. Inyo County is under no current obligation to provide this land to the Courts, or hold it open indefinitely. If the Court cannot continue with the project, their land offer *may* be off the table; it is foreseeable that the land *could* be offered to other Departments or Projects. The Inyo Superior Court has full cooperation with the County of Inyo in making this a reality as long as the $1.5 million can be combined with the CCF funding.

- The completion of this project (which could be done August 1, 2013) will result in cost savings to the Judicial Council/AOC as the present historical courthouse is in need of severe maintenance and updates; the present location is non-ADA complaint, does not have proper air conditioning or ventilation, lacks security, and has many needed repairs. Creation of the new Independence facility will also allow the AOC to stop a lease for an additional court-leased site in Independence, saving judicial branch dollars each month in rental and maintenance costs.

- The Superior Court saved these funds for over a decade, shaving off operational costs at the expense of the Inyo Superior Court and employees. $1.5 million, in the overall Judicial Branch budget, is minimal, but means

everything to Inyo County. This creates a new facility- without any Judicial Council or AOC monies- that will replace a facility that the AOC deemed to be "in dire enough condition to warrant it being designated as a 'Critical Need' facility."

- In looking at the charts provided by the AOC Finance Department, the Inyo Superior Court has the second highest "Trial Court Reserves as a Percentage of Total Expenditures" of all trial courts in California; this is because the $1.5 million in funds specific to this project are added in. If the $1.5 million are taken out for this project's continuation, the Inyo County Superior Court's remaining fund balance will still provide a high, equitable, and fair amount of fund reserve balance that will be utilized in assisting the Judicial Branch in solving the fiscal deficit.

- The Court understands that we can now utilize reserves/fund balances for two years to offset the Governor's reduction. Inyo Superior Court respectfully requests direction on how much in the Fund Balance can be utilized annually over the two years, and what the portion of deficit to be imposed on Inyo fund balances has been determined. This number could impact whether we have $1.5 million for this project, or if the monies are necessary to maintain to keep current Operations, personnel, and access to justice afloat.

- Inyo Superior Court was the only court that resulted in a "controversial" SB 1407 project. The Judicial Council, in siting the SB 1407 location in Bishop, relied upon knowledge that this CCF/Reserve funding project was continuing in Independence, and factored this into their ultimate decision.

Conclusion

On behalf of the Inyo County Superior Court, I urge you to direct the AOC to permit compliance with the written approval received from the DOF in building a new Independence jail-adjacent facility, thereby permitting us to transfer- and the AOC to accept- $1.5 of "committed Capital project funds" to the Architectural Revolving Fund and thereby reduce our fund balance the equivalent. These $1.5 million for this project should not be considered "available" funds branch-wide to resolve the State of California's budget deficit. Please allow us to build this facility. Our Court saved the money to do this, and denial of the project will ultimately be more costly to the branch, who will have to continue maintaining a run-down, inadequate, non-ADA compliant facility. The AOC will have to continue maintaining a secondary court facility in Independence that could be cancelled upon completion of this project. The County's offer for free land could be placed in jeopardy. The $2.306 CCF money with the County will be recovered since it was specifically approved for this project only. I urge you to allow us to continue the project, as approved by the DOF, and permit the AOC to

reduce our fund balance by the $1.5 million. A reduction will still give Inyo Superior Court a fair and equitable portion that will be swept to contribute to the overall statewide deficit crisis.

Thank you for your time and consideration.

Sincerely,

Tammy L. Grimm
Court Executive Officer
Inyo County Superior Court

JUDICIAL COUNCIL OF CALIFORNIA - ADMINISTRATIVE OFFICE OF THE COURTS

COURT FACILITIES ARCHITECTURAL REVOLVING FUND TRANSFER REQUEST

DOCUMENT NUMBER: AOC-11-036
PROJECT NUMBER:
DATE: 6/19/2012

The Administrative Office of the Courts (AOC) is hereby authorized to proceed with the following project, and the State Controller is hereby requested to transfer funds to the Court Facilities Architecture Revolving Fund in the amount shown below in accordance with Section 70379 of the Government Code.

DESCRIPTION OF PROJECT

This document is requesting approval of a deposit of funds in the amount of $3,806,000 for the development and construction of a secure and accessible modular court facility, of approximately 10,000 building gross square feet. The facility will be located on county-owned property immediately adjacent to the Inyo County Jail, in the Independence area of Inyo County. The project will be funded by the use of local Courthouse Construction Funds in the amount of $2,306,000 pursuant to the Memorandum of Understanding between the Judicial Council of California, Administrative Office of the Courts, the County of Inyo, and the Inyo Superior Court, fully executed on March 30, 2010 and funds from the Superior Court of Inyo County court reserves pursuant to a subsequent Memorandum of Understanding between the Judicial Council of California, Administrative Office of the Courts, and the Superior Court of California, County of Inyo, entered into as of March 27, 2012, in the amount of $1,500,000 .

No transfer of funds is being requested. A check in the amount of $3,806,000 from the Superior Court of California, Inyo County is attached and requested for deposit into the Court Facilities Architectural Revolving Fund in accordance with section 70379 of the Government Code.

PUBLIC WORKS BOARD APPROVAL DATE	TOTAL ESTIMATED PROJECT COST
	$3,806,000
PRIOR EXPENDITURES FOR PRELIMINARY PLANNING (To be capitalized on completion of project)	APPROVED, OFFICE OF COURT CONSTRUCTION AND MANAGEMENT, AOC
	TITLE: Lee Willoughby, Division Director
	DATE: 6-21-12

SOURCE OF FUNDS

FUND	APPROPRIATION (Name and Chapter Number)	
[redacted]	[redacted]	
APPROVED, FINANCE DIVISION, AOC: [signature]	DATE: 6/21/12	BUDGET ALLOTMENT TITLE: [redacted] $3,806,000	DATE: 6/19/2012
I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.		UNENCUMBERED BALANCE BEFORE POSTING THIS ESTIMATE (AFTER T.B.A. OR B.R. NO...)	
		AMOUNT TO BE TRANSFERRED:	$3,806,000
APPROVED, ADMINISTRATIVE OFFICE OF THE COURTS: [signature]		TITLE: Jody Patel, Interim Administrative Director	DATE

DEPARTMENT OF FINANCE APPROVAL

APPROVED BY: [signature]	TITLE: SFBA	DATE: 6/26/12

DISTRIBUTION: 1. Original - CONTROLLER, ACCOUNTING 2. AOC OCCM 3. AOC ACCOUNTING 4. AOC BUDGET 5. DEPT OF FINANCE

Brian J. Lamb
Presiding Judge

Dean T. Stout
Judge

Tammy L. Grimm
Court Executive Officer

Virginia Bird
Assistant Executive Officer

Superior Court of California
County of Inyo

RECEIVED
AUG 15 2011
AOC-SRO-OCCM

August 16, 2011

William C. Vickrey, Administrative Director of the Courts
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Dear Mr Vickrey:

As you are aware, the Judicial Council, at its April 29, 2011 meeting, unanimously voted to site the new Inyo Courthouse facility in Bishop. Since we now have a final resolution to the new construction location, I am now writing you to obtain (a) final approval for expenditure of our Courthouse Construction Fund, and (b) final approval of the Conceptual Plan, contained in this letter. In the March 30, 2010 Memorandum of Understanding between the Inyo County Superior Court, your Office, and the County of Inyo, encumbrance and expenditure of the Inyo Courthouse Construction Fund was conditioned on the Court and the AOC developing a Conceptual Plan/Proposal for the Inyo County Court Facilities, and the AOC approving the Conceptual Proposal no later than September 4, 2011. A copy of this referenced Memorandum of Understanding is affixed as Attachment 1.

The purpose of this letter is to respectfully request your approval of the Conceptual Plan Proposal, outlined below. We are asking that the accrued and ongoing Courthouse Construction Fund monies of approximately $2.306 million be allowed to be spent on Inyo County Court Facilities in Independence to fund a portion of a new secure, accessible one-courtroom, one-hearing room courthouse of approximately 10,000 Gross Square Feet on County land directly adjacent to the Inyo County Jail to facilitate the secure movement of in-custody defendants to and from the court facility. The project is anticipated to be provided through the design, acquisition, and construction of a building, or possibly the installation of a modular facility.

The County of Inyo supports the Conceptual Plan. On June 8, 2011, the County of Inyo, through its County Administrative Officer- Kevin Carunchio- fully endorsed and encouraged the development of the Independence conceptual plan between the AOC and Court, stating that the County was committed to "make County-owned land, adjacent to the Sheriff's Administration Center and County Jail, available at no or nominal cost for a new court facility in Independence." See Mr. Carunchio's letter, attached, as Attachment 2.

The CCF funds would augment Court funds that have been approved for expenditure on this project. Please note that on June 30, 2011 the AOC approved the use of up to $1.5 million in court funds to fund a portion of this project after a financial Request for Court-Funded Project was submitted (Attached as Attachment 3); this resulted in the AOC's thorough fiscal check of the Inyo Superior Court's reserves, leading then-Director of Southern Regional Operations, Sheila Calabro, to finalize authorization on this project. On July 1, 2011 Kelly Quinn, AOC Senior Manager of Planning, sent Inyo Superior Court a letter confirming that the AOC approved our request to utilize up to $1.5 million in court funds to fund part of this project. This letter is attached for your reference as Attachment 4.

When the new courthouse is completed, the following will occur:

(1) The Court will vacate the Department 2 leased facility on Clay Street, which has transferred to the state, and the AOC will arrange for termination of the lease in accordance with the current lease agreement.

(2) The Court will also discontinue daily use of the Historic Courthouse located at 168 North Edwards, and vacate the following spaces once the Independence facility is constructed: all space in the basement of the Historic Courthouse building, including the Courtroom (Department 3), Clerk Space and offices, as well as the storage area. On the main level, the Court intends to vacate the Court Clerk space known as the Department 1 office, located adjacent to the County Recorder. On the top floor, all presently-occupied court space will be vacated, although the County has indicated that they are willing to allow use of the monumental Historic Courtroom and contingent offices/Chambers for overflow and ceremonial purposes.

(3) The CFPs for these two facilities (Department 2's Clay Street and the Historic Courthouse) will be used to offset the operating costs of the new Independence courthouse.

The County of Inyo has supported this plan in writing and has offered the land at no or nominal cost to the Court in exchange for the Court's vacating the Historic Courthouse. The County of Inyo is willing to work with the AOC and the Court regarding the disposition of the currently-occupied Court space in the Historic Courthouse and secure land for a Court Facility in Independence. As indicated by its endorsement of this request, and as previously stated in correspondence to the AOC by the County on March 17, 2009, and to myself on June 8, 2011 via letter (Attachment 2), the County is willing to provide land for the new facility at "no or nominal" cost. Upon your approval of this request to use the Courthouse Construction Fund monies, the County is prepared to work with the AOC and Court to formally commence the process for conveying land in Independence for the Independence Court Facility in a manner preferred by the AOC and Court.

If this plan is acceptable to you, we request your final approval and signature, below. As you are aware, time is of the essence, and I respectfully request your prompt action on this matter so that we may begin utilizing the funding immediately in Independence to better serve the residents and court users of the Court and County.

Sincerely,

Brian J. Lamb
Presiding Judge
Superior Court of California, County of Inyo

AUGUST 11, 2011
Date

The plan outlined above, regarding request for approval for Inyo County Courthouse Construction Fund Expenditure and Encumbrances and Conceptual Plan on 14-CCF004.00, is hereby approved by the AOC.

for

William C. Vickrey
Administrative Director of the Courts

8-18-11
Date

BOARD OF SUPERVISORS
COUNTY OF INYO
P. O. BOX N • INDEPENDENCE, CALIFORNIA 93526
TELEPHONE (760) 878-0373 • FAX (760) 878-2241
e-mail: pgunsolley@inyocounty.us

August 16, 2011

William C. Vickrey, Administrative Director of the Courts
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

SUBJECT: SUPPORT FOR USING ENCUMBERED COURTHOUSE CONSTRUCTION FUNDS AND PLEDGE OF COUNTY LAND FOR A NEW INDEPENDENCE COURT FACILITY

Dear Mr Vickrey:

On August 26, 2009, the County of Inyo and the Superior Court of California, County of Inyo, submitted, for your consideration, two separate "County Courthouse Construction Fund Request for Approval of Expenditure or Encumbrance" applications with respect to court facilities in Inyo County. You subsequently approved our request, and the conditions upon which your approval was granted were incorporated in the Memorandum of Understanding by and between the Administrative Office of the Courts, the County of Inyo, and the Superior Court, County of Inyo, Regarding the Conceptual Proposal for the Inyo Court Facilities and the Use of the Courthouse Construction Fund, dated March 30, 2010.

With the Judicial Council voting unanimously on April 29, 2011, to site the new Inyo Courthouse facility in Bishop, we understand that your office and the Inyo County Superior Court have completed, or will soon be completing the Conceptual Proposal – identified in the MOU – to use the encumbered Courthouse Construction Fund monies to construct a modular Courthouse facility in Independence. As required by Section 1.1 of the MOU, the resulting Inyo County Court Facilities (Plan) must be approved by you no later than September 4, 2011. In sending this letter, the Inyo County Board of Supervisors is reiterating its long-standing support for, and willingness to work with the Administrative Office of the Courts and the Inyo County Superior Court to construct a new Courthouse in Independence. Specifically, the County is continuing to pledge land for this project, and we urge you to approve whatever Conceptual Plan for a new Independence Courthouse that the local Judges, working with your staff, determine will best meet the needs of the Court.

We understand that, on June 30, 2011, the AOC approved the use of up to $1.5 million in court funds to fund a portion of this project, and that with your approval of the Conceptual Plan and authorization to proceed with using the locally encumbered Courthouse Construction Fund, over $2.3 Million in additional funding will be available to invest in the new Independence Courthouse project. Please recall that the Court facilities in Independence are in dire enough condition to warrant them being designated as "Critical Needs" facilities. As proposed, the new secure, ADA accessible, one-courtroom, one-hearing room Courthouse of approximately 10,000 Building Gross Square Feet will alleviate these conditions, and facilitate the secure movement of in-custody defendants to and from the court facility. The project will also support the Court in its commitment (which was also reiterated in the subsequent AOC report regarding the location of the new Inyo Courthouse facility) to continue all criminal proceedings in Independence after the new Inyo Courthouse facility is constructed in Bishop.

As indicated by this endorsement, and as previously stated in correspondence to the AOC from the County on March 17, 2009, and to Presiding Judge Brian J. Lamb from the County Administrative Officer on June 8, 2011,

the County is willing to provide land located between the County Jail and Independence Road Shop for the new Court facility at no or nominal cost. The provision of this land will be made in accordance with the provisions of State law, the Inyo County Real Property Management Policy, and in consideration of how the AOC prefers to handle the matter of potentially vacated Court space in the Historic Courthouse. Upon your final approval to use the Courthouse Construction Fund monies, the County is prepared to work with the AOC and Court to formally commence the process for conveying the land for the modular Court Facility in a manner preferred by the AOC and Court. It would be our expectation that, as part of this process, the disposition of the AOC's long term interest in the Historic Courthouse will also be addressed.

Once the new modular Courthouse is constructed in Independence, we understand that the Court may find it desirous and cost-effective to discontinue daily use of the Historic Courthouse located at 168 North Edwards, in Independence. Similarly, the AOC may find it prudent to use the Court Facilities Payments, currently associated with the Historic Courthouse and the leased Department 2 (Clay Street) facility, to offset the operating costs of the new Independence Courthouse to the extent that these payments are no longer required to fund State obligations at the two existing facilities. In light of the possibility of the Court vacating its presently occupied space within the Historic Courthouse, and in anticipation that the AOC may use the current Court Facilities Payments to offset the operating costs of the new facility, the County of Inyo is willing to work with the AOC and the Court regarding the disposition of the space in the Historic Courthouse currently assigned to the Court. This could be accomplished by the County and AOC agreeing to either negotiate an amendment to, or rescind the Transfer Agreement and Joint Occupancy Agreement currently governing the Historic Courthouse, and the County stands by willing to work with the AOC toward this goal.

Although no court personnel may remain in the Historic Courthouse after completion of the new Independence project, if the Court prefers to maintain the Historic Courtroom for ceremonial and overflow purposes, the County is prepared to work with the Court and the AOC in this regard. Should this process result in all space in the Historic Courthouse reverting back to the County, the County is willing to work with the Court enter into an agreement granting the Court continued use of the monumental Historic Courtroom, the contiguous Chambers and Secretarial/Executive Office spaces in the Courtroom Suite, and the upstairs Jury Room for ceremonial and overflow purposes. In part, this agreement would endeavor to provide for the maintenance and preservation of the Historic Courtroom as a Courtroom and remain in its architectural splendor for visitors, special sessions, and overflow in case of Court space requirements.

We thank you for your consideration of our request, and your ongoing support of the Inyo County Superior Court and the community of Independence. If you have any further questions, or require additional information or action, please contact the County Administrative Officer, Kevin Carunchio, at (760) 878-0292.

Sincerely,

Susan Cash

Susan Cash
Chairperson, Inyo County Board of Supervisors

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE
ADMINISTRATIVE OFFICE OF THE COURTS, THE COUNTY OF INYO,
AND THE SUPERIOR COURT, COUNTY OF INYO, REGARDING
THE CONCEPTUAL PROPOSAL FOR THE INYO COURT FACILITIES
AND THE USE OF THE COURTHOUSE CONSTRUCTION FUND

This Memorandum of Understanding Regarding the Conceptual Proposal for the Inyo Court Facilities and the Use of the Courthouse Construction Fund ("MOU") is made and entered into on this _____day of _____ 2009, ("Effective Date"), by and between the County of Inyo, a political subdivision of the State of California ("County"), the Judicial Council of California, acting by and through the Administrative Office of the Courts ("AOC") and the Superior Court of California, County of Inyo ("Court"), collectively referred to as the Parties.

BACKGROUND TO AND PURPOSE OF MOU

A. On August 26, 2008, the County Board of Supervisors passed Resolution No. 2008-36 (Exhibit "A") authorizing the approval of encumbrance and expenditure from the accrued and incoming Courthouse Construction Fund (CCF) based on certain conditions contained in the Resolution,

B. On September 4, 2008, the Administrative Director of the Courts authorized the development of a Conceptual Proposal for additional Court facilities in Inyo County (Exhibit "B") using the CCF to fund the additional Court facilities,

C. On October 1, 2008 the responsibility for the Bishop Court Facility transferred to the Judicial Council.

D. The Parties wish to memorialize their understanding setting forth the terms of the use of the CCF for the project(s) that will be developed.

NOW THEREFORE, the County, AOC, and Court hereby agree as follows:

1. AOC AND COURT RESPONSIBILITIES AND OBLIGATIONS

1.1 The AOC and Court will develop a Conceptual Proposal for the Inyo County Court Facilities (Plan) that must be approved by the AOC no later than September 4, 2011.

1.2 The Plan shall make the most effective use of all accrued and annual incoming funds and be consistent with the Superior Court Facilities Master Plan dated June 30, 2003, as updated from time to time.

2. COUNTY RESPONSIBILITIES AND OBLIGATIONS

2.1 As of October 1, 2008, the County has and will continue to maintain and encumber all accrued and incoming CCFs in a separate interest bearing account with the interest earnings remaining in the account for use in implementing the approved Plan.

2.2 If the Court and AOC do not approve a Plan by September 4, 2011, the County will deposit all accrued and incoming CCFs and interest into the State Court Facilities Construction Fund no later than September 30, 2011.

2.3 The County will not incur any obligation to fund or operate any existing court facility in Inyo County, or improvements thereto, or to fund, provide land, manage contracts, provide technical assistance, or operate any new court facility in Inyo County developed under the Plan.

3. AOC RESPONSIBILITIES AND OBLIGATIONS

3.1 AOC shall indemnify, defend, and hold harmless the County from and against all claims penalties, actions or costs to the County arising from the County's encumbrance of the County Courthouse Construction Fund as provided by County Resolution No. 2008-36, Exhibit A.

4. MISCELLANEOUS

4.1 Entire Agreement. This MOU contains the entire and complete understanding of the Parties hereto.

4.2 Amendment. Any amendments to this MOU must be in writing and signed by all parties.

4.3 Time of Performance. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday, or holiday, such payment shall be made or act performed on the next succeeding business day.

4.4 Further Assurances. Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other

instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this MOU.

4.5 Time. Time is of the essence in each and all of the provisions of this MOU.

4.6 Waiver. Any waiver by any Party hereto of a breach of any of the terms of this MOU shall not be construed as a waiver of any succeeding breach of the same or other term of this MOU.

4.7 Binding. This MOU shall be binding upon the successors and assigns of AOC, Court, and County.

4.8 Counsel and Drafting. Each Party has had the opportunity to participate in drafting and preparation of this MOU and represents it has reviewed this MOU with counsel. No Party shall deny the validity of this MOU on the ground that such Party did not have the advice of counsel. The provisions and terms of this MOU shall not be construed in favor or against any Party.

4.9 Counterparts. This MOU may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

4.10 Severability. In the event any provision of this MOU is held by a court of competent jurisdiction or arbitration to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

4.11 Governing Law. This MOU is construed under California law.

4.12 Certification of Authority to Execute this MOU. County, Court, and AOC certify that each individual signing below has the authority to execute this MOU on behalf of his/her respective party.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, this MOU has been executed as of the date first above written.

APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel

By: _____
Name: Melvin L. Kennedy
Title: Managing Attorney
Date: 03-29-10

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

By: _____
Name: William C. Vickrey
Title: Administrative Director of the Courts
Date: 3-30-10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF INYO

By: _____
Name: Hon. Brian Lamb
Title: Presiding Judge
Date: MARCH 18, 2010

APPROVED AS TO FORM:
County of Inyo, Office of the
County Counsel

By: _____
Name: RANDY KELLER
Title: County Counsel
Date: 3-16-10

THE COUNTY OF INYO, COUNTY ADMINISTRATIVE OFFICE

By: _____
Name: Kevin D. Carunchio
Title: County Administrative Officer
Date: 03-16-10

4

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF COURT CONSTRUCTION AND MANAGEMENT

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-8720 • Fax 415-865-8885 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

LEE WILLOUGHBY
Acting Director, Office of Court Construction and Management

September 4, 2008

Mr. Kevin Carunchio, Administrator
Inyo County Administrator's Office
County of Inyo
Post Office Drawer N
Independence, California 93526

Re: Inyo County Request for Approval of Courthouse Construction Fund Expenditure and Encumbrances (14-CCF004.00)

Dear Mr. Carunchio:

The Administrative Office of the Courts (AOC) is pleased to notify you that the Request #1, a "Conceptual Proposal for Inyo County Court Facilities," by Inyo County for expenditures from the accrued and future annually accrued local Courthouse Construction Fund (CCF) is conditionally approved as follows:

1. *Plan developed with and approved by AOC.* A plan for use of these funds must be developed in collaboration with the AOC and approved by the AOC within three years from the date of this letter. This plan shall make the most effective use of all accrued and annual incoming funds and be consistent with the Superior Court Facilities Master Plan (June 30, 2003, or subsequent update). If a plan is not approved by the AOC within this time period, all accrued and incoming CCFs shall be deposited into the State Court Facilities Construction Fund.

2. *CCF review and approval by the AOC.* The AOC's Finance Division has reviewed a complete accounting of accrued and annual CCFs, including available balances,

outstanding commitments, and a projection of future revenues, and has confirmed that uncommitted current and future funds are available for the plan referenced above.

3. *CCFs to accrue reasonable interest.* All accrued CCFs must be kept in a separate, interest-bearing account with interest earnings remaining in the account for use in implementing the approved plan.

4. *Memorandum of understanding (MOU).* An MOU between the county, the court, and the state to represent the terms of the use of these funds will be developed, which shall include the matters indicated in Inyo County Resolution No. 2008-36.

If you have any questions regarding this matter, please contact Ms. Kelly Quinn Popejoy, Senior Manager of Planning, at 818-558-3078.

We look forward to working with Inyo County and the court on the timely development of the plan for use of CCFs for the benefit of the court and the county, in service to the residents of Inyo County through improved court facilities.

Sincerely,

William C. Vickrey
Administrative Director of the Courts

WCV/KQP/rrw

cc: Hon. Dean T. Stout, Presiding Judge, Superior Court of Inyo County
Ms. Nancy Moxley, Executive Officer, Superior Court of Inyo County
Mr. Ronald G. Overholt, AOC Chief Deputy Director
Ms. Sheila Calabro, Regional Administrative Director, AOC Southern Region
Ms. Mary M. Roberts, General Counsel, AOC Office of the General Counsel
Mr. Stephen Nash, Director, AOC Finance Division
Mr. Melvin Kennedy, Managing Attorney, AOC Office of the General Counsel
Ms. Kelly Quinn Popejoy, Senior Manager, AOC Office of Court Construction and Management
Ms. Rona Rothenberg, Manager, AOC Office of Court Construction and Management
Ms. Jeannette Wong, Senior Real Estate Analyst, AOC Office of Court Construction and Management

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF COURT CONSTRUCTION AND MANAGEMENT

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TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

LEE WILLOUGHBY
Director, Office of Court Construction and Management

June 30, 2011

Hon. Brian Lamb
Presiding Judge
Superior Court of California, County of Inyo
301 West Line Street
Bishop, California 93514

Re: Inyo Superior Court: Approval of Use of Court Funds for New Modular Buildings to Replace Current Independence Court Facilities

Dear Judge Lamb:

We are pleased to inform you that the Administrative Office of the Courts (AOC) has reviewed and approved your request to use up to $1.5 million in court funds to partially fund construction of a one-courtroom 10,000 Building Gross Square Foot secure and accessible modular building on county-owned land adjacent to the Inyo County jail. The site, with an area of approximately 46,800 square feet, will be secured at nominal cost to the state. This project will consolidate the existing facilities for the Independence Area.

As you know, the AOC, the court and the County of Inyo executed an MOU in relation to this project in March of 2010. The information in this letter reflects the planning work that has proceeded since then.

When the new courthouse is completed, the court will vacate the Department 2 leased facility on Clay Street, which has transferred to the state, and the AOC will arrange for termination of the lease in accordance with the current lease agreement. The court will also discontinue daily use of the Historic Courthouse located at 168 North Edwards, and vacate the following spaces: all space in the basement of the historic courthouse (A-1), including the courtroom (department 3), clerk space and offices, as well as the storage area. On the main level, the court will vacate the court clerk space known as the department 1 office, located adjacent to the offices of the county recorder. On the top floor, all presently-occupied court space will be vacated. No court personnel will remain in the historic courthouse after completion of this project. The court

facility payments for these two facilities will be used to offset the operating costs of this new courthouse.

This project will be funded by the court funds approved in this letter and County Courthouse Construction Funds (CCF) in the amount of approximately $2.306 million. As we have discussed, at a May 2011 meeting with the Office of Court Construction and Management (OCCM) management team, Mr. Vickrey indicated he was comfortable with conceptual plan for use of the available CCFs for this project. I understand you will be sending a letter from the court and the County of Inyo requesting his written approval of the use of CCF funds.

Subject to the enumerated conditions, the project may proceed upon verification and completion of the following:

a. Land for project. The court will work with OCCM and a staff attorney with the AOC's Office of the General Counsel's Real Estate Unit (OGC/REU) to develop the appropriate documentation to secure land for this project from the county and address the disposition of AOC's equity in the historic courthouse (A-1).

b. Construction - AOC-Court MOU. A staff attorney with the AOC's OGC/REU will develop an MOU for this project between the court and the AOC. The MOU, customized as needed, will authorize the AOC to directly pay project-related costs, on behalf of the court, and to reduce the court's distribution from its annual allocation from the Trial Court Trust Fund (TCTF). The court will be required to reflect the TCTF gross distribution as non-cash revenue, and to record the direct payment issued by the AOC as an expense in the court's financial records. The AOC will provide to the court a record of all payments made on behalf of the court for this project.

   The MOU will indicate that expenditure of court funds will be made after all CCFs for this project are exhausted. The MOU will also indicate that the available CCF or court funds will pay for any increases to project costs for this project.

Your AOC-OCCM real estate contact will be Joanne Williamson, Senior Real Estate Analyst (818-558-3116). Your AOC-OCCM project management contact for the tenant improvements will be Gary Swanson, Project Manager (818-558-3123).

Thank you for your patience as we worked with AOC Finance to verify the funds for this project. We look forward to supporting this project in Inyo County for the benefit of the residents of your jurisdiction through improvements in your facilities.

If you have any questions concerning this request and the AOC process, please feel free to contact me at 818-558-3078.

Sincerely,

Kelly Quinn
Senior Manager of Planning

KQ:rrw

cc: Mr. Ronald G. Overholt, AOC Chief Deputy Director
Ms. Sheila Calabro, Regional Administrative Director, AOC Southern Regional Office
Ms. Margie-Borjon Miller, Assistant Regional Administrative Director, AOC Southern Regional Office
Mr. Lee Willoughby, Director, Office of Court Construction and Management (OCCM)
Mr. Robert Emerson, Assistant Division Director, AOC-OCCM, Business and Planning Services
Ms. Gisele Corrie, Financial Manager, AOC OCCM, Business and Planning Services
Mr. Chris Magnusson, Senior Planner, AOC OCCM Planning
Mr. Ernie Swickard, Assistant Division Director, AOC OCCM, Design and Construction Unit
Mr. Gary Swanson, Project Manager, AOC OCCM, Design and Construction Unit
Ms. Leslie Miessner, Supervising Attorney, AOC Office of the General Counsel, Real Estate Unit
Ms. Eunice Calvert-Banks, Manager, AOC-OCCM, Real Estate and Asset Management Unit
Ms. Joanne Williamson, Real Estate Analyst, AOC-OCCM, Real Estate and Asset Management Unit

SEIU 1021
San Joaquin County Courts Chapter
Hunter Square
Stockton, CA 95202

July 24, 2012

Comments submitted for the July 27, 2012 Judicial Council Meeting by:
SEIU 1021 Bargaining Team for San Joaquin County Superior Court:
Re: **Historical Allocation to San Joaquin Superior Court**

Bridget Childs, Sonya Farnsworth, Dani Jeitz, Monica Jones, Grant Preeo, Tim Robinson, Teresa Trigg, Jennifer Whitlock and Steve Bristow

Madam Chief Justice and Judicial Council:

We are employed by San Joaquin Superior Court and are members of the employees' bargaining team. Steve Bristow is the local representative for our union, SEIU 1021. Our team includes a research attorney, legal process and courtroom clerks, an accounting guru and a court reporter.

We anticipate that our CEO will have to report to you that she has reached no agreement on concessions with the court's employees and therefore, she will be forced to lay off another 13 employees beyond the 45 laid off last year. Currently, the employees are expected to vote on management's last offer on Friday, July 27, 2012, the date of your meeting. (The very short reprieve offered on the 13 layoffs (no more than three months) and the impending expiration of the employees' contract (on October 31, 2012) stymied a better outcome.) Because of our court's situation, the parties did not have much room to maneuver.

If we are correct in our expectation that the employees will vote 'No' to concessions, it will be because the employees understand that the current fiscal constraint San Joaquin Superior Court finds itself in is very largely the creation of economic conditions beyond our control, an ungoverned Administrative Office of the Courts and the failure of the Judicial Council to *properly* allocate funds among the trial courts to guarantee to the public -- whom the courts serve -- equal access to the courts, and so as to ensure minimum operating and staffing standards. *Gov. C. sec. 68502.5(c)*

In labor negotiations, the AOC's negotiator acknowledged that San Joaquin Superior Court is historically underfunded. In a meeting with San Joaquin Bar Association's Fair Court Funding Committee, Mr. Curtis Child acknowledged that San Joaquin Superior Court is historically underfunded. But management's "solution" is to have some of the difference come out of the pockets of employees. Mr. Child offered no solution.

The actual solution is for this Judicial Council to finally do its job and properly allocate funding among the trial courts. **Fifteen** years after Lockyer-Isenberg, San Joaquin Superior Court's allocation is still 1.57 percent of all trial court funding. This ignores:

- San Joaquin County's population growth of 21.6 percent since 2000 (California grew 10 percent);
- Stockton's status as second most-violent city in California (after Oakland) and its status as **highest** in property crimes;
- Our high rate of gang crime and the resultant stress on court resources;
- San Joaquin County's significant unemployment rate (14.5 percent as of May 2012; Sacramento County's was then closer to 10.5 percent);
- Stockton's persistent national ranking in foreclosures.

We know other Central Valley counties grew even more than San Joaquin did; this is part of the reason that all courts' allocations should be re-determined. It's a hard job. But it's your job. Some powerful people are going to scream because you have to take from the better-resourced to give to the less-well-resourced. Yes. That's your job.

The **Legislative Analyst's Office** April 13, 2012 report 'Managing Ongoing Reductions to the Judicial Branch' report graphed, on page 13, the significant differences in the various' trial courts level of reserves – further evidence of significant underfunding of some and overfunding of others. The report noted, at pages 10 – 11:

> "Based on data compiled through 2010-11, 10 of the 58 trial courts in the state received more funding – totaling roughly $40 million – than predicted by the [AOC's] workload study. In other words, the AOC's resource allocation study [(RAS)] suggests that these particular courts are better resourced for their caseloads than their counterparts.". . . **Based on these findings, we recommend that the Legislature direct the Judicial Council to more closely align the level of funding for the above courts to their actual workload need. Given the magnitude of cuts to the courts, we believe prioritizing cuts to those courts that have more funding than their counterparts is a reasonable approach."**

The report can be accessed at: http://www.lao.ca.gov/analysis/2012/crim_justice/managing-ongoing-reductions-041312.pdf

The AOC's own publications acknowledge the underfunded status of certain courts, see for example, page 3 from the Judicial Council's Annual Report to the Legislature of March 22, 2010 "Judicial Administration Standards and Measures Promoting the Fair and Efficient Administration of Justice" which can be accessed at http://www.courts.ca.gov/documents/standards-measures0310.pdf.

Although we are not perfect, our court uses its slender resources prudently. We have no retired judges helping us with judicial education; we do not employ our own general counsel. We have four secretaries for 33 bench officers and executive staff. In October 2011, the court laid off 46 employees; it leaves vacant the vast majority of positions vacated by retirements and resignations. With the 2011 layoffs, we 'achieved' 27 percent understaffing. With retirements and the new layoffs, we are down to 229 employees and in the realm of 30 percent understaffing (and more based on RAS recommendations). For those who think it is appropriate to compete on FTE ratios, that is 6.94 employees per bench officer. As you know, the impact of criminal cases on various trial courts' operations undermines FTE comparisons.

We have closed a courtroom in Lodi and a branch in Tracy, transferring domestic violence and civil harassment restraining order cases to Stockton and Manteca, and denying easy access for north county (rural) and south county (rural and suburban) residents to courts that were relatively easy for them to reach. Court users can't telecommute to their court dates, and that is even assuming our customers have internet access – many do not. The court no longer pays for a second psychiatric report for certain defendants; by agreement with the local defense bar, only one court-paid report is used. We have used private security on the public entrance and in civil courtrooms for years now.

We all know times are difficult, but you must please properly reallocate funds among the trial courts. Whether you consider population, crime and filing statistics and/or the Resource Allocation Study model, the historical allocations you continue to use are completely inappropriate. Using the historical allocations undermines the entire purpose of state trial court unification and is resulting in the deprivation of access to justice for San Joaquin County residents and businesses, which is detrimental to the public safety and public welfare in our County.

Thank you for your attention to this matter.

Respectfully submitted,

Bridget Childs
Research Attorney
San Joaquin Superior Court

and

Sonya Farnsworth
Legal Process Clerk III
San Joaquin Superior Court

Dani Jeitz
Fiscal Services Technician II
San Joaquin Superior Court

Monica Jones /bc

Monica Jones
Legal Process Clerk III
San Joaquin Superior Court

Grant Preeo
Legal Process Clerk III
San Joaquin Superior Court

Tim Robinson
Courtroom Clerk
San Joaquin Superior Court

Teresa Trigg
Legal Process Clerk III
San Joaquin Superior Court

Jennifer Whitlock
Certified Court Reporter
San Joaquin Superior Court

Steve Bristow
Lead Negotiator
SEIU 1020
San Joaquin Superior Court Chapter

Comments submitted for the July 27, 2012 Judicial Council Meeting
Re: Historical Allocation to San Joaquin Superior Court

Madam Chief Justice and Judicial Council:
My name is Carrie Dall, and I am an employee of the Stockton Superior Court in San Joaquin County, but more importantly I am a resident of San Joaquin County.
I write you to express my despair and outrage at the lack of funding for San Joaquin County Courts. As a citizen, the cutbacks and threat of outright cessation of services is unacceptable. Cutting hours in essential offices of the courthouse denies the general public access to basic rights and due process.
The archaic allocation of funds throughout the State courts does not take into consideration the population boom San Joaquin County has experienced starting in the '90s and continuing through today. Stockton has the second highest violent crime rate in the state and the highest property crime rate, yet we receive the same percentage of funding we did in 1990. This is not only outrageous, but fundamentally unfair. As a citizen of San Joaquin County I deserve the same protections and due process rights as any other California citizen, I pay the same taxes, and yet my access to justice and basic protections is significantly less than if I lived in other counties. I implore you to examine and re-assess San Joaquin County's allocation of funds to afford its citizens a fair piece of the pie, no more, no less.
Thank you for your attention,
Carrie Dall
(209)468-2850

Superior Court of California
County of Trinity

ANTHONY EDWARDS
Judge

JAMES P. WOODWARD
Judge

July 26, 2012

Tani G. Cantil-Sakauye
Chief Justice of California
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Hon. Douglas P. Miller, Chair
Associate Justice Court of Appeal,
Appellate District Division Two
3389 12 Street
Riverside, CA 92501

Jody Patel
Interim Administrative Director of the Courts
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102

Zlatko Theodorovic
Director and Chief Financial Officer
Finance Division
Administrative Office of the Courts
2850 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833

SUBJECT: Judicial Council Meeting on July 27 and FY2012/2013 $150 Million Reduction Plan

Dear Chief Justice Cantil-Sakeyue, Justice Miller, Ms. Patel and Mr. Theodorovi:

As you are aware, Trinity Superior Court is one of the 2 courts in the State with court staff (i.e., marshals) providing 100% of security. Our concern with the Budget Working Group's recommendation with respect to the $150 Million Reduction Plan is two-fold:

1. Trinity will be unfairly disadvantaged if our $450,608 security allocation is included in our base 45.10 funds and subject to the FY12/13 $150 Million Reduction Plan. The proposed recommendation to adopt Scenario A on the basis the budget bill language is the letter of the law and deviations would require additional legislation to separate the security allocations currently included in the base is the most harmful scenario to Trinity resulting in disproportionately higher reductions than any other court in the State at 40%. The second highest reduction would be to Shasta at 27%, whereby both courts appear to

be unfairly disadvantaged for having their own marshals providing 100% court security. It is hard to fathom that these intentions were deliberate when the budget language was approved. More likely it was an oversight due to the fact our courts are unique with their organizational structure.

2. Trinity is one of 10 courts classified as an under-funded court with respect to its security allocation. When the revised security standards were implemented in FY 2006/2007 Trinity's approved FTE levels were dropped from 2.58 to 1.65 positions. This is the same year our Marshal was diagnosed with a terminal illness and subsequently passed. While the Marshal was out on FMLA Leave the court added another deputy to fill the vacancy to keep our staffing levels at the 3 needed positions. Our senior deputy also received out of class pay for performing the duties of the Marshal and these changes were reported to the AOC showing 2 supervisor positions filled whereby one was not funded based on the FIN Manual Policy Section 14.01. Due to these anomalies, Trinity was only funded at 49% when the 9 other under-funded courts were funded at 87% and higher.

The other courts throughout the State have the ability to take the cuts while still operating, we can't. Being an under-funded court is challenging in itself and to have our security allocation cut further as part of the $150 Million Reduction Plan will force us to make difficult decisions about closing our entrance screening station. Additionally, based on an independent review of the U.S. Marshal's Office we are not staffed to their recommended levels. Additional cuts to our security allocation will exasberate the situation for Trinity. We implore you to reconsider the Budget Working Group's recommendation and consider what we believe to be the most equitable and fair scenario and that is scenario C

Your consideration is greatly appreciated.

Sincerely,

Anthony Edwards
Presiding Judge

AE/law

July 26, 2012

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

Via Electronic Mail Only
judicialcouncil@jud.ca.gov

Dear Members of the Judicial Council,

I began working as a research attorney for the San Joaquin Superior Court more than 5 years ago. When I started, the research attorneys were working in an area of the courthouse that had been abandoned by the county's law library. This area was affectionately referred to as "the dump" because the previous occupant not only left behind hundreds of books, but they also left behind a mountain of garbage. This is not an exaggeration. They literally left garbage; ie., open boxes of food, wrappers, crumbled papers, empty boxes, etc. However, the San Joaquin Superior Court research attorneys came in without complaint and did their job. This went on for years.

The only reason "the dump" was eventually cleaned-up was because the court needed another courtroom and this was the only available space. I watched as our Court Operations Manager worked tirelessly to rid the space of the garbage and turn it into a "courtroom." Then I watched as the judge and her courtroom staff came in every day and held court. They did everything they could to conduct themselves in a professional and respectful manner, to make the space seem like an actual courtroom. I watched as litigants and jurors had to come to this makeshift courtroom and take it seriously and do what they could to treat it with respect. Through it all, the employees of San Joaquin Superior Court got the job done and court was held.

My first individual office at this court was slated to be in a storage closet. It was the only available space in "the dump." Unfortunately, our IT staff was unable to wire my "office" for internet or a phone because they were not certified to work with asbestos. Thus, I worked from the break room. My office was a small desk next to a sink and a conference table.

"The dump" is just one example of how the employees of San Joaquin Superior Court make the best of their situation. Every corner you turn in our courthouse has something wrong: duct tape holding the carpet together, roaches taking over the bathrooms and hallways, mini blinds falling on judges in their chambers. My supervisor, a woman who has been a professional for over 20 years and worked for the court for well over 10 years, currently works out of a storage closet at the end of a public hallway. If her door is open (in order to let other staff members know she is available), her safety is in jeopardy because any member of the public can walk in on her at any moment without warning. In fact, on one occasion, someone entered her office and stole her wallet.

However, we all continue to work under these conditions. No one complains, no one asks for more. We simply get the job done, and we are doing it with less and less. Less money, less resources, less employees. In March 2009, San Joaquin Superior Court had 348 employees, we are now down to 242 employees. Depending on the model you look at, we should have anywhere from 350-450 employees. Any way you look at it, we are beyond understaffed.

Some courts, namely the ones with millions of dollars in their reserves, like to blame the state of San Joaquin Superior Court's budget woes on mismanagement of funds. Mr. Scott Gardner, the gentleman from the AOC sent to San Joaquin Superior Court for our latest round of employee negotiations, likes to blame our budget issues on the bad economy. These are cop out excuses. The reason San Joaquin Superior Court is in this position is because the Judicial Council has allowed the status quo to stand as far as the allocation of the trial court funds goes. San Joaquin Superior Court has historically received 1.57% of the budget, and that is where it has stood for over 10 years.

This 1.57% has stood in the face of many changes. San Joaquin County has grown by more than 20%, while the state has only grown by 10%. But we still only get 1.57%. Stockton has recently been touted as the second most violent city in California, just behind Oakland. But we still only get 1.57%. Stockton has the highest rate of property crime in the state. But we still only get 1.57%. Stockton is at an all time high for gang activity and violence. But we still only get 1.57%. Stockton is suffering one of the highest foreclosure rates in the country. But we still only get 1.57%. Stockton has an unemployment rate of 14.5%, much higher than the nation's average. But we still only get 1.57%.

All of these escalating problems require a fully functioning judicial system to help resolve the resulting issues. However, due to the complete misallocation of the trial court funds, San Joaquin Superior Court has been forced to cut back on what it offers to the people of this county. Our court has shut down a branch in Tracy and one of two courtrooms in Lodi. Our small claims calendar has been scaled down dramatically. Last Fall we laid off 45 employees, and another 13 this Summer. The court has seen numerous retirements, with none of those positions being filled. Instead, the retirees' duties have simply been delegated out to the remaining employees. And as the loyal employees they are, the San Joaquin Superior Court staff is still getting the job done.

The staff here has gone above and beyond to ensure the people of this county continue to have access to justice, something they are guaranteed by the Constitution of this state. Not only does every staff member here contribute to the budget by paying their taxes, but in recent years, they have also contributed to the budget by agreeing to reduce their salaries. So on top of taking on extra duties and working with minimal resources to keep the halls of justice up and running, these employees have given up parts of their hard earned paychecks to plug the budget holes. THIS NEEDS TO STOP!

While they have tried, it is not the responsibility of the San Joaquin Superior Court staff to fix the budget woes of this state or the trial courts. However, it is the job of the

Judicial Council to properly allocate the trial court funds. When there are courts sitting on millions in reserves, while our court has a measly $900,000.00 in reserves, which is a loan from the Judicial Council, there is an obvious problem.

Every year, our CEO and presiding judge make the trek to the Judicial Council to beg for emergency funding, just in the hopes of keeping our doors open. This is ludicrous. I am certain our CEO and presiding judge could make better use of this time by running the court in this county and assuring that the wheels of justice are still spinning. Just as I am certain that the members of the Judicial Council could make better use of their time, as opposed to listening to this yearly plea. If San Joaquin Superior Court was properly funded, these meetings where we beg for money could stop.

I implore the Judicial Council to do their job and take a close look at how the trial court funds are allocated. The current mode of status quo is not working, and the San Joaquin Superior Court staff should not have to continue giving up their paychecks to make sure the citizens of this county have their constitutional rights protected. If the Judicial Council does not make an imperative change to how these funds are allocated, the people of San Joaquin County will not have meaningful access to justice. This is an unconscionable conclusion, but the Judicial Council has the power to make sure this does not happen. The Judicial Council has the power to ensure that every person in this state, even the ones in San Joaquin County, has reasonable and meaningful access to THEIR courts.

Sincerely,

Jennifer D. McMahan

Written Comments:

Agenda Item F: Trial Court Budget: Fiscal Year 2012-2013 Allocations

My goal in submitting this written comment is simply to:

a) remind the Judicial Council of the $7.5 billion delinquent court ordered debt which remains uncollected by local trail courts throughout California; and

b) recommend that the Judicial Council give the local trial courts an economic incentive to "try harder" to collect this debt by making a Government Code 77201.1 (a) allocation of "excess collections" to the local trial courts which collect this money.

FACTS:

1. The Budget Act of 2012 (Stats. 2012, ch. 33) substantially reduces FY 2012-2103 funding for local trial courts.

2. As a consequence, local trial courts are currently engaged in drastic and unprecedented cost cutting measures. In Los Angeles County alone, Presiding Judge Lee Smalley Edmon recently announced budget cuts which would affect 431 employees, including 157 employees who will be laid off, 108 who while lose 40% of their salaries when moved to a three day workweek, 86 employees who will lose between 5% and 40% of their salary when they there positions are reclassified, and 80 employees who are being transferred to new jobs/locations because their old jobs have been eliminated. As John A. Clark, the LA Court's Executive Officer and Clerk of Court explained: *"[T] final outcome is difficult to manage, and impossible to predict, due to the speed and severity of the budget cuts being forced upon us."*

4. Uncollected court ordered debt owed to the various Superior Courts in California exceeds $7.5 billion and has continued to grow every year since annual reports to the legislature were required by statue. (In Los Angeles County alone, uncollected court ordered debt exceeds $2 billion!)

5. Government Code section 77205 (a) provides that *"[I]n any year in which a county collects fee, fine and forfeiture revenue that exceeds [statutory "maintenance of effort" requirements] the excess amount shall be divided between the....county and the state, with 50 percent of the excess transferred to the state for deposit in the Trial Court Improvement fund....."*

6. The Judicial Council has the discretionary authority to *"....allocate 80 percent of the amount deposited in the Trial Court Improvement Fund ... [to]...the trial court in the county [which collected the excess revenue].*

DISCUSSION:

7. When trying to market private collection agency services to local trial courts throughout the state, one of my clients often encounters the same response: *"Why should we care about collecting more revenue? Whatever additional revenue we collect just goes to the AOC and to the Trial Court Improvement Fund."*

27 July 2012. David Farrar 1/2

8. If the Judicial Council would simply exercise its Gov Code section 77205 (a) discretion to allocate revenue from excess collections to the local trial court which actually collected the additional revenue, that would achieve two important outcomes:

8.1 The local trial courts would have an additional incentive to "try harder" to collect some of the $7.5 billion which remains uncollected; and

8.2 the local trial courts could use this revenue to avoid further court closures and employee layoffs.

9. Although much of the $7.5 billion will probably remain uncollected, even a collection or "liquidation" rate of only 10% would be an additional $750 million, an amount larger than the FY 2012-2013 budget reductions. If LA County alone 10% of the $2 billion would be an additional $200 million revenue and additional court closures and employee layoffs would be avoided.

RECOMMENDATION:

10. The Judicial Council should undertake a five (5) year pilot project to exercise it Gov Code section 77205 (a) discretion to allocate to the local trial court which collects currently uncollected court ordered debt 40% of the funds received by the State in excess of the maintenance of effort allocation and in excess of the amount collected by the court for allocation to other courts during FY 2011-2012.

11. By thus establishing a benchmark for continued reallocation to trial courts, but permitting the local trial court to retain for its own local operations all sums over its previous, historic contributions to the State, the Judicial Council would create a substantial additional incentive for enhanced collections of the outstanding debt.

Respectfully submitted,

David Farrar, Member
State Bar of California
dwfarrar@hotmail.com
213-247-3119

Brand Farrar LLC
PO Box 19575
Los Angeles CA 90019

From: Matosantos, Ana [mailto:Ana.Matosantos@dof.ca.gov]
Sent: Thursday, July 26, 2012 3:01 PM
To: Patel, Jody
Cc: Jarvis, Amy

Subject: Tomorrow's meeting

I am writing regarding tomorrow’s Judicial Council meeting and the planned discussion of potential additional redirections to trial courts. As you know, this year’s budget focused on increasing transparency and accuracy in the Judiciary’s budget. Providing specific funding levels to the trial courts, review courts and the Judicial Council was an important element of the changes reflected in the Budget Act. Unfortunately, an error was made in the level of appropriation authority provided to trial courts as part of the funding set aside for activities that support all trial courts. We are concerned about the potential redirection of the excess spending authority. Further, there is a question regarding available resources to support the higher level of appropriation. DOF needs additional time to review the information, understand the facts, and work with the Council on an appropriate course of action.

Therefore, I am requesting that the Judicial Council remove Recommendations 6 and 7 from its July 27, 2012 agenda. We are concerned that the amount of excess authority is overstated, resources may not be available to fund this level of spending and the redirection is inconsistent with the Budget Act. In addition, given that the Budget has been in place for less than one month, we believe more information is needed and caution against any adjustments this early in the fiscal year.

Thanks for the consideration. Let me know if you have questions.

Ana

WESTERN
SAN BERNARDINO COUNTY
BAR ASSOCIATION

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Dean McVay, President Elect
Fernando Bernheim, Vice President
Matthew Taylor, Secretary/Treasurer
Angelique Bonanno, Imm. Past President

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Correspondence sent via Email to judicialcouncil@jud.ca.gov

July 26, 2012

Judicial Council of California
455 Golden Gate Ave.
San Francisco, CA 94102-3688

May 16, 2012

To the Judicial Council of California,

I write to you today not only in my capacity as the president of the Western San Bernardino County Bar Association, but also as a concerned local attorney. The Inland Empire, encompassing both San Bernardino and Riverside counties, has experienced great population growth and with that, the need for additional judgeships in the face of massive budget cuts to the local court systems. As eloquently expressed by the Riverside County Bar Association, by allocating a portion of the $26 million budget for the AJP (FY 2012-13) to fund AB 159 judgeships, the Judicial Council would be assisting the courts most in need of help as well as furthering the continued use of retired judges and court staff. If funded, the proposal for additional judgeships would significantly reduce the burden on counties that are impacted, overworked, and under-funded, including both San Bernardino and Riverside Counties.

Therefore, it is with this correspondence that the Western San Bernardino County Bar Association offers its support and joins in Robyn Lewis, the president of the Riverside County Bar Association, and Kira Klatchko, secretary of the Riverside County Bar Association, along with members of the San Bernardino County Bar Association, proposal for more judges in six counties, including Riverside and San Bernardino, before the Judicial Council on July 27, 2012.

Sincerely,

Laurel A. Hoehn
President

Cc: Robyn A. Lewis, President, Riverside County Bar Association