



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 17, 2015

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<b>Title</b>	<b>Agenda Item Type</b>
Court Facilities: Lease of Plumas-Sierra Courthouse to Third Party	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
None	April 17, 2015
<b>Recommended by</b>	<b>Date of Report</b>
Facilities Policies Working Group Hon. Douglas P. Miller, Chair Hon. Marla O. Anderson, Vice-chair	March 23, 2015
	<b>Contact</b>
	Eunice Calvert-Banks, 415-865-4048 <a href="mailto:eunice.calvert-banks@jud.ca.gov">eunice.calvert-banks@jud.ca.gov</a> Charles Martel, 415-865-4967 <a href="mailto:charles.martel@jud.ca.gov">charles.martel@jud.ca.gov</a>

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### Executive Summary

The Facilities Policies Working Group recommends (1) the Plumas-Sierra Courthouse be leased to a third party, and (2) delegation of authority to the Administrative Director to sign a lease and any associated documents. The short-term lease of the closed courthouse will assist in reducing judicial branch facility expenditures.

### Recommendation

The Facilities Policies Working Group recommends that the council:

1. Authorize staff to negotiate with third parties in order to lease the Plumas-Sierra Courthouse; and
2. Delegate to the Administrative Director the authority to sign a lease and any associated documents in order to complete a lease transaction.

## **Previous Council Action**

None.

## **Rationale for Recommendation**

The internal chairs asked for assistance from a small group of Judicial Council members to support the Executive and Planning Committee in its role to oversee the council's policies and procedures regarding court facilities under rule 10.11(c) of the California Rules of Court. This group, referred to as the Facilities Policies Working Group (FPWG), is currently reviewing practices and considering policies in various areas related to court facility management. Pending the development and implementation of new facility-related policies, at its March 20, 2015 meeting, the FPWG reviewed the status of the Plumas-Sierra regional courthouse (the Courthouse), determined that the facility was not being utilized by the courts, and would not in the near future be utilized for court operations.

The prospective lease of the Courthouse in its entirety is the first lease transaction involving (a) an entire court facility and grounds, and (b) a court facility constructed by the Judicial Council as part of its Capital Program. In November 2014, the Plumas-Sierra regional courthouse in the city of Portola was closed by both the Plumas and Sierra superior courts, and their respective court staffs were relocated. The Plumas and Sierra courts have indicated that they intend to reopen the Courthouse as their budgets permit in the next 3–5 years. In the past several months, Judicial Council staff (staff) received proposals from both the City of Portola and the Long Valley Charter School to lease the facility.

## **Legal Authority**

With the enactment of the Trial Court Facilities Act in 2002 (as amended, the Act), the Legislature granted the Judicial Council broad authority over trial court facilities. Specifically, Government Code section 70391(a)<sup>1</sup> provides that the Judicial Council shall “[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities.”

This broad and unqualified language confers an authority coextensive with that of an owner upon the Judicial Council, except where expressly limited by statute. Other than the requirement that the Judicial Council dispose of surplus court facilities (Gov. Code, § 70391(c)), nothing in the Act or elsewhere expressly prohibits the Judicial Council from entering into a lease of all or a portion of a court facility with an unrelated third party while it carries out its disposition duty or when, as in the case of the Courthouse, the court facility has been temporarily closed due to budget constraints.

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<sup>1</sup> All future code references in this report are to the Government Code, unless otherwise noted.

The Legislature’s use of the phrase “as an owner would have” to describe the nature and scope of the Judicial Council’s authority over court facilities is significant. Under California’s Civil Code, “[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others” (Civ. Code, § 654). Ownership is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; and when the use is restricted (Civ. Code, § 680). Otherwise, it is absolute, meaning the owner “has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws” (Civ. Code, §§ 678–679). “Ownership is a bundle of rights and privileges,” and an owner may enter into a lease agreement conferring on the tenant the rights of exclusive possession of the property “against all the world,” including the owner (*Union Oil Co. v. State Bd. of Equal.* (1963) 60 Cal.2d 441, 447).

Based on the foregoing, the Judicial Council has the requisite authority under California law to grant rights to an unrelated third party to occupy and use the Courthouse through a lease agreement.

### **Implementation of Legal Authority**

Under Government Code section 70392(a), the Administrative Office of the Courts (now Judicial Council staff) is given the authority to “provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts,” and to “[c]arry out the Judicial Council’s policies with regard to trial court facilities, except as otherwise expressly limited by law.”

### **Judicial Council as Landlord**

At its March 20 meeting, the Facilities Policies Working Group discussed whether the Judicial Council should be a landlord. The FPWG determined that in this circumstance, with the appropriate contractual protections, it would be beneficial to lease the Courthouse. The Judicial Council controls a vast amount of real property statewide almost entirely occupied and used for the administration of justice. Barring a major change in the state’s budget priorities, there is, and will continue to be, a shortfall in the amount of funds needed to operate and adequately maintain the court facilities controlled by the Judicial Council. With no express prohibition against the Judicial Council leasing out the property it controls, it might be deemed imprudent to not explore lawful opportunities to reduce that shortfall by shifting some operations and maintenance costs to a tenant and to realize some rental income.

### **Risks and Liabilities of Acting as Landlord**

Ownership of real property carries certain real risks and liabilities that to a large extent may be shifted to the lessee through a properly drafted lease.

***Ownership liabilities.*** The Judicial Council’s risks and liabilities as owner of the Courthouse include the following (Ownership Liabilities):

- Costs associated with operating and maintaining the property, including insurance, utilities, repairs, replacement, and other operating costs;

- Tort liabilities arising from claims, losses, damages, and costs associated with personal injuries or property damage, e.g., “slip and fall” claims;
- Property liabilities arising from claims, losses, damages, and costs associated with fires, floods, earthquakes, and other casualty events; and
- Property losses arising from eminent domain or condemnation, although this risk should be minimal given that the Judicial Council is the chief policy-making body to a branch of state government.

***Landlord liabilities.*** If the Courthouse were leased to a third party, the Ownership Liabilities would be allocated between the Judicial Council and lessee in the lease agreement to the greatest extent possible. Bearing in mind the need to deal with only a creditworthy and stable lessee, under a standard, commercial, triple-net lease agreement, the parties would agree to the following customary provisions to shift the risks, liabilities, responsibilities, and obligations associated with the Premises from the owner to the lessee:

- The lessee would pay rent in advance to secure the full and timely performance of its obligations under the lease agreement. Requiring advance payments would reduce the Judicial Council’s risk that it may be required to cover costs that the lessee agreed to pay under the lease agreement.
- The lessee would be responsible for all expenses associated with operating and maintaining the Courthouse, including insurance, utilities, maintenance, repairs, and other operating costs and any possessory interest taxes. Because the entire Courthouse would be leased to a single lessee, the Judicial Council would shift to the lessee responsibility to operate, repair, and maintain the building structure, roof, base building equipment (e.g., the HVAC system and life safety equipment), common areas, and the land surrounding the Courthouse.
- The lessee would be responsible for repairing all damage to the Courthouse as a result of its occupancy and use and restoring it to its prelease condition, ordinary wear and tear excepted.
- The lessee would be responsible for the cost of complying with any applicable accessibility improvements that may be required because of the lessee’s proposed use of the Courthouse.
- The lessee would only have the right to assign the lease agreement or sublet any portion of the Courthouse with the prior, written consent of the Judicial Council, and in the event that the lessee does not vacate the Courthouse at the end of the term of the lease agreement, but holds over after the term expires, the monthly base rent would increase steeply (typically to 150 percent to 200 percent of the then-current base rent amount). Such provisions provide the Judicial Council with control of the lessee entities that

occupy and use the Courthouse, and provide a clear economic incentive to the lessee to vacate the Courthouse at the end of the term of the lease agreement.

- The lessee would occupy and use the Courthouse only for the specific purposes identified in the lease agreement’s “use clause,” and would take occupancy of the Courthouse on an “as-is” basis. Furthermore, the lease agreement should contain additional disclaimers, such as a Judicial Council disclaimer of any responsibility for personal injury, death, or property damage occurring at the Courthouse. Such disclaimers will limit the lessee’s recourse under the lease agreement and reduce the risk that the lessee could claim that the Courthouse is unsuitable for its use and occupancy.
- The lease would limit the lessee’s remedies against the Judicial Council following any breach or default of the lease agreement that is not corrected within the applicable notice and cure period provided in the lease agreement. Such limitations will include (a) full and complete waiver of any and all rights to consequential, punitive, or special damages; (b) full and complete waiver of the lessee’s right of specific performance or injunctive relief; (c) waiver of the lessee’s right to exercise any “self-help” remedies and all rights to set off amounts that are at any time owed by the lessee under the lease agreement against any claims that the lessee alleges against the Judicial Council or amounts that the lessee alleges are owed to it by the Judicial Council; and (d) agreement that the lessee’s only relief shall be monetary damages in an amount equal to the lessee’s actual losses.
- The lessee would indemnify, defend, and hold the Judicial Council harmless from and against any and all claims, losses, damages, and costs arising from the lessee’s occupancy and use of the Courthouse including all accessibility-related claims. To support these indemnity obligations, the lessee would be required to maintain adequate insurance covering commercial general liabilities and property damage, with the Judicial Council being named as an additional insured thereunder, and having the right to acquire such additional insurance (at lessee’s cost) if determined necessary. Furthermore, such insurance policies will be primary with respect to all claims covered thereby, and the lessee and lessee’s insurers will be required to waive any rights to subrogation and contribution.
- In the event of a material casualty loss, the Judicial Council will have the option either to repair the Courthouse or terminate the lease agreement.
- In addition, the lease agreement would contain the typical appropriations and budget-delay provisions applicable to any financial obligations of the Judicial Council under the lease agreement.

Although the provisions of the lease agreement described above can minimize the Judicial Council’s risks and liabilities that may arise from leasing the Courthouse, the Judicial Council should anticipate that disputes under the lease agreement might arise and (to some degree) be

unavoidable. Due diligence should be undertaken in order to determine the creditworthiness and stability of the lessee. In leasing the Courthouse, the Judicial Council would be trading off the risks and costs of such disputes and the creditworthiness of the lessee for the benefits of the lessee's rental payments and the lessee paying all or virtually all of the costs of operating and maintaining the Courthouse during the term of the lease agreement.

### **Summary of Pros and Cons to Leasing the Courthouse**

Assuming a creditworthy and stable lessee, and a triple-net lease agreement with the owner-friendly provisions outlined above, below are lists of some of the pros and cons of leasing the Courthouse.

#### **Pros:**

- Judicial branch receives revenue to offset statewide operations and maintenance expenses;
- Ongoing operation of building systems (HVAC, plumbing, etc.) by a lessee is better for the systems than shutting them down, especially in Portola's mountain climate;
- Ongoing occupancy is beneficial for the community because it helps prevent blight;
- Ongoing occupancy assists in keeping the facility secure (deters presence of the homeless, less vandalism, graffiti, etc.);
- Transfers financial liability for most system and infrastructure failures from the branch to a third party;
- Transfers some legal liability (e.g., for tort claims) to a third party; and
- Potential public perception that the Judicial Branch is finding a solution to a financial problem that serves a local need while maintaining the option of keeping the courthouse available for the local courts in the future.

#### **Cons:**

- Lessee may damage the facility, not meet its repair obligation, and could prove to be judgment-proof;
- Potential lack of flexibility for the courts should their program needs change abruptly; and
- Potential public perception issues since the facility was constructed as a courthouse but is not being utilized for that purpose for the immediate future.

### **Comments, Alternatives Considered, and Policy Implications**

#### **Comments**

This request was not circulated for comment as it is specific to the Superior Court of Plumas County and the Superior Court of Sierra County. Staff has received written communication from both courts stating that the facility is not currently being used for court operations; however, the courts do intend to reoccupy the Courthouse when their budget situations improve.

### **Alternatives Considered**

The recommended alternative is for the Judicial Council to exercise its rights as an owner and lease the Courthouse to a third party on a short-term basis in order to offset ownership costs and prevent blight in the local community.

Another alternative is for the Judicial Council to retain the Courthouse in its vacant state, and continue to be responsible for all ongoing operation and maintenance costs. Although the Courthouse is not occupied, the Judicial Council continues to incur property ownership expenses such as utilities, landscaping, and trash removal. This alternative is not recommended.

### **Implementation Requirements, Costs, and Operational Impacts**

Staff will need to check the creditworthiness of the prospective lessees and negotiate final lease terms; these activities are routine tasks for Real Estate & Facilities Management staff. No out-of-pocket costs will be incurred in order to enter into a lease. The Plumas and Sierra courts ceased operations at this location in November 2014; therefore, there are no operational impacts.

### **Attachments and Links**

1. [Cal. Rules of Court, rule 10.11\(c\)](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_11):  
[http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_11](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_11)
2. [Government Code section 70391](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70391):  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=70391](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70391)
3. [Government Code section 70392](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70392):  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=70392](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70392)
4. Attachment A: Correspondence from the Superior Court of Plumas County
5. Attachment B: Correspondence from the Superior Court of Sierra County

**Bustamante, Mary**

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**From:** Norrie, Deborah [Deborah.Norrie@plumas.courts.ca.gov]  
**Sent:** Tuesday, January 27, 2015 4:35 PM  
**To:** Bustamante, Mary  
**Cc:** Kaufman, Ira; Hilde, Janet; Kennelly, John; Kirby, Lee  
**Subject:** Re: the Plumas/Sierra Regional Courthouse

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mary –

The judges and CEO's of the Plumas and Sierra Courts appreciate the opportunity you provided to review a proposed lease agreement for the Plumas/Sierra Regional Courthouse. We appreciate your specifically identifying that the A/V equipment is to be maintained (Term #10(b)) and that an early termination clause is included in Term #4. The goal of both courts is to re-open and occupy that courthouse when the courts' budget pictures improve. An early termination clause allows the courts that option.

Beyond our appreciation for considering the Court's long term goal of re-occupying the regional courthouse in developing a lease agreement, we leave the choice of lessee and maintenance of this courthouse in the capable charge of Judicial Council staff under the direction of the Judicial Council and its internal and advisory committees.

Deborah W. Norrie  
Court Executive Officer  
Plumas Superior Court  
520 Main St., Room 104  
Quincy, CA 95971  
530-283-6016



**Bustamante, Mary**

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**To:** Lee Kirby  
**Cc:** Norrie, Deborah; Johannaber, Emily  
**Subject:** RE: Portola Courthouse

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**From:** Lee Kirby [<mailto:lkirby@sierracourt.org>]  
**Sent:** Thursday, January 22, 2015 10:11 AM  
**To:** Bustamante, Mary; Johannaber, Emily  
**Cc:** Norrie, Deborah  
**Subject:** RE: Portola Courthouse

Hi Mary & Emily –

Judge Kennelly has discussed this with Debbie Norrie during my absence and has indicated that she will approve.

We will defer to Plumas Superior Court's decision in this matter and concur that this potential lease can be taken to the Facilities Policies Working Group for approval.

If you need anything further from Sierra, please let me know.

Lee

*Lee Kirby, Court Executive Officer  
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