



9/12/11

Dear Members:

We write to update you on the specially scheduled meeting of the Judicial Council held on 9/9/11. As anyone who was able to tune in to the live broadcast will attest, to describe the meeting as "contentious" would be a gross understatement.

You may recall that at the last council meeting the Chief Justice referred to an "offer" being made to the San Francisco Superior Court for additional funding. That offer was not accepted. Thereafter, negotiations ensued, culminating in a press release by the San Francisco Court last week setting forth the terms of a written, signed agreement entered into between the Court and Ron Overholt, interim AOC Director, which would provide the Court with \$2.5 million, enabling them to keep some of their civil courts open, and lessening the number of immediate layoffs. The ostensible purpose of the hastily called council meeting was to present the agreement to the council for its acceptance.

Less than 48 hours prior to the scheduled meeting, the AOC publicly posted the agenda. In addition to the one page agreement (Attachment F), a 45 page document was provided that sought to add new and different terms and conditions to the previously signed agreement. These conditions would have required the court to cede a great deal of its management prerogatives to the Executive and Planning Committee, make periodic reports to the council and submit to audits, among other things. The entire document can be accessed at <http://www.courts.ca.gov/documents/20110909item1.pdf>.

Though Executive and Planning Chairman Justice Douglas Miller stated that the conditions were not the product of AOC staff, and were mere "suggestions", the San Francisco Court obviously saw itself as the victim of a classic bait-and-switch. It dispatched the Court's Chief Executive Officer, Mr. T. Michael Yuen, to make that point directly to the council.

Mr. Yuen, in no uncertain terms, described the council meeting as a "charade", and accused the council of "negotiating in bad faith through their emissary" Mr. Overholt. He stated his belief that the council meeting was simply staged to make an example of his court so as to "stifle future dissent". He noted the growing sentiment among the trial courts for innovative solutions, with or without council and AOC approval. He made it clear that under no circumstance would the San Francisco Superior Court accede to being managed by the AOC or council. He opined that the AOC and council "appear to value unfettered autonomy and control" rather than the actual delivery of broad access to the courts. We have attached a transcript of the statement of Mr. Yuen hereto.*

Needless to say, his statements were not warmly received by the council or AOC.

Departing AOC Director William Vickrey angrily decried them as "inexcusable" and "an absolute professional low". Council member Judge Mary Ann O'Malley of the Contra Costa Superior Court went further, and accused the San Francisco Superior Court of being a "mismanaged organization" disserving its citizens.

The Chief Justice made it quite clear that in her view the one page document, titled "Agreement", and signed by Mr. Overholt and the CEO of the San Francisco Superior Court was not a binding agreement, saying it was "not executed", and that the council, not AOC, had sole authority to dispense the emergency funds. Mr. Overholt agreed that the document was not enforceable, as did several council members. Justice Miller, while specifically noting that the statute which created the emergency funds in the first place allows the council to delegate to the AOC Director the power to allocate the funds, also opined that the agreement was a nullity.

However, we note that at the July 22, 2011 meeting of the Judicial Council, the council, by unanimous vote, delegated to the Director of the Administrative Office of the Courts the power to "adjust allocations of funds to courts and for approved programs and projects as needed to address unanticipated needs and contingencies. Any adjustments will be reported to the council at the end of the fiscal year." That authority extended to the emergency funds in question. The minutes of that meeting were accepted without modification on 9/9/11 and can be found at <http://www.courts.ca.gov/documents/20110722jcminutes.pdf> In fact, Mr. Overholt was one of the presenters of the motion. Mr. Overholt became interim Director at the same meeting, by a vote of the council. Thus, he was Director on the date the San Francisco agreement was signed. Under these circumstances, the fact that the council and Mr. Overholt now deny his authority is as puzzling to us as it apparently was to the San Francisco Superior Court.

Eventually the council voted to loan San Francisco Superior Court \$2.5 million dollars while backing away from the more onerous of the conditions under consideration.

The meeting was covered by several news outlets. An excellent television report by KGO TV's Vic Lee, which includes a few of Mr. Yuen's comments, can be found at http://abclocal.go.com/kgo/story?section=news/local/san_francisco&id=8348489 We include the written report of Mr. Lee herein.

Likewise, we hope you will read the article by **Maria Dinzeo of the Courthouse News Service** titled "**Deal On Emergency Funds for San Francisco Hotly Debated**". It is a very detailed and accurate report of the meeting. We include it here as well. If you wish to share the article with anyone it is linked at <http://www.courthousenews.com/2011/09/09/39678.htm>

The Alliance of California Judges issued the following statement following the meeting:

"The Alliance of California Judges supports Presiding Judge Feinstein and her court in rejecting terms that were proposed to the Judicial Council as conditions for providing emergency funding to the San Francisco Superior Court. These conditions would have been an improper usurpation of the independent constitutional authority of a local trial court and presiding judge. This problem demonstrates why the current funding mechanisms for our trial courts are a failure, and why the Alliance has urged fundamental reform. This

agreement would not have been necessary in the first place if the Judicial Council had provided the additional \$82.0 million of emergency relief still legally available under the Budget Act, as urged by the Alliance, which would have provided relief to all courts, not just San Francisco.

This also illustrates why the trial courts need to be guaranteed the funding allocated to them by the Legislature without reserve. Many more courts will soon face the same circumstances faced by San Francisco. The Alliance supports funding relief for all trial courts, and we urge the Judicial Council at its October meeting to revisit the issue of providing full relief authorized by the Legislature for this year."

One final note on the emergency funds issue. We have recently learned that approximately \$130 million dollars has been amassed by the AOC in these "emergency funds" in the past decade, though the current figure on hand is reportedly only \$9 million. The Alliance of California Judges has made a formal information request as to how the AOC spent the other \$100 million plus. So far, the AOC has only revealed that \$6 million has gone to trial courts as emergency expenditures. We will update you when we obtain the information.

CCMS

Given the rancor surrounding the San Francisco funding item, most news outlets overlooked the second agenda item, which dealt with 'the presentation of two independent reviews/reports regarding the CCMS project, including a high level contextual overview of these reports.' An hour was scheduled for the receipt of the reports, but when the agenda item was finally called, the Chief Justice informed the presenters that 15 minutes would be allotted. As is often the case, the reports arrived literally at the end of the meeting, and were not posted in advance of the meeting as promised by the AOC and CCMS Executive Committee Chairman, Justice Bruiniers. Instead they were hastily handed out to the council members at the meeting. The "presentation" too no more than five minutes, and consisted of Justice Bruiniers and others assuring the council that "CCMS works". The discussion was limited to one council member asking that in the future Justice Bruiniers try to use less technical language "that even judges could understand". The transcript reflects much laughter and applause. The council promised to discuss the matter more fully at the October meeting. We are told that CCMS is being funded at roughly the rate of \$600,000.00 per day, as courts continue to struggle to operate. We can't help but note that 4 days of that funding would cover the loan to the San Francisco Superior Court.

Finally, we ask that you read the article in the Ventura County Star titled "**Judges Group Frustrated by Cuts, Wants Changes in Judicial Council.**" It can be accessed at <http://www.vcstar.com/news/2011/sep/05/judges-group-frustrated-by-cuts-wants-changes-in/> In the article, Philip Carrizosa, AOC spokesperson, questions the membership numbers reported by the Alliance of California Judges. We have requested that Mr. Carrizosa apologize for his baseless comment, and that he contact the reporter and indicate to him that he has no basis whatsoever for his assertion. In an email to the Alliance, Mr. Carrizosa has denied making the statement, evidently taking the position that he was misquoted. In the same email, he alleges that Daily Journal reporter Amy Yarbrough also apparently misquoted him in an article in 2009. We will keep you informed as this issue further develops.

Thank you for your continued support.

Directors,
Alliance of California Judges

(*Note: The attached transcript is derived from an AOC-generated transcript streamed along with the audio broadcast. We have done our best to correct 100 or more obvious misspellings and other errors in the AOC transcript. The transcript of the entire meeting, along with AOC disclaimer that it is in fact a rough version, can be accessed at <http://www.courts.ca.gov/3044.htm>. Unfortunately, there are gaps in the version posted on the council website. **For example, the statement made by the Chief Justice and set forth in the Courthouse News article ("A \$2.5 million allocation should take a hell of a lot more than a rubber stamp") does not appear in the transcript, which inexplicably shifts to another speaker when the statement was made.** It may be that the AOC is using a machine generated transcript rather than a court reporter, which might account for the low quality of the meeting transcripts they regularly release.)

Deal on Emergency Funds for San Francisco Court Hotly Debated

By MARIA DINZEO

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SAN FRANCISCO (CN) - Recrimination and rancor abounded at a meeting of California's Judicial Council where members eventually voted unanimously to give a \$2.5 million bailout from the branch's emergency fund to the financially strapped San Francisco Superior Court. The fracas began when Court Executive Officer Michael Yuen said San Francisco would reject the money that was contingent on several provisions attached at the last minute. Calling the agreement brokered by the judiciary's Administrative Office of the Courts a "charade," Yuen said, "I will not allow my court to succumb to unnecessary micromanagement of our financial affairs."

In reproaching incoming interim AOC director Ron Overholt for negotiating on behalf of the council in what he characterized as bad faith, Yuen claimed documents presented at Friday's meeting had been altered from the original agreement he signed with Overholt to give the floundering court emergency money with no strings.

"It was our understanding that the Judicial Council had given Mr. Overholt the authority to negotiate on your behalf," he said. "In light of this delegated duty, it is outrageous that this agreement was not presented to you as executed by both parties."

"Instead, frankly what we have here is a charade," he continued. "It is an embarrassment not only for the council but for the incoming interim director of the AOC. It's a doctored version that was never presented to Presiding Judge Katherine Feinstein or to me."

The new document presented seven conditions the court would have to meet to receive the \$2.5 million and makes no mention of a promise from the AOC to push for increased funding from the Legislature and give the court an additional \$650,000 grant to keep two civil litigation

courtrooms open.

Among other things, the conditions require the court to refrain from closing any courtrooms, compile a detailed report on how the money will be spent, submit to an audit by the AOC on how it spent the money and submit several additional reports on how the court plans to implement cost-saving measures. The court would also be required to repay the money from any remaining funds it has at the end of each fiscal year through 2015.

"We find the conditions totally unacceptable and frankly, insulting," Yuen said.

He also took issue with a provision of the document that says the council could choose to give San Francisco less than the initially agreed upon \$2.5 million. "Let me make clear that I cannot and I will not subject my employees anymore to a yo-yo effect caused by prolonged uncertainties as to whether the AOC and Judicial Council will have the will and demonstrate the commitment to help trial courts like us keep our doors open," Yuen said.

But Yuen was even angrier that the option up for a vote did not even include a statement of the AOC's commitment to seek legislative help for the branch, as the original agreement had. "The agreement pledged the council to work to advocate for legislation that would allow any trial court to generate and retain certain new revenues," Yuen said.

"The thought of trial courts achieving financial independence from the AOC is apparently a scenario too radical to consider, let alone support by actively seeking the passage of such legislation," he added. "The time has come and the momentum is building within the branch for such critically needed outside-the-box thinking. With or without the support of the Judicial Council and the AOC."

Yuen continued: "In fact, I hope you recognize that the breach of trust on display here today actually fuels the seeds of dissent and the urgent requests for reforms within the branch. It appears that the council and the AOC value unfettered autonomy and control over the actual delivery of broad access to justice for its state's citizenry. I will not allow my court to succumb to unnecessary micromanagement of our financial affairs. The seven conditions outlined in the report before you simply amount to unwelcome, insulting infringement on the local authority of the San Francisco Superior Court."

The council ultimately decided to give San Francisco the \$2.5 million based on the court's original agreement, but with the added condition of repayment within five years and a report to the council by Aug. 1, 2012, on how the money was used. Yuen's passionate remarks nonetheless elicited a very unfavorable response from several judges and justices.

Chief Justice Tani Cantil-Sakauye seemed to take particular offense to Yuen's insinuation that seeds of dissent would be sown by the council's adoption of the amended agreement. Her response referred to a belief held by many judges within the branch that AOC staff should control judicial branch policy.

"The AOC, unlike the fiction out there, does not run council," Cantil-Sakauye said. "AOC does not define council. AOC doesn't make the decision and then council ratifies."

"And this money belongs to all the 58 trial courts," she added. "A \$2.5 million allocation should take a hell of a lot more than a rubber stamp."

Council members argued that the emergency fund money could become highly sought after by the state's other 57 trial courts if San Francisco were to receive help.

"There's only \$9.8 million in the urgent needs reserve, and I expect that that amount will be about the same next year and then the year after," Judge David Rosenberg of Yolo County said. "So we're not talking about a lot of money."

While \$9.8 million is the amount that was allocated to the fund this year, the council has

allocated almost \$130 million to the emergency fund since fiscal year 2000-01 and has given out, at maximum, \$6.3 million to trial courts in the last decade. In fiscal year 2009-10, Plumas County Superior Court received \$40,000 from the fund to open its new courthouse.

Appellate Justice Douglas Miller took a conciliatory approach in responding to Yuen. "Quite frankly, I don't appreciate the lecture that we received," Miller said. "Because I think we're here and have been here trying to help you. To make it sound like you have, that somehow we're committing a crime or we're doing something that is evil, I find offensive. I mean, we're only here to help."

Perhaps the most heated response came from Contra Costa Judge Mary Ann O'Malley, who suggested mismanagement as the primary reason for the court's financial troubles. "The citizens deserve better," O'Malley said. "I don't want to punish them for their court's mismanaged decisions."

O'Malley also called the media coverage of San Francisco's budget woes "caustic and nasty." Recently, San Francisco revealed it had prepared to layoff 122 employees in May last year, which would have ostensibly solved its budget problems. The AOC then put pressure on the court not to lay off any staff, as it could jeopardize a deal it was making with the Legislature for a \$230 million funding and revenue package.

When the deal fell through anyway, Feinstein said publicly that the court found itself in an even worse position as a result of trusting the AOC.

O'Malley also took umbrage with the court's insistence that the AOC commit to advocating in the Legislature for additional funding for the trial courts. "People have been working very hard to try to come up with a solution, and the rhetoric I have been hearing on the TV and news has not been helpful," she said. "To lay blame is lame and doesn't belong. Frankly, to say that we need this commitment, it's insulting. It's absolutely insulting."

Judge Feinstein was ill and could not attend the Friday meeting, but signaled via email that she would approve of the agreement once it was amended to cut out most of the strings, allow the court five years to repay the loan and include all the original provisions of the initial agreement.

Judge David Wesley of Los Angeles moved to approve the no-strings agreement but withdrew his motion, saying, "Since it's acceptable to Judge Feinstein, it's acceptable to me."

The Alliance of California Judges, a group fighting for increased funding for the trial courts and judicial branch reforms, issued a statement after the meeting, saying: "These conditions would have been an improper usurpation of the independent constitutional authority of a local trial court and presiding judge. This problem demonstrates why the current funding mechanisms for our trial courts are a failure, and why the alliance has urged fundamental reform."

JUDICIAL COUNCIL VOTES TO GIVE SAN FRANCISCO MONEY FOR COURTS

SAN FRANCISCO (KGO) -- The California Judicial Council, the body that runs the state's judiciary affairs, has voted to give San Francisco emergency funding to reduce layoffs and court closures, but a last minute surprise move by the council almost soured that deal.

"Outrageous, shameful, insulting," -- that's how the CEO of San Francisco's courts described that surprise move at the Judicial Council meeting Friday. He thought his court was getting \$2.5

million with some strings attached, but to his surprise, the deal now on the table had conditions he had never seen.

"The Judicial Council negotiated in bad faith through its emissary. This conduct is shameful and unbecoming of any representative from the world's largest court system," said San Francisco Courts CEO Michael Yuen.

Those were the harsh words from the chief executive of San Francisco's courts. The reason he said them is because he felt betrayed.

Last week, San Francisco's courts reached an agreement with the Judicial Council's staff. The AOC, the Administrative Office of the Courts, agreed to give San Francisco \$2.5 million in emergency funds to mitigate the severe cutbacks. In a one-page agreement, the deal said 14 courtrooms would close instead of 25 and 75 workers would be laid off instead of 177.

However, two days ago, the AOC came up with a much longer document with conditions which San Francisco says were never discussed, conditions which would violate its local autonomy.

Yuen had a blunt reply for the Judicial Council. He said, "Unfortunately, representations and promises made by the AOC are apparently as meaningless as an official signature."

Some of the council members who spoke were upset at Yuen's remarks.

"Quite frankly, I don't appreciate the lecture that we received because I think we're here and have been here trying to help you," said Judicial Council Member Judge Douglas Miller.

Outgoing chief administrator of the AOC Bill Vickery was outraged. He said, "Your comments at the beginning, for me at least, were an absolutely professional low in judicial administration."

In the end, council members agreed to forgo most of the new conditions. They proposed instead to make the \$2.5 million a loan payable in five years.

"I don't think we can walk out of here as I once said beforehand, and allow all these courts in San Francisco to close," said Judicial Council Member Judge Burt Pines.

Yuen texted Presiding Judge Katherine Feinstein who replied that a loan would be acceptable.

So it looks like those cutbacks will be less severe, now that San Francisco's courts will receive \$2.5 million in emergency funding.

The reform-minded Alliance Of California judges issued a statement on Friday saying the council still has \$82 million in emergency money, which it should give to all courts which have to make cuts.

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